

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Bill Tash, Vice Chairman, on January 23, 1995, at 3:00 PM.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 162, HJR 10
Executive Action: HB 201 Do Pass

Tape 1, Side A

HEARING ON HB 162Opening Statement by Sponsor:

REP. LILA TAYLOR, House District 5, Busby, said HB 162 was requested by the Department of State Lands (DSL), and is a proposal to change the definition of prospecting, extend the application period for renewal of a mining permit and add criteria for refusal of a prospecting permit. **REP. TAYLOR** said she agreed to sponsor the bill because she believed it would bring existing state law into compliance with federal law. However, several parts of the bill were not required by federal law and made the law too strict. **REP. TAYLOR** offered amendments that would take those parts out of the bill.

Proponents' Testimony:

Bud Clinch, Commissioner, Department of State Lands, said the Montana Strip and Underground Reclamation Act is the regulatory authority for prospecting and mining of coal in Montana. Through the DSL, Montana administers its regulatory program on private, state and federal lands. Because there is also a federal statute regulating coal mining, Montana's program must at all times be as effective as the federal program in both its statute and regulations. The federal mechanism for notifying a state regulatory program authority of a deficiency is a "732" letter. On February 25, 1994, the federal register included a deficiency letter about Montana's program. It was that letter that initiated the department to craft HB 162. **Mr. Clinch** explained the amendments to the committee.

Jim Mockler, Montana Coal Council, supported HB 162 as amended.

Jeff Barber, Northern Plains Resource Council, supported HB 162.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DAVID EWER asked **John North**, Attorney, DSL, why page 8, section 4 of the bill reads "Section 82-4-227, MCA, is amended to read:" and **REP. TAYLOR'S** amendments strike section 4 of the bill in its entirety. **Mr. North** said the department is not getting rid of current law, it is simply not amending that section.

REP. HAL HARPER asked **Mr. North** why the amendments strike "drilling" on page 4, line 9 of the bill. **Mr. North** said the department doesn't believe the addition of "drilling" makes a substantial change in the bill and in order to ensure that the bill does not contain anything in section one that has not been mandated by the Department of Interior it was taken out.

Closing by Sponsor:

REP. TAYLOR urged the committee to give HB 162 a Do Pass vote.

HEARING ON HJR 10**Opening Statement by Sponsor:**

REP. DICK KNOX, House District 93, Winifred, said HJR 10 was requested by the Environmental Quality Council to conduct an interim study of the compliance and enforcement programs of the state's natural resource and environmental agencies. The primary force and rationale of the resolution is that the people and the regulated community of the state of Montana demand that the laws of this state be enforced in a consistent, fair and effective manner. REP. KNOX said he has attended performance audits of some of the natural resource agencies and found that the consistency of performance was not what it should have been. It is very important that the regulated community knows what to expect. If natural resource enterprises such as mining are to continue in Montana it is very important that the general public can also be assured that regulations and laws are enforced in a consistent, fair and effective manner. If this is not done there will be endless controversy over natural resource enterprises which are very important to the state of Montana. A fiscal note will be requested.

Tape A, Side B.

Proponents' Testimony:

Jeff Barber, Northern Plains Resource Council (NPRC), said the environmental problems and controversies that tend to arise are due more to the enforcement of the laws than to the laws themselves. NPRC welcomes an environmental quality council study. Mr. Barber urged the committee to adopt HJR 10.

Janet Ellis, Montana Audubon Legislative Fund, supported HJR 10.

Larry Brown, J Bar D Environmental Services, commended REP. KNOX for introducing HJR 10. Mr. Brown said he had spent about twelve years in the regulatory arena working for the Department of Natural Resources, Water Quality Bureau. Most of the employees tried to be fair and consistent in the way the laws were applied but it was very difficult because of the subjective issues and the evaluation techniques that were used and the personalities that were involved. Mr. Brown said it was extremely disturbing to him not to be able to meet with the state or a client without having the representation of an environmental group or the press and would like to have that issue addressed in the study from a bipartisan, unbiased prospective.

Peggy Trenk, Western Environmental Trade Association, said the study will allow exploration of enforcement policies in a manner that doesn't indict anyone or any activity. It will be good for the environment and the business climate.

Jim Jensen, Executive Director, Montana Environmental Information Center, said the Montana Constitution would have to be amended in order to allow state agencies to conduct private meetings which would violate the public's right to know. **Mr. Jensen** said the legislature has spent a considerable amount of money the last two years through the Legislative Audit Committee and the Legislative Auditor's office on the same topic that is in the bill. The Legislative Audit Committee should be asked to create a joint study with the Environmental Quality Council.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. BOB RANEY asked **REP. KNOX** if he had given any thought to working with the Legislative Audit Committee. **REP. KNOX** said he had and thought it would be a mistake to bypass the committee and work independently.

REP. HAL HARPER asked **REP. KNOX** if he was amenable to adding subsection (d) to the resolution saying that the methods other states use to improve compliance and enforcement will be studied. **REP. KNOX** said in theory it is a good idea but didn't know if he could completely support that concept.

Closing by Sponsor:

REP. KNOX said the intent of the resolution is not to come up with greater regulatory control. **REP. KNOX** referred to a water quality subcommittee study for HJR 29 which said "the term enforcement that is used by the subcommittee means more than penalties or other sanctions. The subcommittee agreed that enforcement includes the entire universe of activities undertaken by an agency to ensure compliance with its constitutional and statutory goal including incentives, technical assistance, education and other tools." **REP. KNOX** said he envisioned that as being part of HJR 10 and any ongoing study.

CHAIRMAN KNOX resumed the Chair.

EXECUTIVE ACTION ON HB 201

Motion: **REP. HAL HARPER** MOVED HB 201 DO NOT PASS.

Discussion:

REP. HARPER said he was uncomfortable with the bill because the amount of timber that can be cut from state lands should be left to the Board of State Lands that constitutes the trustee for the state and the state school trust. It is wrong to let the board be the trustee for decisions about grazing fees, recreational use, etc., but not the amount of timber that can be cut. It is wrong to substitute political judgment for the boards. **REP. HARPER** said the bill would be more acceptable if the 50 million board feet figure was stricken from the bill. It is irresponsible to give the board a flat order to cut 50 million board feet of timber. If the purpose is to maximize the income from the school trust the people who act as trustees should have the flexibility to make a decision that is in the best monetary interest of the school trust fund.

Motion: **REP. SCOTT ORR** MADE A SUBSTITUTE MOTION HB 201 DO PASS.

Discussion:

REP. ORR said timber is not getting cut and to ask the state to increase the amount of timber to be cut to 50 million board feet is not going to cause a problem. The state is losing out on a lot of revenue. This is an opportunity to manage forests responsibly.

REP. PAUL SLITER said he agreed with **REP. ORR'S** substitute motion. HB 201 will create jobs in the timber industry.

REP. AUBYN CURTISS spoke in favor of **REP. ORR'S** substitute motion. **REP. CURTISS** said it is unconscionable to see the mortality rate in the forests. Dead and dying timber should be utilized.

REP. EMILY SWANSON said she liked the concept of sustainable timber yield and maximizing the benefit to the school trust fund, but it is arbitrary to set a target of 50 million board feet when no one knows if that is a valid target.

REP. DOUG WAGNER said 50 million board feet is not an arbitrary number. That number came from a study that has already been done by the Department of State Lands. A more recent analysis of that study by the department brought the figure up to 55 million board feet. The more dying and slow-growing trees that are taken out of the forests the more room there is for new vigorously growing trees that will produce oxygen. It is better for wildlife, forest health and water quality.

REP. BILL TASH said the 50 million board feet is not to maximize the return to the school trust fund, it is to optimize the return to the school trust fund. The word maximize gives the connotation that timbered land is going to be exploited by the cuts rather than optimized by sustainable yield cuts.

Tape 2, Side A.

REP. JON ELLINGSON said he couldn't support HB 201 at this time because it's important for the Department of State Lands to finish its study and give it to the legislature before a decision is made.

REP. RANEY quoted item 10 of the fiscal note which said "DSL will proceed with timber harvest that may result in significant impacts to wildlife, visual and other resources where those impacts are outweighed by potential revenue." Regardless of the impact on wildlife the trees are going to be harvested. This legislation is saying timber production comes ahead of everything else and nothing else matters.

REP. TASH said in order to reach the sustainable yield, trees are going to have to be harvested before they go up in smoke. If that isn't taken into consideration there are going to be more bills in appropriations to deal with fires. **REP. TASH** recommended HB 201 be passed before more timber dies by fire or rots on the ground.

REP. RANEY said dead and dying trees are healthy for a forest. The bill demands litigation because of the inconsistency of the law.

REP. CURTISS said the decision on timber harvesting should be left up to the professionals who know what it takes to manage a forest.

REP. RANEY said the fiscal note refers to the revenues going into a trust fund but it should be noted that the revenues aren't going into a trust, they are going into a general fund.

MOTION: **REP. SWANSON** MOVED TO AMEND HB 201 BY CHANGING THE WORD "REQUIREMENT" TO "GOAL" ON LINE 23.

Discussion:

REP. ORR said he didn't know what the word change would mean and how it would be interpreted.

REP. SWANSON said by changing the word to "goal" the department wouldn't be required to put the full volume of timber up for sale if the timber isn't there in their best judgment of sustainable yield.

REP. ORR said he was against the amendment because it basically guts the whole bill. Fifty million board feet is not meant to be a goal, it's meant to be a minimum requirement.

Tape 2, Side B.

Vote: Voice vote was taken. Motion to amend failed 12-6.

HOUSE NATURAL RESOURCES COMMITTEE

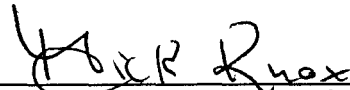
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Vote: Voice vote was taken on Substitute Motion Do Pass HB 201. Motion carried 12 to 6. REP. RANEY, REP. ELLINGSON, REP. DAVID EWER, REP. HARPER, REP. SWANSON and REP. TUSS voted no.

ADJOURNMENT

Adjournment: 4:30 PM



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 1-23-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

January 24, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that **House Bill 201** (first reading copy -- white) **do pass**.

Signed: *Dick Knox*
Dick Knox, Chair

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Committee Vote:
Yes 12, No 6.

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Natural Resources

DATE 1-23-95 BILL NO. #B201 NUMBER

MOTION: Substitute Motion - Do Pass

NAME	AYE	NO
Rep. Dick Knox, Chairman	✓	
Rep. Bill Tash, Vice Chairman, Majority	✓	
Rep. Bob Raney, Vice Chairman, Minority		✓
Rep. Aubyn Curtiss	✓	
Rep. Jon Ellingson		✓
Rep. David Ewer		✓
Rep. Daniel Fuchs	✓	
Rep. Hal Harper	✓	✓
Rep. Karl Ohs	✓	
Rep. Scott Orr	✓	
Rep. Paul Sliter	✓	
Rep. Robert Story	✓	
Rep. Jay Stovall	✓	
Rep. Emily Swanson		✓
Rep. Lila Taylor	✓	
Rep. Cliff Trexler	✓	
Rep. Carley Tuss		✓
Rep. Doug Wagner	✓	

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 162
 DATE 1-23-95 SPONSOR(S) Rep. Taylor

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jim Mockler	Mt. Coa / Council			✓
BUD CLINCH	DSL			✓
Larry Brown	Ag Pres. Assoc			
Maureen Cleary Schwind	WIFE			
John North	DSL			✓

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 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HR 10
 DATE 1-23-95 SPONSOR(S) Rep. Amos

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Peggy Trenk	WETA	HR10		X
MIKE MURPHY	MT. WATER RES. ASSN.	HR10		✓
Larry Brown	Ag. Pres. Assoc.			
Maureen Cleary-Schwartz	WIFE			
Janet Ellis	MT Audubon			✓

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