MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

Committee ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chair Tom Towe, on February 18, 1993, at 1:00 PM.

ROLL CALL

Members Present:
Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Kelsey Chapman, Committee Secretary

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

Committee Business Summary:
Hearing: SB 329, SB 342, SB 394
Executive Action: None

HEARING ON SB 329

Opening Statement by Sponsor:

Senator Klampe, Senate District 31, opened on Senate Bill 329. He told the Committee SB 329 was a bill that would allow Missoula to build an ice skating rink. Senator Klampe stated that during the Hearing the members and witnesses would be talking about Tax Exempt Revenue Bonds, non-profit corporations, and prevailing wage. He stated the intent is to exclude non-profit groups and corporations from the prevailing wage requirement. He clarified that this exclusion did not include hospitals. Senator Klampe told the Committee there were two other purposes of SB 329. He explained that these were to clarify the statutes. The first of these purposes was to clarify that what the bill addressed with the prevailing wage provision was only the portion of a project

financed with the Tax Exempt Revenue Bond, and not the entire project. The second purpose is that the prevailing wage requirement should be applicable to projects financed with the bonds issued after July 1, 1993.

Proponents' Testimony:

Greg Rutherford from Missoula, representing Missoula On Ice, Inc., a 501(c)3 non-profit organization, stated that a 501(c)3 organization is an organization that has some advantages under tax laws because it is engaged in projects that benefit the public. Mr. Rutherford said that there are a very strict set of rules passed under the Internal Revenue Service, and Missoula On Ice, Inc. had met the requirements set by those rules to be a 501(c)3 organization. He stated that not all non-profit organizations are 501(c)3 groups. Mr. Rutherford's organization would like to build an ice skating rink in Missoula for non-profit purposes to benefit the community, and would like to keep the cost of use of the facility to a minimum to the user. He stated that part of this project could use volunteer workers to build the rink. Mr. Rutherford stated that SB 329 would allow this organization to use volunteer workers, even though revenue bonds are used as a source to fund the ice skating rink. Senate Bill 329 would allow a non-profit group to let volunteers help out if the project was a benefit to the community without the group having to worry if it was violating prevailing wage laws.

Mae Nan Ellingson, Dorsey and Whitney Law Firm spoke in support of SB 329 from written testimony (Exhibit #1).

John Lawton, City Manager of Great Falls offered the Committee what he called a practical application of what SB 329 would mean in view of a particular project in Great Falls. The American Ethanol Corporation and the OBECO Corporation and others are planning a $120 million ethanol plant in Great Falls. $10 million to $12 million will be sold in industrial development tax increment bonds to build the infrastructure of the plant. Mr. Lawton defined the infrastructure as the water, sewer, roads, gas lines, and other such needed items. He told the Committee that the tax increment feature of this plan is the only economic development tool that the project has to promote economic development. The City of Great Falls has been told several times by the developers of this plant that the City's ability to issue industrial development tax increment bonds to help support the plant is the only thing that equalizes the Montana tax structure with those of surrounding states. The current law requires that prevailing wages be paid on the entire project if a public portion is being financed with tax increment bonds. Mr. Lawton said that this is not an argument against prevailing wage rates because most of the contractors that would build the plant would be union contractors, or would pay the prevailing wage. Mr. Lawton told the Committee that the City of Great Falls doesn't feel there should be a law that requires prevailing wage to be paid on the whole project. He urged support of Senator Klampe's

amendments (SB032901.AEM).

Gene Fenderson, Montana District Council of Laborers', brought before the Committee a set of proposed amendments to Senate Bill 329 (Exhibit #2). He said he did not exactly support SB 329, but would with these amendments. In addition, he made reference to a similar bill brought before the Montana State Legislature before. He said Representative Southworth and others worked on the Bill, and were told that the wording "Industrial Tax Exempt Bonds" would cover everything. Mr. Fenderson told the Committee that now bonds under different names were being called something else. He explained that he felt if public monies were going to be involved, then the prevailing rate should be covered. He claimed nothing he knew of would prevent volunteer labor from working on an ice skating rink or anywhere else. He questioned that portion of the project covered by the Bond. Mr. Fenderson said that the companies that deal in the large projects use tax exempt bonds as leverage by gaining the backing of the monetary institutions.

Dan Whyte, ARCO, rose in support to SB 329 with the amendments proposed by Senator Klampe (SB032901.AEM), specifically the amendment making the Bill apply to bonds issued after July 1, 1993.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Lynch asked Dan Whyte what interest ARCO had in this type of bill. Mr. Whyte answered it was his understanding ARCO has some projects with Washington Corporation and they deal on some degree with taxes and bonds.

Senator Lynch asked Dan Whyte if ARCO was more concerned with the bond section than with the prevailing wage section in the Bill, and ARCO was suggesting that people should be allowed to employ without paying prevailing wages. Mr. Whyte said that ARCO was not suggesting that, but rather was interested in the tax exempt bond portion of the Bill. He said that ARCO was interested in clarifying statutes.

Senator Blaylock asked Gene Fenderson if he was for or against the Bill. Mr. Fenderson answered that there were some problems with the Bill, but he hoped the Committee could work them out through his proposed amendments (Exhibit # 2).

Senator Blaylock asked Mae Nan Ellingson why people using

volunteer labor needed to have the exemption from the prevailing wage requirement. Mae Nan Ellingson answered that the Committee would have to decide whether or not to exempt not-for-profit corporations from the provisions of the requirement. She went on to add that the Bill was not talking about Industrial Revenue Bonds, bonds issued by cities and counties or the Board of Investments in aid of economic development projects, or use of public tax dollars. She clarified that the Bill was not talking about using tax dollars to build the projects such as the ice skating rink.

Senator Lynch asked Senator Klampe why, though the Committee and the witnesses had been talking primarily about volunteer labor, volunteer labor was never mentioned in the Bill. Senator Klampe answered that no one who testified ever said they were talking exclusively about volunteer labor.

Senator Keating asked John Lawton if what he had testified to meant the City of Great Falls needed to issue Industrial Development Tax Increment Bonds to fund the proposed ethanol plant because taxes were so high in Montana; that this was the only way to gain an advantage over North Dakota and other states. Mr. Lawton answered that the Industrial Development Tax Increment Bond Authority would sell bonds and build a public portion of the ethanol plant. This portion would include infrastructure such as roads, and would cost from $10 to $12 million. He explained that the bonds would be paid back through the taxes on the increased value of the land and facilities. This would be the only tax money that would be used to pay off those bonds.

Senator Keating asked John Lawton if North Dakota and Idaho had Industrial Development Bonds. Mr. Lawton answered that he was not sure.

Senator Keating asked John Lawton if he meant that by having the ethanol plant pay off the bonds with property tax, the city was alleviating some property tax. Mr. Lawton answered that this was correct. He estimated that the plant's taxes would be $3 to $3.5 million per year; about $1.2 million of these taxes would go to pay off the bonds.

Senator Towe asked Senator Klampe if he would agree to Mr. Fenderson's amendments (Exhibit #2). Senator Klampe answered that he would not, but he would offer a compromise amendment.(Ex.#2a).

Senator Towe asked Senator Klampe why the ice skating rink project could not pay prevailing wage if it were funded with tax exempt bonds. Senator Klampe answered that the rink had had a very hard time getting started, and the exemption would aid the development. He proposed that the Bill be amended to include only 501(c)3 corporations to make it more acceptable.

Senator Lynch asked Gene Fenderson if it were common for union workers to work for less than prevailing wage. Mr. Fenderson answered that he was not aware of such a practice.

Senator Lynch asked Senator Klampe if the contractors they had been discussing were non-union. Senator Klampe directed the question to Greg Rutherford. Mr. Rutherford answered that the situation of a union contractor working for less than the prevailing wage might come about if there were a special contract involved, but a non-union contractor would be the most likely contractor to work on these projects.

Senator Towe asked Greg Rutherford why a contractor could not make an agreement to donate part of his or her work time and be paid the prevailing wage for the other part of the work time. Mr. Rutherford said he was not sure what the laws were that governed that type of agreement. Senator Towe said that a person can volunteer at any time, but that if a person wants to get paid that person should get the prevailing wage.

Senator Towe asked Mae Nan Ellingson if the Committee was to conclude not to release the non-profit corporations from the prevailing wage, would there still be parts of Senate Bill 329 that should be passed. Ms. Ellingson answered that the Committee should clarify what the Bill applies to, put the law where it could be found, and make the Bill applicable to bonds issued after July 1, 1993.

Closing by Sponsor:

Senator Klampe closed. He reviewed the three points of Senate Bill 329: To get the ice skating rink built in Missoula; to amend the bond laws so that a project can accept tax exempt revenue bonds but not apply the bond rules to the portion of the project not covered by the bonds; and to get the Committee to clarify the applications of the Bill, put the law where it is available, and to make the Bill applicable to bonds issued after July 1, 1993.

HEARING ON SB 342

Opening Statement by Sponsor:

Senator Wilson, Senate District 19, opened on Senate Bill 342. He told the Committee the Bill was being introduced at the request of a group of laborers' organizations in an attempt to find a compromise with SB 62. SB 342 would allow employers or contractors to continue their pension and insurance programs for their employees. Senator Wilson explained the current law does not technically allow this. SB 342 would bring the employers and contractors in line with federal law. This was the intent of SB 62. In addition to this intent, SB 342 would penalize the contractors and subcontractors failing to pay standard prevailing

wage. An employer who violates Davis-Bacon prevailing wage rates for public works contracts would be fined up to 20% of the delinquent wages. This money would be paid to the Department of Labor Unemployment Administration Division and used for future enforcement of the laws. The convicted employer would pay the worker his wages and $25 per day each day the worker was shorted. Senate Bill 342 requires that a contractor submit certified payroll records to the contracting agency on a weekly basis. These records would be provided to the Department of Labor within five days after a request. They would then become public record. Senator Wilson brought attention to amendments in the Bill. The amendments deal with the contractor or subcontractor that violates any of the provisions on two or more projects during a three year period. If found guilty, the contractor or subcontractor would loose the right to work on publicly funded projects for three years.

Proponents' Testimony:

Gene Fenderson, Laborers' International Union, announced his organization stood in strong support for SB 342. Mr. Fenderson made reference to SB 62, introduced by Senator Hager. He told the Committee SB 342 and SB 62 both address the problems in Montana with a law saying, unless a person is signatory to a collective bargaining agreement, that person may not have insurance, welfare or pensions provided by the employer. This law was struck down by the courts. The Contractor's Association continues to run its programs for its members and workers. Mr. Fenderson announced the Laborers' Union did not have an argument with that. SB 342 has provisions within it allowing for employers to continue health, welfare, and pension programs for employees not signatory to a collective bargaining contract. Mr. Fenderson told the Committee a similar bill was passed in the 52nd Legislature, but vetoed by Governor Stephens. SB 342 does not have all of the provisions the bill of the 52nd Legislature did. Mr. Fenderson told the Committee the following points were missing from SB 342: The Union had incorporated continuing welfare and pension programs into the 52nd Legislature Bill; it included in the Bill stricter fines to be imposed on people who broke the laws within the system; it had provisions to determine how to set prevailing wage. Mr. Fenderson explained that SB 342 has four facets: Non-union contractors could continue welfare and pension programs for their employees; it has stricter penalties for contractors not abiding by the laws; it has certified payrolls; and it has provisions that if a contractor was caught not abiding by the laws, that contractor could not work on publicly funded projects for three years.

Bill Egan, Montana Conference of Electrical Workers, told the Committee employees should have the same benefits and rights whether they be union or non-union. In this fact, Mr. Egan agreed with SB 62. He said he hoped the sponsors of SB 62 would agree to the compromise of SB 342. SB 342 would add fines for employers cheating the system. Mr. Egan said an employer that is

honest would like to see the added provisions because that employer would not like to compete with another who was getting away with cheating the system for a profit. Mr. Egan announced he felt SB 342 was a good compromise to all the other similar bills that have come before the Montana Legislature. He urged a "Do Pass."

John Manzer, Teamsters Union, told the Committee that his organization thought SB 342 was a fair compromise bill. He said that he questioned SB 62 because it may cause problems when strictly interpreted. Mr. Manzer told the Committee that when an employer runs the employer's own employee program, and polices it, as well, there should be legislation to protect the employees. He claimed that workers should be given as much protection in the areas of welfare and pension as they can be given under state law or statute. He urged passage of SB 342.

Ron James, Ironworkers' Union, rose to support SB 342.

Mike Mizenko, Montana State Association of Plumbers and Pipefitters, urged support of SB 342.

Don Judge, Executive Director, Montana State AFL-CIO, told the Committee that he was disappointed the Contractor's Association had come to testify as opponents to SB 342 because the Bill was meant to be a compromise. Mr. Judge added that SB 62 was not a good bill because it would allow for undesirable health and welfare programs to be set up under its provisions. Representatives of the AFL-CIO, the Contractor's Association, the State Department of Labor, and the building trades met and attempted to compromise on SB 62. Mr. Judge reported that in that meeting, organized labor felt that certain language must be included in SB 342 (Page 1, Line 25; Page 2, Lines 1 and 2) in order to protect currently existing apprenticeship programs in the state. Mr. Judge told the Committee the next topic discussed in the meeting was adding a provision in SB 342 to allow the Department of Labor to preview the fringe benefit programs (Page 2, Lines 17-19). This provision states that a private contractor or sub-contractor must file a copy of the fringe benefit plan or program that is described in Section 2 of SB 342. Mr. Judge also said the Bill would strengthen penalty provisions for failure to pay benefits. SB 342 also would provide that the employer would be required to keep in his/her files and submit the certified weekly payroll upon request of the State Department of Labor and Industry. He added that if a person or corporation violated these provisions, that individual or corporation would be prohibited from performing work on a publicly funded project covered under the Bill for a period of three years. Mr. Judge told the Committee the next section the compromise meeting addressed the enforcement of proceedings and decided the cases could be brought before a Department of Labor and Industry hearings officer, and the decision could be appealed to the District Court. He announced that SB 342 does not change prevailing rates, prevailing rate districts, or add new

bureaucracy in the State of Montana. Mr. Judge urged putting the Bill into law so that the fringe benefit plans and the certified weekly payroll could be public record. He told the Committee that this would help stop violations of labor laws and workers' compensation.

Opponents' Testimony:

Lloyd Lockrem, Montana Contractors Association (MCA) stated SB 342 is essentially HB 836 with one exception: Title and predetermined wages. Mr. Lockrem told the Committee the MCA supports the certified payroll. The opposition of the Contractors Association to SB 342 is that the association feels it ties two unrelated issues together. SB 62 simply grants construction workers who do not belong to unions in the State of Montana some comfort that their benefits will continue. Mr. Lockrem stated that the opposition to SB 342 is because the issues of continuing benefits and certified payroll are unrelated. Mr. Lockrem announced the MCA would support the concept of SB 342 and offered the Committee a set of proposed amendments (Exhibit #3). He also gave the members a copy of apprenticeship training laws (Exhibit #4). He pointed out the highlighted section of the paper. Mr. Lockrem told the Committee that the MCA had no objections to the penalty provision. He added, however, that the penalty may be severe enough a contractor would chose to litigate in order to save money. He stated he felt the contractor that cheats should be issued a civil penalty of up to $5 thousand.

Brad Talcott, Montana Contractor Health Care Trust, stated he was at the compromise meeting referred to by Mr. Judge. He told the Committee his feeling was there needed to be language added in order to make enforcement of the laws easier for the Department of Labor by keeping the paper load out of that office. Mr. Talcott stated the Department would be more willing to agree with the provisions in SB 342. Mr. Talcott said that he agreed with Mr. Egan that there should be equity for all workers. He told the Committee that he felt the AFL-CIO was looking at SB 342 as if it were a contract of some form, as Mr. Judge referred to it as one. Mr. Talcott stated that he felt the Bill was only legislation to get health care, welfare, and pension benefits for workers that had not had them before.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Blaylock asked Lloyd Lockrem about workers put in health care plans that were not good. Mr. Lockrem could not give an answer to the question directly, but explained the bad plans existed, but that the MCA and ERISA tried to counter them by offering better plans that were also competitive with the bad

ones.

Senator Towe asked Mr. Lockrem if he and the MCA found anything offensive in SB 342. Mr. Lockrem answered other than the problem of the Bill mixing health care issues with the certified payroll issues, he found nothing offensive.

Senator Towe asked Mr. Lockrem why he did not want the two issues together. Mr. Lockrem answered the MCA felt health care and retirement issues were to critical. He felt that the payroll issues may overcome these issues.

Senator Towe asked Don Judge why the payroll and pension issues should be run together if they are two good issues that stand on their own. Mr. Judge answered the AFL-CIO did not feel the certified payroll issue was a very controversial one, and backed up his response by pointing out to the Committee that there had been no one to testify against it at the hearing.

Senator Towe asked Don Judge what caused the Bill to be vetoed by Governor Stephens in the 52nd Legislature. Mr. Judge answered that he did not know. Mr. Judge directed the question to Gene Fenderson. Mr. Fenderson told the Committee two of the reasons the bill had been vetoed. The first was a clause that changed the way the rates of prevailing rates were set. Mr. Fenderson added the other item that the Governor did not like about the bill was the Department of Labor and Industry and the Architects and Engineers went to him and testified that there was too much paperwork involved. He added SB 342 did not carry either of these provisions. Mr. Fenderson mentioned too, that he felt this bill was not "piggy-backing" payroll issues and pension issues.

Senator Keating asked Mr. Fenderson if the department would be as nervous about SB 342 as it was about the bill that was vetoed by Governor Stephens because it still contained the weekly certified payroll provisions. Mr. Fenderson answered the payroll provisions had changed. He stated the original problem the department had with the Bill was the paper load it would have because all weekly certified payrolls would be sent to be filed with the department. SB 342 had provisions the payroll records would be kept by the contractor or the sub-contractor and produced to the department upon request.

Mr. Keating asked Mr. Fenderson if the contractor or sub-contractor would then have to copy all the payroll records if the Department of Labor requested them. Mr. Fenderson answered if there was a complaint, the Department of Labor would handle the copying of the files.

Mr. Keating asked Mr. Fenderson under what conditions the Department of Labor would request the payroll records of a contractor or a sub-contractor. Mr. Fenderson answered a request would be made if a worker had filed a complaint with the Department that there was a discrepancy in the payroll or in

carrying out the contract.

Senator Aklestad asked Mr. Fenderson who else besides the Department of Labor could request a copy of the payroll records. Mr. Fenderson answered anyone who wants one could get one. The records would become public.

Senator Aklestad asked Lloyd Lockrem if he was attempting to take out any of the severe penalties through proposing his amendments. Mr. Lockrem answered he was not, but rather softening them to avoid forcing a contractor into court.

Senator Aklestad asked Mr. Lockrem if he would support the legislation with the amendments. Mr. Lockrem answered that he would.

Senator Aklestad asked Mr. Lockrem if he would support the legislation without the amendments. Mr. Lockrem answered he would not. He told the Committee the MCA would prefer to support SB 62 as a separate bill.

Senator Towe asked Mr. Lockrem, referring to Mr. Lockrem's proposed amendments (Exhibit #1) what was wrong with the Montana Department of Labor only recognizing those employees that get federal registration from the United States Department of Labor. Mr. Lockrem answered there was no approval.

Senator Towe asked Mr. Lockrem if it would be better to change the word "approval" to "registration" within the section of the Bill that would be amended by items 2 through 5 in Mr. Lockrem's amendments (Exhibit #1). Mr. Lockrem answered there was no registration by the U.S. Department of Labor. He added what was in SB 62 met the requirements of ERISA. There is no Federal approval process under ERISA law. Mr. Lockrem added that this section in SB 342 may be preempted by ERISA.

Senator Towe asked Mr. Fenderson if he agreed with Mr. Lockrem. Mr. Fenderson answered that he disagreed with Mr. Lockrem's statement that approval was hard to regulate because there is no Federal approval process under ERISA law.

Senator Towe asked Mr. Fenderson what was intended by sub-paragraph 4 of SB 342. Mr. Fenderson answered it provides that the contractor or sub-contractor must pay the total fringe benefit.

Senator Towe asked Mr. Fenderson if he meant to countermand Section 1 of SB 342 if the contractor does not have a collective bargaining agreement. Mr. Fenderson answered he did not. Senator Towe said it looked like it might.

Senator Towe asked Mr. Lockrem to answer the same question. Mr. Lockrem told the Committee that the union members have no option

on whether they were going to pay health and welfare, or apprenticeship training programs, but rather pay for the whole package. The plan of MCA is to have an option between the two.

Senator Lynch asked Mr. Lockrem if SB 62 were to be tabled what his stance on SB 342 would be. Mr. Lockrem answered it would have to go back to the Board of Directors.

Closing by Sponsor:

Senator Wilson closed. He stated that the issues in SB 342 called for compromise. He then pointed out that the contractors received everything in SB 342 that they would in SB 62. He said what labor is asking for is stricter enforcement of prevailing wage laws. Senator Wilson told the Committee the request was not unreasonable, and urged a Do Pass of SB 342.

HEARING ON SB 394

Opening Statement by Sponsor:

Senator John Harp, Senate District 4, opened. He told the Committee he had introduced this Bill several times before in different Committees. Senator Harp explained much of the language in SB 394 is included in Department of Labor and Industry Rules. Currently under rules, 20% of a worker's settlement if there is no hearing on a workers' compensation case goes to the attorney. 25% goes to the attorney if there is a hearing before a workers' compensation judge, or the Supreme Court. SB 394 delegates 15% of the settlement for the attorney in all cases. Senator Harp stated very few workers' compensation cases go before a workers' compensation judge, and even fewer go before the Montana Supreme Court. SB 394 also puts a cap on attorney's fees for workers' compensation cases. The Bill sets the attorney fee limit at $7500.00. Senator Harp told the Committee if the insurer and the claimant have agreed on a certain sum then that sum should not be affected by an attorney's efforts. If an attorney comes to the workers' compensation arena and finds by the attorney's own efforts additional benefits may be obtained, then the attorney may be paid 15% of the settlement. Senator Harp went on to say an attorney may collect up to 15% of a settlement a claimant to whom initial compensation is denied receives if the claim is accepted by the insurer, or ordered compensable by workers' compensation court or the Supreme Court. He told the Committee SB 394 listed items for which he thought attorney's fees should not be included. He continued, saying he did not think medical and hospital benefits that are received by a claimant unless the insurer has denied all claims and benefits that are denied for certain medical and hospital costs should be included in attorney's fees unless the attorney is successful in obtaining the benefits of the claims. He also stated an attorney should not receive benefits in a case which the attorney aided

only in filling out the original claim forms. Senator Harp told the Committee that the bottom line on this bill was to get fraud under control, maintain and promote safety, and contain medical costs.

Informational Testimony:

Chuck Hunter, Montana Department of Labor and Industry, offered testimony neither in favor nor in opposition to SB 394. Mr. Hunter told the Committee his office had compiled lists of workers' compensation attorney's fees and he presented them to the members (Exhibits 5a and 5b). He explained the original settlement amounts reported to the press and the Committee were incorrect. Mr. Hunter apologized to the Committee for the 50% reporting error. Originally, the office reported the settlements were about $3.5 million, whereas they were over $7 million.

Proponents' Testimony:

Rick Hill, the Governor's Office reported to the Committee Governor Racicot has indicated he is interested in substantial reform in workers' compensation. He told the Committee the Governor believes the workers' compensation crisis is very important to both Montana workers and employers. Mr. Hill announced the Governor's Office had asked groups of people that are affected by the system to participate in the solution to the crisis. The Governor's Office believes it is only reasonable that attorneys who are beneficiaries of the system are also participants in the solution. Mr. Hill said it was not the Governor's intention to support any specific limitations of the SB 394, but rather to support the attorney limits in principal. The Governor believes it is the claimants attorney who sets the scope and also the cost of workers' compensation litigation and therefore the method by which to limit the cost of litigation would be to cap attorney's fees for workers' compensation programs. Mr. Hill told the Committee these reasons are the reason the Governor supports SB 394.

Charles Brooks, Montana Retail Association (MRA), told the Committee the instructions given to him by the Board of Directors of the MRA were they would be very deeply involved in legislation with intents to address major problems within the workers' compensation system. Mr. Brooks said the MRA rose in support of SB 394 as one piece of legislation in the 53rd Legislative Session to address the problems of Workers compensation.

Mike Micone, Montana Motor Carriers Association, told the Committee the MMCA believed SB 394 should not be viewed as a bill where there is abuse of the system on the part of the attorney, but instead view the Bill as one where the attorneys are a part of the solution and share in resolving the workers' compensation problem.

Don Allen, Coalition for workers' compensation System

Improvement, told the Committee the Coalition had not taken a stand on specific items in SB 394. He said the Coalition was testifying to endorse the concept of trying to examine all the factors that impact the cost of workers' compensation. Mr. Allen said the Coalition was trying to put together a package of these factors throughout the session that may lead to improving the system.

Opponents' Testimony:

Russell B. Hill spoke from written testimony (Exhibit #6).

Jan Van Riper, a workers' compensation attorney told the Committee that she opposed SB 394 because it would do very little to help solve the problems with workers' compensation. She claimed the Department of Labor and Industry's list of attorney's fees was wrong in their assessment of her income from cases. In 1991, the department claimed she made more than she did. The next year the lists showed her earning less. Ms. Van Riper called the Department of Labor and was told the methods of keeping track of these fees was not accurate at that point. She said she was concerned about the Department's accuracy. Ms. Van Riper told the Committee it was important for its members and other legislators to understand how much of the workers' compensation fees attorneys make are generated on old-law cases. She said she went through her records and found that she did not earn as much on cases that arose after a 1991 amendment of workers' compensation laws. Ms. Van Riper announced to the Committee she thought the problem of very high fees had been solved through the amendment. She said the attorneys could not represent the clients anymore, and the clients suffered. She said in the past she saw clients in her office coming in for settlements. Ms. Van Riper told the Committee now she sees clients coming to her because they are not getting medical bills paid, medical treatment, their compensation rates are wrong, and their compensation checks are late. She went on to say she was not generating enough fees, and has to refuse workers' compensation case clients. Ms. Van Riper said she believes the system has never worked in terms of the attorney fee situation. She continued to explain she used to think attorneys fees were too high, but now she thinks they are too low, resulting in workers not being able to get representation. Ms. Van Riper said there should be another bill to fix workers' compensation problems, not SB 394.

Don Judge, Executive Secretary, Montana State AFL-CIO, told the Committee it was the injured worker that would be hurt by the passage of SB 394. He said the bill prevented these workers from getting representation. He continued the attorneys fees were not driving the cost of the workers' compensation system. Mr. Judge claimed the fees were being paid out of claims that were justifiably received from a system that had taken those claims away from the workers. He said one way to limit the cost of the system would be to limit defense fees. He said limit the fees of

the insurers and the fees paid by the workers' compensation division or the new State Fund. Mr. Judge said SB 394 was not good legislation.

Norm Grosfield, a workers' compensation attorney told the Committee that Senator Harp was mistaken if he believed all the income an attorney received was the attorney's. Mr. Grosfield said his operating costs were over $100 thousand in one year. He handed to the Committee a set of proposed amendments (Exhibit #7) and a list of the estimated overhead for a sole lawyer in a small firm (Exhibit #8).

Mike Coke, a workers' compensation lawyer from Bozeman, told the Committee he opposed SB 394. He reiterated the opinion the Bill would only harm workers.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Senator Harp closed.

ADJOURNMENT

Adjournment: 3:01 pm

SENATOR TOM TOWE, Chair

KELSEY CHAPMAN, Secretary

TET/kc

ROLL CALL

SENATE COMMITTEE Labor & Employment Relations DATE 1/18/93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Towe	X		
Sen. Wilson	X		
Sen. Aklestad	X		
Sen. Blaylock	X		
Sen. Keating	X		
Senator Lynch	X		
Sen. Burnett	X		

FC8

Attach to each day's minutes

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TO: Senator Terry Klampe and
Members of Senate Business and Industry Committee

FROM: Mae Nan Ellingson Mae Nan Ellingson

DATE: February 18, 1993

RE: SB 329

SENATE LABOR & EMPLOYMEN
EXHIBIT NO. 1
DATE 2/18/93
BILL NO. SB329

The 52nd Legislature in 1991 enacted HB 591, which provides as follows:

> A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

That bill has been codified in the public contract laws at Section 18-2-403(4). At least three significant problems have arisen relating to this law: (1) it is not clear what bonds are referred to in the phrase "tax-exempt industrial revenue bonds"; (2) because the law is not codified or referred to in any of the statutes relating to the issuance of tax-exempt bonds, most issuers and underwriters of bonds, bond counsel, borrowers and others working with tax-exempt bonds have been unaware of the law, with the result that the law may often but inadvertently have been violated; and (3) because the law refers to "a contract let for a project" it is not clear how it applies in the case of a total construction program of which a bond-financed project might be but a part.

We encourage this committee and the legislature to approve legislation which would: (1) clarify which type of bonds the prevailing wage requirement applies to, (2) direct that the provision be codified or referred to in the appropriate

bond statutes, (3) clarify how it applies to large undertakings of which bond-financed projects are but a part, and (4) establish that if and to the extent the prevailing wage requirement applies to bond-financed projects, it applies only to projects financed by bonds issued after the effective date of the clarifying legislation.

Background of HB 591. HB 591 was introduced in the 1991 session as a bill entitled "A Bill to Require that a Contract Let for a Project Costing More Than $25,000 and Receiving a State Tax Exemption Contain a Provision Requiring the Contractor to Pay the Standard Prevailing Wage." Even though HB 591 was amended in the House Taxation Committee to substitute the term "financed in whole or in part by tax-exempt industrial revenue bonds" for "receiving a state tax exemption," a significant change in concept, the status sheet through the legislative session continued to define the bill as "Prevailing Wage Law Applies to Tax Exempt Project". This may explain, at least in part, why persons involved with the issuance of tax-exempt industrial revenue bonds did not attend the committee meetings, did not offer comments in 1991, and were generally not aware of the passage of the law. I have reviewed the testimony on HB 591 before both the House Taxation Committee and the Senate Taxation Committee, and do not find anywhere a clear statement of the intent of the sponsor of the legislation as to the applicability of the proposed legislation. Those minutes also reflect a misunderstanding of "tax-exempt industrial revenue bonds." To aid the Committee in appreciating the problem which the law has created and determining how to amend the law, we think it might be helpful to describe the term "tax-exempt industrial revenue bonds", who issues them in Montana and for what purposes.

Overview of Industrial Revenue Bonds. Before 1968, the Internal Revenue Code permitted the issuance of state and local bonds on a tax-exempt basis even if the proceeds of the bonds were used completely for private purposes. As a general rule, State statutes authorized the issuance of such bonds where the State or local government found that tax-exempt financing could serve, foster or encourage within its jurisdiction a public interest or public purpose, such as economic development and job creation through industrial, manufacturing, and commercial projects. Similarly, tax-exempt financing was made available to organizations providing goods and services of benefit to the community, such as hospitals and other health care facilities, pollution control facilities, multifamily housing, hydroelectric facilities and recreation facilities. The State statutes authorizing these bonds generally characterized them as industrial revenue bonds ("IRB's"), industrial development bonds ("IDB's"), or economic development bonds. In 1968, Congress

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amended the Internal Revenue Code to include a definition of "industrial development bond". In essence an industrial development bond was an issue of bonds more than 25% of the proceeds of which was used in the trade or business of a non-exempt person and more than a major portion of the principal and interest of which was secured by, or was to be derived from, payments in respect of property used in a trade or business. With the 1968 amendment interest on industrial development bonds became subject to federal income taxation unless the bonds were within one of several exceptions.

The state or municipality issuing industrial development bonds was rarely if ever the obligor on the bonds. Most often, the issuer would loan the proceeds of the bonds to the private borrower, who would agree to use the proceeds to construct or acquire a particular facility and to repay the loan at times and in amounts sufficient to pay the principal of and interest on the bonds when due. In Montana, like most states, the enabling legislation provided that the issuer had no pecuniary liability on the bonds so issued. Since no public money was involved, other than the proceeds of the bonds which were repayable by the private borrower, and the project was not a public facility, such projects have not generally been subject to the competitive bidding requirements or other laws applicable to public projects or contracts. Similarly, recognizing the private character of the bond-financed projects, the projects are normally subject to property taxes, unless the financing itself is for a tax-exempt organization, such as a hospital.

Over the years and particularly since 1986, the restrictions on tax-exempt financing for the benefit of private parties have increased. With the adoption of the Internal Revenue Code of 1986, the term "industrial development bonds" or IDB's" as they were called, was removed from the Code. Instead, the 1986 Code now refers to "private activity bonds," which are defined so as to include all bonds which were industrial development bonds but also includes a variety of other bonds which were not industrial development bonds.

Under the Code as it currently exists, private activity bonds bear interest exempt from federal income taxes only if they satisfy many statutory requirements and regulations and are issued for one of the following purposes:

A. Exempt Facilities Bonds
   (1) airports,
   (2) docks and wharves,

(3) mass commuting facilities,
(4) facilities for the furnishing of water,
(5) sewage facilities,
(6) solid waste disposal facilities,
(7) qualified residential rental projects,
(8) facilities for the local furnishing of electric energy or gas,
(9) local district heating or cooling facilities,
(10) qualified hazard waste facilities, or
(11) high-speed intercity rail facilities;

B. Qualified Student Loan Bonds; or

C. Qualified 501(c)(3) Bonds (this includes hospitals).

In Montana, there are currently five entities that are specifically authorized to issue "private activity bonds". In addition, the State, through the Board of Examiners, may issue bonds which would generally be deemed to be "private activity bonds" for purposes of the Code, even though the facility financed is owned and operated by the State. The Broadwater Dam project is a good example. Similarly, cities are authorized by Title 7, chapter 7, part 44, to issue revenue bonds to finance various facilities, including airports and public parking facilities; such bonds, because of the "non-governmental use" of the facilities, may also be private activity bonds. In addition, cities and now counties are authorized to issue tax increment bonds for certain purposes and some of such bonds may also constitute private activity bonds. To complicate matters further, they may bear interest that is not tax-exempt for federal tax purposes.

1. Cities and counties have been authorized since 1965 under the provisions of Title 90, Chapter 5, Part 1, MCA, to issue bonds to finance projects for "commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, or medical facilities; higher education facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; and any combination of these projects." Bonds issued to finance some of these projects, even though permitted by Montana law, would no longer qualify for federal tax exemption. While the title of Chapter 5 of Title 90 is "Industrial Development Projects," the statute itself does not use that term with reference to bonds issued under that law. (Generally, the title of the bonds would

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reflect the nature of the project for which the bonds were being issued, for example, "Hospital Revenue Bonds", "Solid Waste Facility Bonds" and would not likely be called "Industrial Revenue Bonds.") Was it the intent of HB 591 that the prevailing wage requirement extend to all types of bonds issued by cities and towns under this Act?

2. The Board of Investments is authorized to issue bonds for the same types of projects as those for which cities and counties may issue bonds, under the Economic Development Bond Act of 1983. As with the cities and counties, some of the authorized purposes may no longer be eligible for tax-exempt financing under the Code.

3. The Montana Health Facility Authority (the "MHFA") is authorized by Title 90, Chapter 7, Part 3, to issue bonds for eligible health facilities that are owned and operated by nonprofit corporations. Under this statute, the MHFA provides tax-exempt financing to hospitals, as well as small nonprofit corporations which construct, with tax-exempt bonds, facilities such as day care centers and group homes in local communities, which may in turn provide services to State clients on a contract basis with the State.

4. The Montana Board of Housing is authorized under Title 90, Chapter 6, Part 1, to issue bonds to finance both single family and multifamily housing.

5. The Montana Higher Education Student Assistance Corporation is authorized to issue Qualified Student Loan Bonds. Since those bonds would not finance projects within the meaning of 18-2-403(4), those bonds probably are not at issue here.

Under current Montana law, interest on bonds issued by Montana governmental entities is exempt from state income tax, whether or not such interest is exempt from federal income tax.

Currently, the laws governing the issue of private activity bonds by the Board of Investments and cities and counties do require contracts for the construction of bond financed projects to require that contractors give a preference to Montana labor. See 90-5-114, 17-5-1526 and 17-5-1527, MCA.

Current State of Confusion. Since HB 591 did not define the term "tax-exempt industrial revenue bonds," it is difficult to determine to which of the bonds described above the legislation was meant to apply. Because the Code no longer uses the term "tax-exempt industrial revenue bonds" (and did not include the term when HB 591 was passed), there is no extraneous definition to assist in interpretation. Under the 1954 Code definition (i.e., pre-1986), bonds issued to finance hospital projects owned and operated by a 501(c)(3)organization, would not in most cases be industrial revenue bonds, but such bonds are likely to be private activity bonds under the 1986 Code. The committee minutes shed some light on the intent, but are in themselves confusing. It appears from the February 14 hearing in the House Taxation Committee, that the proponents believed that taxes or other public money was being used for the projects being financed. Two separate statements indicated that because the contractors were being paid from public funds to complete the projects, there was no reason to not make them subject to the prevailing wage. (Perhaps because of the discussion about public monies being used for these types of projects, it was deemed appropriate to codify HB 591 in Title 18, which is the title reserved for Public Contracts. No other provisions of the public contract law apply to projects financed with tax-exempt bonds, except the Montana labor preference which is clearly indicated in provisions of the pertinent bond law.) It is unclear, however, that the decision to require prevailing wage rested on whether public funds were actually being used. One proponent indicated an intent to have the provision apply when cities, counties and the State were issuing tax-exempt bonds to promote industrial and commercial expansion.

One proponent indicated that it was not the intent to have it apply to Board of Housing programs. It was suggested that an amendment would be offered to exempt the Board of Housing, but it does not appear that such an amendment was offered. No mention was made of an intent to have the statute apply to hospitals or other health care projects, but subsequently to enactment of the legislation a proponent has contended that its intent was to have it apply to hospitals.

Uncertainty as to Meaning of "Project". HB 591 by its terms applies to "a contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds." The term "project" is also used in the laws we referred to above which authorize the issuance of certain types of state and municipal bonds. If bonds are issued to finance a "project" which is but one component of a facility, it seems reasonable to interpret HB 591, if applicable, as meaning the bond-financed project, but it is also possible because of the phrase

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"financed in whole or in part" that the "project" under HB 591 is the total facility of which the bond-financed project is but a part. For example, the City of Great Falls has announced its intent to issue tax increment industrial infrastructure bonds to finance certain public improvements (streets, sewers, utilities, etc.) related to the American Ethanol project. The tax increment bonds will be issued in the approximate amount of $10,000,000-$12,000,000, but the total costs of the project are expected to be $80,000,000-$90,000,000. The contract for the improvements financed by the City's bonds would be subject to the prevailing wage law because the contract would be a public contract as public money is being used to finance the improvements. There is a question under the statute whether the use of the tax increment bonds would cause the remainder of the project to be subject to the prevailing wage law. This uncertainty should be eliminated and would be eliminated in two respects by the adoption of the amendments proposed by Senator Klampe.

Policy Decision. We do not discuss whether it is good public policy to require that contracts for construction of projects financed in whole or in part with bonds which are private activity bonds under the Internal Revenue Code should contain a provision that the contractor pay the prevailing wage. That is obviously a policy decision for the legislature, and no doubt arguments may be made on both sides of this issue. (It should be noted, however, that the issuance of tax-exempt bonds is one of the few economic development tools that governmental entities in Montana have. We have not undertaken a survey of other states to determine how many require the payment of prevailing wages as a condition for tax-exempt bonds, but we do know that a substantial number of our neighboring states do not.) Our concern as lawyers, and more specifically as bond counsel and as counsel for state and local governments issuing private activity bonds, is that whatever the legislative decision, it should be expressed clearly. We think HB 591 is not clear and that parties most affected by its provisions (issuers and borrowers alike, as well as financial advisors and legal counsel) have not been aware of its existence. We therefore recommend that it be reconsidered and that if retained it be clarified and made effective to contracts entered into with respect to bonds issued after a future date (e.g., July 1, 1993).

SB 329 as introduced would: (1) require the prevailing wage be paid on all contracts in excess of $25,000 for projects financed in whole or in part by tax-exempt revenue bonds, unless the project is for a nonprofit corporation, other than a hospital or the contractor has a collective bargaining agreement in place; and (2)

codify the requirement in the sections of law authorizing cities and counties, the Board of Investments and the Montana Health Facility Authority to issue tax-exempt bonds. As it stands, it does not: (1) clarify "the project financed in whole or in part" question, (2) make an exception for Board of Housing bonds, or (3) provide that the provisions will be applicable after this statute is enacted on July 1, 1993. Accordingly, we recommend the committee approve the amendments presented by Senator Klampe, which would specify that only the project financed by bonds be subject to the prevailing wage requirement. The amendments also removed the term tax-exempt and instead refer to bonds issued by the entities described in the bill. This seems consistent with what we now understand to be the original intent and avoids having to try to define in the statute the terms "tax-exempt bond", "private activity bond" or "industrial revenue bond".

MNE:jlc

Amendments to Senate Bill 329

page 2, lines 22 and 23, following subsection (g), strike everything through the word "hospital"

page 2, line 24, change the word "an" to "a"

page 5, line 24, following subsection (g), delete entire line

page 5, line 25, delete entire line

page 8, lines 16 and 17, following the word "performed" delete everything through the word "hospital"

page 11, line 19, subsection (6), delete entire line

page 11, line 20, delete entire line

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Amendments to Senate Bill No. 329
First Reading Copy

Requested by Senator Klampe
For the Senate Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 17, 1993

1. Title, lines 5 and 6.
Following: "FINANCED" on line 5
Strike: remainder of line 5 through "REVENUE" on line 6
Insert: "FROM THE PROCEEDS OF"
Following: "BONDS"
Insert: "ISSUED ON OR AFTER JULY 1, 1993"

2. Page 3, line 1.
Page 6, line 3.
Page 9, lines 25 and 26.
Page 11, line 24.
Following: "financed"
Strike: "in whole or in part by tax-exempt revenue bonds"
Insert: "from the proceeds of bonds issued under this part on or after July 1, 1993,"

3. Page 8, lines 12 and 13.
Following: "financed"
Strike: remainder of line 12 through "bonds" on line 13
Insert: "from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993,"

MONTANA CONTRACTORS ASSOCIATION
Lloyd Lochram

Amendments to SB 342

1. Page 1 Strike Line 15 through Page 3 Line 3.
(All of Section 1)

2. Page 4 strike all of line 3 through "labor," on line 4.
Insert: "allowance provisions,"

3. Page 4 strike all of line 21 through "labor," on line 22.
Insert: "allowance provisions,"

4. Page 5 line 8 following: "travel"
Strike the remainder of the line through "labor," on line 10.
Insert: "allowance provisions,"

5.. Page 6 strike all of line 6 through "labor," on line 7.
Insert: "allowance provisions,"

6. Page 8 line 10 following: "underpaid".
Strike the remainder of the line through "representative," on line 11.

7. Page 11 strike lines 18 and 19.
(section 10)

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 2/18/93
BILL NO. SB 342

Michigan's Apprenticeship Training Laws Subject to ERISA Preemption

ERISA preempts Michigan's apprenticeship training program, the Eastern District Court of Michigan rules.

Amendments enacted

Plaintiffs brought an action to enjoin the enforcement of new apprentice ratio and training program requirements added as amendments to Michigan's apprenticeship law. The plaintiffs argued that these requirements impermissibly interfered with their established apprenticeship training requirements and were consequently preempted by ERISA and the National Labor Relations Act.

Law would affect employee benefit plans

The court notes that ERISA will preempt any state law which relates to any employee benefit plan. The court finds further that a recent Eighth Circuit case held that a law similar to the Michigan statute was preempted since it was "specifically designed to affect employee benefit plans" and would subject employers to conflicting and inconsistent state and local regulations.

Savings clause not applicable

The defendants argued that, even if the ratio and equivalency requirements were found to relate to the apprenticeship programs, the Michigan law is saved from preemption by ERISA's "savings clause." Under this provision, ERISA may not "alter, amend, modify, invalidate or impair" any law of the United States. The defendants contended that the preemption of the Michigan statute would interfere with apprenticeship training regulations issued under the Fitzgerald Act, a federal law.

The court disagrees. It finds that the purpose of the Fitzgerald Act is to create a voluntary system under which employers can obtain federal registration by observing and complying with certain apprenticeship standards. It does not require employers to seek or get approval for their apprenticeship training programs. In addition, employers that do not choose to follow the standards necessary for federal registration do not violate federal law.

Accordingly, the court finds that the preemption of the ratio and equivalency requirements will not "alter, amend, modify, invalidate or impair" any law of the United States, since enjoining the enforcement of the Michigan law will not cause employers that obtained federal registration before the recent amendments to stop adhering to the relevant voluntary standards.

Federal regulation appropriate

The court also rejects the defendants' argument that the ratio and equivalency requirements should not be preempted because they concern two subjects—occupational training and safety requirements—traditionally reserved to state regulation. The court agrees that the regulation of these two areas is normally reserved to the states. However, "Congress has the authority to enact laws that impact upon matters traditionally of local concern where those local matters affect interstate commerce." Further, the court holds, Congress has made clear in ERISA an intent to preempt all state laws relating to an employee benefit plan.

The case is *Associated Builders and Contractors v. Perry*, 15 EBC 2919 (E.D. Mich. 1992).

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 2/18/93
BILL NO. SB 342

LLR *Employee Benefits* **Legal-Legislative Reporter News Bulletin**

For members of the International Foundation of Employee Benefit Plans

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5) THOMAS BULMAN (MISSOULA)	205,146.61
6) BERNARD EVERETT (ANACONDA)	201,099.67
7) VICTOR HALVERSON (BILLINGS)	187,836.14
8) THOMAS LYNAUGH (BILLINGS)	181,938.62
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14) ROBERT SKAGGS (BILLINGS)	118,209.25
15) RICHARD PYFER (HELENA)	112,973.97
16) MARY KAY STARIN (BUTTE)	112,184.21
17) RUSSELL PLATH (BILLINGS)	106,037.98
18) JAMES HUNT (HELENA)	95,695.00
19) NORMAN GROSFIELD (HELENA)	91,824.00
20) DARRELL WORM (KALISPELL)	88,269.50

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5B
DATE 2/18/93
BILL NO SB 394

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

ATTORNEY FEE SETTLEMENT LIST

Fiscal Year 1992

ATTORNEY NAME	# CLAIMS SETTLED	APPROXIMATE TOTAL NET SETTLEMENT AMT (no annuities listed)	TOTAL FEES	TOTAL COSTS	% OF FEES TO NET SETTLEMENTS
	29	801,418.28	145,754.95	2,947.41	18.2 %
ANDERSON	2	98,000.00	19,600.00	0.00	20.0 %
ASTLE	1	15,000.00	3,000.00	0.00	20.0 %
AUSTIN	1	3,540.00	590.00	0.00	16.7 %
BAIZ	1	10,000.00	2,000.00	0.00	20.0 %
BARER	1	35,000.00	6,469.16	1,491.50	18.5 %
BEAUDETTE	1	35,056.25	7,011.25	0.00	20.0 %
BECK	6	348,028.14	81,909.60	1,000.00	23.5 %
BECK, M	2	112,079.35	22,415.87	420.00	20.0 %
BELL	3	36,566.00	7,313.20	89.44	20.0 %
BEST, M	2	33,000.00	5,010.00	0.00	15.2 %
BISHOP, R	1	71,000.00	12,000.00	0.00	16.9 %
BOGGS, B	1	16,000.00	4,000.00	0.00	25.0 %
BOLAND	4	102,887.00	18,245.86	95.44	17.7 %
BOTHE	47	1,638,029.43	315,689.43	1,241.92	19.3 %
BOTTOMLY	4	191,613.22	45,349.31	4,310.85	23.7 %
BRADSHAW	1	30,506.12	6,101.22	0.00	20.0 %
BRONSON	1	50,000.00	12,500.00	400.00	25.0 %
BROWN	3	125,199.12	24,355.80	0.00	19.5 %
BUDEWITZ	4	109,828.32	16,673.41	424.12	15.2 %
BULEY	3	21,000.00	4,200.00	0.00	20.0 %
BULMAN	33	990,514.59	205,146.61	564.75	20.7 %
BURGESS	3	121,400.00	25,580.08	192.75	21.1 %
BURRIS	1	22,500.00	5,625.00	0.00	25.0 %

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

ATTORNEY FEE SETTLEMENT LIST

Fiscal Year 1992

ATTORNEY NAME	# CLAIMS SETTLED	APPROXIMATE TOTAL NET SETTLEMENT AMT (no annuities listed)	TOTAL FEES	TOTAL COSTS	% OF FEES TO NET SETTLEMENTS
CALLAGHAN	5	104,000.00	13,448.00	0.00	12.9 %
CANNON	2	94,997.63	18,999.11	32.05	20.0 %
COK	2	20,000.00	4,750.00	187.75	23.7 %
COLE	2	27,758.17	2,524.50	200.98	9.1 %
CONNELL, M	3	242,350.00	49,925.00	700.00	20.6 %
CONNORS	1	44,850.00	8,970.00	200.25	20.0 %
COOPER, T	1	15,789.26	3,157.85	0.00	20.0 %
COTHER	1	48,000.00	9,600.00	0.00	20.0 %
CROWE	4	173,542.25	31,708.45	1,190.65	18.3 %
DAHOOD	5	216,000.00	43,180.00	122.05	20.0 %
DAHOOD/EVERETT	1	22,500.00	4,500.00	275.00	20.0 %
DATSOPOULOS	35	1,088,766.38	219,423.49	0.00	20.2 %
DAYTON	8	337,158.24	68,431.64	17.15	20.3 %
DELANE	1	18,409.79	1,593.75	7.50	8.7 %
DIX	1	45,337.69	6,000.00	0.00	13.2 %
DONOVAN	1	49,000.00	11,000.00	0.00	22.4 %
DOUBEK	3	90,650.00	19,395.95	82.86	21.4 %
DOWLING, T	1	12,000.00	2,400.00	242.45	20.0 %
DUCKWORTH	14	341,290.71	68,002.51	1,169.51	19.9 %
DZIVI, R	1	12,500.00	2,500.00	15.95	20.0 %
EAKIN	13	260,631.52	47,744.97	1,269.35	18.3 %
EDMISTON	18	608,460.60	135,873.03	860.45	22.3 %
EISELEIN	4	109,027.40	23,189.85	1,335.43	21.3 %
ENGEL, J	1	25,000.00	5,000.00	140.15	20.0 %

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DATE 2-18-93
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STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

ATTORNEY FEE SETTLEMENT LIST

Fiscal Year 1992

ATTORNEY NAME	# CLAIMS SETTLED	APPROXIMATE TOTAL NET SETTLEMENT AMT (no annuities listed)	TOTAL FEES	TOTAL COSTS	% OF FEES TO NET SETTLEMENTS
EVERETT, B	22	951,927.53	201,099.67	616.35	21.1 %
FAIN	1	13,000.00	2,600.00	0.00	20.0 %
FAIN, R	2	41,021.52	9,108.77	0.00	22.2 %
FAY	1	3,312.00	552.00	50.00	16.7 %
FERGUSON	24	540,267.23	82,553.64	4,666.47	15.3 %
FINN	6	188,736.99	37,547.39	48.00	19.9 %
FOOT	7	291,892.00	47,907.09	289.34	16.4 %
FUNYAK, K	1	21,000.00	4,200.00	214.00	20.0 %
GABRIEL	1	21,975.00	5,493.75	0.00	25.0 %
GARDNER	2	55,475.00	10,700.00	0.00	19.3 %
GAROFOLA	1	9,940.00	1,988.00	0.00	20.0 %
GERHAN, A	1	20,000.00	4,000.00	0.00	20.0 %
GINNINGS	1	46,000.00	87.50	0.00	0.2 %
GOHEEN	1	5,801.74	750.00	0.00	12.9 %
GORDON	1	32,000.00	6,400.00	0.00	20.0 %
GRATTON	1	10,000.00	2,000.00	0.00	20.0 %
GRAVES	5	143,836.47	25,207.79	0.00	17.5 %
GREENWOOD, H	1	11,000.00	150.00	0.00	1.4 %
GRENFELL	5	109,301.66	20,978.98	5,032.64	19.2 %
GROSFIELD	15	587,122.00	91,824.00	834.00	15.6 %
GUENTHER	4	123,950.38	10,756.91	37.10	8.7 %
GURTHE	1	10,000.00	2,000.00	0.00	20.0 %
GUSTAFSON	1	20,000.00	4,000.00	351.37	20.0 %
HALVERSON	22	1,056,946.29	187,836.14	1,115.00	17.8 %

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

ATTORNEY FEE SETTLEMENT LIST

Fiscal Year 1992

ATTORNEY NAME	# CLAIMS SETTLED	APPROXIMATE TOTAL NET SETTLEMENT AMT (no annuities listed)	TOTAL FEES	TOTAL COSTS	% OF FEES TO NET SETTLEMENTS
HALVORSON	1	35,749.10	6,000.00	150.00	16.8 %
HAMMER, J	2	168,438.08	37,419.61	0.00	22.2 %
HANSON	1	67,275.00	8,529.00	0.00	12.7 %
HARMAN	1	3,600.00	720.00	0.00	20.0 %
HARRINGTON, J	11	283,058.46	55,402.14	162.08	19.6 %
HARRISON	2	33,330.50	6,666.70	0.00	20.0 %
HARTFORD, L	5	166,700.75	41,675.18	20.86	25.0 %
HAXBY	11	345,886.50	71,568.63	5,000.00	20.7 %
HEBERLING, J	1	6,000.00	1,200.00	0.00	20.0 %
HENNESSEY	9	130,769.60	20,821.86	897.25	15.9 %
HILEMAN	1	10,000.00	2,000.00	79.00	20.0 %
HOLLAND	1	42,500.00	8,500.00	0.00	20.0 %
HOLT	1	18,500.00	581.25	0.00	3.1 %
HOOKS, P	1	59,500.00	3,000.00	0.00	5.0 %
HOWE	6	118,287.24	23,657.44	1,505.39	20.0 %
HUNT	15	518,630.63	95,695.00	1,223.87	18.5 %
HURT	1	13,734.00	2,740.00	0.00	20.0 %
INGRAHAM	4	108,992.23	21,230.00	162.43	19.5 %
IRVING	2	55,105.00	9,974.50	273.70	18.1 %
JACKSON	1	46,438.00	9,287.60	25.50	20.0 %
JARUSSI	11	481,462.92	86,596.69	908.51	18.0 %
JOSEPH	3	51,000.00	10,200.00	5.25	20.0 %
JOYCE	3	41,500.00	6,870.00	1,290.50	16.6 %
KAMMERER	1	62,166.82	12,433.37	0.00	20.0 %

EXHIBIT 5B
DATE 2-18-93
SB 394

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

ATTORNEY FEE SETTLEMENT LIST

Fiscal Year 1992

ATTORNEY NAME	# CLAIMS SETTLED	APPROXIMATE TOTAL NET SETTLEMENT AMT (no annuities listed)	TOTAL FEES	TOTAL COSTS	% OF FEES TO NET SETTLEMENTS
KAMPFER	1	12,000.00	2,400.00	20.41	20.0 %
KEEFER	8	229,441.24	41,193.85	40.00	18.0 %
KEEGAN	2	100,000.00	20,600.00	0.00	20.6 %
KELLEHER	10	349,205.57	68,585.80	520.27	19.6 %
KELLER	5	272,222.28	42,471.42	344.88	15.6 %
KIDDER	2	60,979.27	12,195.86	0.00	20.0 %
KNUCHEL	1	47,418.77	7,418.77	0.00	15.6 %
KOZAKIEWICZ	1	2,000.00	400.00	0.00	20.0 %
LAURIDSEN	65	1,605,105.35	293,354.06	3,214.72	18.3 %
LERNER, A	1	10,000.00	2,000.00	169.01	20.0 %
LEWIS	64	2,927,245.55	646,569.50	17,142.35	22.1 %
LIND	3	69,000.00	16,500.00	2,058.46	23.9 %
LUCERO	3	56,500.00	11,001.00	0.00	19.5 %
LYNAUGH	28	925,772.59	181,938.62	9,578.35	19.7 %
MAHAN	1	71,500.00	17,875.00	0.00	25.0 %
MAILLOUX	1	43,629.56	8,725.91	0.00	20.0 %
MANLEY	1	8,081.38	1,346.90	0.00	16.7 %
MARBLE	4	90,393.00	17,573.25	391.06	19.4 %
MARKS, S	6	214,151.75	42,630.33	1,718.83	19.9 %
MARRA	1	12,000.00	2,400.00	144.04	20.0 %
MARTIN	17	441,969.77	84,615.72	3,588.79	19.1 %
MASSMAN	1	25,000.00	5,000.00	0.00	20.0 %
MCCANN	8	191,247.49	36,249.49	38.65	19.0 %
MCCHESNEY	1	50,000.00	7,757.50	0.00	15.5 %

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

ATTORNEY FEE SETTLEMENT LIST

Fiscal Year 1992 PAGE: 6

ATTORNEY NAME	# CLAIMS SETTLED	APPROXIMATE TOTAL NET SETTLEMENT AMT (no annuities listed)	TOTAL FEES	TOTAL COSTS	% OF FEES TO NET SETTLEMENTS
MCGARVEY, A	5	142,400.00	31,510.15	5,579.25	22.1 %
MCKEON	7	130,395.24	26,734.16	282.30	20.5 %
MCKEON, L	7	99,187.79	19,080.39	173.05	19.2 %
MCKEON, MJ	3	31,500.00	6,163.48	0.00	19.6 %
MCKEON, T	1	8,000.00	1,600.00	0.00	20.0 %
MCKITTRICK	4	33,513.86	6,789.42	5.00	20.3 %
MEHR	1	43,263.89	8,652.79	0.00	20.0 %
MELCHER	5	123,161.40	23,541.39	376.49	19.1 %
MODINE	2	33,742.81	7,936.00	0.00	23.5 %
MOORE, J	1	25,000.00	5,000.00	0.00	20.0 %
MORRISON, R	1	8,000.00	1,600.00	0.00	20.0 %
MURPHY	2	82,000.00	14,432.00	42.27	17.6 %
MURRAY, M	1	73,000.00	14,600.00	0.00	20.0 %
NASCIMENTO	2	8,250.00	1,650.00	0.00	20.0 %
NELSON, C	1	25,000.00	6,250.00	669.20	25.0 %
O'BRIEN	7	151,121.84	27,216.84	241.16	18.0 %
OAAS	3	100,463.72	20,122.63	94.09	20.0 %
OGG	12	151,647.07	26,836.17	2,397.80	17.7 %
OLDENBURG	1	52,378.21	10,475.64	0.00	20.0 %
OLSON. B	1	34,000.00	2,890.00	0.00	8.5 %
OLSON, K	1	18,000.00	3,600.00	0.00	20.0 %
ORIEL	1	37,000.00	7,400.00	0.00	20.0 %
OVERFELT	28	820,488.24	156,377.24	1,998.58	19.1 %
PALMER. R	3	76,239.69	15,751.00	100.00	20.7 %

EXHIBIT 5B
DATE 2-18-93
SB 394

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

ATTORNEY FEE SETTLEMENT LIST

Fiscal Year 1992 PAGE: 7

ATTORNEY NAME	# CLAIMS SETTLED	APPROXIMATE TOTAL NET SETTLEMENT AMT (no annuities listed)	TOTAL FEES	TOTAL COSTS	% OF FEES TO NET SETTLEMENTS
PAUL, J	1	50,000.00	12,500.00	0.00	25.0 %
PETERSON, R	2	88,750.00	16,750.00	0.00	18.9 %
PHILIP, R.	1	2,500.00	625.00	0.00	25.0 %
PICOTTE	9	216,440.00	43,288.00	413.03	20.0 %
PLATH	20	571,949.54	106,037.98	816.41	18.5 %
POHL	2	19,564.06	3,912.81	84.53	20.0 %
PYFER	21	543,298.66	112,973.97	5,579.11	20.8 %
RAGAR	2	88,500.00	17,700.00	0.00	20.0 %
RAMLER	2	96,000.00	18,000.00	11.85	18.8 %
REGNIER	1	42,000.00	10,500.00	0.00	25.0 %
RENZ	2	111,500.00	27,875.00	55.55	25.0 %
RICE	4	50,910.31	9,557.10	103.32	18.8 %
ROBERTS, S	8	239,385.00	47,096.24	346.50	19.7 %
ROSSBACH/WHISTO	1	30,000.00	6,000.00	0.00	20.0 %
SAMSON, R	2	10,000.00	2,000.00	0.00	20.0 %
SAND	4	127,071.05	26,491.00	658.62	20.8 %
SCANLON	1	14,000.00	2,800.00	0.00	20.0 %
SCHOFIELD	2	70,828.96	12,276.60	0.00	17.3 %
SCHUYLER	3	151,250.00	33,300.00	0.00	22.0 %
SEAMAN	27	671,163.47	133,790.69	193.20	19.9 %
SEIDLITZ	8	327,645.93	65,779.13	3,021.38	20.1 %
SHEEHY	15	383,169.87	71,110.22	430.00	18.6 %
SKAGGS	14	620,382.25	118,209.25	399.62	19.1 %
SKAKLES	1	20,080.00	5,145.00	163.61	25.6 %

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

ATTORNEY FEE SETTLEMENT LIST

Fiscal Year 1992 PAGE: 8

ATTORNEY NAME	# CLAIMS SETTLED	APPROXIMATE TOTAL NET SETTLEMENT AMT (no annuities listed)	TOTAL FEES	TOTAL COSTS	% OF FEES TO NET SETTLEMENTS
SKJELSET	9	368,219.20	50,351.78	36.75	13.7 %
SKORHEIM	11	304,533.86	63,852.93	381.35	21.0 %
SLOVAK	4	262,016.55	47,545.40	400.00	18.1 %
SMITH	1	65,000.00	16,206.11	175.54	24.9 %
SMITH, C	2	32,710.51	6,542.01	0.00	20.0 %
SOMMERFELD	3	129,695.05	37,054.88	10.46	28.6 %
SPEAR	3	73,000.00	14,912.50	0.00	20.4 %
SPRINKLE	2	50,500.00	10,100.00	0.00	20.0 %
STAHMER	6	205,636.44	41,213.78	137.61	20.0 %
STARIN	16	567,161.72	112,184.21	2,249.74	19.8 %
SUENRAM	1	47,500.00	9,500.00	0.00	20.0 %
SULLIVAN	5	207,356.00	37,516.74	1,850.19	18.1 %
THOMPSON	2	40,000.00	8,750.00	36.44	21.9 %
TODD	2	21,000.00	4,200.00	14.50	20.0 %
TOENNIS, P	2	67,005.00	13,401.00	525.00	20.0 %
TORKELSON	2	47,000.00	9,400.00	31.04	20.0 %
TURRIN	3	92,690.35	16,042.65	293.69	17.3 %
UTICK, A	2	111,125.87	24,764.47	1,053.50	22.3 %
VANRIPER	25	770,749.61	157,261.62	2,899.94	20.4 %
VIDAL	2	88,500.00	17,700.00	0.00	20.0 %
VOLINKATY, R	2	42,500.06	9,875.00	6,509.59	23.2 %
WALLACE, L	7	122,507.67	23,665.00	360.00	19.3 %
WARVER	1	69,038.39	13,807.67	0.00	20.0 %
WELLS	1	11,046.00	2,209.20	251.10	20.0 %

EXHIBIT 5B
DATE 2-18-93
SB 394

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

ATTORNEY FEE SETTLEMENT LIST

Fiscal Year 1992 PAGE: 9

ATTORNEY NAME	# CLAIMS SETTLED	APPROXIMATE TOTAL NET SETTLEMENT AMT (no annuities listed)	TOTAL FEES	TOTAL COSTS	% OF FEES TO NET SETTLEMENTS
WESTVEER	1	45,000.00	10,000.00	0.00	22.2 %
WHELAN	15	605,064.50	126,845.22	2,019.72	21.0 %
WHISTON	4	166,687.56	31,876.00	0.00	19.1 %
WHITE	2	51,614.81	10,322.95	0.00	20.0 %
WILSON	2	158,979.76	25,153.22	0.00	15.8 %
WINSTON, J	1	23,394.32	1,000.00	0.00	4.3 %
WOLFE	1	36,586.31	7,317.00	0.00	20.0 %
WOODWARD	10	328,111.85	58,513.09	513.06	17.9 %
WORK	1	5,000.00	1,000.00	100.00	20.0 %
WORM	9	427,288.04	88,269.50	193.48	20.7 %
WUERTHNER	1	22,217.32	4,514.90	151.69	20.3 %
YODER, J	2	66,305.00	10,719.50	1,581.90	16.2 %
YOUNG	2	62,268.31	12,453.66	0.00	20.0 %
TOTALS	1,158	36,673,232.59	7,157,141.71	131,168.35	19.5 %

Montana Trial Lawyers Association

Executive Office
#1 Last Chance Gulch
Helena, Montana 59601
Tel: 443-3124

February 18, 1993

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 2/18/93
BILL NO. SB394

Sen. Tom Towe, Chair
Senate Labor and Employment Relations Committee
Room 413/415, State Capitol
Helena, MT 59620

RE: SB 394

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to SB 394, which further regulates certain attorney fees in workers compensation cases. MTLA opposes SB 394 for numerous reasons:

1. The attorney fees of claimants in workers compensation cases are already regulated, by administrative rules--unlike the fees paid by insurers to defense attorneys.

2. Since 1987, not a penny of the fees paid to claimants' attorneys comes from the pockets of employers, insurers, or Montana taxpayers. All such fees are paid entirely by claimants themselves. In contrast, every penny of the increasing fees paid to defense attorneys comes from employers (who pay premiums directly) or Montana taxpayers (who subsidize State Fund operations). Regrettably, workers compensation insurers are not even required to report the amounts which they spend on attorney fees, and no comparison between claimant and defense fees is possible.

3. Reports of claimants' attorney fees paid in workers compensation settlements include only those disputed cases in which a claimant obtained some recovery. However, most claimants' attorneys (again unlike defense attorneys) collect nothing at all if their client loses. In other words, evaluating attorney fees on the basis of reported

settlements assumes a 100 percent success rate for claimant attorneys and grossly exaggerates their real compensation.

4. Although MTLA has not had time to carefully evaluate the most recent Department of Labor report of settlements and claimant attorney fees, it appears that:

* Total claimant attorney fees remained virtually unchanged from the previous year despite an increase of nearly 20 percent in the number of settlements;

* The average settlement amount decreased from approximately $37,400 in 1991 to $31,600 in 1992;

* The average claimant attorney fee per settlement decreased from approximately $7,480 in 1991 to $6,180 in 1992.

Those trends would continue the dramatic declines reported in previous years. The 1992 figures, for example, reflected a 10 percent decline in settlement amounts between 1990 and 1991 and a corresponding 12 percent decline in fees paid to claimant attorneys. That one-year improvement continued a four-year trend which saw settlement amounts decline more than 30 percent and fees paid to claimant attorneys decline nearly 40 percent.

5. Such declines in settlements and claimant attorney fees, however, have not been accompanied by declines in other components of Montana's workers compensation system. In fact, tremendous increases in medical costs, employer-paid premiums, the operating budget of the State Fund, etc., have made declines in claimant attorney fees seem puny by comparison.

6. This Legislature is also considering, and will likely approve, fundamental changes in workers compensation laws that are already terribly complex. For example, several bills propose limiting workers compensation benefits (both indemnity and medical) to the proportion of an injury directly attributable to the workplace accident. Allocating the causes of injuries in this manner, and introducing the issue of non-work-related causes such as age and lifestyle, will either increase litigation or profoundly disadvantage injured workers who cannot obtain legal representation.

7. Section 1, subsection (2) of SB 394 allows a claimant attorney to contract with the claimant for less than the maximum amounts permitted by the bill (page 1, lines 23-25), but subsection (6) (page 3, lines 12-14) prohibits the claimant attorney from accepting less than the amount prescribed by the contract. Moreover, subsection (6), by requiring those fees to "be paid out of workers' compensation funds received by the claimant," also prohibits an attorney from collecting any fee whatsoever in advance.

8. Subsection (4)(b) of the bill excludes attorney fees for "benefits that are received by the claimant when the attorney has only assisted in filling out initial forms." Ironically, in a workers compensation system which frequently treats claimants completely differently depending upon whether they have retained an attorney, this element of representation may be precisely the most important and effective contribution an attorney can make to an injured worker. Subsequent legal representation generally produces progressively diminishing returns.

9. Subsection (5) of the bill, which subjects fee agreements to department approval, and subsection (7) of the bill, which requires the department to resolve disputes over fees, will entail additional department costs and deserve a fiscal note.

10. Considering the detail of preceding amendments, subsection (8) of the bill authorizing the department to "regulate the amount of the attorney's fee in any workers' compensation case" becomes, for all practical purposes, useless language unless the department can exceed as well as reduce the statutory limits.

Thank you for considering these comments. If I can provide additional information or assistance, please contact me.

Respectfully,

Russell B. Hill
Executive Director

EXHIBIT 6
DATE 2-18-93
SB 394

Great Falls Tribune

Sunday, April 12, 1992

Rea

Time to look closely at workers comp changes

Thank you for Chuck Johnson's March 29 report documenting the 10 percent decline last fiscal year in the amount of workers compensation settlements and the corresponding 12 percent decline in fees paid to claimants' attorneys. Those statistics continue a four-year trend which has seen settlement amounts decline more than 30 percent and fees paid to claimants' attorneys decline nearly 40 percent.

Similarly, injured employees filed 230 fewer work comp claims last year, a decline of 4 percent from the previous year and more than 15 percent over the last four years. The State Fund has still not reported the amount of compensation benefits paid to injured workers last fiscal year (which ended June 30, 1991), but those benefits shrank $10.8 million between 1989 and 1990, a decrease of 10 percent in one year. None of the above decreases, by the way, is adjusted for inflation.

Obviously, lawmakers have been remarkably successful since 1987 at reducing compensation for injured workers and their attorneys. Unfortunately, total annual premiums for work comp coverage increased again last year, with premiums charged by the State Fund jumping more than $8.6 million — more than 9 percent. (Those increases do not include payroll taxes to pay off debts of the old fund.) Work injuries reported to the State Fund last year also increased: more than 2 percent over the previous year and more than 7 percent over the previous four years. The operating budget of the State Fund increased, more than 9 percent last year alone, to $9.8 million, a whopping 45 percent increase in four years.

Despite these numbers, injured workers and their attorneys will remain tempting targets for anyone exploiting oursystem. For that reason, please allow me to clarify several points.

- Not a penny of the fees paid to claimants' attorneys in work comp settlements came from the pockets of employers or Montana taxpayers. All such fees are paid entirely by claimants, who are conspicuously absent among critics of attorney fees. In contrast, every penny of the increasing fees paid to defense attorneys in work comp settlements comes from employers (who pay premiums directly) or Montana taxpayers (who subsidize State Fund operations).
- The 20 claimants' attorneys listed in your March 29 report collected half of all fees awarded in work comp settlements, yet they comprise less than 10 percent of the attorneys representing claimants in such cases.
- Work comp settlements include only those disputed cases in which a claimant obtains some recovery. Most attorneys in work comp cases, however, collect nothing at all if their client recovers nothing. In other words, calculating attorney fees on the basis of settlements assumes a 100 percent success rate for claimant attorneys and grossly exaggerates their compensation in work comp cases.
- Expenses such as staff, facilities, travel, and unreimbursed costs typically consume a third of all fees awarded to claimant attorneys in work comp cases.

According to the laws of economics (which are harder to amend than laws protecting injured workers), more Montana attorneys should gravitate toward work comp cases if fees were actually excessive. But in fact the opposite is true: fewer attorneys are willing now to accept work comp cases, and those that remain must concentrate on workers compensation law.

Montana lawmakers, intent on reducing benefits to injured workers and precluding litigation, have done just that. They have reduced claims — but not injuries. They have reduced claimants' attorney fees — but not premiums or administrative costs. At the expense of individual workers and circumstances, they have made Montana's work comp system more predictable, but they have not yet made it more affordable to Montana employers. Meanwhile, more Montana workers suffer without compensation or recourse and more Montana families and communities feel the economic pain of workplace injuries.

The Montana Trial Lawyers Association represents more than 400 Montana attorneys who are committed to protecting the legal rights of victims and consumers. MTLA welcomes serious discussion and scrutiny of Montana's work comp system, and to that end I thank the Tribune again for injecting important, objective information into a debate too often muddied by anecdotes and caricatures.

RUSSELL B. HILL, executive director, Montana Trial Lawyers Association

MTLA

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7
DATE 2/18/93
BILL NO. SB 394

Amendments to Senate Bill No. 394

1. Page 1, line 20.
Strike: "15%"
Insert: "20% (or 25% if the case goes to hearing before the workers' compensation judge or the state supreme court)"

2. Page 1, line 23.
Strike: "The attorney fee may not exceed $7500."

3. Page 2, line 3.
Strike: "15%"
Insert: "20% (or 25% if the case goes to hearing before the workers' compensation judge or the state supreme court)"

4. Page 2, line 4.
Strike: ", up to the"
Strike: lines 5 and 6
and on line 7, strike: "the state supreme court"

5. Page 3, line 4.
Strike: "$75"
Insert: "$90"

6. Page 3, line 13.
Following: "and"
Insert: "for contingency agreements under subsections (2) and (3) above,"

7. Page 3, line 22.
After line 22
Insert: "(8) For good cause shown, the department may approve a variance providing for fees in excess of the guidelines of fees as set forth in subsections (3) and (4).
(a) To obtain approval of a variance, an attorney has the burden of providing clear and convincing evidence of entitlement to a greater fee by documenting the following factors in regard to the specific claimant and the specific case:
(i) The anticipated time and labor required to perform the legal service properly.
(ii) The novelty and difficulty of legal issues involved in the matter.
(iii) The fees customarily charged for similar legal services.
(iv) The possible total recovery if successful.
(v) The time limitations imposed by the client or circumstances of the case."

Renumber subsequent subsections

Estimated Overhead for Sole Practitioner or Per Lawyer in Small Firm Involved in Litigation

Employee Salaries	$ 40,000.00
Employee Benefits (FICA, etc.)	10,000.00
Insurance	5,000.00
Professional Expenses, CPA	5,000.00
Rent	6,000.00
Law Library	5,000.00
Office Equipment Repair	1,000.00
Travel Expenses	5,000.00
CLE and Professional Dues	500.00
Telephone	5,000.00
Office Supplies and Equipment	4,000.00
Property Taxes	500.00
Litigation Costs advanced that may or may not be recovered (depositions, expert witnesses, etc.)	20,000.00
Total	$107,000.00

1,500 to 1,750 billable hours per year

Overhead costs: $61 to $71 per hour

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8
DATE 2/18/93
BILL NO. SB 394

DATE 2-18-93

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 329 - SB 342 - SB 394

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Ron James	Iron Workers Lo 841	342	✓	
Charles R Brooks	MT. Ref. Assoc	394	✓	
Greg Rutherford	Missoula On Ice Inc.	329	✓	
Sonny Lockner	Mont. Cont. Trust	342		✓
Carl Schweitzer	MCA	342		—
Bradley B Talcott	Mont Contractor Trust	342		✓
John Lawton	City of Great Falls	329	✓	
Wm Egan	MT Conf Elect Wkrs	329	—	Am
Wm Egan	" " "	342	—	
John Mawzey	Teamsters Union	342	✓	
~~John Mawzey~~	~~Teamsters Union~~	~~342~~	~~Am~~	
Michael Mizenko	MT. State Asso Plumbers	329	✓	
Michael Mizenko	MT. State Asso. Plumbers	342	✓	
Ed Tinsley	Labor Union	329 342	✓	?
Mike MacElwain	Mont Assn of Counties	329		
Riley Johnson	NFIB	394	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2/18/93

SENATE COMMITTEE ON LABOR

BILLS BEING HEARD TODAY: SB 329 SB 342 SB 394

Name	Representing	Bill No.	Check One Support	Oppose
Don Judge	MT STATE AFL-CIO	SB 342	✓	
Mike Micone	MMCA	SB394	✓	
Roger B Hill	Mt Trial Lawyers	SB394		✓
Rick Hill	Gov Office	SB394	✓	
Don Judge	MT STATE AFL-CIO	SB 394		✓
Kent Kleinkopf	self	SB394		X
Jacqueline Denmark	AIA	SB 394	✓	
Gerd Phillips	NAII	SB 394	✓	
Dan Whyte	Arco	SB329	✓ w/amend.	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10