

MINUTES OF THE MEETING OF THE HOUSE LABOR COMMITTEE
January 22, 1981

The Labor Committee met at 12:30 p.m., on January 22, 1981, in Room 129, State Capitol, with Chairman Robert Ellerd presiding and all members present.

Chairman Ellerd opened the meeting to a hearing on the following bills: HBs 190 and 193.

HOUSE BILL 190

REPRESENTATIVE STEVE WALDRON, District 97, chief sponsor, said this bill says that waitresses must be paid minimum wages and their tips may not be included in that amount. He said this is just a matter of fairness and equity.

JERRY DRISCOLL, Laborers' Union Local 98, Billings, spoke for the bill.

JOHN MUNN, Helena, representing self, said he supports the bill. He said tips declared as wages could cause corruption and is unenforceable. He said tips should be a bonus for good service and not a subsidy for the owner.

JAMES W. MURRY, Executive Secretary of the AFL-CIO, said they would like to go on record as supporting the bill. He said most of their people do not come under this act but they have always supported this kind of legislation.

MICHAEL DAHLEM, representing the 800 students of the University of Missoula, said this legislation would assist their students who must work part-time to pay for their education. He felt tips should be a bonus for good service.

ROGER L. ANDERSON, Montana Restaurant Association, Great Falls, spoke in opposition. He said he expresses the opinion of the Montana Food Service Operators. He said tip credits are very important to this service in Montana. He said tip credits create more jobs; the food service has less of a labor cost; less labor cost means that the owner of the restaurant can hire more people. Less labor costs mean lower menu prices and this helps keep a handle on inflation. He said tip credits also lessen the disparity between front-of-the-house employees and back-of-the-house-employees. He gave his own establishment as an example: if a waitress is making \$2 an hour - \$16 a day; his waitresses average \$20 a day in tips - \$36 a day which is far above the minimum wage requirement. If the restaurateur was disallowed the use of tip credit, he would have a choice of raising prices on the menu or offer the general public an incentive to come through his door because his prices are higher by including the gratuity into the price of the meal. Then the employee would be receiving only the minimum wage. He said his establishment comes

under the federal minimum wage law which is \$3.65 minus 40% tip credit. He felt tips do create more motivation of the food service employee to increase production. He pointed out that for this state to remain great we have to increase production. He said there are 93 organizational members in his group and most of them are Mom and Pop restaurants which would be affected by this legislation.

BILLIE BERSCH, Great Falls, representing self, said they have three food operations and have been in the food business for about forty years, starting as a waitress. She said the food businesses provide jobs for people who can't work an 8 to 5 schedule - like students and housewives. She asked how many other people earn a 15% cash monetary return above their pay check. She said the tradition of tipping exists nationally and internationally and is something extra given for service. She said a good waitress is a proud waitress and she will earn more money as a waitress than in many other occupations. If this bill passes she will not receive more but probably less.

ROGER YOUNG, Great Falls Food Service Association, said they represent 108 restaurants in the area. He said the food services that would be the most affected were the smaller ones and he felt they would find it difficult if they were stripped of this option. He mentioned the IRS looks on the tip as a wage and it is to be reported.

PHIL STROPE, Montana Innkeepers Association, said this act is a change of Montana law and does not affect employees bound by the federal law. He felt this law would only be effective and burdensome to those that are too small to be covered by the federal law.

Rep. Waldron in closing said his daughter works in a restaurant where the minimum wage is paid. He didn't believe the passage of this law would drive any of them out of business. He said the tip we are leaving is for the waitress and for many this has to be put into the minimum wage. He said perhaps menu prices are going up but he didn't mind paying a little more to give the employees a fair shake. As far as students being able to work in restaurants - also convenient for the restaurants as students are available for those hours. He felt the passage of this law would force the few restaurants who do not fairly deal with their help to do so.

Questions were asked by the committee. Rep. Harrington asked how one would know if a restaurant used tip credit. He said he pays the restaurant for the meal and a tip is over and above this price and left for the waitress. Rep. Waldron responded to a question that someday a waitress is unable to make up to the minimum wages in tips. Rep. Underdal asked if the individual waitress is always allowed to keep her tips, if in some places they are taken. Rep. Waldron said in one way or the other you are turning your tips over until it makes up to the minimum wage.

Mrs. Bersch responded to the question that a waitress keeps her tips and they do not go in a pot for the management. Rep. Keyser asked if there was a wide variation in what each waitress receives and Mr. Anderson said the older and more experienced would usually receive more.

HOUSE BILL 193

REPRESENTATIVE JACK MOORE, District 41, said this bill is a protection and help to the small contractor around the state. He said with this inflation it is extremely costly to get a certified accountant to certify his net worth.

There were no opponents and Rep. Moore had no closing statements and there were no questions from the committee.

Chairman Ellerd closed the hearing on the bill and opened the meeting to a consideration of the following bills:

EXECUTIVE SESSION

HOUSE BILL 148 Chairman Ellerd said this bill had failed on a DO PASS motion on January 20. Since no positive action was taken the bill is still in committee. Rep. Briggs moved a DO NOT PASS. Rep. Thoft moved that the votes from the previous do pass vote be reversed. This motion carried and so HB 148 receives a DO NOT PASS recommendation.

HOUSE BILL 118 Chairman Ellerd said additional amendments were needed on the bill because of the amendment passed on January 20. Rep. Keedy moved the following amendments: title, lines 7 and 8 to strike "PROVIDING FOR THE VOTE NECESSARY TO ADOPT A DECISION," and on line 14 to strike "vote necessary for decision--"; plus the amendment approved on January 20. This motion carried with Rep. Dozier and Rep. Harrington voting no. Rep. Underdal moved DO PASS AS AMENDED and this motion carried with Reps. Menahan, Harrington and Keedy voting no.

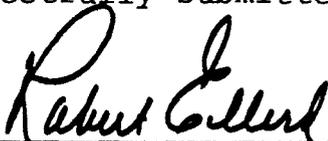
HOUSE BILL 193 Rep. O'Connell moved DO PASS. Rep. Briggs said he felt the sponsor had a wrong impression of his bill as he testified for the small contractor and the bill exempts those with a net worth over \$200,000. Rep. O'Connell withdrew her motion and made a motion to HOLD FOR THE DAY and have the sponsor return. This motion failed with a tie vote. Voting no were Reps. Dozier, Harper, Keedy, Keyser, Menahan, Seifert, Sivertsen, Smith and Rep. Thoft was absent. Rep Harper moved a DO NOT PASS motion. Chairman Ellerd said he had a problem with killing the bill as the committee did not question the sponsor when he was available. Rep. Harper withdrew his motion. Rep. Keedy moved the bill BE TABLED and this motion carried with Chairman Ellerd voting no.

HOUSE BILL 190 Rep. Harrington moved DO PASS. He said the waitress should get her tip above her minimum rate and it should be hers to do with as she likes. Rep. Pavlovich expressed surprise there weren't more people testifying - didn't they know? Rep. Sivertsen questioned what would be accomplished by passing the law as the restaurant owners would just be forced to economize in other ways - by removing other worker benefits perhaps. He felt waitresses are not being paid enough to live on and he hoped hearing the bill would alert employers to do better. Rep. Hanson also felt the bill would not help although he felt they should be getting minimum wages. Chairman Ellerd said he tips according to service and he likes to think the waitress gets it. Rep. Sivertsen said he didn't feel this bill will answer that problem. Rep. Harrington felt this was the vehicle to use - specifying they can't use the gratuity to meet the minimum wage. Rep. Keyser said he supports the bill but fears some waitresses could be hurt by it. Rep. Seifert said he opposed the bill as it would cause increased food prices in the retail market. He said in 90% of the cases checked by the Department of Labor the employees are making more money than they would if the bill passed. He felt they would be aware of abuses as the minimum wage has to be posted and reported to the Department of Labor. Rep. Smith asked how come there weren't waitresses testifying. Chairman Ellerd said the bill had been posted the required time so they should have been aware. Rep. Dozier said they elected people to represent them -- too expensive for his people to come to Helena to testify. Rep. Harper said the bill does not speak to management pocketing tips. He didn't feel the bill did much but is a good try. The researcher, Ms. Brodsky, responded to a request that she telephone the Department of Labor to ask about tip credits. She reported she had been told that this bill doesn't really affect anyone - federally covered food services have a 40% tip credit but the state does not have this so the only effect is if the minimum wage raises to \$2.50. A roll call vote was taken on the DO PASS motion and it failed with 10 voting no and 7 yes (Dozier, Hanson, Harrington, Keyser, Menahan, O'Connell, Pavlovich). Rep. Seifert moved DO NOT PASS and have the votes reversed. This motion carried.

Upon being recognized by the Chair, Rep. Harper moved that the researcher be asked to research the possession of a tip when left for a waitress or waiter and that if it is not available solely to them that a committee bill be drafted to cover such an incident. Motion carried unanimously.

Motion was made to adjourn. Meeting adjourned at 2:30 p.m.

Respectfully submitted,



ROBERT ELLERD, CHAIRMAN

