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Economic Affairs Interim Committee

61st Montana Legislature

SENATE MEMBERS
ROY BROWN
KEN HANSEN
JIM KEANE
RYAN ZINKE

HOUSE MEMBERS
CHUCK HUNTER
MICHELE REINHART
DON ROBERTS
GORDON VANCE

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

MINUTES

September 9, 2009

Room 137, State Capitol
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.

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. ROY BROWN
SEN. JIM KEANE
SEN. RYAN ZINKE

REP. CHUCK HUNTER
REP. DON ROBERTS
REP. GORDON VANCE

COMMITTEE MEMBERS EXCUSED

SEN. KEN (Kim) HANSEN
REP. MICHELE REINHART

STAFF PRESENT

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

Visitors

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

COMMITTEE ACTION

The Economic Affairs Interim Committee:

- approved the minutes from the July 8, 2009, meeting.
- approved the use of committee funds to attend the Governor's Workers' Compensation Conference in Missoula.

CALL TO ORDER AND ROLL CALL

00:00:31 Sen. Keane called the committee to order at 9:15 a.m. He welcomed everyone to Helena. The secretary called the roll. (Attachment #3) Sen. Hansen and Rep. Reinhart are excused.

AGENDA

Approval of Minutes

00:01:31 Sen. Zinke made the motion to approve the minutes for July 8, 2009. The motion passed.

00:02:58 ***Public Comment on Work Plan/Topics before EAIC***
None.

Work Plan Discussion:

SJR 30 - Cost drivers for premiums and the operation and structure of the Montana State Fund, presented by:
Pat Murdo, LSD Staff
Kris Wilkinson, LFD Staff

00:04:28 Ms. Murdo gave a PowerPoint presentation on SJR 30 addressing the issues and goals that affect the cost of premiums. **(Exhibit 1)**

00:10:13 Ms. Wilkinson gave an overview on her part of the PowerPoint in regard to the State Fund rate structures and private insurers.

00:12:28 Ms. Murdo continued with the PowerPoint presentation.

00:18:04 The committee discussed:

- the number of meeting days that they will hold,
- the committee's goals,
- topics for the meetings, and
- budget options.

EAIC comments and questions

00:23:21 Sen. Keane wanted to know the difference between Medicare's role in claim closure with the Old Fund compared to the new State Fund. Ms. Wilkinson replied it would be the same process for the new State Fund as it was with the Old Fund.

- 00:23:58 Rep. Roberts asked who signs off on Medicare claims. Jerry Keck, administrator of the Employment Relations Division, Department of Labor and Industry (DLI), explained how the sign off on Medicare works in relation to workers' compensation claims settlement.
- 00:28:16 Sen. Zinke wanted to know who performs the actuary analysis. Mr. Keck replied that the parties who intend to enter into a settlement will hire a life planner (a person that has medical expertise and experience in that field) who will look at the pattern of treatment for that specific case to determine what would be the expected lifetime medical expenses of that individual and how the costs will be distributed.
- 00:29:05 Further questions by committee members on Medicare were answered by Mr. Keck.
- 00:34:07 Larry Jones, Liberty Northwest, stated they are Montana's largest private workers' compensation carrier. He explained the medical reserve that is included in workers' compensation claims.
- 00:34:43 Mike Taylor, National Council on Compensation Insurance, Inc. (NCCI), explained how insurance carriers look at claims.

Work Plan Discussion

- 00:36:56 Sen. Keane and the committee discussed holding meetings out of town. The committee decided to keep the meetings in Helena after reviewing a chart that itemized individual expenses for out-of-town travel. **(Exhibit 2)** The committee and Ms. Murdo discussed how the state's MetNet system could work for meetings by linking with communities that want to participate in committee discussions.
- 00:52:31 Ms. Murdo suggested that the money saved from not traveling, the committee members could attend the Governor's conference on workers' compensation that will be taking place in Missoula later this fall.

Motion:

- 00:53:12 The committee members voted to use committee funds to attend the Governor's Conference in Missoula. The motion **passed**.

ISSUES

- 00:54:13 Sen. Keane and the committee discussed the key issues they want to keep on future agendas:
- 00:58:27 1) **Subcommittees** - Sen. Keane and the committee discussed how they could approach various topics without forming subcommittees.
- 01:04:02 Ms. Murdo continued with the key issues outlined in the work plan: **(Exhibit 3)**
 2) **Rail Services Competition Council** - Ms. Murdo will talk to Director Jim Lynch, Department of Transportation, about giving a presentation on the Rail Council.

- 3) **Boards** - the fees and costs of the Boards, and the committee's oversight of these Boards.
- 4) **The Montana Heritage and Preservation Commission** - the Commission negotiates an administrative fee with the Department of Commerce. It was suggested that the committee could have the statute changed so the Commission will not be required to submit a report in the future.

Public Comment

01:20:45 Bruce Spencer, Property Casualty Insurance Association of America, stated that his comments apply to section 4 of the work plan titled "Other Interim Activities - that provides for emerging issues that have resulted from court decisions, federal actions, or another cause may be investigated." He said that Property Casualty Insurance feels that State Fund does have more flexibility in its rate making than private carriers, his clients, and the private carriers feel it is not fair. It is believed that the rates would be lower if all carriers were the same. Mr. Spencer asked the committee if they could place this issue on a future agenda.

01:22:09 Aimee Grmoljez, Billings Clinic, stated that the Clinic has the largest occupational medicine practice in Montana. They have two occupational physicians at the clinic, and there are only five in Montana. She talked about family practitioners that are making determinations and signing off on workers' compensation for employees to return to work. She offered her assistance to the committee for the SJR 30 study.

EAIC comments and questions

01:26:52 Sen. Brown commented that he has met with an occupational doctor, and said they have a lot to offer this committee regarding ways to reduce costs. He suggested that an occupational doctor meet with the committee to provide more information.

Break 10:45 a.m. to 11:00 a.m.

01:52:58 Ms. Murdo and Kris Wilkinson, LFD, gave an overview on the SJR 30 topics to be covered in future meetings.

02:04:47 Sen. Keane asked that the Department of Administration provide information at a future meeting regarding workers' compensation for state agencies.

02:06:59 The committee discussed how they want to address workers' compensation exemptions. Jerry Keck, DLI, said that Rep. Himmelberger had a bill in the last Legislature (2009) on how to address future exemptions.

02:11:12 Sen. Keane wanted more information about the workers' compensation claims per payroll for Plan 1 insurers.

02:15:06 Rep. Vance requested that insurance fraud issues be addressed at the next meeting.

- 02:18:19 Sen. Brown suggested the committee address how costs can be controlled before there is an increase in benefits.
- 02:19:16 Sen. Zinke addressed a letter he sent to the committee for the July 8, 2009 meeting, describing his goals, and how he considered the return to work program to be a benefit.
- 02:20:25 Rep. Hunter asked that the committee also research accident rates.
- 02:21:24 11:30 to 1:00 p.m. Lunch
- 03:46:02 Sen. Keane called the meeting back to order.

Panel Members on Workers' Compensation SJR 30 Study - Premium Cost Driver Factors

Ann Clayton, consultant hired by Department of Labor and Industry (DLI)
 Mike McCarter, former workers' compensation judge
 Jerry Keck, DLI, medical cost issues and claim settlements from historical and department (mediator) perspectives

- 03:46:45 Ann Clayton presented a PowerPoint that addressed what other states are doing regarding cost drivers on the Early Return to Work Program, and outlined her research plan. **(Exhibit 4)**

EAIC comments and questions

No comments or questions from the committee members.

- 04:25:16 Mike McCarter addressed claim closures for indemnity and medical claims.

Break

- 04:50:08 Jerry Keck, administrator of the Employment Relations Division (ERD), DLI, distributed and explained several handouts addressing:
- Medical cost issues in workers' compensation. **(Exhibit 5)**
 - Information on Montana workers' compensation medical fee schedule reimbursements compared to study states. **(Exhibit 6)**
 - A list from ERD research on other states and how they handle settlements that may close medical benefits for injured workers. **(Exhibit 7)**
 - A memo from Ann Clayton, Consultant, and Diana Ferriter, Claims Assistance Bureau Chief, DLI, that addresses the use of medical panels in resolving workers' compensation medical disputes. **(Exhibit 8)**

EAIC comments and questions

- 05:25:48 Sen. Zinke asked for a definition of the hassle factor. Mr. Keck explained that the Utilization and Treatment Guidelines would decrease the hassle so the physicians do not have to ask for preauthorization for every treatment and thereby save on the hassle of paperwork.
- 05:34:40 Rep. Roberts and Mr. Keck discussed treatment in trauma centers and having the right

treatment at the right time, and how it is a cost savings to the system.

- 05:35:27 Rep. Hunter, committee members, and Mr. Keck discussed:
- The prescription drug fee program that was adopted in 2007.
 - The workers' compensation requirement to use generic brand drugs if available.
 - How the hassle factor affects all providers or provider types equally.
 - The objective in adopting prescription fees, which was to keep the system straightforward to use as a benchmark and have a single conversion factor that everyone can understand.
 - hospitals "costs".
 - Medicare reimbursement rates as compared with workers' compensation

05:41:57 Sen. Keane commented that more information on the above issues will be addressed at another meeting.

Break

05:50:50 Sen. Keane called the committee back to order.

Panel Members on Early Return or Transition to Work Issues

Connie Welsh, Administrator, Health Care Benefits Division, Department of Administration (D of A)

Lance Zanto, Workers' Compensation and Benefits Management Bureau, Health Care and Benefits Division, D of A

Thom Danenhowe, Montana Municipal Interlocal Authority (MMIA)

Ann Komac, Claims Manager, MMIA

05:51:32 Connie Welsh gave a PowerPoint presentation on the Early Return to Work Program (ERTW), regarding larger employers' concerns. **(Exhibit 9)**

05:57:15 Lance Zanto continued with the PowerPoint presentation by giving an overview of the 11 components regarding the key elements on ERTW. He distributed a copy of the components. **(Exhibit 9)**

06:08:27 Thom Danenhowe distributed a copy of his PowerPoint presentation, which explains the large employers perspective on ERTW. **(Exhibit 10)**

06:14:39 Ann Komac continued with the PowerPoint explaining employees' benefits on ERTW.

Panel Members on Small Business Concerns

Loren Davis, Davis Business Machines

Loretta Miller, Green Meadow Auto Salvage

06:30:10 Loren Davis, Davis Business Machines, Helena, discussed small business employer concerns with workers' compensation.

06:33:00 Loretta Miller, Green Meadow Auto Salvage, Helena, said they have not had a workers'

compensation claim from any of their employees who have missed more than four days of work, but she is interested in options for job sharing or other ways to get employees back to work sooner.

EAIC comments and questions

06:36:58

Sen. Keane and Thom Danenhower discussed:

- workers' compensation for self funded groups, such as MMIA; and
- the state injury rate, which is approximately 6.3%, compared to MMIA's, which is about 1.4 %.

Sen. Keane said the committee is looking for this kind of information regarding large self funded groups, and how they are doing. He said if the injury rate is significantly less for self funded groups, the committee would like information on why larger employers are doing a better job than the state. He asked Mr. Danenhower to bring data back to the committee for a large county such as Yellowstone County.

06:41:23

Rep. Roberts, Loretta Miller, and committee members discussed:

- sharing employees with other businesses knowing the employee has an injury and is on workers' compensation.
- having an agreement within the employer pool regarding who is responsible for that employee.
- workers' compensation would have to put standards in place.
- the industries would need to be similar in order to share workers.
- would the state would need to facilitate this type of situation.

06:43:46

Sen. Brown talked about the problem of small businesses. He said when there are only two to five people in a business, there is no place for them to go, unlike the state of Montana with 14,000 plus employees who can be shared.

Panel Members on Work Place Safety Programs

Bryan Page, Safety Program, DLI

Carl Kochman, State Fund and WorkSafeMT

Jon Bennion, Montana Chamber of Commerce

06:50:02

Bryan Page talked about SB 192, which has motivated employers to develop safety programs. The DLI Safety Program has assisted 150 small businesses throughout Montana by helping them to write safety programs. He discussed the Montana Safety Cultural Act that is currently in place.

06:53:59

Carl Kochman presented information regarding the State Fund's safety program and the WorkSafeMT program, a private-public partnership. He distributed and explained the WorkSafeMT Strategic Plan for 2009-2012. **(Exhibit 11)**

07:04:30

Jon Bennion distributed a brochure on the Montana Chamber's partnership with Liberty Northwest on Montana Safety Choices, and described the program's goals for its members. **(Exhibit 12)**

EAIC comments and questions

07:13:40

The committee discussed how to lower workers' compensation rates for small businesses in Montana.

Additional public comment on cost-driver factors

07:31:35 Laurence Hubbard, Montana State Fund, gave an overview and PowerPoint commentary on the medical cost drivers in regard to:

- demographics;
- older people who stay on workers' compensation longer;
- court decisions; and
- relationships between injured workers, employers, and physicians.

07:43:30 Al Smith, Montana Trial Lawyers' Association, said the association is available to the committee as a resource. He discussed: 1) claim closures, and 2) ERTW. He said ERTW works for large employers, but in Montana 90% of businesses are small with 20 or fewer employees.

07:46:56 Sheryl Wood, Associate Director, Montana Association of Counties (MACo), talked about MACo's safety programs. MACo has provided training throughout the state that has decreased injured workers' compensation claims.

Rule Review

07:51:54 Bart Campbell, LSD staff attorney, distributed a summary of the August rules. He said it was very quiet for that month. He said the Legislative Auditor's office is close to completing their findings regarding fantasy football that is being operated by the State Lottery. **(Exhibit 13)**

OTHER ISSUES

07:53:34 Ms. Murdo talked about the November meeting and stated that unemployment insurance, fraud issues, and the medical review board and other medical issues will be on the agenda. Ms. Murdo distributed a glossary of workers' compensation terms that will be helpful to the committee members when they study SJR 30. **Exhibit 14** She also distributed and explained a handout titled "State-by-State Use of AMA Guides (rev. 6/1/2009)." **Exhibit 15**

ADJOURNMENT

07:55:26 Sen. Keane adjourned the EAI committee at 5:10 p.m.