



Fire Suppression Interim Committee
60th Montana Legislature

SENATE MEMBERS

JOHN COBB
KEN HANSEN
RICK LAIBLE
DAVE LEWIS
GERALD PEASE
CAROL WILLIAMS

HOUSE MEMBERS

STEVE BOLSTAD
JIM KEANE
KRAYTON KERNS
RICK RIPLEY
CHAS VINCENT
BILL WILSON

COMMITTEE STAFF

LEANNE HEISEL, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary
BARBARA SMITH, Fiscal Analyst

MINUTES

CONTRACTING SUBCOMMITTEE

March 27, 2008

Room 137, State Capitol
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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SUBCOMMITTEE MEMBERS PRESENT

REP. JIM KEANE, acting Chair
SEN. KEN HANSEN, via teleconference

FSIC COMMITTEE MEMBERS PRESENT

SEN. GERALD PEASE
REP. KRAYTON KERNS
REP. CHAS VINCENT

STAFF PRESENT

TODD EVERTS, Staff Attorney

Agenda & Visitors' List

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

COMMITTEE ACTION

The Contracting Subcommittee of the Fire Suppression Interim Committee selected, by consensus, nine recommendations to present to the full Fire Suppression Interim Committee.

CALL TO ORDER AND ROLL CALL

00:00:01 REP. KEANE called the meeting to order, SEN. HANSEN was present via teleconference. REP. KEANE reviewed what happened at the last meeting and discussed aviation issues. He stated that the Subcommittee would hear more about aviation issues during today's meeting and work to find some solutions.

AVIATION CONTRACTORS PRESENTATION

00:01:45 **Debra Armstong, Armstrong Helicopters, LLC, Stevensville**, said she and her husband operate a disabled veteran-owned aviation business and fly three helicopters piloted by military-trained pilots. She discussed issues of concern to private aviation businesses that were raised at the March 4 Contracting Subcommittee meeting and also offered a list of recommendations put forth by the private aviation contracting community (EXHIBIT #1). Ms. Armstrong's discussion referenced an October 18, 2007, Legislative Audit Division (LAD) memorandum from Joe Murray, Performance Audit Manager, to Scott Seacat, Legislative Auditor (EXHIBIT #2). Regarding safety and lack of oversight concerns, Ms. Armstrong also provided photos of two of her company's helicopters with descriptions and a photo of a Department of Natural Resources and Conservation (DNRC) helicopter that had many unapproved modifications (EXHIBIT #3).

00:08:40 SEN. HANSEN thanked Ms. Armstrong for information for Subcommittee and asked her to elaborate on the large cost per hour discrepancy between DNRC (\$805 per hour) and private aviation services (\$1200 per hour), and to explain how the rates are established. Ms. Armstrong said that she does not feel the DNRC rate is accurate and that the rates are set by the United States Forest Service (USFS). She offered to provide copies of the federal flight rate chart. SEN. HANSEN said that one of his concerns is the training and health requirements for pilots. He said insurance and liability are also concerns. Ms. Armstrong said that private pilots have to meet strict USFS requirements and have to take tests on safety and flight safety before being approved. She states that DNRC or USFS pilots are not required to do this. Regarding insurance requirements, Ms. Armstrong said that Montana requires private pilots to have \$5 million of liability insurance in Montana. SEN. HANSEN asked if the insurance is verified before providing services. Ms. Armstrong said it is, and that insurance companies notify all additionally insured people listed on a policy if that policy is canceled or lapses.

00:12:33 REP. KEANE asked if other states put out bids for her company's services. Ms. Armstrong said yes, and that she has contracted private services to other states every year since 2002. She explained how the contracts are set up and the requirements of the contracts.

00:13:33 REP. KEANE asked if the contracts are finalized in advance of the fire season. Ms. Armstrong said yes, and that she has already contracted for next the season. REP. KEANE asked if the USFS or DNRC in Montana have made any contracting opportunities available to private contractors. Ms. Armstrong said no, that she has been signed up as a vendor since 2002 and has yet to sign a contract with the state.

- 00:15:14 **William Metz, Vigilante Helicopters, Laurel**, said that the cost comparison information and analysis in the LAD memorandum (EXHIBIT #2) was heavily skewed toward the DNRC and not representative of costs. He said that most aviation contractors would be interested in bidding on state contracts and would provide professional and cost effective services. He said that he would like to have "an apples to apples" cost comparison done to ensure a level playing field. Mr. Metz submitted additional comments not discussed at the meeting (EXHIBIT #4).
- 00:16:55 In response to a question from REP. KERNs, Mr. Metz said because the DNRC operates aircraft for a public use, it is excluded from certain requirements or standards that the private companies are subject to.
- 00:18:18 **Ted Beck, President, BigSkyBeck Helicopters, Helena**, testified that he has been in the aircraft fuel business for sixteen years. Mr. Beck said his opinion of the private aviation contractor issue differs significantly from that of Ms. Armstrong and provided a written statement outlining his position (EXHIBIT #5).
- 00:26:51 SEN. HANSEN asked Mr. Beck to confirm that he has had private contracts with state of Montana and USFS. Mr. Beck said that was correct, and listed several of the contracts he has had with various agencies over the last several years.
- 00:28:26 SEN. HANSEN referred to the LAD memorandum (EXHIBIT #2) and asked Mr. Beck if, in his opinion, the information in the memorandum was correct. Mr. Beck said that he has thoroughly read the memorandum and that the information is correct.
- 00:29:41 REP. KERNs asked what the market value of a Huey helicopter is. Mr. Beck said that one would pay \$200,000 and \$300,000 for a basic model. He said if it was to be equipped to fight fires, the cost would increase to over \$3 million. REP. KERNs asked if the cost of such helicopters was taken into consideration in the LAD memorandum. Mr. Beck said that the memorandum evaluated operating costs only and that acquisition costs were not included.
- 00:30:50 REP. KEANE referred to "cost/flight hour" in Table 1 on page four of the LAD memorandum and asked Mr. Beck to estimate what the cost per hour for a Bell helicopter would be. Mr. Beck said that he did not have expertise on that aircraft, but estimated that it would be at least \$2,000 per hour.
- 00:32:09 REP. KEANE asked for another aviation operator to respond to his question. **Gary Blaine, Billings Flying Service, Inc., Billings**, said that he charges \$1500 per hour for Bell UH1H. Mr. Blaine discussed a folder of information that contained photos of equipment, different contract proposals that he has written, price narratives, and other information relative to contract aviation (EXHIBIT #6). In response to a question from REP. KEANE about rates, Mr. Blaine said that much better rates are available if contracted for in the off season.

- 00:35:30 SEN. HANSEN asked the rates listed in Mr. Blaine's information also include ground support. Mr. Blaine said it includes everything but a mileage charge for the fuel truck.
- 00:38:05 Mr. Blaine said that he disagreed with Mr. Beck and said that Montana can't afford to not change how it uses aviation services. He said it is frustrating to him as a tax payer and business man, to sit and watch while taxpayer money is wasted and personal property of friends and family burn.
- 00:42:26 **John Ostlund, Yellowstone County Commissioner, Billings**, said that he used to be in Yellowstone County's primary attack fire department. He thanked the DNRC for its hard work and dedication, and said that he has full confidence that the agency's capability. Mr. Ostlund said that he is concerned about tax dollars and doesn't see how FTEs can be rationalized. He said that fire suppression is part time work and should be contracted out. He agreed with previous statements about the need for more helicopter managers and said that Yellowstone County has had several fires that would have been much less expensive to fight and much smaller, had a manager been available to sign off on aviation equipment. He said that he supports the use of local contractors to put out these fires and that it would save millions of tax dollars. Mr. Ostlund said that he plans to ask his fellow county commissioners to consider contracting for initial attack services because he can't allow the same situation to repeatedly occur.
- 00:45:47 **Mandy Taylor, New Frontier Aviation, Fort Benton**, said that he has been in the aviation business since 1991. He said that he contracted with the DNRC for short periods of time in 1992 and 1994, and has contracted exclusively with the Bureau of Land Management (BLM), the USFS, and multiple other states since 1995. Mr. Taylor reviewed the different aircraft he has available. Mr. Taylor said that initial attack is by far the most effective fire suppression approach and asked why more dollars have not been allocated to initial attack. He said that maps indicated that fires are concentrated in certain areas of the state and suggested that resources be concentrated in those areas, to allow for a more rapid response.

DISCUSSION OF LEGISLATIVE AUDIT MEMORANDUM

- 00:50:09 **Mike Wingard, Performance Audit Manager, LAD**, said that Mr. Murray was not available to speak at the meeting. Mr. Wingard emphasized that the memorandum was a legislative request and that the information in the memorandum was based on DNRC records. He said it would be very difficult to do a true "apples to apples" cost comparison because the DNRC's information is considered public information and easily accessed, while private aviation companies may be reluctant to provide the same information, due to proprietary information concerns. He said that it could be done, but cautioned that the LAD has no authority to compel private contractors to provide information, and that it would be a time-intensive undertaking. REP. KEANE asked if the Subcommittee has the authority to request LAD to create an actual report on the numbers, including private contractor information. **Todd Everts, Staff Attorney, Legislative Services Division (LSD)**, said the Subcommittee could recommend to the full FSIC that a full audit be done, and that the FSIC could then ask the

Legislative Audit Committee to decide if the request warrants action. Mr. Everts said another option would be to request legislation in the 2009 session.

- 00:51:43 SEN. HANSEN said that he would like to see a legislative performance audit. REP. KEANE asked if he should make a recommendation to the full FSIC for a full audit. SEN. HANSEN said yes, because it is difficult to make comparisons without accurate numbers. REP. KEANE said that the Subcommittee would make that recommendation to the full FSIC.
- 00:55:19 A member of the public said that contract information is considered public information and is posted on the USFS or BLM websites.
- 00:56:15 **Bob Harrington, Forestry Division Administrator, DNRC**, said there were strong accusations made against his agency and that he would like to respond. REP. KEANE said that Mr. Harrington did not need to defend his agency and that he would like him to discuss the possibility of developing best value aviation contracting. Mr. Harrington said it could be done, but that it would require resources to be diverted from other areas. Mr. Harrington said he would like to identify how to provide contractors with equal access for call-when-needed situations, and that it is on his winter project priority list.
- 00:59:04 SEN. HANSEN agreed that there was no need for Mr. Harrington to defend his agency and said that he is doing a good job. He said discussion should focus on improving the system and saving tax dollars, and that the work of the Subcommittee is to identify what changes can be made.
- 01:00:15 REP. VINCENT asked Mr. Harrington to provide more information on the helicopter manager issue and if it would fall within any of the priority areas identified by the DNRC. Mr. Harrington said the manager issue is an ongoing problem and is a priority issue. He said the second item on the DNRC priority list - adding several FTE - would allow for at least one additional helicopter manager. REP. VINCENT asked if consideration has been given to providing contractor training to perform this function. Mr. Harrington said that he did not know.
- Mr. Harrington said that his main job is to maintain public trust in the DNRC and said that transparency is necessary to do that. To that end, he said he has discussed the problems and has tried to listen and learn about others' concerns. He invited the Subcommittee to tour the DNRC aviation hangar and said he is proud of the quality of the aviation program and would welcome a full audit. He said he understands the concerns of private contractors but that he believes believes that the DNRC's niche is initial attack, and that the niche for private contractors is for large fires that escape initial attack. Mr. Harrington said he would be happy to provide a forum to further discuss Ms. Armstrong's and other concerns.
- 01:07:42 REP. KEANE said it is clear to him that the people in the private contracting community are unhappy with the current system. He said that it is important to establish good communication lines and that the DNRC needs to establish a simple contracting system, as other states have done. He said he hopes that the

DNRC seriously considers the comments made at the day's meeting. Mr. Harrington said that he agreed. SEN. HANSEN also agreed.

01:10:05 **Bill Galt, Rancher, Helicopter Pilot, White Sulphur Springs**, said that he is a landowner, a taxpayer, and a private aviation contractor. He said that he is dispatched through the Meagher County Sheriff's Office and that it has worked very well. He suggested that local sheriffs or fire wardens could be trained to serve as helicopter managers.

01:14:32 REP. KEANE encouraged the aviation contractors to continue working together and suggested that they organize into an association, in order to better communicate their needs and to demonstrate to the state the value of their services. He asked that they communicate with the DNRC and also asked Mr. Ostlund from Yellowstone County to stay involved with the issue.

01:15:37 SEN. HANSEN asked Mr. Ostlund if the Montana Association of Counties (MACo) has gotten involved in the aviation issue. Mr. Ostlund said MACo has not been involved but that he would take this issue back to MACo's Transportation Committee for discussion.

BREAK

UPDATE ON PRIVATE CONTRACTOR INSPECTION PROCESS

01:28:50 **Phil Holman, Director of Acquisitions, Northern Region, USFS**, said this issue is based on water handling contractors' concerns that too many inspections are required. He said he has spoken with the DNRC about the problem and that there will be no pre-season inspection required for equipment already under contract. Inspections will be required, either at the dispatch center or at the incident, for equipment contracted in 2008; and post-incident inspections will still be required, mainly to address potential risk liability issues for equipment that may have been damaged while fighting a fire. Mr. Holman said the contractor who brought the issue forward was the victim of very unusual circumstances, and that it is very unlikely that the situation would happen again.

01:33:10 REP. KEANE asked if headway has been made. Mr. Holman said yes, and that he is supportive of including all stakeholders because they are very much a part of any solutions that may emerge, and that he values their suggestions. He said it is his goal to reach a positive conclusion and firmly believes that everyone needs to be involved.

01:35:20 Mr. Harrington said he is confident that the concerns will be addressed satisfactorily. REP. KEANE asked if the contracting community will be involved and notified of the changes made to the inspection process. Mr. Harrington said yes.

01:36:02 REP. KEANE commented that the fact that both best value contracting and Emergency Equipment Rental Agreements (EERAs) are being used is causing problems. Mr. Holman agreed that this has caused problems, but said that both systems are still needed in extreme fire years. He explained that there have

been instances in extreme fires years in which best value contracted resources have been depleted, forcing the use of EERAs.

01:39:22 Mr. Harrington agreed with Mr. Holman's statement about the need for EERAs and said that the extreme fire seasons of the past two years have necessitated their use. REP. KEANE said that as long as both systems are being used, he wants to make sure that best value contracts are always utilized first. He said another issue he would like to address is that of having one best value contractor stay at the top of the call list. He said that in a busy fire year, many contractors will get work, but that a slow fire year may result the top few best value contractors getting all of the work. He said that he would like some sort of system in place to prevent this from happening.

WORKERS' COMPENSATION ISSUES

01:43:02 REP. KEANE said that he and Mr. Everts met with the Department of Labor and Industry (DOLI) and State Fund about the workers' compensation issue. He reviewed the concern of private contractors that they have to pay a \$300 fee for workers' compensation, and may not ever get called out on a fire. REP. KEANE said the fee is supposed to be based on the number of hours worked but isn't being used that way. He said that there are also concerns about falsified claims, but noted that under the best value contracting system, the time, date, and location of when a contractor is dispatched is recorded, and should be easily tracked and verified.

01:45:04 **Jacqueline Lenmark, American Insurance Association (AIA)**, said that she has done some preliminary research on the workers' compensation issue, but that it is not fully developed at this time. She said that REP. KEANE's ideas all have possibilities for development and implementation, and that she has requested the AIA to provide additional information about what private carriers can offer. She said that the AIA and provide assistance in identifying and developing solutions, and that she supports the recommendations of the Subcommittee, with the exception of 1a - no action.

01:47:05 REP. KEANE said he understands that insurance companies may not be able to insure everyone. He said discussion will continue and that he hopes that the State Fund will get involved. Ms. Lenmark asked to underscore that in the area of worker's compensation insurance, different companies have different areas of underwriting and risk protection expertise. She said the AIA would attempt to identify companies with expertise in insuring firefighters.

STAFF PRESENTATION OF OPTIONS, SUBCOMMITTEE DISCUSSION

01:49:47 Mr. Everts discussed potential recommendations of the Contracting Subcommittee, saying that the list is a compilation of testimony taken at the March 4 hearing.

1. Contractor equipment inspection process. REP. KEANE said that this issue has been dealt with. SEN. HANSEN agreed. Mr. Holman asked to add the caveat that it may seem like the process has been improved, but to remember that it is a dynamic process and that continual adjustments will be needed.

2. Cross training with federal and state agencies. Mr. Everts said that the contracting community supports Option B - that state and federal fire suppression agencies work with representatives from the private contractor community where possible to conduct joint training sessions. REP. KEANE and SEN. HANSEN agreed. Mr. Holman said that he would offer seats to the contractor community at USFS training sessions. REP. KEANE said that his statement would be on the record.
3. Private suppression contractors workers' compensation issues. Mr. Everts said that it wasn't discussed, but that DOLI has offered to provide staff to work with the DNRC and federal fire agencies to enforce independent contractor provisions on fire lines. Option B is to request that DOLI coordinate with the DNRC and federal fire suppression agencies to ensure compliance. Option C is to recommend that the State Fund and private insurance work with the contractor community to ensure reasonable workers' compensation rates. REP. KEANE said that both options need to be done, but asked to add that a letter be sent to State Fund, DOLI, and AIA, asking that they all participate in the process. Mr. Harrington asked to change Option B to designate the Northern Rockies Coordinating Group (NRCG), rather than the DNRC, as the contact. He said this issue is an interagency issue and that the NRCG is the appropriate entity to handle the matter. SEN. HANSEN and REP. KEANE agreed to the change.
4. Dispatch private contracting resources. Option B - recommend support for current NRCG dispatch system of using closest resource - was endorsed by REP. KEANE and SEN. HANSEN.
5. Organizing private contracting community. Option B - recommend that an association be formed to speak for the private community - was selected by REP. KEANE and SEN. HANSEN. REP. KEANE asked to modify the recommendation to allow aviation contractors to form their own association and SEN. HANSEN asked that the number of associations that can be formed be limited no more than two or three. REP. KEANE said that the aviation association must be included in the limit.

02:01:00

Duane Turk, Private Contractor, Helena, said that he has attempted to accomplish this locally and that his efforts were resisted. He said there are a great deal of differences between the different groups and that it is almost imperative that separate groups be established to represent the different interests. REP. KEANE said he would consider that in the recommendation.

6. Business management. REP. KEANE said that the Infrastructure Subcommittee has also addressed this issue. REP. KEANE and SEN. HANSEN said that they believe the Contracting Subcommittee has addressed the issue and would also support the Infrastructure Subcommittee's work.
7. Best value contracting. Option B - continued support for the best value contracting process- was agreed upon by REP. KEANE and SEN. HANSEN.
8. Other recommendations. Mr. Everts said the discussion regarding a letter to the Legislative Audit Committee to request a forma audit of DNRC

aviation program would fall under this recommendation. REP. KEANE said the problem with the LAD memorandum was that it was not a formal audit and that the auditor didn't work with aviation contractors or federal government to get accurate numbers. SEN. HANSEN agreed. REP. VINCENT asked to have the issue of fire equipment managers be addressed also, saying that it needs to be addressed as part of a formal audit. He said that it is a problem that needs to be fixed. REP. KEANE agreed.

02:05:36

SEN. HANSEN asked to return to the issue of cross training and said that he wants it to be clear that those hired must be physically fit and able to perform the necessary duties. Mr. Harrington agreed that SEN. HANSEN's request is a legitimate issue and said that significant liability issues could result if not addressed. REP. KEANE asked how counties handle this issue for local and volunteer firefighters. SEN. HANSEN said he assumed that liability would fall back to the county. REP. KEANE said that the same type of protection is needed for private contractors. SEN. HANSEN agreed.

9. Mr. Everts said that the only other recommendation was to encourage continued coordination and communication between private, local, state, federal, and tribal fire suppression agencies. REP. KEANE and SEN. HANSEN agreed.

Mr. Everts entered in the meeting record letters from several aviation contractors: Minuteman Aviation (EXHIBIT #7), Homestead Helicopters (EXHIBIT #8), and Neptune Aviation Services (EXHIBIT #9).

PUBLIC COMMENT

02:10:41 Mr. Harrington said that he provided Ms. Heisel with a DNRC memo on contracted resources for the Jocko Lakes Fire, and that he wanted to make sure that the Contracting Subcommittee received it. Mr. Everts said that he would make sure that it is distributed.

02:13:23 SEN. HANSEN thanked REP. KEANE for good job of chairing meeting and the contracting community for testifying. He said the information is needed to make good decisions.

ADJOURNMENT

02:14:05 With no further business before the Contracting Subcommittee, REP. KEANE adjourned the meeting.

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