



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

November 17, 2021
Room 137 and 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)
Rep. Alice Buckley (D)
Sen. Jason Ellsworth (R)
Rep. Brandon Ler (R)
Sen. Shane Morigeau (D)
Rep. Mark Noland (R)
Rep. Katie Sullivan (D)

MEMBERS VIA ZOOM:

Sen. Carlie Boland (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 third meeting of the interim to begin its three assigned studies and continue statutory duties of agency oversight and administrative rule review. Statutory duties included:

- a presentation by the Department of Labor and Industry; and
- administrative rule review, including a hearing on two rule notices by the Department of Labor and Industry for rules regarding unemployment insurance benefits and qualifications for independent contractor status, and a hearing on proposed new cannabis rules by the Department of Revenue.

The committee also:

- informally objected to the Department of Labor and Industry's rule on independent contractors (MAR 24-35-376);
- heard presentations on all three of its assigned studies (HJ49 – benefits cliffs, HJ48 – facial recognition technology, SJ31 – marijuana program implementation); listened to public comment on the studies; had discussion and determined next steps for each study;
- planned a Zoom meeting in December to review potential rule amendments by the Department of Revenue for several cannabis rules;
- reviewed a staff briefing paper on interstate compacts and decided to resume the topic in the spring;
- discussed an emerging issue regarding the Board of Horseracing and the Montana State Lottery and requested follow-up at the next regular meeting;
- requested the Commissioner of Banking and Financial Institutions discuss the foreclosure process at the next regular meeting; and
- received an update from staff on the committee tour of marijuana facilities.

CALL TO ORDER/ROLL CALL

08:01:34 Presiding Officer Kenneth Bogner called the meeting to order at 8:01 a.m. The committee secretary took roll. ([Attachment 3](#))

08:02:57 Sen. Bogner gave opening remarks.

AGENCY OVERSIGHT

08:03:49 Erin Sullivan, Lead Researcher, gave an overview of the agency presentations.

Department of Labor and Industry

08:04:37 Laurie Esau, Commissioner of Labor and Industry ([Exhibit 1](#))

08:06:39 Erin Weisgerber, Administrator, Centralized Services Division

08:07:53 Amber Dow, Administrator, Technology Services Division

08:09:25 Strauss, Administrator, Employee Relations Division

08:09:55 Todd Younkin, Administrator, Business Standards Division

08:10:51 Scott Eychner, Administrator, Workforce Services Division

- 08:12:15 Paul Martin, Unemployment Insurance Division, gave an update on the activities of the Unemployment Division.
- 08:19:49 Quinlan O'Connor, Chief Legal Counsel, discussed the DLI's administrative rules.

Committee Questions

- 08:23:17 Sen. Ellsworth asked Mr. Martin to explain upfront costs as opposed to maintenance costs for possible technology for the Unemployment Insurance Division.
- 08:26:40 Sen. Ellsworth said that he would like a more in depth overview from Mr. Martin on the different technologies for the end user.
- 08:36:08 Sen. Bogner asked Commissioner Esau if it would be possible to get information on what a \$15 million upgraded domestic system would be like and what efficiencies would be created by a new system.
- 08:37:08 Rep. Noland asked Mr. Martin to elaborate on the workforce shortage.
- 08:44:26 Rep. Buckley suggested that the Commissioner and Mr. Martin provide comparisons from other states who are looking at upgrading their systems.
- 08:45:43 Sen. Bogner asked Mr. Martin how his department identifies possible unemployment insurance fraud.
- 08:47:36 Sen. Bogner asked Mr. Eychner for an estimate on how many more people are needed in the workforce area.

Administrative Rule Review: MAR 24-11-375 and MAR 24-35-376

- 08:51:29 Quinlan O'Connor referred the committee to the marijuana rule, MAR 24-11-375, and said if the committee had questions, he would be happy to answer them. [\(Exhibit 2\)](#)
- 08:52:16 Mr. O'Connor discussed the independent contractor rule, MAR 24-35-376. [\(Exhibit 3\)](#)

Committee Questions

- 09:04:06 Sen. Morigeau commented that there needs to be some clean up language in the rule to round out the intent of Senate Bill 367.

Public Comment

- 09:09:44 Brian Thompson, Browning, Kaleczyc, Berry & Hoven Law Office, discussed his letter to DLI regarding language in MAR 24-35-376. [\(Exhibit 4\)](#)

Motion

- 09:13:10 Sen. Ellsworth moved to informally object to MAR Notice 24-35-376.

Discussion on the Motion

- 09:14:09 Sen. Morigeau commented on the rule and said that he is willing to work with the contractors and other stakeholders on making additional changes to the language of the rule.
- 09:14:40 Jameson Walker, committee attorney, explained what happens when a committee objects to a rule.

Vote

- 09:15:26 The motion passed unanimously by voice vote.

HJ 49 STUDY: BENEFITS CLIFFS IN PUBLIC ASSISTANCE PROGRAMS

Overview of programs and incentives available to Montanans

09:16:30 Ms. Sullivan gave an overview of the HJ 49 Study. ([Exhibit 5](#))

Department of Public Health and Human Services

09:19:27 Morgan Taylor, Chief Policy Officer, Economic Securities Services Branch, gave a presentation on the benefits programs offered by the DPHHS to low and moderate income individuals and families. ([Exhibit 6](#))

Department of Labor and Industry

09:28:02 Scott Eychner, Administrator, Workforce Services Division, gave a presentation on the benefits from the DLI. ([Exhibit 7](#))

Department of Revenue

09:39:30 Aaron McNay, Economist, Tax Policy and Research, Department of Revenue, discussed the memorandum that lists the tax provisions that were identified as either being eliminated or phased out as income reaches a particular threshold. ([Exhibit 8](#))

Committee Questions

09:49:53 Rep. Sullivan asked Mr. Eychner what benefit is most impactful for people.

09:51:31 Sen. Bogner asked Mr. Eychner about educating the Montana workforce on what benefits are available.

09:53:46 Rep. Buckley asked Mr. Eychner about other states having to match the work opportunity tax credit and what support does Mr. Eychner need to ensure that the HELP Link program is doing everything it can do.

09:57:53 Rep. Sullivan asked Mr. McNay about the child care and dependent deduction and the property tax assistance program.

09:59:13 Sen. Bogner asked Ms. Taylor about the pre-pandemic vs. pandemic numbers of participants in the programs.

09:59:59 Sen. Bogner asked Ms. Taylor about resources to help families get out of poverty.

10:03:06 Rep. Buckley asked Mr. Eychner if ending continuous eligibility will impact the HELP Link program.

10:05:25 Sen. Bogner discussed the next steps for the study.

Public Comment on the HJ 49 Study

10:09:14 Heather O'Loughlin, Montana Budget and Policy Center ([Exhibit 9](#))

10:12:44 Rep. Buckley asked Ms. O'Loughlin to expand on what the key ways are that might reduce benefits cliffs.

Next Steps for the Study

10:19:15 Ms. Sullivan summarized what was done with the HJ 49 Study so far.

10:22:31 Rep. Sullivan asked about possible topics for the next meeting.

10:25:37 Rep. Buckley said she would like some information from other states on the methods for reducing the benefits cliff.

10:27:25 Sen. Bogner said he would like an update from Director Meier on what DPHHS has done.

10:27:40 Ms. Sullivan said that she will prepare a summary of the panel's presentations and will reach out to the Montana Budget and Policy Center and see if they can provide some information on the research that they have done.

BREAK (reconvened at 10:49 a.m.)

HJ 48 STUDY: FACIAL RECOGNITION TECHNOLOGY

Overview of Use by Montana State Agencies

10:52:09 Ms. Sullivan gave an overview of the HJ 48 Study. **(Exhibit 10)**

Department of Labor and Industry

10:52:43 Jeannie Keller, Fraud Prevention Manager, Unemployment Division, gave a presentation on how facial recognition technology is used, shared, and how secure the data is. **(Exhibit 11)**

Department of Justice

11:01:08 Laurie Bakri, Administrator, Motor Vehicle Division

11:05:03 Anne Dormady, Crime Information Bureau Chief, Montana Division of Criminal Investigation

11:06:42 David Ortley, Assistant Attorney General, Division of Criminal Investigations, distributed a paper from the Center for Strategic and International Studies on Facial Recognition Technology: Responsible Use Principles. **(Exhibit 12)**

Committee Questions & Discussion

11:13:30 Rep. Noland asked Ms. Keller about her statement "you won't use this information against us".

11:14:30 Rep. Noland asked Ms. Bakri about the "one too many" comment.

11:16:05 Rep. Noland asked Ms. Bakri to explain what "NLETS" is.

11:16:44 Sen. Bogner asked Ms. Keller to talk about the security of the ID.me database.

11:18:14 Sen. Bogner asked Ms. Keller who has access to personal information in ID.me and can that information be shared.

11:20:11 Rep. Sullivan asked Ms. Dormady about the Fusion Center.

11:21:31 Rep. Sullivan asked Ms. Dormady about the database in the Fusion Center and can other groups' database be accessed through the Fusion Center.

11:23:36 Rep. Noland asked Mr. Ortley if he uses the ID.me and is Mr. Ortley concerned about the sharing of information through ID.me.

11:25:45 Rep. Sullivan asked Mr. Ortley if law enforcement is using facial recognition to investigate crimes.

11:26:57 Rep. Sullivan asked Mr. Ortley about a model policy to protect Montana's privacy.

11:28:03 Rep. Sullivan asked Ms. Bakri about the database for the Department of Motor Vehicles and the picture IDs.

11:29:02 Rep. Sullivan asked for more information on NLET's access to the Montana database.

11:29:42 Ms. Bakri

11:32:20 Rep. Noland stated his concerns of the potential of someone getting in and getting that information.

11:33:01 Rep. Noland asked Mr. Ortley who authorized putting up cameras on the streets in Kalispell.

11:36:31 Rep. Harvey asked Mr. Ortley if he knew of other states that have implemented laws that allow facial recognition by law enforcement.

Public Comment on the HJ 48 Study

11:40:20 Kendall Cotton, President and CEO, Frontier Institute, submitted a document from the Montana Analysis and Technical Information Center regarding its facial recognition policy ([Exhibit 13](#)) and his written testimony ([Exhibit 14](#)).

11:48:09 Katrina Farnum, self

11:50:26 Mike Hagman, self

11:58:16 Melissa Lewis, self

12:00:34 Steve Cape, Coalition for Safety and Justice

12:09:05 Connie Ciabaton

LUNCH BREAK (reconvened at 1:17 p.m.)

SJ 31 Study: Marijuana Program Implementation Presentation on Codified Version of House Bill 701

13:21:06 Ms. Sullivan gave a presentation on the codified version of HB 701. ([Exhibit 15](#))

13:23:57 Ms. Sullivan referenced the memo from Cori Hach, staff attorney, regarding the issues in HB 701 for potential inclusion in a housekeeping committee bill. ([Exhibit 16](#))

Court Administrator's Office

13:36:08 Beth McLaughlin, Supreme Court Administrator, discussed expungement and re-sentencing in marijuana convictions. ([Exhibit 17](#))

Committee Questions

13:43:13 Sen. Ellsworth asked Ms. McLaughlin about changes in HB 701 regarding possession of paraphernalia by people older than age 21.

13:46:19 Sen. Morigeau asked Ms. McLaughlin about eligibility requirements for expungement.

Department of Revenue

13:48:32 Kristan Barbour, Administrator, Cannabis Control Division, gave a presentation on the role of the Cannabis Control Division.

Committee Questions

13:54:22 Rep. Noland asked Ms. Barbour for clarification on the transporter licenses and fees.

13:55:38 Sen. Ellsworth asked Ms. Barbour about issuing new licenses for recreational or medical marijuana in Montana counties.

13:59:52 Sen. Ellsworth asked Courtney Cosgrove, Attorney, Cannabis Control Division, about tribal licenses.

14:01:32 Sen. Ellsworth asked Ms. Cosgrove about allowing someone to pay the license fee upon their renewal for an election of a tier.

14:03:30 Sen. Morigeau asked Ms. Cosgrove if the tribes are limited when they enter the program at a different tier.

14:05:34 Sen. Ellsworth wanted it on record that it was never the legislative intent to limit the tribe to a tier 1 but to allow them the full benefits of participation.

- 14:06:41 Sen. Morigeau said that was his understanding as well, that the intent was not only the guaranteed ability to obtain a license but to also participate fairly and equally.
- 14:07:09 Rep. Harvey asked Ms. Barbour about the testing facilities that fall under the moratorium.

HB 701 - Local Ordinances and Option Taxes

- 14:08:59 Ms. Sullivan discussed the Local Ordinances and Option Taxes section in House Bill 701. [\(Exhibit 18\)](#)

BREAK (reconvened at 2:24 p.m.)

Committee Questions

- 14:24:33 Rep. Kassmier asked Ms. Barbour if House Bill 701 allows for home delivery.
- 14:26:15 Sen. Ellsworth asked Ms. Barbour several questions related to the issuance of licenses for dispensing medical marijuana and recreational marijuana.

Public Comment on SJ 31

- 14:32:50 Kate Cholewa, Montana Cannabis Industry Association [\(Exhibit 19\)](#)
- 14:42:28 Nathan Kosted, Government Affairs Policy Communications, Stillwater Laboratories
- 14:44:34 Mark Taylor, Association of Montana Troopers
- 14:48:02 Antoinette Lininger, self
- 14:51:56 Katrina Farnum, self
- 14:52:49 Rep. Jane Gillette, House District 54
- 14:55:35 Steve Cape, Coalition for Safety and Justice
- 15:01:01 Kaari Fulton, Armadillo Buds, Dawson County

Next Steps for the HJ 48 Study

- 15:07:57 Ms. Sullivan reviewed the study topics.
- 15:09:28 Rep. Sullivan discussed obtaining information from the ID.me program and NLET's access to database for criminal investigations.
- 15:09:55 Sen. Bogner would like more information on the Fusion Center.
- 15:10:30 Rep. Sullivan suggested that the committee hear from those groups either in-person or have the groups answer the committee's questions and submit them to the committee.
- 15:11:53 Ms. Sullivan said she will contact these groups and work with Rep. Sullivan on the questions, poll the committee to make sure these are the questions that the committee wants, get that information, and schedule a short Zoom meeting to discuss the responses to the questions.

BREAK (reconvened at 3:35 p.m.)

ADMINISTRATIVE RULE REVIEW

Legislative Services Division

- 15:36:20 Jameson Walker, Staff Attorney, discussed the Administrative Rulemaking and Rule Review, November 2021 memo. [\(Exhibit 20\)](#)

Department of Revenue

15:42:35 Brendan Beatty, Director, Department of Revenue, discussed the rulemaking amendments proposed for House Bill 701.

Committee Questions and Discussion

15:48:21 Sen. Ellsworth asked Mr. Beatty how the department collects the tax revenue from the marijuana industry.

15:51:31 Sen. Ellsworth asked Mr. Beatty about the point of sale system for the marijuana dispensaries.

15:53:18 Ms. Barbour responded.

15:54:14 Sen. Ellsworth asked Ms. Barbour about New Rule I, Marijuana Dispensary-Point-of-Sale System.

15:58:39 Sen. Ellsworth discussed the legislative intent of the bill.

16:03:11 Rep. Ler asked Ms. Barbour about the department using a cashless system.

16:05:14 Sen. Morigeau asked Mr. Beatty about New Rule IV(13), Marijuana Dispensary Licenses, and New Rule VI, Combined Use Licenses.

16:10:22 Sen. Bogner asked Ms. Cosgrove to discuss the amendments to New Rule IV and New Rule VII, Suspension or Revocation of Worker Permits.

16:15:47 Rep. Harvey asked Ms. Cosgrove if the products that are going to be sold in the dispensaries tested by businesses operating in the medical system.

Public Comment

16:20:59 Brandon Madland, provider, Missoula ([Exhibit 21](#)) Nathan Kosted,

16:34:48 Stillwater Labs ([Exhibit 22](#))

16:41:25 Kate Cholewa, Montana Cannabis Association

16:42:34 Katrina Farnum

16:51:09 John Spear, Director, Buffalo Laboratories ([Exhibit 23](#))

16:53:46 Christina Johnson, Scientific Director, Future Labs

16:58:10 Antoinette Lininger

17:00:27 Ross Fulton

17:01:52 Kaari Fulton

Committee Questions and Discussion

17:04:31 Sen. Morigeau asked Ms. Farnum about dispensaries selling hemp that does not contain cannabis by products.

17:07:59 Sen. Morigeau asked if the department wanted to comment on the rule that governs the sale of hemp.

17:08:40 Ms. Cosgrove

17:11:12 Sen. Bogner suggested looking at a committee bill to clarify the intent of the rules.

17:11:29 Sen. Morigeau proposed that the committee informally object to the New Rule VI on the combined use license.

17:12:29 Sen. Ellsworth asked Ms. Cosgrove about the date when the rules will take effect.

17:13:14 Sen. Ellsworth suggested a Zoom meeting to review the rules and then if the committee decides to object, they can do it at that time.

- 17:14:04 Mr. Walker reminded the committee that the EAIC does not assume rulemaking authority over the medical marijuana program until January 1.
- 17:16:52 Sen. Ellsworth said that he spoke with the chair of the Revenue Interim Committee and that the chair supports what the EAIC committee plans to do.
- 17:18:27 Rep. Harvey said that he would like to see the department work with the testing labs and come up with a solution to modify the moratorium on testing labs.

EMERGING ISSUES

- 17:19:51 Amy Carlson, Legislative Fiscal Analyst, discussed the next MARA (Modernization and Risk Analysis Study) meeting.

Occupational Licensing for Military Spouses

- 17:25:22 Ms. Sullivan discussed the document "Interstate Compacts For Occupational Licensing", the occupational licensing for military spouses ([Exhibit 24](#)). Ms. Sullivan referred the committee to David Cook's memo explaining the spreadsheet that shows the licensing boards and their license type ([Exhibit 25](#)), and the spreadsheet referenced in the memo ([Exhibit 26](#)).

Public Comment on the Interstate Compacts for Occupational Licensing

- 17:31:23 Roger Hagan, Montana Department of the American Legion
- 17:33:49 Abigail St. Lawrence, Montana Speech Language and Hearing Association

Board of Horseracing Lottery Game

- 17:38:25 Rep. Buckley read the statement from Rep. Ed Buttrey, sponsor of House Bill 704, regarding the Horseracing Lottery Game.
- 17:40:01 Mr. Walker discussed the legislative intent of House Bill 704.

Public Comment on Board of Horseracing

- 17:42:02 Tom Tucker, Executive Director, Montana Board of Horseracing
- 17:43:14 John Hayes, Chairman, Board of Horseracing

MEETING WRAP UP

- 17:45:16 Sen. Bogner requested that Rep. Buttrey be on the agenda at the next meeting to discuss his request on the Board of Horseracing issue.
- 17:46:05 Rep. Noland said that on the issue of foreclosures, he would like the committee to hear from the Commissioner of Banking.
- 17:48:34 Sen. Morigeau asked about a date for the Zoom meeting on rules in December.

Update on Optional Field Trip

- 17:49:55 Ms. Sullivan referred the committee to the written public comment received before the meeting and the Montana State Fund's response to questions from Rep. Noland that can be found under Tab 8. Ms. Sullivan updated the committee on the proposed field trip to visit marijuana licensees.

ADJOURNMENT

- 17:52:49 Sen. Bogner adjourned the meeting at 5:52 p.m.