

MINUTES

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

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on June 28, 1989, at 1:10 p.m.

ROLL CALL

Members Present: All with the following exception:

Members Excused: Rep. Simpkins

Members Absent: None

Staff Present: Eddy McClure, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 62

Presentation and Opening Statement by Sponsor:

Rep. Smith, District 5, stated that this is a bill to study the problems involved in Workers' Compensation which will be held over the interim and a report made to the 52nd Legislature.

Testifying Proponents and Who They Represent:

Mike Sherwood, Montana Trial Lawyers Assn., Missoula
Don Judge, AFL-CIO

Proponent Testimony:

Mr. Sherwood said his organization supports this study and had spoken with Rep. Smith about perhaps having members of the general public on the study but Rep. Smith said the bill would be sounder if it was limited to the Legislature and personnel. One of the most frustrating problems is actuarial projections which seem to be changing daily. Mr. Seacat, or someone in his office, had said in a hearing recently that they are not in a position to verify that the proposed additional taxes on employers and taxes on employees could affect Montanans' lifestyle but could seriously affect their attitude toward this body. He would propose instead that House Bill 62 be passed with an amendment. The amendment would include Section 39-71-2304 which is not referenced in this bill. This is the section that requires the division to set actuarially sound rates both in different classifications and the overall determination of rate classification and that an additional

subsection 7 be added to read "the division shall retain in effect the overall rates in existence on January 1, 1989, based on actuarial data and projections available on January 1, 1989 and shall separate the different classes so we can have data and projections available on January 1, 1989 to be sound and continue to do so until April 1, 1991". That puts in abeyance the reductions that have been received in the last week or so. Projections are not able to be verified. The actuary is on a vacation and the committee is being asked to react overnight to something that may or may not be valid. This allows some time to study the problem without having to react to unverified data not being balanced. The risk that that data is valid will delay beginning the action that has to be taken to get more funding in the coffers, but it also allows July 1 to come and go without a 22% increase and allows the interim study commission to come back and make the adjustments based on the data that is verified.

Mr. Judge spoke in favor of this legislation stating it is a good idea to study the issue since no one seems to know just how bad the system is. There are different points of view from one extreme to the other. They would recommend a couple of things in the study, that this special select committee be set up and be authorized and funded to contract with an individual actuary who is familiar with the Workers' Comp system but not with the Montana system in the past. That person should be instructed to review the approximately 4,000 outstanding cases or a significant portion thereof, to find approximately what the condition of that fund is, to try to establish payout dates on the liability fund, and to review the reserves that have been set aside to pay for that unfunded liability. He did not feel the \$15,000 set aside in the bill to do this, is sufficient, but did not know what an actuarial audit would cost. It is important because the public needs to know that the decision was based on data that everyone can agree on. He also suggested that the committee seriously consider the amendment proposed by Mr. Sherwood which would artificially withhold the raising of the rates until such time as you can collect that data.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Rice asked what the difference was between this commission and the Governor's commission that acted prior to the enactment of a similar senate bill. Rep. Smith responded there was very little, but they would probably be looking for different things. When they started on that senate bill they were told they were facing \$29 million, then about November of '84 it was

close to \$81 million, and by the time that session was over it was around \$129 million. They need the auditors' figures.

Rep. Kilpatrick asked if Rep. Driscoll liked the amendments. Rep. Driscoll said he liked the amendment but did not know if a study resolution had any effect on the law. Rep. Kilpatrick stated this is not a resolution. Rep. Driscoll agreed and stated it is actuarially unsound. If action can be delayed there will be a bigger problem down the road.

Rep. Russell asked Mr. Judge if he had any idea of the cost of an independent actuary do an assessment of the fund. Mr. Judge responded negatively and suggested that Workers' Comp might have the answer to that question. Rep. Russell asked if it was his intention to have that audit a part of this study group. Mr. Judge answered that his recommendation is that this commission be authorized to have the authority to contract for an independent actuarial audit and that new section 8 be encouraged to reflect the cost of that audit.

Closing by Sponsor: Rep. Smith saw no need for further comments. The amendments would be well covered anyway, except for the funding of the audit if they are going to do a full audit it would be expensive. From what he had been hearing the study is badly needed and urged concurrence of this bill.

DISPOSITION OF HOUSE BILL 62

Motion: Motion by Rep. Smith that HB 62 Do Pass.

Discussion: None.

Amendments, Discussion, and Votes: Motion by Rep. Smith to move two amendments.

Chairman Russell said she knew that Don Judge had made an amendment that allowed powers to the committee to contract for an independent actuarial audit of Workers' Comp. Mr. Judge said that was correct and also provide the money to do that.

Mr. Murphy from Workers' Comp. said money to do an independent actuarial audit, to do what Mr. Judge is suggesting, could give a couple things. He said their actuary received \$22,000 a year, and that covers the rate development end and the financial analysis for the year. The committee is probably looking at \$15,000 to do an independent actuary study, which would be his best ball park guess. When the Governor's Council was meeting, Peat Marwick Main was hired through the Legislative Auditor's office for the Advisory Council. They did a study on the same thing. He said to check with the Legislative Auditor and see what they ended up paying.

- Rep. Squires asked if there would be any benefit to having a person here where this body of people who are concerned about it can actually touch bases with them. San Francisco is not an isolated part of the world and neither is Montana, but she was concerned that answers are not available. (The actuary is on vacation and unavailable).
- Mr. Murphy said he did not know of an actuary firm in Montana that could do the actuarial studies of insurance. There are numbers of them that do pension problems; and several years ago they asked one of them and they did not want to touch it.
- Rep. Squires was concerned that an actuarial study had been done by a San Francisco firm and they could not get the answers required here and that only Plan 3 is to be in the study. She asked if it would be beneficial to look at Plan 2 which is a private carriers also, since she felt there is some definite abuse going on there also.
- Mr. Murphy answered that he too felt the study should be more comprehensive than just Plan 3. Other insurance companies writing Workers' Comp in Montana, which about 200 are authorized to do, with about 10 do most of the business in the state since 1979 or 1980, have had the exact same types of financial problems that the state fund has. You don't hear about that, he said, because the state fund is the state fund and the greatest number of people and is easy target. He felt the whole thing should be looked at and if it is strictly a state problem, then try to correct it, but if the problem is something else, then that input is needed too.
- Chairman Russell said it would be appropriate for the committee to make an amendment to study Plan 2 as well as Plan 3. They can take a look at what they call premium as well.
- Rep. Driscoll asked Rep. Whalen when the actuary does come to Montana, assigned the amount of money to be paid out, and tells what ought to be done, can he tell what happened? Mr. Murphy said he comes to Montana on some occasions. In January the information is sent to him. He works on it for a couple of months and then in a 2 to 5 day meeting they go over what he is recommending and suggesting. At the end of the fiscal year, when the books close through the state budget and accounting system sometime in August, more information is sent to him and then he returns generally in October.
- Rep. Driscoll asked if the actuary looks at individual claims to see if they are reserving properly for those claims? Mr. Murphy said there are people inside who look at the individual claims, and set reserves for the individual claims. The actuary looks at the total reserves he thinks the fund should have, and looks at a pay out analysis over

several years. He has samples of claims to look at, and looks at their analysis and gives instructions on they should look at different claims.

Ms. McClure asked if this committee was asking her to amend the appropriation up to \$25,000 or more. It was pointed out that this could be done on the floor.

Chairman Russell asked Ms. McClure to explain Rep. Smith's amendments.

Ms. McClure said the first amendment was from Mike Sherwood on putting the statute number in the bill. The second amendment was from Don Judge asking for the power of the committee to contract with an independent auditor for the Workers' Comp system, and the third amendment was from Rep. Squires asking for a study on Plans 1, 2 and 3 rather than just 3.

Motion: A motion was made to adopt the Sherwood amendments.

Ms. McClure read the amendment at the request of a committee member. She said it is an amendment to 39-71-2304, which is the determination of rates and classifications, and you would be adding a subsection 7, which says "notwithstanding the provisions of subsections 1 through 6, the Division shall retain in effect, the overall rates in existence on January 1, 1989, based on actuary data and projections available on January 1, 1989 and shall set rates for different data assuming that data and those projections to be sound, until April 1, 1991."

Rep. Thomas asked if this was also in the title of the bill.

There was some discussion on the amounts frozen, whether the title should be amended, etc.

Rep. Kilpatrick said he could see Mr. Murphy shaking his head and was wondering if he could comment. Mr. Murphy said you are freezing rates and also last July 1 coming forward, all rates stay the same regardless of accident experience, regardless of any other monies coming in, or whatever. He asked if that is what we are talking about. He was told yes, and said his reaction is that it is not a sound financial and prudent thing to do, in his opinion. You are avoiding the inevitable when those rates come off, and also on a cash analysis you are talking about drawing down about \$9 million in this next year. He said the following year if this goes through, he was not sure, but would be concerned about that move.

Rep. Squires asked if there is any language in the bill to coordinate this with the study. Rep. Kilpatrick said he didn't know and asked Mr. Sherwood. Mr. Sherwood asked if the intention of this question is that while this is frozen

the study should be going on. Rep. Driscoll said he had a date of April 1991, figuring if the study has a conclusion before that, that a special session could be held or Legislation could be passed in the general session prior to this and the law could then be modified. In the first hearing they said \$157 million and that was the bottom line, and his intention was to get a better handle on that data and make it available then in a special session or the general session and to then come in and do what has to be done.

Chairman Russell said we are talking about Workers' Comp, and she would agree with the legal researcher that it is broad enough. Rep. Thomas said he would agree, except that this is a study.

Rep. O'Keefe said they just had this same discussion in Taxation Committee on the same question. An individual member in the chamber made the request that the bill go to the rules committee for an interpretation.

Rep. Thomas said he would not do that unless this amendment passes. Rep. O'Keefe asked if Rep. Squires would move the amendment.

Rep. O'Keefe asked if Rep. Squires was freezing the rates? Rep. Squires said yes, until there is some actuarial compatibility with the Legislative Auditor and the study group. If they don't come up with something, then it is frozen until the legislature takes action on the audit. She felt that would be one of the first things the study group would do - find out where we are. She was concerned about this \$150 million and then found out that it is \$219 million. She was having a real problem with it and they can't get the numbers without the actuary.

Mr. Micone said he could see a real problem with the committee's actions. It appeared to him that this committee is attempting to act with their heart instead of their head. The conflict between the Legislative Auditor and the figures from the Division had nothing to do with rates. The Legislative Auditor doesn't even deal with rates. He had told someone yesterday he would have no objection to a piece of legislation that would have an independent audit of the Workers' Compensation, but no way would he agree to the fact that we should freeze rates where they are because all that the committee was doing, was to postpone what will happen in the future. That is the law they operate under as mandated by this Legislature. He did not know how they can live by that law and yet have this committee sit here and talk about freezing rates. This same committee did not accept Rep. Driscoll's bill yesterday and it was something that would help that fund. It must be realized that the costs are increasing, and if you want the study of the W. C. program which includes the study of the rate structure as well as

the unfunded liability and the whole operation, they would fully cooperate in that, but would certainly ask that you do not take any action to freeze rates based on 1988 figures.

Rep. Whalen asked Mr. Micone if the unfunded liability, as he understands it, is future liabilities on claims that have been incurred in the past, so they are talking about premium in plan 3, you are talking about insuring employers for accidents that are going to happen under the 1987 law. He memory was that earlier they were told that there would be a decrease in claims. If they take care of the unfunded liability of the past it would seem that you can get actuarially sound down the line. Mr. Micone said a portion of the monies that were included in the rate increase, about 7%, was caused by the unfunded liability.

Recommendation: The Sherwood amendment was voted on and FAILED with 5 members voting in favor of the amendment, 11 members voting against.

Motion: Motion by Rep. Whalen to Do Pass the Judge amendment which would study plan #3.

Recommendation: The motion PASSED by a unanimous vote of those present.

Motion: Rep. Squires moved to include Plans 1 and 2 in the study.

Motion: Rep. Smith moved HB 62 Do Pass As Amended.

Recommendation and Vote: The motion CARRIED by a unanimous vote.

HEARING ON HOUSE BILL 63

Presentation and Opening Statement by Sponsor:

Rep. Whalen, District 93, stated this is another proposal to try to address the problem the Workers' Compensation Division claims it is having with regard to Plan 3 of the Workers Compensation system. Testimony on several other bills have just been heard on the extent of the problem. Whether or not the fund is as suggested is beside the point, because the division has decided they are going to raise rates on claims acquired after the next few days. It is incumbent upon this body to do something to prevent them from carrying out the raise, and the alternatives try to prevent the increase by providing money to subsidize the rates with an increase in payroll tax from 3/10 of 1% to 4.5/10 of 1%, the payroll tax on employees, the soda pop tax, a portion of Rep. Driscoll's bill to freeze benefits both to medical providers and to injured workers. He offered an alternative that would not include any of those solutions. HB 63 addresses 2 problems. One is an

unfairness that presently exists in the tax code in relation to the taxation of insurance companies and the second is the Workers' Compensation problem they face. Essentially, this bill requires the insurance companies doing business in Montana to pay the corporate income tax that all other corporations doing business in this state have to pay. Presently, there is a premium tax assessed on gross revenue of insurance at 2-3/4%. HB 63 requires that insurance companies file an income tax return reflecting what their Montana income is, and then if applying the corporate income tax rate of 6 3/4% to that income shows there would be a tax liability in excess of the current amount being paid under the premium tax, they would pay the additional tax so the tax would be the same as other corporations doing business in the state pay. If their calculations reflected that the income tax would be lower than the premium tax they pay they would only be required to pay the premium tax. The bill takes any excess revenue raised as a result of paying the income tax over and above the premium tax and allocates it to a fund to be used for three purposes in the following order: 1) The money be applied to prevent the rate increase from going into effect on July 1, 1989, to the extent collections are there in order to satisfy that; 2) To roll back rates to the extent of 20% on Plan 3 employers and 3) If the money is available after collections and accomplishing those two tasks, the money will be used to reduce the unfunded liability.

Rep. Whalen distributed a rough fiscal note to try to get some idea of what the tax might raise, based upon general analysis of the situation in Montana. He is satisfied that, while the insurance commissioner's had more accurate figures, in 1987 Montanans paid approximately \$1 billion to out of state insurance companies for insurance. He is presuming that level on premiums will remain about the same. There is no way he can come up with the figures at the present time because insurance companies do not have to report what they pay in claims, etc. They have their own internal operating formulas to determine profitability and the Insurance Commissioner's office has that information, but it is not available to the public. HB 63 allows the commissioner to use those formulas in determining the income of the insurance companies. He is estimating the collections over and above the present premium tax that you see on the fiscal note would be approximately \$21 million per year. (Fiscal note is attached as EXHIBIT 1)

Testifying Proponents and Who They Represent:

Don Judge, AFL-CIO

Proponent Testimony:

Mr. Judge said currently Montanans are paying slightly above average insurance rates excluding the expected rate

increases. They are in support of the bill, and feel this is a way to find out what the problems are and how bad they are with the understanding of the possibility of artificially holding down the rates until such time as the extent of the problem is known. In the event there is a need to subsidize the system, this bill is a better approach than was ever made in regard to tax reform in Montana. Montana is fighting a tough battle with other states since they choose to subsidize Workers Comp in those states, and the entire burden is on the employer in Montana.

Testifying Opponents and Who They Represent:

Tom Hopgood, Health Insurance Association of America
Patrick Driscoll, American Council of Life Insurance
Bonnie Tippy, Alliance of American Insurers
Jacqueline Terrill, American Insurance Association
Gene Phillips, National Association of Independent Insurers
James Borchardt, Insurance Examination Bureau, State Auditor's Office
Larry Akey, Montana Association of Life Underwriters and The Independent Insurance Agents of Montana
Ben Havdahl, Montana Motor Carriers Association

Opponent Testimony:

Mr. Hopgood stated the Health Insurance Association is composed of the vast majority of health insurance companies that write health insurance sold nationwide and in Montana. Specifically, it does not include Blue Cross and Blue Shield because they are non-profit health service corporations. The cost is premium payments but there are a we see a lot of factors that affect the price of insurance. Mandatory coverage and rising medical costs makes your insurance go up. There would not be much increase in insurance offices in Montana until there is a better atmosphere in the state. A bill like this will increase the price of insurance. It will not be the insurance companies that pay the bill, the people will pay for it in their premium. If this bill passes and the insurance companies pay the corporate tax and lose their premium tax they would also lose the offset they receive for bailing out a company that fails. If this happened it could develop into a lawsuit as a breach of contract with the State. He felt this bill contained an unconstitutional delegation of power to the insurance companies to either allow the deductions of the corporation license tax provided by statute or to choose to allow such deductions as allowed by the National Association of Insurance Commissioners.

Mr. Driscoll expressed opposition to HB 63 and HB 76 in the regular session. The effective repeal of the premium tax offset, as was attempted in HB 76 is unconstitutional and would probably lead to litigation. It undermines a

mechanism in place in the state to prevent losses to 11,000 insurers such as happened with Life of Montana.

Ms. Tippy stated she had never seen the Alliance of American Insurers this excited in all the years she has lobbied for them. Their actuary did some quick figuring on what kind of revenue this bill could possibly bring to Montana and they cannot make a profit in Montana. Even Nader and Hunter do not accuse the insurance companies of making 40% profit anywhere in America. This bill creates a huge administrative burden to the insurance companies which will be passed on to the insured and increase the burden of the Insurance Commissioner.

Ms. Terrill shared with the committee some problems she could foresee that the committee should be aware of. First, she clarified the nature of the premium tax and explained that this sort of tax will put a more onerous burden on the insurance industry which is already bearing the burden of the premium tax. The premium tax is not a tax based on profit but it is directly related to the premiums of the insurance sold and must be paid whether or not the insurance company makes a profit. Montana already is paying a premium tax rate higher than almost other states in the United States and a premium tax is imposed in lieu of other taxes. The insurance companies are paying taxes in Montana, the premium tax was imposed in lieu of other taxes to insure that they would be carrying their fair share of the tax burden. In addition to the premium tax, they pay numerous other fees and licensing fees for the privilege of operating in Montana. Montana is not in a good economic position, trying to attract business and there are no domestic insurers in Montana. She felt this bill had a number of bases for legal challenge, and a legal challenge is predictable and will not solve the problem this bill is trying to address.

Mr. Phillips stated that at best, this bill is a band aid approach to a problem we all recognize exists is not the proper place to solve the problems of the Workers' Compensation fund, the unfunded liability and the other problems confronting Workers' Compensation. This requires a more reasonable approach to solve the problems and cannot be done by imposing additional premiums on people who are insuring automobiles, homes, and things of that nature.

Mr. Borchardt said their office has several concerns with this bill. First, it is unclear without an extensive study just how much revenue, if any, this bill would generate. It could generate a lot or it could generate none at all. It would take more than two examiners more than two days to determine what the bill will do. Section 1, part 4, A, B and C points out three purposes. There is some question in the State Auditor's office on the purposes A and B either currently capping Workers' Comp rates or reducing the state

Workers' fund rates and whether this would be desirable. That would mean that any private insurer that wants to compete would either be taking a roughly 20% loss or not compete for Workers' Comp business in Montana and simply withdraw. Then the State fund becomes the only insurer in the state. The third problem is a technical matter in section 3, part 4. It indicates the net income would be determined based on deductions allowable under the current corporate polling, or deductions allowed by the standard for determining that income adopted by the NAIC. He said that the National Association of Insurance Commissioners have adopted no standards for determining net income on a state basis. There are no such standards except on a nationwide basis, so again special standards for deductions would have to first be determined by the department, but cannot be determined by the NAIC.

Mr. Akey stated other opponents have spoken about potential problems with repeal of the premium tax offset, and he would recommend to the committee read the letter from the Guaranty Assn. on legal issues involved there. Other opponents have spoken about a constitutional delegation, and he wanted to speak only from the perspective of what this bill does to the consumers of insurance in Montana. Several legislators ask why they oppose bills that would raise premiums, and asked if that didn't increase the commissions on the policies you sell. If it is looked at from the selfish viewpoint of the agents, it would be in their economic best interests to have this legislature pass various legislation that would raise insurance rates, but there is a growing confidence in the insurance industry in this state that if this is not resolved on the behalf of the insurance industry, an initiative similar to the propositions recently passed in California and propositions brewing in other parts of the country will be proposed in Montana. They believe that is good, and that this bill is not good for the insurance industry but not good for the insurance consumer either. It is not the companies that pay taxes on the insurance revenues, it is the consumers that pay the taxes. He suggested this attempt to hold down Workers' Comp taxes makes very little sense to raise insurance rates.

Mr. Havdahl said his organization is concerned with the high cost of Workers' Comp since it is one of the highest costs the industry has to bear. The second highest cost is the cost of liability insurance and equipment insurance and the high cost of cargo insurance. This is a catch 22 and it will not solve the problem. There is no net reduction in the cost of Workers' Comp insurance.

Questions From Committee Members:

Rep. Driscoll asked if insurance companies were going to sue if it is passed. There are 1300 insurance companies and they all hire lawyers. He suggested if they all had lawyers the

fees for the lawyers might be collected and pay off the funding for this bill.

Closing by Sponsor: Rep. Whalen stated he would be surprised if the insurance industry came in and supported this bill. He would like to say the person who has the most credibility in his mind of those who testified, is Jim Borchardt from the Insurance Commission's office, and addressed some of this concerns. Rep. Whalen conceded that it is true he did not know if it would raise any money, but there was some conflicting testimony from the insurance industry that it would require a 40% net profit before receiving revenue on this bill. Then it was heard that they didn't want to pay a tax increase which was unfair. This suggested to him that they are probably making enough profit that there would be an income from this bill.

Rep. Whalen said he felt as a committee they had decided that subsidizing rates is exactly what is intended. It is a policy decision that all these bills are capping and he saw nothing wrong with doing so with a plan 3 insurance company. The only risk is the worst risks that are out there. Whether that results in switching from plan 2 to plan 3, he did not know, but something has to be done.

Rep. Whalen continued by saying that the situation in section 3, part 4 apply to net income, but you also need to look at the bill to see that the Department of Revenue has the authority in conjunction with the insurance commissioner to take that national income and figure out which portion of it is Montana income. The Department of Revenue does that every day in determining the tax liability of out of state corporations doing business in Montana and operating in several states as well as Montana. He could not see where this is a problem that cannot be dealt with under rule making authority. Since this is not in the bill rule making authority should be amended into the bill.

Rep. Whalen addressed some of the issues raised by the insurance companies. He had learned a long time ago that the problems found in legislation is only limited by their collective imagination. At one time the DOR decided what out of state corporations were going to pay into the unitary tax, and it was done under rules. The Legislature two years ago chose to overrule those rules but it is not an unconstitutional delegation of authority for the administrative department to figure out what someone's tax liability. Whether or not a rate can be increased to pass on a cost depends on the nature of the economic market the industry is operating in. The insurance industry is exempt by federal law from the anti-trust laws in this country and can collude and set prices at monopoly levels and divide up markets, if they so choose, and whether or not they do this he did not know, but he suggested to the committee they are charging the maximum allowance they can charge now, and he did not think there

will be any rate increases if this legislation is passed. He felt the effect would be, with the state of Montana having an industry doing business in the state, that we might get a little back.

Rep. Whalen stated it was also suggested by the insurance companies that there would be an onerous burden in paper work for the insurance companies and on the insurance commissioners from this legislation. He could not speak for the insurance commissioner, but he could tell the committee that this information is kept by the insurance agency internally. He had been told by a person who works for an insurance company that in order to come up with the information needed in the insurance reporting bill, would simply require about 15 minutes of computer work to call up the information requested. He suggested to the committee that is all that would be required by the insurance industry under this bill. In response to Mr. Akey, Life Underwriters, in regard to the premium tax versus the income tax, he said the insurance companies won't tell us how much money they make. They are afraid to do so, and he was satisfied that the public policy reason that they like the premium tax as applied to the gross revenue is because if they had to pay an income tax they would have to report how much money they are making, and they don't want to do that.

DISPOSITION OF HOUSE BILL 63

Motion: Motion by Rep. Whalen that HB 63 Do Pass.

Discussion: None

Amendments, Discussion, and Votes: Motion by Rep. Whalen that the researcher draft an amendment for rule making authority so that both the Insurance office and the Department of Revenue have the authority to implement the bill.

Recommendation: The amendment PASSED by unanimous vote.

Motion: Rep. Whalen moved HB 63, as amended, Do Pass.

Discussion: Rep. Thomas asked if this needed to be delegated to the Department of Revenue or the Insurance Commissioner on the tax codes, which one would be better?

Rep. Whalen said both are appropriate in the matter of which is on line for consideration, what formula is appropriate for that line, and the D O R has to determine the tools on how this will be determined on a state basis.

Rep. Thomas asked if perhaps this should be delegated authority to one of them since most of the money will go to alleviate the Workers' Comp situation. He thought perhaps to delegate some of the authority to the Commissioner of Labor.

Rep. Whalen did not see what the purpose of doing that would be

since they are on line for most of the proceeds.

Rep. Thomas asked Ms. McClure about delegating authority, and was told it is their contention they have a delegation of authority problem in giving it to the insurance commissioner. There are no standards. It is something the D O R normally deals with. She felt an additional delegation could add problems.

Rep. Whalen asked Ms. McClure if standards would come from the rules added through the amendment. Ms. McClure said there is no guide lines as to what those standards would cover, what a choice would be determined by, etc.

Rep. Whalen asked about the standards of NAIC as well as the existing standards setting a guide line. Ms. McClure said normally when you set guidelines on rule making, the Legislature says "this is what those standards will cover" and now you are saying to an outside body--you set the standards. The fact that the insurance commissioner has the choice to do that every time, she could do so. She could choose not to implement those standards, if there are some standards out there to choose from, but she could also take the other direction and choose those standards every time and they are not standards this Legislature has even approved. There was some discussion on the D O R setting rule making authority before, and they were subsequently challenged and changed to statute by the Legislature.

Rep. Smith asked about insurance rates and Rep. Whalen said he felt the industry charges the greatest rate they think the market will bear. Any amount over and above their costs they put in their pockets. Some lines of insurance companies tend to be more competitive than others because there are more carriers underwriting property and casualty, for example. He gave an example of an insurance company that charged insurers in this state for one year \$1.8 million in premiums for risks they were underwriting and at the same time they reported to the insurance commissioner that they estimated claims to be paid as a result of that raised premium rate they charged was 25% for claims they were reserving.

Recommendation and Vote: The motion that HB 63 Do Pass As Amended PASSED. Roll call vote was taken with 9 members voting yes, 7 members voting no.

EXECUTIVE ACTION

DISPOSITION OF HOUSE BILL 60

Motion: Rep. Pavlovich moved HB 60 be tabled.

Discussion: Rep. Pavlovich said this had been put into a bill in

taxation and cannot be used twice, so he would recommend the bill be tabled.

Recommendation and Vote: The motion to TABLE CARRIED with Rep. Kilpatrick opposing.

RECONSIDERATION OF HOUSE BILL 56

Motion: Rep. Pavlovich moved to reconsider House Bill 56.

Recommendation and Vote: The motion CARRIED. (Hand vote) 9 members voting aye, 7 voting no.

DISPOSITION OF HOUSE BILL 56

Motion: Rep. Pavlovich moved HB 56 Do Pass As Amended.
(Amendments were put in at a prior meeting)

Discussion: Rep. Rice said he had voted against this bill yesterday and will vote against it today as it still stands because he would not vote to put a tax on the workers of this state just because the state can't run an insurance company. He would offer an amendment to take \$20 million of the general fund as an appropriation in this bill to cover the deficit so rates are not increased as of July 1. Even though there is a general fund balance of more than expected, he had not ran into many who thought the money would be there for the \$20 million. His rationale for offering the amendment is that workers' compensation does not have any other source of revenue, other than premiums to cover this particular problem. Some say that is needed for education, but the educational sources do have other sources of revenue.

Rep. Lee asked if at the same time he was removing the 3/10 if a percent? Rep. Rice said he would remove the 3/10 of a percent and put in \$20 million.

Rep. Thomas said we are leaving the .045 in then? Rep. Pavlovich suggested we take it all out. It was pointed out that the .045 has been in effect since '87 and it is supposed to sunset in '91.

Motion: Rep. Rice moved to delete the 0.3 on employees, leaving the status of the law as it is now for employers, and we are plugging in an appropriation for \$20 million.

Rep. O'Keefe said he would oppose the amendment and said he could see this motion passing and the bill passing here and the attempt made on the floor to take the appropriation out of the bill, and reinserting the 3/10 of a percent employee tax. He wondered if anyone on this committee is planning on doing that with this motion.

Rep. Smith explained what was happening, and said what this would

amount to is starting out with a new bill with \$20 million out of the general fund for Workers' Comp.

Rep. Lee asked how important the rate freeze is over the long haul? Rep. Smith answered the freeze was holding the employee tax at \$12 million and the employers tax was \$6 million or \$6.5 million and they need \$20 million. The 22% rate increase will raise \$19 million over the biennium.

Rep. Squires asked if it would be the endeavor of both sides to solve the problem.

Rep. O'Keefe asked Rep. Smith if he understood that Rep. Rice's motion to withdraw the freeze. Rep. Smith said yes.

Rep. Kilpatrick remarked that they are going to have trouble getting the \$20 million. He asked if it would be better just to come out and say they want \$20 million to replace this.

Discussion was held on the various bills that were presented and proposed solutions in them.

Chairman Russell asked Ms. McClure to clarify the amendment. Ms. McClure said basically we were gutting the bill. They are going back to 3/10 of 1% on the employer, like there was no action yesterday; taking off the 3/10% on the employee, taking off the freeze and the benefits, and putting in \$20 million from the general fund.

Recommendation: Vote was taken on the Rice amendment. The motion PASSED. Rep. O'Keefe abstained from voting.

Motion: Rep. Smith moved HB 56, Do Pass As Amended.

Recommendation and Vote: Vote was taken. The motion CARRIED with Rep. O'Keefe voting no.

RECONSIDERATION OF HOUSE BILL 57

Motion: Rep. Compton moved HB 57 be taken off the table.

Recommendation: The motion CARRIED with 11 members voting yes and 3 members voting no.

DISPOSITION OF HOUSE BILL 57

Motion: Rep. Pavlovich moved HB 57 Do Pass As Amended.

Discussion: Rep. Pavlovich said he would like to change the bill from 5 cents to 3 cents. The 3 cents would bring in approximately \$11 a year which is \$22 million over the biennium.

HOUSE COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

June 28, 1989

Page 17 of 17

Amendments, Discussion, and Votes: Motion was made by Representative Pavlovich to amend House Bill 57 from 5 cents to 3 cents.

Rep. Pavlovich said the information Ms. McClure needs to prepare the amendment is contained in HB 26.

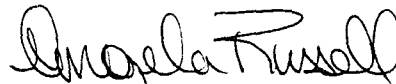
Recommendation: The motion PASSED with 2 members voting no.

Motion: Rep. Pavlovich moved that HB 57 Do Pass As Amended.

Recommendation and Vote: The motion that HB 57 Do Pass As Amended Carried with 2 members voting no.

ADJOURNMENT

Adjournment At:



REP. ANGELA RUSSELL, Chairman

AR/td

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DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS

COMMITTEE

DATE 6-28-89

[illegible]

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STANDING COMMITTEE REPORT

"An Act Establishing a Joint Select Committee
on Workers' Compensation"

June 28, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that HOUSE
BILL 62 (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Page 4, line 10.

Following: "under"

Strike: "plan No."

Insert: "plans No. 1, 2 and"

2. Page 4, lines 17 and 18.

Following: "governing" on line 17

Strike: remainder of line 17 through "fund" on line 18

Insert: "workers' compensation"

3. Page 4, line 24.

Strike: "under the state fund"

4. Page 5, line 25.

Strike: "and"

5. Page 6, line 3.

Strike: "."

Insert: "; and

(6) contract for an independent actuarial audit of the
workers' compensation system."

STANDING COMMITTEE REPORT

"An Act Imposing the Corporate License Tax
on Insurance Companies and Appropriating the Tax Money
for Workers' Compensation Plan Expenses"

June 28, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that HOUSE
BILL 63 (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Title, line 7.

Following: line 6

Insert: "AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES
TO IMPLEMENT THIS ACT,"

2. Title, line 7.

Following: "15-31-113,"

Insert: "33-1-313,"

3. Page 7, line 25.

Following: line 24

Insert: "Section 4. Section 33-1-313, MCA, is amended to read:
"33-1-313. Rules -- notice, hearing, and penalty. (1) The
commissioner may make reasonable rules necessary for or as
an aid to effectuation of any provision of this code and 15-
31-113(4). No such rule shall extend, modify, or conflict
with any law of this state or the reasonable implications
thereof. Any such rule affecting persons or matters other
than the personnel or the internal affairs of the
commissioner's office shall be made or amended only after a
hearing thereon of which notice was given as required by 33-
1-703. If reasonably possible the commissioner shall set
forth the proposed rule or amendment in or with the notice
of hearing. No such rule or amendment as to which a hearing
is required shall be effective until it has been on file as
a public record in the commissioner's office for at least 10
days.

(2) In addition to any other penalty provided, willful
violation of any such rule shall subject the violator to
such administrative penalties as may be applicable under

June 28, 1989

Page 2 of 2

this code as for violation of the provision as to which such
rule relates.""

Renumber: subsequent sections



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

June 28, 1989

Honorable John Vincent
Speaker of the House
House of Representatives
State Capitol
Helena, Montana 59620

Dear Speaker Vincent:

The House Labor and Employment Relations Committee TABLED HB 60
on this date.

Sincerely,

Rep. Angela Russell
Chair

Juri
6/29/89 8:15 AM

STANDING COMMITTEE REPORT

"An Act to Revise the Workers' Compensation Act
to Continue the Freeze on Maximum Weekly Benefits"

June 28, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that HOUSE
BILL 56 (first reading copy -- white) do pass as amended .

Signed: *Angela Russell*

Angela Russell, Chairman

And, that such amendments read:

1. Title, lines 4 through 10

Following: "TO" on line 4

Strike: remainder of line 4 through "TAX," on line 10

Insert: "APPROPRIATE \$20 MILLION FROM THE GENERAL FUND"

2. Title, lines 12 and 13.

Following: "AMENDING" on line 12

Strike: remainder of line 12 through "THROUGH" on line 13

Insert: "SECTION"

3. Title, lines 14 and 15.

Following: first "DATE"

Strike: remainder of line 14 through "DATE" on line 15

4. Page 1, line 18 through page 16, line 7.

Strike: sections 1 through 9 in their entirety

Renumber: subsequent sections

5. Page 16, lines 10 through 12.

Following: "compensation" on line 10

Strike: "payroll and wage"

Following: "account." on line 11

Insert: "(1)"

Following: "compensation" on line 11

Strike: "payroll and wage" on line 12

6. Page 16, line 13.

Following: "fund."

Insert: "(2)"

Strike: first "and"

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8-15-89
1994

June 29, 1989
Page 2 of 2

Insert: ", "

7. Page 16, line 14.

Following: "tax"

Insert: ", and revenue appropriated to the account under [section 2]"

8. Page 16, line 19.

Following: line 18

Insert: "NEW SECTION. Section 2. Appropriation. There is appropriated \$20 million from the general fund to the workers' compensation tax account in the state special revenue fund for fiscal year 1990 to be used to reduce the unfunded liability in the state compensation mutual insurance fund."

Renumber: subsequent sections

9. Page 16, lines 19 through 21.

Strike: section 11 in its entirety

10. Page 17, lines 3 through 6.

Strike: section 13 in its entirety

Renumber: subsequent section

11. Page 17, lines 7 thorough 9.

Strike: ", " on line 7 through "are" on line 9

Insert: "is"

12. Page 17, line 10.

Strike: "of" through "act]"

13. Page 17, lines 11 and 12.

Strike: section 15 in its entirety

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STANDING COMMITTEE REPORT

"An Act to Impose a Tax on Soft Drinks to Reduce
the Unfunded Liability in the Workers' Compensation State Fund"

June 28, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that HOUSE
BILL 57 -- (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Page 3, line 8.

Following: "(1)"

Strike: "0.417"

Insert: "0.25"

2. Page 3, line 10.

Following: "(2)"

Strike: "\$3.20"

Insert: "\$1.92"

SPONSOR'S FISCAL NOTE

Form BD-15S

There is hereby submitted a Sponsor's Fiscal Note for: HB 603, Version: 1ST READING

Assumptions A. 1 Billion Dollars Premium Revenue paid by Montanans

each year

1

B. Claims & Reserve amt. for claims charged against the above premium revenue each year — 340 Million Dollars

C. Operating Expenses charged against the above premium Revenue each year — 60 Million Dollars

D. Claims paid out of above Revenue are paid out in approximately equal amounts over an average of 10 years. (results in an average of 850 Million held per year for claims payments)

E. Insurance Companies will earn an average of 15% per year on monies held pending payout on claims.

F. Premium tax collections → 28 Million Dollars per year

G. Corporate Income tax collections → ⁴⁹ 28 Million per year

Tax Collections for w.c. Reductions

Current	FY 90	FY 91
\$0	\$21 Million	\$21 Million

Revised
DATE June 28, 1989
HB 603

PRIMARY SPONSOR Timothy J. W. Walker DATE 6-28-89

Fiscal Note for: HB 603 Version: _____

HB 56

6-28-79

1

AMENDMENTS H.B. 56
SPECIAL SESSION 6/89
INTRODUCED BILL (WHITE COPY)

1. Page 12, line 13 through line 14.
Following: "2-15-1701"
Strike: "revenue provided for in 2-15-1301."
Insert: "labor and industry provided for in 2-
15-1701."
-

VISITORS' REGISTER

Labor

COMMITTEE

BILL NO. HB 62

DATE

6/28/89SPONSOR Owens

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<u>Ben Hadden</u>	<u>MT Motor Carrier Assn</u>	<u>X</u>	
<u>Don Allen</u>	<u>MT. West End Assn</u>	<u>X</u>	
<u>Don Judge</u>	<u>MT STATE AFL-CIO</u>	<u>X Amend</u>	
<u>Steve Browning</u>	<u>State Farm Insurance</u>		<u>X</u>

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Labor

BILL NO. HB 63

DATE 6/28/89

SPONSOR H. Haler

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 6/28/89 BILL NO. 63 NUMBER

DPA

NAME	AYE	NAY
REPRESENTATIVE COCCHIARELLA	X	
REPRESENTATIVE COMPTON		X
REPRESENTATIVE DRISCOLL	X	
REPRESENTATIVE GLASER		X
REPRESENTATIVE KILPATRICK	X	
REPRESENTATIVE LEE		X
REPRESENTATIVE O'KEEFE	X	
REPRESENTATIVE PAVLOVICH	X	
REPRESENTATIVE RICE		X
REPRESENTATIVE SIMPKINS		X
REPRESENTATIVE SMITH		X
REPRESENTATIVE SQUIRES	X	
REPRESENTATIVE THOMAS		X
REPRESENTATIVE WHALEN	X	
REPRESENTATIVE McCORMICK, Vice-chair	X	
REPRESENTATIVE RUSSELL, Chair	X	

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Tami Dore
SECRETARY

CHAIRMAN

MOTION: H.B. 63 As Amended - passed