

MINUTES

MONTANA SENATE  
51st LEGISLATURE - SPECIAL SESSION

COMMITTEE ON LABOR

Call to Order: By Co-Chairman Gary C. Aklestad, on June 27, 1989, at 1:00 p.m., Room 312-2, Capitol

ROLL CALL

House Members Present: Representative Vicki Cocchiarella, Representative Duane Compton, Representative Jerry Driscoll, Representative Bill Glaser, Representative Tom Kilpatrick, Representative Thomas Lee, Representative Mark O'Keefe, Representative Robert Pavlovich, Representative Richard Simpkins, Representative Carolyn Squires, Representative Fred Thomas, Representative Timothy Whalen, Representative McCormick, Representative Jim Rice, Representative Angela Russell

Senate Members Present: Senator Tom Keating, Senator Sam Hofman, Senator J. D. Lynch, Senator Gerry Devlin, Senator Bob Pipinich, Senator Dennis Nathe, Senator Richard Manning, Senator Chet Blaylock, Senator Gary Aklestad

Members Excused: Representative Jim Rice, Representative Clyde Smith

Members Absent: None

Staff Present: Tom Gomez

Announcements/Discussion:

Co-Chairman Aklestad announced that he and Chairman Russell will co-chair the meeting, and that they will establish a few ground rules. He indicated that, for HB56, 30 minutes will be allowed for the proponents, 30 minutes for the opponents, and no more than 30 minutes for questions from the committee members. He reported that Chairman Russell has several other bills before her committee which will either be heard before they go into session, or after, noting that HB54 deals with the employer tax and, if there is time before they go into session at 3:00, he would suggest the Senate committee stay in joint hearing for that particular bill. He added that the other bills to be heard by Chairman Russell's

committee will be HB57, HB58 and HB60, which deal with taxation measures, and indicated he is not sure they will be assigned to the Senator Labor Committee, at this time.

Senator Blaylock asked Chairman Aklestad if he has allowed 30 minutes for the proponents and the opponents, apiece, and 30 minutes for questions. Chairman Aklestad responded yes, if they need that much time. Senator Blaylock suggested that, in the questioning period, they limit the questions to one per person, until everyone gets to ask a question, rather than having a series from one member, which will eat up all the time. Chairman Aklestad indicated that, if Chairman Russell concurs, they can do that. Chairman Russell concurred.

#### HEARING ON HB 56

##### Presentation and Opening Statement by Sponsor:

Representative Jerry Driscoll reported that Senator Lynch says it is the worst bill he has ever seen, and stated that he probably agrees, but it is probably necessary. He indicated that, during the regular session, they were told the workers comp fund was \$157 million in debt, or unfunded liability, and that it is presently, by actuary standards, \$215 million. He pointed out that there will be a 22% rate increase on July 1st, that the notice has already been sent to the employers, which is across the board, noting that other employers, depending on their class code, will get a change from that, which could be up or down.

Representative Driscoll noted that there are lots of ideas floating around for other funding sources, which may or may not be okay, depending on how you look at it. He asked, if the rates are raised 22%, will there be any jobs left. He pointed out that a lot of people are worried about personal property tax, in this special session, but, for the majority of employers in this state, that is very few dollars, that most people with large personal property taxes are also self-insurers and do not have to pay these rates. He indicated the issue is, do they raise some money and subsidize rates, and compete with other states, noting that Wyoming puts resource taxes into their's, and Idaho subsidizes by having the low-end, low-risk employers pay artificially high rates to subsidize the higher risk industries. He pointed out that, if Montana is going to compete against those states, we will

have to do the same thing, or have this problem forever, until they change.

He reported that he fought the three-tenths on employees, during the regular session, indicating that, at that time, they were told the unfunded liability was headed down, but it is going up and, if a 22% raise is put on the employer, jobs will be lost. He pointed out that the freeze on medical and benefits in this bill saves in the neighborhood of \$3 million, that the tax on employees brings in \$12 million, but that they are still short, so he is proposing an amendment which would appropriate \$10 million out of the general fund for workers comp, which would stop any raises July 1st, and probably stop raises July 1st of 1990.

List of Testifying Proponents and What Group they Represent:

Mike Micone, Commissioner, Department of Labor and Industry  
Representative Bob Marks  
Representative Lum Owens  
Bill Olson, Montana Contractors Association  
Carol Daly, Executive Director, Flathead Valley Economic  
Development Corporation; private businesswoman,  
representing herself  
Ben Havdahl, Montana Motor Carriers Association  
Jim Tutwiler, Montana Chamber of Commerce  
Kathy Kirsch, private businesswoman, representing herself  
Bonnie Tippy, Montana Innkeepers Association  
Senator Paul Rapp-Svrcek  
Senator Jerry Noble, Jerry Noble Tires  
Charles Brooks, Executive Vice President, Montana Retail  
Association; Montana Hardware Association; Montana Tire  
Dealers Association  
Senator Gene Thayer  
Representative Ole Aafedt, Travel Time RV's

Testimony:

Mr. Micone indicated it would be easy for anyone to stand before the committee and oppose imposition of a tax, that no tax is popular, but they certainly do not like the idea of a new tax being imposed upon, not only employees, but employers of the State of Montana.

Mr. Micone's written testimony is attached as Exhibit 1.

Testimony:

Representative Marks indicated he would like to mention some things which have not been touched on in the discussion thus far. He pointed out that, if nothing is done between now and a few days from now, these new rates will take effect. He indicated that a double-digit increase to the tune of 20 some percent, on the average, will further deteriorate the market share that the state fund has, noting that, if those are priced higher than they are now, by 20 some percent, they expect the market share to deteriorate, which will have a compounding negative effect on the fund.

Representative Marks stated that he was not a strong proponent of putting a payroll tax on the employer, at the time it was passed but, looking back, he feels the Legislature probably did what needed to be done because this issue is becoming of great concern to not just employers, but employees, noting that employees are the recipients of the act, as well as holding harmless the employer, which is kind of a trade. He indicated that he would hope the committee would be able to pass this bill out, that he thinks, to the average person on the street, business people, and the employees who work for those business people whose businesses are in trouble, this is an even more important issue than the main one they came here to address, which is school funding, noting that it is a very inflammatory issue, very visible issue, and he would hope the committee would pass this out. He added that he has Representative Driscoll's amendments, and thinks the committee should do whatever it has to do get this bill out of committee.

Testimony:

Representative Owens reported that he has been involved in the work comp thing, and it has some real problems. He indicated that, if he wants to pay a guy \$1,000 today, it will cost him \$1,600 to write that check, and they have to get a better way to help themselves. He indicated that one of the ways is to put this tax on the employees, noting that he thinks a by-product of this tax is, when someone hurts their back on Sunday, the guy working along side of him may remember that he hurt his back on Sunday, instead of Monday, and they may not see so many claims. He further indicated he thinks it may draw all the people together, with all the problems in this state, because we just can not have a healthy economy, when work comp rules are like they are.

He reported that Butte got a tax break for a new industry, and he told them that is good, that he would vote for it forever, but asked what is that new industry going to say, when they take a look at the work comp rates.

Testimony:

Mr. Olson stated that they urge the committee's support of HB56. He indicated the problem has to be addressed, and that it seems like this is a viable bill to do that.

Testimony:

Ms. Daly indicated that, both as an economic developer, and a private business person, she would very much like to encourage the committee to pass this bill. She reported that, as an economic developer, one of the questions they deal with constantly from businesses looking to locate in Montana, or expanding in Montana, is the workers compensation rates. She stated that she thinks there is also some concern, on the part of the workers, about the problems they have encountered, and which were alluded to a few moments ago, in terms of abuse of the program. She further stated that she thinks there is conscienceness and concern, and willingness to share in this endeavor to bring this down into reasonable limits, so that there will be better jobs for people, more jobs for people, and higher wage jobs for people.

Testimony:

Mr. Havdahl indicated that the trucking industry in Montana is particularly vulnerable to the high cost of workers compensation. He reported that, during the regular session, they testified before both of these committees, separately, on several issues dealing with the workers compensation matter, and pointed out the negative impact the high cost of workers compensation has on the trucking industry in Montana. He indicated that the trucking industry is a mobile industry, that several trucking companies have considered, that some have actually moved out of Montana, and others have re-employed drivers in corporations from outside of the state in their desperation efforts to try to curb the cost. He stated that Montana truckers are attempting to compete with the surrounding states, all of which have lower costs for workers compensation than Montana, and that sometimes the difference between staying in business, making a profit, and competing with the trucking industry from other states, is represented

by the high cost of workers compensation insurance. He reported that the current rate for truckers in Montana is 16.59%, and that, July 1, that is slated to go up to 18%, which will compound the problem.

He indicated that the passage of HB56 will preclude a major increase in that rate, and that they commend the committee for taking this action.

Testimony:

Mr. Tutwiler indicated that, in the general session, they supported, reluctantly, a similar bill to tax employees, and that they do so again today, with the understanding that such taxation would help resolve a problem and will, hopefully, be temporary in nature.

Mr. Tutwiler then indicated that, in their concern over the workers compensation issue, and reflecting the concern among businesses around the state, they have tried to see how this problem is being handled in other states. He reported that at least one observation is clear, that states which have had some success in workers compensation, in that they do not have a large unresolved or unfinanced deficit and are operating in the black, appear to have either one of two characteristics. He indicated they are either subsidizing their workers compensation programs through other revenue sources, citing, as an example, Wyoming uses massive amounts of severance taxes on minerals, and another approach, which seems to be working, is that some states, by whatever means, have been able to amass considerable investments in an investment portfolio, stocks and bonds, which is used to help defray the operating costs of their respective workers compensation programs.

He indicated that it would seem apparent, even to those who are not fully cognizant of all the details of the actuarial business, that, when a segment of the economy such as medical services is inflating at three to four times the rate of general inflation, there will be constant problems with trying to fund the workers compensation program unless some other source of revenue is found.

Testimony:

Ms. Kirsch indicated the reason she is here is to tell the committee that they have to do something about workers comp rates, that a 22% increase on her business is just about the

straw that will break the camel's back. She reported she only has ten employees, which is no biggie to the committee members because they are talking 200, but there are a lot of businesses in this state who have only ten employees and, if workers comp keeps increasing, they are not going to be here. She indicated that, if they want to put a small percent tax on employees, she will have to collect it, that she is willing to do that, and that employees will pay attention to what they are doing in the work place, also.

She referred to the comment regarding people getting hurt on Sunday and collecting on Monday, and reported that she lives in the little town of Boulder, and sees a lot of that. She indicated that all she wants the committee members to do is consider that they are not talking 200 people, they are talking ten jobs, in her case, adding that they are actually talking more jobs because she can go out of business, and take a job away from somebody else, that she can find another job, but the ten jobs she has created will be lost.

Testimony:

Ms. Tippy reported that their association represents approximately 8,500 hotel and motel rooms in Montana, and they wish to go on record as being in support of this bill. She stated that perhaps there will be an advantage to such a piece of legislation, that perhaps some employees will feel it is not just their boss's plan, or their boss's responsibility, but will take some amount of ownership into the workers compensation plan, which is for them, and maybe help prevent some abuses, or help employees and employers work together to solve this problem which affects every single person in Montana. She stated that they ask the committee to seriously consider adoption of this bill.

Testimony:

Senator Paul Rapp-Svrcek stated that he appears in support of this bill, noting that it is certainly a bitter pill for him to swallow to support this bill, but that he is here to tell the committee that this problem is real, they can not sweep it under the rug any longer, that it is not going to go away until they address it, not only with this bill, but with several other bills which are going to come before this Legislature in the next couple of days. He indicated he is sure they all have horror stories about employers who are bailing out of Montana because they can no longer afford to

pay the work comp rates in this state, pointing out that, in his district, the problem is particularly bad because they border Idaho, and it is relatively easy for employers to transfer their operations, taking 30, 40, 50 jobs with them, or just leave the jobs lay here in Montana.

He stated that he does not like having to support this legislation, but thinks they have reached the point where it is not a problem for the employers, it is not a problem for state government, it is not a problem for Democrats, and is not a problem for Republicans, that it is a problem for Montana. He added that everybody in Montana has to pitch in, that, the sooner we pitch in and the more comprehensively we pitch in, not only with this bill but with the other bills, the faster we can take care of this problem, the faster we can reduce the rates, and the faster we can bring this work comp problem under control. He indicated that he thinks they need to do that, that he thinks the time is now, and he hopes the committee members will pass this bill out of committee.

Testimony:

Senator Noble reported that he represents Jerry Noble Tires, which employs about 50 people around the state, that their increase will mean about \$40,000 a year, which used to be net profit, and there is not going to be a lot left. He indicated that, pretty soon, the little businesses will, like him, say "What is the use?", noting that he is telling it truthfully, and added that, if the increase goes into effect, it will be absolutely devastating to his business.

Testimony:

Mr. Brooks reported that they represent a number of small businesses throughout Montana, over 1,000, that they would like to go on record in support of this legislation, and urge the committee's thoughtful consideration to give it a do pass to the floor for debate.

Testimony:

Senator Thayer indicated that, before he came down here, he had a lot of calls about the problems with workers comp, after employers began getting their proposed rate increases, that he had a lot more calls about that than about the education

problem. He stated that, if the committee does not pass this bill, they have two choices, one of which is to let the 22% increase go in, which will mean some employers will get 80% and 90% increases, noting that a few will get decreases but that, in the overall, it amounts to a 22% increase, which he thinks that is untenable, and is something which just can not happen, that should not happen. He indicated that the only other choice they have is to reduce benefits, which he does not think any of us want to do. He stated that this is the most reasonable proposal, and urged the committee to adopt this bill.

Testimony:

Representative Aafedt reported that he only has nine employees, but that the difference in his workers comp will be a big difference in net profit, and he prays that the committee will pass this bill.

List of Testifying Opponents and What Group They Represent:

Senator J. D. Lynch  
Senator Bob Pipinich  
Don Judge, Montana State AFL-CIO  
Mike Sherwood, Montana Trial Lawyers Association  
Robert Culp, Safety Chairman, Local 885, United Paperworkers International Union  
Tom Schneider, Montana Public Employees Association  
James Hill, Area Representative, Western Council of Industrial Workers, Portland, Oregon  
Jay Reardon, President, United States Steel Workers, Local 72; President, Helena Trades and Labor Council  
Tom Bilodeau, Research Director, Montana Education Association  
Terry Minow, Montana Federation of Teachers; Montana Federation of State Employees  
Darrell Holzer, President, Plumbers and Pipefitters Local Union No. 30  
Len Blancher, Assistant Business Manager, Operating Engineers Local 400

Testimony:

Senator Lynch stated that he rises in opposition to HB56, that he thought it was the worst bill he had seen, when they were looking at 1,500 or 1,600 bills in the regular session, and it is certainly the worst bill of 80 or so they are looking

at in the special session. He added that he reluctantly opposes the bill, that he thinks it is probably a first for him to oppose a bill sponsored by his friend Representative Driscoll. He pointed out that he realizes Representative Driscoll's plight, but he thinks there are other ways to accomplish it for the short-term, which is what they are talking about, rather than to give it to the employee one more time.

He reported that he heard and opposed, noting he is glad he did now that he sees what they are doing today, the so-called compromise bill, SB315, where they were assured that, if they would ding the employees just one more time, the problem would go away. He indicated they did a great job, they took away benefits, noting he remembers the one provision he particularly liked is that they made sure the widows got it, too, that they only got ten years instead of life on their benefits, but it was going to solve the problems of workers comp.

Senator Lynch asked if they have forgotten what workers comp is and why it was set up, and pointed out that it was set up for one thing, to protect the employer, noting that it was not set up out of benevolence of the employer, that the Republican legislators started workers comp years ago, and it was set up to protect businessmen from losing their businesses to unsafe working conditions, that it was to protect the employer, not the employee. He indicated that, if he represented employers, he certainly would be in favor of the Legislature helping him pay his insurance bill, adding that, if there was a bill up that the employee had to pay all of the employer's insurance, some would think that would be a pretty good idea, also.

Senator Lynch referred to the suggestion that the employee is the only abuser of the workers compensation program and submitted that, if every employer who should be paying would be paying, the problem would be far less. He then indicated that they are told another solution would be SB315, and he understands from Mr. Micone that, if given enough time, the spiral will start going down, but the immediate problem is cash-flow, that, if he understands the bill, they are talking in the area of \$12 million, and this would do it. He suggested that the rainy day is, in fact, here and, if there is a bill by Senator Crippen which is asking for \$56 million, the appropriate thing to do is take \$12 million of that to solve this immediate cash-flow problem.

He indicated he would love to go back home to his district in Warm Springs, and tell them they got a 2.5% increase, but, by

the way, the special session, which is to address problems with school funding, has taken three tenths of that percent away, right off the bat, because employees should be paying for the employer's insurance policy. He stated that it is not right then, it is not right now, and he hopes the committee defeats the bill.

Testimony:

Senator Pipinich indicated that, as Senator Lynch said, Senator Crippen's bill, SB14, is coming up, which is the building bill for all the university systems and will raise \$56 million. He indicated that, instead of putting any more tax, instead of trying to get three tenths of one percent for a one-time shot deal, he will propose an amendment that they put \$15 million of that money in this workers compensation bill, that no other tax be made, and nothing else done.

Testimony:

Mr. Judge's written testimony is attached as Exhibit 2.

Testimony:

Mr. Sherwood stated that, as Mr. Judge indicated, there is a serious constitutional problem with opposing a payroll tax on employees. He cited Article II, Section 16, which specifically says that the common law rights of someone to sue, when hurt due to the negligence of another, are abrogated under a workers compensation situation when the immediate employer who hired that person provides the coverage for workers compensation. He pointed out that, now, the employee is being asked to provide that. He added that, along with the constitutional problem, there is a potential conflict in the statutes, noting it has been the policy of this Legislature to make sure employers do not do what this bill proposes to be done, which is take money from the laborers to pay workers compensation premiums. He indicated that, specifically, Section 39-71-406 provides that it is unlawful for the employer to deduct or to obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workers, and that the making or attempt to do so is a crime.

Mr. Sherwood pointed out that the focus seems to have been on the .3%, that two proponents said this is a better suggestion than reducing benefits, noting that benefits are being reduced, if only passably in this case, but radically. He

stated that a freeze at the 1986 level of \$299, by 1991 will represent somewhere around a 25% to 30% reduction, with a 5% cost of living, a 30% reduction in what someone is going to be effectively receiving by 1991 to support a family. He indicated that, looking at double-digit inflation, with medical expenses, a freeze at the 1988 rates, by 1991, is going to be somewhere around a 30% reduction in medicals. He continued that, while that has played a back-burner role in the discussion today, it is critical to the people who are living on the edge, now. He reported that he is in a boy scout troop, in which a gentleman in a full back brace has a child. He indicated that, ignoring the pain he is in, the committee members have to recognize how he feels when he comes to the troop, and says he does not have \$8 for his child for the campout, noting he will not have it for three more years, if this continues.

Mr. Sherwood asked the committee to please seriously consider the passive reduction that is going on, as well as some other means for funding the short-term problem in workers comp.

Testimony:

Mr. Culp's written testimony is attached as Exhibit 3.

Testimony:

Mr. Schneider stated that they are strongly opposed to this, for obvious reasons. He indicated he is sure the committee members know that salary increases granted for state employees this year are minimal at best, that they have just come off a two-year wage freeze, and all they are doing is taking a big chunk of that to put in the workers comp fund.

Mr. Schneider reported that, on the other side, he is a private employer, that he employs nine people, and it looks to him like he will have to tell his people he is taking three-tenths of a percent out of their wages, and giving them the right to sue him, noting he is not sure he wants to do that, that he thinks he would just as soon pay the three-tenths, and keep the right that they can not sue him. He stated that he takes exception when people talk about their rate going up 22%, because he does not think everybody's rate is going up 22%, that his rate is not going up 22%. He indicated that everybody in the state will be subsidizing the high accident/injury people in Montana, who will continue to have their accidents, and that others will pay for it. He added that maybe that is a deterrent to business in this state, but they are also being given a reward, that they are

being rewarded by making everybody pay for them not enforcing safety standards.

Mr. Schneider then indicated he takes exception to the comments about the accidents on Sunday, and the workers comp claims on Monday, reporting that he has been in business for thirty years, that he has never had an employee file a claim on Monday morning, and does not think it is just for people to say that unless they can prove it. He stated that he thinks it is a bad bill, that they resist the bill, and he thinks it is the wrong direction to go.

Testimony:

Mr. Hill's written testimony is attached as Exhibit 4.

Discussion:

Chairman Russell indicated that there are five minutes left, and asked the remaining opponents to raise their hands. She then asked those individuals to line up, and at least give their name and one brief statement.

Testimony:

Mr. Reardon's written testimony is attached as Exhibit 5. He distributed copies of a letter, a copy of which is attached as Exhibit 6.

Testimony:

Mr. Bilodeau noted that Senator Lynch stated the issue very clearly, that this bill violates the trust agreement between workers and management. He indicated that worker safety and the cost of workers compensation will not be solved by passing the cost on to the injured and to the working, and asked that the committee please do not pass.

Testimony:

Ms. Minow stated they also rise in strong opposition to HB56. She reported that state employees have come off two years of wage freezes, that the Legislature granted a 2.5% increase and, if they take away .3% of that with this bill, that would be adding insult to injury, noting that school district

employees, and employees of local governments, are in the same situation, facing Initiative 105 and inadequate funding. She stated that they ask the committee to give this bill a do not pass recommendation, that they recommend an independent audit of the workers compensation situation, and, if they need to address the situation right now, perhaps accelerating corporate and income tax payments would be a solution.

Testimony:

Mr. Holzer's written testimony is attached as Exhibit 7.

Testimony:

Mr. Blancher's written testimony is attached as Exhibit 8.

Questions From Committee Members:

Chairman Russell reminded the committee members that each Representative and Senator can have one question.

- Q. Representative Kilpatrick indicated they are getting a lot of disagreement, different facts, and things like that, and asked if the Legislative Auditors' office believes the Workers Compensation Division will have a cash-flow problem, and will be unable to pay benefits and providers, if no rate increase is implemented this July 1st, or if no other form of rate subsidy is provided.
- A. Ms. Julie Barr, Legislative Auditors office, responded that they are fairly comfortable that, with a rate increase, there would not be a cash-flow problem, but are not quite as comfortable with a no rate increase if there will be a cash-flow problem. She indicated they have some questions, but the actuary is on vacation, and they have not been able to get together with him to answer some of their questions, so they are not as comfortable, there.
- Q. Representative Kilpatrick asked if, in other words, he can not pin them down to, if there is no raise, will there be a cash-flow problem.
- A. Ms. Barr responded that she can not say that there will or will not be.
- Q. Representative Kilpatrick asked if she is questioning it, though.

- A. Ms. Barr responded she is questioning it, yes.
- Q. Representative Thomas asked Mr. Micone to respond to the same question, noting he thinks it would only be assumed they would ask the department.
- A. Mr. Micone responded that their analysis of the cash-flow, with no rate increase, indicates the state fund will run out of cash during the fiscal year 1991, after July 1, 1990.
- Q. Senator Hofman reported that he sat in on a hearing, last winter during the regular session, and they were told that everything was going fine in workers comp, that the unfunded liability would decrease by \$12 million, and would be paid off by 1997, even if nothing was done. He noted all of these things were nice to hear, and they believed every word, but that, now, they find out things are much different, much worse. He asked Mr. Micone if he has any explanations as to where the mistakes were made in analyzing the problem at that time.
- A. Mr. Micone responded that he has appeared before committees and talked in terms that SB315 was starting to show results, that they have had good experience with the mediation process, and firmly believed at that time, and still believe that SB315 is going to prove successful. He pointed out that they can not control the escalating costs in workers compensation, that the older those claims get, the more costly they get. He stated that he does not recall, if they want to separate the operations from the unfunded liability, that any of them came before the Legislature and stated that there would never be an increase in rates.
- Q. Senator Manning asked how many employers in Montana, who should be covered by some sort of insurance, are not covered, today, and why not.
- A. Mr. Micone responded that he can not answer that question, and indicated it was enlightening to him, when the discussion came up about rate increases and the problem with the horseman, that there were approximately 80% who were not in compliance, noting that he does not know if that means 80% were not paying at all, or were not paying the right amount. He indicated he can tell Senator Manning, and make a guarantee, that it is his intention, by the time those functions come under his

responsibility, that they will have a concerted effort, not only to insure employers are complying and paying their insurance premiums, but to intensify their efforts to insure there is no fraud in the system, both from faulty claims from workers and faulty claims from providers. He stated that will be their number one priority, as far as the department is concerned.

- Q. Chairman Russell indicated they seem to be getting different numbers on the unfunded liability and cash reserves, and asked Mr. Micone if he and the auditor's office can work together to come up with one common set of figures, and how close are they to possibly getting there.
- A. Mr. Micone asked permission for Mr. Murphy from the state fund to address that, noting that he may have given some wrong information earlier, too.

Mr. Jim Murphy responded that the figures Chairman Russell is referring to are cash-flow projections, that the unfunded liability is established by the actuary, and he does not think there is any disagreement as to what that figure is, as of the moment he looked at it. He indicated the problem they are having with the cash-flow is getting the actuary and the Legislative Auditor's office to agree as to what they think the pay-out pattern is going to be, as he understands it. He reported that the only cash analysis they did, leaving everything as is with employer taxes already in place and no rate increase, over fiscal year 1990, would indicate they would draw-down about \$9 million in investments. He noted that, the minute they start doing that, the amount of interest they will earn in the out years will be less, because their investments will come down. He indicated he does not know of any cash projection spread out through 1995 which anybody wants to stand up and tell the committee is right or wrong.

- Q. Senator Lynch pointed out that the employee has given up his right to sue, which is how workers comp is set up, that they are covered and can not sue for additional money for losses. He added that it must be provided by the employer but that, now, it is going to be provided partially by the employee, and the employee now has the right to sue.
- A. Representative Driscoll responded that he does not know, but that, when the first one happens, there will be a

case, and they will find out. He indicated the exclusive remedy is the concern of a lot of people and, although the bill addresses that, it could be unconstitutional, and he would imagine there may be a law suit, but that he can not say for sure.

- Q. Representative Squires indicated there have been several figures floating around as far as how many investigators they have, and her understanding is that the responsibility of these investigators is not only to find employers who are not covered by workers comp, but also to look at those employees who have been labeled, here, as fraudulent. She asked Mr. Micone how many investigators there are in the state, at this time.
- A. Mr. Micone asked permission to defer that question to Mr. Murphy.

Mr. Murphy responded that there are one and one-half FTEs in the uninsured employers unit who are responsible for determining whether an employer has the proper coverage. He added that they get assistance from auditors in the UI department, who happen to identify employers who do not have the insurance, noting that there are 20 auditors who do UI audits, workers comp, state fund audits, and uninsured audits, but that, actually, there are about one and one-half FTEs who are responsible for that.

Mr. Murphy noted that Senator Manning asked about that, and reported that the activity of that uninsured unit is in their annual reports. He indicated he remembers that, in the 1988 report, about 440 employers were fined and penalized for not providing coverage, and that there were something like in the thousands of investigations conducted.

- Q. Senator Blaylock asked Representative Driscoll, if this bill were to pass, if they have provided a date for the tax.
- A. Representative Driscoll responded June 30, 1991.
- Q. Representative Cocchiarella asked Representative Driscoll what he thinks the chances are that they will be able to remove that tax in 1991.
- A. Representative Driscoll responded that, if they do not find some other money, slim and none. He indicated that, until they pay off the \$215 million, or whatever the

number is, and there are enough investments, that he would assume they would have to have somewhere in the neighborhood of \$150 million in the bank drawing investment earnings, noting that he is taking these numbers out of the sky, that he is not an actuary, and indicated they will have to have some kind of artificially high rates, or some other source of income to pay it off.

- Q. Representative Simpkins referred to page 15 of the bill, and indicated everybody keeps referring to it as a premium. He then referred to line 5, and pointed out that it clarifies this is not a premium, that it is a tax, and that the sole purpose is to pay off the debt. He asked Representative Driscoll if that is the way they have it set up, and if the only way that money can be used is to pay off that debt.
- A. Representative Driscoll responded yes, that is basically what they use it for, but indicated that the money all goes in one place, to the Board of Investments, and, whether they take his 30 cents and pay a claim that happened today, or they take his 30 cents and pay somebody from 1985, how is he going to know it, adding that it is just bookkeeping, and just words. He indicated that, because they are dedicating this money to workers comp, that is where it is going, and, if there is anything wrong with the bill, or the exclusive remedy, whatever you call it is immaterial in front of the courts.
- Q. Senator Devlin asked Representative Driscoll what he foresees happening, if the so-called 22% is imposed on those insurers, as far as jobs and companies which employ people.
- A. Representative Driscoll responded that, in the high-wage, good jobs, not in the service trade, he sees mechanization at a faster rate, noting they will mechanize, anyhow, if they can save money, but this would drive it faster. He added that, in small companies, he sees the owner hiring less and doing more of the work himself, or simply going out of business, if they can not afford the rate.
- Q. Senator Devlin asked if that would mean less jobs, then.
- A. Representative Driscoll responded yes.

- Q. Representative Whalen indicated that, in January, when the House Labor Committee met, some people from the division and state fund conceded that employee fraud constituted less than 1% of all claims filed, and that a lot of employers did not have coverage. He further indicated that, at the same time, two or three employees were being prosecuted in court, and could be sent to jail for fraud, but that not one employer had been prosecuted, under the reciprocal part of that statute, for fraud by not carrying workers compensation insurance. He indicated that he is confounded to hear they have one and one-half investigators investigating employer fraud being perpetrated on employees in this state, and asked Mr. Murphy why something is not being done about that, greater than what is being done right now.
- A. Mr. Murphy responded that the uninsured function has been in existence for some time, that the fines and penalties levied by the uninsured unit, as he indicated, were over 400 a year, in the one year he can remember. He added that the division is, in fact, pursuing uninsured employers, and that the statute allows them to fine and penalize them, or issue closure orders. He indicated that the more bodies, the more they can do, and reported that there have been requests, at least at the division level, for increased support in that area. He noted that he heard Mr. Micone indicate that, when that function transfers to the department, he will pursue that more aggressively.
- Q. Representative Pavlovich referred to page 13 of the bill, Line 16 under "Temporary findings and purpose", which says "other sources", and asked Representative Driscoll if he has anything in mind for other sources.
- A. Representative Driscoll responded that his first amendment was for \$10 million from the general fund, and he has a bill in to tax soda pop, that Representative Whalen has a bill, and so does Senator Rapp-Svrcek. He indicated that, depending on how the school funding comes out, if they make the surcharge effective in July for schools, they could take the first six months of that 10% surcharge, and take accelerated income tax collections. He pointed out that they need to get some money in the fund so they can make some money off investment earnings to keep the rates from going up, and keep their cash flow from going to zero.

- Q. Senator Keating indicated that the Legislature was asked to appropriate money for computer expansion and refinement in the workers comp department, and asked Mr. Murphy if that computer is up and working, if they are getting good data out of the computers, or if there is reason to doubt they are getting accurate figures.
- A. Mr. Murphy responded that the information being provided to the actuary out of their system is accurate, that he does not think there is any question about that. He indicated he thinks where they are seeing some disagreement is in the assumptions they are drawing, that he is not sure the Legislative Auditor agrees with the assumptions the actuary is drawing, adding that he thinks the data is good.

Closing by Sponsor:

Representative Driscoll indicated he guesses one of the problems is that the claims examiner, the person who reserves the money for a claim, in some cases, reserved low. He explained that, if somebody gets hurt and they think the claim will cost \$5,000, but it ultimately costs \$10,000 or \$15,000, they are short that much, and they would not have the money to pay it, if they did not adjust premiums. He then pointed out that one would not do anything, but that, if there were quite a few where they missed their guess like that, it would create quite a problem.

Representative Driscoll reported that the cash-flow projections from the Legislative Fiscal Analyst were using projections of cash-flow with \$42 million in the bank, but that, according to the Board of Investments, there is \$29 million in the bank. He added that, when these projections were done a year ago, they projected \$92 million in claims paid in fiscal year 1989 when, in fact, it is over \$106 million in this fiscal year, which will end Friday. He then noted that, on January 1, when they separate the fund from the division, it is no longer, in his opinion, completely immune from suit, like the government is. He related that a friend was hurt in 1983, and has a settlement coming, under the old law, in a lump sum, but that another person hurt in a similar accident, at a similar time, received \$85,000 and, if he does not receive his money pretty soon, he is going to sue. He indicated that, after January 1st, if they do not settle with him, he will probably file a bad-faith suit, like he would against a regular insurance company. He explained that this accelerates the payments, which is the problem the Auditor

has, and that they have to talk with the actuary to see how soon these claims are coming due, what estimates he is using, and whether or not the state is going to pay out \$113 million next year, or if it is really \$125 million. He pointed out that a lot of that is aging of these claims, prior to 1987 claims, that those people are still entitled to a lump sum payment and, if the actuary has reserved them properly, or recognized them properly, they are okay, with the 22% rate increase but, if those people start getting their lump sum payments quicker, they do not have enough money.

Representative Driscoll indicated that, if they run out of money, the injured worker who has a claim and a bi-weekly payment will not get a bi-weekly payment. He added that the worker might get a registered warrant, but that he does not know what they would do, and supposes they will be back in special session before that happens. He pointed out that, as the money goes down, the interest earnings go down, which just compounds the problem, and that he guesses, in order to solve it quick, they could put in about \$200 million, one time, which would fix it. He then reported that self-insurers estimate they save 22% to 25% under SB315, that, although they are not ready to say that is solid because they do not have enough data, they are still saying it will be real close to that. He added that the state fund did not save it, because they were paying unfunded liability with it, or the rates were too low in the first place, or whatever. He pointed out that, in this rate increase, there is 7.7% for back debt, and that, in one of the rate increases in the past, he believes there were another few percentage points, so that the rates, without the debt, could be 30% lower. He explained that is not in every class, that it depends upon the experience factor of each class, but that the rates are too high because of this debt, and they are subsidizing to the tune of \$12 million right now, with the employers' payroll tax. He reported that Wyoming subsidizes someplace to the tune of \$40 million, but that they also have one rate structure, no matter what occupation, that, for a low experience occupation like office and clerical, it is \$3.80, and for a logger it is \$3.80, pointing out that, for a logger in Montana, it is \$38, and for secretaries it is \$.36, noting they are taking money off the low-risk, and subsidizing everybody, adding that Idaho does something similar, although not as drastic. He stated that, if Montana is going to compete with those states, he guesses they will have to get in the ball game, noting that they did not start this subsidy war, but it is there, and that, on top of the subsidy war, there is a \$215 million debt. He added that he would not be surprised to come back in 1991 and find out it is higher, because no one knows what it is.

Representative Driscoll then suggested that, as Representative Darko said, the audit committee, or somebody, should get another actuary who deals with workers comp companies, only, and other state funds, and find out who is owed, how much, and that then maybe they can fix it, noting this not a long-term fix, that it is a fix until 1991 to keep the rates from going up. He added that, if they do not keep the employer payroll tax on, there will be another 10.08% raise put on by the division in 1991, and they will have, probably, the best workers comp, but no jobs.

Chairman Russell announced the hearing on HB56 as closed.

#### HEARING ON HB 54

Chairman Russell noted there is not much time, but that the committee will try to accommodate Representative Bardanouve as much as they can. Chairman Aklestad announced to the Senate committee members that they will continue a joint hearing, noting that Chairman Russell indicated they will try to complete the hearing for proponents and opponents, that the Senate members will be able to hear both sides, and not have to re-hear it.

#### Presentation and Opening Statement by Sponsor:

Representative Francis Bardanouve reported that, when he heard what will happen to workers comp, it concerned him, noting that he realizes workers comp is not a pension system, but that, for years, he has attempted to keep the various trust funds and pension funds actuarially sound. He indicated that, a couple of sessions ago, they found that workers comp may not be actuarially sound, and he became involved in a battle on the floor, late one night, that he and a gentleman across the aisle fought a bitter battle late into the night to put a .03% on the law books. He noted that they came very near to losing that battle and, had they lost it, workers comp would now be bankrupt, no question about it.

Representative Bardanouve indicated he does not know what is going on in workers comp, that they have had workers comp reform, they have cut benefits, and have done this and that. He reported that, a short time ago, they had a so-called deficit of some \$40 or \$50 million; then, a year or so later,

\$100 and some million, and now \$200 and some million, noting that it is almost inconceivable to him that those figures could change so rapidly. He stated that he can not comprehend it, pointing out that they had a crisis in the pension fund, for years, but never, never anything like that. He again indicated that he does not know what is going on there, but that, regardless of what causes it, it is here, that, if those figures are right, they have a crisis.

He stated that the number one issue, this session, more serious than the foundation programs, for which they were called here, is the workers comp shortfall. He indicated that, if they fail to come up with legislation on the foundation program, not many people will be really hurt, that education will go on as it is now, and that, although seven men with black robes will probably be unhappy, there will be no crisis in Montana education, but that there is a crisis here, today, on workers comp. He indicated there will be people who will probably lose their jobs because employers can not continue paying the rates which will be imposed in Montana.

Representative Bardanouve indicated this is probably the shortest bill of the session, that it is a short amendment to the present law to change from 0.3% to 0.45% on the wages of all Montana workers, noting that, of course, this would be paid for by the employers. He noted that he would imagine the same people who paraded up here a few minutes ago to support the imposition of an assessment on the employees will parade up here shortly opposing this bill, but indicated that there is a serious shortfall, and this 0.45% will generate about \$13 million additional, noting that 0.3% generates \$25.6 million, during the 1991 biennium, and that 0.45%, during the biennium, will generate about \$38.3 million, about \$6.5 million, additional, per year, noting it will vary, of course. He added that will go quite a ways toward meeting the crisis situation they are in.

Representative Bardanouve stated that the 0.45% will be paid by employers, and reported that they heard a horrible human cry, when they put on the 0.3% assessment in 1987, but that he has heard almost no complaint, from his people. He pointed out that, of course, they do not have as many big employers in his area as are elsewhere in Montana, but that many ranchers and farmers pay it, and it is part of their operating expenses. He added that the small increase proposed here will not put any employer out of business, that he can not believe that. He stated that the pain, noting it is a real pain to pay this, will be shared by all employers of Montana, and he

feels that the rest of Montana employers should be willing to share a little pain to save some of the most crisis-situation employers in Montana. He indicated that if they can, with some additional revenue elsewhere, come up with maybe about \$20 million a year, they will prevent this tremendous increase in the proposed rates, that this will be about one-third of the necessary money. He again stated this is a very short bill, which amends 0.3% to 0.45%, noting that it is the shortest bill they have had in the Legislature in 1989. He added that he feels the committee should give it their serious consideration, noting that he believes, for all employers in Montana, it will be a little burden, but that a burden carried by all is far better than a burden carried by a few and, therefore, as a partial solution, he would ask that the committee support this bill.

List of Testifying Proponents and What Group they Represent:

Don Judge, Montana State AFL-CIO

Testimony:

Mr. Judge stated that they believe it is the Legislature's decision to review the figures and the data which is before them, and determine if subsidies are, indeed, necessary for the fund to hold down what some consider to be exorbitant increases in insurance premium rates for specific employers. He indicated that they leave that decision up to the Legislature, but would say, however, that this piece of legislation offers a much more reasonable means of raising some of the needed revenue, in the event it is found they need to raise additional revenue. He added that it does not violate the constitutional protections of workers, those protections discussed earlier about the right to sue versus who provides the workers compensation insurance, and they agree that it spreads the burden out much more evenly for employers across Montana. He indicated they would urge the committee to give this piece of legislation a do pass recommendation, should they find it necessary to subsidize those employers' rates.

List of Testifying Opponents and What Group They Represent:

Mike Micone, Commissioner, Department of Labor

Gordon Morris, Association of Counties

George Wood, Executive Secretary, Montana Self-Insurers Association

Charles Brooks, Montana Hardware Implement Association

Jacqueline Terrell, American Insurance Association

Alec Hanson, Montana League of Cities and Towns  
Don Allen, Executive Director, Montana Wood Products  
Association  
Carol Daly, Executive Director, Flathead Economic Development  
Corporation  
Bonnie Tippy, Alliance of American Insurers; Montana  
Innkeepers Association  
Laurie Shadoan, Bozeman Chamber of Commerce  
Jim Tutwiler, Montana Chamber of Commerce  
Ben Havdahl, Montana Motor Carriers

Testimony:

Mr. Micone indicated that Representative Bardanoue has stated this piece of legislation will raise an additional \$6.5 million per year, noting that he certainly does not argue those numbers, which means there is roughly \$13+ million which will be required for the upcoming year, for the operation of the workers comp state fund system. He pointed out that means that, rather than an average rate increase of 22%, they are now talking roughly an average rate increase of 15.5%, noting that this does not mean every employer will have their rates increase 15%, that it may mean some will have their rates increase 85%, and some will continue to have their rates decrease. He indicated it is interesting that at least one opponent to the previous bill is now supporting legislation which could yet have a detrimental affect on jobs in Montana. He stated that, every time they increase the burden on the employer, they are, in fact, sending another signal, and he would suggest that, in their consideration of a subsidy, the committee either not consider either piece of legislation, and look for another source of funding to subsidize the system, or, of the two, HB56 is a better piece of legislation.

Testimony:

Mr. Morris reported that the Association of Counties currently has a self-insurance program for workers comp and, as employers, counties across Montana are, in fact, liable for the three-tenths of one percent tax assessed against employers. He indicated this would represent, based on a \$100 million payroll, about a \$150,000 increase over and above the \$300,000 assessment levied under current law. He noted that he has the uncomfortable position of pointing out to the committee that Section 1-2-1112 MCA, which they refer to as the Drake Amendment, requires funding to accompany any legislation considered by the Legislature which imposes additional financial burdens on local government. He indicated he wishes this were not the case because they wrestle with this problem

from the standpoint of having to administer their own program, and they can certainly appreciate the problem. He further indicated that they have been self-funded for four years, they are not contributing to the problem, and he would suggest that they do not need to be looked at by way of being assessed to deal with the problem.

Testimony:

Mr. Wood indicated that he thinks, in these two hearings, the committee members will hear agreement that they have a crisis situation, but that the answers will be to tax somebody else to do it. He stated that, under the present system, the deficit is made up by the three-tenths of one percent on employers, only. He then reported that he represents the self-insurers group, which has never been a part of the entity which has the unfunded liability, that they are separate and that, over the years in which the law became more liberal, and payments were made, they had to suck it up, and pay it from the bottom line, that they could not look for a subsidy from someone else, nor could they incur a liability to pay it.

He indicated that they talk about this being a small increase, but pointed out that, for his group, that does not exist. He explained that, in the first place, the present three-tenths of one percent discriminates against them because they were never part of the state fund and, secondly, it discriminates against them because it is on payroll, that they represent those employers in Montana who are the basic industries in a lot of the cities, and the wages are higher, they are not a \$3.35 an hour payer, so they pay a disproportionate amount. He cited the example of an employer in Missoula who's payroll is about \$40 million a year, that this employer is paying \$120,000 a year, presently, and this bill makes it \$180,000. He added that this is not the largest employer in the state, and he knows that, for one of the large employers, this tax increase will make their payment for payroll taxes \$500,000 a year or, to be more accurate, \$499,500 a year, if this increase goes through.

Mr. Wood called the committee's attention to the fact that it not only affects their group and the amount they pay, but it also affects their group, as individuals, because of the increase created in public agencies, that the state, cities and counties will have a dramatic increase in their costs. He pointed out that, though they did not incur and did not complain about the three-tenths of one percent, they understood, at that time, that it would be over in 1991, and he is

sure, though he has not consulted anyone, that, at four and one-half percent, some people will be taking a look at it because, for \$60,000, \$80,000 and \$100,000, to \$130,000 a year, they can do something in the way of looking at it to see whether this is a just tax. He added that it does not spread the risk, that it spreads the risk to employers in Montana, only, and does not spread it to anyone else. He asked that this bill be reported do not pass.

Testimony:

Mr. Brooks reported that he is here today primarily representing the Montana Hardware Implement Association, particularly at the request on one of their members who is a large implement dealer in Great Falls, who is privately insured, and has been paying the three-tenths of one percent assessment. He indicated that, last year, because of the efficiency of that member's business in maintaining accident control in his operation, he received a \$3,600 rebate from the private carrier. Mr. Brooks stated that the member is very disturbed that he is being penalized by the assessment, that he did not create any of the deficits found in the workers compensation fund. He indicated they find this discriminatory, and the member asked that he convey that to the committee today.

Testimony:

Ms. Terrell reported that the American Insurance Association is a trade association comprised of some 200 property and casualty insurers, many of whom write workers compensation insurance in the State of Montana, adding that many of those companies are also employers within the State of Montana. She stated that the American Insurance Association opposes this legislation, most respectfully.

Ms. Terrell indicated that, at some time, this body is going to have to confront the statutory mandate that the state fund operate in an actuarially sound manner and, to continue to shore-up the state fund through employer taxes and employee taxes, is not going to accomplish that end. She pointed out that the Legislature has carefully considered and, in the last four years, enacted legislation to address this problem, that they enacted SB315 in 1987, and SB428 in the 1989 regular session, and indicated that both of those bills were designed to address the problem of the state fund. She then indicated what has not happened is that there has not been sufficient time for those reforms, which they carefully considered and

passed, to take effect and start having a beneficial affect on the operation of the state fund.

She then stated that, as to the inequity of this tax, she would just reiterate the comments Mr. Wood and Mr. Brooks made to the committee, and inform them that the American Insurance Association also supports that point of view. She further stated that this is a discriminatory tax on employers who are paying for private insurance, and who are also paying an additional tax to shore-up those who are insured through the state fund. She indicated that, as long as they continue to shore-up the state fund, and not require it to operate in an actuarially sound manner, as required by Montana statute, this problem will continue to exist, that the hole will grow only deeper, and there will be no incentive for that situation to be addressed.

Ms. Terrell indicated that she would again respectfully request that the committee give this legislation a do not pass recommendation.

Testimony:

Mr. Hanson indicated they recognize that the unfunded liability in the workers comp program is a serious problem for our state, but that they have to oppose this bill for two reasons, essentially. He pointed out that, as proposed, this bill will cost the cities and towns in Montana \$105,000, on top of the \$210,000 they are already paying under the tax imposed by the 1987 Legislature, noting that he realizes this is not all the money in the world, but that anyone who understands municipal finance would agree that the budgets of the cities and towns of this state are balanced on a very dangerous and narrow margin. He stated that he thinks it is also important that this adjustment may buy some time for the state fund, but indicated that what it really does is postpone the day when all the elements of a well-managed, actuarially sound workers compensation program are brought into the proper balance. He indicated that they need to balance and align payroll, premiums, benefits, claims administration and risk management into a workers compensation program which can stand on its own, and provide benefits with a fair premium structure. He noted that he knows they are a long way from that objective, but he thinks that, instead of postponing the day when they move in that direction, they should get on the road, and get after it.

Mr. Hanson reported that the cities accepted the three-tenths of one percent payroll tax in 1987 because they realized they were part of the incurred liability, that their claims were included in the unfunded liability. He indicated he thinks this bill may be a signal that the .3% payroll tax is an open-ended commitment, and that this is the easiest and possibly the most logical method of raising the money necessary to subsidize the state fund, adding that he would hope, sometime, the .3% can be lifted, and that maybe the place to start is here, today.

Testimony:

Mr. Allen stated that he rises in opposition to HB54, and indicated that, in respect to the sponsor, he would like to mention that they were not one of those who attempted to see that the payroll tax bill, which was passed last time, did not pass. He indicated that their people did not like it, but saw the seriousness of the problem and did not object to that. He referred to the fact that it was small, and pointed out that, already, under the new law passed last time, to their mills, the one-quarter million each year being paid in to that fund, to increase that by 50%, they do not consider a small increase.

Mr. Allen further pointed out that they find, in the forest products industry today, competition for the dwindling timber supply, or at least what is available, higher prices they are having pay for that, the competitive nature, and having to compete with facilities in other states, and that it is tough enough, with all of the other costs involved, for them to take three steps forward without taking two back. He indicated the idea that this would not cause any problems is not the case. He pointed out that they have talked in this session, and before, for lowering the personal property tax, that the same people who are having to pay four and five times the national average for like facilities, in personal property tax, are the same ones who are paying this tax and would have to pay the increase. He indicated that, for that reason, they oppose this bill.

Testimony:

Ms. Daly stated that she rises in opposition to this bill on behalf of the employers in her area who, she thinks, are in the position of many employers who did not complain about this, that they felt they were being asked to take responsible action to meet the need for which the 0.3% was identified,

adding that, now, they are talking 0.45% and, next time, are they going to be talking 0.6%. She indicated she thinks it is a situation where they may have set something into motion, a lack of confidence, certainly in the numbers, and she is sure they will hear from employers as a result of this particular suggestion.

She indicated the other thing which is unfortunate is that, while they have been very conscious about sending messages to businesses about the business climate, most of what they have been doing is trying to reduce costs and taxes for businesses which are not even here yet, and that now they are talking about raising costs for businesses which are here. She stated that she thinks this is very counter-productive, and asked that the committee give it a do not pass.

Testimony:

Ms. Tippy reported that the Alliance is a property and casualty trade association, a national association which began as a trade association for workers compensation companies. She indicated they went through a lot of this, in 1987, that she remembers a lot of discussions in hearings, and a lot of discussions not in hearings as well, on the whole issue, and the bottom line is that such legislation penalizes employers who choose to do business with private companies.

She indicated that, if she understood Mr. Judge correctly, he quoted from a report written by the Alliance of American Insurers, her client, and that, basically, private insurance companies do a little bit better job of keeping track of medical costs and holding some costs down, than the state fund does, or state funds in the nation do. She added that she would certainly reiterate that fact, and urge this committee to give due consideration to the very importance of the private sector, not only in main street businesses, but also in insurance, be it workers compensation, life insurance, or anything else. She indicated she does not think any of us really have a strong desire, other than perhaps the AFL-CIO, to see Montana become a monopoly where there is no incentive, or it is actually illegal for private carriers to do business, and, therefore, they ask the committee to not adopt this legislation.

Ms. Tippy asked the committee's indulgence, and indicated she would again like to speak for the Montana Innkeepers Association in opposition to this bill. She indicated it always sounds like a small increase, to begin with, but that it is

the small increases in so many areas of an employer's responsibility which is making it next to impossible for employers to open new businesses, or even to maintain existing businesses in the State of Montana. She reported that perhaps the existing hotels and motels in Montana can pass some of these costs on, she does not know but, even if they do pass them on, it is going to disincen travelers from staying in hotels, because they will have to raise their rates, and they ask the committee to please give due consideration to killing this bill.

Testimony:

Ms. Shadoan reported that she is an employer, she has two restaurants in Bozeman, and is not in the state workers compensation program, that she is with a private insurer. She indicated this is only a \$700 increase in her particular business, noting she says "only" because it could be more, but that she thinks it is important to know that it is \$700 she should not have to pay. She urged the committee to defeat HB54.

Testimony:

Mr. Tutwiler stated that they strongly endorse the arguments which have been made in opposition to HB54, that they believe this particular bill presents a real question of fairness and equity. He indicated that they are particularly concerned over the fact that businesses already in Montana face very high personal property taxes and, in many cases, face high income tax, noting that there already is, in effect, a hostile tax climate in this state. He further indicated that they think employers have gone far down the road in trying to resolve the workers comp problem, and that passing a bill now, on the heels of the reforms of 1987, will clearly send a signal that business is a vulnerable target in Montana, that it is a very unsafe place to do business. He urged the committee's careful consideration, and a do not pass on HB54.

Testimony:

Mr. Havdahl stated they, too, would like to go on record in opposition to HB54.

Questions From Committee Members:

- Q. Senator Lynch indicated that maybe he does not understand, and asked Mr. Brooks if he is saying that it is unfair to his employers in Great Falls to pay 21.5% additional, but it is fair that the employees, who are also not part of the problem, pay 23%.
- A. Mr. Brooks responded that their position and their point is that, first of all, an employer, who is privately insured, because of the efficiency of his operation, received a 30% rebate last year from his private carrier. He indicated that he understands Senator Lynch's point that they are going to assess all employees throughout the state, and asked Senator Lynch if he would agree that there are some inequities. He further indicated that, when they talk about this small increase, he believes, if his mathematics are correct, this is a 50% additional fee upon the employers.
- Q. Senator Devlin asked Representative Bardanouve if this would increase state employees, if this would be imposed on state employees, also.
- A. Representative Bardanouve responded that everybody shares in the pain, across the board.
- Q. Senator Devlin asked Representative Bardanouve if he would, for the next fiscal year, be bringing in a supplemental to pay that from the state end.
- A. Representative Bardanouve responded that he has heard Senator Devlin say, many times, that these agencies always have money to cover their costs, that the Legislature does not have to provide for them, let them eat it.
- Senator Devlin noted, if that is Representative Bardanouve's intention, he is glad he said that.
- Q. Representative Simpkins indicated that Representative Bardanouve stated that employers should have no objection to helping fund the state, during this financial crisis we find ourselves in. He asked if Representative Bardanouve also contends that maybe the employees should have no objection in helping fund the state to get itself out of a financial problem.
- A. Representative Bardanouve responded no, that Representative Simpkins misunderstood him, and he never said they would not have any objection. He indicated that he said the same people who testified for putting an assessment

on employees will parade up here and oppose his bill, that he knew they would, and he was right. He added that his bill may be wrong, but he was right, they do object, and he knew they would object.

- Q. Representative Simpkins asked Representative Bardanouve if he feels that this debt, \$215 million, was created by the employer's failure to pay the premiums they were billed by a state agency which determined what they should pay, or if it is the fault of the state agency for incorrect billing procedures.
- A. Representative Bardanouve responded that, if it was the fault of the agency not billing enough, this is one way of picking up the money which they should have been billed for.

Closing by Sponsor:

Representative Bardanouve noted that he realizes time is short, and indicated that, as he said, he was right, that the people who want to put an assessment on the employees oppose putting it upon themselves. He stated that he will warn private insurers that, if they do not solve this crisis, there might be a major re-write of workers comp in Montana, and maybe nobody will have the privilege of not joining workers comp, that maybe they will write the law that everybody will have to join and share in the cost of workers comp.

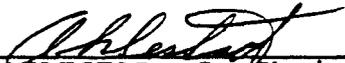
He reported that there are proposals being bandied around here, employees assessment, gambling bills, pop bills, general funds, and that this is another alternative. He indicated that he will reluctantly support the assessment on employees, that he will oppose it, but may vote for that bill and that he thinks the members of the committee can support this bill as part of the solution. He pointed out that they heard the gentleman who should be most concerned say they are sending the wrong signal, and asked what signal are they sending to high-risk employers in Montana, are they going to send a signal to get the hell out of Montana, that they will raise the rates clear up to the ceiling and, if they can not afford to pay it, to pack their bags and go to Idaho or Wyoming. He stated that they have to solve this situation, and he thinks it is a signal to a segment of Montana employers who, through no fault of their's, are in a high-risk industry, if they say they will not do something for them.

Representative Bardanouve then pointed out that the Chamber of Commerce said they are sending the wrong signal, and indicated he wonders where the business people of Montana receive most of their income from, noting that he thinks the Chamber of Commerce members receive most of their income from the laborers of Montana, that the workers of Montana supply most of the income for the business people in Montana. He noted that they do not seem to hesitate to send them a signal that they will make them pay, and then say that the employers do not have to pay. He then indicated that he resented the gentleman who said it is devious legislation, that he does not like to be called a devious person. He stated that it is as plain as the handwriting on the wall that what it does is raise it from 0.3% to 0.45%, and he does not know how more plain they can write a piece of legislation.

Representative Bardanouve stated that there is a crisis, and he is trying to put this before the committee as one alternative, that he fears the general fund can not support workers comp. He indicated they have to, he has found over the years, keep the general fund actuarially sound and that the general fund is actuarially sound when they have about 5% of the general fund budget. He added that, with over \$800 million, they have to have over \$40 million in that general fund to be actuarially sound and, if they rob the general fund to support the new foundation programs, and to support workers comp, they will soon create an actuarially unsound general fund.

ADJOURNMENT

Adjournment At: 3:15 p.m.

  
\_\_\_\_\_  
GARY C. ARLESTAD, Co-Chairman

  
\_\_\_\_\_  
ANGELA RUSSELL, Co-Chairman

GCA:AR/mhu  
JT-HB56.627

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: 6/27/89

|                         | PRESENT | ABSENT | EXCUSED |
|-------------------------|---------|--------|---------|
| SENATOR TOM KEATING     | ✓       |        |         |
| SENATOR SAM HOFMAN      | ✓       |        |         |
| SENATOR J.D. LYNCH      | ✓       |        |         |
| SENATOR GERRY DEVLIN    | ✓       |        |         |
| SENATOR BOB PIPINICH    | ✓       |        |         |
| SENATOR DENNIS NATHE    | ✓       |        |         |
| SENATOR RICHARD MANNING | ✓       |        |         |
| SENATOR CHET BLAYLOCK   | ✓       |        |         |
| SENATOR GARY AKLESTAD   | ✓       |        |         |

TESTIMONY BEFORE THE JOINT HOUSE AND SENATE LABOR COMMITTEE ON  
SENATE LABOR & EMPLOYMENT  
HOUSE BILL 56

EXHIBIT NO. 1

DATE 6/27/89

BILL NO. HB 56 p 1

BY MIKE MICONE, COMMISSIONER OF LABOR AND INDUSTRY

JUNE 27, 1989

Last March I appeared before the House Labor and Employment Relations Committee in support of the employee wage tax - SB 405.

The tax at that time was proposed to reduce the unfunded liability of the workers' compensation system. We stated at that time that many people viewed the unfunded liability as a major deterrent to a good business climate. And it's not just business or employers that want to reduce the debt.

We stated that workers perceive the unfunded liability as a threat to the well-being of the system that is supposed to pay their medical expenses and replace lost wages in case of injury.

We still believe both of those statements are valid.

Since the announcement that the liability had increased, and that rates would increase on July 1, I have received a number of inquiries of what can be done to stop the spiraling of costs and subsequent increases. Our concerns, like yours, are how do we maintain a viable, actuarially sound fund, and yet maintain rates at a level that will not drive businesses out of Montana or forced to close their doors.

HB 56 - 2

I'm convinced that the changes made in past legislation, and the contemplated structural changes will begin to show results given time to operate. But the problems in workers' compensation were created over a long period of time and will not be resolved overnight. It will take a dedicated effort on everyone's part and over a long period of time to make it work.

The actions contemplated by this special session may appear to be resolving the problem. But in essence, what you are addressing today can only be viewed as a short term stop gap approach to a long term problem.

You are in effect making a decision to subsidize the workers' compensation system. If, as is proposed, the subsidy is removed after two years and costs have continued to escalate, the resulting rate increase at that time could be far in excess of the 22% proposed at this time.

The decision to impose a tax on employees is not an easy one to make. We recognize your concerns that an increase in workers' compensation rates at this time could have a detrimental effect on Montana's economy. If the actions, as proposed in HB 56, eliminate one of Montana's major stumbling blocks to an improved economic climate, it will certainly benefit all Montanans' in the long run and should be given serious consideration.

I would suggest that Sections 7 (1) be amended to allow for the State Mutual Insurance Fund to collect the tax. As proposed, it transfers the responsibility to the Department of Revenue for collection of the employer payroll and employee wage tax.

The 1989 legislature allocated 1 1/2 FTE to administer the tax and the State Fund has in place the system necessary to collect the tax. We believe that for the short term, 1 to 1 1/2 additional FTEs could be allocated to the State Fund for the additional collection with no requirements for program start up.

If in 1991, the legislature determines the tax should continue for the longer term, we would suggest the transfer to the Department of Revenue be made at that time.

Thank you for the opportunity to appear before you.



JAMES W. MURRY  
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59624  
406/442-1708

STATEMENT OF DON JUDGE ON HOUSE BILL 56, SPECIAL SESSION OF THE 1989  
LEGISLATURE, JUNE 27, 1989

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Madam Chair, members of the committee, for the record my name is Don Judge and I'm representing the Montana State AFL-CIO in opposition to House Bill 56.

When I think about the reason we are in this hearing today, I need to reflect for a minute about the process by which we arrived here.

The Legislature is working very diligently to find a solution to the school funding problem, an issue some feel is the most critical matter facing the state right now. In that effort, you're working on the basis of a well-documented and thoroughly thought-out Supreme Court decision based on literally years of work by the courts, the legal profession and the education community. Regardless of where you stand on that issue, you have to agree that it is one that has received careful consideration based on a massive amount of study and input.

On the issue of the payroll tax to subsidize Workers' Compensation, we cannot make the same claim. We believe that the Legislature is rushing to act on this issue, which is based on audits we can't agree upon and decisions by the Workers' Compensation Division to raise premium rates, perhaps unnecessarily. Worse yet, this rush is ignoring the basic conclusions reached during the regular legislative session: that the real purpose of the Workers' Compensation system is to provide a safe and healthy workplace, and to compensate workers when they're hurt at that workplace.

This rush to judgment on such a serious policy reversal may have widespread implications for decades to come in Montana. Your decision on this vital question should be the result of a serious, deliberate discussion buttressed by hard facts and sound logic. Without that, we believe that Montana could pass a bad law, and then we all lose, regardless of whether we ever have any involvement with the Workers' Compensation system. We need to stop . . . think . . . reach into our collective wisdoms and avoid hasty action.

The Montana State AFL-CIO remains opposed to an employee payroll tax to subsidize premium rates for employers covered by the state Workers' Compensation Fund. Our members opposed this issue when it was proposed in the regular session of the Legislature, and they continue to oppose it now.

We believe that there are three basic reasons to oppose an employee tax subsidy. First, the largely unexplored area of cost control; second, the Constitutional implications, and third, the uncertainty surrounding the actual status of the state fund.

Let me explain these in a little bit more detail.

Cost control seems to be popular everywhere in the country except Montana, particularly with the State Fund. Throughout the regular session of the

Legislature, workers attempted to get lawmakers and opinion leaders to focus on the single most important issue in Workers' Compensation: the high rate of workplace injuries and accidents here in Montana compared with the rest of the country.

We'll say it again here today: If you can put a lid on accidents and injuries, you can cut the cost of benefits and medical care and, in turn, reduce employer premium rates. If you continue to ignore Montana's higher-than-average accident rate, we will continue to see growing benefit and medical costs, along with a growing number of injured and maimed workers.

We are further concerned that a move toward subsidizing employers' premium rates will erase any incentives for employers to provide safe workplaces. Responsible employers will continue to do their best to provide a workplace that is safe for customers and employees, but we're very concerned about the effect this proposal might have on less responsible employers.

Basically, we fear that an employer who has a high workplace accident rate may not care what effect that has on premiums if he knows that the premium rates are going to be subsidized anyway. We firmly believe in the need for strong safety incentives and for serious, state-mandated safety programs for all industries in order to control costs by reducing injuries.

That brings up the second part of the cost control issue. Very little attention, if any, has been focused on measures to control the costs of medical care under the program, despite a national focus by the public and private insurance industry on medical cost containment.

To its credit, the private sector insurers in Montana appear to have taken some positive steps toward medical cost control in the last decade. Let me cite some figures for you, based on the annual reports of the Workers' Compensation Division. In Fiscal Year 1978, medical costs made up nearly 31 percent of the total benefits paid by the State Fund, and nearly 32 percent of the benefits paid by private insurers. Ten years later in FY'88, the State Fund still was paying more than 30 percent out in medical costs, but the private insurers had cut theirs down to only 26 percent.

If the State Fund would focus some energy on medical cost containment, particularly on some of the outrageous fees paid to consultants, rehabilitation specialists and others, the program would be financially healthier.

I want to note that just yesterday our office received the quarterly newsletter of the Alliance of American Insurers, which is not a group known for any particular sympathy for labor unions. One entire page of their newsletter focuses on the problem of medical care costs being shifted onto Workers' Compensation systems because they have few if any of the cost control measures that have become standard throughout the rest of the insurance industry. The Alliance concluded that the continued existence of the workers' compensation system nationally may depend on the imposition of medical cost controls.

Our second major concern is the tradeoff that established the ground rules for workers' compensation in Montana. Under the Montana Constitution, Article II, Section 16, workers forgo their rights to sue employers over workplace injuries, so long as their employer provides Workers' Compensation insurance. We believe that the word, "provides" in this case means that the system is the employers' financial responsibility, not the employees'. If you have to help pay for it, it's not "provided."

Under the Constitution and Montana law, employees already sacrificed the right to legal redress that every other citizen enjoys. They also sacrifice their very lives and limbs at the workplace when they suffer a job-related injury. We believe that to ask them to make even further sacrifices by paying for this system is not only a violation of Constitutional intent, but just plain unfair. Think about it . . . employers would be able to shift part of their burden onto their workers and still retain their immunity from lawsuits. They clearly would get to have their cake and eat it, too.

Our final major concern is quite simply the depth of the problem with the State Fund. No one can tell us for sure what it is. We're not convinced that anyone on the Hill -- the Legislature, the auditor, Workers' Compensation, the Administration -- has valid numbers to support their position on this issue.

The Legislative Auditor presents us with numbers to show an impending jump in the deficit, but then tells us that the numbers probably aren't right. The Division presents numbers, but the Auditor doesn't agree with them.

Everyone agrees that more numbers have to be generated in order to arrive at a true picture. Shouldn't that raise a big red flag for us all? We simply can't support any proposed solution as drastic as this when no one has a solid handle on the problem that is driving the issue.

We believe that responsible legislative action demands an agreed-upon analysis of the problem before any such action is taken. We cannot simply stand by and assume the correctness of such drastic action to solve a problem that no one is able to accurately define.

We can, however, support a comprehensive audit of Workers' Compensation, with an independent actuary not previously involved with the system, to arrive at a set of facts upon which everyone agrees. We can understand if you decide to provide a broad-based subsidy to the system in the period during which an audit is being conducted. We can recommend that you seriously consider making our system an exclusive state plan in which the private insurance sector cannot cream the good employers off while the state fund is required to accept all the bad risks. We can recommend a system to you wherein good, safe employers see substantial premium savings based on their experience of providing a safe and healthy workplace. And we can recommend to you a system in which premiums are based on hours worked rather than total payroll -- a system that would reward good employers in the high-wage, high-risk industries.

For all of the reasons we've discussed here today, we oppose House Bill 56. You have a tough problem in front of you and a tough decision to make. However, difficult problems are not solved with hasty decisions. We urge you to give this bill a "Do Not Pass" recommendation.

I know our testimony today has been longer than normal, and I thank you for bearing with us. The length of our statement reflects the importance we attach to the issue and the action you take on it.

Thank you.

HELLGATE LOCAL 885  
UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO  
P.O. BOX 8885, MISSOULA, MONTANA 59807

(406) 543-7788

STATEMENT BY ROBERT CULP ON HOUSE BILL 56, SPECIAL SESSION OF THE 1989 LEGISLATURE, JUNE 27, 1989  
=====

Madam Chair, members of the committee, my name is Robert Culp. I'm the Safety Chairman for Local 885 of the Paperworkers Union, which has about 550 members working at the Stone Container plant in Frenchtown. I'm here today in strong opposition to this bill.

I'm responsible for enforcing contract provisions relating to safety and health in our workplace, so I can speak with some expertise on the issue of workplace safety and Workers' Compensation in general.

Our members are flat out opposed to an employee tax to subsidize our employer's Workers' Compensation premium rates. We're concerned about the bad precedent it would set if employees starting subsidizing the system. We're even more concerned about giving subsidies and reduced rates to an employer who has cut our wages and worsened our working conditions, even while the company enjoys strong profits. To heap even more bad news for workers on top of all that is unfair. It's especially unfair when our employer gets to keep his immunity from lawsuits.

If this bill passes, the bottom line for us would be that we'll have abide by our part of Montana's constitutional "bargain," we'll have to pay an extra tax to support our employers, we'll have to suffer the crippling effects of workplace injuries, and we'll be called the stumbling blocks on the road to Montana's economic development. Meanwhile, our employer will get to ignore his part of the bargain: He'll get reduced premium rates. He'll be able to ignore workplace safety. And, he'll still be perceived as the builder of Montana's economy.

One of our slogans at the Paperworkers is "Just say No;" we say no to drugs and we say no to regressive legislation.

We say no to this employee tax to subsidize our bosses.

We say put safety before production, not production before safety.

Montana's loggers have proved that safety works, through the safety program run by Flathead Valley Community College. It's clear that if the employer has the proper equipment and the proper incentive, safety programs work by cutting injuries and cutting Workers' Compensation costs.

TESTIMONY OF BOB CULP ON HOUSE BILL 56

PAGE TWO

June 27, 1989

Montana's workplace safety record is far worse than the national average, and we believe one of the reasons is the lack of teeth in our safety laws. We believe employers must be required to have a full commitment to a safe workplace.

We believe that employers who have high accident rates should pay for his own shortcomings, and that asking workers to pay for them is almost criminal.

Employees around the state are being asked for concessions and givebacks by their employers. This would be just another concession, just another piece out of our paycheck.

We urge you to join us and just say no to this bill. This is a bad deal for workers, for their families and for all Montanans, and we urge you to vote against it.

Thank you.

## WESTERN COUNCIL OF INDUSTRIAL WORKERS

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

EXHIBIT NO. 4DATE 6/27/89BILL NO. HB 56

BLUE MOUNTAIN  
CENTRAL CALIFORNIA  
CENTRAL OREGON  
CENTRAL WASHINGTON  
COOS BAY AREA  
INLAND EMPIRE

(503) 228-0235

NORTHERN CALIF.  
PORTLAND COAST COLUMBIA  
PUGET SOUND  
REDWOOD  
WILLAMETTE VALLEY



721 S.W. OAK STREET

PORTLAND, OREGON 97205

STATEMENT BY JIM HILL ON HOUSE BILL 56, SPECIAL SESSION OF THE 1989  
LEGISLATURE, JUNE 27, 1989

Madam Chair, members of the committee, my name is Jim Hill, and I'm the Area Representative for the Western District Council of the Lumber, Production and Industrial Workers Union. I'm here today to oppose House Bill 56.

We represent about 1,800 members in locals in Libby, Olney, Missoula, Thompson Falls, Bonner, Columbus and Bozeman.

As lumber workers, we're very familiar with the problem of rising Workers' Compensation costs for the state and for our employers. However, we're also very aware of the costs levied against our members in terms of accidents and injuries.

We believe that increased emphasis on safety is the most important step that can be taken to control Workers' Compensation costs. A special safety program run through the Flathead Valley Community College this year has cut injuries and accidents for the enrolled employers by about 50 percent. We believe that those kind of safety programs are definitely the way to go, as they'll lead to lower costs to the system and eventually, lower premiums to the employers.

We know that the impacts of safety achievements like this on an employers' rates are felt only as part of a three-year running average, but we believe the long-term benefits to everyone are worth it.

Because of our focus on safety issues, we're very concerned about the effect this bill might have on employers. An employee tax is nothing but a subsidy to help hold down employers' insurance premium rates. We're concerned that a direct subsidy of those rates by workers will take away the incentives for employers to provide a safe workplace. In essence, we believe that some employers may be inclined to throw out safety programs once they know that their rate increases will be subsidized by the workers themselves.

We're especially opposed to a subsidy which is provided by employees, the working people who are injured and maimed on the job.

Testimony of Jim Hill  
Page Two  
June 27, 1989

We've heard some talk in recent years about how working people have to help pay the price of the Workers' Compensation system. I'm here to tell you that they're already paying that price with their sweat and their blood. Montanans pay the price when they walk onto the job every day, where they run a 1 in 10 risk of getting injured sometime during the year. Bodies are maimed, lives are disrupted, families are torn apart by workplace injuries. So I won't believe that workers don't already pay the price for Workers' Compensation.

The members of the Lumber, Production and Industrial Workers are absolutely opposed to a tax on employees to subsidize employers' Workers' Compensation premium rates.

Thank you.

# UNITED STEELWORKERS

BOX 490  
EAST HELENA, MONTANA 59635  
TELEPHONE 227-6261



Local  
72

OF  
AMERICA

AFL-CIO  
SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 5 pgs  
DATE 6/27/89  
BILL NO. HB56

STATEMENT BY JAY REARDON ON HOUSE BILL 56, SPECIAL SESSION OF THE 1989 LEGISLATURE, JUNE 27, 1989

Madam Chairman, members of the committee, my name is Jay Reardon and I'm president of Local 72 of the United Steelworkers of America. I'm here today representing the 225 workers at ASARCO's East Helena Plant and as President of the Helena Trades and Labor Council. Both organizations oppose House Bill 56 and any move toward an employee payroll tax to subsidize the Workers' Compensation system.

House Bill 56 is unfair. It goes against the basic principle of Workers' Compensation insurance, that being that the employer pays the premium on a no-fault insurance plan and the employee gives up any right to sue over workplace injuries.

This bill is another attempt to place the Workers' Compensation problems on the backs of workers and their families. Many people say that workers don't pay anything for the system, and that they should somehow help out. Let me tell you for a minute just exactly how workers do pay, every day.

We paid in the 1987 Legislature when injured workers were forced to take a seven-working-day deductible before getting benefits. We paid when they eliminated repetitive trauma as a compensable injury.

We paid with changes concerning industrial respiratory and coronary disease, changes that severely limit a worker's ability to recover benefits for these when they're work-related.

Workers paid with a freeze in maximum benefits while other costs around us continue to rise. Workers' families paid with reductions in death benefits if a worker was so unfortunate as to be killed on the job.

We also pay every day on the job, where we stand a 1 in 10 chance of getting hurt sometime during the year.

We pay every day with our arms and our legs, with our fingers and with our toes. We pay with the loss of eyesight and hearing. We pay with our lungs and our hearts. And some of our friends and family pay the ultimate price; they pay with their lives.

How much did we pay? Last year, 28,613 workers paid with injuries, and another 25 paid with their lives.

So what's the solution? In the short-term, the state could either increase the payroll tax on all employers or bond off the deficit to remove it from the rate base.

In the long-term, we should do away with the three separate plans we have here in Montana and go with an exclusive state fund that encompasses all employers, not just the worst risks like we have in the State Fund now.

We should also encourage employers to police themselves and their fellow business people, many of whom don't obtain the required coverage or don't pay their premiums. These bad employers cost their colleagues and all of us money and, ultimately, injuries.

We should also insist on a safe and healthful workplace as the best way to reduce injuries and, as a result, keep costs under control.

Let me give you an example from our employer, the ASARCO facility in East Helena. The company is required to give us statistics on injuries and illnesses in the plant. Let me share with you some of the statistics ASARCO has provided.

In November 1985, the rate of incidence of disabling injury or illness per 200,000 man hours worked was 1.33. The severity rate was 80.0, which represents 80 actual lost days per 200,000 man hours. By the first half of 1988, the incidence rate had jumped seven-fold, to 7.75, and the severity rate had jumped to 137 lost days per 200,000 man hours.

With official company statistics like that, we can see very clearly why the cost of Workers' Compensation is going up: it's because injuries are going up and the severity of those injuries is going up.

In closing, let me make a little analogy. Making workers pay part of the cost of Workers' Compensation insurance is very much like asking your house guests to pay part of your homeowners' insurance to cover whatever might happen while they're visiting. That's an outrageous notion, and the idea incorporated into this bill is just as outrageous.

We urge you to vote against House Bill 56.

# ASARCO Incorporated

EAST HELENA PLANT

EAST HELENA, MONTANA  
59635

EXHIBIT NO. 6

DATE 6/27/89

BILL NO. H856

TELEX 31-3120  
TEL. 406-227-5311

M. A. SHARP  
MANAGER  
R. D. HEARST  
SUPERINTENDENT  
G. J. JONES  
ACCOUNTING MANAGER

November 19, 1985

Mr. James P. Reardon, President  
United Steelworkers of America  
Local 72

Dear Jay:

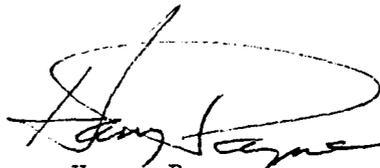
In accordance with the Safety and Health Article contained  
in the National Agreement, please be advised of the following statistics  
for the Third Quarter of 1985:

East Helena Incident Rate \* 1.33

East Helena Severity Rate \* 80.0

\* Incident Rate - Number of disabling injuries/illnesses per 200,000  
man hours.

\* Severity Rate - Actual days lost per 200,000 man hours.

  
Harry Payne

Mr. John Finch, President  
U.S.W.A. Local 72  
East Helena, MT 59635

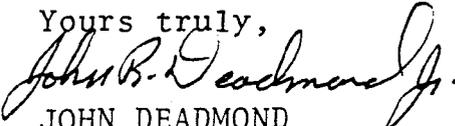
August 23, 1988

Dear John:

In accordance with Safety and Health of our agreement, following is a summary report of accident frequency and severity at our plant for the 1st half of 1988.

|                | <u>Hours Worked</u> | <u>Incident Rate</u> | <u>Severity Rate</u> |
|----------------|---------------------|----------------------|----------------------|
| First Quarter  | 144,996             | 8.28                 | 99.0                 |
| Second Quarter | 138,762             | 7.20                 | 174.7                |
| YEAR TO DATE   | 283,758             | 7.75                 | 137.0                |

Yours truly,

  
JOHN DEADMOND

JD/od

**Yellowstone Valley Central Labor Council**

LABOR TEMPLE

Twenty-Four South Twenty-Ninth Street

**Billings, Montana 59101**

STATEMENT BY DARRELL HOLZER ON HOUSE BILL 56, SPECIAL SESSION OF THE 1989 LEGISLATURE, JUNE 27, 1989

Madam Chairman, members of the committee, my name is Darrell Holzer, and I'm a member and president of Plumbers and Pipefitters Union Local 30 in Billings. I'm here today as president of the 5,000-member Yellowstone Valley Central Labor Council, which is opposed to House Bill 56.

The Yellowstone Valley Central Labor Council met last night in Billings to consider this issue and this bill in particular. At that meeting, I was directed to travel here today and express the Council's unanimous opposition to House Bill 56 and to any payroll tax paid by employees.

At its inception, the Workers' Compensation in Montana represented a tradeoff that ultimately benefited the employer more than anyone else. Employers recognized the need to protect themselves against liability for workplace injuries, and acknowledged the need to create a workers' compensation system to do that. In that tradeoff, workers lost their right to sue their employers over workplace injuries, as long as employers carried Workers' Compensation insurance.

That tradeoff was detailed in our most fundamental legal document, the Montana Constitution. At the risk of belaboring the point, let me read, in part, from the Montana Constitution, Article II, Section 16:

"No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state."

If you require employees to begin paying for this system, a move taken only by one other state in this nation, you will break that Constitutional tradeoff, but only for one of the parties. Employers will get off the hook for having to provide a Workers' Compensation system. Employees, though, will still have no rights to take up workplace injuries in the courtroom.

Not only is that move unfair to workers, we're very concerned that if we let employers off the hook on paying for the system but still give them immunity from lawsuits, many of them will abandon any pretense at safety in the workplace.

If employers can be confident that their premium rates will be subsidized by someone else, then some of them may not care about their workplace injury rates and the higher rates charged as a result. They'll just pass it on to whoever is paying their subsidy.

Our final concern is perhaps, in the immediate case, the most important, and that is the question of the numbers. Exactly how bad is the problem with the State Fund? We've seen several different figures for the unfunded liability, and we've seen public disputes over even those figures. We continue to hear that the State Fund may still have a positive current cash flow, but even those figures are in some doubt.

We don't question for a moment that there's a problem in the State Fund, and that legislative remedies probably will be necessary. However, we can't support this mad rush to judgment on a problem that has not been clearly defined yet.

Members of the trade union movement in Montana have for years been calling for an independent audit of the Workers' Compensation system because of just this problem. We renew that call again today.

As working people who labor in some of the most hazardous professions in the state, our members fully understand and support the need for a sound Workers' Compensation system. However, we cannot support this unfair tax to subsidize our employers. We will not provide the shield to protect them from liability if they have an unsafe workplace, and we certainly won't pay their costs.

We urge you to vote against House Bill 56.

Thank you.

# International Union of Operating Engineers

Local 400

Affiliated with AFL-CIO

Montana

JOHN C. "JACK" CALDWELL

President

MICHAEL J. KEATING

Vice President

BOB DANIELS

Treasurer

LARRY GRIBBLE

Rec. Corres. Secretary



JOHN C. "JACK" BALL

Business Manager &  
Financial Secretary

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 8

DATE 6/27/89

BILL NO. HB 56

HEADQUARTERS

2737 Airport Road

Helena, Montana 59601

Telephone: (406) 442-9597

MAIL ADDRESS

P.O. Box 5929

Helena, Montana 59604

STATEMENT OF LEN BLANCHER ON HOUSE BILL 56, SPECIAL SESSION OF THE 1989 LEGISLATURE, JUNE 27, 1989

Madam Chair, members of the committee, my name is Len Blancher. I'm the assistant business manager for Local 400 of the Operating Engineers Union, and I'm here today in opposition to this bill.

The members of the Operating Engineers Union oppose an employee tax to pay for Workers' Compensation costs. We're very familiar with those costs, as most of our members work in the building trades industries that face some of the highest premium rates.

We recognize the problem associated with the high cost of insurance and the rising costs of providing benefits to injured workers. However, we also recognize the problem of workplace injuries, and we don't think it's fair to slap a tax on workers while ignoring safety.

We believe a stronger emphasis on safety is more important to the long-term solvency of the Workers' Compensation system. If you cut the number of workplace injuries and accidents, you cut the number of claims and the cost of providing benefits. That translates eventually into lower premiums for employers, a safer workplace for employees and a stronger system overall.

We question the wisdom of rushing into this proposed solution to the unfunded liability problem when the Legislature's and the Administration's experts don't even agree on the scope of the problem yet.

There is no hard number on the deficit in Workers' Compensation -- we've heard everything from \$150 million to over \$210 million. Perhaps the number goes the other way -- perhaps it's less than \$150 million. I doubt it, but the point is, no one appears to know for sure. We definitely oppose drastic action such as an employee tax when no one is even sure how big a problem we have.

If a subsidy to Workers' Compensation is necessary, we believe it should be more broadly based than just workers. If we're trying to fix this system for the good of the state, the good of the public, then we ought to draw more players into the game. A general fund subsidy would be far more appropriate than just singling out the workers whose only real involvement in the system is getting hurt and crippled on the job.

A good example of why we should bring the public at large into the issue is the people who profit from Workers' Compensation, but who likely wouldn't have to pay this proposed tax. Lawyers, doctors, rehabilitation specialists, medical consultants, hospital officials and others make lots of money off the system, but would not have to pay this tax on their profits. We think that's unfair.

We oppose the idea of a Workers' Compensation subsidy paid only by workers.

Thank you.

Amendments to House Bill No. 56  
First Reading Copy

Requested by Representative Driscoll  
For the Joint Committee of House Labor and Employee Relations  
and Senate Labor

Prepared by Eddy McClure  
June 27, 1989

1. Title, line 13.

Following: "MCA;"

Insert: "APPROPRIATING MONEY FROM THE GENERAL FUND TO REDUCE THE  
UNFUNDED LIABILITY IN THE STATE COMPENSATION MUTUAL  
INSURANCE FUND;"

2. Page 15, line 13.

Following: "withhold"

Strike: "form"

Insert: "from"

3. Page 16, line 22.

Insert: "NEW SECTION. Section 12. Appropriation. There is  
appropriated \$10 million from the general fund to the  
workers' compensation payroll and wage tax account in the  
state special revenue fund for fiscal year 1990 to be used  
to reduce the unfunded liability in the state compensation  
mutual insurance fund."

Renumber: subsequent sections.

VISITORS' REGISTER

Labor

COMMITTEE

1063

BILL NO. HB 56

DATE ~~6/26/89~~ 6/27/89

SPONSOR Russell

| NAME (please print) | RESIDENCE                | SUPPORT | OPPOSE |
|---------------------|--------------------------|---------|--------|
| James A. Hill       | E.M.S.L.A.               |         | ✓      |
| Robert L. Culp      | Frenchtown               |         | ✓      |
| Thomas E. Schneider | Holena M.P.E.A.          |         | ✓      |
| Don Judge           | MT STATE AFL-CEO         |         | X      |
| JAY REARDON         | USWA LOCAL 72            |         | X      |
| Kathy Kirsch        | Boulder                  |         |        |
| Ben Havdahl         | MT Motor Carriers Assn   | X       |        |
| DARRELL HOLZER      | YELLOWSTONE VALLEY LABOR |         |        |
| Bill Olson          | Mt. Contractors          | X       |        |
| GARY SCHWEDER       | Whin-fish                | ✓       |        |
| BARB TURNER         | "                        | ✓       |        |
| STU McQuade         | KALISPELL                | ✓       |        |
| Dorson Morris       | M.A.C.                   |         |        |
| Len Bracher         | I.U.O.E. #400            |         | ✓      |
| Mike McCain         | Dept of Job Ind.         | X       |        |
| Don Oller           | Ms. Wood Products Assn   | X       |        |
| Tom Owens           | Owens & Harst            | X       |        |
| Bernie Sweet        | Rep. Dist. #64           | X       |        |
| Paul King           | Missoula                 |         | ✓      |

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LABOR

COMMITTEE

2013

BILL NO. HB 56

DATE ~~6/26/89~~ 6/27/89

SPONSOR DRISCOLL

| NAME (please print) | RESIDENCE            | SUPPORT | OPPOSE |
|---------------------|----------------------|---------|--------|
| JAMES WOSHNER       | GREAT FALLS          |         | -      |
| Terry Minow         | MT Ed of Teachers    |         | ✓      |
| Phil Campbell       | MEA                  |         | ✓      |
| Stuart M. Zunde     | Kalspell             | ✓       |        |
| Michael Sherwood    | MTLA                 |         | ✓      |
| Charles Brooks      | MT. ROT. 17550C      | ✓       |        |
| Carol Daly          | Kalspell             | ✓       |        |
| Long Stalup         | Miroula              | ✓       |        |
| Margaret            | MT. Self Transcribe. |         |        |
| Juni Twizel         | MT CHAMBER           | ✓       |        |
| John P. Kelly Jr.   | Superior             |         | ✓      |
|                     |                      |         |        |
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Sabor

COMMITTEE

3 of 3

BILL NO. HB 54

DATE 6/27/89

SPONSOR Bardonia

| NAME (please print)         | RESIDENCE           | SUPPORT | OPPOSE |
|-----------------------------|---------------------|---------|--------|
| <del>Thomas Schneider</del> | <del>MPEA</del>     |         | ✓      |
| <del>Steph Dama</del>       | <del>Missoula</del> |         |        |
| <del>James J. ...</del>     | <del>n m</del>      |         |        |
| <b>Tucker Hill</b>          | <b>Champion</b>     |         | ✓      |
| Charles Brooks              | MT Rotn. / 1755 DC  |         | ✓      |
| Deane Wood                  | Mt. Hill Immersion  |         | ✓      |
| Arden Morris                | MAD                 |         | ✓      |
| Jim Tutwiler                | MT CHAMBER          |         | ✓      |
| Carol Daly                  | Kalispell           |         | ✓      |
| Leen Stalcup                | Missoula            |         | ✓      |
| Guria Shaban                | Bar Chamber         |         | ✓      |
| Jon Allen                   | Mt. Wood Park Assoc |         | ✓      |
| Jay Kessler                 | U S W A Local 72    | ✓       |        |
| Ben Hurdal                  | MT Motor Carriers   |         | X      |
|                             |                     |         |        |
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