

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN THOMAS KEATING, on January 28, 1997,
at 1:00 P.M., in 325

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(s) & Date(s) Posted: SB 41 & SB 67; 1-17-97
Executive Action: None

HEARING ON SB 41

Sponsor: SENATOR STEVE BENEDICT, SD 30, Hamilton

Proponents: Chuck Hunter, Department of Labor & Industry
Nancy Butler, State Fund
George Wood, Montana Self-Insurers' Association

Opponents: None

Opening Statement by Sponsor:

SENATOR STEVE BENEDICT, SD 30, Hamilton, said SB 41 is a housekeeping bill brought forward by the Department of Labor & Industry. First, it streamlines the process for insurers and injured workers to resolve claims by removing the Department from

processes where currently they are a part of the process but don't add any value to the process. Secondly, it clarifies the process for dispute resolution, involving wages, subrogation, and questions of dependency. Third, it updates the Workers' Compensation Act to include the type of business entity known as limited liability partnerships which they approved in the 1995 session. Forth, and most importantly, the bill repeals the portion of the Workers' Compensation Act known as the Underinsured Employers' Fund, a program which was created in 1993 and was designed to police employers who misclassified workers to reduce the cost of their insurance premiums. That program has not worked. It has not reduced fraud and it should be eliminated, it is something we don't need. **Chuck Hunter, Department of Labor & Industry**, will be here to testify with more technical information on the bill. **SEN. BENEDICT** called attention to the set of amendments. **(EXHIBITS 1 & 2)** Those are amendments which were agreed upon by both the State Fund and the Department of Labor and Industry.

Proponents' Testimony:

Chuck Hunter, Department of Labor & Industry, stated he does not have much to add to the testimony of **SEN. BENEDICT**, but said he will tell us about the repeal of the underinsured program. They have operated that program since 1993, and have found a couple of things. One is, the incidence of misclassification of workers in terms of premium classification, has not been as widespread as was originally believed. Secondly, they find that in most of the cases where they did find misclassification, it was simply a matter of poor communication between the insurer and the insured. They do still find there are some misclassifications regarding the independent contractor issue. Employers do, at times, still classify people who should be employees as independent contractors. Their experience is that they are much more able to deal with that situation in the Uninsured Employers' Fund and actually they are proposing to put the resources that were devoted to the Underinsured Employers' Fund to dealing with uninsured employers. That is where the greater problem exists. The underinsured has been intrusive in the relationship between the insurers and their insureds. For those reasons, the Department is recommending that we do away with the program. It will simplify the process and get rid of a government program which doesn't really prove to be effective, it will save insurers money while we do that. For those reasons, they respectfully request a "do pass" on this bill. As **SEN. BENEDICT** said, there are State Fund amendments which they have concurred in.

*{Tape: 1; Side: A; Approx. Time Count: Approximately 1:10 p.m.;
Comments: Tape recorded over approximately 3 seconds of
conversation which does not pertain to the hearing on SB 41, this
recorded over the first 3 seconds of Nancy Butler, the next
proponent's statement.*

Nancy Butler, State Fund, (inaudible opening statement of testimony) settle that subrogation claim with the claimant's heirs, that they are deceased. The two sections are inconsistent, the amendments make them consistent. (EXHIBIT 3)

George Wood, Montana Self-Insurers' Association supports this legislation and commends the Department for suggesting legislation that does away with needless sections of law, repeals them and amends other sections to make them more affective and workable. For this reason they request a "do-pass" on SB 41.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

CHAIRMAN KEATING asked SEN. BENEDICT in regards to the two funds, underinsured and uninsured, if this disposes the underinsured fund. That presumes there is a balance of funds in the fund. He asked what that balance is. SEN. BENEDICT responded he cannot tell what the balance is, but he can tell him what will happen to the balance. The balance of the underinsured fund will go into the uninsured fund. CHAIRMAN KEATING said that fund has a balance, what will be the total balance of that fund when the transfer is made? Chuck Hunter responded that he cannot give an exact dollar figure and could find it within a matter of moments, but it is somewhere in essence it is about \$1 million or \$1,100,000. CHAIRMAN KEATING asked if that was the total in the uninsured fund. Mr. Hunter responded that is correct.

Closing by Sponsor:

SEN. BENEDICT commends this bill for the Committee's consideration and asks for a "do-pass" on SB 41.

HEARING ON 67

Sponsor: SENATOR STEVE BENEDICT, SD 30, HAMILTON

Proponents: Carl Swanson, President of State Fund
Mick Robinson, Representing Governor Rasciot
Don Allen, Coalition Workers' Compensation System Improvement
Russ Ritter, Washington Corporation of Missoula
David Owen, Montana State Chamber of Commerce
Riley Johnson, National Federation Independent Business
Roger McGlenn, Independent Insurance Agents of Montana
Dan Hutchings, Montana Building Industry Association
George Wood, Montana Self-Insurers' Association
Keith Olson, Montana Logging Association
Ben Havdahl, Montana Motor Carriers' Association
Jacqueline Lenmark, American Insurance Association
Aidan Myhre, Rehabilitation Association of Montana

Debbie Berney-Taylor, Professional Insurance Agents
of Montana

Bob Worthington, Montana Municipal Insurance
Authority

Ray Barnicoat, Montana Association of Counties

Leo Ward, Montana Schools Group Insurance Authority

Chuck Hunter, Department of Labor & Industry

Bill Crivello, Crawford & Company Rehabilitation

Charles Brooks, Billings Chamber of Commerce

Opponents: Jerry Driscoll, Montana Building Trades Council
Russell Hill, Montana Trial Lawyers Association
Don Judge, Montana State AFL, CIO
Sue Weingartner, Alliance of American Insurers
REP. ROYAL JOHNSON, HD 10, Billings

Opening Statement by Sponsor:

SEN. STEVE BENEDICT, SD 30, Hamilton, presented SB 67 with pleasure. He stated he felt as if he wore a bullseye on his back when he presented the employer-employee payroll tax in 1993 to this Committee after having shepherding it through the House. He has never supported, much less carried a tax increase, so it was a very onerous, black day for SEN. BENEDICT when he agreed to sponsor the payroll tax, a half a billion dollar tax on the employers and employees of this state in order to bail out the ailing Workers' Compensation System Old Fund. At that time he remembers telling the members of this Committee that payroll tax would run until approximately the years 2006 to 2007. They have, in the last three years, made remarkable progress in the health of the New Fund, and they have brought the health of the Fund to the point where he can come before the Committee today and ask to eliminate the payroll tax on employers and employees by December 31, 1998. SEN. BENEDICT said that would make him a very happy legislator.

SB 67 eliminates the payroll tax on employers and employees by December 31, 1998. It merges the Old and the New Funds. It repays \$20 million to the General Fund. It allows the calculation of investment income and operational expense. It allows the State Fund to contract with licensed insurance agents for the sale of State Fund insurance policies. It increases the State Fund board of directors to seven from the present five. It provides State Fund customers with the option of multi-state coverage. It allows the State Fund to prepare a joint fraud office budget with the Department of Justice and Department of Labor, and under some amendments which are being proposed also brings in the Department of Labor. It also has some provisions for some housekeeping measures to clean up some statutes.

There were provisions in this bill when it was pre-filed, for increases and permanent partial wage loss and greater access to vocational rehabilitation. The amendments SEN. BENEDICT will propose also take out those increases and permanent partial wage

loss and the vocational rehab. pieces of the bill as they could not get consensus from all three plans on those components. He has the amendments prepared, and along with the amendments are a synopsis of the amendments. (EXHIBITS 2 & 3) He apologizes to the Committee for bring a bill which will require several pages of amendments, but he thinks everybody on this Committee is aware of the opportunity that the legislators have had to try to get as many bills as possible pre-filed. In their gusto to do that, he is not sure the intensive consequences were foreseen. That is if you pre-file a bill, that bill goes into drafting before it has a chance to have a lot of input.

SEN. BENEDICT took the pre-filed bill to as many people that are part of the Workers' Compensation system and to many of the people who have interest in Work. Comp. issues and ask for consideration of the bill and whether or not they had any changes they would like to see in the bill. Then they prepare the amendments. He commends the bill along with the amendments and he would like to have Carl Swanson from the State Fund explain the bill further.

{Tape: 1; Side: A; Approx. Time Count: Approximately 1:13 p.m.}

Proponents' Testimony:

Carl Swanson, President of State Fund, presented his testimony. (EXHIBIT 4)

Mick Robinson, Representing Governor Racicot, strongly supported SB 67. (EXHIBIT 5)

{Tape: 1; Side: A; Approx. Time Count: Approximately 1:36 p.m.}

Don Allen, Coalition Workers' Compensation System Improvement, supported SB 67. He remembers back four years ago, prior to the session when the Coalition first came together, that people were angry, people were upset in every way both from an employer's standpoint, and from an employee's standpoint. Employers were upset that they could not control costs, employees were unhappy because they were not able to receive deserved raises. They could not get answers from the State Fund, they could not get their telephone calls promptly attended to. The Coalition, along with other groups that had an interest on behalf of other people, employers, employees, tried real hard to address these issues. The goals of the Coalition were get cost under control, to get responsible, effective, and accountable management at State Fund. to try to do something about premium costs which were going out To try to make the state more competitive, to get the private sector back into the state. The concern over safety was one which was shared by everyone and the Safety Culture Act addressed that, medical costs of the managed care approach to spend being pursued, and last but not least, the fraud issue. This issue had to be addressed and Mr. Allen thinks it has been effectively.

Mr. Allen said the overall issue was that they wanted to have a system that was healthy, that would inspire competition, would get the private sector back, and result in an opportunity for some things to be different.

The size of the State Fund at that time certainly was much larger. In the minds of many it was too large. They thought the State Fund has too big of share of the market. There was not any incentive for private sector to come back in it. He pointed out that members of the Coalition are not just State Fund policy holders, but also Plan 1 and Plan 2 policy holders. They have monitored meetings of the State Fund and **Mr. Allen** gives credit to **Gov. Racicot** and the State Fund board which has been there since changes were put in place to allow them to operate like a business. They have made a lot of progress and as result, this took away some of the anger and feelings which existed four years ago.

SEN. BENEDICT talked about the "target on his back", and **Mr. Allen** said he does not know of anyone in this state who was happy about that payroll tax. He believes this bill shows light at the end of the tunnel and sets a date for this tax to come off and he believes this is something, along with premium decreases, will inspire more confidence in other companies to stay competitive. He believes the State Fund is in good shape right now, it is being run well, and he also believes this bill will put in place some things to improve things further. When this bill was first announced, **Mr. Allen** said there was a lot of concern as many of there members said things were working pretty good right now and didn't want to rock the boat and make any changes. The Coalition was not willing to sign off on this bill until they could see exactly what the changes were. They believe **SEN. BENEDICT'S** amendments will improve the bill and they hope the Committee will give this bill a "do-pass".

Russ Ritter, Washington Corporation of Missoula, was present in support of SB 67. He stated he was there to represent Washington Corporation as a customer of the State Fund. Four years ago, **Mr. Jim Brouelette**, Director of Human Relations of Washington Corporation, was appointed to the board at State Fund and has served in that capacity as a member since that time. **Mr. Ritter** said he has had the opportunity on a meeting-by-meeting basis, to visit with **Mr. Brouelette** to see the kinds of things that were taking place and the direction which the State Fund was taking over the past four years. **Mr. Brouelette** was on both sides of that issue simply because he represented management and he also represented the workers in his own profession. So he heard on both ends as to what was good and what was bad.

Mr. Ritter stated that most of everything which has happened in the past four years has certainly been beneficial to taking the State Fund into 21st Century. The access which has been made available both to the employer and the employees is commendable. It is really a success story, and he is here on behalf of

Washington Corporation to say they believe the State Fund has done many things right. They believe SB 67 is a step in the right direction, they see it is a positive step forward, it will continue to make the State Fund competitive, and then continue to reduce those rates.

David Owen, Montana State Chamber of Commerce, was present not only to support SB 67 but also to salute a rather remarkable achievement in the turn-around of Workers' Compensation in Montana, particularly at the State Fund. It will be an enormous relief to the Montana Chamber to bring to an end the Old Fund liability tax. They were involved in that a number of years ago and it was not easy. The tax being removed early is certainly good news. They have seen remarkable achievement which has not only been getting rid of this tax, but it has brought premiums down.

Mr. Owen said there was an assertion made in a previous hearing, that this is somehow the business community getting away with something because they are now paying less for Workers' Comp. This is a little bit ludicrous. There is a limited amount of money that can go from his members to employees. It is infinitely better that it go to them in the form of wages than to get siphoned off to provide for required benefits. Unfortunately, this reduction is fairly new and we do not have statistics so he cannot quote a migration to higher pay. In fact, the statistics which are still there that we hear many indicate there is some wage stagnation. As he travels the state twice a year, he is hearing people bidding up labor in some pretty dynamic labor areas which cannot be done if there is an oppressive level of Workers' Compensation premiums. There was also some reductions in benefits which he commends the legislature for. It was not easy to be an advocate for those.

Mr. Owen said we have a benefit package now which is comparable to other states and is fair. It has helped them relieve the burden of high premiums on their members. He commends the State Fund administration and they support them in the strongest endorsement that they could give for that is removing the 15% cap. **Mr. Owen** said he works with a group of people who are not easy to serve. Much of the private sector aren't that interested. They do not have many employees and not a lot of money. For them to receive the kind of service they would like them to have, the State Fund is going to need the flexibility.

Mr. Owen believes this is a sign that this business community has faith in this administration to support altering those definitions and addressing that cap. They commend this bill and its sponsor.

Riley Johnson, National Federation of Independent Business, said they started a process in 1993 and asked the legislature that the State Fund be run like a business. They got what they asked for. They then asked the State Fund to get out of "red ink", and they got that. They also asked increased customer service and

satisfaction and got that. They asked for reduced rates and got that. They asked for a handle on fraud and got it.

Mr. Johnson stated they now stand in support of this administration and the State Fund asking that they get a few more steps. They are asking for an elimination of the Old Fund liability tax and obviously a paperwork reduction which this will result in. Secondly, they are asking for a privatization of a state function meaning the independent agents having the ability to market the State Fund product. Finally, we are asking for the all-state endorsement. A lot of their companies operate in other states and this would be major help to them. For those reasons, **National Federation of Independent Business** stands in complete support of SB 67.

Roger McGlenn, Independent Insurance Agents of Montana, stands in support of SB 67. (EXHIBIT 6)

{Tape: 1; Side: B; Approx. Time Count: Approximately 1:50 p.m.; Comments: The taped was turned from Side A to Side B, in the process the next Proponent, Dan Hutchings' name and introduction was not recorded..}

Dan Hutchings, Montana Building Association, stated members of his organization commend the efforts of State Fund over the past few years in their turn from the past direction. They would like to support SB 67 and its proposed amendments.

George Wood, Montana Self-Insurers' Association, supported SB 67 as amended. It has already been adequately explained by members of the community interested in Workers' Compensation. There is a feeling that State Fund has turned a corner and has had a remarkable improvement in their relationships with the business community and with the claimant. For this reason, they suggest we give them the tools they request to increase their efficiency and effectiveness in maintaining and managing the State Fund. For this reason they request a "do-pass".

Keith Olson, Montana Logging Association, stood in support of SB 67.

Ben Havdahl, Montana Motor Carriers' Association, also supports SB 67.

Jacqueline Lenmark, American Insurance Association, stated the association she represents is comprised of 250 property and casualty insurers who write Workers' Compensation insurance in Montana. They support SB 67. This bill covers three general areas. First are the case procedural changes included in this bill. They strongly support those changes. The bill also covers a number of operational changes for the State Fund. **American Insurance Association** has two strong overriding policies with regard to Workers' Compensation. The first is that an employer choose the insurer of his or her choice. The second and very

strong policy of her association is that they want to assist in the establishment and maintenance of strong competitive State Funds which can also serve as the market of last resort in the states in which they operate. They view the operational changes in SB 67 as heading in that direction.

Ms. Lenmark said she hopes that someday she will stand before this committee and testify as a proponent on a bill that says the State Fund will operate under the same regulatory authority as the private insurers and that it will meet all of the same standards as private insurers, that we will all work in the same environment. This bill heads in that direction and because of that the **American Insurance Association** hopes the Committee will give this bill a "do-pass" recommendation so that the Fund can continue its good track record of the past couple of years in improving its stability and operation.

There are two specific operational changes in the bill **Ms. Lenmark** addressed, because **Carl Swanson** specifically asked for the input of her association. The first is the other states' coverage. They do support the provision which is in the bill on other states' coverage. It is still possible she will bring to this committee or to the sponsor some requested amendments about language changes but certainly they strongly support that particular measure of the bill. The other area she is compelled to comment on is that a number of proponents have commented about rate reduction. Her association would like to implore this committee to always take measures to insure rate adequacy. It is important to have affordable rates for employers, but if those rates are not adequate and if measures are not always taken to insure that rate adequacy, they will be faced again with the same problem they have just struggled out of over the past four years. They recommend a "do-pass" on SB 67.

Aidan Myhre, Rehabilitation Association of Montana, said the organization she represents are rehabilitation professionals which work in the private sector and work closely with the Workers' Compensation providers, along with the employers and injured workers to facilitate a return-to-work process. This association offers support of SB 67 and urges the members of the Committee to pass the bill.

The **Rehabilitation Association of Montana** has submitted an amendment through **Sen. Benedict** and through the **State Fund**, which addresses one minor, technical change on page 14, line 26 they request that the definition of light labor activity be modified in order to be consistent with an industry-wide reference known as the Dictionary For Occupational Titles. The rehabilitation professionals along with the medical community and occupational specialists rely on this dictionary and believe there should be some harmony between the Workers' Compensation Act and this reference dictionary. They support cost effective and quality rehabilitation services. They also understand the debate of expanding access to rehabilitations and they want to clarify in

its original form, this bill did open up access to rehabilitation to a group of individuals who might not have otherwise been able to, a group of individuals with a 15% impairment and with no wage loss.

The **Rehabilitation Association** believes that this would not have been added a significant number of individuals which would be accessing rehabilitation, it would not have added significant cost, also they understand the debate and are sensitive to this issue. In conclusion, she is open for questions and they support SB 67 as amended.

Debbie Berney-Taylor, Professional Insurance Agents of Montana, stated they were in support of this bill in that they are competitors of the State Fund with their own small Workers' Compensation program. Regardless, they believe it is very important this bill pass in order to keep the State Fund a viable, competitive fund.

Bob Worthington, Montana Municipal Insurance Authority, said they are comprised of 95% of the city and town employees across the state and are a Plan 1 insurer. They know the Workers' Compensation system has come a long ways in the past four years. A great part of that success is attributed to the number of pieces of legislation from the past. This piece allows the State Fund to be competitive in the market place or more competitive, which is one of the keys to a strong system. For that reason, the **Montana Municipal Insurance Authority** supports SB 67 as amended.

Ray Barnicoat, Montana Association of Counties, stated they rise in support of SB 67 because they believe that by combining the Old and the New Funds into the State Fund and eliminating the Old State Fund tax, county governments across the state can save substantial sums of money. They also feel the bill addresses the issue of time limitations on acceptance of a claim, being a Plan 1 insurer, they feel the language which is proposed there is language that is reasonable and fair to an insurer. They ask for a "do-pass" on this bill.

Leo Ward, Claim Counsel for the Montana Schools Group Insurance Authority, which is the self-insurance pool which represents most of the school districts in Montana, supports SB 67.

Chuck Hunter, Department of Labor, supports this bill as well, primarily for the part of the bill which is connected to the Department of Labor, the ability to prosecute fraud cases arising through the Uninsured Employers' Fund, which are spoken to in the sponsor's amendments. Secondly, the point in which there is a specific time period in which people bring disputes into the comp. system. They manage those dispute resolution mechanisms. That time frame which is specified is a better language in the system. For those reasons, they support SB 67.

Bill Crivello, Crawford & Company, which is a rehabilitation firm providing services to Workers' Compensation insurers throughout the state said he is not representing anyone's interests but would like to make a couple of observations from a professional perspective. In the original language of **SEN. BENEDICT'S** bill there was a provision for what is being considered an expansion of rehab. benefits, which would basically have opened a door or a potential door for individuals with significant disabilities who did not experience a wage loss. His observation, and that of many of his peers is that there are not that many people who experience that significant of a disability for whom that door would be opened. Therefore, from a common sense perspective from those in **Mr. Crivello's** industry, that they do not see that as that big of an expansion. He believes this is a common sense approach to a better law and should be considered. The other provision on page 14 which has to do with the definition of light duty is a typographical error made six years ago and it continues to be politically debated and evaluated and not corrected because it is not politically correct to do so. If you correct it, you will be criticized for reducing benefits to injured workers. If you do not, you will be criticized for expanding it. The reality is it is a typographical error that needs correcting.

Charles Brooks, Billings Chamber of Commerce, was present to support SB 67 as amended.

{Tape: 1; Side: B; Approx. Time Count: Approximately 2:06 p.m.}

Opponents' Testimony:

Jerry Driscoll, Montana Building Trades Council, said he voted for the payroll tax and the result has been every session since to reduce benefits. Page 12 and 13 of the bill states a claim must be accepted or denied within 30 days, except in the new language. If this is not done, a person can go to Workers' Compensation court and if the claim is found compensable, there may be an assessment to the injured worker. **Mr. Driscoll** stated it takes over a year to get to that court. During that year, he guessed the worker just starves.

The amendment which is offered states "increasing permanent partial benefits" in the title. One of the amendments offered eliminates that. The language is on page 14. On page 16, if you had 15% impairment to the whole body you can receive rehabilitation if you have no wage loss, was eliminated by another amendment offered this day. In a meeting earlier today, before the session began, with claims examiners from the private sector he asked for an example of 15% to the whole body. The answer was, "comatose". On page 19 and 20 is where the \$20 million is paid back. In 1989, in a special session, under motions this special session was expanded to include Workers' Compensation. **REP. DOROTHY BRADLEY** and **SEN. BRUCE CRIPPEN** had a bill to accelerate tax collections in which the money was to be used to build new buildings at the University System. On the

last night, **Mr. Driscoll** made a motion to give the \$20 million to Workers' Comp. In that debate, it was expected that some day they would pay it back. It was not in writing, but one of the discussions from the floor. Then they want to eliminate the 15% cap on administrative costs. The Chairman of the Board, now **Congressman Rick Hill**, voted against that. It is in the minutes of the Workers' Compensation Board of Directors. He lost but he voted "no". In 1995 the Workers' Compensation benefits were reduced to injured workers over 30% and there was a corresponding 18% reduction in premium. If you reduce costs by 30% and reduce income only by 18%, you should make some money.

Mr. Driscoll said the other thing that is amazing to him is that in their annual report, if they hire attorneys, private investigators, or other outside help to fight people from getting benefits, that money is filed against the claim, and against the employer's account. And then, in their annual report, it is shown as benefits paid to injured workers. There is a new bill presented in every session. Every session is started with a few crumbs and when it gets to the Committee, it is all gone for injured workers. **Mr. Driscoll** states if the legislature cuts benefits by 30%, why are premiums only reduced by 18%? Why does the 15% cap need to be removed when there is a lot of money being spent over there which goes against the claim file and is not called an administrative cost. He hopes that for one legislative session there would not be any Workers' Compensation bills and that SB 67 would be killed. One of the things he has been saying which is evident more and more in the people's attitude, is that the newest biggest lie in the world is "I'm from the government, and I'm here to help you".

Russell Hill, Montana Trial Lawyers' Association opposed SB 67.
(EXHIBIT 7)

Don Judge, Montana State AFL,CIO, stated he reluctantly presents himself before the Committee. There are clearly some things for employers which have been an advantage to the State Workers' Compensation Fund. They now have several people issuing insurance policies in the private sector and, of course, the State Fund would like to be able to compete with the private sector and the private sector would like to keep the State Fund around because they really don't want to take those claims and those employers which nobody else wants to handle. He does stand to state that we do have some problems about the way in which this thing has been conducted. Benefits from the annual Department of Labor Work. Comp. reports state in average settlement amounts, which prior to 1987 were ranging somewhere between \$38,000 to \$50,000, depending upon which plan a business was under, are now ranging somewhere less than \$10,000 in all three plans. That's more than a 30% cut. Permanent partial disability benefits have dropped more than 50% in just the last couple of years. That is more than a 30% cut.

Mr. Judge referred to a statement **David Owen, Montana State Chamber of Commerce** said that he would predict someone would say this because they had said it at a previous hearing, "Well, the truth of the matter is wages are stagnant in the State of Montana, we still rank 47th in the nation in terms of average wage, and all of these cuts in benefits and premium costs, including a 36% cut in premiums over a two-year period, have produced very little, if anything in the area of wage increases". This has not translated itself into increased wages. He remembers candidate, **Rick Hill**, proudly announcing that there would be a bill to repeal the Workers' Compensation payroll tax, one of the very good sections of this bill. **Rick Hill** also said we would re-institute some benefits, and here we are today, we have **Congressman Rick Hill** and we have the State Fund saying we have to take those benefits out, we cannot have those benefits in this legislation. The tax never should have been on workers and very few states have ever enacted a tax on workers for payment of their Workers' Compensation. **Mr. Judge** quoted **Riley Johnson** as saying we asked for it, we got it, we asked for it, we got it, we asked for it, we got it. **Mr. Judge** stated injured workers' didn't ask for it but they got it! And they have been getting it ever since 1987, when this legislature, both Democrat and Republican has said we have to save the State Fund in the State of Montana. By saying that they virtually reached in and reached the guts out of the benefits that injured workers are receiving in the State of Montana.

In terms of rehabilitation, the proposed law would have said that injured workers did not have to suffer a wage loss in order to be eligible for certain forms of rehabilitation benefits. Then someone else said there are not very many people, it is only a \$80,000 to \$90,000 tab. We need to remember that in the last legislative session, we excluded virtually 66% of all claimants from any access to rehabilitation benefits. Because when we said they had to suffer a wage loss, it was an automatic exclusion for about two-thirds of the claims being filed in the State of Montana. **Mr. Judge** believes there is some potential for workers not suffering wage loss to need rehabilitation benefits in the future. They were hopeful that would be put back in, from their perspective it has to do with people like the kids sitting in the hearing (he is referring the pages), who go to work at a minimum wage job during the school year and get injured, and they have great potential in their lives, they could be doctors or lawyers, or anything they wanted to be. But because they are working at a minimum wage job, in some fast food restaurant or somewhere else, and they are injured and our law states we cannot have rehabilitation benefits unless we suffer a wage loss, because they are at minimum wage and cannot go back into the work force at less than minimum wage, they will never be entitled to rehabilitation benefits if they are injured. The one hope we had in this bill is there might be some justice reinserted into it. Now they see the State Fund asking for more flexibility to exceed the 15% cap so they can be competitive with the private sector. He concurs that they should offer better service to those injured

workers and to those employers out there, but we have had several people before us telling us that the customer of Workers' Compensation is the employer in the State of Montana. **Mr. Judge** said he is hear to tell us there is a different side to that equation, that is those injured workers and those survivors, and those beneficiaries of those injured workers. We need to take care of those people to. The stand opposed, reluctantly to SB 67. They would like to state that it is a good idea and they encourage the Committee to reject the amendments that will strip any benefit improvements out of this bill.

Sue Weingartner, Alliance of the American Insurers was present in opposition of SB 67. (EXHIBIT 8)

Rep. Royal Johnson, HD 10, Billings, stated is has been difficult to understand what has been going on with Workers' Compensation since 1990 and what happened. He likes to take the position that former **Rep. Driscoll** took. He said he would like to get through a session without having this kind of conflict with Workers' Compensation. We could have easily done that if we would have just continued on the course that they had set. He has no criticism about the management of the New Fund nor how they have handled it. But they do not have anything to do, up until this time with the Old Fund. In 1990 they separated the Old Fund and the New Fund asked for \$12 million to make a New Fund work, and you take care of that half billion dollars with a liability sitting out here in the Old Fund.

During special session, not during legislative session, as a candidate, **Rep. Johnson**, came up for that session because he wanted to hear just exactly how to do this. There was an actuary representing the State Fund, another one representing the State of Montana, and neither one of those two people, after about four hours of testimony, could agree on exactly what the problem was. It had not gotten better than that situation until the State Fund dropped it in their lap again in 1993, as a legislature, and said, "What are you going to do with your problem?" Well, we took the painful action that represented **Rep. Driscoll's** statement, and if you did not get any calls on that program, you were the one person in the whole legislature who did not. **Rep. Johnson** never had the phone ring quite as hard. The people wanted to know why you would put a tax on employees and increase the tax on employers to take care of the situation. The reason we did it was in concert with a lot of the people who came up as proponents on this bill today. Because something had to be done. We financed \$142 million worth of long-term bonds, we financed another \$32 million before we hardly got out of town. Those were to take care of the claims the New Fund had against the Old Fund. Once we had done that, we had to have a way to pay those bonds off and the way we decided to pay those off was the tax we have heard about.

Rep. Johnson stated he spoke with **Congressman Hill** a number of times, he talked to a lot people about the fact if we would have

just let it go, the tax would have stayed on just like it had the last time.

{Tape: 2; Side: A; Approx. Time Count: 2:40 p.m.}

In talking to people in the State Fund is was said, you do that, we do that, and we will be right back where we were in 1989 wondering what is going to happen.

This morning's Tribune has an opinion page which talks about the Workers' Compensation. **Rep. Johnson** hopes some have taken time to read it. It is titled "A Leap of Faith", and the last paragraph says, "That is why it is a leap of faith, it intuitively seems wrong but is recommended by the people who have turned the Workers' Compensation system around and they shouldn't be penalized for cutting the premiums". The people who turn the Workers' Compensation around were those people who were working in the New Fund, they had nothing to do with salvaging the Old Fund. If you remember back to 1993, you will find none of those people appeared here as proponents. In her testimony, **Jacqueline Lenmark**, who worked hard in 1993 as he remembers, her desire was to testify when everything was on the level. There isn't anything in this bill, there is not any conversation going around the hall, making this on the level. The Governor asked the State Fund over a year ago, to give us a privatization plan. Where is that plan? He took it around the state and tried to get some action on it and by the mid-year they suddenly learned it was not a privatization plan at all. The board, rightfully so, rejected that so-called privatization plan. So they have had the opportunity to privatize the Fund. They do not want to privatize the Fund, they have the best of all worlds. They have you responsible for the debts, and they have the ability to run it the way they want to. Can you get a better deal than that?

Rep. Johnson referred to a few bullets they used to sell this particular plan. Eliminating the Old Fund tax liability two years early, read the bill and you will find they have an out for that situation. Say \$74 million, they have an out which says if the reserve is below a certain figure, they don't have to do that. That sounds like a statement of fact. It does not sound like if you do this, we can do this and then six months later we go again and if we do this, you can do this.

Rep. Johnson referred to a chart given to him by a member of the State Fund. (This was not handed in as an exhibit) He stated the chart said if what happens the way they say it will, they will save \$74 million. If they go to 6/9/99, they will save \$48 million. If they go to 12/31/99, one year later, they will save \$22 million. That is a deceptive way to sell a program! That is not what this says at all. And the bill will tell you that if you have read the bill.

The reason we are here talking about this is because the State Fund wanted to pay dividends. They do not want to reduce the

taxes on the premium payers until 1998. They could have, at least, gone through until 1998 since that was their program, and said we are not going to do anything like the fees bonds, we are not going to do anything until 1998, we would like to tell the legislature in 1998 that this is a program we think we could consider. The legislature, in the past hundred years, has met the day after the first of the year. Three days was all we had to have and the legislature in 1999 would be here to consider just what we are talking about today. There is no reason to be in this position. The \$20 million we talk about, if you haven't read the last pages about the State Fund in the Volume 2 of your budget books, look on those pages and they will tell you the answer that the State Fund gave when the budget director said to send back the \$20 million that you have had to use since 1989. The letter said "we will do that if you do these conditions, give us a building, do all of those fun things, and then we will pay you back over a four-year period". This bill says they will pay us back over a two-year period, the end of 1998 fiscal year, the end of 1999 fiscal year.

Rep. Johnson is asking this Committee to carefully consider what they are doing here and consider what the options are. Take a look at the other options. You have heard people talk about the benefits and he thinks they are right about a lot of them, and he thought that was exactly what the New Fund was prepared to do, was to increase those benefits to injured workers, and bless their hearts, they deserve it. The \$20 million, if we take it in, when **Rep. Johnson's** HB 150 passes, we can earn about \$107 million for the General Fund, not for the State Fund. For the past seven years they have had the use of that money. If you take their average earnings on \$100 million, you'll find they have a substantial amount of money they have used in the State Fund.

A statement from a letter from a former Chairman of the Board, says to remove any perception, (this is on the synopsis of SB 67), "if the State Fund is a burden to the General Fund, the State Fund shall repay to the General Fund \$10 million in 1998 and \$10 million in 1999". They are going to be a burden until we get the whole \$20 million back. Every year they get the use of that money. The 15% cap which we heard discussed until a year ago, the most money ever paid for administrative expenses was a little over \$15 million, and you can find this out by looking in the annual reports, certainly under \$14 million. At that time there was \$185 million worth of premium going into the State Fund, so there had to be a little extra at that particular point. Even going down to where they are now at \$90 million, take your 15% and multiply it by that and you will get about \$13.5 million dollars.

In addition to that situation, they have taken from the Old Fund, up until the last two years \$3 million per year more for the management of Old Fund claims. That \$3 million shows as an account receivable from the Old Fund to the New Fund of \$2.5 or

\$2.8 million in the 1995 report. That is an account receivable from the Old Fund to the New Fund. If you go back and look at the language in that whole situation and you'll find out what we agreed to is that they would take care of the Old Fund liabilities on a basis of \$3 million per year. The last year **Rep. Johnson** thinks it was \$1.9 million. He urges the Committee not to let this bill pass without hearing some of the other options. We do need to fix it. The bill he suggested will cut taxes immediately, will cut them by half on both employers and employees and self-insured individuals. We will take the \$20 million immediately. The things which are in this bill that are probably good, and ought to be back in by defeating the amendments are the things that do benefit workers. None of the testimony by proponents, all who represented the insurance industry and etc., there is no conversation about the insurer of last resort. That is the reason they would like to keep the State Fund in business, so they do have that situation.

The following is a letter to the President of the Fund from the previous Chairman of the Board, **Rep. Hill**, dated November 12th. "As you know the State Fund can operate with a 15% cap, particularly given the recent interpretation by the legislative counsel, that is flexible interpretation of the limit. However, I also want to object vigorously to the representation your letter to the Governor that the Board supports and approves eliminating the 15% cap. I also take exception to the suggestion that the Board support the plan to merge the Old and New Funds was a vision of privatization plan. As you know, it is my view that privatization plan is actually a non-privatization plan, indeed a substitute for privatization of the State Fund. In my view it be made future privatization of this Fund more difficult and unlikely".

Rep. Johnson stated he rises in strong opposition of this bill, particularly until the other options that are available are heard.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

NOTE: THE FOLLOWING IS A VERBATIM STATEMENT BY SENATOR BENEDICT.

"**Mr. Chairman**, after that marathon session I would be delighted to close. And I'll try to keep it as brief as possible because I understand we have a floor session to go to as soon as we can. **Mr. Chairman**, thank you for a very good hearing, **Mr. Chairman** and Committee members, I think that you are, because of the lack of questions, you're either sitting there in a dazed state because of all the information that you've gotten, or the bill has been pretty well explained and I would hope that it's the latter. I would like to address some comments that have been made about cuts in benefits by both **Jerry Driscoll** and **Don Judge** of the **AFL/CIO**. And I would submit that previous legislatures under

extreme pressure from organized labor piled benefit on top of benefit until the Work. Comp. system collapsed under the sheer weight of those benefits. Now we have a system that's fair, adequate, and balanced. It provides for injured workers without dragging the system under.


We need a healthy Work. Comp. system in this state, one that benefits employers and employees alike. And holding the line on benefits is what has enabled us to bring this bill forward. As far as **Rep. Royal Johnson's** concerns go, I'm really kind of puzzled as to where some of those come from. And I would maybe submit that it comes down to either a couple of things. It comes down to either sour grapes or it comes down to who do you believe? Do you believe the financial professionals at the State Fund, the people who have transformed that company into one of the brightest success stories in state government and work with the numbers that we're talking about here today, every single day. They do that on a daily basis, that's what they get paid for. Or do you believe someone who may have an ax to grind, who has had a series of Work. Comp. bills that have been killed in previous legislative sessions as being too extreme or unworkable. I think those are the only conclusions that you can draw. Either there are some problems that nobody in this room is aware of, or maybe the information is just not adequate for **Rep. Johnson** to be able to support this bill. But the financial professionals at the State Fund are the people who have brought this bill forward and believe me, I've been through the numbers and it works. With that I would commend this bill to you and ask for favorable action on the bill and the amendments. Thank you."

ADJOURNMENT

Adjournment: 2:46 p.m.



SEN. THOMAS F. KEATING, Chairman



GILDA CLANCY, Secretary

TFK/GC