

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN THOMAS KEATING, on January 14, 1997,  
at 1:00 p.m., in Room 413/415

#### ROLL CALL

##### Members Present:

Sen. Thomas F. Keating, Chairman (R)  
Sen. James H. "Jim" Burnett, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Benedict (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Dale Mahlum (R)  
Sen. Debbie Bowman Shea (D)  
Sen. Fred Thomas (R)  
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Legislative Services Division  
Gilda Clancy, Committee Secretary

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

##### Committee Business Summary:

Hearing & Date Posted: SB62, 1/10/97  
Executive Action: None.

#### HEARING ON SB62

Sponsor: Senator Mike Sprague  
Proponents: Chuck Hunter, Department of Labor & Industry  
Nancy Butler, State Fund  
Bob Worthington, Montana Municipal Insurance  
Authority  
George Wood, Montana Self-Insurers'  
Association  
Jacqueline Lenmark, American Insurance  
Association  
Opponents: Russell Hill, Montana Trial Lawyers' Association  
Don Judge, Montana State AFL, CIO

**Opening Statement By Sponsor:**

**SENATOR MIKE SPRAGUE, SD 6, Billings**, stated that at the request of the Department of Labor he introduces SB62 in order to modernize and facilitate the flow of rehabilitation money available to disabled workers. This does not change in any way the amount of money or the benefits they receive. In **SEN. SPRAGUE'S** opinion, SB62 should be titled 'Benefits Distribution Efficiency Act'. He introduced a flow chart indicating what this bill addresses. (**EXHIBIT 1**). **SEN. SPRAGUE** asked **Chuck Hunter, Department of Labor**, to explain the flow chart, which he did. He explained after July 1, 1997 insurers and injured workers would agree on a rehabilitation plan. Once that plan has been agreed on, the insurers would dispense that money directly. **SEN. SPRAGUE** handed out (**EXHIBIT 2**).

*{Tape: 1; Side: A; Approx. Time Count: 1:10 p.m.}*

**Proponents' Testimony:**

**Chuck Hunter, Department of Labor**, gave his testimony. (**EXHIBIT 3**).

**Nancy Butler, State Fund**, stated the State Fund supports this bill. (**EXHIBIT 4**). They requested the Department of Labor to set guidelines in administrative rules similar to the Department of Health & Human Services' to determine what is payable to the injured worker.

**Bob Worthington, Montana Municipal Insurance Authority**, is in support of SB62 and also requested consideration of the amendment the Department of Labor has proposed.

**George Wood, Montana Self-Insurers' Association**, is also in support of this bill with two proposed amendments and request that when this issue is considered at the executive session that it is passed.

**Jacqueline Lenmark, American Insurance Association**, supported the passage of this bill and also the two amendments which were proposed by the Department of Labor and by the State Fund.

**Opponents' Testimony:**

**Russell Hill, Montana Trial Lawyers' Association (MTLA)**, stated the bulk of the bill is very good. They oppose it because of several technical problems in the bill. They believe even though this bill extends extra benefits to injured workers, there would be problems with it. The biggest problem occurs in section 1, line 16 through 20 which pertains to injecting the date of June 30, 1997 into this provision regarding payment of rehabilitation expenses. He said if you'll look at the key words on line 19, 'in addition', at the present time these rehabilitation benefits are paid in addition to benefits under the Workers' Compensation

Act. Applying a date only to injuries which occur before this June 30, 1997 date has a special significance. On page 3, subsection 3 the same language is stated in addition to rehabilitation benefits but the impact is different. This is referring to two different things. Before that section is amended, a worker is entitled to Workers' Compensation benefits plus rehabilitation benefits. After that section, the rehabilitation benefits on an injury which occurs after June 30, 1997 date, need not be in addition to the Workers' Compensation benefits. The new benefits which are in addition to the Work Comp. benefits are the tuition and fees which are added in.

**Mr. Hill** asked the Committee to refer to section 2, subsection 5 on page 2, lines 21 through 23. He stated the legal impact on this is that the legislature can pass retroactive legislation if it affects procedural rights, but the legislature cannot retroactively affect substantive rights. This denominates the methods and processes used to disperse rehabilitation expenses as procedural rather than substantive. **Mr. Hill** states the Department of Labor is concerned about who "cuts the check". That is clearly procedural but if we denominate the method of appeals and disputes which is clearly not procedural, it affects whether or not someone receives benefits.

**Mr. Hill** then asked the Committee to refer to section 3, bottom of page 2. The **MTLA** has no problem with not requiring this written rehabilitation plan to be filed with any department, but if it is not filed at a neutral forum where a worker who is involved in a dispute can easily access it, he requested that at least the worker receive a copy of it. Many times in a dispute, trying to access the relevant documents is a battle.

Regarding section 7, an insurers' notice of termination to an injured worker when he or she isn't complying, lines 12 and 13, **Mr. Hill** stated when deleting the language on a form approved by the Department, since the consequence of this notice is complete termination of these benefits at the unilateral discretion of the insurer, he requests that notice is written, not just a phone call that people will argue about later.

**Don Judge, Montana State AFL, CIO**, stated that he did not know if the streamlining of the system was opposed. He stated from the brief description which was made of the amendments he would like to read those. Referring to page 3, subsection 3 which delineates the benefits someone is entitled to. This legislation excludes travel and living expenses. There are provisions for relocation of workers to a place they might have to go to be rehabilitated but they operate extensive dislocated worker programs and often it is much less expensive to pay for the commute than it is to relocate someone. They want to make sure the ability to access those travel benefits are not affected by the legislation. They ask careful consideration of the amendments to make this a good bill and they will probably be back to support it.

{Tape: 1; Side: A; Approx. Time Count: 1:21 p.m.}

Questions From Committee Members And Responses:

**SEN. SUE BARTLETT** asked **Chuck Hunter** in referring to the first page, first section in striking a subsection which pertains to an appeal process, to address the reason for that. **Mr. Hunter** responded the reason for striking the subsection is that the dispute resolution process for benefits issues, which this would be the amount of benefits payable, would automatically go into a mediation process if there was a dispute under this legislation between an insurer and an injured worker. **SEN. BARTLETT** then asked clarification about the dispute resolution in terms of which pot of money, which Department, and also why the mediation. **Mr. Hunter** answered the mediation could arise from any kind of dispute but typically speaking if the insured and injured worker could not agree on the amount of money the insured was willing to pay. It could be like travel relocation expenses, any issue of which there is dispute between the worker and the insurer. From there it goes on to Workers' Comp. court if mediation is not successful. **SEN. BARTLETT** asked if this appeal process that is being stricken had been in the statute to address the vocational rehabilitation benefits that certain injured workers were eligible for and it did not pertain to their Workers' Compensation claim but with the vocational rehabilitation. **Mr. Hunter** responded that is correct and stated in addition this revolves around rehabilitation expenses and not the benefits themselves. What has been paid from this account at the Department of Public Health and Human Services was money for rehabilitation expenses. The regular rehabilitation benefits have always been an issue that have been paid directly from the insurer. It is only the expenses that came out of this account.

**SEN. DEBBIE SHEA** asked regarding 'termination of benefits' on page 5, section 7, as to what the point in eliminating prior approval by the Department is. **Mr. Hunter** stated the point is to remove another bureaucratic form. If the insurer would like to terminate these benefits and believes it is the right thing to do, they must notify both the Department and the claimant of their intention to do that 14 days in advance. It merely removes the form, it does not remove the notice and the requirement to provide notice. He added in regard to **Mr. Hill's** comment, the provision here does not specify written notice and the Department would have no problem with that kind of amendment. If it needs to be written, that will be fine.

**SENATOR FRED THOMAS** stated that the fiscal statement presents no savings in doing this. He realizes this saves time within the Department but is asking if there is savings in doing this. **Mr. Hunter** responded there are no savings. The only effort that has been required historically to do this has been access through the phones, which we will still do for those pre-7/1/97 claimants, to take the plans in for insurers which is simply opening the mail and putting it in a file and then transferring that information.

There will be that savings. The Department is still willing to do the assessment, they will still take those plans in. There is only a portion of a portion of a body involved in doing that work.

**SENATOR TOM KEATING** asked **Mr. Hunter** since we are dealing with the flow of money and we are taking the Department of Health out of the loop of handling the money, if the Department of Health is still in charge of the rehabilitation program or cut out altogether. **Mr. Hunter** said they are not necessarily cut out altogether but they will be cut out of this process of handling an account which pays for expenses. They will still offer vocational rehabilitation services. **SENATOR KEATING** asked if they will still work with the injured party. **Mr. Hunter** responded that they will.

Closing Statement By Sponsor:


**SENATOR SPRAGUE** closed with complimenting the Department of Labor for bringing this bill forward.

NOTE: Donald R. Judge, MT AFL/CIO, submitted a synopsis of his comments during the hearing on January 15, 1997. (EXHIBIT 5)

ADJOURNMENT

Adjournment: 1:30 p.m.

  
SEN. THOMAS F. KEATING, Chairman

  
GILDA CLANCY, Secretary

TFK/GC