



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Economic Affairs Interim Committee

65th Montana Legislature

SENATE MEMBERS

GORDON VANCE--Chair
EDWARD BUTTREY
TOM FACEY
LEA WHITFORD

HOUSE MEMBERS

RYAN LYNCH
MARK NOLAND
VINCE RICCI
SHARON STEWART-PEREGOY

COMMITTEE STAFF

PATRICIA MURDO, Lead Staff
JAMESON WALKER, Staff Attorney
FONG HOM, Secretary

MINUTES LOG

SJR 27 SUBCOMMITTEE

April 27, 2018
Room 137, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Please contact the Legislative Services Division at 406-444-3064 for more information.

SUBCOMMITTEE MEMBERS PRESENT

SEN. GORDON VANCE, Chair
SEN. EDWARD BUTTREY
SEN. TOM FACEY
SEN. LEA WHITFORD

REP. RYAN LYNCH
REP. MARK NOLAND
REP. VINCE RICCI
REP. SHARON STEWART-PEREGOY

SUBCOMMITTEE MEMBERS EXCUSED

STAFF PRESENT

PATRICIA MURDO, Lead Staff
JAMESON WALKER, Staff Attorney
FONG HOM, Secretary

VISITORS' LIST ([Attachment 1](#))

AGENDA ([Attachment 2](#))

SUBCOMMITTEE ACTIONS

The Economic Affairs Interim Committee Subcommittee on SJR 27 took the following actions at its April 27, 2018, meeting:

- Heard from the State Auditor's Office about that office's role in overseeing the solvency of workers' compensation insurers, to make sure the insurers can pay claims incurred in the present and, for some, into the distant future.
- Heard from Montana State Fund as to its role in the Montana market and from a group called Fair Montana and an actuary for Victory Insurance, the only other Montana-headquartered workers' compensation insurer. The Fair Montana group would like to see Montana State Fund removed as an insurer because the group feels Montana State Fund's rates are too high and that state government gives Montana State Fund an advantage, including no premium tax, that other insurers do not have. Montana State Fund countered that if its rates are unreasonably high then other insurers ought to be able to undercut their rates, especially because other insurers can refuse to cover the high-risk or no-experience employers that Montana State Fund must cover.
- Heard from a representative of the National Council on Compensation Insurance, which sets the basic recommendation that all insurers use in setting their rates. This year NCCI recommended a reduction in rates of 10.7%, primarily driven by fewer losses and a downward trend in claims.
- Took under advisement all materials presented for the study in preparation for making recommendations on next steps at the full committee's July meeting.

CALL TO ORDER AND ROLL CALL

- 00:00:06 Sen. Gordon Vance called the meeting to order at 8:02 a.m. The secretary called roll. ([Attachment 3](#))
- 00:01:10 Sen. Vance gave opening remarks.

SJR 27 DOCUMENTS - Pat Murdo, Committee Staff

- 00:02:11 Ms. Murdo referred the committee members to the material that she is distributing: Old Fund Transfers, Legislative Fiscal Division ([Exhibit 1](#)); Workers Compensation Residual Market Mechanisms ([Exhibit 2](#)); and NCCI's answers to the residual market questions ([Exhibit 3](#)).

MEANINGFUL COMPETITION - Matthew Rosendale, State Auditor, and Steve Matthews, Chief Financial Officer, State Auditor's Office

- 00:02:45 Commissioner Rosendale ([Exhibit 4](#))
- 00:18:03 Mr. Matthews

Questions from the Subcommittee

- 00:26:14 Sen. Facey asked Mr. Matthews whether or not he agreed that the backstop for

the State Fund is the taxpayers of Montana even with recent changes for making up any deficiencies.

- 00:27:19 Sen. Facey asked Mr. Matthews about a Montana Supreme Court case regarding when payments could be stopped from the Workers Compensation system and the social security system would take over. He asked about court cases that could inflate the costs to any workers comp insurance provider. He also asked about medical costs.
- 00:29:38 Rep. Noland asked Mr. Matthews about the supervision, rehabilitation, and liquidation laws not being applicable to Montana State Fund.
- 00:30:24 Sen. Buttrey asked Mr. Matthews how the Risk Based Capital (RBC) measurements show whether someone has adequate capital.
- 00:31:29 Sen. Buttrey asked Commissioner Rosendale what the State Auditor's Office does if rates do not meet the litmus test as that pertains to the State Fund. He also asked Commissioner Rosendale what happens if the State Auditor's Office finds the rates are too high and whether the State Auditor's Office can force companies to do something about their rates if they are excessively high. Sen. Buttrey also asked what happens if insurers disagree with the State Auditor's Office about rate adequacy. Commissioner Rosendale redirected Sen. Buttrey's question to Nancy Butler.
- 00:35:08 Nancy Butler, Deputy State Auditor
- 00:36:02 Sen. Buttrey asked how the State Auditor's Office would equalize the "playing field" when it comes to work comp.
- 00:38:02 Sen. Buttrey referenced Mr. Matthews' comment about the State Fund being at 918% for its RBC and his statement of higher RBC being good. Sen. Buttrey asked if, at some point, there has to be a top limit where assets surplus or equity is too high.
- 00:39:56 Sen. Facey asked Commissioner Rosendale about leveling the playing field.
- 00:41:26 Sen. Facey commented that State Fund has to take all customers, but in other states, a business has to have three rejections from the commercial market before applying to the State Fund. It has been suggested that maybe that model be used in Montana. Sen. Facey reviewed concerns about the conditions of the residual market that could drive up costs for small businesses.
- 00:43:27 Sen. Facey asked Commissioner Rosendale if the State Auditor's Office is able to examine rate tiers and whether that is proprietary information.
- 00:43:56 Rep. Lynch asked Commissioner Rosendale about the investment income that is part of the State Fund's asset mix. He asked whether, for other insurance lines of business, there is a conversation about what investment fees look like. He asked whether State Fund's investment fees are in line with other commercial carriers, what measuring stick is used, and whether there is an optimal ratio as far as a management fee for services.
- 00:47:57 Sen. Buttrey requested, as a personal privilege, a brief recess.

BREAK (reconvened at 9:00 a.m.)

SOLVENCY, RATE-SETTING, AND MEANINGFUL COMPETITION

Overview from the Montana State Fund - Laurence Hubbard, President/CEO

- 00:59:09 Mr. Hubbard distributed and discussed the document, "Weighted Average LCM by Carrier Group" ([Exhibit 5](#)) and a flyer from Victory Insurance ([Exhibit 6](#)).

Rates/Solvency Determinations - Russell Greig, Willis Towers Watson

01:18:23 Mr. Greig ([Exhibit 7](#))

Subcommittee Questions

01:27:39 Sen. Facey asked Mr. Hubbard if the State Fund should be required to join the Montana Insurance Guaranty Association and the possible cost of joining.

01:30:14 Sen. Facey asked Mr. Greig about the money that State Fund pays out in benefits.

Overview from FAIR Montana

01:33:05 Scott Reichner, FAIR Montana, introduced Jessica Epley, Executive Director of FAIR Montana.

01:33:33 Jessica Epley, Executive Director of FAIR Montana ([Exhibit 8](#))

Rates/Solvency Determinations - Chuck Emma, EVP Advisors for Victory Insurance

01:41:28 Mr. Emma

Subcommittee Questions

01:48:29 Rep. Ricci asked Ms. Epley about her comment that the State Fund would be eliminated on its own.

01:49:35 Rep. Ricci asked Mr. Emma about comparing premiums and level of benefits in other states.

01:50:29 Sen. Buttrey asked Mr. Emma about his comment that claims paid out by the State Fund are higher than claims paid out by the private sector and that cases are resolved more slowly.

Public Comment

01:52:44 Rep. Greg Hertz, House District 12, said that the subcommittee needs to stay focused on what's best for employers and employees in Montana. He asked why change a system that is successful. He encouraged the subcommittee to leave Montana State Fund as it is and concentrate on lowering accident rates. He said that the assets of the State Fund and the policyholders should be used for workers comp purposes only.

01:55:55 Bridger Mahlum, Montana Chamber of Commerce, said that a dissolution of the Montana State Fund is not the answer. Reducing the cost of doing business is important and, with that, reducing work comp premiums.

01:58:08 Abigail St. Lawrence, Montana Building Industry Association, said that small businesses rely on Montana State Fund for reliable and low-cost service. Because State Fund is the insurer of last resort, she is opposed to elimination of the State Fund.

01:59:21 Riley Johnson, State Director for the National Federation of Independent Business, commented on rebates.

02:01:27 Jon Metropoulos, representing Victory Insurance, said that Montana is the 10th highest state in the nation for its worker compensation rates. He said that the state should look at the delivery system.

02:06:43 Spook Stang, Motor Carriers of Montana, said that he believes that the State Fund is making headway with its safety programs.

OVERVIEW OF NCCI'S LOSS COST FILING AND IMPACT ON RATES - Todd Johnson, NCCI

02:11:22 Mr. Johnson ([Exhibit 9](#)) and ([Exhibit 10](#))

Subcommittee Questions

02:15:18 Sen. Facey asked about small employers driving up the loss costs ratio.
02:16:14 Sen. Buttrey asked if the Legislature were to move forward with liquidation or closing the State Fund that somebody would have to provide a flow chart as to how to accomplish that, ramping up the new system as the old system is closed. He asked if NCCI could provide any information on how Montana would change from the State Fund to a private model.

REVIEW DECISION TREE AND OPTIONS

02:18:37 Ms. Murdo ([Exhibit 11](#))

Subcommittee Discussion

02:28:28 Sen. Facey said he doesn't see a need for change.
02:32:06 Sen. Lea Whitford said the system, on the private side as well as the State Fund side needs to be improved. She said she will not support changing the work comp system.
02:34:09 Rep. Noland recommended that the subcommittee move forward and continue to study changes.
02:36:23 Rep. Ricci said that he expected more out of the private sector today, as to concrete evidence that they can make a difference in the market. He said he did not see that. He called for further discussion at the July meeting.
02:38:02 Rep. Stewart-Peregoy said that there is no guarantee that the rates will go down if State Fund were to be privatized. She believes that further exploration of an incentive process within the 5-tier system within State Fund is needed.
02:42:44 Sen. Buttrey said that the private sector should come in front of the committee and look at specific parts in statute that would make the private sector more competitive with State Fund. He recommended that the subcommittee review the information given, come to the next meeting, and vote on a direction that the subcommittee recommends for the Legislature to move forward.
02:45:35 Rep. Lynch said that the subcommittee needs to look more closely at safety which impacts rates.
02:48:06 Rep. Ricci commented on safety.
02:48:40 Sen. Vance said that he would like the subcommittee to review the information received today and then decide in what direction the subcommittee should move, and make that decision at the next meeting.

Motion

02:50:12 Sen. Facey moved for staff to focus on the option of keeping State Fund a state entity and that staff not direct its efforts towards bills dissolving State Fund or turning it into a private entity.

Discussion on motion

02:51:35 Rep. Noland said he does not support the motion.

Roll Call Vote

02:54:11 The motion failed on a 3-5 roll call vote, with Sen. Facey, Sen. Whitford, and Rep. Stewart-Peregoy voting yes, and Sen. Buttrey, Sen. Vance, Rep. Lynch, Rep. Noland, and Rep. Ricci voting no. [\(Attachment 4\)](#)

Discussion on the Next Meeting Date

02:56:20 The subcommittee members decided not to meet in June.

Public Comment on any topic

02:57:28 Rep. Greg Hertz discussed a lawsuit filed in Lake County regarding \$30 million in management fees charged to State Fund under Senate Bill 4 in the 2017 special session. He said he would like to get the lawsuit resolved before the 2019 session.

02:59:07 Bridger Mahlum, Montana Chamber of Commerce, wanted to let the subcommittee know that the Montana Chamber and several potential partners are working on a resurgence of the safety initiative and hope to have a more thorough update by the next meeting.

ADJOURNMENT

02:59:56 Sen. Vance adjourned the meeting at 11:02 a.m.

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