

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

FINANCE & CLAIMS SUBCOMMITTEE ON SB 267

Call to Order: By CHAIRMAN TOM BECK, on March 10, 1997, at 8:16 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

CHAIRMAN BECK We ended the last meeting after hearing the DNRC proposal. I believe there was one portion of that proposal that we might be able to backfill with General Fund but there are people who have constitutional problems with that backfill.

Bud Clinch, Department of Natural Resources and Conservation (DNRC) (EXHIBIT #1 & 2) handed out and explained.

SEN. CHUCK SWYSGOOD What would happen if you put the trust administration account between the permanent fund and the Board of Investments? **Mr. Clinch** Taking it directly out of the permanent fund may put you in the gray area about constitutionality.

SEN. SWYSGOOD After the money flows into the permanent trust, the interest from that money is invested by the Board of Investments, right? **Mr Clinch** No, the whole permanent fund is invested. The Board of Investments attaches a managing fee at

that point, and funds their activities out of part of the return on the investment.

CHAIRMAN BECK Can the department do the same as the Board of Investments, that is take some money out of the return? **Mr. Clinch** That's basically the concept we're suggesting here. You can take it out of interest or out of the proceeds before you put it in. I think there are some legal people who could give you some insight as to which is the most defensible method in regards to the Constitution.

CHAIRMAN BECK How much money is in the permanent trust right now? **Jeff Hagener, DNRC** As of FY96 it was \$304 million.

CHAIRMAN BECK If you take it out after investment by the Board of Investments, that's like getting it from the General Fund. Am I saying that correctly? **Mr Hagener** That's correct, that interest goes into the General Fund and is combined with the distributable revenue that we obtained from timber sales and others, and is earmarked for education. If you make that amount less, you are going to backfill it with more General Fund to meet whatever amount of money you are appropriating for education. Consequently, if you do it the way we're mentioning, the interest income will continue to grow a little bit each year but the permanent fund will not grow as fast.

CHAIRMAN BECK Over a period of time, it would affect the General Fund.

SEN. SWYSGOOD What amount of money is going to be attached to this administrative account? **Mr. Clinch** Right now the amount remaining in the General Fund, that is in the Trust Land Management Division, is \$3.2 million per year.

CHAIRMAN BECK You're going to take \$3.2 million out of the flow and into the permanent fund? **Mr. Clinch** That's correct. And that flow into the permanent fund is about \$12 million. Instead of the permanent fund growing by \$12 million per year, it would grow by \$8.8 or \$9 million, depending on where our actual revenues were.

SEN. ARNIE MOHL Where does the \$3.2 million go then? **Mr. Clinch** That goes to funding the activities within the Trust Land Management Division which directly produces these revenues.

SEN. MOHL Does that flow over into the General Fund and you're funded out of that? Or is that going to a different account? **Mr. Clinch** Currently, all the revenues go to these sources. This is proposing that we pay all of our management costs out of the revenues and then whatever is left is distributed to the bank.

CHAIRMAN BECK This \$3.2 million is coming out of RIT? **Mr. Clinch** No, it is coming out of General Fund. If we implement

this process it will free up General Fund which can then backfill the activities that are funded by RIT. That's the global concept of what's before us.

SEN. DALE MAHLUM How many staff do you have? **Mr. Clinch** Within the whole department there are about 500, the Trust Land Management Division consists of 122 FTE's. They're distributed around the state in about 30 different field offices. They do everything, from timber sales in the Swan to grazing activities in Miles City. Collectively, they generate \$27 million annually in distributable income, plus all the other revenues that come from these activities. There is a substantial cost benefit ratio in terms of return by the revenues that this staff generates.

SEN. CHRIS CHRISTIAENS Is it typical that the Board of Investments has a management fee for every institution that has a managed fund? **Taryn Purdy, Legislative Fiscal Division (LFD)** Yes, they take a small management fee for all funds that they manage. **Greg Petesch** has a major problem with the constitutionality of this. Specifically, this draft is addressing those sections of the law that directly implement direct constitutional language as it applies to sale proceeds and the use of the interest.

SEN. MOHL I assume this is all under DNRC and DEQ. Their budgets have been approved. **Ms. Purdy** The budgets that have been approved by the House appropriate trust lands with General Fund. With the long range planning action that has taken place, the grants that DNRC is proposing to increase through this process, are now funded at \$2-3 million.

SEN. MOHL If they weren't funded here, they would have to go to the General Fund. **Ms. Purdy** They are currently in the General Fund.

SEN. KEATING: I think this is what **SEN. MOHL** is trying to get at, where is that \$5 million coming from? Is that RIT or General Fund? Or is that the money that is going to flow, with this bill, into the General Fund? **Ms. Purdy** The money you're talking about in this proposal is totally separate money and is currently going into the permanent school trust fund. The interest that is being generated off that is also counted as income to the General Fund and it somewhat loses its identity once it goes into the General Fund. In the past, it had been earmarked for schools. Currently, that income is funding the general operations of state government.

SEN. KEATING The money **Mr. Clinch** is talking about comes from production, it doesn't come from taxes. It comes from royalties, sales, that sort of thing. That money normally flows into the trust. There is another \$3.5 million out of RIT, interest income, that funds the department. Under reclamation and development there is \$3 million in HB 7, and there is about \$4.5

million of RIT interest income and RIT tax money that funds the departments.

CHAIRMAN BECK That's the money that **SEN. MOHL** wants to get a handle on; the FTE's involved in that because that seems to be outside the General Fund. **Ms. Purdy** The operations of the department that are currently being funded with RIT, in addition to the grants, under their proposal would now be funded with General Fund. In order to increase the amount of grants that are being funded with RIT, an additional General Fund hit would be generated.

SEN. MOHL You would also have more money going into the General Fund. **Ms. Purdy** Yes.

SEN. MOHL But you would have a better handle on it. If all of this money from RIT, timber and grazing went into the General Fund and was disbursed from that, you would have a better control of it. **Ms. Purdy** You are correct about RIT going into the General Fund. The money that is currently going into the permanent trust is earmarked to do so by the Constitution. You might argue that you have a pretty good handle on it now, as well, because it is going into the permanent trust and into that savings account from which the interest is being disbursed.

SEN. KEATING Now there are two different trusts, RIT Trust and the school trust.

CHAIRMAN BECK The RIT trust has about \$98 million in it; it's getting close to the \$100 million cap. But this one is \$304 million and there is no cap on it, is that right?

SEN. CHRISTIAENS The 5% schools revenue would amount to about \$12 million per year, is that correct? **Ms. Purdy** No, of the interest you earn, 5% has to go back to the permanent fund. The interest over the biennium was approximately \$54 million in 1996. Five percent of that yields about \$2 million per year.

CHAIRMAN BECK So \$2 million would flow back into the purse. **Ms. Purdy** That's correct.

CHAIRMAN BECK There is \$27 million in distributable revenues, right? **Mr. Clinch** No, actually the distributable revenues should be about \$52 million.

CHAIRMAN BECK The interest on the permanent fund yields about 10% of the \$340 million in there? That means, if we divert this money, we will have about \$3.2 at 10%, which would be \$320,000 per year less interest. Did I say that correctly? **Mr. Clinch** I think that's an accurate statement. **Ms. Purdy** There would also be cumulative funds.

CHAIRMAN BECK I'd like to determine the constitutionality of whether we can, or cannot, do this. You seem to have a different

opinion than some other people. **Greg Petesch, Legislative Services Division (LSD)** This issue isn't new; it's been around for a number of years. I'm of the opinion that Article X, Section 5 of the Constitution, where it says that 95% of all income and earnings have to go to all elementary and secondary schools and the remaining 5% of all income and earnings goes back to permanent trust accounts for 100% of all income and earnings. I don't think that 100% of all means net; I think it means gross. I believe Article X, Section 5 of the Constitution is the only provision that's applicable to this proposal. The issue here is the 100% of either the gross money that is generated from all these pots or the net. The department is trying to take a portion of the gross and use it for other purposes and I think 100% means gross.

Mr. Hagener (EXHIBIT #3 & 4) handed out and explained.

SEN. SWYSGOOD Have you looked at the constitutions of the states that are referenced here and are they similar or in like nature to ours? **Mr. Petesch** I think all the provisions have slightly different wording.

SEN. SWYSGOOD Is the Board of Investments management fee legal? **Mr. Petesch** Not in my opinion.

SEN. SWYSGOOD Nobody has challenged that? **Mr. Petesch** No.

SEN. SWYSGOOD We are not in a position to take another hit to the General Fund. If this bill is a mechanism to allow **SEN. KEATING'S** bill to work, and you want to take the legal chance on the constitutionality of that, fine. But if you're going to impact the General Fund, I won't be very receptive to it.

CHAIRMAN BECK My understanding is that even if we did something with this bill it won't take effect for 2 years. However, we're setting a precedent for the next biennium. I think we have 2 options, we can adopt this bill and see if the legislature will buy it or we can cut back on the grant proposals. I don't know how we're going to completely eliminate the hit to the General Fund.

SEN. MOHL I still don't feel comfortable with the answers I've received. Why can't all of the money go into the General Fund?

CHAIRMAN BECK I think that's what we are going to try to do with this bill.

Ray Beck, DNRC (EXHIBIT #5) handed out and explained.

SEN. MOHL Can we spend that money in 2000 or 2001? I thought we couldn't do that. I thought we could only schedule for the next biennium. **Ms. Purdy** That is correct, this shows what you would propose to the next legislature.

SEN. MOHL Can we say no to reclamation? **Ms. Purdy** That is correct, right now the RIT is over appropriated. Consequently the General Fund, unless you cut back on current programs, is going to take a hit in this biennium regardless of what you do. Where the big hit is going to take place next time is in the increase in grants. Nothing in the Constitution prevents you from taking the RIT proceeds and interest and putting them in the General Fund. Statute currently says to do it a certain way, but nothing prevents you from changing statute to do that. The constitutional issue comes in with the other revenue you were referring to, the grazing rights.

SEN. MAHLUM It looks like we're going to spend more money in FY00-01 than we are taking in. Is that true? **CHAIRMAN BECK** Yes, we need a comparison to what we're actually granting today.

SEN. KEATING What are you talking about when you say orphan fund? **John Tubbs, DNRC** The orphan fund is the SB 377 fund.

SEN. KEATING It's all mining? **Mr. Tubbs** It is not all mining. CERCLA sites are many things. To be a CERCLA site they must have enough hazardous substance contaminating the environment. On some level it is just too small to qualify as a CERCLA site. That could be oil and gas, not typically at the production well, but in a refinery, etc. Mainly they are dry cleaners, custom pole operations, abandoned mines, etc.

SEN. KEATING Are you still talking about oil and gas mitigation coming out of the reclamation and development grant? **Mr. Tubbs** Yes, under this proposal that would continue to be funded through the reclamation and development grants.

SEN. MOHL It was mentioned that we were going to be short of funds in FY99, do you recall how much that is? **Ms. Purdy** I believe one of the accounts was \$1.3 million under, another was about \$.5 million under.

Jane Hamman, Office of Budget and Program Planning OBPP) Please look at the bottom line of (EXHIBIT #5).

SEN. MOHL What is the \$848,000 under totals, is that per year or biennium? **Mr. Tubbs** That is a biennial figure. That's what the RIT's deficits total. (EXHIBIT #5) explained.

SEN. MOHL Doesn't that still have to come out of the General Fund as far as bookkeeping, even though it might not be a negative figure at the end of the biennium? **Mr. Tubbs** No, it wouldn't be considered a part of the General Fund. This is state special.

SEN. MOHL The \$500,000 is General Fund. **Mr. Tubbs** The \$500,000 would wind up in General Fund.

CHAIRMAN BECK What is the interest for this quarter? **Ms. Purdy**
A little under \$16 million per biennium.

Mr. Tubbs I believe the Revenue Oversight Committee adopted an 8.8% interest rate per year, for all trust funds, and 6% for any new investments. LSD has assumed that we are going to lose some interest earnings due to calls on existing investments.

{Tape: 1; Side: B; Approx. Time Count: 9:00; Comments: None.}

SEN. LINDA NELSON I am wondering about the constitutionality of this proposal. Is this apt to be challenged, who would do the challenging, and how soon would it be challenged? Would it stop everything if we adopt this? **Mr. Clinch** I don't know who is apt to challenge this. There are numerous groups that represent trust beneficiaries. If they were to perceive that schools were not being allocated proper amounts, they might have some reason to challenge. The proposal is not going to impact the amount of money that goes to the General Fund and is distributed to the school trust. The other thing you need to know is that the resource development account, timber sales account and the Board of Investments management fee could be challenged. They have been in effect since 1967 and have not been challenged. There are a few key things that we need to talk about regarding constitutionality. In **Mr. Petesch's** argument he used the word income and interest, we are not affecting income or interest because in the various enabling acts, income refers to the money that comes from distributable revenues. Interest is the amount of money that goes back and is referred to as proceeds. The language referring to proceeds is entirely different. We tried to have this discussion with **Mr. Petesch** but you can see that he is very firm in his opinion. When you bring two attorneys together it's not often that you can have a rational discussion. We gentlemanly agreed to disagree. We don't anticipate a constitutional challenge occurring because the option has existed for decades.

CHAIRMAN BECK If we decide to go along with this source of revenue, is that a bill that must be started in the House? **Ms. Purdy** I'm not sure that it would be classified as an appropriation bill. I think it can be started here.

SEN. CHRISTIAENS I get a little nervous when we start dealing with this, it seems to me you merely broaden the possibility for lawsuits. The Board of Investments' management fee may be incorrect.

CHAIRMAN BECK We might cut the grants. **SEN. MOHL** That money will go to the General Fund? **CHAIRMAN BECK** Right.

SEN. KEATING May I offer a suggestion? Look at **(EXHIBIT #6)**. One of the problems with over spending is the statutory appropriations. If you look down the list, the renewable resource and reclamation grants, water storage and groundwater

assessment accounts are statutory appropriations at fixed amounts. I recommend you leave the environmental contingency account and eliminate the oil and gas mitigation account, renewable resource grants, reclamation and development grants, the water storage account, and the groundwater assessment account. Eliminate the statutory programs and put all the interest income in the General Fund or put it into an interest account that can be appropriated. I'd like to make another suggestion to the department and subcommittee? I recommend that the reclamation and development account be only for grants to the counties, cities, and towns, that state agencies not be included in the grant program. I recommend the metalliferous mines tax go entirely for mining cleanup, and not into the trust. Then they wouldn't need to ask for a grant out of the reclamation and development account. If oil and gas were to receive its appropriation, whatever the legislature thought was appropriate for plugging wells, they wouldn't have to apply to the department for a grant. One state agency shouldn't have to apply to another state agency for a grant to do its work. As it was testified here by **Mr. Tubbs**, the reclamation and development account grants money to cities and towns for cleanup in some areas and they may still want to retain that.

CHAIRMAN BECK That's something we want to discuss in committee. We want the most qualified people to get the job done. **SEN. KEATING** They're already giving cities and towns grants under the reclamation and development account now, aren't they? **Mr. Tubbs:** Yes, in some cases.

CHAIRMAN BECK What does your bill in taxation do? **SEN. KEATING** It sunsets the tax when the fund reaches \$100 million which will happen in 2000.

CHAIRMAN BECK What would be the problem of holding up that bill until the next biennium? **SEN. KEATING** The department has included that tax in all of their proposals. They're not letting go of the tax. Every budget you're going to see, is going to have appropriations out of that tax money. It will be difficult for the legislature to release the tax. If they know it will sunset in 2 years and the money won't be there, the Governor won't put it into his budget.

CHAIRMAN BECK We don't know whether we're going to have a tax to work with or not. **SEN. KEATING** SB 267 was to detach the tax and let 100% of the oil, gas, and coal tax go into the RIT and let the metalliferous mines tax go to the abandoned mines and orphan fund. By doing that mining is not making a contribution to RIT. The oil and gas tax would be used for filling the trust and then sunset. It's not fair that a small group of people pay for all these programs. They do not want to sunset the metal mines tax when the trust reaches \$100 million, but they do want it to go into the orphan share trust.

SEN. MOHL How much of a hit would that make? **SEN. KEATING** If the tax was not interfered with it would generate about \$3 million per year.

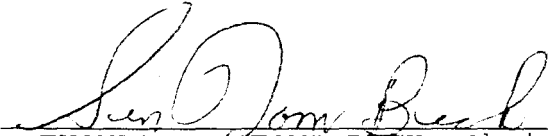
CHAIRMAN BECK If I understand correctly, the taxes collected in 1998 will be \$1.6 million and in 1999 \$1.7 million. **SEN. KEATING** That includes the metalliferous mine proceeds of 8.5%. **Mr. Tubbs** RIGWAT proceeds are the first three items in 98 and 99 and total \$1.2 million per year.

SEN. KEATING The RIT tax for oil, gas, and coal is about \$2.5 million per year.

Bill Daehling, MSU-Northern I would like to remind you that there is a debt service to pay on the statutory appropriation for MSU-Northern. If you make changes there, you should take this into consideration. Also, the reason this was established during the 1993 session is because all of the 4 university units, with the exception of MSU-Northern, were getting a statutory appropriation out of I & I, land grant or normal school funds. This was an attempt to bring equity to the units in the university system. I hope you will take this into consideration if you choose to make changes. The debt service this biennium is \$509,000. I believe the debt service for this year is just under \$80,000.

ADJOURNMENT

Adjournment: 10:00 a.m.


SEN. THOMAS A. "TOM" BECK, Chairman


SHARON CUMMINGS, Secretary

TB/SC