

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES**

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 17, 2001
at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: Sen. Lorents Grosfield (R)

Members Absent: None.

Staff Present: Nancy Bleck, Committee Secretary
Mary Vandebosch, Legislative Branch

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 83, 1/11/2001 (postponed)
SB 84, 1/11/2001
SB 31, 1/12/2001

Executive Action: SB 84
SB 83
SB 146
SB 92

HEARING ON SB 83 AND SB 84

CHAIRMAN BILL CRISMORE called the meeting to order at 3:00 p.m. **SEN. BEA MCCARTHY, SD 29, Anaconda,** asked that **SB 84** be tabled and also asked that **SB 83** be postponed as the Montana Department of Environmental Quality would be working on some amendments. **CHAIRMAN CRISMORE** asked if there were any questions or discussion and advised the committee would handle this request with executive action later in the meeting.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 2}

HEARING ON SB 31

Sponsor: SEN. DALE E. BERRY, SD 30, Hamilton

Proponents: Bud Clinch, Director, Montana Department of Natural Resources and Conservation
Clive Rooney, Bureau Chief, Special Uses Management, Montana Department of Natural Resources and Conservation
Scott Odegard, General Manager, Sun River Electric Cooperative, Fairfield, Montana, on behalf of Montana Electric Cooperatives Association
Mike Strand, Executive Vice-President of General Counsel, Montana Independent Telecommunications Systems
Robert (Bob) Fouhy, Director, Northern Electric Cooperative, Opheim, Montana
Geoff Feiss, General Manager, Montana Telecommunications Association

Opponents: None.

Opening Statement by Sponsor:

SEN. DALE E. BERRY, SD 30, Hamilton, presented **SB 31** and explained the bill was brought forth by recommendation of the **Montana Department of Natural Resources and Conservation (DNRC)**. **SB 31** was an act generally revising the laws governing state trust land, authorizing the use of historic right-of-way easements for existing utilities, clarifying that full fair market value must be obtained for the use of school trust lands and extending the effective period for historic right-of-way deeds and easements.

{Tape : 1; Side : A; Approx. Time Counter : 2.1 - 5}

Proponents' Testimony:

Bud Clinch, Director, Montana Department of Natural Resources and Conservation, opened by thanking **SEN. BERRY** for bringing this bill forward on their behalf. He thought **SEN. BERRY** did a thorough job of explaining what **SB 31** would do. The bill basically implements the Supreme Court decision in the Montross court decision and so a vast majority of the language and strike-outs in this proposal were merely implementing the provisions of that Supreme Court decision. Secondly, **SB 31** added reference to utilities in the easement statutes. **SEN. BERRY** referenced the need for an amendment. The amendment would address a typographical error in the drafting of the bill. On page one, lines 24 and 25, the current language referenced the year 1977 and was intended to represent 1997. **Mr. Clinch** offered that he and **DNRC staff member Clive Rooney** would be available to write a detailed response to comments if necessary. **Mr. Clinch** respectfully requested the committee vote DO PASS on **SB 31**.

{Tape : 1; Side : A; Approx. Time Counter : 5.1 - 7}

Scott Odegard, General Manager, Sun River Electric Cooperative based in Fairfield, Montana, on behalf of Montana Electric Cooperatives Association, rose in support of **SB 31** and offered **EXHIBIT(nas13a01)**, written testimony.

Mike Strand, Executive Vice-President of General Counsel, Montana Independent Telecommunication Systems, representing telephone cooperatives and independent rural telephone companies, spoke in support of **SB 31**.

Bob Fouhy, Director, Northern Electric Cooperative in Opheim, Montana, spoke in support of **SB 31** and provided written testimony, **EXHIBIT(nas13a02)**.

Geoff Feiss, General Manager, Montana Telecommunications Association, representing independent commercial and cooperative telecommunications service providers, stood in support of **SB 31** and urged the committee's support.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked whether this bill would apply to private landowners. **SEN. BERRY** replied that it would if the private landowners had historical use on state land; for example, a ranch with a state easement across it. Regarding how this bill pertained to private landowners, **Mr. Clinch** stated the bill would apply only on school trust lands. The applicant might be a

private party like a rancher or utility. **SEN. VICKI COCCHIARELLA** then referred to section one of the bill regarding the recognition of historic right-of-way deed "to provide continuation of a county road". She wondered how county roads fitted in with state lands and this historic right-of-way. **Mr. Clinch** related that out across the landscape one could envision the checkerboard ownership pattern of state lands and the wide variety of activities that occur on those lands; one use being county roads that cross state and private lands. From the beginning of Montana's statehood, counties developed county roads across state lands while failing to secure easements to do that. **Mr. Clinch** also stated that if that activity was in place prior to 1997 then what this bill would attempt to do was provide a mechanism or avenue whereby the counties could have an expedited fashion to obtain a historic right-of-way deed for that road that was already in place. **SEN. COCCHIARELLA** asked if this related to existing utilities only and would not apply to new but rather historic operation of those lines and utilities. **Mr. Clinch** confirmed that "historic" referred to those on the landscape prior to 1997. **SEN. KEN TOOLE** questioned if the majority of the benefactors of this bill would be utility companies. **Mr. Clinch** stated it was a combination of existing utility lines, county roads and other roads that were accessing other private entities as well. **SEN. TOOLE** inquired about deeding from state land to a private utility, like the Montana Power Company, would the state then be entitled to collect property taxes on the land under those laws. **Mr. Clinch** stated that while an easement does convey a distinct property right he did not believe it rises to the threshold of being taxed and confirmed this with **Clive Rooney, Bureau Chief, Special Uses Management, DNRC**. **SEN. TOOLE** then inquired about controlling access and issues like weed control. **Mr. Clinch** advised that each easement would have a certain set of stipulations that go along with it. Many of these easements were very narrow to affect the affected space by the overhead power line and they may or maynot have a road underneath of them. If there are roads associated with the easements, generally, the easements carry language associated with that service occupancy and impacts of that including weed management. **SEN. TOOLE** hypothesized whether the state could change the conditions of access on an easement in the future such as restricting an easement holder from having a right to drive on their easement or an easement holder giving the general public the right to drive on it. **Mr. Clinch** stated he thought once the state made a conveyance in an easement, that was a disposition of those property rights. He was not familiar, short of a negotiation with the easement holder, how the state could revoke or change that. **Mr. Rooney** explained that the easement is a non-exclusive interest in the land and it provides a right for a specific use but it does not convey rights beyond that; so that right is the

right of conveying electricity if it is a utility line or for a road or use of a road, but it does not provide any control over that road to other parties. The state would still retain the right to control the access along the road. **SEN. TOOLE** questioned if the state could restrict access along a road that has been generally used by the public which was on power line easement where too many people had created a weed problem. **Mr. Rooney** stated that the state would have that right to restrict. **SEN. TOOLE** inquired about the question of abandonment if a utility is granted an easement for their use of the power line and then new technology appears and we are not getting all of our power micro-waved. If the lines were not needed anymore, what happened to the easement. **Mr. Rooney** advised the easement would be extinguished through five years of non-use as per the statute. **SEN. TOOLE** asked if it then would revert back to the state. **Mr. Rooney** confirmed it would. **SEN. TOOLE** questioned why deeding was better than leasing. **Mr. Clinch** said the statute provided an avenue for things other than just utilities. It was unacceptable to a mortgage company that is trying to sell property when they don't have a deeded access agreement. Until now they have been unwilling to accept anything short of that. DNRC came up with a process that satisfies their needs relative to those types of issues. Relative to county roads, **Mr. Clinch** thought there was some concern about capital investment and the longevity of it. While there is a possibility that some new technology might emerge, there is an equal concern that it won't change and at the end of ten years some substantial investment in a power line corridor may no longer have an authorization. **SEN. TOOLE** asked if there would be a technical problem in treating utility properties differently than county roads. He asked how much of the land involved would be access to utility lines versus ranch access. **Mr. Rooney** stated that there is not a fifty/fifty split between roads and utility lines, and there are thousands of miles covered. **SEN. MIKE TAYLOR** questioned the right-of-way agreement, stating if the holder had a structure in place then that structure would have to stay and **Mr. Rooney** agreed. **SEN. TAYLOR** asked if technology changes and the holder needed to upgrade that structure what they would have to do. **Mr. Rooney** stated they would need to amend the easement that they secured for the historic purpose. There will be a procedure established in current law that we follow to amend it for its prospective use, and it is not a difficult thing. **SEN. TAYLOR** asked how the department arrived at the \$50 fee. **Mr. Rooney** stated the fee was established in statute already. The \$50 is the application fee for any easement under existing statute. **SEN. TOOLE** inquired if an upgrade would nullify the easement, or does the easement tie to the type of line or the size of the line. **Mr. Rooney** stated the easement would be for the specific type of line that exists

today, and that would likely require an amendment. **CHAIRMAN CRISMORE** said there was some confusion about giving an easement or selling the land. The bill authorizes easements, so there is not actual sale of the land and the state still owns the land.

Closing by Sponsor:

SEN. BERRY closed by saying he felt the department staff covered **SB 31** very well. He submitted his plan for the proposed amendment to correct the dates that were typographical errors, **EXHIBIT(nas13a03)**. Amendment **SB003101.amv**, **EXHIBIT(nas13a04)**, was received January 22, 2001.

CHAIRMAN CRISMORE closed the hearing on **SB 31**.

{Tape : 1; Side : A; Approx. Time Counter : 7}

EXECUTIVE ACTION ON SB 84

Motion/Vote: **SEN. MILLER** moved that **SB 84 BE TABLED**. Motion carried unanimously.

{Tape : 1; Side : B; Approx. Time Counter : 0.5 - 1.1}

POSTPONED ACTION ON SB 83

CHAIR CRISMORE advised postponement of hearing on **SB 83** until further notice.

{Tape : 1; Side : B; Approx. Time Counter : 1.1 - 1.3}

EXECUTIVE ACTION ON SB 146

CHAIRMAN CRISMORE advised there were amendments to **SB 146**.

Motion: **SEN. TAYLOR** moved that **AMENDMENTS TO SB 146 BE ADOPTED**, **EXHIBIT(nas13a05)** (**SB014601.amv**) dated February 2, 2001.

Discussion: **Mary Vandebosch** explained the amendments to **SB 146** by referencing page two, line 15 of the bill. The part that will be stricken is "the term as defined in 75-6-102". Replacement language will be "a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents". **Ms. Vandebosch** felt this would make it easier for people to

understand and determine whether this requirement applied to them or not.

Vote: Motion that **AMENDMENTS TO SB 146 BE ADOPTED** carried unanimously.

Motion/Vote: SEN. MILLER moved that **SB 146 DO PASS AS AMENDED**. Motion carried unanimously.

{Tape : 1; Side : A; Approx. Time Counter : 1.3 - 4.9}

EXECUTIVE ACTION ON SB 92

Motion: SEN. COCCHIARELLA moved that **SB 92 DO PASS**. Motion that SB 92 DO PASS carried 8-1 with Toole voting no.

Discussion: SEN. TOOLE advised he had proposed an amendment, **EXHIBIT (nas13a06)**, (SB009201.amv). Mary Vandebosch explained the amendment and offered **EXHIBIT (nas13a07)**, a copy of the repealer relating to number one of SEN. TOOLE'S amendment to **SB 92**. SEN. TAYLOR questioned the revision of removing the termination date. SEN. TOOLE explained the amendment. Mary Vandebosch clarified the amendment by saying that in the current law it says that you cannot claim a tax credit for energy... and that expires December 31, 2001. The bill repeals that so you could get a tax credit for investment in property used to produce energy..... The amendment puts this provision back into the law and takes off the termination date. SEN. TAYLOR questioned if there was any research regarding whether this credit had ever been used, the frequency of use, etc. He was concerned this amendment might preclude someone from building more infrastructure and creating more jobs and taking renewable resources and doing something with them. Lou Moore, Chief, Pollution Prevention Bureau, DEQ, advised this credit had been used by the small recyclers. The total credit amounted to approximately \$184,000 per year. She thought there were around 20 parties using this tax credit. Ms. Moore thought this was very important for the small recyclers and for DEQ. She felt it was an incentive and might be used more in the future. SEN. COLE asked if this amendment would make the credit permanent. Ms. Moore said that was right. There had never been a credit for energy before, **SB 92** would create one and this amendment would take it back so there would not be credit and removing the termination date would make it where there never could be one. SEN. COLE verified that we would need to propose another amendment to keep the tax credit on there. Mary Vandebosch said the bill drafted without the amendment on it, would repeal this

provision of code, referencing exhibit 7. That means when the bill became effective, the credit could be used for energy from reclaimed material. There is no need to deal with the termination date at all because the whole section was repealed and all the termination dates were repealed in the repealer of the bill. **CHAIR CRISMORE** confirmed that if the amendment was put on, there would not be a tax credit that could be used. If the amendment did get on the bill, then the tax credits would be available. **SEN. COCCHIARELLA** inquired if a facility used some recycled product to produce energy, then **SB92** (without the amendment) would provide these parties with a tax credit for the equipment used in that process. **Ms. Moore** responded that it would apply but that there were exceptions to the use of the credit. The fuel used to create energy would have to be something that was currently disposed of in a landfill as a solid waste. **SEN. ROUSH** asked **SEN. TOOLE** if the sponsor, **SEN. HALLIGAN** subscribed to the amendment. **SEN. TOOLE** said he really was not sure. **SEN. TOOLE** added that the reason he brought this amendment forward was that he questioned whether this tax credit was enough to drive decision-making. The wastes were already being used without the credit and he did not feel it was necessary.

Motion/Roll Call Vote: **SEN. TOOLE** moved that **AMENDMENTS TO SB 92 BE ADOPTED**. Motion failed 1-9 with Toole voting aye.

CHAIRMAN CRISMORE noted earlier motion on the table by **SEN. VICKI COCCHIARELLA**.

Voice Vote: Motion that **SB 92 DO PASS** carried 10-0.

{Tape : 1; Side : A; Approx. Time Counter : 4.9 - 26.6}

OTHER BUSINESS - SB 31 and SB 126

SEN. TOOLE requested the committee wait to take executive action on **SB 31** regarding easements. **CHAIRMAN CRISMORE** advised we would take action on both **SB 31** and **SB 126** at a later time and we will not be **meeting** on Friday, January 19, 2001.

{Tape : 1; Side : B; Approx. Time Counter : 26.7}

ADJOURNMENT

Adjournment: 3:55 P.M.

SEN. WILLIAM CRISMORE, Chairman

NANCY BLECK, Secretary

WC/NB

EXHIBIT (nas13aad)