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ENVIRONMENTAL QUALITY COUNCIL ENERGY POLICY SUBCOMMITTEE MINUTES

Date approved: *

July 19, 2004

Room 137, State Capitol Building

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee exhibits are on file in the offices of the Legislative Services Division.

COMMITTEE MEMBERS PRESENT

SEN. DANIEL MCGEE, CHAIR
SEN. WALTER MCNUTT
SEN. GLENN ROUSH
REP. NORMA BIXBY
MR. TOM EBZERY

COMMITTEE MEMBERS ABSENT

SEN. KEN TOOLE?

STAFF PRESENT

TODD EVERTS, Legislative Environmental Analyst

AGENDA & VISITORS

Agenda ([Attachment 1](#))

* These minutes were completed after the interim recessed and were not approved by the subcommittee.

COMMITTEE ACTION

- Recommended that the Energy Policy Subcommittee and the EQC comment on the proposal by the Energy and Telecommunications Interim Committee to assume the EQC's current statutory authority for developing state energy policy.
- Adopted the draft subcommittee report on alternative energy.

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Chairman McGee, and roll call was noted.

UPDATE ON ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE (ETIC)

[The tape recording begins in the middle of a discussion by Mr. Everts on the legislation the ETIC is proposing as a result of its interim activities.]

. . .

Mr. Everts explained that Sen. Royal Johnson proposed a bill to change the way the Universal System Benefits (USB) program charge is assessed and to extend the charge to fund USB programs until December 31, 2005. The final piece of legislation extends the eligibility date for the electrical generation and transmission facility property tax exemption that was authorized in the 1999 Legislature. This bill extends the date for any facility that offers to sell at least 50 percent or more of its output at a cost-based rate to Montana and to tinker around with the local impact fees to offset the costs to local governments.

Mr. Everts noted that the next ETIC meeting is September 9 and 10. When the committee releases its legislation for public comment, Mr. Everts stated he will provide copies to the subcommittee and the EQC for comment.

Sen. Roush asked what was behind the discussion for the ETIC to take over the energy duties of the EQC. Mr. Everts stated there is a bill draft the committee has proposed to clean up some administrative matters, but also, in reference to what the senator is asking, it eliminates the EQC from its historically defined role in the energy policy development process. It does not prohibit the EQC from debating energy issues, but consolidates energy policy processes under the ETIC since it is an energy committee. If there are environmental or conservation or renewable energy issues that the EQC would like to pursue, there is no prohibition for the Council to do so.

Sen. Roush asked about the membership of the ETIC and whether it was similar to other interim committees, with eight members, or if was an extended committee, like the EQC. Mr. Everts answered that it was like the other interim committees with eight legislators, four from each

party. Mr. Everts explained that concerning utility-style issues that the Transition Advisory Committee and now the ETIC deals with, the ETIC will have sole jurisdiction. Regarding conservation, renewables and environmental impacts related to those energy generation facilities, etc., those will still be within the province of the EQC if the Council chooses to pursue them.

Sen. Roush relayed his concern that the ETIC will have a lot of power over energy issues in the state and the EQC would be abdicating all their authority. Mr. Everts stated that the EQC or individual legislators may make comments on the bill draft proposing these changes once it has been released.

Mr. Ebzery asked for clarification about why the ETIC believes it is better suited to deal with energy issues now that utility restructuring issues are abating. How does it justify to the EQC that those topics no longer belong within its purview?

Mr. Everts answered that the justification for them is in the creation of the committee itself. As an interim committee, it is given a much broader role than the Transition Advisory Committee. His belief is that their justification would be to avoid duplication of effort. But it is a policy call. If the EQC wants to retain their authority for energy policy development in statute, they are entitled to do so. Then the work will have to be carefully coordinated between the two committees.

Mr. Ebzery asked that the EQC further discuss this issue so they have an understanding of what is being proposed.

Sen. McNutt agreed that the issue should be discussed with the whole EQC at the next day's meeting. He said he was struggling with it a little bit because the EQC has been very involved over time with energy issues and Mr. Everts has been very active with this topic on behalf of the EQC. Sen McGee also agreed and said he would include it in his recommendations to the Council.

Sen. Roush further explained that he raises this issue because he believes the EQC is a very important committee to the state of Montana on the basis of its public membership. When these duties are transferred to the ETIC, which has no public members, the Council is sending a message to the people of Montana that the subcommittee doesn't believe the public understands what is going on. He says he welcomes public input and believes the EQC has done a good job on handling these issues. He believes there may be some ego involved for some to take over all energy issues for the state. At least for this next session, if energy issues are taken away from the EQC, there will be very few issues for the EQC to discuss.

Sen. McGee reiterated that he would bring the issue before the EQC.

REVIEW OF THE SUBCOMMITTEE DRAFT REPORT

▶ **Draft legislation and recommendations**

Mr. Everts noted that for the first time, as far as he could recall, there were no public comments received on a draft report. A notice of the report went out to 193 people and hard copies of the report were distributed to the ETIC and EQC.

Mr. Everts said since there were no comments, he would go over the subcommittee's recommendations.

The bill draft requests for the Energy Policy Subcommittee are presented in Appendix A of the draft report (**Exhibit 1**) The first bill draft (LC 210) incorporates the subcommittee's request for a bill that clarifies that alternative renewable energy resource projects are eligible for renewable resource and grant loans. The second bill draft (LC 209) raises the loan eligibility amount for alternative energy systems from \$10,000 to \$40,000. It also clarifies what costs may be included. There's a provision in the bill that up to \$30,000, or 10%, whichever is greater, may be charged for administrative costs.

A concept of LC 209 went to the budget office and was rejected. Ms. Lou Moore, Chief of the Department of Environmental Quality (DEQ), Air, Energy and Pollution Prevention Bureau, explained the reasons for the rejection of the concept. The bill was sent to the budget office with several other requests and this one was not accepted by the Governor's Office to go forward. She explained she doesn't have a full understanding of the reasons, but she believes that it's largely based on the fact that it came out as a legislative bill and from a legislative program and they believed that if the changes needed to be made they needed to be made by the Legislative Branch rather than the Executive Branch.

Sen. McGee asked if that meant the EQC could not bring the proposal forward.

Mr. Everts stated that it did not, but he wanted the Council to be aware of the budget office's comments.

Sen. McNutt asked Ms. Moore if she was aware of any budgetary concerns or problems with the bill. She stated she was not. She said the big issue was that the budget office noted it was a legislative bill and for that reason, did not want to take on making changes to it.

Mr. Everts went on to discuss the third piece of legislation proposed by the subcommittee (LC 208). He stated that this bill clarifies that an applicant that proposes to build an ethanol facility may not submit more than one application for a facility in the same location. The Montana Department of Transportation (DOT) had talked about making some changes to the definition of

construction, but that has not occurred. This change responds to one element that the subcommittee had clearly identified that needed changing.

Mr. Ebzery remarked that the subcommittee had collectively seen that the system was being gamed a bit, and this bill is a step in correcting that issue. But he believed it should be considered as part of the DOT recommendations and a review of the entire program. At least the subcommittee should hear whether the program was doing what the Legislature 10 years ago intended for it to do. Today no plants have been completed which he believes is a result of the issue with timeframes. He questioned whether the incentives were really needed. If a federal bill is passed, is the ethanol incentive program a prudent use of highway transportation funds that could be used to build more roads?

Mr. Everts reiterated that this bill was a defined step to eliminate the gaming, but that he would arrange for more information from the DOT at the September meeting.

Sen. McGee agreed with Mr. Ebzery that more information would be helpful at the September meeting and asked if anyone from the DOT would like to comment at this time.

Mr. Bob Turner introduced himself as Chief of the Fuel Tax Management Analysis Bureau which administers the ethanol tax incentive. He said he was at the meeting as an observer and wasn't aware if the department had any recommendations. He agreed to inform the director and deputy director of the subcommittee's request for more information.

Mr. Everts discussed the fourth bill draft request. He said he was still working with the State Bond Counsel and that the two page brochure would be ready for review at the September meeting ([Exhibit 2](#)). He also stated there were two publications being updated. He was updating the publication which the subcommittee drafted last interim, "The Electricity Law Handbook" ([Exhibit 3](#)). The DEQ will have an update of their publication, "Understanding Energy in Montana", completed in August and ready for review by September.

Mr. Everts said the subcommittee could now decide whether to adopt or not adopt the recommendations and the reports.

Sen. McGee asked if there was discussion on the subcommittee report. Since there was no discussion, he solicited a recommendation to submit the report to the EQC.

Sen. McNutt asked how to recommend a report if there are issues with the third bill draft. Mr. Everts stated the subcommittee could adopt the report but defer recommending the adoption of the report by the EQC until September.

Sen. McNutt said he didn't personally have any problem recommending the report as it is since it did include the findings of the subcommittee. They did want to accomplish the goal of fixing a system where one company can tie up the process. And he would agree to deferring having the report adopted by the whole committee until September, but he believed it needed to come out of this subcommittee.

Sen. McGee asked for a motion to adopt the draft subcommittee report.

Sen. McNutt made the motion. Sen. McGee seconded the motion.

Sen. McGee asked for comments on the motion. He then stated that he agreed with Sen. McNutt that the report should be adopted even if there are some things in the report that may need to be tweaked.

Sen. Roush noted the amount of work completed by staff. He further noted that the information, in particular, the information in the bonding brochure, is so complicated and technical, it would take an expert to understand it, and he's not surprised no one commented on it.

Mr. Ebzery remarked he would like to join Sen. Roush in commending the staff on a job well done. There was a lot of information and the subcommittee heard from a number of people. He noted that he learned a lot about hydrogen, biodiesel, ethanol and wind energy. He believed the subcommittee gave everyone an opportunity to talk about alternative fuels and the report was well done and he appreciates the work of Mr. Everts.

Rep. Bixby agreed that the work is excellent and she thinks the alternative energy report is very important and will help move the state forward faster than it may have otherwise.

Sen. McGee also wanted to commend Mr. Everts and the staff for the work on the report. He said it's an excellent document and the EQC can be very proud of it. He referred to the report as a building tool—it states where the state is and where it may be able to go— and now the private sector can use it as a basis for action.

Sen. McGee asked for a vote on the motion to adopt the draft report. The motion carried unanimously.

Sen. McGee asked if there was other business.

► **Hydrogen fuel development**

Sen. Roush initiated a discussion on hydrogen fuels. He stated he had just returned from a Pacific Northwest Economic Region (PNWER) meeting and Montana was far behind on

hydrogen fuel development. He said he sees an opportunity in Montana and the state should act on it as suggested by Dr. Williamson from the University of Montana, College of Technology. He noted there has been a discussion of wind energy for the last three or four years, but he hasn't seen any wind development. The state has coal resources, which compliment hydrogen development. He said the subcommittee could be bold and support an appropriation to promote hydrogen as an energy source. He stated it's the coming thing in this country and in the world. It's big in British Columbia. The industry provides good paying jobs and good revenue for the state. There would be less competition than with oil or ethanol. He asked if there was any support in the subcommittee for proposing legislation.

Sen. McGee said he agreed in principal, but funding would be a problem, unless it was funded with bonding or leveraging the coal tax trust. The Legislature is already looking at the possibility of increasing funding for schools. He stated he doesn't see how with 910,000 people in the state, the Legislature can come up with money to accomplish this. The state has a huge transportation system to take care of, education expenses, etc. If there is going to be a state revenue source to fund this, it would require looking at something else, a sales tax, or bonding or creative financial incentives or packages so companies can come in and develop hydrogen in Montana. He believes hydrogen development is great, but there is no money for funding.

Mr. Ebzery asked if there are states in the Northwest that are moving forward without strict appropriations. Are there non-monetary incentives that would boost hydrogen development?

Sen. Roush said that he couldn't answer that specifically because the conference didn't discuss financing. The major policy topic was electric transmission and generation—but the discussion kept returning to hydrogen. He recognizes financing is a problem. He has heard about proposed financial incentives at the federal level. He said he thinks there are many opportunities for this state, maybe through the university system. There are a few active states, but Montana has great potential to be at the forefront.

Sen. McGee said there is a lot to learn from other states. He received a tax booklet that probably all other legislators received that stated there are three states that are debt free, and Wyoming is one of them. And one of the reasons it is debt free is because it has already developed its natural resource base. It already has coal bed methane development, etc. It has tax revenues coming in and a billion dollar surplus. And Montana as a state, in order to do the kinds of things Sen. Roush is promoting, or funding education or Medicaid, is going to need to look at how the state can produce more revenue. He stated the only way he knows how is to develop more natural resources, and then the question becomes how to do that safely environmentally so the state doesn't end up in a law suit every time there's a proposal. There are a lot of hoops and hurdles between here and paradise.

Mr. Everts referred to an outline on page 21 of the report of what other states have done and notes the 1.2 billion dollars in federal incentives Sen. Roush commented on earlier. Mr. Everts stated that one potential policy option is to create an entity that is eligible to receive federal money and to establish partnerships with private interests. A few examples are the Florida Hydrogen Partnership and the North Dakota Hydrogen Project . Some states have gone further by, for example, providing money for a hydrogen park. But not all projects have been funded with huge amounts of dollars, yet they have provided a focal point for information and action.

Sen. McGee asked if Mr. Everts is saying that states have partnered with private enterprise?

Mr. Everts cited an example of that scenario—the California Hydrogen Business Council. He noted it works with the state and the federal government and private enterprise to assist in funneling money for hydrogen development projects.

Sen. McGee said in Montana the state could create a hydrogen park, for example, at the university in Bozeman, and identify some copartners—both in business and government—to work together. The state could act at the front end, trying to get grant money, possibly from the 1.2 billion dollar hydrogen fuel initiative. One of the things companies may lack is the ability to go after funding sources that are available or familiar to the state. The state could initiate a long term development project with the objective that within a certain time frame, 5 to 10 years, the investment would eventually pay itself back when the state started using the fuel cell resource.

Sen. McGee asked if there was any other discussion.

Sen. McNutt asked the subcommittee to look at page 19 of the alternative energy report. He referred to the recommendations made in House joint Resolution 26 (2003). He said he didn't disagree with any items in the resolution. It may be possible to use some coal tax trust funds. He said he would look at promoting this personally if the subcommittee didn't act as a whole since the state will get steam rolled if it doesn't move forward. He wanted to look at bonding since he heard that was a problem last session.

Sen. McGee asked how coal is used in the development of hydrogen fuel cells.

Mr. Everts replied it was used in the conversion process.

Sen. McGee said the state is taking coal tax dollars when the companies mine coal, so couldn't the state identify some of those dollars for research and development for hydrogen fuel development since coal is used in the process? He's not sure how the coal tax money would be used, possibly for a loan.

Sen. Roush noted he wasn't sure either. But he mentioned in other cases the state provides start up money to a project and then cuts it off when the project is established. He's willing to put some money into it as long as at some point the project pays the investment back. He appreciates the comments in favor of this and want to progress before there are 40 other states involved. He asked Mr. Everts to contact Dr. Williamson and bring a more concrete proposal to the next meeting.

Sen. McGee said the state could provide an interest free loan from the coal tax trust in the first years of the project, then add an ascending scale of interest in the second or third year. This scenario gives money to the development of hydrogen fuel that the company must pay back to the trust. There's no losing in this proposal.

Sen. Roush said if the state works with the university system, and he thinks they should, whoever makes money from research and development should pay back that money to the coal trust fund as well.

Sen. McGee said he agreed and he isn't sure how the details should work at this time. He said he didn't see an available appropriation from the current tax structure. There's either a bonding proposal which puts the state further in debt or the use of the coal tax trust—and he knows there are people who don't want the coal trust used for anything. But if there are tax dollars coming from the development of coal that go into a fund and some of that money is used for research and development for a different use of the coal that will return money to the same fund, he isn't sure why anyone would have a problem with that.

Rep. Bixby asked if there is a comparable existing business council that could work with these issues.

Mr. Ebzery mentioned the Board of Investments.

Sen. McGee added the Governor's Economic Development Council.

Rep. Bixby noted if there was a comparable entity to take the lead, the subcommittee could make a recommendation to that entity.

Sen. Roush advised that Florida has a coal gasification hydrogen project listed in the report. He remarked the coal must be imported from somewhere. He reiterated that Montana needs to get involved. The statistics on page 16 or 17 show that in Canada there are enormous job opportunities. From what he's heard, he expects hydrogen fuel development to continue to blossom.

Ms. Moore added that Dr. Paul Williamson's project has received several thousand dollars in funding from Congress in the last 6 weeks or so. The announcement came from Sen. Burns' office. The DEQ had partnered with him to get some grant proposals funded, which were unsuccessful, but he was awarded some money on his own. She stated she would be glad to gather more information for the committee.

Sen. McGee said he would appreciate it if she would get the information to Mr. Everts.

INSTRUCTIONS TO STAFF

Sen McGee asked if there was any further discussion or instructions to staff. None were offered.

ADJOURN

Sen. McGee adjourned the meeting.