



Economic Affairs Interim Committee

58th Montana Legislature

SENATE MEMBERS

GLENN ROUSH--Vice Chair
SHERM ANDERSON
JEFF MANGAN
MIKE TAYLOR

HOUSE MEMBERS

JOE MCKENNEY--Chair
NANCY RICE FRITZ
JIM KEANE
SCOTT MENDENHALL

COMMITTEE STAFF

PATRICIA MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

September 7, 2004

Room 137, State Capitol
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

REP. JOE MCKENNEY, Chair
SEN. GLENN ROUSH, Vice Chair

SEN. SHERM ANDERSON
SEN. JEFF MANGAN
SEN. MIKE TAYLOR

REP. NANCY RICE FRITZ
REP. JIM KEANE
REP. SCOTT MENDENHALL

STAFF PRESENT

PATRICIA MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The committee:

- approved the change in the May 5, 2004, minutes, as requested by Bart Holaday;
- approved the June 30 and July 1, 2004, minutes, as written;
- accepted SB 270 Study Committee proposed legislation revising the definition of an independent contractor as a committee bill (IClegislation.doc - EXHIBIT #4);
- heard proposed legislation of the SB 304 Study Committee recommendations for legislation regarding the State Compensation Insurance Fund;
- approved LC 6666 amending the Occupational Disease Act as a committee bill; and
- adopted the Committee final report.

CALL TO ORDER AND ROLL CALL

REP. MCKENNEY called the final meeting of the Economic Affairs Interim Committee to order at 9:33 a.m. The secretary noted the roll, all members were present (ATTACHMENT #3).

Pat Murdo, Research Analyst, Legislative Services Division (LSD), noted that **Bart Holaday, Adams Street Partners**, requested that the minutes of the May 5, 2004, meeting reflect that Adams Street Partners is paid an investment fee of 1%, not 10%, as stated in the minutes. The Committee voted to approve the corrected version of the May 5, 2004, minutes on a unanimous voice vote.

The Committee approved the minutes from the June 30 and July 1, 2004, meeting as written on a unanimous voice vote.

RULE REVIEW -- BART CAMPBELL, STAFF ATTORNEY, LEGAL SERVICES, LSD

Mr. Campbell reported there was no rule review necessary at this time. He said he anticipated hearing from the Board of Medical Examiners and the Board of Nursing once certain rules regarding medical assistants have been filed with the Secretary of State. He said he would keep the Committee members informed on that issue.

SEN. MANGAN voiced concern that the proper procedure is not being followed in this particular issue and asked if the Economic Affairs Committee has any recourse if that turns out to be the case. REP. MCKENNEY said recourse, if needed, could be pursued legislatively since little time remained in the interim.

Mr. Campbell said that when the rules regarding medical assistants are filed with the Secretary of State's Office, he also will review them for compliance with the Administrative Procedure Act. If the proposed rules do not comply with the Act, Mr. Campbell said he would contact REP. MCKENNEY, who could either approve a letter to the Board of Medical Examiners to express the Committee's concerns regarding the medical assistant rules or that, as Chair, REP. MCKENNEY could also call an additional meeting. Mr. Campbell said that with a legislative session so close at hand, if there was a serious objection from any legislator, the Board would probably try to more thoroughly spell out what it is trying to accomplish.

REPORT ON SB 304 AND PROSPECTIVE LEGISLATION

Sen. Royal Johnson, Billings, presented a report from the SB 304 Study Committee (EXHIBIT #1). The SB 304 Study Committee was charged with studying the role of the State Compensation Insurance Fund and whether it was cost effective and in the best interest of the state, whether Montana employees and Montana employers should sell all or a portion of the State Compensation Insurance Fund assets and liabilities, and if an assigned risk pool should be created. The Committee was charged with making separate determinations in regards to the Old Fund and the New Fund. The Committee is to report to the 59th Legislature and the Governor on the determinations made in the study, and to prepare any necessary legislation as part of the report to implement a recommended sale. Sen. Johnson then discussed the 12 recommendations contained in the report (EXHIBIT #1).

Sen. Johnson distributed and discussed an August 23, 2004, letter from Greg Petesch, Director of Legal Service, LSD, regarding Sen. Johnson's request for analysis of section 39-71-2352, MCA, (EXHIBIT #2).

Laurence Hubbard, President, Montana State Fund (MSF), reviewed for the Economic Affairs Committee that at the May meeting he had requested a draft bill to allow the Montana State Fund to be exempt from the approval process related to information technology services, as well as certain procurement provisions. Because of the lack of support from the SB 304 Study Committee and the Governor's Office, Mr. Hubbard stated he was withdrawing his request.

SEN. TAYLOR asked Sen. Johnson, regarding the tax on the workers' compensation fund, if research shows that this tax will result in lower rates, as intended. Sen. Johnson said research does support this proposal and that testimony heard by the SB 304 Committee has indicated that in order to level the playing field, the tax is an absolute necessity.

SEN. TAYLOR asked Mr. Hubbard why he wanted his agency to be exempt from the state's procurement requirements. Mr. Hubbard said that Montana State Fund operates as a business which collects premiums, pays claims, and has to compete for customers. Speed to market is critical and is complicated by having to follow the state requirements.

REPORT ON SB 270 AND PROSPECTIVE LEGISLATION

Jerry Keck, Administrator, Employment Relations Division, Department of Labor & Industry (DOLI), said he was appearing before the Committee on behalf of the SB 270 Independent Contractor Study Committee to request that the Economic Affairs Committee adopt a proposed bill, as recommended by the SB 270 Independent Contractor Study Committee. Mr. Keck provided a document (EXHIBIT #3), which listed:

- the SB 270 Study Committee members;
- the general principles adopted by the SB 270 Study Committee; and
- the key components of the proposal from the SB 270 Study Committee.

Mr. Keck said establishing certainty and fairness were key in the Study Committee's efforts to establishing a definition of an independent contractor.

Mr. Keck provided copies of the draft legislation resulting from the SB 270 Study (IClegislation.doc - EXHIBIT #4) and explained the components of the bill.

The following members of the SB 270 Study Committee on the proposed legislation:

Cary Hegreberg, Montana Contractor's Association (MCA), said the MCA is in support of the proposed legislation because:

- it meets the needs and concerns of independent contractors;
- it retains legislative intent in providing for an exemption for independent contractors; and
- it provides for more accountability for employers and will prevent the types of abuses that led to the Supreme Court decision in the Wild case.

Webb Brown, Montana Chamber of Commerce, stated the Chamber is in support of the proposed legislation.

Jason Miller, Pacific Northwest Regional Council of Carpenters, Helena, echoed comments made by Mr. Hegreberg, saying the Committee members focused on solving the problem and produced a good solution.

Byron Roberts, Montana Building Industry Association (MBIA), stated his association is in agreement with the statements made regarding the draft legislation. His association has been aware of abuses in the system for quite some time. An IC exemption is meant for a proprietor of a business and not to be a system for employees to avoid paying workers' compensation.

Riley Johnson, National Federation of Independent Businesses (NFIB), said the independent contractor issue is a major one for small businesses. Mr. Johnson reported a recent study revealed there are 31,000 independent contractors in Montana, as compared to 2,800 in Washington. Mr. Johnson said he could not officially endorse the proposed legislation until the NFIB members vote to approve it in late September.

Carl Schweitzer, American Subcontractor's Association of Montana, said his association participated in the study and is in support of the draft legislation. He added that it has been a long and arduous process of trying to craft something that would meet the Court decision, yet counter the abuse that is in the system.

Bob Worthington, Montana Municipal Insurance Authority & the Montana Self Insured Association, testified that the associations he represents agree with previous comments made regarding the difficulty created by the Wild decision and that the remedy crafted by the SB 270 Study Group should help resolve the independent contractor problem.

Committee Discussion

SEN. ROUSH asked Mr. Keck to clarify that individuals working on their own would be exempt from the IC license. Mr. Keck said sole proprietors and other independent businesses would be exempt from the workers' compensation requirement. SEN. ROUSH referenced a recent situation in which an independent contractor sued a homeowner after falling off the homeowner's roof and asked if the proposed legislation would remedy that type of situation. Mr. Keck said there are differing opinions on whether homeowners may be sued and that the

issue may be outside the role of this legislation. He asked Kevin Braun, chief legal counsel for the department, to comment.

Kevin Braun, Department of Labor and Industry, said the legislation proposed by the SB 270 Independent Contractor Study Group would not prevent those types of lawsuits. This bill will address the workers' compensation component associated with any liabilities flowing from the workers' compensation system.

REP. MENDENHALL asked how many additional full-time employees (FTE's) the proposed legislation would require and what the cost of education and on-site audits would be, if implemented. Mr. Keck estimated it would take an additional 4-6 employees and that 15% of the registration fee is dedicated to an educational program. He added that the SB 270 Committee is considering increasing that to as much as 25%. The biannual fee will be between \$100 - \$125. REP. MENDENHALL asked how much an increase that will be over the existing fee. Mr. Keck said the current fee is \$17 and did not know what percentage increase that amounted to.

SEN. TAYLOR asked if the bill would need a fiscal note. REP. MCKENNEY said a fiscal note would be attached during the legislative process.

REP. MCKENNEY said the SB 270 Study Committee has requested that the Economic Affairs Committee approve this bill as a committee bill. If that is not done, an individual legislator may pick it up and sponsor it.

SEN. MANGAN **moved to adopt** the draft legislation presented by the SB 270 Study Committee as a committee bill (IClegislation.doc - EXHIBIT #4). The **motion passed** on a unanimous voice vote. SEN. ANDERSON agreed to sponsor the bill.

Sen. Johnson asked to have the Economic Affairs request that the SB 304 Study Committee bills be drafted but not have sponsors assigned.

REP. KEANE **moved** to draft the proposed legislation of the SB 304 Study Committee. The **motion passed** on a unanimous voice vote.

REVIEW OF SJR 17 OPTIONS

LC 6666 - Amending the Occupational Disease Act

Eddy McClure, Staff Attorney, LSD, reminded the Committee that it had eliminated the "do nothing" option in the Workers' Compensation Simplification portion of SJR 17. Ms. McClure referred the members to LC 6666 (EXHIBIT #5) and said a preamble has been added to the bill draft and was needed to explain the background of the issue and why the Committee chose this option. Ms. McClure said it was her hope that this would speed up the legislative process in trying to explain it to legislators not familiar with the issue. Ms. McClure then reviewed LC 6666 with the Committee members.

Public Comment on LC 6666

Larry Jones, Liberty Northwest Insurance, reviewed the "merger" option of merging the Occupational Disease Act with the Workers' Compensation Act. He said, while that was the goal of the working group, at this point there are too many uncertainties to proceed with that option. Mr. Jones asked the Committee to reconsider the "do nothing" option. He said exploration of the possibility of merging the two Acts would continue amongst the self-insureds and insurers

Jacqueline Lenmark, American Insurance Association (AIA), said her association concurs with Mr. Jones' request to the Committee and that she would like the Committee to know that she remains committed to working on the merger option but thinks that additional time is needed before adoption of the merger proposal.

Nancy Butler, Montana State Fund (MSF), concurred with the remarks made by Mr. Jones and Ms. Lenmark in requesting that the Economic Affairs Committee take no action at this time on amending the Occupational Disease Act.

Jerry Driscoll, Montana State AFL-CIO, said he was surprised and disappointed by the change of mind testified to by the working group members and still urged codification of the three Supreme Court rulings impacting this issue.

Shawn Bubb, Montana Schools Group Insurance Authority, said he was also speaking on behalf of George Wood, and the Self-Insureds Association, in saying that they also favor postponing action on the merger option.

Committee Discussion on LC 6666

SEN. MANGAN **moved** to adopt LC 6666 as a Committee bill.

REP. MCKENNEY asked for a further explanation of why he and other stakeholders were recommending the "do nothing" approach at this time. Mr. Jones said the Supreme Court makeup is of concern to the working group, as well as other issues. The working group wishes to continue its work toward merger, but also thinks that because this is such an important issue, decisions should be made only after careful consideration and deliberation.

REP. KEANE stated he would support SEN. MANGAN's motion but thought it was a "band aid solution" and that the best solution would be to allow the same benefit for both injury and occupational disease.

SEN. MANGAN expressed his strong displeasure with the point of view expressed by the working group members and said he found it offensive that so much work had been done by so many for the recommendation to be made now to abandon it. He said LC 6666 had his continued support.

REP. MCKENNEY said he would support the motion to approve LC 6666, if only to keep the pressure on the stakeholders to come to an agreement.

SEN. MANGAN's **motion to approve LC 6666 passed** on a 6-2 voice vote, with SEN. ANDERSON and REP. MENDENHALL voting no. SEN. MANGAN agreed to sponsor LC 6666.

LC 9896 - Revising Definitions of Employees for Workers' Compensation Purposes

Pat Murdo, Research Analyst, LSD, directed discussion to LC 9896 (EXHIBIT #6). She reviewed for the Committee that at the June meeting, the Committee had requested that the two options on exemptions be put together: one was to take out some of the exemptions and the other one was to reorganize and simplify exemptions. Ms. Murdo then explained the language changes in and provisions of LC 9896.

Public Comment on LC 9896

Nancy Butler, MSF, said the proposed bill would accomplish what the Committee had requested be done at the June meeting. The language can continue to be fine tuned and clarified, if needed.

Jacqueline Lenmark said the AIA supports this draft and asked the Committee's indulgence to allow work to continue in developing the bill. She said it has been difficult to integrate but that results would be excellent if continued work is allowed.

Committee Discussion on LC 9896

SEN. ANDERSON referred to Page 16 of LC 9896 (EXHIBIT #6) and said the language "and who devote full time to the partnership, limited liability partnership, or limited liability company...." would prevent him from supporting the bill. He asked to have the original language of "working member" put back in the bill.

Ms. Murdo said the language had been changed to ensure more similarity in the bill and that it could be amended, as requested by SEN. ANDERSON.

REP. MENDENHALL said he could see SEN. ANDERSON's point but that he wasn't sure he could support a draft that is constantly fluid. He suggested consideration of LC 9896 when it is has been finalized.

SEN. TAYLOR agreed with REP. MENDENHALL, saying the bill could be resurrected and put into the system after the problems are worked out, instead of voting on it as a Committee bill.

SJR 17 Final Report

Pat Murdo, LSD, presented *Tweaking Workers' Compensation Statutes...And More - Final Report of the SJR 17 Committee* (EXHIBIT #7). She said George Wood has requested more information be included regarding the importance of the Workers' Compensation Act as the exclusive remedy and the importance to the employer for having that exclusive remedy. Ms. Murdo asked the Committee members for input, saying the report will be the SJR 17 Subcommittee's final report to the 2005 Legislature.

REP. MCKENNEY asked to have the word "tweaking" removed from the final report title.

DEPARTMENT OF LIVESTOCK UPDATE

Marc Bridges, Executive Officer, Department of Livestock, provided information pertaining to the Meat & Poultry Inspection Bureau (EXHIBIT #8). He explained the facility licensing process and noted the licensed state and federal inspected plants operating in Montana.

Mr. Bridges said the Inspection Bureau operates with 17.5 full-time employees (FTEs) and is requesting two additional FTEs for fiscal years 2006-07 (EXHIBIT #9).

SEN. MANGAN said the Department of Livestock has been very cooperative in its efforts to comply with the Economic Affairs Committee's request to improve the inspection process. He supported the request for additional FTE's and suggested that the Committee write a letter of support. This would have an economic impact because it may make the difference between a new business being started in Montana or not.

In response to a question from SEN. ROUSH regarding the length of time it takes to approve an application, Mr. Bridges said circumstances vary and range from problems with loan applications to impacts of court decisions.

SEN. ANDERSON said asked what is the total number of facilities the existing 15 FTEs have to inspect. Mr. Bridges said the inspectors are responsible for inspecting 54 different plants all across the state, as well as 150 custom-exempt plants.

MONTANA ASSOCIATION OF COUNTIES (MACo) ECONOMIC DEVELOPMENT PERSPECTIVES

Anita Varone, Chair, Montana Association of Counties Economic Development Committee (MEDC) & Lewis and Clark County Commissioner, said county commissioners have not typically gotten involved in economic development but have come to understand the important role local government plays in economic development. The nine-member economic development committee was started by MACo and is made up of county commissioners from across the state. The foremost role of the MEDC is to promote economic development across the state and to provide services to establish a stable Montana economy. The MEDC provides services to help maintain and/or expand existing Montana businesses, as well as to recruit businesses to the state.

Ms. Varone also distributed copies of the MACo current position regarding Montana Economic Developers Association (MEDA) Initial Agenda for the 2005 Legislative Session (EXHIBIT #10). She said MACo has not formally adopted a position and would be voting on it at the end of September.

SEN. MIKE TAYLOR - COMMENTS ON ECONOMIC DEVELOPMENT IN MONTANA

SEN. TAYLOR addressed the Committee on the issue of economic development. SEN. TAYLOR distributed and discussed:

- a table of workers' compensation premium rates to illustrate Montana's rates, as compared to surrounding states (EXHIBIT #11);
- 12 key points essential for economic development in Montana (EXHIBIT #12);

- the pillars of economic development (*Corner Stones for Economic Development*, EXHIBIT #13); and
- a proposal for placing the Department of Commerce under the Governor's Office (EXHIBIT #14).

REP. MCKENNEY thanked SEN. TAYLOR for his eight years of service as a state senator and for his interest and expertise in economic development in Montana.

ENCORE ACQUISITION CO., JEROME ANDERSON & JON BRUMLEY

Jerome Anderson, Legal Counsel for Encore Acquisition Co., introduced Jon Brumley, Chief Executive Officer, Encore Acquisition Co., as a prominent member of both the national independent oil and gas production industry and of the Texas education community. He also provided a biography of Mr. Brumley's business achievements and accomplishments (EXHIBIT #15).

Jon Brumley, CEO, Encore Acquisition Co., introduced Tim Oley, Senior Vice President, Encore Acquisition Co., and Jennifer Ludwig, Senior Reservoir Engineer, Encore Acquisition Co. Mr. Brumley thanked the legislators for the tax policies implemented in Montana, saying that they are consistent and are working.

Mr. Brumley provided copies of "*Encore Acquisition Company - Renewing Vintage Fields*" (EXHIBIT #16). The presentation summarized Encore's acquisition and development of the Cedar Creek Anticline oil field located in eastern Montana and western North Dakota. Mr. Brumley also included details of Encore's plan for future expansion and activity.

REP. KEANE asked where Encore is purchasing its electricity. Mr. Brumley said Montana Dakota Utilities (MDU) is Encore's primary provider. REP. KEANE asked if Encore has plans to build its own air compressors or if it plans to continue to purchase compressed air. Mr. Brumley said Encore plans to eventually have the capability to compress its own air.

REP. MCKENNEY asked when the job numbers, currently 380-plus in Montana, would peak. Mr. Brumley said he couldn't say with absolute certainty. He referred to Pages 16 and 18 of EXHIBIT #16 and said this is a long-term project that will be going on for decades. He stated that there may not be an actual peak of numbers and that he would rather see a certain level sustained over a long period.

REP. KEANE asked if high oil prices would affect development. Mr. Brumley didn't think so, saying that Encore is conservative and doesn't think the high oil prices will last.

REP. RICE FRITZ asked if the likelihood of environmental problems are lessened using air pressure versus water pressure. Mr. Brumley thought that was true because water has to be reinjected and is generally more difficult to work with.

SEN. TAYLOR asked if air injection could be used in coal bed methane gas extraction. Mr. Brumley said it could not.

CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS

Mark Simonich, Director, Department of Commerce (DOC), gave a brief update on the Certified Regional Development Corporations (CRDC). Director Simonich said the CRDCs were formed as a result of HB 76 in the 2003 Legislature. He reported the program has successfully certified 12 regions (EXHIBIT #17). He noted that two counties have chosen not to participate at this time but have the option of joining one of the regional organizations in the future. Mr. Simonich then discussed each of the 12 regions.

SEN. ANDERSON asked how the funding is allocated to the regions. Director Simonich said every organization receives a minimum of \$25,000, but that an additional \$60,000 is available for regions that meet additional criteria, such as the number of counties in the organization, the number of either incorporated or unincorporated communities served, and the population of the counties.

SEN. ANDERSON if there is a plan to form additional regions. Director Simonich thought that 12 regions are adequate and that discussions have been held with the two outstanding counties to determine why they didn't join and if they are interested in joining at some point. Their viewpoint is that they are doing fine on their own and don't see the need to join. The DOC is hoping that at some point they will choose to join, but they don't have to join. Other programs, such as the Small Business Development Center, still are provided to the counties, whether or not they are a member of one of the regional programs.

REP. MCKENNEY asked if a county could move from one region to another. Director Simonich said counties are allowed to change regions and that it is up to the county commissioners to make the final decision. The DOC has to be notified of any moves or changes.

REP. MENDENHALL referred to a chart provided by Pat Murdo, LSD (Historical Comparison of Montana Employment and Wages and Salaries - EXHIBIT #18) and pointed out that when compared to Wyoming's recent allocation of \$18 million to the Wyoming Economic Development Association (WEDA), it becomes very evident that Montana must continue to work on how to utilize the natural resources it has available, which could make a big difference in what could be done within the certified regional development organizations.

CARROLL SOUTH, MONTANA BOARD OF INVESTMENTS (MBI) -- CREDIT SUISSE FIRST BOSTON STUDY

Carroll South, MBI, commented that the Credit Suisse First Boston Corporation (CSFB) was asked by the Board to determine if there are viable economic development programs in the state of Montana in which the Board could prudently invest pension funds. CSFB spent approximately six weeks traveling the state meeting with economic development programs, the university system, and financial companies. CSFB's report will be presented to the Board on September 16, 2004. Mr. South said he has prepared a preface for the CSFB report which outlines past efforts to improve economic development in Montana.

SEN. MANGAN said he would like to see both the CSFB report and the preface prepared by Mr. South as soon as possible after September 16. He asked Mr. South to contact LSD staff to

pass along the materials to the Committee members. All members indicated they would like to receive copies of the reports. Mr. South said he would provide those materials.

COMMITTEE PROPOSED LEGISLATION

REP. MCKENNEY noted that SEN. MANGAN and REP. MENDENHALL were unable to attend the remainder of the meeting and that he had REP. MENDENHALL's proxy. REP. KEANE reported that SEN. MANGAN had given him his proxy.

Dave Gibson, Governor's Office of Economic Development (GOED), emphasized that the proposed bills do not reflect 100% consensus, but represent a compromise between the groups and individuals who worked on the bill drafts and that the proposed bills fulfill the requirements set forth by the Economic Affairs Committee.

Mr. Gibson reviewed that the Committee members had been sent LC 150 (EXHIBIT #19 - Creating the Montana Capital Investment Board -purple copy) and said that after review and discussion of the bill, additional changes were made. Mr. Gibson discussed the changes made in the revised version of the proposed bill, LC 5600 (EXHIBIT #20 - Creating the Montana Equity Capital Act -green copy).

Mr. Gibson distributed draft copies of *MONTANA EQUITY FUND - Expanding the Supply of Seed and Venture Capital For Montana Entrepreneurs* (EXHIBIT #21), noting that the document is labeled "draft" because the stakeholders would like the Committee's input. Mr. Gibson said the document is largely based on Oklahoma's program because of its longevity and noteworthy record of success and that adjustments have been made to accommodate Montana law.

Mr. Gibson reminded the Committee that, as currently structured, both the green and purple versions of the equity fund bill (EXHIBIT #s 19 and 20) encourage investment in Montana businesses, but that the free market is used as much as possible to do it. In the initial stage of the fund, investments outside the State of Montana will be allowed. The bill will require that businesses who receive money through the deferred tax credit mechanism have a presence in Montana, but that they will not be forced to invest money into Montana businesses.

Jon Marchi, Montana Ambassadors and Glacier Venture Capital Fund, agreed with SEN. TAYLOR's earlier remarks regarding economic development issues in Montana and said, in terms of average wages per job, Montana ranks 50th. Regarding the status of venture capital in Montana, Mr. Marchi pointed out that his venture capital firm, Glacier Venture Capital Fund, is the only active venture capital firm operating in Montana. He noted that the 2003 Legislature attempted to pass a venture capital bill (SB 465) but that it was very complicated and required investments in Montana businesses only. Mr. Marchi said the proposal to establish the Montana Equity Fund is based on the Oklahoma program and is less complicated than SB 465. He explained that the number one priority of the Montana Equity Fund is to make money and in order to do that, out-of-state investments must be allowed, at least initially. Using the structure of the Oklahoma program and applying it to Montana data, it is estimated that over \$120 million should come back into Montana over the next 10-12 years, as long as the venture capital companies have no restriction in terms of where they invest their money. A new feature of the Montana Equity Fund is the Montana Evergreen Fund which will receive 75% of the post tax

credit proceeds from the Montana Equity Fund and will invest exclusively in Montana businesses. Mr. Marchi referred the members to the last page of the handout (Page 3, EXHIBIT #21) in order to illustrate how the flow of money would work.

Mr. Gibson referred the Committee members to *SUMMARY OF MAJOR CHANGES TO FUND OF FUNDS LEGISLATION* (EXHIBIT #22) and explained the seven significant changes between LC 0150 (EXHIBIT #19-purple copy) and LC 5600 (EXHIBIT #20-green copy). Mr. Gibson noted that the new language added to LC 5600 appears as bold type.

Karen Powell, State Auditor's Office, said she planned to review the changes in LC 5600 that affected premium tax and that she would ascertain if the new language is acceptable to the industry and to the State Auditor's Office.

Public Comment

Brian O'Keefe, AA Capital Partners, Inc., Chicago, IL, said his company was very interested in doing business in the State of Montana. He distributed copies of a report containing an overview of AA Capital Partners, an analysis of potential Montana investment opportunities, and his analysis of the proposed legislation (EXHIBIT #23).

Dick King, President/CEO, Missoula Area Economic Development Corporation, MAEDC, commented that, as an administrator of Mon-Tech, the Montana Technology Enterprise Center, he is aware of several companies in Mon-Tech that are trying to commercialize research at the University of Montana and are struggling to build their companies. This legislation would be very beneficial to those companies. Mr. King said it must be understood that the key language in the bill is "shall seek", which, in the opinion of the MAEDC, is weak. The MAEDC would prefer to see more specific language requiring perhaps a small portion of the fund to be invested in Montana companies.

Elizabeth Harris, President, Jobs Now, & CEO of Flathead County Economic Development Authority, said she completely supports LC 5600 - the Montana Equity Fund because it will build infrastructure that is currently lacking in Montana and that must be in place to grow high value companies.

Jeanne Windham, Small Business Owner, Polson, thanked SEN. TAYLOR for his comments. Ms. Windham said she is very aware that this is not a quick fix and compared economic development to a big jig saw puzzle, saying that access to private capital is an integral and necessary part of the puzzle. She said she fully supports LC 5600.

Committee Discussion

SEN. ANDERSON asked Dave Gibson, GOED, to comment on why basing LC 5600 on Oklahoma's model is suitable for Montana. Mr. Gibson said he recognizes that every state is different but that although Oklahoma has a larger population than Montana and has different attributes, it still has a large rural component and history of similar industries.

SEN. ANDERSON asked for an explanation of the board that would provide oversight of the Montana Equity Fund. Mr. Gibson said the composition of the board is defined on Page 4 of LC

5600 (EXHIBIT #20) and would be appointed by the Governor. SEN. ANDERSON said it would be essential that the board members be experienced and educated on venture capital. Mr. Gibson agreed that extensive knowledge and understanding of venture capital would be critical in selecting board members.

REP. RICE FRITZ commented that she generally supports the idea but wondered about the possibility of other opportunities to use tax credits to encourage investment in Montana companies only. Mr. Gibson said that historically, government has a poor record of determining the "hot" industries. This bill allows the market to make the individual decisions on what the next hot industry. Government helps create the industry but avoids making the decision on where the appropriate investments are.

REP. RICE FRITZ asked Mr. Gibson if he would consider Mr. King's earlier suggestion of strengthening the language in EXHIBIT #20. Mr. Gibson said he would object to changing the language because flexibility is needed in order to avoid having to use the tax credits.

REP. KEANE said he saw a number of problems with the bill, for example, how to explain to constituents that their money was going to be invested in out-of-state businesses. Mr. Gibson agreed that would be a difficult issue to handle, but said the use of tax credits would be almost a certainty if out-of-state investing is not allowed. He noted that the Evergreen fund would eventually be available and would be invested 100% into Montana businesses.

REP. KEANE asked if investments in Montana could be done first, and then allow out-of-state investments. Mr. Gibson said that could be done but would all but guarantee the use of deferred tax credits.

REP. MCKENNEY **moved** to support LC 5600 as a committee bill.

SEN. ANDERSON shared REP. KEANE's concerns and said while the bill does have merit, it would be difficult to support because of its complexity. He said he could not support LC 5600.

REP. KEANE stated that SEN. MANGAN had placed his proxy vote in support of LC 5600 with him but that he personally would not support LC 5600. He recommended additional work to clean up some of the problem areas before introduction.

REP. MCKENNEY said any bill that is approved as a committee bill should have strong support and that it appeared to him that LC 5600 would not have a high level of support from the committee members. He withdrew his original motion to approve LC 5600.

REP. KEANE encouraged the working group to continue its work on the bill and to find a sponsor for the bill. SEN. TAYLOR agreed with REP. KEANE's comments, saying that he would like to see it presented to the 2005 Legislature, providing additional work is done to clarify and simplify LC 5600.

MONTANA ECONOMIC DEVELOPERS ASSOCIATION (MEDA) BILL DRAFT REQUESTS

Dick King, MEDA, said the MEDA has a meeting scheduled with Carroll South, Montana Board of Investments, to attempt to work out differences regarding the workforce training bill.

Evan Barrett, President, MEDA, discussed two bill draft proposals:

- LCmed1 - exempting a local economic development mill levy from a local government's mill levy limitation (EXHIBIT #24), and
- LCmed2 - property tax break for new industry (EXHIBIT #25).

Regarding LCmed2 (EXHIBIT #25), Mr. Barrett pointed out that after the draft had been sent out, MEDA reconsidered the draft and concluded that the language should be broadened to extend beyond "value adding industry". MEDA feels the definition should include "value adding industry or getting 50% of the revenues from out of state". This is a discretionary tax break, either on the part of local government or on the part of the state. MEDA would like that modification to be made and would support the bills with that change in language made.

Bart Campbell asked Mr. Barrett to clarify if he wished to also exempt port authority mill levy from the local government cap. He said the current version of the bill is not written that way and if that is the Mr. Barrett's intention, the changes should be made now. Mr. Barrett said originally two ports have asked to be removed, which MEDA has done. He then noted that the port authority mechanism has become common in Montana for potentially assessing mills for economic development in Montana. They are not in the bill as MEDA proposed it. Mr. Barrett said the port authorities should be included in the bill.

LCmed1 Discussion -- Exempting a Local Economic Development Mill Levy from a Local Government's Mill Levy Limitation

SEN. TAYLOR commented that it is ill-advised to impose a mill levy or raise taxes without the people's consent and that this issue should be left to a vote of the citizens.

SEN. ROUSH asked for an explanation of current exemptions. Mr. Barrett referred to Page 3, subsection (5), of LCmed1 (EXHIBIT #24) and said the current exemptions from the cap were specified there.

No motion was made on LCmed1.

LCmed2 Discussion -- Property Tax Break for New Industry

Mr. Barrett explained the components of the bill and what it would establish. He noted that MEDA would like to expand bill language to include "the term only applies to business enterprise that maintains the required number of new jobs, as provided for in (2)(a) for the entire three-year period, and (1) is producing or will produce value-added products or commodities, or (2) derives more than 50% of its revenues from outside Montana". This would allow non value-adding businesses, such as service sector businesses, to qualify if they are basic sector and fit other definitions that the Board of Investments uses to define basic sector.

Mr. Barrett added that when the business equipment tax was at 11%, the statute to be amended by LCmed2 was a very valuable tool but now is no longer effective with real property taxed at 3.3% and business equipment taxed at 3%. Mr. Barrett said setting a new class - Class 14 - would make that incentive work again.

SEN. TAYLOR said LCmed2 (EXHIBIT #25) gives a narrow tax break to a few businesses that mainly operate out-of-state. He said lowering the business equipment tax to 2% would alleviate the problem. He said he supports economic development but thought the bill proposal was too narrowly focused and said he would rather the money be spent on workforce training.

SEN. ANDERSON asked for clarification on whether this would be a potential tax credit for existing businesses in Montana that expand as long as it is tied to value-added products. Mr. Barrett said it would not be a tax credit but rather a tax break. It would be a reduction in the property tax. The new language would allow that it would apply to new *"and expanding"* businesses. SEN. ANDERSON asked if it was accurate to say that the new law would apply to existing Montana businesses, as well as out of state entities that may want to do business in Montana. Mr. Barrett said that was correct, as long as the company met the 10 jobs threshold.

SEN. TAYLOR asked what the fiscal note on LC med2 might be. Mr. Barrett believed there would be no fiscal impact because the existing tax on existing equipment is not being reduced. No taxes are being taken away. It would affect only new equipment coming in with a new business or on an expanding business purchasing new equipment related to the expansion. This would reduce their rates for a short time and then the tax rates would be adjusted upward.

No motion was made on LCmed2.

LC 0246 - ANGEL INVESTOR NETWORK -- EXHIBIT #26

REP. MCKENNEY said LC 0249 - a joint resolution urging the development of an angel investor network (EXHIBIT #26) - has already been approved as a committee bill and all that remains to be done is to appoint a sponsor. He said because SEN. MANGAN has knowledge of and interest in this issue, he would be asked to carry LC 0246.

LC 5555 - SIMPLIFICATION AND CLARIFICATION OF THE WORKERS' COMPENSATION ACT & LC 5560 - SIMPLIFICATION AND CLARIFICATION OF WORKERS' COMPENSATION ACT

Ms. Murdo explained that LC 5560 (EXHIBIT #28) is simply a consolidation of different sections that were in different places and is more of a clean up bill than anything.

SEN. ROUSH agreed to sponsor LC 5560.

Ms. Murdo explained that LC 5555 (EXHIBIT #27) clarifies language and terminology, as well as standardizes several terms used in the statute. She noted that a concern raised by Jerry Driscoll, AFL-CIO, relating to the term "safe tools" has been resolved.

REP. MCKENNEY reiterated that LC 5555 has already been approved as a committee bill. He assigned SEN. MANGAN to be the sponsor and asked him to discuss it with SEN. VICKI COCCHIARELLA.

COMMITTEE REVIEW & ADOPTION OF THE COMMITTEE FINAL REPORT -- EXHIBIT #29

REP. KEANE **moved** to adopt the final report on economic development. The **motion passed** on a unanimous voice vote.

INTERIM SUMMARY COMMENTS

REP. MCKENNEY thanked all of the Committee members, staff, and working group members, and stakeholders who contributed to the work of the Economic Affairs Interim Committee.

SEN. TAYLOR thanked REP. MCKENNEY for his efforts as Committee Chair.

ADJOURNMENT

With no further business before the Committee, REP. MCKENNEY adjourned the meeting.

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