

**MINUTES**

**MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By Chair Bianchi, on February 5, 1993, at 4:35 p.m.

**ROLL CALL**

**Members Present:**

Sen. Don Bianchi, Chair (D)  
Sen. Bob Hockett, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Lorents Grosfield (R)  
Sen. Tom Keating (R)  
Sen. Ed Kennedy (D)  
Sen. Bernie Swift (R)  
Sen. Chuck Swysgood (R)  
Sen. Henry McClernan (D)  
Sen. Larry Tveit (R)  
Sen. Cecil Weeding (D)  
Sen. Jeff Weldon (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Paul Sihler, Environmental Quality Council  
Leanne Kurtz, Committee Secretary

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

**Committee Business Summary:**

Hearing: None  
Executive Action: SB 158, SB 171, SB 196, SB 214, SB 261,

**EXECUTIVE ACTION ON SB 158**

**Motion/Vote:**

Sen. Kennedy MOVED TO AMEND SB 158. The MOTION CARRIED UNANIMOUSLY.

**Motion:**

Sen. Weeding MOVED SB 158 BE INDEFINITELY POSTPONED.



**Discussion:**

Sen. Weeding stated SB 158 would be dead "for all practical purposes."

Sen. Bianchi added there is a hazardous waste siting bill coming to the Committee and if it passes, the Committee may want to revisit the cement labeling issue.

Sen. Weeding WITHDREW the MOTION TO INDEFINITELY POSTPONE SB 158.

**Motion:**

Sen. Weeding MOVED TO TABLE SB 158.

**Discussion:**

Sen. Keating stated a bill that is tabled can be moved off the table by a majority of the Committee of the Whole. Sen. Weeding stated two-thirds of the Committee of the Whole must vote to reconsider a bill that has been indefinitely postponed.

**Motion:**

Sen. Weeding WITHDREW his MOTION TO TABLE and MOVED TO INDEFINITELY POSTPONE SB 158.

**Discussion:**

Sen. Doherty said he is not clear on the difference between indefinitely postponing a bill in committee and tabling it. Sen. Swysgood and Sen. Keating discussed the difference between tabling and indefinitely postponing a bill.

**Vote:**

MOTION TO INDEFINITELY POSTPONE CARRIED with Sen. Weldon, Sen. Doherty and Sen. Bianchi voting NO.

**EXECUTIVE ACTION ON SB 171**

**Motion:**

Sen. Doherty MOVED TO AMEND SB 171 (SB017101.PCS).



**Discussion:**

Sen. Doherty stated the language in the amendments mirrors the language in the court decision and in the Constitution. The intent is that information must be disclosed "unless the demands of individual privacy clearly exceed the merits of the public disclosure." Sen. Doherty said the judge ruled that the Department of State Lands (DSL) must make that decision.

Sen. Tveit asked John Fitzpatrick, Pegasus Gold, to comment on the amendments. Mr. Fitzpatrick said he believes the amendments open the bill up more than the court case did, and "completely strip away any right to privacy." He said the amendments strike what he believes is the essence of SB 171 (p. 2, lines 17-19).

Sen. McClernan asked Sen. Doherty why he would want geological information (p. 2, lines 17-19) disclosed. Sen. Doherty stated he thinks the court decided squarely on the side of disclosure "unless the merits of individual privacy outweigh disclosure." He said he assumes the merits of individual privacy would "obviously include proprietary information." Sen. McClernan said there are projects in the works near Lincoln and near Noxon involving low-grade deposits. He continued that the companies will be using new technology to recover the minerals, and he is concerned that SB 171 as amended would be changing the rules on companies that have already submitted applications.

Sen. Bartlett said she does not believe SB 171 changes the rules because the constitution pre-dates all the applications to which Sen. McClernan had referred. Sen. McClernan responded that if the mining companies had known about this legislation, they may not have put certain information in the applications submitted to DSL.

Sen. Keating asked for clarification on what the amendments do that is different from the bill. He stated the DSL Commissioner must still make the determination whether or not information should be released. Sen. Keating continued the statute is close enough to the language in the constitution that the amendments are not needed.

**Motion:**

Sen. Kennedy made a SUBSTITUTE MOTION that the amendments BE SEGREGATED and voted on separately.

**Discussion:**

Sen. Doherty suggested the Committee segregate the first seven amendments from the eighth amendment, as the eighth amendment deals with Sen. McClernan's concerns.



**Vote:**

The MOTION TO SEGREGATE THE AMENDMENTS CARRIED with Sen. Grosfield, Sen. Doherty and Sen. Tveit voting NO.

**Motion:**

Sen. Doherty MOVED TO AMEND SB 171 (SB017101.PCS, amendment #1).

**Discussion:**

Sen. Doherty said the amendment is significant, as it changes the tenor of the bill.

**Vote:**

The MOTION TO AMEND SB 171 (amendment #1) CARRIED with Sen. Grosfield, Sen. Keating, Sen. Swift, Sen. Swysgood, and Sen. Tveit voting NO.

**Motion:**

Sen. Doherty MOVED TO AMEND SB 171 (SB017101.PCS, amendment #2).

**Discussion:**

Sen. Doherty said information must be disclosed if it is given to a public agency, unless the demands of individual privacy outweigh the merits of public disclosure.

Sen. McClernan asked Sen. Doherty to explain the difference between existing language and the proposed language. Sen. Doherty said Article 2, Section 9 of the constitution states the public has access to everything in a public document except when the demand for individual privacy exceeds the merits of public disclosure.

**Vote:**

The MOTION TO AMEND SB 171 (Amendment #2) CARRIED with Sen. Grosfield, Sen. Keating, Sen. Swift, Sen. Swysgood, and Sen. Tveit voting NO.

**Motion/Vote:**

Sen. Doherty MOVED TO AMEND SB 171 (SB017101.PCS, amendment #3).  
The MOTION CARRIED UNANIMOUSLY.



**Discussion:**

Sen. Doherty stated amendment #5 deals with small miner confidentiality, adding current language stipulates that all information is confidential between the Board of Land Commissioners and the applicant. He stated he thinks that is counter to the constitution. Sen. Doherty asked Mr. Sihler if the court case specifically addressed the small miner confidentiality exclusion. Mr. Sihler said he could not remember, but added amendment #1 says all information is publicly available, and amendment #2 "sets up the test under which the information wouldn't be publicly available".

Sen. Swysgood said he thinks the amendments make it impossible for a mining company to operate.

Sen. Grosfield said if the court decision did not deal with small miners, the Committee should not be addressing it either.

Sen. Keating stated the amendments reverse the intent of SB 171. He added mining has been one of the bright spots in Montana's economy during the last 5 years, providing jobs and creating new wealth. Sen. Keating said the amendments are going to choke the mining industry by imposing restrictions beyond what is in the constitution.

**Motion:**

Sen. Kennedy made a SUBSTITUTE MOTION that the Committee PASS CONSIDERATION on SB 171 until he can find out what Sen. Halligan thinks of the amendments.

**Discussion:**

Sen. Doherty stated legislators took an oath to uphold the constitution, and finds personally offensive any intimation that he is attempting to stop business in Montana.

**Vote:**

The MOTION TO PASS CONSIDERATION on SB 171 CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 196****Motion:**

Sen. Hockett MOVED TO AMEND SB 196 (SB019601.PCS), and asked Sen. Devlin to comment on the amendments.



**Discussion:**

Sen. Devlin stated he is trying to accelerate the underground storage tank removal process. He said he wants to provide a window of opportunity for people to remove tanks, but does not want people to be able to install them in that time period. Sen. Devlin added he does not want SB 196 to affect tanks in the process of being removed. He said people are afraid of the ramifications of removing the tanks.

Sen. Grosfield asked Paul Sihler to discuss the amendments. Mr. Sihler said much of the statute provides the Department of Health and Environmental Sciences (DHES) with rulemaking authority, which results in many of the details of the law occurring in rule rather than statute. He continued it would be difficult to strike the 1,100 gallon limit only for removal of tanks and have the rest of the statute apply only to installing tanks and to ongoing cleanup.

Sen. Weeding said registering a tank puts it on record, which shows on the property's title. He added the record would continue to show the tank's presence if it was removed during the window of opportunity Sen. Devlin wants to provide.

Sen. Hockett asked John Geach, DHES Underground Storage Tank program, if SB 196 will create problems for tank owners rather than help them. Mr. Geach said DHES is concerned that if owners are allowed to remove tanks without having to document it or notify anybody, it could cause a liability problem for lenders as well as sellers and purchasers of land.

Sen. Grosfield noted that many states do not regulate tanks under 1,100 gallons, and asked Mr. Geach how they handle liability problems. Mr. Geach said about 9 or 10 states regulate the smaller tanks and he is unsure how the others handle the issue. He continued that property owners in Montana are not required to certify the presence or absence of underground tanks on their property.

**Motion:**

Sen. Tveit made a SUBSTITUTE MOTION to PASS CONSIDERATION on SB 196.

**Discussion:**

Sen. Bartlett said Committee members should act on the bill and the amendments they have, as it may make further amendments unnecessary.

Sen. Keating said the tanks are not a threat in rural areas, and he would support amendments that would streamline the process for rural tank owners.



Sen. Keating added that public health in urban areas should be protected through legislation.

**Vote:**

The MOTION to PASS CONSIDERATION on SB 196 CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 214**

**Motion:**

Sen. Weldon MOVED TO AMEND SB 214 (SB021402.PCS).

**Discussion:**

Sen. Weldon explained that the amendments strike the involvement of Fish, Wildlife and Parks (FWP) in SB 214, noting that he did not intend for the department to have to spend money on the project. Sen. Weldon discussed the changes made to Section 8. He said Section 70-16-301 MCA was amended to incorporate "spelunking" into the current law.

**Vote:**

The MOTION to AMEND SB 214 CARRIED UNANIMOUSLY.

**Motion:**

Sen. Weldon MOVED SB 214 DO PASS AS AMENDED.

**Discussion:**

Referring to page 3, lines 12 through 23, Sen. Grosfield asked if the surface owner or the subsurface owner owns the cave minerals. Sen. McClernan said most of the minerals on line 22, are regarded as "common varieties" in federal law, meaning a person could not stake a mining claim.

Sen. Tveit asked Mr. Sihler if the liability provision would apply if a cave owner was proven negligent. He asked if an owner could be sued if he or she allowed someone into a dangerous cave, even if a liability contract was signed. Mr. Sihler read from 70-16-302 MCA which states that the landowner owes no duty of care with respect to condition of the property, except that the landowner is liable for injury "for an act of omission that constitutes willful or wanton misconduct."



Sen. Swysgood asked if Subsection 2 of Section 5 would apply to someone who was lost and built a fire in a cave to keep warm. David Roemer said smoke from a campfire or a candle would not constitute a violation of SB 214, as it would not be harmful to cave life. He added the language is standard in other state's bills.

Sen. Grosfield asked Russell Hill, Montana Trial Lawyers Association (MTLA) whether a landowner would be liable if someone was hurt in a cave the landowner didn't know he had. Mr. Hill said it would depend on whether or not the person was a "recreational user".

Sen. Weldon noted the liability question will exist whether or not the Committee passes SB 214.

Sen. Keating said SB 214 would be new law, and every part of the statute would be tested if it is placed in the codes. He added he does not believe that SB 214 is necessary.

Sen. Weldon defended SB 214, and said the legislature shouldn't shy away from the bill simply because its new law.

**Vote:**

The MOTION that SB 214 DO PASS AS AMENDED CARRIED with Sen. Swift, Sen. Keating, and Sen. Swysgood voting NO.

**EXECUTIVE ACTION ON SB 261**

**Motion:**

Sen. Doherty MOVED SB 261 DO PASS.

**Discussion:**

Sen. Doherty said there are four subdivision bills in the House and briefly described each bill. The Committee discussed how all the subdivision bills would be organized with the House.

Chair Bianchi said the House and Senate Committees will look at each bill on an individual basis and deal with what remains in a conference committee or on the floor.

Sen. Grosfield said he is concerned that SB 261 only deals with exemptions, and does not address the review process except in cases of minor subdivisions.

Sen. Swift expressed concern over the "applause meter" and said he cannot support SB 261.



SENATE NATURAL RESOURCES COMMITTEE

February 5, 1993

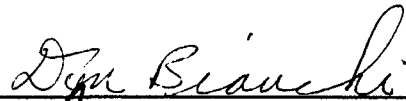
Page 9 of 9

**Vote:**

The MOTION that SB 261 DO PASS CARRIED 8 votes to 5 with Sen. Swift, Sen. Swysgood, Sen. Tveit, Sen. Keating, and Sen. Grosfield voting NO.

**ADJOURNMENT**

**Adjournment:** 6:05 p.m.



SEN. DON BIANCHI, Chair



LEANNE KURTZ, Secretary

DB/lk



SENATE NATURAL RESOURCES COMMITTEE

February 5, 1993


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**Vote:**

The MOTION that SB 261 DO PASS CARRIED 8 votes to 5 with Sen. Swift, Sen. Swysgood, Sen. Tveit, Sen. Keating, and Sen. Grosfield voting NO.

**ADJOURNMENT**

**Adjournment:** 6:05 p.m.



SEN. DON BIANCHI, Chair



LEANNE KURTZ, Secretary

DB/lk



# ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 2/4

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	X		
Sen. Hockett	X		
Sen. Bartlett	X		
Sen. Doherty	X		
Sen. Grosfield	X		
Sen. Keating	X		
Sen. Kennedy	X		
Sen. Swift	X		
Sen. Suysgaard	X		
Sen. McClernan	X		
Sen. Treitz	X		
Sen. Weeding	X		
Sen. Weldon	X		



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 6, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 214 (first reading copy -- white), respectfully report that Senate Bill No. 214 be amended as follows and as so amended do pass.

Signed: Don Bianchi  
Senator Don Bianchi, Chair

That such amendments read:

1. Title, lines 8 through 10.

Strike: "GRANTING" on line 8 through "RESOURCES;" on line 10

2. Title, line 12.

Following: "PENALTY;"

Insert: "AMENDING SECTION 70-16-301, MCA;"

3. Page 2, lines 4 through 6.

Strike: the second "and" on line 4 through "resources" on line 6

4. Page 2, lines 24 and 25.

Strike: subsection 3 in its entirety

Renumber: subsequent subsections

5. Page 5, line 12 through page 6, line 2.

Strike: section 7 in its entirety

Renumber: subsequent sections

6. Page 6, line 4.

Following: "The"

Insert: "liability of the"

7. Page 6, lines 6 through 11.

Strike: "not" on line 6 through "." on line 11

Insert: "restricted pursuant to 70-16-302."

Section 8. Section 70-16-301, MCA, is amended to read:

"70-16-301. Recreational purposes defined. "Recreational purposes", as used herein in this part, ~~shall~~ include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions."

-END-



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 6, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 261 (first reading copy -- white), respectfully report that Senate Bill No. 261 do pass.

Signed: *Don Bianchi*  
Senator Don Bianchi, Chair



# ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 171  
 Amendment 1

DATE \_\_\_\_\_ TIME \_\_\_\_\_ A.M. P.M.

NAME	YES	NO
Chairman Bianchi	X	
Vice Chairman Hockett	X	
Sen. Bartlett	X	
Sen. Doherty	X	
Sen. Grosfield		X
Sen. Keating		X
Sen. Kennedy	X	
Sen. McClellan	X	
Sen. Swift		X
Sen. Suysgood		X
Sen. Treit		X
Sen. Weeding	X	
Sen. Weldon	X	
	8	5

Leanne Kurtz  
 SECRETARY

Sen. Bianchi  
 CHAIR

MOTION: That 1<sup>st</sup> Amendment to 171 pass



# ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 171  
 Amendment 2

DATE \_\_\_\_\_ TIME \_\_\_\_\_ A.M. P.M.

NAME	YES	NO
Chairman Bianchi	X	
Vice Chairman Hockett	X	
Sen. Bartlett	X	
Sen. Doherty	X	
Sen. Grosfield		X
Sen. Keating		X
Sen. Kennedy	X	
Sen. McClellan	X	
Sen. Swift		X
Sen. Suysgood		X
Sen. Treit		X
Sen. Weeding	X	
Sen. Weldon	X	
	8	5

Leanne Kurtz  
 SECRETARY

Sen. Bianchi  
 CHAIR

MOTION: MOVED 2nd Amendment to SB 171 pass



# ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. SB 261

DATE 2/5 TIME 6:05 A.M. P.M.

NAME	YES	NO
Chairman Bianchi	X	
Vice Chairman Hockett	X	
Sen. Bartlett	X	
Sen. Doherty	X	
Sen. Grosfield		X
Sen. Keating		X
Sen. Kennedy	X	
Sen. McClellan	X	
Sen. Swift		X
Sen. Suysgood		X
Sen. Treit		X
Sen. Weeding	X	
Sen. Weldon	X	
	6	5

Leanne Kurtz  
SECRETARY

Sen. Bianchi  
CHAIR

MOTION: Sen. Doherty MOVED SB 261 do pass



Amendments to Senate Bill No. 171  
First Reading Copy

Requested by Senator Doherty  
For the Committee on Natural Resources

Prepared by Paul Sihler  
January 28, 1993

*DO PASS*  
*yes*  
1. Title, line 4.

Strike: "PERMITTING"

Insert: "REQUIRING"

*yes*  
2. Title, lines 7 and 8.

Strike: "AFTER" on line 7 through "APPLICANT" on line 8

Insert: "UNLESS THE DEMANDS OF INDIVIDUAL PRIVACY CLEARLY EXCEED  
THE MERITS OF PUBLIC DISCLOSURE"

3. Page 1, lines 15 and 16.

Strike: "through" on line 15 through "(4)" on line 16

*yes*  
4. Page 1, line 17.

Strike: "director"

Insert: "commissioner"

Strike: "director's"

Insert: "commissioner's"

5. Page 1, lines 19 through 24.

Strike: "confidential" on line 19 through "permit" on line 24

Insert: "open to public inspection"

6. Page 1, line 25.

Following: "may"

Insert: "not"

7. Page 2, lines 1 through 3.

Strike: "on" on line 1 through "director" on line 2

Insert: "if the commissioner determines"

Strike: "privacy" on line 2 through "for" on line 3.

Insert: "demands of individual privacy clearly exceed the merits  
of"

8. Page 2, lines 4 through 21.

Strike: subsections 3 through 5 in their entirety.



Amendments to Senate Bill No. 214  
First Reading Copy

Requested by Senator Weldon  
For the Committee on Natural Resources

Prepared by Paul Sihler  
February 5, 1993

1. Title, lines 8 through 10.  
Strike: "GRANTING" on line 8 through "RESOURCES;" on line 10
2. Title, line 12.  
Following: "PENALTY;"  
Insert: "AMENDING SECTION 70-16-301, MCA;"
3. Page 2, lines 4 through 6.  
Strike: the second "and" on line 4 through "resources" on line 6
4. Page 2, lines 24 and 25.  
Strike: subsection 3 in its entirety  
Re-number: subsequent subsections
5. Page 5, line 12 through page 6, line 2.  
Strike: section 7 in its entirety  
Re-number: subsequent sections
6. Page 6, line 4.  
Following: "The"  
Insert: "liability of the"
7. Page 6, lines 6 through 11.  
Strike: "not" on line 6 through "." on line 11  
Insert: "restricted pursuant to 70-16-302."

Section 8. Section 70-16-301, MCA, is amended to read:  
"70-16-301. Recreational purposes defined. "Recreational purposes", as used ~~herein in this part~~, shall include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions."

{Internal References to 70-16-301:  
x 15-6-133 x 87-1-504}

Re-number: subsequent sections

SENATE NATURAL RESOURCES

EXHIBIT NO. \_\_\_\_\_

DATE 2/5 \_\_\_\_\_

BILL NO. \_\_\_\_\_



To: Sen Bianchi

2/5/93

SB60 - I vote <sup>do pass</sup> ~~is~~ with Tveit  
and ~~that~~ <sup>that</sup>.

SB72 - I vote do not pass

SB158 - I vote yes to table

Jerry MacChesney

Jerry MacChesney

P.S. SB 171 - I vote do not pass

" - I vote yes to do pass



Proxy

SB60 yes do pass

SB72 yes do pass

SB158 yes - table motion

SB196 NO, DO NOT pass

SB 214 yes, do pass w/amdts.

SB225 yes, do pass

SB171 want amendments; if amdts  
do pass  
if no amdts, do not pass

- Steve Odery