



Economic Affairs Interim Committee

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58th Montana Legislature

SENATE MEMBERS

GLENN ROUSH--Vice Chair
SHERM ANDERSON
JEFF MANGAN
MIKE TAYLOR

HOUSE MEMBERS

JOE MCKENNEY--Chair
NANCY RICE FRITZ
JIM KEANE
SCOTT MENDENHALL

COMMITTEE STAFF

PATRICIA MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

January 23, 2004
Afternoon Meeting

Room 102, Capitol Building
Helena, Montana

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 the document.

COMMITTEE MEMBERS PRESENT

REP. JOE MCKENNEY, Chair
SEN. GLENN ROUSH, Vice Chair

SEN. SHERM ANDERSON
SEN. JEFF MANGAN
SEN. MIKE TAYLOR

REP. NANCY RICE FRITZ
REP. JIM KEANE
REP. SCOTT MENDENHALL

STAFF PRESENT

PATRICIA MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

VISITORS' LIST & AGENDA

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

COMMITTEE ACTION

- The Committee approved the October 23 and 24, 2003, minutes as written.
- The Committee approved addressing letter to Montana's Congressional Delegation voicing objections to the Office of the Comptroller of the Currency preemption regulation. The objectives were based on the information heard at morning joint meeting between the Economic Affairs Committee and the State Administration & Veterans' Affairs Committee and the recommendation of Montana's Commissioner of Banking and Financial Services, Annie Goodwin.

CALL TO ORDER AND ROLL CALL

REP. MCKENNEY called the Economic Affairs Interim Committee back to order at 1:30 p.m.

The Committee approved the October 23 and October 24, 2003, minutes as written by a unanimous voice vote.

STATE AUDITOR OVERVIEW

State Auditor John Morrison presented an overview of the duties, responsibilities, and goals of the State Auditor's Office (EXHIBIT #1). Mr. Morrison:

- discussed the SAO's administrative role in collecting revenue (EXHIBIT #2 - non-paginated first and second pages and pages 5 and 14).
- explained the many different insurance functions of the SAO and discussed related information (EXHIBIT #2 - pages 1-3).
- profiled the five Insurance Bureaus operating within the SAO (EXHIBIT #2):
 - ▶ Examinations Bureau - pages 5 & 6;
 - ▶ Rates and Forms Bureau - page 7;
 - ▶ Insurance Investigations Bureau - page 8;
 - ▶ Insurance Licensing Bureau - page 10, and
 - ▶ Policyholders Services Bureau - page 12.
- discussed the captive insurance companies established in Montana (EXHIBIT #2- page 8).
- outlined the State's role in securities regulation (EXHIBIT #2 - pages 13-15).

Mr. Morrison also discussed Montana's cooperative efforts undertaken with other states to create more uniformity and reciprocity among U.S. financial services regulatory structures in order to achieve Gramm-Leach-Bliley Act objectives. Mr. Morrison also discussed:

- the on-going controversy over state versus federal regulation and said the majority of the insurance industry would like state regulation to continue.
- how continued state regulation would be beneficial for Montana consumers and that the revenue associated with the SAO regulatory function is a significant source of revenue for the general fund.
- how state regulation is important for consumer protection as well.
- Uniform Regulation Through Technology (URTT), which Montana fully implemented in

2001. URTT is a constellation of 13 different electronic systems and regulatory mechanisms that allow multi-state access to the same data bases and information.
- agreements entered into with other western states on continuing education courses to allow a course approved in one state to be accepted in other states.
 - functional regulation agreements entered into with the Securities & Exchange Commission (SEC) and the OCC allowing continued state regulation.
 - market conduct reform. Mr. Morrison said Montana is close to adopting uniform rules that will encourage cooperation among states in resolving issues related to insurance markets.
 - speed-to-market initiatives designed to get new insurance policy approaches approved more expediently.
 - the proposed Interstate Insurance compact:
 - National Association of Insurance Commissioners passed the Interstate Compact Model Act (IMCA) which will establish a national committee to review all of the life insurance and annuity policies of the states that adopt the Act. If the national committee approves the policy, then it can be marketed in all of the participating states. With a few exceptions, the ICMA will preempt state laws to the contrary. Mr. Morrison said he generally is in favor of this program but wants to know more about what the standards will be before Montana passes this Act and is committed. Those standards are being developed and the SAO is monitoring development.
 - the NAIC Consumer Protection Group has launched a new national website for consumer information sources.

SEN. ANDERSON referred back to EXHIBIT #2 - page 8 and asked Mr. Morrison to explain why he anticipates a reduction in the fines category. Mr. Morrison said there were one-time large fines collected in FY 2004 and he did not anticipate additional large settlements in the future. Mr. Morrison also said the SAO purposely provides low estimates for its fine collections.

SEN. TAYLOR referred to EXHIBIT #2 - page 9 and asked why resident licenses over the past biennium were declining. Alicia Pichette, Insurance Commissioner, SAO, said resident licenses were not declining; there just had not been an increase. She said the main reason for this was that the uniform licensing applications process established with other states created more opportunity for non-residents to become licensed in Montana. She said she anticipates that the increase will level off over time.

SEN. TAYLOR said it is becoming increasingly difficult for consumers involved in agriculture to acquire insurance. Mr. Morrison said he could not comment on any particular portion of agriculture-related insurance but had seen an overall increase in the number of property-casualty companies doing business in Montana. He commented that Montana is currently in a "hard market" and listed three factors:

- the rapid expansion in the 1990s into smaller markets, such as Montana. When the market declined, these companies had to adjust for their losses and many of these insurance companies left Montana as quickly as they came.
- the cataclysmic insurance losses resulting from September 11, 2001, and
- a series of extraordinary natural disasters.

Mr. Morrison commented that the result of these factors is insurance being more expensive and

less available.

SEN. TAYLOR asked who was taking advantage of the captive insurance opportunities in Montana. **John Huth, Captive Insurance Coordinator, SAO**, said there are nine captive insurance companies currently licensed to do business in Montana. Hospitals, nursing homes, and trucking companies are the main types of companies that have taken advantage of this opportunity.

SEN. TAYLOR asked how much revenue is produced by these captives. Mr. Huth said it is statutorily required that the tax paid is .04 of 1% on the first \$20 million, with a minimum of \$5,000. He said the smaller captives would likely produce the \$5,000 minimum and larger companies would produce more, depending on the amount of premium they write.

SEN. MANGAN asked Mr. Morrison to comment on the venture capital issue. Mr. Morrison said venture capital was of interest to the SAO. He said while he initially supported the CAPCO model, he now supports the FUND of FUNDS model because it doesn't have the potential loss of revenue. He also said the disadvantage of the FUND of FUNDS model is that it doesn't guarantee an infusion of capital into Montana business. Mr. Morrison added that the real focus is to attract venture capital companies to open offices in the state and get interaction going, which will lead to more deals getting funded.

COMMITTEE ACTIVITY UPDATE

Pat Murdo, Staff Research Analyst, Legislative Services Division, (LSD) distributed an update on issues that the Committee has interest in or has worked on (EXHIBIT #3) which included:

- meat inspectors for new businesses or aspects of existing businesses waiting to be inspected and licensed;
- creation of multi-faceted state economic development plan/Board of Regents involvement (EXHIBIT #4 - A Proposal for the Montana Board of Regents);
- comparison of neighboring states' Economic Development Offices (EXHIBIT #5 - Economical Development in Montana and Regional States by Function);
- lumber issues: Canadian rejection of the U.S. proposal and WTO rulings in favor of the U.S.; and
- claims reimbursements.

RULE REVIEW ISSUES

Anne O'Leary, Counsel for the Board of Medical Examiners, reported that the Board has withdrawn its proposed rule change regarding medical assistants. Ms. O'Leary said this rule would be reworked before re-submitting it for approval and that many stakeholders would have the opportunity to have input on this rule in the re-working process.

Sami Butler, Montana Nurses Association, (MNA), said the MNA had worked carefully on the language of HB 321, regarding the licensing of medical assistants in the 2003 Legislative Session. She said the MNA had grave concerns with the proposed rule, which expanded the

language to include acute care facilities within the scope of a medical assistant's realm of practice. This, along with several other issues, has caused concern for the MNA. A hearing, held on November 22, 2003, drew many opponents to this proposed rule, and Ms. Butler stated she was very pleased that the Board voted to withdraw this set of rules and rework them to more closely represent legislative intent.

REP. MENDENHALL asked that this Committee have some form of representation in the rule revision process to ensure that the legislative intent is met and is carried through. Ms. O'Leary said HB 321's sponsor, Rep. Cindy Younkin, was involved and would continue to remain active in the rule-making process.

SJR 17 WORKERS COMPENSATION STUDY UPDATE

Eddy McClure, Staff Attorney, LSD, reminded the Committee members that the staff had broken SJR 17 into three sections for study:

- to request that the Committee examine options for simplifying the work comp act - presented at the last Committee meeting;
- to look at the policy of allowing exemptions for certain employments under workers compensation - will be presented at today's meeting; and
- to examine options for simplifying the occupational disease act, including recent Montana Supreme Court cases on occupational disease, as it relates to work comp - to be presented at the Committee's March meeting.

Ms. McClure said the focus of today's meeting would be on exemptions included under the Worker's Compensation Act.

Ms. McClure suggested that if the Committee made the decision that legislation would be needed, the legislation should be drafted and finalized at the May and June meetings.

Ms. McClure distributed a letter from Roger McGlenn, Independent Insurance Agent's Association of Montana (IIAM), Executive Director, (EXHIBIT #6) containing comments regarding SJR 17 and said Bob Biskupiak would discuss the details of the letter with the Committee.

Ms. McClure said one of the exemptions on the list is independent contractors, that the Department of Labor and Industry is conducting a study dealing with the issue of independent contractors, and that Jerry Keck, of DOLI would update the Committee on that study.

Bob Biskupiak, President-elect, IIAM, discussed the main points of Mr. McGlenn's letter (EXHIBIT #6) and specifically discussed worker's compensation statutes:

- 39-71-105 (1), MCA, Declaration of Public Policy;
- 39-71-501, MCA, Definition of uninsured employer; and
- 39-71-401 (2), MCA, Employments covered and employments exempted.

Jerry Keck, Administrator, Employment Relations Division, Department of Labor and Industry (DOLI), provided background information to the Committee on the exemptions in the Worker's Compensation Act (EXHIBIT #7). Mr. Keck said his comments were intended to help provide an understanding of the context in which legislators make public policy decisions in the

Montana worker's compensation system.

Ms. Murdo distributed a table titled, "*39-71-401(2) EXEMPTIONS -- WHEN CREATED, BACKGROUND INFO, OTHER STATE SIMILARITIES*", which listed exemptions to the Worker's Compensation Act and other pertinent information (EXHIBIT #8). Ms. Murdo discussed each exemption and its history.

Dick Martin, Claimant Attorney, commented that if an injured worker is excluded from a worker's compensation claim, the door is opened to a tort claim. Mr. Martin said something to consider is that a plaintiff's attorney prefers tort claims if negligence can be proven.

Ms. McClure said she had attempted to get actual claimants to come to the meeting but the claimants she had contacted were very reluctant to appear before the Committee. She said she will continue to look for claimants to testify to the Committee.

REP. KEANE said he had talked to a couple of claimants and said they are reluctant to talk to the Committee because they don't understand the system, have problems and become frustrated.

Glenn Gregor, Worker's Compensation Claimant, testified to the Committee of his personal experience as a claimant in the worker's compensation system and said each time he has had to file worker's compensation claims, the process has become more difficult. Mr. Gregor said as a result of these difficulties, he has experienced a great deal of personal loss and has had to declare bankruptcy.

REP. MCKENNEY asked Mr. Gregor for a time line of when he has experienced difficulties with the system. Mr. Gregor said he has experienced problems since December of 1992.

VENTURE CAPITAL OVERVIEW

Ms. Murdo distributed and discussed an overview of venture capital (EXHIBIT #9) which covered:

- the state's goal regarding venture capital;
- who provides investment capital;
- benefits of venture capital;
- where venture capital investments are made;
- types of venture capital firms;
- Montana's previous ventures; and
- possible options, goals, and structure.

Also included in EXHIBIT #9 was a venture capital initiatives discussion paper (EXHIBIT 9A) and a January 7, 2004, memo outlining background information and questions on venture/equity/seed capital programs in Montana (EXHIBIT 9B).

Ms. Murdo also handed out additional documents pertaining to venture capital:

- EXHIBIT #10 - memo from John Cadby of the Montana Banker's Association;
- EXHIBIT #11 - memo from Gary Morehouse of the Department of Commerce; and

- EXHIBIT #12 - information on angel investors.

SEN. TAYLOR said he would like to see data and results from economic development groups that the State has funded before allocating additional funds for economic development efforts.

REP. MCKENNEY said both the Great Falls Development Association and the Montana Economic Development Association have expressed to him a desperate need for some type of venture capital fund in Montana to attract businesses. He asked Dave Gibson of the Governor's Office of Economic Development was working with those groups. Mr. Gibson said his office was indeed working with different groups. Mr. Gibson said he thought the missing venture capital link in Montana is in high risk capital availability.

SEN. MANGAN said economic development is the function of local government and communities but the state needs to assist with the process by providing the necessary tools. He said he thought venture capital was one of those tools that could be used to assist in economic development. He also asked Ms. Murdo for details on the upcoming ad hoc venture capital discussion group meeting in Helena. Ms. Murdo said the meeting is scheduled for February 6, 2004, in Room 137 of the Capitol at 11 a.m.

REP. MCKENNEY said in looking at the list of participants for the ad hoc group meeting, he did not see many economic development participants. Mr. Gibson said this meeting was intended to be a high level discussion group but that it was open to all of the economic development groups.

SEN. TAYLOR referred to EXHIBIT 9B, page 11 (venture capital firms that received tax credits via the Montana Capital Company Act) and commented that he thought it was very important that there be safeguards put in place to protect the Montana consumer because of past misuse of grants and tax credits given to venture capital companies.

SEN. MANGAN said he agreed with SEN. TAYLOR that there have been problems in the past but said past problems should not necessarily deter future programs.

REP. MCKENNEY said SEN. TAYLOR expressed valid concerns but he still thinks venture capital is a valuable tool for the economic development programs.

Mr. Gibson acknowledged there have been past failures but encouraged the Committee to consider why the failures occurred and to identify what could be done differently to ensure future success.

REP. MCKENNEY said venture capital would remain on the Committee's agenda and would be discussed again at the March meeting.

SEN. MANGAN said the Committee would be updated in March on the ad hoc venture capital discussion group meeting.

SEN. TAYLOR asked for as much documentation as possible to identify the pitfalls and weaknesses of past attempts at venture capital.

Gary Morehouse, Department of Commerce, said he would be pleased to answer any questions on the history of tax credits/venture capital. SEN. TAYLOR asked Mr. Morehouse to prepare documentation for the March meeting of why/how the tax credits were or were not used in the past.

REP. KEANE, in reference to the morning joint State Administration and Veterans' Affairs/Economic Affairs Committees' discussion of federal regulation of banks, **moved** the Joint Committee address a letter to the Congressional Delegation voicing objections to the OCC regulation based on the information heard today and the recommendation of Commissioner Goodwin. The motion passed unanimously on a voice vote.

COMMITTEE DISCUSSION/DIRECTIONS TO STAFF

Ms. Murdo said the next meeting was scheduled for March 11 and suggested the agenda include more discussion on venture capital. She said she had invited Carroll South, Montana Board of Investments to present information. REP. MCKENNEY asked to have an accounting of past successes and failures in state assistance to business, in order to avoid similar mistakes in the future.

ADJOURNMENT

With no further business before it, the Committee adjourned. The next meeting will be held on March 11, 2004, at the Capitol.

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