

MINUTES OF THE MEETING OF THE HOUSE LABOR COMMITTEE
January 29, 1981

The Labor Committee met at 12:30 p.m. on January 29, 1981, in Room 129 of the State Capitol, with Chairman Ellerd presiding and all members present.

Chairman Ellerd opened the meeting to a hearing of the following bills: HBs 332, 342 and 344.

HOUSE BILL 342

REPRESENTATIVE JACK MOORE, District 41, chief sponsor, said this bill provides that the Commissioner of Labor should serve at the pleasure of the Governor like every other department head.

During questions Rep. Hanson asked if any other department heads were appointed this way. Rep. Moore said the Fish and Wildlife department head was once appointed by the Fish and Game Commission but now serves at the pleasure of the Governor.

In closing Rep. Moore said he presented the bill at the request of the Governor. He said it is a good bill.

HOUSE BILL 332

REPRESENTATIVE JOE F. KANDUCH, Sr., District 89, chief sponsor, said this bill was to help people who had gone on disability years before - to increase their benefits in the future. However, after looking into the cost and finding it would cost the employers 27¢ on the dollar and that it could become a very attractive retirement program so no one would opt for the sum settlement, he couldn't justify the cost. He told the committee he was against the bill. A handout showing these facts is EXHIBIT 1.

REPRESENTATIVE RED MENAHAN said a few years back we had some of these kind of bills in to help the disabled. He said all the major employers came in for the bills. At that time the employee was provided for by the company and they could sue the company. The legislation passed and now the Industrial Accident Board is what gets sued. It protects the Anaconda Company. Rep. Menahan said the railroad takes care of its own. He said this is another case like the silicosis one.

DON JUDGE, AFL-CIO, said they support the bill and oppose the sponsor. He felt this was a good shot at trying to increase the benefits for those who have been in the program for a long time.

BILL PALMER, Workers Compensation Division, spoke as a neutral. He suggested the committee consider a fiscal note as the bill would not only have current effects but some long reaching ones.

KEITH OLSON, Montana Logging Association, spoke as an opponent. He said they pay a lot for workmen's compensation coverage. He said they are not ARCO but small independent businessmen.

Chairman Ellerd opened the hearing to questions from the committee.

Rep. Keedy asked what the lowest rate paid for industrial accident is. Mr. Palmer said 10¢ a hundred. He said the logging industry is coming down due to their engineering in new safety features. He said the highest rate is in wrecking. Rep. Keedy asked if the people being considered in this bill as totally and permanently disabled are frozen at the level of benefits at the time of the injury, and how long this has been a law. Mr. Palmer said since 1915 and increases in the average weekly wages won't do these people any good. Rep. Keedy asked how much it would cost to upgrade these people. Rep. Kanduch said \$30 million to bring the past up to now; \$8,768,396 under this bill. Mr. Palmer said some take settlements. He said they are to do the best they can for their clients and since this bill would make it a good retirement plan they would have to suggest they stay with the plan.

It was brought out that there are three plans the employer can take: self insurance, private carrier or state fund. The state rate is the cheaper.

Chairman Ellerd asked if there were any other way to fund without charging employers. Mr. Palmer said all premiums goes back to the employer. The only other way would be to appropriate. Chairman Ellerd asked how silicosis was handled. Rep. Menahan said from the general fund.

Rep. Keedy asked how Mr. Judge felt concerning the fiscal note. Mr. Judge said they would like to see it retroactive but they want to be reasonable. It would have to be commensurate with the fund. Rep. Keedy asked about the settling up. Mr. Palmer said a lot of the earlier cases have been settled. They may still be totally disabled in the vocation they were in but able to learn another trade.

Rep. Shultz asked if this is the first time this matter has been addressed. Rep. Kanduch said to his knowledge, yes. Rep. Menahan said he had tried to get rid of Plan 3 at one time.

Chairman Ellerd suggested holding the bill and seeing if anything can be done with it - to see how many people are involved. Mr. Chapman said he would check on what the state fund has. He couldn't answer for the private carriers or the self insured.

Rep. Menahan moved the bill be held until further information is obtained and then have a subcommittee check the information. Rep. Menahan suggested that perhaps a segment could be brought up now and two years from now bring up another one.

Rep. Kanduch in closing said so far he has had a terrible time trying to get a bill through a committee and now he is having a hard time trying to get a bill killed. He said if the committee doesn't know what it is doing to be sure and find out before they did anything.

Chairman Ellerd asked for a vote on Rep. Menahan's motion of holding the bill. The motion carried unanimously.

HOUSE BILL 344

Vice-Chairman Underdal took the chair as the Chairman is chief sponsor of this bill.

REPRESENTATIVE ROBERT ELLERD, District 75, said this bill is being introduced at the request of the Department of Labor. The bill would limit the payment of extended unemployment benefits to two weeks for individuals filing from a state which doesn't have extended benefits.

DAVID HUNTER, Commissioner of Labor, said this bill is needed to make the unemployment statutes in compliance with federal statutes. This is basically the federal statutes which will be enacted by other states and so will be consistent with other states. He said there are two triggers - a state and a national. The national trigger went off but the state trigger in Montana is still on. Those individuals whose state trigger is off and claim benefits in Montana could claim benefits for two weeks. If a Montana employee moves from Montana where the trigger was on to a state where the trigger was off couldn't collect.

CHAD SMITH, Unemployment Compensation Advisor, supported the bill. He said the individual could only draw for two weeks - doesn't have to be allowed to draw for two weeks but not entitled to draw for any longer than that.

Questions were asked by the committee: Rep. Keedy asked for and explanation of the trigger. Mr. Harold Kansier, Unemployment Insurance Bureau, said the trigger works this way. To have an on trigger you must have unemployment of 4 percent or more and the unemployment must be 120 percent of the average of the past two years. When the trigger is off the benefits must remain on for 15 weeks but then may trigger off at any time; and happens when the employment rate drops below 4 or below the 120 percent. He said we are at 5.19 and at 134 percent. It is anticipated we will trigger off sometime in March and with the 120 percent and not the 4 percent.

Rep. Harrington asked how this would affect Anaconda and its people. Mr. Kansier said it is a state average and not a regional

one. Rep. Menahan suggested putting it on the consent calendar. Rep. Keyser didn't think this was a good idea as other representatives won't know what a trigger is.

EXECUTIVE SESSION

HOUSE BILL 344 Rep. Dozier moved DO PASS. The motion carried unanimously (Rep. O'Connell was absent).

HOUSE BILL 342 Rep. Thoft moved DO PASS. (A delegation from the Polson High School were welcomed into the room by Chairman Ellerd and he asked Rep. Seifert to explain to them what the committee was working on.)

A voice vote was taken and the bill passed unanimously (Rep. O'Connell absent).

HOUSE BILL 259. Rep. Menahan moved DO NOT PASS. Copies of a suggested amendment was passed and a copy is EXHIBIT 2 of the minutes. Rep. Menahan withdrew his motion. The researcher, Ms. Brodsky, explained the amendment at the request of the Chairman. She said the amendments provide there will be a contract to perform services in the fall or the workers will not be excluded from claiming benefits. Rep. Harrington asked if this would be a written contract. It was mentioned the Labor Department requires a written contract. Question was called and a voice vote taken on the amendments. The motion carried unanimously with all members present. Rep. Sivertsen then moved to remove all parts having to do with short holiday times - leaving in only the summer period between terms. His amendment was to strike from line 24 on page 1 through line 7 on page 2; lines 9-15 on page 3; and the reference to holidays in the title. Rep. Menahan supported the motion. He said you don't collect for the first week and most holidays aren't two full weeks. Chairman Ellerd asked if these people when they apply for the job are informed they won't be paid for the holidays. Rep. Sivertsen said it varies between school districts. He said if they agree to pay them, fine; if not, these people can't find employment for just two weeks. Rep. Menahan mentioned that at times unemployment is considered part of the yearly salary for these people. Question was called on Rep. Sivertsen's amendments and it carried with Reps. Seifert and Smith voting no. Rep. Harper asked if the Senate carves out these provisions the committee felt necessary, would the committee stick with what it has here. Rep. Sivertsen said he would. Rep. Hanson moved DO PASS AS AMENDED and a roll call vote was taken. The motion carried with 12 voting for, 4 against (Harrington, Menahan, O'Connell, Pavlovich); and Rep. Dozier absent.

HOUSE BILL 193 Rep. Underdal moved to reconsider this bill. Motion carried unanimously with those present (Rep. Dozier absent). Chairman Ellerd asked Ms. Brodsky to explain why the bill had been brought back to the committee. Ms. Brodsky said the bill was changed from the original intent when the amendments were added. This would make it unconstitutional. Rep. Underdal moved the bill be amended to change the \$50,000 to \$30,000 and keep the other amendments. This motion carried with 10 voting for and 7 opposed (Thoft, Schultz, O'Connell, Keedy, Keyser, Harrington, Harper). Rep. Seifert moved DO NOT PASS AS AMENDED and this motion carried with 15 for, 1 opposed (Rep. Ellerd) and 1 absent (Dozier).

Chairman Ellerd recognized Ms. Brodsky. She said she had been asked to research whether an employer could keep an employee's tip. She said she had done some research and found that under the minimum wage law there is a rule but there is no law to that effect. She passed to the members copies of the direction and where it could be placed in the code. A copy of this is EXHIBIT 3 and part of the minutes.

Rep. Harper said he would like to get the committee bill moving. He said the thing will have different effects depending on where it is placed in the law. He proposed it be established as a separate section of law. Rep. O'Connell made this a motion and the motion carried unanimously with those present (Dozier absent).

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

Respectfully submitted,



ROBERT ELLERD, Chairman

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Firm No.

Case No.

DIVISION OF WORKERS' COMPENSATION
INTER-OFFICE COMMUNICATION

To Bud Pillen, Chief, State Insurance Fund

Subject Proposed Amendment to Section
39-71-702 MCA.

From Judy Simpson, Management Analyst

Date January 21, 1981

As you requested, following are some facts concerning permanent total claims:
(status as of June 30, 1980).

Year of occurrence	# Claims files	# Still open	# Closed	% Closed
71 yr.	5	3	2	40%
72 yr	5	2	3	60%
73 yr	10	3	7	70%
74 yr	17	14	3	18%
75 yr	14	10	4	29%
76 yr	9	4	5	56%
77 yr	15	9	6	40%
78 yr	22	14	8	36%
79 yr	10	8	2	20%

The lifespan of the permanent total claim appears to rarely last over 10 years as we only have one file over 10 years old still active (Bob Gohn).

Because the bill has no provision for retroactive implementation the earliest date that we can expect to feel an impact will be in FY83 as those permanent total cases accepted in 82 will (I assume) be carried forward in 1983.

Consider this: The average number of permanent claims filed for the last nine mature years (71 through 79) is 11.8. Of that number, only an average of 7.4 remain active and receiving bi-weekly benefits, and an average of 4.4 are settled or closed.

We figured the average weekly wage to increase between 8% to 10% per year (at maximum) in the future. Therefore, we can prorate out for the next 10 years the maximum net effect to the total pay out as follows:

Firm No.

Case No. Page 2

**DIVISION OF WORKERS' COMPENSATION
INTER-OFFICE COMMUNICATION**

To Bud Pillen, Chief, State Insurance Fund

Subject Proposed Amendment to Section
39-71-702 MCA.

From Judy Simpson, Management Analyst

Date January 21, 1981

# Files	Payout Year	Prorated Ave. Wage	Amount Paid Proposed	Amount Paid Current	Difference
7	82	241	87,724	87,724	0
14	83	265	192,920	184,184	8,736
21	84	292	318,864	290,472	28,392
28	85	321	467,376	407,316	60,060
35	86	353	642,460	535,808	106,652
42	87	388	847,392	677,040	170,352
49	88	427	1,087,996	832,468	255,528
56	89	469	1,365,728	1,003,184	362,544
63	90	516	1,690,416	1,191,008	499,408
70	91	568	<u>2,067,520</u>	<u>1,397,760</u>	<u>669,760</u>
		TOTALS	8,768,396	6,606,964	2,161,432

Please keep in mind that these are prorated based on estimates that ~~were~~^{were} purposely high to give us a maximum impact.

Hope this will give you what you need to testify. If you need more, please let me know.

xc: Carla Smith
John King

Ex. 2

PROPOSED AMENDMENTS TO HB 259

Page 3, lines 5 - 8

Following: "contract"

Strike: lines 5 -8 in their entirety

Following: line 14

Insert: new subsection, which reads: "The exclusions in subsections (1) and (2) apply only if the individual has a contract to perform services in any capacity for any such educational instituion for both such academic years or both such terms."

Next 1-9

Ex. 3

"Tips and gratuities are the sole property of the employee and may not be used by the employer to constitute any part of the employee's base wage."

Proposed language to be placed in Title 39(labor), Chapter 3 (wages and wage protection), Part 2(payment of wages) or Part 4 (Minimum Wage and Overtime Compensation).