

MINUTES OF THE MEETING OF THE HOUSE LABOR AND INDUSTRY COMMITTEE  
January 15, 1981

The Labor and Industry Committee convened at 12:30 p.m. on January 15, 1981, in Room 129 of the State Capitol, with Vice Chairman Underdal presiding and all members present, except Chairman Ellerd who was excused.

Vice Chairman Underdal opened the meeting to a hearing on the following bills: HBS 118 and 124.

HOUSE BILL 118

REPRESENTATIVE ROBERT ANDERSON, District 16, chief sponsor, said this bill deals with the Department of Labor and Industry's State Board of Personnel Appeals, which review filed grievances and make decisions. Rep. Anderson apologized for the need of extensive amendments and passed to each member a copy of the amended bill (EXHIBIT 1 of the minutes). He said the five member board has had difficulty getting all members together and meeting on a regular basis. This bill would provide three auxiliary members - one to represent labor, one to represent management and a neutral one. If any of the appointed regular members are unable to make a hearing, his auxiliary counterpart would sit in for him. This will enable the full board to meet on a regular basis. He said Bob Jensen and Dave Hunter were present at his request to give testimony and answer questions.

DAVID HUNTER, Commissioner of Labor and Industry, said he was in favor of the auxiliary board members. He said the Board of Pardons is handled this way. He said this particular board (Board of Personnel Appeals) differs from many other boards in that it has a specific makeup - needs to include members representing labor, and management and a neutral (whose vote is often needed to break a tie).

BOB JENSEN, Labor Department, said he would answer questions.

R. NADIEAN JENSEN, American Federation of State, County and Municipal Employees, Executive Council 9, spoke next in support and a copy of her testimony is EXHIBIT 2 and part of the minutes. He said they would also support the amended bill.

JAMES W. MURRY, Montana Secretary of the AFL-CIO, said they would like to go on record as supporting the bill.

RANDY SIEMERS, Operating Engineers, said this would expedite decisions and they support the bill.

Opponents - none.

Rep. Anderson closed. He said this will not increase the permanent size of the board. These members will only fill in if needed to get the job done.

Vice-Chairman Underdal asked for questions from the committee. Rep. Keyser objected to having the substitute members appointed by the Governor. He said in the original bill the board members selected the substitute neutral member. He felt this change made a questionable bill out of a good one. He felt this could overbalance the total board. Rep. Anderson in responding pointed out that line 19, page 1, of the original bill provides the board to be appointed by the Governor. He said this is a usual practice for most of the boards that function in the state. Rep. Keyser said his chief objection was having a brand new bill before them and having 8 people appointed. On request Mr. Hunter responded that this way both sides will have some assurance of who the board members will be. In response to a question by Rep. Keedy, Mr. Bob Jensen said the policy is the same members who hear a case will decide on it. Rep. Menahan brought out that the Senate has to approve board appointments.

#### HOUSE BILL 124

REPRESENTATIVE EARL LORY, District 99, chief sponsor, said it was at the request of the Workmen's Compensation Advisory Council that he was sponsoring the bill. He said it was an innocuous bill that made some minor changes in the laws relating to Workmen's Compensation laws. Rep. Lory went through the bill explaining the changes. He said he had requested Bill Palmer of the Division of Workmen's Compensation to be present to give testimony and answer questions.

NORM GROSFIELD, Independent Insurance Agents of Montana, said they support the bill and most especially the first change.

BILL PALMER, Labor and Industry Department, said he is on the council which is comprised of members from labor, insurance agents, private sector, division people and this council has checked through proposed bills - one veto and the council does not give its support. This bill has the council's support. Mr. Palmer requested the word "monthly" be struck on page 4, line 10.

JAMES W. MURRY, Executive Secretary of the AFL-CIO, said he has served on the Governor's Advisory Council. He said they support the bill.

Opponents - none. No questions from the committee.

#### EXECUTIVE SESSION

HOUSE BILL 124 - Rep. Keyser moved to strike "monthly" on page 4, line 10. This was approved unanimously with those present. Rep. Harrington moved the bill AS AMENDED DO PASS. Rep. Thoft seconded the motion. The motion carried unanimously with those present.

HOUSE BILL 118 - Rep. Menahan moved DO PASS. Rep. Keyser moved to delay action until the two members who had been gone during the explanation of the amended bill have an opportunity to study it (Chairman Ellerd and Rep. Seifert - who had been excused to attend a meeting during the hearing on HB 118 but was again present). A roll call vote was taken and it passed with 9 yes and 7 no and 1 excused (Chm. Ellerd). The nos were Reps. Dozier, Harper, Harrington, Menahan, O'Connell, Pavlovich, Sivertsen.

Rep. Menahan moved that no further action be taken on any bills. Rep. Harrington seconded it. A voice vote was taken and failed.

HOUSE BILL 79 - Rep. Harper said a Statement of Intent was needed for this bill which had been passed from the committee the previous meeting. Copies of the Statement were passed and a copy is EXHIBIT 3 and part of the minutes. Rep. O'Connell moved this statement be accepted. A voice vote was taken and passed unanimously with those present.

HOUSE BILL 11 - The sponsor of this bill had agreed to the amendments accepted by the committee at the last meeting. Rep. Kaiser moved that the amendments be adopted. The motion carried with Rep. Dozier voting no and Rep. Ellerd excused. Rep. Keyser moved the bill AS AMENDED DO PASS. This motion carried with five voting no (Dozier, Harrington, O'Connell, Pavlovich, Menahan) and one absent (Ellerd).

HOUSE BILL 89 - Rep. Menahan moved the bill DO NOT PASS and Rep. Thoft seconded the motion. The researcher, Ms. Brodsky, read upon request a communication from Floyd E. Edwards, Regional Administrator of the US Department of Labor. This communication had been received by Fred Barrett of the Employment Security Division (EXHIBIT 4 of the minutes). This communication indicated the bill would be unconstitutional and could adversely affect the state's Employment Security Program. A voice vote was taken and passed unanimously with those present.

HOUSE BILL 101 - Rep. Harrington moved the amendment on page 1, lines 20 and 21, to strike "bad" and "as described in 45-6-316" and insert "knowing it will not be honored on the date of issue." Rep. Keedy moved a substitute motion to amend by striking the new language on page 1, lines 20 and 21 and insert "(a) because his employer failed to pay him in full and in timely fashion" and to strike Seciton 2 in its entirety. He felt this would clear up the problem and not tie it up with the criminal part which could leave a loophole and the employer simply would not issue a check at all. He felt this broader amendment would cover Rep. Dozier's concern of ineligibility for compensation. Rep. Dozier said he had trouble with "in timely fashion" which has a time limit of 10 days. He preferred "knowingly gave him a bad check."

He said he was not after the guy who makes an overdraft accidentally but the one who does it knowingly. Rep. Keedy expressed a fear this could encourage employers not to pay at all and he didn't think that was Rep. Dozier's intent. Rep. Harper said he had done a little follow-up work on the bill and the Division people had told him they could see the committee was pretty much in accord with feeling that being issued a bad check was reason for quitting. They, however, felt the problem could better be handled through the rules by telling the local eligibility checkers that a bad check is reason for leaving employment. Rep. Harper moved a substitute motion to indefinitely postpone the bill. Rep. O'Connell moved a substitute motion of **PASSING THE BILL FOR THE DAY**. This motion carried with Reps. Seifert, Keyser, Smith and Underdal voting no.

Motion was called for adjournment. Meeting adjourned at 1:38 p.m.

Respectfully submitted,

  
Melvin Underdal  
Vice Chairman Underdal

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BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED "AN ACT PROVIDING FOR AUXILIARY MEMBERS ON THE BOARD OF PERSONNEL APPEALS; AMENDING SECTION 2-15-1705, MCA."

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

Section 1. Section 2-15-1705, MCA, is amended to read:

"2-15-1705. Board of Personnel appeals -- allocation -- composition -- quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) The board consists of five members and three auxiliary members appointed by the governor. Two members and one auxiliary member shall represent management, two members and one auxiliary member shall represent employees or employee organizations of the state, and one member and one auxiliary member shall represent a neutral position.

(4) An auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time an auxiliary member has all the rights and responsibilities of a regular board member. The neutral auxiliary member may

1 only replace the neutral member. The auxiliary member who  
2 represents management may only replace a member who represents  
3 management. The auxiliary member who represents employees or  
4 employee organizations of the state may only replace a member  
5 who represents employees or employee organizations of the state.

6 ~~(4)~~(5) The board is designated a quasi-judicial board for  
7 purposes of 2-15-124."

8 Section 2. Effective date. This act is effective on passage  
9 and approval.

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Ex. 2

MONTANA STATE COUNCIL No. 9  
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES  
Affiliated With A. F. L. - C. I. O.



Jerry Wurf  
International President

William E. Lucy  
International Secretary-Treasurer

TESTIMONY ON HOUSE BILL 118

HOUSE LABOR AND INDUSTRY COMMITTEE

January 15, 1981

Mr. Chairman, Members of the Committee:

For the record, my name is Nadiean Jensen. I am the executive director of Montana State Council #9, American Federation of State County and Municipal Employees (AFSCME), AFL-CIO. I appear today as a proponent of HB 118.

HB 118 will allow the board, of the Board of Personnel Appeals, to conduct business each time it meets rather than, as in the past, having to postpone or skip meetings because the neutral board member could not be present.

It is very frustrating to both management and labor to have a scheduled hearing date, thereby knowing a decision will be made to resolve problems filed with the board; then have that hearing postponed.

Postponments create a back log in case load, for the board and are also costly to the state.

Mr. Chairman, members of the committee, HB 118 would allieviate these problems and I would urge your support of HB 118 and recommend you give it a do pass recommendation.

Thank you

Respectfully submitted,

R. Nadiean Jensen, Executive Director  
Montana State Council #9, AFSCME, AFL-CIO

Statement of Intent - LC 282

A statement of intent is required for this bill because it grants the Commissioner of Labor and Industry rulemaking authority regarding the preference for Montana labor in public works contracts. This bill intends that the commissioner adopt rules concerning areas such as the use of apprentices, methods of computing standard prevailing wage rates, and geographical areas subject to the rates. The commissioner shall also have the authority to adopt rules as may be needed to ensure that reporting and enforcement measures are complied with.



Ex. 4.

ELEGRAPHIC MESSAGE

SECURITY DIVISION

NAME OF AGENCY U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION	PRECEDENCE ACTION: P INFO:	RECEIVED JAN 08 1981 EMPLOYMENT SECURITY DIVISION
COUNTING CLASSIFICATION	DATE PREPARED 1/7/81	OFFICE OF THE ADMINISTRATOR
FOR INFORMATION CALL		TYPE <input checked="" type="checkbox"/> SINGLE <input type="checkbox"/> BOOK <input type="checkbox"/> MULTIPLE-ADDRESS
NAME FLOYD E. EDWARDS/WAAS	PHONE NUMBER 303/837-4652	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

MR. FRED BARRETT  
CHAIRMAN AND EXECUTIVE DIRECTOR  
EMPLOYMENT SECURITY DIVISION  
P.O. BOX 1728  
HELENA, MONTANA 59601

SUBJECT: PROPOSED H.B. 89

WE UNDERSTAND THAT HOUSE BILL 89 HAS BEEN INTRODUCED IN THE MONTANA LEGISLATURE PROVIDING THE FOLLOWING PREREQUISITE QUALIFICATIONS TO THE RECEIPT OF UNEMPLOYMENT COMPENSATION:

THAT AN INDIVIDUAL MUST "BE UNEMPLOYED 30 CONSECUTIVE DAYS OR 90 CUMULATIVE DAYS IN ANY GIVEN NINE MONTH PERIOD PRIOR TO HIS CLAIM FOR BENEFITS IF GROSS INCOME OR GROSS INCOME COMBINED WITH GROSS INCOME OF SPOUSE IN THE THREE QUARTERS PRECEDING DATE OF UNEMPLOYMENT EXCEEDS \$24,000."

PLEASE BE ADVISED THAT WE BELIEVE THAT THIS REQUIREMENT CONSTITUTES AN IMPERMISSIBLE "MEANS" TEST WHICH WOULD MAKE THE RECEIPT OF UNEMPLOYMENT COMPENSATION DEPENDENT UPON THE NEEDS OF THE RECIPIENT. THIS ISSUE ARISES UNDER SECTION 3304(a) (4) OF THE FEDERAL UNEMPLOYMENT TAX ACT (FUTA). A PARALLEL ISSUE WAS ADVERSELY DECIDED AGAINST THE STATE OF SOUTH DAKOTA BY DECISION OF THE SECRETARY DATED

SEPTEMBER 25, 1964. SHOULD THE PROPOSAL

SECURITY CLASSIFICATION	
PAGE NO. 1	NO. OF PGS. 2

**TELEGRAPHIC MESSAGE**

DATE OF THE ADMINISTRATION

NAME OF AGENCY U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION	PRECEDENCE ACTION: P INFO:	SECURITY CLASSIFICATION
COUNTING CLASSIFICATION FOR INFORMATION CALL	DATE PREPARED 1/7/81	TYPE OF MESSAGE <input checked="" type="checkbox"/> SINGLE <input type="checkbox"/> BOOK <input type="checkbox"/> MULTIPLE-ADDRESS
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

CONTINUED...

IN QUESTION BECOME LAW AND BE FOUND TO BE INCONSISTENT WITH FEDERAL LAW, IT IS MY DUTY TO ADVISE YOU THAT BOTH THE FUTA TAX CREDIT AVAILABLE TO MONTANA EMPLOYERS AND GRANTS FOR OPERATING THE STATE'S EMPLOYMENT SECURITY PROGRAM WILL BE SUBJECT TO LOSS.

IF YOU HAVE ANY QUESTIONS ON THIS MATTER, PLEASE LET ME KNOW.

*Michael J. Nastuck,*  
 Acting for  
 FLOYD E. EDWARDS  
 REGIONAL ADMINISTRATOR

PAGE NO. 2	NO. OF PGS. 2	SECURITY CLASSIFICATION
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VISITORS' REGISTER

HOUSE Labour + Industry COMMITTEE

118 + 134

Date 1/15/81

SPONSOR

Please specify # of bill for or against

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
PER McGLENN	HELENA, MT	IND. INSURANCE AGENTS OF MT	124	
Tom GROSSFIELD	HELENA, MT	IND. INSURANCE AGENTS OF MT	124	
Edy Samms	Helena, MT	Operating Empl	118	
Nadrian Jensen	Helena	AFSCME	118	
Bill [unclear]	Helena	AFSCME	115	
Bill [unclear]	Helena	Rep Dist 99	124	
Ed Palmer	Helena	Dist Workers Comp	124	
Anna W. Murray	Helena	Mont State AFL-CIO	118 124	
Myr Prusiel	Billings	Labour's Union	118	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.