MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 22, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on March 22, 1985 at 8:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL 402: Hearing commenced on Senate Bill 402. Senator Dave Fuller, District #22, sponsor of the bill, explained this authorizes a lump-sum advance settlement in certain workers' compensation cases. This occurs when all parties agree payment is due and will allow a worker to get immediate payment which is deducted from the final settlement.

Proponent Jan VanRiper, Chief, State Insurance Fund Bureau, Department of Labor and Industry, distributed to committee members Exhibit 1 which is attached hereto. Ms. VanRiper explained that this amendment is necessary should House Bill 453 pass. She suggested the committee delay action on Senate Bill 402 until House Bill 453 has been approved.

Proponent Norm Grosfield, an attorney who practices in workers' compensation law, offered his support of the bill.

Proponent George Wood, Executive Secretary, Montana Self Insurers Association, stated the bill as written clarifies the issue. It allows benefits and will make what is currently happening legal.

There being no further discussion by proponents and no opponents present, all were excused by the chairman and the hearing on Senate Bill 402 was closed.

SENATE BILL 281: Hearing commenced on Senate Bill 281. Senator Dave Fuller, District #22, sponsor of the bill by request of the Department of Labor and Industry, explained that this revises the method of calculating the amount of a permanent total benefits lump-sum workers compensation payment by discounting it by 7%, compounded annually. The Willis supreme court decision changed the policy for granting lump sum payments. Previous policy sums were being discounted to present value and the supreme court said this can not be done, added Senator Fuller.

Proponent Gary Blewett, Administrator, Workers Compensation Division, Department of Labor and Industry, explained this legislation is necessary due to the Willis decision. This will decrease the expected volume of lump sum payments and provide a 7% discount. A claimant must show why they can not live on the bi-weekly payment. Confusion and inequities exist in present law.

Representative Clyde Smith, District #5, offered his support of the bill.

Proponent Keith Olson, Executive Director, Montana Logging Association, explained that House Bill 281 was amended in the senate. This bill can not be amended for fear of losing. Montana pays 25 cents per $100 worth of payroll and must compete with Idaho who pays 16 cents per $100 worth of payroll.

Proponent George Wood, Executive Secretary, Montana Self Insurers Association, explained this legislation is a compromise and if amended, will fail.

Proponent Don Allen, representing the Montana Wood Products Association, explained the timber industry is suffering from a bad recession and this represents a good compromise.

Proponent Forrest Boles, President, Montana Chamber of Commerce, stated the chamber is happy with the original bill and a compromise is needed.

Proponent Karl Englund, representing the Montana Trial Lawyers Association, stated they worked long and hard in the senate to reach this compromise. There use to be a 2% discount rate, but the legislature removed this and prior to the 2% it was 5%. Nobody wants to see the system go bankrupt or see injured workers go without benefits, added Mr. Englund.

Proponent Norm Grosfield, an attorney who practices in workers' compensation law, and representing the Independent Insurance Agents Association of Montana, offered his support of the bill.

Proponent Riley Johnson, representing the National Federation of Independent Business, Professional Insurance Agents and the Montana Homebuilders Association, offered his support of the bill.

Representative Norm Wallin, District #78, offered his

support of the bill.

Proponent Irv Dellinger, representing the Montana Building Material Dealers Association and the Montana Hardware and Implement Dealers Association, offered his support.

Proponents George Allen, representing the Montana Retail Association and Jim Murry, Executive Secretary, Montana State AFL-CIO, offered their support of the bill.

Representative Driscoll asked Gary Blewett if the last time the premium was raised was due to an increase in health care cost. Mr. Blewett stated there has been an increase each year, but last year was the largest increase since 1981.

Representative Driscoll asked Gary Blewett if on page 4, line 15, it is in the workers best interest to have a good attorney and accountant. Mr. Blewett explained an accountant is needed and that the insurer will invest with the claimant to get the best settlement.

Representative Thomas asked Gary Blewett what will happen to the rates. Mr. Blewett explained that if the Willis decision and the bill were not present, the rates would remain as is. Due to the Willis decision and Senate Bill 281 there is an increase of 15%. The rates stay the same plus or minus 2%.

Representative Driscoll asked Gary Blewett if a person is hurt and never gets a raise, is this in the best interest of the worker. Mr. Blewett explained that this is a standard statement of law.

Representative Driscoll then asked Mr. Blewett if it is presumed workers squander money and if they receive a lump sum just before being poverty stricken. Mr. Blewett stated that is a presumption and yes that is when they would receive their money.

There being no further discussion by proponents and no opponents, all were excused by the chairman and the hearing on Senate Bill 281 was closed.

SENATE BILL 356: Hearing commenced on Senate Bill 356. Senator Stan Stephens, District #8, sponsor of the bill, explained this exempts newspaper carriers and part-time newspaper correspondents from coverage under the Workers' Compensation Plan. The 1983 legislature passed a law

requiring independent contracters to apply to the Division of Workers' Compensation for a certificate showing they are an independent contractor. The bill will eliminate newspaper carriers and part-time correspondents from applying to the division. This does not relieve the newspaper from any liability, added Senator Stephens.

Proponent Charles Walk, Publisher, Independent Record, explained that there are thousands of carriers in the state. The product is purchased from the publisher and the responsibility for collection is on the individual. Those who maintain a foot route are generally between the ages of 11 and 14. The failure to enact this legislation will result in a "paper blizzard" and these exemptions are reasonable, added Mr. Walk.

Proponent Terry Dwyer, representing the Great Falls Tribune, explained they have 189 correspondents in the state and offered his support of the bill.

Proponent George Allen, representing the Montana Retail Association, offered his support of the bill.

Opponent Jim Murry, Executive Secretary, Montana State AFL-CIO, stated it sounds like the purpose of this bill is to help people, but it is designed to cut the cost of newspapers doing business in the state. This is unfair to have those become independent contractors, just so the newspaper does not have to pay workers comp costs. The cost of insurance is less and the coverage is not adequate, added Mr. Murry.

Gary Blewett, Administrator, Workers Compensation Division, Department of Labor and Industry, stated his position on the bill is a neutral one. He suggested that all independent contractors apply to the division to get a certificate and those that want can apply for an exemption. Should this bill pass, an individual must judge whether they are an independent contractor or employee.

In closing, Senator Stephens, stated this will relieve the division and the newspapers from unnecessary paperwork and detail.

Representative Thomas asked Senator Stephens if newspaper carriers are independent contractors, which was answered yes.

Representative Thomas addressed the same question to Gary Blewett. Mr. Blewett stated the bill will not establish this, it is determined on a case by case basis.

Representative Driscoll asked Gary Blewett if a carrier is hurt while on the job, must he hire an attorney and prove he is an employee prior to receiving benefits. Mr. Blewett stated this was correct if the employer has not designated him as an employee.

Representative Brown asked Mike Malloy if he knew if a carrier was an employee or independent contractor. Mr. Malloy stated they are an independent contractor and they do sign a contract.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on Senate Bill 356 was closed.

SENATE BILL 409: Hearing commenced on Senate Bill 409. Senator Bill Farrell, District #31, sponsor of the bill, explained this provides for examination by a panel of physicians by a Worker's Compensation claimant at the request of the employer. Senator Farrell supplied written testimony which is attached hereto as Exhibit 2.

Proponent George Wood, Executive Secretary, Montana Self Insurers Association, explained this will allow a panel of physicians to examine and will only require one examination.

Proponent Keith Olson, Executive Director, Montana Logging Association, stated the Montana workers compensation laws are for the benefit of Montana employers and employees. This will help to get stability and control in the workers compensation rates.

Proponent Gary Blewett, Administrator, Workers Compensation Division, Department of Labor and Industry, stated that from an administration standpoint, current law is difficult to administer. They are not able to achieve the twice a year standards and the 90th percentile is statistically difficult to do.

Opponent Karl Englund, representing the Montana Trial Lawyers Association, stated there is no problem with having a realistic value fee schedule or with having a panel to exam. The cost containment provision for medical payments is difficult to find a physician to work with a workers comp patient. This will cause more problems for the claimant. Putting restriction on what a physician can charge will limit the physicians available for quality care.

Opponent Vince Burns, a worker who was injured in a horse accident in 1981, explained that doctors are reluctant to deal with workers compensation patients, due to possible court appearances and the paper work invloved. The ability to get first rate care is sometimes impossible.

In closing, Senator Farrell, stated he thought the problems of the physicians and the injured were solved.

Representative Kadas asked Gary Blewett why the move from the 90th percentile to the median is taking place, the reason for said move and how much of a reduction this will show. Mr. Blewett explained that this is not being done at the divisions request, that this will reduce the amount that has to be paid and that when the 90th percentile is in effect, there is a shift of about 28% of the workers comp payments.

Representative Kadas asked George Wood the same question. Mr. Wood stated the fee schedule provides for an adjustment in rates to the median. The 90th percentile change showed a 30 - 40% change in median costs.

Representative Kadas asked George Wood if he believes there will be a problem with finding a doctor. Mr. Wood stated that no, there has always been a median and the availability of services is widespread.

Representative Kadas asked Vince Burns if he sees a problem with the panel. Mr. Burns stated this is a good idea as he was examined by numerous physicians.

Representative Brandewie asked Gary Blewett if there is a wide variation of doctor bills received, which was answered yes.

Representative Hansen asked Gary Blewett how the median rate is arrived at. Mr. Blewett explained that you count half way up the bills to arrive at the figure.

There being no further discussion by proponents and opponents, all were excused by the chairman and the hearing on Senate Bill 409 was closed.

SENATE BILL 447: Hearing commenced on Senate Bill 447. Senator Richard E. (Dick) Manning, District #18, sponsor of the bill, by request of the Department of Labor and Industry, explained this bill provides that after 13 weeks of unemployment suitable work is work that offers 75% of the individual's

earnings in his previous insured work. This will conform Montana law with the Federal Unemployment Tax Act. Senator Manning supplied testimony as shown on Exhibit 3 attached hereto.

Proponent Dave Wanzenried, Commissioner, Department of Labor and Industry, stated this does not change the operating instructions of the department. The U.S. Department of Labor wants the legislature to enact this. Exhibit 4 was distributed to committee members by Mr. Wanzanried.

In closing, Senator Manning, stated this bill is needed to conform with the federal requirement.

There being no further discussion by proponents and no opponents present, all were excused by the chairman and the hearing on Senate Bill 447 was closed.

SENATE BILL 337: Hearing commenced on Senate Bill 337. Senator Chet Blaylock, District #43, sponsor of the bill, by request of the Department of Labor and Industry, stated this revises the methods of collecting unpaid unemployment compensation contributions. The bill gives the department the option to place a lien upon the property of the delinquent employer and to order the property sold.

Proponent Dave Wanzenried, Commissioner, Department of Labor and Industry, stated that in some instances employers do not pay their taxes and this allows the department to help collect. The language provides for flexibility wether by civil action or lien. Once contributions become due an automatic judgment may be placed against an account.

Proponent Sue Mohr, Chief, Unemployment Insurance Contributions Bureau, Department of Labor and Industry, stated the department will try to collect immediately and is usually 90 days to one year before a lien is considered. Monthly notices are sent to notify of the past due taxes. Prior to a lien being filed, a certified letter is sent to the employer. By waiting priority is lost and this will put the department on an equitable basis with IRS.

Representative Driscoll asked Sue Mohr where the Montana state income tax fall in line. Ms. Mohr stated they had considered introducing a similar bill, but she does not know if they did.

There being no further discussion by proponents and no

opponents present, all were excused by the chairman and the hearing on Senate Bill 337 was closed.

ACTION ON SENATE BILL 337: Representative Thomas moved DO PASS on Senate Bill 337. Representative Schultz asked Sue Mohr if this is setting up a judge/jury situation. Ms. Mohr stated priority will be given as far as due process is concerned. Question being called, Senate Bill 337 will BE CONCURRED IN by unanimous vote.

SENATE BILL 440: Hearing commenced on Senate Bill 440. Senator Bob Williams, District #15, sponsor of the bill, stated this includes in the definition of "employer" under the Workers' Compensation Act, any group that meets the requirements set by the Division to operate as self-insured under Plan No. 1. Exhibit 5 was distributed to committee members by Senator Williams.

Proponent Jay Downen, representing the Montana Telephone Association of Independent Communities, stated they worked with the division to establish a self insurance program. The concern about safety programs is present. The co-ops are large enough to pool their assets and engage in Plan 1 under the division. Co-ops are non-profit and operate at high costs, added Mr. Downen.

Proponent Gary Blewett, Administrator, Division of Workers Compansation, Department of Labor and Industry, supplied written testimony which is attached hereto as Exhibit 6. Mr. Blewett explained the amendments proposed by him.

Proponent Bob James, representing the Montana Association of Utilities, stated this extends Plan 1. He tried to contact the insurance commissioner and others invloved. Mr. James stated that Oregon has similar legislation.

Proponent John Lahr, representing the Montana Power Company, stated the divisions amendments stretches the rule by introducing more than one subject in a bill. This will cost rate payers and the reason for self insurance is to reduce the cost. Montana Power currently has between 2 and 3 million dollars outstanding in workers compensation liability. There must be a method of picking up the Hunt Brothers, but leaving the healthy alone.

Proponent Jim Hughes, representing Mountain Bell, stated the proposed amendment is redundant. Utilities need not incur other costs to stay in business. A method of solving

the problems and not raising the costs must be found.

Proponent Jim Murry, Executive Secretary, Montana State AFL-CIO, offered his support and stated this will afford the best protection for workers. Mr. Murry supports the amendment proposed and stated additional safeguards are needed and the amendment provides for that.

Proponent George Wood, Executive Secretary, Montana Self Insurers Association, voiced his opposition to the amendment. Every self insurer has a back up and it does not make sense to require a bond. A top company pays $7 per $1000 for a surety bond and if a financial statement was not sufficient, a company would not be allowed to operate.

Proponent Keith Olson, Executive Director, Montana Logging Association, stated carriers are not interested in the logging business. Over 2 million dollars in premium are paid each year.

Proponents Dave Wanzenried, Commissioner, Department of Labor and Industry, stated this is not a department bill, and that the council should look at this during the interim period.

Opponent Glen Drake, representing the American Insurance Association, stated he is not opposed to the concept,but self insurance should be uniformally and properly regulated. The bill puts the regulating function on the insurance commissioner and does not leave all decisions up to the division. The opinion of Richard Bach, attorney for the Insurance Commissioner is that this falls into reciprocal insurance and that the drafter did not consider present law. The bill is in direct conflict with existing law and this should be referred to the governor's advisory council on workers compensation. Exhibits 7 and 8 are attached.

In closing, Senator Williams, stated that a two year study could cause the loss of 1/2 million dollars and the bill should be passed as it appears.

Representative Driscoll asked Glen Drake who would sue if a worker can not sue for punitive damages under workers compensation insurance. Mr. Drake explained that a jester would be handling the claim and a suit could be brought about individually for the mis-handling of a claim.

Representative Driscoll asked George Wood how often a financial statement must be filed if you become a self-insured corporation. Mr. Wood explained that it is

filed annually.

Representative Schultz asked Gary Blewett if permission must be received from the Department of Labor and Industry prior to self insuring, which was correct.

Representative Schultz then asked Gary Blewett why the concern for the amendment. Mr. Blewett explained that this is only applicable to associations, it does not exist to other self insurers.

Representative Glaser asked Gary Blewett why those employed by the Hunt Brothers are not able to receive benefits now. Mr. Blewett explained there is no criteria for shakiness.

Representative Glaser then asked Gary Blewett if they are asking the bonding industry to police in order to alleviate the division from their responsiblity. Mr. Blewett stated this will not alleviate and that there is a measured method to protect against risk.

Representative Simon asked Gary Blewett if it is a requirement to review a financial statement prior to granting self-insuring status. Mr. Blewett stated a company must have the cash flow to protect claims.

Representative Schultz asked Gary Blewett if there is a grandfather provision. Mr. Blewett explained that with the amendment there would be.

Representative Simon asked Gary Blewett what the effect on the state fund will be if all those safe employers leave. Mr. Blewett explained that those who were left would face a rate increase.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on Senate Bill 440 was closed.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 11:20 a.m.

Rep. Bob Pavlovich,
Chairman

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date March 23, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormick	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

STANDING COMMITTEE REPORT

March 22 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration SENATE Bill No. 337

third reading copy (blue color)

CHANGE METHOD OF COLLECTING UNPAID UNEMPLOYMENT COMPENSATION CONTRIBUTIONS

Respectfully report as follows: That SENATE Bill No. 337

DO PASS
BE CONCURRED IN

Rep. Bob Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 18 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration SENATE Bill No. 81

third reading copy (blue)
color

NO UNEMPLOYMENT BENEFITS IF RECIPIENT SUPPORTS STRIKE CAUSING UNEMPLOYMENT

Respectfully report as follows: That SENATE Bill No. 81

DO PASS
BE CONCURRED IN

Rep. Robert Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

Exhibit 1
3/22/85
SB402
Submitted by: Jan VanRiper

PROPOSED AMENDMENT TO SENATE BILL NO. 402

1. Page 1, line 21.

Following: "receiving"

Strike: "either"

Following: "total"

Strike: "or permanent total"

Exhibit 2
3/22/85
SB409
Submitted by: Senator Farrell

SENATE BILL 409

THIS BILL CLARIFIES THE STATUTE REGARDING THE EXAMINATION OF INJURED WORKERS BY A PHYSICIAN TO DETERMINE THEIR PHYSICAL CONDITION AND ABILITY TO WORK.

OFTEN THE INJURED WORKERS' INJURIES ARE SUCH THAT EXAMINATION AND TREATMENT REQUIRES THE SERVICES OF PHYSICIANS IN MORE THAN ONE MEDICAL SPECIALTY. AS A RESULT, MULTIPLE EXAMINATIONS ARE REQUIRED. THIS RESULTS IN INCREASED COSTS TO THE EMPLOYER AND ADDED INCONVENIENCE TO THE INJURED WORKERS. IT ALSO MAY RESULT IN DELAY IN DETERMINING DEFINITIVE TREATMENT.

TO AVOID THESE PROBLEMS, EXAMINATION BY A PANEL OF PHYSICIANS IS NEEDED.

THE PANEL IS ADMINISTERED BY A PHYSICIAN-ADMINISTRATOR. REQUESTS FOR EXAMINATION DATES ARE MADE TO THE PHYSICIAN-ADMINISTRATOR WHO RECEIVES THE WORKERS' MEDICAL RECORDS. HE DETERMINES THE TIMELINESS AND APPROPRIATENESS OF THE EXAMINATION. HE THEN CHOOSES THE PANEL MEMBERS AND SCHEDULES THE EXAMINATION. THE COST OF THE PANEL AND INJURED WORKERS' EXPENSES ARE PAID BY THE INSURER. THE PANEL, AFTER EXAMINATION, PROVIDES A CONSENSUS REPORT GIVING THE INJURED WORKERS' CONDITION; ADVICE REGARDING NEEDED TREATMENT; ABILITY TO WORK; NEED FOR VOCATIONAL REHABILITATION: AND AN EVALUATION OF PERMANENT IMPAIRMENT, IF INDICATED.

AS AN EXAMPLE, THE MISSOULA PANEL'S PHYSICIAN-ADMINISTRATOR IS A NEUROLOGIST. THE PANEL MEMBERS TYPICALLY INCLUDE A NEUROSURGEON,

AN ORTHOPEDIST AND A VOCATIONAL REHABILITATION SPECIALIST. DEPENDING ON THE INJURED WORKERS' CONDITION, THE PHYSICIAN-ADMINISTRATOR MAY INCLUDE ON THE PANEL SPECIALISTS IN INTERNAL MEDICINE, CARDIOLOGY, PULMONARY SPECIALISTS, PSYCHOLOGISTS OR PSYCHIATRISTS OR ANY OTHER SPECIALTY HE FEELS NECESSARY. THE USE OF THE PANEL IS A WORTHWHILE ADDITION TO THE MEDICAL FACILITIES AVAILABLE TO THE INJURED WORKER AND THE EMPLOYER.

THE BILL ALSO PROVIDES FOR THE ADOPTION OF A RELATIVE VALUE FEE SCHEDULE FOR PAYMENTS OF MEDICAL FEES WHICH WOULD CHANGE ANNUALLY.

THE RELATIVE VALUE FEE SCHEDULE PROVIDES UNIT VALUES FOR MEDICAL PROCEDURES WHICH VARY WITH THE DIFFICULTY OF THE PROCEDURE. THE UNIT VALUE REMAINS CONSTANT. THE MAXIMUM FEE PAID FOR THE MEDICAL SERVICES IS CHANGED BY CHANGING THE AMOUNT OF A CONVERSION FACTOR. THIS TYPE OF FEE SCHEDULE WAS USED IN MONTANA FOR MANY YEARS.

THE BILL ALSO CHANGES THE METHOD OF COMPUTING THE CONVERSION FACTOR. THE PRESENT FEE SCHEDULE PROVIDES FOR PAYMENT OF FEES AT THE 90th PERCENTILE. THAT IS, THE FEE SCHEDULES MAXIMUM AMOUNT FOR A PROCEDURE, IF BILLED TEN TIMES AT VARIED AMOUNTS, WOULD BE SET AT A FIGURE WITH ONE CHARGE GREATER AND EIGHT CHARGES LESS THAN MAXIMUM FEE SCHEDULE AMOUNT. THE FEE SCHEDULE MAXIMUM WOULD AUTOMATICALLY INCREASE IF THE DOCTORS FEES ARE GREATER THAN THE MAXIMUM AMOUNT SET IN THE FEE SCHEDULE.

THE CHANGE PROVIDES FOR SETTING OF THE MAXIMUM FEE SCHEDULE AMOUNT AT THE MEDIAN FEES BILLED TO THE STATE FUND. THAT IS, THE MAXIMUM FEE SCHEDULE AMOUNT WOULD BE THAT FEE WHICH WAS BILLED BY MOST DOCTORS FOR THE PROCEDURE.

I WOULD URGE THIS COMMITTEE TO REPORT SENATE BILL 402. DO PASS.

Exhibit 3
3/22/85
SB447

Submitted by Senator Manning

DEPARTMENT OF LABOR & INDUSTRY

UNEMPLOYMENT INSURANCE DIVISION

TED SCHWINDEN, GOVERNOR

STATE CAPITOL

STATE OF MONTANA

P.O. Box 1728
1327 Lockey
Helena, MT 59624

Benefits (406) 444-3783
Contributions (406) 444-3834

February 22, 1985

To: Senator Dick Manning

From: David E. Wanzenried

Re: Senate Bill 447

Senate Bill 447 was requested by the Department of Labor and Industry to clarify a section of the unemployment law.

Section 4 of the current law contradicts the suitable work definitions contained in Section 3(b). A U.S. Department of Labor letter (attached) indicates the change is needed to conform Montana law with federal law.

Section 39-51-2304(4) MCA currently provides that after the 13th week of unemployment a claimant must accept work at 75% of the prevailing wage. This section conflicts with subsection 3 which states that no work is suitable for a claimant if the wages are substantially less favorable than prevailing for similar work in the locality.

Senate Bill 447 makes no change in the operating procedure of the Unemployment Insurance Division. The proposed changes reflect those recommended by a federal directive.

The current law and this proposed clarification both require a more rigorous definition of suitable work for claimants who have received benefits for 13 weeks.

Copy sent to Montana 1-16-85

U.S. Department of Labor

Employment and Training Administration
1961 Stout Street
Denver, Colorado 80294

JAN 21 1985

January 16, 1985

8TGU UI 6-2

Subject: Legislative Proposals

Mr. David Wanzenried
Act. Commissioner of Labor
Employment Security Division
P.O. Box 1728
Helena, MT 59624

ATTN: Peg Hartman
U.I. Director

Attached is a copy of a Memorandum that formally transitts the comments and observations of our national office.

We have been requested to ensure that the 'understandings' indicated are correct. Your review and response will be appreciated.

Thank you for your cooperation in negotiating the issues raised. Your willingness to maintain open lines of communication has already resolved several issues before they became cumbersome problems. Thanks again.

Orlin Waas
Associate Regional Administrator

Attachments

WAAS:db:1/16/85
TGU 844-6353
cc: RF UI

JAN 16 1985

U.S. Department of Labor

Employment and Training Administration
601 D Street, N.W.
Washington, D.C. 20213

JAN 11 1985

MEMORANDUM FOR: LUIS SEPULVEDA
Regional Administrator, Denver

FROM: BERT LEWIS
Administrator for
Regional Management

SUBJECT: Montana-1985 Legislative Proposals

Thank you for sending us the 1985 legislative proposals submitted by the Montana State agency. We appreciate the opportunity to review them before they are introduced. Our comments on these proposals were discussed on December 19 and 21, 1984 in telephone conversations between Martha Lopez of the Unemployment Insurance Service, Peg Hartman, UI Division Chief of the Montana State agency, and other State agency staff. Following is a summary of our comments and discussions with State agency staff.

PROCEDURES FOR COLLECTING UNPAID CONTRIBUTIONS

This proposal would amend existing collection procedures by providing that unpaid contributions have the effect of a judgment, arising at the time the contributions are due. No Federal issues would be raised by this proposal.

REQUIREMENT THAT EMPLOYMENT TO PURGE DISQUALIFICATIONS BE COVERED EMPLOYMENT

This proposal would amend several sections of Montana's law to require that employment to purge disqualifications be "covered" employment as defined by Section 39-51-203 of the State's law. As presently worded, this proposal would require claimants to work in covered employment in Montana to satisfy a disqualification. We believe that this proposal could raise an issue under Section 3304(a)(9)(A) of the Federal Unemployment Tax Act (FUTA).

Section 3304(a)(9)(A) states that compensation may not be denied or reduced because an individual resides or files a claim in another State. This Federal law requirement gives a claimant the right to have all of his earnings, regardless of where they are earned, considered in determining his eligibility for benefits. In addition, a claimant who works in more than one State may not be treated less favorably than a claimant who works only in one State.

Requiring that a disqualification be satisfied only by earnings in covered employment in Montana would prevent a claimant from using earnings outside the State to requalify for benefits. He would not be treated the same as someone who had worked only in Montana. Therefore, we recommended to the State agency that this proposal be revised to read that each of the disqualifications listed may be satisfied by "insured employment in this or any other State." Ms. Hartman stated that it was not the State agency's intention to exclude earnings covered by other States and that the proposal would be revised.

MODIFICATION OF SUITABLE WORK CRITERIA AFTER 13 WEEKS OF UNEMPLOYMENT

In reviewing the above proposal on disqualifications, it was noted that the State law contains a provision modifying the definition of "suitable work" after a claimant has been unemployed for 13 weeks. The law states that after 13 weeks, work will be considered suitable if it pays 75% of the prevailing wage. This provision appears to conflict with Section 39-51-2304(3)(b) of the State law which provides that, notwithstanding any other provisions of the law, no work may be considered suitable if the wages, hours, or other working conditions are substantially less favorable than those prevailing for similar work in the locality. This section of State law reflects the requirements for suitable work in Section 3304(a)(5)(B), FUTA.

As we indicated to the State agency, the 13-week provision could result in claimants being denied benefits under conditions prohibited by Federal and State law. In addition, a job paying 75% of the prevailing wage could in many cases pay less than the minimum wage. We are also unclear how the agency handles weeks of partial or nonconsecutive unemployment.

The intent of the provision is to require claimants to broaden their work search the longer they remain unemployed. We agree with this objective, but believe that other provisions in Section 39-51-2304(2) of the State's law already require the agency to consider length of unemployment in determining whether work is "suitable." This section also permits the agency to consider other important factors and individual circumstances, rather than setting an arbitrary standard for suitable work.

Based on these considerations, we recommended that Section 39-51-2304(4) be deleted from the State's law. Ms. Hartman stated that the agency would consider our recommendation. If legislation is not introduced to delete this provision, we

request that you ask the State agency to provide us with written assurances that the requirement in Section 39-51-2304(3)(b) will always override that in Section 39-51-2304(4).

INTEREST ON FRAUDULENT OVERPAYMENTS

This proposal would require that fraudulently obtained benefits be repaid with interest of 18% per year. It is entirely within the State's authority to require such a penalty. We are concerned, however, that the State agency may implement this provision by offsetting a claimant's future benefits to satisfy the penalty as well as the overpayment.

As we explained to the State agency, recouping overpaid benefits by offset is allowed by Federal law because the benefits were erroneously paid from the State's unemployment fund. However, offsetting benefits to pay penalties or fines has been consistently interpreted as violating Section 3304(a)(4), FUTA, and Sections 303(a)(1) and (5) of the Social Security Act (SSA).

Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA, allow monies to be withdrawn from a State's unemployment fund only to pay benefits. Section 303(a)(1), SSA, requires States to employ methods of administration which will ensure full payment of benefits to claimants when due. Offsetting future benefits to pay interest or penalties on an overpayment would constitute an improper reduction in the amount of unemployment compensation payable to a claimant. Therefore, it would not be consistent with these Federal law provisions.

Ms. Hartman stated that the agency would take appropriate action to ensure that claimants are not required to pay interest on overpayments by offset of future benefits.

MODIFICATION OF BASE PERIOD IN CASES OF DISABILITY

This proposal would modify the definition of "base period" for individuals who are temporarily disabled. It would not raise a Federal issue.

UNEMPLOYMENT TRUST FUND SOLVENCY

This proposal would make a variety of changes in State law to improve unemployment trust fund solvency. Major items include increasing the taxable wage base and increasing contribution rates to a maximum of 6.4%. We have comments on only one of these provisions, the establishment of a surtax to repay Federal advances to the State's unemployment fund.

The proposal states that the surtax "will be paid in the same manner as regular contributions." We recommended that the agency also include language similar to that in Section 39-51-408 of the State's law, specifying that the surtax is separate from regular contributions and into which fund or account it will be deposited.

We also recommended amending Section 39-51-408(c) to provide that interest on Federal advances not be deposited in the unemployment insurance account, if this is the same account from which benefits are paid. Section 3304(a)(17), FUTA, states that interest may not be paid either directly or indirectly from a State's unemployment fund. For further information on how interest must be paid, we suggested the State agency review Unemployment Insurance Program Letter No. 29-84, dated August 22, 1984.

ASSESSMENT OF .1% FOR ADMINISTRATION

This proposal is designed to meet the requirements in the stipulation entered into in the 1983 Montana conformity/substantial compliance case, No. 83-CCP-1, signed by the Montana State agency and the Department of Labor on September 28, 1983. Under the terms of the stipulation, it was agreed that the State agency would interpret Section 39-51-404(4) of the State law to "impose a separate assessment upon employers and a corresponding reduction in their 'contributions' to the State unemployment fund, rather than to divert employer 'contributions' from the State unemployment fund." In addition, the State agency agreed to seek conforming amendments to its law no later than June 30, 1985.

The proposal submitted by the agency would amend Section 39-51-404(4) of the State law to read, "an assessment equal to .1% of all taxable wages as defined by 39-51-1108 and .05% of total wages paid by employers not covered by experience rating shall be charged to all employers and may be used by the department for administrative purposes. All such assessments must be deposited in the unemployment insurance account provided for in 39-51-406 and used as appropriated by the legislature."

Our review of this proposal indicates that the assessment is separate from and would be paid in addition to all other contributions. Ms. Hartman confirmed that the proposed assessment would be in addition to an employer's regular contribution under experience rating. For example, an employer who is subject to a contribution rate of 6.4% under experience rating would pay a total of 6.5%. This proposal, if enacted by June 30, 1985, will satisfy the requirements of the stipulation in case No. 83-CCP-1.

Ms Hartman also asked about a related idea which the agency did not submit in writing, but which could be added to this proposal. She said the agency would like to amend the definition of "contributions" in Section 39-51-201(9) of the State law. This section currently defines "contributions" as "money payments to the state unemployment fund required by this chapter." The agency would like to add a sentence which reads, "This definition does not apply to Section 39-51-404(4)." We concurred and suggested that the agency also exclude from the definition of "contributions" the State law sections establishing the surtax to repay Federal advances and the assessment to pay interest on Federal advances.

BETWEEN/WITHIN TERMS DENIAL

This proposal is designed to meet the requirements in the Under Secretary of Labor's decision in Case No. 84-CCP-3, signed on October 29, 1984. This decision states that Montana law does not contain the provisions required by clauses (ii), (iii) and (iv), FUTA, as amended by Section 521 of Public Law 98-21. The decision further states that a certified copy of satisfactory conforming legislation must be received by January 18, 1985, in order for the Under Secretary to make the 1984 certifications of Montana law under Sections 3303(b)(1) and 3304(c), FUTA.

The proposal submitted by the State agency contains several provisions which would not conform to Federal requirements. For example, it requires the retroactive payment of benefits to both professional and nonprofessional employees of educational institutions, whereas Federal law allows retroactive payments only for nonprofessional employees. The agency had earlier submitted a proposal which closely followed the language in Federal law. As indicated in our memorandum to you dated August 21, 1984, this earlier proposal was considered satisfactory with one minor exception.

Because of the short time available to resolve this issue, we recommended that the State agency substitute its earlier approved proposal for the later one. Ms. Hartman agreed that the agency would use the earlier proposal.

MISCELLANEOUS CHANGES

This proposal makes a variety of changes in State law mostly of an administrative nature. We question only Section 11 of the proposal which would repeal Section 39-51-304 of the State law. This section includes the requirement that the agency will hire in accordance with merit system principles adopted by the merit system council. This requirement parallels that in Section 303(a)(1), SSA.

Ms. Hartman stated that this section was being repealed because the merit system council had been abolished. The functions of the council are now being handled by the Department of Personnel Administration. Because merit system hiring is required by Federal law, we recommended that Section 39-51-304 of the State law be amended rather than repealed. Ms. Hartman stated that the proposal would be revised accordingly.

CONCLUSION

Please thank Ms. Hartman and the other State agency staff for their cooperation in reviewing these proposals. In addition, please review this memorandum with the agency to ensure that our understanding of the actions the agency will take is correct. We also ask that you keep us informed of the status of these proposals once the legislature convenes in January, 1985. Thank you for your help.

Exhibit 4
3/22/85
SB447 Submitted by: Dave Wanzenried

JAN 16 1985

U.S. Department of Labor

Employment and Training Administration
601 D Street, N.W.
Washington, D.C. 20213

JAN 11 1985

MEMORANDUM FOR: LUIS SEPULVEDA
Regional Administrator, Denver

FROM: BERT LEWIS
Administrator for
Regional Management

SUBJECT: Montana-1985 Legislative Proposals

Thank you for sending us the 1985 legislative proposals submitted by the Montana State agency. We appreciate the opportunity to review them before they are introduced. Our comments on these proposals were discussed on December 19 and 21, 1984 in telephone conversations between Martha Lopez of the Unemployment Insurance Service, Peg Hartman, UI Division Chief of the Montana State agency, and other State agency staff. Following is a summary of our comments and discussions with State agency staff.

PROCEDURES FOR COLLECTING UNPAID CONTRIBUTIONS

This proposal would amend existing collection procedures by providing that unpaid contributions have the effect of a judgment, arising at the time the contributions are due. No Federal issues would be raised by this proposal.

REQUIREMENT THAT EMPLOYMENT TO PURGE DISQUALIFICATIONS BE COVERED EMPLOYMENT

This proposal would amend several sections of Montana's law to require that employment to purge disqualifications be "covered" employment as defined by Section 39-51-203 of the State's law. As presently worded, this proposal would require claimants to work in covered employment in Montana to satisfy a disqualification. We believe that this proposal could raise an issue under Section 3304(a)(9)(A) of the Federal Unemployment Tax Act (FUTA).

Section 3304(a)(9)(A) states that compensation may not be denied or reduced because an individual resides or files a claim in another State. This Federal law requirement gives a claimant the right to have all of his earnings, regardless of where they are earned, considered in determining his eligibility for benefits. In addition, a claimant who works in more than one State may not be treated less favorably than a claimant who works only in one State.

Requiring that a disqualification be satisfied only by earnings in covered employment in Montana would prevent a claimant from using earnings outside the State to requalify for benefits. He would not be treated the same as someone who had worked only in Montana. Therefore, we recommended to the State agency that this proposal be revised to read that each of the disqualifications listed may be satisfied by "insured employment in this or any other State." Ms. Hartman stated that it was not the State agency's intention to exclude earnings covered by other States and that the proposal would be revised.

MODIFICATION OF SUITABLE WORK CRITERIA AFTER 13 WEEKS OF UNEMPLOYMENT

In reviewing the above proposal on disqualifications, it was noted that the State law contains a provision modifying the definition of "suitable work" after a claimant has been unemployed for 13 weeks. The law states that after 13 weeks, work will be considered suitable if it pays 75% of the prevailing wage. This provision appears to conflict with Section 39-51-2304(3)(b) of the State law which provides that, notwithstanding any other provisions of the law, no work may be considered suitable if the wages, hours, or other working conditions are substantially less favorable than those prevailing for similar work in the locality. This section of State law reflects the requirements for suitable work in Section 3304(a)(5)(B), FUTA.

As we indicated to the State agency, the 13-week provision could result in claimants being denied benefits under conditions prohibited by Federal and State law. In addition, a job paying 75% of the prevailing wage could in many cases pay less than the minimum wage. We are also unclear how the agency handles weeks of partial or nonconsecutive unemployment.

The intent of the provision is to require claimants to broaden their work search the longer they remain unemployed. We agree with this objective, but believe that other provisions in Section 39-51-2304(2) of the State's law already require the agency to consider length of unemployment in determining whether work is "suitable." This section also permits the agency to consider other important factors and individual circumstances, rather than setting an arbitrary standard for suitable work.

Based on these considerations, we recommended that Section 39-51-2304(4) be deleted from the State's law. Ms. Hartman stated that the agency would consider our recommendation. If legislation is not introduced to delete this provision, we

request that you ask the State agency to provide us with written assurances that the requirement in Section 39-51-2304(3)(b) will always override that in Section 39-51-2304(4).

INTEREST ON FRAUDULENT OVERPAYMENTS

This proposal would require that fraudulently obtained benefits be repaid with interest of 18% per year. It is entirely within the State's authority to require such a penalty. We are concerned, however, that the State agency may implement this provision by offsetting a claimant's future benefits to satisfy the penalty as well as the overpayment.

As we explained to the State agency, recouping overpaid benefits by offset is allowed by Federal law because the benefits were erroneously paid from the State's unemployment fund. However, offsetting benefits to pay penalties or fines has been consistently interpreted as violating Section 3304(a)(4), FUTA, and Sections 303(a)(1) and (5) of the Social Security Act (SSA).

Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA, allow monies to be withdrawn from a State's unemployment fund only to pay benefits. Section 303(a)(1), SSA, requires States to employ methods of administration which will ensure full payment of benefits to claimants when due. Offsetting future benefits to pay interest or penalties on an overpayment would constitute an improper reduction in the amount of unemployment compensation payable to a claimant. Therefore, it would not be consistent with these Federal law provisions.

Ms. Hartman stated that the agency would take appropriate action to ensure that claimants are not required to pay interest on overpayments by offset of future benefits.

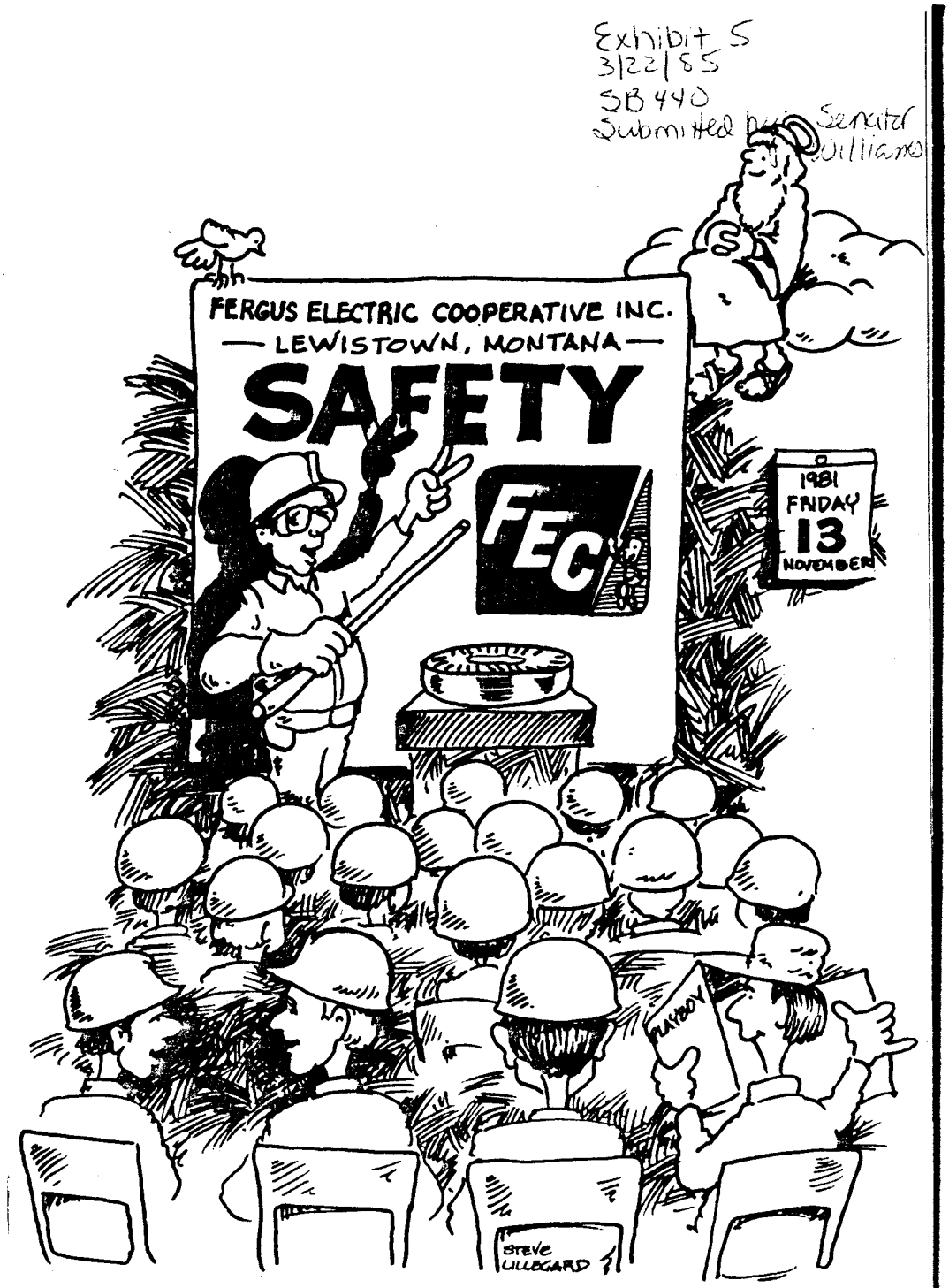
MODIFICATION OF BASE PERIOD IN CASES OF DISABILITY

This proposal would modify the definition of "base period" for individuals who are temporarily disabled. It would not raise a Federal issue.

UNEMPLOYMENT TRUST FUND SOLVENCY

This proposal would make a variety of changes in State law to improve unemployment trust fund solvency. Major items include increasing the taxable wage base and increasing contribution rates to a maximum of 6.4%. We have comments on only one of these provisions, the establishment of a surtax to repay Federal advances to the State's unemployment fund.

Exhibit 5
3/22/85
SB 440
Submitted by Senator Williams



GILT EDGE ROUTE
BOX 4040
LEWISTOWN, MONTANA 59457

Exhibit 6
3/22/85
SB440
Submitted by: Gary Blewett

Before the House Business and Labor Committee

TESTIMONY CONCERNING SB440 and PROPOSED AMENDMENT
by
Gary Blewett, Workers' Compensation Division Administrator

March 22, 1985

The Department of Labor and Industry supports SB440 as it affects associations who want to self-insure. It is a strong bill for that purpose because it allows the Workers' Compensation Division to publish rules about requiring interested associations to provide sufficient and effective security to protect injured worker under any circumstances. If the security can't be provided, the association can't self-insure.

The Department proposes amendments to SB440 in order to apply the same stringent security requirements for all self-insurers, not just associations. The current bill will not allow the Division to require up-front security from self-insurers other than association of employers. The Division is required to find that a non-association employer "has lost his solvency or financial ability to pay" before it can require security (Page 3, lines 3-19).

Shortly after SB440 passed the Senate, one of the Workers' Compensation self-insurers, Great Western Sugar, filed bankruptcy. The Division registers 406 open cases with this company. Some of whom depend for their survival on biweekly payments that Great Western Sugar is supposed to pay them. Because of the limitation placed on the Division's ability to require security, there are no funds available to pay workers' compensation benefits to these claimants.

There are now 51 self-insurers in the Montana workers' compensation system. The Division holds no security to protect any of their claimants. All claimants with self-insurers are dependent on the continued financial strength of these firms for their benefits.

The case of Great Western Sugar shows that requiring security after solvency or financial ability to pay is lost, provides no protection to claimants at all.

Your support of SB440 with these amendments, will provide up-front protection for workers whether they work for employers who self-insure individually or through an association.

Injured GW workers lose benefits

Injured employees of Great Western Sugar Co. are finding themselves in a financial vise.

GW has shut down and filed for protection from its creditors under Chapter 11 of the bankruptcy law. Worker-compensation benefits have come to and end, and injured Montana employees cannot, because of the law, collect unemployment benefits.

About 24 persons, with minimum existing claims of $1.3 million for injury benefits, have been left in the lurch, according to John Yoder, a Billings attorney representing some of the claimants. GW has a sugar refinery in Billings.

The state of Montana has ordered GW to deposit the money with it to cover the claims and has ordered the company to cease operations until it does. The order was issued Friday, a week after GW closed its doors and sent its few remaining employees on furlough.

"It does look a bit strange," said Steven J. Shapiro, chief attorney for the Division of Workers' Compensation. "Under the circumstances we felt it best to issue the suspension order as it could have been possible they would reopen."

The problem stems from the fact that GW is "self-insured" or covering its workers' compensation benefits itself, rather than through an insurance company. State law permits companies to be self-insured if they are certified to do so. Otherwise the injury benefits are supplied through a third-party carrier.

GW was put up for sale by sealed bid in late December with a deadline of Feb. 15. Creditors of GW's parent firm, Hunt International Resources Co. of Dallas, were not satisfied with details of a sale agreement, and GW halted all remaining operations March 1.

Last Thursday, GW filed for protection from its creditors under Chapter 11 of the bankruptcy law in Dallas to reorganize. Attempts to complete the sale are continuing also.

Jack Fulton, GW government relations director, said Wednesday that a sale was not imminent. As for the workers' compensation problem, Fulton said, "I just don't know right now what is happening with that." An attorney with GW in Denver familar with the order was unavailable Wednesday.

Shapiro in his order told GW to deposit with his agency $35,000 in cash, surety bond or negotiable securities to cover estimated liabilities expected to incur for the balance of the fiscal year.

The order said, "the employer shall cease all operations in the state of Montana until such time as it has made the deposits or given the securities required, or has obtained insurance, and has obtained approval of the division to resume operations."

Thirdly, GW was ordered to deposit $1,278,000 to cover the minimum existing liabilities" to cover those who were receiving temporary total benefits before the companies checks started bouncing three weeks ago.

"These are injured workers who have not been released by their doctors," said Yoder. "This class cannot draw unemployment because they are not fit to work."

"They are having a hard time," said Shapiro. "This is the healing period and that can last for two weeks to two years."

GW had not deposited any money with the state as of Wednesday morning. "A compliance officer from the division has spoken to three persons at GW," said Shapiro. "We will try to get ahold of the bankruptcy court and if it does not order compliance or the company does not voluntarily comply, we will participate in the bankruptcy on behalf of the claimants."

GW continues talks on potential sale

DENVER (AP) — A second-round of buyout talks for Great Western Sugar Co., by a sugar-beet growers organization for five Western states and Hunt International Resources Corp. representatives is continued in Dallas, a SUGRO Inc. spokesman said. "To me that's good, as long as they're talking," said Art Meisner, executive manager of the Greeley-based SUGRO.

He said the latest round of talks between the growers association and Hunt representatives began Monday, after recessing last Wednesday in New York.

Asked if the second round ot talks indicated that SUGRO had the inside track on the bidding for Great Western, Meisner said he could not comment.

Meanwhile, Meisner said the time element was becoming critical for beet growers. "That guy sitting out on that farm who doesn't know what he's going to be doing all summer, that's damn critical. I wouldn't want to be in his shoes," Meisner said.

once a company gets tagged as a takeover target it often gets gobbled up by someone. Media companies are increasingly attractive as "asset plays": someone might buy CBS, for instance, and then sell off its broadcast, record and publishing businesses piecemeal and reap a huge profit. But buying a broadcasting company isn't simple. There's the FCC, which could create years of legal delays even for a nonbroadcaster. There are also public-policy questions that might lead to congressional interference. "Capitol Hill may hate the networks," says analyst R. Joseph Fuchs of Kidder, Peabody & Co., "but the devil you know is better than the devil you don't know."

CBS has other defensive weapons at its disposal: it could pull off a huge acquisition of its own—piling on enough debt to scare off a raider—or find a white knight to snatch it away from a predator. In the end, the company might just luck out. The heavy trading in its stock could be the result of many different speculators buying in hopes of profiting from an eventual takeover bid. ABC had two similar run-ups last year—and the rumored bid never surfaced.

DAVID PAULY in New York with MARGARET GARRARD WARNER in Washington

A Private Crisis, A Public Disgrace

How public a concern is the private life of a government official? Sometimes very public, John Fedders learned last week. As chief enforcement officer of the Securities and Exchange Commission, Fedders had racked up an impressive record pursuing a range of securities-law violators. But as a front-page story in The Wall Street Journal described, Fedders, formerly a lawyer in private practice, was also experiencing serious financial difficulties stemming in part from the pay cut he took to work for the government. Worse, he was embroiled in a contentious divorce trial—during which he admitted to having beaten his wife, Charlotte, seven times during the course of their 18-year marriage. According to Mrs. Fedders's testimony in a divorce proceeding in Maryland, the beatings had left her with a broken eardrum, a wrenched neck, several black eyes and many bruises. The day after the Journal's account ran, Fedders resigned.

SEC chairman John Shad accepted Fedders's resignation "with regret" and praised his "exceptional leadership." Others in the Reagan administration were less laudatory. White House counsel Fred Fielding had let the matter drop when reports of the beatings first came to his attention, but after the Journal's story appeared, chief of staff Donald Regan demanded Fedders's departure. "There's an obvious discrepancy between his behavior and those family values the administration espouses," one aide said.

Wilting Roses of Texas

The Hunts and others hit some financial dry holes

Talk about trouble: it's just one thing after another for Bunker Hunt and his younger brother Herbert, whose family practically wrote the book in Texas on how to pile up money. Take last week. The First National Bank of Chicago, to which the Hunts owe a reported $60 million, abruptly froze the funds of the family's Great Western Sugar Co.—and as Hunt interests were negotiating the sale of the company to a beet-growers' association, all Great Western employees were laid off. Then the Commodity Futures Trading Commission charged Bunker and Herbert with illegally manipulating silver prices back in 1979 and 1980—which could subject the brothers to a new round of private lawsuits. But do you hear the Hunts whining? "One should never worry about money," shrugged Bunker last week, even though he may be down to his last billion or so. "Good health and a few good friends are all you need."

HARRY BENSON

Bunker Hunt: 'Good health and a few friends are all you need'

Bunker and Herbert aren't the only Texas moneymen in trouble. The 24 acres of prime land surrounding oilman and former Dallas Cowboys owner Clint Murchison Jr.'s mansion were auctioned off by the banks recently because of unpaid debts. And Ft. Worth tycoon T. Cullen Davis and his third wife have been reduced to flying economy class; their family oil-servicing company has been caught in a financial squeeze from the downturn in oil drilling. Indeed, the gossip these days among wealthy Texans tends to dwell on which high flier may crash next. In Houston, Baron Enrico di Portanova's (occupation: jet-setter) continuing battle for a larger share of the Hugh Roy Cullen estate may ultimately put that multimillion-dollar old fortune at risk. And oilman John Mecom has put his New Orleans Saints football team up for sale, sparking rumors about his financial health.

In fact, the troubles of the Hunts, the Murchisons and the Davises may well spell the end of an era that began when the Texas oil boom took off back in the 1890s. Since then certain families with oil fortunes have been able to open bank vaults simply by uttering their magic names—or secure loans for even the shakiest oil deals with a handshake. But after the near-collapse of Continental Illinois and the failure of Penn Square Bank, banking examiners began looking more closely at uncollateralized Texas loans—and didn't like what they saw. What's happening now, says David Johnson, a business analyst for E.F. Hutton, "tells a lot of these guys who've been riding high on leverage that they don't have any guarantee of staying there." One Texas oilman, whose own fortune is still intact, even expects some good coming from that. He foresees "a renewed sense of fiscal responsibility" as Texans realize that "anybody can go broke if they make bad deals."

While they are far from broke, Bunker and Herbert Hunt are certainly experts on bad deals. They are two of the 15 children of the legendary H. L. Hunt, who once boasted he needed income of $1 million a week "just to keep from starving" but still brought his meager lunch to the office in a brown paper bag. When he died in 1974, H. L. left an estate valued at $4 billion; his offspring increased that by investments in everything from oil to cattle to apartment houses.

But in the past five years, deal after deal has gone sour. A few years ago, the Hunts lost a stunning $1.5 billion when the price of silver plunged; a family friend says the brothers still have 59 million ounces of the

metal sitting in a Delaware bank, for which they paid $11.09 an ounce and which now sells for only $5.80. Hunt International Resources, a real-estate, energy and sugar-processing conglomerate, disclosed this month that it and its affiliates had debts totaling $389.2 million—$295 million of it in default. The Hunts' lignite-mine holdings in Montana and North Dakota have dropped in value by two-thirds, Bunker acknowledges, and the brothers have been bombarded by lawsuits growing out of failed deals. Just to top it off, the Internal Revenue Service is suing the brothers for a reported $238 million in back taxes. In all, according to some accounts, the collective fortunes of Bunker, Herbert and Lamar, a third brother, have plummeted by more than $4 billion in the past four years. Bunker, for one, won't say whether that figure is accurate or not. "I don't count my money very often," he told NEWSWEEK last week. "I don't count it at all, except in the normal course of business."

PENELOPE BREESE—GAMMA-LIAISON

Herbert and Bunker testify to Congress during their 1980 silver spree: No worries

'Bandwagon': The Hunts' problems are traceable to bad strategy, bad management and bad luck. Their investments in recent years were based on the belief that continuing high inflation was a fact of life—and they concentrated on real estate, natural resources, silver and other commodities which would grow in value in that economic climate. In the late 1970s, when inflation seemed out of control, that strategy worked wonderfully—but in these days of relatively stable prices, it is ruinous. Says Barbara Timmer, a former counsel for the House subcommittee that investigated the Hunts' silver buying: "The [Hunts'] ideology got them on a bandwagon a little late and they never got off."

Their involvement in sugar is a good example of the Hunts' bad judgment—and bad luck. They were apparently attracted to sugar in 1974 because of a sudden tremendous run-up in prices. "Some of their rich friends were asking them, 'How come you're the only kid on the block not making money in sugar?'," says one sugar-industry source. "So the Hunts came in—but by that time the party was over." In November 1974 an oversupply of sugar—and the growing public perception that too much sugar is unhealthy—sent prices into a tailspin. Moreover, say industry insiders, the Hunts aggravated an already bad situation with their arrogant and high-handed management. The bottom line is that they simply didn't know the sugar business. "When the collapse came," says New York sugar broker Nicholas Stevenson, "they were stuck with a lot of high-priced sugar inventory in a declining market."

Another bad investment—at least for now—are the Hunt holdings in the Beaufort Sea oil fields on the Canada-Alaska border. During the 1960s, the Hunts leased roughly 1.5 million Canadian acres for exploration. But the Canadian government has imposed stiff environmental rules governing the pipelines that will bring any oil to the United States. It also cut back on the tax breaks once offered to developers of the field. Demand for oil has dropped sharply in recent years, and in any case, the acres owned by the Hunts are for now simply inaccessible. "They're in deep water, they're ice-bound and there's not technology today to get the oil and gas out of there," claims one Dallas energy expert who used to work for the Hunts. "Oil would have to be $50 a barrel for it to be profitable in this frontier area."


SHELLY KATZ—BLACK STAR

CARLOS OSORIO—AP

Davis and Murchison: A tough new game for Texas high rollers?

On Thursday of last week, when the bulk of the latest bad news hit, Bunker Hunt's secretary reported that, uncharacteristically, when her boss arrived at work he did not even pause to say hello or pick up any messages. Instead, he marched resolutely into his office, shut the door and remained there all day. In Dallas, lawyers for the ailing and wheelchairbound Clint Murchison Jr. were busy preparing his defense against more than 20 creditors, who are seeking roughly $140 million from him. And Cullen Davis and his brother, Ken, were warding off their own pack of creditors: 28 banks who petitioned a federal court in Dallas to put Kendavis Industries International Inc. into bankruptcy, claiming that the Davis brothers owe them more than $316 million.

New Rules: For his part, Bunker Hunt insists that while his family may be down, they are far from out. He is confident their investments in energy and real estate will pay off—and that despite the family's problems with its bankers, "the overall picture looks pretty good." "The outlooks and attitudes of the wealthy Texas families have not changed; they are still going after big plays, perhaps even those with high risks," said George Christy, a professor of finance at North Texas State University. But the attitudes of the banks, sobered by the fall in oil prices and real-estate values, have changed dramatically. If concerns about the financial health of the Texas families spread, some experts worry that they could dry up bank lending and lead others to back away from doing business with the families—perhaps even resulting in a domino effect that would bring down their empires. As one Dallas banker put it, "We're not covering their ass anymore."

TOM NICHOLSON with NIKKI FINKE GREENBERG and CHRISTOPHER MA in Washington, DANIEL SHAPIRO in Houston and DOUG TSURUOKA in New York

PROPOSED AMENDMENTS TO SENATE BILL NO. 440

REFERENCE BILL

BY DEPARTMENT OF LABOR AND INDUSTRY

1. Title, line 7.

Following: "AS SELF-INSURED;"

Insert: "REQUIRING SECURITY AND EXCESS LIABIITY INSURANCE OF ALL SELF-INSURED EMPLOYERS;"

2. Page 2, line 6.

Following: "individual liability"

Insert: ", excess liability insurance."

3. Page 2, line 9.

Following: "provided for,"

Insert: "and the employer shall meet the other requirements of this part,"

4. Page 2, lines 21 and 22.

Following: "under this chapter."

Insert: "(3)"

Following: "An"

Strike: "association, corporation, or organization of employers"

Insert: "employer"

5. Page 3, lines 3 - 12.

Following: "Requiring security of employer. (1)"

Strike: remainder of line 3 through "plan No. 1, the" on line 12.

Insert: "The"

Following: "division must require"

Strike: "the"

Insert: "an"

6. Page 3, line 25.

Following: "undertaking"

Insert: "issued by a surety company licensed to do business in this state and"

7. Page 4, line 1.

Following: "fixed by"

Strike: "it with two or more sufficient sureties"

Insert: "the Division"

8. Page 4, line 6.

Following: "consist of any"

Insert: "United States"

PROPOSED AMENDMENT TO SENATE BILL NO. 440

STATEMENT OF INTENT

1. Page 1, line 10.

Following: "those rules"

Strike: "required by section 4 of this bill."

Insert: "to provide for:"

2. Page 1, lines 11 to 13.

Strike: lines 11 to 13 in their entirety.

Insert: "(1) the requirements for certification of an employer as self-insured under the act;"

Renumber: subsequent sections.

3. Page 1, lines 19 to 20.

Following: "solvency of"

Strike: "the group self-insurer"

Insert: "self-insurers"

4. Page 1, lines 23 - 24.

Following: "individual employers"

Strike: "within the group"

Insert : "of a group self-insurer"

5. Page 2, line 3.

Following: "management of the"

Strike: "association"

Insert: "group self-insurer"

6. Page 2, line 5.

Following: "auditing the"

Strike: "group"

7. Page 2, line 8.

Following: "termination of"

Strike: "group"

8. Page 2, line 9.

Fofllowing: "by the"

Strike: "group"

Insert: "employer"

9. Page 2, line 10.

Following: "determination that the"

Strike: "group"

Insert: "employer"

10. Page 2, line 13.

Following: "that all"

Strike: "group"

11. Page 2, line 16.

Following: "employees of the"

Strike: "group"

Insurance Dept. Phone
(406) 444-2996

STATE AUDITOR

STATE OF MONTANA

Exhibit 7
3/22/85
SB440
Submitted by:
Glen Drake

ANDREA "ANDY" BENNETT
STATE AUDITOR

COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

March 21, 1985

Mr. Glen L. Drake
Keller, Reynolds, Drake, Sternhagen
& Johnson
Attorneys at Law
38 South Last Chance Gulch
Helena, MT 59601

Dear Mr. Drake:

Please be advised that in my opinion as General Counsel for the Insurance Division of the State of Montana, Senate Bill 440 does fall within the scope of the Montana Insurance Code, Chapter 5, regarding reciprocal insurers. Therefore, the Commissioner of Insurance would require that any group participating in the program proposed by Senate Bill 440 would have to comply with the Montana Insurance Code regarding reciprocal insurance.

Sincerely,

Richard E. Bach
General Counsel

REB/cal

Exhibit 8
3/22/85
SB440
Submitted by: Glen Drake

AMERICAN INSURANCE ASSOCIATION

85 John Street
New York, N. Y. 10038
(212) 669-0400

December 15, 1983

TO THE WORKERS' COMPENSATION COMMITTEE

RE: N.A.I.C. Group Self Insurance Model Act

Attached is the model act for group self insurance adopted by the N.A.I.C. at the December 9th San Diego meeting.

Municipal groups are excluded from this model because it was felt that the requirements for private groups are in many cases inapplicable to municipal or public groups. For example, many states prohibit joint and several liability for municipalities and some exempt them from taxation. The (D) Task Force will draft a separate model bill for municipal groups and seek its adoption at the June meeting in New Orleans.

The primary pupose of the model is to ensure solvency of groups. This is accomplished by minimum deposits, net worth and annual premium requirements, examinations and an indemnity agreement requiring joint and several liability. Groups must adhere to the classification system, experience rating plan and the manual rules filed with the Commissioner. Groups may make their own rates after five years if they have sufficient loss experience. The model prohibits a service company and an administrator from having a financial interest in one another and prohibits making the payment of refunds or dividends contingent on continued membership in the group.

Yours sincerely,

Charles Coakley
Secretary

CC:jv

cc: Regional Vice Presidents

NAIC WORKERS' COMPENSATION GROUP SELF-INSURANCE MODEL ACT

DRAFT 5

December 3, 1983

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NAIC WORKERS' COMPENSATION GROUP SELF-INSURANCE MODEL ACT

Section 1. Scope.

The provisions of this Act shall apply to workers' compensation self-insurance groups. This Act shall not apply to public employees or governmental entities. Groups which are issued a certificate of approval by the commissioner shall not be deemed to be insurers or insurance companies and shall not be subject to the provisions of the insurance laws and regulations except as otherwise provided herein.

Section 2. Definitions.

A. "Administrator" means an individual, partnership or corporation engaged by a workers' compensation self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide day to day management of the group.

B. "Commissioner" means the Commissioner of Insurance.

DRAFTING NOTE: See discussion on the regulation of groups by either the insurance department or workers' compensation agency on pp. 72-75 in the NAIC Study Committee report.

C. "Insolvent" or "Insolvency" means the inability of a workers' compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

D. "Net premium" means premium derived from standard premium adjusted by any advance premium discounts.

E. "Service company" means a person or entity which provides services not provided by the administrator, including but not limited to, (a) claims adjustment, (b) safety engineering, (c) compilation of statistics and the preparation of premium, loss and tax reports, (d) preparation of other required self-insurance reports, (e) development of members' assessments and fees, and (f) administration of a claim fund.

F. "Standard premium" means the premium derived from the manual rates adjusted by experience modification factors but before advance premium discounts.

G. "Workers' compensation," when used as a modifier of "benefits," "liabilities," or "obligations" means both workers' compensation and employer's liability.

H. "Workers' compensation self-insurance group" or "group" means a not-for-profit unincorporated association consisting of five or more employers who are engaged in the same or similar type of business, who are members of the same bona fide trade or professional association which has been in existence for not less than five years, and who enter into agreements to pool their liabilities for workers' compensation benefits and employer's liability in this state.

DRAFTING NOTE: States may wish to use other terminology to describe groups, e.g., associations, funds, or pools.

Before a state chooses to delete the language "who are engaged in the same or similar type of business and" it is recommended that the drafter carefully review the discussion of the issues involved, see pp. 22-25 of the Study Committee report.

Section 3. Authority To Act As A Workers' Compensation Self-insurance Group.

No person or entity shall act as a workers' compensation self-insurance group except as so authorized by the commissioner.

Section 4. Qualifications for Initial Approval and Continued Authority to Act As A Workers' Compensation Self-insurance Group.

A. A proposed workers' compensation self-insurance group shall file with the commissioner its application for a certificate of approval accompanied by a non-refundable filing fee in the amount of $____. The application shall include the group's name, location of its principal office, date of organization, name and address of each member, and such other information as the commissioner may reasonably require, together with the following:

1. Proof of compliance with the provisions of Subsection B of this Section.
2. A copy of the articles of association, if any.
3. A copy of agreements with the administrator and with any service company.
4. A copy of the bylaws of the proposed group.
5. A copy of the agreement between the group and each member securing the payment of workers' compensation benefits.
6. Designation of the initial board of trustees and administrator.
7. The address in this state where the books and records of the group will be maintained at all times.
8. A pro forma financial statement on a form acceptable to the commissioner showing the financial ability of the group to pay the workers' compensation obligations of its members.

9. Proof of payment to the group by each member of not less than 25% of that member's first year estimated annual net premium on a date prescribed by the commissioner. Such payment shall be considered the initial premium payment of each member required by Section 18 if the proposed group is granted a certificate of approval.

B. To obtain and to maintain its certificate of approval a workers' compensation self-insurance group shall comply with the following requirements as well as any other requirements established by law or regulation:

1. A combined net worth of all members of a group of private employers of at least $1,000,000.

2. Security in a form and amount prescribed by the commissioner which shall be provided by either a surety bond, security deposit or financial security endorsement or any combination thereof. If a surety bond is used to meet the security requirement, it shall be issued by a corporate surety company authorized to transact business in this state. If a security deposit is used to meet the security requirement, securities shall be limited to bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof; certificates of deposit in a federally insured bank; shares or savings deposits in a federally insured savings and loan association or credit union; or any bond or security issued by a State of the United

States of America and backed by the full faith and credit of the State. A financial security endorsement, issued as part of an acceptable excess insurance contract, may be used to meet all or part of the security requirement. The bond, security deposit, or financial security endorsement shall be (a) for the benefit of the state solely to pay claims and associated expenses and (b) payable upon the failure of the group to pay workers' compensation benefits it is legally obligated to pay.

The commissioner may establish requirements for the amount of security based on differences among groups in their size, types of employments, years in existence, and other relevant factors; however, the commissioner may not require an amount lower than $100,000 for any group during its first year of operation.

3. Specific and aggregate excess insurance in a form, in an amount, and by an insurance company acceptable to the commissioner. The commissioner may establish minimum requirements for the amount of specific and aggregate excess insurance based on differences among groups in their size, types of employments, years in existence and other relevant factors and may permit a group to meet this requirement by placing in a designated depository securities of the type referred to in Paragraph 2 of this Subsection.

4. An estimated annual standard premium of at least $250,000 during a group's first year of operation. Thereafter, the annual standard premium shall be at least $500,000.

5. An indemnity agreement jointly and severally binding the group and each member thereof to meet the workers' compensation obligations of each member. The indemnity agreement shall be in a form prescribed by the commissioner and shall include minimum uniform substantive provisions prescribed by the commissioner. Subject to the commissioner's approval, a group may add other provisions needed because of its particular circumstances.

6. A fidelity bond for the administrator in a form and amount prescribed by the commissioner.

7. A fidelity bond for the service company in a form and amount acceptable to the commissioner. The commissioner may also require the service company providing claim services to furnish a performance bond in a form and amount acceptable to the commissioner.

C. A group shall notify the commissioner of any change in the information required to be filed under Subsection A of this Section or in the manner of its compliance with Subsection B of this Section no later than 30 days after such change.

D. The commissioner shall evaluate the information provided by the application required to be filed under Subsection A of this Section to assure that no gaps in funding exist and that funds necessary to pay workers' compensation benefits will be available on a timely basis.

E. The commissioner shall act upon a completed application for a certificate of approval within 60 days. If, because of the number of applications, the commissioner is unable to act upon an application within this period, the commissioner shall have an additional 60 days to so act.

F. The commissioner shall issue to the group a certificate of approval upon finding that the proposed group has met all requirements or he shall issue an order refusing such certificate setting forth reasons for such refusal upon finding that the proposed group does not meet all requirements.

G. Each workers' compensation self-insurance group shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against it in this state. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this state any obligation or liability of the group for workers' compensation benefits.

Section 5. Certificate of Approval; Termination.

A. The certificate of approval issued by the commissioner to a workers' compensation self-insurance group authorizes the group to provide workers' compensation benefits. The certificate of approval remains in effect until terminated at the request of the group or revoked by the commissioner.

B. The commissioner shall not grant the request of any group to terminate its certificate of approval unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the

commissioner. Such obligations shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith. Subject to the approval of the commissioner, a group may merge with another group engaged in the same or similar type of business only if the resulting group assumes in full all obligations of the merging groups. The commissioner shall hold a hearing on the merger if any party, including a member of either group, so requests.

DRAFTING NOTE: Before a state chooses to delete the language "engaged in the same or similar type of business" it is recommended that the drafter carefully review the discussion of the issues involved, see pp. 22-25 of the Study Committee report.

Section 6. Examinations

The commissioner shall examine the affairs, transactions, accounts, records and assets of each group as often as the commissioner deems advisable, but not less often than once every three years. The expense of such examinations shall be assessed against the group in the same manner that insurers are assessed for examinations.

Section 7. Board of Trustees: Membership, Powers, Duties, and Prohibitions.

Each group shall be operated by a board of trustees which shall consist of not less than five persons whom the members of a group elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, or directors of members of the group. The group's administrator, service company, or any owner, officer, employee of, or any other person affiliated with, such administrator or service company shall not serve on the board of trustees of the group. All trustees shall be residents of this state or officers of corporations authorized to do business in this state. The

board of trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

A. The board of trustees shall:

1. Maintain responsibility for all monies collected or disbursed from the group and segregate all monies into a claims fund account and an administrative fund account. At least 70% of the net premium shall be placed into a designated depository for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions. This shall be called the claims fund account. The remaining net premium shall be placed into a designated depository for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the administrative fund account. The commissioner may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group shows to the commissioner's satisfaction that (a) more than 30% is needed for an effective safety and loss control program or (b) the group's aggregate excess insurance attaches at less than 70%.

DRAFTING NOTE: Special fund contributions include second injury and other loss related funds. Administrative costs include guaranty fund assessments.

2. Maintain minutes of its meetings and make such minutes available to the commissioner.

3. Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the

group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.

4. Retain an independent certified public accountant to prepare the statement of financial condition required by Subsection A of Section 11.

B. The board of trustees shall not:

1. Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the commissioner.

2. Borrow any monies from the group or in the name of the group except in the ordinary course of business, without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner.

Section 8. Group membership; Termination; Liability.

A. An employer joining a workers' compensation self-insurance group after the group has been issued a certificate of approval shall (1) submit an application for membership to the board of trustees or its administrator and (2) enter into the indemnity agreement required by Subsection B.5 of Section 4. Membership takes effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

B. Individual members of a group shall be subject to cancellation by the group pursuant to the bylaws of the group. In addition, individual members may elect to terminate their participation in the group. The group shall

notify the commissioner and the workers' compensation agency of the termination or cancellation of a member within 10 days and shall maintain coverage of each cancelled or terminated member for 30 days after such notice unless the group is notified sooner by the workers' compensation agency that the cancelled or terminated member has procured workers' compensation insurance, has become an approved self-insurer, or has become a member of another group.

C. The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is cancelled by a group remains jointly and severally liable for workers' compensation obligations of the group and its members which were incurred during the cancelled or terminated member's period of membership.

D. A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.

E. The insolvency or bankruptcy of a member does not relieve the group or any other member of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

DRAFTING NOTE: This language should not be interpreted as negating any other statute or case law limiting defenses.

Section 9. Service Companies.

A. No service company or its employees, officers or directors shall be

an employee, officer or director of, or have either a direct or indirect financial interest in, an administrator. No administrator or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a service company.

B. Unless the commissioner otherwise permits, the service contract shall state that the service company shall handle to their conclusion all claims and other obligations incurred during the contract period.

Section 10. Licensing of Agents.

Except for a salaried employee of a group, its administrator or its service company, any person soliciting membership in a workers' compensation self-insurance group must be licensed as provided (in Section ___ of the insurance code).

Section 11. Financial Statements and Other Reports.

A. Each group shall submit to the commissioner a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. The financial statement shall be on a form prescribed by the commissioner and shall include, but not be limited to, actuarially appropriate reserves for (1) known claims and expenses associated therewith, (2) claims incurred but not reported and expenses associated therewith, (3) unearned premiums and (4) bad debts, which reserves shall be shown as liabilities. An actuarial opinion regarding reserves for (1) known claims and expenses associated therewith and (2) claims incurred but not reported and expenses associated therewith shall be included in the audited financial statement. The actuarial opinion shall be given by a

member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

B. The commissioner may prescribe a uniform accounting system for all groups to ensure the accurate and complete reporting of groups' financial information.

C. The commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.

Section 12. Taxes.

DRAFTING NOTE: A state that imposes a premium tax or other tax on workers' compensation insurers will have to decide whether such tax should be imposed on groups. However, a state that dedicates a premium tax or other tax on workers' compensation insurance principally for workers' compensation purposes, e.g., administration or a special fund, should impose such tax on groups. See pp. 45-47 of the Study Committee report.

Section 13. Fees and Assessments.

DRAFTING NOTE: Fees and assessments for second injury funds or other special funds or for administrative funds associated with the insurance department or the workers' compensation agency should be imposed on groups in the same manner that they are imposed on insurance companies or self-insurers. See pp. 45-47 of the Study Committee report.

Section 14. Misrepresentation Prohibited.

No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a membership of a group.

Section 15. Investments.

Funds not needed for current obligations may be invested by the board of trustees in accordance with (Section ___ of the insurance code regarding

investments of property and casualty insurers.)

Section 16. Rates and Reporting of Rates.

A. Every workers' compensation self-insurance group shall adhere to the uniform classification system, uniform experience rating plan, and manual rules filed with the commissioner by an advisory organization designated by the commissioner.

B. Premium contributions to the group shall be determined by applying the manual rates and rules to the appropriate classification of each member which shall be adjusted by each member's experience credit or debit. Subject to approval by the commissioner, premium contributions may also be reduced by an advance premium discount reflecting the group's expense levels and loss experience.

C. Notwithstanding Subsection B of this Section, a group may apply to the commissioner for permission to make its own rates. Such rates shall be based on at least five years of the group's experience.

NOTE: States that have adopted the Alternative Model Workers' Compensation Competitive Rating Act should use the following provision in place of Subsections B and C above:

> Every group shall use the pure premium rates filed with the commissioner by the designated advisory organization plus an additional amount representing the member's portion of estimated expenses. A group may contract with an advisory organization approved by the commissioner for assistance in developing appropriate rates.

D. Each group shall be audited at least annually by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll and rates. A report of the audit shall be filed with the commissioner in a form acceptable to the commissioner. A group or any member thereof may request a hearing on any objections to the classifications. If the commissioner determines that as a result of an improper classification a member's premium contribution is insufficient, he shall order the group to assess that member an amount equal to the deficiency. If the commissioner determines that as a result of an improper classification a member's premium is excessive, he shall order the group to refund to the member the excess collected. The audit shall be at the expense of the group.

Section 17. Refunds.

A. Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than 12 months after the end of the fund year.

DRAFTING NOTE: In those states where dividends may be paid earlier than 12 months, the time limit should be changed to conform to state practice.

B. Each member shall be given a written description of the refund plan at the time of application for membership. A refund for any fund year shall be paid only to those employers who remained participants in the group for the entire fund year. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

Section 18. Premium payment; Reserves.

A. Each group shall establish to the satisfaction of the commissioner a

premium payment plan which shall include (1) an initial payment by each member of at least 25% of that member's annual premium before the start of the group's fund year and (2) payment of the balance of each member's annual premium within the first ____ months of that fund year in monthly or quarterly installments.

B. Each group shall establish and maintain actuarially appropriate loss reserves which shall include reserves for (1) known claims and expenses associated therewith and (2) claims incurred but not reported and expenses associated therewith.

C. Each group shall establish and maintain bad debt reserves based on the historical experience of the group or other groups.

Section 19. Deficits and Insolvencies

A. If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this Act, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

B. In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from (a) surplus from a fund year other than the current fund year, (b) administrative funds, (c) assessment of the membership, if ordered by the group or, (d) such alternate method as the commissioner may approve or direct. The commissioner shall be notified prior to any transfer of surplus funds from one fund year to another.

C. If the group fails to assess its members or to otherwise make up

such deficit within 30 days, the commissioner shall order it to do so.

D. If the group fails to make the required assessment of its members within 30 days after the commissioner orders it to do so, or if the deficiency is not fully made up within 60 days after the date on which such assessment is made, or within such longer period of time as may be specified by the commissioner, the group shall be deemed to be insolvent.

E. The commissioner shall proceed against an insolvent group in the same manner as the commissioner would proceed against an insolvent domestic insurer in this state as prescribed in (Section ___ of the insurance code regarding liquidation, conservation, etc.). The commissioner shall have the same powers and limitations in such proceedings as are provided under those laws, except as otherwise provided in this act.

F. In the event of the liquidation of a group, the commissioner shall levy an assessment upon its members for such an amount as the commissioner determines to be necessary to discharge all liabilities of the group, including the reasonable cost of liquidation.

Section 20. Guaranty Mechanism. (OPTIONAL)

In the event of a liquidation pursuant to Section 19, after exhausting the security required pursuant to Section 4.B.2., the commissioner shall levy an assessment against all groups to assure prompt payment of such benefits. The assessment on each group shall be based on the proportion that the premium of each group bears to the total premium of all groups. The commissioner may exempt a group from assessment upon finding that the payment of the assessment would render the group insolvent. Such assessment shall not relieve any

member of an insolvent group of its joint and several liability. After any such assessment is made, the commissioner shall take action to enforce the joint and several liability provisions of the insolvent group's indemnity agreement, and shall recoup (1) all costs incurred by the commissioner in enforcing such joint and several liability provisions, (2) amounts that the commissioner assessed any other groups pursuant to this Section, and (3) any obligations included within Subsection F of Section 19.

DRAFTING NOTE: Each state should evaluate carefully the financial security requirements it imposes on workers' compensation groups and, in keeping with its regulatory philosophy regarding workers' compensation benefit guarantees, should make its own decision on whether a guaranty mechanism is needed for groups. If a state decides to establish a guaranty mechanism for groups, the guaranty mechanism should not (1) take the place of any financial security requirements, (2) relieve the members of an insolvent group of their joint and several liabilities, or (3) be prefunded except for minimum administrative expenses.

Section 21. Monetary Penalties

After notice and opportunity for a hearing, the commissioner may impose a monetary penalty on any person or group found to be in violation of any provision of this Act or of any rules or regulations promulgated thereunder. Such monetary penalty shall not exceed $1,000 for each act or violation and shall not exceed $10,000 in the aggregate. The amount of any such monetary penalty shall be paid to the commissioner for the use of the state.

DRAFTING NOTE: The disposition of monetary penalties will have to be set forth by each state according to its own practices.

Section 22. Cease and Desist Orders

A. After notice and opportunity for a hearing, the commissioner may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of any provision of this Act or of any rules or regulations promulgated thereunder.

B. Upon a finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the commissioner may do either or both of the following: (a) impose a monetary penalty of not more than $10,000 for each and every act or violation of such order not to exceed an aggregate monetary penalty of $100,000 or (b) revoke the group's certificate of approval or any insurance license held by the person.

Section 23. Revocation of Certificate of Approval

After notice and opportunity for a hearing, the commissioner may revoke a group's certificate of approval if it (1) is found to be insolvent, (2) fails to pay any premium tax, regulatory fee or assessment, or special fund contribution imposed upon it, or (3) fails to comply with any of the provisions of this Act, with any rules promulgated thereunder, or with any lawful order of the commissioner within the time prescribed. In addition, the commissioner may revoke a group's certificate of approval if, after notice and opportunity for hearing, the commissioner finds that (a) any certificate of approval that was issued to the group was obtained by fraud; (b) there was a material misrepresentation in the application for the certificate of approval; or (c) the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator in its fiduciary capacities.

Section 24. Notice and Hearings

DRAFTING NOTE: This section should conform to the state's administrative procedures act and insurance code for notices and hearings resulting in orders of suspension, revocation, cease and desist and monetary forfeitures.

Section 25. Rules and Regulations.

The commissioner shall have power to make rules and regulations in order to implement this Act.

Section 26. Severability Clause.

If any provision of this Act, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this Act.

Montana Legislative Council
State Capitol
Helena, MT. 59620
(406) 444-3064

March 21, 1985

TO: Representative Les Kitselman

FROM: Valencia Lane VL

RE: SB 95

This is in response to your request that I review SB 95 and your proposed amendment to the bill, which would require the Department of Labor and Industry to transfer the interest earned on the Job Service assessment money by July 1 of each year to the state general fund. As I understand it, your question is what is the proper disposition of the interest earnings.

I have reviewed the federal and state laws regarding the unemployment insurance system and the state accounting laws. It is my conclusion that it would not be appropriate to transfer the assessment interest earnings to the state general fund.

I could find nothing in federal law which addresses either the assessment money or the interest earned thereon. Because the Job Service assessment is not a part of the unemployment insurance "contributions", the money does not fall within the purview of the unemployment insurance laws. However, when the Department of Labor and Industry determines that the assessment money is not needed for Job Service administration and transfers the money to the federal unemployment insurance trust fund, the transfer is irrevocable and the money cannot be recovered. Unless such a transfer of the assessment money is made, the assessment is outside the scope of the federal unemployment insurance laws and there is nothing in the federal law which would prohibit the assessment interest earnings from being transferred to the state general fund.

However, the inquiry cannot stop just with an analysis of the federal laws. State law, as well, must be examined. Section 39-51-404(4), MCA, which established the Job Service assessment, states that any remainder of the assessment not used for administrative purposes must be transferred to the unemployment trust fund account. Language in the appropriations act which appropriates the money provides that the assessment is to be used specifically for administration of the local job service offices. Based on the nature of the assessment and buttressed by the language in 39-51-404(4) and the appropriations act, it seems apparent that the assessment is collected and held in a fiduciary manner as a trust for the benefit of employees. The question as to the proper disposition of interest earned by a trust fund has long been settled in Montana law. In an Attorney General's Opinion, 38 A.G. Op. No. 57 (1979), the Attorney General answered the question of the disposition of interest earnings on money held by the Highway Department in trust for a local government. The Attorney General stated that: "It is elementary that any interest earned by a trust belongs to the beneficiary and the trustee is compelled to apply it to that use", p. 203. The A.G.'s opinion was based on well-established case law and cited the Montana Supreme Court cases of In re Davis' Estate, 47 Mont. 155, 134 P. 670 (1913) and In re Allard Guardianship, 49 Mont. 219, 141 P. 661 (1914). It is my opinion, based on the A.G. opinion and established case law, that the interest earnings on the assessment account properly must remain in the assessment account and if not used for administrative purposes, must be transferred to the unemployment insurance fund. I believe that it would be improper to transfer the interest earnings to the state general fund.

I hope this discussion is of help to you. Please let me know if I can be of further assistance.

VL:ee

LANE/ee/Rep. Kitselman

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. Senate Bill 281 DATE March 22, 1985

SPONSOR Senator Fuller

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
LYNN M. SEELYE	INTERGEN INC		✓
Jon Delfanger	MBMDA	✓	
George Ward	Mt Self Insurers	✓	
Riley Johnson	NFIB, MT. Home Builders	✓	
Clyde Smith	House District 5	✓	
Hiram Shaw	Dept. Labor + Ind.		
J.H. Beck Bales	MT Chamber of Commerce	✓	
George Allen	MT Retail Assn	✓	
Roger McGlenn	INDEPENDENT INSURANCE AGENT ASSOC. OF MT	✓	
[illegible]	[illegible]	✓	
Dee Cross	Billings Chamber of Commerce	✓	
Norm Crosfield	Self + Indep. Ins. Agents Assn. of Mont.	✓	
KEITH OLSON	MT. Logging Assn	✓	
Richard C. Pratt	MT Restaurant Assoc	✓	
Jim Murry	Mont. AFL-CIO	✓	
Gary Blewett	Workers' Comp	✓	
John Allen	MT. Wood Products Assoc	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. Senate Bill 337 DATE March 22, 1985

SPONSOR Senator Blaylock

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. Senate Bill 356 DATE March 22, 1985

SPONSOR Senator Stephens

NAME (please print)	REPRESENTING	SUPPORT	OPPOS
Terry Dwyer	Great Falls Tribune		
George Allen	MT Retail Assn	✓	
J. Bruce Bales	MT Chamber	✓	
Jim Murry	MT St. AFL-CIO		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FO

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. Senate Bill 402 DATE March 22, 1985

SPONSOR Senator Fuller

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
George Ward	Mt Self Insurers	✓	
Norm Grosfield	Self	✓	
KEITH OLSON	MT. Logging Assn	✓	
Roland Pratt	MT Electrical Assn	✓	
Gary Blewett	Workers' Compensation	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. Senate Bill 409 DATE March 22, 1985

SPONSOR Senator Farrell

NAME (please print)	REPRESENTING	SUPPORT	OPPOSI
George Wood	Mt Self Insurers	✓	
Chas Smith	Mont Resp Assn	✓	
KEITH OLSON	MT. Logging Assn.	✓	
Richard D Pratt	MT Restaurant Assoc	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. Senate Bill 440 DATE March 22, 1985

SPONSOR Senator Williams

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Greg Wood	Mt Self Insurers Assn	✓	
	Am Ins Assn		✓
Keith Olson	MT. Logging Assn.	✓	
Bob James	Mt. Assoc. UT.	✓	
Jim Murray	Mont AFL-CIO	✓	
Ray Stewart	Montana Contractors	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. Senate Bill 447 DATE March 22, 1985

SPONSOR Senator Manning

NAME (please print)	REPRESENTING	SUPPORT	OPPOSI

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FO

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.