



Economic Affairs Interim Committee

60th Montana Legislature

SENATE MEMBERS

KEN HANSEN--Vice Chair
ROY BROWN
FRANK SMITH
DONALD STEINBEISSER

HOUSE MEMBERS

SCOTT MENDENHALL--Chair
MIKE MILBURN
MICHELE REINHART
BILL THOMAS

COMMITTEE STAFF

ANDREW GEIGER, Lead Staff
BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary
LISA JACKSON, Staff Attorney for HJR48
PAT MURDO, Staff for HJR48 & SJR13

MINUTES

July 17, 2008
July 18, 2008

Bozeman, Montana

Opening Remarks - Tour of MSU Campus
Student Union Building - Rm. 275
Strand Hall
Montana State University

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

REP. SCOTT MENDENHALL, Chair
SEN. KEN HANSEN, Vice Chair
SEN. ROY BROWN
SEN. FRANK SMITH
SEN. DONALD STEINBEISSER
REP. MIKE MILBURN
REP. MICHELE REINHART
REP. BILL THOMAS

STAFF PRESENT

ANDREW GEIGER, Lead Staff
BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

Visitors/Agenda July 17, 2008

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

Montana State University (MSU) CAMPUS TOUR - Thursday, July 17, 2008

(The tour is not recorded)

9:30 a.m. The committee met in the MSU-VMB Seminar Room, Molecular Biosciences building.

Rep. Mendenhall called the meeting to order. He welcomed everyone to Bozeman and thanked the MSU staff for their hospitality. The secretary noted the roll. (Attachment #3) A schedule was handed out of the day's events. (Attachment #4)

Opening remarks - Veterinary Molecular Biology (VMB) Seminar Room, Molecular Biosciences Building

10:00 a.m. Rep. Mendenhall introduced MSU President Geoff Gamble.

President Gamble welcomed the committee to the MSU campus and talked about the development of higher education as well as the instructional and the research sides of education. He said the need is great to bring the University of Montana (UM) and MSU together with businesses to contribute to national competitiveness. He said that universities and legislators need to make every effort so that Montana has a good return on graduates in businesses and research. He talked about the decline in college enrollment around the state. He addressed the two universities complementing each other and how they partner in their research.

President Gamble distributed a handout showing expenditures by colleges and departments. **(Exhibit 1)** He discussed the \$100 million received in research grants and funds and how they have used these funds to assist over 200 high tech companies in Montana. He said that employers are coming into Montana seeking out Montana university students because of their work ethics and education.

President Gamble talked about the BioFuels research program and how the Montana universities have teamed up with Yale university to accomplish this research. He said the committee will be viewing this research on its tour where products are developed and introduced to the public.

President Gamble said that MSU requires undergraduates to participate in research. He said they have a 16:1 student-teacher ratio. The university students have received 47 awards and are 14th in the nation in receiving achievement awards. He said that MIT, Yale and John Hopkins Universities are behind us in this achievement. Montana students are taking discoveries and technologies and putting them out into the world of business.

President Gamble thanked the legislature for its study and awareness about education. He said we can be very proud of our university system, and thanked the committee for visiting.

The Committee Members tour the MSU Campus

- 10:45 a.m. The committee traveled to the MSU CO₂ field site - Towne Far (Tech Park), where Dr. Lee Spangler provided a carbon sequestration demonstration.
- 12:10 p.m. Dr. Luther Talbert, Plant Biotechnology, VMB Seminar room, gave a presentation on plant licensing and plant pathology. **(Exhibit 2)**

Dr. Mark Jutila, Veterinary Molecular Biology, VMB Seminar room, discussed the four areas that encompass the scope of VMB research. The VMB uniquely combines expertise in the study of pathogen biology, host defense, cell biology and use of small and large animal models. Dr. Jutila said they perform research for the National Institutes of Health (NIH) US and Dept. of Agriculture, for their research in emerging infectious diseases.

PowerPoint presentations

- 1:45 p.m. Dr. Rob Goodwin, President of LigoCyte Pharmaceuticals, gave a PowerPoint presentation on the collaboration of LigoCyte with MSU. LigoCyte, a research lab near the campus, has received \$28 million in grants to develop vaccines for the norovirus and influenza research. Undergraduate students from MSU assist in the research.

Kris Merkel, President, S2 Corporation, presented a PowerPoint explaining their collaboration with MSU on economic development and research. Mr. Merkel said that S2 is a high technology based small business with solutions for multiple Department of Defense customers. S2 technology develops radar-range Doppler signaling devices, intelligence for electronic warfare, optical-communications, and much more.

Dr. Peter Roos, President, Bridger Photonics, gave a PowerPoint presentation on the commercial innovative photonics technology that improves society. They research and develop economical, rugged, high quality lasers, laser devices, and sensors. Their technology helps: 1) identify sources of pollution, 2) scientists to position satellites better, and 3) in the fight against illicit drug use. Dr. Roos talked about the award they received from the National Science Foundation for the development of a sensor that seeks out meth labs.

Other places of interest and presentations from:

- 3:00 p.m. Dr. David Singel, Chemistry and Biochemistry Building

Byker Auditorium, CBB

Dr. Mark Young and Trevor Douglas, Center for Bio-inspired Nanomaterials,
John Peters, Thermal Biology Institute
Steve Holland, MT Manufacturing Extension Center
Will Swearingen, TechLink
Rich Semenik, College of Business-Entrepreneurship

5:00 p.m. The MSU campus tour ended. The committee met at the MSU Bobcat Stadium Club for a reception.

Exhibit 3 - Economic Development & Business Assistance Programs-MSU Bozeman

Exhibit 4 - MUS Patents & Licenses Research & Technology Report - Bozeman

Exhibit 5 - Brochures showing various companies in collaboration with MSU

Friday, July 18, 2008

Visitors/Agenda

Visitors' list, Attachment #1.

Agenda, Attachment #2

CALL TO ORDER AND ROLL CALL

REP. MENDENHALL reconvened the EAIC meeting at 8:05 a.m. on July 18, 2008. The secretary noted the roll. (Attachment #3).

AGENDA

00:01:28 REP. MENDENHALL asked the committee and staff to introduce themselves. He thanked President Gamble and the MSU staff for the July 17 tour and the information that was presented to the committee. He said the information heard on research and commercialization is one of the committee's study topics.

00:02:35 SEN. HANSEN, Vice Chair, thanked everyone for attending today's meeting and commended the staff for their assistance in making arrangements for this meeting.

An analysis of issues relating to residential contractors and best practices

00:03:40 **Joy Ooka, Red Lodge**, said she is representing a group of homeowners that are here today because contractors have betrayed their trust and have forced people to use the legal system as a remedy. She distributed a handout on her organizational efforts at cataloguing residential projects that are in dispute.

(Exhibit 1) She identified a list of what happens when a person chooses a bad contractor they become victims of:

1. fraud,
2. robbery,
3. deceit,
4. liens placed on homes after paying double for nothing,
5. phoney information on a builder's qualifications, and
6. the frustrations due to lack of accountability.

Ms. Ooka said most people are not aware they need to know everything there is about their projects to protect themselves when they hire a contractor. She said under current conditions a lot of the people have learned that they need to know every aspect of their project and be present when the contractor is on the project. She said they have also learned that they need to buy the supplies for the

contractor instead of allowing the contractor to charge supplies that end up for someone else's project. She said the only inspections that are done on a house is for plumbing and electrical. There are no safeguards to protect the consumers against exploitation and fraud from bad contractors. The supposed safety nets of city/county inspections or even police enforcement are not effective. She said that contractors should be required to have more education and be licensed for the skills they claim they have. She asked that the legislators find a way to enforce contractors to carry insurance and be bonded to cover the cost of the projects they are bidding. She added that it will increase the cost of the projects, but it will be minimal compared to what the consumer has to pay out in attorney fees, reconstruction, and stress related medical bills.

00:08:53 **John (Buzz) Tarlow, Practicing Attorney and Law Professor**, discussed how current law plays out in court. He has represented homeowners, contractors, subcontractors, design professionals, and suppliers in Montana, and also represents clients from other states. He also lectures part-time at the MSU- College of Engineering. He said that lawyers can be very expensive, and sometimes the courts offer very little relief. He offered his assistance to work with the committee to address the following issues:

- how lien laws work,
- the residential construction defect statute, and
- the payment act.

Mr. Tarlow said he is available to take any questions that the committee and public may have.

00:10:28 **Rep. Ray Hawk, HD 90, Florence**, said he is here because a constituent had a bad experience with a contractor. He noted that Joy Ooka has addressed a lot of the issues. He said that the Better Business Bureau ranks contractors as number one in the top 10 list for bad complaints. AARP has reported that only one in 60 people report their bad experience. He reported that research shows the people who had the most problem with contractors are 60 years of age and older. These people have: 1) sold a business, 2) taken equity from a larger home, or 3) moved to Montana from another state. He said that a lot of these people pay cash so they don't have any lending institution that could protect them. The Consumer Protection Agency has reported 57 complaints against contractors in Montana in the last 1½ years.

00:23:53 Rep. Hawk quoted statutes that contractors and consumers are required to follow. He suggested changes to the existing statutes that could be a solution to some of the problems.

Rep. Hawk said that Dustin Stewart, Montana Building Industry Association (MBIA), will explain later what is happening in the trades. He informed the committee there is a list of bad and good businesses located on a web site called Angies List www.angieslist.com.

PUBLIC COMMENT:

- 00:33:49 **Ron Solberg, Helena**, built a house in 2002, and has paid over \$35,000 in legal fees over the past six years.
- 00:35:43 **Cliff Boehm, contractor from Red Lodge**, said he is called in to re-do contractors jobs when they leave. He said that Montana needs more laws for contractors and to perform more stringent inspections.
- 00:42:34 **Pete McGovern, Bozeman**, said he is missing footers and headers in his 3-story home. He has been sued for going to the Consumer Protection Agency, and has been physically attacked by the builder. He has spent over \$100,000 in legal fees and re-construction of his home.
- 00:46:56 **Eileen McGovern, Bozeman**, said she and her husband Pete, were sued for calling the police. Their legal fees have exceeded \$160,000. When a company places a lien or files a suit, the banks will cut off the construction loan.
- 00:51:18 **Rich and Beverly Perry, Stevensville**, said their contractor put down the wrong size floor joist. She said the state's system has "no teeth" to go after these guys. She asked the committee to find a better way to protect the consumers. They have spent \$6,000 to have attorneys write letters.
- 00:56:53 **Pam Wheeler, Stevensville**, said she wanted to expand her business and have the family involved, but her builder took her for everything. She had to file for bankruptcy and call the police because the builder had billed all the tools to her account to build her home and then took them with him when he left.
- 01:00:54 **Joy Ooka, Red Lodge** said she purchased a home that had a nonworking septic system that has cost her \$90,000 between two contractors. She talked about realtors not being required to carry errors and omission insurance while some do, her realtor didn't. She stated that errors and omission insurance should be required for all realtors to protect their businesses from liability.
- 01:02:25 **Colleen Delzer, Columbus**, said she went through the contractors list, did all the checking on contractors before she made her choice on a builder. She even inspected two of the homes of the builder she had chosen to see what kind of a work he did. She thought the homes were well built, and couldn't find any complaints about his work. She signed a contract and gave him a \$49,500 down payment to secure the place for the lumber. The contractor was supposed to start on her house last September. The following April she had to ask him to leave the site, and he got violent and went after her. The builder then placed a lien on her home, and he has found an insurance company who has provided him with three attorneys. She said if she loses out on just one item that she has filed against the builder, she will have to pay all three attorneys fees. She has contacted the Montana Builder's Association to find a builder to come in and take care of the problems caused by her builder. She said builders don't want to come onto a site when it is in dispute because they don't want to be involved. Her lawyer wrote her a letter stating that he cannot continue with her case, and warned her that the attorney fees could go to \$70,000.

01:10:09 **Jerry Keck, Administrator, Employment Relations Division, DLI**, said his department registers construction contractors under the Construction Contractors Registration law. He distributed a handout (**Exhibit 2**) that explains the contractors law, 39-9-101 et., seq., MCA, that states all construction contractors are to be in compliance with the workers' compensation law. He provided the department's website www.mtcontractor.com/crx/CRWelcome.htm. He talked about the Contractors Registration Program (CRP), and informed the committee that the law wasn't designed to protect consumers. It was designed to verify that those who are in the construction industry have workers' compensation. He said the consumers that have testified here today cannot be addressed by the CRP. His office receives complaints every day from consumers like those heard here today.

EAIC discussion and questions

01:12:04 REP. REINHART asked Mr. Keck if he has any suggestions or solutions to address the problem. Mr. Keck replied that the issues outlined by Rep. Hawk are probably the option. He stated that the options provided today would create a significant increase in government regulation, including licensing. To have "teeth" in it might require inspections on residential construction. He said based on what he heard here today that the people do not feel it is very useful unless there is a bonding requirement or a clear insurance requirement so when there are problems, such as a fine, that it is a reduced judgment that the consumer would be able to collect on. He talked about the people who have accrued over \$100,000 in legal fees in order to get to a judgment they could benefit from. He noted that it sounds like a bonding requirement or a security deposit may not work in this case.

01:15:11 SEN. SMITH asked Mr. Tarlow if he has looked at other states to see what their laws are. Mr. Tarlow said there are about 30 states that have contractor licensing. He said that registration requirements are misleading because many consumers feel that registration is a form of licensing. He has heartfelt sympathy toward the people that have told their stories here today. He told about sitting with contractors who also have been treated poorly by owners of residential projects and said as most transactions go there are viewpoints from both sides.

01:17:19 SEN. SMITH talked about Minnesota's laws. The committee discussed the number of home starts in Minnesota compared to Montana. Mr. Tarlow said there are a number of solutions to the problems heard here today and one would be sewer system inspections.

01:19:17 REP. MILBURN asked what other options are there besides licensing. Mr. Tarlow responded that the legislature changed the retainer law not too long ago to hold back on a percentage of the bid until the job is finished and accepted; this was reduced from 10% to 5%. He said this happened because the Contractor's Association and individuals who lobbied the legislature said it is unfair to wait until the end of the job to pay the contractors. He said a holdout is a good way to balance out the relative risks, and it benefits construction projects. Mr. Tarlow suggested that the contractor registration be called workers' compensation registration so people will understand that it isn't for a licensed contractor.

Mr. Tarlow said he was very impressed by several of the people here today that did their checking and took all the right steps to choose a builder. He said the one reason for the problem heard here today was the building boom.

REP. MILBURN asked Mr. Tarlow if he has testified for more homeowners than contractors. Mr. Tarlow said the last couple of years he has represented more homeowners than contractors - about 60/40. He has yet to complete a judgement on the side of the homeowner. He said there are substantial bias toward working people such as the contractors, and the courts and most districts are very pro-contractor. There are many grieved contractors out there because the owners didn't live up to their deal either.

01:26:53 **Dustin Stewart, Montana Building Industries Associations (MBIA)**, explained what the building industries do. He discussed:

- The MBIA is a not-for-profit organization of small Montana businesses that have banded together to promote and protect the homebuilding industry in the State of Montana.
- The MBIA is comprised of 9 local associations from around the State of Montana, that have a total of 2,300 small business members who build over 75% of the homes in Montana.
- The MBIA is part of the National Association of Homebuilders, which one of the largest trade associations in the nation.
- The MBIA works with the Montana State Fund to provide a significant amount of safety training and offer reduced workers' compensation rates to members through the Group Rewards Insurance Program (GRIP), which is available to all MBIA members.
- The MBIA has been in conversation regarding this issue with the DLI for many years.

Mr. Stewart said the board sympathizes with the people that testified here today. He said that the members of the MBIA are here for the long-haul, they are in every community, and they are not someone that is here to make a buck and run.

01:36:38 SEN. HANSEN wanted to know the percentage of home builders that are not registered. Mr. Stewart said that 30% of homes built in Montana are built by builders that are not members of the MBIA. SEN. HANSEN wanted to know if Mr. Stewart had any solutions to the problems talked about here today. Mr. Stewart said there is a need to focus on inspections of homes. He stressed that the DLI and local governments need to find a way to provide more inspections. Currently, the cities in Montana do their own building code inspections. He said it is a fee-based system, and only half of the homes in Montana are currently being inspected. Mr. Stewart said that MBIA members build at the code level of the State of Montana building codes. Mr. Stewart said there should be more legislation to enforce inspections, and that the MBIA is currently working out details to create a building code district for the State of Montana.

01:47:58 Rich Perry asked Mr. Tarlow about contractors placing liens on these peoples homes, and wanted to know what the cost is to the contractor. Mr. Tarlow reported that the contractors' lien statute is pro-contractor, and explained how

that formality is accomplished.

01:56:33 Sen. Brown said he had his own experience with a bad contractor, and questioned the committee to find some solutions for this next legislature.

02:01:20 Cliff Boehm addressed the problem of not having enough qualified inspectors.

Rule Review, Bart Campbell, Staff Attorney

02:03:15 Bart Campbell, LSD staff attorney for EAIC, distributed information on rules for the Helena Board of Horse Racing, and other agencies' rules that EAIC monitors. **(Exhibit 3)** He explained the proposed adoption of new rules for Horse Racing. **(Exhibit 4)** He distributed a copy of HB 616 for the committee to review from the 2007 Legislature, which addresses fantasy sports leagues. **(Exhibit 5)** The Board doesn't have a license as stated in the bill. He talked about the para-mutual HUB that the Board is required to contract with, and isn't addressed in HB 616.

02:14:10 REP. MENDENHALL asked Mr. Campbell to proceed writing the letter to the Board. He said the Board is required to answer every letter it receives.

02:16:52 The committee discussed forming a working group to draft a bill that will address the contractors.

BREAK

Update on Workers' Compensation Issues and Potential Legislation

• **Representatives Milburn and Thomas - Briefing from Legislative Liaisons to Montana State Fund**

02:41:09 REP. THOMAS said that the State Fund is working very hard to lower the rates. He discussed the Old Fund, but didn't have the figures with him. He said that the Legislature will have to appropriate \$3 to \$4 million every session to keep the fund solvent.

02:45:35 REP. MILBURN reported that the high accident rate is determined by the high claim rate. A number of claims in Montana are nonthreatening such as falling off of a chair, etc, and the Legislature needs to look at why Montana has a higher percentage of filed claims; are there more accidents or are people just filing more claims.

Department/Agency comments

02:46:38 Jerry Keck, Administrator, Employment Relations Division, DLI, and Ex-Officio member of the Labor Management Advisory Council (LMAC), discussed legislative options approved by the Council. He distributed and explained a report by the LMAC on workers' compensation. **(Exhibit 6)** He provided a list of the Council members. **(Exhibit 7)** Mr. Keck handed out a copy of the Council's draft legislation and he commented the department would like this committee to sponsor the bill. **(Exhibit 8)**

EAIC discussion and questions

- 02:57:38 REP. MENDENHALL wanted to know how other states rank in comparison with Montana in regard to employers that own businesses. Mr. Keck will provide a chart that shows where Montana stands in comparison with 13 other states. Montana is ranked number one where employers have less than 10 employees, and he was unsure where Montana is in comparison with Wyoming with 10 to 25 employees. Montana is at the bottom of the list with employers that have over 1000 employees because of the few employers in that range. OSHA will not say who they are because they would be able to identify them. He said that Montana has the lowest rate of employer sponsored health insurance, but has a high percentage of small employers because Montana requires that agriculture claims be reported.
- 03:03:31 Mr. Keck directed the committee to page 3 in the Bureau of Labor Statistic handout. (See Exhibit 4) He talked about using OSHA data which mirrors the National Council on Compensation Insurance, Inc. (NCCI). He explained that NCCI is the rating organization for the State of Montana for workers' compensation. When legislature proposes a change, NCCI will set the standard rates for insurers that need to be adopted. He said if they are a Plan 2--a private company--then they are required to file with the Insurance Commissioner's Office. The report is an analysis that the NCCI did for the LMAC. It addressed two issues: 1) If Montana reduced the workers' compensation injury rate to the national average what would the savings be, and 2) if Montana could reduce the time away from work to match the national average what would the savings be. If injury rates were reduced to the national average it could mean a potential savings of \$145 million. Mr. Keck distributed a handout from NCCI showing claim frequency results between Montana and the nation. **(Exhibit 9)**
- 03:32:21 Mr. Keck distributed a copy of the DLI draft legislation **(Exhibit 10)** "An Act requiring a letter of intent in order to create a new exemption from workers' compensation, providing for a voluntary certification program for workers' compensation administrative funding system, and clarifying the DLI's authority to collect."
- EAIC discussion and questions**
- 03:49:20 There was discussion on how to address: 1) DLI's draft legislation, 2) a companion bill, and 3) setting assessments.

PUBLIC COMMENT:

04:04:42 Jon Bennion, Montana Chamber of Commerce

PUBLIC COMMENT ON HJR 48-MANDATE LIGHT PROPOSAL:

04:11:10 Arlene Wiley, Volunteer for Cancer, distributed a handout addressing proposals on behalf of the State Auditor's Office. **(Exhibit 11)**

Update on State Administration and Veterans Affairs (SAVA) letter

04:16:41 REP. MENDENHALL and Mr. Geiger talked about the letter of agreement

(Exhibit 12) between EAIC and the SAVA committee to monitor the Montana State Fund.

Update from staff on statutory requirements for the remainder of the Interim

04:18:26 Mr. Geiger discussed the final meeting that will take place on September 12, 2008, in Helena. He said the agenda for the final meeting is busy and an oral report will be too long. He and Ms. Murdo will write their reports prior to that last meeting. Mr. Geiger addressed the statutory requirements and committee obligations.

EAIC discussion and questions

04:29:02 The committee discussed bill drafting, and concluded that it is too late in the interim to bring bills before the committee.

04:57:31 **Dr. Doug Steele, Vice Provost & Director of the MSU Extension Service**, Dr Steele distributed a handout **(Exhibit 13)** showing the MSU proposed biennium budget. The new funding proposal will assist MSU with extension programs by providing funding to extension centers throughout Montana for economic development.

EAIC discussion and questions

05:19:14 REP. MENDENHALL wanted to know about the funding mechanism for extension agencies, and asked what is the federal budget and what is the state budget. Dr. Steele said that 69% is state dollars, and 37% is federal dollars.

05:27:09 REP. MENDENHALL talked about partnerships between the extension centers and MSU and how the funding for the extension programs are used. He has been an extension agent and asked Dr. Steele to encourage the staff to contact their legislator.

05:36:13 REP. MENDENHALL adjourned the EAI committee meeting at 2:00 p.m.

CI0206 0034coxd.