



# Economic Affairs Interim Committee

## 57th Montana Legislature

**SENATE MEMBERS**  
DALE MAHLUM, Chairman  
DOROTHY BERRY  
JON ELLINGSON  
GLENN A. ROUSH

**HOUSE MEMBERS**  
KATHLEEN GALVIN-HALCRO, Vice-Chairman  
GARY MATTHEWS  
JOE MCKENNEY  
JOHN SINRUD

**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.**

Sixth Meeting of Interim  
Room 137, State Capitol  
June 14, 2002

### **COMMITTEE MEMBERS PRESENT**

Sen. Dale Mahlum, Chair  
Rep. Kathleen Galvin-Halcro, Vice Chair  
Sen. Jon Ellingson  
Sen. Glenn A. Roush  
Rep. John Sinrud

### **COMMITTEE MEMBERS EXCUSED**

Sen. Dorothy Berry  
Rep. Gary Matthews  
Rep. Joe McKenney

### **STAFF PRESENT**

Gordon Higgins, Research Analyst  
Eddy McClure, Attorney  
Lois O'Connor, Secretary

### **VISITORS**

Visitors' list (ATTACHMENT #1)  
Agenda (ATTACHMENT #2)

### **COMMITTEE ACTION**

- Approved the minutes from the April 10, 2002, meeting

- Approved a blanket motion to adopt all proposed legislation presented by the Department of Labor and Industry
- Approved a blanket motion to adopt all proposed legislation presented by the Department of Agriculture
- Approved the proposed legislation presented by the Public Service Commission

### **CALL TO ORDER AND ROLL CALL**

The meeting was called to order by Sen. Mahlum, Chair, at 8:00 a.m. Attendance was noted; Senator Berry and Representatives Matthews and McKenney were excused. (ATTACHMENT #3)

Sen. Roush **moved** that the minutes from the April 10, 2002, meeting be approved. Motion passed unanimously.

### **LABOR MARKET TRENDS**

**Bob Rafferty, Research and Analysis Bureau, Department of Labor and Industry**, provided a summary of Montana's labor market trends and a 2002 economic briefing. (EXHIBIT #1)

Sen. Roush asked if information on wage rates for similar job types were available on a county-by-county basis. Mr. Rafferty said yes, that there is a statewide survey of occupations and the Workforce Investment Act requires local statistics.

**Gordy Higgins, Research Analyst, Legislative Services Division**, said that the Committee meets for the final time on September 13, 2002. There will be advantages to scheduling another presentation from Mr. Rafferty before the final meeting and before the 2003 Session, particularly when several of the economic development proposals will be known.

### **DEPARTMENT OF LABOR AND INDUSTRY ISSUES**

#### **Reed Act Distribution**

**Wendy Keating, Commissioner, Department of Labor and Industry**, stated the following:

- Employers pay both a state and federal unemployment tax.
- The state tax goes to pay benefits for unemployment insurance claimants while the federal tax goes into the federal FUTA fund and are allocated annually to the states.
- The federal tax is used solely for the purposes of administration of the unemployment insurance program, the Job Service Labor Exchange Program, and for labor market information activities; and currently, the federal government has a large surplus in the FUTA fund.
- As the surplus has built, there has been much pressure from states because they have been underfunded in the administration of those programs.
- President Bush's economic stimulus package solved the problem by allocating a 1-time only amount to the states from the surplus.
- Montana received \$18.5 million, but it can only be used for the administration of unemployment insurance, Labor Exchange, and labor market information, with the caveat that states could put a portion of the allocation into their unemployment insurance trust funds to beef up their benefits.
- Montana's trust fund is very healthy and solvent, and it is growing. The Department expects the tax schedule for employers to remain at the lowest of the 10 possible schedules.

- Although Montana does not need to put money into the trust fund at this point, it has a huge funding deficit and crisis in the administration of the unemployment insurance program. The Department will spend the dollars to bring its unemployment insurance administration up to a level of adequacy.
- There is no time limit on the expenditure of the funds, and the Department is looking at legal ways to use the money to offset general fund expenditures.
- The Department will also use part of the funds to upgrade the Internet so that people can file for benefit claims online and to fund an additional analyst position in the Research and Analyst Bureau.

### **Future Workforce Development and Retraining Activities**

Commissioner Keating stated the following:

- There is a great deal of confusion between what the Office of Economic Opportunity and what the Department does regarding workforce issues.
- When the Office of Economic Opportunity was born, the Department saw an opportunity to tie together workforce development issues with economic development.
- The Department offered to move the state Workforce Investment Board into the Office of Economic Development because it would solidify a tie between the two and help develop a better relationship.
- There would also be an advantage for the Governor's Office to have direct liaison with local communities through local Job Service workforce center staff.
- If the Department were going to review consolidation and coordination on a state-level basis, it needed to bring to the table other players that were involved in workforce issues.
- It invited to the table other state agencies to formulate a state agency management team (SAM), and it is seeing improvements in coordination at the local level.
- Recommendations will be available by Sept. 1 on the coordination efforts.

Rep. Sinrud said that education is important in developing good jobs and well-rounded businesses. He asked about the quantity of well-educated people in Montana versus daily laborers, and what, if anything, could be done to help educate those people who are in daily labor positions to help them increase their economic opportunities. Ms. Keating said that Montana is the only state that does not have a state-funded pot of money to address the improvement of skills for incumbent workers. State agencies involved with the workforce is looking at the 2-year education system and tying those resources to the opportunities that may arise. Rep. Sinrud said that he moved up in the workforce through education and self-motivation. It is difficult to motivate workers to understand that if they increase their capacities through education, they become more valuable to the business. It is also very difficult to coordinate between employers and schools in order to receive higher education. He would like see the University System open up as many evening classes as possible, whether university or technical units.

### **Final rule Notice for Workers' Compensation Fee Schedule**

**Jerry Keck, DOLI**, said that a task force on the worker's compensation fee schedule has worked together for the last nine months and came to consensus on the disparity of the physical medicine reimbursement fee schedules between chiropractors, physical therapists, and occupational therapists. Rules have been drafted and approved by the Task Force. A few minor comments have been made since the public hearing which will be responded to. The rules will become effective July 1, 2002.

### **Program Update: Unemployment Insurance Division**

**Jim Hill, Division Administrator, Unemployment Insurance Division, DOLI**, stated the following:

- The unemployment insurance program is designed to help workers who are temporarily unemployed through no fault of their own, and it is paid by employers.
- The program is very important to local communities because it is an economic stabilizer.
- Last year, \$63 million was paid out in unemployment insurance benefits statewide.
- The temporary extended unemployment compensation program was established as a result of the federal economic stimulus package that extends unemployment benefits for people who have exhausted their benefits.
- The federal government will reimburse Montana for all of the costs of the program.
- Through June 10, 2002, 34,000 notices have been sent to potential claimants, 5,621 claims have been filed, and \$5.8 million in total benefits have been paid.
- Years ago, claimants had to go to Job Service Offices to file claims for unemployment insurance at which time the Department went to phone claims because there was not enough money in the program to pay for the program at the local office level.
- The Department applied for a \$500,000 grant to establish an Internet program for claimants to file claims but, if received, it would have to be supplemented with Reed Act funds.
- It will find out by the end of August whether it will receive the grant.

Sen. Mahlum asked if employers in Missoula, for example, pay in the \$6.5 million for unemployment insurance. Mr. Hill said yes, the program is designed whereby the high users pay the bulk of the money because there is more activities. Telephone claims is a stressful occupation and the Internet or a toll free number would reduce the frustration levels.

### **REVIEW OF PROPOSED AGENCY LEGISLATION**

Mr. Higgins said that the Department of Commerce and the Office of Economic Opportunity will not present their legislative proposals until the August meeting.

**Dave Bohyer, Research Director, Legislative Services Division**, provided an overview of the procedures for review, request, and drafting of agency legislation. (EXHIBIT #2) He requested that the Committee make a blanket motion to adopt all of the proposed legislation. If the Committee members object to any one piece of legislation, the proposal could be segregated and discussed at a later date.

**Eddy McClure, Staff Attorney, Legislative Services Division**, explained that a blanket decision on the acceptance of any of the Departments' proposed legislation was not a stamp of approval by the Committee. The purpose of the blanket motion was just get them in the bills process.

Sen. Mahlum asked if any legislation had been segregated. Mr. Bohyer yes, the Department of Justice had legislation to make a seat belt violation a primary violation. Some Law and Justice Interim Committee members asked that it not be drafted by request of the Interim Committee. The Department will have to find a holdover legislator to request the bill on behalf of the Department.

**Department of Labor and Industry**

**Kevin Braun, Legal Counsel, DOLI**, provided an overview of the DOLI's proposed legislation. (EXHIBIT #3) Proposal #6 to merge the Boards of Hearing and Speech has been withdrawn.

Sen. Mahlum asked about the current Board of Nursing. Mr. Braun said that there are currently four RNs on the Board of Nursing that consists of a screening panel and an adjudication panel. RNs serving on the screening panel that takes in complaints cannot serve on the adjudication panel. It is essential that they have the same expertise when coming to a final resolution. The Board will also become an 11-member board that meets quarterly for three days.

Rep. Sinrud asked if the same number of people sat on both the adjudication committee and the screening committee. Mr. Braun said that it was not anticipated that the number of serving on the two committees would change, only that the proposed legislation allows them to be properly staffed associated with their responsibilities.

Rep. Sinrud asked what the clarification would be on the rulemaking authority related to out-of-state and foreign CPAs. Mr. Braun that the clarification is trifold: (1) the Board of Public Accountants wants to establish the recognition of entity types via rules; (2) to clarify various liability insurance requirements for CPAs and CPA firms; and (3) to establish recognition of their educational requirements. Rep. Sinrud asked about the educational requirements. Mr. Braun said that public accountants define their continuing education requirements because of their expertise in the field. The rule has to do with continuing education to ensure that they are up to date on current laws.

Rep. Sinrud asked about the cost affiliated with the Board of Realtors' putting their directory of real estate on a web site. Mr. Braun said that by eliminating the hard-copy publication, the Department can expect an overall cost saving of \$3,000 a year.

Sen. Mahlum asked about the Subsequent Injury Fund (SIF) and how much was currently in the fund. Mr. Braun said that the SIF comes from an assessment on the various insurance plans. For example, Plan 1 insurers annually pay a separate assessment depending on the amount of usage of the SIF by that plan. The earnings from the amount left in the SIF in the past has deferred any assessments until recently. There is between \$800,000 to \$900,000 in the SIF currently.

Ms. McClure asked about the court case that Mr. Braun was involved in. Mr. Braun said that the court involved employee coverage requirements. Statute provisions include language that goes to residency of the employee. If it is a Montana resident coverage, its required if their employment duties are carried out in the state or are primarily controlled in the state. There is also language related to nonresidents. If a nonresident works in the state, primarily controls it, and carries it out, they are eligible for workers compensation in Montana. The Montana Supreme Court, in Shimmel related to an out-of-state trucking firm, a Montana resident went to work for the firm who predominately drilled out of state and delivered to other state locations. The Court wrote the residency statutes out of the law by saying that they only apply when it involves a temporary services contractor. The Department needs to change the language to fix the problem.

Sen. Mahlum asked how many Professional Employer Organizations ( PEO) there were in Montana. Mr. Keck said that there are 23 licensed PEOs in Montana that cover 300 employers and provide approximately 4,500 employees. Mr. Braun added that the Department's main problem with PEOs is that they try to become de facto (existing in actual fact although not by legal establishment) Plan 1 self-insurers because they do not want to pay the cost of workers compensation insurance.

Rep. Sinrud asked if entities conducting the standardized national examinations for licensure were public or private interests. Mr. Braun said that most of them are private testing entities that are approved by the state and subject to the Board.

Rep. Sinrud asked why farmers and ranchers were exempt from the proposed 60-day grace period for scale license fee lapses. **Jack Cain, Weights and Measures Bureau, DOLI**, said that 10 years ago, all licenses related to weighing or measuring were under the umbrella of the Weights and Measures Bureau. All licenses were done on December 31 and new licenses began on January 1. In January, the livestock industry may not know whether they were going to use the scale next fall, nine months for example, to ship cattle. As a result, a 6-month, grace period provision was put in place for them to make late payments.

Rep. Sinrud made several suggestions regarding changes to the legislative proposal overviews (i.e. make them consistent among the agencies; include the agency name on the front page; break out each topic, and explain the acronyms).

The Committee also agreed to make a recommendation to the Legislative Council to make official the concept that all workers' compensation legislation come before the Committee for formal review.

### **State Fund**

**Karl Swanson, President and CEO, State Fund**, provided an overview of its proposed legislation to reorganize the State fund to become a nonprofit public corporation and domestic mutual insurer. (EXHIBIT #4)

Sen. Roush asked about the amount of money in the surplus fund. Mr. Swanson said that \$169 million is set aside in reserve and surplus to weather adverse contingencies.

Sen. Mahlum asked Mr. Swanson to explain the meaning of "insurer of last resort". Mr. Swanson said that prior to 1915, employers were exposed to unlimited liability under the tort claims system. Injured employees had to sue their employer if they were injured and prove negligence. Under the Workers' Compensation Act, employers are no longer sued for unlimited liability through the tort system and employees access benefits as determined by the Legislature in law. The Legislature required that an "insurer of last resort" be mandatory for businesses (What would happen if a business tried to secure workers compensation coverage, and they were unable to find someone to underwrite it?)

Nationally, the guaranteed market is accessed two ways: (1) through assigned risk pools, and (2) through state funds. Assigned risk pools write 5% of the market share in a state which is 5% of the unprofitable business. It is also a pass-through system. In the late 1980s and early 1990s, many carriers in assigned risk pool states exited the market because the assessment became

so great that it created a crisis. After that, many states decided to establish state funds making them the "insurer of last resort".

**Chuck Swysgood, Director, OBPP**, said that the Office of Budget and Program Planning (OBPP) supported the proposed legislation. He said that during the 1989 Session, \$20 million was loaned to the State Fund to be used for the Old Fund liability on which no interest was paid. In light of the looming budget cuts and in trying to keep the percentage of reductions as low as possible, he approached Mr. Swanson and the State Fund Board to ask if they would be receptive to paying back some of the interest on the \$20 million. As a result, the State Fund suggested taking the excess money that currently flows from the Old Fund into the New Fund after the actuary determines the liability rate and have that excess above the 10% contingency flow into general fund. Over a projected 3-year period, the total is approximately \$17 million. The revenue enhancement that will be used to mitigate the percentage reductions applied to the agencies, particularly the Departments of Public Health and Human Services and Corrections. On passage and approval, the state would receive \$8.4 million.

Ms. McClure said that Sen. Fred Thomas requested the bill draft for the State Fund's proposed legislation, and it is currently in the legislative process.

#### **Department of Agriculture**

**Ralph Peck, Director, Department of Agriculture**, provided an overview of the Department's proposed legislation. (EXHIBIT #5)

Sen. Mahlum asked if inspection fees generated by the anhydrous ammonia safety program were enough to cover inspections. Director Peck said that the safety program will be marginally self-supporting if it receives the fee increase but would be at a minimal functioning level.

Rep. Sinrud asked if the increase in the State Grain Laboratory user fees was adequate enough to operate the program. Director Peck said that the Department hoped that the increase would be enough to continue the program for another 4 to 6 years. However, as inflation continues to grow, the Department will come before the Legislature again regarding the maximum amount that can be charged.

Sen. Roush asked how the State Grain Laboratory fees were collected and were the difficulties experienced by the Laboratory brought about because the agricultural industry did not use the program. Director Peck said that the Wheat and Barley Committee establishes the mill rate by rule. The fees are collected by the first purchaser and paid by the producer through a checkoff. There is also a private company that provides testing of grain, and it says that they match the federal standards. However, if there is a question, the State Grain Laboratory is the arbitrator. If producers do not use the State Grain Laboratory, where they send the grain sample is at the discretion of the grain elevator.

#### **Public Service Commission**

**Wayne Budt, Administrator, Transportation and Centralized Services Division, Public Service Commission**, provided an overview of Commission's legislative proposal (EXHIBIT #6)

Sen. Mahlum asked if Qwest was having problems in Montana. **Kate Whitney, Public Service Commission**, said that went, Qwest has made significant improvements and has met most of

the Commission's standards on retail service quality. The proposed legislation deals only with wholesale service to competitive local exchange carriers and how it provides service to them in a timely manner.

Rep. Galvin-Halcro asked if a fee was charged to other entities in competition with Qwest that goes to cover the Qwest payment to the PSC. Ms. Whitney said no, that the performance assurance plan is solely there to provide incentives to Qwest to meet the performance standards for wholesale service quality to those competitive carriers. If Qwest does not meet the performance standards, most of the payments go to the competitive carriers. If Qwest has egregious failures, the payments come to the state. The proposed legislation allows the PSC to use the funds that come to the state to do the oversight necessary under the plan.

Sen. Ellingson asked if he were correct that in the absents of the proposed the legislation, the PSC did not have the authority to monitor quality assurance. Mr. Budt said that the PSC has the authority. The legislation only sets up a statutory appropriation for the funds to go into and be drawn out of while the monitoring is being done. The appropriation will be self-supporting.

#### **ADOPTION OF PROPOSED DEPARTMENT LEGISLATION**

Rep. Galvin-Halcro made a blanket motion to adopt the Department of Labor and Industry's proposed legislation (9 bills). Motion passed unanimously.

Rep. Galvin-Halcro made a blanket motion to adopt the Department of Agriculture's proposed legislation (7 bills). Motion carried unanimously. The industries affected by the remaining three proposals will find a legislator to request the legislation. However, if the Department chooses to have the Committee request the proposals, it will be done at the next meeting.

Sen. Roush **moved** that the Committee approve the Public Service Commission proposed legislation. (1 bill) Motion passed unanimously.

#### **REPORT FROM SEN. ROUSH ON PNWER**

Sen. Roush provided a brief update on the latest Pacific Northwest Economic Region (PNWER) meeting and provided an overview of the PNWER dues paid by member states and adjoining countries. (EXHIBIT #7) (PNWER is an international organization that promotes collaboration among the Pacific Northwest states and adjoining Canadian provinces to forge new cooperative arrangements that will enhance the overall competitiveness of the region in international and domestic markets.) He said that the PNWER dues owed by Montana are \$30,000 for the biennium--\$15,000 a year. He recommended that the Committee request the appropriation for the dues so that Montana could participate in PNWER.

Sen. Roush added that electrical energy was PNWER's largest topic of discussion. Other topics of discussion were health care, prescription drugs, water issues, some environmental concerns, homeland security, and the importation of agricultural products, particularly beef, from other countries.

Committee staff will write a letter on behalf of the Committee to the Legislative Council requesting the \$30,000 biennial appropriation for PNWER participation.

## **UPDATE ON GOVERNOR'S ADVISORY COUNCIL ON TAX REFORM**

**Kurt Alme, Director, Department of Revenue**, outlined the Martz Administration's tax reform proposal. (EXHIBIT #8)

Sen. Mahlum said that in the 1999 Session, he carried 6% car-rental tax legislation. The tax would be used for projects such as Main Street Montana and some other historical places in the state. If a car rental tax is approved in the 2003 Session, where will the money go. Director Alme said that under the Governor's proposal, all of the revenue received from the car rental tax will go toward general fund backfill for the proposed income tax cut. The only thing that would not go toward the general fund backfill is the local option tax component of the proposal.

Rep. Sinrud asked if the proposal would provide a 10% income tax deduction to get as many people affected by the reduction of the federal income tax deductibility and a sales tax is added on to specific items, what does the percentage become because it is no longer 10%. Director Alme said that the percentage depends on how much of the tax burden is shifted out of state. If the tax burden shifted out of state is \$26 million, for example, the income tax cut would be closer to 4%. Rep. Sinrud asked if there was a lot of support for the proposal. Director Alme said that the Department and Governor's Office are still pitching the idea across the state and there is support for the concepts. As to the specifics of the proposal, they have been receiving mixed reviews with most of the concerns centering around the elimination of federal deductibility on income taxes. However, the biggest concern has been the name--"tourist tax". In addition, there has been fairly good acceptance among the people in the tourism industry that the sales tax was going to be a "pass through" and not attached to businesses. But the individual income tax cuts, since most of the business are not C-corporations, they are sole-proprietorships, partnerships, and S-corporations, they are going to see the benefit of the income tax cut.

Rep. Sinrud asked if the Department had conducted a study regarding the impact of the additional "tourist tax" on resort communities, such as Big Sky, West Yellowstone, or Whitefish, in defining their private resort taxes versus the state tax. Director Alme said that this was an issue that still needed to be worked out. To date, the Governor's Office is not trying to replace the existing resort taxes or the accommodation funding which goes to Travel Montana. It is a question of whether the communities wanted the local option tourist tax component added on to their existing resort taxes. Rep. Sinrud said that the cumbersome part of doing business would be to separate the two taxes, giving one tax to the resort area and one to the state. He asked if there was any way to evaluate the administrative burden on businesses. Director Alme said that the Department has to work that issue out in the next six months. The first issue related to administrative burden that comes into play with the statewide tourist tax is to not allow business to become tax collectors. Most states allow businesses to keep a flat fee or a certain percentage of the tax to offset the cost of having to collect the tax. The second issue is how to structure the tax--Should it be structured like a gross receipts tax or a sales tax? Rep. Sinrud suggested that the Department also review those businesses that are not set up to have a cash register or computer with a sales tax built into it.

Rep. Galvin-Halcro asked if a tourist tax was implemented, could Montana residents save their receipts and claim them on their state taxes. Director Alme said that the proposal he discussed did not talk about saving receipts and taking them as a deduction on state income taxes, but that is, in effect, what is occurring. All Montana residents are getting a percentage income tax deduction based on the amount that they are spending on the tourist tax. It is not linked directly to

what individuals spend. However, deductibility can be allowed. The problem for Montana residents is getting into the question of interstate commerce.

Sen. Roush felt that whatever the tax reform proposal group decides what is going to be subject to the tourist tax, he hoped that the group applies the tax to every resident of Montana and not exempt anyone or any particular entity or business. Director Alme said that the one advantage by having a narrowly focused selective sales tax as opposed to a broad based general tax is that Montana does not have to get into the discussion about wholesale inputs, such as the argument used by farmers, ranchers, and business. Sen. Roush asked what process did the state have to impose the tax on reservations. Director Alme said that the Department has the ability to impose a state sales tax on reservations except on tribally owned facilities.

Sen. Ellingson asked if the Governor could not get the tourist tax proposal passed, would she still consider removing the federal deductibility. Director Alme said no, and that the issue had not been discussed. Sen. Ellingson commented that even if the tax rates were lowered, there would still going to be winners and losers. Sen. Ellingson said that Wyoming did not have capital gains, and at some point Montana had to look at the states that it was competing with. He asked if Montana had to eliminate its federal deductibility in order to be competitive. Director Alme said that in order to be competitive, Montana would have to reduce all taxes to zero. Since that cannot be done, he would like to see Montana safely in the middle.

#### **FURTHER BUSINESS AND ADJOURNMENT**

The Committee approved August 16, 2002, as the next meeting date.

There being no further business, the meeting adjourned at 4:40 p.m.

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