



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

Economic Affairs Interim Committee

59th Montana Legislature

SENATE MEMBERS

DONALD STEINBEISSER--Vice Chair
JOHN BRUEGGEMAN
VICKI COCCHIARELLA
KEN HANSEN

HOUSE MEMBERS

JIM KEANE--Chair
DAVE GALLIK
TOM MCGILLVRAY
MIKE MILBURN

COMMITTEE STAFF

PATRICIA MURDO, Lead Staff
BART CAMPBELL, Staff Attorney
DAWN FIELD, Secretary

MINUTES

September 9, 2005

Room 102, State Capitol
Helena, Montana

Outlined minutes with audio recording: These minutes provide abbreviated information about Committee discussion, public testimony, actions taken and other activities. The minutes are accompanied by an audio recording. For each activity listed, the minutes indicate the amount of time (in hours, minutes and seconds) that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

COMMITTEE MEMBERS PRESENT

REP. JIM KEANE, Chair
SEN. DONALD STEINBEISSER, Vice Chair

SEN. JOHN BRUEGGEMAN
SEN. VICKI COCCHIARELLA
SEN. KEN HANSEN

REP. DAVE GALLIK
REP. TOM MCGILLVRAY
REP. MIKE MILBURN

STAFF PRESENT

PATRICIA MURDO, Lead Staff
BART CAMPBELL, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, [Attachment #1](#).
Visitors' list, [Attachment #2](#).

COMMITTEE ACTION

The Economic Affairs Interim Committee unanimously approved the June 24, 2005, minutes, as written.

TAPE 1 - SIDE A

CALL TO ORDER

00:07:12 REP. KEANE called the meeting to order at 9:02 a.m. He reviewed the agenda and reminded the members that the meeting will be a live broadcast via TVMT. The secretary took the roll; all members were present. SEN. HANSEN **moved** to adopt the June 24, 2005, minutes, as written. The **motion passed** on a unanimous voice vote. REP. KEANE asked the Committee to review a letter providing guidance concerning public participation and decorum at an interim committee meeting ([EXHIBIT #1](#)) and asked those present to conduct themselves accordingly.

AGENCY PRESENTATIONS

BOARD OF INVESTMENTS - CARROLL SOUTH, EXECUTIVE DIRECTOR

00:11:18 Mr. South provided a brief history of venture capital in Montana, reporting that the Board of Investments (BOI) committed \$25 million to a regional Fund of Funds program to be managed by Credit Suisse First Boston (CSFB). The region will encompass Montana, Wyoming, South Dakota, North Dakota, Idaho, eastern Washington, and eastern Oregon. CSFB plans to open an office in Montana. Mr. South said one caveat to the success of the contract is that CSFB must raise another \$15 million from other investors or the program will not be implemented. He said that CSFB has one year to accomplish that. He also discussed details of the contract between the State of Montana and CSFB.

00:15:21 REP. KEANE asked if the BOI would be notified when CSFB has raised the \$15 million and when the Montana office would be opened. Mr. South said he remains in contact with CSFB, that he would be notified when the money is raised, and that the Montana office would not be opened until the \$15 million is raised. REP. KEANE asked Mr. South to keep the Committee updated on this issue.

00:16:53 SEN. COCCHIARELLA asked if there is a deadline by which the funds must be raised. Mr. South said CSFB has until May 9, 2006, to raise the funds.

00:17:10 REP. KEANE asked Mr. South to discuss the Montana Board of Investment's annual report. Mr. South discussed pension fund investment requirements and the current status of pension funds.

00:20:31 REP. KEANE asked for projections for investments. Mr. South responded that long term recovery is dubious and provided a detailed explanation. He said there is a problem that must be fixed.

00:25:32 REP. MCGILLVRAY said the Public Employee Retirement System (PERS) has a discretionary defined contribution plan and asked Mr. South if there was any benefit to or liability in eliminating the defined benefit plan and requiring a defined contribution plan. Mr. South discussed the differences between a defined contribution plan and a defined benefit plan and the issues involved with each.

DEPARTMENT OF AGRICULTURE - NANCY PETERSON, DIRECTOR

00:28:37 Director Peterson presented an overview of the department to the Committee, including a recap of relevant issues the Department is currently dealing with ([EXHIBIT #2](#)). Ms. Peterson reviewed the economic development programs within the Department and also discussed legislation and other related issues.

00:40:21 SEN. HANSEN asked Director Peterson to further explain her statement regarding the difficulties being experienced by the State Grain Laboratory and asked what state laws needed to be clarified. Ms. Peterson explained how the wheat and barley assessments have been allocated in the past years. She recommended that the current law (SB 213, 2003) be amended to clarify that revenue generated from the bill be used to help fund the State Grain Laboratory. SEN. HANSEN asked if Ms. Peterson intended to ask for the amendment for the 2007 Legislative Session. Ms. Peterson said that is her intention.

00:43:56 REP. MCGILLVRAY asked if private industry could supply this service and why a state grain laboratory is needed. Ms. Peterson said private companies do supply the service, but also can control testing; and that a producer needs to have an unbiased determination on grain sample analysis in order to not be at the mercy of the private company buying the grain.

00:45:37 REP. MILBURN said he is aware that the State Lab has had problems in the past in its testing procedures. Ms. Peterson said the federal grain inspection standards, and not the State Lab, that was the cause of the problems.

00:47:00 REP. KEANE asked how the assessments are currently being spent. Ms. Peterson said the assessment monies are going mainly to marketing and research programs to promote and enhance the marketing of Montana grains.

00:48:54 REP. KEANE asked Ms. Peterson to provide a report to the Committee on how much money has come in and how it has been expended for the

last two years. [Ms. Peterson supplied the material to REP. KEANE in the afternoon.]

00:49:05 SEN. COCCHIARELLA asked for an update on rail competition issues. Ms. Peterson said a number of different state agencies are involved in this issue and that meetings have been held with Burlington Northern Santa Fe (BNSF). She reported that Central Montana Rail (CMR) is experiencing problems also. WATCO Group is visiting with Union Pacific (UP) about a route through the southern part of the state. Ms. Peterson said this is a very important issue, because if UP leaves Montana, there will be no rail competition left in the State. She also discussed railroad issues facing northern and eastern Montana and the importance of rail service to the livelihood of producers, particularly in eastern Montana.

TAPE 1 - SIDE B

00:53:04 REP. KEANE said House Bill 769 established the Rail Services Competition Council and that two members from the Economic Affairs Committee were appointed as members to Council. He noted that no meetings have been held yet. Ms. Peterson said the designation of appointees was recently sent to the Secretary of State's Office and that the next step would be to call a meeting. REP. KEANE said the Council needs to meet sooner rather than later, due to the huge significance of the issue. Ms. Peterson was asked to explain what Watco is. Ms. Peterson explained that the Watco Group was established approximately 20 years ago as a result of larger railroads wanting to release short lines they no longer wished to maintain. Watco purchases or leases these lines in over 20 states nationwide, including Montana.

00:56:11 SEN. STEINBEISSER asked if Watco is known for keeping up its tracks, saying that Watco lines in his area are in poor condition and that trains must travel very slowly on them. Ms. Peterson said Watco does have plans for maintenance, but not necessarily to upgrade its lines.

00:57:54 REP. KEANE said in his travels throughout the state, it appears that the federal government does not do anything about knapweed or noxious weeds, and asked if there is there anything the State can do to make federal agencies take action on this issue. Ms. Peterson said the Governor has signed an executive order and has been meeting with federal agencies to discuss this issue.

00:59:19 REP. MILBURN commented that the Rails to Trails organization is becoming very organized and is pushing forward with a plan to purchase the branch line between Great Falls and Helena. He asked if the Department is participating in this issue. Ms. Peterson said it is absolutely critical to Montana that the branch line is not taken out of service, because it would take away any opportunity for north-south movement. Ms. Peterson said, in her opinion, that line absolutely must stay and noted that BNSF was a strong proponent of the Rails to Trails effort to get control of that line.

DEPARTMENT OF LIVESTOCK - MARC BRIDGES, EXECUTIVE OFFICER

- 01:00:42 Mr. Bridges stated the Department's mission and named the different Divisions that make up the Department. Mr. Bridges updated the Committee on issues of concern to the Department, such as establishing sanitation requirements for mobile slaughter facilities; state licensing of new slaughter facilities and a status report on existing slaughter and meat processing plants in Montana. He also discussed animal health issues, particularly:
- the outbreak of vesicular stomatitis in Montana livestock and the potential economic impact of this disease on the Montana livestock economy, (EXHIBIT #3); and
 - West Nile Virus.
- Mr. Bridges also talked about a national animal identification project, homeland security; continuity in government services; and expenses and revenues.
- 01:10:22 SEN. HANSEN said, as Vice Chair of the Natural Resource Subcommittee, one of the issues he is very interested in is the Department's budget. He noted that the Department's budget usually comes in very low and expressed concern, due to emerging animal health issues, fuel costs, and other increased costs, that the Department budget may not be adequate. Mr. Bridges said, although it would be tight, he anticipated that the Department would be able to stay within the budget. He said the reserve fund balance is adequate and that additional steps to cut costs have already been taken. SEN. HANSEN said he didn't want the Department's services to communities to suffer.
- 01:14:09 REP. MCGILLVRAY said he is curious about what the Department of Livestock does with respect to noxious weeds. Mr. Bridges said the Department of Livestock has no statutory control over weeds but that weeds are an issue of concern, so whenever possible, information is passed on to the appropriate agency or individual. REP. MCGILLVRAY asked Mr. Bridges if he thought the Department of Livestock should have a role in fighting noxious weeds. Mr. Bridges said the Department of Agriculture does a good job and that the Department of Livestock has enough to do.
- 01:15:24 SEN. STEINBEISSER asked Mr. Bridges to discuss the fee increase implemented at the Diagnostic Laboratory. Mr. Bridges said the fee increase would generate approximately \$60,000 for the Laboratory. The fees for extra testing, such as for rabies, can no longer be absorbed by the Department and that the costs must be passed along to those using the services. Mr. Bridges said a survey of other laboratories in the western United States was done to compare costs and fees before implementing the fee increase.
- 01:17:51 REP. KEANE asked that a copy of the increase in fees to be given to SEN. STEINBEISSER. [They were provided.]

UPDATE ON SB 133, CAPITAL INVESTMENT BOARD

Karen Powell, Deputy Securities Commissioner - State Auditor's Office (SAO)

- 01:32:15 Ms. Powell provided a brief overview of what has happened in the SAO in regard to SB 133:
- She has spoken to a number of fund managers in the past few months regarding Fund of Funds programs. Most of those managers contacted her and are anxious to know what the status of SB 133 is.
 - It has been explained to the fund managers that although the legislation was passed, the funding was not included; so the law is in a holding pattern.
 - At least three separate fund managers have indicated that they are very interested in assisting Montana in developing a fund of funds program and the managers were not deterred by the fact that funding had not been appropriated.
 - The fund managers are ready to take action as soon as Montana issues a Request For Proposals (RFP).
 - The fund managers have been directed to the Governor's Office.
 - A number of Montana citizens have expressed interest in serving on the Board.
 - The SAO is committed to assist in whatever manner the Board or Governor's Office deems necessary.

Evan Barrett, Chief Business Officer - Governor's Office

- 01:35:28 Mr. Barrett also addressed issues related to SB 133:
- The Governor did receive the letter sent to him from the Economic Affairs Committee requesting that he appoint Board members as soon as possible and the Governor took the letter under advisement.
 - The Governor's Office is also trying to address the issue of, if money is raised from outside sources, can it be accepted and expended legally. After researching the issue, the determination was made that private money could be used legally, but that it is a risk.
 - An issue of constitutionality, under two Montana Supreme Court decisions (White and Hollow), has also been raised. The Governor's Budget Director, David Ewer, requested a legal opinion from the same law firm that did the Hollow case; and the opinion is that the bill is not constitutional ([EXHIBIT #4](#)).
 - This legal opinion has had a chilling effect on the ability and willingness of the Governor's Office to raise private resources.

01:43:33 REP. KEANE asked Mr. Barrett if SB 133 is law. Mr. Barrett said yes. REP. KEANE asked why the Governor is not moving forward. Mr. Barrett said first and foremost, the bill is still unfunded, so the tools to move

forward are lacking. REP. KEANE said that, at the last meeting, it was agreed that there were people willing to work for no pay to get the Fund of Funds program going. Mr. Barrett said the Governor's Office did not agree to anything but to take under consideration the opinion of the Committee. **TAPE 2 - SIDE A** The Governor's Office sought the legal opinion because of the doubts it had regarding the bill.

01:45:36

SEN. COCCHIARELLA said some of Mr. Barrett's statements seemed contradictory to her. She asked him to clarify why the legal opinion was requested, why an outside entity was requested to do the opinion, and if the citizens of Montana paid the cost of the legal opinion. Mr. Barrett said staff attorneys were asked to review the procedure for the ability to raise and expend outside funds. SEN. COCCHIARELLA referred to Mr. Barrett's statement that during the legislative session he had avoided testifying on SB 133 and asked if he had known during the session that this bill was unconstitutional. Mr. Barrett said that while he supported the concept of the bill, a constitutional question had been raised; and that created a discomfort level that kept the Governor's Office from supporting the bill. SEN. COCCHIARELLA stated that she is frustrated by the constitutionality issue and that the "after the fact" reluctance to implement the bill is an excuse. She pointed out that the Governor's Office has had the legal opinion for weeks and only recently shared it with the Committee. SEN. COCCHIARELLA also reminded Mr. Barrett that the Legislature passed the bill with overwhelming support and that it has requested the Governor to support the bill. She asked if \$200,000 were given to the Governor's Office as of the meeting day, if the issue of constitutionality and the legal opinion would still be an issue. Mr. Barrett responded that the Senator's questions were hypothetical and difficult to answer, but that if the funding had been available, the Board probably would have been appointed, and it is likely that the Board would have been asked to address the issue of constitutionality. SEN. COCCHIARELLA said the people's branch of government is not being listened to or respected by the Executive Branch and she finds that very aggravating. She asked Mr. Barrett to respond to her statement. Mr. Barrett said while he understood her frustration, there has been no attempt by the Executive Branch to ignore the wishes of the Legislative Branch and that the root problem is that the Legislature did not appropriate funding for the bill.

01:56:03

REP. MILBURN asked if the lack of funding is the cause for the question of constitutionality. Mr. Barrett said no. REP. MILBURN asked why the Dorsey and Whitney law firm was selected to address the question of constitutionality. Mr. Barrett said Dorsey and Whitney is the firm that litigated the WHITE and HOLLOW cases for the State and that it has the deepest knowledge of the law on issues like this.

01:57:19

REP. KEANE commented that the Legislature, especially the Economic Affairs Committee, has been working on this economic development model for many years, which has wide support. He pointed out that

anybody may say a bill may be unconstitutional and that a differing opinion from another attorney could easily be obtained. He said he wished Mr. Barrett would make up his mind one way or the other about his position on this bill, so the issue could move forward. Mr. Barrett agreed it has been a frustrating process and said if clarity on the constitutionality is obtained, the Governor's Office will gladly move forward to implement it.

David Ewer, Budget Director - Governor's Office

02:00:39

REP. KEANE asked David Ewer why an outside firm was asked to do the legal opinion, what the cost was, and why the legal opinion was not given to the Economic Affairs Committee on a more timely basis. Mr. Ewer said the law firm asked to do the legal opinion is the State's bond counsel and they also provide the Governor's Office with legal analysis when it is requested. Mr. Ewer said it was never the intention to withhold information from the Committee. The process for the Executive Branch to discuss this issue is via the committee hearing, which is what is happening at this meeting. REP. KEANE said that the opinion was given to the Governor for over a month ago and that he didn't receive a phone call about this issue until the day before this meeting. If there was a constitutional problem, the Economic Affairs Committee should have known about it long ago. Mr. Ewer said as the Budget Director, he opposed the bill, he has always felt it was unconstitutional, and that the Governor's administration has been divided on this issue from the start. He said he did discuss his reservations and concerns about SB 133 with State Auditor John Morrison on January 20, 2005. Mr. Ewer explained the histories of similar bills in Montana that resulted in the Hollow and White court cases. Mr. Ewer said those two cases are the basis for the legal opinion sought by the Governor's Office. He said that when the bill came to the Governor's Office, he did not know that the bill was unfunded. Mr. Ewer said he is skeptical of using private money to fund the bill but that even if it is funded, SB 133 would still be at serious risk of passing the constitutionality test.

02:12:15

SEN. COCCHIARELLA asked for the cost of the legal opinion. Mr. Ewer said the attorney who prepared the opinion is on retainer, so no invoice was issued for the cost.

02:13:40

SEN. BRUEGGEMAN made the following points regarding SB 133:

- Regarding the question of constitutionality, the Legislature has faith in the Legislative Branch legal counsel and that SB 133 was okayed by that counsel.
- Anyone can challenge the law, but in the meantime the law is being ignored - it is law and must be implemented.
- SB 133 is fixable and stalling on the program is not the answer.
- If there was a serious question of constitutionality, that question should have been raised before bill was signed into law.

Mr. Ewer responded that he had conveyed his opinion concerning SB 133 during the legislative session, that it is within the bounds of the Executive Branch to not implement programs that are not funded by the Legislature, and that the Executive Branch will respectfully listen to the Legislature's concerns; but the Legislative Branch cannot demand that the Executive Branch fund a program.

02:19:51

REP. KEANE asked why the Governor didn't seek a legal opinion from the Attorney General (AG). Mr. Ewer responded that his personal experience, his personal sense of the bill, and what he thought were the issues convinced him that the entity most experienced with the issue was the firm that had been involved from the beginning. Dorsey & Whitney is a truly recognized expert in this area and has both the expertise and credibility to give the best opinion. REP. KEANE said the Dorsey opinion is meaningless and that the AG's opinion would carry weight. Mr. Ewer said if funding were attached, the Governor's Office would be duty bound to implement the program but that he still would have advised seeking an opinion on the constitutionality of SB 133.

02:22:37

SEN. JEFF MANGAN, SB 133 sponsor, discussed the history of SB 133. After much discussion and consideration, it was agreed that a Fund of Funds approach would be worth moving forward. The constitutional issues of venture capital were thoroughly discussed during the drafting stage of the bill. He said that although the bill was heard very early in the legislative session, no action was taken on the bill until the day of transmittal. SEN. MANGAN said that during that time, no one came directly to him to discuss the bill and that when the bill was introduced on the floor of the Senate, he had felt blindsided by Sen. Jim Elliott's statement that he thought SB 133 to be unconstitutional. SEN. MANGAN noted that Mr. Ewer didn't express any concerns regarding constitutionality in the fiscal note prepared by the Office of Budget and Program Planning. **TAPE 2 - SIDE B** SEN. MANGAN said he would not want to carry an unconstitutional bill, that he should be informed of constitutional concerns during the session, and that it was a waste of time and resources if those concerns were known and not expressed to him. He said another venture capital bill he sponsored last session was vetoed by the Governor and in the veto letter, SB 133 was referenced as being "fine", so he is confused as to when the discussion regarding the constitutionality of SB 133 took place. He said it is his opinion that the Governor doesn't like the direction from the Committee and just doesn't want to act. SEN. MANGAN offered the possibility of addressing the issue of funding during the special session, providing one is held.

02:32:37

Bart Campbell, Staff Attorney, LSD, commented on the legal opinion obtained by the Governor, saying that he has a different perspective. Mr. Campbell said he doesn't agree that whether the bill is constitutional or not is the issue, due to the fact that SB 133 is already law. Mr. Campbell explained several sections of the Constitution relating to the powers given to the different branches of the Montana government. He said it is

alarming to him that a well-respected law firm has written such an opinion but that a law passed by the Legislature remains law until the Judicial Branch rules otherwise. Mr. Campbell also discussed the wording in SB 133, pointing out that it uses the word "shall". He said that choice of wording makes it mandatory that there has to be a Board appointed and that it must carry out the duties, as detailed in the law. Mr. Campbell said it would be best to resolve this problem through a cooperative agreement, but said that executing a *Writ of Mandamus* is a possibility for the Committee to consider. Mr. Campbell cautioned that even if the funding is found and that the Governor names a Board, the issue of constitutionality may still remain.

- 02:42:56 REP. KEANE said it is time for the Committee to decide what action to take. He suggested sending a letter listing a specific deadline by which the Board must be appointed. He also suggested that Greg Petesch, Chief Legal Counsel, LSD, be asked for his legal opinion.
- 02:43:52 SEN. BRUEGGEMAN asked for time to consider the options and to hold Committee discussion after the lunch break.

PUBLIC COMMENT

No public comment was given.

BOARD OF LANDSCAPE ARCHITECTS, DEPARTMENT OF LABOR LETTER SUSPENDING ACTIVITIES

- 02:45:13 Mr. Campbell briefly reviewed the issue of the Department of Labor and Industry (DOLI) suspending activities and service to the Board of Landscape Architects (BLA). Mr. Campbell said his opinion is that, statutorily, DOLI has no authority to suspend services to the BLA and he referenced several Montana Code Annotated citations to that effect. Mr. Campbell discussed possible remedies, saying that any interested person or legislator may petition for the promulgation of a rule, that this interim committee may require that a rulemaking hearing be held, that a legislative remedy could be pursued in the 2007 legislative session, or that a *Writ of Mandamus* could also be considered.
- 02:52:35 **Ron Yates, licensed Landscape Architect, United States Forest Service, Great Falls,** testified that landscape architects design a variety of facilities and other products that affect the health and safety of Montanans every day. He noted that 47 states, including Montana, regulate this profession and that it is essential to maintain this registration and licensing program for the health and safety of Montanans. Mr. Yates provided materials for the Committee detailing the important function that landscape architects perform in modern society (EXHIBITS #5 & #6).

- 02:58:49 **Dick Mayer, licensed landscape architect**, testified on behalf of the Board of Landscape Architects. Mr. Mayer provided the background information on the formation of the licensing board for landscape architects and noted that the bill requiring licensure was passed in 1975. He said the bill's purpose was to safeguard the health, safety, and welfare of the people of Montana and to preserve the integrity of Montana's total environment. He said the Board was to be self-supporting and was not meant to be a burden on Montana taxpayers. Mr. Mayer said it is his sincere hope that this Board can continue to meet the intent of the Legislature when it created the Board in 1975.
- 03:01:17 **Shelley Engler, Chair of Board of Landscape Architects, Bozeman**, summarized Board activity, events, and occurrences leading up to the dispute with the Department of Labor:
- In 2003, legislation was passed that required licensing fees to be commensurate with costs;
 - The Board of Landscape Architects feels the possible long term solutions all require legislation but did not have time to draft a bill for the 2005 session. **TAPE 3 - SIDE A**
 - If there had been timely communications from the Department, this crisis would not have occurred.
 - There are gaps in policies and procedures and the BLA would appreciate the Economic Affairs Committee's assistance in establishing procedures to address this type of situation.
- 03:11:40 **Jim Brown, Administrator of Business Standards Division, Department of Labor** referenced material provided earlier to Committee (EXHIBITS #7 & #7A) and explained the Department's position of temporarily suspending Department services to the Board of Landscape Architects. He also addressed changes in the Department that resulted in increased expenses to the boards and specifically, expenses relating to the Board of Landscape Architects.
- 03:21:30 **Mark Cadwallader, Staff Attorney, Department of Labor**, discussed the Department's position that it does have authority to temporarily suspend services to a board.
- 03:23:25 REP. KEANE asked Mr. Cadwallader to provide Mr. Campbell with a letter stating the Department's position on why it has the authority to temporarily suspend services to a board. Mr. Cadwallader said he would provide such a letter to Mr. Campbell.
- 03:23:49 SEN. HANSEN asked Mr. Brown to explain how the Department calculated the figures submitted in the Department's letter and if the Committee could have a detailed explanation of the Board of Landscape Architects' expenses. Mr. Brown explained the expenses incurred by the Board of Landscape Architects (EXHIBITS #7 & #7A) and said that a detailed breakdown of expenses would be provided to the Committee.

- 03:26:50 SEN. COCCHIARELLA asked Ms. Engler if she had reviewed the plan proposed by the Department. Ms. Engler said she had not been given a copy of the plan. SEN. COCCHIARELLA asked Mr. Brown if the Department had provided copies of the proposed plan to Ms. Engler or to the Board of Landscape Architects. Mr. Brown said Jill Caldwell, Bureau Chief, thought she had sent copies out the previous week. Ms. Engler said no board members have received copies of the Department's proposed plan. SEN. COCCHIARELLA asked Ms. Engler to participate in the committee's work on boards. Ms. Engler said the Board has taken steps to remedy the situation and expressed her support of the Committee's efforts to assist with a remedy. Ms. Engler said the licensing board staff within the Department has been wonderful and that minimal services are being provided by the Department. SEN. COCCHIARELLA asked if Ms. Engler had been a part of the discussion in going over the list of expenses and did she agree with the Department's assessment of the Board's expenses and services. Ms. Engler said that an explanation of how the costs are arrived at continues to be provided to the Board by the Department, but the Board's concern is that the Department is dictating what services a board receives and the extent of services being provided without relating them to how much money the board has available.
- 03:33:34 REP. KEANE asked Mr. Brown to confirm Ms. Engler's statement that five Department staff attend BLA meetings. Mr. Brown said that Ms. Engler's statement was correct, but that three individuals provide most of the support.
- 03:35:43 **Todd Boucher, Executive Officer, Business & Occupational Licensing Bureau, DOLI**, also responded to REP. KEANE's question.
- 03:36:59 REP. KEANE asked for a detailed cost analysis for the Board of Landscape Architects for the last three years. Mr. Brown said he would be able to provide information from 2004 through current day expenditures.

REVIEW OF SJR 35 SURVEY, POLICY BACKGROUND PAPER
PAT MURDO, COMMITTEE STAFF

- 00:00:02 Pat Murdo presented results from the SJR 35 Board Survey. ([EXHIBIT #8](#)). **TAPE 3 - SIDE B** Ms. Murdo distributed a decision tree ([EXHIBIT #9](#)) to help the Committee discuss policy issues relating to the regulation of boards and discussed available options.
- 00:17:05 REP. KEANE explained that the purpose of the SJR 35 survey was to gather information for the Committee's consideration. REP. MILBURN asked to whom the survey was sent. Ms. Murdo said it went to all board members and licensees, and any interested parties that could be identified. Ms. Murdo said the interested party names were gathered from meetings, from associations who lobby the boards, and from anyone

who has expressed interest in creating a new board. She said postcards were also distributed. She agreed that more people interested in boards probably received the survey than did those opposed to boards.

PUBLIC COMMENT

- 00:21:37 **Don Hargrove, Belgrade**, stated that he has worked extensively on board issues and that he strongly supports the SJR 35 study. He said he believes it has tremendous potential and will have a positive impact by eliminating turf battles and increasing efficiency. He said he hoped that a Committee bill would be the end result of the Committee's efforts.
- 00:24:36 **Jolene Reick, (ASLA) Licensed Landscape Architect, Billings**, commented regarding page seven of *Board ABCs: Report to the Economic Affairs Committee*, (Title vs. Practice Acts, [EXHIBIT #10](#)). Ms. Reick also distributed and discussed a memorandum regarding the Montana Practice Act - Exemptions ([EXHIBIT #11](#)).
- 00:28:00 **Mona Jamison, Attorney, Physical Therapy Association of Montana**, testified that there is a lack of accountability of the boards to the citizens of Montana. She suggested that the Committee consider the possibility of moving them into the department under which they operate, in order to increase the accountability of boards to the public.
- 00:32:12 **Rep. Eve Franklin, HD 24, Great Falls**, commented primarily regarding health boards. Because practice issues have profound effects on the public, Rep. Franklin suggested a second survey be done of the executive directors and secretaries of those boards, in order to determine what can the DOLI can do to promote excellence in the practice through regulation.
- 00:37:31 **Keith Allen, Local 233, Licensed Master Electrician**, commented that the Department of Labor's practices of how it staffs boards and how it charges boards for services needs to be investigated.

DECISION TREE AND COMMITTEE DISCUSSION

- 00:39:59 SEN. COCCHIARELLA said there is much to consider and suggested allowing the Committee more time to consider the issues before making decisions. REP. KEANE said the Committee would not begin making decisions until the working group had formulated recommendations for the Committee. Ms. Murdo said the purpose of the decision tree was to help the Committee identify what issues needs further study. She encouraged the Committee to work through the decision tree in order to provide direction to the work group.

00:48:04 The Committee stepped through the decision tree. **TAPE 4 - SIDE A** REP. KEANE, after discussion of the first points in the decision tree, said to assign all the questions to the work group. Pat distributed a DOLI report ([EXHIBIT # 12](#)) on professional and occupational licensing. **TAPE 4 - SIDE B** The Committee discussed how to best select the members of the working group. It was decided that the best approach would be to allow all interested people participate and that the group would operate on a consensus basis.

01:50:41 **Susan Good, Montana Hearing Society**, commented on her past experience in working groups. She said the committed people were the ones that consistently showed up to work. SEN. COCCHIARELLA agreed that it is important to allow all to participate, if they are motivated and committed to doing the work.

REVIEW OF BUDGET

01:53:45 Pat Murdo updated the Committee on the expenditures, including the SJR 35 mailing of 65,000 postcards. REP. KEANE asked for the remaining Committee budget balance.

01:55:57 REP. GALLIK asked for an explanation of how the mailing was conducted and who paid the expense of the mailing. Ms. Murdo said that the Department of Labor paid for the postage and that the Economic Affairs Committee paid the cost of the postcards and mailing labels.

REVIEW OF MEETING DATES

01:59:34 Ms. Murdo reviewed the work plan ([EXHIBIT #13](#)) and asked the Committee to discuss options for meeting dates and workload issues; specifically workers compensation issues relating to possible court decisions.

02:04:18 REP. KEANE said he has a conflict with the November 4, 2005, meeting date and asked to change it. The Committee chose October 28, 2005, as the new meeting date. It was decided that Ms. Murdo would contact former Judge Mike McCarter to present information regarding the anticipated workers' compensation court ruling. It was also decided that Ms. Murdo would arrange to have national and local presenters to speak on identity theft issues.

02:09:51 Ms. Murdo distributed a news release from the Bureau of Business & Economic Research on economic impacts of Hurricane Katrina on Montana ([EXHIBIT #14](#)).

- 02:11:09 Ms Murdo updated the Committee on efforts to coordinate with the Energy and Telecommunications Interim Committee on energy issues.
- 02:12:48 Ms. Murdo noted that the members have a news release and a registration form in their packets for the Governor's energy symposium. (EXHIBITS #15 & #16). She said she has asked the Governor's Office to waive registration for legislators but that she has not yet received a response.
- 02:13:43 REP. GALLIK asked if the Committee would be interested in investigating the high cost of fuel in Montana and if there is a way to lessen the economic impact on Montana consumers. REP. KEANE suggested waiting until the October meeting to address this because more information would be available.
- 02:17:41 SEN. BRUEGGEMAN said the Department of Transportation is concerned that fuel prices will affect tax revenues and he discussed the possible implications of decreased tax revenues.
- 02:18:59 SEN. STEINBEISSER commented that Montana fuel supplies have been affected by Hurricane Katrina. REP. KEANE said the EAIC could ask the Energy and Telecommunications Committee what information it has regarding this issue. Ms. Murdo said she thought it very likely that this issue would be discussed at the Governor's energy symposium and that, if the Committee wanted, she would report back to the Committee at the October meeting.
- 02:21:22 Mr. Campbell discussed the rule review summary previously mailed out to committee members (EXHIBIT #17).
- 02:23:41 REP. KEANE recommended that the Committee consider the legal opinion regarding the constitutionality of SB 133, provided by Mr. Ewer, to be informational only. He suggested that the Committee request Greg Petesch, Legal Services Director, LSD, review the legal opinion and to make comments. **TAPE 5 - SIDE A** SEN. COCCHIARELLA asked to have staff draft an amendment to fund SB 133, in the event of a special session. The Committee discussed possible funding sources. SEN. COCCHIARELLA asked to have Karen Powell, State Auditors Office, research similar programs in other states and how those states set up and fund their programs. REP. KEANE asked if the Committee wished to pursue a *Writ of Mandamus*. SEN. COCCHIARELLA asked for more information on a *Writ of Mandamus* and what the procedure is to initiate it. Mr. Campbell explained the legal procedure involved in determining if a *Writ of Mandamus* is warranted. REP. KEANE said an opinion on a *Writ of Mandamus* would be good general information.

PUBLIC COMMENT ON ANY ISSUE BEFORE THE EAIC OR UNDER ITS PURVIEW

02:33:28

Gary Amestoy, Project Coordinator, Chester Irrigation Project and West Crane Irrigation Project, encouraged the Economic Affairs Committee to continue its efforts in establishing a Montana Equity Capital Investment Program (SB 133). He also said that:

- the availability of water and the availability of financing are pressing issues for rural economic development programs;
- rural economic development projects are in need of the opportunity to attract out-of-state investors;
- there is a need for other means of financing rural economic development projects, such as long term, low interest loans;
- Montana water development policy is a critical issue for Montana and that the State must be proactive and aggressive in protecting its water.
- Montana should work to develop value-added products similar to the Canadian irrigation development projects, ethanol development, and others.

Mr. Amestoy invited the Committee members to attend the tour of Canadian economic development projects, saying that the purpose of the tour is to encourage collaboration between governments and agencies to work together. He said he would provide details to anyone interested in attending the tour.

ADJOURN

02:39:58

With no further business before the Committee, REP. KEANE adjourned the meeting. The next meeting of the Economic Affairs Interim Committee will be held on October 28, 2005.

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