

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By VICE CHAIRMAN SENATOR JAMES BURNETT, on
January 30, 1997, at 1:00 p.m., in Room 413/415

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Eddy McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

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

Committee Business Summary:

Hearing: None
Executive Action: SB 3, Tabled; SB 5, Tabled.
SB 45 (No Final Action Taken)

{Tape: 1; Side: A; Approx. Time Count: 1:05 p.m.}

COMMITTEE DISCUSSION ON SB 3, SB 5, SB 45

Discussion:

VICE CHAIRMAN JAMES BURNETT called the meeting to order and
turned it over to SEN. FRED THOMAS for discussion.
SEN. THOMAS recommended that SB 3 and SB 5 be kept in the
Committee on the table. He recommended that SB 45 be amended and
that it be passed on to the Floor. Some of the issues dealt with
was bonding, professional licensing and repealing some sections.
The first recommendation was that sections in (EXHIBIT 1) be
repealed where they are marked with an 'X'. Also that the

repealer include section 701 through 706, which deals with contractors' bonds. **SEN. THOMAS** thought it best to act as they go through each one.

SEN. STEVE BENEDICT said his opinion that it is difficult to follow what is going on.

SEN. THOMAS responded if the Committee is not ready to kick the bill out, then they could request a 'grey bill'. If the Committee is ready to kick it out, then go ahead and go forward.

Eddy McClure added that (**EXHIBIT 1**) is like a handwritten 'grey bill'. All the amendments are in this exhibit.

SEN. BENEDICT stated that he did not know if those that testified on the original bill would feel comfortable about the changes they proposed, either not being there or are there.

SEN. THOMAS said that anyone who had input significant to the process was in attendance at the hearing which lasted at least two hours, so he feels anyone present would feel very comfortable in this.

SEN. SUE BARTLETT asked not knowing for sure what amendments might be recommended, if it would make any sense to do an overview and then go back and concentrate on each bill.

SEN. THOMAS made the decision to do that. He stated the first recommendation in SB 45 is the bonding. Through a lot of discussion it was decided that people don't like it, also the bond is somewhat after the fact. It is designed to protect Workers' Compensation coverage, though it does not do that because it does not enact or reenact it if it comes off by not being paid. If we want to build in consumer protection in the future, we should leave this bond in and not repeal it at this time. His recommendation is to repeal the independent contractor bond that is before us, in this case.

SEN. BENEDICT asked if this meant there would not be any bond, if any bond in current law would not be there.

SEN. THOMAS said this is correct. This bond, as we know it, would be repealed, not taken out of the bill.

SEN. CASEY EMERSON asked if there are any other amendments regarding putting some special kind of bond back in there.

SEN. THOMAS responded no other bond is recommended being placed back in.

Eddy McClure stated if you go through the bill, there are no changes in the bill through page 6, and those lines you see stricken, like on 13, 19 through 24 are references to the bonding requirements. If we repeal part seven, then those proposals we

are dealing with, the date the bond expires, short term bonding, those things are stricken in there.

SEN. THOMAS said on page 7, the next recommendation to the Committee is in Section 9. It is to repeal this section but retain part of it. As you see it being stuck in the marked-up bill, that we are retaining the bottom part of that section, the first part of subsections 1 through 4 deals with registration being a prerequisite to the suit or lien and in the court there was a strong feeling that is part of the reason the court has suspended the law, in part. The recommendation is to take this part out. The part which is recommended to be retained deals with the upward mobility of liability, and there are a couple of small amendments in there that would go on page 8, where we are clarifying under what section. Both of the verbiage changes were recommended by **Chuck Hunter, Department of Labor**.

SEN. BENEDICT asked as far as migration of liability, will this protect a homeowner who hires a contractor and that contractor says he is an independent contractor, from being liable in the case that person is injured while working on their home?

SEN. THOMAS asked **Lawrence Hubbard, Attorney, Department of Labor**, to answer this question.

Mr. Hubbard responded that they had asked the Committee to insert the language under Section 39-71-405, so it was clear that the statute that provides for migration of Workers' Compensation liability is the statute that is specifically referenced. So if it is an employer, whether it be a homeowner, contractor, or otherwise who would become otherwise liable under Section 405 of the Workers' Compensation Act, this would include that liability for migrating upward.

SEN. BENEDICT asked if that would make the ultimate liability lie with the person who was injured? In other words, if you are injured, you do not have any other place to go.

Mr. Hubbard responded it would be the uninsured employer who would have the ultimate liability, possibly in a private law suit. But indeed, the injured worker would not be getting Workers' Compensation benefits from the insurer or the owner.

SEN. BENEDICT stated this does not answer his question, all that takes care of is Workers' Compensation. That still leaves the employer or the homeowner hanging out there a bunch, because the independent contractor cannot go to Work. Comp. to get benefits, but can sue. The migration of liability is still there, it just goes through the courts rather than through the Work. Comp. system.

SEN. TOM KEATING stated that he does not know if we can put anything in statute that would preclude a claimant from presenting to the court that he is an employee and therefore, the

contractor/contractee is the employer and that point becomes uninsured. If the court holds that the circumstances surrounding the activity establishes an employer/employee relationship, then that is where it is going to go. Somebody can say that he is an independent contractor and swear to it and say he has an exemption from Workers' Comp., but if he changes his mind, there is nothing we can write in statutes to preclude him from going to court and saying that he is an employee. That is the real dilemma that we are in.

SEN. BENEDICT asked **Mr. Hubbard** for a final word on this matter.

Mr. Hubbard said that even under 405 as it currently exists in the law, the homeowner in that kind of situation would always be exposed to that kind of liability under their general liability carrier or liability under tort lawsuit for personal injuries. The Supreme Court had ruled in a series of cases that Section 405 does not prevent or protect even that contractor. It will not keep them from being sued in tort as well as having to pay the Workers' Compensation benefit.

SEN. THOMAS asked if straightening out whom, is what help limit the liability. If you fall into this square as an independent contractor, that helps peg my ability down to anyone else, because you are that versus the other individual who fits into another square of being an employee. There is likely to be more liability exposure in the case there is no Workers' Compensation on that employee versus the other scenario. So straightening that out should eliminate more liability.

SEN. THOMAS' recommendation to the Committee is making those amendments dealing with Section 9 of the bill, on pages 7 and 8. On the bottom of 8 and the top of 9, the recommendation is that we leave the threshold of value at the \$2500 level. It is presently at \$500, recommendations are \$1000, but his recommendation is that it is left at \$2500. Page 9, line 3 they are recommending the marked sentences 3 through 5 be deleted, which deals with advertising. It is the subcommittee's understanding this is an oversight, this deals with advertising and wanting to be a contractor as has been done in other places.

SEN. THOMAS asked **Eddy McClure** to clarify the top of page 10.

Ms. McClure stated the recommendation is to leave the language in subsection 19 which deals with professional licenses, at the same time the subcommittee had a recommendation dealing with fire suppression, we took the professional licensing out for these people.

SEN. THOMAS also referred to subsection 19 and said they are recommending the professional license exemption be deleted, that it not be allowed to go into this legislation, they are recommending it be stricken from the bill and that exemption not exist. With that, there are requests by the fire suppression

people that they get an exemption likened to licensed electrical people and plumbers. The subcommittee had asked **SEN. WILSON** to look further into this and address it.

SEN. BILL WILSON said he thinks it is a good idea to leave them in. He said he looked into a bill and in order to become licensed or endorsed as a fire suppressionist, which consists of sales, service, and inspection, in three areas, fire alarm systems, fire suppression systems and fire extinguisher systems, they have to submit proof of general liability and Workers' Compensation. **SEN. WILSON'S** concern is if these people are exempted they may be opening the door to other people lining up. He spoke with **Chuck Hunter** regarding this, and asked him to clarify this.

SEN. THOMAS asked **SEN. WILSON** in order for fire suppression people to be licensed if they had to show proof of liability insurance and proof of Workers' Compensation insurance? **SEN. WILSON** responded this is correct.

Chuck Hunter stated in the one and one half years or so in which the Department has operated this program, there have really only been two groups who have come to them saying they are already licensed, they do construction-related work, but we already get our own licenses and gone through that process. Those two groups were water well drillers who are already addressed by the bill and fire suppression people. Really, there are no others they know of out there in the wings clamoring for an exemption because of their own licensing. In the Department's view, this limits it to the two groups they know of.

SEN. WILSON recommended they keep the exemption in.

SEN. THOMAS said this recommendation is as presented and he believes the Committee would agree the fire suppression people be included because they have to prove Workers' Compensation coverage. **SEN. THOMAS** referred to the amendment on a contractor engaged in the logging industry (**EXHIBIT 2**) who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill.

Eddy McClure said this had to be drafted separately, she thinks it is 4508.

SEN. THOMAS said they had three different options that were submitted dealing with the same subject, so they had the most conclusive language prepared so the Subcommittee did not make a recommendation on this but if it is permissible of the Committee to allow the requester time to justify this request.

Keith Olson, Montana Logging Association, said as the Department of Labor and he reads the bill, in the portion that defines construction contractor, it talks of the construction of roads. That is a fairly general term and the concern of his organization

is that every logging contractor out there, who in the process of harvesting and transporting timber frequently engages in the construction of a forest access road, whether it is for a small portion of land or a piece of federal timber.

Rather than put all those folks through the process of trying to suggest to them that they might need to go and get registered as a contractor, he would prefer to see some sort of exemption that kicks them out. Therefore, they are engaged in the process of doing public works or some of the road construction activities that the Montana Contractors' Association brings into this bill. Certainly, they would need to comply with that. He is not sure if the definition is specific and tight enough for everybody, but that is all they are asking.

SEN. BENEDICT stated he seems to him the bill deals with construction contractors but the current construction could be construed to mean road construction in the forest, is that correct?

Mr. Olson responded as he read the definition of construction contractor, it indeed referenced the construction of a road. A contractor reads "a person, firm, or corporation in pursuit of an independent business offers to undertake, undertakes or submits a bid to construct or repair, add to or subtract from, improve, move, wreck or demolish for another building, highway, road, railroad". That is the definition which has caught their attention. Again, most every logging contractor out there with a grader, crawler or bulldozer is frequently asked to build roads as part of the timber harvesting contract. In private conversation **Mr. Hunter** suggested that will bring the logging contractors in, so **Mr. Olson** is asking for an exemption.

Eddy McClure said the last thing on page 17 is to reiterate the repealed sections. She has added two things on page 5, requested by **SEN. BARTLETT** as part of the original bill, subsection (2) on line 23 of page 5 is stricken and the memo from **SEN. BARTLETT** explains the ramifications of that. (EXHIBIT 3)

Ms. McClure said **Chuck Hunter** raised the fact that on that page on line 14, subsection (e), is no longer necessary because the definition of general contractor is already in the bill, so that line needs to come out. In reference to striking subsection (2), the Department of Labor ends up doing a balancing test to try to determine whether or not a document is public or not. (Refer to EXHIBIT 3)

Ms. McClure said striking subsection (2) does not automatically mean the public doesn't get any or all this information, it just means the Department of Labor has to file the constitution and do the balancing test.

SEN. KEATING referred to Section 24, the repealer. He asked if the recommendation was to repeal 39-3-701 through 706. **SEN.**

THOMAS responded that is correct.

NOTE: SEN. KEATING RESUMED THE CHAIR AT THIS POINT IN THE MEETING.

{Tape: 1; Side: A; Approx. Time Count: 1:40 p.m.}

EXECUTIVE ACTION ON SB 3

Motion: SEN. THOMAS moved that SB 3 be tabled, then a do-pass of SB 3 for the sake of discussion as per SEN. BENEDICT'S request.

Discussion: SEN. THOMAS stated SEN. LINDA NELSON'S bill has been incorporated with the elements that needed to be and it deletes the fee, so it is his recommendation that this bill be tabled.

SEN. BARTLETT said from her understanding, the fee that SEN. NELSON was hoping to delete would continue to be a part of the law with the actions that we are taking here.

SEN. THOMAS answered this is correct. In SB 45 on page 17, further recommendation was to retain the deletion as what is referred to as 'C', that being one of the tests being registered. It was the recommendation that we retain that in here, even though SEN. WILLIAM CRISMORE is bringing forward a bill dealing with definition of independent contractor. This could be in his bill verbatim, it is the Subcommittee's recommendation that it be left in here. We know we are going to have that bill and we know it will be a significant subject matter, if this is in here and it moves forward and we know that is the case, he believes it is the right thing to do. SEN. THOMAS believes SEN. CRISMORE'S bill is the right thing to do also, but until we get to it, this will be in this bill.

SEN. BENEDICT stated it is his understanding that the \$25 annual fee will stay in and they will still have to re-register annually, and part 'C' will stay in the law, which is the part that is giving us the most problem.

SEN. THOMAS responded that part 'C' would be stricken. In SB 45 we are recommending that stricken language be retained. He apologized for referring to SB 45 and confusing the issue during discussion regarding SB 3.

SEN. BENEDICT asked him in SB 45 if the part 'C' would be stricken, but the fee would be left in current law the way it is. SEN. THOMAS said this is correct.

CHAIRMAN KEATING asked if this included the annual registration.

SEN. THOMAS responded yes.

CHAIRMAN KEATING asked if that was addressed.

SEN. THOMAS responded it was not addressed in SB 45 at all.

CHAIRMAN KEATING asked then if it was possible to address this in SB 45.

SEN. THOMAS answered that it is.

Motion/Vote: SEN. THOMAS MOVED THAT SB 3 BE TABLED. THE MOTION CARRIED BY VOICE VOTE.

SEN. BENEDICT was the only Committee member in opposition.

EXECUTIVE ACTION ON SB 5

Motion: SEN. THOMAS MOVED THAT SB 5 BE TABLED as well.

Discussion: As had been stated by SEN. HOLDEN this was in here for our use. If it is retained in Committee, it is still here.

Vote: MOTION CARRIED UNANIMOUSLY by the Committee by voice vote.

EXECUTIVE ACTION ON SB 45

Amendments: (EXHIBITS 1, 2, 3, & 4)

Motion: SEN. THOMAS moved do-pass on SB 45 with amendments. He also moved to delete the bonding which includes the repeal of Sections 701 through 706.

Discussion: CHAIRMAN KEATING asked if SEN. THOMAS was deleting this section from consideration or proposing a repealer.

SEN. THOMAS said he is proposing to repeal it, not to strike it but to repeal it from the law.

CHAIRMAN KEATING said in the work bill (EXHIBIT 1), Section 39-3-703 shows are repealed in the title. It would be stricken from the bill but it would be repealed as well.

SEN. THOMAS pointed out it would repeal Sections 701, 702, 705 and 706. His motion includes those as well. SEN. KEATING stated this is to prevent the upward mobility of Workers' Compensation claims from a subcontractor to a general contractor.

{Tape: 1; Side: B; Approx. Time Count: 1:50 p.m.}

CHAIRMAN KEATING referred to (EXHIBIT 1), Section 24 which cites the four sections which are being repealed that are not in the bill other than in (EXHIBIT 1) for clarification.

SEN. BARTLETT would like the Committee to be aware that the contractor registration bill did not entirely initiate bonding requirements on construction contractors in the State of Montana. The sections that they are proposing to repeal were in one form

or another and as early as the revised codes of Montana version of 1947, and had been amended as well and some sections had been enacted in 1975. There have been reasons for bonding requirements on construction contractors that are completely different from the contractor registration ones which evolved in the last legislative session.

SEN. BARTLETT thinks it is wise for the Committee members to be aware that this a far more sweeping amendment than simply addressing the contractor registration issues that were brought to the floor by **SEN. FORESTER'S** bill in the last session.

CHAIRMAN KEATING asked **Eddy McClure** if the payroll is bonded someplace else.

Ms. McClure responded that she did not think so.

CHAIRMAN KEATING stated then they are removing the bonding on payroll as well as Workers' Compensation.

SEN. BARTLETT said she would be willing to look at the bonding requirements as they became written in the last session. She does not want to undo years of bonding requirements on construction contractors for the other reasons beyond registration that the bonding requirements were first instituted.

CHAIRMAN KEATING said it is difficult to segregate the Work. Comp. bonding from the payroll bonding.

SEN. BENEDICT stated if they put the bonding in for purposes of the construction bonding program, we should be able to find that out without messing everything else up. He said it looks to him that there is a lot more work to do than to try to do something that might end up biting them.

CHAIRMAN KEATING agreed and stated they are trying to apply this vast well of knowledge they have been working with, to get in and correct a bad situation. They may do a little scuffling along the way but this has to be done in as much as the complaints from the public in the past two years and the restraint on workers. He hopes the Committee's knowledge can be applied in a positive way.

Motion: **SEN. BENEDICT** offered a substitute conceptual amendment that **Eddy McClure** be asked to research what needs to be done to take out the construction bonding requirements that don't affect payroll and that kind of thing, but that were put in the last session.

Discussion: **CHAIRMAN KEATING** asked **SEN. BENEDICT** if he is saying to strike the bonding for Workers' Compensation purposes but leave the bonding for payroll purposes.

SEN. BENEDICT responded he is not sure he is saying Workers' Compensation.

CHAIRMAN KEATING pointed out what was done was to propose bonding upon those who do not have a payroll. That was one thing they wanted to get rid of. He suggested to the Committee that they accept the recommendation of the Subcommittee and repeal this thing. Then to narrowly cover construction contractor bonding for payroll purposes to be amended in a new senate bill. That way you will address the specific situation that you want to retain, but you get rid of the garbage and clean the slate before it gets put back in.

SEN. BENEDICT said he feels by repealing everything, we are going to repeal some bonding requirements that have nothing to do with payroll, and have nothing to do with Workers' Compensation.

Eddy McClure said that what she hears **SEN. BENEDICT** saying is that rather than repealing 703 through 706, go back and bring them into the bill and then amend it back to the way it was before 354.

SEN. THOMAS said that is certainly a possibility, though he would not encourage going back to the old law. In his estimation, 706 which is an older law and amended last session, allows a contractor to contract when the other contractor failures to be registered. Pursuant to this law it allows the employees of the other contractor and their wages fall to the subcontractor. There is good reason to get rid of this and he believes if we do clean the slate and add back what we need, if any is needed, he would encourage the Committee to strike entirely and then add back whatever might be needed.

SEN. MAHLUM said he would like to make sure they take care of the small independent contractor, the one-man guy who comes out and hangs wallpaper, so he does not have to post a \$10,000 bond because he is not going to pay his own payroll to himself.

Motion: **SEN. BENEDICT** withdrew his substitute motion.

CHAIRMAN KEATING said the MOTION IS THAT SECTION 701, 702, 703, 705 AND 706 BE REPEALED.

Vote: This MOTION CARRIED BY VOICE VOTE, with six supporting and three opposing the motion. Those opposing were **SEN. BARTLETT**, **SEN. SHEA**, and **SEN. WILSON**.

Discussion: **Eddy McClure** referred to page 6, (EXHIBIT 1). She said all the language which is out is dependent on the changes in bonding.

CHAIRMAN KEATING asked on page 2, Section 2, what has happened to it?

Ms. McClure responded it has been deleted.

CHAIRMAN KEATING referred to Section 3 and stated there is no change. Section 4 and Section 5, there is no change. He asked the Committee if these sections were acceptable in this form? No one responded.

In referring to Section 6, line 14, (e), **Eddy McClure** said if you look at the original bill, **SEN. HOLDEN** had stricken general contractor, and specialty contractor on the page 4. Back to page 5, line 14, this is one of the things those contractors have to identify on the application form. This needs to come out in the original draft.

CHAIRMAN KEATING asked if the recommendation is to delete general or specialty.

Ms. McClure said just (e) on page 5. They don't even have to tell you the type of contracting activity they are involved in. This is just a clean-up.

Motion: **SEN. THOMAS** moved that subsection (e) of Section 6 on page 5, line 14.

Vote: The Committee unanimously voted in favor of this by voice vote.

Discussion: **SEN. THOMAS** stated he would like to focus on line 23 which is the issue **Ms. McClure** raised as the information on the application. In the current law it is not of public record and in the bill before them, it is being stricken.

SEN. BARTLETT said she agreed the language as it is proposed to be struck is overly-broad, which concerned **Mr. Greg Petesch, Code Commissioner**, and it is her understanding this was not even at the request of the sponsor, but because it was over-broad.

SEN. BARTLETT said in asking **Ms. McClure** to prepare a memo (**EXHIBIT 3**), she simply wanted to remind the Committee and the public that taking this language out does not automatically make all of that protected information. It will still be in the Department's records and it is quite likely parts of the application information will become public information and other parts will remain confidential information.

CHAIRMAN KEATING stated this language was in the law and it is being taken out at this point, nevertheless, access for public information is still available under other parts of our statutes, but it is at the discretion of the **Department of Labor** based on the statutory criteria as to what is public and what is not.

Referring to Section 7, **Ms. McClure** said depending upon what is done with the bonding, all those black marks (**EXHIBIT 1**) indicate the repeal of the bonding provisions in the Subcommittee. Those sections had to be deleted because they pertain to bonding.

SEN. THOMAS asked if this can be tagged to the original motion to delete 701 through 706.

CHAIRMAN KEATING asked **SEN. BENEDICT** if Section 7 was the area they deal with the annual certificate of registration. It now states if the certificate is valid until the earliest date of the expiration date, which must be for the period of at least two years but not less than three years.

SEN. BENEDICT responded that is in Section 206 and 401. He said the fees in this are \$80 and the fees in 401 are \$25.

SEN. THOMAS stated that in SB 45 **SEN. NELSON'S** SB 3 deals with Section 206 and it deletes subsection 6, which cannot exceed \$80, but it struck that fee entirely. It deletes the fee for the annual registration.

CHAIRMAN KEATING asked if instead of \$105 if this would bring it to just \$80? **Ms. McClure** responded that is correct, just one fee.

Motion: **SEN. BENEDICT** moved in Section 7, page 6, line 8 to strike everything after chapter down to the end of line 24. Also, to strike line 3 and 4 on page 7. That should leave the registration intact and take the fee away.

CHAIRMAN KEATING asked **Chuck Hunter, Department of Labor**, what he thought that motion would do.

Mr. Hunter responded his motion would eliminate the construction contractor registration fee, not the independent contractor exemption.

CHAIRMAN KEATING asked **SEN. BENEDICT** why he wants to do this.

SEN. BENEDICT responded he does not think that it should be incumbent on a brick-layer who wants to work in the State of Montana. In order for him to work in the state he must pay a State of Montana fee to practice his trade.

CHAIRMAN KEATING asked **Mr. Hunter** how much money in their budget applies to this situation.

Mr. Hunter responded the annual registration of \$80 with approximately 7,000 contractors is about \$560,000.

SEN. MAHLUM stated if they do that it would set a precedent for stock brokers, bankers, and many other people would not have to pay a fee to practice their profession in the State of Montana.

SEN. BENEDICT answered this pertains to the building requirements of this chapter which is the building construction contractors. He said all he is trying to do is that if the Department wants them to register, they will take that upon themselves, but by

striking everything else in that chapter, the Department does not have \$560,000 in expense anymore either.

SEN. BENEDICT said simple registration is just to send a letter.

CHAIRMAN KEATING asked if they pay any other fees?

SEN. MAHLUM asked if Mr. Hunter would expound of this issue.

Chuck Hunter stated if the legislature wants to have some kind of process to register contractors, their interest is to have the resources to be able to process the issuance. If the process to issue some kind of registration is very simple, he believes it will take less resources than they have today. He said they cannot issue this for 7,000 contractors without any money whatsoever.

SEN. THOMAS said the issue isn't really the fee, he believes it is the registration. If the Committee wants to strike registration they can do that, but if we are going to have registration then there should be a fee to pay for the system.

SEN. EMERSON said it seems to him the Department may not need quite so much money for the registration process. He asked SEN. BENEDICT if he would be willing to add something like this to the bill.

SEN. BENEDICT responded that he would instead offer a substitute motion.

Motion: SEN. BENEDICT offered a substitute motion to repeal everything in Section 7, including the registration and to delete lines 3 and 4 on page 7. He does not care if they register, but does not want them to have to pay the fee.

Discussion: CHAIRMAN KEATING asked Carl Schweitzer, Montana Contractors' Association, his opinion on this matter.

Mr. Schweitzer answered they hoped the contractor registration would not be repealed. All their members pay the \$80 fee.

Don Chance, Montana Building Industry Association, said their association also does not want the registration repealed. They all pay it, frankly if a contractor cannot pay \$80 a year to register, he cannot operate his business anyway.

Russ Penkal, Independent Contractors of Montana, said they are opposed to the registration process and this fee, not for money aspect, but for all the rules and regulations that go along with it. They also do not have a problem with gathering a data base on independents, what they do, etc. He supports the motion.

SEN. THOMAS feels that this is a good point, potentially that there is something in between and that maybe there could be a

renewal fee that is less than the original fee. Maybe the renewal fee could be \$10 or something of that nature.

Chuck Hunter said it would be difficult for him to predict what the cost would be, certainly if they have a process in which they don't need to check a bond, verify Workers' Compensation coverage, if they don't need to see if the contractor has an Uninsured Insurance policy, all those eliminations would certainly drive the cost down. He thinks the driving force behind this act was compliance with payroll laws.

CHAIRMAN KEATING said then he is advised that if they were to repeal 39-9-204, there is no reason to have 202 and 206 would be gone. So, the whole chapter would be repealed or the Committee can go back to SB 5. They are faced with a major change and he is not sure the Committee understands the ramifications of all of it. He is going to call for a vote on the motion to repeal 39-9-204.

Motion: SEN. BENEDICT stated he is not sure the motion to repeal is really workable. He gave a **SUBSTITUTE MOTION THAT MONTANA CODE ANNOTATED, SECTION 39-9-201 IS REPEALED, 202 REPEALED, 204 REPEALED AND LINES 3 AND 4 OF SECTION 3 OF 206 REPEALED AND 207 REPEALED.**

{Tape: 2; Side: A; Approx. Time Count: 2:28 p.m.}

Discussion: SEN. THOMAS suggested since there can be several motions of this nature, they could deal with this bill and amend it into a form that is pursuant to the bill. They could either vote for or against it. They could vote for or against SB 5 as well, which is the repealer. He recommends they vote on this motion immediately, and then revert to amending the bill and voting on the bill. The bill is designed to retained the contractor registration, if we chose to repeal it, we can vote against the bill and deal with SB 5.

Vote: The **MOTION FAILED** during a voice vote. There were two supporting votes by SEN. BURNETT and SEN. BENEDICT.

Motion: SEN. EMERSON MOVED TO REPLACE THE \$80 FEE WITH \$10 PER YEAR IN SECTION 8, 39-9-206, SUBSECTION (3) AND ALSO ELIMINATE SUBSECTION (6).

Discussion: SEN. THOMAS said it is his understanding that the Department, at least in the first year, is going to incur costs that exceed the \$10 which SEN. EMERSON is recommending. If they want the General Fund to pick up the other amount, then that would be the case, we will be shifting that to the General Fund. It is his understanding the Department is going to exceed the \$10 figure, up to a possible level of \$60 in costs.

Certainly, there is some room to reduce that \$80 fee, either in the form of the first year or second year or both. That first

year there is going to be more work done in setting this up. That second year, we want that procedure to be very streamlined. The work has been done, in most cases it should be in and out of there in a flash, and by reducing that revenue we are saying we do not want you dealing with that a lot, you have done the work up front, now move on. He encourages not to go with \$10 overall.

SEN. EMERSON said he agrees other than the fact that the way to get them to streamline it is put it down to \$10 and let them get the job done. They have already done some of the work last year on it and he believes it is about time to go with it.

Vote: MOTION FAILED BY VOICE VOTE, five opposing votes and four supporting votes.

Motion: SEN. THOMAS MOVED THAT WE ESTABLISH THE RENEWAL FEE NOT TO EXCEED \$25. In essence the contractors would have an up-front fee of \$80, there could be a motion to amend that, but in this motion he would be leaving that alone and just establishing an up to \$25 renewal fee.

SEN. MAHLUM made a substitute motion. He said because the system is already in the system, the contractors are in it right now, he does not believe we need the \$80 fee the first year to get it going. He suggested the first year they go to \$40, after that down to \$20.

Discussion: CHAIRMAN KEATING stated new people will be coming on, but you have to be melded into the system, that is what the \$80 fee is for. The annual renewal, then, under SEN. THOMAS' motion is reduced to \$25.

Motion: SEN. MAHLUM amended his motion to read \$50 at registration and a \$25 renewal fee thereafter.

Discussion: SEN. BARTLETT asked **Chuck Hunter** if under the power to adopt fees and changed them through administrative rule they had ever reduced a fee because of the costs necessary were reduced.

Mr. Hunter responded not in any of the programs he has been associated with.

SEN. THOMAS asked **Mr. Hunter** if they can include the reinstatement of certificates with renewal, is that more synonymous than with new?

Mr. Hunter said that is correct.

Vote: The MOTION CARRIED by voice vote, with SEN. EMERSON opposing it.

Motion: SEN. THOMAS MOVED TO REPEAL SUBSECTIONS (1) THROUGH (4) AND RETAINING SUBSECTION (5) IN SECTION 9. In retaining

Subsection (5) the language helps stop upward mobility of liability. The areas recommended to appeal deal with the issue that a contractor cannot file a lien unless they are registered. There is a feeling that is unconstitutional and barring access to the courts.

Discussion: CHAIRMAN KEATING asked if on page 8 SEN. THOMAS is requesting to insert the 39-71-405.

SEN. THOMAS said this is correct.

Vote: The MOTION CARRIED UNANIMOUSLY by voice vote.

Motion: SEN. THOMAS MOVED ON PAGE 9, SECTION 10 THE RECOMMENDATION IS TO DELETE THAT LANGUAGE ON LINES 3 TO 5. (EXHIBIT 1) This is the area that dealt with advertising, wanting to be a contractor and it was felt that this was an oversight.

Vote: The MOTION CARRIED UNANIMOUSLY by voice vote.

Motion: SEN. EMERSON MOVED THAT THE PROFESSIONAL LANGUAGE BE DELETED AND FIRE SUPPRESSION PEOPLE BE ADDED AS AN EXEMPTION IN SECTION 11.

Discussion: SEN. THOMAS would like the record to reflect the reason they are adding the fire suppression individuals is because to become licensed there is proof of Workers' Compensation coverage processes.

Vote: The MOTION CARRIED UNANIMOUSLY by voice vote.

Discussion: CHAIRMAN KEATING referred to Section 11. He stated there are some deletions of the statutes in the bill, but they are not changing that. There will be amendments to 39-9-301 as they stand in the bill.

SEN. EMERSON asked on page 11, line 7 about violations with a penalty of not more than \$5,000. He stated the main problem with this is that for small independent contractors a fine of \$5,000 is a little high. He would like to change this to \$1,000.

Motion : SEN. EMERSON MOVED THE FINE BE CHANGED FROM \$5,000 TO \$1,000.

Discussion: SEN. THOMAS said he does not know what this should be, but obviously the penalty is designed to encourage compliance with the law. He doesn't know if we want to have a law that does not encourage compliance. If we don't want the law, we can go against the law. He doesn't know if \$1,000 is enough or if \$5,000 is too much.

CHAIRMAN KEATING said the sponsor of the bill has been very thorough and thoughtful in his presentation and didn't seem to feel the necessity to address that issue.

Vote: **SENATOR EMERSON'S MOTION TO CHANGE THE FINE FROM \$5000 TO \$1000 FAILED** with a voice vote of five against and four in favor. Those voting against were **SEN. SHEA, SEN. THOMAS, SEN. WILSON, SEN. BARTLETT,** and **SEN. KEATING.**

Discussion: **CHAIRMAN KEATING** addressed Section 12 through Section 21. No changes were made in these Sections. Sections 22 and 23 have already been addressed and so have the repealer sections.

Eddy McClure asked for clarification on the bonding provisions. She asked if they were to be put back the way they were before or to repeal them.

CHAIRMAN KEATING stated they have repealed all of the bonding requirements, what they would like to have is language which would reinstate contractor bonding for payroll purposes.

SEN. THOMAS stated in talking with **Chuck Hunter** and there really did not seem to be anything that is of necessity that they are repealing with was in the law before. Potentially, it would be detrimental to go back to the old law.

It is **SEN. THOMAS'** opinion if they were to identify what they want out of the prior law and then ask **Ms. McClure** to propose that a form of amendment, he would say that would work. He does not know that any senator present will find they want to retain anything in that old law. Obviously it is a question which needs to be searched.

SEN. BARTLETT stated she would like to see what the law stated before the 1995 amendments before a change was made.

CHAIRMAN KEATING said this Executive Action on SB 45 would be held open until they get a response to that concern and discuss it.

Discussion: **SEN. BENEDICT** said he would like to add to SB 3 a repealer in 39-71-401, Section 3, page 4, after application on line 18 until program on line 20. He would like to repeal all of that language.

Ms. McClure stated 120 is already in **SEN. HOLDEN'S** bill which does take out the subsection (c). She thinks **SEN. BENEDICT** is dealing with the other half of **SEN. HOLDEN'S** bill which is to get rid of the \$25 fee and go back to old law. You would still strike the fee of the 'A,B,C' test and bring in the other half of **SEN. HOLDEN'S** bill.

Motion: SEN. BENEDICT said he MOVES TO REPEAL THE 'C' and so they are just taking it back to the way the law was and they did not need the \$25 then.

SEN. EMERSON said to his understanding we are leaving the \$50.

SEN. BENEDICT said that is not correct, this is the independent contractor versus contractor registration. This is the little guy that has to register the \$25 every year. The result of this motion would be to eliminate the fee with the independent contractor registration.

SEN. THOMAS asked if this is not eliminating registration, where will we find this then?

SEN. BENEDICT responded if you go back prior to 1995, we had part A and part B. The contractor registration did not need a \$25 fee at that point, and he is saying they do not need it now.

Vote: The MOTION FAILED with four supporting the amendment and four opposing. Those opposing were SEN. THOMAS, SEN. WILSON, SEN. BARTLETT, and SEN. SHEA.

ADJOURNMENT

Adjournment: 2:54 p.m.



SEN. THOMAS F. KEATING, Chairman



GILDA CLANCY, Secretary

TFK/gc