

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN BILL CRISMORE**, in the absence of **CHAIRMAN LORENTS GROSFIELD**, on February 10, 1997, at 3:15 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(s) & Date(s) Posted: HB 71, HB 288
Executive Action: HB 71, SB 224/No Final Action

HEARING ON HB 71

Sponsor: REP. DOUG MOOD, HD 58, Seeley Lake

Proponents: Ray Beck, Department of Natural Resources and
Conservation
Ed Lord, Flint Creek Water Association Users

Opponents: None

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, Seeley Lake, said HB 71 was because of an incident in his district, explaining the East Fork Dam was

located in Grant County. He gave a brief history, saying in June, 1996, sediment was coming out the center drain of the Dam; shortly thereafter, a sinkhole fell and it was felt the Dam was in danger of imminent failure. The situation was studied and the area downstream was evacuated. They determined the center Dam had to be replaced and other repairs needed to be done. He said the money for repair came from an emergency loan fund which was administered by the Department of Natural Resources and Conservation (DNRC), and was loaned to the Flint Creek Irrigators Association to be used to fund the repairs. **REP. MOOD** said the fund was critical to DNRC's ability to respond to emergencies, explaining the East Fork Dam repairs required the entire \$1 million authorized under the program, which meant no funds remained for DNRC's use for emergency situations. He stated HB 71 requested raising the \$1 million loan cap to \$10 million, which would give DNRC the flexibility to respond to future emergencies. **REP. DOUG MOOD** said currently the state administered 38 similar dams which were from 40-50 years old and about 300 miles of canals, both of which had potential emergency situations.

Proponents' Testimony:

Ray Beck, Department of Natural Resources and Conservation (DNRC), said **REP. MOOD** did a good job of explaining the loan authority his situation had benefited from. He informed the Committee DNRC had significant loan programs -- 128 public loans and 135 private loans for a total of about \$133 million. He said if the loan could be planned, the entity would contact DNRC who would in turn go through the legislative channels; however, an emergency was a different situation in that statute allowed DNRC to loan up to \$1 million per emergency. **Mr. Beck** said it became obvious DNRC would have no more loan authority for other emergencies; therefore, the request for the \$10 million. He also explained the law said it had to be a significant impact or liability to create an emergency; hopefully, no emergency loans would have to be made but it was important to be able to do so, if necessary.

Ed Lord, Flint Creek Water Association Users, said he represented the irrigators who used the waters from the East Fork Dam. He reiterated how the Dam had developed problems with its drainage system resulting in an evacuation and emergency closure of the entire Basin at the height of the tourist season. The entire scope of the dam repair exceeded \$1.9 million, the money for which came from their own \$60,000 reserve, \$110,000 from the Governor's Environmental Contingency Grant Program and the \$1 million loan and other funds from DNRC. **Mr. Lord** said the Association agreed to bond itself for \$1 million and repay the loan within 20 years; however, had the needs exceeded \$1 million or if other projects had already used the amount, they would not have been able to complete their rehabilitation this year. He strongly urged the Committee to raise the cap from \$1 million to \$10 million.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY asked when the \$1 million was set. **Ray Beck** said it was set in 1991, and the loan in the testimony was the first loan since then.

SEN. TOM KEATING asked if this was Coal Tax money. **Mr. Beck** said it was backed by the Coal Tax bonds. **SEN. KEATING** asked how it worked in regard to the Coal Tax revenue, flow, boxes, etc. **Mr. Beck** said when the Coal Tax money came in, half went to spendable money for agency programs and half went into the permanent trust. The first box it flowed into was the Coal Severance Tax Bond Fund which backed the loans; therefore, if there was default on the loans or if a subsidy was set up by the legislature, the Bond Fund covered that first and then the money flowed into the School Trust Fund.

SEN. KEATING asked how long the money resided in the Bond Fund account. **Anna Miller, DNRC**, said the Fund was reviewed every year and if no funds had been used, it flowed through; however, it had to be remembered the state borrowed money through the issuance of Coal Severance Bonds and that money was used to make loans to the borrower. The borrowers repaid the money, but if they didn't, DNRC had the authority to go to the Coal Tax flow-through revenue for one year as a pledge in case the money would have to be used. If the money was not used, it rolled over into the permanent trust.

SEN. KEATING commented the bond account was collateral for the loans made. He asked from where the money for the loans came. **Ms. Miller** said Coal Severance Tax Bonds were issued through a public sale.

SEN. KEATING asked the value of current total loans outstanding. **Anna Miller** said \$55 million in loans were outstanding, as of June 30, 1996. **SEN. KEATING** asked if the Coal Tax Loan Account was the collateral and **Ms. Miller** said \$5 million sat in the Account.

SEN. KEATING asked if the emergency level was different from what was there now, i.e. could as many bonds as desired be sold. **Ms. Miller** said it couldn't because the whole program had \$250 million worth of lending authority; however, they were asking for a \$10 million limit on emergency situations. They currently had \$1 million emergency loan authority. **SEN. KEATING** asked if there had ever been a default and was told there hadn't.

SEN. MIKE TAYLOR asked for a modest cost of an emergency loan based on the fiscal report. **Anna Miller** said when bonds were issued, an official statement had to be issued. They usually averaged less than 2% of a bond issue. They issued about \$5 million in Coal Tax Bonds per year.

SEN. TAYLOR asked what the bonds presently rated. **Ms. Miller** said AA-.

SEN. TAYLOR said there was a possible lawsuit against the state involving tribal issues and wondered if funds would be lost from the Coal Trust. **Ray Beck** said it would have no effect.

Closing by Sponsor:

REP. DOUG MOOD reiterated this was the first time the emergency loan had been used and while \$1 million was a large amount, it really didn't go very far in projects of this magnitude.

HEARING ON HB 288

Sponsor: **REP. CARL OHS, HD 33, Harrison**

Proponents: **John Arrigo, Department of Environmental Quality**
Angela Janacaro, Montana Mining Association
Rick Dale, Golden Sunlight Mines

Opponents: **None**

Opening Statement by Sponsor:

REP. CARL OHS, HD 33, Harrison, said HB 288 clarified legislation passed in 1995, and dealt with an incident called Pony Mill. He said the 1995 legislature passed a bill called the Good Samaritan which allowed a mining company to come and clean up a damaged site but not be liable for their work. **REP. OHS** said an attempt was made to make the language of the law tight; however, the mining company involved in the Pony Mill incident studied the legislation and decided there was some question on the liability. He said HB 288 loosened the language just enough to allow companies to clean up the site but not be liable.

Proponents' Testimony:

John Arrigo, Department of Environmental Quality (DEQ), read his written testimony. **(EXHIBIT 1)**

Angela Janacaro, Montana Mining Association, said in the spring of 1995, the Association started a fund drive in which \$10,000 was contributed to the Phase 1 Reclamation Clean-up for the state and another \$20,000 was contributed for in-kind services, in large part by the Golden Sunlight Mine. She said they strongly supported HB 288 because companies could contribute to the effort and remediate a situation without assuming liability, thereby making themselves good neighbors and responsible companies.

Rick Dale, Golden Sunlight Mines, said the problem language in the existing legislation discouraged persons or businesses who wanted to assist the DEQ in the clean-up efforts, because it seemed someone who had not been involved in the original problem

responsible for part of the continuing and future clean-up costs might be liable. He stated the existing language contradicted the intent of the 1995 legislation and created obstacles in protecting the environment and accomplishing the clean-up process. **Mr. Dale** said they were trying to be more actively involved in the clean-up of the Pony Mill site; however, though they had the capability to assist the DEQ, they were cautioned about participating because of the liability ramifications. That meant a delay in making a more prompt response. He urged support of HB 288.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. MIKE TAYLOR asked what would happen in the following scenario: A company went bankrupt but had a hazardous waste site involving water. The water holding facility was punctured and the water ran into a stream and killed all the fish. **John Arrigo** said the intent was if a company provided service under DEQ's approval, they would not be liable. **SEN. TAYLOR** wondered from where the liability would come and was told the Department would be liable.

SEN. BEA MCCARTHY referred to Section 3 and asked why the act needed to be retroactive to 1995. **Mr. Arrigo** said it was because the work was done 1996; the funds had already been collected and spent.

SEN. VIVIAN BROOKE asked for an example of how HB 288 changed the law passed in the 1995 session. **John Arrigo** said he was specifically referring to Page 2, Lines 26-27, which did not pertain where the Department initiated action under this part, i.e. private entity should fix the problem or the Department would and charge the entity for the cost.

SEN. BROOKE asked for the figures which explained how much clean-up monies had been spent by private industry and by the state. **John Arrigo** distributed copies of (EXHIBIT 2) which explained and answered **SEN. BROOKE's** question. He added Phase II involved solidifying the tailings, cutting the liner, folding it over the tailings and regrading the dam so drainage could be restored through the site around the buried tailings; the estimated cost was around \$150,000.

SEN. BROOKE asked if wells were still being monitored in the area. **Mr. Arrigo** said they probably had not been monitored since last fall; however, they intended to revisit the site this spring to come up with additional samples.

SEN. BROOKE asked how much money or in-kind private industry could generate. **Rick Dale** said he came into the project about halfway through it, so he wasn't totally familiar with the total

history on the financing side; however, he projected raising cash and in-kind contributions to at least what had done so far.

SEN. BROOKE asked how much money was spent in order to raise the \$7,300, explaining she understood a third party was hired to do the fundraising. **Mr. Dale** said his company provided the manpower, equipment and other materials necessary to remove the hazardous materials. The \$7,300 was just that -- the phone solicitation was one of their consultatory employees who agreed to provide that service for half his consulting rate. Funds were submitted to the Montana Mining Association to pay the costs. **John Arrigo** said Golden Sunlight Mines provided the service of removing the chemicals, phone solicitation and repairing the liner. He didn't have the exact figures, but each was about \$2,500. Golden Sunlight hired the contractor at half his normal rate to spend time on the phone and in the \$95,000, \$10,000 was cash contributions; in addition, another \$10,000 was in donated services. He said he understood the Mining Association was planning to reinitiate its solicitation.

SEN. FRED VAN VALKENBURG asked if the bill required a 2/3 vote of each house because it granted immunity from liability. **Larry Mitchell** said the idea was new to him.

SEN. VAN VALKENBURG said he didn't know if he was correct, but it seemed striking the sentence on Page 2, Lines 26-27, extended the immunity to entities which may become involved in some remediation where the Department had already initiated action. He wondered if that triggered the requirement of a 2/3 vote. **John North, DEQ**, said it was not reviewed because it was considered to be simply a clarification, rather than change, with regard to the amendment on Page 3, Subsection (d).

SEN. VAN VALKENBURG asked why a bill was needed when it was only a clarification and was told they were nervous about the way the language was written; even though they felt the court would probably determine it would be held to what the amendment stated, there could be some question.

SEN. VAN VALKENBURG asked **REP. KARL OHS** if the bill got 2/3 vote in the House and was told it did.

VICE CHAIRMAN BILL CRISMORE relinquished the chair to **CHAIRMAN LORENTS GROSFIELD** who had returned from another committee.

CHAIRMAN LORENTS GROSFIELD asked if the \$7,300 was not bigger because of the liability concern or were there other priorities. **REP. KARL OHS** said it was a combination of both. He had been at the site several times with both industry and the Department and there seemed to be a great deal of interest in helping.

Closing by Sponsor:

REP. KARL OHS said even though HB 288 was directed at a very specific incident, it had ramifications regarding the industry's trying to clean up what others had not done correctly. He hoped the bill would sail through the Committee.

{Tape: 1; Side: B; Approx. Time Count: 4:00 p.m.}

EXECUTIVE ACTION ON HB 71

Motion/Vote: SEN. BEA MCCARTHY MOVED HB 71 BE CONCURRED IN.
Motion CARRIED UNANIMOUSLY. SEN. BEA MCCARTHY will carry HB 71.

EXECUTIVE ACTION ON SB 224

Motion: SEN. MACK COLE MOVED DO PASS ON AMENDMENTS sb022401.ate (EXHIBIT 3).

Amendments: Art Compton, DEQ, explained Amendments sb022401.ate (EXHIBIT 3A).

Discussion: SEN. FRED VAN VALKENBURG asked if the amendments were agreed to by the collaborators to the consensus process. Mr. Compton said they weren't; SB 224 was not a piece of consensus legislation, and the amendments didn't reflect consensus either. The working group did not achieve consensus at the end of its two-year effort, that shaped the bill. He said there was not consensus at the end-game because a number of the collaborators' support for a number of provisions in the bill was intentioned upon identifying an acceptable trigger, and finding the trigger was the point upon which the collaborative broke down.

SEN. MACK COLE said some of the amendments were his, but most of them were the Department's. We put them together and agreed on them; there was no mention of the collaborative.

SEN. VAN VALKENBURG commented some of the collaborators agreed on Amendments 5 & 7, which had the effect of saying if the air quality issues were violated in such a way that they affected Class I airshed, Class I river, etc., as opposed to being "located in." He wanted to know what "some of the collaborators" meant. Art Compton said there were a number of the collaborators who didn't agree with some of the amendments. Some of them were driven purely by opponents' testimony; however, he believed "be located in or directly affecting" was not a substantive one. He remembered the argument being if the facility was located in a class I airshed, if it didn't affect the airshed, it should not be covered; whereas, it should be covered if it directly affected that resource. The dialogue didn't include the collaborators but got around to "directly affecting" as a more appropriate and focused trigger to use.

SEN. VAN VALKENBURG commented just because something was located within one of the categories didn't mean it necessarily affected the area. Art Compton agreed.

Vote: Motion DO PASS ON AMENDMENTS sb022401.ate CARRIED UNANIMOUSLY.

Discussion: SEN. MIKE TAYLOR asked for explanation of triggers. Art Compton said they were the most difficult issues to address; however, all collaborators agreed emissions-based triggers were a more accurate reflection of a proposed facility's actual effects than merely its size. Two things were brought by the Department to the table regarding the size trigger: (1) Environmental caucus in the collaborative advanced emissions-based triggers around the 50 - 80-megawatts range; (2) Industry collaborators felt 250-megawatts were needed to support the consensus bill. The Departments embraced combining both elements and adopting emission-based triggers at the 250-megawatt level. They hoped the adoption of emissions-based triggers advanced by the environmental caucus and others, and the 250-megawatt trigger would be at the heart of everyone's main concern. Mr. Compton said they looked at actual numbers or particulates for SO² at 50-, 75-, 150- and 250-megawatts. There was no magic about the 250 megawatts other than an industry technology which was an off-the-shelf combustion turbine which was about the 240-megawatt level, modularly placed and at a very low impact. He felt the Department was comfortable with the 250-megawatt level because it would exclude from review a relatively environmentally benign facility the industry felt was one of the more likely ones to be developed over the next decade or two.

SEN. TAYLOR asked if the Department supported SB 224 and if the emission controls on top of the triggers were sufficient to monitor the activity. Art Compton affirmed both questions.

SEN. VIVIAN BROOKE asked if the 250 was inserted because of off-the-shelf technology (generator that worked from natural gas). Mr. Compton said it was one of the reasons; however, the other half of the decision dealt with the concept of advancing the emission-based triggers which were important to the environmental caucus but supported by all members of the collaborators, and adopting industry's perspective.

SEN. BROOKE said there were many other types of generators under 250 which weren't as clean as the state-of-the-art one being discussed. Art Compton agreed. SEN. BROOKE wondered what levels of mega-wattage they were. Mr. Compton said two generation units had been constructed since the Colstrip era, i.e. a 37-megawatt waste coal burner which emits about 1,200 tons of SO² per year; however, he could not say whether the 1,200 tons was a significant or insignificant output of SO². It did, though, support the premise small, pulverized coal units emitted substantially greater amounts of SO² than natural gas.

SEN. BROOKE wondered about the time frames incorporated into the amendments, and how realistic they were. Mr. Compton said the six-month review was do-able for a project which had no risk of significant effects. Testimony from industry collaborators indicated they expected new projects built in this new

restructured and competitive utility industry to be small competitively acquired facilities as opposed to the large thermal-baseload generation of the past. Most of the projects would have only modest effects. **Mr. Compton** said the one-year comprehensive review would probably be accomplished through an EIS.

{Tape: 2; Side: A; Approx. Time Count: 4:45 p.m.}

CHAIRMAN LORENTS GROSFIELD asked if one of the triggers was the amount of workers dealt with, i.e. in the 37-megawatt plant, how many workers were there. **Art Compton** said it would be substantially less than 500. **CHAIRMAN GROSFIELD** said it referred to "permanent work force" and wondered what the permanent work force was at Colstrip III. **Mr. Compton** said he thought it had been about 400, but they were scaling it back to about 225.

CHAIRMAN GROSFIELD asked **Ken Williams, Montana Power**, the same question and was told at its height, Colstrip I-IV had about 600 employees; however, it was currently about 400.

CHAIRMAN GROSFIELD asked why "500" was chosen and **Art Compton** said he didn't remember; however, it could have been the House bill included the same trigger with a lower number of employees and additional trigger of 6% of the population within a 50-mile radius, which was probably more realistic.

SEN. TOM KEATING said BGI in Billings was a 57-megawatt facility with 35 people as their work force and **Mr. Compton** affirmed.

SEN. MIKE TAYLOR asked if SB 224 let any facility off the hook from following past regulations or standards, and was told if his facility was a 75-megawatt plant it would not be covered by virtue of the 250-megawatt trigger. It was unlikely the 75-megawatt would trigger any other triggers.

SEN. VIVIAN BROOKE referred to SB 366 from the 1995 session and wondered how the working group was brought to the table, and expressed concern there were no other legislators present for a broader understanding of the issues. **Art Compton** said the ground rules of the collaborative required after a date certain (about half-way through the collaborative process) any members who wanted to join the group had to have the unanimous consent of all the collaborators.

SEN. BROOKE wondered if the collaborative brought SB 366 to the 1995 session and **Mr. Compton** said it was not; this collaborative actually convened in November, 1994, and was a continuation of working groups which brought a siting act bill to the 1993 legislature which dealt with the easy issues.

SEN. BEA MCCARTHY asked which currently existing facilities became exempt because of the SB 224. **Art Compton** said there were none.

CHAIRMAN GROSFIELD asked if SB 224 had been in place in the early 1970's, which would have been required to go through the act. **Art Compton** said only two had been built since then: (1) Rosebud Energy Plant at Colstrip would not be covered by SB 224 because it was below 50-megawatts; (2) Yellowstone Energy Limited Partnership in Billings was about 57-60-megawatts and was not covered by SB 366. **CHAIRMAN GROSFIELD** asked if Colstrip would have been covered by SB 224 and was told it would have been.

{Tape: 2; Side: A; Approx. Time Count: 4:54 p.m.}

SEN. MACK COLE asked what a plant who didn't hit these triggers would be covered under. **Art Compton** said a proposal was not subject to siting act review; a generation unit still had to maintain air and water quality authorizations which would be generally considered by the Department in the framework of the MEPA process.

CHAIRMAN GROSFIELD and other Committee members agreed to hold off final action on SB 224 until Wednesday [February 12]. **CHAIRMAN GROSFIELD** reminded the members if there were any more amendments, they should be sure to get them in.

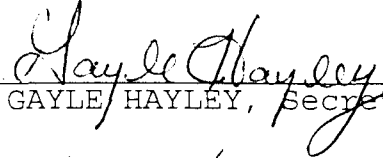
SEN. VAN VALKENBURG commented the Committee had previously heard a bill sponsored by **REP. ROYAL JOHNSON** which had to do with the repeal of the Hannah Amendment. It was explained the Department didn't want to implement it any sooner than October 1; however, he wondered why SB 224, which had far greater implications, was to be effective July 1. **SEN. VAN VALKENBURG** wondered why the hurry to implement this one by July 1, as opposed to delaying the other one to October 1. **Mark Simonich** said SB 224 was a Department bill while **REP. JOHNSON's** bill was not; the Department simply responded to his desire for the effective date -- it had no preference one way or the other. **Mr. Simonich** said there was some discussion concerning the impact of moving the date forward and there was recognition by the Department that under the state implementation plans the plants in the Billings area were under some deadlines to get some technology into place which would have to be achieved by next March.

ADJOURNMENT

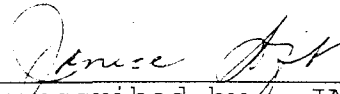
Adjournment: The meeting adjourned at 5:00 p.m.



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary



Transcribed by: JANICE SOFT

LG/GH