**BUSINESS REPORT**

**MONTANA SENATE**
**61st LEGISLATURE - REGULAR SESSION**

**SENATE JUDICIARY COMMITTEE**

**Date:** Thursday, February 19, 2009 **Time:** 8:00 am
**Place:** Capitol **Room:** 303

**BILLS and RESOLUTIONS HEARD:**

SB 402, SB 406, SB 442, SB 464

**EXECUTIVE ACTION TAKEN:**
SB 298-Tabled
SB 334-Tabled
SB 379-Do Pass-Motion Failed on 6-6 tie Vote
SB 288-Do Pass As Amended
SB 349-Do Pass As Amended
SB 374-Do Pass-Motion Withdrawn, Action Postponed

**COMMENTS:**

SEN. Gary L. Perry, Chairman

# MONTANA STATE SENATE
## Roll Call
## JUDICIARY COMMITTEE

DATE: 2/19/09

| NAME | PRESENT | ABSENT/ EXCUSED |
|---|---|---|
| **SENATOR GARY PERRY, CHAIRMAN** | ✓ | |
| **SENATOR JIM SHOCKLEY, VICE CHAIRMAN** | ✓ | |
| **SENATOR AUBYN CURTISS** | ✓ | |
| **SENATOR JOHN ESP** | ✓ | |
| **SENATOR GREG HINKLE** | ✓ | |
| **SENATOR LARRY JENT** | | ✓ |
| **SENATOR CAROL JUNEAU** | | ✓ |
| **SENATOR CLIFF LARSEN** | ✓ | |
| **SENATOR JESSE LASLOVICH** | ✓ | |
| **SENATOR DANIEL MCGEE** | ✓ | |
| **SENATOR LYNDA MOSS** | ✓ | |
| **SENATOR TERRY MURPHY** | ✓ | |
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## SENATE STANDING COMMITTEE REPORT



Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 288** (first reading copy -- white) **do pass as amended**.

Signed: _____
*Senator Gary L. Perry, Chair*

**And, that such amendments read:**

1. Title, page 1, line 4 through line 8.
**Strike:** "CLARIFYING" on line 4 through "DATE" on line 8
**Insert:** "REQUIRING A WRITTEN UNDERTAKING TO BE GIVEN BY A PARTY REQUESTING A HEARING OR A STAY BEFORE A COURT OR THE BOARD OF ENVIRONMENTAL REVIEW; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

2. Page 1, line 12 through page 2, line 16.
**Strike:** section 1 in its entirety
**Renumber:** subsequent sections
**Insert:** "NEW SECTION. **Section 1. Energy development project -- hearing and procedures.** (1) If the person requesting the hearing is not the applicant or permittee of an energy development project, the board or the district court shall require a written undertaking to be given by the party requesting the hearing for the payment of costs and damages incurred by the permit applicant and its employees unless the board or the district court determines that issuance of the permit was prohibited by statute.

(2) When requiring an undertaking, the board or the district court shall use the same procedures and limitations that are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(3) If the person requesting the hearing is not the applicant or permittee and a stay, an injunction, or a

**Committee Vote:**
**Yes 7, No 5**
Fiscal Note Required __

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restraining order is not requested, the board or the district court shall require a written undertaking pursuant to the provisions of this section."

**Insert: "Section 2.** Section 75-2-103, MCA, is amended to read:

**"75-2-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure that is necessary for an energy development project.

~~(5)~~ (6) "Board" means the board of environmental review provided for in 2-15-3502.

~~(6)~~ (7) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

~~(7)~~ (8) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(8)~~ (9) "Emission" means a release into the outdoor atmosphere of air contaminants.

(10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;
(iii) producing liquid hydrocarbon products;
(iv) refining crude oil or natural gas;
(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.
(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(9)~~ (11) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

~~(10)~~ (12) "Hazardous waste" means:
(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or
(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

~~(11)~~ (13) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.
(b) Incinerator does not include:
(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;
(ii) space heaters that burn used oil;
(iii) wood-fired boilers; or
(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

~~(12)~~ (14) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:
(a) cultures and stocks of infectious agents;
(b) human pathological wastes;
(c) waste human blood or products of human blood;
(d) sharps;
(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;
(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

~~(13)~~ (15) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

(i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and

(ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection ~~(13)(a)~~ (15)(a) includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

~~(14)~~ (16) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

~~(15)~~ (17) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

~~(16)~~ (18) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

~~(17)~~ (19) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials;

asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation.""

**Insert: "Section 3.** Section 75-2-211, MCA, is amended to read:

**"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not

apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is

considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

(i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided in subsection (14).

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) Except as provided in [section 1]:

(a) ~~The~~ the department's decision on the application is not final until 15 days have elapsed from the date of the decision~~.~~;

(b) ~~The~~ the filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) ~~Upon~~ upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality

permits not subject to subsection (12).

(14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

(a) the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and

(b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department.""

**Insert: "Section 4.** Section 75-5-103, MCA, is amended to read:

**"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure that is necessary for an energy development project.

~~(1)~~ (2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(2)~~ (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(3)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(4)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(5)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(6)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(7)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(8)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(9)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(10)~~ (12) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(11)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(12)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(13)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has

requested authorization to degrade high-quality waters.

~~(14)~~(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(15)~~(17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(16)~~(18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(17)~~(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(18)~~(20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(19)~~(21) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(20)~~(22) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(21)~~(23) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(22)~~(24) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(23)~~(25) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(24)~~(26) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(25)~~(27) (a) "Pollution" means:

(i) contamination or other alteration of the physical,

chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(26)~~ (28) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(27)~~ (29) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(28)~~ (30) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(29)~~ (31) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(30)~~ (32) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(31)~~ (33) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution

prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(32)~~(34) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(33)~~(35) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(34)~~(36) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(35)~~(37) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(36)~~(38) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(37)~~(39) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.""

**Insert:** "NEW SECTION. **Section 5. Written undertaking.** If the person requesting a hearing under 75-5-611 is not the applicant or permittee of an energy development project, the district court shall require a written undertaking to be given by the party requesting the hearing for the payment of costs and damages incurred by the applicant or permittee unless the district court determines that issuance of the permit was prohibited by statute. When requiring an undertaking, the district court shall use the same procedures and limitations that are provided in 27-19-306(2) through (4) for undertakings on injunctions."

**Insert:** "NEW SECTION. **Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 1].

(2) [Section 5] is intended to be codified as an integral part of Title 75, chapter 5, part 6, and the provisions of Title 75, chapter 5, part 6, apply to [section 5]."

**Renumber:** subsequent section

3. Page 2, line 19.
**Insert:** "NEW SECTION. **Section 8. Applicability.** [This act] applies to judicial and board of environmental review hearing and appeal proceedings initiated on or after [the effective date of this act]."

- END -

## SENATE STANDING COMMITTEE REPORT

**February 19, 2009**


Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 349** (first reading copy -- white) **do pass as amended.**

Signed: _____
*Senator Gary L. Perry, Chair*

**And, that such amendments read:**

1. Page 2, line 22.
**Following:** the first "that is"
**Insert:** "identified as"

- END -

**Committee Vote:**
**Yes 10, No 2**
Fiscal Note Required __

SB0349001SC.smo

MD

All Notices are to be printed, none will be EMailed

## COMMITTEE FILE COPY

# TABLED BILL

The **SENATE JUDICIARY COMMITTEE** TABLED **SB 298, SB 334**, by motion, on **Thursday, February 19, 2009**.

(For the Committee)

(Secretary of the Senate)

1:05 / 2/19
(Time) (Date)

February 19, 2009 Pamela E. Schindler, Secretary Phone: 444-4891

# MONTANA STATE SENATE
## Roll Call Vote
## JUDICIARY COMMITTEE

DATE 2/19/09 BILL NO SB280 MOTION NO. 2,
MOTION:

remove 288.01

| NAME | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---|---|---|---|
| SENATOR DANIEL MCGEE | ✓ | | |
| SENATOR JESSE LASLOVICH | | ✓ | |
| SENATOR AUBYN CURTISS | ✓ | | |
| SENATOR LARRY JENT | | ✓ | ✓ |
| SENATOR TERRY MURPHY | ✓ | | |
| SENATOR LYNDA MOSS | | ✓ | |
| SENATOR JOHN ESP | ✓ | | |
| SENATOR CLIFF LARSEN | | ✓ | |
| SENATOR CAROL JUNEAU | | ✓ | ✓ |
| SENATOR GREG HINKLE | ✓ | | |
| SENATOR JIM SHOCKLEY, VICE CHAIR | ✓ | | |
| SENATOR GARY PERRY, CHAIRMAN | ✓ | | |
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7/5

# MONTANA STATE SENATE
## Roll Call Vote
## JUDICIARY COMMITTEE

DATE 2/19/09 BILL NO SB 288 MOTION NO. 3
MOTION:

amend 288.02

| NAME | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---|---|---|---|
| SENATOR DANIEL MCGEE | ✓ | | |
| SENATOR JESSE LASLOVICH | | ✓ | |
| SENATOR AUBYN CURTISS | ✓ | | |
| SENATOR LARRY JENT | | ✓ | ✓ |
| SENATOR TERRY MURPHY | ✓ | | |
| SENATOR LYNDA MOSS | | ✓ | |
| SENATOR JOHN ESP | ✓ | | |
| SENATOR CLIFF LARSEN | | ✓ | |
| SENATOR CAROL JUNEAU | | ✓ | ✓ |
| SENATOR GREG HINKLE | ✓ | | |
| SENATOR JIM SHOCKLEY, VICE CHAIR | ✓ | | |
| SENATOR GARY PERRY, CHAIRMAN | ✓ | | |
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7/5

# MONTANA STATE SENATE
## Roll Call Vote
## JUDICIARY COMMITTEE

DATE 2/19/09 BILL NO SB 278 MOTION NO. 4
MOTION: Do Pass As Amend

| NAME | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---|---|---|---|
| SENATOR DANIEL MCGEE | ✓ | | |
| SENATOR JESSE LASLOVICH | | ✓ | |
| SENATOR AUBYN CURTISS | ✓ | | |
| SENATOR LARRY JENT | | ✓ | ✓ |
| SENATOR TERRY MURPHY | ✓ | | |
| SENATOR LYNDA MOSS | | ✓ | |
| SENATOR JOHN ESP | ✓ | | |
| SENATOR CLIFF LARSEN | | ✓ | |
| SENATOR CAROL JUNEAU | | ✓ | ✓ |
| SENATOR GREG HINKLE | ✓ | | |
| SENATOR JIM SHOCKLEY, VICE CHAIR | ✓ | | |
| SENATOR GARY PERRY, CHAIRMAN | ✓ | | |
| | | | |
| | | | |

7/5

# MONTANA STATE SENATE
## Roll Call Vote
## JUDICIARY COMMITTEE

DATE 2/19/09 BILL NO SB 298 MOTION NO. 2
MOTION: amendment 298.01

| NAME | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---|---|---|---|
| SENATOR DANIEL MCGEE | | ✓ | |
| SENATOR JESSE LASLOVICH | ✓ | | |
| SENATOR AUBYN CURTISS | | ✓ | |
| SENATOR LARRY JENT | ✓ | | ✓ |
| SENATOR TERRY MURPHY | | ✓ | |
| SENATOR LYNDA MOSS | ✓ | | |
| SENATOR JOHN ESP | | ✓ | |
| SENATOR CLIFF LARSEN | ✓ | | |
| SENATOR CAROL JUNEAU | ✓ | | ✓ |
| SENATOR GREG HINKLE | | ✓ | |
| SENATOR JIM SHOCKLEY, VICE CHAIR | | ✓ | |
| SENATOR GARY PERRY, CHAIRMAN | ✓ | | |
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6/6

# MONTANA STATE SENATE
## Roll Call Vote
## JUDICIARY COMMITTEE

DATE 2/19/09 BILL NO SB 298 MOTION NO. 3
MOTION: Table

| NAME | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---|---|---|---|
| SENATOR DANIEL MCGEE | ✓ | | |
| SENATOR JESSE LASLOVICH | | ✓ | |
| SENATOR AUBYN CURTISS | ✓ | | |
| SENATOR LARRY JENT | | ✓ | ✓ |
| SENATOR TERRY MURPHY | ✓ | | |
| SENATOR LYNDA MOSS | | ✓ | |
| SENATOR JOHN ESP | ✓ | | |
| SENATOR CLIFF LARSEN | | ✓ | |
| SENATOR CAROL JUNEAU | | ✓ | ✓ |
| SENATOR GREG HINKLE | ✓ | | |
| SENATOR JIM SHOCKLEY, VICE CHAIR | ✓ | | |
| SENATOR GARY PERRY, CHAIRMAN | ✓ | | |
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7/5

# MONTANA STATE SENATE
## Roll Call Vote
## JUDICIARY COMMITTEE

DATE 2/19/09 BILL NO SB334 MOTION NO. 1
MOTION: Do Pass

| NAME | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---|---|---|---|
| SENATOR DANIEL MCGEE | — | | |
| SENATOR JESSE LASLOVICH | | — | |
| SENATOR AUBYN CURTISS | — | | |
| SENATOR LARRY JENT | | — | — |
| SENATOR TERRY MURPHY | — | | |
| SENATOR LYNDA MOSS | | — | |
| SENATOR JOHN ESP | | — | |
| SENATOR CLIFF LARSEN | | — | |
| SENATOR CAROL JUNEAU | | — | — |
| SENATOR GREG HINKLE | — | | |
| SENATOR JIM SHOCKLEY, VICE CHAIR | — | | |
| SENATOR GARY PERRY, CHAIRMAN | — | | |
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6/6

# MONTANA STATE SENATE
## Roll Call Vote
## JUDICIARY COMMITTEE

DATE 2/19/09 BILL NO SB334 MOTION NO. 2
MOTION: Table

| NAME | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---|---|---|---|
| SENATOR DANIEL MCGEE | ✓ | | |
| SENATOR JESSE LASLOVICH | ✓ | | |
| SENATOR AUBYN CURTISS | ✓ | | |
| SENATOR LARRY JENT | ✓ | | ✓ |
| SENATOR TERRY MURPHY | | ✓ | |
| SENATOR LYNDA MOSS | ✓ | | |
| SENATOR JOHN ESP | ✓ | | |
| SENATOR CLIFF LARSEN | ✓ | | |
| SENATOR CAROL JUNEAU | ✓ | | ✓ |
| SENATOR GREG HINKLE | | ✓ | |
| SENATOR JIM SHOCKLEY, VICE CHAIR | | ✓ | |
| SENATOR GARY PERRY, CHAIRMAN | ✓ | | |
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9/3

# MONTANA STATE SENATE
## Roll Call Vote
## JUDICIARY COMMITTEE

DATE 2/19/09 BILL NO SB349 MOTION NO. 3
MOTION: Do Pass as Amend

| NAME | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---|---|---|---|
| SENATOR DANIEL MCGEE | — | | |
| SENATOR JESSE LASLOVICH | — | | |
| SENATOR AUBYN CURTISS | — | | |
| SENATOR LARRY JENT | | — | — |
| SENATOR TERRY MURPHY | — | | |
| SENATOR LYNDA MOSS | — | | |
| SENATOR JOHN ESP | — | | |
| SENATOR CLIFF LARSEN | — | | |
| SENATOR CAROL JUNEAU | | — | — |
| SENATOR GREG HINKLE | — | | |
| SENATOR JIM SHOCKLEY, VICE CHAIR | — | | |
| SENATOR GARY PERRY, CHAIRMAN | — | | |
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10/2

# MONTANA STATE SENATE
## Roll Call Vote
## JUDICIARY COMMITTEE

DATE 2/19/09 BILL NO SB379 MOTION NO. 1
MOTION: Do Pass

| NAME | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---|---|---|---|
| SENATOR DANIEL MCGEE | ✓ | | |
| SENATOR JESSE LASLOVICH | | ✓ | |
| SENATOR AUBYN CURTISS | ✓ | | |
| SENATOR LARRY JENT | | ✓ | ✓ |
| SENATOR TERRY MURPHY | ✓ | | |
| SENATOR LYNDA MOSS | | ✓ | |
| SENATOR JOHN ESP | | ✓ | |
| SENATOR CLIFF LARSEN | | ✓ | |
| SENATOR CAROL JUNEAU | | ✓ | ✓ |
| SENATOR GREG HINKLE | ✓ | | |
| SENATOR JIM SHOCKLEY, VICE CHAIR | ✓ | | |
| SENATOR GARY PERRY, CHAIRMAN | ✓ | | |
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6/6

# AUTHORIZED
# SENATE COMMITTEE PROXY

I request to be excused from Judiciary Committee because of other commitments. I desire to leave my proxy vote with:

Sen. Jesse Laslovich

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

| BILL/AMENDMENT | AYE | NO |
|---|---|---|
| SB 311 DoPass | ✓ | |
| SB 341 DoPass | ✓ | |
| SB 340 AMEND | ✓ | |
| SB 340 DoPass | ✓ | |
| SB 281 amend | ✓ | |
| SB 281 CONCUR amend | ✓ | |
| SB 281 DoPass As Am. | ✓ | |
| | | |
| 1/9/09 SB 87 Amend | ✓ | |
| SB 87 SUB TABLE | ✓ | |
| SB 250 DoPass | ✓ | |
| SB 250 Rec/Table | | ✓ |
| SB 238 Amend | | ✓ |
| [redacted] | | |

| BILL/AMENDMENT | AYE | NO |
|---|---|---|
| 1/16/09 SB 364 TABLE | ✓ | |
| SB 400 DO PASS | ✓ | |
| [redacted] | | ✓ |
| SB 288 REMOVE amend | | ✓ |
| SB 288 amend | | ✓ |
| SB 288 DOPASSASAM. | | ✓ |
| SB 298 Amend | ✓ | |
| SB 298 table | | ✓ |
| SB 334 DOPASS | | ✓ |
| SB 334 [redacted] table | ✓ | |
| SB 349 amend | ✓ | |
| SB 349 DOPASSASAM | | ✓ |
| SB 379 DO PASS | | ✓ |
| | | |

Sen. Lacy (Signature) Date 1/7/09

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# AUTHORIZED
# SENATE COMMITTEE PROXY

I request to be excused from Judiciary Committee because of other commitments. I desire to leave my proxy vote with:

Sen. Jesse Laslovich

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

| BILL/AMENDMENT | AYE | NO |
|---|---|---|
| 2/13/09 SB 250 Remove from Table | ✓ | |
| SB 250 Amend | ✓ | |
| SB 250 DO PASS AS AM | ✓ | |
| | | |
| SB 368 Do Pass | ✓ | |
| 2/16/09 SB 400 DO PASS | ✓ | |
| SB 405 DO PASS | ✓ | |
| [redacted] | | |
| | | |
| 2/18/09 SB 221 Amend | ✓ | |
| [redacted] | ✓ | |
| SB 221 Amend | ✓ | |
| SB 221 DO PASS AS AM | ✓ | |
| [redacted] | | |

| BILL/AMENDMENT | AYE | NO |
|---|---|---|
| 2/18/09 SB 332 DO PASS | | ✓ |
| SB 333 DO PASS | | ✓ |
| SB 333 TABLE | ✓ | |
| SB 332 TABLE | ✓ | |
| SB 288 amend REMOVE | | ✓ |
| SB 288 amend | | ✓ |
| SB 288 DO PASS AS AMEND | | ✓ |
| SB 298 amend | ✓ | |
| SB 298 table | | ✓ |
| SB 334 DO PASS | | ✓ |
| SB 334 [redacted] table | ✓ | |
| SB 349 amend | ✓ | |
| SB 349 DO PASS AS AM | | ✓ |
| | | |

Sen. Carol Juneau (Signature) Date 1/5/09

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**MONTANA STATE SENATE**
**Visitors Register**

**Judiciary Committee** **Date** 2/19/09

**Bill No.** SB-442 **Sponsor(s)** Senator Laslovich

**PLEASE PRINT** **PLEASE PRINT** **PLEASE PRINT**

| Name and Address | Representing | Support | Oppose | Inf. |
|---|---|---|---|---|
| Don Judge | MT Nurses' Association | X | | |
| [illegible] | MCADSV | X | | |
| [illegible] | [illegible] | X | | |
| Jonene Bernhardt | self | X | | |
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**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

# MONTANA STATE SENATE
## Visitors Register

**Judiciary Committee** **Date** 2/19/09

**Bill No.** SB-464 **Sponsor(s)** Senator Laslovich

**PLEASE PRINT** **PLEASE PRINT** **PLEASE PRINT**

| Name and Address | Representing | Support | Oppose | Inf. |
|---|---|---|---|---|
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**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**MONTANA STATE SENATE**
**Visitors Register**

**Judiciary Committee** **Date** 2/19/09

**Bill No.** SB-402 **Sponsor(s)** Senator Peterson

**PLEASE PRINT** **PLEASE PRINT** **PLEASE PRINT**

| Name and Address | Representing | Support | Oppose | Inf. |
|---|---|---|---|---|
| Gene Allison | Dept of Labor | | ✓ | |
| Kelly Casillas | Dept of Commerce | | ✓ | |
| Ken Mercer | Self | ✓ | | |
| TIM DAVIS | MSGC | | ✓ | |
| George Goolie | MWF | | X | |
| Mike HAZELS | Gallatin County | | X | |
| Bob Lane | DFWP | | X | |
| John MacDonald | City of MSLA | | X | |
| Tim Reardon | MDT | | ✓ | |
| John Bloomquist | Mt. Stockgrowers Assn. | X | | |
| Joe Roberts | Mt. Assoc Realtors | X | | |
| Jean Johnson | MT Act'g Guides | X | | |
| Vanessa Clark | Helena Chamber | X | | |
| Janet Ellis | MT Audubon | | X | |
| Cary Hegreberg | Contractors | X | | |
| Mark Staples | MT. TAVERN ASSN. | X | | |
| Jon Bennion | MT Chamber | X | | |
| [illegible] | [illegible] | ✓ | | |
| HAROLD BLATTIE | MACO | | X | |
| Bob WORTHINGTON | STATE | | X | |

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**MONTANA STATE SENATE**
**Visitors Register**

**Judiciary Committee** **Date** 2/19/09

**Bill No.** SB 402 **Sponsor(s)** Sen Peterson

**PLEASE PRINT** **PLEASE PRINT** **PLEASE PRINT**

| Name and Address | Representing | Support | Oppose | Inf. |
|---|---|---|---|---|
| Ann Gilkey | OPI | | X | |
| Jill Guthrie | Self, Landlord | ✓ | | |
| Candace West | DNRC | | ✓ | |
| John Meckl | St. Auditor's Office | | ✓ | |
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**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

# MONTANA STATE SENATE
## Visitors Register

**Judiciary Committee** **Date** 2/19/09

**Bill No.** SB 406 **Sponsor(s)** SEN. MC GEE

**PLEASE PRINT** **PLEASE PRINT** **PLEASE PRINT**

| Name and Address | Representing | Support | Oppose | Inf. |
|---|---|---|---|---|
| ~~Rick Jore~~ | MT Pro-Life Coal | ✓ | | |
| RITA SENKLER | SELF | ✓ | | |
| LeeAnn Bear | Montana Pro Life Coal. | ✓ | | |
| Christina Berlen KALISPELL | Self | ✓ | | |
| ANTHONY BERLEN KALISPELL | SELF | ✓ | | |
| Vivian McNeme | Self MPLC | ✓ | | |
| Jonene Bernhardt | self | ✓ | | |
| Adriane McNeme | self | ✓ | | |
| Linda Jackson | self | ✓ | | |
| Jill Guthrie | Self | ✓ | | |
| Carl Colby | unborn | ✓ | | |
| JC Lane | Unborn | ✓ | | |
| Angie Wagenhals | NARAL | | ✓ | |
| Kelsen Young | MCADSV | | X | |
| Connie Bykgard | MPLC Montana Pro Life Coalition | ✓ | | |
| Gregg Trude | RPL MT | ✓ | | |
| Mike Kanzlarich - Helena | Self | X | | |
| Jamee Greer | Human Rights NW | | X | |
| Niki Zupanic | ACLU | | ✓ | |

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**MONTANA STATE SENATE**
**Visitors Register**

**Judiciary Committee** **Date** 2/19/09

**Bill No.** SB-406 **Sponsor(s)** Senator McGee

**PLEASE PRINT** **PLEASE PRINT** **PLEASE PRINT**

| Name and Address | Representing | Support | Oppose | Inf. |
|---|---|---|---|---|
| HARRIS HIMES | | X | | |
| Wm D. Wise III P. | | X | | |
| Becky Stockton | Self / Representative of MT. Prolife Coalition | X | | |
| Suzanne Brooks | MT PROLIFE COALITION | ✓ | | |
| Cheryl Roller | | ✓ | | |
| C Kathleen Sipes | Mt Prolife Coalition | ✓ | | |
| Cheri Pross | the Unborn | ✓ | | |
| John Arrigo | self | | ✓ | |
| Tim Bernard | self | ✓ | | |
| Caleb Hinkle | Self | X | | |
| Chuck Hinkle | Self | ✓ | | |
| Heidi Hinkle | Self | ✓ | | |
| RJ Christensen | Self | ✓ | | |
| [illegible] | MT Prolife Coalition | X | | |
| Stacey Anderson | Planned Parenthood of MT | | X | |
| [illegible] | Annie B. + Co | ✓ | | |
| Anna Roessmann | DIS RT MONTANA | | X | |
| Roland Horst Bigfork MT | Montana Prolife Coalition | X | | |
| Joanne Kauzlarich | Self | X | | |

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**