

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 20, 1985

The meeting of the Labor and Employment Relations Committee was called to order on February 20, 1985 at 5:40 p.m. by Chairman J. D. Lynch, in Room 413/415 of the Capitol.

ROLL CALL: All members were present.

DISPOSITION OF SENATE BILL 281:

Discussion of Senate Bill 281 commenced. Senator Lynch noted that the members read an attempt to compromise on Senate Bill 281. He stated there would no longer be any testimony to this bill unless a specific question was directed to any witness.

Senator Aklestad asked if the committee would need Senator Fuller's amendments to comply with the state on this bill. John MacMaster replied that he believed they were needed, and he suggested to the division that they be put in.

Senator Keating asked John MacMaster why he felt they (the amendments) were necessary. John MacMaster replied because he thought there was a question as to whether or not you could make the new law, that is the discount rule, apply to injuries and lump sums that were awarded prior to the effective date of the new law. Senator Towe asked if the committee was discussing the proposed retroactive amendment. Senator Lynch replied that was correct.

Senator Towe asked John MacMaster what the amendment meant. John MacMaster replied that it meant basically two things, one was that if the injury was prior to the act's effective date and the award was after the effective date, then the act would apply; if the injury and an award occur prior to the effective date and the award was reopened and redetermined, then this act would also apply. Senator Towe asked if that was permission to reopen it. John MacMaster replied that it was not, in his opinion. Senator Towe asked what the basis was for reopening. John MacMaster replied that to him the basis would be whatever it was currently under the Workers' Compensation Act. If they could reopen now they would be able to reopen under the same principles and rules for reopening after this act's effective date, but if they do reopen then this act would apply.

Mr. Blewett commented by stating that if this act passed it would be a disincentive to lump sum payments. Senator Lynch

asked Mr. Blewett what the criteria was currently for reopening a case. He replied that the Supreme Court decision in the case of Keenas allowed for the reopening of a case for a neutral effect, meaning both sides had understood the facts at the time, and that was the only basis he knew of.

Senator Thayer asked if the language that Senator Towe suggested would hurt anything in the bill. Senator Lynch replied that he did not think so. Senator Towe's suggestion was that the passage of this act would not be grounds to reopen a case.

Senator Aklestad stated that to his understanding you could not reopen a case unless you qualify under the criteria of the existing law. John MacMaster replied that was correct. Senator Keating moved Senator Fuller's amendments to Senate Bill 281 BE ADOPTED. (Exhibit No. 1)

Senator Towe made adjustments to Senator Fuller's amendments by adding this language: "The mere passage of this act will not be grounds for the reopening of any case."

Senator Keating's motion would not include this language put in by Senator Towe. The motion carried and passed unanimously by a voice vote. The amendments were ADOPTED.

Senator Aklestad had a concern as to whether they qualify in the correct manner, and with that in mind, he moved Senate Bill 281 DO PASS AS AMENDED.

Senator Aklestad stated that he made that motion because there was no indication by the department, due to the handout that the committee received, with the amendment at the 6%, that there was guarantee of a figure by the department. He felt that Senate Bill 281 as amended would put Montana back to where it should be, so there won't be an additional 15% increase. He also mentioned that the department mentioned an 11% increase as years go on because of inflation.

Senator Lynch stated he opposed the motion to adopt the amendments. He said he had been trying to come up with a compromise in an attempt to be fair with both sides, to try to get the 15% down to 2 or 3 percent. He also stated he was not satisfied from the workers point of view to completely eliminate the possibility of necessary lump sums. He felt there were instances where people will be better served with the lump sum and he thought the 6% discount would be a logical place to look, and with this language it would discourage lump sums and reduce the 15% to 2 or 3%, and that would be the only way he would support the bill.

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Senator Keating stated the 6% discount rate that would be put into the bill is an 11% increase in the rates. Senator Haffey asked Gary Blewett if the bill could be amended further to include language that would reach some kind of a compromise, would they be back at a place where they were prior to the Supreme Court action on Willis and prior to the workmen's compensation action on Willis that led to the Supreme Court. Would we be back in a place where discounts were used on a case by case basis. Would we be tighter than the way things were then. Mr. Blewett replied no to all of Senator Haffey's questions.

Mr. Blewett explained that the circumstances they had prior to the Willis decision was the discount rate or a lump sum settlement that he called money market neutral. Whether you paid them in a lump sum or over a period of time, it had the same cost to the insurer.

Senator Haffey asked how the language they had fit in with the circumstance prior to the Willis decision. Mr. Blewett replied it would put them at about a 2 or 3% per year higher cost to the employer.

Senator Towe asked Gary Blewett to explain 2-B in the proposed language they had been considering. Mr. Blewett replied that 2-B said that you could allow for a lump sum to be used to invest in a business or pay off debts, so they could approximate their income they had before the accident. You could even allow for some reasonable expected gross at the time they lost wage increases, etc. He also stated that to the extent of the intended use of the lump sum would generate income in excess of that, that would be putting yourself into a considerably better position because of the lump sum. He stated that this proposal said if they got into that position then they should simply get the money market value of the future benefits.

Senator Towe asked if that meant that if someone's benefits were \$500 per month and he could buy an apartment house for \$50,000 that would earn \$450 per month income, that this would be permissible. But if he bought a different business for the same amount of money that would earn \$650 per month, that would not be permissible. Mr. Blewett replied that could be the effect, however, he did not feel that would be the outcome of this bill.

Senator Haffey stated that the amendments to him did the following: paragraph 1 addresses the 6%, paragraph 2 explicitly tightens up, and paragraphs a, c, d and 3 all address that tightening up objective. Mr. Blewett replied he was correct. Senator Haffey stated that paragraph b did more than address the tightening up objective; to him it

precludes any possibility that a lump sum would be anything higher than the purchase price to an insurer of an annuity, even with the 6% discount language. Mr. Blewett replied he did not feel that was the case. He thought it simply made the statement about what is a legitimate use of a lump sum, and if it should be used for enhancing a claimant's income opportunity beyond what he might have expected had he not had the accident.

Senator Haffey then asked Gary Blewett if he was saying that a lump sum that was in excess of the purchase price of an annuity that might fall out of one or more cases in the next couple of years as a result of this language, as long as the lump sum does not run into the constraints set forth in paragraph "b". Gary Blewett replied he was saying that a lump sum was okay to increase a person's opportunity for additional income over what they might have experienced had they not had the accident, but it shouldn't cost the system any more than the annuity price.

Senator Towe spoke against the motion. He stated he could not support the bill unless something was done to help alleviate the problem.

Senator Keating stated that those who opposed Senate Bill 281, and testified against Senate Bill 281, were all attorneys except for two; the AFL-CIO and Judge Shea. He felt there should be something done about attorney fees. He also emphasized that if they were trying to help businesses in the state, but it was only the employed paying into the fund at the present time, and that person will be the only one absorbing this 12% increase or any other amendment.

Senator Lynch called for the vote. There was a roll call vote taken on Senator Aklestad's motion that Senate Bill 281 DO PASS AS AMENDED. (Exhibit 2) The motion failed.

Senator Towe asked Karl Englund if he had anything to do with the drafting of the amendments. He replied he was in substantial agreement in terms of a compromise with the language as it was set forth. He had a problem with "b" because he felt it would lead to illogical results.

Senator Towe moved the adoption of further amendments to Senate Bill 281. (Exhibit 3)

Senator Thayer stated he had problems with the state trying to make decisions about what a person is supposed to do with his lump sum settlement.

Senator Keating asked Mr. Blewett if the worker came up with too good of an idea, if he could not get the lump sum? Mr. Blewett replied that he could not get it with the 6%

discount.

Senator Haffey asked Gary Blewett if Senator Towe's proposed amendments were to be adopted, would there be fewer lump sum payments in the next few years, and would they all be much higher? He replied if you eliminated "b" it would create less lump sum payments being authorized, but more than what he anticipated in the bill.

Senator Aklestad stated that he felt this should be studied because of the complexity of the bill. Senator Lynch agreed. Senator Thayer stated he felt they were missing the point of the awarding of lump sums.

Senator Thayer stated that the lump sum should not be discounted, and the committee should look at an 8 or 9% figure. Senator Lynch stated that the reason he was trying to find a compromise was to get the 15% down to a reasonable increase and it is down to 2 or 3% now.

Senator Haffey asked Gary Blewett how much the cost to the division and the insurers of the bill with the amendment, including "2b" pre-Willis, and the cost that Senator Aklestad talked about would go up. Gary Blewett replied 2 or 3%. Senator Haffey asked how much it would go up without paragraph "2b" included. Gary Blewett replied somewhere between 3-11%. Senator Haffey then asked if paragraph "b" effected the amount of lump sums and the number of lump sums. Gary Blewett replied that was correct.

Senator Keating asked Mr. Blewett why he arrived at the 6% discount figure? Mr. Blewett replied that was what the committee presented to him as a condition. Senator Keating asked that given the 6% discount, could you devise a lump sum control mechanism to reduce the volume so as to mitigate as far as you could reasonably do it? Mr. Blewett replied that with the amendments the table was no longer effective. (Exhibit 4)

Senator Keating stated that what they were trying to do was to preserve the system at least for two years so that the study group could come up with something that would be fair for everybody. He felt they had to get as close to a zero increase in the employers premium in order to protect the whole system; the worker, the employer, and the lump sum payment. He suggested to leave paragraph "b" in the amendments as a discouragement to lump sum payments and he wanted to amend it to an 8% discount.

Senator Towe withdrew the portion of his motion to take out "2b" and moved that it be re-inserted.

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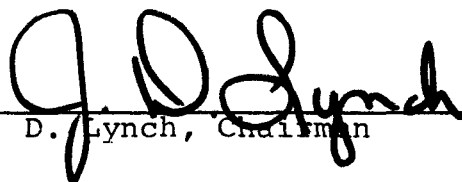
Senator Keating made a sub-motion to adopt Senator Towe's amendments to change the word "weekly" to "annually" in the first paragraph, and to change 6% to an 8% discount.

Senator Haffey made a substitute motion for all motions pending that pages 1-4, with "annually" still included and with 7% rather than 6% and including "2b", that the amendment be adopted for Senate Bill 281 as already amended. A roll call vote was taken on Senator Haffey's motion. (Exhibit 5)

The motion carried and passed with the vote being 5-3. The amendments were ADOPTED.

Senator Towe moved that Senate Bill 281 DO PASS AS AMENDED. The motion carried and passed with Senator Aklestad voting NO.

ADJOURNMENT: The meeting was adjourned at 7:10 p.m.



J. D. Lynch, Chairman

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PROPOSED AMENDMENT TO SENATE BILL NO. 281

INTRODUCED COPY

1. Title, line 10.

Following: "MCA;"

Insert: "PROVIDING FOR RETROACTIVE APPLICABILITY
AND EFFECT;"

2. Page 3, line 4.

Following: line 3.

Insert: "NEW SECTION. Section 3. Applicability -
~~Retroactive~~ ~~Effect~~. This act applies
retroactively within the meaning of 1-2-109
to injuries incurred and lump sums awarded
or paid prior to the effective date of this
act if a lump sum is awarded or paid for the
injury , or the award or settlement is reopened
and redetermined, after the effective date of
this act."

Renumber: subsequent sections.

LABOR AND EMPLOYMENT

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

DATE 2-20-85 SENATE BILL NO. 281 TIME 5:40 p.m.

<u>NAME</u>	<u>YES</u>	<u>NO</u>
<u>SENATOR AKLESTAD</u>	<u>X</u>	
<u>SENATOR BLAYLOCK</u>	<u>X</u>	
<u>SENATOR HAFHEY</u>		<u>X</u>
<u>SENATOR KEATING</u>	<u>X</u>	
<u>SENATOR MANNING</u>		<u>X</u>
<u>SENATOR THAYER</u>	<u>X</u>	
<u>SENATOR TOWE</u>		<u>X</u>
<u>CHAIRMAN LYNCH</u>		<u>X</u>

Beth Daily
SECRETARY

Chairman
J.D. LYNCH

Motion: SB 281 DO PASS AS AMENDED (with Senator Fuller's
amendments)

THE MOTION FAILED

Proposed amendments to SB 281, introduced copy.

LABOR & EMPLOYMENT

1. Title, lines 7 through 10.

Following: "PAYMENT" on line 7

Strike: "TO" through "PERIOD" on line 10

Insert: "BY DISCOUNTING THE LUMP-SUM BY 6 PERCENT; PROVIDING A METHOD FOR DETERMINING WHETHER A LUMP-SUM WILL BE GRANTED

2. Page 1, line 13.

Following: line 12

Insert: "WHEREAS, the Montana Supreme Court has interpreted the law to disallow any discounting of a lump-sum workers' compensation payment; and

WHEREAS, this would greatly increase insurance rates; and

WHEREAS, the Department of Labor and Insustry desires to amend the law to provide a lump-sum payment not exceeding the purchase price of an annuity that would yield income equal to the total biweekly benefits payable; and

WHEREAS, annuity rates fluctuate widely and are at a currently high rate of 10 or 11 percent; and

WHEREAS, the inflation rate also fluctuates widely, is currently at approximately 3 percent, and affects the worker's purchasing power; and

WHEREAS, the Legislature desires to reach a compromise between the interests of workers and the interests of employers.

THEREFORE, the Legislature finds it appropriate to amend section 39-71-741, MCA, in the manner provided by this act."

3. Page 1, line 18 through page 2, line 4.

Following: "payment." on page 1, line 18

Strike: remainder of subsection (1)

4. Page 2, line 9.

Following: "as to"

Strike: "what"

Page 2 of proposed amendments to SB 281, introduced copy.

5. Page 2, lines 9 and 10.

Following: "what the" on line 9

Strike: "purchase" through ", the" on line 10

6. Page 2, line 11.

Following: "conversion."

Insert: "The following procedure must be used by the division and the workers' compensation judge in determining whether a lump-sum conversion will be awarded:

(a) It is presumed that biweekly payments are in the best interests of the worker or his beneficiary. The award of a lump-sum must be the exception, not the rule, and may be made only in extraordinary circumstances. The worker or his beneficiary has the burden of proving that extraordinary circumstances exist, that there is a genuine and substantial need, and that it is highly probable that the use to which the lump-sum will be put will successfully address the extraordinary circumstances that gave rise to the award.

(b) A lump-sum may not be awarded solely because it would put the worker or his beneficiary in a better financial position than he was in prior to the injury; and the fact that biweekly payments will not put him in the same financial position he was in prior to the injury is not alone grounds for awarding a lump-sum.

(3) A lump-sum award must equal the total of the biweekly payments that would otherwise be due under this chapter, minus a discount equal to 6 percent per annum without compounding."

Renumber: subsequent subsections

WORKERS' COMPENSATION DIVISION

EXHIBIT 4

LABOR & EMP.

IMPACT OF STEPPED DISCOUNT RATES

	<u>Discount Rate</u>	<u>% Increase in Rates</u>	<u>Biennium Dollar Impact</u>
→	11%	0%	\$ -0-
	10	02	1,963,000
	9	04	4,176,000
	8	06	6,639,000
	7	08	9,388,000
→	6	11	12,529,000
	5	14	16,062,000
	4	18	20,096,000
	3	21	24,700,000
	2	27	29,948,000
	1	32	36,016,000
	0	38	42,976,000

LABOR AND EMPLOYMENTROLL CALL VOTESENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONSDATE 2-20-85 SENATE BILL NO. 281 TIME 5:40 p.m.

<u>NAME</u>	<u>YES</u>	<u>NO</u>
<u>SENATOR AKLESTAD</u>		<u>X</u>
<u>SENATOR BLAYLOCK</u>	<u>X</u>	
<u>SENATOR HAFHEY</u>	<u>X</u>	
<u>SENATOR KEATING</u>		<u>X</u>
<u>SENATOR MANNING</u>	<u>X</u>	
<u>SENATOR THAYER</u>		<u>x</u>
<u>SENATOR TOWE</u>	<u>X</u>	
<u>CHAIRMAN LYNCH</u>	<u>X</u>	

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SECRETARYChairman
J.D. LYNCHMotion: FOR ALL MOTIONS PENDING THAT THE AMENDMENT BEADOPTED FOR SB 281 AS ALREADY AMENDED.THE MOTION PASSED.