

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

February 3, 1981

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Harold Nelson on February 3, 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 226: Chairman Nelson introduced Senator Jack Healy, sponsor of SB 226, to the Committee. Senator Healy explained the bill to the Committee. Senator Healy presented a printed explanation of SB 226 and also suggested a short amendment which is on page 4, line 16, delete the word "that" and insert the phrase ",and in fact,".

This bill is an act to amend section 39-51-204, MCA, to exclude tree-thinning contractors who satisfy certain conditions, from the definition of "employment"; and providing an effective date of May 1, 1981.

PROPOSERS OF SENATE BILL 226: Mr. W. M. Kirkpatrick of Missoula, representing Champion International Corporation, presented a printed memorandum further explaining the bill to the Committee. This memorandum is attached. Mr. Kirkpatrick urged support of SB226, and stated they are in support of the amendments submitted by Senator Healy.

Mr. Robert Holding of Missoula, Montana, representing the Montana Wood Products Association, stated they are in support of SB 226. Mr. Holding stated that tree thinning is an excellent method of forest management, and good experience for the young people who work in the thinning programs and provides needed income to young people.

OPPOSERS OF SENATE BILL 226: Mr. Don Judge, representing Montana AFL-CIO, stated they are in opposition to SB 226. He stated that there are people other than college students working in this program. He feels it weakens the Unemployment Compensation Act, and sets the stage for further dismantling of Unemployment Insurance Compensation Act. He further stated that the issue is whether or not we are going to continue to dismantle the Compensation Act. He told the Committee that the Forest Products Industry is one of the major abusers of the Unemployment Insurance Fund, and they urge a Do Not Pass on SB 226.

Mr. Tim Lovely of Missoula, Montana, representing Missoula County Trades & Labor Council, stated they are in opposition to SB 226, and Mr. Lovely's printed testimony is attached to the minutes.

Mr. Gregg Groepper from the Department of Labor & Industry stated they have no position on SB 226, but he voiced concern about the potential effect of SB 226 on Workers' Compensation Uninsured Employers' Fund.

QUESTIONS ON SENATE BILL 226: Senator Anderson asked about independent contracting.

Mr. Groepper stated there were some cases of litigation when injuries were sustained.

Senator Goodover asked Mr. Kirkpatrick about the size of the trees. Mr. Kirkpatrick stated they were usually small trees.

Senator Goodover asked about the incidents of injuries and what kinds of injuries. Mr. Kirkpatrick replied that there were very few cases of injuries--one was his son when he nicked himself with a chainsaw. He stated that this bill does not change in any way the workers' compensation law. This is Employment Security.

Senator Keating asked if the tree thinners worked in groups, and if their work was designated ahead of time. Mr. Kirkpatrick stated they usually work in groups of not less than three, and the forester marks the work they are to do. The company marks the area they work into, and they are paid on the basis of the amount they clear.

Senator Keating inquired about other companies in the area who would contract for tree thinning. Mr. Kirkpatrick stated that he did not know.

Senator Norman asked if the tree thinner, before the contract is signed, would have to show evidence that he had disability coverage for injuries on the job? Mr. Kirkpatrick stated that in the past this was not true, but it will be in the future.

Senator Norman asked about language in the bill--there is no guarantee that tree trimmers would be covered for disability. Mr. Kirkpatrick stated that there is no relation of the bill to workmen's compensation.

Senator Goodover stated that for people who are independent contractors there is no guarantee that they have to have insurance, etc. Senator Norman stated there was more risk involved in tree trimming and someone has to pay for injuries sustained by the workers.

Mr. Kirkpatrick stated that the individual pays himself, and he believed the coverage was at least \$100,000.

Senator Ryan asked about expenditures of the worker. Mr. Kirkpatrick stated that they must get the equipment they need for the job and pay for it themselves.

Senator Anderson inquired if the individual could buy a workers' compensation insurance policy. Mr. Groepper stated that they could--it was at the highest rate, but it was available.

Senator Aklestad asked whether the amendment was properly placed. Attorney, Katherine Orr, stated that she thought it was alright.

CONSIDERATION OF HOUSE BILL 11: Chairman Nelson introduced Representative Spilker, sponsor of HB 11, to the Committee. Rep. Spilker explained the bill to the Committee. This bill resulted from a look at some state mandates. This bill makes it possible for local government to comply with the mandate. There has been some difficulty in establishing work periods. Rep. Spilker stated that the potential for financial savings for local governments is their main concern and the main reason for asking that this area be looked into. It also gives local government the right to make decisions.

Rep. Spilker stated that there should be an amendment dealing with language in the bill. The title should be amended. Line 11 should read "workperiod" and not "workweek". This is true on line 24, page 2, also.

PROPOSERS OF HOUSE BILL 11: Ms. R. Nadiean Jensen, representing Montana State Council #9, AFSCME, stated they support HB 11 as amended.

Mr. Jerry McGivern, representing Cascade County Commissioners, stated they are in support of HB 11 with the amendments.

Mr. Douglas Johnson, representing Cascade County Pesticide Program, stated that they support the bill as amended. Mr. Johnson offered some amendments which are written on his witness sheet.

Ms. Doris Shepard, representing Montana Association of Counties, stated they support HB 11.

Mr. Thomas Schneider, representing Montana Public Employees Association, stated they support HB 11, but they only agree with the bill as it is. They do not agree with the amendments. They feel the amendments would change the whole concept of what the bill was written for in the first place.

There were no opponents to House Bill 11 present at the hearing.

QUESTIONS ON HOUSE BILL 11: Senator Goodover wanted to know what happened to the bill in the House. Rep. Spilker said that she did not know about the amendments presented today by the Cascade County Commissioners.

Senator Ryan wanted to know about the difference between the terms, "exempt" and "non-exempt". Rep. Spilker referred to page 5, line 15. She stated that everybody is non-exempt except for this list.

Rep. Spilker stated that she would like Senator O'Hara to carry HB 11 on the floor if it is Concurred In by the Committee.

Chairman Nelson called the hearing on HB 11 closed.

CONSIDERATION OF HOUSE BILL 76: Chairman Nelson introduced Rep. Harper, sponsor of HB 76, to the Committee. Rep. Harper explained the bill to the Committee. This bill is an Act to exempt certain pensions from the reduction requirements which apply to claimants of unemployment insurance and to include social security benefits within the reduction requirement; amending section 39-51-2203, MCA. This bill is by request of the Department of Labor.

PROPOSERS OF HOUSE BILL 76: Mr. Gregg Groepper, representing the Department of Labor, stated they are in support of HB 76.

Mr. Harold Kansier, representing Montana Employment Security Division, stated that this bill provides for pension offset.

Mr. Don Judge, representing Montana AFL-CIO, stated that organized labor does recognize this is important legislation.

Mr. Chad Smith, representing Unemployment Compensation Advisors, Inc., stated they support HB 76.

There were no opponents to House Bill 76 present at the hearing.

QUESTIONS ON HOUSE BILL 76: Senator Goodover asked if we have been in compliance in the past with the federal act. Mr. Kansier stated that the federal act passed recently in October 1980.

Senator Hafferman asked how much the employee loses by doing it this way. Mr. Kansier stated that in some cases the offset is considerable. It is concerned with the amount of social security payments received. One-half is subtracted from unemployment compensation benefits.

There is no actual reduction in social security payments by the unemployment division; the division merely reduces the unemployment benefit by half.


Rep. Harper asked Sen. Aklestad to carry HB 76 on the floor if the Committee Concurs on it. Sen. Aklestad agreed to do this.

Chairman Nelson called the hearing on HB 76 closed.

ACTION ON HOUSE BILL 76: Senator Goodover moved that House Bill 76 Be Concurred In. Sen. Hafferman seconded the motion. The Committee voted 6-1 that HOUSE BILL 76 BE CONCURRED IN. The only "no" vote was by Senator Ryan. Senator Anderson was not present for the vote on HB 76.

No action was taken on HB 11 because amendments are to be submitted. No executive action was taken on SB 226 at this meeting.

ADJOURN: There being no further business, the meeting adjourned at 2:30 p.m.



Senator Harold C. Nelson, Chairman

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ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date Feb. 3

NAME	PRESENT	ABSENT	EXCUSED
GARY C. AKLESTAD, VICE-CH.	✓		
MIKE ANDERSON	✓		
PAT M. GOODOVER	✓		
WILLIAM HAFFERMAN	✓		
THOMAS F. KEATING	✓		
BILL NORMAN	✓		
PATRICK L. RYAN	✓		
HAROLD C. NELSON, CHAIRMAN	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

February 3, 19 81

MR. PRESIDENT

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration HOUSE Bill No. 76

Respectfully report as follows: That HOUSE Bill No. 76

BE CONCURRED IN
TO PASS

Q.C.

2/3/81

SENATE BILL NO. 226

By Healy

Before presenting an explanation of this bill to the committee, I should first inform you that the Employment Security Division has suggested a very short amendment which is entirely agreeable with me. If you will look at page 4, line 16, delete the word "that" and insert the phrase ", and in fact,". The purpose of this amendment is to make certain that not only does the contract provide that the tree thinner is free from the control of the company, but that he is in fact free from such control. I urge the adoption of this amendment.

The wood products people in the Missoula area have hired about 150 persons during the summer to thin the trees on their forest land. The purpose of this work is to improve the growth of the remaining timber stand. Most of these tree thinners are college students on vacation from school. Usually they work in groups of three as a partnership. They supply all of their equipment, insurance and transportation and are paid on the basis of the work completed rather than the time worked. Most of the thinners clear about \$50 per day although some do better.

Some time ago the Employment Security Division informed the industry that persons working as thinners would have to be classified as employees and could not be considered independent contractors because of the provisions in the Montana law.

This presented a very serious problem because the costs of supervision, transportation and the time limitation on the work day made a continuation of the project economically impossible.

To avoid these consequences and enable the industry to continue with its tree thinning program, which will provide work and income to about 150 students each summer, this amendment to Section 39-51-204 MCA is proposed. What it does is exclude these tree thinners from the definition of employment. I urge your approval.

NAME: W.M. KIRKPATRICK DATE: 2/3/81

ADDRESS: MISSOULA

PHONE: _____

REPRESENTING WHOM? CHAMPION INTL. CORP

APPEARING ON WHICH PROPOSAL: S.B 226

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Submitted by H. M. Kirkpatrick

MEMORANDUM

12/10/80

HISTORY

Champion International has provided summer work for about 150 persons. These people, who are mostly students on summer vacation, work as tree thinners on Champion's forest lands in western Montana. They work under written contracts which require the worker to supply his own equipment, insurance and transportation. The agreements specify that the tree thinner is free to set his own working hours and that his remuneration will be based upon the work performed rather than the time worked. The average student is able to clear about \$50 per day under this arrangement. Some, of course, make more.

PROBLEM

Recently the Employment Security Division has asserted that these young people cannot be classified as "independent contractors" but must be considered as employees of Champion under the criterion laid down in 39-51-203(4)(a)(b)(c), MCA. This would mean that each person would have to be supervised, he would have to be transported to and from work by the company, he would have to be compensated on an hourly rate, and the amount of tree thinning he would be able to perform each day would be greatly reduced. It simply would not be possible to continue the program, where the cost of supervision alone would be prohibitive.

SOLUTION

A bill to exclude from the definition of employment, services performed under a written contract calling for the thinning of trees on forest lands is proposed. This bill would add a new subsection (m) which would permit a continuation of the practices followed in the past.

The adoption of this amendment would very likely result in Champion International spending approximately \$700,000 in a tree thinning program this coming summer and would permit it to contract with more than 150 persons, most of whom are college students who rely on this income to continue their education.

If the amendment is not adopted, it probably will become necessary to drop this summer employment program.

NAME: BOB HELDING DATE: 2-3-81

ADDRESS: 316 Savings Center Bldg - Missoula, MT.

PHONE: 728 - 3650

REPRESENTING WHOM? MT. WOOD PRODUCTS ASSN.

APPEARING ON WHICH PROPOSAL: SB 226

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Don Judge DATE: 2/3/81

ADDRESS: P. O. Box 1176 Helena

PHONE: 442-1708

REPRESENTING WHOM? MT STATE AFL-CIO

APPEARING ON WHICH PROPOSAL: SB 226

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

COMMENTS: weakens unemployment Comp Act. sets stage

for further dismantling of Unemp. Comp. Does special
interest champion International Bill.

sets stage for increasing load on the underserved workers
fund in worker's compensation Act. stimulates problems in
tracking down violators of worker's compensation requirements.

NAME: Timothy Lovely DATE: 2/3/81
ADDRESS: 270 St Johns, Lolo
PHONE: 273-0288
REPRESENTING WHOM? Missoula County Central Trades and Labor Council
APPEARING ON WHICH PROPOSAL: SR 226
DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X
COMMENTS: See Attachment

MISSOULA COUNTY TRADES & LABOR COUNCIL

Affiliated with the American Federation of Labor and
Congress of Industrial Organizations

P. O. BOX 218 — MISSOULA, MONTANA 59801



February 3, 1981

TESTIMONY OF TIM LOVELY, APPEARING BEFORE THE SENATE LABOR COMMITTEE ON SENATE BILL 226

I am Tim Lovely, secretary treasurer of the Missoula Trades and Labor Council. I am here to oppose Senate Bill 226.

This bill is a welfare bill for Champion International. I have nothing against public assistance for the needy. But Champion is not needy. And in this case, the assistance for Champion is not even from the government, but from the people employed by Champion to thin trees.

In Missoula we have a large number of people employed in the lumber business. Unemployment insurance is designed to help Montana workers cope with unemployment without having to go on the dole. This is insurance, not welfare. Tree thinners work seasonally. They are likely to be unemployed in the winter, although, like all unemployment comp receivers, they must be looking for work to be eligible. Why should these people be denied a subsistence, just to save Champion a few dollars?

Some of these tree thinners have families they are supporting. Why should those families be punished?

Senate Bill 226 is the first step. Who will be next? All employees in the lumber business? That sort of punishing of workers could also lead to the destruction of the unemployment insurance system. Or maybe the next logical step is to exclude such workers from workers compensation, since they are so-called independent contractors if this bill passes. The timber industry has some of the most dangerous jobs in the state. Workers have been maimed and killed. Champion would save money by not paying for workers comp for these workers. But what would happen to the workers?

This is a terrible bill which punishes working people so that Champion can increase its profits. It just isn't fair. I urge you to do the fair thing and defeat this bill.

NAME: Gregg L. Rogers DATE: 2/3

ADDRESS: ESD BLDG 412

PHONE: 449-2621

REPRESENTING WHOM? LABOR & INDUSTRY

APPEARING ON WHICH PROPOSAL: 76

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

COMMENTS: 226 - no position & potential ~~no~~ effect
on Workers Compensation Uninsured employers fund.
76 - support

NAME: R. Nadrean Jensen DATE: 2-3-81

ADDRESS: Helena

PHONE: 442-1192

REPRESENTING WHOM? MT. ST. Council #9 ASCME

APPEARING ON WHICH PROPOSAL: HB 11

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENTS: I support the HB 11 as amended
by the House Labor Committee and as
presented to the Senate Labor Committee
from the 3rd reading of The House.

WITNESS STATEMENT

Name Douglas L Johnson Date 2/3/81

Address 521 1st Ave NW Great Falls, MT Support ?

Representing Cascade Co. Pasture Program Oppose ?

Which Bill ? H.B. 11 Amend ? x

Comments: I would like to suggest the following amendments to H.B. 11. A. The bill as presently written proposes an eighty hour maximum for compensatory time accrued. I feel that the local governing body should be given the right to set the maximum no. of hours accrued as the needs of the various departments may vary. The 80 hr proposed maximum may not be sufficient for departments operating seasonally such as, Weed Control Road Dept. etc. Whereas 80 hrs may be excessive for employees of the various court house officers.

B. The Ability of the employee to choose overtime payments or compensatory time for each pay period may be very cumbersome administratively. It would generate more paperwork and would force the Dept. to budget the maximum amounts for salary budgets to provide sufficient funds for salaries if all employees elected not to receive compensatory time. I feel The employee should be given opportunity to elect to receive overtime payments or compensatory time

Please leave prepared statement with the committee secretary. but he should make this determination for a longer period. i.e. quarterly, semi-annually or annually

NAME: Thomas E. Schneider DATE: 2/3/81

DATE: 2/3/81

ADDRESS: Box 5600

PHONE: 442-4600

REPRESENTING WHOM? MPFA

APPEARING ON WHICH PROPOSAL: HB 11

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: CHAD SMITH DATE: 2-3-81

ADDRESS: BOX 604 HELENA

PHONE: 442-2980

REPRESENTING WHOM? UNEMPLOYMENT COMP ADVISORS, INC.

APPEARING ON WHICH PROPOSAL: HB 76

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

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