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ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE
67th Montana Legislature

SENATE MEMBERS

Janet Ellis
Mary McNally
Keith Regier
Tom Richmond

HOUSE MEMBERS

Laurie Bishop
Denise Hayman
Christopher Pope
Derek Skees
Brad Tschida
Daniel Zolnikov

COMMITTEE STAFF

Trevor Graff - Research
Analyst
Nadine Spencer - Secretary
Jameson Walker - Attorney

MINUTES LOG

August 20, 2020

9:00 AM

Zoom Meeting

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Please contact the Legislative Services Division at 406-444-3064 for more information.

ROLL CALL

Members Present:

Rep. Derek Skees, Chair (R)
Sen. Janet Ellis, Vice Chair (D)
Rep. Laurie Bishop (D)
Rep. Denise Hayman (D)
Sen. Mary McNally (D)
Rep. Christopher Pope (D)
Sen. Keith Regier (R)
Sen. Tom Richmond (R)
Rep. Brad Tschida (R)
Rep. Daniel Zolnikov (R)

Staff Present:

Trevor Graff, Research Analyst
Nadine Spencer, Secretary
Jameson Walker, Attorney

Committee Business Summary

The Energy & Telecommunications Interim Committee (ETIC):

- Voted to change the agenda to include a discussion on the legislative proposals from Roger Koopman;
- Voted to put PD 0001 out for public comment;
- Voted to have staff prepare a bill draft on the proposal from Mr. Koopman to eliminate the NorthWestern Energy preapproval process (69-8-421) and allow staff to consider components of 69-12-307;
- Voted to have staff prepare a bill draft on the proposal from Mr. Koopman to reinstate Power Costs and Credits Adjustment Mechanism (PCCAM) deadband.

Agenda (Attachment 1)**Call to Order/Roll Call**

- 09:01:10 Rep. Skees called the meeting to order at 9:00 a.m. The secretary called the roll. [\(Attachment 2\)](#)
- 09:01:13 Rep. Skees said staff will provide an introduction for each agenda item. He said in order to be able to have enough time for public comment this will be the last meeting of the interim to introduce committee legislation.

Military Installations and Wind Farm Siting**Introduction**

- 09:02:12 Trevor Graff, research analyst, Legislative Service Division (LSD), said at the last meeting the ETIC was given information related to the issues with siting wind farms near military installations in Montana. [\(Exhibit 1\)](#)

Other States' Language

- 09:03:22 Mr. Graff discussed the Oklahoma draft statute. He said it centralizes on a distinct setback from military facilities and the role of the Federal Aviation Administration's (FAA) Military and Aviation Installation Assurance Siting Clearing House. [\(Exhibit 2\)](#)

Public comment

- 09:07:51 Steven Sample, Department of Defense (DOD), Military Aviation Installation Assurance Siting Clearing House.
- 09:14:10 Jeff Fox, Montana policy manager, Renewable Northwest.
- The ETIC also received written public comment [\(Exhibit 3\)](#)

Questions from the committee

- 09:18:23 Rep. Skees said, without objection, he will allow the committee to ask questions to anyone testifying today or anyone who testified at the last ETIC meeting.
- 09:18:58 Rep. Hayman asked Mr. Fox about issues with the DOD contracts with individual landowners for setbacks.
- 09:21:34 Rep. Hayman asked Mr. Fox how other states have dealt with the issue of landowner development rights and if there is an example of a successful agreement between the DOD, the landowner, and the energy company.
- 09:23:40 Sen. Ellis asked Mr. Sample about the impact from military training routes and weather radar. Mr. Sample said he will provide more information.
- 09:27:58 Sen. Ellis asked Mr. Sample about the number of miles of flight training routes. Mr. Sample said he will provide a map that quantifies the information.
- 09:29:42 Rep. Pope asked Mr. Sample if the issue is specific to Montana or if the DOD is trying to establish a statute in each state.
- 09:33:18 Rep. Pope asked Mr. Sample about the need for legislation in Montana.
- 09:35:39 Rep. Bishop asked Mr. Sample about putting the setback into code and if he can guarantee that the distance will not change in the future.
- 09:37:50 Rep. Tschida asked Mr. Sample about the two-mile radius and if there are certain projects that may require less distance.
- 09:40:29 Rep. Skees asked Mr. Sample if the Department of Energy, or any other federal agency, consults with the DOD when awarding federal grants for funding construction of wind projects built in Montana.
- 09:41:28 Rep. Skees asked Mr. Sample if a no hazard designation is required from the clearing house before funding can be obtained for developing a project.
- 09:44:13 Rep. Skees asked Mr. Sample about requirements that the FAA communicate with the DOD when they receive notification for a self-funded project.
- 09:45:02 Rep. Skees asked Mr. Sample if the DOD is seeking federal legislation.
- 09:46:08 Rep. Skees said Capt. Gordon Blair will show a video of how wind turbines affect a flight path. [190513_Wind Turbine.MP4](#)
- Rep. Skees asked Mr. Blair how close the helicopter in the video was flying to the wind turbines.
- 09:48:10 Rep. Skees thanked Mr. Blair and Mr. Graff for the video presentation.
- 09:52:49 Rep. Hayman asked Mr. Blair where the video was taken.
- 09:53:23 Rep. Hayman asked Mr. Blair if the FAA had any objection regarding development of the project.
- 09:53:49

09:55:53 Rep. Skees asked Lt. Col. Jason Keen, Malstrom Air Force Base, if he had any information to add. Mr. Keen provided additional information about land use and setbacks.

Committee action

09:59:15 Rep. Skees asked about committee action for proposed legislation.

09:59:28 Sen. Richmond commented on permitting and setback requirements.

10:03:23 Rep. Hayman agreed with Sen. Richmond and said the state should not be involved.

10:04:22 Rep. Pope said he also supports the view presented by Sen. Richmond and the need to ensure that the least amount of conflict happens between land use, energy development in the state, and national security requirements.

10:05:05 Rep. Skees said he shares Sen. Richmond's concerns on which agency should have authority. He discussed the process for committee legislation and said that the DOD can still work with an individual legislator to draft legislation.

10:07:48 Mr. Sample thanked the committee. He said he will provide information that characterizes the missions the DOD is concerned about.

10:08:06 Rep. Skees said any information given to the committee by the DOD should be considered confidential.

PSC Legislative Proposals

10:08:53 Mr. Graff said the committee received two requests for legislative proposals from the Public Service Commission (PSC) for pre-introduction. He said at the last meeting the ETIC approved the PSC's proposal to amend SB 244 (2019) and to work with staff on a committee bill draft. He said today the committee needs to discuss the changes to Title 69. [\(Exhibit 4\)](#)

10:11:16 Jameson Walker, staff attorney, LSD, provided an overview of the request to repeal the commission's Title 69 judicial review procedures, sections 69-3-401 through 405, MCA.

Public comment

None

Questions from the committee

10:14:38 Sen. Ellis discussed her concerns and said the PSC rate case process is expensive. She asked Mr. Walker if the Montana Administrative Procedures Act (MAPA) allows interveners in PSC rate cases to participate in challenges of PSC actions. She asked if Title 69 allows aggrieved parties to participate.

10:19:06 Rep. Skees asked Mr. Walker if repealing sections 69-3-401 through 405 stops a utility from having a chance to appeal an order issued by the PSC.

- 10:20:17 Rep. Skees said without objection he will allow the committee to ask questions to the people that testified at the last ETIC meeting.
- 10:22:37 Rep. Skees asked Robyn Arnold, policy analyst, Department of Public Service Regulation, if the repeal limits the ability of a public utility to challenge an order.
- 10:22:44 Rep. Skees asked Zachary Rogala, legal counsel, PSC, about the need for the level of the repeal.
- 10:28:33 Sen. Regier asked Ms. Arnold about the outcome of the vote that was taken by the PSC.

Committee action

- 10:29:03 Rep. Skees asked Mr. Graff about committee action.
- 10:29:48 Rep. Skees said if the draft proposal is approved it will go out for public comment. Mr. Graff said the bill will not go out for public comment but allow for pre-introduction status for the 2021 legislative session.

Motion

- 10:30:28 Sen. Richmond moved to draft the legislative proposal to repeal sections 69-3-401 through 405, MCA, for pre-introduction.

Discussion on the motion

- 10:31:59 Sen. Ellis
- 10:32:14 Rep. Skees
- 10:32:28 Sen. McNally

Vote

- 10:33:33 The motion failed 5-5 by roll call vote. Sen. Ellis, Sen. McNally, Rep. Bishop, Rep. Hayman and Rep. Pope voted no. ([Attachment 3](#))
- 10:34:30 Rep. Skees asked Mr. Graff about committee action on the legislative proposals from Roger Koopman.
- 10:36:09 Rep. Skees said the committee can make a motion to add an agenda item for today to review the proposals submitted by Mr. Koopman.

Motion

- 10:36:28 Sen. Ellis moved to change the agenda to include a discussion on the legislative proposals from Mr. Koopman.

Discussion on the motion

- 10:37:37 Rep. Skees
- 10:38:31 Sen. Regier

Vote

- 10:39:10 The motion carried 6-4 by roll call vote. Rep. Tschida, Sen. Regier, Sen. Richmond, and Rep. Skees voted no. ([Attachment 4](#))
- 10:40:30 Sen. Ellis asked when the discussion will be added to the agenda. Rep. Skees said it can be added after the administrative rule review at the end of the day. Mr. Graff agreed.
- 10:42:07 Recess
- 11:10:08 Reconvene

HB 597 (2019) Cleanup Legislation

Overview

- 11:10:15 Mr. Graff provided an overview of the amendment to HB 597. ([Exhibit 5](#)) He said the committee needs to decide whether to put the bill draft out for public comment.

Public comment

None

Questions from the committee

- 11:12:16 Rep. Skees asked Mr. Graff if the two-year change is added to other sections of the bill draft.

Committee action

Motion/Vote

- 11:13:09 Sen. Ellis moved to put PD 0001 out for public comment. The motion carried unanimously by voice vote.
- 11:15:55 Recess
- 11:19:21 Reconvene

PSC Update

- 11:19:38 Bob Lake, chairman, PSC, provided an update on PSC activity.
- 11:20:24 Mr. Lake provided an update on the status of NorthWestern Energy (NWE) dockets.
- 11:26:06 Mr. Lake discussed the docket for Apex Solar.
- 11:27:02 Mr. Lake discussed the dockets for Montana-Dakota Utilities.
- 11:30:04 Mr. Lake discussed an application by North Star Water and Sewer to increase its rates for a subdivision near Helena.

- 11:31:33 Mr. Lake said on July 28 the commission approved a staff recommendation for handling informal and formal complaints by transportation carriers against entities they suspect are operating without proper commission authorization.
- 11:32:16 Mr. Lake discussed the status of implementation of legislation from the 2019 session and said there has been no change since the July ETIC meeting.
- 11:35:06 Mr. Lake provided an update on the status of the PSC petition for declaratory ruling involving public records request.

Public comment

None

Questions from the committee

- 11:37:27 Sen. Ellis asked Mr. Lake about the petition that was filed by NWE to restart the docket to purchase Colstrip Unit 4 and the length of the comment period for interveners to respond.
- 11:40:00 Sen. Ellis asked Mr. Lake if the petition to restart the docket is on the agenda for the PSC meeting next Tuesday. Sen. Ellis redirected her question to Will Rosquist, Regulatory Division administrator, PSC.
- 11:43:02 Rep. Hayman said she would like a copy of the PSC report prior to the ETIC meetings. Rep. Skees asked Mr. Lake to provide a copy of his report in the future. Mr. Lake said he will.
- 11:44:39 Rep. Pope asked Mr. Lake about the PSC timelines.
- 11:47:04 Rep. Pope asked Mr. Lake about the ability for the PSC to finish its procedure schedule before the November election.
- 11:50:33 Rep. Pope asked Mr. Lake if the PSC will hold a docket on the Department of Environmental Quality's remediation plan for Colstrip after the final report is received.
- 11:52:07 Sen. McNally asked Mr. Lake about receiving notification for the public comment period on NWE's acquisition of Colstrip Unit 4.
- 11:54:20 Sen. McNally asked Mr. Lake about reports regarding the need for urgent maintenance at Colstrip Unit 4 and if it has any impact on the docket going forward.
- 11:56:01 Rep. Skees asked Mr. Lake to provide a copy of the media reply on the petition for declaratory ruling as soon as it is released.

Committee action

None

Lunch

- 11:57:54 Recess
- 13:00:32 Reconvene

Railroad Rights of Way Issues

Overview

- 13:01:50 Mr. Graff provided an introduction and said the committee received a letter from BNSF Railway and Montana Rail Link (**Exhibit 6**) and a letter from Union Pacific Railroad Company. (**Exhibit 7**) Mr. Graff said the committee also received a draft proposal from the Montana Rural Electric Cooperatives. (**Exhibit 8**)
- 13:03:07 Rep. Skees commented on the legislative draft proposal from the Co-ops.

Public comment

- 13:04:58 Matt Jones, BNSF Railway.
- 13:08:28 Geoff Feiss, general manager, Montana Telecommunications Association (MTA).
- 13:14:30 Gary Wiens, Montana Electric Cooperatives' Association (MECA).
- 13:16:56 Nathan Anderson, Union Pacific Railroad Company.
- 13:23:29 Kelly Lynch, deputy director and legal counsel, Montana League of Cities and Towns (MLCT).
- 13:27:30 D.B. Kenner, Brotherhood of Locomotive Engineers and Trainmen.
- 13:31:06 Ross Lane, vice president Corporate Relations, Montana Rail Link.

Questions from the committee

- 13:39:13 Rep. Bishop asked Ms. Lynch about the proposed legislation and other solutions that might be relevant for the MLCT.
- 13:40:37 Rep. Hayman asked Mr. Feiss about attempts to deal with the issue on the federal level.
- 13:43:09 Rep. Hayman asked Mr. Anderson about working with the utilities to find a solution.
- 13:47:43 Sen. Regier asked Mr. Jones if BNSF handles all the rights-of-way requests and supervisions or if they hire a third party to review the applications.
- 13:50:06 Sen. Regier asked Mr. Jones if BNSF monitors how the cases are handled by third-party firms.
- 13:51:48 Sen. Regier asked Mr. Feiss if the MTA was involved with drafting the proposed legislation and about including other entities that want to cross utility rights-of-way.
- 13:53:12 Sen. Regier asked Ms. Lynch about the draft legislation and the need to include cities and counties.
- 13:54:25 Rep. Pope asked Mr. Lane about efforts made by Union Pacific to negotiate with MTA and MECA.

14:01:26 Rep. Skees commented on the issue and said the private sector needs to find a solution.

Committee action

14:03:30 Rep. Skees asked about committee action.

14:03:51 Sen. Richmond said he does not see a role for the ETIC in endorsing the proposed legislation and recommended that the committee not take any action.

14:04:40 Rep. Skees said no action will be taken by the committee and thanked the public for their participation.

14:05:15 Recess

14:30:22 Reconvene

E-Rate Program Proposed Legislation

Overview/Draft Proposal

14:31:04 Mr. Graff provided an introduction and said the committee voted on the original draft legislation to reauthorize the E-rate program at an earlier meeting. He said today the committee needs to consider an amendment proposed to the original bill draft. [\(Exhibit 9\)](#)

Public comment

14:33:35 Mr. Feiss.

Questions from the committee

14:38:02 Rep. Hayman asked Mr. Feiss why the money established under the 2017 law was not fully spent.

14:39:41 Rep. Hayman asked Mr. Feiss if the original money was allocated for new expenditures for broadband.

14:40:55 Rep. Hayman asked Mr. Feiss if the additional language will expand the use of e-rate money for broadband that schools are currently using in their districts.

14:41:58 Rep. Hayman asked Mr. Feiss if the money will be used to help students who do not have the capability to use broadband because they do have it in their home, rather than being used to reimburse districts that already have broadband and the capability to deliver it.

14:42:53 Rep. Hayman asked Mr. Feiss if the bill draft is dependent on school districts approaching companies to provide services to students that do not have broadband. She asked if it does not allow students or parents to contact providers directly.

14:44:57 Sen. Ellis asked Mr. Feiss about the bill draft and the comment that "broadband" needs to be defined.

14:47:05 Sen. Ellis asked Mr. Feiss about the process for obtaining information on the money that may be left over when the bill initially passed.

14:48:14 Rep. Pope asked Mr. Feiss about the sideboards for infrastructure reimbursement for providers.

14:50:57 Rep. Pope asked Mr. Feiss about the role of the Office of Public Instruction (OPI).

14:51:34 Rep. Skees asked Mr. Feiss why the sunset isn't tied to federal funding.

14:52:12 Rep. Skees asked Mr. Feiss about matching the language in the bill draft to the language in federal code.

14:54:31 Rep. Skees asked Mr. Feiss if private schools can also use the money.

14:54:55 Rep. Skees asked Mr. Feiss to summarize the amendment.

Committee action

14:56:53 Mr. Graff said he recommends making the changes to the original bill draft.

14:57:50 Sen. Ellis asked Mr. Graff about making changes to the amendment. Rep Skees told Sen. Ellis she can move the bill, move the amendment, and offer another amendment. He said staff can draft the bill and the committee can consider it at the meeting tomorrow.

Motion/Vote

14:59:58 Sen. Ellis moved to approve PD 0002 as it was initially presented to the committee. The motion carried unanimously by voice vote.

Motion

15:01:28 Sen. Ellis moved to amend PD 0002 with the amendment proposed by Mr. Feiss.

Discussion on the motion

15:02:23 Sen. Regier

15:02:39 Rep. Skees

15:02:48 Mr. Graff

15:03:02 Rep. Skees

15:03:09 Sen. Regier

Substitute Motion/Vote

15:03:24 Sen. Regier made a substitute motion to segregate the amendment into two sections. The motion carried unanimously by roll call vote.
[\(Attachment 5\)](#)

Motion/Vote

15:05:26 Sen. Ellis moved section 1(a) of the amendment and to delete the Department of Commerce and insert the Office of Public Instruction. The motion carried unanimously by voice vote.

Motion

15:06:25 Sen. Ellis moved section 1(b) of the amendment.

Discussion on the motion

15:07:00 Rep. Pope

15:07:55 Sen. Regier

15:08:39 Sen. Ellis

15:10:23 Rep. Hayman

15:11:32 Sen. Regier

15:11:53 Mr. Graff

15:12:23 Sen. Regier

15:12:35 Rep. Skees

Vote

15:14:30 The motion failed 4 - 6 by roll call vote with Rep. Bishop, Rep. Hayman, Rep. Pope, and Sen. Ellis voting aye. ([Attachment 6](#))

15:14:37 Sen. Ellis asked Rep. Skees about the process and if the committee will consider the bill at the meeting tomorrow.

15:15:27 Mr. Graff said the committee is only voting to put the bill draft out for public comment. He said a final vote on a committee bill will be made in September.

15:16:09 Sen. McNally said it is an important concept and the reason she voted "no" was the wording.

15:16:38 Rep. Hayman said she agrees with staff that there are educational resources available in the community that can help to improve the bill draft and provide services for students. She said she will reach out and contact people tonight.

15:17:25 Rep. Bishop agreed. She said since this is a stressful time for schools it may be better to wait and get feedback before the next meeting.

15:18:08 Rep. Skees agreed and asked Mr. Graff to reach out to OPI. He asked committee members to reach out to the education community prior to the September meeting.

15:18:40 Rep. Hayman agreed.

15:19:08 Mr. Graff asked about the bill draft for the meeting tomorrow. Rep. Skees said without objection the committee can work on improving the bill draft and discuss it at the meeting in September.

15:20:24 Mr. Graff said he will work on the amendments made by the committee today and draft a bill for public comment. He said he will include questions regarding amendments providing broadband to individual homes.

Administrative Rule Review

15:20:48 Mr. Walker said there are no new rules for the ETIC to review.

Public comment

None

Questions from the committee

None

Committee action

None

Public Comment on Matters Within the Jurisdiction of the ETIC

None

Roger Koopman Legislative Proposals

15:23:15 Sen. Ellis asked about the legislative proposals from Roger Koopman.

Committee action

Motion

15:24:08 Sen. Ellis moved to have staff prepare a bill draft on the proposal to eliminate NWE's preapproval process (69-8-421).

15:24:54 Mr. Graff

15:27:29 Rep. Skees

15:27:42 Sen. Ellis

15:28:24 Rep. Pope

15:29:53 Sen. Richmond

15:31:11 Rep. Skees

15:31:51 Rep. Bishop

15:32:07 Rep. Skees

15:32:32 Sen. McNally

15:33:47 Rep. Hayman

Substitute Motion

15:34:22 Rep. Hayman made a substitute motion to allow the committee to hear from Mr. Koopman about his proposals

Discussion on the motion

15:34:40 Rep. Skees

15:34:56 Rep. Hayman

Vote

15:35:39 The motion failed 5-5 by roll call vote. Rep. Tschida, Rep. Zolnikov, Sen. Regier, Sen. Richmond, and Rep. Skees voted no. ([Attachment 7](#))

Motion

15:36:25 Sen. Ellis restated her previous motion.

15:37:01 Mr. Graff

15:37:18 Rep. Skees

Vote

15:37:27 The motion carried 6 - 4 by roll call vote. Rep. Skees, Rep. Tschida, Sen. Regier, and Sen. Richmond voted no. ([Attachment 8](#))

15:38:34 Mr. Graff said he will prepare a bill draft for the committee to consider tomorrow and asked about the competitive solicitation process.

15:39:05 Rep. Skees said he recommends making a motion to empower staff to consider 69-12-307 components in the bill draft.

Motion/Vote

15:39:29 Sen. Ellis moved to allow staff to consider components of 69-12-307 into 69-8-421. The motion carried 9-1 by voice vote. Sen. Regier voted no.

Motion

15:40:22 Sen. McNally moved to have staff prepare a bill draft to reinstate Power Costs and Credits Adjustment Mechanism (PCCAM) deadband.

Discussion on the motion

15:41:25 Mr. Graff

15:41:55 Rep. Pope

15:42:37 Rep. Skees

Vote

15:42:51 The motion carried 6-4 by roll call vote. Rep. Tschida, Sen. Regier, Sen. Richmond, and Rep. Skees voted no. ([Attachment 9](#))

15:43:35 Rep. Skees asked about motions on the other two proposals from Mr. Koopman.

15:44:34 Rep. Skees thanked the committee and staff.

ADJOURNMENT

15:45:17

Rep. Skees adjourned the meeting at 3:45 p.m.