

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS
MONTANA STATE SENATE

February 14, 1985

The twelfth meeting of the Labor and Employment Committee was called to order by Chairman J. D. Lynch in Room 413/415, Capitol, at 12:40 p.m. on February 14, 1985.

ROLL CALL: All the members were present.

FURTHER CONSIDERATION OF SB 281: Senator Lynch said that Senator Fuller would not be supportive of any means of putting a cost of living adjustment in SB 281. However, he felt that was a committee decision, but Senator Lynch felt that there was room for some amendments to SB 281, and the foremost that I would consider feasible is a percentage of a discount on the lump sums that are granted. After visiting with 20 or 30 or 40 people, the 6% or 5% range that has been mentioned, I think that's possible, and I think that might be a basis where we might start on SB 281. Senator Towe has introduced a set of amendments. Mr. Bottomly from Great Falls, asked us to consider some amendments, and Senator Fuller has an amendment as I recall. With that brief introduction, I would open the meeting for discussion on SB 281. Whose amendments are these? It was determined that they belonged to the Division of Workers Comp.

Senator Towe asked if there was any interest in pursuing some of the things that he suggested the other day. Senator Towe told the committee that they are faced with doing something one way or the other. They have to act on the bill. Senator Towe asked if there was any interest in putting a loan program in to take care of the needs and the lump sum, and in exchange in eliminating lump sums altogether. With the substitute of a loan program, we would then be able to put the money saved into a cost-of-living increase, which in my opinion is far more important and better for the worker. I asked John to work on this--where are you on this, John?

Mr. MacMaster, Legislative Council, replied that he had given Senator Towe copies of five questions that he asked of the Division and that they gave him the answers that the committee has copies of. Mr. MacMaster said that he understood that the cost savings of eliminating lump sum payments would be minimal. In other words, if you just said no more lump sums, the administrative costs saved to the divisions would be minimal, and the cost to the employers would be minimal also. Senator Blaylock asked that, before the Willis agreement they had lump sums, right? Were they discounted? Mr. MacMaster replied that yes they had them, and as he understands it they were discounted along the lines of what 281 does. Mr. MacMaster said that what 281 does is to codify what the Division was doing prior to Willis.

Senator Towe explained that he handles some workers' comp cases in his practice, and that in one of them the fellow wanted a lump sum settlement, and he ran the payments out and it came to \$170,000. Senator Lynch asked if that was a lump sum of \$170,000 at 38½ years expected lifetime? Senator Towe said whatever the life expectancy of his client was times the monthly payment..biweekly payments, and it came to over \$160,000, so we asked what they would give us as a lump sum, and I think the figure was \$55,000. I asked them how they got that, and they replied that they knew a good annuity in Denver where they could buy an annuity for \$55,000 and it would pay him the same monthly rates to which he is entitled for the rest of his life, at the exact same figure that the workers' comp would pay. I think in that case, I was able to talk them out of another \$10,000 and that was it. That's the problem and that makes it bad for the worker who really does need some money up-front. He said that insurance company is discounting that at 13% and that's a really high figure. There was some discussion regarding giving the client the money and letting him buy the annuity. Senator Towe then suggested that they loan the person the money that he needs to take care of his immediate problems, which may be say, \$40,000, at an interest rate and then he continues to receive the payments. However, the payments go to pay off his loan, but he hasn't given up the total benefits, when the loan is paid off, he still has something left. But the attorneys won't get anything out of it in that situation. Senator Towe feels the loan program is very attractive.

Senator Blaylock said that in talking with many people, they believe that the workers' compensation program is working well. It is sound, it is generous and it works good. It seems to me that as our first duty we should maintain the soundness of the system, because it is good for our workers and it is good for our employers. Senator Blaylock said that he didn't feel that they could lay on the employers an increase such as 38%, or even 11%. Senator Blaylock would like to retain the lump sum payments if they could in some way. Senator Lynch asked if he was suggesting like Senator Towe's amendments of restricting the lump sum. Senator Blaylock said he was torn. He would hate to tell them that they can't have a lump sum, but he is also sure that they cannot do like post-Willis. They can't add 38%.

Senator Towe explained to Senator Lynch that if you didn't have to pay the \$170,000 off for 20 years, you can take a lesser amount and invest it, and by 20 years let it build up. The question is how much do you have to invest? If you were to pay out \$170,000 with a 13% discount in 20 years, the figure would probably be somewhere around \$15,000. If that insurance company can go out

and invest that money at 13%, or it may be higher, they won't tell me the investment rate is, but if in fact, it was 6%, my guess is that you would have to put in something on the order of \$75-\$80,000, and that's what the difference in discount means, and that's what's hurting. This is why I object to the bill. You should not be able to take that very high interest rate and thrust it onto the backs of the workers. That's not fair.

Senator Aklestad said that he did not feel that SB281 was the full answer for the long-term. The Committee agreed. Senator Aklestad said that he thought he would be in favor of putting SB281 through in the manner in which Senator Fuller has adopted it, even though he doesn't feel it has all the answers he would like to come up with, and then have those answers answered with a study committee and then maybe they could come up with something for the next session that would cover the inflation, the lump sum, and these problems. He believes that time is too short to really work on it and do it justice.

Senator Lynch told Mr. Blewett that he had had a call from a claimant in his district saying that a friend had told him to wait to settle until after the legislature is through meeting in April. Senator Lynch felt that the man would be better off to settle now during post-Willis than to wait until later. Mr. Blewett agreed. Senator Aklestad agreed and listed facts and figures over the last three years showing how much of an increase there has been in workers' comp payouts, as well as the money paid in. He feels that adding on to the employers' payments is just another burden that they should not have to pay in order to keep them in business in the state.

Senator Keating said he was going to follow-up on what Senator Blaylock had to say. Senator Blaylock said that pre-Willis we had a good workers' comp. It seemed fair and equitable for everybody, and John said there was minimal impact from lump sums pre-Willis as well. As 281 is presented except for the retroactive applicability amendment, it would place us about at that pre-Willis status that would not deny lump sum requests although it might dissuade them somewhat because of these situations, and then the rest of them could go into that advisory council in the interim so that the cost-of-living could be considered. We could maybe come to a better discount situation. Senator Keating agrees with Senator Blaylock.

Senator Haffey asked Mr. Blewett if Justice Shea had said that if the Workmen's Compensation Division had been doing what the legislature had told them to, it would have been making lump sum payments in accordance with what the Supreme Court decided? Am I correct? Mr. Blewett replied that that's what he heard Justice Shea say in the hearing. Would the employer's contribution be reduced if we did all this as set forth and specified when lump sum payments could be made, would the costs to the division and employers be lower? Mr. Blewett replied that it would.

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Senator Haffey asked if they could draft specific language would that address the prohibitive cost to the division and to the employer. Mr. Blewett replied that if they could draft language that gave real criteria to the decision-makers, the court, or whoever, indeed that would narrow it down, but it depends on how many of those you create. Senator Haffey feels that if the committee doesn't do something, there will be hundreds of requests for lump sum payments over the next two years. He feels that they have to get specific.

Senator Thayer said that if they didn't add the discount, people would be foolish not to ask for a lump sum settlement. Senator Thayer felt that they didn't have any problems until the Willis case from as far back as the '70's.

Senator Lynch asked Patrick McKittrick, Great Falls Attorney, to answer Senator Thayer's question since he would be familiar with things further back. Mr. McKittrick gave the background on the act as it currently reads. He told them about the discount, and how he didn't know exactly how much the insurers discounted under plan #1 and plan #2. He believes they should put it at 6%, study it for two years and let it go in the interim. Senator Lynch said 6% was a figure that was mentioned to him that would make no-one happy. The insurers would not be pleased, the claimants would not be pleased, and no-one else would be pleased.

Senator Lynch asked the insurers other than the division's to answer Senator Thayer's question about how they discounted prior to the Willis decision. Jim Davis with the Orion group said that he had only been here since 1983, but that they had an underwriter who was very familiar with this and he introduced Dan Glenny. Mr. Glenny said that he couldn't answer prior to the Willis case, but at the present time when the court allows a settlement, they do take into account the present cost of an annuity that could be used to settle the case, so the answer would be yes. We do use an annuity. He said they would eventually compromise with the attorney because they can buy one from USF&G or from themselves for 9% or 11%. Senator Towe said that he could tell them a little bit about how this worked before the Willis decision and how that impacts here. Generally when the attorneys and the insurers start to discuss settlement, they talk discount. I think I settled some for 8% and some for 9%, and maybe even higher than that. The higher it is, of course, the worse it is for the claimant. That of course, was not done with the Willis decision. With this bill, there is complete annuity discount, and I submit that neither are fair to the working man. Under the present law, I really think that's unfair the other way. In other words, I think that is too much, because with that case I had of the \$170,000, that man could take his \$170,000 and invest it and he would have probably two or three

times that much for the rest of his life, just by investing that amount of money. And it wasn't intended, I don't think that they should get the windfall, so I don't think that's fair. On the other hand, it isn't fair the other way because I know what will happen if you pass this law. Unfortunately, there are too many workers who want that lump sum payment, and they will take too much less to get it. Senator Towe said he was not fond of lump sums because a lot of people who go to see him have already been through a lump sum. They have gotten a lump sum settlement and it is gone. Senator Towe really believes that the best solution to the problem is to really tighten the lump sums. Senator Towe suggests that they improve the language with the language he suggested the other day where you tighten down the lump sums, and you put a 6% discount on those that you do allow. You can't cut them off altogether because there are some really serious needs that have to be dealt with.

Senator Haffey asked Senator Towe to quickly explain the mathematics to him. He asked if you just take the biweekly payments and figure them out according to life expectancy. Senator Haffey asked him to tell him how the 6% would be applied to it. Senator Towe said that they will take the same \$170,000, which is the biweekly payments multiplied by the rest of his life, or as according to the last legislative session until social security kicks in. It is how much you would have to pay out now if you had the money invested at 6% in order to equal those monthly payments. I got it out of a big book. The 6% number will put it somewhere between \$170,000 and \$55,000. Mr. Blewett said that he had given them a handout last time that would show them the range between zero and 11%. Mr. Blewett said that Senator Towe indicates annuities are a lot higher than that, and they might well be. The reason we chose that is because it was pretty close to the rate of return that we have been getting. The way things are right now, that would generate an 11% increase in premium, and that is because of the differential between the rate of return that we have now and the rate by which we would settle. Senator Haffey said but a tightening up now on the language when lump sums are appropriate, would further reduce the cost? Mr. Blewett replied, exactly.

Senator Manning still feels that the workers' compensation act was put in place to protect the employer and not the employee so much, and I do think that we can't forget the employer. I was wondering if there was any feasibility of putting together a committee bill with the ideas that we have heard here along with maybe an interjection similar to what SB219 has got for cost-of-living.

Senator Keating asked Mr. Glennly if they were using the 11% figure for discounting at the present time. Mr. Glennly replied that you negotiate. It is not just 11%. You just negotiate the figure.

Senator Keating wanted to know how the insurer felt about SB281. Mr. Glenny told him that it basically put the employer in a good position because it virtually eliminated lump sums with the discounts listed. This puts the employer in an excellent position if 281 is in force so they have these discounts. Senator Keating asked Mr. Glenny what he would consider a discount rate that would be a balancing figure at this time. Mr. Glenny felt that they had to take more than just this bill into account. He said if they were going to put a COLA in SB219, whatever that amounts to, they were talking about 6% and then put a 6% discount in here, you balanced yourself out--you still have Willis at \$332,000 in a compromise. You have ended up no place at all. Senator Lynch asked Mr. Glenny if, assuming that this were the only bill and the rest get tossed to a study committee, what percent would you think..is 6% a reasonable one? Mr. Glenny responded that it was fair. Now, this is assuming it is the only bill, the COLA is going to get studied, and we are not trying to balance.. a bill of this magnitude is going to get through this session. Our actuary in Connecticut feels that 6% is too low, Mr. Glenny replied. He wants it at 11 or 10 3/4ths. Senator Towe asked Mr. Glenny to forget about his company, what did he think? Mr. Glenny replied that rates are going to go up, and you will see things rise because it has to be cost effective when you offer benefits versus the premiums that you collect. I don't really have a percentage figure. If the division is using 11%, I would have to agree to 11%. That's the way we have been doing it, you know, for years and years, Mr. Glenny replied.

Senator Towe asked Mr. McKittrick what he thought the percentage should be. Mr. McKittrick said that that is what he suggested, but as he understands it, the division has already based on the Willis decision raised the premium 15%, or anticipating raising the premiums 15%, so we are looking basically at a 5 or 6% discount in relationship to the fact that the premium has already been raised 15% because of the Willis decision.

Senator Blaylock asked Mr. Blewett if the cases pre-Willis were discounted between 7 and 8%? Is that where most of them fell? Mr. Blewett said he did not believe so. Senator Blaylock asked what they were discounted. Mr. Blewett said he believed they were discounted at or near an annuity rate, which he believed was in the realm of 10 or 11%. Mr. Blewett went on to tell the committee that there are many elements involved in a compromise and that the discount rate is only one of them. And if you change this one element, this base, so you can no longer consider a present value consideration, then you are going to have these kinds of rate increases. Mr. Blewett said that they used in their fiscal note, the assumption of an 11% rate of return as the thing that would be lost under this system, so a representation from a 0 to 11 is taking just that one factor into consideration assuming all the other compromise elements that one can

entertain held constant in the past. I would guess that the 6% discount would generate an 11% increase if all other factors are the same. However, that is based on where we were last year. We have made a 15% rate increase, so this would be different. Do you feel, Senator Blaylock asked, in order to cut down on the number of lump sum settlements that Senator Towe's language..have you seen that? Mr. Blewett replied that he had seen the suggested language. Senator Blaylock asked if that would really tighten down as far as he was concerned because the bill, as Senator Blaylock reads it, gives the division carte blanche on whether they approve a lump sum or not. Mr. Blewett replied that it only gives the division control if the insurer and the claimant agree. Then the division reviews that to make sure that it fits within these parameters, and that we would deny a lump sum that didn't have all of these criteria. Mr. Blewett offered to work out the language with Senator Towe that would fit and be fair to everyone.

Senator Haffey asked Mr. Blewett if what he is talking about is language based on the experience of the last couple of years, under which lump sum payments are called for, and that specific language with the 6% discount would be a step in the direction of addressing the place where both lump sums are appropriate and mitigating the increased costs, other than that annual cost that you have to make for your premiums anyway. Correct? Mr. Blewett replied yes.

Mr. MacMaster told the committee that they already had that kind of language. That it had already been worked out between himself, Mr. Blewett and Jan Vanriper, and he had copies of it. Mr. Blewett affirmed that they had drafted some language that they felt more comfortable with than the language it was in right now.

Senator Haffey asked Mr. Blewett if the 15% increase on top of the annual fluctuations had been imposed. Mr. Blewett said that they had assessed 15% effective January 1st. Senator Haffey said but lifting that off for a minute and say we are readdressing the situation, if language was put in place similar to what you are going to work out, are you also saying that if that language were in place in the law, then you would be able to conclude and you would not know until experience demonstrated otherwise that there was no reason for an increase in premiums? Mr. Blewett replied yes.

Senator Lynch asked if this 15% increase would stay in effect if they put in new language. Mr. Blewett said it would not stay in effect with the new language in the law. Senator Lynch said it would negate the rates on July 1st. Mr. Blewett said that they would collect the rates as is on July 1st, but they would not let the 15% continue. Senator Lynch asked the committee if they thought they should be promoting annuities. He said if he were an annuity salesman, he would be writing in here saying how much he liked this bill, because you are going to tell people if they

want lump sums, you are going to buy annuities. Senator Towe explained that it did not work that way. First, you find someone who wants to sell an annuity, and then you go back and you say, I can buy an annuity for x number of dollars, and I will settle the case with you for say \$50,000. Senator Towe said you never buy the annuity--you get this because of the price of the annuity.

Senator Keating said that if they raised the discount rate to 9%, according to Mr. Blewett's chart, they could increase the premium rate to the employer by 4%, does this mean that you could reduce the 15% increase that you gave them by 11%? Mr. Blewett replied that it should be even more, because this 4% increase assumes that there is no change in the way that we controlled lump sums. We are talking about controlling the volume of lump sums, which should severely reduce the numbers. This bill would not create an increase because we had done a good enough job in controlling the volume of lump sums and still done a good enough job to have a high enough discount on the balance that there wouldn't be an impact. Senator Keating said there wouldn't be an increase, would there be a decrease? Mr. Blewett said considering all the factors there should be a decrease in the 15%.

Senator Lynch said that he got the feeling they were headed toward a compromise, so he asked Mr. Olson, in all fairness, if he could see where they were heading and did he think this is going to be a fair compromise? Mr. Olson said that if he is hearing everything right, he is pleased with what he is hearing. He said he is a little worried about whether or not it will work. He said that he is interested in rate stability, and if 281 is going to be the catalyst for that, and then we are going to throw a lot of other legislation to a committee, and not undo what we do here, I'm pleased.

Senator Aklestad said that he gave them the figures before and that they had a \$5 million dollar increase going into this, and that they are not just compromising the big employers, they are compromising everyone. Senator Aklestad feels that they are compromising the employer and that this committee should make darn sure when they reach these compromises that the employers get a decrease in premiums, especially in light of the drastic raises they have had over the last four or five years.

Senator Blaylock said that as far as 281, they did not need a study committee. Secondly, he would like to see Mr. Blewett, Senator Towe and whoever else wants to get involved in this, draw up that language, and then he thinks the aim should be that they reduce that 15% increase. That's absolutely essential.

Senator Manning agreed with Senator Blaylock, but he would like to have a copy of that information and somebody explain it fully. He would like to have both sides involved.

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Senator Lynch said that he felt that both sides are well aware and they will be here.

Senator Thayer said that he felt that they had to deal with the other legislation also, because he felt it would be too bad to do all this work on 281 and then have one of the others crashed through and negate all that they have done.

Senator Lynch said that he would be willing to vote for a table, and to put those other bills right into that council, because he doesn't think they can address all those issues this session. He would love to see a COLA, but he doesn't think they are prepared to address that issue this session.

Senator Towe agreed, but he wants to talk on 220 separately. He feels that 220 is a separate issue. Senator Lynch said they could look at 220, but he is of the opinion that if they can get 281 out, upsetting both sides equally, then he thinks they have accomplished a great deal for both sessions. He feels it is necessary to get 281 out in some fashion.

Senator Keating said he agreed with Senator Blaylock as to the language, but it is his understanding after listening to the testimony here, that it is possible for that language to affect legislatively through 281, a situation whereby the rates paid by the employer can be rolled back to January 1, 1985..pre-January 1, '85 and still arrive at some little bit better discount rate than the 11%.

Senator Lynch asked Mr. Blewett for the time-frame in which they might have something concrete to look at. How about a Saturday meeting? Mr. Blewett said he would like to have a proposal for him by Saturday since they are coming up on transmittal. Senator Lynch gave Mr. Blewett until Monday and then said he would set another date for a meeting.

The meeting was adjourned at 2:20 p.m.

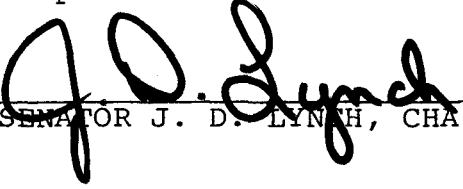

SENATOR J. D. LYNCH, CHAIRMAN

Exhibit 1
2-14-85
for Labor & Employment
Committee
Prepared 2/14/85

RE: SB281

RESPONSE TO QUESTIONS FROM SENATE COMMITTEE STAFF

1.) What are the cost savings of prohibiting lump sum payments?

Premium: This is equivalent to the impact of present value lump sums. Therefore, the premium rate increase due to the Willis "no discount" decision would be cancelled.

Administrative: Relatively little time was spent on the review of lump sums themselves (pre-Willis). The time consuming aspects are a, b, and c:

a.) Whether claim is permanent total or premanent partial,

b.) The amount of biweekly benefit.

c.) The duration of benefit.

Finally:

d.) Conversion of future benefits to a lump sum is considered.

2.) How big a cost of living increase would these savings fund?

- Depends on how the "no premium" increase is viewed. The passage of SB281 or a "no lump-sum" law would avoid a 38% rate increase in July.

3.) Assume a worker gets a loan on the private market against the pledged future biweekly payments. What would be the size of the loan available compared to SB281 or, alternatively, compared to the Willis decision?

- The net to the claimant would approximate the amount available under SB281 rather than the Willis "no discount" amount. The exact net would depend on the interest charged by the bank. The SB281 fiscal note assumes an 11% rate of return. Bank interest rates are generally higher. Current "new car" loans are at 13 1/2% and commercial loans are at 15 1/2%.

4.) Could loans be made from the State Fund?

- Use of premium is limited by 39-71-2322 and 39-71-2324. All reserves must be turned over to the Board of Investments as "part of the long-term investment fund."

- If the law were changed, the Division would need staff to administer the loan plan.

- If loans did not yield the rate of return we now get, premium would have to increase to make up the difference. (Premium is always adjusted according to the estimated rate of return on investments.)

5.) Could the State Fund make loans to claimants under Plan No. 1 or 2?

- Not without a change in law as indicated in number 4.

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COMMITTEE ON LABOR + EMPLOYMENT

VISITORS' REGISTER

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(Please leave prepared statement with Secretary)