

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
52nd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By **CHAIR CAROLYN SQUIRES** on March 15, 1991, at  
3:00 p.m.

**ROLL CALL**

**Members Present:**

Carolyn Squires, Chair (D)  
Tom Kilpatrick, Vice-Chairman (D)  
Gary Beck (D)  
Steve Benedict (R)  
Vicki Cocchiarella (D)  
Ed Dolezal (D)  
Jerry Driscoll (D)  
Russell Fagg (R)  
H.S. "Sonny" Hanson (R)  
Royal Johnson (R)  
Bob Pavlovich (D)  
Jim Southworth (D)  
Fred Thomas (R)  
Dave Wanzenried (D)  
Tim Whalen (D)

**Members Excused:**

Mark O'Keefe (D)

**Members Absent:**

David Hoffman (R)  
Thomas Lee (R)

**Staff Present:** Eddy McClure, Legislative Council  
Jennifer Thompson, Committee Secretary

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

**HEARING ON SB 349**

**Presentation and Opening Statement by Sponsor:**

**SEN. JOHN HARP, Senate District 4, Kalispell,** said he was representing the injured worker. SB 349 is an act to regulate attorney fees in Workers' Compensation matters; providing for regulation of attorney fees by the Department of Labor. The bill deals with the defense side and the claimant's side. The dollar amount is \$90 per hour. There was concern from the opponents that access to attorneys for low-income people was being limited.

Section 5 was an additional section provided, which was amended on the Senate Floor. This does not restrict a claimant to enter into a contingency basis. The injured worker should have the ability to attain an attorney at a reasonable rate. There is a need to control attorney's fees. He presented a copy of Gary Wilson's testimony, who had problems with his attorney and his Workers' Compensation case. **EXHIBIT 1.** Attorneys in Workers' Compensation cases hardly ever see the injured worker. Normally, a paralegal or a secretary works through the claims. This bill will make attorneys accountable for their time spent in the cases. The opponents will say that SB 315 of the 1987 Session has cured all Workers' Compensation problems, and there are no longer lump-sum settlements. He presented a handout. **EXHIBIT 2.** The Great Falls Tribune printed a list of the top 15 attorneys' fees from Workers' Compensation. The top attorney earned over \$800,000 on 99 cases. He referred to Page 3 of the handout. There is something wrong with the process when there are attorneys with those rates. Many times there is no litigation in Workers' Compensation cases. There are four different levels: 350 to 400 cases are taken care of at a mediation board, 120 to 140 cases are heard before the Department of Labor, 450 to 500 cases are heard before the Workers' Compensation judge, and 30 to 40 are heard before the Supreme Court. Many times the cases never go to court. Very few hours are spent on the cases. Opponents will say that because of SB 315, this bill isn't needed. The Ingram Decision threw out SB 315 which dealt with lump-sum settlements and the ability to reduce costs in litigation. Old law, prior to SB 315 of 1987, dealt with how injured workers would receive funds. It dealt with lump-sum settlements. SB 315 gave the insurer and the injured worker the ability to agree to a settlement, and cases would be settled in a shorter period of time if there were no disputes. Both sides couldn't agree. Since then, that area of SB 315 has been stated by the State Supreme Court as unconstitutional. If a worker hires an attorney because he hasn't been able to receive benefits from an injury two years ago, the attorney can reach back to the date of injury for compensation. Many times the attorney had no interest in the case prior to the time the injured worker retained him. One of the preambles of SB 315 was that injured workers wouldn't have to rely so heavily on attorneys. Currently, there are eight other states that regulate attorney fees.

#### Proponents' Testimony:

**SEN. RICHARD PINSONEAULT** said Workers' Compensation was never intended to fatten the lawyer's bankroll. There are some fine attorneys in Montana who do an excellent job. There is an amendment that allows the claimant to proceed under the law that currently exists. Putting a cap on attorneys' fees isn't that bad. If it doesn't work it can be removed the next session. Everyone is frustrated with the Workers' Compensation system.

**Merle Isgett, Policy Vice President, National Federation of Paralegal Associations, sent written testimony. EXHIBIT 3**

**Opponents' Testimony:**

**Michael Sherwood, Montana Trial Lawyers' Association, Missoula,** said SB 349 will limit the ability of the injured worker to hire an attorney. He stated he doesn't handle Workers' Compensation cases but handles personal injury cases. If an injured party goes to an attorney with no money, the attorney can take the case on a contingency fee. The attorney can make up to 33 percent, which is the general standard depending on whether the case is settled early or not. The contingency fee allows an attorney to take the case where he may lose and make nothing, but he may win the next case and will make \$200-300 per hour. This allows him to represent a person who may not have an absolutely winnable settlement. There is a Section that allows the attorney to charge a contingency fee, but it doesn't allow the attorney to recover more than \$90 per hour. The contingency fee in the bill doesn't work. If an injured worker tries to attain a Workers' Compensation attorney without any money, the attorney will say he will represent the claimant with the requirement of money up front. The claimants won't be able to hire attorneys.

**Mark Guenther, Attorney, Bozeman,** said if he got \$90 per hour from Workers' Compensation claimants, he wouldn't be at the hearing. When an attorney represents a claimant on a contingency-fee basis, he gets paid when he wins and doesn't get paid if he loses. It takes money to finance a case that is litigated. The law is complex. It is a battle of expert witnesses, including doctors, vocational rehabilitation experts, and employment experts. If a case goes to trial, the out-of-pocket costs will run from \$2,000 to \$5,000. It is the claimant's attorney who finances and funds that case. That injured worker who is laid off does not have the resources to finance the case. He doesn't employ a paralegal, and he returns phone calls. The attorney's representation of a client does not end when the settlement comes through and the money is so-called divided. In every accepted liability case in Montana, medical files remain open. Many years after a claim is settled there may be a dispute between the insurer and the claimant as to whether a medical procedure or expenditure is reasonable. The attorney becomes involved and is not compensated. Without the contingency option, Workers' Compensation claimants would not have the resources to retain counsel.

**Judy Stringer, laborer, Belgrade,** said she was a Workers' Compensation claimant and opposed the \$90 cap because she wouldn't have been able to afford up-front money in order to retain a lawyer. She could go to her lawyer anytime she needed him, and he wouldn't charge her another \$90 to see him after her case was closed.

**Bill Erickson, truck driver,** said he was refused benefits after being injured in 1987. After three months of struggling, he finally received benefits with the help of his attorney. His attorney charged only 20 percent.

**Jan Van Riper, Attorney, Helena,** said the bill on its face probably looks good because who can quarrel with limiting attorney fees to \$90 per hour in the Workers' Compensation arena. The problem with applying that in the claimants arena is that attorneys cannot afford to charge \$90 per hour on a contingency-fee basis. If the attorney would get paid \$90 per hour on every case, that would be fine and he could probably operate for less than \$90 per hour. A claimant's attorney can only operate on a contingency-fee basis because the injured worker cannot afford \$90 per hour out of their pockets. In previous testimony, Sen. Harp indicated that often attorneys don't even see injured workers. She sees injured workers all day, and it is very grim. It is great when all a claimant wants her to do is settle a case for \$100,000 where she will make 20 percent, but that doesn't happen very often. Often people are not getting medical bills paid and are not getting compensation pay that may be only \$50 per week. "You take those cases because they need help, and you are not going to get paid any money in those cases." If SB 349 is passed, an attorney would not be able to afford to take those cases. It's the other cases where an attorney would make 20 percent of \$90-100,000 that allows him to take care of many people who need the help and can't afford to pay for it. She was one of the attorneys on the list of the "big fifteen." In 1990, she made a considerable amount of that money on old-law cases, which are done now. HB 2, which was passed in the Special Session, allowed the State Compensation Insurance Fund to "lump out" these old-law cases. There was a tremendous amount of settlement activity. The major amendments to the Workers' Compensation Act and what will occur this session should be left to work themselves out before more is done and the injured workers' rights to attorneys are taken away.

**Mike Sand, Attorney, Bozeman,** said he represents injured workers, but it isn't a large part of his practice. This bill has been brought forward because there are a few attorneys that have made a substantial amount of money from Workers' Compensation. There are many injured workers in Montana. This bill is attempting to do away with the percentage contingency fee. It has been proven to work well within the system. The Department of Labor and the Workers Compensation Court regulate attorney fees. The Supreme Court has the authority to regulate attorney fees. The percentage contingency fee is the injured worker's key to the courthouse. The bill limits attorney fees to a maximum of \$90 per hour whether an attorney represents an injured worker, an employer, or an insurance company. The employer's attorney and the insurance company's attorney get paid win or lose. The claimant's attorney gets paid only when he wins. The bill is discriminatory against the injured worker. It limits access to legal services.

**Norm Grosfield, Attorney, Helena,** said he represents claimants and defendants. Attorney fees have been regulated in Montana on the claimants side since about 1975 with limited complaints. Often times fees are adjusted downward from the 20 percent maximum, which is a custom in his office depending on the amount of work put into it and is a custom of many claimants' attorneys throughout Montana. There are certain levels set forth in regulations now, but that doesn't mean that the attorney charges those figures. Most claimants' attorneys are very fair, do a good job, and are needed. Under SB 349, claimants will not have access to attorneys.

**John Alke, Attorney, Montana Defense Trial Lawyers' Association,** said both the members of the association and his firm don't do contingent fee work in this area. They represent the employers and insurers. There is a problem in the justice system, including the area of Workers' Compensation. The bill is not addressing the real problem. How much the attorneys are paid by their clients is not the problem, particularly when the client enters into that agreement in a completely willing fashion. It is substantive rules of liability that are the problem, and this bill does not address that. From a defense standpoint, \$90 isn't too bad right now when most of the work is done for less, but once it is in statute, it will be forever.

**Scott Kauffman, injured worker,** said he was injured in January, 1989. He was getting nowhere with Workers' Compensation. He hired a lawyer on a contingency basis, which was the only way he could afford one. Nothing happened until he obtained a lawyer, who helped him through all the rules, regulations, and legalities. Contingency is for the working people because they can't afford anything else.

**Don Judge, Executive Secretary, AFL-CIO,** said Sen. Harp is trying to address a problem that exists with a few rotten apples in the barrel. In doing so, he is attempting to throw away the whole barrel. No injured workers have appeared on behalf of this bill. Attorneys shouldn't be "ripping off" injured workers. In 1985 and 1987 the law was supposed to have been changed to make it easier for the injured worker to obtain benefits. Apparently, that is not the case. Under HB 803 an attorney won't accept marginal cases because if he loses the case, he won't get paid, and he will let the worker go on his own. The AFL-CIO doesn't like the current system, but this bill doesn't solve the problem.

**Allen Chronister, State Bar of Montana,** said 99 percent of what has been heard pertains to one sentence in the bill, which limits the fees to \$90 per hour. There are many other provisions in the bill which expand and amplify the existing law concerning the factors that the Division or the court can consider when it is evaluating an attorney fee in a Workers' Compensation case. When it is coupled with the \$90 per hour, there is the problem. The figure shouldn't be carved into stone. Some people make much more than \$90 per hour, and some make less. If this bill is

passed, then in future sessions people will want to amend it up or down because its too high or low. The people who regulate the fees have enough factors to adjust the fees to set each individual case.

Questions From Committee Members:

REP. BENEDICT asked Ms. Van Riper if she had documentation on the billable hours of her 22 cases that were in the article and what it figured out to be per hour. Ms. Van Riper said she didn't have documentation. Since they were contingency fee cases, she didn't keep track of the hours.

REP. BENEDICT asked Mr. Sherwood if there was a survey to determine the average billable hourly rate among the trial lawyers considering there are different types of litigation with different rates. Mr. Sherwood said attorneys that do Workers' Compensation cases have almost exclusively plaintiff practices that include personal injury and products liability cases. They don't bill per hour, so they don't keep track of their hours.

REP. BENEDICT said he wasn't trying to limit it to Workers' Compensation, but civil cases of any kind or any type of litigation. Mr. Sherwood said he billed by the hour. In Missoula, attorneys that bill by the hour bill somewhere between \$80 to \$140 depending on who is paying them and the type of work. REP. BENEDICT said if someone went to an attorney for any kind of case, what is the average rate if it wasn't on a contingency fee basis. Is \$90 a fair average? Mr. Sherwood said there isn't an answer; it depends upon the case.

REP. SOUTHWORTH asked Mr. Judge why an attorney is needed; isn't there another part to this bill that isn't being discussed. Mr. Judge said the law shouldn't be so complex that an attorney is needed. Many workers don't have unions who may be able to assist in Workers' Compensation. When benefits are denied, workers go to attorneys. It could also be a question about the level of benefits, medical services, or whether the worker is recovered and able to return to work.

REP. DRISCOLL asked Ms. Van Riper if contingency fees were limited to 20 percent. Ms. Van Riper said yes. REP. DRISCOLL asked if there was an uncontested case and the insurance company offered \$40,000, what would the fee be. Ms. Van Riper said an attorney would be entitled to \$8,000. REP. DRISCOLL said the worker doesn't get \$40,000 because the money gets discounted to present value. Ms. Van Riper said right. She assumed that when he said \$40,000, it was discounted to the present value figure. REP. DRISCOLL asked if most plaintiff attorneys take their percent off the actual dollar amount on the check or from the offer which is not discounted. Ms. Van Riper said her guess is that most attorneys will take percentage off the actual. She said she was confused with the use of the word "offer." Usually, there is a pre-discount figure. The offer will be at the discount. "If you are suggesting that an attorney takes a 20

percent of the pre-discounted figure, the recourse is to go to the Department of Labor and Industry and contest the fee that was taken because it is wrong."

REP. HANSON said to Ms. Van Riper if 20 percent was taken from the amount offered, then the expenses are taken from what is left. For example, \$40,000 was an offered amount. The attorney's fee was \$8,000. The expenses of \$5,000 would be deducted from \$32,000. The 20 percent does not cover the expenses. Ms. Van Riper said that is true, but most Workers' Compensation cases don't have \$5,000 worth of expenses. The expenses might be that high if the case goes to trial because of depositions and other costs. An average cost of expenses on a case she has settled is between \$100 to \$300.

REP. FAGG asked Mr. Chronister if the State Bar of Montana would support the bill if there was an adjustment on the \$90 per hour, so it would increase every year with the consumer price index. Mr. Chronister said he didn't think so. It hasn't been discussed with the executive committee. There is a wide range of fees that lawyers charge. The average rate of his office is \$85, but he just recently handled a case for \$45 per hour. The \$90 is not an unfair rate. If an attorney could get paid \$90 per hour for each hour he puts into a case there would be any complaints. That is not the way it works. REP. BECK asked Mr. Grosfield how he received most of his clients. Mr. Grosfield said he doesn't advertise; he guessed he received clients through other satisfied clients or attorneys who do not handle Workers' Compensation. REP. BECK asked if he had clients throughout Montana. Mr. Grosfield said he had clients in several different cities. REP. BECK asked if Workers' Compensation was the only line of work he did in the legal profession. Mr. Grosfield said no. REP. BENEDICT asked Mr. Grosfield if there are finders fees for referring Workers' Compensation cases by other attorneys. Mr. Grosfield said generally when an attorney refers somebody to him, some of the preparation work has already been done and the attorney can be paid part of the fee. If the attorney just refers the case, then there is generally no fee due.

REP. JOHNSON asked Mr. Sherwood to comment about Section 5. Mr. Sherwood said Section 5 purports to say there is a contingency fee. There isn't a contingency fee because the bill says in no event will an attorney get more than \$90 per hour. There are some abuses, but this bill doesn't solve the problems. The system is fixing itself. The concern is about John Bothe who made \$800,000. There was a "window of opportunity" to settle many old-law cases. That got many old-law cases out of the system when more money could be received. In the next year the top money makers will not be making near \$800,000, because there isn't that window of opportunity. Even with the Ingram Decision, there aren't many old-law cases. To solve the problems would be to let HB 2 and HB 315 work.

REP. BECK said he was familiar with the abuses in the 1970s in Workers' Compensation when other workmen were soliciting business for attorneys, law officers were investigating and referring cases, and supervisors in the institutions were referring cases, etc. He asked SEN. HARP if those acts were still occurring. SEN. HARP said there is integration with attorneys in western Montana. He knows of attorneys who not only have law firms but have wrecking companies where they will pick up an injured driver in a car.

REP. PAVLOVICH said the window of opportunity is closed and asked SEN. HARP if he would object if a sunset clause be placed on the bill, so it could be tried for two years. SEN. HARP said the window of opportunity was the blue-light special where HB 2 was to settle all cases. In fact, some have been settled. The problem is that Mr. Sherwood needs to look at the Supreme Court Decision on the Ingram Decision. He contends that the old law, which had the lump-sum settlements and the large payments, is in the past. Because of the Ingram Decision, everything that was acted upon in the 1987 Session was thrown out. The attorney fees will not go down but will go up because they have found a loophole. In the Ingram Decision, Mr. Bothe was a friend of the Court.

#### Closing by Sponsor:

SEN. HARP said 80 percent of every claim that comes before Workers' Compensation is accepted. Very seldom is an injured worker denied a claim. A lawyer is important when there is a dispute. Then a contingency is entered into based on this bill or \$90 per hour. Bob Robertson, who worked in the Workers' Compensation Division, was trying to regulate attorney fees. The Association of Claimant Attorneys Inc. filed suit against the Workers' Compensation Division. The case went before the Eighth Judicial Court in Gallatin County, and it was thrown out. The decision of the Court was there is no regulation of attorney fees. It is a separation of powers. It is the responsibility of the Legislature to put into statute any regulations on attorney fees. SB 349 attempts to put a regulation into statute. The majority of cases are not litigated, so the time of litigation is not a strong point. The average maximum benefit to an injured worker is \$299, so \$90 per hour is certainly enough for attorneys in Montana. Taking care of the injured worker is most important.

#### HEARING ON HB 803

#### Presentation and Opening Statement by Sponsor:

REP. WILLIAM "RED" MENAHAN, House District 67, Anaconda, said HB 803 is a protection for employees in communities where a closure or layoff would have a detrimental effect. There were 1,000 jobs lost in his community. Recently, there was the proposed closure of Galen, and no consideration was given to the community. HB 803 requires the state to provide notification when it plans the

closure or retrenchment of a facility. The employer shall offer comparable reemployment to as many employees as possible who lost their jobs in a closure or retrenchment. An employer shall be required to pay 25 percent of the annual payroll of the affected employees into the Community Readjustment Fund for job training. When there is an area that is solely dependent on government employees, the effect of a closure should be considered. The local businesses and everyone suffers from retrenchments. Property values drop considerably. This protects the community so the state can't haphazardly shut down programs.

**Proponents' Testimony:**

**John Ortwein, Montana Catholic Conference,** quoted the statement of Auxiliary Bishop Joseph Sullivan at the 1988 United States Catholic Conference. He stated his support of national plant and facility closing laws which will give workers and their communities notice to develop plans and alternatives when faced with major job layoffs. The advance notice provisions give hope to protect workers and their communities from the most devastating aspects of major job losses. HB 803 will help address the issue of major job losses in Montana.

**Harley Warner, Montana Association of Churches,** said when a major employer and taxpayer shuts down or relocates, it creates enormous costs for the rest of the community. A community will need time to investigate solutions to prevent such an economic catastrophe. HB 803 provides for advance notice of a closing or a mass layoff, and it allows for compensation to the local government impacted by the closure or layoff. It provides training for the employees who were subjected to the layoff.

**Beth O'Halloran, Montana Federation of State Employees and Montana Federation of Teachers,** presented written testimony.  
**EXHIBIT 4**

**Don Judge, Executive Secretary, AFL-CIO,** said in 1980, the Montana AFL-CIO attempted to qualify an initiative for the ballot, which would have required pre-notification of plant closures in the private sector in Montana. The initiative was not qualified for the ballot. Shortly thereafter, Anaconda announced the closure of its smelters. About one year later mines were closed in three Montana communities. The devastating impacts of those closures caused the Legislature to provide additional unemployment benefits for those workers and additional funds for the communities impacted. Although HB 803 would not affect the private sector, this would require the State of Montana to provide notice to the communities to set up a fund to assist those communities to offset the impacts of major retrenchments or closures. Should the closure of Galen take place, it would be the Legislature's responsibility to assist those communities in dealing with the impacts of the closure. The fiscal note is only accurate if a major closure or retrenchment occurs.

Bob Heiser, United Food and Commercial Workers' Union, stated his support.

Opponents' Testimony:

Mike Micone, Commissioner, Department of Labor and Industry, said the provision in HB 803 that gives the responsibility to the Department of Labor should be given to the Department of Commerce. The Department of Commerce has a Local Government Assistance Division that provides assistance in meeting some of the provisions in HB 803, specifically to do economic impact studies and to assist communities in their economic development efforts. The Department of Labor and Industry is ill equipped to administer this bill. Rep. Menahan is probably thinking of the closure of Galen and the impact on small communities. This legislation has far more reaching effects than just the city of Anaconda and Galen. The Department of Labor has experienced a reduction in force over the past six years of about 160 FTEs (Full Time Equivalent), which are due to cuts in federal funding. Those cuts fit within the criteria of this legislation. The Department or the State of Montana would have to provide to Helena those sums of money to cover federal cuts. It is not the intent that when there is a federal cut to provide a community, which in this case is financially stable, to receive funding from the General Fund. All agencies are faced with cuts that the Legislature may make. He has no objection to providing retraining assistance to dislocated workers. If it is intended to take care of the Galen situation, then it should be labeled as such and there should be a specific piece of legislation for Galen.

Curt Chisholm, Director, Department of Institutions, said he was concerned about the Section that creates the community readjustment fund for those reductions of employees that are part of a legislative decision-making process. If the state plans to reduce employee size in certain areas, it should give appropriate notice and work with local communities. The downsize of the MDC (Montana Developmental Center) facility in Boulder, which is part of a deliberate plan to get that facility within a manageable size relative to patients and give it a specific sense of mission, would come under the definition of retrenchment because employee size was expected to be reduced by more than 25 people. The problem is that the budget was premised on an average FTE level that would be reduced and the budget was based on those reductions. There would not be money in the Boulder budget to pay the 25 percent to a local government entity as required in HB 803. When there is a planned and deliberate reduction, money has to be left in the budget to pay the 25 percent or exempt that kind of a payment to the local community. This is a technical area that could cause some serious problems to the Department of Institutions.

**Questions From Committee Members:**

**CHAIR SQUIRES** said the fiscal note indicates the rapid response unit would be available. She asked **Mr. Micone** if he wanted to transfer the rapid response unit over to the Department of Commerce since he had previously indicated that the bill should come under the Department of Commerce instead of the Department of Labor. **Mr. Micone** said he doesn't wish to transfer it. The rapid response unit is federally funded, and it would be provided under any condition.

**CHAIR SQUIRES** referred to the fiscal note which states a closure or retrenchment of state facilities are projected to be rare occurrences. She considers the data processing, the guards, the Boulder reduction, vacancy savings, and the women's prison retrenchment. She asked **Mr. Chisholm** what is minimal in regard to retrenchment. **Mr. Chisholm** said he didn't know what minimal means in the opinion of the budget office. They anticipated reductions of 25 FTEs or employees to be minimal occurrences. **CHAIR SQUIRES** said the data processing was lost to privatization. It is not minimal. **Mr. Chisholm** said the women's prison would not fit the definition of retrenchment because the employees would not be laid off but would be given the opportunity to transfer with that program to the new selected site. **CHAIR SQUIRES** said retrenchment is not the right word, but people will be lost.

**REP. DRISCOLL** asked **Mr. Micone** how long it would take him to write the rules for this bill. **Mr. Micone** said it would take about three to four months. **REP. DRISCOLL** asked how many people it would take. **Mr. Micone** said one FTE for a short period of time; it may be one-quarter of an FTE. **REP. DRISCOLL** said the fiscal note says if it is contracted out it will cost \$20,000. Privatization costs too much.

**Closing by Sponsor:**

**REP. MENAHAN** said when the Boulder Hospital was downsized, the community was not taken into consideration. If the workers in the women's prison move, their houses won't sell in an area like Anaconda. With the loss of jobs, the tax base in the community drops dramatically. The financial loss is devastating to the community. The state should be giving the people consideration in the public sector. The employees deserve something from the state after making a commitment.

**EXECUTIVE ACTION ON SB 267**

**Motion:** **REP. FAGG** moved to amend SB 267. **EXHIBIT 5**

**Discussion:**

REP. FAGG said the amendments include unions in the bill, so neither employers nor unions can use these "goons." Sen. Towe and Rep. Driscoll agreed to the amendments.

**Vote:** SB 267 AMENDMENTS. Motion carried 17 to 1 with Rep. Whalen voting no.

**Motion/Vote:** REP. PAVLOVICH MOVED SB 267 BE CONCURRED IN AS AMENDED. Motion carried 12 to 6 with Reps. Benedict, Hanson, Hoffman, Johnson, Lee, and Thomas voting no.

REP. WHALEN will carry SB 267.

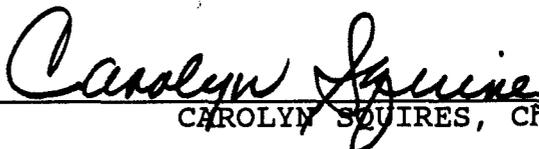
**EXECUTIVE ACTION ON SB 383**

**Motion/Vote:** REP. WANZENRIED MOVED SB 383 BE CONCURRED IN. Motion carried unanimously.

REP. WANZENRIED will carry SB 383.

**ADJOURNMENT**

**Adjournment:** 5:10 p.m.

  
CAROLYN SQUIRES, Chair

  
JENNIFER THOMPSON, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 3/15/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE			✓
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN		✓	
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE		✓	
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

HOUSE STANDING COMMITTEE REPORT

March 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 267 (third reading copy -- blue) be concurred in as amended.

Signed: *Carolyn Squires*  
Carolyn Squires, Chairman

Carried by: Rep. Whalen

And, that such amendments read:

1. Page 1, line 15.

Following: "employers"

Insert: "or unions"

2. Page 1, lines 19 and 23.

Following: "employees"

Insert: "or organizations"

3. Page 2, lines 3 and 23

Page 4, line 1.

Following: "employer"

Insert: "or a union"

4. Page 2, lines 23 and 24.

Following: "business"

Insert: "or organization"

5. Page 2, line 25.

Following: "employer's"

Insert: "or the organization's"

6. Page 3, line 1.

Following: "employer"

Insert: "or the organization"

HOUSE STANDING COMMITTEE REPORT

March 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 383 (third reading copy -- blue) be concurred in .

Signed: \_\_\_\_\_  
Carolyn Squires, Chairman

Carried by: Rep. Wanzenried

FAX TRANSMISSION

DATE 3/15/91  
SB 349

DATE: 3-15-91

NO. OF PAGES: 8

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Sen. John Hay

COMPANY: State Legislature FAX # ( ) 444-4105

REFERENCE/PROJECT: \_\_\_\_\_

FROM: Gov

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COMMENTS: \_\_\_\_\_  
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EXHIBIT 1DATE 3/15/91SB 349

Sen. John Hays  
Rep. Jerry Vansol

This letter is in regards to the bill that is before the Senate regarding putting limits on attorney fees in work comp cases.

In Aug, 1985 I was injured in an industrial accident. John Bothe (attorney) was hired. What a joke.

Bothe likes the quick fix.

I was involved with a backhoe accident, in which the backhoe flipped onto gear and ran over me. I had leg, hip + back injuries.

After 2 1/2 years of dealing with this man, I finally got him to admit that he wasn't going after the backhoe manufacturer.

I had constant problems with my medicals getting paid.

If I had to talk to him (Bothe) about anything (quickly) (for instance if something came in the mail that needed taken care of promptly) the receptionist would say that I couldn't talk to him, but I could make an appointment for 2 to 3 weeks later and take care of the problem. By the time he would either call or I could get in to see see him. I would

to him about:

An appointment with her ~~was~~  
consisted of me telling him what was  
going on and him dictating letters.

to try to take care of the problems.  
 maximum.

He tried to force me into settling for approx. \$2,000. With no medicals for my hips or back.

I fired him 30 months after I hired him because of ① The way he does business (quick fixes were apparently what he was used to) ② He lead me on to believe that he was going to file a lawsuit against the backhoe mfg. which never happened. ③ I was never able to talk to him when I really needed to. ④ Didn't seem to really want to fight for me, for my rights. (Basically just ~~went~~ went along with whatever was happening. There is more, but I think this is enough.

After all of this I hired another attorney. Finally settled with comp. for almost 5x the money with all my medicals for my legs, hip & back covered for life. I might add that I did not have state comp but rather had a private carrier.

My present attorney has taken care of all of my needs with putting me first. A lawsuit has been filed against the backhoe mfg.

After 30 months of run-around Bullshit from Bothe he still charged me \$5000<sup>00</sup> for what little he did do for me.

So Both's Bill would be satisfied.

This Bill that has been introduced should be ~~not~~ passed because of attorney who operate in this manner. Attorneys that operate in the manner should not have a license to practice Law.

Please vote for this Bill.

John: I would like to talk to the Rep. or Senator about the bill introduced about payment of <sup>of</sup> Child Support Payments!

Yours

Gary Wilson  
Hallowell, MT 59901

Senator John Harp  
Senate District 4  
February 19, 1991

It seems that most employers work with a profit margin of about 10%; why should Worker Compensation Lawyers receive 20% to 25% profits on an injured workers's wage benefit. (Less small legal fees, and many times work is done by a paralegal.) I seriously feel that both Worker Compensation Attorneys and employee lawyers should be limited to a fair fee policy. Eight (8) states that we surveyed have laws similar to Senate Bill 349 which limit lawyer fees. It is my contention that part of our \$221 million dollar liability is being caused by very high attorney fees.

Stacy Hennessy, worker's compensation insurance specialist with the American Insurance Association, related Montana's situation to conditions prevailing nationwide and pointed out that every state insurance fund is in trouble, some in even more severe straits than Montana.

Many lawyers are receiving fees from the time the claimant was injured, until the litigation is settled which may take two or three years. It does not seem appropriate that an attorney should go back to the date of injury when many times claimants hire them two to three years after injury. The attorney just does not have any interest in the case at that time.

Robert J. Robinson, former (until 1989) administrator for the Department of Labor and Industry, Division of Workers'

Senator John Harp  
February 19, 1991  
Page Two

Compensation, feels that statutory limits would be better and more effective than limits placed by rule. In Robinson view the overwhelming source of workers compensation problems are the legal system, including the Montana Supreme Courts liberal expansion of benefits.

One of the opponents' big arguments is that if you put limits on lawyers fees claimants would not be able to get council. In talking with Brenda Trolin in Denver, Colorado, from the office of National Conference of State Legislatures, she stated that many states have limits on lawyer fees and have not seen a shortage of lawyers willing to help claimant. The result seems to make lawyers work more effectively by trying to get cases resolved sooner.

Another argument is that if lawyers do not get their fees they will not take worker compensation cases. I question why a lawyer should make earnings in excess of \$800,000 on 99 cases when many times there is not even any litigation in certain cases, and few hours devoted to their clients needs.

Example 1: Lawyers hourly fee at \$90 on \$20,000 fee for service equals 222 hours of service which equals 5 1/2 weeks of work; very questionable that a lawyer is putting this much time into a single case.

Senator John Harp  
February 19, 1991  
Page Three

Example 2: Mr. John Bothe of Columbia Falls was the highest paid attorney in 1990 workers' compensation settlements with estimated legal fees of \$810,978. Labor Department figure show that Bothe obtained \$3.96 million for injured workers in 99 workers compensation settlements in fiscal 1990, which ended June 30. In 1989, he receive \$591,980 legal fees in 71 settlements. In 1988, he received \$1.02 million in legal fees. His three year total is \$2,422,958 which figures out to be \$3,365.22 per work day for the last three years. Using 1990 figures Mr. Bothe's legal fees were \$810,978 at a \$90 base rate, this equals 9011 hours, which equals overs 225 weeks, which at 40 hours per week is almost 4 1/2 years worth of work. It seems very unlikely that one lawyer spent 225 weeks on just 99 cases. At 20 days per month times 12 months, Mr. Bothe made \$3,379.07 per day in 1991, or \$422.38 per hour.

Ex. 2  
3/15/91  
SB 349

Senator John Harp  
January 30, 1991

ATTORNEY FEES WORKERS' COMPENSATION STATUTES FOR 1990

ALASKA: 25% minimum first \$1000.00; 10% on balance -- statute.

FLORIDA: 25% First \$5,000.00; 20% second \$5,000.00; 15% on balance -- statute.

KENTUCKY: 20% first \$25,000.00; 15% next \$10,000.00; 5% balance; \$6,5000.00 maximum -- statute.

LOUISIANA: 20% first \$10,000.00; 10% on balance -- statute.

MARYLAND: 20% first \$7,000.00; 15% next \$18,000; 10% balance -- policy.

NEW MEXICO: Maximum of \$12,500.00 -- statute.

UTAH: 20% first \$15,000.00; 15% next \$15,000.00; 10% balance, maximum \$9,051.00 -- rule.

VERMONT: 20% maximum \$3,000.00 -- policy.

JH/fdh

# Workers' compensation settlements top \$39 million

HARLES S. JOHNSON

ine Capitol Bureau  
LENA — Attorneys obtained  
5 million in workers' compen-  
in settlements for injured Mon-  
workers in the last fiscal year  
collected an estimated \$8.1 mil-  
in legal fees, the state Labor  
artment says.

ures for the year ending June  
1990, show that 1,151 settle-  
ts averaging \$34,309 were paid  
njured workers by the three  
ods used by Montana employ-  
o obtain workers' compensation  
ance. These are private insur-  
e companies, self-insured em-  
ers and the state-run workers'  
State Fund.

itorney fees averaged \$7,005 per  
or 20.4 percent of the settle-  
t amount.

In past years, the Labor Depart-  
ment has randomly checked one of  
every four settlements to determine  
the average fee as a percentage of  
the settlement.

In 1989 and 1990, the department  
used actual attorney fees for work-  
ers' compensation settlements by  
privately or self-insured companies.

For those insured by the State  
Fund, specific attorney fee informa-  
tion was available for only nine  
months out of the 24-month period.  
For the remaining 15 months, the  
department applied what was the  
average percentage fees, which  
turned out to be 20.4 percent of the  
settlement amounts.

Corresponding figures on how  
much the employers and their in-  
surance companies paid their at-  
See COMP, 7A

## Columbia Falls lawyer at head of earnings list

Tribune Capitol Bureau

HELENA — Columbia Falls attorney John Bothe continues to top  
the list of Montana attorneys both in the workers' compensation  
settlements they obtained for injured workers and the estimated legal  
fees they collected for their work.

Figures compiled by the state Labor Department show that Bothe  
obtained \$3.96 million for injured workers in 99 workers' compensa-  
tion settlements in fiscal 1990, which ended June 30. The department  
estimates that he collected \$810,978 in legal fees for this work.

He also obtained the largest total work-comp settlements and thus  
the most-estimated fees in fiscal 1989, according to the department's  
figures released recently. He obtained 71 settlements totaling \$2.9

See LIST, 7A

EXHIBIT 2  
DATE 3/15/91  
HB SB 349

# List: Top fees

**FROM IA** million and collected fees estimated at \$591,872.

Bothe also has led the list in previous compilations by the department. In fiscal 1988, he obtained more than \$4.56 million in settlements, with his fees estimated at \$1.02 million.

His law partner, David Lauridsen, was fifth in 1990 with settlements totaling \$1.2 million and fees estimated at \$251,980.

For 1989 and 1990, the Labor Department used actual attorney fee information from workers' compensation settlements by companies that were insured by private companies or self-insured.

But for those companies that insured with the state-run plan, specific attorney fee information was available for only nine months out of the 24-month period. For the remaining 15 months, the department applied what was the average percentage of attorney fees, which turned out to be 20.4 percent of the settlement amount, according to claims examiner Carol Gleed. Similar calculations were made in past years.

Here is a list of attorneys whose estimated fees from workers' compensation settlements topped \$100,000 in fiscal 1990:

1) Bothe, 99 settlements totaling \$3.96 million; estimated fees of \$810,978.

2) Tom Lewis of Great Falls, 46 settlements totaling \$2.1 million; estimated fees \$340,275.

3) Norman Grosfield of Helena, 41 settlements totaling \$1.4 million; estimated fees of \$281,196.

4) Thomas Lynaugh of Billings, 36 settlements totaling \$1.2 million; estimated fees of \$253,330.

5) Lauridsen of Columbia Falls, 38 settlements totaling \$1.2 million; estimated fees of \$251,980.

6) Monte Beck of Bozeman, 22 settlements totaling \$1.04 million; estimated fees of \$212,614.

7) Janice Van Riper of Helena, 22 settlements totaling \$850,433; estimated fees of \$173,488.

8) Milton Datsopoulos of Missoula, 19 settlements totaling \$813,163; fees of \$165,885.

9) Michael Prezeau of Whitefish, 24 settlements totaling \$794,410; estimated fees of \$162,060.

10) John Whelen of Butte, 24 settlements totaling \$723,821; estimated fees of \$147,659.

11) Ben Everett of Anaconda, 16 settlements totaling \$243,493; estimated fees of \$120,046.

12) Victor Halverson of Billings, 17 settlements totaling \$517,900; estimated fees of \$105,652.

13) Roger Sullivan of Kalispell, 10 settlements totaling \$514,600; estimated fees of \$104,978.

14) Gregory Skakles of Anaconda, 15 settlements totaling \$499,797; estimated fees of \$101,959.

15) Kenneth Grenfell of Missoula, 13 settlements totaling \$497,754; estimated fees of \$101,542.

## Comp: Talled

### FROM IA

Attorneys to defend work-comp cases are not a matter of public record, except for the state-run Compensation Mutual Insurance Fund, which insures 27,000 Montana employers.

The State Fund paid \$894,434 to hire outside defense lawyers to handle court cases in fiscal 1990 and \$691,594 in 1989, according to its president, Patrick Sweeney.

In addition, he estimated the State Fund spends about \$200,000 a year to its own legal staff, which handles mediation and some contested cases.

Sweeney said he has no idea how much self-insured or privately insured companies pay in attorney fees.

Monday, January 14, 1991

# Legislator to propose limiting

By CHARLES S. JOHNSON  
Tribune Capitol Bureau

HELENA — The legal fees paid to attorneys who obtain workers' compensation settlements for injured workers will be an issue again in the 1991 Legislature.

Sen. John Harp, R-Kalispell, said he will re-introduce a version of his unsuccessful 1989 bill that would impose a \$15,000 maximum limit on the amount an attorney could collect on a workers' compensation settlement, regardless of the amount.

The bill also imposed certain percentage limits. A lawyer couldn't collect more than 20 percent of the first \$10,000 of settlement obtained, 15 percent on the next \$20,000 and 10 percent on the balance, with a maximum fee of \$15,000.

Harp's 1989 bill was killed in the Senate on a 28-20 vote, but he vowed to try again. He has not yet requested the bill to be drafted but said he would do so soon.

"I'm going to run at them again," he said in a recent interview. "Eventually people will start paying attention."

Hundreds of thousands of dollars in lawyers' fees are potentially at stake.

Workers' compensation rules now provide that an attorney can collect 20 percent of the amount of an injured worker's settlement if there is no hearing and 25 percent if the case is heard by the Workers' Compensation or Montana Supreme Court.

By imposing a monetary cap, Harp said his goal is to make sure more of the settlement reaches the injured worker instead of going to the attorney.

"You just look at these additional dollars that should be going to injured workers," Harp said. "It's a shame we have that kind of money being drained away for legal fees."

But attorneys who specialize in obtaining workers' compensation settlements for injured workers oppose the fee ceiling and question the motives of Harp, a contractor.

"I frankly don't think Mr. Harp's intent is to protect the injured worker," said lawyer Norman Grosfield of Helena. "His intent is to take a shot at claimants' attorneys, which he has done in the past."

Grosfield called Harp's bill "a rather vindictive proposal."

If the state wants to regulate fees of workers' compensation attor-

neys, it also should oversee those paid to defense lawyers for insurance companies representing employers, he said. However, Grosfield made it clear he opposes any state regulation of private contracts between clients and their attorneys.

John Bothe, a Columbia Falls lawyer who regularly obtains the most settlements for injured workers in Montana and collects the most fees, said most people advocating capping attorney's fees "have absolutely no interest in the injured workers."

"What bothers me is I feel the real reason is not to get more money to claimants but to prevent claimants from getting an attorney," Bothe said.

Harp readily admits that he would like to find a way to simplify Montana's workers' compensation laws "so it isn't so time consuming and you wouldn't need an attorney."

Bothe said it would be fine with him if Montana could simplify its work-comp laws so injured workers didn't need to hire an attorney. The Columbia Falls lawyer said he would find a different area of the law in which to work.

But Bothe said Montana's work-

Great Falls Tribune 7A

## work-comp attorney fees

ers' compensation system is complicated and has gone through two sets of major changes enacted by the Legislature in recent years, with the prospect of more coming this year.

"What do you do with the (injured) guy with a high school education or less and doesn't understand the system?" Bothe asked.

Bothe acknowledged that his "gross numbers" of settlements and fees he has obtained are high but pointed out that he handles these cases under a contingency-fee arrangement. If a settlement isn't obtained, the attorney doesn't collect any fee.

"There are a lot of small little issues that attorneys work on that

they never get any compensation for," Bothe said, adding that they all tend to average out with the settlements in other cases.

Yet the defense lawyers for the insurance companies representing employers are paid an hourly fee for every case, regardless of the outcome, he said.

Harp, like everyone, is looking out for his own self-interest in the matter, Bothe said. The attorney said he had represented some injured workers employed by Harp's family construction business in past workers' compensation cases.

It was unclear whether the Stephens administration, which has said improving Montana's work-

comp system is a top priority, will support limiting legal fees.

Labor Commissioner Mike Micone said he doesn't believe the administration has a position yet.

"I've come around to the thinking that attorney fees are not the problem with the system," Micone said. "It's using one profession to correct the system, and it's a simplistic way to solve the problem."

Patrick Sweeney, president of the state-run Compensation Mutual Insurance Fund, said it's up to the Legislature to decide whether to cap lawyers' fees.

"I'm not going to get into that one," he said. "We'll do what the Legislature decides."

EXHIBIT 3

DATE 3/15/91

HB SB 349

# NFPA

## National Federation of Paralegal Associations

104 Wilmot Rd., Suite 201 • Deerfield, IL 60015-5195 • (708) 940-8800

PLEASE REPLY TO:

Merle L. Isgett  
Vorys, Sater, Seymour and Pease  
Suite 2100, Atrium Two  
221 E. Fourth Street  
P.O. Box 0236  
Cincinnati, Ohio 45201-0236  
(513) 723-4025

April 9, 1991

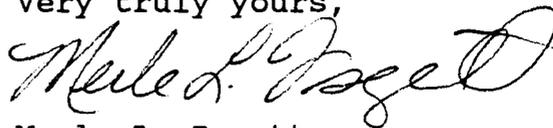
The Honorable Carolyn Squires, Chair  
House Labor Committee  
Capitol Station  
Helena, Montana 59620

Re: Senate Bill No. 349

Dear Representative Squires:

Enclosed please find written testimony for the National Federation of Paralegal Associations, Inc. on Senate Bill No. 349 which we ask be made part of the record on this Bill. In the event you have questions regarding this testimony, please do not hesitate to contact me.

Very truly yours,



Merle L. Isgett  
Policy Vice President

MLI/iv

Enclosure

cc: NFPA Board  
Mr. Carl Wangman  
Ms. Marie Tangney

WRITTEN TESTIMONY OF  
THE NATIONAL FEDERATION OF PARALEGAL ASSOCIATIONS, INC.

HOUSE LABOR COMMITTEE

THE HONORABLE CAROLYN SQUIRES, CHAIR

APRIL 9, 1991

HELENA, MONTANA

\* \* \* \* \*

Honorable Representative Squires, Members of the Committee:

Thank you for allowing the National Federation of Paralegal Associations, Inc. (NFPA) to present this written testimony on Senate Bill 349.

Founded in 1974, the NFPA is the oldest and largest non-profit professional association, and represents over 16,500 paralegals nationwide. The NFPA affirms the paralegal profession as an independent, self-directed profession which supports increased quality, efficiency and accessibility in the delivery of legal services. In addition, it promotes the growth, development and recognition of the profession as an integral partner in the delivery of legal services.

In March 1987, at the NFPA's annual meeting the following definition of a legal assistant was adopted:

A Paralegal/Legal Assistant is a person, qualified through education, training or work experience, to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be

separately at market rates, fees awarded the attorney at market rates for attorney time would not be fully compensatory if the court refused to compensate hours billed by paralegals or did so only at "costs." Similarly, the fee awarded would be too high if the court accepted separate billing for paralegal hours in a market where that was not the custom.

The Court further stated:

. . . Where, however, the prevailing practice is to bill paralegal work at market rates, treating civil rights lawyers' fee requests in the same way is not only permitted by sec. 1988, but also makes economic sense.

In its decision, the Court also made it clear that paralegal time is recoverable under 42 U.S.C. §1988:

Clearly, a "reasonable attorney's fee" cannot have been meant to compensate only work performed by members of the bar. Rather, the term must refer to a reasonable fee for the work product of an attorney.

In the City of New York v. Darling, Delaware, 440 F. Supp. 1132 (S.D.N.Y. 1977), the district court awarded \$60,483.50 in paralegal expenses. The opinion reads:

[Defendant] objects to the award of any expenses for paralegals, claiming that ". . . use of secretaries and paralegals are plain and ordinarily office expenses and reimbursement for the expenses of running a law office comes from the fees earned by attorneys, not from fees earned by paralegals . . . attributable [sic] overhead of paralegals as a billable expense is really pushing a fee application far beyond the limit . . .

We disagree. Since the use of paralegals has proliferated in the last several years, their use in cases of this nature has been responsible for large savings. It is a practice to be encouraged, and law firms should be reimbursed at least for their expenses (and in appropriate cases perhaps at a greater rate). (emphasis added) 440 F. Supp. at 1136.

The Southern District of New York has not reversed its position on this matter as reflected in Darling-Delaware opinion in Ross v. Saltmarsh, 521 F. Supp. 753 (1981).

In Pacific Coast Agricultural Export Association v. Sunkist Growers, Inc., 526 F.2d 1196, 1210 n.19 (9th Cir. 1975), the Court noted:

As a matter of practice, most attorneys engaged in the antitrust practice use legal assistants, particularly in digesting and indexing discovery and trial materials, much of the work heretofore performed by relatively inexperienced lawyers. . . . As a matter of policy, the use of paralegal help in this fashion greatly reduces the cost of legal services to the public and is thus a practice to be encouraged.  
(emphasis added)

In light of Pacific Coast, supra, the Court in Spray-Rite Service Corp. v. Monsanto, 684 F.2d 1226, 1249 (7th Cir. 1982) disagreed with Monsanto's contention that paralegal fees may be recovered only to the extent that their billing is included as overhead in the lawyers' billing rates and ruled "that paralegal and law clerks' fees are recoverable as a portion of the plaintiffs' reasonable attorneys' fees." (See also Spanish Action Committee of Chicago v. City of Chicago, 811 F.2d 1129 (7th Cir. 1987), Northcross v. Board of Education of Memphis City Schools, 611 F.2d 624 (6th Cir. 1979) and Cameo Convalescent Center, Inc. v. Senn, 738 F.2d 836 (7th Cir. 1984)).

Additionally, courts have awarded paralegal fees at hourly rates which vary according to the complexity of the tasks performed. The District Court in the District of Columbia calculated the recoverable rate for legal assistant services to

equal. \$30.00/hour in Laffey v. Northwest Airlines, 572 F. Supp. 354, 388 (D. D.C. 1983). A rate of \$30.00/hour was also awarded in Walters v. City of Atlanta, 803 F.2d 1135 (11th Cir. 1986). The Fifth Circuit identified a range of \$30.00 - \$50.00 per hour for paralegal services in Richardson v. Byrd, 709 F.2d 1016 (5th Cir. 1983). In Citizens Council of Delaware County v. Brinegar, 741 F.2d 584 (3rd Cir. 1984), the Appellate Court upheld the District Court's award of \$50.00/hour for paralegal fees as reasonable and correct.

Once the recoverability of paralegal fees is allowed, the merits upon which this award will be granted must be developed. The Tenth Circuit's opinion in Lamm v. Ramos, 713 F.2d 546 (10th Cir. 1983) avers the courts should award legal assistant fees in the same manner as attorneys:

We recognize the increasingly widespread custom of separate billing for the services of paralegals and law clerks. The District Court must determine whether law clerk and paralegal services are normally part of the office overhead in the area, and thus already reflected in the normal area billing rate the court has established in the case. If those services are not reflected in the area rate, the court may award them separately as a part of the fee for legal services. The court should scrutinize the reported hours and the suggested rates in the same manner it scrutinizes lawyer time and rates.

The Civil Rights Attorney's Fee Award Act of 1976 (42 U.S.C.S. §1988) sets forth twelve elements that District Courts must take into consideration when awarding attorney's fees to the prevailing party: 1) the time and labor required; 2) the novelty and difficulty of the questions; 3) the skill requisite to perform the legal service properly; 4) the preclusion of

employment by the attorney due to the acceptance of the case; 5) the customary fee; 6) whether the fee is fixed or contingent; 7) time limitations imposed by the client or the circumstances; 8) the amount involved and results obtained; 9) the experience, reputation and ability of the attorneys; 10) the "undesirability" of the case; 11) the nature and length of the professional relationship with the client; and 12) awards in similar cases. Although some of these factors do not pertain to legal assistants, the elements identified in this act give us solid foundation upon which to build.

It is the NFPA's desire to have Senate Bill 349 amended to avoid a statutory interpretation by the courts at some later date whereby the award of paralegal fees is denied. If the issue of paralegal fees is addressed in the statutes, there can be no question of legislative intent on this issue. For the foregoing reasons, the NFPA respectfully urges the amendment of Senate Bill 349.

Respectfully submitted,

*Jolene Miller*  
JOLENE MILLER  
President



# MONTANA FEDERATION OF STATE EMPLOYEES

AFT, AFL-CIO

P.O. Box 1246

Helena, Montana 59624

 ARTCRAFT, BUTTE

DATE 3/15/91

HB 803

(406) 442-2123

**JIM MCGARVEY**  
President



TESTIMONY OF THE MONTANA FEDERATION OF TEACHERS/MONTANA FEDERATION OF STATE EMPLOYEES, AFT, AFL-CIO BEFORE THE HOUSE LABOR COMMITTEE, 3/15/91.

Madame Chairperson, members of the committee, I am Beth O'Halloran, representing the Montana Federation of Teachers and the Montana Federation of State Employees and I am here to voice our strong support for House Bill 803.

HB 803 was designed to protect employees and communities when closures or layoffs occur in a governmental facility. The bill is the result of the Department of Institutions plans to close the Galen campus of Montana State Hospital. The Department of Institutions would also like to close or drastically cut the entire Montana State Hospital. Phase-down of services at Montana Developmental Center in Boulder continues.

HB 803 would protect any community losing more than twenty-five state jobs over the course of two years. The loss of jobs in an area has a ripple effect throughout the community. HB 803 provides for disbursement of funds from the community readjustment fund to the local economic impact committees and this would delineate, if only slightly, drastic economic impact upon the affected communities.

The monies provided to a community as a result of this bill will be closely monitored by an appointed local economic impact committee, charged with overseeing expenditures, loans and investments of the funds allocated. The committee shall represent a broad base of interests within the community and thus will have the best interests of the community at heart.

Perhaps the most valuable provision of this bill is the notification procedure outlined within it. Affected communities are to be immediately notified upon the decision to retrench or close and given a written statement of impact. Unless our neighbors in communities affected by closure and retrenchment are notified quickly and thoroughly of their situation, they will be unable to adequately mitigate the ill-effects of those circumstances. Proper notification allows a community to brace for the coming storm and its costs are negligible.

This bill is a good neighbor bill. It means a lot in terms of watching out for our friends and neighbors who feel the terrible effects of retrenchment and closure in their jobs, in their businesses, in their communities and on their families. I urge you to give House Bill 804 a do-pass consideration.

Amendments to Senate Bill No. 267  
Third Reading Copy (Blue)

Requested by Rep. Fagg  
For the House Committee on Labor and Employment Relations

Prepared by Eddy McClure  
March 12, 1991

1. Page 1, line 15.  
Following: "employers"  
Insert: "or unions"
2. Page 1, lines 19 and 23.  
Following: "employees"  
Insert: "or organizations"
3. Page 2, lines 3 and 23  
Page 4, line 1.  
Following: "employer"  
Insert: "or a union"
4. Page 2, lines 23 and 24.  
Following: "business"  
Insert: "or organization"
5. Page 2, line 25.  
Following: "employer's"  
Insert: "or the organization's"
6. Page 3, line 1.  
Following: "employer"  
Insert: "or the organization"

**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. SB 349

DATE 3/15/91

SPONSOR(S) Sen. John Harp

PLEASE PRINT

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jan Van Riper	self		X
William "Suede" Erickson	self		X
Mike Sord	self		X
Judith Atkinson	self		X
Mark Guenther	self		X
Norm Grosfield	self		X
Don Judge	MT STATE AFL-CIO		X
MARIE LANGDOFF	AFSCME		X
MTLA Michael J. Steward	A MTLA		X
Bob Heiser	UFCW		X
Ross Lanna	SELF		X
Scott Kauffman	self		X
Allen Chronister	State Benef. Ment		X

**PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.**

**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. HB 803

DATE 3/15/91

SPONSOR(S) Rep. Red Menahan

**PLEASE PRINT**

**PLEASE PRINT**

**PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
HARLEN WARNER P.O. BOX 745 59624	MONT ASSOC. OF CHURCHES	X	
MARK LANGDONT	AFSCME	X	
Bob Heiser	UFCW	X	
<del>Mike S</del>			
Beth O'Halloran	MFT/MFSE	X	
John Craven	Mt Catholic Cong	X	
Don Judge	MT STATE AFL-CIO	X	
Mike Moore	DCU		X
CURT CRISWELL	D of H		X

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