

HB 557 INTRODUCED BY DRISCOLL  
COMPUTATION OF WORKERS' COMPENSATION PREMIUM FOR  
CONSTRUCTION INDUSTRY  
1/30 INTRODUCED  
1/30 REFERRED TO BUSINESS & LABOR  
1/30 FISCAL NOTE REQUESTED  
2/06 FISCAL NOTE RECEIVED  
2/11 HEARING  
2/18 TABLED IN COMMITTEE

1 House BILL NO. 557  
2 INTRODUCED BY Smalley

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT  
5 INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS'  
6 COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM  
7 RATES; REQUIRING THAT PREMIUM RATES TO BE PAID FOR WORKERS'  
8 COMPENSATION INSURANCE FOR THE CONSTRUCTION INDUSTRY BE  
9 COMPUTED ON THE NUMBER OF HOURS WORKED RATHER THAN ON A  
10 PERCENTAGE OF PAYROLL; AMENDING SECTIONS 19-12-401,  
11 33-16-1004, 39-71-116, 39-71-2302, AND 39-72-102, MCA; AND  
12 PROVIDING A RETROACTIVE APPLICABILITY DATE."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 33-16-1004, MCA, is amended to  
16 read:

17 "33-16-1004. Rates -- considerations -- methods --  
18 standards. All rates shall be made in accordance with the  
19 following provisions:

20 (1) Due consideration shall be given to past and  
21 prospective loss experience within and outside this state,  
22 to catastrophe hazards, if any, to a reasonable margin for  
23 underwriting profit and contingencies, to dividends,  
24 savings, or unabsorbed premium deposits allowed or returned  
25 by insurers to their policyholders, members, or subscribers,

1 to past and prospective expenses both countrywide and those  
2 specially applicable to this state, to investment income  
3 earned or realized by insurers from their unearned premium,  
4 loss, and loss expense reserve funds generated from business  
5 within this state, and to all other relevant factors within  
6 and outside this state.

7 (2) The systems of expense provisions included in the  
8 rates for use by an insurer or group of insurers may differ  
9 from those of other insurers or groups of insurers to  
10 reflect the requirements of the operating methods of any  
11 insurer or group with respect to any kind of insurance or  
12 with respect to any subdivision or combination thereof for  
13 which subdivision or combination separate expense provisions  
14 are applicable.

15 (3) Risks may be grouped by classifications for the  
16 establishment of rates and minimum premiums. Classification  
17 rates may be modified to produce rates on individual risks  
18 in accordance with rating plans which establish standards  
19 for measuring variations in hazards or expense provisions,  
20 or both. Such standards may measure any difference among  
21 risks that can be demonstrated to have a probable effect  
22 upon losses or expenses.

23 (4) Rates shall not be excessive, inadequate, or  
24 unfairly discriminatory.

25 (5) Except to the extent necessary to meet the



1 provisions of subsections (1) through (3), uniformity among  
2 insurers in any matter within the scope of this section is  
3 neither required nor prohibited."

4 Section 2. Section 39-71-116, MCA, is amended to read:

5 "39-71-116. Definitions. Unless the context otherwise  
6 requires, words and phrases employed in this chapter have  
7 the following meanings:

8 (1) "Average weekly wage" means the mean weekly  
9 earnings of all employees under covered employment, as  
10 defined and established annually by the Montana department  
11 of labor and industry. It is established at the nearest  
12 whole dollar number and must be adopted by the division of  
13 workers' compensation prior to July 1 of each year.

14 (2) "Beneficiary" means:

15 (a) a surviving wife or husband;

16 (b) an unmarried child under the age of 18 years;

17 (c) an unmarried child under the age of 25 years who  
18 is a full-time student in an accredited school;

19 (d) an invalid child over the age of 18 years who is  
20 dependent upon the decedent for support at the time of  
21 injury;

22 (e) a parent who is dependent upon the decedent for  
23 support at the time of the injury (however, such a parent is  
24 a beneficiary only when no beneficiary, as defined in  
25 subsections (2)(a) through (2)(d) of this section, exists);

1 and

2 (f) a brother or sister under the age of 18 years if  
3 dependent upon the decedent for support at the time of the  
4 injury (however, such a brother or sister is a beneficiary  
5 only until the age of 18 years and only when no beneficiary,  
6 as defined in subsections (2)(a) through (2)(e) of this  
7 section, exists).

8 (3) "Casual employment" means employment not in the  
9 usual course of trade, business, profession, or occupation  
10 of the employer. Any person hauling or assisting in hauling  
11 of sugar beets or grains, in case of emergency, is  
12 considered engaged in casual employment.

13 (4) "Child" includes a posthumous child, a dependent  
14 stepchild, a child legally adopted prior to the injury, and  
15 an illegitimate child legitimized prior to the injury.

16 (5) "Construction industry" means any activity in  
17 connection with the erection, alteration, repair,  
18 replacement, renovation, installation, or demolition of a  
19 building, highway, bridge, or structure.

20 (6) "Division" means the division of workers'  
21 compensation of the department of labor and industry  
22 provided for in 2-15-1702.

23 (7) "Fiscal year" means the period of time between  
24 July 1 and the succeeding June 30.

25 (8) "Husband" or "widower" means only a husband or

1 widower living with or legally entitled to be supported by  
2 the deceased at the time of her injury.

3 ~~{8}~~(9) "Insurer" means an employer bound by  
4 compensation plan No. 1, an insurance company transacting  
5 business under compensation plan No. 2, the industrial  
6 insurance account under compensation plan No. 3, or the  
7 uninsured employers' fund provided for in part 5 of this  
8 chapter.

9 ~~{9}~~(10) "Invalid" means one who is physically or  
10 mentally incapacitated.

11 ~~{10}~~(11) "Order" means any decision, rule, direction,  
12 requirement, or standard of the division or any other  
13 determination arrived at or decision made by the division.

14 ~~{11}~~(12) "Payroll", "annual payroll", or "annual  
15 payroll for the preceding year" means the average annual  
16 payroll of the employer for the preceding calendar year or,  
17 if the employer shall not have operated a sufficient or any  
18 length of time during such calendar year, 12 times the  
19 average monthly payroll for the current year; provided, that  
20 an estimate may be made by the division for any employer  
21 starting in business where no average payrolls are  
22 available, such estimate to be adjusted by additional  
23 payment by the employer or refund by the division, as the  
24 case may actually be on December 31 of such current year.

25 ~~{12}~~(13) "Permanent partial disability" means a

1 condition resulting from injury as defined in this chapter  
2 that results in the actual loss of earnings or earning  
3 capability less than total that exists after the injured  
4 worker is as far restored as the permanent character of the  
5 injuries will permit. Disability shall be supported by a  
6 preponderance of medical evidence.

7 ~~{13}~~(14) "Permanent total disability" means a condition  
8 resulting from injury as defined in this chapter that  
9 results in the loss of actual earnings or earning capability  
10 that exists after the injured worker is as far restored as  
11 the permanent character of the injuries will permit and  
12 which results in the worker having no reasonable prospect of  
13 finding regular employment of any kind in the normal labor  
14 market. Disability shall be supported by a preponderance of  
15 medical evidence.

16 ~~{14}~~(15) The term "physician" includes "surgeon" and in  
17 either case means one authorized by law to practice his  
18 profession in this state.

19 ~~{15}~~(16) "The plant of the employer" includes the place  
20 of business of a third person while the employer has access  
21 to or control over such place of business for the purpose of  
22 carrying on his usual trade, business, or occupation.

23 ~~{16}~~(17) "Public corporation" means the state or any  
24 county, municipal corporation, school district, city, city  
25 under commission form of government or special charter,

1 town, or village.

2 ~~(17)~~(18) "Reasonably safe place to work" means that the  
3 place of employment has been made as free from danger to the  
4 life or safety of the employee as the nature of the  
5 employment will reasonably permit.

6 ~~(18)~~(19) "Reasonably safe tools and appliances" are  
7 such tools and appliances as are adapted to and are  
8 reasonably safe for use for the particular purpose for which  
9 they are furnished.

10 ~~(19)~~(20) "Temporary total disability" means a condition  
11 resulting from an injury as defined in this chapter that  
12 results in total loss of wages and exists until the injured  
13 worker is as far restored as the permanent character of the  
14 injuries will permit. A worker shall be paid temporary total  
15 disability benefits during a reasonable period of  
16 retraining. Disability shall be supported by a preponderance  
17 of medical evidence.

18 ~~(20)~~(21) "Wages" means the average gross earnings  
19 received by the employee at the time of the injury for the  
20 usual hours of employment in a week, and overtime is not to  
21 be considered. Sick leave benefits accrued by employees of  
22 public corporations, as defined by subsection ~~(16)~~ (17) of  
23 this section, are considered wages.

24 ~~(21)~~(22) "Wife" or "widow" means only a wife or widow  
25 living with or legally entitled to be supported by the

1 deceased at the time of the injury.

2 ~~(22)~~(23) "Year", unless otherwise specified, means  
3 calendar year."

4 NEW SECTION. Section 3. Premium rates for  
5 construction industry. The premium rates under plan No. 2 to  
6 be paid for workers' compensation insurance for the  
7 construction industry must be computed on the number of  
8 hours worked for each occupation classification rather than  
9 on a percentage of payroll.

10 Section 4. Section 39-71-2302, MCA, is amended to  
11 read:

12 "39-71-2302. General requirements for electing  
13 coverage under plan. Every (1) Except as provided in  
14 subsection (2), every employer subject to the provisions of  
15 compensation plan No. 3 shall at the times and in the manner  
16 prescribed by the division pay to the division a premium  
17 based on a percentage of his payroll as determined by the  
18 division, which shall be a member of a rating organization  
19 in accordance with the provisions of this chapter.

20 (2) Premium rates for the construction industry must  
21 be computed on the number of hours worked for each  
22 occupation classification rather than on a percentage of  
23 payroll."

24 Section 5. Section 39-72-102, MCA, is amended to read:

25 "39-72-102. Definitions. As used in this chapter,

1 unless the context requires otherwise, the following  
2 definitions apply:

- 3 (1) "Beneficiary" is as defined in 39-71-116~~(2)~~.
- 4 (2) "Child" is as defined in 39-71-116~~(4)~~.
- 5 (3) "Disablement" means the event of becoming  
6 physically incapacitated by reason of an occupational  
7 disease from performing work in the normal labor market.  
8 Silicosis, when complicated by active pulmonary  
9 tuberculosis, is presumed to be total disablement.  
10 "Disability", "total disability", and "totally disabled" are  
11 synonymous with "disablement", but they have no reference to  
12 "partial permanent disability".
- 13 (4) "Division" is as defined in 39-71-116~~(5)~~.
- 14 (5) "Employee" is as defined in 39-71-118.
- 15 (6) "Employer" is as defined in 39-71-117.
- 16 (7) "Husband" is as defined in 39-71-116~~(7)~~.
- 17 (8) "Independent contractor" is as defined in  
18 39-71-120.
- 19 (9) "Insurer" is as defined in 39-71-116~~(8)~~.
- 20 (10) "Invalid" is as defined in 39-71-116~~(9)~~.
- 21 (11) "Occupational disease" means all diseases arising  
22 out of or contracted from and in the course of employment.
- 23 (12) "Order" is as defined in 39-71-116~~(10)~~.
- 24 (13) "Pneumoconiosis" means a chronic dust disease of  
25 the lungs arising out of employment in coal mines and

1 includes anthracosis, coal workers' pneumoconiosis,  
2 silicosis, or anthracosilicosis arising out of such  
3 employment.

4 (14) "Silicosis" means a chronic disease of the lungs  
5 caused by the prolonged inhalation of silicon dioxide (SiO<sub>2</sub>)  
6 and characterized by small discrete nodules of fibrous  
7 tissue similarly disseminated throughout both lungs causing  
8 the characteristic x-ray pattern and by other variable  
9 clinical manifestations.

10 (15) "Wages" is as defined in 39-71-116~~(20)~~.

11 (16) "Wife" is as defined in 39-71-116~~(21)~~.

12 (17) "Year" is as defined in 39-71-116~~(6)~~~~(7)~~ and  
13 39-71-116~~(22)~~~~(23)~~."

14 Section 6. Section 19-12-401, MCA, is amended to read:  
15 "19-12-401. Eligibility for pension benefits. In order  
16 to qualify for participation in the volunteer firefighters'  
17 pension plan under 19-12-404, a volunteer firefighter must  
18 meet each of the following requirements:

19 (1) (a) To qualify for full participation, he must  
20 have completed a total of at least 20 years' service as an  
21 active volunteer firefighter and as an active member of a  
22 qualified volunteer fire company.

23 (b) If a firefighter is prevented from completing at  
24 least 20 years' service by dissolution or discontinuance of  
25 his volunteer fire company, personal relocation due to

1 transfer or loss of employment, personal disability, or any  
 2 other factor beyond his reasonable control, he may qualify  
 3 for partial participation if he has completed at least 10  
 4 years' service. In that event, he is eligible for only a  
 5 proportion of the benefits specified in 19-12-404,  
 6 determined by multiplying the benefits by a fraction, the  
 7 numerator of which is the number of years of active service  
 8 completed and the denominator of which is 20.

9 (c) The years of active service are cumulative and  
 10 need not be continuous. The service need not be acquired  
 11 with one single fire company but may be a total of separate  
 12 periods of active service with different fire companies in  
 13 different fire districts.

14 (d) Effective March 1, 1965, the annual period of  
 15 service for the purpose of this chapter is the fiscal year.  
 16 No fractional part of any year may count toward the service  
 17 requirement, and to receive credit for any particular year,  
 18 a volunteer firefighter must serve with one particular  
 19 volunteer fire company throughout that entire fiscal year.

20 (2) (a) Except as provided in subsection (2)(b), he  
 21 must have attained the age of 55, but he need not be an  
 22 active volunteer firefighter or an active member of any  
 23 volunteer fire company when he reaches that age.

24 (b) An active member of a volunteer fire company whose  
 25 duty-related injury results in a permanent, total disability

1 as defined in 39-71-116~~(13)~~ is eligible to receive a partial  
 2 pension regardless of his age calculated as follows:

3 (i) for a member with less than 10 years of service, a  
 4 pension calculated as provided in subsection (1)(b) in which  
 5 the numerator equals 10; or

6 (ii) for a member with 10 years or more of service, a  
 7 pension calculated as provided in subsection (1)(b).

8 (3) During each of the years for which he claims  
 9 credit under subsection (1), he must have completed a  
 10 minimum of 30 hours of instruction in matters pertaining to  
 11 firefighting under a program formulated and supervised by  
 12 the chief or foreman of his volunteer fire company.

13 (4) Effective July 1, 1965, no volunteer firefighter  
 14 may receive credit for any year of membership in a volunteer  
 15 fire company unless, throughout the year:

16 (a) the company maintained firefighting equipment in  
 17 serviceable condition of a value of \$2,500 or more; and

18 (b) the company or the fire district served by it was  
 19 rated in class 5, 6, 7, 8, 9, or 10 by the board of fire  
 20 underwriters for the purpose of fire insurance premium  
 21 rates.

22 (5) He must have ceased to be an active member of any  
 23 volunteer fire company, and if he applies for and receives  
 24 pension benefits hereunder, he will not thereafter be  
 25 eligible to become an active member of any volunteer fire

1 company."

2 NEW SECTION. Section 7. Extension of authority. Any  
3 existing authority of the workers' compensation division to  
4 make rules on the subject of the provisions of this act is  
5 extended to the provisions of this act.

6 NEW SECTION. Section 8. Codification instruction.  
7 Section 3 is intended to be codified as an integral part of  
8 Title 39, chapter 71, part 22, and the provisions of Title  
9 39, chapter 71, apply to section 3.

10 NEW SECTION. Section 9. Applicability. This act  
11 applies to workers' compensation policies issued or renewed  
12 on or after October 1, 1985.

-End-



## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB557, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring that investment income earned or realized by certain workers' compensation insurers be considered when determining premium rates; requiring that premium rates to be paid for workers' compensation insurance for the construction industry be computed on the number of hours worked rather than on a percentage of payroll; amending sections 19-12-401, 33-16-1004, 39-71-116, 39-71-2302 and 39-72-102, MCA; and providing a retroactive applicability date.

ASSUMPTIONS:

1. The portion of this bill "requiring that investment income earned or realized by certain workers' compensation insurers be considered when determining premium rates" has no impact on the State Fund. The State Fund already uses its investment income in rate making calculations.
2. The State Fund policy data base has been used in this analysis to identify the "construction industry" as defined in 39-71-116(5) of this bill.
3. This bill has no impact on benefits. The bill will cause a shift of costs (premium) from some employers in the construction industry to other employers in the industry, plus the short term developmental costs and the long term additional costs of an hourly based premium system will be borne by the construction industry in the form of a net premium increase.
4. The implementation of this bill would require a phased approach including the following stages:
  - a. Parallel collection of payroll and hours data from employers in the construction industry. The continued collection of both hours and payroll would be necessary in order to be compatible with interstate ratings and the NCCI experience rating system which is required by state law.
  - b. Rate calculations to establish rates per hours worked in order to replace the rates per \$100 of payroll would be necessary. The resultant "hourly" rates must be sufficient to cover accident costs, as well as additional administrative costs. These rate calculations would be reviewed by the Fund's actuarial consultants.
  - c. A computer system modification would be necessary in order to accommodate the dual hourly and payroll based construction industry while retaining all other industries on a payroll basis.
  - d. A revision of audit procedures would be necessary to verify the reported hours. Auditing reported hours would be more difficult and less accurate than verifying payroll amounts. There are no cross checks on hours such as UI and Tax reports that exist for payroll.

*David L. Hunter* DATE 2/6/87  
 DAVID L. HUNTER, BUDGET DIRECTOR  
 Office of Budget and Program Planning

*I disagree with assumption  
4 & 76*  
*Jerry Driscoll* DATE 2-6-87  
 JERRY DRISCOLL, PRIMARY SPONSOR

Fiscal Note for HB557, as introduced.

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5. 3400 employers for construction industry
  - Total Work Comp Employer population equals 25,000
  - Construction Industry is 1 of top 5 industry codes that needs constant monitoring as a result of audit experience. This results in twice the audit penetration of this industry relative to its representation of the total population.
  - 10.5 of Audit staff works on Work Comp audits.
  - Auditing by hour instead of by payroll will increase audit time by 50%.
  - Operating costs are 18.7% of personal services
  
6. Construction Industry will have to do more record keeping as a result of this bill. It will be difficult for contractors to verify the industry code they are saying an employee is working under without some sort of a time card system maintained for each job. If the contractor is not able to verify the job on which the hours were worked, the Auditor will default to the highest code for the industry.

FISCAL IMPACT:

Revenues:

Unknown.

Expenditures:

	<u>FY88</u>		<u>FY89</u>	
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Current Law</u>	<u>Proposed Law</u>
Personal Services	\$ 0	\$ 53,861	\$ 0	\$ 53,804
Operating Expenses	0	102,785	0	7,035
Equipment	0	2,200	0	0
TOTAL	\$ 0	\$158,846	\$ 0	\$ 60,839

Funding:

State Special Revenue	\$ 0	\$112,744	\$ 0	\$ 14,737
Federal & Special Revenue	0	46,102	0	46,102
TOTAL	\$ 0	\$158,846	\$ 0	\$ 60,839

NOTE: For accounting purposes, to provide for the transfer of funds to the Audit Bureau, additional appropriation authority of \$46,102 has to be set up in the State Special Revenue Fund in Workers' Compensation.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

The proposed effective date of October 1, 1985, is not possible to meet. Dual collection of payroll and hours reported could not begin until July 1, 1988, due to the time required to develop the computer programs. Premiums based on hours could not be implemented until July 1, 1989.

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