

MINUTES

MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION

SELECT COMMITTEE ON WORKERS' COMPENSATION

**Call to Order:** By CHAIRMAN CHASE HIBBARD, on February 3, 1993,  
at 3:00 P.M.

ROLL CALL

**Members Present:**

Rep. Chase Hibbard, Chairman (R)  
Rep. Jerry Driscoll, Vice Chairman (D)  
Rep. Steve Benedict (R)  
Rep. Ernest Bergsagel (R)  
Rep. Vicki Cocchiarella (D)  
Rep. David Ewer (D)

**Members Excused:** None

**Members Absent:**

**Staff Present:** Paul Verdon, Legislative Council  
Evy Hendrickson, Committee Secretary

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

**Committee Business Summary:**

Hearing: None  
Executive Action: None

CHAIRMAN HIBBARD announced that HB 347 and HB 361 would be rescheduled for Monday, February 8th. He expressed concern that the bills were not being introduced. The goal for the committee was to get bills completed by February 12th. A request for a transmittal extension may be necessary.

REP. BENEDICT asked if it would be possible to discuss with the leadership not requiring bills to be rereferred to a standing committee but to have them come directly out of this committee.

CHAIRMAN HIBBARD said that would be a definite possibility. The plan of the committee was to hold bills and postpone executive action on the bills until the very last so a package could be put together. This package would then move on to the Labor Committee where it would be heard as a package.

CHAIRMAN HIBBARD said that he was granting SEN. KEATING some time today to address the committee. SEN. KEATING had worked with some individuals from Oregon who were instrumental in solving the Oregon problem known as the "Oregon Miracle."

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**SEN. KEATING** said he had worked on workers' comp reform for a number of years and had some ideas for how to repair the system.

He then spoke about **Ken Heckler** who served on a subcommittee working with the group in Oregon for the repair of that plan. Mr. Heckler is also a risk manager, has been involved in the insurance industry for a number of years and has considerable knowledge about insurance and workers' compensation coverage.

**Terry Keating** said he had been involved with economic development activity since 1988 when 65 people in the Yellowstone County region went on a retreat in Lewistown to try and develop some method to spur economic development in the region. After six months of strategic planning, the plan was formally adopted by the Montana Trade Works for the Yellowstone County Region and was implemented by a management committee which he co-chaired.

**Mr. Keating** related to the committee some of the major problems he had heard from employers and employees. One particular employer who had \$1.5 million in sales and employed 13 people, 8 full-time and 5 part-time, last year had a rollover of 95 employees. If he could offer a good benefit package, he could hold good employees; however, he is paying so much in workers' comp he does the best he can. Eighty percent of the businesses in Montana are small operations employing fewer than 10 people. After several years of working at this, their proposal was for the state to get out of the workers' comp business and privatize it.

He said this is not a new or radical idea. Most states rely on the private sector to write their workers' comp insurance. In fact, only 19 states have a state plan. Reform efforts are not working and the State Fund requires major tax substance; premiums are out of control.

**Mr. Keating** then showed his presentation of graphs. **EXHIBIT 1**

**Mr. Keating** said the chart showed the effort the state has made to pull employers into the state plan. The state currently controls about 70% of the market share of premiums written in the state. The problem is, the more insurance they write, the more money they lose. The longer they stay in business, the deeper they go into debt. For every dollar in premiums the state takes in, they will go a dollar in debt.

**Mr. Ken Hector**, a consultant from Oregon, said his state had experienced similar problems but they have been able to satisfactorily solve most of them. Among the similarities was a very negative business plan. Workers' comp rates were very high, and the net result was that Oregon could not attract new business. In fact, businesses were leaving the state and relocating in more favorable locations.

In 1986, Oregon had the sixth highest workers' comp rates in the

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nation. At the same time, despite the high rates, the state was the 46th lowest in the nation in terms of benefit levels. From 1991 to 1993 their rates dropped over 30% a year annually. Oregon is now the 22nd highest in rates.

These changes were not made at the expense of injured workers. They raised schedule benefits 152% and unscheduled benefits 100%. Changes were made as to who could get into the system, how long they could be in the system, and the type of services that would be provided. Safety was a very big part of those changes and the state took steps to provide help to employers to make their work place safer.

The savings in premiums alone in the last three years was in excess of \$200 million. The total premiums have dropped as a result of the rate decreases and litigation is down 35%. The Oregon fund was not in the same serious financial trouble as Montana. They were losing \$1 million a week. At the time they started losing money, they had a significant surplus and that precluded their problem from becoming as drastic as what Montana is experiencing. It took a lot of hard work but it is doable. Politics must be kept out of it.

To make workers' comp workable in Montana will take a change that is all encompassing. How the deficit is addressed is a completely separate issue. It is a funding mechanism. It would be prohibitive to try and make up the deficit through workers' comp rates alone. An alternative funding mechanism must be found to resolve the deficit.

**SEN. KEATING'S** bill, in the early draft version, had the components. With some of the refinements discussed with the Governor's office, there are mechanisms available to bring about the changes needed.

**REP. DRISCOLL** asked if Mr. Keating could provide the Oregon rate and the shared risk pool rate in the classes of logging and bartenders. **REP. DRISCOLL** asked if anybody draws at least one check for one day of temporary total benefits, is that an indemnity? Mr. Keating replied that was correct, and there is a three-day waiting period in Oregon; on the fourth day they would receive a benefit.

**REP. BERGSAGEL** asked about the 149 claims which then dropped to 110 - did the medical costs maintain or did they go up in that same period of time? Mr. Keating said medical costs have gone down dramatically since 1990. Part of the reforms included serious changes in the law affecting delivery of medical benefits.

**REP. BERGSAGEL** asked if the total payment of medical costs out of the workers' comp fund maintained at the same level, dropped 110 claims or went up. Mr. Keating said total costs had gone down in all areas. He said one of the problems was it was easy getting

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into the system and easy staying in the system. There were no controls on the amount of treatment received. One of the big changes made was in that area alone. They took out palliative care and this had a significant effect on dropping the total cost of providing medical benefits.

REP. BERGSAGEL asked the average increase in wages in the state of Oregon, how much had the economy expanded, how many more jobs did the state have before the work comp started to turn around. Mr. Keating said he didn't have those figures but total employment was up.

REP. BENEDICT asked Mr. Keating what kind of surplus Oregon had. He guessed in the millions but wasn't sure of the number. REP. BENEDICT said he understood that Oregon had sustained an underwriting loss, yet they paid out dividends for reducing premiums and paid for it out of their surplus. Mr. Keating said some carriers had an underwriting loss and some did not. The state fund came very close to a break even point. REP. BENEDICT said his question is if indeed you are lower in premiums so rapidly in Oregon, are you an actuary? Mr. Keating replied he was not. REP. BENEDICT asked what actuarial firm Oregon used. Mr. Keating said the state fund had their own actuary on staff. Who they go to outside for other services he did not know. REP. BENEDICT said the legislative auditor audits the State Fund in Montana. It is also a requirement that an outside actuarial firm be used and that is Tillinghast, which is one of the best in the country. Their people say just because the state might institute some great reforms, the result would not be known for three to five years. Mr. Keating said he was surprised how quickly rates dropped. The changes made in Oregon law were very substantial ones. If a big portion of the cost drivers are eliminated, you know you can make some reasonable estimates about what results should be achieved.

REP. BENEDICT asked for some background on the period when Oregon had to drop about 4,500 insureds. Mr. Keating said the state fund made the decision, because they found themselves as an insurer of last resort. They had a large number of low premium risks, employers that had an annual premium of \$1,000. They sent notices of non-renewal or cancellation, depending on the circumstances, to roughly 20,000 employers. At this time reform was in the initial discussion. It highlighted interest in reform because these employers were going to be driven into the marketplace looking for coverage. The net result was it effectively created a true assigned risk because the state fund was stuck with all of these risks. Now they would go into the assigned risk field. All of the insurance carriers who were writing, by law, would have to participate in that pool and they would take on the percentage based on the amount of premium.

REP. BENEDICT asked how much workers' comp is being written by the state fund and how much totally in the state of Oregon compared to Montana. Mr. Keating said the estimated total

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premium for the state for 1993 is \$734 million. The state fund now has approximately 40% and they are the largest writer in the state. Liberty is the second largest.

REP. DRISCOLL asked if the state fund gets assessed and what was the assessment. Mr. Keating said that was correct and the only thing the state fund didn't have to do is pay taxes. REP. DRISCOLL asked if the assigned risk pool lost money? Mr. Keating said to his knowledge it did not because it's run the same way. The rates are just higher. All the other claim practices apply, the same as voluntary market place or self insurance. REP. DRISCOLL asked what would happen if the assigned risk pool estimated wrong and it had a debt; who would pay it? Mr. Keating said they would have to come back to the carriers for more money.

CHAIRMAN HIBBARD asked how large the assigned risk pool was in Oregon. Mr. Keating said he did not know but could get the numbers.

REP. BENEDICT asked who runs the Oregon assigned risk pool. Mr. Keating said there is an administrator but it is an administrative body and doesn't have anything to do with handling claims.

REP. BENEDICT asked what Mr. Keating's position was with the Oregon miracle. Mr. Keating said he was one of the legislative committee members of the Oregon self-insurer association.

REP. EWER asked Mr. Hector if he could rank the measures that Oregon enacted that had the most impact. Mr. Hector distributed a comparison of the old and new laws in the Oregon workers' compensation system. EXHIBIT 2 Changes were made on what the definite injury alone was, medical was tightened up, there were rehabilitation changes, safety requirements and safety programs, fraudulent claims, people incarcerated are no longer paid, people that were drunk or under the influence of drugs while injured on the job are no longer compensable.

REP. EWER asked if safety was number one. Mr. Hector said out of the top five, safety would be number one.

Oregon has also made changes regarding the court system. There were problems in the court of appeals. In Oregon the process is if you have an issue you go to a workers' compensation hearing. The level of appeal is a trier of fact hearing and from there it would go to the workers' comp board which is comprised of three people. They would then review it and make a decision. From there it would go to the court of appeals and that's where there were problems because the court of appeals would make a decision which would be effectively writing a new law. The court was significantly impacting them with their decisions. The legislature, by statutory change, took away the ability of the court of appeals to review on the record; they could only review as a matter of law. That had a big effect on the stability of

the system.

**SEN. KEATING** said the intention was to propose that Montana entirely privatize its workers' comp system. This would be accomplished by sunsetting the state plan at some transitional date specifically. The state would require coverage by the employer or the employee in the statutes to preserve the exclusive remedy under the constitution. There would be three areas for the employer to buy workers comp coverage. Private companies, through self-insurance or by paying benefits under an ERISA plan, would meet or exceed the statutory benefits of the state. It would be similar to self-insurance but the payment of benefits under ERISA would be the equivalent of having workers' compensation coverage for exclusive remedy purposes.

There would be an assigned risk pool. Every private company that did business in the state would take turns being assigned those risks by the insurance commissioner. **SEN. KEATING** recommended the Oregon benefit package. It would eliminate Montana statutes with regard to the benefits and the procedures, etc. The best way to achieve lower premiums in the state of Montana is to reduce the claims and adjust the claims as quickly and as fairly as possible. Along with the safety and fraud laws, it would bring the premiums down for the employer by managing the claims adjustments in the program. To do that, the law has to be specific and clear. This benefit package is not that specific so **SEN. KEATING** recommended what has been tried and is working.

**REP. BENEDICT** said he was intrigued by the proposal but if the insurance companies can't compete with the state right now because the state is charging rates that are lower than the insurance companies, how would privatization lower those insurance premiums when the State Fund is running them out of business now by charging lower rates? How will that create jobs?

**SEN. KEATING** said he had also struggled with that question. If we get out of the state plan and go private, it would cost more money. In looking at the premiums, it does cost more money because the premiums the privates charge are generally higher than what the state charges. Is a \$500 million deficit not a cost? He said if the state was charging premiums to have the state break even, the premiums would be as high as any private carrier charges because the NCCI rates for Montana are driven by the actuary so the more benefits, the more payments in the state fund, the higher the NCCI rates, which also drives the private premiums.

**SEN. KEATING** said the old fund is separate from the new fund and it's the responsibility of everybody in the state regardless of whether they are employer or employee. This plan does not address the old fund at all. That is a totally separate issue.

**REP. BENEDICT** asked if administration and management couldn't be privatized but still have the state fund?

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**SENATOR KEATING** said that he didn't think it would last nor did he think Oregon's plan would last if the legislature starts messing with it. He believes the state should privatize because one of the best examples is here in our own state. The self-insurers manage their claims and keep their assessments down. When the counties went self-insured and got private claims adjusters, they began to bring their premiums down. They weren't harassed by statute.

**CHAIRMAN HIBBARD** asked if **SEN. KEATING** had any idea how large that assigned risk pool might be in Montana. **SEN. KEATING** replied that he did not.

**CHAIRMAN HIBBARD** questioned **SEN. KEATING** about the benefit package that should be defined in the statutes and asked whether he had any idea what that benefit package would look like.

**SEN. KEATING** said he would take the Oregon package. Montana's is vague. Montana's language is subjective instead of objective. Montana laws should be specific and not subject to interpretation and that way a lot of problems could be avoided. Oregon's benefit package is good, it has an experience and it would be adaptable to our system.

Part of the confusion is that Montana had three major changes in the law in 1987, 1989 and 1991 so the state is currently operating under four laws. If this law is enacted, the state would be operating under five laws. That makes it very difficult and every time we make a major change it adds confusion to the system.

**REP. BENEDICT** asked Mr. Sweeney of the approximately 27,000 policy holders the State Fund covers, how many of those would be under \$1,000 in premium. Mr. Sweeney said approximately 16,000 would be under \$1,000 in premiums.

**CHAIRMAN HIBBARD** said the committee would have two bills on the docket for Monday and possibly three for Friday.

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ADJOURNMENT

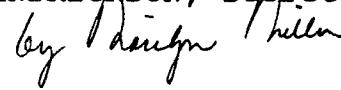
Adjournment: 6:10 p.m.



REP. CHASE HIBBARD, Chairman



EWY HENDRICKSON, Secretary



CH/eh

## HOUSE OF REPRESENTATIVES

HOUSE OF REPRESENTATIVES  
Select Water Comm. COMMITTEE

## ROLL CALL

DATE

## COMMITTEE

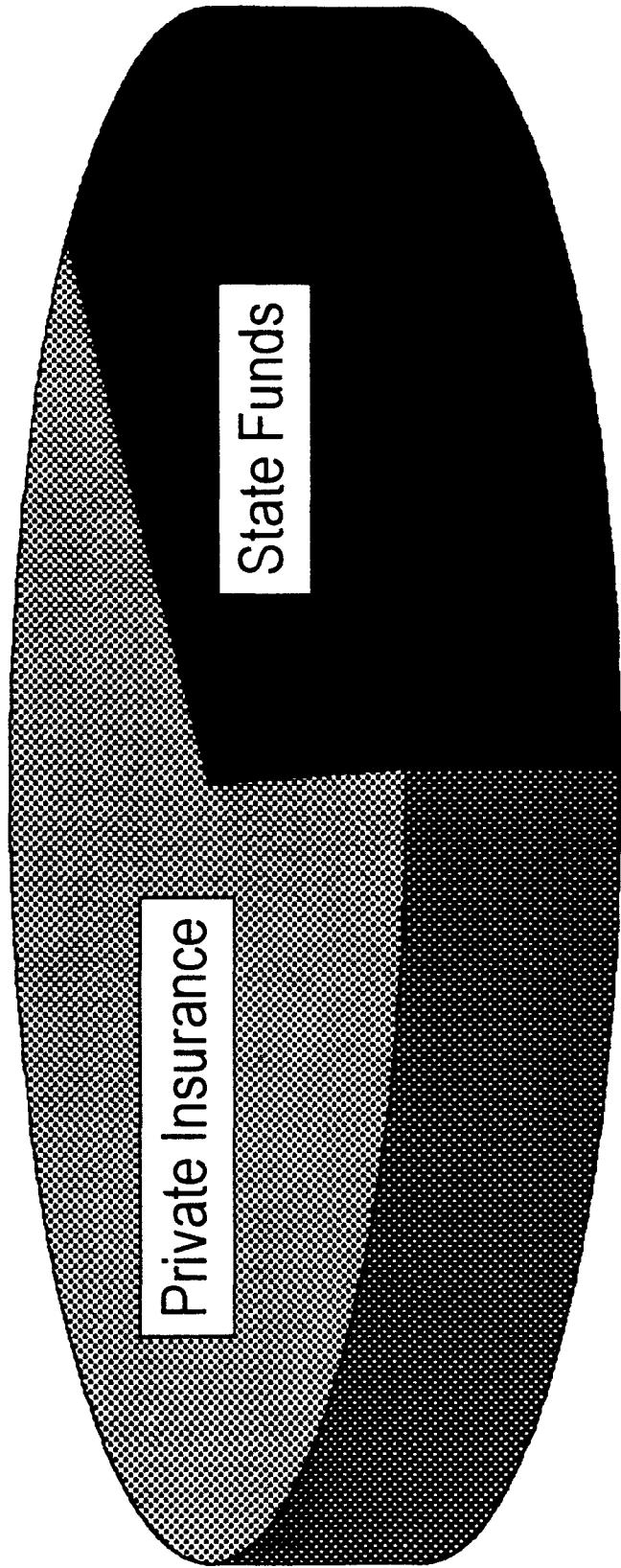
7-3-93

## **Privatize Montana's Work Comp**

- Most States Rely Upon Private Sector
- Montana's Deficit is Uncontrollable
- Reform Efforts Are Not Working
  - Paying Later is More Costly
- The State Fund Requires Major Tax Subsidies
- The State Fund is an Inefficient Monopoly
- Competition and Increased Options Are Needed

## **Use of Private Insurance or State Funds By States**

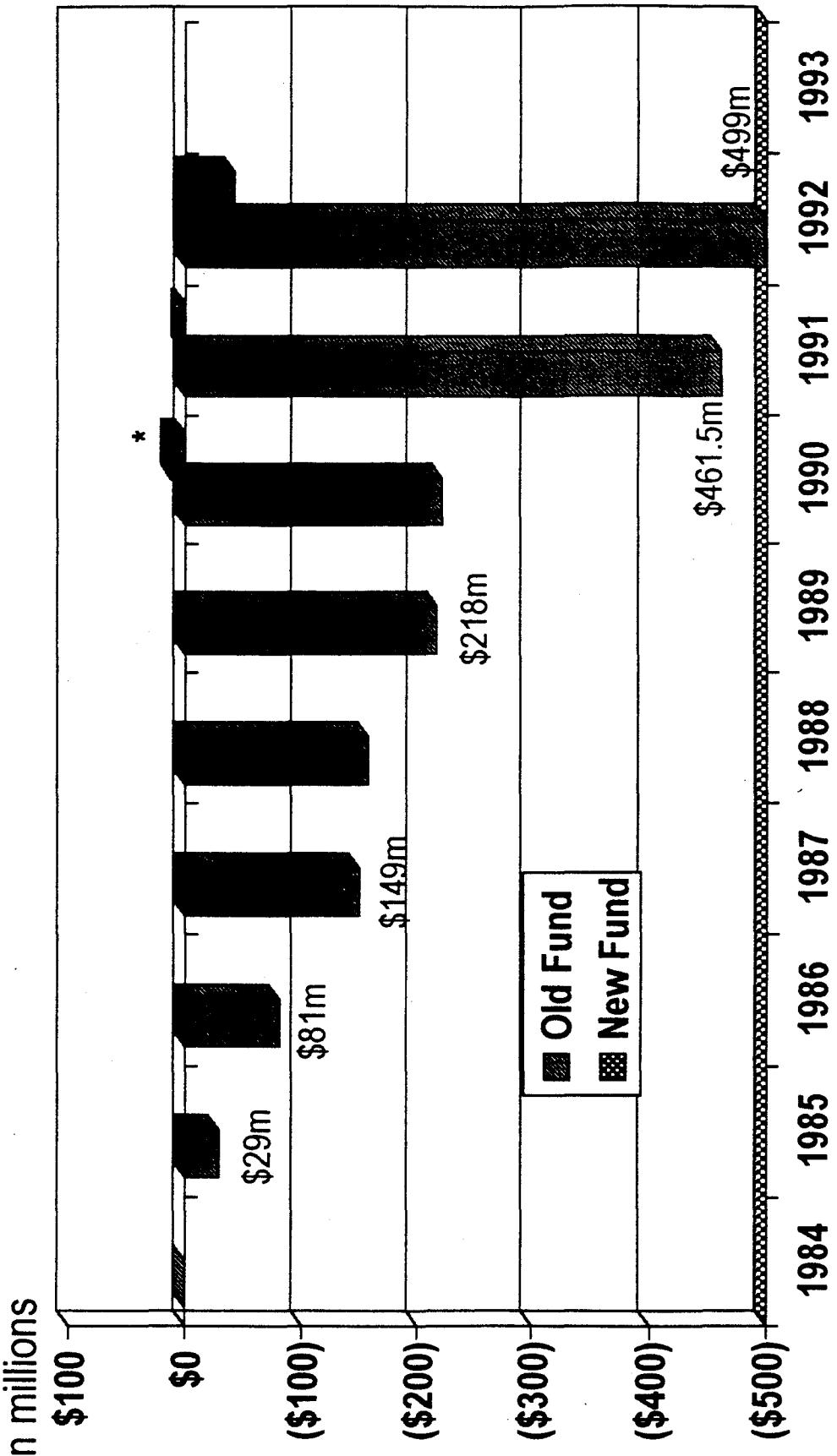
**32 states (63%)**



**19 states (37%)**

EXHIBIT 1  
DATE 2-3-93

# Montana State Fund Balances

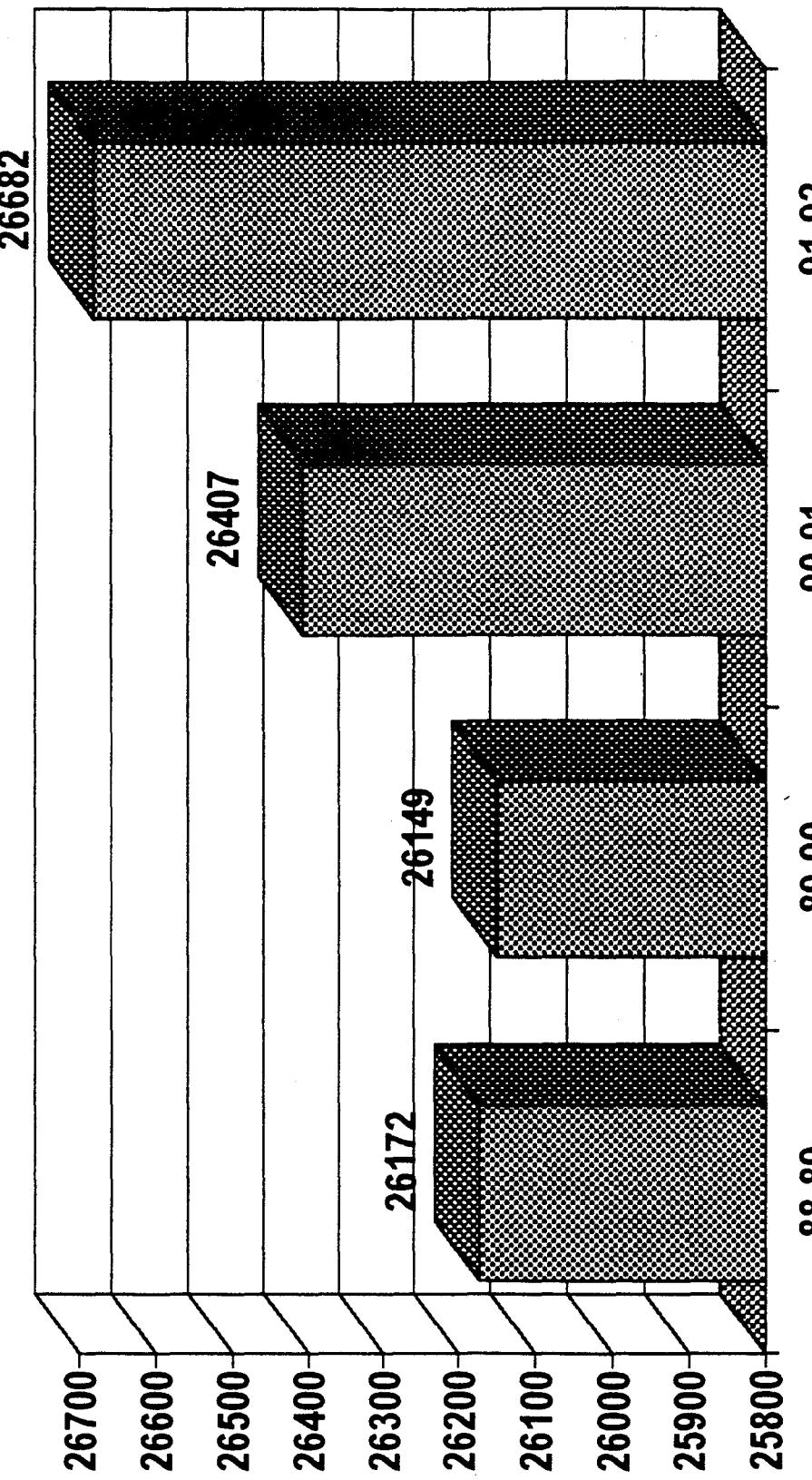


\* \$12 m seed funding for start-up of New Fund, July 1990 5

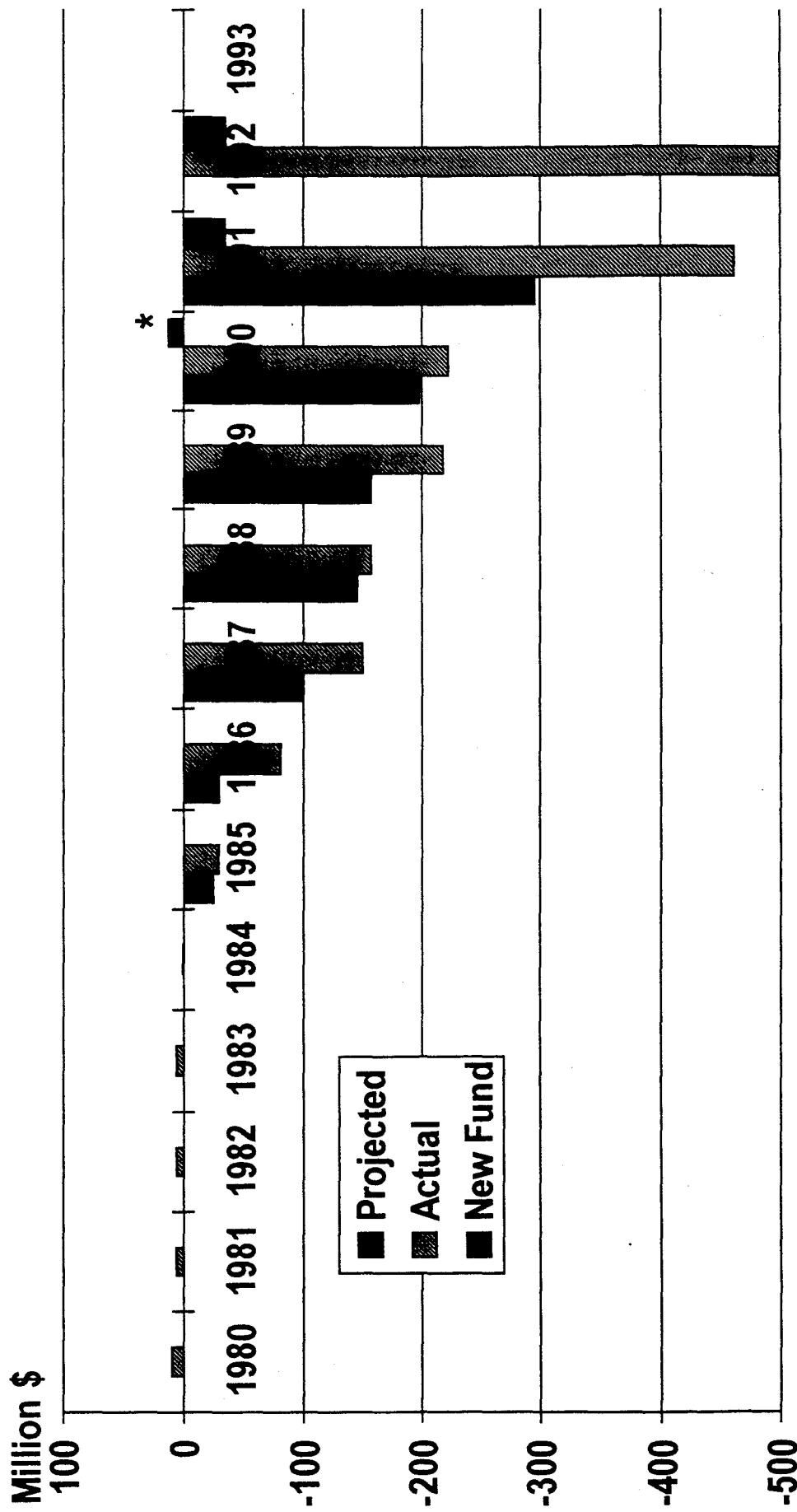
EXHIBIT 1  
1984-93-93

- Premiums have increased about 128% in less than 10 years.
- Premiums are only part of cost. Taxpayer subsidies include:
  - 1987- estimate \$10.75m per year from 0.3 percent payroll tax.
  - 1989 - \$20m appropriation to defray scheduled 22% rate hike.
  - 1990 - \$12m transferred from Old Fund to start the "New Fund"
  - 1990 - \$13-\$14m per year until 2009 from 0.28% employer payroll tax.
  - A 1% payroll tax on employers and employees will likely be proposed.
  - Attempts to subsidize and balance the fund have not made a dent.
- Continued similar attempts will most likely result in more of the same--higher tax burden and continued mismanagement.
- This is a disservice to both the insurance customer and the taxpayer.

# # Employers Enrolled - State Fund

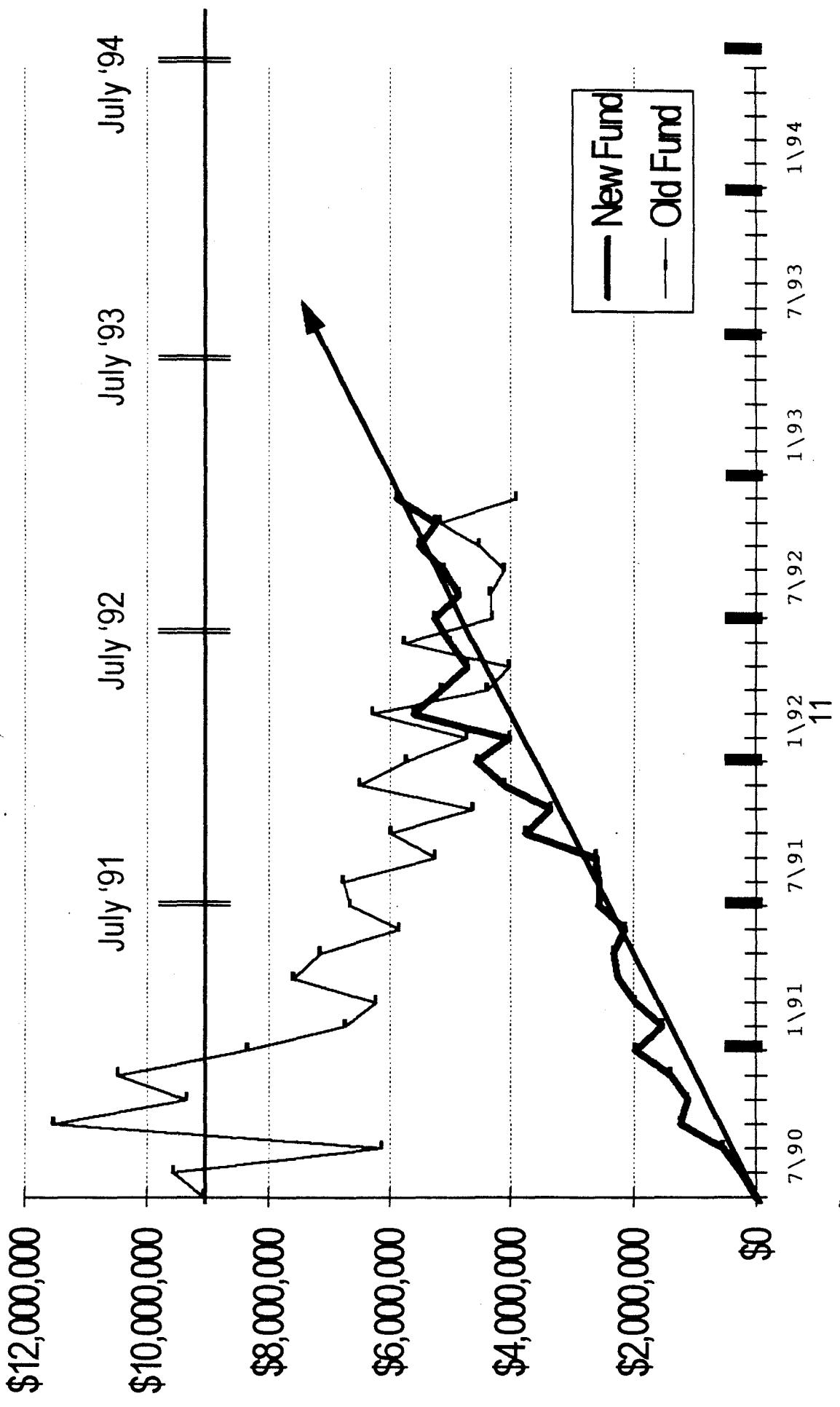


## State Fund Deficit

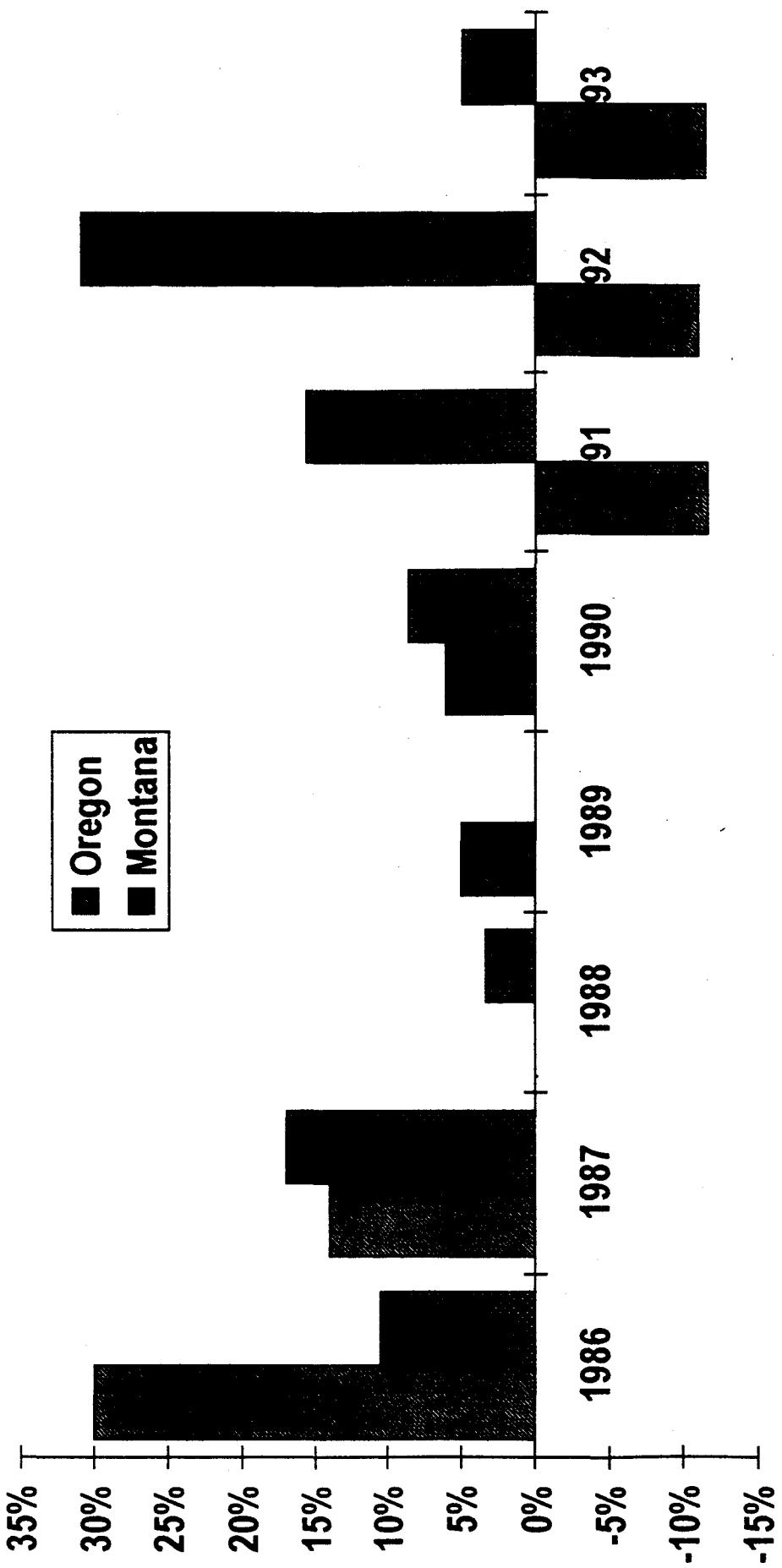


2-3-93

# Claims Paid Since Major Work Comp Reform, 1990



## Rate Changes: Oregon - Montana



# The Oregon Workers' Compensation System

A comparison of the old and new laws

EXHIBIT 2  
DATE 9-3-93

| Subject                         | Old Law   | New Law <sup>HB</sup>   |
|---------------------------------|---|---|
| Benefits for scheduled injuries | \$145/degree of impairment  | \$315.63/degree for injuries between 7/1/92 and 6/30/93   |
| Safety                          | Safety committees for businesses with more than 10 employees and high injury rate | Mandatory safety committees for businesses with 10 or more employees  |
|                                 |   | Mandatory safety committees for businesses with fewer than 10 employees and high injury or premium rates  |
| Compensability                  | "Material contributing cause" the standard for job-related injuries and diseases  | "Material contributing cause" remains standard for job-related injuries and diseases, but in addition injury must be corroborated by objective medical findings |
|                                 | Injury aggravation occurring off the job is compensable                           | Prohibits aggravation claims when existing condition worsened by off-the-job injury   |
|                                 | Pre-existing and subsequent injuries are compensable                              | Pre-existing and subsequent injuries non-compensable unless work a "major contributing factor"  |
|                                 | Benefits awarded for injuries resulting from illegal drug or alcohol abuse        | Benefits denied for injuries resulting from uncondoned illegal drug or alcohol abuse documented by clear and convincing evidence                                |
|                                 | Time-loss benefits awarded to jailed claimants                                    | Time- loss benefits denied to jailed claimants  |

|   |  |   |
|---|--|---|
| <b>Attending physicians able to authorize time loss and rate impairment</b> | All medical providers, including MDs, DOs, oral surgeons, dentists, chiropractors, naturopaths, podiatrists, nurse practitioners | MDs, DOs, oral surgeons   |
| <b>Compromise and release (lump-sum settlements)</b>                        | Prohibited except when bona fide dispute exists concerning compensability  | Chiropractors for the first 30 days from the date of the first visit on the claim or 12 visits, whichever occurs first  |
| <b>Palliative care (non-curative treatment)</b>                             | Permitted  | Nurse practitioners in some rural areas   |
| <b>Job reinstatement</b>  | At employer's discretion providing position available and worker able to perform duties  | All others only through managed care organizations  |
| <b>Preferred worker program</b>   | Repays premium costs for first two years after hiring an injured worker  | Permitted except for medical benefits   |
| <b>Handicapped Workers' Reserve</b>   | Reimbursement for all or part of cost of claim for hiring handicapped worker   | 30-day cooling off-period for claimant to withdraw  |
|   |  | Prohibited except for permanent total disability, to monitor prescription drugs, to monitor prosthetic device, to enable worker to continue current employment                                      |
|   |  | Reinstatement to former job for up to three years unless certified by attending physician as unable to work, participates in vocational assistance, goes to work elsewhere, refuses light-duty work |
|   |  | Reinstatement requirements not applicable to businesses with 20 or fewer employees  |
|   |  | Premiums and assessments not paid for payroll of preferred worker   |
|   |  | Repays claims costs for injuries suffered by injured worker for first three years after hiring  |
|   |  | Issue ID cards to preferred workers   |
|   |  | Program eliminated<br>Replaced with Re-employment Assistance Reserve to finance Preferred Worker Program  |

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| <b>Managed care organizations (MCOs)</b> | Not permitted, employee could choose attending physician and change twice  | MCO must be certified by the state and have a contract with a workers' compensation insurance company  |
|  |  | Injured workers with accepted claims may be required to see doctors in an MCO that has contracted with employer's insurance company  |
|  |  | MCO must provide full range of medical services without discriminating against any class of medical provider   |
|  |  | Internal monitoring to prevent excessive treatment   |
|  |  | Financial incentives to reduce costs   |
| <b>Medical treatment outside MCOs</b>    | All treatment  | Medical emergencies  |
|  |  | MD or DO who is the injured worker's "primary care physician" and who maintains the worker's medical records - all referrals to medical specialists must be inside MCO   |
| <b>Claims processing</b>                 | 60 days to accept or deny a claim<br>Back-up denials prohibited except in cases of fraud<br>Full benefits paid during appeals process<br>Insurance company closure permitted when worker returns to work<br>With clear and convincing evidence, Workers' Compensation Board (WCB) and referees permitted to go outside standards for rating impairment<br>New medical evidence allowed on appeal | 90 days to accept or deny a claim<br>Back-up denials permitted for up to two years<br>Maintenance payments only during appeals process<br>Insurance company closure permitted when worker released for regular or modified work<br>WCB and referees prohibited from going outside standards for rating impairment<br>No new medical evidence allowed on appeal |
|  |  | Director of Department of Insurance and Finance (DIF) appoints medical arbiters to resolve disputes  |

## Litigation

|   |  |
|---|--|
| Virtually every decision appealable   | No appeal until after request for reconsideration of Determination Order             |
| Extent of impairment routinely appealed with new medical evidence entered into the record | Challenge to impairment rating limited to whether medical standards properly applied |
| Penalties and attorney fees determined by referees  | Penalties determined by DIF unless other insurance companies involved                |
|   | No separate attorney fees  |
|   | Attorney gets 50 percent of penalty  |

EXHIBIT 2  
2-3-93

This document is for comparison purposes only. It contains simple explanations of the old workers' compensation law and the new one. It is not intended to be a comprehensive explanation of the current system.

Prepared by SAIF CORPORATION November 1992

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Visita  
Select Works Corp.  
DATE 2-3-93 SPONSOR(S)

## COMMITTEE

**BILL NO.**

DATE 9-3-93

**SPONSOR(S)**

**PLEASE PRINT**

**PLEASE PRINT**

**PLEASE PRINT**

| NAME AND ADDRESS | REPRESENTING    | SUPPORT | OPPOSE |
|------------------|-----------------|---------|--------|
| Diana Feinster   | F.R.D           |         |        |
| Denny Zelen      | END             |         |        |
| <del>W.H.</del>  | <del>W.H.</del> |         |        |
| Ken Huber        | (Sugar)         |         |        |
| Larry Keeting    | (B.G.)          |         |        |
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**PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.**