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Economic Affairs Interim Committee

64th Montana Legislature

SENATE MEMBERS

GORDON VANCE--Vice Chair
TOM FACEY
RICK RIPLEY
LEA WHITFORD

HOUSE MEMBERS

RYAN LYNCH--Chair
MIKE LANG
NATE MCCONNELL
VINCE RICCI

COMMITTEE STAFF

PATRICIA MURDO, Lead Staff
JAMESON WALKER, Staff Attorney
KRISTINA LIMING, Secretary

MINUTES LOG

August 31 - September 1, 2015
Room 137, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select Committees, then Interim. Once on the page for Interim Committees, scroll down to the appropriate committee. The written Minutes Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

REP. RYAN LYNCH, Chair
SEN. GORDON VANCE, Vice Chair

SEN. TOM FACEY
SEN. RICK RIPLEY

REP. MIKE LANG
REP. NATE MCCONNELL
REP. VINCE RICCI

COMMITTEE MEMBERS EXCUSED

SEN. LEA WHITFORD

STAFF PRESENT

PATRICIA MURDO, Lead Staff
JAMESON WALKER, Staff Attorney
KRISTINA LIMING, Secretary

VISITORS' LIST ([Attachment 1](#))

AGENDA ([Attachment 2](#))

COMMITTEE ACTIONS

At the Aug. 31-Sept. 1 meeting the Economic Affairs Committee:

- requested information on broadband funding in Montana from all sources;
- by voice vote agreed to continue an objection to a proposed rule from the Board of Physical Therapy Examiners that addressed dry needling, among other issues. The committee members said they would take action on the rule at the next meeting in the hope that there would be agreement on the proposed rule and any amendments.
- requested that a letter be sent to thank the Department of Labor and Industry employees who stayed late to provide information and a tour for EAIC members of the facilities where the licensing boards are staffed and operate;
- requested that the Governor's Office of Economic Development report on how much total money is spent in this state on economic development by the Department of Commerce, the State Tribal Economic Development Council, the Department of Labor and Industry, the Department of Transportation, the Coal Tax Trust Fund, and other sources;
- requested that the Governor's Office of Economic Development also provide an estimate of the return on investment for the expenditures made for economic development;
- requested that new rules on the Big Sky Economic Development Fund be sent to committee members as soon as they are published in the Montana Administrative Register;
- requested a list of which air ambulances operating in Montana are accredited by which national accreditation entities;
- voted to accept a revised work plan that added an extra day to the last meeting date in August 2016, provided for review of the Department of Livestock at each meeting but set one presentation by each of the other agencies monitored by the Economic Affairs Committee or as otherwise provided in the work plan, requested additional meetings on broadband and economic development concerns, and requested that the Hail Insurance Board be on the agenda when the Department of Agriculture review is held.

CALL TO ORDER AND ROLL CALL

00:00:00 Rep. Lynch called the meeting to order at 10:03 a.m.
00:00:05 The secretary took the roll. ([Attachment 3](#))

**INTRODUCTION OF TAXES VS. FEE FINANCING FOR LICENSING BOARDS,
DEPARTMENT OF LIVESTOCK**

00:01:31 Ms. Murdo provided a brief overview of the reasons the committee was hearing about taxes vs. fees as a funding consideration for the licensing boards and the Department of Livestock.

00:05:49 Terry Johnson, former revenue analyst for the Legislature, provided the committee with a PowerPoint presentation on Taxes vs. Fee Financing.
([EXHIBIT 1](#))

Committee Questions of Mr. Johnson

00:26:18 Sen. Ripley asked about audits done by the Legislative Auditor.
00:27:32 Rep. Lang asked about potential constitutional violations listed in an audit of the Department of Livestock.

PANEL PRESENTATION: DEPARTMENT OF LIVESTOCK BUDGET AND STRUCTURAL BALANCE MONITORING

John Scully, Board of Livestock Vice Presiding Officer
Lila Taylor, Member of Board of Livestock
Christian Mackay, Executive Director, Board of Livestock
George Harris, Central Services/Budget Director, Department of Livestock

00:31:13 Mr. Scully
00:40:56 Ms. Taylor
00:42:44 Mr. Scully

Committee Questions

00:43:51 Sen. Vance asked Mr. Scully about specifics of expenditures.
00:47:11 Sen. Facey asked Mr. Scully about brucellosis and public health issues related to testing at the Veterinary Diagnostic Lab. He also asked about possibilities of partnerships with the Montana State University or other entities to address the lab.
00:52:57 Sen. Ripley asked Mr. Scully about cost-per-test specifics.
00:57:10 Sen. Ripley asked Ms. Murdo about budget time lines for state agencies. Ms. Murdo provided the committee with a spreadsheet containing finance and budget information for the Department of Livestock. **(EXHIBIT 2)**
01:03:47 Sen. Ripley asked Mr. Scully about zero-based budgeting.
01:04:39 Sen. Ripley asked Ms. Murdo about the inconsistencies the FTE information provided. Mr. Stephen Forrest, Legislative Fiscal Analyst II, provided further clarification and a document with corrected FTE budget information. **(EXHIBIT 3)**
01:06:30 Sen. Ripley asked Ms. Taylor about board member training provided by the Board of Livestock.
01:07:28 Sen. Ripley asked Mr. Scully about improvement plans related to department evaluations.
01:09:22 Sen. Vance asked Mr. Scully about performance standards development and requested communication with the committee when standards are established.
01:12:16 Sen. Facey commented about consumables used by the Veterinary Diagnostic Lab.
01:13:11 Rep. Lynch asked Mr. Forrest about a specific dollar amount that was put into the diagnostic lab. Mr. Forrest provided a document with the 2017 Biennium budget for the Department of Livestock. **(EXHIBIT 4)** Mr. Scully assisted in answering.
01:21:06 Sen. Ripley asked about budgeting and employee management services.

Panel Presentation, Continued

1:23:03 Mr. Mackay
01:34:38 Mr. Harris **(EXHIBIT 5)**
01:47:00 Mr. Mackay

Committee Questions

01:48:37 Sen. Facey asked Mr. Mackay about fees for inspection services.
01:49:12 Sen. Ripley asked Mr. Mackay about whether the furlough at the end of 2014

was necessary and about board training.

Committee Discussion

01:51:48 The committee discussed the work plan and the possibility of including Department of Livestock issues in future meetings.

Committee Questions

01:54:54 Rep. Lang asked Mr. Harris for clarification on the Department of Livestock budget information provided.
02:01:51 Sen. Ripley commented about the funding and financial issues, and suggested other options to address the issues.
02:03:41 Sen. Facey asked Sen. Ripley about the zero-based budget. Mr. Forrest assisted in answering Sen. Facey's question.

Public Comment for all Taxes and Licensing concerns

02:07:02 Chelcie Cremer, Montana Farm Bureau Federation, described how industry stakeholders were working to address concerns about the Department of Livestock's long range budget solutions.
02:10:01 Abigail St. Lawrence, Montana Speech Language and Hearing Association, commented on the Board of Speech Pathologists licensing fees.
02:12:49 **LUNCH** - (reconvened at 1:17 p.m.)
03:13:59 Sen. Vance read aloud the public comment guidelines.

BROADBAND PANEL DISCUSSION - ECONOMIC DEVELOPMENT IMPACTS

Phil Grate, CenturyLink, Director of Regulatory Affairs
Gary Duncan, Public Service Commission Rate Analyst
Rob Ferris, Vision Net, Chief Executive Officer

03:14:34 Mr. Grate **(EXHIBIT 6)**, **(EXHIBIT 7)**, **(EXHIBIT 8)**
03:41:37 Mr. Duncan **(EXHIBIT 9)**
03:56:41 Mr. Ferris

Committee Questions

04:08:26 Sen. Facey asked Mr. Ferris about fiber expansion and mapping. He also asked about grant opportunities.
04:11:36 Rep. McConnell asked Mr. Grate and Mr. Duncan about important areas for the Legislature to consider.
04:20:09 Rep. Ricci asked about specific incidents where economic development has been hindered by broadband problems.
04:21:36 Sen. Ripley requested that staff compile a list of broadband funding and sources in Montana.
04:23:13 Rep. McConnell asked all three panelists about broadband connectivity.

Public Comment

04:27:29 Jim Ahrens, Citizen, commented about broadband availability in rural Montana.
04:32:10 Dave Dobbins, Cascade Schools, also commented about the need for broadband and internet costs in rural areas. He also provided information about the school where he is employed and its struggles with internet costs. **(EXHIBIT 10)**

RULE REVIEW

04:46:01 Mr. Walker provided the committee with the Administrative Rule Report.
(EXHIBIT 11)

PANEL PRESENTATION: REPRESENTATIVES OF BOARD OF PHYSICAL THERAPY EXAMINERS AND OF ACUPUNCTURISTS

Brian Miller, Board of Physical Therapy Examiners

Tanja Brekke, acupuncturist member of the Board of Medical Examiners

04:50:23 Ms. Murdo made note of a document she provided to the committee regarding the rule proposed by the physical therapists' board. (EXHIBIT 12)

04:50:32 Mr. Miller (EXHIBIT 13), (EXHIBIT 14)

05:05:20 Ms. Brekke

Public Comment:

The following individuals testified in favor of the implementation of the dry needling rule:

05:17:14 Christian Appel, former member of the Board of Physical Therapy Examiners

05:21:58 Shannon McCarthy, Physical Therapist

05:25:16 Sandra Marston, Physical Therapist

05:27:03 Jay Shaver, Montana Physical Therapy Association

The following individuals testified against implementation of the dry needling rule:

05:29:28 John Semmens, Montana Association of Acupuncture and Oriental Medicine
(EXHIBIT 15)

05:33:09 Barbara Good, Acupuncturist

05:39:25 Bree Manninen, Acupuncturist (EXHIBIT 16)

05:44:30 Brenda Kaser, Acupuncturist (EXHIBIT 17)

05:50:17 Jane Hamman, Lobbyist (EXHIBIT 18)

05:52:39 Lundi McFarland, Acupuncturist

05:55:20 Lauren Oechsli, Acupuncturist

05:58:08 Mr. Walker provided the committee with three options pertaining to the dry needling rule.

Committee Questions

05:59:28 Rep. Ricci asked Ms. Brekke about the time lag between the introduction of the physical therapists' use of dry needling and the proposed rule.

06:01:29 Sen. Ripley asked Judy Bovington, Department of Labor and Industry, about the appropriateness of the dry needling rule.

06:05:09 Sen. Ripley asked the panelists whether a delay would allow both sides to work out solutions.

06:10:20 Mr. Appel commented about standards that physical therapists must meet.

06:12:21 Sen. Facey asked Ms. Brekke if she was speaking on behalf of the Board of Medical Examiners. Ms. Bovington clarified that both of their boards had moved to allow them to testify on behalf of the Boards and as individuals.

06:13:43 Rep. Lynch asked Ms. Bovington about the scope of practice defined by the boards.

06:15:24 Rep. Lynch asked Mr. Miller about the changes and revisions that would be

- made to the rule.
- 06:16:06 Ms. Murdo provided the committee with other public comment that was submitted to the committee. ([EXHIBIT 19](#)), ([EXHIBIT 20](#)), ([EXHIBIT 21](#))
- 06:17:12 Rep. Lang asked Mr. Miller about why physical therapists couldn't just refer patients to acupuncturists. ([EXHIBIT 22](#))
- 06:18:52 Mr. Walker provided the committee with further clarification to the rule process pertaining to the dry needling rule.

Motion/Vote

- 06:19:43 Sen. Facey moved to withdraw the objection to the rule proposed by the Board of Physical Therapists.

Committee Discussion/Questions

- 06:22:00 The committee discussed the motion.
- 06:25:10 Ms. Bovington provided information to the rule notice details and legal practice of dry needling by Physical Therapists.

Committee Questions

- 06:26:29 Rep. Lang asked Ms. Bovington about the opportunity to rewrite the rule if the notice times out.

Motion/Vote

- 06:27:08 Sen. Ripley proposed a substitute motion to amend Sen. Facey's motion to delay the vote until the next meeting in hopes that there would be a resolution.
- 06:27:33 The committee discussed the motion.
- 06:29:57 Sen. Facey withdrew his motion.
- 06:30:05 Sen. Ripley moved to continue the committee objection until the next meeting. The motion passed unanimously by voice vote.

Committee Business

- 06:32:02 Mr. Younkin provided the committee with details of what the trip to the Business Standards Division would include.
- 06:33:58 Rep. Lynch recessed the meeting until 8:00 a.m on September 1, 2015. The committee members then proceeded to the Business Standards Division for an informational tour of that office. Notes from the discussion are provided here. ([Attachment 4](#))

SEPTEMBER 1, 2015

COMMITTEE MEMBERS PRESENT

REP. RYAN LYNCH, Chair
SEN. GORDON VANCE, Vice Chair

SEN. TOM FACEY
SEN. RICK RIPLEY

REP. MIKE LANG
REP. NATE MCCONNELL
REP. VINCE RICCI

COMMITTEE MEMBERS EXCUSED

SEN. LEA WHITFORD

STAFF PRESENT

PATRICIA MURDO, Lead Staff
JAMESON WALKER, Staff Attorney
KRISTINA LIMING, Secretary

VISITORS' LIST ([Attachment 5](#))

AGENDA ([Attachment 2](#))

CALL TO ORDER AND ROLL CALL

00:00:01 Rep. Lynch called the meeting to order at 8:01 a.m.
00:00:40 The secretary took the roll. ([Attachment 6](#))

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT - AGENCY MONITORING

00:00:49 John Rogers, Montana's Chief Business Officer, provided the committee with an overview of the current business and responsibilities of the Governor's Office of Economic Development. (**EXHIBIT 23**)

Committee Questions

00:37:23 Sen. Ripley asked about the Governor's budget. Sen. Ripley asked for the economic development figures from the Department of Labor and Industry, the Department of Commerce, and the Governor's Office of Economic Development.
00:44:46 Rep. Lang asked about broadband mapping expansion and confidentiality.
00:47:50 Rep. Ricci asked about water sewer infrastructure. He also requested to meet with the Office of Economic Development to further discuss the issue.
00:51:36 Sen. Facey asked about efforts to coordinate with other entities.
00:54:23 Rep. McConnell asked about return on investment and how the state tracks what economic activity is generated.
01:03:52 Rep. Lynch asked about an opportunity for an overarching economic development model from various standpoints, including infrastructure.
01:06:36 Sen. Ripley asked about paid advertisements by the state.

DEPARTMENT OF COMMERCE - AGENCY MONITORING

01:12:49 Doug Mitchell, Deputy Director, provided the committee with an overview of the

structural approaches and changes being made at the Department of Commerce and the department's current responsibilities.

Committee Questions of Mr. Mitchell

- 01:36:10 Sen. Ripley asked about the biennium budget provided in the overview document. (**EXHIBIT 24**)
- 01:38:20 Sen. Facey asked about the Big Sky Economic Development Trust Fund program.
- 01:41:21 Rep. Lynch asked about the timeline of the rules.
- 01:41:45 Rep. McConnell asked about the workforce training funds, innovation and return on investment.

Public Comment

- 01:46:16 Sen. Debby Barrett, President of the Senate, commented about the need for clarification regarding programs pertaining to economic development and expenditures. (**EXHIBIT 25**)
- 01:50:13 Short Break

OVERVIEW OF NORTH DAKOTA'S EXPERIENCE WITH AIR AMBULANCES: HB 1255 AND PREFERRED PROVIDER LISTS

- 02:02:17 Rebecca Ternes, Deputy Commissioner, North Dakota Insurance Department, joined the committee by video conference to share North Dakota's experiences with air ambulances. (**EXHIBIT 26**)

Committee Questions

- 02:15:05 Sen. Facey asked about the owner of Valley Med Flight.
- 02:15:39 Sen. Ripley asked if Valley Med Flight operates in other states, specifically Montana.
- 02:16:00 Ms. Murdo provided the committee with a document containing information about what air ambulance services are provided in Montana. (**EXHIBIT 27**)
- 02:16:32 Rep. Lang asked about the published list of services provided by air ambulances and the involvement and authority of the North Dakota Insurance Department to assist in controlling the rates assigned.
- 02:18:00 Rep. Lynch read aloud the public comment guidelines.

PANEL DISCUSSION ON LEGAL COMPLICATIONS RELATED TO MEMBERSHIP-BASED HEALTH CARE

Paul Pedersen, Blue Cross Blue Shield of Montana, Senior Director, Provider Networks
Alan Hall, Allegiance, Vice President and General Counsel
Nick Domitrovich, Department of Public Health and Human Services Attorney
Robbie Copeland, EagleMed, Director of Marketing and Business Development
Dr. Randy Thompson, Billings Clinic Medflight, Medical Director
Mike Milburn, Department of Justice

- 02:19:27 Mr. Pedersen (**EXHIBIT 28**)
- 02:34:16 Mr. Hall (**EXHIBIT 29**)

02:39:07 Mr. Domitrovich (**EXHIBIT 30**)
02:44:20 Mr. Copeland
02:52:57 Dr. Thompson
03:10:07 Mr. Milburn

Committee Questions

03:18:40 Rep. McConnell asked Mr. Copeland for a breakdown of the percentage of individuals who are covered and not covered under their membership or other insurance.

03:20:20 Rep. McConnell asked Mr. Milburn if the Montana Legislature could pass laws related to air ambulance regulations. He also requested Mr. Hall and Mr. Domitrovich for their opinion.

03:25:31 Sen. Facey asked Mr. Domitrovich and Mr. Hall if it would be appropriate to require that the hospital belong to a network. Mr. Milburn provided his opinion on the matter as well.

03:29:46 Sen. Facey asked Dr. Thompson about protocols including protocols to ensure that costs are understood by patients.

03:33:44 Sen. Facey asked Mr. Pedersen whether overcapacity in air ambulance services is a reason for higher bills.

03:35:29 Rep. Ricci asked Dr. Thompson about membership-based fees and the business model used by membership-based air ambulances. He also asked about the federal government reimbursement through Medicare for air ambulances and asked for recommendations to overcome this issue.

03:38:12 Sen. Ripley asked Mr. Copeland about reimbursement rates by loaded mile instead of total mileage.

03:40:25 Rep. Lynch asked Mr. Domitrovich about accredited air ambulance providers in the state of Montana. Jim De Tienne, Department of Public Health and Human Services answered with further detail.

03:43:08 Rep. Lynch asked Mr. Milburn about dispatch services.

Public Comment on Air Ambulance Services

The following individuals commented about air ambulance services:

03:44:53 Bob Olsen, MHA - An Association of Montana Health Care Providers
03:54:31 Jesse Riddle, General Counsel, Valley Med Flight
04:02:50 Nick Mazanec, Attorney, State Auditor's Office

Committee Questions

04:05:03 Sen. Facey asked Mr. Olsen about EMTALA (the Emergency Medical Treatment and Active Labor Act law) and rates for service. He also asked him about networks and the appropriateness of requiring a hospital to have a contract with an air ambulance service.

04:09:52 Sen. Facey asked Mr. Riddle about the North Dakota lawsuit in reference to requiring contracts.

04:12:03 **LUNCH** - (reconvened at 1:01 p.m.)

OVERVIEW OF ALCOHOL INDUSTRY

04:59:06 Shauna Helfert, Administrator, Liquor Control Division, provided the committee with a brief background on the Montana alcohol industry and provided a handout.

(EXHIBIT 31)

- 05:14:44 Sen. Facey asked about beer licenses and floating licenses. He also asked about the distillery purchasing of bulk liquor from out of state and distilling a single time for sale in Montana. Sen. Facey also asked for clarification to the definition of a Dram Shop.
- 05:19:38 Rep. Ricci asked about gaming restrictions on floating licenses and the worth of a floating license after the restriction.
- 05:20:43 Rep. Lynch asked about eligibility for floating licenses.

PANEL DISCUSSION REGARDING ALCOHOL INDUSTRY STATUS AND OPTIONS

John Iverson, Montana Tavern Association
Jennifer Hensley, Montana Distillers Association
Matt Leow, Montana Brewers Association
Kristi Blazer, Montana Beer and Wine Distributors Association
Chad Ouellette, Liquor Store Owners Association of Montana

- 05:23:17 Mr. Iverson
- 05:24:43 Ms. Hensley
- 05:30:33 Mr. Leow **(EXHIBIT 32)**
- 05:37:42 Ms. Blazer **(EXHIBIT 33)**, **(EXHIBIT 34)**, **(EXHIBIT 35)**
- 05:44:50 Mr. Ouellette

Committee Questions

- 05:46:01 Sen. Facey asked about the high value of liquor licenses. Mr. Iverson and Ms. Hensley answered.

Public Comment

The following individual commented about the alcohol industry and current issues:

- 05:54:23 Brian Smith, Blackfoot River Brewing

WORK PLAN DISCUSSION

- 05:57:05 Ms. Murdo provided a brief overview of the changes made to the interim work plan **(EXHIBIT 36)**. She also passed out a brochure containing various economic development resources for the Department of Commerce **(EXHIBIT 37)** and made note of a document from the committee packet with HJR29 Study options **(EXHIBIT 38)**.
- 06:05:34 The committee discussed the work plan.
- 06:24:41 Ms. Murdo distributed additional information regarding economic development programs. **(EXHIBIT 39)**

Motion/Vote

- 06:25:20 Sen. Ripley moved to adopt the work plan as presented with minor changes as discussed.
- 06:26:38 The committee continued discussion on the work plan.
- 06:29:25 The committee took a voice vote on Sen. Ripley's motion. The motion passed unanimously.
- 06:29:48 Ms. Murdo presented a letter requested by the committee and received regarding the Department of Labor and Industry's response to a letter provided to the committee in June that questioned the department's occupational licensing

changes. (**EXHIBIT 40**)

DIRECTIONS TO STAFF / ADJOURNMENT

06:31:10 Rep. Lynch adjourned the meeting at 2:35 p.m.

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