

## MINUTES

### MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON NATURAL RESOURCES

Call to Order: By Senator Thomas F. Keating, on January 20, 1989, at 1 pm in Room 405 of the Capitol.

#### ROLL CALL

Members Present: Thomas Keating, Larry Tveit, Loren Jenkins, Darryl Meyer, Lawrence Stimatz, Pete Story, Bill Yellowtail, Elmer Severson, Cecil Weeding, Dorothy Eck, and Jerry Noble

Members Excused: Senator Fred VanValkenburg

Members Absent: None

Staff Present: Bob Thompson and Helen McDonald

#### HEARING ON SENATE BILL 154

##### Presentation and Opening Statement by Sponsor:

Senator Dennis G. Nathe, Senate District 10, sponsored this bill. It is a bill to provide the Department of State Lands with authority to keep confidential certain geologic information received from lessees. The problem is this: if the Department of State Lands has a tract under lease, whether it has hard rock or oil, the department wants to know what it has geologically. It can call the company and go down to the company office to look at it but it can't bring the information back to state offices to really study it because they can't keep it confidential from any other competitor who may be interested in the same geologic information because it has been in the hands of the department. They would like to have this bill passed in order to have the power to hold the information confidential. If there are certain seismic logs that they would like to look at on certain state lands then they could bring it back to the department and look at it without being placed in a very untenable position of having to disclose what is proprietary information.

Senator Nathe summarized by stating that if this geological information belongs to someone else and it's usually of monetary value, if you're in the oil business or the hard rock mining business. The intent of this bill is to enable the department to keep information confidential.

List of Testifying Proponents and What Group they Represent:

Janell Fallon, Montana Petroleum Association  
Ken William, Entech  
Gary A. Langley, Montana Mining Association  
Ron Sandall, Department of State Lands  
John North, Department of State Lands

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John North, Interim Commissioner of Department of State Lands. " We requested introduction of this bill and support its passage. Senator Nathe explained very well what the bill does and so I'll just hit the high points in my testimony. The bill has four major provisions, all of which are basically identical, because it places the same confidentiality provision in each of the four chapters in the code dealing with mineral leasing. Those chapters deal with metalliferous minerals, non-metalliferous minerals, coal, oil and gas. We feel we need to review this information to make sure that the state gets a fair deal and also to make sure the lessee gets a fair deal.

The state really needs to have all the information in order to determine what constitutes a fair law and what the state's assets are and so forth. We need to be able to obtain that without jeopardizing our lessees because if our lessees lose a competitive edge the state loses a competitive edge because if their revenues fall then our royalties fall. Currently the mineral leasing statutes contain no authorization for the department to keep information confidential and as you know there are broad right-to know provisions in the Montana Constitution so we feel in order to maintain the confidentiality of this information we need statutory authorization from the legislature.

There is precedent for such an authorization. The Montana Hard Rock Act, a mined-land reclamation statute, currently requires the Department's

Reclamation Division to keep confidential certain information obtained under that statute.

We feel the passage of this bill will help the Department in making critical decisions on its mineral leases without divulging any proprietary or confidential information to the public. This makes good business sense and will enhance the Department's working relationship with its lessees.

The statute has been drafted to meet the most recent Montana Supreme Court decision on confidentiality of information, (Belt vs Bennett decision). The language is almost identical to the language that was upheld in that decision and so we feel that if challenged, it would withstand constitutional muster." [Exhibit 1]

Janelle Fallon, Executive Director of the Montana Petroleum Association. "In the case of the petroleum industry particular geologic information is developed usually at tremendous expense to the company and they hope to be reimbursed for that expense. They do not want anybody else to get that information essentially for free, so confidentiality is extremely important to our industry."

Gary Langley, Executive Director of the Montana Mining Association, agreed with the testimony stated by Mr. North and supports the bill.

Ken Williams, Entech, a mining subsidiary of Western Energy, would like to go on record as supporting Senate Bill 154.

Questions From Committee Members:

Senator Jenkins questioned Mr. North as to whether it is a problem having the department determine whether to withhold the information as long as the department considers it necessary. Would it be better to have it in conjunction with the mining lessee or permittee? Senator Jenkins cited this as an example because all four sections are similar. Shouldn't the person that is affected by the release of the information have some say about when the information is released?

John North answered that he believed that the developer will tell the department what information the developer considers to be confidential. Mr. North thinks it's only fair. The language would allow the lessee or the developer to determine what is confidential and require the department to keep that information confidential.

The department could work with the lessee and say "this is what we feel we can keep confidential." The department will be able to keep that information confidential and then the lessee can make the decision based on what he is doing at the time.

Senator Jenkins questioned Mr. North as to what was stated in the opening that "now you have to go to lessee's office or place of business to review this information". This gives the lessee complete control over what can or cannot be released. Would he give the department this information even with this law knowing that at any time the department could release the information if the department decided it wanted to?

Mr. North answered that getting some information is very costly as some of this information comes from Billings, Denver, Texas, and California. Within the scope of the department's travel budget, the information is Under the law, if the Department tells a lessee that the information will be confidential and the department is not able keep it confidential, the risk to the department in terms of a lawsuit would be tremendous. Under this bill, once the department determines that information is confidential, they will be able to preserve confidentiality of that information.

Senator Jenkins questioned Janelle Fallon if the petroleum industry could be comfortable with this.

Janelle Fallon answered that there isn't a lot of information that they give the department right now.

Senator Weeding questioned Mr. North about the difference in Section 1 and 2 except for the word permittee in Section 3. He asked if there was a difference addressed in the things in Sections 1 and 2.

Mr. North answered that Section 1 is intended to go into the non-metalliferous lessee provisions, Section 2 goes into the metalliferous lessee provisions, Section 3 into the coal mining lessee provisions, and Section 4 into the oil and gas provisions. In some statutes permits are given and some are not.

Senator Yellowtail questioned Mr. North about the public's best interest?

Mr. North answered that language to protect the public's best interest comes directly from the statute that was upheld in Belt vs. Bennett. He feels that in this situation there are two interests to be protected. One

SENATE COMMITTEE ON NATURAL RESOURCES

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is the interests of the lessee but also another one is the interest of the state's school trust. It is actually in the best interest of the state's school trust to keep certain information confidential and so that's why we have to protect the public's best interest and protect the school trust as well. [Belt vs. Bennett 44 State Reporter 1133]

Senator Keating questioned Mr. North as to whether the state negotiates mining leases rather than hold out certain lands for auction bidding? Senator Keating is familiar with oil and gas leasing which is through the auction bidding process but when it comes to hard rock mining and coal mining, does the Department actually negotiate a lease with the lessee?

Mr. North answered that the department has systems in the the metalliferous and non-metalliferous areas, that normally waive until there is an application. If there is an application, then the department negotiates.

Senator Keating asked John North if the Department had private geological information about the applicant before the lease is put up or before the lands are offered.

Ron Sandall, Petroleum Geologist for the Department of State Lands, answered that he is the geologist that manages the rest of the minerals for the state. He has been involved in this leasing process and has written many parts of the leases for metals over the last decade. One of the things that has evolved through the last ten years particularly for mining leases, is the ability of the department to negotiate the royalty rates on mining leases as they progress in time. One of the things that the department does not do is require any confidential proprietary information from the applicant prior to the issuance of a lease. The department writes a royalty rate which is reflective of that particular mineral at that particular time and then writes a clause in the lease. After a five-year period, the department goes back and renegotiates that lease term. If things have progressed during the 5-year term, the department sits down with the company and at that time it may be very critical to them and to the department to see the company's confidential records including their mining economics.

Senator Keating asked Ron Sandall. "Under oil and gas there is a certain time limit in which the operator can request that the oil and gas commission can hold information as privileged information or confidential

information for a period of time. Is there any requirement for mining operators to provide information to the state mining bureau which is a state entity that would gather data and that sort of thing whereby they might be given confidential information for storage and library?"

Ron Sandall answered that he knows the Bureau of Mines and Geology in Butte has a drill core library and they have some requirements that require the companies to submit information. But he didn't know what the statutes are for mining on private lands. On state land the department requires that drill cores be submitted to the Bureau of Mines and Geology in Butte.

Senator Keating asked Ron Sandall whether they have statutory confidentiality rights at the state bureau.

Ron Sandall answered that " The way we operate on state leases is, as long as a company has a state mining lease and they are in the process of developing that lease we do not require any confidential information submitted to us. However, there is a clear cut release that says once a lease is dropped, before bond can be released all confidential information must be submitted to the state."

Senator Keating asked Mr. North "The extension of authority for promulgating rules is Section 7. Will there be a need for promulgation of rules? Would we need a statement of intent with this bill?"

Mr. North answered " I'm not sure at this time. I would assume that we could write that into our rules."

Senator Keating asked for a statement of intent.

Closing by Sponsor: Senator Nathe closed the hearing on SB 154.

#### DISPOSITION OF SB 154

Recommendation: Chairman Keating would like to wait for the statement of intent. This bill being held for executive action until the statement of intent is received.

There is no other action to be brought before the committee, the meeting is adjourned.

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ADJOURNMENT

Adjournment At: 1:30 pm

  
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THOMAS F. KEATING, Chairman

TFK/hmc

ROLL CALL

NATURAL RESOURCES

COMMITTEE

51<sup>st</sup> LEGISLATIVE SESSION -- 1989

Date 1-20-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	✓		
Senator Fred VanValkenburg			✓
Senator Loren Jenkins	✓		
Senator Darryl Meyer	✓		
Senator Lawrence Stimatz	✓		
Senator Pete Story	✓	WTTT	
Senator Bill Yellowtail	✓		
Senator Elmer Severson	✓		
Senator Cecil Weeding	✓		
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.



SENATE STANDING COMMITTEE REPORT

January 25, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration SB 154 (first reading copy -- white), respectfully report that SB 154 be amended and as so amended do pass:

1. Title

Following: line 7

Insert:

"Statement of Intent

The legislature is extending the rulemaking authority of the board of land commissioners to allow the board to amend its existing mineral leasing rules to provide for protection of confidential information. The legislature intends that the rules be written broadly to cover all information that would legitimately be considered confidential by lessees, including, as appropriate, mineral quality and quantity, mineral location, mineral depth, cost of production, and the extent of the reserves. This information may include economic or engineering data. The legislature also intends that the rules establish a procedure whereby the lessee may notify the department of state lands of information it considers to be confidential and to be notified whether the department agrees before the lessee submits the information. Furthermore, the legislature intends that the rules include a process to protect the lessee's interests if the department considers declassification of the information at a future date."

AND AS AMENDED DO PASS

Signed:

  
Thomas F. Keating, Chairman

Statement of Intent attached.

SENATE NATURAL RESOURCES  
EXHIBIT NO. 1  
DATE 1-20-89  
BILL NO. SB 154

Senate Bill 154  
Testimony of John F. North  
Interim Commissioner of State Lands  
Senate Natural Resources Committee  
January 20, 1989

The Department of State Lands has requested introduction of and supports the passage of Senate Bill No. 154. This bill would allow the Department of State Lands to keep confidential certain geologic information. This bill applies to all types of Department mineral leases. The bill has four major provisions, all of which are basically identical, because it places the same confidentiality provision in each of the four chapters in the code dealing with mineral leasing. Those chapters deal with metalliferous mineral, non-metal-liferous minerals, coal, and oil and gas.

The Department of State Lands manages the mineral estate on school trust and endowment lands held by the State of Montana. In certain situations the Department's geologist needs to review geologic data acquired by the lessee in order to assure that the state and the lessee are being treated fairly under the lease provisions. If the information that the geologist reviews in making critical decisions is made public, other competitors could use the information to their advantage, the state lessee would suffer and the State, whose income rises and falls with the income of its lessee, would also suffer. As a result of this problem, the lessee is justifiably reluctant to expose this information to the Department without a guarantee that it will be held confidential. This puts the Department at a disadvantage as it attempts to manage trust lands.

The mineral leasing statues contain no authorization for the Department to keep this information confidential. Given the broad right-to-know provisions of the Montana Constitution, the Department feels that it needs statutory authorization from the Legislature to maintain confidentiality. There is precedent for such an authorization. The Montana Hard Rock Act, a mined-land

EX: # 1

1-20-89

SB 154

reclamation statute, currently requires the Department's Reclamation Division to keep confidential certain information obtained under that statute.

The passage of this bill will help the Department in making critical decisions on its mineral leases without divulging any proprietary or confidential information to the public. This makes good business sense and will enhance the Department's working relationship with its lessees.

I respectfully request that you give this bill a do pass recommendation.

(This sheet to be used by those testifying on a bill.) **SB 154**

NAME: John North DATE: 1/20

ADDRESS: Dept. of State Lands

PHONE: 2074

REPRESENTING WHOM? Dept. of State Lands

APPEARING ON WHICH PROPOSAL: SB 154

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENT: see Exhibit 1

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

SB 154

NAME: Rod Sandahl DATE: 1-20-89

ADDRESS: Dept of State Lands

PHONE: 444-2074

REPRESENTING WHOM? DSL

APPEARING ON WHICH PROPOSAL: SB 154

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENT:  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Janelle Fallon DATE: 1/20

ADDRESS: Mt Petroleum Assoc

PHONE: 442-7582

REPRESENTING WHOM? \_\_\_\_\_

APPEARING ON WHICH PROPOSAL: SB 154

DO YOU: SUPPORT?  AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENT:  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Mary A Cangel DATE: 1/20/89

ADDRESS: Helena

PHONE: 443-7297

REPRESENTING WHOM? Mt. Mining Assoc.

APPEARING ON WHICH PROPOSAL: 154

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENT:  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Ken Williams DATE: 1/20/89

ADDRESS: 16 E. Granite

PHONE: 782-4233

REPRESENTING WHOM? Entech

APPEARING ON WHICH PROPOSAL: SB-154

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENT:

Multiple horizontal lines for writing comments.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



DATE 1-20-89

COMMITTEE ON NATURAL RESOURCES

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VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Janell Fallon	Mt Petroleum	SB 154	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ken Williams	Entech	SB 154	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marna Pankaj	Montana Mining Assn.	SB 154	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jim [unclear]	Pegasus Gold Corp	SB 154	<input checked="" type="checkbox"/>	<input type="checkbox"/>

(Please leave prepared statement with Secretary)

COMMITTEE ON \_\_\_\_\_

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Kelly Conady	BN	SB154		

(Please leave prepared statement with Secretary)