

SENATE COMMITTEE ON LABOR

April 10, 1991 Hearing Room 50 03:00 p.m. Tapes 58 - 59
MEMBERS PRESENT: SEN. GRATTAN KERANS, CHAIR SEN. LARRY HILL,
VICE-CHAIR SEN. PETER BROCKMAN SEN. BOB KINTIGH SEN. BOB SHOEMAKER

STAFF PRESENT: ANNETTE TALBOTT, COMMITTEE COUNSEL ROBERTA WHITE,
COMMITTEE ASSISTANT MEASURES CONSIDERED: SB 868 - SAIF DUTIES AND
POWERS - PUBLIC HEARING

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in quotation
marks report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes. _

TAPE 58, SIDE A

001 CHAIR KERANS calls the meeting to order at 3:12 p.m. He removes SB
826 from the agenda due to illnesses and inability of some people to
appear at the hearing. WITNESSES: JOE GILLIAM, NATIONAL FEDERATION OF
INDEPENDENT BUSINESSES ROBERT C.A. MOORE, OREGON TRIAL LAWYERS
ASSOCIATION/OREGON WORKERS' COMPENSATION ATTORNEYS GARY WEEKS, DIRECTOR,
DEPARTMENT OF INSURANCE AND FINANCE MIKE LAMB, CASUALTY ACTUARY,
DEPARTMENT OF INSURANCE AND FINANCE DICK MCGAVOCK, PROGRAM EXECUTIVE,
POLICY ANALYSIS SECTION, INSURANCE DIVISION, DEPARTMENT OF INSURANCE AND
FINANCE

SB 868 - SAIF POWERS AND DUTIES MODIFICATIONS - PUBLIC HEARING
011 JOE GILLIAM, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES (EXHIBIT
A) > Details Exhibit A. > Testifies in support of SB 868.

221 SENATOR SHOEMAKER: If one purpose of SAIF is to stimulate the
economy by providing Senate Committee on Labor April 10, 1991 - Page 2

compensation insurance to new and emerging businesses, what criteria
does SAIF have to use to apply to setting premiums. Since the new
businesses do not have experience, where do you put that business?

GILLIAM: If SAIF can historically prove that taking on new accounts has
higher costs associated with carrying those accounts, they could be
allowed to put them in a different tier. SHOEMAKER: I am talking about
experience ratings in terms of safety. How can you tell how that new
business is going to fare, relative to others in its same type of
industry and size.

GILLIAM: Age is not necessarily a criterion that has to be thrown out. I
think they can look at their book of business and look at how do
companies in their first three years, how do those companies typically
perform in relationship to safety and claims costs, and then use that
data to apply a rate to them? Someone shouldn't be discriminated against
from having coverage at all based upon the fact that they are a new
business.

284 SENATOR SHOEMAKER: Do you consider it appropriate to have a rate
category for new businesses?

GILLIAM: Just to say that they are more expensive because they are new,
without proof, isn't adequate enough. SENATOR SHOEMAKER: Do you presume
that their new experience rating would be about the same as others their
size? Would that be the presumption they would start with, as you see

it?

GILLIAM: That's how I would see it.

307 CHAIR KERANS: I find very interesting your Appendix N (EXHIBIT A). You have brought us a pretty miserable piece of legislation if the allegations are true. Removes incentives for safety in the work place, jeopardizes the solvency of the Industrial Accident Fund while providing a windfall to private businesses - is that your intent? GILLIAM: That is not our intent, and it is not what the bill does. 340 SENATOR HILL: Did SAIF send this letter (Appendix N, Exhibit A) to all of its covered employers? GILLIAM: I believe they sent it out to all their group programs. I'm basing that assumption on what this person received. SENATOR HILL: In your view, does this letter tell the truth or does this tell a lie, or set of lies? GILLIAM: What is listed here, and the results that they say, are not truthful in my opinion. SENATOR HILL: So in your opinion, SAIF is informing your members of facts that aren't true regarding your legislation.

These minute' contain materials which paraphrase and/or summarize 8tl ements made during this session. Only te% enclosed in quotation marks report a spealcer's exact words. For complete content. of the proceeding., please refer to the taper. . . . Senate Committee on Labor April 10, 1991 - Page 3

GILLIAM: Regarding Appendix N that you have mention, yes, the bill does not do the things that they say it will do. > I am putting the question to the Committee to determine whether or not the reserving practices are adequate. If they are not adequate, my small employers are going to be on the hook for this thing. They are going to experience more cancellations, more premium increases, or if the fund were to fail, as it did in Montana, all employers in the state were on the hook for that. They all pay a surcharge in addition to their regular workers' comp bill to re-establish the fund in Montana and get it back to the place where it can pay teh bills for injured workers. We don't want to see that happen here.

390 CHAIR KERANS: Can you elucidate the meaning of Exhibits L and M for me (EXHIBIT A). You say in your narrative that they dumped good risk businesses into the assigned risk pool, and then set up a small business group. What are you trying to tell us about this?

TAPE 59, SIDE A

001 GILLIAM: SAIF has worked with the Associated Oregon Industries and JBL&K of Portland to create, develop a small business risk pool or group program, if you will. This is allowed now under SB 1198, which was passed in the special session. It's the same group of business - \$2,500 or less - and no- experience rating. Before we couldn't afford to keep those businesses, but now we can afford to compensate AOI for providing services, compensate agents to sell it, and compensate JBLK to bill, collect premiums and manage accounts. There is not cost cutting behind this measure in SAIF that says we are going to move this whole operation outside of SAIF so we don't have this overhead anymore. SAIF doesn't get any smaller, but now we have additional costs. How do you do that? You can't keep them one minute, but now you can afford to pay extra for it. > The Secretary of State's audit shows that SAIF's performance was improving in the months before they found it necessary to drop 10,000 small businesses because they could not afford to handle their business. > We found out later that they were turning a profit during that time.

046 SENATOR HILL: That's not what they told us. > If any other company covered by the Unfair Practices Act had perpetrated that particular fraud, do you feel your members would have had some sort of recourse to see that doesn't happen again, or to see if that fraud was stopped? In other words, would the Unfair Practices Act have protected your members from this particular fraud? GILLIAM: I'm not sure. I don't have a determination or a legal opinion on that. I have been told that private carriers would not have been allowed to wholesale cancel such as this. The Insurance Commissioner would not have approved of such a move for private carriers. SAIF doesn't come under that scrutiny at this point. > I would request the Committee look into any issues of refinancing of liabilities that SAIF has become involved with, and to determine whether it's real reinsurance on the liabilities, or financial reinsurance on those liabilities. In the real reinsurance, you get rid of the claims - you're done with them once and for all. In financial reinsurance, you keep the liability and the claims and if those claims reach that top level of whatever amount of insurance you're buying, the liability of those claims comes back to the original insurer - in this case SAIF.

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate CommXtee on Labor April 10,1991- Page 4

080 SENATOR SHOEMAKER: Please explain financial reinsurance to me.

GILLIAM: It operates in much the same way as reinsurance. But the company that sells the reinsurance doesn't assume full financial responsibility for that liability. If they buy \$1 million worth of reinsurance, if those losses reach \$1 million or exceed the \$1 million limit, then those liabilities are given back to SAIF Corporation. > It appears that it's not on your books, but a few years out there, you could receive a liability for it. You reserve less, but five years down the road, those liabilities could come back to rest because they exceed the original \$1 million. You're reserving is not going to be adequate.

SENATOR SHOEMAKER: Why would you not have to reserve for that excess liability that your reinsurance contract exposes you to?

GILLIAM: Financial reinsurance doesn't require you to do that. That is our concern.

SENATOR SHOEMAKER: In other words, the reinsurer doesn't require it because he doesn't care. But the state or whoever is requiring reserves should care. Is it that they don't know about this - they don't understand it?

GILLIAM: From what I understand, it's a relatively new practice in the insurance game. Here's a new thing that's going on in the industry. If SAIF is using reinsurance in the real terms, that's fine and dandy. If it's financial reinsurance, it raises a flag because the insurance commissioner doesn't know if it's regulated, etc.

119 SENATOR HILL: Does the NFIB currently have a group policy with SAIF?

GILLIAM: No we don't.

SENATOR HILL: Did you have one previously? GILLIAM: We did not. We've had health insurance in the past, and for that reason, we went bust. We

have no financial interest in the programs at SAIF or with any private carrier, or with anybody else.

SENATOR HILL: Do any of your members have group policies?

GILLIAM: Some of our members have group policies. 131 ROBERT C.A. MOORE, OREGON TRIAL LAWYERS ASSOCIATION/OREGON WORKERS' COMPENSATION ATTORNEYS (EXHIBIT B) > Details Exhibit B. > Testifies in support of SB 868. 166 GARY WEEKS, DIRECTOR, DEPARTMENT OF INSURANCE AND FINANCE > Discusses the rate-making section of the bill, and the tiered rating section of the bill. - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report & speaker's exact words. For complete contents of the proceedings, please refer to the tapes. - Senate Committee on Labor April 10, 1991 Page 5

206 DICK MCGAVOCK, PROGRAM EXECUTIVE, POLICY ANALYSIS SECTION, INSURANCE DIVISION, DEPARTMENT OF INSURANCE AND FINANCE: Tiered rating is used for marketing purposes by insurers such as SAIF and Liberty Mutual Northwest who do not have the advantage of a sister affiliate insurers under a group wherein they can have a preferred price for their workers' compensation policy. A lot of private insurers are a member of a group, and each insurer can have a different price level, and therefore that is a distinct marketing advantage in pricing a product to particular levels of risk that are seeking coverage. Tiered rating is a form of schedule rating. It was first utilized by the State Accident Insurance Fund after it withdrew its subsidiary, SAIF of Oregon. > It came in initially with three tiers: a preferred, a standard and a substandard, quite like what you find in auto insurance, where there are about three markets. A modification factor is a percentage applied to the tier premium to get to the total rate. This rate then is applied to \$100 units of payroll, which gives you a gross premium, through which rating plans may be applied to get down to a new premium. That gives them the flexibility to engage in the market place and underwrite their accounts. Liberty Mutual Northwest has a similar rating plan which is structure by certain criteria and parameters to which to pitch the account. > Those programs were approved in 1987. 260 SENATOR HILL: This is the discounting plan? MCGAVOCK: This is the tiered rating, distinguished from discounting. A merit rating for smaller employers who are under \$2500 in net premium costs, and it award for good experience and penalizes for bad, very similar to what experience rating does for employer who generate more than \$2,500 per year. Both programs - experience and tiered are obligatory under the system utilized in the state, per HB 2700, Legislative Assembly, 1987. TALBOTT: Did Liberty Northwest have a tiered rating system before SAIF implemented theirs, or was that adopted afterwards, 279 MCGAVOCK: > It did not. They received approval subsequent to the approval of the tiered rating for SAIF. SENATOR SHOEMAKER: What criteria does SAIF employ to put an employer in one tier or another: MCGAVOCK: The filing requirements are various in detail. They are geared by various factors, such as loss ratios. SENATOR SHOEMAKER: How does it differ from what would be required in this bill? MCGAVOCK: Among other things, focusing on Section 3 on page 3, going backwards because now having the full gamut of 737 applicable to SAIF, then we could apply the various criteria required supporting what we call the holy trinity under 737.310: · the rates shall not be inadequate; · nor unfairly discriminatory; · nor excessive. > Section 2, paragraph B, the rates shall not vary except by work class)fication. We would have one rate, and it would appear that the tiered rating would not be permissible unless one could . ~ .

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. - Senate Committee on Labor April 10, 1991 - Page 6

view that tiered rating is a form of scheduled rating, and that this language does not preclude scheduled rating as such. At that juncture, given the assistance of the objective basis in Line 27, language that if "an objective schedule rating plan could be filed, then under the provisions of this bill, Section 2b, could carry forward with a form of tiered rating, only subject to the criteria set for here: that it be an objective parameter. That would be helpful.

329 SENATOR SHOEMAKER: As presently applied, tiered rating as used by SAIF is subject to little actual control regarding which tier they put an employer in. There are enough ways they can make their decision to put the employer where they think they need to be to get the business. MCGAVOCK: They perhaps could be doing this. It would take an audit of their practices to determine whether or not they were living up to their filings on tiered rating. SENATOR SHOEMAKER: Their filings composed on an objective standard? MCGAVOCK: They did have parameters and standards that would be objective. The question is whether or not it was purely objective. WEEKS: The filing does require certain parameters, certain standards, protocols for each of the tiers. As Dick has said, we would have to go in and do an audit to see if the protocols and standards are being adhered to. SENATOR SHOEMAKER: How would this bill differ from that - in laymen's terms? MCGAVOCK: This bill would require that it be totally objective. SENATOR SHOEMAKER: I thought you said that what they filed, if followed, would require total objectivity, too. MCGAVOCK: What they have filed is they have general objective parameters, but it is possible that they have utilized subjective judgment in the application, and our problem is that the filing was predicated upon their former experience of their SAIF of Oregon Corporation, which was a known quantum. SENATOR SHOEMAKER: What I'm having trouble with here is that you can always cheat with a bunch of rules if you put your mind to it. And you've always got the problem of auditing it and trying to get through that and finding it out. So just putting in a bunch of new rules doesn't mean you can't still maneuver things around. What I'm trying to get at is whether the present system to which they are subject on the books at least, is different from what is permitted here. MCGAVOCK: The original filing was predicated on past experience and going forward prospectively. Their anticipation that they're underwriting the fallout would mirror the former experience of where they came from and their rates. One of the criteria was loss ranges. To the extent that it left room for judgment in its application, like there is in schedule rating today which sets up the presumption of unfair discrimination, but nevertheless you can overcome the presumption and that's what SAIF had done in this instance, with the filing. This bill, if enacted, would make it totally objective and there would not be the permissive range of allowing the - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. - Senate Committee on Labor April 10, 1991- Page 7

subjective latitude of subjective judgement between these groups that SAIF currently enjoys.

TAPE 58, SIDE B 002 TALBOTT: Would it be fair to say that it's the

amount of latitude that's the difference? That the NFIB is trying to get at?

McGAVOCK: Yes, that's a fair assumption.

013 WEEKS: I would like to have Mike Lamb talk about Section 4 on page 3, which is discounting. 020 MIKE LAMB, CASUALTY ACTUARY, DEPARTMENT OF INSURANCE AND FINANCE: > Discounting: They mainly allow workers' comp insurers to discount where the disability has been determined to be permanent total or fatal injury, where the benefit is a lifetime pension. It is a contractual series of known payments - the only uncertainty is number of payments due to length of life, and maybe the interest rates. SENATOR HILL: So those are permitted to be discounted. LAMB: That's discounted, and the standard tables are 3 and one-half percent discount. SENATOR HILL: That's to allow interest earnings? The basis for that discount that's allowed is that the principle will earn interest which will then fulfill the obligation. Is that correct? LAMB: The modern way we say that is we recognize the time value of money. It is probably not correct to say that we're recognizing the investment potential of your assets because I don't think the value of your liability should depend on your investment strategy. 040 SENATOR HILL: But in practice, the discounting is allowed because the value of the award is made whole through the interest earnings on the principal. That's the practical result. LAMB: That's a good way of understanding it, yes. We do not normally allow discounting beyond that for workers' compensation insurers or any other type of casualty insurers, primarily because of the risk. When you discount any type of future payouts, you must consider not only the investment risk, but also the cash-flow risk of timing and amount, which are considerable in this kind of business. > They have allowed SAIF discounting mainly on the basis of the Attorney General Opinion that we have from 1988. Their discounting since that time has been to discount future payouts of medical expenses by three and one-half percent, and indemnity or disability payments by 7%. SENATOR HILL: Is that permitted to all insurers? LAMB: No. SENATOR HILL: It's only permitted SAIF? LAMB: Correct.

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Labor April 10, 1991- Page 8

SENATOR HILL: It's only permitted pursuant to the Attorney General's Opinion of 1988? LAMB: I think that's a fair statement. SENATOR HILL: There are two decisions - one was 1986 that said they can't do it, and one was 1988, which said they were wrong and SAIF can do it. And so the 1988 decision is what authorizes the discounting. Why isn't it permitted for other workers' compensation insurers?

064 LAMB: Because of the risks in both the timing and the amount of the future payouts. SENATOR HILL: Here is quote from the Secretary of State's Office of 1989: "SAIF follows the practice of discounting certain claims reserves to their present value". Present value what does that mean? LAMB: Present value is kind of a generic financial term meaning the amount that a future cash flow is worth today, considering the time value of money. A dollar ten years from now is worth perhaps somewhat less than it is today. 077 SENATOR HILL: Reserves so discounted include indemnity at 7% and all medical at 3.5%. The discount reflected in the claims reserve at June 30, 1989, in 1988 totalled \$542,320,000 and \$560,600,000 respectively, so the discount amounts to

half a billion dollars a year? LAMB: I looked at the December 30, 1990 statement that SAIF gave to our department, and it shows a discount of \$596,518,000 for loss reserves, and a discount of \$42,820,000 for loss expense reserves, for a total of \$639,338,000. SENATOR HILL: So the discount reflected in the claims reserve is climbing. 092 LAMB: There may be some difference. I think the reserves that the Secretary of State auditors is done on a general accounting basis, which may be some difference. SENATOR MILL: Suppose the Board decided to terminate the discount. Then they would find in their books that they have a hole in their budget of that amount. Is that correct? LAMB: There would be an increase in the liabilities equal to the difference between this amount and whatever the amount would be of the three and one-half percent on life pension type cases. SENATOR HILL: I think the testimony that Mr. Gilliam shared with us was manipulation of the discount can swing the books quite a bit and move you into the black or into the red. It's one of the things that's allegedly happened. And when you've got a discount value over half a billion dollars, that's a pretty big swing. Why is it that other companies cannot discount this way for the medical and time loss? Is it considered a bad risk? Is that because the statute forbids it, or is it because you don't permit it? 111 LAMB: I don't believe there is any statute that prohibits discounting. The statutes say that the reserve must be sufficient to pay out your obligations. SENATOR HILL: Do you have a rule that says that they can't discount those particular - These minutes contain materials which pamphase ant/or summarize statemonts made during this session. Only te% enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committoe on Labor April 10,1991- Page 9

reserves?

LAMB: Our rules say that insurance companies must report to us based on the National Association of Insurance Commissioners, and those instructions do not permit the discounting.

SENATOR HILL: So you would say it's standard practice not to allow - it's standard, prudent management practice not to allow discounting of those particular reserves?

LAMB: That's correct.

SENATOR HILL: He refers to Joe Gilliam's Appendix C (EXHIBIT A). "In a letter of advice dated December 31, 1986, this office concluded that SAIF Corporation was not authorized to discount its discretionary reserves. That conclusion is incorrect. So long as SAIF Corporation acts according to recognized insurance principles, there is no statutory limitation on the method it uses in fixing discretionary reserves. This opinion controls." We've just established that established insurance principles don't permit discounting these reserves. Why are you allowing SAIF to violate established insurance principles, and therefore, violate this particular Attorney General's Opinion?

137 WEEKS: This Attorney General's opinion, as I understand it, endorses the notion that SAIF corporation may discount. SENATOR HILL: So long as SAIF Corporaiton acts according to recognized insurance principles. WEEKS: There are principles to cover discounting, to permit discounting in certain lines of insurance. SAIF Corporation would say to you that this has been a prudent practice. There are indeed reserves sufficient to pay out the liabilities, which is what we're concerned about. This is unusual among workers' comp carriers to permit this kind

of discounting. We had an Attorney General's Opinion, the Commissioner of Insurance at the time agreed with the opinion and agreed that there were sufficient reserves even under a discounting policy such as SAIF as followed. SENATOR HILL: Let me suggest that the same consideration was not extended to Liberty Northwest, it was not extended to Standard Insurance, it was not extended to other providers. In other words, SAIF had "most favored nation" status in your interpretation of how recognized insurance principles applied to the extent of discounting these reserves. That isn't fair. 163 WEEKS: I don't know that any of those insurance companies came forward and requested the same discounts. I don't have that history. HILL: That's not the point. It's not the point whether they asked or not, because if the principles that you quoted say they can't discount and be responsible managers, which is what I gather from the testimony is the case. If what you say is accurate, as far as principles of insurance, why would they have impetus to come forward and request? It's not done, it's not permitted, it's not good management, if this company was able to do it. Why? WEEKS: I think at the time this opinion was issued, that the Commissioner did not believe the Insurance Division had the authority to go in and direct the SAIF Corporation to do other than

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. . Senate Committee on Labor April 10, 1991 - Page 10

what is permitted here. TALBOTT: Would the addition of the entire chapter of 737 to SAIF's list of provisions that they have to comply with aid in your ability to make them comply? WEEKS: We have talked about that as a staff, and there are some elements in that whole chapter that do not cover SAIF that would be beneficial to us. There are some parts of your analysis that I would say we are able to take advantage of through other parts of 737, but Dick has done some analysis of that, and there are three or four places that we can comment on that might be beneficial to us.

195 McGAVOCK: Yes, 737 would be beneficial to the Director. His obligations on rate filings SAIF would be made subject to the hearing procedure under 737 .342, which they are currently exempt from under 731.028, and additionally, they would be subject to fictitious grouping statutes. More importantly, they would also be subject to 737.230, detailed data, which would help because we then could compel the specific detail data on a tiered rating. This would not help us in the reserving as much as Section 4 would. 220 SENATOR SHOEMAKER: Are there any good reasons that SAIF should not be subject to the same rules, whatever they are, as applied to other workers' comp insurance carriers? LAMB: One possibility is that the way you think of discounting reserves is how much would you have to pay to reinsure some other insurance company to take over these liabilities. That's a concern with discounting, and it's one of the reasons you don't normally discount much, because a reinsurer would not discount very heavily. > You might want to consider in the case of SAIF that the situation where they might want to re-insure their entire business is unlikely to arise. In that kind of situation, you might say that they can discount based on their current investments and the timing of their assets and their cash flow.

SENATOR SHOEMAKER: Does Liberty Northwest reinsure all its book of business?

LAMB: No sir, I don't believe it does.

244 SENATOR SHOEMAKER: I don't see any reason there why SAIF should be treated any differently than Liberty Northwest in its reserve discount requirements.

LAMB: Well Liberty Northwest is owned 100% by a parent company which may decide to dissolve the company or take their business elsewhere or some other sort of business decision. SHOEMAKER: What difference does that make? Reserves are supposed to be adequate to cover the risks that you've undertaken, and the liabilities that you've got. The ownership of the company should be irrelevant to that consideration shouldn't it?

LAMB: Well, we're considering here whether or not it's advisable ever to discount reserves.

SENATOR SHOEMAKER: No, that's not my question at all. Is there anything about the nature of SAIF and the nature of Liberty Northwest and the nature of other workers' comp, These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Labor April 10, 1991- Page 11

insurers that should indicate there should be different rules regarding the discounting of reserves between those different insurers?

LAMB: The only consideration you might want to give is that it is highly unlikely that you would ever close down SAIF.

SENATOR SHOEMAKER: If I want to say I don't have to dip into other state resources to cover any of their liabilities, if I say that is a premise, then is there any reason to treat them differently from any other insurer?

LAMB: Not if you look at it that way.

274 WEEKS: One of the things we need to keep in mind is that this discounting principle is only one of the elements in the total reserving policies and practices of the insured. You need to talk to SAIF about some of the other elements of that reserving policy and practice that they have that might in some way offset the discounting principle that we're trying to follow in this particular instance.

SENATOR SHOEMAKER: The bill says that their reserves shall set aside a reserve account in the amount required of a domestic insurer. In other words, the same rules will apply. You have different reserve requirements depending upon a number of factors, but the same rules would apply and determine what the corporate reserve is.

WEEKS: Under this bill, yes. But under existing system, they have a discounting policy and there are other elements of determining the reservation which I think you would want to assure yourself of whether or not the fund is solvent. You need to look at this discounting principle here and then these other elements which would factor in.

SENATOR SHOEMAKER: My question is whether there is anything about this proposed bill that we should question in that regard. Is this a good bill in saying that they are all subject to the same rules as domestic insurers regarding reserve requirements? Would that be good legislation?

Is there anything fundamental about SAIF that should lead us away from saying, yes, that makes sense?

WEEKS: Only in the sense that when the Attorney General made this opinion, they said SAIF is fundamentally different. The language in there says it is an instrument of the State, and by virtue of that is not subject to all the same regulations and policies that other private insurers are subject to follow. I believe that is why the Commissioner acted as he did in 1988.

314 SENATOR BROCKMAN: Because you are treated differently, would that give you an unfair advantage over other competitors that basically do the same thing that you do?

McGAVOCK: Unfair advantage, focusing solely on the market place on ratemaking, to the extent that we're looking at investment income aside from reserves, there could be a distinction when you get down to our guideline which is that the rates shall be adequate, among other things. If you are looking at adequate reserves, and certainly rate adequacy would come to play, and if there are two different standards imposed in measuring reserves, and if the disparity became great enough, it could. But it would have to be a great extreme.

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Labor April 10, 1991 - Page 12

> It would be taken into consideration among the many factors.

SENATOR HILL: What about the adequacy of ORS 733 in requiring domestic insurers to reserve per statute to protect policy holders. Is it adequate to protect the policy holders in private regulated companies?

WEEKS: We would believe that's true. SENATOR HILL: What is there about ORS 733 which would make inappropriate to be applied to the SAIF Corporation? WEEKS: I'm not sure that we could tell you that it would be inappropriate. It is made clear to us by the Attorney General that there is no state official who can compel SAIF how to fix its discretionary reserves. That is very clear in the 1988 opinion, which basically says to us that we need to stay out of the way in the matter in which those reserves are determined.

412 SENATOR HILL: Can you help us understand why it is good policy or bad policy to apply ORS Chapter 733 to SAIF?

WEEKS: Is the public's interest protected by SAIF's reservation practices that are now followed? If the answer to that is no, then it seems like it follows that you would want to make some change. At this point I don't think we are prepared to tell you that the public is not protected by the current discounting practices and reservation practices of the SAIF Corporation. That seems to me that it has yet to be proven by discussion with the Corporation and maybe even by our own examination.

TAPE 59, SIDE B 003 SENATOR HILL: If we assume that to be true, what is there that's different about SAIF that makes it true that in SAIF's case it can violate established insurance management principles, where it's not true for private companies? McGAVOCK: It would be merely to

revisit the purpose of the public corporation enactment of 1979 that set apart the State Accident Insurance Fund as a state agency to become a public corporation. There were certain basic policy goals to allow them to function like a private insurer. These differences do not extend to the accounting principles that 733 deals with in Section 4. That is more statutory accounting. 064 SENATOR HILL: It is also true that SAIF could fail. There is nothing there to say the legislature is going to bail them out. They are not guaranteed with GO bonds or property taxes or anything else. They are not subject to 734 or 733 - where is the protection or the safety net? What makes SAIF different that makes you think it is immune to failure? McGAVOCK: There is no safety net. That is the question still in front of us. WEEKS: SAIF has been treated different in a lot of areas over the years. When AOL's small logging program failed, we asked SAIF to take that liability on. We didn't spread that liability around, we didn't ask private carriers to take it on - we asked SAIF to take it on. Then we tell .

. These minute. contain materials which paraphrase and/or surmnanze ~ternenb made during this session. Only text enclosed in quotation marks report a spealcer's exact wordr. For complete contents of the proceed ~gs, please refer to the tapes. Senate Committee on Labor April 10, 1991- Page 13

them to make sure their reserving practices are sufficient. We have historically treated SAIF different than we have private carriers. SENATOR HILL: I recognize that and that's not in dispute. The fact that SAIF is treated differently is beyond dispute. We know that, and that is one of the bases of the bill. In fact, they should be treated a little less differently than it has been in the past. I was hoping that you could help us understand what would be the best policy choice, but I don't feel like I've been enlightened very much in the last 10 minutes except further my belief that SAIF is different under current law and statute. That doesn't help us make decisions as to how we might change those laws and statutes. > Is it prudent to subject SAIF to the same requirements to protect the baneficiaries and the clients that all other insurance companies are required to be subject to, in light of the fact that there is no safety net under SAIF, whereas for other insurance companies there is a safety net. 130 SENATOR SHOEMAKER: This raises this policy issue. If we find that it is good policy that SAIF be the insurer of first resort and it not have preferential tiers as we know it now, the public should be willing to underwrite some part of SAIF's risk out there. > Another requirement of this bill is that the auditing function of SAIF would be performed by your offfice rather relying on SAIF itself to do it. Do you have any reaction to that? 159 WEEKS: In doing this we would bill the company for the cost of the audit. The Insurance Division would not pay for it. We already do a triennial audit on the company, and that would not be changed by this bill. 261 SENATOR HILL: In Stan's letter I believe there was an allegation that the assigned risk pool would be reduced. "Removes the threat of the assigned risk plan...." That's not correct, is it?

WEEKS: We don't believe it's correct to say that there would be no high risk pool. 309 DAVID ZAKARIAN, VICE PRESIDENT, GENERAL MANAGER, AGRICOMP INSURANCE AGENCY > The agency runs a workers' comp group for farms and ranches in Oregon, with 2,000 farms and ranches covered through SAIF Corporation. > Testifies in opposition to SB 868. > His opinion is that whatever was done by SAIF is working and that there should be no changes until it becomes more clear how effective the changes have really been. 392 SENATOR HILL: Did any of your people get canceled during the massacres of the last two years? ZAKARIAN: Yes,

over 400 over the last two years. 378 SENATOR HILL: Would it disturb you if you came to the conclusion that the cancellations were unnecessary and were due to solely political reasons? ZAKARIAN: If it were strictly, solely, 100% political, it would concern me. I don't believe it was because I have seen the effects of the actions in our own group. - Three minutes contain material which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Committee on Labor April 10, 1991- PaBe 14

420 SENATOR SHOEMAKER: Has your group investigated any other insurance carrier for your workers' comp coverage in the last two years?

ZAKARIAN: We have considered looking at other insurance carriers in the last six years on and off, and what I find in the industry is that there is nobody in Oregon stable enough or as competitive as SAIF to warrant a move.

502 The meeting was adjourned at 5:04 p.m.

Submitted by: Reviewed by:

Roberta White Annette Talbott Assistant Committee Counsel

EXHIBIT LOG:

A - Testimony on SB 868 - Joe Gilliam - 70 pages B - Testimony on SB 868 - Robert C.A. Moore - 2 pages C - "Charges Against Employers and Workers" - Staff - 2 pages D - Preliminary Staff Measure Summary on SB 868 - Staff - 1 page E - Fiscal Analysis of SB 868 - Legislative Fiscal Office - 1 page

. These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.