

MINUTES OF THE MEETING  
LABOR & EMPLOYMENT RELATIONS COMMITTEE  
MONTANA STATE SENATE

February 11, 1977

The fourteenth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in Room 402 of the State Capitol Building at 9:30 a.m.

ROW CALL: All members present.

CONSIDERATION OF SB 330: An act regarding the creation of the office of and appointment of the Workers' Compensation Judge.

Senator Murray, Chief Sponsor of this bill, introduced SB 330 to the Committee. This bill provides for the selection of the Workers' Compensation Judge by the Governor, by and with the consent of the Senate. This bill will assign responsibility for the appointment and confirmation based on inquiry into the nominee's expertise. SB 330 further provides for a salary based on a similar responsibility, that of the Administrator of the Workers' Compensation Division. (See attached testimony.)

George Wood, representing Montana Self Insurers Association, appeared in support of this bill. Under the present law, the people who wish the job as judge make application, then they are screened and then three names are sent to the governor. He will choose one. This bill permits the judge to be chosen by the same procedure, however, it is then confirmed by the Senate. The educational background is not an important qualification. Expertise in the field of Workers' Compensation is more important than a law school degree. It is important that the Workers' Compensation Judge be placed on the same perspective as the Administrator of the Workers' Compensation Division.

There being no further proponents to SB 330, Senator Lee called for any opponents.

Jim Murray, representing Montana State AFL-CIO, appeared in opposition to this bill. SB 330 would reduce the judge who has brought dignity and justice to the system of industrial accident settlements to an administrative law officer that would amount to a little more than a glorified hearings examiner. This bill demeans and mocks the whole system that was set up by the 1975 legislature to assure that both workers and employers are treated fairly in the course of industrial accident settlement. This system was a long time coming and we are unwilling to let go. (See attached testimony.)

Pat McKittrick, representing the Joint Council of Teamsters, appeared in opposition to this bill. The present law is now working. That is the most important thing that this committee should consider. The intent of the present law is for the benefit of injured workers. Under this bill all of those important powers are gone. We are going back to the idea of political participation.

Greg Morgan, representing the State Bar Association of Montana, appeared in opposition to this bill. The State Bar of Montana urges this committee to vote against SB 330.

Don Judge, representing AFSCME, AFL-CIO, appeared in opposition to SB 330. The system appears to be working as it is and appears to give fair opportunity for hearing to disabled workers. I attended a hearing and it was held in a competent manner. There is no need for a change.

Lonny Mayer, representing the Retail Clerks Association, appeared in opposition to SB 330. I don't think we have given the present system enough of a chance to work. I also attended a hearing. It was well conducted and well run.

Senator Murray, There has been some reference made by the opposition that might cause us to think there was some inequities involved. Inequities result in the standards of the individual involved. If the court handles things as equitable as the Workers' Compensation Division it seems strange that the rate of appeals would go up. Both parties have the right to appeal. The procedures before where a district court could be considered didn't provide any equities. This bill provides that the appeals goes straight to the top court. If we continue with this procedure, we are continuing to put the increased load of appeals directly to the Supreme Court.

General discussion was then held by the committee. There is nothing wrong with the present system. George Wood stated that the law shouldn't be restrictive and say the applicant has to be an attorney as the present law states. Jim Murray stated that the Worker's Compensation Judge travels all over the state to hold hearings. The court should be made as accessible as possible to workers. A lot of their time is taken up in travel.

Senator Smith moved that SB 330 DO NOT PASS. Senators Lee, Blaylock, Mehrens, Smith and Himsl voted "aye" and Senators Lowe, Goodover and Nelson voted "nay". The motion carried.

CONSIDERATION OF SB 86: Further discussion was held on SB 86. Senator Goodover moved that SB 86 DO NOT PASS. Senator Lee, Lowe, Goodover, Himsl, and Nelson voted "aye" and Senators Blaylock, Mehrens, and Smith voted "nay". The motion carried.

CONSIDERATION OF SB 264: Further discussion was held on SB 264. Senator Smith moved that SB 264 DO NOT PASS. Senators Lee, Blaylock, Mehrens, Smith, Himsl and Goodover voted "aye" and Senators Lowe and Nelson voted "nay". The motion carried.

CONSIDERATION OF SB 96: Further discussion was held on SB 96. Senator Goodover brought up the fact that this bill was already voted on January 28, 1977 and wondered why they would bring up the motion again two weeks later. On that day, however, Senator Lowe moved that this bill be deferred until legal counseling was given on how to amend it. Senator Smith made a motion to reconsider the motion made on January 28 by Senator Mehrens. The motion carried with Senator Nelson and Goodover voting "nay".

Senator Smith then moved that SB 96 DO NOT PASS. The motion carried with Senator Goodover voting "nay".

CONSIDERATION OF SB 136: Further discussion was held on SB 136. Senator Lowe made a motion that SB136 DO NOT PASS. Senator Mehrens made a substitute motion that SB 136 DO PASS. The motion failed with Senators Lee, Mehrens, and Smith voting "aye" and Senators Lowe, Blaylock, Goodover, Himsl, and Nelson voting "nay". The committee then went back to the original motion made by Senator Lowe that SB 136 DO NOT PASS. The motion carried with Senators Lowe, Blaylock, Himsl, Goodover, and Nelson voting "aye" and Senators Lee, Mehrens, and Smith voting "nay".

CONSIDERATION OF SB 163: Senator Himsl made a motion that SB 163 DO PASS. The motion failed with Senators Lowe, Himsl, Goodover and Nelson voting "aye" and Senators Lee, Blaylock, Mehrens, and Smith voting "nay". SB 163 will go to second reading without recommendation.

ADJOURN:

There being no further business, the meeting was adjourned at 10:45 a.m.



Robert E. Lee, Chairman

## ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 2/11

[illegible]

LABOR

COMMITTEE

BILL SB 330

# VISITORS' REGISTER

DATE 2/11

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 2/11/77 SENATE Bill No. 86 Time 10:20

NAME	YES	NO
Senator Robert Lee, Chairman	✓	
Senator Bill Lowe, Vice Chairman	✓	
Senator Chet Blaylock		✓
Senator Pat Goodover	✓	
Senator Matt Himsl	✓	
Senator Sandy Mehrens		✓
Senator Harold Nelson	✓	
Senator Richard Smith		✓

Laurie Jo Antonietti  
Secretary

Senator Robert Lee  
Chairman

Motion: DO NOT PASS - Senator Goodover  
moved this bill DO NOT PASS. MOTION  
carried.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 2/11/77 SENATE Bill No. 96 Time 10:25

NAME	YES	NO
Senator Robert Lee, Chairman	✓	
Senator Bill Lowe, Vice Chairman	✓	
Senator Chet Blaylock	✓	
Senator Pat Goodover		✓
Senator Matt Himsl	✓	
Senator Sandy Mehrens	✓	
Senator Harold Nelson	✓	
Senator Richard Smith	✓	

Laurie Jo Antonietti  
Secretary

Senator Robert Lee  
Chairman

Motion: Senator Smith moved SB 96

DO NOT PASS. Motion carried.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

136

Date 2/11/77 SENATE Bill No. ~~135~~ Time 10:30

NAME	YES	NO
Senator Robert Lee, Chairman	✓	
Senator Bill Lowe, Vice Chairman		✓
Senator Chet Blaylock		✓
Senator Pat Goodover		✓
Senator Matt Himsl		✓
Senator Sandy Mehrens	✓	
Senator Harold Nelson		✓
Senator Richard Smith	✓	

Laurie Jo Antonietti  
Secretary

Senator Robert Lee  
Chairman

Motion: DO PASS - Motioned failed  
Substitute motion by Senator Mehrens that  
SB 136 DO PASS. MOTION failed.

(include enough information on motion--put with yellow copy of committee report.)



SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 2/11/77 SENATE Bill No. 136 Time 10:33

NAME	YES	NO
Senator Robert Lee, Chairman		✓
Senator Bill Lowe, Vice Chairman	✓	
Senator Chet Blaylock	✓	
Senator Pat Goodover	✓	
Senator Matt Himsl	✓	
Senator Sandy Mehrens		✓
Senator Harold Nelson	✓	
Senator Richard Smith		✓

Laurie Jo Antonietti  
Secretary

Senator Robert Lee  
Chairman

Motion: DO NOT PASS

Senator Lowe moved SB 136 DO NOT  
PASS. MOTION carried.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 2/11/77 SENATE Bill No. 163 Time 10:40

NAME	YES	NO
Senator Robert Lee, Chairman		✓
Senator Bill Lowe, Vice Chairman	✓	
Senator Chet Blaylock		✓
Senator Pat Goodover	✓	
Senator Matt Himsl	✓	
Senator Sandy Mehrens		✓
Senator Harold Nelson	✓	
Senator Richard Smith		✓

Laurie Jo Antonietti  
Secretary

Senator Robert Lee  
Chairman

Motion: Senator Himsl moved SB 163 DO PASS.  
The motion failed. This bill will go to  
Second Reading without recommendation.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 2/11/77 SENATE Bill No. 264 Time 10:20

NAME	YES	NO
Senator Robert Lee, Chairman	✓	
Senator Bill Lowe, Vice Chairman		✓
Senator Chet Blaylock	✓	
Senator Pat Goodover	✓	
Senator Matt Himsl	✓	
Senator Sandy Mehrens	✓	
Senator Harold Nelson		✓
Senator Richard Smith	✓	

Laurie Jo Antonietti  
Secretary

Senator Robert Lee  
Chairman

Motion: Senator Smith moved SB 264  
DO NOT PASS.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 2/11/77 SENATE Bill No. 330 Time 10:15

NAME	YES	NO
Senator Robert Lee, Chairman	✓	
Senator Bill Lowe, Vice Chairman		✓
Senator Chet Blaylock	✓	
Senator Pat Goodover		✓
Senator Matt Himsl	✓	
Senator Sandy Mehrens	✓	
Senator Harold Nelson		✓
Senator Richard Smith	✓	

Laurie Jo Antonietti  
Secretary

Senator Robert Lee  
Chairman

Motion: SENATOR SMITH moved SB 330 DO NOT  
PASS. Motion carried.

(include enough information on motion--put with yellow copy of committee report.)

## AMENDMENTS TO THE LAW CREATING THE WORKERS' COMPENSATION JUDGE

This bill would provide for an administrative law judge which the Supreme Court has indicated was done in the last session by passage of H.B. 100. In the case of Skrukrud v. Gallatin Laundry Co., Inc., decided on December 14, 1976, the Court said, "Under the law as it now exists, the Court directly reviews the decisions of the Workers' Court, section 92-852 (2), R.C.M. 1947. The Workers' Court proceedings are administrative in nature and quasi-judicial, sections 92-852 (1) and 82A-1016, R.C.M. 1947. The appropriate scope of this Court's review should be no different than it was under former law. . . ."

This quotation is from a unanimous decision of the Supreme Court.

An administrative judge's appointment should be based on his or her expertise in the field of law upon which they will be required to render quasi-judicial decisions. It need not be based on education and does not require the qualifications of a district judge who is called upon to make judicial rulings on a multitude of subject matters.

Again, the administrative judge's most important qualification is his or her expertise in the specific field of law upon which they will be required to render decisions, and not their educational background.

This bill provides for the selection of the Workers' Compensation Judge by the Governor, by and with the consent of the senate. This bill will assign responsibility for the appointment and confirmation based on inquiry into the nominee's expertise.

The bill further provides for a salary based on a similar administrative responsibility, that of the Administrator of the Workers' Compensation Division.

This bill places the Workers' Compensation Judge and the Workers' Compensation Court in proper perspective - where it belongs - in the administrative field where its quasi-judicial powers will be exercised.

WORKER'S COMPENSATION HEARINGS AND APPEALS TO SUPREME COURT

ADMINISTERED BY WORKER'S COMPENSATION DIVISION

<u>Year</u>	<u>Heard</u>	<u>Decided</u>	<u>Appealed</u>	<u>% of Decisions Appealed</u>
1971-1972	149	72	5	6.9
1972-1973	167	86	5	5.8
1973-1974	173	106	7	6.6
1974-1975	<u>149</u>	<u>88</u>	<u>3</u>	<u>3.4</u>
TOTAL	<u>638</u>	<u>352</u>	<u>20</u>	<u>5.7%</u>

ADMINISTERED BY WORKER'S COMPENSATION COURT

1975-1976 (7/1/75-12/10/76)	198	76	28	36.8
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FISCAL NOTE (HB 100)

HEARINGS COSTS:

Division Administered:	1975-1976 \$47,333.00	1976-1977 \$51,649.00
Court Administered: <i>+57%</i>	\$82,065.00	\$85,646.00
Budget Amendment:	\$22,854.00	
Requested Supplemental Appropriation:	_____	\$57,828.00
TOTAL	\$104,919.00	\$143,474.00



Box 1176, Helena, Montana

ZIP CODE 59601

JAMES W. MURRY  
EXECUTIVE SECRETARY

LUNDY SHOPPING CENTER  
MISSOULA HIGHWAY

REMARKS OF JAMES W. MURRY ON SENATE BILL 330, HEARINGS OF THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 11, 1977

I appear here today on behalf of the workers of Montana, who deserve, at the very least, a fair shake after they have been injured or disabled as a result of an industrial accident. I appear in opposition to Senate Bill 330, which would demean the entire independent appeals system that was set up two years ago for the fair settlement of industrial accident claims.

Just 20 months ago, after years of abuse and corruption of the workers' compensation system, injured workers finally got a break with the establishment of the workers' compensation court. Injured workers finally were guaranteed the objectivity, professionalism and dignity that accompany every court of law when a court for workers was established on an even footing with our state district courts.

And now, through Senate Bill 330, you would reduce the judge who has brought dignity and justice to the system of industrial accident settlements to an administrative law officer that would amount to little more than a glorified hearings examiner. Under the proposal you're considering today, the workers' compensation judge would no longer be subject to the same standards and qualifications our district judges must meet. The workers' compensation judge would no longer come through a judicial nominating commission before appointment by the governor because the workers' compensation judge would no longer be a member of the judicial branch of government. The next workers' compensation judge would be hand-picked by the governor, and eventually, we would find ourselves right back where we started with political abuse of the system. We know that wouldn't happen now, with the quality of leadership that currently prevails over the Division. But we've seen deception and we've seen corruption too many times in the past to trust the type of structure you're considering today.

Four years ago, the Montana State AFL-CIO clamored for an independent appeals procedure for settling workers' compensation claims. The time was right for an independent appeals procedure. Suddenly, however, with the threat of Senate Bill 330, that appeals procedure isn't so independent. Suddenly, the insulation that protected the court from political influence would be stripped away with the replacement of the current judge by an administrative officer. Suddenly, the insurance companies would have more influence with the court, and they aren't entitled to more influence.

Some of you may not know that the workers' compensation law was designed and enacted for the benefit of injured workers. The workers' compensation law exists for workers...not for doctors or lawyers or insurance companies.

The position you're talking about today...the position of workers' compensation judge...should attract a person of the highest calibre and a person with a thorough knowledge of the law because the law we're talking about is a very complex law. There is no language in Senate Bill 330 that requires the workers' compensation judge to be a

lawyer, and I think injured workers are entitled to more than that. Furthermore, Senate Bill 330 would drop the salary of the workers' compensation judge, and that's hardly the way to go about building the calibre of this important office.

In effect, Senate Bill 330 demeans and mocks the whole system that was set up by the legislature in 1975 to assure that both workers and employers are treated fairly during the course of industrial accident settlements. We view Senate Bill 330 as a backdoor approach to the demise of the independent appeals system by the same people who opposed creation of the new system in 1973. That system was a long time coming, and we are unwilling to let go of it, now that we have had a taste of justice.

opeiu #2, afl-cio