

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on January 27,
1997, at 1:00 P.M., in Room 405.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: None
Executive Action: SB 97, SB 108, HB 118

CHAIRMAN LORENTS GROSFIELD relinquished the chair to VICE
CHAIRMAN WILLIAM CRISMORE because he was unable to be there to
open the Committee meeting.

EXECUTIVE ACTION ON SB 97

Motion/Vote: SEN. MACK COLE MOVED TO RECONSIDER AMENDMENT
sb09701.alm BY SEN. GROSFIELD. Motion CARRIED 9-1.

SEN. MACK COLE referred to Page 2, New Section 19, Part 2, and
said he wanted to delete that portion because it had a part which
could end up being controversial if passed, especially in 2(a),
providing for exclusive authority by the state to issue permits,
etc. He explained if there was a situation where there was an
agreement, it could have items on how the administration would

be done, sometimes jointly; however, it would always be done through total agreement, and leaving this amendment in there could limit or at least hinder some of the people in being able to negotiate.

Motion: SEN. MACK COLE MOVED TO DELETE SECTION 19(2) OF THE AMENDMENT.

Discussion: SEN. GROSFIELD commented he would resist that amendment because the attempt was to give the ability to set up some kind of interim process, and if that amendment was deleted, many area water users would be pretty nervous. He explained deleting it could be perceived as giving the Department the authority to not retain exclusive authority; it was addressed on Page 3, Lines 14-16. That should be some comfort level to those people, but 2(a) reinforced it; he was uncomfortable about giving it up, especially since the amendment was already adopted.

SEN. VIVIAN BROOKE asked if SEN. COLE'S argument was during negotiations it wouldn't be applicable. SEN. COLE said he didn't say it might not be applicable; rather, negotiations would be limited with 2(a). He stated he would amend his amendment just to be 2(a); he didn't see any big problems with 2(b) and 2(c). He explained when negotiations were in process and both sides took a look, there could be some people who wondered why negotiations were going on if it was apparent how the administration was going to be issuing permits when it was already written in the law. He suggested it would hurt negotiations.

SEN. BROOKE asked for Susan Cottingham's comment on the amendment and was told it would actually be the DNRC doing the negotiating so she would defer to them.

Don McIntyre said they originally had what was now the first and third part, and initially the only reservation he had was the issue of whether or not the tribes would see it as inflammatory; however, he thought the state would seek retention in any negotiation so the Department had no objection. Mr. McIntyre said it was as SEN. COLE presented it -- something the agency would strive for in terms of its negotiations.

Vote: Motion TO DELETE SECTION 19(2) OF THE AMENDMENT FAILED 5-5 WITH SEN. TOM KEATING, SEN. KEN MILLER, SEN. MIKE TAYLOR, SEN. WILLIAM CRISMORE AND SEN. LORENTS GROSFIELD VOTING NO.

Motion/Vote: SEN. LORENTS GROSFIELD MOVED DO PASS ON SB 97 AS AMENDED. Motion CARRIED UNANIMOUSLY 10-0.

VICE CHAIRMAN WILLIAM CRISMORE relinquished the chair to CHAIRMAN LORENTS GROSFIELD.

EXECUTIVE ACTION ON SB 108

Amendments: CHAIRMAN LORENTS GROSFIELD explained Amendments sb010801.alm (EXHIBIT 1) as follows: (1) #2 was a clarification because Page 2, Subsection (2), Line 12, talked about admissible evidence while Subsection (3), Line 15, talked about relevant evidence. He was concerned the different terms could mean something different so on Line 15 he struck "relevant evidence" and inserted "admissible evidence that is relevant"; (2) #3 on Page 5, Line 27, went to "amended claims or amended objects" because the Water Court had to publish that in newspapers; however, the average citizen would not understand there could be an additional objection opportunity. This amendment clarified that the bill now said notice must specify any response, and he was adding "or objection to the proposed amendment" must be filed; thus clarifying to members of the public there probably was an opportunity there to object if a claim was changed significantly; (3) #4 added "finally" in temporary sections. Subsection (5) explained the abandonment provisions didn't apply to existing rights until they were determined in accordance with Part 2 of this chapter. He was concerned Part 2 was changed to say a temporary preliminary or preliminary decree was enforceable. He opined sometime in the future somebody was going to argue there was an enforceable decree; therefore abandonment should begin at that date. The interpretation of that part of the abandonment section has been final adjudication. He expressed concern about the abandonment issue in the bill but thought the clarification would help.

Discussion: SEN. TOM KEATING asked why "relevant evidence" was changed in only one place. CHAIRMAN GROSFIELD referred to Line 12, "relevant evidence under this part may include admissible evidence", and explained he was trying to make the language the same.

SEN. VIVIAN BROOKE asked if it was assumed that relevant evidence would be admissible. CHAIRMAN GROSFIELD said any admissible evidence that was relevant; however, he didn't think it was presumed because that was up to the judge.

Motion/Vote: CHAIRMAN LORENTS GROSFIELD MOVED DO PASS ON AMENDMENTS sb010801.alm (EXHIBIT 1). Motion CARRIED UNANIMOUSLY 10-0.

Discussion: CHAIRMAN GROSFIELD continued answering SEN. BROOKE'S question by saying he sensed the prosecuting attorney felt a bit differently. He explained this whole process began a number of years ago by people coming in on their own, working through it without hiring attorneys; it worked pretty well. He was concerned this amendment became a sort of lawyers relief act because anybody who got an objection filed against them was immediately going to try to find something they could pick apart on the person who filed the objection against them.

CHAIRMAN LORENTS GROSFIELD relinquished the chair to VICE CHAIRMAN WILLIAM CRISMORE because he had to leave to present a bill.

SEN. FRED VAN VALKENBURG used the following illustration: A landlord had a relationship with a tenant; however, the situation had not gone well so the tenant moved out. The tenant didn't pay the last month's rent so the landlord had a right to go to court to try to recover that rent; however, the landlord was just happy the situation was over so nothing was done in that regard. However, two months later the tenant sued for wrongful eviction.

SEN. VAN VALKENBURG said the landlord should not be precluded from asking for the last month's unpaid rent; that was what counter objections were about and why there should be the ability to pursue them.

Motion/Vote: SEN. TOM KEATING MOVED DO PASS SB 108 AS AMENDED.
Motion CARRIED UNANIMOUSLY 10-0.

EXECUTIVE ACTION ON HB 118

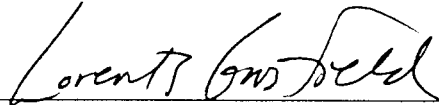
Motion/Vote: SEN. MACK COLE MOVED DO PASS ON AMENDMENT HB011801.alm (EXHIBIT 2). Motion CARRIED UNANIMOUSLY 10-0.

Discussion: SEN. MIKE TAYLOR asked for clarification on the buildings and was told this amendment was about a building with an ongoing obligation which was required to go through the bidding process, etc., that was there before.

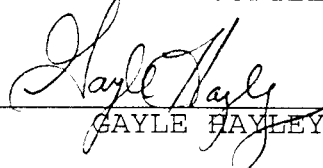
MOTION/VOTE: SEN. KEN MILLED MOVED HB 118 AS AMENDED BE CONCURRED IN. Motion CARRIED UNANIMOUSLY 10-0.

ADJOURNMENT

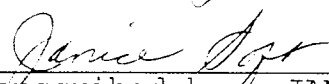
Adjournment: Meeting adjourned at 1:37 p.m.



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary



Transcribed by: JANICE SOFT

LG/GH