



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

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

November 17, 2009
8:30 a.m.

RM 157 - Capitol Bldg
Helena, Montana

(Billings site broadcast is 9 a.m. to noon via MetNet Link to MSU-Billings site, 214 N. Broadway)

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. 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 - Helena, Attachment #1.
Visitors' List - Billings, Attachment #2.
Agenda, Attachment #3.

COMMITTEE ACTION

The Economic Affairs Interim Committee:

- approved the written minutes from the September 9, 2009 meeting.
- participated in a MetNet teleconference with the Billings Clinic Medical Providers.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Keane opened the meeting at 8:36 a.m. The secretary called the roll.
Attachment #4

Motion:

00:01:29 The motion was made to approve the minutes from the September 9, 2009 EAIC meeting. The motion **passed**.

AGENDA

00:02:42 Sen. Keane informed the committee that there would be a MetNet discussion. He introduced the speakers who will address an issue that he had requested at the last meeting regarding the percentage of costs compared to payroll.

SJR 30 Workers' Compensation Study

Updates on Plan 1 losses/claims as a percentage of payroll

Bob Worthington and Nancy Butler, reporting on Oct. 27 work group discussions

00:04:52 Bob Worthington distributed and explained a handout that addressed three issues: **(Exhibit 1)**

- the dollar costs and loss of Workers' Compensation per \$100 of payroll for Plans 1, 2, and 3.
- what is the effect and is there a way to quantify differences among insurers.
- are there transfers between Workers' Compensation costs and employers health care costs.

00:07:07 Mr. Worthington explained the difficulties of comparing data among plans. He said it is impossible to determine for Plans 2 and 3 if there is a transfer of Workers' Compensation costs to health insurance. He said that for the most part Plan 1 companies do have health care insurance.

00:14:42 Nancy Butler addressed State Fund safety programs.

00:16:27 Dan Gengler, also of State Fund, explained the statistical data from Exhibit 1.

00:20:49 Sen. Keane asked Mr. Worthington to explain Mr. Gengler's comments on the differences between paid dollars and incurred dollars. He directed the members to Exhibit 1, and explained how self funded groups work in comparison with the State Fund.

00:24:02 Thom Danenhower, Montana Municipal Insurance Authority (MMIA), provided an explanation of incurred dollars.

00:26:20 Rep. Roberts asked for clarification on the acronym of IBNR. Mr. Danenhower

responded that it is "incurred but not reported" expenses.

00:28:13 Dan Gengler said that Montana State Fund insures a broad range of businesses and addressed several reasons why there are differences in the costs across carriers, including that Montana State Fund has a higher loss rate because it insures more hazardous businesses. State Fund also provided ultimate cost data.

00:30:35 Sen. Keane acknowledged the MetNet group being broadcast from Billings and welcomed them to the meeting.

Sen. Keane asked if IBNR is estimated. Mr. Gengler reported that a claims examiner gives the cost, but actuaries know that the costs rise over time. The difference between claim estimates and actuary estimates is IBNR. Sen. Keane asked if IBNR could be different between carriers. Mr. Gengler confirmed that the amounts would be different.

00:33:00 Mr. Worthington addressed the differentiation and opinions between actuaries. Medical inflation is one of many factors that are part of the actuarial estimates.

00:34:03 Sen. Keane reviewed his questions on the differences in Plans 1, 2 and 3 estimates and costs. Benefits to the workers are the same for all plans, but the costs to the plans are different. He said the committee's charge is to come up with solutions for costs.

00:36:16 Sen. Zinke discussed his analysis on small businesses and other groups..

00:37:06 Rep. Hunter wanted to know if the committee can receive information on the duration of data at a future meeting. Sen. Keane asked the panel members if they can come up with information why the duration is longer in Montana, and also provide information on the comparison between Plans 1, 2, and 3. He asked that the chart (Exhibit 1) be updated.

Medical Provider Panel

- **Ray Christopher, MD, FACOEM**
- **Dave Johnson, Physicians' Assistant for St. Vincent Healthcare Occupational Medicine Clinic**
- **John Petrisko, M.D., Billings Clinic**

Ms. Murdo distributed a copy of the Billings Clinic's responses to the medical provider panel questions. **(Exhibit 2)**

Overview of health care from the Billings medical providers

00:39:34 Dr. John Petrisko introduced himself and said he is available to provide information and answer any questions the committee may have.

00:39:40 Dr. Ray Christopher talked about the need for expertise in the Workers' Compensation system.

00:39:44 Dave Johnson, Physicians Assistant at St. Vincent explained that he works in the

occupational health care area. He thinks that basic Workers' Compensation injuries are straight forward. Most of the clinicians are capable for day to day injuries related to the workplace. His clinic at St. Vincent often sees referrals of complex injuries from other parts of the state. Sen. Keane asked if there are doctors throughout the state that keep patients on Workers' Compensation too long? Mr. Johnson responded that yes, possibly. A trend is that injured workers take longer to recover other some other people who are injured as athletes or at home.

- 00:46:02 Sen. Brown asked Dr. Petrisko how he makes the decision to send a worker back to work. He wanted to know if there is a methodical way to determine when a person is ready to return to work? Dr. Petrisko said that he uses the occupational guidelines to determine when someone reaches a stabilized point or is back to their pre-injury state. In addition, a physician has to weigh subjective complaints, such as the patient telling the physician "I have back pain." For a physician that is hard to pinpoint. However if there is a torn ligament, etc. that it is objective. But he said they mainly use objective findings to determine when an injured worker goes back to work.
- 00:56:47 Rep. Roberts asked Dr. Christopher about his experience with Workers' Compensation patients in other states. Dr. Christopher stated that he practiced in Georgia and Indiana. It is his opinion that light or modified duties should be used more. He said that a worker that stays home is not as likely to return to work as someone who returns quickly to light duty. Rep. Roberts than asked if Montana's way of evaluating workers varies throughout the state and if doctors are able to sort through subjective rather than objective findings. Dr. Christopher responded that occupational medicine physicians has a better ability to look at a worker's complaints than a primary care doctor would. He said the training of primary care doctors would help.
- 01:00:25 Sen. Hansen asked about the percentage of referrals from the Great Falls area to the Billings Clinic. Dr. Petrisko responded he didn't have a specific percentage, but stated that more referrals come from Eastern Montana, as physicians are fewer in that region of the state.
- 01:02:57 Sen. Zinke offered a summation of the doctors' comments. Mr. Johnson commented about negativity in the work place for injured workers. He said companies that don't have a return to work program are less likely to allow an injured person to come back to work. Dr. Christopher agreed with Mr. Johnson's comments. He recommended a back to work program in which insurance pays for part of the worker's light duty to be able to return to work.
- 01:08:30 Rep. Roberts asked the panel if they have seen anyone become better while there is ongoing litigation. Dr. Petrisko responded that it does cause the case to go longer.
- 01:10:38 Sen. Zinke asked the panel about longer term care costs and wanted to know what would be the acceptable way to get the worker back to work. Dr. Petrisko stated that he encourages his patients instead of reminding them of their injury.

He thinks at times that insurance does interfere, but not all the time, and that does delay treatment.

01:15:08 Dr. Christopher commented that preauthorization is not necessarily the reason that the process is slowed. Most often the paperwork is not returned from the businesses in a timely manner. Dr. Petrisko said he calls the insurance company case manager directly when all the paperwork from the company is in hand and that speeds up the preauthorization process.

01:18:42 Sen. Keane asked about Plans 1, 2 and 3 and the response from State Fund and private insurance. Is one plan better than the other.

Dr. Petrisko replied that it is the adjusters within the plans where there are difficulties, not really the plans themselves.

Dr. Christopher said he hasn't had any problems with State Fund approvals and if there is a problem, he will call the case manager directly to determine the problem.

01:21:03 Rep. Hunter asked about reimbursement incentives for primary care and whether there are reimbursement issues and if he has any suggested changes. Dr. Christopher talked about the fee schedule and compared it to Georgia and how Montana looks good. He discussed impairment ratings and said, in general, the fee schedule is fine. Dr. Petrisko stated that fees for impairment ratings are poor. Wyoming is double in impairment reimbursement rates. Therefore, it is often a disincentive to do impairment ratings in Montana for non-occupational physicians.

01:24:40 Rep. Vance asked the panel about a presentation at the Worker's Compensation Conference held in Missoula in September that discussed HIPAA (the Health Insurance Portability and Accountability Act). He said that Richard Pimentel commented that HIPAA makes it difficult to design a return to work program. Dr. Petrisko responded that HIPAA does make it difficult to return to work because of certain conditions that come up because some information is private and cannot be discussed with employers. He stated that a new process regarding genetic Information prohibits physicians from discussing genetic information about a patient.

01:29:47 Sen. Keane questioned why there are only a few occupational doctors in Montana, and he wanted to know why Montana cannot attract occupational doctors to other areas of the state. Mr. Johnson responded that he didn't think towns or counties have thought about adding occupational providers in their area. Some towns think that their physicians can handle it. The higher percentage of injuries physicians see are standard injuries with only a few complex cases that need the expertise. Dr. Christopher commented that with the fee schedule it should be easy to get recruitments. Dr. Petrisko talked about training as an occupational physician and thought the physicians may not recognize the benefits and interesting cases in Montana. Mr. Johnson said there are not that many occupational providers in the country. Most occupational

physicians live in bigger cities, but the trend is changing.

01:36:01 Sen. Keane requested that hospitals report on occupational providers.

01:42:04 Rep. Hunter asked the panel if having a state level medical director for Workers' Compensation would be a benefit and questioned what the job description for such a person would be. Dr. Petrisko recommended such a person should coordinate rural physicians, paperwork, training etc. Rep. Roberts asked if they have outreach services? Dr. Petrisko responded that the Billings Clinic has branch locations. However, the specialized physicians do not have any control over the outreach services. He stated that a system should be in place. Dr. Christopher stated that the St. Vincent hospital does not have satellite clinics but may in the future. Dr. Christopher, addressing Rep. Hunter's question, stated a state medical director would help. Mr. Johnson said training across the state and a statewide medical director makes sense. Sen. Keane thanked panel members for their good work.

01:46:45 Break

02:00:25 Sen. Keane called the meeting back to order. Panel members participating from Billings via MetNet were introduced.

Followup on Employer and Employee Perspectives on Return to Work and Fraud - Panel from Billings employers

- **Mike Marsh, Owner, Midland Claims Service**
- **Rod Svee, Executive Director, Tumbleweed**
- **Gordon Tryan, General Manager, Browns Auto Service, Inc.**
- **Walt Stieg, Stieg & Associates Insurance**
- **Terry Reiter, member of the Montana Public Employees Association**
- **Jim Doane, Roscoe Steel & Culvert, Director of Safety & Logistics**

ISSUES:

02:01:52 Mike Marsh said his company, Midland Claims Service, handles industry injury claims, including 26% of self insured claims in Montana. He presented a report that was given to the Labor Management Advisory Council (LMAC) return to work and stay at work. **(Exhibit 3)**

02:10:55 Rod Svee said that Tumbleweed is a non-profit organization that works with at-risk youth. His organization does not do long-term counseling nor does it perform outreach services but is available 24/7. Mr. Svee discussed Tumbleweed's Workers' Compensation costs. Since opening in 1976, they have never had a Workers' Compensation claim. They had two audits and currently use Victory Insurance that costs \$16,120 a year. They have had to close offices in Great Falls and Missoula.

02:17:06 Walt Stieg said he insures long-haul truckers and they are one of the largest insurers in the western United States. He said they work with Montana State Fund. Rates have dropped in the years that his company has offered long haul insurance. He said the three-plan system works well. State Fund has controlled

rates. He said safety pays.

02:21:33 Mr. Stieg talked about a federal program called CSA 20-10. He explained how it will be an issue with privacy, but it will make safer drivers.

02:23:41 Mr. Stieg provided examples of situations with several companies: He would like to see a subrogation of claims.

02:27:56 Gordon Tryan gave an overview of his company and the insurance plan they are on. He talked about the work environment and safety programs. He said they are currently at Tier Two with State Fund. Mr. Tyran indicated that the company is trying to reach a Tier One again. He said that State Fund comes to his work place and trains the employers/employees. He has found that medical treatment is slow. He cited an example of an injured employee that couldn't get in to see a doctor for nine weeks after the injury. He stated that claims are high because of the slow process.

02:33:54 Terry Reiter, MPEA representative, said the process is a little slow, but he has been treated very fairly.

02:34:53 Jim Doane stated that Roscoe Steel has facilities in Missoula, Billings and Casper, Wyoming. His goal is to reduce claims, and he stated that the training is hands on. He talked about incentives for employees. He said they are a self insured group that is very aggressive and self audited. He gave an example of a doctor not being available because he went on vacation and there was no one to step in to assist, so the employee had to wait weeks for treatment. Because of the employee's lost of work time, Workers' Compensation costs were impacted.

EAIC comments and questions

02:40:19 Sen. Brown asked Rod Svee why his rates went up so high. Sen. Brown asked if there was a rate change. Mr. Svee described how State Fund reviewed nonprofit classifications. Mr. Svee said his people have not changed just the classification.

02:42:19 Rep. Reinhart asked Mr. Doane to expand on his transitional duty program. Mr. Doane stated that Roscoe Steel typically has their injured employee see a doctor the same day and his company does not encourage injured employees to have another duty until they can even see a doctor. He thinks that is not altogether honest. Once the employee has seen a physician, then the transitional program can get underway.

02:45:05 Rep. Reinhart asked Terry Reiter to expand on his experience. Mr. Reiter responded that he developed tennis elbow related to his work as a painter. He indicated that he tried two series of cortisone shots, which did not work. Then he had surgery. His doctor told him it was a six-week recovery, but it has been five weeks and he is still sore. Since he is in the painters' union, other jobs are not available to him.

02:47:13 Sen. Keane asked Mr. Doane with Roscoe Steel to discuss costs with Bob Worthington (of Plan 1 self-insurers) and find out how Roscoe Steel's transitional

duty program works.

- 02:48:40 Sen. Keane asked Nancy Butler to address the increased costs for nonprofits. She deferred the question to Mike Taylor, NCCI, who responded that there has been a reclassification. He will get the information back to the committee.
- 02:50:14 Sen. Keane asked Mr. Taylor to look at other nonprofits to see how their rates have changed and compare those changes with Mr. Svee's nonprofit.
- 02:50:40 Sen. Zinke commented to Mr. Marsh on their exemplary work and would like more information on how they operate.
- 02:52:33 Sen. Brown wanted Nancy Butler to address comments by Mr. Tryan with Browns Auto Service. He wanted to know if there is a procedure for the delays in doctor visits. Ms. Butler stated that Worker's Compensation laws allow the worker to choose their first doctor and clearly a wait of nine weeks is too long. Once the worker is within the system, then Workers' Compensation works to get the employees to the right physicians quickly.
- 02:54:41 Rep. Hunter asked Mr. Marsh about apportionment and wanted to know if Plan 1 has lower costs for occupational care. In addition, do the Plan 1 clients have a broader access to coverage for employees. Mr. Marsh responded that most self-insured clients can choose to participate in the program. Some of those plans offer the opportunity to pursue an occupational disease claim through Workers' Compensation.
- 02:57:30 Sen. Keane thanked the panel members for their participation.
- 02:58:26 Sen. Keane asked Sen. Zinke to report on the Flathead public forums. He stated that he will follow up with a memo. Some of the topics discussed at this meeting are similar to what was discussed in the Flathead. He talked about a possible medical board and/or panel that looks at Workers' Compensation issues. He said that the Department of Labor and Industry (DLI) is working on putting a medical board together. He discussed:
- cost drivers: claim closures, rate guidelines, etc.
 - return- to- work incentives for small business.
 - tort reform.
 - medical providers training.
 - treatment guidelines.
 - business community in the Flathead works on rates on a case by case.
- Sen. Zinke said in closing he thinks the committee can make Workers' Compensation better and make sure businesses can still be competitive.

Safety Programs for Agriculture and Livestock Producers

- **John Youngberg, Montana Farm Bureau**
- **Les Graham and Gene Surber, Montana Ag Safety Program**

- 03:05:44 Mr. Youngberg administers the Montana State Fund Agricultural Program (MSFAG) through the Montana Farm Bureau. He distributed a handout titled Montana Agriculture Safety Manual. **(Exhibit 4)** He said that members of the agricultural association can be part of this safety program, which offers the following service: a 4% discount on rates if a worker attends a safety training program. He stated that the largest claims in recent years are with ATV accidents. The training program is now addressing ATV safety.
- 03:14:05 Les Graham distributed a brochure explaining the agriculture safety program. **(Exhibit 5)** He gave an overview of the training program. The return to work program allows most farms and ranches to keep employees on their payroll. He said the one problem is noncompliance within the program on actually wearing safety gear like hard hats and steel-toed boots since ranch work is so diverse.
- 03:19:08 Gene Surber said he asked clients if wearing helmets on ATVs would help and if field of vision was affected by the helmets. Clients indicated that helmets would help and wouldn't impede vision, but none of them would wear one. Mr. Surber has tried to change the attitude and behavior so that helmets would be worn. He provided a website for the members to go to: www.Montanaagsafety.com
- 03:21:21 Rep. Roberts asked how many accidents happen with children. Mr. Graham responded that 85% of accidents involve family members.
- 03:23:27 Mr. Youngberg said that family members are exempt from Workers' Compensation coverage, and that is the reason there are not many claims for them that go through the system.
- 03:25:36 **LUNCH**
- 04:40:19 Sen. Keane called the committee back to order.

Update on Workers' Compensation Fraud and Other Research Topics

- **Ann Clayton, consultant to Employment Relations Division of the Department of Labor and Industry (DLI) for issues related to SJR30**
- **Jerry Keck, DLI, update on utilization and treatment guidelines**

- 04:42:07 Ann Clayton talked about the issues of SJR 30 - Workers' Compensation Fraud. She distributed a PowerPoint addressing how fraud is handled in Montana. **(Exhibit 6)** Workers' Compensation fraud is either handled through criminal prosecution or to pursue civil sanctions, like a denial of benefits, which is handled through dispute resolution. State Fund has an attorney that works with the Department of Justice to pursue Workers' Compensation fraud. She gave information on fraud in: Alaska, Idaho, New Mexico, North Dakota, Oregon, South Dakota and Wyoming. She said that most states have no idea how many cases have been reported but are not convicted. Montana can pursue employers

that have not purchased Workers' Compensation insurance. In Montana nine elements must be met to establish fraud. She included numbers that show percentages of fraud cases for State Fund.

- 05:11:08 Sen. Hansen asked Ms. Clayton about the fraud hot line, how is it policed, whether calls are anonymous, and the follow-up to the hot line calls. She said the information is referred to a supervisor or a Workers' Compensation investigator. Nothing would be pursued unless the investigator thought there was evidence. Ms. Clayton said a caller can remain anonymous. She said that ERD has been averaging five calls a week to the hot line.
- 05:13:38 Rep. Roberts asked of the average five a week calls how many end up under investigation. Ms. Clayton responded that she will get that information back to the committee.
- 05:14:21 Rep. Michelle Reinhart commented about an employee that tried to file a claim and the employer wouldn't accept it and fired that person. She asked Ms. Clayton if she has heard of these situations, that in her opinion are not necessarily fraud but appear to be retribution. Ms. Clayton responded that Montana statutes provide sanctions for those types of situations. Also, an injured worker can call Workers' Compensation directly to file a claim. Rep. Reinhart asked how many cases of fraud does the Attorney General have. Ms. Clayton couldn't get that information for this meeting, but she will follow-up to get that information to the committee. Sen. Keane asked what the percentage of fraud rate is for Montana. Ms. Clayton stated that information is not available, if it were they would be able to prosecute. She stated that in 2008 State Fund pursued 392 open investigations, costing roughly \$5.4 million, and they referred 15 cases for prosecution and obtained 13 convictions. Sen. Keane commented on the system.
- 05:19:00 Jerry Keck, DLI, distributed a handout of a PowerPoint that gives an overview of utilization and treatment guidelines for Workers' Compensation. He explained how the guidelines work. **(Exhibit 7)** Mr. Keck distributed a handout of the Montana DLI, ERD Workers' Compensation Annual Report 2008. **(Exhibit 8)**
- EAI comments and questions**
- 05:33:41 Rep. Roberts said that most states shown in the handout are not in the South and wanted to know why. Mr. Keck stated that Oklahoma, Tennessee, and Kentucky use federal guidelines, but some states such as Florida write their own guidelines.
- 05:34:50 Rep. Hunter asked Mr. Keck if he had stated earlier that currently 80% of treatment requires preauthorization in Montana. Mr. Keck replied yes.
- 05:35:36 Rep. Reinhart asked how other states have resolved the 20-25% that fall outside of the guidelines. She wanted to know if they use a panel or a medical director. Mr. Keck said that one state uses a panel, however most states are doing the same as Montana by using dispute resolution, which means mediation and litigation.

05:36:51 Sen. Keane asked if the Labor Management Advisory Council (LMAC) would participate in the guideline process. Mr. Keck said the medical provider group will be consulted, then LMAC and then payers or insurers. Sen. Keane asked about legislative action. Mr. Keck responded that if the providers support guidelines, then the guidelines will be finished, however he is concerned that providers may not be willing to participate.

05:39:01 Rep. Roberts commented about providers being concerned about not being preauthorized in the guidelines. Mr. Keck responded that orthopedic surgeons and spine clinics will be reluctant to join the process. High-cost implants and high-cost surgeries may not be recommended treatments, however it doesn't mean those surgeries or treatments can't be done, but they would have to be preauthorized. If it is in the guidelines it is automatically covered.

05:40:19 Sen. Keane asked if the injured workers are satisfied with treatment and service in other states. Mr. Keck said a study showed that guidelines did not affect access for injured workers. The Workers Compensation Research Institute studies work comp systems nationwide, including worker satisfaction. Mr. Keck stated that a survey will be conducted again.

Break

05:53:39 Rep. Vance gave a presentation from the Governor's Workers' Compensation Conference. He stated that most of the report has already been discussed. He said he would like more information on HIPAA's effect on the program. Sen. Keane asked the legislative staff for more information.

05:55:39 Rep. Hunter gave information on several of the Montana State Fund board meetings that he has attended. Important topics discussed at the board meetings were: medical trending causing higher payments, State Fund premium volume is shrinking due to economic downturn, and Old Fund unfunded liability projections. The Satterlee case has been decided in favor of the insurer, State Fund. The State Fund equity was discussed, and the Board decided to provide a \$2 million dividend to the employers of State Fund based on the 2007 premium year. He stated there also was a raise in the rates paid to the outside actuary from \$475/hr to \$490/hr.

05:59:31 Sen. Brown and Rep. Hunter talked about the Satterlee case.

Member Issues:

Unemployment Insurance Benefits (extensions) and Trust Fund Solvency

- **Roy Mulvaney, Department of Labor and Industry, Unemployment Division**

06:00:10 Roy Mulvaney distributed several handouts, which he explained. He discussed a PowerPoint from the Unemployment Insurance Division. **(Exhibit 9)** He also distributed a memorandum from Commissioner Keith Kelly. **(Exhibit 10)** He addressed a press release that was released today, 11/17/09, **(Exhibit 11)** that show Montana at a level 5 rate increase for unemployment taxes. Mr. Mulvaney

addressed the solvency of the Trust Fund.

06:33:51 Sen. Brown asked about unemployment in Montana. Mr. Mulvaney responded that the current rate is 6.7%. Barb Wagner, senior Economist for DLI, provided information that Montana will peak this current (4th) quarter but it will go down in the 1st quarter of 2010.

06:36:33 Rep. Roberts asked about employer rates going down. Mr. Mulvaney responded that each year rates are calculated based on the Trust Fund account.

Professional and Occupational Licensing Boards

- **Budgeting and Fees Commensurate with Costs**
Jack Kane, Administrator of the Business and Standards Division, DLI
- **Professional Assistance Programs for impaired licensed professionals**
Jack Kane, DLI

06:39:33 Jack Kane gave an overview of the fee increases for the Boards.

EAIC comments and questions

06:46:32 Sen. Brown asked Mr. Kane what the incentive is for the Board to control costs when all they need to do is increase the fees to cover the costs.

06:48:39 Sen. Brown said he has heard complaints from his constituents about attorneys that are at these meetings and driving up the costs. They want to know why the fees are going up. Mr. Kane discussed the fees.

06:51:24 Rep. Hunter said he has heard concerns from electrical contractors, and wanted to know more about the process for changing rates. He noted that the Montana Administrative Procedure Act (MAPA) gives opportunity for public comment.

06:53:35 Sen. Keane talked about his experience of dealing with licensing boards when he was chairman of EAIC in the 2005-06 interim. He would like to meet with Mr. Kane and discuss why certain rates have doubled this year.

06:57:30 Jack Kane continued addressing the programs.

07:02:20 Rep. Roberts talked about board programs for the Medical, Dental and Nursing Boards that address impaired medical providers. Mr. Kane said the performance audits will take care of the issues with the Medical and Dental Boards. He said the Nursing Board is more aggressive toward impaired medical providers.

Legislative Audit Report on Fantasy Sports Parimutuel Gambling

- **Angus MacIver, Legislative Audit Division (LAD)**

07:17:36 Angus MacIver addressed the LAD performance audit findings and the legality of the Board of Horse Racing's Fantasy Sports program being handled by the Montana Lottery Commission. **(Exhibit 12)** A memo was distributed from Sherry

K. Meador, Attorney from the Montana Board of Horse Racing. **(Exhibit 13)** The LAD will be meeting with the Board in the near future to discuss changes recommended by the LAD audit. The letter said that the Board was following the rules, but it was the way they were implemented that is the root problem. He said the LAD recommend that the Board contract for services rather than use a license provision for the fantasy sports program.

07:26:58 Pat Murdo provided more information of the LAD audit.

Rule Review

07:27:48 Bart Campbell, staff attorney addressed the Lottery and an opinion from the Attorney General's Office. Mr. Campbell said that the interagency agreement between the Board of Horse Racing and the Lottery should be addressed by the Attorney's General's Office.

07:31:40 Sen. Keane said the key to the discussion is "what will LAD do"? He asked that the Board of Horse Racing and the Lottery not be placed on January's agenda.

Directions to Staff for Next Meeting

07:34:28 Ms. Murdo talked about performance and financial audits that are being done for the agencies under the purview of the Economic Affairs Interim Committee.

07:36:53 Ms. Murdo and the committee members discussed committee meeting dates and the committee's budget. She said the members could attend conferences that relate to legislative issues.

07:43:09 Ms. Murdo will contact the Montana Hospital Association (MHA) for discussion about the medical director and recruitment raised by Sen. Keane. Ms. Murdo will inform the committee members of meeting dates for the Labor Management Advisory Council.

Adjourn

07:47:49 There being no further issues Sen. Keane adjourned the Economic Affairs committee meeting at 4:24 p.m.