

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN KEN TOOLE**, on January 11, 2005 at
3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Ken Toole, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Essmann (R)
Sen. Dan Harrington (D)
Sen. Dave Lewis (R)
Sen. Greg Lind (D)
Sen. Dan McGee (R)
Sen. Gary L. Perry (R)
Sen. Glenn Roush (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: Casey Barrs, Legislative Branch
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SB 83, 1/11/2005; SB 143, 1/11/2005
Executive Action: None.

HEARING ON SB 83**Opening Statement by Sponsor:**

SEN. GLENN ROUSH (D), SD 8, opened the hearing on **SB 83**, Clarify renewable energy projects eligible for renewable resource grants-loans.

He stated that this bill is a result of the report that came out of the Energy subcommittee of the Environmental Quality Council (EQC) on energy issues. This bill will clarify grants and loans on alternative energy that have taken place in the past. Some of the alternative energy resources available for funding are: feasibility, design, research, and resource assessment studies; preparation of construction rehabilitation, or production plans, education, and implementation. He discussed other projects that are currently in place and available for funding that will enhance resources in Montana such as development of off-stream and tributary storage, and improvement of water use efficiency for new and older systems.

Proponents' Testimony:

John Tubbs, Resource Development Bureau Chief, Department of Natural Resources (DNRC), discussed the wind resource grant program. He feels the bill is straight forward, and hopes it will encourage people to take advantage of these alternative resources and apply for the grants and loans.

Patrick Judge, Montana Environmental Information Center (MEIC), distributed an amendment that he would like to see included in SB 83. He thanked the Department for developing the bill, and Sen. Roush for the presentation. He stated that the amendment will strike "facilitate" so more resources will qualify under this bill. He urged the Committee to pass SB 83.

EXHIBIT(ens07a01)

Chuck Magraw, Counsel, representing Natural Resource Development Council and DNRC, stated his support for SB 83, and the amendment that Mr. Judge presented. He urged the Committee to pass SB 83.

Pat Torgerson, Women Involved in Economics, stated the organization's support for SB 83. She urged the Committee to pass this bill.

Clarice Ryan, Women for Montana Voters (WFMV), stated that this bill has a dual purpose not only to generate more energy, but to

utilize the opportunity for thinning and helping the forest. She urged the Committee to pass SB 83.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CURTISS asked Mr. Tubbs about RND monies, and if they are available for water projects. **Mr. Tubbs** replied that RND dollars are for renewable resources that don't use water. **SEN. CURTISS** questioned the funding level from HB 6. **Mr. Tubbs** responded that there is \$4 million in the account (\$2 million, and another \$2 million which is from interest) for renewable resources. He said that additional funds are in the account and can be available and transferred into the account for water projects.

Closing by Sponsor:

SEN. ROUSH closed stating the fiscal note will not have an impact on the budget. He urged the Committee to pass SB 83.

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HEARING ON SB 143

Opening Statement by Sponsor:

SEN. BRENT CROMLEY (D), SD 25, opened the hearing on SB 143 while **SEN. LAIBLE** was presenting a bill in another Committee. **SEN. CROMLEY** stated this bill will authorize loans from the orphan share account to be used for other environmental projects such as; Hazardous Waste/Cercla Special Revenue account, and the Environmental Quality Protection account.

Proponents' Testimony:

Sandi Olsen, Remediation Division, Department of Environmental Quality (DEQ), distributed written testimony (see exhibit 2, amendments (see exhibit 3) that states, "starting July 1, 2005, up to \$2 million may be appropriated from the orphan share fund to the department (in HB 2) to pay for the department's costs for investigations and preparation of feasibility studies for releases at facilities which the state may be liable." Another amendment on exhibit 3 will insert new language that states "if HB 2 is passed and approved and contains an appropriation of \$2 million from the general fund to the department to pay that

agency's costs for investigations and preparation of feasibility studies for releases at the Kalispell Pole and Timber, Reliance Refinery Company, and Yale Oil Corporation state superfund sites, then section 2(10) is void." She distributed a flow chart (see exhibit 4) summarizing the disbursement of funds from RIGWA tax, and Oil and Gas tax into the special fund accounts. She discussed SB 103 presented by **SEN. LAIBLE** in the last legislative session.

{Tape: 1; Side: B}

Ms. Olsen stated that the amendment in SB 103 from the 2003 Legislature didn't allow them to take money out for the two superfund sites. The funds from HB 2 will be a one time only for the superfund sites: Kalispell Pole and Timber, and the Reliance Refinery Company.

[EXHIBIT \(ens07a02\)](#)

[EXHIBIT \(ens07a03\)](#)

[EXHIBIT \(ens07a04\)](#)

Opponents' Testimony:

Jayne Mitchell, Legal Counsel for Swank Enterprises, Valier, Montana, stated her opposition to SB 143. She informed the Committee that Swank is a family owned construction company, which has operated for 40 years, and employs approximately 350 employees. Swank is the owner of a small piece of property in Flathead County that was purchased for the purpose of storing construction equipment. The property had been contaminated many years before from a refinery that operated in the 1920s. She informed the Committee that Swank had been approached by DNRC in 1997 to see if they could do an "in kind" contribution of workers and equipment to restore the site. Swank was informed at that time there would be sufficient funds to clean up all the affected properties. She stated that DNRC owns most of the contaminated property having taken it from the defunct Reliance Refinery during the 1930's, and then they leased it to other refineries during the 1950's and 1960's. The DNRC had received a grant from the legislature in 1997 of approximately \$582,300 to clean the site up. The grant application and supporting consulting work was prepared by Roger Noble, an environmental consultant, from Kalispell, MT. The DEQ supported the grant, advising the legislature that they would provide its technical expertise as an "in kind" contribution.

Ms. Mitchell stated that DEQ praised the grant, and its letter of support was included with that of various public and private entities in the grant application. For the next seven years the

DNRC submitted information to the DEQ attempting to get its approval to act upon the submissions of the DNRC. The DNRC warned DEQ that failure to utilize the grant could result in the loss of the grant and loss of funds to clean up the site. The DNRC had submitted a Remedial Action Plan that was intended to be the definitive study which would fill all of the gaps in the previous studies. The DEQ failed to review this study from December 2002 to August of 2004, and the grant was lost due to the inaction of DEQ. She stated that Swank submitted its own proposal to the DEQ which refused to act upon Swank's proposal. In August 2004, the DEQ filed a lawsuit against seven parties, including Swank Enterprises. The DEQ is now seeking \$2 million from the legislature to study the problem some more, and has now added two other sites, Kalispell Pole and Timber, and Yale Oil Corporation to the DEQ study. **Ms. Mitchell** stated that the orphan share account is for the purpose of paying for the cleanup costs of defunct companies, and not for the purpose of providing an additional appropriation to the DEQ's budget under the guise of "studies". She asked the Committee to consider the unfortunate land owners who will probably be billed for these additional costs. She informed the Committee that Swank did not cause any of this contamination. She urged the Committee to not pass this bill.

EXHIBIT (ens07a05)

Informational Testimony: None.

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Questions from Committee Members and Responses:

SEN. PERRY asked whose liability is it to clean up these sites. **Ms. Olsen** responded that it is the Department's responsibility, and the intent of the \$2 million from the orphan share account is for this purpose.

The question was referred to **Cindy Martin, On-Site Manager for the Remediation Division, DEQ**, who discussed the amount of time that it took for the DEQ to review the remedial plan from DNRC. She informed the Committee that her division was short staffed, and they had a hiring freeze and weren't able to fill the position that handled this area until later.

SEN. PERRY asked **Ms. Mitchell** when did Swank purchase this property. **Ms. Mitchell** replied 1992.

SEN. ESSMANN asked which sites have the highest priority for water protection. **Ms. Martin** replied that Kalispell Pole and

Timber and Reliance Oil Refineries are the DEQ's highest priority. She stated that people do use the ground water in this area. The DEQ worked with the Santa Fe Railroad and Burlington Northern Railroad regarding contamination in the wells adjacent to the railroad. Santa Fe and Burlington Northern assisted in hooking up several of the properties adjacent to the railroad to the city water supply. She said there is a covered water supply available in the area by the Reliance Refinery Company in Kalispell, which is not threatened by the contamination. She stated that the greater risk is from the property adjacent to the Kalispell Pole and Timber, which hasn't been investigated. The \$2 million requested by DEQ was discussed, and how it will be used for the study and cleanup.

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SEN. LEWIS discussed the orphan share account and asked Ms. Olsen about the \$600,000 taken from the account. **Ms. Olsen** responded that taxes and interests from other accounts have contributed to the share in the orphan share account. She referred the Committee to the last page on exhibit 4, and the last column which shows that borrowing the \$600,000 for the Corbin reclamation site will leave the account in good shape.

CHAIRMAN TOOLE asked if current owners of property previously contaminated are responsible to clean up the contamination. **Cindy Brook, Attorney, DEQ**, responded that the Superfund law is very strict, but she questioned the liability. **Sandy Olsen** replied that people who purchase property that was previously contaminated are 100% liable for the total cost in the clean up of the site.

Closing by Sponsor:

SEN. LAIBLE closed SB 143.

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. KEN TOOLE, Chairman

CLAUDIA JOHNSON, Secretary

KT/CJ

Additional Exhibits:

EXHIBIT ([ens07aad0.PDF](#))