

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

SELECT COMMITTEE ON WORKERS' COMPENSATION

Call to Order: By Senator Tom Towe, on April 1, 1993, at 3:09 PM

ROLL CALL

Members Present:

Sen. Tom Towe, Chair (D)
Sen. Gary Forrester, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Sue Bartlett (D)
Sen. Harry Fritz (D)
Sen. John Harp (R)
Sen. John Hertel (R)
Sen. Bob Hockett (D)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: Senator Jim Burnett (R)

Staff Present: Susan Fox, Legislative Council
Kelsey Chapman, Committee Secretary

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

Committee Business Summary:

Hearing: HB 13, HB 504
Executive Action: None.

HEARING ON HB 13

Opening Statement by Sponsor:

Representative Steve Benedict, House District 64, said HB 13 generally revises workers' compensation laws regarding the compensability of mental stress claims, and gives the Governor the right to appoint the board of directors and the executive director of the State fund. The Governor then can ask for accountability of the board of directors and the executive director, and be himself accountable.

Representative Benedict said HB 13 would give the State Fund budgetary authority to run like a private insurance company;

would exempt the State Fund from the Montana Administrative Procedures Act (MAPA) except for rate making; and would require the Legislative Auditor to annually report to the Governor and Legislature regarding rate adequacy and solvency of the State fund. HB 13 also would require the State Fund to inform injured workers what benefits they were entitled to, and how to access the workers' compensation system. An amendment in the House removed the Governor's ability to privatize many functions of the old, and new funds. Representative Benedict said this provision was important to have in HB 13 because the state does not belong in the insurance business. Workers' compensation should be privatized as much as is feasible. Representative Benedict said HB 13 was a key part of the workers' compensation reform package of the 53rd Legislature, and would improve the functioning of the workers' compensation system and the efficiency of the State fund.

Proponents' Testimony:

Pat Sweeney, Executive Director of the State fund, handed out reference sheets (Exhibits 1a - 1d). He said HB 13 revised operation and administration of the State fund, but would not remove statutory requirements for public participation in governmental operations, or other statutory standards. HB 13 would place the State Fund under the supervision of the Legislative Auditor, who would provide an independent third party review of the State fund. Once this annual examination was completed, the Legislative Auditor would report to the Governor, the Legislature, and the board of directors. HB 13 would also require the State Fund work toward obtaining sufficient surplus so as to stabilize its rates.

Mr. Sweeney said the State Fund actuary advised that due to the initial capitalization, the Fund was unable to withstand fluctuations in the insurance business on a year to year basis without periodically having a deficit. HB 13 would require the State Fund to have a 25 percent surplus of its annual premium by the year 2003. Mr. Sweeney said the State Fund was currently operating on money collected from the policy holders through premium payments to the fund.

Mr. Sweeney explained that the State Fund is a state agency limited to the budget the Legislature approves for its operation. HB 13 would allow the board of directors to determine the budget of the State Fund up to a maximum of 15 percent the previous years earned annual premium and send that budget to the Governor and the Legislature for review. This provision of HB 13 would allow the State Fund to adequately staff and handle claims, underwriting, safety, audit, and other operational needs.

Mr. Sweeney said the State fund's claims examiners had caseloads higher than industry standards, as many as 315 cases per examiner. The Fund would rather have caseloads in the area of 225 to 250 cases per examiner. The State Fund could bring in

additional funding through audits if it had more staff. Mr. Sweeney said Exhibit #1a showed Montana as having the lowest expense ratio in the United States. Exhibit #1c showed Montana as having on a five year average the lowest operating expense of any state in the country. Exhibit #1b showed Montana as having the second highest number of policies per employee, behind Utah. He said that Exhibit #1d showed states leading in workers' compensation had aboard of directors setting the budget of their funds.

Mona Jamison, Montana Chapter of the American Physical Therapy Association said she supported HB 13 with the House amendments. She supported having the board of directors and the executive director serving at the pleasure of the Governor and the partial exemption of the State Fund from MAPA. She stated having the executive director of the State Fund serve at the pleasure of the Governor places the director at the same status as every other state agency director. This political accountability would help implement many changes that have been mandated through other legislation. She said this was a significant change, and a way of allowing the State Fund to do its business while being held accountable.

Jim Tutwiler, Montana Chamber of Commerce, said Section 1, page 24 was a good declaration of policy. He said Sections 2 and 3 dealing with the accountability were also merited, and asked the Committee to not amended it out of HB 13. He said the accountability had changed over the years, but wherever the blame for the debt may lie, the State Fund deficit was a state debt. Mr. Tutwiler said the Chamber supported Section 6, page 29, dealing with rate making mechanisms because it provided for public input on procedures. He said the section requiring the State Fund to have a 25 percent surplus of annual premium by 2003 would cause steep premium increases, but there needed to be some surplus in the fund, given the volatile nature of the workers' compensation system. Mr. Tutwiler said allowing 15 percent of annual premiums to be budgeted for State Fund operating costs, would mean higher premiums for employers, but employers would be willing to pay the higher costs if they realized they would get good management of the State Fund in return.

Rick Hill, the Governor's Office, said Governor Racicot supported HB 13 because of the general changes in it to the workers' compensation. He said HB 13 would give the Governor more direct authority and accountability with the State fund. Though the Governor did not solicit the provisions of having the board of directors and the executive director serve at his pleasure, this was acceptable, as the Governor was ready to take the responsibility of having more direct oversight of the fund.

Rose Hughs, Executive Director of the Montana Health Care Association, said House amendments had addressed her original concerns about HB 13. She said she had served on the Governors' Task Force on Workers' Compensation and on the subcommittee

dealing with administration of the State fund. The subcommittee asked how to deal with the problems related to the administration and management of the State fund, and came up with two diametrically opposed answers. The first recommendation was that the Fund be privatized, and the second recommendation was that the Fund should be put under direct supervision and accountability of the Governor's office because the Fund should run like other government agencies unless privatized. She said people argued this would make the workers' compensation system political, but decisions were presently made publicly for political reasons. She said if there were going to be political decisions made, they should be made by the Governor, who is an elected official accountable to the public.

George Wood, Executive Secretary, Montana Self Insurers' Association (MSIA) said he supported HB 13 with the House amendments.

Jacqueline Lenmark, American Insurance Association (AIA), said AIA supported HB 13 in its present form, and believed HB 13 could be improved in two ways. She offered an amendment (Exhibit #2), in which the State Fund would be regulated by the insurance commissioner as an insurance company. AIA felt that the State Fund would be acting in the market place unregulated if the 1993 workers' compensation legislation package passed. The annual review by the Legislative Auditor would not be enough regulation. The rate making process the amendment proposed was the same one companies AIA represents must go through. These companies file their rates and must justify these to the insurance commissioner. She said the insurance commissioner would not be happy about taking this authority, but his office was the place AIA felt the regulation of the State Fund should reside. Ms. Lenmark said HB 13 could also be improved by putting back in privatization of the State fund. She distributed another amendment (Exhibit #3) that would put this language back in HB 13. She said creating an old Fund and a new Fund was appropriate for Montana when faced with this workers' compensation crisis. She distributed a letter from the president of Liberty Northwest Insurance Corporation to Governor Marc Racicot stating the position of that company on regulation and privatization (Exhibit #4). She said this company was one of the largest writers of workers' compensation insurance, but not a member of AIA. She stated AIA supported HB 13 with or without the amendments.

Reily Johnson, National Federation of Independent Businesses (NFIB), said annual review was a "get back to the people" approach. He suggested the privatization section be reinstated. NFIB supported the surplus concept in HB 13, the 15 percent administration cost, and AIA's amendment. The only place to have review of an insurance company was with the insurance commissioner. He asked for serious consideration of the amendment because the Legislative Auditor was not in a technical position to review an insurance company. Mr. Johnson said the insurance commissioner was not happy about the AIA amendment

because there were no means of controlling the State fund. He said in the amendment there was such a provision that would give the insurance commissioner the amount of control wanted.

Mike Micone, Montana Motor Carriers' Association, said the section on appointment of the board of directors and the executive director would put politics back into the workers' compensation system. He said he had not found any problems with doing his job properly when he served at the pleasure of a political person or board, and did not find this section to be a problem.

Don Allen, Coalition for Workers' Compensation System Improvement, said the coalition represented over 50,000 people and about 225 workers, employers, organizations, and associations. He said beginning in September of 1992, the coalition was involved in suggesting to the Legislature, ideas included in the workers' compensation package. He said if the major management concerns of the State Fund were not resolved, the efforts of the Legislature would be wasted. The coalition's concern was that HB 13 was the only bill left that expressed some of the frustrations and concerns of how to handle the State fund. The coalition did not support the Governor appointing the executive director. He said Governor Racicot was going to have an opportunity to impact the future direction of the State Fund by appointing three people to the board soon. The coalition's hope was that Governor Racicot would pick three people in the who would make sure the State Fund was run like a business, and make changes to ensure the Fund would take advantage of bills being passed. He said the State Fund had not answered how it was correcting its inadequacies of the past, and without major changes in the management of the State fund, HB 13, HB 504, and the other pieces of legislation that were being considered by the Legislature would not be fully effective.

Informational Testimony:

Tom Schneider, Montana Public Employees' Association (MPEA), said MPEA did not support the AIA amendments, but was otherwise neutral about HB 13.

Bill Lombardi, Insurance Commissioner's Office, said Commissioner O'Keefe was opposed to the AIA amendments, but otherwise supported HB 13. Before the House Select Committee on Workers' Compensation the commissioner asked to be removed from HB 13, and the legislative auditor had been placed in HB 13 in his position. Mr. Lombardi said Commissioner O'Keefe wanted to be part of the solution to workers' compensation problems. In 1989 the Legislature gave the insurance commissioner authority over the Fund starting in January of 1990, but took the authority away in May of 1991. HB 13 required the Legislative Auditor to report rates to the Governor, the Legislature, and the State Fund Board. Mr. Lombardi said HB 13 would also require the State Fund to retain a surplus of 25 percent of the annual premium. He said

the commissioner would support the AIA amendment if he could have liquidation authority so the State Fund would be pliable.

Don Judge, Executive Secretary, Montana State AFL-CIO, said the AFL-CIO did not have a position on HB 13, but it was opposed to the AIA amendments.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Hertel asked Representative Benedict to explain why the House removed privatization from HB 13. Representative Benedict said the House tied on a vote about the privatization proposal. During the last interim, the State Fund was examined, and the 4 Republican and 4 Democrat member study committee unanimously decided on the privatization proposal. The House Select Committee decided to strike the language that was an amendment of language from HB 456 into HB 13.

Senator Towe asked Representative Benedict if privatization should be a part of HB 13. Representative Benedict explained this proposal of privatization did not require sale of the State Fund to a private company. He said the state would have to pay money to get a company to take over the State fund, rather than being able to sell it. He said HB 456, which was amended into HB 13, provided the Governor would have the authority to privatize parts of the old and new funds.

Senator Harp asked Pat Sweeney if the premiums were close to \$170 million. Mr. Sweeney answered about \$165 million was correct. Senator Harp said if 15 percent of the annual premiums was used as the State fund's budget, there would be about \$11 to \$12 million additional dollars that could be spent for administrative needs. Senator Harp asked Mr. Sweeney to outline how the State Fund would use an additional \$5 to \$10 million to improve administration. Mr. Sweeney said 36 FTE might be spent in areas of claims, safety, audit, rehabilitation, rehabilitation nurses, and support staff. He said if those 36 people were to be approved under the State fund's budget in HB 2, the budget would be only 9.25 percent of the annual premiums. Mr. Sweeney continued, saying that this would still be fairly conservative, and showed that the board would not extend immediate authority to spend 15 percent of the premiums. With the 36 additional FTE's requested, the fund's budget would still be under 10 percent of the annual premiums.

Senator Harp said the safety and fraud bills that had been sent to the Governor had funding and assessments for 10 FTE's. He asked if the State Fund was looking at an additional 26 FTE's beyond that. Pat Sweeney answered he had included these new FTE's in the 36 FTE's he had made reference to.

Senator Harp asked what surplus the new Fund had currently. Pat Sweeney answered the Fund was in a deficit position of about \$37.5 million. The deficit was declining in the new fund, and if HB 13 were to pass, the actuary would take into consideration the 25 percent surplus by 2003 requirement when setting rates.

Senator Towe said 15 percent of \$165 million was \$24 million and asked Pat Sweeney how much of that would be used. Mr. Sweeney said that would be a board decision. This was much more money than the State Fund had been given before, but the amount was in the lower middle half in comparison to the budgets of other state funds. He said the "Oregon miracle" did not happen through just legislative changes regarding benefits, but also through spending money in order to save money.

Senator Towe asked how much of the \$24 million Mr. Sweeney anticipated the State Fund would spend. Mr. Sweeney said he doubted if the board of directors would spend above 10 percent to 12 percent of the total premiums.

Senator Towe asked Mr. Sweeney if the 25 percent surplus goal was realistic. Mr. Sweeney said he thought it was.

Senator Towe asked if meeting this goal would lead to substantial increases in workers' compensation premiums. Mr. Sweeney answered he did not foresee any substantial increase besides the general rate increases, but better management and better staffing would help save money.

Senator Towe asked for comment on the intent statement about mental mental and mental physical claims on page 24. Representative Benedict said tightening the definition of mental mental and mental physical stress was discussed in the joint interim committee. He said Bart Campbell researched what other states were doing, and tried to understand the workers' compensation court decisions in these cases. The committee tried to write language that would give the court more direction on what the Legislature intended for stress claims.

Senator Towe asked Representative Benedict what "mental mental" meant. Representative Benedict answered this was a mental stress claim. Senator Towe asked what "mental physical" meant. Representative Benedict directed the question to Jim Murphy, who said mental physical was a measurable physical injury that was initiated by a mental stress (i.e. ulcers).

Senator Towe asked Representative Benedict if the reference to mental stress claims would be more appropriate in the benefits section of the code, rather than structured into a policy statement. Representative Benedict said the researcher felt that because the direction the courts were getting from the Legislature was not clear there should be a declaration of public policy.

Senator Towe asked if the same thing would apply to repetitive injury claims as well. Representative Benedict answered it would.

Senator Towe said the language at the beginning of section 1 stated it was the objective of the workers' compensation system to provide without regard to fault wage, supplement, and medical benefits. He said the language said that wage loss benefits were not intended to make an injured worker whole, but rather to assist a worker at a reasonable cost to the employer. Senator Harp clarified this was existing law, and not a new section.

Senator Harp asked Pat Sweeney if the provision on page 28, line 18 was a minimum charge imposed on small employers by HB 13. Mr. Sweeney answered this was existing law that was taken out in order to let the board of directors establish a minimum premium, but was later reinstated so any minimum premium would be based upon administrative costs. He said the minimum premium of the State Fund was currently about \$123.00.

Senator Hertel asked Representative Benedict to comment on the AIA amendment placing the State Fund under the authority of the insurance commissioner. Representative Benedict said the drafters of HB 13 had discussed the insurance commissioner as an accountable authoritative officer for overseeing the State fund. After deciding that if the insurance commissioner had the authority, he might liquidate the fund, the interim committee decided the insurance commissioner should be given supervisory powers only. The insurance commissioner was not happy about having just this power, but told the interim committee if the appropriation was available, he would do a study and report to the Legislature and the Governor on his findings. Representative Benedict said the Legislative Auditor was required to do the same type of study on the State Fund every year. The interim committee thought it would be better to leave the State Fund under the auditor, and to give the auditor expanded authority to conduct an actuarial review. He said he would resist AIA's amendments for these reasons.

Senator Towe asked if the intent of HB 13 was to have the board managing the whole budgeting process of the State Fund and to not have that budget reviewed by the Legislature or placed into the state budget. Representative Benedict answered that the State Fund would be outside the budgetary process but the State Fund was statutorily appropriated, so it would still have to come before the Legislature and announce its intentions for the money.

Pat Sweeney said the board would establish a budget, and the State Fund would provide the Legislature and the Governor with copies of its budget. He said if the Legislature wanted to comment on that budget, it would be free to do so.

Senator Towe asked if taking the State Fund out of the Legislative Finance Act would take it out of the state budget.

Pat Sweeney answered this was correct.

Senator Towe asked Jacqueline Lenmark what she felt about Representative Benedict's remarks on having the State Fund under the authority of the insurance commissioner. Ms. Lenmark said the amendments proposed by AIA were slightly different than the original language in the first bill. As HB 13 was originally drafted, the insurance commissioner had no real authority over the State fund. The AIA amendments purpose to put the State Fund under chapters 1, 2, and 16 of the insurance code, requiring the insurance commissioner to examine the State Fund on the same basis as other insurance companies. It would also give the insurance commissioner authority to supervise the rehabilitation of an insolvent fund. Ms. Lenmark said the amendment restricted the commissioner's ability to liquidate the State fund, because the State Fund is Montana's insurer of last resort. To liquidate the State Fund would leave Montana policy holders without an insurance company. She said the AIA amendments require that the State Fund justify rates it charges in every class code; and require that the Fund participate in a rating organization and follow the rules of that rating organization in setting its rates. The amendments would also allow the State Fund to deviate from filed advisory rates in the same way the AIA companies are able to do. When these companies deviate too far the insurance commissioner can tell the company to change the rate to one more appropriate. If the company does not comply with the insurance commissioner's ruling, then the commissioner would have the ability to fine the company. The amendment would allow that penalty to be applied to the State fund. Ms. Lenmark stated it was the position of AIA that insurance companies should be regulated consistently by the insurance commissioner. She asked how to encourage private companies back into the Montana marketplace. She said private companies could not compete in the Montana marketplace because of rate inadequacy and because they would have to compete on a different basis than the State fund.

Representative Benedict said he had debated the pros and cons of assigning the insurance commissioner to be the authority over the State fund. He asked how many more FTE's the insurance commissioner would need in order to regulate a company the size of the State Fund with 27,000 policy holders. He said the insurance commissioner agreed with him on this issue.

Senator Towe said leaving the State Fund out from under the authority of the insurance commissioner except for in the rating chapters would make sense because the insurance commissioner does similar rate reviews for other companies.

Representative Benedict said HB 13 made reference to the National Council on Compensation Insurance (NCCI). The State fund, when setting rates, used NCCI recommended rates as guidelines.

Senator Towe said the theory was that if the Governor was to be held responsible he should be accountable for the authority he

has. Usually in a scenario like this, a board of directors is not put in between the Governor and the executive director. He said the provisions in HB 13 did not address this issue, and might not be conducive to holding the Governor responsible because the board could be blamed for not getting the job done.

Representative Benedict answered the board had experience in workers' compensation insurance, and putting the board over the executive director would create a policy committee for the Governor.

Senator Towe asked Representative Benedict how he would respond to the concern that the system had not improved when the Governor had been in control before. Representative Benedict explained the reason to put the Governor back in control was that removing the Governor as the overseer of workers' compensation may have been a mistake, as the new Fund was already in debt about \$50 million.

Senator Towe said if the Governor was responsible and accountable there should not be a board of directors shielding him from his responsibility for the executive director. He asked Rick Hill to comment on that. Mr. Hill responded that there were a number of functions the board of directors served independent from direct oversight of the executive director. The board provides other services to the management of the State Fund in rate setting policy procedures and the budget. Mr. Hill said HB 13 would allow the Governor to intercede directly in the hiring and firing of the executive director rather than having to wait to appoint board members to accomplish that.

Senator Bartlett said if she was the governor and after a year she found the people she had appointed were not aiming toward a goal in the same manner she was, if she was to fire enough of those people so as to accomplish the goal, she would look foolish. Representative Benedict said the State Fund was in such bad shape, that a governor would probably feel compelled rather than embarrassed to get rid of those people who were not aiming in the same direction as was the governor.

Senator Bartlett asked Representative Benedict if he felt the situation with the new Fund was a result of the management structure rather than the management. Representative Benedict said over the last three years there were indicators that the new Fund needed to react, but it had not reacted quickly enough. He said this was in part due to inside management, but also due to management structure and outside influences.

Senator Bartlett asked Representative Benedict if the problems in management of the State Fund was a consequence of not having the board and the director serve at the pleasure of the governor. Representative Benedict said when he looked at the internal structure of the Fund and decisions were being made, there was a combination of things happening making it imperative to give the

governor authority over the board and executive director. This would give the governor ability to tell the board what needed to be done, and replace the members if the tasks were not accomplished.

Closing by Sponsor:

Representative Benedict said HB 13 was a key piece of legislation designed to help fix the ailing workers' compensation system. He said a \$40 million unfunded liability has developed within the new fund. He said the board and management of the State Fund needed some change or there would be further deterioration of the new fund.

HEARING ON HB 504

Opening Statement by Sponsor:

Representative Benedict, House District 64, said HB 504 was a bad bill for employers and employees, but the only realistic way to pay off the unfunded liability in the old fund. He said the bipartisan interim committee on workers' compensation had spent a year looking at alternatives to find a solution to the debt in the old fund. The ideas in HB 504 were unanimously decided on as the best alternative. HB 504 places a 0.5 percent payroll tax on employers and employees. In 1998 the tax rates would begin to go down, and would fall to 0.2 percent by the year 2003. Representative Benedict said these projections were modeled from a worst-case scenario, and that the trigger mechanisms could bring the payroll tax rate down earlier. He handed out a spreadsheet showing how the trigger mechanisms worked (Exhibit #5).

Proponents' Testimony:

Rick Hill, the Governor's Office, said no one wanted to pay the \$400 million deficit. Governor Racicot believed HB 504 to be a long-term solution to the old Fund liability issue, and was reasonable because it spread the debt burden to both employers and employees.

Opponents' Testimony:

Harley Thompson, Montana Building Industry Association (MBIA), spoke from written testimony (Exhibit #6).

Jim Tutwiler, Montana Chamber of Commerce, said the old Fund debt had grown, despite attempts by the Legislature to find a funding mechanism. He said in 1987 when the first payroll tax was imposed on employers, there was hope that the tax was a temporary measure. In 1991 the indebtedness had grown, the payroll tax was still in place, and bonding issues to borrow more money at a faster rate were being considered. In the 1991 special session a bonding issue was approved and implemented. Mr. Tutwiler said

the Chamber later found that the amount of bonding that had been solicited and the amount of payroll tax that was collected as a solution to the debt had already become useless. Mr. Tutwiler said bonding power had been exhausted, and employers were paying a payroll tax that was designed to continue until 2018. He said the concern of employers was intensified by the fact that employers alone have paid almost \$64 million in payroll taxes since 1988.

Reilly Johnson, National Federation of Independent Business (NFIB), said people were opposed to paying anything more until something was done to solve the debt. He said employers perceived they had paid \$200 million toward the debt in the Fund since 1988. \$140 million of bonding was paid by \$64 million in payroll tax, yet the deficit has grown. He said the unfunded liability was not a State Fund deficit, but rather a state debt. He stated employers were not willing to pay any more without some equality in the tax situation. He said if the Legislature was to pass HB 504, it should keep the employee tax in the provisions.

George Wood, Executive Secretary, Montana Self Insurers' Association, said when the payroll tax had originally been imposed, a section was put in that said the Legislature may only raise the tax with a two third's majority, but the truth was that it did not require a two third's vote to adopt a higher tax rate. He stated the self insurers had never been in the State fund, and thus had never added to the debt of the old fund. He said the self insurers had to pay their own bills, and were now being asked to pay someone else's as well. He said the payroll of the self insurers in Montana exceeded \$1,200,000,000, and a tax on that would have a great impact to the members of the association. He said he realized this was a state debt, and that the beneficiaries of the funding mechanisms in the State Fund were the injured workers. If anything was to be done, then the wage payer and the wage earners should be treated equally.

Jacqueline Lenmark, American Insurance Association (AIA), said the AIA companies were paying proper premiums, but were also asked to pay for the rate suppression and poor management of the State fund. She said there had been audits of the State Fund that detail problems with the State Fund management. She said the AIA companies were being forced to pay for those deficiencies.

Russell B. Hill, Montana Trial Lawyers Association, said imposing a payroll tax on employees would erode the exclusive remedy. He said the beneficiaries of the tax were employers who have paid artificially suppressed premiums. He said the unfunded liability was a state debt.

Don Judge, Executive Secretary, Montana State AFL-CIO, said the Constitution provided exclusive remedy protection for employees. He said HB 504 would make Montana the only state in the nation where workers pay to provide insurance for employers. He said

the National Chamber of Commerce, the National Alliance of Business, and other national unions and insurer groups had collectively agreed that an employee payroll tax was inappropriate. He said the Montana State AFL-CIO convention had adopted a resolution against imposing a payroll tax as a means of paying off the debt. He said if the Legislature passed HB 504, the AFL-CIO would get enough signatures to keep it from becoming law.

Mike Micone, Montana Motor Carriers Association, said the management problem with workers' compensation would not be solved by imposing a payroll tax. He said because of strict safety programs, the premiums on workers' compensation had risen sharply for truckers in Montana. A 5 percent increase on premiums was going to be imposed to pay for the unfunded liability in the new fund. He stated there would be nothing but increases as long as the State Fund was around. He said in 1987 the original payroll tax was debated at 1 a.m. on the 90th day of the Legislature, the employers were told that the debt would be solved in six years. He said at the time the debt was \$60 million. He said there was no sunset in HB 504 to say the tax would be repealed after a number of years.

Staci Reilly, Montana Federation of Teachers and Montana Federation of State Employees, said the 4800 members of these organizations opposed HB 504.

Tom Schneider, Montana Public Employees' Association, said that HB 198 was a pay freeze, and HB 504 was a pay cut. He said his office employed 11 people who in 27 years had never had a workers' compensation claim. He said he would have to ask them to give a percentage of their salary to pay off a debt they had never been a part of, and this was not right.

Don Allen, Coalition for Workers' Compensation System Improvement, said HB 504 failed to overcome the perception of people that the debt was unsolvable. He said the problem was the lack of confidence in the management of the State fund. He stated the members of the coalition were worried about staying in business, being able to hire, give raises, and keep people employed. He said 1993 was an opportunity for the Legislature to make sure the management of the State Fund was well enough organized to give people confidence.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Harp said he was disturbed because \$4 million was being transferred monthly from the new fund to the old fund, and yet no one had presented a solution. He asked if there was an answer

other than to just give the problem to the Legislature, and then complain about the solutions presented by the Legislature.

Senator Harp asked Mr. Tutwiler where the money to pay off the old Fund would come from, if not from a payroll tax. Mr. Tutwiler said he knew of no answer. He said he did not support subsidizing workers' compensation in Montana, but added since there was a set amount of claims in the old fund, some sort of subsidization of the old fund was necessary. He said that Oregon used coal, mineral, and oil taxes to subsidize its fund. This was the wrong way to go, but needed consideration.

Senator Harp asked Don Judge what to do to pay off the unfunded liability. Mr. Judge said this was an obligation of the employers. He said Montana wanted to offer subsidies for paying off the old fund, but the AFL-CIO continued to offer progressive ways to do the same. He said the Chamber of Commerce had suggested a coal severance tax to pay off the fund. The AFL-CIO had suggested rolling back the oil, coal and gas tax into the statewide property tax base to take care of the education funding problem of Montana, but that was not going to happen, so that \$26 million per year was still available. That money could be used for the unfunded liability.

Senator Harp said when the 0.28 percent payroll tax was imposed in 1987, the greatest opposition was to having the self-insurers pay, but they accepted the tax with the terms that the debt would be solved in 5 to 6 years. The House recognized at that time the unfunded liability was a state debt that employers had to pay. He said his understanding was that in HB 504, the people who had never been in the State Fund, such as the self-insurers, were going to be taxed at the rate of 0.5 percent. Senator Harp was amazed the self-insurers had not sued, because they should not be paying this debt. He said Mr. Wood had told him the unfunded liability was being considered a state debt, and thus the people he represented could not sue.

Senator Harp asked Don Judge if the unfunded liability was a state debt why everybody in the state should not be included in paying off the debt. Mr. Judge answered HB 504 was not a broad-based tax including everybody. He said this was a employer-employee payroll tax, not a corporate license tax or other tax. He said HB 504 was a regressive tax based on the flat income of an individual. He said the self-insurers may still have the right to sue. He stated if the obligation is no longer there for the employers to pay the workers' compensation debt, do the employees who still have old fund claims not settled have the right to sue their employers. Mr. Judge said if the debt was not a workers' compensation problem anymore, then the employees should have the right to sue their employers.

Senator Bartlett said that making the State Fund take the most dangerous industries' employers while the self insurers took only the large employers was adding to the deficit. She asked George

Wood if saw that the employers he represented were adding to the deficit in this manner. Mr. Wood said members of the Self Insurers' Association belong to industries of all dangers. These members faced their problems and pay their bills based on these danger levels. He said as the insurer of last resort, the State Fund has a unique marketing tool in that everyone has to carry workers' compensation insurance. He stated the State Fund can charge any rate it wanted, and there is no choice but to have the coverage. He said from 1915 to the middle 1970's, the State Fund was the insurer of last resort, and it was a solvent group. He said the mechanisms had always been there to charge the rates applicable to the risks involved. He said being the insurer of last resort was not part of the State Fund's problem. The self-insurers were the well managed ones because they made themselves so. He said there were industries in Montana that were larger than any self insurer that would not be allowed to self insure by DOLI or by the Self Insurers Guaranty Fund because they do not practice safty in the work place or good claims management.

Senator Bartlett asked Mr. Wood where these employers got their insurance. Mr. Wood said they were either with the private insurers or with the State fund.

Senator Bartlett asked Mr. Wood what would happen to the deficit if everyone had to insure with the State Fund. Mr. Wood said if the Legislature felt that those employers who operate safely should subsidize those who operate unsafely, then there might be a meeting point. He said a monopoly would hurt the self insurers because they use a management that keeps their costs down. Costs can not be kept down in a monopoly group. He said the way rates were selected, the employers he represented would still have low rates because they operated large, safe industries. He said monopolizing would work if the safely run industries subsidized the carelessly run ones.

Senator Bartlett said the insurance philosophy was that the healthy subsidize the sick. Mr. Wood said this was the law of numbers, and the State Fund could use this.

Senator Towe said in the normal insurance market there was an assigned risk plan where all groups have to subsidize those that are hurt. Senator Towe asked if this justified the self insurers having to participate in some of the costs of the State Fund debt. Mr. Wood answered no. He said the assigned risk pool was originally available in the states without state funds. He said the people that participated in an assigned risk pool were in debt like the State Fund. He said those in the business of selling insurance were the ones that subsidized the assigned risk pool. He said his companies were not selling insurance, but rather running stores and industries. He reiterated the assigned risk pools were to be subsidized by the people who sell insurance.

Senator Towe said the state allowed the self insurers the

privilege of not having to purchase insurance. He asked Mr. Wood if for that privilege there should be an obligation to pay some of the assigned risk. Mr. Wood answered no, because if one of his companies was failing, people from outside his insurance group would not subsidize the profitability of that company.

Senator Towe asked the Legislative Auditor Scott Seacat to explain the chart (Exhibit #5). Mr. Seacat explained the chart. He explained there would be \$138 million worth of bonds outstanding at the end of Fiscal Year (FY) 1993. The total expense column included administrative expense for the State fund. The employee and employer payroll tax were driven by the overall payroll in the state of about \$4.88 billion times the tax rate in effect. The tax triggers up by 0.05 percent anytime that the borrowing from the new Fund reserves or other source reached or exceeded \$50 million. The payroll tax in HB 504 was high enough that it should never have to trigger up, but instead would trigger down. Anytime the projected end of year cash would exceed \$25 million the tax would trigger down. He said in FY 2000 the projected end of year cash is about \$56 million. Therefore, in 2001, the payroll tax would trigger down to 0.45 percent for both employers and employees.

Senator Towe asked Mr. Seacat about the changes in the first column of Exhibit #5. Mr. Seacat explained there was the presumption there would be continuing deterioration of the liability payments in the old fund. An unfunded liability originally projected at about \$406 million was now thought to be \$475 million. The projections for FY 1993 was that the old Fund would pay \$50 to \$56 million in claims. Given that situation, the unfunded liability should be about \$350 million. The actuaries are projecting the amount to be \$475 million, showing further deterioration in the old Fund liability.

Senator Towe asked if the \$371 million deficit that people were talking about was the unfunded liability. Mr. Seacat answered that at the end of FY 1993, if all the claims payments hold, then the actuary should estimate the debt of the unfunded liability to be about \$371 million.

Senator Towe said the \$371 million estimate would not include any payroll tax paid in 1993. Mr. Seacat said HB 504 would not impose a tax in 1993. He explained about \$26 million would have to be borrowed from the new fund, and the bill contemplated that.

Senator Towe asked Mr. Seacat to explain the line on the chart for 2003. Mr. Seacat said that the assumption was that in 2003, the Fund would accumulate enough cash to do a number of things. The cash should be enough to defuse the outstanding bonds. He said the \$234 million was the amount of bonds, bond interest, and debt service that would be owed.

Senator Harp asked if the \$132 million in 2003 was the interest debt that was due in 2003, or if the bonds were being called in

in 2003. Mr. Seacat said the \$132 million was the amount left to pay in 2003. That schedule would go on until 2020, but if the \$132 million was available in 2003, the bonds could be called in and paid off.

Senator Harp asked how there would be \$132 million in ten years, with the deficit as bad as it was. Mr. Seacat answered that under the trigger tax, that would be what was available in the account.

Senator Towe asked if this would allow the tax to be ended. Mr. Seacat said technically, yes. There was a provision in HB 504 that as of the year 2003, the employee tax, and the incremental increase from 0.28 percent to 0.5 percent are terminated. There would be a technical problem with repealing the 0.28 percent, because that would be for remaining debt service. That would have to remain until the debt service was paid off, then the 0.28 percent could be repealed also.

Senator Towe said the only thing repealed in the year 2003 was anything over and above the existing 0.28 percent payroll tax. Senator Harp said the 0.5 percent employee tax would be dropped, and the employer tax would fall 0.22 percent. Mr. Seacat said this was correct. He said because of the triggering mechanisms, the 0.5 percent tax should be about 0.35 in the year 2003.

Senator Towe said Representative Ewer's proposal for bonding that would require considerably less cost to the employers, and no cost to the employees. Senator Towe asked Representative Benedict what the problem was with that bill. Representative Benedict said there was a substantial bipartisan vote striking the proposal down because the bill bonded more money and extended a 0.38 payroll tax on employers for 25 years to help the Fund through just the next biennium. He said in the next session the rest of the unfunded liability would have had to be dealt with.

Senator Towe said after the two years the Legislature might have a better idea of how to solve the debt. Representative Benedict said the bill would have extended the payroll tax an additional 25 years to make it through the next two years.

Senator Towe asked Representative Benedict how he would respond to the concept that if the matter was going to be dealt with, a bonding approach should be used. Representative Benedict said it was the unanimous view of the members of the joint interim select committee that bonding had been tried before, and the debt had not been resolved. He read from the minutes of that committee, showing that Representative Driscoll felt that bonding was not a viable option. Representative Benedict said there was no support.

Senator Towe said this was Representative Driscoll's view, but instead of the possibility that the cost of the bonds might be \$30 million per year, HB 504 asked the Legislature to put in \$52

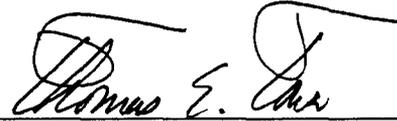
million per year. Representative Benedict said \$52 million per year would take care of the debt service and the principal. He said Representative Driscoll was referring to just the interest when he said the cost would be \$30 million per year.

Closing by Sponsor:

Representative Benedict said he wished there was a different solution to the unfunded liability. He said he never had carried a tax bill, and did not like carrying HB 504. He stated it was imperative that the process be shared by the employers and employees. If the burden was shifted to the employers alone, it would decimate the fragile stability of the employment climate in Montana. Representative Benedict said in Montana there were thousands of employers who were on the verge of going out of business. There would be a great loss to Montana if these employers were to go out of business because the whole burden of the workers' compensation debt was put on their shoulders. He said this would also put employees out of work. No one is happy about HB 504, but the alternative would be to start bouncing checks to injured workers.

ADJOURNMENT

Adjournment: 5:30 p.m.



SENATOR THOMAS E. TOWE, Chair



KELSEY CHAPMAN, Secretary

TET/ksc

WORKERS' COMPENSATION MARKET 1991 - SYMMETRIX (3/93)

SENATE SELECT COMMITTEE
WORKERS' COMPENSATION

EXHIBIT # 10

DATE 4/01/93

BILL # HB 13

○ = \$300 Million

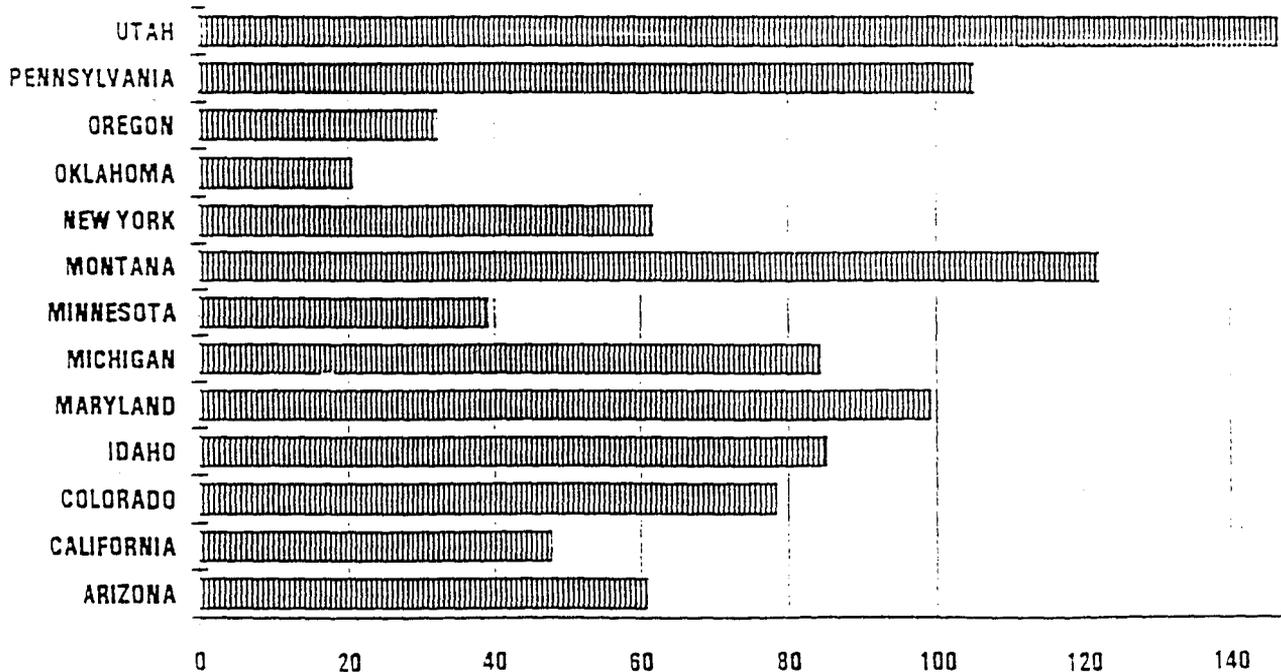
STATE	Total Direct Premiums	Pools Reinsurance Premiums Written	Estimated State Fund	Workers' Comp Mechanism	Aetna	Casualty Ins. Co.	CIGNA	Commercial Union	Continental (Fidelity)	Fireman's Fund	Hanover Ins. Co.	Hartford Acc. & Ind. Co.	Liberty Mutual Ins. Co.	Mountain States Mutual	Travelers Ins. Co.	US&G	Wausau	All Others	5 Yr. Avg. Net Oper. Results	1991 Net Oper. Results	3 Year Res. Mkt. / State Fund CAGR	Notes
Oregon SAIF Corporation	○		○	G															+	+	-8.6%	- 1 of 5 servicing carriers for state assigned risk pool.
Oklahoma State Insurance Fund	○		○	F															-	+	12.6%	- State Fund is the assured mkt. Installing image processing system.
Maryland Injured Workers' Insurance Fund	○		○	H															-	+	0.7%	- Must insure all employers except under Longshoremen's and Harbor Workers Act.
Utah Workers' Compensation Fund	○		○	F															+	NA	12.7%	- State Fund is the assured market in Utah. Computer system upgrades underway.
Montana State Compensation Mutual Ins. Fund	○		○	F															-	-	5.0%	- State Fund is the assured market in Montana. Lowest expense ratio in the U.S.
Idaho State Insurance Fund	○		○	G															+	+	14.8%	- Not a servicing carrier for state assigned risk pool. Write 80% of market. Computerized
Wyoming Workers' Comp. Division	○		○	E															-	-	36.2%	- Monopolistic State Fund is assured mkt. Implementing an imaging system.
Minnesota State Fund Mutual Insurance Company	○		○	H															+	+	7.5%	- Completely computerized. Recent managed care initiative.
North Dakota Workers' Comp. Bureau	○		○	E															-	NA	17.7%	- Monopolistic State Fund is the assured market.
South Carolina State Workers' Compensation Fund	○		○	G															+	-	11.0%	- Insures only state, city, and county agencies. Not involved with state pool.

Symmetrix

DL S

WORKLOAD INDICATORS 1991

STATE	NUMBER OF POLICIES	NUMBER OF EMPLOYEES	POLICIES PER EMPLOYEE
ARIZONA	42733	701	60.96
CALIFORNIA	259465	5419	47.88
COLORADO	40560	517	78.45
IDAHO	14491	170	85.24
MARYLAND	26508	267	99.28
MICHIGAN	41183	488	84.39
MINNESOTA	6000	153	39.22
MONTANA	26407	216	122.25
NEW YORK	190168	3073	61.88
OKLAHOMA	9215	446	20.66
OREGON	35695	1104	32.33
PENNSYLVANIA	28397	270	105.17
UTAH	24200	165	146.67



SENATE SELECT COMMITTEE
WORKERS' COMPENSATION

EXHIBIT # 2 b

DATE 4/01/93

DIRT # 11B 13

ANALYSIS EARNED PREMIUM VS EXPENSES			
COMPETITIVE FUNDS 1987-1991			
STATE	EARNED PREMIUM	EXPENSES	PERCENTAGE
ARIZONA	\$1,050,124	\$206,030	19.62%
CALIFORNIA	\$8,731,613	\$1,489,516	17.06%
COLORADO	\$1,194,586	\$156,862	13.13%
IDAHO	\$264,586	\$34,688	13.11%
MARYLAND	\$622,252	\$73,541	11.82%
MICHIGAN	\$806,295	\$252,230	31.28%
MINNESOTA	\$231,336	\$87,042	37.63%
MONTANA	\$440,717	\$46,181	10.48%
NEW YORK	\$4,815,027	\$966,699	20.08%
OKLAHOMA	\$506,981	\$71,571	14.12%
OREGON	\$1,084,748	\$324,164	29.88%
PENNSYLVANIA	\$881,483	\$150,570	17.08%
UTAH	\$386,437	\$62,551	16.19%
Source AASCIF 1992 FACT BOOK			
(In Thousands of Dollars)			

SENATE SELECT COMMITTEE
WORKERS' COMPENSATION

EXHIBIT # 1c

DATE 4/01/93

BILL # HB 13

SUMMARY OF SURVEY REGARDING
BUDGET QUESTIONS

State Fund Responses	Who Has The Authority to Set The Budget For Your State Fund	To What Extent Does Executive Branch Get Involved in Setting the Budget	To What Extent Does Legislative Branch Get Involved in Setting the Budget
Arizona	Set by the Fund Approved by the Board	None	Joint legislative Budget Committee, which meets all year/reviews and approves
Louisiana	Board of Directors	None	None
Maryland	Board of Directors	None	None - Presented for informational purposes only
Minnesota	Mgmt. sets/ Board approves	None	None
New Mexico	Board of Directors	No approval - Sends Report to Governor	None
Oregon	Mgmt. sets/ Board approves	None	None - Copy goes to legislature for information purposes only
Texas	Board of Directors	None	None

cs/4074

SENATE SELECT COMMITTEE
WORKERS' COMPENSATION

EXHIBIT # 1d

DATE 4/01/93

BILL # HB 13

Amendments to House Bill No. 13
Third Reading Copy

Prepared by Jacqueline Lenmark
American Insurance Association
April 1, 1993

1. Title, line 13

Following: "~~FUND;~~"

Insert: "PLACING THE STATE FUND UNDER THE
AUTHORITY OF THE INSURANCE COMMISSIONER;"

2. Title, line 21

Following: "RATE MAKING;"

Strike: "AUTHORIZING" THROUGH "YEAR" ON LINE 23."

3. Page 22

Following: line 20

Insert: "Section 1. Section 33-1-401, MCA, is amended to read:

"33-1-401. Examination of insurers and state compensation insurance fund.

(1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer and the state compensation insurance fund as often as he deems the commissioner considers advisable. He The commissioner shall so examine each domestic insurer not less frequently than every three years. The commissioner shall examine the state fund on a yearly basis beginning no sooner than October 1 following the end of the fiscal year. Examination of an alien insurer may be limited to its insurance transactions

(4) If, after examining the state compensation insurance fund pursuant to subsection (1), the commissioner determines that the state fund, if it were a private insurer, would be subject to the provisions of Title 33, chapter 2, part 13, the commissioner shall report those findings to the governor and the legislature."

Section 2. Section 33-16-1002 is amended to read:

"33-16-1002. Applicability of part. This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation ~~Plan~~ Plans No. 2 and No. 3 of the workers' compensation act, Title 39, Chapter 71, ~~part~~ parts 22 and 23."

SENATE SELECT COMMITTEE
WORKERS' COMPENSATION

- 1 -

EXHIBIT #

2

DATE

4/01/93

BILL #

HB 13

Section 3. Section 33-16-1005, MCA, is amended to read:

"33-16-1005. Membership in rating organization required - exception - filings with Commissioner.

(1) Every insurer, including the state compensation ~~mutual~~ insurance fund . . .

(2) The rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. ~~Any insurer writing pursuant to Compensation Plan No. 2~~ Every insurer, including the state fund, shall adhere to the manual rules and classifications and rating plans . . .

4. Page 29, line 5

Following: "self-supporting~~++~~."

Strike: remainder of line 5 and lines 6 through 13 in their entirety.

5. Page 29, line 5

Following: "self-supporting~~++~~."

Insert: "Premium rates and classifications must be adopted in compliance with Title 33, Chapter 16.

6. Page 32, line 24

Following: "rates."

Insert: "rates must be set in compliance with Title 33, Chapter 16."

7. Page 33

Following: Line 5

Insert: (3) The state fund may not make any adjustment to the full manual premium developed for any risk without adequate justification for that adjustment. An adjustment will be presumed to be adequately justified if:

(a) it is applied in a manner consistent with the rules filed under 33-16-1005; and

(b) the state fund files contain adequate documentation of the facts supporting the adjustment.

A misclassification of a risk shall be considered an adjustment without adequate justification.

(4) The state fund shall maintain reasonable records of the information collected or used by it in developing the premium charged for any risk so that the records will be available to the insurance commissioner to verify compliance with this section.

8. Page 33

Following: Line 5

Strike: Section 10 in its entirety.

Insert: "NEW SECTION. SECTION 10. Authority of Insurance
Commissioner with respect to state fund.

(1) The insurance commissioner shall review rates established by the board to determine if the rates comply with Title 33, Chapter 16 and are not excessive, inadequate, or unfairly discriminatory. The insurance commissioner has the same authority over the state fund's rate-setting procedures as the insurance commissioner has over the rate-setting procedures of private insurers.

(2) The state fund is subject to the provisions of Title 33, chapter 1; Title 33, chapter 2, except for 33-2-1342 through 1388; and Title 33, chapter 16.

(3) The commissioner of insurance may not exercise his authority under Title 33, chapter 2, part 13 based on the insolvency that is recognized to exist on the effective date of this section.

(4) The state fund is not a member insurer for the purposes of the insurance guarantee association established pursuant to Title 33, chapter 10, part 1.

9. Page 40, line 11

Following: "25"

Insert: "1-3,"

EXHIBIT 2

DATE 4-1-93

HB 13

Amendments to House Bill No. 13
Third Reading Copy

Prepared by Jacqueline Lenmark
American Insurance Association
March 31, 1993

1. Title, line 13.

Following: "FUND."

Insert: "PERMITTING THE GOVERNOR TO CONTRACT FOR PRIVATE SECTOR INVOLVEMENT TO LIQUIDATE THE UNFUNDED LIABILITY AND TO MANAGE CLAIMS OF THE OLD FUND AND TO MANAGE CLAIMS OF THE NEW FUND OF THE MONTANA STATE MUTUAL INSURANCE FUND;

2. Title, line 15.

Following: "~~33-1-102~~"

Insert: "33-1-102, 39-71-721, 39-71-2315, 39-71-2351"

3. Page 4, following line 4.

Insert: "WHEREAS, the Legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the State Fund as the insurer of last resort, and in making this insurance available, the State Fund has incurred an unfunded liability; and

WHEREAS, the unfunded liability has grown each year despite the fact that there have been numerous attempts to solve the problem by legislation and other methods, but those attempts have not resolved the problem; and

WHEREAS, the Legislature separated the payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990 (the "old fund"), from injuries occurring on or after July 1, 1990 (the "new fund"), and provided revenue options and spending limits; and

WHEREAS, this separation has not eliminated the unfunded liability, which is estimated to be in excess of \$400 million; and

WHEREAS, the Joint Select Committee on Workers' Compensation of the 52nd Legislature solicited from private insurance and reinsurance markets proposed solutions to liquidate the old fund unfunded liability; and

WHEREAS, insurance and reinsurance markets responded to the Committee's request for assistance to liquidate the old fund unfunded liability; and

WHEREAS, the Committee reviewed and concurred in a preliminary proposal of one of the insurance and reinsurance markets that the Committee believed provides significant benefits to Montana, including but not limited to:

- (1) risk transfer;
- (2) profit sharing between the reinsurer and the state;
- (3) investment of premiums in Montana financial institutions and investments;
- (4) funding and finance options;

(5) security to Montana in the event of contract breach or insolvency of the reinsurer;

(6) industry best claims management and administration; and

(7) development of clean industry private sector jobs; and

WHEREAS, there may be merit in the proposal, and it may be in the best interests of Montana to proceed with the negotiations with the reinsurer.

THEREFORE, the Legislature finds it appropriate to empower the Governor to fully investigate and negotiate a reinsurance solution."

4. Page 22.

Following: line 20

Insert: "NEW SECTION. Section 1. Liquidation of old fund liability. (1) (a) The governor is authorized to negotiate the liquidation of the unfunded liability of the old fund of the state fund, and defined in 39-71-2312, if an agreement can be reached that is in the best interests of Montana. The scope of any negotiated agreement may include but may not exceed all of the rights, privileges, liabilities, and duties of the state fund with respect to all claims arising prior to July 1, 1990.

(b) The governor may not enter into an agreement that pays more than \$400 million to the other party to the agreement.

(c) Any contract finalized by the governor must contain a provision that the contract is void unless necessary financing for the agreement has been provided by the 1993 legislature.

(d) To be effective, a contract must be finalized by the governor within 120 days of [the effective date of this section].

(e) Any contract finalized by the governor may require reinsurance premium payments by the state to be used to liquidate the old fund liability.

(2) Any entity entering into an agreement with Montana under [section 2] or this section shall submit an annual report to the legislative audit committee. The first report is due 12 months after the agreement is finalized and thereafter may be submitted on a fiscal year basis.

(3) Any negotiations or agreements entered into pursuant to [section 2] and this section are not subject to the competitive bidding requirements of Title 18, chapter 4.

(4) A negotiation or an agreement entered into pursuant to [section 2] is not subject to the privatization plan requirements of Title 2, chapter 8, part 3.

NEW SECTION. Section 2. Claims settlement of new fund claims - new fund management. As part of the negotiated liquidation of the unfunded liability of the old fund of the state fund, as defined in 39-71-2312, the governor may negotiate for claims settlement of the claims of persons whose benefits have not been determined under a claim based on an injury occurring on or after July 1, 1990, and for services with respect to the new fund of the state fund, including but not limited to claims management services, third-party administration, and medical cost containment

agreements if the contracted services are in the best interests of the state. An agreement under this section is valid only if it is part of an agreement that meets the requirements of [section 1].

NEW SECTION. Section 3. Audit of contracted services and old fund liquidation. Any proposal involving the private section in liquidation of the unfunded liability of the old fund of the state fund, as defined in 39-71-2312, or in claims settlement and management of the new fund of the state fund must provide for audit and reporting mechanisms in compliance with 39-71-2361.

NEW SECTION. Section 4. Mutually agreeable lump-sum settlements. Beginning July 1, 1993, a workers' compensation claimant and the state fund or a reinsurer may, regardless of the lump-sum law in effect on the date of the injury, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law in effect on the date of the injury applies.

Section 5. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. Except as provided in [section 4]:

(1) (a) ~~If~~ if an injured employee dies and the injury was .

(6) ~~In~~ in all cases, benefits must be paid to beneficiaries, as defined in 39-71-116-; and

(7) ~~Benefits~~ benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."~~

Section 6. Section 39-71-2315, MCA, is amended to read:

39-71-2315. Management of state fund -- powers and duties of ~~the~~ board. Except with respect to any agreement established pursuant to [sections 1 and 2]:

(2) ~~The~~ the management and control of the state fund is vested solely in the board-; and

(2) ~~The~~ the board is vested with full power, authority, and

Section 7. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has . . .

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355, to payment of premiums for a negotiated

liquidation of the unfunded liability of the old fund of the state fund as provided in [section 1], and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

~~(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislation oversight of the state fund should be increased."~~

Section 8. Section 39-71-2354, MCA, is amended to read:

"39-71-2354. Use of payroll tax proceeds -- loans -- bonds.

(1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under 39-71-2355 and this section and any premium payments that may be required by an agreement made pursuant to [section 1]. If the state fund Except as provided in subsection (2), the board of investments shall, at all times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. ~~Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990.~~ In the event that loans are necessary for an agreement established in accordance with [sections 1 and 2], the governor is authorized to pursue internal and external financing that is in the best interest of the state. The board of investments shall choose the method of financing that is more cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under 39-71-2355 and this section. Bonds for the state fund must be workers' compensation bonds issued under 39-71-2355.

(2) ~~The~~ Except for any agreement established pursuant to [sections 1 and 2], the total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under 39-71-2355, except bonds issued to repay loans as provided for in subsection (1), may not exceed \$220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020."

Section 9. Section 39-71-2503, MCA, is amended to read:

"39-71-2503. Workers' compensation payroll tax. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded

liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990, or for payment of those claims under [section 1]. If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, "

Section 10. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs. (1) A person may not transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code. . . ."

6. Page 39, following line 8.

Insert: NEW SECTION. Section 18. Coordination with occupational disease act of Montana. For purposes of [sections 1 through 4] and the administration of Title 39, chapter 72, a reference in [sections 1 through 4] to an injury resulting from an accident or to a claim for an injury resulting from an accident includes a disablement, as defined in 39-72-102(4)."

Renumber: subsequent sections

7. Page 13, line 13.

Following: "instruction."

Insert: "(1) [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 through 3].

(2) [Section 4] is intended to be codified as an integral part of Title 39, chapter 71, part 23, and provisions of Title 39, chapter 71, part 23, apply to [section 4]. (3)"

8. Page 40, line 1.

Following: "APPLICABILITY"

Insert: "Sections 1 through 3, 10, and 18 are effective on passage and approval:

(2) [Sections 4 through 9] are effective on finalization of an agreement entered into by the governor and the reinsurer, as provided in [section 1].

Lloyd Center Tower
825 NE Multnomah Street
Portland, Oregon 97232-2141
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Liberty
Northwest
Insurance Corporation



March 31, 1993

Governor Marc Racicot
Capitol Station
Helena, MT 59620

Dear Governor Racicot:

I am writing to urge your support of efforts to reform Montana's workers' compensation system. These efforts involve two areas that are interdependent and vitally necessary to provide cost controls and a stable, competitive market for Montana employers.

The reforms to improve the efficiency of the benefit delivery system will significantly reduce unnecessary expenses paid by employers while helping reduce worker disability. But for these reforms to work it is imperative that Montana create a healthy, competitive market for workers' compensation insurance by addressing needed reforms of the state fund. This will assure that Montana employers can readily obtain insurance at competitive prices.

As Montana and other states have discovered, the negative influence of under-regulated state workers' compensation insurance funds is profound. State insurance codes stringently regulate the marketing and financial practices of private workers' compensation insurers. This provides checks and balances of state insurance laws which protect policyholders, workers and taxpayers of the state.

The new breed of state fund which has emerged from Montana, Michigan, Oregon and other states, however, is exempt from all or significant portions of these insurance regulations. Their structures as "independent public corporations" and state run mutual insurers also exempt them from income taxes and other requirements which apply to all other insurers. The result of all this is mismanagement which includes predatory marketing and questionable financial practices influenced heavily by politics. As Montana has discovered, the legacy of these practices is that sources of insurance dry up as private insurers are driven out of the market and the financial tax burden is ultimately slung around the necks of businesses and taxpaying citizens.

SENATE SELECT COMMITTEE
WORKERS' COMPENSATION

EXHIBIT # 4

DATE 4/01/93

BILL # HB 13

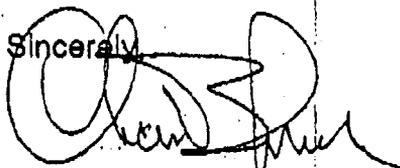
Workers' Compensation Reforms

Page 2

In dealing with the major problems created by their state fund, it is my understanding Michigan is actively pursuing efforts to sell it. Oregon is only now recovering from the state fund's implementation of a program to cancel and non-renew all small business accounts.

So the eyes of the nation are on Montana to see whether leaders will take necessary steps with the state fund to ensure establishment of a healthy, competitive insurance system for employers. The workable state fund options are basically two: bring the fund under all the insurance code requirements which apply to all other workers' compensation insurers or sell the fund. Either of these options will bring insurers back into Montana, ensure fair treatment of employers and workers, and a healthy, workers' compensation insurance market that provides for readily available insurance at a competitive price.

Sincerely,



Charles B. Gill, Jr.
President

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 11:33 AM
 02/10/93

PAYROLL INFLATOR OF 5% USED
 AS REQUESTED BY LEGISLATORS

THIS SPREADSHEET PREPARED WITH
 THE FOLLOWING ASSUMPTIONS:

FISCAL YEAR	TOTAL PROJECTED LIABILITY PAYMENTS	BOND DEBT PAYMENTS	TOTAL EXPENSE	EMPLOYEE PAYROLL TAX	EMPLOYER PAYROLL TAX	PROJECTED END OF YEAR CASH	PROJECTED INTEREST EARNINGS	PAYROLL TAX IN-->
1994	\$56,396,158	\$11,319,361	\$67,715,519	\$26,909,283	\$26,909,283	(\$41,284,125)	(\$1,019,206)	1993-94 0.5000X
1995	\$47,461,746	\$11,318,181	\$58,779,927	\$28,254,747	\$28,254,747	(\$44,682,833)	(\$1,128,273)	1994-95 0.5000X
1996	\$41,632,203	\$11,320,631	\$52,952,834	\$29,667,484	\$29,667,484	(\$39,298,744)	(\$998,046)	1995-96 0.5000X
1997	\$37,355,999	\$11,317,544	\$48,673,543	\$31,150,858	\$31,150,858	(\$28,345,620)	(\$675,049)	1996-97 0.5000X
1998	\$33,212,381	\$11,318,244	\$44,530,625	\$32,708,401	\$32,708,401	(\$5,614,722)	(\$155,279)	1997-98 0.5000X
1999	\$30,299,309	\$11,317,694	\$41,617,003	\$34,343,821	\$34,343,821	\$21,995,089	\$539,172	1998-99 0.5000X
2000	\$27,538,261	\$11,319,984	\$38,858,245	\$36,061,012	\$36,061,012	\$56,671,256	\$1,412,388	2000-01 0.4500X
2001	\$25,122,227	\$11,318,859	\$36,441,086	\$34,077,657	\$34,077,657	\$90,658,492	\$2,273,009	2001-02 0.4000X
2002	\$22,069,098	\$11,321,394	\$33,390,492	\$31,805,813	\$31,805,813	\$123,996,927	\$3,117,301	2002-03 0.3500X
2003	\$50,756,671	\$132,326,715	\$183,083,386	\$29,221,590	\$29,221,590	(\$580,654)	\$62,624	COVERED PAYROLL \$4,881,502,500
2004								COST OF CAPITAL--> 5.0000X
2005								PAYROLL INFLATION RATE--> 5.0000X
2006								BEGINNING CASH BALANCE--> (\$26,367,966)
2007								
	\$371,844,052	\$234,199,607	\$606,042,659	\$314,230,666	\$314,200,666		\$3,429,640	

THIS SPREADSHEET CALCULATED THE
 FOLLOWING FINANCIAL RELATED DATA:

TOTAL EXPENSE \$606,042,659
 YEAR PAYROLL TAX ENDS 2003

IF CASH IS GREATER THAN \$25,000,000
 PAYROLL TAX DECREASES BY .05%
 IF CASH IS LESS THAN (\$50,000,000)
 PAYROLL TAX INCREASES BY .05%

CLAIMS DEVELOPMENT FACTOR 1.10

SENATE SELECT COMMITTEE
 WORKERS' COMPENSATION
 EXHIBIT # 5
 DATE 4/01/93
 BILL # HB 504

Homebuilders Assoc. of Billings
252-7533

S.W. Montana Home Builders Assoc.
585-8181

Great Falls Homebuilders Assoc.
452-HOME



Flathead Home Builders As
752-2522

Missoula Chapter of NAHB
273-0314

Helena Chapter of NAHB
449-7275

Nancy Lien Griffin, Executive Director
Suite 4D Power Block Building • Helena, Montana 59601 • (406) 442-4479

HB 504

An act to increase the payroll tax and imposing an
employee wage tax to fund the state fund old debt

Recommend:
DO NOT PASS

Mr. Chairman, Members of the Committee:

I am Harlee Thompson a delegate from the Montana Building Industry Association legislative committee. The Montana Building Industry Association represents 179 Builder members with 3,413 employees and 541 associate members with 27,003 employees.

The Montana Building Industry Association does not and will not support any new tax to bail out The State Fund's Unfunded liability of the old fund until there is a clear demonstration of the management of the current new state fund to insure that this mess will not occur again. We as business owners and employees are unwilling to help fund any debt that cannot even be established as to the size within even a \$100 million.

This bill is one of the most unfair bills of this session. When the .28% tax was enacted to bail out the old fund we were told that this would take care of the problem and were promised that the tax would never be raised. Instead of raising it you will eliminate it then add a new one. The sponsor and supporters try to justify raising taxes on already over taxed employers and adding a tax to over taxed employees of this state and claim they don't have to worry about the exclusive remedy because the state's Old Fund liability is a debt of the state. If this is a debt of the state let's call it so and add a new tax line on our state income tax form that charges another surtax to our income tax. This will allow every tax payer in the state to share the burden. This could be a new line 42 on form 2s and should be labeled to notify the tax payer what this tax is for.

I feel that it is important to make the people of Montana aware that this extra tax is the result of an attempt of previous administrations, with the

SENATE SELECT COMMITTEE
WORKERS' COMPENSATION
EXHIBIT # 6
DATE 1/6/93
BILL # HB 504

aid of the management of the old fund, to make them look better by keeping rates artificially low. This was very clearly poor management and a blatant misuse of state moneys. This practice has led to a near monopoly for the State Fund when the private insurance carriers began leaving the state in mass numbers because they could not compete with the artificially low rates of the State Fund. I have to wonder if this wasn't a plan of the State Fund all along.

The separation of the Old Fund and the new fund was a round about way of filing chapter 11 bankruptcy. When a business does this it is required to file a plan of recovery. The State Fund has had 6 years to come up with a plan but they have not. They can't even tell us the exact amount of the liability.

The Montana Building Industry Association feels that with some of the major changes this legislative session has the opportunity to bring to the work comp system and with proper management of the new fund the State Fund could become profitable. We would recommend that those profits be used to fund the unfunded liability. Until we see some changes in the direction of the management of the new fund we will not support HB 504 or any other bill dealing with the raising of taxes to aid the Old Fund.

The Montana Building Industry Association strongly recommends a

DO NOT PASS on HB 504

DATE THURSDAY, APRIL 1, 1993

SENATE COMMITTEE ON SELECT COMMITTEE ON WORKERS' COMPENSATION

BILLS BEING HEARD TODAY: HB 13, HB 504 - (BENEDICT)

PLEASE PRINT

Name	Representing	Bill No.	Check One	
			Support	Oppose
Tom Schneider	MPEA	HB 504		X
Mike Sullivan	Work Comp Coalition	HB 13 / HB 504		
Harlee Thompson	M B I A	504		X
Lynn Logan	Bls Chamber	504	✓	X
George Wood	MT Self Ins Assoc	HB 13 504		✓
Dee Hughes	mt Health Care	HB 13	✓	
Don Judge	MT STATE AFL-CIO	HB 504 HB 13		X NO Amend
Mike Miconer	MMCA	HB 13 HB 504	X	X
Jim Twine	MT Chamber	HB 504 HB 13	✓	✓
Riley Johnson	NFIB	HB 504 HB 13	X	X
Stacy Riley	MFT / MFSE	HB 504		X
Lack Bull	Gov Office	HB 13 HB 504	✓	
Don Allen	CEVERB	HB 13 HB 504	✓	✓
Bill Lombardi	State Auditor's Office	HB 13	oppose amendment	
Reguline Denmark	Am. Fire Assoc.	HB 13 HB 504	✓	✓
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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 4/1/93

SENATE COMMITTEE ON Select Work Comp

BILLS BEING HEARD TODAY: HB 13, HB 504 (Benedict)

Name	Representing	Bill No.	Check One	
			Support	Oppose
Justin Krum	Bell	1	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Danyel Hergenroder	"		<input type="checkbox"/>	<input type="checkbox"/>
Lisa Ann Kuchinski	"		<input type="checkbox"/>	<input type="checkbox"/>
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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY