

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

March 27, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on March 27, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 198

Rep. Thomas moved SB 198 BE CONCURRED IN. He mentioned the letter from Jim Gillette, Legislative Auditors Office, to Rep. Manuel with attached amendments. Exhibit No. 1

He said the amendments deal with the tax implications of the bill. When the bill was introduced it was tax neutral in the long run. The amendments make it neutral in the short run. Rep. Thomas moved the amendments.

Rep. Swysgood asked about the four year language. Rep. Thomas said it took a five year period and calculates the tax on that five year period. He said that is established as a minimum tax which would be carried on forever until the law is changed. This would neutralize the impact to local communities.

Rep. Brandewie questioned whether this would be spread out among all banks or if it was selective. Rep. Swysgood said they would not take from a profitable area and move it around. If you are losing money and a five year average is a loss, then that would be the base.

Rep. Hanson questioned if this was paying the same rate. Rep. Swysgood said this was a request by the Department of Revenue to keep the language with current law.

Rep. Simon asked what would happen if one of the banks that they purchased grow, if the base was frozen, would they be added on top of that. Rep. Thomas said they would but the five year average base was as low as they could go. Rep. Simon asked if a bank was losing money and was froze at a five year average. Rep. Thomas replied that once the base was established that was what they would have to pay, once they go over that base they would have to pay above.

Rep. Brandewie mentioned the letter of 3-20, by the Legislative Auditor, and information that banks could challenge this on the constitutionality because it is possible to have

a larger effective corporate tax rate than 6 3/4 with these amendments by averaging. He pointed out if the bill passes with the proposed amendments there is potential for cost shifting by banks to reduce their tax burden.

Rep. Swysgood mentioned that under current law the banks could move the money around. This law would put further restrictions with the amendment.

Rep. Thomas said the most recent letter of 3-25 by the Legislative Auditor, clearly states that with their proposed amendments they have neutralized the fiscal impact on local government revenue collections and distributions.

The question was called on the amendments as proposed by the Legislative Auditor. The motion carried 10-8 (Roll Call Vote #1).

Rep. Thomas moved that SB 198 BE CONCURRED IN AS AMENDED. Rep. Thomas commented that the bill represented free enterprise since it allowed a more open way of doing business. He discussed banks having difficulty operating in Montana and the need for flexible legislation.

Rep. Grinde questioned whether 150 days was long enough for acquisition. Rep. Thomas mentioned amendments at the bottom of page 2, amendment #5, but that the number of days was not a problem. He pointed out that most of that would be done with the companies that hold the banks.

The question was called. The motion failed 9-8 (Roll Call #2)

Rep. Driscoll moved Senate Bill 198 BE TABLED. The motion carried unanimously.

ACTION ON SENATE BILL 328

Rep. Kitselman moved to reconsider action on SB 328 to allow more time. The motion carried with 4 opposed.

ACTION ON HOUSE BILL 861

Chairman Kitselman noted that Rep. Bachini was not present when the bill was tabled by the sponsor. He said the Rules Committee had advised that his rule was in order. Rep. Bachini moved to lift HB 861 from the table. The motion failed. (Roll Call Vote #3)

ACTION ON SENATE BILL 10

Rep. Driscoll moved to table SB 10. The motion failed 9-9 (Roll Call Vote #4).

Rep. Thomas moved BE CONCURRED IN. The motion failed.

ACTION ON SENATE BILL 115

Rep. Brown moved to lift SB 115 from the Table. She explained that this was the continuing education bill that did not have a roll call vote. The motion carried 11-7 (Roll Call Vote #5)

Rep. Brown moved BE CONCURRED IN. Rep. Thomas commented that the bill causes trouble for the industry. He said the problems that need to be addressed are that there are people that have more than one license and would need to comply with the bill also to retain their license. He pointed out that by combining the two they could use similar seminars to keep both their licenses. He said the law would present a problem to a lot of people to retain their life insurance license. He said that anyone that handles or sells or does any insurance work in the office has to be licensed. This would result in an additional 1,200 people that would need to be licensed including service and office workers. This would cost around \$450 a year for each person to retain their license for continuing education. The state is mandating 8,000 agents with several million dollars of cost in continuing education.

Rep. Kitselman commented that Rick Hill had testified concerning his staff of five people and equated the cost of \$1,500 to send his secretary to a training course of 20 hours, taking two days off, pay for the motel bill, travel expenses and the cost of the course.

Rep. Brandewie discussed the cost of continuing education that was mandated for the real estate business. He pointed out that it cost \$4-500 a year for continuing education. He said that consumer protection was the important point made by the bill. He moved an amendment on page 3, line 24, following "of" insert "up to". He said the fee would not be a flat \$20 but only the fee necessary for the administration. The question was called on the amendment. The motion carried unanimously. Rep. Kitselman commented that the insurance industry did not need to fund the whole Department.

Rep. Hanson pointed out the law passed for the real estate business, was a manipulative tool for the realtors. She said if the insurance agents needed educating then a system for all of them should be developed.

Rep. Simon moved to add on on page 2, line 21, "property and casualty". He said this would require a change in the title and twice on page 3.

Rep. Bachini inquired whether insurance agents had in-house requirements for education and not have to create a department in the Auditor's Office. Rep. Kitselman mentioned that every Monday morning they had four hours of courses within his company because of changes.

Rep. Brandewie pointed out that if an agent misrepresented a policy then the company would replace him.

Rep. Simon moved the second amendment. He said that section 4, the applicability date would change from 1988 to 1990. The motion failed.

Rep. Nisbet moved to table the bill. The motion failed 9-9 tie vote.

ADJOURNMENT:

The meeting was adjourned at 10:30 a.m.



REP. LES KITSELMAN, Chairman

DAILY ROLL CALL
BUSINESS & LABOR COMMITTEE

99th LEGISLATIVE SESSION -- 1987

Date MARCH 27, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

STANDING COMMITTEE REPORT

MARCH 26

19 87

Mr. Speaker: We, the committee on

BUSINESS AND LABOR

report

SENATE BILL NO. 371

- do pass
- do not pass

- be concurred in
- be not concurred in

- as amended
- statement of intent attached

REP. LES KITSELMAN

Chairman

AMENDMENTS AS FOLLOWS:

1) Title, line 8
Following: "PROVIDING AN"
Insert: "APPLICABILITY DATE AND AN"

2) Page 1, line 12
Strike: "6"
Insert: "7"

3) Page 1, line 13
Strike: "Health Care Reimbursement Defers"
Insert: "Preferred Provider Agreements"

4) Page 1, line 14
Following: line 13
Insert: "Section 2. Purpose. The purpose of [sections 1 through 7] is to allow a health care insurer providing disability insurance benefits to negotiate and contract with health care providers who: (1) provide health care services to its insureds or subscribers at a reduction in the fees customarily charged by the provider; or (2) enter into agreements in which the participating providers accept negotiated fees as payment in full for health care services the health care insurer is obligated to provide or pay for under the health benefit plan."

Repealer: subsequent sections

5) Page 1, line 15
Strike: "6"
Insert: "7"

6) Page 2, line 5
Following: line 4
Insert: "(3) 'health care insurer' means:
(a) an insurer that provides disability insurance as defined in 33-1-707;
(b) a health service corporation as defined in 33-30-101;



THIRD

BLUE

REP. KITSELMAN will sponsor

reading copy ()
color

(c) a health maintenance organization as defined in section 2 of Public Bill No. 353;

(d) a fraternal benefit society as defined in 39-7-30;

(e) an administrator as defined in 39-10-901; or
(f) any other entity required by the commissioner that performs health insurance.

Section 2. Amend the following:

7) Page 1, lines 7 through 9

Strike: "and "insurer" as defined in

Section 2 of Public Bill No. 371, in 6 in the words, "and "insurer" through "producer"

Section 2 of Public Bill No. 371, Chapter 33, part 1.

8) Page 1, lines 14 through 17

Strike: subsection (5) in its entirety

Insert: (6) "preferred provider" means a provider or group of providers who have contracted to provide specified health care services;

(7) "preferred provider agreement" means a contract entered into on behalf of a health care insurer and a preferred provider of health care services;

Section 3. Amend the following:

9) Page 1, line 9

Strike: "insurer" as defined in

Section 2 of Public Bill No. 371, Chapter 33, part 1.

10) Page 1, line 21

Strike: "insurer" as defined in

Section 2 of Public Bill No. 371, Chapter 33, part 1.

Insert: "insurer" means a person or entity that is licensed to issue health insurance policies in this state or to issue health care coverage in this state or to issue health care coverage."

11) Page 1, line 23

Strike: "insurer"

Insert: "health care insurer"

12) Page 1, line 25

Strike: "insurer" as defined in

13) Page 3, line 1

Following: "insureds"

Insert: "or subscribers on whose behalf the health care insurer is providing health care coverage"

Following: "including"

Insert: "preferred provider"

Following: "to"

Insert: "(i)"

14) Page 3, line 2

Following: ";

Insert: "and (ii) the amount and manner of payment to the provider;"

15) Page 3, line 13

Strike: "ARRANGEMENT"

Insert: "agreement"

16) Page 3, line 14

Strike: "MEDICALLY NECESSARY"

Insert: "health care services"

Strike: "EXPENSES"

17) Page 3, line 15

Strike: "6"

Insert: "7"

18) Page 3, line 22

Strike: "(2)"

19) Page 3, line 23

Following: "LEAST"

Insert: "(a)"

20) Page 3, line 15

Strike: "ARRANGEMENT"

Insert: "agreement"

21) Page 4, line 3

Following: "PROVIDER"

Insert: "; and

(b) a provision that clearly identifies the difference in benefit levels for health care services of a preferred provider and benefit levels for the same health care services of a nonpreferred provider"

22) Page 4, line 4

Following: line 3

Insert: "(2) A health care insurer may not require hospital staff privileges as criteria for designation as a preferred provider in a preferred provider agreement."

23) Page 4, line 5

Strike: "ARRANGEMENTS"

Insert: "agreements"

24) Page 4, line 6

Strike: "ARRANGEMENT"

Insert: "agreement"

25) Page 4, line 9

Strike: "POLICYHOLDERS"

Insert: "insureds"

26) Page 4, lines 11 through 16

Following: "(A) A" on line 11

Strike: the remainder of line 11, lines 12 through 15 in their entirety and line 16 through "ARRANGEMENTS"

Insert: "provision setting a payment difference for reimbursement of a nonpreferred provider as compared to a preferred provider. If the health benefit plan contains a payment difference provision, the payment difference may not exceed 15% of the reimbursement level at which a preferred provider would be reimbursed"

27) Page 4, line 20

Following: "OF"

Strike: "A PROVIDER ARRANGEMENT."

Insert: "an"

28) Page 4, line 21

Following: "POLICY"

Strike: "A"

Following: "CONTRACT"

Insert: "except those already approved by the commissioner"

29) Page 4, line 24, through page 5, line 1

Following: "rules" on line 24

Strike: the remainder of line 24, lines 25 and 1 in their entirety

Insert: "necessary to implement the provisions of"

30) Page 5, line 2

Strike: "6"

Insert: "7"

31) Page 5, line 4

Strike: "6"

Insert: "7"

32) Page 5, line 6

Strike: "6"

Insert: "7"

33) Page 5, line 7

Following: line 6

Insert: "Section 9. Coordination instruction. If Senate Bill No. 353, including the definition of "health maintenance organization", is not passed and approved, the bracketed language in section 3(3)(c) of this act is void."

ReNUMBER: subsequent sections

34) Page 5, line 13

Following: line 11

Insert: "Section 11. Applicability -- filing with commissioner. On or before January 1, 1988, a health care insurer performing the functions enumerated in this act shall notify the commissioner of its existence and continue to operate subject to the provisions of this act."

ReNUMBER: subsequent section

35) Page 5, line 13

Strike: "6"

Insert: "7"

ROLL CALL VOTE

DATE _____
 TIME _____

BUSINESS & LABOR

COMMITTEE

DATE March 27, 1987 BILL NO. SB 198 NUMBER 1

NAME	AYE	NAY
REP. LES KITSSELMAN, CHAIRMAN	✓	
REP. FRED THOMAS, VICE-CHAIRMAN	✓	
REP. BOB BACHINI	✓	
REP. RAY BRANDEWIE		✓
REP. JAN BROWN	✓	
REP. BEN COHEN		✓
REP. JERRY DRISCOLL	✓	
REP. WILLIAM GLASER		✓
REP. LARRY GRINDE	✓	
REP. STELLA JEAN HANSEN	✓	
REP. TOM JONES		✓
REP. LLOYD MCCORMICK	✓	
REP. GERALD NISBET		✓
REP. BOB PAVLOVICH		✓
REP. BRUCE SIMON		✓
REP. CLYDE SMITH	✓	
REP. CHARLES SWYSGOOD	✓	
REP. NORM WALLIN		✓

TALLY

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John Deane
 Secretary

Les Kitselman
 Chairman

MOTION: Rep. Fred Thomas moved the amendments to SB 198 as proposed by the Office of the Legislator Auditor.

Motion carried 10 to 8.

ROLL CALL VOTE

BUSINESS & LABOR

EXHIBIT _____
 DATE _____
 HB _____
 COMMITTEE _____

DATE March 27, 1987 BILL NO. SB 198

NUMBER 2

NAME	AYE	NAY
REP. LES KUTSELMAN, CHAIRMAN	✓	
REP. FRED THOMAS, VICE-CHAIRMAN	✓	
REP. BOB BACHINI	✓	
REP. RAY BRANDEWIE		✓
REP. JAN BROWN	✓	
REP. BEN COHEN		✓
REP. JERRY DRISCOLL	✓	
REP. WILLIAM GLASER		✓
REP. LARRY GRINDE	✓	
REP. STELLA JEAN HANSEN		✓
REP. TOM JONES		✓
REP. LLOYD MCCORMICK	✓	
REP. GERALD NISBET		✓
REP. BOB PAVLOVICH		✓
REP. BRUCE SIMON		✓
REP. CLYDE SMITH		
REP. CHARLES SWYSGOOD	✓	
REP. NORM WALLIN	abstained	

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Alvin...
 Secretary

Les Kutselman
 Chairman

MOTION: Rep. Thomas moved that SB 198 BE CONCURRED IN

AS AMENDED. Motion failed - 9-8.

ROLL CALL VOTE

DATE _____

BUSINESS & LABOR

COMMITTEE _____

DATE March 27, 1987 BILL NO. HB 861

NUMBER 3

NAME	AYE	NAY
REP. LEO KITSELMAN, CHAIRMAN		✓
REP. FRED THOMAS, VICE-CHAIRMAN		✓
REP. BOB BACHINI	✓	
REP. RAY BRANDEWIE		✓
REP. JAN BROWN	✓	
REP. BEN COHEN	✓	
REP. JERRY DRISCOLL	✓	
REP. WILLIAM GLASER		✓
REP. LARRY GRINDE		✓
REP. STELLA JEAN HANSEN	✓	
REP. TOM JONES		✓
REP. LLOYD MCCORMICK	✓	
REP. GERALD NISBET	✓	
REP. BOB PAVLOVICH	✓	
REP. BRUCE SIMON		✓
REP. CLYDE SMITH		✓
REP. CHARLES SWYSGOOD		
REP. NORM WALLIN		✓
		✓

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Dee Brumby
Secretary

Leo Kitseleman
Chairman

MOTION: Rep. Bachini moved to lift House Bill No. 861 from table.

Motion failed - 10-8.

ROLL CALL VOTE

BUSINESS & LABOR

COMMITTEE

DATE March 27, 1987 BILL NO. Senate Bill 10 NUMBER 4

NAME	AYE	NAY
REP. LEO KUTSELMAN, CHAIRMAN		✓
REP. FRED THOMAS, VICE-CHAIRMAN		✓
REP. BOB BACHINI	✓	
REP. RAY BRANDEWIE	✓	
REP. JAN BROWN		✓
REP. BEN COHEN	✓	
REP. JERRY DRISCOLL	✓	
REP. WILLIAM GLASER	✓	
REP. LARRY GRINDE		✓
REP. STELLA JEAN HANSEN	✓	
REP. TOM JONES		✓
REP. LLOYD MCCORMICK	✓	
REP. GERALD NISBET	✓	
REP. BOB PAVLOVICH	✓	
REP. BRUCE SIMON		✓
REP. CLYDE SMITH		✓
REP. CHARLES SWYSGOOD		✓
REP. NORM WALLIN		✓

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Lee Montgomery
 Secretary

Leo Kutselman
 Chairman

MOTION: Rep. Driscoll moved to table Senate Bill No. 10.

Motion failed - 9-9 (tie vote).

ROGER TIPPY

Attorney At Law

BOX 543
CAPITOL 1 CENTER
208 N. MONTANA
HELENA, MONTANA 59624

(406) 442-4451

DATE: March 26, 1987
TO: House Business & Labor Committee
FROM: Montana Independent Bankers, by Roger Tippy, Lobbyist *RT*
RE: Senate Bill 198

The "tax neutrality" amendment submitted to the subcommittee on Wednesday morning may achieve the desired revenue effect at the sure cost of further complicating the bill. Here is a way I could see it working in practice, and at least one loophole that would be left open. The hypothetical bank system is somewhere between First Banks and Norwest in terms of their current reported income flows:

The corporation license tax rate is 6 3/4% of taxable income. Suppose a consolidated system of banks has \$1 million of taxable income, owes tax on its consolidated return of \$67,500. Now, suppose the system included three profitable banks which had been generating \$1 million a year the last five years and two banks which had lost \$2 million last year, although their five-year averages were also slightly positive. Suppose each bank has an equal one-fifth of the deposits. That means the five counties each get one-fifth of the \$67,500, or \$12,500. The three counties with the profitable banks have to get an extra \$50,000 each under the amendment, to maintain their historic tax receipts. The bank system has to pay

	\$ 67,500	---	consolidated tax liability
plus	<u>150,000</u>	---	county tax supplements
	\$225,000,		

which makes its effective corporate tax rate 22½% rather than 6 3/4%.

I submit that this bank organization is not going to put up with such a situation for long. It could challenge the constitutionality of its tax treatment under equal protection standards. If it lost in court, it would doubtless be back here asking the legislature for relief.

Failing either, the system could close its branch banks in the three profitable communities (a simple 4-page form is all you need to close a branch of a national bank) and reopen branches in new locations a week or so later. By ceasing to operate, however briefly, they would break the obligation to pay historic taxes.

CONCLUSION

The amendment has tax policy ramifications which cannot be adequately evaluated before transmittal deadline. This bill should be rejected.

PROPOSED AMENDMENT SENATE BILL NO. 198
Blue Copy

1. Title, line 19.
Strike: "15-31-114,"
Insert: "15-31-121,"

2. Title, line 20.
Following: "MCA"
Insert: "PROVIDING APPLICABILITY DATE; AND PROVIDING IMMEDIATE
AND DELAYED EFFECTIVE DATES"

3. Page 3, line 23.
Following: "to"
Insert: ": (i)"

4. Page 3, line 25 through page 4, line 1.
Following: "of" of line 25
Strike: "October 1, 1987"
Insert: "January 1, 1988; or
(ii) the use of the emergency branching provisions
under 32-1-372(6) through (8)."

5. Page 2, line 22.
Following: "."
Insert: "The banks that may merge or consolidate under this
section include banks in Montana that were owned by out-of-
state bank holding companies, as defined in the Bank Holding
Company Act of 1956, as amended (12 U.S.C. Sec. 1841, et.
seq.) on January 1, 1987."

6. Page 5, line 5.
Strike: "15-31-114 and"

7. Page 5, line 12.
Following: Line 11
Insert: "(7) In the case of the consolidation or merger of
banks under this section, each of the banks which was
consolidated or merged shall pay at least as much
corporation license tax after consolidation as the average
it paid for the five tax years immediately preceding the
consolidation or merger as long as the bank continues to
operate, and as long as the corporation license taxes are
required to be distributed to local governments. If this
minimum is not met after the allocation in 32-1-371(6), the
consolidated or merged bank shall pay the additional amount
of tax necessary to meet this minimum."

8. Page 11, line 6.

Following: "."

Insert: "The acquiring bank may be owned by an out-of-state holding company if such ownership existed on January 1, 1987."

9. Page 14, line 4 through page 20, line 8.

Strike: section 8 in its entirety

Insert: "Section 8. Section 15-31-121, MCA, is amended to read:

"15-31-121. Rate of tax -- minimum tax. (1) ~~The~~ Except as provided in 32-1-371(7), the percentage of net income to be paid under 15-31-101 shall be 6 3/4% of all net income for the taxable period. The rate set forth in this part shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.

(2) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than \$50.

NEW SECTION. Section 9. Extension of authority. Any existing authority of the department of commerce and the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act."

Renumber: subsequent section

10. Page 20, line 13.

Following: line 12

Insert: "NEW SECTION. Section 11. Applicability. The amendments to 15-31-702 and 15-31-121 [in sections 7 and 8] apply to taxable years beginning after December 31, 1987.

NEW SECTION. Section 12. Effective dates. (1) Section 3, subsections (6) through (8) of section 4, sections 5, 6, and 9, and this section are effective upon passage and approval.

(2) The remainder of this act is effective January 1, 1988."

7086a/C:JEANNE\WP:jj

STATE OF MONTANA

Office of the Legislative Auditor

STATE CAPITOL
HELENA, MONTANA 59620
406/444-3122

EXHIBIT _____

DATE _____

NR _____

DEPUTY LEGISLATIVE AUDITORS:

JAMES GILLETT
FINANCIAL COMPLIANCE AUDITS

JIM PELLEGRINI
PERFORMANCE AUDITS

LEGAL COUNSEL:

JOHN W. NORTHEY



SCOTT A. SEACAT
LEGISLATIVE AUDITOR

March 27, 1987

Representative Rex Manuel
Montana House of Representatives
State Capitol
Helena, MT 59620

Dear Representative Manuel:

We have reviewed the attached amendments to Senate Bill 198 (blue copy), as provided by Paul Verdon of the Legislative Council. We analyzed the effects of amendments 1, 6, 7, and 9 as they relate to neutralizing the bill's effect on local government revenues. The remaining amendments are not revenue related and are beyond the scope of our request on the fiscal effects of the bill.

We believe the proposed amendments listed above should neutralize the effects on local government revenue by the passage of Senate Bill 198.

If we may be of further assistance, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Gillett".

James Gillett
Deputy Legislative Auditor

JG/js4a

Attachments

PROPOSED AMENDMENT SENATE BILL NO. 198
Blue Copy

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Strike: "15-31-114,"
Insert: "15-31-121,"
2. Title, line 20.
Following: "MCA"
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AND DELAYED EFFECTIVE DATES"
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section include banks in Montana that were owned by out-of-
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Company Act of 1956, as amended (12 U.S.C. Sec. 1841, et.
seq.) on January 1, 1987."
6. Page 5, line 5.
Strike: "15-31-114 and"
7. Page 5, line 12.
Following: Line 11
Insert: "(7) In the case of the consolidation or merger of
banks under this section, each of the banks which was
consolidated or merged shall pay at least as much
corporation license tax after consolidation as the average
it paid for the five tax years immediately preceding the
consolidation or merger as long as the bank continues to
operate, and as long as the corporation license taxes are
required to be distributed to local governments. If this
minimum is not met after the allocation in 32-1-371(6), the
consolidated or merged bank shall pay the additional amount
of tax necessary to meet this minimum."

8. Page 11, line 6.

Following: "."

Insert: "The acquiring bank may be owned by an out-of-state holding company if such ownership existed on January 1, 1987."

9. Page 14, line 4 through page 20, line 8.

Strike: section 8 in its entirety

Insert: "Section 8. Section 15-31-121, MCA, is amended to read:

"15-31-121. Rate of tax -- minimum tax. (1) The Except as provided in 32-1-371(7), the percentage of net income to be paid under 15-31-101 shall be 6 3/4% of all net income for the taxable period. The rate set forth in this part shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.

(2) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than \$50.

NEW SECTION. Section 9. Extension of authority. Any existing authority of the department of commerce and the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act."

Renumber: subsequent section

10. Page 20, line 13.

Following: line 12

Insert: "NEW SECTION. Section 11. Applicability. The amendments to 15-31-702 and 15-31-121 [in sections 7 and 8] apply to taxable years beginning after December 31, 1987.

NEW SECTION. Section 12. Effective dates. (1) Section 3, subsections (6) through (8) of section 4, sections 5, 6, and 9, and this section are effective upon passage and approval.

(2) The remainder of this act is effective January 1, 1988."

7086a/C:JEANNE\WP:jj

MEETING MINUTES
WORKERS COMPENSATION SUBCOMMITTEE
MARCH 27, 1987

The meeting of the Workers' Compensation Subcommittee was called to order at 12:45 p.m. on March 27, 1987 in room 202a of the state capitol building by Chairman Bill Glaser.

All members were present.

HOUSE BILL 884

Opponents

(8b:000) Ray Conger, Chairman of the Montana Classification and Rating Committee of the Montana Council on Compensation Insurance, and the president of Public Risk Insurance Management, spoke in opposition to HB 884. He stated that the financial short-fall facing the State Compensation Insurance Fund has to be dealt with swiftly to avoid a potential collapse of the program. He noted the majority of solutions available to correct this problem are administrative in nature and do not need any legislative involvement. He added a "quick fix" measure should not be used on a problem that has developed over the past six (6) to seven (7) years. Mr Cowger stated many options are available for use to help solve the problems facing the state compensation insurance fund. He then covered exhibit 1, which provides background information on the state fund and lists some of the options available for consideration to improve the financial situation of the state fund.

(8b:395) In response to a question from Rep Driscoll, Mr Cowger, in referencing page two (2) of exhibit 1, stated he did not think that a shared risk pool was necessary. He said it was his position that the fund does have some advantages. He added that if the fund was operating on a more independent and competitive basis than it is, he would be willing to assist in getting an assigned risk plan started in the state.

(8b:441) Dan Glenny, Orion Group, stated passage of SB 315 would do a wealth of good for the insureds in the state, representing an 18% to 22% savings to employers based on the estimates available from the division. He further noted that HB 884, to the private insurance market, represents a increase of 23.6% for employers, which he stated was a tremendous penalty to the insureds who have chosen to pay an additional rate for a number of years to avoid having to have insurance coverage with the state insurance fund. He stated the combination of the two bills are to the detriment

of the insureds that want to have coverage under Plan 2. Mr Glenny said for the employers who have elected to have insurance with the Orion group, that they would be better off to have neither bill.

Mr Glenny then covered suggestions and areas where he felt the state fund could improve administrative procedures. These included:

The usage of scheduled credits and debits, which has been in state statute for 15 years but has not been utilized.

Balancing the needs of the employers when dealing with cash flow and attaining equity in this area. He noted the request for deposits in certificates balances the needs of the employers ahead of the needs of the state fund. He added that the deposit that an insurance company charges should also generate some advance premium payment. As the state fund now operates, the only people making money under the certificate of deposit (CD) system are the banks, and many businesses have to go out and borrow the money to pay their CD's. Mr Glenny explained that the Orion group has 51.7% of the risks they write in Montana, on which they collect 100% of the premium in advance prior to the start of the policy year.

He encouraged the state fund to reevaluate the deposit system and to more frequently review the policies it carries. He stated this can be done by computer software programs that are available.

Mr Glenny recommended yearly audits, the use of fee companies, and an affective monitoring system for employers.

(9a:000) He suggested the state fund utilize more consistent standards to improve its cash position.

Mr Glenny concluded by stating HB 884 is premature. He noted that the state fund currently has \$30 - \$45 million in investments, assets of \$70 million, and will collect an additional \$65 to \$70 million each year in premiums. He stated if rates were raised to an adequate level, an additional \$50 million each year would be realized, as well as the development of better cash flow techniques, adoption of minimum premiums and expense costs, which could bring in another \$10 to \$15 million every year. He said if the state fund abides by the provisions of SB 315, there will be substantial savings realized.

(9a:039) In response to a question from Rep Driscoll, Mr Glenny stated the Orion Group does cover some loggers and construction employers, with 20% of their premium coming

from sawmills. He said the group is not in a position to compete against the state fund premiums.

(9a:073) Keith Olson, Montana Loggers Association, said his association was supportive of most of the testimony presented by Mr Cowger and Mr Glenny. Mr Olson further stressed the consideration of converting to a monthly reporting program, having cash deposits equal to two (2) or three (3) months of anticipated premium, and more stringent and aggressive auditing procedures.

(9a:110) Mr Glenny added that every accountant, insurance agent and underwriter in the state understands how the state fund charges a deposit. He stated they know if they list the payroll accurately on their application for coverage the state fund will get them for a 50% deposit. But if they should estimate their payroll at 1/20th of what it really is the deposit will be a lot less, which is a common practice in the state. He said the fund is losing a tremendous amount of money in this area; but with the transfer to CD's it doesn't matter in the end anyway.

End Public Testimony

(9a:144) Gene Huntington, Governor's Office, noted all the suggestions from private industry refer to more money or attaining funds faster from the people who insure with the state fund to deal with the cash flow problem. He stated the basic dilemma on dealing with the unfunded liability was a rate increase or taking interest on the deposits from those insuring through the state fund or distributing the cost over the three (3) plan system. Mr Huntington noted the relevant testimony stated that with the passage of SB 315 private insurer costs will be decreased substantially, while state fund rates should be increased to cover the unfunded liability. He added the law of economics is that the state fund will lose a share of the market, accelerating the decline of the fund while forcing a special session or crisis situation with limited options in terms of preserving the three (3) plan system. He said all options are rate increases by another name.

(9a:170) Rep Driscoll stated since there was such opposition to HB 884 to fund the uninsured liability, that other methods should be explored, i.e. 10% income tax surcharge on corporations, some method to insure that employers do not leave the state fund plan, or the implementation of a two (2) tier system, plan 1 and plan 3.

The meeting was adjourned at 2:15. (9a:262)

Bill Glaser, Chairman

bg/gmc/3.27 DRAFT

STATE FUND - UNFUNDED LIABILITY

HB 884 introduced in the Montana Legislature to solve the unfunded liability problems within the State Compensation Insurance Fund will impose a "payroll tax" of 57¢ on each \$100 of wages paid by every Montana employer. This revenue producing measure would provide the State Fund with an additional \$23 million each year beginning in Fiscal Year 1988.

The financial short-fall facing the State Compensation Insurance Fund has to be dealt with swiftly to avoid a potential collapse of this needed insurance program. The majority of solutions available to correct this problem are administrative in nature and do not need any legislative involvement. A "quick-fix" measure should not be used on a problem that has developed over the past six to seven years.

The State Fund has grown from a relatively small insurance company in the late 1970's to the largest insurance writer of workers' compensation insurance in Montana. Many reasons surround this tremendous growth, but, the most significant reason rests with the inadequate rate that the State Fund has used since 1980. Since July 1, 1980 the State Fund has charged its policyholders a rate that did not meet a break-even level for their insurance operations. Since this rate was significantly less than the rates used by the private insurance companies in Montana, many Montana employers moved their insurance coverage to the State to save premium dollars. In 1980, the State Fund wrote \$26.9 million in workers' compensation coverage. They grew to \$33.7 million in 1983; to \$37 million in 1984; to \$49.3 million in 1985 and are projecting premium income of \$65 million for 1987.

The State Fund has increased its market share nearly 100% from 1981 through 1987 using a rate that was not adequate. They passed on this rate savings to only those policyholders that purchased insurance from the State Fund. Businesses that did not attain insurance coverage from the State Fund thru this period were required to pay higher prices for insurance from their private insurance company to reflect the increases in the costs of workers' compensation insurance. Since the State Fund was not using an actuarial sound rate in the 1980's, they

are faced with a financial deficit or unfunded liability that they must meet to maintain their position in the insurance industry.

Many members of the Montana Legislature believe that this "payroll tax" measure is the only solution to this financial problem. But, many options are available even at this late point to deal with the financial problems of the near future.

Many people believe that the State Fund will not be able to solve this financial problem since the State Fund cannot refuse insurance to any business. When the State Fund was created in 1915, it was granted many advantages over the private insurance companies and the self insured companies. In exchange for these advantages, the State Fund was restricted in its ability to restrict enrollment in its insurance program. These advantages include:

1. All State government agencies must insure with the State Fund.
2. State Fund was exempted from the need to pay premium taxes. (The State Fund in Idaho & Oregon pay premium taxes to their respective General Funds)
3. State Fund was exempted from paying income taxes on their profits from operation.
4. State Fund was exempted from paying income taxes on dividend or interest income.
5. State Fund does not belong to the Western Guarantee Association. (Private insurance companies are required to participate and thus, must charge their insureds an additional 2% of earned premium to support the financial failures of private insurance companies)
6. State Fund does not have to purchase reinsurance for excess losses. (Had the Fund purchased reinsurance for their aggregate losses in each year, the Fund's unfunded liability would be minimal at this point or even non-existent)
7. State Fund is immune from all regulations imposed by the Insurance Commissioner. The State Fund is permitted to discount their incurred losses at unusually high interest rates; they do not have to maintain a "loss adjustment expense" reserve that will equal the cost of paying off all outstanding claims; they are exempt from all costs of acquiring new business (salesmen, marketing staff, or agents).

Many options are available for use to help solve the problems facing the State Compensation Insurance Fund. The following options are not meant to be an inclusive listing of ALL available options:

1. The 57¢ "payroll tax" amounts to a 16.48% premium increase for those risks insuring with the Montana State Fund. Employers' are looking at bottom line costs for insurance, and whether the requirement to pay additional monies to the State Fund is called a "rate increase" or a "payroll tax" the cost must be paid by the employer.

The State Fund rate for insurance is the cheapest available in Montana at this time. The next best available rate used by any insurance company is State Fund plus 17½%.

The State Fund would certainly be able to move their rate upward without having to lose the need for charging the lowest rate.

2. The State Fund is able to charge an advance rate for dangerous places of employment. This permits the State Fund to debit their current rate to use on employers that have employment conditions unacceptable to the standard risk.

Private insurance companies for many years have used a debit or credit system to impose a penalty for poor risks or grant a reduction to good risks.

3. The State Fund should improve their insurance products by offering for sale more than just a guaranteed cost insurance policy. They could offer retrospective rated insurance policies, retention plans, cash flow plans, and individually tailored dividend programs.
4. The State Fund should improve their cash flow position. They should require that all advance deposits be paid in cash. A deposit should be more than just security for unpaid premiums; it should be a vehicle that generates income to aid in the operations. Deposits should be altered annually to reflect the current operations of each risk that is insured with the State Fund.
5. The State Fund should offer more than just quarterly and semi-annual voluntary payroll reports as the method of paying premiums. A program to allow insureds to pay premiums in advance will improve the cash-flow position of the Fund.

Private insurance companies allow premium payments in advance on the majority of insurance policies. Payments on a monthly basis and an annual basis in advance provide a very positive cash flow and additionally this reduces the fixed collection costs associated with premium payments.

6. The State Fund should audit all risks above \$2,500 each year.

Private insurance companies audit all risks each year; risks above \$2,500 are generally audited by a individual visiting the risks and risks below \$2,500 are generally asked to submit all payroll information on a solicitation basis. Fee auditors are able to complete about 20 audits per week per person when actually visiting the business.

7. The State Fund should use proven claims reserve practices that reflect the loss development characteristics unique to Montana. When the initial reserve amounts are not adjusted in a timely manner, the Experience Modification Factor is unable to reflect the "correct" actual incurred loss. The use of the NCCI development factors will more accurately allow the State Fund to know that the experience modification promulgation process is reflective of the actual loss data.
8. The State Fund does not use the "Expected loss rates" or the "D ratio's" calculated by NCCI in the experience rating process. Since the State Fund does not use the NCCI rates, the State Fund should calculate their own experience modification factors using factors that are relative to their own experience.

It serves no purpose to develop a rate program and then use a different set of rates to promulgate an experience modification factor. Currently, the "expected loss rate" for many class codes is greater than the actual rate used by the Fund. In these cases, the experience modification factor is far less than adequate in reflecting the true experience of a risk.
9. The State Fund should have a loss control department. They should implement an aggressive program to aid employers in reducing loss time injuries. The use of "safety inspectors" employed by the Division of Workers' Compensation prevents a free exchange of information on the part of the employers in many cases. Loss control is a very important item in the overall effort to reduce employer costs under the workers' compensation program.
10. The State Fund rate level does adequately reflect the losses incurred by each classification code. Since individual claim reserves are not adequately valued within the first seven months, the rates don't reflect the true loss experience. This problem is providing a dual benefit to the employer; one from the rate position and one from the experience rating position. The use of NCCI loss development factors would help solve this problem.
11. The State Fund should retain the services of an actuarial firm that has a wealth of knowledge in the property-casualty insurance field. Their current actuarial firm has helped lead them on the path to their current financial position. The use of NCCI is always an alternative. The Fund could submit their line item losses to NCCI for determination of the adequate rate to use.

Many of the State Fund rates are based on virtually no credible data since they are inclusive of such a small data base. The inclusion of additional data available from NCCI would improve the rate credibility base that the State Fund is using.
12. The State Fund could increase each rate less than the average rate by 25%. The average State Fund rate is about \$3.75. This additional increase will generate additional premiums of \$8-10

million annually. This type of increase would pass more of the fixed costs of the insurance operation directly to the users.

13. The State Fund should stagger their renewal dates (NARD dates). This would permit the use of the correct rates and correct experience modification factors at all times. This would improve the internal work flow and all policies would not receive their modification factors on July 1.
14. The State Fund should "short-rate" any insured that is mid-term cancelling a policy to insure with another insurance company.
15. The State Fund should eliminate any special programs that they have with certain groups that work to the detriment of the overall insurance program offered by the State Fund.

For instance, they should drop the Montana Logging Association "Dividend-Safety Program". Under this program, the State Fund pays to the MLA up to 4% of the paid premium by all the members. Additionally, none of the members of this "group" are required to pay an advance deposit.

16. The State Fund could choose to cap rates when they reach a certain limit (for instance \$32.00). If this were the case, the State Fund would have to spread the excess over the remainder of the risks insured with the Fund. This practice is common when a rate increase would be excessive in any single year; extension to an overall book of business would also be very easy to implement.
17. The State Fund could adopt the NCCI expense constant for Montana of \$120. per insurance policy. This charge for 26,000 risks would amount to \$3,120,000 annually.

State Funds in Oregon and Idaho currently use this same \$120.

18. The State Fund could use a minimum premium charge on each account similiar to the private insurance companies in Montana. State Funds in Idaho and Oregon also use this same minimum premium. The minimum premium is equal to the current rates times 105 plus the \$120 expense constant, but not over \$750 each year.
19. The State Fund should improve their claims handling process. They currently have attorney representation on 35% of their open case file which is excessive for the industry, probably seven (7) times the average for Montana. A problem exists in getting the word to the injured people on their benefits and what the State Fund will do for them.

20. The State Fund should not use special classification codes for only their own usage. They should use established classifications that include a history of losses.

For some of the captives insuring with the State Fund, the Fund has created a special classification code to use. This code has a rate that has been developed over a period of time. Then the risk is experience rated. For instance, the State Highway Department uses two codes only used by that entity. Then they receive an experience modification factor comparing them to the average risk using just those two classifications.

The effect of any losses are magnified by providing a lower rate and a low modification factor if past losses are less than the premium paid. If the losses are greater, the rates and the experience modification factor would be much greater than the premium paid.

Since losses are discounted when they exceed \$2,000; a greater benefit is given to the insureds with numerous losses over that \$2,000 loss figure.

21. State Fund may still need to borrow monies to meet the immediate financial needs of their plan in late 1989 or 1990. They could borrow this money from the "Coal Trust" and amortize the debt over an extended number of years.

One of the major reasons that the State Fund is facing the financial problems of today rests in the tremendous growth that it brought upon itself. By maintaining a rate level less than break-even, they were able to garner the majority of the workers' compensation insurance market in Montana. But, the more business they attracted, the more money they will lose. To reverse this trend, the State Fund will have to charge a rate that is adequate to cover all insurance operations. Private insurance companies must charge an adequate rate to remain in business. In recent years, the private insurance companies have charged a rate that would cover the insurance operations, but that rate has been unattractive to the consumers in Montana since the State Fund is using a rate that is depressed.

The State Fund is an insurance company and must operate like an insurance company. It must provide a product to the consumer at an equitable price, a price that is inclusive of all the costs of operating an insurance company for a long period of time. The Fund must use good business practices. It must use methods consistent with all other insurers, balancing the needs of the customer and Fund.

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A change in the administrative direction at the State Fund will assist in making them a more viable venture. The current problems at the State Fund developed over the past seven years and can be solved through prudent decisions and money management. HB 884 shifts the burden of insurance from the high risk employer to the low risk employer. A flat tax on the payroll earned of each employer will penalize the employers who have succeeded in implementing a good and effective safety program over a number of years. Employers with low rates will see tremendous increases in premium.

Schools, retail stores, professional offices and other low risk establishments will see rate increases that exceed 50% under HB 884. These risks have provided the base for all successful insurance operations in the past. A risk with a \$20.00 rate would only see an increase in premium of 2.9% under HB 884.

The unfunded liability existing at the State Fund is a direct result of the insurance program offered by the Division of Workers' Compensation. The insureds at the State Fund who received lower than adequate rates in the past should hold the responsibility of balancing the existing liabilities of the present since they are a direct result of the past operations.