

HOUSE BILL 141

Introduced by Harrington, et al.

1/10	Introduced
1/10	Referred to Labor & Employment Relations
1/11	First Reading
1/11	Fiscal Note Requested
1/17	Fiscal Note Received
1/18	Fiscal Note Printed
1/24	Hearing
2/06	Committee Report--Bill Passed as Amended
2/08	Taken from Printing and Rereferred to Labor & Employment Relations
2/18	Committee Report--Bill Passed as Amended
2/25	2nd Reading Passed
2/26	3rd Reading Passed
	Transmitted to Senate
2/26	First Reading
2/26	Referred to Labor & Employment Relations
3/19	Hearing
4/02	Motion Failed to Adopt Minority Do Pass Committee Report
4/02	Majority Adverse Committee Report Adopted

HOUSE BILL NO. 141

INTRODUCED BY

Handwritten signatures: Jonathan Paulsen, Elizabeth Bentley, and others.

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW PAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS OR WAGES AND BENEFITS TO NONPROFESSIONAL SCHOOL EMPLOYEES BETWEEN ACADEMIC TERMS AND DURING VACATIONS AND HOLIDAYS OR DURING AN EMERGENCY CLOSURE; AMENDING SECTIONS 20-9-806 AND 39-51-2108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

Section 1. Section 39-51-2108, MCA, is amended to read:

"39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. (1) Benefits based on service in employment defined in subsections (5) and (6) of 39-51-203 and subsections (2) and (3) of 39-51-204 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which that begins during the period between two successive academic years or

during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract or reasonable assurance of a contract to perform services in any such capacity for any such educational institution for both such the academic years or both such the terms.

~~{2}--Benefits-based-on-services-in--any--other--capacity for--an--educational--institution--shall--be--denied--to--any individual--for--any--week--which--commences--during--a--period between--2--successive--academic--years--or--terms--if--the individual--performs--such--services--in--the--first--of--such academic--years--or--terms--and--there--is--a--reasonable--assurance that--the--individual--will--perform--such--services--in--the--second of--such--academic--years--or--terms--if--any--individual--is--denied benefits--and--was--not--offered--an--opportunity--to--perform--such service--for--the--educational--institution--for--the--second--of such--academic--years--or--terms--such--individual--shall--be entitled--to--a--retroactive--payment--of--the--benefits--for--each week--for--which--the--individual--filed--a--timely--claim--for benefits--and--for--which--benefits--were--denied--solely--by--reason of--the--denial--provided--for--in--this--section.~~

{3}{2} Benefits based on services described in subsections subsection (1) and ~~{2}~~ of this section shall must be denied to any individual for any week which that

1 commences during an established and customary vacation
 2 period or holiday recess if such the individual performs
 3 such the services in the period immediately before such the
 4 vacation period or holiday recess and there is reasonable
 5 assurance that such the individual will perform such the
 6 service in the period immediately following such the
 7 vacation period or holiday recess.

8 ~~{4}~~(3) Benefits based on services described in
 9 subsections subsection (1) and ~~{2}~~-of--this--section to an
 10 individual who performed such the services for an
 11 educational institution while in the employ of an
 12 educational service agency shall must be denied as specified
 13 in subsections (1)~~;~~ and (2)~~;~~~~-and-{3}-of-this-section~~. The
 14 term "educational service agency" means a governmental
 15 agency or governmental entity which that is established and
 16 operated exclusively for the purpose of providing such
 17 service to one or more educational institutions."

18 **Section 2.** Section 20-9-806, MCA, is amended to read:

19 "20-9-806. School closure by declaration of emergency.
 20 If a school is closed by reason of a declaration of
 21 emergency by the governor~~;~~:

22 (1) the pupil-instruction days lost during the closure
 23 need not be rescheduled to meet the minimum requirement for
 24 pupil-instruction days that a school district must conduct
 25 during the school year in order to be entitled to full

1 annual equalization apportionment; and
 2 (2) nonprofessional school employees must receive full
 3 wages and benefits for the days not scheduled."

4 NEW SECTION. Section 3. Applicability. (1) [Section 1]
 5 applies to claims for benefits that are made after [the
 6 effective date of this act].

7 (2) [Section 2] applies retroactively, within the
 8 meaning of 1-2-109, to emergency closures on or after
 9 January 1, 1991.

10 NEW SECTION. Section 4. Effective date. [This act] is
 11 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0141, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to allow payment of unemployment insurance benefits or wages and benefits to nonprofessional school employees between academic terms and during vacations and holidays or during an emergency closure.

ASSUMPTIONS:

1. The average benefit charges for government entities in the period FY83-FY85 were \$4.6 million. UI disqualification provisions similar to those proposed in HB0141 were in effect during this period.
2. The average benefit charges for government entities in the period FY88-FY89 were \$2.9 million. Current UI disqualification provisions were in effect during this period.
3. The difference of \$1.7 million is attributed solely to the denial of benefits to nonprofessional school employees between academic terms and during vacations and holidays.
4. Average weekly benefit amounts are increased from FY88 levels by 2.94% for FY92 and 4.1% for FY93.

FISCAL IMPACT:

Expenditures:


	FY92			FY93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
UI Benefits	43,000,000	44,750,000	1,750,000	42,000,000	43,770,000	1,770,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local school districts would experience increases in workers' compensation rates. 20% to 30% of school district employees would be in classifications which would receive summer unemployment benefits. Workers compensation rates would increase to cover costs for these employees and all schools would be impacted by the general rate increase.

TECHNICAL NOTES:

HB0141 may be in nonconformance with Section 3304 of the federal Unemployment Tax Act which requires nonprofessional school employees to be treated the same as instructional, research, or administrative school employees between academic terms and during vacations and holidays with respect to UI benefit eligibility with potential implications for receipt of administrative grants and the 5.4% FUTA tax credit to employers.


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning
DATE 1/16/91


DAN HARRINGTON, PRIMARY SPONSOR
DATE 1/18/91

Fiscal Note for HB0141, as introduced.

HB 141

1 HOUSE BILL NO. 141
 2 INTRODUCED BY HARRINGTON, LYNCH, QUILICI, PAVLOVICH,
 3 BROOKE, DAILY, MCCARTHY, DRISCOLL, MENAHAN, STIMATZ,
 4 JACOBSON, D. BROWN
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW PAYMENT OF
 7 UNEMPLOYMENT INSURANCE BENEFITS OR WAGES AND BENEFITS TO
 8 NONPROFESSIONAL SCHOOL EMPLOYEES BETWEEN ACADEMIC TERMS AND
 9 DURING VACATIONS AND HOLIDAYS OR DURING AN EMERGENCY
 10 CLOSURE; AMENDING SECTIONS 20-9-806 AND 39-51-2108, MCA; AND
 11 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY
 12 DATES."

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

15 Section 1. Section 39-51-2108, MCA, is amended to read:

16 "39-51-2108. Payment of benefits based on service in
 17 public, charitable, or educational organizations. (1)
 18 Benefits based on service in employment defined in
 19 subsections (5) and (6) of 39-51-203 and subsections (2) and
 20 (3) of 39-51-204 are payable in the same amount, on the same
 21 terms, and subject to the same conditions as compensation
 22 payable on the basis of other service subject to this
 23 chapter, except that benefits based on service in an
 24 instructional, research, or principal administrative
 25 capacity for an educational institution may not be paid to

1 an individual for any week of unemployment which that begins
 2 during the period between two successive academic years or
 3 during a similar period between two regular terms, whether
 4 or not successive, or during a period of paid sabbatical
 5 leave provided for in the individual's contract if the
 6 individual has a contract or HAS-BEEN-PROVIDED-A-WRITTEN
 7 STATEMENT-INDICATING-THE-FOLLOWING-TO-THE-INDIVIDUAL-NO
 8 LATER-THAN-30-DAYS-BEFORE-THE-END-OF-THE-FIRST-OF-THE
 9 ACADEMIC-YEARS-OR-TERMS;

10 (A) WHETHER-THERE-IS-A reasonable assurance of a
 11 REEMPLOYMENT contract to perform services in any such SUCH
 12 capacity for any such THE educational institution for both
 13 such the academic years or both such the terms;

14 (B) WHETHER-IT-IS-STATED-THAT-THE-INDIVIDUAL-HAS-NO
 15 REASONABLE-ASSURANCE-OF-REEMPLOYMENT-AND-THAT-THE-INDIVIDUAL
 16 SHOULD-FILE-A-CLAIM-FOR-BENEFITS-AT-THE-CLOSE-OF-THE
 17 ACADEMIC-YEAR-OR-TERM;

18 (C) IF-IT-IS-STATED-THAT-THE-INDIVIDUAL-HAS-REASONABLE
 19 ASSURANCE-OF-REEMPLOYMENT, THAT-THE-WRITTEN-STATEMENT-INFORM
 20 THE-EMPLOYER-THAT-HE-MAY-FILE-A-CLAIM-FOR-BENEFITS-AND-THAT
 21 THE-DETERMINATION-FOR-ELIGIBILITY-FOR-BENEFITS-IS-MADE-BY
 22 THE-DEPARTMENT-AND-NOT-BY-THE-EMPLOYER; AND

23 (D) IF-IT-IS-STATED-THAT-THE-INDIVIDUAL-HAS-REASONABLE
 24 ASSURANCE-OF-REEMPLOYMENT, THAT-THE-INDIVIDUAL-IS-ENTITLED
 25 TO-A-RETROACTIVE-PAYMENT-OF-BENEFITS-IF-HE;



1 ~~(i) IS NOT OFFERED AN OPPORTUNITY TO PERFORM THE~~
 2 ~~SERVICES FOR THE EDUCATIONAL INSTITUTION FOR THE SUBSEQUENT~~
 3 ~~ACADEMIC YEARS OR TERMS;~~
 4 ~~(ii) IS OTHERWISE ELIGIBLE AND FILED A CLAIM FOR EACH~~
 5 ~~WEEK BENEFITS ARE CLAIMED; AND~~
 6 ~~(iii) FILED A CLAIM FOR RETROACTIVE BENEFITS NO LATER~~
 7 ~~THAN 30 DAYS FOLLOWING THE COMMENCEMENT OF THE SUBSEQUENT~~
 8 ~~ACADEMIC YEAR OR TERM.~~

9 ~~(2) Benefits based on services in any other capacity~~
 10 ~~for an educational institution shall be denied to any~~
 11 ~~individual for any week which commences during a period~~
 12 ~~between 2 successive academic years or terms if the~~
 13 ~~individual performs such services in the first of such~~
 14 ~~academic years or terms and there is a reasonable assurance~~
 15 ~~that the individual will perform such services in the second~~
 16 ~~of such academic years or terms; if any individual is denied~~
 17 ~~benefits and was not offered an opportunity to perform such~~
 18 ~~service for the educational institution for the second of~~
 19 ~~such academic years or terms, such individual shall be~~
 20 ~~entitled to a retroactive payment of the benefits for each~~
 21 ~~week for which the individual filed a timely claim for~~
 22 ~~benefits and for which benefits were denied solely by reason~~
 23 ~~of the denial provided for in this section;~~

24 ~~(3)(2) Benefits based on services described in~~
 25 ~~subsections subsection (1) and (2) of this section shall~~

1 must be denied to any individual for any week which that
 2 commences during an established and customary vacation
 3 period or holiday recess if such the individual performs
 4 such the services in the period immediately before such the
 5 vacation period or holiday recess and there is reasonable
 6 assurance that such the individual will perform such the
 7 service in the period immediately following such the
 8 vacation period or holiday recess.

9 ~~(4)(3)~~ Benefits based on services described in
 10 subsections subsection (1) and ~~(2)~~ of this section to an
 11 individual who performed such the services for an
 12 educational institution while in the employ of an
 13 educational service agency shall must be denied as specified
 14 in subsections (1) and (2) and ~~(3)~~ of this section. The
 15 term

16 ~~(4) FOR THE PURPOSES OF THIS SECTION:~~

17 ~~(A) THE TERM~~ "educational service agency" means a
 18 governmental agency or governmental entity which that is
 19 established and operated exclusively for the purpose of
 20 providing such service to one or more educational
 21 institutions;

22 ~~(B) "REASONABLE ASSURANCE" INCLUDES BUT IS NOT LIMITED~~
 23 ~~TO AN OFFER OF EMPLOYMENT OR ASSIGNMENT MADE BY THE~~
 24 ~~EDUCATIONAL INSTITUTION IF THE OFFER OR ASSIGNMENT IS NOT~~
 25 ~~CONTINGENT ON ENROLLMENT, FUNDS, OR PROGRAM CHANGES; AN~~

1 INDIVIDUAL--WHO--HAS--BEEN--NOTIFIED--THAT--HE--WILL--BE--REPLACED
2 AND--DOES--NOT--HAVE--AN--OFFER--OF--EMPLOYMENT--OR--ASSIGNMENT--TO
3 PERFORM--SERVICES--FOR--AN--EDUCATIONAL--INSTITUTION--IS--NOT
4 CONSIDERED--TO--HAVE--REASONABLE--ASSURANCE."

5 **Section 2.** Section 20-9-806, MCA, is amended to read:
6 "20-9-806. School closure by declaration of emergency.
7 If a school is closed by reason of a declaration of
8 emergency by the governor;

9 (1) the pupil-instruction days lost during the closure
10 need not be rescheduled to meet the minimum requirement for
11 pupil-instruction days that a school district must conduct
12 during the school year in order to be entitled to full
13 annual equalization apportionment; and

14 (2) nonprofessional school employees must receive full
15 wages and benefits for the days not scheduled."

16 NEW SECTION. **Section 3. Applicability.** (1) [Section 1]
17 applies to claims for benefits that are made after [the
18 effective date of this act].

19 (2) [Section 2] applies retroactively, within the
20 meaning of 1-2-109, to emergency closures on or after
21 January 1, 1991.

22 NEW SECTION. **Section 4. Effective date.** [This act] is
23 effective on passage and approval.

-End-

HOUSE BILL NO. 141

INTRODUCED BY HARRINGTON, LYNCH, QUILICI, PAVLOVICH,
BROOKE, DAILY, MCCARTHY, DRISCOLL, MENAHAN, STIMATZ,
JACOBSON, D. BROWN

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an individual for any week of unemployment which that begins
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individual has a contract or ~~HAS-BEEN-PROVIDED-A-WRITTEN~~
~~STATEMENT-INDICATING-THE-FOLLOWING-TO-THE-INDIVIDUAL-NO~~
~~LATER-THAN-30-DAYS-BEFORE-THE-END-OF-THE-FIRST-OF-THE~~
~~ACADEMIC-YEARS-OR-TERMS;~~

~~(A)-WHETHER-THERE-IS-A~~ reasonable assurance of a
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capacity for any such THE educational institution for both
such the academic years or both such the terms;

~~(B)-WHETHER-IT-IS-STATED-THAT-THE-INDIVIDUAL-HAS-NO~~
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1 ~~{i}--IS--NOT--OFFERED--AN--OPPORTUNITY--TO--PERFORM--THE~~
2 ~~SERVICES--FOR--AN EDUCATIONAL INSTITUTION FOR THE SUBSEQUENT~~
3 ~~ACADEMIC YEARS OR TERMS;~~

4 ~~{ii}--IS--OTHERWISE--ELIGIBLE--AND--FILED--A--CLAIM--FOR--EACH~~
5 ~~WEEK--BENEFITS--ARE--CLAIMED;--AND~~

6 ~~{iii}--FILED--A--CLAIM--FOR--RETROACTIVE--BENEFITS--NO--LATER~~
7 ~~THAN--30--DAYS--FOLLOWING--THE--COMMENCEMENT--OF--THE--SUBSEQUENT~~
8 ~~ACADEMIC--YEAR--OR--TERM.~~

9 ~~{2}--Benefits--based--on--services--in--any--other--capacity~~
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14 ~~academic--years--or--terms--and--there--is--a--reasonable--assurance~~
15 ~~that--the--individual--will--perform--such--services--in--the--second~~
16 ~~of--such--academic--years--or--terms;--if--any--individual--is--denied~~
17 ~~benefits--and--was--not--offered--an--opportunity--to--perform--such~~
18 ~~service--for--the--educational--institution--for--the--second--of~~
19 ~~such--academic--years--or--terms;--such--individual--shall--be~~
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21 ~~institutions;~~

22 ~~{B}--"REASONABLE--ASSURANCE"--INCLUDES--BUT--IS--NOT--LIMITED~~
23 ~~TO--AN--OFFER--OF--EMPLOYMENT--OR--ASSIGNMENT--MADE--BY--THE~~
24 ~~EDUCATIONAL--INSTITUTION--IF--THE--OFFER--OR--ASSIGNMENT--IS--NOT~~
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20 meaning of 1-2-109, to emergency closures on or after
21 January 1, 1991.

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23 effective on passage and approval.

-End-

MAJORITY REPORT

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 1, 1991

MR. PRESIDENT:

We, the majority of the committee on Labor and Employment Relations having had under consideration House Bill No. 141 (third reading copy -- blue), respectfully report that House Bill No. 141 be amended and as so amended not be concurred in:

1. Page 5, line 16.
Following: line 15

Insert: "NEW SECTION. Section 3. Conflict of laws. If the United States secretary of labor finds a provision of [this act] to be in conflict with the Federal Unemployment Tax Act, then the provision of [this act] in conflict with the Federal Unemployment Tax Act is invalid."

Renumber: subsequent sections

Signed: *Gary Aklestad*
Gary Aklestad

Signed: *Chet Blaylock*
Chet Blaylock

Signed: *Gerry Devlin*
Gerry Devlin

Signed: *Tom Keating*
Tom Keating

Signed: *Dennis H. Nathe*
Dennis Nathe

LB 4/1/91
Amd. Coord.

SB 4/1 2:00
Sec. of Senate

MINORITY REPORT

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 1, 1991

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Renumber: subsequent sections

Signed: *J.D. Lynch*
J.D. Lynch

Signed: *Bob Pipinich*
Bob Pipinich

Signed: *Tom Towe*
Tom Towe

LB 4/1/91
Amd. Coord.

SB 4/1 2:00
Sec. of Senate

SENATE
HB 141