

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN THOMAS F. KEATING**, on January 16, 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: Eddye 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(s) & Date(s) Posted: SB 120 & SB 98; 1/10/97
Executive Action: None.

{Tape: 1; Side: A; Approx. Time Count: 1:05 p.m.}

HEARING ON SB 120

Opening Statement By Sponsor:

SENATOR DALE MAHLUM, SD35, Missoula, introduces SB 120. The bill is simply designed to hold up payment of wages if the County Attorney has proof or belief that an employee has committed the crime of theft of funds or property from the employer. Instead of paying the subject employed within three days which is now in the legislation, we would like to have this time stated "until the resolution of the criminal proceedings against the employee is complete". If the employee is found innocent by the court, all wages due the employee plus interest shall be paid

immediately. This shall be stated in the Employee Policy Manual. An example of this is, let's say you have been missing \$50 every week from a certain till in your store. After about eight weeks you decide to call in a specialist and they put a camera up. For two weeks you watch one employee take \$50 out, put it in his pocket, and you have all this documented. Next you bring the Police Department in, call the employee in and the employee admits to doing this. He admits to doing this for a total of ten weeks, which adds up to a total of \$500. What we want to do in SB120 is that if the employee has worked for eight days and receives \$80 per day in wages, he has \$640 coming from the employer. We would like to be able to hold that money owed him so that the \$500 offset for the \$640. This gives the employer an opportunity to get his money back. As far as employees are concerned, a majority of small business, which 90% in Montana are, the greatest asset they have in their firm is the employees. The only problem is that in every barrel of apples there is a rotten one.

{Tape: 1; Side: A; Approx. Time Count: 1:08 p.m.}

Proponents' Testimony:

David Owen, Montana State Chamber of Commerce, stated they support the intent of this bill enthusiastically and do it with the following observation. This whole process of employing people is becoming so complicated and we are going to deal with a lot of those issues. Mr. Owen has been managing Chambers for over 20 years and this issue is the biggest change he has seen in those years. People used to want and look forward to having more employees and brag about the growth of their business. Now they like the people who work for them but this idea of employing people has become very difficult. You have someone that you know took money from you but you have to give them more money in hopes that the judicial system will be able to return it to you. The courts state that people are innocent until proven guilty, but it seems to fit the concept that we do post bail, we do some things to hold people's attention during process and if this can fit that concept, especially when people have admitted this. If there is any way to make sure this loss is not compounded by giving them more things, SENATOR MAHLUM has done us all a favor.

Riley Johnson, National Federation of Independent Businessmen (NFIB), said they, too, stand in support of SENATOR MAHLUM'S proposal and he felt Mr. Owen is absolutely correct. Our members are finding ways to not hire people because of the problems which are being created by Wage An Hour processes being forced upon us and paperwork, so we would like you to take very serious consideration on this bill and we believe it is fair.

Chuck Hunter, Department of Labor and Industry, stated they have been working with SENATOR MAHLUM the past couple of days on the language that would help the Department with some problems in the Wage Payment Act. He believes with some amendments to this bill

we could solve some problems for both employers and the Department. We have a different standard for payment of wages upon discharge for public sector employers and private sector employers. That has been the cause of some concern, particularly in the private sector who have had a shorter time-frame. We propose an amendment to this bill that would be stated in line 16 of the bill which would begin on the first sentence. This would state, "within three days, except for the employees of the State of Montana and its political subdivisions who would be paid", through the word paid which would conform the time-frame for both public and private sector to the same regular pay day or 15 day time-frame. Secondly, we would propose an amendment on line 19 and 20, eliminating that sentence. On line 23, we would propose adding the term 'laid-off' after the term 'separated for cause' because at this time there is no provision for people who are terminated due to lay-off. This would put the language in such a way that people who were separated for cause or for lay-off could go under the employers' policy regarding those separations. **Mr. Hunter** also said in lines 26 through 30, they would like to include a more specific time-frame for payment following separations for cause.

Opponents: None

Questions From Committee Members And Responses:

SENATOR SUE BARTLETT asked **SENATOR MAHLUM** in regard to the changes which would come in the last part of the bill, what his intent is in terms of putting in the wording "unless payment of wages is provided for an employer's written personnel policy manual". **SENATOR MAHLUM** responded that a majority of small businesses have an employee personnel manual. He said when he hired an new employee they would come to work at 9:00 in the morning. That employee was given a manual and sent to the break room to read the manual, at this time he was being paid. Then he would sign a slip stating he read the manual. The manual told them several things, including what happens if dishonesty had to be addressed. We didn't used to have to do that, but now we do. **SENATOR BARTLETT** asked **SENATOR MAHLUM** what the provisions were in the manual for the final paycheck which was owed someone when they were separated from employment. **SENATOR MAHLUM** responded the manual he had was updated by an attorney and he did have a provision in the manual which really did not do much good because of the existing law. It was a provision which stated we could recover losses through wages. **SENATOR BARTLETT** then asked **SENATOR MAHLUM** that regarding the provision for going under the employer's written personnel policy manual would apply whenever someone separated from their employment, not simply when they are separated because of theft. What were the provisions if someone were laid-off? **SENATOR MAHLUM** responded that he brought the employee into an office and explained to them why they're being laid-off and gave them a written piece of paper regarding that. **SENATOR BARTLETT** asked **SENATOR MAHLUM** what the provisions for receiving their final paycheck under those circumstances were.

SENATOR MAHLUM stated they would be paid when the pay period is up, if they were paid bi-weekly they would be paid at the end of two weeks. Also notice was given them two weeks in advance.

SENATOR CASEY EMERSON asked **SENATOR MAHLUM** if he and **Mr. Hunter** are in agreement about the things **Mr. Hunter** mentioned. **SENATOR EMERSON** responded they are in agreement.

SENATOR BILL WILSON asked **SENATOR MAHLUM** on page 1, line 27 through 30 it states, "an employee who is separated from employment by the employer because the employee has committed the offense of theft of the employer's funds or property and criminal charges have been filed by the County Attorney against the employee". He stated both **Mr. Owen** and **SENATOR MAHLUM** mentioned the employee admitted that he had done something wrong. Where is the provision for due process, shouldn't this person be convicted? **SENATOR MAHLUM** responded what usually happens is the employee has proof before he accuses the employer. If you don't, he will sue you and he could own your business, so you are really careful about that. So with proof in hand, your officials go to your employee and they bring him in and talk to him. In nine times out of ten when the proof is right there, the employee will admit to doing this. They will sign it right there and they will want to just get out of there. **SENATOR WILSON** asked if he were that employee and worked under a collective bargaining agreement and went through a formal investigation process, what would happen if he said he didn't do it? **SENATOR MAHLUM** answered that then we would go through the process.

SENATOR DEBBIE SHEA asked **SENATOR MAHLUM** what happened to the wages in the meantime. **SENATOR MAHLUM** answered they are still in that entrepreneur's business fund. That is something that could probably be put into an escrow account or something like that. The employer does not have a problem with that at all. It is that he would like to get some of that money back. **SENATOR SHEA** responded what she is concerned about what would happen if this money was in escrow until such time this was settled, and could this go over a long period of time with the employer being without his pay? She does understand that it would be paid back with interest. **SENATOR MAHLUM** said that it is a good idea to put this into an escrow account because it also protects the employee. We could do this with a County Attorney and just put the money into the employee's escrow account.

CHAIRMAN TOM KEATING stated that **SENATOR MAHLUM'S** bill is changing existing language for the most part and some of what was asked is already in statute, it is just being modified. He is pointing this out to those who are unfamiliar with reading legislation.

Closing Statement By Sponsor:

SENATOR MAHLUM closed with the statement that this bill is not meant to harm an employee, if the employee can prove he has not

done anything wrong, he does get his wages plus an interest back on it. I believe this is a good bill for small businesses in Montana.

HEARING ON SB 98

Opening Statement By Sponsor:

SENATOR FRED THOMAS, SD 31, Stevensville, brought before the Committee SB 98. The Montana university system, one of those entities being the University of Montana, working on areas of administrative costs and trying to streamline to save money has set up several things. One being a one-stop shopping center for student enrollment process to streamline and save money. This is the capability of transferring student loans electronically. This helps to make the university system a better system, one which is consumer-oriented, and one which takes less money from students' pockets, out of the General Fund, etc. That process cannot be completed without the authorization from the legislators and governors. SB 98 helps them streamline that process in looking at administrative costs and functions. In this case it is one area with potentially great savings. In the bill, it deals with Workers' Compensation and current law indicates the university system must purchase their Workers' Compensation coverage from the State Fund. The bill states Workers' Compensation can be bought from anyone of the three plans, 1, 2, or 3. It does not say you cannot buy it from the Fund but states you have the option to buy it from one of the other plans, 1 or 2 as well. It is not a privatization bill nor is it protectionism as we would be called upon to do later.

SENATOR THOMAS referred to the fiscal note. He pointed out the savings of approximately \$350,000 in fiscal year 1999. This is with the assumption that nothing would get going the coming year, but would take affect in 1999 as a potentially good savings. That may come from the negotiated savings from the State Fund or possibly from a private insurance entity. Potentially the savings could come either way. **SENATOR THOMAS** points out that this bill can directly impact student's tuition. We are asking the students in Montana and elsewhere to pay more and more and it seems only right to allow the consideration of cost reduction wherever that is possible and appropriate and **SENATOR THOMAS** feels that it is in this case. The savings goes to the taxpayers of Montana. Another element **SENATOR THOMAS** points out here that this bill will make a reality is the element of creating a focus on safety and prevention vs. handcuffing the university system to the State Fund. If SB 98 passes, this could happen whether Plan 1, 2 or 3 is selected, meaning the self-insured, private, or the State Fund. With the ability to choose on your own, versus going to the State Fund, which would be the only work-place you can buy your coverage. With state law, you have eliminated your ability to save money, you save money by eliminating and reducing claims and accidents; therefore, you are safety conscience. When you can talk to Plan 1, 2 or 3 as options and develop one of those to

the best nature, then you have the choice to save money. If you have to go to the Fund and that is the only place I can buy my coverage, at their price, then the big element is taken away in cost savings. To target in on safety and accident prevention and in a lot of ways, this is what we should be more concerned about than even the dollar savings. There is provision to reduce costs as is because you have a modifier in your plan with the State Fund as the University System would have right now. It is not completely taken out with the current set-up, but the big picture of safety and concentration on prevention is gone from that.

SENATOR THOMAS addressed a couple of things that potentially may come up. He stated the Committee may hear the opponents say some very valid things and no one needs to point out that great things have taken place in the State Fund. With **Carl Swanson** as the head of it, they have done a tremendous job. One thing **SENATOR THOMAS** believes will be told us is that the "camel's nose is in the tent" and the University System is no different. He believes the concern is that if we let out one, even though it is a very different part of state government, outside of the State Fund and let them do their own thing, then potentially everyone else will follow. **SENATOR THOMAS** stated this is not what the bill is designed for. The bill simply says the University System is cut and dried and there is no question about that. The opposition to this bill may even point out that the University System is not different than the rest of the state government. **SENATOR THOMAS** said it is very obvious it is different regarding where they get their funds and who they are regulated by. There is a question on the Fiscal Note, item 12, as to whether or not the State Fund is required by law to be very conservative or if they would charge higher rates than private insurers in order to cover costs. He believes the State Fund has a legitimate point in stating this is not true. **SENATOR THOMAS** does not debate this with them, he believes the Fiscal Note overstates that point significantly. The Fund is higher on some codes and lower on some codes, depending on what they are.

SENATOR THOMAS believes the biggest thing the Fund will say is if you unhandcuff the University System and let them look at all three plans, you will do irreparable harm to the State Fund, or at least the potential exists. He does not believe that is true, the reality is not there. If the University System changed to Plan 1 or 2 away from the State Fund, the whole risk would be transferred from the State Fund employees rather than University System employees to some other mechanism. You are moving it entirely away. They no longer, at the State Fund, have that risk of employees for compensation claims. On that basis, it may be asked, since there is nothing left, how could it harm them? Because we lose the business. In the competitive world they say that's tough, that's the way it goes, but in the actuarial world if you lose a risk there is nothing left of the problem. As the Fiscal Note points out, there is about a \$1.75 million to anticipate free in the next fiscal year. That's about 2% of the State Fund's premiums for that coming year. This is not a

gigantic hit. If it is, we have got bigger problems than we realize over there. If you take the net income that is generated in the Fiscal Note, \$128,000, against the net premium which is not a commonly used factor, you've got next to nothing as far as your residual left in harmony with the Fund.

Proponents' Testimony:

Rod Sunsted, Fiscal Affairs Montana University System, spoke in favor of the bill. (EXHIBIT 1)

Craig Roloff, University System, MSU Bozeman, supported this bill. (EXHIBIT 2)

{Tape: 1; Side: B; Approx. Time Count: 1:47 p.m.}

Jeremy Fritz, Student Lobbyist, MSU Bozeman, stated that anytime the administration of any university or colleges have savings, it directly affects students, whether it gives them more access to services, lower costs to those services, or even in this case the opportunity to have tuition lowered or the chance of having money granted from the Montana Tuition Assistance Program. If you notice on assumptions on the Fiscal Note, number 11, it states the money would be used to the Montana Tuition Assistance Program. In brief, that program allows students to lower the burden of financial debt as more and more students are graduating with huge student loan debt. With the number 11 assumption, we would like to see the dollars from the General Fund and tuition routed to the Montana Tuition Assistance Program. As previously stated they would like to see, the \$146,000 go back to auxiliary services. As students on campus, they totally benefit from auxiliary services, whether it goes to re-roofing the resident hall or food services or having carpet or having water fountains replaced, it truly benefits students and helps their quality of education.

Cathy Krego, Director, Human Resource Services, University of Montana, Missoula, spoke in support of SB 98. She said in her role as director, she oversees both the payroll administration function, which is the payment of those Workers' Compensation premiums, as well as the safety programs, claims processing, and facilitating an employee's return to work. **Ms. Krego** spoke about purchasing Workers' Comp. coverage in the most competitive manner possible. She does believe we have seen dramatic improvement in services from the State Fund in the past few years.

However, **Ms. Krego** stated they would like the ability to coordinate their claims administration across all campuses of the University System. Currently claims management depends upon the ability of an individual claims examiner or an individual campus and their ability to implement those kinds of programs. They would like the ability to have immediate access to claims information, monthly reports from the State Fund are not adequate to get in and aggressively manage both the liability to the

university and the employees' return to work. They would like the ability, as **Mr. Roloff** stated, to return some of those incentives back to the Department in units which have shown good claims experience. An important component also is the ability to really align our self-funded medical insurance plan with Workers' Compensation. There is a great deal of overlap in those areas as claims are filed and we need the ability to bring those two functions together. Another example where we would implement some administrative procedures which we feel would be very effective is, an injured employee very often chooses to go to an emergency room or specialist which is much more costly, we would like to implement a Preferred Provider arrangement. With this the costs could be controlled and the initial visit to the physician, also this would improve the communication greatly between medical providers and the university. This would facilitate an employees return-to-work significantly in a job which they could perform and perform without fear of aggravating that injury or illness in the future.

One example of successful self-funded Workers' Comp. program is Missoula County which went to a self-funded Workers' Comp. program and pulled out of the Montana Association of Counties fund some time ago and saw a 60% savings in three years. We are asking through SB 98 the opportunity to realize some similar savings and to provide better service to our employees at the campuses.

George Wood, Montana Self-Insurers' Association, stated the association, in its 36 years of existence has always supported the three plans. In addition to that, we have also supported the opportunity for every employer to be able to choose which of the three plans they wish to elect to insure their obligation. The benefits for the insurers are identical, it is just the opportunity to determine which best suits that particular employer. For those reasons, he suggested this bill pass.

Riley, Johnson, National Federation Independent Businessman, (NFIB), stated they have a problem. The **NFIB** has always supported privatization of state functions and this obviously is headed in that direction. The problem they have is that the small employer, who has to pay into Workers' Compensation, is paying increased amounts. He is not sure how is problem should be addressed, but will not oppose something that is private enterprise driven. Over the past few years, Workers' Compensation has turned around, but one of the reasons it was sold was that it had to run like a business. So we have a situation where the Workers' Comp. in this session is going to ask for a number of changes in the Work. Comp. system, and one of the issues is that they want to run more like a business. The dilemma is that we are now going to discriminate against another state agency who wants to run like a business, and we are going to have to support them. The **NFIB** does not believe it is proper for one state agency to mandate the cropping up of another state agency. They realize there is a problem and certainly do not

want to see their own Workers' Comp. rates rise dramatically, but on the other hand we think you can review this from a standpoint of the Work. Comp. system. On the other hand, this is a private enterprise situation and the Work. Comp. is asking for exactly the same thing that this other state agency is asking for.

{Tape: 1; Side: B; Approx. Time Count: 2:00 p.m.}

Opponents Give Testimony:

Carl Swanson, President, State Fund, spoke in opposition to SB 98. (EXHIBIT 3)

Mick Robinson, Representing Governor Racicot, stated he was an opponent in this matter. He said they are not opposed to the idea, their opposition is pointed toward the timing of this particular issue in a period of transition. As you have heard from **Mr. Swanson** and the proponents, there has been significant financial improvement after many years of struggling. There has been a change of management and a change in philosophy that has resulted in decreases in premiums over the last two years. Additionally, we will be seeing major legislation in this particular session, SB 67, which will, as **Mr. Swanson** indicated, eliminate the Old Fund liability, which has certainly been an issue here in the legislative session for years. It will also eliminate the Old Fund liability tax, which **Mr. Robinson** believes will be well-received by every employer within the State of Montana. It will also transfer the \$20 million into the state General Fund. The Governor strongly supports SB 67. Given that, the Governor agrees with **Mr. Swanson** that now is not the time to jeopardize the substantial progress which has been made by the Fund and the present solid financial position of the State Fund. We need to give the State Fund the opportunity to properly serve the University System, to fully serve that client, and as **Mr. Swanson** stated in his testimony, they fully intend to provide the services as well as the pricing programs to meet their needs.

David Owen, Montana State Chamber of Commerce, said he goes along with **Riley Johnson's** dilemma. Out of fairness to this process, if we were not to amend this bill, they would be opposed to this bill. We do believe in competition in the private sector, so in that sense we do agree that this is a matter of timing. But we agree with the State Fund at this point because we have a practical consideration. Most of my 800 members are small businesses. We would like to reaffirm our belief in a three-phase system, a State Fund for the very small business and a residual market for those who have bad record, a private option and a self-insured option. Our fear is as the university takes off and others do, and we go to a free market, we do end up with the very small and the very bad which develops a problem for one of our members. He believes if we chase numbers around this issue, it is a small amount of premium, the savings is a small amount of the university budget which may result in somewhat of a

tie. He is cynical enough to also hear in the plea "just give us more time", his daughter telling him she will clean her room at some point in time. He would suggest for the Committee and the Legislature to choose a date, around 1999, where this can be debated again.

Jacqueline Lenmark, American Insurance Association, which is a trade association comprising of approximately 250 property and casualty insurers, many of the companies which write private insurance under Plan 2 in the State of Montana. **Ms. Lenmark** feels she should be standing as a proponent in this legislation but stands as an opponent uncomfortably. She hopes some day to be able to stand as a proponent for legislation that proposes all employers can choose their insurance product in a very free and open market. This is a very strong policy in her association.

However, another competing and equally strong policy of her association is that they would like to assist in the establishment and maintenance of a very strong, three-way system in the Workers' Compensation area. So many small employers must rely on a State Fund as a market of last resort. We are moving in the direction of a strong State Fund. We have seen a return of private carriers in Montana, because those carriers have seen a strengthening of the State Fund's fiscal integrity. When we look at this piece of legislation, we need to consider if we will jeopardize the fiscal integrity and stability of the State Fund. If we do we may send a signal back to private carriers which will make them nervous about Montana's market.

{Tape: 1; Side: B; Approx. Time Count: 2:16 p.m.}

Questions From The Committee And Responses:

SENATOR MAHLUM asked **Carl Swanson** regarding the fiscal '92, '93, and '94, the paid losses that Montana University System had the average of those three years was approximately \$883,000. Then fiscal '95 had a paid loss of \$493,000, fiscal '96 had \$242,000, so what would have happened in fiscal '95 where they would have had a catastrophic situation, where nobody was killed but there was a catastrophic type injury? **Mr. Swanson** responded it would have changed the numbers because we would have paid that severe injury and would have had reserves for ongoing medical payments and indemnity payments. **SENATOR MAHLUM** then asked if they would have had the big net income, because anytime you are insuring people you can have a catastrophic accident which can bring the problems up. **Mr. Swanson** answered that this is correct.

SENATOR EMERSON asked **Mr. Swanson** if it would have been nice if they hadn't had the university system since you said they didn't pay all the losses, wouldn't State Fund have been more profitable? **Mr. Swanson** responded if that is what came across, that is not what he intended to say. All of State Fund's customers during this five-year period, '92 through fiscal year '96 overall were profitable. Considering all the premium

received and all the losses paid in reserves, university system was profitable also. What he was pointing out to the Committee was that just the university system loss ratio, or the amount of losses they had were 13% above what all their other customers had. So they had higher losses as an entity as our customers did over all. You can equate that to a loss ratio, the ratio between premiums received and losses incurred. Their loss ratio was higher by approximately 13%. **SENATOR EMERSON** inquired of **Rod Sunsted** that this bill has a July 1, 1997 effective date, what is the earliest he would see the university changing if this bill were passed. **Mr. Sunsted** responded that in their conversations with the budget office, they said they would not be in a position to make any change until July 1, 1997. The first they would be in a position to look at those options would be July 1, 1998. They would not be planning any changes in fiscal year '98. By fiscal year '99, he believes they would be in a position to evaluate those options. **SENATOR EMERSON** asked if this means it will be at least a year and maybe more. **Mr. Sunsted** said this is correct.

SENATOR BENEDICT addressed **Mr. Swanson**. **SENATOR BENEDICT** stated he understood from **Mr. Swanson's** testimony that once we have the payroll tax problem solved and we have the New and the Old Fund merged, then we would be able to work a lot closer with the university system to help them decrease their premium. **SENATOR BENEDICT** asked what could be done to increase their premiums in terms of programs or the possibility of dividends. **Mr. Swanson** responded there are a number of things, one being special pricing programs, and retrospectively rated programs, there are scheduled credit programs, a number of programs which as early as this July, 1997 are able to be discussed with the university systems. In fact, some of those discussions are already taking place in that area. The big picture in the big area that we need to be attacking is cost containment. The effort in partnership with the university system and our claim adjusters and our managed care organizations, efforts to return the worker back to the work environment in transitional employment is all a significant focus of the State Fund. From a safety standpoint, one of the thing **Mr. Swanson** heard was that SB98 would be an added incentive from a safety standpoint. He believes that incentive exists today because it is reflected in the experience modification of all logic customers. This also would be reflected in their pricing programs.

{Tape: 2; Side: A; Approx. Time Count: 2:24 p.m.}

SENATOR EMERSON asked **Mr. Swanson** if he felt the State Fund could be competitive or even below what the self-insured or private market could do for the university system given a period of time. **Mr. Swanson** responded that their mission statement captures it all. Their mission is to be Montana's insurance provider of choice because we want our customers to want us because we are known for our service. We aim to be the service provider of choice in the state, loss control, claim management, early

return-to-work ethics, all the ingredients which go into managing the big section of costs which are your benefits. They do believe they can be competitive on cost and the key ingredient to the State Fund's success is the continued support of our legislature in recognizing we must be competitive in service, in pricing, recognizing individual exposures, each individual risk presents quality of management, loss control and also to be competitive in product, that they tailor their products to their customer. With the support of the legislature in allowing the Fund to function competitively just like other successful State Fund's around, they certainly can maintain a good cross-section of business and not be just a residual market. If that happens, pricing will go up substantially for small business in this state. SB 67 addresses the ability to allow the State Fund to fill that function.

SENATOR EMERSON asked **CRAIG ROLOFF** when the safety program was started at MSU. **Mr. Roloff** responded it was started about 10 years ago and has obviously grown considerably over time because it took awhile to bring it up to speed. His last count was 27 different training programs that were available to employees on campus, in Billings or in Havre or the research stations.

SENATOR EMERSON asked if **Mr. Roloff** gives a lot of credit to that for the reduction of claims on the chart. **Mr. Roloff** responded that he did, not only the training program, but actually having a person on the campus who will go out and follow-up after an accident occurred. Not only follow up with the employee who had the accident to help them get back to work, but also analyze the work they were doing, the task they were performing at the time and developing a better way to do it.

{Tape: 2; Side: A; Approx. Time Count: 2:32 p.m.; Comments: SENATOR MAHLUM asked Craig Roloff the next question, he inadvertently stated his name as Mr. Sunsted.}

SENATOR MAHLUM asked **Craig Roloff** if that meant that the State Fund does not help them, that they do everything themselves as far as taking care of the people who are hurting and getting them into different jobs and things like that. **Craig Roloff** responded that it is not something they do entirely or not at all. It really is supplemental. **SENATOR MAHLUM** asked if that meant the State Fund does help them. **Craig Roloff** responded that they do.

SENATOR KEATING asked **Carl Swanson** if he recalled about how many customers he had about three ago. **Mr. Swanson** responded when he came with the Fund in January of '94, he was of the understanding the market share on a business basis was approximately 80 to 85% of the businesses in the state. They peaked at approximately 26,000 customers. Today they have about 25,500 customers, so they have lost about 500 customers amounting to about \$30 Million in premium in the net. They have gained a lot of small businesses which have reformed in our state. Regarding market share on a payroll basis, during '92 through '94, Plan 1 was approximately 26% market share, State Fund was 55% in '92 and has

come down to about 45% in fiscal year '94, and private carriers Plan 2 have picked up those 10 points of market share. Since then the Fund has continued to lose business. He is estimating that today their market share is somewhere between 40 and 45%.

SENATOR KEATING asked if that meant down from 85%. **Mr. Swanson** said he is not sure if whether the 85% was just looking at Plan 2 and Plan 3 and whether self-insured's were in that number or not.

SENATOR KEATING asked if they are seeing a decline in their operating costs or growth in their operating costs as a result in the decline of the market share. **Mr. Swanson** answered that the State Fund's operating expense ratio has been just about the lowest in the United States for State Funds. The reason is that our State Fund was not doing many of the things it should have been doing as an insurance company. As a result, it was one of the key contributions that led to not attacking the big horse and the unfunded liability that we saw. Our operating expense ratio today is approximately 10%. Back in '93 it was 7 or 8%. State Funds back then were averaging 15% as the lower average. Today those same State Funds, because of declining premium, are between 25 and 35% operating expense ratio. **SENATOR KEATING** asked if **Mr. Swanson** had a round figure in the annual cost in dollars. **Mr. Swanson** said approximately \$17 million, including all the systems. They have had a considerable investment in their technology to replace their 1970's technology and to address the year 2000. **SENATOR KEATING** asked **Mr. Swanson** because of this free enterprise argument, the university has said that they probably would not leave the Fund until July 1, 1999 if this bill passes. **SENATOR KEATING** stated in the light that **Mr. Swanson** understands he is opposing this bill in awareness of that future date for loss of business, is there some time in the future you would not oppose this bill? **Mr. Swanson** responded there is. He said as long as our legislature supports the State Fund and allows them to be competitive in those three areas he has mentioned, they strongly believe in a healthy, competitive environment, in the fact that they need to earn the business, and the fact they did not have the ability to function as an insurance company until some recent legislation in 1993. They just want the opportunity to earn that business, and if they can't then they deserve to lose it. So, ideally he would like three years. **Mr. Swanson** said let's see what happens with SB67, and if the Old Fund liability tax which is in that bill ends as they believe it will in December 1998, then a re-visit this issue in the 1999 session would be very satisfactory to the State Fund. **SENATOR KEATING** asked if around the year 2000 he might not oppose this. **Mr. Swanson** said that sometime in calendar year 1999, we should have had the opportunity to show they can earn the business and do the best job, so mid-1999 or later in the year that would be satisfactory to us if the Committee saw fit to do that.

{Tape: 2; Side: A; Approx. Time Count: 2:36 p.m.}


Closing By Sponsor:

SENATOR THOMAS said this bill has nothing to do with whether or not we support the State Fund or if we appreciate the success of the State Fund. He touched briefly on the safety and the accident prevention aspect which was addressed a couple of times in the conversation. If you have to go to the State Fund and buy your insurance there and that's the only place you can buy it, you have eliminated 70% of the ability to reduce claims, accidents, and create safety. If you're not going to save the money, you're not going to put the time into it. We have had some success there, but if you put that dollar out there to the entity and the employees to save money and this is a monopolized situation, it is time to change it. On the issue of safety, all of the safety culture acts in the world aren't going to do it unless an employee and employer can potentially earn some money back. That is what is successful. **SENATOR THOMAS** corrected the record by stating that private insurance carriers are in Montana now because they can make money selling Workers' Compensation Insurance. They are not here because the State Fund is more healthy, they are here because they think they can make a profit. In the past the Fund was selling insurance at a low rate, building up the balance of the rate and the deficit. You add those two together and you have the real rate. Again, the issue is not whether or not they support State Fund. The premium we are talking about is 2% approximately, probably 1.85 of the State Fund's premium. He stated he appreciates the talk of the competition, it is healthy and good for us. We fundamentally know that competition breathes health and vitality into the market. **SENATOR THOMAS** handed out an article about **Mr. Swanson**. **(EXHIBIT 4)** **SENATOR THOMAS** said we are also talking about an entity which is giving back \$20 Million, that wasn't the loan, that was a gift, wasn't a liability on an asset sheet, and yet we might break it. The competitive market states the university system will switch their coverage to someone else. That is one-tenth of \$20 Million or less than that. We can afford to let the university some flexibility in their coverage.

ADJOURNMENT

Adjournment: 2:45 p.m.


SEN. THOMAS F. KEATING, Chairman


GILDA CLANCY, Secretary

TFK/GC