MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIR CAROLYN SQUIRES**, on February 7, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

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

Members Excused:

David Hoffman (R)
Bob Pavlovich (D)

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

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

HEARING ON HB 44

Informational Testimony:

Marc Racicot, Attorney General, appeared at the Committee's request of January 24, 1991, to give an opinion on HB 44. He stated that the question is not appropriate for resolution by the Attorney General. There are potential liabilities contained within the bill. As counsel for the state, he does not have the prerogative to render a decision that may impact the potential liability of the state pursuant to a claim. This opinion will determine with the force of law the liabilities of associated parties until the Legislature or Court rules otherwise.

Questions From Committee Members:

REP. DAVE WANZENRIED asked **Mr. Racicot** if the bill was needed. **Mr. Racicot** said the bill would require refunds or credits that would probably be billed back into the actuarial tables and premiums for next year.

REP. JOHNSON asked **Mr. Racicot** what the Legislature does to an agency that doesn't follow the rules. **Mr. Racicot** said there could be admonishments, court actions, legislation, or a mandamus action to require that agency to comply with the laws as written.

HEARING ON HB 465

Presentation and Opening Statement by Sponsor:

REP. FRED THOMAS, House District 62, stated HB 465 is a general Workers' Compensation revision bill requested by the Department of Labor. The bill clarifies that the rules of evidence will apply in a Workers' Compensation hearing. The State Fund must pay its costs to the Workers' Compensation assessment. It reduces claim reporting requirements to insurers, streamlines administration and expedites payments to claimants. The Department of Labor would be allowed to set medical fee schedules based on industry-wide data rather than only State Fund data. A time frame would be established for application for certification of vocationally handicapped under the Subsequent Injury Fund. The Department of Labor may require additional security from a Plan 1 or self-insured employer as evidence of solvency and ability to cover future liabilities. The bill amends the Occupational Disease Act to allow occupational disease claims to be paid from the Subsequent Injury Fund. He distributed an amendment. **EXHIBIT 1**

Proponents' Testimony:

Bob Jensen, Administrator, Department of Labor & Industry, presented written testimony. **EXHIBIT 2**

George Wood, Executive Secretary, Montana Self Insurers Association, stated support with the proposed amendments: 1. The amendment changes the title and requires the paying party to have a decision in who becomes a self insurer and the amount of security deposit required since the guarantee fund pays the benefits if a self insurer becomes bankrupt. 2. The section allowing the firing of an employee should be strickened but not the whole section. The section says there is a right to require a pre-employment physical. In the event that the occupational disease progresses normally without accidents, the employer is not responsible for the increase in the occupational disease due to its normal progression. For example, a person with an identified occupational disease may not be severe enough at the time for certification. It may be severe enough at a later date, but the person has gone to work by then. 3. A median billing

allows the fee to be increased by overcharging from the beginning. The old section should stay except for striking the median fee schedule and the State Fund. **EXHIBIT 3**

Pat Sweeney, State Fund, stated his support with the amendments of **REP. THOMAS** and **Mr. Wood.**

Christian Mackay, AFL-CIO, presented written testimony for Don Judge. **EXHIBIT 4**

Gene Fenderson, Montana State Building and Construction Trades Union, stated support of HB 465 along with the reservations of the AFL-CIO.

Opponents' Testimony: None

Questions From Committee Members:

REP. DRISCOLL said to **Mr. Jensen** on Pg. 10 the first, second, and third evaluators are removed and replaced with the language of 39-71-605 (Montana Codes Annotated), which is one doctor and a panel. Why is the injured worker limited to the panel instead of the three evaluators? **Mr. Jensen** said the advisory group felt the entire panel system was cumbersome and should be abolished and replaced.

REP. DRISCOLL asked **Diana Ferriter, Department of Labor,** if the Department would agree to an amendment to replace it with 39-71-605 (MCA) to say, if there was a disagreement with the first evaluator there is an option of a second evaluator. **Ms. Ferriter** said the language that brings the dispute process to the Department is being stricken. It is not being replaced with 39-71-605 (MCA). Even with the language deleted, at the bottom of Pg. 9, both a claimant and an insurer may still obtain an impairment rating from a physician. At that point, if there is a dispute over the ratings from parties of their choice, it goes to mediation. Three additional evaluations are being deleted that come before the Department. **REP. DRISCOLL** asked why the statistics on the burial of deceased workers are being stricken on Page 4, Lines 10-11. **Ms. Ferriter** said that the burial expense maximum is $1,400, and that information is not used for statistical purposes. It is not used in the assessment for the insurers for the Rehabilitation Fund or the Subsequent Injury Fund. The information has been collected if insurers choose to submit it. There is an alternative method for statistics; the insurer has to make a $1,000 assessment to the Uninsured Employers Fund when there is a fatality.

REP. DRISCOLL said to **Mr. Wood** during the interim in the study committee, the actuary said if nothing was done medical costs would rise at least 30 percent. Would your amendment stop that? **Mr. Wood** said no. **REP. DRISCOLL** asked what his amendments did. **Mr. Wood** said the amendment removes the method of mediation, which will automatically make it rise. There could be a continued

freeze on medical costs or place a limitation on it rising. **REP. DRISCOLL** asked if the bill could be amended so the costs would rise the same as what the injured worker receives. **Mr. Wood** said he would support the amendment if the Legislative Council indicates that the title is broad enough for it to be included.

Ms. McClure, LC Attorney, asked **Mr. Wood** whether his amendment was actually about amending the subsection regarding the discharge of the employee in Subsection (4) rather than to repeal the whole section. "During your testimony you said you didn't want the whole section repealed." **Mr. Wood** said yes. **Ms. McClure** said if his amendment was intended to delete only Subsection (4) which is unconstitutional, the proposed amendment striking the repealer of the section does not accomplish that. **Mr. Wood** said the amendment strikes the repealing of the whole section. If the Committee wanted to repeal only Subsection (4), he would support it, but it should be repealed if it stays as a whole section.

Ms. McClure asked **Mr. Jensen** if the whole section should be removed or if he agreed with Mr. Wood to leave in the sub-section. **Mr. Jensen** said the whole section should be removed.

Closing by Sponsor:

REP. THOMAS closed HB 465.

HEARING ON HB 385

Presentation and Opening Statement by Sponsor:

REP. JERRY DRISCOLL, House District 92, stated HB 385 would change where the penalties and interest from the Unemployment Insurance Fund would go. Presently the money is put back in the trust fund. On Pg. 3 of HB 385 the penalties and interest collected would be paid into an account which would be used for enforcement of the act if the Appropriations Committee appropriated the money to it, if not the money would go back into the trust fund.

Proponents' Testimony:

Chuck Hunter, Department of Labor and Industry, stated his support for HB 385. **EXHIBIT 5**

Christian Mackay, AFL-CIO, presented written testimony for Don Judge. **EXHIBIT 6**

Gene Fenderson, Montana Building and Construction Trades Union, stated his support for HB 385.

Johnny Monahan, Director, Montana Ironworkers' Training Program, stated his support along with the recommendation of the AFL-CIO to include money for apprenticeship and training.

Opponents' Testimony: None

Questions From Committee Members:

REP. DRISCOLL asked **Mr. Hunter** if he wanted the Technical Note on Pg. 3 of the Fiscal Note to say "at the end of biennium" instead of "each fiscal year." **Mr. Hunter** said the language came from the budget office, so it is associated with the Governor's request for how the funding is to be used.

Closing by Sponsor:

REP. DRISCOLL agreed with the proponents to hold HB 385 until HB 124 is scheduled because it deals with the assessment in the Unemployment Insurance Fund.

Informational Testimony:

CHAIR SQUIRES said that HB 124, sponsored by Rep. Gilbert, is scheduled February 19, 1991.

HEARING ON HB 453

Presentation and Opening Statement by Sponsor:

REP. RUSSELL FAGG, House District, proposed HB 453 on behalf of the Judge's Retirement System. **EXHIBIT 7**

Proponents' Testimony:

Judge Tom Honzel, First Judicial District, stated his support of HB 453 and presented a question and answer handout. **EXHIBIT 8**

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

REP. FAGG closed hearing on HB 453.

HEARING ON SB 11

Presentation and Opening Statement by Sponsor:

SEN. GENE THAYER, House District 19, stated that many contractors in Montana do the majority of their work out of state. The other states have adopted legislation that says if a contractor from another state has a bidding preference in their state the same preference will be given to the local contractors of that state. If there is a 3 percent bid preference, a disadvantage is created when bidding in neighboring states. The laws enacted years ago to protect Montanans are starting to "backfire." The contractors take many skilled workers and management to export jobs into

another state and import the cash back into Montana. When companies find most of their work out of state, they may move their headquarters to another state if it is for a long period of time.

Proponents' Testimony:

Timothy Barnard, President, Barnard Construction Company, sent a letter to **REP. TOM KILPATRICK** in support of SB 11. **EXHIBIT 9**

Gene Fenderson, Montana Building and Construction Trades Union, stated his support of SB 11. For many years the Montana Construction and Building Trades Union has opposed changing this law in hopes to keep the work in the state with Montana contractors and workers. The work and construction in Montana declined, and many contractors and craftsmen had to find work out of state. Since the money is sent back to take care of their families, it has helped Montana in the long run. The reciprocal bid preference is almost nationwide.

John Manzer, Teamsters Union, stated SB 11 would remedy the disadvantage contractors have when working out of state.

Martin Becker, Sletton Construction, said that 10 to 15 percent of Sletton Construction business is done within the state and the remainder out of state. About 75 to 85 percent of the supervisory personnel and lead people on projects are born, raised, and live in Montana. Their income comes back to Montana. They should be able to work in the surrounding states without the disadvantage. The major subcontractors also go to the surrounding states.

Lars Ericson, Montana State Council of Carpenters, stated if the reciprocity law is changed, the Montana contractors working out of state could bid projects equally with contractors in neighboring states. If the state does not have the reciprocity, those people would be coming into this state with a disadvantage.

Christian Mackay, AFL-CIO, stated his support of SB 11 and the position taken by the Montana Building and Construction Trades Union.

Johnny Monahan, Ironworkers Local 841, stated his support of SB 11.

Dave Becker, Washington Contractors, Missoula, stated the Washington Contractors actively pursue work out of state. It is an equipment intensive company and has one of the largest fleets in the United States. The central shop facility repairs and maintains equipment, and many Montana companies are used to provide services and products.

Dennis Lind, Washington Corporation, Missoula, stated it is time to allow the contractors and union laborers to compete successfully in other markets to improve the economic base in

Montana.

Opponents' Testimony: None

Questions From Committee Members:

REP. SONNY HANSON asked **SEN. THAYER** if there was consideration to include Section 103 to define what constitutes a local or in-state corporation. **SEN. THAYER** said no. The bill is very narrow in scope.

REP. O'KEEFE asked **Mr. Becker** if the bid preference is changed would the bill affect the Washington Contractors to bid on out-of-state contracts. **Mr. Becker** said the bidding would be done more competitively. **REP. O'KEEFE** said many companies may receive more out-of-state work which would result in the work being so far from the central facility that it would leave **Mr. Becker** said no; presently the Washington Contractors have jobs in California, Nevada, and Arizona. **REP. O'KEEFE** stated that he fears companies leaving the state.

Mr. Lind said that Mr. Washington has a deep dedication to Montana and is committed to remain here. This bill will give the Washington Contractors the ability to remain in the state.

Closing by Sponsor:

SEN. THAYER said the bill is effective immediately upon passage and approval. There is a considerable amount of business that contractors are preparing to bid on, so upon passage of the bill there is the possibility of additional work that will benefit the people of Montana.

EXECUTIVE ACTION ON SB 11

Motion: **REP. LEE MOVED SB 11 BE CONCURRED IN.**

Discussion:

REP. HANSON said that surrounding states have a comparable law.

Vote: Motion carried unanimously.

REP. DRISCOLL will carry SB 11 in the House of Representatives.

EXECUTIVE ACTION ON HB 453

Motion/Vote: **REP. DRISCOLL MOVED HB 453 DO PASS.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 465

Motion: **REP. JOHNSON MOVED HB 465 DO PASS.**

Discussion:

REP. DRISCOLL said he had a problem with the medical fee in the present law and the drafting of HB 465 even with the amendments. Since 1987 medical fees and benefits to the injured workers have been frozen. The freeze will be removed some time this year. At that time the benefits of injured workers will rise from $299 per week up 6 to 7 percent. The testimony of the interim committee stated that under the present schedule doctor's fees will rise 30 percent. It should be amended so they can't get any more money than the injured worker. According to the actuary, the estimated payout from the Workers' Compensation Fund would escalate by 30 percent in the next year if something is not done. That is not affordable.

REP. WHALEN said the bill removed the requirement of the Rules of Civil Procedure and Evidence be adhered to. One of the reasons for the development of the body of the law of evidence is to guarantee that evidence brought before a court or administrative agency is trustworthy. If the Rules of Evidence are removed medical reports may have no foundation. There may be no opportunity for a claimant or lawyer to examine the doctor's report.

REP. JOHNSON withdrew his motion to give **REP. WHALEN** a chance to study the bill further.

CHAIR SQUIRES deferred Executive Action on HB 465.

EXECUTIVE ACTION ON HB 44

Motion: **REP. DRISCOLL MOVED HB 44 BE TABLED.**

Discussion:

REP. THOMAS said he agreed that the bill be tabled. If more information is obtained the bill could be taken from the table.

Vote: Motion carried 17 to 5 with **REPS. WHALEN, LEE, O'KEEFE, FAGG, and DOLEZAL** voting no.

ADJOURNMENT

Adjournment: 4:30 p.m.

CAROLYN SQUIRES, Chair

JENNIFER THOMPSON, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL **DATE** 2/7/91

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	✓		

CS05COM.man

5.15
2-7-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 7, 1991

Mr. Speaker: We, the committee on Labor report that Senate Bill 11 (third reading copy -- blue) be concurred in .

Signed: Carolyn Squires
Carolyn Squires, Chairman

5.10
2-7-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 7, 1991

Mr. Speaker: We, the committee on Labor report that House Bill 453 (first reading copy -- white) do pass .

Signed: Carolyn Squires
Carolyn Squires, Chairman

TABLED BILL

Labor & Employment Relations
Name of Committee

February 7, , 19 91
Date

The following bill HB 44

was TABLED, by motion, on February 7, 19 91.

For the Committee

T.D. Bauman
For the Chief Clerk

5:00
Time

2-7-91
Date

CS-04
1991

EXHIBIT 1
DATE 2/7/91
HB 465

AMENDMENT TO HOUSE BILL 465
DEPARTMENT OF LABOR & INDUSTRY

On page 12, line 9 and 10, strike the words "or to mandatory mediation". This strikeout was overlooked in drafting the legislation.

The paragraph should read:

~~(6)~~(4) ~~A party may dispute a final impairment rating rendered under subsection (3)(b)(ii) by filing a petition with the workers' compensation court within 15 days of the evaluator's mailing of the report.~~ Disputes over impairment ratings are not subject to 39-71-605 ~~or to mandatory mediation~~.

Testimony of Bob Jensen
HB-465

EXHIBIT 2
DATE 2/7/91
HB 465

P. 1068

Madam Chair, members of the committee, my name is Bob Jensen. I am an Administrator in the Department of Labor and Industry. HB-465 is a Department Bill which contains a number of unrelated issues pertaining to workers' compensation regulatory functions. This Bill does not deal with benefit levels or issues that would adversely affect claimants or employers. The Department feels that legislation affecting the rights of claimants or employers should be proposed by those advocacy groups.

We have discussed this bill with a Department ad hoc Advisory Council, which includes representation from claimants, employers, rehabilation services and all three insurer groups- Plan 1, Self Insurers; Plan 2, Private carriers and Plan 3, the State Fund. Although all council members may not totally agree with every section of this Bill, I believe there is census that HB-465 is an appropriate Department Bill.

The Department drafted these legislative proposals with three considerations in mind. The first involves what we consider oversights in the drafting of SB-428, the 1989 reorganization Bill. This Bill abolished the former Workers' Compensation Division, established the State Fund as a separate entity attached to the department of Administration, and transferred the regulatory functions to Department of Labor and Industry. Section 2 (page 2) of this proposed legislation is needed to clarify what assessments against the State Fund the Department can make for the Workers' Compensation

Administration Fund. Presently, the statute mandates the Department to assess the State Fund an amount to fund the State Fund's direct cost. This is very confusing language. Our amendment clarifys a drafting oversight and eliminates a potential funding dispute between the Department and the State Fund. It authorizes the Department to assess the State Fund in the same manner as the Department assesses self-insurers and private carriers for their direct costs and indirect costs of regulation.

The second oversight involves section 7(page 7). The current language of this section restricts the Department to establishment of a medical fee schedule that is based on the median fees billed to the State Fund. These data are costly and time-consuming to retrieve from the Fund's medical payment records, difficult to analyze because of obsolute coding, and in some areas simply not available. The proposed language would allow the Department to take advantage of current fee schedule research now being conducted by various public and private organizations around the country. Our schedule would be developed in cooperation with all insurers- private insurers as well as the State Fund.

Our second consideration, in drafting this legislation, involves, what we believe to be, ambigious language in the current statute. Section 9(page 12) and section 13 (page 18) refer to the Subsequent Injury Fund, which is a program designed to bring vocationally handicapped persons back into the workforce.

The section 9 amendment would clarify that an individual may be eligible for certification by the Subsequent Injury Fund if application is made prior to or within 60 days of employment. The Department has interpreted the current language to mean that an applicant is not eligible for certification unless he is unemployed or off work due to the impairment. Others dispute this interpretation and argue that an individual should be allowed to return to work pending certification. We are proposing this amendment to satisfy the intent of the Worker's Compensation Act regarding the return of injured workers to the workplace as soon as possible, rather than delay the return waiting for an administrative process to take place.

Section 13 provides for the inclusion of occupational disease benefits under the Subsequent Injury Fund to all claimants certified as vocationally handicapped by the Subsequent Injury Fund. The purpose of the Subsequent Injury Fund is to provide an incentive to employers to hire the handicapped by limiting liability to 104 weeks on subsequent injuries. Presently, occupational diseases are not covered by the Fund. This amendment would allow the subsequent Injury Fund to

to accept liability on occupational diseases after the employer's insurer paid 104 weeks of benefits.

Section 15 repeals language that was intended to ~~39-72-304, MCA was intended to~~ limit an employer's liability for a worker's preexisting occupational disease, which is what the Subsequent Injury Fund does with preexisting injuries. It is an outdated section of law allowing an employer to require an applicant for employment to submit to a medical exam to determine if the applicant suffers from an OD. The report of the examining physician then must be sent to the DLI for approval or disapproval. If the report is disapproved, which would mean the employer would be liable for the worker's OD, the employer may discharge the applicant from employment without liability to him.

The Department is requesting a repeal of 39-72-304, MCA. Besides being a potential violation of the Human Rights Act (49-4-101), this section would not serve any purpose of limiting the liability of an employer hiring a worker suffering from an OD that would not be served by the amendments to in Section 13 (39-72-402, MCA). By including occupational disease in the Subsequent Injury Fund process, the employers and workers will have one procedure to request and employer liability can be more efficiently established.

EXHIBIT 2
DATE 2/7/91
HB 465

Pg 5 of 8

~~Section 10. (Section 39-71-2106).~~
Section 10 (Page 13)
This amendment allows the Department to require an applicant for self-insurance to place a larger deposit with the Department which demonstrates ability to pay or offers sufficient financial security.

The present law limits the amount of security deposits the Department may require and maintain from self-insurers. If the Department were to require a security deposit in an amount larger than the law provides, and the self-insurer should become bankrupt, the difference could be seized as an asset by a bankruptcy court. Workers' compensation claimants are classified as unsecured creditors with no priority in a bankruptcy proceeding. The claimants may never receive benefits unless the security deposit maintained by the Department is sufficient.

Two previous self-insurers in Montana recently filed for Chapter 11 Reorganization and ceased making benefit payments to their Montana claimants. The deposits held by the Department may not be sufficient to cover outstanding liabilities.

This amendment would allow the Department to require a minimum deposit of $250,000 or the average amount of incurred liabilities over the preceding three years, whichever is greater, and increase that deposit as necessary.

Section 3 (page 3) reduces and simplifys insurers reporting requirements to the Department regarding compensation and medical expenditures. The Department would collect qualitative data which is used to calculate the rehabilitation and subsequent injury fund assessments while streamlining the Department's procedures and reducing processing time. Presently,the statute requires monthly reporting of five categories. The amendment would require quarterly reporting of only two categories.

Section 4 (page 4), Section 5 (page 5) Section 6 (page 5) and Section 14 (page 18) remove the requirement that certain claims related forms be filed with the Department. The Department intends to diminish its role as a clearinghouse for documentation on Workers' Compensation claims. With this amendment, will encourage all parties to a claim (claimant, medical providers, etc.) to file documents with insurers. The insurers will then be required to file necessary documentation with the Department. This change will reduce benefit payment delays to claimants, payment delays to medical providers, and unnecessary tracking and record keeping performed by the Department now occuring under the present procedure.

Finally, Section 8 (page 9) repeals the Impairment Rating Dispute Resolution procedures administered by the Department. Insurers, claimants and medical providers voiced numerous complaints about the procedures.

The proposed legislation repeals a cumbersome and expensive

Our third consideration involves a streamlining of functions and setting forth new directions taken by the Department in the administration of the regulatory functions.
Section 1 (page 1), section 11 (page 15) and section 12 (page 17) provide that the statutory and commonlaw rules of evidence do not apply in contested case hearings before the department involving Workers' compensation contested cases or to mediation.

The bill's purpose is simply to make workers' compensation contested case hearings uniform with all other contested case proceedings before department hearing examiners. None of the other contested cases, including wage and hour, collective bargaining, unemployment insurance and grievances, is bound by the rules of evidence. The statute governing each of those proceedings specifically states that the rules of evidence do not apply.

The purpose in excluding department contested case proceedings from the formal rules of evidence is to provide for a more informal atmosphere in which unrepresented claimants, petitioners, grievants and respondents may represent themselves. To impose rigid rules of evidence on non-attorney petitioners and respondents would preclude their self-representation and force them to hire attorneys.

procedure and provides for dispute resolution through a mandatory mediation process. The purpose of the legislation is to provide a resolution process within the Department, but eliminate the burdensome and expensive process.

EXHIBIT 3
DATE 2/7/91
HB 465

Amendments to House Bill No. 465
First Reading Copy

Requested by Representative Benedict
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 7, 1991

1. Title, line 15.
Following: "DEPARTMENT"
Insert: ",WITH THE CONCURRENCE OF THE MONTANA SELF-INSURERS' GUARANTY FUND,"

2. Title, line 20.
Following: "MCA;"
Strike: "REPEALING" through "MCA;"

3. Page 8, line 24.
Following: "~~Studies.~~"
Insert: "A relative value fee schedule for medical, chiropractic, and parmedical services provided for in this chapter, excluding hospital services, must be established annually by the department and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialities. The department shall adopt rules establishing relative unit values, groups of specialities, the procedures insurers are required to use to pay for services under the schedule, and the method of determining the medical fees. These rules must be modeled on the 1974 revision of the 1969 California Relative Value Studies."

4. Page 9, line 9.
Following: "responsibilities"
Insert: ", but services described in the relative value fee schedule may not be reimbursed at more than the relative value fee schedule rate regardless of where the services are performed"

5. Page 9, line 12.
Following: "~~relative value~~"
Insert: "relative value"

6. Page 13, line 22.
Following: "department"
Insert: ",with the concurrence of the Montana self-insurers' guaranty fund,"

7. Page 19, lines 14 and 15.
Following: line 13
Strike: section 15 in its entirety
Renumber: subsquent sections

EXHIBIT 4
DATE 2/1/91
HB 465

DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

Testimony of Don Judge on House Bill 465 before the House Labor and Employment Relations Committee, February 7, 1991

Madam Chair and members of the Committee, for the record, I'm Don Judge, Executive Secretary of the Montana State AFL-CIO, here today to testify in support of House Bill 465.

The AFL-CIO does not oppose the changes proposed to workers' compensation in House Bill 465. However, we do have two concerns, and suggested amendments to the changes proposed in sections 4 and 5.

Under the provisions of HB 465, an injured worker would be required to file claims only with employers or their insurers. The Department of Labor and Industry would no longer be required to accept and record such claims. We disagree with this change.

We believe that an injured worker should continue to be able to file a claim with the department. In some instances, the injured worker may not know who the insurer is or, under the statue of limitations, may not have the opportunity to file with the employer or insurer. In addition, the worker may feel more comfortable in filing a claim with an unaffected party.

Since the department is required to maintain a list of employers and insurers, the department is the only dependable avenue that workers can count on to file a claim.

In light of these concerns, I would ask that you delete the amendments to the current law proposed in sections 4 and 5 of House Bill 465. With those minor corrections, we urge you to support House Bill 465.

Thank you.

EXHIBIT 5
DATE 2/7/91
HB 385

TESTIMONY: HOUSE BILL 385
Department of Labor and Industry

For the record, my name is Chuck Hunter, representing the Department of Labor and Industry. I am here as a proponent of this bill, and in fact, this bill was requested by the Department.

There are two primary functions of the tax bureau in the UI program:

1) to make it easy for employers to voluntarily comply with the system (most employers routinely just comply with the law, and send in what is owed on time, no hassle.

2) to keep the playing field level for all the players when it comes to taxation: to make sure that each pays the appropriate share, no more and no less. This second function involves several types of activities: audits, accounts receivable , filing liens and so on. These are the activities that ensure that level playing field. Over the past 5 years, our ability to perform these functions at the necessary level has been diminished.

The problem is financial, and relates directly to the federal deficit problem.

As you know, the administration of the UI program is federally funded through the FUTA payroll tax. And while there are billions of dollars available in the FUTA accounts, which may be used only for this purpose, the federal government has been reducing the amounts of funds given to states to run the UI program. Why? Because the more funds that stay in the trust fund, the smaller the deficit appears.

The federal grant for the UI program in Montana was slightly over 6 million in 1985. In 1990, it was slightly over 5 million about an 18 percent reduction in funds, with no reduction in what was expected, no program changes.

How do you deal with a reduction of that level? You protect the core services, which in our case is the payment of benefits and the part of the tax program that focusses on voluntary compliance. You rob from the integrity areas - from collections, from audit, from compliance, in order to get the money in the bank and to pay benefits to eligible people. What suffers is the playing file - it becomes less level over time.

We are proposing to use penalty and interest money collected from UI delinquencies to fund collection positions, both for delinquent tax collection and benefit overpayments. No new revenue would be generated: this is money that is already

collected, but is now simply going into the trust fund. We would use this money, appropriated by the legislature, to hire 3 collection people this biennium. And our collection history shows that they will more than pay for themselves - each collector will return more money to the trust fund than he or she costs by a factor of 3.

We believe that passage of this bill will allow to do a far better job at keeping the playing field level. It uses an existing source of money, and an appropriate source, in that it is generated from UI delinquencies. And overall, it will help the trust fund. We ask for your favorable consideration.

EXHIBIT 6
DATE 2/7/91
HB 385

DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DON JUDGE ON HOUSE BILL 385, HEARINGS OF THE HOUSE LABOR COMMITTEE, FEBRUARY 7, 1991

Madam Chair and members of the committee, for the record my name is Don Judge, executive secretary of the Montana AFL-CIO. I am here this afternoon to testify in support of House Bill 385.

Certainly, it's appropriate to recognize Representative Driscoll's efforts to address the problem of past-due contributions for unemployment insurance.

Strict enforcement, as called for in HB 285, would help insure timely payments to the unemployment insurance fund or, in the alternative, to help recover lost taxes plus penalties and interest. Obviously, this activity would benefit the trust fund balance, and subsequently, all employers in the state fund, and that's a laudable goal.

There are other laudable goals for use of these funds, as well as the detection and collection of unpaid contributions. We would like to make the committee aware of another possible use of the penalty and interest monies. That use would be for apprenticeship and training programs, which help keep Montanans gainfully employed.

Over the last five years, jointly-administered apprenticeship programs have been funded with Carl Perkins dollars. These federal dollars have been made available to our state under the federal Carl Perkins vocational education law. That law will change drastically on July 1, 1991, and this change will have a devastating affect on the building trades' joint labor/management apprenticeship programs. After July 1, Carl Perkins monies will no longer be available for apprenticeship and training programs.

By using funds such as the penalties and interest monies to replace the lost Carl Perkins funds, workers could continue to receive valuable training from these jointly-administered programs.

HB 385 offers two opportunities to this committee and the legislature to have a positive economic impact in our economy -- either to help recover payment of taxes due from employers, or to help fund valuable apprenticeship and training programs, which will be lost without an alternative funding source such as this.

We would urge that this committee hold its consideration of HB 385 while hearings on other bills come before this committee regarding possible sources of funding for apprenticeship and training programs. At that time, we would urge the committee to adopt the best vehicle for funding of both past-due collection of taxes and for funding vital employment and training programs in Montana. Thank you for considering our views on this important matter.

EXHIBIT 7
DATE 2/7/91
HB HB 453

HB 453

REQUIRING EMPLOYER TO PICK-UP MEMBERS' CONTRIBUTION
TO JUDGES' RETIREMENT SYSTEM

In 1985, the Montana Legislature enacted legislation at the request of the Executive Branch, requiring public employers to "pick-up and pay" the mandatory retirement contribution of their employees prior to withholding federal and state income taxes on salaries. This resulted in a larger net paycheck each payday because the taxes on this portion of members' salaries are deferred until actually received -- in the form of a refund or monthly retirement benefit.

The Judges's and Firefighters' Unified retirement systems were originally included in the 1985 legislation. However, that bill was amended to exclude these two systems because federal tax laws at that time provided significant advantages to those two groups to pay their taxes "up-front", rather than after retirement.

In November, 1986, Congress significantly changed tax laws relating to pensions, eliminating those previous advantages for the firefighters and judges. In 1987, the Legislature enacted legislation including the Firefighters' Unified Retirement System under the "Employer Pick-Up" provisions of state law, leaving only the Judges' Retirement System not covered by such legislation.

This bill is introduced at the request of the Montana Judges Association to grant this group the same status as other public retirement system members in Montana.

EXHIBIT 9
DATE 2/7/91
HB 453

HB 453
QUESTIONS AND ANSWERS

1. What is the "Pick-up and pay" concept"?

   "Pick-up and pay" is basically a deferred income plan which permits the employer to pay the employee contributions to the retirement system with before-tax dollars. Currently, judges pay federal and state taxes on their total salaries and then made contributions to their retirement system with "after-tax dollars".

2. What is the benefit to judges to have their contributions "picked-up"?

   This change will increase the members' take home pay by the amount of tax liability the individual judge currently incurs on his or her retirement contribution. The deferred taxes will then be paid upon retirement.

3. Will judges have any individual choice on whether or not they participate?

   No. In order for contributions to be tax-deferred, all mandatory contributions to the retirement system must be treated in the same manner.

4. What effect will this change have on future retirees?

   Judges retiring after July 1, 1991, will not have to pay taxes on the portion of the benefits resulting from their pre-July 1, 1991 contributions. However, they will have to pay taxes on the portion of their benefits attributed to tax-deferred contributions, interest, employer contributions and state contributions. Since retirees' incomes are expected to be less after retirement, it is to be expected that the taxes on these benefits will be at a lower rate at that time.

5. What is the tax liability to a judge who terminates his employment and withdraws his or her contributions in a lump-sum?

   A terminating judge will owe state and federal taxes on the portion of his or her refund which has been tax deferred. Those taxes will be assessed in the year in which the judge receives the refund. In addition, the federal government imposes a 10% penalty if the judge were to take a lump-sum refund of previously tax deferred amounts prior to age 59 1/2.

6. Can a judge continue to defer taxes if he or she takes a refund?

Yes. The taxable portion of any refund may be rolled-over into an IRA within 60 days of the refund without affecting a person's taxes due.

7. Will the "employer pick-up" affect the amount of retirement benefits received?

No.

EXHIBIT 7
DATE 2/7/91
SB 11

BARNARD CONSTRUCTION COMPANY, INC.

P.O. Box 99 ○ Bozeman, MT 59771-0099 ○ (406) 586-1995 ○ FAX (406) 586-3530

February 6, 1991

Representative Kilpatrick
Montana House of Representatives
State Capitol Building
Helena, MT 59620

Re: SENATE ~~HOUSE~~ BILL 11
RECIPROCAL BID PREFERENCE FOR CONSTRUCTION

Dear Representative Kilpatrick:

I am writing to you to request your support of House Bill 11. This bill passed unanimously in the State Senate last week.

With the decline in the number of projects available to bid in Montana, the number of Montana based firms taking their work force and following work through out the West is increasing. Bidding in southwestern states also gives Montana companies much needed winter work. Competition is often fierce and in some states in-state contractors possess the advantage of a 3 to 5% preference. As a result, Montana contractors must compete with higher mobilization and overhead costs as well as this preference.

House Bill 11 would simply put all contractors on even footing when bidding state projects. Those states that continue to impose a preference would be equally assessed that "penalty" when bidding in Montana.

Thank you for considering support for this bill.

Sincerely,

Timothy Barnard

Timothy Barnard, President

EXHIBIT 4
DATE 2/1/91
HB 465

DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

Testimony of Don Judge on House Bill 465 before the House Labor and Employment Relations Committee, February 7, 1991

Madam Chair and members of the Committee, for the record, I'm Don Judge, Executive Secretary of the Montana State AFL-CIO, here today to testify in support of House Bill 465.

The AFL-CIO does not oppose the changes proposed to workers' compensation in House Bill 465. However, we do have two concerns, and suggested amendments to the changes proposed in sections 4 and 5.

Under the provisions of HB 465, an injured worker would be required to file claims only with employers or their insurers. The Department of Labor and Industry would no longer be required to accept and record such claims. We disagree with this change.

We believe that an injured worker should continue to be able to file a claim with the department. In some instances, the injured worker may not know who the insurer is or, under the statue of limitations, may not have the opportunity to file with the employer or insurer. In addition, the worker may feel more comfortable in filing a claim with an unaffected party.

Since the department is required to maintain a list of employers and insurers, the department is the only dependable avenue that workers can count on to file a claim.

In light of these concerns, I would ask that you delete the amendments to the current law proposed in sections 4 and 5 of House Bill 465. With those minor corrections, we urge you to support House Bill 465.

Thank you.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Employment Relations **COMMITTEE** **BILL NO.** 465

DATE 2/7/91 **SPONSOR(S)** Rep. Fred Thomas

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CHRISTIAN MACKAY On Behalf of Don Judge	AFL-CIO	✓	
Bob Jensen	Department of Labor	✓	
John E Caldwell	Local 400	✓	
George Wood	MT Self Insurers Assn	✓ as amended	
Pat Sweeney	State Fund	✓	
Riley Johnson	NFIB	Amended	
Eugene Fenderson BOX 702 -	MT St Bldg Trades	✓	
Bonnie Tippy	MT Chiro Assn		
Jacqueline N Terrell	Am. Ins. Assoc.	✓ w/ amdts	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Employment Relations **COMMITTEE** **BILL NO.** 385

DATE 2/7/91 **SPONSOR(S)** Rep. Jerry Driscoll

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CHRISTIAN MACKAY BEHALF of Don Judge	MONTANA STATE AFL-CIO	✓	
CHUCK HUNTER	DEPT. OF LABOR & INDUSTRY	✓	
John Menzel P.O. Box 2648 G.F. 59403	Teamsters Union	✓	
JOHNNY MONAHAN P.O. BOX 3206 GREAT FALLS 59403	MONTANA IRONWORKERS	✓	
Eugene Fenderson Box 702 Helena	Mt St Bldg Trades	✓	
John Caldwell	Local 400	✓	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Employment Relations COMMITTEE BILL NO. 453

DATE 2/7/91 SPONSOR(S) Rep. Russell Fagg

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tom Hoszel - Helena	Mont Judges Ass'n	✓	
Jim Oppedahl	Court Administrator		

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Employment Relations COMMITTEE BILL NO. SB 11

DATE 2/7/91 SPONSOR(S) Sen. Gene Thayer

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DAVID BECKER 6525 LINDA VISTA MISSOULA, MT	WASHINGTON CONTRACTORS GROUP, INC,	✓	
Martin Becker PO BOX 2461 Great Falls, MT	50 Hen Construction	✓	
Dennis Lind 201 W. M. Missoula, MT	WASHINGTON CORPS	✓	
JOHNNY MONAHAN P.O. Box 3205 Gt. FALLS - 59403	MONTANA IRONWORKERS JATC IRONWORKERS L.U. 841	✓	
Robert K. Murphy 1621 Karmen RD. Helena	International Brotherhood Electrical Workers,	✓	
John Manzer P.O. Box 2648 G.F	Teamsters Union	✓	
Eugene Fenderson BOX 702 · HELENA.	MT ST BLG TRADES	✓	
CHRISTIAN MACKAY on BEHALF of Don Judge	AFL-CIO	✓	
Lars Ericson	MT ST Council Carpenters	✓	
John Caldwell	Local 400	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.