

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN THOMAS F. KEATING, on April 8, 1997,
at 3:15 p.m., in 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: Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

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: HB 150; 4-2-97

HEARING ON HB 150

Sponsor: REP. ROYAL JOHNSON, HD 10, Billings

Proponents: Jerry Driscoll, Montana Building Trades Council

Opponents: Mark Barry, State Fund
Jacqueline Lenmark, American Insurance Association

Opening Statement by Sponsor:

NOTE: EXHIBIT 1 contains amendments to HB 150.

REP. ROYAL JOHNSON, HD 10, Billings, said he believes HB 150 is
the real answer to Workers' Compensation problems.

He said he would like to explain the difference between SB 67 and HB 150 and tell the committee why he feels HB 150 should be passed. He referred to **EXHIBIT 2**, which show the comparisons.

REP. JOHNSON said this bill asks the New Fund to pay the \$63 Million in July 1998, which they have already agreed to do. It also says that they will pay the \$20 Million back to the general fund on the basis of \$10 Million one year and the remaining \$10 Million the following year.

He said HB 150 also cuts the tax in half. He said the legislators have had a big job in trying to hold down increase in spending but we do not have a bill which actually cuts taxes. He explained each page of **EXHIBIT 2**, and compared SB 67 to HB 150.

Proponents' Testimony:

Jerry Driscoll, Montana Building Trades Council, stated HB 150 will cut the payroll tax in half immediately, therefore, saving the taxpayers quite a bit of money.

He said in the past when the Old Fund was created, they allowed the State Fund to charge \$3 Million administrative costs. Sometime after that they took the tax collection away from the State Fund and gave it to the Department of Revenue. They still charged the \$3 Million administrative costs and the Department of Revenue is charging approximately \$380,000 and \$575,000 a couple years ago.

Mr. Driscoll stated that under the scenario of SB 67, the amount of money that will be left is around \$72 Million, depending upon the discount factor. That will be transferred to the New Fund. He said this bill, when it cuts the tax, allows the State Fund to bid on the administration of the Old Fund. He said we originally put in \$3 Million and there were over 5,000 outstanding claims. Now there are 2,184 claims and it costs \$1 Million.

Referring to the last sheet of **EXHIBIT 2**, **Mr. Driscoll** stated there is not much administration to those claims. He said if they want to bid for it, they can find out in the private sector what it costs to do this type of work. He thinks the private sector will come in second but the total price will be substantially less than \$3 Million.

Opponents' Testimony:

Mark Barry, State Fund, said he will address this issue in the manner that the bill was intended. His testimony is contained in **EXHIBIT 3**.

Jacqueline Lenmark, American Insurance Association, said during her first session as a lobbyist, she lobbied against the payroll tax. She said her association felt that is not an appropriate way to address the unfunded liability that had been identified in

the State Fund. She said that tax, however, did go on to the employers who were insured with the companies which she represents and on the payroll her companies were paid to their employees, even though they weren't involved with the State Fund. From 1987 until 1993 she has lobbied hard to ensure great adequacy in Montana for the State Fund so that the situation that tax was designed to address does not reoccur. In 1993, she lobbied again for putting that payroll tax on employees. The reason her association came to that difficult was not as was indicated to require employees to now fund a portion of their Workers' Compensation Insurance.

Ms. Lenmark stated she lobbied in favor of putting that tax on employees because they are citizens of the State of Montana and Montana made a decision to run its insurance company in a certain manner, and that manner had certain fiscal consequences which all citizens of Montana had been a responsibility to respond to. That is also the reason that this year they oppose any proposal which would take that payroll tax off any Montana citizen at a different time than any other citizen. They hope the tax will come off soon and they hope this legislature will make the policy decision to take the tax off all taxpayers at precisely the same time and to provide some sort of protection or contingency plan because all of this is based on projections. **Ms. Lenmark** said they support some sort of contingency because she does not want to lobby again to put on another payroll tax on the employers she insures or on the employees.

If this bill is amended to accomplish those ends, then she thinks her companies would support this bill, but as it stands now, they oppose it.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT said that he thinks he understood what **Mark Barry** said regarding the assumptions which were used to prepare the spread sheet (**EXHIBIT 2**), which do not appear to be 'apples to apples' to him. **SEN. BENEDICT** asked **Mr. Barry** to correct him if he were wrong, but what he heard him say it that **REP. JOHNSON** used assumptions which were not quite as conservative as **Mr. Barry's** to arrive at his assumption of the amount of tax which would ultimately be levied to fully fund the Old Fund. **SEN. BENEDICT** said if you use those same figures which he used, then this bill would cost more than SB 67.

Mr. Barry responded that is correct.

SEN. BENEDICT said there are certain things he likes about this bill and some things he does not like. He believes HB 150 has a fatal flaw. On page 11, line 19 it says that as far as the claims administration of the Old Fund, that the Department of Administration would contract to administer paying claims for those injuries. Then on page 18, line 25 it says the Legislative

Finance Committee will contract for the administration. He asked **REP. JOHNSON** if he would agree this is a fatal flaw in this bill.

REP. JOHNSON said this is not fatal flaw. If they used that as credence throughout this whole system, they probably wouldn't get anything passed. That may be a technical error in the bill, but it is not a fatal flaw.

CHAIRMAN KEATING asked **REP. JOHNSON** for comparison, there are several differences between SB 67 and HB 150. To simplify it for an overview, **CHAIRMAN KEATING** said the first difference is the reduction of the payroll tax in HB 150 as compared to the elimination of the tax in SB 67. He said there would be a saving to the taxpayer under HB 150.

REP. JOHNSON answered that is correct. The wording in SB 67 is that in 1999, that tax would come off, based on it being actuarially sound.

CHAIRMAN KEATING said SB 67 is saying that under certain circumstances, they could eliminate the tax sooner and that would be a greater saving to the taxpayer.

{Tape: 1; Side: B; Approx. Time Count: 4:00 p.m.}

REP. JOHNSON said the only comment he could make on that is that he looked at SB 67, and they said the tax would probably come off in 1999 and he did not see any place in SB 67 where it would come off before that. In HB 150, it does come off.

SEN. BENEDICT said his bill originally called for the payroll tax to end on 12/31/98, then it seemed like there was some hesitation among certain members of the body to be that aggressive, so they added it could end as late as the middle of 1999. But the figures in the fiscal note were based on it ending 12/31/98.

CHAIRMAN KEATING said his question is there a figure that triggers the sunset of the tax?

SEN. BENEDICT answered yes.

REP. JOHNSON in SB 67 the actuary hired by the State Fund says that it is 10% over actuarially sound. That is when it can come off, and it cannot come off before that situation exists, there is no other figure in that bill. He said in HB 150 the tax off in the year 2,000 on self-employeds and employees it comes off in 2001.

CHAIRMAN KEATING asked in SB 67, if it is not actuarially sound, does the tax sunset 6/30/99, regardless?

REP. JOHNSON answered it does not.

CHAIRMAN KEATING stated that means there is no specific date in SB 67 as to when the tax comes off.

REP. JOHNSON said that is correct as far as the date is concerned.

CHAIRMAN KEATING stated the only way in SB 67 that the payroll tax sunsets, is based on actuarial determinations.

REP. JOHNSON said that is his understanding.

SEN. MAHLUM stated in **EXHIBIT 2** where at the top of the page it has HB 150, it appears the employer rate is taken from one-half percent down to one-quarter percent.

REP. JOHNSON said that is right.

SEN. MAHLUM asked if it were the same for the employee from .2% to .1%. As an employer, he said he considers one-half of one percent a nuisance tax. He said when a person has to take 50 cents from \$100 per employee, he would rather maintain it at one-quarter percent because as an employee, he would like to get the whole thing over as an employer.

SEN. EMERSON said for the small employer, he agrees with **SEN. MAHLUM**.

CHAIRMAN KEATING asked **REP. JOHNSON** if in HB 150 he is suggesting the Old Fund at some date will be offered to anybody in the claims settlement business. In other words, they could bid to manage the Old Fund in hopes that the \$3 Million administration fee can be reduced.

REP. JOHNSON said that is exactly correct because every time that fee is reduced it can be put towards claims, then the number in the last column is reduced by that particular number.

CHAIRMAN KEATING asked where the \$3 Million comes from.

REP. JOHNSON replied that it comes from the tax.

CHAIRMAN KEATING stated then it comes from the payroll tax which is funding the Old Fund Liability.

REP. JOHNSON said that is correct, and if the payroll tax is stopped on it, it comes out of whatever surplus is left in the fund.

CHAIRMAN KEATING asked if that cost of administration is reduced, does the excess go to satisfy claims which may then reduce the payroll tax even sooner?

REP. JOHNSON answered not in his bill unless it is actuarially sound.

CHAIRMAN KEATING stated the Old Fund account balance has to have a certain reserve in order to satisfy ongoing claims. He said there was some discussion about that balance and he thinks in **REP. JOHNSON'S** chart (**EXHIBIT 2**), it is down to \$40 Million and in the State Fund's chart it is \$72 Million. He asked if **REP. JOHNSON** would explain the difference.

REP. JOHNSON said that has to do with how long it would stay in existence. It doesn't need to stay there because there is a time when the entire fund could be annuitized if there was enough money. He said he visited with **Mr. Barry** about this and he suggested to **Mr. Barry** that the New Fund would be a good party to have as administrator, depending on what they would charge the Department of Administration. When you have \$220 Million worth of claims and have \$150 Million to pay those claims, you are very close to annuitizing those claims. **REP. JOHNSON** said **Mr. Barry** agreed with him about that.

He referred again to **EXHIBIT 2** and said in HB 150 or SB 67, you can see where the numbers of the Old Fund working balance and the working capital in 2004 are almost the same number. He said he thinks what really needs to be looked at is how much the Old Fund has to pay out. If all the Old Fund outlays are added, you get \$372 Million. If you look over that whole period of time and look at the right hand side numbers, you can see the amount you have to work towards that balance.

CHAIRMAN KEATING said in dealing with the Old Fund, and dealing with the number of claims, if 2,184 is the total number of claims.

REP. JOHNSON said that is correct as of January 1, 1997.

CHAIRMAN KEATING stated the other categories of claims do not total 2,184.

Mark Barry said the remaining claims have only medical reserves open, the indemnity side of those claims have been closed out, but they are lifetime medical costs.

CHAIRMAN KEATING asked **Mark Barry** if he had an idea of the declining number of claims. He said at some point there would be zero claims.

Mr. Barry said he does not have an estimate, but at the time they provided the information to **REP. JOHNSON** there were 2,184 claims and as of today there were 2,104 claims.

SEN. BENEDICT asked **Mr. Barry** if statute says the administration of the Old Fund claims can be up to \$3 Million, but not set right at \$3 Million?

Mr. Barry said that is correct.

SEN. BENEDICT asked then, as the Old Fund claims start to decline, can we expect to see the administration costs of the Old Fund also decline?

Mr. Barry said in **EXHIBIT 2** there is a column regarding claims costs, and next to it are the letters 'LAE', which would be the cost to administer the claims and you can see a declining balance there.

CHAIRMAN KEATING stated the 'LAE' on both sheet show in 1996 2.7 and then 1997 is 2.3. He asked **Mr. Barry** if they had been charging \$2 Million instead of the 2.7 and 2.3?

Mr. Barry said the cost allocation since 1991, for Old Fund claims administration has been \$19 Million. The amount the State Fund has recovered of that amount is \$17 Million. He said those figures are in their annual reports.

Mr. Barry stated in the early years of 1991 and 1992, the State Fund only charged \$3 Million, even though it cost \$5.2 and \$4.2 Million to administer those claims at that time. The State Fund is picking up the difference up to \$3 Million. Once that difference is absorbed, then it will be a direct allocation to what appears on the spreadsheets.

SEN. EMERSON asked **Mr. Barry** at what point will the difference be picked up?

Mr. Barry responded at the end of fiscal year 1998.

SEN. EMERSON asked **REP. JOHNSON** if he put \$3 Million aside every year for administration?

REP. JOHNSON referred to **EXHIBIT 2**, in the column titled Annual Outlays, under 'Total Old Fund Outlays', those numbers include the \$3 Million.

SEN. EMERSON stated when you get down to the year 2022, it is only \$1.397 Million.

REP. JOHNSON said that is how the surplus keeps building. That is why there is \$40 Million in HB 150 as opposed to \$72 Million in SB 67. In both cases, once the tax is taken off, there will be somewhere over \$380,000 per year added into this.

CHAIRMAN KEATING stated the New Fund has reserves and is solvent. He asked if there was a way the Old Fund can drag down the solvency of the New Fund?

REP. JOHNSON said he does not believe it could as long as the \$63.8 Million was transferred in June of 1998 into the Old Fund. He stated **Mr. Barry** said that SB 67 provides there to be money if there is a shortage in the Old Fund. They have collected excess monies from the Old Fund and put them in the reserves. He said

they can move back all the money towards the Old Fund that they have.

CHAIRMAN KEATING said if the payroll tax goes off, and they pay \$63 Million into the Old Fund to use as reserves against the claims, the only thing going into the Old Fund, then, is the interest off the reserves and the elimination of certain claims keeps the Old Fund solvent.

REP. JOHNSON answered that is right.

CHAIRMAN KEATING asked if there is any point where that money will not reach and the Old Fund will have an unfunded liability again?

REP. JOHNSON said he believes that is possible, but the Old Fund's newest claim is now six years old, so there is a pretty good trail on what was to be claimed on. Also, the outstanding claims have dropped from January 1997, from 2,184 to 2,104. That is a fair drop on 2,000 claims.

CHAIRMAN KEATING said but if it should happen that we end up with an unfunded balance, that will come out of the General Fund.

REP. JOHNSON answered that is exactly right.

SEN. BENEDICT said that **REP. JOHNSON'S** bill does not have a contingency fund built into it and SB 67 has a 10% reserve, so neither bill will take care of a bump in the road down the line.

REP. JOHNSON responded with one exception. There is no requirement in SB 67 which says that if all the money is used up, there is no contingency to move money from the New Fund to the Old Fund. He said money from the Old Fund claims will have to come from someplace else, and in 1993 we chose to tax for that money.

Closing by Sponsor:

REP. JOHNSON referred to a 1995 annual report from the State Fund. He said on page 32 it reads at the bottom, "The law so limits the annual cost of claims associated with the Old Fund to \$3 Million". He said the State Fund allocated \$3 Million and \$2.9 Million in the administration costs to the Old Fund in fiscal years 1994-95 and 1993-4 respectfully. The Old Fund has a \$2.8 Million obligation to the New Fund in unrecovered administrative costs in previous years. He asked how a person could have an unrecovered cost if the limit is \$3 Million you can charge for handling claims? The amount of money that they are moving from the \$3 Million now, over and above what they charge against the claims comes to recover this account receivable, which could not have been on the books if there was a limit. But in the law there is a limit.

REP. JOHNSON further stated the employers pay a larger share, which is something the legislators added to law a long time ago. When the two funds were split in 1990, the Old Fund took \$12 Million and gave it to the New Fund, which is far less than it takes to run an insurance company. He stated part of the \$102 Million is a pay-back of that \$12 Million. So \$12 Million of the New Fund reserves was for money to start the New Fund transferred from the Old Fund in 1990 to start the New Fund.

He said if the taxpayers continue to pay at the rate in SB 67, they are going to supply of the \$63 Million, about \$15 Million more to pay for the \$3 Million transfer. On that basis, **REP. JOHNSON** said it is not being taken out of surplus but out of taxes.

REP. JOHNSON said the president of State Fund went to Billings and sat down with a group of people to show them his privatization plan. He wanted to uncap the amount of money they were able to put into administrative costs.

He further stated the State Fund has \$185 Million revenue stream a little over two years ago. They now have around \$92 Million and they think they will go to around \$83 Million. Costs of the Old Fund have run up to less than \$14 Million up until this last year, when they went over that amount. Projections are they will be at \$17 to \$20 Million in the next two years. He said the State Fund has cut out 27 people and have raised their need for money by \$300,000. When the State Fund was asked to return the \$20 Million, they wanted to do it over a four-year period. They also wanted to have the ownership of their building transferred so they could use that as an asset, and he thinks that is a good idea for the Fund, however, he is not sure it is good for the taxpayers of Montana.

REP. JOHNSON said he has no criticism of the Fund except they did not need to defease the bonds. Had they not done that, there are plenty of ways they could have worked out the problems, by the cap and the dividend situation.

He believes this committee needs to seriously consider HB 150 because for the legislators not to give a tax break to those who deserve it, is not the way Workers' Compensation should work. This bill provides an intelligent way for this to be done.

ADJOURNMENT

Adjournment: 4:30 p.m.



SEN. THOMAS F. KEATING, Chairman



GILDA CLANCY, Secretary

TK/GC