

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Richard Manning, on January 15, 1991,
at 1:05 p.m.

ROLL CALL

Members Present:

Richard Manning, Chairman (D)
Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Gerry Devlin (R) - temporarily excused

Staff Present: Tom Gomez (Legislative Council).

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

Announcements/Discussion: NONE

HEARING ON SENATE BILL 14

Presentation and Opening Statement by Sponsor:

Senator Bob Williams presented Senate Bill 14 to the Committee as requested by the Select Committee on Workers' Compensation. The recommendation out of that Committee is that a self-insured employer may be required to provide a security deposit to assure the ability to pay. Senate Bill 14 adds a certificate of deposit to instruments that an employer may provide as a security deposit. It also includes an amendment to Section 39-71-2106.

Proponents' Testimony:

George Wood, Executive Secretary of the Montana Self-Insurers Association spoke in support of Senate Bill 14. He told the Committee that it adds on more option for security deposits.

Bob Jensen, Administrator of the Unemployment Insurance

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

January 15, 1991

Page 2 of 5

Division of the Montana Department of Labor and Industry, spoke from prepared testimony. (Exhibit #2) Mr. Jensen also presented the Committee with a proposed amendment.

Opponents' Testimony:

NONE

Questions From Committee Members:

Senator Keating asked Mr. Jensen if government bonds are attachable assets. Mr. Jensen referred the question to Diana Ferriter. Ms. Ferriter said government securities can be seized.

Senator Towe explained that if a security agreement is pledged to the Department of Labor and Industry, a bankruptcy court cannot touch it. Senator Towe explained that joint-ownership would not be necessary if a security agreement was in place.

Senator Blaylock asked Ms. Ferriter which instrument is most often used. Ms. Ferriter said that for self-insurers it is the surety bond, and that it cannot be seized in a bankruptcy.

Senator Nathe asked if a security agreement applies to all instruments. Senator Towe explained that it applied to all except security bonds which are outside companies, who are bound regardless of the bankruptcy situation.

Senator Keating asked Mr. Jensen if the Rules were promulgated yet. Mr. Jensen said they would be done on the basis of using certificates of deposits if this Bill passes.

Mr. Jensen explained that the self-insurer is audited annually in order to determine the employer's solvency.

Senator Keating asked that George Wood address the amendment and go on record in support of it. Mr. Wood explained that if the instrument has a security agreement with it, it is secure.

Closing by Sponsor:

Senator Williams closed by saying that he would accept the suggested amendments. He recommended a DO PASS.

HEARING ON SENATE BILL 28

Presentation and Opening Statement by Sponsor:

Senator Williams presented Senate Bill 28, as well as, proposed amendments. Senate Bill 28 would require concurrence of the Montana Self-insurers Guaranty Fund in a decision of the Department of Labor and Industry that an employer is entitled to

LA011591.SM1

self-insure or to continue to self-insure under the Workers' Compensation Act. The original Bill required the Department of Labor and Industry consult with the Fund. Senator Williams stated that Senate Bill 28 would give the Fund more than an advisory position.

Proponents' Testimony:

George Wood, Executive Secretary of the Montana Self-Insurers Association and Executive Secretary for the Montana Guaranty Fund. Mr. Wood spoke in favor of Senate Bill 28, saying that the Guaranty Fund should have the power to concur, rather than advise the Department in approving employers for self insurance. Mr. Wood told the Committee that at the present time the relationship between the two entities is working like concurrence, although the law has not given the Fund the right to concur. This Bill would allow the Fund veto power. Mr. Wood said the Fund has the financial liability but does not have the right to approve or disapprove an applicant. (Exhibit #2)

Opponents' Testimony:

Mike Micone, Commissioner of Labor and Industry spoke in opposition to Senate Bill 28. Mr. Micone told the Committee that the Department has the responsibility by law to approve or disapprove an applicant for self insurance. He explained that since the establishment of the Guaranty Fund the Department of Labor and Industry has worked closely with the board, but that the Department was not abdicating their responsibility or authority.

Questions From Committee Members:

Senator Lynch asked Mr. Wood if in fact the Fund was going from an advisory role to a veto role. Mr. Wood answered that it could be characterized as that. Senator Lynch pointed out that if it working well now, why change it. Mr. Wood explained that the regulatory authority rests with the state but the financial responsibility is the Fund.

Senator Blaylock asked how many people serve on the advisory board. Mr. Wood told the Committee that there are five, Dan Walker of US West, Charles Gilder of Montana Power, John Mizner of Champion International, Don Jenkins of Golden Sunlight Mines, and Mark Blair of ASARCO in Troy.

Senator Towe pointed out that in Section 4 and Section 5 the department should have the flexibility to ask for additional proof of solvency. When the department becomes convinced that the solvency is in question, the department should be able to act without the Fund standing in their way. Senator Towe asked Mr. Wood if Section 4 and Section 5 were struck from the Bill would he object. Mr. Wood said he would not object. Senator Towe asked Mr. Micone if he would object to the Bill if Section 4 and

Section 5 were struck. Mr. Micone explained the department would still oppose the Bill because the department would continue to have the responsibility while turning over authority.

Senator Keating asked about renewals, and if the self-insurer is always a member once they have been approved. Mr. Wood pointed out that the Fund can advise the department that the employer is "shaky". Senator Keating then asked what the department can do upon that advice. Mr. Wood said the department could ignore it. Mr. Wood cited the Circle K Stores which were approved by the department. Circle K has since discontinued paying their claimants, their security deposit has been tapped and their payments are being made by the surety company. If that surety bond is insufficient, the self-insurers fund has to assess themselves and pay the difference.

Senator Blaylock referred to an earlier question by Senator Lynch. Senator Lynch said that they (the Fund) should share the risk. Mr. Wood pointed out that the Fund does not insure anyone. The Fund is set up to be an insurer of last resort.

Closing by Sponsor:

Senator Williams said that the self-insured want to assure themselves that they will be in a position to concur on all applications, regardless of the personalities at the Department of Labor and Industry or the Fund. Senator Williams asked for a DO PASS. He also pointed out that there would be no need for the fiscal note after amendments.

EXECUTIVE ACTION ON SENATE BILL 14

Motion: Senator Lynch moved to amend Senate Bill 14 with the Department of Labor and Industry amendment.

Discussion: NONE

Motion: Senator Lynch moved that Senate Bill 14 DO PASS as amended.

Discussion: Senator Towe asked the Committee if there were a need for a statement of intent. He suggested that the Department of Labor and Industry should be directed to include security agreements in the Rules.

Amendments, Discussion, and Votes: Voice vote.

Recommendation and Vote: DO PASS as amended.

EXECUTIVE ACTION ON SENATE BILL 28

Motion: Senator Towe moved to amend Senate Bill 28.

Discussion: NONE.

Amendment, Discussion, and Votes: Voice vote. CARRIED.

Motion: Senator Towe moved to delete Section 4 and Section 5 from Senate Bill 28.

Sub-Motion: Senator Lynch offered a substitute motion for DO NOT PASS as amended on Senate Bill 28.

Discussion: Senator Lynch asked that a vote be taken. If Senate Bill 28 were to NOT PASS Senator Towe's motion would not be needed. Senator Lynch pointed out if there are no problems between the Fund and the department the Bill is unnecessary. Senator Towe told that Committee that the Fund has shown that there is a possibility for problems.


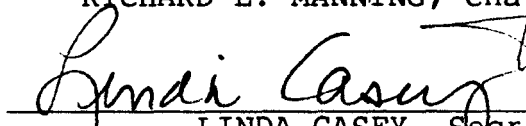
Senator Blaylock pointed out that Mason's says that all motions must be stated positively. After further discussion it was decided to call a Roll Call Vote.

Amendments, Discussion, and Votes: Roll Call Vote on sub-motion.

Recommendation and Vote: DO NOT PASS as amended.

ADJOURNMENT

Adjournment At: 2:15 p.m.


RICHARD E. MANNING, Chairman

LINDA CASEY, Secretary

REM/11c

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 1/15/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN			temporarily E
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING	P		
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 16, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 14 (first reading copy white), respectfully report that Senate Bill No. 14 be amended and as so amended do pass:

1. Page 1, line 16.

Following: "deposit"

Insert: "in accordance with rules adopted by the department"

Signed: _____
Richard E. Manning, Chairman

RR 1/16/91
Amd. Coord.

B. L. H. 91
Sec. of Senate

NAME: George Wood DATE: 1/15/91

ADDRESS: Nt. Self Insurers Assoc.

PHONE: 549-8849

REPRESENTING WHOM? Box 969 Marcellus, Nt.

APPEARING ON WHICH PROPOSAL SB 28

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: The Guaranty Fund feels that they should have the power to Concur rather than advise the Department in approving employers for self insurance. Since they have the financial liability they should have the right to approve or disapprove applications for self insurance in conjunction with the Department of Labor and Industry.
George Wood

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 1/15/91
BILL NO. 28

TESTIMONY ON SENATE BILL 14

Bob Jensen, Administrator
Unemployment Insurance Division
Department of Labor and Industry

Mr. Chairman, members of the Committee, for the record my name is Bob Jensen, and I am the Administrator of the Unemployment Insurance Division, of the Department of Labor and Industry.

I am here to speak as a proponent of allowing the use of certificates of deposit as security for employers who wish to be covered under plan 1 , that is, self insured, under workers compensation in this state. We believe that properly structured, a certificate of deposit can provide the Department with the type of security needed for a self insured company, and will provide those companies with more flexibility in choosing the appropriate security instrument.

I will raise several cautions to the committee regarding this approach, however. A certificate of deposit is a "cash equivalent" that is likely to be seized as an asset of the self-insurer if the business goes into bankruptcy. In that event, the Department may be unable to obtain those funds to pay the benefits secured by the CD, since workers compensation claims are treated as unsecured and without priority by the bankruptcy laws.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 1/15/91
BILL NO. 5814

A second concern is that CD's are not insured for over \$100,000 by the FDIC. The minimum deposit placed with the Department by a self insurer is \$250,000, and we currently have deposits as large as \$2,000,000. Multiple CDs would be necessary, in increments of \$100,000, if this instrument were chosen.

For certificates of deposit to be viable form of security in regard to self insurers, the Department would need (1) joint ownership of the CD, (2) an automatically renewable certificate to prevent lapses in coverage and earnings, (3) completion of assignment forms so the Department could obtain the security in the event of a bankruptcy, and (4) issuance from a Montana financial institution so the Department and Montana courts have jurisdiction.

We believe these requirements would make a CD a viable form of security for both the Department and self-insurers. If the committee has additional questions regarding the technical considerations of CDs, we have staff from the Employment Relations Division on hand to provide technical information.

Thank you.

NAME: MIKE MICALE

DATE: 1/15/91

ADDRESS: DEPT. OF LABOR & INDUSTRY

PHONE: 444-3263

REPRESENTING WHOM? SAME AS ABOVE

APPEARING ON WHICH PROPOSAL: SB 28

DO YOU: SUPPORT? ☐

AMEND? ☐

OPPOSE? ☒

COMMENTS: SB 28 - DEPT. OF LABOR & INDUSTRY HAS
RESPONSIBILITY AND AUTHORITY TO REVIEW & ACT ON
APPLICATIONS FOR WORKERS COMP. SELF INSURANCE.

SB 28 GIVES AUTHORITY TO THE GUARANTEE FUND BUT
THE DEPT. RETAINS RESPONSIBILITY.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 1/15/91

BILL NO. SB 28

115191

COMMITTEE ON

VISITOR'S REGISTER

[illegible]

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 1/15/91 Senate Bill No. 28 Time 2:10 pm

NAME	YES	NO
SENATOR AKLESTAD	X	
SENATOR BLAYLOCK		X
SENATOR DEVLIN	X	
SENATOR KEATING	X	
SENATOR LYNCH	X	
SENATOR MANNING		X
SENATOR NATHE		X
SENATOR PIPINICH	X	
SENATOR TOWE		X

Linda Casey
Secretary

Sen Richard E. Manning
Chairman

Motion: Do Not Pass Carries
as amended

SENATE BILL NO. 14
Proposed Amendment submitted by the
DEPARTMENT OF LABOR & INDUSTRY

Section 39-71-2106(1), MCA, is amended to read:

"39-71-2106. Requiring security of employer. (1) The department may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the Department. ~~Such~~ The security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and must be the greater of:

(a) \$250,000; or

(b) an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years."

CONTACT PERSON:

Diana Ferriter
Employment Relations Division
P. O. Box 8011
Helena, MT 59604-8011
406-444-6530