MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ALAN OLSON**, on February 16, 2005 at 3:05 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:
Rep. Alan Olson, Chairman (R)
Rep. Dave Gallik, Vice Chairman (D)
Rep. Dennis Himmelberger, Vice Chairman (R)
Rep. George G. Groesbeck (D)
Rep. Robin Hamilton (D)
Rep. Hal Jacobson (D)
Rep. Harry Klock (R)
Rep. Mark E. Noennig (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Wayne Stahl (R)
Rep. Karl Waitschies (R)
Rep. Brady Wiseman (D)

Members Excused:

Members Absent: Rep. Robyn Driscoll (D)

Staff Present: Todd Everts, Legislative Branch
Cynthia Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamp markers follow testimony.

Committee Business Summary:
Hearing & Date Posted: HB 685, 2/12/2005; HJ 24, 2/15/2005; HB 631, 2/11/2005; HB 687, 2/12/2005; HB 618, 2/11/2005
Executive Action: HJ 24; HB 685; HB 642; HB 631; HB 687; HB 618

HEARING ON HB 685

Opening Statement by Sponsor:

REP. ROY BROWN (R), HD 49, opened the hearing on **HB 685,** which would revise laws related to electricity supply and default supply service. **REP. BROWN** explained he is bringing HB 685 on behalf of the consumers of Montana since everyone has seen large increases in their rates, and there are more increases in the future. **REP. BROWN** suggested Montana consumers want to pay the lowest price possible for energy. **REP. BROWN** explained the portfolio contains designer energy supplies such as qualifying facilities (QFs) which were mandated into the portfolio and were uneconomical on their own. As a result, Montana utility customers are buying a portfolio that is 14 percent comprised of QFs. Almost one-quarter of every dollar spent on electricity in the state goes to pay for only 14 percent of the supply. **REP. BROWN** believed Montana customers deserve access to the least expensive energy possible. **REP. BROWN** pointed out that just because a company has the lowest cost, it would not necessarily mean the company is reliable and credit-worthy. Therefore, **REP. BROWN** submitted Amendment HB068501.ate.
EXHIBIT(feh38a01)

Proponents' Testimony:

Brad Molnar, Commissioner, Montana Public Service Commission (PSC), explained the PSC's vote was 2-2, with one person out of town. The two Commissioners who voted not to support the bill thought it would be difficult to arrange for the lowest cost and how the lowest cost would be determined. **Commissioner Molnar** spoke about a public meeting held at the Lewis and Clark County Library where survey results indicated people are most concerned about the cost of their energy bills. Commissioner Molnar testified that the PSC receives 18,000 complaints about the price of energy every year. **Commissioner Molnar** emphasized that not one of those calls is a compliment about the price of electricity and natural gas. **Commissioner Molnar** believed the designer method has failed the people of Montana.

Opponents' Testimony:

Chuck McGraw, Natural Resources Defense Counsel, Renewable Northwest Project, and testifying **on behalf of Patrick Judge and the Montana Environmental Information Center,** opposed HB 685 and stated the bill's simplicity is its drawback and would distort the contents of the default supply portfolio. **Mr. McGraw** stated

that consumers typically do not just consider price when making a choice. **Mr. McGraw** suggested it would make good sense for the default supplier to diversify its resources. In addition, a default supplier may choose to lock into reasonably priced, long-term contracts. **Mr. McGraw** thought focusing on the lowest short-term cost to the exclusion of all other factors would not produce the best results for Montana electricity consumers.
{Tape: 1; Side: A; Approx. Time Counter: 9.3 - 12.8; Comments: Testimony of Chuck McGraw.}

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. DAVE GALLIK, HD 79, HELENA, asked REP. BROWN how to define "total cost." **REP. BROWN** replied it would not matter, and that it would be up to the PSC to decide.

REP. GALLIK believed that hydro power has the lowest cost, and that PPL Montana would like to be the sole provider. **REP. GALLIK** thought HB 685 might limit the further building out of generation, which would include wind and coal. **REP. BROWN** disagreed and stated the amount of hydroelectricity in Montana is not sufficient to meet the entire need in Montana. **REP. BROWN** pointed out that energy generation could be built in the state that is not necessarily all for Montana.

REP. KARL WAITSCHIES, HD 36, PEERLESS, summarized **Mr. McGraw's** testimony and asked **Mr. McGraw** how the consumer would be at the risk of rising prices if Montana adopted a low-cost policy. **REP. WAITCHIES** asked by what mechanism that would be possible. **Mr. McGraw** provided a hypothetical example where the default supplier may have foregone the opportunity to lock in the long-term, reasonably priced cost to the detriment of default supply customers. **Mr. McGraw** thought it would be important for both the default supplier and the PSC to be flexible.

Closing by Sponsor:

REP. BROWN closed by stating it is difficult for him to see how the lowest-cost energy supply could distort the portfolio. **REP. BROWN** believed that Montana should not create another class of stranded costs. **REP. BROWN** suggested keeping it simple and easy for everyone involved by picking the lowest-cost energy for consumers.

HEARING ON HJ 24

Opening Statement by Sponsor:

REP. BOB BERGREN (D), HD 33, opened the hearing on **HJ 24**, a bill to commemorate Lewis and Clark bicentennial.

Proponents' Testimony:

Gia Randano Fairchild, the owner of Lewis and Clark Trail Adventures, leads float trips and hiking trips. **Ms. Fairchild** explained how her business is dependent on historical interpretation and scenic beauty. **Ms. Fairchild** urged the Committee to support HJ 24.

Stephanie Ambrose Tubbs, the daughter of author Stephen Ambrose, has visited many places along the Lewis and Clark Trail. **Ms. Tubbs** recalled her father's belief that the best part of the Lewis and Clark Expedition occurred in Montana. **Ms. Fairchild** has visited other states and acknowledged those states' pride in their part of the story.

David Ellenberger, Bozeman, read written testimony from Hal Stearns, a noted Lewis and Clark historian.
EXHIBIT(feh38a02)

Bob Clark, Missoula, read written testimony from Alan Kesselheim of Bozeman.
EXHIBIT(feh38a03)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. WAITCHIES expressed concern about the language on Page 2, Line 10, since he already signed a resolution which would require water to be kept in Fort Peck Reservoir, and the bill says the State will abide by natural fluctuations. **REP. BERGREN** could not say whether there would be a conflict.

{Tape: 1; Side: B}

Closing by Sponsor:

REP. BERGREN pointed out that Lewis and Clark traveled more miles in Montana than any other state and urged a do pass for HJ 24.

EXECUTIVE ACTION ON HJ 24

Motion/Vote: **REP. HIMMELBERGER moved that HJ 24 DO PASS. Motion carried unanimously by voice vote with REP. HAMILTON voting aye by proxy.**

HEARING ON HB 631

Opening Statement by Sponsor:

REP. WAYNE STAHL (R), HD 35, opened the hearing on **HB 631**, which would revise surplus lines insurance law. **REP. STAHL** explained insurance producers have worked with the Montana State Insurance market access problem for surplus lines. Montana laws prohibit access to the surplus lines markets when a quote is offered by a company licensed in Montana and participating in the guaranteed fund. **REP. STAHL** identified Lloyds of London as one company where access is sometimes denied. **REP. STAHL** spoke about his experience when the Town of Saco was attempting to get insurance for two proposed gas wells. **REP. STAHL** spoke about how they could not purchase insurance from a surplus lines company, so had to proceed without insurance. **REP. STAHL** stated HB 631 would allow access to the surplus lines market when the premium rate is 10 percent or $1,500 less than that standard market, and the surplus lines company is a financially stable A-rated or better company. The bill will also require additional information to be disclosed to the consumer, form and content to be approved by the Insurance Commissioner, to ensure that decisions are made from a basis of knowledge. **REP. STAHL** thought HB 631 would improve the competitive insurance market in Montana.

Proponents' Testimony:

Roger McGlenn, Independent Insurance Agents Association of Montana, and **Montana Surplus Lines Agents' Association**, submitted written testimony in support of HB 631. **Mr. McGlenn** also submitted a list indicating the credibility of surplus lines companies, as well as a list of eligible surplus lines companies and their ratings in Montana. **Mr. McGlenn** noted that Jackie

Lenmark, American Insurance Association, asked him to enter her name into the record in support of HB 631.
EXHIBIT(feh38a04)
EXHIBIT(feh38a05)
EXHIBIT(feh38a06)
(REP. DRISCOLL arrives.)

Tylynn Gordon, Deputy State Auditor, State' Auditor's Office, stated HB 631 was drafted at the request of the State Auditor's Office. **Ms. Gordon** encouraged the Committee to give HB 631 a do pass. **Ms. Gordon** pointed out that Rosann Grandy, the surplus lines and insurance expert from the State Auditor's Office, was also present and would be available for questions.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. GALLIK asked about language on Page 2, Line 26, which refers to "...at least 10% higher and at least $1,500 greater than the premium rate quoted by the authorized insurer; or" and wanted to know for what period of time the quoted rate would be. **Mr. McGlenn** responded most policies are written on an annual basis, but clarified that the quote would be for whatever the policy period is.

REP. GALLIK had questions about Page 3, Line 1, "unless the unauthorized insurer is the equivalent of A-rated or better..." and wondered how the equivalency would be determined. **Mr. McGlenn** explained there are a variety of insurance rating organizations and some of those companies do not use the "A" rating system.

REP. GALLIK asked if the standards of the other organizations would allow for a comparison of "apples to apples." **Mr. McGlenn** agreed it would because the standard "A" rating is an established benchmark that can be measured off of the other companies.

REP. GALLIK expressed concern about the guarantee fund not backing up the consumers of Montana and stated he is nervous about taking that away. **Mr. McGlenn** stated there absolutely was a problem, and he pointed out the language on Page 3, Lines 2 and 3, referring to disclosure of information in a form and content approved by the Commissioner.

{Tape: 1; Side: B; Approx. Time Counter: 14.2 - 18.9; Comments: Questioning by REP. GALLIK.}

Closing by Sponsor:

REP. STAHL closed the hearing on HB 631.

HEARING ON HB 687

Opening Statement by Sponsor:

REP. SCOTT MENDENHALL (R), HD 77, opened the hearing on **HB 687,** a bill which would revise the laws governing tobacco and would give the Department of Revenue (DOR) and Department of Justice (DOJ) additional tools to enforce Montana's tobacco tax. **REP. MENDENHALL** explained how the passage of tobacco Initiative 149 resulted in a large increase in the contraband sale of tobacco products. This will result in decreased sales for Montana businesses who use tobacco as a drawing card into their businesses. **REP. MENDENHALL** stated Montana has the third highest tobacco tax rate in the nation and Montana's tax rate is substantially higher than any of Montana's neighboring states. **REP. MENDENHALL** suggested there is an increase of contraband tobacco entering Montana from other states. **REP. MENDENHALL** thought the high tax is necessary to ensure Montana's youth do not have easy access to cheap tobacco products, and to ensure a level playing field for Montana businessmen who are selling tobacco products within the parameters of the law.

Proponents' Testimony:

Neil Peterson, Department of Revenue, submitted a summary of the main provisions of HB 687. **Mr. Peterson** believed the tax is an important source of revenue and highlighted the importance of collecting the tax. **Mr. Peterson** also submitted a section-by-section detail of HB 687, as well as a letter addressed to MasterCard International signed by the attorneys general to the Master Settlement Agreement (MSA).
EXHIBIT(feh38a07)
EXHIBIT(feh38a08)
EXHIBIT(feh38a09)

Chris Tweeten, Assistant Attorney General, testified there are two main avenues to deal with marketing tobacco products: (1) through the DOR; and (2) through the DOJ and the Attorney General to enforce the MSA. **Mr. Tweeten** stated HB 687 changes definitions in the tax code to make them consistent with

definitions in the MSA. **Mr. Tweeten** also spoke about enforcement difficulties and believed HB 687 would make enforcement easier.

Mark Staples, Montana Wholesale Distributors, testified as a proponent to HB 687, and stated his organization always recognized an increase in taxes would force sales to other avenues.

{Tape: 2; Side: A}

Mr. Staples suggested there should not be any advertising for the 1-800 numbers or websites which would foster the purchase of tobacco products.

Ronna Alexander, Montana Petroleum Marketers and Convenience Store Association, stated HB 687 is a good attempt to address the problems they have been raising for the past couple of years.

Kristin Page Nei, American Cancer Society and the Alliance for a Healthy Montana, thought HB 687 would strengthen the enforcement efforts surrounding the MSA.

Candace Payne, American Heart Association, appreciated the effort to control the use and sale of tobacco products.

Gene Huntington, Department of Justice, urged support for HB 687.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. BRADY WISEMAN, HD 65, BOZEMAN, wanted to know if there was currently an area of taxation where DOJ pursues internet companies. **Mr. Tweeten** explained the responsibility for pursuing internet companies that sell tobacco products lies with DOR, and the current statutes for enforcement are not particularly well-suited to internet marketing. **Mr. Tweeten** mentioned internet gambling may also be occurring. **REP. WISEMAN** wondered if this would be a change in tax policy and recalled there may be Federal regulations which would prevent states from taxing internet sales. **Mr. Tweeten** deferred the question to **Mr. Peterson.**

Mr. Peterson explained the Internet Tax Freedom Act only applies to the levying of telecommunication taxes. **Mr. Peterson** believed the act did not apply, and it would be possible to levy a tobacco

tax against companies that regularly and systematically solicit business.

REP. WISEMAN asked if HB 687 was modeled after statutes in place in other states. **Mr. Peterson** responded he did not believe it was modeled after another state.

REP. JACOBSON asked about the reference to the Secretary of State's office and **Mr. Peterson** explained the Secretary of State's office would accept service of process.

REP. MARK NOENNIG, HD 46, BILLINGS, asked about solicitation and other sales over the internet. **Mr. Peterson** explained the Internet Freedom Act applies only to accessing taxes on telecommunication services and does not apply to the sale of goods over the internet. **Mr. Peterson** spoke about the Quill decision passed down by the U.S. Supreme Court which dealt with states attempting to levy sales taxes. **Mr. Peterson** stated he would provide **REP. NOENNIG** with more information about the Quill decision.

REP. GROESBECK asked if it would be illegal for him to go online and order a case of cigarettes. **Mr. Peterson** replied it would be a misdemeanor for someone to possess cigarettes in Montana that were untaxed. **Mr. Peterson** explained the Attorney General's office is in the process of negotiating with credit card companies to not allow the use of credit cards for online cigarette purchases. The bill also contains reporting requirements for companies who ship tobacco products.

REP. GROESBECK wanted to know about the impact on the wholesalers since the passage of the cigarette initiative. **Mr. Staples** thought it was too early to say how large the impact would be since there was a run on cigarettes in December.

CHAIRMAN OLSON asked how many revenue agents would need to be hired. **Mr. Peterson** explained there is a Decision Package under the Department of Health and Human Services for tobacco prevention and that Decision Package would include funds for tax enforcement.

REP. HIMMELBERGER recalled concerns in 2001 about the purchase of alcohol over the internet. **REP. HIMMELBERGER** wondered if there were similarities or differences between the 2001 legislation and HB 687. **Mr. Peterson** stated there were a lot of similarities. **Mr. Peterson** explained that there is a connoisseur's license which allows a limited amount of alcohol to be shipped, as long

as the person buys a license and pays the taxes associated with it. **REP. HIMMELBERGER** wondered how many connoisseur licenses existed and whether there had been any illegal shipments of alcohol since the inception of the connoisseur license. **Mr. Peterson** thought there were approximately 25 connoisseur licenses, and stated he was unaware of any illegal sales, but was fairly sure illegal sales were being conducted.

Closing by Sponsor:

REP. MENDENHALL reminded the Committee that the people spoke when they passed the tobacco initiative, and they did not intend to open the door for contraband tobacco. **REP. MENDENHALL** stated passage of HB 687 would help local businesses and limit access to tobacco products by youth. **REP. MENDENHALL** clarified that 15 gambling control officers would be cross-trained in tobacco tax collection.

EXECUTIVE ACTION ON HB 685

Motion: **REP. HIMMELBERGER moved that HB 685 DO PASS.**

Motion: **REP. GALLIK moved that AMENDMENT HB68501.ate BE ADOPTED.**

Discussion:

REP. GALLIK wondered what would be "creditworthy" and "financially stable" and wondered if there were definitions. **REP. GALLIK** thought it would be prudent to state legislative intent. **REP. GALLIK** did not have any suggestions regarding possible definitions.

REP. WAITCHIES commented it would be a function of the PSC to ensure any contracts are from a creditworthy entity.

CHAIRMAN OLSON thought the discussion was similar to discussion on HB 389 when the PSC testified that contracts going into the default supply are specific on this issue.

Vote: **Motion that AMENDMENT HB68501.ate BE ADOPTED carried 11-3 by roll call vote, with REP. STAHL, REP. WISEMAN and REP. PARKER voting no, and REP. GROESBECK and REP. HAMILTON voting aye by proxy.**

Motion: **REP. WISEMAN moved that HB 685 DO PASS AS AMENDED.**

Discussion:

REP. HARRY KLOCK, HD 83, HARLOWTON, pointed out on Page 1, Line 22, the word "long-term" is struck. **REP. KLOCK** wondered what would keep someone from coming in on a short-term basis and getting the smallest bid. **REP. WISEMAN** agreed and stated while the bill requires the lowest cost, it may not be the best deal, and there are a number of other factors that should be considered. **REP. WISEMAN** emphasized that the PSC went through two years of rule making to develop the current procurement guidelines. **REP. WISEMAN** stated he anticipates a fiscal note since it will cost money to implement the legislation.

REP. STAHL asked Commissioner Molnar to comment. **Commissioner Molnar** stated the portfolio contains many different designs that compliment each other.
{Tape: 2; Side: A; Approx. Time Counter: 21.6 - 30; Comments: Executive action discussion on HB 685.}
{Tape: 2; Side: B}

REP. GALLIK disagreed and stated removal of the reference to "long-term" would mean total cost with no provision for short-term or medium-term. **REP. GALLIK** believed it would be in the people's best interest to have long-term contracts because that would result in affordable and stable contracts. **REP. GALLIK** also suggested the bill would take coal-fired plants out of the picture. **REP. GALLIK** noted hydro would be lower than coal-fired power.

REP. HIMMELBERGER recalled that hydro could never cover the total supply, and it would be necessary to incorporate other powers. **REP. HIMMELBERGER** argued total cost would include long-term contracts. **REP. HIMMELBERGER** thought the bill was in the best interest of Montana consumers.

REP. GALLIK disagreed with **REP. BROWN's** statement that the hydropower plants cannot cover the power that NWE uses in the default supply since the hydropower plants have made it clear they would be happy to provide a total requirements contract.

REP. HIMMELBERGER pointed out that the power has be able to go where it is needed.

CHAIRMAN OLSON stated removing "long-term" would not necessarily mean the elimination of long-term contracts. **CHAIRMAN OLSON** cited the need for a mixture of contracts.

Vote: Motion failed 6-8 by roll call vote with REP. HIMMELBERGER, REP. NOENNIG, REP. OLSON, REP. RICE, REP. STAHL, and REP. WAITSCHIES voting aye, and REP. GROESBECK and REP. HAMILTON voting no by proxy.

Motion/Vote: REP. WISEMAN moved that HB 685 BE TABLED AND THE VOTE REVERSED. Motion carried.

(REP. HAMILTON returns.)

HEARING ON HB 618

Opening Statement by Sponsor:

REP. ROBIN HAMILTON (D), HD 92, opened the hearing on **HB 618,** which provides for telecommunications service competition. **REP. HAMILTON** believed the bill is about fairness, competition and consumer choice. **REP. HAMILTON** stated the bill would build on the 1996 Telecommunication Act, which allowed large regional carriers of telephone service to enter the lucrative long-distance market if they opened their local networks to competition. **REP. HAMILTON** explained the term "unbundling," which means a phone system would consist of several pieces rather than a single system. **REP. HAMILTON** identified the most important piece as the "local loop," which consists of the single bit copper wire that connects the house to the telephone switching equipment. Large carriers own and control all the local loops, which have basically been paid for over the years by ratepayers. After passage of the Telecommunication Act, Qwest opened its local loops to competitors and was allowed to enter the long-distance market. Since December 2002, Qwest has added 4.6 million long-distance customers. However, according to the FCC, competitors state wide serve only four percent of the market. The PSC set the price of the local loop for competitors at $23. Qwest's cost to its residential customers is only $17; therefore, unless local competitors can purchase the local loop for the same price as Qwest, there is no real competition.

(REP. GROESBECK returns.)

Proponents' Testimony:

Jason Williams, a law student at the University of Montana, testified on behalf of Blackfoot Communications in their capacity as a competitive communications provider. Mr. Williams submitted written testimony as a proponent to HB 618.
EXHIBIT(feh38a10)

{Tape: 2; Side: B; Approx. Time Counter: 12.2 - 15.8; Comments: Testimony of Jason Williams.}

Brad Molnar, Commissioner, Montana Public Service Commission, testified that HB 618 says that if Qwest had a service that is requested by another carrier, they cannot charge that carrier more than they would charge themselves in billing out that same service at the wholesale or retail level. The bill also provides that if there is a dispute, the PSC will review the rule.

Monica Tranel, Montana Public Service Commission, submitted a fact sheet containing a proposed amendment.
EXHIBIT(feh38a11)

Opponents' Testimony:

Rick Hayes, Qwest, submitted written testimony in opposition to HB 618. **Mr. Hayes** also submitted a list containing four points highlighting why HB 618 should not pass. **Mr. Hayes** testified HB 618 is unnecessary and depicted HB 618 as a "last-minute mess" that will not work.
EXHIBIT(feh38a12)
EXHIBIT(feh38a13)

Geoff Feiss, Montana Telecom Association, also believed HB 618 is unnecessary and subject to too many interpretations.

{Tape: 3; Side: A}

Mr. Feiss thought the PSC amendment would reverse the rural carrier exemption. For these reasons, **Mr. Feiss** stated he opposed HB 618.

Mike Sheard, Montana Independent Telecommunications Systems (MITS), testified MITS opposes HB 618 with the PSC amendment. **Mr. Sheard** submitted a written summary of rural telephone cost recovery. **Mr. Sheard** explained the major problem with HB 618 is that it would prohibit rural telecoms from charging any more than what is implicitly in their retail rate that goes towards recovery of a loop.
EXHIBIT(feh38a14)

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. JOHN PARKER, HD 23, GREAT FALLS, noticed that the PSC's fact sheet indicated that the U.S. Code establishes a Federal minimum that states can build upon in their own regulatory scheme. On the other hand, the fact sheet presented by Mr. Hayes indicates the U.S. Code is intended to fully occupy the area to the exclusion of State law. **REP. PARKER** wanted to know which fact was correct. **Ms. Tranel** explained ten states have proceeded to establish additional elements without any State statutory authority in place. Qwest is asserting it is possible for the State to order additional elements to be unbundled under current law. **Ms. Tranel** explained there has not been a decision from states where the issue is being litigated. The PSC believes it is better to have explicit State statutory authority in place.

REP. PARKER directed the same question to **Mr. Hayes**. **Mr. Hayes** asserted Federal law is intended to fully preempt any State involvement in the issue of unbundling.

REP. NOENNIG asked **Mr. Sheard** to review from beginning to end what unbundling means and provide a breakdown of the costs. **Mr. Sheard** explained the cost of the copper wire from the telephone central office to each subscriber and stated in many cases the cost of that copper wire exceeds $100 per month. Some of that cost is recovered through universal service funds, some is recovered through access charges, and the rest comes through local exchange service. **Mr. Sheard** thought the bill assumes the rates telephone companies charge for local service fully recovers the cost of every element; however, those costs are recovered from other sources.
{Tape: 3; Side: A; Approx. Time Counter: 7.7 - 12.4}

REP. STAHL had questions about § 69-3-803 and the PSC exemption. **Ms. Tranel** explained the PSC exemption is not grounded in the definition of "rural telephone company." **Ms. Tranel** stated if the bill were to pass, it would give the PSC the ability to order incumbent carriers, such as Qwest, to make an element of their network available to a competitor in a way not already required by Federal law. However, rural companies would be exempt. The exemption could be challenged and the PSC would then have to perform an evaluation and make a ruling. **Ms. Tranel** cited this as an excellent policy.

REP. DIANE RICE, HD 71, HARRISON, wanted to know if this was the same bill as the one heard in the 2003 Legislative Session. **Mr. Feiss** replied it was not the same bill, but admitted the two

bills had similar themes. **REP. RICE** recalled the 2003 bill aided Blackfoot Telephone only, to the detriment of others. **Mr. Feiss** recalled the 2003 bill aided all rural telephone companies, and the people who did not like it were the wireless carriers.

REP. WISEMAN asked Mr. Williams about the specific problems his client is having with Qwest. **Mr. Williams** explained the issue is the price. **REP. WISEMAN** asked if there was a way to handle the objections of MITS. **Mr. Williams** suggested leaving the bill as it is would exempt rural telephone companies. **Mr. Williams** noted that Qwest has revenue sources that are not available to rural carriers.

REP. STAHL asked about the language on Page 2, Line 1. **Ms. Tranel** explained this is the pricing section of the bill and that the question is not whether you can get it, but how much it costs. **Ms. Tranel** believed the language is the key to the legislation.

Closing by Sponsor:

REP. HAMILTON asked the Committee to look at what happens when the largest company around does not want competition.

EXECUTIVE ACTION ON HB 642

Motion: **REP. PARKER moved that HB 642 DO PASS.**

Motion: **REP. PARKER moved that Amendment HB064202.ate BE ADOPTED.**

Discussion:

Todd Everts, Research Analyst, Legislative Services Division, reviewed amendment HB064202.ate with the Committee.
EXHIBIT(feh38a15)
{Tape: 3; Side: B}

REP. PARKER submitted a handout from the City of Great Falls regarding the proposed amendment.
EXHIBIT(feh38a16)

REP. GROESBECK asked for the rationale behind new Section 11(2)(b) and the reference to "...four equal blocks of customers spread equally over a period of 2 years." **John Fitzpatrick, Northwestern Energy (NWE),** explained the language is there so customers will move off in small increments. This will allow the

new entity to get billing systems set up and allow the default supplier they are leaving to make adjustments in its power supply contracts in a measured way.

REP. GALLIK asked what would happen if someone within the Great Falls area did not want to move and wanted to stay with NWE. **CHAIRMAN OLSON** replied they could not. **REP. GALLIK** wondered what happened to deregulation and the ability to choose.

Mr. Everts directed the Committee to the reference to a small customer in 2(c)(1), which would require the small customer to move to the local supply small entity. Those with commercial load would not be required to move.

CHAIRMAN OLSON pointed out the language is similar to legislation in 2003.

REP. HAMILTON understood there was considerable compromise on the amendments and asked **Mr. Gregori** to address that compromise. **Mr. Gregori** explained a typical residential customer is less than 7 KW and would move to the local distributor, those bigger than 50 KW would have the option of staying with NWE or going, and large industrials could stay.

REP. WISEMAN suggested the amendments had solved the differences between the parties.

CHAIRMAN OLSON asked Mr. Fitzpatrick if the amendment resolved the differences between the parties. **Mr. Fitzpatrick** replied the amendments make the bill better, but NWE remains concerned that the legislation has not been given the attention it deserves. NWE would like to see the amendments put on the bill. **Mr. Fitzpatrick** stated NWE has no objection to the project.
{Tape: 3; Side: B; Approx. Time Counter: 5.9 - 15.8; Comments: Committee discussion on HB 642.}

Vote: Motion to adopt HB064202.ate carried 13-1 by roll call vote with REP. GALLIK voting no.

Motion/Vote: REP. PARKER moved that HB 642 DO PASS AS AMENDED. Motion failed 7-7 by roll call vote with REP. DRISCOLL, REP. HAMILTON, REP. JACOBSON, REP. PARKER, REP. RICE, REP. STAHL, and REP. WISEMAN voting aye.

EXECUTIVE ACTION ON HB 631

Motion: REP. STAHL moved that HB 631 DO PASS.

Discussion:

REP. STAHL explained this is another tool for people in Montana who have something out of the norm that they would like to insure. **REP. STAHL** thought there were good protections in the bill that would save people substantial money. **REP. STAHL** recalled there was no opposition to HB 631.

REP. GROESBECK agreed, and stated his concerns were addressed in Section 2(2), and suggested providing another alternative would be a good idea.

Vote: Motion that HB 631 DO PASS carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 687

Motion: REP. PARKER moved that HB 687 DO PASS.

Discussion:

REP. PARKER commented there were no opponents to HB 687, and it appeared the proponents had been working for a number of months on HB 687.

Vote: Motion carried 10-4 by roll call vote with REP. HIMMELBERGER, REP. KLOCK, REP. RICE, and REP. WAITSCHIES voting no.

EXECUTIVE ACTION ON HB 618

Motion: REP. HAMILTON moved that HB 618 DO PASS.

Discussion:

REP. HAMILTON referred the Committee to the fact sheet from the PSC (Exhibit 11). **REP. HAMILTON** noted the purpose of the bill was not to include the rural carriers.

Motion: REP. HAMILTON moved conceptual Amendments 1 and 2, from the PSC's proposed amendments (Exhibit 11).

REP. STAHL suggested the bill should define the difference between a State law rural telephone company and a Federal law rural telephone company. **REP. STAHL** suggested the PSC's proposed amendment 3 might be necessary.

REP. NOENNIG pointed out Amendment 3 changes the definition of rural telephone companies from the State statute definition to the Federal definition, and they are both exempt.

REP. WISEMAN emphasized that the motion on the table was to pass Amendments 1 and 2 and should be voted on prior to any more discussion on Amendment 3.

Vote: **Motion carried unanimously by voice vote.**

Motion: **REP. HAMILTON moved that HB 618 DO PASS AS AMENDED.**

Discussion:

REP. HAMILTON pointed out **Mr. Feiss** was not quite comfortable with the bill as indicated earlier.

Motion: **REP. STAHL moved that conceptual Amendment 3** (Exhibit 11), **BE ADOPTED.**

Discussion:

REP. STAHL asked if it was the Committee's intention to use the State definition for rural telephone exemption as provided in § 69-3-803, and leave out Section 6 completely. **REP. STAHL** recalled that Ms. Tranel had explained if the Federal language is left in the bill, it does not accomplish what the bill is intending.

REP. HAMILTON stated § 69-3-803 mirrors the Federal definition, but because it is a State bill, it should contain State language.

REP. NOENNIG wondered why the PSC would want the definition changed to the Federal definition. **REP. HAMILTON** replied it was just for consistency in law. **REP. HAMILTON** stated he was not opposed to the amendment because the language mirrors the Federal language.

REP. STAHL asked Mr. Williams about using the Federal definition. **Mr. Williams** explained the definition in Section 2 is the exact same definition provided by the Federal Telecommunications Act. **Mr. Williams** explained rural telephone companies are exempt from

Federal rules, and there is a waiver provision. The proposed legislation, as written, says as a matter of State law, there is no waiver provision.

REP. STAHL asked if the waiver would cause heartburn for what he is trying to do. **REP. HAMILTON** stated he did not have a problem with the amendment whether it is in or out.

REP. STAHL explained the two definitions for rural telephone companies are different because of the waiver language in the Federal statute.

REP. STAHL withdrew his motion without objection.

Vote: Motion that HB 618 DO PASS AS AMENDED failed 6-8 by roll call vote with REP. DRISCOLL, REP. GALLIK, REP. GROESBECK, REP. HAMILTON, REP. PARKER, and REP. WISEMAN voting aye.

Motion/Vote: REP. NOENNIG moved that HB 618 BE TABLED AND THE VOTE REVERSED. Motion carried.

EXECUTIVE ACTION ON HB 685

Motion/Vote: REP. KLOCK moved TO TAKE HB 685 OFF THE TABLE. Motion failed 7-7 by roll call vote with REP. HIMMELBERGER, REP. KLOCK, REP. NOENNIG, REP. OLSON, REP. RICE, REP. STAHL, and REP. WAITSCHIES voting aye.

ADJOURNMENT

Adjournment: 6:37 P.M.

_____
REP. ALAN OLSON, Chairman

_____
CYNTHIA PETERSON, Secretary

AO/cp

Additional Exhibits:

EXHIBIT(feh38aad0.PDF)