

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

February 1, 1979

The meeting of the Labor and Employment Relations Committee was called to order by Chairman Lowe on February 1, 1979, in Room 404 of the State Capitol at 12:30 p.m.

ROLL CALL: All members of the Committee were present.

Chairman Lowe asked Senator Lawrence G. Stimatz to address the Committee as Sponsor of Senate Bill #190. Senator Stimatz explained that the bill was designed to exclude from membership in the Public Employees' Retirement System students in public educational institutions and those CETA-funded employees who elect to be excluded; and to allow persons so excluded who later become members to qualify the excluded service. Senator Stimatz then introduced Larry P. Nachtsheim of the Personnel Division to explain the financial impact to the Committee. Mr. Nachtsheim's statement is attached as Exhibit "A". Mr. Bruce H. DeRosier, Executive Director of the Employment and Training Division of the Department of Labor then offered testimony in favor of Senate Bill #190 and his statement is attached as Exhibit "B".

Another proponent of the bill was Mr. David G. Goss representing the City of Billings. Mr. Goss proposed an amendment to Senate Bill #190 which is attached as Exhibit "C".

After a general discussion of Senate Bill #190, Senator Dover moved the Amendment and Senator Aklestad seconded, however, Senator Dover asked the Department to rework the amendment to make it shorter and to provide the Committee with a Financial Statement at the next meeting to be held on February 6, 1979.

Chairman Lowe then asked Senator Hafferman to address the Committee on Senate Bill #208. Senator Hafferman stated that this bill was introduced at the request of the Code Commissioner and introduced Mr. John A. Bobinski, Legal Counsel for the Personnel Division, to explain the changes to the Committee. Mr. Bobinski proposed several amendments to the bill which are attached as Exhibit "D". Mr. Bobinski stated that there were no substantive changes in the bill and explained each amendment to the Committee.

There being no proponents or opponents to Senate Bill #208, Senator Dover moved passage of the bill with the amendments, seconded by Senator Palmer and the bill passed unanimously as amended.

Representative Pavlovich was then asked by Chairman Lowe to address the Committee on House Bill #31. Senator Pavlovich explained that this bill was introduced at the request of the Department of Labor and Industry to clarify the method of charging interest on past-due contributions.

Senator Pavlovich then introduced Mr. Harold V. Kansier, Deputy Administrator of the Unemployment Insurance Bureau of the Department of Labor and Industry. Mr. Kansier explained that primarily the changes would allow the penalties collected to be placed into the unemployment compensation trust fund instead of a non-interest bearing fund.

Since there were no proponents or opponents, Senator Dover moved the bill and Senator Aklestad seconded, and the bill was passed unanimously.

Senator Dover then moved that House Bill #31 be placed on the Consent Calendar and the Committee so moved unanimously.

Chairman Lowe then asked the Committee to vote on Senate Bill #150 heard at a previous meeting. Senator Mehrens moved to pass the bill and the Committee voted unanimously to pass this bill.

Chairman Lowe then asked Senator Palmer if it would too great an inconvenience to reschedule his bill, Senate Bill #266 to February 6th as there was only one bill scheduled for Saturday, to which Senator Palmer voiced no objection.

There being no further business, the Committee adjourned at 2:00 p.m.



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Senator William R. Lowe

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

46TH LEGISLATIVE SESSION - - 1979

Date 2-1-79

NAME	PRESENT	ABSENT	EXCUSE
HAROLD C. NELSON, VICE CHAIRMAN	✓		
GARY AKLESTAD	✓		
HAROLD L. DOVER	✓		
WILLIAM F. HAFFERMAN	✓		
JOHN (SANDY) MEHRENS	✓		
BOB PALMER	✓		
ELMER D. SEVERSON	✓		
RICHARD G. SMITH	✓		
BILL R. LOWE, CHAIRMAN	✓		

Attach to minutes each day.

AMENDMENTS TO SB-208 (WHITE COPY)

- 1. Page 6, line 22.  
Strike: "and 39-3-204"
- 2. Page 7, line 22.  
Strike: "and 39-3-203"
- 3. Page 11, line 17.  
Strike: "the"  
Following: "the"  
Insert: "a"
- 4. Page 23, line 8.  
Strike: "Standards for apprenticeship"  
Following: "apprenticeship"  
Insert: "Apprenticeship"  
Strike: "are as follows"  
Following: "follows"  
Insert: "shall contain"
- 5. Page 24, line 16.  
Strike: "the provisions of"
- 6. Page 25, lines 3 through 16.  
Strike: lines 3 through 16 in their entirety  
Following: line 16  
Insert: "(2)(a) "Public employee" means:  
  - (i) except as provided in subsection (2)(b) of this section, a person employed by a public employer in any capacity; and
  - (ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.  
(2)(b) "Public employee" does not mean:  
  - (i) an elected official;
  - (ii) a person directly appointed by the governor;
  - (iii) a supervisory employee, as defined in subsection (3) of this section;
  - (iv) a management official, as defined in subsection (4) of this section;
  - (v) a member of any state board or commission who serves the state intermittently;
  - (vi) a school district clerk;
  - (vii) a school administrator;
  - (viii) a registered professional nurse performing service for a health care facility;
  - (ix) a professional engineer;  
or  
(x) an engineer-in-training."

7. Page 29, line 17.  
Strike: "and"

27. 8. Page 29, line 18.  
Strike: "39-31-204"

9. Page 56, line 19.  
Strike: "must be"  
Following: "be"  
Insert: "are"

10. Page 56, line 25.  
Following: "or"  
Strike: "be"  
Following: "be"  
Insert: "it is"

11. Page 62, line 3.  
Following: "or"  
Strike: "be"  
Following: "be"  
Insert: "it is"

Chapter 169, 1941 Laws

CHAPTER 169

SESSION LAWS

Section 3054. Semi-monthly Payment of Wages. Definitions for the purpose of this act.

Employer to give notice to employees as to wages.

"Each employer, or an authorized representative of the employer, shall on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month or yearly basis and date of payments. Such notification shall be in writing to each employee or the posting of notice in a conspicuous place. The provisions of this Section shall not apply in respect to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received and hours to be worked, or to employers engaged in agriculture or stock raising, provided, however, such employers shall conform with the provisions of Section 2056.

Now CODIFIED AS 39-3-203

Wages to be paid, when.

"Every employer of labor in the State of Montana, shall pay to each of his employees the wages earned by such employees at least twice in each month in lawful money of the United States, or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed shall withhold from any employee any wages earned or unpaid for a longer period than five (5) days after the same become due and payable; provided, however, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law; provided further, that if at such time of payment of wages any employee shall be absent from the regular place of labor, he shall be entitled to such payment at any time thereafter. Provisions of this Section shall not apply to any professional, supervisory or technical employees, who by custom, receive their wages earned at least once monthly.

Now CODIFIED 39-3-204

Permissible deductions.

Exception.

Definitions.

"The following are the definitions used for the purpose of this act:

(a) 'Employ' means permit or suffer to work.

(b) 'Employer' includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, acting directly or indirectly in the interest of an employer in relation to

CHAPTER 11, 1919 LAWS

Chapters 10-11

SESSION LAWS

Board of County Commissioners, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient, and the question of the removal of the county seat shall not be submitted."

Section 3. This Act shall be in full force and effect from and after its passage and approval.

Approved February 13, 1919.

CHAPTER 11.

"An Act to Provide for the Payment of Wages of Employees and to Provide Penalties for Violations Thereof."

Be it enacted by the Legislature of the State of Montana:

Wages of  
laborer shall be  
paid every 15  
days.

Wages shall be  
paid upon or  
before what day

When employee  
is absent from  
place of labor.

Employers who  
are not affected  
by this Act.

Penalty for not  
paying at times  
required by Act.

Section 1. That from and after June 1, 1919, every employer of labor (except agricultural labor), whether a person, copartnership or corporation, in the State of Montana, shall pay to his employee the wages earned each and every fifteen (15) days in lawful money of the United States, or checks on banks convertible into cash on demand full face value thereof, and all such wages shall be due and payable, and shall be paid by such persons, copartnership or corporation not later than the fifth and twentieth day of each calendar month for all such wages earned up to and within five (5) days of the date of such payment; provided, however, that if at such time of payment any employee shall be absent from the regular place of labor he shall be entitled to such payment at any time thereafter; provided, further, that this Act shall not affect any person, copartnership or corporation, foreign or domestic, who shall have already established, and shall continue to maintain, a semi-monthly or weekly pay day.

Section 2. Whenever any employer, whether a person, copartnership or corporation, fails to pay any of his employees, as provided in Section 1 of this Act, then a penalty shall attach to such person, copartnership or corporation, and become due such employees as follows: A sum equivalent to a penalty of five per cent of the wages due and not paid, as herein provided, as liquidated damages, and such penalty shall attach and suit may be brought in any court of competent jurisdiction to recover the same and the wages due.

Section 3. Whenever any employee is discharged from

COLLECTIVE BARGAINING  
FOR PUBLIC EMPLOYEES

39-31-205

**39-31-202. Board to determine appropriate bargaining unit — factors to be considered.** In order to assure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

**History:** En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2).

**39-31-203. Deduction of dues from employee's pay.** Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

**History:** En. Sec. 12, Ch. 441, L. 1973; R.C.M. 1947, 59-1612.

**39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right.** (1) No public employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment if such public employee pays in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments, and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this section shall make written application to the chairman of the board of personnel appeals. Within 10 days of the date of receipt of such application, the chairman shall appoint a committee of three, consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who shall be the chairman. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within 3 days of the meeting date, and a copy thereof shall be forthwith mailed to such public employee, labor organization, and the chairman of the board of personnel appeals.

**History:** En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(5).

**39-31-205. Designated labor organizations to represent employees without discrimination.** Labor organizations designated in accordance with the





*Exhibit C*

## CITY OF BILLINGS

220 NORTH 27TH STREET  
P. O. BOX 1178  
BILLINGS, MONTANA 59103  
PHONE (406) 248-7511

### PROPOSED AMENDMENT TO SB 190

(15) Person who are employed on or after the effective date of this act as city managers, city administrators, or as any type of an appointed chief administrative officer of any city or county government ~~or a division of the city or county government~~ may elect not to join the retirement plan under this act by notifying the board in writing prior to their employment or within 90 days following their employment. Those persons already employed as an administrative officer by a municipality or county government at the time of the effective date of this act may elect to terminate their membership in the retirement plan under this act in order to join or continue membership in another retirement plan established for administrative officers of local governments. A person wishing to terminate under this section shall notify the board within one year following the effective date of this act of the individual's desire to terminate membership. Upon such notification, the board shall direct the administrator of the plan to transfer the employee contributions, if any, that the individual terminating has on account under this plan to the other retirement plan that has been designated by the person terminating.

*Exhibit "B"*

January 17, 1979

Honorable Lawrence G. Stimatz  
Montana Senate  
State Capitol  
Helena, MT 59601

Dear Senator Stimatz:

As per your request regarding the Public Employees Retirement System (PERS) in relation to the Comprehensive Employment and Training Act (CETA), I have compiled all available information for your review.

Under the Comprehensive Employment and Training Act, Public Service Employment participants are required to receive the same rights and benefits as regular public employees. Historically, CETA monies have been used to provide these rights and benefits to participants. Almost 120 million federal dollars nationwide are utilized for contributions to state and local retirement funds each year. If a CETA employee (for whom retirement benefits have been paid) is not hired as a regular employee, the federal CETA money contributed on his/her behalf has remained in the retirement fund.

Section 98.25 of the October 13, 1977 CETA Regulations indicates that after October 1, 1978, PSE funds are not to be used to pay the employer's share of contributions into retirement funds. The expenditure of funds for retirement contribution purposes is to be assumed by the employer of the PSE participant. In many cases, particularly in state and local government positions, the money required to pay the contribution is not available. Consequently, I requested and received a waiver of Section 98.25 until such time that the state legislature had the opportunity to convene to adopt an alternate plan. The waiver will not be extended beyond July 1, 1979.

As I have indicated, many individual employing agencies do not have the necessary money available, and hence, would have to lay off their CETA personnel. If participation in the retirement system were optional, CETA employees would be classified similarly to other public employees who are excluded from PERS, but still have the option to join. Thus, CETA participants could decide on an individual basis whether or not to contribute. Because an employee must pay into PERS for 5 years before becoming eligible for benefits, it could be expected that most CETA employees would choose not to join, and consequently, the burden on local employers would be eased.

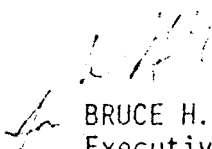
If the CETA participant was later hired into a permanent, full-time position with the same employer, he/she could then make a decision on whether to join PERS, retroactive, of course, to the beginning of the CETA-funded training period. If the decision was to join, the ex-CETA individual would be required to pay his share for the entire period, but federal funds could be used to pay the employer's share for the time the individual had been in training.

Making PERS optional for CETA employees could save an estimated \$200,000 annually in state funds which would have to be set aside for CETA PERS contributions. For city and county funds, an even higher savings could be realized.

The current waiver of the Regulations extends only to July 1, 1979. After July 1, 1979, federal funds can be used for PERS only if the employer has hired the participant on a permanent, full-time basis, and if the participant then makes the decision for retroactive coverage.

I hope this answers your questions concerning PERS. I have enclosed some information I thought would be helpful. If I can assist you with further clarification, please let me know.

Sincerely,



BRUCE H. DeROSIER  
Executive Director

Enclosures

cc: Larry Nachtsheim,  
Steve Brown

P.E.R.S. BILL -- CETA and SCHOOL DISTRICT EMPLOYEES' EXCLUSION

Subsection 14.

Primary thrust of this bill is to correct a funding deficiency created by a change in the federal regulations which delete payments for retirement benefits from CETA grant moneys.

This bill provides a means whereby CETA employees may elect not to belong to P.E.R.S. Due to the temporary nature of their initial employment under CETA it is assumed that the majority of CETA employees will elect out of P.E.R.S. If these CETA employees transfer to regular full-time employment, they may qualify their previously exempted service and the federal government will pay the retroactive employer retirement cost. This bill will provide a major budgetary savings to both state and local governments as under the present federal regular and state retirement statutes, the employing agency would have to fund the retirement cost for the temporary CETA employees.

(BRUCE DeROSIER OF THE DEPARTMENT OF LABOR WILL PROVIDE  
FINANCIAL IMPACT INFORMATION)

Subsection 13.

The second portion of this bill is the student exclusion. As a whole, students, due to their economic situation, do not wish to have P.E.R.S. withheld from their salary. In most instances they will not work in public employment long enough to receive any benefits other than a refund. If an individual later becomes a public employee and wishes to qualify his employment while a university student, he or she may do so within one year of becoming permanently employed. This same option was not provided for students working in primary and secondary schools as normally the time worked is hardly sufficient to justify the

NAME: Senator Larry Stamaty DATE: 2-1-79

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

REPRESENTING WHOM? P.E.R.S.

APPEARING ON WHICH PROPOSAL: SB 190

DO YOU: SUPPORT?  AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: Technical requirement to comply  
with Federal law on CEQA  
will save State about  
\$200,000 per year - from  
the General Fund.

NAME: Bruce DeRosier DATE: Feb 2, 1979

ADDRESS: Box 169, State Capitol, Helena

PHONE: 449-5600

REPRESENTING WHOM? Employment & Training Div, Dept of Labor & Industry

APPEARING ON WHICH PROPOSAL: SB 190

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: Technical provisions to make state  
PERS and Federal Comprehensive Employment  
& Training Act (CETA) retirements compatible.







NAME: Harold V. Kausier DATE: 2/1/79

ADDRESS: Helena

PHONE: 449-2723

REPRESENTING WHOM? Int Emp. Sec. Div.

APPEARING ON WHICH PROPOSAL: HB-31

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Fred Barrett DATE: 2/1/79

ADDRESS: P.O. Box 1728

PHONE: 449-3662

REPRESENTING WHOM? E, S, D,

APPEARING ON WHICH PROPOSAL: S.B. 208 H.B. 31

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

# STANDING COMMITTEE REPORT

February 1

19 79

MR. President:

We, your committee on Labor & Employment Relations

having had under consideration Senate Bill No. 203

Respectfully report as follows: That Senate Bill No. 208  
introduced bill be amended as follows:

1. Page 6, line 22.

Strike: "and 39-3-204"

2. Page 7, line 22.

Strike: "and 39-3-203"

3. Page 11, line 17.

Following: "file"

Strike: "the"

Insert: "a"

4. Page 23, line 7.

Following: "39-6-106."

Strike: "Standards for apprenticeship"

Insert: "Apprenticeship"

NOOPASS

(CONTINUED)

February 1

79

19.....

5. Page 23, line 8.

Following: line 7

Strike: "Standards for apprenticeship"

Insert: "Apprenticeship"

6. Page 23, line 8.

Following: "agreements"

Strike: "are as follows"

Insert: "shall contain"

7. Page 24, line 16.

Strike: "the provisions of"

8. Page 25, lines 3 through 16.

Strike: lines 3 through 16 in their entirety

E. Page 25.

Following: line 16

Insert: "(2) (a) "Public employee" means:

(i) except as provided in subsection (2) (b) of this section, a person employed by a public employer in any capacity; and(ii) an individual whose work has ceased as a consequence of of in connection with any unfair labor practice or concerted employee action.

(2) (b) "Public employee" does not mean:

(i) an elected official;(ii) a person directly appointed by the governor;(iii) a supervisory employee, as defined in subsection (3) of this section;(iv) a management official, as defined in subsection (4) of this section;(v) a member of any state board or commission who serves the state intermittently;(vi) a school district clerk;(vii) a school administrator;(viii) a registered professional nurse performing service for a health care facility;(ix) a professional engineer;

or

(x) an engineer-in-training."

10. Page 29, line 17.

Strike: "and"

11. Page 29, line 19.

Strike: "39-31-204"

12. Page 56, line 19.

Following: "shall"

Strike: "must be"

Insert: "are"

(CONTINUED)

February 1 19 79

13. Page 56, line 25.

Following: "or"

Strike: "be"

Insert: "It is"

14. Page 62, line 3.

Following: "or"

Strike: "be"

Insert: "It is"

And, as so amended,  
DO PASS



# STANDING COMMITTEE REPORT

February 1

1979

MR. **President:**

We, your committee on **Labor & Employment Relations**

having had under consideration **House**

Bill No. **31**

Respectfully report as follows: That **House**

Bill No. **31**

**unanimously passed and unanimously placed on consent calendar.**

**UNANIMOUSLY CONCURRED IN**

*B.A.*

..... February 1 ..... 1979 .....

MR. **President:** .....

We, your committee on **Labor & Employment Relations** .....

having had under consideration ..... **Senate** ..... Bill No. **150** .....

Respectfully report as follows: That ..... **Senate** ..... Bill No. **150**  
**introduced bill unanimously passed.**

DO PASS

*W.R.*