



ECONOMIC AFFAIRS INTERIM COMMITTEE

67th Montana Legislature

SENATE MEMBERS

Kenneth Bogner
Carlie Boland
Jason Ellsworth
Shane Morigeau

HOUSE MEMBERS

Alice Buckley
Derek Harvey
Joshua Kassmier
Brandon Ler
Mark Noland
Katie Sullivan

COMMITTEE STAFF

Fong Hom - Secretary
Erin Sullivan - Research Analyst
Jameson Walker - Attorney

MINUTES LOG

April 20, 2022

Room 317/Zoom

Helena, Montana

Please note: This document is a Minutes Log and provides annotation 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 recording 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 the 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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MEMBERS PRESENT IN PERSON:

Sen. Kenneth Bogner, Chair (R)
Rep. Derek Harvey, Vice Chair (D)
Sen. Jason Ellsworth (R)
Sen. Shane Morigeau (D)
Rep. Mark Noland (R)
Rep. Katie Sullivan (D)

MEMBERS PRESENT VIA ZOOM:

Sen. Carlie Boland (D)
Rep. Brandon Ler (R)

REVENUE INTERIM COMMITTEE MEMBERS PRESENT:

Megan Moore, Research Analyst
Sen. Brian Hoven
Rep. Connie Keogh
Rep. Tom Welch

MEMBERS EXCUSED:

Rep. Alice Buckley (D)
Rep. Joshua Kassmier (R)

STAFF PRESENT:

Erin Sullivan, Research Analyst
Jameson Walker, Attorney
Fong Hom, Secretary

AGENDA (Attachment 1)

VISITORS' LIST (Attachment 2)

COMMITTEE ACTION

The committee held its fifth meeting of the interim to continue work on its assigned studies and administrative rule review. The committee also:

- watched a virtual tour by a marijuana testing lab;
- heard presentations and public testimony, and held a committee work session on its SJ31 study on marijuana program implementation;
- heard presentations and public testimony, and held a committee work session on its HJ48 study on facial recognition technology;
- voted to begin drafting committee bills for the SJ31 and HJ48 studies; and
- discussed topics for the June meeting.

CALL TO ORDER/ROLL CALL

- 11:31:54 Presiding Officer Kenneth Bogner called the meeting to order at 11:31 a.m. The committee secretary took roll. (Attachment 3) Rep. Kassmier was excused and left his proxy with Sen. Bogner. Rep. Buckley was excused and left her proxy with Rep. Harvey.
- 11:33:20 Sen. Bogner gave opening remarks.

LUNCH & LEARN - VIRTUAL LAB TOUR - Fidelity Diagnostics

Lab Presentation

- 11:34:51 Erin Sullivan, Lead Researcher, gave an overview of the Fidelity Diagnostics Lab. (Exhibit 1)
- 11:35:00 Virtual tour of Fidelity Diagnostics Lab

Committee Questions of Fidelity Diagnostics Lab

- 12:23:49 Sen. Hoven asked Ms. Cholewa how many labs like the Fidelity Diagnostics Lab exist in Montana.
- 12:24:44 Sen. Hoven asked how the labs get samples from growers to test, and what do the labs charge per sample.
- 12:28:28 Sen. Hoven asked what happens to the sample if pesticides are detected, is the state and the grower notified about the detection of pesticides.
- 12:28:53 Rep. Keogh asked how much testing is required before the product goes to market?
- 12:31:29 Sen. Bogner asked what the timeline is from the time the lab gets the sample to the time the tests are completed.
- 12:32:09 Sen. Hoven asked if a major grower can have their own laboratory to test their product or do the growers have to go to an independent lab.
- 12:33:06 Sen. Hoven asked if Fidelity Diagnostics Lab participates in a program where a third-party sends samples to labs to test for accuracy.
- 12:34:47 Rep. Harvey asked about testing when a transaction occurs between a grower to a dispensary.
- 12:36:38 Sen. Hoven asked if growers are trying to breed plants that might produce a higher THC level.
- 12:38:07 Sen. Ellsworth asked if it is accurate that a plant and the flower itself can only hold a certain amount of THC.

Public Comment on the Lab

12:40:39 Erica Siate, self

BREAK (reconvened at 1:00 p.m.)

SJ 31 - FEDERAL RESPONSES TO MONTANA MARIJUANA LAW

Presentation

13:04:07 Carl Jensen, Attorney, Great Falls, gave the federal response regarding the Montana marijuana law.

Committee Questions of Mr. Jensen

13:17:37 Sen. Hoven asked if Mr. Jensen has any knowledge of what European countries are doing with regards to marijuana.

13:21:07 Rep. Noland asked what other states are doing to deter people from crossing borders and bringing in marijuana.

13:23:59 Rep. Noland asked if credit unions are used more by the marijuana industry for obtaining loans for expansion and for depositing money.

Public Comment

13:26:30 Kate Cholewa, Montana Cannabis Industry Association

13:28:02 Ben Forsyth, self

13:38:40 Levi Black Eagle, Secretary to the Crow Tribe

13:40:08 Frank White Clay, Chairman of the Crow Tribe

13:42:56 Erica Siate, self

13:44:48 Christopher Young, Attorney, Bozeman

BREAK (reconvened at 1:55 p.m.)

COMMITTEE WORK SESSION ON SJ 31 STUDY ON MARIJUANA

Presentation

13:57:23 Ms. Sullivan gave a presentation on the following documents:

13:57:31 the Supreme Court Order regarding the adoption of temporary rules for expungement ([Exhibit 2](#));

13:58:12 the Marijuana Metrics ([Exhibit 3](#));

14:06:11 Spreadsheet on marijuana statutes ([Exhibit 4](#)); and

14:07:21 House Bill 701 Cleanup Options ([Exhibit 5](#)).

Committee Discussion/Questions

14:13:11 Sen. Bogner said that he would like unanimous support for a cleanup bill.

14:13:59 Sen. Hoven asked Ms. Sullivan about drug seizures.

14:14:46 Rep. Harvey asked Kristin Barbour, Administrator, Cannabis Control Division, for clarification on the issue brought up by the members of the Crow Tribe. He thought that that issue had been resolved pertaining to the Crow Tribe's ability to tier up.

14:16:39 Ms. Barbour responded.

14:17:30 Rep. Noland asked Ms. Barbour why the Crow Tribe is unable to tier up.

14:19:58 Sen. Morigeau asked Ms. Barbour if the department's rule is in conflict with what is in Administrative Rules.

14:21:19 Sen. Ellsworth asked Ms. Barbour if there would be a problem with the Department of Revenue if the Crow Tribe applied for a tier 4.

14:22:57 Rep. Noland asked Ms. Barbour if there is a conflict with the combined use process.

Public Comment on SJ 31

14:28:15 Eric Bryson, Montana Association of Counties

14:30:41 Kate Cholewa, Montana Cannabis Industry Association

DISCUSSION ON HOUSE BILL 701 CLEAN UP OPTIONS

Issue: Inconsistency in Definitions

14:34:39 The committee raised several concerns regarding sales between wholesale and dispensaries vs. farmers and dispensaries. Ms. Sullivan will do more research on this issue. The committee marked this issue to be reviewed at a later date.

Issue: Definition of Hemp

14:38:37 The committee discussed the three options in this issue and decided to go with Option D: revise more than one statute for clarity (Combination of A, B, C).

Issue: Lack of "Catch-all" Penalty Provision

14:45:44 Ms. Sullivan will do more research on this issue and present her findings at a later date.

Issue: Delivery, Distribution, Purchase, Consumption, Use under 21

14:46:19 Sen. Ellsworth asked about clarifying language regarding a cardholder who is under the age of 21 and on a licensed premise in order to consume marijuana. Courtney Cosgrove, Legal Counsel, Cannabis Control Division, responded. The committee decided to go with Option C: revise both statutes.

Issue: Conflicting Language

14:50:11 Sen. Ellsworth recommended allowing suspension up to one year on both. The committee decided to go with Option A: amend 16-12-109, MCA, to allow for suspension for up to one year.

Issue: Multiple Statutes for Legislative Monitoring

14:56:39 The committee discussed who should have oversight of the labs. Rep. Harvey recommended that language be added to move the oversight of the labs specific to marijuana from the Children, Families, Health and Human Services Interim Committee to the Economic Affairs Interim Committee, combine all the statutes, and remove reports to the Revenue Interim Committee. The committee decided to go with Rep. Harvey's recommendation.

Issue: Unnecessary Statute for Expungement Court

15:05:00 After some discussion on this issue, the committee decided to go with Option B: amend 16-12-115, MCA.

Issue: Identify of Complainant

15:11:54 Sen. Hoven suggested that the name, address, and phone number be required but also agreed that the Department of Revenue shouldn't provide that information to the dispensary or to the provider. The committee asked for more research.

Issue: Background Checks

15:16:23 The committee discussed background checks as required by HB 701. Sen. Bogner said that the committee doesn't have a consensus on this issue, so the committee will discuss any recommendations at the next meeting.

Issue: Licensee's Ability to Wholesale

15:37:08 Sen. Ellsworth discussed the recommendation to amend 16-12-203 to remove references to vertical integration. Sen. Hoven agreed with the idea that cultivators should not sell, but that only manufacturer to manufacturer should be able to sell. Rep. Harvey recommended Option A: amend 16-12-203, MCA.

Issue: Minimum Age to Enter a Marijuana Business

15:45:48 The committee discussed this issue. Sen. Ellsworth agreed that unless the person is a registered cardholder, anyone under the age of 21 should not be permitted inside a marijuana business. Sen. Bogner said that without objection, the committee will go with Option A: amend 16-12-207, MCA.

Issue: Fee Structure

15:46:51 The committee discussed the fee structure issue. Sen. Ellsworth would like to pass on this issue and see what the department proposes. Sen. Hoven said the committee should look further into the fee structure because \$20,000 is excessive. Rep. Harvey said that this issue needs to be put on hold and have more input from the industry. Sen. Bogner agreed with Rep. Harvey that the committee will postpone making a decision and get more information from the industry, get recommendations from the department, and then consider a change in the fee structure.

Issue: Certain Licenses Increasing Tiers at Renewal

15:56:22 The committee discussed the tier up issue. Sen. Bogner discussed amending the statute to say "at any time" so there is some clarity. Jameson Walker, legal staff, said the committee could put into statute "Whereas clauses" for clarification purposes. Sen. Bogner said without objection the committee will consider Mr. Walker's suggestion.

Issue: Combination-Use License

16:00:01 Ms. Sullivan suggested that this issue be further discussed before taking action. Sen. Bogner recommended postponing this issue.

Issue: Dates (General Cleanup)

16:01:18 Ms. Sullivan said that this issue has to do with dates and the recommendation is to consider general cleanup of these statutes to remove references to outdated dates.

Issue: Multiple Statutes for Fraudulent Representation – Penalties

16:02:28 The committee discussed the difference between penalties of a physician who fraudulently misrepresents information and civil fines. Rep. Sullivan recommended Option A: combine the statutes.

Issue: Possible Confusion Regarding Criminal Distribution of Dangerous Drugs

16:03:59 Mr. Walker discussed the issue of criminal distribution of dangerous drugs near school property. Sen. Bogner said that anything to make it easier to clarify intent and what is meant. He recommended having clarifying language regarding this issue.

16:06:47 Ms. Sullivan asked the committee to consider Mr. Bryson's suggestion about the local option tax split and giving better explanation on how the municipality allocation goes. She would like to provide sample language at the next meeting for 16-12-310, MCA.

Issue: Repeal of Title 61, Chapter 8, Part 4

16:08:34 Ms. Sullivan said that this was the section in HB 701 that didn't get codified because of the SB 365 repeal. Sen. Ellsworth said he has no interest in looking at this issue which may be under the purview of the Department of Justice or the Law and Justice Interim Committee. Sen. Bogner suggested postponing this issue.

BREAK (reconvened at 4:25 p.m.)

ADMINISTRATIVE RULE REVIEW

16:24:14 Jameson Walker, Legal Staff, gave an update on administrative rulemaking and rule review ([Exhibit 6](#)). He also discussed MAR Notice No. 42-1048 ([Exhibit 7](#)), MAR Notice No. 42-1049 ([Exhibit 8](#)), and MAR Notice No. 42-1051 ([Exhibit 9](#)).

Public Comment

None

Committee Questions of Mr. Walker

16:27:43 Sen. Ellsworth asked if there was anything in the rules that the committee needs to be aware of.

**COMMITTEE WORK SESSION - HJ 48 STUDY ON FACIAL RECOGNITION TECHNOLOGY
Presentation by Legislative Services Division**

16:29:52 Ms. Sullivan referred the committee to the following documents: Follow-up Questions from Economic Affairs Interim Committee and responses from ID.me ([Exhibit 10](#)), the Department of Labor and Industry's response ([Exhibit 11](#)), and the response from Clearview AI ([Exhibit 12](#)). She also noted public comments that she had received regarding the study to date.

Ms. Sullivan discussed her briefing paper "HJ 48 Study of Facial Recognition Technology Draft Recommendation for Discussion" ([Exhibit 13](#)).

Public Comment on the HJ 48 Study

16:36:44 Kendall Cotton, President, Frontier Institute ([Exhibit 14](#))

16:41:30 Steve Cape, Coalition for Safety and Justice ([Exhibit 15](#))

16:48:00 Connie Ciabaton, self

COMMITTEE DISCUSSION ON HJ48 STUDY

GENERAL POLICY OPTIONS

Issue: Lack of Definitions

16:50:28 Ms. Sullivan said currently there are no definitions in statute. Rep. Sullivan said that if we take some action later, we will get the defined terms in and any bill that we take on will be appropriate.

Issue: Outdated Advisory Council Appointment Process

16:51:37 Ms. Sullivan said that this issue is for the advisory council that oversees the Montana Fusion Center. The committee discussed legislative appointment procedures and recommendations. Sen. Bogner suggested adding that legislative members who serve on the advisory council will be reimbursed for expenses.

GOVERNMENT POLICY OPTIONS

Issue: Notice Requirement

16:58:53 Ms. Sullivan gave a presentation on this issue. Rep. Sullivan said she would like to see the Notice Requirement used in a criminal investigation as part of discovery rights. Sen. Ellsworth asked Mr. Walker to reach out to the National Conference of State Legislatures (NCSL) and other places for model legislation on Notice Requirements. Sen. Bogner said that with no objection, the committee would go with Option A: add provisions for notice requirements.

Issue: Access to Noncriminal Databases

17:08:32 Ms. Sullivan said that this issue is not in statute. Rep. Sullivan would like to see a bill that addresses access to noncriminal databases and thresholds for law enforcement. Sen. Bogner said without objection, the committee will go with Rep. Sullivan's suggestion of combine the two issues of access to noncriminal databases with the thresholds for law enforcement to access facial recognition technology.

Issue: Limiting or Prohibiting use of Body-worn Cameras

17:14:08 Rep. Harvey said that there needs to be parameters set because of the unknowns out there. Rep. Sullivan said if there is a comprehensive bill that restricts the government's ability to use facial recognitions, that will automatically attach to any video or photo taken from a body camera. She feels comfortable leaving body cameras out of it for the time being. Sen. Bogner said the committee is in agreement to not touch the issue of body-worn cameras but will add those provisions that encompass facial recognition technology as a whole.

CONSUMER PROTECTION POLICY OPTIONS

Issue: Clarification on Consent

17:23:41 Ms. Sullivan discussed this issue. Rep. Sullivan commented. Sen. Bogner said that this doesn't fit in the purview of the study. He would like to bring some consumer protection laws and asked who would like to work with him on that.

Rep. Sullivan expressed her concerns regarding the recent information received from ID.me.

17:31:48 Ms. Sullivan reiterated that the committee decided to pass on the Consumer Protection portion of the committee bill. The committee further discussed the issue of the advisory council appointment process. Ms. Sullivan said that the

appointment procedures are outlined in the Bill Drafting Manual. Rep. Sullivan asked if two separate bills are in order. Sen. Bogner said one bill with the Fusion Center Advisory Council appointment and the other bill on the rest.

WRAP UP

General Public Comment

17:36:39 Connie Ciabatonni asked if the committee has considered going back to the state to find out who is using facial recognition technology.

Next Meeting Agenda Items

17:37:57 Ms. Sullivan gave an overview of the agenda items for the June meetings. Sen Morigeau asked if the committee would be amenable to have Mr. Walker draft a committee bill for the independent contractor certificate.

17:46:40 Ms. Sullivan asked if the committee had any interest on the medical marijuana issue.
Sen. Ellsworth discussed Rep. Noland's request regarding licensees that he had made to the Department of Revenue (DOR). Sen. Ellsworth asked that the DOR send that information to Ms. Sullivan to give to the committee.

Additional Administrative Items

Ms. Sullivan referred the committee to the response from the Montana Attorney General regarding the Whitefish Credit Union issue ([Exhibit 16](#)) and the invitation from NCSL to attend the National Occupational Licensing Meeting ([Exhibit 17](#)).

ADJOURNMENT

17:48:46 Sen. Bogner adjourned the meeting at 5:48 p.m.