

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES**

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on February 2, 2001 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 310, 1/18/2001; HB 304,
1/18/2001
Executive Action: HB 320; HB 327; HB 126

HEARING ON HB 310

Sponsor: REP. NORMA BIXBY, HD 5, Lame Deer

Proponents: Beth Kaeding, Bozeman, self
Dena Hoff, NPRC
Steve Gilbert, Helena, self
Irv Alderson, Birney, self
Jeanie Alderson, Birney, self
Art Hays, Tongue River Valley
Teresa Erickson, NPRC
Art Loendorf, Farmers Union
Joe Rodriguez, Native Action
Tom Schneider, Helena, self
Brenda Lindlief Hall, Tongue River Water Users
Association and self
Jeff Barber, MWF
Ron Arneson, Northern Chyenne Tribe
Jim Sweaney, Gardiner, self
Julia Page, NPRC
George Nell, Gardiner, self
Michelle Reinhart, MEIC
John Wilson, Montana Trout Unlimited
Jeff Bukowski, Bozeman, self
Betty Whiting, Montana Association of Churches
Rep. Carol Juneau, HD 85, Browning

Opponents: Gail Abercrombie, Montana Petroleum Association
Rebecca Watson, Redstone Gas
Kemp Wilson, Red Lodge, self
Don Allen, WETA
Patrick M. Montalban, Northern Montana Oil & Gas
Association (NMOGA)
Tom Ebzery, CMS Oil & Gas

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0.4}

REP. NORMA BIXBY, HD 5, Lame Deer, stated HB 310 would require a permit for discharge of groundwater from a coal-bed methane well to surface water. It would amend section 75-5-401 MCA. Coal-bed Methane in Montana is a new energy source which is looked upon, by some Montanans, as a way to bring more income to Montana. The companies are touting approximately \$441,000,000 in revenues with \$270,000,000 going to the state general fund. These incomes would come from a field with a life of 20 years. This bill does

not stop coal-bed methane development. She stated that she disagrees with the fiscal note. It states that coal-bed methane operations with water discharges, to state waters, will be permitted in the usual permitting program process. Also, water quality from a coal-bed methane project typically does not meet the exemption so projects will still need a permit in most cases. The key words that bring concern are, "typically does not meet the exemption" and "permit in most cases." It must be in all cases. We are talking about Montana's water. Wyoming already requires a permit, why not Montana? There are a number of reasons to require a permit. Methane is an entrapped gas and can only be released by de-watering the coal aquifers and discharging this produced water to surface. The Board of Oil and Gas Conservation acknowledged that methane production is unique and creates very different impacts than conventional natural gas production. BLM estimates that 10,000 coal-bed methane wells will be drilled in Montana over the next 10 years. Montana contains 30% of the nation's coal reserves. Each coal seam could potentially contain methane gas. If developed, these could cause considerable impact on large areas of eastern and central Montana. She handed out an article **EXHIBIT (nah27a01)**. An Environmental Impact Study is being done because the development may have significant impacts on the environment. Coal-bed methane wells discharge between 20 to 30 gallons, per minute, of water, per well. The unaltered groundwater may become altered during withdrawal. The water discharge contains high levels of dissolved salts. We must assure now, in this legislative session, protection of our water. Lets get things in place and do it right from the beginning. The development of coal methane is new and we don't have the data to back up the long term impacts of this type of development. A permit is not too much to ask.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 8.6}

Tom Schneider, Helena, self, stated that the land involved in coal-bed methane covers a massive area. He calculated, based on the typical well profile, about 250,000 oil field barrels of water will be produced. This water would cover 56 townships, 3 inches deep. The 10,000 expected wells is based on a net back of \$1.80 per decatherm. HB 310 is a bare minimum we can do. The discharges involved will be massive. They will flow into the Powder River, Tongue River, Little Powder and all of the associated drainages. These are not the only places that will potentially be affected. The potential is in Bozeman, Livingston, etc. He stated that he cannot imagine that someone would oppose this bill. There should not be a question about

whether a permit will be required or not. This should not just be limited to development wells. The wells in terms of exploration and development pose the same risks to the environment. He urged a do pass of HB 310.

Brenda Lindlief Hall, Tongue River Water Users Association and self, stated that she is not being paid to testify. She passed out a copy of The Constitution of the State of Montana, Articles I - X **EXHIBIT (nah27a02)**. She spoke of the constitutionality of allowing the pollution of Montana's waters. She worked on the case of *MEIC v. DEQ*. In that case the Montana Supreme Court unanimously found that a broad exemption such as this was unconstitutional. It implicated the fundamental right to a clean and healthful environmental. Dealing with water rights, it implicates Article IV, Sections 1, 2 and 3. She stated that the legislators are all here because they care about Montana and it's citizens. She said, "You've all been entrusted with a precious task of enacting legislation for the protection of all Montanans." This legislation will not be harmful to anyone. If everyone already agrees that permits are necessary then it might as well be enacted. This will clarify any confusions. The DEQ has acknowledged that these discharges can and will impact the soils and water quality.

Ron Arneson, Northern Cheyenne Tribe, stated that the Northern Cheyenne Tribe is very concerned about the impact of coal-bed methane on their water. The Tribe believes that the life contained in the water is spiritual. That life needs preservation. He asked for a do pass.

Dena Hoff, NPRC, submitted graphs about her testimony **EXHIBIT (nah27a03)** and written testimony **EXHIBIT (nah27a04)**.

Jeanie Alderson, Birney, self, submitted written testimony **EXHIBIT (nah27a05)**.

Jeff Barber, MWF, quoted from the concurring opinion in the decision on *MEIC v. DEQ*. He quoted, "The facial unconstitutionality of 75-5-317(2)(j) lies in it's exemption of particular water discharges from non-degradation review without consideration of the nature and volume of substances in the water that is discharged. The possibility that some water discharges will not harm the environment does not justify their exemption from careful review by the state to protect Montana's fundamental rights to a clean and healthy environment and to be free from unreasonable non-degradation of that environment." That speaks for itself. He also expressed support of the bill on behalf of the Montana Chapter of the American Fishery Society.

Joe Rodriguez, Native Action, stated that our children and water are our most precious resources. This issue is of great concern to the residents of the Northern Cheyenne Reservation and surrounding area. Water is used in a variety of ways on the reservation. Preliminary data has raised concerns regarding impacts to the water on both the Crow and Cheyenne Reservations. This is a very scary issue for people in the area. He passed out an affidavit from a member of Native Action **EXHIBIT (nah27a06)**.

Steve Gilbert, Helena, self, submitted written testimony **EXHIBIT (nah27a07)**.

Art Hays, Tongue River Valley, submitted written testimony **EXHIBIT (nah27a08)**.

Beth Kaeding, Bozeman, self, stated that she has a personal stake in this legislation as the J. M. Huber Company of Denver has indicated that it will apply for coal-bed methane permits in the Bozeman area. The ranchers in the area are very worried. This bill would allow those concerned people to participate in the decisions to permit water discharges. Water is very important to the livelihood of agriculture. She stated that she is not against coal-bed methane development but she is for development in an orderly and prudent matter. Water is too precious to waste. There is a lack of information about the consequences of coal-bed methane development. She said, "If, in the excitement of the short-term boom of extracting the coal-bed methane, an area's agricultural foundation is destroyed by the loss of it's water resources or the ruin of the lands surface by the unregulated dumping of saline ground water, what will be left when the coal-bed methane wells are dry in 10 to 20 years?" She stated that we must promote conservation and alternative energy sources. Only after all of the unanswered questions and identified problems are addressed should we develop this non-renewable energy resource. This bill would assure that our water would not be impaired when coal-bed methane resources are developed.

Jim Sweaney, Gardiner, self, favors the bill.

Julia Page, NPRC, favors the bill. She stated this is not just a problem for eastern Montana as there are some applications for leases in Gallatin County.

Irv Alderson, Birney, self, submitted written testimony **EXHIBIT (nah27a09)**.

George Nell, Gardiner, self, asked the committee to use common sense and not to let our water go to waste.

Michelle Reinhart, MEIC, stated that HB 310 is a simple and clear measure to uphold our right to a clean and healthful environment. She urged the committee to support the bill.

John Wilson, Montana Trout Unlimited, stated that coal-bed methane is moving west and could be a threat to trout rivers. He supports the bill.

Jeff Bukowski, Bozeman, self, stated that he testified 2 years ago in front of the Natural Resources committee. Permits must be required for this drilling.

Betty Whiting, Montana Association of Churches, supports this bill in concern for the universe and the people who live upon it.

Rep. Carol Juneau, HD 85, Browning, stated that she supports HB 310. The bill is good for the state and the environment. She urged a do pass.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 52.5}

Rebecca Watson, Redstone Gas, stated that we are talking about unaltered groundwater. This is pure, pristine, Montana groundwater. It does not have any coal-bed methane production fluids in it. The quality of the groundwater is poor compared to the quality of the Tongue River. Yet, it is unaltered groundwater. Coal-bed methane development does not de-water aquifers. It lowers the pressure of water in order to release the gas molecules. Many people have raised the issue about 75-5-401. This law has been challenged in court and EPA and the Federal District Court have approved this law. She passed out a packet on coal-bed methane **EXHIBIT (nah27a10)** and a video **EXHIBIT (nah27a11)**. Redstone is the only company, in the state of Montana, that is producing coal-bed methane. There is presently a moratorium on further coal-bed methane. All of the concerns and issues are really premature development. Redstone is limited, under the terms of a settlement and prior agreement, to 250 producing wells. In the meantime the state and federal governments are conducting a MEPA and NEPA review. All of the concerns are going to be discussed and analyzed in a two year EIS statement process that began in December. Montana's current laws are working so this bill is unnecessary. Industry is working with the agencies to try and ensure that good review occurs before development occurs. **Ms. Watson** went over her exhibits and the history of Redstone Gas in Montana. We cannot target out one industry and put regulations against it. Montana is already unfriendly to industry. Wyoming is seeing great benefits from

coal-bed methane development. **{Tape : 1; Side : B; Approx. Time Counter : 0.1}** In the last ten months Redstone has been sued or intervened into a lawsuit six different times. That is a real disincentive to come to the state of Montana. Redstone is considered to be the class act of coal-bed methane developers in Wyoming. We are trying to bring in a good economy to the state so we must build on what we have. The agriculture community can use the water coal-bed methane produces to water their cattle, drink and, if flushed with Tongue River water, it can be used to irrigate. The coal-bed methane industry would be a benefit to the state of Montana and the current laws will work to protect our environment. Do not enact another barrier to one particular industry.

Kemp Wilson, Red Lodge, self, stated that he opposes the bill for a couple of reasons. The first is because there is a full blown EIS study underway now. It is important that the legislature has all information before it enacts laws. He stated that his real concern is the wide scale impact of the proposed legislation. Methane in water is a pain to farmers and ranchers but the statute referenced is a water quality not a water quantity statute. As such, the concern addressed by the amendment either has to be that the methane produced with the water is causing problems or that the water is incapable of meeting the three exemptions to the exemption under the statute. It was the exemption in 401 that allowed drilling of stock water, domestic water and irrigating wells. This legislation will require all water wells drilled into coal beds to obtain a DEQ discharge permit. The application process could take up to two years. He stated that he, as a well owner in a coal producing county, does not think this legislation is a good deal.

Tom Ebzery, CMS Oil & Gas, stated that he concurs with the two previous speakers. He handed out two booklets on coal-bed methane **EXHIBIT (nah27a12)** and **EXHIBIT (nah27a13)**. He stated that this legislation is unneeded. He assured the committee that **CMS Oil & Gas** will obtain all necessary permits and comply with environmental standards.

Gail Abercrombie, Montana Petroleum Association, stated that this is a water quality section not a water quantity. Why should one want to exclude coal-bed methane unless they don't want the development. We need to send the message that Montana is willing to work with the operators. This is unnecessary and sends a bad message. She asked for a do not pass.

Patrick M. Montalban, NMOGA, stated that the oil and gas industry is very highly regulated. The proponents have concerns that need to be looked at. 10,000 wells will create several good paying

jobs and tax dollars which this state needs. The EIS study will determine any problems coal-bed methane may pose for the environment. We must compromise to work this problem out.

Don Allen, WETA, stated that only part of the constitution was talked about by the proponents. They left out the rights of pursuing life's basic necessities, enjoying and defending life and liberty, acquiring and possessing property, etc. As long as people do the kinds of activity in a lawful way they should be able to pursue the other rights. He hoped for a do not pass.

Informational Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 13.9}

Jan Sensibaugh, DEQ, stated that the data the DEQ has received shows that this water cannot meet the non-degradation requirements and therefore needs a permit.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 14.5}

REP. ERICKSON asked **Ms. Sensibaugh** if all wells, not just the ones that data has been received on, will require permits. **Ms. Sensibaugh** stated she is not certain. That is what the EIS process will show. **REP. ERICKSON** asked then would it be prudent to think about not just the area that you have received data on but the also the area that we know very little about and therefore this could be a very useful piece of legislation. **Ms. Sensibaugh** stated that is a policy decision but the EIS would develop the information to allow us to know whether the exemption applied or not.

REP. ERICKSON asked **Ms. Watson**, do you think that, having this law, might decrease or increase the possibility of lawsuits? **Ms. Watson** stated that she does not think it will make a difference. This is another barrier to business in the state of Montana. Some companies fear to come into Montana because of the numerous lawsuits brought against natural resource projects. Like I137 targeted gold mining this legislation would target coal-bed methane. **REP. ERICKSON** stated that he thinks in having this law there may be fewer constitutional challenges than there otherwise might have been. Is that a reasonable thing to think? **Ms. Watson** stated that she does not think so. It is important to listen and understand that before any discharges occur we will have the information to know about the water quality. If the

water quality is good this law will not be implicated. These fears are unfounded.

REP. LASZLOFFY asked **Mr. Schneider** since he is a petroleum engineer, does he understand, technically, how coal-bed methane extraction works. **Mr. Schneider** stated yes. **REP. LASZLOFFY** then asked why can't we pull the water out, pipe it to another part of the same field and re-inject it. **Mr. Schneider** stated that is the recommendation he intends to make as part of the EIS process. That settles the issues in terms of whole ecosystem destruction.

REP. MOOD asked **Ms. Sensibaugh** if a discharge permit, under this circumstance, requires environmental review under MEPA. **Ms. Sensibaugh** stated yes. The EIS is for the whole area of the state where coal-bed methane could be undertaken. **REP. MOOD** followed up asking if this bill would require permits for each individual well. **Ms. Sensibaugh** stated that is correct. **REP. MOOD** then asked if each one of those individual permits would be subject to MEPA review. **Ms. Sensibaugh** stated no, the permits would be issued under the EIS currently underway. **REP. MOOD** asked how those permits would protect the individuals. **Ms. Sensibaugh** stated, with each individual permit issued there is a public comment period. **REP. MOOD** asked if it is true that Wyoming does not have the MEPA process. **Ms. Sensibaugh** stated yes. **REP. MOOD** asked how they protect their water quality and the various concerns on this issue. **Ms. Sensibaugh** stated they issue permits under the EPA National Pollution Elimination System permit process which the state administers with the same water quality standards as the state of Montana. **REP. MOOD** then asked if anyone is falling dead in Wyoming. **Ms. Sensibaugh** stated not that she has heard of.

REP. GUTSCHE asked **Ms. Watson** if Redstone acquired a permit when they first started operating. **Ms. Watson** stated that they had permits from the Board of Oil and Gas. The DEQ sent a letter stating that Redstone was exempt under 401. At that same time Redstone had already started the process of obtaining water quality permits. There was quite a bit of delay in putting those permits out and it was not until June of 2000 that Redstone received the permits. Therefore, from October 1998 until June 2000 Redstone was discharging under the provisions of the law. **REP. GUTSCHE** followed up asking what precipitated Redstone getting it's water quality permit. Was there any legal action against Redstone or did they do this on their own. **Ms. Watson** stated that Redstone simultaneously applied for MPDS permits back in 1998. DEQ had those under review, put them out for public comment and no comments were filed by anybody. Concerns were raised, DEQ was uncertain how MEPA would apply to the issuance of

the permits, the permits were delayed and finally they were received in June of 2000. The notice of intent to sue by NPRC was filed in April of 2000.

REP. GUTSCHE asked **Mrs. Lindlief Hall** if Montana is in compliance with EPA regulations regarding it's groundwater. **Mrs. Lindlief Hall** stated that it is her understanding that the discharges, at this point in time, are not in compliance with EPA requirements. **REP. GUTSCHE** followed up asking for further comment on the non-compliance. **Mrs. Lindlief Hall** stated that she does not have more information on that. In regards to the differences between Montana and Federal law, the Montana Constitution is more stringent than the Federal Constitution in it's environmental provisions. We must act within the constraints of the Montana Constitution. **REP. GUTSCHE** followed up asking **Mrs. Lindlief Hall** if she is aware that the EPA has said to the state of Montana that, in order to comply with federal laws, Montana will need to eliminate the permit exception found in MCA section 75-5-401(1)(b). **Mrs. Lindlief Hall** stated yes.

REP. LASZLOFFY asked **Ms. Watson** to address the same issue. **Ms. Watson** stated that there was litigation filed by several environmental groups challenging the enactment of certain Montana water quality standards. Included among them is 401 which was litigated. EPA reviewed those water quality standards as part of that litigation. They approved the water quality standard with the change made in 1999 by the legislation. The environmental groups then re-filed a complaint, with the Federal District Court, and said that approval was wrong. The District Court reviewed it and disagreed. They found in favor of EPA's approval of Montana's water quality standards. That case is on appeal to the Tenth Circuit, it's been fully briefed and should be argued within the next few months. EPA does not like this standard but they did not disapprove it.

REP. LASZLOFFY asked **Ms. Sensibaugh** to address the same question. **Ms. Sensibaugh** stated that in December of 1998, DEQ did receive a letter from EPA that they disapprove that exclusion in the law. The DEQ then brought a bill forward, which was passed by the 1999 legislature, that required a look at non-degradation before the exclusion. There have been ongoing negotiations, on this issue, between DEQ and EPA.

REP. BALES asked **Ms. Sensibaugh** if HB 310 is passed what effect will that have on the DEQ's action. **Ms. Sensibaugh** stated that if DEQ discovers that there is a place where coal-bed methane development is done and all of the unaltered groundwater meets the requirements then that area would not be permitted. **REP. BALES** followed up asking could you do that if this bill passes.

Ms. Sensibaugh stated that, if this bill passes, DEQ would issue a permit to every coal-bed methane well discharge. **REP. BALES** asked if this bill would cause the department a lot more extra effort than necessary. **Ms. Sensibaugh** stated DEQ would have to issue permits it wouldn't ordinarily issue. **REP. BALES** followed up asking what her view is of water being used for livestock water, etc. which is, in essence, a discharge. **Ms. Sensibaugh** stated, if the water is being put to a beneficial use and is not being discharged into surface water DEQ would not issue a permit.

REP. HURDLE asked **Ms. Sensibaugh** if water is considered unaltered and pure if it is saline. **Ms. Sensibaugh** stated that it depends on the level of saline in the water. **REP. HURDLE** then asked **Ms. Sensibaugh** to give her some information about the levels of salinity that's acceptable. **Ms. Sensibaugh** stated that she does not have those numbers but she could get those. **REP. HURDLE** then asked if 75-5-401 says that water is not altered from it's ambient quality, then that must mean that salinity doesn't count. **Ms. Sensibaugh** stated that there are standards for salinity. The water would be required to meet those standards even if it's unaltered groundwater. **REP. HURDLE** followed up asking if there is any testing going on now for salinity. Has the salinity in the Tongue River Reservoir changed in the last three years. **Ms. Sensibaugh** stated that a monitoring program has begun. Monitoring was discontinued for a while but it is being reinstated to get that data. It appears that the salinity may be going down. **REP. HURDLE** asked **Ms. Sensibaugh** to provide the recent data of the salinity in the Tongue River Reservoir.

REP. YOUNKIN asked **Ms. Sensibaugh** to provide the committee with the water quality standards for sodium and any other saline salts.

REP. GUTSCHE asked **Mr. Schneider** if unaltered ground water is pure and pristine and what it has in it that makes it harmful. **Mr. Schneider** stated that most of the water he has seen has total dissolved solids of about 1,300 parts per million. The Tongue River Reservoir is around 300. There is a four fold differential in terms of water quality. **REP. GUTSCHE** followed up asking then if the water is potable, useful for irrigating and is it harmful to the river and wildlife? **Mr. Schneider** stated that livestock and human consumption can handle a higher salinity content than agriculture. There are some limited stock uses of those waters and it can be described as potable although there are variations of that. In terms of irrigation and impact on the aquatic system, those limits are very much lower. **REP. GUTSCHE** followed up asking, since this is a water quality issue, could he elaborate on why it is important to have this permitting process

in place for the quantity aspect of this. **Mr. Schneider** stated there is a direct link between the two. These wells produce a lot of water and to suggest that they should be able to dump that water, without going through a permitting process, is incredulous.

REP. MOOD asked **Ms. Sensibaugh** to put together the numbers of the saline solution people use in their eyes as well as the average salinity content the human body contains.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 40.7}

REP. BIXBY stated that these permits will protect everybody. She doesn't think that these permits will discourage industry. We must put some protections in place for our environment. We are stewards of the land. This permit should be required for all industry. We need the EIS to determine the long-term impacts of coal-bed methane. When the last tree is gone and the last fish has been eaten then and only then will you know that money cannot be eaten. Requiring a permit is not too much to ask for our children.

HEARING ON HB 304

Sponsor: **REP. GILDA CLANCY, HD 51, Helena**

Proponents: **Cliff Christian, Montana Building Industry Association**
Jeff Buchowishi, Bozeman, self
Peggy Trenk, Montana Association of Realtors
Andy Skinner, Helena Property Owners Association

Opponents: **Linda Stoll, Montana Association of Planners**
Mona Jamison, Gallatin County
Anne Hedges, MEIC
John Prinkki, Carbon County and Montana Association of Counties
Julia Page, NPRC
Tim Davis, Montana Smartgrowth Coalition
Jim Sweaney, Gardiner, self
Bob Horne, MAP
Janet Ellis, Montana Audubon

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 45.1}

REP. GILDA CLANCY, HD 51, Helena, stated that this bill clarifies the intent of section 76-3-511 and 50-2-130 MCA. These sections permit local government entities to develop regulations that are more stringent than comparable state rules, etc. HB 304 requires evidence in support of the more stringent regulations to be based on site specific information and studies that are directly related to the conditions that require a more stringent regulation. The clarification is necessary so that regulations will not be arbitrarily imposed upon the public without developing a solid basis for them. Such clarification is needed to assure the public that they are being effectively regulated and to reduce the amount of litigation that follows rule making that is not adequately documented.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 47.6}

Andy Skinner, Helena Property Owners Association, stated that there are studies done all over the country which are then applied in hearings regarding this area. This is wrong as all areas are different. There should be site specific conditions to deal with in these instances. There are three major changes in the bill which will help make this law more effective. He asked for a do pass.

Cliff Christian, Montana Building Industry Association, stated that local governments are being squeezed for revenues and problem fixes. This idea, to provide some clarity, is an excellent idea. He asked for a do pass.

Peggy Trenk, Montana Association of Realtors, submitted written testimony **EXHIBIT**(nah27a14).

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 53.1}

Linda Stoll, Montana Association of Planners, submitted written testimony **EXHIBIT**(nah27a15).

Mona Jamison, Gallatin County, stated that this bill erodes local control. Gallatin County does like to pick and choose, in some areas, a more stringent regulation. They have to provide hearings and public input into the development of those particular regulations. *{Tape : 2; Side : A; Approx. Time Counter : 0.1}* Some of these standards are so vague that they just beg for lawsuits. She went over specific parts of the bill and gave reasons that they shouldn't be adopted. The bill will cost the counties and tax

payers more money. It's indefinite and sets no standards. She asked for a do not pass.

Anne Hedges, MEIC, urged the committed to take a look at what the existing law is. There are high standards already which may be appropriate in certain standards. This bill takes the standards too far.

John Prinkki, Carbon County Commissioners and Montana Association of Counties, submitted written testimony **EXHIBIT (nah27a16)**.

Julia Page, NPRC, stated that this bill sets too high a bar and would be prohibitive for local governments. It flies in the face of planning and subdivision issues. This bill goes in the wrong direction.

Tim Davis, Montana Smartgrowth Coalition, stated that this bill pushes local governments out of local control. He urged a do not pass.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 9.9}

REP. WANZENREID asked **REP. CLANCY** on line 25, subsection 2, if it is her intention that all of the standards must be met in order to have a higher standard adopted locally. There are four different conditions that will now need to be met. **REP. CLANCY** stated yes, that is correct. **REP. WANZENREID** followed up - in subsection b, line 25, how would we know if the standard is inadequate? **REP. CLANCY** read subsection b and stated this is if they are inadequate to protect public health and environment. **REP. WANZENREID** asked how the local government would know that. Do they actually have to experience the damage onsite to know that the state standards are inadequate? **REP. CLANCY** deferred the question to **Mr. Skinner**. He stated, what this is meant to do is, the counties keep track of what happens in a subdivision. If they start having a problem they know what their problems are. He gave examples.

REP. ERICKSON asked **REP. CLANCY** what the term "site specific" means. **REP. CLANCY** stated that it's not her intention to put undue work or costs onto local governments. What is currently happening is they're taking site information from different states such as Florida and Oregon and the information they are receiving is not comparable to the sites in Montana. Followup by **REP. ERICKSON** - So do you mean that Montana is a site or that different areas in Montana are sites? Where is the site? **REP. CLANCY** stated that she would consider an amendment to clear up that specific language.

What her intentions were is that the site is comparable to the site of the application for the subdivision.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 15.4}

REP. CLANCY stated that this bill is only intended to require evidence in support of the more stringent regulations. The regulations which have been imposed have been unfair and have hampered economic development in our state. Clarification is needed to assure our citizens that they are being fairly regulated. HB 304 would enhance jobs and economic development in the state. It would alleviate unfair costs and litigation. It is not the intent of HB 304 to add undue costs to local governments. She urged a do pass.

EXECUTIVE ACTION ON HB 320

{Tape : 2; Side : A; Approx. Time Counter : 16.8}

Motion: **REP. LAIBLE** moved that **HB 320 DO PASS.**

Motion: **REP. ERICKSON** moved that the **AMENDMENT ON HB 320 BE ADOPTED.**

Discussion: **REP. ERICKSON** passed out the amendment **EXHIBIT (nah27a17).** He then explained the amendment.

REP. LAIBLE stated that he is in opposition of the amendment as it dilutes the whole purpose of the bill. It leaves up to interpretation what the duty of the Justice Department is. The reason of the bill is to close up that interpretation.

REP. YOUNKIN asked **REP. ERICKSON** what "the interests of justice" means. **REP. ERICKSON** stated that language comes from Exhibit 5 from the hearing on HB 320 on January 29, 2001. He read the language from the exhibit.

REP. WANZENREID read from the minutes from the 1995 hearing of HB 501 in the Senate Judiciary Committee. He stated that the sponsor of the bill, Rep. Anderson, specifically said the following, "Therefore, if a person could convince the court that justice would not prevail, if they're required to post a bond, the court has that in it's discretion." "In the interest of justice" means if justice isn't served they don't require a bond. This is not a clarification, it is a major change in the intent of the original language.

REP. MOOD stated that we are dealing with the interest of the schools. We are trying to protect the beneficiaries of this Trust land.

REP. BALES gave an example, regarding wildfires, why we need this bill as it is currently worded.

REP. LAIBLE read from the minutes of HB 501. He stated that Rep. Anderson presented HB 501 on behalf of the public schools. HB 501 would attempt to safeguard the trust lands of Montana from frivolous lawsuits which cost the state and beneficiaries money. The intent was to protect the School Trust Lands. This amendment takes that away.

Vote: Motion failed 8-12 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting aye.

REP. ERICKSON read from the first section. He stated the legislators are not the ones to say if something is constitutional or not.

REP. MOOD read from the constitution regarding trust lands given to the state. That section of the constitution has to be protected. This bill does that.

Vote: Motion carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.

EXECUTIVE ACTION ON HB 327

{Tape : 2; Side : A; Approx. Time Counter : 32.3}

Motion: REP. DALE moved that HB 327 DO PASS.

Motion/Vote: REP. HOLDEN moved that HB 327 BE TABLED. Motion carried 18-2 with Dale and Wanzenried voting no.

EXECUTIVE ACTION ON HB 126

{Tape : 2; Side : A; Approx. Time Counter : 35.3}

Motion: REP. YOUNKIN moved that AMENDMENTS ON HB 126 BE ADOPTED.

Discussion: REP. YOUNKIN stated that HB 126 was moved on January 31, 2001 and postponed. She passed out two amendments **EXHIBIT (nah27a18)** and **EXHIBIT (nah27a19)** and went over them.

REP. MOOD asked **REP. STORY** if he asked Greg Petesch about these references and what his response was.

REP. STORY stated he did not ask Mr. Petesch but he did ask Mr. Mitchell. He stated that he is comfortable with the amendments.

Vote: Motion **AMENDMENT HB012602.alm ON HB 126 BE ADOPTED carried unanimously.**

Mr. Mitchell explained the purpose of amendment HB012601.alm.

REP. MOOD asked **Mr. Mitchell** if it is necessary to start at the word "end" on page 16, line 26 in order to ensure the amendment.

Mr. Mitchell stated that is a flaw in the amendment. The amendment should say page 16, following line 25 rather than line 26. He stated that he would correct that.

Vote: Motion that **AMENDMENT HB012601.alm ON HB 126 BE ADOPTED carried unanimously.**

Motion/Vote: **REP. YOUNKIN** moved that **HB 126 DO PASS AS AMENDED. Motion carried unanimously.**

ADJOURNMENT

Adjournment: 5:45 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah27aad)