Business, Labor, and Agriculture Interim Committee

56th Montana Legislature

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SENATE MEMBERS
JOHN R. HERTEL, CHAIR
DALE MAHLUM
GLENN A. ROUSH
DEBBIE SHEA

HOUSE MEMBERS
CARLEY TUSS, VICE CHAIR
ROD BITNEY
ROY BROWN
BRENNAN RYAN

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.**

Third Meeting of Interim
MACo Building, Helena
November 12, 1999

COMMITTEE MEMBERS PRESENT

Sen. John R. Hertel, Chair
Rep. Carley Tuss, Vice Chair
Sen. Dale Mahlum
Sen. Glenn A. Roush
Sen. Debbie Shea
Rep. Roy Brown

COMMITTEE MEMBERS EXCUSED

Rep. Brennan Ryan
Rep. Rod Bitney

STAFF PRESENT

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

VISITORS

Visitors' list (ATTACHMENT #1)

COMMITTEE ACTION

- Approved the October 8, 1999, minutes

- Approved that Ms. McClure prepare legislation to address the registration of postsecondary educational institutions with either the Department of Commerce or the Secretary of State for Committee review
- Approved that Committee staff write a letter to the Department of Commerce, Building Codes Division, expressing the Committee's objection to the $5 renewal fee increase and that the Department provide more documentation on the necessity of the increase at its next meeting
- Approved January 13 and 14, 1999, for its next meeting date

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Sen. Hertel, Chair, at 8:35 a.m. Roll call was noted; Representatives Bitney and Ryan were excused. (ATTACHMENT #2)

Sen. Mahlum **moved** that the October 8, 1999, minutes be approved. Motion carried unanimously.

Gordon Higgins, Staff Researcher, Legislative Services Division, requested that the Committee consider forming a subcommittee to address Senate Joint Resolution No. 15 (a study of workers' compensation and rates and benefits). The subcommittee will be enhanced by using a working group comprised of the principal stakeholders and a preliminary meeting will be scheduled for December 3, 1999. Committee staff will present a study plan on SJR 15 at the January meeting.

UPDATE ON NEBC TOWNHALL MEETINGS

Linda Brander, Northwest Environmental Business Council (NEBC) provided written comments on five statewide townhall meetings held to discuss public and private sector competitors. (EXHIBIT #1) Included in the comments were issues identified from private industry, services where the public and private sectors compete, competitive disadvantages and concerns, and further recommended study components.

Sen. Mahlum said that while attending the townhall meeting in Missoula, a representative from BFI, a private garbage removal service whose investment in the Missoula area is quite substantial, expressed his concerns about what would happen to BFI if the government decided to remove garbage itself, as is done in Billings, and what it would do to BFI's opportunity to compete to provide those removal services. Ms. Brander added that BFI's also expressed concern about federally subsidized recycling programs in the state that BFI had no chance to compete against because they were funded with soft dollars.

Rep. Brown attended the Billings townhall meeting. He said that he found that whenever citizens or municipalities need a water or soil analysis, the State Lab is in direct competition with the private sector

labs that do the same analysis. At the same time, the private labs that are competing with the State Lab are certified and regulated by the State Lab. He said that this type of arrangement may have been necessary years ago but he felt uncomfortable with it today because of the possibility of retribution and the very real potential for conflict. Another comment made at the meeting was made by the Billings municipality who stated that it could provide garbage removal services for three-times cheaper than a private company could provide the services.

Sen. Mahlum asked if the Committee recommends that a certain business be privatized, would it be in the best interest of Montana consumers if that service could be provided by a governmental entity at a cheaper rate. Rep. Tuss said that it was much too early for the Committee to consider mandating that a certain service be privatized. She felt that with the circulation of the private sector vendor and government agency survey questionnaires that the Committee was gathering data with the intent of identifying characteristics that would indicate a reason to consider privatization.

Mr. Higgins provided a fax from Dr. James Smith, Montana Microbiological Services, Bozeman, regarding Rep. Brown's concern about the State Lab. (EXHIBIT #2) According to Dr. Smith, the State Lab should either compete or regulate but should not do both. He added that the Children, Families, Public Health and Human Services Committee (CFHHS) has rule review responsibility over the State Lab and Dr. Smith would be contacting CFHHS about this issue.

STATE FUND

In response to Rep. Tuss' request regarding contracting procedures, **Nancy Butler, General Counsel, State Fund**, provided a compilation of information that included the two RFPs in question. (EXHIBIT #3) Ms. Butler said that the first RFP consisted of dividing the state into three geographic areas and requested that the managed care companies (MCO) at that time select one area that they wished to propose an MCO. Five respondents were received, the top three scorers in the three geographic areas were selected, and negotiations began on prices. The contract was awarded to Montana Health Systems, Inc. (MHS) in area two (Bozeman). Because the prices in the remaining two areas were still too high to accept, a second RFP was let and it was modified to allow an MCO to participate in more than one area. MHS was the top scorer for both quality and price and was awarded areas one and three.

Ms. Butler said that the State Fund is in the insurance business and it must make business decisions. While the State Fund can contract with more than one MCO, based on quality and cost, the State Fund felt that it would be in its best interest to award one contract with one MCO. She added that MHS has been authorized to conduct business in Montana since 1995; and there is no preference in Montana

contracting statutes for services, only goods. In addition, a condition of the second contract award was that MHS become certified statewide under Department of Labor and Industry regulations which it did on September 13, 1999.

Jim McCluskey, Claims Vice President, State Fund, said that MCO legislation was enacted in 1993 for the purpose of helping injured workers return to work as quickly as possible and to help control medical and indemnity costs (lost time from work costs). The MCO system in Montana was built from the ground up and by 1998, there were eight MCOs. Of the eight, five were Montana hospital-based MCOs and three were national or regional companies. At the end of four years and with the full knowledge of all of the MCOs, the State Fund planned to reissue new contracts with the intent that the best performers in cost, service, and customer satisfaction could earn more business. The decision was designed to provide the following:

- decrease the number of MCOs because administrative burdens were to costly with eight;
- the decrease in MCOs would result in economy of scale which would result in lower costs to the State Fund and Montana policyholders;
- the State Fund could more easily monitor fewer MCO performances to ensure higher qualities of service being delivered to Montana's injured workers and policyholders; and
- prevent higher premium increases for workers' compensation insurance by reducing expenses.

Mr. McCluskey said that the State Fund had intended to award three contracts to cover the three state regions. However, all but one MCO returned their proposals with increased fees. As a result, the State Fund had to choose to either allow its cost to significantly increase and pass the cost on to Montana businesses, abandon the program completely, or offer larger regions to see if economy of scale would occur. The State Fund chose to offer larger regions and determined that it was in the best interests of the State Fund, the injured workers, and the insured to choose one vendor which was HMS. He added that HMS has provided quality service, was located in Montana from the beginning, has the most experience in workers' compensation managed care, has the highest customer satisfaction, and has reduced the State Funds' cost for the MCO program.

Ramona St. George, President, Montana Health Systems, Inc., provided written comments about MHS. (EXHIBIT #4)

Rep. Tuss asked **Bob Olsen, Montana Hospital Association**, to comment on the following statements:

- That from 1995 through the signing of the new contract in 1999, the hospital-based MCOs were repeatedly asked to cut costs and original agreements were renegotiated up to three times within a contract period. According to testimony, part of the reason that Montana organizations were not given contract consideration was because of their high costs; and
- That because MCOs are hospital-based, their region of influence is smaller, therefore, more costly than the current setup.

Mr. Olsen said that in 1993, the Association supported the legislation that created managed care for workers' compensation because the State Fund's unfunded liability was a huge concern to Montana and many parts of the workers' compensation system had to be changed. Payroll taxes were imposed and worker benefits were reduced while medical providers, beginning in the 1980s, were frozen. Hospitals, in essence, were statutorily mandated to subsidize workers' compensation. The State Fund receives approximately $12 million or more in discounts from hospital services every year. He said that forming managed care was the hospitals opportunity to remove the mandated discount and to take control of the cost explosion that was causing much of the State Fund's problems.

Mr. Olsen said that the five hospital-based MCOs that were formed because of the legislation are currently out of business because the State Fund was the only workers' compensation insurer that used the MCOs. He said that under the original MCO concept, hospitals were suppose to make money as workers returned to work earlier, the lost income payments would decrease and the MCOs would share in the savings as a way of financing MCOs. Because of the reduction in injured workers' benefits, those dollars never materialized for sharing. A hospital-based MCO could establish a referral or case fee because its network was already under contract and how much their providers would be paid and how they would conduct business was established within the provider network. MHS in Bozeman was under the same network. He said that the only thing that a hospital-based MCO could bid on under the RFP was its case referral fees. He said that as a member of the St. Peter's Hospital Board in Helena and when the Board was asked to join the MHS provider network, it was asked to take a further 5% to 10% discount. St. Peter's was already giving a 30%-or-more discount to the State Fund and now it must give an additional 10% funding stream to its competitor, MHS, the MCO that was awarded the contract.

In conclusion, Mr. Olsen said the Association currently has an ongoing dispute with the Department of Public Health and Human Services over network adequacy. The purpose of bringing MCOs into a community is for improving quality and outcomes and reducing costs. The problem with bringing an MCO in without a network is that once the MCO has authority to do business without a network, they impose terms that may not be reasonable or satisfactory to the local providers. He said that Helena had the Hospital, local therapists, and local physicians formed in a network to do business with the State Fund. However, he was unsure what the current MHS network in Helena looked like. When the hospitals put their regional bids in, they already had their networks in place; the competitor did not. MHS is now the sole managed care provider and business is either done with them or hospitals do not do business. The Department of Labor and Industry told the MCOs that their provider networks had to be in place before they received their license to do business. However, according to testimony, MHS's statewide network is not developed, and yet, its statewide license has been provided.

Rep. Tuss asked Mr. McCluskey if he knew of any cases in which an injured worker in Anaconda, for example, was asked to go to Missoula for physical therapy. Mr. McCluskey said that he was aware of injured workers who were being asked to go elsewhere because the provider network was not complete. However, it is the practice of the MHS to ask the current treating physician to join its provider network. Rep. Tuss commented that the treating physician may not be Board certified and MHS acknowledges only Board certified physicians. She asked from the time the statewide providers created a managed care model to respond to the State Fund's requests, were contract negotiations held with the MCOs that changed or adjusted their case rate recovery. Mr. McCluskey said that the State Fund initially started the MCO program through a pilot program which included an incentive-based compensation component. Its purpose was to identify savings generated by the MCOs and; if the savings could be identified, the State Fund would pay a portion of them to the MCOs. After the pilot program began, the State Fund found it impossible to identify the savings attributable to just the MCOs. As a result, the State Fund moved out of the pilot project into a fee-for-service environment and renegotiated all MCO contracts to pay certain fees per referral. Rep. Tuss asked if the physicians or panel who perform the medical reviews licensed in Montana. Mr. McCluskey said that the physicians are not Montana licensed physicians. They are licensed in Oregon.

Ms. St. George clarified:

- that MHS was licensed within the letter of Montana law, that it had an adequate provider network, and that it was continuing to recruit providers;
- that MHS's reviewing physicians on the medical review committee are comprised of Board certified physicians but Board certification was not required for admission into its provider network;
- that she was unaware of any patient who has been required to move from one area to another for anything other than medical reasons because medical care may be unavailable in smaller communities; and
- that although MHS's review committee are Oregon-licensed physicians, the preface that MHS uses to review care that is provided to workers is a concurrent system of checks and balances. The most frequently used oversight tool is a second opinion by a Montana-peer physician.

DEPARTMENT OF COMMERCE

Eric Fehlig, Attorney, Building Codes Division, Department of Commerce, provided written comments on the Division's process regarding public input to the impending change over from the current Uniform Building Code System to the International Building Code System. (EXHIBIT #5)

Sen. Roush asked if the Department is switching to the International Building Code System by January 2000, why has the Department not formed the new Building Codes Council. Mr. Fehlig said that the former Building Codes Advisory Council was administratively formed and the new Building Codes

Council will be appointed by the Governor. The Department has no control over the timing process or over the Governor's appointments. He added that although there was some criticism that the Division did not work with the former Advisory Council, he disagreed saying that the Division reviewed the Council's input and made substantial changes to the rule proposal based on its recommendations. In addition, Mr. Fehlig said that until the International Building Codes are published and received by the Department, it will not know what the changes and differences between the two code systems are, and it will be a daunting process to get Department staff familiar with those changes.

Sen. Mahlum asked if Montana contractors would be burdened by more bureaucracy under the International Building Codes System when they know the current building code system so well. Mr. Fehlig said that he was unsure whether the International Code System was going to be any better or worse than the Uniform Building Codes. However, the new system will be different and it will take time for all stakeholders to learn the process before conversion. He said that the International Code System is updated every three years and it could be that the Department may decide to stay with the current system for another six years before it completely adopts the International Code System.

Sen. Hertel asked if it was strictly the Department's decision to convert to the International Code System or did the Legislature have a say in the propose. Mr. Fehlig said that the Department would listen to the Legislature's input but legally the conversion is set up by the granting of rulemaking authority that the Department is to establish what the state building code system is by adopting nationally recognized codes.

Rep. Tuss asked for an update on a medical gas piping statute passed in the 1995 session that was ignored by the Department. Mr. Fehlig said that 1995 legislation created an endorsement provision for installation of medical gas piping that is regulated by the Board of Plumbers. The Department has never regulated medical gas piping until recently because it is a specialty field. With the endorsement provision, the Department found it unnecessary to bring medical gas piping under a permitting process. Under the direction of the 1997 Legislature, the Department adopted a nationally recognized standard for medical gas piping. Permits are currently required, checking the credentials of people installing the piping is required, and the Department has developed a certification process for piping inspectors.

Agency Rule Review - MAR Notice No. 8-70-17

Bart Campbell, Staff Attorney, Legislative Services Division, provided written information regarding the Building Codes Division's MAR Notice No. 8-70-170 including comments and objections to the rule by Mr. James Archer and Mr. Campbell's analysis of Mr. Archer's objections. (EXHIBITS #6 and #7 respectively)

Rep. Bruce Simon, House District #18, Billings, requested that the Committee address Mr. Archer's objections by considering the following:

- Offer amending legislation to MAPA that would require agencies to include in its adoption notices what a citizen's next step could be if the citizen continued to objected to an adopted rule, such as appealing to the appropriate interim committee that has rule oversight responsibility on an objected rule. (Mr. Archer sent comments on his objections to MAR Notice No. 8-70-170 to the Department but did not attend the meeting in which the rule was adopted. If citizens were not in possession of the MAPA statutes, they would not know where to go to further object to the rule adoption.) The Montana Constitution allows citizens to participate in government prior to the time that decisions are made.
- Question the Department's policy of whether a person who is licensed to be an architect or engineer is qualified to be a building inspector. (The Department automatically assumes that if a person has a certain piece of paper, the person does not have to go through the proper "hoops" to be an inspector.)
- Question the Department's increase in renewal fees (from $40 to $45). (When an electrical permit is issued by the Department, it includes the cost of a rough-in inspection and final inspection which bring into question the reason why there should even be a renewal fee in the first place.) The renewal fee punishes the "little guys" who are struggling to build on their own and cannot get the project done in a year which forces them to get a renewal permit and pay extra for inspections that they have already paid for but have yet to receive.)

Mr. Fehlig said in the previous 12 months, the Department received 400 renewal requests. The alternative to renewal fees are requested inspection fees based on the Department's average cost of $45 an hour. The Department is anticipating a deficit of $250,000 in the program without fee increases and the Department was not in a position where it could start reducing fees while maintaining the same program. He said that although the Department requires a 48-working-hour notice for inspection, it allows the person holding the permit to continue the project if the inspectors cannot make the requested inspection time. Larger Montana cities that enforce their own electrical codes can enforce the 48-hour law. However, the Department cannot because of the amount of "windshield time" its inspectors must spend traveling. As a result, the Department established a circuit inspection system whereby the Department asks to be notified of the impending inspection but its inspectors may be unable to get to the request for two weeks because of where the request is located within the circuit system location. The longer that a permit is open, the more costly it become because more repeat trips to a location are required for closure which justifies the permit renewal fee.

Sen. Mahlum asked when an inspection was closed. Mr. Fehlig said that an electrical permit is open until the final inspection is complete, or if the permit lapses (goes over the 12-month period), or if a final inspection is not requested. Sen. Mahlum asked what happens if a final inspection is not requested after a 2-year lapse, for example. Mr. Fehlig said that the lapse would have been caught through the circuit return system; and even though a final inspection was not requested, inspectors return to inspection sites

more frequently than every two years. In addition, if a final inspection tag is not located on the meter box, it sends up a red flag. Sen. Mahlum asked if Montana Power would hook up the meter box without the final inspection tag. Mr. Fehlig said that final inspection tags are not required for Montana Power to energize the meter box.

POSTSECONDARY EDUCATION SUBCOMMITTEE

Eddye McClure, Staff Attorney, Legislative Services Division, provided written comments regarding the problems and questions raised by the recent closure of several proprietary postsecondary educational institutions in Montana. (EXHIBIT #8) Ms. McClure gave the Committee several options and recommendations:

- an individual legislator could request a bill draft to solve the problem;
- an interim committee could request a bill draft but preferred that it not be the Postsecondary Education Committee. The registration of postsecondary educational institutions should be assigned with the Consumer Affairs Office of the Department of Commerce, with the State Auditor's Office, or with the Secretary of State; and
- recommended that the proposed legislation not be written as it was in the 1974 Session.

Rep. Tuss said that postsecondary education institutions are business doing businesses in Montana and it made sense that they be licensed to do business and post a bond because they are accepting money in exchange for a service. Rep. Tuss **moved** that Ms. McClure prepare legislation to address the registration of postsecondary educational institutions with either the Department of Commerce or the Secretary of State for Committee review. Motion carried unanimously.

SJR NO. 9: STUDY OF STATE CONTRACTING PROCEDURES

Mr. Higgins provided a memo from David Bohyer regarding state contracting policies (EXHIBIT #9) and as a member of the State Administration, Public Employee Retirement Systems, and Veterans' Issues Interim Committee (SAIC), Sen. Roush provided a short summary of testimony by the private sector and the Departments of Administration (DOA) and Transportation (DOT) regarding their state contracting policies and their RFP processes. He said that the SAIC discussed what was in the best interests of the state regarding contracting services and the discussion found that there are problems with the RFP process and how contracts are awarded by the DOA. However, SAIC recognizes that the Legislature sets the agenda for how the DOA handles contracting services and they vary depending upon whether the contract is for goods or for services. He added that the DOT, in most contracting cases, must award its contracts to the lowest bidder. Sen. Roush said that the biggest concern was fairness in how the contracts were being awarded, adding that small business felt that they were being left out of the process by the DOA's policy to award its contracts to one bidder and that not all but most contracts were awarded to out-of-state businesses because of the lack of experience within the state's architects and

engineers. In addition, The Architectural and Engineering Bureau within the DOT selects several businesses that it wants to offer an RFP proposal. When a business is selected to receive the contract is when the DOT negotiates the contract. Sen. Roush felt the process unfair.

Rep. Tuss asked if, for example, 100 businesses responded to a goods or services contract, would the Department narrow the RFP responses to 5 and negotiate with them all and are the negotiations extended to only those 5. Sen. Roush said that there are definite differences in how the Departments handle contracts for goods and services. **Sheryl Motl, Bureau Chief, State Purchasing Bureau, DOA**, clarified that the procurement laws that guide the procurement and construction of highways administered by the DOT have nothing to do with the Montana Procurement Act (MPA) which the DOA administers. The DOA can procure goods or services by (1) bid, usually the lowest cost if the business meets certain specifications and if it is a responsible and responsive vendor; and (2) a RFP if it is an issue of quality. Once the RFPs are received, they are evaluated and the top scorers are identified. The top scorers are asked to give demonstrations and presentations and continue to be scored until the Department decides to enter a best-and-final offer process. It then selects the top scoring candidate who it will offer the contract to. If the Department feels that it must negotiate the contract, it does so at that point.

Sen. Roush commented also that when the DOT awards a bid, it is dealing with federal dollars and it is hamstrung by federal regulations on how it does RFP proposals which is why out-of-state businesses are awarded most of its contracts.

OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION

Leroy Schramm, Chief Legal Counsel, Office of the Commissioner of Higher Education, provided 1901 Competition with the Private Sector that included the Board's established policies and procedures regarding University competition with private vendors. (EXHIBIT #10)

Sen. Mahlum asked that Committee members be provided a copy of the Board of Regents' annual report regarding the implementation of its competition policy.

Sen. Shea asked who reviews those instances where the university system is engaging in activities that are in competition with the private sector. Mr. Schramm said reviews are conducted on campus and the only involvement by the Commissioner of Higher Education or the Board of Regents would be in the event of a dispute and an appeal is filed. Sen. Shea asked if there is a dispute and it is satisfied at the campus level, who makes the decision. Mr. Schramm said the decision would be made by either the chancellor on the smaller campuses or the president on the larger campuses through the informal

complaint process. If the business still feels that it is being competed against and is still unsatisfied, it can then appeal to the Commissioner by way of the formal complaint process.

Rep. Tuss asked if a representative from the disputing business was a member of the dispute resolution board. Mr. Schramm said no, adding that the policy does not go into that type of detail and the policy does not mandate that there be that be a dispute resolution board. Rep. Tuss asked how long a dispute resolution takes to complete and was concerned about due process in that the same people who are sponsoring a competitive situation are not identical to the decisionmaking people. Mr. Schramm said that the timeframe is tighter than any other university time frame and if, in fact, the competitive activity was a pet project of the president, then the process could run into the problem as outlined. However, it is mitigated by the formal complaint process to the Board of Regents who do not have a vested interest in a specific program.

Rep. Hertel said that the initial HB 515 proposal included the university system; but as it travel through the legislative process, it was exempt. He asked if the exemption was due to the Board' policy action taken prior to the introduction of the bill. Mr. Schramm said that the exemption was a product of conversations held between Rep. Larry Grinde and the Commissioner of Higher Education.

Rep. Larry Grinde, House District #94, Lewistown, said that the university system exemption was his decision as sponsor of HB 515 because he could not fight all of the "giants" at one time. It was not because of the Board's policy statement. He said that the policy statement is fine, however, it should be adhered to. As an example, the Montana State University - Northern came to Great Falls with new curriculum that is competing directly with the University of Great Falls which is a private institution. There is nothing is statute prohibiting MSU - Northern from competing with the University of Great Falls. There is, however, Board bylaws that say that it cannot compete with private colleges, and in his conversations with Commissioner Croft, it was the Commissioner's intention to strike the language from the bylaws so that the University System can compete on any level against a private university. The university system's explanation was that it could offer the new curriculum for much less money. Rep. Grinde said that the debate becomes the University of Great Falls, a private institution, competing with the university system that is subsidized with taxpayer dollars and where is the line to be drawn where tax revenue is being garnered from the private sector to fund facilities like universities. He said that philosophically, the university system has gone beyond the boundaries of what it is suppose to be doing.

Mr. Schramm clarified that the new recreation facility on the University of Montana campus was totally funded with student fees, the Board was ensured that the facility would be available only for members of

the University community, and there were no complaints from the private health clubs in Missoula. Referring to the issue of MSU - Northern and the University of Great Falls, he said that just because there is a private school in a community, should the private school should be given the veto over what type of public education is being offered. The issue is not generating tax dollars but that the people in Great Falls deserve access to the same type of reasonably priced public education as the people in any other Montana community.

Rep. Tuss commented that when MSU - Northern wanted to merge into two entities, the Great Falls delegation stood behind it and asked only that it respect the covenant that the University of Great Falls had. MSU - Northern agreed that any new classes brought to the University of Great Falls would be done so in a noncompetitive manner and it has not happened. She said that MSU - Northern has expanded its 100 and 200 course programs, has failed to bring in 400, 500, and 600 course programs, has carpetbagged the Great Falls community, and takes academic dollars and offers little intellectual services that a university offers a community. As a result, MSU - Northern takes Great Falls dollars for 100 and 200 course programs that are offered at the University of Great Falls and the Great Falls College of Technology at the request of the Postsecondary Education Committee. She added that the issue is not MSU - Northern competing with the University of Great Falls, it is MSU - Northern taking money and duplicating its own programs at the technical college level.

HB 515 QUESTIONNAIRE - PUBLIC COMMENT

Mr. Higgins provided an overview of the two proposed survey questionnaires regarding government competition with private vendors. One questionnaire was for private sector vendors and the other for government entities. (EXHIBITS #11 and #12 respectively)

The Committee discussed at length whether the questionnaires were too lengthy; whether the open-ended questions could be limited or combined; whether any of the questions could be focused on in a different venue such as the Committee's future public hearings; and whether the questionnaires should be anonymous or whether space should be provided for entities to identify themselves by industry sector or who they represent. They also discussed possible questions that could be added to the questionnaire: (1) are any private sector vendors regulated or certified by a government agency that they are in competition with; and (2) does a government agency believe that it is providing a service at a cost much less than a private enterprise could provide the service.

The Committee also decided to keep as a separate Committee topic the issue of cooperative agreements between cities and counties to provide services while keeping in mind that local governments are often asked by taxpayers to provide a service even though the cost to them may be higher.

Rep. Grinde expressed his concerns about how the questionnaires would be distributed. Mr. Higgins said that the questionnaire will be distributed to the Chamber of Commerce and Associations for distribution to their members in addition to articles in The Interim , the Legislative Branch website, and press releases.

Ms. Brander requested that the government agency questionnaire include whether the agency is a regulatory agency and what it thinks it role should be and what percentage of an agency's intergovernmental contracts is representative of goods or services that could be normally obtained through the private sector; and that both questionnaires qualify what they perceive as effective and efficient. She also requested that the parenthesis under question #4 of the private sector questionnaire include "federal to state" and "state to state".

Mona Jamison, Montana Physical Therapy Association, preferred that anonymity be optional. She said that some people answering the questionnaire have no problem identifying themselves; and in Mr. Higgins' analysis of the questions, he may want to conduct followup questions to receive more information. She added that geographic areas served and size of the companies may also be relevant to the types of responses received. Ms. Jamison said that if Mr. Higgins received information that could possibly lead to legislation and if he did not fully understand the context of those answers from both public and private sectors, the Committee would not be taking advantage of what it needs if private vendors and agencies take the time to answer the questionnaire.

Alec Hansen, Montana League of Cities and Towns, preferred that neither questionnaire be anonymous because the results of the questionnaires could influence legislative policy on vitally important issues. If complaints are going to be made regarding local or state governments, identity needs to be open so that the local or state governments can respond to the complaints and so they can be validated. He requested that the government agency questionnaire ask: Are there private businesses that come to the agency with proposals to offer a government service that the government agency is currently offering and was the proposal accepted, and, if not, why not?

Geoff Fiess, Montana Telecommunications Association, requested that both questionnaires ask about full cost accounting and ask what goods and services both sectors provide, site examples of the products that are provided by the government that are believed to be competing with private products and

services, and ask the private sector if it believes it has been concluded from offering its services to the government.

Mike Foster, Montana Contractors Association, said that the questionnaires may not receive a full response if private sector entities are required to make themselves known, particularly those that are being regulated by a governmental entity.

Mr. Higgins said that the public comments could be incorporated into the framework of the questionnaires and he would like to have the responses back by December 30, 1999. The Committee also decided that the anonymity of the questionnaires would remain optional.

HB 515 STUDY - PUBLIC COMMENT

Full Cost Accounting and Other State and Local Government Action

Mr. Higgins presented and overview and a copy of Basic Principles of Full Cost Accounting. (EXHIBIT #13) Mr. Higgins said that if there is no process to identify whether money is being saved, full cost accounting, in and of itself, is a budgeting tool and does not necessarily allow the Legislature, agency director, or city manager, to say that a certain service should be privatized. It only identifies what the total cost of the service is, which is important to taxpayers because they like to know what things cost. However, if the Legislature is interested in implementing full cost accounting as a way to help make a decision about who should be providing services, there needs to be much more thought into recognizing who should be providing what service. He said that graphic examples of full cost accounting will be provided to the Committee at a future meeting.

Mr. Higgins presented an overview and a copy of Efforts to Address Public-Private Competitive Issues in Other States. (EXHIBIT #14)

Sen. Shea suggested that Committee staff continue to review other states that have similar philosophies as Montana to see what they are doing to address the delivery of services to the public so that Montana is not "spinning its wheels".

Rep. Brown asked why the three states that were more like Montana and in the same geographical area unsuccessful at addressing public-private competitive issues while the states farthest away were successful. Mr. Higgins speculated that the reason may be the political makeup of the bodies pursuing the legislation and the strength of the opposition. However, prior to Florida and Virginia implementing their competition legislation, they had many problems in government accountability in terms of what the state

and local governments were doing with tax revenue. When their legislation was proposed, it was not proposed under privatization efforts but under government efficiency efforts that were campaign platforms for governors. The ultimate decision to privatize certain things came as a byproducts of an effort to review how business was currently done and can better choices be made. Sen. Shea felt that partnering with the stakeholders rather than alienating was a key to the states' successes.

Mr. Higgins said that the results of the survey may provide possible recommendations for future study and may identify some of the problems.

GENERAL PUBLIC COMMENT

Barbara Butler, Solid Waste Division, Billings, asked that the questionnaire would put local governments on the defensive and she requested that rather having an objective study to see if there is a problem, let local governments say what services and goods they provide. She added that the Committee must also keep in mind that because of mergers and acquisitions, some industries in Montana and throughout the country, particularly in the solid waste industry, are multinational corporations rather than small businesses. She requested that the questionnaire delineate between the spirit of HB 515 which is to help small "Mom and Pop" business from huge MicroSoft size corporations that take over the smaller business in Montana.

Mike Foster provided written comments for reference. (EXHIBIT #15) He said that the issue before the Committee is huge and the study approach would prove to be very beneficial to all stakeholders and that the proper role of government is at the heart of the whole issue. Anytime that the Legislature contemplates changing the status quo, political will is necessary if changes are recommended. He said that the Montana Contractors' Association is a strong supporter of privatization but still recognizes the important things that government does. He added that the DOT and the Montana Contractor's Association have been discussing areas of potential privatization and it should be encouraged at every level.

Alec Hansen said that the League of Cities and Towns has conducted many analyses of privatization legislation over the years and; based on the testimony from people across the state, it will be very difficult for the Committee to recommend privatization legislation that will work effectively in Montana because of the diversity of the state. It is extremely difficult to adopt a law in Helena that will work effectively in 56 counties and 128 cities and towns across Montana. He felt that the Committee should approach the issue from the direction of establishing a system that analyses performance instead of mandating a one-size-fits-all privatization requirement for all state and local governments. Cities do not have much money and

must make every dollar stretch, and if they can find a way to do something cheaper, they will. He asked that the Committee let the market work and allow local authorities to make the decisions that best suits them instead of mandating privatization that will become impossible for many smaller cities and towns to do.

Tom Daubert, Solid Waste Contractors' Association, provided a newspaper article Lake County confronts its trashy issues, a list of Taxes Paid by Private Sector, Not Paid by Local Governments, and information regarding the City of Helena and Class D Permitting. (EXHIBITS #16, #17, and #18 respectively) In response to comments made by Ms. Butler, he said that even though there has been some significant mergers in the solid waste business, the vast majority of those businesses in the private sector remain "Mom and Pop" operations in Montana. He said that the goal of the Committee should be to serve the taxpayers of the state rather than the businesses while trying to find a solution that works to the taxpayers' maximum benefit. No person would disagree with the idea that whenever government can do something better than anyone in the private sector for less money, they should be allowed to do it. Conversely, however, whenever anyone exists in the private sector that can do a job better than government for less money, they should also be allowed. He said that if the same quality job, go with the route that saves the taxpayers the most money. He added that if there is a private option and a private sector person is asking for the right to make a proposal or bid, it should be a requirement to see if the proposal saves the taxpayers money. He said that privatization cannot be required everywhere, as stated by Mr. Hansen, but the Committee could require a fair analysis of the options where options exist.

INSTRUCTIONS TO STAFF

The Committee instructed Committee staff to:

- provide examples of full cost accounting;
- provide a comparison on the methods by which Montana currently budgets and accounts for costs;
- incorporate the suggestions of the Committee and public into the survey questionnaire; and
- gather information on the attitudes between the three states that were unsuccessful in passing competition legislation as compared to the two states that were successful--how the attitudes looked on paper and how they sounded when they were discussed.

Rep. Tuss said that the types of information that staff is encouraging the Committee to receive regarding full cost accounting will be very important. There are, for example, a number of variables that could be listed under indirect costs and some have more value in the overall scheme than others. The returning Committee members will be required to stand and argue for one variable or the other, and as legislators, they routinely see laundry lists. When they see laundry lists, their minds close. Committee members should understand the tool of full cost accounting to the best of its ability.

Regarding the building codes dispute as discussed in prior testimony, Mr. Campbell said that the Committee need not recommend anything yet because at the end of the interim, there could be a list of legislation proposed by the Committee and, if the Committee wanted to address the problem at that time, it could use its options to change the rule policy by repealing the rule or amending the rule. In addition, if the Committee felt that the $5 increase in the renewal fee was unnecessary or commensurate with costs and if it voted as such, Committee staff could send the Department a letter. The Department would then have 14 days to respond. If the Committee did not like the response, it could have the Secretary of State note the Committee's displeasure in the Montana Register; and if the fee was challenged in court, the burden of proof would be on the Department. If the Court found that the Department acted arbitrarily or capriciously, it could award attorney's fees.
Rep. Brown said that Mr. Archer did not receive a chance to speak and requested that the issue be postponed until the next meeting.

Rep. Tuss asked if the $5 fee increase was imminent. Mr. Campbell said that the rule in question has been adopted and the fee increase will go into effect as the current renewals expire. Rep. Tuss said that with the passage of CI 75, the 1999 Session was a nightmare because of the many bills introduced to raise fees. Without compelling data, it did not make sense and she was not willing to brush off the issue lightly. She said that legislators are the ones who must take the heat and she asked if it would be appropriate for the Committee to ask the Department to hold off implementing the fee until the Committee understands the issue better. She said that citizens object to conflicts of information. She requested information on whether citizens are notified on the original permit of a reinspection or renewal fee and whether the renewal permit is important to a citizen's ability to continue to provide services.

Rep. Brown said that according to testimony, there were only 400 renewal fees issued. At $5 more, the total is only $2,000. If that amount of money is what will make or break the Building Codes Division, they are in deep trouble. The Committee needs to send a message that the increased renewal fee is not commensurate with costs and it can be discussed again at the next meeting.

Mr. Campbell asked if the Committee preferred the informal approach (send a letter stating the Committee's disagreement with the $5 renewal fee increase to the Department) or formal approach (have the Secretary of State note the Committee's displeasure in the Montana Register along with the rule).
Rep. Tuss said that she would prefer that the Committee begin with the informal approach but she did not want to negate the Committee's ability to use the formal approach.

Rep. Brown **moved** that Committee staff write a letter to the Department of Commerce, Building Codes Division, expressing the Committee's objection to the $5 renewal fee increase and that the Department provide more documentation on the necessity of the increase at its next meeting. Motion carried unanimously.

Representative Tuss and Senators Mahlum, Hertel, and Shea were appointed to the Subcommittee on Workers' Compensation . A working group that includes Senators Thomas, Ellingson, and Cocchiarella, organized labor, providers, the State Fund, and the self-insured organizations will assist them this interim.

The Committee approved January 13 and 14, 1999, for its next meeting date. There being not further business, the meeting adjourned at 5:00 p.m. Cl2255 9328loxa.