

MINUTES OF THE MEETING  
NATURAL RESOURCES COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

March 22, 1985

The meeting of the House Natural Resources Committee was called to order by Chairman Dennis Iverson at 5:15 p.m. in Room 312-1 of the State Capitol.

ROLL CALL: Reps. Asay, Garcia, Grady and Harp were excused; all other members of the committee were present.

SENATE BILL 283: SB 283 was introduced in committee by the sponsor, Sen. Jack Galt, District 16. Sen. Galt told the committee that SB 283 was introduced at the request of the department of natural resources and conservation, and is a "fine-tuning" of Sen. Manning's water development bill which was passed four sessions ago. The bill provides a revision of the bonding programs of the DNRC regarding water development projects. Sen. Galt pointed out some specific provisions of the bill, including: entitling the department to issue bond anticipation notes to provide interim financing for water projects; changing the flow of funds on the coal severance tax water bond program; allowing the sale of bond amortization notes for coal severance tax financing, and setting up an emergency fund for water development projects.

Caralee Cheney, a representative of the water development program division of DNRC, further explained those provisions and presented a proposed amendment to the bill, a copy of which is attached as Exhibit 1.

There were no further proponents, and no opponents to SB 283.

Rep. Cobb asked what instances would constitute an emergency in which emergency water development funds would be needed, and Ms. Cheney said a chemical spill or other instance that caused a water source loss would qualify.

Rep. Galt closed by telling the committee that the DNRC's water development program is one of the best programs administered by the state, and SB 283, as an improvement to that program, deserves full support.

SENATE BILL 112: Sen. Pete Story, District 41, introduced SB 112, which he sponsored. The bill would amend section 75-7-103 MCA to clarify that the natural streambed and land preservation act of 1975 is applicable to certain entities of the federal government, and would authorize agreements to provide for notice to conservation districts for federally approved projects within those districts.

Sen. Story said he was prompted to sponsor the legislation because of an incident that occurred in his district wherein the Forest Service began construction of a road without notification or permission of the landowner. Sen. Story stated that the Forest Service is allowed to take action on private land that even the owner of that land cannot take without a state permit.

He said there is no penalty written into SB 112, but that the bill asks the federal government and its entities to enter into agreements with the state and conservation districts when projects are planned that will affect the state's streambeds.

PROPOSERS: Allen R. Carter, a Livingston area rancher, spoke in support of SB 112. He related an instance in which the Forest Service began road construction on his property in an area affecting up to 180' of streambed. The agency did not stay within its surveyed right of way, but entered his land and refused to show permits to do so, he said.

There were no further proponents of the bill.

OPPOSERS: Dave Donaldson, a representative of the Association of Conservation Districts, said that group supports the intentions of SB 112, but opposes the bill unless it is amended. He said that adding the federal government to the definition of "person" regarding streambed projects would increase the workload for conservation districts. A copy of his testimony is attached hereto as Exhibit 2. He stated that the conservation districts would support the bill if it were amended.

There were no further opponents.

Rep. Miles asked Sen. Story for his opinion on the amendments offered by the conservation districts and the senator said he would accept those amendments if it meant saving the bill.

Rep. Peterson said she had spoken with a representative of the Army Corps of Engineers and feels that the problem addressed in SB 112 is an ongoing one, and there are gaps between agencies that the bill does not address. Sen. Story replied that the Corps has no rangers to look for permit violations, and that the agency can only investigate permit violations if it is notified. SB 112, by requiring state notification and involvement, would be a big step toward closing gaps and avoiding problems, he said.

Sen. Story said the question of easements and rights of way is not at issue and is not addressed in the bill.

Rep. Raney agreed to carry SB 112 on the House floor.

EXECUTIVE ACTION

SENATE BILL 112: Rep. Jones moved that SB 112 BE CONCURRED IN. Rep. Raney suggested that the committee discuss the amendments suggested by the association of conservation districts. Rep. Miles commented that the group's proposed amendment 3) appeared to be a complete rewrite of Section 3 of the bill. Rep. Jones said the amendment indicated that the ACDS want the department of Fish, Wildlife and Parks to do their work. Rep. Raney noted that the amendments would remove the Forest Service from inclusion in the bill, and that if that is not done, the conservation districts maintain they cannot do their jobs. Rep. Cobb said it looked like the conservation districts are trying to avoid the responsibility of notification, but he said that "notification is not that big a job."

The committee then returned to public hearing for introduction of SB 415.

SENATE BILL 415: Sen. Ethel Harding, District 25, introduced SB 415, which she sponsored. She told the committee that SB 415 provides an option for local departments or boards of health to review certain subdivisions. She emphasized that the bill does not direct that those subdivisions must be locally-reviewed, but rather, it gives local governments the option to do so. She said she sponsored the bill because she believes that those local departments are often better able to identify and address local concerns than state agencies.

PROPONENTS: Pat Trusler, a Lake County sanitarian, told the committee he had been working on the proposed legislation since the last session. SB 415 offers a local option for certification, he said, and provides a third level of review for minor subdivisions. He said the Lake County planning agency is a strong proponent of the bill.

Jim Richard, representing the Montana Association of Planners, said that group supports SB 415 as written.

Ed Zuleger supported SB 415 on behalf of the Missoula County Health Department.

Will Selser supported the bill on behalf of the Lewis and Clark County Board of Health.

Terry Carmody, representing the Montana Association of Realtors, said that group supports SB 415 in the interests of promoting local review of subdivisions.

William Spilker, a Helena realtor, said SB 415 is good legislation. Most subdivisions that would be included under SB 415 are site-specific, and should be locally reviewed, he said.

Steve Pilcher, representing the water quality bureau of the department of health and environmental sciences, said SB 415 recognizes the contribution and capabilities of local health departments. The bill will make subdivision review easier for all concerned, he said.

There were no opponents to SB 415, and the floor was opened to questions from committee.

Rep. Miles asked Mr. Pilcher who would request the review covered in the bill. He said that local county boards of health would make the review request to DHES.

Rep. Cobb asked if the \$1,000 per day penalty for violation of the rule (page 11, line 9) was excessive. Mr. Pilcher said that penalty is consistent with other laws regulating the state's environmental quality.

Sen. Harding closed by saying that the bill is a good one, worked out by sanitarians, planners and the department of health and environmental sciences. That broad base of support indicates that the support of the committee would be in order, she said.

#### EXECUTIVE ACTION

SENATE BILL 415: Rep. Ream moved that SB 415 BE CONCURRED IN. That motion was approved unanimously. Rep. O'Hara moved that the Statement of Intent be approved, and that motion was passed unanimously.

The committee then went out of executive action and began the public hearing on SB 354.

HEARING ON SENATE BILL 354: Sen. Joe Mazurek, District 23, introduced SB 354, which he sponsored. The bill is a brief one, and simply clarifies that the conveyance of one or more parts of a building is not a subdivision, he said. Sen. Mazurek told the committee he introduced the bill at the request of the Lewis & Clark area-wide planning board, after a series of recent attorney general's opinions created problems for planning agencies. Those opinions he said, have stated that under the subdivision and platting act, a duplex is a subdivision and must be reviewed. The bill simply says that a multi-family structure is not a subdivision and should not be reviewed as such, said Sen. Mazurek.

PROPOSERS: Gus Bergum, Lewis & Clark planning director, said SB 354 is a good means of ending the problems caused by a bad attorney general's opinion.

Helena real estate agent Bill Spilker supported SB 354.

Terry Carmody, representing the Montana Association of Realtors, said that group supports SB 354.

Jim Richard, of the Montana Association of Planners, said he had drafted some proposed amendments to the bill, but chose not to offer them to the committee. Because those amendments were not offered, the association would stand neutral on SB 354, he said.

There were no opponents to SB 354, and the floor was opened to questions from committee.

Rep. Raney asked if the allowance for improvements to a structure could become a loophole. For instance, could an improvement under SB 354 be a separate structure, he asked. Sen. Mazurek said that a shed might be construed as an improvement, but that a separate residence would not be allowable under the law. Rep. Raney said he believed there still might be a potential loophole in the bill.

Sen. Mazurek closed without comment.

Rep. Miles agreed to carry the bill on the floor of the House.

EXECUTIVE ACTION ON SB 354: Rep. O'Hara moved that SB 354 BE CONCURRED IN. Rep. Ream moved the minor amendment suggested by Sen. Mazurek, and that motion was unanimously approved. Rep. O'Hara then moved that SB 354 BE CONCURRED IN AS AMENDED, and that motion was approved with Rep. Raney voting no.

EXECUTIVE ACTION ON SB 112: Continuing the earlier discussion of SB 112, Rep. Raney said he could not see how SB 112 would hurt the conservation districts. Rep. Cobb commented that a fish and game representative is generally present at hearings anyway. Rep. Peterson agreed that conservation districts would likely not be burdened by the bill.

Rep. Kadas moved that SB 112 BE CONCURRED IN. Rep. Raney asked if the bill would require a terrific amount of action by the conservation districts, and Rep. Cobb said he did not think so. Rep. Ream said the bill is fine as it is, and the amendments proposed by the conservation districts would "clutter it up." Rep. Kadas's motion was unanimously approved. Rep. Raney agreed to carry the bill in the House.

Natural Resources Committee  
March 22, 1985  
Page 6

EXECUTIVE ACTION ON SB 283: Rep. Ream moved that SB 283 BE CONCURRED IN. Rep. Kadas moved the amendment proposed by the department of natural resources and conservation. That amendment was unanimously approved. Rep. Ream then moved that the bill BE CONCURRED IN AS AMENDED, and that motion passed, with Rep. Driscoll voting no.

There being no further business before the committee, the meeting was adjourned at 6:35 p.m.

  
Rep. DENNIS IVERSON, Chairman

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/22/85

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom			X
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney			X
GRADY, Edward			X
HARP, John			X
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

# STANDING COMMITTEE REPORT

PAGE 1 of 2

MARCH 22

19 35

MR. **SPEAKER:** .....

We, your committee on ..... **NATURAL RESOURCES** .....

having had under consideration ..... **SENATE BILL 293** ..... Bill No. ....

THIRD reading copy ( BLUE )  
color

**AN ACT TO REVISE THE BONDING PROGRAMS OF THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION**

Respectfully report as follows: That ..... **SENATE BILL 293** ..... Bill No. ....

**BE AMENDED AS FOLLOWS:**

- 1) Title, line 18.  
Following: "85-1-619,"  
Insert: "85-1-623,"
  
- 2) Page 21.  
Following: line 22  
Insert: "Section 15. Section 85-1-623, NCA, is amended to read: "85-1-623. Authorization of water development bonds. The legislature, through the enactment of this section by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$5 \$10 million and the issuance and sale of water development bonds in this amount for the purpose of providing funds appropriated to the water development account for loans as provided in the water development program.""

Renumber: subsequent sections.

(CONTINUED ON FOLLOWING PAGE)

~~86483~~

3) Page 26.

Following: line 17

Insert: "NEW SECTION. Section 22. Requirements for approval of state debt -- severability. Because section 15} authorizes the creation of state debt, a vote of two-thirds of the members of each house is required for enactment of section 15}. If section 15} is not approved by the required vote, section 15} is void, and the remaining sections of this act are valid and remain in effect in all valid applications upon enactment."

Renumber: subsequent section.

AND AS AMENDED,

BE CONCURRED IN

# STANDING COMMITTEE REPORT

PAGE 1 of 2

March 18 1935

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration SENATE BILL 369 Bill No.

THIRD reading copy ( BLUE color )

## AN ACT TO PROVIDE FOR THE SAFETY OF DAMS AND RESERVOIRS

Respectfully report as follows: That SENATE BILL 369 Bill No.

### BE AMENDED AS FOLLOWS:

- 1) Title, line 8.  
Strike: "SECTIONS"  
Insert: "SECTION"
- 2) Title, lines 9 and 10.  
Strike: "85-15-201" through "85-15-304,"
- 3) Page 8, line 1.  
Following: "of the"  
Insert: "high-hazard"
- 4) Page 12, line 4.  
Strike: "insufficient"  
Insert: "sufficient"

XXXXXX  
DO PASS

CONTINUED ON FOLLOWING PAGE  
STATEMENT OF INTENT ATTACHED

AMENDMENTS TO SB 369 (Continued)

- 4) Page 14, line 14.  
Strike: "Sections"  
Insert: "Section"
- 5) Page 14, lines 15 and 16.  
Strike: "95-15-201" through "95-15-304,"  
Strike: "are"  
Insert: "is"

AND AS AMENDED,

BE CONCURRED IN

*JK*  
*H*

## STATEMENT OF INTENT - SENATE BILL 369

A Statement of Intent is required for this bill because it delegates rulemaking authority to the Department of Natural Resources and Conservation in section 20.

It is the intent of the legislature that the department adopt rules relating to the classification of dams and reservoirs to determine whether dams and reservoirs are to be classified as high-hazard under the bill, rules governing the content, form, and procedure for applications for dam and reservoir classification and permits to be issued under the bill, rules governing criteria to be used by the owners of dams and reservoirs when conducting inspections of the high-hazard dams and reservoirs and submitting reports to the department, rules establishing safety standards for the design, construction, operation and maintenance of high-hazard dams and reservoirs, rules establishing emergency preparedness and warning procedures to be implemented by owners of high-hazard dams and reservoirs in cases of danger to people or property, and other rules as may be necessary for the department to implement the bill.

# STANDING COMMITTEE REPORT

March 22 22

19 95

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration SENATE BILL 112

Bill No. ....

THIRD reading copy ( BLUE )  
color

**AN ACT TO CLARIFY THAT THE NATURAL STREAMBED AND LAND  
PRESERVATION ACT OF 1975 IS APPLICABLE TO THE FEDERAL  
GOVERNMENT AND ITS ENTITIES**

Respectfully report as follows: That SENATE BILL 112

Bill No. ....

BE CONCURRED IN

XXXXXX  
XXXXXX  
XXXXXX

  
ROY DENNIS IVERSON,

Chairman.

# STANDING COMMITTEE REPORT

..... March 22, ..... 19 55.....

MR. SPEAKER:.....

We, your committee on NATURAL RESOURCES.....

having had under consideration SENATE BILL 354..... Bill No.....

THIRD reading copy ( BLUE )  
color

AN ACT TO CLARIFY THAT THE CONVEYANCE OF ONE OR MORE PARS  
OF A BUILDING IS NOT A SUBDIVISION

Respectfully report as follows: That SENATE BILL 354..... Bill No.....

BE AMENDED AS FOLLOWS:

- 1) Page 1, line 15.  
Strike: "newly constructed"  
Insert: "proposed"

AND IS AMENDED,

BE CONCURRED IN

~~DO PASS~~

# STANDING COMMITTEE REPORT

MARCH 22

1935

MR. SPEAKER

We, your committee on NATURAL RESOURCES

having had under consideration SENATE BILL 415

Bill No. ....

THIRD reading copy ( BLUE )  
color

**AN ACT PROVIDING AN OPTION FOR LOCAL DEPARTMENTS OR BOARDS  
OF HEALTH TO REVIEW CERTAIN SUBDIVISIONS**

Respectfully report as follows: That SENATE BILL 415

Bill No. ....

BE CONCURRED IN

~~BY PASS~~

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

EXHIBIT 1  
3/22/85



TED SCHWINDEN, GOVERNOR

32 SOUTH EWING

STATE OF MONTANA

(406) 449-3712

HELENA, MONTANA 59620

MEMORANDUM

TO: Senator Jack Galt

FROM: Larry Fasbender  
Director, DNRC

DATE: March 22, 1985

SUBJECT: Proposed amendment to S.B. 283

We would propose a change to S.B. 283 to raise the bond limit from \$5 to \$10 million for the Water Development General Obligation Bond Program.

This would require adding section 85-1-623 to the title, inserting a new section 15, and renumbering subsequent sections.

New section 15:

Section 15. Section 85-1-623 is amended to read:  
"85-1-623. Authorization of water development bonds. The legislature, through the enactment of this section by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$5 \$10 million and the issuance and sale of water development bonds in this amount for the purpose of providing funds appropriated to the water development account for loans as provided in the water development program."

This bonding authority is used for loans under \$200,000 and some proceeds go to public projects approved by the legislature but they are primarily used for private agricultural projects approved by the Director of DNRC during the interim.

To date \$2.2 million of this bonding authority has been used and it was anticipated that the remaining \$2.8 would be adequate for the program until the 1987 legislative session. However, recent increased interest from the agricultural community has generated approximately \$1.6 million in projects which could be funded this spring, which would leave only \$1.2 million in authority to fund projects approved by the 1985 legislature and new private projects which may arise.

In addition, the department has received legislative direction to put additional emphasis on agricultural projects during the upcoming biennium.



Montana Association Of Conservation Districts

EXHIBIT 2

~~12~~  
3/22/85

7 Edwards  
Helena, Montana 59601  
Ph. 406-443-5711

March 22, 1985

TO: The Honorable Dennis Iverson, Chairman  
House Natural Resources Committee

TESTIMONY ON SB 112 TO MAKE THE NATURAL STREAMBED AND PRESERVATION ACT OF 1975 APPLICABLE TO CERTAIN ENTITIES OF THE FEDERAL GOVERNMENT AND AUTHORIZING AGREEMENTS TO PROVIDE FOR NOTICE TO CONSERVATION DISTRICTS OF FEDERALLY APPROVED PROJECTS WITHIN DISTRICTS.

The Association is in opposition to SB 112 but does support the intentions of Senator Story.

The Association has one problem with the bill on page 2, lines 5 through 8. This section adds the federal government to the definition of "person".when doing projects on streams of less than 5 cfs. This requires the federal government to receive a 310 permit on streams that are less than 5 cfs which would include all dry stream banks. This would increase the workload for the Conservation Districts, who presently administer many 310 permits.

The federal government presently has to receive a 404 permit administered by the corp. of engineers on streams greater than 5 cfs.

I also have some concerns about the language in the new section 3 on pages 2 and 3. It is a little bulky.

If the committee feels we need to pass this bill I would like to suggest some amendments which are attached.

Thank you for your consideration.

David Donaldson  
Executive Vice President

DD:dv

Ex. 2, p. 2  
3/22/85

Proposed Amendments to SB 112

1. Title, Line 4

Strike: "CLARIFY" through "ENTITIES"

Insert: "AUTHORIZE THE MONTANA DEPARTMENT OF FISH WILDLIFE  
AND PARKS TO ENTER INTO MEMOS OF UNDERSTANDING WITH THE  
U.S. ARMY CORPS OF ENGINEERS CONCERNING FEDERAL STREAM  
RELATED PROJECTS"

2. Page 2, Lines 5 through 8

Following: "87-5-502."

Strike: "Person" on line 5 through "SECOND" on line 8

3. Page 2, Line 23

Following: line 22

Insert: "NEW SECTION. Section 3. Department authorized to  
make agreements. The department may enter into memos  
of understanding with the army corps of engineers and  
the corp. of engineers may provide for notification to  
the conservation districts of any federal stream related  
projects within the districts governed by 33 U.S.C. 403  
or 33 U.S.C. 1344."

Renumber: subsequent sections







