

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on February 17, 1999 at
3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Deb Thompson, Committee Secretary
Kathleen Williams, Legislative Branch

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 610, HB 617, HJ 23,
2/15/1999

Executive Action: HB 610, HB 520, HB 573, HB
574, HB 576, HB 617, HJ 23, HB
102

EXECUTIVE ACTION ON HOUSE BILL 610

Rep. Ohs **MOVED TO TABLE**. He explained the bill was similar to another bill. The question was called. The motion **PASSED**.

HEARING ON HOUSE JOINT RESOLUTION 23

Sponsor: Rep. Monica Lindeen, HD 7, presented the resolution. She explained the bill came about because a resident of New York City wanted to change the name of Pompeii's Pillar for historical accuracy. She said in a two week period of time a citizen petition had 1000 signatures delivered to the Montana Department of Natural Resources. The joint resolution had 148 of 150 Legislator signatures.

Proponents: Russ Riter spoke in favor of the resolution.

Opponents: None.

Questions from Committee Members and Responses: Rep. Stovall asked what name had been suggested. Rep. Lindeen replied it was Pompeii's Tower. When the original journal was first transcribed the spellings were changed. However, the spelling changes were inconsistent throughout.

Closing by Sponsor: Rep. Lindeen closed.

EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 23

Rep. Curtiss **MOVED DO PASS**. The question was called. The motion **PASSED** unanimously.

EXECUTIVE ACTION ON HOUSE BILL 520

Rep. Erickson **MOVED DO PASS**. He distributed amendments, **EXHIBIT (nah39a01)**, **EXHIBIT (nah39a02)**, and a letter from Stephanie Shammel **EXHIBIT (nah39a03)** and a copy of the Notice of Violation and Administrative Order for the C.R. Kendall Mine, **EXHIBIT (nah39a04)**.

Rep. Erickson **MOVED** amendment 001. He said the amendment gets rid of the burden of proof part of the bill. The question was called. The motion **PASSED** unanimously.

Rep. Erickson referred to the second set of amendments which dealt with the question in the Hearing regarding exact language. He said the reason for the amendment is that it deals with the word "degradation" - to refer to this as the common meaning in regards to land. Degradation in water went to the other common meaning which is "impairment of use". He explained the intent was to address the ground water problem. He said "proximate" means nearby.

Rep. Ewer asked for a reaction from the department regarding this issue. He noted the sponsor was trying to clarify degradation to land and wanted to address water degradation to adjacent property. He asked how the department felt about degradation of adjacent lands and impairment of adjacent ground water. Wayne Jepson, a hydrologist from DEQ, replied an extension outside the mine area may be appropriate. Rep. Ewer asked if the word "proximate" was a reasonable standard for a reclamation plan. He asked how reclamation was done now. Mr. McCullough, from DEQ, said the language would open the door to endless litigation simply because of the difficulty of defining "proximate", "reasonably" and "adjacent". **{Tape : 1; Side : A; Approx. Time Counter : 30.1-34.2}**

Gunner Hembelson, an engineer with the environmental management department, discussed a permit area and how they operate within disturbed areas. If there is a question of water impact, they calculate the water treatment, such as diversion treatment. **{Tape : 1; Side : A; Approx. Time Counter : 35.7}**

Rep Ewer said mineralized water was one issue, but what about less water, how was this dealt with in permitting. Mr. Hembelson said this was taken into account regarding the groundwater characteristics, through monitoring. He noted the application does not go into the neighboring lands aquifer. He said it was difficult to calculate since the characteristics of a nearby aquifer are different.

Rep. Dale pointed out this indefinite language has been addressed before. A permit application depends on the groundwater regime and how the risk is analyzed and what the perimeter of the study area should be. The amendment extends beyond the permit boundary. The department always addresses the issue without the amendment. **{Tape : 1; Side : A; Approx. Time Counter : 42}**

Rep. Erickson discussed the need for excess bonding ahead of time should there be any problems. He said there are downstream people who are concerned about mining and the Kendall mine case is real evidence that there is a problem. Rep. Tash pointed out this was speculating about what "if" problems. He said the amendments open the door to more litigation. The purpose of this bill is to solve problems. **{Tape : 1; Side : A; Approx. Time Counter : 47.3}**

The question was called on the Erickson amendments. The motion **FAILED** 8-12 on a roll call vote.

Rep. Ewer **MOVED** an amendment. He referred to page 2 regarding impairment of use of adjacent surface water and ground water, to get the impairment notion. The second amendment refers to page 3, line 15, where it says "number of acres of disturbed land" he proposed to add "and impairment of surface water and ground water" and stick the rest of the language so we don't have to get into the notion of restoration of water. If the department already addresses water, as far as policy, this is putting it in as a matter of law.

Rep. Tash noted his concerns that these amendments may be overriding some of the non-degradation standards that are already set.

Rep. Dale pointed out degradation is a strong term. Montana does have a non-degradation law. The confusion raised is with the use of the term degradation in conjunction with land. If this same issue would apply to municipalities it would create a problem. **{Tape : 1; Side : A; Approx. Time Counter : 63.8}**

{Tape : 1; Side : B} Rep. Dale continued that this term was open-ended and could be used as an avenue to stop legitimate projects.

The question was called on the Ewer Amendment. Rep. Dale noted by insuring restoration or replacement, it should be identified who causes the impairment; for example, adjacent areas could be impaired by fertilizer, drilling wells, highway's anti-caking agent with cyanide. He pointed out these kinds of things do get used to stop projects, they are not applied reasonably. They become an open ended tool. Those in the mining industry would favor anything that would define regulation better or define liabilities. However, this amendment would open up liability and looks for a deep pocket.

The motion **FAILED** 12-8 with Reps. Tuss, Harper, Ewer, Gutsche, Raney, Hurdle, Erickson and Eggers voting yes.

Rep. Younkin **MOVED TO TABLE**. The question was called. The motion **PASSED** 12-8.

HEARING ON HOUSE BILL 617

Sponsor: Rep. Karl Ohs presented the bill which concerned underground storage. He said the bill would change the membership of the board. **{Tape : 1; Side : B; Approx. Time Counter : 16.6}**

Proponents: Ronna Alexander, representing the Petroleum Marketers Association, spoke in favor of the bill. She said their association represented 70% of the petroleum storage facilities in the state. She said this would move towards a more efficient process. She distributed the Petroleum Board side of their budget. **EXHIBIT (nah39a05)** The changing of the membership of the board is at the request of the department. There is conflict of interest when there is a regulating agency sitting on a board that also determines eligibility to the fund. The bill would move staff under DEQ which is more efficient. DEQ is on site as a case manager, there is a petro case manager and an above ground person, like the Fire Marshall. A tank owner has to talk to three regulators. This is a duplication of efforts. **{Tape : 1; Side : B; Approx. Time Counter : 20.7}**

Mark Simonich, Director of Department of Environmental Quality and board member, discussed the Petroleum Tank Release Board. The board is in unanimous support of HB 617. The board compensation is awkward since it is both department rules and state fire code that are applicable rules that apply to eligibility for reimbursement under the fund. You have two members of the board that have to sit in judgement when their own staffs have made a recommendation that a particular facility may be out of compliance and ineligible for the fund. The bill would allow two public members to sit on the board and allow the State Fire Marshall and the department to be advisors to the board. **{Tape : 1; Side : B; Approx. Time Counter : 29}**

Opponents: None.

Questions from Committee Members and Responses: Rep. Wagner asked about the intrusion of three inspectors. Ronna Alexander replied there were some complex sites but most only required one inspector. Rep. Tash pointed out the legal fees and court costs have only amounted to \$599 for the biennium which represented efficiency.

Closing by Sponsor: Rep. Ohs closed.

EXECUTIVE ACTION ON HOUSE BILL 617

Rep. Ohs **MOVED DO PASS**. The question was called. The motion **PASSED** 19-1 with Rep. Hurdle voting no.

EXECUTIVE ACTION ON HOUSE BILL 573

Rep. Erickson **MOVED DO PASS**. He presented an amendment. **EXHIBIT (nah39a06)** He explained the amendment addressed eminent domain for a gasoline pipeline (see map) **EXHIBIT (nah39a07)**.

Rep. Erickson **MOVED** the amendment. Rep. Tash explained this was Rep. Bookout-Reinicke's amendment when she first presented the bill.

Kathleen Williams explained the language was proposed by the sponsor based on the current law for the Bonneville Power lines.

Rep. Ewer felt this was a bad amendment. He stated no one likes condemnation but gas is needed in cars. He **MOVED A SUBSTITUTE MOTION TO TABLE**. The question was called. The motion **PASSED** 15-5 with Reps. Raney, Harper, Eggers, Gutsche and Erickson voting no.

EXECUTIVE ACTION ON HOUSE BILL 574

Rep. Ewer **MOVED DO PASS**. Rep. Ewer **MOVED** the 04 amendment. **EXHIBIT (nah39a08)**

Kathleen Williams explained the additions to the amendment and the intention. **{Tape : 1; Side : B; Approx. Time Counter : 42.1}**

Rep. Dale asked about the provision that mentioned 600 ft from home schools. He asked for clarification if the pipeline could be replaced in the existing location. Williams pointed out the concern was the bill might be interpreted to require replacement.

Rep. Harper asked to segregate the amendment and drop #3. He pointed out this was taken from the law that applied to casinos and all they need to do is open the back door and it does not apply.

The question was called. The motion **PASSED** unanimously.

Rep. Harper **MOVED THE BILL AS AMENDED**. Rep. Ewer said the companies were getting a bad rap. There is no alternatives since

pipelines are the most economical and safer than trucks or trains.

Rep. Curtiss pointed out the Major Facilities Siting Act had been good and this bill would not solve problems.

Rep. Tuss felt this bill was creating mischief. She was offended by the exemption of crude oil. Rep. Younkin clarified that technically crude oil already used pipelines greater than 17".

Rep. Mood pointed out knowledge regarding technology had doubled and will double again. Because of the changes in technology there were less spills, less than 2% in ten years. The majority of spills were before 1980 and most of them third party incidents. It is not necessary to force the process.

The question was called. The motion **FAILED** 15-5 with Reps. Gutsche, Ewer, Erickson, Harper and Eggers voting yes.

Rep. Younkin **MOVED TO TABLE**. The question was called. The motion PASSED 15-5.

EXECUTIVE ACTION ON HOUSE BILL 596

Rep. Ohs **MOVED DO PASS**. {Tape : 1; Side : B; Approx. Time Counter : 59.4}

Rep. Ohs explained this bill would request documentation of rules.

Rep. Story said the bill was written for the purpose to address the problems if a project was designed and approved and then during the construction phase the department criteria changed, got more stringent most likely, the department couldn't come back and make you change your designs because it hadn't been built yet.

Rep. Harper suggested fixing it where it says persons owning or operating or proposing to operate the system. Rep. McGee suggested "applicant".

{Tape : 2; Side : A}

The question was called on the amendment. The motion **PASSED** unanimously.

Rep. McGee **MOVED THE BILL AS AMENDED**. Rep. Curtiss asked about the cost. Rep. Harper responded that the problem was the operation would get permitted and then the department changes the

rules. The department may be put in a bind because maybe EPA will demand the rules be changed. Passage of the legislation will give the department some defense against the EPA. This will provide protection for contractors. Rep. Story commented that this would also require periodic update of the manuals and the electronic format.

The question was called. The motion **PASSED** 19-1, with Rep. Orr voting no.

EXECUTIVE ACTION ON HOUSE BILL 298

Rep. Dale **MOVED HB 298 OFF THE TABLE**. Rep. Dale said there was information available from the Administrative Code Commission.
EXHIBIT (nah39a09)

The question was called. The motion **PASSED**, 14-6 with Reps. Gutsche, Ohs, Tuss, Erickson and Hurdle voting no.

Rep. Dale **MOVED DO PASS HB 298**. He read the March 7, 1995 letter from John McMaster regarding alternatives to a well. See Exhibit 9. He pointed out a cistern "may be" utilized which does not mean it is mandated. The bill would give recourse when the department interprets the existing law wrong by preventing a permit. **{Tape : 2; Side : A; Approx. Time Counter : 6.8 - 8.2}**

Rep. Hurdle pointed out the problem with the bill was its direct relation to the sponsor's father.

Rep. Dale noted people are still forced to install cisterns who have a well that is adequate most of the time. There is a cost that continues to be imposed on property owners who have quality water on their property but not quantity.

Rep. Ewer said this bill was trying to fix a simple issue but it was really a major public policy issue. Unsuspecting buyers should be protected.

Rep. Dale said this policy needs to be addressed since the existing method is unsatisfactory. Part of the ramifications for this are cases where a well has been adequate part of the time and the department requires a cistern to the benefit of the landowner. The problem is the person who has the well can't pump from the well into the cistern. They have to haul water.

Rep. Fuchs pointed out the department could still recommend a cistern but they could not mandate one.

Kathleen Williams said the critical term was "dependability". She explained how the department assessed a permit, they look at the quality, quantity, gallons per minute and the long term dependability of the water supply. If the applicant can't show there is a dependable water supply then they allow alternate water sources, which is a cistern.

Rep. Erickson discussed the dependability issue. He noted Joan Miles, the Lewis and Clark Health Director had concerns about reasonable distance, guidelines and the real concern for liability for local government.

Rep. Erickson **MOVED TO TABLE**. The motion **FAILED** 9-11, on a roll call vote.

Rep. Ewer **MOVED A SUBSTITUTE MOTION OF DO PASS**. He commented if there was a complaint the person should get a lawyer. He said this bill focused on a small class of people. Rep. Tash noted the bill needed some work in order to move through the system.

Rep. Fuchs said the dependability issue was a matter of philosophy or interpretation. A cistern can be an alternative. Rep. Tash suggested the term dependability be defined.

The question was called. The motion **PASSED** 13-7 with Reps. Gutsche, Tuss, Ewer, Harper, Erickson, Hurdle and Eggers voting no.

EXECUTIVE ACTION ON HOUSE BILL 102

Rep. Tash referred to a letter he received as Chairman to reconsider actions on HB 102. This was Rep. Fisher's bill and the letter requested the bill be moved from the Table. Rep. Harper **MOVED TO TAKE HB 102 OFF THE TABLE**. Rep. Ohs **MOVED A SUBSTITUTE MOTION TO ADJOURN**. The motion to Adjourn **PASSED**. House Bill 102 was left on the table.

ADJOURNMENT

Adjournment: 5:37 P.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah39aad)