

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 17, 2005 at 7:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Jeff Mangan (D)
Sen. Lynda Moss (D)
Sen. Gerald Pease (D)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: None.
Executive Action: SB 258; SB 378; SB 385; SB 402; SB
462; SB 483; SB 482; SB 407; SB
408; SB 426; SB 429; SB 435; SB
436; SB 447

EXECUTIVE ACTION ON SB 258

Discussion: SEN. MICHAEL WHEAT, SD 32, said that after the hearing on SB 258, he met with both sides of the issue to see if they could come up with what they believed to be a reasonable compromise. He provided a copy and overview of amendment #SB025801.avl and a gray bill.

EXHIBIT(jus39b01)

EXHIBIT(jus39b02)

SEN. WHEAT said that SB 258 is important to both landowners and the oil and gas industry. If the bill moves forward, it may need further work.

Motion: SEN. WHEAT, moved that SB 258 DO PASS.

Motion: SEN. WHEAT moved the approval of amendment #SB025801.avl.

{Tape: 1; Side: A; Approx. Time Counter: 4.3 - 17.5}

Discussion: SEN. WHEAT said that the amendments attempt to provide procedures that protect the rights of both surface owners and oil or gas operators when disputes or disagreements arise regarding mitigation or compensation for damages to the surface owner. It also addresses when an oil and gas estate is leased or conveyed and provides notice to the surface owner when the operator proposes to undertake an oil and gas operation on the surface owners land.

{Tape: 1; Side: A; Approx. Time Counter: 17.5 - 23.5}

SEN. DANIEL MCGEE, SD 29, said that SB 258 requires a surface-use agreement as a condition for approval of a permit. He asked, what if there is no surface-use agreement. **SEN. WHEAT** said that there may be instances where a landowner refuses to sign any type of agreement. In that instance, it is unfair to the oil and gas operator to not be able to move forward. In that instance, SB 258 may need tinkering to allow the operator to be able to certify to the Board of Oil and Gas that the surface owner refused to sign the agreement. **SEN. MCGEE** said that concept may create a further problem in that an operator tried to get a surface-use agreement but could not get one, the operator has posted the bond but they have no permit, and the landowner still gets to use one-half of the bond.

SEN. WHEAT asked if a permit was needed before notice was given to start an oil and gas operation or is notice given before a

permit is issues by the Board. **Tom Richmond, Administrator and Petroleum Engineer, Board of Oil and Gas**, said that currently, notice requirements exists in part of the statute that the Board has no rulemaking authority for. The notice requirement is independent of what the Board does. When the Board receives notice of intent to drill or a drilling permit application, it has an administrative process to ensure that the wells are in a legal location and that the operator is bonded for the well. An environmental assessment is conducted and the permit is approved. There is also a separate 10-day notice requirement for wells in "undelineated fields or wildcat fields"--wells located away from existing production.

{Tape: 1; Side: A; Approx. Time Counter: 23.5 - 24.6}

SEN. JIM SHOCKLEY, SD 45, asked if notice was given to the landowner as well as being published in the newspaper. **Mr. Richmond** said that Board does not send notices to landowners, but operators are required to give an independent notice to landowners.

SEN. MCGEE requested an explanation of an operator bond. **Mr. Richmond** said that the Board has authority to set a good and sufficient bond for an operation. It adopts bonding requirements by rule and, currently, the requirements are set by the depth of the well. The requirements are conditioned on properly plugging and abandoning a well, which the Board interprets to mean, cleaning up the area disturbed by the operation of a well. The Board holds the penal-sum bond in the name of the state of Montana for the purpose of if the operator did not properly plug and abandon the well, the Board could hire it done.

{Tape: 1; Side: B; Approx. Time Counter: 38.6 - 41.1}

SEN. JON ELLINGSON, SD 49, asked if he were correct in assuming that if a surface owner does not want to enter into an agreement, the owner cannot prevent the entry of the person who owns the mineral rights as long as the bond is posted. **SEN. WHEAT** said, that was correct, adding that if a person has a construction lien and the person files a complaint on the lien, the person that it is filed against can bond out of it--file a bond in the amount of 1 1/2 times the amount of the complaint.

{Tape: 1; Side: B; Approx. Time Counter: 41.2 - 45.1}

SEN. SHOCKLEY said that the "surety bond" for access is not a bond. A bond is something that somebody purchases to ensure that when the person has the obligation to pay a sum of money, if the purchaser of the bond does not pay, the person bonding him will.

SB 146 needs language that says that someone has to borrow the money or use capital to put it in the bank and then the landowner gets to take one-half of it out.

Vote: SEN. WHEAT'S motion that amendment #SB025801.av1 be approved carried on 7 to 5 roll call vote. SENATORS O'NEIL, SHOCKLEY, MCGEE, PERRY, AND CURTISS voted nay.

Motion: SEN. WHEAT moved that SB 258 DO PASS AS AMENDED.

Motion/Vote: SEN. MCGEE moved to further amend SB 258 by striking Subsection (2) of NEW SECTION 10 -- (2) Execution of a surface use agreement between the operator and the surface owner shall be required as a condition of approval of an application for a permit to conduct oil or gas operations. Motion carried unanimously by voice vote.

Motion: SEN. MCGEE moved to further amend SB 258 by striking the language "The bond must be in an account that the surface owner can access. The surface owner must be able to access at least half of the bond amount." in NEW SECTION 11.

SEN. ELLINGSON asked who proposed that particular language. Michelle Reichart, Northern Plains, said that most of the language in New Sections 10 and 11 was taken from Wyoming legislation that is currently being considered, except for the two sentences that SEN. MCGEE wishes to strike. Those sentences were a suggestion from the Northern Montana Minerals Association who wanted access to the bond money before the operator came on the land.

Vote: SEN. MCGEE'S amendment carried on a unanimous voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 54.4 - 57.9}

SEN. JERRY O'NEIL, SD 3, questioned the meaning of the language "The amount of the bond or other guaranty specified . . . is not intended to establish any amount for reasonable and foreseeable damages." SEN. WHEAT said if the surface owner and operator cannot agree on the amount and if a bond still had to be posted for the double amount, just by the mere fact that the bond was posted does not mean that is what the amount of the damages are. SEN. O'NEIL felt it would be better to strike the sentence in its entirety so that if it goes to court and the court awards the fee, the bond amount cannot be a part of whether it is a reasonable negotiation or damage.

Motion: SEN. O'NEIL moved that the language "The amount of the bond or other guaranty specified . . . is not intended to establish any amount for reasonable and foreseeable damages" be struck in its entirety from NEW SECTION 11.

SEN. WHEAT disagreed, saying that the posting of the bond is in no way to be considered a value of reasonable and foreseeable damages. It is just the estimate between the two parties. If they cannot agree on an amount and it ends up in court, the court will decide the damage amount.

Vote: SEN. O'NEIL'S motion failed on a 2 to 10 voice vote. SENATORS O'NEIL and CURTISS voted aye.

{Tape: 1; Side: B; Approx. Time Counter: 57.8 - 62.0}

SEN. MCGEE said he did not like the language that the surety bond be equal to twice the amount of the difference between the damage estimates of both parties without some type of sideboards. He asked what is a reasonable "not to exceed" figure per well. **Ms. Riechart** was unsure and **Mr. Richmond** said that the rational approach would be to look at what the reclamation would be for a well. For a shallow well, it may be very small. If it is a large and deep well, it may be a significant amount. He suggested designing language that would cover the cost of reclaiming a location that is going to be disputed.

{Tape: 1; Side: B; Approx. Time Counter: 62.0 - 63.1}

SEN. WHEAT said that other cost are involved besides reclamation costs. He asked if the language would have to encompass the additional costs. **Mr. Richmond** said, yes, adding that he was uncomfortable with the definitions of "damages" currently in SB 258. If the definition means damages to growing crops or taking a certain amount of land out of production for a period time, the amount would be relatively straight forward to compensate for. If the damages mean off-site damages or are more esoteric in nature, it becomes harder to put an amount on. There is a difference between reclamation and surface damage.

{Tape: 2; Side: A; Approx. Time Counter: 1.1 - 4.7}

SEN. AUBYN CURTISS, SD 1, asked about the procedure for notification if a landowner lives out of state, for example. **Mr. Richmond** said that statute requires written notice be given to the address of record in the county. **SEN. CURTISS** asked if the provisions of SB 258 make it more difficult to notify owners. **Mr. Richmond** said although he did not believe that SB 258 made

notification more difficult, it did require more levels of notification and negotiation than what is currently required in statute.

{Tape: 2; Side: A; Approx. Time Counter: 4.7 - 20.5}

Motion: SEN. O'NEIL moved a CONCEPTUAL AMENDMENT to insert "and if the operator prevails by receiving an award of less than the final offer of the surface owner, the court shall award litigation expenses to the operator" after "surface owner" at the end of **NEW SECTION 8(2)** Offer -- award of litigation expenses.

SEN. O'NEIL said that the language would make the language in SB 258 similar to current language under operator judgments in present case law. The conceptual amendment would ensure that both parties negotiate in good faith.

Vote: SEN. O'NEIL'S motion failed on a 6 to 6 roll call vote. SENATORS O'NEIL, SHOCKLEY, MCGEE, PERRY, LASLOVICH, and CURTISS voted aye.

Valencia Lane, Staff Attorney, Legislative Services Division (LSD), said that the gray bill cannot be amended because the line numbers do not add up to the real bill. Any amendment must be done to the original bill or to the amendments, themselves.

SEN. JESSE LASLOVICH, SD 43, commended SEN. WHEAT'S attempt to address the "bad actors" doing bad things to surface owners, but he felt that the attempt may create more problems for the people who are doing "good things". He was very concerned about the bonding issue, as well as, the laundry list of problems that have to be addressed related to the surface-use agreements.

SEN. LYNDA MOSS, SD 26, saw SB 258 as a way to provide accountability for poor stewardship and poor corporate behavior, particularly when a corporation can come in and subcontract with other businesses with essentially no accountability. SB 258 provides an opportunity to redefine equity and positive relationships between the industry and surface owners.

{Tape: 2; Side: A; Approx. Time Counter: 20.5 - 29.1}

SEN. CURTISS said that every member of the Committee wants to see economic development in Montana and yet, more and more, the Legislature is seeing legislation that throws up roadblocks for people who want to create jobs. SB 258 is a prime example of it, and she opposed the bill.

Motion/Vote: SEN. WHEAT moved a CONCEPTUAL AMENDMENT to insert the bond be "either" twice the amount of the difference between the damages estimated by the operator and damages estimated by the surface owner, "or \$10,000, whichever is less" in Section 4(3) (b) . Motion carried unanimously by voice vote.

SEN. ELLINGSON said that the Committee needed to recognize the good-faith efforts of SEN. WHEAT; and if SB 258 is not passed, the Committee will not have the opportunity to continue working on it.

Vote: SEN. WHEAT'S motion that SB 258 DO PASS AS AMENDED failed on a 6 to 6 roll call vote. SENATORS O'NEIL, SHOCKLEY, MANGAN, MCGEE, PERRY, and CURTISS voted nay.

EXECUTIVE ACTION ON SB 378

{Tape: 2; Side: A; Approx. Time Counter: 29.1 - 36.2}

Motion: SEN. BRENT CROMLEY, SD 25, moved that SB 378 DO PASS -- prefiling request for insurance information.

Motion: SEN. CROMLEY moved the approval of amendment #SB037801.av1.

EXHIBIT(jus39b03)

Discussion: SEN. SHOCKLEY asked, in light of the fact that Rule 11 is never enforced, why would the Legislature want to put that language in statute. SEN. CROMLEY disagreed that Rule 11 was never enforced, but if it not, it means that the pleadings are being signed. SEN. WHEAT said that the language was included to `alleviate the fear that some unscrupulous lawyer may go to an accident scene and door to door looking for people to sue.

Vote: SEN. CROMLEY'S motion to approve amendment #SB037801.av1 carried unanimously by voice vote.

Motion/Vote: SEN. CROMLEY moved that SB 378 DO PASS AS AMENDED. Motion carried 7 to 5 by roll call vote with SENATORS CURTISS, MCGEE, O'NEIL, PERRY, and SHOCKLEY voting no.

EXECUTIVE ACTION ON SB 385

{Tape: 2; Side: A; Approx. Time Counter: 36.5 - 43.8}

Motion: SEN. MCGEE moved that SB 385 DO PASS.

Motion: SEN. MCGEE moved the approval of amendment #SB038501.agp.

EXHIBIT(jus39b04)

Discussion: Shirley Brown, Administrator, Child and Family Services, Department of Public Health and Human Services (DPHHS), said the DPHHS felt that SB 385 should represent a way for people to get assistance in working through the child protective services system if they had a grievance. SB038501.agp address the issues that the Division had in terms of the proposed ombudsman having direct contact with children during the investigation of child abuse and neglect.

Vote: SEN. MCGEE'S motion to approve amendment #SB038501.agp carried unanimously by voice vote.

Motion/Vote: SEN. MCGEE moved that SB 385 DO PASS AS AMENDED. Motion carried on a 9 to 3 voice vote with SENATORS LASLOVICH, MANGAN, and MOSS voting no.

EXECUTIVE ACTION ON SB 402

{Tape: 2; Side: A; Approx. Time Counter: 43.8 - 53.9}

Motion: SEN. GARY PERRY, SD 35, moved that SB 402 DO PASS.

Motion: SEN. PERRY moved the approval of amendment #SB040201.agp.

EXHIBIT(jus39b05)

Discussion: SEN. CROMLEY said that his concern is for the parents who may not want a certificate of stillbirth. SEN. PERRY said that the amendment defines "stillbirth". It does not change a natural circumstance. It just acknowledges that there was a birth and, for statistical purposes, provides information on how many stillbirths there were. Some parents may not want a certificate. The certificate is given upon request of the parents only.

Vote: SEN. PERRY'S motion to approve amendment #SB040201.agp carried unanimously by voice vote.

Motion: SEN. PERRY moved that SB 402 DO PASS AS AMENDED.

Discussion: SEN. CROMLEY said that because there were no opponents or proponents to the bill, he felt like he was operating in the blind and felt uncomfortable voting for SB 402 without more input.

SEN. CURTISS said that SB 402 may help provide closure to some parents who have gone through such a tragedy.

Vote: SEN. PERRY'S motion that SB 402 DO PASS AS AMENDED carried on a 9 to 3 roll call vote. SENATORS CROMLEY, MOSS, and MANGAN voted nay.

EXECUTIVE ACTION ON SB 462

{Tape: 3; Side: A; Approx. Time Counter: 0.4 - 2.5}

Motion: SEN. SHOCKLEY moved that SB 462 DO PASS.

Discussion: SEN. CROMLEY opposed SB 462 because many venue statutes were changed in the 2003 Session. Even though it has all been changed, SB 462 may not have any effect other than residual.

Vote: SEN. SHOCKLEY'S motion that SB 462 DO PASS carried on a 7 to 5 roll call vote. SENATORS MOSS, ELLINGSON, WHEAT, CROMLEY, and LASLOVICH voted nay.

EXECUTIVE ACTION ON SB 483

{Tape: 3; Side: A; Approx. Time Counter: 2.5 - 4.6}

Motion/Vote: SEN. MCGEE moved that SB 483 BE TABLED. Motion carried on an 11 to 1. SEN. ELLINGSON voted aye.

EXECUTIVE ACTION ON SB 482

{Tape: 3; Side: A; Approx. Time Counter: 4.6 - 8.6}

Motion: SEN. WHEAT moved that SB 482 DO PASS.

Motion: SEN. WHEAT moved to amend SB 482 by striking the WHEREAS clauses and striking the language after "in a manner that does not adversely effect the public health and safety," and inserting "or the environment." on Page 2, line 3, sub(d). Motion carried unanimously on a voice vote.

Motion: SEN. WHEAT moved that SB 482 DO PASS AS AMENDED.

Discussion: SEN. CROMLEY said that SB 482 applies only to Montana corporations which, for the most part, are very small. If statute has language that all corporations had to act with the same standards included in SB 482, it would be more appropriate.

Vote: SEN. WHEAT'S motion that SB 482 DO PASS AS AMENDED failed on a 3 to 9 voice vote. SENATORS MOSS, ELLINGSON, and WHEAT voted aye.

Motion: SEN. MCGEE moved that SB 482 BE TABLED AND THE VOTE REVERSED. SENATORS MOSS, ELLINGSON, and WHEAT voted nay.

EXECUTIVE ACTION ON SB 407

{Tape: 3; Side: A; Approx. Time Counter: 8.6 - 12.1}

Motion: SEN. WHEAT moved that SB 407 DO PASS.

Discussion: SEN. CROMLEY said that SB 407 increases the penalties on minors in possession (MIP), and the increases have never proven successful in reducing the number of MIPs. If there is a problem, the Legislature must find other ways to solve it. SEN. MCGEE said that the 2003 Session left a penalty gap between the 18 to 21 year olds. SB 407 would make the penalty conform universally among children younger than 21 years of age.

Vote: SEN. WHEAT'S motion that SB 407 DO PASS carried on a 8 to 4 voice vote. SENATORS O'NEIL, SHOCKLEY, MANGAN, and CROMLEY voted nay.

EXECUTIVE ACTION ON SB 408

{Tape: 3; Side: A; Approx. Time Counter: 13.6 - 14.5}

Motion/Vote: SEN. MANGAN moved that SB 408 BE TABLED. Motion carried on a 7 to 5 by voice vote. SENATORS CURTISS, MCGEE, O'NEIL, PERRY, and SHOCKLEY voting nay.

EXECUTIVE ACTION ON SB 426

{Tape: 3; Side: A; Approx. Time Counter: 14.5 - 19.1}

Motion: SEN. MCGEE moved that SB 426 DO PASS.

Motion/Vote: SEN. CROMLEY moved the approval of amendment #SB042601.asb. Motion carried unanimously on a voice vote. SEN. MANGAN vote aye by proxy.

[EXHIBIT](#)(jus39b06)

Motion/Vote: SEN. SHOCKLEY moved that SB 426 DO PASS AS AMENDED. Motion carried unanimously on a voice vote. SEN. MANGAN voted aye by proxy.

EXECUTIVE ACTION ON SB 429

{Tape: 3; Side: A; Approx. Time Counter: 19.1 - 26.1}

Motion: SEN. SHOCKLEY moved that SB 429 DO PASS.

Motion: SEN. SHOCKLEY moved to the approval of amendment #SB042901.av1.

Discussion: SEN. SHOCKLEY said that there was much discussion on the amendment, and it was decided that the proposed language should not be in the bill.

Motion/Vote: SEN. SHOCKLEY moved a SUBSTITUTE MOTION to strip amendment #SB042901.av1. Motion carried on a unanimous voice vote. SEN. MANGAN voted aye by proxy.

Motion: SEN. SHOCKLEY moved the approval of amendment #SB042903.av1. Motion passed unanimously by voice vote. SEN. MANGAN voted aye by proxy.

[EXHIBIT](#)(jus39b07)

Motion/Vote: SEN. SHOCKLEY moved SB 429 DO PASS AS AMENDED. Motion carried unanimously by voice vote. SEN. MANGAN voted aye by proxy.

EXECUTIVE ACTION ON SB 435

{Tape: 3; Side: B; Approx. Time Counter: 38.6 - 40.5}

Motion: SEN. SHOCKLEY moved that SB 435 DO PASS.

Motion: SEN. WHEAT moved the approval of amendment #SB043501.av1. Motion carried unanimously by voice vote. SEN. MANGAN voted aye by proxy.

EXHIBIT(jus39b08)

Motion/Vote: SEN. SHOCKLEY moved that SB 435 DO PASS AS AMENDED. Motion carried unanimously by voice vote. SEN. MANGAN voted aye by proxy.

EXECUTIVE ACTION ON SB 436

{Tape: 3; Side: A; Approx. Time Counter: 40.5 - 39.8}

Motion: SEN. O'NEIL moved that SB 436 DO PASS.

Discussion: SEN. CROMLEY opposed SB 436 because he did not like a guarantee placed in statute that may give people false hope. He felt that the people working with children and families are not attempting to remove the child from the home. Trying to return children to parents is best for children, parents, and the Department. This is a complex matter, and he felt that the Department went to extreme measures to reunite children and families.

SEN. O'NEIL said that currently an abuse and neglect petition must state the nature of the alleged abuse or neglect and the relief requested. He questioned, if people ask for relief and receive it and if they change their conduct as requested, what is wrong with giving them back their children.

Motion: SEN. LASLOVICH moved a SUBSTITUTE MOTION that SB 436 BE TABLED. Motion carried on a 7 to 5 voice vote. SENATORS O'NEIL, SHOCKLEY, MCGEE, PERRY, and CURTISS voted nay. SEN. MANGAN voted aye by proxy.

EXECUTIVE ACTION ON SB 447

{Tape: 3; Side: A; Approx. Time Counter: 43.7 - 43.8}

Motion: SEN. ELLINGSON moved that SB 447 DO PASS.

Motion: SEN. ELLINGSON moved the approval of amendment #SB044701.av1.

EXHIBIT(jus39b09)

Discussion: SEN. ELLINGSON said that even with the amendments, the major thrust of SB 447 remains the same--to streamline the process of resolving disputes involving initiatives and resolving them directly with the Supreme Court rather than going to a District Court first.

Vote: SEN. ELLINGSON'S motion to approve amendment #SB044701.av1 carried on a 10 to 2 voice vote. SENATORS MCGEE and PERRY voted nay. SEN. MANGAN voted aye by proxy.

Motion/Vote: SEN. ELLINGSON moved that SB 447 DO PASS AS AMENDED. Motion carried on an 8 to 4 voice vote with SENATORS CURTISS, MCGEE, O'NEIL, and PERRY voting no.

ADJOURNMENT

Adjournment: 8:35 P.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

Transcribed by LOIS O'CONNOR

MW/mp

Additional Exhibits:

EXHIBIT ([jus39bad0.PDF](#))