

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN ETHEL HARDING, on January 13, 1995,  
at 10:00 AM

#### ROLL CALL

##### Members Present:

Sen. Ethel M. Harding, Chairman (R)  
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)  
Sen. Mack Cole (R)  
Sen. Mike Foster (R)  
Sen. Don Hargrove (R)  
Sen. Vivian M. Brooke (D)  
Sen. Bob Pipinich (D)  
Sen. Jeff Weldon (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: David Niss, Legislative Council  
Gail Moser, Committee Secretary

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

##### Committee Business Summary:

Hearing: SB21  
Executive Action: SB21 DO PASS

{Tape: 1; Side: A; Approx. Counter: 26;  
Comments: Blank portion of tape--counter position 16.8 through 18.6}

#### HEARING ON SB21

##### Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, Senate District 34, Missoula, said that, as a member of the Legislative Council, he volunteered to carry legislation to correct clerical problems with bills that were passed last session. SB21 is simply correcting an error. SEN. HALLIGAN said that Greg Petesch will explain the detail.

**Informational Testimony:**

Greg Petesch, Legislative Council, referred to HB13 which was carried by Rep. Benedict in the last session. The particular section of law that is now in SB21 was taken out of HB13 and put back in twice and completely amended two other times. Action on HB13 (EXHIBIT 1) contained the exact language of the former subsection with one change and that's the change being made on line 28 of SB21, changing *shall* to *may*. When HB13 was sent down for enrollment, the proofreaders read all of the changes in the various versions and gave an instruction to the terminal operator to reinsert the subsection as it existed. That was done. The bill was enrolled and sent to the Governor for signature. Since the error was not discovered until after the Governor had signed the bill, there was no way to clerically correct it. SB21 simply puts the section back the way it was voted on in the last session.

**Proponents' Testimony:**

Aidan Myhre, State Fund, stated that even though the State Fund uses NCCI classifications and rates as a basis for their own rates, they should be allowed the flexibility to use their own Montana experience as the basis for their rates.

**Opponents' Testimony:**

George Wood, Executive Secretary of the Montana Self Insurance Association, said he represents Montana employers who enroll under Plan 1 of the Workers Compensation Act. Mr. Wood said his Association has no objection to the proposal from the State Fund that the NCCI rates *may* be used, but they believe State Fund should use, or *shall* use the NCCI quotes. The NCCI codes are the standard codes used for comparison between states. When HB13 was passed, it included certain data collection procedures. Mr. Wood said that his Association's share of the cost was approximately \$600,000. Mr. Wood said that if the State Fund is not using a standard set of codes, it creates difficulty in comparing codes and prices across states. Mr. Wood stated another problem that may arise concerns rates at the Montana level unless the premiums and losses are reported to NCCI using the same codes. Mr. Wood said that if the State Fund is writing over 70% of their business without being able to correlate their rates with the experience of other states, insurance companies will be hesitant to write business in Montana. Mr. Wood said that his Association would not object to an amendment that said "*may*" use the rates, but they want "*shall*" use the codes.

Jerry Driscoll, representing Montana State Building Construction Trades, said he agreed with Mr. Wood's suggestion for an amendment that said "*may*" use the rates, but "*shall*" use the codes.

Mr. Driscoll said that last session there was \$600,000 appropriated to the Department of Labor for a database, but if the same class coding is not used between states, that money is worthless.

Jacqueline Linmark, representing the American Insurance Association said it is their goal to have a competitive and healthy State Fund operating in Montana. Ms. Linmark said that she represents companies who come into the state and market a product in competition with the State Fund and in competition with the self insurers that Mr. Wood represents. Ms. Linmark said that this three-part competitive system is what makes for a stable Workers Compensation market in Montana. Her Association also supports the mandatory membership in the NCCI. Ms. Linmark also stated that her Association thinks it is appropriate for the State Fund to deviate on their rates or to use those rates permissively because they are addressing a different market than the companies that she represents. But, for the stability of the market, they feel it is necessary to have the State Fund use the NCCI classification codes filed with the Insurance Commissioner. Ms. Linmark said her Association would support an amendment that would allow a deviation from those classification codes if it were appropriately filed.

#### Questions From Committee Members and Responses:

SEN. MIKE FOSTER asked Ms. Myhre to provide the perspective of the State Fund regarding the difference between "may" use the rates and "shall" use the codes? Aidan Myhre asked Nancy Butler to answer Senator Foster's question. Nancy Butler, General Counsel for the State Fund, said that what we are trying to do is clarify the language, not go into a major change for the way the State Fund does business. The State Fund uses NCCI class codes and is a member of NCCI. Ms. Butler said that, because the State Fund is the insured of last resort, they have occasional risks that have different class codes. Occasionally, the State Fund will insure risks that no one else wants to cover, i.e., horseracing. The State Fund has a different code on the horseracing group because the Fund works with them so that they can stay in business in the state. The State Fund is using NCCI's class codes and rates as a basis for their own rates.

SEN. DON HARGROVE asked Nancy Butler to clarify that, basically, the NCCI codes are used, except for those activities which are unique to Montana. Ms. Butler said that is correct. Ms. Butler further stated that when the Classification Rating Committee has reviewed disputes over class codes, the State Fund Board of Directors has consistently adopted the NCCI codes. SEN. HARGROVE again asked Ms. Butler to clarify that the State Fund is not substituting class codes, just adding codes for special circumstances. Ms. Butler said that's correct. SEN. HARGROVE suggested that other states must have the same type situations occur. Ms. Butler said it's true that every state has unique

factors and they call them *state specials*; and states deviate from the NCCI codes, in some cases, because of their state's particular industry mix.

**SEN. JEFF WELDON** expressed concern that SB21 was asking to correct an error, but it now appears as though the Committee is being asked to consider the substance of the law.

**Mr. Petesch** responded that because SB21 was brought to Committee by the Legislative Council, the Council tried to construct the title carefully so that SB21 could only be passed or killed to correct the enrolling error or not. **Mr. Petesch** suggested that amendments outside of correcting the enrolling error would change the purpose of the bill.

**SEN. WELDON** commented that if this Committee chooses not to correct the enrolling error, it is essentially saying that the error was okay, and therefore changing the substance of the last legislative act. **SEN. WELDON** said his concern is that, by opening the substance of the last legislative act, we are taking substitute action on this particular point and questions whether or not this is the appropriate form in which to do that.

**CHAIRMAN ETHEL HARDING** said she thinks Senator Weldon has made a good point to be considered in Executive Action.

Closing by Sponsor:

**SEN. HALLIGAN** said he thinks Mr. Petesch is correct -- SB21 is to be passed or killed. It's not designed to have any substantive testimony today on the many issues that were discussed last session. **SEN. HALLIGAN** invited the Committee to do a *committee bill* to address the substance issues, but that SB21 was not designed for that purpose.

**CHAIRMAN HARDING** closed the Hearing on SB21.

EXECUTIVE ACTION ON SB21

Motion: **SEN. FOSTER** moved that SB21 DO PASS.

Discussion: **SEN. WELDON** said to the people who spoke in opposition to SB21 that the reason he is voting for SB21 is because of its nature. **SEN. WELDON** stated that if the substance of the bill is what they would like to have addressed, another bill should have been brought before a different committee.

**SEN. MESAROS** stated his agreement with Senator Weldon.

**SEN. BROOKE** said she agrees with Senator Weldon's and Senator Mesaros' discussion. However, she expressed concern that the testimony highlights the fact that a lot of these problems still aren't settled.

**CHAIRMAN HARDING** agreed with Senator Brooke, and stated that the opponents' questions need to be brought up in a formal bill to the appropriate committee. This Committee is just working on the correction.

**Vote:** The **MOTION CARRIED UNANIMOUSLY** on oral vote.

ADJOURNMENT

Adjournment: 10:30 AM



ETHEL M. HARDING, Chairman



GAIL MOSER, Secretary

EMH/gem

MONTANA SENATE  
1995 LEGISLATURE  
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE \_\_\_\_\_

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 13, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SB 21 (first reading copy -- white), respectfully report that SB 21 do pass.

Signed: Ethel M. Harding  
Senator Ethel M. Harding, Chair

SA Amd. Coord.  
Sec. of Senate

111055SC.SPV



SENATE STATE ADMIN.

EXHIBIT NO.

DATE 01-13-95

BILL NO. SB221

HB 0013/05

HB 0013/0

1 management, servicing, and payment;  
2 {5}[4] collect and disburse money received;  
3 {6}[5] adopt classifications and charge premiums for  
4 the classifications so that the state fund will be neither  
5 more nor less than self-supporting. PREMIUM RATES FOR  
6 CLASSIFICATIONS MAY ONLY BE ADOPTED AND CHANGED USING A  
7 PROCESS, A PROCEDURE, FORMULAS, AND FACTORS SET FORTH IN  
8 RULES ADOPTED UNDER TITLE 2, CHAPTER 4, PARTS 2 THROUGH 4.  
9 AFTER SUCH RULES HAVE BEEN ADOPTED, THE STATE FUND NEED NOT  
10 FOLLOW THE RULEMAKING PROVISIONS OF TITLE 2, CHAPTER 4, WHEN  
11 CHANGING CLASSIFICATIONS AND PREMIUM RATES. THE CONTESTED  
12 CASE RIGHTS AND PROVISIONS OF TITLE 2, CHAPTER 4, DO NOT  
13 APPLY TO AN EMPLOYER'S CLASSIFICATION OR PREMIUM RATE.  
14 Premium-rates-for-classifications-may-only-be-adopted-and  
15 changed-using-a-procedure-a-procedure,-formulas,-and-factors  
16 set-forth-in-rules-adopted-under-title-2,-chapter-4,-parts-2  
17 through-4.-After-such-rules-have-been-adopted,-the-state  
18 fund-need-not-follow-the-rulemaking-provisions-of-title-2-  
19 chapter-4,-when-changing-classifications-and-premium-rates.  
20 The-contested-case-rights-and-provisions-of-title-2,-chapter  
21 4,-do-not-apply-to-an-employer's-classification-or-premium  
22 rate.-The-state-fund-must-belong-to-the-national-council-on  
23 compensation-insurance-and-shall-use-the-classifications-of  
24 employment-adopted-by-the-national-council-and-corresponding  
25 rates-as-a-basis-for-setting-its-own-rates. THE STATE FUND

1 MUST BELONG TO THE NATIONAL COUNCIL ON COMPENSATION  
2 INSURANCE AND MAY USE THE CLASSIFICATIONS OF EMPLOYMEN  
3 ADOPTED BY A WORKERS' COMPENSATION RATING ORGANIZATION AN  
4 CORRESPONDING RATES AS A BASIS FOR SETTING ITS OWN RATES.  
5 {7}[6] pay the amounts determined due under a policy o  
6 insurance issued by the state fund;  
7 {8}[7] hire personnel;  
8 {9}[8] declare dividends if there is an excess o  
9 assets over liabilities. However, dividends may not be pai  
10 until adequate actuarially determined reserves are se  
11 aside. If those reserves have been set aside, money that ca  
12 be declared as a dividend must be transferred to the account  
13 created by 39-71-2321 for claims for injuries resulting fro  
14 accidents that occurred before July 1, 1990, and used fo  
15 the purposes of that account. After all claims funded b  
16 that account have been paid, dividends may be declared an  
17 paid to insureds.

18 {10}[9] perform all functions and exercise all power  
19 of a domestic-mutual-insurer private insurance carrier the  
20 are necessary, appropriate, or convenient for t  
21 administration of the state fund."

22 Section 5. Section 39-71-2323, MCA, is amended to read  
23 "39-71-2323. Surplus in state fund -- payment  
24 dividends. Subject to the provisions of 39-71-2316{9}{10},  
25 at the end of any fiscal year there exists in the state fu

DATE 1-13-95

SENATE COMMITTEE ON State Admin.

BILLS BEING HEARD TODAY: S.B. 21

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
George Wood	Met Self Insurers Assoc.			✓
Jerry Quisell	Montana State Builders Trade			✓
Greg Petersch	Leg. Council			
Adan Myhr	State Fund		✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY