

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ALAN OLSON**, on January 24, 2005 at
3:00 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. Robyn Driscoll (D)
Rep. George G. Groesbeck (D)
Rep. Robin Hamilton (D)
Rep. Hal Jacobson (D)
Rep. Harry Klock (R)
Rep. Mark E. Noennig (R)
Rep. Diane Rice (R)
Rep. Wayne Stahl (R)
Rep. Karl Waitschies (R)

Members Excused: Rep. John Parker (D)
Rep. Brady Wiseman (D)

Members Absent: None.

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

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

Committee Business Summary:

Hearing & Date Posted:
Executive Action: HJ 4; HB 48; HB 153

EXECUTIVE ACTION ON HJ 4

Motion: REP. RICE moved that HJ 4 DO PASS.

Discussion:

REP. DIANE RICE, HD 71, HARRISON, depicted HJ 4 as an act of desperation.

REP. HAL JACOBSON, HD 82, HELENA, recalled a similar resolution that was passed last session. REP. JACOBSON suggested there would need to be a way to follow up on the resolution.

Todd Everts, Research Analyst, explained that the Secretary of State will send the resolution to the Congressional Delegation, but Mr. Everts was not aware of any other follow up procedure.

REP. WAITCHIES commented that he believes the Congressional Delegation is already aware of the issue.

REP. JACOBSON commented that there should be a way to make a stronger reiteration that this is an important issue.

Vote: Motion carried unanimously with REPS. WISEMAN and PARKER voting by proxy.

EXECUTIVE ACTION ON HB 48

Motion: REP. DRISCOLL moved that HB 48 DO PASS.

Discussion:

REP. DRISCOLL commented that HB 48 was a good bill that would create more jobs.

REP. HIMMELBERGER requested that the committee hold off on acting on HB 48 until its next meeting, since several committee members were waiting for additional information.

CHAIRMAN OLSON agreed to hold off, and REP. DRISCOLL withdrew her motion.

EXECUTIVE ACTION ON HB 153

Motion: REP. NOENNIG moved that HB 153 DO PASS.

Discussion:

REP. NOENNIG summarized HB 153 as the "ring-fencing" bill, which would give the Public Service Commission (PSC) the authority to review transactions which might materially affect the stability of a regulated energy utility. REP. NOENNIG submitted proposed amendment HB015301.ate and explained that the first part of the amendment would limit the transactions to "financial" transactions. REP. NOENNIG commented that he did not believe the second part of the amendment would be needed because the current language "...including but not limited to..." is more specific than the proposed new language.

EXHIBIT (feh18a01)

Motion/Vote: REP. NOENNIG moved that HB015301.ate be segregated and Part No. 1 of HB 015301.ate BE ADOPTED. Motion carried unanimously with REPS. WISEMAN and PARKER voting by proxy.

Motion: REP. NOENNIG moved that HB 153 DO PASS AS AMENDED.

Motion: REP. NOENNIG moved that HB015302.ATE BE ADOPTED.

EXHIBIT (feh18a02)

Discussion:

REP. NOENNIG stated the amendment was requested by Northwestern Energy (NWE) to deal with the issue of NWE's stipulation and agreement with the PSC and Montana Consumer Counsel in connection with NWE's bankruptcy. REP. NOENNIG stated there is concern that the "ring-fencing" bill would compete with the stipulation and supercede the stipulation. In an effort to avoid any litigation, REP. NOENNIG suggested the "ring-fencing" legislation should acknowledge the stipulation and clearly state that it does not intend to conflict with the existing stipulation.

REP. GALLIK thought it could be problematic to exempt one particular stipulation and one particular entity. REP. GALLIK thought there could be an issue of constitutionality. REP. NOENNIG replied that he thought it would be appropriate to grant an exemption considering the potential for the statute becoming problematic with the federal government. Mr. Everts pointed out the amendment is generic in its reference to "...a regulated

energy utility..." **Mr. Everts** stated the amendment was worded to protect the amendment from a special legislation argument.

REP. GALLIK stated he is hesitant to provide exemptions that are specific to one entity, even though they are crafted to be generic.

CHAIRMAN OLSON recalled **REP. GALLIK** had concerns in the interim about impairment of contract and suggested the amendment would address his concern. **REP. GALLIK** replied it might, but noted his overriding concern is federal preemption and precedence of federal law.

Vote: Motion to adopt HB015302.ate carried 11-3 by roll call vote with REPS. GALLIK, HAMILTON, and JACOBSON voting no and REPS. WISEMAN and PARKER voting by proxy.

Motion: REP. NOENNIG moved that HB 153 DO PASS AS AMENDED.

Discussion:

REP. GALLIK commented that he believes HB 153 is a good bill and that he would support the bill.

CHAIRMAN OLSON asked Greg Jergeson, Chairman of the Montana Public Service Commission, for an explanation of how the PSC would interpret the legislation. Specifically, **CHAIRMAN OLSON** wanted to know what additions the PSC would have in light of the language, ". . .material affiliate transactions, including but not limited to . . ." **Commissioner Jergeson** stated the transactions would need to be financial and rise to a level of materiality. **CHAIRMAN OLSON** asked if it would include contracts for gas or electricity. **Commissioner Jergeson** replied that those contracts are reviewed in their tracker procedures, and that process would not be affected by HB 153. **CHAIRMAN OLSON** asked if Montana Dakota Utilities (MDU) purchased gas from Fidelity, whether it would be an affiliate transaction. **Commissioner Jergeson** replied the transaction would need to be treated as a non-affiliate transaction.

Vote: Motion carried unanimously by voice vote with REPS. WISEMAN and PARKER voting by proxy.

(Recess taken from 3:30 until 3:45.)
(Reps. Wiseman and Parker are present.)

EXECUTIVE ACTION ON HB 199

Motion: REP. HIMMELBERGER moved that HB 199 DO PASS.

Discussion:

CHAIRMAN OLSON submitted amendment HB019902.ate to address concerns voiced by the committee. **CHAIRMAN OLSON** also submitted a copy of the existing statute.

EXHIBIT (feh18a03)

EXHIBIT (feh18a04)

Mr. Everts explained that HB 199 is at the request of the Energy and Telecommunications Interim Committee (ETIC). **Mr. Everts** explained there was overlap in the Code between the responsibilities of the ETIC and the Environmental Quality Council (EQC). The ETIC suggested there should not be any duplication in terms of policy development efforts; therefore, HB 199 will eliminate that duplication. **Mr. Everts** pointed out an energy policy statement, transportation energy policy statement, and alternative fuels policy and implementing policy were developed by the EQC in conjunction with the PSC and the Montana Consumer Council prior to the 1995 Legislature. **Mr. Everts** noted the EQC has not taken a position on HB 199. **Mr. Everts** explained the amendment would maintain the energy policy development process, but would substitute the ETIC for the EQC.

Motion: REP. OLSON moved that HB019902.ATE BE ADOPTED.

Discussion:

REP. GALLIK commented the amendment makes it much more clear as to what the intent of the bill is and places the energy policy under the ETIC where it belongs.

Vote: Motion carried unanimously by voice vote.

Motion: REP. HIMMELBERGER moved that HB 199 DO PASS AS AMENDED.

{Tape: 1; Side: A; Approx. Time Counter: 23.4 - 30.6}

{Tape: 1; Side: B}

Discussion:

REP. WISEMAN requested an explanation of HB 199 with the amendment. **CHAIRMAN OLSON** explained his amendments, and **REP. NOENNIG** summarized that the energy policy was originally to be

developed by the EQC, PSC, and the Montana Consumer Council, and HB 199, as amended, will substitute the ETIC for the EQC.

REP. GALLIK agreed with the analysis.

REP. JACOBSON expressed concerns about the make-up of the ETIC since the EQC was made up of legislators, as well as members of the general public. **CHAIRMAN OLSON** stated in the end the legislature will set the policy with the input of the PSC and the Montana Consumer Council, and the Department of Environmental Quality (DEQ) will represent the interests of the administration.

REP. WISEMAN expressed his concern about not having time to digest all the ramifications of HB 199 and thought the committee should be given more time. **REP. WISEMAN** stated HB 199 represents a serious change to how energy policy is developed in Montana.

REP. WISEMAN commented that the only ones served well by energy deregulation in Montana have been out-of-state investors. **REP. WISEMAN** urged caution.

{Tape: 1; Side: B; Approx. Time Counter: 5.4 - 6.9}

CHAIRMAN OLSON countered that HB 199 does not represent new law, but simply substitutes the ETIC for the EQC. **CHAIRMAN OLSON** stated there are currently two interim committees working on energy policy and that duplication of effort does not serve the state.

REP. RICE asked for clarification on the EQC's position, and **CHAIRMAN OLSON** explained the EQC did not take a stand on the issue; rather, the EQC chose to let the issue go through the legislative process.

REP. GROESBECK recalled Governor Schweitzer had said he wanted to hold an energy summit this summer and wanted to know what impact the legislation would have on that summit. **CHAIRMAN OLSON** did not see where the legislation would have any impact on the Governor's Energy Policy Summit.

REP. JACOBSON agreed the ETIC would be the logical place to deal with energy policy, but had concerns about the lack of public input provided on ETIC. **REP. JACOBSON** recognized the role of the Montana Consumer Council in energy policy.

REP. GALLIK acknowledged it is always nice to have citizen input and stated the ETIC received a great deal of citizen input throughout the interim. **REP. GALLIK** suggested HB 199 makes sense.

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REP. NOENNIG reported the statutory requirements of the EQC and the make up of the EQC and noted there are four members of the general public.

REP. PARKER requested waiting until the next meeting to act on HB 199, so committee members can make an informed decision.

REP. HIMMELBERGER withdrew his motion.

ADJOURNMENT

Adjournment: 4:10 P.M.

REP. ALAN OLSON, Chairman

CYNTHIA PETERSON, Secretary

AO/cp

Additional Exhibits:

EXHIBIT ([feh18aad0.PDF](#))