

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Towe, on February 20, 1993, at 1:30 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: Eddy 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 377, SB 381, SB 360, SB 405
Executive Action: SB 347, SB 342, SB 62, SB 394, SB 329,
SB 274, SB 377, SB 381, SB 360, SB 405

HEARING ON SB 377

Opening Statement by Sponsor:

Senator Sue Bartlett, Senate District 23, told the Committee SB 377 would require employers to provide a ten minute rest periods to employees for every four working hours. Senator Bartlett explained the Bill was drafted in response to a request of people in Senate District 23. These people work for an employer who had provided for rest periods during the company's history in Montana. The company was purchased by a national corporation, and the new owners prohibit rest periods because Montana law does not require it. Each time the employees requested breaks, they were told they would not have them until rest periods were required by state law. Senator Bartlett told the Committee among Western states Colorado, Utah, Nevada, Oregon, Washington, and

California require rest periods. She continued, saying that rest periods contribute to work place safety and employee productivity. The rest period provisions of SB 377 did not apply in emergency instances in which property, life, public safety or public health would be in danger; it would not apply to a single job site serving the general public when the employer had fewer than three employees on a shift; it would not apply when an employee's total time worked in a day is less than four hours; it would not apply when the providing of rest periods would conflict or interfere with the requirement of any Federal law. Senator Bartlett explained this would mean employees in nursing homes would not have required breaks under law. She said also this decision was based on a need to limit health care costs. Requiring nurses in nursing home to take breaks may force the home to hire more employees, thus driving up the cost of the care in the home. Federal law would also exempt teachers certified by the Office of Public Instruction (OPI). Senator Bartlett proposed an amendment which would exempt employers that had an existing collective bargaining agreement with which ten minute rest periods would conflict, such as a case brought to Senator Bartlett by Leo Barry on behalf of the Railroad Union. Senator Bartlett told the Committee she had included in SB 377 a section that would allow the Montana Department of Labor and Industry to adopt rules and to consider case-by-case exceptions in the event that demands of public safety would prevent the employer from complying with the Bill. The statement of intent of SB 377 instructs the department to construe the provisions of the Bill narrowly when making decisions on a case-by-case basis. SB 377 allows the department to address through rule-making authority the conditions under which it would grant an exemption. This would allow for the flexibility needed to make the provisions of SB 377 work in Montana.

Proponents' Testimony:

Ryan James, International Union of Ironworkers, rose in support of SB 377. Mr. James stated that the Ironworkers had a collective bargaining agreement with the Steel Directors Association that included no rest periods. He told the Committee that a gentlemen's agreement within the Ironworkers allowed for ten minute coffee breaks. That agreement had been in place for the sixteen years Mr. James had worked for the Ironworkers. He stated SB 377 was important to his organization because the employees would sometimes work 10 to 12 hours at a time.

Don Judge, Executive Secretary, Montana State AFL-CIO spoke in favor of SB 377. Mr. Judge made reference to a bill given a do pass recommendation by the Committee introduced by Senator Harp that requires workplace safety committees. He told the Committee the AFL-CIO believed SB 377 would go one step further in aiding workplace safety.

Gene Fenderson, Montana District Council of Laborers', rose in support of SB 377.

Janette Gill testified she was in support of SB 377. She told the Committee her employer, who remained undisclosed, had taken work breaks away two years before because the State of Montana did not require coffee breaks. The other branches of her company in California and Colorado allowed rest periods because laws in those states require them. Ms. Gill stated Montana employees were told that unless the law changed, they would not be allowed breaks. She stated that she was in favor of the provisions in SB 377.

Opponents' Testimony:

Greg Van Horssen, State Farm Insurance, rose in opposition of SB 377. He told the Committee State Farm employs several hundred people in Montana. Mr. Van Horssen continued that State Farm agreed whole-heartedly with SB 377 in concept, but State Farm had concerns with the concepts. Mr. Van Horssen said one concern would be addressed with an amendment regarding collective bargaining agreements and other similar agreements. He suggested employees and employers should be able to discuss the employment relationship; that both the employees and employers of State Farm knew there would be times when employees would be required to work extended hours in the interests of serving clients. He stated this did not mean State Farm did not offer breaks within the employment contract; it did, but the company did not feel breaks should be statutorily mandated. Mr. Van Horssen asked if SB 377 would cover exempt or non-exempt employees, or both; he asked how the Bill would address the situation of an employee that was not paid hourly; he asked how an employer was to document whether or not a required break had been taken. Mr. Van Horssen told the Committee SB 377 was interpreted by him to mean once the provisions were in place everybody was going to take a ten minute break every four hours. He told the Committee that this was not true. Mr. Van Horssen asked if the employer must force the employee to take the break, even though the employee did not want to. He reiterated the fact that State Farm agreed with the concept of SB 377. He said State Farm rose in opposition to the Bill as it read without some amendments. He suggested an amendment that would exempt agreements not made just in collective bargaining situations, but any other agreement between employers and employees.

David Owen, Montana Chamber of Commerce, stated the Chamber thought SB 377 was too much to address the particular situation in Montana, but believed the idea of breaks was supportable. Mr. Owen said he had the Chamber staff poll about twenty of the members to find out if they allowed breaks. The polls showed about half of the members allowed breaks, and the other half did not. He stated the comments of the employers that did not allow breaks were those that were important for the Committee to consider. The half that did not supply breaks maintained a very flexible work place that allowed for coffee at the desk, talk between employees, and occasional breaks to leave the office and run errands or take care of a child. He stated that most smaller

Montana companies did allow this type of flexibility, and did not need new laws to mandate the way the employers ran the company.

Russ Ritter, Washington Corporation, reluctantly opposed SB 377. He told the Committee that Washington Corporation had a system where an employee was allowed to take informal breaks and time off. He stated that the Corporation did not have organized coffee break rooms. Mr. Ritter said as he read the bill, it seemed as if it required a place to take a break. He told the Committee as long as an employee got the assigned work done, Washington Corporation had no problems with its employees taking breaks. He announced the company was open to any amendments that would allow the Corporation's working situation to stay relatively the same.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Blaylock asked Greg Van Horssen if he would support SB 377 if the amendments he suggested were added to the Bill. Mr. Van Horssen answered he believed State Farm would. He explained within the context of employer and employee relationship, the employee had to understand there would be times when a break would not be appropriate in lieu of serving clientele.

Senator Keating asked David Owen if SB 377 would be more acceptable to him if the Bill were to read that an employee would have a paid rest period every four hours unless the employer allowed for flexibility as far as breaks were concerned. Mr. Owen answered that this provision would make the Bill more acceptable, but the Chamber would probably still oppose SB 377.

Senator Towe asked Mr. Owen if he thought there was a need to do something about the employers that did not offer breaks, in lieu of the fact most other states had laws mandating them. Mr. Owen answered that he would hold to his formerly stated opinion.

Senator Aklestad asked Senator Bartlett asked if SB 377 included people paid by the day, rather than hourly. She answered the intent was to cover employees at all levels.

Senator Aklestad asked Senator Bartlett if the employees that came to her from her district were union or non-union employees. Senator Bartlett answered they were non-union.

Senator Aklestad asked Don Judge if union agreements the AFL-CIO had with various employers had provisions for breaks. Mr. Judge answered the Montana State AFL-CIO did not have any collective bargaining agreements with employees as they were represented by unions. He continued that a ten to fifteen minute rest period

was a normal agreement in most union contracts.

Senator Aklestad asked Mr. Judge if he knew of any contracts within the unions in which a break was not included. Mr. Judge answered he did not. He said there may be some.

Senator Wilson asked Senator Bartlett if she could clarify her ideas regarding railway trainmen. She answered that the amendment (SB037701.AEM) was drafted to address the situation of the railway trainmen. She said her understanding was the provisions in the trainmen's contracts differed from provisions in SB 377, but still allowed for some sort of rest period. She said the trainmen did not wish to get caught in-between the requirements of state law and the provisions of their collective bargaining agreements.

Senator Blaylock asked Senator Bartlett how widespread the practice of not giving breaks was in Montana. Senator Bartlett answered she had no solid information on how common the practice was. She went on to say that Mr. Owen's poll showing half employers gave breaks, and half did not, might be representative of employers in Montana.

Senator Aklestad asked Senator Bartlett to clarify that for every four hours of work an employee could have a ten minute break. She answered that within each continuous four hours of work there would be required a ten minute break according to the provisions in SB 377.

Senator Aklestad asked Senator Bartlett if he was to assume on a normal work day the Bill would not apply to a person working from 8 AM to 5 PM with an hour off for lunch. Senator Bartlett answered that within the four hours between 8 AM and 12 PM, a ten minute break would be allowed, and another allowed within the four hour time span between 1 PM and 5 PM, assuming lunch was the hour between 12 PM and 1 PM.

Closing by Sponsor:

Senator Bartlett closed. She stated she had attempted to build flexibility into the provisions of SB 377. She added that she would oppose an amendment that would include agreements between employers and employees outside of the presence of a collective bargaining agreement. Her own experience was an employer carried a great weight in being able to secure what that employer wanted, and the employees were at a distinct disadvantage. She told the Committee that SB 377 was an attempt to give employees the leverage they needed to secure a rest period. Senator Bartlett said she would raise the same opposition to any amendment regarding Mr. Ritter's comments that Washington Corporation was flexible enough to allow for breaks without them being mandated. She said she would not want to amend SB 377 so that almost every employer would not be covered by the provisions. She explained that her work experience was primarily as a supervisor and

manager; she found rest breaks enhanced employees' performance, ability, and reinforced the desire for safety in the workplace. She said there was a "bad actor" aspect in the motivations of introducing SB 377, but that she did not think Montana needed companies that would attempt to get more out of the employees by taking away rest breaks that had been provisions of their contract previously. She said good managers would be capable in adjusting to the provisions in SB 377, and would be able to make a transition without disrupting the workplace.

HEARING ON SB 381

Opening Statement by Sponsor:

Senator Forrester, Senate District 49, opened on SB 381. He said there were employers that misclassify an employees work category in order to pay lower workers' compensation premiums. SB 381 provides for the collection of payments, penalties, fines, and remedies for enforcement by the Montana Department of Labor and Industry. He stated SB 381 was a workers' compensation reform bill which leveled the playing field of workers' compensation.

Proponents' Testimony:

Don Judge, Executive Secretary, Montana State AFL-CIO, told the Committee there was other similar legislation being considered that dealt with penalties for misrepresented payroll in order to save on workers' compensation premiums. Mr. Judge told the Committee double the premium cost in fines seemed to be an appropriate penalty. He questioned Page 3, lines 11 through 13, the deposit of the fines in the Uninsured Employers' Fund to be used for purposes delegated for the fund. He said employers in question in SB 381 were not uninsured, but rather under-insured. He told the Committee that he believed the funds should be deposited in the regular workers' compensation fund in order to hold down the premium rates for those employers participating in the system.

Ron James, International Union of Ironworkers, rose in support of SB 381. He said the Ironworkers supported the Bill.

Gene Fenderson, Montana District Council of Laborers', spoke in strong support of SB 381. He told the Committee he felt one of the problems with workers' compensation in the state of Montana was the non-reporting or misclassification in workers' compensation. Mr. Fenderson stated in California up to 70.7% of construction contractors misclassify their employees to save money. In Washington, D.C., a study conducted by Washington University showed that 152,000 tradesmen are classified as workers for residential projects, but another 120,000 workers that work for these projects were misclassified.

Jacqueline Lenmark, American Insurance Association, stated her

association's strong support of SB 381. Ms. Lenmark told the Committee the amendment suggested by Mr. Judge assumed all employers misclassifying employees were insured with the State Fund. She continued the amendment would eliminate a method to fairly return penalties to employers insured with the companies of the AIA. She stated the Uninsured Employers' Fund was a fund all people contribute to, and while it was true employers penalized by the Bill were not uninsured, the Fund was a mechanism to return the penalties to all the parties participating in the system.

Opponents' Testimony:

Roger Tippy, Montana Beer and Wine Wholesalers' Association stated he was in between being a proponent or an opponent to SB 381. He told the Committee he agreed with the intent of the Bill, but foresaw some practical problems it could present. He offered a set of amendments he had shared with Senator Forrester that would address these problems (Exhibit #1). Mr. Tippy explained the Scopes Manual of Job Classifications does not clearly spell out the way to classify employers. He said it was difficult and confusing to apply in some circumstances. Mr. Tippy told the Committee in the Association the employers had the experience of the employees being classified by code 8810 as outside salesmen, or by code 7390 if they place the kegs and physically handle the beer or wine. He explained 7390 held a much higher premium rate because of the dangers of back strain and injury involved. Sometimes a salesperson, classified by 8810 may arrange a floor display, or by other means handle the beer or wine. One of the wholesalers' was visited by a State Fund auditor and was told if a salesperson handled merchandise they must be reclassified under 7390. This wholesaler sought an administrative review which looked at the interchange of labor rules in the Scopes Manual that clarifies if a person is doing a combination of jobs that fit under two or more codes, that employee must be classified under the job which is most hazardous. There are exceptions for seasonal work and incidental work which allow some judgment factor. Mr. Tippy stated SB 381 assumed the employer goes through the Scopes Manual and classifies the employee. He continued sometimes the State Fund makes the job classification decision. They may call the NCCI office in Denver to help classify the employer. Mr. Tippy told the Committee SB 381 should be aimed at the way the employer describes the job, and if that is misdescribed the penalties should apply. Mr. Tippy explained his amendments (Exhibit #1). He said that with those amendments in place, he would join the proponents.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Aklestad asked Ron James in what other instances were there criminal actions taken in workers' compensation. Mr. James explained there were several penalties regarding fraud on both the employees' and employers' sides.

Senator Aklestad asked Mr. James if the criminal penalty for the type of fraud mentioned in SB 381 was already decided on. Mr. James answered he did not know what the penalty would be. Senator Towe clarified the penalty for a misdemeanor was generally six months imprisonment.

Senator Aklestad asked Senator Forrester if he knew what the penalty would be. Senator Forrester answered the intent of SB 381's penalty provisions was more administrative penalties, and no jail time was mentioned.

Senator Aklestad asked Senator Forrester how much criminal action could be taken. Senator Towe answered the penalty would be up to six months jail time or \$500 unless stricter provisions were specifically set forth to the contrary. SB 381 does not provide any stricter provisions.

Senator Aklestad asked Senator Forrester if he was understanding correctly a section of the Bill by interpreting the Montana Department of Labor and Industry could completely close a company if a workers' compensation premium violation was discovered, no matter if the discovery had been verified. Senator Forrester answered that it was not his intention to let the Montana Department of Labor and Industry simply shut a business down without verifying there had been a fraudulent action on behalf of the employer.

Senator Aklestad asked Senator Forrester if he would be willing to amend SB 381 in order to clarify the section that would allow for the Montana Department of Labor and Industry to shut a business down. Senator Forrester answered this section was one to encourage employers to abide by the law.

Senator Lynch asked Senator Forrester if on Page 2, line 4 of SB 381, he would support changing "shall" to "may" in order to give more latitude to the Montana Department of Labor and Industry in whether or not to close a business. Senator Forrester answered he would support the amendment. He clarified the intent of SB 381 was to make it harder for an employer to misclassify an employee by making the punishment stricter. Senator Towe said the amendment would make sense in view of Mr. Tippy's comments that sometimes misclassification was not intentional.

Senator Keating asked Senator Towe if on Page 2, line 3, "when the department discovers," the word "discovers" has a legal meaning. Senator Keating asked if it would be better to use the word "ascertain." Senator Lynch answered the words were synonymous in this context. Senator Towe said he agreed with Senator Lynch.

Senator Towe asked Senator Forrester if he had any argument with the amendments offered by Roger Tippy. Senator Forrester answered he would support them only if needed. He said he thought many of the employers that misrepresent the classification of their employees do so for personal gain.

Closing by Sponsor:

Senator Forrester closed on SB 381.

HEARING ON SB 360

Opening Statement by Sponsor:

Senator Nathe, Senate District 10, told the Committee SB 360 was intended to set the insurance premium rates of volunteer firefighters in accordance with the number of fire runs made in the previous year. At present, a volunteer firefighter in an incorporated city would pay \$25 per month, or \$75 a quarter in premiums for their workers' compensation. A rural volunteer firefighter would pay based on a \$900 per month salary. This is much higher. Senator Nathe told the Committee a rural volunteer firefighter may make ten runs per year at two hours for each run, or be involved in twenty hours of fire fighting per year. He stated the premium based on \$900.00 salary per month was out of proportion with the risk involved. Senator Nathe stated SB 360 was an attempt to balance the premium rates with the risk involved for volunteer firefighters.

Proponents' Testimony:

Jim Murphy, State Fund, said he needed to point out SB 360 conflicted with MCA Section 39-71-123(5). He explained this was a section Senator Nathe referred to when in 1991 the Senator set forth the threshold for payroll and workers' compensation benefits for volunteer firefighters.

Opponents' Testimony:

Jacqueline Lenmark, American Insurance Association (AIA), said SB 360 was well intended and designed to correct a problem volunteer firefighters were facing. She told the Committee the basis of the association's opposition was the complexity of the rate making system, which is designed not only to include risk, but to pay for benefits if there is an injury. Ms. Lenmark explained the rate-making process began with the NCCI. She said because of the wide-spread application of the rate-making process, the AIA felt payroll was the best indication for setting rates. She said the AIA opposed any measure using any other basis of calculation. Ms. Lenmark said the AIA believed the rate-making process should be consistent across all classifications and industries so it works fairly for all who are included in the workers' compensation system.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Blaylock asked Ms. Lenmark if the \$900.00 per month estimate was based on the wage the firefighters would receive if they were getting paid. Ms. Lenmark answered if a firefighter was injured, the benefits that firefighter would receive would be as much as if he were receiving \$900.00 per month in salary. She stated the AIA was not against the firefighters, but rather a new rate-making process.

Senator Towe asked Senator Nathe what the intent was of the Bill. He asked Senator Nathe to clarify if SB 360 meant if someone was injured and would be covered by workers' compensation, that person would only receive pay based on a two-hours-per-mission basis. Senator Nathe answered that was not what he intended. He explained volunteer firefighters in incorporated cities fighting structural fires are only paid \$25 per month. Rural volunteers were paying a workers' compensation premium in order to be covered by workers' compensation set at a premium based on \$900 per month. He said one firefighter would fight structural fires and make many fire fighting runs, one would fight grass fires and make only a few runs, yet the one that would fight the less dangerous of the two and less often would pay more for protection under workers' compensation.

Senator Towe asked Senator Nathe to clarify MCA 39-71-123(5) with which SB 360 would conflict. Senator Towe read the code and stated the code does not specify rural or incorporated city firefighters, but rather says volunteer firefighter premiums would be based on \$900.00 per month salary. Senator Nathe said volunteer firefighters from an incorporated city may be paid only \$75.00 per quarter.

Senator Towe directed his question to Jim Murphy. Mr. Murphy answered he thought MCA 39-71-123(5) was referring to rural firefighters. Senator Towe found the wording limiting the code to rural firefighters.

Senator Towe asked Jim Murphy how he would handle the volunteer firefighters in a city. Mr. Murphy answered Senator Nathe was referring to the self-insured cities, but he was not sure how the cities reached the \$75.00 per quarter premium. Mr. Murphy clarified the conflicting point between the statute and SB 360 was the statute set \$900.00 for a payroll base and \$900.00 for a workers' compensation base. He told the Committee Senator Nathe was correct in stating the small rural fire districts did not have enough budget to pay these premiums.

Senator Towe directed the question to Ms. Lenmark. She answered that self-insurers, under PLAN 1, do not pay premiums, but rather

pay the same benefits. Those companies under PLAN 2 collect premiums. She said that most volunteer firefighters were within the self-insured definition.

Senator Lynch asked Jim Murphy to clarify if Butte firefighters were considered self-insured or premium insured, since Silverbow county is not incorporated, but rather a consolidated government with several volunteer fire departments, as well as a paid fire department. Mr. Murphy answered that they were considered self-insured.

Senator Lynch asked Senator Towe why the Committee could not strike out the reference to "rural" and have all volunteer firefighters pay the same premiums. Senator Towe answered that this would mean the rural firefighters would then only receive benefits based on the two-hour estimated fire runs, or an estimated \$9.00 per month. Senator Nathe answered the intent was not to reduce the coverage of the rural firefighters that severely. Senator Nathe clarified the intent of SB 360 was to be a protection of the volunteer, his home, and his family, while making the premiums on this protection affordable and reasonable.

Senator Aklestad asked Jim Murphy if he meant Montana did not have any volunteer firefighters covered under the State Fund in incorporated towns. Mr. Murphy answered he was not sure. He said there may be a few of the incorporated city volunteer firefighters covered under the State Fund.

Senator Aklestad asked Mr. Murphy what the rate was on these. Mr. Murphy answered the rate was based on what the salary of a regular firefighter would be.

Senator Aklestad asked again what the rate would be. Mr. Murphy answered he would have to check.

Senator Aklestad asked Mr. Murphy if he knew what the rate was charged on a salary of \$900.00 per month. Mr. Murphy answered it was the same code rate. Mr. Murphy clarified if the Committee passed SB 360 it would repeal MCA 39-71-123(5), the base for the workers' compensation pay for a volunteer firefighter.

Senator Towe asked Jim Murphy if the workers' compensation base would then return to the two hours per month average work time for a rural volunteer firefighter. Mr. Murphy answered the base would return to the statutes determining wage loss compensation, where if a person was hurt, that person would be compensated for the pay lost due to the injury. Because a volunteer would lose no wage, they may get no compensation.

Senator Towe asked Senator Nathe to comment on Mr. Murphy's answer. Senator Nathe answered he was working to balance the risk involved in being a rural volunteer firefighter with the

workers' compensation premiums a rural volunteer firefighter would have to pay to receive benefits. Senator Nathe said the premium rate should not outweigh the risk so tremendously.

Closing by Sponsor:

Senator Nathe closed on SB 360.

HEARING ON SB 405

Opening Statement by Sponsor:

Senator Keating, Senate District 44, told the Committee the Constitution required an employer provide workers' compensation coverage for an employee if the employer is to be exempt from liability. Senator Keating continued an employer's choices of buying coverage were privately, self-insured, or through the state plan. The state workers' compensation plan presently covers 70% of businesses in Montana. Senator Keating said SB 405 would abolish the state plan requiring the employer provide workers' compensation and to establish alternative opportunities of obtaining coverage (Sec. 4, page 11). This section states an employer who has any employees in service shall maintain a workers' compensation and occupational disease insurance policy with an insurance company authorized to transact business in Montana. Senator Keating stated the employer could also be self-insured as provided for in law, or could make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund plan or program that meets the requirements of the Employment Retirement Income Security Act (ERISA) of 1974. He continued these would be the three areas where an employer could get coverage.

Senator Keating told the Committee SB 405 provided for an assigned risk pool so if an employer was denied coverage by a private carrier and the employer did not want to be self-insured or participate in a trust plan, the assigned risk pool, governed by the Insurance Commissioner, would in rotation assign those employers to a private firm doing business in Montana.

Senator Keating stated his original intent was to strike all of the law, the benefits, and the procedures on the assumption each employer could negotiate benefits packages and claims procedures with the employees. Senator Keating stated it was pointed out these amendments would create imbalances in the system. He said the decision to make was what benefits should be written into law. Workers' compensation benefits in Montana were subjective in law. Senator Keating told the Committee rates are not specific and this made it hard for claims management and payment of benefits.

He said the Oregon plan established three years before had higher benefits than Montana's plan, had good claims procedures, had certain limits on times and types of coverage, and had been very

successful. Senator Keating continued the premiums had come down significantly since the plan was established, while the benefits had been higher. He stated this was because the benefits were going to the worker and not the lawyers and doctors. Senator Keating recommended the Committee put the Oregon benefits into Montana law. He said he would accept a benefit package acceptable to everyone concerned. Senator Keating told the Committee there were nineteen states with a state plan and the other thirty-two seemed to operate well without one.

Proponents' Testimony:

Doug Wilson, Tri River Lumber Sales, submitted written testimony to be entered into the record (Exhibit #1).

Kimberley Greenough, Townsend Lumber Company, Inc., submitted written testimony to be entered into the record (Exhibit #2).

Terry Keating, representing himself, told the Committee in 1988 he had become involved with a group dealing in economic planning and had attempted to see if the group could find a method of increasing economic development. He stated he co-chaired a committee managing the Strategic Planning Process, work done by three hundred people in Yellowstone County.

Mr. Keating stated he was not representing any of the groups he had mentioned or was involved in, but himself only. He continued it was because of his experiences in these groups he had the opportunity to speak to hundreds of employers and employees in the previous five or six years. He said he believed he had come to know the employers' and employees' problems in terms of running businesses in Montana. Mr. Keating told the Committee one threat he saw within the system was the burden the workers' compensation fund placed upon small employers. He continued that statistics showed 9% of economic development occurred through business retention and expansion; only 10% occurred through business recruiting. He stated 65% of businesses in Montana employ less than ten people. Mr. Keating said the backbone of the Montana economy is the small business person. He told the Committee an effort must be made to retain these small businesses and give them the opportunity to expand in order to help economic development in Montana.

Mr. Keating said as Senator Keating had showed, the idea of privatizing workers' compensation was not too radical. He reviewed the concept of privatizing Montana's workers' compensation, speaking from prepared charts (Exhibit #3). Mr. Keating said the growing debt of the workers' compensation fund was caused from mismanagement of claims, fraud, and a system that was too cumbersome to operate.

Mr. Keating said one part of SB 405 he found was a salvation of economic development was the portion that would allow a small employer to offer benefits under an ERISA plan. He continued

that if abolishing the State Fund was not possible, then he would ask the Committee to preserve the portion of SB 405 that addressed ERISA, and consider it as a plan under the State Workers' Compensation Fund. Mr. Keating told the Committee this would allow employers under an ERISA plan that are currently offering benefits to offer workers' compensation benefits in a manner that meets or exceeds those workers' compensation benefits mandated by the state of Montana. He said this would aid a small employer that has a large turnover of employees due to not being able to offer a benefit package. Mr. Keating continued these employers believed they could maintain employees for a longer period of time if they could offer a benefit package. He asked the Committee to maintain at least this section of SB 405.

Carl Schwartz spoke on the behalf of Bradley Talcott, president of James Talcott Construction, from written testimony (Exhibit #4).

Bob McClees, McClees, Inc., Bozeman, stated McClees, Inc. employed on an average 65 employees, and as many as 90. He said they did construction work and operated in Montana, Wyoming, Arizona, Idaho, and Washington. He told the Committee he was in support of SB 405 not to prevent the State from insuring workers' compensation cases, but rather to give his corporation another option to place employees under workers' compensation coverage. He stated his understanding was the ERISA portion of SB 405 would allow McClees, Inc. to have other options. Mr. McClees gave two examples of why the corporation wanted other options. He said high workers' compensation rates in Montana made it difficult to compete with companies in other states. This was a great disadvantage to his present employees and employees he would like to hire. He gave an example of a time his company had an opportunity to be the low bidder on a job in Arizona, but another company procured the project because McClees, Inc. could not afford to bid lower. Another case occurred in Billings where the low bidder came into Montana from Wyoming. None of the Montana companies bidding on the job could afford to bid lower due to workers' compensation rates.

Mr. McClees told the Committee another reason his employees and future employees would be hurt by being forced to be covered under the state plan was the deposit premiums employers were required to pay into the State. He said that because of the number of employees and the payroll of McClees, Inc., the state was asking for a deposit of \$150,000.00. He stated this was a large portion of the working capital of the company. If the company had an option outside of the State Fund, the deposit premium would not be required. Mr. McClees reiterated his support for SB 405.

Reily Johnson, National Federation of Independent Business (NFIB), told the Committee NFIB had polled its members, and found that 3 out of 4 voted to privatize workers' compensation.

Mr. Charles Brooks, Vice President, Montana Retail Association, submitted written testimony for the record (Exhibit #5).

Opponents' Testimony:

Jacqueline Lenmark, American Insurance Association, told the Committee the AIA opposed SB 405. She stated several areas of SB 405 the AIA believed would cause problems for Montana. Ms. Lenmark said the Bill seemed to be premised on an idea that when the State Fund was abolished there would be coverage immediately available to all Montana employers through the insurance carriers the AIA represents. She told the Committee this coverage would not happen immediately. She continued there would not be immediate response by private insurers on July 1st when the State Fund was abolished. She stated the AIA supported the three plan system Montana has presently. She said the AIA would like to see a stronger and healthier State Fund and a leveler rating base so the AIA companies could compete with the State Fund.

Ms. Lenmark told the Committee SB 405 would repeal the section of law providing for exclusive remedy to Montana employers. She said the AIA felt exclusive remedy was an important protection under the workers' compensation system. She continued this protected an employer from tort suit and damages arising from tort suit litigation.

Ms. Lenmark stated another problem with the Bill was the assigned risk plan. She told the Committee this would discourage private carriers from reentering the Montana insurance market. The companies she represented had about 10% of the total market share in Montana, self-insurers represented another 10%, and the State Fund represented about 80%. Ms. Lenmark said SB 405 was asking companies representing only 10% of the market share to pick up the assigned risk of the 80% of the market share the State Fund held. This would be a major deterrent to private companies looking to enter the Montana market.

Ms. Lenmark said the last area of concern the AIA had with SB 405 was the ERISA portion of the Bill. She stated other states had attempted to enact ERISA as an option in the workers' compensation arena with a belief that federal law would preempt state laws. The matter of whether that preemption actually stands for employers was being litigated in California. She continued if employers chose to insure under ERISA, and did not do so correctly, the state may be able to enforce its own laws upon the employer in addition to the federal ERISA laws. She cautioned this matter of ERISA needed to be examined closely before SB 405 was considered.

Don Judge, Executive Secretary, Montana State AFL-CIO, claimed the AFL-CIO had no problem with the assigned risk plan. He said the Montana State AFL-CIO had been an advocate of maintaining a State Fund in states having one. He told the Committee an ERISA approach had to be examined because funded plans providing

protections for the payment of benefits, outside of the state plans and independent insurers, seemed to be a good idea. Mr. Judge said this would eliminate the duplication of the payments for health care costs. He said at the present an employer paid for health care coverage for an employee both at work and away from work. He told the Committee there was legislation in the House of Representatives proposing Taft-Hartly funds to provide coverage because these funds would be strongly regulated. He said there were problems with ERISA in that it may grant an automatic assumption if a plan is adequately funded, but will not investigate a problem until a fund has proved it does not have enough money to meet obligations.

Don Allen, Coalition for Workers' Compensation Improvement, told the Committee early in the coalition's work it took a position against abolishment of the State Fund. He said the coalition had not taken a position on the other aspects of SB 405. He said everything had to work together to fix the workers' compensation system. The State Fund should be one of the elements to help fix the system.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Aklestad asked Senator Keating if the states without a state plan bought from the private sector. Senator Keating answered they bought from the private sector or those who were self-insured. He said they had assigned risk rules.

Senator Aklestad asked Senator Keating if Oregon was a state that purchased from the private sector. Senator Keating answered Oregon had a state plan called SAIF instituted about three years before, but it has more private carriers operating in the system.

Senator Aklestad asked Senator Keating if Oregon had more private carriers in its system than the states with the private insurers insuring the employers. Senator Keating answered he did not know.

Senator Towe asked Senator Keating to respond to Ms. Lenmark's concern that if SB 405 was implemented there would not be enough private carriers. Senator Keating answered the private carriers and the State had competed before, but the State began to charge low rates which caused the private carriers to leave the State. He said this caused the State to lose money. He told the Committee there were two choices: To have the State charge the NCCI recommended rates, or to continue to lose money.

Senator Towe asked Senator Keating if there was a third alternative to make sure there was only one plan to assure all

assigned risks were taken care of by the same plan. Senator Keating answered this was a monopolizing view. He said this could drive up taxes, as the same type of plan had done in Canada.

Closing by Sponsor:

Senator Keating told the Committee the only way to keep a financial exposure to the Montana taxpayer was to privatize workers' compensation. He stated SB 405 provided for the State Plan to be phased out by July 1, 1994. He said this plan would encourage competition. He told the Committee more than 100 thousand Montanans, and 40 million Americans were estimated covered by self-funded plans, or ERISA plans. He continued these had lower premiums of about half the State Plans'. Premiums paid into private plans have generated reserves and the retention of costs are much lower, yet the self-funded plans pay higher benefits than a State Plan.

Senator Keating said Oregon had higher benefits than Montana, and a similar benefit package would be good for Montana. He said the date for getting the State Fund out of Montana could be postponed if the privates wanted to pick up a market share in Montana. He said if they did not, the State Fund would be available to fall back to. He said there would be no competition until the State Plan charged actuarially sound premium rates. He told the Committee as premiums go up employers lay-off employees. Senator Keating said SB 405 had merit, and if the Committee wanted to amend it, he asked the ERISA plan stay within the matrix of the Bill. He asked help in amending it while keeping the potential.

EXECUTIVE ACTION ON SB 347

Motion:

Senator Wilson moved that subcommittee amendments (SB034701.AEM) be adopted.

Discussion:

Senator Keating asked Senator Harp if the chiropractors and physical therapists were able to participate in the providing rehabilitation and services for the recovery of workers. Senator Harp answered they would.

Senator Keating asked Senator Harp if the physical therapists were provided for in the Bill. Senator Harp answered physical therapists were considered "treating physicians" by SB 347.

Vote:

The amendments SB034701.AEM were UNANIMOUSLY ADOPTED, with Senator Lynch voting yes by proxy.

Motion:

Senator Wilson asked that amendments (SB034703.Anb) be reviewed in concept, reserving the right to change any grammatical errors, as the amendments had not been through editing. He moved the amendments be adopted.

Discussion:

Nancy Butler, General Council, State Fund, explained the amendments (SB034703.Anb). Ms. Butler stated item 2 of the amendments was requested by the Chiropractors. She said the next three amendments were in response to concern the hospitals had voiced. She explained item 5 of the amendments would help the Montana Department of Labor and Industry establish rates by giving the department rates to look at.

Senator Towe asked Nancy Butler who would set would the rates mentioned in item 5. She answered the Montana Department of Labor and Industry would set the rates.

Ms. Butler continued to explain item 6, saying that this would allow the insurer to pay only what the insurer would pay for services in Montana, whether or not the person receiving services received the services in the state.

Senator Blaylock asked clarification on item 6. He asked if a person decided to go to an out-of-state care center for medical service, would an insurer pay only what would be the normal rates for the same care in Montana, and the person who sought the care would pay what was not covered by the insurer. Ms. Butler explained it would depend on the hospital's policy. If the hospital billed in excess of insurance coverage, the person seeking care out-of-state would pay the excess.

Ms. Butler said the AFL-CIO had raised a question regarding having more than one Managed Care Organization (MCO) available in a community. Item 8 allows a worker to choose which MCO to receive services from if there is more than one in a community.

Senator Towe asked Nancy Butler if "Managed Care Organization" was a defined term within SB 347. She answered it was defined in section 8, line 9, page 19 of the Bill.

Vote:

The amendments SB034703.Anb were UNANIMOUSLY ADOPTED, with Senator Lynch voting yes by proxy.

Discussion:

Don Judge, Executive Secretary, Montana State AFL-CIO, explained amendments (SB034705.AEM). He said item 2 of the amendments was meant to limit power of the insurer and leaves the Montana Department of Labor and Industry to determine rules that establish when travel needs for health care are legitimate.

Eddye McClure pointed out the amendment in item 2 did not put into words "pursuant to rules adopted by the department," but just eliminated "only if the travel is incurred at the request of the insurer." Mr. Judge said the amendment should reflect "pursuant to rules adopted by the department," and asked the old language be reentered.

Mr. Judge went on to explain item 3 of the amendments proposed striking out subsection (7), the co-payment section.

Senator Towe asked Mr. Judge why he would want to strike subsection (7). Mr. Judge answered there was no other state in the country requiring co-payment.

Mr. Judge explained item 5. He said this amendment would allow the employer to chose a MCO. Mr. Judge told the Committee this provision would allow an employer to chose from health care organizations certified by the Montana Department of Labor and Industry, rather than being forced to seek the services of one that had a contract with the insurer, or not get benefits paid.

Mr. Judge explained items 7, 8, 9, 10, 11, and 12.

Mr. Judge said there was currently no provision in SB 347 regarding an employee's rights to appeal a termination or denial of benefits. In item 13 of the amendments, a provision as such is inserted.

Mr. Judge explained item 14. He said an injured employee's family should be entitled to receive the prevailing wage for the care the family member would have been providing.

Mr. Judge explained item 15. He said the number "8" was an arbitrary decision to cut off benefits at 8 hours, rather than grant benefits for the number of hours of care needed.

Senator Aklestad expressed he had problems with some of the amendments. He asked Senator Harp to respond to the amendments. Senator Harp answered he would rather not amend SB 347 any more.

Senator Towe said the amendments (SB034705.AEM) needed to be looked at individually.

Senator Aklestad asked for a consensus of the Committee. He argued the Bill was being watered down. He said there would be other chances to amend SB 347. Senator Towe answered there were

concerns about the Bill, and the Committee had an obligation to consider the amendments proposed by the AFL-CIO. Senator Aklestad restated he would like to hear the consensus of the Committee members. Senator Blaylock said it would be only fair to the AFL-CIO to look at the amendments one by one. He said they were not all substantive. Senator Wilson said he concurred with Senator Blaylock, and that Senator Lynch would do the same.

Item 1 of amendments (SB034705.AEM) was considered by the Committee. Senator Harp said the amendment had nothing to do with secondary medical care. Senator Towe asked Senator Harp to clarify if the wording of SB 347 provides that if because of an injury, a worker could never return to employment, that worker could not get secondary medical care that would not affect the chances of returning to employment. Senator Harp answered he would not get into individual cases.

Senator Towe asked Don Judge if this was his concern. Mr. Judge answered it was. Senator Harp said he disagreed.

Senator Keating asked if the employer was not receiving benefits for a secondary injury because of the condition of not being able to return to work. Senator Towe answered this was how the Bill read.

Don Judge explained that under current law these people are currently receiving benefits. He continued the section on Page 10, lines 22 through 25 in SB 347 would require the insurer to furnish secondary medical services defined on page 8 of the Bill only upon a clear demonstration of the cost effectiveness in returning the injured worker to employment.

Pete Strizich of the State Fund responded to Mr. Judges concerns. He stated second medical treatment was designed specifically to eliminate revenue enhancement programs among medical service providers. He said primary medical services were provided for in the Bill. He said if an injury related to impairment, the treatment would be a primary service. He said SB 347 was designed to cut out high-cost programs doing nothing to return an injured employee to work.

Senator Towe asked Mr. Strizich if it was his belief the language on the bottom of page 11 covered the situations that were being discussed. Mr. Strizich answered that it was the intent of the language to cover this type of situation.

Senator Towe asked Don Judge to respond. Mr. Judge answered he was concerned that "permanently partial" was not covered, but that "permanently total" was. Senator Towe answered Mr. Judge was correct.

Item 2 of (SB034705.AEM) was discussed. Senator Towe asked what kind of travel other than that at the request of the insurer was there. Mr. Judge answered it depended upon the injured worker.

He said there were already rules set by the Montana Department of Labor and Industry that defined legitimate travel in accordance with what was needed for medical treatments. Mr. Judge said it seemed reasonable to rely on existing rules. Senator Towe asked Senator Harp to respond. Senator Harp said there was nothing that was being offered in amendments (SB034705.AEM) he agreed with.

Senator Blaylock asked Don Judge if he knew how often travel provisions were being abused by the injured employee. Senator Blaylock said the provision was in the bill because there was abuse. Mr. Judge said this was a good point, but there was no way of addressing the cost of fraudulent travel. Senator Harp said in the last biennium was \$1.8 million for injured workers to travel from one clinic to another. Senator Harp stated SB 347 was not denying the injured worker needed travel, but the insurer would have the chance to talk to the injured worker to see if the travel meets the insurer's approval under a managed care situation.

Senator Towe asked Senator Harp what would happen if the primary treatment doctor treating a patient deems a certain medical test needed, and the patient needs to travel to receive the test, but the insurance company refuses to pay costs. Senator Harp answered under a managed care system the patient would not go for the test. He continued in an MCO the insurer would have a substantial reason for the travel not to occur. Senator Towe asked why the travel should not be at the request of the MCO, rather than the insurer. Senator Harp answered under SB 347 the person paying the bills, or the insurer, should have some control over how the money was being spent.

Senator Blaylock asked Chuck Hunter, Montana Department of Labor and Industry, if there would be an appeals process under the legislation if the employer was denied travel by the insurer. Mr. Hunter answered there would be a dispute over what the medical benefit was. This would come to a mediation process.

The Committee discussed item 3 of the AFL-CIO amendments. Senator Towe said the theory of the Bill's section in question unamended was after the employee's first visit to a medical care institution, each subsequent visit will cost the employee \$10.00, or \$25.00 if the visit is to a hospital in an emergency situation. The amendment would strike this section (page 14, lines 8 through 23). Senator Towe explained the theory was there was perhaps over-utilization of medical services, and by requiring the employee to pay some of the cost, some of the over-use would be eliminated. Senator Towe said an argument was this provision in SB 347 may conflict with the Constitution. Senator Keating explained the language in the Constitution said if the employer provided workers' compensation in accordance with state law the employer is not subject to liability. He said the exclusive remedy is providing coverage as provided by state law. Senator Keating said if the section of SB 347 was in state law,

and the employer had bought coverage in accordance to it, there should be no constitutional challenge. Senator Towe noted an argument in court may go either way.

Motion:

Senator Blaylock moved item 3 of amendments (SB034705.AEM) be adopted.

Discussion:

Senator Aklestad spoke against the motion. He said there was only one state that requires employees to pay into the system, that state being Washington. He said this requirement had never been overturned by a court. He noted this was not an exact, but a similar case as to the one proposed in SB 347.

Vote: The Motion FAILED with Senator Aklestad, Senator Keating, Senator Burnett, and Senator Wilson voting NO. Senator Towe and Senator Blaylock voted YES. Senator Lynch voted YES on a proxy vote.

Discussion:

Item 5 of the amendments (SB034705.AEM) was examined. Eddye McClure noted this amendment (item 5 of (SB034705.AEM)) and the already adopted amendment - item 8 of Senator Wilson's amendments (SB034703.Anb) would conflict. Senator Towe said this was correct. He said if this amendment was to be adopted, Senator Wilson's amendment would need to be changed.

Motion:

Senator Blaylock moved items 6 and 8 of amendments (SB034705.AEM) be adopted.

Discussion:

Senator Keating asked why involve the Montana Department of Labor and Industry in such a situation. He said the insurer would be the one selecting the physician. Don Judge said the Montana State AFL-CIO, in proposing this amendment was attempting to avoid an insurer enforcing upon the employee a doctor with which the insurer had a contract. He said because the last amendment (item 5) was not adopted the "company doctor" situation would be in place. Mr. Judge said there was no further reason to consider items 6 and 8.

Motion:

Senator Blaylock withdrew his motion to adopt items 6 and 8, and moved that items 5, 6, and 8 of amendments (SB034705.AEM) be

adopted.

Discussion:

Senator Harp stated SB 347 was not a "company doctor bill". He said the concepts in the Bill had worked in Oregon, and there was no one to be hurt by the provisions. Senator Harp stated SB 347 was the only way to get the system under control.

Senator Towe stated the "company doctor" concern was legitimate, as employers had been hurt by the "company doctor" before. He stated the question was when a person had an initial treating doctor, and was referred, would the same argument apply to the referral. Senator Towe asked Mr. Judge to comment.

Mr. Judge said the managed care system was to be chosen from those MCO's certified by the Montana Department of Labor and Industry. He said the patient still had the choice of staying with the initial treating physician. He said the injured worker should have the right to select from among any number of MCO's certified by the department.

Senator Towe commented there were doctors he would want his clients to go to, and some he would not.

Vote :

The motion by Senator Blaylock that items 5, 6, and 8 of amendments (SB034705.AEM) be Adopted FAILED, with Senator Keating, Senator Burnett, Senator Aklestad, and Senator Wilson voting no. Senator Towe and Senator Blaylock voted YES. Senator Lynch voted yes on a proxy vote.

Discussion:

Item 13 of the amendments (SB034705.AEM) was considered. Senator Towe clarified this amendment would insert an appeal provision. Senator Towe asked if there was any appeal provided for in SB 347 without the amendment. Nancy Butler answered the bill provided for mediation in workers' compensation court, rather than appealing with the Montana Department of Labor and Industry. Mr. Judge said the amendment was put in by request of Senator Lorents Grosfield. He said if there was already an appeals provision in place, that was satisfactory.

Items 14 and 15 of the amendments were considered. Senator Towe said the question of item 14 was whether a family member caring for an injured worker should receive minimum or prevailing wage. Item 15 questioned whether that payment for the care should be limited to 8 hours per day, or the number of hours required to care for the person.

Senator Towe said item 14 was reasonable, as minimum wage was not good policy for the state. He stated item 15 was unreasonable,

as asking to pay for 24 hours per day was too much.

Mr. Judge clarified item 15 was not asking that someone be paid for 24 hours per day. He stated the eight hours provided for in SB 347 was arbitrary, not based upon medical conclusions as to how much care is needed by the individual. He said item 15 would provide pay for the required number of hours of care an injured worker would need. The required number of hours would be a medically determined decision.

Nancy Butler explained the domiciliary care statute. She said the current provision said the insurer was required to pay a family member for 24 hours per day at about \$7.50 per hour, or \$180.00 per day. Ms. Butler continued this was very expensive for an insurer. She said a nursing home would, on average, cost about \$67.15 per day. If the care needed was less than an RN or LPN could provide, but still substantial enough to meet standards in SB 347, a family member could provide that care. The family member would be limited to what it would cost the insurer to provide care for the injured worker in a nursing home. She said the Bill also recognized the fact that care might be required less than 24 hours per day. An RN or LPN would not be paid for more than the hours worked. She said a family member would be limited to 8 hours per day at minimum wage. Ms. Butler explained if the prevailing rate of \$7.50 was used, at eight hours, the cost to the insurer would be \$56.00 per day. It would cost the insurer only \$67.15 for 24 hour care in a nursing home. Ms. Butler said this was not a distinctive difference.

Senator Towe stated he thought the 8 hour provision was not unreasonable, but the minimum wage bothered him.

Senator Wilson said he had never been a proponent of minimum wage for anyone.

Senator Towe suggested the Committee adopt item 14, but not 15.

Senator Burnett said if a family member was taking care of the injured worker, it should be done without cost. Senator Towe said it was not the family member's fault the worker was injured.

Senator Aklestad said it was a hardship on a family member to have care come into the home. He stated that live-in care was not necessarily 24 hours per day, but varied depending upon the care needed.

Senator Keating stated that if someone needed care, and the insurer would put the person in a nursing home, but the family chose to care for the person at home, the family should not be able to charge more than what the insurer would pay for a nursing home. Senator Towe answered this limit was in SB 347.

Senator Harp stated Senator Wilson made a good point, and that he was not an advocate of minimum wage either.

Motion\Vote:

Senator Wilson moved that the Committee adopt item 14 of amendments (SB034705.AEM). The motion to adopt item 14 of amendments (SB034705.AEM) CARRIED UNANIMOUSLY with Senator Lynch voting YES by proxy.

Discussion:

The items 8 and 9 of amendments (SB0347707.AEM) (chiropractors amendments) were discussed by the committee. Bonnie Tippy explained the amendments. She told the Committee language in the amendments would help answer the question of when a person should go into managed care. Ms. Tippy said item 8 reflected the belief an injured worker should not go into managed care until the worker has lost wages for fifteen days. She explained language in item 9 of the amendments said employees making demonstrable progress should not be forced into a managed care organization by an insurer.

Roger Tippy explained he was not a lobbyist for the Chiropractors, but had been asked to draft item 9. He stated after an employee had lost wages for fifteen working days, as provided for in item 8, item 9 would provide for an appeals process to stay out of managed care that would utilize the workers' choice to stay with the treating physician. The initial procedure would grant the insurer 10 days to study the treating physicians documentation and to decide if it matched utilization guidelines. The insurer would then decide if the prognosis by the treating physician was realistic. If the insurer decided it was not realistic, and the employee did not ask the workers' compensation court to utilize speedy equity powers, managed care would begin. An employer could apply with workers' compensation court for a temporary restraining order, or other equivalent court order, then attend a hearing. A judge would set up a hearing without attorneys present, and listen to the employees physician and the insurers physician. The judge could then make the decision whether or not the injured worker should enter managed care.

Senator Towe asked where the chiropractors fit into SB 347, and why they were advancing the issue. Ms. Tippy answered the chiropractors' problem with the Bill was that once a claimant entered an MCO, the MCO run by a medical clinic would have no interest in that injured worker continuing to be treated by a chiropractor. She continued that this interest of not allowing a patient to continue receiving chiropractic treatment was profitable. She exemplified this statement by stating a back surgery done under managed care would be much more profitable than several treatments by a chiropractor.

Senator Harp answered under managed care the first priority was to get the injured worker through the process. He continued,

saying the system of managed care had beliefs contrary to those Ms. Tippy had stated. Senator Harp told the Committee for every day a worker was not in managed care, the worker would not be being treated fairly. The injured worker would not be back to work, and every day cost the State Fund money. He said he did not view managed care as being run strictly by medical doctors. He told the Committee he believed the amendments worked outside the purpose of SB 347.

Senator Blaylock asked Pete Strizich, State Insurance Fund, if he would comment on the amendments. He said the State Fund had looked at the items and believed they defeated the purpose of a managed care system.

Senator Towe asked Pete Strizich how he would respond to the concern about some doctors not referring to a chiropractor, no matter if a chiropractor could be of help. Mr. Strizich said what Ms. Tippy had stated had been an ongoing battle between the chiropractors and the AMA for years.

Mark Staples told the Committee that the intent of the Bill was not to take an injured worker from a treating physician that is accomplishing progress toward getting the worker back to work. He stated the amendment was designed to add language to clarify that point.

Senator Towe asked Mr. Staples if a chiropractor was considered a treating physician in SB 347. Mr. Staples answered a chiropractor was, but an injured worker could be taken from the treating physician after any duration of lost wages. He clarified that wage lost would start after six days.

Senator Harp stated the treating physician was not just a chiropractor, but anyone under the definition in SB 347. He said the Bill was designed to take a worker into managed care as quickly as possible in order to get the person back to work as quickly as possible. He stated there needed to be a truce between the State Fund and the chiropractors. Senator Harp went on to say the Bill allowed for the insurer to leave the patient outside the MCO and with the treating physician. He said the problem was the chiropractors did not have good faith with the State Fund. He continued the insurers had to work with the State Fund to reach a fair compromise. He said the chiropractors were valuable in getting injured employers back to work.

Motion:

Senator Keating moved items 8 and 9 of amendments SB034707.AEM be adopted.

Discussion:

Senator Aklestad stated the amendments had merit, but a statute

was already in the Bill that dealt with the same situation. He said there would be other places to amend SB 347. Senator Aklestad urged the Committee to pass the Bill out of Committee with the amendments already accepted, but not any more.

Vote:

The motion FAILED with Senator Keating voting YES. Senator Lynch voted YES on a proxy vote. Senator Towe, Senator Blaylock, Senator Aklestad, Senator Burnett, and Senator Wilson voted NO.

Motion\Vote:

Senator Aklestad moved SB 347 DO PASS AS AMENDED. The motion carried UNANIMOUSLY.

EXECUTIVE ACTION ON SB 342

Motion\Vote:

Senator Towe moved amendments (SB034201.AEM) be adopted. The Motion to adopt amendments (SB034201.AEM) CARRIED UNANIMOUSLY. Senator Lynch voted YES by proxy.

Discussion:

Senator Keating asked how the amendments adopted would help a private contractor. Senator Towe answered they would clarify that a contractor could not get fringe benefits so high they were above the prevailing wage.

Senator Keating asked if these fringe benefits could be paid into a trust. Senator Towe answered if SB 342 was passed, the contractor could put the benefits into a trust.

Motion\Vote:

Senator Blaylock moved SB 342 DO PASS AS AMENDED. The Motion carried with Senator Towe, Senator Blaylock, Senator Wilson, Senator Aklestad, and Senator Keating voting YES. Senator Lynch voted YES by proxy vote. Senator Burnett voted NO.

EXECUTIVE ACTION ON SB 62

Motion/Vote:

Senator Wilson moved SB 62 be TABLED. The Motion CARRIED, with Senator Towe, Senator Blaylock, and Senator Wilson voting YES. Senator Lynch voted YES on a proxy vote. Senator Burnett, Senator Keating, and Senator Aklestad voted NO.

EXECUTIVE ACTION ON SB 394Discussion:

Senator Keating stated he had originally signed on to SB 394, but had received phone calls from workers who had a hard time receiving benefits. These workers told Senator Keating if it was not for their attorneys they would not be receiving benefits. Senator Keating said there were already some limits on attorney's fees.

Motion:

Senator Keating moved that SB 394 DO NOT PASS.

Discussion:

Senator Aklestad argued against the motion. He stated the Bill suggested there was a problem in workers' compensation with attorney's fees. He said he did not agree with the idea that employees were going to be harmed by SB 394. He said this should aid employees by limiting the money they would need to pay an attorney.

Senator Towe stated this was not true because the attorneys' fees were generally higher than the recovery made by the employee. He said SB 394 did not affect the employee's recovery, because the money came out of the State Fund. Senator Towe argued that under SB 394 the benefits to attorneys would not be high enough to give them incentive to represent workers' compensation cases.

Senator Blaylock stated he had received calls from injured workers who were fearful because they could not get representation under current attorney rates.

Senator Keating said he had not found the same problems with finding representation for workers' compensation cases with the self-insured plans. He said the only type of insurer he heard a complaint about was the State Fund. He told the Committee he was reluctant to take the representation away from people who were not being served.

Vote:

The motion CARRIED, with Senator Towe, Senator Keating, Senator Wilson, and Senator Blaylock voting YES. Senator Lynch voted YES by proxy. Senator Aklestad and Senator Burnett voted against the motion. Senator Aklestad requested a Minority Report on SB 394.

EXECUTIVE ACTION ON SB 329

Discussion:

Eddye McClure explained amendments. She told the Committee amendments SB032901.AEM, requested by Senator Klampe, and amendments SB032903.AEM, requested by Senator Towe.

Motion:

Senator Aklestad moved adoption of amendments (SB032901.AEM).

Discussion:

Senator Blaylock said he did not agree that SB 329 was going to exempt certain projects from the prevailing wage. Senator Towe answered Senator Blaylock's concern could be addressed in amendments SB032903.AEM.

Gene Fenderson said he had a meeting with Senator Klampe. He explained SB 329 had three parts: To change codification; to exempt non-profits from the prevailing wage rule; and to define a new effective date. Mr. Fenderson told the Committee he had agreed with Senator Klampe on the codification, the effective date, and the amendment to take out non-profits from not being covered under SB 329. Mr. Fenderson said his concern with Senator Klampe's amendments was the part that eliminated the wording "in whole or in part by tax-exempt revenue bonds." He said the original intent of the legislation was if a project received revenue bonds, the whole project was covered by a prevailing wage provision.

Senator Towe responded the amendment was not inconsistent with the intent Mr. Fenderson stated. He said all this wording did was define "tax-exempt revenue bonds."

Vote:

The motion of Senator Aklestad to adopt amendments SB032901.AEM carried UNANIMOUSLY. Senator Lynch voted YES by proxy vote.

Discussion:

Senator Aklestad said the Committee was taking care of technicalities, but not reality in what the sponsor intended. He said the amendments would eliminate from the Bill the original intent of the sponsor. He urged the Committee to respect the original intent.

Motion\Vote:

Senator Blaylock moved amendments SB032903.AEM be adopted. The motion CARRIED with Senator Towe, Senator Wilson, and Senator Blaylock voting YES. Senator Lynch voted YES by proxy. Senator Keating, Senator Burnett, and Senator Aklestad voted NO.

Motion\Vote :

Senator Blaylock moved SB 329 DO PASS AS AMENDED. The motion carried with Senator Towe, Senator Blaylock, Senator Wilson, and Senator Keating voting YES. Senator Lynch voted YES by proxy. Senator Burnett and Senator Aklestad voted no.

EXECUTIVE ACTION ON SB 274**Motion\Vote:**

Senator Keating moved SB 274 be TABLED. The motion carried UNANIMOUSLY.

EXECUTIVE ACTION ON SB 377**Discussion:**

Senator Aklestad asked if there would be consideration to expand SB 377 to include other written, but not verbal agreements. He said the sponsor had indicated she would not want to expand the Bill to include other agreements. Senator Towe stated he would not favor an amendment such as the one offered by Senator Aklestad.

Motion\Vote:

Senator Blaylock moved the amendment (SB037701.AEM) submitted by Senator Bartlett be adopted. The motion carried UNANIMOUSLY, with Senator Lynch voting YES by proxy.

Motion:

Senator Blaylock moved SB 377 DO PASS AS AMENDED.

Discussion:

Senator Keating argued against SB 377. He said he understood the need for coffee breaks, but felt they should be part of an agreement between the employer and employee, not statutorily mandated. He said most employers would allow break time within the work schedule, and there was no real need for the Bill. Senator Keating stated SB 377 could hurt good employers. He argued that there would be challenges sought due to the provisions in SB 377. He continued that if the provisions of SB 377 were put into law, employers who were flexible before may become less flexible, allowing only what break time statutes said they must.

Senator Towe said there was testimony when he carried a similar bill that a major employer in Billings refused to give breaks. Accidents were caused because of this, and the employees were unhappy. Senator Towe agreed with Senator Keating that most employers would realize breaks were a good policy, but argued some employers would not give breaks.

Senator Keating said he disagreed with Senator Towe that the company in Billings, which Senator Keating identified as Conoco, did not give breaks.

Terry Keating told the Committee he had worked at the Conoco facility, and said there was no designated break period. He said what they were told was that most of the employees worked in teams and if one person would have some time that he was not busy, that employee could have a cup of coffee.

Vote:

The motion CARRIED with Senator Towe, Senator Blaylock, and Senator Wilson voting YES. Senator Lynch voted YES by proxy. Senator Keating, Senator Aklestad, and Senator Burnett voted NO.

EXECUTIVE ACTION ON SB 381

Motion\Vote:

Senator Aklestad moved SB 381 be amended on Page 2, line 4, striking "shall" and inserting "may". The motion to amend SB 381 carried UNANIMOUSLY.

Discussion:

Senator Towe suggested considering the Montana Beer and Wine Wholesalers' amendment (Exhibit #1).

Motion\Vote :

Senator Keating moved amendments (Exhibit #1) be adopted. The motion carried UNANIMOUSLY.

Motion\Vote:

Senator Aklestad moved SB 381 DO PASS AS AMENDED. The motion carried UNANIMOUSLY. Senator Lynch voted YES by proxy vote.

EXECUTIVE ACTION ON SB 360

Motion:

Senator Keating moved SB 360 be TABLED.

Senator Aklestad asked that Senator Keating withdraw his motion.

Senator Keating Withdrew his motion to TABLE SB 360.

Discussion:

Senator Aklestad told the Committee there were real problems with workers' compensation rural volunteer firefighters that had to be dealt with. He asked to reduce the \$900.00, while not affecting incorporated cities. Senator Aklestad noted it would be best to put the Bill on the Floor of the Senate and amend it there.

Senator Wilson concurred with Senator Aklestad, and informed the Committee that Senator Lynch had left written instructions to the same affect.

Motion:

Senator Keating moved SB 360 DO PASS.

Discussion:

Senator Blaylock asked Senator Aklestad if he wanted a rural firefighter that was injured to be receiving benefits based upon \$900.00 per month salary. Senator Aklestad answered he had discussed this with Senator Nathe, and said the figure of benefits based upon salary of \$900.00 per month could be changed.

Senator Towe said SB 360, if unamended would allow a rural volunteer firefighter to receive full benefits for next to nothing in premium costs.

Senator Aklestad said he thought this was fine, based on the fact these firefighters were volunteers providing a service to a community. He said he would be willing as an employer to pay into the State Fund to let these firefighters receive benefits if they were injured without paying expensive premiums.

Senator Burnett said volunteer firefighters put in a lot of working time.

Jacqueline Lenmark, American Insurance Association (AIA) said one point Senator Nathe may not have been aware of was he could appeal the classification the rural firefighters had to the Classification and Rating Committee, a statutorily defined committee provided for in Title 33 under the insurance code. She said Senator Nathe's concern was the firefighters in the rural areas were not exposed to the same risks as those in incorporated cities, and therefore should not have to pay the same sort of premium. Ms. Lenmark said if that was true, the Classification and Rating Committee could take the information about the risk, and change the risk classification of the rural volunteer firefighters. She said when that happened, the premium

changed, while the benefits stayed the same.

Senator Towe clarified the Classification and Rating Committee would adjust the risk factor, and balance the premium rate. Ms. Lenmark said this was correct. She said as a practical matter, the Legislature should not be considering anything that would put cost on the State Fund. SB 360 would put the cost of the Bill on the State Fund.

Senator Towe asked if the appeals process would need a bill. Ms. Lenmark stated the action was already set up in the statutes.

Senator Towe told Senator Aklestad he had a problem with the Bill as it read because it was internally inconsistent. He said Ms. Lenmark was right in that the concerns Senator Nathe was addressing in SB 360 needed to be taken before the Classification Committee, which would take into consideration the risk factor.

Senator Burnett said during the fire season a volunteer firefighter may be called to help once a week. He made the point the firefighters were a necessary reserve.

Senator Towe said Senator Burnett was right, but said there were better methods of getting coverage under workers' compensation than passing SB 360.

Motion:

Senator Keating withdrew his motion that SB 360 DO PASS.

Senator Aklestad moved SB 360 DO PASS.

Discussion:

Senator Towe restated his objections to passing SB 360. He said he did not think the Committee should be passing the Bill when workers' compensation was in debt.

Senator Aklestad told the Committee it had, in the past, passed legislation helping one person. He continued that SB 360 had the potential to help communities all over Montana.

Vote:

The motion that SB 360 DO PASS CARRIED, with Senator Aklestad, Senator Keating, Senator Burnett, and Senator Wilson voting YES. Senator Lynch voted YES by proxy. Senator Blaylock and Senator Towe voted NO.

EXECUTIVE ACTION ON SB 405

Discussion:

Senator Keating stated he would like to use SB 405 to help the

state workers' compensation plan by giving employers another source of coverage. He asked for the support of the Committee if he amended everything out of SB 405 except the section that would allow for coverage of workers' compensation through an ERISA plan. Senator Keating read the Bill as it would read if amended. He said the Bill as amended would take some pressure off the State Plan, and help fix workers' compensation.

Senator Towe asked if there were any ERISA plans that met Montana's requirements. Senator Keating answered if an ERISA plan did not meet the state's requirements, it could not be used.

Senator Towe asked if Senator Keating thought there were any plans that would meet the state's requirements. Senator Keating answered there were.

Senator Towe asked Jacqueline Lenmark if she knew if there were any ERISA plans meeting the state's requirement. She answered she did not know.

Motion:

Senator Keating moved SB 405 BE AMENDED.

Discussion:

Senator Towe read the Bill as it would be amended. He said his concern with SB 405 was he did not think there were any ERISA plans certified by the state. Senator Keating said it would give an employer an option to write a plan that would comply with state law. Senator Towe said he thought if a plan was certified, it would be much more expensive than the State Plan.

Vote:

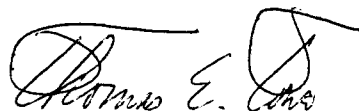
The motion to amend SB 405 CARRIED, with Senator Keating, Senator Aklestad, Senator Blaylock, and Senator Burnett voting YES. Senator Towe and Senator Wilson voted NO. Senator Lynch voted no by proxy.

Motion\Vote :

Senator Keating moved SB 405 DO PASS AS AMENDED. The motion carried with Senator Towe, Senator Keating, Senator Aklestad, Senator Burnett, and Senator Blaylock voting YES. Senator Wilson voted NO. Senator Lynch voted NO by proxy.

ADJOURNMENT

Adjournment: 5:59 PM



THOMAS E. TOWE, Chair



KELSEY CHAPMAN, Secretary

TET/kc

ROLL CALL

SENATE COMMITTEE Labor & Employment DATE 1/20/93
Relations

[illegible]

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 22, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 329 (first reading copy -- white), respectfully report that Senate Bill No. 329 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

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 2, lines 22 and 23.

Page 5, lines 24 and 25.

Following: "(g)"

Strike: remainder of line through "hospital,"

3. Page 3, line 1.

Page 6, line 3.

Page 9, line 25 through page 10, line 1.

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,"

4. 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,"

5. Page 8, lines 16 and 17.

Following: "performed"

Strike: remainder of line 16 through "or" on line 17

6. Page 11, lines 19 through 21.

Following: "(6)"

Strike: remainder of line 19 through "the" on line 21

Insert: "The"

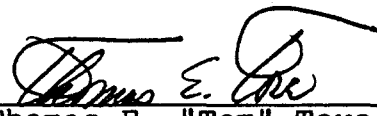
-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 22, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 342 (first reading copy -- white), respectfully report that Senate Bill No. 342 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Page 2, line 24 through page 3, line 3.

Following: "labor." on line 24

Insert: "(5)"

2. Page 2, line 25

Following: "subcontractor"

Strike: remainder of line 25 through "agreement" on page 3 line 1

Insert: ", except those described in subsection (4),"

3. Page 3, line 2

Following: "hourly"

Strike: remainder of line 2 through "18-2-402" on line 3

Insert: "wage as defined in 18-2-401"

4. Page 3, line 19.

Following: line 18

Insert: "(2) Basic hourly wage" means that portion of the standard prevailing wage that is taxable."

Renumber: subsequent subsections

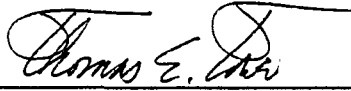
-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 4
February 22, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 347 (second reading copy -- yellow), respectfully report that Senate Bill No. 347 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, lines 9 and 10.

Strike: "REVISING" on line 9 through ";" on line 10

2. Title, line 17.

Strike: "39-71-711,"

3. Page 4, line 23 through page 5, line 4.

Strike: subsection (7) in its entirety

Renumber: subsequent subsections

4. Page 5, line 9.

Following: line 8

Insert: "(9) "Disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition."

Renumber: subsequent subsections

5. Page 7, line 23.

Following: "treatment"

Insert: "prescribed by a treating physician"

6. Page 7, line 25 through page 8, line 2.

Following: "stability."

Strike: remainder of line 25 through "medicine." on page 8, line 2

7. Page 8, lines 19 and 20.

Strike: line 19 through "programs" on line 20

Insert: "physical restoration programs and other restoration programs designed to address disability and not impairment,"

8. Page 12, line 11.

Following: "physicians,"

Insert: "including at least one treating physician from the area
of specialty in which the injured worker is being treated,"

9. Page 12, lines 21 through 23.

Following: "services"

Strike: remainder of line 21 through "are" on line 23

10. Page 13, line 6.

Strike: "14"

Insert: "13"

11. Page 13, line 10.

Following: "rates"

Strike: "must"

Insert: "may"

12. Page 13, line 11.

Following: "groups."

Insert: "The rates established by the department pursuant to this
subsection may not be less than medicaid reimbursement
rates."

13. Page 13, line 14.

Following: "responsibilities."

Insert: "For services available in Montana, insurers are not
required to pay facilities located outside Montana rates
that are greater than those allowed for services delivered
in Montana."

14. Page 14, line 24.

Following: line 23

Insert: "(d) A worker is not responsible for the cost of a
subsequent visit pursuant to subsection (7)(a) if the visit
is an examination requested by an insurer pursuant to 39-71-
605."

15. Page 14, line 24 through page 15, line 25.

Strike: section 4 in its entirety

Renumber: subsequent sections

16. Page 16, line 23.

Strike: "7"

Insert: "6"

17. Page 17, line 9.

Following: line 8

Insert: "(9) An insurer may not require a worker receiving
benefits under this chapter to obtain medications from an
out-of-state mail service pharmacy."

18. Page 18, line 12.

Strike: "9"

Insert: "8"

19. Page 18, lines 24 and 25.

Following: "with" on line 24

Strike: "physicians or physician groups or"

Following: "pharmacies," on line 25

Strike: "physical therapists,"

20. Page 19, line 8.

Following: "providers."

Insert: "This section does not prohibit the worker from choosing
the initial treating physician under [section 5(1)]."

21. Page 19, line 14.

Strike: "6"

Insert: "5"

22. Page 19, line 17.

Strike: "10"

Insert: "9"

23. Page 19, line 21.

Following: "workers."

Insert: "A worker who is subject to managed care may choose from
managed care organizations in the worker's community that
have a contract with the insurer responsible for the
worker's medical services."

24. Page 20, line 1.

Strike: "10"

Insert: "9"

25. Page 23, line 9.

Following: first "practitioner,"

Strike: "or"

Following: second "practitioner"

Insert: ", or a chiropractor"

26. Page 24, line 4.
Following: "organization"
Insert: "or treating physician"

27. Page 25, line 18.
Following: "prevailing"
Strike: "minimum"

28. Page 26, line 2.
Following: "insurer"
Insert: "or the claimant"

29. Page 26, line 17.
Following: line 16
Insert: "(3) The department may seek recommendations for
representatives from the state licensing boards governing
the providers."

30. Page 26, lines 18 and 20.
Strike: "14"
Insert: "13"

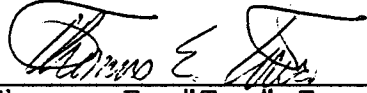
-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 21, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 360 (first reading copy -- white), respectfully report that Senate Bill No. 360 do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 22, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 377 (first reading copy -- white), respectfully report that Senate Bill No. 377 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Page 2, line 18.

Following: "law;"

Strike: "or"

2. Page 2, line 20.

Following: "instruction"

Strike: "."

Insert: "; or"

3. Page 2, line 21.

Following: line 20

Insert: "(f) if providing rest periods pursuant to [section 1]
conflicts with the provisions of a collective bargaining
agreement."

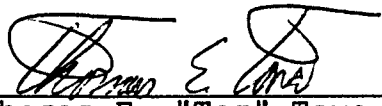
-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 22, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 381 (first reading copy -- white), respectfully report that Senate Bill No. 381 be amended as follows and as so amended do pass.

Signed: 

Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, line 5.

Following: "KNOWINGLY"

Strike: "MISCLASSIFY"

Insert: "MISREPRESENT"

2. Title, line 6.

Following: "WORK"

Strike: "CATEGORIES"

Insert: "DESCRIPTIONS"

3. Page 1, line 15.

Strike: "misclassifies"

Insert: "misrepresents the duties of"

4. Page 1, line 18.

Following: "classified."

Insert: "The term "knowingly" has the meaning as defined in 45-2-101."

5. Page 1, line 23.

Following: "or"

Insert: "up to"

6. Page 1, line 24.

Following: "greater."

Insert: "The department shall determine the amount of the penalty based upon the gravity of the violation, the intent of the employer, and the clarity of the relevant classification codes. The determination by the department is subject to the provisions in 39-71-204."

7. Page 2, line 4.


Following: "it"

Strike: "shall"

Insert: "may"

-END-

M - Amd. Coord.

 Sec. of Senate

431147SC.Sma

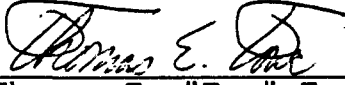
ADVERSE

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 21, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 394 (first reading copy -- white), respectfully report that Senate Bill No. 394 do not pass.

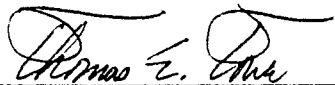
Signed: 
Senator Thomas E. "Tom" Towe, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
February 22, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 405 (first reading copy -- white), respectfully report that Senate Bill No. 405 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, lines 4 through 12.

Following: "ACT" on line 4

Strike: remainder of line 4 through "DISCRETION;" on line 12

2. Title, line 14.

Following: "COVERAGE;"

Insert: "AND"

3. Title, line 15 through line 17.

Strike: line 15 in its entirety through "39-71-317," on line 17

Insert: "SECTION"

4. Title, line 17 through page 3, line 13

Following: "39-71-401,"

Strike: remainder of line 17 through "39-72-714," on page 3, line 13

5. Page 3, line 16 through page 11, line 14.

Strike: page 3, line 16 through page 11, line 14

Renumber: subsequent sections

6. Page 11, line 18.

Page 12, lines 12 and 17.

Page 14, lines 19 and 20


Following: "Compensation"

Strike: "and Occupational Disease"

7. Page 11, line 24 through page 12, line 10.

Strike: page 11, line 24 through page 12, line 10

Insert: "elect to be bound by the provisions of compensation plan No. 1, 2, or 3 or shall make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 (ERISA) and that provides benefits to employees for health care, pensions on retirement or

 Amd. Coord.
Sec. of Senate

431204SC.San

death, life insurance, and disability and sickness insurance. The benefits under the ERISA plan may not be less than the benefits mandated by workers' compensation laws. The benefits of an ERISA plan must be reviewed by the department and certified as meeting statutory requirements."

8. Page 12, line 13.
Following: "plan"
Strike: "coverage option"
Insert: "compensation plan"

9. Page 14, line 14.
Following: "bound"
Insert: "elect to be bound"

10. Page 14, lines 16 through 18.
Following: "~~or 3,~~" on line 16
Strike: remainder of line 16 through "self-insured" on line 18
Insert: "by the provisions of compensation plan No. 1, 2, or 3,"

11. Page 15, line 4.
Following: "~~election of~~"
Strike: "application for"
Insert: "election of"

12. Page 15, line 5.
Strike: "exemption"
Insert: "election"

13. Page 15, line 19.
Following: "~~or 3~~"
Insert: "under the provisions of compensation plan No. 1, 2, or 3"

14. Page 16, line 6
Following: "~~notice~~"
Insert: "served in the following manner:
(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and to the department; or
(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice"

15. Page 16, lines 8 and 9.

Following: "~~plans or~~" on line 8

Insert: "plans or"

Following: "insurers"

Strike: "or changes status with respect to self-insurance"

16. Page 16, line 20.

Following: "~~notice~~"

Insert: "if the officer falsifies the notice"

17. Page 16, line 24.

Following: "of"

Strike: "workers'"

Following: "compensation"

Strike: remainder of line 24

18. Page 17, line 13 through 58, line 10.

Strike: sections 5 through 29 in their entirety

-END-

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 62

DATE 20 February 1993 TIME 5:05 A.M. P.M.

NAME _____

YES NO

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Wilson that SB 62 be
TABLED

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 329

DATE 20 February 1993 TIME 5:25 A.M. P.M.

NAME _____

YES

NO

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Blaylock that Amendments
(SB032903.AEM). Be ADOPTED.

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 329

DATE 20 February 1993 TIME 5:26 A.M. P.M.

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Blaylock that SB 329 Do
pass as amended.

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 342

DATE 20 February 1993 TIME 5:03 A.M. P.M.

NAME _____

YES

NO

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Blaylock that SB 342
do Pass as amended

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 347

DATE 20 February 1993 TIME 4:05 A.M. (P.M.)

NAME

YES

NO

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Blaylock to adopt Items Three
(3) of AFECIO Amendments (SB034705.AEM).

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 347

DATE 20 February 1993 TIME 4:21 A.M. P.M.

NAME

YES

NO

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Blaylock to adopt Items 5, 6,
7, 8 OF AFL-CIO Amendments (SB034705.AG)

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 347

DATE 20 February 1993 TIME 4:54 A.M. (P.M.)

NAME

YES NO

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen Keating to adopt Items 8 and 9
OF CHIROPRACTORS' Amendments (SBO3707.AEM).

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 360

DATE 20 February 1993 TIME 5:45 A.M. (P.M.)

NAME _____

YES

NO

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. AKlestad that SB360

DO PASS

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 371

DATE 20 February 1993 TIME 5:33 A.M. (P.M.)

NAME _____

YES

NO

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Senator BLAYLOCK That SB 377
DO PASS AS AMENDED.

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 394

DATE 20 February 1993 TIME 5:15 A.M. (P.M.)

NAME _____

YES

NO

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Keating that SB 394 DO NOT PASS.

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 405

DATE 20 February 1993 TIME 5:55 A.M. P.M.

NAME _____

YES NO

[illegible]

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. Keating that SB 405 be
amended.

ROLL CALL VOTE

SENATE COMMITTEE LABOR ; EMPLOYMENT RELATIONS BILL NO. SB 405

DATE 20 February 1993 TIME 5:58 A.M. (P.M.)

| NAME | YES | NO |
|--------------------|-----|----|
| Sen. Tom Towe | X | |
| Sen. Bill Wilson | | X |
| Sen. Jim Burnett | X | |
| Sen. J.D. Lynch | | X |
| Sen. CHET BLAYLOCK | X | |
| Sen. Tom Keating | X | |
| Sen. GARY Hklestad | X | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Kelsey CHAPMAN
SECRETARY

Senator Tom Towe
CHAIR

MOTION: By Sen. KEATING THAT SB 405 Do PASS
AS Amended.

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,"

Amendments to Senate Bill No. 329
First Reading Copy

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

Prepared by Eddy McClure
February 18, 1993

1. Page 2, lines 22 and 23.

Page 5, lines 24 and 25.

Following: "(g)"

Strike: remainder of line through "hospital,"

2. Page 8, lines 16 and 17.

Following: "performed"

Strike: remainder of line 16 through "or" on line 17

3. Page 11, lines 19 through 21.

Following: "(6)"

Strike: remainder of line 19 through "the" on line 21

Insert: "The"

Amendments to Senate Bill No. 342
First Reading Copy

Requested by Senator Towe
For the Seante Committee on Labor and Employee Relations

Prepared by Eddy McClure
February 20, 1993

1. Page 2, line 24 through page 3, line 3.

Following: "labor." on line 24

Insert: "(5)"

Following: "subcontractor" on line 25

Strike: remainder of line 25 through "agreement" on page 3 line 1

Insert: ", except those described in subsection (4),"

Following: "hourly" on page 3, line 2

Strike: remainder of line 2 through "18-2-402" on line 3

Insert: "wage as defined in 18-2-401"

2. Page 3, line 19.

Following: line 18

Insert: "Basic hourly wage" means that portion of the standard
prevailing wage that is ~~taxable~~ taxable."

Renumber: subsequent subsections

Amendments to Senate Bill No. 347
First Reading Copy

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

February 20, 1993

1. Page 4, line 23 through page 5, line 4.
Strike: subsection 7 in its entirety
Renumber: subsequent subsections
2. Page 12, line 11.
Following: "physicians,"
Insert: "that shall include at least one treating physician from
the area of specialty in which the injured worker is being
treated,"
3. Page 12, lines 21 through 23.
Following: "services" on line 21
Strike: remainder of line 21 through "are" on line 23
4. Page 13, line 10.
Following: "rates"
Strike: "must"
Insert: "may"
5. Page 13, line 11.
Following: "."
Insert: "The rates established by the Department pursuant to this
subsection shall be not less than medicaid reimbursement
rates."
6. Page 13, line 14.
Following: "responsibilities."
Insert: "For services available in Montana, insurers are not
required to pay facilities located outside Montana rates
that are greater than those allowed for services delivered
in Montana."
7. Page 14, line 24 through page 15, line 25.
Strike: Section 4 in its entirety
Renumber: subsequent sections
8. Page 19.
Following: line 21
Insert: "A worker who is subject to managed care may choose from
managed care organizations in their community that have a
contract with the insurer responsible for the worker's
medical services."

Amendments to Senate Bill No. 347
First Reading Copy

Requested by Senator Blaylock

For the Senate Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 20, 1993

1. Title, lines 9 and 10.

Strike: "REVISING" on line 9 through ";" on line 10

2. Title, line 17.

Strike: "39-71-711,"

3. Page 1, line 19.

Insert: "STATEMENT OF INTENT

A statement of intent is required for this bill because 39-71-704 (1)(g) and (1)(h) authorizes the department of labor and industry to adopt rules for the appointment of physician panels to review proposals for palliative or maintenance care and, upon the advice of professional licensing boards of practitioners, to exclude from compensability any medical treatment found unscientific, unproved, outmoded, or experimental."

4. Page 4, line 23 through page 5, line 4.

Strike: subsection (7) in its entirety

Renumber: subsequent subsections

5. Page 9, line 21.

Strike: "(29)(a)"

Insert: "(28)(a)"

6. Page 12, line 13..

Following: "appropriateness."

Insert: "The rules must provide that the panel include at least one physician from the same profession or practice area as the treating physician."

7. Page 14, line 24 through page 15, line 25.

Strike: section 4 in its entirety

Renumber: subsequent sections

8. Page 17, lines 24 and 25.

Following: "for" on line 24

Strike: line 24 through "duration" on line 25

Insert: "15 working days"

9. Page 18, line 8.

Following: line 7

Insert: "(4) Notwithstanding the provisions of subsections

(3)(a) through (3)(d), an injured worker may also request

the insurer to authorize continued treatment by the worker's

treating physician on the grounds that the worker is making demonstrable progress toward recovery. A treating physician shall document this progress in terms of the utilization treatment and standards established in 39-71-704(2). A request by a worker must be considered approved by the insurer unless, within 10 days of receiving the request, the insurer produces countervailing opinion evidence that demonstrable progress toward recovery has not been shown. The workers' compensation court shall establish an informal procedure for the speedy resolution of disputes arising under this subsection. An insurer may petition the court for an order to the worker to show cause why the worker should not report to managed care, and a worker may petition the court for an order to the insurer to show cause why the insurer should not continue to reimburse the worker's treating physician for services rendered to the worker. If a preponderance of the evidence shows that the worker is making demonstrable progress toward recovery, the insurer may not limit the worker to treatment from a managed care organization if the worker elects to continue treatment with the treating physician selected by the worker."

Renumber: subsequent subsection

10. Page 13, line 6.

Strike: "14"

Insert: "13"

11. Page 16, line 23.

Strike: "7"

Insert: "6"

12. Page 18, line 12.

Strike: "9"

Insert: "8"

13. Page 19, line 14.

Strike: "6"

Insert: "5"

14. Page 19, line 17.

Page 20, line 1.

Strike: "10"

Insert: "9"

15. Page 26, lines 18 and 20.

Strike: "14"

Insert: "13"

Amendments to Senate Bill No. 347
First Reading Copy

Requested by SB 347 Subcommittee
For the Senate Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 19, 1993

1. Page 5, line 9.

Following: line 8

Insert: "(10) "Disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition."

Renumber: subsequent subsections

2. Page 7, line 23.

Following: "treatment"

Insert: "prescribed by a treating physician"

3. Page 7, line 25 through page 8, line 2.

Following: "stability."

Strike: remainder of line 25 through "medicine." on page 8, line 2

4. Page 8, lines 19 and 20.

Strike: line 19 through "programs" on line 20

Insert: "physical restoration programs and other restoration programs designed to address disability and not impairment,"

5. Page 14, line 24.

Following: line 23

Insert: "(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605."

6. Page 17, line 9.

Following: line 8

Insert: "(9) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy."

7. Page 18, lines 24 and 25.

Following: "with" on line 24

Strike: "physicians or physician groups or"

Following: "pharmacies," on line 25

Strike: "physical therapists,"

8. Page 19, line 8.

Following: "providers."

Insert: "This section does not prohibit the worker from choosing
the initial treating physician under [section 6(1)]."

9. Page 23, line 9.

Following: first "practitioner,"

Strike: "or"

Following: second "practitioner"

Insert: ", or a chiropractor"

10. Page 24, line 4.

Following: "organization"

Insert: "or treating physician"

11. Page 26, line 2.

Following: "insurer"

Insert: "or the claimant"

12. Page 26, line 17.

Following: line 16

Insert: "(3) The department may seek recommendations for
representatives from the state licensing boards governing
the providers."

Amendments to Senate Bill No. 347
First Reading Copy

Requested by Senator ~~XXXXXX~~ *Towle*
For the Senate Committee on Labor and Employee Relations

Prepared by Eddy McClure
February 19, 1993

1. Page 10, lines 22 through 25.

Following: line 22

Strike: subsection (b) in its entirety

Renumber: subsequent subsections

2. Page 11, lines 9 and 10.

Following: "~~department~~"

Strike: remainder of line 9 through "insurer" on line 10

3. Page 14, lines 8 through 23.

Strike: subsection (7) in its entirety

4. Page 17, line 11.

Following: "subsection"

Strike: "(3)"

Insert: "(4)"

5. Page 17, line 14.

Following: line 13

Insert: "(2) An injured worker who is determined

to be in need of a referral to managed care may choose a system from any of the managed care systems that have been certified by the department. Subsequent referrals must be approved by the insurer. A dispute between the claimant and the insurer regarding subsequent referrals must be resolved through the mediation process provided by the department."

Renumber: subsequent subsections

6. Page 17, line 23.

Following: "the"

Strike: "insurer"

Insert: "department"

7. Page 18, line 9.

Following: "subsection"

Strike: "(3)"

Insert: "(4)"

8. Page 18, line 11.

Following: "the"

Strike: "insurer"

Insert: "department"

9. Page 23, line 24.

Following: "noncompliance."

Insert: "(1)"

10. Page 24, line 4.

Strike: "(1)"

Insert: "(a)"

11. Page 24, line 5.

Strike: "(2)"

Insert: "(b)"

12. Page 24, line 7.

Strike: "(3)"

Insert: "(c)"

13. Page 24, line 9.

Following: line 8

Insert: "(2) A worker may appeal the termination of compensation
benefits through procedures established by the department."

14. Page 25, line 18.

Following: "prevailing"

Strike: "minimum"

15. Page 25, line 19.

Following: "than"

Strike: "8"

Insert: "the required number of"

Amendments to Senate Bill No. 377
First Reading Copy

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

Prepared by Eddye McClure
February 18, 1993

1. Page 2, line 18:
Following: "law;"
Strike: "or"

2. Page 2, line 20.
Following: "instruction"
Strike: "."
Insert: "; or"

3. Page 2, line 21.
Following: line 20
Insert: "(f) if providing rest periods pursuant to [section 1]
conflicts with the provisions of a collective bargaining
agreement."

S.B # 377

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1 - (SB 377)
DATE 2/20/93
BILL NO. SB 377

Requires Employers to Provide
Employees with Rest Periods:

| NAME | ADDRESS |
|-------------------------|-----------------------------------|
| Jeanette Gill | 1014 Hudson St Helv. |
| Cheryl Sloan | 3000 Villard #188 |
| Tom Raudt | 734 N. Benton Ave |
| Monica Stewart | 4431 Prairie Drive - Helena, MT |
| Mark Sherman | Box 4574 Helena |
| Ester Grant | 150 Lincoln Rd. W. |
| Sharon Crabbe | 3965 Canal Drive, Helena, MT |
| Jack Herrault | PO Box 68 - Choteaux |
| Dale De Hart | 1053 N. Warren - Helena, MT |
| Jay L. Casper | 430 So. Lomborn, Helena, MT |
| 203 Wood | Box 133 Helena |
| Jack Smith | 1764 Crofting Court |
| Bill Sympson | 905 Forestvale Helena |
| Cheryl Ingemann | 1505 Minnesota Ave |
| Justa McDonald | 1656 Karmen Helena |
| Joe Garrison | 718 Darby St Helena |
| Joan Moore | 1805 E. Joslyn. |
| Green Cremer | 574 State Helena |
| Sandra Allen | 1111 Highland |
| Graig W. Paget | 2474 Country Club Ave, Helena |
| Lisa M. Hill | 907 8th Ave., Helena |
| Hilda Leyer | P.O. Box 7127 - Helena |
| William Sisk | 315 N. Main Helena |
| Julie A. David | Forest Park Est., Lot 125, Cheney |
| Clayton B. Furze | 1266 Dudley, E. Helena |
| James Altpeter | 926 1/2 8th Ave Helena |
| Joe Thompson | 375 W. Kingston |
| Wayne | Forest Park Estates #125 |
| Bill Hansen | 3135 Thruway E. Helena |

Hearing Feb 20th
10-12 Capitol Building

L/H - 4800

NAME

Dick Thweatt

Rylon McClary

Tracey Faulkner

Virginia L. Cupp

ADDRESS

36 Harrison Ave

Helena, MT 59601

HELENA MT 59601

County Employee
1717 Lincoln St. 59601

1717 Lincoln St. 59601



**Montana
Beer & Wine
Wholesalers
Association**

Post Office Box 124 • Helena, Montana 59624 • Telephone (406) 442-4451

To the Senate Labor Committee
Re: Senate Bill 381
Proposed amendments

- SENATE LABOR & EMPLOYMENT**
EXHIBIT NO. 1 (SB 381)
DATE 2/20/93
BILL NO. SB 381
1. Title, page 1, line 5
Following: "KNOWINGLY"
Strike: "MISCLASSIFY"
Insert: "MISREPRESENT"
 2. Title, page 1, line 6
Following: "WORK"
Strike: "CATEGORIES"
Insert: "DESCRIPTIONS"
 3. Page 1, line 15
Following: line 14
Strike: "misclassifies"
Insert: "misrepresents the duties of"
 4. Page 1, line 18
Following: "classified."
Insert: The term "knowingly" is used as defined in 45-2-101."
 5. Page 1, line 22
Following: line 21
Insert: "up to"
 6. Page 1, line 24
Following: "greater."
Insert: "The department shall determine the amount of the penalty, subject to 39-71-204, based upon the gravity of the violation, the intent of the employer, and the clarity of the relevant classification codes."

Rationale: amendments 1-3 reflect the fact that employers do not classify as such, they describe positions, and someone with the State Fund or other insurer, often in consultation with NCCI, assigns the position to the appropriate code. Amendment 4 uses the definition of "knowingly" in the Criminal Code: "A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by the conduct." Nos. 5 and 6 provide for some flexibility in assessing a penalty, based on aggravating or mitigating factors, and assure that the penalty assessment order is subject to opportunity for hearing.

DATE 2/20/93BILL NO. SB 405

ATTN: SENATOR TOM KEATING

WE AT TRI RIVER LUMBER SALES
ARE IN SUPPORT OF SB 405 —

WE NEED THIS BILL TO ALLOW ERISA INTO THE
STATE AS A WORK COMP ALTERNATIVE IN ORDER
TO SURVIVE. CONTINUING THE PRESENT SYSTEM
WILL MEAN DISASTER FOR ANY RESOURCE INDUSTRY
ESPECIALLY SAWMILLS OF OUR SIZE!

Doug Wilson, TRI RIVER LUMBER SALES

DATE 2-20-93

SB 405

TOWNSEND LUMBER COMPANY, INC.

Wood By-Products Transportation Specializing in Self-Un-Loading Trailers

101 North Front St. - P. O. Box L - Phone 406-266-5261

TOWNSEND, MONTANA 59644

2-19-93

Lanny White

Pres. Townsend LOR Co.

SB405

Honorable Tom Keating

MT. Senate

Labor and Employment
Relations Committee

Dear Committee,

Please put on record this letter for
Support of SB405.

My concerns are two fold. One
for our company, which, is a truck transporta-
tion co. hauling wood by products; Supporting
50-60 Montana families thru direct employment.
And two, for the state of Montana in general.

On the company side; with the state
work comp rates as they are, which is presently
26.26 per 100, It would be economically
feasible to move as much of our operation as
possible to Idaho. With the conservative pre-
diction of our rates being 40 per 100 by July
1994 the move would be essential; and what-
ever part of the business couldn't feasibly
be moved would have to be shut down.

TOWNSEND LUMBER COMPANY, INC.

Wood By-Products Transportation Specializing in Self-Un-Loading Trailers

101 North Front St. - P. O. Box L - Phone 406-266-5261

TOWNSEND, MONTANA 59644

Now that is not to say the person being shut down wouldn't be picked up by a company big enough to be self insured with rates of \$6⁰⁰ per 100. Yes there are large companies in Montana who are paying 6 per 100 for Workers Compensation thru both private and self insurance plans.

Because of restraints, smaller companies don't have the luxury of this form of free enterprise. I.E.: Insurance companies don't like Montana's liberal payouts and as for self insurance, small companies can't afford claims monitoring.

Now my concern for the state of Montana, briefly is; most transportation companies, unlike ours, which is intrastate, are interstate. This allows them to base wherever they wish. This has been happening for quite sometime and at this moment is gaining great momentum. Of course what happens with this approach is Montana loses good citizens and under the present Workers Compensation Insurance plan; rates for remaining businesses increases dramatically.

TOWNSEND LUMBER COMPANY, INC.

Wood By-Products Transportation Specializing in Self-Un-Loading Trailers

101 North Front St. - P. O. Box L - Phone 406-266-5261

TOWNSEND, MONTANA 59644

In closing; I can't emphasize enough the need for this legislature to act boldly in allowing for private insurance to take over the needs of Montanians.

Sincerely,

Larry White

Pres. Townsend Lumber Company Inc.

EXHIBIT 2 (SB-405)

DATE 2-20-93

SB 405

DATE

DATE

EXHIBIT

DATE

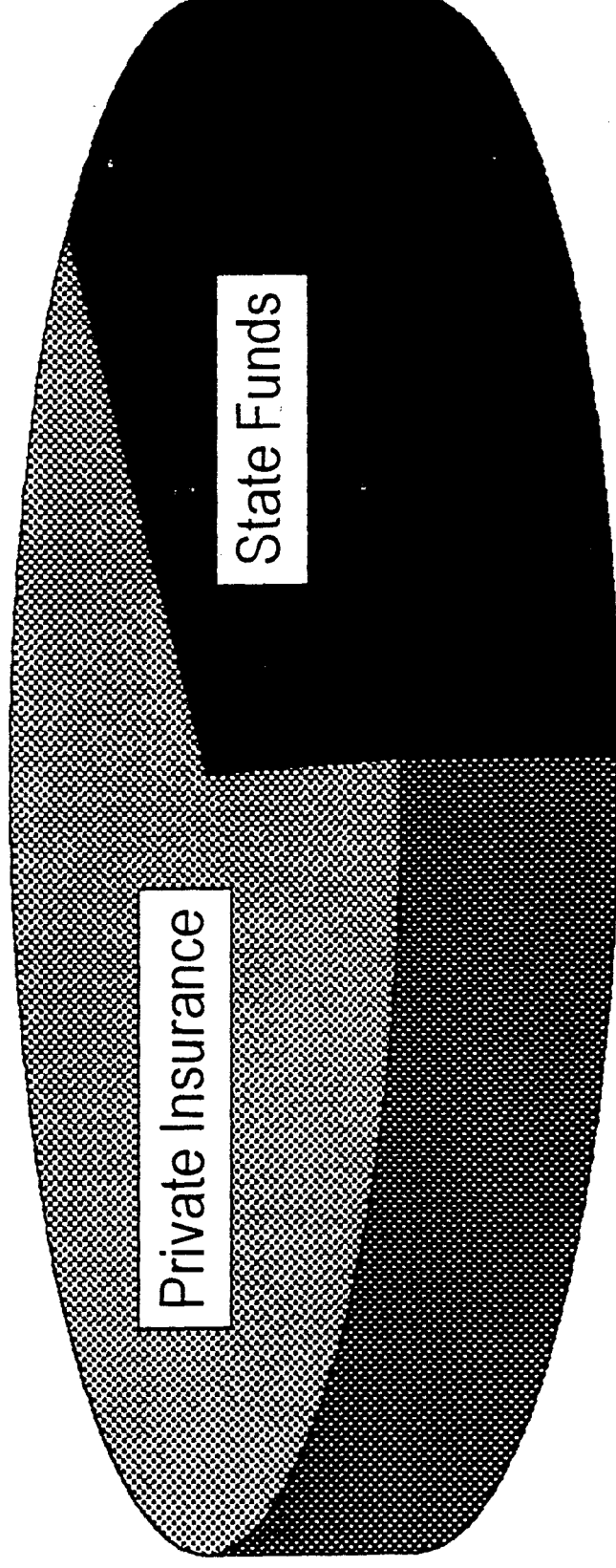
Privatize Montana's Work Comp

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3 - SB 405
DATE 2/20/93
BILL NO. SB 405

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

Use of Private Insurance or State Funds By States

32 states (63%)



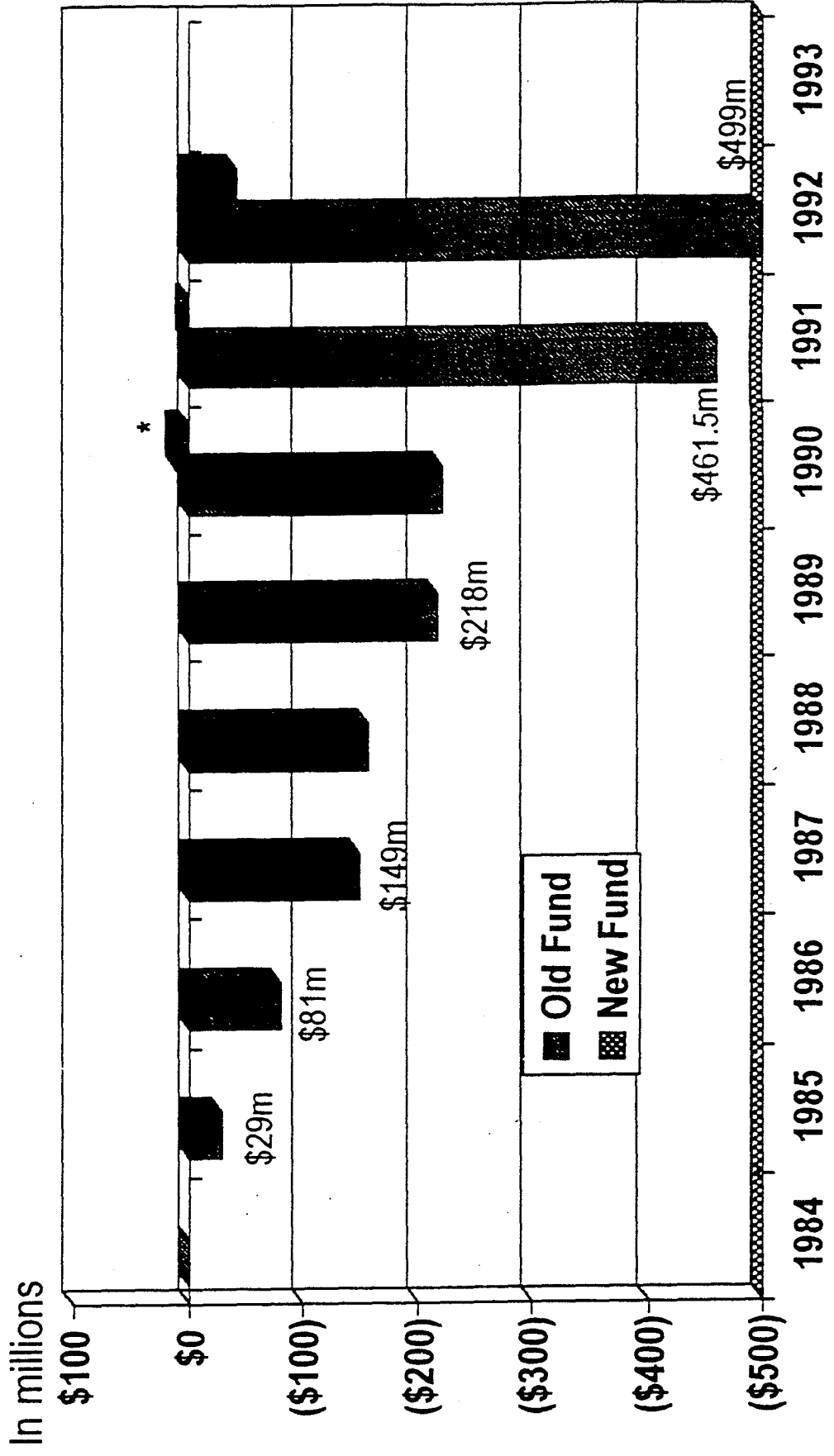
State Funds

Private Insurance

19 states (37%)

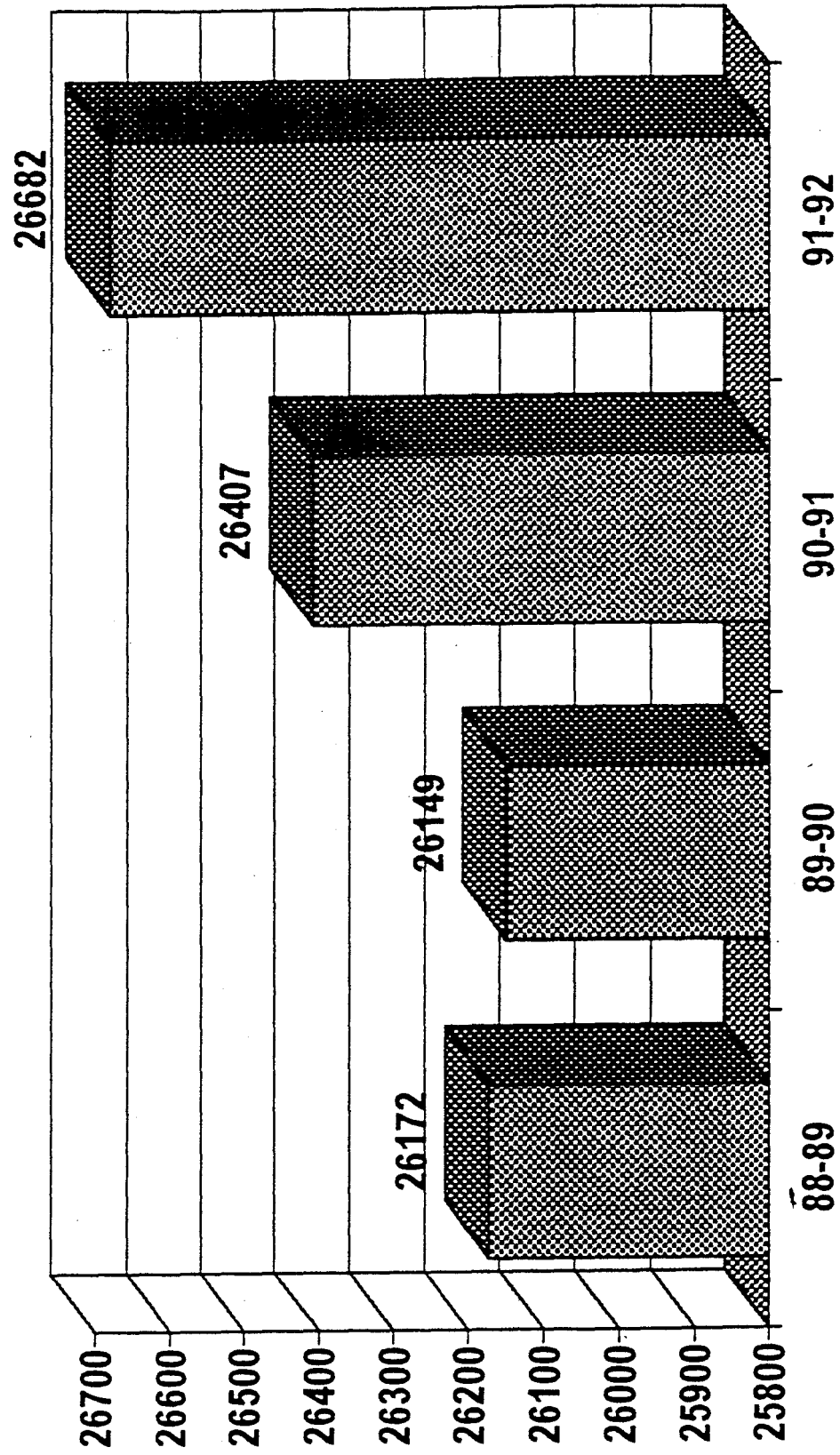
- Premiums have increased about 128% in less than 10 years.
- Premiums are only part of cost. Taxpayer subsidies include:
 - 1987- estimate \$10.75m per year from 0.3 percent payroll tax.
 - 1989 - \$20m appropriation to defray scheduled 22% rate hike.
 - 1990 - \$12m transferred from Old Fund to start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

Montana State Fund Balances

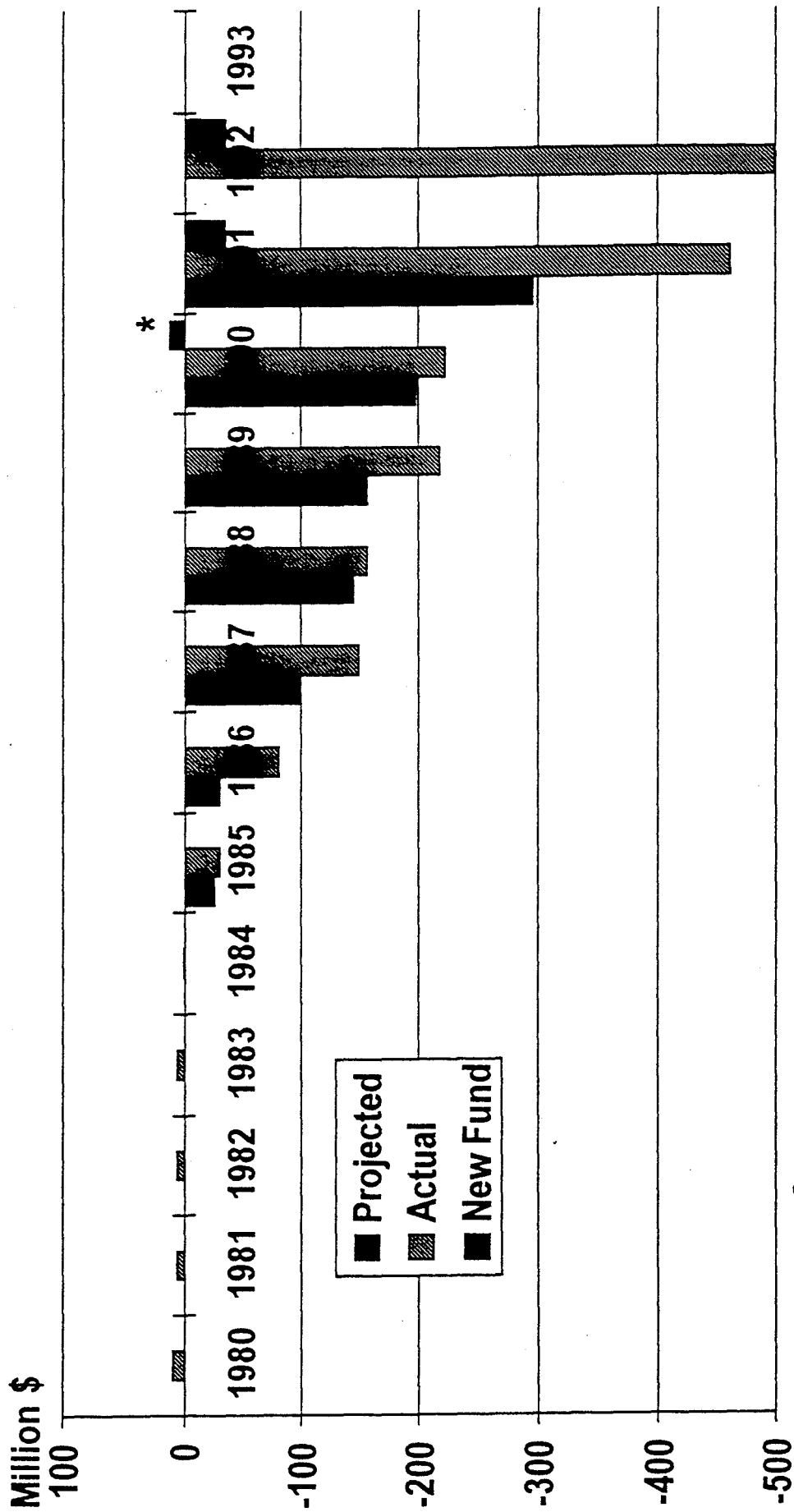


* \$12 m seed funding for start-up of New Fund, July 1990 5

Employers Enrolled - State Fund



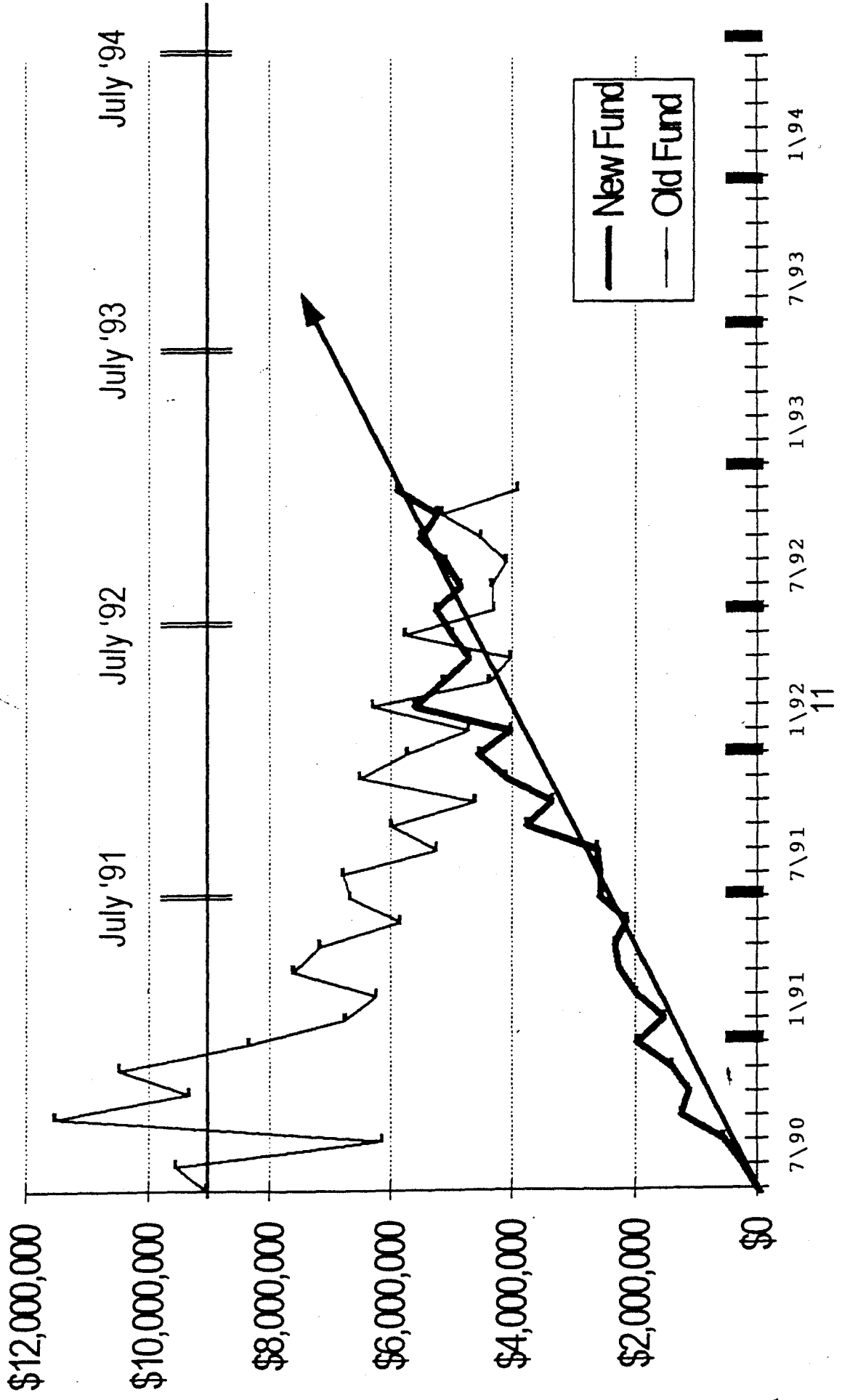
State Fund Deficit



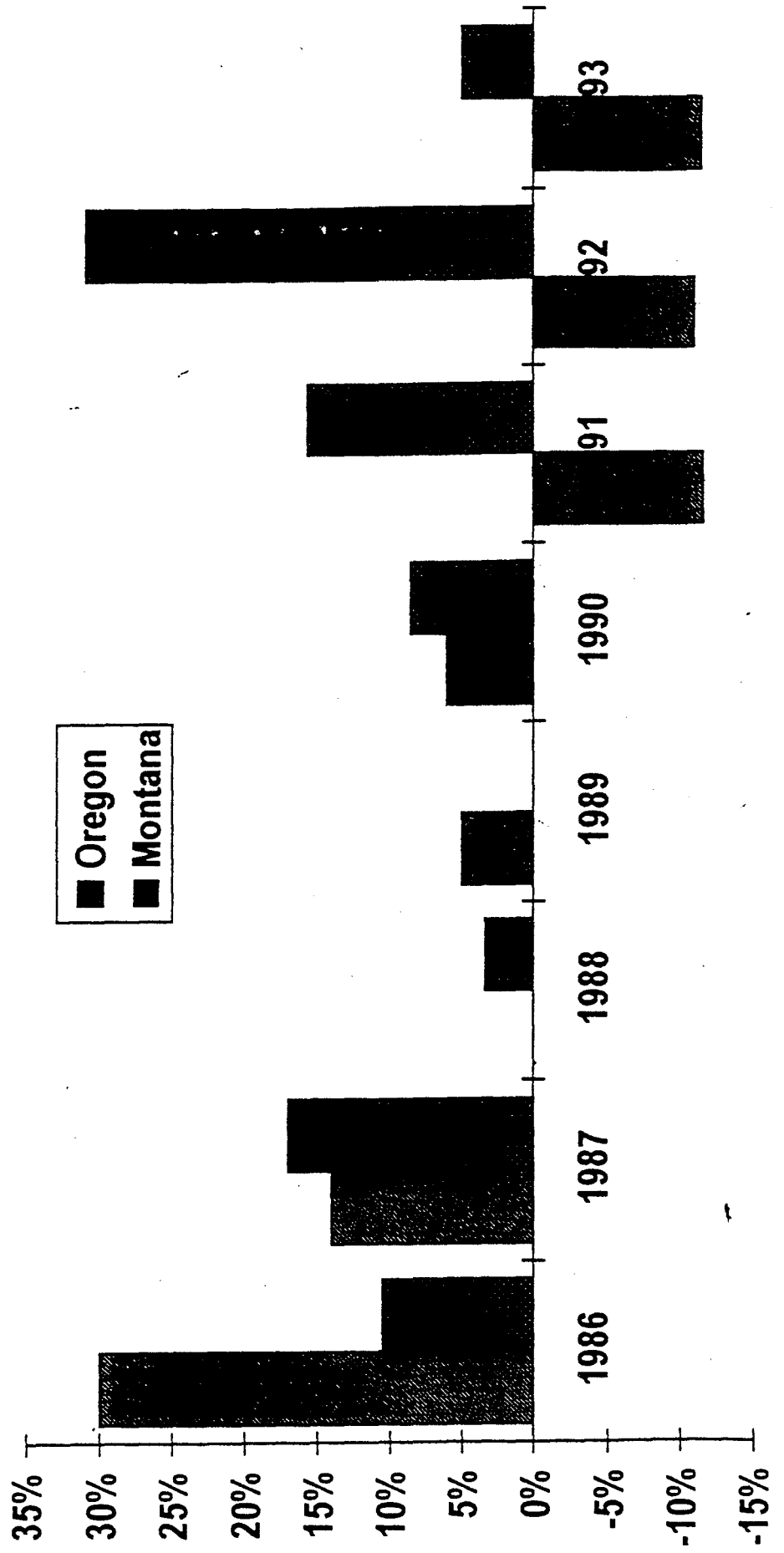
* \$12 million seed funding for startup of New Fund, July, 1990

Claims Paid Since Major Work Comp Reform, 1990

EXHIBIT 3 (SB 405)
DATE 2/20/93
SB 405



Rate Changes: Oregon - Montana



To: Members of the Senate Labor & Employment Relations Committee
From: Bradley Talcott, president of James Talcott Construction

Gentlemen:

As a Montana contractor who has just received my latest work comp printout from the State Fund, I would like to point out several cases to you that have persuaded me to support SB 405 by Sen. Tom Keating.

These cases will illustrate what I believe are some of the major problems with the State Fund and point to the need for an alternative system or competitive option for businesses in this state.

One of my cases involves a man I hired who let me know before he started working that he had been injured by a horse and was trying to see if he could get back on a job. After a short time in my employ, he came in and told us he was unable to work because his back (injured by the horse) simply could not hold up to the job. He gave the State Fund the same explanation.

On Feb. 20, 1992, I received a statement from the State Fund saying he had been compensated more than \$74,000, plus \$8,800 in medical bills for his back. Cause of injury listed on the State Fund printout: "Kicked in the back while showing a horse!." We immediately appealed the compensation. The conclusion of State Fund: their printout must have been in error. They revised it to read "Lifting concrete, strained back." It was charged to our account.

In another case, a former employee who had gone to prison was collecting compensation for a tailbone injury. He continued to collect benefits while in prison (I believe this has since been outlawed). Upon his release, a doctor determined he was healed, but his own doctor disputed that and he continued to collect benefits. We later learned (and an investigation proved) that he was running a car repair and sales business out of his own home.

We contacted the state hotline and explained that we believed the system was being abused. We were told by a State Fund employee that the Legislature had just provided funds to settle some of the old cases and that this case was among them. It was never investigated. **Total cost: \$158,500.**

In yet another case, a worker had been laid off following a job. He later came in and claimed he had a back injury incurred during the job. He did not know when or how the injury had occurred and, of course, there were no witnesses. Employees later told us the man was working in a rock

band, but compensation benefits were still being paid. In this case, there was no one to monitor whether an injury had actually occurred or whether the benefits were being paid while the man continued work. **Total cost: \$57,300.**

Finally, a worker had been on the job for one day and did not show up the next. He called in later to say he had been injured. Again, no witnesses. We were informed by employees that the man was working elsewhere for cash. We called the hotline and reported the suspected fraud. To our knowledge, there has been no investigation. **Paid out so far: \$15,800. And another \$27,000 in estimated liability has been set aside. Total four these cases is over \$314,000.**

Gentlemen, there may have been injury in some of these cases. My concern is that the State Fund does is so ineffective in managing the cases that abuses are allowed to occur, unchecked. If my insurance company in the private sector had handled cases like this, I would have fired them long ago. I don't have that option with the State Fund.

In fiscal year 1991, we paid \$109,000 in premiums; in fiscal 1992 it was \$191,000 and in calendar year 1992 we paid \$230,000. These increases in premiums leave less for the company to operate on and less for me to share with my employees.

Please consider Mr. Keating's bill as a way to provide an alternative to those of us who use the system.

Burdette D Talbot



Executive Office
318 N. Last Chance Gulch
P.O. Box 440
Helena, MT 59624
Phone (406) 442-3388

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 5

DATE 2/20/93

BILL NO. SB 405

TESTIMONY

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

SENATE BILL 405

1:00 P. M.

FEBRUARY 20, 1993

ROOM 413/415

MR. CHAIRMAN AND COMMITTEE MEMBERS:

FOR THE RECORD I AM CHARLES BROOKS, EXECUTIVE VICE PRESIDENT OF THE MONTANA RETAIL ASSOCIATION AND ITS AFFILIATES, MONTANA HARDWARE & IMPLEMENT ASSOCIATION, MONTANA TIRE DEALERS AND MONTANA OFFICE EQUIPMENT DEALERS ASSOCIATION.

WE RISE IN SUPPORT OF SB 405. OUR EXECUTIVE COMMITTEE FEELS THE WORKERS COMPENSATION PROBLEMS MUST BE RESOLVED DURING THIS SESSION. OUR MEMBERS HAVE LOST CONFIDENCE IN THE SYSTEM AND ITS MANAGEMENT. A RECENT SURVEY OF OUR MEMBERSHIP REVEALED THAT 65% OF THOSE RESPONDING FELT THE STATE SHOULD SELL THE FUND TO A PRIVATE INSURANCE COMPANY. 97% SAID WE SHOULD PUT A CAP ON SETTLEMENTS AND LIMIT ATTORNEY FEES.

THIS PROPOSED LEGISLATION RESPONDS TO THE CONCERNS OF OUR MEMBERS AND HAS AN ADDITIONAL FEATURE OF PUTTING IN PLACE AN ERISA PROGRAM WHICH WE SUPPORT. WE URGE YOU TO GIVE FAVORABLE CONSIDERATION TO SB 405.

DATE 20 February 1993

SENATE COMMITTEE ON LABOR & Employment Relations

BILLS BEING HEARD TODAY: SB 377 - BARTLETT, SB 381 - FORRESTER,
SB 360 - NATHE, SB 405 - KEATING

PLEASE PRINT

Name

Representing

Bill
No.

Check One

Support Oppose

| | | | | |
|--------------------|-------------------------|-------------------|-------------|-------------|
| Tom Randt | Self | SB 377 | X | |
| Ron James | IRONWORKERS 381-377 | | X | |
| Jeanette Bill | Self | SB 377 | X | |
| Phyllis Johnson | NFIB | 277 405 381 | X X X | X |
| RJE McVEES | McVEES DVE | 405 | X | |
| Queen Moore | Self | 377 | X | |
| John King | State Fund SB 360 | | no position | |
| Ted Scherf | Self | SB 377 | ✓ | |
| Greg Van Horssen | State Farm Ins. | | | X |
| Jacqueline Denmark | Am. Ins. Assoc | 405 360 | | X X |
| Jacqueline Denmark | Am. Ins. Assoc | 381 | X | |
| John Keating | Self | 405 | X | |
| Don Bucke | MT STATE AFL-CIO | SB 377 SB 381 | X X | SB X 405 |
| Roger Tippy | Mr Beer/Wine Wholesaler | 381 | | Amen |
| Eric Fers | Delaware | 377 381 | X | |
| Jim Murphy | State Fund | 360 | | * |

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 20 February 1993

SENATE COMMITTEE ON LABOR & Employment Relations

BILLS BEING HEARD TODAY: SB 377 - BARTLETT, SB 381 - FORRESTER,
SB 360 - NATHE, SB 405 - KEATING

PLEASE PRINT

Name

Representing

Bill
No.

Check One
Support Oppose

| | | | | |
|-------------|--------------|-----|-------------------------------------|-------------------------------------|
| Carl Schwab | Brad Talbott | 405 | | <input checked="" type="checkbox"/> |
| Ann Keating | Self | 405 | <input checked="" type="checkbox"/> | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY