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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

July 16, 2020

8:00 AM

State Capitol, Room 172

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ROLL CALL

Members Present in Helena:

Rep. Derek Skees, Chair (R)
Sen. Keith Regier (R)
Sen. Tom Richmond (R)
Rep. Daniel Zolnikov (R)

Members Present Remotely:

Sen. Janet Ellis, Vice Chair (D)
Rep. Laurie Bishop (D)
Rep. Denise Hayman (D)
Sen. Mary McNally (D)
Rep. Christopher Pope (D)
Rep. Brad Tschida (R)

Staff Present:

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

AGENDA ([Attachment 1](#))**Reconvene**

08:02:08 Rep. Skees reconvened the Energy and Telecommunications Interim Committee (ETIC) at 8:01 a.m. The secretary noted the roll.
([Attachment 2](#))

Montana Climate Solutions Council

08:02:08 Trevor Graff, research analyst, Legislative Services Division (LSD), provided an introduction.
08:03:02 Patrick Holmes, natural resource policy advisor for Governor Bullock, provided an update on the Montana Climate Solutions Council. ([Exhibit 1](#))

Public comment

08:08:31 Randy Pinocci, Public Service commissioner, District 1.
08:09:08 Sen. Ellis objected to Mr. Pinocci's testimony.
08:09:53 Sen. McNally said Mr. Pinocci should limit his comments to the report.

Motion

08:10:17 Rep. Hayman moved that the committee vote on the objection by Sen. Ellis.

Discussion on the Motion

08:11:14 Rep. Pope
08:11:41 Rep. Skees
08:12:08 Rep. Pope
08:12:15 Rep. Skees

Vote

08:12:48 The motion failed 5-5 by roll call vote. Sen. Ellis, Sen. McNally, Rep. Bishop, Rep. Hayman, and Rep. Pope voted no. ([Attachment 3](#))
Rep. Tschida voted aye by proxy. ([Attachment 4](#))

08:13:44 Mr. Pinocci continued.

08:14:52 Rep. Pope requested that Mr. Pinocci limit his comments to the report. Rep. Skees said the committee has already ruled on the testimony.

08:15:44 Mr. Pinocci continued.

08:16:17 Rep. Pope objected and asked that Mr. Pinocci limit his comments to the report. Rep. Skees asked Mr. Pinocci to direct his comments to the Montana Climate Solutions Council.

Questions from the committee

08:17:54 Sen. Regier asked Mr. Holmes about the research the Council used for the plan.

08:20:52 Sen. Regier asked Mr. Holmes who set the goal of net greenhouse gas neutrality by 2035.

08:21:33 Sen. Regier asked Mr. Holmes if the Council considered any positive effects of climate change.

08:22:31 Sen. Regier asked Mr. Holmes about the budget for the Council.

08:23:53 Sen. Ellis asked Mr. Holmes about the public comment process and how the comments are being incorporated into the final report.

08:26:42 Sen. Ellis recommended including a list of the members of the Council in the report and said it was a bipartisan committee that came up with the recommendations.

08:27:36 Rep. Pope apologized for his earlier statement and said he appreciates Rep. Skees leadership.

08:28:14 Rep. Pope thanked Mr. Holmes and asked about the work of the Council.

08:32:25 Rep. Pope asked Mr. Holmes about the future of the Council after the report is finalized. He asked if there are other states that Montana can look to.

08:34:54 Rep. Skees thanked Mr. Holmes and asked about recommendations from the Council for legislation or rulemaking once the report is finalized.

08:37:02 Rep. Skees recommended that the Council wrap up its work sooner rather than later so the ETIC has time to consider any legislation.

08:37:54 Rep Tschida joined the meeting.

Environmental Quality Council Update

08:38:26 Joe Kolman, director, Legislative Environmental Policy Office, LSD, provided an overview of the agenda for the Environmental Quality Council meeting scheduled for July 29-30.

Call Before You Dig Update

08:46:43 Mr. Graff provided an introduction.

08:48:12 Doug Hardy, chair, Underground Facility Protection Council, provided an update on the call before you dig laws.

08:53:33 Brief recess
08:54:28 Reconvene

Public comment

None

08:55:28 Rep. Skees said Tim Lloyd, Building Codes Bureau chief, Department of Labor and Industry, is experiencing technical difficulties and cannot join the meeting. He said Mr. Lloyd can submit any additional information to the committee as written testimony.

Questions from the committee

None

Committee Action

08:56:22 Mr. Graff asked if the ETIC wants to continue to receive updates on the program during future interims. Rep. Skees said he recommends having Mr. Hardy or Mr. Lloyd submit updates to the committee in writing.

08:56:58 Mr. Lloyd joined the meeting. Rep. Skees asked Mr. Lloyd to submit his testimony in writing. **(Exhibit 2)**

08:57:51 Sen. Ellis asked Mr. Graff if there is another legislative body that receives updates on the program.

08:59:02 Rep. Skees said if there are components of the law that need to be fixed the department can submit it to the committee for review as an agency bill.

High-Performance Building Program Update (17-7-214, MCA)

09:00:03 Russ Katherman, Architectural and Engineering Division, Department of Administration, provided an update on the status of the high-performance building program. **(Exhibit 3)**

Public comment

None

Questions from the committee

09:07:40 Rep. Pope asked Mr. Katherman about the discussion regarding inventory and about the payback period for improvements made under the program.

09:14:21 Recess

10:30:29 Reconvene

10:30:46 Sen. Ellis called for a point or order. She said the members of the ETIC attending the meeting at the Capitol are not wearing facemasks per the executive order that was enacted yesterday by the governor. She said the members of her caucus are willing to leave the meeting so that no action can be taken by the committee.

- 10:31:45 Rep. Skees said he read the executive order and the exemptions to the requirement. He said it is against the Health Insurance Portability and Accountability Act (HIPAA) to ask someone about their exemption and he will not require them to wear a mask.
- 10:32:21 Sen. Ellis said the members of her caucus are no longer willing to participate in the meeting.
- 10:32:37 Rep. Skees said the committee members can watch the meeting offline in order to be informed on the remaining agenda items. Sen. Ellis said they will watch the recorded version. Sen. Ellis, Sen. McNally, Rep. Bishop, Rep. Hayman, and Rep. Pope left the meeting.
- 10:32:57 Rep. Zolnikov said some of the presenters have traveled across the country to participate.
- 10:33:29 Rep. Skees said all the agenda items have been noticed and he will not end the committee meeting. He said he respects the call made by the committee members who left.

Military Installations and Wind Farm Siting

- 10:33:55 Mr. Graff provided an introduction. [\(Exhibit 4\)](#)
- 10:34:43 Col. Russell Williford, vice wing commander, 341st Missile Wing, Malmstrom Air Force Base, discussed the potential for legislation regarding the construction of wind energy farms near nuclear capable facilities and the impact to multiple Department of Defense (DOD) missions.
- 10:36:26 Ron Tickle, executive director, DOD Military Aviation and Installation Assurance Siting Clearinghouse, provided comments on wind turbine siting compatibility with DOD activities and efforts to ensure that the national defense mission is considered in energy development.
- 10:44:18 Rep. Skees said Capt. Gordon Blair and Lt. Col. Jason Keen are present in the audience and available to answer questions.

Public comment

- 10:44:43 Tom Darin, Western State Affairs director, American Wind Energy Association.
- 10:52:28 Rep. Skees said the committee may direct questions to Mr. Darin.
- 10:52:55 Jeff Fox, senior manager, Transmission, Markets, and Montana Policy, Renewable Northwest.

Questions from the committee

- 10:57:18 Sen. Regier asked Mr. Tickle if the DOD monitors the agricultural industry.
- 10:58:07 Sen. Regier asked Mr. Walker about the Montana statute and how high property rights extend above the ground.
- 11:00:47 Rep. Skees said the House Judiciary Committee discussed the height that an unmanned aerial vehicle (UAV) can fly over property. Mr. Walker said he will provide more information.
- 11:01:37 Rep. Zolnikov commented on laws pertaining to drones.

11:02:34 Rep. Zolnikov asked Mr. Tickle about the setback requirements and the 1,200-foot easement and where the two-mile radius starts. Mr. Tickle redirected the question to Mr. Williford.

11:04:29 Rep. Zolnikov asked Mr. Williford from where the two-mile radius extends. Mr. Williford redirected the question to Mr. Tickle.

11:05:02 Rep. Zolnikov asked Mr. Tickle about the loss of value for a developer when a wind farm project is denied.

11:08:20 Rep. Zolnikov asked Mr. Williford about the number of launch facilities and missile alert facilities.

11:10:16 Rep. Skees asked Mr. Tickle about including the DOD in the decision-making process for the siting of future additional wind farms close to nuclear silos.

11:11:05 Rep. Skees asked Mr. Tickle about the permitting process in Montana.

11:11:42 Rep. Skees asked Mr. Graff about permitting requirements.

11:13:21 Rep. Skees asked Mr. Tickle about involving the DOD in the state process.

11:14:08 Mr. Graff commented about the language in statutes from other states and permitting options.

11:14:42 Rep. Zolnikov asked Mr. Tickle about working with developers to access areas that are impact zones.

11:17:05 Rep. Skees said the committee received an example of an Oklahoma statute ([Exhibit 5](#)). He asked Mr. Tickle if there is a specific state that has adopted legislation that he would recommend Montana consider.

11:19:02 Rep. Skees asked Mr. Tickle about setback requirements in Oklahoma and Indiana.

11:20:46 Sen. Richmond asked Mr. Graff about the permitting requirements for a wind farm facility in Montana.

11:23:41 Rep. Skees commented on permitting requirements under the Montana Environmental Policy Act (MEPA) and on working with the DOD.

11:24:24 Rep. Zolnikov commented on adding unnecessary standards.

11:25:30 Rep. Skees commented on working with the DOD and finding a solution that works for everyone.

11:26:52 Rep. Skees said the committee cannot take any action without a quorum.

Lunch

11:27:49 Recess

12:33:22 Reconvene

12:33:33 Rep. Skees said he talked to staff about the governor's executive order and determined that if no members of the public are present in the meeting room the committee members do not need to wear a face mask. He asked the ETIC members present about continuing the meeting.

12:34:39 Rep. Tschida said he recommends allowing the meeting to continue and to have the public participate in another room.
12:35:12 Sen. Richmond agreed.
12:35:31 Rep. Skees asked Sen. Regier and Rep. Zolnikov if they had any objections to continue the meeting.
12:35:40 Rep. Tschida asked for a point of personnel privilege.
12:37:25 Mr. Graff requested a brief recess in order to set up the room for public participation.

12:37:54 Recess
13:02:07 Reconvene

HB 597 (2019) Cleanup Legislation

13:02:20 Mr. Graff provided information on HB 597. [\(Exhibit 6\)](#)
13:03:10 Rep. Skees said a separate room has been set up for the public and the only people in the room are committee members.

Public comment

13:03:54 Mike Green, Crowley Fleck PLLP, representing Montana Dakota Utilities.
13:05:42 Mr. Pinocci.

Questions from the committee

13:06:54 Rep. Zolnikov commented on the legislation.
13:07:13 Rep. Zolnikov asked Mr. Green about adding "with approval of the PSC."
13:08:53 Sen. Regier asked Rep. Zolnikov if the PSC will decide whether it is a 2-year or 3-year planning cycle.
13:09:34 Rep. Zolnikov asked Mr. Pinocci about adding "with approval of the PSC."
13:10:30 Rep. Zolnikov commented on the reason for extending the planning cycle.
13:10:54 Rep. Skees noted that Mr. Pinocci presented his opinion and does not speak for the entire PSC.

13:13:13 Recess
13:15:32 Reconvene

Railroad Right of Way Issues

13:15:47 Kirk Lundby, government relations officer, Montana Electric Cooperatives' Association (MECA).
13:26:05 Geoff Feiss, general manager, Montana Telecommunications Association.
13:30:57 Ross Lane, vice president, Corporate Relations, Montana Rail Link.
13:38:44 Matt Jones, BNSF Railway.
13:45:09 Blaine Bilderback, BNSF Railway.

Public comment

13:48:48 D.B. Kenner, chairman, Montana State Legislative Board, Brotherhood of Locomotive Engineers and Trainmen.

Questions from the committee

13:51:18 Rep. Skees said the committee is unable to take any action today without a quorum.

13:52:12 Sen. Regier asked Mr. Walker if a railroad right-of-way is considered private property in Montana statute.

13:52:42 Sen. Regier asked Mr. Walker if utilities can use eminent domain laws for crossing private property in Montana.

13:53:16 Sen. Regier asked Mr. Lane if giving right-of-way approval allows unlimited access for maintenance for a utility. Mr. Lane redirected the question to Joe Gentri, Montana Rail Link.

13:54:37 Sen. Regier asked Mr. Lundby about crossing individual private property and if there is a permit process.

13:55:23 Sen. Regier asked Mr. Lundby about other utility rights-of-way that MECA has dealt with other than railroad rights-of way.

13:56:26 Sen. Regier asked Mr. Lundby about the draft legislation.

13:58:49 Rep. Zolnikov asked Mr. Lundby about the railways that have the most issues.

13:59:47 Rep. Zolnikov asked Mr. Jones about the issues and why there hasn't already been a solution for improving the process.

14:03:28 Rep. Zolnikov asked Mr. Feiss the same question.

14:06:02 Rep. Skees thanked the panelists for their participation.

14:08:07 Recess

14:28:53 Reconvene

E-Rate Program Proposed Legislation

14:29:06 Mr. Graff provided an overview of the proposed legislation.

14:30:15 Mr. Graff discussed the proposed amendment. ([Exhibit 7](#))

14:31:31 Rep. Skees said the committee is unable to take any action today without a quorum.

14:32:20 Paul Taylor, budget analyst, Office of Public Instruction (OPI), provided a financial overview of the bill draft.

Public comment

14:35:19 Mr. Feiss.

Questions from the committee

14:41:06 Rep. Skees said he talked to Elsie Arntzen, superintendent, OPI, and he supports the bill draft.

Public comment on matters within the jurisdiction of the ETIC

None

Other Business/Instructions to Staff

Review of August Meeting Items

14:43:01 Rep. Skees said the committee is unable to discuss the August meeting items without a quorum. He said he will work with Mr. Graff on sending an email to the committee regarding the meeting date.

Review of Committee Budget

14:43:34 Mr. Graff provided an update on the committee budget.

Committee Discussion

14:43:55 Rep. Skees
14:44:34 Rep. Tschida
14:45:17 Rep. Skees
14:45:42 Sen. Richmond
14:46:08 Rep. Skees thanked staff.

ADJOURNMENT

14:46:38 Rep. Skees adjourned the meeting at 2:46 p.m.