



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

August 19, 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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To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. 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. RYAN ZINKE

REP. CHUCK HUNTER
REP. MICHELE REINHART
REP. DON ROBERTS, by phone

COMMITTEE MEMBERS EXCUSED

SEN. KEN (KIM) HANSEN

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 EAI committee approved the following:

- Minutes from the June 29, 2010, meeting.
- DLI's proposed bill draft, LCImac, addressing workers' compensation. (Exhibit 2)
- Sending a letter to Dr. Beverly Byrum, Chair, Accreditation Committee regarding accreditation of the Veterinary Diagnostic Laboratory in Montana. (Exhibit 13)
- The SJR 14 State Lab Report. (Exhibit 12)
- drafting of nine bill draft proposals for the State Auditor's Office. (Exhibit 14)
- drafting of the Department of Labor and Industry's (DLI) proposed housekeeping bills and other bill drafts. (Exhibit 18)
- drafting of the Department of Commerce' proposed bill regarding a quality schools grant program incorporating wind and solar energy.
- drafting of the Department of Agriculture's two proposed bills - one a commodity bill, (Exhibit 19), and the other on a judicial process regarding weeds. (Exhibit 20)
- A committee bill draft regarding medical assistance programs, LCmihp. (Exhibit 24)
- A committee bill draft giving the State of Montana an option for obtaining workers' compensation coverage, LCeah2. (Exhibit 29)
- A committee bill draft revising Montana State Fund board member composition, LCLch2. (Exhibit 30)
- A committee bill draft providing a definition of the term"Order" for the Department of Livestock, LClive. (Exhibit 34)

CALL TO ORDER AND ROLL CALL

00:00:10 Sen. Keene called the EAIC meeting to order at 8:00 a.m. The secretary called the roll. **Attachment #3**

Motion

00:00: 20 Rep. Hunter made the motion to approve of the EAIC June 29,2010 minutes. The motion **passed**. Sen. Hansen voted aye by proxy.

00:00:33 Rep. Vance requested that another EAIC meeting take place. The committee discussed dates and agreed to have a last meeting on September 3, 2010.

AGENDA

Review Agenda - Staff

00:05:01 Ms. Murdo gave an overview of the agenda. See attachment #2.

00:08:02 Sen. Keene talked about workers' compensation and said the 2011 Legislature needs to do something on work comp because Montana's current ranking can't continue (as highest or nearly highest in the nation for premiums).

COMMITTEE STUDIES - SJR 30 and SJR 14

Review of Fiscal Analysis of LMAC package

- **Kris Wilkinson, Legislative Fiscal Division**
- **Mike Taylor and Raji Chadarevian with NCCI (by phone)**

- 00:09:04 Ms. Wilkinson provided an informal financial analysis of the LMAC bill draft. **(Exhibit 1)** She reviewed the estimates of the National Council on Compensation Insurance (NCCI) and estimates provided by the Department of Labor and Industry (DLI).
- 00:36:46 Mike Taylor and Raji Chadarevian of NCCI discussed the LMAC bill draft, LC Imac. **(Exhibit 2)** Mr. Taylor reviewed the impact of the medical fee, but said he does not have fixed numbers at this time for Montana. Ms. Murdo distributed several handouts providing information from NCCI.
- An analysis of LMAC dated 7/30/2010. **(Exhibit 3)**
 - A reform proposal from LMAC. **(Exhibit 4)**
 - Comparison of NCCI and LMAC/ERD financial impact. **(Exhibit 5)**
- 00:42:06 Dr. Phillip Steele, Helena, served on a DLI-appointed committee that reviewed the proposed utilization and treatment guidelines. He talked about: 1) standardization of all guidelines, 2) timely access to physicians, 3) consistency, and 4) progression to return-to-work programs. He stated it will take several years for changes to take effect.
- Panel Members from the LMAC committee**
- 00:49:51 Bob Worthington, representing the management side of LMAC, distributed a handout that provides an update of the LMAC analysis. **(Exhibit 6)**. He reiterated that the process is change, and there is resistance to change. He urged the committee to approve the bill draft, LCImac, so it can go forward to the 2011 Legislature.
- 00:58:51 Jason Miller, representing the labor side of LMAC, gave labor's reasoning for why the proposed bill draft (Exhibit 2) is a good bill. He referred to Exhibit 5 regarding the comparison of costs from NCCI and LMAC/ERD.
- 01:07:03 Jerry Keck, administrator of the Employment Relations Division (ERD), DLI, explained the changes for workers' compensation in the bill draft, LCImac, Exhibit 2.
- 01:10:51 Frank Neuhauser, University of California-Berkeley, presented information of the average earnings and losses of injured workers, the distribution of the proposed compensation changes, and the current medical fee schedule costs. **(Exhibit 7)**
- 01:15:02 Mr. Keck said there are sections of the bill that do not show costs/payments at this time because the department has not yet determined the rates.
- 01:20:11 The committee asked Mr. Worthington, Mr. Miller, and Mr. Keck about whether

they would stand behind this bill draft, LCImac, when it is presented to the 2011 Legislature. Mr. Keck, Mr. Worthington and Mr. Miller assured Sen. Keane and the committee that they will be diligent in supporting this bill draft.

01:23:46 The committee discussed the estimated \$150 million in cost savings, and if the businesses that pay premiums will receive this money. Mr. Keck explained how NCCI sets fee schedules and how the schedules work. Mr. Worthington addressed how it will affect the self-insured. Sen. Keane asked if state organizations would benefit from this immediately. Mr. Worthington said yes. Mr. Keck said it is the department's goal is to have the fee schedule in place by January 1, 2011.

Public Comments

Ms. Murdo distributed several handouts of public comment:

- Keith Ori, a Physical Therapist (PT), wrote about PT reimbursement rates. **(Exhibit 8)**
- The Rehabilitation Association of Montana, offering recommendations **(Exhibit 9)** to be included in the LC Imac bill draft proposal.

01:29:23 Bill Dahlgren, Missoula, the owner of several sporting goods stores, said he also represents the management side of LMAC. He said the time is right to go forward with the bill draft proposal. He said there was a compromise between the stakeholders.

01:31:33 Riley Johnson, representing the National Federation of Independent Businesses, and a member of the LMAC work group, talked about a program called WorkSafeMT. He said the LMAC represents the people who pay and receive the benefits of the program. He responded to Sen. Brown's question regarding whether any savings would be passed on to the employer. Mr. Johnson said there is some information on this issue, but at this time it is a separate issue. Mr. Johnson said that loss costs needs to come down before it can be determined if there is a benefit. He stated his support of the LCImac bill draft.

01:33:57 Erin MacLean, representing the Montana Medical Association, read a letter from Dr. Steele addressing the reimbursement cuts to providers. **(Exhibit 10)** Dr. Steele noted in his letter that a 10% drop in access to care could be substantial in Montana. Ms. MacLean said she does not agree with the bill draft as proposed and asked that LMAC look at other recommendations rather than take the cuts out of the medical providers' pockets.

01:46:09 Richard Martin, Attorney, Great Falls, discussed problems he sees in the bill draft. He said that some of the problems are: 1) the frequency of injuries due to unsafe working conditions, 2) the bill draft does not address employers' accountability, and 3) the stay-at-work/return-to-work program is forcing people to return to work when they are not healed. He gave other reasons why some of the changes will not work, such as medical expenses are 80% of the costs. He asked that LMAC address some of these issues so a bill can be passed through the Legislature.

- 01:49:49 Aimee Grmoljez, representing Billings Clinic, addressed two issues: 1) lower medical providers' rates and 2) the utilization and treatment guidelines. She said there will be longer wait times for treatment of workers' compensation claims and there will be an added burden on providers in small rural areas who will no longer see workers' compensation patients. She added that the Billings Clinic opposes rate cuts. She said the injured worker will not get back to work early. She distributed a handout from Kristianne B. Wilson, Vice President of Strategic Development, Billings Clinic, that talks about who will be affected and the expected workload the proposal will add to medical staff. **(Exhibit 11)**
- 01:53:28 Jim Larson, representing the Teamsters Union, said on behalf of the 4,500 teamster members, the Teamsters Union supports the LCI mac bill draft.
- 01:53:53 David Whitehall, Attorney, Missoula, talked about wage loss benefits, and his clients who cannot return to work and need these benefits to pay their bills. He said the bill is a theory, and it will not work the way it is intended.
- 01:58:37 Marv Jordan, Montana Contractors Compensation Fund -- a self insured contractors' fund within the state, said MCCF concurs with the LMAC bill because of the need for change.
- 01:59:07 Al Smith, representing the Montana Trial Lawyers Association, talked about the irregularities of the proposal, and he said it can be achieved in a much simpler way and at lower costs. He said the proposal does not address safety in the work place. He asked the committee to hold off until there are more facts to back up changes related to using impairment for benefit calculations. He asked that no workers be left behind.
- 02:02:53 Nancy Butler, Montana State Fund (MSF), said that MSF opposes two areas: 1) going back to the 5th addition of the American Medical Association guidelines for impairment ratings from the current 6th addition, and 2) a provision that requires insurers to pay attorney fees if a worker succeeds in a medical dispute.
- Ms. Butler talked about the fee schedule and commented on the NCCI presentation Exhibit 3 and the lack of flexibility for workers to return to work.
- 02:05:13 Jacqueline Lenmark, representing the American Insurance Association on behalf of Plan 2 work comp insurers, said she is also speaking for Bruce Spencer, Property Casualty Insurance Association, and Larry Jones of Liberty Northwest. She commended LMAC for its hard work. She concurred with Ms. Butler regarding the insurance companies preference to use the current 6th edition for impairment ratings and stated that going back to the 5th addition goes against insurance companies' policies. She noted that the statute now says the "current" edition. She said that workers' compensation is priced differently from other insurance in Montana; it is governed by statute and private insurers are regulated through the Commissioner of Insurance (the State Auditor's Office). She said that NCCI requires insurers to be members and to adopt a filed advisory rate, which is subject to prior approval by the Commissioner of Insurance. The statute states that the rates cannot be:

- excessive,
- inadequate, and
- unfairly discriminatory.

Ms. Lenmark described the insurance companies' rating process and how they compete through their expense components. If there are savings, she said, they will be passed on to the employers through their rates. She said the insurance companies believe that the LMAC bill will save dollars.

02:12:07 Laurence Hubbard, CEO, Montana State Fund (MSF), talked about compromises that will need to be made. He stated that LMAC has identified true cost drivers in the workers' comp system in Montana. He noted that there are no facts to back up the impairment issue. He also said that there are no benefits for workers when 40% of them are left out of the equation. He said that MSF follows the law so the rates are not excessive. He talked about still paying the unfunded liability under the "Old Fund". He discussed the statutes stating that MSF is more conservative and not-for-profit motivated.

02:17:30 Bonnie Lyytinen-Hale, representing Headwaters and the Rehabilitation Association of Montana, offered recommendations as noted in her handout (Exhibit 9), to be included in the LCImac bill draft.

02:18:59 Bob Olsen, Montana Hospital Association, said he questions the affect the proposed LCImac bill draft medical fee revisions would have on medical providers. He stated there were no medical providers on the LMAC committee.

EAI comments and questions

02:24:41 Sen. Zinke commented about no provisions in the bill regarding safety and fraud. He is in favor of the bill, stating it is a best chance, and it can be tweaked in the upcoming Legislature.

02:30:27 Rep. Hunter commended the LMAC members for their hard work and input on the bill draft proposal, LCImac. He talked about the medical part of the bill draft and discussed some of the issues to be addressed such as the Utilization and Treatment Guidelines. He said the bill needs to go forward for the 2011 Legislature to work on.

02:32:50 Rep. Reinhart commented on the impairment rating concerns and getting workers back to work. She said that injured workers have not come forward to say how it will benefit them. She said from her perspective wage loss should be looking at the workers' wages.

02:35:40 Sen. Keene addressed the committee stating that workers' compensation was the number 1 issue that the Legislature assigned the EAI committee. He said the bill isn't perfect, but it needs to go forward as is.

Motion

02:36:21 Sen. Keene made the motion to adopt the bill draft LCImac (Exhibit 2) as a Committee bill. The motion **passed**. Sen. Hansen voted aye by proxy.

02:51:46 **Break**

02:52:08 Lee Heiman, attorney, LSD, introduced Robert Stutz, the new chief legal counsel for the Legislative Services Division.

Update on SJR 14 Study - Reports on stakeholder meetings.

Recommendation review

- **Hope Stockwell, staff for SJR 14 Study**

02:54:19 Ms. Stockwell introduced Dr. Bill Layton, director of the Montana Veterinary Diagnostic Laboratory (VDL) in Bozeman, who was present via poly com phone. Ms. Stockwell distributed a report (**Exhibit 12**) that provides an update reflecting conversations involving the Department of Livestock, the Board of Livestock, Department of Fish, Wildlife, and Parks, and Montana State University (MSU) on the possibility of a combined laboratory for the VDL and the Wildlife lab or related options of working together. She asked that the committee send a draft letter (**Exhibit 13**) to Dr. Beverly Byrum, chair of the Accreditation Committee for veterinary diagnostic laboratories,. The accreditation committee will have a meeting in November to review the lab situation.

03:02:09 Dr. Layton thanked the committee for its deliberation on this issue. He said accreditation is very important.

Motion

03:03:35 Rep. Vance made the motion to send the letter to Dr. Byrum. See Exhibit 13. The motion **passed**. Sen. Hansen voted aye by proxy.

Motion

03:04:11 Rep. Vance made a motion to use Ms. Stockwell's report (Exhibit 12) as the committee's report for SJR 14. The motion **passed**. Sen. Hansen voted aye by proxy.

AGENCY BILL DRAFT REVIEW

- Department of Agriculture - Director Ron de Yong
- Department of Commerce - Director Dore Schwinden
- Department of Labor and Industry - Commissioner Keith Kelly
- State Auditor's Office (SAO) - Jesse Laslovich on behalf of State Auditor Monica Lindeen

03:06:35 Jesse Laslovich distributed and explained the draft legislation of nine bills from the State Auditor's Office. (**Exhibit 14**)

EAI comments and questions

03:22:41 Sen. Zinke talked about the national health care reform bill, and said that the word "exchange" was left off of the bill draft. He asked if the health care model is based on the Massachusetts or Utah model. Mr. Laslovich said it doesn't look like it is modeled after either state. He noted that various portions of the national health care bill are before the committee now, because the national deadline requires some portions to be in place by January 2013.

Public Comment

- 03:26:05 Frank Cote, Government Relations, Blue Cross/Blue Shield of Montana (BC/BS MT), said BC/BS MT is willing to work with the State Auditor on the health reform bills and expects solutions will be found during the 2011 Legislature.
- 03:27:06 Tanya Ask, New West Health Services, offered several suggestions for the committee to consider: 1) the need for one set of regulations to keep overall administrative costs down, and 2) the importance of local regulation of insurance in a rural state, which will make medical services better for the people of Montana.
- 03:28:15 Mona Jamison, lobbyist for the Montana Life and Health Insurance Guaranty Association, said the Association has requested the SAO to put forward bill proposal No. 5, adopting model language for the Montana Guaranty Association. She said this model is the best consumer act in Montana, because it will protect policyholders if a company becomes insolvent or is impaired. She said in some cases the Montana law is better than the model act.
- 03:30:14 Claudia Clifford, Montana AARP, said that AARP supports the health care reform bill draft requests. She asked the committee to move these bill drafts forward for consideration in the 2011 Legislature and noted the importance of local regulation.
- 03:31:34 Sen. Brown commented that other states have challenged health care reform as not Constitutional. He noted that other options are to opt out of federal health care reform. Sen. Keene said the committee is only allowing the Secretary Auditor's Office to move the proposal forward for discussion at the 2011 Legislature. Sen. Zinke clarified that the proposals are just for drafting purposes.

Motion

- 03:34:56 Rep. Reinhart made the motion to move the nine proposals forward for drafting. The motion **passed** 5-3. Sen. Brown, Rep. Vance and Rep. Roberts voted no. Sen. Hansen voted aye by proxy.
- 03:37:32 Mr. Laslovich asked a question about the process of sponsoring a bill. Ms. Murdo and Mr. Campbell explained how the sponsorship of a bill goes forward.

Lunch 11:45 to 1:00 p.m.

- 04:57:14 Rep. Vance called the committee back to order at 1:00 p.m.

Energy Prices in 2010 as Related to Economic Development

- **John FitzPatrick, NorthWestern Energy (NWE)**

- 04:57:31 Mr. Fitzpatrick distributed information and talked about the outlook of the economy in Montana (**Exhibit 15**), and electricity prices in Montana. (**Exhibit 16**)
- 05:16:08 The committee discussed: the use of coal; how NWE negotiates prices; the economy not recovering at least until 2020; and biomass, infrastructure, and permitting.

05:32:26 Ms. Murdo distributed a memo written by Richard D. Liebert, Lt. Colonel (retired, Army) regarding the use of Malmstrom Air Force Base for a Strategic Biofuel Program (SBP) for the production of clean energy. The memo was one he sent to Montana Senator Jon Tester. **(Exhibit 17)**

05:32:58 Keith Kelly, DLI Commissioner, distributed information and explained the department's proposed housekeeping bills and bill drafts. He noted there is one stand-alone board bill, which is not being requested by the department but by the Board of Real Estate Appraisers. **(Exhibit 18)**

Motion

05:43:52 There was no public comment. The motion was made for DLI to go forward with the proposed housekeeping bills and bill drafts (Exhibit 18). The motion **passed**. Sen. Hansen voted aye by proxy.

Department of Commerce

05:44:21 Dore Schwinden, Director of the Department of Commerce, talked about two agency proposals. One is to address the quality schools grant program. The second proposal is to incorporate wind and solar energy into schools and school studies.

Motion

05:46:05 Sen. Zinke made the motion to approve the agency's proposal. The motion **passed**. Sen. Hansen voted aye by proxy.

05:46:22 Cort Jensen, attorney for the Department of Agriculture, discussed two proposed bill drafts, which he distributed and explained to the committee: 1) a change to allow commodity dealer bonds **(Exhibit 19)** and 2) a bill addressing a judicial process for dealing with landowners on noxious weed concerns **(Exhibit 20)**.

Motion

05:50:28 Sen. Zinke made the motion to accept both proposed bill drafts. The motion **passed**. Sen. Hansen voted aye by proxy.

Review of Montana Heritage Preservation and Development Commission (MHC) indirect administrative rate

- **Paul Reichert, Executive Director**

05:50:56 Mr. Reichert talked about an article about the MHC printed in the New York Times as having the most ambitious preservation projects in the nation. **(Exhibit 21)** He also distributed a handout showing projects and activities of Virginia City and Nevada City, two of Montana's best preserved territorial town sites. **(Exhibit 22)**

Update on Distressed Wood Products Revolving Loan Program (HB 669)

- **Dore Schwinden, Department of Commerce**

05:53:45 Dore Schwinden introduced Andy Poole, deputy director, Department of Commerce, who reviewed a report on the Wood Products Revolving Loan Fund. **(Exhibit 23)**

Review of Medical Impairment Subcommittee Proposals

- **Rep. Roberts and Rep. Hunter**

- 06:02:24 Rep. Roberts gave an overview of the medical impairment proposed bill draft, LCmihp. **(Exhibit 24)**
- 06:10:39 During public comment, Emery Jones, Montana Nurses Assistance Program, said he has a problem with Section 3, subsection (d) of LCmihp (Exhibit 24) regarding relapses. He explained the process for a person who enters a medical assistance program and whose license may be suspended. He said the language should be clarified regarding relapses when the person is actively working and under a program contract. He also noted the need to differentiate between treatment programs and assistance programs.
- 06:14:20 Dr. David Johnson commented via phone that the panel is against medical staff being required to pay for this service when they make application to apply for a license to work. Rep. Roberts talked about the three-strike provision of the bill draft. Rep. Hunter noted that the licensing boards would pay for the audits.
- 06:22:24 Sen. Zinke commented about his concern about privilege and half-steps or passes when a person breaks a law. Mr. Campbell raised a concern about existing language reiterated in the proposed bill draft (Exhibit 24) about physical impairments due to a chronic physical illness. He questioned whether this is a problem under the Americans with Disabilities Act.
- 06:24:35 Ms. Murdo talked about additional language for the proposed bill draft, LCmihp attached to Exhibit 24, standardizing language and attaching the three-strikes to a contract provision.

Motion

- 06:27:17 Rep. Roberts made the motion to approve LCmihp as a committee bill with the suggested changes. A roll call vote was taken. **(Exhibit 25)** The motion **passed 6 - 2**. Sen. Zinke and Rep. Vance voted no. Sen. Hansen voted aye by proxy.

Review of SJR 30 Committee Bills, Study Report and Recommendations

- **Overview of Issues - Pat Murdo, Bart Campbell, Kris Wilkinson, and Matt Stayner, staff**

- 06:30:10 Ms. Wilkinson distributed a handout updating the cost analysis of implementing a bill that will provide a financial and compliance audit of the State Fund, to be conducted by the Legislative Auditor's Office every five years. **(Exhibit 26)**
- Rep. Reinhart's proposals of Montana State Fund regulation LCfund**
- 06:32:41 Rep. Reinhart explained that the bill draft proposal, LCfund **(Exhibit 27)** would provide better service for the people of Montana. .
- 06:35:25 Laurence Hubbard, president and CEO of Montana State Fund, commented that he does not agree with Rep. Reinhart's comments. He stated that he cannot support the bill as proposed, and gave his reasons why.

- 06:39:57 Jacqueline Lenmark, American Insurance Association, and reporting for Bruce Spencer of the Property Casualty Insurance Association, and Larry Jones of Liberty Northwest, said they all support full regulation of Montana State Fund. She said the bill draft, LCfund would give the Legislature and the committee some information to work with for comparison of plans.
- 06:42:15 Sen. Brown referenced the importance of reducing costs for workers' compensation and questioned how the rate payers would pay for the increased costs of regulation.
- 06:43:16 Rep. Hunter commented if there is to be a rate review that this committee should provide the guidelines so LAD would know what to audit. Rep. Reinhart asked if LAD could audit State Fund with their legislative enabling authority. Rep. Hunter said that LAD could, but probably wouldn't. At Rep. Reinhart's request, Kris Wilkinson commented on the types of reviews that LAD does in contrast to what the bill proposal requests, specifically market conduct and financial examinations.
- 06:46:58 The committee discussed timelines that should be used for auditing State Fund and the associated costs. There were several suggestions from no less than five years to having an audit every year.
- 06:48:52 Rep. Reinhart discussed the value of the State Auditor having a role in reviewing the State Fund's practices or if the Legislative Audit Division review was sufficient. She asked about trimming several parts of the bill draft, such as claims management and best practices. She noted that Montana taxpayers could be on the hook if anything goes wrong with State Fund. She said that State Fund could find ways to cut costs for policyholders, such as not performing audits every year.
- 06:51:14 Rep. Hunter asked how often private insurance companies in the work comp industry go through a market conduct review? Ms. Lenmark replied it can be done at any time at the discretion of the Commissioner of Insurance, but no less than five years. Rep. Hunter said it is important that State Fund offer the product at the least cost that can given the proper administration of the program. But, being in a competitive market, State Fund is expected to compete with the private market. His dilemma is the fairness issue, but he would support a market conduct exam.
- 06:52:54 Rep. Reinhart recommended that subsection (2) of the bill draft, LCfund, be removed, and have audits performed every five years. She said that LAD can deal with all the pieces when they perform an audit.
- Motion**
- 06:56:55 Rep. Reinhart made the motion to approve the proposed bill draft, LCfund, (Exhibit 27) as a committee bill with subsection (2) removed. Roll call vote was taken. **(Exhibit 28)** The motion **failed** 4 to 4. Rep. Roberts voted no by proxy. Sen. Hansen voted aye by proxy.
- 07:06:16 **Rep. Hunter's proposal to consider state choice of insurance plans LCeah2**
Rep. Hunter addressed the proposed draft bill, LCeah2, and said it gives the state of Montana the option to be a self-insured entity for work comp. **(Exhibit 29)**

- 07:10:13 Paige Tabor, Workers' Compensation Management Bureau, Department of Administration, asked why Plan 2 was not in the proposed bill draft. Rep. Hunter responded that self-insurance would give the State of Montana a better management role over their own workers' compensation.
- 07:12:47 Laurence Hubbard talked about State Fund being the State of Montana's insurance carrier of choice. He addressed each section of LCeah2 and how it would affect the State of Montana and State Fund. He noted some technical concerns.
- 07:17:06 Jacqueline Lenmark, American Insurance Association, and reporting for Bruce Spencer of the Property Casualty Insurance Association, and Larry Jones of Liberty Northwest, urged that the proposed bill draft be opened to all three plans, Plans 1, 2, & 3.
- 07:20:09 Rep. Hunter agreed to the need to make technical changes and said Plan 2 could be included. Sen. Zinke said he supports the bill because competition is good, and if Rep. Hunter makes those changes he will vote for the bill.

Motion

- 07:20:38 Sen. Keane made the motion to approve the proposed bill draft, LCeah2, that will include Plan 2, and some technical corrections. The motion **passed**. Sen. Hansen voted aye by proxy.

Rep. Hunter's proposal to revise Montana State Fund board composition

- 07:21:40 Rep. Hunter said LCLch2 addresses the State Fund board. **(Exhibit 30)** He provided background information stating the bill draft is about the experiences that the board members bring to the board. The bill deletes the requirement for an insurance producer to be on the board, such as an insurance agent or broker.
- 07:26:00 Mr. Hubbard explained the experience that each citizen board member brings to State Fund. He said the addition of a qualified executive insurance financial accounting level could be a challenge to find.
- 07:29:33 Jacqueline Lenmark, American Insurance Association, and reporting for Bruce Spencer of the Property Casualty Insurance Association, and Larry Jones of Liberty Northwest, said they all support bill draft, LCLch2. She said the change would benefit the State Fund Board of Directors. She suggested another change, which would be for the Governor to appoint some of the board members and to allow State Fund to elect members from its policyholders.
- 07:32:28 Rep. Hunter offered a conceptual amendment on page 2 of the bill to reinstate a license insurance producer as a "may" rather than a "must".

Motion

- 07:33:47 Rep. Hunter made the motion to approve the bill draft and include the conceptual amendment. The motion **passed**. Sen. Hansen voted aye by proxy.

HIPAA Subcommittee Report

- 07:34:44 Rep. Hunter reported that the HIPAA subcommittee completed its work, and that

LMAC has incorporated the language suggested by the subcommittee into the LMAC bill, LCImac (Exhibit 2).

07:35:35 Ms. Murdo talked about a proposal that stemmed from issues raised by Luminite (a company near Three Forks) at the June 29, 2010, meeting. The issue regarded concerns about companies reactivating work comp policies by paying for past uncovered periods but also being subject to fines from the Department of Labor and Industry for being without work comp coverage. She said the issue was moot because existing law satisfied the insurers.

07:37:20 Mr. Campbell talked about research into whether limited liability companies (LLC) might avoid covering a worker that has been injured if that worker is a member-manager. He said language is being discussed that states any person that is a member of a LLC who is actually working in the construction field must be provided workers' compensation coverage by the company.

07:38:55 Ms. Murdo distributed several handouts and explained each one:

- A memo from Chuck Mazurek, Paine Financial Group. **(Exhibit 31)**
- A memo about volunteer firefighters explaining the use of time spent by a volunteer firefighters sleeping at the fire hall while in the service of an employer. **(Exhibit 32)**

Update on brand inspector coverage

07:43:35 Ms. Murdo gave an update of brand inspectors stating the Department of Livestock will now cover volunteer brand inspectors (approximately 450 in Montana) under the department's work comp policy.

SJR 30 Final Report

07:46:04 Ms. Murdo distributed a draft report **(Exhibit 33)** for SJR 30. She gave an overview of the committee's involvement with the DLI's Labor-Management Advisory Council's three-plus years of trying to find ways to address cost drivers making workers' compensation so costly in Montana.

07:47:23 Sen. Keane and the committee discussed the report and moving it forward as the final report.

Definition of an Order

07:48:54 Rep. Vance gave an overview of the proposed bill draft, LClive, which gives a definition of an "Order" for the Department of Livestock **(Exhibit 34)** He explained that an order would become a directive authorized by statute when issued by the Department of Livestock and the Board of Livestock.

07:50:19 Sen. Debbie Barrett, SD 36, said that LClive goes too far regarding the length of time and costs of an Order to the department, and it is not what she intended. Her only concern is with Order 1001D, which is not an order, but a state program. She has been informed by the Department of Livestock that the Designated Surveillance Area (DSA), is a state program with oversight from the USDA Animal and Plant Health Inspection Service (APHIS).

07:57:02 The committee discussed the intent of the proposed bill draft, LClive, and suggested clarifying language in the bill draft that an Order is temporary and not intended to establish programs.

Motion

07:58:08 Rep. Vance made a motion to approve the proposed bill draft, LClive, regarding the Order, and tweaking the language to clarify Sen. Barrett's issues. The motion **passed**. Sen. Hansen voted aye by proxy.

07:59:20 George Edwards, Department of Livestock, distributed a handout of a report on the Livestock Loss Reduction & Mitigation Board and Program. **(Exhibit 35)** He explained the payment process when livestock is lost to wolves.

08:06:52 Ms. Murdo distributed a handout of her draft report called "It's More Than a Rocking Chair Activity", which summarized the committee's accomplishments during this 2009-2010 interim. **(Exhibit 36)** She also distributed a draft letter written to Rep. Himmelberger, Sen. Williams, and the Legislative Council Members, requesting that the State Compensation Insurance Fund be placed under the oversight of the Economic Affairs Interim Committee (EAIC). **(Exhibit 37)**

Motion

08:09:43 Sen. Brown made the motion to approve the letter, Exhibit 37. The motion **passed**. Sen. Hansen voted aye by proxy. Sen. Brown also moved the final reports.

08:11:45 Mr. Campbell distributed a handout of his rule review. **(Exhibit 38)** He said there are no problems with rule review at this time. He reported that three departments are amending rules, which he explained.

08:13:02 Ms. Murdo distributed an informational letter from Rep. Wanda Grinde, chair of the Education and Local Government Interim Committee, to the EAIC regarding the Department of Labor and Industry rulemaking on fire mitigation and construction techniques for structures built in certain high wildfire hazard areas. **(Exhibit 39)**

Adjourn

08:16:31 Sen. Keane closed the EAI committee thanking everyone for their accomplishments, and solving issues that came before the committee. He thanked the staff for their work, and closed the hearing at 4:21 p.m.

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