

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS**

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on April 3, 2001 at 3:00 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Stanley Fisher (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 506, 4/9/2001; SB 521,
4/9/2001; SB 513, 4/9/2001
Executive Action: SB 513, SB 506, SB 521

HEARING ON SB 506

Sponsor: SENATOR JOHN COBB, SD 25

Proponents: Debbie Smith, Natural Resources Defense Council
Matthew Leow, Montana Public Interest Research Group
Patrick Judge, Montana Environmental Information
Center
Patty Keebler, AFL-CIO
Betty Whiting, Montana Association of Churches

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0.3}

SENATOR JOHN COBB, SD 25, said that there are four parts to this bill. It creates a revolving loan account. It took money from air quality penalties assessed by DEQ to do that. Those moneys go in the general fund, they run about \$140,000 each year. DEQ will be able to loan this money out at low interest rates for people who want to do alternative energy for small businesses. It also raised the credits for individuals and businesses for developing alternative energy. It expands the definition of alternative energy. The last thing is that it adds alternative energy to some loan and bond programs within the state. Hopefully this will help people with alternative energy compete with fossil fuels. There are some amendments. **EXHIBIT(feh75a01)**
EXHIBIT(feh75a02)

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 16.6}

Debbie Smith, Natural Resources Defense Council, said that this bill provides meaningful incentive on an individual to promote the use of alternative energy, including solar, geothermal, small hydro, et cetera. Anything that can be done to promote the use of sustainable fuels will be something that benefits Montana and future generations. She passed out additional information.
EXHIBIT(feh75a03) **EXHIBIT(feh75a04)**

Matthew Leow, Montana Public Interest Research Group, said that with the energy situation we are in right now, we are becoming more familiar with where our energy comes from and our energy

policy. This is the direction that we need to go as we look toward the future. This bill will help very worthwhile projects. Renewable energies are not a cheap thing to get involved with. There is not the established industry in alternative energy that you can find when you look at other resources, such as coal. It is important for the government to invest this money in a positive energy policy for the future. It is an investment in the future. These projects have been stigmatized as projects for the rich people. This is a way to get around that. We need a wider population base to be trying these projects.

Patrick Judge, Montana Environmental Information Center, pointed out that this bill is one of the very first that was endorsed by the Citizens' Council on Energy Policy. There are no state moneys going out toward this; this is simply a tax exemption for people who are willing to invest their own money in these projects.

Patty Keebler, AFL-CIO, said that her organization has longstanding policy positions in support of encouraging alternative energy, as well as producing energy in traditional ways. This is a good bill.

Betty Whiting, Montana Association of Churches, said that in their concern for God's creation they urge passage of this bill. They believe that we need to continue to reward people who are seeking to find ways to pass on the creation to our descendants.

Questions from Committee Members and Responses:

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

REPRESENTATIVE CAROL JUNEAU asked if the use of turbines for irrigation would be covered under this. **SENATOR COBB** said that there wouldn't be any equipment tax on them. They would also get added income and a tax credit on that income. They may also be able to get a low interest rate loan.

REPRESENTATIVE TOM DELL clarified that the funds for this are from air quality noncompliance fees. Is that the state revenue that is listed on the fiscal note? **SENATOR COBB** said that is correct.

REPRESENTATIVE TRUDI SCHMIDT asked about number 4 in the technical notes. **SENATOR COBB** said that was taken care of in the amendments.

REPRESENTATIVE ROY BROWN asked if it also takes care of the technical notes, numbers 5 and 6. **SENATOR COBB** said that they had taken out the definition of noncommercial in amendment number 8. **REP. BROWN** said that there had been some discussions, concerning the plant in Billings, about fuel cell technology and converting the plant over to that. Would that be too large of a project for this? **SENATOR COBB** said that they would be exempt for five years.

REPRESENTATIVE BOB STORY said that the House had passed a similar bill and there was a lot of discussion about the language that is found in subsection 2B, "To qualify for the exemption the generation facilities may include those powered by..." Does the sponsor construe that section of law to still allow the exemption to apply to fossil powered generators because of the "may"? **SENATOR COBB** said that in amendment number 9 that was removed, so it must be only the ones listed. **REP. STORY** said that several places in this bill it allows alternate energy generation to be financed through a lot of different methods. Has the sponsor received any feedback about the use of the Treasure State Endowment Program, as to the expansion of that program? **SENATOR COBB** had heard that the Treasure State might not be appropriate. He hasn't heard any feedback from the other areas. **REP. STORY** said that section four allows special improvement districts to be formed, that's only for zoning of cities, not rural districts. **SENATOR COBB** said that the cities may start thinking that they should have some windmills outside the city to supplement the energy supply. This has been seen in North Dakota. **REP. STORY** asked if it was intentional to leave out the rural special improvement districts. **SENATOR COBB** said that it was not. **REP. STORY** asked if anyone has ever used the credit found in section 15. **SENATOR COBB** didn't know of anyone. **REP. STORY** asked if 40% is more of an incentive. **SENATOR COBB** said that we should create the industry and then tax them later.

REP. JUNEAU asked about the struggling industrial companies. Are there very many of those that are considering trying to do some alternative energy and would they fit under this if they did? **SENATOR COBB** doesn't think that they are looking at that. Wind power is between 4 and 6 cents. North Dakota and South Dakota are lowering their sales taxes as fast as they can for these industries. They don't have the property taxes that we do. He is just trying to compete with them.

REPRESENTATIVE DOUG MOOD said that on page 10, section 10, there is language that allows for a deduction of 100% of the first 12,000 in residences and 100% of the first 20,000 in commercial

buildings. **SENATOR COBB** said that is the same as **SENATOR TAYLOR's** bill. However, in the amendments section 10 was stricken in an attempt to lower the fiscal note.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 41.9}

SENATOR COBB said that what he saw across the nation is that we have high property taxes on this equipment in relation to other states, but they have sales taxes. They are lowering their sales taxes. He is trying to make it so that the alternative energy projects have a chance. Across the nation, he saw that the one thing that was lacking was small residential. If you don't have any money, you can't use the credit. Those people will be able to borrow a low interest loan to create these things. He is trying to create this industry in Montana.

HEARING ON SB 513

Sponsor: SENATOR JIM ELLIOT, SD 36

**Proponents: Matthew Leow, Montana Public Interest Research Group
Patrick Judge, Montana Environmental Information
Center
Patty Keebler, AFL-CIO
Deborah Smith, NRDC, RNP**

Opponents: Ken Morrison, PPL

Informational Witnesses: Mark Prichard, Department of Revenue

Opening Statement by Sponsor:

SENATOR JIM ELLIOT, SD 36, said that this is an excess profits tax on the generation of electricity in the state of Montana. The first excess profits tax was introduced in the state of Georgia during the Civil War. It was against the manufacturers of uniforms and munitions. The rationale for such taxes is to help the government recover the high costs of purchases due to the high costs of the companies involved. In wartime these taxes have been used. In the anticipated supplementals that some of the state agencies are requesting to pay what they anticipate will be very high prices of electricity, we are seeing a need for the state of Montana to recover some of that cost through excess profits taxes. It is to correct an inequitable situation that has been caused by government action. He read from a paper, "The

fact is, the whole sphere of economic activity is sometimes deliberately, and often unavoidably, permeated by the affects of government... What the government gives, the government has a right to take away, at least in part... It has the right to take away a portion of what it did not intend to give, the gift being in the nature of an unintended and unearned increment." He handed out supplemental information and an amendment.

EXHIBIT (feh75a05) EXHIBIT (feh75a06)

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 0}

Matthew Leow, Montana Public Interest Research Group, said that this is a consumer issue. It will protect Montana consumers from price gouging by generators in the state. The generators in California are making a killing on the energy crisis. At the same time, the companies who distribute the energy are reporting record losses and are talking about bankruptcy. This is a situation that we, in Montana, don't want to get into. Although Montana is a smaller market, we only have one large company that is controlling the generation in the state. Therefore, that company, PPL, is in a very good position for themselves to dictate what the rate is going to be on the electricity. This bill discourages profiteering by imposing these large taxes on out-of-pace profits. It also prevents the distributors from going bankrupt because the money that is collected from this tax will go back to the distributors. Hopefully, this would create more realistic rates; the generators should be able to make a fair profit; the distributors should be able to charge enough to stay in business, and the consumers should be able to stay in business, heat their homes, et cetera. PPL will argue that this is illegal, it will be passed on to the rate payer and it will have a negative effect on business. However, he feels that the real reason they are opposing this is that they want to be able to charge excessive rates that result in excessive profits. If they don't plan on charging rates that are past 125% of cost, then they have nothing to worry about.

Patrick Judge, Montana Environmental Information Center, said that this bill gets at the problem. If you look in California you see that there is a tight supply market, but you also see that the structure of the industry has allowed a magnification of the price increases. He read from PPL's web page.

EXHIBIT (feh75a07) This bill will discourage profiteering, it allows for a reasonable profit without any penalty, but it also works on the supply side as well, in terms of liberating power and investing in conservation, and creating more power through

clean, alternative energy sources. This may be moving away from the sanctity of the free market, but such a move may be warranted by the need to protect Montana's economy and Montana's environment.

Patty Keebler, AFL-CIO, said that business profits are good. Profits are the pots of money where workers get raises and better benefits, where plants and work sites are upgraded, where safety and education programs are enhanced, and where community projects are funded. Excess profits, however, almost always mean something is out of whack. Today that is our economy. Working families need the legislature to stop the hemorrhage of jobs, to restore what we have lost, and to bring balance back to our economic system.

Deborah Smith, NRDC, RNP, said that they support section 2, which allows for the excess profits collected, if any, to be directed to conservation and renewables in an amount of 25% of the total and then 75% of the total to rate reduction, which would include low income bill assistance. MPC has updated its conservation potential forecast. At a cost of 3 ½ cents or less, there is 98 megawatts of capacity available in their system. The total cost of acquiring this conservation at 3 ½ cents a kilowatt hour less, is about \$179 million. Most of the 98 megawatts could be purchased within the next three years. The savings potential would be broken down to 75% of that in the commercial/industrial sector, 25% in the residential sector, and less than 1% in the agricultural sector. This is an extremely effective way of using excess profits that the generators are getting to help Montana become more self sufficient in terms of its energy use.

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 12.9}

Ken Morrison, PPL, submitted written testimony.

EXHIBIT (feh75a08)

Informational Witnesses:

Mark Prichard, Department of Revenue, is here to answer any questions.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 15.3}

REPRESENTATIVE BOB STORY asked about page 2, sub 4, does the sponsor interpret 125% to be 4 ½ cents or 25% over 2 cents. **SENATOR ELLIOT** said that it is the revenue to cost percentage. It would be the cost divided into the revenue.

REPRESENTATIVE ROY BROWN asked for the definition of cost. **SENATOR ELLIOT** replied that cost would be up to the PSC and the Department of Revenue to decide. **REP. BROWN** clarified that we are going to let the PSC decide what cost is. **SENATOR ELLIOT** said that there is language in the bill that allows the Department of Revenue to consult with the PSC.

REP. STORY asked if this is going to be on an aggregate thing and how does it work if the company has other facilities throughout the nation. **SENATOR ELLIOT** said that he thought we would use the same formula that is used for corp tax, which is profits, assets and payroll. **REP. STORY** asked what happens to the people who own qualifying facilities, who are generators, but have higher costs. They would be taken care of because you are on a cost ratio. **SENATOR ELLIOT** said that was his understanding.

REPRESENTATIVE GARY FORRESTER asked what the difference was between this and a price cap. **SENATOR ELLIOT** said that there is no real price cap in this until profits are at 200%. **REP. FORRESTER** asked, why don't we just reregulate? **SENATOR ELLIOT** said that if we reregulate, we will be reregulating in a market environment, rather than a cost environment. **REP. FORRESTER** said that Hungry Horse dam was down 40 feet. It looks like the hydro portion could be producing less than 50% of full capacity this summer. If PPL is forced to go on the market, how does the sponsor propose to regulate them without PSC involvement every hour of every day? **SENATOR ELLIOT** said that this is a form of regulation through taxation. If PPL has to go on the market, the language on page 1, line 28, indicates that in determining the revenue from the sale of electricity, the cost of buying that power would be taken into account.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 29.9}

SENATOR ELLIOT referred to the Wheeler conference. **EXHIBIT (feh75a09)** At that meeting it was said that there is market manipulation in California. The California Public Utilities Commission and the Electricity Oversight Board said that sellers may have been withholding power from this market in an effort to drive up prices in other parallel markets. In this

bill, the formula for defining profit is more defensible and more manageable than it is in other bills. It is a good mechanism. We have heard that this is an inappropriate tax on Montana generators. That makes the question, are the prices that PPL is wanting to charge Montana businesses punitive and indiscriminate? We have heard that this would have a chilling effect on economic development in Montana, yet deregulation, according to MPC, makes Montana more competitive in terms of economic development. We are now in a situation similar to California, where there is not expansion because of the volatility of the electricity prices. The prices that PPL has been charging have a chilling effect on the economic state of Montana from the standpoint of growth and stability. There is a compelling public interest that something be done to regulate, in some sense, the price of electricity in the state of Montana. This bill is constitutional. The constitutionality of imposing this tax can be found in Snead vs. Arizona and Baldwin vs. Montana Fish and Game Division. They are attempting to bring PPL to the table. Since PPL won't come to the table to work something out, we need legislation to make sure that we get a fair shake. They would like to deal with PPL in a equitable, fair and neighborly way. It is a sin to make money off of others' misfortunes.

HEARING ON SB 521

Sponsor: SENATOR STEVE DOHERTY, SD 24

Proponents: Patty Keebler, AFL-CIO

Opponents: None

Opening Statement by Sponsor:

SENATOR STEVE DOHERTY, SD 24, said that this is a simple, straightforward bill. It simply amends the current statute that gives the Governor emergency powers in an energy crisis situation. It arises out of an act that was passed in 1978 to deal with the energy shortage in that decade. The bill clarifies that energy emergency means an existing, eminent, domestic, regional or national shortage of energy or a price of energy that will result in curtailment of essential services, production of essential goods or disruptions of significant sectors of the economy. All of that language is current law, with the exception of adding "or a price of energy." It would clarify the Governor's powers to include that issue.

Proponents' Testimony:

Patty Keebler, AFL-CIO, supports this bill.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 46.7}

REPRESENTATIVE DOUG MOOD asked, in the Energy Emergency Act, does it allow that emergency situation to take place for 45 days.

SENATOR DOHERTY said that was correct. At the end of that 45 day period, the energy emergency stops, unless the legislature, by an affirmative act, intercedes and by resolution or act says that they believe the conditions exist for a continuation of the energy emergency and the Governor's powers need to be extended beyond the 45 day period.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 48.1}

SENATOR DOHERTY said that the bill is very straightforward. It adds yet another tool in the toolbox for the Governor.

EXECUTIVE ACTION ON SB 521

Motion: REP. DELL moved that SB 521 BE CONCURRED IN.

Discussion:

REP. STORY questions if we want to leave energy prices a permanent fixture in the Emergency Powers Act or if we want it to sunset. He doesn't have any strong feelings one way or the other.

Motion/Vote: REP. DELL moved that SB 521 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 506

Motion: REP. STORY moved that SB 506 BE CONCURRED IN.

Motion: REP. STORY moved that AMENDMENT BE ADOPTED.

Discussion:

REP. STORY said that the amendments were to reduce the cost. He wanted to get this bill moving.

Motion/Vote: **REP. STORY** moved that **AMENDMENT TO SB 506 BE ADOPTED. Motion carried unanimously.**

Motion: **REP. STORY** moved that **AMENDMENTS TO SB 506 BE ADOPTED.**

Discussion:

REP. STORY said that the first amendment would strike section 25, which is the Treasure State Endowment program. The second amendment returns the credit in section 15 to 35%. The third amendment would be to include rural SIDs as well as the municipal SIDs.

Motion/Vote: **REP. STORY** moved that **AMENDMENT TO SB506 BE ADOPTED. Motion carried unanimously.**

Motion/Vote: **REP. STORY** moved that **SB 596 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 513

Motion: **REP. DELL** moved that **SB 513 BE CONCURRED IN.**

Motion: **REP. DELL** moved that **AMENDMENT TO SB 513 BE ADOPTED.**

Discussion:

REP. DELL explained the amendments.

REP. STORY said that the amendment works well. It clarifies the language that the Senate put in the bill.

Motion/Vote: **REP. DELL** moved **AMENDMENT TO SB 513. Motion carried 11-1 with R. Brown voting no.**

Motion: **REP. DELL** moved that **SB 513 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. OLSON said that he will vote no.

REP. STORY said that this excess profits tax bill is better constructed than the other ones they have seen so far. He asked

if it was the intention to tax all the electricity generators in the state and exported, or just on the power that is generated in Montana and sold into the distribution system. **SENATOR ELLIOT** commented that his intention would be to tax all power generated. It is something to hold over their heads to bring them to the table.

REP. DELL wanted to know about a windfall profits tax bill. Are we on the cutting edge of this, or is this being done in any other state? **REP. STORY** had not heard anything. **SENATOR ELLIOT** said that we are on the cutting edge. The people in California don't understand why someone hasn't enacted one of these there. **Mr. Maly** said that the California deregulation law required their utilities to sell their generation assets. They did so to out-of-state entities. The utilities that are in California are on the receiving end of these high prices. It is companies outside of California that are reaping the profits.

REP. STORY said that there is a little known federal law that was passed several years ago to exempt states from taxing power that was exported. There were generators in New Mexico selling power into Arizona and New Mexico put a tax on those to collect some money out of Arizona, and the federal law prohibited that. He doesn't see a constitutional problem with taxing the power sold in the state. **REP. SCHMIDT** asked, where in the bill is the issue **REP. STORY** is talking about. **REP. STORY** said that it is on line 20, page 1. **SENATOR ELLIOT** said that the language he referred to merely defines who is a producer and a person who would be liable for the tax. The law that **REP. STORY** referred to requires that you tax equally in state and out of state and that is what this bill does.

REP. CURTISS asked if these are percentages that the industrials could live with. **REP. STORY** said that it depends on how you determine what cost is.

REP. FORRESTER said that there is nothing in this bill that says that PPL has enough power for large industrials to come back on their system. This bill will go to a free conference committee. He doesn't see why we need this bill when we have such broad titles in all of the other bills. He will vote no on this bill.

REP. ROY BROWN said that he is bothered that if any generator that has not sold any electricity in the state in the last five years, but they are selling out of the state, then they don't have to pay the tax. Why would they ever consider selling it in the state under these circumstances. He will vote against this bill.

REP. DEE BROWN called for the question.

Motion/Vote: REP. DELL moved that **SB 513 BE CONCURRED IN AS AMENDED. Motion failed 4-8 with Curtiss, Dell, Juneau, and Schmidt voting aye.**

By committee consensus the vote was reversed to table.

ADJOURNMENT

Adjournment: 5:30 P.M.

REP. AUBYN A. CURTISS, Chairman

ROBYN LUND, Secretary

AC/RL

EXHIBIT (feh75aad)