

**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **ACTING CHAIRMAN BILL CRISMORE**, on February 12, 1997, at 3:00 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. Ken Miller (R)  
Sen. Mike Taylor (R)  
Sen. Fred R. Van Valkenburg (D)

**Members Excused:** Sen. Bea McCarthy

**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 310, posted 2-7-97  
Executive Action: SB 310, HB 162, HB 288, SB 224

**HEARING ON SB 310**

**Sponsor:** SEN. LORENTS GROSFIELD, District 13, Big Timber,

**Proponents:** Larry Jordan, President Paradise Valley Canal  
Users Assoc. and Park Branch Water Users  
Assoc.  
William Smith, Chairman, Park Branch Water Users  
Assoc.  
Ray Beck, DNRC, Conservation Resource Development  
Division  
Mike Murphy, Montana Water Resource Association  
David DePuy, Board Member of Park Branch Canal,

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. LORENTS GROSFIELD** introduced SB 310. This bill came to him from the local water users' association in his district. It addresses issues regarding funding various kinds of water projects and, in this case, it deals with emergencies. The bill has potential applications beyond the people testifying here today. It goes to water users' associations which might be things like canal companies, ditch companies or local drinking water supply type of water users or organizations. There's a lot of potential benefit for the parties associated with this issue. Senate Bill 310 tries to make some of our loan programs work better with respect to the needs of local water users' associations, whether they're irrigation or otherwise. It especially addresses emergencies they might have where they need to fix the problem now and not wait for a two year cycle of applying for a loan, going through the application process and waiting for the legislature to convene. When a head gate blows out, it needs to be repaired in a timely manner.

**Proponents' Testimony:**

**Larry Jordan, Paradise Valley Canal & Park Branch Canal**, rose in support of the bill. In 1991 when he testified against privatizing these canals, one of the major concerns was financing. How do we handle a major problem on our canal? We took over our canals in 1995. Our headgate blew out in the summer of 1995. We made it through the summer. We had from the fall of '95 until spring of '96 to build our diversion project, which cost approximately \$285,000. It would probably cost a little more than that today. We put approximately \$60,000 of our own money into this project. We started planning and looking for financing in the fall of 1995. We went to the lending institutions, banks, and the Farm Credit Services. It's pretty hard to borrow money on an easement such as our canal project. We do not own any property, all we own is an easement, and our major collateral is our water contracts and our water rights. Finally, about the first of the year, American Bank of Livingston, which is a private bank, said they could lend us the money to do this project. The loan was a 9½ percent floating loan with a maximum of 24 percent. Hopefully the interest rates never go that high. We started talking to John Tubbs right away when our canal first had the problem. Our project would not qualify for the program because we are not a government entity. What we are asking from you is a way to get a loan we could live with on a fixed rate. With a canal company, you set your expenses a year in advance. This would really help us because we could plan ahead. A fixed rate is a very good means of financing our project.

**William Smith, Park Branch Canal**, spoke in support of SB 310. The response that we made to this situation was looking seriously at what we had and what we could do about it. We wanted to do a

quality job. The original diversion was installed in 1935 as part of the initial construction of the Park Branch Canal. The Paradise Canal was then added to this project in 1957 to 1959.

The diversion was very serviceable from 1935 until 1995. We wanted to ensure that we provided something that would serve with time and be a contribution to the valley. We hired HKM Engineers from Billings to work with us on this project. They handled the engineering and we provided the majority of our own construction support. We looked at this project from a standpoint of being cost effective and providing the valley with a long term asset. The two canals irrigate approximately 12,000 acres of land in the Paradise Valley. Without this canal project and without this diversion, the economy in that area would be significantly impacted, thus we took the steps necessary to do what we felt was a cost effective response to the problem we had. In order to meet the needs of our irrigation users, we had to work through the winter of '95 and '96. We actually didn't get started with construction until the winter of '96, so we would be ready to provide water to our users this last summer of 1996. A few days after the canal, or after the diversion was completed, high water started and we had the flood of the century.

**Ray Beck, Department of Natural Resources (DNRC)** stated this was a loan program that they administered in their division. Earlier in the fall they met with the water users and **SEN. GROSFIELD** regarding the issue described here today. The way the law is currently set up, it isn't workable for them as far as a water users' association is concerned. We have reviewed the law and now ask for amendments which we have presented to **SEN. GROSFIELD**. We'd like to present those to you as well. **(EXHIBIT 1)** The amendments better clarify the law and make it more workable with what's in existing law today. This is an issue they've dealt with before wherein associations, irrigation associations especially, were not covered by the law even though they have similar needs as irrigation districts and other private and public entities. They have four or five other associations that are in similar situations. He commented that **Larry Bloxsom** and **John Tubbs** were present to answer questions.

**Mike Murphy, Montana Water Resource Assoc,** stated the association wished to go on record in support of SB 310. It's certainly appropriate to consider the income of the water users' associations. Stock shares are invested as collateral to secure a loan and are the same security that in concert with the water rights, impacts the value of the land irrigated under the project. Considering the nature of the cost of most rehabilitation or construction projects, it is also appropriate to demand limits be increased to the \$300,000 limit. Again, we support SB 310.

**David DePuy, Park Branch Canal,** stated they really need this bill. We have another water association in Park County in

Livingston. Water users are going to have problems in that every canal is going to have problems down the road caused by breakouts. This is a program which is really needed. The members of both boards reviewed all the options. The only option we had was to go to the bank and that was very discouraging. We received our loan as a gesture towards the users, to help us out as a community project by the bank.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. DALE MAHLUM asked if this bill passed, would these people be able to get the money from the program and go back and repay the bank? He didn't think they would ever want to be faced with 25% interest. Ray Beck answered they sat down just before the hearing and worked through the numbers and it looked like it will work well for them. These loans are based on the bond rate currently set at 7 1/2 percent.

*{Tape: 1; Side: a; Approx. Time Count: 3:00 p.m.}*

Closing by Sponsor:

SEN. GROSFIELD said they were dealing with a program that was designed to help these kinds of projects. The program works well and has helped a lot of projects around the state, but there are some glitches in the program which need fixing so that it will help not just at the beginning of a project, but also with emergency situations. You can imagine when we're talking about 60 or so water users on this canal. We're talking about the major part of the north end of Paradise Valley on the Yellowstone River. This involves a lot of water. The big canal coming out of the Yellowstone River is a significant part of the economy of Park County.

In the case of an emergency, they go to the bank and are asked what collateral they have. They have an easement, some water rights, and water contracts which say they are going to get some money from these users. What happens if they don't come through with the water contract? The spigot gets turned off. What happens if your spigot gets turned off when you're in the process of irrigating? You don't get a crop. There's a terrific incentive to pay those water contracts. This bill tries to recognize that in our state loan program DNRC would be allowed to use those contracts as collateral for a loan.

There are 2 items in the amendment. The people from DNRC reviewed the introduced version of the bill with the state bond counsel. There was concern about the wording on page 2, lines 16 through 18 and that is the reason for amendment no. 5. As far as striking \$300,000 and going back to \$200,000, he would just as soon stay with \$300,000, remembering that the \$200,000 was

established when this program began in 1981, which was 16 years ago. Given increased costs, maybe that threshold should be increased.

**EXECUTIVE ACTION ON SB 310**

**Amendments:** sbo31001.alm

**Discussion:** CHAIRMAN GROSFIELD asked Ray Beck to explain the amendments a little more thoroughly, especially the \$200,000 to \$300,000 amounts. They used \$200,000 a couple of places and \$300,000 in a couple places. Ray Beck explained that the first amendment clarified the language. On the second amendment, following \$200,000 on page 2, line 13, they struck the \$300,000 which was included and put it back to \$200,000. This would be for private loans and currently that's what it is, \$200,000. Each loan is about \$78,000, so they felt that was adequate for the private loans at this point in time. The third amendment is for clarification. The fourth amendment was recommended by the bond counsel.

CHAIRMAN GROSFIELD commented that he must have the wrong sheet, the numbering was wrong. Ray Beck focused on amendment no. 5, which is at page 2, line 17 & 18. That's the issue that the bond counsel had a little bit of concern with. He thought it had been cleaned up so it addressed everyone's concern. They met with the water users and it seems to work just fine for them. He's sure it will for any other association that comes in. The key is the loan amount for the water associations which is \$300,000, which CHAIRMAN GROSFIELD requested to be in the bill. They feel comfortable with that because water associations, and in this case especially, two associations are tied together and are made up of quite a few members. The structures are quite significant. When they do have a failure or an issue, that can be addressed. The loans are probably going to be much greater than \$200,000, which, under a privately owned situation, is fairly significant for any water improvement. On page 2, line 22, which is item six on the sheet, we took out the \$300,000 because that section of the law is tied to a grant program as well as a grant loan program, and we would have conflicting programs if we changed that from \$200,000 to \$300,000. Our Renewable Resources Grant Program uses \$200,000. For us to be consistent with the amount of grant that will be given, or amount of loan based on the grant that they've received, they need to go back to \$200,000. Neither of the ones we reverted back to \$200,000 have been a significant issue in the past. The \$300,000 amount for the water association is a natural idea.

**Motion/Vote:** CHAIRMAN GROSFIELD MOVED SB 310 BE AMENDED.  
MOTION CARRIED UNANIMOUSLY.

**Discussion:**

**SEN. VAN VALKENBURG** stated that the existence of this program is attributable to the existence of the Coal Severance Tax and the legislature's allocation of the money obtained from fund.

**CHAIRMAN GROSFIELD** asked if **SEN. VAN VALKENBURG** was speaking to the members from Paradise Valley or if he was really speaking to the members of the committee. **SEN. VAN VALKENBURG** stated that the people from Paradise Valley don't often get the chance to hear his pearls of wisdom.

**Motion/Vote:** **SEN. TAYLOR MOVED SB 310 DO PASS AS AMENDED.**  
**MOTION CARRIED UNANIMOUSLY.**

#### EXECUTIVE ACTION ON HB 162

##### Discussion:

**CHAIRMAN GROSFIELD** stated that **SEN. THOMAS KEATING** was concerned about whether or not there was adequate protection in the bill as it appeared before us with regard to rule making on fees. There are no amendments before the committee.

**SEN. KEATING** asked if these fees were currently going into the General Fund? **Jan Sensibaugh.** Replied that the fees currently do go into the General Fund.

**SEN. KEATING** asked if they wanted to divert them from the General Fund into a hazardous waste account? Does that become a statutory appropriation? **Ms. Sensibaugh** replied no, it does not.

**SEN. KEATING** then asked if the money can only be used for hazardous waste appropriation? **Ms. Sensibaugh** answered that is correct. It would be a part of the appropriation process where the appropriation subcommittee and the whole conference would appropriate them to the department to use for hazardous waste activity. Only that amount could be used and they could only be used for those activities.

**SEN. KEATING** said they would be collected from generators of the hazardous waste and the legislature would appropriate funds to their department for the oversight of this operation. The fees collected normally go into the General Fund, and then the General Fund supports the program. **Ms. Sensibaugh** replied no, they do not get any General Funds support for this program. **SEN. KEATING** then asked how they received the fees? **Ms. Sensibaugh** said at this time their spending authority comes from a federal grant and the hazardous waste RIT account. They have some fee authority for the large commercial projects which they use for applications, however, concerning the fee authority at issue here, they do not have and do not spend those fees in the program now.

**SEN. KEATING** stated his understanding was that these fees, instead of going to the General Fund, would go into an account

from which appropriations could be made for this program. **Ms. Sensibaugh** replied that was correct. **SEN. KEATING** believed this to be a statutory appropriation. **Ms. Sensibaugh** answered no, it is not.

**Motion/Vote:** **SEN. VAN VALKENBURG** MOVED HB 162 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY.

*{Tape: 1; Side: a; Approx. Time Count: 3:45}*

EXECUTIVE ACTION ON HB 288

Discussion:

**CHAIRMAN GROSFIELD** commented that **SEN. VAN VALKENBURG** had a question about liability. **Larry Mitchell** stated this was reviewed by Greg Petesch and he didn't raise any questions about it. The constitutional provision states that if immunity is granted to the state, it must be given by a law that's passed by a two-thirds majority vote. This particular act doesn't intend to grant immunity deliberately to the state or local governments, it simply provides the parties involved in the remediation of these sites which they aren't responsible for, some immunity.

**SEN. MIKE TAYLOR** questioned who incurred the liability for third-party damage if everyone else is immunized? **Larry Mitchell**. In the case of the CECRA program, the Super Fund program in the state, the state will automatically be named in a suit if something goes wrong if they're taking action on their own, or their contractor, unless their contractor incurs gross negligence in the process of performing the contract. There's some language in CECRA that allows them some immunity if they're performing in concurrence with the CECRA remediation. There may be some folks here who could expand on that, but basically the state has the liability. This law doesn't intend, nor does it state anywhere, that for all CECRA actions the state will be immunized from any damages. If we are cleaning up an area on a ranch, the party doing the work is not held liable because we've asked them to work on this project. So the state, he guessed, ultimately would have to be responsible because they are the individuals that hired the person to do the work. They ultimately come to liability if there is a problem, which is probably the way it should be if they hired the individuals. Am I correct in that assessment?

**CHAIRMAN GROSFIELD** answered that was correct. He commented that the bill really arises out of a bill we had last session, SB 410, which was a committee bill that came from this committee. They wanted the bill to address the clean up at the Pony Mine. Part of the concern they were trying to address was that there was a problem there and a willingness on behalf of parties to put some money into that cleanup. They were reluctant to do so because as soon as they put any money in it, they attracted liability. They

passed the bill to address that situation. In the meantime, some money has been raised that affects them, but there's still concern over the liability language, so this is what needs to be fixed.

**Motion/Vote:** SEN. CRISMORE MOVED HB 288 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 224**

**Amendments:** sb022401.ate - EXHIBIT 2.

**Motion:** SEN. MACK COLE MOVED SB 224 DO PASS AS AMENDED - sb022401.ate.

**Discussion:** CHAIRMAN GROSFIELD reminded the committee they started executive action on this bill last time they met, and they adopted the amendments with a slight clerical amendment, so amendments 22401.ate were on the bill. He has an interest in making at least one additional amendment. He's not had a chance to talk to SEN. COLE about them and he's not really had a chance to get his amendment nailed down to just exactly what he wants to do. But it's a fairly simple amendment if he can just figure out the numbers he wants to use. It might be easier to work from the gray bill, although the official amendment will have to reference the official bill. He would like to amend the triggers that are in this bill. The first one is fairly straight forward and simple. On page 12 we are dealing with the triggers for definition of facility. One of the triggers (4) states that it would require a permanent work force greater than 500 workers. He would move that in our bill, we change that 500 workers to 90. He doesn't believe there's any project in this state that's going to have 500 workers. Why have a trigger that's not realistic in practice?

REP. HALEY BEAUDRY, House District 29, Butte, said they've gone up and down on these trying to find the right trigger level. He believed that for getting permits for power plants, one could run a power plant with a 250 mega watt back stop with 90 jobs. There's a little plant in Billings that runs with less than 40, and one in Colstrip which also runs with less than 40 people. They're attached to other plants and people are assigned to other duties, so permanent full-time jobs are only full-time jobs in that they are dedicated specifically to the generation of energy. For example, if you built a co-gen on site of a lumber mill or pulp plant, you wouldn't count all of the people who are working in the pulp plant who would be there, just the ones which were dedicated strictly to electric generation. He believed 500 was a quite large trigger.

SEN. KEATING stated BGI is the one that REP. BEAUDRY is talking about, and they are at about 57 megawatts and they have 35



employees. If they double that to 70, you're at 100 megawatts. We're talking about exempting a 250 megawatt unit. If it takes more than 90 people, then the consequences are that they have to go out and do all the economic surveys and certify the need of the product, etc. Is that what you're saying?

**CHAIRMAN GROSFIELD** commented, if they are at 57 with 30 employees and doubled it, he doesn't think doubling employees necessarily follows. His understanding is that the off-the-shelf version is environmentally benign and it's his understanding the work force would not be much more than double.

**SEN. KEATING** stated he failed to understand why **CHAIRMAN GROSFIELD** was trying to peg a threshold to the number of workers. We want more jobs in this state, and what you're saying is if somebody's going to offer more than 90 jobs on a project, they're going to have to jump through an EIS.

*{Tape: 1; Side: b; Approx. Time Count: 4:00}*

We're setting the threshold at 250 megawatts. He doesn't care if it takes a thousand people to do that, the megawatt level is the threshold because it determines the size of the project which usually determines the amount of pollution and that sort of thing. The number of people on the job certainly is inconsequential, except if you put in too low a threshold and then start putting perfectly good projects through a process that's completely unnecessary. If you want to go to 300 workers, nobody would object to that. That might be reasonable. The amount of 500 workers was picked for a reason.

**SEN. COLE** said at this late date he was rather surprised this suddenly showed up. The reason they picked the figure of 500 was for purposes of a trigger. He would hate to have a plant go to 475, because going higher meant jumping through all these additional hoops. He would have no problems dropping it to 300 but wanted the amount to be much higher than 90.

**SEN. TAYLOR** said the 150 figure had been arbitrarily thrown out. He concurred with **CHAIRMAN GROSFIELD** that the triggers were too high, and he couldn't support that high a trigger, but he certainly would balance that with **SEN. KEATING's** proposal. He could live with 150.

**CHAIRMAN GROSFIELD** stated that **SEN. KEATING** made a good argument. He asked **SEN. COLE** why we have a work force trigger in here at all? **SEN. COLE** answered that they were spending all this time on it, they were trying to get some triggers that would have a major affect, as this is a major facility siting. They went through various triggers. They felt if they went over 500 permanent employees, that would be triggering the Major Facility Siting Act. That was the reason that figure came up as they were looking at various things from Class 1 to streams. If you get a

major work force in there that could be another trigger. It's never been in there before. Probably industry won't agree with this now, but that was one of the figures put in and there was no objections to it at the time as he recalled, and it was part of their total plan. He hates to start messing with these things now.

**SEN. KEATING** said part of the reason for the person threshold was because quite possibly these facilities would be out in the coal area where it's sparsely populated and four or five hundred people coming into a small community might have an impact. A survey at that point would be justifiable to see what kinds of impacts there were and if the facility needed to come up front with some impact money for the schools or roads or something like that. That information would be good to have, and he thinks that's probably the reason for the people impact on the facility. He guessed 300 people might be a sufficient impact, but he thought less than 300 people wouldn't necessarily be that big an impact. They have four or five hundred at Colstrip, which is quite a huge facility. They're talking about smaller facilities.

**Substitute Motion:** **SEN. KEATING MOVED TO FURTHER AMEND HB 288.**

If the work force is greater than 300 workers, then it becomes a major facility.

**CHAIRMAN GROSFIELD** called on **REP. BEAUDRY** who was a member of this collaborative group and primarily represented industrial interests. **REP. BEAUDRY** believed 90 was an appropriate number because that was the permanent work force of a 240 megawatt facility. **SEN. COLE** told them that there was a reason for the 500 figure. **SEN. KEATING** told them they should go to 300, and he thinks they're grabbing a number out of the air. **SEN. KEATING** believes that it ought to be at least 500, if not 500, then 1,000. The essence of the reason to trigger a Major Facility Siting Act is to the impact on the community and the state as a result of its being built. That ought to be the basis that we decide upon, whether the triggering mechanism justifies a more thorough look at the project. It would appear to him that if 90 workers is what it takes to run a 240 megawatt facility and we're setting a trigger in here based on megawattage of 250, and that's been our principal trigger in the past, that is an appropriate number and one that we can at least justify.

**SEN. TAYLOR** said he concurred. He thinks of some of these small communities, 90 or 150 people moving in has an impact and he agrees again with **SEN. KEATING**, we need the jobs, but there has to be something tied to these triggers that will make sense instead of just picking numbers and throwing them around. He doesn't want to walk out of this committee looking like a fool because we picked triggers that are not reasonable or prudent.

**SEN. MAHLUM** guessed 300 sounded like a reasonable number everyone has kind of bought into and it seems like a reasonable substitute motion. He'd like to point out to the committee that these different triggers that are in here say "or", "or 300 workers", "or 230 kilowatts", so if one of them kicks in, then that's what limits it. He guessed he'd go with the 300 figure. For some reason, we need a whole lot more employees and he'd sure hate to turn them away to generate the 250 megawatts. Everyone has kind of accepted 300, let's go with that number.

**SEN. MAHLUM** said if they have 250 megawatts in here, and it takes 192 people to run and make a profit, that's what they're going to use. If it takes 301 to run it, that's what they're going to use. If it takes 92 people, that's what they're going to use because they want to make a profit. They don't want to put more people onto the payroll.

**CHAIRMAN GROSFIELD** stated he was satisfied for the time being in going with 300, but he would ask **SEN. COLE** that he look into it a little bit further and see if maybe it might be more realistic to adjust that number further one way or another. That seemed to be the main concern at the hearing. He'll work with 300 for the time being. Question is called.

**Vote:** THE MOTION TO AMEND HB 288 CARRIED WITH **SEN. TAYLOR** and **SEN. VAN VALKENBURG** voting no.

**SEN. VAN VALKENBURG** wanted the record to reflect he would have voted for the Chairman's amendment had the substitute motion not passed.

**CHAIRMAN GROSFIELD** asked for clarification of the 300 ton of particulate matter at 10 microns or less found on page 7 and again on page 11. His understanding is that number is a little bit different to start tinkering with because if you lower that number too much it has a net result of raising SO<sup>2</sup> emissions, and vice versa.

**REP. BEAUDRY** said one of the methods right now that's most common in burning coal to produce power is to burn coal in a fluidized bed boiler. So you mix rock, dirt, and limestone. The limestone is calcium carbonate. The calcium sucks up the sulphur as much as it can and forms a calcium carbonate with sulphur which is gypsum. Some of that escapes. If you want less and less of that to escape, you throw in more and more rock and keep the residence time higher. You increase the residence time so it stays in the boiler longer. As you try to reduce the sulphur, you add more and more limestone and in this system, you will increase the emissions out of your stack. That just stands to reason. Whatever it is, it's 99.9999% is captured, the little bit that goes through is 1 ten thousands of a per cent of something. So the bigger number you're keeping the per cent of, the bigger number goes through the stack. That's what you have to do.

**CHAIRMAN GROSFIELD** asked, if you increased it are you dealing with less sulphur? **REP. BEAUDRY** answered if you want to reduce the sulphur you can put in more rock. Eventually you get to the point where you have a furnace full of rock and it won't burn. That's part of designing the fluidized bed system. You reach the optimum point. Right now that optimum point is .8% sulphur.

**CHAIRMAN GROSFIELD** asked, in that trigger, can you describe what thought went into pegging it at 300, instead of 200, for example? **REP. BEAUDRY** answered first he understands that it says the emitting particulate matter (pm10), the other type of emission, besides out of the stacks point of emission, is the dust behind the pickup tires. Some of that is pm10, so the bigger the plant gets, the more vehicles you're driving around there, the more the wind blows. In eastern Montana, they have windy days. That's part of that total emissions we're talking about there, it's a calculation push, you can't measure it. Fusitive emissions are based on models, calculations, computer models. If you drive a pickup on a dusty road, the dust is comprised of such and such material, here's how much emissions you will have. The lower that number goes, the more restrictive we are on the size of the plant. He doesn't know the numbers off the top of his head, how to design a plant right here, because there are 10,000 variables, but there are some plants that could run well with 200 tons of pm10 a year and, in fact, he believes the plants in Montana that qualify as qualified facilities emit less than 200 tons per year.

**SEN. TAYLOR** asked how does the 300 tons particulate here compare with federal statutes? Is there a federal or a state limit on the emission? This says emitting 300 tons a year particulate matter at 10 microns or less. How does that stack up with federal standards? **REP. BEAUDRY** believed they could not compare that number to standards. There is the Title 5 Air Quality Permit that's federal and requires you to perform in a certain manner.

**SEN. TAYLOR** asked where the 300 tons wording came from? **SEN COLE** answered that in the collaborative committee over the last 2 years, they tried to look at different furnace types, different fuels, different mixes of fuels and tried to calculate where those numbers would be. It's difficult.

**SEN. TAYLOR** said he guessed he was going back to the Chairman's question again. You have 300 tons. Now he has a feel of how that was arrived at. What happens if it drops to 200 tons? The smaller plant, would that meet a 250 megawatt plant, with 300 employees. **REP. BEAUDRY** answered there isn't a 250 megawatt plant. There are hundreds of different combinations of fuels, of locations and furnaces that would produce 250 megawatts of electricity. So there isn't a 250 megawatt plant. Yes, you could design a 250 megawatt plant, you could come up with some

250 megawatt plants that would be less than 200 tons per year pm10.

**SEN. KEATING** commented, if you're dealing with Montana coal, it has a sulphur content that generates SO<sup>2</sup>, you're using rock to reduce the SO<sup>2</sup> compliance, so depending on the coal you're using, you may have to have 300 tons of parts per million in order to keep the SO<sup>2</sup> at state levels. **REP. BEAUDRY** replied 300 tons per year comes from a 250 megawatt power plant, using best available control technology (BACT), and burning Montana low sulphur coal as the fuel. Your best available control technology was the fluidized bed boiler. It was not a wet scrubber or something else, it was a fluidized bed boiler, which is the one we mix the limestone in with the fuel. We arrived at the number, you may embarrass some people by calling it scientific, but we arrived at the number. It is a calculated, derived number.

**SEN. TAYLOR** commented that in using Montana coal, which is good, and using this type of furnace, which he understands, in order to lower that number to 300 or lower, you'd have to go to a different system. Would that be much more expensive or just a different system, or do we have the technology? **REP. BEAUDRY** answered we don't have the technology. It may be available but it is not BACT. Now we hear of technology that's available that's proposed in Wyoming, but it isn't BACT yet, it's still an invention so far.

**SEN. COLE** stated there was a scientific figure used and the 300 figure is not an arbitrary figure in any way. **CHAIRMAN GROSFIELD** stated he wanted to have this discussion because he thinks it's important to discuss the triggers and be sure we're someplace in the ball park.

**SEN. VAN VALKENBURG** said he was always taught, as he was growing up in Montana, that if you took someone to a dance, you should dance with the person you went to the dance with. **SEN. COLE** and his pals decided to take Northern Plains and the EIC to this dance, but at some point apparently they didn't look quite as good to them as somebody else. **CHAIRMAN GROSFIELD** asked **SEN. VAN VALKENBURG** to be careful. He remembered an incident a couple of sessions ago where a certain Senator got into a hassle over a comment that is very close to what is being said at this time. **SEN. VAN VALKENBURG** said he was quite familiar with that, and he guessed that, to him, is one of the best reasons to vote against this bill. This started out as one thing and ended up as something entirely different.

**SEN. COLE** responded there are triggers that are not necessarily one side or the other, even in amending the bill. If you look on page 7, item 4, where we took out the 90% of sulphur and put in they have to employ the best available control pursuant, so on and so forth, this was definitely one of the items that made sure that we would not be burning dirty coal, because it's much easier

to take out 90% of something that is high in sulphur than it is to take out 90% of something that is very low in sulphur. There was everything that was possible in this bill. Sometimes maybe it's a good bill when neither side thinks it's a wonderful bill and he thinks we have a little of that in this bill right here today.

**SEN. BROOKE** commented that the time line always concerned her in these cases. She thinks if we examine the workings of any regulatory department here in our state, we see so much of what our state employees, our technicians have to go through due to those deadlines. She's always concerned with what she sees as a tightening up of those time frames. She understands that people looking for permitting need to have a pretty good idea of when they can expect an answer from the department. However, she's never real confident that with all the good work that we do, our departments are still very burdened with this kind of work. Also, we've seen an incredible turnover in some of these departments, so we have people who are just learning, kind of on the job training, and whether they can meet these time frames, that's one of her biggest concerns about this bill. Another concern she has is that we're going to be facing a lot of legislation in regard to restructuring of the utility industry, and it almost seems like with both those efforts, we're going from what she considers a well balanced regulated industry to something that really opens the door for unregulation. This has a lot of good parts in it and she does agree that the Siting Act needed to be revised. She's hesitant to go this far at this time.

**SEN. COLE** said the time lines were something that the department was involved in. The department does feel this is a bill they do support and they are going to have to deal with these time lines. They are time lines that will be beneficial for the state as a whole, and he doesn't have any problems with them. Part of the reason for these improvements on the bill, is because of the fact that we are restructuring. He's not going to have stranded power or stranded money sitting out there as time moves on.

**CHAIRMAN GROSFIELD** stated he agreed with **SEN. BROOKE** that the Major Facility Siting Act was in need of review and change. If you look at some of the language this bill repeals, it becomes very obvious that the Major Facility Siting Act was passed in an era and an atmosphere of fear. Fear that major utilities were going to come in to Montana, drain the Yellowstone River, and rape and pillage all of eastern Montana. As you read through some of these sections that we are repealing, it's amazing to him that anything ever got sited in Montana. Reading through this you get the distinct sense that the legislature in 1973 made a concerted effort to foreclose the possibility of major facility siting within the State of Montana. He believes this bill is a bill that is very much needed. **SEN. KEATING** is exactly right, we need to be sure that we are open to industry that will bring more

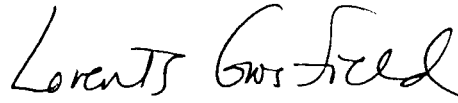
jobs to Montana. On the other hand, we, as the Natural Resources Committee, need to be sure that we address that responsibly, and he thinks we have here. Some people left the table over some issues during the process, that happens, and be that as it may, that may end up happening with the electrical industry restructuring bills that are going on, though he hopes it doesn't. It has happened in the past with regard to a lot of other issues we've dealt with. That does not relieve us of the responsibility or give us an excuse to just back away from the issue because everybody is not agreeing.

This legislature is not a consensus process. The legislature is a democratic process. If we take votes, and we took one today, 26/24 on reconsidering the motion, the adverse committee report, there's no consensus there and that's an issue that there will not be consensus on, but that doesn't mean that we back away from it and don't pay any attention to the issue. The bill didn't satisfy everybody but it has satisfied the regulators who are professional and competent in this area, and he has great confidence in the regulators of this state, be it air quality or water quality or whatever, and he thinks we have an excellent bill here and he certainly intends to support it wholeheartedly.

**Motion/Vote:** SEN. COLE MOVED SB 224 DO PASS AS AMENDED. THE MOTION CARRIED WITH SEN. VAN VALKENBURG and SEN. MCCARTHY voting no.

ADJOURNMENT

Adjournment: 4:40 p.m.

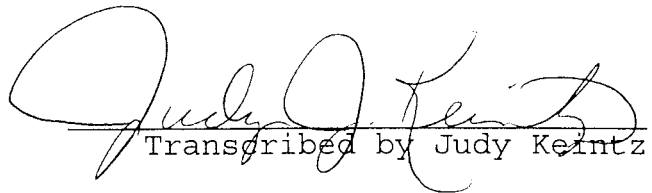


SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary

LG/GH



Transcribed by Judy Keintz