

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on March 25, 2003 at 3:15 P.M., in Room 317-A, B & C Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Gary L. Perry (R)
Sen. Don Ryan (D)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 479, 3/13/2003;
HB 571, 3/10/2003;
HB 675, 3/10/2003;
HJ 26, 3/13/2003

Executive Action: HB417; HB 580; HJ 26;
HB 675; HB 479; HB 710;
HB 637

HEARING ON HB 479

Sponsor: REP. KIM GILLAN, HD 11, BILLINGS

Proponents: Matt Brainard, PSC
Rick Hays, Qwest
Ed Eaton, AARP
Verner Bertelsen, MT Senior Citizens Assn.
Bonnie Lorang, MT Independent Telecommunications
Systems (MITS)
Phil Maxwell, 3 Rivers Communications

Opponents: None

Opening Statement by Sponsor:

REP. KIM GILLAN, HD 11, BILLINGS, presented HB 479 and stated this bill dealt with telephone cramming and slamming and gave the PSC additional authority to enforce existing law. To facilitate understanding of this issue, she provided **EXHIBIT (ens63a01)**, a diagram of the billing process and **EXHIBIT (ens63a02)**, an overview of HB 479 compiled by the PSC. She explained if a consumer found an unauthorized charge on his telephone bill, he would face difficulty in remedying this because typically, the service provider hid behind the billing agent or billing aggregator; there was no recourse because oftentimes, rural phone companies acted as the billing agent only, and the charge was not theirs since they do not provide telephone service. She added this bill focused on the service provider, and gave the PSC jurisdiction over the billing aggregator.

Proponents' Testimony:

Matt Brainard, PSC, rose in support of HB 479 and stated, absent this bill, the PSC would not be able to prohibit these practices. Due to computer generated billing, there had been a rash of false billing which was passed on through legitimate billing agents; the scope of this was quite large because even if a customer was only billed one or two dollars for a phony charge, if this happened in a multi-state area, such as Qwest's service territory, it could add up to thousands of dollars. He stated this bill gave the commission the ability to go after the violators and maintained the workability of the present billing system.

Rick Hays, Qwest, advised the committee he, along with other industry representatives, had worked extensively with the

commission and its staff to arrive at a reasonable compromise, and he urged the committee to pass this bill.

Ed Eaton, AARP, also rose in support of HB 479 because it was an appropriate tool to end slamming and cramming practices. In a fraud survey his organization had conducted last fall, it became apparent that one third of its members had fallen victim to consumer fraud within their telephone service; a mere fraction of those had filed a complaint or asked for refunds. He mentioned the percentage of victims was down from a survey done two years ago, largely thanks to legislation and community education, but more work was yet to be done. In closing, he submitted **EXHIBIT (ens63a03)**, testimony from **Pat Callbeck-Harper** who could not be present to testify.

Verner Bertelsen, MT Senior Citizens Assn., also stood in support of HB 479.

Mary Lorang, MT Independent Telecommunications Systems (MITS), rose in support of HB 479 and recommended a "do pass".

Phil Maxwell, 3 Rivers Communications, voiced his support for HB 479 as amended and thanked the commission's staff for their work. He stated this put the emphasis on the companies engaged in these unsavory practices.

Questions from Committee Members and Responses:

There were no questions from the committee.

Closing by Sponsor:

REP. GILLAN closed on HB 479 and stressed this was a strong consumer bill.

HEARING ON HB 571

Sponsor: REP. JOHN PARKER, HD 45, GREAT FALLS

Proponents: Jim Kembel, MT Assn. of Chiefs of Police; MT Police Protective Assn.
Pam Bucy, Department of Justice
Pat Callbeck-Harper, AARP

Opponents: Tom Beck, Chief Policy Advisor to Gov. Judy Martz
Scott Darkenwald, Department of Administration

Opening Statement by Sponsor:

REP. JOHN PARKER, HD 45, GREAT FALLS, presented HB 571, a consumer protection bill, and stated certain parts of the bill had been amended out because there were other bills which achieved similar goals more effectively. He advised HB 571 would transfer the Consumer Protection Office from the Department of Administration to the Department of Justice; provided for the collection of attorneys' fees for successful civil prosecution of these cases; and attorney's fees could be given to the defendant in a case if it was determined the case was brought in bad faith. He submitted **EXHIBIT (ens63a04)** and **EXHIBIT (ens63a05)**, copies of section from the Montana State Code relating to the functions of the Department of Administration; he felt this department was not the appropriate place to house a litigation and prosecution function for the state. He went briefly over marked portions of these copies to make the point it made more sense to house this program in a setting with other attorneys who were experts at handling complex litigation. He pointed out the state's current Consumer Protection attorney, Cort Jensen, was present strictly as an informational witness.

Proponents' Testimony:

Jim Kembel, MT Assn. of Chiefs of Police, and the MT Police Protective Assn., rose in support of HB 571, stating the Attorney General's Office and the various law enforcement offices worked closely together on all law enforcement functions and it would be a natural for them to continue in this setting. He felt the consumer protection program would have more tools available in pursuing and prosecuting criminal offenses, such as the department's investigators, computer experts, staff, and criminal prosecutors. In closing he mentioned the Attorney General's Office handled the consumer protection programs in all states except Georgia.

Pam Bucy, Department of Justice, stated consumer protection had become the number one priority for the National Association of the Attorneys General, and the department supported this bill since they were a law enforcement agency, and it was a natural fit; they received thousands of consumer complaints each year which they currently referred to the Consumer Protection Office. She added it would provide for a more efficient and effective transfer of information.

Pat Callbeck-Harper, AARP, provided written testimony, **EXHIBIT (ens63a06)**.

Opponents' Testimony:

Tom Beck, Chief Policy Advisor for Gov. Judy Martz, stated the Office of Consumer Protection had just been moved in the last biennium from the Department of Commerce to the Department of Administration because the latter was best equipped to handle consumer protection problems. He stressed while consumer protection was the Governor's goal, not all of it was litigation; a lot of it was resolved without litigation, and the Governor's Office felt the Department of Administration was the proper place for these issues.

Scott Darkenwald, Director, Department of Administration, also rose in opposition to HB 571. Referring to the sponsor's list of the department's functions, he clarified they also included bank examiners, the state's tort defense, and they were in the process of having the Public and the Appellate Defender's Offices attached to them. He pointed out that the Consumer Protection Office already worked with the Attorney General's Office, as well as with the State Auditor, the PSC, the Governor's ombudsmen, the FTC, the FBI, and in-state local law enforcement. He did not think a move would improve these relationships nor would it have any operational benefit. To underscore the effectiveness of the office within his department, he stated when the Consumer Protection Office was under the auspices of the Commerce Department, the settlement of fines amounted to \$262,000, none of which went into the General Fund; and since it was transferred to his department, the amount had risen to \$608,000 of which \$526,000 went to the General Fund. So far in 2003, they had collected \$449,000 with \$349,000 going to the General Fund. The settlement amount which went directly to the consumers had also increased proportionally, in fact, this year alone, consumers had gotten back \$2,8 million. He advised **Cort Jensen's** office had received nothing but praise, and he did not want to see the office transferred out of his department.

Questions from Committee Members and Responses:

SEN. KEN TOOLE, SD 27, HELENA, asked **Ms. Bucy** if she knew how this was being handled in other states, and she replied with the exception of Georgia, every state housed the Consumer Protection Office in the Attorney General's Office; Hawaii had an in-take office in the governor's office but consumer protection and fraud cases were tried in the AG's office. **SEN. TOOLE** wondered if the AARP had advised fraud victims to contact law enforcement rather than just not doing business with companies who had defrauded them. **Ms. Callbeck-Harper** referred to the graph attached to her testimony and stated law enforcement was not specified but "state government official" was on the list for people to contact; in focus group discussions, people had indicated they would go to the police or the AG's office with these kinds of complaints.

{Tape: 1; Side: B}

SEN. TOOLE referred to **Mr. Darkenwald's** breakdown of fines collected and wondered if he also had one showing the number of complaints and the average sum collected. **Mr. Darkenwald** deferred to **Mr. Jensen** who did not have such a breakdown on hand.

SEN. TOOLE asked whether the Department of Administration actually prosecuted criminal violations or deferred them to another agency. **Cort Jensen** advised under current law, the county attorneys, the Attorney General, and the Department of Administration all shared jurisdiction with regard to the consumer protection law. His office received the vast majority of complaints but the AG's and county attorneys' offices had shared jurisdiction since the 1970's. He explained when he first came on board and HB 127 came through, there had not been a felony version of consumer protection crime, and it would have been impractical and wasteful of state money to make them criminal violations. Now, with the rise in felonies, the county attorneys prosecuted criminal cases and his office handled civil cases; to him, this seemed to be a cost-effective way in getting the most money back to the people and to the state. **SEN. TOOLE** surmised he did not prosecute criminal cases, and **Mr. Jensen** replied he had not in the time he had been with this office.

SEN. TOOLE wondered if **Mr. Darkenwald** was with the Department when it was recruiting for **Mr. Jensen's** position which he denied.

SEN. TOOLE addressed **Mr. Dal Smilie** and asked whether they were looking for experience in criminal prosecution at that time. **Mr. Smilie** advised the hiring criteria had included an interest in consumer protection law as well as the ability to prosecute criminal and civil cases. He repeated **Mr. Jensen** worked with county attorneys and was a prosecutor himself. He felt the success of this office was dependent on its resources, no matter where the office was housed.

SEN. MIKE TAYLOR, SD 37, PROCTOR, stated the Legislature had worked very hard in getting the Consumer Protection Office re-organized because most of the crimes committed today were in the field of hi-tech telecommunications, and the Department of Administration not only had the technical expertise but had also stepped up prosecution of these cases. He wondered if her membership was aware of all the changes which had taken place to make the office more effective. **Ms. Callbeck-Harper** replied most of their membership was not as technologically advanced as other segments of the population, and she stressed the results of the survey clearly showed they did not know where to take their complaints. She added wherever the Consumer Protection Office would be housed, it was important to begin a community education program. **SEN. TAYLOR** asked **Mr. Darkenwald** to enlighten the committee as to upgrades and improvements they had made in those

last two years, especially with regard to the protection of seniors; **Mr. Darkenwald** deferred the question to **Mr. Smilie** who advised, when his department took over this office, they changed how the intake and call system worked to create a better call flow; they created three different silos to accept information and did extensive cross-training of personnel. They also made sure the attorney working in the office would dedicate 100% of his time to consumer protection issues, and they had such an attorney, passionate, sharp, and dedicated, in **Cort Jensen**. He went on to say HB 2 had just added part of an anti-trust attorney as well as a paralegal which would greatly help. With the goal being efficiency, they also changed their listing in the phone book as different people worked on different aspects of consumer protection, and consumers did not always know whether to go to the PSC, the auditor, or another agency with their complaints. **SEN. TAYLOR** addressed the sponsor and asked how he envisioned changing FTE's and re-allocation with regard to the General Fund appropriation. **REP. PARKER** replied the Fiscal Note contemplated direct re-allocation of the existing FTE's into the Department of Justice.

SEN. DON RYAN, SD 22, GREAT FALLS, ascertained **Mr. Smilie** had been working throughout the transition which he confirmed. **SEN. RYAN** asked if there had been new funding to the Department of Administration when the Consumer Protection Office was transferred or did the funding follow from the Department of Commerce. **Mr. Smilie** replied basically, they had gotten the funding from the Department of Commerce and had made the case for additional funding. He added HB 126 of the current session would provide for funding in a different way, with less of it coming from the General Fund since they were collecting more funds. **SEN. RYAN** acknowledged the change in the funding formula, and stated wherever this office ended up, it would subsist on reimbursements from the fines they collected. He asked **Mr. Smilie** whether he expected this to change should the office be transferred to the AG's office. **Mr. Smilie** admitted he was not sure but did not expect this to change. **SEN. RYAN** wondered whether **SEN. TAYLOR's** original legislation to re-organize and streamline the Department of Commerce contained the provision that the Consumer Protection Office was to be moved which **Ms. Bucy** confirmed. **SEN. RYAN** then asked into which department this original bill wanted to move this office. **Ms. Bucy** stated the original draft had intended for it to be moved to the Attorney General's office and, having been in office for only a week or two, they panicked, and after discussions with the Governor's Office and **SEN. TAYLOR**, were able to get it moved to the Department of Administration.

SEN. BOB STORY, SD 12, PARK CITY, asked who made the employment decisions in the Department of Justice. **Ms. Bucy** advised it depended on the personnel to be hired, but they had a personnel officer on staff, and each division administrator handled their own hiring. **SEN. STORY** wondered if anyone the Department of Justice had a say in which personnel would be transferred. **Ms. Bucy** stated it was her understanding all present personnel would transfer, and she was more than happy with that prospect. **SEN. STORY** referred to an increase in some of the penalties and asked the sponsor to explain the reasons behind them. **REP. PARKER** advised he was seeking an increase in the maximum fines because he wanted to punish those who preyed on the elderly.

SEN. TAYLOR reiterated **Ms. Bucy's** concerns with regard to not wanting to take on the responsibilities of the Consumer Protection Office because she thought they had neither the capability nor the funding. **Ms. Bucy** contradicted his assumption, saying it was because they were not provided an attorney in the exchange, and did not feel they could spare one of their own attorneys to take on the program. She added according to her recollection, **SEN. TAYLOR** had not been aware there was no funding for an additional attorney at the time. **SEN. TAYLOR** inquired if her office had upgraded their computer system in the meantime to be better equipped to deal with these issues, and **Ms. Bucy** replied the department, by request, had just been funded for a Consumer Crime Unit, and she thought it would be operational by either July or October.

Closing by Sponsor:

REP. PARKER closed on HB 571, stating his surprise at a member of the Governor's Office appearing as an opponent since they did not testify before the House Judiciary Committee or had discussed it with him. He repeated the bundle of duties given to the Department of Administration did not seem appropriate if the goal was to protect seniors.

HEARING ON HB 675

Sponsor: **REP. CAROL JUNEAU, HD 85, BROWNING**

Proponents: **Beth Brenneman, ACLU of Montana**
Cort Jensen, Department of Administration,
Consumer Protection Office

Opponents: **None**

Opening Statement by Sponsor:

REP. CAROL JUNEAU, HD 85, BROWNING, presented HB 675 and stated this bill would provide information gathered by grocery stores for use through discount cards could not be sold to other parties without the cardholder's implicit consent. Some of the applications she had seen did indicate the information would not be used for other purposes but there was no law to prohibit this. She submitted **EXHIBIT (ens63a07)**, copy of an e-mail from one of her constituents, and copies of three applications for store discount cards.

{Tape: 2; Side: A}

Proponents' Testimony:

Beth Brenneman, ACLU of Montana, stated in recent years, computer technology had advanced to such a degree where it made it quite easy for companies to gather information about what people buy and what they do. Through the use of store discount cards, grocery stores were able to record individuals' purchases throughout the year, and she felt this bill would provide the consumer with a measure of control over the compilation of their personal habits and data. She advised this sort of information did not lend itself to the traditional analysis of privacy rights under the constitution because purchases were made in a public place; when each purchase, though, was recorded over a long period of time, it appeared as if a profile or identity of the individual was being constructed, and this most definitely could be considered an invasion of privacy, and she voiced strong objection to the practice of selling this information.

Cort Jensen, Department of Administration, Consumer Protection Office, also rose in support of HB 675, saying this was another bill dealing with practices which violated the consumer protection laws. He stated absent this bill, his office did not have jurisdiction or a lot of resources to devote to this particular issue.

Questions from Committee Members and Responses:

SEN. BEA McCARTHY, SD 29, ANACONDA, wondered why grocery stores were being singled out when stores like Home Depot were issuing and using the same type of cards. **Ms. Brenneman** agreed this issue involved all of our purchases but felt this question should be asked of the sponsor. **SEN. McCARTHY** stated there was very little privacy once a consumer signed an application but wondered why she limited this bill to grocery stores. **REP. JUNEAU** replied she targeted grocery store because people have to buy groceries;

she added she would be amenable to looking at amendments to ensure consumers' privacy was protected. **SEN. MCCARTHY** contended she did not think this could be done; once a person signed an application, his right to privacy was compromised.

SEN. TAYLOR asked if the sponsor was agreeable to amend this bill to prevent other types of businesses from selling names without permission. **REP. JUNEAU** replied certain credit card companies included a privacy statement on their applications but to her knowledge, this was not the case with grocery stores; it would depend on the types of businesses he had in mind. **SEN. TAYLOR** stated he was concerned about stores not covered by the bill as written and felt they should comply with the provisions of HB 675.

Closing by Sponsor:

REP. JUNEAU closed on HB 675, stating it served to protect our privacy; she granted the stores the right to use the information gleaned through the cards for their own marketing and purchasing purposes but stressed they should not be able to sell it.

HEARING ON HJ 26

Sponsor: **REP. CINDY YOUNKIN, HD 28, BOZEMAN**

Proponents: **Patrick Judge, MEIC**
Tom Figarelle, Forward Montana

Opponents: **None**

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, BOZEMAN, presented HJ 26, saying she drafted this resolution because her bill to provide funds for establishing the infrastructure for a Hydrogen Future's Park in Missoula was disposed of in the House. This resolution was seeking support from the Legislature for the implementation of a hydrogen-based economy which would provide much needed economic stimulus. Montana is the only state in the nation with the natural resources needed to make it a leader in the hydrogen energy industry; added benefits were the inherent decrease in dependency on foreign oil and the fact that producing hydrogen energy from coal was cleaner than producing electricity from coal. She stated it was an expensive but cutting edge technology. She envisioned establishing a Hydrogen Futures Park and the necessary alliances with energy producers as well as an education

training system to prepare high quality hydrogen energy professionals.

Proponents' Testimony:

Patrick Judge, MEIC, voiced his organization's support of HJ 26 because the environmental benefits of a hydrogen based economy would be substantial; the only by-product in converting hydrogen to electricity was water, and it would help free this nation from the dependence on finite and mostly imported energy sources. He claimed globally known petroleum reserves would be exhausted in another 40 years, and domestic production had peaked in the 1970's.

Tom Figarelle, Forward Montana, also rose in support of the resolution, stating a hydrogen based economy was an important part of Montana's future. He admitted it would be some time before this new technology was developed and its energy readily available, but it would become as important to Montana as oil was to Texas. He had become intrigued by this technology when listening to a presentation on hydrogen fuel by Dr. Paul Williamson, Dean of the College of Technology.

Questions from Committee Members and Responses:

SEN. EMILY STONINGTON, SD 15, BOZEMAN, questioned why the sponsor used the term "*the key economic development*". **REP. YOUNKIN** replied she would not be opposed to changing this to "a" key since there were many components to economic development.

SEN. STORY asked about the tie-in with the University of Montana, and **REP. YOUNKIN** explained the hydrogen fuel cell technology had gotten its start at the College of Technology (COT) in Missoula because Dean Williamson was the resident expert, and the COT was a part of the University of Montana. **SEN. STORY** continued he was concerned with the fact the COT was not suited for this or any kind of research as opposed to the engineering departments in the university system. **REP. YOUNKIN** replied being from Bozeman, she had agreed to carry this resolution because it would not only benefit Missoula, saying the engineering students would be from MSU but the technology of building a hydrogen fuel cell was to be taught at the COT in Missoula. **SEN. STORY** stated he was somewhat familiar with generating electricity from hydrogen and asked what happened to the carbon which was a by-product of burning coal to get hydrogen. **Mr. Judge** admitted he was not that familiar with the process but knew hydrogen could be stripped off a methane molecule; he suspected carbon dioxide would not be created because coal was not combusted.

SEN. TAYLOR asked whether **Bill Johnston, UM**, was familiar with the research at the COT. **Mr. Johnston** replied he was not as familiar with its current status but wanted to clarify the COT was a division of the university; he echoed the sponsor's statement that it would take teachers with credible training in the field of hydrogen fuel cell technology to do the training, and there needed to be a place to practice the technology; the COT was best suited to teach technicians. He did not know the current standing with regard to federal money for a Future's Park but knew it was being pursued actively. He stressed the University was not pursuing this technology on its campus.

CHAIRMAN JOHNSON referred to provisions in items (1) through (9) of the bill requiring funding and asked where the sponsor thought this money would come from; he did realize this was just a resolution but invited her comments anyway. **REP. YOUNKIN** stated this being a resolution, none of the provisions would be implemented but she felt strongly about starting the thought process and moving in the right direction. She realized money was tight, and developing this technology was a goal we needed to start thinking about.

Closing by Sponsor:

REP. YOUNKIN closed on HJ 26 and stated in reference to **SEN. STORY's** question of taking hydrogen from coal, hydrogen in the refineries in Billings, for instance, was being wasted because hydrogen sulphite was a by-product of refining oil; they did extract the sulphur from it and sold it for various uses, but the hydrogen was dissipating into thin air. She claimed the technology for hydrogen existed, all it needed was a market, and the refineries could be expanded to incorporate extraction of hydrogen. In closing, she stressed it was important to start looking into the future and find ways to have all of the current comforts without being dependent on foreign countries.

EXECUTIVE ACTION ON HB 266

Note: At the end of the following discussion, Executive Action on HB 266 was postponed but I wanted these minutes to reflect the committee's actions.

Motion: **SEN. STONINGTON** moved that HB 266 BE CONCURRED IN.

SEN. STONINGTON introduced **Amendment HB026602.asb**, **EXHIBIT (ens63a08)** .

Substitute Motion: SEN. STONINGTON made a substitute motion that AMENDMENT HB026602.ASB BE ADOPTED.

Discussion:

SEN. STONINGTON reminded the committee that HB 266 dealt with the Montana Telecommunications Access Program which charged 10 cents per line on all phone lines in the state; this money was used to provide services and equipment to the hearing impaired. In the Special Session of the Legislature, an amendment had been adopted which appropriated roughly \$57,000 of this money for the Montana School for the Deaf and Blind to test infants for hearing impairment; she understood the money was used for general operations, however. During the bill's hearing, sentiment had emerged to continue funding to MSDB in this way for this biennium. She had opposed this initially because it would impact the ending fund balance for the MTAP program but seeing how it left roughly \$40,000, she was in favor of extending the re-allocation, and her amendment provided for this; it also limited to 250% of poverty level people who wanted to purchase special equipment made available under the program.

{Tape: 2; Side: B}

SEN. STORY MOVED to segregate and ADOPT amendments (3) and (4) because the bill originally provided for the 250%. **Vote: Motion carried 7-0**, with **SEN'S. TOOLE, STAPLETON and PERRY** excused.

SEN. STORY stated historically, if monies were appropriated, even if for a specified purpose and time period, it was easy to expect the allocation to continue; he was not in favor of adding item (2) into statute because it would continue to be a source of revenue for MSDB; this was not the purpose of the MTAP fund.

SEN. McCARTHY recalled the Education Subcommittee had taken this money to fund a cottage, enabling it to operate seven days a week; she was certain this money was not available and thus, HB 266 could not be concurred in. **CHAIRMAN JOHNSON** recalled these funds were given to the School to give them the means of testing twenty additional infants, but **SEN. McCARTHY** advised it was discovered during this discussion the funding had run out for the cottage, and some of the money was then transferred to help retain staff at the cottage. She repeated she was not comfortable voting on HB 266 when she was not sure whether the money was available. **CHAIRMAN JOHNSON** turned to **Todd Everts** for clarification who stated he was unsure of what was done in the subcommittee but stressed the funding provision here was discretionary and not required; he offered to find out, though.

SEN. McCARTHY asked **SEN. STONINGTON** to wait taking Executive Action until the information was available. **SEN. STONINGTON** agreed, and **Executive Action on HB 266 was postponed to March 27,**

2003; she added she wanted to make sure if this appropriation was contained in HB 2, it should be stipulated it was only for the coming biennium and would not be continued.

EXECUTIVE ACTION ON HB 417

Todd Everts refreshed the committee's collective memory and stated HB 417 was a contingent repealer of the state's PERPA Act, saying if the federal law was repealed, the state's would be repealed as well. PERPA mandated Qualifying Facilities to sell electricity to utility companies.

Motion/Vote: SEN. MCCARTHY moved that HB 417 BE CONCURRED IN. Motion carried unanimously. SEN. RYAN agreed to carry HB 417 in the Senate.

SEN. STAPLETON returned to the committee.

EXECUTIVE ACTION ON HB 580

Mr. Everts explained HB 580 created a procedure for expedited complaint proceedings before the PSC within the Montana Telecommunications Act regarding interconnections.

Motion: SEN. STONINGTON moved that HB 580 BE CONCURRED IN.

Discussion:

SEN. STORY recalled this bill had enjoyed much support at the hearing and stated, with regard to the contentious hearing on HB 641, the PSC *should* be able to deal with complaints. CHAIRMAN JOHNSON asked **Geoff Feiss, MTA**, to comment. **Mr. Feiss** stated this bill created an expedited dispute resolution process for interconnection agreements; HB 641 dealt with a much broader exchange of traffic and information among carriers but also provided complaint proceedings.

Vote: Motion that HB 580 BE CONCURRED IN carried unanimously with SEN. PERRY and SEN. TOOLE excused. SEN. STONINGTON agreed to carry this bill.

EXECUTIVE ACTION ON HJ 26

SEN. STONINGTON reminded the committee to have "the" changed to "a" but stated she did not have to have it reprinted to vote on it.

Motion/Vote: SEN. RYAN moved that HJ 26 BE CONCURRED IN. Motion carried unanimously. SEN. PERRY and SEN. TOOLE were excused. SEN. McCARTHY agreed to carry this bill.

EXECUTIVE ACTION ON HB 675

Motion: SEN. STORY moved that HB 675 BE CONCURRED IN.

Discussion:

SEN. STORY commented HB 675 only affected people who signed up for a store discount card after the bill's passage and approval, and its title was too narrow to include other stores. SEN. TAYLOR agreed with this assessment.

Vote: Substitute motion failed 5-5 with MCCARTHY, PERRY, RYAN, STAPLETON, and TAYLOR voting no. SEN. PERRY and SEN. TOOLE voted by proxy.

Motion/Vote: SEN. STORY moved that HB 675 BE INDEFINITELY POSTPONED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 479

Motion: SEN. STORY moved that HB 479 BE CONCURRED IN.

Discussion:

SEN. TAYLOR wondered what the difference was between this bill and current law. Mr. Everts asked to defer to Mr. Jensen who replied it was the PSC and not his office who had jurisdiction over this issue, and he deferred to Kate Whitney, PSC. Ms. Whitney explained HB 479 extended the commission's jurisdiction over slamming and cramming to the billing aggregators. Currently, the commission only has jurisdiction over the service provider but wants to stop the billing aggregators from passing on these charges in the first place.

Vote: Motion HB 479 carried unanimously, 8 - 0. SEN. RYAN agreed to carry this bill in the Senate.

EXECUTIVE ACTION ON HB 710

Motion: SEN. STAPLETON moved that HB 710 BE CONCURRED IN.

{Tape: 3; Side: A}

Discussion:

Mr. Everts advised there was an amendment, requested by the sponsor, **EXHIBIT(ens63a09)**, but absent an official requestor, he had not drafted it. He explained the amendment excluded, as had other bills before the committee, persons with prior business relationships and messages sent on behalf of colleges and universities.

Substitute Motion: SEN. STONINGTON moved that **AMENDMENTS AS in EXHIBIT(ens63a09) BE ADOPTED.**

Discussion:

SEN. TAYLOR asked whether this amendment expanded the legislation. **Mr. Jensen** replied this amendment was fine because the two groups excluded were not the ones causing SPAM. **SEN TAYLOR** wondered if these were the amendments requested by Qwest, and **Mr. Jensen** advised those had not been introduced yet.

SEN. RYAN inquired if one could establish something like a "do-not-call-list" for e-mails or would people have to accept them for 18 months once a business relationship was established. **Mr. Jensen** explained it was the same; they could e-mail until the 18 months expired or the addressee told them to stop sending messages.

SEN. McCARTHY stated she was receiving e-mails from a person in Nigeria and had told him to take her off his list, to no avail. **Mr. Jensen** advised not to answer these messages because it told the sender they had a legitimate address. He added the Secret Service was investigating this since they involved international money laundering.

SEN. TAYLOR remarked this amendment would set a whole new precedent because e-mail was becoming much like someone's telephone, and it needed to be addressed.

Vote: Motion carried unanimously.

SEN. STONINGTON agreed to have the amendment requested in her name.

Mr. Everts handed out **EXHIBIT(ens63a10)**, a set of amendments requested by Qwest. **SEN. STONINGTON** pointed out these amendments highlighted the problems within HB 710, such as the fact only 20% of the SPAM circulating in this country originated in the U.S.

which meant it would be next to impossible to stop. Moreover, the "ADV" in the subject line, in her opinion, gave the green light to these e-mails being permitted; she felt it created a financial, if not legal, liability for the Internet Service Providers.

Motion/Vote: SEN. STONINGTON moved that HB 710 BE INDEFINITELY POSTPONED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 637

Motion/Vote: SEN. STORY moved that HB 637 BE CONCURRED IN.

Motion carried unanimously. SEN. STORY agreed to carry HB 637 in the Senate.

ADJOURNMENT

Adjournment: 5:15 P.M.

SEN. ROYAL JOHNSON, Chairman

MARION MOOD, Secretary

RJ/MM

EXHIBIT (ens63aad)