



## Economic Affairs Interim Committee

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### 65th Montana Legislature

#### SENATE MEMBERS

GORDON VANCE--Chair  
EDWARD BUTTREY  
TOM FACEY  
LEA WHITFORD

#### HOUSE MEMBERS

NATE MCCONNELL--Vice Chair  
MARK NOLAND  
VINCE RICCI  
SHARON STEWART-PEREGOY

#### COMMITTEE STAFF

PATRICIA MURDO, Lead Staff  
JAMESON WALKER, Staff Attorney  
FONG HOM, Secretary

# MINUTES LOG

## SJR 27 STUDY

November 8, 2017  
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.

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

### **COMMITTEE MEMBERS PRESENT**

SEN. GORDON VANCE, Chair  
REP. NATE MCCONNELL, Vice Chair

SEN. EDWARD BUTTREY  
SEN. TOM FACEY

REP. MARK NOLAND  
REP. VINCE RICCI  
REP. SHARON STEWART-PEREGOY (phone)

### **COMMITTEE MEMBERS EXCUSED**

SEN. LEA WHITFORD

### **STAFF PRESENT**

PATRICIA MURDO, Lead Staff  
JAMESON WALKER, Staff Attorney  
FONG HOM, Secretary

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

## AGENDA ([Attachment 2](#))

### COMMITTEE ACTIONS

The Economic Affairs Interim Committee made these requests at its November 8, 2017, subcommittee meeting related to Senate Joint Resolution 27 on workers' compensation:

- for a legal analysis of the ownership of Montana State Fund's assets; and
- for presentations at the February subcommittee meeting of independent insurance agents' experiences in finding workers' compensation insurance for employers.

### CALL TO ORDER AND ROLL CALL

00:00:04 Sen. Vance called the meeting to order at 8:01 a.m. The secretary called roll. Sen. Whitford was excused. Rep. Stewart-Peregoy participated by phone.  
([Attachment 3](#))

### ADMINISTRATIVE UPDATES ON SUBCOMMITTEE APPROACH - Review of Table Approach-- Sen. Vance

00:01:10 Sen. Vance gave an overview of the SJR 27 Subcommittee's meeting.

### MONTANA'S WORKERS' COMPENSATION OVERVIEW: THE 3-WAY SYSTEM - Nancy Butler, Deputy State Auditor

00:01:59 Ms. Butler ([Exhibit 1](#))

### Questions from the Subcommittee

00:12:06 Sen. Facey asked about Plan 3 in the 3-Way System and what information was gathered regarding the oversight on rates that was done by the insurance commissioner in the past.

00:13:00 Ms. Butler

00:18:25 Pat Murdo referred the committee to a handout from the State of Montana Benefits Division showing the dividend distribution for Policy Year 2012.  
([Exhibit 2](#))

### EMPLOYER VIEWS ON COMPETITION

John Youngberg, Montana Farm Bureau  
Larry Jones, Montana Self-Insurers Association  
Riley Johnson, National Federation of Independent Businesses  
Spook Stang, Montana Motor Carriers Association  
State of Montana Benefits Division (no representative - dividend handout)

00:19:48 Spook Stang

00:24:35 Riley Johnson ([Exhibit 3](#))

00:30:08 John Youngberg

00:37:51 *Rep. Stewart-Peregoy joined the meeting at 8:38 a.m. by phone.*

### **Questions from the Subcommittee**

- 00:38:08 Sen. Vance asked the panelists about an observation regarding the private market not being interested in companies that are small or of high risk. He asked if their companies had experienced market access problems.
- 00:38:25 Mr. Stang
- 00:40:01 Mr. Johnson
- 00:41:32 Mr. Youngberg
- 00:42:15 Sen. Buttrey asked Mr. Stang for comparisons in costs between Plans 2 and 3.
- 00:42:46 Mr. Stang
- 00:43:44 Sen. Buttrey asked Mr. Stang about the \$9.50 number he gave.
- 00:43:57 Mr. Stang
- 00:44:26 Sen. Vance asked Mr. Youngberg for more information from his organization.

### **Public Comment**

- 00:45:07 Mark Barry, Chief Financial Officer, Montana State Fund
- 00:46:05 **BREAK** (reconvened at 9:01 a.m.)

### **Employer Views on Competition - continued**

- 01:00:47 Larry Jones, Executive Director, Montana Self-Insurers Association, said the association does not have a position on revisions in the existing workers' compensation system. He described a school district leaving the self-insured market and putting out a request for proposals.

### **Questions from the Committee**

- 01:02:39 Sen. Facey clarified that Mr. Jones was executive director of Plan 1 insurers.
- 01:03:01 Mr. Jones
- 01:03:14 Ms. Murdo explained the reason for the SJR 27 Study binders.

### **INSURERS' DISCUSSION ON COMPETITION - Rates, Premium Taxes, Service, Settlements**

Laurence Hubbard, Montana State Fund  
Keith Brownfield, Victory Insurance  
Gary Strannigan, Liberty Mutual  
Shannon Shanholtzer, Montana Association of Counties Workers Compensation Trust  
John Leonard, retired, president emeritus, Maine Employers Mutual Insurance Co.

- 01:07:00 Laurence Hubbard (**Exhibit 4**)
- 01:15:47 Keith Brownfield
- 01:28:40 Gary Strannigan
- 01:30:47 Shannon Shanholtzer
- 01:35:18 John Leonard

### **Questions from the Subcommittee**

- 01:41:32 Rep. Ricci asked Mr. Brownfield to address an opinion that small employers will be pushed into a high risk pool.
- 01:41:54 Mr. Brownfield

01:43:49 Rep. Ricci asked about Montana's workers' compensation rates being the 43rd highest in the country and asked how Mr. Brownfield correlates the high premiums vs. high accident rates.

01:44:22 Mr. Brownfield

01:45:12 Rep. Ricci asked Mr. Brownfield what would happen if his company fails, who would bail his company out.

01:45:44 Mr. Brownfield

01:46:11 Rep. Ricci asked the panelists if there is strong interest for other companies to sell comp insurance in Montana.

01:46:41 Mr. Brownfield

01:47:33 Mr. Strannigan

01:49:19 Mr. Hubbard

01:52:30 Sen. Facey asked the panelists about the Oregon study.

01:53:35 Mr. Hubbard

01:54:28 Mr. Leonard

01:55:30 Mr. Brownfield

01:56:29 Sen. Facey asked Mr. Hubbard about page 3 of his handout (see Exhibit 4) that showed \$216 million in dividends. He asked if Mr. Hubbard could provide to the committee what the premium payments were over time since 1999.

01:57:15 Mr. Hubbard

01:57:23 Sen. Facey asked Mr. Brownfield to address the National Council on Compensation Insurance (NCCI) handling the residual market.

01:58:11 Mr. Brownfield

02:04:01 Sen. Facey asked Ms. Shanholtzer if she has seen a slight uptick in rates since the larger counties have left the market.

02:04:40 Ms. Shanholtzer

02:05:32 Rep. McConnell asked the panelists to address the statement, if it isn't broken, why fix it. He said he is not hearing any compelling argument for privatization.

02:06:24 Mr. Strannigan

02:10:14 Mr. Brownfield

02:12:31 Mr. Hubbard

02:16:16 Ms. Shanholtzer

02:17:45 Mr. Leonard

02:19:45 Sen. Buttrey asked Mr. Hubbard if the Montana State Fund has an unfair advantage in the competitive market because the State Fund does not pay premium taxes on its policies.

02:21:07 Mr. Hubbard

02:22:17 Sen. Buttrey asked Mr. Strannigan to explain the reduction in market share: is it due to competition, new entry into the market, or policies that are not being written in Montana?

02:23:11 Mr. Strannigan

02:25:58 Sen. Facey asked Mr. Leonard if the self-insured use stop loss insurance.

02:26:02 Mr. Leonard

02:28:15 **BREAK** (reconvened at 11:40 a.m.)

## **PANEL COMPARING GUARANTEED MARKETS AND RESIDUAL RISK POOL AND ASSIGNMENTS**

Bruce Hockman, Pinehurst Consulting  
Cliff Merritt, National Council on Compensation Insurance

02:44:40 Bruce Hockman (**Exhibit 5**)  
03:05:30 Cliff Merritt (**Exhibit 6**)

### **Questions from the Subcommittee**

03:17:49 Sen. Facey asked Mr. Merritt what is meant by "accessible policy".  
03:17:53 Mr. Merritt  
03:18:45 Sen. Buttrey asked Mr. Merritt how the insurance pools are defining residual markets.  
03:19:06 Mr. Merritt  
03:20:27 Sen. Facey asked Mr. Merritt about small businesses moving in and out of the residual markets.  
03:21:08 Mr. Merritt  
03:21:53 Rep. Ricci asked Mr. Hockman if the Montana State Fund has an unfair or competitive advantage.  
03:22:13 Mr. Hockman  
03:27:41 Rep. Noland asked Mr. Hockman to clarify "the cost of entry is critical" comment.  
03:28:02 Mr. Hockman

### **Public Comment on panel discussions**

03:30:58 Bridger Mahlum, Montana Chamber of Commerce, commented on new businesses having difficulties of getting coverage without guaranteed markets.  
03:35:53 Bruce Spencer, representing the National Council on Compensation Insurance, wanted the committee to know that NCCI is a nationally recognized expert in workers compensation, and that NCCI can provide national information or data.  
03:37:07 Chris Cavazos, Montana AFL-CIO, said that all of the cost savings that have been achieved since 2011 have been on the backs of workers. Achieving savings goes along with improved safety.  
03:38:30 Jon Metropoulos, Victory Insurance, said that Victory Insurance is looking at trying to achieve a systemic delivery change so that more private enterprises will be involved in Montana.  
03:40:46 Rep. Ricci asked Mr. Metropoulos for more data to support his statement of \$60 to \$90 million in savings.

### **SUBCOMMITTEE NEXT STEPS**

03:41:38 Sen. Vance asked if the subcommittee would like to hear from independent insurance agents selling workers' compensation insurance in Montana.  
03:42:41 Sen. Facey said he would like to know what would happen if we were to mutualize or privatize and what would happen with existing State Fund assets and liabilities.  
03:44:10 Ms. Murdo said that Mr. Walker has been compiling other states' supreme court cases on the question of to whom does a state fund's assets belong. She suggested having a debate between two attorneys on that policy idea.  
03:46:12 Rep. Noland agreed with requesting independent insurance agents to come and

- present.
- 03:47:34 Rep. McConnell said that the discussion of assets is an important one to have as well as a discussion about mutualization. He also said that it is important to hear insurance agents' perspectives. Rep. McConnell said that he would like to hear the perspective from employers. This committee is trying to get actionable legislative items for the next session.
- 03:51:40 Rep. Noland commented on hearing from lawyers.
- 03:52:38 Rep. Stewart-Peregoy said that the committee needs to deal with low wages in Montana, high accident rates, and the high startup costs for businesses.
- 03:54:59 Sen. Vance said that a thought was to have a lawyer from each side of the issue and present an argument that might go to the Supreme Court as to where those assets might go.
- 03:55:43 Sen. Buttrey said that safety and the increase in medical costs are issues that need to be looked at.

### **Motion/Vote**

- 04:00:44 Sen. Buttrey moved to request a legal analysis summarizing legal decisions in other states on mutualization or privatization. The motion passed unanimously by voice vote.
- 04:01:37 Rep. Ricci said that he wanted it on record that bringing in employees and employers into the discussion might not help the EAIC's decision making. Safety is an important issue, and hearing from employers that have implemented safety polices that have been successful would be a better avenue to pursue.
- 04:01:56 Rep. McConnell said that the committee should hear about safety programs that are effective in order to craft legislation that will improve the conditions of the market.

### **ADJOURNMENT**

- 04:04:32 With no further business before the subcommittee, Sen. Vance adjourned the meeting at 12:06 p.m.

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