

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYEE RELATIONS

Call to Order: By Chairman Russell, on March 7, 1989, at 3:15 P.M.

ROLL CALL

Members Present: Thirteen.

Members Excused: Compton and Thomas.

Members Absent: Glaser.

Staff Present: Eddy McClure, Staff Attorney.

Announcements/Discussion: None.

HEARING ON SB 156

Presentation and Opening Statement by Sponsor:

MARK O'KEEFE opened the hearing on SB 156 for SEN. HALLIGAN, sponsor of the bill. Reserved the right for Sen. Halligan to close.

Testifying Proponents and Who They Represent:

BOB JENSEN, Administrator of the Employment Relations Division in the Department of Labor and Industry.

HENRY BADT, Montana Association of County School Superintendents.

Proponent Testimony:

BOB JENSEN, proponent. I have handed out an excerpt from our recent audit in the Department of Labor and Industry where they address this issue in this bill and you can see at the very top of the page the school census report which is the subject of this bill where the legislative auditor did some research on the issue, contacted the county superintendent of schools and found out that nobody uses the report. County superintendents of schools do not have the authority to provide the information and they requested that the Department of Labor and Industry seek to have it repealed. (Excerpt from audit attached hereto as Exhibit #1).

HENRY BADT, proponent. We would just like to clear our conscience since this hasn't been done since 1972 and we would like to have the statute removed.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

SEN. HALLIGAN: I would like Rep. Carolyn Squires to carry this bill if you should look favorably on it.

DISPOSITION OF SB 156

Motion:

REP. PAVLOVICH: Move DO CONCUR on SB 156.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote:

SB 156 PASSED unanimously.

Rep. Squires will be carrying this bill.

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HEARING ON SB 159

Presentation and Opening Statement by Sponsor:

SEN. BLAYLOCK: SB 159 deals with the New Horizons program. One purpose of this bill is to make technical changes in the New Horizons Act which will help displaced homemaker centers provide child care assistance to eligible clients. The amendments will also simplify the process of providing incentives to displaced homemaker centers for helping AFDC recipients find and keep jobs. These technical changes will better enable eligible clients to make the transition from welfare to self sufficiency.

The other purpose of the bill is to extend the sunset date until New Horizons is replaced by similar child care assistance under the Family Support Act.

Testifying Proponents and Who They Represent:

SUE MOHR, Administrator of the Employment Policy Division in the Department of Labor.

Proponent Testimony:

SUE MOHR, proponent. My division is responsible for administering the New Horizons program and we asked Sen. Blaylock to introduce this bill on our behalf. The New Horizons program was created about two years ago. Rep. Winslow came up with this idea of providing day-care funds for folks who go off AFDC and onto employment. Sometimes when that happens, the person who receives employment isn't really receiving a high enough wage to justify getting off AFDC unless they get some kind of support in the way of child care. That is how this program began. It has been a slow process getting it started and getting it administered properly. There were some technical defects in the law which was written fairly specifically and stringently and it became obvious in the administration of the law that it would be helpful to change some of the items in there. I will take you through these so you will understand what they are all about.

On the first page, the amendment would be to distribute incentive funds at the beginning of the year. Now that we are collecting data on the displaced homemaker centers who are operating the program, we can do that up front instead of doing it after the fact. It seems like if we do it that way, displaced homemakers can put those funds right back into the program. They get incentive funds and when the program is over they sit there with the money and don't know what to do with it, so it seems like a better way to use the funds.

The law was written so that child care assistance could only be provided to those folks going off AFDC into employment. Many of our AFDC moms are interested in going back to school and this program was not available to them. This opens it up so if they are in any kind of training program they can also be eligible. It also opens eligibility. As you will see, the original language said "... the last nine months, and are not eligible for AFDC but would have been eligible," which is a tough one to administer at the local level. We opened that up to say "the past 36 months" and this gives program operators the ability to determine among themselves who would have the priority for service. The program seems to make sense for us to allow program operators that kind of flexibility instead of limiting them to nine months. You get in a situation where somebody has been on AFDC eight months and you have to tell them to stay on an extra month. I don't think that is the purpose of the program.

It also changes the assistance to twelve months and points out that it may not exceed \$50 a week, instead of \$200 a month. It provides for a decreasing scale transitional process for the last six months of the program. It allows for administrative costs to be used for both follow-up and management of the program. The program originally did not allow for that and tends to be another kind of problem for local program operators trying to run these programs.

The last section is on program evaluation. It puts an ending date on program evaluation. We didn't think the purpose of the program was to evaluate people who go off AFDC for the rest of their lives, so this puts an ending date at evaluation of six months.

The last part is a termination date for the program. We propose that it terminate on 7/1/90. The jobs portion of welfare reform is currently working its way through the human services committee. It has an implementation date of 10/1/89. We propose to begin to tie in New Horizons into the child care provisions of welfare reform and end it by the end of that first fiscal year in the biennium. That is why there is a termination date. The appropriation for New Horizons has been appropriated for two years. That decision was made in the human services committee since it is a part of the match package for the welfare reform program. This bill ties into the welfare reform package that is currently being worked on by the human services committee and also the appropriations committee.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

RICE: Question for Ms. Mohr. The standard for benefits to be received in the last six months of the period are going to be gradually decreased. Are there going to be regulations or some kind of a scale that is more specific than that?

MOHR: Yes, we are currently putting together some implementing rules under the assumption that this bill will pass because there is some other legislation going through that requires a little bit more lead time. Probably it would be quite similar to the transitional day care that is being put together. I believe in HB 200 which is also part of the welfare reform package. We tried to tie those two together as closely as possible.

SIMPKINS: Question of Mohr. We are opening this up to other people who previously didn't qualify by saying people going to school and things like this will not qualify, is that correct?

MOHR: Yes, that is right.

SIMPKINS: Then this fiscal note says there is no increased cost or increased funding even though we're going to take in more people. Are we saying that is because it is a fixed budget -- when they run out of money there will be no more people put on the program?

MOHR: That is correct.

SIMPKINS: So there are some people who will not be able to avail themselves of this service, possibly?

MOHR: Yes, I imagine that the population that would become eligible under the new parts of the program is probably more than we can pay for.

Closing by Sponsor:

SEN. BLAYLOCK: Close. (When asked by Ch. Russell who would be carrying this bill for him he said Vicki Cocchiarella, but after the meeting it was decided that Carolyn Squires would carry this bill.)

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HEARING ON SB 160

Presentation and Opening Statement by Sponsor:

SEN. BLAYLOCK: SB 160 is an act to generally revise and clarify the unemployment insurance laws.

This bill came out of the Advisory Council of the Unemployment Insurance Security Division and there is some cleanup language in it, but generally is a revision. I want to get to the amendments that are going to be offered. There is one regarding discharge and they want to put the words "if they are suspended" in. This makes a fairly significant change in the bill that I was first given. I guess I am very uneasy about doing that because I only sat in on one session of the advisory council. The bills that were recommended out of there are recommended by both labor and management and I am uneasy when it gets to this point and then suddenly these amendments start coming in. (The amendment referred to is attached hereto as Exhibit #2). You can do as you wish but I don't like it.

There is another amendment which they want to consider excluding the carpet layers. (Copy of amendment attached

hereto as Exhibit #3). They want to be thought of as independent contractors, rather than being under the unemployment law. We have got more and more of that going on and that eats into the unemployment insurance. The more of these people who drop out, the worse it is. Again, I would like to have you use your best judgment on these proposed amendments.

Testifying Proponents and Who They Represent:

CHUCK HUNTER, Administrator of the Unemployment Insurance Division.

CHARLES BROOKS, Montana Retail Association.

JACK GRACE, Butte, Independent Carpet Layer.

KENT CLARK, Butte, Independent Carpet Layer.

ED DENNEHY, Dennehy Flooring.

Proponent Testimony:

CHUCK HUNTER, proponent. As Sen. Blaylock said, this bill was introduced at the request of the department. It is a bill that was run by the Unemployment Insurance Division's Advisory Council, comprised of representatives from the business community and the labor community, as well as representatives from the public sector, representatives and senators.

The bill itself contains a number of minor revisions to the law. There are two provisions within the original bill that are more substantial than the other portions.

On pages 13 and 14, there are changes related to agriculture employment and domestic employment. Currently under the law, agriculture employment is generally excluded from coverage under unemployment insurance. However, if an agricultural employer also provides another kind of employment out of the same business entity, i.e. if he is the sole proprietor running some other kind of business, maybe some equipment repair or some guiding services out of the same business entity, we sometimes pick up that business and pick up the agricultural employment as well. In tough economic times many small ag employers are having to turn to other kinds of employment to try to make ends meet. We feel this clarification for the ag section would allow small ag employers to keep their agricultural employment excluded from coverage if they provide a separate set of records and books for the other employment -- the mechanic work, the guiding service, what have you, on their properties.

The same kind of logic applies in the section about domestic employment. Currently, domestic employment is not covered

unless you pay \$1,000 for that employment in any calendar quarter. Again, we are trying to exclude that kind of small coverage from a small business who might pay for that domestic employment out of the same business account as his sole proprietor account.

The second provision is on page 18 and this is the provision that deals with the fiscal note that is attached to the bill. It has a fiscal note of \$126,000 worth of impact to the trust fund. Currently, under the unemployment insurance law, we deduct from the claimants weekly benefit amount a proportion of that benefit amount if they are receiving some type of pension. That was a provision that was in the law that reflected the federal unemployment tax act and we were mandated to have that kind of conformity with the federal law. The federal law has been changed and it now allows us to not deduct benefit amounts when a claimant is receiving a pension that he or she contributed in part to. This provision is designed to reflect the new federal law that allows us to not deduct if the claimant has contributed to part of that pension. Those are the substantial provisions of the bill.

The first amendment has to do with the exclusion of coverage of floor covering installers. This is an area that the division deals with on a regular basis in the area of independent contractor coverage. For as long as I have been around the division, we have been struggling trying to make independent contractor decisions on floor covering installers. It is an area of employment that is very close to the dividing line between independent contractor and employment. This provision would just take the coverage of those types of workers right out of the law. It would make it easier for us to administer and we wouldn't be making individual independent contractor decisions again on that type of employment.

The other provision relates to suspension. Currently, under the unemployment insurance law, we deny benefits to individuals who are discharged for misconduct. We have recently had several cases where a claimant filed after having been suspended for misconduct. Under the way the law is currently written we could not deny benefits based merely on a suspension. It had to be on a discharge. This was a provision that was presented to the advisory council as part of our original proposal for this bill. The advisory council looked over the proposal and decided not to include it in the final bill, so I will bring that to your attention as well.

CHARLES BROOKS, proponent. I also serve on the Governor's Advisory Council for Unemployment Compensation and was in the session where we agreed upon the changes that were reflected in the original SB 160. I was not aware of the amendments until today, but they seemed reasonable to us so

recognizing that we do have some conflict with the rules of the council, the council has agreed (there must be 100% concurrence) on the adjustments to the unemployment compensation code. I personally would like to testify today in support of amendment #1 and oppose amendment #2.

JACK GRACE, proponent. Independent carpet layer. I have been doing this type of work for twenty years. I supply all my own tools and I set my own hours. I take care of my own insurance and I have made a very good living for my family.

KENT CLARK, proponent. Independent carpet layer. I have been doing this work for about 22 years. Until recently we all felt that we were always independent contractors because we furnish our own insurance, we take care of our own income tax, hire bookkeepers, furnish our own trucks. We can dictate our hours. We can work for one store or several stores. We can do work for building contractors. Until recently they say we weren't independent contractors because we actually do more than 50% of our work for Ossello's, which is a major furniture and carpet store in Butte. The only reason we do more than 50% of the work for Ossello's is they are the biggest. If we don't have to work for ten stores to make the same living as we do for one store, it saves us a lot of hassle and Ossello's have the business there. We work for him or the store probably 90% of the time. If he wasn't there and his business was broken up into ten stores, it would be the same thing, except he does do the bulk of business in Butte, and we do our work for him. That seems to be the problem now. They don't recognize independent contractors because we do most of our work for one store.

ED DENNEHY, proponent. Getting back to working for one individual. We are allowed to work for all kinds of individuals. My income from last year from Ossello's was 47% of my total income, 23% from another flooring store and individuals. So as far as working "for" the man, I can't see where we do. As far as workers' comp goes, we signed something a year or two ago that we wanted to be exempt from this, but I can't tell you exactly what it was.

Testifying Opponents and Who They Represent:

JIM MURRY, Executive Secretary of the Montana State AFL-CIO.

GENE FENDERSON, Montana State Building and Construction Trades Unions.

NADIEAN JENSEN, Executive Director of Montana State Council #9, AFSCME.

BOB HEISER, United Food and Commercial Workers.

DON ALLEN, Executive Director of the Montana Wood Products Assn.

Opponent Testimony:

JIM MURRY, opponent. Originally we didn't oppose SB 160, but we feel we have to at this time. Apparently there has been a change in the rules. I have been participating on advisory committees for unemployment comp, workers' comp for about the past 20-25 years. Usually the legislation is considered by everyone who serves on those committees and there is a lot of agreement, a lot of disagreement and a lot of compromise as to the position that we assume. Then the legislation is brought to the legislature with the understanding that it is just what it is, it is an advisory committee bill. Now the rules are being changed and the department, or whoever, is coming in and attempting to change these bills from the legislation that we originally considered. I think the committee should give thought to what this kind of behavior might do as far as the credibility of advisory committee bills in the future. I think that by doing this you jeopardize the effectiveness of advisory committees that take a lot of heat off the members of the legislature because the debate goes on in the committees instead of here in the legislature.

The sponsor of the bill brought the bill in, taking the word of whoever took the bill to him that it was an advisory committee bill and now those rules change.

The amendment that talks about suspending workers for misconduct is one of the most vicious amendments I have seen for a long time and I am sure whoever is responsible for this, including the people who testified from the department, realize this. The assumption with this amendment is that the employer is always right and that simply is not the case. The claimant gets no consideration at all. You are going to disqualify that claimant from unemployment compensation benefits simply because he or she was suspended for misconduct, without even considering those charges. That is the reason the law reads the way it does right now because on many occasions (I served on the labor appeals board a number of years) I found you always have to weigh each case on the merits and it is not unusual to find that an employer is wrong. An employer does things to provoke an employee to do something that might otherwise be considered misconduct and that has to be taken into consideration when you weigh those cases and whether or not a worker is entitled to those benefits.

The other amendment that deals with carpet layers, I'm not too sure that I understand what is going on. The department has testified that they have been struggling with this provision of the law for a long time and I don't understand that as we already have provisions in the law to provide for people to become independent contractors. They simply have to meet the criteria set in the law.

Take into consideration carpet layers who might want to be covered by the law. The people who have testified here I don't doubt them at all. I'm sure they feel exactly as they have conveyed to you that they are independent contractors and they feel they are independent contractors and that is what they want to be. For workers who want the coverage there should be protection for them, so as you make the changes in the law, please take that into consideration. With the amendments, we would have to oppose this legislation.

GENE FENDERSON, opponent. We also oppose the amendments. I especially want to speak about the suspension situation. There are a number of ways an employee can be suspended, I think you all realize that, that is with pay, without pay, temporary, permanent, a number of things and I understand the amendments do not address any of those things. Whether you are working under city administration rules or county rules or even department of administration rules of suspension, or with a private employer, say in a grievance procedure, in an arbitration procedure, in a collective bargaining act, especially an industrial agreement. It is not unusual for those cases to go six months to a year before a final decision is made whether a person is actually suspended full time or part time or something in between. In the meantime, if that worker is found not guilty of the actions he is accused of, you are putting them and their families in a terrible financial bind. We think it is drafted totally unclear and is not needed.

NADIEAN JENSEN, opponent. I represent employees who walk a very narrow line. They work with human beings. In many instances some innocent move can be taken for abuse and they are immediately suspended. This would disenfranchise them and put them in a very precarious situation and I ask that you vote against this bill.

BOB HEISER, opponent. We don't oppose the bill, but we oppose the amendments to the bill.

DON ALLEN, opponent. I hesitate to rise as an opponent to the bill itself, but in view of the comments that have been made regarding the amendments, we are in favor of both the amendments to the bill and unless the one dealing with the discharge is added then we would be opposed to the bill.

Questions From Committee Members:

PAVLOVICH: Question for Nadiean Jensen. You oppose the whole bill completely, with or without the amendments?

JENSEN: No, I oppose the amendment on the suspension.

PAVLOVICH: Same question to Mr. Murry.

MURRY: I oppose both of the amendments.

PAVLOVICH: Question of Mr. Hunter. On the one amendment, not the suspension amendment, Mr. Murry had a problem with it. He said you had problems with it too. I understand there is a court case going on right now pertaining to this where the carpet layers are trying to get enrolled, but they can't do it.

HUNTER: There is a court case currently involving carpet installers from a business in Butte. The division found those installers to be employees. That case went to an appeals hearing. The appeals officer also found them to be employees. It went to the Board of Labor Appeals and the board found them to be employees. The case is now pending district court on the same issue, whether those carpet installers are independent contractors or employees. The business owner is maintaining that they are independent contractors; the department has found them to be employees, under the current law.

PAVLOVICH: If we pass this bill with that amendment in there, will it clear that court case up?

HUNTER: It will not clear that court case up because this law would take effect from the date it is passed. The court case would be settled under the old law.

DRISCOLL: Question of Hunter. If these people meet all of this criteria, how could they not be independent contractors under the AB test?

HUNTER: I think the language here is very close to what is required from the ABC test. I think that language does specify some key elements that we don't always see in that same configuration under the ABC test. We feel that the language here would very clearly make them meet the ABC test.

DRISCOLL: Is the court case over workers' comp and unemployment payments/taxes?

HUNTER: The court case is with unemployment insurance only; however, I think the division of workers' compensation normally relies on UI decisions to make their decisions, so it is likely that there would be an effect from the workers' compensation division as well.

DRISCOLL: You are amending 39-51-204 and that is the unemployment section of the law, how is this going to exempt them from workers' comp?

HUNTER: It will not exempt them from the workers' compensation laws. It requires for our purposes that they either have an

exemption or have coverage, but it says nothing for the workers' compensation law itself.

DRISCOLL: In the case of these people, did they apply for independent contractor status with the workers' comp division?

HUNTER: I don't know that.

DRISCOLL: May I ask one of the proponents of the amendment from Butte, whoever would like to answer.

Sir, did you apply for independent contractor status with the workers' comp division?

CLARK: Not yet. They have made up a criteria of what an independent contractor is and I will apply for independent contractor status right away.

We didn't meet the criteria on the A and B test and one of the things is that too large a percentage of our work is done for one individual. The other thing was that they regulate our hours. They don't regulate our hours, but they will schedule us four days in advance so the homeowner will know we are going to be there.

DRISCOLL: Were you aware that under the current law you must apply for this exemption, did anybody ever explain that?

CLARK: No sir. Not until just recently. Mr. Orizotti, a lawyer in Butte, did explain this to us just recently. We did not know this.

DRISCOLL: Question for Hunter. The ABC test does not say anything about working for one individual. How did they say that these people worked for one person too much when that is not part of the ABC test?

HUNTER: The ABC test is used often in conjunction with what is called the common law test. Twenty factors identified under the law relate to the ABC test. One of those factors used by the division relating to the ABC test is can a worker survive the termination of a relationship with one employer? If a worker was working for only one employer and if that relationship were ended, the worker would not have any more work and could not seek other employment. We intend to view that as indication of an employer/employee relationship.

SIMPKINS: Question for Chuck Hunter. Without this amendment, can they get an exemption from unemployment insurance division, even if they got an exemption from workers' comp?

HUNTER: There is no formal exemption from unemployment insurance law the way there is in the workers' compensation law, but we may find in the individual cases that a certain worker

would fall outside of the law because he met the independent contractor criteria.

SIMPKINS: What we are saying is that if this amendment were in place and he got the workers' compensation exemption, he is excused from the unemployment division. But if we don't have this amendment, he still has to go through another procedure even with the workers' compensation to be exempt from this.

HUNTER: Yes, that is correct.

DRISCOLL: Last session we had a bill that went through the house, I don't know if it went through the senate, that made the ABC test for the workers' comp and unemployment exactly the same. Did that bill pass?

HUNTER: Yes, it did.

DRISCOLL: The intent in the committee when we heard the testimony on that bill is if you received your exemption from either unemployment or workers' comp then you automatically got the other one. So are we following that bill?

HUNTER: My understanding of the bill was slightly different from that. I believe what the bill did was set up a joint definition and a joint process for the resolution of decisions from the two divisions regarding independent contractors. I do not believe the bill ever said that if a worker received a workers' comp exemption that the UI division would automatically adopt that.

DRISCOLL: What did we pass the bill for?

If we said if they passed the test at workers' comp and the definition of the ABC is identical, I believe, then they must reapply and go through the hearings process at unemployment? Is that the process we are using?

HUNTER: Yes, at times that may be the process. Let me point out the way the exemption process works at the workers' compensation division. An independent contractor, or a worker, may apply for that exemption merely by sending in a form describing the way they do their business. For unemployment insurance we have always looked at the relationship rather than looking at what is described on paper. That is why we have not adopted verbatim their decisions on the exemption form.

RUSSELL: If there are no further questions from the committee, this closes the hearing on SB 160.

DISPOSITION OF SB 159

Motion:

SQUIRES: Moved DO CONCUR IN.

Vote: Unanimous, DO CONCUR IN.

Rep. Cocchiarella said she would carry the bill in the House. It was later decided that Rep. Squires would carry it.

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HEARING ON SB 186

Presentation and Opening Statement by Sponsor:

SEN. BOYLAN: SB 186 is an act allowing the sale of the State Workers' Comp Insurance Plan and Fund. (He then read from the bill starting on page 3, line 23 through page 4, line 21).

I think you found out in your campaigns that the No. 1 problem with businesses in the state of Montana is the fear of the high cost of workers' comp. During the last session we did a real work over of the workers' comp division. We have 30+ bills in here this time to reform the workers' comp division. I think we have so much reform on it that it is becoming deformed.

We have a \$157 million debt in the workers' comp in the state and the state now is going to get stuck with more high risk insurance. The League of Counties has their own insurance. They are not high risk so they were able to set up their own deal. The university system will probably try this, so will the school system. What have you got left but the high risk, so that will make the \$157 million debt become worse.

(He talked at length here about the "workers' comp scandal" in 1975, and then about various people who have worked for workers' comp and why people sue WC, about mismanagement and why claims go up).

So, let's put the program and fund up for sale and see if there is anybody out there who might buy it.

(He then talked at length as to why some insurance company might want to buy it and then compared it to companies that buy small home mortgages, etc.)

Testifying Proponents and Who They Represent:

TOM SIMKINS, Simkins Lumber Company in Bozeman.

LAURIE SHADOAN, Lobbyist for the Bozeman Chamber of Commerce.

Proponent Testimony:

TOM SIMKINS, proponent. We have been in business for some forty years in Bozeman, so we have a long history of carrying workers' compensation insurance. As I have gone back through the records, we have been with a private carrier most of the forty years. I can only recall about three to five months that we were actually insured with the state fund. Presently we are insured with a private carrier. We have been able to obtain insurance from the private carrier at a competitive rate to the state rate. The reason why we have chosen to stay with the private carrier is that you will find that private carriers have a better reputation for adjusting their cases. I think this is better for me and the injured worker. Another reason I chose to stay with the private carrier, and I don't know how much of a risk this is, but as I read the letter of the law, if the state fund should become insolvent I, as an employer, would become responsible for it. I don't know what the political realities of this is but it still bothers me and I guess this is the reason why I chose to stay with the private carrier.

I think maybe Sen. Boylan's bill offers a real opportunity to get rid of this huge liability and deficit. Since I have only been with the state fund for a few months and we only had a few small claims, the state fund made money off me, I feel like I am being picked on to be paying a sur charge until 1997. I really didn't contribute to this deficit but as an employer I am going to be required under the present system to keep paying.

I see there is a bill before the legislature now where the employees may be asked to contribute to this unfunded liability. I think we can do best for employers and employees if we can find a way to get rid of this deficit and have somebody take it off our hands.

LAURIE SHADOAN, proponent. We are in support of HB 186, to have an option and give the possibility of selling the workers' compensation division. As a business owner, I feel strongly that the division should be run as a business and making the hard business decisions. While the division is under the control of the legislative process, I do not believe this is possible to achieve. I was appalled to learn that the workers' compensation division has been in the red since 1979. As a business owner, if I ran by business as the division has been run, I would not be in business. I contend that SB 186 needs to be one option to the solving of

workers' compensation problems. Please vote favorably on this bill.

Testifying Opponents and Who They Represent:

JIM MURRY, Montana state AFL-CIO.

GENE FENDERSON, Montana State Building and Construction Trade Unions.

BOB HEISER, United Food and Commercial Workers.

MONTE BECK, Attorney.

Opponent Testimony:

JIM MURRY, opponent. We are in opposition of SB 186. Read from written text which is attached hereto as Exhibit #4.

GENE FENDERSON, opponent. We agree with the testimony which Mr. Murry just gave.

We honestly believe that selling this fund would create one of the worst business climates this state has ever seen by the sky rocketing insurance premiums that will have to be paid under a private fund. If you are worried about the business climate, pass this bill and we believe it will get much worse. We totally oppose the bill.

BOB HEISER, opponent. We oppose the bill for many reasons that have already been mentioned. I worked for a company that went from the state plan to a private plan. The private plan offered this employer lower rates than the state could offer, etc., and lured them over to the private plan. Within two years their rates were higher than the state's plan was, so this employer switched back over to the state plan. At that time they had the option.

If the state fund was taken over by a private carrier then we would not have an option and we would all be at the mercy of the private carrier as to what premium they would charge for the coverage.

SB 186 is not in the best interest of Montana business or the workers of Montana and I urge you to give this bill a do not pass recommendation.

(tape turned over at this point and didn't get it going properly so some of Mr. Beck's testimony was not recorded)

MONTE BECK, proponent. and we're going to have a crisis that people won't even believe in five years from now. I don't want to see any of the rights taken away from the workers. I have to conclude that it would be run better by a private entity. That is the only thing that I care to

support, is the concept that if you turn it over to a private insurance company it will be run by the private insurance company, it will be managed by the private insurance company, and they have an interest in getting cases settled and resolved. I have to say that the people I have as my clients want to get on with their lives, even though they have been injured.

My testimony is in favor of Sen. Boylan's bill because I think it would help the worker. Somebody should look into the state fund and see how it is being managed and then you would see how this deficit got created. I have clients who are quadraplegics; I have clients with their arms cut off; and if I brought them in here you would see the horrors that are created by work accidents. The manner in which the state fund manages the cases doesn't promote settlement.

Questions from Committee Members:

DRISCOLL: For Sen. Boylan. On page 4, I see the Senate took out the assigned risk pool. What was the reason?

BOYLAN: The staff did that in constructing the bill. If this was sold by the reading of the other they would have to take them all, so then they would probably be in the same position as the state. The state has to take them all unless Sen. Thayer's bill goes through where they establish the high risk pool in the private sector. We discussed that in the legislative council today, whether we should put that high risk back in there. I think if somebody bought it you couldn't make a monopoly out of it, so then some other people could come in and start selling insurance. Then I think maybe they'd take the goodies and leave the bad with somebody else. I think if it really was sold, a high risk pool would have to be implemented.

DRISCOLL: Page 4, lines 9 through 13, says the person who buys this has to take all comers. So you have put this new buyer in the same situation the state fund is in.

BOYLAN: That was my problem with it, that you'd be putting the new buyer in the same position as the state is in. If you read down, the Department of Administration shall review and prepare comments and recommendations regarding each proposal so the 52nd legislature. Any special session of the legislature meeting before the convening of the 52nd legislature may review the proposals that have been submitted and the comments and recommendations of the Department of Administration. I think in their negotiations with buying this fund, they would probably ask that a high risk pool be set up.

WHALEN: Question for Sen. Boylan. I like the idea of the assigned risk pool. I take it if this legislation were to pass, you would like to see that back in there?

BOYLAN: I think it would have to be and I think that it would probably be a negotiating deal if they were interested in buying that there would have to be an amendment put in that the high risk pool would have to be established.

WHALEN: Who amended out the assigned risk pool?

BOYLAN: It was done in the legislative council just making up the bill. It is very permissive, the whole thing. I think if we had it like the original bill says "requiring" instead of "allowing" I think we would have had to set up the high risk pool. This is just allowing the sale and not requiring the sale.

WHALEN: Question for Jim Murry. I was a little disturbed about the number of injuries you cited in your testimony that apparently took place in 1987, the rate of injury and the rate of increase of injury. Do you think that the state made a political decision, or the governor, or whoever did it, made a political decision a number of years ago to subsidize the rates of workers' compensation that that might have encouraged employers to be a little more sloppy in the way they protected their workers since they didn't have to compensate them at the level they were compensating them in the past?

MURRY: We don't see any indication of that. From our observations, we think the main reason for the dramatic increase in industrial accidents is the fact that we have not had adequate enforcement of the Occupational Safety and Health Act. Montana is a state that has federal enforcement of that safety law. We have run into a problem of not having an adequate number of people out in the field to enforce that law and the result has been that more workers have been hurt, made sick, crippled and killed than any time since the passage of the act.

WHALEN: For Mr. Murry. Do you see any connection between the cost of compensating an employee that an employer injures and his motivation as to what extent he is willing to go to to try to protect that employee from injury and, if so, what connection do you see?

MURRY: It is my understanding that when the law was put into effect in 1915 the idea was that we put in place a no-fault insurance paid for by employers, and then we would have benefits spelled out in the law. In that scenario, the idea was that we hold the benefit rate high enough that it would be very expensive to not have a safe place to work. It would be very expensive, in other words, for employers to allow workers to be hurt, killed, crippled or made sick and then that would be a driving force in premium rate costs. Instead, they would be encouraged to provide a safe place to work and we subscribe to that idea today, and so do many,

many good employers who do care about the condition of the work place and the conditions under which their employees work.

DRISCOLL: Question for Beck. You said you have been working with Sen. Boylan for two years to promote this bill. Have you had any comments or done any research on who might buy it? There are people who buy up debts and try to make a tax dodge on them, have you had any contact with those people?

BECK: No, I told Paul Boylan, Mr. Driscoll, that I think we are going to find that it is going to be extremely difficult to try to sell this. I don't think anybody is going to buy the state fund the way it is, unless some fancy Philadelphia lawyer can figure out some kind of tax break for these big insurance companies. As we know, insurance companies don't pay federal taxes anyway. They aren't even subject to antitrust laws. I don't know how your're going to find a buyer for it, with all due respect, but that doesn't necessarily negate his idea that one ought to at least allow the idea to be explored. Who knows, Hartford, Allstate, State Farm, or somebody with big dollars may want to buy this.

DRISCOLL: Last session SB 315 passed and is the present law for all accidents after July 1, 1987. That law says there can't be any settlements, private fund or state fund, so you can only get five weeks for each one percent of your impairment and after that you get wage loss.

BECK: That is not true.

DRISCOLL: That's what SB 315 says.

BECK: SB 315 says they may enter into a partial settlement if they want to. Private insurance carriers are doing that. State fund has a policy not to settle injuries.

DRISCOLL: Are you telling me that private insurers will, on injuries after July 1, 1987, in addition to your indemnity award, they will give you a lump sum on your future or your 500 weeks times \$149.50?

BECK: That's correct.

DRISCOLL: At what rate do they discount it?

BECK: It's a terrible discount. It is discounted almost 40% of what it used to be. You take an 8% discount and you apply it over 500 weeks and you back it up, that worker gets about 40% of what his case is worth. It is terrible.

DRISCOLL: Then why would that be better than the wage loss under the law?

BECK: Because ten years from now \$149 a week supplement isn't worth anything to the worker. By inflation alone, if we take 5% a year, in ten years there is half of it gone right there. What can a worker do with \$149.50 a week? He can't do anything with that. He will continue to get these benefits. He will be in a cycle which he will never get out.

SMITH: Question for Mr. Murry. I believe you alluded to it briefly, and Mr. Beck touched on it. I would like to have you go into it a little deeper. Shortage on premium dollars is what got us into this mess.

MURRY: I'm glad you asked me that question because I think every time I come before this committee and we get into these discussions and I make reference to what we did about making a political decision to keep premium costs down, I feel tension coming over the room. I think that some may feel that I am directing those remarks at people in the industries that benefited by that political decision. Those people in the timber industry did benefit, there is no question about that.

The point I am making with my testimony today is the reason we need Plan 3 is because that is the only place that some employers can go for coverage now. Workers have to have the coverage under the law and employers have to have some place to go. With the law being the way it is, we can make decisions from time to time to make it easier for those employers. As we testified about this two years ago, our concern was this -- we said that the unfunded liability was going to grow by virtue of what happened and we should all take that into consideration. We heard hearing after hearing where workers were accused of defrauding the system and that was the reason for the unfunded liability. Lawyers were being blamed for the unfunded liability. The court system was being blamed for the unfunded liability. All we were saying during that whole time is, let's look at it for what it is and there may be justification for doing that. Members of the legislature, people in public office, employers, trade unionists, all of us, should understand that and see it for what it is. We should be able to discuss that objectively. I guess I am making the argument on one hand, we were critical of that decision two years ago and today I am making the argument that there should be a Plan 3 so that we can give Montana employers some insulation when they need that. So in that instance I support this case.

WHALEN: Question for Beck. During the testimony of the opponents to the bill they indicated that one of the reasons they were afraid of the possible sale of the state fund was that since the fund is required to take the employers of last resort, the high risk employers, etc., that their rates would go way out of sight and there wouldn't be any check or

control on that. I wonder what your observations would be on that potentiality. To supplement my question, there was encouragement and ultimately a subsidy of the rates a number of years ago as a result of a decision by the administration because of the severe rates that were in effect. Also, if the rates do skyrocket for the employers who can't find insurance anywhere else, are we going to lose those businesses?

BECK: I must say that is the most cogent reason for opposing the bill. I think you hit it on the head. I think that you may then be stuck with the situation in which the private carriers can raise the rates so high that you can put somebody out of business. The state fund is the one insurance company that is there that will always insure everybody. That has to be tempered though with the concept that high risk industry and those industries that are causing the injuries should have to fairly pay for what they cost. I don't think that the state fund ought to be the only insurance company in this state that subsidizes the high risk employers, and we do that right now. Private carriers get the cream of the crop. They also have a provision that you can have counties and cities self insured. I think you have a problem in that regard.

Can't it be worked out by some kind of an amendment here to the bill, appointing a regulatory body that has some teeth in it, like the insurance commissioner's office, that can review the rates of the insurance companies so they cannot go out and arbitrarily raise rates and call it a crises and blame everybody, blame the victims. Couldn't there be a regulatory process to allow for a rate making procedure.

WHALEN: Question for Beck. This bill, before amendment, apparently had an assigned risk pool in it which would have required some of the Plan 2 carriers to pay into an assigned risk pool. I don't know if that would have applied to Plan 1 as well. Two years ago I strongly considered putting in a bill that would have eliminated Plan 1 and Plan 2 carriers. Plan 1 partly because of the debacle with Great Western Sugar and the gross negligence of the division in allowing that to happen. Also, it would have taken your strong employers and it would have spread the risk so that the rates would have been set not just on picking up the dogs and cats but also on the strong employers. The closest thing I see in Paul's bill to something along those lines is the assigned risk pool. I guess I ask you for your comments and observations on that.

BECK: I think the basic idea behind the assigned risk pool is a good one. I think your point is well taken because you need something there to protect it. Whether it be an assigned risk pool or some other method, I would urge the committee, if you are seriously considering the bill, to propose some amendments to it.

Closing by Sponsor:

BOYLAN: I think Jim Murry really hit the nail on the head when he said for political reasons, there weren't some charges made. That's what the matter is with the whole system. There were political reasons made so the fund started going in debt. I think if the truth were known, some agencies of government during the interim balanced their budget by not paying the requirement into workers' comp. I think if there really was an outside audit it would be proven. Safety is really going to pieces. We are getting more injured workers all the time because the state has no way to enforce the safety regulations. A private insurer can enforce safety though through the threat of cancelling the insurance coverage. There are only 18 states in the United States that has a state fund. What are the rest of them doing? So why is this just a crises in the state of Montana? Most of the states are with the private insurers. There are a lot of states who don't have a state fund and you don't hear about trouble with the private insurers. So I wish this committee would at least put up the sign "For Sale" and see what reaction we get and who might accidentally come in. If they come in with some offers I think a special session should be called if we get a good buyer who is willing to dicker on a \$157 million debt.

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ADJOURNMENT

Adjournment At: 5:20 P.M.



REP. ANGELA RUSSELL, Chairman

AR/mo

5309.MIN

VISITORS' REGISTER

HOUSE LABOR

COMMITTEE

BILL NO. 156

DATE 3/7/89

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
J. HENRY BAPT	MACSS	✓	
Bob Jensen	Dept. of Labor Ind.	✓	
Ed Lemley	Danahy Flooring	✓	
Kent Clark	Independent Floor	✓	
RICK SUEJKOVSKY	SUEJKOVSKY FLOORING	✓	
Carolyn SUEJKOVSKY	SUEJKOVSKY FLOORING	✓	
RICH BROWN	RICH BROWN FLOORING	✓	
Conn Norling	Independent Floor Covering	✓	
John P. Grace	Carpet & Linoleum at ITB	✓	
Nadine Jensen	AFSCME	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LABOR

COMMITTEE

BILL NO. 159

DATE 3/7/89

SPONSOR _____

[illegible]

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VISITORS' REGISTER

HOUSE LABOR

COMMITTEE

BILL NO. 160

DATE 3/7/89

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Charles Brooks	NAT RETAIL ASSOC.	✓	
Ed Dennehy	Dennehy Flooring	✓	
Bert Clark	Bert Clark Flooring	✓	
Rick Svejksky	Svejksky Flooring	✓	
Bryon Svejksky	Svejksky Flooring	✓	
Rich Brown	Rich Brown Flooring	✓	
John Hopkins	Independent Flooring	✓	
John P. Moore	Carpet & Linoleum at its Best	✓	
Bob Heiser	UFCW		x amend
Madison Jensen	ATSCNE		x amend
Chuck Hunter	DOLT		
Jim Murray	Mont. AFL-CIO		X

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

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VISITORS' REGISTER

HOUSE LABOR

COMMITTEE

BILL NO. 186

DATE 3/7/89

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[illegible]

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ACCIDENTS AND INJURIES BY INDUSTRY TYPE

Industry group (excludes gov't)	Montana 86/87	Montana 87/88	percent change	percent of total	U.S. (,000) 1986	U.S. (,000) 1987	percent change	percent of total
All private sector	22,851	26,849	+17.5%	100.0	5,492.0	5,845.5	+6.4%	100.0%
Agriculture	1,588	1,789	12.6	6.6	86.4	95.0	9.9	1.6
Mining	567	1,055	86.1	3.9	55.7	59.3	6.5	1.0
Construction	2,443	2,411	-1.3	8.9	641.2	631.2	-1.5	10.8
Manufacturing	4,045	4,919	21.6	18.3	1,865.1	2,087.2	11.9	35.7
Trans. & utilities	1,750	1,958	11.8	7.3	400.6	422.5	5.5	7.2
Wholesale trade	1,645	1,659	0.1	6.2	387.1	403.8	4.3	6.9
Retail trade	4,390	5,112	16.5	19.1	1,032.8	1,052.4	1.9	18.0
Fin., insur., & real estate	204	288	40.3	1.0	112.7	112.2	0.1	1.9
Services	6,219	7,658	23.1	28.5	910.4	981.9	7.8	16.8

Sources: -- U.S. Department of Labor (Release #88-562), Dec. 19, 1988
 -- Montana Division of Workers Compensation, 1988 annual report

Technical note: Montana statistics are compiled on a fiscal year basis (June to June), while federal statistics are for the calendar year.

OCCUPATIONAL INJURY AND ILLNESS RATES PER 100 FULL TIME WORKERS

Industry group (excludes gov't)	Montana			United States		
	1985	1986	1987	1985	1986	1987
Private sector total	8.0	8.2	9.0	7.9	7.9	8.3
Ag, forestry, fishing	15.4	12.9	13.2	11.4	11.2	11.2
Mining	8.5	6.3	7.9	8.4	7.4	8.5
Construction	17.3	17.5	14.8	15.2	15.2	14.7
Trans. & Utilities	7.5	7.4	7.6	8.6	8.2	8.4
-- Communication	4.9	2.2	3.5			
-- Electric, gas and sanitary	5.9	6.8	7.8			
Wholesale trade	7.2	7.6	8.7	7.2	7.2	7.4
Retail trade	5.9	5.8	7.2	7.5	7.8	7.8
Finance, insurance and real estate	1.4	1.1	1.1	2.0	2.0	2.0
Services	6.3	6.9	7.8	5.4	5.3	5.5

Of the injuries or illnesses that resulted in lost workdays in all private sector employment, the average number of lost workdays for each case was:

	1986	1987	% change
Montana	61.6	80.2	+ 30.1%
U.S.	65.8	69.9	+ 6.2%

Sources: -- U.S. Department of Labor (Release #88-562), Dec. 19, 1988
 -- Montana Division of Workers Compensation, 1988 annual report

DATE 3-7-89

HB SB 186

2043

WORKPLACE INJURIES ARE A SERIOUS PROBLEM IN MONTANA, NOT ONLY FOR THE WORKERS WHO SUFFER, BUT ALSO FOR THE WORKERS' COMPENSATION SYSTEM THAT MUST PAY THE DAMAGES. WE CANNOT CONTINUE TO EXPERIENCE THE KINDS OF INJURY INCREASES WE'VE SEEN IN RECENT YEARS AND STILL EXPECT TO HAVE A SOLVENT FUND WITH AFFORDABLE RATES.

A MAJOR PART OF THE SOLUTION MUST FALL NOT ON MAKING BASIC CHANGES TO THE SYSTEM, BUT ON EDUCATING EMPLOYERS ABOUT THE NEED TO PROVIDE A SAFE WORK ENVIRONMENT.

WITH THAT ASSESSMENT, DOES IT FOLLOW THAT WE SHOULD CONSIDER SELLING THE STATE FUND TO THE HIGHEST RESPONSIBLE BIDDER IN ORDER TO RID OURSELVES OF THIS UNIQUE BURDEN? NO, IT'S NOT UNIQUE AND IT SHOULDN'T BE SOLD OFF.

SELLING IT TO PRIVATE INDUSTRY VERY LIKELY WILL BRING ABOUT HIGHER RATE INCREASES THAN WOULD HAPPEN UNDER STATE CONTROL.

WE BELIEVE THAT THE STATE FUND SERVES AS A BUFFER FOR SERVICES, IN ADDITION TO PROVIDING LOWER RATES. HISTORY HAS SHOWN THAT PRIVATE INSURANCE COMPANIES COME AND GO. MONTANA'S WORKERS AND EMPLOYERS DESERVE THE STABILITY OFFERED BY A STATE-RUN PLAN.

PRIVATE FIRMS DESIRE TO MAKE A PROFIT, WHICH THE STATE FUND IS NOT CURRENTLY DOING. THERE ARE ONLY TWO WAYS TO CHANGE THAT: RAISE PREMIUM RATES OR REDUCE BENEFITS. BENEFITS TO WORKERS HAVE ALREADY BEEN SEVERELY CUT. RAISING RATES IS NECESSARY, BUT RAISING THEM HIGH ENOUGH TO COVER A PRIVATE COMPANY'S PROFIT MARGIN IS NOT NECESSARY.

WE'RE ESPECIALLY CONCERNED ABOUT THE POSSIBILITY OF HIGHER RATES PUSHING SOME EMPLOYERS TO SIMPLY NOT GET COVERAGE. IF RATES UNDER A PRIVATELY RUN PLAN GO TOO HIGH, AS WE FEAR THEY WILL, SOME EMPLOYERS WILL CHOOSE NO COVERAGE AND LEAVE THEMSELVES AND THEIR WORKERS EXPOSED TO GREAT HARM, ALL IN THE NAME OF PRIVATE PROFITS AT THE EXPENSE OF PUBLIC GOOD.

WE BELIEVE THAT SB 186 DOES NOT SERVE THE BEST INTERESTS OF EITHER MONTANA WORKERS OR EMPLOYERS, AND WE ASK YOU TO VOTE AGAINST IT.

STATE FUNDS, MOST OF WHICH STILL HAVE UNDERWRITING LOSSES. LOOK AT COLORADO, WHERE THE RATES FOR LOG TRUCK DRIVERS ARE FOUR TIMES WHAT THEY ARE IN MONTANA. OR WASHINGTON AND OREGON, WHERE STORE CLERKS' RATES ARE TWO AND THREE TIMES HIGHER.

THOSE HIGHER RATES BRING ME BACK TO A POINT THAT HAS BEEN MADE BEFORE ABOUT MONTANA'S WORKERS COMPENSATION FUND: A POLITICAL DECISION WAS MADE TO KEEP PREMIUM RATES DOWN A FEW YEARS AGO BECAUSE OF COMPLAINTS BY SOME EMPLOYERS. KEEPING THOSE RATES DOWN FOR POLITICAL REASONS WHEN ACTUARIAL TABLES DEMANDED A RATE INCREASE IS THE ROOT CAUSE OF THE CURRENT UNFUNDED LIABILITY OR DEFICIT.

IN OUR STUDY OF OTHER STATE PLANS, WE DUG A LITTLE DEEPER, ASKING THE QUESTION: HOW ARE OTHER STATES COVERING THEIR SERIOUS UNDERWRITING LOSSES?

WE FOUND TWO BASIC ANSWERS: PRIOR YEAR SURPLUSES AND INVESTMENT INCOME.

WE FOUND THAT MONTANA RANKS LAST IN THE PERCENTAGE OF INCOME IT RAISES FOR WORKERS COMPENSATION OUTSIDE OF PREMIUMS. INCOME FOR THE 20 STATE FUNDS FROM BONDS, MORTGAGES AND OTHER INVESTMENTS AVERAGED \$97 MILLION IN 1987, OR ABOUT 35 PERCENT OF WHAT WAS RAISED VIA PREMIUMS. IN MONTANA, OUR LOW INVESTMENT INCOME WAS ONLY \$6.7 MILLION, OR 9.6 PERCENT OF THAT RAISED BY PREMIUMS.

OUR STUDY, COUPLED WITH THE STATE'S RATE SURVEY, PAINTED FOR US A PRETTY CLEAR PICTURE OF WHAT'S HAPPENING IN STATE WORKERS COMPENSATION FUNDS.

FUNDS WITH HIGH UNDERWRITING LOSSES HAVE COVERED THEM WITH INVESTMENT INCOME THAT MONTANA DOESN'T HAVE, OR WITH PRIOR YEAR SURPLUSES THAT ARE BEING EATEN AWAY. THEY'RE ABLE TO AVOID DRASTIC RATE INCREASES BY CONTINUING TO RELY ON INVESTMENT INCOME VIA LARGE POOLS OF RESOURCES PUT TOGETHER IN PRIOR YEARS. THE OTHER FUNDS THAT ARE IN POOR SHAPE, SUCH AS WYOMING'S, ARE VERY SIMILAR TO MONTANA: THEY HAVE SERIOUS UNDERWRITING LOSSES, SMALL NON-PREMIUM INCOMES AND LITTLE OR NO PRIOR YEAR SURPLUSES.

SO IT'S CLEAR THAT MONTANA'S FUND IS NOT THE WORST IN THE COUNTRY, DOESN'T HAVE THE HIGHEST RATES IN THE COUNTRY, AND ISN'T ALONE IN WRESTLING WITH UNDERWRITING LOSSES.

THE PLAIN TRUTH ABOUT THE HIGH COST OF WORKERS' COMPENSATION INSURANCE IS THAT IT IS DUE IN LARGE PART TO ON-THE-JOB ACCIDENTS. LET ME SHARE WITH YOU A FEW FACTS WE HAVE PULLED TOGETHER FROM OFFICIAL STATE AND FEDERAL GOVERNMENT REPORTS:

--THE NUMBER OF WORKERS WHO ARE HURT AND MADE SICK ON THE JOB IN MONTANA IS HIGHER THAN THE NATIONAL RATE, AND IS INCREASING FASTER.

--IF WORKPLACE INJURIES IN MONTANA CONTINUE TO RISE AT THE RATE OF 17.5 PERCENT ANNUALLY, THE 26,849 INJURIES RECORDED IN FY '87 WILL RISE TO ALMOST 220,000 INJURIES BY THE YEAR 2000.

--THE INCREASE IN WORKPLACE INJURIES IN MONTANA FROM 1986 TO 1987 IS NEARLY TRIPLE THE NATIONAL RATE, AND THE STATE'S INCREASE IN WORKDAYS LOST DUE TO INJURIES IS FIVE TIMES HIGHER THAN THE NATIONAL AVERAGE. I AM PROVIDING YOU WITH SOME ADDITIONAL STATISTICAL INFORMATION FOR YOUR REVIEW.



JAMES W. MURRY
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59624
406/442-1708

EXHIBIT 4
DATE 3-7-89
HB 58186

pg 1043

TESTIMONY OF JIM MURRY ON SENATE BILL 186, BEFORE THE HOUSE LABOR COMMITTEE, MARCH 7, 1989

MR. CHAIRMAN, FOR THE RECORD I AM JIM MURRY, EXECUTIVE SECRETARY OF THE MONTANA STATE AFL-CIO, AND I'M HERE TODAY TO OPPOSE SENATE BILL 186 WHICH WOULD ALLOW THE SALE OF THE WORKERS' COMPENSATION INSURANCE FUND.

I'D LIKE TO BEGIN TODAY BY EXPLODING A FEW MYTHS ABOUT OUR MUCH-MALIGNED STATE WORKERS COMPENSATION FUND.

CRITICS WILL TELL YOU THAT THE MONTANA STATE FUND HAS THE HIGHEST INSURANCE PREMIUM RATES IN THE NATION, OR THAT WE HAVE THE HIGHEST LOSS RATE IN THE NATION. OUR NEW GOVERNOR EVEN SAID THAT THE PROBLEMS WITH WORKERS COMPENSATION ARE A MONTANA PROBLEM, SUGGESTING THAT SOMEHOW OUR FINANCIAL DIFFICULTIES ARE UNIQUE IN THE NATION.

AND YET, NONE OF THOSE STATEMENTS ARE TRUE.

A SURVEY OF PREMIUM RATES BY THE WORKERS' COMPENSATION DIVISION FOUND THAT MANY PRIVATELY RUN WORKERS COMPENSATION PLANS -- INCLUDING ONE SURVEYED IN MONTANA -- HAVE SUBSTANTIALLY HIGHER RATES.

THAT PROVES ONE OF ORGANIZED LABOR'S MAIN POINTS IN RESPONSE TO COMPLAINTS ABOUT HIGH PREMIUM RATES: IF YOU THINK THEY'RE HIGH NOW, JUST WAIT UNTIL YOU TURN IT OVER TO A PRIVATE COMPANY -- STATISTICS INDICATE SOME OF THE RATES COULD DOUBLE OR TRIPLE.

IN ADDITION TO THE STATE'S SURVEY OF PREMIUM RATES, THE MONTANA STATE AFL-CIO CONDUCTED ITS OWN STUDY OF STATE-RUN WORKERS COMPENSATION PROGRAMS TO SEE WHAT'S DIFFERENT ABOUT OTHER PLANS....TO SEE IF MONTANA'S PROBLEMS REALLY ARE UNIQUE. WE STUDIED THE 1987 OPERATING STATEMENTS OF THE 20 STATE-RUN WORKERS COMPENSATION PLANS, AS PROVIDED BY THE AMERICAN ASSOCIATION OF STATE COMPENSATION INSURANCE FUNDS.

WHAT WE FOUND IS THAT THREE OTHER STATE FUNDS HAVE UNFUNDED LIABILITIES, INCLUDING ONE THAT IS NEAR \$3 BILLION. BUT, MORE REVEALING, WE FOUND THAT 16 OF THE 20 STATES HAD A NET UNDERWRITING LOSS IN 1987....16 OF THE STATES PAID OUT MORE IN LOSS COSTS THAN THEY COLLECTED IN PREMIUMS. PUT SIMPLY, OUR STUDY SHOWED THAT NEARLY EVERY STATE FUND IS CHARGING RATES THAT ARE NOT HIGH ENOUGH TO COVER LOSSES, AND IN MANY CASES, THE TOO-LOW RATES ARE SERIOUSLY LOW COMPARED WITH LOSSES.

AND IF YOU THINK MONTANA'S RATES ARE HIGH, JUST LOOK AT SOME OF THE OTHER

remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

Renumber: subsequent sections.

3044

skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection); or

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing

act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment,

Amendments to Senate Bill 160

pg 1 of 4

1. Title, line 8.

Following: "SERVICES;"

Insert: "TO EXCLUDE FROM THE DEFINITION OF EMPLOYMENT THE
SERVICES PERFORMED BY INSTALLERS OF FLOOR COVERINGS;"

2. Title, line 15.

Strike: "39-51-203"

Insert: "39-51-204"

3. Page 14

Following: line 7.

Insert: "Section 4. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. .

(1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such

Amendments to Senate Bill 160

1. Title, line 11.

Following: "SOURCE;"

Insert: "TO DISQUALIFY FROM RECEIPT OF BENEFITS INDIVIDUALS
SUSPENDED FOR MISCONDUCT;"

2. Title, line 16.

Following: "39-51-2203,"

Insert: "39-51-2303,"

3. Page 18

Following: line 24

Insert: " Section 8. Section 39-51-2303, MCA, is amended to
read:

"39-51-2303. Disqualification for discharge or
suspension due to misconduct. An individual shall be
disqualified for benefits after being discharged or
suspended:

(1) for misconduct connected with the
individual's work or affecting the individual's
employment until the individual has performed services,
other than self-employment, for which remuneration is
received equal to or in excess of eight times the
individual's weekly benefit amount subsequent to the
week in which the act causing the disqualification
occurred;

(2) for gross misconduct connected with the
individual's work or committed on the employer's
premises, as determined by the department, for a period
of 52 weeks."

Renumber: subsequent sections

1 School Census Report

2 The Commissioner of Labor does not compile a list of children under 16 years
3 of age with the names of parents or guardians as required by section 41-2-112, MCA.
4 The law specifies that the County Superintendent of Schools in each county should
5 have a census of children to provide the commissioner. Department management said
6 that the department had relied on the Office of Public Instruction (OPI) for such
7 information until OPI changed the method of documenting school population 15 years
8 ago. Department personnel were not aware of the specific legal requirement for the
9 census and know of no specific use for the data. In a discussion with one County
10 Superintendent, we learned that neither the county nor the school districts compile
11 the information. The superintendent indicated that compilation of the additional
12 information would be costly. Since the law was enacted in 1907, no one has compiled
13 or used the required information in 15 years, and the department knows of no
14 specific use for the data, the department should seek legislation to repeal the
15 requirement for compiling census reports.

16 RECOMMENDATION #23

17 WE RECOMMEND THE DEPARTMENT SEEK LEGISLATION TO
18 REPEAL THE REQUIREMENT FOR COMPILING CENSUS REPORTS.

19 Advanced Rate Assessments

20 Section 39-71-2305, MCA, requires DWC to assess a 50 percent rate increase
21 (advanced rate) to employers whose workplace is considered "unduly dangerous." The
22 advanced rate assessment is to be made if the workplace is unduly dangerous in
23 comparison with other like workplaces and the employer has not implemented the
24 safety provisions of the Montana Safety Act.

25 We found in our current and previous two audits that the advanced rate never
26 assessed. Division personnel at that time stated that no administrative rules existed
27 to provide criteria for determining whether a workplace was more dangerous than
28 similar workplaces. The division concurred with our recommendation to formulate
29 rules. We found during the current audit that the department has not adopted written
30 criteria for designating a workplace as "unduly dangerous."

31 DWC has implemented an incentive program for employers with a high exper-
32 ience loss ratio compared to like employees. DWC provides these employers with a
33 Basic Loss Control Manual. Employers that implement procedures in the manual

STANDING COMMITTEE REPORT

March 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that SENATE BILL 159 (third reading copy -- blue) be concurred in.

Signed: _____
Angela Russell, Chairman

[REP. SQUIRES WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that SENATE BILL 156 (third reading copy -- blue) be concurred in.

Signed: Angela Russell
Angela Russell, Chairman

[REP. SQUIRES WILL CARRY THIS BILL ON THE HOUSE FLOOR]

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-7-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Angela Russell, Chairman	✓		
Rep. Lloyd "Mac" McCormick, VC	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Duane Compton			✓
Rep. Jerry Driscoll	✓		
Rep. Bob Pavlovich	✓		
Rep. Bill Glaser		✓	
Rep. Tom Kilpatrick	✓		
Rep. Thomas Lee	✓		
Rep. Mark O'Keefe	✓		
Rep. Jim Rice	✓		
Rep. Richard Simpkins	✓		
Rep. Clyde Smith	✓		
Rep. Carolyn Squires	✓		
Rep. Fred Thomas			✓
Rep. Timothy Whalen	✓		