



Economic Affairs Interim Committee

57th Montana Legislature

SENATE MEMBERS

DALE MAHLUM, CHAIRMAN
DOROTHY BERRY
JON ELLINGSON
GLENN A. ROUSH

HOUSE MEMBERS

KATHLEEN GALVIN-HALCRO, VICE-CHAIRMAN
GARY MATTHEWS
JOE MCKENNEY
STEVE VICK

COMMITTEE STAFF

GORDON HIGGINS
RESEARCH ANALYST
BART CAMPBELL, STAFF ATTORNEY
EDDYE McCLURE, STAFF ATTORNEY
LOIS O'CONNOR, SECRETARY

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

First Meeting of Interim
Room 137, State Capitol
June 15, 2001

COMMITTEE MEMBERS PRESENT

Sen. Dale Mahlum, Chairman
Sen. Glenn A. Roush
Sen. Jon Ellingson
Sen. Dorothy Berry
Rep. Kathleen Galvin-Halcro, Vice-Chairman
Rep. Gary Matthews
Rep. Joe McKenney
Rep. Steve Vick

STAFF PRESENT

Gordon Higgins, Research Analyst
Bart Campbell, Attorney
Eddy McClure, Attorney
Lois O'Connor, Secretary

VISITORS LIST AND AGENDA

Visitors' list (ATTACHMENT #1)
Agenda (ATTACHMENT #2)

COMMITTEE ACTION

- Approved the tentative interim meeting calendar with the knowledge that more meetings can be scheduled as needed
- Senators Roush, Ellingson, and Berry and Representatives Matthews, Galvin-Halcro, and

- McKenney volunteered to be members of the SJR 22 Subcommittee, with Rep. McKenney being appointed Chairman and Sen. Ellingson, Vice Chairman
- Tentatively adopted the interim Committee meeting calendar
 - Elected Sen. Mahlum Presiding Officer
 - Elected Rep. Galvin-Halcro Vice Presiding Officer

CALL TO ORDER AND INTRODUCTION OF COMMITTEE MEMBERS AND STAFF

The meeting was called to order by Senior Senator Dale Mahlum at 9:35 a.m. Roll call was noted, all Committee members were present. (ATTACHMENT #3)

INTRODUCTION OF DEPARTMENT OF LABOR AND INDUSTRY OFFICIALS

Mike Foster, Commissioner, Department of Labor and Industry introduced the members of his leadership team and offered the Committee the Department's assistance for the interim.

- Jim Brown, Administrator, Business Standards Division--new division resulting from reorganization that will include building codes, professional and occupational licensing, and weights and measures formerly under the umbrella of the Department of Commerce.
- Jerry Keck, Administrator, Employment Relations Division--includes the regulatory responsibilities of workers' compensation, labor standards, safety standards, wages and hours, and human rights.
- Tammy Peterson, Administrator, Centralized Services Division-- includes budgeting, payroll, and the Hearings Bureau.
- Wendy Keating, Administrator, Job Services Division--includes the services that are provided by the 29 Job Service centers throughout the state and the State Workforce Investment Board.
- Kevin Braun, Chief Legal Counsel
- Jim Hill, Unemployment Insurance Division--includes the unemployment insurance fund.

REVIEW OF THE DRAFT COMMITTEE WORK PLAN

Gordon Higgins, Legislative Research Analyst, Legislative Services Division, provided an overview of the Committee's draft work plan. (EXHIBIT #1)

Sen. Ellingson asked if the Committee would be reviewing new rules only and whether the agency monitoring function should be set up in such a way as to make it more efficient since the Committee is responsible to oversee eight agencies. Mr. Higgins said that in the last interim, staff would meet with the Committee Chairman to discuss and decide whether the Committee needed to have a more formal process to review contentious rules. The agency would then be asked to come before the Committee to respond to questions. As for the Committee's monitoring function, Mr. Higgins suggested that the Committee consider creating time on its agenda over the course of the interim to allow for every agency to come before the Committee. He said that if there are issues that are perennial "hot spots", the Committee should consider using some of its time to focus on them. Although it was important to have as much information

about the agencies as it can, it would be important to decide whether the Committee just wanted to delve into one or two issues in greater detail.

Rep. McKenney felt that the Committee's constituents would tell the Committee what agency issues it should be reviewing, and he felt it appropriate that the Committee hold more meetings if it thought that there was a need.

Bart Campbell, Staff Attorney, Legislative Services Division, said that the reorganization of the Department of Commerce as the economic development tool for Montana, the reorganization of the Department of Labor and Industry, and the organization of the new Office of Economic Development in the Governor's Office would also be important for the Committee to oversee. He said that they may need some legislative "tweaking" in order to accomplish their goals.

The Committee also agreed that the public be notified of what agency it would be focusing on at each meeting so that they have the opportunity to come before the Committee to express their concerns.

Rep. Vick asked what the Committee's options were as they relate to rule review. **Eddy McClure, Staff Attorney, Legislative Services Division**, said that the Committee could be as involved or proactive as it wants to be in the rule review process; and although the Committee does not have the power to veto a rule, it did have the power to ask questions. The Committee could also request a copy of a proposed rule, request that an agency provide a rationale for a proposed rule, or it could repeal a rule.

DISCUSSION OF SENATE JOINT RESOLUTION #22 (Health Care and Health Insurance Study)

Mr. Higgins provided a copy and overview of SJR 22, a study of rising health care and health insurance costs. (EXHIBIT #2) He said that the Legislative Council assigned SJR 22 to the Committee with the added recommendation that a subcommittee of no more than 12 members be appointed from members of the Economic Affairs Committee, the Legislative Finance Committee, and the Children, Families, Health and Human Services Committee. Staff also suggested that the Committee consider instructing staff to work with the State Auditor's Office to revise Title 33 (Insurance and Insurance Companies) for cleanup purposes. Mr. Higgins said that he would talk with the stakeholders throughout the summer to better prioritize the issues relating to the health care and health insurance study (SJR 22). He also offered staff assistance

to the members of the Committee who are also members of the Pacific Northwest Economic Region Council.

Following a thorough discussion, the Committee decided the following:

- to hold its meetings in Helena, unless specific business should require that they travel to another city;
- to review the insurance market in Montana;
- to focus on the challenges that governmental entities and private businesses are facing to secure adequate and affordable health insurance for employees;
- to examine the implications and ramifications of purchasing pools;
- to examine the relationships between insurance providers and health care providers in order to adequately address the uninsured citizens of Montana;
- to review the efforts of other states and the federal government in terms of what roles they play in the insurance industry and providing health insurance;
- to review what other states are doing in terms of access and affordability of prescription drugs;
- to review the feasibility of recreating the Health Care Advisory Council;
- to examine why health care insurance and medical costs are rising at a rate faster than inflation;
- to examine why health care providers are charging more than the cost of the services that they provide;
- to examine the feasibility of “first-aid stations” in rural communities as opposed to “small, full-staffed hospitals”; and
- to examine the liability insurance expenses paid by hospitals, doctors, and pharmaceutical companies.

It was also suggested that the Committee not get bogged down on the issues that it has no control over, such as those that have to be dealt with at the federal level, and concentrate on the issues that may lead to legislation in the 2003 session.

PUBLIC DISCUSSION OF SJR 22

Bob Olsen, Montana Hospital Association, said that the Committee’s deliberations on the role of small, full-staffed hospitals in rural areas would be an important topic for the Association to keep track of. He suggested that the Committee imagine how many communities that it would like to see existing in Montana 20 years from now. Which communities are going to be abandoned is what he hears when people say “These small communities cannot expect to be viable.” He said the city of Plains is not going to close its hospital. It is going to convert its license from a full-service hospital to a critical-access hospital and it is not going to change anything that it does. He looks at public expectation as economic development and the economic underpinning of where communities will be located. For the Legislature to say that a small community cannot have a hospital facility would not be wise because those communities may see themselves as striving to become a surviving community.

Rep. Vick asked if direct subsidies to small hospitals were eliminated, what could the state do to keep a hospital open in rural areas. Mr. Olsen said that most of the small facilities are dependent on Medicare as their primary source of revenue. Federal policy needs to be changed to ensure that Medicare changes its mind about paying for its policies because it disadvantages rural America. Neither can the state ignore the economic principles of the smaller communities. The Legislature also controls the purse strings for the Medicaid program, 60% of all nursing home services, 10% of all hospital services, and approximately 3% of the worker's compensation services that are delivered. He added that the Legislature does not pay for the cost of care in Montana, the citizens do. As a result, the state contributes to the fundamental problem in its policymaking. He suggested that the Committee review this issue.

Matt Fisher, Manager, Health and Welfare Benefits, Montana Power Company (MPC), said that the Montana Power Company is very concerned about health care costs and the lack of competition in the state to provide adequate health care in acute facilities with lower health care costs. Because of this concern, MPC, along with the state of Montana and others, have formed the Montana Association of Health Care Purchasers which is a consortium of the major employers in the state that will focus on issues such as purchasing pools for larger group insurances and health care providers, provider reimbursement rates, the cost shifting of health care costs, the access to affordable prescription drugs, and factors causing health insurance rates to increase above the rate of inflation. The Association has recently hired a pharmacy benefit manager who is able to provide the discounts and services to a larger group of providers and who is able to supply a consolidated purchasing effort in order to leverage prices. The Association is also focusing on a self-insured product that can be offered to its employees.

Sen. Roush asked that the Association keep in mind that Montana still has independent pharmacists and drug stores who are often excluded from the discount.

The Committee requested that the Association keep in contact with Committee staff as to its efforts.

Joyce Brown, Administrator, State Employee Benefit Plan, said that Benefit Plan is the largest employee plan in the state. Purchasers are desperate and employers are struggling to maintain benefits. Recently, she has written letters to health care providers stating that they had to hold the line on cost because the purchasers are losing the battle. There are more and more health care costs that are uncovered and there is less value in the health insurance benefits. She said that state employee benefits are 12% of the employee's compensation package and they are struggling to make ends meet with their salaries. Ms. Brown also felt that private

insurance is in danger in Montana because wages are low in comparison to its health care costs.

Riley Johnson, National Federation of Independent Business (NFIB), said that health care coverage and retention is the number one issue for small businesses in Montana. The NFIB's typical member is a small business with two or three employees with \$250,000 gross sales a year. Many small businesses are dropping health insurance policies because they cannot afford them. The NFIB is interested in purchasing pools for small businesses and suggested that the Committee study issues that are doable, such as allowing ERISA-type plans for small business. He added that Montana's utilization of technology needs to be updated, particularly in the area of telecommunications. Mr. Johnson offered the NFIB's help to gather any information that the Committee may need.

Claudia Clifford, Senior Policy Advisor, State Auditor's Office, said that many Montanans are on the verge of not being able to afford health insurance, many employers as well as individuals. The Committee must keep in mind that one out of five Montanans currently do not have health insurance, Medicaid, or Medicare and it does not include those people who have \$5,000 deductible plans which are fairly common. She encouraged the Committee to focus on the issues that it can affect, such as cost shifting and how it can keep small employers offering benefits. She said that the prices in the health insurance market are high and the profit margins are thin and the Committee must look at the system as a whole because the insurance business interfaces with the public system of which the United States Congress plays a large role. Ms. Clifford suggested that the Committee review the policies that are coming from Congress.

Anita Bennett, Montana Logging Association, said that the logging industry is concerned about employers reducing benefits, cost shifting, and premium costs to employees. Employers are shifting to voluntary products and considering the discontinuance of group health insurance and replacing it with critical-care type policies. She requested that the Committee require a complete answer from those who represent the medical industry, such as why a facility is more profitable in one area of the state than another area of the state and what is their federal compensation through programs. Another major concern is the Health Insurance Portability and Accountability Act (HIPAA). She said that Montana currently has a reverse discrimination in guaranty issue under the federal HIPAA regulations that states "guaranty issue in groups of 2 to 50 in associations". It is a guaranty issue to any member of an association which includes a sole proprietor. The Association has no problem with it as long as the rest of the field is doing the same thing. HIPAA is not doing that but they do mandate it to associations.

Ms. Bennett said that another area of concern is the federal privacy bill and sue your employer. She said it does not matter that the federal government changed it to stipulate that it is only if the employer had any decisionmaking in the criteria. It will still be that an employer is going to figure on a lawsuit and will have to defend that the employer had no decisionmaking and that the employer did, in fact, purchase a fully insured program. She requested that the Committee review this area.

Tanya Ask, Montana Blue Cross and Blue Shield (MBCBS), said that the issues before the Committee are very contentious and some are going to require very hard decisions. She said that Montana has seen huge increases in costs as other states but the dollars are not pouring in to address those costs. She said from an insurance perspective, Montana does not have just “band aid stations”, it has some fantastic technology and abilities of its citizens but they cost money. Cost shifting is a very important piece. She requested that the Committee review what the costs back to the employers would be, review the regulatory arena, and review the collaboration efforts going on in Montana. She said that in the past 2 years, there have been huge increases in regulation on the insurance industry in Montana.

Senators Roush, Ellingson, and Berry and Representatives Matthews, Galvin-Halcro, and McKenney volunteered to be members of the SJR 22 Subcommittee, with Rep. McKenney being appointed Chairman and Sen. Ellingson, Vice Chairman. Committee staff will inform the Legislative Finance Committee and the Children, Families, Public Health and Human Services Committee of the remaining six membership openings.

UPDATE ON HOUSE JOINT RESOLUTION #7 (Travel Expenses and Compensation)

Ms. McClure provided a copy and overview of HJR 7. (EXHIBIT #3) She said that travel and wage laws are governed by federal law and are interpreted by federal cases which are fact specific and very subjective. Her goal in helping House Speaker Dan McGee write HJR 7 was to make the rules and regulations regarding compensability of travel time user-friendly. She and **John Andrew, MT Department of Labor and Industry**, have set up a meeting with a U.S. Department of Labor representative from Great Falls to come up with a product that better explains to employers what the rules are and how to go about paying employees for travel time. She did not anticipate legislation and will keep the Committee apprized of this issue.

Mr. Andrew said that the problem surrounding HJR 7 is one federal and one state law running parallel to each other. If state regulations are fixed and if the fix puts them out of conformance with federal law, it would create a worse situation than Montana currently has. The overriding objective is to maintain conformity between the two statutes. The Department has also

conducted a survey of other states that have similar laws and that have paralleled their state rules with the federal law. Mr. Andrew also did not anticipate any future legislation.

ADOPTION OF INTERIM CALENDAR

The Committee tentatively adopted the proposed interim Committee meeting calendar keeping in mind that the SJR 22 Subcommittee meetings will be held the day prior to the proposed full Committee meeting dates and that the Subcommittee may have to meet more regularly later into the interim. (See p. 6 of Exhibit 1) Staff also suggested to piggy-back meetings with other interim committees as much as possible.

DISCUSSION OF MEMBER ISSUES

Rep. Vick requested a review of what other states have done in the area of economic development. Staff will also keep the Committee apprized of what the Governor's Office on Economic Development is doing.

Sen. Ellingson requested a report from the Department of Labor and Industry and other organizations on what they are doing to help Montana workers who have been laid-off from their jobs (i.e., how long their unemployment insurance lasts and whether they are being referred to appropriate job placements and job training opportunities). This report should also include those who are in transition from the agricultural, forest products, livestock, and mining industries.

Sen. Roush requested that the health care organizations submit information on the health care crisis in Montana along with possible solutions for Committee review.

Rep. Galvin-Halcro requested a review of the companies in Montana that are not allowing their employees to have a break period; and as the companies come to the knowledge of the Committee, she suggested writing a letter to them stating that the situation is being reviewed and, if legislation is warranted, the Committee will do so. She also requested the Mr. Andrew review legislation from the 37 other states that have similar legislation to the legislation she introduced in the 2001 Session for comparison purposes.

Rep. McKenney said that he opposed Rep. Galvin-Halcro's legislation because he needed to be convinced that a compelling problem existed in Montana. If he could be convinced, he would be supportive of legislation regarding the issue.

PUBLIC COMMENT

Chuck Butler, Montana Blue Cross and Blue Shield (MBCBS), provided an article from the AARP's Washington Bulletin regarding the Patients' Bill of Rights debate being held in Congress. (EXHIBIT #4) He said that the liability provisions within the Patient's Bill of Rights is of great concern to MBCBS. The Congressional Budget Office estimates that the Kennedy-McCain legislation will increase health care premiums to employer-sponsored health plans by 4.2% and the Breaux-Frist-Jeffords legislation will increase premiums by approximately 3%.

Sen. Ellingson why the Kennedy-McCain legislation would increase health care premiums. Mr. Butler said that when there is additional liability in health plans, companies have to protect themselves. One way to do that is to increase premiums in the event that they are sued, and if they are sued, it will cost more money and the costs will be passed along. Hospitals and doctors that MBCBS partners with will also be under additional liability.

Mary Dalton, Medicaid Services, Department of Public Health and Human Services, said that the Health Care Advisory Council under the auspices of DPHHS was legislatively appointed. Although it expired in July, it wrote a white paper on insurance reform. In addition, the Department had two public forums with its partners and several pharmaceutical companies to discuss pharmacy costs in Montana. She will provide the Committee with a copy of the white paper and a copy of the proceedings from the forums.

Claudia Clifford, State Auditor's Office, said that the State Auditor's Office is amenable to the Committee's cleanup of Title 33 which is very complicated. She suggested that the cleanup be included in the Auditor's housekeeping bill. However, the timing of the bill is very important because the industry groups need plenty of time to review the bill for any contentious policy issues. She added that the Legislature directed the Commissioner of Insurance to redesign the funding mechanism for the Montana Comprehensive Health Association which is the insurer of last resort when a person cannot get health insurance. It is also mandated by federal law that the Auditor's Office have the program so that people who are leaving group insurance coverage have access to individual coverage. The current funding will not meet the needs of the program in this biennium. The Auditor's Office must seek a loan from the Board of Investments to fund the program fully.

ELECTION OF OFFICERS

Sen. Ellingson **moved** that Sen. Mahlum be elected Presiding Officer. Motion passed unanimously.

Sen. Roush **moved** that Rep. Galvin-Halcro be elected Vice Presiding Officer. Motion passed unanimously.

INSTRUCTIONS TO STAFF AND ADJOURNMENT

Sen. Roush suggested that staff contact Montana's Congressional Delegation to see if federal dollars would be available to hold public meetings on SJR 22 in two or three places across the state.

The Committee set rule review, draft legislation review, other interim activities, members issues, and the clarification of Title 33 as medium Committee priorities and agency monitoring and its assigned study activities as high Committee priorities. It was also suggested that Committee members who wanted copies of the rules could get on the mailing list for the Montana Administrative Register published by the Secretary of State's Office.

There being no further business, the meeting adjourned at 2:35 p.m.

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