MINUTES OF THE MEETING
FINANCE AND CLAIMS
MONTANA STATE SENATE

April 1, 1977

The nineteenth meeting of the Senate Finance and Claims committee met on the above date in room 331 of the State Capitol. Roll call was taken and Senator Thiessen, Chairman called the meeting to order at 8:06 AM.

House Bill 646 was explained by Representative Fagg. He said this is basically the same bill we passed two years ago. I has to be funded every biennium since it is a diversion of Highway funds. He said they have tried to make it more equitable.

Mr. Byron Roberts Assistant Administrator of the Planning Division of the Department of Community Affairs who was introduced as the author of the amendments and the one who drafted the bill. He said this bill puts $300,000 for a biennium for use of the cities and counties for public transportation. It is paid at the end of the biennium. The counties may use it for bridges or road construction if they do not have a public transportation system. The city of Billings and of Helena are the only two cities who are receiving benefits from this fund, there are around 40 counties. It is apportioned on a formula as well as eligibility basis using the gas tax method, and is sent out directly from the treasurers office.

This bill would change it to a lump sum to be allocated in a more equitable manner. The amendments were on the formula as well as the definition of the act. The current formula apportions funds as to the number of passengers per mile as well as the amount of deficit to occur.

Dave Hunter, League of Cities and Towns spoke in support of the bill.

John Crawley, Planning Director for Missoula said they are in the process of starting a public transport system in Missoula. He said the cost to the taxpayers for the first year would be about $538,000. He said if they were going to be responsible they had to look at public transportation because of the air polution problems in the Missoula area.

Mr. G. L. Nurse, Missoula spoke for the Senior Citizens and said they support the bill.

Gregg McCurdy, Montana Association of Counties said they support the bill.

Dave Moe, Helena chapter of the AARP said the retired persons favored this bill. He said they realize the automobile places in our life, but so does mass transportation.

Luke McTagg, representing the senior citizens in Billings said he felt mass transportation was a must. He said he would leave testimony with the committee.

Marilyn Hamilton, representing herself said she and her mother used the transportation at least once per week, and she did not know what they would do without it. This was in Helena.

Arlene Loble, City of Helena, said this is her job--the public transportation system. She said there is no way to make this type of system self supporting and still provide transportation for the poor and handicapped as well as the senior citizens. She said the cost per passenger runs $1.20. They charge 25 cents per person except to the senior citizen and handicapped, and they pay 15 cents per ride.

Opponents for the bill were Larry Tobiason, Montana Auto Assn., said he felt the roads needed the money and it should not be diverted from the Highway funds. Testimony attached.

Earl Moritz, representing the Highway Users Association said he did not want to deny the senior citizens anything, but he did feel Highway Funds should not be diverted. He recalled the session when he was Senator and the fight that was centered around the anti-diversion funds. He said in Montana the only way to get to many of the areas was by highway, and he felt the money should stay there.

Larry Huss, Montana Contractors Association spoke against the bill. He said he was in agreement with what had been said against the bill.

Don Coleman, Montana Motor Carriers Association said he said by diverting these funds they were endangering $2 million in Federal funds.

Questions were asked from the committee. Under questioning it was decided the $2 million figure was not necessarily accurate.

House Bill 86 was explained by Representative Kimble as the zero based budgeting bill, and while it was based on the zero based budgeting of both the Texas Instrument Company and the the State of Georgia when Carter was Governor. He said these two examples were based on total committment, but this was a measure that would be used as a trial basis, and was adapted to use of a small state.

Representative Uhde spoke in favor of the bill.

Rod Gudgel said he felt this was a necessary tool for the legislature, and until the Legislature gains more balance of power we will never know how effective any program or department is.

Opponents to the bill were Dave Lewis who said he was speaking for the Budget office said he did not feel after the directive of the Legislature last year to work up a priority system that they had paid that much attention to it, and it had cost the department many many hours of work. He said to the best of his knowledge only one sub committee used this.

Questions were asked by the members of the committee. Some of the concerns of the committee were that possibly there could be more time trying to justify their existance than in actual performance. They also wondered if there would eventually be some profit shown from this type of program. There was concern that when the additional information came in it meant more time involved for the Legislature to review it.

House Bill 491 was explained by Representative Hansen He said all the funds involved were ear marked funds.

Opponent to the bill was Doyle Saxby, Department of Administration who said he did not feel we should set a new precedent here. People should be paid for actual expenses, but not be paid for days in travel, overnight, etc, in addition to expenses. Only in actual days at a meeting should they receive a set amount. If they want to op;en it up and include wages while traveling, then they should open it up to all and not to a select few.

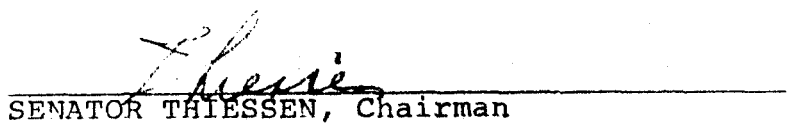
Amendments were suggested to change "shall" to "may" and to remove the travel, etc. Some of the laws in existance now were checked in the code book and the lines in the bill which would be affected were given.

Motion by Senator Fasbender, second by Senator Etchart to strike all of the language which permits compensation while traveling to and from board meetings.
Voted and passed. Unanimous.

Motion by Senator Fasbender, second by Senator Etchart to strike all of the language referring to "while engaged in board business" . Voted, passed unanimous.

Motion by Senator Etchart, second by Senator Boylan that House Bill 491 be poncurred in as amended Voted and passed. Unanimous.

The meeting adjourned, to be called again at 11 A.M.



SENATOR THIESSEN, Chairman

SENATE F+C COMMITTEE

BILL _____ VISITORS' REGISTER DATE 4/1

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
John Crowley	Missoula Planning Dept.	646	X	
G L Morse	Missoula Senior Citizens	646	X	
Dan E Moe	AARP	646	X	
[illegible] Hamilton	myself	646	X	
[illegible]	myself	646	X	
[illegible] Dawson	Concerned Citizens	646	X	
[illegible]	Dept of Adm	491		✓
Gary Tobiason	Mont. Auto Assoc.	646		X
Harry Hansen	Rep Dist 64	491	X	
[illegible]	Mont Cat Assoc	646		X
Don Coleman	Mont Motor Carriers Assn	646		X
[illegible]	Highway User Fed	646		X
Gerald L. McCurdy	MT. ASSN. OF COUNTIES	646	X	
[illegible] J. Bertagna	City of Billings Transit Div	646	X	
[illegible]	Billings Montana	646	X	
Arlene Lobl	City of Helena	646	X	
Gene Huntington	OBPP	86		X
David L. Hunter	MT. League of Cities	646	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE COMMITTEE FINANCE AND CLAIMS

Date 4-1-77 H Bill No. 491 Time 10:02

NAME		YES	NO
Himsl, V.C.		✓	
Story			
Etchart		✓	
Kolstad		✓	
Lockrem	excused		
Nelson		✓	
Smith			
Stephens		✓	
Fasbender		✓	
Boylan		✓	
Flynn		✓	
Mehrens			
Regan			
Roberts			
Thomas			
Thiessen, Chairman		✓	

Secretary Chairman

Motion: (1) [illegible] Amend

(2) Amend

[illegible] 9 Amend

8 AM.

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

45th LEGISLATIVE SESSION 1977 Date 4/1/77

NAME	PRESENT	ABSENT	EXCUSED
THIESSEN, CH	✓		
HIMSL, V.C.	✓		
STORY	✓		
ETCHART	✓		
KOLSTAD	✓		
LOCKREM			
NELSON	✓		
SMITH	✓		
STEPHENS	✓		
FASBENDER	✓		
BOYLAN	✓		
FLYNN	✓		
MEHRENS	✓		
REGAN	✓		
ROBERTS	✓		
THOMAS	✓		

HB 646

CITY OF BILLINGS
TRANSIT DEPARTMENT
LOUIS J. BERTAGNA, DIRECTOR
P. O. Box 1178 Phone 252-3355
BILLINGS, MONTANA 59103

March 31, 1977

Cornie R. Thiessen, Represenative Senate District No. 27
Chairman, Finance and Claims Committee
Senate Room 331
Capitol Station
Helena, Montana 59601

The following is written testimony as expressed during the Finance and Claims Committee hearing on April 1, 1977 pertaining to the support of SB 646 for State Subsidy of Mass Transit.

Mr. Chairman, Members of the Committee and Senate Represenatives;

My name is Louis J. Bertagna, City of Billings Transit Director representing the City of Billings in support of SB 646.

The City of Billings residents and local government realize the automobile plays an important part of the American Way, and it presently dominates our present way of life. But, "There Is A Need For Mass Transit".

This need is recognized by most, especially the Federal Government, our local government, the residents of Billings and other communities with enough foresight to implement a Mass Transit System during these crutial times.

To emphasize the importance of Mass Transit the Federal Government has apportioned eleven billion dollars to fund the implementation and support of Mass Transit Systems of the nation. In Montana alone the federal government has set aside 4.1 million dollars for Mass Transit Capital Improvements and operating subsidies on a 80/20 or 50/50 match basis. This match consists of 80% federal funds for 20% local funds towards Capital Improvements and 50% federal to 50% local funds for operating subsidies. Not to mention the funds allocated under seperate federal funding sources towards aiding and assisting the elderly, handicapped and special technical study program grants not included in the

previously mentioned 4.1 million for this state alone.

In brief, I would like to state that there is more federal funding available to Montana for Mass Transit than our state and local governments could provide the appropriate match of local funds to obtain under these present conditions. These federal funds unless used in a specific period of time, will be reverted to the U.S. Government for reapportionment to other locations.

In the past five years the Billings Community has supported its Transit System to the extent of approximately $250,000 per year because we know there is a definate need to meet the transportation needs of our growing community. In addition, the federal government has contributed approximately .5 million dollars towards our capital improvements and operating expenses. To date, the State of Montana has contributed $54,000 towards our Mass Transit needs, about 2% of the total costs. In addition, the federal government requires that local transit properties maintain a specific level of effort towards the continuation or improvement in their transit services in order to be eligible for federal subsidy programs. The $54,000 that was provided by the State can be considered as a part of the local share of local matching funds for operating subsidy, capital improvements, elderly and handicapped projects and technical study grants. Should this state subsidy be discontinued the entire burden shall fall upon the local taxpayer to make up the loss of these funds through an additional means of taxation which we all feel is entirely unnecessary.

During the last League of Cities and Towns convention a resolution was passed by the League to support the continuation and improvement of state subsidies towards local government owned and operated Transit Systems.

This resolution was passed on the basis of the local communities interest and support of their Mass Transit System as follows:

In the past four years the City of Billings has carried in excess of 1.5 million passengers of which 205,000 were Senior Citizens, who ride free, approximately 15,000 handicapped at reduced fares, and an undetermined number of students. Taking all these factors into consideration, our Billings Transit System has demonstrated a growth program from four routes to eleven routes and a 280% increase in ridership over the past four years.

In view of our past energy crunch, the present State Energy Conservation Commission has displayed an ever-growing concern to establish definate plans of action towards

conserving the energy resources of our state and the nation. This alone indicates a definate need and improvement of Mass Transit Facilities in Montana.

Our community is full of people who need adequate bus service, most particularly our younger, older and handicapped citizens. Many of our oldsters and handicapped are isolated in small rooms, apartments and nursing homes. Confined as they are, with meager incomes and little means of transportation, they all, too often, become medical, psychiatric and psychological problems, thereby placing great demands upon the communities medical and welfare services that could be avoided. By enabling our youngsters, oldsters and handicapped to travel freely about the City, we can eliminate many of their problems and longer keep them as active, contributing members of our society.

Our Transit System provides service to some of the residents of our City presently without public transportation. The present routes do provide service to all public and elderly housing and many of the nursing homes, and all hospitals in our urban area.

It has been our intension to cover our entire City with a means of public transportation to schools, colleges, hospitals, clinics, doctors offices, nursing homes, places of employment, business sections, shopping centers and recreational facilities within our community. Our present ridership survey indicates the systems service to the elderly and handicapped is approximately 20% of the riders.

The City is also working with numerous community agencies and organizations in an effort to obtain a continuous source of suggestions towards the improvement of the City owned and operated Mass Transit System. We, as City Government, owe this service to the citizens of our community.

In addition I would like to add that our City has budgeted for the anticipated $54,000 state subsidy as Transit revenues towards our All-Purpose General Fund. The elimination of the state subsidy will have direct adverse effect on our Transit System's revenues to the General Fund as well as reduce the amount of Federal Subsidy the City's Transit System would be eligible to receive by $27,000. This would result in a reduction of services now being provided for the Elderly and Handicapped in the City of Billings and parts of Yellowstone County.

In closing, I wish to express that the City of Billings, Montana, is in support of SB 646 and stands ready to answer any questions from our elected officals in the Senate, as well as provide any necessary future support of Mass Transit in State of Montana.

Respectfully Submitted,

L J Bertagna

Louis J. Bertagna
Transit Director
Represenative of and for the
City of Billings, Montana

LJB/sm

BILLINGS - YELLOWSTONE
CITY-COUNTY PLANNING BOARD

ROOM 303 · COURTHOUSE PHONE 252-5181
EXT. 205
BILLINGS, MONTANA 59101

March 31, 1977

Mr. Cornie R. Thiessen, Chairman
Finance and Claims Committee
Senate District 27

Subject: Senate Bill 646 - Revision to State Transit Subsidy Act

Dear Mr. Thiessen,

On behalf of the City of Billings and Yellowstone County, I wish to supply the Finance and Claims Committee with the following written testimony:

In Billings, we are in the process of developing a long range Transportation Plan to hopefully meet urban travel demand to the year 2000. It is well realized in the Billings community that the automobile is and will continue to be the primary mode of travel and thus our planning efforts should be directed towards building new and better streets. However, due to a number of growing problems in urbanized areas such as Billings, we do not think that the automobile in itself is the answer to urban mobility. Other modes of travel are available which can play an important role in moving people at a low cost in monetary, environmental and energy terms. What we are trying to do in Billings is strike a balance of transportation facilities and services so as to allow the evolution of an economically, environmentally and socially sound transportation system. For this reason we think that mass transit should and can play a major role in the total make-up of Billings' transportation system.

I would like to briefly touch upon four reasons why the City of Billings and Yellowstone County are in support of mass transportation and specifically this Senate Bill.

(1) Mass Transportation is an Economical Way to Meet Areawide Travel Demand

The Billings area faces the prospect of spending large sums of money on street and capital-intensive improvements to meet the rapidly growing demand for travel throughout the community. With travel demand increasing at a rate as high as 10% annually along several important highways, the time has arrived to consider alternative means of moving people economically. The fact is that not enough funds are available to continually provide motorists with the necessary street facilities to handle future travel demands. Local officials now realize that if more trips can be diverted to alternative modes of travel, such as mass transportation, money can be saved.

CITY OF BILLINGS
TRANSIT DEPARTMENT
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P. O. Box 1178 Phone 252-3355
BILLINGS, MONTANA 59103

March 31, 1977

Cornie R. Thiessen, Represenative Senate District No. 27
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Montana Automobile Association

STATE HEADQUARTERS OFFICES: P. O. BOX 4129
607 N. LAMBORN / HELENA, MONTANA 59601
PHONE 442-5920

My name is Larry Tobiason, Executive Vice President of the Montana Automobile Association.

My purpose for appearing before this committee is not to deny the right of Public Transportation Systems to operate or to deny the public the right to use public transportation systems. My purpose is to point out to this committee the condition of the Montana Highway Road System and the damage that is being done when we allow diversion of highway funds.

The motorists of this state have contributed their money to the highway trust account that is to be used solely for the purpose of constructing, maintaining and upgrading our highway system. When we allow this type of diversion we are asking all the motorists of this state to subsidize a system of transportation that only benefits a few.

Montana's roads are deteriorating rapidly. There is a desperate need to upgrade, repair and improve our present highway system if we are to maintain our precious freedom of mobility. Many of our roads and streets were built decades ago and are dangerous, presenting hazards to life and property.

According to figures provided by the Montana Department of Highways, there are 2,843 miles of primary and rural extension roadways that are in dire need of reconstruction. At todays cost, this would be approximately $882,000,000. And this does not include the Secondary Highway System. In addition there are 146 bridges in Montana that need to be replaced because of structural and width deficiencies.

Now if that doesn't scare you, let's consider the Interstate System.

Branch Offices: BILLINGS 2923 2ND AVE. NORTH (59101) GREAT FALLS 1812 10TH AVE. SOUTH (59405) MISSOULA 306 W. BROADWAY (59801) KALISPELL 116 FIRST AVE. WEST (59901)

tent, why the legislature would have any difficulty in stating this in simple, straight language, rather than incongruously grouping it in the same sentence with a definition of a "gainful occupation".

To find what the legislature did, in fact, intend we are restricted in our search to the statute itself. The rule on this was stated in Green vs. City of Roundup, 117 Mont. 160, 157 Pac. (2d) 1010, as follows:

> ". . . While it is the general rule that it is the duty of this court to ascertain the intention of the legislature, if possible, it is equally true that the intention must be gathered from language employed by the lawmakers . . . "

This restriction on source is emphasized in, Mills vs. State Board of Equalization, 97 Mont. 13, 33 Pac. (2d) 563, where Justice Anderson said:

> " . . . the intention must be gathered from the language employed by the lawmakers and not from street rumors or other similar sources." (Cases cited.)

With this background in mind we see that it is necessary to supply and delete language to give this amended section some semblance of meaning. We could restate it so that *only* income from a "gainful occupation" is computed, but, that ignores the phrase "from any source".

We could restate it so that all income whether from veterans' pensions, social security, etc., is computed. But that ignores the fact that the sentence defines a "gainful occupation".

However, the law forbids this approach as a means of arriving at the legislative intent.

Section 93-401-15, R.C.M., 1947, states:

> "Construction Of Statutes And Instruments—General Rule. In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."

In the Mills case, supra, the rule is positively stated to be:

> ". . . This court will not read into a statute words necessary to make it conform to a supposed intention of the legislature . . . "

In Re Baxter's Estate, 101 Mont. 504, 54 Pac. (2d) 869, the rule is stated:

> "In the construction of a statute it is not permissible to read something into or out of it to make it understandable or workable . . . "

The rule has been strictly adhered to in a host of Montana cases. The reason for it was well expressed by the Indiana Supreme Court in Ry. Comm. of Indiana vs. Grand Trunk Western Ry. Co., 179 Ind. [illegible], 100 N.E. 85[illegible]:

> "The courts cannot venture upon the dangerous path of judicial legislation to supply omissions or remedy defects in matters committed to a coordinate branch of the government. It is far better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however, desirable they may be, than for judicial tribunals to transcend the just limit of their constitutional powers."

That is true here. The legislature will have to correct the error made by this amendment if it is to be corrected.

In the meantime it is my opinion that because the amendment to the last sentence of Section 71-103, R.C.M., 1947, [illegible] the law forbids "reading something into or out of it to make it understandable or workable" the amendment is unenforceable.

Very truly yours,

ARNOLD H. OLSEN,
Attorney General.

What is the effect of substitute House Bill 204 on Section 71-1003 (a), R.C.M., 1947.

Before the last amendment, this paragraph read:

"Eligibility Requirements For Aid To Persons Having Silicosis, As Herein Defined. Payments shall be made under this chapter to any person who:

(a) Has silicosis, as defined in this chapter, which results in his total disability so as to prevent him from engaging in a gainful occupation. The term "gainful occupation" as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential."

• • •

This paragraph defines the term "gainful occupation". It was amended as here concerned, by changing the period at the end to a comma and adding this clause:

"but, shall mean any person having an income from any other source exceeding one hundred fifty dollars ($150.00) per month."

The result is that the last sentence now reads:

"The term 'gainful occupation' as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential, but, shall mean any person having an income from any other source exceeding one hundred fifty dollars ($150.00) per month."

Immediately, the question arises. What shall mean any person? A gainful occupation? A silicotic? A payment? What is meant is not at all clear.

A familiar canon of statutory construction tells that where the language of a statute is plain, simple, direct, and unambiguous, there is no room for interpretation. It interprets itself.

Our reading of this paragraph is enough to convince that it is greatly in need of interpretation to give it a meaning so it can be administered.

The subject of the paragraph is a "gainful occupation". With the amendment, the paragraph seems to say that a "gainful occupation" is a person with an income from any other source exceeding $150.00 per month.

The ordinary meaning of the term "gainful occupation" is any work or business that is beneficial, advantageous or profitable. This meaning has been modified by the statute to exclude intermittent light labor, but, legal authority could be ransacked without disclosing that a "gainful occupation" is a person, in fact, without disclosing that a "gainful occupation" is something other than a work or business. With the amendment, the paragraph becomes obscure.

The entire statute (Section 71-1003, R.C.M., 1947) deals with the eligibility requirements silicotic victims must meet in order to receive benefit payments under the silicosis act. A reading of it discloses the following internal arrangement by paragraph:

(a) Defines a "gainful occupation" and how it effects eligibility;

(b) States the Montana residence requirements;

(c) States the eligibility of medical institutional inmates;

(d) States the eligibility when the silicotic also draws payments under the workmen's compensation act.

We can guess that the amendment was intended to impose another qualification on eligibility by setting an income limitation of some sort. That is possible, but then we wonder if such was the case, why the legislature did not place it under paragraph (d) where it would logically fall, or, make a new paragraph of it. We wonder also, if such was the in-

Opinion No. 22

Silicosis—Income Limitations—Gainful Occupations—What Constitutes.

HELD: Words cannot be supplied to or omitted from a statute to determine the legislative intent.

A "gainful occupation" under the Silicosis Act is a work or business; it is not a person.

June 30, 1955.

Mr. N. A. Rotering,
County Attorney
Silver Bow County
Butte, Montana

Mr. John C. Harrison
County Attorney
Lewis & Clark County
Helena, Montana

Gentlemen:

You ask me a number of questions about the effect of the amendment to Section 71-1003 (a), of substitute House Bill 204, enacted by the last legislative assembly.

For this opinion these questions may be consolidated and restated as one question:

SILICOSIS PAYMENTS

This analysis addresses payments for silicosis disability under Section 71-1004, R.C.M. 1947, wherein eligible persons may receive $175 per month from the Workers' Compensation Division. The legislation was enacted in 1937 to provide payments to persons having silicosis (referred to as silicotics) which renders it impossible for them to follow any substantial gainful occupation. Originally, the statute provided that $30 per month would be paid to silicotics who were totally disabled. The amount was gradually increased to $175 over the years. When the program was initially enacted, there were no other programs available to care for workers disabled by silicosis. However, since then the federal social security program and the Montana Occupational Disease Act have provided for total disability protection. In 1957 the federal social security disability program became avilable to persons over 50 years of age. The federal social security program was later revised--in 1960--to enable disability payments to be made to disabled workers of any age. The Montana Occupational Disease Act which provides payments for silicosis complicated disabilities was enacted in 1959.

The general silicosis statute initially provided that benefits were payable only to individuals with silicosis; however, in 1974 the statute was amended to pay the silicosis benefit to widows of silicotics as long as the widow remained unmarried. However, a widow whose spouse died prior to March 14, 1974, is limited to one-half the silicosis payments provided her taxable income is not more than $6,800. There are currently two bills related to the silicosis payments being considered by the legislature--House Bill No. 140 to raise the monthly benefit for silicotics from $175 to $250 and Senate Bill No. 217 to raise benefits for widows

whose spouse had died prior to March 14, 1974, to $250--equal to the regular monthly payment to silicotics and widows whose spouses died since 1974.

The Nature of Silicosis

Silicosis results from the inhalation of silicon dioxide dust into the lungs. Harmful quantities of such dust most commonly occur in underground mining; however, some of the silicotics receiving payments under provisions of Section 71-1004, R.C.M. 1947, contracted silicosis above ground. The silicon dioxide dust lodges in the lungs causing a scarring and hardening of portions of the lungs. Such a condition restricts the transfer of air and causes shortness of breath. Generally, the Workers' Compensation Division panel of pulmonary specialists (three medical specialists) indicate that the disabling effect of pure silicosis, unless in advanced stages, was shortness of breath. Silicosis payments differ from federal black lung payments in that black lung (pneumoconiosis) payments are available to only miners who worked in coal mines. Those payments are for total disability caused by a disease resulting from inhalation of coal dust.

Operation of the Silicosis Program

Applications for silicosis payments are processed essentially as other workers' compensation cases. The applicant is examined by one of the three "pulmonary specialists" used by the division for making silicosis determinations. Those qualifying for occupational disease benefits are placed under the division's regular program. If the restrictions for the occupational disease benefits are not met, the applicant is placed under the general fund-silicosis program. The same silicosis disability determination is sufficient for qualifying under either program--the applicant under the silicosis program is just as

disabled as those receiving occupational disease payments if he is eligible. Otherwise, he is not entitled to either occupational disease or silicosis benefits, but must rely on social security disability retirement benefits or other retirement benefits.

Presently, all eligibility decisions are based on a physician's determination of total disability from performing heavy manual labor (mining) and that the disability relates to silicosis. This is the way the law has been applied even though the law does not specifically relate to heavy manual labor but rather to any gainful occupation (Section 71-1003(a), R.C.M. 1947, described on page 6).

In order to assess the operation of the silicosis program, we examined two groups of claimants: the 80 most recent silicosis applicants encompassing the period November 5, 1976 back to March 5, 1970, a period of almost seven years; and the 100 oldest active files for claimants who applied for silicosis benefits during the period September 17, 1941 through June 5, 1961, a period of almost 20 years. In our review of the most recent group (80 claimants) we analyzed a multitude of factors such as the work background, origin of disability, and income data. In contrast, our review of the 100 oldest active files concentrated only on income data primarily to determine whether the two groups differed. The differences were not significant as is pointed out in the paragraphs which follow.

We also examined 80 files for payments to widows whose silicotic husbands had died prior to March 14, 1974, and 46 files of applicants who had been denied silicosis benefits during 1977 and 1976.

We found that most claimants in the most recent group of 80 claimants are currently living within Montana although 10 percent of the silicotics and 12 percent of the widows have current addresses outside the state.

We noted that 86 percent of the active silicotics in the most recent group of 80 claimans listed the Anaconda Company as the exposure source to silicon dust. We did not find any claimants in this group listing out-of-state mines (coal or otherwise) as the source of the disease. Data was somewhat incomplete for the widow payments; however, for those files showing the source of their spouses' silicosis, 87 percent listed the Anaconda Company. Similarly, 81 percent of the denied applications listed the Anaconda Company as the source of silicon dust. Only one application was denied because the person failed to meet the ten year residency requirement of Section 71-1003(b), R.C.M. 1947. Over the last 5½ years the division has denied benefits to 67 percent of the applicants, generally because they did not have disabling silicosis.

Trend of the Silicosis Program

The earliest data available on the program shows that 286 claimants received silicosis benefits of $30 per month during fiscal year 1941-42; this number gradually increased until fiscal year 1960-61 when 779 claimants received $75 per month. Since that fiscal year the number of silicotics declined until fiscal year 1974-75 when 271 received $175 per month. The gradual decline stopped that year because of statutory amendments permitting payment to surviving spouses of deceased silicotics. At February 28, 1977, there were 245 silicotics receiving payments, 31 widows receiving payment and 257 widows receiving one-half payments.

The general fund pays the entire cost of the silicosis program. The cost of the silicosis program since fiscal year 1965-66 has been as follows:

Fiscal Year		Monthly Payment	Number of Claimants		Amount	
1965-66		$ 90.00	547		$626,783	
1966-67		90.00	508		585,175	
1967-68		125.00	455		707,801	
1968-69		125.00	412		654,441	
1969-70		140.00	391		678,888	
1970-71		158.50	361		645,261	
1971-72		158.50	321		640,116	
1972-73		158.50	311		608,366	
1973-74		175.00	303		618,239	
1974-75		175.00	271		585,170	
1975-76	Silicotics and Widows	175.00	271	528	585,239	856,926
	Widows (One-Half Pay)	87.50	257		271,687	
1976-77	Silicotics and Widows	175.00	276	533	389,657	594,232
(8 Mo.)	Widows (One-Half Pay)	87.50	257		204,575	

Source: Compiled by Office of the Legislative Auditor.

Fiscal notes for the two bills currently being considered by the legislature indicate an increased biennial cost of about $1,566,225.

In addition to the silicosis program financed by the general fund, the Workers' Compensation Division operates the Occupational Disease Act (Section 92-1301, R.C.M. 1947) enacted in 1959. This statute also provides payments to workers disabled due to silicosis. This program is financed by employers as a part of the workers' compensation insurance program. Disability payments under the Occupational Disease Act are substantially higher than the general fund silicosis program. However, the qualifications under this program are more restrictive in the sense that the worker must have been exposed to harmful levels of silicon dioxide dust for 1,000 work shifts in the eight years prior to the disability and total disability must occur within four years from the last day the employee worked for the employer against whom the claim is filed. Any silicotic qualifying for benefits under the occupational disease law is excluded from the general fund silicosis program by a specific provision of the law (Section 71-1003(d), R.C.M. 1947). This statute provides benefits only if workers' compensation payments are

less than $175 per month. This will not occur since workers' compensation payments are substantially in excess of $175 per month.

We contacted six western states (Wyoming, Colorado, Utah, Arizona, Idaho, and Nevada) to determine whether they had a silicosis program similar to the one in Montana. None of the states paid silicosis through general fund appropriations but rather covered silicosis through workers' compensation insurance liability by employers.

Eligibility for Silicosis Benefits

Both Sections 71-1001 and 71-1003, R.C.M. 1947, state that payments are for persons totally disabled due to silicosis. The division makes its decisions of disability and eligibility on the basis of examinations by one of the designated pulmonary specialists. Section 71-1003(a), R.C.M. 1947, also provides for an income test as follows:

> "The term 'gainful occupation' as used herein shall not be construed to mean occasional or intermittent light employment when the ability to do manual labor is not essential, but shall mean any person having an income from any other source exceeding one hundred fifty dollars ($150.00) per month."

The $150 per month test is not being applied to widows of silicotic husbands. However, an additional income test is applicable to widows of those claimants who died prior to March 14, 1974--each may not earn more than $6,800 per year. (This section is subject to amendment by Senate Bill 217 which eliminates the $6,800 income test.) Although the applications used by the division and forms used for subsequent year follow-up request income data, the system is totally honorary. That is, the division does not make independent tests of income reported or not reported by applicants through collateral sources such as through the Employment Security Division's wage records.

According to data submitted by the claimants, most silicotics receive pension income (such as social security and company pensions)

from other sources in excess of the $150 limitation imposed by statute. Of the 80 files examined for the most recent group of silicotic payments, six claimants did not report income data. The average pension for the remaining 74 claimants included in our test was $364 monthly, exclusive of the $175 silicosis payment. Only four of those reporting income data showed income less than $150. Most of the claimants reporting income (54 percent) indicated a company pension and all would be entitled to social security if totally disabled regardless of age. All except one of the claimants reporting income data indicated that they received social security payments. Similar statistics were found to exist among these claimants in the group of 100 oldest active files. Only nine claimants had total income of less than $150. Three of the claimants in the group of 100 did not report income data. The average pension for the remaining 97 claimants was $290.

The $150 limitation of income was introduced by a 1955 amendment adding the words "but shall mean any person having an income from any other source exceeding one hundred fifty dollars ($150.00) per month." An Attorney General's opinion (26 Opinions of the Attorney General, No. 22, June 30, 1955 copy attached) held that this amendment was "meaningless," that the legislature would have to correct the error and that the income limitation of the amendment was unenforceable.

The division operates the program inconsistent with both the law and the Attorney General's opinion. The law (Section 71-1003(a), R.C.M. 1947), specifies that applicants with "income from any other source" in excess of $150 are disqualified while the Attorney General's opinion held this provision unenforceable. Nevertheless, the division interprets the law as disallowing silicosis benefits to applicants with wages in

excess of $150 per month, but disregards pension income of any amount. We observed three instances in the last seven years where applicants were denied silicosis benefits because they had wages in excess of $150. While there may have been other such denials, the division does not have statistics compiled.

If the $150 statutory limitation were literally construed and applied, nearly all of the claimants (95 percent in the most recent group and 91 percent in the oldest group) currently receiving silicosis benefits would be ineligible because of excessive income. That is, four (5 percent) of the 80 claimants in the most recent group and nine (9 percent) of the 100 claimants in the oldest group show income less than the $150 per month limitation specified by the law.

We made a limited test of Employment Security Division's records for 14 of the claimants in the most recent group to identify instances where claimants had earnings. Our test disclosed two instances where wage earnings occurred at the same time silicosis payments were made.

The average pension income of the widows, as reported by the claimants was $235 exclusive of the silicosis payment. There were only four widow claimants receiving a pension of less than $150 per month. Although the statute specifies that the wage earnings of these widows cannot exceed $6,800 per year, the division does not test for wage earnings with the Employment Security Division's records.

Our examination of the 80 most recent active claimant files showed that most claimants applied for silicosis benefits at normal retirement or later. We found that 58 claimants in this group, or 72 percent, applied at retirement age or later. Only 22 claimants, or 28 percent, of the 80 claimants were less than retirement age when application was

made for the silicosis program. Most of these 22 applicants were getting social security disability payments and ten were getting company pensions.

We noted three applicants in the most recent group who applied for the silicosis program prior to retirement while still gainfully employed. The division denied the benefits because their earnings were greater than the prescribed $150 limitation. Two of these applicants worked an additional two years and after retiring, reapplied and were subsequently granted benefits. The other was working as a sales representative and continued another 1½ years before reapplying at retirment. This applicant was mistakingly paid silicosis payments for 13 months on the basis of the first application while working full time as a sales representative. The division found and corrected this mistake.

In examining files for the group of 80 most recent active claimants we also identified the number of years since the last date of exposure to silicon dioxide dust. In one case a parts manager who applied for silicosis benefits after he retired at age 65 had not been exposed to silicon dioxide dust for 34 years. We observed many instances where 11-12 years had lapsed since last exposure.

Our examination of the 80 most recent claimants and the 100 oldest active claimants suggests that the silicosis program is used as a supplemental retirement program in addition to aiding workers totally disabled by silicosis. Although the statutes do not prohibit payment of benefits after reaching normal retirement it appears the program was intended to assist disabled workers rather than provide supplemental benefits after normal retirement. We questioned the three specialists to determine how a person could work until normal retirement and then become disabled.

One commented that such a condition could not exist because it does not fit the pattern of the disease. Another advised that most silicosis detected by X-ray does not result in disablement and that if there is not substantial impairment of the lung capacity with other related problems, the person can work. He advised that his description of the silicosis effect is simply that silicosis is "the straw that broke the camels back"--without silicosis, chronic bronchitis or emphysema would not be disabling. The other specialist expressed the belief that applications for the program are prompted more for economic reasons at retirement than because of disability.

SUMMARY

Time constraints did not permit us to make an exhaustive evaluation of the general silicosis program; however, the data observed suggest that problems exist which should be considered.

First, there is a question relative to the payment of benefits to the majority of the silicotic claimants. The law provides for disqualification of applicants with monthly income in excess of $150. The Attorney General held this provision unenforceable. The division applies its own interpretation considering only $150 per month wages earned from a gainful occupation. Under a literal application of the law nearly all of the silicotics presently receiving silicosis benefits would be ineligible for silicosis benefits.

Second, the division does not perform an independent verification or test of income reported by claimants. Any income reporting system which relies on honorary reporting becomes much more effective when subject to independent verification. The division should establish a process of verification with independent sources, i.e., the Employment Security Division's records, etcetera.

Third, a question exists as to the nature of the silicosis program: is it to provide assistance to persons totally disabled from silicosis or is it to be a supplemental retirement program. We found that 72 percent of the claimants attain eligibility for normal retirement benefits and retire before claiming total disability. This prevalent situation suggests that in the majority of instances the program operates as a supplemental retirement program.

Fourth, since enactment of the program in 1937, two other disability programs--social security and occupational disease--have been established which may obviate the need for the general fund silicosis payments. The cost of these two programs is financed by employer contributions.

March 31, 1977

[illegible] Thomas Hartnett
[illegible] House of Representatives
[illegible]
[illegible]

Dear Representative [illegible]:

In response to your request of March 17, 1977, we have looked into the [illegible] allegations. [illegible] of the [illegible] [illegible] Social Security Administration [illegible] officials. These allegations [illegible] the disposition of claims files and contact with [illegible] [illegible] [illegible].

Attached is a summary of our review of the [illegible] allegations. If we can provide further assistance on this matter please contact us.

Sincerely,

Morris L. Garrett
Legislative Affairs

[illegible]
Attachment
cc: Senator C. [illegible]
Representative [illegible]
Senator John L. Healy