



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

May 25-26, 2010
Room 137

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.

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COMMITTEE MEMBERS PRESENT

SEN. JIM KEANE, Chair
REP. GORDON VANCE, Vice Chair
SEN. ROY BROWN
SEN. KEN (KIM) HANSEN
SEN. RYAN ZINKE
REP. CHUCK HUNTER
REP. MICHELE REINHART
REP. DON ROBERTS

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 EAIC:

- approved the minutes from March 30 & 31, 2010;
- voted to exclude the State Grain Lab from the SJR 14 study of labs;
- agreed to send a letter encouraging the Board of Livestock, the Department of Livestock, the Fish, Wildlife, and Parks Department, and the president of Montana State University to engage in joint discussions about the potential for shared laboratory space.

CALL TO ORDER AND ROLL CALL

Tuesday, May 25, 2010

00:00:03 Sen. Keane called the Economic Affairs Interim Committee to order at 8:39 a.m. The secretary called the roll. Attachment #3.

AGENDA

00:00:59 Sen. Brown made the motion to approve the minutes of March 30 and 31, 2010, as written. The motion **passed**.

Reports Provided to the Committee

- **Pat Murdo, Research Analyst**

00:01:32 Ms. Murdo gave an overview of the agenda. She talked about updates regarding proposed legislation from several of the agencies. She provided background information on workers' compensation loss costs, Old Fund budget issues, and the state's budget for the upcoming Legislature.

Committee comments and questions

00:06:50 Sen. Keane discussed the cost of workers' compensation and its exemptions, and asked that the committee think about a meeting in July to revisit this before the committee's last meeting in August.

Followup on State Auditor Investigations of Steering Complaints for Automotive Repair

- **Jesse Laslovich, State Auditor's Office, and**
- **Bart Campbell, EAIC staff attorney**

00:09:02 Mr. Laslovich discussed the concerns of the Montana Collision Repair Specialists Association and the need to make sure that insurance companies follow the anti-steering statute that was passed in the 2007 Legislature. He talked about the complaints that come into the office.

Committee comments and questions

00:15:49 Rep. Roberts, Rep. Vance, and Mr. Laslovich discussed if there are disincentives for people regarding steering and commented that people cannot be steered

toward certain auto body repair shops. There was discussion about using formal and informal approaches to address the problems.

00:19:26 Mr. Campbell quoted 33-18-224, MCA, the statute prohibiting designation of specific auto body repair shops, and stated that consumer protection law sets out what can be done.

00:20:39 Mr. Laslovich emphasized that patience will be needed to handle this situation. Sen. Keane talked about past and current legislatures working on this issue, and it still isn't handled.

Update on proposed rules from the Insurance Commissioner for a high risk pool, implementing a portion of the new federal health reforms

• **Jesse Laslovich, for the State Auditor's Office**

00:24:08 Mr. Laslovich discussed the State Auditor's Office's proposed rules to implement the new federal health care act regarding high risk health insurance pools. The hearing on the proposed rules is June 2, and the State Auditor's Office hopes to finalize the proposed rules by June 26, 2010. He said federal law requires a program to be on line by July 1, 2010. He said that criteria for eligibility is outlined in the new health care act. He said the program will be called the Montana Affordable Care Plan. To be eligible a person has to have a pre-existing condition and not have had health insurance for the last six months. The federal plan will allocate \$5 billion across the United States. Montana's share will be \$16 million to help offset costs not covered by premiums for the high-risk pool.

00:29:16 Sen. Hansen wanted to know if Montana would be on the hook if costs exceed the \$16 million. Mr. Laslovich said that the director of the Department of Health and Human Services said that the money will run out for all of the states before 2014. He said this is only temporary until January 1, 2014.

00:32:26 In response to committee questions Mr. Laslovich said the U.S. Department of Health and Human Services is developing guidelines for the new high risk program and that the State Auditor's Office will be in charge of the program.

00:38:53 Answering questions about the costs of health care premiums, Mr. Laslovich said he would get the range of premiums to the committee. He said a contract has been entered into between the Montana Comprehensive Health Association and Blue Cross Blue Shield of Montana (BC/BS).

00:41:38 Rep. Hunter asked if there will be any changes in the form of high risk groups. Mr. Laslovich said it is being discussed to add statutes. Among other questions, Sen. Keane wanted to know if BC/BS will be setting the rates. Mr. Laslovich said it will be the board that will set the rates and BC/BS will administer it.

Followup from Board of Outfitters and Business Standards Division regarding Applications and Emergency Guide Licenses

- **Lee Kinsey, chair, Board of Outfitters**
- **Tyler Moss, Board Counsel**

- 00:44:17 Mr. Kinsey explained how the Board operates and what they do. He gave a brief history of the past guide application process and explained the new change in the guide application process that will start this year.
- 00:47:18 Mr. Moss said with the direction this committee has given the board, two committee meetings and two conference call meetings have been held.

Public comment

- 00:48:15 Mac Minard, representing the Board of Outfitters and Guides Association, talked about a letter he had sent previously to committee members. He said there are 2 issues the Board has addressed: 1) the guide application, and 2) the emergency guide application and guide rules. He said they have taken the direction given by the Economic Affairs Committee and have streamlined the application process.
- 00:51:48 Sen. Keane thanked Mr. Minard, Mr. Moss and Mr. Kinsey for their comments.
- 9:30 a.m. Break - back at 9:35

Update on New Rule regarding Executive, Administrative, Professional Employee Minimum Wage and Overtime Provisions

- **Jerry Keck, Administrator of the Employment Relations Division, Department of Labor and Industry (DLI)**

- 01:07:21 Mr. Keck said his division is in charge of enforcing the Wage Payment Act. The Act determines what employees are exempt for purposes of overtime. He said that the Montana rules are now synchronized with the federal rules that were changed in 2004. He said the department adopted the federal salary threshold, currently \$455 a week, for determining employees who are exempt for overtime.

AGENCY BILL DRAFT PROPOSALS

State Auditor's Office

- **Jesse Laslovich on behalf of Commissioner Monica Lindeen**

- 01:10:14 Mr. Laslovich discussed legislative bill concepts, including housekeeping changes to the insurance code. He said there will be substantial changes. His office will be coming before the Legislature regarding the implementation of the federal health care reforms. Among the concerns are coverage of children until the age of 26. The State Auditor's Office will propose bills geared toward implementing Montana's health care reforms in line with the federal reforms. He talked about rate review authority for premiums that are established by health insurance companies. He said that Montana is one of four states that currently does not have rate review authority.

Committee comments and questions

01:23:21 Sen. Brown asked whether settlement recovery money and grants coming into the office are put into the general fund. Mr. Laslovich responded by giving examples of securities cases and fines going into the general fund and not kept in the State Auditor's Office.

Department of Livestock

- **Christian Mackay, Executive Officer**

01:28:37 Mr. Mackay said the department does not have any agency bills at this time.

Committee comments and questions

01:29:01 Sen. Hansen asked Mr. Mackay about brucellosis, the cost to the producers, the mandatory testing, and the beef checkoff program, which he said was sold to the producers as a marketing tool. He noted that if Montana loses its brucellosis class-free status it will hurt all producers in Montana. Mr. Mackay said he understands the frustration. He has heard loud and clear with regard to the use of the beef checkoff fund. The department's role is to collect those funds, and it cannot be used for live cattle. He addressed the cost of testing, the budget, and said the department is looking at the reimbursement rate. He said they are making an adjustment of the rate from \$12 per head for the vet so that \$10 will go to the vet and \$2 to the producer.

01:34:33 Sen. Hansen and Mr. Mackay discussed where the beef checkoff money goes and what it is used for. Mr. Mackay gave a breakdown of the various places where the beef checkoff money is used.

01:37:35 Sen. Keane talked about frustrations regarding department actions, and he asked for a written document on what is being done regarding a testing program for brucellosis. He asked Mr. Mackay to revisit this issue, and come back to the committee with a breakdown what the money is used for.

Department of Agriculture

- **Ron de Yong, Director**

01:40:17 Mr. de Yong talked about his agency's bill draft requests, which he said is an attempt to make Montana more business friendly. He said the department issues licenses for commodity dealers that require bonding. He said instead of the dealers putting up a deficit bond that has previously been required, the dealers will now have to put up only 110 % of Montana liabilities. He said this process will make it more straightforward.

01:42:33 Sen. Keane wanted to know why not 150% or 175%. Director de Yong said they wanted to leave this up to the Legislature. He explained how regular bonding works and how it is determined by percent of hundred weight such as storing grain. He said they figured that 110% will cover all costs.

01:44:04 Rep. Reinhart wanted to know how the food innovation centers are coming along. Director de Yong explained where the food innovation centers are located, and how they are working. He said there are grants that allow a person

to try a product and see if it works without having to invest too much before they know if it works.

Department of Commerce

- **Tony Preite, Director**

01:46:52 Mr. Preite talked about the department's conceptual legislation. He said that Kali Wicks, program manager from the department's Quality Schools Grant Program, will address HB 152. Director Preite talked about the Renewable Energy Initiative. He said the department's Chief Legal Counsel, Marty Tuttle, is also available to answer any questions the committee may have.

01:48:26 Ms. Wicks talked about HB 152, which established the Quality Schools Facility Grant program. She gave an overview of how the department uses this fund. She distributed and explained the following handouts:

- the final grant awards for 2010. **(Exhibit 1)**
- the locations of the projects that will receive the funds, **(Exhibit 2)**, and
- the dollar amount of the grants awarded for the projects. **(Exhibit 3)**

01:53:28 Sen. Keane asked Mr. Preite if this is the only proposed legislation. Director Preite said yes. They talked about bio-mass being part of this program, and Mr. Preite said it will be for future legislation

Department of Labor and Industry (DLI)

- **Commissioner Keith Kelly**

01:55:05 Commissioner Kelly distributed a handout describing the department's proposals. He informed the committee there are 11 bill proposals. He said the main proposal is the Workers' Compensation Revision bill being developed by the Labor-Management Advisory Council (LMAC). He said as much as \$150 million could come back to Montana as savings from this proposal. **(Exhibit 4)**

02:11:40 Sen. Hansen asked Commissioner Kelly about Workers' Compensation for brand inspectors. Commissioner Kelly said DLI and DoL are currently working on this and hope to have the issue resolved before the upcoming Legislature.

02:16:01 Sen. Brown asked about delays by the department on the determination of unemployment insurance. Sen. Brown said it is taking 3 to 4 months before an employee knows if their claim has been accepted or denied. Commissioner Kelly said if the claim is clean it can be pushed out the next day. If there is an issue, it slows the system down.

Governor's Office of Economic Development

- **Evan Barrett**

02:27:49 Mr. Barrett said that the office does not have any plans for a bill at this time. He gave an overview of all the projects that are currently taking place.

02:32:37 Rep. Reinhart asked Mr. Barrett for an update on some of the projects. Mr.

Barrett responded stating that the fastest growth sector in Montana is in the energy sector, such as coal. He noted the Otter Creek project will produce approximately 53 million ton of coal per year. He gave an overview of other projects that are or will be taking place. He said the two main growth areas are in: 1) the university arena, and 2) energy. Mr. Barrett talked about the revolving fund loan, which has kept Montana businesses on line. He noted that the Smurfit Stone facility might be used for development of bio-mass electrical generation.

02:43:32 Sen. Keane asked about the development of an on-ramp for Montana in the oil line, and whether the oil producers are signed up for it. Mr. Barrett said the Governor's Office is working on the delivery of the product. He said Montana is meeting with South Dakota, and Wyoming. He discussed the Trans-Canada oil pipeline and the jobs it will create in Montana on the construction side.

Montana State Fund (courtesy overview)

- **Laurence Hubbard, CEO of State Fund.**

02:48:06 Mr. Hubbard said that State Fund does not have any proposals for legislation at this time. He talked about possible legislation from LMAC-DLI, with whom they have been working.

Montana Chamber and Montana State Fund Responses to SB 192, regarding small business work comp premiums and safety/return to work programs

- **Jon Bennion for Montana Chamber of Commerce**
- **Laurence Hubbard for Montana State Fund**

02:49:24 Mr. Hubbard gave an overview of SB 192 and the role of experience rating.

02:54:34 Mr. Bennion thanked Sen. Zinke and the other members who sponsored SB 192. He provided information regarding the Montana Chamber of Commerce collaboration with Liberty Northwest, an insurance group, to help small businesses use the Workers' Compensation Insurance and Safety Program to lower premiums. **(Exhibit 5)**

02:58:40 The committee asked questions about safety services. Mr. Hubbard said that DLI is the enforcement arm for the Workers' Safety Program and talked about some of the safety programs that are in place, such as those overseen by the Occupational Safety and Health Administration.

03:09:15 Sen. Keane talked about businesses reporting accidents, and he asked Mr. Hubbard to review the Chamber of Commerce's program.

Update on Loss Cost Adoption and Other State Funds' Regulation

- **Pat Murdo, Staff**

03:13:21 Ms. Murdo talked about the new rates of the NCCI recommendations and

Montana State Fund's loss costs. **(Exhibit 6)**

03:19:26 The committee asked further questions of Mr. Hubbard regarding the comparisons of NCCI and Montana State Fund's loss costs. Mr. Hubbard and Larry Jones, Liberty Northwest, will address this issue at the committee's meeting tomorrow on May 26, 2010.

03:24:00 **Lunch**

04:45:23 Sen. Keane called the committee back to order 1:15 p.m.

COMMITTEE STUDIES

Update on SJR 14 Study of Livestock, Agriculture, and selected other state laboratories

- **Hope Stockwell, staff**

04:46:09 Ms. Stockwell gave an overview and update of SJR 14, the study of state labs. She distributed a memo she had addressed at an earlier meeting on state labs, one being the Veterinary Diagnostic Lab (VDL). **(Exhibit 7)** She also distributed a handout that addresses the state's grain labs through the Department of Agriculture. **(Exhibit 8)** Ms. Stockwell showed pictures of labs located throughout the state. **(Exhibit 9)** She also discussed a seed lab that is not state run. She said it is financially in trouble, because the fees are not keeping up with expenses.

04:57:54 Ms. Stockwell distributed a handout showing the study tasks along with potential findings and recommendations. **(Exhibit 10)**

Comment from Department of Livestock

- **Christian Mackay, Executive Officer**

04:59:13 Mr. Mackay talked about funding of the VDL. He distributed a handout that requested a statement from the EAIC committee that will recognize the importance of the VDL for; 1) the livestock industry, 2) public health and wildlife surveillance, and 3) encourage the Board of Livestock to actively pursue full American Association of Veterinary Diagnostic Laboratory (AAVDL) accreditation including pursuit of adequate facilities. **(Exhibit 11)**

05:03:38 Dr. Bill Layton, director of the Veterinary Diagnostic Laboratory, gave an overview why accreditation of a laboratory is needed in Montana.

Public Comment

05:11:19 Anne Weber, lab director at the Cogswell Building for the Department of Health and Human Services (DPHHS), stated her support for lab testing and gave a brief summary of why it is important.

05:14:02 Sen. Keane asked Mr. Mackay how the DoL will address the problem of the lab's accreditation. Mr. Mackay said that the department hopes to show the AAVDL

that Montana is making progress and will be getting together with other agencies such as Montana State University (MSU). Sen. Keane wanted to know how DoL might build a new lab. Mr. Mackay said that "Build America Bonds" is not the right fit for the department, which is looking at private and public funding. Sen. Keane wanted to know who would help with funding for a new building. Mr. Mackay said it will be the Board of Livestock. Sen. Keane asked if the Board had clearly understood what the committee is doing. Mr. Mackay replied that since Ms. Stockwell's study, they have advanced much further than expected.

05:20:15 Sen. Zinke asked if other states have state-run labs. Dr. Layton responded that most states have their own diagnostic laboratories. He explained how the accreditation takes place for a state-run lab. The committee discussed funding for the VDL and potential combinations with other state-run labs.

05:29:12 Rep. Reinhart asked about combining the Cogswell lab at DPHHS with other labs. Ms. Weber said they do human, not animal, testing. She said that the Cogswell lab is currently in good shape at this time.

05:30:48 Sen. Hansen asked Dr. Layton about samples that are sent out-of-state and what is the turn around time. Dr. Layton said there are three labs: 1) Michigan State University, 2) the National Veterinarians Diagnostic Laboratory, and 3) Cornell University. He said the cost is passed on to the veterinarians. The percentage of tests that go out-of-state is approximately 10%.

05:33:59 Art Noonan, deputy director, Department of Fish, Wildlife and Parks (FWP), said they are looking at combining labs with DPHHS, DoL, and the VDL.

05:37:23 Sen. Keane said the committee will vote on the suggestions first thing in the morning.

Report from HIPAA Subcommittee

05:39:05 Rep. Hunter gave an update and overview of the HIPAA subcommittee's recommendations. He talked about how it would be best for an employee to return to work early.

05:41:06 Rep. Hunter distributed and explained two handouts. The first handout is the bill draft LCwccw, which was approved by the subcommittee to present to the full committee. **(Exhibit 12)** The handout is new language that will provide clarity about what types of information can be shared. He distributed a handout that is a compilation of comments sent in by attorneys. **(Exhibit 13)**

05:45:31 Rep. Hunter also distributed and explained bill draft LCwcc#2. **(Exhibit 14)**

05:47:32 Rep. Roberts informed the committee that LCwcc#2 would protect exchange of patient information between medical practitioners and the insurer.

05:49:03 Rep. Hunter discussed current practice and the need for a signed release for the employer to obtain certain information about an injured workers' return to work.

- 05:52:06 Sen. Keane suggested the HIPAA subcommittee continue its work until they have resolved this issue.
- 05:53:14 Al Smith, Montana Trial Lawyers Association, distributed a handout that addresses the claimant's right to privacy. **(Exhibit 15)** He addressed a standard form.
- Update on Old Fund and State Budget Issues**
- **Kris Wilkinson and Terry Johnson, Legislative Fiscal Division**
- 06:09:45 Ms. Wilkinson gave an update on the Old Fund balance. **(Exhibit 16)** She addressed a handout that is an article from the *Missoulian* on Bipartisan leadership and explained how it is needed to restore the Old Fund. **(Exhibit 17)**
- 06:17:17 Terry Johnson, Lead Fiscal Analyst, LFD, distributed several handouts. The first PowerPoint-style handout provided current revenue trends. He explained each slide. **(Exhibit 18)** He talked about **(Exhibit 19)**, a summary of the general fund revenue monitoring report.
- 06:38:35 Rep. Hunter questioned Mr. Johnson on page 6 of Exhibit 18, regarding trends showing estimates on projected balance. Mr. Johnson said that it is very reasonable there is a growth factor. He said that the biennium of 2013 & 2014 might look better.
- 06:41:46 Sen. Brown asked Mr. Johnson about the oil price and production in Montana.
- 06:43:46 Sen. Zinke asked if there is still a difference between the Legislative Fiscal Division (LFD) and the Governor's Office of Budget and Program Planning. Mr. Johnson said yes there is a difference. He noted there are differences in corporate and income tax estimates.
- 06:46:33 Other questions from the committee included: the unfunded balance for pensions: (Mr. Johnson said the unfunded liability is \$2.5 billion for all retirement funds); lack of investment reserves on the Old Fund; the increase in administrative costs for the Old Fund from 14.8% to 14.9%.
- 06:50:43 Mark Barry of Montana State Fund explained the Old Fund and its administrative costs. He said the number is based on 2009 and an increase in 2011.
- 06:52:08 Sen. Keane asked when there is a decrease in claims in the Old Fund, why are the administrative expenses increasing.
- 06:53:16 Sen. Keane wanted to know what the difference is between LFD and the Governor's Office regarding revenue estimates. Mr. Johnson replied only about \$7 million. He said the largest difference is in this current biennium, 2011. He said that Montana will not recover until 2015 to be at the same level it was at in 2008.
- 06:58:11 Further questions from the committee included analysis of Medicaid case load

growth, whether state special revenue accounts could be used for general fund purposes (being discussed by the Legislative Finance Committee); whether estimated coal revenue is budgeted into the general fund (Mr. Johnson said yes); and whether there is money in the state's special fire account. Mr. Johnson said yes, about \$16 million for general emergencies).

Subrogation

- **Bart Campbell, Staff Attorney, LSD, and**
- **Kevin Braun, Montana State Fund**

07:03:12 Mr. Campbell explained that subrogation is when one person is substituted in place of another person. For insurance, subrogation allows insurance companies to go after a third party. He explained how insurance contracts work. He talked about the "made whole doctrine".

07:12:43 Mr. Braun discussed Montana Supreme Court decisions referencing the "full legal redress" provision in Montana's Constitution, Article II, section 16 and that workers' compensation is considered not to "make a person whole". He noted that product liability and automotive accidents are frequent situations where subrogation is used.

Rule Review for April and May

- **Bart Campbell, Staff Attorney**

07:27:18 Mr. Campbell gave an overview of rules proposed by the agencies over which the committee has monitoring responsibilities. (**Exhibit 20**)

07:33:15 Sen. Keane recessed the committee meeting at 4:03 p.m.

Wednesday, May 26, 2010

Visitors/Agenda

Visitor's list. Attachment #1

Agenda, Attachment #2

00:00:00 Sen. Keane reconvened the committee at 8:00 a.m. The secretary noted the roll. Attachment # 3

Motion

00:00:35 Sen. Hansen noted that the Grain Lab in Great Falls is working well and it doesn't need to be moved to Bozeman. He moved to keep the Grain Lab out of the SJR 14 study and to leave it as is. The motion **Passed** unanimously.

Motion

00:01:42 Sen. Hansen made a motion that the committee recommend a long range process of combining the VDL and the FWP wildlife lab together at MSU Bozeman to improve the collaboration, communication and the work flow. He added to the motion to send a letter to FWP, the Board of Livestock, MSU Bozeman, and the Department of Livestock regarding coordinating and combining the labs together. He wants a report back from each of these entities.

Discussion:

00:03:01 The committee discussed whether outsourcing laboratory tests is cost effective and would provide the same service. They also talked about finding a building that could be used instead of building a new lab.

00:07:03 Sen. Hansen explained why he wanted a letter/report from the VDL, FWP, BoL and DoL to determine what the costs would be. He said there are other funding sources such as Homeland security, as well as private and public funds that could be used if it is determined to be feasible. Sen. Hansen said he has talked to Dr. Layton who said that they outsource approximately 10% of tests.

00:08:48 Sen. Brown said as long as the motion is inclusive and done with private enterprise and not spending a lot of money that he is for the motion. Sen. Hansen said it is just to get heads together to figure something out and bring it back to the committee.

Vote:

00:09:49 The motion **passed** unanimously.

00:10:30 Sen. Keane gave direction to Ms. Stockwell.

00:11:51 Ms. Stockwell said the provisional accreditation runs through the end of this year. Sen. Keane asked that the committee be kept informed. Ms. Stockwell asked about the seed lab and if she is to do anything with that. Sen. Hansen said his motion does not include the seed lab.

Costs of State Option of Choosing Among Plan 1, Plan 2, Plan 3 Work Comp Insurers

- **Connie Welsh and Lance Zanto from Department of Administration**
- **Steve Kahn, AON Consulting**
- **Laurence Hubbard and Mark Barry, Montana State Fund**

- 00:14:07 Ms. Welsh provided a history of the State of Montana's Workers' Compensation costs and distributed a handout that summarized her presentation. **(Exhibit 1)**
- 00:19:49 Mr. Kahn gave an overview of his findings and analysis of Workers' Compensation funding alternatives for state employees. He distributed a handout that shows a cost comparison of AON's actuarial findings. **(Exhibit 2)**
- 00:31:25 Mr. Hubbard responded to the previous comments and talked about the impact of other work comp plans compared to State Fund. He said that the State of Montana is State Fund's largest client. He talked about the program presented by Mr. Kahn and said that the State of Montana is currently self rated, not self insured. Mr. Hubbard addressed a report about loss costs and case reserves.
- 00:47:21 Mr. Barry gave an overview of State Fund's work with the State of Montana. He distributed a handout regarding impacts if the State of Montana were able to choose from other work comp plans. **(Exhibit 3)**

Committee comments and questions

- 00:52:52 Sen. Zinke gave a summary of his experiences regarding workers' compensation. Sen. Zinke said that everyone has recognized that workers' compensation rates are too high. He talked about claim closure, medical costs, and board review. He asked if these are fixes that will bring all parties to the middle of the pack. Mr. Hubbard responded that the Labor-Management Advisory Council (LMAC), and other stakeholders will give a presentation later today that will provide information of medical costs, utilization treatment guidelines, and other programs.
- 00:58:07 Mr. Hubbard talked about the committee getting closer in solving workers' compensation issues. He said there are other states that are struggling with this issue also.
- 00:59:41 Mr. Kahn gave his perspective of the State of Montana as a policyholder under either a self-insured plan or insuring with Montana State Fund. He stated that self- insurance is the best plan for State of Montana.
- 01:04:34 The committee asked about self-insurance reserves, and wanted to know if Montana needs to set aside more than the \$16 million to cover costs. Ms. Welsh said no. She talked about improvements that can be given to the system with resources outside of the system. Mr. Hubbard said that State Fund should keep the State of Montana administration separately.
- 01:25:03 **Break**

01:36:31 **Back from Break**

Panel Discussion:

Costs and Processes Related to Reviews of Montana State Fund's Actuarial Soundness

- **Kris Wilkinson, Legislative Fiscal Division (summary of costs)**
- **Mark Barry, Montana State Fund**
- **Tori Hunthausen, Legislative Auditor, and Jim Gillette, Legislative Audit Division (LAD)**

01:38:45 Ms. Wilkinson distributed and explained 2 handouts.

- The Anthem Saga - Editorial in the New York Times. **(Exhibit 4)**
- The Montana State Fund Loss Reserve comparison between actuarial estimates. **(Exhibit 5)**

01:49:48 Mr. Barry gave an overview of Ms. Wilkinson's handout (Exhibit 5) about costs related to regulation of Montana State Fund.

01:51:31 Ms. Hunthausen introduced her staff and explained why an actuary is used.

01:52:50 Sen. Brown questioned Exhibit 5, and asked about the dollar amount in the reserves. Mr. Barry responded that accident losses occur each year so that adds to the increase. Ms. Hunthausen said the actuary is contracted and not a part of the Legislative Audit Division.

01:59:14 Rep. Reinhart asked if State Fund's rates have been too high. Ms. Hunthausen said no. Ms. Wilkinson noted the uses of a market conduct exam.

02:02:07 Mr. Barry noted that State Fund cannot refuse any business. He talked about the State Fund being placed under the State Auditor's Office by the Legislature for a brief time.

02:04:06 Rep. Hunter talked about several State Fund meetings he has attended and asked Ms. Hunthausen about a state review and whether the Legislature needs authority. Ms. Hunthausen said they can adjust the RFP under the scope of existing statute.

02:06:07 Mr. Barry said in prior legislation that the cost can approach six figures for a market conduct review. He said a rate level review depends on the State Auditor's review.

02:07:02 Sen. Keane asked Ms. Hunthausen to have her attorney and Mr. Campbell keep in touch.

Fraud Review and Discussion

- **Ben Jones, Montana State Fund - Presentation for Employers**

- **Larry Jones, Liberty Northwest;**
- **Jerry Keck, Department of Labor and Industry**
- **Nancy Butler, Montana State Fund**
- **Ann Komack, Montana Municipal Interlocal Authority (MMIA); and**
- **Ali Bovingdon, Attorney General's Office**

- 02:08:33 Mr. Jones gave an overview of fraud. **(Exhibit 6)** He talked about investigating claims, and how he handles claims on the reservations. He said that fraud is very rare with an injured worker.
- 02:28:28 Ms. Komack explained what MMIA does. She gave a definition of a hard fraud and a soft fraud. She said that hard fraud is when a worker intentionally and willfully files a false claim in order to obtain workers' compensation benefits. A soft fraud is when a claim is filed legitimately but the claimant exaggerates the symptoms. Ms. Komack said with new guidelines in place they will be able to identify people that are filing false claims.
- 02:30:36 Mr. Keck discussed the effect of fraud on workers' compensation Plans 1, 2 & 3.
- 02:34:55 Ms. Bovingdon addressed her duties as a deputy attorney general and how that office prosecutes the various fraud cases. She noted that several dedicated prosecutors from her office work on fraud referrals from Montana State Fund.

Review of Labor Management Advisory Council (LMAC) Recommendations

- **Jerry Keck, Dept. of Labor & Industry**
- **Jason Miller and Bob Worthington, LMAC co-chairs**
- **Riley Johnson, LMAC member (temporary substitute for Mr. Worthington)**

- 03:10:31 Mr. Keck addressed costs and savings from current and proposed efforts to revise workers' compensation laws.
- 03:12:29 Mr. Miller said he represents labor for LMAC, and said that LMAC has reached a consensus that will address 3.5 years of the council's work. Mr. Miller distributed a handout showing the key elements that have been recommended to the EAIC by the LMAC. **(Exhibit 7)** He also distributed a handout showing the benefit delivery process. **(Exhibit 8)**
- 03:20:36 Riley Johnson said he represents small businesses on the LMAC committee. He is concerned about cost drivers and cost controls. He had a handout that addressed the estimated cost impacts of the proposed work comp changes. **(Exhibit 9)**
- 03:33:56 Mr. Keck said that LMAC expects to see language for a draft bill at its next meeting on June 23. He gave an overview of Exhibit 7 and explained the legislative changes line by line.
- 03:52:57 **LUNCH**

- 05:00:34 Sen. Keane called the committee back to order at 1:03 p.m.
- 05:02:07 Mr. Keck gave an overview of Exhibit 9, the Benefit Delivery Process. He addressed Mr. Johnson's handout, Exhibit 10, regarding NCCI loss cost filings.
- 05:14:35 Mr. Worthington talked about SJ 30 and a request by firefighters that presumptive diseases be considered. Mr. Worthington said the LMAC has had this on the agenda and will discuss more after firefighters meet with the insurers and work through the process of cost issues. He also noted that LMAC will discuss exemptions further in the future.

Public Comment on any LMAC topics, recommended or not

- 05:18:10 Ann Komack asked the committee to change the number of days that an insurer has to decide on whether it will accept a claim. LMAC has proposed 14 days instead of the current 30 days. She said she opposed the change because not all the facts are known in a short time frame.
- 05:19:35 Dick Martin, attorney, Great Falls, said he is opposed to the benefit delivery process. He said this legislation is unfair to the injured worker. It denies people the due process of law.
- 05:22:07 Don Judge, Montana Injured Workers Council and a member of LMAC, thanked DLI and LMAC for the development of the reform package. He said that Montana's premium rates are way out of line compared to other states. The impact may not be noticed now, but it will bring down employers' costs.
- 05:26:17 Nancy Butler, Montana State Fund, requested that the EAI committee provide the opportunity for State Fund to review the proposed legislation from LMAC before the committee goes forward. State Fund by law goes by NCCI for base rates.
- 05:30:13 Bill Dahlgren, Missoula, small sports business firm, said he also serves on the LMAC. He said this is a great package for Montana when AFL - CIO and members of the Montana Chamber of Commerce can agree. He said there is a delicate balance between labor and management.
- 05:32:31 Jon Bennion, Montana Chamber of Commerce, said this package represents a lot of bold ideas and would like to move the debate forward to the coming Legislature. He asked that the committee not to lose sight of Montana ranking second in the nation for work comp premiums.
- 05:34:33 Bruce Spencer, representing the Property Casualty Insurance Association, said his clients do not know enough details yet to oppose or support the bill.
- 05:35:14 Bonnie Hall talked about making the information available so the employer and physician can find and read it.
- 05:36:25 Stacey St. Johns, Fair Claims attorney, talked about early return to work and using the impairment rating as a component for calculating future wage loss.

payments. She commented about the differences in the wage loss factors and impairment ratings. She distributed a handout that explains what is proposed and what is current. **(Exhibit 10)**

05:42:47 Al Smith, Montana Trial Lawyers Association, said he has been through the LMAC process for the past 3 1/2 years. He talked about LMAC discussions being limited for items #6 through #16 from Exhibit 7. He is a board member of WorkSafeMT, and stated that improved safety is a key area that will save money for Montana.

05:46:56 Danny Lee, AFL-CIO, and a member of LMAC talked about the unanimous vote from LMAC to bring this before the EAI committee.

05:59:45 Sen. Keane commended LMAC, and thanked the members for their hard work. He said he hopes that LMAC stays together when the Legislature comes to town. He said one of the successes they have is they have come to a consensus for working together.

Motion:

06:03:08 Sen. Keane made a motion that EAIC take the LMAC proposal as submitted in a package in conjunction with the LMAC committee and bring it back in one package. The motion **passed** unanimously by voice vote.

06:27:24 **Break**

06:27:47 Sen. Keane called the committee back to order at 2:30 p.m. and asked for committee member suggestions for proposed legislation.

06:38:28 The following suggestions were made by the committee members: Sen. Zinke asked for more information on a review board and rehabilitation training. Rep. Reinhart asked that the Legislative Audit Division do audits of State Fund for market conduct, claims management, best management practices; and financial exams. She suggested this might require a statutory change but to look at existing statutory language. Rep. Hunter said more people with an insurance background should be on the State Fund board and suggested allowing the state to opt out of State Fund, which may result in some savings. Rep. Reinhart added that someone from DofA be on the State Fund's Board. Sen. Brown suggested keeping focus on safety and accident reduction.

Report from Board of Livestock Discussions on Designated Surveillance Areas and other brucellosis issues, including use of Beef Checkoff funding

- **Jan French, Board of Livestock chair**
- **Christian Mackay, Department of Livestock executive director**

06:44:50 Mr. Mackay distributed a handout from the Montana Beef Council, and explained the beef checkoff funds and how they are used. He also noted that the Board of Livestock had requested an audit of the Montana Beef Council, but that the Legislative Audit Division did not have full authority to audit all of the Beef Council. He noted that beef checkoff funds cannot be used for live animal

projects. **(Exhibit 11)** Mr. Mackay provided a handout explaining responses to the work group recommendations. **(Exhibit 12)**

- 06:59:18 Jan French identified and explained the duties of the DoL board members.
- 07:03:18 Norm Peterson, Attorney, Department of Justice and a contract attorney with DoL, talked about the DSA. He discussed a letter written by Mr. Campbell about duties of brand inspectors and a memo written by Todd Everts, legal counsel for the Legislative Environmental Policy Office.
- 07:19:27 Mr. Campbell gave an opposing view and reviewed the laws, Mr. Everts' letter, and the brand inspector issues. He said that stock inspectors are not state employees and do not get paid by the BoL. Mr. Campbell talked about who is liable when a stock inspector is injured.

Public Comment

- 07:26:10 Watty Tayler, Vice President of the Montana Stockgrowers Association, said he is a local producer. He talked about the DSA, and said that Yellowstone Park is still a site for brucellosis. He said that many of the laws that are currently in place were written over 50 years ago. He talked about workers' compensation with the livestock industry and said they will be able to work it out. He talked about working on the Montana Beef Council
- 07:30:29 Brian Masard, Dillon, said he lives inside the DSA and said it states in statute that he is suppose to be protected and that the DoL is not protecting him.
- 07:35:51 Todd Everts, Staff Attorney, LEPO, gave an overview of the Montana Environmental Policy Act (MEPA).
- 07:37:03 Druska Kinkie, a livestock producer from Paradise Valley, said there is no protection for livestock producers within the DSA. She said that FWP is protecting them. She said that section 2 of the DSA order needs to be replaced. She talked about a work group session where no one could explain section 2, and asked why not go with best management action plan? She said that Montana is regulating healthy livestock not diseased wildlife. She talked about the MEPA review and the checklist.
- 07:41:14 Nancy Schlepp, representing the Montana Farm Bureau, talked about removing the restrictions on producers in the DSA. She asked if there could be a way for them to opt out. She suggested several questions to have Mr. Peterson respond to in a letter.
- 07:44:49 Meg Smith, Divide, Montana, talked about concerns that quarantines might be implemented but that quarantines are for sick cattle. She said there are no sick cattle in the DSA.
- 07:46:20 Sen. Debbie Barrett, SD 36, southwest Montana, said she would like to have the legislature define what an Order is. She stated that all County Commissioners in the area are against the DSA.

07:51:42 John Bloomquist, Attorney, Helena and Dillon, thanked the committee for its work. He suggested several ways to change the DSA Order. He gave an example of a client of his that sent him a letter stating that he has sold his ranch because of concerns about being in the DSA.

Report from Representative of Animal Plant Health Inspection Service (APHIS) on Brucellosis Issues

- **Dr. P. Ryan Clarke, Belgrade, Regional Brucellosis Epidemiologist for APHIS, USDA**

07:54:22 Dr. Clarke provided background information on brucellosis and how APHIS was considering regionalizing the threat of brucellosis as part of a reassurance to international trading partners. The regionalization would be in the greater Yellowstone National Park area. He distributed a handout summarizing his comments. **(Exhibit 13)** He distributed and identified five concept plans of the Board of Livestock. **(Exhibit 14)**

A handout from Errol Rice, Montana Stockgrowers Association, was distributed explaining the Association's approach to the DSA. **(Exhibit 15)**

08:44:15 Sen. Keane asked if there is any further discussion. Seeing none he adjourned the committee at 4:44 p.m.

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