

## MINUTES

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

Call to Order: By Chairman Gary Aklestad, on July 7, 1989,  
at 3:55 p.m., Room 331, Capitol

#### ROLL CALL

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

Members Excused: Senator Dennis Nathe

Members Absent: None

Staff Present: Tom Gomez

#### HEARING ON HB 62

##### Presentation and Opening Statement by Sponsor:

Representative Lum Owens reported that this is a bill to appoint a committee to do a study, from the Senate and from the House, chaired jointly, bipartisan, to take look at the problems with workers compensation. He pointed out that, when they were in session, they thought they had a \$157,000 problem, that, later on, they knew they probably had a \$215 million problem. He then indicated that he predicts they could have a \$250 million problem because there are 4,000 cases which are not resolved, and it will depend on what reserves were set for it, that, if they were lucky and the attorneys did not make too much money, they might get away for less and, if they were unlucky and the attorneys do better, it will cost more.

Representative Owens indicated that the scope of the study was to take a look at all phases of workers compensation. He then indicated that there is a proposed amendment, and explained that they talked about \$15,000 for the committee, but then they got the word that it would cost \$25,000, if this committee decided to have a financial audit, so that is why the appropriation is actually \$40,000. He noted that there is a good possibility the \$25,000 will not be used, but they felt

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they did not want to tie the hands of the committee, if they deem that is necessary.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Questions From Committee Members:

- Q. Senator Blaylock indicated that, since the passage of SB315, he has heard that their income is 22% better than their outgo, that is, on the cases which have happened since SB315, as can best be calculated. He asked Mr. Murphy if that is somewhere near the truth.
- A. Mr. Jim Murphy, Chief, State Insurance Fund Bureau responded that he is guessing what Senator Blaylock has heard is that, in the last fiscal year, plus this fiscal year, they are talking about an underwriting gain, which is that the premiums they have collected are, in fact, a little more than what it should take to pay the claims, adding that he does not know whether 22% is the right figure. He indicated that is what gives them some indication that SB315 seems to be going where they thought it was going to go, in terms of the cost of the system.
- Q. Senator Blaylock asked Mr. Murphy if he feels relatively sure that it is in the right direction and is, at this point, actuarially sound, that it is working.
- A. Mr. Murphy responded yes, that he feels comfortable with that.
- Q. Senator Pipinich indicated that they are trying to get this \$22 million for a one-time shot in the arm for workers compensation, and then they are also trying to get Representative Driscoll's caps on, in the bill which Representative Driscoll has agreed to. He asked Mr. Murphy, if they get those two items, noting that they are starting to gain on it now, does he think they need this study.

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- A. Mr. Murphy responded that the committee is made up totally of legislators, and that the legislators they have talked to still feel very uncomfortable with the workers compensation system. He indicated that, if this type of study would allow a number of legislators to get more informed, understand more about the system and raise the comfort level, maybe it would be good. He noted that he does know how much it would divulge, in terms of solid recommendations, but he knows that it would help to get an overview of the system. He added that one of the things they suggested in the House was not to restrict the study to just looking at the state fund, that they should look at the system as a whole, because self-insurers and insurance carriers are also operating within the state. He noted that he guesses it is more what the legislators feel they need.
- Q. Senator Keating indicated that Mr. Murphy said SB315 is moving in the right direction, in that the actuarials are beginning to work out and they could have lower premiums, if they did not have the unfunded liability. He asked Mr. Murphy if the unfunded liability is being increased because of the pre-1987 claims.
- A. Mr. Murphy responded that it is being increased as more and more information on paid claims gets to the actuary, that the actuary is seeing an increase in the cost of those claims. He indicated that he does not know whether they can tie it strictly to pre-1987 claims, that the actuary does not look at it in that vein, that he looks at total paid claims but, basically, it would be more towards the pre-1987 claims.
- Q. Senator Keating indicated that they have 4,000 claims, roughly, and asked Mr. Murphy if the decisions on those are going to impact SB315.
- A. Mr. Murphy responded no, that the 4,000 claims will have to be adjusted under pre-SB315 law, and that any court cases affecting those, unless it is the same statutory language, do not affect the claims under SB315. He added that, if they have court cases dealing with SB315 language, then, of course, that would affect all the cases from that point forward.
- Q. Senator Keating indicated that, then, SB315 will not be impacted with those 4,000 cases, but pointed out that the unfunded liability continues to grow, and that has to be

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paid by somebody, which means that the employer will be paying premiums to cover the unfunded liability.

- A. Mr. Murphy responded that is correct, and that part of the rate increase which brought all of this about included a portion for that.
- Q. Senator Keating asked Mr. Murphy, if he read what the study calls for, is the study generally broad enough that they will be looking at a whole bunch of areas within the insurance business, and will have better or more complete information with regard to what they are dealing with.
- A. Mr. Murphy responded yes, and indicated that it would appear to him the study would undertake a complete and thorough study which would say to him that whoever that committee is can go wherever they want.
- Q. Senator Devlin reported there was a study two years ago by a Governor's task force, and asked Mr. Murphy how much broader this study is than that one was, and if this covers more than that study, or the parameters of their study. He further asked if Mr. Murphy was here, then, and if he got involved in that study.
- A. Mr. Murphy responded that he was here, and was involved to some extent, noting that he does not remember exactly what the language in the law said, but that they covered a pretty broad spectrum, too, that they covered benefits, looked at claims issues, legal issues, and coverage issues, so they had a broad spectrum which they looked at, too. He added that he does not know if it is any different than this.
- Q. Senator Devlin asked if Mr. Murphy knows of any points in this one which maybe they did not cover.
- A. Mr. Murphy responded no, that he does not know, off hand.
- Q. Senator Lynch indicated that the Legislative Council approves interim studies, every session, and their figure is generally about \$16,000 to \$18,000, noting that they need a lot. He asked Mr. Murphy why they would need \$40,000, when every other study that he knows of does not come near that.
- A. Mr. Murphy responded that, as he understands it, noting he did not give them the figures, what is included in this which may not be in the Legislative Council study

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is an independent actuarial analysis of the state fund. He added that he thinks, noting that Representative Owens may know more than he, the figure they put in there for that was something like \$25,000, \$15,000 for the committee study and \$25,000 for an independent actuarial review of the state fund.

Representative Owens explained they did that because, if this study goes, which he really, really hopes it does, the committee may feel that the workers compensation people are not getting the proper data. He pointed out that they have a new administrator, and expect him to turn it around, but what they really have to do is give him the tools and guidance to be able to turn it around, that they should not go forward, the way they are. He added that, if they need outside financial advice on what is wrong with this thing, they want the ability to have it, noting that the committee may or may not use the \$25,000, but that it would be a shame to go part way, and not all the way.

Representative Owens then indicated that his concept of the workers compensation thing is like a game of football the way it is, and they are expecting these people to administrate it under the rules which are there today. He further indicated that his concept of this committee is that they have to take a hard look at changing the rules, that, if there is some way they can get the attorneys out of it and get the money to the worker who is injured, that is where they have to get to. He added that, right now, he does not believe anybody can administrate it to a degree where it would be satisfactory, because the rules are so gray, and he is saying they have to change the rules.

- Q. Senator Lynch stated that he has a problem with the way they are going about this. He reported that he stood up on the Senate floor, noting he would like Representative Owens to respond to this, when they had the education study in which they wanted their own appropriation. He suggested that what they are doing is setting a precedent, and pointed out that every one of these studies, noting that sometimes there are up to 22 of them, all get voted for, and there is a priority list for whatever the Appropriations Committee lets them have. He further indicated that he does not know if workers compensation is any more important than the education studies, but they took that out and said they had better go through the normal process, adding that he thinks they will get

funded through the normal three interim committees that they have.

Senator Lynch again indicated that what they are trying to do, and has been tried before, is, every time they want a study, they do not want to go through the regular priority list, and will just put their own appropriation in. He noted that every one of those studies are voted on, that, although he can not believe it, they all pass, so there will be 22 studies, if they keep going this route.

- A. Representative Owens responded that one difference is that, when they were in regular session, they were told about the liability, \$177 million. He reported that, when they came for the next session, they were at \$225 million, which is not a very long time and tells them that it is, to some extent, out of control. He indicated that they have a new administrator and feels that, if they are going to give the new administrator a chance to really make the thing work, they have to give him all the help and guidance they can, noting that they may have to change the rules and may have to take a look at the benefits.

Representative Owens pointed out that one other thing which should be addressed, and thought about by this committee, which is really important, is that there are a lot of people who are not on workers compensation, that a lot of people do not employ a lot of people, but are on plans through private carriers, that these people are still being harassed the same as the workers compensation people are, as far as dollars and cents to do business in Montana, and the difference is they do not see it because the numbers do not come through the workers compensation. He stated that he thinks there are just as many millions of dollars being spent and used, and part of it wasted, through these quiet insurance plans that they do not hear about, and that, to him, is why they need a real broad study to help these guys do their job, and make it a better place to be in business in, in Montana.

- Q. Senator Lynch asked Representative Owens if this study will try to find out about employer abuse, noting that he knows there is employee abuse, but that he understands the investigators can only investigate employee abuse, not employer abuse.

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- A. Representative Owens responded sure, noting that Senator Lynch has a really good point. He reported that he talked with Pat Sweeney, who has been real receptive, and what they need to do is talk about monthly reporting, demand monthly reporting on workers compensation, that this is one tool. He indicated that he is a contractor, that he can work a guy three months and, if he wants to change him from Owens Enterprises to Owens Trucking, he could take the gamble, put him on a different payroll, and they will never know he worked that first three months. He added that, if the employee gets hurt, they will know it, because they will inherit the claim.
- Q. Senator Devlin indicated that quite a bit of this cost of \$40,000 will be contributable to the contract for a independent actuary, \$25,000, and asked Representative Owens if the department is now audited by an independent, who did the report that just came out where they found out they had a \$215 million unfunded liability.
- A. Representative Owens responded that, as he understands the workings of it, they take their numbers and send them to an outside actuary, who comes back with a recommendation. He indicated that, if this committee does not agree with their numbers, and what they are sending out, noting that he thinks they need to amputate the system, not try to band-aid it, and they see this is not the right way to do it, he would like the committee to have the ability to say they do not believe the numbers from this guy, and want to go to another guy.
- Q. Senator Devlin indicated he knows about second opinions, but that they will feeding them approximately the same numbers.
- A. Representative Owens responded that depends on where else they go to get them, that the legislative auditor can give them some numbers, but sometimes their numbers will not always balance with the department's numbers.

Senator Keating indicated that the legislative auditor did some background checking on this, that the actuarial firm which is being contracted with is not really an insurance actuarial firm, and there is some question as to whether they really have the background for giving them the actuarial information they want. He further indicated that it has been suggested they take a look at a different actuarial firm, one with some insurance background.

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- Q. Senator Devlin indicated that he looked through that, and sees those numbers have changed, as far as interest earnings, which was part of the problem which drove it up. He added that the growth factor was reduced from 3 to 1, and asked if those numbers came from the department.
- A. Representative Owens responded no.
- Q. Senator Keating pointed out that this is a general fund appropriation, and asked Representative Owens if there is money in the general fund.
- A. Representative Owens responded that they were told there was, and were also told they should put that \$25,000 appropriation in, which Senator Lynch was talking about, to make sure that, if things worked out, it would not be left by the wayside.
- Q. Senator Keating asked Representative Owens why this is not taken out of the administration fund, rather than the general fund, and if the administration fund in workers compensation would be an appropriate source of funds for this, rather than general fund money. He indicated that perhaps he should ask the department to answer that.
- A. Mr. Murphy responded that he would guess they could take the money from wherever they wanted. He indicated that, if it is taken out of their so-called operating funds, they would need an appropriation in that respect, and it would be charged back through rates, so they would be funding a study with rates charged by the state insurance fund on its 27,000 employers.
- Q. Senator Devlin asked Mr. Murphy what are they paying the outfit which is doing their auditing, now, and if they pay that out of the fund.
- A. Mr. Murphy responded that they do.
- Q. Senator Devlin asked Mr. Murphy what are they soaking them for just monkeying around with the figures they give them.
- A. Mr. Murphy responded that, in addition to a financial analysis at the end of the year which they do in October or November, in the spring of the year they also do the rate review and look at rate development, that those are



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the two main things they do. He indicated that they also, on occasion, do different analyses for them on passage of laws, or something, noting that is kind of minor. He added that they contract with them for around \$22,000, that they have a retainer, and pay \$22,000 a year for those services.

Q. Senator Devlin asked Mr. Murphy how long this firm has done their work, and if they have ever changed firms since Mr. Murphy has been there.

A. Mr. Murphy responded no, and reported that, when he was here in the 70's, a gentleman by the name of Joe Flynn was doing it, noting that he is not so sure Mr. Flynn was not with the same firm, but that he has now branched off. He reported that Coates & Herfurth is their actuary, and have been with the state fund for a long time.

Q. Senator Devlin asked if they have ever asked for a second opinion from a different outfit.

A. Mr. Murphy responded they have done that, and reported that they asked for a second opinion through the Governor's advisory council, that Peat Marwick did it, and then they brought Joe Flynn back in on a separate contract to look over it again, about two years ago.

Q. Chairman Aklestad indicated that the make-up of the Governor's advisory council, which was just mentioned, was legislators and individuals from the private sector, and asked Representative Owens if he had considered, instead of forming a whole new committee, letting them look into this.

A. Representative Owens responded that he did, and came away feeling that they have some direction which is a little bit different direction than this because, if he understands it, that will be a board which will help run this like an insurance company. He added that, in his mind, that is good, but pointed out that he is saying he does not think anybody can administrate the workers compensation division, today, with the rules they have to administrate it with. He indicated that there is so much gray, so much cheating, so much fraud, and attorney fees, that they have to find a way to change the rules so that they have something they can administrate, and make it financially sound.

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- Q. Chairman Aklestad indicated that he appreciates where Representative Owens is coming from and his concern. He then reported that he served on that, one time, and that is not the total function, that they also come up with new recommendations for legislation for the next year, rule-making changes for the department. He noted that he hates to see them get into a situation of double committees for approximately the same effort.

Chairman Aklestad asked Representative Owens, if they hire a new actuary, will they ask the new actuary the same questions, and go through the same scenario as they did with the old actuary, noting that he would imagine they would come up with approximately the same numbers as far as the unfunded liability, and the whole ball game. He further asked if it is Representative Owens' intent to try to develop a new set of circumstances in which this new actuary would relate to the figures the department is putting together, pointing out that, otherwise, they will have the same thing. Chairman Aklestad stated that he thinks there has to be new questions asked, and again asked Representative Owens if that is going to be part of their effort and, if so, in what way.

- A. Representative Owens responded that he thinks it should be an effort on the part of both the committee and the administrator, who undoubtedly has some ideas how to turn this around, some thoughts and feelings which are well-based, and may want to hire his own actuary, so he does not have to depend on other people, adding that, if that happened, they would take a different approach. He indicated that he sees this as a team event between a new administrator and this committee to try to turn the thing around. He referred to Chairman Aklestad's comment about amputation, in a previous conversation, and indicated that he really thinks this committee has to face that, that they have to say they will never make it work under the rules they have, and come up with something, some better rules.

- Q. Chairman Aklestad indicated that they are actually getting back to the philosophy of whether they can get the job done. He then stated that he has a problem with hiring a new actuary, if the new actuary is going to just decipher the figures that the department is presenting presently. He indicated it was his understanding that the department, at one point in time, hired another actuary to come in and check the old one, noting that he does not know if those figures are available and what

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authority they had to do it, but that it was done, he understands. He reported that the final result of the independent actuary which the department hired on their own came in very close to the existing actuary, noting that he is not saying they were right or wrong, but that they did because of the parameters in which they are operating, as far as the questions and what is being done. He stated that, if the new actuary has to operate under the same circumstances, he is wondering if they are going to accomplish anything more. He asked Representative Owens if, through this bill, they will be able to come up with a whole new criteria of questions to dig into this problem of workers compensation in a different manner, that, otherwise, he thinks they are wasting their time if the new actuary can not deal with different circumstances.

- A. Mr. Pat Sweeney indicated that they will provide the same data they have in the past, to the new actuary but also, at the same time, they are receptive to any questions he wants to ask and, if he feels they have missed something in the past, they should provide that information. He further indicated they are willing to open up the system.
- Q. Chairman Aklestad asked Mr. Sweeney who establishes the questions which are asked of them, and the figures asked of them, what an actuary asks of them, and who establishes the format.
- A. Mr. Sweeney responded that, for the most part, the actuary does, that he tells them what he needs in order to determine rates, reserves, and everything else.
- Q. Chairman Aklestad then asked if this committee could dictate to the actuary to come up with the figures and look into the workers compensation in the areas they would like to look into.
- A. Mr. Sweeney responded that they could pose that question to him but, whether he would change the science in which he develops his number, he does not know. He added that any actuary on contract with them would be receptive to them.
- Q. Chairman Aklestad indicated that overtures have been made that, possibly, the low-end premium they are paying is so low that it does not even cover administrative costs and, in fact, maybe some other areas are carrying that.

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He asked Mr. Sweeney, if that question is asked of the existing actuary, would he cover that area.

- A. Mr. Sweeney responded that, to his knowledge no, that what he looks at is individual class codes to determine what rate should be charged, per class code, that it supports the class code. He indicated that no one, as far as he knows, has ever posed the question to him what would happen if they charged, for instance, a \$1 minimum, period, on a class code, that, to his knowledge, that has not been asked.

Closing by Sponsor:

Representative Owens indicated that one point of interest which came up is the fact that, if they are talking about \$100 million, and about \$8 million to administrate it, that is 8%, right there, but that they are writing workers compensation, now, for so much less than the 8% total administration costs. He noted that they can do anything they want with those numbers, but he feels that is another area they have to look at and make a recommendation. He further indicated that he hopes the committee can concur in this because he thinks they need to talk about amputation, and he thinks they need to change the rules. He stated that he does not think it matters what administrator they have, if he has to live under these rules, which is his main point, that he does not think it would matter. He then indicated that, when they see attorneys making millions of dollars out of it, noting that is just what they see here, and then, if they can help private business, if they can clean the rules up, they have a great opportunity to do a great service.

Discussion:

Chairman Aklestad indicated that he does not usually have execution action on the same day, but that he is not sure when they will get out of here, and asked the committee what they would desire, if they would like to have execution action today. He added that it would appear they are going to be in session next week, and asked if the committee would like to wait until then.

Senator Blaylock indicated that he knows Representative Owens is very, very sincere, that they are all frustrated, but that they did a study of Montana citizens from all across the state, and he thinks it was a good cross-section of Montana

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from all sectors. He asked Chairman Aklestad if that would be accurate. Chairman Aklestad responded he thinks so. Senator Blaylock then indicated that it seems to him, in listening to those people who were on it, and looking at everything he saw, that they probably made four or five bad mistakes in workers compensation. He stated that he thinks some political decisions were made, noting that he does not think they were made from bad motives, but were made, particularly in the timber industry, to try to keep the rates comparable with other states, when they should have been raising those rates more rapidly, which is now, he understands, what has been done. He noted that they have separated the division, and have said they will raise the rates because the accident rate is higher.

Senator Blaylock reported there was a series of court decisions which broadened workers compensation beyond what the legislature had really intended and, now, it has cost a lot of money. He noted that he is not saying they are wrong, that they follow the law and they interpreted it, which is their prerogative, but that has cost a bundle, adding that he thinks any study they have is going to find out the same thing, again. He pointed out that they also have those lump-sum settlements, which is what the division is still facing on those 4,000 cases, that, as he understands it, the lump-sum cases are still there, and are part of this unfunded liability because they go under the old law, that they do not come under the new one. He indicated they did have generous benefits, here in Montana, which have been cut back substantially, almost drastically, with SB315.

Senator Blaylock then reported that he has been getting calls, and trying to help some people who have been injured, but that a lot of people can not get lawyers, that the lawyers will not touch the cases, noting that he thinks that is a tragedy because some of these people need help, but the lawyers say there is nothing in it. He then indicated that they put in the mediation service, which he thinks is cutting it down.

Senator Blaylock stated that he does not have a whole lot of quarrel, if they want to go ahead and have an actuary do another study, but he suspects he will have to go to these gentlemen who represent the division, and who will have to give him the same set of figures, noting that maybe they can ask him some new questions. He again indicated that he does not quarrel with that, but thinks they will find out just about the same thing.

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Chairman Aklestad indicated he would like the committee to indicate if they wish to take executive action today. Senator Keating stated that he would rather postpone executive action, that there are a couple of things he would like to check into. Chairman Aklestad advised Representative Owens that the committee is not postponing executive action to not do anything, that he anticipates they will be here next week, and that they will take executive action on it the first part of the week, hopefully on Monday.

ADJOURNMENT

Adjournment At: 4:30 p.m.

  
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GARY C. AKLESTAD, Chairman

GCA/mhu  
HB62.077

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: July 7, 1987

	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	✓		