

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES on March 5, 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)
David Hoffman (R)
Royal Johnson (R)
Bob Pavlovich (D)
Jim Southworth (D)
Dave Wanzenried (D)
Tim Whalen (D)

Members Excused:

Fred Thomas (R)

Members Absent:

Thomas Lee (R)
Mark O'Keefe (D)

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

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

HEARING ON HB 824

Presentation and Opening Statement by Sponsor:

REP. TIM WHALEN, House District 93, Billings, said he sponsored a bill in 1987 to deal with a problem in which a constituent was significantly injured. When he applied for Workers' Compensation, he was told that the employer was uninsured. He wrote to the Division to obtain relief from the Uninsured Employers' Fund and was told there was no money in the Fund. The bill was introduced as a .1 percent payroll tax before the .3

percent payroll tax was adopted to finance the unfunded liability of the Workers' Compensation system. The bill was tabled. HB 824 will put .1 percent into the Uninsured Employers' Fund. According to the Department of Labor, the fines against uninsured employers are sufficient to take care of the claims against the Fund. According to Jim Murphy, possibly the medical bills were being paid first, but he wasn't sure biweekly wage benefits were being paid. An employer can obtain insurance from the private market, from the State Fund, or by being self-insured. In order to take care of high-risk employers, there is an insured risk pool. All insurance companies pay into this pool, so if one insurance company goes bankrupt the others pay the claims for those that were insured by that bankrupt insurance company. The payroll tax is a similar system, but instead of covering a bankrupt insurance company, it would pay for claims where employers can't afford to buy insurance from the State Fund, which is an insurance company of last resort. HB 824 would require self-insured employers or employers insured through private companies to contribute. This tax would assure that the Fund is adequate and solvent, and will take care of employees who primarily work for "marginal" employers. Those employers don't have insurance because of the nature of their businesses; they may be high injury business or the margin of gross revenue is low.

Proponents' Testimony: None

Opponents' Testimony:

George Wood, Executive Secretary, Montana Self Insurers Association, said in 1987 the Legislature passed a temporary bill requiring a payroll tax for four years. Now that payroll tax is on for an indefinite time period, and this bill is proposing another tax. This bill increases the payroll tax by 35 percent. It makes the employer who complies with the law finance the losses of an employer who doesn't comply with the law. The payroll tax is unfair. It would raise \$4.5 million per year, and increase costs for employers.

Bob Mullen, Department of Labor and Industry, said the present system of assessing penalties on the uninsured is a much more equitable method of placing the responsibility with the proper party. The present Fund revenues are meeting claim payments. Over the past two years, the Department has received in excess of \$2 million while expending slightly more than \$600,000 in claim payments. The Department appreciates the attempt of the bill, but currently an additional tax is not necessary.

Russ Logan, Billings Chamber of Commerce, said it is detrimental to employers to continue to increase taxes for the Fund.

James Tutwiler, Montana Chamber of Commerce, said HB 824 would institutionalize a payroll tax on employers. The current payroll tax has been in place for some time and the end isn't near, but

it addresses the problem of the unfunded liability. HB 824 would impose a permanent tax on Montana businesses, then each session thereafter it could be added again for other causes.

Jacqueline Terrell, American Insurance Association, said the payroll tax was instituted to take care of the unfunded liability of the State Fund. Although that is a tax directed only to funding the State Fund, those employers who choose to insure with the self-insurers or with private companies also pay this additional tax for funding the State Fund. This bill penalizes people who are already complying with the law to take care of a problem created by those who are not complying.

Gene Phillips, National Association of Independent Insurers and the Alliance of American Insurers, stated his opposition.

Joyce Hoffman, small business owner, Columbia Falls, said small businesses can't afford any more taxes.

Questions From Committee Members: None

Closing by Sponsor:

REP. WHALEN closed the Hearing on HB 824.

HEARING ON SB 28

Presentation and Opening Statement by Sponsor:

SEN. BOB WILLIAMS, Senate District 15, Hobson, said in 1982 SB 278 created the Self-Insurers Guaranty Fund. It created a mechanism for the payment of Workers' Compensation claims of an insolvent self-insured employer. The Fund is financed by the requirement that every private self-insurer must join the Fund as a condition of self-insurance approval and must pay an initial fee of a \$1,000 assessment based on compensation payments. The duties of the Fund are to assume and pay the Workers' Compensation obligations of an insolvent self-insurer who has discontinued payments and whose security is exhausted. The self-insured employers must assess themselves amounts necessary to pay the claims of the insolvent employer. The money to pay the insured workers' claims comes from employers who are self-insured. SB 28 changes the word "consult" to "concur." The people paying the bill should have the ability to concur with the Department of Labor rather than just be consulted with.

Proponents' Testimony:

George Wood, Executive Secretary, Montana Self Insurers Association, said the Guaranty Fund insures that injured workers employed by self-insurers would receive compensation if the self-insured employer went bankrupt. In the event of a bankruptcy where the security deposits are exhausted, the members of the Guaranty Fund must assess themselves sufficient money to pay the claims promptly. Since the Fund has been in operation, there has

been one bankruptcy and the Fund has contingent liability on that. Circle K went bankrupt in January 1990, and the security deposit is paying it. Since the enactment of this bill, the Department has been operating under "concurrence." The bill says "consult." The working relationship between the Fund and the Department is excellent. The purpose is to determine who is going to self-insure or who's self-insurance privileges will be continued. The intent is not to decrease the Department's authority but to share the obligation with the Department. If a self-insured employer becomes bankrupt, the Fund pays the debts, not the Department. The Fund should have more than an advisory position on who will be included in the Fund and whose bills the Fund will have to pay. This is putting into law what has been practiced since 1989.

Dan Walker, President, Self Insurers' Guarantee Fund, said the relationship with the Department is a matter of concurrence as renewals and new applications are dealt with. He stated his support of including that in the Code. The Fund is ultimately responsible for any debts.

Opponents' Testimony:

Bob Mullen, Deputy Director, Department of Labor, said it should be the Department's responsibility to approve or disapprove applications of self-insurers. It is the Department, and therefore the state, that owns the regulatory responsibility of self-insurers. It is the Department's staff that have been held personally liable for an insolvency, not the Guarantee Fund Board members. The Department feels that its public responsibilities are much greater than those of Guarantee Fund's members. Since the Fund was established in 1989, the Department has worked closely with the Board. Presently, the statutory language insists upon consultation and allows the review of the applications by the Board prior to the Department making a determination. This relationship has been helpful to the staff of the Department. The method requiring concurrence of application and review is unnecessary. The Department is an executive agency and the Board is appointed by the Governor. If problems arise, the hands of the agency shouldn't be tied "up front." There is little reason to legislate what is being done in present practice.

Questions From Committee Members:

REP. DRISCOLL asked **Mr. Mullen** if he said somebody was held personally liable when a self-insured went broke. **Mr. Mullen** said yes; in the Great Western Case, two staff members were held personally liable when that self-insured went insolvent. **REP. DRISCOLL** asked how much money did they have to pay. **Mr. Mullen** referred the question to **Diana Ferriter, Department of Labor**. She said the amount of claims was about \$1 million, not including any negligent damages that may be found. **REP. DRISCOLL** asked how much of the \$1 million was paid by the employees that were held

personally liable. **Ms. Ferriter** said she didn't have the information with her, but the Supreme Court ruled that the Department of Labor could be held liable for the claims because of negligence that was found in reviewing the application. **REP. WHALEN** said he was one of the lawyers involved in the lawsuit. The Department of Labor and Industry, the State of Montana, and any individuals formally with the Department of Labor have not been held accountable for any money in that case. A lawsuit was filed against the state; that lawsuit was thrown out on an immunity question which was overturned by the Supreme Court. A trial date has not been scheduled before the District Court.

REP. BENEDICT said it seems the result is whether the Department of Labor decides who gets into the Self-Insured Fund or the self-insurers themselves. He asked **Mr. Mullen** if he could foresee where somebody would be referred into the Self-Insured Fund against the wishes of the self-insurers? **Mr. Mullen** said that has not taken place yet. The Department doesn't foresee that happening. The Department has worked closely with the Guarantee Fund and listens to their advice. **REP. BENEDICT** asked if the Department would let somebody into the Fund against the wishes of the self-insurers. **Mr. Mullen** said if the Department felt strongly that there would be problems in the future, it would be discussed with the Guarantee Fund and perhaps with the Governor.

REP. JOHNSON asked **Mr. Mullen** if the Montana Self-Insurer Guarantee Fund was allowed to make the decision not to concur, is there a way that the Department of Labor could be completely relieved of liability. **Mr. Mullen** said yes; that could probably be worked out, but he didn't know if Montana's workers would be protected in that process. The Department is given the regulatory responsibility of the self-insureds. Presently, the Department wants to maintain that responsibility.

REP. JOHNSON asked **Mr. Wood** how he would react if all the responsibility was given to the Guarantee Fund. **Mr. Wood** said that is not what is being asked for. The state has a position in the determination of who should be self-insured. They should concur. The liability of state employees has moved off track. When the law was passed in 1989, any self-insurer admitted became the liability of the Self-Insurers' Guarantee Fund. There is no state liability. The Great Western Case was prior to the Fund. Circle K went bankrupt after the Fund was created. If the security deposit of Circle K is insufficient, the Fund will have to pay. The shared authority gives two perspectives; it enlarges the knowledge and the validity of any decision.

Closing by Sponsor:

SEN. WILLIAMS said when Great Western went bankrupt, the Fund didn't exist. The Fund will be obligated to make sure that the worker employed by a bankrupt company will receive full benefits. The Self-Insured Fund should have more voice in who is brought into the Fund.

HEARING ON SB 14Presentation and Opening Statement by Sponsor:

SEN. BOB WILLIAMS, Senate District 15, Hobson, said SB 14 was introduced at the request of the Select Committee of Workers' Compensation. A self-insured employer may be required to provide a security deposit to assure the ability to pay that portion of the statute creating eligibility for an employer to self-insure. The security deposit is an additional assurance that the Workers' Compensation claims will be paid. The present statute provides that the security deposit may be a surety bond, government bond, or a letter of credit. This bill includes a certificate of deposit (CD) for a security deposit to allow a company or corporation to secure their obligation.

Proponents' Testimony:

Bob Jensen, Administrator, Department of Labor and Industry, said SB 14 allows the use of CDs as security for employers who wish to be covered under Plan 1, or the self insurers' program. If properly structured, a CD can provide the Department with the security needed for a self-insured company and those companies will have more flexibility in choosing the appropriate security instrument. There are some concerns. A CD is a cash equivalent that is likely to be seized as an asset if the business goes bankrupt. The Department may be unable to obtain those funds to pay benefits secured by the CD since Workers' Compensation claims are treated as unsecured and without priority by the bankruptcy laws. CDs are not insured for over \$100,000 by the Federal Deposit Insurance Corporation (FDIC). The minimum deposit placed with the Department by a self-insurer is \$250,000. Multiple CDs would be necessary in increments of \$100,000. For CDs to be a form of security for self-insurers, the Department would need joint ownership of the CD, an automatically renewable certificate to prevent lapses in coverage and earnings, completion of assignment forms so the Department could obtain the security in the event of a bankruptcy, and issuance from a Montana financial institution so the Department and Montana Courts have jurisdiction. Because of the concerns, the Department offered an amendment for Page 2, Lines 8-9, of the third reading copy. This amendment, which was accepted by the Senate Labor Committee and full Senate, would allow the Department to conduct administrative hearings in accordance with information contained in the statement of intent on Page 1 of the third reading copy. Certain requirements would make a CD a visible form of security for the Department and self-insurers.

George Wood, Executive Secretary, Self Insurers Association, stated his support and concurred in the amendments. The language on Page 1, Line 23, "accompanied by a properly executed security instrument that must be filed of record to protect against employer bankruptcy and other insolvency" is necessary. If the Department holds hearings, the limits of the CDs should be

\$50,000 from one bank. The federal government has the \$100,000 insured, but there is talk that the \$100,000 guarantee will be reduced to \$50,000. The Act states that the self-insurer can use government bonds, letters of credit, surety bonds, and now CDs under this bill. When the employer puts up his security deposit, it doesn't necessarily have to be in one but can be in any of the four. It gives more flexibility as long as the instrument giving title to the Department is signed, and there's a limit on the amount of the CD to coincide with the FDIC limits.

Opponents' Testimony: None

Questions From Committee Members:

REP. JOHNSON asked **Ms. Ferriter** on the letter of credit approval which is currently law, are there rules pertaining to what type of investments or institutions are used. **Ms. Ferriter** said currently there are no administrative rules for handling letters of credit. There are procedures in place, and the Department requires financial institutions to use an actual form with specific language developed by the Department's legal counsel when a letter of credit is issued. **REP. JOHNSON** said under those conditions, are there currently letters of credit outstanding for this particular function. **Ms. Ferriter** said the Department does have letters of credit on deposit. **REP. JOHNSON** asked who looks at the financial institutions. **Ms. Ferriter** said the Department is not looking at the financial conditions of the financial institutions, but a rating system is available.

REP. KILPATRICK asked **Mr. Jensen** and **Mr. Wood** if the amendments they referred to were already in the bill. They both said yes.

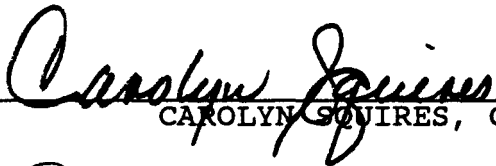
REP. JOHNSON asked **Mr. Jensen** if he would consider setting up rules concerning letters of credit. **Mr. Jensen** said that the Department would want to consider it.

Closing by Sponsor:

SEN. WILLIAMS said if the bill is passed, Rep. Driscoll will carry the bill.

ADJOURNMENT

Adjournment: 3:45 p.m.


CAROLYN SQUIRES, Chair


JENNIFER THOMPSON, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 3/5/91

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	✓		

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. HB 824

DATE 3/5/91

SPONSOR(S) Rep. Tim Whalen

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Charles R. Brooks - HLN	MOUNTAIN RETAIL ASSOC		✓
Ims Logan	Billings Area Chambers of Commerce		✓
Roger McClellan	Insurance Independent Agents of M.T.		✓
Bob Melton	Dept. of Labor		✓
Joyce Hoffmann	Insurance of Columbia Falls		✓
Leaythood	Mt Self Insurance Assoc		✓
Jacqueline N. Terrell	Am. Ins. Assoc.		✓
Riley Johnson	NFIB		✓
Leon Stalcup	Mont Restaurant Assoc		✓
Jim Tutwiler	MT Chamber		✓
GEEVE PHILLIPS	U+I & I+I		✓

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. SB 28

DATE 3/5/91

SPONSOR(S) Bob Williams

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Betsy Mullen	Dept. of Labor		✓
George Wood	Mt. Self Insurance Assoc	✓	
Ray Foster	Billings Chamber	✓	
John Adelman	US WEST	✓	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. SB 14

DATE 3/5/91

SPONSOR(S) Sen. Bob Williams

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Gay Wood</i>	<i>Int Self Insurers Assoc</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Kay Foster</i>	<i>Billings Chamber</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Bob Jensen</i>	<i>Dept of Labor & Industry</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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