



## **ECONOMIC AFFAIRS INTERIM COMMITTEE**

### **68th 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**

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

# **MINUTES LOG**

July 19, 2022  
Room 136/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:**

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

#### **MEMBERS EXCUSED:**

Rep. Alice Buckley (D)  
Rep. Brandon Ler (R)

#### **STAFF PRESENT:**

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

## **AGENDA (Attachment 1)**

### **NO VISITORS' LIST**

### **COMMITTEE ACTION**

The committee held a virtual meeting to collect stakeholder feedback on its proposed bill draft for the HJ48 study on facial recognition technology. After the stakeholder discussion and public comment, the committee moved to submit amendments to the draft bill for further review at the August meeting. The committee also:

- Held administrative rule review, including review of two formal rule objections. The committee withdrew its formal objection to MAR Notice No. 42-1048 by the Department of Revenue, but chose to continue its objection to MAR Notice No. 24-2-390 by the Department of Labor & Industry;
- Held a work session for its SJ31 committee bill, heard public comment, and provided direction to staff for further amendments to the bill; and
- Reviewed and approved proposed legislation from the State Auditor's Office for pre-introduction for the 2023 Legislative session.

### **CALL TO ORDER/ROLL CALL**

10:33:03 Presiding Officer Kenneth Bogner called the meeting to order at 10:33 a.m. The committee secretary took roll. **(Attachment 3)**

10:34:30 Sen. Bogner gave opening remarks.

### **HJ 48 STUDY OF FACIAL RECOGNITION TECHNOLOGY**

#### **Overview**

10:35:37 Erin Sullivan, Lead Research Analyst, gave an overview of the HJ 48 Study of Facial Recognition Technology and introduced the panelists.

10:38:12 *Sen. Morigeau joined the meeting at 10:38 a.m.*

### **HJ 48 STAKEHOLDER PANEL**

Kevin Gilbertson, Department of Administration  
John Elizandro, Department of Labor and Industry  
Katie Donath, Department of Corrections  
David Ortley, Department of Justice  
Andy Hanks, Department of Administration  
Jake Henry, Compliance Monitoring Systems  
Chief Wade Nash, Montana Association of Chiefs of Police  
Joshua Racki, Montana County Attorneys Association  
Dan Smith, Montana Police Protective Association  
Sheriff Mike Linder, Montana Sheriff and Peace Officers Association

10:38:29 Kevin Gilbertson, Chief Information Officer, Department of Administration

10:38:54 John Elizandro, Department of Labor and Industry **(Exhibit 1)**

10:40:59 Katie Donath, Probation and Parole Quality Assurance Manager, Department of Corrections **(Exhibit 2)**

10:42:15 Sue Sheilicek, Support Services Bureau Chief, Public Safety Division, Department of Corrections

10:43:20 David Ortley, Deputy Attorney General, Department of Justice **(Exhibit 3)**

11:00:10 Andy Hanks, Chief Security Officer, Department of Administration

11:02:55 Jake Henry, Program Manager, Compliance Monitoring Systems

11:03:32 Chief Wade Nash, President, Montana Association of Chiefs of Police

11:06:03 Joshua Racki, Cascade County Attorney, Montana County Attorneys Association

11:09:56 Dan Smith, Executive Director, Montana Police Protective Association

11:12:52 Sheriff Mike Linder, Yellowstone County Sheriff's Office, Montana Sheriff and Peace Officers Association

### **Questions from the Committee**

11:15:07 Rep. Noland asked Mr. Ortley to clarify the one-to-one matching. Mr. Ortley deferred Rep. Noland's question to Laurie Bakri.

11:20:50 Laurie Bakri, MVD Administrator, Department of Justice, discussed the one-to-one matching.

11:22:55 Rep. Sullivan asked Mr. Ortley about getting a warrant electronically or telephonically.

11:25:22 Rep. Sullivan asked Mr. Racki about the exigency provision and when would that come into play.

11:26:43 Rep. Sullivan asked if the Department of Corrections could provide more information on what it is like for a person using facial recognition technology.

11:27:33 Ms. Bakri and Mr. Henry

11:28:22 Rep. Sullivan asked Mr. Henry if once the company provides the service of matching the photo online, is that information deleted.

11:30:30 Ms. Bakri and Mr. Racki

11:32:51 Rep. Noland asked the presenters for a brief response regarding when the information is received, how long is the information stored and when it is deleted, and is it safely deleted.

11:33:50 Paul Martin, Department of Labor and Industry; Ms. Donath, Department of Corrections; Mr. Henry, Compliance Monitoring Systems; Mr. Ortley and Anne Dormady, Department of Justice responded.

11:37:00 Rep. Noland

11:37:51 Sen. Bogner asked Mr. Martin to provide an update on unemployment insurance and fraud prevention.

### **Public Comment on HJ 48 Study**

11:44:12 Steve Cape, Coalition for Safety and Justice

11:51:19 Katie Kinsey, Chief of Staff, Policing Project at NYU School of Law

11:55:12 Jake Parker, Security Industry Association  
12:00:03 Shelby DeMars, Montana Police Protective Association  
12:01:53 Aman Jabbi, Bigfork  
12:08:14 Connie Ciabatonni, self

### **Committee Discussion**

12:11:45 Sen. Ellsworth  
12:12:41 Rep. Sullivan  
12:14:45 Rep. Noland  
12:16:13 Sen. Bogner  
12:17:07 Rep. Sullivan  
12:18:00 Sen. Bogner asked the committee to provide amendments to the current bill to be reviewed in August.  
12:18:22 Ms. Sullivan said she would like the amendments sent soon so that she can incorporate those into a draft bill to be sent out for public comment before the August 16 meeting.  
12:19:09 Sen. Bogner

**BREAK** (reconvened at 1 p.m.)

### **ADMINISTRATIVE RULE REVIEW**

#### **Overview of rule review memo**

13:02:29 Jameson Walker, Staff Attorney (**Exhibit 4**)

#### **Committee questions/discussion**

13:09:23 Sen. Ellsworth asked Mr. Walker about a rule and notice from the Department of Revenue regarding repealing a law.  
13:09:49 Mr. Walker discussed the Department of Revenue's rule notice 42-1053.  
13:10:49 Sen. Ellsworth discussed a rule from the Department of Revenue that would repeal the statute on loyalty programs. He asked the Department of Revenue to clarify the repealing statute.  
13:12:01 Courtney Cosgrove, Legal Counsel, Department of Revenue, asked Sen. Ellsworth what statute he is referring to.  
13:12:55 Mr. Walker said the rule that Sen. Ellsworth is asking about has been filed with the Secretary of State's Office, but hasn't been published, therefore, it has not been assigned a MAR Notice No. He said this is related to the adoption of New Rule I, pertaining to the authorization of the marijuana dispensary customer loyalty programs and can be found on EAIC's webpage under Meeting Materials for today's meeting, MAR Notice No. 42-1059 (**Exhibit 5**).  
13:14:52 Sen. Ellsworth discussed reasonable necessity in MAR Notice No. 42-1059.  
13:15:41 Mr. Walker

- 13:16:21 Ms. Cosgrove clarified what the statute prohibits the giving away of marijuana or marijuana products.
- 13:17:06 Sen. Ellsworth cited the 16-12-207, MCA, that prohibits a marijuana licensee from giving away any marijuana or marijuana products.
- 13:18:19 Sen. Bogner asked the department to clarify the difference between giving away products or selling at a discount and to address the rule on where that line is.
- 13:18:29 Ms. Cosgrove
- 13:19:28 Rep. Noland discussed the intent of the rule.
- 13:20:40 Mr. Walker discussed the two sections in 16-12-207, MCA, that Sen. Ellsworth was concerned about.
- 13:21:33 Sen. Bogner said if the committee wanted a clearer interpretation of the statute, that can be discussed at a future meeting.
- 13:22:09 Mr. Walker said he will provide an update on rule review for the August 16 meeting.

### **Overview of Rule Objection Letters**

- 13:22:27 Mr. Walker gave an overview of the process for a formal objection.

### **Objection to Department of Labor and Industry MAR Notice No. 24-2-390**

- 13:27:47 Mr. Walker discussed the committee's letter to the DLI regarding its formal objection to MAR Notice No. 24-2-390, relating to public participation in board meetings. **(Exhibit 6)**
- 13:29:09 Quinlan O'Connor, Chief Legal Counsel, Department of Labor and Industry, discussed the department's response to the formal objection to MAR Notice No. 24-2-390. **(Exhibit 7)**

### **Committee questions/discussion**

- 13:33:03 Sen. Bogner asked Mr. O'Connor about New Rule I, section 2, regarding the opportunity for public comment on any public matter not on the agenda. He said he did not see that the rule allowed for public comment on items on the agenda. He asked Mr. O'Connor to clarify that.
- 13:34:47 Sen. Bogner asked Mr. O'Connor about New Rule II, section 2.
- 13:37:42 Sen. Ellsworth asked Mr. O'Connor if he considers limiting public comment a factor and arbitrary.
- 13:41:17 Rep. Noland said he wants to make sure that there is clarity on the state level for public comment guidelines that all school board meetings can follow.
- 13:43:24 Sen. Bogner said he would like to see where in the constitution that says government agencies should afford reasonable opportunity for citizen participation. He said there needs to be provisions where it says that if there is any interest to the public, they have the opportunity to participate.
- 13:44:18 Sen. Ellsworth agreed.

### **Objection to Department of Revenue MAR Notice No. 42-1048**

- 13:44:40 Mr. Walker discussed the committee's objection to MAR Notice No. 42-1048. **(Exhibit 8)**
- 13:46:48 Brendan Beatty, Director, Department of Revenue **(Exhibit 9)**

### **Committee questions/discussion**

- 13:49:23 Sen. Ellsworth said that the confusion over MAR Notice No. 42-1048 has been resolved. He recommended that the committee withdraw its objection.
- 13:51:24 Sen. Bogner thanked the Department of Revenue for being available for questions.

### **Public Comment on the MAR Notices No. 24-2-390 (public participation) and 42-1048 (marijuana packaging and labeling)**

- 13:52:05 Pepper Petersen, Chief Executive Officer, Montana Cannabis Guild, (MAR Notice No. 42-1048)
- 13:53:27 Kate Cholewa, Montana Cannabis Industry Association, (MAR Notice No. 42-1048)
- 13:54:55 Deborah Kimmet, former chair of the Board of Massage Therapists (MAR Notice No. 24-2-390)
- 14:02:00 Kate Cholewa, Montana Cannabis Industry Association, commented on the tracking system, METRIC.
- 14:06:04 Pepper Petersen, CEO, Montana Cannabis Guild, resumed his comments on the Cannabis Control Division's rules and regulations.

### **Committee questions/discussion**

- 14:08:32 Sen. Ellsworth
- 14:10:02 Sen. Bogner asked Kristan Barbour, Administrator of the Cannabis Control Division, to explain the METRIC tracking system and its requirements.
- 14:13:26 Sen. Bogner asked Ms. Barbour how the relationship works between the Cannabis Control Division (CCD) and METRIC.
- 14:14:50 Sen. Ellsworth asked Ms. Barbour if METRIC maintains the confidentiality agreement regarding information that it receives.
- 14:16:50 Mr. O'Connor provided clarification on the public participation rule.

## **SJ 31 WORK SESSION**

### **Overview of draft bill**

- 14:19:57 Ms. Sullivan discussed the changes to PD 0001: revising marijuana laws. **(Exhibit 10)**

### **SJ 31: Definition of Hemp Analysis**

- 14:24:58 Ms. Sullivan **(Exhibit 11)**
- 14:26:33 Cort Jensen, Chief Legal Attorney, Department of Agriculture, discussed the definition of hemp at the federal level.

14:29:49 Ms. Barbour said the department will bring recommendations on how this committee and others may want to handle the intoxicating hemp products.

### **SJ 31: Catch-All Penalty Provision Analysis**

14:30:39 Ms. Sullivan (**Exhibit 12**)

### **Committee questions/discussion**

14:34:42 Sen. Morigeau expressed his concern regarding the term "catch-all" because not all things are equal as far as the possible crimes.

14:40:55 Sen. Ellsworth recommended that Sen. Morigeau work with Ms. Sullivan on his concern.

14:41:36 Sen. Bogner said without objection Sen. Morigeau will work with Ms. Sullivan.

### **SJ 31: Fee Structure Analysis**

14:42:06 Ms. Sullivan referred the committee to the document, "SJ 31 Fee Structure Analysis" (**Exhibit 13**).

### **Concentrate Retail Price Study**

14:42:41 Grant Clifford, Business Analyst, Cannabis Control Division, gave a presentation on the Concentrate Retail Price Study. (**Exhibit 14**)

### **Committee questions/discussion**

14:54:45 Sen. Ellsworth asked Mr. Clifford what he would like to see happen in the fee structure of manufacturers.

14:57:49 Sen. Ellsworth asked Mr. Clifford about the \$90,000 licensing fee for the yearly production.

14:58:30 Sen. Ellsworth said the idea behind the fee structure is to pay the costs to the Department of Revenue and not have it be a revenue stream. He asked Mr. Clifford to comment on that.

15:00:07 Sen. Ellsworth asked Mr. Clifford if he factored in the costs to the department in coming up with the fee structure or would it lower the fee structure making it harder to pay the costs.

### **Public Comment**

15:03:07 Steve Cape, Coalition for Safety and Justice

15:06:44 Pepper Petersen, Montana Cannabis Guild

15:11:02 Aaron Morrow, Lab Manager, Collective Elevation Chinook Myth

### **Committee discussion and direction regarding the SJ 31 Study**

15:15:51 Sen. Ellsworth asked the Department of Revenue for information regarding the cost structure and if the fee structure is keeping up with the cost structure.

15:16:41 Ms. Barbour asked Sen. Ellsworth if he wanted an analysis on what it costs to run the Cannabis Control Division or an analysis on what it costs to have the inspectors go out and look at these properties.

15:17:44 Sen. Ellsworth said he would like to look at the whole department to make sure that they are being regulated correctly.

15:18:44 Sen. Bogner asked Ms. Barbour for the information before the September meeting.

15:19:15 Ms. Sullivan summarized the direction that the committee wanted her to take regarding the fee structure and catch-all penalty.

15:20:10 Sen. Bogner asked Ms. Sullivan about the hemp definition issue.

15:20:13 Ms. Sullivan discussed the options proposed in the analysis.

15:20:47 Sen. Bogner asked for direction regarding the options in the hemp definition.

15:24:07 Sen. Ellsworth asked Ms. Sullivan which way the committee should go based on Mr. Jensen's presentation.

15:21:39 Ms. Sullivan asked Mr. Jensen about the Department of Agriculture's recommendation.

15:22:15 Mr. Jensen

15:24:15 Sen. Ellsworth discussed the committee bill.

15:25:01 Sen. Bogner said that without objection, the committee will move forward with a bill to be reviewed at the August meeting.

15:25:27 Ms. Sullivan said she will provide amendments to the bill regarding the catch-all penalty issue and the hemp issue.

15:26:32 Sen. Ellsworth asked for clarity regarding transparency on the owners of the operations.

15:27:42 Sen. Bogner asked Ms. Sullivan to find that section of code for clarity on identifying by name who the license holders are.

## **AGENCY LEGISLATION PROPOSALS**

### **Overview of the process**

15:28:48 Ms. Sullivan discussed the process for agency proposed legislation. **(Exhibit 15)**

### **State Auditor Proposed Legislation 2023**

15:31:47 Frank Cote, State Auditor's Office **(Exhibit 16)**

### **Public Comment**

None

### **Committee discussion**

15:33:27 Sen. Bogner said without objection, the Economic Affairs Interim Committee will approve the drafting of the State Auditor's proposed legislation.



## **WRAP UP**

### **General Public Comment**

None

### **Questions regarding the Department of Revenue's rule number 42-1048**

- 15:34:27 Sen. Ellsworth asked the Department of Revenue to clarify MAR Notice No. 42-1048, marijuana packaging and labeling.
- 15:35:02 Ms. Barbour
- 15:39:07 Sen. Bogner asked about the committee removing its objection to the Department of Revenue's MAR Notice No. 42-1048.

### **Motion/Vote**

- 15:39:58 Sen. Bogner moved to withdraw the Economic Affairs' objection to the Department of Revenue's MAR Notice No. 42-1048. The motion passed unanimously on a voice vote with Reps. Kassmier, Ler, Sullivan, and Buckley voting yes by proxy.

### **Discussion on Department of Labor and Industry rule number 24-2-390**

- 15:40:42 Sen. Bogner discussed the committee's objection to the Department of Labor's MAR Notice No. 24-2-390.
- 15:41:34 Sen. Ellsworth
- 15:41:55 Sen. Bogner said he prefers leaving the committee's objection in place.

## **ADDITIONAL ADMINISTRATIVE ITEMS**

### **Topics for the August Meeting**

- 15:43:45 Sen. Bogner said that he and Rep. Barry Usher talked about the draft bill, PD 0002, in which Rep. Usher had some concerns. Sen. Bogner will bring those concerns to the August meeting. Sen. Bogner also said he would like an update on HB 139 regarding the Board of Funeral Services.
- 15:44:35 Ms. Sullivan discussed the August agenda items.
- 15:46:05 Sen. Morigeau discussed the changes in the Combined-Use licenses and would like to see the changes in the committee bill.
- 15:48:00 Sen. Ellsworth
- 15:48:24 Ms. Sullivan

## **ADJOURNMENT**

- 15:50:45 Sen. Bogner adjourned the meeting at 3:50 p.m.