MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

SELECT COMMITTEE ON WORKERS' COMPENSATION

Call to Order: By **CHAIRMAN CHASE HIBBARD**, on February 15, 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. David Ewer (D)

Members Excused: Rep. Cocchiarella

Members Absent: None.

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: HB 534, HB 587
Executive Action: HB 470, HB 347, HB 453, HB 534

HEARING ON HB 534

Opening Statement by Sponsor:

House Bill 534 was presented by **REP. JERRY DRISCOLL, House District 92, Billings** because **REP. VICKI COCCHIARELLA, House District 59, Missoula,** sponsor of the bill, was unable to be present. The bill would allow an insured employer to choose to accept a medical deductible, and for purposes of computing rates and rating plans, all medical losses incurred must be reported to the insurer without regard to the application of any medical deductible regardless of whether the employer or the insurer pays the losses.

Proponents' Testimony:

Stan Kaleczyc, Attorney, said that **HB 534** clarifies that an actuarially sound method of determining rates and rating plans will be used. HB 534 ensures that small employers will not be penalized when and if they choose a medical deductible plan,

while preserving the benefit of an up-front credit when a medical deductible plan is chosen. **EXHIBIT 1**

Jacqueline Lenmark, American Insurance Association (AIA), stated this bill could ensure the consistency and integrity of the rate-making process.

John King, Underwriting Department of the State Fund, said the State Fund supports this bill.

Riley Johnson, National Federation of Independent Business (NFIB), believes the bill clears up some minor problems with the medical deductibles.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. DRISCOLL believes this bill will affect the ratemaking process.

HEARING ON HB 587

Opening Statement by Sponsor:

REP. HAL HARPER, House District 44, Helena, stated HB 587 has been requested by the state auditor. He said the bill changes the membership of the classification and rating committee for workers' compensation insurance coverage; grants rulemaking authority to the committee; and establishes informal hearing guidelines not subject to the Montana Administrative Procedures Act (MAPA). **REP. HARPER** stated all insurers writing worker's comp coverage must belong to the National Council of Compensation Insurers (NCCI). A statement of intent is required because the bill clarifies that the classification and rating committee has the power to promulgate rules necessary for the conduct of the business of the committee and the classification and rating committee has been statutorily created.

Proponents' Testimony:

Bill Lombardi, representing the **State Auditor and Insurance Commissioner Mark O'Keefe,** said the state insurance commissioner supports HB 587, which he considers a clean-up bill. **EXHIBIT 2**

Stan Kaleczyc, NCCI, stated NCCI has provided administrative and organizational support for the classification and rating committees. He said the composition of the committee changes will include one representative of employers. The bill gives the

classification and rating committee expressed rulemaking authority. The bill makes it clear that this committee meet the requirements of the open meeting and public participation laws in the state. The bill preserves an informal hearings process which is inexpensive for the employer and the committee.

Nancy Butler, General Counsel for the State Fund, said the bill allows for the agency needed rulemaking authority.

Roger Tippy, Helena Attorney, said the committee holds meetings to hear employers who feel that have been misclassified. **Mr. Tippy** asked why the section stating, "make the final determination regarding the establishment of all manual rules and classification" was deleted from the bill. He is uncertain why a hearings officer is being hired to take part in the informal hearings process. The **SB** hearing was done by a conference call and not at a formal hearing with an attorney. The state auditor's office took the minutes and has them on record. **Mr. Tippy** distributed the Montana Administrative Procedures Act. **EXHIBIT 3**

Jacqueline Lenmark, American Insurance Association (AIA), stated they do not feel a consumer should be placed on the committee. This individual is not conversant with the needs of the insurance industry in keeping an insurance company solvent and properly operating within the Montana market place. A district judge will hear the appeals from this committee and the AIA does not feel the judge is conversant with the ratemaking process. She asked the committee to amend the bill to delete the addition of the consumer representative or to increase the insurance representation on the committee accordingly.

Opponents' Testimony:

Steve Brown, Montana Health Care Association (MHCA), stated he has represented MHCA in litigation involving the State Fund accessing public records and has experience in classification and ratemaking. He stated the association has no objections to the committee keeping the appeal hearings on an informal basis and what is being proposed in this bill is not consistent with what has been explained. He is concerned with the language stating the committee shall be funded from the operation budget of the rating organization and requiring the committee to be staffed by the rating organization. He stated there were numerous problems in obtaining information from NCCI. He believes the citizens of Montana should be able to receive information pertaining to the committee from a Helena office rather than going through the Denver office. The committee has been staffed locally. He does not believe the NCCI staff is well versed in Montana law. **Mr. Brown** said the court can throw out a decision which is in excess of the statutory authority of the agency. He said that committee determinations are important and that classifications will determine rates. He stated if this committee is to exist and

issues are to be resolved on an informal basis, this bill is not going to encourage this.

John Shontz, Attorney, believes the informal process should be returned to subjugation to the Montana Administrative Procedures Act.

Questions From Committee Members and Responses:

Mr. Kaleczyc questioned the statement which refers to one representative of employers who are insured by private insurance carriers and the state compensation mutual insurance fund, appointed by the commissioner of insurance. He said an individual employer cannot be insured by both insurance companies or be on this committee.

REP. HARPER said it is not the intent of the bill the way **Mr. Kaleczyc** is interpreting it. He said the intent of the above section is to have representation of an employer who is insured under Plan Two or Plan Three of the State Fund.

Paul Verdon rewrote the section to read: one representative of an employer who is insured by either a private insurance carrier or a state compensation mutual insurance fund.

REP. BENEDICT asked **Pat Sweeney, President, State Fund,** how many employers the State Fund currently insures. **Mr. Sweeney** said approximately 27,000 employers are insured by the State Fund.

REP. BENEDICT asked how many of the 27,000 employers would be unhappy with their classification if they knew this committee was not the final authority. **Mr. Sweeney** said approximately ten percent.

REP. BENEDICT believes if the language of the bill, line 17 and 18, was changed and the decision on classification was left up to the district judges, people will feel they need to have their classifications reviewed. **Mr. Sweeney** said this could be a possibility.

REP. EWER said he is confused with the role MAPA is taking in regards to the State Fund and the classification and rates. He believes the bill has the process which involves MAPA for the rates and classification. **Ms. Butler** stated there was a decision in the district court involving the classification and rating committee and the decision stated that state agencies should have administrative rules governing their hearing procedures. She said that, in order to make rules in Montana, there must be specific authority. This bill gives the committee the authority they will need to make rules. The committee will have the authority to conduct hearings and the State Fund will not.

REP. EWER asked if people who are dissatisfied with their

classifications or ratings will appeal to this committee. **Ms. Butler** said this committee will allow people a hearing if they question their classification or rating status.

REP. BENEDICT said he feels the option of letting people question what their classification and rating should be is a poor one. **REP. HARPER** said everyone has the option to go to district court with their appeals; the classification and rating committee will make the final determination unless or until a person goes to court. He believes the bill is needed to ensure that the informal method is maintained. Under MAPA, contested case provisions are supposed to apply to ratemaking, so the committee's total adherence to MAPA must be loosened.

REP. EWER asked **Mr. Kaleczyc** if the process in the bill is unique. **Mr. Kaleczyc** said the process is not unique but that Montana's statute provides for a classification and rating committee is unique. **REP. EWER** asked if there is an appeals process which ends up in courts in other states? **Mr. Kaleczyc** said he is not familiar with other states and organizations. **REP. EWER** asked if this bill would affect all other insurers who offer work comp insurance. **Mr. Kaleczyc** said if a person is insured with a private company or the State Fund and they are unhappy with their class code, this would be their venue for administrative appeal.

Closing by Sponsor:

REP. HARPER said he believes the people who will staff the classification and rating committee will be subject to MAPA and to public hearings.

HEARING ON HB 604

Opening Statement by Sponsor:

REP. ROYAL JOHNSON, House District 88, Billings, said he believes there are items which need to be addressed in workers' compensation for the state of Montana. Responsibility and accountability need to come from the Governor's office. He believes workers' comp should be made a part of state government. The state of Montana ranks 35th in the nation for paid out benefits. **REP. JOHNSON** said he does not believe the state has paid out too many benefits according to the national level. Another item is that benefits will be kept in the law. He said the laboring people do not want to help pay off the old fund liability. He explained **EXHIBIT 4, page 3** to the committee. The spreadsheet calculated the following financial related data:

Total expense	$572,238,654
Year payroll tax ends	2003
If cash is more than	$20,000,000

Payroll tax decreases by .05%

REP. JOHNSON said that **EXHIBIT 4, page 5** shows that the legislature initially funded the State Fund inadequately and they need to take a look at this and give some guidance as to how they want to adequately preserve the organization. The financial figures indicate a red ink problem of $423 million as of June 30, 1992. **REP. JOHNSON** believes the rates should be raised 25% for July 1993, January 1994, and July 1994. He believes the old fund and the new fund have to be fixed.

Proponents' Testimony:

Rose Hughes, Executive Director of the Montana Health Care Association (MHCA), said the main concerns of the association are the accountability factor and the cost of premiums. She has served on a subcommittee which dealt with the administration of the fund and which recommended two major items. The first major proposal was that the state not be in the insurance business at all and the alternative proposal was that, if the state is going to be in this business, then it should stop functioning as a private company and establish some accountability. The association would like to have this issue put back in the Governors's office.

Ms. Hughes said the association does not want the employer tax to go up. She believes the mandatory rate increases will go up with or without legislation. The nursing home rate increases have gone up approximately 70 to 75 percent in the last year. She said whatever figures the actuary finds necessary will be the rate increase. Some people feel if workers' comp is placed in the Governor's office it will then become a political issue. **Ms. Hughes** said workers' comp is a political issue regardless of who handles it.

Marshall Gray, retired lumberman, had these suggestions to make regarding workers' compensation: 1) screen for fraud; 2) establish a judicial staff and require all complaints be heard by them and their decisions be final; 3) allow no cash settlements; 4) change the existing laws if necessary; 5) establish employee contribution to the fund; 6) establish a state rehabilitation center to get people back to work; 7) work to reclaim some of the monies already paid out; 8) strongly oppose privatization of fund, and 9) establish a crime stoppers hot-line against work comp fraud. **EXHIBIT 5**

Mr. Johnson, National Federation of Independent Business (NFIB), said the federation does not have a ballot position on this bill but has ballot positions on employee participation in dealing with the problems related to workers' comp. He said members support political responsibility and accountability in workers' comp and also the high-risk pool. Members support solving both programs at the same time, and approximately 70% of the 8,600

members support privatization but they do not support the continuance of not adhering to the law. The federation members have lost faith in the system. **Mr. Johnson** said he believes **REP. JOHNSON** has offered the key to programs which could help the workers' comp funds. On the federation ballot there is a place for comments; on the 1993 ballot, the most common comment was that people are willing to pay the bill but they do not want to keep paying the bill.

Opponents' Testimony:

Don Judge, AFL-CIO, said they do not like the funding mechanism being proposed by this legislation as an employee payroll tax to pay off this bill. He believes the cash flow for this account can be obtained by raising the unemployment insurance trust fund as the trust fund continues to grow.

Mike Micone, Montana Motor Carriers Association, feels HB 604 will have a devastating effect on an industry already reeling as a result of a number of double digit rate increases over the past couple of years. He believes the creation of an assigned risk pool will serve as a disincentive to attract private companies to the state, and it may even result in existing companies deciding not to write policies in the state. Strong safety programs, prevention of fraud, and aggressive management will do more to cure the ills of this system as opposed to throwing millions more dollars into the system. **EXHIBIT 6**

Mr. Micone presented a study done in Connecticut which pointed out that companies are being dumped into the assigned risk pool because of negatively biased underwriting criteria which treats certain classification like leprosy, regardless of the individual company's claims record or experience factors. **EXHIBIT 7**

Ms. Lenmark, agreed with **Mr. Micone** regarding the assigned risk pool and mandated rate increases by this legislature.

Steve Turkiewicz, Executive Vice-President of the Montana Auto Dealers Association, said carriers have indicated to him that, if they come into Montana, they will charge less than NCCI rates. The dealers feel it would not be wise to self-insure their workers' comp program.

James Tutwiler, Montana Chamber of Commerce, stated his organization embraces the concept of privatization. They would be supportive of the bill if it mandated something which would solve the management problem. They want the payroll tax to be consistent. He believes mandated premiums pour more money into the problem and said higher rates will be prohibitive for small employers.

Questions From Committee Members and Responses:

REP. BENEDICT said **Mr. Sweeney** made the remark earlier that if they separated the $54 million and just took what they were short each year in order to be solvent on a yearly basis, they would need a 10 to 15% increase each year. **Mr. Sweeney** said it was the actuary who provided the figures and the actuary strongly suggested not to make up the deficit with one rate increase. **REP. BENEDICT** asked if 10 to 15% increases would be necessary to bring the fund back into balance regardless of the deficit which has occurred. **Mr. Sweeney** stated this process will create a surplus.

REP. DRISCOLL said a part of workers' comp is considered health insurance and asked how NCCI justifies rates of $1.41 they published on some people when just the health insurance is $4.22 a hundred even though they are less then the state charges.

Ms. Lenmark said workers' compensation is not health insurance, that it is property and casualty insurance. She said a health insurance policy carries mandated coverage which increases the cost of the policies.

REP. DRISCOLL feels the state should be willing to pay the board members approximately $20,000 yearly, plus expenses, and perhaps then the members would be willing to serve. **REP. JOHNSON** feels the members should receive better compensation.

REP. HIBBARD asked **REP. JOHNSON** how money can be taken from the new fund and placed in the old fund and expect the new fund to remain solvent. **REP. JOHNSON** said it is a loan from the new fund to the old fund and must be repaid.

REP. DRISCOLL said the new fund has $224 million dollars as of February 11, 1993.

Closing by Sponsor:

REP. JOHNSON said he was encouraged during the testimony to hear the labor people suggesting there might be a different alternative to pay off the fund. He said the worst thing for the state would be to not do anything with the worker's comp fund.

EXECUTIVE ACTION ON HB 470

Motion: **REP. DRISCOLL MOVED HB 470 DO PASS AND MOVED ADOPTION OF THE AMENDMENTS DATED FEBRUARY 12, 1993. EXHIBIT 8**

Motion: **REP. BENEDICT** moved an amendment to add a coordinating clause that would state if **SEN. HARP'S** bill passes, the penalty in **SEN. HARP'S** bill for fraud would be incorporated in this bill. **REP. BENEDICT** said **SEN. HARP'S** bill identifies penalties for defrauding the workers' compensation system. He then withdrew his amendment.

Vote: The motion on **REP. DRISCOLL'S DO PASS AS AMENDED** carried unanimously. **EXHIBIT 9**

EXECUTIVE ACTION ON HB 347

Motion: **REP. BENEDICT MOVED** the bill for discussion and will offer a table motion after further discussion.

Discussion: **REP. DRISCOLL** said he wants to table lump sum payments which are used to settle claims.

Motion/Vote: **REP. BENEDICT MOVED THAT HB 347 BE TABLED.** The motion to table HB 347 carried unanimously.

EXECUTIVE ACTION ON HB 453

Motion: **REP. BENEDICT MOVED HB 453** for purposes of discussion and he will offer a table motion later on.

Discussion: **REP. EWER** supports the tabled motion and he feels the bill has merit regarding the due process the bill addresses.

The amendments to HB 453 were discussed. The amendments lengthen the statute of limitations for workers' compensation fraud to 12 years. It also exempts from prosecution under the terms of this bill anyone who voluntarily informs the department that he has committed fraud and if he agrees with the department to make full restitution of the benefits obtained in violation on an agreed payment schedule. **EXHIBIT 10**

Vote: **REP. BENEDICT MOVED THAT HB 453 BE TABLED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 534

Motion/Vote: **REP. DRISCOLL MOVED HB 534 DO PASS.** Motion carried unanimously. **EXHIBIT 11**

ADJOURNMENT

Adjournment: 6:40 p.m.

REP. CHASE HIBBARD, Chairman

Evy Hendrickson, Secretary
by Marilyn Miller

CH/eh

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL DATE 2-15-93

NAME	PRESENT	ABSENT	EXCUSED
CHASE HIBBARD, CHAIRMAN	✓		
JERRY DRISCOLL, VICE CHAIRMAN	✓		
STEVE BENEDICT	✓		
ERNEST BERGSAGEL	✓		
VICKI COCCHIARELLA			✓
DAVID EWER	✓		

HR:1993
wp.rollcall.man

HOUSE SELECT COMMITTEE REPORT

February 18, 1993

Mr. Speaker: We, the select committee on Worker Worker Compensation report that House Bill 470 (first reading copy -- white) do pass as amended .

Signed: _____
Rep. Hibbard, Chair

And, that such amendments read:

1. Page 3, line 19.
Following: "(a)"
Insert: "(i)"

2. Page 3, lines 21 and 22.
Strike: "and" on line 21 through "services" on line 22

3. Page 4, following line 1.
Insert: "(ii) A sole proprietor or working member of a partnership who represents to the public to be an independent contractor and who is in the construction industry shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3."

4. Page 7, line 2.
Strike: ":"

5. Page 7, line 3.
Strike: "(i)"
Following: "elected"
Insert: ", as required,"

6. Page 7, lines 5 through 7.
Strike: ";" on line 5 through "Act" on line 7

-END-

Committee Vote:

HOUSE SELECT COMMITTEE REPORT

February 18, 1993

Mr. Speaker: We, the select committee on Worker Compensation report that House Bill 534 (first reading copy -- white) do pass.

Signed: _____

Rep. Hibbard, Chair

Committee Vote:

EXHIBIT 1
DATE 2-15-93
HB 534

Talking Points re HB 534

- NCCI supports HB 534 because it provides an actuarially more sound means of computing rates and establishing rating plans where employers elect a medical deductible plan.

- An employer who elects a medical deductible plan receives a credit up front, based upon the amount of the deductible (bigger deductible, bigger credit) and the employer's risk for each class code (lower risk, higher credit).

- For employers who do not elect a medical deductible, no credit is given.

- For employers who do not elect a medical deductible, they, of course, report gross medical losses. To keep rating plans and rates consistent and statistically more valid, it makes more sense for all employers to report gross losses.

- Without consistent reporting of gross losses, from an actuarial standpoint, several things would happen which are not desirable:

  1. Reporting on a net basis would give a false picture of an artificially low risk, which would result in lower rates and lower mod factors. This means that an employer who did not choose a deductible plan would subsidize those who did -- who already get a credit.

Stan Kalcynske-Nelson
Attorney

2. If you create an artificial disparity, careless employers could alternate between the regular program and the deductible program as their rates and mod factors change.

3. Small employers with small losses receive smaller mod factor reductions than larger employers with more losses because the frequency and severity of the losses of the larger employer get masked, resulting in the small employers subsidizing the large employers.

In conclusion, HB 534 clarifies that an actuarially sound method of determining rates and rating plans will be used. HB 534 ensures that small employers will not be penalized when and if they choose a medical deductible plan, while preserving the benefit of an up-front credit when a medical deductible plan is chosen.

EXHIBIT 1
DATE 2/15/93
HB 534

EXHIBIT 2
DATE 2-15-93
HB 587

Mr. Chairman, members of the committee, for the record I am Bill Lombardi, representing state auditor and insurance commissioner Mark O'Keefe.

The state insurance commissioner supports House Bill 587, which he considers a clean-up bill.

The commissioner requested the bill because the district court said last year that changes had to be made in the way the classification and rating committee worked.

The commissioner also has requested a change in the composition of the C&R committee. He asks for two representatives of private insurance carriers instead of three, and calls for a new member who will represent employers insured by private carriers and the State Fund.

He thinks that is an important change because it puts on the committee a representative of the consumers of workers' compensation insurance. The commissioner thinks that consumers should have a say in the classification and rating process of this important type of insurance.

Over the next two years the insurance commissioner will evaluate the C&R committee and the way it functions to determine if it needs another consumer member. The commissioner could bring legislation to the Legislature in 1995 to add another consumer to the committee.

The commissioner, who as an employer has been involved with the C&R committee and understands the process, believes that the informal hearings process is working and should be allowed to continue. It's inexpensive, expeditious and helps solve the problems employers have.

The measure also will force the committee to adopt some rules so the public will have full knowledge of what it is doing. The commissioner believes the committee should abide by the open meeting laws, and that the public be given every reasonable chance to participate in the committee's process.

The commissioner still believes that the informal process of hearing classification appeals is working and shouldn't be tampered with.

The commissioner asks that the committee pass this bill.

Thank you.

EXHIBIT 8
DATE 2/15/93
HB 587

Tuppy

EXHIBIT 3
DATE 2-15
HB 587

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition shall contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision.

History: En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(4); amd. Sec. 2, Ch. 277, L. 1979.

2-4-604. Informal proceedings. (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings thereon;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at his cost a transcription of the recording, or both. Objections shall become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

History: En. Sec. 3, Ch. 277, L. 1979.

Cross-References

Privileges, Title 26, ch. 1, part 8.

Rules of privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Oath or affirmation of witnesses, Rule 603, M.R.Ev. (see Title 26, ch. 10).

Hearsay rules for District Court, Rules 801 through 806, M.R.Ev. (see Title 26, ch. 10).

(1) R. Johnson

STATE FUND MONTANA

STATE COMPENSATION MUTUAL INSURANCE FUND
P.O. BOX 4759
HELENA, MONTANA 59604-4759

EXHIBIT 4
DATE 2-15-93
HB 604

GENERAL INFORMATION (406) 444-6500

January 15, 1993

Representative Royal Johnson
Montana State Legislature
State Capitol Building
Helena, MT 59620

Dear Representative Johnson:

Following is a partial response to your request for information:

Benefit payments by month for the Old and New Funds from January 1, 1990, through December 31, 1992:

The segregation of Old and New Funds did not occur until July 1, 1990; therefore, the payments from January through June, 1990, represent payments on all claims of record at that point.

January, 1990	$ 7,931,990
February, 1990	8,057,475
March, 1990	8,541,898
April, 1990	7,871,664
May, 1990	8,523,436
June, 1990	7,949,254

	New Fund	Old Fund
July, 1990	$ 8,035	$ 9,067,279
August, 1990	253,453	9,565,898
September, 1990	540,400	6,136,775
October, 1990	1,230,355	11,522,327
November, 1990	1,101,833	9,344,977
December, 1990	1,396,527	10,477,737
January, 1991	1,967,335	8,337,851
February, 1991	1,534,333	6,744,877
March, 1991	1,968,080	6,226,612
April, 1991	2,235,879	7,598,296
May, 1991	2,309,001	7,162,071
June, 1991	2,125,602	5,835,941

(1A)

EXHIBIT 4
DATE 2/15/93
HB 604

	New Fund	Old Fund
July, 1991	$ 2,563,133	$ 6,660,096
August, 1991	2,539,912	6,775,491
September, 1991	2,610,144	5,231,646
October, 1991	3,746,801	5,983,872
November, 1991	3,345,294	4,605,035
December, 1991	4,089,935	6,501,107
January, 1992	4,539,029	5,720,673
February, 1992	4,010,091	4,707,703
March, 1992	5,595,826	6,288,971
April, 1992	5,128,851	4,369,787
May, 1992	4,694,198	4,023,027
June, 1992	4,977,645	5,755,313
July, 1992	$ 5,240,153	$ 4,290,267
August, 1992	4,835,705	4,323,387
September, 1992	5,083,206	4,091,239
October, 1992	5,508,593	4,499,839
November, 1992	5,222,526	5,146,624
December, 1992	5,872,924	3,903,218

Projected monthly payout for the Old and New Funds for 1993 and 1994.

This information must be provided by the actuary. I placed the request, but he needs several days to provide the information. I expect it Monday or Tuesday, and I will provide it to you as soon as I receive it.

The dollar amount of cost for the legislation the State Fund is suggesting for the 1993 Legislature.

Until any legislation is in final form and introduced, it is difficult to provide any cost estimates regarding operational costs. The State Fund will prepare fiscal notes on any bills with a financial impact. Proposed legislation dealing with changes in benefits has been sent to the National Council on Compensation Insurance for pricing, and we don't expect their response for several weeks.

STATE COMPENSATION MUTUAL INSURANCE FUND
P.O. BOX 4759
HELENA, MONTANA 59604-4759
GENERAL INFORMATION (406) 444-6500

(2)

January 22, 1993

EXHIBIT 4
DATE 2/15/93
HB 604

Representative Royal Johnson
Montana State Legislature
State Capitol Building
Helena, MT 59620

Dear Representative Johnson:

Following is the breakdown of indemnity and medical payments which you requested earlier this week:

All Accident Years:	Indemnity	Medical	Total
January, 1990	$5,311,322	$2,620,668	$7,931,990
February, 1990	5,237,590	2,819,885	8,057,475
March, 1990	5,144,343	3,397,555	8,541,898
April, 1990	4,780,811	3,090,853	7,871,664
May, 1990	5,263,887	3,259,549	8,523,436
June, 1990	5,304,945	2,644,309	7,949,254
New Fund			
July, 1990	6,635	1,400	8,035
August, 1990	131,040	122,413	253,453
September, 1990	210,777	329,623	540,400
October, 1990	358,609	871,746	1,230,355
November, 1990	491,001	610,832	1,101,833
December, 1990	584,431	812,096	1,396,527
January, 1991	723,482	1,243,853	1,967,335
February, 1991	593,951	940,382	1,534,333
March, 1991	752,218	1,215,862	1,968,080
April, 1991	896,081	1,339,798	2,235,879
May, 1991	1,003,840	1,305,161	2,309,001
June, 1991	861,398	1,264,204	2,125,602

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New Fund	Indemnity	Medical	Total
July, 1991	$1,341,896	$1,221,237	$2,563,133
August, 1991	1,340,621	1,199,291	2,539,912
September, 1991	1,406,632	1,203,512	2,610,144
October, 1991	1,795,918	1,950,883	3,746,801
November, 1991	1,687,552	1,657,742	3,345,294
December, 1991	2,142,719	1,947,216	4,089,935
January, 1992	1,983,520	2,555,509	4,539,029
February, 1992	2,242,608	1,767,483	4,010,091
March, 1992	2,895,289	2,700,537	5,595,826
April, 1992	2,694,827	2,434,024	5,128,851
May, 1992	2,623,420	2,070,778	4,694,198
June, 1992	2,907,309	2,070,336	4,977,645
July, 1992	3,055,917	2,184,236	5,240,153
August, 1992	2,638,549	2,197,156	4,835,705
September, 1992	2,754,489	2,328,717	5,083,206
October, 1992	3,093,305	2,415,288	5,508,593
November, 1992	3,185,286	2,037,240	5,222,526
December, 1992	3,411,623	2,461,301	5,872,924
Old Fund			
July, 1990	6,066,471	3,000,808	9,067,279
August, 1990	6,942,962	2,622,936	9,565,898
September, 1990	4,258,682	1,878,093	6,136,775
October, 1990	8,998,859	2,523,468	11,522,327
November, 1990	7,695,800	1,649,177	9,344,977
December, 1990	8,948,747	1,528,990	10,477,737
January, 1991	6,214,932	2,122,919	8,337,851
February, 1991	5,129,629	1,615,248	6,744,877
March, 1991	4,571,570	1,655,042	6,226,612
April, 1991	5,789,535	1,808,761	7,598,296
May, 1991	5,505,682	1,656,389	7,162,071
June, 1991	4,450,168	1,385,773	5,835,941

2B

Old Fund	Indemnity	Medical	Total
July, 1991	$5,382,467	$1,277,629	$6,660,096
August, 1991	5,547,206	1,228,285	6,775,491
September, 1991	4,070,873	1,160,773	5,231,646
October, 1991	4,594,796	1,389,076	5,983,872
November, 1991	3,396,133	1,208,902	4,605,035
December, 1991	5,261,034	1,240,073	6,501,107
January, 1992	4,506,743	1,213,930	5,720,673
February, 1992	3,724,882	982,821	4,707,703
March, 1992	4,883,819	1,405,152	6,288,971
April, 1992	3,313,371	1,056,416	4,369,787
May, 1992	2,932,556	1,090,471	4,023,027
June, 1992	4,795,644	959,669	5,755,313
July, 1992	3,308,768	981,500	4,290,268
August, 1992	3,388,600	934,787	4,323,387
September, 1992	3,143,559	947,680	4,091,239
October, 1992	3,581,620	918,219	4,499,839
November, 1992	4,378,461	768,163	5,146,624
December, 1992	3,017,020	886,198	3,903,218

I have not forgotten your request for monthly projections of benefit payments for 1993 and 1994. I contacted the actuary on Wednesday to see how he was progressing with the request, and he said it would take a few more days. He does not normally make projections at this level of detail. I assure you I will forward the information to you just as soon as I get it.

If I may provide you with anything else, please do not hesitate to ask.

Sincerely,

Carla J. Smith, Vice President
Administration & Finance

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(3)

OFFICE OF THE LEGISLATIVE AUDITOR — 93L-22B
SCHEDULE OF PROJECTED LIABILITY PAYMENTS AND CASH NEEDS — 08:02 AM
/ — 01/23/93

FISCAL YEAR	TOTAL PROJECTED LIABILITY PAYMENTS	BOND DEBT PAYMENTS	TOTAL EXPENSE	EMPLOYEE PAYROLL TAX	EMPLOYER PAYROLL TAX	PROJECTED END OF YEAR CASH	PROJECTED INTEREST EARNINGS
1994	$51,269,234	$11,319,361	$62,588,595	$26,909,283	$26,909,283	($36,027,427)	($889,431)
1995	$43,147,042	$11,318,181	$54,465,223	$28,254,747	$28,254,747	($34,865,869)	($882,712)
1996	$37,847,457	$11,320,631	$49,168,088	$29,667,484	$29,667,484	($25,346,525)	($647,537)
1997	$33,959,999	$11,317,544	$45,277,543	$31,150,858	$31,150,858	($8,549,403)	($227,050)
1998	$30,193,073	$11,318,244	$41,511,317	$32,708,401	$32,708,401	$15,739,036	$382,954
1999	$27,544,827	$11,317,694	$38,862,521	$34,343,821	$34,343,821	$46,727,194	$1,163,036
2000	$25,034,783	$11,319,984	$36,354,767	$32,454,911	$32,454,911	$77,217,270	$1,935,021
2001	$22,838,388	$11,318,859	$34,157,247	$30,291,250	$30,291,250	$106,314,955	$2,672,432
2002	$20,062,816	$11,321,394	$31,384,210	$27,830,086	$27,830,086	$133,964,146	$3,373,229
2003	$46,142,428	$132,326,715	$178,469,143	$25,047,078	$25,047,078	$5,816,018	$226,860
2004							
2005							
2006							
2007							
	$338,040,047	$234,198,607	$572,238,654	$298,657,919	$298,657,919		$7,106,802

PAYROLL INFLATOR OF 5% USED
AS REQUESTED BY LEGISLATORS

THIS SPREADSHEET PREPARED WITH
THE FOLLOWING ASSUMPTIONS:

PAYROLL TAX IN-->

1993-94	0.5000%
1994-95	0.5000%
1995-96	0.5000%
1996-97	0.5000%
1997-98	0.5000%
1998-99	0.5000%
1999-2000	0.4500%
2000-01	0.4000%
2001-02	0.3500%
2002-03	0.3000%

July 1, 1993

COVERED PAYROLL	$4,881,502,500
COST OF CAPITAL-->	5.0000%
PAYROLL INFLATION RATE->	5.0000%
BEGINNING CASH BALANCE->	($26,367,966)

THIS SPREADSHEET CALCULATED THE
FOLLOWING FINANCIAL RELATED DATA:

TOTAL EXPENSE	$572,238,654
YEAR PAYROLL TAX ENDS	2003
IF CASH IS ~~LESS~~ THAN (note)	$20,000,000

PAYROLL TAX DECREASES BY .05%

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Chairman Harrison reconvened the meeting at 11:40 a.m. He explained that the members of the Board had just received copies of the Court's decision on the Montana Health Care Association suit in the mail yesterday. Since the Board members had not had a chance to fully review this decision, no purpose would be served by discussion on that matter today. This topic will be taken up at the next Board meeting.

Pat Sweeney addressed the Board. He stated that as everyone was aware, the finances of the new fund had been discussed in considerable detail at the last Board Meeting. As pointed out by our actuary, State Fund had a $10 million operating loss. In addition, we were showing a $2 million loss from fourth quarter receivables being down, and a further $2 million modification factor imbalance. This year's rates had projected approximately $2 million in surplus. From all previous and present financial data, the State Fund is now sitting at a projected year-end balance of zero surplus. Mr. Sweeney has looked at the second half of the fiscal year, and historically approximately 45% of annual premium has been collected during the second half of the year. Fiscal year '92's premium is estimated at approximately $123 million, and 45% of that number is $55,600,000. It is Mr. Sweeney's recommendation that it is imperative for the Board to adopt an interim rate increase in the area of 11%. Based on current expected balance of fiscal '92 premium, an 11% increase would yield approximately $5.5 to $6 million.

Chairman Harrison interjected that the Board had passed a 15.7% rate increase effective July 1, 1991, which was actuarially set on an experience basis, and after the mod factor was applied about 2% of that increase never came into being. Realistically, it was a 13.7% increase. Chairman Harrison questions if the Board passes an 11% experience based rate increase for January 1, 1992, is that mod factor going to have the same impact by reducing that 11% by 2% and netting an effective 9%?

Mr. Sweeney responded that if this increase was done on the same basis as the last increase for the same fiscal year, then yes, you would have to make that same assumption.

In-depth discussion then ensued on experience based approaches versus across-the-board methods, as well as the existing caps of 50% and zero.

Chairman Harrison enumerated the three things to be now addressed today. The first is the desirability of retaining either or both of the caps. In Board approval of the rate increase effective July 1, 1991, a floor cap was set at zero, meaning that there would be no decrease in any policyholder's premium rate. The top cap was set at 50%, meaning that no policyholder's premium rate would increase by more than 50%.

It is Ms. Butler's legal opinion that because of the volatility of the numbers, the Board would be following the mandate of the statutes to be self supporting by moving as rapidly as possible to eliminate the deficit and build surplus, but not attempt to do this within the next six months. The reason they shouldn't find it prudent to do this by fiscal year end is based on the actuary's own analysis of the fact that these numbers are moving all the time. In addition, Mr. Lewis has stated we may see some improvement if we don't have a significant tail development, and because we enacted the 20% rate increase in July, 1992.

However, according to the actuarial report, there is no guarantee the deficit might not be greater. The Board, in order to balance the analysis, should also take into consideration the fact that we're the insurer of last resort and can't refuse coverage to an employer. We need rate stabilization to provide economic predictability for our employers; and we need to guard against the effect of a drastic rate increase on the market share, since there would be potentially fewer employers on which to collect this deficit in the future.

V.D. Trucker

It is Ms. Butler's recommendation the Board should have a long-range plan to eliminate the deficit, build surplus at the same time, monitor the financial condition at least every six months as the Board has been doing, and react each year to statutory changes as well as any changes in experience. In this way, the Board would be adequately addressing the mandate of assuring the State Fund is self supported and adequately funded.

Mail calculations

Chairman Harrison reminded the Board what they were addressing in this meeting are the updated financial figures received today, which indicate a red-ink problem of $42.3 million as of June 30, 1992.

#Loss located source Problem Legislature

Les Hirsch indicated that he did not feel the State Fund should be expected to build reserves through premiums alone. The legislature initially funded the State Fund inadequately, and the legislature needs to take a look at this and give us some guidance as to how they want to adequately reserve this organization. The Board of Directors has done its best to meet those needs, and to push rate increases any further would be very detrimental to Montana business.

Bob Short said it was his opinion the legislature should take a look at the legislation which affects the benefit payments; or the claim activity on which this organization has to raise its premiums in order to fund. He is in agreement with Mr. Hirsch that to keep hitting our policyholders with rate increases is tough, but it is our only alternative at this point.

Exhibit H
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Chairman Harrison indicated that although he agreed with Mr. Hirsch in the inability for us to reach reserve levels, that we were not talking about reserves today, but operating losses which have to be made up before addressing any question of reserves.

Once again, looking at the financial data as of June 30, 1992, and taking into consideration the $12 million initial equity, what we see is actually $54 million operating loss for the two years. Mr. Harrison wishes we were in a position where we could reasonably talk about building reserves and he would agree that need is a legislative perogative. However, does the Board need to do anything at this time to fulfill the mandates of the statutes which say that we will maintain the State Fund on an actuarially sound basis. Today we are confronted with $42 million in red ink, and if we don't do anything, have we been true to the mandates?

Pat Sweeney was asked for his recommendations. Mr. Sweeney asserted the first two years of operations were underpriced, however he did not feel that it would be fair to the policyholders nor would it be prudent to try and make up that $42 million loss in one fell swoop. That would be a 60% to 65% increase and we can't do that. But at the same time, it was his feeling that something should be done to address the deficit. It was his suggestion to move along the lines of a 5% to 10% increase at the first of the year.

Mr. Sweeney further suggested that in conjunction with that, the Board might want to consider leaving a 5% increase, for example, as a base increase to be added on to any rate increases considered in the future. For instance, if the actuary were to advise next July 1 that because of experience data, premium rates should be increased 8%, the 5% base would be added, making a total 13% increase. Using that 5% figure, you would start to have a compounding effect over time, and it is assumed the compounding effect of that initial 5% would eliminate the deficit in 2-1/2 to 3 years.

Mr. King advised that logistically, any rate increase enacted as of January 1, 1993, would have to be an across-the-board increase. Mr. King ran preliminary estimates based on FY92 booked premium, of estimated additional premium income on a 5% and 10% basis; which is attached hereto as "Exhibit A".

There was considerable discussion of premium rates, compounding interest, fairness to all policyholders, long-term goals of building a reserve or surplus, and immediate problems of the operational deficit.

It was suggested that if the Board intends to add an additional 5% or 10% rate increase annually on top of any actuarially determined increase for premium purposes, then all policyholders should be notified this is our intent in order to give the business community time to react and plan ahead.

Motion was made by Bob Short, seconded by Clyde Smith, and approved unanimously with no dissenting vote:

> BE IT RESOLVED, premium rates are to be increased by 5% across-the-board for all policyholders' classification codes, effective January 1, 1993.
>
> BE IT FURTHER RESOLVED, it is this Board's intent to review the financial condition of the State Fund at least every six months with emphasis to be placed on consideration of an additional suggested 5% increase on a continuing basis to eliminate the deficit and strengthen reserve position; however, it is in no way intended for this Board's actions today to be binding in any way on any future Board of Directors, Board of Directors' Meeting, or on any changing financial conditions.
>
> AND IT IS FURTHER RESOLVED, that a letter be sent to all policyholders advising them of this Board's intent to consider an ongoing additional 5% rate increase effective July 1, 1993.

The Board was advised such a letter would be included with notices for the rate increase effective January 1, 1993, which would be mailed to all policyholders in December 1992.

The next meeting was set for Thursday, December 10, 1992, at 9:30 a.m., Room 303.

THERE BEING NO FURTHER BUSINESS, the meeting was adjourned at 1:00 p.m.

cs:3688

EXHIBIT 4
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STATE OF MONTANA
WORKERS' COMPENSATION RATES

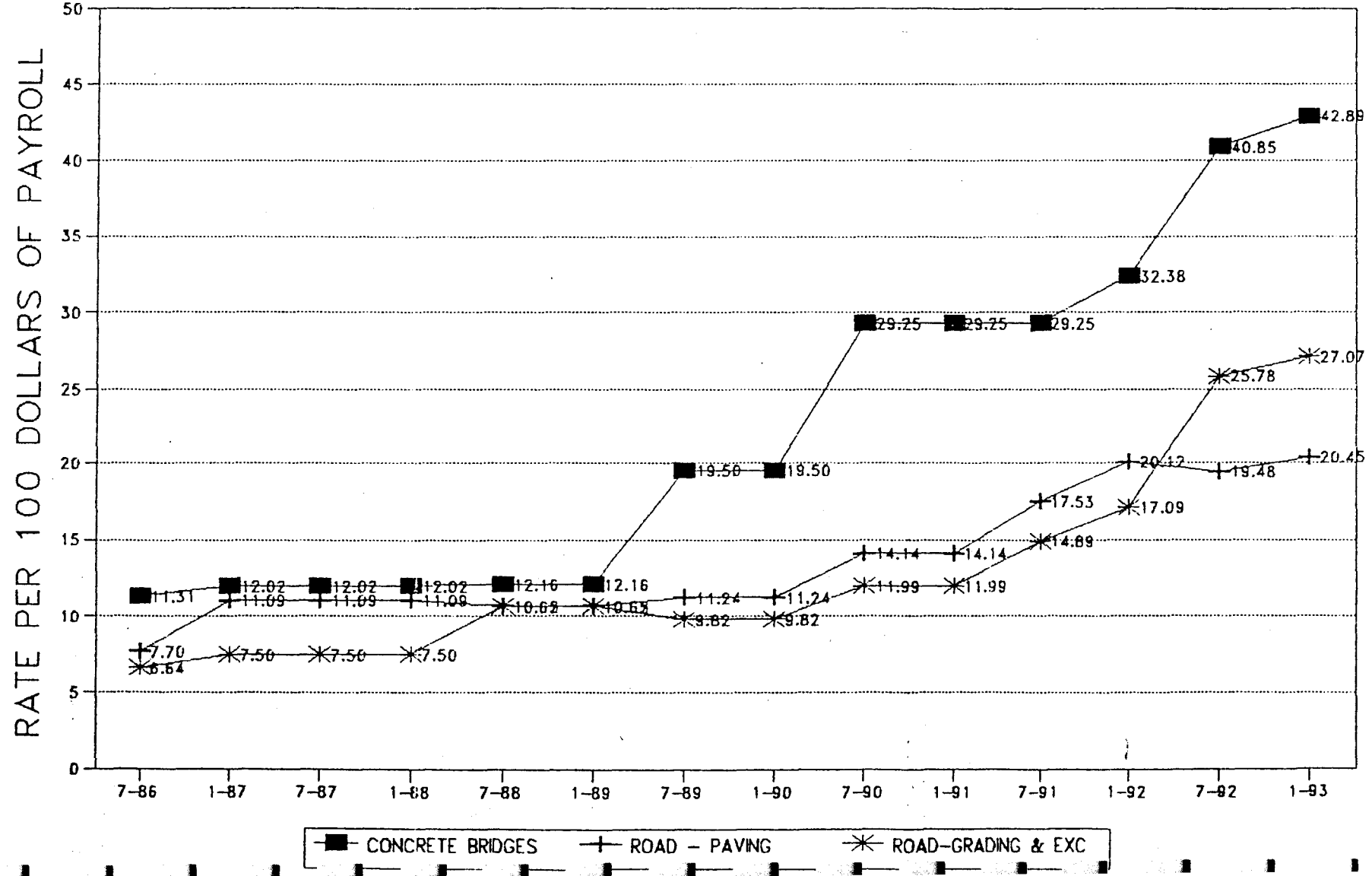

EXHIBIT 5
DATE 2-15-93
HB 604

5825 Estate Lane
Belgrade, Montana 59714
February 15, 1993

Rep. Chase Hibbard
Chairman, Special Committee on
Workman's Compensation
State Capitol Building
Helena, Montana

Dear Sir:

As an employee in Montana for twenty-five years, and then and as an employer and employee for another twenty years in British Columbia, Alberta, I have these suggestions to make:

1. Screen for fraud:

   A. Premiums - A 5% audit in 1992 yielded $750,000. A full audit could net $15,000,000.

   B. Fraud in Claims - Was injury on the job?

   C. Fraud by Providers - Check for falsifying and duplication of billings.

   D. Fraud by the Legal Profession - end "Ambulance Chasers!"

2. Establish a judicial staff and require all complaints be heard by them and their decisions be final.

3. Allow no cash settlements. All pay out be made on monthly schedule based on previous earnings. Taking all claims out of the public courts will be the biggest saving.

4. Change the existing laws if you have to. They are not made in stone and are not working.

5. Establish employee contribution to the fund. Make them responsible for safety.

6. Establish a state run rehabilitation center to get people back to work.

7. Work to reclaim some of the monies already paid out.

8. Strongly oppose privatization of fund.

9. Establish a crime stoppers hot-line against W.C. fraud.

Sincerely,
Marshall Gray

EXHIBIT 6
DATE 2-15-93
HB 604

Statement to House Workers Compensation Select Committee
HB 604 - Date submitted: February 15, 1993
Mike Micone, Montana Motor Carriers Association

Mr. Chairman. Members of the Committee. For the record my name is Mike Micone, representing the Montana Motor Carriers Association.

The Montana Motor Carriers Association must come before you today in opposition to HB604.

We appreciate the efforts of Representative Royal Johnson to resolve problems in the state workers' compensation insurance program, but HB604 will have a devastating effect on an industry that is already reeling as a result of a number of double digit rate increases over the past couple of years.

In 1990, the rate for over the road trucks towing trailers in classification 7219 was $13.09 per $100 of wages. The rate today is $26.06 per $100 of wages. With the passage of HB604, the rates will rise to $32.83 on July 1, 1993; $41.03 on January 1,1994; and $51.29 on July 1, 1994, a 400% increase in 4 years.

Add to this a doubling in the payroll tax to pay off the unfunded liability only adds to the lack of confidence in a system that appears to be out of control.

If increases of this magnitude are not enough to drive trucking companies out of business or out of the state, the creation of an assigned risk pool will certainly guarantee it.

This isn't the first time the State of Montana has considered an assigned risk pool in an effort to ease the burden on the State Fund.

When SB 428 was enacted in the 1989 Legislature, a provision called for a review to determine the viability and necessity to create such a pool.

I was Commissioner of Labor at the time and was responsible to make the determination by December 31, 1989. The Department did make an in depth analysis and met with a number of individuals and groups to assist in reaching this decision. Not one insurer we spoke with, including the State Fund, supported the creation of an assigned risk pool.

My determination in 1989 was that the State Fund would be responsible for approximately two thirds of those employers assigned to the pool, and would have been required to pay a premium tax of approximately $3 million thus negating any potential savings.

That determination is even more meaningful today than in 1989, as the State Fund's share of the market has risen to about 75%, which would cause them to carry an even higher portion of the pool.

I believe the creation of an assigned risk pool will serve-as a disincentive to attract private companies to the State, and it may even result in existing companies deciding not to write policies in the State. Thus such an action could be counterproductive to what is intended in the legislation.

Nationally, there is a broad base of belief in the insurance business that they do not want to underwrite small truckers, irrespective of the risk. They paint the industry with a broad stroke, and punish companies, even those that are good risks.

It is the accepted explanation that a company is placed in the pool because it is determined to be a poor risk, and a surchargeis imposed, usually 20%. Many times, through no fault of their own, companies wind up in an assigned risk pool. And once in the pool, it is virtually impossible to get back into the voluntary market.

In a Connecticut study, it was pointed out that companies are being dumped into the assigned risk pool because of negatively biased underwriting criteria which treats certain classifications like lepers, regardless of the individual company's claims record or experience factors. One company has been in the pool for 12 years in spite of the fact of having a .79 mod factor; another has been in the pool for 20 years and has a .80 mod factor.

Good experience and favorable claims are not sufficient to override the policy not to underwrite certain risks because they are too small or because the governing classification is problematic.

We believe the State Fund should remain as the insurer of last resort for those companies that are unable to obtain coverage in the private sector. We continue to believe that those companies with proven poor records should incur a surcharge until such time as their loss ratio meets acceptable standards of the industry.

Finally , as we have stated in the past, the infusion of more money into the system will not solve the problems of the system. Strong safety programs, prevention of fraud, and aggressive management will do more to cure the ills of this system as opposed to throwing millions more dollars into the system.

Thank you for the opportunity to make these comments.

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EXHIBIT 7
DATE 9-29-93
HB 604
Mich. Mvrs

Motor Transport Association of Connecticut, Inc.

Michael J. Riley
President

Good afternoon Commissioner. I am Michael Riley, President of the Motor Transport Association of Connecticut - a trade association of over 1,300 companies which operate commercial vehicles in and through the state of Connecticut. Our members include freight haulers, movers of household goods, construction companies, tank truck operators, private carriers and companies which provide goods and services to the trucking industry.

Before we begin, we would like to express our appreciation to Mr. Christiansen, of NCCI, who has been most cooperative in helping us to understand this proposal and sharing with us information which we needed in order to evaluate its effect upon our industry.

The impact of being in the assigned risk pool for Connecticut trucking companies is devastating. The burden of being placed in the assigned risk pool has forced many good Connecticut companies to go out of business or out of state. The proposal before you today will not improve the situation, it will make it worse.

A 20% surcharge upon the population of the Assigned Risk Pool is terrifying to many Connecticut companies and should be rejected. However, there are some aspects of this proposal from NCCI which should be tried and which may help to decrease the burden of the pool on the voluntary market.

SURCHARGE OF GOOD RISKS IS UNFAIR

We acknowledge that the workers' compensation assigned risk pool is a problem. And, we realize that we need to develop a plan to deal with that problem. The assigned risk pool is loosing money. However, there are risks in the pool which, through their good experience and safe operation, make a positive contribution to the assets of the pool.

We also know that the Connecticut assigned risk pool represents a smaller share of the market than in most other states. In Maine and Rhode Island, whose programs are in crisis and near failure, the assigned risk pool represents over 90% of the market. In Connecticut, it only represents 12% of the total market. One of the reasons for this has been the resistance of the employer community to, in an irresponsible way, monkey with the rate structure through legislative intervention. In Connecticut, the regulatory process has set the rate and we have addressed benefit reductions and other reforms legislatively. No long term good purpose is served by a legislature which increases benefits and then restricts the ability to charge the rates necessary to provide those benefits.

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While the assigned risk pool is a problem for all participants in the workers' compensation system in this state, it is a more serious problem for certain classifications like trucking, nursing home workers, and various construction classes. Restrictive underwriting criteria, with broad application throughout the insurance industry and across the country, have excluded certain classifications from participation in the voluntary market.

Data from NCCI show that trucking is disproportionately delegated to the residual market. In both the percent of total premiums and total number of risks in the residual market, the truckman classification (7219) is far higher than many construction occupations and police officers. (see the tables below)

OCCUPATIONAL CLASSES WITH THE HIGHEST PERCENT OF RESIDUAL MARKET PREMIUMS AND AT LEAST $25 MILLION RESIDUAL MARKET PREMIUMS UNITED STATES 1991

1.	TRUCKING	51%
2.	NURSING HOME WORKERS	47%
3.	ROOFERS	43%
4.	POLICE OFFICERS	37%
5.	CARPENTERS	29%

OCCUPATIONAL CLASSES WITH THE HIGHEST PERCENT OF RESIDUAL MARKET RISKS AND AT LEAST 5,000 RESIDUAL MARKET RISKS UNITED STATES 1991

1.	TRUCKING	68%
2.	BUILDINGS AND OPERATIONS BY CONTRACTOR	47%
3.	PAINTERS AND PAPERHANGERS	40%
4.	LANDSCAPE CONTRACTORS	38%
5.	MASONRY CONTRACTORS	38%

The Connecticut figures for Classification 7219 mirror the national figures.(see below)

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CONNECTICUT ASSIGNED RISK/ VOLUNTARY COMBINED
CLASS 7219 TRUCKMAN NOC

YEAR	NO OF POLICIES	TOTAL PREMIUM
1991	267	$14,011,108
1990	291	13,059,165
1989	312	19,423,528

CONNECTICUT ASSIGNED RISK POOL
CLASS 7219 NOC

YEAR	NO. OF POLICIES	TOTAL PREMIUM
1991	132	$ 2,133,912
1990	153	3,147,612
1989	174	3,199,518

Based upon our discussions with members, we have evidence of the fact that moving and storage classifications, several other construction classifications and others are also disproportionately overly represented in the residual market.

Now, it is the accepted explanation that a company is placed in the pool because he is determined to be a poor risk. However, we would like to make the point that many of the companies in the assigned risk pool are indeed not bad risks by virtue of their safety records, payment records, claims data and experience modifications. It is our contention that these companies are being dumped into the assigned risk pool because of negatively biased underwriting criteria which treats certain classifications like lepers, regardless of the individual company's claims record or experience factors. How else would one explain the following:

NAME OF COMPANY	YEARS IN POOL	MOD
LIGHT RIGGING COMPANY	12	.79
GUARD ALL CHEMICAL CO.	20	.80
BARRY HORSE TRANSPORTATION	6	.83
FREEMAN P. THURSTON, INC	3 1/2	.88
BRIDGEHAVEN FORD	3	.88
FLEMMING TRANSPORTATION	2	.98
WEST END MOVING & STORAGE	10	1.00
CORE LTD, INC.	7	1.07
HARTFORD DESPATCH	5 MOS.	1.12

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These companies alone represent over $1 million worth of premium and considerable less than that in claims. Why are they in the assigned risk pool? Are they bad risks? Are they unsafe? We know that they are not . . . and their favorable modifications prove it! They are in the pool because the insurance industry has decided that they don't want to write these kinds of risks in the voluntary market. Knowledgeable insurance industry personnel readily admit that their policy is not to underwrite certain risks because they are too small or because the governing classification is "problematic". Good experience and favorable claims and premium data are not sufficient to override this policy.

According to a recent report prepared by the Office of Legislative Research, which asked companies for their underwriting criteria for certain classifications, "We were told that underwriting criteria are proprietary information and thus cannot be shared with us for competitive reasons. Each company sets its own criteria for accepting workers' compensation insurance applicants, which can vary and are not necessarily formally written down."... "Liberty Mutual has no specific underwriting criteria but does evaluate the likelihood of the applicant generating premium income sufficient to cover the cost of a catastrophic loss. In other words, premium income from the employer must be sufficient to pay for a large loss. this standard eliminates most small operators from the voluntary workers compensation market that Liberty Mutual offers. Mr. Barrett indicated that most of the company's voluntary business is with large stable companies in the classes cited. Most other risks are assigned to the pool." (emphasis added)

Therefore, we see that there are many companies in the pool who are not there because they are bad risks. They are there because they are small companies and they perform a function which the insurance industry (which exists to manage risk) has decided is "too risky".

Is it fair to assess these companies a 20% surcharge? What are they being punished for? Through their favorable premium to claims ratios they already help to subsidize the pool. Virtually all of them have tried, unsuccessfully, to be placed in the voluntary market. Surcharging them would be unfair, discriminatory and counter productive and would push many companies into bankruptcy or to out of state locations.

RECOMMENDATIONS

- The Insurance Department should have a clear understanding of exactly who is in the pool and why.

- The Department should study the population of the pool and determine if it contains an excessive number of small companies or companies with favorable experience modifications.

- The Department should ensure that risks with favorable records are not unfairly surcharged.

- The Department should be satisfied that negatively biased underwriting criteria do not result in a company being dumped into the pool or being foreclosed from re-entering the voluntary market

EXHIBIT 7
DATE 2/15/93
HB 604

ESKIMO MEDICARE - SURCHARGE OF HIGHER RISKS

NCCI points out that the loss ratio in the pool is 27.6% higher than in the voluntary market. We accept the fact that there are risks in the pool because of their poor experience records. Through some combination of frequent and/or severe claims, or poor management, or lax safety practices, companies can wind up in the assigned risk pool. As we understand the purpose for the pool, it is to provide help to these companies so that they can rehabilitate themselves, weather their bad experience and, hopefully return to the voluntary market in healthy form, at a later date.

Unfortunately, that's not the way it works in the real world.

Years ago when a member of an eskimo tribe got seriously sick, it was the custom to take them out on the ice and leave them there to die. That's what our assigned risk pool is like . . . Eskimo Medicare. If a company gets sick enough to get put in the pool, it is left there to die.

The biggest misnomer in the insurance lexicon is the term "Servicing Carrier". The carriers servicing the assigned risk pool do not perform the services which the companies in the pool need to get healthy again. They need aggressive managed care, case management, utilization review and investigation and litigation in cases of fraud and abuse. NCCI, in its proposal to provide "Risk Management Services", proposes a rather passive series of actions which a carrier would provide to an insured including "consultation regarding review of accident prevention programs, trends, seminars, literature and administrative aides", "review of causes and trends of past accidents, potential exposures and loss control programs", "recommendations for policy holder control of exposures", "description of operations and loss potentials" and "review of prior surveys". While these services are more than is currently available to the population of the pool they are woefully inadequate to help get companies out of the pool.

The objective of the servicing carrier should be to get the companies assigned to it healthy enough to get themselves out of the pool. One irony is that each of the servicing carriers know very well how to service comp customers. They all have case management, managed care, utilization review, fraud and legal departments. They brag about how well they service their clients in the voluntary market. And, they trip all over themselves trying to sell their cost containment bells and whistles to self-insurers. Yet, companies in the assigned risk pool have to beg, threaten and whine to get any of these services extended to them.

We also feel that, because of the lack of aggressive cost control and case management, fraud and abuse are particular problems for the population of the pool. Recent articles have estimated that fraud and abuse could represent 20% of the costs of workers' compensation. Carriers should be especially diligent to identify fraud and abuse in the pool, not less.

EXHIBIT 7
DATE 2/15/93
HB 6004

So, we have a situation where a company can enter the pool because of a problem, not be adequately serviced by his "servicing carrier", have his losses increase, get ARAPed, not be able to afford the ARAPed premium, and not be able to get out of the pool. This is a formula for disaster. The assigned risk pool is now the waiting room for bankruptcy court.

The statistics on the Classification 7219 population of the pool clearly demonstrate that the attrition in the classification is in the companies in the pool and not the voluntary market. (see table above - between 1989 and 1991, the number of truckman policies in Connecticut declined by 45 - 93% of them were in the assigned risk pool.

One large Connecticut motor carrier, who is in the pool, has told me that it is his workers compensation premium that has eaten away his profitability. In self defense, he has now closed a Connecticut terminal and opened one in New Jersey. Twenty five Connecticut jobs were then transferred to the New Jersey terminal and the carrier reduced his comp costs from 25% of payroll to 10%.

When a person cuts his right wrist and goes to the emergency room, we don't expect the doctors there to cut open his left wrist. We hope that they will sew him up, maybe give him a transfusion from some healthy people and get him back to work as soon as possible. Imposing a 20% surcharge on the troubled companies in the pool is like cutting open their left wrist. It will very likely be fatal.

RECOMMENDATIONS

1. The Department should require that servicing carriers truly service the pool by providing the full range of cost containment services which they provide to their customers in the voluntary market.

2. The population of the pool ought not to be written off as doomed. An effort must be made to reduce costs within the pool and to rehabilitate the companies in the pool with the ultimate objective being to return them, in a healthier state, to the voluntary market. Before surcharging we should be servicing.

3. A concerted effort should be undertaken, with the cooperation of the new Workers' Compensation Fraud Unit in the Chief State's Attorney's Office's, to eliminate fraud and abuse in the pool.

4. The Department should proceed to develop the Depopulation Listing as recommended by NCCI.

5. The Department should institute a Take-Out credit program on an experimental basis to see what effect it might have on the pool.

EXHIBIT 7
DATE 2/15/93
HB 604

Commissioner, it is no secret that we will be back here within a few short weeks to react to another NCCI proposal to increase the general workers' compensation rates. We have heard rumors that this increase could be as high as 20%. If that rate were to be approved, we could have a troubled company in the risk pool suffer a 20% increase in its manual rate, be ARAPed at up to 25% and then be surcharged an additional 20%. The cushion does not exist in this economy to absorb that kind of hit.

Thank you.

EXHIBIT 7
2/15/93
HB 604

Connecticut General Assembly

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(203) 240-8400
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Room 5300
Legislative Office Bldg.
Hartford, CT 06106

OFFICE OF LEGISLATIVE RESEARCH

September 15, 1992 92-R-0958

TO: Honorable Lynn Taborsak

FROM: Helga Niesz, Principal Analyst

RE: Workers' Compensation Insurance

You asked about underwriting criteria for several classes of workers' compensation insurance, namely for trucks for hire (7219); movers (8292); storage, warehouses, and furniture (8293); roofers (5551); and ironworkers (5040, 5057, 5059, and 5069) at the five insurance companies with the most volume of such insurance in Connecticut. It is your understanding that the underwriting criteria prevent anyone in these classes from getting private workers' comp insurance and result in their going to the assigned risk pool.

The five companies with the largest volume of workers' comp insurance in Connecticut in 1991 are ITT Hartford Insurance Group (16% of the market share), Liberty Mutual Group (13.9%), Aetna Life and Casualty Group (11.4%), American International Group-AIG (6.3%), and Travelers Insurance Group (5.3%).

Underwriting criteria for each company selling workers' compensation insurance are not filed with the Insurance Department, according to Walter Bell of the Insurance Department's Property and Casualty Division. In fact, no underwriting criteria are filed with the department for any kind of commercial insurance, only for homeowners' and auto insurance, according to Mr. Bell. We attempted to obtain them from the Insurance Association and directly from each of the five companies. We were told that underwriting criteria are not available in written form; they are considered proprietary information and thus cannot be shared with us for competitive reasons. Each company sets its own criteria for accepting workers' compensation insurance applicants, which can vary and are not necessarily formally written down.

William Barrett of Liberty Mutual told us that each of the classes of insurad risk you asked about are considered high risk occupations. Liberty Mutual has no specific underwriting criteria but does evaluate the likelihood of the applicant generating premium income sufficient to cover the cost of a catastrophic loss. In other words, premium income from the employer must be sufficient to pay for a large loss. This standard eliminates most small operators from the voluntary workers' compensation market that Liberty Mutual offers. Mr. Barrett indicated that most of the company's voluntary business is with large stable companies in the classes cited. Most other risks are assigned to the pool.

In general, the size of the assigned risk market in Connecticut between 1986 and 1990 has averaged around 11.9% of the market of total premium dollars. In 1991 it rose to 13%. This is generally much lower than other New England states, according to John Miletti of the Insurance Association. On a national basis, about two-thirds of basic trucking workers' comp is in the assigned risk market, according to Mr. Miletti. More specific information on the categories you asked about was not available either directly from the companies or the association. Ken R. Christianson of the National Council on Compensation Insurance has indicated that he will try to provide us with some general statistics on what percent of the market in the categories you asked about is covered under the assigned risk plan. We will forward this information to you as soon as we receive it.

HN:lav

7
2/15/93
HB 604

EXHIBIT 8
DATE 2-15-93
HB 470

Amendments to House Bill No. 470
First Reading Copy

Requested by Representative Driscoll
For the Committee on Workers' Compensation

Prepared by Bart Campbell
February 12, 1993

1. Page 3, line 19.
Following: "(a)"
Insert: "(i)"

2. Page 3, lines 21 and 22.
Strike: "and" on line 21 through "services" on line 22

3. Page 4, following line 1.
Insert: "(ii) A sole proprietor or working member of a partnership who represents to the public to be an independent contractor and who is in the construction industry shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3."

4. Page 7, line 2.
Strike: ":"

5. Page 7, line 3.
Strike: "(i)"
Following: "elected"
Insert: ", as required,"

6. Page 7, lines 5 through 7.
Strike: ";" on line 5 through "Act" on line 7

EXHIBIT 9
DATE 2-15-93
HB 470

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL VOTE

DATE 2/15/93 BILL NO. 470 NUMBER 470

MOTION: Pass.

NAME	AYE	NO
CHASE HIBBARD, CHAIRMAN	✓	
JERRY DRISCOLL, VICE CHAIRMAN	✓	
STEVE BENEDICT	✓	
ERNEST BERGSAGEL	✓	
VICKI COCCHIARELLA Absent		
DAVID EWER	✓	

HR:1993
wp:rlclvote.man

EXHIBIT 10
DATE 2-15-93
HB 453

Amendments to House Bill No. 453
First Reading Copy

Requested by Representative Molnar
For the Select Committee on Workers' Compensation

Prepared by Paul Verdon
February 13, 1993

1. Title, line 7.
Following: "FRAUD"
Insert: "AND EXCLUDING CERTAIN PERSONS FROM THOSE CIVIL PENALTIES"

2. Title, line 12.
Following: ";"
Insert: "LENGTHENING TO 12 YEARS THE PERIOD FOR PROSECUTION OF WORKERS' COMPENSATION FRAUD;"

3. Title, line 13.
Following: "39-71-316"
Insert: ", 45-1-205,"

4. Page 2, line 24.
Following: line 23
Insert: "(d) A prosecution under 45-6-301(5) may be commenced within 12 years after the time the offense was committed.

(e) The penalty provisions of subsection (3)(a) do not apply to a person who, before [the effective date of this act], voluntarily informs the department that the person had violated the provisions of subsection (2) if that person agrees with the department to make full restitution of the benefits obtained in violation of subsection (2) on an agreed payment schedule.

Section 2. Section 45-1-205, MCA, is amended to read:

"**45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 may be commenced within 5 years after the victim reaches the age of 18 if the victim was less than 18 years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after

the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) shall be extended in a prosecution for unlawful use of a computer, and prosecution shall be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2) is extended in a prosecution for theft under 45-6-301(5), and prosecution must be brought within 12 years after an offense is committed.

~~(6)~~(7) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

~~(7)~~(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed.""

{*Internal References to 45-1-205: 13-35-101 CHECKED PEV*}

Renumber: subsequent section

EXHIBIT 11
DATE 2-15-93
HB 534

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL VOTE

DATE 2-15-93 BILL NO. 534 NUMBER

MOTION: (Do pass)

NAME	AYE	NO
CHASE HIBBARD, CHAIRMAN	✓	
JERRY DRISCOLL, VICE CHAIRMAN	✓	
STEVE BENEDICT	✓	
ERNEST BERGSAGEL	✓	
VICKI COCCHIARELLA (Absent)		
DAVID EWER	✓	

HR:1993
wp:rlclvote.man

2-1593

NAME Marshall Gray

ADDRESS 5825 Estate Land. - Belgrade

HOME PHONE 388-4638. WORK PHONE —

REPRESENTING Self.

APPEARING ON WHICH PROPOSAL? Workmans Comp Reform.

DO YOU: SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS:

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F11

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

HBs # 604
534
587

Select Workers Comp. COMMITTEE BILL NO.

DATE 2-15-93 SPONSOR(S)

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

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Nancy Butler	State Fund	587	
Jacqueline Lenmark	AIA	587 534	604
Ed Kelly	NCCS	587 534	
John King	State Fund	534	
Steve Turkewitz	Mt. Auto Dealers Assn		604
Riley Johnson	NFIB	534	
Mike Micone	MMCA		604
George Wood	MT Self Insurers Assoc		[redacted]
Jim Tutwiler	Mt Chamber		604
Steve Brown	Mt. Health Care Assoc		587
Roger Tippy	pro se	587	
Don Judge	MT STATE AFL-CIO		HB 604

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