SENATE JUDICIARY
EXHIBIT NO. 4
DATE 4/7/09
BILL NO. SJ0033.01 SJR33

SENATE JOINT RESOLUTION NO. 33

INTRODUCED BY G. PERRY

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF WORKERS' COMPENSATION IN MONTANA, INCLUDING LAWS RELATED TO THE MONTANA STATE FUND, WORKERS' COMPENSATION PREMIUM COST DRIVERS, LAWS AFFECTING PREMIUMS, AND LAWS ADDRESSING BENEFITS, EXEMPTIONS, AND ATTORNEY FEES.

WHEREAS, Montana's workers' compensation premiums ranked at 155% of the median premium rate and second highest in the nation in a 2008 study by the Oregon Department of Consumer and Business Services, an increase from fifth place in 2006; and

WHEREAS, the Labor-Management Advisory Council on Workers' Compensation in 2007 and 2008 sought to address concerns about workers' compensation premiums by evaluating public policies and cost drivers, such as high injury rates in Montana, high costs for medical benefits, time away from work, and open-ended cases but did not examine structural issues, including the three-tiered system for obtaining workers' compensation coverage in Montana; and

WHEREAS, past studies of Montana's workers' compensation system have addressed the relationship of occupational diseases to overall workers' compensation and whether to change laws related to the Montana State Fund, yet problems with workers' compensation in Montana persist and remain a major concern of this state's employers; and

WHEREAS, a February 2009 Legislative Audit Division report concluded that legal compliance risks faced by the Montana State Fund may be higher because of an internal and external lack of regulatory oversight mechanisms, which is of potential significance because of Montana State Fund's current market dominance of 67% of a market that is shared with private carriers providing workers' compensation insurance, excluding self-insured employers; and

WHEREAS, statutory direction for the Montana State Fund to operate as a self-sustaining business in a manner similar to that of a privately operated mutual insurance business has resulted in the Montana State

Fund developing compensation and incentive plans and premium and other performance measures similar to those of private companies; and

WHEREAS, national surveys indicate Montana has a greater frequency rate than other states for paid-out benefits to injured workers, yet average benefits in 2004 ranged from last among the 43 jurisdictions surveyed for permanent total injuries to 24th for permanent partial injuries, resulting in a range that underscores concerns about the frequency of claims and the period in which claims are left "open" or unsettled, which reflects a need for greater premiums to ensure reserves to cover open-ended cases, ever-increasing medical costs, and possible impacts from court cases.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine workers' compensation benefits, premium cost drivers, and structural issues in Montana, particularly as they relate to the three-tiered system involving self-insurers, private carriers, and the Montana State Fund.

BE IT FURTHER RESOLVED, that the examination of the structural issues of workers' compensation insurance in Montana include the implications and requirements associated with:

(1) dissolving the Montana State Fund as a state-appointed workers' compensation insurer of last resort, allowing the Montana State Fund to become a wholly independent company, and determining what other options exist for an insurer of last resort or an assigned risk pool;

(2) revising the current structure of workers' compensation insurance by looking at structures in other states, including the exclusive state-operated programs used in Wyoming and North Dakota, a combination of a state-operated insurance plan with self-insured coverage allowed in Washington, and the Texas approach of not mandating workers' compensation insurance but providing a structure for voluntary coverage. This approach also may include a review of changes to Montana statutes that retain the existing three-tiered structure but remove the statutory direction to the Montana State Fund to operate in the manner of a private insurance company.

(3) making the Montana State Fund subject to regulation by the State Auditor's Office; and

(4) allowing the State of Montana to self-insure, insure with a Plan No. 2 workers' compensation insurer, or revise the statutes related to the Montana State Fund.

1 BE IT FURTHER RESOLVED, that the examination of workers' compensation issues in Montana include
2 coordination with the Labor-Management Advisory Council on Workers' Compensation regarding:
3 (1) how workers' compensation coverage is structured and how changes to benefits, exemptions,
4 attorney fees, and related cost-driver issues affect premiums; and
5 (2) how Montana compares with neighboring states with similar industries in terms of frequency and
6 types of claims, court decisions affecting the course and scope of employment, costs and duration of medical
7 treatments, relationship between workers' compensation and age-related medical conditions, length of time off
8 work from injury, and the extent of open claims and the impact of laws in each state related to these factors.
9 BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be
10 presented to and reviewed by an appropriate committee designated by the Legislative Council.
11 BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review
12 requirements, be concluded prior to September 15, 2010.
13 BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,
14 comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.
15 - END -