

## MINUTES

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

Call to Order: By Chairman Gary Aklestad, on May 23, 1990,  
at 9:00 a.m. in room 405

#### ROLL CALL

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

Members Excused: None

Members Absent: None

Staff Present: Mary McCue and Tom Gomez

Announcements/Discussion: None

#### HEARING ON HOUSE BILL 1

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

Representative Bob Thoft, House District 63, said that House Bill 1 is an act allowing the use of inmate labor for completion of a low security housing unit at Montana State Prison as authorized in Section 6, House Bill No. 777, laws of 1989 and providing an immediate effective date, a retroactive applicability date, and a termination date. It is most important to complete the construction of the 96 man unit that is badly needed. With the overcrowding there, we have people in basements and closets, and there is concern about security people who work there. There was a chain of events in court that led up to this bill. If we continue to use inmate labor to complete this housing unit, it should be done in December. If we have to stop work and go to a private contractor it probably won't be completed until the middle of next year. And it will cost at least \$1,000,000 more through a private contractor. A question of responsibility and liability arises if you change builders in the middle of the project.

List of Testifying Proponents and What Group they Represent:

Curt Chisholm, Director, Dept. of Institutions  
Senator Tom Beck  
Senator R. J. Pinsoneault

List of Testifying Opponents and What Group They Represent:

Senator J.D. Lynch, S.D. 34, Silver Bow  
Ken Dunham, Montana Contractors Assn.  
Jim Murry, Exec. Sec., Montana AFL-CIO  
Senator Bob Pipinich, S.D. 33, Missoula  
Gene Fenderson, Montana Dist. Council of Laborers  
George Haggermon, Federation of State & Co. Employees  
Jack Hall, President, Montana Building Contractors  
Trades Council

Testimony: Curt Chisholm stated the construction of the low security housing unit goes to Department of Administration. It did their architectural and engineering work and we began to construct the housing project for the prison inmates and also the other projects authorized by HB 777 during the 1989 session. The legislature authorized the use of prison labor to build some buildings on the prison grounds, namely a ranch house, minimum security building, water system and a dam.

The events that bring us to this point began in December, 1989 when a Mandamus Action was filed against the two state departments Institutions and Administration by 14 labor unions, 2 private contractors and 5 legislators asking the District Court in Helena, Montana to stop further construction on the low security housing unit, alleging that the authority on which we're operating is illegal or unconstitutional. It was in Feb. of 1989 when Judge McCarter ruled in the following manner. First of all, the Judge did not grant the mandamus action, which was requested by the petitioners. At that time she gave a declaratory judgement on the points of law that relate to whether or not the authority upon which we are operating is constitutional or not. That judgement created controversy as to whether in fact we had constitutional authority to proceed or did not. We immediately in a very timely manner appealed that decision the very next day in Feb. 1990 whereby we raised the following issues. If there is a problem with the title of the bill, does the fact that we're using inmate labor for the construction for this housing unit need to be referenced in the title of this bill. Is it a general appropriations act or is it not.

If it is a general appropriations you do not have to mention every item in the title of the bill. Another important issue to be resolved is, if boiler plate language that is in an appropriation measure that is in existence for 2 years, amend, exempt provisions of substantive conditions of statutory law. We continued to construct at the prison. In consulting with attorneys of both departments and the Attorney General's office who advised me that Judge McCarter had every opportunity to halt the building activity by awarding the mandamus action. She did determine that some of the authority under which we were operating was unconstitutional. He takes an oath of office to uphold the constitution, and he does not want to act lawlessly. They asked the Montana Court to take jurisdiction in this matter by requesting a stay of execution of the order. Once we did that the petitioners went in with their own request to the Supreme Court asking for injunctive relief by stopping the construction project.

In March, 1990 the Supreme Court came back their answer. They did take jurisdiction of the matter and they denied the stay of execution request on the basis that no order had been given by the lower court. Secondly, they remanded the petitioners request for injunctive order back to the lower court saying they did not want to get involved in that kind of thing. They did decide to take the matters that we had appealed to them earlier and consider those in a very timely routine manner. Which means we'll get an answer in about 120 days from the date of their decision. Twice this matter was before the courts. Twice they had an opportunity to order the Director of Administration to stop the construction with inmate labor and they did not. He felt that the construction as mandated by the 1989 legislative session could go forward.

We are still under construction and have encumbered up to 80% of the money. The project is desperately needed. As we sit here today there are 1122 inmates in Montana State Prison. That's 22 people over emergency capacity of 1100 at the Prison. We need to focus in on the adult male correctional system as a system and recognize that we have a crisis in the system. We have 54 men at Swan River Forest Camp and we're going to add 6 beds. In addition we have 136 adult felons out in the pre-release centers, for which we have a contract capability of 120 beds - 16 people beyond our contract capability because we need the beds. We don't have the money for that, but we have to spend it anyway because

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there is no room in the prison. We have 38 people on electronic supervision in the communities. We have over 3600 people on parole and probation.

We were funded for 150 individuals for FY90 and we were at that body count at the beginning of this fiscal year. This has been a crisis and I had to authorize the opening of a 31 cell unit in the maximum security unit in the old vacated forensic unit on Montana State Hospital's Warm Springs Campus earlier this year. That cost us 13 FTEs that we don't have and a personnel cost of \$300,000.00 annually just to keep those 31 cells going to accommodate this prison overflow. What we're asking you to do is recognize the seriousness of the correctional pressures on the department's correctional division. To recognize that we're not doing anything relevant to precedent setting kinds of situations because we have used inmate labor in the past. We've used similar language in the past to authorize inmate labor on construction projects in the past. We're asking you to fix the constitutional problems that Judge McCarter pointed out in her decision in Judicial Court and continue uninterrupted with the construction efforts so that this 98 man, low security housing unit can be ready by December of this year in order to help relieve prison overcrowding.

Senator Tom Beck, SD 24, Deer Lodge where the prison is located. Money has already been spent for materials and we aren't taking away sales of materials or supplies. Using the inmates for some of the labor to build something so desperately needed is a savings to all Montana taxpayers and I urge you to pass this bill.

Senator Dick Pinsoneault, SD 27 Lake, stated he had experience in law enforcement and generally with the prison system for many years. He toured the prison yesterday and the conditions were extremely overcrowded at Rolf Hall where incoming population is housed. It was an insult. The total floor space is 2000 square feet for 40 prisoners and you have to weave between the bunks. At times there are between 30 to 90 people there. With such severe overcrowding we're fortunate that we haven't had a fire or riot. He urged support of HB 1.

Senator J.D. Lynch stated that he was, has been and is opposed to the use of inmate labor on major construction projects. This is taking jobs away from regular hard working people. Let's stop this insidious system of labor.

Ken Dunham of the Montana Contractors Association stated that the use of inmate labor was a poor economic policy and should not happen in our state.

Jim Murry, Executive Secretary of the Montana State AFL-CIO read his statement in opposition to House Bill # 1. See Exhibit # 1.

Senator Bob Pipinich, SD 33 Missoula, rose in opposition to this bill.

Gene Fenderson of the Montana District Council of Laborers reiterated Jim Murry's statement in opposition to using inmate labor for major construction projects.

George Haggermon of the Federation of State and County Employees also rose in opposition to HB #1.

Jack Hall, President of the Montana Building Construction Trades Council rose in opposition to HB #1.

Questions From Committee Members: Senator Devlin asked if we don't pass this bill what will happen? Mr. Smith of the Department of Administration said it is appealed to the Supreme Court and that decision would probably come in Sept. or Nov.

Senator Devlin asked Tom O'Connell of the State Administration Department if the court should stop the project with inmate labor, what is the scenario? Mr. O'Connell explained that they would have no option but to wait for the next legislature. There are no funds to complete the building by letting it out to contract.

Senator Devlin asked what kind of time delay would there be? Tom O'Connell responded that it would go into the long range building plan. One year from that date is the requirement for the completion date of a project.

Senator Lynch asked Mr. Chisholm if he had any objection along with giving the business to the state and giving the agricultural business to the state? Mr. Chisholm said that the prison is a stable Department enterprise. Senator Lynch stated that furniture is another prison industry. Senator Lynch asked if he had any objection taking away jobs from the private sector? Mr. Chisholm said that wasn't their intent. Senator Lynch asked if there were 35 prisoners working on the project? Mr. Chisholm said there was.

Senator Keating asked who is directing the prison labor? Mr. O'Connell said that a project superintendent had

been hired, as well as a carpenter foreman, an electrical foreman, and so forth. Senator Keating asked if these foremen are from the private sector? Mr. O'Connell said they were and were State employees. Senator Keating asked Mr. O'Connell where do you get your supplies? Mr. O'Connell showed the committee a batch of purchase orders where private business and vendors furnished the building supplies.

Senator Keating asked how many projects had been given out to the private sector this biennium? Dave Ashley of the Dept. of Administration stated that we have 30 to 40 million out on contract to the private sector at this time.

Senator Blaylock asked Curt Chisholm when we had a special reason for using prison labor and not hiring on a contract? Curt said this was a recommendation made by Carroll South and Governor Schwinden. It was inherited by the Stephens administration. There was a great need and this was a solution and recommendation on the prison issue. There is a \$25,000 cap on projects that can be built by prison labor.

Senator Blaylock asked if this bill will complete this work and that's it? Are you going to come to the 91 legislature and suggest changes to this? Curt Chisholm said he is not advocating that.

Senator Lynch asked Curt is there an architect in the prison? Mr. Chisholm answered that he didn't know of one.

Closing by Sponsor: Representative Thoft stated this was a small building project in relation to all the other buildings being done in the state and it was a very cost effective, well run expenditure that was aimed at helping to solve prison over crowding and save the taxpayer. The cost of keeping a prisoner for a year is \$20,000 and this way he helps us not to have to spend more. Please pass this bill.

#### DISPOSITION OF HOUSE BILL 1

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Tom Keating MOVED that we DO CONCUR IN HB 1. Chairman Aklestad called for a ROLL CALL VOTE. The vote was 5 IN FAVOR OF and 4 OPPOSED, with Senators J.D. Lynch, Bob Pipinich, Richard Manning, and Chet Blaylock voting NO. The motion

carried.

HEARING ON SENATE BILL 3

Presentation and Opening Statement by Sponsor: Senator Paul Boylan, SD 39, Gallatin County, stated that Senate Bill 3 is an act separating the liability of the state workers' compensation insurance plan and fund on the basis of whether the liability arises from claims for injuries resulting from accidents and occurred before July 1, 1990, or accidents that occur on or after that date; requiring the sale of the state compensation mutual insurance plan. Both the employee and the injured worker are being ripped off. Injured workers had to go to court because the worker's comp wouldn't respond. He said some lawyers won't take a case covered by workmen's comp. The department should enforce safety. With the separation, we can sell this insurance plan. I urge you to support SB 3.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

Jim Murry, President of AFL-CIO

Testimony: Jim Murry said that his organization does not want to sell the state plan. His state federation asks that the state plan be included in the insurance picture. His organization thinks there should be more enforcement of safety in the work place.

Questions From Committee Members: Asked what if the Governor can't sell, would it go to the title company and assign the risk? Would that company continue to pay their premiums. Senator Boylan answered that the high risk pool is there.

Senator Blaylock asked about raising rates on the state plan.

Sam Hoffman asked what kind of benefits can private insurers give? Senator Boylan responded that they would be more regulated and more enforced. The rates should be raised. It works against a good efficient plan.

Senator Devlin asked if you have to get an appeal on the state plan?

Senator Keating said there are a couple referrals in here with regard to the administrative process of the present plan. Are you leaving the benefits under workmen's comp insurance statutorily required? It would be still subject to the statutes and benefits for the private carrier? Senator Boylan said yes.

Senator Manning asked if he had compared rates in other states to Montana? Senator Boylan said he had. There are other numerous studies. The major problem in comparing them is that they are set up differently.

Senator Keating asked if under plan 3 the agency determines his own actuary?

Senator Aklestad asked why go from 3 to 4 people on page 34 line 18? Tom Gomez explained that line 25, page 33 changes that number.

Closing by Sponsor: Senator Boylan stated that the State should not be in the insurance business and this is the vehicle to get rid of a very difficult situation. I hope you see your way clear to pass Senate Bill 3.

#### DISPOSITION OF SENATE BILL 3

Discussion: Senator Aklestad said this bill will put the Worker's Comp up for sale and if there is no sale for the plan then the clients are distributed amongst the other insurance entities.

Amendments and Votes: None

Recommendation and Vote: Senator Keating MOVED that Senate Bill 3 DO PASS. The vote was 7 in favor of and 2 (Senator Blaylock and Senator Manning) opposed Senate Bill 3. Motion carried.

#### HEARING ON HOUSE BILL 2

Presentation and Opening Statement by Sponsor:

Representative Glaser, House District 98, Yellowstone County, stated this is an act separating the liability of the state workers' compensation insurance program and fun on the basis of whether the liability arises from claims for injuries resulting from accidents that occurred before July 1, 1990, or accidents that occur on or after that date; and authorizing the board of investments to make loans and to issue bonds payable by the employer's payroll tax to pay off the unfunded



liability. We have a very reasonable manner and it provides a source of funding to retire this debt. It's a continuation of this \$.28 on the \$100 payroll tax on all the employers subject to the Workers' Comp Fund. It provides a little more oversight so that the Legislature can see where we are and what's going to happen as time goes on. It provides assurance of public input. It takes a very tough look at where we are, where we've been and where we're going. It tries to solve the Workers' Comp in a way that people will be certain of how we're handling the \$385,000,000 debt that we have. There are \$65,000,000 in assets and over \$300,000,000 shortfall. This is a reasonable, long term, semi-palatable solution to this problem. Business won't be afraid of the compensation system in our state.

List of Testifying Proponents and What Group they Represent:

Representative Hal Harper, HD 44, Lewis & Clark  
 Representative Jerry L. Driscoll, HD 92, Yellowstone  
 Representative Chuck Swysgood, HD 73 Beaverhead  
 Ben Havdahl, Montana Motor Carriers  
 Rick E. Bach, Council, State Workers' Comp Fund  
 Keith Olson, Montana Logging Assn.  
 Susan C. Witte, Dept. of Insurance

List of Testifying Opponents and What Group They Represent:

James Tutwiler, Montana Chamber of Commerce, Exhibit #8  
 Riley Johnson, NGIB  
 Roger McGlenn, Independent Insurance Agents of Mt.  
 Dennis Burr, Montana Tax Payers Association  
 Jacqueline Terrell, American Insurance Association  
 Leon Stalcup, Montana Restaurant Assn.  
 Alex Hanson, Montana League of Cities and Towns  
 George Wood, Montana Self Insurers Assn. Exhibit #2  
 Bruce Wheeler, M.S.B.A.  
 Randy Nordquist, Dept. of Insurance  
 Representative Glen Campbell, HD # 48  
 William Boharski, Exhibits #4, 5  
 Peter Funk, Department of Justice

Testimony: Representative Harper said that we must do something about the unfunded liability. The question in front of you is what is the cheapest way to do that. Workers' Comp is set up as an independent entity. They certify how much they need. That goes to the budget director so that the governor is involved, if the budget director agrees that a certain amount is needed. Our Board of Investments has a good track record, and they have done wonders with the investments. The Board

of Investments will decide what is the cheapest, most reliable, and best way, to find the amount of money that is needed. This bill is a negotiation process to insure that employers of this state get the best deal possible.

Representative Glaser and I got involved in this idea when we found the Workers' Comp was going to sell bonds on their own for a large amount of money. Did they have the authority to do that? This would be a state debt and the state would be liable. So, we thought we should have some control over state debt. The bonding concept seems the most sane way to get the money to capitalize this operation. We want to make the fund more responsive and more aggressive in settling these claims. Local governments and schools presently pay 0.3% payroll tax and so with this it will drop to 0.28%. There are amendments being offered.

Jerry Driscoll, HD 92, Billings stated the 1987 legislature passed a Workers' Comp bill that gave a savings of 25% plus benefits to injured workers. If HB 2 with the bonding clause goes through, you will hear testimony about the cost to employers over the 30 years. Under the 30 years scenario we will give \$750,000,000 in benefits discounted at present value. The benefits go on forever, but the tax has a sunset. Workers have participated substantially. This is a state debt, whether it's a bond or unfunded liability. The Department can not settle claims in lump sums. The House version would offer injured workers a settlement of 80% of the known liability if they will take a settlement.

The present law states you must prove the settlement is in the best interest of the worker. That required an attorney and an economist to prove you were going to do something good with your life. The long term debt could be bought down through settlements. The department needs the cash to do that.

The law says they must run the plan actuarially sound. In order to do that they have to raise rates 24.3% on July 1. Construction laborers will go up from \$11.00 to \$17.00. Loggers were at \$37.00 to \$42.00. The loggers have installed safety regulations in the last couple years. Rep. Driscoll proposes that we put some money into this plan. At 7 1/2% this was the cheapest capital he had found. We ask you to pass this bill.

Representative Swysgood, HD 73, Dillon, is standing in support of this bill. He did not support it in the

House because of the length of time it took to retire the bonds. He offered an amendment. (See Exhibit # 3 prepared by John MacMaster) He believes the Worker's Comp needs to buy down the unfunded liability and that takes cash, which they do not have. He doesn't like the payroll tax and he doesn't like the 30 year bond plan. He's offered this amendment that would shorten the bonding time and leaving the .3% tax on to do that. If we retire the debt faster, the payroll tax would come off. He also offered an amendment to a technical part of the bill. (See Exhibit # 6) We must leave the cash flow basis. I asked you to support this bill with my amendments. (See Exhibit # 10)

Ben Havdahl said that the Montana Motor Carriers Assn. would like to go on record in support of HB 2 establishing supplemental funding of the unfunded liability that exists in the State Worker's Compensation Fund. (See Exhibit No. 1)

Rick E. Bach, Legal Counsel for the State Compensation Insurance Fund, stated he is here in behalf of the state fund. He gave some amendments to the committee that would delete the Montana Administrative Procedures Act from the state fund. (See Exhibit # 7)

Keith Olson, executive director of the Montana Logging Association, said that his association supports HB 2 because they fear state fund rates will go up 24% in July and another 19% next July. Current work comp rate in Montana for logging is 37%. He addressed the rate adequacy issue. He believes the rate for loggers is very adequate. We are in our 3rd year of an aggressive safety program. If the unfunded liability didn't exist today the work comp rate for logging activities would be heading downward. He believes HB 2 is worthy of support.

Susan Witte, legal counsel for the State Auditor, Andrea Bennett, who is also Commissioner of Insurance. She stated that the Commissioner of Insurance supports HB 2 and urges the Committee to pay attention to the amendments offered by Rick Bach for the state fund. (See Exhibit #7) This deals with classification and premium rates. The commissioner believes she has the authority to review those rates, which requires the state fund to adopt rule making for classification and premium rates. You are going to get away from flexibility with that type of rating process. No other insurance company has to go through a rule making process in classifications for rate premiums. She supports the bill with that amendment included.

Jim Tutwiler, of the Montana Chamber of Commerce stated that he appeared today to oppose the manner in which HB 2 addresses the worker's compensation problem. (See Exhibit #8) I urge a do not pass on HB 2.

Riley Johnson, represents 6,000 members of the Montana National Federation of Insured Businesses. He opposes any bill that would penalize small business in Montana. In 1987 the rates were raised significantly on the payroll tax. He feels that lower risk employers should not subsidize higher risk employers. Please consider Mr. Tutwiler's suggestions that you come up with a better answer to this very uncomfortable problem. Please let the people who will pay this bill have some input in the solution. NFIB recognizes the problems of high rates in certain industries and suggests that you just change the rates and charge the rates you need to run a safe and sound worker's comp and let's keep politics out of this rate making. He asked for an appropriation from the general fund to satisfy the unfunded liability. He opposes HB 2.

Roger McGlenn, director of Independent Insurance Agents of Montana, stated they strongly oppose HB 2. It continues to move the state fund from proprietary function to government function. We believe this is wrong and dangerous. It is a continuation of one of the problems facing us today. We believe that HB 2 only deals with the symptoms of the problem and the underlying causes. In the last 2 years the Worker's Comp has collected \$22,000,000 in employer payroll tax. In 1989 they received \$20,000,000 from the general fund for a total of \$42,000,000 plus, and yet the unfunded liability continues to grow. The general fund appropriation and the additional payroll tax was to payoff the unfunded liability. He believes all employers should be paying the same rate and not have different classifications. With employers such as school districts, state and local governments, the Montana taxpayer is further burdened. I urge you not to pass this bill.

Dennis Burr of the Montana Taxpayers Association asked the committee to reduce rates and not raise them. Please do not pass this bill.

George Wood, of the Montana Self-Insurers Association rose in opposition to HB 2. (See Exhibit # 2)

Alex Hanson of the League of Cities and Towns stated that HB 2 would cost the cities and towns of Montana a

tremendous amount of money under the terms of the bonds. Their budgets are tough. With I 105 their tax base was frozen and he asked that the committee exempt municipal governments. Safety programs have been put into place and accidents have been considerable reduced and the rate increase in unacceptable.

Bruce Wheeler of the Montana School Board Association offered amendments to HB 2. (See Exhibit #8)

Representative Bud Campbell, HD # 48, Powell County rose in opposition to HB 2.

Representative William Boharski, HD # 4, Flathead County, rose in opposition to HB 2 and offered amendments that would make the bill more agreeable.(See Exs. #4 & #5)

Leon Stalcup of the Montana Restaurant Association rose in opposition to HB 2.

Jacqueline Terrell of the American Insurance Assn. stated that the Workers' Comp Plan should require adequate rating to cover the accidents incurred.

Peter Funk from the Department of Justice directed the committee to Section 19 on page 27, line 22 where it says, "Such accounts must be transferred to the attorney general for collection." Mr. Funk stated that the attorney general prefers not to have this responsibility.

NOTE: The Committee recessed for lunch and the convening of the Senate. They will return at 2:30 p.m. Senator Aklestad called the committee back into session at 2:40 with all members present.

Questions From Committee Members: Senator Pipinich asked the Department to tell them how they could lost \$475,000,000 in the last 10 years? Mr. Murphy answered that \$375,000,000 is the amount of payout. Unfunded liability is in the neighborhood of \$200,000,000. Court decisions, hospital costs, poor information are items that are raising our rates.

Senator Pipinich stated that if you go for 30 years the payback will be \$620,000,000. That's a difference of \$420,000,000. Are we going to have to eat the difference? Mr. Murphy said that is your decision.

Senator Nathe asked if after July 1, 1990 will there be enough safeguards to ensure this situation won't happen again? Mr. Murphy said that if you leave it to the

Board that you have set up, those rates should cover the expenses. But there is no guarantee that they will be sound.

Senator Lynch asked if the 24% raise in rates would be across the board. Mr. Murphy said it would be according to classification code and the experience factor.

Senator Hoffman asked Mr. Tutwiler if we can rely on figures of Worker's Comp now? Mr. Tutwiler said that the Chamber of Commerce is concerned about the veracity of rates and size of the liability. They got an outside opinion from the National Institute in D. C. Ohio had an actuary firm, Earnest and Young, that would go on record. They questioned the soundness of the figures.

Senator Keating asked Representative Harper if the Department is going to have a clean slate? What will prevent the Department from continuing the way it is? We need those assurances. Representative Harper you put faith in the Board and they will set rates.

Senator Lynch said he had problems with the bill. His daughter will be 32 years old when the bond is paid.

Rep. Glaser responded that this has become a social problem. We have to restructure the debt. Rep. Glaser said that our children and grandchildren are already obligated to pay out \$800 for every man, woman and child because of the foolishness of July 1, 1990. If you use a cash flow system, the foolishness of today and tomorrow will continue to be there because businesses will not be penalized for their foolishness. This bill immediately penalizes an erroneous employer, because the plan will be operating like a private insurance company. One big problem with Workers' Comp is not the amount of premiums, but how available the system is to people. The problem is all over the nation. We and the Board will have to address this problem.

Senator Lynch said we're told we're \$210,000,000 in the red before we come back next session. Is this a quick fix idea that we're going to start bonding, which really is incurring debt very similarly to what the feds do, for a quick fix rather than balance the budget. Do you see this as a precedent setter to answer our fiscal woes?

Senator Devlin asked about the amendments that would throw your schedule of payments off drastically.

Representative Glaser said that all these amendments were

offered in the House and they were all rejected, some rejected more closely than others. He supports Senator Swysgood's amendments because they define the fact that if you have money available, you must pay off the bonds. The bill currently says if you have money available you may pay off the bonds, and there is mistrust out there.

Senator Blaylock asked Jim Tutwiler if the Montana Chamber of Commerce would rather see the average rate kick in at 24% as of July 1. Mr. Tutwiler answered no, with the information we have it is not necessary to pass this bill. We think there is a way to gain the time we need to assess the true indebtedness of this fund and reconsider the funds true value. At least we need a second opinion of the true amount of what we owe.

Senator Blaylock stated that with SB 428 we commanded them to run this in an actuarially sound manner. If we are going to do that, we have to raise the rates an average of 24%. How do we get around that?

Mr. Tutwiler answered that this session needs to address the definition of an actuarially soundness and you could change that definition so that applies only to cash flow. Get the fund operating so that it is not in danger of going broke or being legally outside the laws of Montana. Before the next general session have aggressive follow through for a second opinion. We need to verify how much money we're going to need. You need to identify the size of the indebtedness.

Senator Keating asked Randy Nordquist of the Insurance Commissioners office if he was the new actuary with the Montana Insurance Commissioner? Mr. Nordquist answered that he was. Senator Keating asked if he had experience with Workers' Comp and actuaries and that sort of thing. He answered yes. Senator Keating stated that he viewed this bill as taking one problem and dividing it into two problems, and that we're trying to address both problems in a similar manner. His first concern is that if we segregate the unfunded liability from the current state fund and they start with a clean slate in July, is there something in the law that says that fund will be run any differently. The Insurance Commissioners office was brought into this last session under SB 428. Does our state fund use the National Council of Compensation Insurance rates? Senator Keating has seen rate sheets that our fund doesn't conform with many of the various categories. With you in the picture will the state fund now have to comply with charging National Council

of Compensation Insurance rates.

Randy Nordquist said that they would not be charging the NCCI's rates. Hopefully they would be using some uniform percentage of the NCCI rates. The thought being that in terms of equitability the NCCI rates are about as good as can be developed to distinguish the relative relationship between one type of industry to another. Once those rates are established, you can apply a 75% ratio to generate only a 75% of the total premium. So the target is to establish rates that will adequately fund the entire program. You have adequacy and equity.

Senator Keating said that under this law will there have to be changes in the rates?

Randy Nordquist answered that based on preliminary evaluations there will have to be substantial changes. I want to tell you about rate level adequacy. As I view their rate filings they may well have considerably inadequate rate levels proposed to be effective July 1, 1990. The National Council has been making rates for 42 states around the country for a long time. Their methods are very good. They watch carefully to ascertain that things stay equitable, that rates are adequate; it's a very good process. Here is an example. Of \$100 \$65 are used to pay injured workers and \$35 is administrative costs. The Montana State plan proposed 65% of the NCCI advisory rates. What that means is that the state fund is proposing to collect sufficient premiums only to fund lost costs. What they propose to pay out of the premiums is lost costs, their administrative expenses and a substantial portion of the unfunded liability. The numbers are not there.

Senator Keating asked if the 24.5% rate increase is just an average and each employer is rated high or low according to risk.

Randy Nordquist answered that is true. What he looked for in the state plan was their compliance with the statute that said the state fund's rates must be based on the NCCI rates. Chapter 39 states they must use the NCCI rates as a basis for their own.

Senator Keating asked if we remove the unfunded liability from the state fund, will we still have to raise our rates an average of 24% to be actuarially sound?

Randy Nordquist answered that 25% would not be near enough.



Senator Keating asked if we separate out the unfunded liability and start that state plan fresh, under the law and under the organization as it now stands, we will have to raise the rates more than 25% no matter what we do?

Randy Nordquist answered that the unfunded liability doesn't go away. Susan Witte from the Insurance Commissioners office rose in support of HB 2 because it appeared to at least help half of the problem, the unfunded liability.

Senator Keating asked Randy if we was familiar with bonding? Have you ever seen anyone else finance their unfunded liability with bonds?

Randy Nordquist answered he has never seen another workers comp with this magnitude of unfunded liability.

Senator Keating asked Dave Lewis if we're talking about floating \$300,000,000 in bonds? Mr. Lewis said he thinks the amount is \$190,000,000. Senator Keating asked if we're going to arbitrage those so there is no interest? Will there be an interest expense on those?

Mr. Lewis stated that they are tax exempt bonds so we can not reinvest at rates above the tax exempt rate. We'll have to either yield restrict; in other words, find other reinvestment opportunities at the same yield as the bonds we issue. Or we will have to rebate any arbitrage to the federal government. There will be an interest cost because the money will be used to pay claims and once the money is gone it's not available for reinvestment. There will be interest costs.

Senator Keating said you have \$190,000,000 worth of bonds and you will have over \$100,000,000 interest over a period of time. The way we're going to fund some of this is with a .3% payroll tax on every employer. We already have that now. If we start paying off the unfunded liability, that still doesn't help us with the new program. All we're doing is retiring a debt, which we have to do, but now we're going to spend more money on interest and we still are charging .3% payroll tax to help do that. We're still going to raise rates and premiums because this bill says instead of paying bills with excess premiums, that's going to be shifted over to help alleviate the unfunded liability. This bill is a contradiction because it says it has to be even stephen, but if there is any surplus it goes to retire the unfunded liability. That doesn't track for

me. What it amounts to is that most of the people that are in the plan now are the ones who bring about the unfunded liability. So if their premiums go up and they help to pay the unfunded liability, they're helping pay for their liability. The taxpayers shouldn't have to come up with a bunch of additional interest to finance the payment of that debt. We must find another way without spending interest.

Dave Lewis stated that one major benefit to doing a bond issue is the funds at a tax exempt cost. The cost of those funds is going to be available to us at a tax exempt rate. He believes there is a benefit to the state economy by using tax exempt bonds.

Senator Keating explained that tax exempt bonds are a method for tax evasion and this would help build that and we're still going to pay interest. They may be tax free to somebody but they are not interest free. Who is going to pay the interest? Every employer in the state is going to say that's a perk to the employee and every employee will be paid less because the employer has to pay this premium for someone's mistakes.

Senator Lynch asked if the .3% that is currently being paid amounts to \$13,000,000 per year? Rep. Glaser said it amounts to \$13,000,000 this year and it does go up as payroll expands in the state. Senator Lynch asked where is the payroll tax going now? Rep. Glaser responded that in 1987 we designated for the unfunded liability. It goes straight into the cash flow system.

Senator Lynch asked if instead of all this bonding why don't we just use the .3% toward the unfunded liability as was intended in the 1987 legislature?

Rep. Glaser said that has been going on. In 1991 we're going to spend \$87,000,000 on the old obligations and we are going to run out of money shortly after we come back.

Senator Lynch asked about the unfunded liability. Will we add \$150,000,000 in the next two years? Rep. Glaser responded that the actuary is actually saying that there is \$375,000,000 in obligations out there. In 1991 there is \$87,000,000 obligations. In 1992 there is \$68,000,000 obligations. That is why the actuary is saying there will be a 25% increase by July 1.

Senator Blaylock asked Randy Nordquist about actuarial soundness.

Randy Nordquist responded that our casualty actuarial society of the American Academy of Actuaries might question actuarial soundness being delved into. If the Workers' Compensation System were to be put on basically cash flow that would violate in every sense of the word the concept of actuarial soundness. The premise of actuarial soundness is that you collect enough funds in that one year to fund all costs associated with that year, regardless of when those costs have to be paid. Also, it goes on to say you collect it as fairly as possible for the people you collect from. Actuary soundness means adequate, not excessive, and not unfairly discriminatory.

Senator Keating asked Randy if bonding would make the fund actuarially sound? Is that in terms of years? Say 8 years? We could carry this unfunded liability for 15 years and paying it off a little bit at a time.

Randy Nordquist stated that as the fund presently stands, it has an unfunded liability which means it is not actuarially sound. The prospect of separating the unfunded liability from the ongoing operations is a particularly happy prospect for the insurance department because it does allow them to get back to the concept of actuarially sound for ongoing operations. At that point the unfunded liability becomes a problem for the legislature.

Senator Blaylock asked if we didn't pass this bill would the proposed 24% increase be totally inadequate?

Randy Nordquist said that is what their preliminary examination indicates. That is a true statement. I believe the deficit would grow with only the 24% increase.

Senator Blaylock stated that we are talking about a fundamental change in state policy. Are we going to make a decision right now? Senator Aklestad said not we are not on this bill.

Senator Blaylock asked if we pass this bill and put on 24% do we still need more money?

Randy Nordquist said that is true in his estimate, unless employers suddenly installed incredibly effective safety programs, or something happened in the claims handling environment, or some change occurred that made benefit payments substantially reduced, then these rates might be adequate. Based on the status quo that is not enough money. The problem is 3 fold. You want

the state fund to be solvent. Yet you want the state fund to maintain low rates. You want the state fund to take all comers. Those 3 components are not compatible. You might throw in another component like excessively high rates for employers who do not have a safety program. 65% of the NCCI rates will not generate enough revenue to include all comers.

Senator Nathe what percent of the NCCI rates would be your suggestion?

Randy Nordquist said he didn't know, but the 65% doesn't take include those awfully high risks. Say 70% then add administrative costs of \$10. The insurance department would like them to have a cushion against future adverse deviation. They should be at 85% to 90% and right now they are at 52.25% That would be a 60% rate increase.

Senator Aklestad asked Rep. Glaser about the liability of the bonding issue. If the bonds are defaulted on, who is responsible?

Rep. Glaser responded that the payroll tax is the only money dedicated in the bill to retire the debt. If the payroll tax is inadequate, the Board of Investment is to advise the legislature.

Senator Aklestad said if the fund does get into trouble, the payroll tax is not sufficient enough to pay off the bond indebtedness, the legislature does not enact legislation either to a payroll tax, general fund or anything, the bonds are at default, who is the first liable person? The employer?

Rep. Glaser answered that this is a state debt. The legislature is going to have to come up with the money.

Senator Aklestad asked if the department hires the same actuary under your bill?

Rep. Glaser stated the current actuary is hired by the Board. Obviously the Insurance Commissioner's actuary sees things differently than Drew James does. If you study Drew James recommendations, he has not been off. We have not taken his advice.

Senator Nathe asked Randy Nordquist about his experience. Are you certified? Randy answered not yet. Senator Nathe asked if he had spoken to Drew James about their differences? Randy had not spoken to Drew James. Senator Nathe asked about Randy's experience in this

field. Randy answered that the last 8 years have been dedicated solely to workers compensation insurance. He worked with state funds in Carson City, Nevada, (a monopolistic state fund) and the last 9 months with a reciprocal insurance exchange in Florida.

Closing by Sponsor: Representative Glaser stated that he relied on the legislative staff and this proposal has been well research and was badly needed. Mr. Petesch and Mr. James spent time working on HB 2. Mr. James projections have been thoroughly researched and presents the best solution to the Workers' Comp problem. He believes the lack of satisfaction of the long term debt is one of the most important negative attitudes enforce in Montana's economy. The House does not want to bandaid. There are two indicators that we should look at. One is the premium and the other is the debt. Politics, bad management and a poor economy. In this bill the House would rather take the 24%. Other states have this problem. We must solve this problem.

#### DISPOSITION OF HOUSE BILL 2

Discussion: None at this time.

Amendments and Votes: None at this time.

Recommendation and Vote: None at this time.

#### HEARING ON SENATE BILL 5

Presentation and Opening Statement by Sponsor: Senator Thayer stated that he carried SB 428 that separated the state fund into a business form. He stated that he is amazed at the different information one gets from the different departments. For the past several months he has been working on this problem with a whole different set of evidence. We need to be very careful what we do in this session. It's going to take a 2/3 majority of each house to get into this bonding mechanism. It's his opinion that we really don't have to pay off the unfunded liability. It's critical that you have enough cash flow and have enough income every year to pay those debts as they come due and operate the plan.

Senator Thayer stated the SB 5 is an act separating the liability of the state workers' compensation insurance program and fund on the basis of whether the liability originates from claims that arose before July 1, 1990 or claims that arise on or after that date; requiring

that for the portion of the premiums attributable to claims that arose before July 1, 1990, the state fund shall charge amounts sufficient to provide revenue to satisfy those claims as they become due and payable. This bill does not lock us in to a 20 or 30 year bonding program. He believes we don't need a 24.5% increase as we don't have that kind of a cash flow problem. We need a rate increase and the Department is contemplating a 5% raise anyway. I've served on the interim committee that studied the workers' comp and we asked the state actuary why an 8 year plan and he said they can't recommend going beyond 8 years. Cash flow is important and keeping our options open to a variety of ideas.

List of Testifying Proponents and What Group they Represent:

Norman Grosfield,  
Dennis Burr, Montana Taxpayers Association  
George Wood, Mt. Self Insurers Association  
Riley Johnson, NFIB  
Alex Hanson, League of Cities and Towns  
James Tutwiler, Montana Chamber of Commerce  
Jacqueline Terrell, American Insurance Association  
Senator Paul Svrcek, SD 26, Thompson Falls

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Norman Grosfield stated that this is a much better alternative. The unfunded liability is difficult to quantify and it will never be precise and it doesn't have to be paid off today. There are 19 state funds in the U.S. and often they operate in a surplus or a deficit situation. Senator Thayer is suggesting that all future cases of liability be established on an actuarially sound basis, but for the unfunded liability you can address it on a cash flow basis. He presented an amendment to the bill requiring that future premiums must be established on an actuarially sound basis. (See Exhibit #1) The legislature is going to have to address this problem each session. This amendment puts a limit on premium collection for the coming fiscal year.

Dennis Burr of the Montana Taxpayers Association said that cash flow covers unfunded liability. There are other bills that are being considered. He believes SB 5 is the proper way to proceed.

George Wood of the Montana Self Insurers agrees with the sponsor and the amendments that have been put before the committee. His Association will work on legislation that doesn't lock in and will give some figures with accuracy. This bill only requires a 5% increase on the past liability so there is no big balloon on July 1, 1990. For that reason, he asks that you do pass this bill.

Riley Johnson of the National Federation in Business stands in support of SB 5. His comment to Senator Blaylock's question, are businesses willing to pay the bill? The answer is yes. This is an amount business could support.

Alex Hanson of Montana League of Cities and Towns said they support this bill because it gives the legislature the time for analysis. A \$662,000,000 bond issue is probably one of the largest in the state.

James Tutwiler of the Montana Chamber of Commerce states they support Senator Thayer's bill with the amendment. We might want to go 1 step further and direct the Board to take a very deep look at the actuarial services they are getting and seriously consider bringing in a qualified nationally certified casualty actuary to look at this plan. He offers his help because actuaries cost about \$250 per hour, so their help in that regard might be needed.

Jacqueline Terrell of the American Insurance Association stated they supported SB 428 when enacted and they support SB 5 as the preferable alternative in looking at this problem.

Senator Paul Svrcek, SD 26, Thompson Falls, feels there is no right answer, but Senator Thayer's bill offers a viable opportunity to get us to the 1991 session. There are many good things in HB 2, but in the span of this session this is the best vehicle to use to buy time for an in depth study. This is certainly the easiest to swallow.

Questions From Committee Members: Senator Keating asked Norman Grosfield if 5% of the premium goes toward the unfunded liability? Norman Grosfield answered that in this amendment 5% goes to the unfunded liability. They may need an increase to take care of rule out cases starting July 1, 1990 through June 30, 1991, assuming there was no unfunded liability at all. This would be on top of that.

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Senator Keating asked Mr. Murphy asked about the Departments projected liability for 1991. The total unfunded liability for 1991 is \$86,000,000. Do you have to pay that many claims? Are those the benefits we have to pay in 1991?

James Murphy answered yes that is the pay down on all the liabilities from 1990 to 2021. What that says is that before July 1, 1990 there is an estimated \$86,672,000 payment. So in this bill, coupled with the cash that we have has to generate at least that much money, plus the law says we have to be actuarially sound for what we anticipate the claims forward. He says that's a substantial rate increase.

Senator Keating asked if this means you must have \$86,000,00 cash flow to meet these obligations? Mr. Murphy answered past obligations cash flow. Sen. Keating said those are current obligations because they caught up with us? Mr. Murphy answered true.

Senator Keating asked if you also have current claims for 1991, you may be looking at \$100,000,000 total?

James Murphy answered that is right. Mr. Murphy said probably more than \$100,000,000.

Senator Keating said so the .3% will raise \$13,000,000 so that means we have to come up with more than \$90,000,000 cash flow to meet all these obligations. Where are we going to get it?

Mr. Murphy answered that you're going to increase rates. He said cash flow pre July 1, 1990 claims is \$86,000,000. Post July 1, 1990 claims the concept is to provide for those on an actuarially sound basis. That means you have enough money in the bank to pay for those liabilities for those claims. So that all the claims after July 1 we would have to anticipate what they will be and increase rates to take care of that. Our actuary believes that is substantially more than 24%.

Senator Keating asked Dennis Burr if he agreed that we have to come up with \$100,000,000 in 1991?

Dennis Burr answered that the fiscal analysist had a total figure for 1991 on page 7 a total of \$110,500,000 estimated payout. The income to the fund is the premiums = \$89,000,000, payroll tax = \$13,500,000, investment income = \$2,500,000 which totals \$105,000,000 cash flow in. This shows that you need 5% to cover cash flow. You are not putting anything



into reserve. We are not going to be able to do that at least for this year. SB 5 is a way to get to next January. What the amendment says is that the 5% increase will go toward reserves. With the 5% increase for this year and next year both would break even.

Senator Manning asked if you separate out would you have enough cash flow to eat away at the unfunded liability?

Norm Grosfield answered that you are separating out the two funds for rate making purposes but for the payments to claimants it is all one fund. Use the money the state fund has available when it comes to the calculation to determine rates, you separate the old and the new out. Under this scenario you would have enough cash flow to pay all legitimate claims on time and you could probably go for a number of years on cash in and cash out. It would be better to eat away at the unfunded liability. Possibly there are other sources of income that you may consider later.

Senator Aklestad asked Senator Thayer about the 30 day notice requirement in your amendment. Is that the same amendment that Rep. Driscoll was concerned about on the House floor last night? Senator Thayer answered that he wants to get that amendment in.

Senator Aklestad asked Senator Thayer about the first amendment. Is it to give assurance that 5% of the premium cannot go against the unfunded liability? Why is that a necessity?

Senator Thayer explained that this 5% is going to be additional income that can be used against the unfunded liability. The numbers he got from Scott Seacat indicate that we can get through 1991 without any increase. I think it is prudent that we address the unfunded liability with a 5% increase. I think they are already contemplating something just under 5% that is needed because of the new business and keep those on an actuarially sound basis. If this bill passes employers across the state of Montana will be looking at approximately a 10% increase. That's much better than 24%.

Senator Aklestad asked in your bill will the payroll and premium money all go into one pot and there will be a separate calculation to satisfy the audit phase? Senator Thayer stated that is correct.

Closing by Sponsor: Senator Thayer stated that it will hurt us to go into bonding at this time. There are so many numbers

floating around that we must analyze the fund. A number of people have offered assistance to work out something. There are alternative ways of solving this problem. I suggest that we take a few modest increases as we go along and handle the unfunded liability as well. This bill eliminates the need for a 24.5% increase. The business people are saying take a 5% anyway. They know the department needs that much to keep in compliance with the law. This is a better policy than locking ourselves into 30 year bonding.

#### DISPOSITION OF SENATE BILL 5

Discussion: Senator Thayer stated that Mary McCue needed time to write the technical amendments. Senator Aklestad called attention to page 3, line 18 after the word collection and disregard all the rest of the verbiage.

Senator Keating said he didn't think the intention was to limit all rates to apply to a 5% increase but that portion of the rates that are payable for the unfunded liability. We still have to raise rates to cover the actuarial on the rest of the fund on current benefits, but that they can't raise the rates more than 5% each year on that portion to cover the unfunded liability.

Senator Aklestad asked if the language after the word "collection" gives legislative intent.

Senator Keating said it should read something like this, "however, the state fund cannot increase total premium rates for the unfunded liability for the fiscal year commencing July 1, 1990 not exceeding 5% immediately preceding fiscal year's total premium collections for the unfunded liability."

Senator Aklestad reiterated his statement of disregarding everything after the word "collection". This is really just legislative intent and shouldn't be in the bill. The only reason we'd leave it in there would be for judicial review. Tom Gomez of the Legislative Council stated that he and Mary McCue had discussed making that verbiage into "Legislative Intent" and she will put that in a separate purpose provision.

NOTE: Chairman Akelstad recessed the committee at 6:45 p.m. On May 24, 1990 at 9:00 a.m. everyone returned and began executive action.

Amendments and Votes: Senator Lynch MOVED the AMENDMENTS to SB 5 that Mary McCue had placed before the committee.

The title change and the Statement of Intent were explained by Ms. McCue. She called attention to line 19 where they take out separate treatment of claims in separate accounts. On page 2, subsection 3 is deleted. Then on page 3, subsection 6 is the heart of the amendments. The significant part deletes the language that "adopt classifications and charge premiums for the classifications in amounts sufficient to provide revenues to satisfy claims as they become due and payable. However, in order to assure this cash flow in the future the state fund shall increase total premium rates for the fiscal year commencing July 1, 1990 by 7% of the immediately preceding fiscal year's total premium." It's an overall increase of 7% as a total cap.

Mary McCue said that amendment # 12 is another section in the Code and delete language that talks about making rates in an actuarially sound fashion. That is taken out. The last part of 12 is the exemption from the notice requirement. There's a provision in insurance codes that you have to give 30 days notice of an increase in the premiums and that is taken out. (See Exhibit #1)

Senator Blaylock asked Randy Nordquist if he liked this amendment regarding actuarial soundness? Randy Nordquist answered that actuaries don't like a mechanism that operates on strictly cash flow.

Senator Blaylock asked Jim Murphy if he liked this amendment. He responded that it is on setting premium rates for a totally cash flow basis. You can do something else in 1991. Perhaps raising rates as you go a little at a time to get to an actuarially sound reserve basis as long as the state fund is in existence and can maintain a degree of the market that generates premium dollars to pay the claims each year as they become payable.

Senator Keating asked the Insurance Commissioner Andrea Bennett if with this scenario of a cash flow basis would she find the law would require her to shut them down?

Andrea Bennett responded that is possible. As Randy explained you are putting it on 3 legs and if it loses one of those legs then it will fall. Her department is not happy about this mechanism.

Senator Keating stated that it is not possible to correct this situation in a two day period and what we are trying to do is salvage this until we can look more

thoroughly in a regular session.

Andrea Bennett said that she would not shut down the Worker's Comp program in the next six months.

Senator Aklestad asked about the original separation in the title remains. Is that correct? Mary McCue responded that it separates them on the basis of when the claim arose.

Senator Aklestad asked if when the separation is made as far as the unfunded liability and the new program as of July 1, 1990, the payroll tax then goes where? Will the payroll tax be earmarked towards the unfunded liability side and could not be used on the premium side to pay existing business after July 1, 1990?

James Murphy responded that could be set up from an accounting standpoint.

Mary McCue responded that the statutes that set up the payroll tax already say that.

James Murphy responded that it is into one pool and it's demonstrated that \$13,000,000 went to pay old claims because the old claims that we paid were in excess of \$13,000,000. Next year we will pay in excess of \$86,000,000 in old claims.

Senator Aklestad asked if the 7% provision would be used strictly on the premium tax side to pay the new business side?

James Murphy answered that is the rate increase you are suggesting here. If you want us to show that that 7% only is going to pay new claims, I don't think that is in the bill.

Senator Keating asked from an accounting standpoint there are old claims and new claims that are a part of the claim pool and you can determine which is new and which is old. You can determine where your income is derived.

Mr. Murphy there are 10,000 claims in a pot. We pay on those claims daily. We pay 400 checks a week on those claims. The money is in deposits. What ever comes due we have to pay it.

Senator Aklestad asked of the \$86,000,000 that is not necessarily old claims, is it?

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Mr. Murphy said that is old claims. That amount will be paid out next year on old claims. The new claims will approximately be \$20,000,000.

Senator Aklestad called for a vote on the amendments. The VOTE was UNANIMOUS in FAVOR OF Senator Thayer's amendments written by Mary McCue. (See Exhibit #1)

Recommendation and Vote: Senator Lynch moved that SB 5 DO PASS AS AMENDED.

Senator Aklestad suggested that in the Statement of Intent we direct the interim committee to stay active and look at other proposals to finance works comp to present to the next legislative body.

Senator Blaylock said he would like it very general that that committee continue to work. There is no magic philosophy out there.

Senator Keating said that the Supreme Court has ruled that the department is not permitting lump sum payments like they should, which may impact the cash flow. There ought to be some source of revenue for supplementing the cash flow from the premiums and the payroll tax. The potential for a limited amount of bonds as a sudden source of revenue to assist that shortfall in the event of catastrophic claims is a suggestion. There might be other methods, maybe even the general fund be used in the event of that catastrophe. Or a 1% surtax on income tax or some mechanism that we could fall back on for supplementing the cash flow in the event we do have an inordinate number of lump sum claims that have to be paid immediately.

Senator Lynch said we'll be back in 1991 and I don't think there will be a catastrophe prior to that. I think the interim committee should further their study. I propose we pass the bill with these amendments. We probably are amending a dead horse anyway. I understand that the House is not going to accept anything short of the bonding issue.

DISPOSITION OF HOUSE BILL 2

Discussion: Senator Aklestad said that the Senate will not accept HB 2 in it's present form and the House has given indication that they would not accept SB 5 as amended. Since that is the situation and this is probably the most important subject matter in the state, it would be his recommendation that we take the subject matter of SB 5 and mold that into HB 2. Take

all of HB 2 except the first portion of the title, which is calls for the separation portion. And take that portion of HB 2 that deals with lump sum provisions. We can make certain that HB 2 is broad enough so that it doesn't put us into a situation if the monies are not there for the buy out that the account is not subject to judicial scrutiny. So as the monies come available we can make lump sum payments. At least the mechanism is there. There is another advantage to that would be is so we would be able to deal with something within the legislative framework of both bodies. If we don't do that we're going to send SB 5 to the House and it will be killed. If we send HB 2 with our mechanism in it, that will go to the House floor, rather than into committee. We don't need a 60% vote, it would just need a majority vote and we're hoping that the House will act to go into a free conference committee and see if we can come back and deal with something. All the subject matters in both bills would be discussed. At least the legislature is still dealing with the subject matter. If we don't do that the legislature will lose control of the situation. This is an important matter and we want to get both house involved again and get something done.

Senator Lynch agrees with this plan. The amendments will be quite extensive. Is it correct that you are taking the bonding completely out of HB 2? Allow the House to reconsider and see if they want to go to conference. It certainly seems like we're still talking together.

Senator Blaylock would like to hear from the Legislative Council that the Supreme Court did not say that we have to start paying lump sum payments. All that decision says is that the Division can not just say we will not consider lump sums. There is great diversity over whether that really impacted the fund by \$10,000,000.

Mary McCue responded that language in statute said that if they could not agree on a lump sum that the insurer could say no and that was not a reviewable issue. So the case says that is a reviewable issue. She thinks that everyone now can't come in and say we want a lump sum out. There is still going to have to be some sort of test. What is not there from the decision is what is that test going to be because there isn't one in the law?

Recommendation and Vote: Senator Lynch withdrew his motion to move SB 5.

Senator Keating MOVED that we merge HB 2 and SB 5. He said there are parts of HB 2 that are beneficial and parts of SB 5 that are beneficial and that's what we're trying to do.

Senator Lynch asked if the Montana Administrative Procedures Act will still be in the new bill? Mary McCue thought not. If you take the bonding out do you take MAPA out, also? Mary McCue responded that those are unrelated issues.

Senator Aklestad said that we could deal with details in the free conference committee. What we're trying to do is keep something alive.

Senator Keating asked if we are going to work on the deletions or are we just lumping the two together to give it a name?

Senator Aklestad recommended that we take HB 2 with part of the title that deals with separation and put SB 5 as amended in and take the portion of the lump sum provision and put that in and run with that. We will rely on the staff to put this in order and hit the Senate floor with it and clean it up then and send it to the House. SB 5 is a short bill. What we're taking out is a lengthy, poorly understood bill.

Senator Keating said you're trying to slide amended SB 5 under HB 2 title.

Senator Keating and Senator Lynch wanted to go through the title and make certain of what they were going to do.

Mary McCue said what they would retain would start on line 4 "an act" down through "that date" on line 9. Then we delete "establishing" down through "June 30th, 2020" on line 23. Then retain the verbiage beginning with the word "providing" down through "lump sum settlements", and on to page 2 through "adjustors". From there on there would be technical changes and some references to the sections that are in Senator Thayer's bill. Then we'll add from Senator Thayer's bill "the state fund shall charge amounts sufficient to provide revenues, satisfy claims as they become due and payable."

Senator Lynch called for the question.

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Chairman Aklestad called for a vote on the MOTION by Senator Keating to merge HB 2 and SB 5 incorporating the title as we just discussed. The VOTE was UNANIMOUS IN FAVOR OF the motion.

Senator Blaylock asked for a grey copy of the bill. Mary McCue said yes, they would do it as fast as possible.

RECOMMENDATION AND VOTE: Senator Lynch MOVED that HB 2 BE CONCURRED IN AS AMENDED.

Senator Keating asked if we are going to review the grey bill in committee? Senator Lynch felt confident in the Council staff that the committee didn't have to meet on it. Senator Keating thought the public might like to see the grey bill. He said we're talking serious ramifications here and he'd like to temper our haste a bit. Departments and the public need to look at it.

Senator Aklestad asked for a time frame. Mary McCue said they would try to have it ready when the Senate convenes at 1:00. Senator Lynch said the public will have time while we're caucusing to go over this proposal.

Chairman Aklestad called for a vote on Senator Lynch's motion. The VOTE was UNANIMOUS IN FAVOR OF HB 2 AS AMENDED. Motion carried.

ADJOURNMENT

Adjournment At: Recess at 12:30 p.m.; reconvene at 2:30 p.m. Adjourned at 5:00 p.m. The reconvened at 8:30 a.m. on May 24 and adjourned at 11:00 a.m.

GA/dh

  
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SENATOR GARY AKLESTAD, Chairman



ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: May 23, 1990

9:am.

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

NEW SECTION. Section 6. Exemption from notice requirement. The 30-day notice requirement imposed under 33-15-1106 does not apply to rate changes effective July 1, 1990, that occur in response to the provisions of [this act].

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval."

BE CONCURRED IN AS AMENDED

Signed:   
Gary C. Aklestad, Chairman

fiscal year's total premium. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated and adequate actuarially determined reserves are determined.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund."

NEW SECTION. Section 4. Settlement of fixed benefit claims that arose prior to July 1, 1990. (1) The state fund shall offer a lump-sum settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability, other than liability for medical benefits, and has fixed benefits. The lump-sum settlement must be 80% of the amount of liability accepted by the state fund, discounted to present value. Each settlement offer must contain a provision granting the state fund a full and unconditional release of liability, other than liability for medical benefits, in exchange for accepting the lump-sum settlement. The claimant shall accept a lump-sum settlement in writing before November 1, 1990, or the settlement offer is void.

(2) If the lump-sum settlement offer made pursuant to subsection (1) is not accepted, the lump-sum law in effect on the date of the injury applies.

NEW SECTION. Section 5. Request for proposals for claims settlement. The state fund shall prepare a request for proposals for contracting with private claims adjusters for settling the claims of persons whose benefits have not been determined under a claim that arose before July 1, 1990. The request for proposals may be based upon a dollar amount of unsettled claims or upon a percentage of claims for which benefits have not been determined. The state fund may not enter into a contract based upon a proposal until it has reported the results of the proposals to the 52nd legislature and has received legislative authorization to enter into a contract based upon a proposal.

methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to treat claims that arise on or after July 1, 1990, is to separate the liability of the state fund for the purpose of establishing premium rates on the basis of whether a claim arose before July 1, 1990, or on or after that date.

Section 2. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a nonprofit, independent public corporation. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan is established under 39-71-431 and is in effect. ~~The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves.~~ For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record."

Section 3. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund -- rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications ~~so that the state fund will be neither more nor less than self-supporting.~~ in amounts sufficient to provide revenue to satisfy claims as they become due and payable. However, in order to assure this cash flow in the future, the state fund shall increase total premium rates for the fiscal year commencing July 1, 1990, by 7% of the immediately preceding

## SENATE STANDING COMMITTEE REPORT

May 24, 1990

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration House Bill 2 (third reading copy -- blue), respectfully report that House Bill 2 be amended and as so amended be concurred in:

Sponsor: (Senator Thayer)

1. Title, lines 9 through 23.

Following: "DATE;" on line 9

Strike: remainder of line 9 through "2020;" on line 23

Insert: "REQUIRING THAT THE STATE FUND SHALL CHARGE AMOUNTS SUFFICIENT TO PROVIDE REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE; REQUIRING THAT THE STATE FUND SHALL INCREASE PREMIUM RATES BY 7 PERCENT TO ASSURE SUFFICIENT REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE;

2. Title, page 2, lines 2 and 3.

Strike: "39-71-116," on line 2 through "THROUGH" on line 3

Insert: "39-71-2311 AND"

Following: "39-71-2316," on line 3

Insert: "MCA;"

Strike: "39-71-2321,"

3. Page 2, lines 4 through 7.

Strike: all of line 4 through "DATE" on line 7

Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

4. Page 2, following line 7.

Insert: "STATEMENT OF INTENT

The legislature recognizes that the unfunded liability currently existing in the state fund cannot be fully addressed at this time. The legislature further recognizes that the unfunded liability will have to be addressed from time to time in future legislative sessions; that other sources of revenue may have to be obtained from time to time to assist in reducing the unfunded liability; and that because of the current state of the economy and because of the current premium rates being charged employers, there should not be a substantial increase in premium rates at this time."

5. Pages 2 through 31.

Strike: everything after the enacting clause

Insert: "NEW SECTION. Section 1. Purpose of separation of state fund liability as of July 1, 1990. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other

**SENATE STANDING COMMITTEE REPORT**

May 23, 1990

**MR. PRESIDENT:**

We, your committee on Labor and Employment Relations, having had under consideration Senate Bill 3 (second reading copy -- yellow), respectfully report that Senate Bill 3 do pass.

**DO PASS**

Signed: \_\_\_\_\_

Gary C. Aklestad, Chairman

**SENATE STANDING COMMITTEE REPORT**

May 23, 1990

**MR. PRESIDENT:**

We, your committee on Labor and Employment Relations, having had under consideration House Bill 1 (second reading copy -- yellow), respectfully report that House Bill 1 be concurred in.

Sponsor: (Noble)

**DO CONCUR IN**

Signed: 

Gary C. Aklestad, Chairman



JAMES W. MURRY  
EXECUTIVE SECRETARY

110 WEST 13TH STREET  
P.O. BOX 1176  
HELENA, MONTANA 59624

(406) 442-1708

**STATEMENT OF JAMES W. MURRY,  
EXECUTIVE SECRETARY, MONTANA STATE AFL-CIO**

**BEFORE A JOINT SESSION OF THE  
HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE  
AND THE  
SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE**

**SPECIAL SESSION -- MONTANA LEGISLATURE  
MAY 22, 1990**

Mr. Chairman, members of the committee, I am Jim Murry, Executive Secretary of the Montana State AFL-CIO, and I'm here representing workers across the state who are opposed to the use of inmate labor.

And, in what perhaps might be a bit unusual, I want to speak up for businesses who stand to lose on this issue. The interests of business and labor coincide in this case because both businesses and their employees suffer if public building contracts are not let out to bid.

Inmates are in prison to be punished for their crimes and to be rehabilitated. We support and participate in efforts to retrain inmates so that they can fit in to society and function in today's workplace upon their release. But when inmate training is used to take contracts away from local businesses and jobs away from local workers, then **workers and businesses** are the ones being punished, not the prisoners.

Imagine this scenario if you will: Inmates are used to build public structures and thus get some on-the-job training, even if it's behind bars. Then, their parole date arrives and they're turned out into the world to find a job and rebuild their lives. Imagine the irony when the ex-con discovers that he can't use what little skill training he received in prison because building contracts are only going to inmate labor gangs -- not former inmates and other private sector workers.

He might literally have to go back to prison to get a job!

That scenario goes beyond the specifics of this question, but it's the logical extension of the precedent you're being asked to set. And we think it's a bad precedent.

The use of inmate labor virtually eliminates the economic benefits of public construction projects, except for material purchases. Whether inmates are going to be substituted for public employees or private sector employees, the bottom line is that virtually no money income is going to be generated from the work done by inmates.

As you know, the wages paid to workers roll over in the economy many times, providing economic benefits that ripple out to a wide variety of businesses and individuals not only in the local area, but across the state. That positive economic ripple absolutely won't happen if public building work is done by inmate labor.

If you decide to authorize the use of inmate labor, look for a minute at the reality of what you have to do to get that done -- look at what the Administration is asking you to do:

-- The Administration is asking you to do something that ordinarily would break half-a-dozen sections of long-standing and well-reasoned Montana law.



-- You're being asked to authorize a no-bid, no-competition, no-rules private contract for a construction project.

-- They want you to approve the use of an untrained, unskilled and unreliable workforce to construct a public building.

-- They want to pay virtually no wages and skip out altogether on paying for workers' compensation and unemployment insurance coverage.

-- They want to ignore the very basic minimum guarantee of competence and responsibility that comes from using bonded contracting companies and skilled craftsmen.

You know as well as I do that if any employer in Montana attempted to operate under those conditions, he likely would end up IN the prison, not building it. And that's as it should be.

Montana's business, contracting and labor laws are for the benefit and protection of all, including business, labor and government. Montana law is clear and unequivocal on the state's dedication to using solid, professional contractors who pay fair wages and compete among their peers for state work.

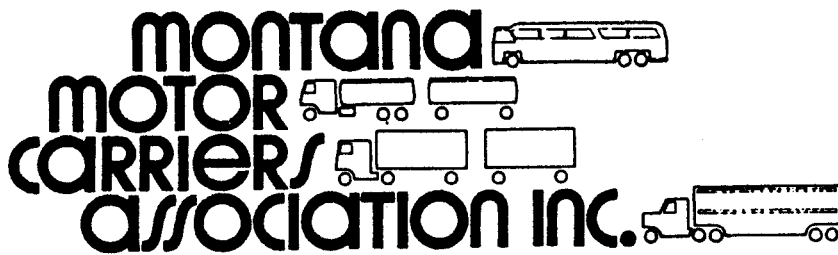
Allowing prison inmates to engage in full-scale construction projects will effectively gut those sections of Montana law, at least on a project-by-project basis. If that's what this Administration wants, if that's what you as Legislators want, then let's have a debate over that issue. Let's not back-door it by simply exempting certain work from those long-standing laws.

We believe the use of inmate labor, if allowed in this case, will signal a return to the chain-gang mentality that was so prevalent in some states in years past -- a mentality that has been rejected time and again in our supposedly more "civilized" age.

Montana's Constitution for years prohibited inmate labor in order to protect against just such a situation as this. When the Constitution was rewritten in 1972, that provision was dropped. It was widely believed that Montana had progressed to the point where such restrictions were made moot by the collective societal bias against chain gangs and slave labor.

We don't believe anything has happened to change Montanans' position on the use of chain gangs. We believe they still abhor the idea.

The Montana State AFL-CIO, backed up by trade unionists all over the state, is flat-out opposed to giving jobs to convicted felons at the expense of law-abiding, tax-paying businesses and workers. We hope you are, too, and will vote against this bad legislation.



SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE ~~May 23~~ May 23, 1990

BILL NO. HB2

B.G. HAVDAHL, EXECUTIVE VICE PRESIDENT  
501 NORTH SANDERS  
P.O. BOX 1714, HELENA, MONTANA 59624  
TELEPHONE: AREA CODE 406 442-6600

Statement of the Montana Motor Carriers Association  
House Bill 2, Special Session Montana Legislature  
May 22, 1990

For the record, my name is Ben Havdahl, Executive Vice President, Montana Motor Carriers Association. MMCA would like to go on on record in support of House Bill 2, establishing supplemental funding of the unfunded liability that exists in the in the state workers compensation fund.

MMCA supported the assessment of the 0.3% tax on all employers in Montana when it was enacted in 1987 and renewed to June 30, 1991 in 1989. Our position has not changed.

Under HB 2, we support the issuance of bonds for the repayment of the estimated \$220 million unfunded liability of the fund and the enactment of the employer's tax on all employers to retire those bonds.

Montana Motor Carriers Association has some 375 carrier members and 125 supplier members. Effective June 1, 1990, the Log Truckers Association of Montana will merge into MMCA expanding the trucker membership by an additional 200 members. MMCA trucker members are and will continue to suffer economically from high costs of doing business in Montana. The highest single cost of operation for the vast majority of our members is the cost of workers compensation insurance premiums.

MMCA Statement HB 2 - Page 2

Reaction to the high cost, has been an influencing factor for truckers in Montana to relocate their operations or reemploy drivers outside of Montana.

MMCA is fully aware of the increased premium needed for payment of the unfunded liability obligation of some 220 million dollars , if the alternative outlined in HB 2 is not enacted, truckers in Montana will be faced with estimated premium increases of 45% or more over the next tow year period. Current rates of 14% and 15% now assessed on over-the-road truckers and log haulers, would increase to 21% and 22%. This increased cost would, without a doubt, seriously impact an already economically depressed trucking industry in Montana and be the direct cause of exporting truck driving jobs outside the State.

# MONTANA SELF-INSURERS ASSOCIATION

GEORGE WOOD, Executive Secretary  
SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 5-23-90

BILL NO. HB 2

For the record, my name is George Wood, Executive Secretary of the Montana Self-Insurers Association. I arise in opposition to House Bill 2. The bill transfers the liabilities of the State Fund to the State of Montana and then provides for payment of these liabilities by a tax on employers only.

The Concept is Flawed. The tax is placed on employers only and further the tax is levied on employers other than those insured by the State Fund to pay State Fund liabilities. The tax is a tax on jobs collected by a payroll tax as an income tax is a tax on income collected, in great part, by a withholding tax on wages and salaries.

The Collection of the Tax is Flawed. The employer who pays a higher wage pays more in taxes than one who pays a lesser wage. This is compounded because an employer who hires a greater number of employees will pay a higher tax. The tax paid by an employer who pays \$10 per hour will be 2½ times as much as one who pays \$4 per hour.

The Disbursement of the Tax is Flawed. The primary purpose of this bill at this time is to avoid an announced State Fund premium rate increase of 24% on July 1, 1990, and 24% premium rate increase on July 1, 1991. This would provide a rate subsidy of 24% to employers insured by the State Fund. The employers with a premium rate of \$1 per hundred dollars of payroll with a subsidy of .24 per hundred dollars of payroll and an employer whose premium rate is \$30 per hundred dollars of payroll with a subsidy of \$7.20 per hundred dollars of payroll. The premium rate

paid represents the usage of and costs to the State Fund of each code classification. The more usage and the higher the costs, the greater the premium rate. The bill provides, as previously indicated, the higher the rate the greater the subsidy.

The bill appears to have "equal protection" problems. The use of the state's taxing power to tax employers to subsidize the premium rates of other employers. The approximate initial tax, by plan would be:

Plan 1	45 employers	\$2,000,000.+
Plan 2	4700 employers	\$4,000,000.
Plan 3	27000 employers	\$6,500,000+.

The non State Fund employers, who would receive no rate subsidy, will pay 45 to 50% of the tax.

The figures issued for the State Fund deficit are truly awesome. From the figures, I have received, the discounted unfunded liability is now \$207,000,000. This represents a State Fund liability which will require "total projected liability payments of \$375,467,000 which will require a payroll tax income of \$662,966,277. To use the words in the bill "it may increase."

The figures are awesome and leaves one with doubts of their validity. When State Fund legislation was passed during the session in 1989, we heard a figure of \$157,000,00; since then we have heard \$197,000,000 then \$217,000,000 then \$197,000,000 and now \$207,000,000. These are the discounted figures. The actual projected liability figures would also vary before settling now at \$375,467,000.

How accurate are the present figures? We won't know until we have had an independent claim audit by knowledgeable adjusters who set

reserves on Montana claims and a review of these figures by a Certified Casualty Actuary. We would be more comfortable in advising on solution if we were sure of the monetary size of the problem. Remember, the discounted figure has risen despite employer tax payments to date of about \$35,000,000 and general fund appropriation of \$20,000,000.

This bill is ~~probably~~ premature.

The bill needs some amendments in addition to the problems previously cited.

1. The separation date is July 1, 1990, the new State Fund went into operation January 1, 1990, and the Reform Act of 1987 went into effect July 1, 1987. A date of separation other than July 1, 1990, is probably needed.

2. The State Fund is an insurer of last resort, yet provisions still remain in the bill for an assigned risk pool. If there is an assigned risk pool, the State Fund is not the insurer of last resort.

3. The bill speaks to transferring the liabilities for injuries resulting from an accident and doesn't mention the transfer of liabilities due to occupational diseases.

4. The bill is unclear as to whether the State Fund or the Board of Investments is to manage the liabilities. Are the adjusting services to be contracted or assigned the State Fund? The difference in costs may be great.

5. The bill indicates that legislative oversight should be increased but doesn't specify how this is to be done and the possible conflict with the Board of Directors. The bill should make the State Fund truly independent.

6. The bill doesn't indicate why a loan is necessary. If all State Fund assets, amounts unknown, are transferred then, of course, start-up money is needed and should be paid from premium rates.

7. The bill removes all liabilities from the State Fund but gives them a book of business of \$90,000,000 to \$100,000,000 which has value which should be assigned and payments made to the liability fund created.

8. New Section 5 has unclear language of the amount of money that can be transferred annually from tax and bond revenue to the liability fund.

9. The bill limits the bond issues to \$220,000,000 when liabilities are projected at \$375,467,000.

10. Page 7 (5) unproofed draft--"all loan and bond proceeds given to the State Fund must be deposited to the credit of the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and may be used only for the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds. This is unclear--why would loans and bond proceeds given to the State Fund be used for the costs of giving the loan proceeds and issuing the bonds?

11. Section 7 Amendments to 39-71-2311 has some wording that is unclear and some that is difficult to reconcile.

(a) The State Fund is a nonprofit, independent public corporation--not a state agency, required to insure any employer requesting coverage unless an assigned risk plan is in effect. Is it an employer of last resort or not?

(b) "Unnecessary surpluses" created by the imposition of premiums--what is an "unnecessary surplus"--who makes that judgment?

(c) "For the purpose of keeping the fund solvent, it must implement variable pricing levels within individual rate classifications . . . ." It is difficult to understand how variable pricing levels are to be used to keep the fund solvent. Are these variable pricing levels to be something in addition to those provided by accepted national standards? If so, how are these variable rates to be determined?

12. The relationship between the State Fund as a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers and the duties of the Commissioner of Insurance to enforce these laws becomes more unclear.

13. Section 7 - The State Fund is a nonprofit, independent public corporation -

Section 8 (4) - The State Fund is a state agency. Can it be both?

14. Section 9 gives the Fund's Board of Directors full power, authority and jurisdiction over the State Fund. This is in conflict with other sections of the bill which limit full power, authority and jurisdiction of the Board.

15. Rules necessary to comply with the Administrative Practices Act in setting rates for 400 classifications could be difficult to implement and, if tried, very costly to the Fund.

16. Appears new State Fund can declare dividends but not pay them to individual employers until the liabilities incurred prior to July 1, 1990, are funded--not paid. No procedure for requiring money that can be



declared a dividend be transferred to liabilities fund. It could be used for rate reductions.

17. The term "reasonable" surplus is used. How much is reasonable?

18. "The burden of this unfunded liability should not be borne by those employers who have insured with the State Fund because the availability of insurance to all employers through the State Fund has benefited all employers who have Workers Compensation Coverage." How?

19. The job tax starts at 0.28% but doesn't provide this is the maximum. In fact, it allows increases in the tax. Shouldn't it be up to 0.28%. The bill allows confrontations on payroll tax each legislative session.

20. Confusion in use of Department. Does it mean Department of Labor and Industry part of the time and Board of Investments part of the time?

21. The bill provides:

(a) "This act is effective on passage and approval and terminates June 30, 2020."

(b) "[Sections 1 through 14 and 16 through 23] are effective July 1, 1990."

(c) "[Section 15] is effective October 1, 1990, and applies to wages payable on or after July 1, 1990." These 3 sections when read together seem to be contradictory.

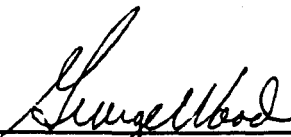
22. What is the effect of the severability clause on this bill? It appears that the failure to obtain an affirmative vote of 2/3 of members of each house somehow allows passage of bill. If this can be done, what happens to be job tax?

This bill has innumerable problems in concepts, potential legal problems and drafting. It asks us to fund a deficit, amount undetermined, whose creation created no benefit to us, with a moveable tax rate for a period of 30 years.

That really asks us to buy a pig in a polk.

The bill should be reported

DO NOT PASS

  
\_\_\_\_\_  
George Wood  
Executive Secretary

Amendments to House Bill No. 2  
Third Reading Copy

Requested by Rep. Swysgood  
For the Committee on Labor and Employment Relations

Prepared by John MacMaster  
May 23, 1990

1. Page 19, line 24.

Following: "paid"

Strike: ", dividends"

Insert: "and until all bonds and loans under [sections 3 and 4] have been retired or paid, money paid into that account under this subsection and any further money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1991, and used to pay and administer those claims. Future premiums must be reduced by the transferred amounts. After that, dividends"

2. Page 28, line 7.

Following: line 6

Insert: "Any tax money in the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, that is a surplus not needed for purposes of that account must be used for the early payment of loans given and the early retirement of bonds issued under [sections 3 and 4]."

Amendments to HB 2, white copy  
Prepared for Rep. Boharski by John MacMaster

1. Title, line 20.

Following: "SOLVENCY;"

Insert: "REQUIRING THAT THE RATE FOR EACH CLASSIFICATION MUST BE  
A PERCENT OF THE NATIONAL COUNCIL ON COMPENSATION  
INSURANCE'S MONTANA SUGGESTED RATE FOR THAT CLASSIFICATION,  
UNLESS A DIFFERENT RATE IS APPROVED BY THE COMMISSIONER OF  
INSURANCE, AND THAT THE SAME PERCENT BE USED FOR EACH  
CLASSIFICATION;"

2. Page 13, line 8.

Following: "rates."

Insert: "To ensure that there is no discrimination between  
classifications, the rate for each classification must be a  
percent of the national council's Montana suggested rate for  
that classification, unless a different rate is approved by  
the commissioner of insurance. The percent must be the same  
for each classification."

HB2AM2

Amendments to HB 2, white copy  
Prepared for Rep. Boharski by John MacMaster

1. Title, line 20.

Following: "SOLVENCY;"

Insert: "PROVIDING A SPECIFIC METHOD OF DETERMINING PREMIUM RATES BUT ALLOWING THE STATE FUND TO USE ANY METHOD SUGGESTED BY THE NATIONAL COUNCIL ON COMPENSATION INSURANCE IN ADDITION TO OR INSTEAD OF THAT SPECIFIC METHOD;"

2. Page 10, lines 4 through 8.

Following: "part."

Strike: remainder of lines 4 through 8 in their entirety

3. Page 13, line 8.

Following: "rates."

Insert: "The state fund shall implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. To ensure that employers are charged equitable rates, the state fund:

(a) shall use employer experience modification factors;

(b) shall allow volume discounts;

(c) shall use a retrospective rating plan for an employer that requests it;

(d) may use a retrospective rating plan for an employer that has shown an inability to control accidents; and

(e) may, in addition to or instead of the rating plan provided in subsections (6)(a) through (6)(d), adopt any rating plan suggested by the national council. The state fund may only use a rating plan referred to in this subsection (6)."

Amendments to House Bill No. 2  
Third Reading Copy

Requested by Rep. Swysgood  
For the Committee on Labor and Employment Relations

Prepared by John MacMaster  
May 23, 1990

1. Page 6, line 9.

Following: "(2)"

Insert: "and unless bonds cannot be sold"



STATE COMPENSATION MUTUAL INSURANCE FUND

P.O. BOX 4759

HELENA, MONTANA 59604-4759

Stan Stephens, Governor

GENERAL INFORMATION (406) 444-6500

May 23, 1990

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. # 7

DATE 5-23-90

BILL NO. H B 2

Senate Committee on Labor  
Montana Senate  
Capitol Building  
Helena, MT 59620

RE: Application of the Montana Administrative Procedures Act  
to the State Fund Under House Bill No. 2

The State Fund is concerned about the specific application of the Montana Administrative Procedures Act (MAPA) to its operations under H.B. 2 for the following reasons:

Under S.B. 428 of the 1989 Legislature, the State Fund was designated a mutual insurer, to be run as a mutual insurer, with all powers vested in its Board of Directors to perform all functions "as fully and completely as the governing body of a private mutual insurance carrier." The provisions of H.B. 2 now denigrate this concept by requiring promulgation of rules which necessitate publication of rule proposals, opportunity for public comment, the possibility of public hearings required because of the large volume of interested persons, and requiring the State Fund to hold contested case hearings pertinent to its own rules.

Under the provisions of S.B. 428, the State Fund is already answerable to the Montana Insurance Code, the regulation by the Insurance Commissioner's Office, and the statutes and administrative rules under the Department of Labor and Industry pertaining to workers' compensation insurance. The application of MAPA on top of these regulations makes the State Fund into an unwieldy bureaucratic animal.

Even if application of MAPA was limited to the promulgation of procedures for publishing rates and classifications, arguably, every time the State Fund changed a rate or reduced benefits, a policyholder or claimant would be entitled to a contested case hearing under the provisions of Section 2-4-102(4), MCA. That section reads: "contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an

May 23, 1990  
Page 2

opportunity for hearing. The term includes but is not restricted to rate making, price fixing and licensing."

With regard to setting rates and classifications under the Montana Insurance Code, Montana is what is known as a "file and use" state. That is, an insurer must first actuarially determine appropriate rates for a given class, file them with the Insurance Commissioner, give 30 days' notice to its policyholders, then put the rates into effect. If a policyholder objects, hearings are held with the "C & R" Committee at the Insurance Commissioner's office. See Sec. 39-16-1012, MCA.

The additional application of MAPA would give the policyholder a separate and additional forum in which to pursue objections to rates or class codes: a contested case hearing before the State Fund. In such a procedure, the ultimate right to implement proper rates and class codes may not be fully determined until all appeals have been exhausted, possibly several years time. This procedure could expect to be replayed by a multitude of policyholders every time rates are increased.

Aside from the fact that the requirement to promulgate rules and hold contested case hearings is duplicative with regard to other procedures to which the State Fund must presently comply, there is the fact that any contested case hearing held by the State Fund may violate a petitioner's right to due process. In the Workers' Compensation Court decision, Sky Country v. State Fund, WCC No. 8909-4913, the Workers' Compensation Court found that where a state agency is 1) in an adjudicatory position (issues findings, conclusions and order); 2) is a party to the proceedings; and 3) receives the pecuniary benefit from any decision which it makes, then the agency has a conflict of interest with regard to the outcome of the proceeding.

The impact of the Sky Country case, is that any proceeding in which the State Fund has held a contested case hearing as required under MAPA, would ultimately be thrown out by the Workers' Compensation Court or the Montana Supreme Court for violating the policyholder's right to due process. The affect of requiring the application of MAPA to the State Fund, therefore, is the creation of an impossibility, so far as can be determined at this point.

It may well be that the State Fund can hire independent hearing examiners to hear each and every contested case hearing which it is required to hold under the Montana Administrative Procedures Act. The cost to the State Fund would be substantial and again, there is no guarantee that the State



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Page 3

Fund can lawfully delegate authority which it cannot legally exercise itself, that is, the authority to render a decision on a contested case hearing.

As a final note, as counsel for the Commissioner of Insurance from 1983 to 1985, I initiated the receivership proceedings against both Glacier General Assurance Co. and Life of Montana. I can attest to the fact that the insurance regulations of this state do work to protect both the public and the policyholders from improper insurance procedures and insolvency. I have not yet, however, seen circumstances where an insurer must comply with the insurance statutes or codes of its state and be subject to the regulation of the Insurance Commissioner's Office, while also being required at the same time to promulgate rules and hold contested case hearings with regard to its own claims handling and rate setting procedures.

I cannot tell you at this juncture that it is an absolute impossibility to comply with both MAPA and the Montana Insurance Code; however, I can tell you that it would be a difficult proposition at best. If we are a state agency and MAPA must apply, then strike the application of the Insurance Code from the operations of the State Fund. If, on the other hand, we are to operate as S.B. 428 intended, then give the State Fund the opportunity to operate as "a domestic mutual insurer", whether a state agency or not, without saddling it with an additional set of procedures that will ultimately serve no purpose other than to add to the problems already faced by this "insurer of last resort".

The amendments proposed by the State Fund to H.B. 2 would delete the application of MAPA to the State Fund. The State Fund urges the Committee to consider this proposal.

Should you have any questions at any time, please feel free to call me at my office, 444-6480.

Sincerely,

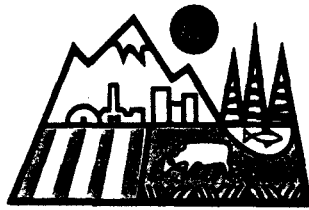
*Richard E. Bach*  
*by df*

RICHARD E. BACH  
State Fund Legal Counsel

REB/df/1928

AMENDMENTS TO HOUSE BILL 2  
(Third Reading)

1. Page 17, lines 12 through 18.  
Strike: subsection(4) in its entirety
2. Page 18, line 12.  
Strike: "rule making"  
Insert: "by-laws"
3. Page 18, line 22.  
Strike: "rules"  
Insert: "by-laws"
4. Page 19, lines 5 through 8.  
Strike: "Classifications" on line 1 through "1" on  
line 4
5. Page 21, line 6.  
Strike: "rules"  
Insert: "by-laws"



SENATE LABOR & EMPLOYMENT

EXHIBIT NO. # 8

DATE 5-23-90

BILL NO. HB 2

## MONTANA CHAMBER OF COMMERCE

P. O. BOX 1730

• HELENA, MONTANA 59624

• PHONE 442-2405

Testimony of the  
Montana Chamber of Commerce  
by

Jim Tutwiler, Public Affairs Manager  
on House Bill 2 (Workers Compensation)  
in the Special Session  
May 21, 1990

For the record my name is James Tutwiler representing the Montana Chamber of Commerce. The majority of our some 1,000 members are small businesses located throughout Montana.

Our purpose in appearing here today is not to oppose solving the State Fund's liability problem but to oppose the manner in which the bill before you addressed that problem.

Of utmost concern to many Montana businesses is the imposition of a payroll tax. As we are all well aware, a temporary payroll tax was enacted in 1987 to June 30, 1991. Since enactment employers have been paying about 13 million a year. The bill here in question would authorize the payroll tax for an additional 30 years and cost employers in this state as much as 662 million dollars. We believe such a tax is unwise and unwarranted. A payroll tax adds significantly to existing business taxes in Montana that, today, are among the highest in the nation. A payroll tax is an inequitable tax because it

requires all employers, whether or not they subscribe to the state fund, to pay. And most certainly a payroll tax is a tax on jobs. It forces employers who pay the best wages to pay the most tax. We should be moving, and the legislature made a start in 1989, to bring Montana's business taxes in line with taxes in competing states. Adding a 30 year payroll tax now in this Special Session moves us in the wrong direction.

Montana businesses are understandably skeptical of reports of the amount of the unfunded liability and what that liability represents.

We must confess to our own frustration and lack of expertise regarding the unfunded liability's true size, why it continues to grow, and how and when and who should pay the bill. We did the best we could by asking Ernst and Young, a nationally recognized firm experienced in workers compensation actuarial and management matters, for their advice and assistance. After examining current reports on the State Fund, Ernst and Young concluded that the latest calculation of funding requirements does not appear to employ generally accepted casualty actuarial techniques appropriate to workers compensation insurance. The firm also cautioned that there is considerable uncertainty surrounding unfunded liability projections and that we ought to be aware of this uncertainty in deciding any long term funding plan.

Our point here is that neither our own statewide business community nor experts in the field are convinced the state fund truly knows the size of the unfunded liability and payment patterns.

Under these circumstances we urge this committee not to

approve a bill which commits the state to a long term funding plan that costs employers over 600 million dollars for a debt of undeterminable size.

(A complete account of Ernst and Young's observations and suggestions is attached to this testimony.)

Members of the committee, we should also point out the bill before you purposely and significantly expands the state's direct control of the Fund's operation. Specifically, Section 8 of the bill would require the Fund's management to follow the Montana Administrative Procedures Act in setting premium rates. Such a degree of oversight is excessive and possibly detrimental to timely and responsive decision making we can and should expect from the Fund's directors. While there has been severe criticism of workers compensation past management, the new management team has given every indication it can and is correcting the problems that have continued to plague the workers compensation system. We believe they ought to have that opportunity to succeed.

The business community believes this bill will channel a lot of employer payroll tax dollars to a liability whose dollar amount is unknown. However, the alternative of taking no action and allowing premium rates to rise on the average of 24% this year and next are equally devastating. Is there another alternative? We believe there is.

It is the business community's hope and our recommendation that this committee consider an alternative which

- (1) Postpones the imposition of a long term payroll tax and the issuance of bond authority.
- (2) Provides for the continued

solvency of the State Fund through June 30, 1991 by making a combined use of General Fund appropriations, Fund Reserves, payroll tax and premium rate adjustment. (3) Requires the immediate undertaking of a comprehensive analysis of the Fund by a casualty actuary so that the legislature and the business community of Montana can by early 1991 have a sound estimate of the Fund's true liability upon which a funding strategy can be devised.

Members of the Committee, we thank you for the opportunity to express our views on this extremely important issue.

# Ernst & Young

277 Park Avenue  
New York, New York 10172  
Telephone: (212) 773-3000  
Fax: (212) 773-1996 / 1997  
Telex: 177704

May 19, 1990

Montana Chamber of Commerce  
P. O. Box 1730  
Helena  
Montana 59624

Re: Emergency Funding for  
State Compensation Mutual Insurance Fund

Dear Sirs:

Thank you for contacting Ernst & Young for actuarial assistance in your evaluation of the proposed funding for the Montana State Compensation Mutual Insurance Fund. Based on the information available for review and the urgency of the issues, I conclude as follows:

1. Whether measured in terms of a present value in excess of \$200,000,000 or future payments on the order of \$400,000,000, a substantial commitment by the people of Montana is proposed. Accordingly, it is important to consider all aspects and weigh alternatives.

2. Available information on funding needs, risks and alternatives is limited.

a. The latest calculation of funding requirements does not appear to employ generally accepted casualty actuarial techniques appropriate to workers' compensation insurance. The presentation resembles a pension evaluation.

There are various areas of specialization within actuarial science. Workers' compensation falls within casualty actuarial science, not pension.

Although there are no statutorily binding standards for rates used by the State Compensation Mutual Insurance Fund, evaluations using generally accepted casualty actuarial techniques are important information that should be available to the Montana legislature.

Montana Chamber of Commerce - May 19, 1990 - Page 3

Relevant sources of Fund revenues are (A) premiums, (B) payroll tax, (C) investment income, and (D) potential supplemental revenue provided by the legislature analogous to the \$20,000,000 in supplemental revenue appropriated for the 1990 fiscal year. Assuming the accuracy of the projections, any combination of funds from these four sources will enable the State Compensation Mutual Insurance Fund to achieve its financial objectives for 1991.

Relative to estimated premium of \$95,994,000 and payroll tax of \$13,283,000 for 1990, the target of \$135,161,000 represents an increase of \$25,884,000.

Countrywide increases in workers' compensation rates have averaged approximately 7.5% per year. (Available data does not permit analysis of a rate level increase based on Montana data. The latest National Council on Compensation Insurance filings should be consulted.) Because there was no increase in Fund rates at July 1, 1989, an increase of 15% in current Fund rates would not be out of line with national benchmarks.

Using values from the latest Fund projections, a 15% increase would generate approximately \$13,343,000 in additional collected premiums, leaving \$12,541,000 to be generated from other sources. By way of comparisons, the latest Fund projection requires a 24.34% rate increase without benefit of additional revenues other than incidental increases in payroll tax.

These are not the only possible funding strategies. A variety of alternative approaches is available and should be considered.

To sum, a long-term financing commitment at this time would be based on weak actuarial foundations. There are alternative financing strategies that would facilitate a decision based on better information.

Ernst & Young is pleased to have been of service in your request for objective appraisal of financing alternatives. We enjoyed working with you and look forward to working with the Montana Chamber of Commerce again.

Sincerely,



Alfred O. Weller  
Senior Manager, FCA, FCAS, MAAA

enc.: Summary of Reviewed Information

ERNST & YOUNG



**ALFRED O. WELLER****ERNST & YOUNG**

=====

Alfred O. Weller joined Ernst & Young as a Senior Manager in November 1987. His responsibilities have included management and casualty actuarial consulting, risk management services, and audit support. Among his clients are large and small companies; self-insurers, primary insurers and reinsurers; new ventures and established companies.

Before joining Ernst & Young, Al Weller was Vice President and Chief Actuary of the Risk Management Division of Fred. S. James & Co., Inc. From 1983 to 1985 he was a Vice President of BRI Coverage Corporation. From 1981 to 1983 Vice President of Casualty Actuarial Services Division of Frank B. Hall and Company, Inc. From 1978 to 1981, Director of Actuarial Services at Continental Insurance Companies. From 1971 to 1978, Mr. Weller rose to the position of Senior Actuary on the Executive Staff of the National Council on Compensation Insurance.

Al Weller is a Fellow of the Conference of Actuaries in Public Practice, a Fellow of the Casualty Actuarial Society, and a Member of the American Academy of Actuaries. He has been active in the Committee work and professional activities of these organizations. Currently, he serves on the Board of Directors of the Conference of Actuaries and various Committees. He has been a speaker at the Casualty Loss Reserve Seminar, RIMS meetings, and other professional societies, and he has published articles in the various actuarial publications. He is also a past President of Casualty Actuaries of Greater New York.

Al Weller is a graduate of Swarthmore College and holds a masters degree in mathematical statistics from Indiana University.

Proposed Amendments to House Bill No.  
Third Reading Copy  
Montana School Boards Association

May 23, 1990

1. Title, line 22.

Following: "SOLVENCY;"

Insert: "PROVIDING FOR A GENERAL FUND APPROPRIATION OF THE  
EMPLOYER'S PAYROLL TAX ASSESSED AGAINST SCHOOL DISTRICTS AND  
LOCAL GOVERNMENTS;"

2. Page 28, following line 9.

Insert: "(3) The tax amounts assessed against school districts  
and local governments under 39-71-2503 are statutorily  
appropriated, as provided in 17-7-502, from the general fund to  
the department to be used to reduce the unfunded liability."

3. Page 31, line 2.

Following: "17"

Insert: "(except the addition of subsection (3) to 39-71-2504)"

4. Page 31, line 11.

Following: "16]"

Insert: "and the addition of subsection (3) of 39-71-2504 by  
[section 17]"

## HOUSE BILL 2

## REPRESENTATIVE SWYSGOOD AMENDMENT

Amendment to House Bill No. 2  
Third Reading Copy

The amendment to Page 28, Line 7, accomplishes one very important objective: it mandates that any excess payroll tax money which accumulates must be used for the early payment of bonds. The effect of this mandate is that the bonds could be retired in 15 years if a combination of two things happens. The first is that if the payroll inflation rate exceeds the original estimate of 3.8 percent, then additional funds would be available for early bond redemption. The actual payroll inflation rate since 1969 is 7.5 percent. Given that, an estimate of five percent growth is not out of line. If that five percent growth is obtained, there would be \$353 million in tax revenues applied to early bond redemption.

The second issue which could allow for early bond redemption concerns the actual level of unfunded liability. If opponents to HB 2 are correct and the estimate of unfunded liability is too high, then there will be even more money available for the early retirement of the bonds.

The essence of this amendment is to lock up any excess money from either higher tax collections or lower unfunded liability, and mandate that it be applied to early debt reduction.

The moment that the debt is retired the payroll tax can be terminated. In fact, if the committee so desired language could be inserted in the bill which would sunset the payroll tax when the bonds are retired.

It can reasonably be assumed that a 30 year bond issue can be retired in 15 years if this amendment is accepted.

LABOR COMMITTEE

WITNESS STATEMENT

51st LEGISLATIVE SESSION

DATE: 5-23-90

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. #A

DATE 5-23-90

BILL NO. H B 2

\*\*\*\*\*  
PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY !  
\*\*\*\*\*

NAME: Leon Stalcup Date: 5-23-90

ADDRESS: 1635 W Kent Missoula MT 59801

PHONE: 721 2895

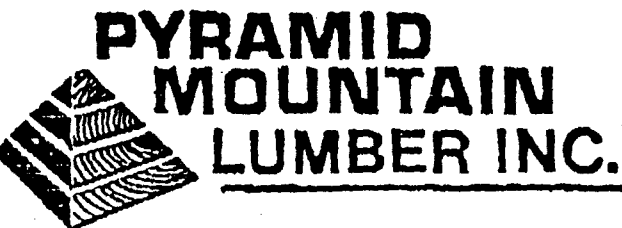
REPRESENTING WHOM: Montana Restaurant Association

APPEARING ON WHICH PROPOSAL: H B 2

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? X

COMMENTS: Montana does have a problem with Workers Comp  
but to commit 660 million Dollars to solve a 220 million  
dollar problem seems to be going too far.  
Where did the problem come from? Which specific industries  
caused the problem? Why are all businesses asked to pay  
on a payroll basis rather than risk basis? If there  
has been a substantial monetary subsidy to specific  
industry then these should be funded, as are all other  
social programs, through the general fund.  
Take the time to study this issue, do not act  
hastely, wait until the regular session to give  
this issue the time it needs.

6



SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 12

DATE 5-23-90

BILL NO. HB 2

(406) 677-220

P.O. Box 549 • Seeley Lake, Montana 5986

5/24/90

TO: Senate Labor Committee

FROM: Roger Johnson, President  
PYRAMID MOUNTAIN LUMBER, INC.

RE: Proposed Workers Compensation Legislation

The last legislative session made major strides towards resolving our troubled workers compensation system. Unfortunately, it was too little too late.

The proposed legislation does nothing to address the problem. If the State of Montana desires to continue in the business of workers compensation, somebody needs to understand and address the problem. If not, the unfunded liability will continue to grow.

I request that a decision not be made in the special session on this extremely critical and complex issue. A problem of this magnitude that is complicated with rate inadequacies deserves more than a quick fix.

Sincerely,

A handwritten signature in dark ink, appearing to read "Roger D. Johnson", is written over a horizontal line.

Roger D. Johnson  
President  
PYRAMID MOUNTAIN LUMBER, INC.

Amendments to Senate Bill No. 5 BILL NO. SB 85  
First Reading CopyRequested by Sen. Gene Thayer  
For the Committee on LaborPrepared by Mary McCue  
May 23, 1990

1. Title, lines 8 through 10.

Following: "REQUIRING THAT" on line 8

Strike: remainder of line 8 through "1990," on line 10

2. Title, line 11.

Strike: "THOSE"

3. Title, line 12.

Following: "PAYABLE;"

Insert: "PROVIDING THAT THE STATE FUND SHALL INCREASE PREMIUM  
RATES BY 7 PERCENT TO ASSURE SUFFICIENT REVENUE TO SATISFY CLAIMS  
AS THEY BECOME DUE AND PAYABLE;"

Strike: "SECTION"

Insert: "SECTIONS 39-71-2311 AND"

4. Page 1, following line 14.

Insert: "STATEMENT OF INTENT"

The legislature recognizes that the unfunded liability currently existing in the state fund cannot be fully addressed at this time. The legislature further recognizes that the unfunded liability will have to be addressed from time to time in future legislative sessions; that other sources of revenue may have to be obtained from time to time to assist in reducing the unfunded liability; and that because of the current state of the economy and because of the current premium rates being charged employers, there should not be a substantial increase in premium rates at this time."

5. Page 1, lines 19 through 21.

Following: "1990"

Strike: remainder of line 19 through "structure" on line 21

6. Page 2, line 11.

Following: "date"

Insert: "for the purpose of establishing premium rates"

7. Page 2, lines 12 through 17.

Strike: subsection (3) in its entirety

8. Page 3, lines 10 and 11.

Following: "(6)" on line 10

Strike: remainder of lines 10 and 11

9. Page 3, lines 13 through 16.



ROLL CALL VOTE

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: 5-23 BILL NO: HB1 TIME: 12:25

VOTE:	YES	NO
SENATOR TOM KEATING	X	
SENATOR SAM HOFMAN	X	
SENATOR J.D. LYNCH		X
SENATOR GERRY DEVLIN	X	
SENATOR BOB PIPINICH		X
SENATOR DENNIS NATHE	X	
SENATOR RICHARD MANNING		X
SENATOR CHET BLAYLOCK		X
SENATOR GARY AKLESTAD	X	



SENATE

REPORT

May 23, 1990

MR. PRESIDENT:

We, your committee on  
had under consideration  
yellow), respectfully re

Relations, having

1 reading copy --

1 be concurred in.

Sponsor: (Noble)

DO CONCUR IN

Signed: \_\_\_\_\_

Gary C. Aklestad, Chairman

SENATE STANDING COMMITTEE REPORT

May 23, 1990

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration Senate Bill 3 (second reading copy -- yellow), respectfully report that Senate Bill 3 do pass.

DO PASS

Signed:   
Gary C. Aklestad, Chairman

## SENATE STANDING COMMITTEE REPORT

May 24, 1990

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration House Bill 2 (third reading copy -- blue), respectfully report that House Bill 2 be amended and as so amended be concurred in:

Sponsor: (Senator Thayer)

1. Title, lines 9 through 23.

Following: "DATE;" on line 9

Strike: remainder of line 9 through "2020;" on line 23

Insert: "REQUIRING THAT THE STATE FUND SHALL CHARGE AMOUNTS SUFFICIENT TO PROVIDE REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE; REQUIRING THAT THE STATE FUND SHALL INCREASE PREMIUM RATES BY 7 PERCENT TO ASSURE SUFFICIENT REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE;

2. Title, page 2, lines 2 and 3.

Strike: "39-71-116," on line 2 through "THROUGH" on line 3

Insert: "39-71-2311 AND"

Following: "39-71-2316," on line 3

Insert: "MCA;"

Strike: "39-71-2321,"

3. Page 2, lines 4 through 7.

Strike: all of line 4 through "DATE" on line 7

Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

4. Page 2, following line 7.

Insert: "STATEMENT OF INTENT

The legislature recognizes that the unfunded liability currently existing in the state fund cannot be fully addressed at this time. The legislature further recognizes that the unfunded liability will have to be addressed from time to time in future legislative sessions; that other sources of revenue may have to be obtained from time to time to assist in reducing the unfunded liability; and that because of the current state of the economy and because of the current premium rates being charged employers, there should not be a substantial increase in premium rates at this time."

5. Pages 2 through 31.

Strike: everything after the enacting clause

Insert: "NEW SECTION. Section 1. Purpose of separation of state fund liability as of July 1, 1990. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other

methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to treat claims that arise on or after July 1, 1990, is to separate the liability of the state fund for the purpose of establishing premium rates on the basis of whether a claim arose before July 1, 1990, or on or after that date.

Section 2. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a nonprofit, independent public corporation. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan is established under 39-71-431 and is in effect. ~~The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves.~~ For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record."

Section 3. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund -- rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications ~~so that the state fund will be neither more nor less than self-supporting.~~ in amounts sufficient to provide revenue to satisfy claims as they become due and payable. However, in order to assure this cash flow in the future, the state fund shall increase total premium rates for the fiscal year commencing July 1, 1990, by 7% of the immediately preceding

fiscal year's total premium. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated and adequate actuarially determined reserves are determined.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund."

NEW SECTION. Section 4. Settlement of fixed benefit claims that arose prior to July 1, 1990. (1) The state fund shall offer a lump-sum settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability, other than liability for medical benefits, and has fixed benefits. The lump-sum settlement must be 80% of the amount of liability accepted by the state fund, discounted to present value. Each settlement offer must contain a provision granting the state fund a full and unconditional release of liability, other than liability for medical benefits, in exchange for accepting the lump-sum settlement. The claimant shall accept a lump-sum settlement in writing before November 1, 1990, or the settlement offer is void.

(2) If the lump-sum settlement offer made pursuant to subsection (1) is not accepted, the lump-sum law in effect on the date of the injury applies.

NEW SECTION. Section 5. Request for proposals for claims settlement. The state fund shall prepare a request for proposals for contracting with private claims adjusters for settling the claims of persons whose benefits have not been determined under a claim that arose before July 1, 1990. The request for proposals may be based upon a dollar amount of unsettled claims or upon a percentage of claims for which benefits have not been determined. The state fund may not enter into a contract based upon a proposal until it has reported the results of the proposals to the 52nd legislature and has received legislative authorization to enter into a contract based upon a proposal.

NEW SECTION. Section 6. Exemption from notice requirement. The 30-day notice requirement imposed under 33-15-1106 does not apply to rate changes effective July 1, 1990, that occur in response to the provisions of [this act].

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval."

BE CONCURRED IN AS AMENDED

Signed:   
Gary C. Aklestad, Chairman