

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 15, 1993,
at 10:02 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)

Members Excused: Sen. Towe

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

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

Committee Business Summary:

Hearing: SB 271
SB 321
SB 323
Executive Action: NONE

HEARING ON SB 356

Discussion:

Chair Yellowtail announced that the hearing on SB 356 was
partially heard the following week and would be finished being
heard today.

Opponents' Testimony:

David Owen, Montana Chamber of Commerce, (MCC), said SB 356 was a
horrid piece of legislation. MCC was concerned with the amount

of paperwork SB 356 would involve. Mr. Owen told the Committee that Montana was working hard to establish a better partnership between government and businesses to work towards moving Montana forward in an economically and environmentally safe manner. The MCC does not think we need to complicate the licensing process, which was already complex. Mr. Owen urged the Committee for a DO NOT PASS recommendation for SB 356.

John Alke, Montana/Dakota Utilities, said SB 356 was very broad and would completely rework the permitting regulatory landscape in the State of Montana. The provisions on waste control would make the provision applicable to virtually every unit of local government. SB 356 sets aside the objective stance the legislature created for various permitting programs, and substitutes a completely subjective standard. In most cases, people involved in this permitting program would have somebody, directly or indirectly, involved in a minor violation of OSHA or an environmental law. Mr. Alke said if SB 356 was enacted into law, a simple temporary equipment malfunction of a generating station, would subject the owner, for the next five years, to the denial of a permit for any project, even though it was unrelated to the generating station in which the violation occurred. Mr. Alke told the Committee the provisions of SB 356 were unique. If a person submits and intentionally misrepresents their past history, they would automatically lose their permit. That means for any entity that does business with other contractors or subcontractors, they could not be relied upon for preparing their own report for purposes of compliance. Since they filed a false and misleading report, under this act, every individual contractor would be investigated in which they do business. Mr. Alke urged a DO NOT PASS for SB 356.

Leo Berry, ENTEC, the non-utility portion of the Montana Power Company, said SB 356 would not be the solution to the proponents problems. Mr. Berry told the Committee SB 356 does not have a due process provision. The amendments Senator Doherty offered, in regards to hearings, would not solve the problem of providing hearings to people when the provisions of the bill would be affected. The main problem of the bill is found on page 4, line 7, subsection C, which defines any law or administrative rule of another state as an environmental law. Mr. Berry said that was a broad definition because we do not know what laws would be incorporated into SB 356. A decision maker must deny a permit or license if a judgement for a criminal conviction had been entered against the applicant. Mr. Berry said under environmental laws, there was strict liability, so an employer would be responsible for the employees actions. There were no mitigating factors. Therefore, a decision maker would be required to deny any permit to an employer for five years. We should not incorporate that kind of standard in our law. Section 4 allows a decision maker to deny a permit if an applicant had violated any environmental law. Mr. Berry said there were no standards to meet the test of due process. Section 7, page 9, states that a person who had been criminally convicted of violating an environmental law, must

undergo an audit. Mr. Berry told the Committee the provisions in SB 356 were very broad. The passage of SB 356 would create problems for compliance purposes and would implement an unfair statute.

Ward Shanahan, Stillwater Mining Company, read from prepared testimony. (Exhibit #1)

John Fitzpatrick, Director of Community and Government Affairs for Pegasus Gold Corporation, said SB 356 would establish a double standard for conducting business in the State of Montana. One group of businesses would be regulated under this particular act as bad actors. All businesses that need permits or who were effected by OSHA would be brought under the act. Significantly, other occupations that are not so regulated, such as attorneys, insurance companies, teaching professions, and the like, would be exempt from its provisions. SB 356 in its current form would be unenforceable and could not be administered. Mr. Fitzpatrick said SB 356 would cause astronomical financial repercussions for the State of Montana. Therefore, a fiscal note should have been attached. Mr. Fitzpatrick urged the Committee to oppose SB 356.

Ted Doney, ASARCO, told the Committee an example of an impact of SB 356. Billings Generation Incorporated was proposing to build a small full generation power plant in Billings in conjunction with the Exxon Refinery. It is a project which would result in a net reduction in air emissions in Billings. That project would have Exxon as a partner, in a general partnership. The contractor on that project would be Walsh Construction. The contractor for the turbine would be Mitsubishi. Because of some delays on financing for the project, Billings Generation would need to amend its existing air quality permit to get an extension of time under the permit to start construction on the project. Under section 2 of SB 356, any modification of a permit for an extension of time to start construction, would be a modification. Therefore, Billings Generation would be required to make an application submitting to the Department of Health, all civil and administrative complaints over the last five years for Exxon, Mitsubishi, and Walsh Construction. Mr. Doney said those companies are in almost every state in the nation, therefore the paperwork created by SB 356 would be astronomical. ASARCO opposed SB 356.

Raymond Johnson, National Federation of Small Business, told the Committee that SB 356 would presume that all small businesses were bad actors. SB 356 would economically hurt and hinder small businesses in Montana. Mr. Johnson opposed SB 356.

Don Allen, Montana Wood Products Association, opposed SB 356.

Rex Manuel, Cenex Petroleum and Division, opposed SB 356.

Gene Phillips, Pacific Power and Light, told the Committee they have facilities all over the United States. Mr. Phillips said to

define all the subcontractors, agents, and joint venturers linked to all their businesses would be impossible. Mr. Phillips asked the Committee for a DO NOT PASS recommendation.

Mike Micone, Montana Mining Association, said SB 356 would discourage industries from coming into Montana and would drive existing industries out of Montana. SB 356, because of its nature, should have had a fiscal note attached. Mr. Micone encouraged the Committee to defeat SB 356.

Alec Hansen, Montana League of Cities and Towns, opposed SB 356 because it would create an expensive and time consuming burden on municipal governments.

Mike Harrington, Montana Power Company, opposed SB 356.

Questions From Committee Members and Responses:

Senator Halligan asked Mr. Berry about liability. Mr. Berry said if someone intentionally disposed of a regulated substance, they could be held criminally liable. Under SB 356, the employer and company would be held liable and unable to receive a permit for five years, even if they were unaware of the violation.

Senator Halligan asked Mr. Berry if there were any prosecutions in Montana, based on strict liability. Mr. Berry was not aware of any.

Senator Halligan asked Senator Doherty about a fiscal note. Senator Doherty said he would request a fiscal note.

Senator Blaylock asked Senator Doherty about the inundation of paperwork. Senator Doherty said if a person had not been guilty of any violations, they would answer no to the questions on the application. If a person had been guilty of violations, they would need to xerox a copy of the violation and attach it to the application. Senator Doherty said that would not be an onerous burden.

Closing by Sponsor:

Senator Doherty told the Committee that there were 22 states who have some measure of bad actor provisions for environmental and worker safety laws. Senator Doherty said this was not an intimidation process, it was a truth in advertising process. We are only going after the people who are getting the permits that are listed in the law. Senator Doherty said SB 356 would not affect the small business in Montana unless they were applying for a strip mine or reclamation act permit, a hazardous waste management permit, or water quality discharge permit. SB 356 deals with how environmental laws would be enforced in Montana. SB 356 would insure that corporations were responsible. This was about the policy in the State of Montana. Senator Doherty said everyone recognizes that we do not want bad actors in Montana,

therefore the Committee should really think about SB 356. Senator Doherty said Montana should join the other 22 states who have adopted similar legislation for environmental permitting.

HEARING ON SB 271

Opening Statement by Sponsor:

Senator Jacobson, District 36, told the Committee that SB 271 would provide for a board of three to five volunteer citizens, appointed by the Chief Justice of the Montana Supreme Court, to review foster care cases and complaints. The board would have access to all appropriate records and would be under the same confidentiality requirement as the Department of Family Services. The review board would free the case workers, currently responsible for conducting reviews, to do case work and provide services to families. The function of the review boards would be to examine cases where a child had been removed from their home, by reason of alleged delinquency, abuse or neglect, for longer than a six month period. The Department of Family Services was required by law to have a plan outlining the program to return the child or find permanent placement, however the case plans were inadequate.

Proponents' Testimony:

Kathy Marshall told the Committee Montana had a bad foster care system. Ms. Marshall said the system does not have an advocate for the children, and the children could not speak for themselves. The case workers are so overworked they cannot get their daily chores down. Ms. Marshall said the children need an advocate outside of the system who can speak up about the problems. SB 271 works and has worked in 22 states. Ms. Marshall urged the Committee to support SB 271.

Senator Burnett urged support for SB 271.

Gail Gray, Office of Public Instruction, supported SB 271. Children do not do well in unstable and ever changing environments. Guidance counselors, principals, teachers, and good common sense, tells us children do not benefit from education if their home environment was unstable and ever changing. The enactment of SB 271 was enacted would lend more stability to the lives of children in the foster care system. Ms. Gray urged support for SB 271.

Hank Hudson, Department of Family Services, (DFS), said the DFS supported SB 271, but had some concerns. Mr. Hudson said he was concerned with the language, which states, "subject to available funding." The department was required to provide foster care review under state and federal law. SB 271 would transfer the authority to the judicial branch. The hiring of staff and all the details of administration and training would need to be done. If the funding was unavailable, the department would be subject

to the loss of federal funding for failure to comply with the mandatory six month reviews. SB 271 provides for the release of records, which may be in conflict with the confidentiality statutes. SB 271 would give the authority to provide copies of medical and case information to people on the board. Mr. Hudson wanted to make sure that it would not conflict with existing statute.

Jim Smith, Montana Juvenile Probation Officers Association, supported SB 271. Mr. Smith the Committee to repeal the youth placement committee, in addition to repealing the foster care review committee.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Blaylock asked Senator Jacobson about the citizen review boards. Senator Jacobson said the citizen review boards have been working very well in other states. The boards consist of volunteers, which are appointed by the Chief Justice of the Supreme Court. They are people who are involved with children, and often times are retired people. Senator Jacobson said the new section on page 6, of SB 271, addresses the confidentiality of the records. The review board would be subject to the same fines and misdemeanors as anyone else who had access to the documents.

Senator Blaylock asked Senator Jacobson about the funds for the system. Senator Jacobson the fiscal note would not be small, however most of the cost would be for the start up of the program.

Senator Halligan asked Senator Jacobson about the Supreme Court. Senator Jacobson said the program has been most successful in the states where it had been administratively attached to the judiciary. The Supreme Court would not be advocating for the children, they would be housing the administration. However, the Chief Justice would be appointing the volunteers.

Senator Halligan asked Ms. Marshall if she had attended a youth placement committee or a foster care review committee meeting. Ms. Marshall said yes.

Closing by Sponsor:

Senator Jacobson told the Committee she would work with them if there were things in SB 271 that were troublesome. Montana does have problems in the foster care system. Senator Jacobson recommended that the Committee look at the statistics in the foster care report which was done for the legislative Finance Committee. Senator Jacobson also recommended the Committee talk

to the members of the Human Services Committee who work on the budget. Senator Jacobson said many of the members signed on SB 271 realizing the problems of the foster care system. Senator Jacobson said SB 271 was a positive approach to clear up the foster care system.

HEARING ON SB 321

Opening Statement by Sponsor:

Senator Christiaens, District 18, said SB 321 was a revision of the medical parole statute. On page 1, lines 18 through 20, the words, "highly unlikely to present a clear and present danger to public safety" would be amended into SB 321. Page 2, line 15, the words "is likely to pose," would be amended into SB 321. SB 321 would be a cost savings bill. If just two people were paroled, there would be a savings of \$15,000 per person. The kinds of people that would be covered under SB 321 would be those who had been diagnosed with cancer, chronic heart disease, or other serious illnesses that have left them incapacitated. They would be paroled out into the community under Medicaid/Medicare type provisions. Senator Christiaens said the funding would relieve the general fund from huge medial costs.

Proponents' Testimony:

Jim Pomroy, Department of Corrections and Human Services, submitted two written statements. (Exhibit #2 and Exhibit #3) Mr. Pomroy said the amendments would simplify the issue of medical parole, without imposing a substantial risk to public safety. The Department of Corrections and Human Services urged support for SB 321.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

NONE

Closing by Sponsor:

Senator Christiaens told the Committee that the parole boards would still hear every case and public safety would still be fully covered. Senator Christiaens urged the Committee to pass SB 321.

HEARING ON SB 323

Opening Statement by Sponsor:

Senator Christiaens, District 18, said SB 323 would authorize the establishment of a shock incarceration program for offenders

convicted of certain felonies. SB 323 would provide for potential sentence reduction for successful completion of the program and provide guidelines for those in the program. SB 323 would have an immediate effective date. Senator Christiaens proposed amendments for SB 323. Senator Christiaens told the Committee the word "youthful" would be stricken from SB 321. Page 2, line 18, "5" would be stricken and "1" would be inserted. The age "25" would be stricken and "35" would be inserted on page 2, line 21. Lines 22 and 23 would be stricken from SB 323. The program was primarily meant as a program of psychological treatment, which included basic skill training in the areas of social adjustment. The program would build self-esteem and self-pride. The program would give the parolees discipline and promote teamwork.

Proponents' Testimony:

Jim Pomroy, Department of Corrections and Human Services, showed a video tape of a shock incarceration program. Mr. Pomroy said the creation of the boot camp would be part of a package the department was proposing to better manage the prison populations. The program would provide judges with an alternative to incarceration. Mr. Pomroy said the Swan River Youth Camp would be converted into the bootcamp.

Joe Murphy, Counselor of the Wyoming Bootcamp, told the Committee about the Wyoming Bootcamp program. Mr. Murphy told the Committee it was a 90 day to a 120 day program. The program was a very structured and disciplined environment. They hold each inmate accountable for their past actions and their present actions. The program was set up for young first time offenders between the ages of 17 and 24. The average sentence in Wyoming for a first time offender was two to three years, however now they have their sentence done in 90 days. They then would be on probation. When an offender is sentenced to the penitentiary, the offender would go before the classification committee. The committee would determine whether they would be a suitable person for the program. The offenders start receiving counseling when they enter the program. Most of the offenders committed crimes of burglaries, drug related crimes, probation violations, destruction of property, and sex offenders. 238 offenders have come into the program and 178 have graduated from the program. The program does not allow offenders who have done time in a penitentiary. Mr. Murphy said security was not a problem. The inmates were supervised 24 hours a day. Each inmate receives two to three hours of training a day. The program has a GED program. Mr. Murphy said over the last 2 1/2 years, the state of Wyoming has saved approximately 3 1/2 million dollars because of the program. 84% of the graduates have not returned to prison. Mr. Murphy said there was also a graduation ceremony after the 90 days was served.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Franklin asked Senator Christiaens about followup to the program. Senator Christiaens said a follow up program was a very crucial and important part of the program.

Mr. Murphy told the Committee the Wyoming Bootcamp was using community alternatives for follow ups. Inmates would live there and go to work. Recommendations were made for continued counseling for substance abuse. There was also a stop program, which was a surveillance program where the person would wear an electronic monitor.

Senator Franklin asked Mr. Pomroy if the Montana Bootcamp would have the same followup program. Mr. Pomroy the followup program would be a pre-release experience.

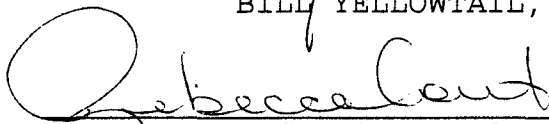
Closing by Sponsor:

Senator Christiaens urged support for SB 323.

ADJOURNMENT

Adjournment: 11:48 a.m.


BILL YELLOWTAIL, Chair


REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-15-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe			X
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

Statement for Stillwater Mining Company

In Opposition to SB 356

Mr. Chairman and Members of the Judiciary Committee, my name is Ward Shanahan I am a lawyer and lobbyist for Stillwater Mining Company. Stillwater Mining Company opposes SB 356 as a very bad example of environmental "Overkill".

HB 356 flies under false colors, it has been nicknamed the "Bad Actor Bill", but this is a misrepresentation of its' actual effect. It applies to everything and everybody good as well as bad. A cursory reading of its first two sections should make that point clear.

Although the bill is styled to look like it's meant to affect the "intentional violator" it actually gets the unintentional violation as well as those routine OSHA inspection "write-ups" that industry has become familiar with as the result of the Inspector's need to let his boss know that he's actually been looking at things. For example, frayed insulation, bent plugs etc. , they all go down as violations, but under this bill they become a ground for punitive action. (See page 7 lines 10-14 of the bill).

This bill is so uniformly punitive in its intent and effect, that its passage will have to be considered as an intentionally hostile act by the legislature of the state of Montana against Stillwater Mining, which has consistently supported environmental protection and compliance with the law in Montana, since it began business in this state 8 yrs ago.

The principal supporters of this bill are people from Baker who are frightened by an application to do business by a battery disposal company which has an allegedly bad reputation. There was no evidence of any kind introduced to show that this company was escaping regulation or would be allowed to operate without full compliance with environmental permitting. There was no evidence at all submitted to show that repeat violations by the business and industrial community at large were somehow putting environmental quality in Montana "at risk".

Stillwater Mining Company, cooperated in the drafting of the Hard Rock Mining Impact Act in 1981. It has consistently complied with all Montana environmental laws to the best of its ability. Yet, this bill would subject the company to "discretionary denial" of the right to do business, based simply on the negligent or accidental, or unintentional violation of any of an entire list of state and federal laws, without regard to the severity of the violation.

We respectfully request a DO NOT PASS on SB 356

DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES
SWAN RIVER FOREST CAMP



STAN STEPHENS, GOVERNOR

BOX 99

STATE OF MONTANA

(406) 754-2292
FAX (406) 754-2293

SWAN LAKE, MONTANA 59911-0099

TO: Mike Ferriter, Bureau Chief
Community Corrections

FROM: Letitia Miller, R.N. *Letitia Miller*

DATE: November 18, 1992

SUBJECT: Medical Parole

It is my opinion that it would be impossible to determine in a medical diagnosis whether a person would be a danger to society as stated in subsection (a) of the medical parole statute (46-23-210). This requirement should be deleted, in my opinion.

SENATE HUMAN RIGHTS COMMITTEE

LEGISLATIVE NO. 2

DATE 2-15-93

FILE NO. SB321

MONTANA STATE PRISON

SENATE JUDICIARY COMMITTEE
LEGISLATIVE NO. 3
DATE 2-15-93
FILE NO. SB321

MEMORANDUM:

TO: JACK McCORMICK
WARDEN

FROM: W. O. AUTERY, JR., M.D. *W.O. Autery, Jr. M.D.*

SUBJECT: Medical Parole Considerations

DATE: May 20, 1992

If we adhere to the severity of the medical condition as defined under Policy (A) "incapable of presenting a danger to society;" it would seem the utility and therefore the budgetary benefit to MSP may be rather small. (A proven nefarious person such as we have here may be "capable" of presenting a danger as long as he can "twitch a trigger finger.")

It probably was written into the law this way to be quite restrictive. but if "incapable of presenting" were changed to a scientifically more acceptable phrase such as "highly unlikely to present," there would be more room for subjective consideration and we would therefore be in a more advantageous utilitarian position.

The other obvious snag on utilization would be the small percentage of inmates with financial resources to cover the enormous outlay necessary for care that becomes a burden to even the state.

However, any amount of incremental change will be a definite benefit and I will help to facilitate the process in any suitable case.

c.c. James M. Gamble, Adm. Corr. Div. Redistributed 11/23/92
Jack McCormick, Warden by request
Mike Mahoney, AW (T)

DATE 2-15-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 271-Jacobson SB 321-Christensen
SB 323-Montgomery

Name	Representing	Bill No.	Check One	
			Support	Oppose
John F. Thomas	B O P	SB 321	✓	
Ward Hanahan	STILLWATER MINING	SB 356		✓
GENE PHILLIPS	P D & L	SB 356		X
Leo Bern	Entech	SB 356		
Mike Harris	MPC	SB 356		X
David Owen	MT Chamber of Commerce	SB 356		✓
Colo. Fitzpatrick	Pacific Gold Corp	SB 356		✓
Dexter Busby	MONTANA Refining	SB 356		✓
Don Allen	Nat. Utah Products Assn	SB 356		✓
Kelley Hanson	WFD B	356		✓
Mike Michele	M/A	356		✓
Ted Davey	ASARCO	356		✓
SEROME ANDERSON	SHELL WESTERN BTP INC. HOLNAM INC.	356		✓
Alec Halsey	CITIES & Towns	356		✓
Jim Smith	Mt. Twp. Probation	271	✓	
Kathleen Muscarel	Self	271	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-15-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 271, 321, 323

Name	Representing	Bill No.	Check One	
			Support	Oppose
Don Burnett	WVSU	271	✓	
Nanette Fallon	Ut Petroleum	356		✓
Hal Long	OPC	271	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY