

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on March 16, 1989, at 3:00 p.m.

ROLL CALL

Members Present: Fifteen.

Members Excused: Rep. Bill Glaser.

Members Absent: None.

Staff Present: Eddy McClure, Staff Attorney

Announcements/Discussion: Chairman Russell announced the order in which the bills will be heard.

HEARING ON SB 255

Presentation and Opening Statement by Sponsor:

SEN. AKLESTAD: (Sen. Aklestad read the introduction of the bill and then started to talk about the highway patrol not having authorization to keep highways open in case of striking workers blocking the highway) ... the highway patrol is not allowed to keep the highways open to the citizens of Montana and let them travel from point A to point B as they desire. I would like to emphasize in only this one case they are not allowed to keep the highways open in the state of Montana.

All other cases, the highway patrol works in conjunction with other law enforcement agencies across the state. Under SB 255, before they would be able to come and intervene, they would still have to get authorization from the Attorney General. If we wanted the bill to be fair to the citizens of this state, they shouldn't have to get authorization from the Attorney General to keep the highways open. This is one exception. This is preferential treatment still in the bill that they would have to get authorization.

I would like to emphasize that under this bill the highway patrol would still be prohibited from intervening or doing anything pertaining to a strike that was at a plant site or on a road just leading in. I think the citizens of Montana feel that law enforcement agencies "will protect you and stop violence in all cases." In this bill, unfortunately, they still will not be able to stop violence and to help other law enforcement agencies. This bill only gives them the authority to keep the highways open in the state.

That is all this bill does, it keeps the highways open. There is nothing against the unions in any way. Unions are mentioned here because they are the only ones who get the preferential treatment to be able to block a highway without the highway patrol intervening.

Testifying Proponents and Who They Represent:

MARK RACICOT, Attorney General.

JIM MOCKLER, Executive Director of the Montana Coal Council.

Proponent Testimony:

MARK RACICOT, proponent. I am here at Sen Aklestad's request to speak about this bill only from a public safety perspective. I think it is important to consider this bill in the context of the historical development that has occurred over these last fifty years. As you know, the Montana Highway Patrol was founded in the mid-1930's and at that time it was the most organized and also the most heavily populated law enforcement organization in the state of Montana.

It is my personal belief if a local law enforcement agency requests their assistance and if the Attorney General approves that assistance, the highway patrol ought to be able to provide the kind of assistance that is needed to maintain and open free flow of traffic. That is precisely what this bill allows and nothing more, as far as I am concerned.

In my judgment, I don't feel that the bill is an effort in any way to try to impugn or curtail the activities of legitimate labor movements. It is designed to provide in those rare instances adequate law enforcement support to local authorities and to people who may not be involved in that particular action. As these kinds of actions take place, there are frequently difficulties that present themselves just simply because of the emotions surrounding them. As a consequence, this is a dispassionate way of providing a certain amount of balance and ability to deal with a volatile situation if it presents itself.

I speak to you on behalf of the people of Montana, from a public safety perspective. I think it only makes good, common, logical sense to allow a law enforcement agency that has the ability to respond upon request, to do so.

JAMES MOCKLER, proponent. As you are all aware, some of our mines were involved in some of this activity and it is unfortunate because the people who work outside of those mines have every right in the world to travel to and from their work on a public highway. The dispute belonged at the bargaining table. That is the way the system works, nobody ever wins one of those disputes, I am sure.

We were told in the last hearing over in the Senate that this bill was completely unnecessary because this is a rare and unusual thing that this ever happens. On the other hand, you will hear today what a horrendous thing it would be if you repealed it from the statutes. I hope you will pass the bill.

Testifying Opponents and Who They Represent:

LEONARD H. COLVIN, Member of the United Mine Workers of America.

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

GENE FENDERSON, Montana State Building Construction Trades Union.

NADIEAN JENSEN, Executive Director of the American Federation of State, County and Municipal Employees.

JAY REARDON, Vice President of the United Steel Workers of America and President of the Helena Trades and Labor Council.

MARK ROADARMEL, Member of Local 239 of Trident, Montana.

JIM DUNDAS, Member of Local 239 of Trident, Montana.

DAVID STEVENS, Member of Local 239 of Trident, Montana.

JERRY DRISCOLL, Representative, House District 92.

Opponent Testimony:

LEONARD H. COLVIN, opponent. I wish to pass this petition (attached as Exhibit #1) down to you on behalf of our people working in Troy, Montana. They are opposed to this bill.

JIM MURRY, opponent. Read from written statement, attached hereto as Exhibit #2.

GENE FENDERSON, opponent. We too rise in opposition to this bill. It has never been proven that this legislation is needed and we encourage you to oppose this bill.

NADIEAN JENSEN, opponent. I represent public employees and we already have folks who break our strikes, called the Montana National Guard. I would not want to see that extended beyond and make strike breakers out of the highway patrol. I do not believe that should be their job and I don't believe they think it should be their job, so I ask that you oppose SB 255.

JAY REARDON, opponent. I would just state that I am opposed to SB 255.

MARK ROADARMEL, opponent. We oppose this bill.

JIM DUNDAS, opponent. I agree with labor's comments. I oppose SB 255.

DAVID STEVENS, opponent. I also oppose SB 255.

JERRY DRISCOLL, opponent. I was involved in a strike in 1981 in Colstrip when the highway was closed. The highway was closed because the company tried to run over us with their gravel trucks. We could have done nothing and gotten killed. We decided to shut the highway. The highway patrolmen were controlling the traffic on both ends. There were 53 deputies there. They already have a law that the counties can call each other to get assistance and they must respond in these instances. To my knowledge, the highway patrolmen are not trained in crowd control. The two officers that were there were glad that this law was on the books. One sat at the interchange at Interstate 90 and one at the town of Colstrip and told the people what was going on out there. It would never have happened if the company would have simply slowed their trucks down and not tried to run over us.

Questions From Committee Members:

SIMPKINS: Question for Jim Murry. Jim, I read in here and maybe I missed something, but it definitely states "public highways." There is no reference to private highways or anything like this. It definitely would state those highways that we as taxpayers own, is that correct? (Murry confirmed this). I just need clarification then, in your position with the union, do you feel that anyone has a right to close down the highway which prohibits the passage of a taxpayer who owns that highway?

MURRY: We certainly haven't taken that position. In fact, it has been our contention that the responsibility rests with local law enforcement people who are trained to do that kind of work and who do it very well. Yes, the roads should be kept open.

SIMPKINS: I must conclude by your statement that you feel it is an illegal act for anyone to close down a road that is owned by the public for any purpose.

MURRY: I can't think of too many exceptions. I think the experience that Rep. Driscoll referred to might be an exception to your conclusion and that was done for the safety of the people who were involved. It was a reaction to what could probably be held to be as an illegal act on the part of the employers in that situation.

PAVLOVICH: Question for the Attorney General. In Section 2 of the bill where it says "no authority in labor disputes" and

I am reading what was done down there with the elderly couple. I assume that the elderly couple had nothing to do with the strike, they were just passing through.

RACICOT: To be honest, I do not have knowledge of the documents that you are referring to.

PAVLOVICH: Question of Jerry Driscoll. The elderly couple in the article here, were they involved in the strike or were they just innocent bystanders going through?

DRISCOLL: During the strike we asked the local authorities to investigate this complaint and never did get a report. It was a charge made by the company and this reporter wrote it up in the newspaper. There were never any charges filed, the reporter wrote it, but it is not verified that this happened.

PAVLOVICH: For the Attorney General. We'll go back to section 2. If we were to amend the bill where it says "are forbidden to make arrests in labor disputes or to prevent violence in connection with strikes," and we were to strike "or to prevent violence in connection with strikes" and just had the other part "... and may not perform any duties whatsoever in connection with labor disputes ..." but that you would have authority if there was violence there pertaining to an innocent bystander going through, would you accept something like that?

RACICOT: I sense in your question that you believe I had something with precipitating this.

PAVLOVICH: What I am talking about is if the highway patrol would be able to step in if something like that was going on.

RACICOT: I think it would be very vague. I want to make it plain that the reason I am presenting testimony here today is that there is a certain trust reposed in the chief law enforcement officer of the state of Montana, as there is in its elected representatives. If I have to come down on one side or another to make a statement about this action, I have to do it from a law enforcement perspective. Whether or not that amendment would allow the highway patrol an opportunity to be involved, upon request of other authorities in a labor dispute if there was violence, I think would be open to question because it is not an expressed grant of approval. It would have to be something a little more expressed, probably in section 3 of the bill.

DRISCOLL: Question of Racicot. Mark, are the highway patrolmen currently trained in crowd control?

RACICOT: The highway patrolmen receive virtually the same

training that any other law enforcement officer receives at the Montana Law Enforcement Academy.

DRISCOLL: How many highway patrolmen are within a two hour drive of Decker?

RACICOT: I don't know precisely. There are obviously a number in Billings. There are 184 Montana highway patrol officers, men and women, in Montana. There are probably 20 within two hours of Decker.

Closing by Sponsor:

AKLESTAD: I am bewildered by the statement that if the highway patrol showed up in this case there would be aggravation. What more aggravation could there be than a citizen traveling and he finds the road closed by a group of people who are authorized to do so without the highway patrol intervening. The sheriff and those do have authority to try to get these people under control. (Showed some instruments that are placed on highways to flatten tires). These are some of the tools used by this group of people that I think is aggravation to the general public, that could be tossed down on your highway. Kids call similar things "jumping jacks." They sure will flatten your tires. It is aggravation to the people you and I represent here today.

On page 2 of the bill, section 2, it explicitly tells that "highway patrolmen have no authority and are expressly forbidden to make arrests in labor disputes or to prevent violence" -- or even to prevent violence. Right now they can show up and another patrolman or policeman could be getting his head beat off and the highway patrol cannot intervene in that case. Do you think that 99% of the people of this state realize that this law is on the books? I don't think they do and I think it is unfortunate. I cannot emphasize enough that all this bill is doing is trying to keep the highways open and the union people say it is against unions. It is against unions in that unions are the only people in our society who are provided that preferential treatment under this particular law. So we have to mention who is in the law. If it was a bunch of farmers doing the same thing, I would have the same bill. No one should block that highway.

I want you to look at the bill, vote on its merits, and vote for the vast majority of the people of the state of Montana so they can travel our highways without being intimidated, because their tax dollars are what build those highways.

RUSSELL: Should this bill pass the committee, who will be carrying it for you on the floor?

AKLESTAD: I haven't designated anyone. I will get one before it hits the floor.

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HEARING ON SB 372

Presentation and Opening Statement by Sponsor:

SEN. NATHE: SB 372 is a bill to strengthen the mediation process. We had a great success last session with the workers' compensation as far as the actual setting up of the mediation board. About 67% of the cases were being resolved through mediation and this is a bill to attempt to strengthen that mediation process. It has been highly successful. On page 2, the first edition, is that the mediator will be able to dismiss any petition for good cause but, as you can see on lines 20 and 21, "... a decision to dismiss a petition under this subsection must be in writing and also must state in detail the grounds for that dismissal," and then it goes on.

The other big change is on page 3, starting with lines 11 through 22, and that is "... the parties are required to fully present their cases at the mediation level; however, if the cause proceeds to the workers' compensation court the parties are not precluded from presenting additional evidence," and then down below on line 19, "... if a new issue is raised at the workers' compensation court that was not raised at mediation before the mediator, the court shall remand the issue back to the mediator for consideration." This is to prevent any game playing on the part of any of the parties involved. I have Mr. Bob Jensen here who will explain in detail these changes.

Testifying Proponents and Who They Represent:

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

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

Proponent Testimony:

BOB JENSEN, proponent. My division administers the workers' compensation mediation program. The handout (attached hereto as Exhibit #3) you have seen before. It is the same one I handed out when you had the overview of the workers' compensation program at the start of the session. Sen. Nathe went through the bill very well. It doesn't make too many changes in the existing law.

(He then refers to the chart he handed out, in particular the cases dismissed)

This is one of the areas of the program where we have received some criticism and for the reason that both parties

think we should dismiss more cases. Under current law the only way we can dismiss a case is if one of the parties motions for the dismissal, then the mediator will act on it accordingly. The changed statute would allow the mediator, upon his or her own motion, to dismiss a case as long as it is subject to the workers' compensation court.

There are also various changes in the statute where they have changed "encouraged" to "shall." This is meant to provide more integrity in the mediation process. We feel if this bill is passed, probably we will be able to hold to that 67% and hopefully a little higher. There is consideration given to the unrepresented claimant.

Regarding language that Sen. Nathe mentioned on page 2, lines 17 through 24. There was discussion on this in the Senate and the Senate felt that the unrepresented claimant should be able to represent himself in mediation. If we cannot resolve the matter in mediation, then the person probably would hire an attorney and then the attorney might want to present additional evidence. If a new issue is raised at the court level the court shall remand that issue back to mediation so the total process takes place in mediation before it goes on to the workers' compensation court. I would encourage your passage of this bill.

JIM MURRY, proponent. We feel the case for SB 372 has been well presented. The bill simply makes the process less formal and easier for all parties to undergo mediation. It is a fair bill and we urge the committee to concur in it.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

SEN. NATHE: It is a fair bill. It merely strengthens a great success we had in the last session and adds more to it. I would hope for your concurrence.

Rep. Smith will be carrying this bill on the House floor if it is passed by this committee.

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HEARING ON SB 309

Presentation and Opening Statement by Sponsor:

SEN. HOFMAN: SB 309 was requested by some of the employees at the cement plant at Trident. They would like to work longer than 8-hour days. This bill merely makes it an option that they may work more than eight hours in a day if they so choose to with an agreement between management and labor. It has to be an agreement that meets the requirements of a majority of the employees. It can't be done if management does not agree, so it has to be a thing that both sides agree to. I think it is a very good bill in that it allows them an option. The option is the same for all laborers, whether they are union members or not.

Testifying Proponents and Who They Represent:

DON JENKINS, President of the Montana Mining Association and also Administrative Superintendent of the Golden Sunlight Mine near Whitehall.

MIKE STRAWBRIDGE, Vice President and General Manager for the Montana Division of Ideal Cement at Trident, Montana.

RORY GAUTHEIR, employed by Stillwater Mining Company, Absarokee, Montana.

FRANK SHOLEY, employed by Golden Sunlight Mine.

MARIE RISHER, employed by Golden Sunlight Mine.

RALPH CLEMENTS, employed by Golden Sunlight Mine.

BOB WOODWORTH, employed by Golden Sunlight Mine as general mill foreman.

JOHN FITZPATRICK, Director of Community and Regulatory Affairs for Pegasus Gold Corporation.

Proponent Testimony:

DON JENKINS, proponent. Read from written statement, attached hereto as Exhibit #4.

MIKE STRAWBRIDGE, proponent. Read from written statement, attached hereto as Exhibit #5.

RORY GAUTHEIR, proponent. I am a mill operator and we are working a 12-hour shift. We started as an 8-hour shift and it was voted in by the employees involved in the mill to go to a 12-hour shift. We did this because we didn't have much for family life, running seven days, 7-1, 7-2, 7-4 schedule.

The 12-hour shift gave us more time to do that because we are only working 14 days out of the month.

Safetywise, there was not a significant difference noticed. We had a perfect record when we were on the 8-hour day and it hasn't changed. Timewise, where we are located, it is beneficial. I am sure each location is a little different, but we have to travel 45 minutes on good roads to get to work. We figured we'd be spending half the time on the roads if we worked a 12-hour shift. Your chances of an accident on the road are cut in half because you are only there 14 days each month.

FRANK SHOLEY, proponent. Similar to the above testimony regarding more time with family, less time on the road, etc.

MARIE RISHER, proponent. I am for this bill to pass also. The main reason is that I would have more time with my family.

RALPH CLEMENTS, proponent. The reasons I would like to see this bill pass have already been mentioned.

BOB WOODWORTH, proponent. Read from written statement attached hereto as Exhibit #6.

JOHN FITZPATRICK, proponent. On behalf of the employees of Pegasus Gold I rise in support of SB 309. The bill does not have any effect whatsoever on the provision that provides for overtime after 40 hours of work. The bill allows an extension of the work day, but overtime would continue on the basis of 40 hours.

If you take a look at the bill and take a look at the code we have, in Title 39, Chapter 4, you will find twelve different sections of law that restrict the work days in various occupations in Montana. The number of occupations are restricted, five of which are the minerals business, such as hoisting operators, miners and smeltermen and workers in cement plants. The code also provides for restrictions in the work day in other areas such as public amusements and telephone operators. A number of rather significant occupations are not covered by such restrictive legislation. For example, contract construction, there is no 8-hour provision; nor for saw mills; nor for people who work in hospitals or offices.

The code and the sections that are being amended here are really quite old. The first section of law was enacted in 1901 and the last one in 1941, 48 years ago. The nature of the work and the nature of the work force in 1941 are significantly different than they are now. Today we have a lot more people who work in technical and professional occupations. We have more women in the work force and we have an interest on behalf of workers in having more flexibility in their work day. Some people want to work

longer shifts and have a shorter number of work days; other people want flex time; other people want to share jobs. Those kinds of changes in the nature of work are important to workers today. This legislation essentially provides them with an opportunity to have a longer work day if they want to.

I have passed out to the committee a graph that shows the incident of accidents in Montana's mining industry. (Graph attached hereto as Exhibit #7). When we were in the Senate, Don Judge brought in some statistics to talk about the hazards of the mining industry. I went back and picked up the same documents he used and I came to a very different conclusion and they are demonstrated on the graph. The incidents of accidents in Montana's mining industry has declined by 40% since 1980. We have had a slight increase in accidents in the last year or so. I think that is primarily attributable to the fact that mining is the only industrial group in the state of Montana that is growing and our employment in the last fiscal year increased by about 900 people.

We don't believe that safety is an issue when you take a look at it and adjust it from the number of people and the number of man hours that are being worked, the actual incidents of accidents is dropping.

This bill has been drafted to try to take into account and respect the special relationship that organized labor has with some employers. The bill provides that the extended work day will only take place in a unionized operation through a collective bargaining agreement. In a non-union operation it would be by a secret ballot of the employees conducted by the Department of Labor. Those particular conditions were drafted into the bill after conversations with people like Rep. Driscoll. We are not interested in running over organized labor in the pattern of bargaining that may be established at a given plant, but we do feel that the employees, whether they are union or non-union, should have an opportunity to have some say about their work day.

Testifying Opponents and Who They Represent:

MARK ROADARMEL, Member of Local 239 of the Cement, Lime and Gypsum Workers Division of the Boiler Makers Union.

VERNON WESTLAKE, Rep. of House District #76.

L. H. COLVIN, Forsyth, Montana.

JAY REARDON, Vice President of the United Steel Workers of America.

DAVE STEVENS, Member of the United Cement, Lime and Gypsum Workers.

DARBY PARKER, Member of Local 239, United Cement, Lime and Gypsum Workers, employed by Ideal Cement Company, Trident, Montana.

JIM DUNDAS, Employed by Ideal Cement Company at Trident.

BOB VELVICK, Representing self.

GENE FENDERSON, Montana State Building Construction Trades Unions.

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

Opponent Testimony:

MARK ROADARMEL, opponent. Read from written testimony, attached hereto as Exhibit #8.

VERNON WESTLAKE, opponent. I am here in opposition to this bill because of a concern that has been brought to my attention based on the information that you just heard from the young fellow from Ideal Cement Company. The contact and the response I have received regarding this SB 309 from the Three Forks area, which is one of the main parts of my legislative district where there is a relatively large labor force, has been a large majority in opposition to the bill. I feel with that kind of a response, I have a responsibility to have a concern. I hope you will examine this bill very carefully and, in my opinion, probably should not concur in the bill.

L. H. COLVIN, opponent. We have not addressed one situation here and that is of the older employee. A person fifty years old or older can work eight hours a day, six days a week without too much problem. You take this same individual and force him into a ten or twelve-hour work day, he is going to try to work it at the risk of his health, is he going to quit his job and then wonder how he is going to care for his family. I think this is something that needs to be in this bill, too. I ask that you do not pass this bill.

JAY REARDON, opponent. The United Steel Workers represents 223 smelter workers at ASARCO's East Helena plant. We have heard a lot today from proponents in mines, but we haven't heard anything from anybody from the smelters. There have been no proponents from my employer either. I want to give you an idea about the place where I work and a reason why you should vote against this bill.

ASARCO Inc. operates a smelter in East Helena. One and a half to two years ago, when OSHA came into the plant in East Helena, they cited the company on 396 alleged violations and recommended a fine of \$1.6 million. That does not show me

that there is a safe work environment there. At work we are exposed to carcinogens, arsenic, and lead. Those exposures are measured on an 8-hour time weighted average. If it was to come about that we end up with 10 and 12-hour days, you could be conceivably exposing employees to twice the amount of carcinogens or lead than what is allowed by law. We are already overexposed greatly.

I think this is a real bad bill. It is just another attack on basic worker rights. It is not needed. We work a lot of 10 and 12-hour shifts, but we get paid over time and it is voluntary. I hope you do not support this bill.

DAVID STEVENS, opponent. Read from a prepared statement, attached hereto as Exhibit #9.

DARBY PARKER, opponent. Read from a prepared statement, attached hereto as Exhibit #10.

JIM DUNDAS, opponent. Read from a prepared statement, attached hereto at Exhibit #11.

BOB VELVICK, opponent. I have been a miner in the state of Montana for 34 years and I strongly oppose this bill.

GENE FENDERSON, opponent. We rise in opposition of this bill. In one way it is kind of unique. I went to the Senate Labor Committee and opposed this bill. I told them that if they were going to pass it, at least they could put something in there for an election of the employees. I want you to understand that that is the only amendment the Senate Labor Committee accepted all year from me. The fact of the matter is, we still oppose the bill. Even with the good thoughts of the senator who introduced it, to try to get more hours off for people to be with their families, etc., the fact of the matter remains that we should be talking about a 32-hour work week at the same pay rather than more hours per day. That should be the subject before this committee today. If they want more time with their families, they should be working shorter work weeks.

JIM MURRY, opponent. We rise in opposition to SB 309. The 8-hour work day is a long-standing principal that represents a balance between safety, productivity and fair compensation.

(He spoke about the above, repeating what has already been said)

Petition from ASARCO Troy Unit Mine submitted and attached hereto as Exhibit #12.

Questions From Committee Members:

SIMPKINS: Question for Jay Reardon. You mentioned that many

people already work 10 to 12-hour shifts and are paid overtime. Has this increased the accidents at your facility?

REARDON: No, not necessarily, but we work on a voluntary basis, the company cannot require us to work overtime.

SIMPKINS: Then I have to assume from your statement there, it is not the number of hours involved, it is the idea of being paid overtime.

REARDON: Well, that is one point, but also we have a clause in the contract that if you do work overtime you cannot work more than 16 hours.

SIMPKINS: I'm glad you mentioned contract. According to this bill, it refers to the idea that it would have to be through a collective bargaining agreement for your hours. Don't you feel that your union could work out that contract?

REARDON: I also have a problem there in section 2 on the top of page 3. Our contract states that eight hours constitutes a work day; anything more than eight hours shall be paid at time and a half. We also have a subrogation clause in our contract. It states that if any part of this contract does not go along with any state or federal law, then it is ineffective. That clause is taken out. So I have a problem there, too. I am not saying if this bill passes that it will throw that out, but I would not put it past my employer a bit to challenge us on that and we would end up in an arbitration.

SIMPKINS: Question for Jim Dundas. I was intrigued by a comment you made that this law saved you -- don't you have a good union contract?

DUNDAS: Yes, I did have, but at the time the company and the union were both saying that the work had to be done. It wasn't an emergency. In a month, two other people and I put in 195 hours overtime. They said to "just keep going," and we said "... 195 hours, isn't that getting a little excessive? Isn't it time to hire somebody else?" They said it was hard to say how long it would last, it was a short term. We live in a state with people unemployed all over the place and they were telling us if we went home at the end of eight hours they would fire us. The only way we got out of it was by showing them the state codes where it said employees did not have to work overtime unless there was an emergency.

SIMPKINS: Jay was talking about a contract which read eight hours a day. This means to me that if they worked you beyond that without the agreements, it would be in violation of labor contracts and your union should have represented

you. Wouldn't that be correct?

DUNDAS: That is correct.

SIMPKINS: So you are saying that they didn't represent you?

DUNDAS: In our business, if nobody objects, we work. Not always 100% has to be done, but mainly most of our work over eight hours is emergency work and we do it willingly. We realize the company has to run and they have to make a profit in order to hire us and we are willing to work with them on that.

LEE: Question for Dundas. Jim, I am not real conversant with all the things in labor, but as I read this bill it doesn't change the 8-hour definition, unless I am missing something. Do you have a different understanding of that? It seems to me like the eight hours is still in place and the only way that 8-hour protection can be removed is if the workers choose to remove it.

DUNDAS: We are kind of confused as to the way this law was meant, that last paragraph. As one of the other members testified, we've been without a contract since 1983. We are under an imposed contract so we don't have an agreement. They can say that we will work 12-hour days, six days a week in this imposition. That is what our problem is. It deals with a contract, but we don't have one. We are a union organization but we are caught with no means to get a contract and we don't know how to handle it. That's why we are opposed to it.

LEE: Question of Jim Murry. Maybe you can help me to understand this a little. Did you hear that last question? It seems to me what this bill is doing is leaving in place the 8-hour work day definition, except if it is collectively bargained to be something else. It seems to me then that the 8-hour definition would hold and couldn't be forced on anybody unless it was agreed to through a bargaining process. Is it different than that, or is that a correct assumption?

MURRY: As you know, this also covers workers that are not under a union agreement. Employers have ways of putting tremendous pressure on workers to encourage them to do what they want. If it is less expensive for an employer to work these people longer hours and to work fewer workers, that becomes a pretty strong motivation for employers. There have been a number of these workers who have testified to that. Their position is that instead of doing that they would like to see more jobs given more workers to support the main street businesses in their communities. Not only that, it would be under safer conditions and I think that is a compelling argument.

In answer to your question, these employers can stand here all day and testify that they are concerned about the workers. They are concerned about the bottom line -- they are concerned about their profit. That is their motivation and that is the reason they are here. We understand that when we go to the collective bargaining table and in our relations with employers as well.

LEE: Jim, I understand what you just said, but it seems to me that the 8-hour work day is still there as a protection unless it has been bargained away or unless there has been a secret ballot if it is a non-union shop.

MURRY: This is just a circumvention of the present law. That's all this is. The 8-hour day, as I said in my testimony, is a long-held principal; in fact, the 8-hour day was covered in our state's original constitution. Those provisions were taken out when we adopted the constitution in the early 70's. What this does is provide a means to go around that law. These workers are saying if that is negotiated and they are forced to work longer than eight hours on days when it is very cold or very hot, that puts a tremendous strain on older workers. The result of that, many times, is that there are accidents, lost-time accidents and deaths. This results in driving the workers' comp premium rates up that we are so concerned about. What we are doing with this law is we are providing a means of circumventing the eight-hour provisions in the law. That's all we are talking about here. Some workers are here saying that they want to do that; other workers are here saying that's a bad idea because the end result is that it will increase work hazards.

LEE: Jim, I understand all that you said, but I still don't see how the law, as it is written, provides an absolute circumvention. It seems to me that the work place that doesn't want it won't have to have it. Is there something I am missing there?

MURRY: The trade union movement, for as long as I have been involved, goes back longer than that. Even where we have had good union contracts we have always made the argument for the eight-hour days in the legislature and at the constitutional convention. We feel that protection has to be there because there will be constant pressure on these employees to work over the eight hours. The law provides, during emergency situations, workers can be asked to work in excess of eight hours. There are a number of workers here who are saying they don't want to circumvent that law, because they are going to pay a very heavy price. They might be hurt, crippled or killed or made sick because of working conditions and they don't want to be exposed to that.

MCCORMICK: Is the eight-hour law amended out of that bill in the title of it, that's what Rob (Lee) wanted to know.

MURRY: That is the intent and then there are some qualifying provisions.

MCCORMICK: That's what Rob was asking. He wanted to know where the eight hours went when it was amended out of there.

MURRY: That was my response. That is the intent of the legislation, to circumvent the provisions presently in the law.

SIMPKINS: Question for Murry. The total number of accidents that you mentioned, as far as an increase in accidents, is this by total man hours worked versus total number of accidents this year versus last year?

MURRY: I think that is total number of accidents. I might stand to be corrected on that but I think that is right.

SIMPKINS: When you made a comment that you have always bargained for this eight hours, even though if your membership wanted longer hours you would still insist on the eight hours in your contracts?

MURRY: I have not been involved in negotiations where it was any other way.

SIMPKINS: Then on page 4, Jim, there is a question of one area that came up. On line 12, would it read better if we put "... collective bargaining agreement." Then some type of wording that says "... if no collective bargaining agreement exists, then the consent of the employees..." That would break it so just the consent of the employees could not break any collective bargaining agreement.

MURRY: Our recommendation to the committee is that this legislation do not pass. The intent of the bill is to circumvent the present eight-hour provision.

COCCHIARELLA: This has to do with clearing up something that Rep. Lee is trying to find out. Is there anything that employers do to employees to get them to vote for these kinds of changes? Is there any force or any tactics that they use on their employees to vote for these things?

Do you think employers do things to their employees to get them to vote or to agree in their contracts or when they are not in a collective bargaining unit. Do they do those kinds of things at all? I think Rep. Lee's question needs to be answered that way.

DARBY PARKER: I can tell you about what we have gone through at our plant with this bill. The plant manager has put on some

pressure. We have about 65 employees. We had a meeting and there were 45 or 50 employees there. Our plant manager indicated to us that they were doing this for the employees. They asked us to trust them. One of the employees asked the plant manager if they took a vote and the majority of the employees were against the bill, would they drop it. The manager said they couldn't do that, not without having some of the people from the other parts of the plant there. Regardless of that we had the majority of the people who worked at the plant there. Then that plant manager went around to several people, and this is hearsay but I'm pretty sure it happened, and did put some pressure on these people to try to get them to sign a copy that he had saying that they were in favor of this bill.

Also, there was some discussion at that meeting about whether the majority of the entire body of our local union or group of people would have to vote on this and whether it would take the majority of the entire body to pass this before anyone would have to work these 12-hour days. Our plant manager told us that they would go group by group, like in the control room or the people in the quarry, you would have to have a majority in each group.

We have five people in our control room and there is one fellow in particular who instigated trying to get this bill going. He got a couple guys to follow him. There are maybe some people who aren't so crazy about working 12-hour shifts. I heard of one instance where a fellow said, "you better put your name on here, or maybe we won't trade days with you if we don't get your support on this bill." Sometimes the men switch days, one will work a Sunday or something for another guy. I would say there is a certain amount of pressure from people in the plant. We have the majority of our people who have signed a petition saying that they are not in agreement with this bill.

COCCHIARELLA: I would like to ask any of these other employees if they have felt pressured, or know of instances where there has been pressure. The employer and employee may agree to a work day of more than eight hours. If that potential agreement is effected by pressure from the employer in any way?

SOMEBODY: (Did not identify himself) I work at the Golden Sunlight Mine and there has been absolutely no pressure from our employer.

RORY GAUTHIER: I mentioned earlier that I have been working 12-hour shifts. It wasn't forced on us, it was voted in. We can still volunteer for overtime if we want and we do have elderly people working with us and they voted it in too. There was no pressure of any kind and we are a non-union operation.

O'KEEFE: Who instigated the election at Stillwater? How was it conducted? You stated earlier that 28 of the 30 workers supported it. Give me a little bit of history about that. There are people out there doing this already, so I am wondering how you got it in at the Stillwater complex but it has not been done elsewhere.

GAUTHIER: We were working an eight-hour shift. We have an open policy with our mining company that if we have grievances we are to go to our foreman and then on up. Well, the foreman heard it and he was willing to do something about it, but told us to go directly to our supervisors, so we did. We kept pushing it and they submitted it to San Francisco and from there I don't know. It was voted on through their board members.

O'KEEFE: Somebody had an election and I would like to know how that worked.

SOMEBODY FROM GOLDEN SUNLIGHT MINE: (He was standing in the audience and didn't go to the podium to use the mike so it was very hard to hear him.) We are the ones who had the election -- it was 28 for, 2 against. It was _____ and myself investigating this and they told us if we could get 100% _____ (could not understand this). I'm 58 years old, I have worked in mining all my life. I have worked 12-hour shifts prior to this. We had the United Steel Workers there. They okayed it and we worked maybe a few more hours a week, but no more hours a month on a 12-hour as you do against an 8-hour. I am definitely for the bill.

LEE: Question for Mark Roadarmel. Mark, you are opposed to this bill, right?

ROADARMEL: Yes.

LEE: If you didn't want this over 8-hour provision where you work, is there a way that they could shove it down your throat?

ROADARMEL: I really don't know that. Like Jim Dundas stated earlier, we don't have a contract. You are asking me questions that I legally don't know the answers to. The consensus of the people on the petition that you have were all against it. Some people do work 12-hour days and some do work for the money (overtime) or they wouldn't be there, that's obvious, but by the same token, that is by their decision. If they don't feel like working more than eight hours they can turn it down and go home. If it is voted in that you go 12 hours, you have to work it whether you want to or not, and most of the people down there do not want it. When I talked to Sen. Hofman earlier I asked him about that and he said that everybody at Trident was for the bill, which they weren't.

O'KEEFE: I think there is a gentleman back there who can answer my question.

LEONARD COLVIN: In response to your question, with the mine worker contract and many other contracts I have seen over about 20 years in labor, part of the contract has what is called an "enabling clause." The enabling clause states that neither party shall try to use that contract to supercede state or federal law. If this bill is permitted to change to a 10 or 12-hour day we will automatically lose that 8-hour protection because a contract cannot supercede state law.

I would also like to address the question about peer pressure. I have a gentleman who spent 3 1/2 years at the mine where I work. This man got to where he was spending so much overtime at the mine that he did not see his family; he was working 12 hours a day, seven days a week, and he got to the point where he had to refuse overtime. The company tried to discharge him. It went to arbitration and the state law intervened, but that contract couldn't supercede state law and 8-hour days was the law.

KILPATRICK: When you work four 12-hour shifts in one week, what about that extra eight hours, do you get time and a half? On this 12-hour shift then every four days when they work four days in a row they would get an extra eight hours?

LEONARD COLVIN: After 40 hours it is premium pay. I believe on rotating shifts there is also a week that they work 32 hours.

SQUIRES: Question for Bob Jensen. We are talking about contracts and if I negotiate in my contract eight hours but for some reason this law would change it to 12-hour days, that would supercede my contract and negate all the collective bargaining that I did. The employer could take it back. Is that what we are talking about?

JENSEN: This issue came up in another committee not too long ago and I thought at the time that probably the state law would prevail, but there was indication there that you could not supercede the contract, so I guess I'm just not certain. This is something that would have to be looked at. Maybe the legal counsel would know. It came up in the Senate Labor Committee on another issue.

SQUIRES: In all of my time with collective bargaining it has always been my understanding that state law supercedes what occurs in a collective bargaining agreement.

JENSEN: If that assumption is right, that is correct, it would superimpose something over your contract which you had negotiated.

RICE: Question for Mark Roadarmel. I was impressed by the number of employees you were able to get to sign this petition, and I just want to follow up with what explanation was given to them as they were signing. SB 309 is rather vague. I don't know all the bills by numbers and I work here and I was just wondering what explanation was given to these people as they were asked to sign.

ROADARMEL: SB 309 was posted on several bulletin boards around the plant by our plant manager, I presume. Anyway, they all read the bill and we asked them if they would be in favor of SB 309, or opposed to it. They had the option of signing the other petition in favor, or that one.

RICE: Did you personally prepare the statement that you read here today?

ROADARMEL: Yes. A man in Jim Murry's office did all the typing for me, but I told him what to say.

SIMPKINS: On page 4, if we change line 12 by putting a period after "the bargaining agreement," we are simply stating that if you have a bargaining agreement you have to negotiate this 12 hours. If no bargaining agreement exists, then it would be the election of the employees. If that's the case, and you have no bargaining agreement, would you agree that if there was total dissatisfaction the employees have a right, under law, to ask for a bargaining unit. If they had an election and the majority of the people elected to have a union represent them, they could have the union come in and to establish a contract, isn't that the way it would work?

COLVIN: It does not work quite that well. Most of your labor agreements say they will not supercede state law. If the majority of the people want the extended work day, you still have a segment of workers you are forcing the longer work day on. How are you protecting those people by leaving the 8-hour day provision in there? If you want to amend it you could put "employees may work over eight hours should they wish."

KILPATRICK: There was one gentleman out there who said that he loves this idea of 12 hours a day because it is safer on him because he doesn't have to go over the deer-infested roads as much. Ralph Clements was it? Would you come up here please?

If you are working a 12-hour day, you are an hour driving to it, an hour driving home, so you are looking at 14 hours. Don't you think you would be less safe than you would be after 8 or 9 hours? If not, why?

CLEMENTS: No sir, I don't. The job I have, number one, I enjoy it, I like being at work, it doesn't have fatigue to it. I have worked 10-hour shifts with this company and I felt no

different at all. I have worked some 16-hour shifts when we first started. We had to double over and I had no problem with that, sir.

KILPATRICK: You are a tough man, then.

SQUIRES: Question for Jay Reardon. You negotiate contracts and one of the prime areas that you negotiate in the contract is the hours of work? (Reardon replied yes).

Normally those hours of work fall into eight hours?
(Reardon replied yes).

I read you this statement: "... a maximum period of eight hours is a regular day's work in all industries and employment, except agriculture and stock raising, the legislature may change this maximum period to promote the general welfare ...". Do you feel that changing to that would provide to the general welfare of you folks due to the exposure you have to arsenic and those kinds of chemicals out at your facility?

REARDON: No, I don't.

Closing by Sponsor:

SEN. HOFMAN: I think you all understand the language on page 2 as to what this bill does. It is an 8-hour day until it is changed by an agreement. There is absolutely no doubt about what the law says.

There are about four employees at Trident who are going to be effected by this. They are the ones who came to me and asked me to carry this bill. They did allow me to understand the whole place was in favor of this. I was surprised when all the opposition showed up. I tried to allay their fears by telling them some of the things that have been brought out in discussion, that unless they choose to work longer than an 8-hour day, they will not have to and that the decision is up to them.

The bill, as amended, will protect all of the workers because ballot elections under the supervision of the Department of Labor are asked for, particularly in the case of those laborers who are not represented by a union. It removes all of the pressure because it is a secret ballot and it is supervised by the Department of Labor.

The very best possible reason that was given to you today for passing this bill was brought out by the opponents. They are saying that there are times when they work more than an 8-hour day. I know this is true because I have had many phone calls from people as far away as Landusky and Absarokee that are telling me that if they choose they could

work more than eight hours and they have been doing this.

I don't know if you people have looked up the state law we are dealing with here, but that state law states very implicitly, with no exceptions, that if you work longer than and 8-hour day you are breaking the law. There is that exception that says "in case of emergency."

Jan Brown will carry this bill in the House should it pass this committee.

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HEARING ON SB 428

Presentation and Opening Statement by Sponsor:

SEN. THAYER: This bill has been worked on since 1985. SB 428 sets up the state compensation insurance fund as a mutual insurer of workers' compensation injuries.

The Governor's Advisory Council of 1985 to 1987 established the foundation of the 1987 reform. This ended up being SB 315 in the last session. The council considered a proposal to remove the state fund from the administrative control of the division of workers' compensation. At that time the council members could not come to a consensus on the separation issue and the department did not support the idea because they felt the conflict was more perceived than real. In the interim it has become more apparent that as the deficit has continued to grow, bold steps must be taken to establish an entity which will guarantee continuous well managed coverage through a mechanism that is established along the lines of a private insurance company.

Montana is probably the only state where both the workers' compensation regulatory function and the state fund are responsible to the same authority. Most states separate this authority to avoid the apparent conflict of interest. Having had additional time to evaluate the impact of this proposal, I am requesting that you also consider these additional amendments. (Attached hereto as Exhibit #13). One of the changes is the wording throughout the codes, taking out "division" and replacing it with "department." (Here he read from written testimony explaining the amendments, attached hereto as Exhibit #14).

It was quite apparent after getting additional input that an effective date of October 1, 1989 was not realistic and rather than put something in statute that you know isn't going to be accomplished, why not make the date more realistic. One of the amendments changes that implementation date.

The same thing was true of the assigned risk pool. If the assigned risk pool is needed, they have more time to study and get ready to implement it.

With these amendments, I think we have a really good bill.

Testifying Proponents and Who They Represent:

MIKE MICONE, Commissioner of the Department of Labor and Industry.

BILL PALMER, Interim Administrator at the Division of Workers' Compensation.

TOM HARRISON, Representing the Montana Workers' Compensation Council.

TOM SCHNEIDER, Montana Public Employees' Association.

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

GEORGE WOOD, Executive Secretary of the Montana Self Insurers Association.

JAMES TUTWILER, Montana Chamber of Commerce.

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

LAURIE SHADOAN, Bozeman Chamber of Commerce.

BONNIE TIPPY, Alliance of American Insurers, also on behalf of Jacqueline Terrell who represents the American Insurance Association.

CHARLES BROOKS, Executive Vice President of the Montana Retail Association. Representing also the Montana Hardware Implement Dealers, the Montana Tire Dealers and the Montana Office Equipment Dealers.

Proponent Testimony:

MIKE MICONE, proponent. We are supporting SB 428. (Read from written testimony, attached hereto as Exhibit #15).

BILL PALMER, proponent. (Read from written testimony, attached hereto as Exhibit #16).

TOM HARRISON, proponent. I would like to explain what the Montana Workers' Compensation Council is made up of and how they became involved in this particular effort. The group is an ad hoc group formed well over a year ago. I think it has fair representation from virtually all aspects and groups that are involved in workers' compensation. By that I include vocational rehabilitation people, the self

insurers, the private companies, the independent insurance agents, the plaintiffs' bar, the defense bar, and I am sure others. My function is that of a liaison for you, the legislature. The basic goal and concern of those council members was the conflict of interest which has been testified to.

I think omitting the conflict of interest, setting up administration of everyone who is in workers' comp and the workers' comp fund itself, will be a great step forward to the state of Montana.

TOM SCHNEIDER, proponent. I want to offer an amendment. We represent the current employees of the plan. The amendment provides them with some type of guarantee that their employment rights will be retained if the fund is moved and that will make them feel a lot better. (He submitted a copy of the proposed amendment, attached hereto as Exhibit #17).

JIM MURRY, proponent. We go on record in support of SB 428 with the amendment proposed by Mr. Schneider to protect the present employees.

GEORGE WOOD, proponent. We want to go on record in support of this legislation and we request that you report this bill do pass.

I have been asked by BEN HAVDAHL of the Montana Motor Carriers Association to indicate to you their support. He was called away and couldn't attend this meeting.

JAMES TUTWILER, proponent. We are very certain of the fact that businesses, in general, throughout the state consider workers' compensation as a major concern to them. Whether the problem lies in the supreme court decisions or district court decisions, or management, or alleged conflicts of interest, or the law as it presently exists, regardless of that, there is a real perception among many businesses in Montana that something is amiss with our management and this bill which promises a new approach offers hope and is warmly and completely supported by the business community.

We were concerned initially that the assigned risk pool could potentially pose a problem for small employers who constitute the majority of the employers in Montana and who are the employers who constitute the biggest share of the clients in the state compensation insurance fund.

If it develops that the assigned risk pool is elected as an option, we ask great care be exercised to insure that the many small employers in this state aren't victimized by an unreal and unaffordable higher workers' compensation insurance rate.

The Montana Chamber stands in strong support of this bill and we urge your adoption.

DON ALLEN, proponent. We rise in support of the bill with the amendments. We think particularly the deletion of section 12 makes it a better piece of legislation.

LAURIE SHADOAN, proponent. The largest single issue of employers is the workers' compensation problem. We support this bill.

The Missoula Chamber of Commerce would also like to go on record in support of SB 428.

BONNIE TIPPY, proponent. Both of these groups are trade associations of insurance companies. The alliance was basically founded with workers' compensation private companies. We support this legislation. We urge your do pass with the amendments.

CHARLES BROOKS, proponent. We support SB 428. We particularly support the concept of variable pricing levels within the individual rate classifications in order to reward an employer with a good safety record and penalize an employer with a poor safety record. Since we represent a large number of small businesses we continue to be concerned that those businesses have access to coverage at a competitive rate. It appears that the proposed legislation will assure that coverage for the many small businesses within our state will continue to be available at reasonable prices. We urge you to support SB 428.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

SEN. THAYER: I think everything has been said that needs to be said about this bill. I want to touch on a couple points. One of the things this is going to do is require the new board to set the rates on an actuarial sound basis. That is an important part of this bill and there is going to be a great emphasis put on safety. This bill includes a flexible rating provision where you can give a break to the company that implements a good safety program and has a good safety

record and you can penalize those employers who refuse to do that. The assigned risk pool may never be needed if this provision works. I urge the committee to adopt the amendments I offered.

It is certainly not the intention of this bill to have any wholesale firing of people, it is merely to set it up like a private company, run it like a private company, and give the new management team the flexibility to move some people around and do what they think has to be done in order to achieve a better system in the future.

Rep. Thomas will carry this bill on the House floor should it pass this committee.

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HEARING ON SB 429

Presentation and Opening Statement by Sponsor:

SEN. THAYER: This bill was put together as a committee bill in Business and Industry prompted by a situation that occurred in Great Falls. I am reluctant to tell you, but it did happen in my own company up there. We had an employee who was embezzling funds from the company and came in and confessed. The arrest was made and the county attorney is prosecuting the case.

It turns out that there is a quirk in the state law that requires that even though somebody has stolen funds from a person or company, you do not have the right to withhold the last check or any money that might be due them for unused vacation time or that sort of thing. The person would be paid if he/she was acquitted or found not guilty of taking the funds. If they are found guilty, then that money can be kept as part of the restitution. The company would be going after whatever assets the person had anyway so this would be part of it.

That's all the bill does.

Testifying Proponents and Who They Represent:

CHARLES BROOKS, Montana Retail Association.

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

Proponent Testimony:

CHARLES BROOKS, proponent. We support SB 429. The retail industry with the large amount of cash and merchandise handled on a daily basis has above average exposure to theft of cash and merchandise by their employees, although we have many programs in force to prevent that from happening,

it does happen. We feel this proposed legislation gives a needed option to the employer, at least a partial recovery of the losses of cash and merchandise. We also see in this proposed legislation some built-in protection for the employee. I would also like to add that as the chief operating officer of a small chain of general merchandise stores I have been faced many times with this issue and it was very frustrating to turn over the final paycheck and not be able to recover your losses. We have experienced this many times. We do urge your passage of SB 429

JIM MURRY, proponent. I wanted to testify on this bill because somehow there has been the feeling that perhaps the AFL-CIO was opposed to the legislation and we really have no problems with it as long as the provisions requiring the filing of criminal charges are kept in the bill. Otherwise we feel that the legislation could be used by a few unscrupulous employers to withhold wages based on some trumped up charge against a worker. As long as the bill stays as it is written we do not oppose it.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

KILPATRICK: Question for Sen. Thayer. If an employee is accused of stealing, and he is found not to be guilty, does he get his pay check, plus interest?

THAYER: I don't think we addressed interest. The money would be put in escrow pending the outcome of the case. It would be my expectation that the money would always revert back. It wouldn't happen unless there was a real bona fide case involved, so I don't think that you need to be concerned that they would have interest coming. If you wanted to put that in the bill, I have no objection to it.

Closing by Sponsor:

SEN. THAYER: It has been a long day, I close.

Sen. Simpkins will carry this bill on the House floor should it pass this committee.

ADJOURNMENT

Adjournment At: 6:45 p.m.


A handwritten signature in cursive script, reading "Angela Russell", is written over a horizontal line.

REP. ANGELA RUSSELL, Chairman

AR/mo

6109.MIN

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-16-89

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	✓		

WE THE UNDERSIGNED MEMBERS OF UMWA LOCAL UNION # 1 AND EMPLOYEES
OF THE ASARCO TROY UNIT MINE ARE OPPOSED TO SENATE BILL 255 WHICH
ALLOWS FOR THE USE OF THE STATE POLICE IN LABOR DISPUTES.

EXHIBIT #1
DATE 3-16-89
#B58 255

Robt O. Sampson
Clyde Q. Cairns
Vaughn Wallace
Gary D. Swanson
Dean Schultz
Pat Savage
John R. Turner
Jon Blue
Jack Graham
Greg Campbell
Frank D. Jones
Brian L. Bauer
KESA A. Fitts
Harley A. Krohn
Gary R. Eubank
Ken Guinnard
Jam R. Rasmussen
Logan Huie
Lawrence R. Morkberg
Maurice J. Huie

Todd Bryant
Henry Reitz
Larry Aucutt
James Cummings
Tom Turner
William S. Davison
Donald C. Wallace
Larry V. Cummings
Joseph D. Turner
Richard Clark.



EXHIBIT #2
DATE 3-16-89
HB 53255

JAMES W. MURRY
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON SENATE BILL 255 BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, MARCH 16, 1989

Madam Chair and members of the Committee, for the record, I am Jim Murry, Executive Secretary of the Montana State AFL-CIO and am here today to oppose Senate Bill 255.

This bill is aimed pure and simply at striking workers by involving the highway patrol in labor disputes. That has been the sponsor's motivation for this legislation in spite of the many amendments which have been made to the bill to disguise its real purpose. We oppose this bill because it is the first step toward creation of a state police force to be used against striking workers. The intent of the original law prohibiting involvement of the highway patrol in labor disputes which was adopted in 1935 was to prevent the power of the state from being used on the side of either the employees or management in labor disputes. This bill would end that neutrality.

Highway patrol officers are not trained for involvement in labor disputes and their involvement could make situations even more tense than at present. There is also no real need for this legislation. Approximately 97 percent of all union contracts are negotiated without strikes and very few strikes have ever involved blockage of highways.

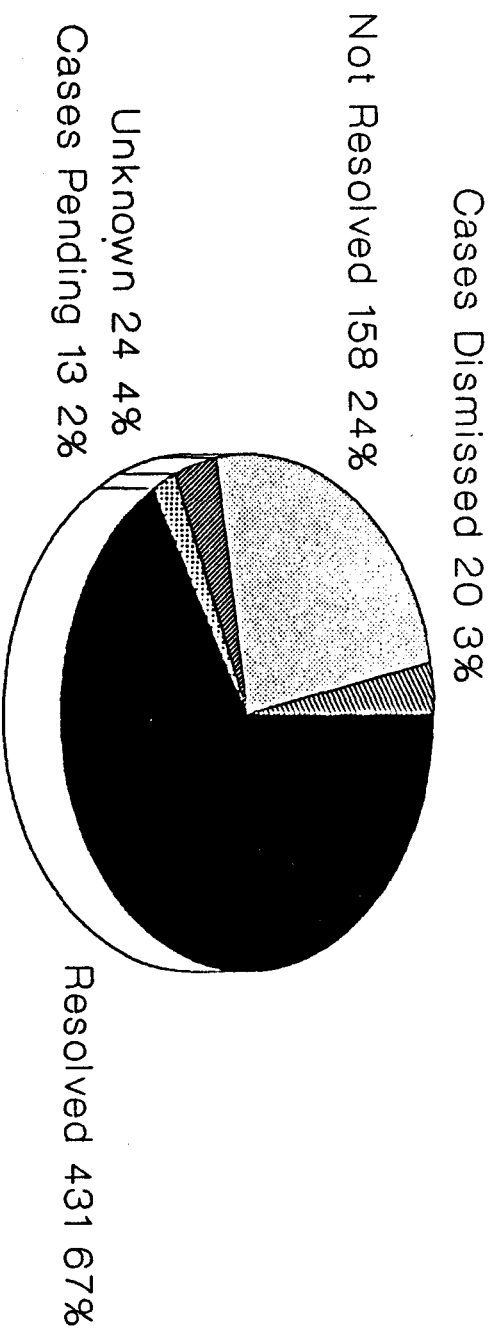
It is not in the best interests of striking workers to alienate or aggravate the public. Labor wins strike disputes by gaining public support, not by alienating people or diverting public support to the employer. To the best of our knowledge, this was the posture taken by the striking workers in the coal fields of eastern Montana.

Senate Bill 255 is simply a political statement on behalf of management during strike situations. The state should not become involved on either side. We urge you to oppose this anti-labor proposal.

Thank you.



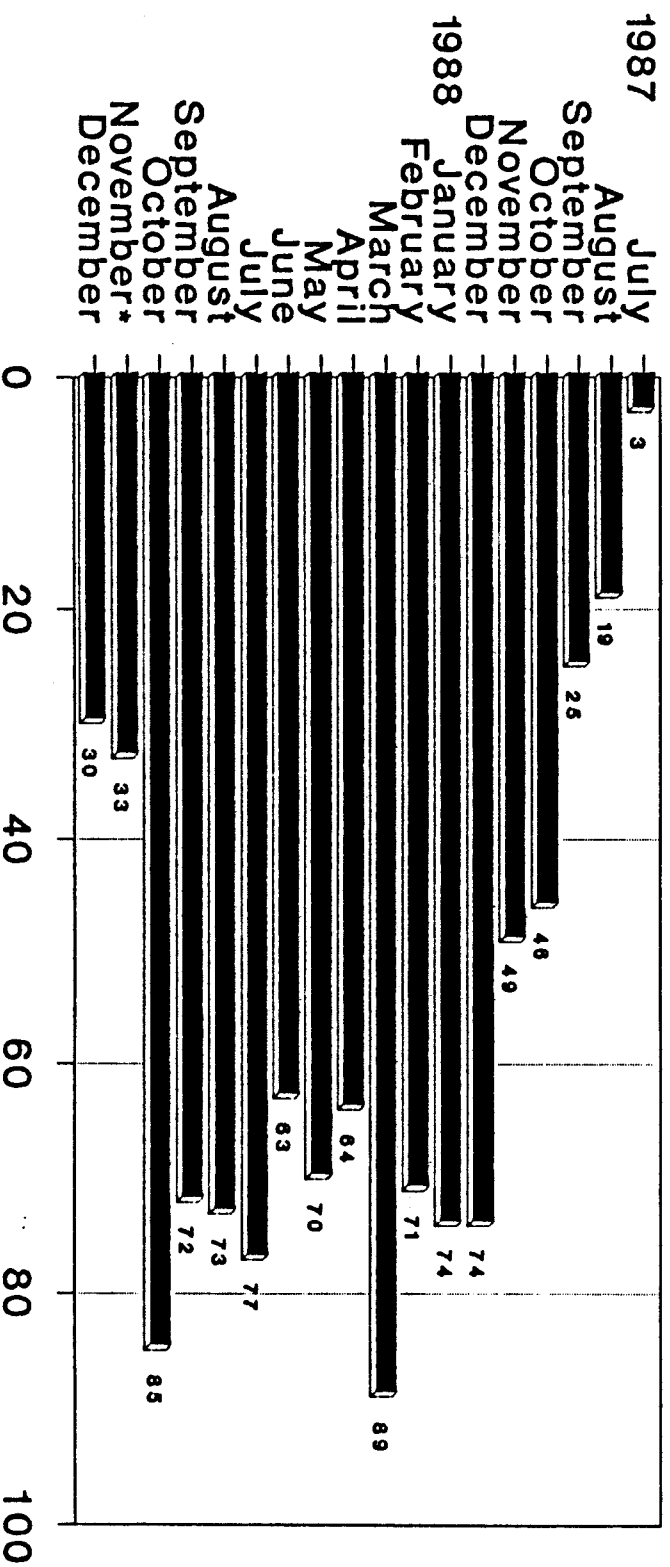
DOLI Employment Relations Division Workers' Compensation Mediation Unit Case Status



All Cases, SFY 1988
Total Cases: 646

DOLI, ERD, Figure A

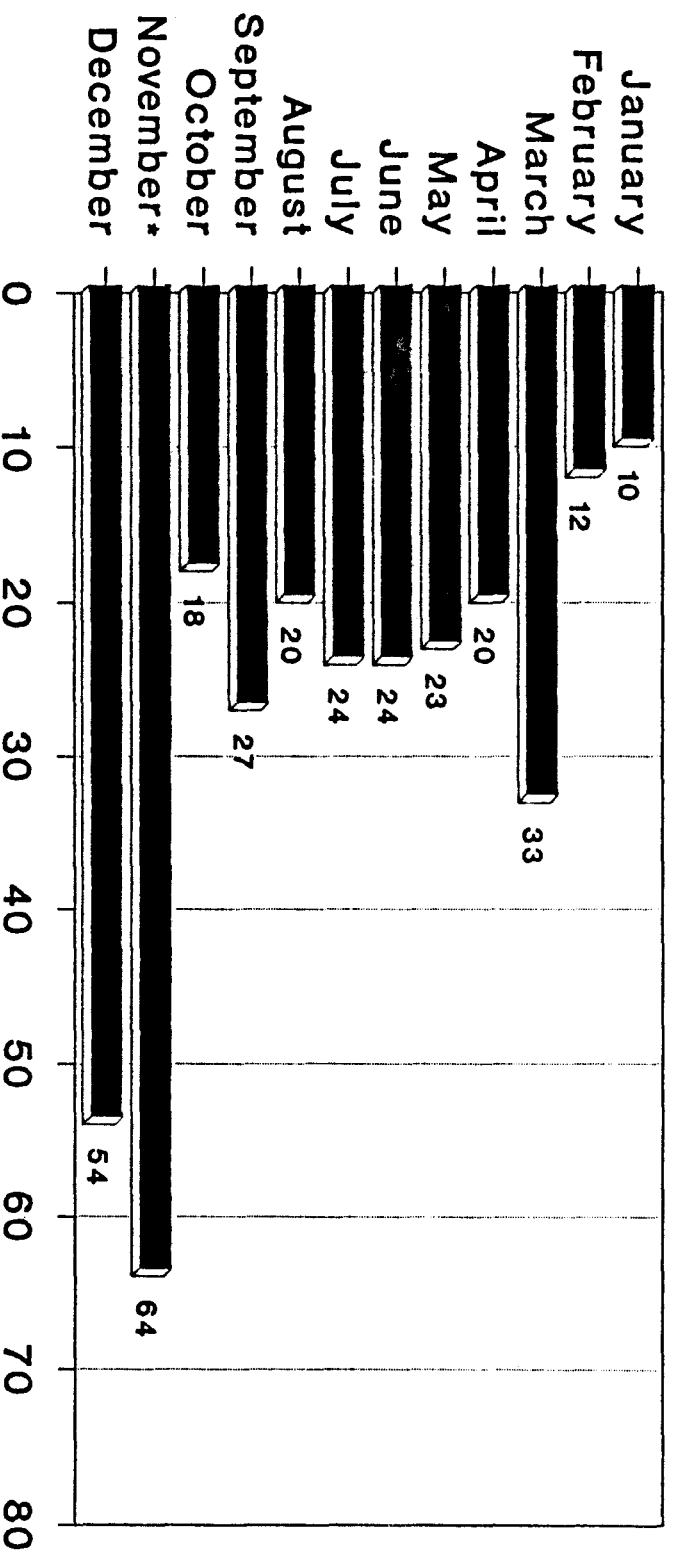
DOLI Employment Relations Division Workers' Compensation Mediation Unit Cases Received For Mediation, 1987-1988



*Carmichael Case Decision
Announced In November, 1988

DOLI, ERD, Figure B

DOLI Employment Relations Division 329 Cases Filed With The Workers' Compensation Court in 1988



*Carmichael Case Decision
Announced In November, 1988

DOLI, ERD, Figure C



GOLDEN SUNLIGHT MINES, INC.

EXHIBIT 4
DATE 3-16-89
HB 58 309

pg 1 of 10

TESTIMONY ON SENATE BILL 309

Madam Chairman and Members of the Committee:

For the record, my name is Don Jenkins. I am President of the Montana Mining Association and I am also Administrative Superintendent of the Golden Sunlight Mine near Whitehall, Montana. One of my chief responsibilities of my job is employee relations.

The Golden Sunlight Mine is an open-pit gold mine near Whitehall that employs about 240 people. A couple of years ago a group of our mill employees came to management with a request that we let them work 12 hour shifts so they could have more time off to, among other things, be with their families. Golden Sunlight is proud of its operation, its employees and its relationship with them. We have, I think, one of the best employee relation programs and employee benefits in the industry.

Golden Sunlight has no objection to the employees working an extended shift as long as safety is not compromised and a majority of the employees affected approve of it. However, before we granted the permission to schedule the 12 hour shifts, we researched Montana Law and discovered that it prevented us from scheduling such a work day. We related that to our employees and they still were not happy. I then call the Department of Labor and asked them if there was some way we could

work such a schedule under the law and they said no, but they ²⁰⁸¹⁰ would not object to it unless someone complained and then they would come down on us hard. With that threat hanging over our head we certainly were reluctant to try it.

Again, this year I was approached by the employees that since I was President of the Mining Association, if the Association could not introduce a bill into the Legislature to provide for extended scheduled shifts. We did that and with the help of Senator Hofman we have gotten the bill this far.

Safety of the employee is a primary concern of any employer. We have investigated that aspect with other mines that are working 10 and 12 hours shifts and have found that there is no significant difference in their accident rate. You will probably hear a lot of statistics today with regard to more injuries in the industry. However, please keep in mind that there are many more people working in our industry now than two years ago so, of course, there are more accidents, but if closely examined the percentage of accidents would probably be about the same.

Employees are not going to lose wages or benefits on extended shifts under this bill. Management is not going to force anyone into any shift schedules the employees don't want. It is a majority rule situation which is implemented by the employees themselves.

I have attached a recent article published by Safety Magazine that states redesigning shift schedules will help an employee to better cope with health, safety and the human biological clock. This article recommends a 12 hour shift

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schedule as one alternative.

I have done my job here, we have gotten the bill to your committee. If this legislation does not pass it will be your turn to explain to these people behind me why they can't work extended shifts, if that be the case. I certainly recommend that you pass Senate Bill 309. This is an employee bill.

Thank you.

Don Jenkins
Administrative Superintendent

SAFETY

40510
COMPLIANCE
LETTER
WITH OSHA
HIGHLIGHTS

EXHIBIT 4

DATE 3-16-89

HB 53309

JANUARY 10, 1989
NUMBER 1701

In this Issue: How to get department managers to accept their share of safety responsibility ■ Safety Spotlight: With employee help, you can prevent the next accident from occurring ■

Unique Settlement. The Bath Iron Works Corporation (BIW) of Maine must provide "substantial financial support" for an Occupational Health and Safety Training Resource Center in Auburn, ME. That's part of a settlement between OSHA and BIW.

In November of 1987, OSHA cited the company for more than 3,000 instances of failure to meet safety and health standards. Since then, the agency and company have been negotiating an acceptable abatement plan.

In the unique part of the agreement, BIW will provide financial support for a new OSH training center. The company's staff will also supply adjunct teaching assistance in safety and industrial hygiene. And BIW will help support student internship programs in safety and health.

The more conventional terms of the agreement include:

- Penalties of \$650,000, which were paid early this month

- Abatement of all hazards cited by OSHA by April 1, 1989

- A corporatewide safety and health program, including voluntary self-audits of its West Bath, Bath, and Portland, Maine, locations

REDESIGN SHIFT WORK: HEALTH AND SAFETY DEPEND ON IT

Employees working night shift have more accidents, tend to argue more with management, and have a higher absenteeism rate. Unfortunately, simply stopping round-the-clock operations isn't possible for many companies. The second-best solution? Change your company's schedules to coincide more closely with the body's natural rhythms.

In today's competitive business world, it's no longer unusual to see companies working around the clock. Some manufacturing processes require continuous operation. Other plants have to get the most efficient use of their expensive equipment in order to remain financially competitive. And some companies must work continuous shifts just to fill orders.

In all such companies, shift work seems necessary and profitable. But it does take its toll on workers. For employees who have to adapt to unusual and demanding schedules, shift work can literally be *deadly*.

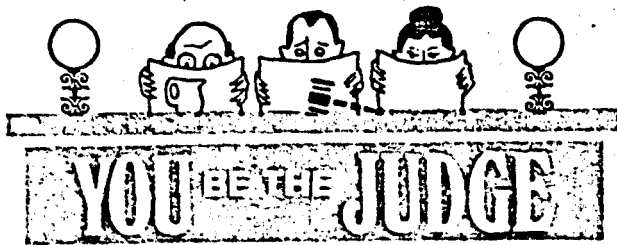
As a matter of fact, some of the world's worst industrial accidents have happened during nighttime shifts, says Dr. Richard Coleman. Coleman is a chronobiologist, an expert in natural body rhythms, and president of Coleman & Associates (Mill Valley, CA), a work-shift-scheduling firm.

Coleman, who is also on the staff of Stanford University School of Medicine, points to Three Mile Island, Chernobyl, and the Union Carbide explosion in Bhopal as three examples of the devastating damage that can occur when mistakes are made during late-night or early-morning hours.

Accident-Prone Times

Why do accident levels increase during the night shift? "Humans respond to biological cycles, which correspond to the 24-hour day/night cycle," Coleman explains. "When people are required to work at times when their bodies would normally be asleep, there can be problems."

For instance, they may develop physical problems such as gastroduodenal ulcers and emotional problems characterized by irritability or nervousness. In addition, night workers are simply more likely to make mistakes—even life-threatening mistakes.



The Story: "There are two ways you could have prevented these deaths," began the OSHA officer who was investigating the deaths of two workers at Industrial Supplies Inc. "First, you should have tested the atmosphere's oxygen levels before allowing workers into the furnace. Any enclosed space has the possibility of being oxygen deficient. And in this furnace, you should have suspected there might be problems."

"Why?" asked Greg Dailey, the deceased workers' supervisor.

"Well, the piping used to carry argon to the furnace wasn't disconnected," the officer said. "Argon diminishes the amount of oxygen in the air. To add to this problem, no means of external ventilation was provided."

"Yeah, sadly it makes sense—I should have realized oxygen levels might be dangerously low," Dailey admitted. "You mentioned there might be another way I could have prevented the deaths?"

"Yes," the officer answered. "The two men should have been wearing rescue equipment and someone should have been waiting outside the furnace to help them if they started to show asphyxiation symptoms."

"For these reasons, I'm citing you with two violations of the general duty clause," the officer concluded.

"Wait," Dailey interrupted. "As much as I know I deserve a citation, I *don't* deserve two. Doesn't the general duty clause require us to provide a place of employment free from recognized hazards? The way I read it, no matter how many dangers exist, we've only violated the standard once. And there's only one hazard here—lack of oxygen in the furnace."

"Don't forget the lack of suitable rescue equipment," the officer said.

At Issue: Is failing to provide protective equipment a danger in itself?

You decide; then turn to page four for the court's decision.

"Night workers also tend to get sleepy, and that poses a safety risk," Coleman adds. "My studies at ten plants in the United States showed that 56 percent of all shift workers fall asleep at work every week while they're supposed to be working."

How can you lessen the burden that shift work places on employees? First, ask yourself whether shift schedules are really needed. In many cases, they're used even when they don't serve a company's needs, Coleman notes.

But, in many other companies, shift work is a necessary evil. If you must have a round-the-clock work cycle, put some thought into its planning. Unfortunately, in much of American industry, shift schedules aren't well thought out, Coleman says. "For instance, shift schedules usually provide balanced coverage—with the same number of workers and hours—even though the company's actual work load may vary a lot," he explains.

"The schedules of the future are ones that not only make people more alert and provide time off, but also match the work load better."

Schedules of Tomorrow, Today

Some companies that have made, or are in the process of making, schedule changes include Du Pont, General Electric, Chevron, Dow, and Pennzoil. You too can propose changing your company's schedules for the better. Coleman suggests that you consider the following:

✧ Rotate shifts in a clockwise manner. "One very basic feature of shift work," Coleman says, "is that if you're rotating shifts, you should go from the day shift to the afternoon or evening shift, and then to the night shift. You should be rotating in a clockwise direction to later hours."

"When you do that, the body can actually make the adjustment, and your people will be more alert," he explains. "And since only a relatively small number of people are either extreme morning or evening types, it's possible to design a schedule that will fit most of the population."

✧ Try two 12-hour shifts. One schedule that Coleman advocates consists of 12-hour work periods, from 6:00 a.m. to 6:00 p.m. and from 6:00 p.m. to 6:00 a.m. Employees are organized into two crews, which allows flexibility in trading days off and customizing schedules.

Employees work only two day shifts—or two night shifts—in a row before they get a day off. And workers rotate between day and night shifts every four weeks.

"Our preliminary results indicate that this slowly rotating 12-hour schedule achieves a good compromise between what the employees want, the body's circadian (or sleep) rhythms, and what business needs," he notes. "And our studies have shown that safety measures have

been maintained as well."

Whatever schedule you design, make sure it matches the work load. "You want to make shift work attractive, so that people don't want to bid out of it, but you also want to cover the plant's needs. Too many times, you're overstaffed on one part of the shift and understaffed on another," Coleman points out.

Devising a schedule to suit everyone's needs may require you to be creative. "One schedule we implemented at Pennzoil results in 30 weekends off per year and ten 12-day vacations," he says.

Helping Nightshift Staff

As with all safety changes you make, the hardest part of implementing the change is convincing employees of its value. To help employees cope with undesirable shifts, Coleman suggests that you:

- Encourage acceptance. "Try to get workers to accept shift work and to adjust their family's social life to the schedule," he says. "Get employees to acknowledge the nature of the job. People who never adjust their lifestyle have the hardest time with shift work."

- Monitor the situation. "Keep up with what's going on, such as how many errors are being made—and when," Coleman suggests. "Don't let your employees abuse drugs or use too much caffeine to help them stay awake. That can interfere with their sleep after work."

- Keep the lines of communication open. "Talk to your employees about sleeping on the job. Employees should feel comfortable enough to ask to take a break or to be watched extra carefully if they're feeling sleepy," Coleman explains.

The good news behind the dilemma of employee acceptance is that most shift workers want to do better. "They want to do a good job," Coleman says. But poorly designed schedules make it tough for workers to reach their goals.

Safety After Sunset

Once you've changed your shift schedule and employees have accepted it, safety will increase because workers are more alert and feel better.

Yet nighttime accident rates may still be higher than daytime rates. Why? Because you aren't on the job to encourage a positive safety attitude. You don't have to put in a 24-hour workday, but your safety program does. Make sure nighttime supervisors and employees know the safety regulations and are following them.

Together, improved shift-work schedules and safety

Safety Spotlight



ACCIDENT INTERVIEWS. The best way to prevent an accident or incident from reoccurring is to learn as much as possible about it the first time it happens. How? Conduct a safety interview every time an incident occurs. Sit down with employees who were involved in the incident or witnessed it, then follow this step-by-step procedure:

- △ Put the employees at ease. Be friendly and sincere to ensure cooperation.

- △ Explain the purpose and importance of recalling safety incidents. Emphasize how employees can play an important role in eliminating problems that could cause injury.

- △ Assure workers that everything said will remain confidential. Point out that the interview is *not* designed to find fault—its only purpose is to get the facts.

- △ Stress the benefits. Fewer injuries mean less lost time from work; less damage to equipment prevents downtime. Increased operating efficiency means higher productivity and greater job security.

- △ Ask questions. Make sure you get *all* the facts. Don't let the session degenerate into a bull session. Clarify all points.

- △ Review. Briefly repeat what the individual has told you to make sure you have it straight.

- △ Discuss prevention and control. Ask for workers' thoughts on how to make the workplace safer.

- △ Thank each employee for cooperating. Doing so will give them the feeling that they've made a significant contribution to accident prevention.



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FACSIMILE TRANSMITTAL FORM

DATE: FEBRUARY 8, 1989

TIME:

ATTN: DON JENKINS

COPIES:

FROM: CINDY SHAVE

TOTAL # OF PAGES INCLUDING THIS TRANS. FORM:

MESSAGE:

DON:

I HAVE GONE THROUGH THE FILES AND DUG OUT THE CORRESPONDENCE I THOUGHT MIGHT BE USEFUL TO YOU. AS YOU CAN SEE FROM THE APPROVALS WE RECEIVED, THE MILL WENT TO 4X4 IN 1981 AND THE MINE IN 1984. CESAR PUT TOGETHER THE ACCIDENT FREQUENCY RATES FOR THE YEARS FROM 1981 TO 1988. THEY DON'T INDICATE ANY SIGNIFICANT CHANGE BECAUSE OF THE IMPLEMENTATION OF THE 4X4. THE FIGURES ARE LISTED BELOW AND IF I CAN HELP IN ANY OTHER WAY LET ME KNOW.

YEAR	FREQUENCY RATE
1981	5.87
1982	2.65
1983	.06
1984	.07
1985	.07
1986	.00
1987	.00
	1988 2.20

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EXHIBIT 4

DATE 3-16-89

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9 of 10

MEMORANDUM

TO: D. J. FRASER
FROM: E. B. Borneman
RE: TWELVE HOUR SHIFTS (PIT)

As suspected the experience with working 12-hour shifts has been favourable. We spoke with Quintette, Bullmoose and Afton.

QUINETTE

Before implementing their schedule, October 12/83, Quintette researched the experiences of Coal Valley (Edson) and Fording Coal. The Safety Co-Ordinator, with whom we spoke (Len Demelt) also had first-hand knowledge of 12-hour shifts at Grande Cache.

He could not identify any safety concerns with 12 hours versus 8 hours. If anything drivers on both schedules tended to find it more difficult to cope around 5:00 A.M.

If he were to implement a 12-hour schedule again he would arrange it so that the mechanics could have an hour in order to service the equipment before the start of the next shift.

They originally began working two day shifts followed by two night shifts. But, they held a meeting with the employees who voted 86% in favour of working four day shifts, with four days of rest followed by four night shifts.

The Union Contract provides a thirty minute lunch period and two twenty minute coffee breaks during the shift at which times the equipment is not operating. The trucks don't all stop at the same time and, if they have spare operators available, they'll put them on the shovels at these times. Originally the operators used to take their coffee breaks "on the fly."

They have not identified any safety problems with the 12-hour schedule. Truck availability is about 80%.

They presently have one thousand (1000) employees. This will be increasing to approximately seventeen hundred (1700).

BULLMOOSE

Experience is similar to Quintette. They work a schedule of two days and two nights and have not had any safety problems that they can identify because of it.

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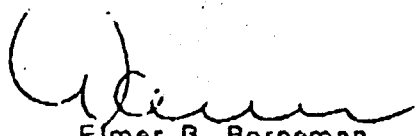
p 10 of 10

TWELVE HOUR SHIFTS (PIT)

AFTON

They were one of the first open pit mines to opt for 12-hour schedules. The employee acceptance has been excellent. They conducted a survey shortly after starting this new schedule and many employees commented that they would seriously think of resigning if the Company decided to revert back to the old one.

Except for two accidents early into the new programme (truck drove off the road and another backed over a berm - both occurred around 7:00 A.M.) Paul Papove, Safety Supervisor, with whom we spoke, said that there appeared to be a transition period when they went to the new schedule and the drivers were told to get out and "kick tires" if they felt themselves getting too tired.



Elmer B. Borneman
EMPLOYEE RELATIONS SUPERINTENDENT

EBB/dms

c.c. - Mine Manager

MARCH 16, 1989

pg 1 of 3

MR CHAIRMAN AND COMMITTEE MEMBERS, MY NAME IS MIKE STRAWBRIDGE AND I AM THE VICE PRESIDENT AND GENERAL MANAGER FOR THE MONTANA DIVISION OF IDEAL CEMENT AT TRIDENT, MONTANA. I AM HERE IN SUPPORT OF MR. HOFMAN'S SENATE BILL #309.

MY SUPPORT OF THIS BILL IS ON BEHALF OF THOSE EMPLOYEES WHO WILL BE AFFECTED BY THIS CHANGE IN THE MONTANA LAW. THE FOLLOWING EXPLANATION INDICATES WHO THESE EMPLOYEES ARE.

A CEMENT PLANT OPERATES 24 HOURS EACH DAY, SEVEN DAYS EACH WEEK. SOME JOBS AT THE PLANT WOULD BE SUITED TO A LONGER WORK DAY. IN TURN, EMPLOYEES WOULD HAVE LONGER DAYS OFF. THE AREAS SUITABLE TO TWELVE HOURS WOULD BE OUR CENTRAL CONTROL ROOM WHERE EMPLOYEES WORK WITH COMPUTERS AND IN OUR QUALITY CONTROL LABS.

PASSAGE OF SENATE BILL #309 DOES NOT GUARANTEE THAT THESE TWO AREAS WOULD BE PLACED ON TWELVE HOUR SHIFTS. IT WOULD, HOWEVER, PROVIDE THE OPTION TO DO SO. MANY POSSIBILITIES MUST BE CONSIDERED IN CHANGING FROM AN EIGHT TO TWELVE HOUR WORK DAY. EMPLOYEE SAFETY IS A PRIME CONCERN. IN THE PAST FOURTEEN YEARS, THE TRIDENT PLANT HAS HAD ONLY THREE LOST TIME ACCIDENTS. WE DO NOT WANT TO RISK AN INCREASE IN DISABLING INJURIES FOR THE SAKE OF SHORTER WORK WEEKS AND LONGER WEEKENDS.

ANOTHER CONSIDERATION IS EMPLOYEE ACCEPTANCE. OUR EMPLOYEES HAVE BEEN TOLD THAT ALL EMPLOYEES AFFECTED BY A CHANGE IN WORK HOURS WOULD HAVE TO BE IN AGREEMENT WITH THE CHANGE. OTHERWISE, THE CHANGE WILL NOT BE IMPLEMENTED. IT WOULD NOT BE FAIR TO CURRENT EMPLOYEES FOR A CHANGE IN ACCEPTED WORK HOURS TO BE MADE WITHOUT THEIR INPUT AND APPROVAL.

EXHIBIT 5
DATE 3-16-89
HB SB 309

20f3


PASSING SENATE BILL #309 WILL NOT AFFECT OUR EMPLOYEE'S INCOME, OVERTIME, OR BENEFITS. ADDITIONALLY, EACH OF THE PROPOSED CHANGES IN THE LAW REQUIREMENT THAT EMPLOYEE AND EMPLOYER AGREE TO WORK HOUR CHANGE IN ADVANCE. IN ORDER TO SURVIVE THE POOR ECONOMIC CLIMATE OF MONTANA, IT IS ESSENTIAL THAT LABOR AND MANAGEMENT WORK AS A TEAM.

THANK YOU FOR THE OPPORTUNITY TO VOICE MY OPINION IN SUPPORT OF THIS BILL. I HOPE YOU WILL FAVORABLY CONSIDER SENATE BILL #309./

I SUPPORT SENATE BILL NO. 309:

3 of 3

"AN ACT TO ALLOW WORKDAYS OF MORE THAN 8 HOURS
PER DAY IN SMELTERS, CONCENTRATORS, MILLS FOR
THE REDUCTION AND REFINING OF ORES, CEMENT
PLANTS, AND QUARRIES;"

- | | |
|---|-----------|
| 1.  | 16. _____ |
| 2. <i>Tommy L. Bryant</i> | 17. _____ |
| 3. <i>Jim Irvine</i> | 18. _____ |
| 4. <i>Bill Rafferty</i> | 19. _____ |
| 5. <i>Will Bellows</i> | 20. _____ |
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| 15. _____ | 31. _____ |

programs will lead to a safe and healthful work environment—night and day.

MAKE SAFETY A DEPARTMENTAL RESPONSIBILITY

Involving supervisors and department managers in safety is the growing trend. And rightfully so. It's terribly difficult for a single safety director to influence hundreds of people about the importance of safety. Department managers and supervisors work closely with their employees. So they are the obvious ones to help the safety director. Yet, attempts to recruit these managers often fail. Why? Because they don't feel responsible for safety.

"In general, department managers don't take steps to reduce safety problems on their own unless they are given responsibility for doing so," explains Larry Rudisel, manager of Loss Control at the Coleman Company (Wichita, KS). So the Coleman Company gave each department in the organization responsibility for its own safety performance. Department managers are now charged with managing their own workers' compensation costs, keeping injury/illness records, and conducting safety checks.



"I think up a lot of safety suggestions."

THE DECISION

Yes. The absence of suitable rescue equipment is a distinct and separate hazard, the Review Commission found. Therefore Industrial Supplies violated the general duty clause twice. Many workers don't consider personal protective equipment an integral part of the work environment. Therefore, they rationalize, lack of it can't be a workplace danger. Not true; lack of personal protective equipment is as much a danger as lack of oxygen or any other workplace hazard.

This case has been fictionalized for dramatic effect and to protect the privacy of those involved.

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DATE

Obviously, department-level managers couldn't take on this new responsibility without Rudisel's help. So he became the company's "safety consultant"—helping the managers safely run their departments. "I'm much more involved in helping to solve individual problems now," Rudisel explains.

At the same time, Rudisel doesn't want to come up with all the safety solutions and improvements on his own. He wants the department-level managers to be thinking about safety. So he's come up with a number of strategies to both help managers and encourage their input. Specifically, he makes these suggestions:

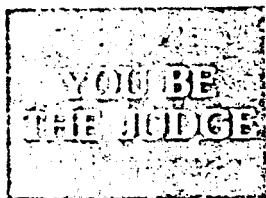
- ✧ Develop close relationships with managers. Operate on a consulting basis: Answer questions and make recommendations when appropriate.

- ✧ Communicate both formally and informally with managers. Use formal communication, such as memos or meetings, when you want to share the same information with everyone. A simple telephone call or one-on-one discussion is appropriate when you want to discuss specific or unique problems.

- ✧ Encourage managers to actively involve their employees in safety issues. Explain to department heads that keeping employees abreast of changes and asking them for suggestions can improve the overall safety climate in the department.

- ✧ Treat each manager individually, based on his or her style of management and personality. For example, while some managers enjoy a straightforward approach, others react better if you "drop" ideas and let managers further develop them. Still others like to be challenged: Tell them that a problem probably can't be solved, and they will prove you wrong.

- ✧ Make safety recommendations only after you've encouraged managers to come up with their own ideas. They know their departments better than you do. And the more you get managers thinking about safety, the more they'll realize how important it is.



My name is Bob Woodworth. I live in Whitehall MT. I'm employed by GSM as General Mill Foreman. I am a proponent of this bill.

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I'm one of the fortunate ones who don't have to work a 7-day rotation schedule. However, I have worked it in the past and I do understand the difficulties it can cause in one's personal life. There has been/will be testimony on this. I will focus ^{instead} on the effects ^{that} a 12 hour shift will have toward smoother operation of our mill.

FIRST OF ALL

Everyone knows the importance of good morale in any workplace. If our employees could have a choice -if they could have a voice in determining their own destinies, it would certainly have a positive effect on morale. 28 out of 30 employees in the mill are in favor of working longer shifts and having more days off. Our management is willing to go along with it but they are unable to proceed because of this antiquated law. *THAT'S* *FURTHER*

Secondly, operation of the mill requires that the operators make certain changes -reagent feed rates, for example. On an 8 hour shift there isn't always enough time for them to see the results of the changes they make. Whereas, the 12 hour shift would allow them to see the full effect of their adjustments. I believe that would make them better operators and beneficial ^{to the way the mill runs} ~~operating~~ effects ~~on the way the mill runs~~.

My third point is this: A lot of the operational errors that we make and some safety-related problems can be attributed to communication failures that happen during shift change. Two shift changes a day, rather than three, should, theoretically, result in a third fewer opportunities for communication failure and provide for better continuity in milling operations and contribute toward a safer workplace.

That leads me to the question of safety. The current law was made in the old days when the work was very hard and conditions difficult ~~and~~ 8 hours were enough then. Modern mining and milling just isn't the hard work that it used to be. We are doing a lot more work with our brains and a lot less work with our bodies. ^{Nowadays} Our operators feel they can handle it with no problems. I talked to people at the Sleeper Mine in Nevada and their safety record actually improved when they went to 12 hour shifts. How many of you have been working 12 hour days lately? ~~And more?~~ How many of you would like to have 14 days off out of every 28 days? *ATTRACTIVE ISN'T IT?*

A couple more points -Some of the opponents of this bill may lead you to believe that this bill will reduce the number of jobs. This simply is not true. Our operators will work more hours per day but fewer days per week. *IT WON'T CREATE ANY MORE JOBS OR ANY FEWER*

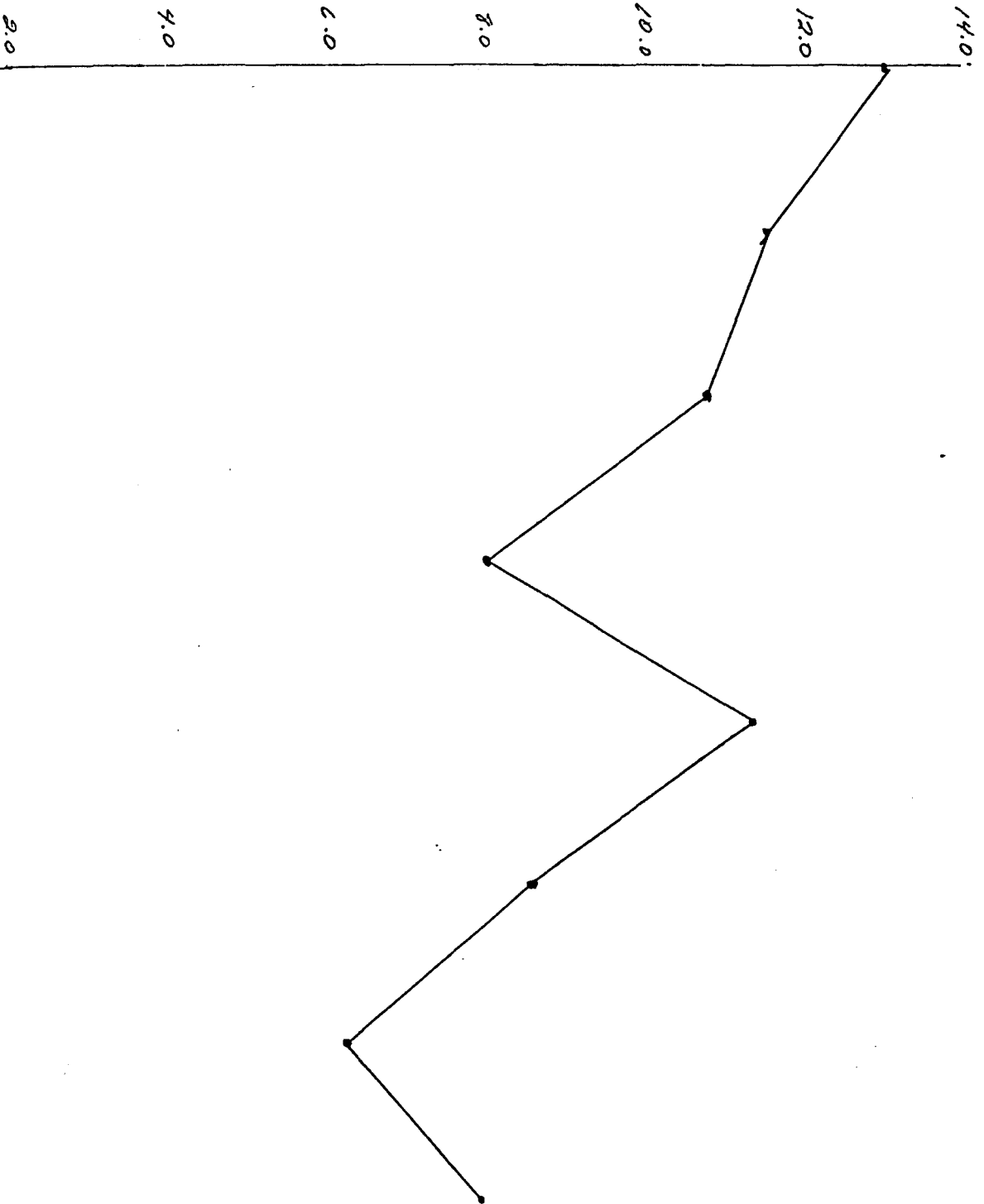
The opponents of this bill also want you to believe that if this bill passes, longer workdays will become mandatory. That isn't true either. All this bill does is give the people a choice. If the majority of the people they represent are opposed to longer workdays as indicated, all they have to do under this bill is take a vote and reject longer workdays. Simple! But listen, there are other working groups in Montana, such as ours, who want to be able to choose. Please, allow us a choice.

Please, vote for this Bill.

Thank you.

Accident
Incident
Rate Per
100 employees

MINING INDUSTRY
Accident Incidence Rate
(per 100 employees)



7

EXHIBIT

DATE 3-16-89

HB 93 309

12 HR.
SHIFTS

M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
X	N	N	N	X	X		X	D	D	D	X	X		X	D	D	D	X	X	
X	X	A	A	A	A	A	A	A	A	X	X	D	D	D	D	D	D	X	X	

8 HR.
SHIFTS

M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
X	N	N	N	X	X		X	D	D	D	X	X		X	D	D	D	X	X	
X	X	A	A	A	A	A	A	A	A	X	X	D	D	D	D	D	D	X	X	

12 HR. SHIFTS

14 Working Days - 168 Hrs
 14 Days Off
 every 28 days
 2 Weekends Off

A person can use 48 hours
 of vacation and get 14 days
 off in a row

8 HR. SHIFTS

21 Working Days - 168 Hrs
 only 7 Days Off
 every 28 days
 1 Weekend Off

A person must use 56 hours
 of vacation in order to get
 only 12 days off in a row



EXHIBIT 8
DATE 3-16-89
HB SB 309
UNITED CEMENT, LIME AND GYPSUM WORKERS
LOCAL UNION NO. 239 AFL-CIO
THREE FORKS, MONTANA

pg 1 of 2

Madam Chairwoman, members of the committee, for the record, my name is Mark Roadarmel and I'm a member of Local 239 of the Cement, Lime and Gypsum Workers Division of the Boilermakers Union. I'm here to oppose Senate Bill 309 on behalf of myself and the majority of the other employees at the Ideal Cement Plant in Trident.

I say "majority of the other employees" on purpose because I think that's an important point to make about this bill. When it was considered in the Senate, this bill was described as having the support of the workers who would be affected. That's just not true.

In fact, I personally spoke with the sponsor by telephone to find out more about this bill after it was introduced. He assured me that the bill was supported by everyone at my plant, and that's why he was pushing it so hard. I assured him that, as one of the employees there, I DIDN'T support it and I knew that many others didn't. I've since learned that people have continued to lobby for this bill by saying that it's supported by the workers who would be affected.

When we talked it over yesterday, a couple of us decided to get together a petition to bring here to you so that you could see for yourselves who's for it and who isn't. We didn't do anything fancy -- we just took an old notepad and wrote on it: "Employees at Ideal Cement Plant who are opposed to Senate Bill 309."

We spent about an hour taking it around to the employees as they were going off shift and asking if they would sign it. Out of the approximately 65 employees at the plant, we have here the signatures of 50 of them. We weren't able in that brief hour to even find all of the workers to ask if they would be interested in signing, but we were able to get 50 out of 65. That's almost 80 percent right there who are flat out opposed to this bill.

I'd like to point out that the company has tried very hard to convince us to support the bill. They've gone so far as to call plant-wide employee meetings to supposedly discuss safety, which is one of our real big concerns. Instead, we all get to the meeting and get an earful of reasons why we should help the company get this bill passed. The company has even taken individual workers aside and tried to convince them in one-on-one sessions to support the bill. Despite all those efforts, and without any meetings on our end, we've picked up 80 percent of the signatures of the workers opposed to this bill, and all that in just one hour on the spur of the moment.

I hope this helps make it very clear that the workers who would suffer under this bill do NOT support it. I hope you'll vote against SB 309.

Thank you.

Employees At Ideal Cement Plant 8
Who are opposed to Senate Bill 307

EXHIBIT
DATE 3-16-29

513309

42 of 2

Clarence W. Gannon
Dorothy Parker

Don Jensen
Robert M. J. J. J.
Vincent J. J. J.

Geoffrey G. Gunn

James J. J.

Cliff J. J.

Wyatt J. J.

Walter J. J.

Charles H. J.

Henry J. J.

Howard J. J.

William E. J.

Clayton J. J.

Clyde J. J.

E. J. J.

Doug Harris

Robert F. J.

Steph J. J.

Don J. J.

Walter J. J.

Henry J. J.

Long J. J.

Archibald J. J.

Randy J. J.

Russell J. J.

Walter J. J.

William A. J.

Richard J. J.

Wayne R. J.

Marion J. J.

Pam J. J.

R. C. J.

Bernard J. J.

Laurel J. J.



EXHIBIT 9
DATE 3-16-83
FILE 58309
UNITED CEMENT, LIME AND GYPSUM WORKERS
LOCAL UNION NO. 239 AFL-CIO
THREE FORKS, MONTANA

Madam Chairwoman, members of the committee, for the record, my name is David Stevens and I'm here to oppose Senate Bill 309.

I oppose this bill because it is vague in some of its provisions. It seems to me that it opens the door to forcing employees to work more than eight hours in a day, even if they don't want to. I don't think anyone who doesn't want to work over eight hours should be forced to, except maybe in emergencies, and then everyone volunteers to help anyway.

I'm concerned about one of the provisions in the bill that would allow the company to request an election to try to get longer shifts. I worry about what effect that would have on our union contract with the company -- and I want to point out that we have been working without a signed contract since May of 1983.

But if and when we succeed in getting the company back to the bargaining table and we get a contract that specifies eight-hour days, I'm concerned that the company could go around the contract by calling for a special election. Then, they could attempt to put pressure on individual workers, and try to line up votes for a longer day.

What would happen if there was a special election and the outcome was in conflict with our negotiated contract? Which one would have the rule of law then? Could they use this procedure to get out of other provisions of the contract?

I raise these questions because I think they're significant and should be explored before such changes are made. I don't think we should get into a situation that allows the company to get around a contract it has negotiated. I urge you to vote against this bill.

Thank you.



EXHIBIT 10
UNITED CEMENT, LIME AND GYPSUM WORKERS 3-16-89
LOCAL UNION NO. 239 AFL-CIO 58309
THREE FORKS, MONTANA

Madam Chairwoman, members of the committee, for the record, my name is Darby Parker and I'm a member of Local 239 of the Cement, Lime and Gypsum Workers Division of the Boilermakers Union. I'm employed at the Ideal Cement Plant in Trident, and I'm here to oppose Senate Bill 309.

One of our concerns about this bill is what it would do to our wages.

We've been under a wage freeze at the Ideal Plant since 1982 -- we've had absolutely no raises since then. We've had some givebacks, such as higher health insurance costs. Coupled with the effects of seven years worth of inflation, what we're really seeing is a loss in our income and our ability to spend money on Main Street.

This bill would make that situation even worse. This bill wouldn't change work hours for a lot of the staff because they already get quite a bit of overtime and 12-hour shifts. What this bill would do is cut the wages they get for that extra work. When they put in four extra hours on the job, usually at the company's request and for the company's benefit, they make a sacrifice that the company should recognize.

Our employer reaps the benefits of our labors and actually saves money by using us on overtime -- that way he doesn't have to hire more people. This bill would let him save even more money by forcing us to work longer and hard while taking money out of our families' budgets. I'm opposed to this bill and I urge you to give it a "do not pass" recommendation.

Thank you.



UNITED CEMENT, LIME AND GYPSUM WORKERS
LOCAL UNION NO. 239 AFL-CIO
THREE FORKS, MONTANA

EXHIBIT 11
DATE 3-16-89
HB SB 309

Madam Chairwoman, members of the committee, for the record, my name is Jim Dundas and I work for Ideal Cement Company at Trident.

I oppose Senate Bill 309 from the standpoint of what it would do to our plant's safety record, which once was the envy of all the cement producers in the United States.

As most of you are probably not aware, we at the Trident Plant have twice gone for 4,000 days with no lost-time accidents. Nationally, just 365 days without a lost-time accident is a rare prize. Since manpower at our plant has been cut back, we no longer can make this claim to a solid safety record. Due to cuts in manpower and longer hours on duty at strenuous tasks, our fellow employees are experiencing an increasing number of work-related injuries, which we would all like to avoid.

I know our company would like longer mandatory hours. I personally have been threatened with discipline twice for trying to work only eight hours, once with threats of firing and the other time with removal from the day shift to an afternoon shift as punishment for three months. The only thing that saved me was the state law that protected my right to an eight-hour day.

We all know that there are times, like when equipment breaks down, that putting in extra hours would help out the company. Ideal Cement has had willing employees at those times. However, we think we should be protected from being forced into those extra hours, especially at no additional compensation for our additional sacrifice. Even when the company needs our help and we might want to give it, there are times when individual employees can't work the extra hours because of sickness, tiredness, or family requirements. I would like for us to have the protection of law when those situations arise. This bill would strip away those protections, and I urge you to oppose it.

Thank you.

WE THE UNDERSIGNED MEMBERS OF UMWA LOCAL UNION #1 AND EMPLOYEES OF THE ASARCO TROY UNIT MINE ARE OPPOSED TO SENATE BILL 309 WHICH WOULD ALLOW COMPANIES TO FORCE EMPLOYEES TO WORK MORE THAN 8 HOURS PER DAY. SB309

Bob Snygar
 Steve Cameron
 Ric Sweeney
 Todd Bryant
 Franklin D. Jones
 Greg Campbell
 Jack Graham
 Jon Rice
 Vaughn Wallace
 Dennis Schultz
 Gary D. Swenson
 Pat Savage
 John B. Turner
 Al Sampson
 Larry Cloutier
 Ken Guinard
 Gary R. Johnson
 Sam R. Miller
 Jerry Huie
 James Cummings
 Lawrence R. Marking

William S. Garrison
 Donald C. Wallace
 Larry V. Cummings
 Maurice J. Huie
 Jeff D. Kinnick
 Richard Clark

EXHIBIT 13
DATE 3-16-89
HB SB428

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING

pg 1 of 6



STAN STEPHENS, GOVERNOR

STATE CAPITOL

STATE OF MONTANA

(406) 444-3616

HELENA, MONTANA 59620

M E M O R A N D U M

TO: Senator Gene Thayer

FROM: Dave Lewis, Director *Dave Lewis*
Office of Budget and Program Planning

RE: Fiscal Impact of amendments to SB428, third reading.

DATE: March 16, 1989

The amendments to SB428 will remove from section 12 consideration of the Premium Tax on Private Carriers, \$2,170,000 in FY90 and \$2,388,000 in FY91. This Premium Tax will remain in the State Auditor's Office and be reverted to the General Fund.

Assuming that the Assigned Risk Plan in Section 13 will be implemented January 1, 1990, the Premium Tax on the State Fund will be imposed. The Premium Tax on the State Fund will generate approximately \$2,987,000 in FY90 and \$3,435,000 in FY91, which will be reverted to the General Fund. This is contingent upon implementing the Assigned Risk Plan. Operating costs for the State Fund and the State Auditor's Office will remain unchanged. The revenue reflected in the fiscal note for SB428 will be reduced by the Premium Tax on Private Carriers of \$2,170,000 in FY90 and the \$2,388,000 in FY91.

The net impact of the amendments to the fiscal note will be to reduce the contribution to the unfunded liability by \$5,131,244 in FY90 and \$5,770,074 in FY91, and revert the Premium Tax on the State Fund collected to the General Fund by \$2,987,000 in FY90 and \$3,435,000 in FY91.

Gene Thayer

Amendments to Senate Bill No. 428
Third Reading Copy
Requested by Sen. Gene Thayer
Prepared by Mary McCue
March 16, 1989

2 of 6

1. Title, line 16.
Following: "2-18-103,"
Insert: "19-3-1002, 19-3-1007, 19-3-1202, 19-13-601, 33-1-102,"
Following: "33-2-119,"
Insert: "33-16-1005, 33-16-1011,"
2. Title, line 17.
Following: "37-72-101,"
Insert: "39-1-103,"
Following: "39-71-206,"
Insert: "39-71-207,"
3. Page 2, line 24 through page 3, line 1.
Strike: line 24 through "is." on page 3, line 1
4. Page 3, line 1.
Strike: "not"
5. Page 3, line 3.
Strike: ", except for"
Insert: "and shall insure"
6. Page 3, lines 24 and 25.
Following: "corporation." on line 24
Strike: remainder of line 24 through "not" on line 25
Insert: "The state fund is"
7. Page 4, line 1.
Following: "may"
Insert: "not"
8. Page 4, line 2.
Strike: ", except a state agency"
Insert: "unless an assigned risk plan is established under
[section 12] and is in effect"
9. Page 4, line 14.
Strike: "12"
Insert: "11"
10. Page 6, line 24.
Strike: "12"
Insert: "11"
11. Page 7, line 2.
Strike: "12"
Insert: "11"

12. Page 9, line 18.

Following: "fund."

Insert: "The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1."

13. Page 9, lines 22 and 23.

Strike: "12" on line 22

Insert: "11"

Strike: "and" on line 22 through "12]" on line 23

14. Page 9, line 24.

Following: "(3)"

Strike: "The"

Insert: "If an assigned risk plan is established and administered pursuant to [section 12], the"

15. Page 10, line 10 through page 11, line 5.

Strike: section 12 in its entirety

Renumber: subsequent sections

16. Page 11, lines 6 and 7.

Strike: "The commissioner of insurance shall promulgate"

Insert: "Following the date on which the provisions of [this act] are implemented but no later than December 31, 1990, the commissioner of the department of labor and industry may order the establishment of"

17. Page 11, line 11.

Following: "methods."

Insert: "In determining whether to order an assigned risk plan to be established, the commissioner shall consider the effect a plan would have on the availability of workers' compensation insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan."

18. Page 11.

Following: line 18

Insert: "(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage."

19. Page 12, line 3.

3056

Page 14, lines 1, 2, 9, and 12.
Page 16, lines 8, 10, and 13.
Page 17, lines 15, 20, and 23.
Page 18, lines 2, 3, and 9.
Page 19, lines 8, 9, 11, and 12.
Page 20, lines 3, 14, 15, 20 (two places), and 23.
Page 21, lines 5, 6 (two places), 11, and 14.
Page 23, line 24.
Page 24, lines 4, 10, and 14.
Page 25, lines 5, 14, and 23 (two places).
Page 26, lines 5 and 9.
Page 27, line 4.
Page 28, lines 1 and 5.
Page 30, line 3.
Page 34, line 10.
Page 35, line 4.
Page 42, lines 3, 5, 6, and 14.
Page 46, line 23.
Page 47, lines 17 and 23.
Strike: "division", "division", "division", and "DIVISION"
Insert: "department"

20. Page 13, lines 10 through 12.
Strike: subsection (7) in its entirety
ReNUMBER: subsequent subsections

21. Page 30, lines 16 and 17.
Following: "due" on line 16
Strike: remainder of line 16 through "EXPOSURE" on line 17

22. Page 36, line 21.
Strike: "employees"
Insert: "management and upper level supervisory positions"

23. Page 37, line 22.
Following: "capacity;"
Insert: "or"

24. Page 38, line 4.
Strike: "; or"

25. Page 38, lines 5 through 8.
Strike: "(c)" on line 5 through "33-18-212" on line 8

26. Page 39, lines 11 through 16.
Strike: lines 11 through 16 in their entirety

27. Page 43, line 14.
Strike: "13"
Insert: "12"

28. Page 45, line 8.
Strike: "workers' compensation division"
Insert: "department"

29. Page 45, lines 21 through 23.

Following: "(c)" on line 21

Strike: remainder of line 21 through line 23

Insert: "'department" means the department of labor and industry;"

30. Page 46, line 25 through page 47, line 2.

Following: "(3)" on line 25

Strike: remainder of line 25 through page 47, line 2

Insert: "'Department" means the department of labor and industry."

31. Page 47, lines 14 through 16.

Following: "(1)" on line 14

Strike: remainder of line 14 through "industry" on line 16

Following: "2-15-1702"

Insert: "'Department" means the department of labor and industry"

32. Page 48.

Following: line 23

Insert: "Section 50. Section 39-1-103, MCA, is amended to read:

"39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

~~(3) Nothing herein contained shall in any manner confer upon the commissioner the authority to interfere in any manner with the conduct of the matters under the control of the workers' compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state pertaining to the affairs of the workers' compensation division or with the enforcement of the safety provisions of the Workers' Compensation Act.~~

~~(4)~~(3) Nothing in this chapter applies to labor violations preempted by federal law or regulation."

Section 51. Section 39-71-207, MCA, is amended to read:

"39-71-207. Merit system. Employees of the ~~division, except the administrator,~~ department are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation."

Section 52. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs. (1) No person shall transact a

business of insurance in Montana or relative to a subject 4086
resident, located, or to be performed in Montana without
complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts~~ part 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 53. Section 33-16-1005, MCA, is amended to read:

"33-16-1005. Membership in rating organization required -- exception -- filings with commissioner. (1) Every insurer, ~~except the division of workers' compensation including the state compensation mutual insurance fund~~, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing

in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

Section 54. Section 33-16-1011, MCA, is amended to read:

"33-16-1011. Classification and rating committee -- membership -- term. (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) three representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must reside in Montana and shall be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance agent who resides in Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the ~~division of workers' compensation~~ state compensation mutual insurance fund who is an employee of the division state fund and who ~~shall be~~ is appointed by the ~~administrator of the division~~ executive director of the state fund.

(3) Each member shall hold office for a period of 3 years. Any appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a) and (2)(b) above, established private organizations representing insurance carriers and independent insurance agents may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee shall be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses."

Section 55. Section 19-3-1007, MCA, is amended to read:

"19-3-1007. Allowance for duty-related disability. (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of his final compensation. However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded ~~compensation by the workers' compensation division~~, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977."

Section 56. Section 19-3-1002, MCA, is amended to read:

"19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsection (2) and 19-3-1004, a member who

is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement.

(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003. The board may request any information on file with the ~~workers' compensation division state compensation mutual insurance fund~~ concerning the duty-related accident. If no information is available, the board may request and the ~~division state fund~~ shall provide an investigative report on the disabling accident."

Section 57 Section 19-3-1202, MCA, is amended to read:

"19-3-1202. Amount of death benefit. The amount of death benefit is the sum of (1), (2), and (3) as follows:

(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the ~~workers' compensation division of the state of Montana state compensation mutual insurance fund~~ that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment; and

(3) the accumulated interest on the amounts in subsections (1) and (2) of this section to the first day of the month in which the benefit is paid."

Section 58. Section 19-13-601, MCA, is amended to read:

"19-13-601. Deduction remitted to firemen's association -- member's contributions. (1) Each employer shall retain from the monthly compensation of each active member a sum equal to 1% of his monthly compensation for his services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

(2) The member's contribution to the retirement system for each active member is 6% of his monthly compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made

under this section, 19-13-604, and 19-13-605 must be based on the total compensation received by the member from his employer and from the workers' compensation ~~division~~ during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions which would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's monthly compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.""

Renumber: subsequent sections

33. Page 49, line 7.

Strike: "and"

Following: "through"

Strike: "12"

Insert: "11, 44, and 45"

34. Page 49, line 10.

Strike: "and"

Following: "through"

Strike: "12"

Insert: "11, 44, and 45"

35. Page 49, line 15.

Strike: "13"

Insert: "12"

36. Page 49, line 17.

Strike: "13"

Insert: "12"

37. Page 50.

Following: line 7

Insert: "NEW SECTION. Section 64. Name change -- code commissioner instruction. (1) In the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division", meaning the division of workers' compensation, are changed to "department of labor and industry" or "department", meaning the "department of labor and industry".

(2) The code commissioner shall designate, in a manner **60f6** consistent with [this act], workers' compensation insurance regulatory functions allocated to the division of workers' compensation by the 51st legislature to the department of labor and industry that are not so designated by [this act]."

(3) Wherever it appears in 39-71-205, 39-71-222 through 39-71-224, 39-71-613, 39-71-902, 39-71-904, 39-71-910 or in law enacted by the 51st legislature, the code commissioner is directed to change the term "administrator" or "his" to "department", meaning the department of labor and industry."
Renumber: subsequent section

38. Page 50, line 9.

Following: "~~50~~"

Strike: "~~54, 55~~"

Insert: "39, 60 through 64"

39. Page 50, line 11.

Strike: "and"

Following: "through"

Insert: "38, and 40 through"

Strike: "~~53~~"

Insert: "59"

40. Page 50, line 13.

Strike: "~~55~~"

Insert: "63"

Strike: "October 1, 1989"

Insert: "January 1, 1990"

SPONSOR TESTIMONY
SB 428
Senator Thayer

09/08/82
EXHIBIT 14
DATE 3-16-89
HB SB 428

Mr. Chairman, members of the committee. SB 428 sets up the State Compensation Insurance Fund as a mutual insurer of workers' compensation injuries.

The Governor's Advisory Council of 1985-87, which established the foundation of the '87 Reform, considered a proposal to remove the State Fund from the administrative control of the Division of Workers' Compensation. At that time, the council members could not come to a consensus on the separation issue, and the Department did not support the idea because they felt the conflict was more perceived than real. However, it now becomes more apparent that as the deficit continues to grow, bold steps must be taken to establish an entity which will guarantee continuous, well-managed coverage through a mechanism that is established along the lines of a private insurance company.

Montana is probably the only state where both the workers' compensation regulatory function and the State Fund are responsible to the same authority. Most states separate this authority to avoid the apparent conflict of interest.

Having had additional time to evaluate the impact of this proposal, I am requesting that you also consider these additional amendments:

1. Rather than implement the assigned risk plan with the effective date of the bill, the amendments provide the commissioner of the Department of Labor and Industry with the authority to evaluate the need and put the plan in place if he feels it necessary. There are several sections in the bill

that need to be amended to accommodate ~~this~~ ^{DATE 3-16-89} provision. Should the plan be implemented, ~~new~~ ³⁰⁴²⁸ language now specifies its operating principles. Also, if the plan is implemented, the State Fund would be required to pay the premium tax which is deposited to the general fund.

2. Section 12 is deleted in its entirety. This section had provided that premium tax paid by private carriers be transferred to the State Fund to assist with the unfunded liability rather than be deposited into the general fund. It had also required the State Fund to pay the same premium tax as private carriers.
3. References to the Division of Workers' Compensation are changed to the Department of Labor and Industry.
4. Exempts only upper level supervisory personnel from the state pay plan rather than all personnel.
5. Makes the act effective on January 1, 1990, or upon the issuance of an executive order which ever occurs first rather than October 1, 1989, or issuance of an executive order. This simply gives the Department of Labor and Industry a little more time to put the program in place.

As a step toward improved fiscal management and better service to all parties involved, the current administration is asking your favorable consideration of this bill.

I would like Mr. Palmer, the Division Interim Administrator, to discuss some of the bill's provisions.

EXHIBIT 15
DATE 3-16-89
HB SB 428
1082

DEPARTMENT OF LABOR AND INDUSTRY
COMMISSIONER'S OFFICE



STAN STEPHENS, GOVERNOR

P.O. BOX 1728

STATE OF MONTANA

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HELENA, MONTANA 59624

March 16, 1989

TESTIMONY BEFORE THE HOUSE LABOR COMMITTEE ON SENATE BILL 428

BY MIKE MICONE, COMMISSIONER OF LABOR AND INDUSTRY

Madam Chairman and members of the Committee, my name is Mike Micone, Commissioner of Labor and Industry. I'm here to support Senate Bill 428 to separate the workers' compensation state fund from the Workers' Compensation Division.

Senate Bill 428 calls for a general reorganization of the Workers' Compensation Division. It would move the state insurance fund to the Department of Administration, while maintaining the regulatory functions in a separate division of the Department of Labor and Industry.

The state fund, as a workers' compensation insurer, would become a mutual insurer with its administration function attached to the Department of Administration. It would be managed by a board appointed by the governor. The board would pick an executive director to manage the day-to-day functions of the fund. The executive director and certain other management employees would be exempt from the state pay plan, with the management staff serving at the pleasure of the executive director.

The board would have the authority to contract out to private industry certain claims-servicing functions of the state compensation insurance fund.

The board would be bound by law to set the fund's insurance rates on an actuarially sound basis.

This is not a new idea; it was discussed during the last session, but not adopted as part of the Workers' Compensation reform legislation.

The 1987 Legislature did make considerable changes in the workers' compensation law. This bill, like many others being heard this session, continues the reform started two years ago.

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The workers' compensation system has been subject to criticism from all quarters. Some say the law is the problem, some say the courts are the problem and some maintain that poor management of the system is the problem.

This bill won't solve all the problems, but it will address what many see as an inherent problem with having the same state agency acting as an insurer as well as regulating the system.

We feel the workers' compensation should be operated more like a privately-run insurance company, and should have its insuring functions separated from its regulatory functions. It's a further refinement of the reform started two years ago.

I ask that you support Senate Bill 428.

DEPARTMENT TESTIMONY

SB 428
State Mutual Insurance Fund

pg 1 of 3

A. Purpose:

- 1.) To remove any conflict of interest that may currently exist between the State Compensation Insurance Fund and the workers' compensation regulatory authority of the Division.
- 2.) To establish an organizational structure which will ensure the solvency of the newly created state mutual insurer.

B. Rationale:

- 1.) The administration recognizes that sound management requires an organization to be financially solvent. Even though the current State Compensation Insurance Fund is a state agency and is supported by the strength of Montana state government, it is necessary for the organization to generate sufficient revenues to cover expected liabilities. Failure to do so puts an unreasonable burden on injured workers who are entitled to the statutory benefits and creates a false sense of financial security for employers who expect premiums to cover costs.
- 2.) The administration is convinced that the proposed structure will continue to provide employers with an alternative to obtaining the required coverage in a competitive market. Employers should continue

to have a choice. Not only price but service and dependability are important factors in making a decision of who will become a firm's insurer.

C. Overview:

- 1.) Establishes a five-member board of directors who are vested with the management and control of the Fund..
- 2.) Establishes the Fund as a mutual nonprofit independent insurer.
- 3.) Allows the Board to appoint an executive director who has the responsibility for the Fund's operating management.
- 4.) Allows the Board to set personnel salaries of those employees who are exempted from the pay plan.
- 5.) Essentially operates in the same manner as a private carrier and requires the State Fund to conform with the insurance commissioner's rules and regulations governing workers' compensation carriers.
- 6.) Property of the Fund, including all monies, property, securities, etc., belong to the Fund and not the state.
- 7.) Allows the Commissioner of the Department of Labor and Industry, should he deem it necessary, to establish an assigned risk pool so that those employers with poor experience may obtain coverage

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either from a private carrier or the State Fund.
The assigned risk plan will provide for an equitable assignment of poor risk employers among both private carriers and the State Fund.

- 8.) Requires the State Fund to provide coverage for all employers unless the assigned risk plan is implemented.
- 9.) Continues the Fund as the exclusive carrier for state agencies.
- 10.) Allows for the payment of dividends once the unfunded liability is wiped out.
- 11.) Maintains the current payroll classification system established by the National Rating Organization.
- 12.) Allows the Governor to implement the provisions of the reorganization by executive order but no later than January 1, 1990.

CONCLUSION:

Although the concept may be new to Montana, many other states, (eg., Arizona, Oregon, Minnesota, Idaho) follow this organizational format.

We ask your favorable support to the bill, the amendments offered by Senator Thayer, and the amendment which will be offered by Mr. Tom Schneider of MPEA.

William R. Palmer
Interim Administrator
March 16, 1989

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~~HB~~ 53 428

Page 49, Section 54, Line 23

After ". . . Fund."

Insert

It is intended that current employees of the division of workers' compensation whose functions are transferred to the state compensation mutual insurance fund shall retain employment rights consistent with their position at the time of the transfer.

VISITORS' REGISTER

House Labor

COMMITTEE

BILL NO. SB 255DATE 3-16-89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
L. H. Colvin	Forsyth MT		X
Jimi Mockler	MT. Coal Council	✓	
Jay Reardon	USWA Local 12		X
MARC Racicot	ATTORNEY GEN	✓	
Bob Griffith	M. H. A. Local	✓	
Jim Dundas	THREE FORKS, MT		X
Frank Roadman	Manhattan MT		X
Dave Stevens	BELGRADE, MT		X
Nathan Jensen	OPSCONE		X
Eugene Jensen	MT St Bly trade		X
Jim Murray	Mont. AFL-CIO		X

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. SB 372

DATE _____

3-16-89

SPONSOR

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VISITOR'S REGISTER

B:11
AGENCY(S)House Labor
SB 309

SUBCOMMITTEE

DATE

3/16/89

DEPARTMENT

NAME	Residence of REPRESENTING	SUP- PORT	OP- POSE
Tim O'Donnell	Whitehall MT	✓	
Terry L Sampson	White Hall MT	✓	
Perry Gauthier	Absarokee MT	✓	
Stacey J. Vorhes	Absarokee MT	✓	
WARD STANARD	HELENA MT	✓	
Galt Maguire	CASPER, WY	✓	
Mary A Conahey	Mt. Mining Assn.	✓	
Tim PIERSON	M.T.M.I.	✓	
Jay Beardon	USWA Local 72 ASARCO		✓
VERNON WESTLAKE	REP. HB. #76.	✓	✓
Madeline Jensen	DPSCME		✓
Mike Jensen	Expt of Labor Industry	✓	
John Jensen	W297		✓
Greg Fendler	Mt State Bldg trad		✓
Jim Murray	Mont. AFL-CIO		✓
Ted Dorey	ASARCO	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.
IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.

VISITORS' REGISTER

House Labor

COMMITTEE

BILL NO. SB 309DATE 3-16-89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Mark Roadarmel	Manhattan Mt.		X
Jim Dundas	THREE FORKS, MT		X
DAVE STEVENS	BELGRADE, MT		X
Darby Parker	Willow Creek MT		X
Don Jenkins	Whitchell	X	
JH Cohen	Forsyth MT		X
Bob Veljick	Colony MT		X
Mike Stankov	Bryson MT	X	
John Fitzpatrick	Helena MT	X	
FRANK Sholey	Butte MT	X	
John Mough	Whitchell MT	X	
Ralph Clements	Silver Star MT	X	
Jack M Smith	Box 422 Whitchell MT	X	
BOB WOODSWORTH	945 POINT OF ROCKS (WHITEHALL) MT	X	
Steve Lyson	Box 95 Whitehall	X	
Richard Roberts	Box 445 Whitehall, MT	X	
Marie Fisher	Whitehall, MT	X	
Mike Allen	Whitehall MT	X	
Joe Nicholls	Silver Star, MT	X	

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VISITORS' REGISTER

House Labor

COMMITTEE

BILL NO. SB428DATE 3-16-89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Garwood	MT Self Insurance Assoc	X	
Ben HAVDARK	MT. Motor Carriers Assn	X	
Tom Schneider	MPETH	Amend	
Charles Brooks	MT. RETAIL ASSOC	X	
Don Allen	MT Wood Products Assn	X	
Riley Johnson	NFIB	X	
John Selmer	WETA	X	
Rob Morawiec	Missouri Chamber	X	
John Mican	Dept of Labor Industry	X	
Reguline Verrell	Amer. Ins. Assoc.	X w/amats	
Norm Springfield	Langer Helens	X with Am.	
Jim Murry	Mont. AFL-CIO	X " "	
Tom Hannon	Mont's Workers Comp Council	X	
Jim Tutwiler	MT Child Labor	✓	
Gloria Shaban	Brazosman Chamber	X w/am	
Bonnie Lippsey	Alliance of Am Insurers	X	
Roger Mobern	IIAM	X AS AMENDED	
Mike Sherwood	MTLA	X	

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VISITORS' REGISTER

House Labor COMMITTEEBILL NO. SB 429DATE 3-16-89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Charles Brooks	MT Rptn, 17550C	X	
Riley Johnson	NFIB	X	
Jim Murray	Mont. AFL-CIO	X	

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.