

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - 1st SPECIAL SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on June 27, 1989, at 1:00 p.m.

ROLL CALL

Members Present: All with the following exceptions:

Members Excused: Rep. Bill Glaser

Members Absent: None

Staff Present: Eddy McClure, Legislative Council

Announcements/Discussion: This meeting was a Joint House and Senate Labor Committee hearing for HB 56. Chairperson Russell conducted the opponents portion and Chairman Aklestad conducted the proponent portion of the hearing. The House committee had scheduled a hearing for other bills and Chairman Aklestad announced that if there was time before the whole Senate went into Session, the Senate Labor Committee would remain for the other hearings as well. It was agreed that one-half hour each be given to proponents and opponents and that committee members be limited to one question each.

HEARING ON HOUSE BILL 56

Presentation and Opening Statement by Sponsor:

Rep. Jerry Driscoll, District 92, stated that HB 56 is necessary because the Workers' Compensation unfunded liability is presently, by actuarial standards at \$215 million. There will be an average 22% rate increase on July 1 and additional funds are still needed. The issue is to raise money and subsidize the rates and compete with surrounding states. The freeze on benefits in this bill will raise about \$3 million and the tax on employees will raise \$12 million. An amendment (which appropriates \$10 million from the general fund) is offered because there still will be a shortfall in the fund. The amendment would prevent any raises on July 1 of 1989 and 1990.

Testifying Proponents and Who They Represent:

Mike Micone, Commissioner, Montana Department of Labor
Rep. Bob Marks, District 80

Rep. Lum Owens, District 7

Bill Olson, Montana Contractors' Association

Carol Daly, Flathead Economic Development Corporation, Kalispell

Ben Havdahl, Montana Motor Carriers' Association

Jim Tutwiler, Montana Chamber of Commerce

Kathy Kirsch, Small business owner, Boulder

Bonnie Tippy, Montana Innkeepers' Association

Sen. Paul Rapp-Svrcek, District 26

Sen. Jerry Noble, representing self, Jerry Noble Tires

Charles Brooks, Montana Hardware Implement Association, Montana
Retail Association

Sen. Gene Thayer, District 19

Rep. Ole Aafedt, Travel Time RV, representing self

Proponent Testimony:

Mike Micone testified in support of HB 56. Exhibit 1.

Rep. Bob Marks stated that a double digit increase of 20% on the average will further deteriorate the market share of the state fund. If the markets are priced higher than they are now by 20%, then we can expect the market share to deteriorate and that will have a compounding negative effect on the fund. He stated that he was not a strong proponent of putting a payroll tax on the employer at the time it was passed and this issue is becoming a great concern to, not just employers, but employees too. He urges passage of HB 56.

Rep. Lum Owens testified in support of HB 56. He said that we need to find a better way to help ourselves and one way is with the tax on employees. This will draw all the people together with all of the problems in this state because we cannot have a healthy economy when Workers' Compensations rules are what they are.

Bill Olson expressed support of HB 56. He stated that the problem has to be addressed and this is a viable way to do that.

Carol Daly testified in support of HB 56.

Ben Havdahl testified in support of HB 56. He said that Montana truckers are attempting to compete with the surrounding states, all of which have lower costs of Workers' Compensation than does Montana. Sometimes a difference between staying in business and making a profit and competing with trucking companies from other states the cost of workers' compensation insurance. The current rate for truckers in Montana is 16.59%. In July 1 that will go up to 18%, which will certainly compound the problem. The passage of HB 56 will preclude a major increase in that right and commended this committee for taking this action.

Jim Tutwiler urged support of HB 56. Such taxation would help

resolve a problem that would be temporary in nature. In the concern over the workers' compensation issue and reflecting the concern among businesses around the state, they have tried to see how this is being handled in other states. Those states looked at that have had success, did have a large unfinanced deficit and are operating in the black appear to have one of two characteristics: subsidizing their workers' compensation programs through other revenue sources, and some states have been able to amass a considerable amount of investment portfolio in stocks and bonds, which is used to help the operating costs of their workers' compensation programs.

Kathy Kirsch expressed support of this bill. There is a 22% increase on her business and this will force her to close and will put ten people out of jobs.

Bonnie Tippy testified in support of HB 56 by stating that they represent approximately 8,500 hotel and motel rooms in the State of Montana. These businesses cannot afford such an increase without hurting the tourism industry. Less people will stay in Montana due to high cost of rooms.

Sen. Paul Rapp-Svrcek said it is hard for him to support this bill, but he stated that this problem is real and won't go away until the Legislature addresses it, not only with this bill, but with several other bills that are going to come before this Legislature. The faster we take care of this problem, the faster we can reduce the rates, and the faster we can bring this workers' compensation problem under control.

Sen. Jerry Noble testified in support of HB 56. He stated that his business employs about 50 people in this state. The increase will mean about \$40,000 per year, which used to be net profit so there won't be much profit left.

Charles Brooks testified in support of HB 56.

Sen. Gene Thayer testified in support of HB 56. He stated that if this bill isn't passed, there are two other choices: one is to let the average 22% increase go in, and that means that some of the employers are going to get 80% or 90% increases; or you can reduce benefits. This is the most reasonable proposal that there is before us.

Rep. Ole Aafedt expressed support of HB 56.

Testifying Opponents and Who They Represent:

Sen. J.D. Lynch, District 34

Sen. Bob Pipinich, District 33

Don Judge, Montana AFL-CIO

Michael Sherwood, Montana Trial Lawyers Association

Robert Culp, United Paperworkers International Union AFL-CIO

Thomas E. Schneider, MPEA

James Hill, Inland Empire Representative to the Western Council
of Industrial Workers from Portland, Oregon

Jay Reardon, United Steelworkers of America

Tom Bilodeau, Montana Education Association

Terry Minow, Montana Federation of Teachers

Darrell Holzer, Yellowstone Valley Central Labor Council

Len Blancher, IUOE #400

Opponent Testimony:

Sen. J.D. Lynch testified in opposition of HB 56 and said that this is the worst bill of the Special Session. Workers' Compensation was set up to protect the employer and was not out of the benevolence of the employer.

Sen. Bob Pipinich opposed HB 56. He said that SB 14 will raise \$56 million for the university system. He will make an amendment to take \$15 million of that money and put it into workers' compensation now. There should be no more additional taxes.

Don Judge testified in opposition of HB 56. Exhibit 2.

Michael Sherwood stated there is a serious constitutional problem with posing a payroll tax on employees. Article 2, Section 16 of the Montana Constitution specifically says that the common law of rights for someone to sue when he had been hurt due to the negligence of another are approbated under workers' compensation when the immediate employer has hired that person provides the coverage for workers' compensation. Now the employee is being asked to provide that. It has been the policy of the legislature to make sure that employers to do what this bill proposes to be done - that is to take money from the laborers and pay workers' compensation premiums. The focus seems to have been on the 0.3%, but benefits are being reduced.

Robert Culp testified in opposition to HB 56. Exhibit 3.

Thomas Schneider testified in opposition of HB 56. He thought it was a bad bill and it is the wrong direction to go.

James Hill testified in opposition of HB 56. The increased emphasis on safety is the most important step to be taken to control workers' compensation cost. Safety programs are the way to go, they lead to lower cost to the system and eventually lower premiums to the employers. Because of their focus on safety issues, they are very concerned about the effect this bill might have on employers. Employee tax is nothing but a subsidy to hold down employers insurance premium rates. The direct subsidy of those rates by workers' will take away the incentive for employers to provide a safe work place. They believe that some employers may be inclined to throw out safety programs once they know

their rate increase will be subsidized by the workers themselves.

Jay Reardon testified in opposition of HB 56. Exhibits 4 & 5.

Tim Bilodeau opposed HB 56 stating this bill violates the trust agreement between workers and management. Worker safety and the cost of workers' compensation will not be solved by passing the cost onto the injured person and onto the worker.

Terry Minow expressed opposition to HB 56. State employees have had two years of wage freezes. This legislature granted a 2.5% increase and if 3% of that is taking away in just this one bill, would be adding insult to injury. School district employees and the employees of local governments are in the same situation facing I-105 and inadequate funding.

Darrell Holzer testified in opposition of HB 56. Exhibit 6.

Len Blancher expressed opposition to HB 56.

Questions From Committee Members:

Rep. Tom Kilpatrick asked Julie Barr with the Legislative Auditor's Office if they believed that the Workers' Compensation Division would have a cash flow problem and would be unable to pay benefits and providers if no rate increase is implemented by July 1, 1990? Ms. Barr stated that they are comfortable with the rate increase there would not be a cash flow problem. They are not quite as comfortable if there were no rate increase that there would not be a cash flow problem.

Rep. Fred Thomas asked Mr. Micone if there would be a cash flow problem and will they be unable to pay benefits and providers if no rate increase is implemented by July 1, 1990? Mr. Micone stated that their analysis of the cash flow for the state fund with no rate increase indicates that the state fund will run out of cash during the fiscal year 1991.

Sen. Sam Hofman asked Mr. Micone if he had any explanations as to where all of the mistakes were made in analyzing the problem? Mr. Micone stated that SB 315 was starting to show successful results. They cannot control escalating costs and the older the claims get the more costly.

Sen. Richard Manning asked Mr. Micone how many employers are not covered that should be by insurance of some sort and why not? Mr. Micone stated that there were approximately 80% that were not in compliance. By the time the fund separates from the division they will have a concerted effort, not only to ensure that employers are complying and paying their insurance premiums, but intensify efforts to ensure that

there is no fraud in the system both from faulty claims from workers and faulty claims from providers.

Rep. Angela Russell asked Jim Murphy if the Auditors' Office and his office could come up with one common set of figures? Jim Murphy stated that the figures that are being talked about are the cash flow projections. The unfunded liability is established by the actuary and there isn't any disagreement with that figure. The problem with the cash flow is getting the actuary and the Legislative Auditor's Office to agree as to what they think the payout pattern is going to be. The only cash analysis that they did, left everything as is - employer taxes already in place, no rate increase, cash analysis over fiscal year 1990 would indicate that they would draw down about \$9 million in investments. The minute you start doing that the interest that was to be earned in the out years is going to be less because investments are going to come down.

Sen. J. D. Lynch asked Rep. Jerry Driscoll if the employee would give up his right to sue and that it must be provided by employer. The employee now has the right to sue. Rep. Driscoll stated that he did not know.

Rep. Carolyn Squires asked Mr. Murphy how many investigators there are in the state. Mr. Murphy stated that there are 1.5 FTE in the Uninsured Employers Unit that are responsible for determining whether the employer has the proper coverage. They get assistance from auditors in the department that identify employers that haven't got insurance. There is twenty auditors that do audits, workers' compensation and state fund audits and uninsured audits.

Rep. Vicki Cocchiarella asked Rep. Driscoll what the chances are that the Legislature could remove the tax in 1991. Rep. Driscoll stated that if we don't find any money, the chances are slim and none.

Rep. Simpkins asked Rep. Driscoll if the tax would go entirely to paying off the debt? Rep. Driscoll stated that the money all goes to one place, the Board of Investments.

Sen. Devlin asked Rep. Driscoll what he foresaw happening in jobs and companies that employ people fees were added. Rep. Driscoll stated that with high wage good jobs, not in the service trade, he predicted mechanization at a faster rate. In smaller companies, the owner would hire less and do more of the work himself, or simply go out of business because they can't afford the rate.

Rep. Whalen asked Mr. Murphy why something isn't being done about the number of investigators checking employer fraud that is being perpetrated on employees? Mr. Murphy stated that the uninsured function has been in existence for sometime, the

finances and penalties that are levied by the uninsured unit is over 400 per year, so the division is pursuing uninsured employers. The statute allows the division to fine and penalize them or order closure notices.

Rep. Pavlovich asked Rep. Driscoll what the 'other sources' were? Rep. Driscoll said there was \$10 million out the general fund and to tax soda pop. Depending on how the school funding comes out, they would make the surcharge effective in July for schools. Money from some investment earnings are needed to keep the rates from going up and to keep the cash flow from going to zero.

Sen. Thomas Keating asked Mr. Murphy if the computer data is good in this area or is there some reason to doubt that the figures are accurate. Mr. Murphy stated that the information that is being provided is accurate.

Closing by Sponsor:

Rep. Jerry Driscoll stated that deficits from \$157 million to \$215 million are possible. Claims examiners, the person that reserves the money for a claim may, in some cases, reserve low. If they think that a claim is only going to cost \$5,000, but it costs \$10,000 or \$15,000, this would create quite a problem. The Legislative Fiscal Analysts Office, was using projections of cash flow that has \$42 million in the bank. The Board of Investments said there is \$29 million in the bank. They were projecting \$92 million in claims paid in FY 89, when in fact it is over \$106 million. On January 1, when the fund becomes a division, it is no longer completely immune from lawsuits.

HEARING ON HOUSE BILL 54

Presentation and Opening Statement by Sponsor:

Rep. Francis Bardanouve stated that all those that had testified in favor of putting a new tax on employees would testify in opposition to this bill. He was distressed to discover the condition of the Workers' Compensation program.

Previous sessions have recognized the need for actuaries for the fund and if past legislators had not begun the process of dealing with the problem the fund would be bankrupt today. Not long ago the deficit was \$50 million, a year later it was \$100 million, and now it is more than \$200 million - almost inconceivable that it could change so rapidly. There is a crisis. This issue, the workers' compensation shortfall, is far more serious than the foundation program. If no solution is found for the foundation program, not many people would be hurt. Education will go on as it is now. There will be seven men with black robes that will be unhappy with the legislature, but there will be no crisis in Montana education. But there

is a crisis today on workers' compensation. There will be people who will probably lose their jobs because employers cannot continue paying the rates that will be proposed in Montana. This is the shortest bill in the session and a short amendment and it changes from 0.3 to 0.45 on the payroll of wages all Montana workers. This should be paid by the employers. However, there is a serious short fall. The 0.45 will generate about \$13 million, 0.3 at the present time generates \$25.6 million during 1991 biennium and the 0.45 during the biennium will generate about \$38.3 million per year. He did not hear many complaints from his constituents and acknowledged that there are not as many employers as there are in other areas of Montana, but many ranchers and farmers pay it. The small increase will not put any employer out of business. It will be painful to pay but the pain will be shared by all employers of Montana. Montana's employers should be willing to share a little pain to save some of the crisis situation employers. With additional revenue of about \$20 million per year, a tremendous increase would be about 1/3 of the necessary money. This will be a burden carried by all, but a burden carried by all is far better than a burden carried by a few, therefore, as a partial solution he asked support of this bill.

Testifying Proponents and Who They Represent:

Don Judge, Montana AFL-CIO

Proponent Testimony:

Don Judge testified in support of HB 54. This piece of legislation offers much more reasonable means of raising some of the needed revenue in the event that additional revenue is needed. It does not violate the constitutional protections of workers. Those protections were discussed earlier - the right to sue versus who provides the workers' compensation insurance. It spreads the burden much more evenly for employers across the State of Montana.

Testifying Opponents and Who They Represent:

Mike Micone, Department of Labor & Industry
Gordon Morris, Montana Association of Counties
George Wood, Montana Self Insurers Association
Charles Brooks, Montana Hardware Implement Association
Jacqueline Terrill, American Insurance Association
Alec Hansen, Montana League of Cities & Towns
Don Allen, Montana Wood Products Association
Carol Daily, Flathead Economic Development Corporation
Bonnie Tippy, Alliance of American Insurance and Montana
Innkeepers' Association
Laurie Shadoan, Bozeman Chamber of Commerce
Jim Tutwiler, Montana Chamber of Commerce
Ben Havdahl, Montana Motor Carriers Association

Opponent Testimony:

Mike Micone testified in opposition to HB 54. This bill would raise an additional \$6.5 million per year. There would be roughly \$13 plus million required for the up-coming year for the operation of the workers' compensation state fund system. Rather than an average rate increase of 22%, now it would be an average rate increase of about 15.5%. That doesn't mean that every employer is going to have their rates increased 15% but it may mean that some will have their rates increased at least 85% and some will continue to have their rates decreased.

Gordon Morris expressed opposition to HB 54. As an employer, counties across the State of Montana are currently liable for the 3/10 of 1% tax assessed against employers. This would represent, based upon \$100 million annual payroll, a \$150,000 increase over and above the \$300,000 assessment levied under the current law. Section 1-2-112 of the Montana Code Annotated, the Drake amendment, requires funding to accompany any legislation considered by the legislature that imposes additional financial burdens on local government.

George Wood testified in opposition to HB 54. A small increase for his group doesn't exist. The present 3/10 of 1% discriminates against them because they were never a part of the state fund. Secondly, it is discriminating because it is on payroll and they would pay a disproportionate amount.

Charles Brooks testified in opposition of HB 54. He said that he is mainly representing a large implement dealer in Great Falls. He is privately insured and has been paying the 3/10 of 1 percent assessment and last year because of the efficiency of his business and maintaining accident control in his operation, he received a \$3,600 rebate from the private carrier. He is very disturbed that he is being penalized by the assessment. He did not create any of the deficit that we find in workers' compensation. We find that discriminatory.

Jacqueline Terrill testified in opposition of HB 54. The American Insurance Association is a trade association comprised of 200 property and casualty insurers many of whom write insurance, workers' compensation insurance in the State of Montana. In addition, many of those companies are also employers within the State of Montana. This is a discriminatory tax on employers who are paying for private insurance and paying an additional tax to shore up those who are insured through the state fund.

Alec Hansen testified in opposition of HB 54. They recognize that the unfunded liability of the Workers' Compensation

program is a serious problem to our state. As proposed this bill will cost the cities and towns of Montana \$105,000 on top of the \$210,000 they are already paying under the tax imposed by the 1987 legislature. The budgets of the cities and towns of this state are balanced on a very dangerous margin. It is also important that this adjustment may buy some time for the state fund, but it really postpones the day when all of the elements of a well-managed, actuarial sound Workers' Compensation program are brought into the proper balance. We need to align payroll, premiums, benefits, claims administration and risk management into a Workers' Compensation program that can stand on its own provide benefits with a fair premium structure. We are a long way from that objective, but instead of postponing the day when we move in that direction we should get right on it.

Don Allen testified in opposition of HB 54. He said under the new law that was passed last time that of \$250,000 each year that is being paid into that fund to increase that by 50% do not consider this small increase. In today's world the competition for the dwindling timber supply and the higher prices that are having to be paid, the competitive nature, the business having to compete with facilities in other states is tough enough with all costs involved to take three steps forward without taking two back. The idea that this would not cause any problems is not the case.

Carol Daly testified in opposition to HB 54 on behalf of the employers in the Flathead area, who are in the position of many employers that did not complain initially. They felt that they were being asked to take responsible action to meet the needs at 0.3%, now we are talking about 0.45%. This is a situation where something may have set into motion. They have been trying to reduce costs and taxes for businesses that aren't even here, and now we talking about raising costs for businesses that are here. She urged that the committee give this bill a do not pass.

Bonnie Tippy testified in opposition to HB 54. This legislation penalizes employers who choose to do business with private companies. Basically, private insurance companies do a better job of keeping track of medical costs and holding some costs down than the state fund does. She urged the committee to give consideration to the private sector, not only in main street businesses, but also in insurance.

Laurie Shadoan testified in opposition to HB 54. She urged the committee to defeat this bill.

Jim Tutwiler said that they strongly endorse the arguments that have been made in opposition to HB 54. This particular bill presents a real question of fairness and equity. They are particularly concerned with the fact that businesses in Montana already face very high personal property taxes. In

many cases they face high mortgages and income tax. Employers have gone far to try to resolve the workers' compensation problem and passing a bill now would only appeal reforms of 1987. They urged the committee to recommend a do not pass of HB 54.

Ben Havdahl testified in opposition to HB 54.

Questions From Committee Members:

Sen. Lynch asked Mr. Brooke if he was saying that it isn't fair to the employers to pay 0.45%, but it is fair for employees to pay 0.3%? Mr. Brooke stated that there are inequities on both parts, but when you talk about the small increase, this is a 50% additional fee upon the employers.

Sen. Devlin asked Rep. Bardanoue if this would increase state employees share also? Rep. Bardanoue stated that everyone shares in the pain.

Sen. Devlin asked Rep. Bardanoue if he would bring in a supplemental appropriation for the next fiscal year to pay? Rep. Bardanoue stated that these agencies have always had some extra money that they have had cover their costs.

Rep. Simpkins asked Rep. Bardanoue if also contends that maybe the employees should have no objection in helping fund the state and getting us out of a financial problem that we are in? Rep. Bardanoue stated that this is a misunderstanding. He said that the same people that testified for putting an assessment on employees will parade up here and oppose this bill.

Rep. Simpkins asked Rep. Bardanoue is he feels that this debt was created by the employers' failure to pay the premiums that they were billed from the State of Montana? Rep. Bardanoue stated that if it was the fault of the agencies not billing enough, then this is one way of picking up the money they have been billed.

Closing by Sponsor:

Rep. Bardanoue warned private insurers that if the crisis is not resolved there might be a major rewriting of Workers' Compensation in Montana and nobody will have the privilege of not joining Workers' Compensation. It could be rewritten so everyone has to join and share in the costs of Workers' Compensation. There are proposals against employees' assessment, gambling bills, pop bills and general funds. This is another alternative. He reluctantly supported the assessment on the employees. Both bills should be supported as part of the solution. The signal being sent to high risk employers in Montana is if you cannot afford to pay the rates, pack your bags and leave. If something is not done for them, then they are getting a signal. The Chamber of

HOUSE COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

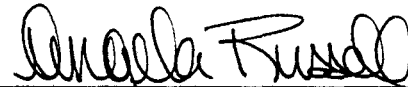
June 27, 1989

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Commerce is also sending the wrong signal and he believed that most of the business people in Montana receive their income from the laborers of Montana. The workers of Montana supply most of the capital income for Montana but no one seems to hesitate to send them a signal. This is not devious legislation and he remarked that he did not like being called devious. It is plain as day what this bill does. It raises from 0.3% to 0.45% and is one alternative to this crisis. The General Fund cannot support Workers' Compensation. The General Fund must be actuarially sound and must have 5% remaining to be sound. With over \$800 million there must be over \$40 million in the General Fund balance to be actuarially sound.

ADJOURNMENT

Adjournment At: 3:10 p.m.



REP. ANGELA RUSSELL, Chairman

AR/td

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DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS

COMMITTEE

DATE 6/27/89

[illegible]

TESTIMONY BEFORE THE JOINT HOUSE AND SENATE LABOR COMMITTEE ON
HOUSE BILL 56

EXHIBIT 1
DATE 6/27/89
HB 56

BY MIKE MICONE, COMMISSIONER OF LABOR AND INDUSTRY

JUNE 27, 1989

Last March I appeared before the House Labor and Employment Relations Committee in support of the employee wage tax - SB 405.

The tax at that time was proposed to reduce the unfunded liability of the workers' compensation system. We stated at that time that many people viewed the unfunded liability as a major deterrent to a good business climate. And it's not just business or employers that want to reduce the debt.

We stated that workers perceive the unfunded liability as a threat to the well-being of the system that is supposed to pay their medical expenses and replace lost wages in case of injury.

We still believe both of those statements are valid.

Since the announcement that the liability had increased, and that rates would increase on July 1, I have received a number of inquiries of what can be done to stop the spiraling of costs and subsequent increases. Our concerns, like yours, are how do we maintain a viable, actuarially sound fund, and yet maintain rates at a level that will not drive businesses out of Montana or forced to close their doors.

Ex. #1

6-27-89

#856

HB 56 - 2

I'm convinced that the changes made in past legislation, and the contemplated structural changes will begin to show results given time to operate. But the problems in workers' compensation were created over a long period of time and will not be resolved overnight. It will take a dedicated effort on everyone's part and over a long period of time to make it work.

The actions contemplated by this special session may appear to be resolving the problem. But in essence, what you are addressing today can only be viewed as a short term stop gap approach to a long term problem.

You are in effect making a decision to subsidize the workers' compensation system. If, as is proposed, the subsidy is removed after two years and costs have continued to escalate, the resulting rate increase at that time could be far in excess of the 22% proposed at this time.

The decision to impose a tax on employees is not an easy one to make. We recognize your concerns that an increase in workers' compensation rates at this time could have a detrimental effect on Montana's economy. If the actions, as proposed in HB 56, eliminate one of Montana's major stumbling blocks to an improved economic climate, it will certainly benefit all Montanans' in the long run and should be given serious consideration.

I would suggest that Sections 7 (1) be amended to allow for the State Mutual Insurance Fund to collect the tax. As proposed, it transfers the responsibility to the Department of Revenue for collection of the employer payroll and employee wage tax.

Ex. #1,
6-27-89
HB 56

HB 56 - 3

The 1989 legislature allocated 1 1/2 FTE to administer the tax and the State Fund has in place the system necessary to collect the tax. We believe that for the short term, 1 to 1 1/2 additional FTEs could be allocated to the State Fund for the additional collection with no requirements for program start up.

If in 1991, the legislature determines the tax should continue for the longer term, we would suggest the transfer to the Department of Revenue be made at that time.

Thank you for the opportunity to appear before you.



EXHIBIT 2
DATE 6/27/89
HB 56

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

STATEMENT OF DON JUDGE ON HOUSE BILL 56, SPECIAL SESSION OF THE 1989
LEGISLATURE, JUNE 27, 1989

Madam Chair, members of the committee, for the record my name is Don Judge and I'm representing the Montana State AFL-CIO in opposition to House Bill 56.

When I think about the reason we are in this hearing today, I need to reflect for a minute about the process by which we arrived here.

The Legislature is working very diligently to find a solution to the school funding problem, an issue some feel is the most critical matter facing the state right now. In that effort, you're working on the basis of a well-documented and thoroughly thought-out Supreme Court decision based on literally years of work by the courts, the legal profession and the education community. Regardless of where you stand on that issue, you have to agree that it is one that has received careful consideration based on a massive amount of study and input.

On the issue of the payroll tax to subsidize Workers' Compensation, we cannot make the same claim. We believe that the Legislature is rushing to act on this issue, which is based on audits we can't agree upon and decisions by the Workers' Compensation Division to raise premium rates, perhaps unnecessarily. Worse yet, this rush is ignoring the basic conclusions reached during the regular legislative session: that the real purpose of the Workers' Compensation system is to provide a safe and healthy workplace, and to compensate workers when they're hurt at that workplace.

This rush to judgment on such a serious policy reversal may have widespread implications for decades to come in Montana. Your decision on this vital question should be the result of a serious, deliberate discussion buttressed by hard facts and sound logic. Without that, we believe that Montana could pass a bad law, and then we all lose, regardless of whether we ever have any involvement with the Workers' Compensation system. We need to stop . . . think . . . reach into our collective wisdoms and avoid hasty action.

The Montana State AFL-CIO remains opposed to an employee payroll tax to subsidize premium rates for employers covered by the state Workers' Compensation Fund. Our members opposed this issue when it was proposed in the regular session of the Legislature, and they continue to oppose it now.

We believe that there are three basic reasons to oppose an employee tax subsidy. First, the largely unexplored area of cost control; second, the Constitutional implications, and third, the uncertainty surrounding the actual status of the state fund.

Let me explain these in a little bit more detail.

Cost control seems to be popular everywhere in the country except Montana, particularly with the State Fund. Throughout the regular session of the

Legislature, workers attempted to get lawmakers and opinion leaders to focus on the single most important issue in Workers' Compensation: the high rate of workplace injuries and accidents here in Montana compared with the rest of the country.

We'll say it again here today: If you can put a lid on accidents and injuries, you can cut the cost of benefits and medical care and, in turn, reduce employer premium rates. If you continue to ignore Montana's higher-than-average accident rate, we will continue to see growing benefit and medical costs, along with a growing number of injured and maimed workers.

We are further concerned that a move toward subsidizing employers' premium rates will erase any incentives for employers to provide safe workplaces. Responsible employers will continue to do their best to provide a workplace that is safe for customers and employees, but we're very concerned about the effect this proposal might have on less responsible employers.

Basically, we fear that an employer who has a high workplace accident rate may not care what effect that has on premiums if he knows that the premium rates are going to be subsidized anyway. We firmly believe in the need for strong safety incentives and for serious, state-mandated safety programs for all industries in order to control costs by reducing injuries.

That brings up the second part of the cost control issue. Very little attention, if any, has been focused on measures to control the costs of medical care under the program, despite a national focus by the public and private insurance industry on medical cost containment.

To its credit, the private sector insurers in Montana appear to have taken some positive steps toward medical cost control in the last decade. Let me cite some figures for you, based on the annual reports of the Workers' Compensation Division. In Fiscal Year 1978, medical costs made up nearly 31 percent of the total benefits paid by the State Fund, and nearly 32 percent of the benefits paid by private insurers. Ten years later in FY'88, the State Fund still was paying more than 30 percent out in medical costs, but the private insurers had cut theirs down to only 26 percent.

If the State Fund would focus some energy on medical cost containment, particularly on some of the outrageous fees paid to consultants, rehabilitation specialists and others, the program would be financially healthier.

I want to note that just yesterday our office received the quarterly newsletter of the Alliance of American Insurers, which is not a group known for any particular sympathy for labor unions. One entire page of their newsletter focuses on the problem of medical care costs being shifted onto Workers' Compensation systems because they have few if any of the cost control measures that have become standard throughout the rest of the insurance industry. The Alliance concluded that the continued existence of the workers' compensation system nationally may depend on the imposition of medical cost controls.

Our second major concern is the tradeoff that established the ground rules for workers' compensation in Montana. Under the Montana Constitution, Article II, Section 16, workers forgo their rights to sue employers over workplace injuries, so long as their employer provides Workers' Compensation insurance. We believe that the word, "provides" in this case means that the system is the employers' financial responsibility, not the employees'. If you have to help pay for it, it's not "provided."

Under the Constitution and Montana law, employees already sacrifice the right to legal redress that every other citizen enjoys. They also sacrifice their very lives and limbs at the workplace when they suffer a job-related injury. We believe that to ask them to make even further sacrifices by paying for this system is not only a violation of Constitutional intent, but just plain unfair. Think about it . . . employers would be able to shift part of their burden onto their workers and still retain their immunity from lawsuits. They clearly would get to have their cake and eat it, too.

Our final major concern is quite simply the depth of the problem with the State Fund. No one can tell us for sure what it is. We're not convinced that anyone on the Hill -- the Legislature, the auditor, Workers' Compensation, the Administration -- has valid numbers to support their position on this issue.

The Legislative Auditor presents us with numbers to show an impending jump in the deficit, but then tells us that the numbers probably aren't right. The Division presents numbers, but the Auditor doesn't agree with them.

Everyone agrees that more numbers have to be generated in order to arrive at a true picture. Shouldn't that raise a big red flag for us all? We simply can't support any proposed solution as drastic as this when no one has a solid handle on the problem that is driving the issue.

We believe that responsible legislative action demands an agreed-upon analysis of the problem before any such action is taken. We cannot simply stand by and assume the correctness of such drastic action to solve a problem that no one is able to accurately define.

We can, however, support a comprehensive audit of Workers' Compensation, with an independent actuary not previously involved with the system, to arrive at a set of facts upon which everyone agrees. We can understand if you decide to provide a broad-based subsidy to the system in the period during which an audit is being conducted. We can recommend that you seriously consider making our system an exclusive state plan in which the private insurance sector cannot cream the good employers off while the state fund is required to accept all the bad risks. We can recommend a system to you wherein good, safe employers see substantial premium savings based on their experience of providing a safe and healthy workplace. And we can recommend to you a system in which premiums are based on hours worked rather than total payroll -- a system that would reward good employers in the high-wage, high-risk industries.

For all of the reasons we've discussed here today, we oppose House Bill 56. You have a tough problem in front of you and a tough decision to make. However, difficult problems are not solved with hasty decisions. We urge you to give this bill a "Do Not Pass" recommendation.

I know our testimony today has been longer than normal, and I thank you for bearing with us. The length of our statement reflects the importance we attach to the issue and the action you take on it.

Thank you.

EXHIBIT 3
DATE 6/27/89
HB 56

HELLGATE LOCAL 885
UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO
P.O. BOX 8885, MISSOULA, MONTANA 59807

(406) 543-7788

STATEMENT BY ROBERT CULP ON HOUSE BILL 56, SPECIAL SESSION OF THE 1989 LEGISLATURE, JUNE 27, 1989
=====

Madam Chair, members of the committee, my name is Robert Culp. I'm the Safety Chairman for Local 885 of the Paperworkers Union, which has about 550 members working at the Stone Container plant in Frenchtown. I'm here today in strong opposition to this bill.

I'm responsible for enforcing contract provisions relating to safety and health in our workplace, so I can speak with some expertise on the issue of workplace safety and Workers' Compensation in general.

Our members are flat out opposed to an employee tax to subsidize our employer's Workers' Compensation premium rates. We're concerned about the bad precedent it would set if employees starting subsidizing the system. We're even more concerned about giving subsidies and reduced rates to an employer who has cut our wages and worsened our working conditions, even while the company enjoys strong profits. To heap even more bad news for workers on top of all that is unfair. It's especially unfair when our employer gets to keep his immunity from lawsuits.

If this bill passes, the bottom line for us would be that we'll have abide by our part of Montana's constitutional "bargain," we'll have to pay an extra tax to support our employers, we'll have to suffer the crippling effects of workplace injuries, and we'll be called the stumbling blocks on the road to Montana's economic development. Meanwhile, our employer will get to ignore his part of the bargain: He'll get reduced premium rates. He'll be able to ignore workplace safety. And, he'll still be perceived as the builder of Montana's economy.

One of our slogans at the Paperworkers is "Just say No;" we say no to drugs and we say no to regressive legislation.

We say no to this employee tax to subsidize our bosses.

We say put safety before production, not production before safety.

Montana's loggers have proved that safety works, through the safety program run by Flathead Valley Community College. It's clear that if the employer has the proper equipment and the proper incentive, safety programs work by cutting injuries and cutting Workers' Compensation costs.

TESTIMONY OF BOB CULP ON HOUSE BILL 56

PAGE TWO

June 27, 1989

Montana's workplace safety record is far worse than the national average, and we believe one of the reasons is the lack of teeth in our safety laws. We believe employers must be required to have a full commitment to a safe workplace.

We believe that employers who have high accident rates should pay for his own shortcomings, and that asking workers to pay for them is almost criminal.

Employees around the state are being asked for concessions and givebacks by their employers. This would be just another concession, just another piece out of our paycheck.

We urge you to join us and just say no to this bill. This is a bad deal for workers, for their families and for all Montanans, and we urge you to vote against it.

Thank you.

ASARCO Incorporated

EAST HELENA PLANT

EAST HELENA, MONTANA
59635

EXHIBIT 4
DATE 6/27/89
HB 56

TELEX 31-3120
TEL. 406-227-5311

M. A. SHARP
MANAGER
R. D. HEARST
SUPERINTENDENT
G. J. JONES
ACCOUNTING MANAGER

November 19, 1985

Mr. James P. Reardon, President
United Steelworkers of America
Local 72

Dear Jay:

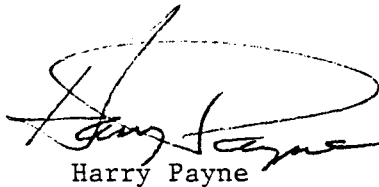
In accordance with the Safety and Health Article contained
in the National Agreement, please be advised of the following statistics
for the Third Quarter of 1985:

East Helena Incident Rate * 1.33

East Helena Severity Rate * 80.0

* Incident Rate - Number of disabling injuries/illnesses per 200,000
man hours.

* Severity Rate - Actual days lost per 200,000 man hours.


Harry Payne

Mr. John Finch, President
U.S.W.A. Local 72
East Helena, MT 59635

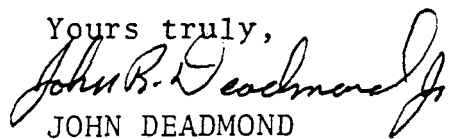
August 23, 1988

Dear John:

In accordance with Safety and Health of our agreement, following is a summary report of accident frequency and severity at our plant for the 1st half of 1988.

	<u>Hours Worked</u>	<u>Incident Rate</u>	<u>Severity Rate</u>
First Quarter	144,996	8.28	99.0
Second Quarter	138,762	7.20	174.7
YEAR TO DATE	283,758	7.75	137.0

Yours truly,


JOHN DEADMOND

JD/od

UNITED STEELWORKERS

BOX 490
EAST HELENA, MONTANA 59635
TELEPHONE 227-6261



OF
AMERICA

AFL-CIO

EXHIBIT 5
DATE 6/27/89
HB 56

STATEMENT BY JAY REARDON ON HOUSE BILL 56, SPECIAL SESSION OF THE 1989 LEGISLATURE, JUNE 27, 1989

Madam Chairman, members of the committee, my name is Jay Reardon and I'm president of Local 72 of the United Steelworkers of America. I'm here today representing the 225 workers at ASARCO's East Helena Plant and as President of the Helena Trades and Labor Council. Both organizations oppose House Bill 56 and any move toward an employee payroll tax to subsidize the Workers' Compensation system.

House Bill 56 is unfair. It goes against the basic principle of Workers' Compensation insurance, that being that the employer pays the premium on a no-fault insurance plan and the employee gives up any right to sue over workplace injuries.

This bill is another attempt to place the Workers' Compensation problems on the backs of workers and their families. Many people say that workers don't pay anything for the system, and that they should somehow help out. Let me tell you for a minute just exactly how workers do pay, every day.

We paid in the 1987 Legislature when injured workers were forced to take a seven-working-day deductible before getting benefits. We paid when they eliminated repetitive trauma as a compensable injury.

We paid with changes concerning industrial respiratory and coronary disease, changes that severely limit a worker's ability to recover benefits for these when they're work-related.

Workers paid with a freeze in maximum benefits while other costs around us continue to rise. Workers' families paid with reductions in death benefits if a worker was so unfortunate as to be killed on the job.

We also pay every day on the job, where we stand a 1 in 10 chance of getting hurt sometime during the year.

We pay every day with our arms and our legs, with our fingers and with our toes. We pay with the loss of eyesight and hearing. We pay with our lungs and our hearts. And some of our friends and family pay the ultimate price; they pay with their lives.

Ex. #5
6-27-89

How much did we pay? Last year, 28,613 workers paid with injuries, and another 25 paid with their lives. HB 56

So what's the solution? In the short-term, the state could either increase the payroll tax on all employers or bond off the deficit to remove it from the rate base.

In the long-term, we should do away with the three separate plans we have here in Montana and go with an exclusive state fund that encompasses all employers, not just the worst risks like we have in the State Fund now.

We should also encourage employers to police themselves and their fellow business people, many of whom don't obtain the required coverage or don't pay their premiums. These bad employers cost their colleagues and all of us money and, ultimately, injuries.

We should also insist on a safe and healthful workplace as the best way to reduce injuries and, as a result, keep costs under control.

Let me give you an example from our employer, the ASARCO facility in East Helena. The company is required to give us statistics on injuries and illnesses in the plant. Let me share with you some of the statistics ASARCO has provided.

In November 1985, the rate of incidence of disabling injury or illness per 200,000 man hours worked was 1.33. The severity rate was 80.0, which represents 80 actual lost days per 200,000 man hours. By the first half of 1988, the incidence rate had jumped seven-fold, to 7.75, and the severity rate had jumped to 137 lost days per 200,000 man hours.

With official company statistics like that, we can see very clearly why the cost of Workers' Compensation is going up: it's because injuries are going up and the severity of those injuries is going up.

In closing, let me make a little analogy. Making workers pay part of the cost of Workers' Compensation insurance is very much like asking your house guests to pay part of your homeowners' insurance to cover whatever might happen while they're visiting. That's an outrageous notion, and the idea incorporated into this bill is just as outrageous.

We urge you to vote against House Bill 56.

Yellowstone Valley Central Labor Council

LABOR TEMPLE

Twenty-Four South Twenty-Ninth Street

Billings, Montana 59101

EXHIBIT 6

DATE 6/27/89

HB 56

STATEMENT BY DARRELL HOLZER ON HOUSE BILL 56, SPECIAL SESSION OF THE 1989 LEGISLATURE, JUNE 27, 1989

Madam Chairman, members of the committee, my name is Darrell Holzer, and I'm a member and president of Plumbers and Pipefitters Union Local 30 in Billings. I'm here today as president of the 5,000-member Yellowstone Valley Central Labor Council, which is opposed to House Bill 56.

The Yellowstone Valley Central Labor Council met last night in Billings to consider this issue and this bill in particular. At that meeting, I was directed to travel here today and express the Council's unanimous opposition to House Bill 56 and to any payroll tax paid by employees.

At its inception, the Workers' Compensation in Montana represented a tradeoff that ultimately benefited the employer more than anyone else. Employers recognized the need to protect themselves against liability for workplace injuries, and acknowledged the need to create a workers' compensation system to do that. In that tradeoff, workers lost their right to sue their employers over workplace injuries, as long as employers carried Workers' Compensation insurance.

That tradeoff was detailed in our most fundamental legal document, the Montana Constitution. At the risk of belaboring the point, let me read, in part, from the Montana Constitution, Article II, Section 16:

"No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state."

If you require employees to begin paying for this system, a move taken only by one other state in this nation, you will break that Constitutional tradeoff, but only for one of the parties. Employers will get off the hook for having to provide a Workers' Compensation system. Employees, though, will still have no rights to take up workplace injuries in the courtroom.

Not only is that move unfair to workers, we're very concerned that if we let employers off the hook on paying for the system but still give them immunity from lawsuits, many of them will abandon any pretense at safety in the workplace.

If employers can be confident that their premium rates will be subsidized by someone else, then some of them may not care about their workplace injury rates and the higher rates charged as a result. They'll just pass it on to whoever is paying their subsidy.

VISITORS' REGISTER

COMMITTEE

BILL NO. HB 56 102

DATE

6/26/89

SPONSOR

Russell

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
James A. Hill	E. MSLA		✓
Robert L. Culp	Frenchtown		✓
Thomas E. Schneider	Helena MPEA		✓
Don Judge	MT STATE AFL-CIO		X
JAY REARDON	USWA LOCAL 72		X
Kathy Kirsch	Boulder		
Ben Hardahl	MT Motor Carriers Assn	X	
DARRELL HOLZER	YELLOWSTONE VALLEY LABOR		
Bill Olson	MT. Contractors	X	
GARY SCHWEDDES	Whitfish	✓	
BARD TURNER	"	✓	
STU McQuade	KALISPELL	✓	
Dorron Morris	MAC		
Len Bracker	I.H.O.E. #400		✓
Mike McGinn	Dept of Labor Ind.	X	
Don Allen	Ms. Wood Products Assn	X	
Tom Owens	Owens & Harst	X	
Bernie Swift	Rep. Dist. #64	X	
Paul King	Missoula		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

LABOR

COMMITTEE

BILL NO.

HB 56 292

DATE

6/26/89

SPONSOR

DRISCOLL

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<u>JAMES WOSNER</u>	<u>GREAT FALLS</u>		<u>-</u>
<u>Terry Minow</u>	<u>MT Ed of Teachers</u>		<u>✓</u>
<u>Phil Campbell</u>	<u>MEA</u>		<u>✓</u>
<u>Stuart M. Zander</u>	<u>Kalispell</u>	<u>✓</u>	
<u>Michael Sherwood</u>	<u>MTLA</u>		<u>✓</u>
<u>Charles Brooks</u>	<u>MT. R. N. / 17550C</u>	<u>✓</u>	
<u>Carol Daly</u>	<u>Kalispell</u>	<u>✓</u>	
<u>Greg Staley</u>	<u>Minoula</u>	<u>✓</u>	
<u>Cherette</u>	<u>MT. Self Transluc.</u>		
<u>Gini Twissel</u>	<u>MT Chamber</u>	<u>✓</u>	
<u>John P. Kelly</u>	<u>Superior</u>		<u>✓</u>

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VISITORS' REGISTER

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COMMITTEE

BILL NO.

HB 54

DATE

6/27/89

SPONSOR

Bardomire

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Thomas Schneider	MPEA		<input checked="" type="checkbox"/>
Septu Danna	Missoula		
James Sel			
R. C. O'Connell			
Tucker Hill	Champion		<input checked="" type="checkbox"/>
Charles Brooks	MT Retn. / 1755 DC		<input checked="" type="checkbox"/>
George Wood	Mt. Hill Immersion		<input checked="" type="checkbox"/>
Arden Morris	MAC		<input checked="" type="checkbox"/>
Jim Twilley	MT CHAMBER		<input checked="" type="checkbox"/>
Carol Daly	Kalispell		<input checked="" type="checkbox"/>
Leon Stalcup	Missoula		<input checked="" type="checkbox"/>
Auric Shaban	Boz Chamber		<input checked="" type="checkbox"/>
Don Allen	Mt. Woodland Park Arst		<input checked="" type="checkbox"/>
Jay Kessler	U S W A Local 72	<input checked="" type="checkbox"/>	
Ben Borden	Mt Motor Carriers		<input checked="" type="checkbox"/>

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.