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Economic Affairs Interim Committee

61st Montana Legislature

SENATE MEMBERS

JIM KEANE--Chair
ROY BROWN
KEN (KIM) HANSEN
RYAN ZINKE

HOUSE MEMBERS

GORDON VANCE--Vice Chair
CHUCK HUNTER
MICHELE REINHART
DON ROBERTS

COMMITTEE STAFF

PAT MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

MINUTES

January 20 & 21, 2010
8:30 a.m.

RM 132 - Capitol Bldg
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

SEN. JIM KEANE, Chair
REP. GORDON VANCE, Vice Chair

SEN. ROY BROWN
SEN. KEN (KIM) HANSEN

REP. CHUCK HUNTER
REP. MICHELE REINHART
REP. DON ROBERTS

COMMITTEE MEMBERS EXCUSED

SEN. RYAN ZINKE

STAFF PRESENT

PAT MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

Visitors/agenda

Visitors' list, Attachment #1.
Agenda, Attachment #2.

COMMITTEE ACTION

The Economic Affairs Committee Members:

- approved the written minutes from the November 17, 2009 committee meeting as amended.

Wednesday, January 20, 2010

CALL TO ORDER AND ROLL CALL

00:07:25 Chair Keane called the Economic Affairs Interim committee to order at 8:30 a.m. The committee secretary called the roll. Attachment #3 Rep. Hunter made a correction and made the motion to approve the minutes from November 17, 2009. Attachment #4 The motion **passed**. Sen. Zinke is excused.

AGENDA

00:09:10 Pat Murdo, Research Analyst staff, addressed:

- SJR 30 - Workers' Compensation. **(Exhibit 1)**
- An addenda to the Competition Report for Workers' Compensation regarding Plan 3 being exclusive for state agencies, information on Montana State Fund's basic premiums, and market share **(Exhibit 2)**
- The statute showing Plan 3 as exclusive for state agencies with the University system allowed to opt out. **(Exhibit 3)**

00:17:45 Chair Keane asked for a report showing what the Labor Management Advisory Council (LMAC) has agreed on or what it has not agreed on. He said that the committee will have to decide whether to take up issues that LMAC is not dealing with.

00:19:18 **Ann Clayton, consultant with the Department of Labor and Industry (DLI)**, gave an overview on rate-setting. She distributed a PowerPoint addressing Workers' Compensation Insurance Pricing, Regulation and the History of State Funds: **(Exhibit 4)** Ms. Clayton discussed:

- the history of state funds;
- general principles of insurance pricing;
- the challenge in setting rates;
- manual rates;
- how the manual premium calculation works;
- the modification factor - actual losses compared to losses of other employers in the same type of business;
- the various information used in the pricing puzzle;
- premium price structure for a specific state - underwriting decisions;
- degree of regulation for rate approval;
- how comparator states regulate Workers' Compensation rates;
- variation in rates - when insurers can charge a rate that is different from the approved rate;
- price structures and how the rates are set;
- alternative policy options;

- how Montana's market compares with comparator states.
- the process of underwriting insurance policies; and
- the difference between Plans 1, 2, and 3 and who pays the benefits to an injured worker.

01:35:09 Chair Keane asked that a report be provided of the 22 states that have a State Fund and how they are regulated.

Rate-setting Comparing Montana State Fund and Private Insurers

- **Kris Wilkinson, LFD staff**

01:35:40 Ms. Wilkinson distributed a PowerPoint **(Exhibit 5)** that explains some of the Workers' Compensation issues in Montana:

- premium assessments;
- establishing premium rates;
- the differences between Plan 2 and Plan 3; and
- how rate tiers work with the Montana State Fund.

Ms. Wilkinson has a handout that explains the premiums and standard rates for the Montana State Fund. **(Exhibit 6)** She said that the University System has its own self-insurance policy.

02:03:13 Laurence Hubbard, President and CEO of the Montana State Fund, provided information on how the Montana State Fund sets premiums:

- the size of the employer.
- experience rating.
- the number of claims over \$250 in any given time period, and
- the amount of time a company has been insured with the Montana State Fund.

Mr. Hubbard said that the longer a customer is with the Montana State Fund the better that company's opportunity to move into the lower tiers.

02:13:23 Break - back at 10:45

Role of Regulatory Oversight by the State Auditor's Office

- ▶ **State Auditor Monica Lindeen and staff:**
 - ▶ **Mari Kindberg**
 - ▶ **Steve Matthews CFO for the State Auditor's Office.**

02:26:00 Ms. Lindeen informed the committee that the State Auditor's Office is being called the Montana Commissioner of Securities and Insurance (CSI). She distributed and explained several handouts:

- ▶ Regulatory oversight of private (Plan 2) Workers' Compensation insurers and what CSI can provide for Plan 3. **(Exhibit 7)**
- ▶ Comparison of Montana State Fund's market share over time to the state's ranking by premium rates in the Oregon national study.

Ms. Lindeen also discussed how the National Council on Compensation Insurance, Inc. (NCCI) sets rates and the impacts on Plan 2 carriers from Sept 11, 2001, and the ensuing recession. **(Exhibit 8)**

Oversight of Montana State Fund as that Relates to Solvency, Reserves, Equity

- ▶ **Kris Wilkinson, LFD staff, and**
- ▶ **Laurence Hubbard, executive director, Montana State Fund**

- 03:16:02 Ms. Wilkinson distributed a PowerPoint and explained:
- ▶ how claims, loss reserves and equity are established. **(Exhibit 9)**
 - ▶ the Montana State Fund reserves, equity, solvency, and related oversight (Old Fund and New Fund). **(Exhibit 10)**
- 03:35:25 Mr. Hubbard distributed a report that explains the issues of oversight by the Montana State Fund **(Exhibit 11)**, and how the rates compare with Montana's private carriers. He explained that the Montana State Fund as a guaranteed insurance carrier cannot decline or refuse to insure an employer. Mr. Hubbard distributed a handout that explains the tiered rating plan **(Exhibit 12)**, and the tier criteria for FY 2010. **(Exhibit 13)**
- 04:01:44 Lunch
- 05:08:04 Sen. Keane called the Economic Affairs Interim Committee back to order at 1:30 p.m.
- ### **Operations of State Funds Elsewhere in the United States and in Montana**
- ▶ **Ann Clayton**
- 05:08:23 Ms. Clayton distributed a handout that addresses the regulation of the Montana State Fund with comparator states and explains how the other states operate. **(Exhibit 14)**
- #### **Plan 2 and Plan 3 -- How they Differ**
- ▶ **Plan 2 Representatives:**
 - ▶ **Larry Jones, Liberty Northwest**
 - ▶ **Keith Brownfield, Founder and CEO of Victory Insurance**
 - ▶ **Plan 3 Representative**
 - ▶ **Laurence Hubbard, executive director, Montana State Fund**
- 05:25:12 Mr. Jones complimented the Montana State Fund, which is a competitor of Liberty Northwest. He distributed a handout that explains how the two Plans differ. **(Exhibit 15)**
- 05:30:04 Mr. Hubbard talked about competition with the other Workers' Compensation insurers in Montana. He addressed how the rate differential and the loss cost multipliers has demonstrated how the Montana State Fund is competitive and how it can set rates lower than the private carriers.
- 05:40:07 Mr. Brownfield distributed a handout and gave an overview of how Victory Insurance operates. **(Exhibit 16)**

EAIC comments and questions

06:11:29 The committee members asked further questions regarding the new State Fund building that is currently being built. Mr. Hubbard explained that the Board of Investments has the contract to build the new building, and that the Department of Corrections is moving into the old State Fund building.

Break

Public Comment

06:32:04 **John Youngberg, Montana Farm Bureau**, discussed the variations of the NCCI codes. He talked about the safety training program in the agriculture industry. He said that it is essential that agriculture keep its class code 6. Most of Montana's agriculture is diversified and the industry does not want to keep track of the various codes.

Classifications and Their Role in Premium Setting

- ▶ **Mike Taylor, NCCI, reviewing NCCI's setting of classifications**
- ▶ **Dick Root, Montana State Fund, reviewing the classification committee's actions and Montana State Fund's use of classifications**

- ▶ **Kris Wilkinson, LFD, provided a case study of Tumbleweed, a nonprofit that experienced a reclassification and a four-fold proposed increase in rates**

06:36:33 Mr. Taylor gave an overview of NCCI's classification codes and how they are set.

06:40:55 Dick Root distributed a PowerPoint (**Exhibit 17**) that explains:

- ▶ the classification and review committee membership,
- ▶ the function of the committee,
- ▶ examples of committee decisions and situations where class codes differ for Montana State Fund, including coverage of all Montana farm and ranch employees under one code

06:53:16 Ms. Wilkinson distributed a handout of a case study of Workers' Compensation Insurance costs regarding the Tumbleweed Runaway Program, Inc. (**Exhibit 18**) She explained how premiums differed for the Tumbleweed program depending on the insurer and where costs is similar or different.

Impacts on Premiums of Legislation and Court Decisions

07:09:25 Mike Taylor of NCCI distributed a handout and addressed the impacts on premiums of legislative and court decisions. (**Exhibit 19**)

Review of Legislative Audit regarding Montana State Fund Board Governance

- ▶ **Angus MacIver, Legislative Audit Division (LAD), and**
- ▶ **Patti Grosfield, Montana State Fund**

- 07:12:26 Mr. MacIver talked about corporate governance practices pertaining to the Montana State Fund. He distributed a handout that addresses commonly asked questions of the management and structure of the Montana State Fund and the recommendations that LAD identified for changes in Montana State Fund practices. **(Exhibit 20)**
- 07:43:04 Mr. Hubbard introduced Patti Grosfield, the Montana State Fund's internal auditor. He distributed a handout of the Montana State Fund board members, their occupation and location. **(Exhibit 21)**
- 07:43:48 Ms. Grosfield gave background information of the Montana State Fund's audits and the different components of the LAD performance audit. She distributed a handout that addressed the Montana State Fund Internal Audit Charter. **(Exhibit 22)** The handout addressed:
- ▶ the mission and scope of work,
 - ▶ accountability - performed by the internal audit department.,
 - ▶ reporting structure,
 - ▶ responsibility,
 - ▶ authority, and
 - ▶ standards of audit practice.

Update from State Fund Liaisons

- ▶ **Rep. Hunter**

- 07:57:53 Rep. Hunter said there is no report because State Fund has not had a meeting since the November EAIC meeting.

Staff Direction

- 07:58:52 Ms. Murdo and the committee members discussed the next meeting and if they need another MetNet session. Ms. Murdo said it has been recommended that the agencies report on bill drafts at the May meeting.

- 08:05:41 Chair Keane recessed the committee at 4:29 p.m.

Recess until Thursday morning at 8:00 a.m.

Thursday, January 21, 2010

Visitors/agenda

Visitors' list. Attachment #1

Agenda. Attachment #2

00:00:41 Chair Keane called the Economic Affairs Committee back to order at 8:00 a.m. The secretary called the roll. Attachment #3

Update on information requested at November 17, 2009, EAIC meeting:

- ▶ **Jerry Keck, Employment Relations Division (ERD), Department of Labor and Industry (DLI), Duration of Claims Data by Plan Type and Summary of Workers' Compensation Claims Paid as a Percent of Payroll.**
- ▶ **Ann Clayton, consultant with ERD - Recommendations for Averting of Dealing with Fraud**

00:01:38 Mr. Keck distributed and explained handouts regarding:

- ▶ The Montana average duration of temporary disability. **(Exhibit 23)**
- ▶ A comparison of Plans 1, 2, and 3 showing workers' compensation benefits paid for every \$100 per payroll. **(Exhibit 24)**

00:17:17 Ms. Clayton talked about fraud and explained that the definition of fraud has to be proven and that it is intentional. She said that employer fraud is the largest of all frauds. She said that Montana does not have the employer problem because the laws are very tight. She suggested that DLI hire a part time employee to investigate fraud.

Overview of How Independent Insurance Agents Direct Traffic to Plan 2 and Plan 3 Insurers.

- ▶ **Bob Biskupiak, Independent Insurance Agents Association of Montana**

00:26:27 Mr. Biskupiak distributed a handout that explains how insurance agents work with Plan 2 and Plan 3 insurers. **(Exhibit 25)** He addressed the insurance agents' role and their specialty with Workers' Compensation and the Montana State Fund. He talked about Plan 2 insurance agent carriers stating that Montana doesn't have many carriers in the state because the market is driven by probability of profit.

00:56:11 10 minute break.

Review of HB 126 Implementation -- State of Montana's Work Comp Plans

- ▶ **Connie Welsh and Lance Zanto, Department of Administration (DofA)**

01:07:04 Ms. Welsh gave an update regarding the implementation of HB 126 that allows Montana to take better control of the state's Workers' Compensation plans. She

distributed a handout (**Exhibit 26**) that gave background information of the DofA's implementation of HB 126 and the Department's involvement in safety, early return to work, and stay at work options. She also discussed how the State had saved money by changing its premium payment schedule.

01:17:16 Mr. Zanto clarified comments about two different policies, one for the Department of Public Health and Human Services and one for firefighters in the Department of Natural Resources and Conservation, and how adjustments were done for each.

There was discussion about the State's return-to-work approach and interaction with doctors as well as self-insurance for the State of Montana and interaction with the Montana State Fund as an insurer and as a state agency. Sen. Keane asked for DofA to request an actuary to estimate the cost of the state self-insuring or using private insurers.

Update on Utilization and Treatment Guidelines Working Group

▶ Jerry Keck, ERD

01:34:43 Mr. Keck distributed a handout that gives an update on the utilization and treatment guidelines for working groups. (**Exhibit 27**) He said that DLI has identified medical costs as a major cost driver for Workers' Compensation premiums. He addressed:

- ▶ strategies for medical cost containment.
- ▶ process for adoption of utilization and treatment guidelines.
- ▶ proposed timeline to adopt the guidelines.

Mr. Keck talked about a meeting that will be taking place to review the Colorado utilization and treatment guidelines following which the Montana medical providers' panel will compare data and make recommendations on which guidelines to adopt. Mr. Keck introduced Frank Newhauser, an economist with the University of California - Berkeley, who will be looking at medical fee schedules and their impact of Workers' Compensation premiums. Mr. Keck said he will keep the committee informed on Mr. Newhauser's proposals. Mr. Keck said that the proposals will also go before LMAC before they are brought before this committee.

Panel on Medical Recruitment and Expansion of Training for Work Comp Treating Physicians

- ▶ **Bob Olsen - Representative of MHA, an Association of Health Care Providers**
- ▶ **Dr. John Petrisko - Representative of Montana Medical Association (by phone)**

01:55:17 Mr. Olsen gave an overview regarding education of physicians for injured workers. He talked about a safety program where the clinics bring providers from rural areas to pursue additional information in the treatment of injured workers. He said it is a good idea that the DLI have a chief medical officer on board because there is no one else for providers to turn to.

02:03:22 Dr. Petrisko talked about continuing education credits for providers. He said that incentives for training providers of injured workers should be voluntary - not mandated. He suggested that information from DLI be sent out to the providers.

Ms. Murdo distributed a handout showing policy options regarding medical costs, to which Dr. Petrisko had referred. **(Exhibit 28)**

Discussion of HIPAA (Health Insurance Portability and Accountability Act) as related to Workers' Compensation

▶ **Erin MacLean - attorney**

02:16:46 Ms. MacLean distributed a PowerPoint that provides information between HIPAA and Workers' Compensation. **(Exhibit 29)** She talked about protected health care information and when that information can be disclosed.

There was discussion about HIPAA and Workers' Compensation, including court cases and return to work. Chair Keane appointed a subcommittee, naming Rep. Hunter as chair and committee member Rep. Roberts, and he asked Erin MacLean, Nancy Butler, and staff to participate in this subcommittee.

02:54:27 Lunch

Policy Options for Workers' Compensation Structure and competition

▶ **Pat Murdo, Legislative Staff**

04:31:50 Ms. Murdo distributed and explained several handouts:

- ▶ A chart that explains LMAC's workplan as of Jan. 19, 2010. **(Exhibit 30)**
- ▶ Policy options for oversight of the Montana State Fund and other options for Workers' Compensation structure and competition. **(Exhibit 31)**

Panel Discussion by Montana State Fund Board Members

04:55:50 Chair Keane informed the State Fund Board members what the EAIC has been working on. He asked the panel members to discuss what they do in comparison to other states.

04:57:12 The State Fund Board of Directors identified themselves and gave background information regarding what they do for State Fund and their other job.

- ▶ Joe Dwyer, Chair of the Board
- ▶ Jane DeBruycker
- ▶ Wally Yovetich
- ▶ Jim Swanson
- ▶ Ken Johnson
- ▶ Boyd Taylor (who joined meeting later)

05:02:45 The panel members talked about their job and the decisions they make as the Board of Directors. The members discussed:

- ▶ the new State Fund building.
- ▶ that they are volunteers, and listen to business issues, such as plans, budgets, and executive issues.

- ▶ the State Fund assets, which are healthy and there is no hidden agenda regarding the new State Fund building that it is funded through State Fund's money through the Board of Investments.
- ▶ the Culture Safety Act and who should be responsible - the employer or insurer for implementation?
- ▶ the Legislature's involvement in funding more inspectors for safety training for anyone that wants to reduce their accident rate.
- ▶ safety training, which is a key action to bring rates down in Montana.
- ▶ physicians making decisions on Workers' Compensation cases and making the determinations to keep a case open or closing a case.

05:44:28 The panel members and committee members discussed State Fund being audited, and how the Board and the committee can communicate better.

EAIC comments and questions

05:52:01 The committee members talked about claims staying open longer and questioned the panel members if they had any suggestions. There was discussion how to get workers back to work earlier. They talked about how the Legislature has set a rate that the injured worker can receive up to 60% of their working wage, but there needs to be more of an incentive for the employee to return to work earlier.

05:56:47 Chair Keane thanked the panel members for their time and comments.

05:58:52 Break

Public comment

06:13:19 Bruce Spencer representing Property Casualty Insurance Association of America, said that his clients are part of the Plan 2 insurers. He talked about an article by Mari Kindberg that explains the Herfindahl-Hirschman Index regarding competitive markets. **(Exhibit 32)** He said there is not a competitive environment in Montana and that Property Casualty Insurers are very concerned about this.

06:21:29 Carl Kochman, WorkSafeMT, and Montana State Fund, talked about how State Fund advertises. Mr. Kochman discussed workplace safety and gave several examples of companies that have a decrease in their insurance premium rates due to safety training. He distributed handouts on WorkSafeMT **(Exhibit 33)** and the Montana Culture Act. **(Exhibit 34)**

Panel Discussion from Plan 1 insurers regarding experience of self-insuring

- ▶ **Leah Tietz, Montana University System**
- ▶ **Colleen Hebert, Bozeman Campus (MSU)**
- ▶ **Bob Worthington, Montana Self-Insurers Association**
- ▶ **Shawn Bubb, Montana Schools Group Insurance Authority**

06:24:45 The panel members introduced themselves.

- 06:26:25 Mr. Worthington gave an overview of the Plan 1 insurers in Montana. He stated there are 40 self insured groups in Montana. He talked about solvency and how the self insured have contributed to the guaranteed fund.
- 06:34:30 Ms. Tietz distributed a handout that shows how the Montana University System (MUS) became self-funded. **(Exhibit 35)** She explained that the Board of Regents requires that each University campus have a coordinator to handle the safety issues regarding early return to work or class.
- 06:42:46 Ms. Hebert gave an overview of her duties working with the self-insured program. She talked about how each campus set its rates and how they have implemented the early return to work or class program.
- 06:50:17 Mr. Bubb talked about school grants for safety. He said that slip and fall accidents are the number one cause of injuries. He commended Montana's three-plan workers' compensation system.
- 07:01:43 Chair Keane asked that a breakdown of the payroll rates be given to the committee members at the next meeting. Chair Keane informed the committee that Commissioner Keith Kelly has informed him that DLI will be staying with the old Unemployment Insurance (UI) computer system due to cuts in the budget.

Rule Review and Department Monitoring

► Bart Campbell, Staff Attorney

- 07:02:30 Mr. Campbell distributed a handout and explained the proposed procedures used in adopting the official Brucellosis Order from the Department of Livestock (DoL) for Brucellosis. **(Exhibit 36)** He said there was a question of whether the Order was properly issued. The DoL is authorized to issue orders and they did hold public discussion. The problem occurred because it was ordered by the State Veterinarian, who is under the DoL. He said that the committee, under the Montana Administrative Procedure Act (MAPA), need not be involved because MAPA addresses rules and not orders. He said this issue should probably be before the Legislative Council. He also distributed a handout of the January/February Rule Review that the EAIC has oversight of the state agencies. **(Exhibit 37)**

Comment from Christian MacKay, Executive Officer, Department of Livestock (DoL), regarding new brucellosis order

- 07:11:28 Mr. MacKay distributed a handout and gave a brief background on the status of the new brucellosis order in Montana. **(Exhibit 38)** He said the order came about because of federal changes. He said the order protects Montana producers and keep them from decreasing their herd. He said an order was used because it is more flexible and can be changed more rapidly than a rule.

Dr. Marty Zaluski, Montana State Veterinarian, reported on the public meetings that took place before the order was issued. He said that a number of participants offered suggestions that have been implemented to make the order

better.

Public Comment

- 07:33:46 Brian Moussard, livestock producer from Dillon, voiced his concern about brucellosis and that the DoL is not pursuing prevention of the disease.
- 07:34:58 Nancy Schlepp, Montana Farm Bureau Federation, distributed information from Park County livestock producers, Druska and Richard Kinki who stated it is an unfunded mandate. **(Exhibit 39)** She also distributed a list of questions from the Montana Farm Bureau Federation to the DoL who responded to the questions regarding the Designated Surveillance Area (DSA) Official Order. **(Exhibit 40)**
- 07:39:07 Sen. Debby Barrett, SD 36, distributed a handout requesting that the EAIC investigate the order. She said that the order does nothing to eradicate brucellosis in Montana, but creates an area where the disease will remain indefinitely. Sen. Barrett said it will place a burden on livestock producers in the DSA. **(Exhibit 41)**
- 07:48:47 Errol Rice, Executive Vice President of the Montana Stockgrowers Association, commented that the Association did not look at the order as a legal analysis. He talked about the ranchers within the DSA and the broader context. He asked that DoL and Fish, Wildlife, and Parks provide more information and discussed U.S. Federal-state partnerships having lapsed, particularly in the Yellowstone National Park area. He recommended reestablishing the partnerships to work on mitigation.
- 08:00:09 Bruce Malcolm a former representative, expressed his concerns as one of the ranchers that is affected by the order and the brucellosis

Staff direction

- 08:04:16 Chair Keane said the issue of brucellosis can be placed on the agenda for the next meeting. He directed the staff to work with a work group on this and bring more information to the next meeting. Sen. Brown asked Mr. Campbell to investigate whether there was an unfunded mandate or a constitutional equal protection issue. Mr. Campbell suggested also determining if the Montana Environmental Policy Act was in play. Chair Keane also noted there should be discussion between producers inside and outside the DSA. Rep. Reinhart asked for strategies from DoL for moving ahead.

Adjourn

- 08:09:00 There being no further agenda or comments, Chair Keane adjourned the Economic Affairs Interim Committee at 4:09 p .m.

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