

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Thomas F. Keating,
on January 25, 1989, at 1 p.m. in the Capitol Building.

ROLL CALL

Members Present: Thomas Keating, Fred Van Valkenburg, Loren Jenkins, Lawrence Stimatz, Pete Story, Bill Yellowtail, Elmer Severson, Dorothy Eck, and Jerry Noble.

Members Excused: Darryl Meyer and Larry Tveit

Members Absent: Cecil Weeding

Staff Present: Bob Thompson and Helen McDonald

HEARING ON SB 161

Presentation and Opening Statement by Sponsor: John Harp, Flathead County, District #4, introduced SB 161 which was requested by the Department of State Lands to provide that a purchaser of state-owned timber shall post a bond equivalent to the potential loss to the state rather than to a set percentage of timber value; and amending Section 77-5-202, MCA.

Senator Harp stated that the smaller logging contractors in Montana will benefit as will the state's school trust lands and Western Montana's economy. Currently the DSL advertises in weekly newspapers, sells timber and awards it to the highest bidder. In the past eight years, more and more smaller loggers are in the bidding process for state timber. It came about when some of the big logging companies such as Plum Creek Lumber, which is a subsidiary of Burlington Northern, completely sold all of its logging equipment two years ago

and got out of the logging business. They completely turned it over to the small loggers who provide that service but often don't have the financial capabilities to tie up 20% in a performance bond. A lot of DSL's sales now have become smaller in size and that is by design to keep more people involved in the bidding process. The DSL can choose these people without obligation as far as their performance in logging and how they perform under the contract with DSL.

List of Testifying Proponents and What Group they Represent:

Randy Mosley, Department of State Lands
Keith Olson, Montana Logging Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Randy Mosley, Department of State Lands, supported this bill. This bill provides the department with more flexibility in setting the amount of bond required for faithful performance of contracts involving the sale of timber from state-owned lands.

Section 77-5-202 MCA requires performance bonds on state timber sales to be a minimum of 20% of the value of the timber sold. The intent of the law is to provide protection for the state against costs that might arise if the timber sale purchaser defaults on the timber sale agreement. This performance bond is held by the State until satisfactory completion of the timber sale agreement. The bonding amount of 20% or more is often appropriate at the start of the timber sale when all of the sale development costs (road, culverts, bridges, etc.) have yet to be completed. As a sale proceeds, the development work is mostly completed. Then, the potential risk to the state declines and a bond of 20% or more may be greater than necessary to cover the risk to the state. [Exhibit 1]

Keith Olsen, Executive Director of the Montana Logging Association from Kalispell stated that when the interest rates fluctuate up and down, the smaller operations have a very difficult time even getting the bond. What this bill proposes to do is to protect the interest of the state and also create an incentive for small logging contractors to bid on state lands. It's a win-win situation.

Questions From Committee Members:

Senator Eck asked Randy Mosley if this is related or should it to timber management for potential loss to the state.

Mr. Mosley answered that the purpose of the performance bond is to insure that purchaser complies with the stipulations of the timber sale. DSL stipulates how the roads should be put in and other aspects of how the sale is conducted. The DSL sets a performance bond to cover the cost of meeting the stipulations. It has been their experience as they progress through the sale and toward the completion of the project that the amount of the bond at the 20% figure is not necessary. The DSL has no problem in reducing the amount because it is satisfied that the particular stipulation that they place in that agreement has been complied with. The department makes sure that everything has been complied with before they reduce the bond.

Senator Jenkins asked if this bill has anything to do with timber cutting or is it more to the environmental impact.

Randy Mosley answered that this bond is simply to cover the state's losses in case the logger defaults. For example, it may also be used if they were take some stumpage trees off the sale and then go broke. The DSL would also utilize the land amount to cover loss if the logger did not construct roads to the required standards and went broke.

Senator Jenkins about the bond amount?

Randy Mosley answered that the cost on the value of the sale. If the appraised value of the total sale was \$100,000 then it is 20% of that amount. The state makes all different sizes of sales from several million board feet to maybe only five hundred thousand board feet. The income of the sales may vary from \$8,000 to upwards of a million dollars depending on the size of the sale. The department can't give an exact figure because it really depends on how much timber is in the particular sale and what the appraised value is. Whatever that amount is, the department will require 20% of the amount for a performance bond.

Senator Jenkins asked how much a bond costs.

Senator Harp replied that the cost is really not the question here; it's the ability to allow smaller

contractors who don't have the financial ability to lower the value of the performance bond so they can be in more timber sales. The cost of actually getting the bond is not a major factor in the construction or timber business.

Senator Jenkins asked about the amendment on this bill. The amount equal to the potential loss to the state looks like there is no 20%. It looks like it could go to 100% potential loss to the state and how is the state is going to justify their potential loss.

Senator Jenkins was wondering about raising the bonding requirements to the person that's being bonded.

Randy Mosley answered that right now the law allows the minimum of 20%. The DSL's intent in requesting this is to allow the department to go below that percentage because the potential risk to the state drops as the timber is cut.

Senator Keating stated that if an operator has reached his bonding level, he can't get any more bonds that would be required to bid on another sale. This bill reduces the amount of the bond against his bonding level so that the contractor can be more competitive and can obtain bonding for other sales as well. But the state's potential loss is only to the percentage of royalty from the sale. The logger is going to sell the timber and the state gets a percentage of that sale. So if the state is going to make 10% of the value of the timber cut, the bonds would only have to be to that value and once the performance by the operator has been established, the state can reduce the bonding requirements. It gives the contractors more opportunity.

Senator Jenkins wondered about the potential loss to the state and how they figured it.

Senator Keating has a bond that goes to environmental protection and part of this performance bond goes for reclamation.

Randy Mosley stated that environmental protection is one of the requirements between the DSL and the contractors. The department wants to maintain water quality in the watersheds, and to insure the roads and the culverts meet DSL standards.

Senator Keating asked if the estimated cost of reclamation would determine the amount of the bond. Randy Mosley

answered that the DSL's timber sale agreements contain stipulations that require the purchaser to comply with all existing laws as well as the best management practices. The department requires 20%, the minimum figure set by law, and that is usually sufficient. The department normally doesn't have problems because it tries to catch problems early and work with the individual to correct it. The 20% bond has been sufficient.

Senator Keating stated, "Then in what you are saying is that the figure here, or amount or percent is not important. What is important is to give you the flexibility as the expert to require bonding sufficient to protect the interest of the state and that's all you are asking for."

Randy Mosler said, "That's correct. In addition this allows us to go below 20% where previously we couldn't"

Closing by Sponsor:

Senator Harp thought all the information was covered.

DISPOSITION OF SB 161

Recommendation and Vote: The voting is left open to the other three members who are absent.

Senator Eck made a motion to DO PASS SB 161. The motion passed.

DISPOSITION OF SB 154

SB 154 is Senator Nathe's bill that would retain mining information as confidential for a period of time. Since rule making was allowed a statement of intent was prepared by the DSL. The statement of intent should read "The legislature is extending the rulemaking authority of the Board of Land Commissioners, etc.," since rule making authority lies with the board.

Senator Eck moved that the committee amend SB 154 by adopting the statement of intent as amended.

Senator Keating informed the committee that from now on the statement of intent will be placed in the bill between the title of the bill and the first section of the bill so there isn't a sheet attached with the statement of intent.

All were in favor and none were opposed.

SB 154 received a DO PASS as amended.

ADJOURNMENT

Adjournment At: 1:40 p.m.


Thomas F. Keating, Chairman

TFK/hmc

senmin.125

ROLL CALL

NATURAL RESOURCES COMMITTEE

50~~st~~ LEGISLATIVE SESSION -- 1989

Date 1-25-89

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

Each day attach to minutes.

DEPARTMENT OF STATE LANDS
Testimony in Support of Senate Bill 161

The Department of State Lands requests your support on Senate Bill 161. This bill provides the Department with more flexibility in setting the amount of bond required for faithful performance of contracts involving the sale of timber from state owned lands. 7

Section 77-5-202 MCA requires performance bonds on state timber sales to be a minimum of 20 percent of the value of the timber sold. The intent of the law is to provide to protection for the State against costs that might arise if the timber sale purchaser defaults on the timber sale agreement. This performance bond is held by the State until satisfactory completion of the timber sale agreement. The bonding amount of 20% or more is often appropriate at the start of the timber sale when all of the sale development costs (roads, culverts, bridges, etc.) have yet to be completed. As a sale proceeds, however, the development work is mostly completed and the potential risk to the state declines and a bond of 20% or more may be greater than necessary to cover the risk.

The need for the flexibility to reduce the performance bond of 20 percent or more to an amount equivalent to the potential risk is particularly important in helping smaller logging companies to bid on state timber sales. In many cases smaller loggers do not have the financial backing of large sawmills and do not have access to needed financial markets to secure needed performance bonds. If the amount of the performance bond required on state timber sales could be decreased as the risk of loss decreases during the course of sale, the timber sale purchaser would find it easier to get an additional line of credit to pursue other state timber sales.

This bill, by amending the present law to allow for more flexibility in setting the performance bond, would benefit the school trusts by reducing the financial load on purchasers of state timber sales, allowing them to bid on more sales and to bid higher prices. It will benefit the small loggers by giving them the opportunity to competitively bid on more timber sales. This in turn should help to promote a stronger forest products industry and be beneficial to the state's economy.

EX 2
1-25-89

Amendments to Senate Bill No. 154
First Reading Copy

For the Senate Committee on Natural Resources

Prepared by Bob Thompson
January 25, 1989

1. Title

Following: line 7

Insert: "Statement of Intent

The legislature is extending the rulemaking authority of the department of state lands to allow the department 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 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."

ROLL CALL VOTE

NATURAL RESOURCES

SENATE COMMITTEE _____

Date 1-25-89 Bill No. SB161 Time _____

NAME	YES	NO
Vice-Chairman Larry Tveit	✓	
Senator Fred VanValkenburg	✓	
Senator Loren Jenkins	✓	
Senator Darryl Meyer		
Senator Lawrence Stimatz	✓	
Senator Pete Story	✓	
Senator Bill Yellowtail	✓	
Senator Elmer Severson	✓	
Senator Cecil Weeding		
Senator Dorothy Eck	✓	
Senator Jerry Noble	✓	
Chairman Tom Keating	✓	

Helen McDonald
Secretary

Thomas F. Keating
Chairman

Motion: do pass - passed

ROLL CALL VOTE

NATURAL RESOURCES

SENATE COMMITTEE _____

Date 1-25-89 Bill No. 154 Time _____

NAME	YES	NO
Vice-Chairman Larry Tveit		
Senator Fred VanValkenburg	✓	
Senator Loren Jenkins	✓	
Senator Darryl Meyer	✓	
Senator Lawrence Stimatz	✓	
Senator Pete Story	✓	
Senator Bill Yellowtail	✓	
Senator Elmer Severson	✓	
Senator Cecil Weeding		
Senator Dorothy Eck	✓	
Senator Jerry Noble	✓	
Chairman Tom Keating	✓	

Helen McDonald
Secretary

Thomas F. Keating
Chairman

Motion: do pass as amended - pass
