

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ALAN OLSON**, on February 18, 2005 at 3:45 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Rep. Alan Olson, Chairman (R)
Rep. Dennis Himmelberger, Vice Chairman (R)
Rep. Robyn Driscoll (D)
Rep. George G. Groesbeck (D)
Rep. Robin Hamilton (D)
Rep. Hal Jacobson (D)
Rep. Harry Klock (R)
Rep. Mark E. Noennig (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Wayne Stahl (R)
Rep. Karl Waitschies (R)
Rep. Brady Wiseman (D)

Members Excused: Rep. Dave Gallik, Vice Chairman (D)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Cynthia Peterson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 708, 2/15/2005; HB 753,
2/18/2005; HB 528, 2/14/2005; HB
670, 2/12/2005; HB 732, 2/16/2005;
HB 662, 2/12/2005; HJ 28,
2/16/2005; HB 722, 2/16/2005; HJ
21, 2/12/2005; HB 725, 2/16/2005;
HB 141, 2/10/2005

Executive Action: HB 708; HB 685; HB 642; HJ 21; HB
141; HB 662; HB 528; HB 732; HB
670; HB 725; HB 753; HJ 28; HB 722;
HB 389

HEARING ON HB 708

Opening Statement by Sponsor:

REP. JON SONJU (R), HD 7, opened the hearing on **HB 708**, which would allow a county government to develop its own policy on fireworks restrictions.

Proponents' Testimony:

REP. DEE BROWN, HD 3, HUNGRY HORSE, lives in an outlying area of Flathead County. **REP. BROWN** believed HB 708 would allow county commissioners to ask citizens what they want with regard to fireworks. **REP. BROWN** thought people should decide what should happen with fireworks in their own counties.

Opponents' Testimony:

Dick Mehaffey, Livingston, opposed HB 708 and commented the bill does not make any sense.

Darrell Rogers, lives on the Reservation but mainly does business in Flathead County at Hong Kong Harry's. **Mr. Rogers** suggested passage of HB 708 would result in people coming to the Reservation to purchase fireworks.

Mike Maeder, Big Sky Pyrotechnics Association, testified the Montana Association of Counties (MACo) does not back HB 708.

Maureen Anderson thought it was interesting that the proponents believe the HB 708 will "regulate," but the bill says "prohibit." **Ms. Anderson** has sold fireworks to help her put her children through college.

John Peterson, Bee Hive Fireworks, has been in the business 37 years and has never had a liability claim.

Mike Brown, R. Brown and Company, opposed HB 708 because many fireworks stand owners and wholesalers purchase merchandise and enter into contracts one to two years in advance.

Mark Brown, R. Brown and Company, pointed out the Reservation in Coeur d'Alene has seen an increase in sales since Spokane, Washington, banned fireworks.

Peaches Peterson, Missoula, opposed the bill and spoke about the impact to landlords who lease space to fireworks stands.

Sonya Bowles sells fireworks and places her profits into a savings account for her grandchildren's education.

Dick Reichenbach, Reichenbach Fireworks, has been in the fireworks business for 58 years and believes the laws are fine the way they are.

George Reichenbach, Reichenbach Fireworks, believes there are enough fireworks regulations.

Mona Jamison, TNT Fireworks, pointed out Line 10 calls for "regulate or prohibit." **Ms. Jamison** emphasized the Governor has the ability to issue a proclamation banning all fires and fireworks in the event there is a drought. **Ms. Jamison** emphasized firework stands are only open for ten days out of the year. **Ms. Jamison** thought it ironic that a person could burn an American flag, but a local government can prohibit fireworks celebrating the Fourth of July.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. SONJU stated HB 708 is not about restricting sales of fireworks, but is about setting policy in the urban-area counties.

EXECUTIVE ACTION ON HB 708

Motion/Vote: **REP. WISEMAN** moved that HB 708 BE TABLED. Motion carried unanimously by voice vote.

HEARING ON HB 753

Opening Statement by Sponsor:

REP. DENNIS HIMMELBERGER (R), HD 47, opened the hearing on **HB 753**, a bill which would revise the law on uninsured motorists.

REP. HIMMELBERGER explained current law requires a fourth conviction for driving without insurance before a license is suspended; HB 753 would require a driver's license to be suspended upon the first conviction.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. BRADY WISEMAN, HD 65, BOZEMAN, referred to Page 1, Line 28, and wanted to know when subsection (3) would apply. **REP. HIMMELBERGER** responded subsection (3) would kick in upon the first conviction. **REP. WISEMAN** asked if the driver would have to show proof of insurance to regain his license. **REP. HIMMELBERGER** agreed that would be the case.

Closing by Sponsor:

REP. HIMMELBERGER closed the hearing on HB 753.
{Tape: 1; Side: A; Approx. Time Counter: 15 - 21.2; Comments:
Hearing on HB 753.}

HEARING ON HB 528

Opening Statement by Sponsor:

REP. ROGER KOOPMAN (R), HD 70, opened the hearing on **HB 528**, which would provide for a year-round beer and wine liquor license for the West Yellowstone airport. **REP. KOOPMAN** explained how an Italian restaurant at the airport, T.J. Bettola's, has to close down during the winter because the airport, as well as the beer and wine license T.J. Bettola's operates under, is owned by the State of Montana. The beer and wine license is only a seasonal license, which runs from June 1 through October 1 of each year.

Proponents' Testimony:

Trisha Boulé, owner of T.J. Bettola's, submitted a petition signed by other business owners in West Yellowstone, as well as a letter from Michael and Gayle Gavagan, owners of the Bar N Ranch in West Yellowstone. **Ms. Boulé** testified that not having a year-round beer and wine license makes T.J. Bettola's an inconsistent restaurant, and is detrimental to her business. **Ms. Boulé**

suggested this would be one more step toward opening the West Yellowstone airport all year long.

[EXHIBIT\(feh40a01\)](#)

[EXHIBIT\(feh40a02\)](#)

Jim Currie, Montana Department of Transportation (DOT), stated DOT has responsibility for the operation of the West Yellowstone Airport. **Mr. Currie** explained that there is activity at the airport during the winter. **Mr. Currie** believed having a year-round restaurant would help retain operators year-round at the airport. **Mr. Currie** explained the license is in the State of Montana's name because operators at the airport frequently come and go.

{Tape: 1; Side: B}

Opponents' Testimony:

Marcia Gray, a business and all beverage license owner in West Yellowstone, submitted written testimony in opposition to HB 538.
[EXHIBIT\(feh40a03\)](#)

Dennis LaFever, a business owner in West Yellowstone and a member of the West Yellowstone Airport Commission, opposed HB 528 because he believed it would be a wasteful use of Montana tax dollars to open a facility that is not winterized.

Carole Howell, a business owner in West Yellowstone, submitted written testimony in opposition to HB 528.
[EXHIBIT\(feh40a04\)](#)

Karen Loy Klungervich, a business owner at Hebgen Lake, submitted written testimony in opposition to HB 528.
[EXHIBIT\(feh40a05\)](#)

Informational Testimony:

Jim Greil, Airport Airways Bureau, Montana Aeronautics Division, made himself available to answer questions regarding the operation of the West Yellowstone Airport.

Questions from Committee Members and Responses:

REP. WISEMAN asked **Mr. Currie** if the State owned any other seasonal beer and wine licenses. **Mr. Currie** responded he was not aware of any other licenses, and added the West Yellowstone airport is the only state-operated airport in Montana.

REP. WISEMAN asked if the State should be in the business of operating the cartel of this liquor license and whether the State should be in the business of picking winners and losers. **REP. KOOPMAN** believed any expansion of competition is good. **REP. KOOPMAN** pointed out that the State chose to operate a restaurant at the airport, and that the owner of the restaurant would bear all the costs.

REP. HAL JACOBSON, HD 82, HELENA, asked if the owner would pay for any modifications to make the facility usable in the winter. **Mr. Currie** agreed the owner would be responsible for those costs.

Closing by Sponsor:

REP. KOOPMAN reiterated the taxpayers would not be paying for any of the remodeling, upkeep, or snow removal. **REP. KOOPMAN** did not see any negative impacts from HB 528 and suggested it would stimulate economic activity.

HEARING ON HB 670

Opening Statement by Sponsor:

REP. GARY BRANAE (D), HD 54, opened the hearing on **HB 670**, a bill which would revise the vote requirement for the Board of Adjustments on planning and zoning decisions. **REP. BRANAE** explained for many volunteer boards, it is difficult to get board members to attend. **REP. BRANAE** cited the Board of Adjustments as an example, stating they are a seven-member board and require four members to be in agreement. HB 670 would allow a majority of the board members present to make decisions.

Proponents' Testimony:

Glenn Oppel, Montana Association of Realtors, testified how difficult it is to make decisions when there are not enough members at the meeting. **Mr. Oppel** thought HB 670 would make the process more efficient and fair.

Randy Reger, explained that the problem was noticed in a Billings City/County meeting. **Mr. Reger** explained it costs approximately \$600 to go in front of the Board of Adjustments, and that often times, members do not show up. **Mr. Reger** believed requiring a majority of those present would be much better.

Opponents' Testimony:

Lee Clemmensen, a member of the Missoula Board of Adjustments, opposed the change in procedure. **Ms. Clemmensen** noted the Board of Adjustments can be made up of five to seven members. **Ms. Clemmensen** explained how Missoula handled the problem of board members not showing up. First, the mayor and the city council, appoint two alternates to vote if the members were not present. **Ms. Clemmensen** stated that since implementing that rule, they have never had less than five people voting. **Ms. Clemmensen** explained five members constitute a quorum, and four members are necessary to get a variance through. **Ms. Clemmensen** believed reducing the rule to "a majority of those members present at the board meeting" will encourage special interests. **Ms. Clemmensen** believed the current procedure should be left in place, and the problem should be addressed by the use of alternates. **Ms. Clemmensen** submitted written testimony from Paul Sopko of Missoula opposing HB 670.

EXHIBIT (feh40a06)

Jane Rectenwald, Missoula, explained how the current process allows special interest groups to have a voice in land use, while allowing people who have purchased property with specific zoning to have some strength of protection.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. JACOBSON asked whether the Board of Adjustments' decisions go to the County Commissioners. **Ms. Clemmensen** clarified the decision of the Board of Adjustments is final, and anyone objecting would have to go to district court.

REP. GEORGE GROESBECK, HD 74, BUTTE, asked **REP. BRANAE** why he is bringing HB 670. **REP. BRANAE** explained he was approached by the Regers in Billings about difficulties they have experienced with the Board of Adjustments because of poor attendance at the meetings.

Mr. Reger added occasionally only three members would show up at the meetings in Billings, although admitted the problem was not as bad in recent years.

REP. GROESBECK stated he has served on many boards and understands the difficulty of getting a quorum between June and September. **REP. GROESBECK** was concerned about unintended

consequences and wondered if it would be better if the board emphasized the importance of attendance to its members. **REP. BRANAE** agreed there could be other solutions, but stated he believed in "majority rules."

REP. MARK NOENNIG, HD 46, BILLINGS, did not understand where the quorum is stated. **Ms. Clemmensen** explained the statute says the board consists of five to seven members, and the ordinance states five members is a quorum. **REP. NOENNIG** noted the statute provides for a concurring vote of four members. **REP. NOENNIG** had concerns about a quorum being a majority of those present since one person could show up and approve a variance. **REP. BRANAE** agreed that could be problematic.

REP. ROBIN HAMILTON, HD 92, MISSOULA, sympathized with the problem and asked **Mr. Reger** if the solutions implemented by Missoula could help solve his problems.

{Tape: 2; Side: A}

Mr. Reger responded in Billings there must be four concurring members to pass a variance and many times only four members would be in attendance. **Mr. Reger** would like the law to state when a quorum is present, there needs to be a majority vote of the quorum to pass a variance.

Closing by Sponsor:

REP. BRANAE closed the hearing by stating they have run into problems in Billings making decisions. **REP. BRANAE** hopes to do what is best for the community.

HEARING ON HB 732

Opening Statement by Sponsor:

REP. DON ROBERTS (R), HD 56, opened the hearing on **HB 732**, a bill to help stop identity theft. **REP. ROBERTS** identified increased technology and access to information as causing an increase to identity theft. **REP. ROBERTS** explained difficulties experienced by victims of identity theft to try and correct the problem. The bill would require consumer reporting agencies to expunge information on a person's credit report that results from a theft of identity. If a solicitation is received from an address different than the one to which it was mailed, the solicitor must first ascertain from the party that they are no longer at the original address. **REP. ROBERTS** explained HB 732 also contains

requirements that when there is a computer breach of security, members of the affected public are notified of the breach.

Proponents' Testimony:

Kelsen Young, a victim of identity theft, submitted written testimony as a proponent of HB 732.

[EXHIBIT\(feh40a07\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 7.4 - 9.5; Comments: Testimony of Kelsen Young, Part 1.}

Robert Speirer, AARP Montana, submitted written testimony in support of HB 732.

[EXHIBIT\(feh40a08\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 11.2 - 14.6; Comments: Kelsen Young testimony, Part 2.}

Opponents' Testimony:

Brad Griffin, Montana Retail Association, testified that the bill is comprehensive and needs more than a ten-minute examination. **Mr. Griffin** suggested a good portion of HB 732 could be preempted by federal law. **Mr. Griffin** expressed confusion over who the bill would cover and who would be exempted. **Mr. Griffin** also suggested the effective date is too soon for businesses to implement the law.

Jill Jarman, Montana Credit Union Network, opposed the bill because of the preemption of federal regulations already in place. **Ms. Jarman** explained that privacy and identity theft regulations are still being finalized, and that they are still trying to learn the new laws. **Ms. Jarman** stated there are many requirements imposed on credit unions by their liability insurance company to reduce the risk of credit card fraud. **Ms. Jarman** thought HB 732 seems to exempt financial institutions, and urged the language should be changed to general language such as banks, credit unions, savings and loans chartered under federal or state law.

Bruce Spencer, Montana Automobile Dealers' Association, is troubled by HB 732 from the perspective of small businesses. **Mr. Spencer** pointed out Section 6 requires destruction of records no longer necessary to be retained. **Mr. Spencer** thought this language would result in a multitude of lawsuits. **Mr. Spencer** pointed out many companies are unaware when they have a computer

security breach. **Mr. Spencer** outlined other problems he has with the proposed legislation.

Steve Turkiewicz, Montana Bankers' Association, testified that he was very concerned with the confusing language, uncertainties, and complexities of HB 732. **Mr. Turkiewicz** cited conflict between state and federal law and stated business is stuck in the middle. **Mr. Turkiewicz** thought a July 1, 2005, implementation date would be impossible.

Informational Testimony:

Cort Jensen, Consumer Protection Office, thought the language for HB 732 originally came from California law and stated he was available for questions.

Questions from Committee Members and Responses:

REP. JOHN PARKER, HD 23, GREAT FALLS, asked Mr. Griffin about his federal preemption concerns. **REP. PARKER** stated he believes there is very little accountability on the part of companies, and that he is very interested in seeing HB 732 survive. **Mr. Griffin** replied he is concerned preemption may be an issue.

REP. PARKER asked Mr. Jensen for his position on the federal preemption doctrine with regard to the State of Montana's ability to regulate consumer reporting companies. **Mr. Jensen** cited the Fair and Accurate Credit Reporting Act (FACRA) which says states cannot take action and sets out what it takes to block information on a credit report. **Mr. Jensen** explained where the FACRA specifically says something, it preempts; where the FACRA is silent, it clearly tells a state they can take action.

{Tape: 2; Side: B}

Closing by Sponsor:

REP. ROBERTS referred to a newspaper article regarding identity theft and suggested that California laws against identity theft have been very successful. **REP. ROBERTS** told how Montana consumers are spending hundreds of hours and thousands of dollars trying to correct one error.

HEARING ON HB 662

Opening Statement by Sponsor:

REP. TIM DOWELL (D), HD 8, opened the hearing on **HB 662**, which would revise funding for airport authorities. **REP. DOWELL** spoke about two airports and one levy; and one airport that gets the money, and one airport that does not.

Proponents' Testimony:

Fred Leistiko, Manager of Kalispell City Airport, testified there are 9 commercial airports and 63 general aviation airports in Montana that are listed on the Federal Aviation Administration's (FAA) National Plan of Integrated Airport Systems list. All of these airports received federal funding to build their airports and make them functional; however, the FAA does not fund operation and maintenance. **Mr. Leistiko** explained counties and municipalities have authority to levy up to two mills for the establishment, maintenance, operation, and equipping of airports that are in their jurisdiction. **Mr. Leistiko** believed §§ 6710 and 6711 are excellent sections of the Montana Code, but do not go far enough to guarantee an equitable share of the tax levy when it is collected. **Mr. Leistiko** stated HB 662 will fix that oversight. **Mr. Leistiko** suggested one airport levy should be assessed and shared between airports. **Mr. Leistiko** testified there are 17 Montana counties with multiple airports.

Scott Richardson, Chairman of the Kalispell City Airport Advisory Council, stated the Kalispell City Airport is the second busiest general aviation airport in the state. **Mr. Richardson** explained the 2003 budget was \$13,000 of which one-half was paid for power and insurance, and the remaining amount went to maintenance. **Mr. Richardson** explained how the board members have been doing the mowing and snow plowing at the airport. **Mr. Richardson** asked for an equitable share of tax money generated by Kalispell property.

Rod Bitney, a newly appointed member to the Kalispell City Airport Authority Council, asked the Committee to support HB 662.

Alec Hansen, League of Cities and Towns, depicted HB 662 as fair and logical.

Mike Fergeson, Aircraft Owners' and Pilots' Association, thought HB 662 was a good bill. **Mr. Fergeson** wished the legislation would have included all municipally owned airports. **Mr. Fergeson**

suggested the legislation would keep airports strong and safe throughout Montana.

Opponents' Testimony:

Hank Galpin, Flathead Municipal Airport Authority, stated the fact that the County Commissioners have not allocated any money to the city airport rests with those County Commissioners. **Mr. Galpin** stated it probably would be equitable to give some of the money up to the city airport. **Mr. Galpin** spoke about annexation occurring in Kalispell and the expansion of the Kalispell city limits. **Mr. Galpin** stated he is not certain the funding mechanism in HB 662 is fair, and that he opposes the bill as currently written.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. WAYNE STAHL, HD 35, SACO, asked **Mr. Leistiko** about the Kalispell city airport. **Mr. Leistiko** explained the airport is owned and managed by the city, and there is no mill levy for the airport.

REP. STAHL asked **Mr. Galpin** about the county airport, and **Mr. Leistiko** explained they are an airport authority under state law, and the members are appointed by the county commissioners. **REP. STAHL** asked about the boundaries of the county airport authority. **Mr. Galpin** explained they are a county airport, and that they also manage the Ferndale and Whitefish airports. **REP. STAHL** asked if all the airports were under the authority of the County, and **Mr. Galpin** responded that was correct, and that they have a board.

REP. STAHL stated the city and county could form an airport authority and assess one mill levy, and everyone could get a share. **REP. STAHL** suggested the city does not want to levy a mill on top of the county mill, and that a regional authority could be done easily, and everyone could share in the cost.

REP. NOENNIG asked what would prevent the formation of an entity to fairly apportion the taxes and run both airports. **Mr. Leistiko** pointed out that the city is reluctant to deed over its land to an airport authority. **Mr. Leistiko** stated there is an option to have a joint city/county airport. **Mr. Leistiko** noted the City of Kalispell does not mind paying the mill levy to the

airport authority, but would like some of the money back to help fund the airport.

Closing by Sponsor:

REP. DOWELL closed the hearing on HB 662 by stating the bill is a good option to get the county to share the mill levy.

{Tape: 2; Side: B; Approx. Time Counter: 5.6 - 25.2; Comments: Hearing on HB 662.}

HEARING ON HJ 28

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, opened the hearing on **HJ 28**, requiring an interim study on the timely recording of easements.

REP. LANGE explained how one of his constituents had bought a house in Joliet and discovered there was a eight-inch sewer line from his foundation, which prohibited his planned expansion.

REP. LANGE stated the title search failed to reveal the easement because the landowner had neglected to file the easement in a timely manner and then had simply forgotten.

Proponents' Testimony:

Glenn Oppel, Montana Association of Realtors, thought the bill was a good idea and believed the bill would help Realtors disclose material facts to a transaction and would lessen the opportunity for a lawsuit.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. LANGE closed the hearing on HJ 28.

HEARING ON HB 722

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, opened the hearing on **HB 722**, a bill which would regulate rates of local governments acquiring

energy transmission facilities. **REP. LANGE** reviewed HB 722 with the Committee.

{Tape: 3; Side: A}

REP. LANGE explained how many of his constituents are worried about their power bills and the last thing his constituents need is higher power bills. **REP. LANGE** purported that taxes, as well as energy, could be increased by a local government. **REP. LANGE** suggested that when people are the taxpayer and the ratepayer, they need protection above all else. **REP. LANGE** believed if there is a government entity or entity that has an energy generation facility of less than 5 MW, they should not be subject to HB 722.

Proponents' Testimony:

Brad Molnar, Montana Public Service Commission (PSC), supports HB 722 and testified that he is in the minority in the PSC.

Commissioner Molnar cited the objective of the PSC as being fair to the utility while protecting the consumer. **Commissioner Molnar** believed that if someone wants to get into the generation or transmission business, they must be able to provide a public service and the rates cannot be higher than the rates of those who are currently in the business. **Commissioner Molnar** depicted HB 722 as a consumer-protection bill.

Opponents' Testimony:

Randy Gray, Mayor of Great Falls, stated Great Falls is excited about the possibility of public power and is proud to be serving parts of the community with power below default rates. **Mayor Gray** explained success is measured by how much money stays in the community because of low rates. **Mayor Gray** believed HB 722 would have large consequences on the partnership between the City of Great Falls and its co-op partners.

Terry Holder, representing public power in general and a past president of Northwest Public Power Association, stated HB 722 will take away local control and give that control to the PSC. **Mr. Holder** reported Montana has had two utility bankruptcies and that the PSC has been unable to stop those bankruptcies. **Mr. Holder** suggested HB 722 would have long-term unintended consequences.

Alec Hansen, representing the League of Cities and Towns, opposes HB 722. **Mr. Hansen** reminded the Committee that Montana cities

put in a bid for Montana Power Company in 2000 which was not accepted. **Mr. Hansen** recalled another bid was submitted for Northwestern Energy (NEW), but the creditors' committee decided to proceed through the bankruptcy. **Mr. Hansen** testified the cities are still interested but thought some of the provisions of HB 722 may foreclose some of the benefits of public power. **Mr. Hansen** emphasized the need for stable rates, reliable power, efficient operations, and local control. **Mr. Hansen** explained how utility operations and city operations would be kept separate. **Mr. Hansen** explained the cities are only interested in transmission and distribution. **Mr. Hansen** suggested what is being proposed in HB 722 would shut down the possibility of competition. **Mr. Hansen** emphasized that the default supply rate is subject to manipulation by the supplier. **Mr. Hansen** suggested it would take time for public power to work and urged patience.

Tim Gregor, Southern Montana Electric Generation and Transmission Cooperative, Inc., testified he is concerned about deferring the opportunity for a local community to make decisions about the rates for the electric energy they serve. **Mr. Gregor** explained how cost savings will be passed onto the customers. **Mr. Gregor** pointed out that municipal electric utilities across the nation traditionally have much lower rates than the traditional investor-owned utilities.

Greg Fergeson, Montana Public Service Commission, stated by a vote of 3-1, with one Commissioner absent, the PSC opposed HB 722. **Mr. Fergeson** believed HB 722 would authorize public utility districts that have not been authorized by the Montana Legislature. **Mr. Fergeson** pointed out that many people do not understand why certain utilities are nonjurisdictional. **Mr. Fergeson** repeated the reasons the co-ops are not subject to the jurisdiction of the PSC is that they elect their own board of directors. **Mr. Fergeson** stated for the same reason, a public utility under a city or county would also be nonjurisdictional to the PSC because the voters would choose the governance for the utility. **Mr. Fergeson** noted there is no distinction between MDU and NEW. In addition, **Mr. Fergeson** stated Title 69 has to do with city water and sewers. **Mr. Fergeson** recalled that water and sewer regulation authority was taken away from the PSC and given to local governments.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. LANGE closed by hearing by recalling how deregulation came about and what a good deal it was supposed to be. **REP. LANGE** admitted deregulation was a mistake because steps were not taken ahead of time to ensure competition could exist in Montana. **REP. LANGE** pointed out that his constituents do not trust their local governments any more than they trust the Legislature. **REP. LANGE** believed HB 722 would protect the ratepayers. **REP. LANGE** was emphatic that if a public utility would take money out of his constituents' pockets, he would fight it every step of the way. **REP. LANGE** was leery about whether a public utility could provide a good deal as promised. **REP. LANGE** believed "local authority" is another way of saying, "Let's let the local guy stick it to the ratepayers." **REP. LANGE** cited this as an opportunity for the PSC to get the authority to protect the ratepayer. **REP. LANGE** would like the Legislature to take a position and protect the ratepayers of Montana.

{Tape: 3; Side: B}

REP. LANGE explained his voters did not send him to Helena to be soft-spoken, and that his constituents are very emotional about this particular issue. **REP. LANGE** urged protection for Montana ratepayers.

EXECUTIVE ACTION ON HB 685

Motion: **REP. KLOCK** moved to reconsider HB 685.

CHAIRMAN OLSON pointed out that HB 685 had already been amended by the adoption of Amendment HB068501.ate.

EXHIBIT(feh40a09)

Vote: Motion carried 9-4 by roll call vote with **REP. HAMILTON**, **REP. JACOBSON**, **REP. PARKER**, and **REP. WISEMAN** voting no.

Mr. Everts clarified a motion to take a bill from the table may be adopted by an affirmative vote of a majority of the members present at any meeting. Therefore, the proxy for **REP. GALLIK** was not allowed to be voted on the above motion.

Motion/Vote: **REP. KLOCK** moved that HB 685 DO PASS AS AMENDED. Motion carried 8-6 by roll call vote with **REP. DRISCOLL**, **REP. GALLIK**, **REP. HAMILTON**, **REP. JACOBSON**, **REP. PARKER**, and **REP. WISEMAN** voting no.

EXECUTIVE ACTION ON EXECUTIVE ACTION ON HB 642

Motion: REP. PARKER moved that HB 642 DO PASS.

Motion: REP. PARKER moved that a CONCEPTUAL AMENDMENT BE ADOPTED to alter the sunset provision in the bill from four years to two years.

Discussion:

Mr. Everts clarified that REP. PARKER would like the language of amendment HB064202.ate which read "on or before July 1, 2009," to state "on or before July 1, 2007." REP. PARKER replied that was correct.

REP. DIANE RICE, HD 71, HARRISON, wanted to know whether the language would mean a plant would have to be in process by 2007.

Mr. Everts replied that on or before July 1, 2007, a local electricity supply entity that has adopted a plan for transition may file with the PSC a petition that demonstrates the transition of those default supply customers from a public utility to the supply entity will not subject the customers on the public utility system to higher or more unstable default supply service rates.

REP. PARKER explained the purpose of his amendment is to increase the comfort level of the some of the legislators he has spoken with and will put this matter back in front of the legislature during the next session, so the issued can be reviewed right away.

REP. NOENNIG asked what would happen if a plan is filed and where the legislature would go from there. Mr. Everts stated once a plan is filed, the PSC will review the plan and issue an order within 180 days of the petition.

Vote: Motion carried 13-1 by roll call vote with REP. GROESBECK voting no by proxy, and REP. GALLIK and REP. WISEMAN voting aye by proxy.

Motion: REP. PARKER moved that HB 642 DO PASS AS AMENDED.

Discussion: REP. PARKER explained that he is bringing the motion after reviewing an editorial in the *Great Falls Tribune*. REP. PARKER stated it seems now that there is a deregulated electricity industry in the state, it is time to lay another option on the table.

Vote: Motion carried 9-5 by roll call vote with REP. GALLIK and REP. WISEMAN voting aye by proxy, and REP. HIMMELBERGER, REP. NOENNIG, REP. OLSON, and REP. WAITSCHIES voting no, and REP. GROESBECK voting no by proxy.
{Tape: 3; Side: B; Approx. Time Counter: 9.2 - 17.5; Comments: Executive Action on HB 642.}

HEARING ON HJ 21

Opening Statement by Sponsor:

REP. JOHN SINRUD (R), HD 67, opened the hearing on HJ 21, which would affirm the State's jurisdiction over roads and rights-of-way on public lands. This will allow counties to tell the Forest Service that they cannot shut down the roads.

Proponents' Testimony:

Kerry White, Citizens for a Balanced Use, submitted written testimony as a proponent of HJ 21.
[EXHIBIT\(feh40a10\)](#)

Ed Melcher, Families for Outdoor Recreation, submitted written testimony as a proponent of HJ 21.
[EXHIBIT\(feh40a11\)](#)

Mike Collins, is a miner who works in the Belt Mountains. Mr. Collins spoke as a proponent of HJ 21.

Harold Blattie, Montana Association of Counties, supported HJ 21. Mr. Blattie referred to Lines 16-18 as "beautiful in their simplicity." Mr. Blattie believed this is an important issue for Montana counties.

{Tape: 4; Side: A}

Ronda Carpenter-Wiggers, Montana Snowmobile Association, testified as a proponent of HJ 21.

Brad Molnar, Families for Outdoor Recreation, spoke about the money generated because of Montana's recreational land use. Mr. Molnar spoke about the economic impact to Montana when the federal government closes down trails. Mr. Molnar stated they are simply asking Congress to take oversight of the Forest Service and the BLM and make those agencies obey the court rulings and their own mandates for multiple use.

Opponents' Testimony: None.

Informational Testimony:

Terry Chute, representing U.S. Forest Service Northern Regional Forester Gail Kimbell, submitted written testimony as an informational witness to HJ 21.

EXHIBIT(feh40a12)

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. SINRUD closed the hearing by identifying the issue as local control and allowing the counties an opportunity to decide whether they would like to reclaim rights-of-way or stop road closures. **REP. SINRUD** reminded the Committee about the economic development achieved from users such as sportsman groups and recreational groups.

EXECUTIVE ACTION ON HJ 21

Motion: **REP. HIMMELBERGER** moved that HJ 21 DO PASS.

Discussion: **REP. WISEMAN** commented he would oppose the resolution since Mr. Chute had indicated the counties may already claim the right-of-way.

Vote: Motion carried 9-5 with **REP. HAMILTON**, **REP. PARKER**, and **REP. WISEMAN** voting no, and **REP. GALLIK** and **REP. GROESBECK** voting no by proxy.

HEARING ON HB 725

Opening Statement by Sponsor:

REP. HARRY KLOCK (R), HD 83, opened the hearing on **HB 725**, which would revise the law on underground facility location and notification. **REP. KLOCK** submitted written testimony explaining the intent of HB 725.

EXHIBIT(feh40a13)

Proponents' Testimony:

Geoff Feiss, Montana Telecommunications Association, believed HB 725 contains a simple economic principle of cost causation. **Mr. Feiss** stated how the bill will provide that if a utility has to

go back out and relocate lines it had already located once, then the party requesting them to relocate will pay the costs associated with the relocate.

Ron Osberg, Montana Independent Telecommunications Systems (MITS), supported HB 725.

Phil Maxwell, Three Rivers Communications, supported HB 725. **Mr. Maxwell** testified Three Rivers Communications spends \$30,000 annually to locate lines the first time, and it is an additional expense if they have to send a crew out to do multiple locates on the same project.

Opponents' Testimony:

Cary Hegreberg, Montana Contractors' Association (MCA), opposed HB 725 because MCA likes to sort out its business dealings outside the halls of the legislature. In addition, **Mr. Hegreberg** suggested the bill is one-sided and unfair since there is no provision to address mismarked utilities, which creates huge problems and costs for contractors. **Mr. Hegreberg** believed it would be inevitable that some jobs would require multiple relocations. **Mr. Hegreberg** submitted written comments from Paul Thompson, Gilman Construction, in Butte. **Mr. Hegreberg** pointed out that no time limit is provided specifying when relocations could be requested without charge. **Mr. Hegreberg** encouraged the Committee and the proponents to look at **SEN. LASLOVICH'S** bill, which would absolve a contractor from liability if he uses the one-call system. **Mr. Hegreberg** urged a do not pass for HB 725. **EXHIBIT**(feh40a14)

{Tape: 4; Side: A; Approx. Time Counter: 8.9 - 24.2; Comments: Testimony on HB 725.}

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. RICE asked about **SEN. LASLOVICH's** bill, and **Mr. Feiss** stated the bill would impose penalties for excavation without having contacted One-Call, and would absolve excavators of liability only if the excavator called and the utility does not show up.

REP. NOENNIG could not find a reference to a time period within which a person was able to make another request without being penalized. In addition, **REP. NOENNIG** asked **Mr. Feiss** to address the concerns expressed by **Mr. Hegreberg**. **Mr. Feiss** stated

current law already requires an excavator to maintain the marks once the marks are there, and the excavator must also bear responsibility for the costs associated with relocates. **Mr. Feiss** addressed emergencies and explained the provisions of current law. **Mr. Feiss** explained it is his intention that once the marks are there, the excavator is responsible for maintaining the marks. If there are multiple excavations at one site, the owner of the site is responsible for the marks, unless other arrangements are made. In addition, the excavator will not be liable for mismarks of the utility.

{Tape: 4; Side: B}

REP. STAHL wondered about multiple excavations that may be required, but not all the markings could be done at one time. **REP. STAHL** asked if it would be done by-the-excavation or by-the-project. **Mr. Feiss** responded in dealing with a large project, segments would be designated, and each segment would be considered a separate location rather than a return call.

Closing by Sponsor:

REP. KLOCK closed the hearing on HB 725.

(**REP. STAHL** chaired the meeting.)

HEARING ON HB 141

Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, opened the hearing on **HB 141**, which would revise electricity universal system benefit laws. **REP. OLSON** stated HB 141 came from the Energy and Telecommunications Interim Committee (ETIC). **REP. OLSON** explained HB 141 revises USB program charges as the relate to co-operative utilities and public utilities and extends the USB charge through December 31, 2009, increasing the minimum annual low-income funding requirement for public utilities. The bill will also eliminate the requirement that utilities report to the ETIC, and will require the Department of Revenue (DOR), the Department of Environmental Quality (DEQ), and Department of Public Health and Human Services (DPHHS) to report annually to the ETIC on credits and expenditures made for USB programs. The bill will prohibit a utility from carrying forward non-committed USB money beyond January 15 and requires the DOR to adopt rules that provide for uniform reporting of USB program credits. **REP. OLSON** identified a retroactive applicability date for the low-income portion which was raised from 17 percent to 25 percent.

Proponents' Testimony:

Rachel Haberman, Energy Share of Montana, submitted written testimony in support of HB 141.

EXHIBIT(feh40a15)

Doug Hardy, Montana Electric Co-operatives Association, submitted written testimony as a proponent of HB 141. **Mr. Hardy** also submitted a Fact Sheet on Montana's Poor and the Need for Low-Income Energy Assistance.

EXHIBIT(feh40a16)

EXHIBIT(feh40a17)

Haley Beaudry, Columbia Falls Aluminum Company, attended many of the ETIC meetings and commended the ETIC on the bill. **Mr. Beaudry** identified the underlying purpose was to take care of people who struggle to take care of themselves. **Mr. Beaudry** stated the idea was to help with people's immediate needs. **Mr. Beaudry** cautioned about not letting the USB charge turn into a tax increase.

John Alke, Montana Dakota Utilities Company (MDU), testified in favor of HB 141 even though the bill will not have an impact on MDU. **Mr. Alke** explained MDU already spends significantly more for low income than what is provided in HB 141. **Mr. Alke** recognized the hard work of the ETIC.

Greg Fergeson, Montana Public Service Commission, was authorized on a 3-2 vote to inform the Committee that the PSC supports the extension of the USB program and believes the USB program serves a vital public need in Montana.

{Tape: 4; Side: B; Approx. Time Counter: 15.6 - 17.1; Comments: Testimony of Commissioner Greg Fergeson.}

Opponents' Testimony:

Brad Molnar, Montana Public Service Commission, agreed the vote was 3-2, but stated the vote was not on HB 141. **Commissioner Molnar** explained he and Commissioner Doug Mood agreed that from the time USB system was created until now, the paradigm has so shifted, it is now counterproductive. **Commissioner Molnar** suggested money is being taken from the poorest people in Montana and being given to the wealthy to buy windmills that generate electricity. **Commissioner Molnar** wondered if he was supposed to tell the 18,000 people who call the PSC annually to complain about high power bills that the rates are being held three percent artificially high because somebody wants a \$42,000 solar

panel, with a 20-year life expectancy and a 42-year payout, placed on a school. **Commissioner Molnar** observed that solar panels are never seen on poor people's houses. **Commissioner Molnar** suggested 100 percent of USB should go to the poor people. **Commissioner Molnar** stated he agrees with Governor Schweitzer that \$10 million from General Fund should be used to help the poor.

Jacalyn Boyle, AARP Montana, submitted written testimony in opposition to HB 141.

[EXHIBIT](#)(feh40a18)

Chuck McGraw, Natural Resources Defense Council; Renewable Northwest Project; and speaking on behalf of Patrick Judge, Montana Environmental Information Center, testified that the only entity that runs a renewables program and uses USB funds to any extent is NEW. **Mr. McGraw** suggested the base year should be adjusted and brought current and the percentage should not be decreased.

{Tape: 5; Side: A}

Mr. McGraw believed the co-ops and the utilities are already doing what the bill directs them to do. **Mr. McGraw** commented discussing the bill at 8:00 P.M. the day before transmittal is not the way to proceed and suggested the sensible way to proceed would be to wait for other Senate bills on the same issue to be transmitted to the House of Representatives.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. WISEMAN reviewed the adjustments on page 2(3)(a) and (b) where the rates are adjusted down for co-op utilities and public utilities are taking from their annual retail sales revenue, and wondered exactly how much money that would be. **REP. OLSON** replied those percentages were adjusted to make the bill revenue neutral the first year, and revenues will increase with the percentages. **REP. WISEMAN** asked if **REP. OLSON** was aware what the gross dollar amount is on USB money now. **REP. OLSON** did not have those numbers available.

REP. HAMILTON asked why **Mr. McGraw** would prefer **SEN. ELLINGSON's** bill. **Mr. McGraw** clarified he was not saying it was a preferred alternative; rather, he was stating that the Committee could have more time to spend on that bill.

Closing by Sponsor:

REP. OLSON pointed out that SEN. ELLINGSON's bill recently had twenty pages of amendments put on it. **REP. OLSON** explained HB 141 was the result of months of negotiations and discussions. In addition, there was only one vote against the bill draft in the ETIC. **REP. OLSON** identified the dissenting vote as belonging to then SEN. ROYAL JOHNSON who thought there was too much added into the bill. **REP. OLSON** also asked the Committee to note that the percentages in the bill were minimum percentages. **REP. OLSON** would like to see more money put into conservation and weatherization.

EXECUTIVE ACTION ON HB 141

Motion: **REP. HIMMELBERGER** moved that HB 141 DO PASS.

Discussion:

REP. JACOBSON wondered why HB 141 was being heard by the Committee so late in the process. **REP. OLSON** explained there were other USB bills being considered that were never drafted. **REP. OLSON** explained he was planning on hearing all the USB bills at one time.

REP. KARL WAITSCHIES, HD 36, PEERLESS, commented that he appreciated the work the ETIC did on the bill and that he would support HB 141.

REP. WISEMAN commented he was highly displeased about hearing HB 141 at the last hour. **REP. WISEMAN** suggested HB 141 was being used a hook to save large utilities money. **REP. WISEMAN** was surprised that the Committee would talk about the need to fund low-income assistance programs and at the same time, talk about reducing the amount of money for the program. **REP. WISEMAN** stated he could not support the bill.

REP. STAHL was confused about **REP. WISEMAN'S** comment since the bill is revenue neutral this year and would grow as time passes. **REP. OLSON** clarified the intent of HB 141 is to be revenue neutral the first year, and then the percentages will be based off of the previous year's revenue. Currently, the percentages are frozen at 1995 revenues.

REP. OLSON urged caution about killing HB 141 before all the USB bills had been heard by the Committee.

Vote: Motion carried 9-5 by roll call vote with REP. GALLIK voting aye by proxy and REP. HAMILTON, REP. JACOBSON, REP. PARKER, and REP. WISEMAN voting no, and REP. GROESBECK voting no by proxy.

{Tape: 5; Side: A; Approx. Time Counter: 10.1 - 14.4}

EXECUTIVE ACTION ON HB 662

Motion: REP. HIMMELBERGER moved that HB 662 DO PASS.

Discussion:

REP. STAHL recapped HB 662 as a "turf war" between the City of Kalispell and Flathead County over the county mill levy for the county airport. The city believes it should receive some of the county mill levy to help fund the Kalispell Airport. An Interlocal Agreement could be entered into to resolve the problem, but under that scenario, both entities would relinquish ownership, and the Airport Authority would be the owner.

REP. NOENNIG explained there are two separate airports and the city is located in the county, and they are not too far apart.

REP. NOENNIG admitted HB 662 would be a solution, but did not know if it would be the right decision.

REP. STAHL explained it is illegal for a county to spend taxes outside of its taxing jurisdiction, and its taxing jurisdiction does not include the municipality because the municipality is a taxing jurisdiction within itself.

REP. HIMMELBERGER commented he is not comfortable passing HB 662.

REP. WAITCHIES asked whether the County Commissioners currently have the authority to divide the money between the two airports.

REP. STAHL did not believe the County Commissioners have that authority.

REP. NOENNIG cited the issue as whether Flathead County needs to be forced to share the money with the City of Kalispell.

Motion/Vote: REP. HIMMELBERGER moved that HB 662 BE TABLED.

Motion carried 13-1 by voice vote with REP. GROESBECK voting no by proxy.

EXECUTIVE ACTION ON HB 528

Motion: REP. HIMMELBERGER moved that HB 528 DO PASS.

Discussion:

REP. HAMILTON asked REP. KLOCK what the position of the Montana Tavern Association is. REP. KLOCK responded they have not taken a position on HB 528.

REP. RICE explained the State of Montana owns two liquor licenses in Virginia City, so the situation is not that unusual. REP. RICE did not object to HB 528.

REP. WISEMAN feels West Yellowstone and Bozeman are under-served by with liquor licenses because of the amount of tourists that come through the area.

REP. HIMMELBERGER pointed out there is a quota system and admitted he does not agree with the quota system. REP. HIMMELBERGER suggested Title 16 should be redone. REP. HIMMELBERGER did not feel HB 528 would be any kind of solution to the problem and stated he would not support HB 528.

REP. RICE commented the situation is not that unusual and the lessee is paying an additional fee to the State of Montana.

REP. STAHL explained the quota system gave two licenses to West Yellowstone, but that West Yellowstone had eight licenses that were legally owned and in place when the quota system went into effect. REP. STAHL suggested if a person wants a liquor license, they should go buy one.

REP. JACOBSON pointed out that the beer and wine license is already 50 percent in place. In addition, REP. JACOBSON thought West Yellowstone had suffered economically recently, and suggested the restaurant in question was a destination restaurant. REP. JACOBSON stated he would support HB 528.

REP. WAITCHIES would not support HB 528 and thought obtaining a liquor license through the legislature was a bad idea. REP. WAITCHIES believed the quota system was the proper route.

CHAIRMAN OLSON reminded the Committee that it was a "beer and wine license" at issue and not a "liquor license." In addition, the beer and wine license was already operating for part of the

year, and HB 528 would only extend the duration of the existing license.

Vote: Motion failed 5-9 by roll call vote with REP. DRISCOLL, REP. HAMILTON, REP. JACOBSON, REP. RICE, and REP. WISEMAN voting aye, and REP. GALLIK and REP. GROESBECK voting no by proxy.

{Tape: 5; Side: B}

Motion/Vote: REP. WISEMAN moved that HB 528 BE TABLED AND THE VOTE REVERSED. Motion carried.

EXECUTIVE ACTION ON HB 732

Motion: REP. HIMMELBERGER moved that HB 732 DO PASS.

Discussion:

REP. PARKER advised the Committee that HB 732 needs to be passed. REP. PARKER stated he would work on HB 732 to assist in seeing the bill work through the process. REP. PARKER stated the consumer reporting agencies have massive power and very little accountability. REP. PARKER stated it was his understanding that the bill is supported by the Department of Justice, and that he is committed to seeing the bill passed.

REP. NOENNIG agreed and recalled another bill that would set up ID cards for people whose identities have been stolen. This bill would work with the consumer reporting agencies to put the identity theft on file.

REP. HIMMELBERGER could not support the bill since it needs work. REP. HIMMELBERGER thought identify theft could be addressed by an interim committee study, but commented he was not comfortable passing the bill in its present condition.

REP. PARKER agreed with REP. HIMMELBERGER's statements and reiterated that is why he is willing to work on the bill with REP. ROBERTS and the DOJ to ensure the bill works well with the other identity theft bill.

REP. RICE would not support HB 732 because of the number of objections from the people who would have to implement the bill. REP. RICE suggested letting the other bill become effective and then taking it to the next step.

REP. WISEMAN has extensive experience in computer software and credit reporting data. **REP. WISEMAN** depicted the industry as a "nightmare waiting to happen." **REP. WISEMAN** believed the missing element is the fact that the data is about people, but those people do not have any property-right interest in that data. **REP. WISEMAN** suggested if the data is about a person and is affecting a person's life, and that person has no control over the data and cannot correct it if it is wrong, then the situation is out of control. **REP. WISEMAN** stated many of his constituents are extremely terrified about identity theft.

CHAIRMAN OLSON spoke about his bank losing a laptop computer containing a considerable amount of his banking business. **CHAIRMAN OLSON** receives monthly reports from credit organizations to ensure his identity has not been stolen.

REP. WAITCHIES asked if the Montana State Legislature has the right to tell a New Jersey corporation what to do. **REP. PARKER** did not have the answer, but stated he would like to find out. **REP. PARKER** would like to see the Montana Legislature shake an angry fist at the massive, arrogant companies that are not responding to the needs of victims of identity theft.

REP. NOENNIG spoke about a former constituent who had her identity stolen and how she was being threatened with lawsuits. **REP. NOENNIG** ultimately intervened and threatened fraudulent Credit Act violations, treble damages, and attorney fees before they finally backed off.

REP. HIMMELBERGER suggested the Committee might be acting on emotion and was not convinced the bill would be helpful in any of the situations discussed.

Vote: Motion carried 9-5 by roll call vote with **REP. HIMMELBERGER**, **REP. KLOCK**, **REP. RICE**, and **REP. WAITSCHIES** voting no, and **REP. GROESBECK** voting no by proxy, and **REP. GALLIK** voting aye by proxy.

EXECUTIVE ACTION ON HB 670

Motion: **REP. HIMMELBERGER** moved that HB 670 DO PASS.

Discussion:

REP. STAHL suggested a rule should be implemented saying if a board member misses one or two meetings, they are no longer a board member.

REP. KLOCK stated a majority of the board members present could result in only three members having the ability to make substantial decisions. **REP. KLOCK** opposed the bill for that reason.

REP. NOENNIG recalled Missoula had a solution without the need for any additional statutory language.

Vote: Motion failed 3-9 by voice vote with **REP. DRISCOLL**, **REP. JACOBSON**, and **REP. PARKER** voting aye. (There were no proxies voted for **REP. GALLIK** and **REP. GROESBECK**.)

Motion/Vote: **REP. NOENNIG** moved that HB 670 BE TABLED AND THE VOTE REVERSED. Motion carried.
{Tape: 5; Side: B; Approx. Time Counter: 13.7 - 16.2; Comments: Executive action on HB 670.}

EXECUTIVE ACTION ON HB 725

Motion: **REP. KLOCK** moved that HB 725 DO PASS.

Discussion:

REP. STAHL commented he understands the problem but believed there are some inherent problems with the application. **REP. STAHL** suggested HB 725 might make the problem a little one-sided toward the utility and against the contractors.

REP. WISEMAN thought the concept was good and stated he would support HB 725.

Vote: Motion carried 11-3 by roll call vote with **REP. NOENNIG** and **REP. STAHL** voting no, and **REP. GROESBECK** voting no by proxy and **REP. GALLIK** voting aye by proxy.

EXECUTIVE ACTION ON 753

Motion: **REP. HIMMELBERGER** moved that HB 753 DO PASS.

Discussion:

REP. HIMMELBERGER recapped that HB 753 would move the license suspension from a fourth conviction to the first conviction. **REP. HIMMELBERGER** explained he does not believe HB 753 would end the problem of people driving without insurance, but after visiting with representatives of the insurance industry and the

Department of Motor Vehicles (DMV), **REP. HIMMELBERGER** believes it is a move in the right direction.

REP. RICE commented that she believes HB 753 is too punitive. **REP. RICE** explained a recent edition of the *Bozeman Chronicle* contained a full page of citations for no insurance, suspended licenses, MIPs, and DUIs. **REP. RICE** suggested people drive without insurance because they cannot afford it.

REP. WISEMAN agreed with **REP. RICE** and believed people need to carry insurance, but suggested suspending a license on a first offense would cause havoc among his constituents.

REP. HIMMELBERGER replied havoc is already being created because of the number of people who have been victims of being hit by someone without liability insurance.

CHAIRMAN OLSON agreed with **REP. HIMMELBERGER** that it is a large problem. **CHAIRMAN OLSON** pointed out that the bill contains a provision that the offender operating the vehicle must be the owner of the vehicle or a member of his immediate family.

Vote: Motion failed 5-9 by roll call vote with **REP. DRISCOLL**, **REP. HIMMELBERGER**, **REP. JACOBSON**, **REP. NOENNIG**, and **REP. OLSON** voting aye, and **REP. GALLIK** and **REP. GROESBECK** voting no by proxy.

Motion/Vote: **REP. NOENNIG** moved that HB 753 BE TABLED AND THE VOTE REVERSED. Motion carried.

{Tape: 6; Side: A}

EXECUTIVE ACTION ON HJ 28

Motion: **REP. PARKER** moved that HJ 28 DO PASS.

Discussion:

REP. WAITCHIES believed HJ 28 is a good idea since currently there is no registry.

REP. STAHL asked if conservation easements were included in HJ 28. **REP. PARKER** pointed out the language refers to all easements.

Vote: Motion carried unanimously by voice vote, with **REP. GROESBECK** and **REP. GALLIK** voting aye by proxy.

EXECUTIVE ACTION ON HB 722

Motion: REP. HIMMELBERGER moved that HB 722 DO PASS.

Motion: REP. HIMMELBERGER moved that HB072201.ate BE ADOPTED.
[EXHIBIT](#)(feh40a19)

Discussion:

Mr. Everts reviewed HB072201.ate with the Committee.

REP. STAHL commented he would oppose the amendment because Saco has its own natural gas facilities and is conducting long-range planning for an electrical generation facility.

Vote: Motion carried unanimously by roll call vote, with REP. GALLIK and REP. GROESBECK voting aye by proxy.

Motion: REP. HIMMELBERGER moved that HB 722 DO PASS AS AMENDED.

Discussion:

REP. WISEMAN commented that public power is a value that should be upheld and that HB 722 is an attack on publicly owned power.

Vote: Motion failed 5-9 by roll call vote with REP. HIMMELBERGER, REP. NOENNIG, REP. OLSON, REP. STAHL, and REP. WAITSCHIES voting aye, and REP. GALLIK and REP. GROESBECK voting no by proxy.

Motion: REP. NOENNIG moved that HB 722 BE TABLED AND THE VOTE REVERSED.

{Tape: 6; Side: A; Approx. Time Counter: 1.9 - 8.2; Comments: Executive Action on HB 722.}

EXECUTIVE ACTION ON HB 389

Motion/Vote: REP. STAHL moved to bring HB 389 OFF THE TABLE. Motion carried 7-5 by roll call vote with REP. DRISCOLL, REP. HAMILTON, REP. JACOBSON, REP. PARKER, and REP. WISEMAN voting no.

CHAIRMAN OLSON directed the Committee to HB038907.ate which was adopted at a previous meeting.
[EXHIBIT](#)(feh40a20)

Motion: REP. STAHL moved that HB 389 DO PASS AS AMENDED.

Motion: REP. OLSON moved that amendment HB038909.ate BE ADOPTED.
[EXHIBIT \(feh40a21\)](#)

Discussion:

REP. NOENNIG commented the issue had arisen as to what would happen if the default supplier chose to invest in, acquire and lease a plant or equipment used for the production of electricity submits it to the portfolio and then subsequently backs out of its commitment. The language in HB038909.ate makes it clear the PSC can enforce the agreement. Mr. Everts requested additional time to clarify the language.

REP. WISEMAN commented the language in HB038909.ate is almost identical to HB038901.ate which the Committee had already voted on and failed to adopt. CHAIRMAN OLSON agreed.

REP. NOENNIG asked Mr. Everts to explain his conceptual amendment. Mr. Everts explained on Amendment 2, Subsection (b), there would be a sentence following that would read, "If the commission approved the default supplier to invest in, acquire, or lease a plant or equipment used for the production of electricity as a part of the default supply portfolio, the default supplier may not withdraw its proposal." Mr. Everts explained once the commission approves the plant as part of the portfolio, the amendment would prohibit the default supplier from retracting its proposal.

REP. STAHL asked about where the preapproval process would be in comparison to final approval. REP. NOENNIG believed it should be the same as with a third party. Mr. Everts identified it as being part of the overall procurement statute and stated the amendment relates to the default supply planning procurement statute, but it could also apply to the preapproval section.

Vote: Motion that Amendment HB038909.ate BE ADOPTED carried 8-6 by roll call vote with REP. GROESBECK, REP. HAMILTON, REP. JACOBSON, REP. PARKER, REP. WISEMAN voting no, REP. GALLIK voting no by proxy, and REP. RICE voting aye by proxy.

Motion: REP. NOENNIG moved that HB 389 DO PASS AS AMENDED.

Motion: REP. NOENNIG moved that Amendment HB038908.ate BE ADOPTED.
[EXHIBIT \(feh40a22\)](#)

Discussion:

REP. NOENNIG explained the purpose of HB038908.ate is to prevent the default supplier from having a conflict of interest in the portfolio such that it would refuse to include a competitor. **Mr. Everts** added the amendment will technically require the PSC in its rulemaking to insure there is no conflict of interest and will require the PSC to review the default supply bids to ensure the default supplier will not unfairly favor its own generation lease proposals. The amendment will also authorize the PSC to protect cost information of the bidder and the default supplier.

Vote: Motion carried 13-1 by roll call vote with **REP. STAHL** voting no and **REP. GALLIK, REP. GROESBECK** and **REP. RICE** voting aye by proxy.

Motion: **REP. NOENNIG** moved that HB 389 DO PASS AS AMENDED.

Discussion: **REP. STAHL** commented that at one time the Committee was looking way down the road, and then the Committee was looking very short-sidedly, and now it seems the Committee is looking at revenue costs up close and at a medium length of time. **REP. STAHL** wondered what the cost of electricity would be by the time the plant is paid for. **REP. STAHL** expressed concern about whether requiring the cheapest cost available would preclude plants from being built.

CHAIRMAN OLSON commented that he believes the amendment would take care of concerns voiced by **REP. NOENNIG** on past practices. **CHAIRMAN OLSON** did not believe those practices would be allowed today based on the way the portfolio is developed. **REP. STAHL** clarified his comment relates to the whole the process and not just one amendment.

Vote: Motion failed 7-7 by roll call vote with **REP. HIMMELBERGER, REP. KLOCK, REP. WAITSCHIES, REP. STAHL, REP. NOENNIG,** and **REP. OLSON** voting aye, and **REP. RICE** voting aye by proxy, and **REP. GALLIK** and **REP. GROESBECK** voting no by proxy.

CHAIRMAN OLSON expressed his displeasure in the way **REP. GROESBECK's** proxy had been voted and stated he believed **REP. GROESBECK** had wanted his proxy to be voted in favor of HB 389.

ADJOURNMENT

Adjournment: 9:36 P.M.

REP. ALAN OLSON, Chairman

CYNTHIA PETERSON, Secretary

AO/cp

Additional Exhibits:

EXHIBIT ([feh40aad0.PDF](#))