

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

January 29, 1981

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Harold Nelson on January 29, 1981, in Room 404 of the State Capitol at 1:00 p.m.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF SENATE BILL 64: Chairman Nelson introduced Senator Roger Elliott, sponsor of SB 64, to the Committee, and he explained the bill to the Committee. He stated that the bill is by request of the Workers' Compensation Advisory Council. The bill also explains the differences between full and partial disability.

PROPONENTS OF SENATE BILL 64: Mr. Laury Lewis, representing the Division of Workmen's Compensation, stated they were concerned whether temporary total disability would be cut out of the bill. There was also some confusion about the amendment that was submitted earlier. However, this amendment was not adopted by the Committee. Mr. Lewis gave the Committee a handout explaining the Division's reasons for supporting the proposed bill. This handout is attached.

Mr. Lewis told the Committee that if SB 64 passes, the injured worker will be getting as much as or more than he was making at the time he was injured. He also stated that it must be decided what the Workers' Compensation Act is intended to do--it is a question the legislature has to address.

Mr. George Wood, representing Montana Self-Insurers Association, stated they are in support of SB 64. Mr. Wood's printed testimony is attached to the minutes.

Mr. Keith Olson, representing the Montana Logging Association, stated they support SB 64.

Mr. Gregg Groepper, representing the Department of Labor and Industry, stated they support SB 64.

OPPONENTS OF SENATE BILL 64: Mr. Tom Ryan, representing Montana Senior Citizens Association, stated they are in opposition to Senate Bill 64.

Mr. James Jensen, representing Low Income Senior Citizens' Advocate of Montana, wondered how the state was going to save money if there was no change. Mr. Lewis stated there is no savings--it is not an insurance company bill.

Mr. Ed Sheehy, representing himself, stated that he is in opposition to SB 64, and would fight any attempt to undercut the social security system.

Mr. Jerry Driscoll, representing Laborers' Union Local 98, stated they are opposed to SB 64.

Mr. James Murry, representing Montana State AFL-CIO, stated they have a problem with the fact that people will retire at age 65.

Chairman Nelson asked Senator Elliott to close on Senate Bill 64. Senator Elliott stated there was no infringement to the Social Security Fund. He stated we have to consider what the workmen's compensation is all about. He would be willing to offer amendments to clarify language in the bill if the Committee feels this is necessary.

QUESTIONS ON SENATE BILL 64: Senator Ryan asked about an earlier amendment to SB 64. The Committee stated that this amendment had not been adopted.

Senator Goodover asked what workers' compensation should be? Mr. Lewis stated that we should have a strong workers' compensation program in Montana and workers should be compensated for any injury they might sustain. He further stated that workers' compensation is meant to replace the lost wages of an injured worker--it is not meant to be a pension program.

Senator Goodover asked if SB 64 is passed what it would do. Mr. Lewis stated that if you are working at age 67, you can still get disability benefits if you are not retired on full social security.

Senator Hafferman wondered about an injury that might occur about a month before retirement.

Senator Elliott stated that you would get a settlement, and part of the settlement would be a choice--a lump sum or a weekly amount.

There was further discussion regarding the age of retirement and whether it is an artificial cutoff point.

Senator Anderson mentioned that there are instances when one is forced to receive social security retirement and times the recipient under the bill would have no choice but to go off total disability.

Senator Ryan asked where the money was coming from. Senator Elliott stated that the reduction in cost would be to the taxpayer.

Senator Ryan asked how this would affect those not covered by social security. Senator Elliott stated that it would not affect them at all. Senator Anderson stated that those not being covered by social security probably have their own retirement plan.

Mr. Lewis stated that the law applies only to social security.

Senator Elliott stated that the point is that when you elect to take social security retirement, the bill kicks into effect.

Chairman Nelson called the hearing closed on Senate Bill 64.

CONSIDERATION OF HOUSE BILL 49: Chairman Nelson introduced Representative Gould, sponsor of HB 49, to the Committee, and Rep. Gould explained the bill to the Committee. House Bill 49 is an act to limit the experience computation period of employers to 3 years. The advantage is that employers who have one bad year are not jeopardized forever.

PROPONENTS OF HOUSE BILL 49: Mr. Fred Barrett, representing the Employment Security Division of the Labor Department, stated that they are in support of HB 49. They feel it is good remedial legislation.

Mr. F. H. Boles, representing Montana Chamber of Commerce, stated they support HB 49. He also stated that the Montana Wood Products Association support the bill.

Mr. Ed Nurse, representing Small Business, stated they are in support of the bill.

Mr. Dave Goss, representing Billings Area Chamber of Commerce, stated they also support HB 49. They feel it reflects more accurately the trends of what is going on in the economic sector.

Mr. Greg Groepper, representing the Labor Department, stated they strongly support HB 49.

There were no opponents to HB 49 present at the hearing.

QUESTIONS ON HOUSE BILL 49: Senator Ryan asked about what historically has been the length of a computation period.

Mr. Barrett stated it would be based on the experience rating of employers on the most recent three-year period rather than from a set period extending back to 1976. They would rather have experience rating available--better data available immediately, and it would not create any additional bookeeping.

Representative Gould made closing remarks in support of HB 49, and asked Senator Anderson if he would carry this bill on the floor if the Committee Concurred on it. Senator Anderson agreed to do this.

ACTION ON HOUSE BILL 49: Senator Goodover moved that HB 49 Be Concurred In. The Committee voted unanimously (with the exception of Senator Norman who had left the meeting) that HOUSE BILL 49 BE CONCURRED IN.

ADJOURN: There being no further business, the meeting adjourned at 2:25 p.m.

Harold C. Nelson
Senator Harold C. Nelson, Chairman

mln

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

47 th LEGISLATIVE SESSION - - 1981

Date Jan. 29, 1981

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 29, 1931

MR. PRESIDENT.....

We, your committee on **LABOR & EMPLOYMENT RELATIONS**.....

having had under consideration **HOUSE**..... Bill No. **49**.....

Respectfully report as follows: That **HOUSE**..... Bill No. **49**.....

BE CONCURRED IN

~~DO PASS~~



NAME: LARRY LEWIS DATE: 1-29-81

DATE: 1-29-81

ADDRESS: 815 FRONT ST.

PHONE: 449-2047

REPRESENTING WHOM? WORKERS COMP

APPEARING ON WHICH PROPOSAL: SB 64

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

MEMORANDUM BY THE WORKERS' COMPENSATION DIVISION
REGARDING SENATE BILL NO. 64, AN ACT TO PROVIDE
THAT TOTAL DISABILITY COMPENSATION BENEFITS WILL
TERMINATE WHEN A CLAIMANT RECEIVES RETIREMENT
SOCIAL SECURITY BENEFITS OR DISABILITY SOCIAL SECURITY
BENEFITS ARE CONVERTED TO RETIREMENT BENEFITS
AND THE CLAIMANT IS DEEMED RETIRED .

The Workers' Compensation Division wishes to explain its reasons for supporting the proposed bill.

The Workers' Compensation Act currently provides for the payment of total disability benefits for the duration of the worker's total permanent disability. This amendment would provide for the termination of total disability workers' compensation benefits in cases where the claimant is deemed to be retired and no longer in the open labor market.

Payment of disability benefits to a worker who has elected retirement is not consistent with the underlying philosophy and intent of the Montana Workers' Compensation Act. Workers' compensation commentators are in universal agreement that the distinctive feature of this compensation system, by contrast with tort liability, is that its awards are made not for physical injury as such, but for disability produced by such injury. The measure of that disability is usually in the difference between the claimant's earning ability before the injury and his earning ability after the injury. The function of the Workers' Compensation Act is well understood; it is to provide support for industrially disabled workers during periods of actual disability and for their dependents in the event of occupationally related death, together with hospital, medical and funeral expenses. This being the case, loss of earnings or diminution of earning capacity are impossible to assess when normal retirement age has been reached, in that it becomes impossible to compare current earning ability with previous earning ability.

The proposed legislation will eliminate payment of total disability benefits after date of retirement. Temporary total and partial disability benefits would remain to properly compensate a worker for temporary disability and for physical impairment that may exist.

It should also be noted that the Montana Supreme Court has suggested in at least one case that the intent of the legislature should be clarified in reference to payment of compensation when loss of earnings is not a factor when a worker has removed himself from the labor market through retirement.

WBD/nmb

gross weekly earnings = \$150.00 (a) *
weekly permanent total rate = \$100 = PT rate (b)
average estimated S.S. benefits age 62 = \$264.00 monthly
average estimated S.S. benefits age 65 = \$330.00 monthly

Determination S.S. offset @ \$264.00 monthly
x 12 months
\$3,168.00
÷ 52.14 weeks
60.76 /week from SS..... (c)
÷ 50% offset
- 30.38 week SS offset..... (d)
+ 100.00 PT rate
69.62 = PT offset rate (e)

vs

100.00 weekly partial rate (f)

age 65 gross weekly earning \$150.00

PT	100.00 weekly
SS Offset	<u>37.97</u> weekly
PT offset rate	\$ 62.03 weekly

vs

Partial \$100.00 weekly

Effects of Senate Bill 54

Retirement at Age 62 - Social Security Discounted by 20%

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Gross Earnings	Permanent Total Rate	Partial Rate	Social Security Benefits	Social Security Offset Rate	Social Security Offset Rate	Permanent Total Offset Rate	Amt. Payable if SB 64 Passed				
											Amt. Payable at Retirement/SS Benefits & PT Offset Rate (b+c)
\$150.00	\$100.00	\$100.00	\$ 60.76	\$30.38	\$69.62	\$130.38	\$160.76	\$160.76	\$160.76	\$160.76	\$160.76
175.00	116.67	109.50	70.43	35.21	81.46	151.89	187.10	187.10	187.10	187.10	179.93
200.00	133.34	109.50	80.09	40.05	93.29	174.19	214.24	214.24	214.24	214.24	190.40
250.00	166.68	109.50	89.76	44.88	121.80	211.56	256.44	256.44	256.44	256.44	199.26
300.00	200.01	109.50	99.42	49.71	150.30	249.72	291.43	291.43	291.43	291.43	208.92
328.50	219.00	109.50	119.68	59.84	159.16	278.84	333.68	333.68	333.68	333.68	229.18

* Letters a-f correspond to data on page 1

** Above amounts are on a weekly basis

Effects of Senate Bill 64

Retirement at Age 65

Gross Earnings (a)	Permanent Total Rate (b)	Partial Rate (f)	Social Security Benefits (c)	S.S. + PT with offset prior to Retirement at Age 65 (c+e)		S.S. + PT (b+c)	Amount Payable if SB 64 passed (f+c)
				Retirement at Age 65 (c+e)	S.S. + PT with offset prior to Retirement at Age 65 (c+e)		
\$150.00	\$100.00		\$100.00	\$ 75.95	\$130.38	\$175.95	\$175.95
175.00	116.67	109.50		90.22	151.89	206.89	199.72
200.00	133.34	109.50		104.49	174.19	237.83	213.99
250.00	166.68	109.50		118.76	211.56	285.44	228.26
300.00	200.01	109.50		133.03	249.72	333.04	242.53
328.50	219.00 (max. allowed)		109.50 (max. allowed)	149.60	278.84	368.60	259.10

NAME: Jeffrey Ward DATE: 1/17/81

ADDRESS: Box 2899 Milwaukee, Wis. 53981

PHONE: 543-7195

REPRESENTING WHOM? Western Life Insurance Co.

APPEARING ON WHICH PROPOSAL: 518 64

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: *Wetland*

SENATE BILL 64

THE PRESENT WORKERS' COMPENSATION ACT PROVIDES FOR PAYMENT OF COMPENSATION BENEFITS TO A TOTALLY DISABLED WORKER AT A MAXIMUM COMPENSATION RATE OF \$219.00 WEEKLY OR \$11,419.32 ANNUALLY. THE BENEFITS ARE PAID FOR THE LENGTH OF THE DISABILITY WHICH COULD BE FOR LIFETIME.

THE INJURED WORKER MAY ALSO BE ENTITLED TO SOCIAL SECURITY DISABILITY BENEFITS. IF SO, THE MONTANA WORKERS' COMPENSATION BENEFITS ARE REDUCED BY 1/2 OF THE SOCIAL SECURITY DISABILITY BENEFITS WHICH HE RECEIVES AT THE TIME OF HIS ORIGINAL ENTITLEMENT AND COST OF LIVING INCREASES GRANTED BY THE SOCIAL SECURITY ACT ARE NOT CONSIDERED.

ASSUME A TOTALLY DISABLED WORKER WHO IS ENTITLED TO THE MAXIMUM WORKERS' COMPENSATION BENEFIT OF \$219.00 WEEKLY AND THE MAXIMUM SOCIAL SECURITY DISABILITY BENEFIT OF \$534.70. THE BENEFITS PAYABLE WOULD BE:

SOCIAL SECURITY	\$123.05 WEEKLY
OFFSET (1/2)	\$61.52
WORKERS' COMPENSATION (\$219.00 - \$61.52)	<u>\$157.48 WEEKLY</u>
TOTAL BENEFITS (TAX FREE)	<u>\$280.53 WEEKLY</u>

THIS IS ANNUAL BENEFITS OF \$14,627.68

WHEN THE TOTALLY DISABLED WORKERS REACHES AGE 65, THE SOCIAL SECURITY BENEFITS ARE CHANGED TO RETIREMENT BENEFITS. THERE IS NO CHANGE IN THE AMOUNT OF BENEFITS JUST A CHANGE IN CLASSIFICATION. THE MONTANA WORKERS' COMPENSATION ACT DOES NOT PROVIDE FOR A REDUCTION IN WORKERS' COMPENSATION BENEFITS WHEN SOCIAL SECURITY RETIREMENT BENEFITS ARE PAID.

ASSUME THE SAME INJURED WORKER REACHING THE AGE OF 65. WE WILL USE THE SAME SOCIAL SECURITY BENEFITS EVEN THOUGH THEY WOULD BE INCREASED BY THE COST OF LIVING INCREASES GRANTED UNDER THE SOCIAL SECURITY ACT. THE INCREASES VARY DEPENDING ON THE COST OF LIVING INDEX. THE LAST INCREASE WAS ABOUT 13%.

SOCIAL SECURITY BENEFITS	\$123.05 WEEKLY
WORKERS' COMPENSATION BENEFITS	<u>\$219.00</u> WEEKLY
TOTAL BENEFITS (TAX FREE)	<u>\$342.05</u> WEEKLY

THIS IS AN ANNUAL BENEFIT OF \$17,835.51 OR AN INCREASE IN BENEFITS OF \$3,207.83 SIMPLY FOR REACHING AGE 65. INCIDENTALLY, THE INJURED WORKER NEED EARN ONLY \$328.50 WEEKLY OR \$17,128.98 ANNUALLY TO EARN THE MAXIMUM WORKERS' COMPENSATION WEEKLY BENEFIT.

THE UNINJURED FELLOW EMPLOYEE OF THE INJURED WORKER WHO RETIRES AT AGE 65 WOULD RECEIVE A MAXIMUM OF \$534.70 MONTHLY OR \$6,416.40 ANNUALLY IN SOCIAL SECURITY BENEFITS.

SENATE BILL 64 PROVIDES FOR THE TERMINATION OF TOTAL DISABILITY BENEFITS UNDER THE WORKERS' COMPENSATION ACT WHEN THE INJURED WORKER RECEIVES RETIREMENT SOCIAL SECURITY BENEFITS. IT DOES PROVIDE THAT THE INJURED WORKER COULD RECEIVE BENEFITS FOR PERMANENT PARTIAL DISABILITY, WHICH ARE FOR A MAXIMUM OF 500 WEEKS OR 9.6 YEARS.

IT DOES NOT PROVIDE FOR TERMINATION OF WORKERS' COMPENSATION BENEFITS FOR TOTAL DISABILITY FOR AN INJURED WORKER WHO IS NOT RECEIVING RETIREMENT BENEFITS. THESE WORKERS WOULD RECEIVE THE SAME BENEFITS FOR TOTAL DISABILITY AS AN INJURED WORKER WHO HAS NOT REACHED AGE 65.

ASSUME THAT SENATE BILL 64 BECOMES LAW. FURTHER ASSUME THAT THE INJURED WORKER PREVIOUSLY MENTIONED REACHES AGE 65. THE BENEFITS, AGAIN ASSUMING NO ANNUAL INCREASE IN SOCIAL SECURITY BENEFITS, WOULD BE AS FOLLOWS:

SOCIAL SECURITY BENEFITS (534.70 MONTHLY)	\$123.05 WEEKLY
WORKERS' COMPENSATION BENEFITS (MAXIMUM-PERMANENT PARTIAL)	<u>\$109.50</u> WEEKLY
MAXIMUM BENEFITS (TAX FREE)	<u>\$232.55</u> WEEKLY

THIS IS AN ANNUAL BENEFIT PAYMENT OF \$12,125.85 WHICH IS 71% OF THE TAXABLE EARNINGS NECESSARY TO DRAW THE MAXIMUM WORKERS' COMPENSATION BENEFIT. THE

BENEFITS WOULD APPROXIMATE THE EARNINGS AFTER TAXES.

I SUBMIT THAT SENATE BILL 64 WOULD CREATE NO UNDUE HARDSHIP.

IF A WORKER IS RETIRED AND RECEIVING SOCIAL SECURITY RETIREMENT BENEFITS, INCOME MUST BE LIMITED TO \$5,500.00 ANNUALLY. IF THIS WORKER IS INJURED, HIS MAXIMUM WORKERS' COMPENSATION BENEFIT WOULD BE \$68.32 WEEKLY. (EARNING \$5,500.00 \div 52.143 WEEKS IN A YEAR \times 66 2/3%).

George W. Ward

NAME: KEITH D. SORI DATE: 29 Jan. 81

ADDRESS: Box 1716, Killeen, 76541

PHONE: 772-2139

REPRESENTING WHOM? Mother tongue Assn.

APPEARING ON WHICH PROPOSAL: 53 64

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

NAME: Henry Thompson DATE: 10/29/81

DATE: 1/29/81

ADDRESS: _____

PHONE: 449-3799

REPRESENTING WHOM? LABOR AND INDUSTRY

APPEARING ON WHICH PROPOSAL: SB-64 HB 49

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

NAME: Howard Tarr DATE: 1/29/87
ADDRESS: Box 442443
PHONE: 4442-8999
REPRESENTING WHOM? Florida Senior Citizen Room
APPEARING ON WHICH PROPOSAL: SB 64

DO YOU: SUPPORT? _____ AMEND? L OPPOSE? _____

COMMENTS: _____

My testimony at a
previous session was in
opposition to this bill -
Due to the situation in
which Senior Citizens find themselves
I would hope to make an
effective date of June 30, 1991

NAME: ED SHEEHAN DATE: 1-29-81

ADDRESS: 1731 5th ave 1/2201A, Apt

PHONE: 2143-5782

REPRESENTING WHOM? SEIU

APPEARING ON WHICH PROPOSAL: SB 64

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE?

COMMENTS: I am concerned about a concrete
accordance recommendation to stop the
use of Social Security and its offset
provisions and following states to offset
disability payments through Social Security
Two states have been identified
as costing the Social Security Trust
funds by making changes such as
Montana proposes

NAME: Tom Driscoll DATE: 1-29-81

ADDRESS: 4344 Stone St Billings

PHONE: 259-1655

REPRESENTING WHOM? Labors Union Local 98

APPEARING ON WHICH PROPOSAL: S. B. 64

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

NAME: James W. Murray DATE: 1-29-81

ADDRESS: P.O. Box 117L

PHONE: _____

REPRESENTING WHOM? Mont. State AFL-CIO

APPEARING ON WHICH PROPOSAL: SB 64

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

NAME: Fred Barnett DATE: 1/29/81

ADDRESS: P.O. Box 1728

PHONE: 449-3662

REPRESENTING WHOM? Employ. Sec. Div. Dept. Labor & Ind.

APPEARING ON WHICH PROPOSAL: *H. B. 49*

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

NAME: AH Bole DATE: Jan. 29

DATE: Jan. 29

ADDRESS: Helena

PHONE: 442-2405

REPRESENTING WHOM? Montana Chamber of Commerce

APPEARING ON WHICH PROPOSAL: H.B. 49

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

NAME: Ed Norsg DATE: 1/29/81

ADDRESS: 2116 Lockey

PHONE: 442-0880

REPRESENTING WHOM? Small Business

APPEARING ON WHICH PROPOSAL: HB 49

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Bill is fair & equitable

NAME: DAVE Goss DATE: 1/29/81

DATE: 1/29/81

ADDRESS: PO Box 2519 Billings, MT. 59103

PHONE: 245-4111

REPRESENTING WHOM? Billings Area Chamber of Commerce

APPEARING ON WHICH PROPOSAL: HB 49

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS::

NAME: D. A. McGehee DATE: 1-29-81

ADDRESS: P.O. Box 1140

PHONE: 4142-1450

REPRESENTING WHOM? U.S. Alliance of American Insurers

APPEARING ON WHICH PROPOSAL: S-3 64

DO YOU: SUPPORT? AMEND? OPPOSE? L

COMMENTS: _____

DATE January 29, 1981

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

VISITORS' REGISTER