

*Final Report of the
2015-2016
Economic Affairs
Interim Committee

May 2017*

Touching All Corners of Montana

**From Air Ambulances to Broadband
and From Licensed Professionals to
Livestock and Economic Development**

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Abstract

The eight-member Economic Affairs Interim Committee (EAIC) looked at a variety of issues related to industry of all kinds during the 2015-2016 interim. In addition to exploring information related to assigned studies and the required monitoring of agency activities, the EAIC members chose to look at economic development issues, particularly related to broadband deployment in Montana. The EAIC also heard reports from the liquor industry at the start of the interim and again in June 2016 after industry representatives had met for about a year on prospective legislated changes in their industry.

Findings

The EAIC had two studies, one assigned by enactment of Senate Bill 390, a study of licensing board fees and costs, and one assigned by Legislative Council to study air ambulance billing under House Joint Resolution 29.

Committee members were asked by staff at their last meeting in August 2016 to respond as to whether they agreed or disagreed with a series of statements; the statements with which they agreed were to be listed as findings for their studies. They also had the opportunity to recommend a finding by filling in blanks. The statements are each available in the respective appendices for the studies, Appendix B for the SB 390 study and Appendix C for the HJR 29 study of air ambulance billing.

Listed below are findings for each study, based on responses received from at least five of the eight committee members.

Findings for the SB 390 Study of Licensing Board Costs

- Unanimously agreed with the comment: “That legal costs, rule revisions, and other budget-impacting activities vary across years as well as boards, which complicates individual board budget planning.”
- A majority of EAIC members agreed that the Department of Labor and Industry’s development and assignment of costs to licensing boards appeared to be appropriate, rational, and equitable.
- A majority also agreed that making one agency primarily responsible for handling licensing boards made sense from a labor and cost distribution perspective while still allowing board-specific costs and policies to be handled by each board.

Opinions split on questions related to whether active supervision might be necessary to protect board members against antitrust complaints. Asked whether to adopt, as a committee bill, a proposal to allow the Commissioner of Labor and Industry to exercise active supervision over potential antitrust activities

by the boards, the EAIC decided against a committee bill and told a representative of the Department of Labor and Industry that the department could move forward with a bill draft request on that topic.

Findings for the HJR 29 Study of Air Ambulance Costs

At least six members of the eight EAIC members agreed with the following statements regarding air ambulance services and related insurance billing:

- “That Montana has a need for air ambulances across the state, especially in rural areas, and a need for the services that they provide;”
- That definitions may be needed of “emergency” services that are compatible with federal and state definitions (to guide billing practices);”
- “That communications are important and that the State Auditor or the Department of Public Health and Human Services or both ought to promote transparency among insurers and air ambulance providers so that patients can see costs and whether their insurance covers certain air ambulance costs;”
- “That insurance companies have a responsibility to inform policyholders/clients of potential out-of-network air ambulance costs as compared with in-network costs”; and
- “That membership reciprocity ought to be regulated more.”

The ultimate “findings” for the air ambulance study were the unanimous adoptions by committee members of two bills that came out of the State Auditor’s Office. One bill proposed holding harmless an insured patient in an out-of-network air ambulance billing situation from balance bills; the proposal outlined a dispute resolution option in which the insurer and the air ambulance provider had options for take-or-leave payments of different types, arbitration, or court resolution. A work group put together by the State Auditor’s Office at the request of the EAIC reviewed options that went into this bill draft but ultimately did not coalesce behind the proposal. A second bill draft out of the State Auditor’s Office was to regulate air ambulance memberships as an insurance product. This bill draft had no discussion by the work group, but EAIC members after hearing the outline of the bill from two of the State Auditor’s Office attorneys agreed to adopt the bill as a committee bill. The adopted bill drafts are LC 379, the hold harmless proposal, which became SB 44, and LC 380, regulating air ambulance memberships as insurance, which became HB 73.

Helpful Hint

For those not viewing this document online, the following websites contain information about the various meetings discussed in this report. If you are unable to access a document, please call 406-444-3064 and request that the document be provided to you. There may be a printing and mailing charge.

If you are viewing this document online, and the hotlinks to committee meeting materials referenced in this report do not work, please visit www.leg.mt.gov to navigate to the 2015-2016 Economic Affairs Interim Committee website to find the referenced material under what may be a new naming protocol.

For the June 10, 2015, Meeting:

<http://leg.mt.gov/css/Committees/Interim/2015-2016/Economic-Affairs/Meetings/June-2015/june-2015.asp>

For the August 31-September 1, 2015, Meeting:

<http://leg.mt.gov/css/committees/interim/2015-2016/Economic-Affairs/Meetings/Aug-Sept-2015/aug-sept-2015.asp>

For the December 1-2, 2015, Meeting:

<http://leg.mt.gov/css/committees/interim/2015-2016/Economic-Affairs/Meetings/Dec-2015/dec-2015.asp>

For the February 4-5, 2016, Meeting:

<http://leg.mt.gov/css/committees/interim/2015-2016/Economic-Affairs/Meetings/Feb-2016/feb-2016.asp>

For the April 20, 2016, Meeting:

<http://leg.mt.gov/css/committees/interim/2015-2016/Economic-Affairs/Meetings/April-2016/april-2016.asp>

For the June 22, 2016, Meeting:

<http://leg.mt.gov/css/committees/interim/2015-2016/Economic-Affairs/Meetings/June-2016/june-2016.asp>

For the August 30-31, 2016, Meeting:

<http://leg.mt.gov/css/committees/interim/2015-2016/Economic-Affairs/Meetings/Aug-2016/aug-2016.asp>

Committee Members

Before the close of each legislative session, the House leadership and Senate Committee on Committees appoint lawmakers to interim committees. The members of the Economic Affairs Interim Committee (EAIC), like most other interim committees, serve one 20-month term. The work of this committee ends in September 2016, although members may be called upon until the next Legislature begins. This information is included to comply with the law in 2-15-155, MCA.

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Overview of EAIC Tasks

All interim committees have a focus. For the Economic Affairs Interim Committee (EAIC) the varied portfolio covers industries of all types and, in general, workers. Subjects before the EAIC touch all parts of Montana and its people. Although natural resource-related industries and telecommunications for the most part are addressed by other interim committees, sometimes the EAIC looks at these industries from an economic development standpoint. That was the case this year for broadband. Other main topic areas this interim included a strong focus on the budget and other concerns of the Department of Livestock, the costs and department interactions with licensing boards as required under Senate Bill 390, and air ambulance billing as requested in the House Joint Resolution 29 study.

Each interim committee also has required functions, spelled out in section 5-5-215, MCA. Specific monitoring assignments, listed in 5-5-223, MCA, give an indication of subjects heard by the committee during the 2015-2016 interim:

- the Department of Agriculture;
- the Department of Commerce;
- the Department of Labor and Industry;
- the Department of Livestock;
- the State Auditor's Office (the Commissioner of Securities and Insurance);
- the Governor's Office of Economic Development;
- the State Compensation Insurance Fund (known as Montana State Fund or just State Fund), provided for in 39-71-2313, MCA and the State Fund's Board of Directors; and
- the Division of Banking and Financial Institutions provided for in 32-1-211, MCA.

Tasks: Monitoring, Studying, Reviewing

Under 5-5-215, MCA, an interim committee is to monitor the operations of its assigned agencies with attention to issues that may require future legislative action and to ways to improve existing law or citizen interactions with the agencies.

In addition, interim committees are required to review administrative rules of assigned agencies and any advisory councils or legislatively required reports to determine if they continue to be needed. An interim committee also may gather information related to existing or prospective legislation “as it determines, on its own initiative, to be pertinent to the adequate completion of its work.” For shorthand purposes, this task is called “member issues.”

Legislation also may designate other tasks, which is the case with reviews required for the Department of Livestock’s structural balance in its budget, the Montana State Fund’s budget, and various reports.

Key Activities

Each interim committee is expected to adopt a work plan at either its first or second meeting. This plan serves as a guide for activities during the 15 to 16 months of interim work. This report follows, in general, the work plan adopted by the EAIC at its second meeting in 2015.¹ That work plan divided the EAIC's responsibilities into three main areas: statutory obligations, study activities, and member issues. Each agenda included times for agency monitoring and rule review--two of the committee's statutory obligations--as well as one or more study activities and generally one member issue.

In 11 days of meetings between June 10, 2015, and August 31, 2016, the EAIC took the following actions:

- Elected Rep. Ryan Lynch as presiding officer and Sen. Gordon Vance as vice presiding officer (June 2015 meeting).
- Appointed Rep. Mike Lang and Sen. Lea Whitford as liaisons for the Rail Service Competition Council. (June 2015 meeting) At the February 2016 meeting Sen. Whitford asked for an alternate to replace her on the RSCC. Sen. Tom Facey agreed to become a liaison in her place.
- Heard from Montanans impacted by hefty bills generated when they or a loved one had to be transported by air ambulances to hospitals capable of handling their emergency situation. Also heard from air ambulance providers, insurers, and others involved in some of the costly encounters. Asked the State Auditor's Office to continue working on the issues related to insurance and air ambulance billing through a working group. (Portions of all meetings.)
- Heard from those companies and citizens engaged in expanding broadband access across Montana and the concerns that they and potential users have experienced.
- Objected to an initial proposed rule by the Board of Physical Therapy Examiners regarding dry needling but did not object to the rewritten version of the rule proposed later in the interim.
- Objected to a rule proposed by the Board of Livestock to revise assessments on dairies and expand the assessment to processors of all milk products (primarily cheese and ice cream manufacturers). The EAIC did not object when a revised version of the rule was proposed.

¹ See the work plan at:

<http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/About/workplan-2015-2016-revised.pdf>

- Sent letters asking Montana’s Congressional delegation to consider revising the Airline Deregulation Act in a way that removes the current preemption against state laws regulating air ambulances, particularly related to pricing.
- Sent a letter to the Montana State Fund (State Fund) Board of Directors recommending against a possible purchase by the State Fund of the City of Helena parking garage adjacent to the State Fund building.
- Authorized drafting of various agency bills for preintroduction for the 2017 Legislature.
- Voted to adopt the following committee bills:
 - Two drafts related to the air ambulance study: one to hold harmless an insured patient transported by air ambulance and providing a dispute resolution process for insurers and air ambulance providers to determine a fair market price for the transport, and the other to revise regulation of some private air ambulance subscription or membership provisions;
 - A draft to transfer duties related to interim committee monitoring of liquor laws and rules from the Revenue and Transportation Interim Committee to the EAIC, which primarily is comprised of members of standing committees that hear liquor bills;
 - A draft to revise mandatory review of monitored agencies’ advisory councils and required reports to allow discretion by a vote of a majority of the interim committee; and
 - A draft to require reports on business industrial development companies only for licensed BIDCOs.

Studies

One of the EAIC’s two studies in the 2015-2016 interim came because of a bill requiring the committee to look at how the Department of Labor and Industry assigned indirect costs and handled budgeting for professional and occupational licensing boards.

The other study, assigned by the Legislative Council, urged a look at the high cost of air ambulances in medical emergencies and the experiences of Montanans who faced high balance bills for that use.

- **Study on Professional and Occupational Licensing Costs**
Under SB 390, the EAIC specifically was asked to look at direct and indirect costs faced by licensing boards and how the Department of Labor and Industry (DLI) assigned those costs to each of the 33 licensing boards administratively attached to DLI.

The study also provided some licensees with an opportunity to question why their initial licensing and renewal fees were so high, as compared to the corresponding fees in other states.

In addition to the overall study on costs and department services for those costs, the study included a look at whether a 2015 U.S. Supreme Court decision ought to result in more supervision by the DLI so that board members might gain some individual liability coverage for actions they take.

For more information on the SB 390 Study, see Appendix B.

- **Study on Air Ambulances**

The air ambulance study, proposed under HJR 29, had many moving parts that centered on cost concerns. From the air ambulance perspective, costs of maintaining operations are high in a state that does not have a substantial enough population to guarantee enough use to gain efficiencies of scale. From the perspective of insurers, many air ambulances—especially those not affiliated with hospitals--were unwilling to participate in networks at the rates that insurers were ready to pay, usually a percentage above what Medicare pays. When a provider is unwilling to be in an insurance network, this means the patient may be sent the balance of the bill (the remainder of what insurance did not pay). For many patients who testified before the EAIC, the balance bills amounted to \$25,000 at the low end to more than \$50,000. In one case, the bill was more than \$100,000—far greater than what the patient or patient’s family had to pay for treatment at the receiving hospital. Patients needing to be air-lifted to a hospital better capable of handling their particular case are caught between the immediate need for life-saving care and the cost that may bankrupt or severely impact their families into the future.

For more information on the HJR 29 Study, see Appendix C.

Agency Monitoring

Some interim committees have one agency that they monitor; others have several. The EAIC claims eight entities. A committee bill to be proposed for the 2017 Legislature would expand the list by one, if approved by the Legislature and allowed to become law by the Governor. That bill would add monitoring of liquor control laws to the EAIC’s duties, primarily because the EAIC’s members generally serve on standing committees during session that review liquor-related bills. Moving monitoring of liquor regulations and rules to the EAIC from the Revenue and Transportation Interim Committee would provide continuity on issues the members heard during session.

Monitoring may involve no more than brief updates by a department or agency. Or monitoring may feature in-depth reports that add to the agency’s everyday work.

- **Governor's Office of Economic Development**

EAIC members at their first meeting indicated an interest in learning more about Montana’s economic development activities. John Rogers, the state's chief business officer, provided an overview of the Governor's Office of Economic Development at the committee's meeting in September 2015, along

with representatives from the Department of Commerce. Asked by the EAIC to provide more specifics on economic development grants, Mr. Rogers returned for presentations in February 2016. These presentations, which discussed Gov. Steve Bullock's Main Street Project among other topics, mirrored some of the information provided by the Department of Labor and Industry in collaboration with the Montana University System (see next section).

- **Department of Labor and Industry**

A presentation on the collaboration between DLI and the Montana University System provided the EAIC members with a detailed look at the work being done to connect employers with technology colleges and students. Some of this collaboration involved dual degree programs that allow high school students to begin their college work while still in high school. Others involved apprenticeships. The EAIC's Feb. 4 meeting featured a preview of the work² being done to coordinate nursing and medical help programs at Missoula College in cooperation with DLI.

Other Department of Labor and Industry appearances at the EAIC, in addition to those generated by reviews of licensing boards at almost all of the meetings, included:

- An overview of DLI activities by Commissioner of Labor and Industry Pam Bucy and division administrators at the committee's inaugural meeting, June 10, 2015. Ms. Bucy reviewed department funding, changes in the unemployment program and workers' compensation, plus information on licensing boards. Various staff answered questions on worker safety and the department budget.
- A tour of the Business Standards Division at the Aug. 31, 2015, meeting. The tour helped to introduce committee members to DLI functions, described in the SB 390 study of licensing boards. Committee members heard how staff handles licensing applications for the various boards and what happens when complaints come in. Division administrator Todd Younkin told members that in any given week, five board meetings may be taking place along with waves of licensing renewals for three or four boards over any 3-month period throughout the year, with applications or complaints fielded at various times for all boards.
- At the Dec. 1 meeting, in addition to discussions about the SB 390 study, the DLI chief legal counsel provided an update on discussions between physical therapists, who had proposed a rule related to dry needling by members of that profession, and acupuncturists, who opposed dry needling as being the equivalent of acupuncture. The committee had opposed

² See "Meeting Local Worker Demand: Labor Market Outcomes for Missoula College", accessed July 26, 2016:
http://lmi.mt.gov/Portals/135/Publications/LMIPubs/Labor%20Market%20Publications/MC%20Report%20FINAL_8.0.pdf

the rule at its Aug. 31-Sept. 1, 2015, meeting but did not continue the opposition in December.

- An issue raised in a previous interim in which the Business Standards Division did not see eye-to-eye with the Montana Petroleum Marketers and Convenience Store Association ended in a harmonious report at the June 22, 2016, meeting. Business Standards Division administrator Todd Younkin described proposed solutions for testing weights and measures related to pump dispensers and fuel meters. Part of that solution requires changes in legislation, which the Department has proposed.

As can be seen from the DLI activities before the committee, the legislators' interim job includes being responsive to members of the public or industries who raise concerns about how government is working. Sometimes the solution is a recommendation to find a compromise. Sometimes action is a step too far, with legislators advising those who don't like the situation to return with a proposed bill at the next legislative session.

- Reports at the last meeting Aug. 30-31, 2016, included updates on apprenticeship programs, unemployment benefits requested under a statute allowing victims of sexual assault to obtain benefits, and the effects of a law raising the costs of death certificates. The Board of Funeral Service had asked in 2015 for increased death certificate fees partly to help improve finances for the Board of Funeral Service. Also on the Aug. 30 agenda was an overview of the activities of the Workers' Compensation Court by Judge David Sandler.

As can be seen from the DLI activities before the committee, the legislators' interim job includes being responsive to members of the public or industries who raise concerns about how government is working. Sometimes the solution is a directive to find a compromise. Sometimes interference is a step too far, with legislators advising those who don't like the situation to return with a proposed bill at the next legislative session.

- **Department of Agriculture**

The Department of Agriculture, in contrast to the DLI, had a brief session with the EAIC. A portion of the Feb. 4-5, 2016, meeting (on Feb. 5) included descriptions of the Growth Through Agriculture program, changes to a pesticide training program, and inquiries about fees for licensing nurseries. Questions about the hail insurance program focused on the department's first-ever decision to buy reinsurance for the state-run program because of catastrophic losses in the 2013 insurance year. Those losses represented 187% of premiums paid and nearly depleted program funds. EAIC members also asked about the department's noxious weed program and efforts to control noxious weeds on federal lands.

The agency also presented legislative requests at the Aug. 30 meeting.

- **Department of Livestock**

A huge focus on the Department of Livestock (DofL) in the 2015-2016 interim stemmed in part from the 2015 Legislature deciding in House Bill 2 to fund most DofL programs as one-time only and directing the EAIC to monitor the DofL's structural balance in each of the two fiscal years touching on the interim. The committee members decided at their first meeting to request budget and other reports at each of the EAIC meetings from the Board of Livestock, which serves as the titular head of the department.

Other reasons for the intense reviews included:

- unhappiness in the livestock industry, which had led to frequent industry-driven meetings to try to fix budget and staffing problems at the department;
- departure through a negotiated, paid settlement of the department's executive officer in late 2015;
- a several month delay before the Board of Livestock named a new executive officer in 2016; and
- proposed rulemaking that rocked fledgling cheese manufacturers and a long-time ice cream maker in the state with proposed high, new fees.

As a result, the EAIC featured reports from the Board of Livestock and the DofL at each of its meetings, usually including budget updates. Other reports included:

- information on how the department uses its per capita fees along with brand inspection fees, milk assessment fees, and some general fund to finance operations and programs. This Aug. 31 review was part of an overall look at fee-financed government that also included an examination of how most licensing boards cover their program costs through licensing fees and not with general fund dollars.
- a review of training offered to the Board of Livestock. The board, as the department director, is responsible for making certain that performance reviews take place as well as that the budget is within its appropriated limits and not in deficit. Board members John Lehfeldt, John Scully, and Nina Baucus reported at the Dec. 1, 2015, meeting on the budget, personnel issues, the board training, and the Veterinary Diagnostic Laboratory, including industry-led efforts to consolidate several agriculture and livestock-related laboratories at or in the vicinity of Montana State University-Bozeman.
- overviews of two audits done by the Legislative Audit Division, a financial audit and a performance audit of the Veterinary Diagnostic Laboratory. Of the three audit recommendations in the financial audit, the Board of Livestock did not concur with the audit's concern regarding use of per-capita fees for part of the payment related to the former executive

officer's settlement. The audit concern was related specifically to the use of the special funds after the executive's departure, when no work was performed on behalf of livestock.³

The Montana Veterinary Diagnostic Laboratory performance audit⁴ contained five recommendations, primarily centered on budgeting and analysis of its costs and fees for services. One of the recommendations was for the DofL to develop a plan and timeline to replace the current laboratory.

Replacing the current laboratory has been a subject before the Economic Affairs Interim Committee since 2009-2010 when a study of state laboratories pointed out facility problems that had previously jeopardized accreditation of the laboratory by a national accreditation group. To highlight a few of the problems identified in the Senate Joint Resolution 14 study⁵ there were biosecurity concerns, cramped and inefficient quarters, and an inadequate electrical system. Although the laboratory did receive accreditation, the ongoing concern about the facility's status remained, due in part to its landlord, Montana State University, apparently having other plans for the land on which the laboratory sits with no alternate site proposed for the laboratory. Throughout the interim, the Board of Livestock updated the EAIC regarding independent efforts by various groups looking into a laboratory facility that could house several labs from different agencies. A working group of stakeholders suggested that the various stakeholders look into options for a joint facility and how to fund it. The Montana Wool Growers Association helped coordinate efforts. In an effort to determine if Montana State University remained interested in an association with the various labs that might be combined into a joint facility, the EAIC asked for a letter from the Montana State University president as to expectations moving forward. A copy of that letter, which affirms interest in continuing

To determine if Montana State University remained interested in an association with the various labs that might be combined into a joint facility, the EAIC asked for a letter from the Montana State University president as to expectations moving forward. The response affirmed interest in continuing collaboration but stressed a need for promoting educational pursuits first and foremost.

³ See [Department of Livestock, Financial Compliance Audit](#) for the Two Fiscal Years Ended June 30, 2015, April 2016, specifically the letter from the Legislative Auditor and p. 5.

⁴ See [Montana Veterinary Diagnostic Laboratory Performance Audit](#), Department of Livestock, May 2016.

⁵ See [State Laboratories: An analysis of state laboratory facilities related to wildlife, livestock, agriculture, and public health](#), October 2010.

collaboration but also stresses the need for promoting educational pursuits first and foremost, is in Appendix E.

- **Department of Commerce**

Department of Commerce Deputy Director Doug Mitchell provided an overview of changes at the department at the EAIC's Sept. 1, 2016, meeting. The committee also was provided with a background briefing paper on the department.⁶ The Department's presentation was part of an overall review of economic development activities, including work being done by the Governor's Office of Economic Development. In a response to a request for more specifics about Department of Commerce economic development programs, the Department's Sean Becker provided overviews at the Feb. 5, 2016, meeting of the Big Sky Economic Development Trust Fund and Incumbent Worker Training Grants.

At its June 22, 2016, meeting Department of Commerce personnel asked for approval of two department bills, one dealing with a Legislative Audit Committee concern about a potential for conflict of interest related to contracted duties of the Board of Horseracing executive secretary and the other allowing the Board of Housing to handle any loans not made by the Board of Housing if requested by a local financial institution. The EAIC moved forward the drafting of both bills.

At the Aug. 30-31 EAIC meeting members heard several of the department's statutorily required reports, including the status of:

- loans and grants made under the Distressed Wood Products Revolving Loan Fund;
- the Montana Heritage Commission (for which the EAIC voted to accept the indirect cost rate assigned by the Department of Commerce for handling the Commission's administrative tasks);
- the Veterans' Home Loan Program; and
- the Board of Research and Commercialization Technology projects.

At the Aug. 31 portion of the EAIC meeting Commerce Deputy Director Doug Mitchell also explained to EAIC members how changes in the flow of funds into the Treasure State Endowment Fund were not expected to affect grants for various infrastructure projects requested by Montana's cities, towns, and counties. Mr. Mitchell also reported that the Department of Commerce had not been asked to review any federal projects on behalf of local governments, another reporting requirement by the department.

- **State Auditor's Office**

Handouts from the State Auditor's Office at the Feb. 4, 2016, EAIC meeting summarized closure of two health-insurance related programs: the Montana Comprehensive Health Association and the Insure Montana program. At the request of the EAIC, the State Auditor's Office took an active role in

⁶See <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Aug-Sept-2015/AgencyOverviewCommerce2015.pdf>.

coordinating a work group on the HJR 29 study of air ambulances. (See Appendix C for more information.)

In addition to receiving an overview of the State Auditor's Office functions, the EAIC heard from staff for both the State Auditor's Office and Montana State Fund regarding implementation of SB 123 from the 2015 session. SB 123 put the Montana State Fund under the regulatory authority of the State Auditor's Office. An actuary hired by the State Auditor's Office provided a review of Montana State Fund's finances and of the Old Fund claims, which are those claims that occurred from injury or occupational disease prior to July 1, 1990, and that were covered by the Montana State Fund in existence at the time.

- **Division of Banking and Financial Institutions**

Commissioner of Banking and Financial Institutions Melanie Hall used agency-monitoring time to discuss proposals for updating the state's banking laws at the Dec. 1, 2015, EAIC meeting. She updated the committee on the status of banks and credit unions in Montana at the Aug. 31, 2016, meeting and noted how several mergers had decreased some branch office access but potentially will end up strengthening the institutions through healthier finances.

- **Montana State Fund**

Significant changes in the Montana State Fund's operations occurred in 2016 as the state's workers' compensation insurer implemented SB 123, which was enacted in the 2015 session. That bill gave regulatory authority over Montana State Fund to the State Auditor's Office, with some adjustments related to the unique role that Montana State Fund has as the state's guaranteed provider of workers' compensation insurance. Previously Montana State Fund followed statutory requirements but its board of directors had no regulator exercising oversight. Oversight prior to SB 123 rested primarily on reviews done by the Legislative Audit Division and other legislative watchers. As a result of SB 123, operational changes included:

- Requirements to file rates and forms with the State Auditor's Office;
- Changeovers to a calendar year from a state fiscal year for some purposes;
- Statutorily required financial assets at a level twice what other insurers are required to have to avoid risk-based capital concerns related to solvency; and
- A place outside of Montana State Fund where employers or injured workers could file complaints.

At the EAIC's Dec. 1, 2015, meeting the members heard assessments from an actuary hired by the State Auditor's Office, who reviewed the assumptions made by Montana State Fund's actuary for rate-setting and figuring how much money to put into reserves. Dan Reppert with Financial Risk Analysts pointed out that Montana State Fund's actuary, Towers Watson (now called Willis Towers Watson), listed various uncertainties that complicated projections. These included the volume and mix of Montana State Fund's business as well as claims handling and reserving practices. The reserving for the New Fund, those claims filed with Montana State Fund on or after July 1, 1990, was generally reasonable, Financial Risk Analysts said, although lower than what Financial Risk Analysts would have estimated. The report also stated that

Montana State Fund’s reserves were high but appropriate, given potential lawsuits that, if successful, could change benefit payments calculated under HB 334, a bill in the 2011 session that created several major changes in Montana’s workers’ compensation laws.⁷

Also at the December meeting, in addition to budget reviews done in conjunction with the Fund’s chief financial officer, Montana State Fund’s chief executive officer reviewed recommendations regarding projected claims and costs for those claims called Old Fund claims, which are claims filed with the state workers’ compensation insurer for injuries or occupational disease that happened prior to July 1, 1990. The cost of the claims now are covered by the state but Montana State Fund continues to manage the claims.

A consultant hired by Montana State Fund to review claims handling also reported to the committee. David Duden, too, addressed whether reserve amounts were appropriate for ongoing claims. His report noted that Montana State Fund followed industry practices. In only two cases, the report said, were reserves under the amount as projected by Duden, of Deloitte Consulting. In 29 files the reserved amount was over what Deloitte expected; the remaining 136 files correlated with expectations.⁸

The MSF dividend received by state agencies in 2016 amounted to \$601,206, approximately 10% of the \$6.2 million premium paid (as of June 30, 2014) by the agencies receiving dividends. Not all agencies received dividends.

Made available after the December 2015 meeting was a response to a committee request for how Montana State Fund’s FY 2015-determined dividends would be distributed to state agencies in 2016. The MSF dividend received by state agencies in 2016 amounted to \$601,206, approximately 10% of the \$6.2 million premium paid (as of June 30, 2014) by the agencies receiving dividends. Seven state agencies that cumulatively had paid \$6,799,715 in premiums did not receive a dividend because their losses for the year on which the dividend was based (totaling \$4,698,059) either surpassed the premium paid by the agency or resulted in a loss ratio of more than 60%.⁹

Overall, 27 state entities received a dividend. See the Table below for summary information. Federal accounts used to pay for state employees’ premiums (based on their federally funded jobs) were

⁷ Financial Risk Analysts, LLC, “Actuarial Report on Montana State Fund,” Dec. 1, 2015. See <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Dec-2015/MSF-Reppert-powerpoint2015.pdf>.

⁸ See Deloitte Consulting LLP, Montana State Fund Workers’ Compensation Claim File Review,” Dec. 1, 2015. <http://www.leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Dec-2015/MSF-deloitte-claims-file-review-Part%20II-12-1-15.pdf>

⁹ These entities were: the Departments of Transportation, Fish, Wildlife, and Parks, Military Affairs, Labor and Industry, and Corrections plus the Teachers Retirement System and the Office of Public Defender. The losses were for Fiscal Year 2013.

reimbursed \$59,513. The lowest amount distributed was \$8.44 to the Department of Military Affairs in the Declared Emergency account. Overall, the Department of Military Affairs did not receive a dividend, based on losses of \$208,134 on dividends paid of \$212,654 for a loss ratio of 97.9%. The largest dividend award of \$206,384 was to the Department of Justice, based on premiums of \$1,118,327 with losses of \$155,846.

State Agency Dividends Received from Montana State Fund in 2016 (based on 2013 loss results)

	Premium Paid	Losses Accrued	Loss Ratio Av.	Federal Share
27 Agencies Received Dividend	\$6,214,116	\$2,077,437	33.4%	\$59,513
7 Entities Did Not Receive Dividend	\$6,799,715	\$4,698,059	69.1%	--

Montana State Fund came before the EAIC at two more meetings in the interim. At the April 14, 2016, meeting Montana State Fund’s chief executive officer and the Helena city manager discussed a proposed purchase¹⁰ by Montana State Fund of a city-owned parking garage adjacent to the Montana State Fund building. After public comment questioning the purchase, the EAIC decided to send a letter opposing the purchase, while recognizing that the choice of buying the structure was one that the Montana State Fund Board of Directors was statutorily free to make. See Appendix D for the letter sent.

The other presentation¹¹ was at the June 22, 2016, EAIC meeting and detailed Montana State Fund’s 2016 calendar year budget. The total proposed budget for CY 2016 is \$182,008,647, up 2.1% from the Fiscal Year 2016 budget. The report also provided Montana State Fund’s expense ratios between 2011 (36.5%) and 2016 (27.3%) as compared with the average of the largest Montana workers’ compensation carriers, which was 36.6% in 2011 and 36.71% in 2014, the latest year for which the figure was available. A note on the report said the highest expense ratio of the other workers’ compensation carriers was 41.5% and the lowest was 30.3%.

Rule Review

Rule review occurred at all the EAIC meetings. The EAIC took action on two rules: one related to a dispute between physical therapists practicing dry needling and acupuncturists and the other related to a proposed assessment by the Department of Livestock on milk producers.

¹⁰ See MSF memo on the parking issue at <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/April-2016/msf-parking-analysis-April14-16.pdf>. Related materials are on the April meeting [website](#).

¹¹ See Montana State Fund 2016 Board Approved Budget Calendar Year Period Jan. 1, 2016 – Dec. 31, 2016, at: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/June-2016/MSFcalendar2016budget.pdf>.

The dispute over dry needling at heart was a concern by acupuncturists that physical therapists essentially were doing acupuncture without the same training that acupuncturists have. From physical therapists' standpoint, the dry needling was being done by others in the PT profession and a rule was necessary to cover appropriate training. The [first proposal](#) referred to the need to demonstrate through continuing education that a physical therapist had appropriate training in dry needling. Although the first rule proposal expired, the EAIC did not object to a proposed rule revision, which the Board of Physical Therapy Examiners drafted after discussions between representatives of acupuncturists and physical therapists. See the letter sent to the Department of Labor and Industry in Appendix D. The [adopted rule](#) stated more specifically that licensed physical therapists had to be able to demonstrate that prior to doing dry needling they had completed training that met relevant guidelines adopted by the American Physical Therapy Association or the Federation of State Boards of Physical Therapists.

The other rule objection related to a proposed increase in milk assessments, which for the first time would be applied to all cheese and ice cream manufacturers in the state. Statute (81-23-202(4), MCA) provided for the assessment to be levied on all licensees of the chapter, which includes milk product manufacturers. As initially proposed, the rule would have had a significant impact on one of four dairies and three of eight manufacturing facilities. One of those facilities was projected to experience an assessment amounting to 37.2% of its estimated retail product cost.¹² After objecting to the rule (see the letter sent to the Department of Livestock in Appendix D), the EAIC received reports periodically on the progress made at meetings between the Department of Livestock and stakeholders. The final rule proposed a lower amount per hundredweight per month and retained a minimum monthly payment of \$50 and a maximum monthly payment of \$1,050. The rule specified that an entity having more than one license that could be assessed would pay only one assessment, whichever amount was higher.¹³ For a list of all rules proposed and adopted plus staff rule review, see the committee website page.¹⁴

The EAIC took action on two rules: one related to a dispute raised by acupuncturists against a physical therapist rule on dry needling and the other related to a proposed assessment by the Department of Livestock on milk producers.

¹² See Small Business Impact Statement for MAR Notice No. 32-15-268 at http://liv.mt.gov/content/ME/MAR_32-15-268_Small_Business_Impact_Statement_Final.

¹³ See Montana Administrative Notice 32-15-275 at: <http://www.mtrules.org/gateway/ShowNoticeFile.asp?TID=7212>.

¹⁴ See <http://leg.mt.gov/css/committees/interim/2015-2016/Economic-Affairs/Rules/rules-table.asp>.

Member Issues

▪ **Broadband Deployment in Montana**

Three EAIIC meetings featured broadband discussions, with the first on Aug. 31, 2015, providing a general overview. The second on Feb. 4, 2016, featured representatives of broadband deployment from Missoula and Bozeman plus school officials involved in getting more broadband in schools. The third meeting on broadband on April 14, 2016, focused on developments and needs of two rural providers, Nemont and Mid-Rivers Communications. Staff of the Energy and Telecommunications Interim Committee provided an update at the April 2016 meeting of that committee's exploration of orphan 9-1-1 funds and options being explored for legislation.

The overview provided at the Aug. 31, 2015, EAIIC meeting recognized that the definition of broadband incorporated technology ranging from traditional wire-delivered information to cable to cellular and satellite.

Phil Grate of CenturyLink provided graphs showing deployment of various technologies, by company and by percentage of Montanans accessing that technology. See Table below. He also pointed out the disparities in population density, income, and educational levels between Montanans and the rest of the nation as possible reasons for the limited broadband deployment in Montana.

Other presenters at the Aug. 31, 2015, meeting were Gary Duncan, staff with the Public Service Commission, and Rob Ferris, Vision Net's chief executive officer and a member of the governor's Main Street Montana Key Industry Network for interconnectivity and telecommunications.

Gary Duncan reviewed the Public Service Commission's limited regulatory role related to broadband and noted that the PSC primarily had responsibility for designating whether local telecommunication carriers are eligible for federal grants. He provided an 11-year tally¹⁵ of federal funds received by Montana's incumbent local exchange carriers (like Blackfoot Telephone Cooperative, Inc.) and by Competitive Local Exchange Carriers (like Mid-Rivers). From 2004 to 2014, the total for high cost federal support amounted to \$900.4 million. His presentation included updates on how federal disbursements had evolved over time.

¹⁵ See <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Aug-Sept-2015/broadband-duncan-psc.pdf>.

Broadband Types of Technology, Major Providers, and Share of Montanans ¹⁶

Technology Type	Major Providers	Share
All Types	Verizon Communications, Inc.	90%+
	AT&T, Inc.	~ 90%
	CenturyLink, Inc.	~ 70%
	Charter Communications	~ 63%
	GlobalNet	~ 27%
Fixed Wireless Technology	GlobalNet	26.1%
	SpeedConnect LLC	20.5%
	Tri County Telephone Association, Inc.	16.4%
	USA Companies, L.P.	15.8%
	Montana Internet	15.6%
DSL Technology	CenturyLink, Inc.	70.3%
	Mid-Rivers Telephone Cooperative, Inc.	~ 5%
	Blackfoot Telephone Cooperative	~ 5%
	Montana Sky Networks	~ 5%
Cable Modem Technology	Charter Communications	63.5%
	Mid-Rivers Telephone Cooperative, Inc.	3.2%
Fiber Technology	Triangle Telephone Cooperative Assn., Inc.	1.3%
	3 Rivers Telephone Cooperative, Inc.	0.8%

Rob Ferris described the work of Vision Net as a business-support middle mile connector serving to connect broadband providers in Montana with national and international connectors. He also reviewed the activities of the Main Street Montana project and the key industry network effort to improve economic development in the state. He noted that some problems had developed in efforts to map where technologies were available and at what speeds because of concerns that proprietary information might be made public. He described the difficulties of determining whether the cost of deployment is a general good or more specific to a company wanting to have faster technology and how that impacts who

¹⁶ See <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Aug-Sept-2015/PhilGrate-Montanabroadbandproviders-June30-2014-SBi-grantee-data-national-broadband-map.pdf> and <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Aug-Sept-2015/PhilGrate-Montana-broadband-speeds-presentation.pdf>.

would pay for the last mile. He also noted efforts of the Broadband group in the Main Street Montana Project.¹⁷

A committee request for information about funding sources at the Aug. 31, 2015, meeting resulted in a staff briefing paper¹⁸ that showed how various federal programs funded deployment in schools, libraries, hospitals, and elsewhere. At the Feb. 4, 2016, EAIC meeting representatives of Missoula and Bozeman discussed their city-specific efforts to build broadband access. School representatives noted the costs of broadband deployment for both large and small school districts.

The April 14, 2016, meeting featured information from two of Montana's more rural providers, Nemont Telephone Cooperative, Inc., headquartered in Scobey, and Mid-Rivers Communications, based in Circle. The presentation by the general managers of both firms focused on technological and regulatory challenges plus the basic challenge of serving broad, sparsely populated areas. Customers expect interoperability and being able to access service no matter where they are in Montana, according to the presenters. That means having continually updated technological devices and agreements with many of the nationwide cellular providers. The regulatory climate and shrinking availability of government subsidies complicates not only the updating requirements but expansion capabilities. As one slide in the presentation noted, "Without support there is absolutely no business case to build and operate rural wireless networks."¹⁹

An unscheduled part of the April 2016 meeting featured an update by staff for the Energy and Telecommunications Interim Committee (ETIC), which in the 2015-2016 interim included options of what to do with so-called "stranded 9-1-1" funds that some telecommunications stakeholders were hoping could be used for broadband expansion. An

¹⁷ For 2016 recommendations of the broadband group, see a May 2016 Main Street Montana report, p. 12. Among the priorities were: mapping of broadband assets in Montana and requests for the 2017 Legislature to put \$25 million in the next biennium toward projects in underserved areas and to encourage public-private investments: http://mainstreetmontanaproject.com/Portals/44/ALL%20KEY%20INDUSTRY%20NETWORK%20RECOMMENDATIONS_6.pdf.

¹⁸ See "Access and Price are Key Aspects for Broadband" at: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Feb-2016/broadband-combined.pdf>.

¹⁹ See slide marked "Regulatory Challenges" in "Rural Montana's Use of Broadband and Wireless: Struggles and Possible Solutions," April 14, 2016: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/April-2016/EAIC-NemontMidRivers.pdf>.

ETIC-requested bill, LC 445 (HB 61), proposed a broad rewrite of 9-1-1 laws, including what to do with unspent 9-1-1 funds.

▪ ***Economic Development in Montana***

Interest in how economic development funds have been spent by the state and federal government resulted in presentations at meetings in September 2015 and again in February 2016. The committee was interested, in part, in how much money had been spent on what types of projects. The tables on the next page provide summary information given to the committee or compiled by request of the committee.

At the September meeting both John Rogers, the chief business officer for the state, and Doug Mitchell, the deputy director of the Department of Commerce, provided background information on activities in Montana to enhance economic development.

Information specifically asked of Mr. Rogers included requests:

- About the governor's budget related to economic development from the Governor's Office of Economic Development, the Department of Labor and Industry, and the Department of Commerce;
- Regarding broadband mapping and confidentiality;
- About water and sewer infrastructure projects;
- For return on investment projections;
- Regarding coordination among various entities and whether an overarching economic development model might be appropriate;
- Regarding paid advertisements by the state.

Information specifically asked of Mr. Mitchell included requests about:

- The biennium budget in the Department of Commerce as indicated in an overview document of the department;
- Changes to the Big Sky Economic Development Trust Fund program; and
- Workforce training funds and return on investment.

Wanting more specifics, the EAIC asked for the Governor's Office of Economic Development and the Department of Commerce to return at a later date with more details. In February 2016, representatives of the Department of Agriculture responsible for the Growth through Agriculture program and Pam Bucy, Commissioner of Labor and Industry, also attended to provide specifics about their respective departments' economic development programs. Ms. Bucy reviewed some of the Department of Labor and Industry workforce training programs that involve coordination between the Montana University System and the Department of

Labor and Industry. John Cech of the Montana University System joined Kirk Lacy, the director of the Industry Driven Workforce Development Partnerships in describing the collaboration in meeting employer needs through curriculum aimed at specific jobs and the use of apprenticeships to help students learn on the job. Matt Springer with the RevUp Program and Kaye Norris with the HealthCareMontana Program gave details on their specific projects. Scott Eychner with the Department of Labor and Industry reviewed incumbent worker training grants.

John Rogers also gave updates in February, providing background information on economic development related to some of the largest federal grant and loan programs and provided more specifics along with overviews of the Big Sky Economic Development Trust Fund, the Primary Sector Workforce Training program, and various business finance incentives in Montana across departments.

Examples of the federal funding coming into Montana, pulled from Mr. Rogers' more extensive handouts,²⁰ were these FY 2014 amounts:

- \$84,462,100 from the U.S. Small Business Administration for 287 section 7(a) loans in Montana;
- \$220,679,598 from the U.S. Department of Agriculture's Rural Development Program for various housing program loans; and
- \$1,192,000 from the U.S. Department of Commerce's Economic Development Administration involving 19 assistance and planning grants.

²⁰ Handouts from John Rogers at the Feb. 5, 2016, EAIC meeting included: [Exhibit 21](#) – the statutory definition of the state's chief business development officer, [Exhibit 22](#) – Information on the Big Sky Economic Development Trust Fund Program and the Primary Sector Workforce Training Grant Program, [Exhibit 23](#) – Montana Business Finance Incentives, [Exhibit 24](#) – funding data related to federal programs, [Exhibit 25](#) – Contracted projects by applicant, project, location, and date for the Montana SSBCI Program plus a description of what projects were intended to do, how many jobs were created or retained and the loans and leveraged funds involved, and [Exhibit 26](#) – Data by Department of Commerce division regarding FY 2016 appropriations for various activities. The last exhibit, Exhibit 27, was a newspaper report on economic development in Montana.

Economic Development Funding, Authority and Biennia Appropriations for FY2014-2015, 2016-2017*

Department/Office	Authority	FY2014-2015 Appropriation	FY2016-2017 Appropriation	% Change
Governor's Office of Economic Development	HB 2	\$1,233,908	\$1,478,921	19.86%
Dept. of Agriculture (selected programs)				
Growth through Agriculture		\$1,195,110		
Dept. of Commerce (selected programs)				
Big Sky Economic Development Trust	Statutory	\$11,476,814	\$7,629,619	-33.52%
Board of Research/Commercialization	Statutory	\$3,014,730	\$3,115,561	3.31%
Community Development Block Grants ^a	HB 2	\$15,855,530	\$15,736,355	-0.81%
Indian Country Economic Development	HB 2	\$1,599,717	\$1,599,940	0.01%
Wood Products Revolving Loan Fund -state	Statutory	\$3,569,601	\$2,065,213	-42.14%
Wood Products Revolving Loan Fund - federal		\$4,041,444	\$2,064,712	-48.91%
Primary Sector Workforce Training Grants	HB 2	\$1,200,000	\$2,560,000	113.33%
Tourism Regions	Statutory	\$12,541,933	\$12,968,096	3.40%
Tourism Promotion		\$33,720,698	\$39,203,870	16.26%
Treasure State Endowment Program	HB 2/HB 11	\$36,181,031	\$20,230,547	-44.09%
Coal Board	HB 2	\$4,162,521	\$5,285,986	26.99%
Project-based Section 8 Housing	Proprietary	\$42,203,790	\$42,422,869	0.52%
Tenant-based Section 8 Housing ^a	- federal funding	\$45,943,430	\$44,744,569	-2.54%

*Appropriations as of 11/3/2016, including any changes in process. Not included are: legislative audit charges or transfers. Community Development Block Grants do not include general fund match.

^aAmounts listed for Community Development Block Grants and Section 8 housing are from the federal government but appropriated through the state.

Selected Projects Funded by State Economic Development Funding

Growth through Agriculture (selected 2014 grants) ^a		Big Sky Economic Development ^b	
Missoula County Extension – frost monitoring study	\$2,500.	Bear Paw-2 planning grants	\$26,250 ea
Fruit orchard/produce farm signage near Bridger	\$250.	BSEDA/All American Pharmaceutical ~ 34 jobs	\$170,000
Botanie Natural Soap Inc. – website development	\$2,500.	BSB/ Imperium Tool–2 jobs	\$15,000
Great Northern Pasta Co. – redesign/print labels	\$1,500.	Bozeman/Aptus Corp. – 77 jobs	\$385,000
MT Gluten Free Prairie – processing equipment grant	\$50,000.	City of Great Falls/Emteq 2 - 80 jobs	\$598,400
MT Fish Co., Bozeman – warehouse equipment grant	\$26,000.	City of Great Falls/ ADF International #1 ~ 111 jobs	\$832,500
Bausch Potatoes, Inc., Whitehall – potato processing equipment – one grant (g), one loan (l)	\$40,000 (g) \$48,388 (l)	Custer Co/Sanjel Inc and Optibland Industries~ 53 jobs	\$397,500
Kalispell Creamery – advertising, labeling	\$1,900	FCEDA/Nomad GCS ~ 87 jobs	\$652,500
Whistling Andy – equipment	\$5,440.	Missoula Co/Blue Marble Biomaterials ~ 96 jobs	\$670,272
Global Agro Commodities – bagging system equipment grant, loan for bin ladders	\$23,400 (g) \$39,900 (l)	Missoula Co/LGT Sustainable Energy Systems Inc. ~73 jobs	\$547,500

^aDepartment of Agriculture presentation at the Feb. 5, 2016, meeting. See: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Feb-2016/AG-growth-thru-ag-overview.pdf>

^bInformation provided by John Rogers, Montana’s chief business officer, at the Feb. 5, 2016, meeting, [Exhibit 22](#).

▪ ***Alcohol Industry Prospective Legislation***

At the EAIC's initial meeting in June 2015 and again in June 2016 the committee heard about efforts within the alcohol industry to address conflicting goals among its stakeholders regarding expansion or revision of how the industry operates. Industry representatives generally indicated in June 2015 an interest in working with their counterparts to develop a mutually agreeable approach to changes in statutes regulating the industry. At the June 22, 2016, meeting a consultant hired by industry representatives in late 2015²¹ to facilitate their meetings used a graphic to illustrate for the committee the difficulty of finding a solution. That pie-chart graphic showed that growth of one component took away from another area, complicating cooperation among component parts.

Proposed Committee Bills

The following summaries describe bill drafts adopted as committee bills by the EAIC:

- **[HB 16 \(LC 173 -- LC9876\)](#)** – Proposes to move the interim monitoring of liquor laws and regulations from the Revenue and Transportation Interim Committee to the Economic Affairs Interim Committee. The rationale is that most of the EAIC members serve on standing committees for business and labor during session and, since most liquor industry bills are heard by those committees, the continuity over bill discussions and implementation can be maintained by EAIC oversight.
- **[SB 44 \(LC 379\)](#)** – Proposes a hold harmless provision for insured patients faced with out-of-network costs if served by an air ambulance provider not in their insurer's network. The bill also sets forth options for voluntary dealings between insurers and air ambulance providers, including arbitration. The bill would allow a patient to assign benefits to go directly to an air ambulance provider instead of the patient, who would then be responsible for paying the air ambulance.
- **[HB 73 \(LC 380\)](#)** – Proposes regulating as an insurance product any memberships offered by private air ambulance providers. Currently 50-6-320, MCA, exempts air ambulance memberships

²¹ For more information on the consultant, see a memo provided at the June 22, 2016, EAIC meeting: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/June-2016/alcohol-coalition-overview.pdf>.

from insurance regulation. The bill provides for certificates of authority, fees, and insurance department oversight, which also includes the potential for monitoring and acting on patient complaints related to membership coverage.

- [SB 8](#) – (LC 399) – Proposes to remove a requirement that interim committees each interim decide what required advisory councils or required reports they want to review for potential revision or repeal. The revised language would call for a review at the request of any member.
- [HB 25](#) – (LC 400) – Proposes to remove an annual report from the Commissioner of Banking and Financial Institutions on activities of business industrial development corporations or BIDCOs. Although allowed by law, to date no BIDCOs have formed in Montana yet the language of existing statute calls for a status report annually. The bill would limit status reports to only when BIDCOs are licensed.

Summary of EAIC Meetings and Handouts

An abundance of topics related to agencies monitored by the Economic Affairs Interim Committee kept members busy in Helena during the 2015-2016 interim. For those committee members who also attended the December subcommittee meeting on workers' compensation their monthly tally amounted to 9 months of activities. The Table below provides information regarding the meetings, agencies monitored, and handouts provided in advance of or at the meetings.

Meeting Date	General Tasks	Specific Activity	Handouts
June 10, 2015	Organizational	Elected Officers Appointed Liaisons to --Montana State Fund --the Rail Services Competition Council Reviewed work plan	*Interim Committee Guidelines *Montana State Fund Brochure * 2015 Legislation with EAIC ties Draft Work Plan
June 10, 2015	Agency Monitoring	Department of Labor and Industry	*Click on Overview
June 10, 2015	Studies SB 390 HJR 29	SB 390 Licensing Board Fees HJR 29 Air Ambulance Study	*SB 390 Study Plan (Appendix B) *HJR 29 Study Plan (Appendix C)
June 10, 2015	Rule Review		
Meeting Date	General Tasks	Specific Activity	Handouts
Aug. 31, 2015 Sept. 1, 2015	Organizational	Adoption of work plan	
Aug. 31, 2015 Sept. 1, 2015	Agency Monitoring	Office of Economic Development Department of Commerce Department of Livestock	Overviews for: --Governor's Office of Economic Development --Department of Commerce --Department of Livestock Budget , Dept. of Livestock
Aug. 31, 2015 Sept. 1, 2015	Studies SB 390 HJR 29	<ul style="list-style-type: none"> • Tour of Department of Labor and Industry's Business Standards Division on Park Avenue • HJR 29 Presentation --Rebecca Ternes, Deputy Commissioner in North Dakota's Insurance Department, described how North Dakota's HB 1255 was 	SB 390 / Department of Livestock Crossover Information -- Staff Memo on Fee Financing -- Presentation on Fees U.S. Dept. of Transportation Guidelines for Use and

		<p>enacted and its intent (providing a list of preferred, in-network air ambulance providers)</p> <ul style="list-style-type: none"> • Panel Discussion: Legal Issues <p>--Paul Pedersen, Blue Cross Blue Shield of Montana</p> <p>--Alan Hall, Allegiance</p> <p>--Nick Domitrovich, Department of Public Health and Human Services</p> <p>--Ellen Stinar, EagleMed(Reach)</p> <p>--Dr. Randy Thompson, Billings Clinic Medflight</p> <p>--Mike Milburn, Department of Justice and former air ambulance pilot</p>	<p>Availability of Helicopter Emergency Medical Transport</p> <p>Complaints Filed with North Dakota Insurance Office on Air Ambulances</p> <p>BCBSMT Presentation</p> <p>Staff Paper on Study Options</p> <p>GAO 2010 Report</p>
Meeting Date	General Tasks	Specific Activity	Handouts
<p>Aug. 31, 2015</p> <p>Sept. 1, 2015</p>	<p>Rule Review</p>	<p>Presentation on concerns about acupuncture and dry needling related to Board of Physical Therapy rules on dry needling.</p> <p>-- Brian Miller and Christian Appel for physical therapists</p> <p>--Tanja Brekke for acupuncturists</p>	<p>Proposed Dry Needling Rule</p> <p>EAIC Letter on Dry Needling</p> <p>Staff Memo on Dry Needling Responses from PTs, Others, Appendices, Board of Medical Examiners, Appendix, T.A. Brekke, Other Acupuncturists, Acupuncturist association, and academy policy</p>
<p>Aug. 31, 2015</p> <p>Sept. 1, 2015</p>	<p>Member Issues</p>	<ul style="list-style-type: none"> • Broadband in Montana <p>--Phil Grate, CenturyLink</p> <p>--Gary Duncan, Public Service Commission</p> <p>--Rob Ferris, Vision Net and member of Main Street KIN</p> <ul style="list-style-type: none"> • Alcohol Industry Concerns <p>--Shauna Helfert, Dept. of Revenue</p> <p>--John Iverson, MT Tavern Assn.</p> <p>--Jennifer Hensley, MT Distillers Assn.</p> <p>--Matt Leow, MT Brewers Assn.</p> <p>--Kristi Blazer, MT Distributors Assn.</p> <p>--Chad Ouellette, Liquor Store Owners Assn. of Montana</p>	<p>Staff report on Broadband as an Economic Development Tool</p> <p>Federal Broadband Map</p> <p>Public Service Commission Role</p> <p>Federal Funds: High-Cost Support</p> <p>Phil Grate:</p> <p>Presentation -- Broadband Operators -- Comparisons</p> <p>Staff Report -- Background Data on Alcohol Industry in Montana</p> <p>Montana Tavern Assn. Letter</p> <p>Fact Sheet on MT Craft Brewing</p>

Meeting Date	General Tasks	Specific Activity	Handouts
Dec. 1-2, 2015	Agency Monitoring	Montana State Fund Department of Livestock Division of Banking/Financial Institutions	State Fund FY2016 budget Background paper on State Fund State Fund presentation , dividend policy , Old Fund report Old Fund claims projection Financial Risk Analysts' letter and actuarial report/presentation Responses – TW , MSF Livestock Budget (10/31/2015) Stakeholder Suggestions: brands , Diagnostic laboratory , budget Background paper – Division of Banking/Financial Institutions
Dec. 1-2, 2015	Studies	<ul style="list-style-type: none"> HJR 29 – Air ambulance study SB 390 – Licensing Boards 	Survey Response Update , Table 1 Presentation , NCCI Data on Workers' Compensation air ambulance use Kalispell Regional Medical Center Fixed/Indirect Costs Background Direct Cost Table Indirect Cost Table Department Summary Board member comments 1 , 2 , 3 , 4
Dec. 1-2, 2015	Rule Review	Dry Needling/Acupuncture Issue	EAIC September letter Acupuncturists' comments Notice of rule delay
Dec. 1-2, 2015	Member Issues	None at December 2015 meeting	
Meeting Date	General Tasks	Specific Activity	Handouts
Feb. 4-5, 2016	Agency Monitoring	State Auditor's Office Department of Livestock	State Auditor's Office overview Insure Montana program wrapup Montana Comprehensive Health Association program wrapup Livestock Board Biographies Bison Issues: Decision Plan , News Milk Assessment Proposal , Info Letters: EAIC , Milk Producers , Grow Montana , Milk Control Livestock lab discussions Options for milk rule, Impact Info Per capita fee chart

		Department of Agriculture	Board of Hail Insurance Growth through Ag data Food/Ag Development Centers
Feb. 4-5, 2016	Studies HJR 29	<ul style="list-style-type: none"> Panel on Air Ambulance Company Memberships, Reciprocity, Network Participation, Balance Billing Panel on Insurance Issues related to Air Ambulance Costs, including Network Participation 	Insurance-Membership Overview Membership Info: KRMCC , Bryant HJR 29 Options, Charity Care Examples 1 , 2 NCCI work comp data Presentations: Allegiance , Bryant + supplement Comments: Carriers , Balance Bills
Feb. 4-5, 2016	Rule Review		
	Member Issues	<ul style="list-style-type: none"> Broadband as Economic Development Workforce Development Programs Economic Development 	Broadband access and price Bozeman Fiber Master Plan , Summary Missoula Fiber Initiative New American Foundation report Gigabit Communities report Dept. of Labor and Industry/MT University System Partnership Rev-Up Report , website , HealthCARE Montana report MT Economic Development 2015 report
Meeting Date	General Tasks	Specific Activity	Handouts
April 14, 2016	Agency Monitoring	Department of Livestock Montana State Fund	Proposed Organization Chart Revenue Comparison OBPP Letter on Livestock Budget Milk assessment statute diagram Updated Budget Comparison Parking Garage Issue , Illustration Internal / External Legal Analyses Statutory background , EAIC letter
April 14, 2016	Studies	HJR 29 Study SB 390 Study <ul style="list-style-type: none"> Review of Federal Trade Commission case related to active supervision Relation to SB 390 Study Washington State's Approach to Licensing Boards and guidance Public Comment 	Medicaid Information Federal Trade Commission guidance ; FTC presentation ; Commissioner memo to boards; Background report/options ; Enterprise Fund analysis Washington State approach ; Comment: 1 , 2 , 3 , 4 , 5 , 6 , 7 , 8 , 9 , 10
April 14, 2016	Rule Review		February/March Addendum

	Member Issues	<ul style="list-style-type: none"> Broadband as Economic Development – Presentation from NeMont-MidRivers Officials 	NeMont-MidRivers Presentation
Meeting Date	General Tasks	Specific Activity	Handouts
June 22, 2016	Legislation	Department of Commerce Legislative Council Guidance Committee Bill Options	Housing, Board of Horseracing Legislative Council Guidance Committee Bill Explanation - Transfer alcohol division duties - EAIC letter to RATIC - Revising BIDCO reporting
June 22, 2016	Agency Monitoring	Montana State Fund Department of Labor and Industry Department of Livestock	- Montana State Fund Budget - State Fund Presentation - Concerns related to pump dispensers, proposals - Financial Audit , Brands Graphic - Diagnostic Lab Performance Audit, Handout - Milk Assessment Proposed Rule - AG advisory letter on bison - Information on commercially raised bison
June 22, 2016	Studies *HJR 29 *SB 390	Updates on working groups Enterprise Funds Active Supervision bill options	- HJR 29 update (no handout) - Memo on enterprise funds - Active supervision drafts 1 , 2 , 3 Comments
June 22, 2016	Rule Review		
June 22, 2016	Member Issues	Worker's Compensation Post-Traumatic Stress Disorder Panel Presumptive Illness for Emergency Responders Alcohol Industry Update from Facilitator	Worker's Compensation Policy on Stress-Caused Injuries, History Memo from Larry Jones, Staff Background Report , Diagnosis – Symptoms Email Handout from State Auditor's Office on Presumptive Illness Background on Facilitator
Meeting Date	General Tasks	Specific Activity	Handouts
Aug. 30-31, 2016	Agency Monitoring -- Legislation	Department of Agriculture	Pesticide program Nursery program Food sales Vertebrate pest management Commercial feed reporting

		Department of Labor and Industry Department of Livestock State Auditor's Office	Payment revisions Incumbent worker program Workforce Innovation program Unemployment insurance Oversight of PAARP Board Meter testing Board Bills for: Optometry , Physical Therapy , Pharmacy , Drug Registry program, Real Estate Appraisers , Realty Regulation Livestock Loss Board List of proposed bills
Aug. 30-31, 2016	Agency Monitoring – Statutory Reports	Department of Commerce Department of Livestock Department of Labor and Industry	Distressed Wood Products Research/Commercialization Board of Investments , FY'15 note Veterans' Home Loan program Federal Project reviews Quality Schools – TSEP report State-Tribal Economic Development Commission Montana Heritage Preservation Commission , Impacts , Article Structural Balance Report , Lab Complex Letter , Letter to MSU and revised MSU letter , Response Livestock Loss Biennial Report Apprenticeship program report Board of Funeral Service report Unemployment insurance report Drug Registry information
Aug. 30-31, 2016	Agency Monitoring	Workers' Compensation Court	Briefing Paper
Aug. 30-31, 2016	Studies	*HJR 29 *SB 390	Draft Brochure , Sample Website , Complaints to State Auditor Proposed Hold Harmless draft – Became SB 44 Membership Subscription draft – Became HB 73 Letter to MT members of Congress Public comment – Bryant Active supervision draft – HB 141
Aug. 30-31, 2016	Committee Legislation	LC 173 – became HB 16 LCbdco – became HB 25 LCintm – became SB 8	Transfer alcohol law monitoring Business Industrial Co. reports Interim committee reviews
Aug. 30-31, 2016	Rule Review		

Appendix A: EAIC Work Plan

Summary

This work plan for the 2015-2016 Economic Affairs Interim Committee (EAIC or Committee) contains:

- an introduction regarding EAIC duties;
- details related to the EAIC's statutory duties;
- plans for a required study on the fees charged to licensing boards by the Department of Labor and Industry;
- plans for any studies assigned by the Legislative Council to the EAIC;
- a proposed schedule in which to accomplish EAIC activities; and
- topics that EAIC members or staff have suggested pursuing (Appendix A).

This work plan may be revised periodically, taking into consideration budget, emerging issues, and timing.

I. *Introduction*

In line with the statutory duties of interim committees (detailed in the next section), the Economic Affairs Interim Committee has responsibility for:

- reviewing rules of certain executive agencies under the EAIC's purview;
- monitoring certain executive agencies' programs and reports and providing a preliminary review of those agencies' draft legislation; and
- studying and reporting to the next Legislature on any issues assigned to the EAIC by the Legislative Council.

The EAIC presiding officer also has the responsibility to name:

- two EAIC members as liaisons to the Montana State Fund, a state entity that provides a guaranteed market for workers' compensation insurance; and
- two EAIC members (one from each party and each legislative body), with vice presiding officer concurrence, to the Rail Service Competition Council.

In the past interim the liaisons named to the Montana State Fund were Rep. Tom Berry and Rep. Lea Whitford. Past liaisons to the Rail Service Competition Council were Sen. Bruce Tutvedt and Rep. Ryan Lynch.

Budget and Meeting Dates

The EAIC budget for the 2013-2014 biennium is \$32,991, slightly more than the \$31,711 for the last interim. For the first meeting, the EAIC is able to tap money left over from the last interim, which means the budgeted amount for the FY2015-FY2016 biennium is able to cover an estimated 10 meeting days. If the members decide to have a subcommittee, the staffing and budget for subcommittee meetings would take away from the main EAIC staffing and budget proportionately.

The bulk of the budget is for members' travel and per diem costs for meetings but allows for additional expenditures, such as the use of remote meeting technologies, meetings out of Helena, or conferences or other meetings related to the EAIC's work. See Table 2 later in this document for proposed meeting dates.

The costs for two EAIC members to serve as liaisons to the Montana State Fund are separately identified in the Legislative Services Division budget. That amount is \$4,484, and liaisons submit their claims separately to the EAIC staff. Liaisons can count on attending approximately five Montana State Fund meetings a year. The remaining meetings for 2015 are Sept. 18 and Nov. 20. Anticipated for 2016 are meetings in February, May, June, September, and November.

The costs for the Rail Service Competition Council liaisons are covered by the Department of Transportation. In 2014 the Rail Service Competition Council met five times, with an economic development subcommittee meeting twice. In 2015 the Council's first meeting was in March.

The study resolutions require that interim committee work, including final reports, recommendations, and any proposals for legislation, be completed by Sept. 15, 2016.

II. *Statutory Obligations and Review of Duties*

5-5-215. Duties of interim committees. (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
 - (b) subject to 5-5-217(3), conduct interim studies as assigned;
 - (c) monitor the operation of assigned executive branch agencies with specific attention to the following:
 - (i) identification of issues likely to require future legislative attention;
 - (ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
 - (iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;
 - (d) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and
 - (e) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.
- (2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.
- (3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.

Duties Required in Statute

A. Rule Review

Under 5-5-215, MCA, an interim committee "shall review administrative rules within its jurisdiction." There are different ways of doing the review ranging from in-depth analysis to general oversight, depending on the Committee's choice. In the past, EAIC legal staff typically reviewed rulemaking notices

from all of the agencies that the EAIC monitors and provided information to the Committee on generally significant rules but only raised flags on a rule if the attorney considered the rule to be noncompliant with legislative intent or otherwise not meeting the Montana Administrative Procedure Act (MAPA). The EAIC could request the Committee attorney to pay particular attention to rules affecting constituent concerns, if any. According to MAPA, the committee charged with reviewing agency rules may:

- request agency rulemaking records for ensuring compliance with MAPA;
- submit recommendations regarding the adoption, amendment, or rejection of a rule;
- require that a hearing be conducted;
- participate in proceedings; or
- review the conduct of administrative proceedings.

B. Program Monitoring

Pursuant to 5-5-215, MCA, the Committee shall monitor the operation of assigned agencies with specific attention paid to:

- identifying issues likely to require future legislative attention;
- improving existing law; and
- seeking the input of citizens regarding the operation of agencies.

The EAIC monitors the following (see Table 1 for more detail):

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Commissioner of Insurance and Securities;
- Governor's Office of Economic Development;
- the Division of Banking and Financial Institutions; and
- Montana State Fund.

C. Draft Legislation Review

Draft legislation review is intended both for an interim committee's suggested legislation and for legislation to be proposed by agencies monitored by the committee. When the interim committee is proposing its own legislation, it is listed under both "requester" and "requested by." A requester must be a legislative entity. The "requested by" entity may be a state agency.

The requester role sometimes is seen by the public as the committee endorsing the bill, when in fact the requester is just enabling drafting of the legislation and is not taking a stand on the contents of the bill. However, an interim committee may choose not to request drafting of a particular bill requested by an agency, which means only that the agency has to find a legislator who will introduce the bill (and the committee then generates some perhaps unnecessary ill will). Early review by legislators also allows for outside suggestions that agencies may or may not take under consideration.

Two reasons for review of agency legislation by interim committees are:

- to provide early drafting for agencies, which presumably know in advance which policies they are seeking to amend, remove, or establish; and
- to improve the workflow so that staff can begin drafting legislation before elections and handle agency legislation before the onslaught of newly elected legislators' bill requests.

Because agencies are expected to have submitted their proposals to the Governor's Office by June in the year preceding the legislative session, interim legislative committees can begin as early as that June to do draft reviews. The EAIC often has reviewed agency legislation at its last meeting of the interim. According to Joint Rule 40-40(5)(a): "Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee." Typically, agencies present only the concepts as drafts are not yet available.

Table 1: Agencies Assigned in Statute to the EAIC and Areas of Interest

Department of Agriculture <ul style="list-style-type: none"> • Agriculture Development Division • Agricultural Sciences Division • Central Services • State Grain Laboratory 	MT Wheat & Barley Committee	Hail Insurance Board
	Noxious Weed Management Advisory Council	Organic Advisory Committee
	Noxious Weed Seed Free Forage Advisory Council	Potato Advisory Committee
	Alfalfa Seed Committee	Pulse Crop Advisory Committee
	Cherry Advisory Committee	
Department of Commerce (Divisions below predate reorganization in 2015.) <ul style="list-style-type: none"> • Business Resources • Community Development • Director's Office • Energy Division • Housing Division • Montana Promotion Division (Office of Tourism/Film Office) 	Board of Housing	MT Facility Finance Authority
	Board of Investments	Montana Heritage Commission
	Board of Research and Commercialization	Small Business Development Center Advisory Council
	Economic Development Advisory Council	State Tribal Economic Development Commissioner
	Coal Board	Tourism Advisory Council
	Hard-rock Mining Impact Board	Board of Horseracing
Department of Labor and Industry <ul style="list-style-type: none"> • Business Standards Division • Centralized Services Division • Employment Relations Division • Unemployment Insurance Division • Workforce Services Division • Workers' Compensation Court 	Professional and Occupational Licensing Boards (33)	
	Building Codes	Occupational Safety / Health
	Weights and Measures	Apprenticeship / Training
	Montana Human Rights Cmsn	Incumbent Worker Training Program
	Board of Personnel Appeals	Foreign Labor Certification
	Unemployment Insurance Appeals Board	Montana State Employers Council
	Labor Management Advisory Council	State Workforce Investment Board
Department of Livestock <ul style="list-style-type: none"> • Animal Health Division 	Livestock Loss Board	Board of Milk Control

<ul style="list-style-type: none"> • Brands Enforcement Division • Centralized Services Division • Veterinary Diagnostic Laboratory and Milk Laboratory 	Meat and Poultry Inspection Bureau	Milk and Egg Inspection Bureau
State Auditor's Office <ul style="list-style-type: none"> • Insurance Division • Securities Division 	Patient-Centered Medical Home Advisory Council	Advisory Council on Continuing Education for Insurance Licensees
		Advisory Council on Risk Management Activities (on call)
Governor's Office of Economic Development	Statutory Duties	
Division of Banking/Financial Institutions	Statutory Duties	
Montana State Fund	Statutory Duties, including budget review under SB 379 (2015)	

D. Maintain Adequate Records of Activities

Under 2-3-212, MCA, if an audio recording is designated as the official record, written records of meetings must also be kept to provide assistance to the public in accessing the relevant portion of the meeting. The Legislative Council has decided that the audio recording stands as the official record. Unless otherwise requested by the Committee, the written material regarding minutes will be a log or guideline to topics, the times that they were addressed, and the names of those who spoke on the subject. As this type of record, there is no need for the Committee to approve the minutes log. The audio recording serves as the official record.

As for other records of activities, staff relies on communication with EAIC members using both e-mails and letters. If an EAIC member prefers communication in only one form, please let staff know and they will adjust to match preferences. Information will be sent to the EAIC members approximately 2 weeks prior to a meeting by mail and posted on the Committee website. Material may be sent in more than one batch. Legislators may refer constituents or interested parties to the website for information or to sign up for electronic notification of EAIC activities. The website is:

<http://leg.mt.gov/css/Committees/Interim/2015-2016/Economic-Affairs/default.asp> or simply <http://leg.mt.gov/eaic>.

E. Additional Statutory Duties

- Licensing Board or Program Review. As part of its monitoring duties related to the Department of Labor and Industry, to which professional and occupational licensing boards are administratively attached, the EAIC is responsible for deciding:
 - if any particular licensing board or program is not needed; or

- if the financial solvency of the board or program is questionable. Under 2-8-404, MCA, the EAIC is required to notify the department if the Committee itself wants to review boards or programs for the purpose of sunseting them or combining them with another board.
- Under 22-3-1002(1), MCA, the EAIC is required to review the administrative fee negotiated between the Montana Heritage Preservation and Development Commission and the Department of Commerce.
- The creation of the Wood Product Industry Loan Program in the Department of Commerce included a requirement in 90-1-503, MCA, that the Department of Commerce report to the EAIC about the status of the distressed wood products industry loan account.
- The Rail Service Competition Council (RSCC) under 2-15-2511(3)(a), MCA, is to "report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues."
- Another statutory requirement, required by House Bill 142 from the 2011 session, is for each interim committee to review advisory councils and reports that must be provided to the Legislature to determine whether they are serving their purpose or are no longer necessary. In the 2013-2014 interim the Economic Affairs Interim Committee voted at its last meeting to remove Advisory Councils created by statute and attached to agencies monitored by the Committee. The Committee bill to implement the conceptual vote resulted in some consternation among Committee members about the impact on the Tourism Advisory Council. That bill, LC410, was not introduced and a subsequent, identical bill draft, LC605, similarly was left on the vine. The advisory councils covered by the bill draft would no longer have been mandatory but would have been permissive if the agencies to which they are attached (shown in parentheses below) determined a need to retain them. These advisory councils were:
 - Tourism Advisory Council (Commerce) created under 2-15-1816, MCA;
 - Economic Development Advisory Council (Commerce) created under 2-15-1820, MCA;
 - Advisory Council on Continuing Education for Insurance Licensees (SAO) created under 33-17-1204, MCA;
 - Advisory Council on Risk Management Activities (SAO), related to medical malpractice concerns, created under 33-23-520, MCA;
 - Noxious Weed Management Advisory Council (Agriculture) created under 80-7-805, MCA;
 - Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture) created under 80-7-904, MCA; and

Organic Commodity Advisory Council (Agriculture) created under 80-11-601, MCA.

At the August 31-September 1, 2015, meeting the EAIC recommended briefing papers on the advisory councils but no specific reviews.

The following reports are required and were briefly brought to the attention of the 2013-2014 interim EAIC and voted upon with all recommended for retention. Either the EAIC is specifically assigned to receive the report or the report is under an agency for which the EAIC is responsible:

- State Agency and County Weed District Biennial Noxious Weed Report (Agriculture), 7-22-2151, MCA;
- Montana Board of Investments Annual Report (Commerce), 17-5-1650, MCA;
- Apprenticeship and Training Program Biennial Report (Labor and Industry), 39-6-101 and 5-11-210, MCA;
- Business and Industrial Development Corp. Report (Banking and Financial Services), 32-11-306, MCA;
- Livestock Loss Reduction Report (to be made to the Legislature and the Board of Livestock), 2-15-3113, MCA;
- Distressed Wood Industry Report (Commerce), 90-1-503 and 5-11-210, MCA; and
- Montana State Fund under SB 379 in the 2015 session is to provide a report on its approved budget to the Economic Affairs Interim Committee. SB 123 took effect in January 2016, but prior to that Montana State Fund was subject to reviews under 39-71-2361(2), which include a report by the insurance commissioner on analyses of actuarial reports conducted on behalf of the legislative auditor. The actuary hired by the legislative auditor usually reports sometime after October (39-71-2362, MCA).

The Economic Affairs Interim Committee in the 2011-2012 interim decided not to review any of the following boards or committees and the 2013-2014 EAIC decided not to ask for information on these, other than those that came before the Committee for rule review purposes (e.g., the Noxious Weed Summit Advisory Council). The following boards, committees, or other entities may contain an advisory function but are not specifically termed advisory councils or are not created statutorily. The 2015-2016 EAIC did not request a review as to their status.

- Montana Noxious Weed Summit Advisory Council (Agriculture), which would be reviewed only in relation to statutory entities, since this council was created under executive order;
- Montana Agriculture Development Council (Agriculture) provided for in 2-15-3015 and 90-9-103, MCA;
- Montana Alfalfa Seed Committee (Agriculture) created under 2-15-3004, MCA;
- Montana Cherry Advisory Committee (Agriculture) created under 80-11-510, MCA (a statute giving the department general creation authority);

- Montana Potato Advisory Committee (Agriculture);
- Montana Pulse Crop Advisory Committee (Agriculture);
- Montana Wheat and Barley Committee (Agriculture) created under 2-15-3002, MCA;
- Board of Hail Insurance (Agriculture) created under 2-15-3003, and Title 80, ch. 2, part 2 MCA;
- State Workforce Investment Board (Labor and Industry);
- Board of Personnel Appeals (Labor and Industry);
- Board of Labor Appeals (Labor and Industry);
- Board of Housing (Commerce) created under 2-15-1814, MCA;
- Coal Board (Commerce) created under 2-15-1821, MCA;
- Board of Research and Commercialization Technology (Commerce) created under 2-15-1819, MCA;
- Hard-rock Mining Impact Board (Commerce) created under 2-15-1822, MCA;
- State Tribal Economic Development Commission (Commerce) created under 90-1-131, MCA;
- SBDC (Small Business Development Center) Advisory Council (Commerce);
- Montana Heritage Preservation and Development Commission (Commerce) created under 22-3-1002, MCA;
- Montana Facility Finance Authority (Commerce) created under 2-15-1815, MCA;
- Board of Investments (Commerce) created under 2-15-1808, MCA; and
- Montana Council on Developmental Disabilities (Commerce) created under 2-15-1869, MCA.

The Mint Committee (Agriculture) created under 2-15-3006, MCA, was formerly on the list but repealed under SB 78, effective July 1, 2015.

III. **Study Activities**

The Economic Affairs Interim Committee has two studies during the 2015-2016 interim: a study of how the Department of Labor and Industry determines fees for operating licensing boards (required by Senate Bill No. 390) and a study assigned by the Legislative Council on May 18, 2015, of options related to regulation of membership-based health care, in particular membership-based air ambulances (as provided in House Joint Resolution No. 29).

- **Senate Bill No. 390** -- In one respect, this study follows up on a two-interim review in which the Economic Affairs Interim Committee received information on all the licensing boards under the Department of Labor and Industry to determine whether each professional and occupational licensing board remained necessary and met a public purpose. That so-called HB 525 study, named for the 2011 legislation directing the study, required a review of one-half of the 33 licensing boards then in existence in the 2011-2012 interim and the other half in the 2013-2014 interim.

Reviews of the licensing boards showed, in part, frustration among some licensees with the cost of their licenses. In both 2011-2012 and 2013-2014, the EAIC heard at a somewhat abstract level how the Department of Labor and Industry assessed its fees to be commensurate with the costs of operating the licensing boards. That HB 525 study was more about the boards and less about their costs. The SB 390 study now directs the Committee to analyze in more depth how the Department of Labor and Industry determines its charges. See Appendix B for a study plan for SB 390.

- **House Joint Resolution No. 29** -- This resolution proposes a study of membership-based health services in terms of financial impacts on consumers, medical facilities and providers, and regulatory enforcement mechanisms. The study also will look at how other states have handled membership-based health care and potential legislation. See Appendix C for a study plan for HJR 29.

IV. *Other Interim Activities*

The EAIC's opportunity to "accumulate, compile, analyze, and furnish information" related to its assigned duties or existing or prospective legislation means that guest speakers may be scheduled to provide information on relevant topics. Members may propose investigation of emerging issues at any time during the interim. Agencies also may request that the Committee study an emerging issue that has resulted from court decisions, federal actions, or another cause. Emerging issues are not necessarily member issues and may be raised by an agency or by staff. But to be on the agenda, the issue must be requested by the presiding officer or other EAIC members. Staff resources are limited, so additions to a work plan must be accompanied by deletions to maintain balance.

V. *Member Issues*

EAIC members have an opportunity to put more or less emphasis on agriculture and ranching, tourism and commerce of all types, and the service industries as they address policy concerns related to economic activity, workforce issues, and the general business environment in Montana. EAIC members and staff have recommended various topics for possible consideration (see Table 3).

VI. *Staff Recommendations for Additional Activities*

If additional issues arise, staff will inform members for their discussion and determination regarding further background information or action.

VII. *Interim Calendar*

The following schedule was adopted at the September 1, 2015, meeting, although the table reflects some changes.

Table 2: Meeting Dates and Proposed Topics and Tasks

Date	Phase	Research Tasks / Policy Issues
June 10, 2015	Organizational	<ul style="list-style-type: none"> • Elect officers • Appoint liaisons to Montana State Fund, Rail Services Competition Council, • Decide work plan (determine involvement in rule review, extent of agency monitoring, meeting times)
	Agency Monitoring	Department of Labor and Industry
	Studies	Work plans related to assigned studies
	Rule Review	
Aug. 31-Sept. 1, 2015	Work Plan	Review HJR 29 and SB 390 work plans
		Determine which Advisory Councils/Committees to review
	Agency Monitoring	<ul style="list-style-type: none"> • Department of Livestock (HB 2 requires budget review after budget goes into effect in July) • Governor’s Office of Economic Development • Department of Commerce
	Studies	HJR 29 – Legal implications related to air ambulances – Determine scope of activities
		SB 390 – Tour Business Standards Division
	Member / Emerging Issue	Broadband Implications in Economic Development
Rule Review		
Dec. 1-2, 2015	Studies	SB 390 – Overview of Department of Labor and Industry budgeting for licensing boards
		HJR 29 - Medical / Air Ambulance Requirements / Poll Data
	Agency Monitoring	Division of Banking and Financial Institutions
		Montana State Fund – Review structure and finances, including Old Fund reviews and review by State Auditor’s actuary of Montana State Fund financial statements.
		Board of Livestock Report and Department of Livestock budget update
	Member Issues	Update on measurement devices for gasoline dealers (postponed until June 22, 2016)
Rule Review		
Feb. 4-5, 2016	Studies	HJR 29 – Insurance issues, payments
	Agency Monitoring	<ul style="list-style-type: none"> • State Auditor’s Office -- Wrap up of Insure Montana Program and Montana Comprehensive Health Association plus overview of agency activities • Department of Agriculture, including a report on the Board of Hail Insurance • Department of Livestock – budget update, other issues
		Member Issues Member Issues, continued

Feb. 4-5, 2016 continued	Rule Review	
April 20, 2016 (moved to April 14, 2016)	Studies	HJR 29 – Discussion of legislative options
	Agency Monitoring	<ul style="list-style-type: none"> • Department of Livestock • Department of Commerce
	Member Issues	Broadband followup and wrapup
		Economic Development followup and wrapup
	Rule Review	
June 23, 2016 (moved to June 22, 2016)	Studies	HJR 29 – potential legislation
	Agency Monitoring	Montana State Fund budget
June 22, 2016, continued	Legislative Review (added)	Department of Commerce legislation
	Member Issues	(nothing in work plan – presentations were on post-traumatic stress and other stress-induced issues in workers' compensation plus presumptive illness among firefighters)
	Rule Review	
Aug. 30-31, 2016	Studies	Wrapup of HJR 29 and SB 390 – possible legislation
	Agency Monitoring	Department of Livestock and Board of Livestock. Structural balance review
	Legislative Review	Committee Bills Agency Bills
	Review of Required Reports	Required Reports from the Departments of Commerce and Labor and Industry, Montana Heritage Commission, and Livestock Loss Board.
	Rule Review	
Date	Phase	Research Tasks / Policy Issues

VIII. Web Resources

Information about the Committee is available through the legislative website, under Committees, Interim, Economic Affairs. At that site, staff will post information regarding Committee activities, minutes, agendas, study reports, and relevant information. The site also provides links to the websites of agencies for which the Committee is responsible.

Legislative Services:

<http://leg.mt.gov/eaic>.

Table 3: Member Issues and Possible Emerging Issues (was Appendix A in Work Plan)

The following table includes suggestions from EAIC members (and staff) and provides space for you to include suggestions for "other" topics of consideration.

Topic	Possible Activity	Date
Agriculture		
Farm Bill and changes to farm insurance programs	<ul style="list-style-type: none"> • Review impacts, if any, on Montana from the 2014 Farm Bill 	

Genetically modified or engineered organisms – current status in Montana	<ul style="list-style-type: none"> Although the HJR 33 study of GMO impacts on Montana wheat markets did not get through the Legislature, the concern about GMO impacts on trade and some organic farmers has arisen in various legislative sessions. A panel discussion on the pros and cons and concerns may be informative. 	
Trade issues	<ul style="list-style-type: none"> Legislative options to improve grain or other ag trade? 	
Other?		
Finance / Investments		
Banking, especially changes to banks and credit unions in Montana from changes brought by the Dodd-Frank Act	<ul style="list-style-type: none"> What is the home loan situation in Montana? Are foreclosures still a problem for banks? Are new home or small business loans difficult to come by? Has the <i>Morrow v Bank of America</i> case stifled loans or loan discussions? Review impacts from Dodd-Frank mortgage changes (20% down, revisions to what is required for refinancing, bank requirements to retain portion of mortgage) on Montana's housing construction and home sales. Possible panel discussion. 	
How investments in cows, liquor licenses, or other nontraditional items affect business developments in Montana	<ul style="list-style-type: none"> Loans or investments based on a tangible commodity other than land is common. In the last Legislature, topics varied from selling fractional shares of cows (during discussions of the raw milk bill, HB 245) to bankers' interest in the way Montana has quotas for all-beverage licenses. How lending works outside the normal box would involve a discussion among panelists from the State Auditor's Securities Office and the Commissioner of Banking and Financial Institutions. 	
Other?		
Economic Development		
Broadband Issues	What is the status of broadband in Montana; how does broadband impact economic development in the state, and what can legislators do to improve access or affordability?	Aug. 31-Sept. 1; February; April
Grant Programs and Implementation	Review sources and amounts of funds available, uses, and beneficiaries of: <ul style="list-style-type: none"> Big Sky Economic Development Trust Fund Lodging Facility Tax Main Street Montana Program Research and Commercialization Program Wood Products Industry Program 	Aug. 31-Sept. 1; February; April
Barriers to Business Entry	Lack of financing options may be one barrier to starting a business but another often-cited problem is lack of a qualified workforce. The Economic Affairs Interim Committee might want to look at what state agencies are doing to resolve barriers to business entry, whether those barriers are regulatory or stem from having to meet too many different requirements from too many agencies. One or more panel discussions might be needed to address this topic fully. A presentation on Main Street Montana findings would be	Interaction with colleges and workforce issues at Feb. 4-5, 2016 meeting

	incorporated as would the Dept. of Labor and Industry's interaction with the colleges.	
Ways to improve business regulation (perhaps focus on one industry?)	<ul style="list-style-type: none"> • One-stop shopping for business applications is an ideal. How well is it working? What businesses are not covered and can they easily be? • What business regulations are common among all industries (from alcohol sales to zoonotics)? Can the right and left hands of government find a common bond to prevent duplication and confusion? 	
Other?		
Insurance		
Insure Montana Program and Small Shop Insurance Exchanges	What is happening with the Small Business Health Insurance Exchange and what is the wind-down process for Insure Montana?	
Insurance Competition	The committee may want to examine competition in the insurance industry, whether related to workers' compensation insurance, medical malpractice insurance, health insurance, or other types of insurance. Would law changes be needed to encourage competition or is lack of population a driving factor?	
Other?		
Livestock		
Budget Issues	<ul style="list-style-type: none"> • Review Department of Livestock budget and structural balance for each division quarterly. HB 2 requires an annual review. Have public comment on Dept. of Livestock finances to determine if efficiencies can be gained in any area. • Review the Board of Milk Control budget / work products. • Review uses of per capita funding and brand income. 	Each meeting to have budget component
Brucellosis and the Designated Surveillance Area	<ul style="list-style-type: none"> • Follow up on work of the 2009-2010 EAIC regarding the Board of Livestock and the Department of Livestock actions related to brucellosis in the areas near Yellowstone National Park. Are veterinarians appropriately paid for the brucellosis checks? • Schedule at least one presentation regarding the Interagency Management Bison Plan and the work of multiple agencies related to bison and whether any of this work is applicable to impacts of elk migration. 	
Other?		
Employment / Unemployment / Labor		
Unemployment Issues	If the state's unemployment rate is lower than the national average but the rate is higher on Indian reservations, is the state doing all it can to achieve better employment opportunities in high-poverty areas? Are job service offices located in the most beneficial sites and does the Legislature have any say in locations or just in personnel and staffing?	
Workforce Development	Reports on: <ul style="list-style-type: none"> • Implementation of workforce aspect of Medicaid revisions; • Incumbent worker training; • Foreign labor certification program; 	February meeting to include college and workforce training

	<ul style="list-style-type: none"> Activities aimed at improving ways to meet job demands in the Bakken. 	
Labor Negotiations for State Employees	Although HJR 28 (proposing a review of the way the state adopts pay plans with unions) did not pass the Legislature, the Committee might want to review options for changing the current approach to state employee pay plan negotiations.	
Other?		
Professional / Occupational Licensing (beyond SB 390 “fees commensurate with costs” study)		
Monitor board solvency and changes allowed in boxing program	Determine which boards need additional oversight or monitoring based on budget, numbers of complaints, other? Are the changes in SB 401 to the boxing program achieving more solvency for that program?	
Monitoring of medical assistance programs	Follow up on licensing boards' medical assistance programs (from work done in 2009-2010) and implementation by the four boards participating in the programs: Board of Medical Examiners, Board of Dentistry, Board of Nursing, Board of Pharmacy. Are other boards participating and under what authority?	
Competition among board-regulated industries in light of new U.S. Supreme Court ruling - <i>North Carolina Board of Dental Examiners v. the Federal Trade Commission</i>	Denturists complain that dentists limit their scope of practice, while dentists say that denturists are not trained as well as dentists so they ought to be limited. The U.S. Supreme Court case - <i>North Carolina Board of Dental Examiners v. the Federal Trade Commission</i> -- found that a licensing board comprised primarily of members of an industry might be anticompetitive. Some Montana licensing boards fit that description (although the 5 dentists on the Board of Dentistry comprise just half of the membership with the remaining members as 3 dental hygienists, 1 denturist, and 1 public member). Do boards need to be examined in light of this decision to make sure one profession's licensees do not dominate?	This was included as part of the SB 390 study at the April 2016 meeting.
Other?		
Workers' Compensation		
Monitor implementation of SB 123 – Montana State Fund under the State Auditor's Office	SB 123, moving Montana State Fund under the regulatory eye of the State Auditor's Office, takes effect Jan. 1, 2016. What are the impacts to date? What changes are in the works for Montana State Fund?	
Subrogation	The Governor's veto message on SB 288 (2015) said that the Labor-Management Advisory Council on workers' compensation would continue to look at the problems cited in testimony on the subrogation bill, although not from the subrogation standpoint but from the perspective of experience modification changes resulting from damages caused by third parties. A panel discussion mirroring the LMAC work is one possibility. Another is simply a report from LMAC.	
Workplace safety	Follow up on the work of WorkSafeMT and reports from OSHA regarding private-sector contacts, whether for citations or recommended changes.	
Impact of claim closure from HB 334 in 2011 session	HB 334 enacted by the 2011 Legislature provided that workers' compensation claims would end after 5 years unless special circumstances apply. The 5-year period for the first batch of claim closures on injuries that occurred on or after July 1, 2011, hits as of July 1, 2016. At a meeting after that date the Department of Labor	

	and Industry and work comp insurers could be asked to report on impacts based on this first batch of claims.	
Other?		

IX. Matrix for Prioritizing the Focus of Meetings

Table 4 provides a brief description of the Committee's involvement over the course of the interim. The columns provide members with options for allocating their time. It is anticipated that choosing the most involvement for each activity will seriously tax the EAIC's time, staff resources, and budget. The table is intended to be flexible yet help the Committee members recognize that only a limited amount of Committee time is available for activities that are not mandated.

Table 4: EAIC Matrix for Setting Priorities for Interim Committee Activities

ACTIVITY	Most Involvement	Moderate Involvement	Minimal Involvement
<i>RULE REVIEW</i> <i>Chosen option</i>	<ul style="list-style-type: none"> Request written or oral reports, including analysis by legal staff at each meeting on all proposed rules or adoption notices for each agency monitored. Request copies of rules from agencies for legislators' personal review. Seek public comment on rules of concern. 	<ul style="list-style-type: none"> Request brief written description of all rules prior to Committee meetings (from this meeting). Review only topics in Committee that: <ul style="list-style-type: none"> Legislators flag as important or of concern; or A member of the committee asks to be placed on the EAIC agenda. <p>xx</p>	<ul style="list-style-type: none"> Hear information only on issues that Committee legal staff considers to be out of compliance with statutes or legislative intent.
<i>DRAFT LEGISLATION REVIEW</i> <i>Chosen option</i>	<ul style="list-style-type: none"> Request reports from agencies on legislative proposals submitted in early 2015 to the Office of Budget and Program Planning. Include panel presentations to familiarize Committee with issues. 	<ul style="list-style-type: none"> Provide time at June and August 2016 meetings, one for initial concept review and the other for follow-up briefings for complex legislation. 	<ul style="list-style-type: none"> Overview of concepts on each item of legislation at final meeting. <p>xx</p>
<i>AGENCY MONITORING</i>	<ul style="list-style-type: none"> Each agency division would give an initial overview presentation. Any agency with further statutory reporting requirements to give an oral report to the EAIC. 	<p>Basic involvement needed:</p> <ul style="list-style-type: none"> Each agency head would provide a brief overview of activities. Any agency with further statutory reporting requirement would give an oral report. 	

<i>Chosen option</i>	<ul style="list-style-type: none"> EAIC members specify follow-up reports on program specifics. 	xx – Except for more monitoring of Dept. of Livestock	
<p>HB 142 REVIEWS A review of the necessity of advisory councils, etc. or reports linked to agencies that EAIC monitors.</p> <p><i>Chosen option</i></p>	<ul style="list-style-type: none"> Review the 35 advisory councils / reports and advisory groups of all types. Some would just be monitored; others would include a “sunset” review with public comment followed by a vote by the Committee on whether to retain. 	<ul style="list-style-type: none"> Have presentations on the 13 advisory councils and reports strictly required for review, with public comment, and votes by the Committee on each along with up to 4 other advisory committees. 	<ul style="list-style-type: none"> Provide a briefing paper for each of the 13 statutory advisory councils and reports, with the committee deciding if any need a review. If a review, there would be public comment and a vote. <p>xx</p>
ACTIVITY	Most Involvement	Moderate Involvement	Minimal Involvement
<p><i>MONITORING IMPORTANT ACTIVITIES (may be based on member issues, see below)</i></p> <p><i>Chosen option</i></p>	<ul style="list-style-type: none"> Outline up to 5 topics chosen at the first meeting to be addressed at subsequent meetings. Include staff-prepared “white papers” on each topic. Discussion by EAIC. <p>xx</p>	<ul style="list-style-type: none"> Outline up to 3 topics chosen at the first meeting to be addressed at subsequent meetings. Staff briefing papers on topics of interest. Discussion by EAIC. 	<ul style="list-style-type: none"> Topics limited to those presented by interested persons who ask to be on agenda. Copies of relevant reports provided to committee. No staff briefing or “white papers”
<p><i>MEMBER ISSUES (see also Monitoring Important Activities, above)</i></p> <p><i>Chosen option</i></p>	<ul style="list-style-type: none"> Each meeting would have 1 member issue on the agenda, with presentation by an identified expert (6 or 7 topics in total) Provide a white paper on designated issues. Draft related legislation. 	<ul style="list-style-type: none"> 4 or 5 member issues would be addressed, with a presentation by an identified expert. Staff to prepare briefing papers or draft legislation as issues arise. <p>xx</p>	<ul style="list-style-type: none"> Address no more than 2 member issues as time allows, with staff providing copies of relevant outside reports to EAIC. No staff briefing or white papers. 1 or 2 presentations, if any.
<p><i>ASSIGNED STUDY SB 390 – reviewing how Department of Labor and Industry sets fees commensurate with costs</i></p>	<ul style="list-style-type: none"> Briefing papers (as listed at far right) Clarification by legislative auditor on approach analyzed for “fees commensurate with costs” 3-4 presentations to allow for more input by board members / licensees, 	<ul style="list-style-type: none"> Briefing papers (as listed at right) Clarification by legislative auditor on approach analyzed for “fees commensurate with costs” 2 presentations Public comment opportunity. 	<ul style="list-style-type: none"> Briefing papers highlighting past and proposed “fees commensurate with costs” approaches. Done separately by LSD.LFD staff and the department. 1 presentation Public comment opportunity

<i>Chosen option</i>	<ul style="list-style-type: none"> • Public comment opportunity xx 		
<p><i>ASSIGNED STUDY</i> <i>HJR 29 – reviewing how membership-based health care works, particularly for ambulances</i></p> <p><i>Chosen option</i></p>	<ul style="list-style-type: none"> • Briefing papers (as listed at far right) • 3 to 4 panel presentations outlining ambulance concerns, consumer and legal concerns, regulator concerns, and patient care issues, including hospital relationships with patients and with air ambulances. • Poll of air ambulances in Montana. • Public comment opportunity xx 	<ul style="list-style-type: none"> • Briefing papers (as listed at right) • Two panel presentations from air and ground subscription offerers, insurers, and regulators • Public comment opportunity 	<ul style="list-style-type: none"> • Briefing papers outlining: federal areas of preemption related to regulating air ambulance service; insurer approaches, cost; and scope of service / other states' dealings • 1 panel presentation • Public comment opportunity

Appendix B: SB 390 – A Study of Professional/Occupational Licensing Board Costs

Summary

Under SB 390, passed in 2015, the EAIC specifically was asked to look at direct and indirect costs faced by licensing boards and how the Department of Labor and Industry (DLI) assigned those costs to each of the 33 licensing boards administratively attached to DLI. Part of the impetus for the SB 390 study was language in a statute that the 2015 Legislature changed regarding adoption of “fees commensurate with costs.” The new language revised under passage of SB 79 was for boards to “set board fees related to its program area that provide the amount of money usually needed for the operation of the board for services.” Until passage of SB 79, the department had routinely faced questions regarding what “fees commensurate with costs” meant. SB 390 sought to address how the department set its fees that were passed along to licensing boards, in part explaining why the cost of having a board usually started at a sum of at least \$32,000 but more on the average of \$45,000 before adding any board-directed program costs.

Background

The EAIC chose the “most involvement” level in its work plan for SB 390, which meant briefing papers, clarification of the term “fees commensurate with costs,” 3-4 presentations to allow for input by board members and other licensees, and public comment opportunity. Several of the presentations included an issue raised when the U.S. Supreme Court ruled in 2015 that members of a profession could, in regulating their own profession and without “active supervision,” be liable to antitrust accusations. Because “active supervision” had the potential to add costs to a licensing board and put into question the administrative attachment concept in which a board acts independently of the agency to which it is attached, the “active supervision” issue came within the scope of SB 390 in that the concept dealt with the relationship between the department and the costs incurred and charged to the boards.

Meeting time spent on the SB 390 study primarily occurred in December 2015, April 2016, and June 2016, with a wrap-up at the final meeting in August 2016. The Table below shows the proposed tasks for the committee along with actual deliverables. In between presentations strictly related to the SB 390 study, the EAIC also heard about some contentious rule issues, including a proposal by the Board of Physical Therapy Examiners regarding dry needling therapy, which acupuncturists licensed by the Board of Medical Examiners considered to be just another name for acupuncture, for which an acupuncturist license is needed. While the EAIC heard from both sides at its December 2015 meeting and asked for a stay on the rule until both sides met to try to reach an agreement, the eventual action by the Board of Physical Therapy Examiners, without further objection by the EAIC, was to adopt a rule slightly different from the original but one that allowed physical therapists trained in the method to do dry needling. The dispute was not part of the SB 390 study but highlighted the moderator role that the Department of

Labor and Industry plays when two boards enter into a dispute with each other. The costs for moderating that activity gets charged back to the boards.

Hearing about board disputes, activities, and concerns led the EAIC to a unanimous statement as part of its SB 390 study: “That legal costs, rule revisions, and other budget-impacting activities vary across years as well as boards, which complicates individual board budget planning.”

One of the proposed deliverables as part of the SB 390 study was to look at how other states handle licensing. Over various interims the EAIC members have heard about different approaches by states, some of which contract out the board management and some of which use boards solely as advisory bodies rather than policy-making bodies. A representative from the State of Washington’s Regulatory Board Section in the Department of Licensing described at the EAIC’s April 14, 2016, meeting how boards operate in her state. Her section specifically works with policymaking boards, while another section is more oriented toward regulation with advice rather than by licensees engaged in self-regulation. One result of the various information provided to the EAIC was that in a final questionnaire on the SB 390 study, a majority of the EAIC agreed that making primarily one agency responsible for handling licensing boards made sense from a labor and cost distribution perspective while still allowing board-specific costs and policies to be handled by each board.

SB 390 List of Study Subjects	Actual Information Provided
<ul style="list-style-type: none"> • EAIC to conduct a study of fees charged for licensing boards. 	<ul style="list-style-type: none"> • Briefing paper on taxes, fees and how they are used by professional licensing boards and the Board of Livestock • Background on fixed costs and indirect costs for licensing boards • Direct costs to boards – for licensing, compliance, management • Indirect costs to boards – division administration, board management, licensing bureau • Handout reviewing overall charges, board fluctuations over time, sample of board budget documents • Background paper with explanations outlining the link between concerns about antitrust approaches, licensing, and various approaches to handling board financing • Memo on enterprise funds
<ul style="list-style-type: none"> • The study was to include but was not limited to: <ul style="list-style-type: none"> - fees incurred, calculated or charged by the department for a variety of activities; - direct and indirect costs as well as administrative service costs and legal costs; - analysis of whether fees for administrative services are commensurate with the costs provided; and - analysis of whether the services provided add value to board work and contribute to public safety. 	
<ul style="list-style-type: none"> • Input by board members/licensees and members of the public 	<ul style="list-style-type: none"> • Comments at meetings on June 10, 2015, Dec. 1-2, 2015, April 14, 2016, June 22, 2016

Issues

- **Fees Commensurate with Costs**

Presentations from Department of Labor and Industry officials involved in the administration of boards and overall budgeting addressed both the issue of fees commensurate with costs and distribution of indirect costs (see below). They explained how the time distribution for activities

related to specific boards resulted in the calculation of both direct and indirect costs. In general, the committee accepted the rationale as logical, with few questions as to assignment of costs. A tour of the Business Standards Division, which manages the licensing board activities, introduced committee members to the various processes involved in licensing, compliance checks, and inspections.

DLI staff explained at the December 2015 meeting how the department assessed direct costs to the boards, based on time distribution by members of the licensing staff, the compliance staff, the legal staff, and board-specific personnel. One analysis indicated that 72% of costs are direct and 28% are indirect, over time and across the full Business Standards Division. The indirect costs include those that benefit all boards but are not specific to any one board. These are then reallocated. Some of these include costs for information services from the Department of Administration and fees charged for the Centralized Services Division for handling payroll, accounting, and other department-wide activities. A third type of indirect costs relates primarily to division-wide administrative costs. Approximately 70% of these costs are salaries. After 2007 the department began assessing the costs based on a quarterly time distribution rather than a 2-year look-back. The division administrator noted that legislation adopted in 2015 under SB 76 allowed boards to determine when the department could handle simple disciplinary issues, a streamlined measure that generally saves costs. Committee member had few questions as to the cost allocations, although there was interest in whether boards had been suspended because of failure to have fees commensurate with costs (no boards were in 2016) and reasons for high costs for some boards (typically litigation). Licensees' comments ranged from costs being "too high" to several board members saying costs were "just right." Specific comments came from a member of the Board of Sanitarians, several licensees of the Board of Speech Pathologists and Audiologists, plus some members of the Board of Outfitters and the Board of Public Accountants.

In a final analysis a majority of the EAIC members agreed with the statement that the Department of Labor and Industry's development and assignment of costs to licensing boards appeared to be appropriate, rational, and equitable.

- **Distribution of Indirect Costs**

Indirect costs charged to boards by the department's central services office, which includes the office of the commissioner of labor and industry as well as the budget staff, were based on the percentage of time tallied for direct costs assigned to each board. The indirect costs provided to the committee²² ranged from a low in FY2015 of \$2,531 for the Board of Athletic Trainers to a

²² See <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Dec-2015/sb390board-indirect-costs.pdf> for indirect costs in FY2015 and <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Dec-2015/sb390-board-direct-costs.pdf> for direct costs in FY2015.

high of \$105,951 for the Board of Medical Examiners. The direct costs for the Board of Athletic Trainers amounted to \$15,585 in FY2015 while the direct costs for the Board of Medical Examiners were \$1,346,805. Other indirect costs for personal services and operating expenses are charged by the Business Standards Division Administration, the Board Management Bureau, and the Licensing Bureau.

The department provided an example of what the difference would be for a cost-allocation based on the number of licensees instead of the time distribution related to direct costs. In that example, given in Table 5 of “Fixed Costs and Indirect Costs Related to Licensing Boards’ Fees”,²³ provided to the December 2015 committee meeting, the department showed that if the costs were based on licensees, rather than direct hours spent on a licensing board, the Board of Realty Regulation would pay 7.37% of all costs instead of 11.03% and the Board of Professional Engineers and Professional Land Surveyors would pay 10.8% instead of 3.36%. A board with fewer licensees, like the Board of Real Estate Appraisers, would pay 0.82% of the costs based on licensees, but with direct hours they are assessed 4.78% of the costs because their issues require more time than some boards with more licensees.

The report provided to the committee in December 2015 also reviewed changes in how the department has assessed charges, changes to the structure of the Business Standards Division, which is the agency handling administrative matters for the licensing boards, and information that indicated that simply removing the board but retaining licensure would save less than \$4,000 a year, with the majority of the costs remaining.²⁴

- **Oversight of Licensing Boards under U.S. Supreme Court’s NC Dental Case and Options Presented to EAIC**

The part of the SB 390 study related to how much discretion or interference should to be provided to the department in light of the 2015 U.S. Supreme Court antitrust decision in the North Carolina Dental Examiners v. the Federal Trade Commission case was not part of the original study issues but was included because of its potential costs, particularly if the commissioner of labor and industry were to be called upon to exercise active supervision frequently. Presentations to the committee reviewed the concept that those carrying out certain anticompetitive actions may be eligible for “state action immunity” if the actions are allowed under state policy, as determined by an authority eligible to exercise “active supervision.” The U.S. Supreme Court decision noted that licensing boards comprised mainly of members of a regulated profession may not receive “state action immunity” if the board’s

²³ See “Fixed Costs and Indirect Costs Related to Licensing Boards’ Fees” at <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Dec-2015/SB390-briefing-paper.pdf>.

²⁴ Op. cit., Table 6, p. 10.

decisions are in violation of the Sherman Antitrust Act. The court, and guidelines later developed by the Federal Trade Commission, recommended that a state entity exercise active supervision to determine if there was a specific legislatively determined objective to protect public health, welfare, or safety and whether to allow a board to take an anticompetitive action.

For the EAIC, the decision on whether to extend greater authority to the department for active supervision was not clear-cut. In part this was because the department already had issued a memorandum warning that board members who went against the advice of the department would not have the support of the department if any lawsuits occurred because of an action that might be considered anticompetitive. EAIC opinions split on questions at the end of the interim related to whether active supervision might be necessary to protect board members against antitrust complaints. Asked whether to adopt, as a committee bill, a proposal to allow the Commissioner of Labor and Industry to exercise active supervision over potential antitrust activities by the boards, the EAIC decided against a committee bill and told a representative of the Department of Labor and Industry that the department could move forward with a bill draft request on that topic. Of the three proposals before the committee, the Department chose to modify LC3901, which became HB 141 (LC392).

Summary

Provided with a series of statements related to the SB 390 study, the committee endorsed the following statements:

- By unanimous consent: “That legal costs, rule revisions, and other budget-impacting activities vary across years as well as boards, which complicates individual board budget planning.”
- By a majority that the Department of Labor and Industry’s development and assignment of costs to licensing boards appeared to be appropriate, rational, and equitable and that making one agency primarily responsible for handling licensing boards made sense from a labor and cost distribution perspective while still allowing board-specific costs and policies to be handled by each board.

Although the committee did not adopt a committee bill to deal with active supervision, the committee indicated to the Department of Labor and Industry that the department may want to include an “active supervision” bill in its list of legislation. The resulting bill draft became HB 141.

Appendix C: HJR 29 – A Study of Air Ambulance Costs

Summary

Under HJR 29, the EAIC faced a basic question of what measures could a state take to address the large bills certain users of air ambulances were getting when there was the potential for federal preemption of any state action under the Airline Deregulation Act. Various court decisions and official interpretations had indicated that states could not pass laws affecting rates, routes, or services (other than medical requirements). So, while states can regulate insurance and many of the insurers were involved in the air ambulance billing scene, what could states do to try to lessen or avoid the impact of large bills from air ambulances that possibly did not participate in an insurer's network?

As information gathering moved into efforts to provide solutions, the committee relied on a working group organized by the State Auditor's Office to develop a range of solutions. These included a website that listed which air ambulances participated in which insurer networks and two bill drafts that the EAIC adopted as committee bills in an attempt to bring insurers and air ambulance providers together to keep an insured patient from bearing the brunt of an unexpected, emergency use of an air ambulance. One bill draft provided for arbitration between air ambulance providers and insurers. The other bill draft allowed for regulation of air ambulance memberships as insurance, thereby providing the insurance commissioner with a rationale for being involved in air ambulance-insurer payment disputes.

Finally, the committee sent letters to Montana's Congressional Delegation, with individual members following up directly with Sens. Jon Tester or Steve Daines, in particular, or with their staff.

Background

HJR 29 proposed a study of membership-based health care services, including membership-based ambulance services, and their impacts on health insurance, health care access, other health providers, and health care costs. In essence the study zeroed in on air ambulance services, their costs and charges, the impacts on patients who were balance billed, and the challenges involved in determining the scope of preemption extended by the Airline Deregulation Act and various other federal laws.

The study plan, as seen in the Table below, outlined various briefing papers, a survey of ambulance providers, and panel presentations. Once the committee received the overview information and recognized the basic conflicts between air ambulance providers with certain cost models and insurance providers with other cost models, the committee decided in February to ask that the State Auditor's Office organize a study group that would look at details related to air ambulance providers and insurers, consider transparency options, and propose possible solutions. One reason for requesting help from the State Auditor's Office was that, as the regulator for insurance, the agency had administrative clout with at least one of the groups at the table. The State Auditor's Office also had the ability to sort through the

insurance language to allow apples-to-apples comparisons, which the committee had not been getting during the early information-gathering stages.

HJR Study Plan: Proposed and Actual Deliverables

Proposed Deliverables	Actual Information Provided. (See Website under Committee Topics)
<p>Briefing papers on:</p> <ul style="list-style-type: none"> • costs; • operational data regarding membership or subscription services; • insurance-related information; • regulations; • health care industry impacts; and • research from other states. 	<ul style="list-style-type: none"> • Survey of air ambulance providers, addressing trips, costs, response time, membership sales, medical staffing. Insurance acceptance, medical capabilities in flight. See also appendices - Tables 1, 2, 3. • Northeast Montana STAT Air provided a breakout of costs for its service and its payor mix. • Insurance-related information posted online included data from Allegiance as a Third-Party Administrator, Blue Cross Blue Shield of Montana, Pacific Northwest Medicaid Rates, and Medicare rates. • Health Care Industry Impacts included costs faced by the State of Montana plan for air ambulance flights, claim numbers filed by air ambulance providers for Medicaid reimbursements; insurance data from Allegiance and Blue Cross Blue Shield of Montana on allowed air ambulance charges and Medicare allowed charges or percent of Medicare paid; and base rates paid for Medicare and Medicaid. • Research from other states was listed on the committee “topics” website. This included legislation or regulations from New York, Florida, Alaska plus court decisions from North Dakota and Wyoming and related legal information from Texas.
<p>Panel presentations indicating:</p> <ul style="list-style-type: none"> • legal concerns related to regulating air ambulances; • pros and cons of various regulations, as perceived by stakeholders; • hospital issues regarding costs of affiliation with air ambulance services and their responsibilities vis-a-vis patients when transfers are or may be needed; • insurers’ perspectives of membership-based services and how best to recognize and deal with the services as a noninsurance, separate product or in another manner; • differences between membership-based and other types of ambulance services from the perspectives of ambulance providers, consumers and emergency room personnel. 	<ul style="list-style-type: none"> • Several different presentations incorporated legal concerns ranging from the requirements of EMTALA, which is a federal law requiring emergency cases to be treated or at least stabilized before transport to the concerns related to the Airline Deregulation Act’s guidelines that prevent state oversight of rates, routes, or services (other than medical requirements). See General Accountability Office 2010 report and Air Medical Journal article. Another legal issue related to air ambulance memberships was raised by Kalispell Regional Medical Center, which operates an inhouse air ambulance and balances offering memberships with concerns about federal anti-kickback statutes and the Civil Monetary Penalties Act, which a report from the hospital said prohibits a recipient of Medicare or Medicaid funds from offering anything of value (except a limited dollar amount) to influence a Medicare or Medicaid beneficiary to use certain services. The legal issues arose at many meetings but were on the Sept. 1, 2015, agenda specifically. • The pros and cons of various regulations came before the committee and the work group in particular at nearly every meeting at least indirectly. Ultimately, the discussion turned on proposed legislation to hold the patient harmless from balance bills in favor of mediation or arbitration by the ambulance providers and insurer/health plans. • Hospitals, medical providers, insurers, air ambulance providers, and regulators addressed the committee Dec. 2, 2015, with their perspectives. • Membership information was on the Feb. 4, 2016, agenda. This meeting also include references to network participation.

Information requested by the EAIC members
<ul style="list-style-type: none">• One member wanted to know why this issue developed primarily from 2011 onward. The explanations typically were indirect but related to the growth of air ambulance services nationwide.

As a result of the State Auditor’s Office participation, an overall work group and a technical work group met at least once a month between March and August 2016. The participants at the work group sessions and on the conference calls included at various times legislators from the Economic Affairs Interim Committee, representatives of air ambulance providers and insurance companies as well as state and university health plans, at least one member of the public who experienced a high balance bill from an ambulance provider, and representatives for hospitals. Also listening in on occasion and being on an email notification list were regulators in other states who were curious to see how Montana might handle this issue.

Key concerns that the committee and the work group sought to address were:

- Finding a solution to balance bills sent by air ambulance providers to consumers, some of whom then faced the potential of bankruptcy, having to sign over pensions, or long-term payment plans. The dilemma was to find a solution that did not trigger federal law preemption concerns that had resulted in the overturning of other state laws dealing with similar problems and that ran afoul of the service, rates, and routes preemption under the Airline Deregulation Act;
- Balancing the needs of air ambulance providers to staff and service high-cost emergency transports with the needs of insurance and health plan providers to keep premiums reasonable; and
- Maintaining services in rural areas.

Issues

- **Federal Law Complications**

Based on the theory that federal law preempts state law if the federal government has “claimed the field” on a particular issue, many people in the air ambulance debate have claimed that the Airline Deregulation Act and accompanying federal court cases and Inspector General Opinions prevent states from imposing laws affecting air ambulance providers’ prices/rates, routes, or services (other than medical requirements).

But preemption is not always clear cut, particularly if more than one federal law can be referenced. Some people suggest that the McCarran-Ferguson Act, which allowed states the rights to govern insurance, may be used as an argument against total preemption by the Airline Deregulation Act. This is the so-called reverse preemption argument. Others question whether the Affordable Care Act carves out some exceptions, in this case by impacting regulations

related to an insurer's payment practices. Federal guidance²⁵ issued April 20, 2016, included in frequently asked questions about the Affordable Care Act, some insight into how language in section 2719A of the ACA is to be implemented in relation to emergency services. That section²⁶ in brief says that an insurer cannot require prior authorization and must pay out-of-network providers at in-network rates. However, there is an opportunity for the provider to balance bill.

Terms referenced in that section of law and variations of them were part of the work group discussions led by the State Auditor's Office. Discussed terms included:

- "reasonable" in terms of the amount paid by an insurer before the patient became responsible for the balance bill;
- "usual, customary and reasonable"; or
- an amount that would reference Medicare allowable charges for the emergency service.

²⁵ See pp. 4-5 of ["FAQs about Affordable Care Act Implementation Part 31, Mental Health Parity Implementation, and Women's Health and Cancer Rights Act Implementation," April 20, 2016.](#)

²⁶ (b) Coverage of emergency services

(1) **Scope.** If a group health plan, or a health insurance issuer offering group health insurance coverage, provides any benefits with respect to services in an emergency department of a hospital, the plan or issuer must cover emergency services (as defined in paragraph (b)(4)(ii) of this section) consistent with the rules of this paragraph (b).

(2) **General Rules.** A plan or issuer subject to the requirements of this paragraph (b) must provide coverage for emergency services in the following manner –

(i) without the need for any prior authorization determination, even if the emergency services are provided on an out-of-network basis;

(ii) without regard to whether the health care provider furnishing the emergency services is a participating network provider with respect to the services;

(iii) if the emergency services are provided out of network, without imposing any administrative requirement or limitation on coverage that is more restrictive than the requirements or limitations that apply emergency services received from in-network providers;

(iv) if the emergency services are provided out of network, by complying with the cost-sharing requirements of paragraph (b)(3) of this section; and

(v) without regard to any other term or condition of the coverage, other than –

(A) the exclusion of or coordination of benefits;

(B) an affiliation or waiting period permitted under part 7 of ERISA ...; or

(C) applicable cost-sharing.

(3) **Cost-sharing requirements** –

(i) Copayments and coinsurance. Any cost-sharing requirement expressed as a copayment amount or coinsurance rate imposed with respect to a participant or beneficiary for out-of-network emergency services cannot exceed the cost-sharing requirement imposed with respect to a participant or beneficiary if the services were provided in-network. However, a participant or beneficiary may be required to pay, in addition to the in-network cost sharing, the excess of the amount the out-of-network provider charges over the amount the plan or issuer is required to pay under this paragraph (b)(3)(i)... [balance bill]

The term used in the eventual bill draft discussed by the work group was “fair market price,” described as “the value of the services provided as agreed upon by the parties or as determined by the independent reviewer based on the factors provided in the dispute resolution process.”

Also discussed was the concept of what constituted emergency services. Under the Emergency Medical Treatment and Labor Act (EMTALA), a medical provider that accepts federal funds must stabilize a patient before transport. But as one physician from Bozeman told the work group at one of its meetings, a patient with some medical conditions may be stable one minute and spiraling downward the next. So the question of whether the person is stabilized for transport and thus not necessarily in an emergency situation is a call for the on-scene physician. Insurers, however, also may find an incentive to weigh in because they are more likely to pay “in-network” for emergency transport, even if the air ambulance provider is out-of-network, because of the Affordable Care Act requirements mentioned earlier. But if not considered “emergency transport,” thereby providing time for a hospital to call around for an in-network air ambulance, the insurer might dispute whether a situation is an emergency or not.

- **Air Ambulance Costs and Competition**

One of the questions asked at the start of the study related to why did air ambulance balance billing become such a big issue starting in roughly 2011 and continuing through the time of the study. There were various

guesses as to the reasons for the balance billing development. One

suggestion was that private equity firms realized that air

ambulance billing was basically unregulated

because of the Airline Deregulation Act. Another was that reimbursement by Medicare had gone

from a cost-based reimbursement to a percentage of charges. Cost-benefit analyses by hospitals meant that some of the hospitals decided to move away from offering air ambulance services, which meant less competition. One comment that highlighted the changing provider world came from the then-chief executive officer of St. Patrick Hospital in Missoula at the Dec. 1, 2015, committee meeting. Jeff Fee recalled that, in the days when St. Patrick Hospital operated its own air ambulance helicopter, he looked out his office window one day and saw that a helicopter not owned by St. Patrick Hospital was landing on the hospital’s helipad. Competition had arrived, not necessarily to lower costs but instead to split already thin margins among more providers.

Overview of Montana State Fund Reimbursements for Workers’ Compensation-Related Air Ambulance Bills 2011-15*

Fiscal Year	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Total	\$405,506	\$263,731	\$412,562	\$697,838	\$605,558
Average cost	\$11,586	\$10,144	\$14,226	\$13,508	\$16,821
Bill count	35	26	29	45	36

*Information from Montana State Fund provided 11/9/2015. Represents both fixed wing and rotor transport inclusive of transport fee and mileage. The Workers’ Compensation fee schedule pays usual and customary charges. For related information on workers’ compensation charges, see: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Aug-Sept-2015/hjr29-ncci-mt-national-data-air-ambulances.pdf>.

The question of whether competition was a benefit or a detriment remained unresolved by testimony from various providers. St. Vincent Hospital in Billings, which operates its own fixed wing and helicopter ambulance, said its air ambulance billing covered costs without being subsidized by other hospital activities. Not all Montana hospitals²⁷ that still operate air ambulance services reported that same experience. Northeast Montana STAT Air, which is based in Glasgow and operates under a cooperative of several Northeast Montana hospitals, provided detailed information about its costs, which may have benefited from some personnel and shared accounting provided by the Frances Mahon Deaconess Hospital in Glasgow but otherwise covered through its charges all but aircraft replacement costs.

What was obvious during the course of the study, however, was that, like many businesses in growth mode, consolidation through mergers was taking place. Between June 2015 and June 2016, EagleMed merged with Summit, which by the end of the study was known as Reach Air. EagleMed had had bases out of Helena and Butte. Northwest MedStar, which had provided service for St. Patrick Hospital in Missoula, was bought out by LifeFlight Network, an Oregon-based provider that has fixed-wing operations out of Butte and helicopter service out of Butte and Missoula, plus other out-of-state bases. Thirteen air ambulance providers telescoped to 11 by June 2016. Of the remaining 11, Air Idaho Rescue (operated by Air Methods, a major national firm), Valley Med out of North Dakota (part of the Air Medical Resource Group), and Sanford AirMed, also in North Dakota, handle calls in areas of Montana closest to their centers of operation. Maps at the end of this section show the scope of the service areas.

Based on a survey prepared for the HJR 29 study, which drew at least some responses from most of the air ambulance providers operating in Montana, charges for lift-off rates varied as did charges per mile. See Table below.

Lift-off rates* for Air Ambulances Serving Montana for 2015

	A.L.E.R.T. Kalispell	Benefis G. Falls	Billings Clinic	HELP Flight*	Life Flight	MT Medical Helena	NE MT STAT Air	NW MedStar (merged)	Sanford Air Med	Reach/EagleMed (Butte)
Rotor	See note	See note	\$12,625	\$11,530	No answer	No rotor	No rotor	\$15,246	\$11,062	No rotor
Fixed Wing	See note	See note	N/A	\$9,916	No answer	\$9,023 See note	\$13,534	\$13,116	\$8,596	\$15,965

²⁷ The Montana hospitals that, as of the publication date for this report, operate air ambulance services are: Benefis in Great Falls, Billings Clinic, Kalispell Regional Medical Center, Northeast Montana Stat Air for several Northeast Montana hospitals, and St. Vincent Healthcare in Billings.

Mileage rates* for Air Ambulances Serving Montana for 2015

	A.L.E.R.T. Kalispell	Benefis G. Falls	Billings Clinic	HELP Flight (St.V's)	Life Flight	MT Medical Helena	NE MT STAT Air	NW MedStar (merged)	Sanford Air Med	Reach/ EagleMed (Butte)
Rotor	See note	See note	\$60.00	\$100	No answer	No rotor	No rotor	\$133.10	\$88.00	No rotor
Fixed Wing	See note	See note	N/A	\$80	No answer	\$26.00	\$38.40	\$110.10	\$37.00	\$175

*Respondent did not supply information on the survey but Information that became available from other sources indicated A.L.E.R.T. had rotor lift-off rates of \$13,125 with mileage of \$85.51 per mile and fixed wing rates of \$10,880 with mileage rates of \$29.95 per mile. Similarly, Benefis for rotor had lift-off rates of \$15,000 with \$139.07 per mile and for fixed wing lift-off rates of \$11,809 with \$99.35 per mile rates. Montana Medical Transport was listed in other sources as having a fixed wing lift-off rate of \$11,550 and \$34 per mile. Some discrepancies may be based on the year in which the information was compiled.

- **Air Ambulance Charges**

Those studying the air ambulance issue recognized the importance and critical aspect of air ambulance service. What was less clear was why there were large differences among the providers’ operating costs and the bills sent to users of air ambulance services. Rationales given by a representative of a coalition of air ambulance providers, which included Reach Air and Airlift Northwest, noted the cost of readiness for both a flight crew and medical crews on a 24/7 basis, 365 days a year. Some of the air ambulance providers had no affiliation with a hospital, other than perhaps hiring some medical providers who also worked at an area hospital. That meant no costs were shared by an overall employer, nor was an overall employer able to reassign personnel so that stand-alone units faced costs that were not reimbursed for days on which they were not called upon to serve Montana’s limited population.

	Montana Medicare allowable	Medicaid allowable
Fixed-wing Base (national aver.)	\$4,190.48	
Fixed wing mileage	\$11.75	
Helicopter Base (urban - u) (rural - r)	\$3,496.75 \$5,245.13	\$1,635.55
Helicopter mileage	\$22.77 (u) \$34.16 (r)	\$13.98

See: For Medicare fixed-wing base and mileage, data is for [2013 from CMS](#). Helicopter data for [Montana Medicare and Medicaid](#) is from 2015.

An argument that air ambulance providers lost money on flights when the patient had Medicare or Medicaid coverage explained why some air ambulance providers charged much more than the basic lift-off and mileage rates as they shifted costs to pay for the lost income.²⁸ However, the losses from Medicare and Medicaid applied to all providers and did not explain why the for-profit or some not-for-profit companies charged much more than hospital-affiliated companies or even one freestanding air ambulance

²⁸ A letter from Air Methods, which operates Air Idaho Rescue, notes that 7 out of 10 transports were for patients covered by either Medicare or Medicaid or uninsured. See: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Committee-Topics/Ambulance/airmethods-ltr5.20.2016.pdf>.

provider based in Helena, Montana Medical Transport. A list²⁹ of providers that had submitted claims to Montana Medicaid showed that Summit Air (acquired by Reach Air) and Valley Med Flight were the only two air ambulances of the seven submitting claims in Fiscal Year 2015 (provided to the committee) that were not affiliated with hospitals.

The committee observed the broad variation in charges when provided at its August 2016 meeting with a list of complaints about balance bills compiled by the State Auditor’s Office. The list was limited in detail as to medical complexities but did allow for some comparison by different providers between the same cities. For example, a Missoula to Seattle flight by Northwest MedStar (which has since been sold to LifeFlight Network) ran up \$57,867 in charges. Airlift Northwest (which is based in Seattle) was similar at \$57,280, and LifeFlight Network billed \$60,262 for the same distance. Two Bozeman to Seattle flights showed the greatest variation; one by Reach Air was \$102,664 and another by Airlift Northwest was \$73,072. These charges were tallied by the State Auditor’s Office³⁰ based on complaints in 2015 through early August 2016. The list showed billed charges ranging from \$21,000 for a flight from Malta to Billings by Northeast Montana STAT Air to \$109,590 by Reach Air from Bozeman to Denver. The tally also showed insurance payments, the air ambulance provider, and the balance bills that became the responsibility of the insured patient. Only one call recorded by the State Auditor’s Office, which had no authority to address the problem but which sought to work with the parties informally, reflected no balance bill for the patient. That was a Helena to Denver flight provided by Reach Air for which the total bill was \$104,242.51. United Healthcare as the insurer paid \$100,000, and Reach Air did not balance bill the patient. In another case with Reach Air, for the Bozeman to Seattle flight charge of \$102,663.92, Blue Cross Blue Shield of Montana paid nothing; the entire bill was passed on to the patient. See Table for a sample of flights, bills, and insurer payments.

Examples of In-State/Out-of-State Air Ambulance Flights, Bills, Insurer Payments, Balance Bills

Shading is for readability. Data is from calls recorded by the State Auditor’s Office in 2015 through early August 2016.

	Origin/Destination	Provider	Total Bill	Insurer and Payment	Balance
In-state Flights	Helena - Missoula	Reach Air	\$46,743	Allegiance - \$14,410.39	\$32,233
	Meagher Co.- Billings	Reach Air	\$27,315	BCBS - \$13,884.96	\$13,470
	Anaconda-Great Falls	LifeFlight Network	\$48,000	BCBSMT - \$20,214	\$27,286
	Florence-Missoula	NW MedStar	\$21,251	BCBSMT - \$13,565.00	\$7,686
	Dillon-Butte	LifeFlight Network	\$29,600	Allegiance - \$18,147.90	\$12,202
Out-of-State Flights	Bozeman-Denver	Reach Air	\$109,590	BCBSMT - \$22,933.00	\$86,657
	Bozeman- Salt Lake City	Reach Air	\$78,766	BCBSMT - \$18,695	\$60,071
	Bozeman-Seattle	Summit Air (Reach)	\$72,353	Pacific Source\$21,318.57	\$51,033
	Missoula-Seattle	LifeFlight Network	\$34,200	BCBSMT - \$15,522	\$18,678
	Missoula-Seattle	Airlift Northwest	\$59,716	BCBSMT - \$23,769	\$35,407

²⁹See <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Committee-Topics/Ambulance/air-amb-mt-medicaid-claim-countSFY15.pdf>

³⁰ See <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Aug-2016/Exhibits/EAIC-August30-31-2016-Ex3.pdf> for Air Ambulance Complaints filed with the State Auditor’s Office.

- **Insurance Network Scope**

The discussion over whether an air ambulance provider is in-network or not was a critical aspect of the HJR 29 study. By having a majority of the participants at the table, the committee quickly learned which air ambulance providers were in network, which insurers were paying less than other insurers for in-network reimbursements, and which air ambulance providers operated on a combination of memberships, acceptance of whatever insurers provided for out-of-network providers, and balance billing. Although for the most part hospital-based air ambulances were in network with a wide range of insurers, that was not the case for Northeast Montana STAT Air, which disagreed with Blue Cross Blue Shield of Montana about an appropriate reimbursement level. The companies continued to work toward an agreement over the course of the study.

Fingerpointing tended to occur regarding what might be a percentage above Medicare that air ambulances might accept. A representative of a coalition of air ambulance companies contended, however, that because Medicare paid an amount unrelated to the actual cost of doing business, the Medicare allowable charge discussion was bogus from the beginning. However, the number remained one of the constants that was discussed.

Bill Bryant, the consultant hired to represent the coalition of the nonhospital-based air ambulance providers, offered information at committee meetings and during work group sessions. He contended that only the largest insurance companies in Montana were among those whose insureds were balance billed and noted that negotiations were rare with some insurers.³¹ He also contended that Montana insurers paid “allowable” rather than “usual and customary” charges, which he said was the payment term used in other states. Deciding what was “allowed,” he said, put the insurer in total charge. Additional insurance coverage that would avoid balance bills by including air ambulance services would, he suggested, add \$1.70 a month to an insurance premium.

³¹ See Bill Bryant, “Emergency Helicopter Services in Montana: What We Have Learned,” presented to the committee at its Aug. 30-31, 2016, meeting: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Aug-2016/bryant8-30-16slides.pdf>.

Insurers at the table included Allegiance (which also serves as the State of Montana’s third-party administrator), Blue Cross Blue Shield of Montana, Pacific Source, and the Montana University System, which runs its own self-insured plan. Other insurers, primarily those handling self-insured groups, participated either indirectly or during public comment.

	In-Network	Out-of-Network
Total Billed	\$1,046,279	\$1,527,757
Paid by Plan	\$539,954	\$524,359
Member Paid	\$28,638	\$24,315
Remainder subject to balance billing	0	\$979,083

At one meeting the representative of the Montana University System noted that the health plan tried to avoid balance billing situations for members of its plan. The Montana state employees’ health plan data from 2014 indicated that out-of-network air ambulance providers billed \$1,527,757 of which the plan paid slightly more than one-third, with members paying \$24,315 and the remaining \$979,083 potentially balance billed. See Table above.

- **Access to Care**

Lack of a burn center or other type of tertiary care center in Montana and long distances between critical access hospitals and medical facilities in the larger Montana cities mean that some form of transportation is necessary to get rural patients to more advanced life-saving care. Air ambulances can help save lives. Air ambulances also may be more practical than using a ground ambulance, which may be the sole form of medical transport in many smaller communities, which may not want their ground ambulance used for a 4-hour, one-way trip to a larger medical center. In these situations, an air ambulance may be important not just for critical emergency care but for providing access to a range of advanced care.

- **Patient Information**

Regardless of whether the transport is for advanced care or for emergency care, the cost issue may hinge on whether an ambulance is in-network or out-of-network. Obviously, a patient has time to find out if the ambulance is in-network or out-of-network if the transport is not an emergency. The work group agreed to tackle a way to make the information more readily available for patients and their families. Since 2014 hospitals have had a manual³² from the Department of Public Health and Human Services that lists different ambulance services for an area. However, the manual did not cross-reference insurance coverage. Often hospital staff does not consult with the patient or the patient’s family as to which air transport should be contacted or used. For that reason, the working group sought to develop both a brochure and a transparency website for use by patients or their families. The brochure was intended to inform patients of their rights and of the potential for balance bills if an out-of-network air ambulance

³² See Department of Public Health and Human Services, “Montana Facility and Air Medical Resource Guide” at: <http://dphhs.mt.gov/Portals/85/publichealth/documents/EMSTS/trauma/archives/facilityresourceguideweb.pdf>

is used. The transparency website,³³ which the State Auditor’s Office agreed to house, provided information from insurers as to which air ambulance companies were in-network, plus lift-off charges, mileage rates, and potential balance bills. One thought behind providing this information was to give the patient or the patient’s family more information and ability to avoid balance bills, as well as, indirectly, raise awareness for hospital personnel who may be making calls for ambulance transport without paying attention to insurance concerns (which would be a violation under EMTALA). The intent of providing more information was not to interfere with medical decisions but to give patients or their families the information necessary to participate in those decisions, if possible. The transparency discussions in the work group and in the committee highlighted concerns that some hospitals may have had “first call” arrangements with air ambulance providers that were not in-network. The work group and the committee heard that weather and availability also played a role in whether any particular air ambulance was able to respond and that on some occasions hospital personnel and first-responders called more than one ambulance. Whichever ambulance arrived first was likely to get the patient, with the other responders unhired and unreimbursed.

- **Air Ambulance Memberships**

Although mentioned in HJR 29 as a factor to be studied, air ambulance memberships did not generate much discussion by the committee or the working group. Efforts to get clarifications of how air ambulances could provide services worth tens of thousands of dollars to someone for a membership costing \$55 or \$60 a year were somewhat resolved with a finding that the air ambulance providers also were able to get the member’s insurance payments for air ambulance service.³⁴ Other points raised during membership discussions were:

- concerns raised by the Kalispell Regional Medical Center about structuring memberships in a way that did not run afoul of Medicare-related laws, such as the Anti-Kickback Statutes and the Civil Monetary Penalties Act, which a report³⁵ from the hospital said prohibits a recipient of Medicare or Medicaid funds from offering anything of value (except a limited dollar amount) to influence a Medicare or Medicaid beneficiary to use certain services;
- questions as to whether the membership money raised by an air ambulance network was spread across the network, including to out-of-state members. Reach Air indicated that its membership program operated separately from its air ambulance service.

³³ See State Auditor’s Office: <http://csimt.gov/issues-reports/air-ambulance-what-you-need-to-know/>

³⁴ See Bill Bryant email related to memberships, among other issues: <http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Feb-2016/hjr29-bryant-membership.pdf>.

³⁵ See “Memorandum on Air Ambulance Membership Program Legal Considerations Taken Into Account by Kalispell Regional Medical Center in Establishing it’s a/L.E.R.T. Assist Membership Program at: leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Feb-2016/hjr29-krmc-membership-info.pdf.

- efforts to get counties to sign up for memberships for residents in their counties; and
- concerns that reciprocity, as described in 50-6-320(3), was not generally adhered to among many air ambulance providers whose memberships more than likely covered only that air ambulance provider's billing. The language of 50-6-320(3) reads: "(3) Any private air ambulance service membership program must have arrangements with other air ambulance service providers in Montana to the extent reasonably possible to ensure maximum geographic coverage within the state for the subscribers to the program."

Despite limited discussion on the membership issue, the committee voted at its last meeting to adopt as a committee bill a proposal to make air ambulance memberships subject to regulation by the insurance commissioner, much as motor club service, as described in Title 61, chapter 12, part 3, is regulated. That bill became HB 73.

Summary

As mentioned above, the committee accepted as a committee bill the proposal to regulate air ambulance memberships through the insurance commissioner's office. The majority of the committee's discussion, however, focused on a bill discussed by the work group to hold an insured patient harmless from balance bills, basically requiring the air ambulance provider and the patient's insurer to negotiate an acceptable rate if the air ambulance provider was not in-network. The insurers worried that this would upend their ability to get air ambulance providers into networks, because of the expectation that the in-network rate would be considered the "floor" and out-of-network air ambulance providers would be able to argue for higher rates. The bill accepted by the committee also would have prohibited insurers from including anti-assignment clauses in their contracts with policyholders, a provision that air ambulance providers had sought out of concern that some patients fail to pay the air ambulance provider if the patient receives a check from the insurer because the insurer has an anti-assignment clause in the policy. The other parts of the bill provided for dispute resolution procedures overseen by the insurance commissioner's office. This bill became SB 44.

SB 44 provided in its preamble that:

- the HJR 29 study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates, which resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs;
- insurer network deficiencies with respect to air ambulances compounded the balance billing problems; and
- certain marketing tactics and a lack of subscription program reciprocity have resulted in consumers purchasing air ambulance subscriptions that lack adequate coverage areas.

A finding section in SB 44 stated:

- air ambulance services provide a necessary, and sometimes lifesaving, means of transporting Montanans experiencing health emergencies;
- Montanans desire adequate access to air ambulance services;
- in many cases the high charges assessed by out-of-network air ambulance services and limited insurer and health plan reimbursements have resulted in Montanans incurring excessive out-of-pocket expenses; and
- the federal Airline Deregulation Act preempts states from enacting any law related to a price, route, or service of an air carrier, which is interpreted as applying to air ambulance services.

The committee also responded to a questionnaire at its August 2016 meeting indicating the following HJR 29-related statements to which at least six of the eight committee members agreed:

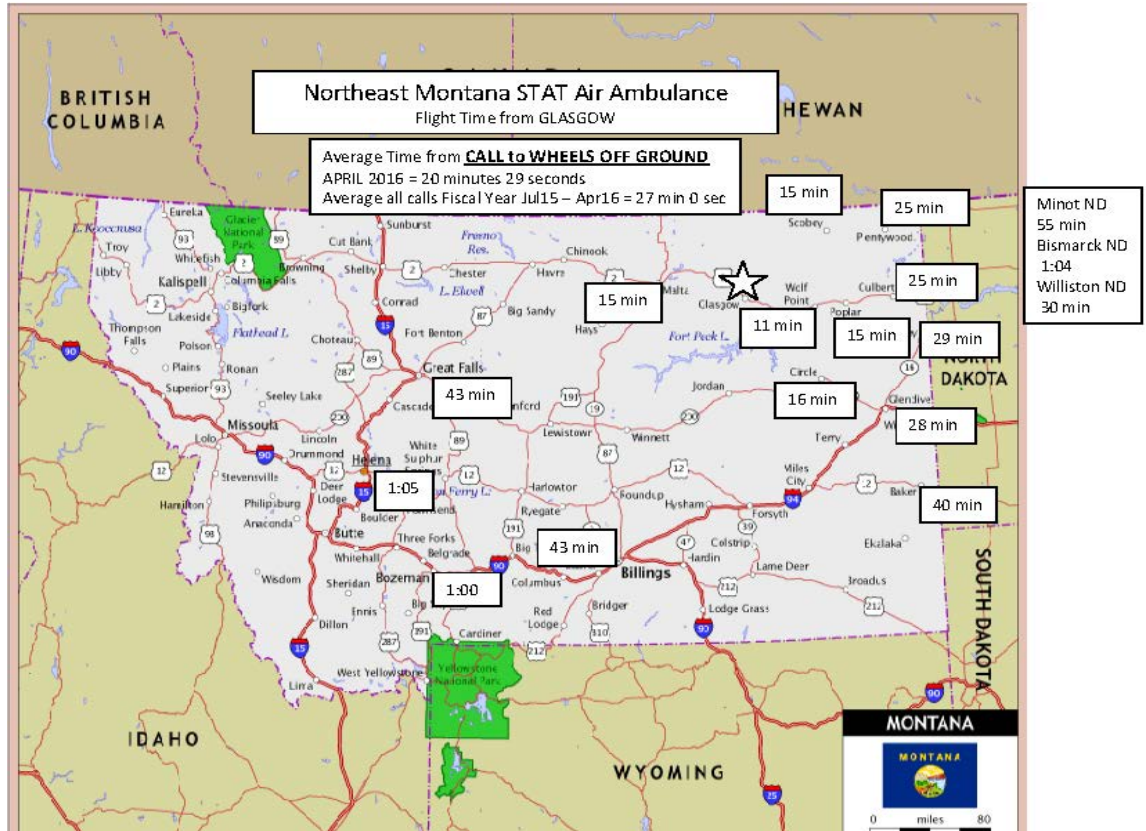
- “That Montana has a need for air ambulances across the state, especially in rural areas, and a need for the services that they provide;”
- That definitions may be needed of “emergency” services that are compatible with federal and state definitions (to guide billing practices);”
- “That communications are important and that the State Auditor or the Department of Public Health and Human Services or both ought to promote transparency among insurers and air ambulance providers so that patients can see costs and whether their insurance covers certain air ambulance costs;”
- “That insurance companies have a responsibility to inform policyholders/clients of potential out-of-network air ambulance costs as compared with in-network costs”; and
- “That membership reciprocity ought to be regulated more.”

Other results from the study, due to the efforts of the State Auditor’s Office, were development of a brochure and a website. The brochure was intended to be distributed to potential air ambulance patients about what to expect if they need an air ambulance. The website, as mentioned earlier, provides information as to whether an air ambulance provider is in-network and potential charges and potential balance billing if the air ambulance is not in-network.

And, while most people involved in the study agreed that the real resolution of high air ambulance charges and balance billing lay with Congress, there was at least some indication that Montana’s Congressional delegation heard the concerns expressed in letters sent by the committee and contacts made by committee members. Because the high cost of air ambulance bills is not only a Montana concern but a concern nationwide, as reflected by efforts to pass legislation in various states and fact-gathering by Maryland’s Commissioner of Insurance, Congress asked for a Government Accountability Office study to look what the Department of Transportation was doing in relation to air ambulances under the Airline Deregulation Act. Staff for the HJR 29 study participated in a conference call in 2016 with the GAO researchers.

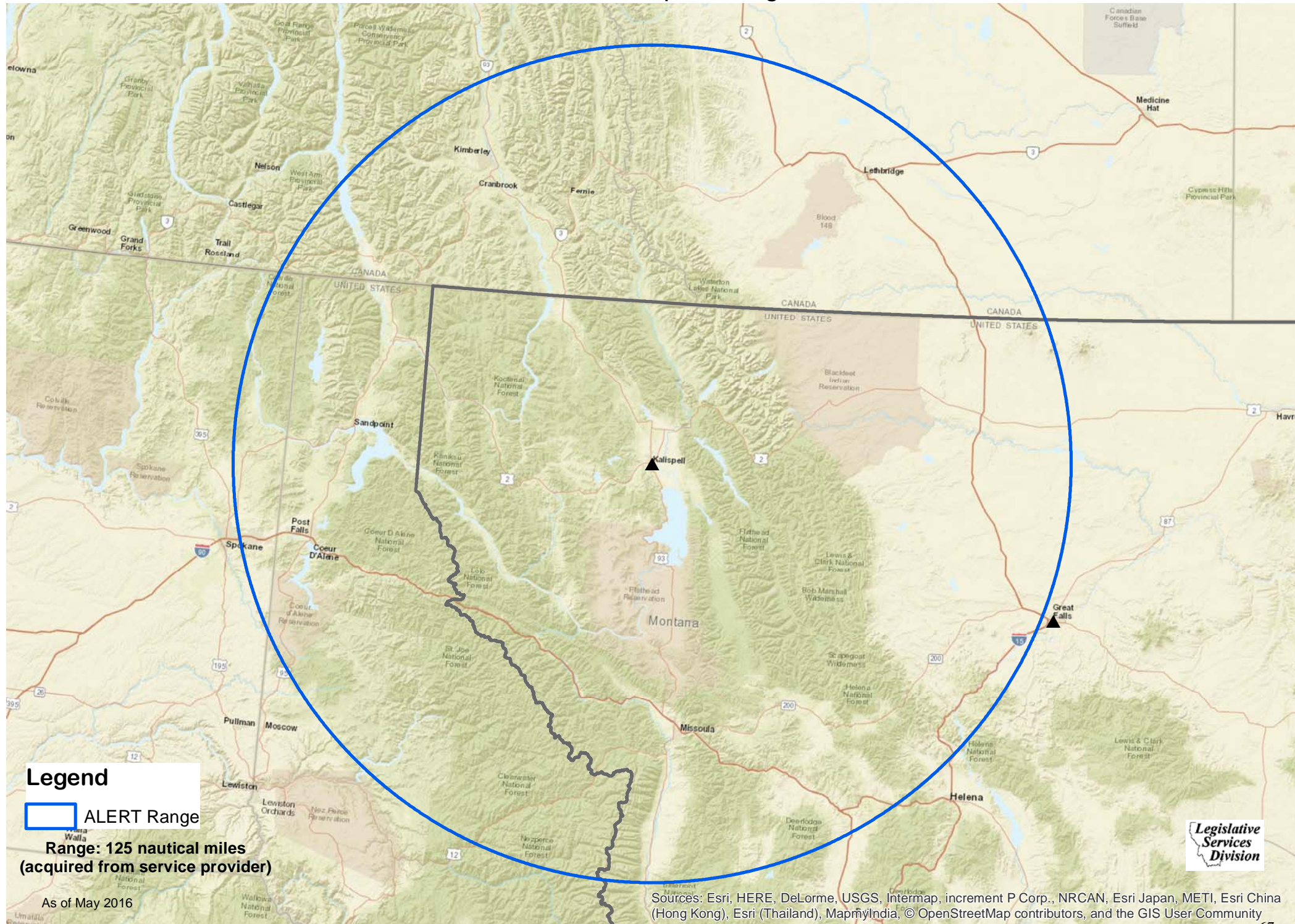
Another study result, developed by Legislative Services staff and based on reported service areas for air ambulance providers, were the maps shown below for Kalispell Regional Medical Center’s A.L.E.R.T. service, Benefis Hospital’s Mercy Flight helicopter radius, and St. Vincent’s HELP Flight. Reach Air provided maps for its helicopter services out of Bozeman/Belgrade and Helena along with a map showing the range of its fixed-wing plane. The maps, in general, would reflect each type of aircraft’s service area, because the capabilities are similar for all the different air ambulance provider aircraft.

Northeast Montana STAT Air provided the map at right. See:



<http://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Committee-Topics/Ambulance/northeast-stat-air-montana2016.pdf> The online map shows times from destinations.

ALERT Helicopter Range



Legend
[Blue Circle] ALERT Range

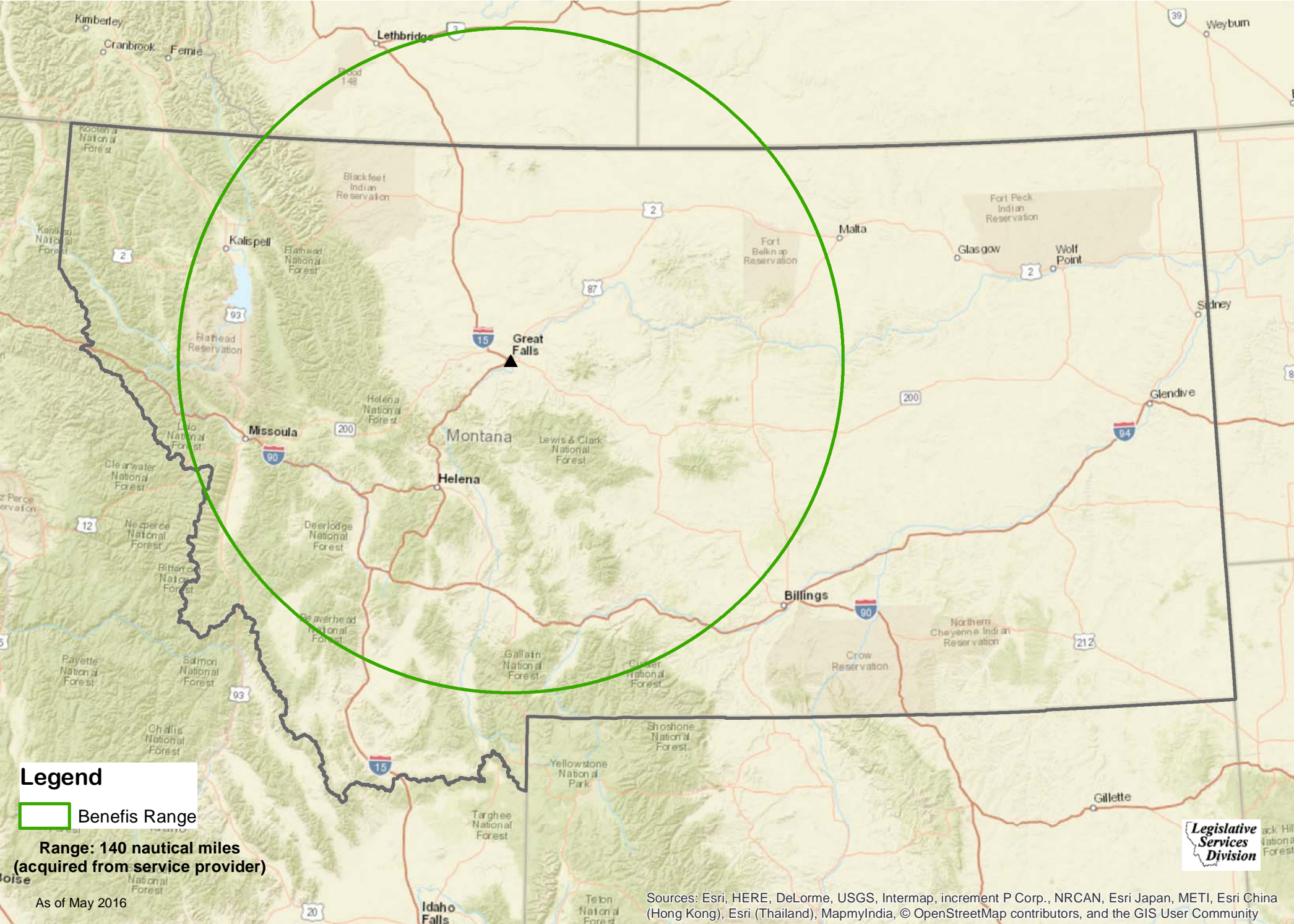
**Range: 125 nautical miles
(acquired from service provider)**

As of May 2016

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community



Benefis Mercy Flight Helicopter Range



Legend
Benefis Range

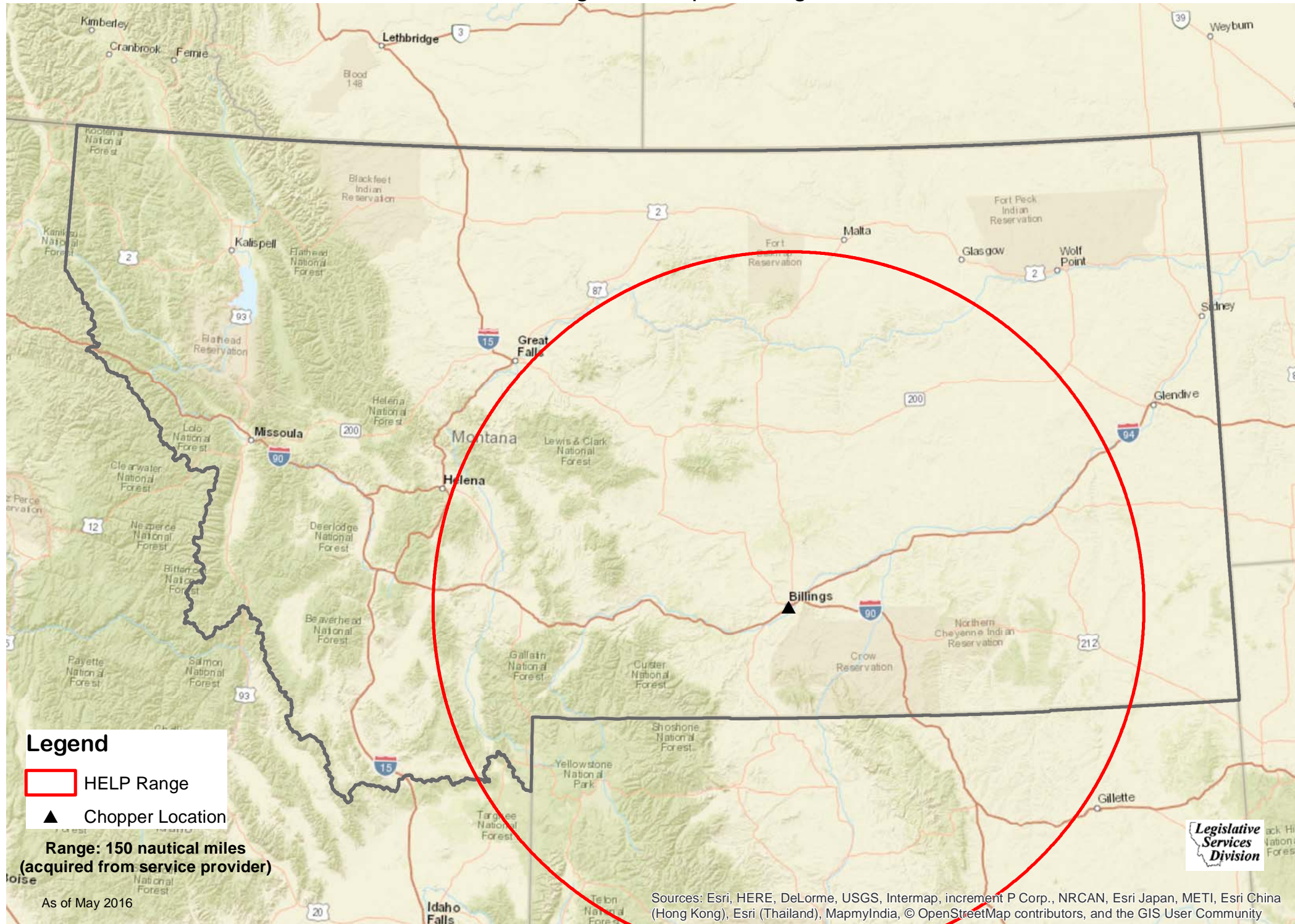
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(acquired from service provider)

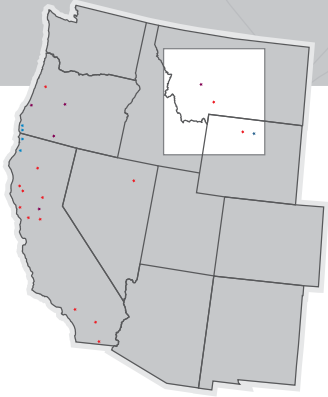
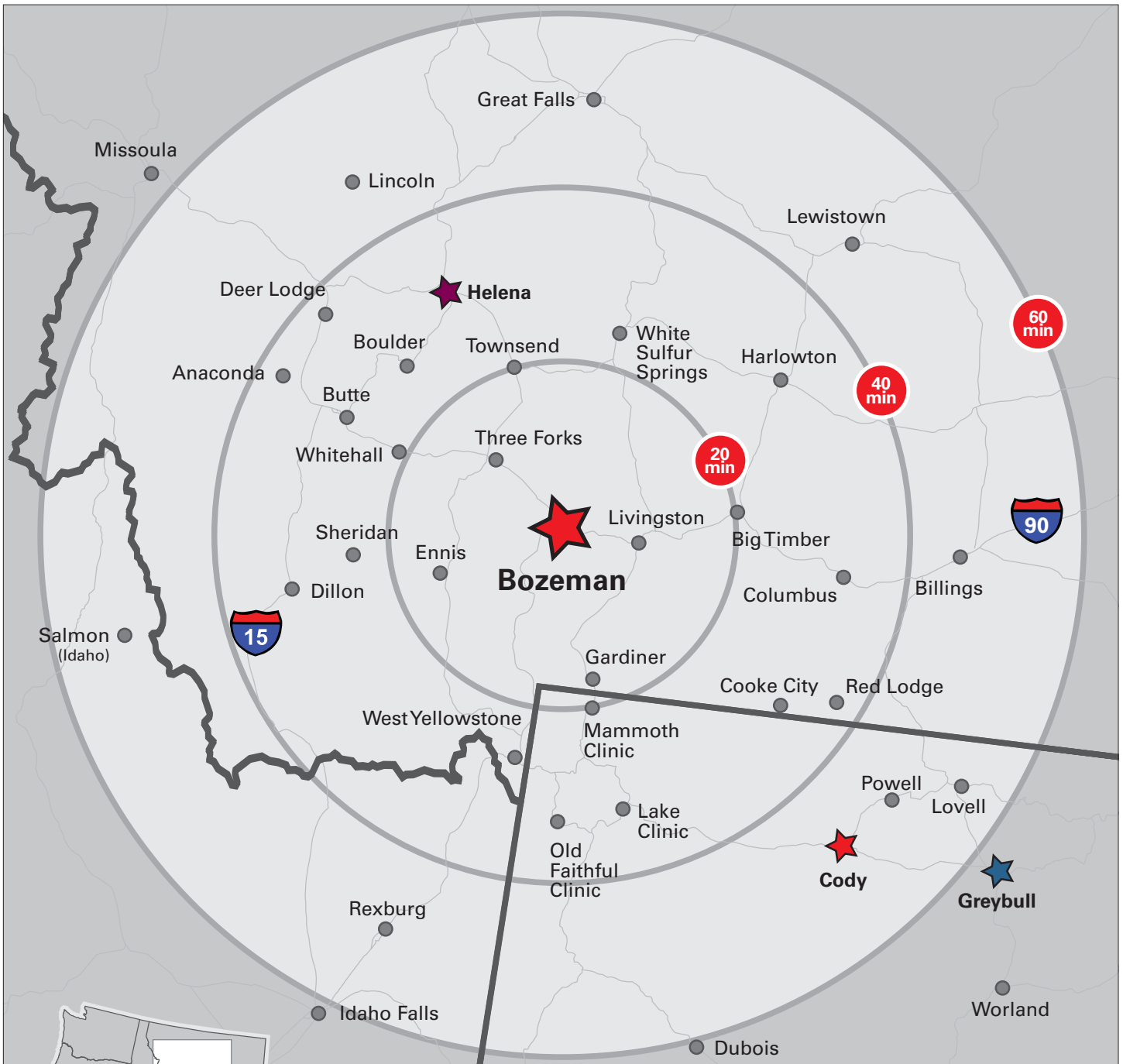
As of May 2016

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community



HELP Flight Helicopter Range



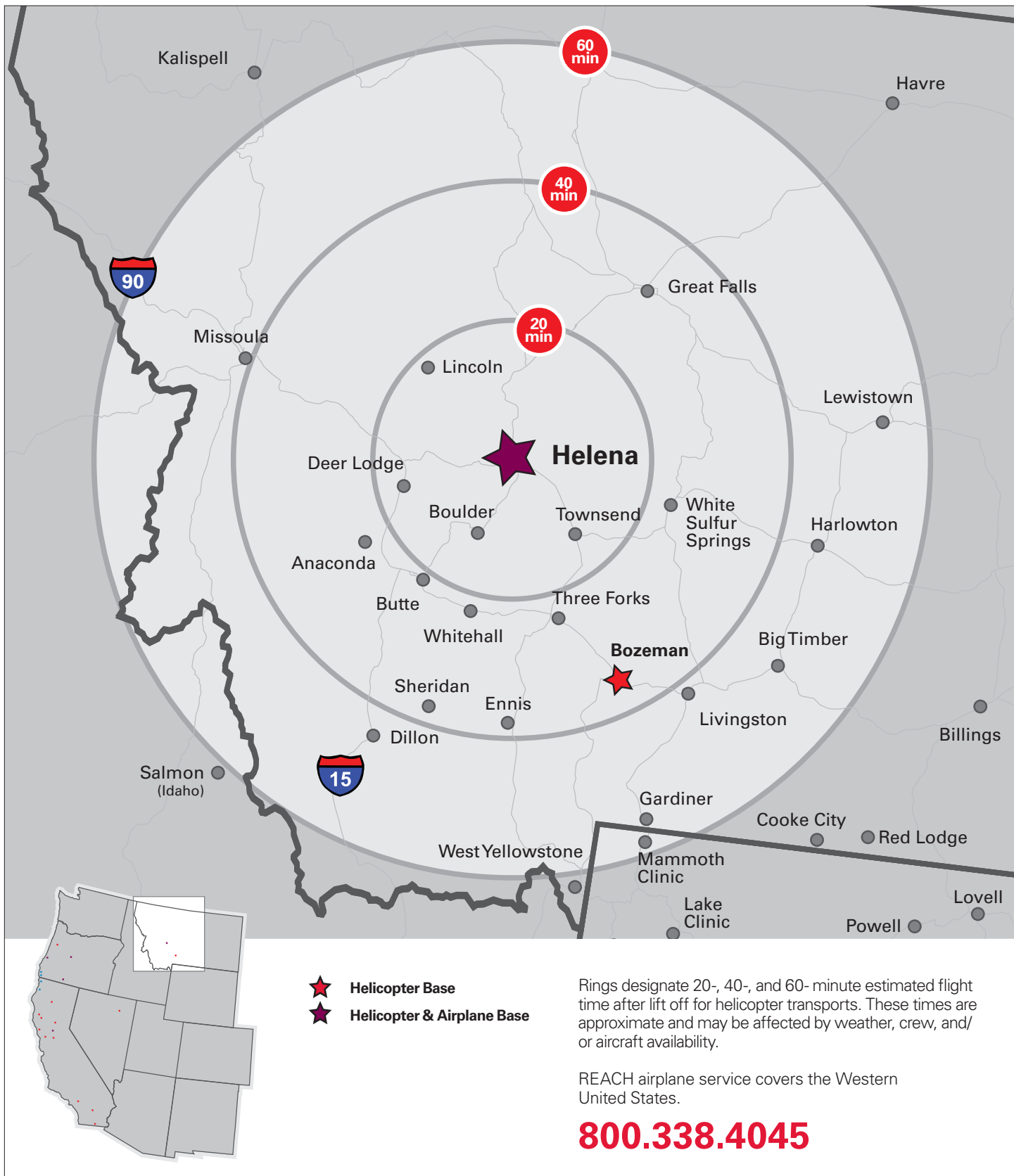


- ★ Helicopter Base
- ★ Airplane Base
- ★ Helicopter & Airplane Base

Rings designate 20-, 40-, and 60- minute estimated flight time after lift off for helicopter transports. These times are approximate and may be affected by weather, crew, and/or aircraft availability.

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800.338.4045

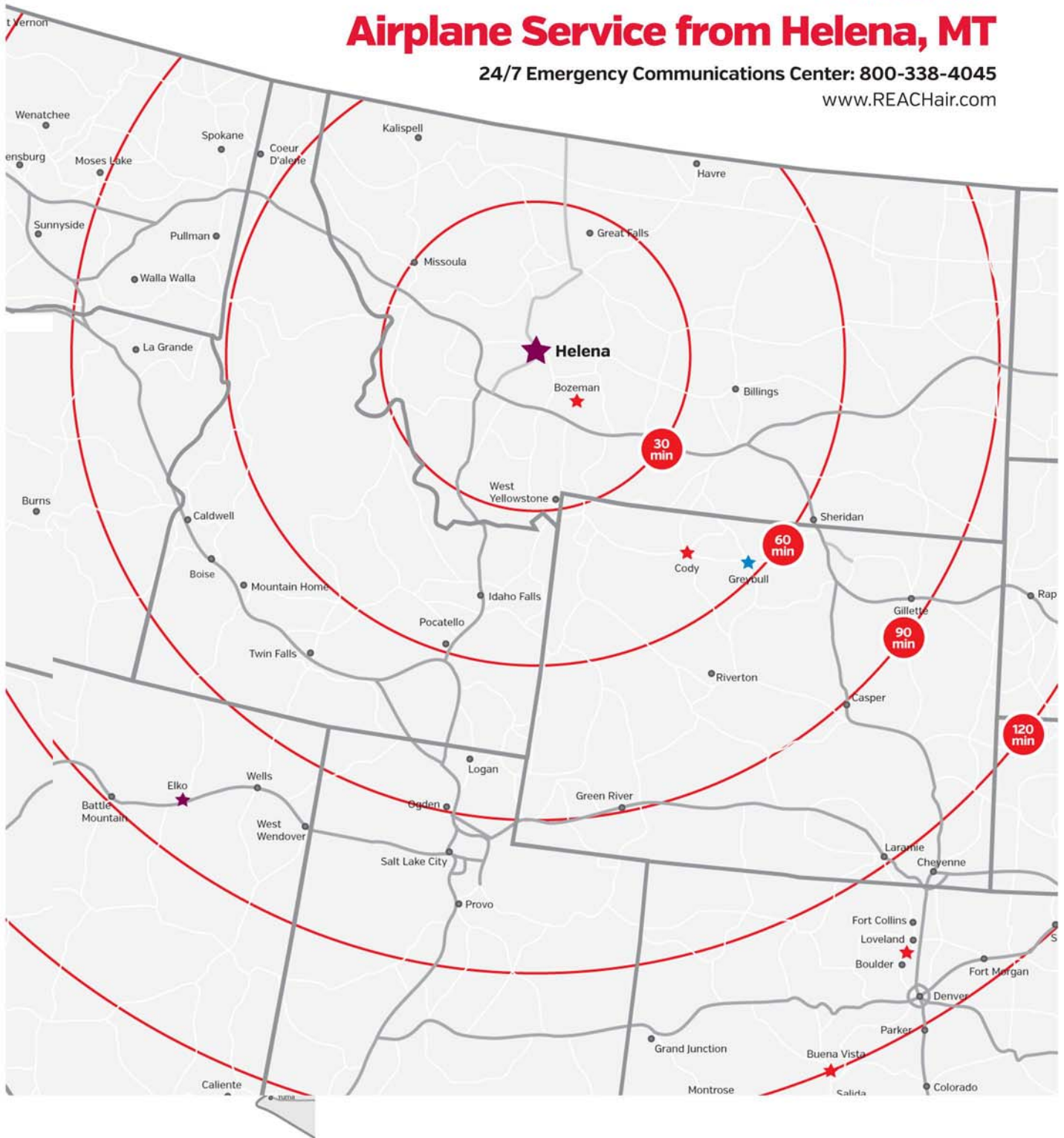


4/2016

Airplane Service from Helena, MT

24/7 Emergency Communications Center: 800-338-4045

www.REACHair.com



- ★ Helicopter Base
- ★ Airplane Base
- ★ Helicopter & Airplane Base
- ★ Helicopter & Ground Ambulance Base
- ★ Ground Ambulance Base

Rings designate 30-, 60-, 90-, 120-, 150-, and 180-minute flight times after lift off for airplane transports.

Appendix D: EAIC Letters Sent

The Economic Affairs Interim Committee sent the following letters as part of its rule review and monitoring duties or as part of an assigned study:

HJR 29 Study-Related Letters

- A [letter](#) to Montana’s Congressional Delegation requesting federal action to revise the Airline Deregulation Act and Medicare payment laws as they impact air ambulances. Sent in February.
- A [letter](#) to the State Auditor’s Office asking that office to spearhead a working group to find solutions to insurer payments as related to air ambulance charges. Sent in February.

SB 390 Study-Related Letters

- A [memo](#) received from the Commissioner of Labor and Industry related to state immunity doctrine and board activities

Rule Review Letters

- June 2015 [letter](#) from the EAIC requesting a delay in adoption of rules proposed by the Board of Physical Therapy Examiners regarding dry needling.
- A followup [letter](#) sent by the EAIC in September 2015 continuing its objection to rules proposed by the Board of Physical Therapy Examiners.

Agency Monitoring-Related Letters

- [Letter](#) to Montana State Fund regarding its proposed purchase of a parking garage.
- [Letter](#) to Montana State University regarding future plans for the Veterinary Diagnostic Laboratory.

Appendix E: Letter from Montana State University on Veterinary Diagnostic Laboratory



October 26, 2016

Economic Affairs Interim Committee
Legislative Services Division
Post Office Box 201706
Helena, Montana 59620-1706

Dear Senator Vance and members of the Economic Affairs Interim Committee:

Thank you for the hand delivery of your letter from the Economic Affairs Interim Committee.

Montana State University is aware of the issues the Montana Department of Livestock faces with its Veterinary Diagnostic Lab and wants to be a partner in continuing conversations about a solution to the physical needs of the lab through a joint facility.

In 1959, the 36th Montana Legislature funded the construction of the existing lab for the Montana Department of Livestock on land provided by MSU.

Like any state agency, the Montana Department of Livestock can submit a request into the Long Range Building Planning process to be included in an infrastructure bill, traditionally House Bill 5 at the beginning of each session.

MSU is in an identical situation with regards to state-funded building requests but with the added layers of the Montana Office of the Commissioner of Higher Education and the university system's governing body, the Montana Board of Regents.

In order for MSU to move forward with any state-funded building project, the Commissioner's Office and the Regents must give approval. This process is completed in the spring of every even-numbered year. In this cycle, MSU proposed – and had approved by the Commissioner's Office and the Regents – a project to meet its core mission of educating students: the renovation of Romney Hall into classrooms.

Not only was this project approved by the Regents, but it is ranked as the highest priority need of the entire university system across the state.

MSU's enrollment has grown 33 percent in the last ten years making it the largest, fastest growing campus in Montana. The renovation of Romney Hall would provide much-needed classroom space that would be used by students of all disciplines.

MSU is using the same process as is available to the Montana Department of Livestock. The university is open to participating in continued conversations about a joint lab solution.

Sincerely,

Waded Cruzado
President

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