

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By VICE CHAIRMAN WILLIAM S. CRISMORE, on February 3, 1997, at 3:00 P.M. in Room 405.

ROLL CALL

Members Present:

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: Sen. Lorents Grosfield

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(s) & Date(s) Posted: SB 223, SB 224, Jan. 27, 1997.
Executive Action: None

HEARING ON SB 223

Sponsor: SENATOR MACK COLE, SD 4, HYSHAM

Proponents: Gary Fjelstad, Rosebud County
Terry Taylor, Taylor's Ace Hardware, Coalstrip, Mt.
Rusty Rokita, Hardin, Mt.
Rep. Lila Taylor, HD 5, Busby
Tom Daubert, Mt. Assoc. of Oil, Gas, and Coal
Don Judge, Mt. State AFL-CIO

Opponents: None

VICE CHAIRMAN WILLIAM S. CRISMORE opened the hearing on SB223.

Opening Statement by Sponsor:

SENATOR MACK COLE, SD 4, HYSHAM stated that this bill would change how the Coal Board will be put together. He spoke of the past history of the Coal Board. In the 70's the Board was looking at impacts as far as the coal industry was concerned, strictly in growth, as a result of new coal development. They were not looking at decline, in the original statute. Now, they are taking a look at a decline in coal industry. This is the main change that the bill will be addressing. The other change that will be proposed has to do with the loans. The Coal Board had the prerogative to make loans, however, in the last 20 years, there has never been a loan made, thus this bill is requesting that part to be taken out.

Proponents' Testimony:

Gary Fjelstad, Rosebud County Commissioner, asked for favorable consideration to SB 223. He stated that the downsizing of the coal industry has resulted in the town trying to pull together and form local organizations and a task force to address the arising problems. The county is hoping for funds to assist them with these infrastructure needs, through this bill SB 223.

Terry Taylor, Colstrip, Montana, resident for 17 years, hardware store owner, commented that the Coal Board in the past has done a good job. Presently, the people in the area have been put under a tremendous amount of stress, with approximately 400 jobs lost. January of last year, the county started a task force to deal with the impact of the downsizing. How do you help the people and how do you react? Two grants were obtained, one from RECD, one from the Forest Service. This money is being used to incorporate a local task force into an economic development organization. He felt strongly that this bill would be helpful in obtaining additional funding for economic development in Colstrip. The corporation that they are setting up will be very similar to the organization in Havre, BearPaw Development, which is a very successful organization that helped build up a five county area.

Rusty Rokita, Hardin, Montana, believes this is an appropriate piece of legislation. He warranted that he had extensive professional experience in the coal impact issues and local impacts, since 1970. The coal industry in Montana is totally unique compared to other industries. When the coal severance tax was created, a 30 percent tax was to be paid, and it would be the state and local units of government, those entities, that would work on the impact issues. It was not directly the coal companies' responsibilities to deal with those issues. The Coal Board became the lead agent for the state, and the local communities from day one in 1975 at the very first coal board meeting. The local communities needed to define their impacts

because each community has different impacts. Most recently, we have seen real impacts as the result of decrease in energy work. This decrease in energy work, jobs, production, and taxes is an impact. He reiterated that the State of Montana has done many good things with the coal money over the last 20 years.

Mr. Rokita believed that if the coal industry ceased today, the job that the legislature would face in appropriations would be much more difficult. The portion of the bill concerning the loan authority was not covered in much detail. The situation existed when the legislation was originally written, the people who were eligible to apply for the funding simply could not borrow the money. Local governments did not have that same kind of capacity. They had to use other mechanisms for borrowing funds. It became a portion of law that looked good, but probably didn't serve a great deal of purpose. There are no magical solutions on the down-side, but he said that the impacts are real, and it will be up to each community that goes through those kinds of impacts to sort out their problems and their future. This legislation is verifying the obvious, that a decrease does create an impact. In conclusion, the past 20 years or so, as a consultant that worked across the state, it's obvious to him, that the further people get away from the coal area, the less people understand about coal problems, or the issues of those communities. His institutional memories of the past were that someday the Board will have to deal with the issues on the back end, the decreases, and the downsize, and that's precisely what this legislation is about.

Rep. Lila Taylor, HD 5, Bighorn and Rosebud Counties, stated she was originally from a mining town, Roundup. She recalled the repressed days of downsizing, and the dying of the town. She supported this bill and hoped we had learned something from the past. Secondly, she supported the refunding of the Coal Board. Last year, she attempted to pass a bill concerning rebuilding some roads to the coal mines. It was defeated. However, if the Coal Board was funded and operating as it was intended to do to deal with these problems, they would not of had to come to the legislature to ask for money.

Tom Daubert, Montana Association of Oil, Gas, and Coal Counties, stated that he believed that the current law in Montana concerning coal money does not compensate local governments fully, fairly, and effectively for the actual impacts. This legislation at least remedies part of this problem by recognizing the impacts of coal mining does not stop because the mining has declined. He urged support for this legislation.

Jim Mockler, Director, Montana Coal Council, reiterated the reason for the 30 percent, and then the 15 percent coal tax was imposed for both the impact of miners coming to work and the impact when they lose their jobs. A lot of these people at Colstrip have lost their jobs. These same people created over \$300 Million for the pockets of the State of Montana for the work that they have done in Colstrip. The people are asking for the

opportunity to come to the Coal Board and then allow the Board to consider their problems or needs.

{Tape: 1; Side: A; Approx. Time Count: 3:45; Comments: .}

Don Judge, Montana State AFL-CIO, said most of the workers of concern here are union workers. He wanted to make several points clear concerning the coal severance tax. First, this money is there to assist the local government entities such as the cities, towns, schools, counties, etc. that are impacted by the loss of this revenue. Those workers are getting assistance now from the Trade Adjustment Act, Title 3 of the Job Training Partnership Act, and the Trade Readjustment Act. Some of these workers have adjusted or moved and when a town loses a considerable amount of tax payers a problem develops for infrastructure. They believe it was the intent of the original legislation to help those communities survive the impact of coal mining whether it be on the upside or downside. Since the legislation was written to affect the upside, we have to come back today to ask you to fix it and take care of the downside.

Opponents: None

Questions From Committee Members and Responses:

SENATOR DALE MAHLUM, SD 35, asked **Terry Taylor**, a local business manager in Colstrip, about what would be the best thing to happen to your community if this bill passed? **Mr. Taylor** responded by saying we have already organized a task force to help our community to encourage tourism, build a strong retail business base, and other infrastructure needs. The area needs a professional to run an economic development unit in Colstrip. **SEN. MAHLUM** asked **Mr. Taylor** about recent business declines in sales. It was stated that there was a definite substantial decline.

SENATOR BEA MCCARTHY asked **SEN. COLE** about the grant authority and the biennial change. **SEN. COLE** referred the question to **Newell Anderson, Administrator of the Local Government Assistance Division, Dept. of Commerce**. **Mr. Anderson** replied that it was a formal process of designation done by the Dept. of Commerce to determine what parts of coal country have produced or had coal activity that causes them to be designated as impacted areas. Because it is such a cumbersome and costly process, it became a biennial designation rather than an annual designation. Also, the Dept. is attempting to downsize the administration because things are not changing quite as rapidly as they did in the past. **SEN. MCCARTHY** asked about the size of the grants allocated. **Mr. Anderson** said the Coal Board doesn't prescribe the size nor the function of the grants, but is just a receiver or an evaluator of the proposal. It is difficult to say because of the wide spectrum involved. It ranges from \$15,000 to \$2,000,000. Generally, the local applicant for the grant participate at least 50% in the project with their own funds.

SENATOR THOMAS KEATING, SD 5, Billings, asked **Mr. Jim Mockler, Mt. Coal Council,** about the downsizing situation. Who is losing their jobs and what are their positions? **Mr. Mockler** did not feel he was the correct individual to answer that, but most of the downsizing have come in the power plant, some have gone through to the mine itself. **SEN. KEATING** asked if the reduction of coal shipments to the purchasers in Minnesota had anything to do with the tax on their coal cars? **Mr. Mockler** answered probably not.

SEN KEATING asked if someone from Montana Power Company would comment on the subject of shutting down Colstrip 3 and 4. **Art Neill,** of Montana Power responded that he represented the generation side of Montana Power's business and said that the work force had been reduced by about 200 positions. The company was not planning on shutting down Colstrip 3 and 4. The reduction of workers was from Colstrip 1,2,3, and 4. The company is just operating with fewer people, he said and the competitive nature of the business, the loss of contracts, may be the cause of the downsizing.

SEN. FRED VAN VALKENBURG, SD 32, asked **SEN. COLE** about the current law that was set on Page 3 of the bill, Sec. 9-6-207, regarding priorities for impact grants. It was written in the context with a strong definition of impact, in reference to growth. This bill did not define major decline. How do you envision, without any direction from the legislature, or any definition of major decline, the Coal Board to determine what is a major decline or reduction in operations at an energy producing complex? **SEN. COLE** said that this was discussed a great deal at various meetings. Decrease or decline was discussed and the committee tried to hold it down to a major decline in coal mining or the operations of coal using energy complexes. He commented that the Coal Board themselves would have to make that decision of what was major. **SEN. COLE** said he would be open to any amendments concerning definitions, if there was something that we should be defining. He said basically, they were trying to keep it at two areas where there really was a major decline. **Mr. Newell Anderson** of the Dept. of Commerce added to **SEN. COLE'S** response by referring to page 4 of the existing statute. Here, the definition of decline is explained in distinct terms. There is an inherent responsibility of the Coal Board to interpret the realities as they are presented and to justify the funds allocated. **SEN. VAN VALKENBURG** asked **Mr. Anderson** to explain the change on page 4, line 19, from 10% to 50% of the funds. He explained that the Budget Director during the 1995 session decided appropriating money to the Coal Board was okay but he did not want the Board to spend very much money, therefore the bill was amended so that only 10% of the funds to be spent outside of the coal impacted designated area. It was a way to have the Coal Board revert that money to the General Fund at the end of that period. This Bill puts the number back to what the statute originally had, which was 50%.

SENATOR VIVIAN BROOKE, asked **Mr. Anderson** about the designation change concerning annual to biennial, and refers to the Treasure State Endowment situation. He stated that the designation has nothing to do with the Coal Board's authority to award grants. The Coal Board, by statute, is required to meet once a quarter, and they can receive and respond to these applications at each of their meetings. The designation is not something that defines when the grants can be awarded. It only defines the areas under the statute where there is a designation of coal impact by qualities that the statute puts forth. The issue of the Board to award grants at any prescribed time has nothing to do with what we are changing here. They have been and continue to be able to issue grants every quarter of the biennium. There is no relevancy to Treasure State issue, only once every two years could the Legislature approve the grants recommended by the Dept. SB 88 clarifies that the Governor can approve those grants rather than the Legislature and that function can happen on an annual basis.

{Tape: 1; Side: B; Approx. Time Count: 4:10; Comments: .}

SEN. MIKE TAYLOR asked **Mr Anderson** about the total statutory appropriations to the Coal Board from the coal tax? What was the total dollar amount? **Mr. Anderson** said there was no statutory appropriations of the Coal Board any longer. It used to be a formula by percentage of revenue annually from the coal tax, but presently those funds are de-earmarked as a result of last years legislation. The Coal Board is a part of a group of funds out of the coal tax that has 8.36 % of the non-trust side of the revenue. **SEN. TAYLOR** asked how many dollars is that? **Mr. Anderson** stated that last year we took a million dollars for grants, and spent \$967,000.00.

Closing by Sponsor:

SEN. COLE closed by thanking the people for their testimony and added a few additional comments. He said that as we go back in history, and take a look at the amount of funds that have come to the State of Montana from the severance taxes, there has been over \$1,137,000,000 received. The money has been used in state General Funds, public schools, highways, conservation, etc. During the 18 year history of the severance tax, there has only been \$107 million that has gone directly to coal impacted areas. Recently, only a half a million dollars is proposed to go back to the impacted areas. This is a small percentage that has actually gone back compared to the benefits that have come out of the coal country to all of the state.

{Tape: 1; Side: B; Approx. Time Count: 4:15; Comments: .}

HEARING ON SB 224

Sponsor: **SENATOR MACK COLE, SD 4, HYSHAM**

Proponents: Jan Sensibaugh, Department of Environmental Quality
 Jim Mockler, Montana Coal Council
 Gene Braun, Montana Power
 Donald Quander, Working Group on Regulatory Reform
 Tom Daubert, Mt. Association of Oil, Gas,
 and Coal Counties.
 Lorna Frank, Montana Farm Bureau
 Tom Ebzery, Pudget Power, Washington Power, Portland
 General Electric
 Haley Beaudry, HD 35
 Candace Torgerson, Billings Generation Inc.

Opponents: Patrick Judge, Montana Environmental Inform. Center
 Deborah Smith, Montana Chapter of Sierra Club
 Nick Golder, Colstrip Rancher
 Arnold Silverman, University of Montana
 Janet Ellis, Montana Audubon

VICE CHAIRMAN WILLIAM S. CRISMORE introduced the sponsor and opened the hearing.

Opening Statement by Sponsor:

SENATOR MACK COLE, SD 4, HYSHAM, stated that the Major Facility Siting Act was a bill that was adopted in the 1970's to look at large generating units. Since then, most generation units are operated by independent power producers, thus, SB 224 is an act to accommodate these changes. The Department of Environmental Quality convened a working group after the last legislative session, which was comprised of representatives of the utility industry, electric cooperatives, large industrial customers, state regulators, environmental groups, and state legislators. This working group has met monthly for about the last two years and has examined every provision of this siting act, developed means to streamline the application requirements, expedited review for all types and sizes of energy facilities, and eliminated decision standards that were no longer applicable. A report was written on Improving and Modernizing The Montana Major Facility Siting Act. (EXHIBIT 1) He commented that most of the issues were agreed upon, however, there was not a complete consensus on every item.

Proponents' Testimony:

Jan Sensibaugh, Administrator of the Permitting and Compliance Division of the Department of Environment Quality, described the specific statutory changes in SB 224 in her testimony. (EXHIBIT 2) Some of the changes mentioned included: 1) Time frame for comprehensive review of large projects is cut in half from 22 months to 12 months; 2) Expedited review process is cut to six months; 3) Alternative site analysis for generating units has been replaced by the requirement that alternatives considered by the Dept. must be specific to the applicant's proposed site. See (Exhibit 2) for further reference.

Jim Mockler, Executive Director, Montana Coal Council, stated that it was his twentieth year to stand before the legislature to testify for the facility siting act but is the first time that we have ever come together, ever sat down for two years, with pros and cons and other people to study the act. There has been no complete consensus arrived at, as many expected. He stressed what the act did and did not do. The act does take away the impediments of the consideration process. The act will not effect the environment. There is not one environmental change in this bill. He hoped the committee would vote favorably for this legislation.

Gene Braun, Montana Power, General Manager of the Electric Transmission Group, commented, that his testimony was limited to the linear facilities aspect of SB 224. (EXHIBIT 3). The changes that are proposed in the act would assure a level playing field for all participants, assure that the public would have a say, provides for decisions that would establish a coordinated permitting process, provides an expedited review process for facilities that is unlikely to result in significant environmental impacts. This expedited process would include upgrades reconstruction and relocation of electric transmission facilities. Montana Power has about 7000 miles of transmission lines, 20 percent of those lines are over 80 years of age. Certainly, his company is in favor of expediting the permit system. The changes would also provide firm time schedules, allow for certification authority to be vested in the DEQ, provide for use of performance bonds to ensure post construction reclamation. There are two minor changes that should be considered in the act: 1) Section 75-20-301 (3a) strike "all", suggest to read "reasonable litigation," rather than "all reasonable litigation." 2) Section 75-20- 302 (2) Strike "restoration" and put in "reclamation."

Donald Quander, Regulatory Reform Working Group, Billings, stated that his testimony is his own although he represents numerous industrial companies who are large electricity customers. **Mr. Quander** handed out copies of his word for word testimony, (EXHIBIT 4), explaining his views. In closing he stated that this reform bill is not a quick fix, but an opportunity to preserve what is valuable while adapting the Act to today's changed world and to what we have learned. It is an long term opportunity to make the Major Facility Siting Act work for the years ahead.

Tom Daubert, Montana Association of Oil, Gas, and Coal Counties, urged support for this bill.

Lorna Frank, Mt. Farm Bureau, supported bill because the Bureau believed that there has been some unrealistic regulatory climate in regard to the Facility Siting Act. There has been no recent changes in this act and we support changes to the Mt. Facility Siting Act which would provide a reasonable and more realistic

regulatory climate under which any needed and desirable facility could be completed. She urged the committee to support SB 224.

Tom Ebzery, Billings, Washington and Puget Power, Portland General Electric, stated he was a member of the consensus collaborative, which was quite a diverse group. He felt this represents a reasonable effort and supported the bill.

REP. HAYLEY BEAUDRY, HD 35, said he was going to be carrying this bill in the House and has been directly involved as a member of the committee and related projects concerning the Montana Facility Siting Act. If we reverted back to the old Facility Siting Act, plants would not be built in Montana and the state would be the recipient of exported power. He urged the committee's support for this bill.

Candace Torgerson, Billings Generation Inc., believed it is important to have a siting act which is flexible enough to get the job done, and able to respond to the changes and advances of technology. She urged the committee to support SB 224.

{Tape: 1; Side: B; Approx. Time Count: 4:40; Comments: .}

Opponents' Testimony:

Patrick Judge, Montana Environmental Information Center, (MEIC), strongly felt there has been a misrepresentation concerning SB 224 and the report that was handed out (**EXHIBIT 1**) did not represent the consensus of the collaborative process. He further stated that the streamlining portions of the bill were contingent on a satisfactory resolution. No agreement could be reached on the triggering aspects, therefore, the conditional review of the streamlining measures was not at all a consensus. **Mr. Judge** handed out his testimony against SB 224, (**EXHIBIT 5**). He summarized by saying the unacceptably high triggers in this bill render the act ineffectual and passage of this bill would leave the Major Facility Siting Act weakened on the books, and more importantly it would leave those books on the shelf. He urged the committee to oppose SB224.

Debby Smith, Montana Chapter of Sierra Club, stated her credentials concerning energy issues and electric utility legislation. In her opinion, this bill does not attempt to reach a compromise and there is a stark dividing line between the opponents and proponents. The lead off proponent of this bill, Jan Sensibaugh, DEQ, talked about the new world of utility restructure, the fast pace, market oriented approach to building power plants wherever the demand was by the customers, and the need for a public interest determination for generation had expired. That is certainly not a uniform view. Most customers would not agree either, except for large industrial generation customers. There are needs for consumer protections of generation that the facility siting act addresses that would be thrown away if this bill is passed as amended. She urged the committee to

eliminate the provisions that strike the public need finding from a major facility. It is important for DEQ to continue to determine what is in the public interest as far the location and need for major facilities. She then proceeded to go through the specific language of the bill, referring to Section 1, 16. She thought parts were harsh and radical such as the elimination of the need for an alternative siting study, and the phrase energy related project, which there is no definition for. She thanked the committee for considering her comments.

{Tape: 2; Side: A; Approx. Time Count: 5:00; Comments: .}

Nick Golder, Colstrip Rancher, Northern Plains Resource Council, (EXHIBIT 6), gave written testimony in opposition to SB224. His testimony focused on the trigger mechanism and believed that without an adequate method of triggering the Act, everything else is pointless. NPRC supported a concept of where actual environmental impacts trigger the Act rather than an arbitrary number of megawatts as currently exists. He urged the committee to adopt the trigger levels as listed in **(EXHIBIT 6)** as an amendment to **SEN. COLE'S** bill. Without these amendments, SB224 renders the Siting Act meaningless, and Mr. Golder urged the legislatures not to pass the bill.

Arnold Silverman, Professor of Geology and Energy Resources, University of Montana, stated he had worked on almost every energy bill since 1967, including the Major Facility Siting Act. He asked the committee to reject SB 224. Two points are important to consider. First, the expedited review section concerning significant adverse environmental impacts needs to be clear. Second, on Section 3, he suggested that the public participate from the beginning in an environment in which people can exchange ideas and information and provide the best possible review. Third, **Mr. Silverman** pointed out the language concerning the facility will produce minimum adverse effects, the changes suggested that the facilities will not produce unacceptable adverse effects. Minimum versus unacceptable is a major difference in both intent of the legislature and to the people who need to respond to this particular bill. Unacceptable to who is the question. Public need should be a part of any bill that is restructured. He concluded that SB 224 cuts the most important and precious protection that we have and he urged to reject it.

Janet Ellis, Montana Audubon, wanted to bring up one point concerning it was a consensus process and did break down at a key point. She was disturbed that a state agency that will be responsible for implementing this program and regulating this permit process is supporting a bill that is not a consensus bill.

Questions From Committee Members and Responses:

SENATOR LORENTS GROSFIELD asked about an alternative bill. **Ms. Ellis** replied that she was unaware of one.

Mr. Patrick Judge wanted to bring to the committees's attention a bill introduced by **REP. ELLINGSON** that addresses the trigger section and is based on multiple environmental criteria. LC 1217 should be introduced tomorrow.

SENATOR FRED VAN VALKENBURG asked **Mr. Braun of Montana Power** what are the megawatt capacity of the Colstrip plants? **Mr. Braun** replied that Colstrip 1 & 2 are 330 MW each, and Colstrip 3 & 4 are 700 MW each. **SEN. VAN VALKENBURG** wanted input about the likelihood of independent power producers building new plants in the state in the future and what is the consequence of that to residential rate payers and small business rate payers if the Legislature gives the green light to all these independent power producers being able to come in and set up new electrical generating facilities below 250 MW with expedited review.

Mr. Braun responded that the Colstrip projects will have to compete. The restructuring of the act is partly about the deregulation of the generation business and makes it competitive. He did not know how to estimate the number of new producers that would come to the state as a result of this legislation. There are a lot of factors involved.

SENATOR BEA MCCARTHY asked **SEN. COLE** about the fact that the result of the study was not unanimous. **SEN. COLE** responded that during the two year study certain items were agreed upon individually. When the triggers were not agreed on, those people withdrew their agreement on some of the things that had been agreed to at the beginning. It was a study, it was not unanimous, and there was not an agreement on everything.

SEN. MCCARTHY asked if they brought the changes back to the group. **SEN. COLE** said the bill initially only had a two year life and the major change in it was moving from 50 to 150 MW. It was basically a stop-gap bill. Once the last session was over, they had put together this group and had been working on it since then. Some things were not agreed upon but the bill was put together with as much input as they could get.

SENATOR VIVIAN BROOKE, asked **Jan Sensibaugh** about some of the representation on the working group. She did not see people on this working group represented by DEQ other than Tom Ellerhoff, Mt. Dept. of Health and Environmental Sciences. Is that department now DEQ or Health and Human Services? **Ms. Sensibaugh** said that is DEQ. Both Tom Ellerhoff and Art Compton are employed by DEQ and were on that working group.

SEN. BROOKE asked **REP. BEAUDRY** if he came representing his district or as a representative of Billings Generation Inc.? He replied that he came representing his district in Butte.

Closing by Sponsor:

SEN. COLE emphasized that this bill was put together with as much input as possible, although the bill is not a total consensus. The major outcome he was hoping for was primarily to expedite the

permitting system and to remove unneeded decision standards. By doing this, the process of the application will be speeded up and will have preserved and enhanced opportunities for public input, and will continue to protect the environmental resources.


SEN. COLE submitted amendments to SB 224, sb022401.ate (**EXHIBIT 7**), and closed.

VICE CHAIRMAN CRISMORE closed the hearing on SB 224.

{Tape: 2; Side: A; Approx. Time Count: 5:35; Comments: .}

ADJOURNMENT

Adjournment: 5:35 p.m.



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary

LG/GH