

MINUTES OF THE MEETING  
BUSINESS AND INDUSTRY COMMITTEE  
MONTANA STATE SENATE

March 25, 1981

The regular meeting of the Business and Industry Committee was called to order by Chairman Frank Hazelbaker on Wednesday, March 25 in room 404 of the Capitol Building at 10 a.m. All members were present.

HOUSE BILL NO. 780: Representative James Azzara, District #96 presented the bill. This is just a good idea that needs further refining. Last November when I began looking into various energy projections being made regionally and nationally, and looked into a study done by the Harvard Business School, a report on America's Energy Future, I decided to look into it further, and HB 780 was the result.

Utilities are not buying the most cost effective resources. Economic tunnel vision is controlling the decisions of our energy suppliers. In the last 25 years of accelerated growth and easily available capital, the solutions to energy shortages have been ones of quantity, to make the grid bigger and to supply more energy for an expanding economy. We are just now beginning to look at our energy systems to see if they are efficient, to see if we are wasting energy, to see if we could use it more wisely, to conserve.

Alternative energies, and conservation could be more cost effective than thermal coal and nuclear power plants. Spend 1 billion to construct a 1,000 megawatt coal-fired power plant or spend 1 billion to weatherize 100,000 homes and conserve 1500 megawatts. My numbers are not exact but that is the gist of the situation. We need to find some way to make conservation profitable and take it seriously.

The Natural Resources Defense Council under Department of Energy contract, recently completed an "Alternative Scenario" to the Bonneville Power Administrations 15 year electrical energy forecast. In comparison to BPA's forecast, the region would need 43% less electrical energy from central station facilities in 1995 under the scenario.....a difference of almost 13,000 average megawatts. Thus, if power plants continue to operate at a capacity factor of about 60%, this alternative Scenario would require 21 fewer 1,000 megawatt plants than the BPA forecast.

HB 780 requires utilities to examine reliable alternative energy and conservation forms, compare them on an economic basis with conventional resources, and purchase the cheapest form of energy available. The bill does this by requiring the utility to submit to the Public Service Commission a projected load demand for the next 10 years and specify how it plans to supply that demand. Then under the direction of the PSC the utility determines its incremental

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system cost, what it costs in today's dollars to construct the next conventional power plant, and compares that with the cost of a wind machine, solar collector, insulation, storm windows, etc., to produce or conserve an equivalent amount of energy. The utility cannot invest in a conventional energy resource unless it is more cost effective than all other resources. It must purchase the cheapest power first. Thus, for instance, if weatherizing homes is the most cost-effective resource, the utility invests 1 billion in weatherizing the homes of its customers. When a particular home or number of homes have been weatherized, the PSC will allow that investment by the utility to be put into the rate base. The utility will then receive a return, exactly as it receives a return on its investment in a coal-fired power plant. The utility is only required to offer the cost-effective weatherization. If a customer does not wish to have his home weatherized, he will be in no way forced to do so. However, since the weatherization will be essentially free it is doubtful he would turn down the offer.

Aside from making common sense economically, the legislation helps both the consumer, the utility, the unemployed and the general economy. The Montana economy will benefit because more capital will be staying in the state, rather than out of state to large contractors for building conventional power plants.

The philosophy of the bill is that capital invested for the benefit of the public should be invested in the most cost-effective manner available. The reality of the bill will be the numerous benefits to the consumer, the utilities, the labor force and the general economy.

JAN KONIGSBERG: Department of Natural Resources, Energy Division. I would like to refer you to section 2 on page 4, the load projection and implementation plan that would be presented to the commission. The bill requirements include a projection of the end-use, a load projection for the next 10 years that will specify the projected load, both system-wide and in Montana. The commission would then approve the load projection and the implementation plan. Both would be subject to review in the course of the commission process. The commission would then assure that once they were built they would be included.

Section 3 is the evaluation criteria for the implementation plan. There are certain technologies that are not reliable and they would not be acceptable. There has to be some basis for determining cost-effective resources.

Section 4 is the acquisition of the resource by the utility, which has to be approved by the commission, so many megawatts of thermal, etc. Section 3 established the lists to draw on to meet the resources section.

Section 5 has to do with the purchase of energy from qualifying conservation energy and renewable energy facilities. This includes transmission and distribution. The utility would be required to buy energy from that facility at a unit cost. That is the provision.

Section 6 simply exempts them from the PSC regulation.

Section 7 is determination of the rate of return. This simply states this would be treated separately from the regular utility.

Section 8 is the complaint and audit programs, to assure the consumer is being treated fairly.

Section 9 is the severability clause.

PROPOSERS:

JIM NYBO representing the Alternative Energy Resources Organization stated he is also a consultant for the Natural Resources Council and a member of the City Commission, but that he was here to speak as a private citizen, and on behalf of AERO and not in his official capacity for the City of Helena. I am convinced that conservation has a role to play. It is possible to have an energy future that is based on conservation. We have to consider the economic effect, and have a comprehensive plan. 55 million of our disposable income goes to buy energy. This bill would encourage conservation. The bill parallels the Federal Public Utilities Act. He went through the bill and pointed out sections and explained them, on pages 4 and 5 and 7 and 8. I think the decision you have to make today is, is this idea ready and is it reasonable.

JOHN DRISCOLL: Public Service Commission. I would like to support the general concept behind this bill, but the details need to be worked out. I would like to talk about fundamentals, such as the increasing price of telephones, oil and gas. The impact has an effect because it affects the long-term fuel costs. The cost of electricity going up is more than just inflation. He presented a cost-curve and stated that nuclear is slightly ahead. When you have a decreasing average cost you can build all the plants you want but when your average costs start to go up you have to start to worry. The people who control the money have the risk, but it is a fundamental change in the economy that has caused us to get into this difficulty. He went on to discuss the risk as reflected in the market. He talked about the concept of the bill and said it would put the PSC in the same risk area. Should the PSC take this risk or should they just represent the market. He quoted from the last chapter of the Harvard Business School Energy Study. We have been trying to work out these kinds of problems because it is in the public interest.

PAT OSBORNE: Northern Plains Resource Council. The PSC should be more involved in future energy planning. It could be completed by the different energy forms, in several areas. In section 2, the load projection, it is essential that the suppliers get together with the regulators. Right now our energy system is working against itself. The energy capacity is there. One of the paradoxes of energy planning and practices is that the utility gets in trouble and they have to raise the rates when the consumer starts to conserve. Conservation leads to higher rates in some cases. I would ask that you give this bill a "do pass".

KAREN STRICKER representing the League of Women Voters. This bill provides a means to help our country conserve energy, but starting at the state level.

LEO BERRY: Director of the Department of Natural Resources. Mr. Azzara asked us to help prepare the bill and this is the result. The reason that I like the concept of the bill is that the company can get approval for their planning from the PSC and that can be included in the rate base. The department will not make a need determination. I really feel that the bill is too early. People are not ready for it yet. He touched on the Northwest Power Act briefly. I think the problems with this bill will be correctible, and if we have a plan so we can develop our own resources we can influence that council, because Montana will be in the forefront of energy planning.

TOM SCHNEIDER: Public Service Commission. I think this bill lays the groundwork for the best piece of comprehensive energy legislation I've seen. There are serious technical problems with the bill but they can be worked out. The way a utility has to make a decision is the way this bill would work in the terms of the time frame. We must evaluate the demand and then determine what resource meets that demand. What this bill attempts to do is to get the decision in at the front of the total siting process. The way the facility siting act works right now, everything has to be complete before they submit for review and that is a tremendous expense of up-front capital with no idea if it will be approved. This bill says "lets make that determination up-front". This will lay it out on the table whatever the initial decision by the regulator. One of the serious problems is its interaction with the Northwest Energy bill, for example. We have drafted a very straightforward amendment that would accomplish many of the things we want in the bill. The key thing is that we could simply spin off the siting act without funding. The fiscal note is the key to any major change of our organization. We think the fiscal note can be reduced somewhat with our amendment.

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PHYLLIS BOCK representing Montana's Power To The People. We support the concept in that it requires the utilities to acquire cost-effective resources to meet additional power needs in Montana.

GERALD MUELLAR: The Governor's Office. We strongly support the concept of this bill. This bill could clarify the concept of need. We do have some unresolved questions about the mechanisms to carry it out. We have discussed the amendment with the PSC and we would support adoption of the amendment. We would also suggest that an interim committee study the concept.

MIKE MALES representing the Environmental Information Center, spoke in support of the bill. We also support this bill for a reason. The fiscal note is one important reason for supporting the bill. We urge you to concur in this bill.

OPPONENTS:

GENE PHILLIPS: Pacific Power and Light Company. We are put in the position of opposing motherhood and apple pie. We attempted to work out the problems but we could not agree among ourselves. PP&L is a six state system. Some of the problems were:

1. The error in line 5 of the statement of intent. That is not true in Montana. Rural electric cooperatives wouldn't be covered by the bill.
2. We already file a 10 year plan, but we have no plans to site in Montana.
3. The PSC would have jurisdiction in other states. I might add that there are no incentives for us to build new plants. We are already doing weatherization and we now give cash rebates for certain programs.

One of the big problems is that we now have a council that requires a program within two years. We also feel it would be premature with the regional plan. If you will look at section 4, we presently have interchange, interconnection agreements.....Washington Water Power and Pacific Gas and Electric. As I read section 4, before we can acquire this power from other utilities it has to be a qualifying facility. I think it is premature to pass the bill until the Pacific Northwest Electric Power and Conservation Planning Council makes recommendations on how to deal with the region's energy future.

JOHN ALKE of Montana-Dakota Utilities opposed. Our firm's energy plan would have to be reviewed by the Montana PSC even though the company doesn't plan to place any energy-generating facility in the state. He touched on the long-run costs, to include an analysis of environmental costs. Concerning the mandatory energy planning, the bill provides not one iota of funding to make a meaningful analysis and review of energy plans. The utilities are already doing these studies. They would have a staff and additional expertise in the PSC, that would have to be added, it seems to me.

MDU is an inter-state agent and we would have to have approval for our fixed assets. We already do that. There are inherent conflicts in the bill. One thing is the amendment, that is the law now. Why do we need the amendment. The problems will follow through also when it comes to implementation. We would have the same problems as with the original bill. I would ask that it not be supported.

BOB GANNON representing Montana Power Company. On behalf of Montana Power there is a general feeling of support for some of the concepts of the bill, but when it gets right down to the nuts and bolts we don't think it can be worked out. Montana Power would have a real problem with the facility siting act with this bill. One of the principle things in the siting act was that it was a one-step and with this bill we would be getting a three-step process for getting permits to construct energy-generating facilities. Under current law, permits must be obtained from the Departments of Natural Resources and Health. We have had tremendous problems with a two-step process and now we would have a third. The siting act requires the DNR to look at the availability and desirability of alternative sources of energy and we already have a long-range plan.

We already have the process for weatherization loans, through HB 569. He read an article from the MONTANA INDEPENDENT RECORD, EXHIBIT "A" showing that a recent study indicated the electric rates were low. We are planning a 350 million megacycle coal-fired plant near Great Falls and this bill would have a disastrous effect on our plans to build. Under the present system, we encountered tremendous problems in getting permits for Colstrip 3 and 4 generating units.

He introduced JOHN ROSS and MARK CLARK from Montana Power, who would be available to answer questions.

#### QUESTIONS FROM THE COMMITTEE:

SENATOR GOODOVER: We started out talking cost-effective; and because of the demands on utilities and what the PSC will have to do to review all of these reports, how cost-effective is the bill with the demands it will make. How many people, to provide all of this information.

JAN KONIGSBERG: No additional personnel, we submitted a fiscal note.

SENATOR GOODOVER: With the backlog, how could you do this.

MR. SCHNEIDER: We believe we have the responsibility although we do not have the cost-effective analysis. Our agency could handle the chores set up by this bill with the addition of two staff members at a cost of about \$65,000 a year.

MR. GOODOVER: How objective can you be in rate cases. How will that affect other plans. How can you be objective.

MR. SCHNEIDER: That is a mis-impression that they are going the wrong way. That kind of analysis has to be made right now. It should be an up-front determination.

MR. GOODOVER asked of the Montana Power representative, would you need additional people.

MARK CLARK: It is going to increase our cost. He went on to discuss the rate cases that would cost money.

CHAIRMAN HAZELBAKER asked Representative Azzara to present the proposed amendments.

MR. AZZARA presented the following amendments, and explained the concept.

1. Title, line 8.  
Following: "RESOURCES"  
Insert: "AND AMEND THE MAJOR FACILITY SITING ACT"

2. Page 9.  
Following: line 8.  
Insert: "Section 8. Exemption. Any covered utility satisfying Section 2 of this act shall be exempt from the need criteria in 75-20-301 (2)(a)."  
Renumber: subsequent sections.

I think some of the questions that have been raised need to be answered. Interstate regulation seems to be a "bogus concern". I believe Montanans should have a say in construction of out-of-state generating plants if they're helping to pay part of the cost. I think it can be made profitable for both utility and consumer. A conflict with federal regulation has been raised. There's no need to wait for the Northwest power planning council to develop its energy plan because federal law says the council's work won't restrain any state's ability to "act creatively" to promote energy

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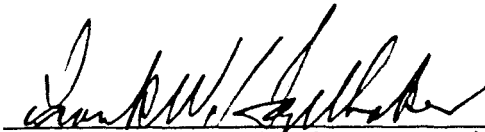
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conservation and use of renewable resources. He read the section of the bill dealing with this. He went on to say, a fiscal note was attached to this bill and I assume the committee has copies of that note. I think Senator Goodover raised a good question and the responsibility rests with all of us. I don't believe the claim that this will would add another step in the permitting process. The "need" assessments already are done by the Department of Natural Resources and this bill would simply require those assessments to be done earlier in the process.

BOB GANNON: The amendment simply goes back to my argument of a two-step and three-step process. Some general discussion followed this comment.

The hearing closed on House Bill No. 780 because a quorum was lost when several members had to leave.

The meeting adjourned at 11:35 a.m.



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Frank W. Hazelbaker, Chairman

Mary Ellen Connelly, Secretary



ROLL CALL

BUSINESS and INDUSTRY

COMMITTEE

47th LEGISLATIVE SESSION -- 1981

Date 3/25

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat - Vice Chairman	✓		
Hazelbaker, Frank - Chairman	✓		
Blaylock, Chet	✓		
Boylan, Paul	✓		
Dover, Harold	✓		
Kolstad, Allen	✓		
Lee, Gary	✓		
Regan, Pat	✓		

Each day attach to minutes.



NAME: John Alke DATE: 3/75

ADDRESS: 406 Fuller, Helena

PHONE: 447-3690

REPRESENTING WHOM? MOY

APPEARING ON WHICH PROPOSAL: HB 780

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? X

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Karen Strickler DATE: 3/25/81

ADDRESS: 1500 Jerome Place Helena.

PHONE: 442-3796

REPRESENTING WHOM? League of Women Voters

APPEARING ON WHICH PROPOSAL: HA 780

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Phyllis A. Bock DATE: 3/25/81

ADDRESS: Helena

PHONE: 442-9830

REPRESENTING WHOM? MONTANA'S POWER TO THE PEOPLE

APPEARING ON WHICH PROPOSAL: HB 780

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENTS: We support Rep. Azzarra's bill  
in that it requires the utilities  
to acquire cost effective resources  
to meet additional power needs  
in Montana.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

# Ninety-sixth Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington on Thursday, the third day of January,  
one thousand nine hundred and eighty*

### An Act

To assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the  
United States of America in Congress assembled,*

#### SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act, together with the following table of contents, may be cited as the "Pacific Northwest Electric Power Planning and Conservation Act".

#### TABLE OF CONTENTS

Sec. 1. Short title and table of contents.  
Sec. 2. Purposes.  
Sec. 3. Definitions.  
Sec. 4. Regional planning and participation.  
Sec. 5. Sale of power.  
Sec. 6. Conservation and resource acquisition.  
Sec. 7. Rates.  
Sec. 8. Amendments to existing law.  
Sec. 9. Administrative provisions.  
Sec. 10. Savings provisions.  
Sec. 11. Effective date.  
Sec. 12. Severability.

#### PURPOSES

SEC. 2. The purposes of this Act, together with the provisions of other laws applicable to the Federal Columbia River Power System, are all intended to be construed in a consistent manner. Such purposes are also intended to be construed in a manner consistent with applicable environmental laws. Such purposes are:

(1) to encourage, through the unique opportunity provided by the Federal Columbia River Power System—

(A) conservation and efficiency in the use of electric power, and

(B) the development of renewable resources within the Pacific Northwest;

(2) to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply;

(3) to provide for the participation and consultation of the Pacific Northwest States, local governments, consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in—

(A) the development of regional plans and programs related to energy conservation, renewable resources, other resources, and protecting, mitigating, and enhancing fish and wildlife resources,

(B) facilitating the orderly planning of the region's power system, and

(C) providing environmental quality;

(4) to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements, including the amortization on a current basis of the Federal investment in the Federal Columbia River Power System;

(5) to insure, subject to the provisions of this Act—

(A) that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and

(B) that Congress intends that this Act not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this Act; and

(6) to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of the Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries.

#### DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "Acquire" and "acquisition" shall not be construed as authorizing the Administrator to construct, or have ownership of, under this Act or any other law, any electric generating facility.

(2) "Administrator" means the Administrator of the Bonneville Power Administration.

(3) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.

(4)(A) "Cost-effective", when applied to any measure or resource referred to in this Act, means that such measure or resource must be forecast—

(i) to be reliable and available within the time it is needed, and

(ii) to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.

(B) For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors,



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REPLACEMENT LANGUAGE FOR H.B. 780

69-3-109. Ascertaining property values - proof of cost effectiveness.

(1) The commission may, in its discretion investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. The commission is not bound to accept or use any particular value in determining rates; provided, that if any value is used, such value may not exceed the original cost of the property. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 6, Ch. 52, L. 1913; re-en. Sec. 3884, R.C.M. 1921; re-en. Sec. 3884, R.C.M. 1935; and Sec. 1, Ch. 28, L. 1975; R.C.M. 1947, 70-106.

(2) In ascertaining the value of property associated with energy production to be considered used and useful for the convenience of the public, the commission may, in its discretion, require proof that the investment is cost effective when compared with reasonably available alternatives. The burden of proof shall be on the public utility to prove its investment in property associated with energy production is cost effective.

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## Tax indexing

Initiative 86, the measure which will index taxes to prevent so-called bracket creep, won widespread support from the voters last fall and is now law.

Rep. Ken Vordvedt, R-Bozeman, introduced a companion measure which would have raised the personal exemption to \$1,000 for tax years beginning after Dec. 31, 1980.

That measure was vetoed by Gov. Ted Scowhinden and the first attempt to override the veto failed in the House last week.

But so far the other aspects of the law haven't been touched by the legislators and we hope it stays that way.

Income tax indexing is designed to allow tax collections to increase at a rate commensurate with real economic growth and prevents taxpayers from losing purchasing power to taxes as a result of inflation. The rationale is relatively straightforward.

Consider the federal income tax for a family of four whose income increases from \$15,000 to \$16,500 due to one-year of 10 percent inflation. If the family files a joint return using the standard deduction or zero-bracket amount, it climbs from the 18 percent to the 21 percent bracket, has the real value of its \$4,000 in personal exemptions and \$3,400 standard deduction eroded by 10 percent and finds its federal income tax bill increasing from \$1,242 to \$1,530 without any change in tax law. The family's tax bill increases by more than

## Unearned income

"Unearned income" is a term that will be used less by the federal government if Treasury Secretary Donald T. Regan gets his way.

"I worked for my money," he told the National Press Club recently. "And having worked for it, and then having had it taxed, and then having managed to save it, I invest it, I send it out to work at my risk, and then a return comes back to me. That's unearned? Not in my lexicon."

## Billions for regulation

Regulation has a multi-billion dollar impact on the public through its effect on the cost of products and services. It also has an effect on the federal budget. Estimates of the number of employees and amount of dollars devoted to regulation at 18 federal agencies were compiled recently by the Center for the Study of American Business.

The center listed 18 agencies that are in the business of federal regulation. These agencies have a total of 58,536 employees and operate under budgets totaling \$3.7 billion.

The largest regulatory agency is the Environmental Protection Agency with 11,226 employees and a budget of \$1.39 billion.

## Now you know

When Indonesia's volcano Tambora erupted in 1815, 12,000 people died. The amount of airborne ash from Tambora was 80 times greater than that of Mount St. Helens — creating enough cooling effect to cause the "year without a summer" of 1816.

The polar bear, which may weigh as much as half a ton and stand as tall as eight feet on its hind

23 percent after a 10 percent gain in income and no change in real income. Consequently, the family's after tax purchasing power declines from \$13,758 to \$13,609 even though its pre-tax income rose sufficiently to offset inflation.

While the dollar figures in this example would be smaller if a state income tax were used, the general effect of inflation on the family tax burden would be the same.

Montanans need tax indexing, particularly because Montana's state income tax is highly progressive.

President Reagan has talked about proposing indexing federal income taxes. It probably will never happen, but it sure would be nice if it did.

## Cheap power

Residential electric bills for customers of Montana power range 37.7 to 45.3 percent below the average for the Mountain Region and 46.4 to 47.9 percent below the national average, according to an Edison Electric Institute typical electric bill survey as of July 1, 1980. The study shows that only 10 out of 220 utilities surveyed offer lower residential electric rates, ranking Montana Power among the very lowest in the nation.

Those figures should be reassuring, but they don't seem to mean much when we write out the check for our utility bill.

## Short life expectancy

"The life expectancy for inflation czars is mercifully short — a situation that reminds me of P.T. Barnum's prescription for keeping a lion and a lamb in the same cage: keep a plentiful reserve supply of lambs." — Alfred E. Kahn, former Carter administration inflation fighter.

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VIEW

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 522

Initiated Bill 1

House of Representatives, January 29, 1981

Transmitted to the Clerk of the House of the 110th Maine Legislature by the Secretary of State on January 29, 1981 and 2,500 ordered printed.

EDWIN H. PERT, Clerk of the House

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Create the Maine Energy Commission.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Short title; purpose. This Act shall be known as the Maine Energy Conservation and Development Act. Its purposes are to:

1. Provide for the administration of the public utilities law through 3 elected commissioners;
2. Consolidate the functions and offices of the Public Utilities Commission and the Office of Energy Resources into one new agency;
3. Establish a state energy budget, a comprehensive energy plan which will:
  - A. Emphasize the development of renewable energy supplies and means of energy conservation;
  - B. Determine priorities for financing of projects by the Energy Development Fund; and
  - C. Guide the commission in making decisions concerning rates, construction requirements and other matters;
4. Revise the rate-making and other standards and procedures for regulating electric and natural gas companies; and
5. Administer an energy development fund to provide financing for projects selected by the state energy budget.

Sec. 2. 5 MRSA Pt. 13, as amended, is repealed.

Sec. 3. 21 MRSA § 1395, sub-§ 7 is enacted to read:

7. Contributions to elections for Maine Energy Commission. It is unlawful for any public utility, corporation or other entity regulated by Title 35 or by the Federal Power Act, Public Law chapter 285, as amended, to make a contribution or expenditure in connection with an election to the Maine Energy Commission or for any candidate for Maine Energy Commissioner knowingly to accept or receive any contribution by these entities.

Sec. 4. 35 MRSA § 1, as last amended by PL 1975, c. 771, §§ 390-392, is repealed and the following enacted in its place:

§ 1. Maine Energy Commission

1. Elected commission. The Maine Energy Commission is created and shall consist of 3 members elected by the qualified electors of the State for terms of 4 years. All 3 commissioners shall devote full time to their duties. One commissioner shall be elected statewide by the qualified electors of the State, and shall be designated chairman. One commissioner shall be elected from the first congressional district by the qualified electors of that district, and one shall be elected from the 2nd congressional district by the qualified electors of that district.

2. Overlapping terms. The chairman and members shall serve terms of 4 years, but the term of the chairman first elected shall expire at the end of 1986 and the terms of the commissioners first elected shall expire at the end of 1984.

3. Organization. The commission shall adopt and have a seal and shall maintain its headquarters office in the Augusta area, at which its records shall be kept. The commission shall appoint an executive director, a director of planning and evaluation and a general counsel, all of whom shall serve at the pleasure of the commission. The executive director shall keep a complete record of the proceedings of the commission which shall be open to public inspection at all times. The executive director shall have authority to certify all official acts of the commission, administer oaths, issue subpoenas and issue all processes, notices, orders or other documents necessary to the performance of the duties of the commission. The commission shall have custody and control of all records, maps and papers pertaining to the offices of the former Board of Railroad Commissioners, the former State Water Storage Commission, and the Public Utilities Commission and the Office of Energy Resources.

4. Employees and consultants. The commission may employ consultants and appoint employees as are necessary.

5. Acceptance of moneys. The commission may apply for and accept on behalf of the State any goods, services or funds, including grants, bequests, gifts or contributions from any person, corporation or government, including the Government of the United States.

6. Agreements. The commission may enter into such agreements with other state governmental agencies, governmental agencies of other states and of the United States and of other countries, and private persons and organizations as will promote the objectives of the commission.

Sec. 35 M.R.S.A. § 13-A, as last amended by PL 1979, c. 265, §§ 3-5, is further amended by adding after the 2nd paragraph a new paragraph to read:

The company shall file a petition for the commission's approval whenever any electric company proposes to purchase by contract an ownership interest in any electric generating plant constructed or proposed to be constructed within or outside the State; or any long-term, one year or over, purchase or sale of energy capacity to or from any source within or outside the State.

Sec. 6. 35 M.R.S.A. § 13-A, 3rd ¶, first sentence, as enacted by PL 1971, c. 476, § 1, is repealed and the following enacted in its place:

In its order, the commission shall make specific findings with regard to: The need for electric facilities, the need for the purchase of an ownership interest in any electric generating plant constructed or proposed to be constructed within or outside the State, or the need for any long-term, one year or more, purchase or sale of energy capacity to or from any source within or outside the State; and whether the proposal is consistent with the state energy budget. If the commission finds that a need exists, and that the proposal is consistent with the state energy budget, it shall issue a certificate of public convenience and necessity for the facilities or the purchase or sale proposed.

Sec. 7. 35 M.R.S.A. §§ 18 and 19 are enacted to read:

18 State energy budget

1. Budget. Beginning January 15th, 1984, and every 2 years thereafter, the commission shall transmit to the Governor and the Legislature a comprehensive state energy budget. The budget shall include, but not necessarily be limited to, the following:

A. Projection of the demand for electrical energy and natural gas in the State for the succeeding 5, 10 and 15-year periods;

B. A plan for the securing of sufficient supply to meet the projected demand, with maximum feasible utilization of renewable resources, including but not limited to solar, low head hydro, wind, peat, biomass and tidal resources; generation technologies; and imported power;

C. A plan for the encouragement of conservation of energy by residential, commercial, governmental and industrial users;

D. Identification of any expected increases to the State's capacity to generate or transmit electrical energy and natural gas, the costs of the additions and an evaluation of their impact on the state's environment, the health and safety of the population and the short and long-term cost of the ratepayers;

E. A report on the impact of the state energy budget on the state's elderly low income populations;

F. Recommendation to the Governor and the Legislature for any administrative or legislative actions which in the view of the commission are necessary to support the state energy budget or otherwise carry out the intent of this section; and

G. An explanation of the major assumptions and methods used in constructing the state energy budget.

2. Process. The state energy budget shall be determined as follows.

A. On or before January 15th of each year every electric company, gas company and natural gas pipeline company shall transmit to the commission its forecast of energy demand and proposed resources to meet that demand for its service area for the ensuing 5, 10 and 15-year periods. The specific content required for the forecasts shall be designated by rule making.

B. Within a reasonable time after receiving the forecasts, the commission shall prepare a forecast of energy demand and proposed resources to meet that demand for the State for the ensuing 5, 10 and 15-year periods. The specific content required for the forecast shall be designated by rule making.

C. Within a reasonable time after preparation of its forecast, the commission shall hold hearings to assess the reasonableness of company and other forecasts. After the hearings the commission shall make a preliminary decision and issue a draft budget.

3. Adoption. Prior to the adoption of the state energy budget by the commission, the draft of the budget prepared pursuant to subsection 2 shall be submitted to the Legislature solely for approval or disapproval. The plan shall be disapproved if 2/3 or more of each House of the Legislature votes a resolution of disapproval. In the absence of a 2/3 vote of disapproval within 60 calendar days from submission, the budget shall be deemed adopted.

#### § 19. Energy Development Fund

1. Establishment. There is established an Energy Development Fund, to be administered by the commission. The fund will consist of moneys raised from the following sources:

A. General obligation bonds;

B. Revenue bonds issued by the commission and by others;

C. Grants, loans and gifts; or

D. Appropriations.

2. Purposes. The fund shall be used for financing projects within the guidelines set forth in the state energy budget.

**Sec. 8.** 35 MRSA § 51, 3rd sentence, is repealed and the following enacted in its place:

In determining just and reasonable rates, the commission shall provide revenues to the utility as may be required to perform its public service, consistent with the state energy budget and to attract necessary capital on just and reasonable terms.

**Sec. 9.** 35 MRSA § 69-A is enacted to read:

**§ 69-A. Effective date of change in rates**

Notwithstanding any other provision of this chapter no change in rates charged by an electric or gas company may take effect until expressly approved by the commission after notice and hearing.

**Sec. 10.** 35 MRSA § 93, first sentence, as enacted by PL 1977, c. 521, is repealed and the following enacted in its place:

The commission shall order electric companies and gas companies to submit specific rate design proposals and related programs which are consistent with the state energy budget at all electric company and gas company rate-making proceedings pending before the commission.

**Sec. 11. Revision clause.**

1. Wherever in the Revised Statutes, the words "Public Utilities Commission" appear or reference is made to that name, they shall be amended to read and mean "Maine Energy Commission."

2. Wherever in the Revised Statutes the words "Office of Energy Resources" appear or reference is made to that name, they shall be amended to read and mean "Maine Energy Commission."

Wherever in the Revised Statutes the word "commissioner," meaning commissioner of the Public Utilities Commission, appear or reference is made to that name, it shall be amended to read and mean "Commissioner of the Maine Energy Commission."

4. Wherever in the Revised Statutes the words "director of the Office of Energy Resources" appear or reference is made to that name, they shall be amended to read and mean "Maine Energy Commission."

**Sec. 12. Disposition of assets, liabilities, personnel and pending cases; effective date.**

1. The assets and liabilities of the Office of Energy Resources and the Public Utilities Commission shall be transferred to the Maine Energy Commission.

2. Nothing in this Act may be construed to affect the provisions of any collective bargaining agreement between the State and the employees of the agencies affected by this Act, in effect on the effective date of this Act.

3. All cases pending on the effective date of this Act shall be disposed of by the

new commissioners, under the law in effect when the cases were filed. All cases requiring conformance to the state energy budget filed after the effective date of this Act and prior to the adoption of the state energy budget shall be disposed of by the new commissioners under the law in effect prior to the effective date of the Act.

**Sec. 13. Effective date.** Sections 1 through 12 of this Act shall take effect upon the election of the commissioners.

**Sec. 14. Election of commissioners.** The first election for the commissioners shall be held during the first November after approval of this Act by the voters.

#### STATEMENT OF FACT

This bill creates the Maine Energy Commission, a new state agency essentially the product of a merger of the now existing Public Utilities Commission and the Office of Energy Resources. The bill provides for the election of 3 commissioners for terms of 4 years, as opposed to the now existing method of gubernatorial appointment of Public Utilities Commission commissioners for 7-year terms.

The bill also revises the rate making and capital construction approval procedures for electric and natural gas utilities. The major change in these procedures requires that all applications for rate increases and authorizations for new capital construction be consistent with a state energy budget. The preparation of this budget is covered in section 7. It is a comprehensive energy plan forming the basis of day-to-day decisions of the commission which charts the course of Maine's energy future.

In addition, the bill, in section 7, creates an Energy Development Fund designed to implement the state energy budget by providing financing for the projects targeted in the budget.

Sections 11 and 12 contain the transitional provisions necessary to put the new commission into operation.