

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chair Carolyn Squires, on January 15, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chair (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Thomas Lee (R)
Mark O'Keefe (D)
Jim Southworth (D)
Dave Wanzenried (D)
Tim Whalen (D)

Members Excused:

Bob Pavlovich (D)

Members Absent:

Fred Thomas (R)

Staff Present: Eddy McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

Chair Squires deferred executive action on HB 28, sponsored by Rep. Sonny Hanson, and appointed a subcommittee to consider amendments and do more research. Rep. Dave Wanzenried was appointed Chairman, along with Rep. Tim Whalen and Rep. Royal Johnson as subcommittee members. Rep. Hanson was instructed to work with them.

There was a general orientation on Unemployment Insurance and Workers' Compensation. EXHIBITS 1,2,3,4

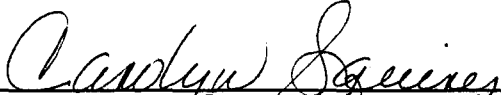
HOUSE LABOR & EMPLOYMENT RELATIONS COMMITTEE

January 15, 1991

Page 2 of 2

ADJOURNMENT

Adjournment: 4:35 p.m.



Carolyn Squires, Chair



Jennifer Thompson, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

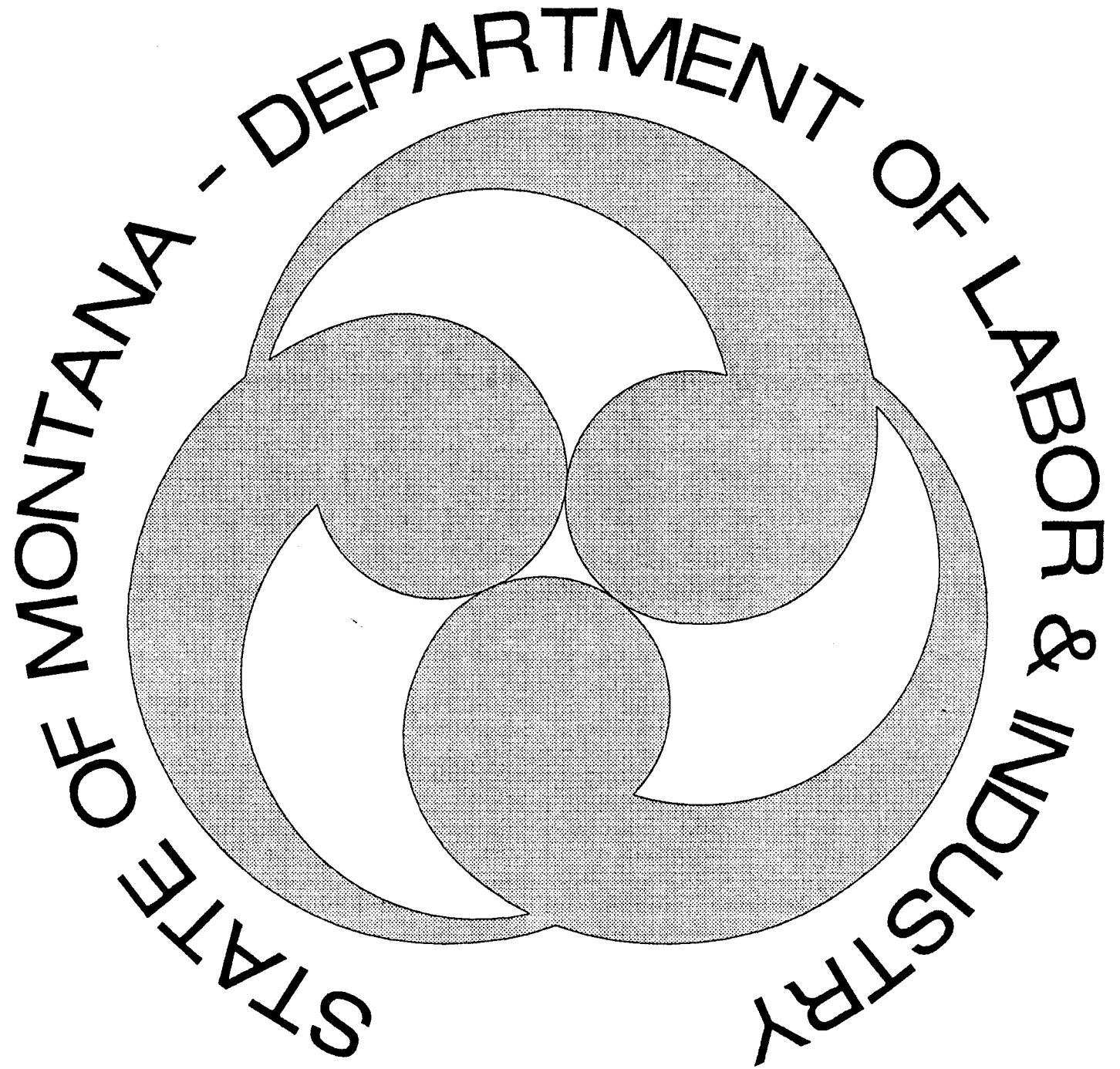
ROLL CALL

DATE

1/15/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH			✓
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS		✓	
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

EXHIBIT 1
DATE 1/15/91
HB Orientation



QUALITY MANAGEMENT

The department has embarked on a program to implement quality management throughout the agency. Known around the country and the world as "total quality management", or TQM, this management approach produces great increases in customer satisfaction, productivity, and satisfaction of the work force. Using concepts proven to be highly effective in organizations both in Japan and in the United States, the department is taking the lead in pioneering this management approach in the public sector.

Quality management emphasizes four critical concepts: (1) providing superior customer service by recognizing that customers must define the quality of service or product they need; (2) creating a work environment where continual improvement of services and systems is expected and delivered; (3) empowering staff to make decisions which effect them and to act in providing services to customers; and (4) to increase to a very high level the amount of employee involvement and teamwork in the organization.

Quality management is far from being a mere program or system. It seeks to develop a "culture" of quality in an organization; a culture in which customers needs are anticipated and met, where people do the right thing routinely, where change is planned and managed, and where people throughout the organization feel ownership and a sense of pride in their work.

The Department of Labor and Industry has begun this project by instituting at least one quality management pilot project in each of the divisions. Department management have received introductory training in the concepts, and a team has been established to develop a quality curriculum which will provide comprehensive training to all department staff.

Experience in the private sector shows that a cultural change of this magnitude takes years to fully implement. However, the department has already seen some very positive and significant changes in the few months since the project was initiated, and the pace of change will likely accelerate in the years ahead. Strategic work plans with a quality emphasis are being developed in each division which will further sharpen the department's efforts to become the quality leader in state government.

DEPARTMENT OF LABOR AND INDUSTRY

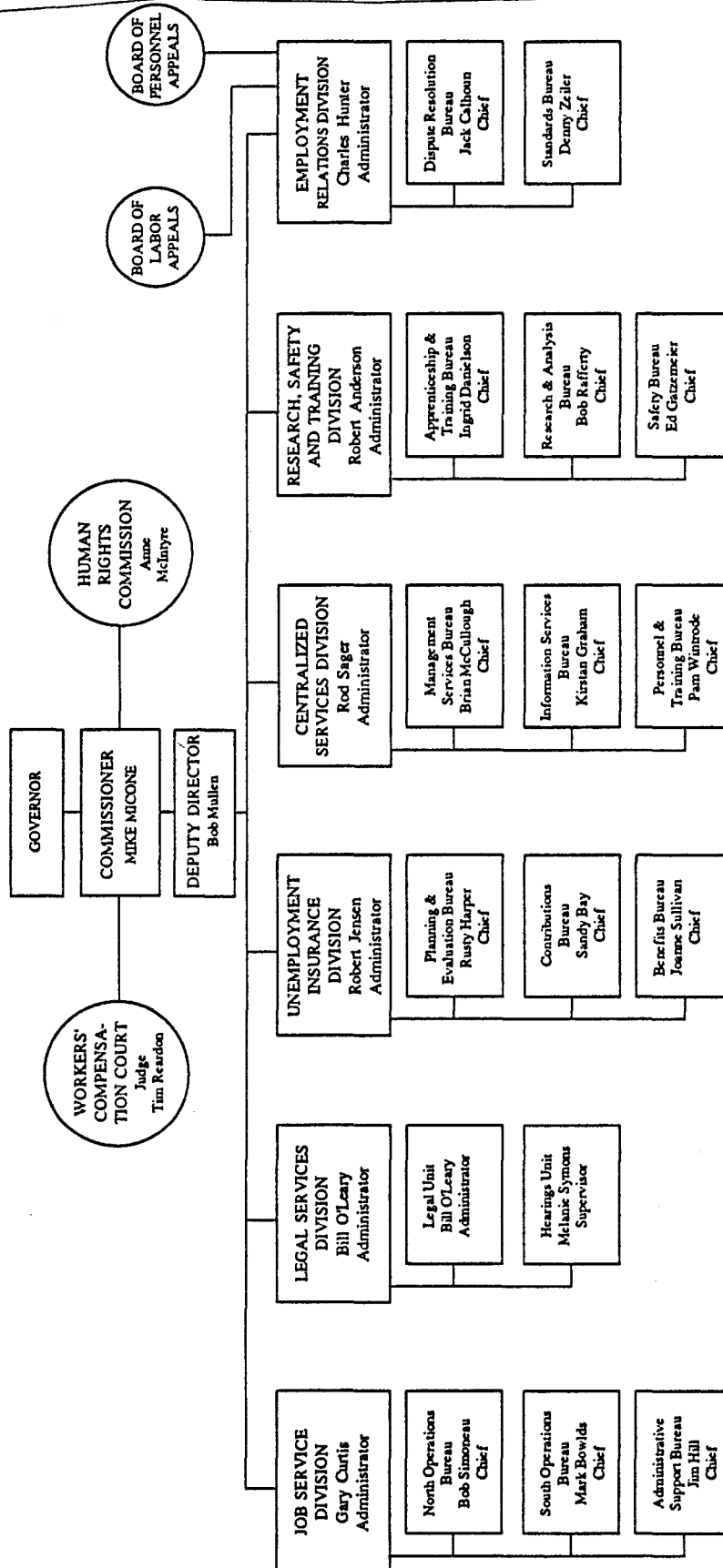
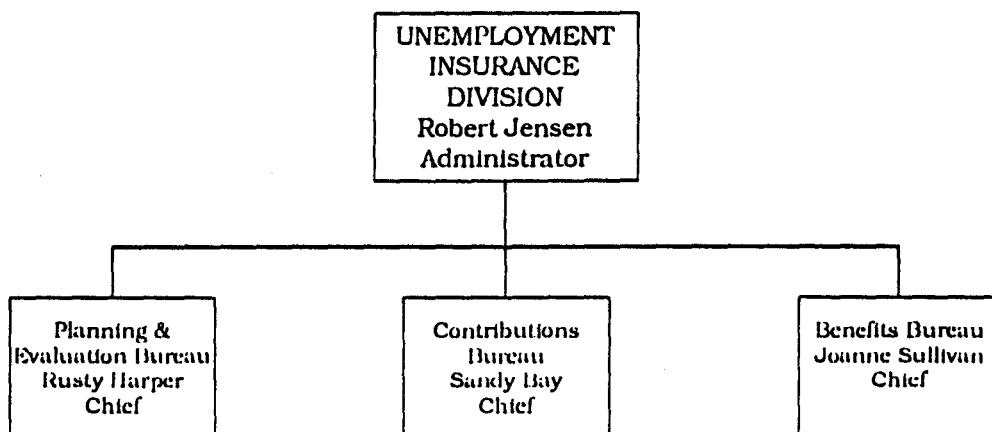


EXHIBIT 1
DATE 1/15/91
HB orientation

UNEMPLOYMENT INSURANCE DIVISION



Overview

The **Unemployment Insurance Division** operates a program designed to provide short term economic benefits to individuals who are unemployed through no fault of their own. To achieve that goal, the division manages both unemployment benefit and contribution programs required by state and federal regulations. The division also provides technical assistance and support to local Job Service staff in regard to U.I. regulations and procedures. To facilitate the delivery of public services, the basic program components are organized into the following bureaus:

The **Benefits Bureau** is responsible for determining both who is eligible for benefits and the amount of benefits those qualified individuals should receive. Additionally, the bureau has a collection function which recovers benefits that were overpaid or were found to be obtained through fraudulent means.

The **Contributions Bureau** is responsible for collecting and accounting for unemployment taxes

paid by approximately 24,000 employers. This bureau accounts for the UI trust fund (maintained in the federal treasury), assigns tax rates for individual businesses, determines the employment status of workers under the statutes and collects delinquent tax monies.

The **Planning and Evaluation Bureau** provides administrative support to the division and houses the budgeting and reporting function. Additionally, this bureau is the home of the internal quality control section, which studies the accuracy of benefit payments.

In general, Unemployment Insurance claims have trended downward since the mid-eighties, while the trust fund balance used to pay benefits has increased over the same time period. The year 1990 saw a leveling of the downward trend in benefit claims, although there was no real growth in the number of claims. Below are some significant statistics regarding the program from the past federal fiscal year end (9/30/90).

Trust Fund Balance:	\$87,000,000
Claims Paid:	\$28,000,000
Taxes Collected:	\$37,000,000
Number of Initial Claims:	54,232
Number of Covered Employers:	24,024

Recent Changes

- Implemented a total quality management (TQM) program designed to improve service to customers and increase the quality of work.
- Provided assistance for business clinics around the state that were designed using prior employer feedback to design the clinic curriculum.
- Conducted a series of "cost of quality" studies to identify inefficiencies and unnecessary labor efforts which resulted in numerous customer service enhancements and systematic problem reductions.
- Redesigned the employer charging function and improved the detail and clarity of employer account information.
- Streamlined the process for granting employers abatement of penalty and interest.
- Improved collection services by instituting a policy of calling on all delinquencies before a billing is sent. Most accounts can now be cleared up over the phone, in a faster, simpler and friendlier manner.
- An automated notifier system has been installed which allows staff to alert claimants to problems at times outside of normal business hours.
- The Planning and Evaluation Bureau is operating as a "self-managing" team, without a bureau chief, with all management decisions performed by the team.
- The Benefits Bureau has been reduced from three sections to two and an entire management layer has been removed.
- Administrative rules have been rewritten in simpler and clearer language, with emphasis on the removal of unnecessary procedural hoops.

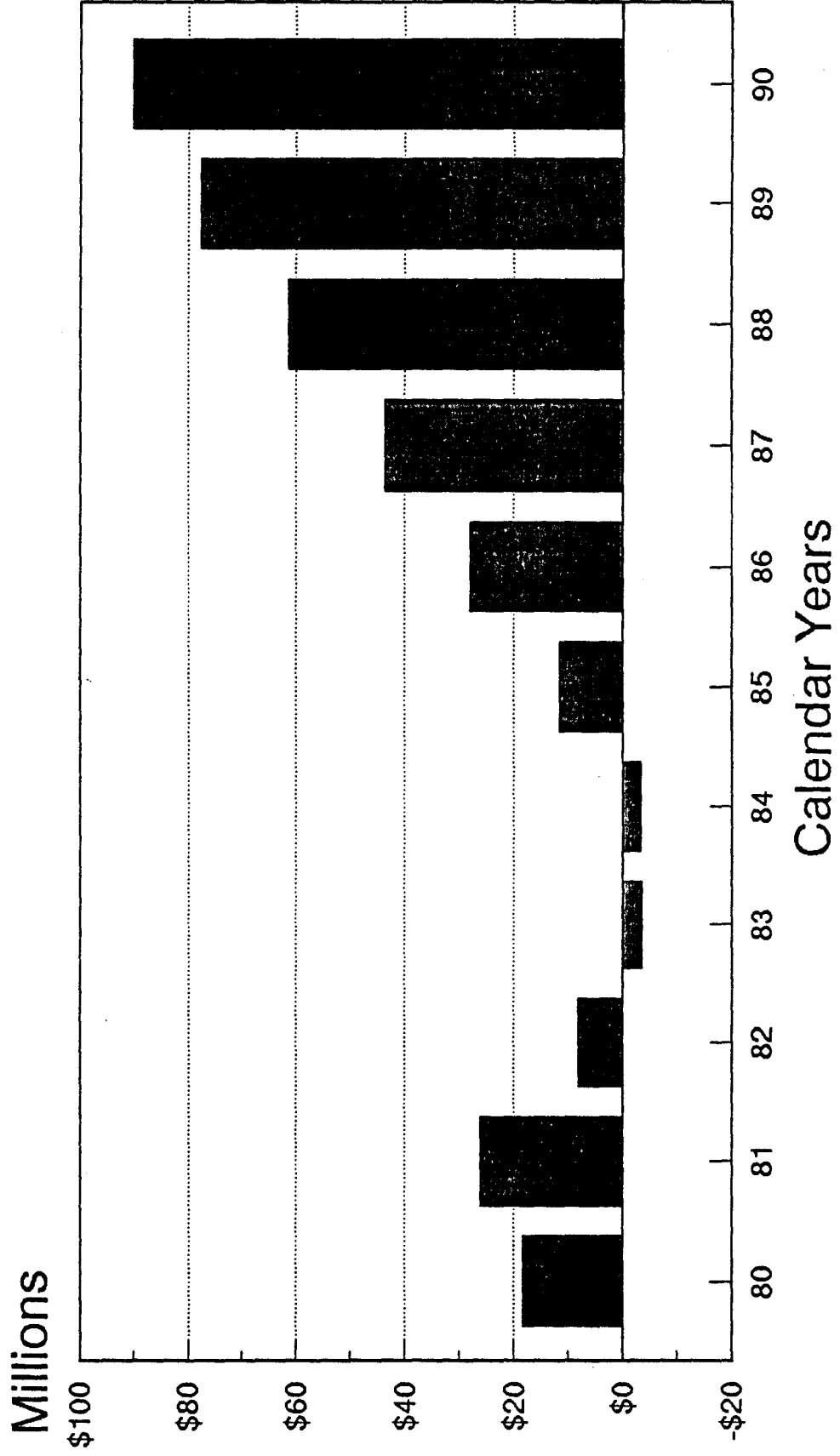
Major Priorities

- Continuing the commitment to total quality management with primary emphasis on superior service.
- Use cost of quality data collected to reduce costs while streamlining and improving the service delivery system.
- Investigate new automation technologies such as "imaging" to reduce paperwork.
- Through legislation seek authority to improve the claims paying process and eliminate systemic problems.
- Encourage Congress to release sufficient federal trust fund dollars to supplant grant revenues that have been reduced to states.

Montana Unemployment Insurance

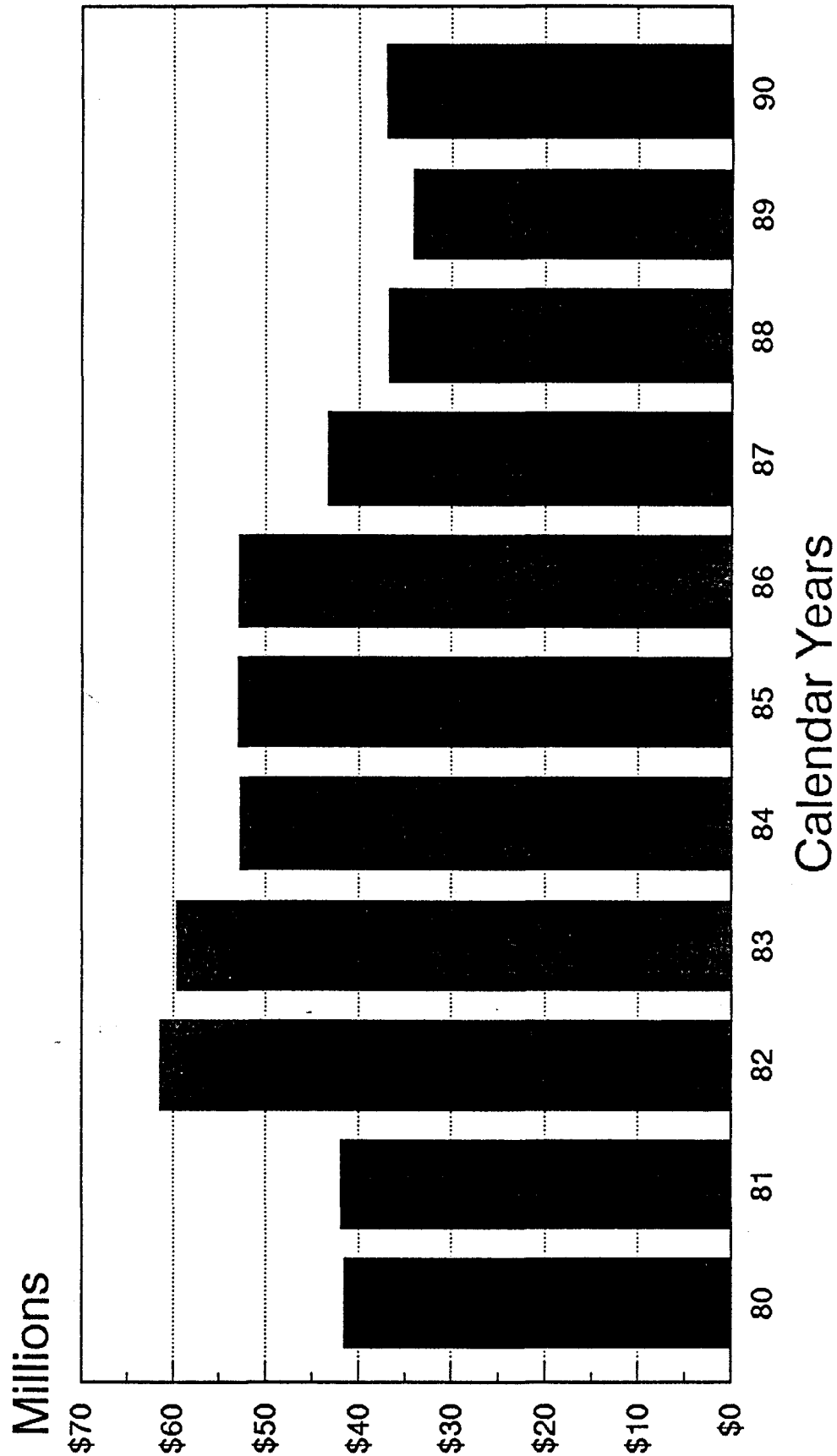
Trust Fund Year End Balances

(1/91)



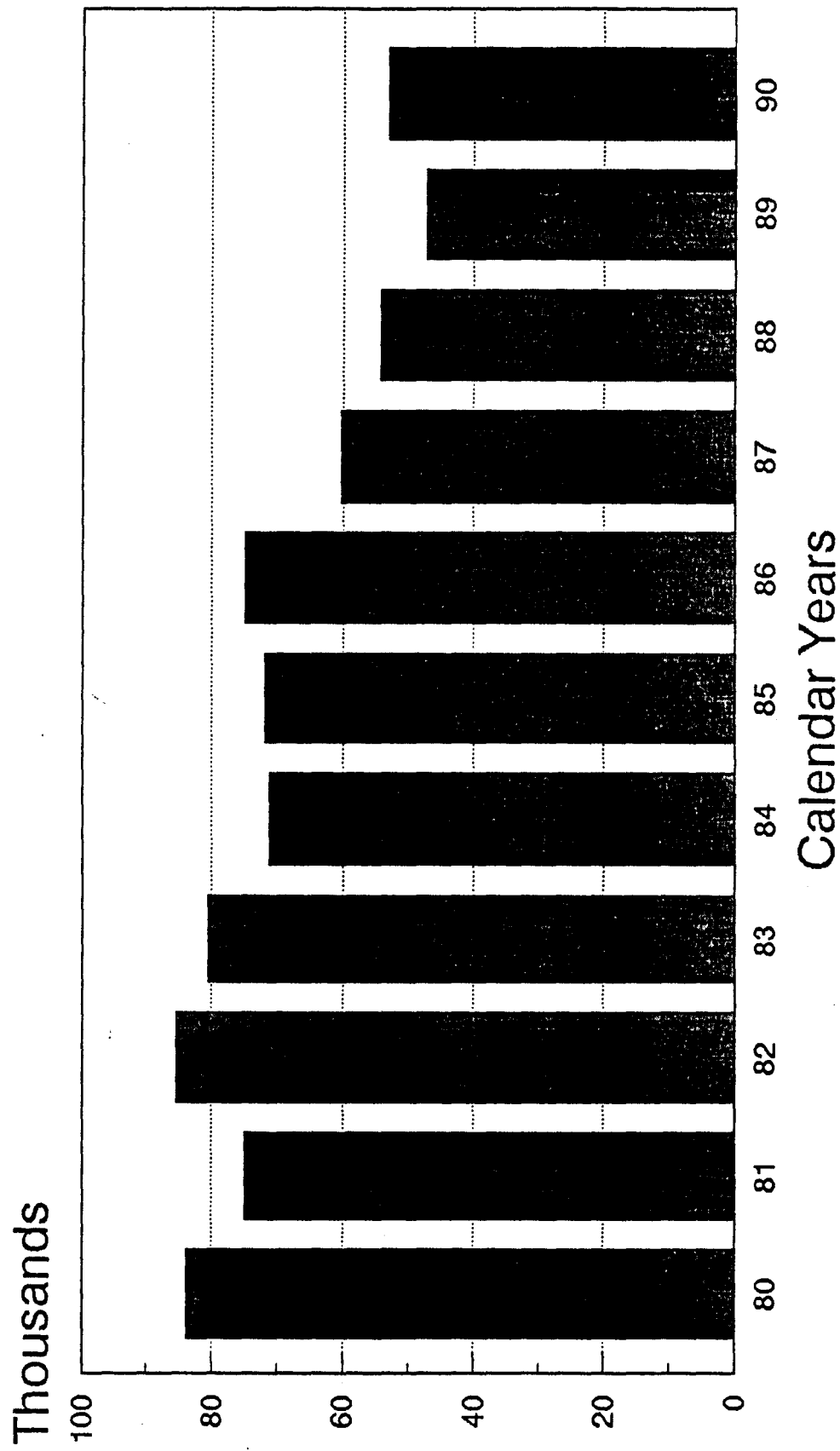
Montana Unemployment Insurance Net Benefit Payments From Trust Fund

Excluding Extended & Fed. Programs (1/91)

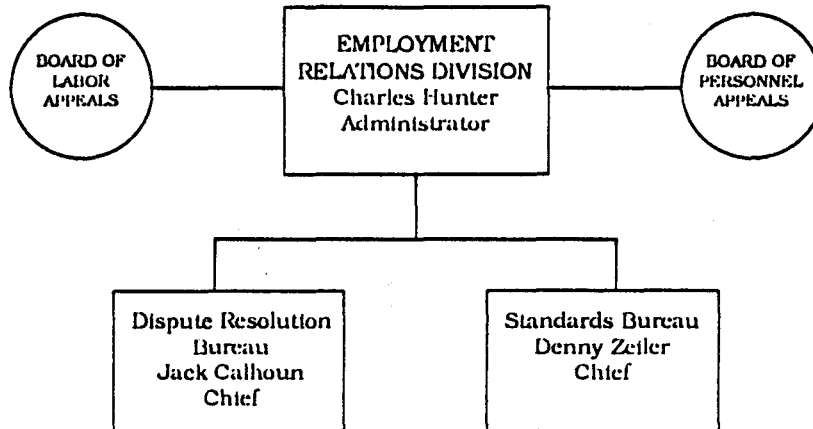


Montana Unemployment Insurance

Yearly Total Number of Newly Unemployed (1/91)



EMPLOYMENT RELATIONS DIVISION



Overview

The **Employment Relations Division** provides to the department multi-faceted functions related to regulation, compliance, investigation and administration of the state's labor, wage and hour, workers' compensation and unemployment insurance regulations and laws. In recent years, the division has placed considerable emphasis on enhancing procedures that attempt to mitigate dispute resolutions before formal action or contested hearings become necessary.

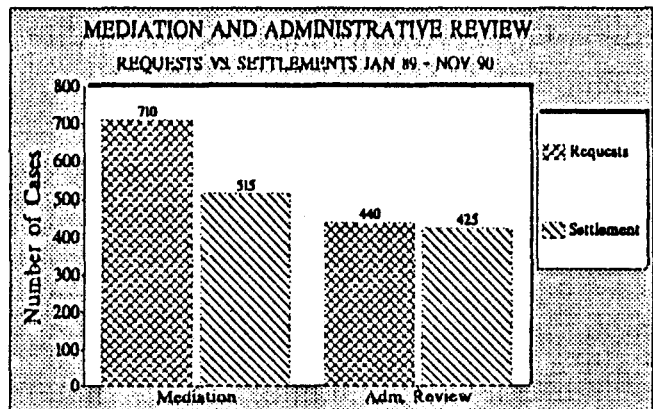
As a result of the creation of the State Compensation Mutual Insurance Fund by the 1989 Legislature, all regulatory functions dealing with workers' compensation were assumed by the Employment Relations Division.

The **Boards of Personnel Appeals and Labor Appeals** are attached to the division with the division administrator, and staff, providing administrative support. As it is presently structured, the division is organized into two bureaus:

The **Dispute Resolution Bureau** provides services in several distinct areas directed toward assisting organizations and individuals in arriving at early, inexpensive settlement of disputes and obligations. Individual units within the bureau deal specifically with matters relating to workers' compensation and the collective bargaining process. In some cases the bureau acts as a referral point for parties seeking fact finders and arbitrators.

The **Mediation Unit** provides assistance to private sector employers in the form of mediation of

contract disputes and representation questions in the area of collective bargaining. The goal is to resolve disputes before it is necessary to proceed to the hearings process as formal contested cases. The success of the unit in case mediations has been admirable and steadily increasing over time.



Administrative reviews are also conducted by this unit. These actions allow parties who have been adversely affected by division orders to request an informal review conference.

The **Claims Management Unit** is charged with ensuring compliance with workers' compensation and occupational disease laws as they relate to benefits and claims. The unit examiners regularly provide assistance to claimants and insurers by informing them of applicable laws and assisting them in claims processing procedures.

The **Files Management Unit** provides support services to other bureau and division units by developing and maintaining a readily accessible database and filing system used to aid examiners and others in carrying out their responsibility to claimants and insurers.

The bureau's **Rehabilitation Unit** consists of a panel that determines a return to work status for injured workers using the primary goal of returning the disabled worker to work as quickly as possible with a minimum of disruption.

The **Standards Bureau** performs functions relating to general employment obligations between employers and employees. The bureau performs primarily a regulatory and compliance role, but has increasingly expanded into a preventative role such as assisting employer queries about the Workers' Compensation Act.

The **Investigation Unit** provides an administrative forum to resolve wage claims and complaints filed by employees, regarding non payment of wages, minimum wage or overtime violations or contractual disputes.

The **Uninsured Employers Fund Unit** enforces workers' compensation coverage requirements for all employers and pays compensation and medical benefits to injured workers of uninsured employers with funds obtained through penalties and violations.

The bureau's **Policy Compliance Unit** is designed to ensure and assist employers in making the proper choice when deciding between the three types of workers' compensation plan options available. The unit reviews compliance with appropriate sections of the Workers' Compensation Act and requests and maintains required security deposits.

In addition, this unit issues, denies or cancels policies and certificates of carriers and/or adjusters when necessary.

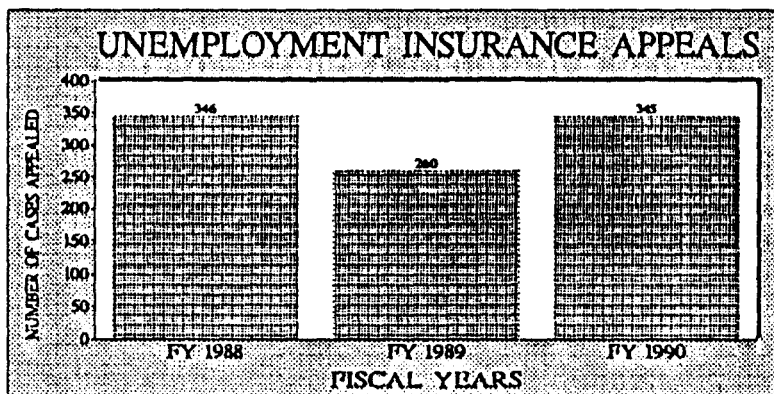
The **Medical Regulations Unit** administers a program providing effective and equitable methods of health care cost containment; methods to establish better communications and education of medical providers, insurers and claimants as related to workers' compensation, and; effective methods of dispute resolution in the injured worker impairment rating process.

The **Subsequent Injury Unit** administers funds that are designed to provide an incentive to employers to hire vocational handicapped workers. It evaluates, approves or denies requests for certification, pays claims and negotiates settlements.

The **Regulations Section** regulates attorney's fees by approving or denying attorney fee agreements with clients.

The **Board of Personnel Appeals** is a five member board that administers Montana's Collective Bargaining Act for Public Employees. It also serves an appellant function by reviewing unfair labor practice cases, representation questions, classification appeals for state government employees and grievances brought by various state agencies. As a result of recent statutory changes the Board also hears appeals brought under the State Wage Payment Act and the State Prevailing Wage Act.

The **Board of Labor Appeals**, consisting of three members, hears appeals concerning eligibility for unemployment insurance benefits and unemployment insurance tax questions. It also determines questions of employment versus independent contractor status for purposes of unemployment insurance and workers' compensation benefits.



Recent Changes

- Separation of the State Fund has resulted in database enhancements as the division gained access to new information.
- Implementation of study team recommendations resulting in reduced reporting requirements and commensurate reduction in paperwork.
- Increased automation capabilities to reduce paper flow and increase monitoring effectiveness while providing statistical information.
- Implementation of two telephone hot lines to (1) allow ease in reporting suspected workers' compensation abuse and (2) provide assistance to parties to speed the processing of claims and benefits.

Major Priorities

- Develop a new database on workers' compensation policy information that interacts with claims information database.
- Automate manual processes in the Subsequent Injury Fund, Policy Compliance, Attorney Fee Regulation, Uninsured Employer Unit and the Medical Regulation Unit.
- Renegotiate extraterritorial and reciprocity agreements to assist employers.
- Establish a comprehensive fee schedule document that allows for simpler preparation and application processes to deal with rising medical costs.
- Establish effective criteria for approving workers' compensation self-insurer requests.

OUTLINE OF LEGISLATION ENACTED
BY MONTANA'S
51st LEGISLATURE - 1989

1. HB 21 Family member exclusion.

Chapter #33 -- Sponsor, Marks, R.
Amends Title 39, Chapter 71, Section 401, MCA.

Exempts members of an employer's family from workers' compensation coverage, provided the member can be claimed by the employer as an exemption under the Internal Revenue Code.

Effective: July 1, 1989.

2. HB 33 Chiropractors allowed to offer impairment evaluations.

Chapter #161 -- Sponsor, Pavlovich, R.
Amends sections 37-12-201 and 37-71-711, MCA.

- a. Allows Board of Chiropractic to establish standards for its members to become impairment evaluators.
- b. Claimant or insurer may obtain an impairment rating from a chiropractor if the treating physician is a chiropractor.

Effective: October 1, 1989.

3. HB 154 Courts may grant stay of execution during appeal process.

Chapter #74 -- Sponsor, Smith, C., et al.
Title 39, Chapter 71, new section, Part 29, MCA.

Permits either the Workers' Compensation Judge or the Supreme Court to stay the execution of an order pending resolution of the appeal.

Effective: March 13, 1989

Applicability: Applies to any case pending before Workers' Compensation Judge which has not been appealed to the Montana Supreme Court.

4. HB 155 No workers' compensation liability for non-workers' compensation reinjury to same body part.

Chapter #184 -- Sponsor, Smith, C., et al.
Amends Title 39, Chapter 71, Section 407, MCA.

Provides that a workers' compensation insurer is no longer liable for benefits on an existing claim if the party suffers a new non-work related injury to a previously injured body part if the worker had reached maximum healing. (Insurer still liable for new work related injury to previously injured body part.)

Effective: October 1, 1989.

5. HB 214 Appointment of trustee for silicotic program recipients.

Chapter #69, Sponsor, Smith, C.
Title 39, Chapter 73, Part 1, new section, MCA.

Allows for the appointment of a representative payee to apply for and receive benefit payments on behalf of eligible silicotic program claimants.

Effective: October 1, 1989.

6. HB 347 General revision of Workers' Compensation Law.

Chapter # 333, Sponsor, Smith, C.
Amends Title 39, Chapter 71, Parts 1, 3, 6, 7, 10, 22, 23, and Section 50-16-527, MCA.

- a. Allows the Division of Workers' Compensation to assess a penalty of no more than \$200 against an insurer should the carrier fail to notify the Division when it cancels a policy.
- b. A clarification of the term "job pool" as used in the rehabilitation process. Defines local job pool as Job Service Office area.
- c. Eligibility for total rehabilitation benefits begins when injured party has reached maximum medical improvement whether or not a rehabilitation provider has been designated.
- d. Establishes the amount paid for claimant travel expenses to medical service at the same rate allowed for state employee travel.
- e. Specifies that a 14-day benefit reduction notice be given only if all wage compensation benefits are terminated. For injuries incurred prior to 7/1/87, a 14-day notice is required if benefits are reduced from total to partial disability.

- f. Amends the current 6-day wage loss waiting period to allow a 48 hour wage loss period which ever is less.
- g. Amends the terms "wages" and "payroll" to coincide for both premium and benefit determination purposes.
- h.(1) Limits to three (3) prior years the time in which the State Fund can assess additional premium or issue premium refunds.
- i.(1) Allows State Fund to apply experience modification factors up to one (1) year retroactively if the calculation has been delayed by the rating organization because of insufficient data.
- j. Requires sole proprietors or partners of a business to elect the wage base for payroll and benefit purposes within the minimum and maximum provided by current law.
- k. Requires wages for all concurrent employments of an injured worker be used when establishing the wage base for compensation benefits provided the worker is disabled as a result of the injury.
- l. Allows a workers' compensation insurer continuous access to the medical records of a worker's industrial injury while claiming benefits.
- m. Allows the Division to assess a penalty of not less than \$200 or more than \$500 against an employer, insurer, or adjuster who refuses or neglects to submit requested reports for review of proper claims handling procedures.

Effective: July 1, 1989, except Item L. above is effective March 27, 1989.

Footnote: (l.) Applies to State Fund only.

7. HB 348 Revise occupational disease panel hearing process.

Chapter #162 -- Sponsor, Marks, R.
Amends Title 39, Chapter 72, Sections 601, 608, 612, and 706, MCA.

Statutory amendments in 1987 broadened the definition of occupational disease to cover additional conditions. This bill clarifies how OD panels are organized and revises the panel selection process.

Effective: July 1, 1989.

8. SB 218 Amend Division's authority to waive time for filing a claim.

Chapter #254 -- Sponsor, Thayer, G.
Amends Title 39, Chapter 71, Section 601, MCA.

In addition to lack of knowledge of a disability, the bill gives Division authority to consider the possibilities of a latent injury or equitable estoppel when making a determination of whether or not the 12-month filing limit on claims should be waived.

Effective: October 1, 1989.

9. SB 278 Creates a Self Insurer's Guarantee Fund.

Chapter #244 -- Sponsor, Thayer, G.
Title 39, Chapter 71, new sections, MCA.

Establishes a means by which self insurers will obligate themselves in order to guarantee payments to injured workers in the event a company is unable to meet its workers' compensation obligations.

Effective: July 1, 1989.

10. SB 285 Allows public corporations to fund a workers' compensation guarantee requirement by selling bonds.

Chapter # XXX -- Sponsor, Halligan, M.
Amends Title 39, Chapter 71, Section 403, MCA

Proceeds of a bond sale may be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or other security required to guarantee the payment of workers' compensation benefits by self insured public entities.

Effective: Passage & approval.

- EXHIBIT 2
DATE 1/15/91
compensation mediation
11. SB 315 Allowing insurers to write workers' medical deductible coverage.

Chapter # XXX -- Sponsor, Rapp-Svrcek, P.
Title 39, Chapter 71, Part 4, and amends
Section 39-71-2304, MCA.

- a. Allows workers' compensation insurers to write medical deductible plans in \$500 increments per claim up to a maximum of \$2,500.
- b. Insurers pay deductible amounts and seek reimbursement from policyholders.
- c. Benefits paid by insurers and reimbursed by the policyholder under the deductible provisions may not be considered expense for rate making or experience rating purposes.
- d. Deductible amounts are policyholder costs and cannot be passed on to employees.

Effective: October 1, 1989.

12. SB 372 Revision and clarification of the workers' compensation mediation procedures.

Chapter # 427 -- Sponsor, Nathe, D.
Amends Title 39, Chapter 71, Sections 2401, 2406, and 2409 through 2411, MCA.

- a. Allows mediator to dismiss a petition on his/her own motion.
- b. Stipulates that the mediation process is informal and intended to resolve issues at a minimal cost to all parties.
- c. Requires all parties to fully present their cases at the mediation level. Issues raised at the Workers' Compensation Court not considered at mediation will be remanded to mediation for review. Parties may present new evidence at Workers' Compensation Court.

Effective: October 1, 1989.

13. SB 421 Authorizing Governor to enter into reciprocal agreements with Canadian provinces.

Chapter #388 -- Sponsor, Aklestad, G.
Title 39, Chapter 71, new section, Part 4, MCA.

- a. Allows Governor to enter into reciprocal worker's compensation law agreements with Canadian provinces.
- b. Specifies agreement conditions and allows denial of reciprocity under certain conditions.

Effective: March 30, 1989.

14. SB 428 General Division Reorganization. Creating the State Compensation Mutual Insurance Fund and blending the Division's responsibilities into the Department of Labor & Industry.

Chapter # 613 -- Sponsor, Thayer, G.

Amends Sections 2-14-1014, 2-18-103, 19-3-1002, 19-3-1007, 19-3-1202, 19-13-601, 33-1-102, 33-2-119, 33-16-1005, 33-16-1011, 33-17-502, 33-18-212, 37-72-101, 39-1-103, MCA.

Amends Title 39, Chapter 71, Parts 1, 2, 3, 4, 6, 7, 9, 23, 25, MCA.

Amends Sections 39-72-201, 39-72-310, 50-71-102, and 50-73-102, MCA.

Repeals Sections 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324, MCA.

- a. Dissolves the Division of Workers' Compensation and transfers its regulatory and safety responsibilities to the Department of Labor & Industry.
- b. Attaches the Workers' Compensation Court to the Department of Labor & Industry rather than the Department of Administration.
- c. Establishes the State Fund as a mutual nonprofit mutual insurer and attaches it to the Department of Administration.
 - 1.) Establishes a five-member board of directors who are vested with the management and control of the Fund.
 - 2.) Allows the Board to appoint an executive director who has the responsibility for the Fund's operating management.
 - 3.) Allows the Board to set salaries of employees.
 - 4.) Essentially operates in the same manner as a private carrier and requires the State Fund to conform with the insurance commissioner's rules and regulations governing workers' compensation carriers with some exceptions.
 - 5.) Property of the Fund, including all monies, property, securities, etc., belong to the Fund and not the state.
 - 6.) Allows the Commissioner of the Department of Labor & Industry, should he deem it necessary, to establish an assigned risk pool so that those employers with poor experience may obtain coverage either from a private carrier or the State Fund. The assigned risk plan will provide for an equitable assignment of poor risk employers among both private carriers and the State Fund.

- 7.) Requires the State Fund to provide coverage for all employers unless the assigned risk plan is implemented.
- 8.) Continues the Fund as the exclusive carrier for state agencies.
- 9.) Allows for the payment of dividends once the unfunded liability is wiped out.
- 10.) Maintains the current payroll classification system established by the National Rating Organization.

Effective: Items c1, c2, and c3 above--April 21, 1989.
Other Sections--Governor may implement by executive order but no later than January 1, 1990.

(Doc 2038x)

DIVISION OF WORKERS' COMPENSATION
OUTLINE OF LEGISLATION ENACTED
BY THE
MONTANA'S 50th LEGISLATURE - 1987

EXHIBIT 3
DATE 1/15/91
HB Ordnation

WORKERS' COMPENSATION

PART I - GENERAL REFORM

1. SB 315 - Chapter 464 -- MAJOR REFORM -- Sponsor, Williams, R.
Amends Title 39, Chapters 71 & 72, and Sections
45-6-301 & 19-12-401, MCA.

a. Statement of Public Policy

The Act should replace lost wages for injured workers and provide medical treatment, rehabilitation, and retraining all through a self administering system which minimizes the necessity for litigation. It should also be construed according to its terms and not liberally in favor of any party.

b. Definition of Injury and Accident

Injury means - internal or external physical harm and death but excludes emotional or mental stress and disease not caused by an accident. Includes heart attacks only if the primary cause of the physical harm.

Accident means - an unexpected traumatic incident or unusual strain identifiable by time and place of occurrence, part of body affected, and caused by a specific event on a single day or during a single work shift.

c. Definition of Wages

Wages means - gross remuneration paid in money or substitute for money for services rendered by an employee. Includes commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations and sick periods, value of lodging, rent, etc., if part of remuneration, and any other payments made on a basis other than time worked.

d. Filing Fraudulent Claims & Theft of Benefits

Any person who obtains or assists in obtaining benefits to which they are not entitled may be guilty of theft and subject to criminal proceedings. If found guilty, subject to a \$50,000 maximum fine and/or 10 years in prison.

e. Mediation Process - Extension of Court Authority

Establishes a mandatory, nonbinding mediation process which attempts to resolve issues early on without the need to involve the Workers' Compensation Court. Defines duties of a mediator, establishes mediation procedure, and limitations of the process. Extends Workers' Compensation Court authority to preserve and enforce order, provide orderly conduct, compel obedience, compel attendance, and punish for contempt. Requires (WC) (the) Court to be bound by the rules of evidence.

f. Safety Program Incentives

Permits insurers to give immediate financial incentives to employers who institute formal safety programs.

g. Coverage Requirements

Exempts real estate salesmen or brokers and direct sellers of consumer products used primarily in the home. Allows independent contractors to apply for exemption.

h. Insurer Liability for Accidents

Increases the threshold of proof a claimant must establish on a pre-existing injury before an insurer can accept liability. Changes test from medically possible to medically more probable than not. Takes traveling employees out of course and scope of employment unless approved by employer. Takes employees out of the course and scope of employment if their use of non-prescription drugs or alcohol is the sole cause of the injury or death unless employer had knowledge and failed to attempt to stop the abuse.

i. Subrogation

Permits an insurer to subrogate against the entire third party settlement.

j. Uninsured Employers Fund

Puts benefit payments on a cash available basis. Provides for payment of wage loss and then medical benefits if funds are available. Eliminates lump sum payments and the requirement to establish reserves.

k. Attorney Fees & Costs

Court to assess costs and attorney fees against insurers who unreasonably delay benefits. Fees awarded only if Court finds insurer's action unreasonable.

l. Attorney Fee Regulation

Division to provide forms for contract between attorney and injured worker. Benefits gained due to the efforts of the attorney will be considered when establishing regulations.

m. Hiring Preference - No Firing

Employer may not fire a worker for filing a claim. Worker gets 2 year return-to-work preference with same employer. District Court has jurisdiction over disputes.

n. Benefits - Wage Compensation

(1.) Temporary Total:

Rate: $\frac{2}{3}$ of wages received at time of injury, maximum "state's average weekly wage"

Duration: Until maximum healing is reached.

Waiting Period: Paid from the seventh day of wage loss.

Freeze: Maximum rate at \$299 until 7/1/89.

(11.) Partial Disability

Wage Supplement Rate: $\frac{2}{3}$ of difference between wages actually received at time of injury and wage worker is qualified to earn in job pool; maximum $\frac{1}{2}$ "state's average weekly wage". Terminates when injured receives or is eligible to receive full Social Security retirement.

Duration: During period of loss--maximum of 500 weeks.

Eligible: After reaching maximum healing.

Impairment: Medical panel evaluation applied to Journal of American Medicine Association Guide (JAMA Guide).

Indemnity: None.

Freeze: Maximum rate at 149.50 until 7/1/89.

(iii.) Total Disability

Rate: Same as temporary total.

Duration: Paid during disability. Terminates when injured receives or is eligible to receive full Social Security retirement.

Lump Sum: Eligible for self-employment maximum of \$20,000 only after rehabilitation priority steps have been satisfied. Limited options (see q. iv. below).

COLA: Provides Cost of Living Allowance to claimants after receiving 104 weeks of biweekly payments. Maximum of 3% per year.

Freeze: Maximum rate at \$299 week until 7/1/89.

o. Impairment Panels

Defines an impairment rating as a purely medical determination. Establishes division authority to appoint physicians as evaluators, may seek nominations from board of medical examiners. Ratings are given as a percentage of the whole person. Provides for second and third ratings if necessary.

p. Hospital Fees

Gives Division authority to establish hospital rates. Freezes medical and hospital rates at 1987 level.

q. Limited Lump Sum Payments

(1.) Disputed Liability:

u May convert benefits if claimant and insurer agree;

DWC must approve;

Settlement may not be reopened; and

u Failure to reach agreement may not be litigated.

u unconstitutional

- (ii.) Accepted Liability:
Permanent total and permanent partial wage supplement may be converted;
✓ - Insurer and claimant must agree;
DWC must approve;
✓ Failure to reach agreement may not be litigated; and
Settlement may not be reopened.

- (iii.) Permanent Partial Wage Supplement Benefits:
✓ - May advance benefits if claimant and insurer agree;
DWC must approve; and
✓ - Failure to reach agreement may not be litigated.

- (iv.) Permanent Total Benefits:
May be advanced, not to exceed \$20,000;
Insurer and claimant must agree;
DWC must approve, certain restrictions; and
Disputes may be heard by mediator and Workers' Compensation Court.

- (v.) Benefits advanced in (iii.) and (iv.) above may be recovered over the duration of the compensation period. They may also be discounted.

r. Rehab Return-to-Work Priorities & Process

Emphasize a "return-to-work" system rather than a "vocational Training" system. A new section on required rehabilitation sets out the sequence of priorities for return-to-work programs. The role of certified private rehabilitation counselors is provided for the first time, and their relationship to the Department of Social and Rehabilitation Services (SRS) is established. Provisions are included for the termination of benefits because of noncooperation with an approved program.

s. Rehab Wage Supplement Benefits

Benefit incentives are provided which encourage both the injured worker and the insurer to actively pursue the retraining and re-employment process. Provisions are also made to discourage malingering participants. Auxiliary benefits are incorporated for travel, relocation, and job-search expenses. Rehabilitation panels are established to ensure the process is kept moving. Wage supplement and partial rehabilitation payments are provided during the rehabilitation period. Self-employment capital may be obtained given certain circumstances. Adjudication of disputed items is also provided.

t. Job Pool vs. Normal Labor Market

Establishes a "job pool" concept to govern the geographic location a worker must consider when making a determination if the worker's physical limitations as a result of the injury would preclude return-to-work.

u. Occupational Disease

Amends the definition to incorporate a provision for cumulative injuries caused by repetitive trauma.

v. Effective Dates

(1.) Generally, July 1, 1987.

(11.) Rule making authority, etc., upon passage and approval.

PART II - ADMINISTRATION

1. SB 242 - Chapter 109 -- ACCESS TO EMPLOYER PREMISES --
Sponsor, Lynch, J.
Amends Section 39-71-2305, MCA.
 - a. Division personnel have access to employer premises for the purpose of determining if area is unduly dangerous. If found unsafe, premium may be advanced by 50%.
 - b. Effective October 1, 1987.
2. HB 78 - Chapter 485 -- ATTACH OR GARNISHMENT OF WORKERS" COMPENSATION BENEFITS--Sponsor, Brown, J.
Amends Section 39-71-743
 - a. Court or administrative authority may attach wage compensation benefits to pay for current or past due child support obligations.
 - b. Effective October 1, 1987.
3. HB 249 - Chapter 239 -- MINIMUM ANNUAL PREMIUM ON STATE FUND POLICIES--Sponsor, Kitselman, L.
Amends Section 39-71-2304, MCA.
 - a. Requires State Fund to assess a minimum annual premium on all policies, to cover administrative costs, amount to be determined.
 - b. Effective July 1, 1987.
4. HB 640 - Chapter 352 -- NOTIFICATION OF INJURY --
Sponsor, Swift, B.
Amends Section 39-71-603, MCA.
 - a. Changes from 60 days to 30 days, the time a worker has to report an injury to his employer.
 - b. Effective October 1, 1987.

5. HB 884 - Chapter 664 -- PAYROLL TAX ON EMPLOYERS -
Sponsor, Smith, C.
NEW SECTIONS.
- a. Provides for a 3% payroll tax on all employers' workers' compensation covered wages.
 - b. Provides supplemental source of funding to finance the unfunded liability.
 - c. Tax effective on payroll for the quarter ending 9/30/87 and terminates 6/30/91.
6. HB 94 - Chapter 232 -- OPTIONAL MEMBERSHIP IN RATING ORGANIZATION -- Sponsor, C. Smith
Amends Section 39-71-2302, MCA
- a. Makes division membership in the national rating organization, National Council on Compensation Insurance, optional rather than compulsory.
 - b. Requires the division to continue to exchange rate making information; i.e., accident & financial statistics.
 - c. Effective October 1, 1987.
7. HB 345 - Chapter 242 - PLAN II SECURITY DEPOSITS --
Sponsor, L. McCormick
Amends Section 39-71-2206, MCA.
- a. Changes security requirements on private insurance companies:

from - not less than \$5,000 or more than \$100,000,
to - not less than \$25,000 or more than \$200,000,

as the division may determine.
 - b. Effective October 1, 1987.
8. HB 373 - Chapter 525--STAFFING PATTERN FOR STATE COMPENSATION INSURANCE FUND -- Sponsor, P. Darko
Amends Section 39-71-203, MCA.
- a. Requires division to employ a sufficient number of personnel to handle claims and policyholder workload.
 - b. Establishing a goal to process all compensation claims within 14 days of accepting initial liability.
 - c. Effective upon passage and approval.

PART III - COVERAGE

1. SB 313 - Chapter 314 -- INDEPENDENT CONTRACTOR DETERMINATIONS - Sponsor, Blaylock, C.
Amends Sections 39-51-201, 203, 310, 1109; Sections 39-71-120 & 401, MCA.
 - a. Common Definition--workers' compensation and unemployment insurance.
 - b. Disputes resolved by Board of Labor Appeals after hearing by Employment Relations Division.
 - c. May appeal hearings officer decision within 10 days.
 - d. "Independent Contractor" determinations may be appealed to Employment Relations Division.
 - e. Effective July 1, 1987.

2. SB 84 - Chapter 92 -- LAW ENFORCEMENT RESERVE OFFICERS, OPTIONAL COVERAGE UNDER PLANS I, II, III -- Sponsor, G. Thayer
Amends Section 7-32-203, MCA.
 - a. Changes the requirement for reserve law enforcement officers to be covered by Plan III only, to coverage by any insurer.
 - b. Effective October 1, 1987.

3. HB 80 - Chapter 148 -- EXEMPT NEWS CARRIERS -- Sponsor, Brown, J.
Amends Section 39-71-401, MCA.
 - a. Exempts news carriers. Parents must approve if minor children are effected.
 - b. Exempts free-lance correspondents.
 - c. Effective October 1, 1987.

4. HB 689 - Chapter 290 -- INDEPENDENT CONTRACTOR EXEMPTION STATUS -- Sponsor, Swift, B.
Amends Section 39-71-401, MCA.
 - a. Provides that an individual who has an "independent contractor exemption" does not have to reapply to maintain that status unless circumstances change under which the original exemption was given.
 - b. Effective October 1, 1987.

5. HB 381 - Chapter 526--COSMETOLOGISTS & BARBERS COVERAGE -
Sponsor, E. Grady
Amends Section 39-51-204 and 39-71-401, MCA.

- a. Exempts from the term "employment," under the unemployment insurance laws, cosmetologists and barbers who can demonstrate they are working as independent contractors.
- b. Exempts cosmetologists and barbers from the need to apply for an exemption from the Division of Workers' Compensation to be determined an independent contractor.
- c. Effective October 1, 1987.

PART IV - SUBSEQUENT INJURY

1. HB 129 - Chapter 151 --SUBSEQUENT INJURY CERTIFICATION --
Sponsor, J. Driscoll
Amends Section 39-71-905, MCA.
 - a. Requires individuals to apply to the division for certification.
 - b. Effective October 1, 1987.
2. HB 130 - Chapter 213 -- CLARIFYING INSURER LIABILITY UNDER
THE SUBSEQUENT INJURY ACT -- Sponsor, J. Driscoll
Amends Section 39-71-907, MCA.
 - a. Specifies that an insurers' liability for a certified individual ceases after it actually pays benefits for 104 weeks.
 - b. Effective October 1, 1987.

PART V - UNINSURED EMPLOYERS

1. SB 118 - Chapter -- UNINSURED EMPLOYER PENALTIES &
EMPLOYER MISCONDUCT -- Sponsor, Halligan, M.
Amends Section 39-71-507, MCA.
 - a. Extends the Penalty Provisions on Uninsured Employers.
 - b. Establishes Employer Misconduct -
 - i) fails to provide coverage,
 - ii) falsifies employment records, including wages reported, number of employees, etc., and
 - iii) refusal to pay workers' compensation premiums.
 - c. Establishes criminal penalties for violation of \$50,000 maximum and/or 10 prison years.
 - d. Effective July 1, 1987.

CRIME VICTIMS COMPENSATION

1. SB 40 - Chapter 203 -- CRIME VICTIMS MENTAL HEALTH TREATMENT -- Sponsor, M. Halligan .
Amends Section 53-9-128, MCA.
 - a. Relative is entitled to \$500, family not to exceed \$1,500 in mental health treatment necessary because the victim died as a result of criminal conduct.
 - b. Effective October 1, 1987.

2. HB 309 - Chapter 496--CRIME VICTIMS COMPENSATION GENERAL REVISION -- Sponsor, J. Quillici
Amends Section 53-9-103 et al, MCA.
 - a. Transfers administration to the Department of Justice, Division of Crime Control.
 - b. Gives the district court jurisdiction over disputes.
 - c. Defines records which are personal in nature and exempt from public disclosure.
 - d. Increases maximum wage compensation benefits from \$125 per week to one-half state's average weekly wage (149.50 as of 7/1/86).
 - e. Increases maximum funeral and burial expenses from \$1100 to \$2000.
 - f. Removes the \$20,000 limitation on the amount of benefits an individual who was employable but not employed may receive. Also applies to that victim's dependents.
 - g. Gives the division subrogation rights against collateral sources arising to the offender because of the criminal conduct.
 - h. Effective July 1, 1987.

3. HB 554 - Chapter 533--CRIME VICTIMS ESCROW FUND - Sponsor, F. Daily
Amends Section 53-9-104, MCA.
 - a. Establishes a fund to accept the proceeds which may become available because of the offender's actions.
 - b. Makes benefits available to victims and their dependents up to \$5000.
 - c. Pay costs of court appointed counsel and fees of the charged person.
 - d. Residue of fund goes to general crime victim account.
 - e. Effective October 1, 1987

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Permanent Total Disability

Injured workers receive permanent total disability benefits when they are no longer temporarily totally disabled and unable to work as a consequence of the injury. The rate is the same as temporary total. The State Fund pays benefits until the worker is eligible to receive Social Security retirement benefits. The State Fund offsets Social Security Disability payments as mentioned above. The State Fund pays annual cost of living adjustments after 2 years—limited to 10 adjustments based on the increase in the state's average weekly wage, not to exceed 3 percent per year.

DEATH BENEFITS

If an injury causes death, the spouse and unmarried children receive weekly compensation benefits at the temporary total disability rate (above). The spouse receives benefits for 500 weeks or until remarried. Unmarried children receive benefits until age 18 or age 22 if attending an accredited school or apprenticeship program. If no spouse or unmarried children exist, dependent parents, brothers or sisters may be eligible for weekly benefits. If no beneficiaries, the State Fund also pays \$1,400 for funeral expenses.

REHABILITATION BENEFITS

Total Benefits—The State Fund may pay weekly benefits at the temporary total rate during a rehabilitation evaluation, not to exceed 26 weeks unless extended by DLI for good cause. Payments start when the injured worker reaches maximum medical improvement and after a rehabilitation consultant has been assigned.

Partial Benefits—The State Fund may pay this benefit in combination with wage supplement benefits during the time the injured worker is in an approved retraining program.

Auxiliary Benefits—The State Fund may pay reasonable travel or relocation expenses or participate in an on-the-job training program to assist in returning the injured worker to a job. The benefits are limited to \$4,000.

SUBSEQUENT INJURY FUND BENEFITS

The Subsequent Injury Fund assists both the injured worker and future employers. A person with a permanent physical impairment which is a substantial obstacle to obtaining employment, whether resulting from job-related injuries or not, may be entitled to certification. The certification assists an individual in obtaining employment because it limits the liability of the employer in the event the

certified worker is later injured on the job. Applications for certification may be obtained from DLI.

MAXIMUM WEEKLY COMPENSATION ALLOWED

Maximum weekly benefits are generally determined in accordance with the state's average weekly wage. However, benefit rate maximums are frozen at the 1987 level until July 1, 1991. The maximum benefit level for temporary total, permanent total, and death claims is \$299 per week. For permanent partial disability the maximum weekly rate is \$149.50. Benefit levels are fixed as of the date of injury and are not adjusted in subsequent years except for the cost of living adjustments provided in permanent total claims.

STATE FUND ENROLLMENT AND SAFETY SERVICES

To apply for State Fund coverage, an employer may write Policy Services, State Compensation Mutual Insurance Fund, P.O. Box 4759, Helena, MT 59604-4759 or phone (406) 444-6440.

The State Fund employs trained experts in the field of occupational safety and accident prevention. Their services are available, including courtesy inspections at the employer's place of business, at the employer's request.

This document was printed at state expense. Information on the cost of publication can be obtained by writing the Department of Administration, Helena, MT 59601.

EXHIBIT

DATE

HB

STATE

COMPENSATION

MUTUAL

INSURANCE

FUND



GENERAL

INFORMATION PAMPHLET

This pamphlet contains a summary of workers' compensation benefits and coverage requirements.

STATE COMPENSATION
MUTUAL INSURANCE FUND
P.O. BOX 4759

HELENA, MT 59604-4759

SF-MIS PAM 1 (New 1/90)

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