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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

June 29, 2010  
Room 102

Capitol Bldg.  
Helena, MT

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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

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

### **COMMITTEE MEMBERS PRESENT**

SEN. JIM KEANE, Chair  
REP. GORDON VANCE, Vice Chair

SEN. ROY BROWN  
SEN. KEN (KIM) HANSEN  
SEN. RYAN ZINKE

REP. CHUCK HUNTER (by phone)  
REP. MICHELE REINHART  
REP. DON ROBERTS (by phone)

### **STAFF PRESENT**

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

### **Visitors/agenda**

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

## COMMITTEE ACTION

The EAI Committee approved:

- the minutes of May 25 & 26, 2010;
- to send a comment letter to Yellowstone National Park (YNP) on remote vaccination of bison for brucellosis and to send copies to the main parties involved in the brucellosis issue, including the Montana Departments of Fish, Wildlife, and Parks (FWP), and the Department of Livestock, plus the states of Idaho and Wyoming.
- a request for informal fiscal notes for proposed legislation.

## CALL TO ORDER AND ROLL CALL

00:00:09 Sen. Keane called the committee to order at 8:35 a.m. The secretary called the roll. Attachment #3 Rep. Roberts and Rep. Hunter are present via polycom. Sen. Keane introduced Renee Hansen, the wife of Sen. Hansen, and Shelley Vance, the wife of Rep. Vance.

### **Motion**

00:02:32 Sen. Brown made the motion to approve the minutes from the May 25 & 26, 2010, meeting. The motion **passed**.

## AGENDA

### **Review Agenda**

- **Pat Murdo, staff-Research Analyst**

0:03:19 Ms. Murdo gave an overview and an update of the agenda. She distributed and explained handouts regarding:

- A *Billings Gazette* article from May 23, 2010, entitled "Good policy or bad medicine? Nurse discipline rules questioned" and explained that this would be helpful as the committee reviewed impairment monitoring programs used by certain health care licensing boards. **(Exhibit 1)**
- A memo from Ms. Murdo **(Exhibit 2)** about impairment monitoring of:
  - The Board of Nursing
  - The Board of Medical Examiners
  - The Board of Dentistry, and
  - The Board of Pharmacy
- A chart showing a comparison of MCHA rates with Montana Affordable Care Plan Premiums. **(Exhibit 3)**
- An email from Laurence Hubbard, Montana State Fund (MSF), noting that MSF had decreased rates by 4%, and the largest private carrier in the state, Liberty Northwest, decreased overall rates by 1.5%. **(Exhibit 4)**

### **AGENCY MONITORING - Impairment Monitoring Procedures Panel:**

- Mike Bertagnolli, Board of Pharmacy
- Brenda Schye, public member of the Board of Nursing
- Dr. Mary Ann Guggenheim, Board of Medical Examiners
- Dr. David Johnson, Vice President of the Board of Dentistry,

- Mike Ramirez, Medical Assistance Program
- Emery Jones, Nursing Assistance Program

- 00:11:36 Sen. Keane introduced the panel members.
- 00:13:09 Rep. Roberts, an oral surgeon, gave an overview of the licensing boards and their history. He talked about the impairment program for medical professionals who take drugs and the need to provide better monitoring.
- 00:23:42 Mr. Bertagnolli talked about the impairment program for the Board of Pharmacy, stating that he doesn't see any gaps in the impaired program for pharmacists. He said the Board prefers the nonpunitive track because it provides more latitude to supervise individuals.
- 00:26:27 Dr. Johnson said that the Board of Dentistry is satisfied with the way the impairment program is currently operated, and he talked about trust in the involvement between the Board and dentists. He said when an individual is under an impairment program contract the Board receives updated reports of the progress on that individual and is able to monitor compliance with that licensee.
- 00:27:51 Dr. Guggenheim distributed and explained a handout of the Montana Physician's Assistance Program. **(Exhibit 5)** She said that Montana has received recognition for successful substance abuse programs. She discussed an internal audit and described how the impairment program works, including use of a contract that deals with behavior and periodic evaluations provided to the Board.
- 00:35:32 Ms. Schye, a public member on the Board of Nursing, talked about the concerns in the medical field and the misinformation that is out in the public of medical staff involved in substance abuse. She explained how she makes the determination if a nurse should or should not remain in practice by asking "would I want that person caring for my family".
- 00:38:51 Mr. Jones distributed a handout that explains how the Board of Nursing assistance program works. He talked about the public and nonpublic approaches. **(Exhibit 6)**
- 00:44:55 Mr. Ramirez discussed a bill that addressed the reporting process, but stated the bill failed in the 2005 Legislature. He said that the Medical Board took the recommendations from that bill for the reporting requirements of the Board of Dentistry and the Board of Medicine. He talked about the use of the criminal justice system when there is substance abuse. He discussed several studies, one involving a review of 904 cases nationwide over a five-year period. Mr. Ramirez distributed a handout called "Setting the standard for recovery: Physicians' Health Programs". **(Exhibit 7)**
- 00:53:11 Dr. Guggenheim talked about a national data bank that provides information of medical abuse. She said that Montana is not nice to medical staff when it comes to being a dumping ground. Dr. Johnson concurred.

- 00:59:18 Rep. Roberts talked about a shakeup in Billings and falsified reports. He said if medical personnel falsify a report they should lose their license. Dr. Guggenheim said she is willing to work with Rep. Roberts regarding falsifying of the application.
- 01:07:19 Rep. Roberts would like a subcommittee to meet with the Boards regarding medical staff impairment. Sen. Keane appointed Rep. Roberts as Chair and assigned Rep. Hunter to the subcommittee.
- 01:10:01 Sen. Zinke wanted to know if each Board has a summary of each case, asking if there is an external/internal report showing the abuse without the names. Dr. Johnson said a screening panel meets and the case is identified by number. He said there is a mediator that works with the board and the licensee, and if it cannot be resolved then the case goes before the full Board.
- 01:12:53 Mr. Ramirez said there is a report showing 36 program frequencies of drug abuse. He distributed a copy of an audit report of the Montana Board of Medical Examiners and explained its recommendations. **(Exhibit 8)**
- 01:13:37 Sen. Keane thanked the panel members for their expertise and insights.

#### **Rule Review**

- 01:14:09 Mr. Campbell reported the rule review is quiet at this time.

#### **Break**

#### **Finance Committee Review of Agency Options for Budgetary Cutbacks - Discussion**

- **Sen. Carol Williams (by phone) and Rep. Galen Hollenbaugh, Legislative Finance Committee (LFC)**
- **Matt Stayner, LFD staff**
- **Kris Wilkinson, LFD staff**

- 01:27:55 Sen. Carol Williams, via polycom, gave an update of the Legislative Finance Committee (LFC) decision to discuss budget issues with interim committees.
- 01:31:46 Rep. Hollenbaugh said the effort is to gather opinions and ideas as the LFC reviews what it would like to see for the budget.
- 01:32:32 Ms. Wilkinson reviewed the information presented at the last committee meeting on the budget and the reasons for the efforts to get interim committee feedback..
- 01:33:41 Mr. Stayner referred to **(Exhibit 9)** and talked about reduction possibilities at various agencies. He explained why some of the programs were among those that were listed to be cut.

#### **Committee comments and questions**

- 01:53:52 Rep. Reinhart asked questions regarding the impact of funding changes on the grain labs and Montana possibly losing accreditation of the labs. Mr. Stayner said

the general fund portion would be replaced with user fees and accreditation should not be affected. Rep. Hollenbaugh asked if there was a point where fees might be too high and the labs not used, which would have potential impacts on public health. Mr. Stayner said that many of the tests are required by law. He said he did not know if labs would not be used if fees were too high. Rep. Vance asked about a fall-back position if agencies need the funds the might be swept to the general fund. Rep. Hollenbaugh said it is unclear, but that an enormous supplemental bill might be needed in the next session and said the result could be a separate crisis. Sen. Zinke noted that Exhibit 9's tallies fell short of the projected deficit. He said that program elimination is going to be necessary. He noted that raising taxes was not an option, and suggested a need to expand use of natural resources. Rep. Hollenbaugh added that Governor Schweitzer said he will veto any tax increases. Sen. Williams said the proposals are for discussion and to prompt other ideas.

02:03:17 Rep. Reinhart talked about studies done in the last interim that showed the value of research. She noted the benefits of valued-added agriculture and research into vaccines. She asked if any of the funds for research would be affected and questioned whether the creation of new jobs would be jeopardized.

02:05:40 Rep. Hunter asked about the Reed Act federal source of funding, particularly for the Employment Security Account. Mr. Stayner said he would look further into the distribution of the funding. Rep. Hunter also asked about the need for an actuarial analysis of the Uninsured Employer Fund (UEF) and what the payout and tail would need to be on the claims for the uninsured. Jerry Keck, Department of Labor and Industry (DLI), said the \$13.7 million reflects the accounts receivable as well as the actual cash. He said the accounts receivable are notoriously low. Actual cash is slightly under \$3 million. Sen. Zinke asked about the UEF paying for the injuries caused in a recent bear attack.

02:10:42 Sen. Keane asked the Committee for any comments or suggestions regarding the agencies. There were no further comments. Sen. Williams said she hopes this opens the dialogue for the upcoming Legislature.

02:12:14 **Public Comment on Options from Legislative Finance Reference Book**  
Jon Bennion, Montana Chamber of Commerce, talked about funds that are for specific purposes. He said if those funds are swept into the general fund that the Legislature should be required to pay that money back.

02:14:45 Riley Johnson, National Federation of Independent Businesses, echoed Mr. Bennion's comments and said that balancing the budget should not be on the backs of private business.

02:15:47 Don Judge, Montana Injured Workers, said that providing funds for WORKSAFEMT will save the state \$150 million in medical payments.

## **COMMITTEE STUDIES - SJR 14 and SJR 30**

### **Update on SJR 14 Study - Reports on stakeholder meetings, outsourcing**

- **Hope Stockwell, staff for SJR 14 Study**

- 02:17:09 Ms. Stockwell distributed several handouts:
- a packet of letters, including one that the committee voted to send to the various agencies searching for ways to combine the Veterinary Diagnostic and Wildlife Laboratories, a letter from the Montana State University president regarding the process, and a letter from Fish, Wildlife, and Parks. **(Exhibit 10)**
  - a table showing state lab testing services, fees, and turn-around times in nearby states. **(Exhibit 11)**
  - an email from Barb Powers on the committee that accredits labs.

Ms. Stockwell said she could not find a comparable lab out-of-state that does the same type of testing that Montana does.

### **Committee comments and questions**

- 02:23:01 Sen. Keane asked Ms. Stockwell about the collaborative process. Ms. Stockwell provided a mockup of a letter to stakeholders and an update on the process, including concerns that funding was problematic. **(Exhibit 12)**

### **Labor-Management Advisory Council (LMAC) proposed legislative package**

- **Jerry Keck, Department of Labor and Industry,**
- **LMAC members Jason Miller and Riley Johnson**

- 02:26:46 Mr. Miller distributed and explained a handout of key elements regarding consensus language for the LMAC proposal affecting workers' compensation rates and costs. **(Exhibit 13)**
- 02:30:22 Mr. Johnson talked about LMAC changing language that affects the closing of claims. He distributed a handout showing a benchmark for designing Workers' Compensation medical fee schedules. **(Exhibit 14)** He discussed the utilization treatment program and getting it started. **(Exhibit 15)** He said the program should be up and running by this fall and online by the first of the year.
- 02:36:10 Mr. Keck presented and explained LC 69LC, the DLI agency bill regarding language from LMAC. **(Exhibit 16)** Mr. Keck said that LMAC hopes to bring a draft bill to the last EAIC meeting in August.
- ### **Public Comment on LMAC proposals**
- 02:54:29 Sen. Zinke asked where will Montana be if this bill draft goes through without changes. Mr. Miller said about \$152 million is projected in savings but that other states also have work comp savings. He said Montana would be better off than it is today. Mr. Johnson added that in 2009 the system costs were estimated at \$407 million, and the savings take that to \$254 million, resulting in \$152 million projected savings.

- 02:56:56 Mr. Keck distributed and explained a handout of estimated cost impacts of the workers' compensation changes. **(Exhibit 17)** He noted a greater emphasis on safety would be beneficial and is not included in the savings. He pointed out that the utilization and treatment guidelines and the medical fee schedule changes were the major cost savers.
- 02:58:25 Sen. Zinke said if Montana could be more in the middle of the pack, work comp would be less of an issue for drawing more business into Montana. Sen. Zinke and Mr. Keck discussed placing a cap on a permanent partial payment when one is paid. Mr. Keck said the way the Montana system works there are two parts to the permanent disability system: 1) an impairment rating, with the amount of the payment related to the functional loss, and 2) if the injured worker cannot go back to work, the temporary disability ends and the permanent partial benefit payment would begin automatically. He said it is the goal of the department for the injured worker to return to work so a payment is never paid.
- 03:01:28 Sen. Brown asked about the plan to reduce medical reimbursement rates, based on Medicare. Mr. Johnson responded that the reimbursement rate can be reduced through DLI's Administrative Rule. Sen. Brown talked about providers dropping out if rates drop. Mr. Johnson responded that the fee schedule might be set at 165%, or 65% over Medicare rates.
- 03:05:28 Rep. Hunter responded to Sen. Brown's concern about savings for medical providers, and questioned if LMAC has considered tracking or mandating that cost reductions go to premium reductions as a cost savings. Mr. Keck replied by explaining a rate filing. He said that NCCI does an evaluation of the impact of any medical payment changes and will do a rate filing without waiting for experience to prove the impact. He said all private insurance companies are required to adopt the new rate reductions. Rep. Hunter said he is concerned that NCCI's suggested 6.4% reduced rate was not implemented fully by Montana State Fund.
- 03:09:34 Stacey Temple St. John, Great Falls attorney, talked about her concerns regarding impairment rating as a factor to determine an injured worker's wage loss. She also provided examples of the American Medical Association impairment rating guides from the 5th and 6th editions and noted the difference as applied to a ballerina and a construction worker. She distributed a handout explaining wage loss currently is assessed and what it would be based on an impairment rating. **(Exhibit 18)**
- 03:16:46 Dick Martin, Great Falls attorney, said the proposed law saves money minimally in comparison to what the department can do by administrative rule. He referenced the inequity in the bill draft, which he said shifts money from people that get wage loss settlements to those that get benefits based on impairment ratings only. He disagrees with the draft bill.
- 03:18:30 Bob Olsen, Montana Hospital Association (MHA), talked about how hospitals are compensated. He said that MHA is not in agreement with language LMAC has placed in the draft bill, particularly relating to a change in how medical providers

are paid. He also referenced previous discussions on hospital payment impacts.

03:23:59 Katherine Dunlap, representing Rehabilitation of Montana, said they support the LMAC language. She did express concerns regarding impairment rating.

03:29:09 Erin MacLean, Montana Medical Association, said the association concurs with the MHA. She talked about the utilization guidelines.

03:32:17 Al Smith, Montana Trial Lawyers Association, expressed concerns about medical provider payments and the impairment rating assessment. He said improved safety is key and said the Association's biggest concern is to fund WorkSafeMT

03:34:12 Nancy Butler, State Fund, said that the LMAC package is a significant change to the work comp system. She said State Fund has two concerns: 1) administration of the act, and 2) pricing. By law NCCI sets loss costs, and she said that Montana State Fund uses NCCI's loss costs as a basis for their rates. Currently Montana State Fund's rates are about 18% lower than NCCI's. She said State Fund is interested in seeing how NCCI prices the changes. She noted concerns about a change in the impairment rating guide to the 5th edition from the 6th edition that currently is being used and a change in how attorney fees are paid.

03:35:40 Mike Foster, representing all of the Catholic hospitals in Montana, said the proposal coming forward from LMAC will create a loss to the hospitals and potential loss in access to medical providers. He requested use of the rulemaking process and possible limits to public comment.

03:38:33 Sen. Keane received committee approval to send a letter to SJR 14 stakeholders.

03:38:51 **Lunch**

#### **Review of Exemptions/Classifications for Selected Workers**

Overview of Issues - Pat Murdo and Kris Wilkinson, staff

- Volunteers, Nonprofits, Performers - Ed Noonan, Myrna Loy Theatre
- Firefighters - Kevin Lauer, Gallatin Gateway Rural Fire District
- Member-Managed Limited Liability Companies - Jerry Keck, Dept. of Labor & Industry
- Household or domestic employment - Jerry Keck, Dept. of Labor & Industry
- Business concerns about classifications
- Amanda Knuteson for Eliminite (a manufacturing company in Bozeman)

04:45:35 Ms. Murdo gave an overview of exemptions. She distributed a handout showing the implications for Exemptions in Montana Workers' Compensation. **(Exhibit 19)**

05:00:05 Ed Noonan described how he has handled the process of exemptions and workers' compensation at the Myrna Loy Theater. He stated that workers' compensation is a minimal cost to them.

05:06:01 Kevin Lauer talked about the cost of workers' compensation coverage for volunteer



firefighters who sleep at the Gallatin Gateway Rural Fire District fire hall. Premiums for volunteer firefighters are based on time spent on the employer's premises and he questioned whether premiums should be paid for time spent while a volunteer is sleeping..

05:12:52 Jerry Keck discussed issues related to construction contractors who use a Limited Liability Company (LLC) exemption to avoid workers' compensation costs. The committee members and Mr. Keck discussed who is responsible when there is an LLC and who is responsible when a worker becomes injured on the job.

### **Concerns by Businesses about Classifications**

05:27:14 Ms. Wilkinson gave an overview of the Workers' Compensation classification codes. **(Exhibit 20)**

05:30:44 Tom Kallenbach and Amanda Knuteson jointly presented the concerns of the firm Eliminite, which produces wastewater treatment products. Mr. Kallenbach talked about the problems with their classification by Montana State Fund as a heavy tank builder.

05:33:32 Amanda Knuteson described her experience in trying to get a reevaluation of the classification code.

05:38:56 Dick Root, vice president of operations, Montana State Fund, explained how the problem had occurred with the Eliminite code. He said that NCCI (the National Council on Compensation Insurance, Inc.) inspected Eliminite and changed its classification by analogy to molded manufacturing instead of heavy tank construction.

05:42:03 Sen. Keane asked about Mr. Lauer's issue of different codes for sleeping and active volunteer firefighters. Mr. Root said they have found that a sleeper is on the job. Sen. Keane and Mr. Root talked about NCCI classifying "downtime". Mr. Root said it would have to go through a separate payroll.

05:49:28 Laurence Hubbard, State Fund, apologized to Mr. Kallenbach and Ms. Knuteson. He said there is a process where the Classification Review Committee can address problems like this, but he said the issue was resolved before it had gone that far.

### **Review of Committee Member-Requested Draft Bills on Work Comp**

- Rep. Reinhart's proposals on Montana State Fund regulation
- Rep. Hunter's proposal to consider state choice of insurance plans
- Rep. Hunter's proposal to revise Montana State Fund board composition

05:50:52 Mr. Campbell gave an overview of LCfund, Rep. Reinhart's bill draft request on regulation of Montana State Fund. **(Exhibit 21)**

05:56:26 The committee discussed market conduct exams and who would pay for a market conduct exam (Montana State Fund, according to the bill draft).

### **Public Comment**

- 06:01:05 Laurence Hubbard, CEO of Montana State Fund, discussed audit reviews and the responsibility of State Fund. He talked about the draft bill LCfund (Exhibit 21) stating it isn't necessary.
- 06:05:10 Rep. Hunter discussed bill draft LCeah2 (**Exhibit 22**), regarding the composition of the board of directors of the state compensation insurance fund and noted more work needed to be done to refine membership requirements.

### **Public Comment**

- 06:08:09 Laurence Hubbard commented on the bill draft.
- 06:10:32 Rep. Hunter discussed bill draft LCeah2, (**Exhibit 23**), which would allow the state to self-insure or choose either Montana State Fund or a private insurer to cover workers' compensation. He said more work needed to be done, including to evaluate its fiscal impact.
- 06:13:39 Sen. Keane asked about the HIPAA subcommittee report. Rep. Hunter said that LMAC is taking up this issue and the subcommittee would wait to hear back from them.
- 06:16:50 Sen. Keane said he would like more information on the volunteer firefighter issue. He asked for a report at the next EAIC meeting the sleeping firefighter issue.

### **Review of Committee Member-Requested Draft Bills/Letters on Livestock issues**

- **Rep. Vance's request on definition of "order"**
- **Letter regarding Yellowstone National Park bison vaccination**

- 06:18:41 Rep. Vance discussed the bill drafts presented in committee and requested that a financial impact report be done to determine if a fiscal note will be attached.
- 06:20:13 Ms. Murdo asked that the committee make this request formally to the Legislative Finance Committee.

### **Motion**

- 06:20:48 Sen. Keane moved to request an informal fiscal note from all agencies for proposed legislation discussion. The motion **passed**. Sen. Zinke voted aye by proxy. Attachment #4
- 06:21:27 Rep. Vance said he would like the word "order" defined in statute for the Department of Livestock so the concerns related to the designated surveillance area will not recur.
- 06:21:47 Mr. Campbell said there currently is no definition of an order in Montana statutes. Mr. Campbell explained that the Board of Livestock's definition of an order is not specific. He said there are emergency rule provisions to allow an order to be quickly implemented, if necessary, but still provide some requirements under the Montana Administrative Procedure Act.

06:29:27 Ms. Murdo talked about a Yellowstone National Park news release asking for public comment on a proposal regarding remote vaccination of bison for brucellosis. The committee members reviewed and approved a letter written by Ms. Murdo in response to that news release. **(Exhibit 24)** She said that at a public hearing in Helena she heard that vaccinating the bison probably would not take care of the brucellosis problem because elk could also have pockets of brucellosis. She asked if the letter was to be sent to all parties concerned in the brucellosis issue.

### **Motion**

06:38:28 Sen. Hansen made the motion to send the letter to all parties. The motion **passed**. Sen. Zinke voted aye by proxy. Attachment #4

### **Public Comment on committee-requested legislation or letters or any other topic on or off the agenda.**

06:52:12 Sen. Keane thanked Sen. Hansen for his service. Sen. Hansen is termed out and will not be back for another Legislative session.

### **Montana State Fund Update -- liaison reports -- email on Liberty Northwest**

06:53:55 Rep. Hunter said there is no liaison report at this time.

06:54:53 Ms. Murdo discussed an e-mail, EXHIBIT 4, from Mr. Hubbard, Montana State Fund, that clarifies the record on Liberty Northwest's overall decrease in premium costs. Ms. Murdo also noted that the overall decrease proposed by NCCI is not necessarily the same as imposed by the insurers.

06:55:59 Ms. Murdo addressed two issues regarding Workers' Compensation: 1) MSF does not report to the EAIC but to the State Administration and Veterans Affairs (SAVA) Committee. She suggested the committee take action to place Montana State Fund under the oversight of the EAI Committee and take it from SAVA, and 2) Ms. Murdo suggested that the committee might want to address what happens when workers' compensation coverage lapses and payments are made retroactively. Sen. Keane said the monitoring revision request has to go through the Legislative Council first. He authorized more work on the retroactive coverage issue.

07:01:20 Ms. Murdo informed the committee that the last EAIC meeting is August 19 and 20.

07:02:09 Ms. Murdo talked about the agencies that will have bill drafts available before the last EAI meeting. She will also have the agencies prepare informal fiscal notes.

### **Adjourn**

07:05:05 There being no further business, Sen. Keane adjourned the committee at 3:35 p.m.