

MINUTES

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

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Bill Wilson, Vice Chair, on March 11, 1993, at 3:02 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: Valencia Lane, Legislative Council
Kelsey Chapman, Committee Secretary

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

Committee Business Summary:

Hearing: HB 534, HB 621
Executive Action: HB 534, HB 174

HEARING ON HB 534

Opening Statement by Sponsor:

Representative Vicki Cocchiarella, House District 59, opened on HB 534.

Proponents' Testimony:

Stan Kaleczyc, representing the National Council on Compensation Insurance, told the Committee HB 534 provided a more actuarially sound way of establishing rates and rating plans for employers. By having an employer reporting on a gross amount, rather than a net amount of medical costs there is a rating plan established, which would put all employers on a level playing field. He said those employers that did not chose a medical deductible would report on a gross basis. HB 534 would provide that all employers

must report on a gross basis, thus avoiding discrepancies and disparities. Mr. Kaleczyc said Riley Johnson, National Federation of Independent Business (NFIB), was one of the first proponents of the medical deductible plan.

Jacqueline Lenmark, American Insurance Association (AIA), said AIA supported HB 534.

Don Judge, Executive Secretary, Montana State AFL-CIO (AFL-CIO), said the AFL-CIO supported HB 534.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Representative Cocchiarella told the Committee HB 534 was one of the few workers' compensation bills that improved the system but was not an attempt to harm workers.

EXECUTIVE ACTION ON HB 534

Discussion:

Senator Burnett asked what was the effect of having a total gross determined. Mr. Kalazyk answered that when there was an injured worker and the employer or insurer paid benefits, the gross amount paid to the hospital or doctor is paid. Under a medical deductible plan, this means the employer could pay the first \$500.00 of the employee's medical bill, and the insurer would pay the balance. When the employer reported the claim, the employer could report the net amount, or what the insurer had paid, or the gross amount, or total amount.

Motion/Vote:

Senator Blaylock moved that HB 534 be CONCURRED IN. The motion CARRIED UNANIMOUSLY, with Senator Keating, Senator Aklestad, Senator Blaylock, Senator Burnett, Senator Wilson, and Senator Lynch voting YES, and with Senator Towe absent and not voting.

HEARING ON HB 621Opening Statement by Sponsor:

Senator J.D. Lynch, Senate District 35, Butte, opened on HB 621 for Representative Jim Elliott, House District 51.

Proponents' Testimony:

Jim Murphy, Montana State Fund, stated that the purpose of HB 621 was to raise the threshold for the premium construction credit program to 1¹/₂ times Montana's average weekly wage. In the original legislation sponsored by Representative Jerry Driscoll and Senator John Harp in 1991 an error was made. The purpose of the 1991 legislation was to give a credit to the employers in the construction industry that paid a higher wage. When the legislation was drafted, the 1¹/₂ was left out of the bill. Mr. Murphy explained 1¹/₂ was being used because it equated to the maximum workers' compensation rate an employer can obtain. Mr. Murphy said he had spoken to both Representative Driscoll and Senator Harp, and they supported HB 621.

Don Judge, Montana State AFL-CIO, told the Committee with the rising cost of medical care in the workers' compensation system upsetting the cost of the loss of wages in the system, there were employers in Montana who were overpaying for what the cost of an injured worker's loss of wages and medical payments were. HB 621 would help bring down the cost of the high wage employers and equalize the system.

Bill Egan, Montana Conference of Electrical Workers, told the Committee HB 621 would level the playing field for employers who paid higher than average wages.

Ron James, Business Manager, Construction and Ironworkers of the State of Montana, rose in support of HB 621.

Jacqueline Lenmark, AIA, said the AIA supported HB 621 with the amendment found in the Bill. She said this was a compromise that had been used successfully in a number of states to address problems specific to the construction industry.

Stan Kaleczyc, NCCI, rose in support of HB 621.

Opponents' Testimony:

Nancy Griffen, Montana Building Industry Association, submitted written testimony in opposition to HB 621 (Exhibit #1).

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Lynch asked Jim Murphy to respond to Nancy Griffen's testimony. Mr. Murphy told the Committee she was correct, but the purpose of HB 621 was to give a premium credit to the high wage paying employers. He said by moving the threshold to 1 $\frac{1}{2}$ the states average weekly wage, the credit was being given to only the higher wage payers.

Senator Lynch asked Jim Murphy if the vast number of states that have laws giving credit to the high paying construction employers had provisions like the ones found in HB 621. Mr. Murphy answered there were many states that had such legislation, and the 1991 legislation in Montana was patterned after these states' laws.

Senator Aklestad asked Jacqueline Lenmark, AIA, if this legislation was heard last session. Ms. Lenmark answered that it was.

Senator Aklestad asked if the 1 $\frac{1}{2}$ times the average weekly rate had not been put in. Ms. Lenmark answered this was true. The legislation was patterned after Delaware legislation late in the 1991 session, and in matching Montana and Delaware, the 1 $\frac{1}{2}$ times was inadvertently omitted.

Senator Aklestad asked Jacqueline Lenmark how many other states had these laws. Ms. Lenmark answered that five states did - Montana, Delaware, Missouri, Oregon, and Iowa. She clarified Iowa had recently passed the legislation, but had not been implemented.

Senator Aklestad asked Ms. Lenmark if only four other states had passed the legislation if it might not be a detriment to smaller construction employers. Ms. Lenmark said it was not detrimental. She stated HB 621 would shift the cost of the system differently.

Senator Aklestad asked Ms. Lenmark if HB 621 had the potential to raise the rates on the smaller construction employers. Ms. Lenmark said the Bill may raise the rates of the construction employers who paid a lower wage. She said it would not be accurate to say the legislation would affect all small construction employers.

Senator Lynch asked Jacqueline Lenmark if the argument that under the current system the high wage employers were subsidizing the low wage employers. Ms. Lenmark answered this was true. Senator Lynch said HB 621 would even the costs.

Senator Aklestad asked Nancy Griffen if she would agree with Senator Lynch's statement. Ms. Griffen answered there was a graduated rate scale. She said Senator Lynch's statement was not

accurate if the graduated pay scale was used.

Senator Blaylock told Nancy Griffen there was subsidization of those lower wage paying employers by the higher wage payers. She answered the more a person paid, the higher credit the employer would receive, which would solve the intent of developing rates not penalizing high-wage payers.

Senator Keating asked Mr. Kaleczyc if there were two people in the construction industry, one paying \$13.00 per hour, and the other paying \$16.00 per hour on the same job, if the employer paying \$16.00 per hour would get a lower premium on workers' compensation. Mr. Kaleczyc answered the rate would be the same, and there would be a graduated discount depending on the wage paid.

Senator Keating asked Randy Norquest, member of the Casualty Actuarial Society, and employee at the Insurance Department, to explain the credit provision. Mr. Norquest answered the point of the schedule of credits was to address the problem of an employee receiving the maximum benefits. If the employee received a raise, the premiums may go up, but the benefits would not. Credits would be maximized at 1 $\frac{1}{2}$ times the worker's weekly wage.

Closing by Sponsor:

Senator Lynch closed for Representative Elliott.

EXECUTIVE ACTION ON HB 174

Motion:

Senator Blaylock moved HB 174 be taken from the TABLE.

Discussion:

Senator Lynch explained the Butte-Silverbow area police had originally not supported the legislation, but they changed their opinion.

Senator Lynch said if the motion was successful, the Legislative Council would prepare amendments he had proposed. He said these included a provision the chief executive would give the decision on the employee's misconduct and the sentence. The employee would then have two choices. The employee could go to the Police Commission and appeal the decision of the chief executive then move to the District Court. The other choice would be, if the choice was in the collective bargaining agreement, binding arbitration.

Senator Keating asked if the choice was the employee's. Senator Lynch answered this was correct. Senator Lynch said Alec Hansen,

League of Cities and Towns, had said the league did not like this, but it was an acceptable compromise.

Senator Aklestad asked if the employee would have a choice. He said if the arbitration was already in the contract, there would not be a choice. Senator Lynch answered there would be a choice. The employer could not change the choice, but the choice was in the contract. He said HB 174 would allow binding arbitration.

Senator Keating asked if the Police Officers' Association were in favor of HB 174. Senator Lynch answered the Butte police were in favor of the Bill. He said he did not think the Police Protective Association was in favor of HB 174. He clarified, though, that the management were members of the Protective Association.

Senator Blaylock told the Committee the Billings police were in favor of HB 174.

Senator Towe suggested there should be a Police Commission. He continued Senator Lynch's amendment allowed an officer to bypass the commission if the officer decided to go directly to arbitration. Senator Towe said he would rather see an appeal go through the commission first, then to the mayor, and if the mayor decided differently, then have a choice of arbitration.

Senator Lynch said this amendment could be discussed.

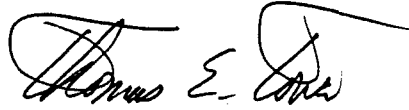
Senator Blaylock said he was uneasy about amendments like this because the Billings police wanted a direct choice.

Vote:

The motion to take HB 174 OFF THE TABLE CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 3:45 PM



SENATOR THOMAS E. TOWE, Chair



KELSEY S. CHAPMAN, Secretary

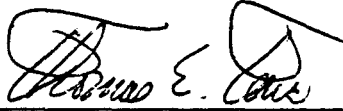
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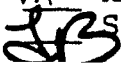
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 11, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 534 (first reading copy -- blue), respectfully report that House Bill No. 534 be concurred in.

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

M- Amd. Coord.
 Sec. of Senate


Senator Carrying Bill

551629SC.Sma

Homebuilders Assoc. of Billings
252-7533

S.W. Montana Home Builders Assoc.
585-8181

Great Falls Homebuilders Assoc.
452-HOME



Flathead Home Builders As:
752-2522

Missoula Chapter of NAHB
273-0314

Helena Chapter of NAHB
449-7275

Nancy Lien Griffin, Executive Director
Suite 4D Power Block Building • Helena, Montana 59601 • (406) 442-4479

HB 621

Revise Work Comp Rate Credit for Construction Industry

Recommend:
Do Not Pass

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 3/11/93

BILL NO. HB 621

Mr. Chairman, Gentlemen of the Committee:

Nancy Griffin, Executive Officer, Montana Building Industry Association. Our Association represents six local associations with 800 small business members serving the housing industry. These small businesses employ nearly 32,000 workers and subcontractors.

HB 621 was the subject of one of the most rushed readings and hearings of any piece of legislation pushed through prior to the transmittal date. The bill's sponsor indicated that he offered his available bill draft request to the State Fund and this is the legislation they developed.

As the workers comp system bases it's rates upon rate of pay, the intent of the rate credit process is to prevent penalty to those employers who pay higher wages. This makes good senses and serves to encourage rather than penalize employers to reward their worker's efforts. Currently this rate credit is computed on a sliding scales which begins with the average weekly wage. Please keep in mind that this average weekly wage is computed by averaging all wages paid-high wages and low wages-and already represents a compromise between high wage employers and low wage employers in the construction industry.

HB 621 raises the wage credit starting point from the average weekly wage, which last month was \$8.59 per hour, to one and one half times the average weekly wage, which would be \$13.50. This legislation effectively establishes a rate increase for employers paying under \$13.50 per hour. This effects retail establishments in the construction industry, laborers, subcontract work, and all work other than skilled carpenter and special trades services.

The State Fund representatives will tell you it will become a part of rate making computations and will all work out in the wash. I'm here to tell you that that "washing" will suds the small employers and rinse the big guys. It is another attempt by the workers comp insurance system to cut costs on the backs of the ratepayer, instead of concentration on claims and administrative efficiency.

No one can say that employers in the construction industry are not already paying substantial premiums. This committee had heard and will heard several pieces of legislation which are far more effective in getting new dollars out of the construction industry. Next week you will hear HB 470 which proposes to eliminate the independent contractor exemption and bring into the system hundreds, maybe thousands of uninsured employers in the construction industry. We support that as fair, but HB 621 which reshuffles rate making criteria from high wage employers to middle wage employers is just plain unfair.

There are ways to correct rate assessment problems in the construction industry, but HB 621 is definitely not one of those ways. We urge a Do Not Pass for HB 621.

DATE 3-11-93

SENATE COMMITTEE ON HB 534 LABOR

BILLS BEING HEARD TODAY: HB 534 - Cocchiarella
HB 621 - Elliot.

Name	Representing	Bill No.	Check One Support Oppose
Ron H. James	Ironworkers	HB 534	X
Ron H. James	Ironworkers	HB 621	X
ARS ERICSON	CARPENTERS	HB 534 621	X X
Wm Egan	MT Conf. Elect Wkrs	HB 621	X
Nancy Higgins	MT Builders Assoc	HB 621	X
Jim Murphy	State Union	HB 621	X
Don Judge	MT STATE AFL-CIO	HB 534 HB 621	X X
STAW KALECZYK	NCCI	HB 534 621	X X
Jacqueline J. Benmark	Am. Ins. Assoc.	HB 534 HB 621	X X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY