

Senate Rules Committee  
March 18, 1985

Senator Van Valkenburg called the meeting to order at 11:05 a.m. with all members being present.

Senator Van Valkenburg stated the purpose of the meeting was to discuss three specific topics, including Senate Bill 425, and to determine if a call of the Senate is in order on 2nd reading, and if a motion to pass consideration is debatable.

Senator Van Valkenburg stated the first order of business as being a determination by the Rules Committee regarding Senate Bill 425. Specifically, the Senate Rules Committee must decide if Senate Bill 425 will require a three-fourths vote for passage.

(NOTE: Senate Bill 425 had passed 2nd reading on March 16, 1985, with a 33-11 margin.)

Senator Van Valkenburg stated that he had contacted the Legislative Council's staff and requested a determination regarding this matter.

Senator Blaylock stated that according to the Constitution, Senate Bill 425 should be considered an "appropriations" measure--not an "investment", and therefore requires a three-fourths vote of the bodies of both houses, not simply a majority vote to pass 3rd reading. Senator Blaylock stressed his opinion that Senate Bill 425 is a "dormant appropriation" because if loans go bad, the money must be taken from the coal trust fund.

Senator Towe stated that page 3, line 9, of Senate Bill 425, was very clear in stating that the bill is talking about an investment rather than an appropriation of coal trust money. Additionally, Senator Towe stressed that any money taken from the coal trust would be paid back with interest. Senator Towe stated that in addition to the bill clearly stating that its intent is as an investment in agriculture, there are also clear precedents for requiring a majority vote only. Those precedents, according to Senator Towe, include House Bill 100, the "Build Montana Program".

Senator Neuman stated that Senate Bill 425 would be backed substantially by real estate, therefore the loans would be secure. He also took exception to the comment made by Senator Blaylock that agriculture is on a downward spiral, stating that he believes that agriculture will "pick up" in the next year.

Senator Van Valkenburg then asked Dave Cogley, of the Legislative Council, to tell the Senate Rules Committee the determination of the Legislative Council staff regarding the need for a three-fourths vote versus a simple majority vote to allow Senate Bill 425 to pass 3rd reading.

Dave Cogley handed out a memorandum as explanation for the Council's position that Senate Bill 425 should be considered an "investment" rather than "appropriating" money from the coal trust fund. (SEE ATTACHED EXHIBIT A)

Dave Cogley further stated that Senate 425 was designed to closely parallel I-95 and that Senate Bill 425 was clearly not a technical appropriation, but rather, an investment.

Senator Crippen asked Senator Towe the meaning, or Senator Towe's definition, of the word "investment".

Senator Towe stated that the word "investment" indicated that the money taken from the coal trust fund (if taken from the fund) would be given with the expectation that that amount of money plus interest would be returned to the fund. An appropriation, on the other hand, would be defined as money taken from the coal trust fund without the intention of fully returning the amount of money taken from the fund to the state.

Senator Crippen voiced his concern that the Legislature would be setting a dangerous precedent by whittling away at the coal trust fund, a little here, a little there, without requiring a three-fourths vote of both houses, as the constitution mandates.

Senator Van Valkenburg asked Dave Cogley if there is a statutory definition of "investment" and/or "appropriation".

Dave Cogley said that there is no such statutory definition of either.

Senator Norman questioned the Legislature's "moral obligation" if loans go bad and the Governor requests the Legislature to "make good" the loans.

Senator Blaylock stated that even if the Legislature didn't have to accept responsibility for a "moral obligation" to make good on defaulted loans, the Legislature would suffer a serious loss of credibility if they ignored the request. Further, he contended that this was clear evidence that a three-fourths vote must be required before putting the coal trust fund at risk, albeit a slight risk.

Senator Towe stated that it would be the "moral obligation" of the Legislature to "make good" on the loans, but it would not be a "legal obligation".

Senator Van Valkenburg stated that it would be the Governor's "moral obligation" to request the Legislature to "make good" on the loans; however, he added that the issue was not who would be held responsible, rather, the issue at hand was if there is a necessity for a three-fourths vote rather than a simple majority for passage of Senate Bill 425 on 3rd reading.

Senator Norman stated that if the Legislature had a moral obligation to make good on the loans, then he supported the requirement for a three-fourths vote. If the Legislature was not morally obligated to make good on the loans, then he would not support the requirement for a three-fourths vote.

Senator Towe stated that it was the Governor's moral obligation.

Senator Norman stated that if the Governor has a moral obligation to request the money from the Legislature, then the Legislature has a moral obligation to respond to the Governor's request.

Senator Stephens stated that the Legislature would be foolish to try to find a way around its "moral obligation" and that obviously responsibility will be traced back to the perpetrators of the bill, and, therefore, the Legislature.

Senator Towe again stressed the fact that the bill is clear in that there is no binding legal obligation.

Senator Stephens asked Senator Towe, that if the day should come that word from the Governor's office requested the Legislature to take the funds from the coal trust fund, could Senator Towe, in good conscience, deny that request?

Senator Towe stated that under most circumstances he would undoubtedly find it impossible to deny that request, but that he could conceive of instances where he would be able, in good conscience, to deny that request.

Senator Van Valkenburg asked the committee for its opinion.

#### MOTIONS:

Senator Stephens made a motion that the Senate Rules Committee conclude that Senate Bill 425 requires a three-fourths vote of both houses of the Legislature in order to conform to the Constitution.

The question was called. The motion was voted on and failed on a 3-2 vote with Senators Norman, Christiaens and Van Valkenburg voting "no" and Senators Stephens and Crippen voting "aye".

Senator Christiaens made a motion that the Senate Rules Committee conclude that Senate Bill 425 requires a majority vote only in order to conform to the Constitution.

The question was called. The motion was voted on and passed on a 3-2 vote with Senators Norman, Christiaens and Van Valkenburg voting "aye" and Senators Stephens and Crippen voting "no".

Senator Van Valkenburg stated that there were two other issues he'd wanted to discuss with the Senate Rules Committee. Those two issues were as follows:

1. Is a call of the Senate in order on Order of Business No. 8 - 2nd Reading?
2. Whether a motion to pass consideration is debatable?

Senator Van Valkenburg stated in regard to question #1, it is his contention that Rule 6-26, page 37, indicates that a call of the Senate is not in order on Order of Business No. 8.

All members of the Senate Rules Committee voiced agreement with the Majority Leader's position.

Senator Van Valkenburg then addressed question #2, asking the other members of the Senate Rules Committee if they felt a motion to pass consideration was a debatable motion. He further stated that Senate rules indicate that it is a debatable motion but joint rules indicate that it is not a debatable motion. Senator Van Valkenburg stated that in his opinion the Senate rules overrule the joint rules, thereby making a motion to pass consideration a debatable motion. Senator Van Valkenburg pointed out that under Joint Rule 5-8, page 19, and Joint Rule 6-26, a motion to pass consideration would not properly be a debatable motion; however, Senate Rule 5-1 states "All proper motions on 2nd reading are debatable."

Senator Towe stated that the question seems to be which rules are dominant. He suggested that joint rules should take precedence.

Bob Person, of the Legislative Council, stated that the precedent was, in fact, exactly the opposite, that being rules for House and rules for Senate have traditionally been granted precedence over joint rules.

Senator Stephens requested that for the purpose of the rest of this session, the Majority Leader or the President should continue under the assumption that the Senate rules take precedence over the joint rules. All Senate Rules Committee members agreed.

Senator Crippen asked Senator Van Valkenburg to discuss the problem of House and Senate session schedules.

Senator Van Valkenburg stated that according to Representative Vincent, this will be the last week there may be schedule conflicts.

There being no further business, the meeting was adjourned.

  
SENATOR VAN VALKENBURG, Chairman