

MINUTES

MONTANA SENATE
51st LEGISLATURE - SPECIAL SESSION
COMMITTEE ON LABOR AND EMPLOYMENT

Call to Order: By Chairman Gary C. Aklestad, on July 1, 1989,
at 10:10 a.m., Room 108, Capitol

ROLL CALL

Members Present: Senator Tom Keating, Senator Sam Hofman,
Senator J. D. Lynch, Senator Gerry Devlin,
Senator Bob Pipinich, Senator Dennis
Nathe, Senator Richard Manning, Senator
Chet Blaylock, Senator Gary Aklestad

Members Excused: None

Members Absent: None

Staff Present: Tom Gomez

HEARING ON SB 29

Chairman Aklestad reported that SB29 pertains to a minimum on workers comp premium tax. He indicated that, in respect to Senator Williams, depending on what transpires in the Legislature itself, he does not know how far this would go, that, if it would get out of committee, he is not sure where it would end up, noting that he thinks Senator Williams has an interest in this and wants to, at least, demonstrate some inequities which may be in the department.

Presentation and Opening Statement by Sponsor:

Senator Bob Williams indicated that he appreciates the committee taking the time to hear this bill. He noted that, on the surface, some people may say it does not warrant a hearing, but that he put the bill in for several different reasons. He indicated that he did not give it any thought last week, and had no idea of putting this bill in, but that he got to thinking about where they stand with workers comp, today, and he is not sure where they are going to come up with the 22% to fund the raise they have to have to keep the system afloat. He stated that he would hate to think they are going to operate a system within the State of Montana, an insurance program, and try to put a tax on pop, or do anything to bail the program out. He added that it seems as though they lay the blame on the high-risk people, that, every time he is

involved in a discussion on workers comp, it's those damn loggers, or whoever, noting that now it is the jockeys.

He indicated that he got to thinking about it pretty seriously and did some checking, that the first thing he wanted to do was see what the administration of the program is costing the State of Montana. He reported that he went to the LFA and came up with the information distributed to the committee members, a copy of which is attached as Exhibit 1. He pointed out that, in 1988, the premiums collected were \$85.8 million, and the administration of that was \$8 million, which results in a pretty husky percentage for the cost of administration. He indicated that bothered him, to start with, that he checked further, noting he appreciated the information he was able to get from some of the self-insured people and the private insurers, and he found that somewhere between 8% and 12% is a realistic figure for administration of a program. He stated that, having worked with workers comp for quite a while, he does know that some of the rates are, in his mind, exceedingly low, adding that he does not know what the lowest rate in the state fund is, but he does know that tens of thousands of employees are paying less than fifty-cents on a \$100 payroll, and tens of thousands of people are paying less than thirty cents on a \$100 payroll.

Senator Williams indicated that he is not here to discuss the risk factor within the workers comp program, because they could sit here all day long and discuss the risks, but that there is a differential, noting there are higher rates than the jockeys, that the steel workers, steeplejacks, and so forth, are higher yet. He stated that, if they take the jockey rate of \$60 per \$100 of payroll, and a low rate of thirty cents, or less, per \$100 of payroll, they will come up with a differential of well over 200 times difference, noting that is not 200%, it is 200 times more that the jockey pays than the one who is operating for thirty cents, or less, on the \$100. He indicated they have to keep in mind the fact that the jockey has no more or less protection or benefits at the \$60 per \$100 payroll than the person who is getting this for twenty-eight cents or thirty cents per \$100. He stated that he feels strongly that there is an imbalance there, adding that it bothers him that they lay all the blame on the high-risk people, and are insuring tens of thousands of people for what has to be well under the cost of the administration of this program. He indicated it is all in the numbers, that, if they multiply things by tens of thousands, it does not take too many pennies to add up to quite a few dollars.

Senator Williams stated that the purpose of this bill is to focus the emphasis on what he feels is an inequity in the premium paid, that he thinks a minimum premium should be charged to the customer, whether it is 3%, 4%, 5%, more or

less, and he thinks it deserves a lot of looking into to see what they can come up with which would be more equitable.

He then indicated that another thing they should bear in mind is that, regardless of what is being paid for workers compensation, the fact that the workers comp program is there, if one should ever get hurt for any reason, that protection is there, regardless of what is paid for it, the same way life insurance and Blue Cross insurance is there, that it is sitting there to be used, if one should ever need it, adding that, hopefully, it will never be needed. He indicated that, to him, there should be some value put on the fact that the policy is there for their use.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

Senator Jerry Noble
Jacqueline Terrell, American Insurance Association
Jim Tutwiler, Montana Chamber of Commerce

Chairman Aklestad asked that the opponents try to keep their remarks brief.

Testimony:

Senator Noble stated that, with all due respect to Senator Williams with his well-intentioned bill to try to do something to the failing workers comp system, this is not the way. He reported that he represents the retail community and wants the committee to know that this would take all the department stores, and his office personnel, and raise this from eighty cents, or whatever it is, to \$4.00 or \$3.00, that it is just devastating. He added that the market is so slim in the retail community that, if they did that, they might as well just put a lot of those people out of business. He indicated that he is trying to think if, over the last 25 years, his office staff has ever had a workers comp claim, that he really does not think they have, and thinks their rate could be ten or twenty cents per \$100, which would be plenty sufficient to handle the claims they have. He pointed out that, when they have several different rate categories they report under, that they stay from \$12 to eighty cents, and are not reporting just the low-numbered ones.

Senator Noble referred to Senator Williams reference to the horse racing industry, and indicated this bill would be trying to average out the rates, and would be taking away the impetus for businesses to push safety, that they need safety programs, and more safety programs in Montana, and they need businesses to respond to those. He indicated that, if they are going to try to hold down the rates on businesses which have not done anything with safety by boosting other ones up, that is not the way. He then referred, again, to the horse race rates, indicating he wants to say why they are where they are at. He reported that they were thirty cents before, now they are \$30, and now \$60, noting that is terrible, and it is bad, but that only 10% or 15% of the horse owners in the State of Montana take workers comp, that 85% or 90% pay it in cash, and the only time they report it is when they have had an injury. He stated that it is up to the horse racing association to get their act together, first, noting they have, incidentally, figured out a way to do that, but need to put the emphasis on safety and, to put the emphasis on safety, they do not do it by averaging the rates.

Testimony:

Ms. Terrell indicated that the American Insurance Association is a trade association comprised of some 200 property and casualty insurers, a number of which are private companies which write workers compensation insurance in Montana. She reported that she is also speaking on behalf of Bonnie Tippy for the Alliance of American Insurers, and Roger McGlenn for the Independent Agents. She indicated that they all have similar concerns for the private companies writing workers compensation in Montana.

Ms. Terrell stated that insurance is a product, and is a product to be priced competitively and commensurate with the risks it is intended to insure. She reported that the American Insurance Association and the other trade associations respectfully and reluctantly oppose Senator Williams' bill for the reason that it flies in the face of the theory upon which insurance should be based. She indicated that the legislature, in their wisdom, in the last two regular sessions, has looked hard at the dilemma the state fund now is in, that it has carefully considered a number of reforms, and enacted SB315 in 1987 and SB428 in this past legislative session to address the problems of the state fund. She indicated it is her belief those reforms have not had an opportunity to take effect, and that any action tampering with the rate of insurance for workers compensation should be deferred until they have an opportunity to see those reforms go into effect, and have some effect on the state fund and the problems it presents.

Ms. Terrell pointed out that the state fund has a statutory mandate to operate competitively and efficiently, that it has not done that in the past, but reforms are in place, now, to put it back into a competitive position with the private insurers. She indicated that this bill will mandate a dramatic increase in workers compensation premiums, noting the committee members already heard the hue and cry over the projected increase which will come as a result of SB428, and that this will far exceed anything contemplated under that particular reform. She reported that the private companies' concern, however, is primarily based on the mandate this will present to them, as well, to rate their product not in a competitive manner, that it will not be rated in accordance with the risk it is intended to insure. She stated that it provides a disincentive for the state fund to operate competitively because, again, they will be shoring up the problem which has existed for all of this period of time and, as Senator Noble very eloquently expressed, it will provide a disincentive to operate the workplace in a safe manner, noting that is one of the main purposes of rating the workers compensation premiums in accordance with the risks presented.

Ms. Terrell then pointed out that there is a statutory requirement that insurance premiums not be unfairly discriminatory or excessive, and she submits to the committee that they may be mandating an incentive for discriminatory rates, through this bill. She strongly urged the committee to give this bill a do not pass recommendation.

Testimony:

Mr. Tutwiler indicated he would simply like to place the Chamber on record in support of the comments which have been made in opposition to the bill. He reported that one of their major concerns is that, if they abandon the actuarial process, they will lose further control of their ability to try to bring some order back to the workers compensation.

He added that equally important, and a point well made by Senator Noble, is that there are many, many businesses in Montana which are small businesses with ten employees, eight employees, five employees, whose operation is very marginal in terms of income. He indicated that, if the committee were to pass this bill and propose that level of premiums for workers compensation, they are very much afraid the impact would be adverse. He reported that these small businesses do not, in many cases, have the option to shop around and acquire their workers compensation from someone else simply because of the fact that many private carriers will not write insurance to provide workers compensation for the very small

employers, and their only recourse is to go to the state fund.

Mr. Tutwiler stated that, if they pass a bill which raises the rates, and if those small businesses which are already at the margin are pushed out of business, they are only agitating the problem they have right now of trying to build the economy. He indicated they appreciate Senator Williams' concern, and his efforts to bring about improvements in workers comp, but that they sincerely believe this particular bill is not the best way to do that.

He added that Mr. Charles Brooks of the Montana Retail Association asked him to represent their organization, as well, in being in opposition to this bill.

Questions From Committee Members:

- Q. Senator Manning noted that what Senator Williams is trying to do with this bill is prevent the proposed rate increase which is coming about down the road, and asked Senator Williams if it is necessary to go to 4%.
- A. Senator Williams responded that what he is trying to do with this proposed bill is address all increases coming down the road, not this 22%, noting they can forget about this 22% because it will never become law in time to address that problem. He indicated that he is trying to prevent that kind of problem from facing them every time they come to the legislature, and he thinks that, with the equalization of the administration of the fund, this bill would do it.
- Q. Senator Pipinich indicated this would take in all the state employees, teachers, and everybody else, and pointed out that it will cost the state millions of dollars a year. He asked Senator Williams if he has thought how they are going to fund that.
- A. Senator Williams responded yes, he has, noting it would be a good increase, that this has been brought to his attention in the last three or four days, and indicated that was the intent of the bill.

He then reported that the premium paid at Montana State University was \$321,104.56 and, with this bill at 4%, that premium would go to \$1,627,291.44, adding that Bozeman follows right along with it. He then pointed out that, noting he is not saying 4% is the right figure, if it takes 4% to insure the university people, they are not doing their duty by appropriating the money to have the university system pay its way for the protection they are

giving to those people. He again indicated he is not saying it is 4%, but that, if that is the case, they are putting the whole load on the back of someone else out there, supposedly the people they are driving out of the State of Montana with the high workers compensation rates.

Senator Williams stated that he is sure, from the information he has been able to come up with in the last few days, that it would not need to be 4%. He indicated that, noting that the counties and cities are self-insured, he does not care if it is state or school districts or the university system, that, whatever it is, he feels strongly that they should be paying for at least the administration of the program, plus their risk factor.

- Q. Senator Pipinich asked Senator Williams how they are going to appropriate the money to pay these, noting that the university system has been cut quite a bit through the session and, if they have to be cut them some more, or pay that out of their system, that will cut them some more. He again asked Senator Williams how they are going to come up with this money.
- A. Senator Williams responded that he feels it would have to be appropriated out of the general fund, which could be done. He pointed out that, when their Blue Cross/Blue Shield goes up, or when any other insurance goes up, they are probably paying somewhere close to what they should be and, when that goes up, the State is not picking up all that expense, that they are doing it some way or another. He added that maybe there is need for a cost-share within the workers comp program, that he does not know, but he does think they need to look at it, that he does not think the state can just pay for everything.
- Q. Senator Pipinich asked Senator Williams what the ratio is between the jockeys in the State of Montana, noting he does not know how many there are, versus the university system, and further asked if there are 60, 70, or 100 jockeys in the State of Montana.
- A. Senator Williams indicated he would defer that to Senator Manning.

Senator Manning responded that, at the outside, there are probably 55.

- Q. Senator Pipinich indicated the loggers are the ones he is really concerned about, because their rates are going very high and Montana is very heavy in logging.

- A. Senator Keating indicated they would not be affected by this.

Senator Williams responded that is where they are laying all the blame, on the loggers and jockeys, and the other high-risk people. He stated that the loggers' claims in 1984 came to 4% and indicated that, if they try convince him that 4% of the claims from those industries which they are laying all the blame on was the cause of that \$215 million deficit, they have more convincing to do there.

- Q. Senator Devlin asked Senator Williams if he has the figures on how much will have to be appropriated out of the general fund to cover all the programs the State would be liable for, the university system, public employees, the whole works.

- A. Senator Williams responded no, that he does not have the figures.

- Q. Senator Devlin asked if he has any idea.

- A. Senator Williams responded lots.

- Q. Senator Keating asked Senator Williams if, in all his research, he has the total payroll figure which generates this \$85 million in premiums.

- A. Senator Williams responded no.

- Q. Senator Keating asked if anyone has the total payroll figure. He indicated that, to say that the administrative cost is \$9.00 per \$100 is a misleading figure because it is \$9.00 per \$100 of premium that is paid, actually \$10 per \$100 of premium paid, but it is not \$10 per \$100 of payroll. He pointed out that they really do not know what the administrative cost is on the average \$100 of payroll, which is the figure he wants.

- A. Senator Williams responded that he does not have the exact figure, but from the O'Ryan group, and from some others he was able to pick up, it looks as though it is somewhere between 40 and 45 cents per \$100 payroll. He added that what he relates to, there, is the cost of administration relative to the premium dollars which were paid, but as far as the payroll is concerned, somewhere around 40 to 45 cents would supposedly cover the cost of the administration, with no risk factors kicked in.

- Q. Senator Keating asked Senator Williams what the minimum

premiums are out there, now.

- A. Senator Williams responded that the minimum he worked on was 28 cents per \$100.
- Q. Senator Keating asked if that was for some businesses.
- A. Senator Williams responded the one he had was school teachers, and the reason he had that was because of the information from university system.
- Q. Senator Keating indicated that is 28 cents per \$100 payroll, and it is costing the state 40 cents per \$100 payroll for administration.
- A. Senator Williams responded that 40 cents is not a figure given to him by the State of Montana, that it is the figure given to him from the privates, and that it should be in that area. He then indicated he wants to emphasize, again, that there is no risk factor, no history or anything figured into that 40 cents which they are speaking of.
- Q. Senator Keating indicated that Senator Williams is talking about raising \$43 million out of all of the industry in the state which is now below \$4 per \$100 in their payroll insurance premiums, and that he is putting an additional tax on a whole group of people who are probably a marginal business, now.
- A. Senator Williams responded that he absolutely does not know of any business in the State of Montana, if what he reads in the paper is right, which is not marginal, whether they are paying this or \$45.
- Q. Senator Nathe asked Senator Williams what was the category or the occupation which had the highest number of claims.
- A. Senator Williams responded that he honestly does not know, that his workers comp file, which is thick, is at home because he was not going to do anything on workers comp. He reported that the figure of 4% came from Ray Conger, who is going to be chairman of the new committee which will be taking care of the workers comp program, and that he honestly can not tell Senator Nathe how it is broken down.
- Q. Chairman Aklestad asked Senator Williams what the statutory authority is as far as imposing this increase on self-insurers, what grounds do they have.

- A. Senator Williams responded that he checked with Andy Bennett's office, with Susan Witte, that Mary McCue put it together, and then he checked, again, with Mary and Susan on the phone, that Mary McCue put the bill together, and, as far as they know, there is absolutely nothing in there which could be contested.

Closing by Sponsor:

Senator Williams thanked the committee for the chance to hear it. He indicated there are a lot of problems with the bill, itself, that it could stand some amendments. He pointed out that there is no way it should have an immediate effective date, adding that he put in the 3%, the 4% and the 5% just to get a figure to work from. He then indicated that he has come up with some pretty good information, he feels, and that, from the information he has been able to gather, the system is still way out of whack, if they are insuring tens of thousands of people for less than 30 cents on \$100, and they will continue to have problems unless they address that problem.

Senator Williams stated that he would hope the committee would not take action on this today and, if it dies, it dies, that he would just as soon have the bill to where they could look at it again, amend it to be more realistic after gathering some more figures, and changing the effective date.

He then indicated that, to answer Senator Noble, he is not trying to average out the rates with this bill, that, if they were to average out the rates, 3%, 4% and 5% certainly would not be in there, that it would be a hell of a lot higher than that percentage. He stated that he is looking at the administration of the state workers compensation plan being provided, that all he wants to do is equalize that, and let the rates fluctuate where they will, that, between the establishment of the rates and their modification factor, it will take care of itself, and it is absolutely not the intent of this bill to average the rates, that it is to average the administration of the program being furnished to the people.

Senator Williams then reported that, to answer Ms. Terrell, SB315 and SB428 are good legislation which is working, he thinks, pretty well. He indicated he is not naive enough to know that it is going to address the problem completely, that he thinks that, if they were to sit around and say SB315 and SB428 are going to take care of the problem, and they do not have to do anything with workers comp, they would be dead in the water so quick again. He added that he thinks, unless they keep looking and trying to find ways which equalize the system and make it a better system, they will be hurting.

He then reported that he checked with Susan Witte and Mary,

who assured him the bill is legally okay.

Senator Williams then addressed Mr. Tutwiler from the state chamber, noting he appreciates all of them testifying on this, and indicated that every meeting he has ever attended with Mr. Tutwiler and Mr. Buck Boles, or even the local chambers, they say they have to do something with that damn workers comp, that they are dragging all these employers out of the state and have to do something with it. He asked, if the Chamber is here in opposition to this, how serious are they as far as doing something with the damn workers comp, noting he does appreciate the input.

Senator Williams noted that the committee has to adjourn and can not take executive action until next week, and indicated that whatever they see fit is fine. He again indicated he appreciates the chance to bring it in, that he thinks it is a real important issue which needs to be addressed.

Discussion:

Senator Blaylock indicated he is concerned about Senator Williams' definitions and asked, when he says the cost of administration is 45 cents per \$100 premium, what is he saying is administration, is it just the cost of paying the employees, heating the building and running the computers, and paying all the claims. Senator Williams responded that they are getting two things crossed up here, and indicated that the cost of administration was a little over 9%. Senator Blaylock then asked Senator Williams what he is including in the cost of administration. Senator Williams responded that the cost of administration is an approximate figure given to him by the private insurers in order to have a base they had to have to administer.

Senator Blaylock again asked Senator Williams what is included, and if he is talking about the payment of claims which come in. Senator Williams responded no. Senator Blaylock asked if it is just the running of the building. Senator Williams responded that he would imagine administration would be just having the program laying down there doing nothing, adding that another thing he is sure it does not include, coming from the private insurers, noting that he could be wrong, but he would seriously doubt that it includes any sales commissions.

Chairman Aklestad announced the hearing on SB29 as closed. He again indicated the committee will not take executive action on the bill today, that they will see what transpires during the session, if that is okay with Senator Williams. Senator Williams indicated he appreciates that.

July 1, 1989

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ADJOURNMENT

Adjournment At: 10:50 a.m.



GARY C. AKLESTAD, Chairman

GCA/mhu
SB29.071

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: 7/1/89

| | PRESENT | ABSENT | EXCUSED |
|-------------------------|---------|--------|---------|
| SENATOR TOM KEATING | ✓ | | |
| SENATOR SAM HOFMAN | ✓ | | |
| SENATOR J.D. LYNCH | ✓ | | |
| SENATOR GERRY DEVLIN | ✓ | | |
| SENATOR BOB PIPINICH | ✓ | | |
| SENATOR DENNIS NATHE | ✓ | | |
| SENATOR RICHARD MANNING | ✓ | | |
| SENATOR CHET BLAYLOCK | ✓ | | |
| SENATOR GARY AKLESTAD | ✓ | | |



JUDY RIPPINGALE
LEGISLATIVE FISCAL ANALYST

STATE OF MONTANA

Office of the Legislative Fiscal Analyst

STATE CAPITOL
HELENA, MONTANA 59620
406/444-2986

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1 pg 1

DATE 7/1/89

BILL NO. 5029

June 28, 1989

Senator Bob Williams
Seat #39
Montana State Senate
State Capitol
Helena, MT 59620

Dear Senator Williams:

The following information is provided in response to your request for background information on the operating expenses of the State Compensation Insurance Fund.

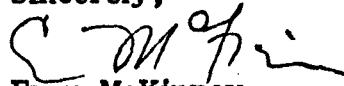
Table 1 summarizes the income and expenses for the past several years, as reported in the Annual Review of Operations for the State Fund. As shown, administrative expenses for fiscal 1988 were about \$8.0 million.

Table 1
Income and Expenses
Fiscal 1982 through 1988

| | Fiscal 1982 | Fiscal 1983 | Fiscal 1984 | Fiscal 1985 | Fiscal 1986 | Fiscal 1987 | Fiscal 1988 |
|------------------------|----------------|----------------|----------------|-----------------|------------------|-----------------|----------------|
| Income | | | | | | | |
| Earned Premium | \$33.7 | \$32.7 | \$37.0 | \$49.3 | \$ 50.9 | \$70.2 | \$ 85.8 |
| Investment Income | 5.8 | 6.5 | 7.2 | 7.4 | 8.0 | 6.3 | 3.6 |
| Other Income | 0.5 | 0.4 | 0.2 | 0.5 | 0.3 | 0.5 | 0.0 |
| Payroll Tax | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 11.0 |
| Total Income | \$40.0 | \$39.6 | \$44.4 | \$57.2 | \$ 59.2 | \$77.0 | \$100.4 |
| Expenses | | | | | | | |
| Claims | \$27.4 | \$32.1 | \$37.9 | \$52.1 | \$ 64.3 | \$79.6 | \$ 90.6 |
| Other (Admin.) | 5.0 | 4.6 | 5.0 | 5.1 | 6.9 | 6.2 | 8.0 |
| Total Expenses | \$32.4 | \$36.7 | \$42.9 | \$57.2 | \$ 71.2 | \$85.8 | \$ 98.6 |
| Net Operations* | \$ 7.6 | \$ 2.9 | \$ 1.5 | \$ (0.0) | \$ (12.0) | \$ (8.8) | \$ -1.8 |

*Before adjustments and changes in reserve requirements.

Sincerely,


Evan McKinney
Senior Fiscal Analyst

EM3:rs:SW6-28

WORK COMP INFORMATION

The following information was provided to me by Pat Sweeney and Jim Murphy of the State Work Comp Division of the Department of Labor.

Projected revenue from premiums paid in 1989
under the present system -----\$84,145,193

Revenue if we had a \$3.00 minimum premium rate
per \$100 of covered payroll-----\$113,392,065
(or 35% increase)

Revenue if we had a \$4.00 minimum premium rate
per \$100 of covered payroll-----\$127,815,054
(or 52% increase)

Revenue if we had a \$5.00 minimum premium rate
per \$100 of covered payroll-----\$143,799,461
(or 71% increase)

Keep in mind that the administrative cost in 1988 was 8 million dollars out of \$85.8 million income from premiums paid or well over \$9.00 per \$100.

SENATOR BOB WILLIAMS
Senate District 15

DATE 7-1-89

COMMITTEE ON

Laber

SA 29

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)