

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### FINANCE & CLAIMS SUBCOMMITTEE ON SB 267

Call to Order: By CHAIRMAN TOM BECK, on March 12, 1997, at 8:12 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

#### Background Information:

Ray Beck, Department of Natural Resources and Conservation (DNRC) (EXHIBIT #1) handed out and explained.

SEN. TOM KEATING This is a section of the law that is on page 5, section 4 of the bill. Amendments to this statute are proposed in SB 267.

Mr. Beck The RIT income is derived from coal, oil, natural gas, metal and other minerals. The fund is expected to reach \$100 million in 2001, once it does all net earnings and receipts must be appropriated by the legislature but the fund can never be less than \$100 million.

CHAIRMAN BECK There are amendments to that section of the law also.

**Mr. Beck (EXHIBIT #1)** further explained with a history of RIT. In 1993 HB 608, sponsored by **REP. BERGSAGEL**, took a look at how the funds were going through the RIT. He was especially interested in the grants program because it was at the bottom of the flow at that time and with increased agency expenditures the grant funds were diminishing over time. The intent of HB 608 was to move the grant programs up higher on the list so there would be a guaranteed allocation to those programs and also restructure some of the expenditures. Since the grants program were moved up renewable reclamation was also moved up and received interest flow. This was set at \$2 million for renewable resource and \$3 million for reclamation. That left a shortfall that flowed down into the other accounts. To make up that shortfall 40% of the proceeds were diverted.

**John Tubbs, DNRC Table 2 in (EXHIBIT #1)** explained. **(EXHIBIT #2)** handed out and Step 1 explained. Our proposal is to shift a large amount of this RIT account money into the General Fund for the next two years. Specific allocations for projects would not be shifted. Step 2 of **(EXHIBIT #2)** explained.

*{Tape: 1; Side: A; Approx. Time Count: 8:30; Comments: None.}*

**SEN. DALE MAHLUM** What is the oil patch? **Mr. Tubbs** The oil patch is the surface and hole with \$600,000 going towards plugging efforts. Several oil refineries are also getting cleaned up through the orphan fund.

**Mr. Tubbs** continues to explain Step 2 **(EXHIBIT #2)**. This is a significant shift of how RIT is currently handled.

**Motion:** **SEN. ARNIE MOHL MOVES THE DEPARTMENT CONCEPT.**

**SEN. MOHL** There are some portions of this that will have to be addressed. Elimination of the oil tax will have an impact on the bottom figure. There is a constitutionality question on LC 175, I believe we could change the trust administration account and move it above the 5% line where the money comes back from the schools to help solve that problem. We need to play with the numbers so we don't affect the General Fund. If we can't take the money with LC 175 this would have to be phased in over 3 bienniums so there wouldn't be such an impact on the General Fund. That will take all the agencies out of RIT and have them funded by the General Fund.

**CHAIRMAN BECK** I'd like to hear **SEN. KEATING'S** thoughts and amendment. We want this to come out revenue neutral with no hit to the General Fund. We may have to pull back on the grants.

**SEN. KEATING** To move the money from the RIT to the General Fund and then spend it doesn't change anything. It doesn't matter whether the money is coming out of the RIT or the General Fund, it is the same money. If you want this to be revenue neutral you have to stop spending.

**CHAIRMAN BECK** At the present time the subcommittees don't have an opportunity to get into the department, this is earmarked money. Isn't that right?

**SEN. KEATING (EXHIBIT #3)** handed out and explained. SB 267 would have all the tax flow into the trust instead of being diverted. The interest income would be appropriated statutorily for five accounts. Amendment #sb026701.a35 (**EXHIBIT #4**) deletes the mitigation, groundwater assessment and orphan shares accounts from statutory allocation. It leaves the tax going to the trust with the only statutory allocation being the environmental contingency account with a balance of \$750,000 at the rate of \$175,000 per biennium. All of the interest income from the trust would go into a single resource interest account. The amendment also reinstates the reclamation and development grant program for cities, towns, counties and tribal governments. There is no statutory allocation to any account, all of the interest income would go into the resource interest account and the legislature would appropriate to those accounts. SB 267 de-earmarks the RIT money so the legislature can appropriate it. All of the programs are still in statute.

**CHAIRMAN BECK** I think the committee wants to get this into the General Fund so the subcommittees can identify department management operations. What do you think of LC 175? Evidently we are taking RIT money to operate state lands.

**SEN. KEATING** Before reformation, forestry and management of state lands were using income from the operation of the forests, lands and property rents with the balance of the money going to education. This makes good sense to me but it appears to be in violation of the constitution which says 95% of the money goes to education and 5% goes to the fund. Since state lands has taken over some of the natural resource programs that were in DNRC we have RIT money supporting part of state lands. Normal state lands is still being funded from the income from the operation of the property. Oil, gas and coal royalties are a diminishing asset. If the money goes into the trust fund, which is inviable, the interest income is being handed as the operation of an asset. If the money is spent before it gets into the trust, the asset has been spent. That is what is happening, LC 175 is taking assets and using them for administration.

**CHAIRMAN BECK** Does the department have some amendments to propose?

*{Tape: 1; Side: A; Approx. Time Count: 8:49; Comments: None.}*

**Mr. Tubbs (EXHIBIT #5)** handed out. These amendments speak to the substance of DNRC's proposal. Providing this revenue for orphan shares means we can strike the penalties and claims provision within SB 377 and have that money continue to be deposited in the General Fund.

**SEN. CHRIS CHRISTIAENS** This is an issue that was brought up in House Appropriations recently. How appropriate is it for fines and penalties to be going to the agencies?

**REP. BOB RANEY, HD 26, LIVINGSTON** An interim subcommittee that I worked on came up with a recommendation for the Legislative Finance Committee. They rejected it but I have introduced it as a bill this session which is in House Taxation now. This bill affects the RIT interest account, not the tax, and says anything going back to the industries that pay the tax for reclamation would remain earmarked under the RIT interest. Everything else would go to the General Fund. It eliminates the money going into accounts that presently get RIT money and replaces it with language that says whatever the legislature may appropriate from time to time. This means the legislature could put as much money as they want of that going to the General Fund toward the statutory accounts. It also makes it easy for future legislatures to come in with legislation to increase the amount of RIT interest that actually goes back to the industries that are paying the tax for reclamation which is what RIT was created for in the first place. Oil and gas pours a tremendous amount of money into this account and gets little back.

**CHAIRMAN BECK** Are you in favor of the concept of switching the money from operations and back into the reclamation grants? **REP. RANEY** I'm in favor of what you are doing but I think there is a more simplistic way of doing this. I'm not exactly sure what all the proposals are here.

**SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER** There is a total of 10-15 bills addressing RIT funds this session, some addressing fines and penalties. I have heartburn over using fines and penalties for state agency funding. I think we give agencies a perverse incentive when we design their funding in such a manner that they derive it off of fines and penalties. I believe all these other bills will work into what this subcommittee is doing and at some point we are going to need some major coordination language. I applaud the direction you are going. The constitutional issue on LC 175 is a bit troubling and you need to be careful how you proceed.

*{Tape: 1; Side: B; Approx. Time Count: 8:59; Comments: None.}*

Questions from Committee Members and Responses:

**SEN. CHRISTIAENS** **SEN. MOHL** talks about moving the trust into an administrative account above the line that shows the 5% for revenue only. Does that do what you think it should to solve the constitutionality problem? **Taryn Purdy, Legislative Fiscal Division (LFD)** I probably wouldn't be the best person to ask but in my conversations with **Greg Petesch** it was not only the interest, it was sale of the proceeds, that would solve the constitutional problem. **SEN. KEATING** pretty much hit it right on the head as far as what **Mr. Petesch's** argument is, there is a

difference between the income and the asset. The timber was an income, therefore outside the main constitutional issue.

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Mr. Tubbs explains DNRC's amendment (EXHIBIT #5).

*{Tape: 1; Side: B; Approx. Time Count: 9:41; Comments: None.}*

SEN. MOHL I'd like SEN. KEATING'S thoughts on this amendment.

SEN. KEATING A large amount of the RIT is still in statutory allocations so you have no control over the spending. You've already made the decision that the money is to be spent for those purposes. By doing so you say that groundwater assessment has priority over the Water Rights Commission or the water court which will have to be appropriated out of the General Fund instead of RIT. You've shifted the RIT money into the General Fund and it is now blended with General Fund and lost. You don't know how much RIT money is in General Fund so when subcommittees are appropriating to the departments you don't know how much General Fund from other sources are going to go into the department. The statutory appropriation to MSU-Northern takes precedent over the money you will appropriate to planning prevention and assistance, remediation, water courts or whatever. My proposal was to de-earmark everything so it could be properly appropriated. Table 2 in (EXHIBIT #1) shows the interest income is \$16 million for the 98-99 biennium. My proposal was to take effect in FY99, the fund will reach \$100 million by 2001 and the interest income at that time will be approximately \$20 million. There would not be a hit to the General Fund because the interest revenue would increase sufficiently to cover all the costs at the present time. The department is proposing to spend \$22 million, which will exceed the interest income from the fund and will require a General Fund hit. The increased spending is for grants for reclamation and remediation but they haven't done anything to reduce government spending. If the interest income from the fund reaches \$20 million and you say that is what we have to spend and we should allocate it accordingly to all these programs then there would not be a hit to the General Fund and you would be appropriating the funds on a priority basis. I have a problem with their proposal.

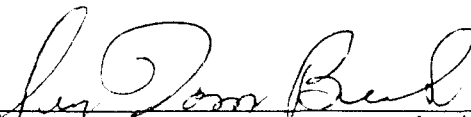
SEN. MOHL The agencies are not controlled by this committee, they are controlled by the appropriations subcommittees. If the subcommittee that had this department thinks they are spending too much money it should be caught there. I realize this is a lot of money but the money was approved in subcommittee.

SEN. CHRISTIAENS The subcommittees looks at every stream of money, not just the General Fund. I think we should trust that subcommittee's decision.

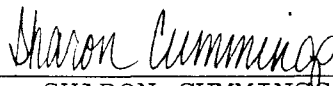
Motion/Vote: SEN. MOHL MOVES TO APPROVE THE DNRC CONCEPT IN EFFECT ON JULY 1, 1999, PUTTING LC 175 IN EFFECT JULY 1, 1997 AND ADOPTION OF DNRC AMENDMENTS. THIS WOULD BE CONTINGENT ON INTRODUCTION AND PASSAGE OF LC 175 AND SPREAD OVER 3 BIENNIUMS. THE MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 9:50 a.m.



SEN. THOMAS A. "TOM" BECK, Chairman



SHARON CUMMINGS, Secretary

TB/SC