MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
FREE CONFERENCE COMMITTEE ON ENERGY TAX: HOUSE BILL 600, SENATE BILL 506, SENATE BILL 508

Call to Order: By **CHAIRMAN MACK COLE,** on April 18, 2001 at 9:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:
Sen. Mack Cole, Chairman (R)
Rep. Bob Story, Chairman (R)
Sen. Bob DePratu (R)
Rep. Ronald Devlin (R)
Rep. Gary Forrester (D)
Sen. Mike Halligan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lynette Brown, Committee Secretary
Stephen Maly, Legislative Branch
Jeff Martin, Legislative Branch

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

Committee Business Summary: Energy Tax Bills: HB 600, SB 506, SB 508

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SEN. MACK COLE told the committee they would deal with HB 600 and SB 506.

HB 600

SEN. COLE said the committee had requested a new fiscal note from the Department of Revenue. **Gene Walborn, Department of Revenue**

explained they did not have a new fiscal note, unfortunately, but he did have some new information that would answer **REP. GARY FORRESTER's** question. **Mr. Walborn** talked to **Brad Simshaw** about the fiscal note and explained #5 talked about the 50 units at a value of $100,000 per unit. He said they did not have the tracking mechanism in place to determine which unit belonged to Conoco, or Smurfit/Stone for example. **Brad Simshaw** had explained to him in #5, he had said, if there were 50 locomotives and if their value was $100,000, this would be the effect; add another 50 in the fiscal year 2003 which would bring you up to 100. **Mr. Walborn** explained the state mills were included in the fiscal note as well as the effect on the local revenues and expenditures. **Mr. Walborn** said the other question raised from **SEN. BOB DEPRATU** was how much a locomotive was worth. He said it would probably not be locomotives they would use in their normal railroad business; therefore, they would probably be some of the less expensive units. The worth could range anywhere from $20,000 - $80,000 - $100,000. **Mr. Walborn** stated they were not able to find the Conoco specific information requested by **REP. FORRESTER.**

REP. ROBERT STORY said the committee still did not know for sure how many locomotives were out there or where they were at. He added he knew of some that were worth $1 million apiece. **Gene Walborn** replied that was the other problem; much of the equipment came in at the end of the year or right after the year end, so the Department of Revenue was in the appraisal process and personal property process presently gathering that information on the new equipment. He said it would be around $15,000 tax for a new piece of equipment.

REP. STORY asked **Gene Walborn** why the department was thinking 50 additional locomotives would be picked up in 2003 because you needed to assume they would have been taxed in the coming biennium; not just what was taxed on the 1st of 2001. **Mr. Walborn** said that was correct and added you also needed to assume there would be more of that type of equipment coming into the state in 2001 and 2002.

SEN. MIKE HALLIGAN asked **Gene Walborn** to repeat the figures. **Mr. Walborn** said the locomotives ranged from $20,000 - $100,000. If it was $20,000, the market value would be about $300 per unit for tax which was based on some of the smaller railroads in the state as well as locomotives used at grain loading facilities.

REP. FORRESTER told the committee he wanted to be sure the counties would be treated fairly. He said this was the first bill the committee would be looking at and probably the cheapest

bill in terms of impact to the counties. He stated as the committee went along, they needed to mindful of the fact counties governments could be strongly impacted which would be a challenge for this committee in determining how to impact county and city governments the least while still allowing some incentives to go forward. **REP. FORRESTER** said he would vote for this because he believed some small businesses would use this, but he was not happy about the 80 megawatt figure. He said that figure began to affect the counties more and more. Going from the 30-80 limit had the potential to make a huge difference in the bill. He added, according to **Gene Walborn's** testimony, they did not know for sure how much was presently out there or how much would come in. He said everything the committee did now was committing counties to some impact and they needed to be mindful of that. **REP. FORRESTER** said he was not going to offer and amendment removing the 80 megawatts and inserting 30 megawatts because **SEN. DEPRATU** felt strongly about that issue. He again reminded the committee they needed to be careful.

SEN. DEPRATU agreed.

REP. STORY stated he did not disagree with **REP. FORRESTER** on that issue. He added the redeeming part was this bill terminated in 2004, therefore, it was a window opportunity. There might be some short term costs, but that needed to be weighed against the cost of the possibility of a plant closing down and the lost tax base from that operation. **REP. STORY** referred the committee to Section B on page 2 of the bill and wondered if the committee did not have any problems with the exemption applying to that percentage; they seemed to run into that problem with the big generator bills.

SEN. HALLIGAN agreed with **REP. FORRESTER. SEN. HALLIGAN** referred to the termination date mentioned by **REP. STORY** dealt with a temporary emergency situation and the impact on the counties. He said the next legislature should take a look at that issue. **SEN. HALLIGAN** wanted the committee to look at amending the termination to December 31, 2002. He said that would give them 1 ½ years to get the information in place; therefore, the next legislature would have to assess (1)if the price volatility was still there, (2) whether the energy pool they were attempting to put together would generate enough electricity for Montana resources and (3)for others to be able to function without hitting the counties. He requested comments from the committee members on whether that would be a realistic thing to propose.

SEN. COLE wondered if that would be too short of a time limit and, thus, create some problems in putting some of the equipment in.

SEN. DEPRATU expressed concern that the time would be too short to put in. He said he would not have any real objection to go back on the percentage, however. He said he was comfortable going back to 80% if the committee would find that helpful. **SEN. DEPRATU** stated he wanted to stay with the 2004. He told the committee he thought the state would start seeing some relief by the year 2004. He wanted the emphasis to be put on the fact they were trying to help small industry and small businesses.

REP. STORY stated the intent of this bill, as it originally began, was to help small people who might bring in some energy to help run something like a cooler. The big industries already had their generators set, so they had made the decision this would work for them without a tax. **REP. STORY** referred to the example discussed earlier with a $1 million generator paying about $15,000 in taxes. The generator **REP. STORY** referenced had to shut down for repairs for one day which cost them $21,000 to have the power company come flip the switch to turn it off. He added, the one day of maintenance cost them more than the taxes for the whole year. He said that all had to do with PSC tariff problems. He stated there was a $15,000 tax on a $1 million unit spread out over a year when it would not even cost 1-day's impact if you didn't run it. He added this bill would have much more effect on the smaller industries.

SEN. HALLIGAN wanted to focus the bill on the smaller businesses or the businesses that might be able to lease or buy the equipment and be able to keep themselves in operation in order to be able to stay in operation. He said this bill would still allow them to shift it to another business, as long as 80% of it was still used in their operation. He said that was the intent of the bill.

Motion/Vote: SEN. HALLIGAN moved that **LINE 3, PAGE2, TO MOVE 70% TO 80% BE ADOPTED. Motion carried unanimously.**

Motion/Vote: SEN. HALLIGAN moved that **HB 600 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

SB 506

SEN. COLE told the committee they would deal with SB 506 at this time.

Jeff Martin explained the committee had passed several amendments when they previously discussed this bill. He added there were

requests for more amendments to modify what kind of investment a homeowner could make for the credit, plus one more set of amendments.

Motion: **REP. STORY** moved that **AMENDMENT SB050605.ASM EXHIBIT(frs87sb0508a01)BE ADOPTED.**

Stephen Maly explained **amendment SB050605.asm** to the committee. He said this was Page 11, Section 10 of the bill. This was to clarify the idea of capital investment on the part of the taxpayer in a building was focused on the physical attributes of the building, such as walls, insulation of windows or the installation of the water heating or cooling system in a building; not a mere appliance. He explained the concept was to narrow the definition of what would qualify.

SEN. COLE asked if this was more narrow, but would be more permanent. **Stephen Maly** replied that was correct.

REP. STORY asked **Stephen Maly** if the water system referred to a water heater. **Stephen Maly** said the clarification language would be easy to do.

REP. FORRESTER asked **REP. STORY** in the ground source systems the co-ops pushed, if water heaters were an integral part of that system. He asked if that was what he was referring to or was he referring to a free-standing water heater that was conserving energy by itself. **REP. STORY** replied that was what the people who asked him to put water heater in there were getting at; upgrading a water heater to one that was more efficient since that was what one of the main energy uses were in the house.

Stephen Maly explained that water heaters fit in there easily, however, this reached farther into other types of systems that were new and different that conserve energy by using water differently, heating differently, and cooling differently. The idea was to be quite general.

SEN. COLE asked if solar panels would go in this. **Stephen Maly** answered, yes, because they were a physical part of the building.

Vote: **Motion** that **AMENDMENT SB050605.ASM BE ADOPTED. Motion carried unanimously.**

Jeff Martin explained to the committee there were two additional sets of amendments: one dealing with expanding the tax credit for wind energy and one for buying cooperatives.

Motion: **SEN. COLE** moved that **AMENDMENT SB050601.AGP EXHIBIT(frs87sb0508a02)BE ADOPTED.**

SEN. COLE asked **Bob Brown, Secretary of State,** to explain **amendment SB050601.agp** to the committee. **Bob Brown** stated it was originally thought this amendment could possibly be attached to a bill introduced by **REP. Juneau,** HB 643. He stated HB 643 extended the tax credit to wind generation on the tribal land. It basically exempted the wind generation on the tribal land from the WET tax, (the Wholesale Electrical Transmission tax). As a member of the land board, **Sec. Brown** was interested in how they could maximize income from school trust lands. It seemed to him perhaps that whole concept could be applied to the public land we own ourselves as a way of generating more power on that land, but also, to try to get more money into the school trust. **Sec. Brown** explained the wind generators, the companies that place them on the property usually paid $3,000 per year, roughly 3% of the gross they would generate, which would translate into around $3,000 per generator. He explained there was some state land that was quite unproductive; the income from those pieces of land did not generate much money. However, some of those sections of land might be in very windy locations where they might be able to make eight or ten times more money from wind generation on the land as opposed to the amount they were making from the purposes they now served. **Bob Brown** said the good part of this was, they would not be sacrificing the existing purpose because the land could continue to be grazed or farmed as is. He added not all sections of state land would be appropriate for this, but some of them would be. He told the committee he thought this was a good idea and good for the public interest. He urged passage of this amendment.

REP. STORY asked **Bob Brown** why he wanted to use the proceeds this way.

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Secretary of State, Bob Brown, replied they would be used in the same way other rental income was used.

REP. STORY told **Bob Brown** Section 2, Sub-section B stated the lease agreement would make annual payments to the permanent trust. **Bob Brown** answered he was not sure why it said that. **REP. STORY** stated he would rather see it go just like the grazing rental, with a certain percentage to the trust. **Bob Brown** responded the income that went into the school trust from the state land was the non-renewable income, such as selling state land, or mining coal. He added grazing fees, agricultural lease

payments, and timber harvest, 95% would go outside the trust, with only about 5% remaining in the trust.

REP. STORY asked **Bob Brown** if the money flowed through the trust. **Sec. of State, Bob Brown,** replied his intention was to have this treated as other renewable income would be treated.

REP. STORY told **Bob Brown** if his amendment exempted those facilities from the WET tax, but did not exempt them from the excess profits tax. **Mr. Brown** answered they wanted to have this correspond directly to the Juneau bill; the provision of the Juneau bill was 33% of the electricity generated had to be used in the state and had to be able to be used for at least five years before the tax break could be offered. He added they were trying to do the same thing for trust land that they do for tribal land.

REP. STORY asked **Bob Brown** if they needed to exempt them from the excess profits tax. **Bob Brown** replied he did not know.

Jeff Martin told the committee he thought they would be because it would be considered new generation. He referred to the cost of production and how it was calculated. He said in SB 505, the House Tax Committee revised that by putting "hour" after "kilowatt", therefore, it would be measured by kilowatt hour as the major output instead of just kilowatt. He recommended the committee may want to add the word "hour" to this bill as well.

REP. FORRESTER asked **Bob Brown, Secretary of State,** what the fiscal impact would be to counties affected by this. **Bob Brown** replied he had checked on the WET tax, which went directly to the state and, therefore, would not have a local impact in that way. He stated the WET tax was now 15% of one cent, .015. **Bob Brown** explained if one wind generator generated about 715 kilowatts approximately 1/3 of the time, each one of these wind generators would then pay about $40 in WET tax; however, the fee they would pay would be around $3,000. He said it appeared they would be far ahead financially, in terms of government purposes, if the money would go to support the schools.

REP. FORRESTER told **Gene Walborn** he had a conversation with some of the oil and gas county commissioners in which they expressed concern that some of the WET tax money was going to be returned to the counties, the counties would then benefit. He added, they did not feel they had gotten any of the WET tax back. **Mr. Walborn** explained part of the WET tax was put into place for the reduction of the property tax for essentially assessed utility companies. He said they got the flow-back from the reimbursement back to them, as referred to in SB 184. He added when the

department collected the WET tax, it went directly into the state general fund, with none of it ear-marked for the county.

REP. STORY told **Gene Walborn** in the original tax reduction on the bill, each one had its own reimbursement taxes set-up; the generator had a combination of WET tax money and the general fund going into it and the telecommunication had their own. He said, in the end, the money was all placed in the general fund; their WET tax was included in their reimbursement.

REP. FORRESTER told the committee the reason he asked this was because **REP. DEVLIN's** commissioner indicated he did not feel the reimbursement formula was fair to his county. They had felt in the reimbursement funding formula, they were going to receive something back and did not feel they had gotten anything back.

REP. STORY replied there had always been some discussion about that issue. He felt for the things they were going to reimburse, for the generators, the telecommunications, oil and gas, and business equipment, everybody had gotten all their money back. He added where they did not get their money back was the motor vehicles and residential property reductions that happened in the first year. He stated that was where they had to raise their mills to get that money.

REP. STORY asked **Bob Brown** if he could call the legal people to make sure Section 2, Sub-section B was worded correctly to ensure the money flowed through the trust and not just locking it into the trust. **Bob Brown** answered he would.

SEN. HALLIGAN commented on Sub-section C, saying it was normally indicated the person who received the credit should be able to sell a certain higher percentage back to the customers in the state, such as 70%, which had been in previous bills. He added this section only listed 33%. He asked if it was necessary to have the lower amount to make it cost effective. He said this amount was different than the other bills dealt with.

SEN. COLE responded that was what they had just talked about also.

Stephen Maly asked if the Department of Revenue could speak on this issue, from their legal view, of the permissibility of requiring in-state service for the purpose of qualifying for a tax credit. He added, in some instances, that would violate the Inter-state Commerce Clause. He said there may be a question about the volume of electricity that was an issue in this bill and how that was distinct from larger volumes. He recommended

getting the Department of Revenue's legal perspective on this issue.

Mark Prichard, Department of Revenue, told the committee there were constitutional problems when giving a tax exemption based upon in-state service. He added the Supreme Court had already ruled that when giving a property tax exemption, income tax exemption, credit, or deduction based upon in-state service, then that was a burden on interstate commerce.

SEN. HALLIGAN asked **Mark Prichard**, if that included at any level. **Mr. Prichard** replied he had not seen a case where they had based in on a certain level. He said, it was clear to him, if you had the whole idea of giving an incentive to do business with in-state consumers or in-state residents, in and of itself, that was a burden on inter-state commerce. He added whether giving 33%, as opposed to giving 75%, it was his view they would look at that incentive as a burden on interstate commerce because that would be giving an incentive to an in-state business to not do business with out-of-state consumers.

Jeff Martin asked **Mark Prichard** if this wouldn't also be contrary to federal statute that applied specifically to energy generation, that stated you can't discriminate on sales between in-state and out-of-state customers. **Mr. Prichard** told the committee there was a federal statute that stated you could not discriminate against out-of-state consumers and in-state consumers. He said, basically, that was in place because New Mexico was taxing energy differently for out-of-state consumers and in-state consumers. This was an exemption, therefore, it would be questionable if it would fall under that statute. He added it would certainly fall under the case law underneath the commerce clause that says it was a burden on interstate commerce.

REP. FORRESTER told **SEN. HALLIGAN**, after **Mark Prichard's** explanation, it looked like the committee may not be able to place a percentage in there at all. He asked **SEN. HALLIGAN** what his opinion was. **SEN. HALLIGAN** replied he had to respect the opinion of the Department of Revenue since he had not done the research on the issue. He added, he found it hard to believe, that at least on some level, they could not attempt to give some kind of tax credit to encourage the generation and encourage some sort of economic activity providing it didn't give so much of a benefit that it benefitted Montanan's more and burdened interstate commerce. He said they would be balancing that test at some point. **SEN. HALLIGAN** added there would be some level where they would say that was not a burden on interstate commerce. He said, to be safe, they would almost have to take that percentage out.

SEN. COLE responded that section could be a problem for the bill, regardless of what percentage they used.

REP. FORRESTER asked **SEN. COLE**, in Section 2, C, was he saying the committee would need to eliminate the percentage altogether. **SEN. COLE** replied that was correct.

Stephen Maly told the committee there were physical constraints in Montana to moving electricity, no matter where it was produced. With respect to the lands that were under consideration, there may be more than sufficient physical impediments to shipping this power into the grid, he explained, in conjunction to the power that was likely to be generated in this fashion. He said, contextually, there be no need to require the in-state service in order to get the benefit for Montana consumers.

REP. DEVLIN referred to another part in Sub-section C, page 1, where it referred to a reasonable rate of return; the House Tax Committee felt that was quite subjective. Therefore, on some of the bills they dealt with, they quantified that. He believed the number they generally used was 12 ½%. He stated the committee may want to do that in this bill to provide consistency in the language.

SEN. COLE said that with the fact this power was probably going to stay in-state anyway because of transmission and the size of it, he preferred removing Sub-section C, rather than having it jeopardize someone questioning it on account of the interstate commerce was concerned and the present federal law.

Jeff Martin responded "C" and Sub-section 3 would need to be removed.

SEN. HALLIGAN stated, essentially, if they didn't do anything to encourage transmission for 3-5 years, then potentially, no one could ship any of the new generation out of state because the transmission system was essentially full; they would then be forced to potentially sell it in-state, which would hopefully reduce overall costs during that period of time. He added, at some point, they would want to do the incentives for transmission once the other generation in other states came on line in order to add to that pool.

SEN. COLE added, probably, if it ended up in that situation, it would probably be fine to have some of the energy produced to go somewhere else.

Stephen Maly stated if they were considering cutting away the requirement for in-state service, that did not require them to impose on the beneficiary, the tax credit, the duty to sell at cost, plus a reasonable rate of return. In other words, putting a cost limit on the power would not run into the same problems as requiring the energy to be sold in the state. He explained they could segregate the cost-plus portion out of the bill so they would be getting something in return from the tax credit.

SEN. HALLIGAN said they needed to strike C and Sub-section 3. He also wanted to re-introduce language that would allow for the cost of production issue.

Jeff Martin explained they might want to keep Sub-section 3 as defining what the cost of production was.

SEN. DEPRATU asked if they could eliminate, in Sub-section 3, wording "at least 33%" and leave the remainder of the section as is.

Motion: **SEN. DEPRATU** moved that to **REMOVE THE WORDS "AT LEAST 33%" FROM SECTION 2, C BE ADOPTED.**

SEN. COLE said he did not know why they would need five years. He said they were trying to get the cost of production plus a reasonable rate of return.

SEN. DEPRATU said, instead, they should remove the words "with a duration of at least five years". He asked if that would make it better.

Substitute Motion: **SEN. DEPRATU** made a substitute motion to **REMOVE, STARTING WITH THE WORD "WITH" AND GO THROUGH 33% BE ADOPTED.**

REP. STORY stated if the committee dabbled around in trying to adjust the clause, it would make it almost impossible for a generator to use the benefit because now they were going to make them contract all of their capacity at the cost of production. He added that might not work for them. He said it might work for them financially, but it did not give them a lot of incentive. It also made it hard to track and it would become rather cumbersome, he said.

Stephen Maly told the committee the real problem was requiring the in-state services, not the percentage that was required to be sold at cost. He said it was not imposing a cost-plus regime. He said, in Sub-section 2, Sub-section C, they could strike "to

customers for use within the state." He said, by excising that alone, would remove the legal problem; they could leave the rest of the structure in place.

SEN. HALLIGAN asked how to avoid **REP. STORY's** concern that it all had to be sold at a cost of production, plus a reasonable rate of return.

SEN. DEPRATU withdrew his motion.

Stephen Maly explained as long as the percentage was not tied to in-state customers, rather, it was tied to the amount of power offered at cost of production.

Jeff Martin told the committee this would also limit, under existing language, it to the five year period.

Motion: SEN. DEPRATU moved to **REMOVE THE SEVEN WORDS IN SUB-SECTION 2,C, STARTING WITH THE WORD "TO CUSTOMERS FOR USE WITHIN THE STATE" BE ADOPTED.**

SEN. HALLIGAN said the cost of production only applied to 33% of the power produced.

REP. DEVLIN said, in some of the other bills, they had limited that to up to 12 ½%. He offered that amendment in there, as well.

Substitute Motion: REP. DEVLIN moved that **AT A REASONABLE RATE OF RETURN, NOT TO EXCEED 12 ½ % BE ADOPTED,ALONG WITH THE WORDING IN SEN. DEPRATU'S MOTION.**

Stephen Maly asked if it was 12 ½% or 12%. **SEN. COLE** answered it was 12%.

REP. DEVLIN said that was fine.

Vote: Motion that **REMOVE THE SEVEN WORDS IN SUB-SECTION 2,C, "TO CUSTOMERS FOR USE WITHIN THE STATE" AND TO INSERT "NOT TO EXCEED 12%" BE ADOPTED. Motion carried unanimously.**

REP. STORY reminded the committee they were to insert on the last line of Sub-section 3, the word "hour" after kilowatt.

Motion/Vote: REP. STORY moved that **INSERT THE WORD "HOUR" AFTER KILOWATT BE ADOPTED. Motion carried unanimously.**

REP. STORY asked what the 15-32-402 credit was. He said the committee had never discussed what they were doing with this exemption. He asked if they were exempting people from the requirement that the federal credit and state credit could only be 60% of the cost.

Jeff Martin replied, yes, it was removing that limitation. He explained they did not have to reduce the state credit to offset the federal credit. He added the accumulative effect would be a tax benefit of 60% of the eligible cost.

REP. STORY asked how much the state credit was, adding he thought it was 35%.

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SEN. HALLIGAN asked **Jeff Martin** if they could exceed that now; they could get the federal credit, take the state credit, even if it exceeded 35% of it for the cost of production. **Mr. Martin** answered, no. He said the effects of the tax benefit would be 60% of eligible costs. It could exceed that amount, but still, only 35% of the eligible cost.

REP. STORY asked **Jeff Martin** where, on page 14 of the bill, did it say that the credit was equal to the cost. **Jeff Martin** agreed, adding it did say 35% of the eligible cost. He said, with this provision, it was still limited to the 35%, but when you add that on to the federal credit, you could exceed the 60% limitation that was in 15-32-403.

REP. STORY asked how much was the possible credit. He asked could it be the credit was greater than the cost. **Jeff Martin** replied he did not know what the percentage amount was, but he doubted it would be 100%. He said he was sure it would be a percentage of eligible cost.

Secretary Bob Brown explained what they wanted to do, and presuming this was in the industrial 643 as well, make it possible to not have to forgo the state tax credit in order to obtain the federal tax credit. He said their intention was what this amendment stated; however, the committee may decide that was not what they wanted to do, though.

REP. STORY said they were trying to find out how much the federal tax credit was; apparently it was more than 25%.

Gene Walborn responded he did not know what the federal credit was, thinking it was around 30-35%. He explained the limitation was so they could not claim 100% of the eligible cost on the

federal level. He said the state simply took a percentage of that. He told the committee they did not have anyone claiming this credit presently.

Stephen Maly asked if the previous amendment also would strike "designated by the Public Service Commission". He said, if not, it should have.

Motion/Vote: REP. DEVLIN moved that **STRIKE "DESIGNATED BY THE PUBLIC SERVICE COMMISSION" BE INCLUDED IN THE AMENDMENT BE ADOPTED. Motion carried unanimously.**

REP. STORY said, on page 2, the length of the credit could be carried out. He said, presently, it could be carried out for seven years. Under the proposal, they would be able to carry it out for 15 years. He added, since they did not know the cost or the cost of the credits, apparently seven years was not enough time to use up all the credits. He asked if that was the concern. **Secretary of State, Bob Brown**, answered that was correct.

SEN. COBB told the committee if they didn't like the 15 years, they could go back to the seven years. He said they got a lot of good credits on these things anyway.

REP. STORY asked **Gene Walborn** if there were any other credits that went out this far. He asked if 15 years was an extreme number for the length to carry forward. **Gene Walborn** agreed that was quite a ways to go out. He said he did not know of any that went for 15 years.

REP. STORY told **Gene Walborn** he was concerned because they were giving them a substantial credit. **Mr. Walborn** offered to make a call to verify this issue.

Motion: REP. STORY moved that **TO TAKE IT BACK TO 7 YEARS BE ADOPTED.**

Jeff Martin said the effect of that amendment was to strike 15-32-404 because there was no substantive change to that section. He said it would be nice the have the language clean-up, but there was no substantive change.

REP. STORY said that would be his motion.

Substitute Motion/Vote: **REP. STORY** made a substitute motion that **STRIKE 15-32-404 BE ADOPTED. Substitute motion carried unanimously.**

REP. STORY reported **Secretary of State, Bob Brown,** did check with staff and the way the annual leave payments worked was 95% of them just flowed through the trust fund. He said his concern was unfounded.

Motion/Vote: **SEN. COLE** moved that **AMENDMENT SB050601.AGP BE ADOPTED. Motion carried unanimously.**

Motion: **SEN. COLE** moved that **AMENDMENT SB050602.AGP EXHIBIT(frs87sb0508a03) BE ADOPTED.**

SEN. HALLIGAN said this was a future amendment, potentially, if the default supplier was a buying co-op or if there was a default supplier who was a separate buying co-op, they could potentially benefit.

Stephen Maly explained, currently, with bills that were going through this legislature, the default supply role was being concentrated on distribution services providers, which basically would take the electricity buying co-op out of the businesses. He said present statute read they had one sole purpose allowed to them which was to serve the default supplier. This allowed them another role to play in the energy mix, which was to be a supplier or promoter of alternative energy. Without this, the buying co-op ceased to exist as a functioning entity.

SEN. COLE asked if this was a buying co-op. **Stephen Maly** responded, yes, this gave them another role to play because the default supplier role was no longer available to them. Present law restricted them to that role, singly.

SEN. COLE asked **Stephen Maly** if this was in the buying co-op that was trying to be set up and nothing had been done on it. **Mr. Maly** answered that was correct. **Mr. Maly** replied without a default supply license, there was no business it could engage in. This amendment would allow them to go down a different path, as the supplier or promoter of alternative energy. The supplier could be in the aggregator functions, but not as a default supplier.
Vote: **Motion** that **AMENDMENT SB050602.AGP BE ADOPTED. Motion carried unanimously.**

Motion: **SEN. HALLIGAN** moved that **SB 506 BE ADOPTED AS AMENDED.**

SEN. HALLIGAN requested **Jeff Martin** to check the title of the bill to see what was remaining in the bill. **SEN. HALLIGAN** assumed the revolving loan program was still in place, air quality, non-compliance, and penalty fees deposited in that loan program were still included. He asked if they had eliminated business property taxes on certain generating equipment or had it been stricken. **Jeff Martin** answered that was still there. He said it was on Section 6 on page 6.

SEN. HALLIGAN asked if that was consistent with **REP. BOOKOUT's** bill on generation. **Jeff Martin** explained this one applied to commercial generation.

SEN. HALLIGAN asked if that was versus all non-commercial generation. **Jeff Martin** replied that was right.

REP. FORRESTER asked **Jeff Martin** if that applied to the wind generation facilities as well that they had just added in. **Mr. Martin** replied, if they looked at page 7, it listed the types of facilities that were powered by solar energy, water, or wind.

REP. FORRESTER asked **Jeff Martin** if they would not only receive the tax credit, but they would be exempt from taxation, such as property tax. He asked if they would not pay business equipment tax either. **Jeff Martin** replied if they had a generating capacity of more than one megawatt.

REP. FORRESTER asked **Jeff Martin** if that would be total megawatts of the group of wind turbans, such as in the case of the locomotives, or was it each wind turban. He said, **Secretary Brown** had stated 3/4 of a megawatt for each wind turban, but if you had many turbans in a grouping, would they consider the group, by adding them together, would they qualify for a tax credit and be subject to a business equipment tax as well. **Jeff Martin** replied Sub-section 2 defined generation facilities and it talked about any combination of connected generators.

REP. FORRESTER wanted to be sure the amendment the committee just passed not only gave a fairly substantial tax credit, but it also allowed for no business equipment tax to be paid as well. He wanted to be clear on that. **SEN. HALLIGAN** agreed that was what the committee just did. **SEN. HALLIGAN** said he did not know if that was the public policy the committee wanted to do. He said, if they gave a substantial credit that could even be 100% of the project cost; however, perhaps it wouldn't be 100% since there was a 35%-40% federal credit and no more than 35% of eligible costs in the state credit.

SEN. COBB explained the reason they reduced the equipment tax was that all the other states had sales taxes, whereas Montana had property tax. He said the other states lower their sales tax to almost nothing or zero for anything that had to do with wind mills and such, but they did not have the property tax. **SEN. COBB** said he was trying to lower the property tax as much so we could compete, so there would be the same up-front cost on that equipment such as the windmills. The credit was a separate issue, he said. By lowering the equipment or eliminating the equipment tax, after five years, they would have to start paying something because people would start getting tired of the big windmills by that time. **SEN. COBB** said the Minnesota recommendation was after so many years, they needed to start paying something. Before trying to recoup the money, it was important to get it up and running first.

REP. FORRESTER told the committee he had a conversation with some of the oil and gas counties in which they indicated they were really concerned about this exact thing the committee was doing. He asked if **William Duffied** could comment. **Mr. Duffied** stated they understood some sort of incentive needed to be given for industry to come into the state, but they were concerned over the past years all of the incentives and tax breaks had ended up on the local government's backs. He added they were concerned the committee would not take away their ability to function and to give them some revenue to make up for the impacts on the counties that these things would create. He reiterated the concern the legislature was taking away the ability for the counties to pick up the impacts.

REP. DEVLIN said there was no termination date for this issue, so in effect, they would be exempting those entities forever.

SEN. HALLIGAN said there was a termination date of five years already included. **REP. DEVLIN** replied that alleviated his concern.

SEN. HALLIGAN asked **SEN. COBB** if the new or expanding industry tax break that was now on the books allowed for a phase-in of the property taxes over a period of time rather than a total exemption. **SEN. COBB** replied that was correct, if they wanted to use that procedure and actually apply for that.

SEN. HALLIGAN asked **SEN. COBB** if they paid a lower tax up front; they started paying, even though it was a much lower rate. **SEN. COBB** said they could use that definition and go that way if they wanted. He added he thought the business equipment tax could be obsolete in a few years; so he was mainly trying to get these

facilities developed and after being developed, if they got too big, they would start taxing them more.

SEN. HALLIGAN asked **Commissioner William Duffied** to comment on this same question. **Mr. Duffied** replied that law gave county commissioners the authority to give a five year tax break, with 50% for the first five years and to phase it in after that, until hitting 100% in the 10th year. He added that would give them some sort of revenue to start with at the beginning.

SEN. HALLIGAN asked **SEN. COLE** if it was worth it to consider as they started with the business equipment tax exemption bills to plug into that new or expanding credit that had been on the books and allow the counties to have some input into the process by granting those. He said it was important to be consistent and treat local governments fairly in the process. **SEN. HALLIGAN** stressed he was a strong supporter of alternative energy and wanted to promote that. He stressed the importance of being consistent with other bills, adding they needed to have some well thought out policy on that and how they were treating the counties. He added the outright exemption did hit the counties quite hard. On the other hand, it was a new energy source that was helping us out, reiterating the importance of giving a strong incentive in that direction. **SEN. COLE** replied this bill addressed **REP. DEVLIN's** concern by placing a five year termination date.

REP. STORY stated **SEN. HALLIGAN** brought up an issue the committee had to face today which was how were they going to deal with the idea of exempting, not only the small facilities, the large facilities and how to deal with them in taxation, impact fees, how the local governments would meet their costs of these, yet still have an incentive for the construction of the facilities. **REP. STORY** said, outside the excise profits tax, this was the biggest issue the committee had facing them. **REP. STORY** asked if the taxpayers were going to be expected to pick up the development costs or the people doing the development. He added **SEN. COLE** was trying to address that issue in his bill, SB 508, with some impact fees. This bill was looking at smaller units, he said.

SEN. HALLIGAN reiterated the importance of consistency. He asked **Jeff Martin** if the existing, new or expanding industry property tax break could fit with this bill. **SEN. HALLIGAN** asked if it was a county option. **Jeff Martin** explained a distinction in the bill; the property tax exemption applied to facilities of one megawatt or more while the new or expanded applied to those facilities with less than one megawatt. He added there were a

couple other provisions that applied to those facilities that were under one megawatt also.

REP. STORY asked **SEN. COBB** if his intent was to let the counties decide if they were going to exempt anything under one megawatt. **REP. STORY** stated he often thought that would be the reverse of what the actual result would be. **SEN. COBB** responded his intent was to exempt those under one megawatt forever; while those above one megawatt would either have to start paying tax or the counties would have to start exempting them. **SEN. COBB** stated his intent was for the smaller ones, under one megawatt, while the larger ones, over one megawatt, would need to start paying in five years unless they would get some other deduction from the counties. He said they could also get a new industry credit right from the beginning, however, he did not know why they would do that if they were already exempt for five years.

Jeff Martin responded the five year exemption was for one megawatt or more; the new industry provisions applied if they were under one megawatt.

REP. STORY pointed out Section 1.A stated they were exempt from taxation completely unless they were over one megawatt, at which time it would be exempt for five years.

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REP. STORY stated Section 1.B exempted for five years. He expressed concern with possibly ending up with several units parked around, all having less than one megawatt.

REP. FORRESTER said if they were physically connected, they would qualify for never paying taxes.

REP. STORY asked **Gene Walborn** what "physically connected" meant to the Department of Revenue. He asked if it meant a power line or did they have to be operated in conjunction with each other. **Mr. Walborn** answered it would need to be to a physically connected generator or generators which would probably have to be a power line or some sort of sub-station to connect the units.

REP. STORY asked **Gene Walborn** if they had the same definition to work with in Section 3 in defining generation facilities. **REP. STORY** said it stated they would be normally operated together was how they would determine the facility. **REP. STORY** said this definition was a little different. He asked if a company came in and set up 20 different wind turbans, scattered across three counties, would that be considered one facility or 20 facilities.

REP. FORRESTER asked if they were physically connected by the fact they were all connected by the same power grid.

REP. STORY stated, practically, they would need to be hooked up to a wire to be physically connected.

Gene Walborn stated clarification would be helpful.

Jeff Martin told the committee in Sub-section 1.A, it said machinery and equipment used in non-qualifying generating facilities. He wondered if that also applied to non-commercial, which would relate to provisions in HB 600.

REP. DEVLIN proposed an amendment, in Section 6, to exempt anything under one megawatt for five years, then have the taxes kick in; also in Section 1.B, for those facilities that had a capacity of more than one megawatt, he would have them apply to the county for the county option for the new and expanding business provision.

Stephen Maly explained the new and expanding credit was also in the bill in Section 7. 15-24-1401 changed the definitions, but by doing so, that engaged another section of law subsequent. It was not in the bill, but by changing the definition of the alternative energy programs that were qualified for that new and expanding tax credit, it would be included.

Jeff Martin stated the definition referred to in 90-4102 stated it was less than one megawatt.

REP. FORRESTER said **SEN. HALLIGAN** had talked to him and agreed with the type of proposal **REP. DEVLIN** just made. He said **SEN. HALLIGAN** felt a need to set a precedent that would begin to protect local government and felt that would be the way to do it. He said **REP. STORY** had alluded to the fact this would be the most important thing coming out of the committee and that would be one way of doing it. He told the committee they had heard of concerns of the commissioners; the commissioners were not there telling the committee what they were doing wrong. They understood what the committee was doing, but the commissioners' concerns were valid.

SEN. COBB said he was correct.

REP. STORY stated he did not disagree with the amendment, however, if the committee did this, they would have a conflict with where they were going with **SEN. COLE's** bill unless they put a cap on. **REP. STORY** said if they left anything over a megawatt that went into Section 7 of the bill, then when they got to SB

508, if they wanted to go down a different track, they would need to come back and re-do this one; he wondered if they were going to follow this mechanism or the one in SB 508.

SEN. COLE asked if they had a generation cap in SB 508. **Doug Hardy** replied it was megawatts.

SEN. COLE stated if, in this bill, they inserted "to not exceed 20 megawatts" that would keep it in the small category; everything over 20 megawatts would fit into SB 508 where the impact fees were. **REP. DEVLIN** said that sounded fine to him. **SEN. COLE** added it would need to be over one megawatt, but not exceeding 20.

REP. DEVLIN stated from one to 20, they would apply for the local option; over 20, they would probably start with impact fees. He added, under one megawatt, they were automatically exempt for five years.

REP. STORY told **REP. DEVLIN** he did not know how these bills would be dealt with because when they coordinated all of these bills, they would all be one section of law.

REP. STORY stated this bill only applied to alternative energy, which probably would not apply to **SEN. COLE's** bill. **REP. DEVLIN** replied they would probably need to put an exemption in **SEN. COLE's** bill for the one to 20 megawatts.

SEN. COLE explained in SB 508, they had average megawatts for an average year.

REP. STORY said they had concluded this only applied to alternative energy.

REP. DEVLIN responded they did not need to cap on this, then. They could just say to exempt alternative energy sources.

Jeff Martin explained the exemption in Section 1.A where it said "exemptions provided in Section 1.B, the machinery and equipment used in qualifying generation facilities built and operated after the effective date of this act are exempt in taxation." He wondered if this might still conflict with HB 600.

SEN. COLE said he did not know.

REP. STORY told **Jeff Martin** he did not think anybody could contemplate HB 600 being for alternative energy crisis.

Jeff Martin said this bill did refer to new HB 600.

Jeff Martin stated if this was commercial, there was no problem. He was wondering if Section 1.A included non-commercial. **SEN. COBB** responded it included non-commercial.

Jeff Martin stated HB 600, when talking about electrical generation machinery and equipment, it included, but was not limited to electrical generation machinery and equipment that was powered by fossil fuels, wind, water, solar energy, fuel cells, and fuel thermal energy.

REP. FORRESTER said it was basically the same definition used on page 7.

REP. STORY told the committee maybe they did not need HB 600 at all then. **SEN. COBB** said HB 600 referred back to the definition in 90- (he didn't finish the number) the definition already found in law on alternative energy sources.

Stephen Maly said the difference HB 600 allowed for a fossil fuel generator, whereas, this bill did not allow a fossil fuel generator to get the credit. He said that was the distinction he saw.

REP. DEVLIN told the committee the difference he saw in this bill, was that SB 506 had far more implication for those commercial applications. He said he envisioned wind farms to not necessarily be just for the home or business, but actually to set up the wind farm to hook up to the power lines, which was not covered in SB 600 because a portion of that had to remain in your business. He saw a difference and felt they could not combine the two bills.

REP. STORY stated the administrative problem would be that someone would need to determine whether a generator met this criteria or that criteria. He said probably the simplest way to fix it would be to pull all of the alternative energy parts out of SB 600 and make it a standard generator bill that ran on gasoline, diesel fuel or whatever fossil fuels because that was what it was geared at. **REP. STORY** said to take all of the alternative energy parts into this bill.

REP. FORRESTER asked **Gene Walborn** if that would clean up the bill if they did that; he asked **REP. STORY** to repeat his previous comments.

REP. STORY explained he wanted to pull all of the alternative generation out of HB 600, making it a conventional generator bill

with fossil fuels; he then wanted to put those sections in SB 506 dealing with alternative section in **SEN. COBB's** bill, and let these tax exemptions apply to those. **Gene Walborn** added they would include the range of one megawatt to whatever limit in SB 506 with the fossil fuels in HB 600.

SEN. DEPRATU reiterated all the alternative sections would be in SB 506.

Gene Walborn responded they could do that by simply going to Section 2.A. He asked if that was correct. **Stephen Maly** responded that was correct.

Gene Walborn asked if, in HB 600, page 2, they would strike everything except "fossil fuels". **Stephen Maly** replied that was correct. **Gene Walborn** said he thought they would accomplish what they had suggested by doing that.

Motion/Vote: **SEN. DEPRATU** moved that **TO RECONSIDER ACTIONS ON HB 600 FOR THE PURPOSE OF PULLING OUT THE ALTERNATIVE ENERGY AND MOVING IT TO SB 506 BE ADOPTED. Motion carried unanimously.**

SB 506

SEN. COLE told the committee they would now go back to SB 506.

Stephen Maly explained a possible amendment to accomplish what they had discussed. He said, in HB 600, on page 2, Section 2, Sub-section A, line 10, the sentence would read "the term is limited to electrical generation machinery and equipment that are powered by fossil fuels". He said everything after that would be stricken.

REP. STORY stated a couple things in the amendment **Stephen Maly** just read were not in **SEN. COBB's** bill; one was solid wood and the other one was agricultural waste.

REP. DEVLIN said, also, fuel cells that were built by hydrocarbons were excluded from **SEN. COBB's** bill.

Stephen Maly explained with this amendment, a fuel cell that was powered by natural gas would still qualify under HB 600.

REP. STORY stated it would, probably, include fossil fuel then. The committee responded, no, it would not.

Stephen Maly said those other items were unique to this bill and in **SEN. COBB's** bill, there was a reference to a specific definition of renewables which may include those other things, not by name, but by inference.

SEN. DEPRATU asked if they could make it more specific than **SEN. COBB's** bill and define it by these renewable sources.

SEN. COLE asked if he meant by adding those in.

SEN. COBB stated he thought the word "biomass" covered all of the things.

Tom Livers, Department of Environmental Quality, explained they did some work with alternative energy systems. He said, he believed, the reference to biomass on page 7 in SB 506 would take into account the wood waste and ag waste systems they were talking about. He added it would be encompassed within SB 506.

REP. DEVLIN told **Stephen Maly** the intent was to limit this bill to fossil fuel. He asked if they needed to include co-generation. **REP. DEVLIN** asked if it was used with fossil fuel or was it just covered automatically. **Stephen Maly** answered he believed it was covered automatically; he said there were no co-generation projects that did not use fossil fuels that he was aware of.

REP. FORRESTER asked **Stephen Maly** what was co-generation. He said he knew the plant in Lockwood generated both electricity and steam, selling the steam; that would be co-generation. For the purposes of definition, what would be considered co-generation. **Stephen Maly** responded the example **REP. FORRESTER** presented defined co-generation.

REP. FORRESTER asked **Stephen Maly** if they needed to produce two things: they needed to produce electricity and steam, therefore, now that would include a steam generation plant since they sell steam back to Exon.

SEN. COLE stated in some cases it could be gas.

Stephen Maly replied it was producing electricity twice. He added it would use steam as a fuel derived from the initial current.

REP. STORY said combined turbans were co-generation also.

SEN. COLE reiterated they were taking everything out of HB 600.

Motion/Vote: SEN. DEPRATU moved to **MOVE OUT THE RENEWABLE GENERATION ITEMS AS DESCRIBED BY STEPHEN MALY BE ADOPTED. Motion carried unanimously.**

SEN. COLE said they would leave HB 600 yet, in case the committee needed to add some changes.

SB 506

SEN. COLE told the committee they would now deal with SB 506.

REP. FORRESTER asked **Stephen Maly** and **Jeff Martin** to see what ways they could tie the rest of the bills together.

SEN. COBB referred to Section 6, the energy equipment exemption; he was concerned about if they had one megawatt included there, if there were a couple different generators and the Department of Environmental Quality had some terms on line 10, stating "that are normally operated together to produce electric power". He said if they took that same language and put it down by line 29, after the word "equipment", that would allow the department to say, on page 6, line 10, "that are normally operated together to produce electrical power". He recommended taking that same language and put it down on line 29 after the word "equipment"; that would try to tie them together. **SEN. COBB** said there had been some people had questions concerning having generators in different locations. He said if that language was included, it would be easier for the Department of Environmental Quality as well as the Department of Revenue.

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REP. DEVLIN told **SEN. COLE** the intent was for alternative energy generation equipment under one megawatt be exempted for five years and anything having a capacity over one megawatt would apply for the local exemption. He told **SEN. COLE** the committee had talked about putting a 20 megawatt cap on that. He asked, if since this bill was only with alternative energy now, was there any reason to have a cap on it. He asked if that would interfere when they dealt with SB 508. **REP. DEVLIN** if they would either qualify under SB 508 or would they qualify under SB 506. **SEN. COLE** responded SB 508 also had the definition for alternative energy. He added they should include the 20 megawatts in there also.

REP. STORY told the committee they were back again to what the Department of Revenue's definition of what a facility was. He added he did not know how to classify 20 wind generators as operating together because the wind would not be blowing everywhere at the same time. The wind generators would almost need to stand alone, dealt with on an individual basis.

REP. DEVLIN agreed with **REP. STORY.** He added, perhaps, the committee should try to contain all of the alternative energy sources in one bill because they were going to operate so much differently. **REP. DEVLIN** said, in the case of wind, there could be a capacity of over 20 megawatts; however, if it only operated 1/3 of the time because of the way the wind blew, it could effectively be said the net output was only 1/3 of that amount. He said that would get around the intention of what they were looking at in SB 508.

Motion: **REP. DEVLIN** moved an **AMENDMENT IN SB 506, NEW SECTION 6, THAT IN 1.B, MACHINERY AND EQUIPMENT USED IN QUALIFYING GENERATIONS THAT ARE UNDER ONE MEGAWATT ARE EXEMPT FROM TAXATION FOR A PERIOD OF FIVE YEARS; IN SECTION B, WHERE IT TALKS ABOUT A GENERATION FACILITY THAT HAS A CAPACITY OF MORE THAN ONE MEGAWATT, IT WOULD BE ELIGIBLE FOR THE NEW AND EXPANDING BUSINESS EXEMPTION, WHICH WOULD THROW LOCAL GOVERNMENT RIGHT INTO THE MIX BE ADOPTED.**

REP. DEVLIN asked **Jeff Martin** if they could do that. **Mr. Martin** asked if he was saying if they were more than one megawatt, they were not exempt and would have to go to the new and expanding business exemption.

Jeff Martin asked **REP. DEVLIN** if he wanted to strike Sub-section B. **REP. DEVLIN** asked if that meant they did not need Sub-section B because that already existed. **REP. STORY** said it already applied.

REP. DEVLIN replied if that would facilitate his intention, then that was what he would recommend for a substitute motion.

REP. STORY told **Jeff Martin** he had said they were included because of Sub-section F on line 23, page 7. He asked if that was where they got into the local government abatement program. He asked if there was a problem in that section because it only went up to one megawatt. **Jeff Martin** replied, no; under one megawatt just applied to small electric generators producing less than one megawatt. (Hydro)

REP. STORY asked **Stephen Maly** by having the definition on page 7, did that preclude them from getting those facilities in. **Mr. Maly** explained that definition did not contain any cap or limit on megawatts; it did not make reference to megawatts.

Stephen Maly asked **REP. DEVLIN** to reiterate his intentions. **REP. DEVLIN** responded in Section 6, taking the 1st line on page 22, where it said 1, Sub. B, machinery and equipment used and qualifying generation facilities built and operated after the date of this are exempt from taxation. He said his understanding was the way that section was presently, that would exempt units of under one megawatt capacity forever. **REP. DEVLIN** said he would like to propose to limit that to a five year exemption. He said, in that area, he would exempt from taxation for a period of five years. His intention with the other one was for generating facilities having a capacity of more than one megawatt would qualify for the new and expanding business section. **REP. DEVLIN** explained **Jeff Martin** had stated they could strike Sub-section B, which would accomplish the same thing. He didn't know if that was clear enough or whether there should be language included to say alternative generation facilities of a capacity of more than one megawatt do qualify for the new and expanding business.

Stephen Maly stated his problem was he did not know where else there was a reference. He said a qualifying generation facility was one that was powered by a renewable energy resource without reference to megawatt size. He did not believe Section 1.A, by itself, spoke to the issue of less than one megawatt.

Jeff Martin agreed.

REP. DEVLIN said if they needed to put that in, then that was what he wanted to do.

Jeff Martin asked if he was referring to less than one megawatt. **REP. DEVLIN** replied, yes; less than one megawatt would be exempt for a period of five years; over one megawatt they would talk to the county commissioners.

SEN. COLE asked **REP. DEVLIN** if this was only on alternative energy. **REP. DEVLIN** replied that was correct, it was alternative energy in SB 506.

REP. STORY told the committee if Section 6 was reconstructed so it would only apply to less than one megawatt; go over in Section 7 and insert one megawatt or larger.

Stephen Maly asked **REP. DEVLIN** if he wanted to include, in this amendment, the additional terminology to mirror the section above as requested by the Department of Environmental Quality and **SEN. COBB.** He added it did not affect the meaning of **REP. DEVLIN's** intent, but it did make it more clear about whether or not these things were connected. **REP. DEVLIN** replied, yes, he would like to include that.

Stephen Maly explained this referred to page 6, line 29, following the word equipment, there would be a phrase inserted "that are normally operated together to produce electric power."

Vote: Motion that **REP. DEVLIN'S AMENDMENT BE ADOPTED. Motion carried unanimously.**

SEN. COLE explained the committee would come back to meet at 1:30.

HB 600

SEN. COLE told the committee they would finish HB 600.

Stephen Maly explained they amended this bill to apply fossil fuel generation machinery.

REP. STORY explained the committee took all of the alternative energy out of HB 600 and put it in SB 506.

SEN. DEPRATU explained HB 600 was now just a fossil fuel generator.

Motion/Vote: **SEN. DEPRATU** moved that **HB 600 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

SB 506

SEN. COLE told the committee they would now deal with SB 506.

Stephen Maly explained **amendment SB050605.asm** **EXHIBIT(frs87sb0508a04).** He said most of this amendment had already been seen and acted on; however, the committee continued to blend as they went along. He explained which parts were new and still required a vote. **Mr. Maly** stated amendment 5 and 6 were new; amendment 8 was new and was over in the other credit area for new and expanded industrial investment, which was now renewable energy produced in the amount of one megawatt or more;

page 3, amendment 17, Section 2, Sub-section C reelected what the committee had discussed regarding changes in the wind energy credit so the requirement for in-state service was gone, but the rest remained the same. He explained the last new amendment was something **SEN. COBB** had requested; which was the insertion of a severability clause, which did no harm to any part of the bill, but may help parts of the bill in the event some parts were struck down.

REP. STORY asked **Stephen Maly** on amendment 5, would that make those facilities of less than one megawatt in capacity exempt for five years. **Stephen Maly** replied, yes.

REP. STORY stated there was still a problem with wording in 1.A exempting everything else. He recommended 1.A say what 1.B did; he said they should take Section 1.A out of the bill on page 6 in new Section 6.

Stephen Maly asked if he wanted Sub-section 1.A stricken. **REP. STORY** replied they needed what was a qualifying facility included.

Stephen Maly asked **REP. STORY** if he wanted it to say "the machinery and equipment used in qualifying generation facilities built and operated after the effective date that have a capacity of less than one megawatt".

SEN. HALLIGAN asked where the amendment was to make sure they were going to the new and expanded industry property tax exemption for above one megawatt. **Stephen Maly** answered that was one page 7 of the bill. He said it was actually amendment 8, which now read "that Sub-section F, on page 7, engages in the production of electrical energy in an amount of one megawatt or more by means of an alternative, renewable energy source as defined."

Stephen Maly told the committee the question had arisen if this would apply to non-commercial generation. **Mr. Maly** stated his reading of this suggested to him they were referring to energy that was marketed.

REP. DEVLIN stated he knew the sponsor's intent was to not make this exclusively for commercial generation; so if a person wanted to set up a wind generator for personal use, this would also apply. He said he thought this would fall under the one megawatt rule, but he didn't know if it needed to be limited by that.

REP. STORY suggested to strike any reference to commercial in Section 6 of the bill. He said, in line 29, it was already opened up for all generation.

Jeff Martin told the committee that suggestion would be consistent with the changes the committee had agreed to on HB 600, just limiting the exemption to those non-commercial that used fossil fuels.

SEN. COLE asked if there was a problem with using the average megawatts used in SB 506.

Stephen Maly asked what an average megawatt was. **Doug Hardy** responded average megawatts in SB 508 was taking the total production over a full 12 month period, then dividing by the 8,000 hours in a year. He said that made sense on a generation such as the committee was looking at in SB 508. **Mr. Hardy** stated, on this, it made a big difference in the end because a coal fire would go steady, whereas, a nameplate would be a lot different than an average megawatt. He explained an average megawatt on wind depended on how much wind there was in a given year. **Mr. Hardy** stated nameplate would be cleaner and easier to implement on wind; where average megawatt was on a fossil fuel, it would make more sense.

SEN. COLE asked if they were going to "nameplate" in this bill and use "average" in SB 508.

Stephen Maly said this section would now include the word nameplate in front of the word capacity. He said the section would now read "the machinery and equipment used in qualifying generations facilities used and operated after the effective date of this act that has a nameplate capacity of less than one megawatt of electrical energy is exempt from taxation for only five years after generation of electricity begins." He asked if that was what the committee wanted.

SEN. COLE agreed.

REP. STORY asked **Stephen Maly** what the definition of facility would be in Sub-section 2. **Stephen Maly** referred the question to the Department of Revenue. **Gene Walborn** explained the amendment would work better if they would strike the words "physically connected". He said he understood the sponsor's intent was to capture, not to allow a wind farm to break up the individual generators to get to the less than one megawatt, but to make that as a whole. He added if they would strike the words "physically connected" and leave in "normally operated together to produce electrical power" that would probably cover it. He said they

could even talk about after "produce electrical power", they could say "and is managed or operated in a single unit" or something similar to that. That would get the intent the wind farm was built to service a contract load; they use all of those generators to get there.

Motion/Vote: **REP. STORY** moved that **#5,6,8,17 & 21 OF AMENDMENT SB050605.ASM BE ADOPTED. Motion carried unanimously.**

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Motion/Vote: **REP. STORY** moved that **SB 506 DO PASS AS AMENDED. Motion carried unanimously.**

SB 508

Jeff Martin explained **amendment SB050803.ajm** **EXHIBIT(frs87sb0508a05).** He said these amendments would go with 33% instead of eliminating any requirement. **Mr. Martin** stated, basically, what these amendments did, with respect to the amount of electrical energy sold, was to reduce the amount from 75% to 33%. It would eliminate the restriction the energy had to be sold within Montana; it could be sold anywhere at the cost base rate of return of 12%, then that facility would be entitled to the exemption. **Mr. Martin** explained, in respect to reducing the 75% of the net generating output that had to be sold at a cost base rate, plus a reasonable rate of return, was reduced from 75% to 33%; but the electricity could be sold anywhere. He said this should get around any commerce clause problems or the particular federal statute that said you could not discriminate between in-state and out-of-state customers for the production of electricity.

SEN. DEPRATU asked how this would affect coal; was this limited to only oil and gas or also coal. **SEN. COLE** replied this included coal-fired steam turbines, oil and gas turbines, and turbine generators that were driven by fallen(indiscernible). He added the alternate energy had been removed.

SEN. DEPRATU asked if coal would be exempt over a 10 year period. **SEN. COLE** replied that was correct.

Jeff Martin asked if the committee wanted to leave in water turbines. **SEN. COLE** replied, yes. **Jeff Martin** said this set of

amendments would have taken out water turbines. **SEN. COLE** said he wanted it someplace.

SEN. HALLIGAN said the amendment talked about the property tax exemption being sub-limited to five years for oil and gas turbines. **SEN. COLE** replied that was correct.

SEN. HALLIGAN told **SEN. COLE** he had indicated it said somewhere else in the bill it applied to coal and water turbines. **Jeff Martin** replied the exemption for coal-fire generators and water turbines would be 10 years. **SEN. COLE** added it would be for oil and gas and water turbines would be for 10 years. **Jeff Martin** responded it would be coal and water would be for 10 years and oil and natural gas-fired turbines would be five years.

SEN. COLE stated that was because they could get them up much faster.

SEN. DEPRATU wanted to be clear on when the date would start. Did it start at the point of construction or the point when the first kilowatts were delivered. **Jeff Martin** replied it would be on the date the construction began, as stated on lines 19 & 20.

SEN. COLE asked **Jeff Martin** if #11 took care of taking out the wind turbines. **Jeff Martin** said, yes, and it would re-insert water turbines.

Jeff Martin said there was also an exception to the exemption that it would not apply to a generation facility for which an application for an air quality permit was being filed.

SEN. HALLIGAN asked **Rody Bullman** to comment on the issue where an application for a generation facility, where the air quality permits had been filed, they would not get the property tax exemption under this bill. **Mr. Bullman** stated he was reticent to speak on behalf of Continental Energy. He said, if he were in their position, he would be concerned about offering a tax break for generation when, in this particular case, they would not be able to receive that.

SEN. HALLIGAN asked **Rody Bullman** if he had the perspective of Butte Silver Bow to give the committee on whether that property ought to be exempted or not. **Mr. Bullman** replied he could not answer those questions right now. He said their budget administrator was out of the room. He added it concerned him both ways. From Butte Silver Bow's perspective, they would prefer to see the revenue generated by the facility, but at the same time, he did not think it would be equitable to opt that particular company out as well.

SEN. HALLIGAN asked **Rody Bullman** now that they had limited it down to a five year property tax exemption, since it would be a gas fire, would five years be a middle ground his company could accept.

SEN. DEPRATU said, as a legislature this year, they had sent the message out that they were very interested in coming with incentives to encourage energy production. He added he felt they had a group that was willing to step right up and start the procedure. He said the legislature was coming along with an incentive, then they go and eliminate that group because of a 60 day or 90 day window. He stated the legislature was not being very fair and that was not a good way to get the message out to the business community that way. **SEN. DEPRATU** explained he would have a problem eliminating them when he felt they had stepped up with their actions.

Jeff Martin explained on page 1, Sub-section 2, was getting away from delivery to consumers in Montana; every five years, the surplus capacity must be offered for use on a declining contract term basis for the remainder of the twenty year period. He said, in new Section 3, there was some concerns for local governments of limiting the impact to "infrastructure". That wording was stricken. Sub-section 4, there was a restriction to the county in which the facility was located or within contiguous counties.

SEN. HALLIGAN asked **Jeff Martin** if that point was consistent with the hard rock mining impact fee. **Mr. Martin** replied, yes.

Jeff Martin stated on page 3, there had been some concern about how the inter-local agreements would work out. In the case of an inter-local agreement, amendment 19 said those had to be deposited in a county electrical energy generation reserve account established in Section 4 in the county in which the facility was located. Money from that account may not be expended until a plan with these inter-local government entities had been submitted to local government assistant division of the Department of Administration. **Mr. Martin** said he did not know where that particular bill was, but that may need to be coordinated with that to put it back to the Department of Commerce if that bill did not pass. He said there was some discussion that there would be a state special revenue account created for this; but Section 4 of this amendment set it up within the county. Therefore, they would not have money going back and forth between the state, but it still couldn't be expended from that account until the plan was approved by the local government assistance division. **Mr. Martin** added there was nothing in these amendments that talked about what criteria, if

any, the local government assistance division would look at in approving a plan.

SEN. COLE stated this was primarily looking at the plan. He wanted the local governments to be able to take care of the impacts.

SEN. COLE told the committee he had another amendment he wanted included with this amendment. He said when the bill first started out, on page 3, line 12, they had .5 total cost, then .05, which were put on by **REP. DEVLIN**, to enable it to get put in a committee. **SEN. COLE** explained he had talked to some of the local county people and rather than taking it back to where it was, at .5 and .05; they would now take a two year impact of .75 of each of those years, the remaining years would be .05, which was operation and maintenance. He said the total 10 years for a county, such as Rosebud County, for example, it would be $6,650,000 by having the two years, up-front big impacts on a $350 million plant of $2,625,000 for two years. **SEN. COLE** explained those monies could be used as long as the impact was necessary. The counties would keep that money there; they would not need to use it all at once. He said operation and maintenance of .05 at $175,000 the following years. He added that hit the big impacts on it. He stated this would increase it another $2 million on a $350 million facility. He explained those were points covered in his discussions with the counties. He wanted to get the money up front because that was when the impacts came in. He wanted the amendments to read "impact fee not to exceed .75 for the first two years and then drop back to where it was when it came across at .05 for the remaining years", depending on whether it was five years or ten.

REP. FORRESTER asked if either Powder River County or Rosebud County representatives could speak to the committee, since they were potentially impacted, about the amendment.

Daniel Watson, Rosebud County Commissioner, said he had a misunderstanding of the terms. He asked if it was .75 and it should be .5, which was the way it was currently in the bill. **SEN. COLE** explained the original bill read .5 and .05. He explained, when it went to the House, in order to get an amendment on it so that it would come back, they allowed the House to put the amendment on and they turned it down, so it could go to a conference committee to be worked on. They moved it to 1 and .5; rather than going back to that, he would go to .75, giving it two years, then go back to the .05 again. **Daniel Watson** said his question and concern was why they dropped back to the .05 instead of .5. **SEN. COLE** replied it was because that was where it originally was. He added that was what he was bringing

up on a county, using Rosebud for the example, that the first year, they would get, on a $350 million plant, the heavy impacts at the beginning. They would get $2.625 million in year one and $2.625 million in year two, then they would be back to the regular operation and maintenance of the $175,000, of the .05, which went back to the original language.

Daniel Watson told **SEN. COLE** he understood the rationale, but did not necessarily agree with it. He understood there would be some carry over from the first two years. **SEN. COLE** replied the purpose was to get the heavy money up front.

Daniel Watson asked if that was primarily for infrastructure. **SEN. COLE** answered, no, it was for whatever they wanted to use it for.

Daniel Watson asked if it could be used for programs or whatever they chose. **SEN. COLE** replied, yes; he reiterated they would receive the money up front instead of having to wait. He explained it might take a generation up to four years to get up if they went back to just property tax. **SEN. COLE** added he had been told they needed the money up front; however, they could carry it out for four or five years if they chose. **Mr. Watson** replied, yes, if they could carry it in the budget for that long.

Daniel Watson expressed concern with the following years, with dropping it back to the .05 level versus another number. **SEN. COLE** responded said they were talking about $6,650,000 which they would get up front.

Daniel Watson asked if that was the amount for over the 10 year period. **SEN. COLE** replied, yes, but they would be getting the majority up front. He added, there was about $1 million difference, but the trade-off was getting the money up front.

Daniel Watson agreed they would need the money up front because most of the impact would be initially.

REP. DEVLIN told the committee he liked the idea of the impact fee in order to get the money to the counties up front; he did not think using Rosebud County was a good one to use as an example because when he came up with those figures using .5%, he used the state-wide average of mills that stayed locally was about 218.

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REP. DEVLIN continued by saying when he ran the figures, based on a $350 million plant, the counties would be sacrificing a great

deal. He explained his idea was to go ahead and offer the incentive at the state level, but try to keep the counties as whole as possible. He strongly felt if they lowered the level to .05 for the remaining years of the tax exemption period, that would be way too low for the counties. He added that was too much impact for the counties to absorb. **REP. DEVLIN** said he had no problem with moving the first two years to .75 and .75, but he thought they should leave the out-years at .5. **SEN. COLE** responded if they wanted to do that, they would end up not having any incentive for anything to come because they would be taking more money away than in any other method. That would not be fair to anybody coming in if they were still talking about trying to get some generation in, jobs in, and trying to get things going. **SEN. COLE** added if they did that, they would be getting way more money than just taking the tax on it. He assumed that with any county going in, the mills would end up getting lowered; they would end up getting some new funds in. He explained the reason he wanted the impacts included was so assure it was truly impacts. By putting the money up front, that was the trade-off; plus it was an incentive to get some kind of development wherever there was some coal.

REP. STORY told **SEN. COLE**, according to **SEN. COLE's** figures, the total impact fee would be about $6.6 million. Over the 10 years, they would be collecting impact fees in lieu of tax on a $350 million plant. He explained that same $350 million plant, at 200 mills, would pay in the neighborhood of $6 million in one year in taxes. **SEN. COLE** said they were referring to local, not state; according to his figures it would be $7 million over 10 years.

REP. STORY said he would have to question those figures. He explained if they had $350 million at 6%, the result would be around $21 million. **SEN. COLE** replied they needed to remember there were also other things that went in there, such as pollution control and machinery.

SEN. DEPRATU asked **Doug Hardy** to comment on this issue. **Doug Hardy, Montana Electric Co-ops,** explained the numbers that were so different in the correlation **REP. STORY** had was because the analysis that generated the $7 million was taking out the state portion and leaving about $1 mills. He said it would lower it a little bit because they would be putting more in of taxable value. He explained it would ratchet it down a little bit in Rosebud because it had such a high taxable value to begin with; it would ratchet down a lot in Richland Co. because they had so little by comparison of taxable value to begin with. It assumed in the first year of construction, they would not have a $350 million plant, rather, they would have 10% of that; it assumed the next year, they would have 30% of that; the following year

they would have 50%; the following year they would have 70%. **Mr. Hardy** stated that would be about the time they would build a coal fire, at which time they would be in production. In 15-6-135, there was a provision, that upon production, the industrial tax that was put into Class 5 for its first three years was taxed at 3%. He said for $7 million to $10 million in Rosebud County, that same methodology in Richland County, would be a local range of $15.7 million. He said that was what the tax would generate if they funded government at the same rate it was funded at before. **Mr. Hardy** said it did drop the mills, dramatically, in that county, for other taxpayers because they would be putting on something having more taxable value. He stated the highest classed taxed people that investor-owned, that would be a $20 million tax over the 10 year period with that same methodology in Richland County. Without question, the lowest tax they would pay, otherwise, would be in Rosebud because of the low evaluation.

REP. STORY asked **Doug Hardy** how would they only collect local mills on a piece of property. He did not know of any way they could not assess states when assessing. **Mr. Hardy** agreed; that analysis of what the impact would be on local government was the only thing he was trying to point out on that. He said, absolutely, if they were fully taxable, there would be the 101 mills going into the state.

REP. FORRESTER asked **Gene Walborn** to present some figures on what would be paid out without the impact fees lobbying effect versus what would be pain out with the impact fees. **Mr. Walborn** agreed with **Mr. Hardy** concerning if the taxable value was increased that much, that would force the mill levies to do things. He explained he was using the fiscal note which addressed using a $140 million plant; he factored it up to show it was 2 ½ times to get to the 350. He did the local mills (not changing the mill levy), using the 218 mills, and it came to around $4.6 million a year once the plant was totally in place and fully running. He said if it took three or four years to get there, there would be some level of getting up there. **Mr. Walborn** referred the committee to **SEN. COLE's** numbers of 2.650 per year, if it was at .75%, that was the trade-off they needed to look at; the impact fee of $2.6 a year, once it was up and running, they would giving up $4.6 million. He said that was what they would be giving up per year once they were fully operational. He explained, over time as the bill kicked in, it would move to $175,000 or something less than that. He reiterated he just used what was in the fiscal note.

REP. FORRESTER asked **SEN. COLE**, according to people's testimonies, how would they minimize the effects on the counties

as much as they could. He added, it appeared with **REP. STORY's** analysis, there could be millions of dollars per year that the counties would be forced to absorb. **REP. FORRESTER** said it was not the state governments; he said the legislature were passing these bills to benefit the whole state. He added he was sure there was some benefit that would come back. He again asked if there was any way to minimize the effect on the counties. He expressed he wanted this bill to go forward, but wanted some ideas about that concern. **SEN. COLE** replied he wanted to see some generation somewhere down there. His intent was to offer something that would give an incentive similar to what other states close to Montana, such as Wyoming, have been giving. He said they had been giving incentives and were already beginning to put some coal-fire generators in. **SEN. COLE** told the committee they had the choice of putting the generators in Wyoming and probably have the power and all the jobs stay in Wyoming or, as they had already seen, there were certain power plants that had looked at going into eastern Montana some time ago; because of a number of reasons he would not elaborate on at this time, they were not giving a huge benefit to North Dakota in the low, coal-type of operations. He stressed he did not want to make that mistake; therefore, that was why he included the incentive for the counties by allowing them to have a big impact up-front because he felt that was where the impacts were. **SEN. COLE** added in many cases this could be very beneficial because of the fact the state of Montana heard from all of the schools saying they needed more money due to student enrollment decreasing. He stated this could easily turn that around. He stressed there was no use putting something in that would not be beneficial enough.

REP. FORRESTER told **SEN. COLE** it appeared by using the .05, **SEN. COLE's** amendments would make it nearly revenue neutral from where the bill originally was. He said it would be about the same number of dollars into it. **REP. FORRESTER** explained it looked like, even in the out-years, there would be a significant impact with **REP. DEVLIN's** amendment of .5. He said **SEN. COLE** wanted to go back to the .05 instead. He stated it appeared to him they would need to go back to the .05 because even if they were at the .5, there was a significant level of difference between paying the full amount of tax and the impact fee that they would still be inclined to locate here. **REP. FORRESTER** stated this bill alone was not the only one; they were looking at a bill to lower the amount of taxes paid on the coal. He said it looked like the .05 may not be enough for the counties. **SEN. COLE** replied he was just using Rosebud county as an example; getting the big money up front was important.

SEN. DEPRATU told the committee as they were considering this, it was important to keep in mind they were talking about money they did not already have at this point. He explained it was not that they were taking this money out of the counties' budgets; in recognizing the counties were going to have additional costs, they were trying to put more money in. He was also concerned that they needed to maintain an incentive because so much had already gone to Wyoming, South Dakota, and North Dakota. **SEN. DEPRATU** stressed they needed to be sure Montana could benefit from these jobs and also needed to be thinking about the income tax and local property taxes the workers would pay. Referring back to the schools situation, he said, it seemed to him there would not be a true impact on the schools from the standpoint of having to build facilities as much as having to deal with staff and administrative issues because they need more kids to fill the schools they already have. He reiterated the importance of remembering these were funds that had not actually been generated at this point.

REP. FORRESTER asked **SEN. COLE** if they would build a 500-1,000 megawatt plant in Powder River county and the actual coal was mined in Rosebud county, many of the people live in Ashland which is in Rosebud county, but a lot of the people would go to Broadus for school. He added there were impacts there that they would not receive, therefore, there were some problems created with those kinds of deals. He said Broadus and Ashland could not absorb large scale construction developments with their present infrastructure. **SEN. COLE** replied that was why he felt it was important to include an impact fee; he wanted them to sit down among themselves to work out where the counties needed the impact fees to be put.

REP. FORRESTER asked **SEN. COLE** if he was aware when they built the plants at Colstrip there were buses that headed east out of Billings every day because many of the people actually lived in Billings. He asked if **SEN. COLE** was saying there was not a provision in this bill saying they had to work out the impacts everywhere. **SEN. COLE** responded, no; it was for contingent counties. He added there would be many other benefits that would come from putting in a plant, such as more money to spend, and the stores benefit. **SEN. COLE** referred to the gross proceeds taxes, saying they would also go into the local governments.

Jim Mockler explained the gross proceeds were 5% of the value of the mine. **SEN. COLE** responded they were talking about millions of tons of additional coal at 5% which would all go into the counties.

REP. DEVLIN told **SEN. COLE** he was still very concerned the .05% in the remainder of the tax exempt years would not be enough to make the local governments whole. He said he understood the reason for the up-front money and the trade-off, and it had been mentioned this was revenue the counties did not presently have, but the additional expenses these counties would incur because of a plant located there were going to be very real. **REP. DEVLIN** said he thought if the generation facility did not contribute its fair share, it would certainly be looked on as an unwelcome neighbor in the eyes of the local taxpayers. He stressed it was very important to make sure they took care of the local governments. He stated it was not fair for the legislature to make an incentive on the backs of the local governments. **SEN. COLE** answered that was totally what he had done with this bill, making sure it was the local governments that would make the decisions in the impact, not the people in Helena. **SEN. COLE** explained he was not tied to the .05, but he wanted to make sure the impacts were going to be the same. He did not want it based on the mill levies. He stressed they would need to strike a balance in there because he did not want the plants going to Wyoming again.

REP. STORY asked if the Department of Revenue could run a chart showing for 10 years, how much property tax would be paid using 200 mills in comparison to how much property tax would be paid under this impact fee. **SEN. COLE** asked if he meant ½ of that, 100 mills, for the local. **REP. STORY** agreed. **Gene Walborn** answered the department could run the analysis for them.

SEN. HALLIGAN asked if that 200 was reflective of the state-wide mill levies. **REP. STORY** responded, no, that was just a number. He said the state-wide average was 430 mills, but they had to assume if one of these plants came in, the county was not going to hold its mill levy up there and try to take all the money the plant generated, plus keep it on the taxpayers. He added Rosebud county was at about 200 mills, and they would assume that would give them the bottom. He said they could have them run it at 300 also if they wanted.

SEN. COLE requested the Department of Revenue run an analysis for 200 and 300, which would end up being 100 and 150.

SEN. HALLIGAN told the committee he assumed because of the attractiveness of the up-front money that was why **SEN. COLE** was heading with the impact fee as opposed to the newer expanding industry tax incentive that would allow the counties to spread that over a 10 year period. **SEN. COLE** replied that was one of his interests, to get the impacts where they were needed to begin with. He added the other reason for that was he felt the way the

bill was set up was a fair way in the fact that all of the impacted entities had to come together to put a plan together. He wanted to have the impacts spread out and truly go to the impacts, regardless of county lines.

Jeff Martin asked **Jim Mockler** to comment. **Mr. Mockler** stated if they decided to vote on the amendments passed out, he requested the committee look at amendment 14 and put "as of the effective date of this act". He said the way it was written, it could be construed the way it was written that anybody with an air quality permit would not be allowed to use this bill. He recommended they make that change.

REP. STORY asked if the reserve account the local governing body would be holding be responsible if the school had bills or once the agreement was made, would the money be apportioned out to the individual cities and schools in other counties. He asked if they would then have control of that money. He stated they would then need some language inserted to keep the money out of the general funds. He added they did not want the impact money to go into anybody's general fund.

Judy Jacobsen, Butte Silver Bow, expressed concern about a plant presently being built in their area. She said they did not want to create a dis-incentive for them to come by exempting them out of the bill. She said they would rather use the laws already on the book, but she understood where the committee was coming from with the impact. She reiterated that was a big problem for them, especially since they intended to locate the plant in their TIFF (tax increment financing) and use that money to get them water they need and building structure. **Ms. Jacobsen** explained they did not want to put them in a position of a dis-incentive by just pulling them out of the bill.

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SEN. COLE asked **Rody Holman, Butte Silver Bow,** to comment. **Mr. Holman** said they had run some numbers, but had not considered the roll-out of the plant in so far as when the plant would come on the tax role. From a general point of view, he said there was a significant difference between what the facility would generate in terms of taxes and the impact fees.

REP. STORY stated Butte Silver Bow's problem was that the city and the county would not get any of this money anyway because it would all go into the increment financing district. The bill was not set up to share the impact fee with the TIFF district. He explained

the impact fee would go to run both city and government schools, but unless the bill was changed, the impact fees could not be put into the TIFF district. **Judy Jacobsen** interrupted **REP. STORY** to say they understood that and that was one of their concerns. He added, as far as the incentives were, the county and city didn't get any of the money; it would just go to pay the bonds in the TIFF district anyway. He said it was a unique situation in a way. **Ms. Jacobsen** stated the way the bill was set up, it would spread between the county and the school district; the TIFFID, which was money needed to pay the Silver Lake bonds would not realize any of the money. She said they already had the lowering of the personal property tax that had caused them to be in a position to have to come up and beg for money to complete those funds because the personal property taxes were at a different rate when they applied for the bonds.

SEN. COLE with the 1.0 in there, it would be exempted out. **Judy Jacobsen** answered they were still looking at it. She reiterated one thing they were looking at was by exempting that particular plant and putting them in a dis-incentive type of situation.

Don McDowell, Powder River County, told the committee if there was a generation plant built in their county, under this bill, the only thing they would look at was impact dollars. Since they were a Class 6 county, and their elected officials were receiving that wage, that would slowly increase with increased population and growth; up front, they were going to be doing Class 1 work, yet it would be done at a Class 6 wage. He wondered if their elected official would stay at that low salary.

SEN. COLE asked if there was 5% of the direct proceeds, would that go directly into changing their county. **Jeff Martin** was not sure if gross proceeds affected that because county classification was based on taxable value, whereas, gross proceeds were not. Gross proceeds did not have a taxable value, rather, it was just by a percentage of the gross.

SEN. COLE stated if they had a mine in their area, that would change quite a lot.

REP. STORY asked **SEN. COLE** if on Section 3, page 3, did he intend to leave the distribution of the impact fees at a 50/50 distribution between schools and local governments in there or was he going to let the negotiation process take care of that. **SEN. COLE** responded, with what they had written, he was questioning if it needed to be in there. He explained in one county, 50/50 might be reasonable, but in another county, the schools might be impacted

more than what the local governments were. **SEN. COLE** recommended removing that part.

Don McDowell explained he had talked to several counties; they had thought about the schools in the counties possibly needing a set amount in that section. He said they would be dealing with other cities and counties, then if they included schools as well, a stated set amount might need to be given.

SEN. COLE asked **Don McDowell** if he had a problem with the 50/50 part. **Mr. McDowell** responded they felt the 70/30 was way out of line, but they could work with the 50/50.

SEN. COLE told the committee they would leave the 50/50 in the bill.

SEN. COLE explained the meeting would take a break and would meet again upon adjournment from the session floors.

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SEN. COLE called the committee to order at 5:15 p.m. to continue the meeting on SB 508.

SEN. COLE told the committee there had been a request for the Department of Revenue to look at figures.

REP. FORRESTER stated the people from Butte Silver Bow also had their figures ready which they would like to present.

Dan Dodds, Department of Revenue, presented the comparisons of property tax and the impact fees **EXHIBIT(frs87sb0508a06).** He explained they produced analysis of different scenarios for the committee to examine. In addition to looking at the different mills, he also looked at two different options for who would be building a power plant; one built by an investor-owned utility (labeled Class 13) and the other built by a co-op(Class 5). He pointed out he did not look at the different treatment for pollution control equipment; it would be taxed at the same rate as other equipment for the co-op, but if certified, it would be taxed at a lower rate for the investor-owned utility. He looked at each of the 10 years for the hypothetical plants. He included having the plants being built in three years, but admitted it would probably be closer to four or five years. He explained at the bottom of each column he had the regular total over the 10 years, while the other figure was the present value of those tax payments at 8%. **Mr. Dodds** said a potential developer would be looking to compare the present value of the property tax as

against the present value of the impact fees. The last three columns were three different impact fees scenarios; the first column was what was in the original version of the bill, the second column was what was presently in the bill, and the third column was **SEN. COLE's** amendment with 3/4 of a percent each of the first two years, with .05% for the remaining years. **Mr. Dodds** explained he used the same impact feed in all the scenarios since the total value of the plants remained the same. He said the property tax varied across the four pages because they looked at different mills and because they were looking at the co-op versus the investor-owned utility.

SEN. COLE asked **Doug Hardy** to comment on differences in the figures presented by **Doug Hardy** and the Department of Revenue, realizing they used different figures in some of the cases. **Mr. Hardy** the differences were primarily on the investor-owned facilities. He said he ran the first three years of production at 3% under the industrial Class5. He said if they couldn't classify under the industrial classification, then they would run it at 6% minus however much percentage was pollution controls, therefore, his ran 5 ½% as a blended taxable valuation over the end. Other than that, the numbers were fairly equal. He explained he had done the scenario of Rosebud being based on 200 mill and the local as low as 94 as they blended in the valuation of the new plants. He explained, while the millages were a little different, the $350 million versus the $500 million plant, the acknowledgment of pollution controls, plus an assumption you would be able to get the first three years of production at a Class 5 on both properties, not just the co-op property.

SEN. COLE asked if he had spread out over four years. **Doug Hardy** replied, yes, he went with the assumption of year one having 10% of the ultimate costs that would be taxable during the tax period, year two would have 30% of the project being in place and taxable, year three would be 50%, year four wold be 70%, year five in production and full valuation.

SEN. COLE asked **Rody Holman** to present their figures to the committee. He explained they took the existing situation. He said in each case, the impact fee under current law, was slightly higher than what the project would generate in terms of total taxes. However, after that, it dropped precipitously. He said they also ran a $260 million project with a build-out of three years (1/3 of the plant would be constructed in each of the first three years with total construction coming on-line within the third year). **Mr. Holman** explained, in their particular case, that would generate $7.32 million in taxes against what the local governments portion of the impact fee would be at this time which

was $650,000. He stated that was a significant impact on local governments and school districts.

Jeff Martin distributed **amendment SB050804.ajm** **EXHIBIT(frs87sb0508a07)** to the committee.

REP. DEVLIN explained the amendment and said he had requested this amendment because of a discussion at the end of the previous meeting when it was brought to light that the class of the counties would be affected if the property was not on the tax roles; therefore, there could be a Class 6 county actually being forced to do the work of a Class 1 county. He said the amendment was fairly simple and said the department would assess the generation facilities just as if they were going to be on the tax rolls and that evaluation would be used for the purposes of determining county classification. **REP. DEVLIN** another reason to do this, and included in the bill, was the penalty clause, or roll-backs tax. He said, at one time, they had discussed with the Department of Revenue if they were going to have to implement the penalty section. The department thought they would have to do the classification anyway rather than go back and try to reconstruct it sometime in the future. He stated, if the department went ahead and assessed it just as if it was going to go on the tax rolls, that would help in determining the classification of the county and would also help, in determining in the case of penalty, that it would be enforced on that. He added that was the purpose behind this amendment.

SEN. DEPRATU stated the amendment made sense.

SEN. COLE asked **REP. DEVLIN** in a case of some of the other facilities, such as gas, would they be doing it for five years, however, it would be 10 years in the case of coal. **REP. DEVLIN** replied, yes.

REP. DEVLIN told the committee the purpose of this was that even though the facility would be exempted for taxes, the department would go ahead and make the assessment, just as it was going to be, except for the fact that no tax would be assessed on it. For the period it was exempt, (five years for oil and gas generators/ 10 years for the other facilities) this would have an impact fee in lieu of tax during that time. For purposes of county classification, he added, the department would go ahead and do this.

REP. DEVLIN explained during the first year, the county would be assessed just as if it was coming on the tax rolls, whichever county would then move up in classification accordingly.

{Tape : 5; Side : A; Approx. Time Counter : 0}

Motion/Vote: REP. DEVLIN moved that **AMENDMENT SB050804.AJM BE ADOPTED. Motion carried unanimously.**

Jeff Martin stated there had been a discussion about natural gas generation facilities, whether the 20 year contract period was appropriate.

Dennis Lopach, Northwestern Corp., explained the discussion **Jeff Martin** referred to had to do with the proposed generation project they had announced a month ago and had been working on since then. He told the committee they were proposing to build two 120 megawatt plants and to sell the power to a power pool at cost for a five year period. He explained when they did their projections, they indicated the power would come out about $.04 - $.045; no profit on this. He said they would like to be able to reduce that cost additionally somewhat by obtaining a property tax exemption. However, because the contracts were for five years, they had a problem with page 1, line 26, of the reference bill. He explained the exemption was contingent on offering contracts to Montana consumers for 20 years. The contracts they intended to offer were for five years with their projections showing at the end of five years, the power would probably be more expensive than market. Therefore, there was a limited ability to go beyond the five year period. **Mr. Lopach** explained on line 22, page 1, of the reference bill, it stated 75% had to be offered at cost based rate. He told the committee they intended to offer 76% of the power at a cost based rate. He explained they wanted to sell the power into the grid and use the high prices in the market to subsidize the cost of Montana industry. **Mr. Lopach** stated the 76% was so close to 75%, he thought it would be a good idea to get a little bit of flexibility to possibly extend that. He said, if they needed to sell more in order to keep the power price low, this would restrict their ability to do that.

SEN. COLE stated he thought it was at 33% presently. **REP. DEVLIN** said there was a proposed amendment with that figure.

Dennis Lopach replied that was fine. He added their issue would then be with the 20 year contract. He said they had discussed the possibility of sections to address gas-fired and coal-fired, but it sounded as though some of the committee's amendments may have been pointed in that direction.

SEN. COLE asked if they had an amendment on gas. **Jeff Martin** replied, yes.

Jeff Martin stated the amendments presented earlier this afternoon were hastily constructed. He explained he was going through making some technical clean-up, making sure everything in the bill worked together. He said, in doing the clean-up of the amendments, he was creating a separate Sub-section for natural gas which would talk about the five year period, rather than the 10 year period. He said, there would be two different sections; one dealing with all other that was exempt and one dealing with oil and natural gas.

Doug Hardy stated the contract period of twenty years was important to some people because that was the life of financing period, to other people, five years was important. He said it did not change operating the resource to the citizens, but they could insert, on line 26, page 1, "contract term - as determined by the generation owner from five to 20 years." He explained that way when they went out and contracted, the contracts they do with the people they were selling the power to would determine that. He said it would keep the components of the bill with trying to have a resource in Montana whole and allowed for whoever had a generation built to meet the term that was needed by the financiers or by other needs.

Dennis Lopach told the committee that would take care of their issue. He added they would like to see an immediate effective date or something quick.

REP. FORRESTER asked **SEN. COLE** to explain if 75%, on line 22, page 1, was real tight, why did he propose to go to 33%. He said it looked to him that the incentive to sell within Montana was gone then. **SEN. COLE** answered they were trying to get some power that was to be sold at cost base rate and all the other bills had 33%; therefore, to be consistent, they changed to 33% also.

REP. FORRESTER told **SEN. COLE** according to the figures presented by the Department of Revenue, these figures went far and above any of the other bills. He said it seemed to him it went far and above in credits or incentives given; then to say they would offer contracts of 33% of that at a cost base rate, had gone to a super deal if going from 75% down to 33% which meant they could sell 2/3 of the power at market. He said they had completely flipped the formula over. **SEN. COLE** replied there were a number of issues that brought that out. He added it was not just the 75%. He said he was trying to keep some of it in there. He added they had to be very careful to make this legal, so they had to take the word "Montana" out in those cases. He said, somehow

if they could get some generation into the state, rather than having it out of the state was the bottom line. He also wanted to put some impact fees into the local governments. **SEN. COLE** wanted to be sure they got generation plants built in Montana and not in North Dakota and Wyoming.

REP. FORRESTER said 50% would meet **Mr. Lopach's** concern. **REP. FORRESTER** did not know if he would be comfortable with these kinds of tax breaks because that was the crux of the bill. He said the counties were the ones that actually took the hit on the actions the legislature performs. He understood the counties did not want to take any hit. He supported the bill, but he did not agree with the present figures. He preferred to see it at 50% rather than 75%. **REP. FORRESTER** stated it may be unconstitutional, but he would rather leave it out of there.

REP. FORRESTER said he wanted to segregate, on the **COLE** amendment, SB050803.ajm, items 3,6, and 12 to strike the 75% and insert 33%.

REP. DEVLIN expressed concern about the 20 year contracts; he understood the need for them, also for the reason of whether building a power plant because they needed a guaranteed contract in order for the financing to come in. He referred to the original 390 bill which said the consumer had to be offered a choice, therefore, they could not bind them to obligation. He asked if they were clear on that issue or if it was a problem. **Stephen Maly** answered that specific provision had to do with the supplier binding the individual customer rather than the supplier binding a whole base of customers to a long term contract. He did not think there was actually a conflict there, but it would be worth verifying that, he added.

SEN. HALLIGAN agreed.

SEN. COLE asked **Doug Hardy** to comment. **Mr. Hardy** told the committee that was correct in terms of SB 390, 1997, offering choice. He said this would be one choice consumers could make to then elect to sign a long term contract. It would not be mandatory, they would be exercising their choice to the signature of a contract with a specific generation source. He said there should not be a conflict between SB 390, from 1997, in this regard.

SEN. HALLIGAN said he was still concerned about the impact fee after the first two years. He said there was still a problem there that he wanted addressed. He wanted an amendment to raise the impact fee after the second year to deal with some of the costs associated with that. **SEN. HALLIGAN** stated he still did

not like the 50/50 split, even though he realized the county commissioners talked about that. He would rather let local control dictate it, and let it be negotiated by the school districts and the local government.

SEN. COLE told the committee they would meet again at 7:30 a.m. the following morning.

ADJOURNMENT

Adjournment: 5:45 P.M.

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SEN. MACK COLE, Chairman

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LYNETTE BROWN, Secretary

BS/MC/LB

EXHIBIT(frs87sb0508aad)