

1 House BILL NO. 204  
 2 INTRODUCED BY Steve HARR  
 3 Richard E. Manning Brady

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A WORK  
 5 PERIOD IN LIEU OF A WORKWEEK FOR EMPLOYEES IN THE  
 6 CONSTRUCTION INDUSTRY; TO EXEMPT CERTAIN CONSTRUCTION  
 7 INDUSTRY EMPLOYEES FROM A MAXIMUM 8-HOUR WORKDAY; TO DEFINE  
 8 "CONSTRUCTION INDUSTRY"; TO REQUIRE AN EMPLOYER IN THE  
 9 CONSTRUCTION INDUSTRY TO PAY OVERTIME COMPENSATION AFTER 8  
 10 HOURS IN A WORKDAY IF THE EMPLOYER OPERATES ON A SCHEDULE OF  
 11 5 DAYS OR MORE OR AFTER 10 HOURS IN A WORKDAY IF THE  
 12 EMPLOYER OPERATES ON A SCHEDULE OF 4 DAYS OR LESS; AND  
 13 AMENDING SECTIONS 39-3-402 AND 39-3-406, MCA."

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

16 NEW SECTION. Section 1. Construction industry -- work  
 17 period in lieu of workweek -- overtime compensation. (1) An  
 18 employer in the construction industry may establish a work  
 19 period other than that provided in 39-3-405 for determining  
 20 when an employee must be paid overtime compensation.

21 (2) An employee in the construction industry must be  
 22 compensated at a rate of not less than 1 1/2 times the  
 23 hourly rate:

24 (a) after 8 hours in a workday if the employer operates  
 25 on a schedule of 5 days or more; or

1 (b) after 10 hours in a workday if the employer  
 2 operates on a schedule of 4 days or less.

3 NEW SECTION. Section 2. Construction industry -- day's  
 4 work -- penalty. (1) For purposes of this section,  
 5 "construction industry" has the meaning provided in  
 6 39-3-402.

7 (2) A period of not more than 8 hours constitutes a  
 8 day's work in the construction industry except when  
 9 employers are operating under a work period provided in  
 10 [section 1] or in cases of emergencies in which life and  
 11 property are in imminent danger.

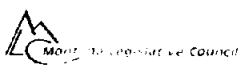
12 (3) A person, corporation, agent, manager, or employer  
 13 who violates this section is guilty of a misdemeanor and  
 14 upon conviction shall be punished by a fine of not less than  
 15 \$50 or more than \$500 or by imprisonment in the county jail  
 16 for not less than 30 days or more than 6 months, or both.

17 Section 3. Section 39-3-402, MCA, is amended to read:

18 "39-3-402. Definitions. As used in this part, the  
 19 following definitions apply:

20 (1) "Commissioner" means the commissioner of labor and  
 21 industry.

22 (2) "Construction industry" means an activity in  
 23 connection with the erection, repair, replacement,  
 24 renovation, installation, or demolition of a building,  
 25 highway, road, bridge, or structure.



-2- INTRODUCED BILL  
 HB 204

1       ~~{2}~~{3} "Employ" means to suffer or permit to work.

2       ~~{3}~~{4} "Employee" ~~includes--any~~ means an individual  
3 employed by an employer.

4       ~~{4}~~{5} "Farm or ranch" ~~shall-mean-any~~ means an endeavor  
5 primarily engaged in cultivating the soil or in connection  
6 with raising or harvesting any agricultural or horticultural  
7 commodity, including the raising, shearing, feeding, caring  
8 for, training, and management of livestock, bees, and  
9 poultry and fur-bearing animals and wildlife.

10       ~~{5}~~{6} "Farm worker" means any a person employed to do  
11 any a service performed on a farm or ranch.

12       ~~{6}~~{7} "Occupation" means any an occupation, service,  
13 trade, business, industry, or branch or group of industries  
14 or employment or class of employment in which employees are  
15 gainfully employed.

16       ~~{7}~~{8} "Wage" means compensation due to an employee by  
17 reason of his employment, payable in legal tender of the  
18 United States or check on banks convertible into cash on  
19 demand at full face value, subject to such an allowance as  
20 may be permitted by regulations of the commissioner under  
21 39-3-403. The term "wage" includes the reasonable cost to  
22 the employer of furnishing such the employee with board,  
23 lodging, or other facilities, if such board, lodging, or  
24 other facilities are customarily furnished by such an  
25 employer to his employees; provided, however, ~~that--in--no~~

1       ~~case-shall-such~~ the inclusion may not exceed an amount equal  
2 to 40% of the total wage paid by such the employer to such  
3 the employee. The term "wage" does not include the value of  
4 any tips received by an employee as a gratuity for service."

5       **Section 4.** Section 39-3-406, MCA, is amended to read:

6       "39-3-406. Exclusions. (1) The provisions of 39-3-404  
7 and 39-3-405 ~~shall do~~ do not apply with respect to:

8       (a) students participating in a distributive education  
9 program established under the auspices of an accredited  
10 educational agency;

11       (b) persons employed in private homes whose duties  
12 consist of menial chores, such as babysitting, mowing lawns,  
13 and cleaning sidewalks;

14       (c) persons employed directly by the head of a  
15 household to care for children dependent upon the head of  
16 the household;

17       (d) immediate members of the family of an employer or  
18 persons dependent upon an employer for half or more of their  
19 support in the customary sense of being a dependent;

20       (e) any persons not regular employees thereof of a  
21 nonprofit organization who voluntarily offer their services  
22 to a nonprofit organization on a fully or partially  
23 reimbursed basis;

24       (f) handicapped workers engaged in work which that is  
25 incidental to training or evaluation programs or whose

1 earning capacity is so severely impaired that they are  
2 unable to engage in competitive employment;

3 (g) apprentices or learners, who may be exempted by the  
4 commissioner for a period not to exceed 30 days of their  
5 employment;

6 (h) learners under the age of 18 who are employed as  
7 farm workers, provided that ~~such the~~ exclusion ~~shall~~ may not  
8 exceed a period of 180 days from their initial date of  
9 employment and further provided that during this exclusion  
10 period wages paid ~~such the~~ learners may not be less than 50%  
11 of the minimum wage rate established in this part;

12 (i) retired or semiretired persons performing part-time  
13 incidental work as a condition of their residence on a farm  
14 or ranch;

15 (j) any an individual employed in a bona fide  
16 executive, administrative, or professional capacity as these  
17 terms are defined and delimited by regulations of the  
18 commissioner;

19 (k) any an individual employed by the United States of  
20 America;

21 (l) resident managers employed in lodging  
22 establishments or personal care facilities who, under the  
23 terms of their employment, live in the establishment or  
24 facility.

25 (2) The provisions of 39-3-405 do not apply to:

1 (a) an employee with respect to whom the United States  
2 ~~Secretary~~ secretary of ~~Transportation~~ transportation has  
3 power to establish qualifications and maximum hours of  
4 service pursuant to the provisions of 49 U.S.C. 304;

5 (b) an employee of an employer subject to the  
6 provisions of part I of the Interstate Commerce Act;

7 (c) an individual employed as an outside buyer of  
8 poultry, eggs, cream, or milk, in their raw or natural  
9 state;

10 (d) an outside salesman paid on a commission or  
11 contract basis who is primarily employed in selling  
12 advertising for a newspaper;

13 (e) a salesman, partsman, or mechanic paid on a  
14 commission or contract basis and primarily engaged in  
15 selling or servicing automobiles, trucks, mobile homes,  
16 recreational vehicles, or farm implements if he is employed  
17 by a nonmanufacturing establishment primarily engaged in the  
18 business of selling ~~such the~~ vehicles or implements to  
19 ultimate purchasers;

20 (f) a salesman primarily engaged in selling trailers,  
21 boats, or aircraft if he is employed by a nonmanufacturing  
22 establishment primarily engaged in the business of selling  
23 trailers, boats, or aircraft to ultimate purchasers;

24 (g) a salesman paid on a commission or contract basis  
25 who is primarily engaged in selling advertising for a radio

1 or television station employer;

2 (h) an employee employed as a driver or driver's helper  
3 making local deliveries who is compensated for such  
4 employment on the basis of trip rates, or other delivery  
5 payment plan, if the commissioner finds that such the plan  
6 has the general purpose and effect of reducing hours worked  
7 by such the employees to or below the maximum workweek  
8 applicable to them under 39-3-405;

9 (i) an employee employed in agriculture or in  
10 connection with the operation or maintenance of ditches,  
11 canals, reservoirs, or waterways not owned or operated for  
12 profit and not operated on a sharecrop basis and which that  
13 are used exclusively for supply and storing of water for  
14 agricultural purposes;

15 (j) an employee with respect to his employment in  
16 agriculture by a farmer, notwithstanding other employment of  
17 such the employee in connection with livestock auction  
18 operations in which such the farmer is engaged as an adjunct  
19 to the raising of livestock, either on his own account or in  
20 conjunction with other farmers, if such the employee is:

21 (i) primarily employed during his workweek in  
22 agriculture by such the farmer; and

23 (ii) paid for his employment in connection with such the  
24 livestock auction operations at a wage rate not less than  
25 that prescribed by 39-3-404;

1 (k) an employee of an establishment commonly recognized  
2 as a country elevator, including an establishment which that  
3 sells products and services used in the operation of a farm,  
4 if no more than five employees are employed by the  
5 establishment;

6 (l) a driver employed by an employer engaged in the  
7 business of operating taxicabs;

8 (m) an employee who is employed with his spouse by a  
9 nonprofit educational institution to serve as the parents of  
10 children who are orphans or one of whose natural parents is  
11 deceased or who are enrolled in such the institution and  
12 reside in residential facilities of the institution so long  
13 as the children are in residence at the institution and so  
14 long as such the employee and his spouse reside in such the  
15 facilities and receive, without cost, board and lodging from  
16 the institution and are together compensated, on a cash  
17 basis, at an annual rate of not less than \$10,000;

18 (n) an employee employed in planting or tending trees;  
19 cruising, surveying, or felling timber; or transporting logs  
20 or other forestry products to a mill, processing plant,  
21 railroad, or other transportation terminal if the number of  
22 employees employed by his employer in such the forestry or  
23 lumbering operations does not exceed eight;

24 (o) an employee of a sheriff's department who is  
25 working under an established work period in lieu of a

1 workweek pursuant to 7-4-2509(1);

2 (p) an employee of a municipal or county government who  
3 is working under a work period not exceeding 40 hours in a  
4 7-day period established through a collective bargaining  
5 agreement when a collective bargaining unit represents the  
6 employee or by mutual agreement of the employer and employee  
7 where when no bargaining unit is recognized. Employment in  
8 excess of 40 hours in a 7-day, 40-hour work period must be  
9 compensated at a rate of not less than 1 1/2 times the  
10 hourly wage rate for the employee.

11 (q) an employee of a hospital or other establishment  
12 primarily engaged in the care of the sick, disabled, aged,  
13 or mentally ill or defective who is working under a work  
14 period not exceeding 80 hours in a 14-day period established  
15 through either a collective bargaining agreement when a  
16 collective bargaining unit represents the employee or by  
17 mutual agreement of the employer and employee where when no  
18 bargaining unit is recognized. Employment in excess of 8  
19 hours per day or 80 hours in a 14-day period must be  
20 compensated for at a rate of not less than 1 1/2 times the  
21 hourly wage rate for the employee.

22 (r) a firefighter who is working under a work period  
23 established in a collective bargaining agreement entered  
24 into between a public employer and a firefighters'  
25 organization or its exclusive representative;

1 (s) an officer or other employee of a police department  
2 in a city of the first or second class who is working under  
3 a work period established by the chief of police under  
4 7-32-4118;

5 (t) an employee of a department of public safety  
6 working under a work period established pursuant to  
7 7-32-115;

8 (u) an employee employed in the construction industry  
9 under a work schedule established pursuant to [section 1]."

10 NEW SECTION. Section 5. Codification instruction. (1)

11 [Section 1] is intended to be codified as an integral part  
12 of Title 39, chapter 3, part 4, and the provisions of Title  
13 39, chapter 3, part 4, apply to [section 1].

14 (2) [Section 2] is intended to be codified as an  
15 integral part of Title 39, chapter 4, part 1, and the  
16 provisions of Title 39, chapter 4, part 1, apply to [section  
17 2].

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

House BILL NO. 204

INTRODUCED BY

Steve HARR  
Richard E. Manning  
Brady

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A WORK PERIOD IN LIEU OF A WORKWEEK FOR EMPLOYEES IN THE CONSTRUCTION INDUSTRY; TO EXEMPT CERTAIN CONSTRUCTION INDUSTRY EMPLOYEES FROM A MAXIMUM 8-HOUR WORKDAY; TO DEFINE "CONSTRUCTION INDUSTRY"; TO REQUIRE AN EMPLOYER IN THE CONSTRUCTION INDUSTRY TO PAY OVERTIME COMPENSATION AFTER 8 HOURS IN A WORKDAY IF THE EMPLOYER OPERATES ON A SCHEDULE OF 5 DAYS OR MORE OR AFTER 10 HOURS IN A WORKDAY IF THE EMPLOYER OPERATES ON A SCHEDULE OF 4 DAYS OR LESS; AND AMENDING SECTIONS 39-3-402 AND 39-3-406, MCA."

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

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(2) An employee in the construction industry must be compensated at a rate of not less than 1 1/2 times the hourly rate:

(a) after 8 hours in a workday if the employer operates on a schedule of 5 days or more; or

(b) after 10 hours in a workday if the employer operates on a schedule of 4 days or less.

NEW SECTION. Section 2. Construction industry -- day's

work -- penalty. (1) For purposes of this section, "construction industry" has the meaning provided in 39-3-402.

(2) A period of not more than 8 hours constitutes a day's work in the construction industry except when employers are operating under a work period provided in [section 1] or in cases of emergencies in which life and property are in imminent danger.

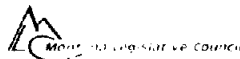
(3) A person, corporation, agent, manager, or employer who violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more than 6 months, or both.

Section 3. Section 39-3-402, MCA, is amended to read:

"39-3-402. Definitions. As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Construction industry" means an activity in connection with the erection, repair, replacement, renovation, installation, or demolition of a building, highway, road, bridge, or structure.



1       ~~(2)~~(3) "Employ" means to suffer or permit to work.

2       ~~(3)~~(4) "Employee" ~~includes--any~~ means an individual  
3 employed by an employer.

4       ~~(4)~~(5) "Farm or ranch" ~~shall-mean-any~~ means an endeavor  
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7 commodity, including the raising, shearing, feeding, caring  
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14 or employment or class of employment in which employees are  
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18 United States or check on banks convertible into cash on  
19 demand at full face value, subject to ~~such an~~ allowance as  
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21 39-3-403. The term "wage" includes the reasonable cost to  
22 the employer of furnishing ~~such the~~ employee with board,  
23 lodging, or other facilities, if ~~such~~ board, lodging, or  
24 other facilities are customarily furnished by ~~such an~~  
25 employer to his employees; ~~provided; however, that--in--no~~

1       ~~case-shall-such~~ the inclusion may not exceed an amount equal  
2 to 40% of the total wage paid by ~~such the~~ employer to ~~such~~  
3 ~~the~~ employee. The term "wage" does not include the value of  
4 any tips received by an employee as a gratuity for service."

5       **Section 4.** Section 39-3-406, MCA, is amended to read:  
6       "39-3-406. Exclusions. (1) The provisions of 39-3-404  
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9 program established under the auspices of an accredited  
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11       (b) persons employed in private homes whose duties  
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13 and cleaning sidewalks;  
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15 household to care for children dependent upon the head of  
16 the household;  
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19 support in the customary sense of being a dependent;  
20       (e) ~~any~~ persons not regular employees ~~thereof~~ of a  
21 nonprofit organization who voluntarily offer their services  
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25 incidental to training or evaluation programs or whose

1 earning capacity is so severely impaired that they are  
2 unable to engage in competitive employment;

3 (g) apprentices or learners, who may be exempted by the  
4 commissioner for a period not to exceed 30 days of their  
5 employment;

6 (h) learners under the age of 18 who are employed as  
7 farm workers, provided that such the exclusion ~~shall~~ may not  
8 exceed a period of 180 days from their initial date of  
9 employment and further provided that during this exclusion  
10 period wages paid such the learners may not be less than 50%  
11 of the minimum wage rate established in this part;

12 (i) retired or semiretired persons performing part-time  
13 incidental work as a condition of their residence on a farm  
14 or ranch;

15 (j) ~~any~~ an individual employed in a bona fide  
16 executive, administrative, or professional capacity as these  
17 terms are defined and delimited by regulations of the  
18 commissioner;

19 (k) ~~any~~ an individual employed by the United States of  
20 America;

21 (l) resident managers employed in lodging  
22 establishments or personal care facilities who, under the  
23 terms of their employment, live in the establishment or  
24 facility.

25 (2) The provisions of 39-3-405 do not apply to:

1 (a) an employee with respect to whom the United States  
2 ~~Secretary~~ secretary of ~~Transportation~~ transportation has  
3 power to establish qualifications and maximum hours of  
4 service pursuant to the provisions of 49 U.S.C. 304;

5 (b) an employee of an employer subject to the  
6 provisions of part I of the Interstate Commerce Act;

7 (c) an individual employed as an outside buyer of  
8 poultry, eggs, cream, or milk, in their raw or natural  
9 state;

10 (d) an outside salesman paid on a commission or  
11 contract basis who is primarily employed in selling  
12 advertising for a newspaper;

13 (e) a salesman, partsman, or mechanic paid on a  
14 commission or contract basis and primarily engaged in  
15 selling or servicing automobiles, trucks, mobile homes,  
16 recreational vehicles, or farm implements if he is employed  
17 by a nonmanufacturing establishment primarily engaged in the  
18 business of selling such the vehicles or implements to  
19 ultimate purchasers;

20 (f) a salesman primarily engaged in selling trailers,  
21 boats, or aircraft if he is employed by a nonmanufacturing  
22 establishment primarily engaged in the business of selling  
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6 has the general purpose and effect of reducing hours worked  
7 by such the employees to or below the maximum workweek  
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10 connection with the operation or maintenance of ditches,  
11 canals, reservoirs, or waterways not owned or operated for  
12 profit and not operated on a sharecrop basis and which that  
13 are used exclusively for supply and storing of water for  
14 agricultural purposes;

15 (j) an employee with respect to his employment in  
16 agriculture by a farmer, notwithstanding other employment of  
17 such the employee in connection with livestock auction  
18 operations in which such the farmer is engaged as an adjunct  
19 to the raising of livestock, either on his own account or in  
20 conjunction with other farmers, if such the employee is:

21 (i) primarily employed during his workweek in  
22 agriculture by such the farmer; and

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11 deceased or who are enrolled in such the institution and  
12 reside in residential facilities of the institution so long  
13 as the children are in residence at the institution and so  
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15 facilities and receive, without cost, board and lodging from  
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17 basis, at an annual rate of not less than \$10,000;

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10 NEW SECTION. Section 5. Codification instruction. (1)

11 [Section 1] is intended to be codified as an integral part  
12 of Title 39, chapter 3, part 4, and the provisions of Title  
13 39, chapter 3, part 4, apply to [section 1].

14 (2) [Section 2] is intended to be codified as an  
15 integral part of Title 39, chapter 4, part 1, and the  
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17 2].

-End-

*House* BILL NO. *204*

INTRODUCED BY *Steve HARP*  
*Richard E. Manning* *Andy*

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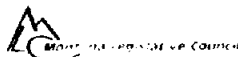
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13 who violates this section is guilty of a misdemeanor and  
14 upon conviction shall be punished by a fine of not less than  
15 \$50 or more than \$500 or by imprisonment in the county jail  
16 for not less than 30 days or more than 6 months, or both.

17 Section 3. Section 39-3-402, MCA, is amended to read:  
18 "39-3-402. Definitions. As used in this part, the  
19 following definitions apply:

20 (1) "Commissioner" means the commissioner of labor and  
21 industry.

22 (2) "Construction industry" means an activity in  
23 connection with the erection, repair, replacement,  
24 renovation, installation, or demolition of a building,  
25 highway, road, bridge, or structure.



1       ~~{2}~~(3) "Employ" means to suffer or permit to work.

2       ~~{3}~~(4) "Employee" ~~includes--any~~ means an individual  
3 employed by an employer.

4       ~~{4}~~(5) "Farm or ranch" ~~shall-mean-any~~ means an endeavor  
5 primarily engaged in cultivating the soil or in connection  
6 with raising or harvesting any agricultural or horticultural  
7 commodity, including the raising, shearing, feeding, caring  
8 for, training, and management of livestock, bees, and  
9 poultry and fur-bearing animals and wildlife.

10       ~~{5}~~(6) "Farm worker" means any a person employed to do  
11 any a service performed on a farm or ranch.

12       ~~{6}~~(7) "Occupation" means any an occupation, service,  
13 trade, business, industry, or branch or group of industries  
14 or employment or class of employment in which employees are  
15 gainfully employed.

16       ~~{7}~~(8) "Wage" means compensation due to an employee by  
17 reason of his employment, payable in legal tender of the  
18 United States or check on banks convertible into cash on  
19 demand at full face value, subject to such an allowance as  
20 may be permitted by regulations of the commissioner under  
21 39-3-403. The term "wage" includes the reasonable cost to  
22 the employer of furnishing such the employee with board,  
23 lodging, or other facilities, if such board, lodging, or  
24 other facilities are customarily furnished by such an  
25 employer to his employees; provided; however, ~~that--in--no~~

1       ~~case-shall-such~~ the inclusion may not exceed an amount equal  
2 to 40% of the total wage paid by such the employer to such  
3 the employee. The term "wage" does not include the value of  
4 any tips received by an employee as a gratuity for service."

5       **Section 4.** Section 39-3-406, MCA, is amended to read:

6       "39-3-406. Exclusions. (1) The provisions of 39-3-404  
7 and 39-3-405 ~~shall do~~ do not apply with respect to:

8       (a) students participating in a distributive education  
9 program established under the auspices of an accredited  
10 educational agency;

11       (b) persons employed in private homes whose duties  
12 consist of menial chores, such as babysitting, mowing lawns,  
13 and cleaning sidewalks;

14       (c) persons employed directly by the head of a  
15 household to care for children dependent upon the head of  
16 the household;

17       (d) immediate members of the family of an employer or  
18 persons dependent upon an employer for half or more of their  
19 support in the customary sense of being a dependent;

20       (e) any persons not regular employees thereof of a  
21 nonprofit organization who voluntarily offer their services  
22 to a nonprofit organization on a fully or partially  
23 reimbursed basis;

24       (f) handicapped workers engaged in work which that is  
25 incidental to training or evaluation programs or whose

1 earning capacity is so severely impaired that they are  
2 unable to engage in competitive employment;

3 (g) apprentices or learners, who may be exempted by the  
4 commissioner for a period not to exceed 30 days of their  
5 employment;

6 (h) learners under the age of 18 who are employed as  
7 farm workers, provided that such the exclusion ~~shall~~ may not  
8 exceed a period of 180 days from their initial date of  
9 employment and further provided that during this exclusion  
10 period wages paid such the learners may not be less than 50%  
11 of the minimum wage rate established in this part;

12 (i) retired or semiretired persons performing part-time  
13 incidental work as a condition of their residence on a farm  
14 or ranch;

15 (j) any an individual employed in a bona fide  
16 executive, administrative, or professional capacity as these  
17 terms are defined and delimited by regulations of the  
18 commissioner;

19 (k) any an individual employed by the United States of  
20 America;

21 (l) resident managers employed in lodging  
22 establishments or personal care facilities who, under the  
23 terms of their employment, live in the establishment or  
24 facility.

25 (2) The provisions of 39-3-405 do not apply to:

1 (a) an employee with respect to whom the United States  
2 Secretary secretary of Transportation transportation has  
3 power to establish qualifications and maximum hours of  
4 service pursuant to the provisions of 49 U.S.C. 304;

5 (b) an employee of an employer subject to the  
6 provisions of part I of the Interstate Commerce Act;

7 (c) an individual employed as an outside buyer of  
8 poultry, eggs, cream, or milk, in their raw or natural  
9 state;

10 (d) an outside salesman paid on a commission or  
11 contract basis who is primarily employed in selling  
12 advertising for a newspaper;

13 (e) a salesman, partsman, or mechanic paid on a  
14 commission or contract basis and primarily engaged in  
15 selling or servicing automobiles, trucks, mobile homes,  
16 recreational vehicles, or farm implements if he is employed  
17 by a nonmanufacturing establishment primarily engaged in the  
18 business of selling such the vehicles or implements to  
19 ultimate purchasers;

20 (f) a salesman primarily engaged in selling trailers,  
21 boats, or aircraft if he is employed by a nonmanufacturing  
22 establishment primarily engaged in the business of selling  
23 trailers, boats, or aircraft to ultimate purchasers;

24 (g) a salesman paid on a commission or contract basis  
25 who is primarily engaged in selling advertising for a radio

1 or television station employer;

2 (h) an employee employed as a driver or driver's helper  
3 making local deliveries who is compensated for such  
4 employment on the basis of trip rates, or other delivery  
5 payment plan, if the commissioner finds that such the plan  
6 has the general purpose and effect of reducing hours worked  
7 by such the employee: to or below the maximum workweek  
8 applicable to them under 39-3-405;

9 (i) an employee employed in agriculture or in  
10 connection with the operation or maintenance of ditches,  
11 canals, reservoirs, or waterways not owned or operated for  
12 profit and not operated on a sharecrop basis and which that  
13 are used exclusively for supply and storing of water for  
14 agricultural purposes;

15 (j) an employee with respect to his employment in  
16 agriculture by a farmer, notwithstanding other employment of  
17 such the employee in connection with livestock auction  
18 operations in which such the farmer is engaged as an adjunct  
19 to the raising of livestock, either on his own account or in  
20 conjunction with other farmers, if such the employee is:

21 (i) primarily employed during his workweek in  
22 agriculture by such the farmer; and

23 (ii) paid for his employment in connection with such the  
24 livestock auction operations at a wage rate not less than  
25 that prescribed by 39-3-404;

1 (k) an employee of an establishment commonly recognized  
2 as a country elevator, including an establishment which that  
3 sells products and services used in the operation of a farm,  
4 if no more than five employees are employed by the  
5 establishment;

6 (l) a driver employed by an employer engaged in the  
7 business of operating taxicabs;

8 (m) an employee who is employed with his spouse by a  
9 nonprofit educational institution to serve as the parents of  
10 children who are orphans or one of whose natural parents is  
11 deceased or who are enrolled in such the institution and  
12 reside in residential facilities of the institution so long  
13 as the children are in residence at the institution and so  
14 long as such the employee and his spouse reside in such the  
15 facilities and receive, without cost, board and lodging from  
16 the institution and are together compensated, on a cash  
17 basis, at an annual rate of not less than \$10,000;

18 (n) an employee employed in planting or tending trees;  
19 cruising, surveying, or felling timber; or transporting logs  
20 or other forestry products to a mill, processing plant,  
21 railroad, or other transportation terminal if the number of  
22 employees employed by his employer in such the forestry or  
23 lumbering operations does not exceed eight;

24 (o) an employee of a sheriff's department who is  
25 working under an established work period in lieu of a

1 workweek pursuant to 7-4-2509(1);

2 (p) an employee of a municipal or county government who  
3 is working under a work period not exceeding 40 hours in a  
4 7-day period established through a collective bargaining  
5 agreement when a collective bargaining unit represents the  
6 employee or by mutual agreement of the employer and employee  
7 where when no bargaining unit is recognized. Employment in  
8 excess of 40 hours in a 7-day, 40-hour work period must be  
9 compensated at a rate of not less than 1 1/2 times the  
10 hourly wage rate for the employee.

11 (q) an employee of a hospital or other establishment  
12 primarily engaged in the care of the sick, disabled, aged,  
13 or mentally ill or defective who is working under a work  
14 period not exceeding 80 hours in a 14-day period established  
15 through either a collective bargaining agreement when a  
16 collective bargaining unit represents the employee or by  
17 mutual agreement of the employer and employee where when no  
18 bargaining unit is recognized. Employment in excess of 8  
19 hours per day or 80 hours in a 14-day period must be  
20 compensated for at a rate of not less than 1 1/2 times the  
21 hourly wage rate for the employee.

22 (r) a firefighter who is working under a work period  
23 established in a collective bargaining agreement entered  
24 into between a public employer and a firefighters'  
25 organization or its exclusive representative;

1 (s) an officer or other employee of a police department  
2 in a city of the first or second class who is working under  
3 a work period established by the chief of police under  
4 7-32-4118;

5 (t) an employee of a department of public safety  
6 working under a work period established pursuant to  
7 7-32-115;

8 (u) an employee employed in the construction industry  
9 under a work schedule established pursuant to [section 1]."

10 NEW SECTION. Section 5. Codification instruction. (1)  
11 [Section 1] is intended to be codified as an integral part  
12 of Title 39, chapter 3, part 4, and the provisions of Title  
13 39, chapter 3, part 4, apply to [section 1].

14 (2) [Section 2] is intended to be codified as an  
15 integral part of Title 39, chapter 4, part 1, and the  
16 provisions of Title 39, chapter 4, part 1, apply to [section  
17 2].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 2, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 204 (third reading copy -- blue), respectfully report that House Bill No. 204 be amended and as so amended be concurred in:

1. Title, lines 12 and 13.

Following: ";" on line 12

Strike: "AND"

Following: "MCA" on line 13

Insert: "; AND PROVIDING AN APPLICABILITY PROVISION"

2. Page 2, lines 22 through 25.

Following: "means"

Strike: remainder of line 22 through "structure" on line 25

Insert: "the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site"

3. Page 10.

Following: line 17

Insert: "NEW SECTION. Section 6. Coordination instruction. The definition of "construction industry" in [section 3(2) of this act] is intended to coordinate with the definitions of "construction industry" in House Bills No. 187 and 342.

NEW SECTION. Section 7. Applicability. [This act] does not apply to bids for construction projects let before October 1, 1991."

Signed: 

Thomas E. Towe, Vice Chairman

 4-2-91  
Ad. Coord.

SB 4-3 10:50  
Sec. of Senate

SENATE  
HB 204



SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 2, 1991 1:34 pm

Mr. Chairman: I move to amend House Bill No. 204 (third reading copy -- blue) as follows:

1. Page 2, line 3.

Following: line 2

Insert: "(3)(a) In the case of either a 4-day workweek or a 5-day workweek, workdays in which the normally scheduled work is not performed because of inclement weather may not be counted as part of the workweek for overtime purposes. In such cases, the employer may schedule additional workdays to make up for workdays missed because of inclement weather.

(b) In the case of either a 4-day workweek or a 5-day workweek, when work is canceled for part of a workday because of inclement weather, the employer may schedule additional workdays to make up the time lost due to inclement weather. In such cases, the total of hours worked on each partial workday must be added to the total of hours worked on each makeup workday for overtime purposes."

ADOPT

REJECT

Signed: \_\_\_\_\_

Senator Harp

*MA* 4-2-91  
Add. Coord.

*SB* 4-2-91 2:50  
Sec. of Senate

SENATE  
HB 204