

**Economic Affairs Interim Committee
Draft Work Plan for the 2003- 2004 Interim**

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I. Introduction

The Economic Affairs Interim Committee is assigned by law, 5-5-223, MCA, to monitor the following state agencies and the entities attached to these agencies for administrative purposes:

Department of Agriculture
Department of Commerce
Department of Labor and Industry
Department of Livestock
State Auditor and Insurance Commissioner
Governor's Office of Economic Development
State Fund¹

Agriculture and ranching, tourism and commerce of all types, and the service industries all contribute in key ways to economic affairs and economic development in Montana. Over the interim, the committee will hear from the industries, the public, and state agencies about policy concerns that top their lists related to economic activity, workforce issues, and the general business environment in Montana.

The proposed meeting schedule, operating within budget restrictions, is for seven meetings:

<u>General Meeting Topics</u>	<u>Date</u>
Introductory Meeting	June 11, 2003 (Wednesday)
Study/Rule Review, Agency Update	October 24, 2003 (Friday)
Study/Rule Review, Agency Update	January 23, 2004 (Friday)
Study/Rule Review, Agency Update	March 10, 2004 (Wednesday)
Study Draft/Rule Review, Agency Update	May 5, 2004 (Wednesday)
Legislation Review	June 25, 2004 (Friday)
Final Reports/Legislation Review	August 20, 2004 (Friday)

The meetings will focus on the SJR 17 study of workers' compensation and occupational disease statutes and rules, rule review, oversight, and legislative proposals from the Committee and from agencies for which the Committee is responsible.

Interim committee work is to be completed by September 15, 2004. From a practical perspective, this means that study reports, if written, and recommendations, including any recommendations for legislation, must be in final form by that date.

¹Although the State Fund is administratively assigned to the Department of Administration under 2-15-1019, MCA, a Memorandum of Agreement was established during the 1999-2000 interim between the Economic Affairs Interim Committee's predecessor, the Business and Labor Interim Committee, and the State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee. The agreement was to assign State Fund to the Business and Labor Interim Committee, in part because the Business and Labor Committee had been assigned an interim study dealing with State Fund. In the 2001-2003 interim the Economic Affairs Interim Committee continued to include the State Fund in its monitoring activities. For this interim, staff of both committees recommend that a similar arrangement be continued.

II. **Statutory Obligations and Review of Duties**

- 5-5-215. Duties of interim committees.** (1) Each interim committee shall:
- (a) review administrative rules within its jurisdiction;
 - (b) subject to 5-5-217(3), conduct interim studies as assigned;
 - (c) monitor the operation of assigned executive branch agencies with specific attention to the following:
 - (i) identification of issues likely to require future legislative attention;
 - (ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
 - (iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;
 - (d) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and
 - (e) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.
- (2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.
- (3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.

The Economic Affairs Interim Committee Duties

A. Rule Review

Each interim committee is responsible for reviewing rules promulgated by the agencies that the committee monitors. Committee legal staff will review the agency rulemaking notices and provide regular updates. According to the Montana Administrative Procedure Act (MAPA), the committee charged with reviewing agency rules may:

- request agency rulemaking records for ensuring compliance with MAPA;
- submit recommendations regarding the adoption, amendment, or rejection of a rule;
- require that a hearing be conducted;
- participate in proceedings;
- review the conduct of administrative proceedings.

Action item: The Committee is encouraged to determine how active it will be in reviewing agency rules during the interim. Among the options are:

- a) a written report by legal staff at each meeting of proposed rules and adoption notices for each agency monitored by legal staff for the Committee;
- b) oral summary reports at each meeting on topics that legislators have flagged as important or of concern, with copies of letters sent by legal staff to an agency regarding legal concerns with a rule;
- c) periodic updates on issues that Committee members have requested or that are considered by staff to be particularly important to the Committee's interim work or that a member of the public has requested be placed on the Committee agenda.

B. Program Monitoring

Pursuant to 5-5-215, MCA (Duties of Interim Committees), the Committee shall monitor the operation of assigned agencies with specific attention paid to:

- identifying issues likely to require future legislative attention;
- improving existing law; and

- seeking the input of citizens regarding the operation of agencies.

Action item: Committee members are encouraged to make suggestions about which activities of which agencies they would like additional information. Prior to the second meeting, planned for October 24, 2003, the Committee is encouraged to decide if reports by each agency to the Committee should be focused on particular issues or should be a broad overview.

C. Draft Legislation Review

Draft legislation review is intended for both the interim committee's suggested legislation and for legislation to be proposed by agencies monitored by the Committee. The agencies are expected to have submitted their proposals to the Governor's Office by June 2004. Interim legislative committees then review according to Joint Rule 40-40(5)(a): "Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee." More information will be available closer to the review dates.

In 2001-2002, the Economic Affairs Interim Committee handled the following bill requests:

Department of Agriculture	7 (4 bills became law, 2 drafts canceled)
Department of Commerce	4 (3 bills became law, 1 draft canceled)
Department of Labor and Industry	7 (7 bills became law)
Department of Livestock	0
State Auditor and Insurance Commissioner	22 (12 bills became law, 4 drafts canceled)
Governor's Office	9 (2 bills became law, 7 drafts canceled)
State Fund ²	0
Total:	49 (28 bills became law, 14 drafts were canceled, 7 bills died in the process)

III. **Study Activities**

The Legislative Council on May 22, 2003, assigned Senate Joint Resolution No. 17 to the Economic Affairs Interim Committee. As background, SJR 17 was requested by Sen. Jon Tester as a response to concerns from the insurance industry that the workers' compensation and occupational disease statutes are confusing and cost too much time and money for compliance.

SJR 17 proposes to:

- Clarify a patchwork of work comp laws (which may save time and money in compliance).
- Review statutes in conjunction with administrative rules for simplification and clarity.
- Assess definitions and concepts in light of changing employment practices and court cases.
- Review existing exemptions for discrimination or failure to meet the intent of work comp policy.

The Economic Affairs Interim Committee also has the opportunity to address recent Supreme Court decisions on workers' compensation to determine if statutory changes are advisable and to determine whether administrative rules that seek to implement court decisions might instead be incorporated into new legislation. One court case, in particular, raises a question of whether

²See footnote 1.

the Workers' Compensation Act and the Occupational Disease Act might be merged. In *Stavenjord v. Montana State Fund*, decided April 1, 2003, the Supreme Court's majority opinion, written by Justice Terry Trieweiler, said in part: "...we conclude that the disparate treatment of disabled workers based simply on the length of time over which their injury or disease is sustained is not rationally related to that legitimate government interest." The government interest referenced is "to provide a wage loss benefit which bears 'a reasonable relationship to actual wages lost as a result of a work-related injury or disease.'" The length of time over which the injury or disease is sustained refers to the work comp definition of injury and the Occupational Disease Act's reference to disease that develops over time. (Injury is defined in 39-71-119, and occupational disease is defined in 39-72-102(10).) For the court case, see: <http://www.lawlibrary.state.mt.us/dscgi/ds.py/Get/File-20509/01-630.wp9.pdf>

Accordingly, the work plan for SJR 17 proposes some key tasks:

- Review **administrative rules and statutes** (excluding benefits)
 - for clarity, duplication
 - are they too general, too specific?
 - what were reasons for adoption and is there a need for a response mechanism?
- Review recent decisions from work comp/occupational disease court cases and their impact on **concepts**
 - differences between work comp and occupational disease
 - exclusive remedy
 - types of cases/sections of law or administrative rule being challenged
- Review **terms, definitions, exemptions**
 - analyze rationale (judicial decisions, statutes, changes in work practices)
 - discuss needs with employers, employees, the Department of Labor, and others
- Selectively compare how nearby states legislate or decide court cases regarding workers' compensation and occupational disease
 - differences, similarities, e.g.: occupational disease vs. injury, exclusive remedy
- Determine other stakeholder concerns

IV. *Other Interim Activities*

The Committee's opportunity to "accumulate, compile, analyze, and furnish information" related to assignments and to existing or prospective legislation means that guest speakers may be scheduled to provide information on economic development or other relevant topics, depending on availability of budget funds. The Committee may want to invite economists who have studied Montana's employment, for example, to address a Committee meeting, perhaps in conjunction with economic development officers from the regional economic development organizations.

The Committee also will be responsible for receiving information on studies required under SB 315, a study by the Office of Economic Development (if funds are available) of conditions affecting railroad freight competition in Montana, and SB 304, recommending a study to determine the feasibility of selling the State Fund and creating an assigned risk pool.

V. *Member Issues*

During past interims, several legislators requested that the Committee address specific issues with the intention that the Committee would prepare recommendations for the upcoming

session. Expecting that this practice will continue, Committee staff will inform the presiding officer of nonmember requests and receive direction on whether the Committee has available resources, time, and interest to conduct research or hold information-gathering meetings.

VI. *Staff Recommendations for Additional Activities*

In the past interim, the Committee worked on SJR 22, looking at health care and health insurance. The issues raised with that study included concerns about the viability of small towns in danger of losing their medical facilities/personnel. Staff proposes updates on federal legislation revising Medicare payments to rural medical facilities and related topics that concern health care as a major economic development issue. Other topics, unknown at this time, are also sure to emerge during the interim and will be presented to the Committee for comment.

VII. *Tentative Interim Calendar*

In addition to an organizational meeting, staff recommends that the Committee meet six times during the interim and encourages the Committee members to adopt the following meeting calendar, with dates to be determined to avoid conflicts with other interim committees whenever possible.

1. October 24, 2003
2. January 23, 2004
3. March 10, 2004
4. May 5, 2004
5. June 25, 2004
6. August 20, 2004

The June and August meeting dates are projected to be two-day meetings, as they will involve legislation and draft/final report reviews in addition to routine business. Meetings will be in Helena, unless Committee members request another location. If a different location is selected, the Committee may need to reassess priorities to accommodate changes. Members are encouraged to decide early in the interim whether meetings should be scheduled outside of Helena, due to the fact that those days require additional resources and logistical demands to ensure adequate space and notice to the public.

VIII. *Web Resources*

Information about the Committee is available through the legislative website, under Committees, Interim, Economic Affairs. At that site, staff will post information regarding Committee activities, minutes, agendas, study reports, and relevant information. The site also provides links to the websites of agencies for which the Committee is responsible.

Legislative Services:

<http://leg.state.mt.us/css/default.asp>

IX. *Matrix for Prioritizing the Focus of Meetings*

The following table provides a brief description of the Committee's involvement over the course of the interim. The columns highlighting priority are designed to spur discussion and offer the members an opportunity to choose how best to allocate their time. It is anticipated that choosing the highest priority column for each activity will seriously tax the Committee's time,

staff resources, and budget. However, the table is an estimate and is fluid enough to allow for flexibility and resource reallocation.

ACTIVITY	HIGH PRIORITY	MEDIUM PRIORITY	LOW PRIORITY
<i>RULE REVIEW</i>	Instruct staff to present regular updates on all proposed rule notices at each scheduled meeting.	Instruct staff to consult with the Committee presiding officer on rule review issues that are of particular interest to the members and schedule updates as necessary.	Respond to rule review requests from the public or legislators as those requests arise throughout the interim.
<i>AGENCY MONITORING</i>	Develop a schedule for agencies to present a systematic review of programs administered, allowing for separate issues to be developed and discussed as needed.	Instruct staff to develop a formal list of questions, to be approved by the Committee, and allocate time for each agency to address the specific questions.	Request background information from agencies and additional information when the Committee becomes aware of issues associated with agency performance.
<i>DRAFT LEGISLATION REVIEW</i>	Work throughout the interim with agencies as they begin to prioritize legislative proposals.	Develop a formal review/comment process for draft legislation proposed by each agency.	No formal review process developed; overview of concepts on each piece of legislation presented.
<i>ASSIGNED STUDY - SJR 17</i>	Full Committee participation	Subcommittee appointed. Periodic updates of subcommittee activities throughout the interim with final recommendations being made at the May or June 2004 meeting.	Staff reports, limited discussions before subcommittee; final recommendations made by subcommittee, based on findings and conclusions.
<i>OTHER INTERIM ACTIVITIES</i>	Outline a schedule of topics to be addressed at each meeting.	Staff prepares "white papers" on topics of interest. Discussion by Committee.	Topics limited to those presented by interested persons who ask to be on agenda.
<i>MEMBER ISSUES</i>	Identify member issues early in the interim and assign staff or working group for member issues.	Instruct staff to research issues and prepare options as issues arise; present findings for Committee consideration.	Address member issues as time allows.
<i>STAFF RECOMMEND.</i>	Incorporate ongoing issues into regular schedule.	Add ongoing issues for discussion as time permits.	Provide background information in packets.