

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By Senator Fred Van Valkenburg, on March 11, 1991, at 3:30 p.m.

ROLL CALL

Members Present:

Van Valkenburg, Chairman (D)
Joseph Mazurek, Vice Chairman (D)
Bruce Crippen (R)
Delwyn Gage (R)
Judy Jacobson (D)
Thomas Keating (R)
Paul Svrcek (D)

Members Excused: none

Staff Present: Greg Petesch, Legislative Council Legal Services

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Senator Van Valkenburg opened the discussion by stating that purpose of the meeting was to determine whether a three-quarter vote was needed for passage of SB 242. Senator Crippen, sponsor of the bill, had requested an opinion on the matter from Greg Petesch of the Legislative Council Legal Services.

Senator Crippen briefly explained that the bill provided a funding source in the form of loans for research and development of science and technology projects. Sen. Crippen pointed out that the bill contained an important funding match for a National Science Foundation Grant at Montana State University. The question on whether the bill requires 3/4 vote for approval arises because it was unclear where the loan repayments would be deposited.

Greg Petesch summarized his opinion on the matter. Petesch concluded that the required vote for the bill as drafted could not be determined because it was not clear where loan repayments would be deposited. If the intent of the bill is that repayments of loans from the In-State Investment Fund be deposited in the science and technology development account, the bill requires a 3/4 vote for passage. If the intent of the bill is that the repayment be deposited back into the In-State Investment Fund, the bill requires a

majority vote for passage. At Sen. Crippen's request, Petesch prepared amendments to clarify that repayments would be deposited in the In-State Investment Fund.

Sen. Van Valkenburg recognized Senator Towe who asked for a clarification of the word "award" on Page 4, lines 18-20, which refers to the \$600,000 state matching funds for a National Science Foundation Grant. Petesch assured Sen. Towe that "award" does not mean a grant in this case. The lead-in for this section specifies project loans. Sen. Crippen stated that the intent of the bill is for the \$600,000 matching funds to be a loan.

Sen. Van Valkenburg commented that he had read the minutes for the hearing of this bill in Senate Business and Industry Committee. He summarized the matching fund needs and said that the minutes reflect a loan request. Mr. Carl Russell, Executive Director the Science and Technology Alliance, concurred with Sen. Van Valkenburg's summary. No other visitors present had any comments regarding the required vote.

Sen. Van Valkenburg asked Sen. Crippen if he agreed that the bill needed amendments to clarify the vote requirement. Sen. Crippen concurred that amendments were needed and said he would like the Senate Rules Committee to consider amending the bills. Sen. Van Valkenburg asked if there was objection by anyone on the committee to considering the amendments today. Sen. Gage expressed a preference that the amendments be considered by the Senate Business and Industry Committee where the bill was best known. Sen. Mazurek agreed with Sen. Gage. Sen. Crippen was concerned about the delay if the bill went to the Senate Business and Industry Committee, although he would go along with the plan if it would help smooth things for floor debate. Sen. Mazurek said that the committee was not very busy.

Sen. Van Valkenburg expressed his concern that from reading testimony, repayment on loans could be extremely long-term or possibly never repaid. Sen. Crippen pointed out the loan repayment provisions on page 12, beginning on line 14, which he felt were adequate. Carl Russell explained the difficulty of immediate repayment with research and development projects. Loans will be for projects which are financially viable in 5 to 10 years. Loans will not be made for projects with no commercial potential. Sen. Van Valkenburg asked if collateral was required for a loan. Russell replied that collateral was not stipulated in the loan requirements, but it was not excluded either. Russell commented that requiring collateral from the University may be difficult to arrange. Russell pointed out that the bill allows for the state to benefit from the value of the product developed by twice the repayment of the amount borrowed. Russell said other states are struggling with

these same questions of financing research and development. This bill is on the "cutting edge" for state financing, said Russell.

Sen. Gage recalled that from testimony up to 10% of the research and development funds would not have to be repaid. Petesch directed the committee to look at page 12, lines 20 to 25, which referenced Sen. Gage's concern. This provision provides that up to 10% of the research and development funds may be used for technology transfer and assistance projects. Those projects allow for indirect benefits to count towards the payback. Facially, it cannot be determined that these funds would not be repaid. Sen. Van Valkenburg asked if the Board of Investments could be sued. Petesch had spoken with Dave Lewis, Executive Director of the Board of Investments, about this matter. Petesch pointed out that the board acts in a fiduciary manner and would be responsible if it knowingly made a loan that it knew would not be repaid.

Sen. Gage stated that the Senate Business and Industry Committee would like to see the amendments. Again, Sen. Gage expressed his concern about the repayment of loans. Sen. Keating commented that the bill established a structure for loans, and that voters have approved loans for investment through I-95. Sen. Crippen said he was willing to see this issue referred to the Senate Business and Industry Committee, but that it should be brought back to the Senate Rules Committee for a determination on voting requirements. Sen. Crippen stated that he would kill the bill if a 3/4 vote was needed. He was adamant that loans were the intent of the bill and integral to the understanding among its supporters.


MOTION: Senator Mazurek moved that a committee report be sent to the Senate stating that the Rules Committee could not determine if a 3/4 vote was needed for approval of this bill. Further, the committee recommended that the Senate re-refer the bill to the Senate Business and Industry Committee for purposes of amendment.

The motion passed unanimously.

ADJOURNMENT

Adjournment At: 4:10 p.m.


FRED VAN VALKENBURG, Chairman


CLAUDIA A. CLIFFORD, Secretary

FVV/cac

Ex. 1
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SB 242 - Rule



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March 4, 1991

Senator Bruce D. Crippen
Minority Leader
Capitol Station
Helena, Montana 59620

Dear Senator Crippen:

I am writing in response to your February 22, 1991, letter requesting an opinion as to whether Senate Bill No. 242 requires a simple majority vote or a three-quarters vote for passage. As Senate Bill No. 242 is drafted, it cannot be determined whether the bill requires a majority vote or a three-quarters vote for passage.

Senate Bill No. 242 authorizes the Montana Board of Science and Technology Development to administer \$5.1 million of the in-state investment fund for research and development project loans. 2

A brief overview of the history of the Montana Board of Science and Technology Development may help in answering the question. When Chapter 701, Laws of 1985, created the Montana Science and Technology Development Board, the authorized technology investments were funded by an appropriation from the alternative energy and energy conservation research development and demonstration account. Chapter 461, Laws of 1987, appropriated \$38 million from the coal severance tax permanent trust fund to the technology investment program debt service fund for payment of principal and interest on bonds used to finance the technology investment program. Chapter 461, Laws of 1987, required and was approved by a three-quarters vote. Chapter 461, Laws of 1987, was declared unconstitutional in the case of White v. State, 233 Mont. 81, 759 P.2d 971, 45 St. Rep. 1310 (1988). Chapter 316, Laws of 1989, authorized the Montana Board of Science and Technology Development to administer \$7.5 million of the in-state investment fund for seed capital project loans. Chapter 316, Laws of 1989, also authorized research and development project loans from other funding sources.

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Senate Bill No. 242 proposes to use the same funding source as Chapter 316, Laws of 1989, for research and development project loans and seed capital project loans. Chapter 316, Laws of 1989, did not require a three-quarters vote for passage because it did not appropriate money from the coal severance tax permanent trust fund. Chapter 316, Laws of 1989, merely specified the type of investment authorized for the \$7.5 million of the in-state investment fund comprising a portion of the coal severance tax trust fund.

Apparently, the question regarding Senate Bill No. 242 has arisen because of concerns that the research and development project loans from the in-state investment fund will not be repaid. Senate Bill No. 242 does not change the payback requirements for research and development project loans. Section 7 of Senate Bill No. 242 amends section 90-3-524, MCA, the provision governing research and development project loan agreements. A research and development project loan agreement must:

- (1) be structured as contracted debt; and
- (2) provide for a payback of at least two times the original loan amount payable from:
 - (a) the income stream of the project; or
 - (b) if the project is a technology transfer and assistance project, indirect benefits.

No more than 10% of the board's allocation of research and development funds may be used for technology transfer and assistance projects.

If the Montana Board of Science and Technology Development adheres to the payback requirements for research and development project loans, the authorized portion of the in-state investment fund would be invested in a manner substantially similar to the portion of the fund administered for seed capital project loans. Section 90-3-523, MCA, governs the terms for a seed capital project loan. The in-state investment fund is not inviolate. If a bad investment is made from the in-state investment fund, the corpus of the trust does not have to be repaid. The Montana Board of Science and Technology Development may not intentionally make a research and development project loan that does not meet the payback requirements of sections 90-3-522 and 90-3-524, MCA. If the research and development project loans from the in-state investment fund are intended to operate as grants, Senate Bill No. 242 must be amended to reflect that intent and a three-quarters vote would be required.

Sections 90-3-305 and 90-3-525, MCA, require that the payback of principal and earnings on a research and development project loan

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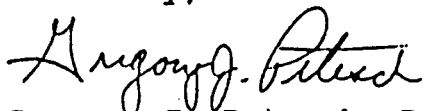
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must be deposited in the science and technology development account. Section 17-6-306, MCA, requires that principal payments on all investments made from the Montana in-state investment fund be deposited in the Montana in-state investment fund. Senate Bill No. 242 does not amend any of these sections. Therefore, Senate Bill No. 242 has created a statutory conflict.

If Senate Bill No. 242 intends that the payback of a research and development project loan made from the in-state investment fund be deposited in the science and technology development account, the bill requires a three-quarters vote for passage. If Senate Bill No. 242 intends that the payback of a research and development project loan be deposited in the Montana in-state investment fund, the bill does not require a three-quarters vote for passage. The conflict created by Senate Bill No. 242 must be clarified before it can be determined whether Senate Bill No. 242 requires a majority vote or a three-quarters vote for approval.

If you have any questions or if I can provide additional information on this issue, please contact me.

Sincerely,



Gregory J. Petesch, Director
Legal Services Division

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