



# Energy and Telecommunications Interim Committee

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

## 58th Montana Legislature

**SENATE MEMBERS**  
ROYAL JOHNSON  
DON RYAN  
EMILY STONINGTON  
FRED THOMAS

**HOUSE MEMBERS**  
DANIEL FUCHS  
DAVE GALLIK  
GARY MATTHEWS  
ALAN OLSON

**COMMITTEE STAFF**  
MARY VANDENBOSCH, Research Analyst  
TODD EVERTS, Staff Attorney  
REBECCA SATTTLER, Secretary

### MEMORANDUM

**To:** Energy and Telecommunications Interim Committee (ETIC)

**From:** Mary Vandenberg  
Lead Staff  
444-5367 or mvandenberg@mt.gov

**Date:** April 5, 2004

**Subject:** Revision of Laws Related to the ETIC and Energy Policy

#### Introduction

Your work plan provides that staff will review statutes and rules and identify possible changes to statute or rule made necessary by the creation of the ETIC.

I have attached a draft bill that identifies what I believe is the simplest approach to addressing the issues that I have identified.

This memo includes:

- an explanation of each section of the draft bill; and
- a discussion of other issues not addressed in the bill.

The bill was drafted by staff for illustration purposes. If the committee wants to pursue a bill, the committee must approve a motion to request a bill draft. This draft represents one way to address the issues; I would be happy to discuss alternatives with you at your request.

#### Section 1

**What:** Clarifies that the ETIC has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the Public Service Commission (PSC).

**Why:** The PSC is not attached to the Department of Public Service Regulation for administrative

purposes.<sup>1</sup> The PSC serves as the department head for the Department of Public Service Regulation (2-15-2601, MCA). It is the PSC that adopts administrative rules, proposes legislation, etc. related to energy and telecommunications.

## **Section 2**

**What:** Eliminates requirement that energy conservation building code rules conform to policies developed under Title 90, Chapter 4, Part 10, MCA.

- Why:**
- o There are no policies in Title 90, Chapter 4, Part 10 that address energy conservation building codes.
  - o LC 7777 eliminates the process for development of energy policy components established in Title 90, Chapter 4, Part 10.
  - o The current law implies that rules must conform to a policy developed by a working group. In my opinion, this interpretation of the law would be an unlawful delegation of power in violation of Montana's Constitution which grants legislative power to the Legislative Branch and prohibits other branches of government from exercising that power.
  - o The current law has caused confusion and delay in revision of the energy conservation building codes by the Department of Labor and Industry.

## **Sections 3 and 4**

**What:** Eliminates the requirement that the Department of Environmental Quality (DEQ) and the Environmental Quality Council (EQC) maintain a continual process to develop the components of a comprehensive state energy policy.

- Why:**
- o The Montana Legislature created the ETIC and empowered the committee to act in its areas of responsibility through enactment of House Bill No. 509 (2003).
  - o Only the Legislature can establish energy policy. The ETIC is charged with preparing bills and resolutions that it believes are necessary for presentation to the next regular session of the Montana Legislature. The process established in 90-4-1003, MCA duplicates the ETIC's charge.
  - o Repeal of these sections makes the laws related to the ETIC comparable to those for other interim committees.
  - o It is not necessary to prescribe the process for development of the state's energy policy in statute. If 90-4-1003, MCA is repealed, the ETIC can still seek the advice of a working group, if it desires. Ultimately, under the Montana Constitution, the process for establishing policy is the legislative process established by the rules of the Montana Legislature.

---

<sup>1</sup>Title 2, Chapter 15 addresses allocation of agencies to departments for administrative purposes.

## **Other Issues**

These are other issues that I identified in my review. None of these issues require legislation. If you have any concerns about the status quo and would like to pursue changes, I would be happy to identify options at your request.

## **Agency Oversight**

The PSC has responsibilities and rules that are not related to energy and telecommunications (e.g., motor carriers). More significantly, the ETIC does not have oversight over entities within the Executive Branch that are active in energy programs and/or policy. Specifically,

- The Governor's Office of Economic Opportunity is involved in energy policy. The Economic Affairs Interim Committee has oversight responsibilities for this office.
- Northwest Power and Conservation Council (NPCC) members and staff have devoted significant time to developing energy policies, including policies that directly affect public utility regulation. No committee has been assigned oversight responsibilities for the NPCC. (The Legislative Council is responsible for review of legislation proposed by entities not assigned to another committee.)
- The DEQ or the Board of Environmental Review have energy responsibilities, including administration of an alternative energy revolving loan account, and implementation of the Major Facility Siting Act and the state building energy conservation program. The EQC has oversight responsibilities for these entities.
- The Department of Public Health and Human Services (DPHHS) is responsible for energy assistance programs. The Children, Families, Health, and Human Services Interim Committee has oversight responsibilities for DPHHS.
- The Department of Revenue has authority over universal system benefits credits and is also responsible for implementation of tax laws that affect energy projects. The Revenue and Transportation Interim Committee has oversight responsibilities for the Department of Revenue.
- Other entities involved in energy include the Department of Commerce, the Board of Investments, and the Board of Oil and Gas Conservation.

There is a mechanism in place for one interim committee to refer an issue to another. Section 5-5-202, MCA, provides that an interim committee or the EQC may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Furthermore, the Legislative Council can refer an issue of statewide importance to a statutorily created committee. The timing of the referral could be problematic if the committee on the receiving end wished to exercise its authorities with respect to administrative rules. The timing issue could be addressed by proactively identifying matters to be referred at the beginning of the interim. The referring committee could direct staff to send rules on specific topics to certain committees.

## **Appointment of Members to the ETIC**

**Experience.** The Joint Rules have not been revised since the ETIC was created. Joint Rule 30-

70 provides for appointment of interim committees and provides that 50% of the membership of certain interim committees be selected from certain standing committees. The appointment of members to the Energy and Telecommunications Interim Committee is not yet addressed. (I have called this to the attention of the staff for the Rules Committee.)

**Number.** All interim committees have 8 members unless the Legislative Council determines that the committee workload requires a greater number of committee members. Committees that have 12 members include: Education and Local Government, Law and Justice, and Revenue and Transportation.

**Issue overlap.** Legislators are appointed to two interstate organizations that are involved in energy issues: the Legislative Council on River Governance and the Pacific Northwest Economic Region. None of the members appointed to represent Montana on these interstate organizations also serve on the ETIC.

Attachments:

LC 7777

Repealed sections

Cl2196 4096mvnb.