

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

February 5, 1981

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Harold Nelson on February 5, 1981, in Room 404 of the State Capitol at 1:15 p.m.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF SENATE BILL 313: Chairman Nelson called on Senator Aklestad, sponsor of SB 313, to explain the bill to the Committee. Senator Aklestad told the Committee that the main objective of the bill is to allow an individual to be self-employed when he wants to be.

PROPOSERS OF SENATE BILL 313: Mr. David Sward of Gallatin Gateway, Montana, representing Independent Contract Dealers for Kirby Vacuums, stated they support SB 313. He feels it is a person's constitutional right to be able to work for himself, and the bill clarifies the law. Mr. Sward's written testimony is on his witness sheet and is attached to the minutes.

Other proponents who were present at the hearing and rose in support of SB 313 are as follows:

- Mr. Gerald C. Rapp of Fairfield, Montana, representing himself.
- Mr. Howard Bish of Lincoln, Montana, representing himself.
- Mr. Donald Wallace of Lincoln, Montana, representing himself.
- Mr. Gene Wright of Lincoln, Montana, representing himself.
- Mr. Jerry Biresch of Lincoln, Montana, representing Blackfoot Post Yard.
- Mr. Elmo Bowlby of Lincoln, Montana, representing himself.
- Mr. Harold Bouma of Choteau, Montana, representing Bouma Post Yard.

OPPONENTS OF SENATE BILL 313: Mr. James Murry, representing the Montana State AFL-CIO, stated they oppose SB 313 as an attempt to destroy the unemployment insurance system in Montana. His printed testimony is attached to the minutes.

Other opponents of SB 313 are as follows:

- Mr. Joe Bossman of Butte, Montana, representing the Joint Council of Teamsters, stated they oppose SB 313.
- Mr. Jerry Driscoll of Billings, Montana, representing the Laborer's Union Local 98. His testimony is attached.
- Mr. Lonny Mayer of Missoula, Montana, representing UFCW.
- Mr. Gregg Groepper, representing the Department of Labor, stated they have no position on the bill, but want to see workers, employers, and employees treated fairly.

Mr. Fred Barrett, representing the Employment Security Division of the Department of Labor. Mr. Barrett provided technical information, and Mr. Barrett's printed statement is attached. Mr. Randy Siemers, representing Operating Engineers, stated they oppose SB 313.

Senator Aklestad made closing remarks in support of SB 313. He told the Committee that the law had been working well until the last few years--now there is need for some change. There were a small number of independent contractors affected by the prior law, but no one should be affected by this bill. He urged a Do Pass on SB 313.

QUESTIONS ON SENATE BILL 313: Senator Hafferman asked how much would have to be added to the cost of each unit of production to cover for unemployment insurance and related costs. Mr. Bouma stated that he thought about 32 percent.

Senator Keating asked if independent contractors who had been employees because of their interim independent contracting would be ineligible for unemployment because of their interim independent contracting. Mr. Barrett stated that they would not under most circumstances.

Senator Keating asked who determines bonafide self-employment. Mr. Barrett stated that his department applies the law.

Senator Anderson asked what made the law less responsible than it has been in the past. Mr. Barrett stated they have not placed any extra emphasis trying to uncover independent contractors.

Senator Goodover asked if a gyppo logger was considered an independent contractor. Mr. Barrett stated that he would be.

Senator Goodover asked about a post cutter--Mr. Barrett stated that the post cutter did not meet the test requirements for the independent contractor.

Senator Keating asked how many union members are in this work force figure covered under Unemployment Insurance Fund. Mr. Murry stated that he did not know, but probably about 40,000 in AFL-CIO.

Senator Keating asked if there were any independent contractors who are union members. Mr. Murry stated that there were.

Senator Goodover asked if the gyppo contractors are told they cannot be any larger. Mr. Barrett said this is correct.

Mr. Campbell stated that it is the right of control--not actual control that is important in distinguishing employees from independent contractors.

Chairman Nelson called the hearing closed on Senate Bill 313.

CONSIDERATION OF SENATE BILL 318: Chairman Nelson introduced Senator Bob Brown, sponsor of SB 318, to the Committee, and Senator Brown explained the bill to the Committee. This bill is an act to provide for the posting of security in the form of a bond, cash deposit, or other manner prescribed by the workers' compensation insurance.

There were no proponents of SB 318 present at the hearing.

OPPONENTS OF SENATE BILL 318: Mr. William Palmer, representing the Division of Workers' Compensation, stated they oppose SB 318. The bill would present a burdensome workload on the Division, is unnecessary because the problem rarely arises, and the Division already has authority to carry out what the bill does.

Mr. Larry Huss, representing the Montana Contractors' Assoc., stated that this bill would create confusion, and if this bill is adopted, all businesses are going to be mandated to post this security in such fashion as the bill describes for only one person. Therefore, he would recommend a Do Not Pass on SB 313.

QUESTIONS ON SENATE BILL 318: Senator Aklestad asked how much a \$500,000 bond would cost. Mr. Palmer stated that the minimum cost is \$30 per year, and \$20 a thousand.

Senator Keating asked how much money they were talking about for a premium. Mr. Palmer stated about \$1,000 per year.

Mr. Huss stated they are now making mandatory what has been discretionary.

Chairman Nelson called the hearing closed on Senate Bill 318.

CONSIDERATION OF HOUSE BILL 124: Chairman Nelson introduced Rep. Earl Lory, sponsor of HB 124, to the Committee. Rep. Lory explained the bill to the Committee. He told the Committee that HB 124 is a housekeeping bill and is an act to generally revise the laws relating to workers' compensation.

PROPOSERS OF HOUSE BILL 124: Mr. Norman Grosfield, representing Independent Insurance Agents Association of Montana, stated they are in support of HB 124.

There were no opponents to HB 124 present at the hearing.

Rep. Lory stated that he would find someone to carry this bill on the floor if the bill is Concurred In.

QUESTIONS ON HOUSE BILL 124: Senator Goodover wondered about the increase in the penalty from \$25 to \$75.

Senator Anderson made a motion that HB 124 Be Concurred In.

Senator Goodover made a substitute motion that the Committee delay action on HB 124. On a voice vote to this substitute motion the only "no" votes were by Senators Anderson and Keating; therefore, no action was taken on HB 124 at this meeting.

ADJOURN: There being no further business, the meeting adjourned at 2:50 p.m.

A handwritten signature in cursive script, reading "Harold C. Nelson", written in dark ink.

Senator Harold C. Nelson, Chairman

mln

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date Feb 5

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.

NAME: DAVID C. SWEED DATE: 2/5/51

ADDRESS: P.O. 18 Galatia, Georgia, N.E.

PHONE: 478-2680 RES.

REPRESENTING WHOM? INDIRECTLY THAT DEPENDS ON
THESE LEGISLATIONS

APPEARING ON WHICH PROPOSAL: S.B. 313

DO YOU: SUPPORT? YES AMEND? OPPOSE?

COMMENTS: I BELIEVE THAT WITHOUT A
BILL LIKE S.B. 313 AN INDIVIDUAL'S RIGHT
~~TO~~ TO WORK FOR HIMSELF IS
BEING TEMPORARILY SUSPENDED. DUE TO THE
INTERPRETATION OF EMPLOYMENT SECURITY
COMMISSIONS RULING ON THE "F.B.C." CASE
AS TO WHO IS OR IS NOT AN EMPLOYEE,
RESULTS IN AN INDIVIDUAL ^{NOT} BEING ABLE TO
WORK FOR HIMSELF UNDER CONTRACT TO
ANOTHER. I FEEL THAT S.B. 313 WOULD
RETURN A PERSON'S CONSTITUTIONAL RIGHT
TO BE IN BUSINESS FOR THEMSELVES AS
AN INDEPENDENT CONTRACTOR.

NAME: Donella Papp DATE: 7-5-11

ADDRESS: 100 W. 1st St. Annapolis

PHONE: 410-277-7777

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: West River

DO YOU: SUPPORT? / AMEND? / OPPOSE? /

COMMENTS: Support the project

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Donald A. Wallace DATE: 2-5-81

ADDRESS: P.O. Box 488 Livedon Mont. 59138

PHONE: 362-4407

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: Senate Bill 313

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

COMMENTS: I am a self employed woodcater. I have been at
it for 8 yrs. I like being my own boss. Coming &
going when I want. With no restriction on my movements.

NAME: Gene WRIGHT DATE: 2-5-81

ADDRESS: LINCOLN, MT. 59639

PHONE: 362-4681

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: Senate 313

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

COMMENTS: My Name is Gene Wright of Lincoln
MT. I have been a poet cutting for 3
years. I am self employ and thats the
way I like it. and I urge that you
pass this ^{senate} bill, 313

NAME: JERRY BIKESCA DATE: 5 5 81

ADDRESS: BOX 304 LINCOLN MONT

PHONE: 362-4250

REPRESENTING WHOM? BLACKFOOT POST YARD

APPEARING ON WHICH PROPOSAL: SENATE BILL 313

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: KEEP POST CUTTERS SELF EMPLOYED,

ADDRESS: 4120 7th St

REPRESENTING WHOM? Self

DO YOU: SUPPORT? AMEND? OPPOSE?

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Harold Brown DATE: 2-5-81

ADDRESS: Box A Chateau Mt 59422

PHONE: 466 2140

REPRESENTING WHOM? Brown and family

APPEARING ON WHICH PROPOSAL: State Bill 313

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

COMMENTS: _____

ADDRESS: P.O. Box 1176 Helena, Mont

REPRESENTING WHOM? Mont State AFL-CIO

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

COMMENTS: _____



JAMES W. MURRY
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59601
406/442-1708

Room 100 "Steamboat Block"
616 Helena Ave.

TESTIMONY OF JAMES W. MURRY ON SENATE BILL 313, HEARINGS OF THE SENATE LABOR COMMITTEE,
FEBRUARY 5, 1981

I am Jim Murry, and I am here to represent the Montana State AFL-CIO. As you would expect, we oppose Senate Bill 313 as an attempt to destroy the unemployment insurance system in Montana.

On Tuesday we testified on Senate Bill 226, the tree thinning bill. Senate Bill 313 is more of clear cutting operation. We oppose thinning out the rights of workers under unemployment insurance and we oppose cutting off all those rights at once.

This bill eliminates what is called the abc test of what is an independent contractor. Under present law, an individual is an employee, and is covered by unemployment insurance provisions, unless (a) the individual is free from control or direction over the performance of the services, (b) the service is either outside the usual course of the business, or is outside of the usual place of the business, and (c) the individual is customarily engaged in an independently established trade.

This bill is an attempt to remove that language and replace it with some loophole language. For example, one loophole in 39-51-204, Section 1m, is that the service provided by a business entity that is engaged in an independent trade occupation, profession or business is exempt from the definition of employment and therefore from the coverage of unemployment benefits. But this new section adds this qualification "irrespective of the capacity or financial capability of this business entity for a continued independent existence."

Clearly, the intent is to force individuals who are not in reality independent contractors, under the present law, to be excluded from unemployment insurance coverage. Just think of how many employers might want to deny their workers coverage by this method. The results should be apparent. Many workers would have no cushion during the times when they are laid off. The unemployment insurance system might teeter toward bankruptcy because of the decreased premium base. Honest employers could face sharply rising premiums to retain the same benefits for their workers. And if a large number of people are denied unemployment insurance, because of their being classified as independent contractors, then we would expect the next move to be to disqualify the same workers for workers' compensation coverage under that law.

When you destroy a good system like unemployment insurance and workers' compensation, the whole state suffers. But the ones who suffer most are the workers and their families.

What would happen if the Anaconda Company had arranged to have all of its employees be declared independent contractors? During a disastrous layoff, those people would be totally without the means even to eat, much less pay rent. There is already too much suffering from large scale layoffs, but to move away from unemployment insurance would be to inflict poverty of the worst kind on people who have been good citizens, productive workers and pillars of their communities. In addition, other businesses would certainly close in places like Anaconda, so that the suffering would extend much farther than it

- over, please -

already does. Presumably our society is not so barbarous that it would simply let people starve to death, so there would be a great burden on the remaining taxpayers to provide public assistance.

Instead of starvation, we currently have a system that provides a small cushion for the worker and the family against the disaster of unemployment, with no burden on employed taxpayers. It would be folly to destroy this humane system for the financial gain of some insensitive employers.

Thank you.

NAME: Joe Mossman DATE: 2-5-81

ADDRESS: 3014 14th Ave S. SE

PHONE: 494-4448

REPRESENTING WHOM? Next Council of trustees

APPEARING ON WHICH PROPOSAL: 313

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME:

DATE: 2-3-87

ADDRESS:

PHONE:

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

LABORERS INTERNATIONAL UNION OF NORTH AMERICA

Local Union No. 98



Bill McColley
Secretary-Treasurer
and Business Manager
345 Calhoun Lane
Telephone 259-4471

BILLINGS, MONTANA 59101,

TESTIMONY OF JERRY DRISCOLL ON SENATE BILL 313
FEBRUARY 5, 1981

I am Jerry Driscoll from Laborers Local 98, Billings, and I'm here to oppose Senate Bill 313.

This bill would be a disaster for employees in the building trades. Not just union members, but all employees.

Virtually every construction job could conceivable come under the definition of independent business entity mentioned in this bill. Just about every employee on every construction job could conceivably lose their unemployment insurance. Next, we would expect the same arguments to be made regarding coverage under the Workers' Compensation Laws.

Construction is a dangerous business. Workers' comp doesn't make up for a missing arm or leg, but it does help pay the bills. And unemployment insurance is extremely important in construction work because it is seasonal. But during a recession like the present -- it's more like a depression in the construction business -- then unemployment benefits are absolutely essential unless you want men, women and children starving.

If you pass this bill and put unemployed construction workers into poverty and leave injured construction workers with a mound of unpayable bills, what's going to happen to those people? The welfare rolls could double or triple. If you pass this bill, what you're saying is that you want individual taxpayers to be paying instead of contractors.

This bill, in one swipe, could about do away with unemployment insurance and workers' compensation. We oppose Senate Bill 313.

Thank you.

NAME: LOINNY MAYER DATE: 2/5/81

ADDRESS: P.O. Box 7112 MSIA

PHONE: 519-8561

REPRESENTING WHOM? UFCW

APPEARING ON WHICH PROPOSAL: SB-313

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

COMMENTS: _____

NAME: Lucy Lopez DATE: 2/5/81

ADDRESS: ESD Bldg rm 412

PHONE: 449-3799

REPRESENTING WHOM? DEPT OF LABOR AND INDUSTRY

APPEARING ON WHICH PROPOSAL: SB 313 HB 124

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

COMMENTS: SB-313 - No position - request that
any changes not exclude a group of workers from
unemployment insurance or unduly penalize any
specific group of employers - but fairly
treat workers and employees and employers.
HB-124 - Support the bill & the work of
the advisory committee.

NAME: Fred Smith DATE: 2/1/61

ADDRESS: P.O. Box 1728

PHONE: 444-3632

REPRESENTING WHOM? E S R. D. H. Labors and

APPEARING ON WHICH PROPOSAL: S, R. 313

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Provide technical
info, (current statement
will be submitted.)

SENATE BILL 313

Senate Committee on Labor

By Fred Barrett, Administrator
Employment Security Division
Department of Labor and Industry

The implications of Senate Bill 313 are both philosophical and practical. Philosophical because it reverses the trend, almost unbroken in the last 45 years, toward an unemployment insurance system of the broadest coverage, which helps our state and nation to stabilize the utilization and supply of labor, and cushions the adverse impact of unemployment on individuals, the economy, and the local community. There is likewise a practical implication when we consider the costly and difficult problems which we foresee in trying to administer a tenuous unemployment insurance system which would be the result of passage of 313.

As to cost, we are preparing a fiscal note to show the impact. The effect of Senate Bill 313 would be to place a high proportion of employer taxes collected subject to challenge, and an unknown number of benefit payments subject to redetermination and possible overpayment.

There are ample safeguards in the present law to delineate and determine who is and who is not an employee subject to unemployment insurance coverage. Granted, there is always room for disagreement, and admittedly this is often a sensitive and difficult area to adjudicate. I believe we have been fair in the interpretation of present law, have not been overzealous, and have certainly not been punitive in the application governing covered employment. Where dispute has arisen, and the instances are certainly not numerous, the grieved party, the employer, has access to the appeals process, and if so desired, the judicial system.

In your consideration of this bill, we would hope that this committee will look to the main issues involved; namely, the preservation of a proven system to cope with the very real problem of unemployed workers, and which at the same time deals fairly with employers who have as great a stake in such a system as do the workers.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: William R. Palmer DATE: 2/5/81

ADDRESS: 815 Front St

PHONE: 449-2047

REPRESENTING WHOM? Division of Workers' Compensation

APPEARING ON WHICH PROPOSAL: AB 318 HB 124

DO YOU: SUPPORT? HB 124 AMEND? OPPOSE? AB 318

COMMENTS: Will offer verbal testimony

NAME: Willie H. Lee DATE: 2-5-61

ADDRESS: Box 514 Haverhill

PHONE: 442-8070

REPRESENTING WHOM? Montana Literature Association

APPEARING ON WHICH PROPOSAL: SA 347

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Earl P. Long DATE: 2/5/81

ADDRESS: RTS Mill Creek Rd

PHONE: _____

REPRESENTING WHOM? House District #99

APPEARING ON WHICH PROPOSAL: HB 124

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY