

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ALAN OLSON**, on March 7, 2005 at 3:25 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None.

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

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

Committee Business Summary:

Hearing & Date Posted: SB 235, 3/2/2005; SB 187,
2/23/2005; SB 356, 3/3/2005
Executive Action: SB 187; SB 169

HEARING ON SB 187

Opening Statement by Sponsor:

SEN. JIM SHOCKLEY (R), SD 45, opened the hearing on **SB 187**, which would provide full faith and credit for Salish and Kootenai tribal fish and game citations. **SEN. SHOCKLEY** explained there is an agreement between the State of Montana and the Salish Kootenai and Flathead Indians to handle fish and game violations on the reservation. In 1947, there was a statute passed that said the State of Montana could enter into an agreement with the tribes to manage fish and wildlife on the Flathead Indian Reservation.

SEN. SHOCKLEY explained an agreement was entered into in 1999, is renewed every year, and approved every four years by the Governor. **SEN. SHOCKLEY** summarized the agreement as stating the tribes and the Department of Fish, Wildlife and Parks (FWP) will jointly manage fish and game.

SEN. SHOCKLEY identified pheasants, ducks and fish as the predominant wildlife at issue. **SEN. SHOCKLEY** explained the joint management as providing for a joint tribal/state fish and game license, and deputies are cross-deputized. If a ticket is issued on tribal land, it is heard in tribal court, but it is not a crime. If the violation is on private land within the exterior boundary of the reservation, it is a State offense, is treated as a crime, and is heard in justice court. In order for tribal court to enforce a civil judgment, the tribe would have to go to the proper district court and seek comity for the tribal court's judgment. SB 187 will allow tickets from tribal court against non-tribal members, if issued on tribal land, to be treated with full faith and credit. **SEN. SHOCKLEY** submitted a copy of the 2002 Bird Hunting and Fishing on the Flathead Reservation Cooperative Agreement.

EXHIBIT (feh50a01)

Proponents' Testimony:

John Carter, Tribal Attorney, depicted SB 187 as a law and order bill which will simplify the enforcement of fish and game laws throughout Montana. **Mr. Carter** explained a joint license could be purchased over the internet, and the license would be fully incorporated into the state fish and game regulatory framework. The regulations will be enacted annually by both the Tribe and the State and will be tailored specifically to the needs of the reservation's population of pheasants, ducks, and fish. **Mr. Carter** explained the bill would enable a tribal court judgment to be recognized as a judgment of a State district court. **Mr. Carter** pointed out the agreement has been on the books for 15

years and is supported by the Governor's Office, the Attorney General's Office, and the Montana Department of Fish, Wildlife, and Parks.

Bob Lane, Montana Department of Fish, Wildlife and Parks, identified enforcement as the only issue that has proven to be difficult and suggested SB 187 would simplify enforcement.

Opponents' Testimony: None.

Informational Testimony: Sarah Bond, representing the Attorney General's Office, stated she would be available to answer questions.

Questions from Committee Members and Responses:

REP. WAYNE STAHL, HD 35, SACO, referred Ms. Bond to the Cooperative Agreement and was troubled that the document was signed by someone other than the Chairman of the Tribe. **REP. STAHL** wondered who signed on behalf of the Chairman and whether that person had authority to sign. **Ms. Bond** explained the signatory, Jami Hamel, is Vice Chairman of the Tribal Council.

REP. MARK NOENNIG, HD 46, BILLINGS, recalled an incident on the Crow Reservation which involved an attempted arrest of non-Indians on fee land in a reservation by tribal police. **Ms. Bond** was aware of the situation. **REP. NOENNIG** wondered how the legislation would have affected that situation. **Ms. Bond** explained the legal circumstances on the Crow Reservation are significantly different than the Flathead Reservation. **Ms. Bond** explained the current law states the Tribe does not have jurisdiction over non-tribal members hunting on fee lands.

REP. STAHL wondered if there was a reciprocity agreement and the State could go to the tribal court to enforce a judgment. **Ms. Bond** pointed out that tribal courts do not have criminal jurisdiction over non-Indians. The State has full criminal and civil jurisdiction over crimes committed by Indians off the reservation.

CHAIRMAN OLSON stated currently if a person is a non-tribal member and gets ticketed for a fish and game infraction on the reservation, he/she would go to state court. **SEN. SHOCKLEY** stated a non-tribal member that commits an offense on tribal land, would go to tribal court for a civil matter. If a non-tribal member commits an offense off fee land, he/she would go to justice court.

SEN. SHOCKLEY further explained that currently, if a non-tribal member gets a ticket because he allegedly commits an offense on land that belongs to the tribe, he has an opportunity to defend himself in tribal court. If the violator loses, and the tribe obtains a judgment, the tribe would have to go to district court to enforce the judgment under comity. If SB 187 passes, the judgment will go to the appropriate district court clerk and the clerk will stamp the judgment to make it enforceable.

Closing by Sponsor:

SEN. SHOCKLEY stated SB 187 will make it profitable to enforce the law, and that if laws are unenforceable, it hurts the state, the tribes, and the ability to manage wildlife.

{Tape: 1; Side: A; Approx. Time Counter: 0.7 - 26.7; Comments: Hearing on SB 187.}

HEARING ON SB 235

Opening Statement by Sponsor:

SEN. JEFF MANGAN (D), SD 12, opened the hearing on **SB 235**, which would revise the Major Facility Siting Act (MFSA). **SEN. MANGAN** spoke about the ability to upgrade existing transmission lines and the requirement to upgrade under MFSA. **SEN. MANGAN** explained SB 235 would exempt transmission line upgrades from the requirements of MFSA. The bill would apply to upgrades within an existing easement or right-of-way and the upgrade could not go outside the right-of-way.

{Tape: 1; Side: B}

Proponents' Testimony:

John Fitzpatrick, Northwestern Energy (NWE), cited Montana as having a dysfunctional power market. **Mr. Fitzpatrick** suggested the market could be improved and electricity prices stabilized by increasing generation and/or improving transmission. SB 235 would help Montana improve transmission in small increments. **Mr. Fitzpatrick** noted SB 235 is not a license to build large-scale transmission systems; rather, it would allow the upgrading of existing transmission lines. **Mr. Fitzpatrick** emphasized that SB 235 would allow the upgrading of a transmission line only on an existing right-of-way and would not allow the acquisition of an additional rights-of-way. **Mr. Fitzpatrick** explained upgrades would include increasing conductor sizes and insulators. **Mr. Fitzpatrick** submitted examples of different transmission poles.

Mr. Fitzpatrick believed SB 235 would be very important for the development of small-scale generation in Montana and, in particular, for wind development.

EXHIBIT(feh50a02)

Van Jamison, is a past administrator of the Energy Division, Department of Natural Resources and Conservation (DNRC). **Mr. Jamison** supports SB 235. **Mr. Jamison** did not believe the underlying purpose of MFSA would be compromised by SB 235. **Mr. Jamison** explained MFSA is intended to minimize the environmental effects of energy development in Montana. **Mr. Jamison** testified his past experiences indicate that while the analysis associated with reviewing the siting of different transmission lines is resource based, the decision making that occurs with respect to transmission siting is landowner-acceptance based.

Mr. Jamison spoke about revisions in MFSA which allow for exemptions if you are able to show 75 percent of the landowners, owning 75 percent of the land, approve of where a proposed transmission is being built. **Mr. Jamison** pointed out the rules clearly indicate it is preferable to locate in existing rights-of-way. **Mr. Jamison** emphasized that SB 235 eliminates costs associated with compliance and eliminates an unnecessary process.

Leo Berry, Great Northern Power Development (GNPD), testified that GNPD is proposing to build a coal-fired generating facility near Circle. **Mr. Berry** stated the power generated by this plan will need to move by wire, and a transmission line is being planned from Circle to Broadview to connect with the line out of Colstrip. **Mr. Berry** thought upgrading existing facilities, as opposed to building new facilities, is desirable. **Mr. Berry** noted difficulties in siting facilities through western Montana. **Mr. Berry** suggested utilizing existing facilities and remaining within existing corridors is good public policy.

Tom Ebzery, Puget Sound Energy, Pacific Corporation, Avista Corporation, and Portland General Electric, supported SB 235 and would like to see the lines updated. **Mr. Ebzery** urged the Committee to adopt the SB 235.

Jim Mockler, Montana Coal Council, thought it would make sense to upgrade powerlines by utilizing property and equipment on hand before beginning new construction. **Mr. Mockler** suggested it would not make sense to buy a new car if all you needed was a new set of tires.

Gary Weins, Montana Electric Cooperatives Association, submitted written testimony as a proponent of SB 235.

EXHIBIT(feh50a03)

{Tape: 1; Side: B; Approx. Time Counter: 15.1 - 15.6; Comments: Testimony of Gary Weins.}

Dan Flynn, International Brotherhood of Electrical Workers, Local 44, believed that taking existing rights-of-ways with aging transmission and rebuilding them to modern specifications is a good idea.

Jerry Driscoll, Montana AFL-CIO, suggested it is common sense to upgrade an existing line in lieu of constructing new lines.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. KARL WAITSCHIES, HD 36, PEERLESS, wondered if the width of the right-of-way is a requirement of the physical structure or a regulatory requirement. **Mr. Fitzpatrick** explained how the width is a requirement of both the physical needs and the regulatory requirements.

REP. DIANE RICE, HD 71, HARRISON, inquired whether there was also a height limitation. **Mr. Fitzpatrick** responded height is constrained by the types of material used; for example, wood poles are generally not any taller than 90 feet. In addition, regulatory constraints are a consideration.

REP. NOENNIG asked about Page 2, Lines 27-28. **Mr. Fitzpatrick** explained the current interpretation of the law is that if NWE wanted to add a substation to an existing facility as an associated facility, NWE would have to go through MFSA. **REP. NOENNIG** asked if there was a relationship between the new facilities and an existing right-of-way. **Mr. Fitzpatrick** responded a substation would be located near an existing transmission facility.

REP. BRADY WISEMAN, HD 65, BOZEMAN, understood a transmission corridor is being contemplated by **Mr. Ebzery's** clients and asked about the proposed costs. **Mr. Ebzery** replied his clients have been collaborating with NWE for the past 18 months to determine if there can be an upgrade from Colstrip to the Montana/Idaho border. **Mr. Ebzery** did not believe an estimate of the proposed

cost was available. **Mr. Ebzery** stated Puget Sound Energy and Avista Corporation have expressed an interest in additional coal generation and electricity from coal, but that would be in the year 2010. **REP. WISEMAN** asked if **Mr. Ebzery's** clients would be seeking government funding, and **Mr. Ebzery** responded they would not be looking for any public funding.

{Tape: 2; Side: A}

Closing by Sponsor:

REP. MANGAN closed the hearing by stating the environmental impacts have already been incurred when the original right-of-way was constructed. **REP. MANGAN** believed the Montana Environmental Information Center (MEIC) is opposed to SB 235.

HEARING ON SB 356

Opening Statement by Sponsor:

SEN. JEFF ESSMANN (R), SD 28, opened the hearing on **SB 356**, which would modify PSC's authority for protective orders. **SEN. ESSMAN** explained SB 356 arose out of a case before the Montana Supreme Court entitled Great Falls Tribune v. Montana Public Service Commission. **SEN. ESSMAN** explained the case came about when the PSC exercised its existing rules to close and maintain confidentiality on certain default provider power contracts before the PSC. The Montana Supreme Court decision altered the status of Montana law, and SB 356 is an attempt to conform the law in accordance with the Court's findings and rulings.

Proponents' Testimony:

Greg Jergeson, Montana Public Service Commission, stated the PSC unanimously supports SB 356. **Commissioner Jergeson** suggested SB 356 relates to a small portion of a larger issue.

Robin McHugh, staff attorney, Public Service Commission, testified the way the statute is currently written, it allows the PSC to protect trade secret information. The proposed legislation will allow the PSC to protect other kinds of information which are lawfully protectable.

John Shontz, Lee Enterprises, spoke about the Supreme Court decision which stated individual right to privacy in Montana law applies only to individuals and not to business and public entities. The proposed legislation will allow the PSC to keep

confidential information entitled to confidentiality under the law.

Colin Stephens, Montana Newspaper Association, agreed with Mr. Shontz's testimony and supported SB 356.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. ESSMAN closed the hearing on SB 356.

{Tape: 2; Side: A; Approx. Time Counter: 2.5 - 9.8; Comments: Hearing on SB 356.}

EXECUTIVE ACTION ON SB 169

Motion: REP. HIMMELBERGER moved that SB 169 BE CONCURRED IN.

Discussion:

CHAIRMAN OLSON referred to information submitted after the hearing by Commissioner Jergeson, which required the state to bring fines up to the federal level.

Commissioner Jergeson explained the certification process and the changes necessary in order to comply with the federal statute for Montana to received the federal money to help operate the program.

Vote: Motion carried unanimously by roll call vote, with REP. GALLIK and REP PARKER voting aye by proxy. REP. STAHL will carry the bill on the floor of the House.

EXECUTIVE ACTION ON SB 187

Motion: REP. NOENNIG moved that SB 187 BE CONCURRED IN.

Discussion:

REP. NOENNIG explained if an individual is subject to a tribal court judgment, the judgment cannot be enforced outside the reservation unless the tribe goes outside the reservation and files a new suit in the appropriate jurisdiction.

CHAIRMAN OLSON wondered if SB 187 would set precedent for other tribes. **REP. NOENNIG** thought it might, but acknowledged the statute only relates to one particular treaty and there is nothing in the bill that would require it to apply anywhere else. **REP. NOENNIG** explained "full faith and credit" relates to the constitutional requirements that one state give full faith and credit to the laws of another state.

CHAIRMAN OLSON wondered what would prevent the statute from expanding to other tribes. **Mr. Carter** agreed with **REP. NOENNIG** and explained the statute is unique to the Flathead Reservation and a particular agreement. **Mr. Carter** explained the bill is very narrow and very focused on one issue.

REP. WISEMAN realized the bill applies strictly to fish and game violations on the Flathead Reservation and asked if a person could be ticketed if they were fishing on the reservation and only had a state fishing license. **Mr. Carter** explained if the person did not have a license and was on tribal land, the person would have to appear in tribal court. If the person was on non-Indian land on the reservation, a ticket could be issued by either a tribal warden or a state warden to appear in justice court. **REP. WISEMAN** asked what would happen if he failed to appear in tribal court and pay the fine. **Mr. Carter** explained that if a person failed to appear in tribal court, a default judgment would be issued. Once the appeal time for that judgment has run, the attorney for the tribes will go to the appropriate court and begin the comity process. **Mr. Carter** noted big-game hunting is not allowed on the reservation by non-Indian members.

REP. GALLIK inquired whether someone could argue under equal protection that full faith and credit should be given to the other agreements between the state and other tribes. **Mr. Carter** responded anyone could file any lawsuit they want, but emphasized SB 187 is key to a particular statute unique to the Flathead Reservation.

REP. WAITCHIES asked who sets the civil penalties. **Mr. Carter** responded they are jointly enacted by the Fish and Game Commission and the Tribal Council, and each government is enabled to establish the appropriate penalty for a particular offense.

REP. WAITCHIES voiced his concern that the fines could vary from person to person without coordinating language between the state and the tribe.

{Tape: 2; Side: B}

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REP. OLSON asked if game wardens could currently file in district court. **Mr. Carter** reminded the Committee that the agreement only goes to fishing and bird hunting, and an offense is key to the land on which the offender is charged. Currently, if the offense is on tribal land, the offender must go to tribal court. If the offender is cited on non-Indian fee reservation land, that person goes to state court. **Mr. Carter** clarified there is no authority for state officers to enforce against a non-Indian on tribal trust land on any reservation in Montana. Mr. Carter explained how violations of fish and game laws on federal or tribal lands on other reservations can often constitute a federal offense.

Vote: Motion carried 8-6 by roll call vote with **REP.**

HIMMELBERGER, REP. KLOCK, REP. OLSON, REP. RICE, REP. STAHL, and REP. WAITSCHIES voting no. **REP. NOENNIG** will carry HB 187 on the floor of the House.

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ADJOURNMENT

Adjournment: 4:55 P.M.

REP. ALAN OLSON, Chairman

CYNTHIA PETERSON, Secretary

AO/cp

Additional Exhibits:

EXHIBIT ([feh50aad0.PDF](#))