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Economic Affairs Interim Committee

60th Montana Legislature

SENATE MEMBERS

KEN HANSEN--Vice Chair
ROY BROWN
FRANK SMITH
DONALD STEINBEISSER

HOUSE MEMBERS

SCOTT MENDENHALL--Chair
MIKE MILBURN
MICHELE REINHART
BILL THOMAS

COMMITTEE STAFF

PAT MURDO, Lead Staff
BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary
LISA JACKSON, Staff Attorney for HJR48

MINUTES

September 12, 2008
Rm 102
9:00 a.m.

Capitol Bldg.
Helena, MT

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate 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.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. SCOTT MENDENHALL, Chair
SEN. KEN HANSEN, Vice Chair

SEN. ROY BROWN
SEN. FRANK SMITH
SEN. DONALD STEINBEISSER

REP. MIKE MILBURN
REP. MICHELE REINHART
REP. BILL THOMAS

STAFF PRESENT

PAT MURDO, Lead Staff
BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary
LISA JACKSON, Staff Attorney for HJR48

Visitors/Agenda

Visitors' list, Attachment #1.
Agenda, Attachment #2.

COMMITTEE ACTION

- The committee approved the minutes for:
 - February 6, 2008
 - February 7, 2008
 - May 7, 2008

CALL TO ORDER AND ROLL CALL

00:04:47 REP. SCOTT MENDENHALL opened the hearing at 9:05 a.m. He welcomed the committee and the public. The secretary called role call. Attachment #3. SEN. ROY BROWN had provided a proxy. Attachment #4.

Motion/vote:

00:06:14 REP. MICHELE REINHART made the **motion** to approve all three sets of minutes. Voice vote was unanimous.
February 6, 2008 - Attachment #5
February 7, 2008 - Attachment #6
February 8, 2008 - Attachment #7

- **Administrative Rule Review**

00:07:30 REP. MENDENHALL explained the administrative rule review. He then introduced Mr. Campbell, Staff Attorney, who will explain the Board of Horse Racing rules.

- **Board of Horseracing/Fantasy Sports Gambling**

00:08:06 Bart Campbell, Staff Attorney, addressed the proposed rules for horse racing. The rules have been questioned because of the Montana Lottery operating the rules. Mr. Campbell distributed a handout of the proposed rules. **Exhibit 1** He stated that while the rules may be legal, they do not conform with the requirements of MAPA, because the rules are not implementing HB 616 the way it was written. HB 616 (Attachment #8) was a tool to obtain more money for the Board of Horse Racing. When the rules were introduced as proposed, the Board of Horse Racing turned over the operation of this betting system to the Montana Lottery. In addition, it would require every bar that offered this type of horse racing to contact the Montana Lottery for all the statistics. Mr. Campbell stated that the intent of HB 616 did not provide for this.

Mr. Campbell stated that by creating the Lottery as the single provider of this network, they entered into a joint agency agreement between the

Lottery and the Board of Horse Racing. That makes the Lottery a single source contact. No bids were solicited. Mr. Campbell pointed out that not offering bids may not be legal. The inter-agency agreement states, "the Lottery will provide lottery/Board of Horse Racing parimutuel licensing of gaming retail locations. Licensees will submit a joint lottery/Board of Horse Racing mutual application to the Montana Lottery, then the Lottery will process applications and determine eligibility." He said HB 616 as written has the licensing under the Board of Horse Racing. In addition, an applicant that completes the Board of Horse Racing/lottery application now must meet requirements to sell lottery products. Again, this is not the intent of HB 616.

Mr. Campbell read an article from the Great Falls Tribune. The statute that passed as part of HB 616 reads, "The para-mutual network licensee conducting fantasy sports leagues wagering shall distribute all funds deposited in the pool to the winner of the parimutuel pool, less the takeout amount of 26%." Mr. Campbell's interpretation of the statute is that all of the money goes into the pool then it is distributed to all the participants minus the takeout. If that is the case, than the pay outs can not be in advance.

Mr. Campbell distributed a letter from REP. MCCHESENEY, sponsor of HB 616. **Exhibit 2** The letter requests the committee to allow the changes to be made to the bill during the legislative process, rather than during interim committee. Mr. Campbell stated that the committee has four options;

1) Take no action.

2) Poll the legislative body and if a majority of each house decides that HB 616 as implemented fits the intention of the bill as written, then the bill becomes a non-rebuttal presumption. Then it becomes a legal challenge of these rules, and the court would have to make a finding that the rules did not fit the intention of the legislature.

3) Request a committee bill. Add a line clarifying what the entity may not do, for example not allowing fantasy sports.

4) Introduce new legislation during the upcoming session that would change the bill.

Questions from Committee Members

00:16:13 REP. MILBURN asked Mr. Campbell if the Lottery doesn't manage this, who will. Mr. Campbell said they were going to license simulcast network providers, then those providers would be subject to licensing by the Board of Horse Racing. REP. MILBURN asked if the Board of Horse Racing

wanted the Lottery to run this or was there an outside influence. Mr. Campbell said he didn't know. He said there was a long delay with the rules. The Governor's office suggested that the Lottery could handle it. REP. MILBURN wanted to know what REP. MCCHESENEY'S intent is. Mr. Campbell said initially REP. MCCHESENEY didn't intend this to go to the Lottery. He is concerned about the legality and the fiscal note. **Exhibit 3** Mr. Campbell said it doesn't represent MAPA rules.

- 00:23:31 REP. MENDENHALL asked Mr. Campbell when is the Board of Horse Racing scheduled for a legislative audit. Mr. Campbell said he didn't know.
- 00:23:98 Pat Murdo, Legislative Research Analyst, said the committee could write a letter to the Legislative Audit Division requesting an audit.
- 00:24:02 **Sherry Meador, attorney for Board of Horse Racing**, stated that the rules that were published and adopted by the Board of Horse Racing do not include provisions for the Lottery, however, the rules do allow multiple networks. She reiterated that the rules do not exclude all other entities only the Lottery. She stated that the Board of Horse Racing made it clear that multiple networks could be included. Now, the rules committee included public entities and were given an entire year to compile the rules. In April, the Lottery offered to have the program in place by September 1, 2008. She said that the Board worked with the Lottery while still allowing multiple networks to be included.
- 00:28:08 **Al Carruthers, Chairman of the Board of Horse Racing**, asked the committee not to make any changes to the bill. He stated that the Lottery invested money for software and it works well. In addition, the process brings money into the state of Montana.
- 00:32:32 **Ray Tracy, member of the Board of Horse Racing** said he is also the chairman of the Lottery committee. He said the state of Washington found out that horse racing was a 6% industry for the state. The industry employs breeders, trainers, and others. Mr. Tracy stated that the Board of Horse Racing followed all the rules to put horse racing back in Montana.

Mr. Tracy said that Mike Manion, Chief Legal Counsel from Department of Administration (D of A), has written a public opinion for Rep. McChesney. He stated that in his opinion the fantasy sports league is legal and consistent with the legislative intent. He explained his reasoning that in Montana statute if an acquisition is identified as a sole source, than you do not have to go through an RFP (request for proposal).

Questions from Committee Members

00:42:44 REP. MILBURN asked Sherry Meador to clarify the rules allow and if it is a sole source or is it multiple sources. Ms. Meador stated that it would not be a sole source, but rather an agreement between intergovernmental agencies. The RFP would not apply between intergovernmental agencies. REP. MILBURN asked Ms. Meador if the interagency agreement states that "the Lottery will act as the sole parimutuel network than the lottery's central gaming system will provide the parimutuel hub for wagering." He asked Ms. Meador if that agreement does in fact limit it to the Lottery. Ms. Meador explained that the rules are different than the interagency agreement.

00:43:21 REP. REINHART asked Bart Campbell if he was concerned with compliance with the state lottery act of MCA 23-7-101 that was attached to the fiscal note. Mr. Campbell explained that difference of opinions arose on whether lotteries could be involved in fantasy sports. Mr. Campbell explained that the differences of options would not be resolved except in the court-of-law. REP. REINHART stated that the Code needs to be clarified to allow this particular setup for fantasy horse racing.

00:45:16 REP. MENDENHALL expressed his concern as a legislator that the bill gets passed and then given to the legislature to vote on. He said that state law matters, whether it is right or not, the law is the law. The committee's job is to oversee the Board. He further stated that the committee relies on the Legislative Services Legal Division for information. As Mr. Campbell raised significant issues, REP. MENDENHALL requested that the committee consider that an audit be carried out by Legislative Audit Division. In addition, he asked that REP. MCCHESENEY be requested to work with the committee.

Motion:

00:49:23 REP. MILBURN made the **motion** to have the committee write a letter to the Legislative Audit Division requesting that an audit be conducted on the Board of Horse Racing.

Discussion:

00:49:29 REP. REINHART asked REP. MENDENHALL to explain how the audit would help. REP. MENDENHALL stated that the audit would perform a more thorough analysis and appoint staff specifically to this issue. The staff would then investigate it more completely and present audit findings. Normally, an agency will then have an opportunity to respond to the audit findings.

00:53:54 Bart Campbell said this is a specific audit with respect to the fantasy

football issue and the issues raised here today.

Vote:

00:54:29 The **motion** passed unanimously by voice vote.

Public Comment:

Presentation of Department/Agency Legislative Requests/Vote to move bill requests into legislative drafting .

REP. MENDENHALL said that the Committee can vote after each presentation or wait until after public comment.

- **Department of Livestock**

00:55:29 **Christian MacKay, Executive Officer of the Montana Board of Livestock**, said they have 3 proposals, however, they are not drafted at this time.

- Brand entry permit \$10. Audit found that the Department of Livestock (D of L) had never collected the fee. Request that the committee remove the law.
- Request change to the stray livestock advertisement law. (Stray livestock that the Board is unable to find rightful ownership, unbranded, etc.) Current law states that the Board can advertise for 30 days. If no one claims it they can sell it at auction. They want to change the advertising time to 15 days and also remove the line that states the board must advertise in the newspaper. They would like to place photographs on the D of L website and notify other agencies. Make more expedient and accessible to defray costs.

00:59:49 SEN. HANSEN asked how will this work in the northern central region where cattle randomly cross the Canadian border. Mr. MacKay stated that currently all advertising is only done at the local level. His counterpart in neighboring provinces did not issue any concern at a recent meeting when the issue was discussed.

01:02:34 REP. REINHART stated that the website may not reach people in rural areas and where they don't have computers. Mr. MacKay said it is posted in county sheriff offices, brand offices, and all thirteen livestock markets.

01:03:22 Mr. MacKay presented the third item, which is a new proposal by the department:

- Rodeo stock processors requested a lifetime brand inspection on rodeo bulls. Current law has provisions on horses, but not cattle. The bulls travel out of state every week and have to go through a brand inspection wherever they go. The animals are not breeding stock, nor are they changing in any way. It is burdensome on the department and certainly on the stock processors. He said four other neighboring states have lifetime inspections for rodeo bulls so that the cattle can travel out-of-state with this inspection.

01:05:15 SEN. HANSEN asked about loss of brucellosis status and if this will be a problem. Mr. MacKay said the proposal is just on brands, not on the health of the cattle. The rodeo bulls will still need to comply with import requirements.

01:06:10 REP. MENDENHALL asked if other bills would be contemplated by the department on brucellosis issues. Mr. MacKay said the changes come at the federal level. His department is working with the State of Montana veterinarian. REP. MENDENHALL asked about operational changes and budgetary requirements. Mr. MacKay stated that additional staffing may be needed, but not additional rules or regulations.

01:07:53 SEN. HANSEN asked Mr. MacKay if the department would implement a split-state status. Mr. MacKay stated that Dr. Zalusky will investigate the split-state status, hot zone management, and tri-state efforts with Idaho and Wyoming when making changes to federal regulations to address the brucellosis situation. The department is expecting a presentation from the USDA Animal Plant Health Inspection Service (APHIS) on split-state status and two area classification, then the Board of Livestock will decide on a plan.

01:09:26 REP. REINHART said there is a shortage of large animal vets. She asked Mr. MacKay to address the shortage of large animal vets. Mr. MacKay said perhaps more vet techs could work under a licensed vet. He said this affects a large part of Montana, and said it is an emerging problem.

- **Department of Labor and Industry**

01:10:47 **Keith Kelly, Commissioner, Department of Labor and Industry (DLI)**, stated that the department has experienced a 5.3% increase in wages and 5.3% increase in employment over the past year. He presented handouts to the committee on the Labor Day Report, **Exhibit 4** and Montana's on the Move. **Exhibit 5**. He requested that the committee consider seven bills for the upcoming session.

- Safety bill. The department's employment and safety bill is intended

to modernize language of the Montana safety act. Montana legislation for that act was enacted in 1969. Federal law generally preempted that act. The current bill limits the department of liability for its services. The purpose of the safety bill modernize safety law to attempt to lower workers' compensation rates.

Questions from Committee Members

- 01:13:32 REP. MENDENHALL stated that Mr. Keck had indicated a similar bill that the committee would present that would be modeled after a similar bill in British Columbia. REP. MENDENHALL asked COMMISSIONER KELLY if this request was the same as his safety bill request. COMMISSIONER KELLY responded that it was not the same. This bill is simply to clean up the language and put the department in sync with OSHA language.
- Workers' Compensation Law Revisions bill. This revises statutes and clarifies requirements for persons applying to become insured, to provide copies of file in a timely manner, clarify religious organizations or trusts that operate as a business and perform work for non-members on projects for profit that they must have workers' compensation coverage, allow the state to enter into agreements and recognize workers' compensation with tribes that cover projects off the reservations. In addition, clarify workers' compensation judges may excuse themselves from a case and have a retired sitting district court judge substitute for the workers' compensation judge. Also, minor statutory changes in acute places.
 - Wage and hour bill that corrects two problems in the employment division by appointing a substitute member to the board of personnel to the existing practice. An audit exception found this problem, so this change is necessary. In addition, the current law allows an employee who has been dismissed for theft to keep his severance pay if his employer has not filed the theft within 15 days.
 - Unemployment Insurance (UI) Division to conform with federal law that allows repayments by electronic means with credit cards, provides for lottery intercept if someone has an unpaid contribution if they win the lottery and clarifies time periods for disputed claims for an alternate member.
 - UI Language Cleanup is a housekeeping bill. This bill was crafted by the staff and on the advice of Pat Murdo to bring language in to comply with Montana codes.
 - Business Standards Division. Standardize the licensing boards under the Department of Labor and Industry. Modernizes the Board of Public Accountant statutes to facilitate accountant mobility while continuing to require licensure for out of state firms that provide specific accounting practices in the state of Montana.
 - Repeal the athletic program. No revenue to run the program.

- 01:20:50 REP. MENDENHALL asked if the licensure for the athletic program affected boxing. COMMISSIONER KELLY confirmed, however the program is not sustainable as there are so few boxing matches.
- 01:22:02 SEN. SMITH stated that the proposed bill to ensure that tribal contractors working off tribal lands have workers' compensation, however, many may already have workers' compensation insurance through a Native American plan. COMMISSIONER KELLY stated that the bill would read, "allows the state to enter into agreements and recognizes tribes with workers compensation plans that cover projects off the reservations."
- 01:22:42 REP. MENDENHALL asked COMMISSIONER KELLY if he had any other bills. COMMISSIONER KELLY indicated that he was finished.

Department of Commerce

- 01:23:19 **Andy Poole, Deputy Director, Department of Commerce**, distributed a report to the committee on the Montana Capital Investment Board as required by statute. **Exhibit 6.** Mr. Poole requested that three bills be considered by the committee. An Act that extends the statutory appropriations for a handful of economic development programs that have been in existence since 2000. This includes the:
- Montana Growth or Agricultural Program,
 - Cooperative Development Center,
 - Small Business Development Center,
 - Small Business Innovation Research,
 - Certified Regional Development Corporations,
 - Manufacturing Extensions Center,
 - Export Trade Enhancement, and
 - Research and Commercialization Program.

Mr. Poole said that the funding in statutory appropriations covers these programs. The sunset on the statutory appropriations is effective in 2010. The Department of Commerce will need legislation in this session to extend this sunset to 2019.

Questions from Committee Members

None

Mr. Poole talked about a bill that would make permanent the Primary Sector Business Workforce Training Act. Currently, in HB2, appropriations are provided for training funds to companies. However, those companies must export at least 50% of goods or services outside of the state of Montana in order to qualify for the program. This act would

keep the statutory language in the bill.

Mr. Poole presented the committee a cost benefits analysis of the programs. **Exhibit 7**

01:30:16 Mr. Poole distributed a report that shows the programs that have received funding for new training programs. **Exhibit 8**

Questions from Committee Members

None.

01:32:30 Mr. Poole discussed:

- Extension of the Big Sky on the Big Screen Act. The current statute allows a 14% tax incentive to filming companies that film in Montana. In addition, a 9% credit for expenditures while on location in Montana. He said that the current bill sunsets in 2010, and new legislation would change the sunset to 2015.

Questions from Committee Members

01:32:57 REP. MENDENHALL asked Mr. Poole if there is a cost analysis on the Big Sky on the Big Screen Act. Mr. Poole referred the question to Betsy Baumgart, staffer for Department of Commerce to answer REP. MENDENHALL's question.

01:33:33 Betsy Baumgart stated that in the first year of the Act they experienced a 34% increase in film production in Montana. The second year of the Act they saw 12% of direct economic impacts to the state. An HBO film "Taking Chance" left about \$1 million in the communities of Ennis and Bozeman. In addition, "A Fork in the Road" left another \$1 million in Laurel, Billings and Bozeman. Another film, "Call of the Wild" left \$500,000 in Philipsburg and Lincoln. REP. MENDENHALL asked Ms. Baumgart if she had developed a formal cost benefit analysis that she could share with the committee. Ms. Baumgart stated that she did not bring it with her, however, she will submit it to the committee later.

Public Comment on preceding presentations/Break

01:36:11 **Terry Myhre, Executive Director of the Montana Economic Developers Association (MEDA)**, presented a handout to the committee. **Exhibit 9** Members of programs overseen by MEDA have helped grow the economy of Montana. Mr. Myhre urged the committee to extend the sunset of the programs for an additional ten years. Also, re-authorize funding for the following programs: New Worker Training, Indian

Economic Development, Main Street Program, and Montana Marketing Assistance.

01:39:14 **Goeff Feiss, General Manager, Telecommunication Association**, presented a report for the committee. **Exhibit 10** Mr. Feiss stated that the programs that Mr. Myhre outlined help rural Montana telecommunications. The programs promote business and job activity in Montana. He urged continued operation of the programs and expand them to take into consideration increases for inflation.

01:41:43 REP. MENDENHALL asked if the committee wants to approve committee bills for drafting. He asked Pat Murdo, Legislative staffer to explain to the committee the process for committee bills.

01:42:53 REP. MENDENHALL said the vote is just to move the bills along in the process, it is not a vote for support.

Motion/vote:

01:43:12 REP. MILBURN made a **motion** to accept all three agency bills. The **motion** passed unanimously by voice vote.

- The committee recessed.

01:59:41 REP. MENDENHALL reconvened the committee.

• **Department of Agriculture**

02:00:10 Ron De Yong, Director of the Department of Agriculture, distributed a handout on the 2009 Agency-Related Legislation. **Exhibit 11** The Department of Agriculture has seven bill requests. He explained each request:

- Growth Through Agriculture - has returned \$6.21 for each \$1 spent.
- Benefits of over \$1 million to Montana.
- 588 new employees, 296 employees for MDEC, and 26 new cooperatives, with more cooperative applications pending.
- Mr. De Yong asked the committee to extend the current sunset to another ten years.
- Clarify the guidelines for the loans and grants within the Growth for Agriculture program. He stated that the language is archaic, and the staff attorney for the Department of Agriculture has clarified and modernized the language.
- Bio-product Innovation Centers (BPIC) are the foundation for the Growth Through Agriculture grants. If applicants use the centers ahead of time, the grant applications have a better chance of

success. Mr. De Yong would like to have the committee form a resolution to encourage federal funding of the Bio-Product Innovation Centers (BPIC).

- 02:03:26 REP. REINHART asked Director De Yong to clarify where the six BPICs are located. Director De Yong stated that they are located in Havre, Wolf Point, Lewistown, Sidney, Joliet and Ronan. REP. REINHART asked if they all offer the same services. Director De Yong said yes.
- 02:04:11 SEN. SMITH asked how long will the Federal Department of Labor grants funds for various workforce programs (WIRED) federal grant last. Director De Yong stated that the money would sunset in 2010, therefore, the department needs the committee to request the funding at the next session so that the grant money will not run out.
- 02:05:15 REP. MENDENHALL asked Director De Yong if the Department of Agriculture has developed an alternative plan if the federal government does not grant additional WIRED funds. Director De Yong stated that the department could not ask for additional funding within their budget per the Governor's request. He discussed:
- A bill on invasive and destructive species council. For example, the Eurasian Water Mill Foil is a new destructive and invasive species. Different agencies are assigned different species, however sometimes an invasive comes in that a department isn't assigned. They would like a council to address the invasive and destructive species.
- 02:09:06 REP. MENDENHALL asked for the definition of an invasive and destructive species. Director De Yong stated that a species causing catastrophic and destructive harm, rather than just invasive.
- Increase the net worth limit of the beginning farm program from \$250,000 to \$450,000.
- 02:11:19 SEN. HANSEN asked Director De Yong where the \$450,000 came from. Director De Yong stated that the Department of Agriculture Bureau Chief, Lee Boyer could answer the question. Mr. Boyer explained that the money came from the beginning farm bill.
- Revise the fertilizer program to clarify what is currently being done.
- 02:14:11 REP. MENDENHALL asked Director De Yong if it doesn't all come out in the pricing. Director De Yong stated that the language of the bill is too convoluted. He said that the staff attorney just cleaned up the language.

- Modify the composition of the mint committee. Instead of making the mint committee have five members, plus the director, the department wants to change it to "up to five members, plus the director". The reasoning behind this is because only five mint producers remain in the entire state of Montana.

02:16:09 REP. MENDENHALL asked if those farmers raise spearmint or peppermint. Director De Yong said it is peppermint. REP. MENDENHALL asked if the certified root stock program at MSU is still going. Director De Yong thinks it is, but would have to check. He said that the root stock grows better in Idaho.

02:18:28 REP. REINHART asked about local food production. REP. REINHART hopes that the local food production grows, even with limited resources.

State Auditor's Office by Jan VanRiper, Deputy State Auditor

02:19:22 **Jan VanRiper** presented a report to the committee outlining the department's fourteen requests. **Exhibit 12**

- To generally revise Insure Montana. The program operates to subsidize small businesses and employees to buy insurance. The department wants to ask clients to apply for the program, allow funds to flow from one side or the other, and tighten income eligibility.

02:25:18 REP. REINHART asked Ms. VanRiper if there is currently a waiting list. She said on the pool side there are about 600 clients waiting. On the tax credit side there are about 50 clients waiting. REP. REINHART asked if the Auditor's office looked at expanding the program to include sole proprietors. Ms. VanRiper stated that the current law allows sole proprietors. However, the Board has discretion as to whether or not to include sole proprietors. The tax credit for sole proprietors also would not be included.

02:27:59 REP. MENDENHALL asked about income restrictions when a company earns more than \$75,000. Ms. VanRiper stated there are no provisions in place for that occurrence.

- Actuarial Opinion Summary--a statement by the company's actuary that their finances are in good shape. The State Auditor wants to change the law to keep this information confidential.

02:27:60 REP. MENDENHALL asked if the actuarial opinion summary was the same thing as credit scoring. Ms. VanRiper said no: She explained some of the programs:

- Breast Reconstruction Mandate Federal Updates-- currently the Federal code is more protective than state. It preempts state law when it is more protective.
- Repeal Franchise Insurance-- It was in place before HIPAA laws. It is inconsistent with the HIPAA laws, and with the association requirements.
- Revise Captive Insurance Laws-- State Auditor's office wants to revise sections of financial reporting requirements for certain types of captive insurance companies.
- Generally Revise MCHA-- State Auditor's office regulates Montana Comprehensive Health Association (MCHA), and MCHA will have some statute changes
- Association Notice and Compliance-- Require association to report that they are doing business in Montana. Sometimes associations don't comply with association laws and health laws. The office wants to have these companies fill out a form.
- Housekeeping-- clean up of statutes.
- Producer Licensing Uniformity-- regulators of insurance move toward uniformity to keep everything the same. The office needs all the uniformity laws for producers.
- Strengthen Insurance Producer Protections-- ensure protections for insurance producers who report insurance code violations to the State Auditor's office. This would be a whistle blowing statute.
- Transfer Pension Payment Function from SAO to D of A-- This is a holdover when the Auditor's office actually did auditing.
- Adopt Model External Review Act--if someone has a health claim with an insurance provider and it is denied, the appeal process will go through the carrier. The appeal process goes outside the health provider. Ms. VanRiper wants to adopt an act to apply to all insurance providers. She said that the fiscal impact will be slight, however, the office may need a few more FTEs.

2:39:08

REP. MENDENHALL asked if the agency would pay for this or if it goes back to insurance premium costs. Ms. VanRiper stated that DPHHS has an appropriation fund, however, ultimately it would come from the general fund.

- Viatical Law Updates--A viatical settlement goes to a person that has a life insurance policy and a terminal illness. The settlement will pay money out of the life insurance proceeds while they are still living, however when they die, the money goes elsewhere. The State Auditor's office wants to monitor the viatical settlements.
- Transfer Anti-Steering-- wanted to move the Anti-Steering Act to the Attorney General's office, however, after additional thought the Auditor's office had decided to not proceed on this act.

Public Comment on last 2 presentations

02:45:35 **Geoff Feiss, General Manager, Telecommunication Association,** stated that he supports MCDC and Growth through Agriculture and urged the committee's support for those programs and to consider an inflationary increase for these programs.

02:46:30 **Susan Witte, Vice President and General Counsel for Allegiance Life and Health Insurance Company, and a third party administrator for Allegiant Benefit Plan,** addressed two issues:
1) Model External Review Act-- she hopes the legislature adopts the entire act and this may entail repealing other managed care statutes, and
2) A placeholder statute - in the model of benefits-- for a model of coordination of benefits

02:48:10 **Ms. Jacquelyn Lenmark represents the American Insurance Association and American Life Insurers,** stated her support and said that these organizations support the viatical law updates.

02:49:23 REP. MENDENHALL said a motion is needed to approve the two agencies' bill draft requests.

Motion:

02:49:56 REP. REINHART made the **motion** to approve both of the agencies requests, and drop the two that have been removed by the agency.

Discussion:

SEN. SMITH indicated that a placeholder should be kept for the two they intend to drop in case something changes. Ms. VanRiper stated that the Anti-Steering proposal could be completely dropped. However, a placeholder could be reserved for the MCHA revision.

Motion/vote:

02:50:35 REP. REINHART **changed** her motion to approve both the agricultural agency's request and the State Auditor's office requests with the exception of the Anti-Steering proposal. The **motion** passed unanimously by voice vote.

LUNCH

04:16:39 Reconvened from lunch (1:18 p.m.)

Public Comment:

Montana Healthcare Forum Update

- 04:17:07 REP. GARY MACLAREN presented an update on the proposed healthcare forum. He urged the committee to adopt the bill supporting the forum.
- 04:20:36 Claudia Clifford, AARP, distributed a handout on the framework for the Montana Healthcare Forum. **Exhibit 13** She stated that in order for the forum to do any more comprehensive work a dedicated council needs to be appointed. The goals and tasks should be reviewed by the legislature to keep the council on track.
- 04:24:43 **Chuck Butler, representing self, and BC/BS** said he lobbied for BC/BS up to 2002, and he has chaired the Montana Comprehensive Association. This is also known as the state's high-risk pool. He supported the Montana Healthcare Forum that would continue on an ongoing basis. He talked about the cost of insurance as a private person. For example, he pays \$9,000 a year for his insurance after he took early retirement. He urged the committee to fund the Montana Comprehensive Association to meet on more often than an interim basis.
- 04:30:53 **Frank Cote, Senior Director and Governmental Relations for BC/BS**, stated that he too, is in support of the Montana Healthcare Forum. The forum encompasses all interests in the healthcare industry. He urged the committee to move the forum forward and endorse it.

Questions from Committee Members:

- 04:35:51 REP. REINHART thanked everyone for their comments. She asked Mr. Cote which committee is in charge of the costs. He replied that the value committee looks at the cost such as, what is the most effective treatment, the best care from the best physician, etc.
- 04:38:58 REP. REINHART said more people are going bankrupt because of healthcare costs, and asked would that issue be addressed in the value committee. Mr. Cote stated that it was not a specific discussion, however, they look at the big picture and hope that something can be done.
- 04:39:48 SEN. HANSEN reiterated REP. REINHART's comments. He thanked the group for their work on this type of bill.
- 04:40:39 **Tanya Ask, Vice President, New West Health Services**, distributed a letter of support for the Health Care Forum from Suzann Jones. **Exhibit 14**

Motion:

- 04:41:32 SEN. STEINBEISSER made the **motion** to have this health care forum as an ongoing committee work for the next six years.
- 04:42:14 SEN. STEINBEISSER clarified that this is a committee bill. REP. MENDENHALL

asked if the committee could vote on this to make it a committee bill. Ms. Murdo responded that the sponsor could make decisions on behalf of the committee then it can be done by the staffer.

Motion/vote:

04:43:53 The **motion** was made to make the health care forum a committee bill. The **motion** passed unanimously by voice vote. SEN. BROWN voted yes by proxy.

04:44:16 SEN. HANSEN said he will sponsor this committee bill.

Public Comment

04:45:23 REP. MENDENHALL asked if anyone had comments. There was none.

Report from Montana Heritage Preservation and Development Commission

04:45:55 **Karlee Smith, Montana Heritage Preservation and Development Commission**, said her agency requests a change in pay status in the statute. She distributed a letter from the Montana Heritage Preservation and Development Director, Paul Reichert, in support of the change in pay status statutes. **Exhibit 15**

Report from State Fund Liaisons

04:48:16 SEN. MILBURN gave an update on the \$27 million construction of the State Fund building at the airport. The building will be owned by the Montana Board of Investments. He said that the rates have gone down to 3%.

04:49:27 REP. THOMAS reported that State Fund will have an audit performed by the Legislative Audit Division. If the committee has any concerns he can refer those concerns to the auditor.

04:51:46 REP. REINHART talked about the State Fund's financial solvency. She asked if the State Fund gets into financial trouble then is the state of Montana responsible. Is there adequate legislative oversight to ensure that State Fund stays solvent. REP. MILBURN said yes, it will be run like a private business. He talked about the state being involved if State Fund fails (regarding the building construction) if it doesn't work out. REP. MILBURN stated that he and REP. THOMAS are liaisons between the committee and the State Fund Board.

04:54:22 REP. THOMAS said there is one area that the legislature is responsible for and will have to address in the next session or the following session. The Old Fund Liability issue will have rising costs. He stated that an actuary has said the legislature will need to put in \$3 million to \$4 million every year to pay for the program. That is one area which the state is liable.

04:57:23 SEN. STEINBEISSER asked how much money is in the Old Fund Liability fund. Rep. Thomas said there is no money. He said it is a liability. The \$3 million to

\$4 million currently in the fund will run out this coming year. The legislature will have to fund the liability of the Old Fund. There is no liability in the new fund. They build reserves every year. He said present employers feel that they were taxed once and the new tax shouldn't be used to pay the Old Fund. The Chamber of Commerce always opposes using business taxpayers to pay taxes again.

05:00:23 SEN. STEINBEISSER asked about the difference in rates between Montana and North Dakota. REP. MILBURN said claim rates (accident rates) are higher in Montana and so the payout is higher. REP. MILBURN stated that the State Fund needs to look at why claim rates are high in Montana. He discussed a safety program to attempt to get the rates down.

05:02:08 REP. MENDENHALL talked about the fact that public employees rates are higher. He discussed policy choices to keep Montana from getting in the same bind in the future. Compared to other states, Montana has a longer claim period. For example, the actuaries have to account for the longer claim period and the actuaries have to raise rates. He said perhaps giving lump sums before the claims drag out.

05:04:02 REP. REINHART asked if all state employees could get cheaper rates. Pat Murdo stated that an upcoming D of A bill will allow the D of A to negotiate for a statewide rate.

05:05:09 For example, Rep. Thomas explained that the Department of Corrections claims are much higher than Fish and Game. Agencies do not like to pay for other agencies higher accident rates. In addition, the rest of private industry state claim rates are higher than other states. He said that many are highway accidents. The state of Montana is looking at safety programs to reduce these highway accidents. The private sector does not like to subsidize the state of Montana programs when the private businesses have already engaged in safety programs.

05:06:58 REP. MENDENHALL talked about the issue that is always out there on funds. He talked about prior cases that were settled and the current Satterlie case that if settled would cost about \$130 million. Rep. Thomas stated that \$190 million is currently in the fund, so if that one case takes \$130 million, not much will be left. So the rates would go up. REP. MENDENHALL asked Nancy Butler, from State Fund to explain workers' compensation payout. Ms. Butler stated that payout would go back to 1981 if a settlement was reached.

05:10:13 REP. REINHART asked if State Fund is bringing forward new legislation for the upcoming session. Nancy Butler explained they have been addressing issues, but they do not have any legislation at this time.

Report from Rail Services Competition Council Members, Sen. Hansen and REP. MILBURN

05:11:16 SEN. HANSEN explained the Rail Services Competition Council. He said the

group is made up of a mix of different individuals from various sectors. The three committees worked on: 1) draft plans to increase rail service competitions in Montana; 2) goals to expand rail service access to local and short line service; 3) the goals met with barriers like paper barriers - federal regulatory issues, volume access limited incentives, limited access for agricultural commodity, limited access for inter-modal shipping options, new construction of rail from Roundup's coal, the STB unwillingness to address the issues, and the growing markets on both coasts; and 4) benefits for the services: competitiveness, reduce reliance on truck carriers, identify markets, solutions for container shortages, create incentives, expansion and marketing high quality coal.

Exhibit 16

Implementations of Goals

- 05:14:51 Understanding paper barriers, acquiring expertise, improving communication, identify markets, container shortage, create incentives, enhancing rail access to UP & CP, inter-modal access, explore successful models, haulage rights in other states, state rail authority, revisit common carrier obligations, addressing inaction of the STB, accessing growing markets and identify the impact of coal tax. The cost for coal will be \$1 million, delivery of the coal \$275,000, analysis of \$13,000 differentials.
- 05:15:23 SEN. HANSEN said that the Rail Commission hopes to put a bill together soon.
- 05:18:00 REP. MILBURN said they are trying to make this more competitive, such as better access regarding the two rails.
- 05:19:34 SEN. STEINBEISSER asked if rail shipping had increased because of the high cost of fuel. SEN. HANSEN said it has been discussed, however the market is captive even though the rail is cheaper.
- 05:20:57 REP. REINHART asked if passenger rail has been discussed. REP. MILBURN replied no. He said it is the charge of the Rail Commission to come up with a plan.
- 05:21:41 Break taken at 2:23.
- 05:49:57 Committee called back to order at 2:50 p.m.
- 05:50:15 REP. MENDENHALL corrected his comments on the Old Fund of \$100 million, and the new fund of \$80 million. He commented that the Slatterie case will receive \$180 million if the suit goes through.
- 05:52:13 REP. MENDENHALL thanked Andrew Geiger, Legislative staffer for all his work and preparation he has done for EAIC. He announced that Mr. Geiger has taken another position and will no longer be involved with the committee

Presentation of Final Reports, Comments from Committee

05:52:32 Pat Murdo distributed a list of the committee meetings and briefly discussed committee agendas. HJR 28 &20- Executive Summary. **Exhibit 17**

- **HJR 48, a study of health care financing reform--report provides information that the committee discussed. Medical bankruptcy is addressed as under-served issue in report.**

05:57:30 Ms. Murdo gave an overview of HJR48. **Exhibit 18**

- **SJR 13, a study of expanding value-added food production in Montana-- transportation costs lower if food grown in Montana**

05:57:57 Ms. Murdo referenced the University of Montana Research Assistant Jessica Babcock's work on SJR13 - Food for Thought: Value added agriculture production and buying locally. **Exhibit 19**

06:00:54 Ms. Murdo addressed medical grants.

- **HJR 39, a study of academic research and commercialization**
- **HJR 28, a study of business infrastructure and economic development**

Questions from Committee Members:

06:02:26 REP. REINHART thanked the committee for their efforts. She stated that Montanans with illnesses are often unable to obtain health insurance, so she urged the staff to continue and study that particular area of concern.

Motion/vote:

06:02:50 REP. REINHART made a **motion** to approve the draft reports, and directed the legislative staff to continue working on the reports. The **motion** carried unanimously by voice vote.

Report on Residential Contractors, Work Group

06:03:21 Bart Campbell, Staff Attorney, presented an overview on issues that homeowners have had with residential contractors. REP. HAWK is working with the Department of Labor (DLI) on the following six issues:

- \$12,000 contractor's license bond--the cost of bond is perhaps too low
- Contractors liability insurance--this does not include poor workmanship
- Performance bond - only for public contracts, not currently written for residential contracts
- Building codes enforced throughout the state by the building codes

- division
- States that require licensed contractors. He gave several examples from the state of North Dakota
- Registered contractor does not mean licensed contractor

Questions from Committee Members

- 06:09:52 SEN. SMITH asked Mr. Campbell if they looked at the website called Angie's list. Mr. Campbell said no, but it could have some potential. A bill request could be made and Mr. Campbell would be happy to work on it.
- 06:11:20 REP. REINHART discussed with REP. HAWK the possibility of paying a percentage down when a builder is building or remodeling a home then the rest at completion of the work. Mr. Campbell said the limit for retainage is now 5%, and it used to be 10%. He talked about the various construction phases, stating that as each phase is completed then a certain amount must be paid. Mr. Campbell said that this process is not much of a cure, but it does help.
- 06:13:12 REP. MILBURN stated that sometimes the contractors do a great job, but the customers just don't want to pay anyway.
- 06:13:39 Mr. Campbell said the homeowners need to take responsibility to have an independent inspector come periodically. However, there are not enough qualified people to perform this service.
- 06:14:49 REP. MENDENHALL asked about an information packet going out with electrical permits.
- 06:15:58 **Dave Cook, Bureau Chief. Building Codes Division, Department of Labor and Industry (DLI)**, informed the committee that the DLI does not have jurisdiction over the contractors, only those with electrical permits. He said they are trying to produce something for consumer protection and it is still being developed for online services, etc.
- 06:18:58 Bart Campbell suggested developing the notion of requiring written contracts for construction and the clauses that should be included for the homeowners.
- 06:20:09 SEN. SMITH commented that change orders are never written down and then the customer is not satisfied with the changes.
- 06:20:39 REP. MENDENHALL said for the record there are a lot of issues that come before the committee like the building contractor issues. The committee had an option to inform the constituents to talk to their own

legislator or put it on this committee's agenda. The committee chose to hear the complaints through the agenda. However, the committee is limited, but they did put a workgroup together. REP. MENDENHALL thanked the committee members for the time that they volunteered to this issue and apologized if some of the constituents got angry towards them. He stated that he felt the committee did all it could.

Committee Wrap-Up and Final Comments

- 06:23:12 Pat Murdo stressed the need for experienced legislators to come to the legislative orientation in November to support the new legislators.
- 06:24:34 SEN. HANSEN said as Vice Chairman he wanted to thank the committee for all the completed good work. He thanked the committee members and the Legislative staff for traveling across the state.
- 06:25:49 REP. MENDENHALL also thanked everyone.
- 06:26:18 REP. REINHART commented that a friend asked her if interim committees are worth it, she stated yes. She said that interim committees are very important, and for her the meetings help her and the legislators prepare for the upcoming session.
- 06:28:00 REP. MENDENHALL adjourned the committee at 3:30 p.m.

A draft of the Executive Summary, written by Andrew Geiger, former Legislative Researcher, was presented to the committee for their review. It is a presentation of all the work the EAI Committee worked on over the interim. When Ms. Murdo has her part finalized and this committee has concluded, the reports will be placed into a final book report and given to the committee members and the public on the outcome of the committee's study. **Exhibit 20**