

Treasure State Resources Association

2021 Montana Legislative Session

Final Report

The Montana Legislature adjourned on Thursday, April 29, 2021. TSRA worked closely with our members and partner organizations on a broad range of bills either to support or oppose. The following is a final report on bills we followed during the session

House Bills

HB 86 (Rep. Mary Ann Dunwell, D-Helena) Rep. Dunwell carried HB 86 on behalf of the Local Government Interim Committee. The bill authorized the creation of regional fire protection service authorities and allowed for fees to be assessed for their operation. Owners of forest lands, including TSRA member companies, already pay the DNRC assessment for fire preparedness and regional fire district fees for services provided by local fire departments. Formation of Regional Fire Protection Service Authorities could have resulted in a cost increase for owners of those forest lands. The Montana Wood Products Association and individual forest land owners, as well as TSRA, opposed the bill as written and asked for an amendment that would provide a mechanism to assure their costs would not increase if an “authority” were created.

The bill was heard in the House Local Government Committee. An amendment was offered to address the opponents’ concerns. The amendment was added but the bill was ultimately tabled.

TSRA Position: Oppose as Introduced

HB 99 (Rep. Denise Hayman, D-Bozeman) The bill would have eliminated the preapproval process for electricity supply sources essentially undoing the practice established in 2007 when Montana sought to re-regulate utilities. Under pre-approval, the state Public Service Commission can approve a resource acquisition that is determined to be prudent before it’s purchased or built and allow the utility to “rate base” the cost. That would help with financing and other planning needs. The measure came out of a last minute action taken by the

Interim Energy and Telecommunications Committee in response to a suggestion from an outgoing PSC member with very little discussion.

The bill was heard in the House Energy, Technology and Federal Relations and later tabled.

TSRA Position: Oppose

HB 150 (Rep. Mary Ann Dunwell, D-Helena) Similar to a measure introduced in 2019, the bill would have established carbon equivalent emission reduction targets and enacted a carbon tax on large sources. Montana would be the second state to enact a carbon tax. The bill was widely opposed by industry representatives and business groups.

The measure was heard in the House Taxation Committee on January 21, 2021 and tabled the following day.

TSRA Position: Oppose

HB 173 (Rep. Denley Loge, R-St. Regis) This act establishes a fire hazard reduction fund and requires the deposit of revenue from forfeited fire hazard reduction performance bonds into a state special revenue fund for authorization, management, and completion of fire hazard reduction activities. The Department of Natural Resources has been using forfeited bond funds for reclamation of abandoned projects for decades, but discovered legislative authority for that activity did not exist. This bill gives the Department the authority for that expenditure.

The bill was signed by the Governor.

TSRA Position: Support

HB 245 (Rep. Larry Brewster, R-Billings) This bill took an opposite approach to the utility pre-approval process and reinforced the practice by providing for accountability on the part of both the utility and the Public Service Commission. The Public Service Commission would be directed to provide more information about why a request for pre-approval was denied.

The bill was heard in the House Energy, Technology and Federal Relations Committee and was later tabled.

TSRA Position: Support

HB 387 and HB 389 (Rep. Ed Stafman, D-Bozeman) Both these measures were aimed at the Colstrip Energy Limited Partnership (CELP) and Yellowstone Energy Limited Partnership (YELP) plants, both of which utilize waste material to generate electricity. The sponsor proposed to set arbitrary emission limits and impose bonding costs that would very likely cause them to shut down.

Opponents provided information about the broader purposes served by the plants besides just producing energy, including maintaining compliance with overall air quality standards in the Billings area.

The bills were heard in the House Energy, Technology and Federal Relations Committee and were later tabled.

TSRA Position: Oppose

HB 394 (Rep. Mark Noland, R-Bigfork) HB 394 makes the temporary (originally 10-year) tax exemption for air and water pollution control and carbon capture equipment permanent. Proponents called attention to the fact that pollution control equipment that is installed at considerable expense to the affected entity is intended to produce a “healthier” environment for everyone and as such their tax burden should not be increased as a result. It allows companies to make long term plans for capital improvements with more predictability.

The bill was signed by the Governor.

TSRA Position: Support

HB 481 (Rep. Steve Gunderson, R-Libby) This measure identifies an extensive list of critical infrastructure facilities for added protection in terms of penalties imposed for trespassing or damage. While civil protests are not affected, anyone who knowingly trespasses is subject to fines and minimal jail time. However, if that individual also causes damage the penalties grow in severity. If it can be clearly demonstrated they were hired by an organization to take such action that entity is also liable for penalties. One of our TSRA members called attention to the possibility that activities conducted by organized labor that are allowed under the National Labor Relations Act might be implicated under the original language of the bill. At our request, Rep. Gunderson supported an amendment that exempted those activities.

The bill was further amended and passed by the Senate. The House approved the Senate amendments and the bill has been signed by the Governor.

TSRA Position: Support as Amended

HB 554 (Rep. Josh Kassmier) This bill is a response to an effort to establish a Natural Heritage Area covering a large swath of both public and private land near Great Falls. Supporters argued that the designation will help promote tourism. Private landowners were concerned about the potential for limitations on use of their property, as has been the case in other parts of the country. HB 554 requires legislative approval of national heritage areas and national historic trails in Montana as a means to ensure concerns about property rights and other matters are carefully considered.

The bill was amended in the Senate to clarify that approval must take place “prior to a congressional act”. The bill was signed by the Governor.

TSRA Position: Support

Senate Bills

SB 38 (Sen. Terry Gauthier, R-Helena) The bill cleans up the language in the “Snowmobile Trail Pass” bill passed by the 2019 Legislature. The measure also allows private clubs and organizations to use the summer recreation trail grant program in the Department of Fish, Wildlife and Parks to provide motorized safety and ethics education as well as for other authorized uses.

The bill was signed by the Governor.

TSRA Position: Support

SB 86 (Sen. Duane Ankney R-Colstrip) The bill revised the coal-fired generation remediation and retirement requirements at Colstrip to include the estimated loss of value of residential or commercial property due to the retirement of a coal-fired generating unit in the decommissioning costs. It adds administration of a new grant program to assist home and business owners with recovering some of the lost value of their property for a drop in the real estate market associated with plant closures to the duties of the MT. DEQ. In addition

the bill impacts agreed-upon provisions of SB 339 passed as a “consensus” bill in 2019.

The bill passed the Senate but was later tabled in the House Energy and Telecommunications Committee.

TSRA Position: Oppose

SB 134 (Sen. Jason Small, R-Busby) This measure adds to language under the section of statute that addresses what activities qualify for working capital loans from the permanent coal tax trust fund to an owner of a coal-fired generating unit. The change would authorize costs related to decommissioning and remediation of a coal-fired generation unit or affected property to meet applicable legal obligations.

The bill was signed by the Governor.

TSRA Position: Support

SB 176 (Sen. Brad Molnar R-Laurel) This was one of several measures that appeared aimed at “forcing” a solution for the Colstrip Generation Facility in terms of keeping it in operation. While both proponents and opponents spoke to a common desire to see Colstrip 3 & 4 continue operating, the bill presented a number of legal and practical concerns, including interference with the Administrative Order of Consent that was signed by the owners, DEQ, and other shareholders to ensure remediation of ponds and other environmental issues at the plant.

The measure passed out of the Senate Energy and Telecommunications Committee after being amended to address some fairly minor concerns relative to obligations for entities that receive funding from the interest generated by the coal trust. It failed on a tie vote on second reading in the Senate but was later revived and sent to Senate Finance and Claims, keeping it in play after the mid-session transmittal deadline. The Finance and Claims Committee approved it and sent it back to the full Senate where it passed 2nd Reading, but later failed to pass on 3rd Reading.

TSRA Position: Oppose

SB 201 (Sen. Steve Fitzpatrick, D-Great Falls) SB 201 provides some sideboards for the Public Service Commission and the Courts in terms of what avoided costs can, and cannot be considered in setting rates. The measure will prevent the PSC or Courts from adding a bonus payment or “adder” to the calculation of avoided cost rates that are not grounded in actual costs in regulation or law. It also prevents the PSC or the Courts from adding a bonus payment or “adder” to the calculation of utility rates that are not grounded in actual costs in regulation or law. One benefit of the measure is that it protects Montana consumers from bearing a cost of externalities, like carbon, that are speculative in nature.

The bill as amended in the House was signed by the Governor.

TSRA Position: Support

SB 233 (Sen. Duane Ankney, R- Colstrip) Similar to a measure introduced in 2017, Senator Ankney’s bill as introduced would have eliminated the Board of Environmental Review, leaving rulemaking responsibilities and appeals to the Department of Environmental Quality. The Senator proposed to amend the bill to move all the rulemaking authority to the Department, but keep the BER for such purposes as hearing appeals from department decisions. Currently some rules are now adopted solely by the Department, while others go through the Board. It is largely a creature of how the authorizing statute was written. In both cases, the DEQ already does all the work with stakeholders and any applicable oversight entities before proposals are heard by the Board. Proponents stated it made sense to keep the rulemaking closest to staff and stakeholders with the applicable expertise and experience. All rules will still have to go through the formal public rulemaking process. There were no opponents.

The bill was signed by the Governor.

TSRA Position: Support

SB 249 (Sen. Mike Lang, R-Malta) The bill primarily revises the way the Montana Sage Grouse Program operations are funded, establishing a cost-sharing agreement between the Department of Fish, Wildlife and Parks and the Department of Natural Resources and Conservation. That includes use of excess Pittman-Robertson fees. Oversight of the program by the Montana Sage Grouse

Oversight Team remains in place. Proponents stressed the importance of keeping the program in place, along with the oversight component.

The bill was signed by the Governor.

TSRA Position: Support

SB 257 (Sen. Jason Small, R-Busby) Sen. Small brought this measure to prohibit local governments from imposing their own carbon fee or tax. There has been a push nationally for local governments to impose such taxes or fees to address climate change. No Montana community has proposed a tax at this time, but many have established local policies aimed at reducing carbon.

The bill was signed by the Governor.

TSRA Position: Support

SB 258 (Sen. Duane Ankney, R-Colstrip) At the request of the Montana Association of Oil, Gas and Coal Counties, Senator Ankney's bill proposes to rename the Treasure State Endowment Program and Fund to the Montana Coal Endowment Program and Fund. Proponents noted it made sense to connect the dots for communities that benefit from the coal severance tax in terms of funding for local infrastructure needs all across the state.

The bill was signed by the Governor.

TSRA Position: Support

SB 316 (Sen. Steve Fitzpatrick, R-Great Falls) Introduced as a measure to more broadly revise civil laws related to use of funds for restoration damages, it was amended in the Senate to restrict the bill to construction repairs and restoration. The bill was brought to the attention of TSRA and others during the transmittal break relative to its potential to accomplish the broader purpose as originally proposed to make sure damages awarded to restore contaminated property will be used for their intended purpose.

The bill was amended in the House to cover more than construction concerns, again assuring that funds awarded for restoration are used for their intended purpose. Once returned to the Senate, the bill was further amended to remove

references to construction repairs and restoration. The House amendments were left in place and additional changes further clarified compliance with rules of evidence standards. The bill has been signed by the Governor.

TSRA Position: Support

SB 325 (Sen. Brian Hoven, R-Great Falls) The bill was introduced on behalf of Malmstrom Air Force Base and sought to prohibit placement of wind turbines within 2 nautical miles of military installations. A representative of the Air Force testified the limitation was needed to address security concerns relative to landing helicopters near missile silos. Opponents pointed out the potential impacts to private property owners whose options to work with wind developers would be reduced as a result of the bill. Testimony also highlighted existing protections provided for via the Department of Defense Clearinghouse that made the bill unnecessary.

The bill was heard in the Senate Energy and Telecommunications Committee and later tabled.

TSRA Position: Oppose

SB 328 (Sen. Duane Ankney, R-Colstrip) The bill seeks to bring Montana's administrative rules in line with both state and federal laws regarding bond release for reclaimed coal mine lands. It is intended to improve the process by which private lands are returned to productive uses more quickly, while maintaining high standards for reclamation.

The bill passed both houses as amended by the House Natural Resources Committee to clarify DEQ will retain a portion of the bond, particularly in situations where water replacement in the designated area is a concern. The measure has been signed by the Governor.

TSRA Position: Support

SB 338 (Sen. Mike Lang, R-Malta) SB 328 was a Montana Chamber of Commerce priority that establishes that a landowner owes a trespasser no duty of care with respect to the condition of the property. Those individuals are on the property without permission or knowledge of the landowner and should not be able to hold the landowner responsible for actions they have taken. The landowner

would still be liable for any injury to person or property for an act or omission that constitutes willful or wanton misconduct.

The bill was signed by the Governor.

TSRA Position: Support

SB 358 (Sen. John Esp, R-Big Timber) Brought at the request of the Montana League of Cities and Towns, the Montana Mining Association, the Montana Petroleum Association and TSRA this bill would repeal the current approach to regulating nutrients and replace with one that is more practical while still being protective of water quality. It follows from a series of court challenges that have created uncertainty for the future of nutrient regulation and subsequently both municipal and private dischargers. After the bill passed the Senate, proponents worked with the Department of Environmental Quality to resolve concerns with the new regulatory approach that applies Adaptive Management principles. Implementation details will be addressed in rulemaking that is currently required to be completed within one year.

The bill passed the full Senate and was approved by the House Natural Resources Committee as amended to reflect the agreement reached between proponents and MT DEQ. The bill passed both houses as amended and has been signed by the Governor.

TSRA Position: Support

SB 379 (Sen. Steve Fitzpatrick R-Great Falls) The bill's primary purpose is to incentivize the acquisition of additional ownership or power from Colstrip to prolong its life. The Public Service Commission retained oversight over the same utility matters.

The bill passed the Senate as amended to address some of the concerns raised by opponents, but was later tabled in the House Energy and Telecommunications Committee.

TSRA Position: Support

SJ 10 (Sen. Jason Small, R-Busby) This Joint Resolution calls on Congress to appropriate funding under the Energy Act of 2020 for the development of carbon

capture technologies at the Colstrip Electric Generating Station. The sponsor spoke to the importance of keeping coal in the mix of our energy supply by using technology to reduce carbon.

The Resolution was approved by both houses. Resolutions do not go to the Governor.

TSRA Position: Support

SJ 16 (Sen. Steve Hinebauch, R-Wibaux) This Joint Resolution urges Congressional and Presidential approval for the Keystone XL Pipeline. The sponsor and proponents for the measure cited the tax revenue and jobs that would be generated in Montana and the importance of keeping an adequate supply of fossil fuels in the mix to generate energy for the nation.

The Resolution was approved by both houses as amended by the House Natural Resources Committee. Resolutions do not go to the Governor.

TSRA Position: Support

SR 4 (Sen. Jeff Welborn, R-Dillon) This resolution sought to confirm the appointment of the new Director of the Department of Environmental Quality, Christopher Dorrington. Mr. Dorrington will serve at the pleasure of the Governor.

The resolution adopted by the Senate and signed by the Senate President on February 3, 2021.

TSRA Position: Support

SR 81 (Sen. Jeff Welborn, R-Dillon) SR 81 called for confirmation of a new member of the Board of Environmental Review. Julia Altemus, Executive Director of the Montana Wood Products Association was nominated by the Governor to serve as a public member. Ms. Altemus has extensive experience in resource management issues.

The resolution was adopted by the Senate on March 9th and has been signed by the Senate President.

TSRA Position: Support