**MINUTES**

**MONTANA SENATE**
**57th LEGISLATURE - REGULAR SESSION**
**FREE CONFERENCE COMMITTEE ON SENATE BILL 508,**and **SENATE BILL 512**

**Call to Order:** By **CHAIRMAN MACK COLE,** on April 19, 2001 at 7:30 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:**
Hearing(s) & Date(s) Posted:
Executive Action: SB 508, SB 512

***{Tape : 1; Side : A; Approx. Time Counter : 0}***

**SB 508**

**SEN. MACK COLE** told the committee they would finish up with SB 508.

**Jeff Martin** distributed the revised **amendments SB050803.ajm** **EXHIBIT(frs88sb0508a01).** He explained the amendments contained

things the committee discussed on the previous day, such as the amendments dealing with the contract period for gas-fired generators changing from 5-20 years. It also dealt with selling surplus capacity on a declining contract term basis for the remainder of the contract term. **Mr. Martin** said, on page 1, line 27, they kept the language on an annual basis or every five years as determined by the owner of the facility. There was also clarifying language on page 2, and clarifying the type of generators that were exempt in the tax to include coal-fire, oil and gas and hydro. He explained amendment 20 dealt with the portion that said if the facility had applied for an air quality permit, they were not allowed the exemption. **Jim Mockler** had mentioned the date, however, they had not included one yet. Sub-section 6 included the amendment adopted the previous day that the department would appraise the facilities for the purpose of county classification. **Mr. Martin** stated they needed to amend something he said yesterday about coal gross proceeds not being part of the county classification; under the coal gross proceeds tax, 45% of the gross value was included as taxable value for bonding in county classification. Amendment 21 was a technical correction under the roll-back provision, while amendments 22 &23 related to the impact fees. He explained amendment 28, for those situations where there was an inner-local agreement, this would authorize the county to assess the impact fee, then deposit it into the reserve account. **Jeff Martin** stated he added a new Section 5, based on a suggestion by **REP. STORY**, which was an electrical generation impact fund; this would not be included as a cash balance for the purpose of off-setting the mill levies and would be administered as a non-budgeted fund as provided in the county, city and school budget laws.

**SEN. MIKE HALLIGAN** asked **Jeff Martin** why they took out the wind turbines, solar power and fuel cells. **Mr. Martin** replied that was in response to what the committee had done in SB 506; they were basically renewable resources which were the ones stricken from this bill.

**SEN. HALLIGAN** asked if they had a real tax break; he thought they had a different tax break.

**REP. RONALD DEVLIN** said when the committee was discussing SB 506, in order to make sure there was no conflicting overlapping between the bills, the decision had been made to put everything dealing with alternate energy sources in SB 506. He said there was a property tax exemption in SB 506 for under one megawatt facilities would be entitled to five years of total tax exemption. **REP. DEVLIN** explained in facilities producing more than one megawatt, they qualified for the existing new and expanding business credit at 50%.

**Jeff Martin** told the committee this act was codified under Title 15, Chapter 6, Part 2, which was the property tax exemption. He thought it might be more appropriate to tax it under the special property tax provisions under Title 15, Chapter 24, which was where all the local government options for providing property tax abatements or exemptions were located.

**REP. ROBERT STORY** stated if the committee was going to move on the amendments, he wanted to segregate 20, Sub-section 5 which explained what they were going to do with the facility in Butte. He also wanted to segregate 23. He said Sub-section 1 talked about a contract for cost based power, whereas, Sub-section 2 did not talk about cost based power. He didn't know if it was the intent or if those contracts should also be cost based.

**REP. DEVLIN** told the committee that needed to be clarified.

**Stephen Maly** asked if that had to do with the other power, the part that was not part of a cost based contract, rather it addressed the remainder. He explained it was intentional that it did not say cost based contract in that particular place.

**SEN. HALLIGAN** agreed.

**Doug Hardy** explained that section was surplus capacity which was defined, whether at 50%, 70%, or 33%; of that, when it is re-offered, the intention was it would be exactly as **REP. STORY** was saying. That section would be offered at cost base, plus, up to a 12% return. He said they understood it did read that way; if it didn't, tagging that in Section 2 did not change what their understanding of the bill was. **Mr. Hardy** stated in terms of the re-offering, which was what Section 2 was, the terms would be under the same cost terms as in Section 1.

**REP. STORY** stated that was his understanding. He explained Section 2 only took place if the first year they offer, they did not get a contract. He said Section 2 would then kick in and they would need to keep offering power at cost base to maintain their exemption, at least on that 33% portion.

**Stephen Maly** said it was unclear as to how to re-word that section.

**Jim Walker** recommended taking the language from the first section and repeat it in the other section. He said that would make it clear that it was a re-offering and that it was exactly what was intended.

**SEN. COLE** stated they had the five years going to 20 years included, depending on what the generating company felt was needed. **Stephen Maly** asked if it was the committee's intent or desire to say they may market the surplus capacity out of state, but only after offering the surplus at a cost based rate; the surplus being defined as that portion of the power that was not offered in the first time at a cost based rate.

**Doug Hardy, Montana Electric,** explained it was not at what was offered; they would offer 100% of whatever it would take, whether 50% of the production they would do on an offering; it was what was not taken. He stated, in other words, if they took Montanans out, somebody did not sign a contract with the term that was done at the beginning. He explained if they offered at the beginning and everybody around took your full obligation to provide cost based, there would be no re-offering part. This was only 50% of the obligation, of the output that was contracted for initially; the intent was they would re-offer what wasn't taken so they would still have the option of cost based. It was the acknowledgment they may not be able to get enough contracts signed at the original offering and that should not let them off the hook for the rest of the period.

**REP. STORY** said he did not think they could clear it up by just putting in a couple words in Sub-section 2. He said they would have to rewrite Sub-section 2 to make it clear that any portion of 33% that was not contracted for would still have to be re-offered at a cost based. He said they needed to mention the remainder.

**REP. GARY FORRESTER** asked if they were still going to use 33%. **REP. STORY** replied he did not know because he was not in the room when the committee discussed that part.

**SEN. COLE** said that changed to 50%.

**Jeff Martin** explained the reason he did not put in 50% was because he did not recall a vote on that. **REP. FORRESTER** answered he was right; they had not voted on it yet, and intended to clean up the amendments today.

**REP. FORRESTER** asked how they wanted it to read.

**SEN. HALLIGAN** stated the committee knew what they meant. He thought that philosophy could be included in the Sub-section 2. **Stephen Maly** replied they were working on it.

**SEN. COLE** said the committee needed to take a look at the 75, 50, or 33 in the amendments to make a decision on that part. He said

they would segregate out sections while voting on the amendments and not vote on everything at once.

**Motion/Vote: REP. FORRESTER** moved **TO CHANGE FROM 75% TO 50% IN AMENDMENTS 1,5,8 AND 18 OF AMENDMENT SB050803.AJM. Motion carried unanimously.**

**SEN. COLE** segregated 20 of **amendment SB050803.ajm.** He asked if a date needed to be included in that section. **Jeff Martin** answered, yes, a date for when they applied for an air quality permit would be in order.

**SEN. HALLIGAN** told the committee he did not want to put that section in the bill.

**Brody Holman, Butte Silver Bow,** stated his position had not changed in respect of the company that was planning on building a facility in Butte. He was reticent to speak on their behalf, on whether they wanted in or out. He said the committee knew their position in respect of the impacts this facility and this bill would have on their local government and the school district.

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**Brody Holman** said perhaps he could consult with the company on whether they wanted to leave it in or take it out.

**REP. STORY** stated he thought they should take it out, then put a section in the bill that said if the facility was built in a TIF (tax increment financing) district, then the TIF district of the local government, for the purpose of distribution of the impact fee. He added if it was not in the TIF district, then the TIF district did not need to be concerned about it. He said that would give them some impact money to deal with their bonding issue in their TIF district and would also give them some money they could put out in the county to help those costs. He said that was probably the best they could do, other than tax the facility.

**SEN. COLE** said the committee discussed that the day before.

**SEN. COLE** asked **Brody Holman** what his feelings were on that. **Mr. Holman** replied, again, their position was that the facility that was to be constructed in Butte would have some impacts and the impact fees that were presently in the bill were far less; the impacts outweighed the amount of money that was there. He said that was the city and county position. He added, at the same time, he agreed; he did not want to put them at a competitive disadvantage.

**SEN. HALLIGAN** asked if they allowed the TIF district to be able to be (indiscernible) by another entity, did they have other restrictions on the use of those funds that would prevent them from using the money outside of that TIF district to help with sewer, water and other impacts. **REP. STORY** answered, no, he did not believe so. He explained the worst situation for the city of Butte and Silver Bow would be to leave the facility taxed and have them build it in the TIF district because then the city and the county would not get any of the money; it would all stay in the district unless they had some kind of a deal going where they would share the money. He did not know of any deal like that. **REP. STORY** stated instead of pumping $1.2 million into that TIF district, just reimburse them for the business equipment reduction as they did before.

**Brody Holman** explained the tax increment code did allow for a TIF district to remit on a prorated basis any unused portions of increment back to the respective taxing jurisdictions. He said, in the particular case they were talking about, their revenue was severely cannibalized as a result of the passage of SB 200 last session which was why they needed the additional back-fill, just so they would not default on those tax increment bonds.

**SEN. BOB DEPRATU** agreed with **REP. STORY.** He said that was how it should be worded as the committee needed to be able to move forward.

**SEN. HALLIGAN** asked if they were going to do an amendment that did the TIF district issue.

**Motion**: **REP. STORY** moved that an **AMENDMENT FOR DISTRIBUTION PURPOSES, IF THE GENERATION FACILITY IS PART OF A TIF DISTRICT, THEN THAT DISTRICT IS CONSIDERED A LOCAL GOVERNMENT FOR THE PURPOSE OF THE DISTRIBUTION OF THE IMPACT FEES, THEN THEY CAN DO THEIR LOCAL AGREEMENTS JUST LIKE EVERYONE ELSE BE ADOPTED.**

**SEN. COLE** said his only concern with that was would it all go into the TIF or were there schools, counties and other things out there that would be a part of it.

**REP. DEVLIN** referred the committee to Section 3 of the bill. He explained when they talked about the inter-local agreements, he thought if the TIF district was considered for the purposes of the impact fee, a unit of local government, then they were involved in the negotiation process which would be included in there. As he understood the bill, the TIF was now at 50% to the local government and 50% to the schools. **REP. DEVLIN** said, in the case of Butte, 50% of the impact fee would go to the school and the remaining 50% would be split up among counties, city and

the TIF district. He reiterated that was his understanding of how this would work.

**SEN. COLE** asked **REP. DEVLIN** what would happen if the committee took out the 50%. **REP. DEVLIN** replied if they didn't have a statutory split between there, and it all went to the local government unit, that would mean 100% would go back. The TIF district would be considered an entity just like city government, county government or a school district.

**SEN. COLE** said then they would have to work with the other local governments on this. He added that was the best they (the committee)could do with this at this time.

**REP. STORY** told the committee he wanted the amendment clear enough to ensure that if the facility was not in the TIF district, that the TIF district was not a local government for the purposes of distribution.

**Vote: REP. STORY'S AMENDMENT FOR DISTRIBUTION PURPOSES, IF THE GENERATION FACILITY IS PART OF A TIF DISTRICT, THEN THAT DISTRICT IS CONSIDERED A LOCAL GOVERNMENT FOR THE PURPOSE OF THE DISTRIBUTION OF THE IMPACT FEES, THEN THEY CAN DO THEIR LOCAL AGREEMENTS JUST LIKE EVERYONE ELSE BE ADOPTED. Motion carried unanimously.**

**SEN. COLE** reiterated that would replace Sub 5, # 20.

**SEN. HALLIGAN** stated any discussion of the amendments would not include Sub-section 5 of amendment #20; that was eliminated. He told the committee he thought the amendments might include the elimination of the 50/50 split, but evidently that 50/50 split was still in there as he did not see any changes to that effect. **SEN. HALLIGAN** requested a brief discussion on whether it should just be negotiated by the local government units and not dictated by the legislature in case that balance needed to be different. He added perhaps the counties could give the committee some input on that issue.

**Dan McDowell, Powder River County**, stated they had talked that over; the 50/50, along with the 70/30 splits and any other percentages could be taken out and they would work it out.

**Motion/Vote: SEN. HALLIGAN** moved to **ELIMINATE ANY PERCENTAGE SPLIT IN THE BILL AND INCLUDE THAT THE IMPACT FEES COULD BE NEGOTIATED BETWEEN THE PARTIES OF THE LOCAL GOVERNMENT, SCHOOLS AND THE TIF DISTRICT IF IT'S IN A TIF DISTRICT, WHICH WOULD BE ON**

**PAGE 3, LINES 19-21 WHERE THE LANGUAGE WOULD BE INSERTED BE ADOPTED. Motion carried unanimously.**

**SEN. COLE** said the committee would deal with **#22 of amendment SB050803.ajm.** at this time. He told the committee they had struck 1% and would put in .75% for two years. He stated they would strike .5 in #23 and he wanted to insert .07, rather than .05.

**REP. STORY** said he wanted to deal with the 120/370. He said he did not have a problem with the .75, but he had some concern with the bottom number. He wanted to hear some discussion on this issue.

**SEN. COLE** said it was primarily some discussion with the counties.

**William Duffied, County Commissioner, Fallon County,** said they did visit about this issue. He said they could probably live with the way the numbers turned out with the $350 million facility. He said he knew with Butte Silver Bow's $250 million plant, this was probably not very attractive to them in the out-years. He stated if they were going to have a generating facility that was going to provide low-cost power and try to be under the normal tax rate, then that was what they were going to have to live with. He said they had decided they probably could live with that.

**Doug Hardy** told the committee they had spent a lot of time and had run several spread sheets in different ways and that was a number that was getting in the top threshold of what makes it worth losing the revenue of what they go to market with, but they would fully support that. He said, if there was a Silver Bow problem because of the unique nature of that, maybe they could do different; he said you get into real problems if you separate what impact fees you have for coal versus gas turbines. He said the committee had made changes already in that exact thing by going to five years on the bill for them because of construction time. These were things they could live with and could fully support as well.

**SEN. COLE** stated one thing they did have with the gas, since theirs was at five years, was a difference with the coal because of the source.

**Brody Holman** said they were obviously concerned about the reduction in the impact fee that was presently being discussed. He said he had shared some numbers with the committee yesterday, concerning year three, with respect to the plant that was

contemplated being constructed in Butte. He stated, under the existing law, it would generate $7.32 million in taxes; with respect to the impact fee, in year three, that the committee was currently considering, that would $182,000 at .07. **Mr. Holman** said, in year three, they were talking about a $7.2 million reduction which was a significant amount to the city and county of Butte Silver Bow. He asked the committee to give that some consideration.

**SEN. COLE** stated he was taking a look at raising this from .05 up to .07; taking a look at some of the counties, such as in the case of Rosebud. He said making that change would make it as fair as they could get.

**REP. STORY** said everybody had different sets of numbers of about what would work out. He said there was not any dispute in that after they got past year four or five. **REP. STORY** explained by going from .05 to .07 impact fee, they were substantially below the taxes the facility would be paying. He was all for giving some tax incentives for facilities to come in; however, anybody that thought they were going to meet the impacts of one of these plants with an impact fee of $200,000 per year was going to be expecting a little help from the local taxpayers when it came to paying the bill. He said he appreciated what **SEN. COLE** was working on with more money up front to help get things going, but he was concerned that the way this was headed, there would not be enough impact fee to deal with the impacts. He added it was basically in the construction phase. **REP. STORY** said he knew the counties were thinking they were going to have to live with .07, however, he would like to see it higher than that. He would like to see it at least at .1 and .2 would probably be better. Again, he said, you don't want to get in the position where you aren't giving a whole lot of incentives to the facility to come there. He stated he could not support anything less than .1 and would actually like to see it higher than that.

**REP. DEVLIN** said the idea of front-loading the impact fee, in order to get money into the hands of the local government immediately, was a very good idea. He stated they had been operating here under the assumption that, such as in the case of Colstrip, they did not pay any impact fees and just came on to the tax roll. He said, technically, they did not pay any impact fee, however, they practically built the town of Colstrip by providing most of the streets and brought in new businesses. He said the idea of impact fees was not new to business. When a new business comes into a town, they are generally required to provide for streets and local infrastructure. **REP. DEVLIN** told the committee they may be putting too much emphasis on the importance of this up-front impact fee and lieu of taxes because

this was something they usually did anyway. He liked this idea, but also had some concerns in the out-years that the local government was on the hook at .07%. He felt that level should be higher than that.

**Doug Hardy** explained they could do the same amount of money of the $7.7 million that was in what the committee's proposal was if they lowered the front end to .6, .6 and .1 on the remaining years. He said that would be closer and the impact of what that did helped in the outward years. He said that was not a benefit for Silver Bow because they were only a five year period. He reiterated that would net about the same amount of money.

**SEN. COLE** asked him to explain again. **Doug Hardy** explained if, instead of .7, .7, .07, if they went to .6, .6, and the remaining eight years at .1%. Again, that would not favor Silver Bow because they were only in the first five years.

**SEN. COLE** stated the two alternatives were to go .6,.6, and .11 for the remaining years or to go .75, .7, ending up with about the same amount of money. He asked the counties if they would rather have the money up front or have more in the later years. **William Duffied** replied they needed the money up front. He agreed with **REP. STORY** if they took Powder River county, for an example, with the increase in salaries they would have, the $180,000 or $200,000 would not cover the salaries they would have for the out-years. He said if they could get the money up-front, it would not need to be spent.

**SEN. COLE** told **William Duffied** they could either get the money up-front, spreading it out over the 10 year period, or not get as much up-front, but get more in the later years. **Mr. Duffied** replied they were still stuck at the same level and would not be getting any more money.

**SEN. DEPRATU** told the committee this was a matter of money management. He said if you were a good money manager, you would rather have as much money up front as you can, manage it properly and invest it if you had surplus. He said they would end up with more money in the long haul. He reiterated a good money manager wanted more money up front.

**Don McDowell** stated by putting the money up front, the last eight years would be light, but hopefully, during those three years of construction, improvements and people would be coming to the county to help increase the tax base along with that.

**SEN. COLE** asked **Don McDowell** if he would rather have the money up front and use the money that way. **Mr. McDowell** responded that was correct.

**REP. STORY** told the committee he was not opposed to the money up-front, the point .75 was fine with him. He said he could support the .75 up-front, but he could not support the .07 in the back. He added there was not enough in the impact fees; the minimum he could accept on amendment 23 was .1, and he would like to see it at .2. **REP. STORY** said he knew .2 would be pushing the tax method quite hard.

**Motion/Vote: SEN. HALLIGAN** moved **ON AMENDMENT 22, TO ACCEPT THE .75 BE ADOPTED. Motion carried unanimously.**

***{Tape : 2; Side : A; Approx. Time Counter : 0}***

**Motion: SEN. HALLIGAN** moved to **MOVE TO .1 IN THE OUT YEARS BE ADOPTED.**

**SEN. COLE** stated he would resist that motion because that would put it up so high for most of the areas that they would not get any generation coming in then. He would like to go with that, too, but he felt if they were going to go with the .75, they had to stay with , possibly, .7; otherwise, they would have defeated the purpose of trying to get generation in. He said they needed to realize there were a lot more benefits other than this. By putting all the money up front, as they had now done, they counties would have the freedom to use the money and invest it however they needed. When companies came into areas, they had willingly put in a number of things over the years that helped the community. For that reason, he would resist that amendment.

**SEN. DEPRATU** stated he supported **SEN. COLE** and his reasons. He said it was important to remain focused on why they were doing this, with the reason they were doing this being to encourage new generation at a cost plus basis. He reiterated they needed to stay focused on that part of it at this point. He could go to .7, but hated to move above .5, however.

**REP. STORY** said if the committee defeated this amendment, the bill would remain at .5.

**SEN. COLE** replied there would be another amendment for .07.

**Motion/Vote: SEN. COLE** moved that **SUBSTITUTE AMENDMENT AT .07 BE ADOPTED. Motion failed 3-3, with Halligan, Story and Devlin voting no.**

**SEN. HALLIGAN withdrew his motion.**

**Substitute Motion: SEN. DEPRATU** made a substitute motion that **AMENDMENT OF .08 BE ADOPTED.**

**REP. FORRESTER** said he could support .08 because he thought what was presently happening in Montana with the price of power; looking at **SEN. DEPRATU's** situation in the Flathead, if the price of power was sold at $345 in October, this bill would offer co-op power. He could not see how the impact of this plant could be compared in any way to what the consumers and the residents of that particular area were going to pay. This plant could benefit members of Flathead Electric Co-op, he thought. **REP. FORRESTER** could not see how the impacts in that area would not be better served with this bill than without it. He could not see, from his point of view, in the case of Butte SilverBow, if going to the .08 and allowing that plant to be built, they could open MRI and the economic possibilities would be endless with this bill. He understood counties concerns, but he also understood the condition the state was in. He said, presently, they were fiddling with killing the bill. He said they were not in a good spot. They may get out and get some power in the $.05 or $.06 range, but in two years, this problem may not be solved. He explained they were talking about 40 power plants possibly being built in California and maybe not. This would give a chance for a Montana plant. He said they had to take some chances and this was one they had to take, therefore, he would support the .08.

**SEN. HALLIGAN** told the committee his only concern was without helping local governments, at current prices, the companies could build the plants and pay for them in 3-5 years; they did not even need the exemption. He said they don't need the help with the current prices. He explained the incentives were already in the market place to build the plants. **SEN. HALLIGAN** said this was frosting on the cake for the co-ops or anybody else. He said they could not just "give the farm away" while at peak prices; instead, they needed to just help them along and be a partner. Being a partner did not mean selling out local governments. He said if they did not give them the impact fees in the outside years, they would be passing the costs on to the property taxpayers in their homes and small businesses and they could not afford that along with the increase in energy prices they would get hit with. He reiterated the committee needed to be aware of that.

**REP. FORRESTER** replied this bill clearly stated 50% of the power would be cost based and it could all be marketed at a cost base on the coal. He said coal power was at around $.035, including cost of construction. He said, if they could get $.035 power, **SEN. JOHNSON's** bill would not have been needed to allow for more money for the university system for energy; they would not have had the local school districts saying they needed a certain percentage included in their budgets for energy increases. He stated he knew the power plant the co-ops were talking about would not be the answer to all of the energy woes, but it certainly a step forward. He reiterated if they didn't take any chances, they would not make any progress either.

**REP. DEVLIN** agreed with **SEN. HALLIGAN.** He said this was not the only bill considered. He stated it was too easy for the state government to give an incentive at local government's expense. He did not feel that at anything less than .1 would adequately cover the local investment in this plant. He stated he could not support anything less than .1.

**SEN. COLE** said if the committee decided they did not want any generation in Montana and would not do anything with this bill, then they would probably see the generation facilities in Wyoming and North Dakota. He stated he had talked to the counties and they thought they could live with the .7 or .8. **SEN. COLE** stated he wanted to see some generation in eastern Montana. He wanted the committee to take the chance and go with the .08 at this time. This was not going to be built overnight, he said, but it would at least give a statement to the companies that were willing to work with them. He said this would show the legislature was willing to work with them as much as they could. He said the counties indicated they were willing to step up to the plate and try to get the power in. The counties could see there would be other benefits to it, as well. **SEN. COLE** hoped they could do the same.

**Vote: SEN. DEPRATU'S MOTION OF .08. Motion failed 3-3**, with **Devlin, Story, and Halligan voting no.**

**SEN. COLE** explained the bill was now at .05.

**SEN. HALLIGAN** stated the other concern he had was, as **REP. FORRESTER** indicated, they had cost based power, potentially, but it did not have to be sold in Montana; it could go to North Dakota or Wyoming. He reminded the committee they had already amended the bill to deal with the interstate commerce issues. He said that was a good concept and this was a good bill, however, it needed to be balanced.

**REP. STORY** said if this whole bill hinged on it being between .08 and .1 on the impact fee, then the bill was shaky to begin with. He said they were not talking about a lot of money there, but it was a lot of money to some local governments. He said, in going from a tax system to an impact fee, was a substantial incentive. He could not understand getting tied up in requiring people coming in to at least put forth an effort to meet the impact.

**SEN. COLE** said he did not understand that either because he could see where they were going to receive more benefits from the .08 than they would have if they had actually been taxed.

**SEN. DEPRATU** explained this was all brand new money, not money they presently had and was not money being taken away from them. He said it was new money coming in and they needed to look at the additional income they would receive from the other things that would happen around the community that were a positive natural benefit. He reiterated the importance of staying focused on why they were doing this, which was to develop energy. He wanted to encourage that. He felt they were weakening it too much.

**Substitute Motion**: **REP. FORRESTER** made a substitute motion that **MOVE TO .1 BE ADOPTED.**

**REP. FORRESTER** explained he felt that was the only way this bill would pass; he felt it would die without it. He said the actual dollars, as pointed out by **REP. STORY**, that the actual dollars compared to the total cost of the project was a fairly small amount. He stated they needed something out there and if it would take a .1, then he was willing to do that and was not willing to see the bill die. He told **SEN. COLE** unless he had another idea of what to do, it looked like without going to at least .1, the bill would not pass.

**SEN. COLE** asked **REP. FORRESTER** if the .1 would be delegated for the full 10 year period. **REP. FORRESTER** replied, yes; he felt that was also what **REP. STORY** and **REP. DEVLIN** referred to. **REP. STORY** responded it would be for the last eight years of the 10 year period. **REP. FORRESTER** agreed; they had already approved the .75 for the first two years.

**SEN. HALLIGAN** asked **Brody Holman** to comment on **REP. FORRESTER's** motion. **Mr. Holman** asked if the first two years was now .75% and if the part being contemplated now was between the .05 and .1. **REP. FORRESTER** replied that was correct. **Mr. Holman** told the committee if they took the effective tax rate, using the new and expanding industry tax break for 10 years, they would have a .3 effect (assuming 200 mills). He said the chances of that going

down in eastern Montana as the plant came on-line would be increased. However, he said, if you assumed 200 mills across the board, the effective tax rate for the first five years would be .3%, then it ratcheted up in the 6-10. He added the committee looked at the new and expanding industry previously and liked it for some of the alternative energy scenarios. He thought the city and county of Butte SilverBow could stand in support of the bill if they encouraged new generation to go for the new and expanding industry. He added they could take a hard look at that. He said, with the numbers the committee was presently talking about, the co-ops might have something different to say. He said, for the first five years, they were looking at an effective tax rate, under the new and expanding industry, of .3%. He arrived at that by the co-ops tax rate was presently at 3%; for the first five years, under MCA 15-24-14, they were at 50% of their taxable value. He assumed a 200 mill figure. He wanted the committee to give that some consideration as well. He said when they rolled in the effective tax rate for the first five years at .3% and the .75; if they add that out, it would be 1.5%. He added that was the same over the five year period that the .3% was times the five years. He encouraged the committee to take a look at that.

**Doug Hardy** responded from a twofold perspective, he said the two things they would have on a $350 million plant under the option just mention by **Brody Holman** would mean a total of $4.8 million savings to them as an incentive; to an investor it would only be a $7 million savings over the 10 year period. The difference, he explained, at an 8 mill difference between a cost base and if market came down to $.05 would be $148 million during the project. He said it was a governmental policy decision if the committee chose to have incentives or not. **Mr. Hardy** added, if .01 in the out years allowed everybody to support the bill, then they would be elated. He said it would be an economic decision if people would build under this or build under standard taxation. He said that decision would be based on which county they went into because it would be about equal to what it would do in taxation in Rosebud, but it would be a good tax savings incentive in other counties.

**REP. DEVLIN** told **Doug Hardy** the committee's discussion had been that they liked the idea of being front-loaded a liked the way the impact fee was structured. He said the committee felt that would put money in the counties hands and felt it did a good job. He explained the problem was in the out-years. He said they were talking about ½%, from .5 to .1. He asked **Mr. Hardy** if he considered that a "deal killer". **Mr. Hardy** replied, no, they could live if it would make the bill go. He added, dollar for dollar on that portion, they did not ever go into this wanting to

harm counties. The difference between the .7 on a plant (on a 250 megawatt) was $840,000. He acknowledged they may go into a county and meet with commissioners before they would build anything to ask what they needed to do. He added it may be that they were well in excess of this, that they would negotiate with county above that level. He said it may be the county would have very little impact, other than law enforcement, depending on what their infrastructure was. He said, in that case, they would apply whatever the policy making body would decide was going to be in the bill.

**SEN. COLE** told the committee there was a motion for .1.

**REP. FORRESTER** said **SEN. DEPRATU** wanted to discuss an alternative to **REP. FORRESTER's** motion.

**SEN. DEPRATU** explained he was trying to reach a compromise he felt he could live with. He added he did not feel good about having to go up this far, but wondered if they could negotiate going with .1 for the first four years after the first two years, and then drop back to the .08 at that time because the economic benefits of the plant would be starting to generate the additional funds and to help out in the counties at that point. He said if they were going to have economic development from the plant, it should be starting to take effect in the 6th year; therefore, in years 7-10, they would drop back to .08.

**Substitute Motion: SEN. DEPRATU** made a substitute motion to **GO WITH .1% FOR THE 1ST FOUR YEARS AFTER THE FIRST TWO YEARS, THEN DROP BACK TO THE .08% AT THAT TIME FOR YEARS 7-10 BE ADOPTED.**

**SEN. DEPRATU** reiterated years 1 and 2 would be .75, then years 3,4,5,and 6 would be at .1, and .08 on years 7-10. He said that would take care of Butte or any other gas-fired plant because it would leave the higher number where they would need it more.

**REP. STORY** said that would help the counties get over the hump, but he felt they were still underestimating the impact some of these facilities would have on local governments. He said he could go along with that in order to move this bill along.

**SEN. COLE** stated he would go along with that.

**Vote: SEN. DEPRATU'S MOTION carried 5-1, with Halligan voting no.**

**William Duffied, Fallon County Commissioner,** asked a question on amendment 29. He asked, if the local governments entered into an inter-local agreement, why did they need a state agency to tell them if it was o.k. **REP. STORY** replied his concern with this

whole deal of negotiating the impact fees was the question of who was the referee. How do they ever get to the point where everybody had an opportunity to make the deal. He added that was the whole concern he had; they needed to have the ability for different government units to come in and sit down to try to work out the impacts. However, in the end, what if they can't agree, he asked. **REP. STORY** added this really didn't get to that answer either. He said there really wasn't a mechanism other than going to court right now. **William Duffied** responded rather than saying "for approval", perhaps they could say "for review". He said if the local governments entered into an inter-local agreement, that agreement should stand. He did not feel there would be very many problems with that.

**SEN. COLE** explained what they were looking at was once they had entered into an agreement. **William Duffied** replied that did not address that.

**SEN. DEPRATU** agreed with **REP. STORY**. He said, in looking at some inter-local agreements in his area, the agreement had been reached, but there was sometimes there was one party that would come to the table feeling they were being harmed. As **REP. STORY** had stated, this would give a referee type of effect.

***{Tape : 2; Side : B; Approx. Time Counter : 0}***

**SEN. COLE** said entering into an agreement was one thing; however, entering into an agreement that everyone approved of may need to be changed.

**Bob Gilbert, Rosebud County,** agreed with **REP. STORY**. He said they did have a concern about the state of Montana having the final say as to how the agreements were worked out. He suggested there be some language inserted to say local government agreements would be made in consultation with the local government assistance bureau so they were involved from the beginning. He said then they could have to consultation from the state, yet allow the counties to make the final determination.

**SEN. COLE** answered he had no problem with that.

**REP. STORY** told the committee that may be an issue that could be worked on and figured out in the interim. He said, assuming there was a facility in one county having impacts in another county, there would now be several governments willing to make in inter-local agreement who possibly would not want to share any of the money with the entity from the other county. If that were to

happen, what would their leverage be in the whole situation. He added that was his concern. He stated the bill implied the option was out there, but until everybody was "on board" they didn't want the situation bogged down, having the money just sitting in the account. He explained it was important to have a mechanism to move the situation.

**William Duffied** replied he understood where **REP. STORY** was coming from, however, in eastern Montana, they had inter-local agreements with all of their counties that were joining, including North Dakota, and they did not have much of a problem. He said they were all out there trying to survive. He said he did not feel that was a necessity, however, they could go ahead if they felt it was necessary.

**SEN. HALLIGAN** asked **Jeff Martin** if the language came from the hard rock mining impact fee. He asked if the local government assistance division approved those impacts. **Jeff Martin** answered if this was similar to the hard rock mining situation, it was by accident. He explained this didn't lay down any criteria by which the state would use to ensure everyone was treated fairly under the inter-local agreement.

**SEN. HALLIGAN** stated this looked consistent with the hard rock mining language.

**REP. STORY** said this seemed similar and it looked as though the hard rock mining board had a fairly large role to play in the impact fees; in the end, in the hard rock mining, the whole committing process hinged on the impact fees being decided beforehand. He added they did not want to go there with this bill. He said, if the counties thought they could live with it, they could strike everything after the last three lines of the amendment. He said, once they had an inter-local agreement, they could start spending the money.

**Motion/Vote**: **REP. STORY** moved that **ON PAGE 4 OF THE AMENDMENTS, PUT THE PERIOD AFTER THE WORD "AGREEMENT" AND STRIKE THE REST BE ADOPTED. Motion carried unanimously.**

**Bob Gilbert** referred the committee to the next page of the same amendment, there was the same language in Sub-section 2. **Jeff Martin** explained they would go through the whole bill to make sure all the other amendments concurred with that decision.

**SEN. COLE** agreed.

**Stephen Maly** said the committee had discussed clarifying the language in Section (indiscernible), Sub-section 2. He said, on

page 1 beginning with line 25 of the bill, in lieu of Sub-section 2's present language, it would read "to the extent that 50% of the net-generated output of the facility is not contracted for delivery to consumers for a contract term extending five years to 20 years as determined by the owner from the completion of the facility. Surplus capacity must be offered at a cost based rate that includes a rate of return not to exceed 12% on a declining contract term basis for the remainder of the contract period. Surplus capacity that is not contracted for in this fashion may be sold at market rates.

**REP. STORY** said he thought the whole Section 2 was confusing even to have in the bill.

**Stephen Maly** replied it was a convoluted series of sentences about when and how much surplus capacity may be sold on the market. He repeated the amendment for the committee.

**REP. STORY** stated if Sub-section 2 was contingent upon what happened in Sub-section 1, he thought they were still only dealing with the first 50% of the power. If they offered 50% in the initial offering, any of that 50% that was not used would be re-offered for the period of the exemption on an annual basis at a cost base rate. He said that was all they were trying to get at. **Stephen Maly** responded, yes.

**SEN. COLE** asked where they would keep in the five years to the 20 years.

**Jim Mockler, Montana Coal Council,** explained, as an investor owned facility, they would not necessarily object to the offering up-front, but then they would have to be able to contract out, after that offering, at least five years. They could not do that on an annual basis; they would need to be able to go to a company to sell that power or they could not do it. He added they would be stuck. He didn't think the amendment took care of that. He thought that was the intent of that, though.

**REP. STORY** told **Jim Mockler** his only shot, economically, to make cost base work out for them was to offer it the first time. **Mr. Mockler** agreed.

**REP. STORY** said they had to get the power on the market to make the generator sell. **Mr. Mockler** agreed. He said that was their problem; they did not have a market to enjoy, therefore, they would be in a different situation. He said they could live with the 50%, but beyond that, they needed to be able to go to market.

**REP. STORY** asked if he was saying they would come back after the minimum of five year contract to market. **Jim Mockler** replied, yes, they would have to have a minimum of the five year market, so they would really only have the initial offering, then what they didn't take, they would come back. He added they might come back the next year if they didn't sell it, but if they did sell it, they would have the option to go out five years. Then, if they didn't sell if by the end of the five years, they would be at the end of their obligation for 10 years. He stated their concern was that they could not be tied to that arrangement, if it wasn't sold at a cost base. **Jim Mockler** explained they could not afford to come back on an annual basis and continue to operate that because that would allow Montana Power, for example, to just sit there and wait. It would take all the gamble out of Montana Power's hands.

**REP. STORY** asked if the language was alright the way if was before he started to have it changed. **Jim Mockler** replied the language was very confusing. He added he preferred it would be more clear that they would only have the dollar for the up-front, then they would be able to go out to market for the five year period, then coming back to re-offer it. He said they would then have that five year contract which was a common contract in today's market at least.

**SEN. COLE** asked **Jim Mockler** asked if they had the five years included at one time. The committee responded, yes, from 5-20 years was included. **Mr. Mockler** replied as long as it was clear that was the intent of the amendment, then that was fine.

**REP. STORY** told the committee this could trigger into a roll-back. He stated they needed to get this section right so it would be clear that once the plant came on, they would have to offer ½ of their power at cost base; if it was not picked up, they could offer anything that was not picked up in that offer and go to market for a period of time. **SEN. COLE** stated the time period would be for 5-20 years.

**REP. STORY** stated it could be possible that an investor-owned facility could come in and offer it at cost, get 20% picked up there, then sell the whole 80% on a long-term contract for 10-20 years to get them by the exemption period. **Jim Mockler** replied that was, perhaps, the way it could be construed presently. He added that was not necessarily what he had asked for. He said he had no problem coming back with the 30% at the end of a five year period. He explained, in other words, if they took 20% at the original offering, that would leave 30% that was available at cost base; he said to allow the investor-owned utility to go out and sell that power for a five year period. He told the

committee if they wanted to force them to re-offer after that five years, he would accept that.

**REP. STORY** reiterated this was a hard section. **Jim Mockler** replied, in all fairness, if they made that initial offering up-front, that should be sufficient. He said if someone wanted to take it, that was the same gamble as a few years ago. He added the people out there who wanted cost base power and cheap power now were willing to take a little more of the gamble and would snatch that up in a minute. **Mr. Mockler** said that was the real world. He explained they would be obligated, then, to that 50% for 10 years.

**Russ Ritter, Montana Rail Link,** told the committee he wanted to make clarification on some of the language within **SEN. HALLIGAN's** bill, SB 512, to see if and how they would be affected. He said if they went forward with this project of trying to bring electricity by engines across the state of Montana in various areas where they could hook on to the Montana Power grid, they would be considered as a new facility. He stated he was not sure, under the definition of the bill, that they were. He explained they were actually taking an engine or engines and retrofitting them so they could deliver AC power from DC. He added it would be a permanent installation someplace on a sidetrack.

**SEN. COLE** told **Russ Ritter** he had mentioned **SEN. HALLIGAN's** bill, which was SB 512, however, the committee was discussing SB 508.

**Russ Ritter** asked, if at a later time, he could present this information.

**SEN. HALLIGAN** said **Russ Ritter** had a point with the wording "electric generation facility". He said that definition did talk about physically connected generator or generators. He did not know whether locomotives being connected would represent a facility. He asked **Doug Hardy** to comment on whether locomotives being connected would represent a facility. **Mr. Hardy** replied he thought that was actually referring into the generation they had worked with in HB 600 as opposed to **SEN. HALLIGAN's** bill, SB 512. As far as "connected", he explained, under the definition in this bill, this language came out of existing statute on the physically connected. **Mr. Hardy** stated he assumed they were sitting on a track at a sight and were connected, then they would fall into the physically connected category. He did not know that this bill, on a cost base, was the vehicle to address that because the committee had that segregated into HB 600 which gave provisions for what **Russ Ritter** referred to.

**SEN. DEPRATU** told the committee, actually, **Russ Ritter's** concern would fit under SB 512 because of actually connecting and becoming a permanent facility if they had that definition tied into the electrical system. He said they actually had to have connecting facilities to the and would become unmovable. Therefore, it might fit under SB 512.

**SEN. COLE** said they would get back to SB 508.

**Doug Hardy** said clarifying the language here was worded into the amendment **Stephen Maly** presented to the committee. He said, whether they were an investor-owned facility or a co-op, their ability to offer a chunk that somebody did not take in the first place, having a five year term on the contract, made it much easier to market than going out and trying to market for one-year contracts. **Mr. Hardy** stated they would whole heartedly support what **Mr. Mockler** suggested. He believed that was what **Stephen Maly** had crafted into the amendment as well.

**Motion/Vote**: **REP. STORY** moved that **TO RESTRUCTURE PAGE 1, SUB-SECTION 2 AS EXPLAINED BY STEPHEN MALY BE ADOPTED. Motion carried unanimously.**

**REP. STORY** told the committee he had questions about transmission upgrades linked like that. He did not know if that needed to be dealt with in this bill or if they were working on that in the other energy committee.

**SEN. DEPRATU** stated he thought it would be more logical to include them in the same way new generation was included. He asked if they could just expand that on this bill.

**SEN. HALLIGAN** told the committee that may be beyond the title of the bill since the title dealt with just generation facilities; he did not know if they could expand the title to include transmission.

***{Tape : 3; Side : A; Approx. Time Counter : 0}***

**REP. DEVLIN** said they had been talking about related delivery systems now including transmission lines. He added, if he remembered correctly, when this bill went through the House Tax committee, they took a look at page 1 , line 21, where it stated "related delivery facilities". He said the definition they agreed on in the House Tax committee was "whatever it took to connect that to the grid", but not an expansion of the existing grid. Therefore, if a plant was set in the middle of nowhere,

whatever it took to get it hooked up was also included in this. The definition was on page 2.

**SEN. HALLIGAN** agreed. He said anything beyond that definition was beyond the title of the bill.

**Stephen Maly** told the committee there was another bill considered in another committee that defined electrical generation facility to specifically include transmission links. He said it was unique to that other bill and had been done by this legislature to achieve this very end.

**REP. STORY** said perhaps it was in **REP. SLITER's** bill.

**William Duffied** presented one more suggestion to the committee to consider putting a sunset on these tax holidays, such as April of 2005. Anything that was not permitted before that date would not be eligible for that consideration.

**SEN. COLE** was not sure where to put that.

**Jeff Martin** explained it would be more appropriate to put that within the body of the bill.

**SEN. COLE** agreed.

**Motion**: **SEN. COLE** moved that **INSERT THE SUNSET OF THE END OF APRIL 2005 AS SUGGESTED BY WILLIAM DUFFIED BE ADOPTED.**

**SEN. COLE** explained that would allow for something to be changed would need to be done by the 2005 session.

**REP. STORY** stated he thought it would work better to have it correspond with the tax year, rather than break it in the middle of the year. He asked **Jeff Martin** if it should be December 31. **Jeff Martin** replied they could either do it then or January 1, 2006; that way, it would cover the whole tax year. He did not know if there would be a situation where it would be permitted on December 31, 2005.

**REP. STORY** stated he thought they should just use the standard date that was generally used for the termination date for property tax.

**Jeff Martin** replied, yes, if it was in the body of the bill stating that anything not permitted by December 31, 2005.

**Substitute Motion**: **SEN. COLE** moved that **AMEND HIS AMENDMENT TO DECEMBER 31, 2005 BE ADOPTED.**

**SEN. HALLIGAN** said it was his understanding the act would terminate after that date. The permitting process which was in place and the companies that had been permitted would be under the tax provisions of the law at that time, but nothing after that point.

**Jeff Martin** replied he did not know if they wanted to terminate it, but it would put into law when the window would close.

**SEN. COLE** asked if the window would close on that date. **Jeff Martin** replied, yes.

**SEN. DEPRATU** said that was worthwhile.

**Vote: SEN. COLE'S SUBSTITUTE MOTION WITH A TERMINATION DATE OF DECEMBER 31, 2005 be adopted carried unanimously.**

**Doug Hardy** explained the only loose end from yesterday was Northwestern had asked that the effective date of the act be moved forward to catch the generation they were trying to provide for some short term relief.

**SEN. COLE** asked he remembered what they were looking at. **Doug Hardy** replied he did not know what the date was, but he knew they were talking about moving the date up.

**Motion/Vote: REP. STORY** moved that **THIS WOULD BECOME EFFECTIVE UPON PASSAGE AND APPROVAL BE ADOPTED. Motion carried unanimously.**

**REP. STORY** said, in all practicality, property did not come onto the tax rolls until January 2002 anyway.

**Motion: REP. STORY** moved that **SB 508 DO PASS AS AMENDED.**

**SEN. HALLIGAN** said with the way they presently had the impact fees, he was glad they raised them, but he would have like to have seen them at .1 for the whole period. He said this forced discussions between the corporation and the local government as to whether the new and expanding industry property tax credit was a better deal than putting in the up-front money. He stated that negotiation was healthier. He said they needed to stay with existing law where they could. This would allow that discussion to occur. **SEN. HALLIGAN** said he was still convinced the market was going to create the incentive to build these plants, not necessarily this property tax incentive; however, it may give a boost.

**SEN. COLE** told the committee he hoped they did end up getting some economic development in the area in eastern Montana or

wherever these generation plants were concerned and that they did not get things so high that these plants would go out of state. He said time would tell if they did this or not.

**Vote: Motion** that **SB 508 DO PASS AS AMENDED. Motion carried unanimously.**

**SEN. DEPRATU** said he felt they had done a lot to encourage development and it was not in the industry's court. He hoped they would move at an accelerated pace.

## SB 512

**Motion/Vote: SEN. DEPRATU** moved to **RECONSIDER ACTIONS ON SB 512 FOR THE PURPOSE OF AMENDMENTS BE ADOPTED. Motion passed 5-1 with Forrester voting no.**

**Motion: SEN. HALLIGAN** moved that **AMENDMENT SB051208.AJM EXHIBIT(frs88sb0508a02) BE ADOPTED.**

**Jeff Martin** explained the amendments. He said he was not sure to what extent these amendments reflected current thinking. He said there were some changes to Section 1 primarily to clarify what an arms-length sale was and if there wasn't an arms-length sale, how the price would be imputed. He continued, on page 2, Sub-section 4, if you had a transaction or sale that was not an arms-length transaction or sale, the department shall impute the sales price under the conditions stated. The imputed price from the last time was the daily weighted average of the Mid-Columbia price for firm on peak electricity. He said this section also had an additional provision that the revenue and taxation committee would (possibly now the revenue and transportation committee)take a look at whatever the tax rates were to see if they seemed to be reasonable and adequate and would report its recommendations on what an appropriate tax rate may be to the next legislative session. Starting on page 2, there was a change on what would be exempt; electrical energy produced by a person where at least 50% was generated or used by the person could no longer be exempt from the tax nor would an electrical generation facility that had a generation capacity of 30 megawatts. **Mr. Martin** explained on amendment 4, it changed "facility" to "unit". The rationale behind changing facility to unit was if there was an existing facility that added on, the add-on portion would be exempt from the excess revenue tax. He stated not-exempt would also be electrical energy sold from a generation facility owned by a rural co-op. Under this set of amendments, Sub-section 1, 4, 5,

and 6 would be the entities that would not be subject to the excess revenue tax. He said the other amendment would change how the rate schedule would be taxed. He reiterated these may not be consistent with what the general thinking was on exemptions.

**REP. STORY** told **Kurt Alme** they had attempted to remove most of the exemptions because some of them would weaken the bill. He asked if any of those would be considered a problem. **Mr. Alme** replied, yes, because the purpose of this bill was to promote reasonable and stable price for energy; that was the goal. The purpose of the tax, then, was to disgorge excess profits, excess revenues, from companies that were capitalizing on the current situation and were helping to create instability in the price. With that being the consistent purpose, he said, a tax had to be broad in scope in order to accomplish its purpose. He said it could not be aimed at one taxpayer or a small group of taxpayers. It had to aimed at similarly situated taxpayers to the extent that the taxpayers would be exempted out, there had to be a rationale basis for that exemption. He reiterated there had to be a rational basis for the exemption and, in totality, it could not be special legislation, meaning if there was a rational explanation for everybody except one taxpayer, there could still be potential legislation for that taxpayer to be an improper legislative function. He said the concern the department had with the exemptions that currently existed, in part, dealt with the rational basis; not the rational basis listed before that would survive after this amendment, but with the totality of the impact of these exemptions on the tax. He stated every exemption this committee decided to keep in needed to be considered carefully and weighed against the possibility that may be committing the scope improperly. **Mr. Alme** suggested considering exemption 5, Sub-section 5, which was currently in the bill, not to be stricken by these amendments. He would consider having that Sub-section removed because of the totality of the impact and also because it would end up exempting, in fact, owners of generation facilities; some owners of the facilities would be subject to the tax and other owners would not. He explained they had concern whenever there was an exemption at all. When trying to come up with a consistent and rational basis for the exemptions, he understood they were trying to encourage stable and reasonable cost. They do not want to discourage new generation because he understood lack of supply had been identified as one of the contributing factors. He explained there would also be the potential problem with QF's (qualifying facilities) of imposing a tax at a rate below the cost which they were able to produce. That would be the suggestion for leaving that in. He added, of course, leaving in the exemption for federal facilities could be left in or not because they could not tax them either way. He stated that was a long background as to the recommendations for these exemptions, why they think the

exemptions should be taken out and why they suggest there was a rational basis to leave the other three in.

**REP. STORY** told **Director Kurt Alme** in the discussions they had the other day about what exemptions were permissible, they got into exemption 3 that the amendment took out about facilities that were under 30 megawatts. He said they were trying to get at things like the systems in the Conoco and Exon refinery that were coming on to help those companies try to stabilize their price. In doing so, he added, the loop got around some other facilities that he did not think should be exempted. **REP. STORY** explained he tried to lower that exemption to catch them and that did not work. He asked **Kurt Alme** if they went back to Sub-section 2, the exemption dealing with people who were trying to produce their own electricity and then sell part of that out to help stabilize their cost; if they traded that off for the flat 30 megawatts exemption, would that hurt the bill. **Mr. Alme** answered every exemption was an issue. He said he would prefer to take out exemption 3 and bring back exemption 2 because he felt exemption 3 was overly broad. He did not know if it was narrowly tailored to capture what the committee was intending to capture; it was casting a wider net than that. **Mr. Alme** stated if the intent was to encourage temporary generation and to encourage private businesses and others to become self-sufficient in a way to try to create stable and reasonable energy prices, then exemption 2 was much more narrowly tailored to accomplish that. He suggested, if that was the goal, with that rational basis, bringing back exemption 2 and taking out exemption 3 because of its breadth. He also suggested if they brought back exemption 2, they raise the percentage that would have to be used internally and also clarify what time frame they were looking at dealing with that percentage.

**REP. STORY** asked **Kurt Alme** what kind of time frame would he recommend. **Mr. Alme** replied, since they would be reporting monthly, he would suggest monthly.

**REP. STORY** asked **SEN. DEPRATU** what the percentage was in HB 600. **SEN. DEPRATU** replied it was 80%.

**REP. FORRESTER** asked **REP. STORY**, when they talked about this the other day, they talked about the 50% being necessary because they knew some of the power would be sold outside of the plant the temporary generators were located in. He said if they ratcheted that up to 80%, they would be forcing them to use almost all of the power produced. He explained the reason for the 50% was quite clear; allow them to sell some of the power out to recover some of the cost. **REP. FORRESTER** said if they put 80% in, he would not be surprised if they would pull the generators out. He

said they would discourage that section then. He reiterated they had gone way too far if they put 80% in.

**Motion**: **SEN. HALLIGAN** moved that **AMENDMENTS, AS THEY ARE, REALIZING THEY WOULD BE ADDING BACK OR TAKING OUT SOME SECTIONS, BE ADOPTED.**

***{Tape : 3; Side : B; Approx. Time Counter : 0}***

**SEN. HALLIGAN** told the committee they would do some separations and additions to the amendments as they went along.

**REP. STORY** told the committee they needed to find the amendments that dealt with exemptions and needed to segregate those to line the exemptions up in order.

**SEN. HALLIGAN** explained amendment 6 removed Sub-sections 2 & 3 in their entirety. He asked if they wanted to eliminate Sub-section 2 and replace with Sub-sections 3 and 5.

**REP. STORY** replied(indiscernible).

**SEN. HALLIGAN** responded on amendment 6 in **Amendment SB051208.ajm**, they would not be taking out amendment 2; rather, they would take out amendments 3 & 5 in their entirety.

**REP. FORRESTER** told **REP. STORY** he still did not understand why #3 on line 25 was "overly broad", as stated by **Director Alme**. **REP. STORY** answered the whole purpose of having any exemptions was to exempt those kinds of facilities, such as the new ones they wanted to bring on to stabilize price. He explained all they were doing with #3 was picking a number and saying that anybody under that size was exempt; there was really no rationale to the number. He added the committee had talked about it during their meetings; if this bill was really trying to get at certain people, a portion of their facilities were escaping through that loop.

**REP. FORRESTER** asked **REP. STORY** why that was any different today than it was two days ago. **REP. FORRESTER** reminded him that the committee had passed it out already. He thought there had already been a committee report signed on this.

**REP. STORY** responded the report had not been signed yet. **REP. FORRESTER** said he thought the report was ready, though. **Lynette Brown**, **secretary**, stated the information had been turned in, but

the report had not been processed yet by the amendments coordinator's office.

**Vote: SEN. HALLIGAN's** motion that **AMENDMENT SB051208.AJM WITH THE ADDITION OF AMENDMENTS 3 & 5 BE ADOPTED. Motion carried 5-1, with Rep. Forrester voting no.**

**SEN. HALLIGAN** said he thought, in another previous amendment, the committee had stricken Sub-section 2. He said they needed to reconsider their actions to make sure Sub-section was back in the bill.

**Motion/Vote: REP. STORY** moved that **RE-INSERT, ON PAGE 2, LINE 22, SUB-SECTION 2 AND AMEND IT SO THAT 50% OF THE MONTHLY GENERATION HAD TO BE USED - THE WORD "MONTHLY" WOULD BE INSERTED BE ADOPTED. Motion carried 5-1, with Rep. Forrester voting no.**

**REP. DEVLIN** told the committee he had another amendment which went back to something the committee tried to do that had been taken out of it, which was the MDU exemption. He said this was taken out the last time, but he still maintained that MDU was held harmless by SB 390 four years ago; the market situation they faced was a lot different than the rest of the western grid that was in Montana. He added he did not feel they should be affected by this. **REP. DEVLIN** explained they had three plants in eastern Montana and with the loss of the size exemption, all of them were now included and they had a high cost of generation. He stated his opinion was that if they were not exempted, there was a very good possibility that those three plants in Montana would be shut down; at least not operated at peak capacity. He said he would like to see them exempted out of it. **REP. DEVLIN** explained there was some language changes made in **amendment SB051208.asm EXHIBIT(frs88sb0508a03)**, in the previous Sub-section 6. He said that was an amendment they originally had included, but had since been taken out. He explained, the deregulation bill, SB 390 from 1997, exempted MDU by statute, in reference to 69-8-201, Sub 4. He added there was a good reason for them to be exempted. He did not think that would hurt the bill's effectiveness if this exemption was provided for.

**Motion: REP. DEVLIN** moved that **AMENDMENT SB051208.ASM BE ADOPTED.**

**SEN. HALLIGAN** asked **Kurt Alme** to discuss the motion as to what it would do to the constitutional issues associated with the bill. **Mr. Alme** explained he had significant concerns about adding this amendment back into the bill from a rationale basis grounds and also from discrimination grounds. He was not sure how MDU could be treated differently; he assumed it was because they were treated differently during the prior legislature in 69-82-014.

HE was concerned treating them differently from other power generators in the state of Montana and exempting all of their sales, which was more, even than exempting just the share of the sales **Mr. Ebzery's** amendment had contained the last time. This went above and beyond what other generation facilities were allowed as far as exemptions were concerned. **Mr. Alme** said even if they exempted out retail sales to regulated markets, he would be concerned about the constitutionality of the bill if this exemption was added.

**Beth Baker, MDU,** told the committee earlier that day, **Kurt Alme** had talked about the purpose of this bill, which was to promote reasonable and stable prices for electrical energy and discourage excess profits. She said he had talked about concepts such as, narrowly tailoring in the exemptions, treating similarly situated taxpayers the same, and not discouraging generation. She said **REP. STORY** had also mentioned part of the purpose of what the legislature was doing here was to encourage generation. **Ms. Baker** stated she thought it was inconsistent with the purpose of this bill to sweep MDU within the tax. She said the first point she mentioned the other day was that MDU remains a fully regulated public utility and this legislature had firmly expressed its policy that MDU customers should not have to pay for the impacts of a deregulated system in which MDU does not participate. Secondly, she added, as discussed before, the revenues from the pool sales were not excess profits; they were not revenues that were just being used to line the pockets of shareholders, rather, there was a direct return to ratepayers from the consideration of those revenues in the total cost of service that was reviewed by the PSC in setting regulated rates. **Ms. Baker**, stated, most importantly, as **REP. DEVLIN** mentioned, this would defeat the legislature's purpose to encourage generation of electrical energy in Montana. She said the people at MDU told her they would have to charge $400 a megawatt hour to cover their costs to pay for this bill. She told the committee the plants in Miles City and Glendive were so small; they were only used for when the demand was peaked. Those plants would not be cost-effective to operate. **Ms. Baker** reiterated it was perfectly consistent with the purpose of the bill to pass **REP. DEVLIN's** amendment and she encouraged the committee to do so.

**REP. DAVE KASTEN, HD 99,** encouraged the committee to pass this amendment. He said in looking at the plant at Sidney, any profits went back to their shareholders there. He said, as they all recalled with the Governor's comments when they first started in, they had a bright spot in the Sidney area presently with the development and added value to agriculture. He stated it would be good to pass this amendment.

**SEN. HALLIGAN** told **Kurt Alme**, based on what **Beth Baker** said, he assumed this was crafted as narrowly as it possibly could be, but it still ran into the same problems **Mr. Alme** had identified. **SEN. HALLIGAN** asked if that had changed, based on her testimony, at all or if there was any way to construct this so that it did affect their company without affecting the bill. **Director Alme** replied the hard thing for him to distinguish was distinguishing MDU from other electrical generators in Montana. Other electrical generators in Montana also sold and did regulated market; those costs were also taken into account for those markets in setting the rates for those ratepayers. **Mr. Alme** asked how could they distinguish MDU from the other companies unless they said it was because what they were trying to do was to protect the Montana ratepayers in eastern Montana who were actually subject to the rate that MDU was charging. He explained the problem with that only distinction, that he was aware of, was that it was an unconstitutional distinction, rather it raises some interstate commerce clause issues. He added this issue was too gray to be making an absolute statement such as it being unconstitutional. **Mr. Alme** explained it raised interstate commerce clause issues because it assessed a tax on all excess profits that impacted not just Montanans; then they came back and would subsidize rates for Montanans. He said he was concerned about the interstate commerce clause impacting that distinction. Without that distinction, he had trouble distinguishing MDU from the other electrical generators in Montana. **Mr. Alme** stated, yes, it was narrowly crafted, but it was not treating similarly situated taxpayers the same.

**SEN. HALLIGAN** told the committee he would oppose the amendment, even though he understood fully where they were going and what they needed to do. He thought it really hurt the defensibility of the bill if they put it on.

**REP. DEVLIN** stated, in closing, he pointed out another distinction that probably had not been brought up. He said, in another committee, they were talking about an energy pool legislation that was going to serve in this power grid and MDU and any generation that was in that midwest power grid was unable to participate in that pool arrangement. He said he felt they were unable to participate in some legislation that was going on that may help some generation in this side; therefore, he definitely felt they should be exempted from this tax because they were operating under different rules.

**SEN. DEPRATU** said he would probably oppose the amendment also. In the meantime, he said if there was anything someone could come up, he would appreciate any answers to get around this so it would not affect the rest of the bill. He added that was his

only reason, because of the survivability of the bill itself. He said he thought they were doing what we wanted them to do.

**Vote: REP. DEVLIN's** motion that **AMENDMENT SB051208.ASM BE ADOPTED. Motion failed 2-4, with Devlin and Cole voting aye.**

**Jeff Martin** told the committee he had a substitute amendment to new Section 1.

**Motion: SEN. HALLIGAN** moved that **AMENDMENT SB051209.AJM BE ADOPTED.**

**SEN. HALLIGAN** explained the amendments attempted to ratchet up the rate to a point, instead of starting at $.045, it would start at $.05.

**Jeff Martin** told the committee it would be a flat rate starting at 4 ½ cents. The graduated rate schedule was gone; it was just a flat rate of 90% on anything $.045 and higher.

**SEN. COLE** asked if they just had one rate then.

**REP. FORRESTER** asked whose amendment this was.

**SEN. COLE** stated it was not the committee's amendment.

**Director Kurt Alme** explained the purpose of this amendment was very straightforward. It would create a simple one rate tax in everything over 4 ½ cents. He said the purpose of this tax was to disgorge excess profits and the 90%, as opposed to a graduated rate, would achieve that more aggressively. He said, of course, it was obviously a policy call as to how aggressive they wanted to be. Given the discussions the Department of Revenue had with members of industry about what would be an appropriate rate to set here, where to set it and how to set it, the department thought the most effective point to set this rate and yet still allow a reasonable rate of return was 4.5, so there was no reason to graduate it. He said they could just go ahead and start at the 90% tax.

**SEN. COLE** asked **Kurt Alme** if he would like to discuss amendment 3a. **Mr. Alme** said he did not believe that part had changed.

**Jeff Martin** stated, for clarification, the only thing that was changed in this amendment was Sub-section 2. He said, in just looking at it, there was probably an internal inconsistency in the amendment that could easily be fixed. He referred to the second sentence in Sub-section 2; he explained to be consistent

with the rate, it should be at a price of $0.045 or higher, unless they wanted the rate to begin at a rate above $0.045.

**SEN. HALLIGAN** referred to the 3rd line on Sub-section 2. **Jeff Martin** stated it would read "at a price of $0.045 or higher per kilowatt hour."

**SEN. HALLIGAN** accepted that as a friendly amendment to the motion.

**Kurt Alme** stated the goal was to create reasonable and stable prices, not just to disgorge profits, but to create reasonable and stable prices. He explained one thing an excess profits tax did was to discourage sales above a certain level. He said to have that discouraging effect, the rate had to be high enough to have a significant discouraging effect; that's why 90%, as opposed to starting with the 50% or going to 70%, was recommended was because of a significant profit. He said any unreasonable profit could still be obtained by changing from the 70% to the 90%.

**REP. FORRESTER** asked **Director Kurt Alme** now that they had gone to a flat 90% rate, what was the difference between setting a rate at 90% and just capping the price of power was. **Kurt Alme** explained they could still sell power with a 90% tax rate; they could still sell at the economics of the decision and still make it worthwhile.

**REP. FORRESTER** asked **Kurt Alme** if he considered this a cap. **Director Alme** replied, no, he considered it a significant disincentive to sell above that rate which was the purpose of an excess property tax.

**REP. STORY** asked if the cap would be at a 100% rate. **REP. FORRESTER** replied it would be very close.

**Vote: SEN. HALLIGAN's** motion that **AMENDMENT SB051209.AJM BE ADOPTED. Motion carried 5-1, with Forrester voting no.**

**SEN. DEPRATU** asked **Kurt Alme** to clarify the item of the idea of using locomotives. **SEN. DEPRATU** said he felt they would qualify, under this, as a new facility.

***{Tape : 4; Side : A; Approx. Time Counter : 0}***

**SEN. DEPRATU** wondered how **Kurt Alme** felt about having the locomotives qualifying as a new facility and if they could have that as an intended record in the minutes. **Kurt Alme** stated he

would like to discuss this with **Gene Walborn** before answering. **SEN. DEPRATU** stated he knew **REP.** (indiscernible) had pictures showing how their experimental set-up would work.

**Russ Riter, Montana Resources and Montana Rail Link Inc.,** explained Montana Rail Link had recently set up a joint venture called "Rail Energy of Montana". He said Montana Rail Link's role in that was to provide the generation equipment to be able to generate electricity to be sold in the state of Montana. He added they had no reason to sell it out of the state of Montana. He said they realized it was up there at about $106 a megawatt hour, but they felt there were customers out there that, unfortunately, could not afford that until such time as they could get generation or other generation facilities were built or other conditions, which would drop the price even further. He told the committee they were taking a generation facility, with those engines, that was now housed in a locomotive and changing it. He stated he did have pictures of them that he would pass around to the committee members. He explained they were changing them from DC power to AC power. The nice things about that was that their railroad was very close to Montana Power's grid and, therefore, they could "hook in" to that particular facility and provide power to industrial customers. He said they were presently doing a test facility in Butte to find out. He said they had come up with 1.55 megawatts per engine, running at about 60%, 24 hours per day. **Mr. Riter** explained they had contacted DEQ and had the required air pollution permits or permits to be able to have this take place. He said they were thinking, at this point, of doing four separate sites with 10 at each. He explained this would give them better access under the grid system and would not put quite as much noise in one given area as compared to other areas. He stated if this worked and they were able to sell it, they were thinking of expanding this into more simply because we're at a point where every little bit helps. He passed the pictures around to the committee members. He stressed this would not help Montana Resources because Montana Resources could only afford power down in the $35-$40 level. **Mr. Riter** said **Sylvia Bookout's** bill, 600, was not asking for property tax; they would be more than happy to pay the property taxes assesses as normal. Therefore, the state would not lose that aspect of an income flow. He said they were only asking for clarification that they did fit under the exemptions in Section 2. He said, on line 20, it said "energy sold from an energy generation facility that is placed in service after the effective date". He said they were not going to do anything other than the test until the legislature put this bill into operation. He said, on line 25, "electrical energy sold from electrical generation facility that has a generation capacity of less than 30 megawatts". He added they were looking at 40, even though they would be 10, 10, and

10; it was all by the same single ownership. He referred to line 27 where it said "a qualifying small power production facility that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electrical power from a small power production facility."

**SEN. DEPRATU** stated those sections had been stricken.

**Russ Riter** told the committee he thought they still qualified. He wanted the department to include in the minutes a ruling or language saying they could go forward with this. He said this was the first time in the United States, that they were aware of, that anybody had tried this particular project to come up with electrical generation. He reminded the committee that back when they had the serious fire in Outlook, Montana years ago, a railroad did actually provide an electrical generator so they could get the power back into that community until they were able to come up with a new line. Under the conditions in the state of Montana, they thought this had much possibility. **Mr. Riter** said this was a joint venture between Montana Rail Link and Commercial Energy of Montana. Rail Energy of Montana would offer electricity at cost base rate until Montana's industrial users could develop more cost effective long-term solutions. He said this power could only be used by the industrials to maintain their current operations in Montana. To the best extent possible, all employees and equipment used in this program would be Montana based. They would hire an additional 17 people to make this operation. He added this was not the greatest economic development in the world, but when looking where we are, every little bit would help.

**Kurt Alme** told the committee, assuming all the other criteria were met, if an engine was converted into an electrical generation unit, it would seem like it would fit within the exemption under new Section 2, Sub-section 1.

**REP. FORRESTER** told the committee **Mr. Riter** said the electrical generation supplied by locomotives hooked together would be covered under this bill. He asked if that was the committee's interpretation.

**REP. STORY** said his interpretation was that they would be exempted from the tax.

**SEN. COLE** said that was his understanding.

**Jeff Martin** said, as a point of clarification, the balance of the amendments were what was in the original approval of the bill, making it effective upon July 1, 2001, the amendment that dealt

with the Flathead Electric and a termination date July 1, 2005. He said there was one additional amendment which was the severability clause, so if one part of the act was found to be unconstitutional, the whole act would not be jettisoned.

**Motion/Vote**: **SEN. HALLIGAN** moved that **SB 512 DO PASS AS AMENDED. Motion carried 5-1, with Forrester voting no.**

**ADJOURNMENT**

Adjournment: 11:00 A.M.

_____
SEN. MACK COLE, Chairman

_____
LYNETTE BROWN, Secretary

LB/MC

**EXHIBIT(frs88sb0508aad)**