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Economic Affairs Interim Committee

61st Montana Legislature

SENATE MEMBERS

JIM KEANE--Chair
ROY BROWN
KEN (KIM) HANSEN
RYAN ZINKE

HOUSE MEMBERS

GORDON VANCE--Vice Chair
CHUCK HUNTER
MICHELE REINHART
DON ROBERTS

COMMITTEE STAFF

PAT MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

MINUTES

March 30 & 31, 2010

Capitol Bldg. Rm 137
Helena, Montana

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.

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COMMITTEE MEMBERS PRESENT

SEN. JIM KEANE, Chair
REP. GORDON VANCE, Vice Chair
SEN. ROY BROWN
SEN. RYAN ZINKE (by phone)
REP. CHUCK HUNTER
REP. MICHELE REINHART
REP. DON ROBERTS

COMMITTEE MEMBERS EXCUSED

SEN. KIM HANSEN

STAFF PRESENT

PAT MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
FONG HOM (March 30), Secretary
CINDY PETERSON (March 31), Secretary

Visitors/agenda

Visitor's list. Attachment #1
Agenda. Attachment #2

COMMITTEE ACTION

The Economic Affairs Committee:

- approved a motion to send a letter to the Board of Livestock to address the recommendations of the Board's work group, and submit the information to the Economic Affairs Interim Committee at the May 25 & 26, 2010, meeting.
- approved the minutes from the EAIC meeting held on January 20 & 21, 2010.

CALL TO ORDER AND ROLL CALL

00:00:03 Sen. Keane called the meeting to order at 10:19 a.m. The secretary called the roll. Attachment #3. Sen. Hansen is excused and provided a proxy. Sen. Zinke is present via poly com telephone.

AGENDA

00:01:21 Pat Murdo gave an overview of the agenda. She distributed documents that will be presented to the committee. Attachment #2

Report on SJR 14

- **Hope Stockwell, Research Analyst, LSD**

00:06:18 Ms. Stockwell distributed a study report and explained that it is in draft form at this time. **(Exhibit 1)**. She asked the committee members for any comments they may have and instructions for additional information.

Ms. Stockwell gave a PowerPoint presentation of the Veterinary Diagnostic Lab in Bozeman. The presentation included pictures of the lab showing lack of space and run-down facilities.

00:24:40 Ms. Stockwell presented pictures of the Wildlife Laboratory managed by the Department of Fish, Wildlife and Parks (FWP), located in Bozeman, and pictures of the Analytical Lab in Bozeman

00:28:56 Ms. Stockwell discussed her findings on page 17 of the study (Exhibit 1). She talked about the long-range development plan for the labs, the Environmental and Public Health Labs, and spaces that the state leases. She said if the committee considers SJR 14, one next step might be to recommend an appropriation for construction funding. Two labs not mentioned in the report are the Analytical Lab at Montana State University (MSU) and the MSU seed lab. She talked about the grain lab in Great Falls that has received a \$25,000 appropriation from Legislature, much of it unspent.

Department of Livestock (DoL)

- **Christian Mackay**

00:36:37 Mr. Mackay talked about the Veterinary Diagnostic Lab's accreditation. The

national accreditation group is not looking for a check or a plan for a new lab, but is looking for progress on this issue. He introduced Jan French and John Lehfeldt, two members of the Board of Livestock (BoL).

Analytical Lab, Department of Agriculture

- **Greg Ames**

00:38:42 Mr. Ames talked about the Analytical Lab. He said the lab has a cooperative agreement with MSU that allows MSU Ag Experimental use of the facility. The lab is ISO-certified. They do contract work for the Environmental Protection Agency (EPA). If the decision is made to move that lab they would have to find new space for the EPA. He discussed contracting with an architectural firm for energy efficiency issues at the grain lab in Great Falls. He noted that there have been some discussions about the MSU Seed Lab, located in Marsh Laboratories at MSU, and combining it with the grain lab.

Fish Wildlife and Parks

- **Dave Risley, Fish and Wildlife Division Administrator**

00:43:21 Mr. Risley said labs serve an important role for wildlife disease detection. They do not feel that their needs are as critical regarding accreditation. He said he was not in a position to commit to funding.

Department of Public Health and Human Services (DPHHS)

- **Anne Weber**

00:45:16 Ms. Weber informed the committee that she is here to answer any questions on behalf of the Public Health and Environmental Health labs located in the Cogswell Building, Helena. She said the labs have currently expended over \$3.5 million for renovations.

00:46:23 Anna Whiting Sorrell, Director, DPHHS, commented about how the department has been involved in the study and will continue to be involved.

Committee comments and questions

00:47:33 Rep. Reinhart requested that Ms. Stockwell find out how Colorado paid for its facility. Sen. Keane asked Ms. Stockwell if she talked to any of the workers in the labs. Ms. Stockwell replied "not in depth" and that Dr. Bill Layton was her primary guide.

00:48:45 Sen. Keane and the committee members asked further questions of Dr. Layton regarding pictures of the lab, and wanted to know how he works in this kind of environment. Dr. Layton said the workers are used to the facility, but his biggest concern is safety. The company employs as many safety features as they can for protection, and the staff has been able to handle the work. Dr. Layton said he has submitted proposals for a different lab facility. He said this is the first time his unit has asked for a new facility, because of accreditation concerns. He also noted that it would be helpful to have increased bio-safety levels in the laboratory. The current facility is considered bio-safety level 2.

- 01:01:18 Sen. Keane asked several questions about the FWP testing on wolves for *Echinococcus grandulosus* and related questions. Neil Anderson responded that the FWP lab send samples to other labs. Sen. Keane asked if this information will be available to hunters about the potential of this disease. Mr. Anderson said it is available on the FWP web page.
- 01:04:49 In response to questions from Sen. Keane and the committee about joint discussions between FWP, and DPHHS, Dave Risley of FWP said departments are responsible for diseases with reservoirs in wildlife that may affect livestock and people. He said it is important that they all work together.
- 01:07:30 Rep. Reinhart asked Heidi Hickers of the Department of Agriculture about a partnership between MSU and state labs. Ms. Hickers said they have different standards. She further discussed collaboration with MSU and other labs.
- 01:10:04 The committee discussed what the Department of Livestock (DoL) needs in terms of accreditation. Mr. Mackay said the accreditation team would like to see recognition and the need for a new facility. He said the options that Ms. Stockwell outlined might be considered for further study. He also talked about the possibility of a joint mission with MSU.
- 01:12:46 Sen. Keane asked Jan French, Chair of the Board of Livestock (Board), if there has been any discussion by the Board for the need of a new facility. Ms. French said it is discussed at every meeting. She talked about the concerns in the current facility and said they need a facility that keeps the laboratory environment controlled. Ms. French said there is huge support by the Board for a new facility, but they do not think they can ask their producers to add any more costs per capita and they are hoping for help financially from the state.
- 01:15:08 Ms. Stockwell gave an overview of the funding source for Colorado. According to Colorado's lab director, the building was completely state funded and used capital development funding. She gave another example of Wyoming, which is adding square footage at a cost of \$17 million out of the state's general fund. Ms. Stockwell talked about the possibility of funding lab construction under a bonding program.

Public Comment

None

BREAK

- 01:33:12 Sen. Keane reconvened at 11:52 a.m.

Update on Brucellosis Work Group Issues

- **Sen. Debby Barrett**
- **Christian MacKay**
- **Dave Risley**

- 01:34:39 Sen. Barrett gave an overview of the work group's activities, and presented recommendations from the work group. **(Exhibit 2)**
- 01:46:22 Christian MacKay, DoL, talked about the work group in Bozeman, the designated surveillance area (DSA) situation because of federal regulations, and how Montana lost its brucellosis-free status because 8 cows tested positive for brucellosis. He doesn't think there is a disease problem, but a regulatory problem.
- 01:50:55 Dave Risley, Administrator, FWP, talked about the impact of brucellosis on wildlife and said FWP is working with the DoL from a disease management perspective. He provided a map **(Exhibit 3)** showing elk concentrations around Montana. He also presented a FWP/MT DoL approach for implementing elk management **(Exhibit 4)**, but he did not discuss it.

Committee comments and questions

- 01:55:35 Rep. Vance asked Mr. MacKay if he has seen the recommendations of the work group. Mr. MacKay said the proposal to conduct a Montana Environmental Policy Act for disease control would be problematic. Mr. MacKay was asked when will DSA end? Mr. MacKay said it would end when the federal rules on brucellosis change.
- 01:58:09 Sen. Keane and the committee discussed a process outlined by Sen. Barrett that could be used as a resolution before there is a flurry of bills in the next session. Sen. Keane asked that the BoL review the work group's recommendations, and provide a response for EAIC.
- 01:59:52 Quentin Kujala, FWP, talked about the seroprevalence in elk and testing that has been conducted by using hunters that harvest elk and collect samples. **(Exhibit 5)** The question was asked how will brucellosis be eliminated from elk herds? Mr. Kujala said it will not happen. Mr. Kujala informed the committee that FWP and DoL are currently involved in conversations with Yellowstone National Park, but he noted that eradication is not feasible for Montana.
- 02:10:04 Rep. Reinhart asked Mr. MacKay what will happen if a DSA is not in place, and who pays for the costs. Mr. MacKay said that if Montana is the one state that did not have a DSA, all cattle producers in the state would be subject to a patchwork of regulations from other states where Montana cattle are sold. He said the costs of testing in the DSA are reimbursed by the DoL. He also noted that most livestock are not at risk.
- 02:17:50 Rep. Vance wanted to know how many of the board members live within the DSA. Mr. MacKay replied none.

- 02:18:13 The committee discussed who pays for the testing. Mr. MacKay said the veterinarians are reimbursed, and there is no cost to the producers. Sen. Barrett replied there is a huge impact to the producers when the cost exceeds the \$12/head reimbursement that the BoL pays just for testing the cattle. She said the reason it would be worthwhile for a Montana Environmental Policy Act analysis is to help determine overall costs.
- 02:19:39 Sen. Keane discussed Sen. Hansen's concern after the last meeting about the costs to producers. Mr. MacKay said he will bring this up at the next BoL meeting. He noted that the dollars from the Beef Checkoff are from a federal program.

Break for Lunch, reconvene at 1:45 p.m.

PUBLIC COMMENT ON BRUCELLOSIS ISSUES

- 03:24:42 Druska Kinkie, a livestock producer in Paradise Valley, provided written testimony regarding brucellosis, and how producers in Paradise Valley have formed a group to become more aware of the disease. **(Exhibit 6)**
- 03:35:25 Ms. Murdo submitted an e-mail from Marty Malone, Park County Commissioner **(Exhibit 7)**, that states the annual DSA review process put forth by the BoL is vague.
- 03:35:44 Brian Masard, livestock producer from Dillon, commented that not everyone is clear on the direction of brucellosis, because of the mandates from federal government through the Animal and Plant Health Inspection Service (APHIS). He said the Montana state veterinarian is to regulate brucellosis in livestock in Montana without any language how livestock producers are to be protected from the disease, which DoL is required to do by state law.
- 03:38:56 Meg Smith, a rancher from Divide, said she is not part of the current DSA, but vaccinates her female cattle against brucellosis. She is concerned about the wildlife population on her property being infected with brucellosis. Ms. Smith believed the order has caused confusion and chaos. She said there is lack of communication.
- 03:47:19 John Bloomquist, attorney, Helena, has many clients within the DSA. He believes the work group's recommendations are worthy of a response from the BoL. Mr. Bloomquist wanted to know about future funding given the current budget circumstances. Mr. Bloomquist referenced an article in *The Bozeman Chronicle* regarding brucellosis in elk, and asked who has the responsibility for diseased wildlife in Montana.

DISCUSSION/ACTION BY COMMITTEE ON SJR 14 REPORT AND WORK GROUP RECOMMENDATIONS

- 03:52:48 The committee talked about Montana being a victim because of the federal laws in place. Mr. Campbell said with the federal laws that are in place that nothing

can be done about Idaho and Wyoming because they are sovereign states. Mr. Campbell said that FWP, DoL and the Department of Agriculture should be under the same interim committee.

03:56:31 Ms. Murdo said that the committee could write a letter of recommendation to urge re-creation of the Interagency Brucellosis Management Plan (IBMP). Neil Anderson stated that the IBMP members heard substantial dialogue, but the committee eventually became stagnant and meetings are not taking place.

03:59:02 Sen. Zinke asked about the implication of brucellosis in the market place and the impact to the ranching industry. Brian Masard responded it does not affect cattle going directly to market, but it does affect cattle going to other states for breeding. In addition, the state veterinarian has jurisdiction over all disease in all species in Montana. Sen. Zinke questioned if it affects our ability to market our cattle in a foreign country. Mr Masard said it does.

04:03:51 Sen. Keane informed the committee that progress is being made, and it is his belief that the issue is with the BoL. He said that the committee can request the Board to address the issue. Mr. Campbell agreed, stating that interim committees can ask for a response as a part of the agency oversight.

Motion

04:06:36 Sen. Keane made the motion to send a letter to the Board of Livestock (Board) to consider Sen. Hansen's request and address the recommendations of the work group and submit to the Economic Affairs Interim Committee at the May 25 & 26, 2010, meeting. The motion **passed** unanimously by voice vote.

SJR 14

04:08:35 Sen. Keane discussed options for the SJR 14 lab study (**Exhibit 8**), and he thought the committee should look at potential funding. He said that the BoL can take a look at this issue as well.

04:09:42 The committee questioned the cost if Montana lost an accredited facility.

04:11:29 Questions were asked of Ms. Stockwell about the planning and design project cost of the lab. She gave a hypothesis that if the project is \$10 million dollars the estimate is approximately 12 percent for the design and engineering costs. Sen. Keane asked that actual dollars rather than percentages be reported.

04:13:58 Sen. Brown asked if there are any private laboratories to do the work. Dr. Layton responded there are private laboratories, but those labs do not perform this type of work.

04:15:46 Ms. Stockwell asked the committee for recommendations that they may want to see included in the draft study report. Rep. Hunter asked to include discussion on the grain lab and the seed lab.

BOARD OF OUTFITTERS - MONITORING OF APPLICATION PROCESS AND

RULES

- **Jack Kane, Division Administrator, and staff for Board of Outfitters**

- 04:21:56 Mac Menard, executive director, Montana Outfitter and Guide Association (MOGA), testified how outfitting and guiding contributes to Montana's tourism industry. Mr. Menard addressed the license application and changes to the emergency guide application requirements. He submitted written testimony on the guidelines. **(Exhibit 9)**
- 04:24:44 Jack Rich, owner of an outfitting and guide ranch in the back country, asked why the license application has been increased from two pages to six pages, including two pages of instructions. It is his belief that some of the questions are inappropriate and unnecessary. He depicted the form as burdensome.
- 04:29:09 Mr. Kane provided background information on licensing boards' application process. Mr. Kane explained that all of the questions on the application were deemed necessary. Mr. Kane spoke about other suggestions regarding licensing, including the length of time for the license renewal process. Mr. Kane addressed the emergency guide application process and the intent of that process. Mr. Kane stated there is no statute for this process.
- 04:39:08 Trudy Pippen, executive director, Montana Board of Outfitters, explained how the new guide application came about. Ms. Pippen believed there was a recommendation from the Board for a standardized application.
- 04:46:21 Robin Cunningham, Fishing Outfitters of Montana, shared the same concerns as the MOGA. Mr. Cunningham stated the process has not been simplified.
- 04:51:02 Greg Gilcrest, Ovando, gave an overview from a small business perspective regarding the difficulties with the licensing application.
- 04:52:54 Tyler Moss, board counsel, Montana Board of Outfitters, stated the form was created by the department in accordance with the law. Mr. Moss explained the requirement that the department "shall" investigate the applicant and that mandate could not be met by asking four questions. Mr. Campbell read the statute and determined it is the responsibility of the department.

BREAK

- 05:07:22 The committee discussed the costs involved in developing a longer application and having someone review those applications. Mr. Kane explained the guides have had to renew their license every year, and now they can just apply for renewal so the process would be less burdensome for the guides.
- 05:12:57 Sen. Keane asked that the guide license issue be placed on the May agenda.

BOARD OF DENTISTRY - CONCERNS ABOUT ADDITIONAL SITES FOR HYGIENISTS' LIMITED ACCESS PERMITS

- **Rep. Roberts**

- 05:15:12 Rep. Roberts provided history of giving dental hygienists an opportunity to work in unique and isolated forums.
- 05:19:15 Mary McCue, executive director, Montana Dental Association, stated the threshold test is whether the person they are serving has access to dental care. Ms. McCue commented there was no showing that the people in the Paris Gibson school (in Great Falls) lack access to dental care. Ms. McCue emphasized the importance of children establishing a dental home for treatment throughout the years.
- 05:23:37 Mr. Kane explained the disconnect between boards and the department. Mr. Kane read the provisions for a Limited Access Permit (LAP). Mr. Kane explained the process that was used to add the Paris Gibson School as an LAP site.
- 05:27:23 Carol Price, a dental hygienist on the Board of Dentistry, talked about the Board of Dentistry's decision to allow the hygienist to provide treatment within the scope of a dental hygienist at Paris Gibson. The Board vote was not unanimous.
- 05:29:38 Kim Dunlap, a registered dental hygienist, is a LAP and is the hygienist who petitioned the board for the LAP at Paris Gibson. Ms. Dunlap did not believe physical proximity to a dentist constituted access to dental care. Ms. Dunlap referred to a letter from Judy Harbeck. **(Exhibit 10)**

OVERVIEW OF WORKERS' COMPENSATION BENEFITS IN MONTANA

- **Ann Clayton, Consultant to the Department of labor and Industry (DLI), and**
- **Diana Ferriter, DLI**

- 05:39:49 Ms. Clayton provided an overview of the benefit system in Montana for Workers' Compensation. Ms. Clayton submitted and reviewed "System Assumptions Based on Best Available Information" **(Exhibit 11)**, and explained the "Overview of Workers' Compensation Benefits". **(Exhibit 12)**
- 06:13:48 Ms. Ferriter submitted and reviewed "Efficient Benefit Delivery Proposals for Discussion at the Labor Management Advisory Council Meetings of March 18-19, 2010". **(Exhibit 13)**

Committee comments and questions

- 06:27:30 Rep. Hunter, Sen. Brown and Sen. Keane talked about the impact costs and the proposed changes be given to NCCI.
- 06:30:04 Ms. Murdo recalled Ms. Reinhart's request to speak with injured workers. Ms. Murdo submitted information regarding injured workers. **(Exhibit 14)**
- 06:32:08 Rick Pyfer, an attorney, introduced Jim Leslie, an injured worker. Mr. Leslie talked about his accident in September of 2006. The time between injury and the time he started receiving benefits almost cost him everything he owned. He said

the main difficulty was getting medical bills and prescriptions paid for.

06:34:11 Sen. Keane wanted to know who was the insurer. Mr. Leslie said Liberty Mutual was the insurer, and he was employed by Helena Sand and Gravel. It took him about a month until he realized he needed an attorney.

06:38:33 Mr. Pyfer stated his practice is approximately 20 % Workers' Compensation. He said the timing related to acceptance of claims needs to be more expeditious.

06:43:24 Rep. Hunter and the committed asked further questions of Mr. Leslie and his experience regarding his return to work effort. Mr. Leslie explained he saw six different physical therapists who released him to return to work with disastrous results. Mr. Leslie said he settled his claim.

06:48:27 Don Judge, Montana Injured Workers' Resource Council, stated they have been studying these issues for three years. He encouraged the committee to have patience because more time is needed to determine how injured workers would be impacted by each of the proposals. Mr. Judge emphasized the need to increase the safety record for Montana workers. Mr. Judge stated how he appreciated the work of the committee. Sen. Keane noted the urgency and that the committee does not have much time.

06:52:34 Al Smith, Montana Trial Lawyers' Association, stated Mr. Leslie's case is not atypical.

06:55:05 Charlotte Scofield, Dillon, provided testimony via the telephone about her Workers' Compensation claim filed with the State Fund. Ms. Scofield had a positive experience with Workers' Compensation.

RECESS

Sen. Keane recessed the committee until 8 a.m., Wednesday, March 31, 2010.

March 31, 2010, EAIC Meeting reconvened

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Keane called the committee back to order at 7:58 a.m. The secretary called the roll. Sen. Hansen was excused and Sen. Zinke was present via poly phone.

Motion

A motion was made to approve the minutes of the EAIC meeting, January 20 and 21 , 2010. The motion **passed**.

AGENDA

**Overview of Workers' Compensation Issues and LMAC's Considerations
Pat Murdo, Research Analyst, LSD**

00:02:10 Ms. Murdo gave an overview of the Labor Management Advisory Council tasks to date. **(Exhibit 15)**.

Committee comments and questions

00:08:08 Sen. Keane and Ms. Murdo discussed reviewing the LMAC list. He would like to review anything that LMAC doesn't have a consensus on at the next meeting.

00:09:50 Sen. Keane and the committee talked about hearing energy issues at the next meeting. He said there are two meetings left and the committee needs to review legislation and/or any committee legislation. Ms. Murdo interjected that is on the agenda to be heard today at 3:30 p.m.

Reports from Labor Management Advisory Council (LMAC)

- **Jerry Keck, DLI, and**
- **Jason Miller, co-chair of LMAC**

00:13:40 Mr. Keck talked about LMAC topics that are contained in their work plan. **(Exhibit 16)**

00:23:36 Mr. Miller informed the committee how LMAC operates and how the goal is to come to a consensus and move forward. He said subcommittees have dealt with some issues. There are discussions on benefits that will be detailed and he will keep the committee informed.

Course and Scope Subcommittee Recommendation

00:25:21 Mr. Keck distributed and explained the LMAC Course and Scope Subcommittee Recommendation. **(Exhibit 17)**

00:27:55 Mr. Miller said this piece of legislation divided Workers' Compensation. He said there was a compromise, and it is an indication of what LMAC is capable of doing.

Committee comments and questions

00:29:04 Rep. Hunter asked what is the intent of the word "requested". Mr. Keck explained the need to address times when a worker feels obligated to be at an event. Employee would have to show that an employer has requested the employee to perform certain duties. Mr. Miller discussed a supervisor's or manager's position of authority and the relationship to a request. He said the proposal represents a compromise between labor and management.

Claim Closure Legislative Proposal

00:32:05 Mr. Keck distributed proposed legislation regarding claim closure. **(Exhibit 18)** He intends to have cost estimates by the May meeting.

00:39:26 Mr. Miller said that LMAC is working toward consensus and feels strongly about this piece of legislation.

Settlement of Future Medical Obligations

00:41:47 Mr. Keck distributed and explained proposed legislation regarding Claim Closure/Medical Settlement. **(Exhibit 19)**

00:48:08 Mr. Miller explained the process that LMAC used to get to this piece of legislation.

00:49:02 Mr. Keck distributed a corrected version of proposed legislation for Claim Closure/Settlement. **(Exhibit 20)**

Committee comments and questions

00:50:40 The committee discussed the possibility of no agreement being in place and questioned what will happen if there is no agreement. Mr. Miller said that is the risk involved by both parties. Mr. Keck talked about an agreement of guiding principles. He said the essence is that everyone agrees to fully discuss issues and listen to both parties knowing there might not be full consensus.

00:54:20 Rep. Reinhart questioned who will handle the jurisdiction when determining claims. Ms. Ferriter said they review case law regarding what the court looks at for best interest criteria.

00:56:22 The committee questioned the issues still remaining such as, are the workers receiving everything they need. Sen. Keane encouraged LMAC to deal with this issue and find consensus.

Overview of Montana's Work Comp System

- **Mike Taylor, National Council on Compensation Insurance, Inc.**

01:02:11 Mr. Taylor gave a report on the Workers Compensation System in Montana **(Exhibit 21)**

Committee comments and questions

- 01:10:39 Sen. Keane asked Mr. Taylor to analyze all bill proposals to see how much money will be saved. He said this presentation will be a baseline for the committee to compare the options.
- 01:12:52 Rep. Roberts asked if there is a better opportunity to negotiate as providers help drive down fees between hospitals and other groups. Mr. Taylor said it will provide better competition, and it will provide the best service to injured workers.
- 01:16:33 Mr. Keck and Ms. Ferriter talked about a benefit package and how it will provide information regarding the use of vocational rehabilitation and wage loss.
- 01:17:57 Ms. Ferriter said for every disabled worker, the insurer must designate a vocational rehabilitation worker to the case.
- 01:20:12 Sen. Keane and the committee discussed saving money through claim closure. Mr. Taylor commented that the sooner a claim is closed that money will be saved. Mr. Keck discussed permanent partial disability benefits.

BREAK

- 01:38:13 Sen. Keane reconvened the committee at 9:35 a.m.

Medical Care Access for Injured Workers in Montana

- **Ann Clayton, Workers' Compensation Consultant, Department of Labor**

- 01:38:48 Ms. Clayton gave a presentation on the findings of the survey on injured worker medical care access and satisfaction with care in the Workers' Compensation System. **(Exhibit 22)** She also discussed the response from medical providers in the Medical Provider Survey. **(Exhibit 23)** She discussed the survey question related to physicians considering quitting the medical field.

Relationship of Attorney Fees to Medical Payments (Lockhart Liens)

- **Al Smith, Montana Trial Lawyers Association;**
- **Kevin Braun, Montana State Fund;**
- **Erin MacLean, Montana Medical Association; and**
- **Bob Olsen, MHA, an Association of Montana Healthcare Providers**

- 01:57:27 Mr. Smith discussed liens and who pays attorneys fees.
- 02:04:09 Mr. Braun said State Fund's position is that each side pays their own attorney fees. He said that no party should be punished if claims are unreasonable. Mr. Braun said they are in opposition to the bill.
- 02:08:03 Mr. Olsen said workers' compensation carriers have enjoyed the benefits of receiving the fees. He talked about who pays medical costs, subtracting attorneys costs, and it isn't reasonable that the medical provider pays for someone's dispute.

02:12:37 Ms. MacLean said that Mr. Olsen did a good job of covering the Association's concerns. She gave an explanation of the American Rule regarding who should pay attorneys' fees and why they are paid the way they are. The Lockhart decision doesn't follow the American Rule. She talked about the pressure on the doctors who provide primary care for individuals on Medicaid and the reason there are fewer doctors providing that care. Because of the pressure from the Lockhart decision, the liens are required to be paid by the docs and the hospitals.

Response by LMAC

02:17:40 Mr. Keck said that LMAC has considered a proposal similar to SB 285 that would have limited payments to lawyers if they had to take a dispute through the court system. Their proposal is to limit attorney fees as provided under law to not be more than 25% of benefit awarded. They have had that bill priced by NCCI. They have a briefing paper that is posted on the web page that shows what other states are doing.

02:20:59 The committee discussed the length of action, is it unreasonable, and is it easy or difficult for the plaintiff to meet. Mr. Smith said it is almost impossible. Mr. Braun said it depends on the circumstances of the case. He disagreed that it is impossible.

02:23:04 Sen. Keane asked if the time factor is considered regarding the cost of attorneys, hospitals, and workers. Mr. Smith said NCCI put a price tag of \$175,000 on the time factor. Mr. Keck said they asked NCCI to price the language on SB 285, who responded that it is about \$360,000 in attorneys fees. He said that the revised projected costs for adopting SB 287, would be an additional cost to the system.

Presumptive Illness

- **Doug Neil, Montana State Firemen's Association**

02:25:36 Mr. Neil that HB 408 provided for presumptive language on behalf of firefighters' occupational diseases. He said that the insurers need to be included in discussions to help the passage of such a bill. He requested the committee's approval to work with the insurers to assist with legislation to keep costs down for employers and at same time protect firefighters. He asked, if they provide presumptive illness for firefighters, what about other employers? He said that currently 45 states have some form of heart lung/cancer presumptive law that Montana doesn't have. Through LMAC and WorkSafe Montana, the Association has tried to model the WorkSafe program currently in place in British Columbia (BC). He found that BC has a provision in the disease law and he would like Montana to have the same. He talked about not having to file a possible exposure report to figure out when he was exposed to the condition that resulted in his illness.

02:34:57 Joseph Sands, Billings, representing members of the Montana State Council of Professional Firefighters, talked about the physical toll that firefighters endure. He asked for help from this committee and LMAC to get relief for presumptive illness.

02:39:29 Sen. Keane asked for an explanation of coverage under MMIA. Mr .Neil said if anything happens on shift, there's no denial and the worker is covered. He gave an example of a worker on a structure fire and when he/she is done and leaves work, then suffers a heart attack or stroke, that firefighter has to prove that it was a result of the job. Sen. Keane asked Mr. Neil how is he covered for Workers' Compensation. Mr. Neil said he is covered through the City of Great Falls, which participates in MMIA.

02:41:53 Rep. Hunter asked about systems where there is presumptive illness eligibility. Mr. Neil said that they have looked at all coverages. He talked about states that have presumptive coverage for firefighters. He said it is about 50/50 where some states cover under Workers' Compensation and some under the retirement system. They want to contain costs, but at the same time provide a safety net for firefighters who will ultimately get sick from the job.

02:45:10 Rep. Reinhart asked if other states have statutes that have presumptive laws. Mr. Neil said he can provide that to committee. He said there are some states that have laws for all other safety personnel, including law enforcement, but law enforcement isn't exposed to same conditions as firefighters and he questioned why are they included.

Overview of Medical Fee Schedules

- **Jerry Keck, Administrator, Employment Relations, DLI**

02:48:22 Mr. Keck talked about fee schedules enacted in 2008. He said there are separate fee schedule for facilities. He said that ambulatory fees are now on the schedule, and he referenced a benchmark for base rate of treatment provided for hospitals on the private side and for the public side.

02:55:24 Frank Newhouse, University of California-Berkeley, has been analyzing the impact of facility fee schedules and non-facility fee schedules. He distributed a chart explaining the percent changes for an average reimbursement for a non-facility from RVP to RBRVS. **(Exhibit 24)**

03:01:55 Mr. Keck said he will provide a full report of the analysis and impact of the fee schedule. He said that true savings comes from; 1) every worker that is injured might not need medical treatment; and 2) utilization of treatment guidelines.

Utilization and Treatment Guidelines (UTG)

- **Jerry Keck**
- **Dr. Alan Dacre, Chair, Medical Provider Group (MPG)**

03:06:47 Mr. Keck talked about the guidelines of treatment stating the goal is to get injured workers appropriate treatment as soon as possible, and to reduce friction of preapproval. The MPG is composed of 15 providers who were asked to evaluate guidelines and make recommendations. **(Exhibit 25)**

03:09:04 Dr. Alan Dacre, orthopaedic surgeon, Billings, provided a summary of what the MPG reviewed and their recommendations. He distributed a copy of MPG's

recommendations. **(Exhibit 26)**

Committee comments and questions

- 03:20:33 The committee members asked about the difference between comprehensive guidelines and non-comprehensive guidelines. Dr. Dacre responded that a comprehensive set of guidelines address any type of injury there is. Dr. Dacre also described the goal of measuring outcomes and said a subcommittee of the MPG is looking at that.
- 03:24:02 Mr. Keck said DLI has statutory authority to collect the data.
- 03:26:17 Sen. Keane asked how close are they to implementation? Mr. Keck said they are in the initial stage of writing the Request for Proposals (RFP), and are looking at Colorado's system. He said they hope to have the RFP posted by the first of May, reviewed in June, with a timeline of posting the rule in its first cycle in July. Mr. Keck said the rule should be in place by this upcoming Legislature.
- 03:29:34 Sen. Keane asked if it will be mandatory by the first of year. Mr. Keck said that the voluntary part will be first than they will do the educational part after that.
- 03:30:15 Sen. Keane asked if there is an educational part in the RFP. Mr. Keck said they will rely on MPG to provide help, interpret, and promote. Dr. Dacre commented on outcomes and clarity. He said that the outcome that Mr. Keck is looking at is different from what medical providers look at. He said that providers don't look at costs or at the overall days out of work. They look at how a patient is doing when they come back from treatment and rely on the patients telling them how they are doing and how they function in daily life.

Public Comment

- 03:32:51 **Don Judge, Montana Injured Workers Council**, spoke on the utilization and treatment guidelines and noted that NCCI had recommended a decreased loss cost rate.
- 03:35:46 Sen. Keane asked Larry Jones if Liberty Northwest is looking at rate reductions in Montana? Mr. Jones said rate setting will take into account lower costs in underwriting and lower costs to premiums. He will contact underwriters in Oregon and provide that information to the committee.
- 03:37:04 Dick Root, vice president of operations, Montana State Fund, referenced NCCI's loss cost recommendations, and said rate making for Montana State Fund is up to the Board as to how much to take of NCCI's recommended rate reduction.

BREAK FOR LUNCH, returning at 12:45 p.m.

UPDATE ON STATE FUND REGULATION IN OTHER STATES -

- **PAT MURDO, COMMITTEE STAFF**

- 04:51:11 Ms. Murdo submitted and reviewed information regarding State Funds in other states (**Exhibit 27**), Review of State Funds' Regulation and Market Concentration (**Exhibit 28**), and the Oregon Department of Consumer Business & Services Workers' Compensation Premium Rate Ranking. (**Exhibit 29**)
- 05:03:48 Rep. Reinhart suggested to match up states to see if their type of regulation impacts their rates and the type of competition they have in the state. Ms. Murdo agreed to provide the information.
- 05:05:01 Ms. Murdo suggested the legislative auditor come to the May committee meeting to address any questions the members may have regarding audits, including any costs of an audit. Sen. Keane asked for a break down of costs between the auditor or insurance commissioner performing audit. Rep. Reinhart said she was curious about what it would cost to have a rate review like Montana's done in other states. Sen. Keane requested a full accounting of what those costs will be.
- 05:08:39 Ms. Murdo asked if the committee wants an actuarial review, an audit, or regulatory review. How deep does the committee want to go for oversight. The committee requested both.

REVIEW OF SUBCOMMITTEE'S DISCUSSION ON HIPAA, RETURN TO WORK, AND MONTANA WORKERS' COMPENSATION LAWS

• **REP. HUNTER AND REP. ROBERTS**

- 05:09:40 Rep. Hunter reported on the subcommittee's activities. He said that discussion centered around the uncertainty regarding the disclosure of medical information. The State Fund had prepared a draft proposal and that proposal served as a foundation for further discussion. Rep. Hunter said the next subcommittee can be held as a conference call if everyone is not able to attend in person.

Committee comments and questions

- 05:13:21 Rep. Roberts asked about the guidelines and are they currently being followed de facto, and will this add a certain degree of comfort.
- 05:13:48 Mr. Campbell said that all parties are being allowed until next week to submit comments.
- 05:14:35 Ms. Murdo suggested the committee could ask for a bill draft request. Information will also be posted on the website. Also, Ms. Murdo has begun to compile a list of interested parties. The committee agreed to submit a bill draft request.

OFFICE OF INSURANCE COMMISSIONER ON ENFORCEMENT OF BAN ON AUTO BODY REPAIR SHOP STEERING

- **Barbara van der Mars, State Auditor's Office**

05:16:26 Ms. van der Mars spoke about the process used to pursue consumer auto body repair shop complaints. Ms. van der Mars stated her office must receive a written complaint from either a claimant or an insured before the State Auditor's Office can investigate.

Committee comments and questions

05:22:17 Rep. Vance requested clarification about an individual who is insured. Ms. van der Mars explained that the office does not want to release information on an insured without their knowledge.

05:26:58 Sen. Keane referenced last session's agreement to avoid "steering" and that both parties said they could live with it. He asked why it is not working. Ms. van der Mars talked about private information that could be contained in a claim file.

05:33:22 Sen. Keane requested Mr. Campbell to investigate the issue with the State Auditor's Office. Mr. Campbell will report at the May EAIC meeting.

PUBLIC COMMENT ON ANY ITEM ON THE AGENDA OR ANY OTHER ISSUE UNDER THE COMMITTEE'S PURVIEW

05:36:28 Nancy Butler, State Fund, gave an overview of the history of State Fund. Ms. Butler submitted and reviewed the "Oregon Rate Study Index Rate & Market Concentration by State" (**Exhibit 30**), and talked about the "Herfindal-Hirshman Index versus Oregon DCBS 2008 Index Rate". (**Exhibit 31**)

Committee comments and questions

05:41:29 Ms. Murdo requested any additional bill draft requests or proposals from the Committee. Rep. Hunter recalled there were other proposals presented to the committee. Mr. Keck said that DLI's proposal could be addressed through the Advisory Council.

05:44:39 Rep. Hunter asked Mr. Keck to consider whether a statutory reference to a chief medical officer would make any sense. Ms. Murdo talked about compiling information from other states.

05:46:05 Ms. Murdo submitted a calendar of the Economic Affairs Interim Committee meetings for the committee to discuss the upcoming committee's schedule. (**Exhibit 32**)

RULE REVIEW

- **BART CAMPBELL, STAFF ATTORNEY**

05:50:57 Mr. Campbell gave an overview of written comments he received from former Sen. Duane Grimes (**Exhibit 33**), and a rule from DLI that will be reviewed on April 2nd. He also distributed a copy of A.R.M. 24.16.201. (**Exhibit 34**) The committee will address this issue at its May meeting.

Public Comment

Colleen Grass faxed in comments about Limited Access Permit Legislation.
(Exhibit 35)

Kevin P. Conroy, D.M.D., P.C., faxed comments regarding Limited Access Permit. **(Exhibit 36)**

ADJOURN

There being no further business, Sen. Keane adjourned the Economic Affairs committee at 3:30 p.m.

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