

MINUTES OF THE MEETING
SENATE RULES COMMITTEE
MONTANA STATE SENATE

January 21, 1987

The meeting of the Senate Rules Committee was called to order by Chairman Fred Van Valkenburg on January 21, 1987 at 11:15 a.m. in Room 415, State Capitol.

ROLL CALL: All members were present. Also present was Lee Heiman, representing the Legislative Council.

PURPOSE OF THE MEETING: Senator Van Valkenburg stated that the purpose of the meeting was to consider whether Senate Bill No. 1 is an appropriations bill. Senator Blaylock raised the issue on the floor yesterday when the Senate passed consideration of the bill and referred it to the Rules Committee for further consideration. Senator Van Valkenburg asked the Legislative Council to clarify what constitutes an appropriation. Mr. Heiman stated that he understood from Bob Person that this was a statutory appropriation. Last session, based on an Attorney General's opinion from 1983, the Legislative Finance Committee had a bill which passed and included a definition of appropriations. Sec. 17-5-501, MCA says that there are three types of appropriations made by laws used in Article 8, Section 14 of the Montana Constitution:

- 1). Temporary appropriations, enacted as part of a designated appropriations bill for a section designated as an appropriation of the bill;
- 2). Temporary appropriations made by valid budget amendment;
- 3). Statutory appropriation made by permanent law in conformance with 17-7-502, MCA.

Heiman summarized by saying that if this is a statutory appropriation within the technical meaning, then it is defined as an appropriation within the code.

Senator Van Valkenburg said that the particular issue with SB 1 comes about because of a provision in that bill on page 7, lines 8-11, in which an impact assistance program would be established and the state of Montana would be required to contribute money to such a fund equal to an amount of 8% of coal severance tax revenue for coal mined in Montana for a Beach-Wibaux plant using the lesser of coal severance tax rates of the party states, which he assumes would be North Dakota and Montana.

Mr. Heiman stated that it cannot be a statutory appropriation unless it specifically states that it is one under 17-7-502, MCA. That means that the money may be put into a revenue account but it has to sit there until, by a specific appropriation, it is spent from the state treasury. This is a clear earmarking of a revenue but it is not an appropriation of that revenue, which would have to come about with a separate bill for the general appropriations.

Senator Van Valkenburg asked for further discussion.

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Senator McCallum said that this bill was in Taxation and one of the things Senator Anderson brought up was that this plant may never be built, and secondly, if it is built, it probably won't be for ten years. Senator McCallum said that in a lot of ways he can see no need for this bill now. There is no deadline for having to approve it.

Senatle Aklestad said the thrust here is to determine whether this is, in fact, an appropriations measure and according to Mr. Heiman, it is not. It is earmarked.

Senator Van Valkenburg agreed, saying that it was his opinion that this is not an appropriation bill, it is an earmarking bill. If the bill becomes law, an earmarked revenue account would be established. It would take a separate appropriation bill to spend money from that account in the future.

Senator Himsl said that it is an allocation of a resource and would set up a fund. It is not a distribution of money. The money would be set aside.

Senator Van Valkenburg agreed, saying that there is a difference between an allocation and a distribution.

Senator Norman said, "Suppose they started mining coal there and there was no such bill, every nickle of the tax collected would go somewhere and be appropriated."

Mr Heiman said that every penny would go into the state treasury.

Senator Norman said someone will lose the eight percent that wouldn't go somewhere else.

Mr. Heiman said the money cannot go elsewhere.

Senator Farrel asked if it were not an investment of the Board of Investments?
(Subsection 3 of the Bill)

While Mr. Heiman was reviewing the bill, Senator Van Valkenburg asked the committee for further discussion. A fiscal note concerning SB 1 was passed out to the committee.

Senator Blaylock stated that the way Mr. Heiman explained it, if money ever were to be spent from the fund, it would come through HB 500. By this bill we're saying that the money is going into that fund and that's all it will be spent for, even though a future legislature will have to authorize it to be spent.

Senator Aklestad said a future legislature would have to OK it. Then it would be an appropriation by that legislature.

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Senator Blaylock said that a future legislature could also undo anything this legislature does.

Senator Farrell asked if the money goes to the Board of Investments, where does the interest go?

Senator Van Valkenburg answered that it would go into the general fund.

Senator Farrell said it could not without a vote of the Commission, according to this bill.

Senator Van Valkenburg said that unless there is a specific provision in this bill that is different from the general rule, income from investments goes into the general fund.

Senator Van Valkenburg asked for further discussion. Hearing none, he asked for a motion.

MOTION: Senator McCallum moved that the Senate Rules Committee recommends and advises the Senate as a whole that Senate Bill No. 1 is not an appropriations bill and as such it should be returned to second reading as previously reported by the Taxation Committee.

Question called. Senators Norman and Hims1 voted no, all others voted yes. The motion carried.

SECOND ORDER OF BUSINESS: Senator Van Valkenburg asked for general discussion about the issue of appropriation measures. Senator Regan has raised the issue informally with regard to a bill of Senator Gage's. Senator Van Valkenburg asked Mr. Heiman about when the Legislative Council reviews a bill, in the drafting phase, does it identify the bill as an appropriation measure and as such, advise any member of the Senate who has made a drafting request that such a bill is an appropriation measure and would have to be introduced in the House of Representatives?

Mr. Heiman replied that during the drafting process, the Council does make a cursory decision, mainly for the status system. If a definite mention is made that there is an appropriation, then it is marked as such. There are problems, however.

Senator Van Valkenburg stated that this is principally a problem for the House to consider as opposed to the Senate. But it is important to the Senate because Senators should not be led to believe that their bills are not appropriation measures, properly introduced in the Senate, and then to find out after some period of time that the House considers them to be appropriation measures which should have been introduced in the House in the first instance. He personally does not think that Gage's bill is an appropriation measure, but he does think it is arguable where the Council should tell the Senate what it considers to be an appropriation measure so

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that the President and the Secretary of the Senate might be notified that a bill was offered for introduction in the Senate and that it was potentially or clearly an appropriation measure so that the Senator could be so advised.

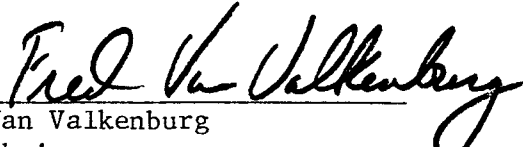
Mr. Heiman stated that could be done.

Senator Van Valkenburg stated that he would write a letter to the director of the Legislative Council asking for clear identification of appropriation bills so that the President and Secretary of the Senate will know before the bill is introduced.

Senator Aklestad asked if the sponsor would be notified first.

Senator Van Valkenburg said yes, it would be the Legislative Council's job to do so. He then asked for any further business. Seeing none, a motion was made to adjourn.

MOTION: Senator McCallum moved to adjourn. Motion passed.


Van Valkenburg
Chairman

ROLL CALL

Senate Rules

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1/21/87

NAME	PRESENT	ABSENT	EXCUSED
Senator Van Valkenburg	X		
Senator McCallum	X		
Senator Norman	X		
Senator Akelstad	X		
Senator Jacobson	X		
Senator Farrell	X		
Senator Blaylock	X		
Senator Himsl	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 21

87

19.....

MR. PRESIDENT

Senate Rules

We, your committee on.....

Senate Bill

1

having had under consideration..... No.....

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BEACH-WISBAUX PLANT IMPACT ASSISTANCE INTERSTATE COMPACT

Senate Bill

1

Respectfully report as follows: That..... No.....

The Senate Rules Committee recommends and advises the Senate as a whole that SB 1 is not an appropriations bill and as such it should be returned to second reading as previously reported by the Taxation Committee.

XXXXXX
DO PASS
XXXXXX

XXXXXXXXXX
DO NOT PASS
XXXXXXXXXX

.....
Chairman.