

**MINUTES**

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

**COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By Vice Chair Senator Bill Wilson, on March 25, 1993, at 3:07 PM.

**ROLL CALL**

**Members Present:**

Sen. Bill Wilson, Vice Chair (D)  
Sen. Gary Aklestad (R)  
Sen. Chet Blaylock (D)  
Sen. Tom Keating (R)  
Sen. J.D. Lynch (D)

**Members Excused:** Senator Tom Towe, Chair (D)

**Members Absent:** Senator Jim Burnett (R)

**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: HJR 14  
Executive Action: HJR 14

**HEARING ON HJR 14**

**Opening Statement by Sponsor:**

Representative Douglas Wagner, House District 8, told the Committee HJR 14 was a resolution requesting that the Workers' Compensation Commission review the workers' compensation premium rates being charged to yew bark harvesters. He said he had been told workers' compensation rates were not the place for the Legislature to be interfering with state agencies, but that he would not have introduced HJR 14 if the problem had been taken care of properly. He said the reason for having the hearing at such a late date was due to the fact he had given the Classification and Rating Committee (CRC) every opportunity possible to schedule and notify the yew bark harvesters of a hearing date. He told the Committee CRC had committed to doing such, but had failed to carry through. He said there had been no official notice of a hearing before CRC to the yew bark harvesters. He said there had been some changes in HJR 14, and handed out proposed amendments (Exhibit #1).

**Proponents' Testimony:**

Cecil Noble, President of Noble and Yew, Kalispell, told the Committee he and his wife were in their second year of producing bark using the Pacific yew wood for Bristol Meyer Swift, the American Cancer Institute. He said that two years before Bristol Meyer Swift bought all the yew wood from the National Forest for \$1 million to produce taxol, a drug used in treating cancer patients. He said the company had also been paying for all cost of the Environmental Impact Study (EIS) in the National Forest, and for all labor, which amounted to \$4 per pound. He said the costs became so high that the company said they would do harvesting on state lands and private lands. The state of Montana has an order of 300 thousand pounds. Mr. Noble said that a year before, with 165 people, Noble and Yew produced 200 thousand pounds. He claimed that before the commencement of operation in April of 1992, Noble and Yew had been trying with the workers' compensation system and with National Commission on Compensation Insurance (NCCI) to be rated for workers' compensation fairly. He continued, saying the main work force was college students. He said there would be between 250 to 300 students working in the coming harvesting season. He said that in the last year in 2 ½ months the work force had produced \$1.3 million in yew bark. He made reference to the example of yew wood. He said the peeler would take a common putty knife and mark the bark, hook it, and strip it off. He said the bark went from the yew fields to Noxon by means of truck, and there the bark is processed and shipped to Boulder, Colorado to Bristol-Meyer to be made into taxol. He referred to pictures of peelers contained in the blue folder (Exhibit #2).

He explained the process of cutting yew wood. He said with a chain saw, a sawer would cut the yew wood into two-foot lengths, and then the peeler would peel it for shipping to Noxon. He said there were five states currently producing yew bark. He pointed out that Bristol-Meyer would buy yew bark from the provider offering the lowest cost. He told the Committee that the Northwest had the most yew wood in a bush form. He said the bush yew wood had 18% more taxol than the yew in the tree form. Mr. Noble continued that in 1992 the price charged by Noble and Yew was \$5.30 per pound of bark, whereas the Oregon and Washington price was \$2.40 per pound. He said he had been directed to lower prices with the 18% differential, or there would not be a market for Nobel and Yew's yew bark.

Jamie Doggett, representing the Montana Cattlewomen and herself, told the Committee the taxol drug was used to cure ovarian and other types of cancer. She said she was representing herself because her mother was suffering from ovarian cancer. She said that to have the opportunity for cancer treatment was important.

Dan Glenny, BAG Consulting, Helena, told the Committee he worked for insurance companies, insurance agents, and attorneys who are suing insurance companies. He said that he was the underwriting manager for the Montana Loggers Management Corporation. He said the insurance industry, State Insurance Fund (SIF) and NCCI, was requiring that Noble and Yew pay rates based on the logging

classification for all the operations that are included in producing yew bark. He said the rate in Montana presently was \$48 to every \$100 of payroll. In 1992 the rate was \$45.71 with the State Fund. The total premium generated was about \$248,000. Out of that, the State Fund accrued liabilities equal to 12 cents per \$100 of payroll. He said that when the insurance agency establishes classification codes or examines how a business should be rated, it should look at what the people do and their exposure to accidents. Mr. Glenny said the logging classification code assumes very little frequency and very high severity. Noble and Yew had very low severity and only seven accidents. The total amount of money paid out in claims was \$735.00. He told the Committee when the NCCI did the inspection on the Noble and Yew facility, and when the State Fund originally classified it, they should have taken into account what was occurring. He said the State Fund still had the chance to say it had made a mistake in classification. The operations of Oregon, which are rated as loggers, deal with large trees cut down by chain saws and skidded to decking saws, put through a de-limber, and at that point, the logs are peeled. He said these logs were very large in comparison to the yew shrub that grows in Montana. He said the yew shrubs were what Montanan's would call scrub brush. He said the SIF would speak against HJR 14, saying that Noble and Yew should appeal its rating to the CRC in Montana. He said Noble and Yew has tried to do this. There was a meeting in December of 1992 and NCCI would not place the company on the agenda for a hearing. He said there was another meeting April 14, 1993, and Noble and Yew had yet to be notified of the schedule of the agenda for that appeal hearing. NCCI is the staff for the CRC, which allows it to write up a synopsis of the entire chain of events that occurred from April of 1992 until presently. This is an opportunity to characterize unfairly the way businesses should be rated. Mr. Glenny said the five members of the CRC had in their possession NCCI opinions which said this type of business must be rated 2702 for the cutting, and 2702 for the peeling. The State Fund supports this position because it is the classification code it originally assigned. Mr. Glenny said there was little success with getting reclassified by appealing to the CRC. He said the private insurers would oppose HJR 14 because they don't want the Legislature setting rates for the SIF or any insurance company. He continued, saying the Legislature could advise the insurance agency as a whole to adopt a classification code that matches fairly the risks and severity that the yew bark harvesters really have.

Ted Doney, law firm of Doney, Crowley, and Shontz, told the Committee he was representing Noble and Yew in the effort to get HJR 14 through the Legislature. He continued, saying he had been contacted by Mr. Noble in December 1992 regarding his situation. At the time he was looking for assistance in the appeal to the CRC. He told the Committee he had felt this to be an outrageous situation, and that the law firm would represent Mr. Noble *pro bono* in the Legislature with a resolution. He said that his partner John Shontz and he had been handling the case. He

explained that taxol was presently used to treat breast and ovarian cancer. He said that he had chronic lymphocytic leukemia, and taxol was being studied as being a drug to treat the disease.

Jerry Loendorf, Montana Medical Association (MMA), told the Committee MMA supported HJR 14 because taxol was an important drug in the use of treatment of cancer, and MMA thought the resolution was appropriate, though the MMA did not feel that it was the place of the Legislature to manage executive agencies. He said MMA did not think this was happening in this case, but rather that the Legislature would be pointing out to an executive agency an unfairness. He expressed the opinion that the workers' compensation rates charged were oppressive.

Mark O'Keefe, State Auditor and State Commissioner of Insurance, told the Committee he was strongly in favor of the amendment proposed (Exhibit #1). He said without the amendment, HJR 14 directed the Commissioner of Insurance to act without legal or statutory authority. He said the amendment took the commissioner out of HJR 14. He said he had seen the yew harvesters at work, and the proponents exhibits and testimony effectively represented the work done by these people. He said in his business, Glacier Wilderness Guides, his employees were classified by the State Fund as outfitters, and paying \$40 per \$100. He said the employees did not belong in the code class they were placed in. He said that he appealed to the CRC, and the CRC lowered the rate to \$6 per \$100. Mr. O'Keefe told the Committee the proponents were saying that the CRC process had not worked for them as it had for him. He said he knew that Noble and Yew were on the CRC meeting agenda for April 14, 1993. He explained that Noble and Yew had not received notification of that agenda. He asked the Committee to hear both sides of the issue, but to wait for the decision of CRC before taking action on HJR 14. He warned once the Committee began legislating workers' compensation rates it would never end. He said on the House Floor that day, HB 587 had passed. HB 587 takes employers like Noble and Yew and puts them on the CRC. Previously the Committee had been composed of insurers only. He said they were asking there be some employers on the Committee who know the situation and could solve this type of situation.

#### Opponents' Testimony:

Jacqueline Lenmark, American Insurance Association (AIA), told the Committee AIA was a trade association comprised of property and casualty insurers. She expressed it was difficult to oppose HJR 14 because the proponents presented a very compelling story. She said AIA strongly opposed the resolution because there was a procedure in place for setting rates and establishing classifications for all employers. She said this procedure applied to all insurers as well under PLAN 2 and PLAN 3. She continued, saying the procedure provided for the Commissioner of Insurance to set rates and to determine if filed advisory rates

were excessive, inadequate, or discriminatory. CRC is in place to establish whether a certain employer has been improperly classified. Ms. Lenmark told the Committee HJR 14 asked the Legislature to politically involve itself in the rate-making process. She recognized that the resolution was directed only at the State Fund, but when the Legislature involved itself in the rate making of the State Fund, it affected the rates of the companies AIA represents. She said this made the marketplace volatile, and provided additional disincentives for the private markets to come into Montana. Ms. Lenmark told the Committee one of the proponents had asked that the Legislature advise the State Fund to set an appropriate rate. She said the State Fund believed it had already done so. She said Commissioner O'Keefe had been regulating the advisory rates that have been filed, and Noble and Yew was on the agenda, as they were informed immediately after the House hearing on HJR 14. She asked the Committee to see that Noble and Yew have a fair hearing from the CRC. She continued it was not appropriate for the Legislature to make a separate determination after the determination of the CRC. She said this rate making process needed to be separate from the political process, and she asked the Committee to leave the system as it was.

Stan Kaleczyc, representing NCCI, told the Committee in December of 1992 Nobel and Yew approached CRC to be put on the agenda. By that date the agenda was established for the December meeting, and it was too late to put them on the agenda. Noble and Yew was told it would have its case heard at the next available meeting. The next available meeting will occur on April 14, 1993. Mr. Kaleczyc said he was notified ten days before that Nobel and Yew had not received formal notification. He explained he personally called NCCI and was assured Noble and Yew would be on the April 14 agenda and communicated that information to Mr. Noble's attorney. Mr. Kaleczyc said since that time he had been told notification to all of the April 14 appellants has been mailed. He told the Committee Noble and Yew would have an opportunity to make a presentation to the five-member CRC. The five members include by statute one representative of the Independent Insurance Agents, one from the State Fund, and three private insurance carriers as appointed by the insurance commissioner. He explained that at the hearing, Mr. Noble would have the prerogative of making the presentation himself, making it with the assistance of an attorney, or having a representative speak on his behalf. He would have the opportunity to explain his case and the CRC would question him. The CRC would have in its possession technical information from NCCI on what the current classification codes relevant to the appeal are, and would render the decision. That decision may or may not be favorable to Noble and Yew. Mr. Kaleczyc continued, saying employers prevail before the CRC, as with Mr. O'Keefe's case. If Nobel and Yew did not like the result of the Committee's decision, it could have a formal contested case hearing under the APA. If that decision is not acceptable, then court is an option. He expressed that there was due process available to Noble and Yew. He assured

Representative Wagner that Noble and Yew would have the due process opportunities he was seeking with HJR 14.

John King, State Fund, told the Committee the State Fund opposed HJR 14 due to all the previously stated reasons the opponents had given.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Keating asked Dan Glenny if Mr. Noble could buy coverage privately, rather than from the State Fund. Mr. Glenny answered that Mr. Noble had the option of purchasing that insurance from a private insurance company if there was one in Montana.

Senator Keating asked Mr. Glenny if a private carrier in Montana selling Mr. Noble coverage would have to sell by NCCI rates. Mr. Glenny answered they could charge any rate they wanted, but would have to file the rate with the insurance commissioner. He clarified that in Montana the rates set were advisory rates.

Senator Keating expressed that this was a case where a private carrier could be competitive considering the risk involved. Mr. Glenny explained there were only two carriers in Montana that sold insurance such as this: the State Fund, and Montana Loggers' Exchange. The Exchange would not sell to Noble and Yew because Noble and Yew is not a logging operation.

Senator Aklestad asked Representative Wagner if the individuals cutting the trees would still be under the higher rating. Representative Wagner answered that they would. He said there were three different classifications of employees possible for Noble and Yew: the employee with the chainsaw cutting the trees, the bark peelers, and the person driving the truck with the yew bark to Noxon.

Senator Aklestad asked Representative Wagner if the people who cut the trees were employed by Noble and Yew, or if they were private contractors. Representative Wagner answered that they were employed by Mr. Noble. He clarified that most of these people were sawers that were previously employed by the timber industry and had lost their jobs due to the market conditions.

Senator Keating asked Mr. Noble if the sawers were on a paid scale. Mr. Noble answered that the sawers had a daily base-pay of \$120 per day. They also receive a 10 cent per pound bonus for the accomplishments of their five-man peeler crew.

Senator Keating asked what the peelers were paid. Mr. Noble answered that in the last year, the peelers were paid \$1.70 per

pound, and as an incentive, as they reached 100 pounds, they received a raise to \$2.00 per pound.

Senator Keating asked what the pickup driver was paid. Mr. Noble said the driver was paid a flat \$100 per day.

Senator Blaylock asked Representative Wagner how much difference there was in the danger of a sawer sawing down large timber and a sawer cutting yew trees. Representative Wagner said it was less dangerous for the yew tree sawers.

Senator Blaylock asked Representative Wagner if an employee might cut his leg with a chain saw, why the rate should be lower. Representative Wagner clarified that the intention of HJR 14 was not to re-rate the sawyers, but rather those people with the putty knives peeling bark.

Senator Keating asked for clarification on rating of college students. Mr. Noble said the problem with having college students sign an independent contracting form was the government did not get any of the money. The year after a situation like this took place, the company that had hired college students as independent contractors said any students or other employees would have to be on its payroll as employees. He reiterated that he was not looking to lower the premiums on the sawers, but rather on the peelers and drivers.

Senator Wilson asked Mr. Noble where in HJR 14 the language was that clarified that the only rate-reduction wanted was that of the peelers and drivers. Mr. Doney said that the resolution was not specific. He said for the record, Noble and Yew was only looking to reduce premiums on people who peel the wood and drive the trucks, rather than the sawyers.

Senator Keating said he thought it was clear on page 3, lines 1, 2, and 3, where HJR 14 said the State Fund was collecting unwarranted premiums on yew bark harvesters.

Senator Wilson argued that someone who cuts down the yew tree could be considered a harvester.

Mr. Doney said it would be good to clarify this, and restated that the sawers were not the target of the resolution.

Senator Wilson asked Stan Kaleczyc to explain the CRC process. Mr. Kaleczyc explained this was the Classification and Rating Committee which was a statutory committee in Montana. Under the insurance codes that committee is established. The Commissioner of Insurance appoints four of the five members, and the fifth is automatically a representative of the State Fund. He said CRC was the committee that reviewed rates for the NCCI filings, but not the State Fund filings.

Senator Wilson asked Mr. Noble if he had been before CRC in an

attempt to get a rate reduction. Mr. Noble answered that the dispute had gone on since April of 1992. He said he had been given the "run around" by CRC. He said that he had talked to a woman there weekly, and she told him Montana could not change his rating, but rather NCCI in Colorado could. He continued, saying he called NCCI, and a person there would say that the reclassification would be taken care of in Montana. Mr. Noble told the Committee that he had asked NCCI to send a representative to investigate the operation. In August, when the harvesting was almost through, Mr. Noble asked again. The NCCI representative came in September, after the harvesting was finished for the season. Mr. Noble told the Committee as he was showing the representative of NCCI pictures and videos, the representative told him NCCI was where rates and classifications were set. Mr. Nobel asked the representative why his premiums were \$48 per \$100. The representative told him it was because his employees worked in the woods. Mr. Noble said that he was an outfitter in the woods, and the premiums on that business were \$28 per \$100. Mr. Noble said he had looked into three private insurance carriers who said they were interested in his business if the premium was \$100,000 or more. He said he was led to believe it would be the same classification as NCCI had set.

Senator Aklestad asked Representative Wagner if he would have any problem with the Committee holding HJR 14 in the Committee until the CRC hearing date. Senator Lynch said the deadline for transmitting bills and amendments back to the House was April 14, 1993, the day of the CRC hearing. Senator Aklestad asked if anyone knew what time the CRC hearing was. Mr. Kaleczyc answered that Nobel and Yew was schedule to be in front of CRC from 11:45 AM to 12:30 PM. He said that the timing could slip if any other appellants went over on their time.

Senator Lynch asked if the Committee could take action as normal, but hold the report until April 14. Representative Wagner said that he would be concerned with getting the resolution beck to the House by the transmittal amendment deadline. He said that even if the report was signed by the chair on the transmittal date, HJR 14 would still have to go on the Floor.

Senator Aklestad asked what the vote was in the House. Representative Wagner answered it was 97 in favor, 3 against HJR 14. Senator Aklestad said that if the Senate was late in transmitting HJR 14, the House would suspend rules to accept it. Senator Lynch said another deadline mentioned on the schedule was April 1, 1993 - deadline to general bills and resolutions.

Senator Keating asked John King if the State Fund always charged NCCI recommended rates. Mr. King answered State Fund tried to follow the NCCI classification and promulgate the rates based upon State Fund reports over a period.

Senator Blaylock asked Jacqueline Lenmark if it was difficult to get a hearing before the NCCI or the CRC. He asked if a company



would get "the run around". Ms. Lenmark answered she did not know this, but she trusted that the Committee had heard an accurate description of Noble and Yew's experience. She said the whole process of the CRC was being reviewed, and Commissioner O'Keefe had requested a bill that would improve that procedure. She said she had called NCCI twice about Noble and Yew. She said she knew also that Mr. Kaleczyc had specifically addressed this issue. She continued, saying the improvements in Commissioner O'Keefe's bill would solve much of the problem. Also, she said this would not guarantee Noble and Yew would get the result they were looking for. She said these were the reasons she did not want the Legislature to get involved in this process. She said it would set a precedent for every other person who was dissatisfied with workers' compensation rates to appeal with a bill to the Legislature. She said they would all have compelling stories, but she would urge the Committee to make the decision to not start this precedent.

Senator Blaylock asked Ms. Lenmark if when she made the two calls to the NCCI she had gotten "the run around". Ms. Lenmark answered that she got immediate action on both calls, and had reported immediately to Mr. Doney the original CRC hearing date was going to be April 6, 1993. She said CRC had apparently had to reschedule that hearing date.

Senator Aklestad asked John King if Noble and Yew had to go through the hearing process if the State Fund felt the rate was too high. Mr. King answered when the application for workers' compensation coverage came in, DOLI was interested because yew bark harvesting was a novel industry.

Senator Aklestad asked Mr. King what the date was on the application. Mr. King answered that it had been dated for over one year before. He continued, saying the State Fund had contacted NCCI for a suggested rate for yew bark harvesters as an industry classification. He explained an industry classification covered different types of occupations within an industry. An occupational classification covered only one occupation. He said when the disagreement continued, State Fund requested an NCCI inspector go and investigate as a third party. He said if the inspector came back and told the State Fund it had misclassified Noble and Yew, than State Fund would have changed the classification. The inspector came back to the State Fund substantiating the classification given to Noble and Yew originally. Mr. Noble expressed his concerned. Mr. King said that State Fund was following direction by the NCCI on this work. He said because of this, Mr. Noble was informed his case would have to go before the CRC. He stated the system did work.

Senator Aklestad asked Mr. King what the justification was for what NCCI stated in the inspection. Mr. King said the inspection discussed the hazards of work in the woods and on that terrain, chainsaws involved, and applying an industry classification.

Senator Aklestad asked Mr. King what the rate was for Christmas tree harvester's rates. Mr. King answered that Christmas tree harvesters had been rated along with nurseries and other similar industries. He said the nursery association had applied to CRC in Montana to split several of these groups that were included with it. He said Christmas tree harvesters now had their own classification code.

Senator Aklestad asked what that rate was. Mr. King answered that he was not sure, but it was about \$25 to \$30 per \$100. He said Christmas tree harvesting was typically done on a plantation with tilled soil and rolling hills. He said that not so much of the exposure was in the harvesting, but rather in the pruning of the trees that goes on for five years until a tree reaches maturity.

**Closing by Sponsor:**

Representative Wagner closed. He said the first item to consider was that taxol was made from the bark and would benefit cancer patients. The goal was to get the treatment price of cancer as low as possible, and the rating that Noble and Yew had was driving the price up. The higher prices are passed directly to the cancer patient. He continued, saying this was an infant industry in Montana that had a very good future. He said one person, a college student that had testified was making about \$326 per day. He said this might be classified like someone who was picking up pine cones in the forest, but not falling timber. He explained if a peeled yew log had a branch still on it, it would begin to grow wherever it was, showing how resilient and renewable the trees were. Furniture companies were exploring the idea of cutting the logs into different lengths, so that after the dense wood was peeled, furniture could be made. He told the Committee that if something was not done with HJR 14, the yew harvesters would not make it.

**EXECUTIVE ACTION ON HJR 14**

**Motion/Vote:**

Senator Aklestad moved the amendment (HJR001401.AEM) be adopted. The motion CARRIED UNANIMOUSLY, with Senator Towe and Senator Burnett not present for the vote.

**Discussion:**

Senator Wilson suggested that on Page 1, line 16, and thereafter throughout HJR 14, that "harvesters" be amended to read "peelers and drivers" ("Wilson amendment").

Motion\Vote:

Senator Keating moved that HJR 14 be amended ("Wilson amendment"). The motion to amend CARRIED UNANIMOUSLY with Senator Towe and Senator Burnett not present for the vote.

Discussion:

Senator Keating clarified that currently HJR 14 was a resolution to the State Fund urging them to change the premiums for yew bark peelers. Eddy McClure clarified it also included drivers.

Senator Wilson asked for a definition of driver. Senator Keating answered this was a pick-up driver. Eddy McClure said it was the truck driver that picked up the bark bags.

Senator Blaylock told the Committee HJR 14 was a serious mistake. He asked why the workers' compensation problem was as bad as it was in Montana. He said in 1983 and 1984 the political pressure from the Governor of Montana was for the State Fund to not raise rates in the logging industry. The State Fund did not raise the rates, and the workers' compensation system began to sink. He said with HJR 14, the Legislature would be interfering with the system by using political pressure directed toward NCCI. Senator Blaylock said Noble and Yew probably had a good case, but that the Legislature should not be using political pressure to say what a state agency should do. He stated political pressure was the reason the workers' compensation system was in trouble.

Senator Aklestad said he had a problem with HJR 14. He explained he thought the harvesters were in the wrong classification, but HJR 14 set a precedent, and there was no way of knowing who would come to the Legislature next asking for a similar bill or resolution.

Senator Keating said there were not private carriers in Montana because the State Fund had been subsidizing some of the industries by undercharging workers' compensation rates. He said the benefits exceed the premiums being paid. He continued that the Legislature was not addressing NCCI for reclassification in HJR 14, but rather urging the State Fund, for the sake of a particular industry in the state, to reconsider the premiums they charge for certain workers within that industry. He said these workers' did not come close to claiming as many benefits as there were premiums paid. He said he did not see anything wrong with both houses of the Legislature urging the State Fund to reconsider the fairness of the workers' compensation rates. Senator Keating stated the Legislature was not dictating the rates to the State Fund, but saying yew bark harvesting was a new and vital industry in Montana and there should be reconsideration of the rates. He said this would in no way jeopardize the actuarial soundness of the State Fund.

Senator Blaylock told the Committee that if the Legislature did pass HJR 14, it would be because it would have some effect. He said Senator Keating was correct that it was not delegating to the NCCI, but instead HJR 14 was telling the State Fund to not follow the NCCI. He argued that, in effect, the Legislature was looking to change the system with HJR 14. It would not be a law, or a direct order, but it would be pressure.

Senator Wilson asked Mr. Noble how marginal his operation was. Senator Wilson asked if it was true he might be out of business if the workers' compensation rates were not changed. Mr. Noble answered that he could say for a fact that he would not have an operation if the prices of premiums were not reduced.

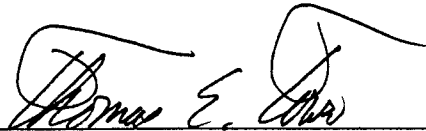
Senator Aklestad asked if the Committee took a vote, that the vote be left open for Senator Towe and Senator Burnett who were not present at the time.

**Motion\Vote:**

Senator Keating moved that HJR 14 BE CONCURRED IN AS AMENDED. The Motion CARRIED with Senator Wilson and Senator Keating voting YES. Senator Blaylock and Senator Aklestad voted NO. Senator Lynch voted YES by a proxy vote. Both Senator Burnett and Senator Towe voted YES by proxy.

ADJOURNMENT

Adjournment: 4:15 PM



SENATOR THOMAS E. TOWE, Chair



KELSEY S. CHAPMAN, Secretary

TET/ksc

# ROLL CALL

SENATE COMMITTEE LABOR & EMPLOYMENT REL. DATE 3-25-93

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GARY AKLESTAD	X		
SENATOR TOM KEATING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR J.D. LYNCH	X		
SENATOR JIM BURNETT		X	
SENATOR BILL WILSON	X		
SENATOR TOM TOWE			X

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
March 28, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Joint Resolution No. 14 (third reading copy -- blue), respectfully report that House Joint Resolution No. 14 be amended as follows and as so amended be concurred in.

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

That such amendments read:

1. Title, lines 14 and 18.  
Following: "FUND"  
Strike: "AND THE"
2. Title, lines 14 through 15 and 19.  
Page 3, lines 9 and 16.  
Following: "INDUSTRY" or "industry"  
Strike: "COMMISSIONER OF INSURANCE"
3. Title, line 16.  
Following: "BARK"  
Strike: "HARVESTERS"  
Insert: "PEELERS AND TRANSPORTERS"
4. Page 2, line 1.  
Following: "be"  
Strike: "harvested"  
Insert: "peeled"
5. Page 2, line 9.  
Following: "of"  
Strike: "harvesting"  
Insert: "peeling and transporting"
6. Page 2, line 24.  
Following: "the"  
Strike: "harvest"  
Insert: "peeling and transporting"
7. Page 3, lines 2 and 10.  
Following: "bark"  
Strike: "harvesters"  
Insert: "peelers and transporters"
8. Page 3, line 6.  
Following: "bark"  
Strike: "harvesting"  
Insert: "peeling"

9. Page 3, lines 8 and 15.  
Following: "Fund"  
Strike: "and the"

10. Page 3, line 17.  
Strike: "be directed to"  
Following: "on"  
Strike: "their"  
Insert: "its"

-END-





Amendments to House Joint Resolution No. 14  
Third Reading Copy

Requested by Representative Wagner  
For the Senate Committee on Labor and Employee Relations

Prepared by Eddy McClure  
March 25, 1993

1. Title, lines 14 and 18.  
Following: "FUND"  
Strike: "AND THE"
2. Title, lines 14 and 15 and 19.  
Page 3, lines 9 and 16.  
Following: "~~INDUSTRY~~" or "~~Industry~~"  
Strike: "COMMISSIONER OF INSURANCE"
3. Title, line 16.  
Following: "BARK"  
Strike: "HARVESTERS"  
Insert: "PEELERS AND TRANSPORTERS"
4. Page 2, line 1.  
Following: "be"  
Strike: "harvested"  
Insert: "peeled"
5. Page 2, line 9.  
Following: "of"  
Strike: "harvesting"  
Insert: "peeling and transporting"
6. Page 2, line 24.  
Following: "the"  
Strike: "harvest"  
Insert: "peeling and transporting"
7. Page 3, lines 2 and 10.  
Following: "bark"  
Strike: "harvesters"  
Insert: "peelers and transporters"
8. Page 3, line 6.  
Following: "bark"  
Strike: "harvesting"  
Insert: "peeling"
9. Page 3, lines 8 and 15.  
Following: "Fund"  
Strike: "and the"

10. Page 3, line 17.  
Strike: "be directed to"  
Following: "on"  
Strike: "their"  
Insert: "its"

AMENDMENT TO HOUSE JOINT RESOLUTION 14

HOUSE THIRD READING COPY  
by Representative Wagner

1. Page 1, Line 14  
Strike: "AND THE"  
Strike: "COMMISSIONER"
2. Page 1, Line 15  
Strike: "OF INSURANCE"
3. Page 1, Line 18  
Strike: "AND THE"
4. Page 1, Line 19  
Strike: "COMMISSIONER OF INSURANCE"
5. Page 3, Line 8  
Strike: "and the"
6. Page 3, Line 9  
Strike: "COMMISSIONER OF INSURANCE be directed"  
Insert: "is requested"
7. Page 3, Lines 15 and 16  
Strike: "~~and the department of labor and industry~~ COMMISSIONER OF INSURANCE be directed to"
8. Page 3, Line 17  
Strike: "their"  
Insert: "its"

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 3/25/93

BILL NO. HJR 14

RATIONALE:

This set of amendments eliminates the Commissioner of Insurance from the resolution. The amendments also clarify that the Legislature is not "ordering" the state fund to do anything not consistent with the law and intent of the resolution.

EXHIBIT NO. 2  
DATE 3/25/93  
BILL NO. HJR 14

HOUSE JOINT RESOLUTION NO. 14

INTRODUCED BY Wagner Knox Rose Bird W Ryan

m. Hassan Schuler Brucki-Mann Bartlett

Kennedy Squires Swanson Davis Lewis Rasmussen

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE STATE

FUND AND THE DEPARTMENT OF LABOR AND INDUSTRY TO REDUCE THE WORKERS' COMPENSATION INSURANCE PREMIUMS FOR YEW BARK

HARVESTERS TO A LEVEL CONSISTENT WITH ACTIVITIES CARRYING SIMILAR RISKS TO WORKERS; AND REQUIRING A REPORT BY THE

STATE FUND AND THE DEPARTMENT OF LABOR AND INDUSTRY TO THE

54TH LEGISLATURE.

WHEREAS, taxol is used by Montana women and other women in the United States who are afflicted with ovarian cancer when other drugs are often not effective; and

WHEREAS, taxol is very scarce in the United States; and

WHEREAS, taxol is produced from the bark of yew brush, and the bark of yew brush can now be harvested in Montana to yield enough taxol to treat annually approximately 3,400 American women with ovarian cancer; and

WHEREAS, yew brush in Montana is a renewable resource; and

WHEREAS, a Montana harvester of yew bark employs approximately 250 people, and the bulk of the employees merely remove the bark from branches with putty knives; and



1           WHEREAS, the cost of harvesting yew bark in Montana is  
2 double the cost in Washington, Oregon, and Idaho; and

3           WHEREAS, the State Fund is collecting \$48 per \$100 of  
4 paid wages in 1992, and the workers' compensation claims  
5 were only 12 cents per \$100 of wages paid in 1992; and

6           WHEREAS, the cost for workers' compensation insurance is  
7 passed on to the cancer patients needing taxol, and the  
8 insurance cost represents 18% of the \$695 cost per treatment  
9 or \$124.06 of the cost of each treatment; and

10           WHEREAS, some women may be precluded from receiving  
11 taxol treatments because of the unnecessarily inflated price  
12 of the drug.

13

14           NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
15 OF REPRESENTATIVES OF THE STATE OF MONTANA:

16           (1) That the harvest of yew bark is a desirable  
17 economic and humanitarian activity.

18           (2) That the State Fund is collecting unwarranted  
19 premiums by charging yew bark harvesters the same rate as a  
20 logging and lumbering enterprise.

21           (3) That the unwarranted rates charged by the State  
22 Fund are a hardship on cancer victims and discourage the  
23 development of environmentally safe yew bark harvesting in  
24 Montana.

25           (4) That the State Fund and the Department of Labor and

Page  
2

1 Industry be directed to evaluate the premiums charged to yew  
2 bark harvesters and to reduce the premiums to a level  
3 consistent with activities carrying a similar risk to  
4 workers and that the Legislature recognize that similar  
5 activities include hand carving and picking pine cones or  
6 mushrooms in the forest.

7 BE IT FURTHER RESOLVED, that the State Fund and the  
8 Department of Labor and Industry be directed to present a  
9 report on their activities consistent with this resolution  
10 to the 54th Legislature during its first month of assembly.

-End-

EXHIBIT 2  
DATE 3-25-93  
HJR 14

HJR

## THE FACTS

## THE ISSUE

1) The Montana Worker's Compensation Fund is profiteering at the expense of American cancer victims who need taxol to survive.

## WHAT

2) The retail cost to treat one American woman with ovarian cancer with taxol is \$695.00.

3) Of the \$695.00, the Montana Workman's Compensation State Fund receives \$124.06 ( or 18 percent) per treatment in pure profit.

## HOW

4) Taxol is manufactured from the bark of the Montana yew brush ( unlike the yew tree which is harvested in Washington and Oregon, the yew in Montana is a prolific selfgenerating brush that is harvested to assure swift regeneration).

5) The Montana Workman's Compensation State Fund charges a Montana yew bark harvester a premium of \$48.00 per \$100.00 of wages paid by the harvester to his employees (this is the same premiums charged to loggers).

6) Most Montana yew bark employees do not "log." The employees sit on stools or on the ground and strip bark off yew limbs with putty knives.

7) In 1992, the yew bark harvester employees claimed, as workman's compensation benefits, a total of 31 cents per \$100.00 of wages paid to the Montana Fund.

8) The Montana yew bark harvester is offering to pay workman's compensation premiums of \$6.25 per \$100.00 of wages paid for bark peelers. Given the 1992 claims experience, the Montana Workman's Compensation Fund will still generate a net profit of \$15.88 per cancer victim (2.2 percent of the retail price of the drug.)

9) All costs and taxes incurred by the harvester are directly passed on to the cancer victim. The premium charged by the Montana Workman's Compensation State Fund significantly adds to the cost of this new important drug.



ADDITIONAL POINTS

10) Aside from (not counting) the charges demanded by the Montana Workman's Compensation State Fund, the cost of harvesting yew bark from brush and bushes in Montana is double the cost of harvesting the bark of non renewable yew trees in Washington and Oregon. Harvesting yew bark in Montana so much more expensive because it is much more labor intensive than harvesting yew bark in Washington & Oregon.

11) The yew harvester in Montana could employ as many as 400 people in the state this year if the cost of Montana yew can be kept reasonably competitive.

12) In 1992, the Montana yew harvest provided enough yew bark to treat about 3,400 American (and Montana) women.

\* If you would like more information on this issue, please contact:

John M. Shontz or Ted Doney at

Doney, Crowley & Shontz  
(406) 443-7018  
Suite 300  
The Power Block  
Sixth & Last Chance Gulch  
Helena, Montana 59601

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 3/25/93

BILL NO. HJR 14

NOBLE & YEW

Cecil Noble of Kalispell, owner of Noble & Yew, Ltd. is engaged in the collection of yew bark. Yew bark is refined into taxol, a substance approved in November 1992 by the U.S. Food and Drug Administration for treatment of ovarian cancer.

During 1992, Noble & Yew paid nearly \$600,000 in wages to employee's working in the collection of yew bark from yew shrubs in northwestern Montana. Workers cut yew shrubs into two foot long branches about four inches in diameter. Other workers then peel the bark from these branches with putty knives. The bark is placed in plastic or burlap bags and hauled to Kalispell.

Last summer Noble & Yew employed 175 part-time workers that harvested 200,000 pounds of yew bark. In 1993, they hopefully will be able to increase that harvest to 600,000 pounds of bark and employ at least 250 individuals, many college students.

Noble & Yew attained their workers' compensation insurance coverage from the State Compensation Insurance Fund. In 1992, seven workers suffered minor injuries and the State Fund paid out a total of \$735.73 and all of these accidents are closed at the current time. For each \$100 paid in wages to workers of Noble & Yew, the total claims costs equaled only twelve cents (12¢). When the average rate in Montana is approximately \$6.00 for each \$100 of payroll, loss costs of 12¢ is very, very impressive.

In May 1992 when insurance coverage was initiated, the State Fund decided to classify Noble & Yew as a "logging & lumbering" enterprise, this requiring them to pay a rate that averaged greater than \$45.00 per each \$100 of payroll. The rate effective January 1, 1993 is \$48.00 and this rate is expected to increase during July of this year.

Since May of 1992, Mr. Noble has been engaged in a losing effort in an attempt to get someone within the State Fund to "reconsider" what they are doing to his enterprise. The State Fund with the assistance of their rating consultant, the National Council on Compensation Insurance (NCCI), have done nothing but attempt to justify why the 120 peelers operating a putty knife have to be rated identical to contract loggers. The State Fund is done working with this risk and has advised them they have the right to appeal this rating to a committee that the State Fund is a member of or take the case into District Court. In addition, the State Fund wants to charge an advance deposit equal to one-half the annual premium that Noble & Yew will pay, \$155,000., also based on the "logging & lumbering" rate.

Noble & Yew asked why they would not qualify for the "Brush Piling & Removal" classification. They were told that the use of this classification is restricted to operations that only utilize heavy machinery such as bulldozers. This class has a rate of \$24.94, high, but much less than the \$48.00. Yet, Noble & Yew cannot use this classification since the "putty knives" don't represent machinery heavy enough to qualify; therefore it is back to the "logging & lumbering" class and rate.

The consultant that the State Fund contracts with visited the operations in Kalispell and indicated that the operators of the putty knives, the "peelers", were not involved in the cutting of the shrubs. They sat on a hillside and scraped the bark and only had to reach into a stack of branches for another piece of wood to scrape when they are done with the one that they are working with. But no one is willing to look past the fact that the work is being done in the forest, therefore it must be rated identical to "logging & lumbering".

It takes 88 pounds of yew bark to produce enough taxol to treat one patient at a cost of \$695.00. In 1992, \$259.12 was paid in wages to yield 88 pounds of bark. Thus, manual premium of \$124.38 is generated based on the rate of \$48.00 per each \$100. of payroll to produce 88 pounds of yew bark. Since only 12¢ in loss costs was incurred by the State Fund per each \$100. of payroll; approximately 31¢ in incurred losses would be expected on \$259.12 in payroll.

The price of this drug is being adversely impacted by the arbitrary actions of individuals who are not willing to consider other alternatives. When classification code manuals are written, they can never predict all of the occupations that may eventually develop. It is up to the professionals within the industry to react in reasonable manner when less than definitive issues arise. The State Fund has not reacted in reasonable manner on this issue that is so very important to Mr. Noble, as well as the user's of taxol. Mr. Noble has been required to seek legal counsel to help him attempt to resolve this issue in a prompt and reasonable fashion.

exhibit 2  
3-25-93  
HJR 14

$$\frac{\text{TOTAL PAYROLL}}{\text{TOTAL POUNDS HARVESTED}} = \frac{588,915}{200,000} = \$2.94458 \text{ payroll per pound harvested.}$$

88 pounds of yew bark is required to produce enough taxol to treat one patient at a cost of \$695.00.

THUS,

$$\begin{aligned} \$2.94458 \times 88 \text{ pounds} &= \$259.12 \text{ or payroll to produce 88 pounds of yew bark.} \\ (\text{times}) \text{ State Fund Rate} &= \underline{.4800} \\ &= \$124.38 \end{aligned}$$

THEREFORE:

Manual premium of \$124.38 is due the State Fund for each 88 pounds of yew bark that is harvested in Montana. The cost to pay all the claims costs during the 1992 harvest season was only 12¢ for each \$100. of payroll, thus, for 88 pounds of yew bark; the claims cost was approximately 31¢ vs. \$124.38 in manual premium.

May 18, 1992 thru June 30, 1992

	Accidents			Claim Dollars Paid			TOTAL PAYROLL	STATE RATE	MANUAL PREMIUM	PER \$100. LOSS PAYOUT RATE
	NO.	OPEN	INDEMN.	MEDICAL	TOTAL					
Cutters:	1	0	.00	212.01	212.01	23,273.	43.30	10,077.	.90	
Peelers:	0	0	.00	.00	.00	52,793.	43.30	22,859.	.00	
Courier:	0	0	.00	.00	.00	1,530.	43.30	662.	.00	
<u>July 1, 1992 to Present:</u>										
Cutters:	4	0	.00	188.38	188.38	92,182.	45.71	42,137.	.20	
Peelers:	2	0	80.07	255.27	335.34	409,055.	45.71	186,979.	.08	
Courier:	0	0	.00	.00	.00	10,082.	45.71	4,608.	.00	
TOTALS:	7	0	80.07	655.66	735.73	588,915.	45.39 (avg)	267,323.	.12	

January 1, 1993 State Fund rate is \$48.00



The home was closed by the board in early November after an investigation showed the supervision of the girls at the home was insufficient.

The home was also operating without required worker's compensation insurance. Sources told the Eagle the home was also delinquent in making federal social security payments of more than \$20,000.

One of the employees at the home, Dorothy (Dee) Connor, 40, of Kila was arrested shortly after the closure, and charged with one count of endangering the welfare of a child, a misdemeanor.

meanor. The warrant for Connor alleged she provided girls at the home with "intoxicating and/or illegal substances."

Tom Lee, the director of the home, and former member of the Montana House of Representatives, was placed on paid leave of absence about six weeks before it closed.

Lee sat on the House Human Services and Aging Committee, which oversees DFS.

Seacat said his office would offer its services to DFS on a contract basis.

## Workers comp rates linked to taxol price increase

By William Simonsen

The amount paid to state workers compensation by a local yew bark collection company may increase the cost of some cancer treatment by as much as 30 percent.

Yew bark is refined into taxol, a substance approved last week by the U.S. Food and Drug Administration for treatment of ovarian cancer.

Mike Trumbull, general manager for Hauser Northwest, a division of Hauser Chemical Co., which collects yew bark from four Pacific Northwest states, said high workers comp rates currently being charged will increase the cost of taxol by as much as 30 percent.

Cecil Noble of Kalispell, who owns Noble and Yew, Ltd., said his company is one of 35 Pacific Northwest subcontractors for Hauser, an Oregon firm, which is under contract from the Bristol-Myers Squibb. Bristol-Myers Squibb makes taxol.

Last summer Noble's workers collected about 180,000 pounds of yew bark. Next summer Hauser wants Noble to collect 300,000 pounds of the bark. About 60 pounds of yew bark is needed to produce enough taxol to

treat a patient for one year.

Noble said he is being charged at an incorrect rate for workers compensation insurance by the state. Noble has been involved in a dispute about the rate since last April. He said the workers comp rates "just wipe out free enterprise."

He said his workers are being charged at the rate of \$48 per \$100 of wages, the prevailing rate for loggers who use machines.

Noble has no objection to paying the higher rate for his employees who use chainsaws, but very few use saws, and no heavy machinery is involved, he said.

After yew trees, or in most cases bushes, are cut down by sawyers with chainsaws, the bark is peeled from the pieces of yew wood by workers using dull pulley knives, Noble said. He said peelers don't go anywhere near the sawyers, and work on wood about two feet long and about four inches in diameter.

He said a typical peeling operation is carried out sitting on a hillside in the woods.

Noble said he pays the same rate on his pickup truck drivers as logging

Also in early December, Mattias said a staff member from his office in Helena would come to Bigfork and perform a financial review of the books at the home. He said the worker would determine "what records they have and what records they don't have."

James Huff, president of the home's board of directors, said the non-profit corporation which ran the home placed the building up for sale. He said the proceeds from the sale will be used to pay off bills still owed by the corporation.

operators pay their drivers.

Noble said workers compensation insurance premiums should be based on the hazards involved for the workers. He said the average worker in the state costs the employer about \$6 per \$100 of wages. He said he should have to pay about \$10 per \$100.

Trumbull said workers comp premiums in Oregon are about \$30 per \$100 of wages. In Idaho premium rates are "in the mid-30s," he said.

Jeff Noble, attorney for Cecil Noble, said during the 1992 harvesting season, medical bills for all the workers totaled about \$2,500. He said the State Fund is demanding more than \$200,000 in workers comp premiums from Noble and Yew, Ltd.

Last summer Cecil Noble employed about 175 people. He said only a couple of "very minor" injuries occurred, mostly twisting ankles walking in the woods. Next summer Noble expects to hire about 250 seasonal employees.

John King, vice president of underwriting for the State Fund, said his agency determines the classification of an industry under guidelines written by the National Council on Compensation Insurance (NCCI), which

Here are the high and low prices for Sprunger at his home just north of the Bigfork school campus, by Job and Artee Riley at their home west of Lakeside, and by Paul Mooring on the West Shore of Swan Lake:

	Bigfork		Lakeside		Swan Lake	
	Low	High	Low	High	Low	High
Tues. Dec. 29	-4	5	1	8	-5	2
Wed. Dec. 30	-5	6	0	9	-2	2
Thurs. Dec. 31	3	10	4	12	0	6
Fri. Jan. 1	10	17	10	15	8	11
Sat. Jan. 2	7	20	12	18	9	14
Sun. Jan. 3	3	22	13	23	10	14
Mon. Jan. 4	9	18	13	21	19	14
Tues. Jan. 5	2		6		3	

he said are used by all states. King said the yew industry doesn't have a conflict with his agency, it has a conflict with NCCI.

An NCCI official made an on-site inspection of Noble's operation in November.

A report dated Nov. 20 by Pat Millay, senior analyst for NCCI, said the decision to classify yew bark workers in the same classification as logging industry workers was upheld.

Millay said the same classification for yew bark workers is being used in Oregon, Idaho and other states in the Northwest.

King said an inspection by NCCI determines if workers are being classified properly. He said NCCI does not have the authority to change classifications or rates.

King said Noble wants to have separate workers comp rates for the different occupations of his workers, but, he said, rates are determined on an industry-wide basis.

King said all logging industry workers, whether they are sawyers, skidder operators or truck drivers, are all charged premiums under the same industry classification.

He said, "Although there is some variance of risk, it is difficult to come too definitive in premium rates."

Trumbull said his company went to Idaho last year in an attempt to have the rates changed. But, "We did make any headway," he said.

Jeff Noble said yew bark gathering in western Montana varies from practices used in states farther west. He said in this area bark is peeled from what are essentially bushes, while in Montana yew grows into large trees sometimes up to 70 feet tall and up to two feet in diameter. He said the classification of the industry as logging in other states was probably proper, but made no sense in Montana.

Noble has requested an appeal hearing before Montana's Classification and Ratings Committee, which grant an exception to the premium charged or create a new classification. King is one of five members of the committee.

He said Noble's case probably be heard in mid-February in Helena. Noble is not satisfied with the findings, he may take his case to District Court, King said.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 3/25/93

BILL NO. HJR 114

BIG FORK EAGLE JAN 6, 1993

PAGE 1

DATE THURSDAY, MARCH 25, 1993

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

BILLS BEING HEARD TODAY: HJR 14 - WAGNER

**PLEASE PRINT**

Name	Representing	Bill No.	Check One	
			Support	Oppose
Dan Glenny	BAG Consulting	HJR 14	X	
Cecil, L. Noble	Noble + Yew	HJR 14	X	
John T. Zandorf	Mt. Res. @ SSA	HJR 14	X	
Jamie Doss	Mt. Cattlewoman	HJR 14		X
Jacqueline Denmark	Am. Ins. Assoc.	HJR 14		X
STAN KAWCZIC	NCCI	HJR 14		X

**VISITOR REGISTER**

**PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY**