

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS
MONTANA STATE SENATE

February 5, 1985

The eighth meeting of the Labor and Employment Relations Committee was called to order by Chairman J.D. Lynch on February 5, 1985, at 1:00 p.m. in Room 413/415, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 281:

Chairman Lynch called on Senator Dave Fuller, sponsor of Senate Bill 281. Senator Fuller said Senate Bill 281 is not a bill that makes a decision about what is just and fair in terms of our workers' compensation program. He thinks that's an issue the legislature must deal with, but Senate Bill 281 in his judgement is not doing that; at least that is not his motivation. Workers' compensation is one of the complex public policy questions that we face in the legislature. Senate Bill 281 is the appropriate mechanism that we take to deal with the Willis Decision. The Willis Decision changed the policy of discounting lump-sum payments. The immediate impact of that from the aspect of the department division was to raise the question of what that does to our trust fund? They would receive an immediate 10-15% increase in premiums. We should put things back to where they were, with lump-sum payments discounted. The impact on private employers if Senate Bill 281 is passed will be \$74 million. That's devastating.

PROPOSERS OF SENATE BILL 281:

Gary Blewett, Administrator of the Workers' Compensation Division, Department of Labor and Industry, submitted written testimony.
(Exhibit No. 1)

David Hunter, Budget Director, Office of Budget and Program Planning, gave the fiscal note and went over where the figures came from. The total impact in the state of Montana, public and private, of not passing this bill is about \$86 million -- an increase in workers' compensation premiums. \$10.2 million of that impact is to cities, counties, and school districts. Passing this bill will reduce their premiums by that much. Impact on state revenue is \$74 million in increased workers' compensation premiums for private sector employers in the state of Montana.

Wallace Jordt, representing Jordt Logging, said his company has gone through four years of bad market and slow markets, with lumber prices down and adjusting downhill. He said

they must do something and it's not to pay, because they can't pay any more. "What do you drop first?" he asked. "You drop your insurance. You're going to get people going away from insurance; you're not going to have workers' compensation if you're awarding a few at the expense of many."

Jerry Okonski, Logging Systems, Inc., based in Libby, submitted written testimony.
(Exhibit No. 4)

Bud Clinich, representing Montana Logging Association as its safety director, submitted written testimony.
(Exhibit No. 5)

Ben Havadah, representing Montana Motor Carriers Association, rose in support of Senate Bill 281.

Forrest Boles, representing and president of Montana Chamber of Commerce and Billings Chamber of Commerce, said the cost of an employer maintaining a job is going up. The employers recognize that unemployment insurance costs are going to increase, other fringe benefit costs are going to increase, workers' compensation costs have increased, and the prospect is for higher increases. Senate Bill 281 offers opportunity to have a direct and dramatic positive impact on the job creation atmosphere in this state. He encouraged support of Senate Bill 281.

Don Allen, representing Montana Wood Products Association and Montana Hospital Association, expressed concern over rising health costs. If this bill is given a Do Pass, it will add a burden to the health care costs.

Riley Johnson, representing Montana Homebuilders Association, National Federation of Independent Business, and Professional Insurance Agents, said these groups support Senate Bill 218 because they are at a breaking point. He spoke as an individual business owner who has cut his work force, because of the overhead of unemployment workers' compensation, in half over the last year.

George Wood, Executive Secretary of the Montana Self Insurers Association, said the association feels this bill is a very moderate approach to an acute problem--the payment of projected future weekly wage loss in lump-sums. There should be some type of legislation to limit the amount of lump-sums and the cost of lump-sums. He requested the committee report this bill Do Pass.

Irwin Dellinger, representing Montana Building Material

Dealers Association, said the association is protected by a private carrier. He urged a Do Pass on Senate Bill 281.

Roger McGlenn, representing Independent Insurance Agents of Montana, said if passage of this bill is not taken by this legislative session there will be continued adverse effects to workers' compensation coverage availability and affordability. He strongly urged the committee to support this bill.

George Allen, representing the Montana Retail Association, rose in support of Senate Bill 281.

Pat Underwood, Executive Vice-President of the Montana Farm Bureau, strongly supports Senate Bill 281.

Bonnie Tippy, representing the Alliance of American Insurers, a private workers' compensation insurance association, strongly supports Senate Bill 281.

Glen Drake, representing American Insurance Association, had figures that show independent insurers and private carriers insure approximately 29% of the employers in the state and the state fund insures approximately 71%.

OPPONENTS OF SENATE BILL 281

Mark Connell, a lawyer from Missoula, said he represented Henry Willis in this case. He said the workers' compensation system was designed to protect people who are employed by industry when they become disabled and crippled by industry.

Mr. Willis, who was a construction worker and was crippled on the job in 1979, was 37 years old. Mr. Willis has a history of doing heavy manual labor. He has suffered tremendously as a result of this accident. Mr. Connell talked about some actual figures as they apply to people like Henry Willis. At the time he went to trial in 1982, he had a life expectancy of approximately 38 years. Mr. Willis, under the workers' compensation statute, is now entitled to \$155 per week until he turns 65; then he is entitled to \$198 per week for the rest of his life.

Mr. Willis went to court over whether or not he is entitled to a lump-sum of his benefits rather than have those benefits be paid out over the future each week. What this bill will do, now, is to tell Henry Willis, "Henry, the lump-sum that you are entitled to is \$68,000."

At the time of the trial, an annuity paying out comparable benefits to Mr. Willis can be purchased for \$68,000. At the

same time, the amount of Mr. Willis' benefits under the workers' compensation system were they to be paid out over time, totaled approximately \$331,000. This bill will tell Henry Willis, "in lieu of paying you \$331,000 over your life expectancy, we will pay you \$68,000 today." This is the effect of this bill. Mr. Willis could have made \$21,000 per year, approximately, had he not been insured. Mr. Willis netted out of this settlement, at that time, a lump-sum of approximately \$198,000; that is how much the workers' compensation will pay this man for what's been taken away from him by his injuries. This injury has taken \$800,000 out of the pocket of Henry Willis; this bill will give him \$68,000 in return. The \$193,000 that Mr. Willis will receive totals, when you figure his life expectancy, approximately \$5,000 per year. In the course of Mr. Willis' employment, he lost \$21,000. He will get \$5,000 for the rest of his life. Under the prior law, as interpreted by the Supreme Court, the proper net measure of compensation for Mr. Willis in this case is \$193,000; this bill will make it \$68,000. Under workers' compensation laws, one only receives a fraction of what one's wages were in the first place. You get approximately two-thirds of your wages subject to a maximum allowed by law. In Willis' case it was \$198 per week.

Daniel Shea, formerly with the Montana Supreme Court, lawyer and author of the Willis decision, said that between 1975 and 1984, the legislature eliminated the last 2% discount factor from the statute saying they didn't want a discount. Until 1984, when the Willis Decision was decided, the State of Montana and the insurance industry had totally ignored this statute. Once the legislature, in 1975, eliminated the discount factor, that meant that in the future, after the legislation became effective, if there were a lump-sum settlement, whether in full or in part, it could not be discounted at present value. And yet, that has not been the practice of the State of Montana or the insurance industry. So for nine years what has really happened in worker settlements is that they have been deprived of the benefits to which they are entitled. He referred to page 2057 and said that he does not hold that the claimant is entitled as a matter of right to the entire undiscounted sum of \$331,000. Rather, the trial court, which is the workers' compensation court, must determine under section 39-71-741 whether the claimants' best interests would be served by either a full lump-sum payment or a partial lump-sum payment with the remainder to be paid out in regular biweekly payments.

That statute permits the division, or if there is a dispute, the workers' compensation judge, to determine whether there is going to be any kind of a lump-sum settlement. It's not

a matter of right, all claimants who are injured don't have a right to a lump-sum settlement. The division can disagree, and if they disagree then it can become a case that is brought before workers' compensation courts. Then the workers' compensation courts can do one of three things: 1) Decide the worker is not entitled to a lump-sum settlement at all; 2) give the worker a partial lump-sum settlement; 3) Decide the worker is entitled to an entire lump-sum settlement. Those options exist at the discretion the workers' compensation court.

Mr. Shea said the governor has created a blue ribbon committee, apparently to look into the whole workers' compensation system, not just the effects of the Willis case. If the workers' compensation laws need to be revamped, Mr. Shea suggested not doing it on a piecemeal basis. He asked the committee to let this interim committee act, let them determine what the situation is, let them find out what the facts are. He asked the committee to defer any consideration to kill the present bill and simply instead defer it to this blue ribbon standing committee for further study.

Dick Bottomly, lawyer, farmer, rancher and employer, gave the committee an example of what this bill is going to do to a worker who loses his hand: If the man is making \$16.00 an hour in a 40-hour week, he therefore is making \$640.00 a week. Multiply that by 52 weeks and it gives him an annual salary of about \$33,000. Multiply that by 20 years, and that gives \$667,000 of just actual wages that that man would earn over his life expectancy. That has nothing to do with his benefits or any other benefits he receives. Under this bill, a hand is worth \$200 a week. If he is getting the maximum amount in 1984, that's \$4,138.50 permanent partial times the number of weeks, which gives a figure of \$27,000. With \$27,000 without discount, he can't work again. If the man receives an annuity discounted at 1/3, that man is going to receive \$9,200 for the loss of his hand, under workers' compensation under this act. The Workers' Compensation Act was designed to protect the employers, not employees.

Tom Boland, who practices law in Great Falls and represents injured workers, submitted an article from the Western Business Newspaper. The article is an ad from Hoiness LaBar FBS Insurance of Montana, one of the largest insurance companies in Montana. This is a major insurance agency, owned by a major bank. Recently it was purchased by one of the largest bank holding companies that function in the state of Montana -- the First Bank system. Mr. Boland said he doesn't think the knowledgeable insurance agents and those low premiums are leaving the state of Montana because

of the Willis Decision.
(Exhibit No. 6)

Gene Peacott, lawyer, said that the question of this hearing is, how do they get the committee's attention, how do they get them thinking about this in depth, that a) the insurance industry is going to go broke; b) the state fund is going to go broke; c) a lot of unworthy, irresponsible, drunken workers are going to receive a windfall, which they should not have. This bill will do away with lump-sum settlements. People who are out here in the marketplace who are productive are going to pay to support, raise and educate families of these injured workers who are not productive anymore. If they get anything it is going to be from the taxpayers. That is a common sense perception as far as the effects of this bill are concerned.

C.L. Overfelt, attorney from Great Falls, said if the committee passes this bill, insurance companies won't leave the state. There will be an influx of insurance agents coming in here to sell annuities because that's what this bill is. He asked the committee to consider an amendment; if the committee discounts it, they should discount it to a present value and leave off this business about an annuity.

Lon Daylen, attorney from Missoula, said we need a study commission to look at this thing in depth because there are some serious problems with the proposed Senate Bill 281. He pointed out the language in line 18-20 that reads, regardless of the date of injury or of a prior lump-sum payment, a lump-sum award is awarded or paid after the date of this act. There is a constitutional problem in article 2, section 31 of the Montana Constitution. Mr. Daylen supports Justice Shea's remarks in support of a study commission.

Don Judge, representing Montana State AFL-CIO, submitted written testimony. (Exhibit No. 7)

Larry Persinger, representing the Montana State Building and Construction Trades Council, spoke in opposition to Senate Bill 281. He asked the committee not to support the bill as currently written.

Joe Bottomly remarked that people say this bill is greased. He offered amendments. (Exhibit No. 8) He said the one amendment that is very important is the one to eliminate the bill's applicability to permanent partial codes. Permanent total means that person can't get any job and permanent partial means that person may have made \$16 an hour as a logger, and now he can get \$4 an hour as a clerk.

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Monty Beck, attorney from Bozeman, pointed out one provision in the bill which seems to give a tremendous amount of power to the administrator of the Workers' Compensation Division. Part 2 of the bill allows the approval of the conversion to an annuity left to the discretion of the division as to 1) what the purchase price of an annuity would be; 2) the amount of the lump-sum payment; 3) advisability of the conversion.

Joe Rossman, representing the Joint Council of Teamsters, rose in opposition to Senate Bill 281.

James Mular, representing BRO of Railways and Airline Clerks, submitted written testimony.
(Exhibit No. 9)

QUESTIONS FROM THE COMMITTEE:

Senator Towe asked Gary Blewett if the cost of living was included in this. Gary Blewett replied the law provided bi-weekly payments and also fixed amounts.

Senator Haffey asked Gary Blewett whether an individual had to make lump-sum payments or could choose not to. Gary Blewett said he has to approve or disapprove, but cannot abuse the decision.

Senator Fuller closed on SB 281, stating there is a need for a study commission.

The hearing was closed on SB 281

ADJOURNMENT: The committee, having no further business, adjourned at 2:55 p.m.


Committee Chairman

Labor and Employment COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 2/5/85

SENATE
SEAT

#

NAME	PRESENT	ABSENT	EXCUSED
1 Senator Aklestad	X		
46 Senator Blaylock	X		
9 Senator Haffey	X		
20 Senator Keating	X		
49 Senator Manning	X		
33 Senator Thayer	X		
Sentor Towe	X		
5 Chairman Lynch	X		

Each day attach to minutes.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Don Judge	MT STATE AFL-CIO	SB 281		
Ben Haddad	MT Motor Carriers Assn	SB 281	X	
Pat Waidewood	MT. FARM BUREAU	SB 281	X	
Bonnie Tapp	Alliance of Amer. Insurers	SB 281	X	
Tom Grosjean	Self	SB 281	X	
Jan Glenney	EBI - Orrion	SB 281	X	
Jim Davis	Orrion Group	SB 281	X	
Cl Overfelt	Overfelt Law Firm	SB 281		X
ROGER McLEND	INDEPENDENT INSURANCE AGENTS OF MT	SB 281	X	
George Allen	MT. Retail Assn	SB 281	X	
JAMES T. MULAR	Dep. Rwy Airline Clerk	SB 281	X	NEUTRAL
Marion	MT. Self Insurance Assn	SB 281	X	
Harry Hirsinger	Montana State Building Trades	SB 281	X	OPPOSE
KEITH OLSON	MT. Logging Assn.	SB 281	X	
Don Allen	MT. Hosp. Assn	SB 281	✓	
John Dush	Am Ins Assn	281	✓	
Stan Stea	Lumber	281		
Amie S. Van Riper	State Comp Ins Fund	281	✓	
Wm Cuddy	Cuddy Logging Assn	SB 281	✓	
BUD CLINCH	MONTANA LOGGING ASSN	SB 281	✓	
Nelson Ford	Joint Logging	SB 281	✓	
FERRY OKONSKI	Logging Septans. Ind	SB 281	✓	
Jan Dellinger	Montan Bldg. Mill Trades	SB 281	✓	
Wm Leonard	Montan Bldg. Mill Trades			✓
W.A. Boles	Montana Chamber	SB 281	✓	
DAVE GROSS	Billings Chamber	SB 281	✓	

2/5/85

TESTIMONY ON SB 281
Before the Senate Labor and Employment Relations Committee

By

Gary Blewett, Administrator
Workers' Compensation Division
Department of Labor & Industry

The Department of Labor and Industry requests an amendment to Section 39-71-741, MCA, to allow a claimant's future biweekly benefits to be converted to a lump sum at present value. This bill specifies the method of determining present value to be the purchase price of an annuity that would yield the biweekly benefits due the claimant. The bill also specifies the table to be used to estimate expected remaining life of a claimant.

Section 39-71-740, MCA, says, "All payments of compensation as provided in this chapter shall be made at the end of each 2-week period, except as otherwise provided herein." Section 39-71-741, the section proposed to be amended by this bill, allows for settlement, compromises of compensation, and conversion of biweekly payments into a lump-sum payment.

The method the State Compensation Insurance Fund has used for several years to convert future biweekly payments to a lump sum was contested in the case of Willis vs. the State Fund. The Workers' Compensation Court tried the case and found in favor of the State Fund. The claimant appealed the case, and the Montana Supreme Court, in a 4 to 3 decision, reversed the Workers' Compensation Court and decided in favor of the claimant.

The Supreme Court's decision came down on November 1, 1984 and held, "...that when a lump-sum payment is ordered under section 39-71-741, MCA, it cannot be discounted to present value." This decision entirely changes the basis upon which the State Fund charges premium to employers. Previously, premium was based on the assumption that biweekly payments would be funded through a combination of premium paid by employers and interest earnings from investments. In the alternative, lump-sum settlements would take into account the loss of further interest earnings by discounting future payments to present value. This had the effect of keeping premium costs unchanged whether a claimant was paid biweekly or in a lump sum.

If the law remains as the Supreme Court decided in the Willis case, the cost of premium to employers has to increase because of the lost interest earnings from investments.

TESTIMONY ON SB 281

Furthermore, because the workers' compensation law fixes the amount of biweekly payments to a percentage of wages at the time of an accident and does not allow for inflationary increases, it would always be to a claimant's advantage to convert future benefits to an undiscounted lump sum to protect against inflationary erosion of the value of future payments. Therefore, we would expect more lump-sum conversions than we presently experience which further adds to the cost of premium. The State Fund raised its rates by 15% on January 1, 1985, to begin the process of adjusting premium to meet the new cost. The fiscal note with this bill indicates an eventual 38% increase in premium due to the law as it is presently defined according to the Willis decision.

The Supreme Court made its decision in the Willis case based on its understanding of legislative intent. The Court's evaluation of legislative intent includes the history of legislated changes in the law, the reported practice of private insurance companies and self-insurers in 1975 at the time of the last amendment to this section of law, and the testimony before the House and Senate committees in 1975. (See Willis decision beginning on page 4).

The Department of Labor and Industry proposes this legislation for 4 reasons:

(1.) We believe that this section of law should be amended to express explicitly the practice and opportunity that insurers believed existed from 1975 through November 1, 1984, when the Willis decision came down. We have done this to give the current legislature the opportunity to either endorse the Supreme Court's interpretation of the law as it is currently written by turning down this bill or to clarify the law with new language.

It is not the intent of this bill to limit the wage loss benefits of injured workers. Its intent is to reestablish the method by which lump-sum payments were made prior to the court's decision in Willis. This bill would apply to lump sums for both permanent total cases and permanent partial cases for all insurers and self-insurers. While it was the State Fund's previous practice to apply a present value conversion only on permanent total cases, we are told that it was the practice among private insurers and self-insurers to include permanent partial cases as well. Therefore, this bill make no distinction between these two classes of benefits for purposes of lump-sum conversion.

(2.) We have also requested this amendment because of the cost to Montana's employers both public and private. A cost increase of this magnitude should not be left to a split decision in the Supreme Court. It is a cost that should be legislatively determined if it is to continue.

(3.) We have also made this a legislative issue because the law as defined in the Willis case establishes, de facto, a new order of benefit by way of the undiscounted lump sum. The amount of money to a claimant increases enormously now as was so clearly pointed out in the Supreme Court's dissenting opinion. (See Willis decision page 13). The Legislature should have the opportunity to determine whether a claimant is to be eligible for an amount that can produce both lifetime biweekly payments and a large lump sum.

(4.) Finally, we have requested this legislation as an opportunity to buy time while a myriad of workers' compensation issues are sorted out over the next two years leading, we hope, to an omnibus bill in the next session. We are concerned that there are inequities and confusion in current law that need to be overcome through rational discussion and involvement of all interested parties. The inequities are varied and perceived differently by both employees and employers. Governor Schwinden has addressed this concern by appointing an 18-member advisory council to conduct a comprehensive study of workers' compensation laws, including the court decisions that define them, and to recommend proposed legislation for the 50th Legislature that balances the interests and concerns of all who are involved.

The proposed changes in SB281 are not intended as a complete solution to workers' compensation issues surrounding the method of paying benefits. It is an interim solution that will prevent what we perceive to be a radical change in the system while more careful revisions can be sorted out through the advisory council.

In compliance with a written request received January 31, 19 85, there is hereby submitted a Fiscal Note for Senate Bill 281 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act limiting the amount of a lump sum workers' compensation payment to the purchase price of an annuity that would yield the bi-weekly benefits payable over the estimated duration of the compensation period; amending Section 39-71-741, MCA; and providing an immediate effective date."

ASSUMPTIONS:

- A. Rates will increase approximately 12% in FY'86 and 12% in FY'87 because of the underlying factors in the system that are independent of the outcome of this bill (loss experience, decline in interest earnings, etc.). An actuarial determination on rate changes won't be made until two months prior to the beginning of a fiscal period.
- B. Since the State Fund operates as a nonprofit entity revenues will match costs.
- C. In order to take into account contingent liabilities on cases classified as permanent total disabilities, the State Fund will either award or reserve the undiscounted lump sum conversion of future biweekly benefits.
- D. Impact on self insurers and private carriers is not included because the basis upon which to make an estimate is unavailable.
- E. The number of claims classified as permanent total will increase due to the incentive added by the Willis case. The percentage of cases classified as permanent total will increase from 2.14% to 5% of all cases. This increase is 2.34 times the current number of permanent total cases.
- F. The impact of the Willis case will be expressed in terms of rate increases in fiscal years 1986 and 1987, which would then stabilize for future years.
- G. This analysis is based only on State Fund data. The State Fund currently has approximately 50% of the workers' compensation market in Montana.
- H. Fiscal year 1980 will be used as a base year to determine the impact.
- I. The increase in liabilities for cases occurring prior to July 1, 1985, will be recovered over a two-year period.
- J. Total public sector employees are approximately 60,800, of which 14,000 are state employees.

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

FISCAL IMPACT:

Impact On State Fund Premium:

	Current Law as Affected By Willis Decision		
	Premium Paid FY 84	FY 85 Estimated	FY 86 1.384%

Proposed Change Affected By SB281		FY 87 1.12%	Reduction Of Premium
FY 86 1.12%	FY 87		

PART A. State Government:

General Fund	\$ 1,271,239	\$ 1,530,570	\$ 2,206,983	\$ 2,471,820	\$ 1,594,641	\$ 1,785,997	\$ 612,342	\$ 685,823
Special Rev.	1,460,579	1,758,536	2,535,695	2,839,980	1,832,150	2,052,008	703,545	787,972
Enterprise	62,718	75,512	108,833	121,948	78,673	88,113	30,160	33,835
Int. Serv.	154,134	185,577	267,589	299,700	193,345	216,546	74,244	83,154
Pension	7,691	9,259	13,350	14,951	9,646	10,803	3,704	4,148
Exp. Trust	2,074	2,496	3,598	4,030	2,600	2,912	998	1,118
University*	495,941	597,112	860,997	964,315	622,108	696,760	238,889	267,555
TOTAL	\$ 3,454,376	\$ 4,159,062	\$ 5,997,045	\$ 6,716,744	\$ 4,333,163	\$ 4,853,139	(\$ 1,663,882)	(\$ 1,863,605)

Net General Fund Savings:

(\$ 851,231)(\$ 953,378)

* Due to the nature of the University System budget, these amounts can be considered General Fund.

Part B. All Other Employers Insured With State Fund:

Total Estimate	\$ 33,678,294	\$ 44,066,599	\$ 66,529,376	\$ 75,650,063	\$ 48,070,321	\$ 54,660,450	(\$ 18,459,055)	(\$ 20,989,613)
Premium	\$ 37,032,670	\$ 48,225,661	\$ 72,526,421	\$ 82,366,807	\$ 52,403,484	\$ 59,513,589	(\$ 20,122,937)	(\$ 22,852,218)

LOCAL GOVERNMENT IMPACT:

Local governments would also receive reduced workers' compensation premiums of approximately \$10.2 million over the biennium. This savings would be distributed between cities, counties and school districts in proportion to their payroll and accident history.

IMPACT ON STATE REVENUES:

If Senate Bill 281 does not pass, the premium for all private sector employers will increase by approximately \$74 million over the biennium. Because premiums are deducted as a business expense, Montana corporate and individual income tax receipts will be reduced. The dollar amount cannot be estimated.



MONTANA LOGGING ASSOCIATION

P.O. Box 1716
Kalispell, Montana 59903-1716
406-755-3185

SB 281--testimony submitted on 2-5-85

Mr. Chairman, members of the committee.

My name is Keith Olson. I am employed as the executive director of the Montana Logging Association. I reside in Kalispell.

Our organization represents over 500 independent logging contractors from throughout the timbered regions of Montana and, because our average member has seven employees, we are small businessmen.

We rise in support of SB 281 because we are terribly concerned that Montana's workers' compensation system is on the verge of collapse.

Before I pursue that any further, allow me to put into perspective exactly where the logging industry fits into the workers' compensation system.

Today, the workers' compensation rate for:

(1) secretaries is	\$ 0.37/\$100 of payroll
(2) salesmen is	\$ 0.81/\$100 of payroll
(3) shop mechanics is	\$ 5.06/\$100 of payroll
(4) road builders is	\$ 9.03/\$100 of payroll
(5) loggers is	\$24.90/\$100 of payroll

One of the reasons our work comp rate is so high is because the timber industry is inherently dangerous and even though we endeavor to minimize the risks associated with working in the woods, eliminating those risks is next to impossible.

However, danger is not the only factor which effects work comp rates. Allow me to illustrate:

Following are the work comp rates for logging (classification code 2702) in each of the last 5 years.

July of 1980	\$18.85/\$100 of payroll
July of 1981	\$19.85/\$100 of payroll
July of 1982	\$19.55/\$100 of payroll
July of 1983	\$20.35/\$100 of payroll
July of 1984	\$21.65/\$100 of payroll
January of 1985	\$24.90/\$100 of payroll

In the 5 year period, July '80/July of '84, our work comp rate rose \$2.80/\$100 of payroll.

In the six month period, July '84/January '85, our work comp rate rose \$3.25/\$100 of payroll.

Actually, our work comp rate went up more in one day (Dec. 31, '84/Jan. 1, '85) than it had in the 5 previous years.

And did it go up because logging was all of the sudden more dangerous? No, it went up because of a Supreme Court decision.

That increase alone will increase an employers cost of workers' compensation insurance for an employee making \$20,000/year in the logging industry from \$4,330/year to \$4,980/year--an increase of \$650/year per employee.

And now we learn that should SB 281 ~~pass~~ pass we will ^{still} face another 12 percent July 1 of this year. Should that happen the cost of workers' compensation insurance for an employee making \$20,000/year in the logging industry would escalate another \$650/employee per year. Should SB 281 Fail, we will experience a 38% increase on July 1, '85.

Enough of the mind-boggling statistics gentlemen, the point is this: we cannot afford it!

Last week Champion announced that they had closed down 8 mills on the west coast, permanently eliminating 2,000 jobs. We can feel fortunate that none of the cutbacks affected Montana operations. I bring this up only to stress that the timber industry is not healthy at this point in time.

Since Senator Lynch and Senator Haffey are the only members of this committee who reside west of the continental divide, it may be appropriate to relate that the timber industry comprises 50% of the economy of Montana's seven western counties.

As logging contractors, we cannot simply pass increased logging costs on to consumers. At the same time you increase our operating costs, the price of lumber may have dropped on the national market--or worse yet, we may have lost another share of our traditional market to Canadian lumber imports.

So what are our alternatives? Are we to either shut down and lay-off our employees, or are we to ask them to take a cut in pay? The Willis decision was, indeed, a sad one for the working man.

Mr. Chairman, members of the committee, that brings me back to the solvency of Montana's workers' compensation system.

The ability of any system designed to provide benefits is only as good as the solvency of those funding the system.

In this case, the Willis decision handed down by our Supreme Court threatens the solvency of many employers; especially those of us in basic industries like logging, because the only way insurance companies can bolster their reserve accounts is a percentage increase in rates; however, a 15% increase in work comp insurance for a secretary amounts to only \$0.12/\$100 of payroll; the same percentage for a logger amounts to \$3.75/\$100 of payroll.

There is no doubt that the Willis decision provided a financial windfall for one injured employee; and the members of the Trial Lawyers Association have been doing cartwheels across the state ever since; however, should SB 281 fail to pass, we sincerely fear insufficient funds will exist in work comp reserve accounts for future employees unfortunate enough to be injured in an industrial accident.

In closing, allow me one further concern of our membership. We have long endeavored to define that gray area which distinguishes a prime contractor/subcontractor relationship from an employer/employee relationship.

If employment costs continue to escalate, we respectfully fear you will once again see that distinction begin to gray, as more and more employers seek ways to avoid payroll costs.

Mr. Chairman, members of the committee, thank you for your indulgence and please move a do pass recommendation for SB 281.

2/5/85

Scope of our operation -

- Western Montana - in business 5 yrs.
- We are logging contractors specializing in logging with cables suspended in the air (skylie logging)
- We provide an approx \$500M payroll to the economies of the Libby / Knapell Area.

The Economic climate for Montana's basic industries is LOW.

There is testimony ^{every day} ~~like it~~ pertaining to how long it ~~is~~ is. Look @ The shape farming - mining - + Forest Products is in

We have a BUILD Montana Program to attract new businesses - however, our state government ought to be doing whatever it can in whatever small way to help our basic industries cope easier with ~~these~~ this adverse climate.

In our specific situation - located near Idaho - our Company has to compete strongly ^{against Idaho loggers} for available logging contracts on Montana timber. to be delivered to Idaho mills. Few Montana residents are employed when Idaho loggers work in Montana - they have their own crews to keep busy.

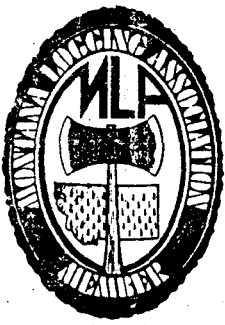
We try hard to maintain a competitive edge by keeping a well motivated crew and run a fairly efficient operation. The difference in Idaho Comp rate for logging @ \$16/100 payroll

v. a continually rising Mt. Comp rate (now @ \$24/100) - plus the upward pressure on unemployment rates wipes out any gain made through increased efficiency

Similar to the miner & farmer, the logger can't pass his increased costs on to his "consumer", ~~the local products mill~~ The various mills. Combine this w/ depressed log prices and upward cost pressures primarily from the service industries - Work Comp, health ins, utilities, etc. and the basic producer receives a "double dosage" of bad economic medicine.

We currently provide our employees with a group health plan - and we would like to expand our ability to provide our employees with additional benefits to keep our valued people.

In spite of some basic philosophic differences in Comp Law and administration, we do believe in the Comp System as a necessary tool that should ~~be~~ protect the interests of the employer as well as employee. Lets try to keep our Montana employees working by helping to keep our basic industry, logging, competitive. ~~with and without~~



MONTANA LOGGING ASSOCIATION

P.O. Box 1716
Kalispell, Montana 59903-1716
406-755-3185

Exhibit No. 5

2/5/85

SB 281- - testimony submitted 2-5-85

Mr. Chairman, members of the committee.

My name is Bud Clinch. I am employed by the Montana Logging Association as safety director. I reside in Kalispell, but the travels associated with my responsibilities take me to Roundup, Big Sky, Hamilton, Superior, Libby, Eureka, and all the places in between.

Within the association I specifically provide loss-control services intended to minimize logging related accidents and hopefully the cost of workers' compensation insurance.

It has long been our understanding that the most effective way to combat the high cost of workers' compensation was through a concerted effort to reduce accidents. Obviously a substantial reduction in the number of accidents would have a favorable effect on reducing the rates.

Hence the inception of the Montana Logging Association's loss-control program. Currently about 350 member firms subscribe to the MLA's program.

The program is a multitude of services including:

First-Aid and CPR training. Last year over 200 employees received such training.

Hearing conservation testing. In our second year of implementation we are expect another 500 employees to undergo the testing to detect early signs of hearing loss.

Safety meetings. During the 100 plus on the job visitations that I annually make, safety and accident prevention and cost is stressed.

Workers' Compensation Seminars. We are looking forward to our fourth annual series of seminars to acquaint the managers with the workings of the workers' compensation system.

Through mailings and newsletters we promote the acceptance and use of important safety equipment.

Safety consultations of computer print-outs of members workers' compensation claims gives insight into the high cost of medical treatment and disability benefits.

Our members participate in this program because they have a strong commitment to their employees. With the average crew size around seven, a near family relationship exist among logging crew members.

With over two years of implementation behind us, we feel the results of the program are just beginning to materialize.

The frequency of accidents is reduced. Technology has produce significantly safer logging equipment and our promotions have reached the majority of the logging community.

However, the costs of workers' compensation continues to rise.

During the computer print-out review process I mentioned earlier, I'm often confronted with claims taht may total more than the combined yearly salaries of the entire crew-a figure which may exceed \$100,000.

More and more as I travel about the state visiting loggers, I am confronted by disgruntled employers.

These are progressive employers and strong supporters of the loss-control program who have gone the full route for their employees.

- They pay to have the crew attend first aid training
- They pay to comply with the OSHA hearing conservation ammendment
- They pay to provide safety equipment such as chaps, ear plugs, etc.
- They pay to equip their vehicles with expensive two-way radios and may subscribe to a mountain top repeater system to provide communication to the most remote locations in the event of an emergency
- They may offer a safety bonus or incentive system to reward "safe employees".
- They may pay or share the costs of a family medical plan.

ALL THESE EFFORTS AIMED AT PROTECTING THE EMPLOYEE-TO PROVIDE A SAFE WORK PLACE-AND TO PROVIDE AN INCENTIVE TO BE A SAFE EMPLOYEE. AND MAYBE, JUST MAYBE, REDUCE THE WORK COMP RATE! ! !

I stress these efforts because I feel our members have done all that can be expected for their employees.

Factors outside their control continue to escalate their rates. If its not the spiriling medical costs, its the liberal awarding of benefits to anyone who request them, and lets not forget the influence of attorney fees. And now the Willis decision threatens the solvency of the entire system.

Please pardom me for rambling on so-but I speak out of frustration. You see, the only means of evaluating our program is through analysis of the total cost of workers' compensation claims. While I strive to shave dollars from the cost colums by minimizing accidents, the supreme court slaps us with 15% increase and possibly more by awarding more liberal benefits.

I'm groping for some answers, maybe some equity. When tomorrow dawns, I'll be back out in the brush-visiting another logging contractor-critiquing his operation and promoting safety.

Perhaps I'll make some constructive suggestions. Maybe I'll warn the crew of some overlooked potential dangers. I'll check the condition of equipment, the coordination of men and machines, first-aid supplies, radio communications, and various safety equipment.

Inevitably we'll discuss past accidents and workers' compensation claims.

I'll probably hear at least one account of a past employee receiving excessive benefits-for an injury that is questioned as to whether it even occurred on the job.

I'll make my plug for hiring and retaining only the best of men. I'll suggest continued involvement with the loss-control program in hopes of checking the runaway rates.

Then I'll hear of the loggers' plight. Something like 1975 prices and 1984 costs, with nothing but increased costs in sight. I'll shake my head in approval.

As mentioned earlier, the emphasis of our "safety program" is to encourage employers to invest in safety. It takes money to invest.

When there's barely enough money to pay the crew's salary, it's futile to expect the niceties like paid training sessions, hearing testing, and safety equipment.

Quite honestly, the rising costs associated with providing employment are making my sales promotion of safety even more difficult.

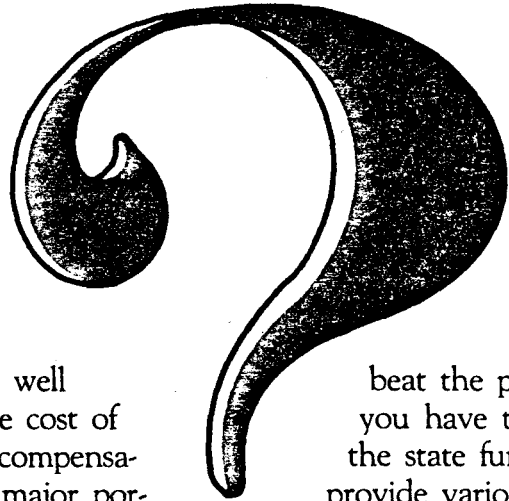
It's with this appeal that I request a do pass recommendation for SB 281.

Exhibit no. 6
2/5/85

Tom Casara
Kenny
Oral



Are you paying too much for Workers' Compensation



As you well know, the cost of workers' compensation is a major portion of your business insurance expense. We can probably reduce that cost.

Hoiness LaBar-FBS Insurance Montana can compete with and, in most cases,

beat the program you have through the state fund. We provide various cash flow programs and loss control assistance to further reduce your workers' compensation costs.

Call us. We can increase your cash flow.



Hoiness LaBar
FBS Insurance Montana

Since 1921

2323 2nd Avenue North, Billings, Montana 245-6511



2/13/85



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARYZIP CODE 59624
406/442-1708

TESTIMONY OF DON JUDGE ON SENATE BILL 281, HEARINGS BEFORE THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 5, 1985

I am Don Judge, representing the Montana State AFL-CIO. We are here to offer comments on Senate Bill 281, and other possible revisions to Montana's workers' compensation law.

The case of Henry Willis vs. the Long Construction Company and the Montana State Compensation Insurance Fund has dramatically highlighted a basic inequity in our workers' compensation law. Senate Bill 281 seeks to protect employers from potentially high premiums caused by lump-sum payments based on future benefit costs. However, another point must be made from an examination of the conclusions of this case. As has been argued previously before Montana legislators, benefits that are paid to totally disabled workers based on a percentage of that workers' income at the time of injury is blatantly unfair. The annual rate of inflation robs dollars out of that worker's pocket each subsequent year. There is currently no means of adjusting these benefit claims to meet true living costs.

As you know, workers traded their right to sue an employer for damages in return for the certain delivery of benefits in an amount which would provide at least a minimal level of support while that worker is unable to work due to injury.

We believe that it makes no sense to create a situation where premiums get so high that employers are forced out of business while attempting to provide adequate workers' compensation insurance.

However, we also believe that workers have a basic right to adequate benefits.

Senate Bill 281 only seeks to address one side of the problem that is before this committee -- the side of the employer. What about the gross inequity facing the injured worker?

Mr. Chairman, Members of the Committee -- we recommend that today you take no action on this bill. Wait to act on this proposal until all the bills introduced to modify this important law are before you. We believe that the workers of this state will benefit most from a law that is fair to employers as well as to workers. That can only be accomplished when the inequity of freezing total disability benefits forever at the original computation rate receives equal consideration as the bill before you.

Thank you for your consideration.

2/5/85

Je Bottomly
Amendment SB 281
new language:

In determining the present value of a workers lump sum award the worker may introduce evidence of future cost of living increases. The award of lump sum shall reflect the cost of living increases the preference of the evidence establishes.

Joe Bottomly

Amendment SB 281

lines 19-24

replace language regarding annuity
with:

a lump sum awarded or
paid after (effective date of this act) may
be discounted by 6% to present
value

See Bottomly
Amendment 281 SB .

The discount referred to in
this section applies only to
total permanent cases and
not to permanent partial cases.

NAME JAMES T MUIAR BILL NO. SB 281

ADDRESS 440 ROOSEVELT DRIVE BUTTE MT DATE 2 5x84

WHOM DO YOU REPRESENT BRO OF RWY & AIRLINE CLERKS

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: THIS LEGISLATION IS SOMEWHAT IN CONFORMITY WITH THE MONTIN SUPREME COURT DECISION IN THE WILLIS CASE. OUR MONTANA AIRLINE CLERKS FEEL THAT THIS BILL DOES NOT GO FAR ENOUGH COMENSURATE WITH THE FEDERAL EMPLOYERS LIABILITY ACT (FLEA) THE WILLIS CASE DOES RECOGNIZE MORTALITY AND ACTUARIAL TABLES ESTABLISHED BY MOST INSURANCE CARRIERS.

WE HAVE PROBLEMS WITH LUMP SUM PAYMENST WHICH DO NOT EXCEED PREMIUM COST. THIS CRITERION COULD ADVERSELY AFFECT PRESENT MAXIMUM LUMP SUM AWARDS AS DECIDED IN THE WILLIS CASE . INASMUCH AS PREMIUM COST RECOVERY WOULD BE LOWER THAN THE AWARDS FOUND IN THE WILLIS DECISION.

WE URGE THE COMMITTEE SET LUMP SUM EQUIVELANTS ACCORDING TO THOSE STANDARDS FOUND IN THE FEDERAL EMPLOYERS LIABILITY ACT (FELA)