

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By VICE CHAIRMAN BILL CRISMORE on March 24, 1997,
at 3:15, in Room 405.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
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: SENATOR VIVIAN BROOKE

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 284, Posted 2/5/97
HB 395, Posted 3/3/97
HB 529, Posted 3/4/97
Executive Action: HB 529, HB 285, HB 383,
HB 437, HB 395, HB 156

{Tape: 1; Side: A; Approx. Time Count: 3:15}

HEARING ON HB 284

Sponsor: REPRESENTATIVE KARL OHS, HD #33, Harrison

Proponents: Mark Simonich, Director, Department of
Environmental Quality
Janet Zimmerman, Northern Plains Resources Council
& Concerned Citizens of Pony

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE KARL OHS, HD #33, Harrison, said the bill was introduced to deal with cleanup of contaminated sites and the fact that there is no funding for cleanup and/or rehabilitation of nonemergency sites. HB 284 would put a portion of fines and penalties paid by industry into a special revenue account for this purpose.

Currently, about \$700,000/year is collected. Under this bill, \$250,000 would go into this special revenue account and the remainder would go into the General Fund or the special orphan share account if that bill should pass.

He thought it was a good idea to take care of potential emergencies before they occur.

Proponents' Testimony:

Mark Simonich, Director, Department of Environmental Quality (DEQ) said the bill was presented at the request of his department. Purpose of the bill is to create another source of funding for cleanup activities.

Often there is no viable, responsible party that can be directed to cleanup a site. This happened at a custom milling site in Pony. Under the Good Samaritan provisions of a bill passed by a previous session, DEQ begged money from industry. Groundwater near some private residences was also impacted and DEQ was able to obtain some funding from the Governor's Emergency Contingency Account.

A problem also occurred at Hobson where a seep occurred from the new sewage lagoon. No emergency funding was available to assist the City of Hobson.

DEQ has decided to attempt to create this account from penalties various statutes allow, rather than from taxes.

If this bill were passed and SB 377 were passed, anything over the \$250,000 in penalties would go into the Orphan Share Account.

Mr. Simonich told the committee he knew it was an earmarking bill, and had not planned to schedule it when CHAIRMAN GROSFIELD was absent. The bill does not create a statutory appropriation and the department will be required to request spending authority from the Appropriations Committee. None of the money could be used to fund staff within the department; it could only be used for on-the-ground activities, which may include education. One example would be educating small miners who often mishandle cyanide.

Janet Zimmerman, Northern Plains Resources Council and the Concerned Citizens of Pony (CCP), spoke in support of the bill.

The CCP incorporated to become involved in the permitting process and to object to the location of a cyanide processing mill directly above their town and their water supply. Their worst fears were realized when the facility leaked. The site has been abandoned and the responsible parties have disappeared. The state has spent in excess of \$100,000 for cleanup. She objected to what she perceived as an ill-conceived relationship between the mining industry and the state regulatory agency.

VICE CHAIRMAN CRISMORE asked **Ms. Zimmerman** whether she spoke as a proponent or an opponent. **Ms. Zimmerman** stated that she was a proponent and she would continue.

She challenged the committee to be accountable to the citizens of Pony and charged the state was negligent in allowing the milling facility to be constructed. She urged support for HB 284 to provide funding for the much-needed reclamation of the Pony mill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 3:30}

SENATOR MIKE TAYLOR asked if fees would be included in the \$250,000 mentioned by **Mr. Simonich**. **Mr. Simonich** said the fund would come from fines and penalties, but no fees.

SENATOR TAYLOR asked how DEQ could determine how much money it would receive every year. **Mr. Simonich** said they couldn't, but could only make an estimate based on what had been collected for the last several years. Litigation often takes a period of years.

SENATOR TAYLOR asked how SB 293 (the self-audit bill) would affect this bill. **Mr. Simonich** didn't think it would have much impact on the penalties his department expected.

SENATOR BEA MCCARTHY asked how communities would apply for this funding. **Mr. Simonich** said that was not included in the bill. **SENATOR MCCARTHY** said she had been thinking about the East Fork. **Mr. Simonich** said the East Fork would be a good example where there is the threat of severe environmental damage. **SENATOR MCCARTHY** said it was her impression that this would not be the type of money that could be used for the Early Warning System. **Mr. Simonich** said he thought she was correct.

SENATOR DALE MAHLUM asked which fine had generated \$1 million in FY 1997. **Mr. Simonich** said it was the state vs. the Landusky-Zortman gold mine. The suit took three years to resolve.

SENATOR MACK COLE asked what type of priorities or controls were used when considering these violations. **Mr. Simonich** asked

whether he meant priorities in terms of enforcement actions or in terms of how the funds would be used. **SENATOR COLE** said he had meant how the funds would be used. **Mr. Simonich** said to a certain degree, work is funded on a first-come, first-served basis. Issues are dealt with as they come up.

SENATOR COLE said he wanted to be sure actions were not taken on an emotional basis and funds reserved for really serious problems. **Mr. Simonich** appreciated that concern, but the bill mandates using funds from a responsible party before the funds accruing from this bill.

SENATOR MCCARTHY asked if legal fees would be paid from these funds. **Mr. Simonich** said DEQ had intended to use these monies for on-the-ground or actual project work. It was not intended to pay staff costs of any kind - legal or otherwise.

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

SENATOR FRED VAN VALKENBURG asked if the requirement that DEQ must seek spending authority before using these funds would preclude the budget amendment process. **Mr. Simonich** said **SENATOR VAN VALKENBURG** probably understood that process better than he did. He thought DEQ had already submitted a request for the \$250,000 as part of the EPP process. The Appropriations Subcommittee chose not to fund that until HB 284 was settled. If the bill should pass, DEQ would need to request an amendment to HB 2 to fund it. If it were denied, he thought it would be impossible to obtain a budget amendment. The committee and the legislature would always remain in control through this process.

SENATOR VAN VALKENBURG said lines 2-4 on page 3 indicated that anything in excess of \$250,000 instead of going to the General Fund would go into the Orphan Share Account. **Mr. Simonich** said he was correct. Section 1 of the bill creates the environmental rehabilitation account, puts \$250,000/year into that account and the remainder goes into the General Fund. Section 2 changes that slightly - it creates the environmental rehabilitation account, puts \$250,000/year into it and puts the remainder into the Orphan Share Account. Language at the end of the bill states that if SB 377 passes, Section 2 applies; if SB 377 does not pass, Section 1 applies.

SENATOR VAN VALKENBURG said the legislature has been told the use of fines and penalties encourages state agencies to harass industry or the regulated entities to generate money. The legislature has been told it is better to take the money collected from fines and penalties and direct it to the General Fund so there is no incentive to use enforcement powers to pad agency budgets. He asked why **Mr. Simonich** thought that would not result from this bill. **Mr. Simonich** recognized that issue exists, but DEQ has attempted to build some protection into the bill. Currently there are two sources for cleanup funding - the Resource Indemnity Trust (RIT) and the General Fund. There are

massive requests from both funds. He believed violators' money should be used for cleanup and rehabilitation projects.

{Tape: 1; Side: A; Approx. Time Count: 3:50.}

SENATOR THOMAS KEATING asked if the bill were intended to fund rehabilitation of mining disturbances. **Mr. Simonich** said it would be for rehabilitation or cleanup as well as preventative measures, including an educational component. The bill was not focused directly at mining. It was also intended to ease the pressure on the RIT, which is funded by only a few industries in the state.

SENATOR KEATING pointed out that were half a dozen other accounts dealing with the environment, with various sources of revenue, and he thought they all sounded similar. These projects are planned in advance. **Mr. Simonich** said sometimes they were planned in advance and in other cases, emergencies occurred. Often there are no funds to deal with emergencies.

SENATOR KEATING said most of the sources of revenue he found in the bill are monies accruing to the General Fund at this time. The proposal requests a statutory appropriation of that money before it gets to the General Fund. **Mr. Simonich** said he wouldn't argue with that contention, but felt this bill would let the public see that violators were being charged to clean up problems they had caused.

SENATOR KEATING said he believed **Mr. Simonich** had stated that DEQ would have to request spending authority. If that money were not appropriated, it would stay in this special account and not be available for General Fund purposes. **Mr. Simonich** said that was his understanding, but if the legislature chose not to grant the appropriation it might be because they had other uses in mind for that money. The legislature would be able to make those choices.

VICE CHAIRMAN CRISMORE asked if this fund would be available for a project like Pony where the problem occurred in the past. **Mr. Simonich** said yes, Pony is one of the things that caused the bill to be drafted.

SENATOR TAYLOR requested clarification of the guidelines to be used in dispersing these monies. **Mr. Simonich** said he believed both Sections 1 and 2 laid out the statutory methods to be used.

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

Closing by Sponsor:

REPRESENTATIVE OHS thanked the committee for a good meeting.

HEARING ON HB 395

Sponsor: REPRESENTATIVE DUANE GRIMES, HD #39, Clancy

Proponents: Angela Janacaro, Montana Mining Association

Opponents: Janet Zimmerman, Northern Plains Resources
Council & Concerned Citizens of Pony
Russell Hill, Montana Trial Lawyers Association
Jim Jensen, Montana Environmental Information
Center

Opening Statement by Sponsor:

REPRESENTATIVE DUANE GRIMES, HD #39, Clancy, presented HB 395 which puts the venue for any actions concerning mine reclamation into the general venue statutes. He felt these actions should be in the county where the issue arose. HB 395 will allow those actions to be heard in places where the miners work, particularly where the mine is located because the mine can't be moved to Helena.

The bill would ensure mining reclamation actions were treated like all other actions.

Proponents' Testimony:

Angela Janacaro, Montana Mining Association, supported the bill because it would make civil actions uniform in Montana statutes.

Opponents' Testimony:

Janet Zimmerman, Northern Plains Resources Council & Concerned Citizens of Pony, objected to the bill because of her personal experience when the state sued the Chicago Mining Corporation to force them to apply for an operating permit. This lawsuit was heard in the place where the operation was sited, a community that was a great supporter of mining. She thought it was a bad idea to have a hearing in a district court where the judge was elected by the people who live there. She felt these hearings should be held in Lewis & Clark County where the expertise is located.

Russell Hill, Montana Trial Lawyers Association, said he spent a great deal of time fighting SB 314 that also had to do with venue. He felt this bill was similar. He distributed a map he had prepared for SB 314 (EXHIBIT #1). The map depicts geographical areas of the state where the county seat is closer to the adjoining county than its own county.

Page 2, line 6, states "Legal actions...must be brought in the district court of the county in which the alleged violation

occurred...." He pointed out that there are instances where a violation could occur in more than one county.

The bill further states, "...if mutually agreed to by parties to the action...." If both parties are mutually agreed to try the case in a different county, either a closer county seat or an urban county seat where lawyers and experts are more likely to be located, it appeared to make no sense to limit these cases to the 1st Judicial District.

Jim Jensen, Executive Director, Montana Environmental Information Center, opposed the bill because it was "a not very thinly veiled attempt to make it more expensive for citizens to go to court." The bill will require state agencies, as well as citizens, to travel.

Questions From Committee Members and Responses:

SENATOR MACK COLE questioned **Ms. Zimmerman's** statement that a local judge wouldn't represent the people, he would only represent mines. **Ms. Zimmerman** said she had stumbled when she made that statement, and she appreciated being given the opportunity to rephrase it. There is a proper time for judges to be elected by the people, but she had seen first-hand what happened when a judge was elected by a majority of people who were employed in the mining industry.

SENATOR COLE commented that he had thought the statement rather derogatory to judges. **Ms. Zimmerman** said if **SENATOR COLE** could have witnessed the Chicago Mining Company case he would have agreed that the judge was biased.

SENATOR COLE said the statements just heard reflected the views of one person.

{Tape: 1; Side: B; Approx. Time Count: 4:25}

Closing by Sponsor:

REPRESENTATIVE GRIMES thanked the committee for a good hearing. In the House it was brought out that the fiscal note addressed the fact that a few people would be traveling as a result of this bill. However, many more people are presently required to travel to Helena from local mines. He thought current law did present a problem for ordinary citizens.

HEARING ON HB 529

Sponsor: **REPRESENTATIVE MATT DENNY, HD #63, Missoula**

Proponents: **Curt Chisholm, Deputy Director, Department of Environmental Quality**

Jim Mockler, Executive Director, Montana Coal
Council

Opponents: None

Opening Statement by Sponsor: REPRESENTATIVE MATT DENNY, HD #63, Missoula, said HB 529 was a cleanup bill. Because of their complexity, numerous small items were omitted from SB 234 and SB 345 passed by the last session. Representatives of the Department of Environmental Quality (DEQ) were present to explain these items.

Proponents' Testimony:

Curt Chisholm, Deputy Director, DEQ, said the executive reorganization bills made some inadvertent mistakes in the two bills mentioned by REPRESENTATIVE CHISHOLM. Senate Bill 14, already passed by both houses of this session, took care of the dissolution of the old Department of Health and creation of the new DEQ and the new Department of Public Health & Human Services. HB 529 is intended to cleanup some mistakes in the dissolution of the old Land Board and the old Department of Natural Resources and the creation of DEQ.

{Tape: 1; Side: B; Approx. Time Count: 4:20; Comments: Mr. Chisholm explained the technical changes in detail. For exact information, the tape should be consulted.}

Section 1 deals with inconsistencies of time frames for permits and environmental impact statements mandated by the former agencies.

Section 2 amends the Major Facility Siting Act.

Section 3 clarifies the rule-making authority in the Strip Mine Act.

Section 4 & 5 correct similar errors in the Hard Rock & Open Cut Act.

Jim Mockler, Executive Director, Montana Coal Council, said the bill does exactly what Mr. Chisholm had explained and he supported those changes.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

{Tape: 1; Side: B; Approx. Time Count: 4:25}

Closing by Sponsor:

REPRESENTATIVE DENNY said he had been surprised that the House hearing had been similar to this one. He had asked the Montana

Environmental Information Center to review it because he knew they had some concerns with the original bills. They reviewed this bill and had no problems with it. He requested committee support.

EXECUTIVE ACTION ON HB 529

Motion/Vote: SENATOR BEA MCCARTHY moved HB 529 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

Senator Jenkins was named to carry the bill.

EXECUTIVE ACTION ON HB 285

Amendments: hb028501.alm

Motion: SENATOR TAYLOR moved amendment hb028501.alm (EXHIBIT 2). This is the amendments Larry Mitchell had revised from REP. SLITER'S amendments, hb028502.agp, (EXHIBIT 3).

Discussion: SENATOR TAYLOR said the Flathead Basin Commission presently consists of 21 members; however, the agricultural community is not represented. The people of this area feel agriculturalists should be represented. Rather than expand the commission to 23, this amendment would remove the licensee (the Tribes already have representation because they are involved with the dam) and the Bureau of Reclamation (BOR) representative. The BOR people never attend meetings. Lake and Flathead County Commissioners said a quorum is always necessary at their meetings and it has been difficult to meet that quorum at a number of meetings.

SENATOR VAN VALKENBURG asked SENATOR TAYLOR to explain his statement about the Tribes. SENATOR TAYLOR said it was his understanding that because the Tribe is already involved on the dam, it would have two members. Under this amendment they would retain one member.

SENATOR VAN VALKENBURG asked where the power company was mentioned, as he thought they held the license. SENATOR TAYLOR said it was his understanding the Power Company was on the commission, but he didn't know who all the members were.

SENATOR MCCARTHY said the Montana Power representative was Bob O'Leary from Butte.

SENATOR TAYLOR said REPRESENTATIVE PAUL SLITER had prepared the amendment and he thought the Tribe would still have a representative on the board.

SENATOR CRISMORE asked Cary Hegreberg to explain. Mr. Hegreberg said his understanding was that the federal license was being transferred to the Tribes in the near future but it wasn't a sure

thing. The Tribes have a standing representative on the Flathead Basin Commission.

SENATOR MACK COLE asked who was the present licensee for the Flathead Project under the Federal Power Act. **SENATOR MCCARTHY** repeated "Bob O'Leary." **Mr. Hegreberg** said it was his understanding that if the license transferred to the Tribes the Montana Power would no longer have a representative on the commission.

SENATOR MAHLUM asked if the representative from British Columbia were active on the commission. **SENATOR TAYLOR** said he didn't know. **Mr. Hegreberg** said a number of years ago, a coal mine planned in British Columbia was expected to impact the Flathead drainage and the Flathead Basin Commission was formed with a representative from the provincial government.

SENATOR TAYLOR said he had talked to both Lake and Flathead counties and they felt this was the best solution to the problem. The Governor did not object.

SENATOR MCCARTHY asked if **SENATOR TAYLOR** would consider segregating amendment 5 from his proposal to protect the lease holder on the dam. **SENATOR TAYLOR** said he wasn't sure.

SENATOR TOM KEATING asked if there were a need for this commission. **SENATOR TAYLOR** said he knew it was a group of concerned individuals and thought it was needed.

SENATOR VAN VALKENBURG said the Governor appoints seven members including his directors of the Department of Natural Resources, Department of Environmental Quality and Fish, Wildlife & Parks. That gives the Governor up to 10 people. He asked if **SENATOR TAYLOR** thought the Governor could get by with nine.

Motion: **SENATOR VAN VALKENBURG** moved to **AMEND THE AMENDMENT** so that on page 1, line 17, seven would be changed to six and **SENATOR TAYLOR'S** amendments 4 and 5 would be deleted so that the holder of the license for the Flathead Project is retained and the number on the commission remains at 21 and the Governor's appointees are reduced from 10 to 9. **(EXHIBIT #3)**

Vote: The substitute motion **CARRIED UNANIMOUSLY.**

Motion: **SENATOR TAYLOR** moved the bill **BE CONCURRED IN AS AMENDED.**

Vote: **SENATOR KEATING** voted **NO**; the remainder of the committee voted **AYE** and the motion **CARRIED 9 to 1.**

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

EXECUTIVE ACTION ON HB 383

Motion: SENATOR MAHLUM moved HB 383 BE CONCURRED IN.

Discussion:

Larry Mitchell explained the statute as it was written now, the DEQ doesn't have discretion when a penalty is discovered in the case of mining violations. This bill would provide the Department with the discretion to impose those civil penalties for mining violations.

John Arrigo, DEQ, said penalties from the Metal Mine Reclamation Act and the Open Cut Mining Act go into the Metal Mine Reclamation Account and the Open Cut Mine Reclamation Account.

SENATOR VAN VALKENBURG asked where the penalty from the Zortman mine had gone. Mr. Arrigo said that penalty was assessed under the Mt. Water Quality Act and the penalty went into the General Fund.

Vote: The motion that HB 383 BE CONCURRED IN CARRIED UNANIMOUSLY.

CHAIRMAN LORENTS GROSFIELD assumed the chair.

EXECUTIVE ACTION ON HB 437

Motion: SENATOR KEATING moved HB 437 BE CONCURRED IN.

Discussion: SENATOR TAYLOR asked if he were correct that a 3-acre mine could be expanded to 5 acres under this bill. SENATOR COLE said he thought that was right.

Jan Sensibaugh, DEQ, said that came from a small miner's exclusion with a cyanide operation. Five acres of disturbed land are allowed in addition to their fully bonded cyanide operation.

Vote: The motion CARRIED UNANIMOUSLY.

SENATOR LYNCH was assigned to carry the bill. SENATOR GROSFIELD said he would carry HB 383. SENATOR TAYLOR offered to carry HB 285.

EXECUTIVE ACTION ON HB 156

Motion: SENATOR CRISMORE moved to take HB 156 FROM THE TABLE.

Discussion: CHAIRMAN GROSFIELD commented that the bill had been tabled partly because Section 2 had a coordination instruction with LC 175 that is on the table in Senate Finance and Claims. This bill was unnecessary if that bill had come off the table, but perhaps this bill should be revisited. He supported the motion.

SENATOR VAN VALKENBURG said the bill was tabled because the committee had been told if this additional money were awarded it would be spent to pay filing fees for late water claims and because it was intended to mothball the Swan River Boot Camp on the assumption that it would be shut down. He thought the majority of the committee was not interested in either of those purposes.

SENATOR CRISMORE said he thought the late filings would have to be taken care of and the state had an obligation to take care of Swan River if it is turned back to State Lands.

SENATOR McCARTHY said she wasn't in the last session, but had been told legislation had been introduced that would take care of the late filing fees but it had not. She asked why they had decided not to take care of the late filing fees.

SENATOR GROSFIELD said he carried SB 234 in the last session. It was the reorganization of the natural resource agencies. The bill eliminated the Department of State Lands (DSL) and DSL was the entity filing the late claims. Now DSL is a division of the Department of Natural Resources (DNRC). There has been discussion about whether or not agencies should have to pay the \$150 fee. People in the private sector objected because they had to pay the fee and it was left in place.

SENATOR KEATING said the late fees were old business and Swan River was contingency fees - the only time money would be spent would be if it were abandoned by the Department of Corrections. There wasn't a lot of money involved.

Vote: **SENATOR VAN VALKENBURG** voted NO; the remainder of the committee voted AYE and the MOTION CARRIED.

Motion: **SENATOR CRISMORE** moved HB 156 BE CONCURRED IN.

SENATOR VAN VALKENBURG commented that he wanted to be sure the committee understood there was nothing in the bill that would limit the department to spending the money for the purposes that were discussed.

SENATOR McCARTHY asked how many late claims there were, and asked if the committee would like to limit the bill to the late claims already in hand.

SENATOR COLE recommended the bill pass.

Vote: **SENATOR VAN VALKENBURG** voted NO; the remainder of the committee voted AYE and the MOTION CARRIED.

SENATOR KEATING offered to carry HB 156.

EXECUTIVE ACTION ON HB 395

Amendments: hb039501.alm

Motion: SENATOR CRISMORE moved HB 395 BE CONCURRED IN.

Motion: SENATOR VAN VALKENBURG moved to amend the bill as shown in EXHIBIT #4.

Discussion: SENATOR VAN VALKENBURG said the amendment would allow an action to be heard in any venue the affected parties could agree upon, if they preferred a venue other than the site of the violation.

SENATOR McCARTHY asked if a change of venue weren't already available. SENATOR VAN VALKENBURG said no; they were quite rare.

SENATOR COLE said he wouldn't support the amendment.

SENATOR TAYLOR supported the amendment.

Vote: SENATOR COLE voted NO; the remainder of the committee voted AYE and the MOTION CARRIED.

MOTION/VOTE: SENATOR CRISMORE moved the bill BE CONCURRED IN AS AMENDED. SENATOR VAN VALKENBURG voted NO; the remainder of the committee voted AYE and the MOTION CARRIED.

SENATOR McCARTHY agreed to carry HB 395.

ADJOURNMENT

Adjournment: 5:15 p.m.



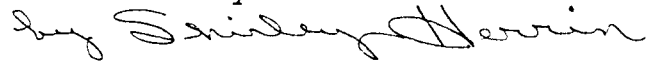
SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary



Transcribed by: SERENA ANDREW



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