

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

FINANCE & CLAIMS SUBCOMMITTEE ON SB 267

Call to Order: By **CHAIRMAN TOM BECK**, on March 6, 1997, at
10:09 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck, Chairman (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Dale Mahlum (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 267, 3/12/97
Executive Action: None

Taryn Purdy, Legislative Fiscal Division (LFD) Currently RIT proceeds go in several directions when the tax is collected, to the trust and various other accounts, the ground water account, grants and loans accounts and various operations of state government. This bill puts all those proceeds into the RIT trust. This is a constitutional trust which must remain inviolable until it reaches \$100 million. Current statute requires the legislature to spend the proceeds of the tax once the trust reaches \$100 million which it is expected to do in the 2001 biennium. The interest from the trust is statutorily appropriated for a number of uses. Some of the interest comes off the top for various purposes including the environmental contingency account and oil and gas and water storage. Statute provides guidelines for use of the interest, \$5 million of it to be used for grants and loans, including \$3 million for reclamation and development and \$2 million for renewable resources. The interest that remains is split statutorily to various accounts, the Department of Natural Resources and Conservation (DNRC), the Department of Environmental Quality (DEQ), hazardous waste, CERCLA, the environmental quality protection fund, the Natural Resource Information System (NRIS) in the State Library, Legislative Services Division, the

Environmental Policy Office and water courts. This bill will change the allocation of the proceeds to focus more upon remediation activities for environmental damage, damages done primarily by mineral mining and the like. A lot of the money would come off the top for oil and gas, particularly orphaned wells. Groundwater, which now gets a portion of the proceeds, would get a portion of the interest and the rest would go into an account from which the legislature would determine, within statutory guidelines, which programs would get the remainder of the interest.

SEN. CHRIS CHRISTIAENS Of the proceeds, how much is going to go for operations of state government?

CHAIRMAN BECK This is **SEN. KEATING'S** proposal. There will be other proposals coming before us. Our object is to boil this down into something that will probably change and restructure a lot of things.

SEN. TOM KEATING (EXHIBIT #1) handed out and explained.

CHAIRMAN BECK The bottom line shows that the trust will be \$97 million by 1999. The interest earned is \$7,887,000 for 1998, and \$7,992,000 for 1999, for a total of \$15 million over the biennium. That's the interest income we are using for all these different programs, right? **SEN. TOM KEATING** The RIGWAT tax is 45.9% and goes to the trust and 54.1% is divided between renewal resource reclamation and groundwater assessment. So the tax is being spent before it gets into the trust.

CHAIRMAN BECK I want to make sure everybody understands that this money is being diverted before going into the RIT.

SEN. ARNIE MOHL What is the total tax in dollars? **SEN. KEATING** The tax total is under revenues, approximately \$3 million for the biennium.

CHAIRMAN BECK The \$15 million is interest income and there will be \$3 million more diverted from the RIT that is also spendable money.

SEN. KEATING The chart shows 45.9% going into the trust. Of the RIGWAT tax, 10% is in the renewable resource account, 30% in the reclamation and development account and 14.1% in groundwater assessment. 15% of the metalliferous mines tax flows to the RIT, the other 85% goes to the counties. Of the metalliferous mines 8.5% goes to the abandoned mine fund at DEQ, 2.22% goes to groundwater, and 4.8% goes to the reclamation and development account. More than half is being diverted away from the fund.

CHAIRMAN BECK The \$3 million is divided up in those percentages.

SEN. KEATING explained the percentages to the subcommittee.

CHAIRMAN BECK I want to make sure we all understand that this money is diverted around the trust and then the balance goes into the trust.

SEN. KEATING The bill would allow 100% of the tax to flow into the trust. The tax would not be used by the renewable resource account, reclamation and development account, groundwater assessment, or the abandoned mine fund.

{Tape: 1; Side: A; Approx. Time Count: 10:25; Comments: None.}

SEN. KEATING The DNRC handout (**EXHIBIT #2**) corresponds with the funds in (**EXHIBIT #1**). (**EXHIBIT #2**) explained. DEQ's handout (**EXHIBIT #3**) explained.

SEN. MOHL Is the \$983,000 cost recovery account from permits or is this private funding over and above permits? **Curt Chisholm, DEQ** This is not from permits. The responsible party for the state superfund site pays DEQ for the administration and clean up of the site. The money on this sheet is spending authority for the responsible parties. They are not paying for a permit, they are paying us to manage the site and get it cleaned up.

SEN. MOHL Where does the permit money go? **Mr. Chisholm** Permit fees are state special revenue and are not reflected in any of these schedules. Permit fees pay for DEQ's on-going operations in a number of areas, primarily the permitting division.

SEN. KEATING The only RIT money that DEQ uses is for hazardous waste, CERCLA and reclamation and development. Part of SB 267 puts all of the money into a single account rather than having four different accounts. The bill also repeals the reclamation and development account. The legislature can appropriate out of one account, then they will know what the total is and how it is being spent. **SEN. KEATING** explains the remainder of (**EXHIBIT #3**) (**EXHIBIT #4**) explains the sanitation course at MSU-Northern. This is a statutory appropriation from RIT for \$480,000 per biennium, I don't believe this course is a proper expenditure of RIT funds, they funds are to be used for reclamation and reformation. There is an expenditure sheet which tells you how much and for what they have been spending the funds. (**EXHIBIT #5**) shows that 12 sanitarians graduated in 1995 and 15 in 1996, we have spent \$240,000.00 for those graduates. I suggest this become a university expenditure or budgeted expenditure and not an RIT expenditure. (**EXHIBIT #6**) is an explanation of what NRIS does.

CHAIRMAN BECK Are you recommending removal of the funding for these two items? **SEN. KEATING** No, I'm saying MSU-Northern should not have a statutory appropriation, not that MSU-Northern shouldn't be considered for an appropriation. I don't think it's appropriate to have a statutory appropriation for MSU-Northern.

CHAIRMAN BECK Is that the only one that is statutorily appropriated? **SEN. KEATING** No, the environmental contingency account and the oil and gas mitigation account is statutorily appropriated.

CHAIRMAN BECK The grant program has first priority for \$600,000, right? **SEN. KEATING** Yes, in HB 7.

CHAIRMAN BECK In all reality they are statutorily appropriated the \$600,000. **SEN. KEATING** No, they have to go through the grant process to get the \$600,000. The grant process is subject to appropriation. SB 267 eliminates the process that is conducted under HB 7.

{Tape: 1; Side: B; Approx. Time: 10:54; Comments: None}

CHAIRMAN BECK Who oversees what jobs get done? **SEN. KEATING** DEQ.

SEN. MOHL What is an orphaned well? **SEN. KEATING** The orphaned wells that we are talking about are those that were drilled in the 1930 and 40's and the responsible party is no longer living. Some of those wells were plugged, but the plugging mechanism has failed and in order to protect the groundwater, you have to re-plug those wells.

SEN. MOHL When you say wells you are talking about mines, how do they correlate? **SEN. KEATING** They are two different things, orphaned oil and gas wells and orphan shares. There might be 4 companies that were responsible for a particular disturbance, three of them are still in existence and have enough money to make the contribution of their share, and the fourth one is gone. That share might be 10% or 20%, or 30% of the cost of the cleanup, that's called an orphaned share.

SEN. CHRISTIAENS Does all of this come out of the \$600,000?

SEN. KEATING No, the bill is proposing arbitrary numbers, \$900,000 per year in the mine mitigation account, \$600,000 for oil and gas and \$900,000 for hard rock mining. This is about how much money they can spend plugging wells in one year.

SEN. CHRISTIAENS We found that they have not been able to get those projects off the ground because of the short window of opportunity to do it in the summer months. Do you believe they will be able to spend \$600,000 in 1 year? **SEN. KEATING** Currently, they have to wait for the legislative process under HB 7 to know that they have the money, it isn't appropriated until April. If they know they have the money coming in January, they can be planning ahead so they can get the job done when good weather arrives.

CHAIRMAN BECK I can't believe that, they get the first \$600,000.

SEN. KEATING The \$600,000 is not for office staff, it goes to the contractors that do the job and they are not going to enter

into contracts until they know they have the money. You wouldn't let any other department in state government pre-spend an appropriation.

CHAIRMAN BECK I don't think that's what we are saying here.

SEN. CHRISTIAENS Under the scenario you are presenting with this bill, will more of the orphaned wells get cleaned up, because of the change of the flow? **SEN. KEATING** Yes, I believe they could spend that much in a year, if they had it up front.

SEN. CHRISTIAENS We just dealt with HB 7 and grants. There were a few projects regarding Butte basements, why isn't there an identifiable party that is responsible there? **SEN. KEATING** That's a good question, I don't know the answer. **John Tubbs, DNRC** I'm not sure.

SEN. KEATING There is one thing I would like the subcommittee to keep in mind when considering the proposal. The tax does not come off when the fund reaches \$100 million, I have a bill in Senate Taxation that asks that the tax be sunset when the fund reaches \$100 million. Under current conditions, it would reach \$100 million in the year 2000 or 2001 depending on the price of oil. Oil and gas pays 65% of this fund, coal pays 22% and hard rock mining and others pay the balance. If the legislature allows the sunset there will be a detachment of about \$2-3 million going from groundwater and into these accounts. To avoid a hole in the funding process, I'm submitting SB 267 for the legislature to consider spending the money appropriately and prioritizing the allocation of these funds. If the legislature doesn't allow the sunset, you will have additional tax money that you can use. The fund is for reclamation. Please keep in mind the source of the revenue that you are appropriating and think about who is paying for what and what the money is being spent for.

CHAIRMAN BECK The bill takes effect January 1998? **SEN. KEATING** The effective date is July 1, 1997 but that can be amended to July 1, 1999, which is the beginning of the next biennium. This would give the legislature this biennium to look at rearranging the funding and be able to budget for it in the next biennium.

CHAIRMAN BECK In the event that we diverted all this back into the trust, we could appropriate the money back out of the trust. That could be escalated forward or maybe it could even be taken back. **SEN. KEATING** No, if you put the effective date as July 1 1999, 100% of the tax would start going into the fund in 1999. So the fund would still reach \$100 million in 2000.

SEN. CHRISTIAENS If we don't do anything, what will happen when it gets to \$100 million? **SEN. KEATING** Nothing happens unless the legislature passes legislation to reappropriate the 1/2 of 1%. There is nothing automatic, there is no sunset and no specific

use. Statute is void of direction when the fund reaches \$100 million.

{Tape: 1; Side: B; Approx. Time Count: 11:13; Comments: None.}

CHAIRMAN BECK Currently, there is so much designated to the trust and when that reaches \$100 million the money is either a spendable commodity to the State of Montana, can be withdrawn or the tax can be taken off. **Ms. Purdy** The constitution requires that anything below \$100 million can be spent. It doesn't require a tax and it doesn't require anything be done with the proceeds. You could remove the tax now, if you wanted to.

SEN. CHRISTIAENS If the tax is repealed before it reaches \$100 million, is it your opinion that the \$100 million would be available and could take care of any litigation or remediation in the future? **SEN. KEATING** The \$100 million is an inviolable trust and can't be touched. The only thing that can be touched is the interest income which could be as high as \$20 million per biennium. (EXHIBIT #7) handed out.

Ray Beck, DNRC We've also been working on the RIT issue, the agencies were moved under RIT in the 1980's because there was revenue in the RIT account and the General Fund was short. Over the years the legislature has been concerned with this but they weren't willing to cut program funding or move them to the General Fund. That is why we are in the situation we are today. About three weeks ago, **REP. KNOX** called a meeting to look at orphan share money and the RIT. Under the current situation there is just no excess money and, in fact, there is a deficit that has to be addressed at some point in the future through the appropriations process. We were directed to come up with a proposal of how some of the funding that is now used for agencies could be freed up to be used for orphan share funding. We decided to look at the whole issue and see if we could come up with a solution that the legislature would look upon favorably. We met with the Governor and key legislators to see if they are interested in it. We ran the proposal by the different agencies being funded from RIT. Briefly, all the agency funding will be removed out of RIT into the General Fund which will create some General Fund problems. We have come up with ways we can offset the majority of the General Fund deficit.

John Tubbs, DNRC (EXHIBIT #8) handed out and explained.

SEN. CHRISTIAENS Under other revenues, those are all special revenues now and you would be changing those special revenues to General Fund? **Mr. Tubbs** Yes, that is the part the Budget Office is not comfortable with.

{Tape: 2; Side: A; Approx. Time Count: 11:39; Comments: None.}

Jane Hamman, Office of Budget and Program Planning (OBPP) I want to emphasize that we are supporting this concept and think

it is a positive step. It would be contingent on LC 175 which needs significant work. You may need to re-work it as a companion bill and then make each one contingent on the other.

CHAIRMAN BECK I think we have all the tools to make this work. Was any of the \$100 million in 2001 accounted for in offsetting the General Fund? **Mr. Tubbs** No.

CHAIRMAN BECK is there a possibility of that happening? **Mr. Tubbs** That is something we should discuss. There are some metal mines taxes that could be used to offset the General Fund. **SEN. KEATING** Step 2 allocates \$600,000 a year to the General Fund from RIGWAT. The presumption is that the tax would continue into 2000 and 2001, that should answer your question.

Paige Dringman I have been working on the orphan share bill which creates a different liability scheme that would allocate the responsibility for sitings on the basis of fault, knowledge and other factors. It would be a situation where a mining company operated a site in the 1930's and that mining company is defunct, out of business and can't be located but they were the principal cause of the problem. There has to be money to clean that problem up. The CERCLA list has 270 sites on it, about 20% of those are mining, the rest are petroleum, agri-chemical, land fills, railroad sites, small business sites, etc. We were trying to come up with a way to fund cleanup and the bill the Senate heard the other day has a funding mechanism in it which is perceived to be inadequate. This proposal by DNRC gives us more long-term funding which is what the orphan share program needs. I support DNRC's proposal.

CHAIRMAN BECK The legislature wants to accomplish two things, get more money in the grant program and get that money back out for cleanup. They want to identify, in the General Fund the people that are participating in this. We don't want a major hit at one time, but I think we can blend it in. There are a number of options for us to look at.

SEN. KEATING Why have any statutory appropriations at all, why not just dump the whole bundle into the General Fund or an RIT spending account and let everybody duke it out.

Tom Richmond, Board of Oil and Gas You mentioned the \$1 million in unspent grant money, we have a \$750,000 contract with General Well Service in Cut Bank to plug wells. That money is obligated. We have participated in the grant program since 1990 and have received grants in various amounts since then. The \$600,000 priority appropriation was added a couple of sessions ago. Our board feels that we are glorifying process at the expense of result. We have one division in every department apply to another division of a department for grants to do things that are clearly and obviously things that we should be doing. We suggest that it is more efficient for it to be done through a direct appropriation.

CHAIRMAN BECK Does applying for the grant substantially delay what you are trying to do in the field? **Mr. Richmond** It does not help at all. We have been told over the years that we could not advertise a contract until we actually had a letter that said we had a contract. So, even though we have a grant priority, we still can't do anything until after July 1 of each year. Also, a two year cycle is not well served in an emergency situation.

SEN. CHRISTIAENS In regard to not being able to start anything until July, are you saying that you can't even send out a request for proposal until July 1st? **Mr. Richmond** Yes, we are not supposed to send out requests for proposals, until the funding is assured.


SEN. CHRISTIAENS What does it cost to plug a well? **Mr. Richmond** From \$5,000 for a shallow, relatively cheap well in good condition to \$135,000.

SEN. CHRISTIAENS What is the bond cost for each well? **Mr. Richmond** Current bond requirements are \$5,000 for a single shallow well, \$10,000 for a single well deeper than 30,000 feet, and \$25,000 for a blanket bond.

SEN. CHRISTIAENS How many wells can you get drilled with that bond? **Mr. Richmond** Any number of wells.

ADJOURNMENT

Adjournment: 12:00 p.m.


SEN. THOMAS A. "TOM" BECK, Chairman


SHARON CUMMINGS, Secretary

TB/SC