

48th LEGISLATIVE SESSION
MINUTES OF
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

January 14, 1983

A regularly scheduled meeting of the Senate Natural Resources Committee was called to order by Senator Harold L. Dover, Chairman, on Friday, January 14, 1983 at 1:00 p.m. in Room 405, State Capitol.

ROLL CALL: Roll was called with all members of the Committee being present.

SENATE BILL 67: Chairman Dover opened hearing and called on Senator Tom Keating, sponsor of the bill. Senator Keating explained this bill would be a repealer to remove the limitation that state lands may not be leased for coal mining to foreign interests. He gave some history of the bill, that in the early 70's era, and time of restriction of development of coal in the state, laws were passed to prohibit foreign control and foreign corporations, from either buying coal products or from obtaining a coal lease. There is no federal restriction against foreign corporations holding a federal lease, nor any state prohibition against their leasing from private owners of property. Foreign corporations who wished to enter development may have federal land on one contract, a lease from a private owner or another with adjacent land; and within that area could be state land creating a hole in their lease. The law currently provides that foreign corporations can obtain oil and gas leases on state lands. This is a measure that is not consistent with other laws. This bill is proposed to repeal the law that prohibits foreign corporations from obtaining a state coal land lease.

PROPOSERS: Chairman Dover called for proponents. Joe Spalding, attorney for Shell Oil Company asked to speak and introduced Bill Gibson, from Houston, geologist with Shell Oil Co. He is requesting repeal of the statute, Sec. 77-3-305, which prohibits a corporation with major stock controlled by foreign interests from obtaining a lease for coal on state lands. Shell Oil is a Delaware corporation, with stock of about 69% owned by Shell Petroleum, a Netherlands company, which also has Dutch and English interests. The company is qualified to do business in all the states and has 36,000 employees, with production of 433,000 barrels of crude and 1.8T cubic feet of natural gas. They do operate coal mining operations in Ohio, Illinois and Wyoming and beginning in Texas, and would like to do likewise in Montana. Shell has been

operating in Montana for 32 years, and have oil and gas leases on about 1 1/4 Million acres in Montana. About 140,000 acres are State lands and the remainder are private and federal. Shell paid 1982 Montana taxes of \$34,000,000 and \$1.8 Million as royalty to the state for oil and gas leases. There are 200 employees in the state. Shell Foundation also contributes to education and charity. He stated that even though they have other stock ownership, they are good citizens of the State and United States.

Federal leases are controlled by the Secretary of the Interior, and he determines whether countries have reciprocity with the United States. Currently there are none on the non-reciprocal list. Shell is preparing to mine on the Crow reservation, and only has problems on state coal lands. Feasibly, Shell could obtain coal leases in an area completely surrounding state coal lands. He suggested that the restrictions should be left to the federal government, that some states have restriction on sales, and that the federal government has passed the agriculture disclosure act requiring reporting of land ownership by aliens. He urged the adoption of SB 67. Mr. Spalding's complete testimony is attached as Exhibit '1'.

Chairman Dover called for further proponents. Senator Eck spoke for the bill, stating there has been considerable discussion in past sessions regarding this very item. She pointed out that a man from Shell in 1973 had made everyone excited by asking whether it would be better to build for twenty small towns, or plan for one of 200,000 people. This had not had a good effect. At that time Governor Judge had tried to put together a package to allow these leases, and it apparently was done too quietly and made the people very upset. She stated in looking at state lands, maybe it is an insult to people wanting to do business in Montana that we don't allow coal leases, and she supports the bill. There were no further proponents.

OPPONENTS: Chairman Dover called for opponents. Toni Kelley, representing Northern Plains Resource Council, Deer Lodge, spoke and stated that last session a bill was passed prohibiting selling of lands to foreign countries. She pointed out that the U.S. government does not allow leases to foreign countries.

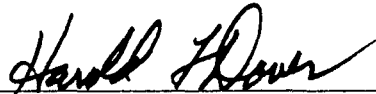
Chairman Dover called for discussion from committee members. Senator Eck inquired as to the bill proposed last session and the fact that the Governor had vetoed that bill. Howard Johnson, EQC staff, stated he had obtained a copy of that veto. He was asked to read it for the committee. It stated the bill was returned without the Governors

signature, being Bill 367, 47th Session, for the following reasons...This would be a change in public policy, I remain concerned about the wisdom of committing finite U.S. energy resources to long term export contracts until America's energy needs are determined...and met. Despite reservations, I concur insofar as it permits coal from state leases to be sold to foreign interests. SB 367, however, also permits foreigners to acquire state coal leases without restriction. This unconditional right far exceeds the federal policy on mineral leasing. It is one thing to allow the export of Montana coal. It is quite another matter to permit...even to encourage... foreign interests to directly acquire Montana coal through lease agreement. He suggested an amendment that will provide export of Montana coal, but reject the right of lease acquisition by foreign interests. The message and SB 367 are attached as Exhibit '2'.

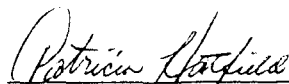
Senator Lee inquired if there would be any problem putting the reciprocity clause into the bill. Senator Keating then pointed out that most state lands are not large enough to be developed by themselves and need adjoining land as well for development. He stated he had heard the veto message had come about through inquiry by Rep. Harper to the Governor, and the need for the message that Montana did not want foreign interests. Committee members stated they wished to look further into the background.

No action was taken on the bill at this time.

ADJOURN: There being no further business to come before the committee the meeting was duly adjourned at 2:00 p.m.



SENATOR HAROLD L. DOVER, CHAIRMAN
Senate Natural Resources Committee



Patricia Hatfield
Committee Secretary

ROLL CALL

SENATE NATURAL RESOURCES COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 1-14-83

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (D)	✓		
HALLIGAN, Mike (D)	✓		
KEATING, Thomas F. (R)	✓		
LEE, Gary P. (R)	✓		
MANNING, Dave (D)	✓		
MOHAR, John (D)	✓		
SHAW, James N. (R)	✓		
STORY, Pete (R)	✓		dy.
TVEIT, Larry J. (R)	✓		
VAN VALKENBURG, Fred (D)	✓		
ETCHART, Mark (R) Vice Chairman	-		dy.
DOVER, Harold L. (R) Chairman	✓		

DATE _____

January 14, 1983

COMMITTEE ON SENATE NATURAL RESOURCES

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretariat)

Mr. Chairman and Members of the Committee:

My name is J. C. Spalding, from Houston, Texas, an attorney for Shell Oil Company. Appearing with me is Mr. W. C. Gibson, a geologist with Shell Oil Company's Mining Organization, also from Houston, Texas. We appreciate the opportunity to appear before you today and do so in support of Senate Bill 67 which would remove the restriction against issuance of state coal leases to "any corporation the majority stock of which is controlled by interests foreign to the United States" except countries with borders contiguous to the United States. That restriction now appears in Section 77-3-305 of the Montana statutes.

It seems clear that those words would make it impossible for Shell Oil Company to acquire a coal lease on state lands, certainly not directly and very probably not by assignment. Shell Oil is a Delaware corporation, with approximately 69.5 percent of its stock owned by Shell Petroleum N.V., a Netherlands company, which in turn is owned 40% by The "Shell" Transport and Trading Co., Limited, an English company, and 60% by Royal Dutch Petroleum Co., so I suppose we are classified as controlled by "interests foreign to the United States," even though we are incorporated under the laws of Delaware, and qualified to do business in all the states, specifically including Montana. Our presence here in the United States involves c. 36,000 employees, and average daily production of 433,000 barrels of crude and condensate and 1.8 Tcf of natural gas. The Company presently operates, through wholly-owned subsidiaries, coal mining operations in the states of Ohio, Illinois and Wyoming and we are

gearing up to mine in Texas and Montana.

I am pleased to state that Shell Oil is no stranger to Montana. We have operated here for about 32 years and produce oil and gas here. We currently have oil and gas leases on about 1 1/4 million acres in Montana, made up of about 140,000 state acres and the remainder from private landowners and the Federal Government. Our daily production of oil in Montana is 24,300 barrels and the gas production is 6,600 Mcf.

This production makes us a significant taxpayer and in calendar 1982 our Montana taxes approximated \$34,000,000, plus \$1,800,000 as royalty to the state under state oil and gas leases. We have about 200 employees residing in Montana and encourage them to become good, active citizens of the state. Through the Shell Foundations and other agencies, the Company will have contributed about \$20,000 in 1982 and 1983 to various entities for educational and charitable purposes. We also have 120 retirees and 100 shareholders in Montana.

I have mentioned these statistics in an effort to demonstrate that we are good citizens of the United States, regardless of the stock ownership and that we have made, and continue to make, a valuable contribution to the industrial development of Montana.

Our oil and gas leases on state lands were issued pursuant to the Montana statutes, Title 77 of the state statutes. Part 4 of the statute, beginning at Section 77-3-401, empowers the state land board to issue oil and gas leases to "any person, association, corporation, domestic or foreign" qualified under the constitution and laws of the state of Montana.

Our oil and gas leases on Federal lands were acquired pursuant to a Federal statute, the Minerals Lands Leasing Act of 1920. That statute, 30 U.S.C.A. Subsection 181, authorizes citizens of a foreign country to acquire leases on oil, gas and coal if the laws, customs or regulations permit U.S. citizens to acquire leases in the foreign country. This is the so-called "reciprocity clause" about which much has been said in the press in recent times. The Secretary of Interior is charged with the responsibility of determining reciprocity on a country-by-country basis. Recent decisions have involved Cyprus, Kuwait, and, I think, Canada. I am not aware of any country being placed on the non-reciprocal list by Interior because the prevailing philosophy is to encourage investment here, while making it possible for United States citizens, individuals and corporations, to invest in natural resources overseas.

Here in Montana, Shell is preparing to mine coal on the Crow reservation in Big Horn County, under an arrangement with the Crow Tribe. It is only on state coal lands that we have the problem and, insofar as I know, the restriction is unique.

The restriction in 77-3-305 will hamper us if we attempt to lease and develop a logical mining unit which may include private, Federal and state lands. To demonstrate that such a situation is a real probability, I would point out that of 12 tracts delineated by the Regional Coal Team composed of state and Federal officials for leasing in the Montana portion of the Powder River Basin in April 1982, and of 9 tracts for possible leasing in the Fort Union Region Area in 1983, all 21 tracts

contain Montana coal lands. In an extreme situation, we could acquire coal rights on lands surrounding state lands, and find that mining operations are not feasible or uneconomic because of the unleased "window." Turned around, if Shell acquires Federal leases surrounding state lands, this would damage the value of the state tract to some other lessee. If we were to surface mine leases adjacent to a state tract, it might be necessary to leave some coal unmined on one or both sides of the boundary line due to the so-called "set back" requirements.

I confess that I am not familiar with the history of the present restriction. I do not know why it was put in the statute. But I do see an inconsistency in denying Shell the chance to acquire state coal leases while we continue to demonstrate our good citizenship, and our good production practices, on state oil and gas leases. If the original legislative intent was to bar corporations with foreign shareholders from mining coal within the boundaries of Montana, then that intent is thwarted by the Federal Government granting coal leases in Montana to such corporations. And if the intent was to bar unfriendly aliens which discourage American investment in their countries, then it is truly ironic that the statute permits leases to Canadian companies while Canada has gone quite far in discouraging American investments.

We seek the opportunity to participate, on equal terms with other prospective coal lessees, in the future development of Montana's coal resources, and such development does not come easily or cheaply. Consider that a company must frequently invest \$10,000,000 in a mine before development even starts and

the magnitude of the problem is apparent. A surface mine in the Powder River Basin of 8 million ton capacity annually will cost \$230,000,000 over the life of the project. And if a company, domestic or alien by your definition, develops such a mine, it creates some 320 jobs and generates royalties of about \$7,000,000 annually.

I feel that the Montana legislature undoubtedly had, and has, the power to have such restriction but I do question the wisdom of it. A good argument can be made that the question is one of foreign policy, best left to the Federal Government under our Constitution. Several states have proposed restrictions on alien ownership recently, probably due to the so-called "Arab threat" or the fear of mid-East petro-dollars gobbling up all the good farm land in America. But the problem has proven to be much smaller than originally thought. The Federal Government passed the Agricultural Foreign Investment Disclosure Act (AFIDA) a few years ago, requiring the reporting of land ownership by aliens, and the furnishing of such data to the various states. The result has been that of some 30 states that proposed restrictions, the restrictions were generally not enacted. I do not have a precise figure, but only 2 or 3 of the 50 states have prohibitory legislation, and none of the mineral producing states.

Therefore, I urge the adoption of Senate Bill 67, in order to make the coal leasing statute consistent with the other natural resources statutes, and to encourage the introduction of coal investment. Adoption would make it possible for qualified

Federal coal lessees with foreign stock ownership, to compete equally with other Federal coal lessees in the acquisition of state coal leases.

EIGHTY-THIRD LEGISLATIVE DAY

1515

Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return Senate Bill 367, "AN ACT TO ALLOW THE BOARD OF LAND COMMISSIONERS TO ISSUE COAL LEASES TO FOREIGN INTERESTS AND TO ALLOW THE SALE OF COAL MINED UNDER LEASES FROM THE BOARD OF LAND COMMISSIONERS TO FOREIGN PERSONS; AMENDING SECTION 77-3-305, MCA; AND REPEALING SECTION 77-3-315, MCA," without my signature and recommend the attached amendments for the following reasons.

The strong support of SB 367 by the Legislature signals a clear change in public policy by the State of Montana. I remain concerned about the wisdom of committing finite U.S. energy resources to long term export contracts until America's energy needs are determined...and met.

Despite my reservations, however, I concur in SB 367 insofar as it permits coal from state leases to be sold to foreign interests. SB 367, however, also permits foreigners to acquire state coal leases without restriction. This unconditional right far exceeds the federal policy on mineral leasing.

It is one thing to allow the export of Montana coal. It is quite another matter to permit...even to encourage...foreign interests to directly acquire Montana coal through lease agreement.

For this reason, I am returning SB 367 with an amendment that will provide the opportunity to export Montana coal, but reject the right of lease acquisition by foreign interests. The title is changed accordingly.

I urge your concurrence in these amendments.

Sincerely,

TED SCHWINDEN
Governor

PROPOSED GOVERNOR'S AMENDMENTS TO SENATE BILL
NO. 367

1. Page 1, line 5.
Following: "ACT"
Strike: "TO ALLOW THE BOARD OF"
2. Page 1, line 6.
Following: line 5
Strike: "LAND COMMISSIONERS TO ISSUE COAL LEASES TO FOREIGN INTERESTS"
3. Page 1, line 7.
Following: line 6
Strike: "AND"
4. Page 1, line 14.
Following: "leases"
Insert: ":",
5. Page 1, line 15.
Following: line 14
Insert: "(1) to any corporation the majority stock of which is controlled by interests foreign to the United States, except for those

2/15/83

interests within countries whose borders are contiguous to the United States; or”

6. Page 1, line 19.

Following: line 18

Insert: “(2)”

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The House on 4/14/81, dissolved the Conference Committee, and the Speaker was authorized to appoint a new Conference Committee, and the House respectfully requests the Senate to appoint a like committee to confer on House Amendments to Senate Bill No. 33.

The Speaker appointed the following members:

Representative Seifert, Chairman

Representative Anderson

Representative Huennekens

The House on 4/14/81, dissolved the Free Conference Committee, and the Speaker was authorized to appoint a new Free Conference Committee and the House respectfully requests the Senate to appoint a like committee to confer on House Amendments to Senate Bill No. 243.

The Speaker appointed the following members:

Representative Curtiss, Chairman

Representative Asay

Representative Shontz

The House on 4/14/81, authorized the Speaker to appoint a Conference Committee on House Amendments to Senate Bill No. 129.

The Speaker appointed the following members:

Representative Jensen, Chairman

Representative Wallin

Representative Pavlovich

The House on 4/14/81, authorized the Speaker to appoint a Conference Committee on House Amendments to Senate Bill No. 483.

1 *Assembly* BILL NO. *367*
2 INTRODUCED BY *Deating Maly* *Alt* *Hammond*
3 *Eck*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE BOARD OF
5 LAND COMMISSIONERS TO ISSUE COAL LEASES TO FOREIGN INTERESTS
6 AND TO ALLOW THE SALE OF COAL MINED UNDER LEASES FROM THE
7 BOARD OF LAND COMMISSIONERS TO FOREIGN PERSONS; AMENDING
8 SECTION 77-3-305, MCA; AND REPEALING SECTION 77-3-315, MCA."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 77-3-305, MCA, is amended to read:

12 "77-3-305. Limitations on leasing. The board shall not
13 issue leases:

14 (1) ~~to any corporation the majority stock of which is~~
15 ~~controlled by interests foreign to the United States, except~~
16 ~~for those interests within countries whose borders are~~
17 ~~contiguous to the United States; or~~

18 (2) If after a determination of the amount, location,
19 and quality of the coal on the lands for lease, the
20 extraction of the coal from such lands by strip-mining
21 methods would adversely affect the methods of recovery of
22 deep minable coal from such operations on such lands in the
23 future."

24 Section 2. Repealer. Section 77-3-315, MCA, is
25 repealed.

-End-

check on
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: J. D. Mockler DATE: 1/14/83

ADDRESS: 2301 Colonial Dr.

PHONE: 442-6223

REPRESENTING WHOM? M/L Coal Council

APPEARING ON WHICH PROPOSAL: JB 67

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME:

DATE:

ADDRESS:

PHONE:

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS: