

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE MINUTES  
January 31, 1983

The Labor and Employment Relations Committee convened on January 31, 1983, at 7:30 p.m. in Room 224K of the State Capitol, with Chairman Williams presiding and all members present except Rep. Thoft and Farris who were excused. Chairman Williams opened the meeting to an Executive Session.

EXECUTIVE SESSION

HOUSE BILL 271 Representative Pavlovich moved DO NOT PASS. Representative Smith seconded his motion. The motion carried with Reps. Ellerd, Addy, Jones and Hannah voting no. Absent were Rep. Thoft and Rep. Farris.

HOUSE JOINT RESOLUTION 7 Rep. Ellerd moved DO PASS. Rep. Miller asked if this wasn't the one that was in regard to the land in Bozeman. He questioned if this just wouldn't be beating a dead horse. He said he had been in real estate for four years and to show what interest can cost, he mentioned how a \$50,000 home in 1976 with interest rates of 8% would cost \$366.89 per month in principal and interest; in 1978 at the 12% rate it would cost \$514.31; in 1980 at 17% it would cost \$712.84; and today at about 10% it would be \$457.34. He said this shows what interest rates are doing to you and that land in Bozeman was put up for sale and purchase while it looked like the interest rates were up. This unsold land costs us each year. We are making 12% with the State Board of Investments. Every year we hold on to that piece of land it is costing our state \$40-50,000 a year through the interest aspect. Land needs to be sold. He said he had asked to see the audit studies and they have been provided by the Department of Labor. He said they are the longest audit study he has ever seen. He read a paragraph from the Governor's Council on Management. This paragraph mentioned the land should be sold. He said that by selling the land we don't have to borrow that money from the federal government. Make interest until we have to pay. I truly believe we should come out with a recommendation that the land should be sold by April 1. I don't think we belong in the real estate business. It is proper for this committee to recommend that we get the land on the block to be sold.

Rep. Williams mentioned that it had been brought out in testimony that the Land Board disapproved the sale and they have the final say.

Rep. Ellerd mentioned he would like to have a committee bill and what it would do is say the department would no longer be in the land business. The money would be used for the unemployment fund. \$300,000 would be in the fund now if it hadn't been used to purchase this land.

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David Hunter, Commissioner of the Labor Department, was asked to respond. He said when the land board turned down the one bid we had on the land they thought we could get more money by holding on to it and trying later. The response is that it is our intention to put it up for sale again this spring.

Rep. Addy moved the bill DO NOT PASS. He said he was in sympathy with Rep. Wallin but what we are talking about is not whether we should keep the land or not, we are talking about trying to find evidence. This would be throwing good money after bad. He felt the bill would not get us where we want to go.

Rep. Harper moved a substitute motion for all motions pending to TABLE the bill.

Rep. Ellerd said Mr. Hunter has been very cooperative and he had no involvement with the deal in any way. He said it isn't a witch hunt that is wanted but a resolution that the funds are used for what they were intended. Rep. Seifert said a resolution is a formal letter and as far as another study it won't accomplish anything we can't accomplish with a formal committee letter saying we feel there has been some neglect in the procedures. This would let the department know we are unhappy with some of the goings-on.

Rep. Driscoll said we should study both the income and outgo if we do study.

The question was called and the motion carried with Rep. Ellerd voting no. Absent were Reps. Thoft, Hannah, and Farris.

HJR 7 received a committee recommendation of TABLE.

HOUSE BILL 330 Rep. Driscoll moved DO NOT PASS. This motion was carried with Reps. Ellerd, Seifert, Addy, Jones, and Hannah voting no. (Rep. Hannah's was a vote left with the secretary and absent were Reps. Thoft and Farris.)

HOUSE BILL 309 Rep. Harper recommended DO PASS and moved the amendments which are Exhibit 1 of the minutes. He said the amendments were a composite of a set he and the researcher, Woody Wright, had compiled and a set put together by the Department of Administration. He said this just puts the Board of Personnel Appeals as a board to hear grievances for all state agencies. He pointed out that in Amendment 9, section 4, sub 2, the new language added gives the department an out, for if their ruling unreasonably interferes with the agency's statutory responsibilities, the ruling must be

reconsidered.

Rep. McCormick questioned why the law should be changed and throw everyone into one group. Rep. Driscoll felt this was just a watered-down version of the bill studied in the study commission. He said it won't solve any problems. He said the agency will have an attorney but who is going to represent the employee. With no money and no attorney, he will not have a chance.

Rep. Addy said he thought what this bill did with these amendments is put a citizen board between the last step in the administration process and filing a process in court. Not taking anything away from the integrity of the system, but just giving him one more form and a neutral board which should be unbiased. One more layer for the grieved employee. Rep. Driscoll said if he represented an employee he would tell the employee to go through this process first and if he loses, then we would take it on from there. This would help labor save money. Rep. Addy suggested this wouldn't be wise. He said when you go into district court it doesn't look at everything over again. It has a very limited review. He felt there should be a union representative with the employee before the board.

Rep. Dozier questioned if this wouldn't be just another layer of frustration in the way before the employee. Rep. Harper reminded the committee that Tom Schneider had supported this. He said state employees want an impartial board to settle their cases. Fragmentation exists through all the agencies - the process is not standard, and we need somewhere to get it together. The original bill I did not like it at all and I don't see how the study commission passed it. This is not another level of frustration. It is another level of hope for the employee. He said that is why he is submitting these amendments.

Question was called on the amendments and they passed with all voting for them except Reps. Driscoll and McCormick. Absent were Reps. Thoft, Farris, and Hannah.

Rep. Driscoll moved an amendment which was to add to amendment 7 of Exhibit 1 following "class" to add "and the allocation of a class to a grade."

Rep. Harper said the essence of the act seems to be dealing with single employees and now we are extending it to a class? Rep. Driscoll said an employee does not have any input into the grade he is put into and you cannot grieve what grade you are in. He said the only pay plan that works is the blue collar plan and

that was the one that was completely negotiated. There was an assignment of points. Those points related into grades. He said as a result of the way pay grades were set the employees were winning all the grievances and instead of sitting down and figuring a workable plan they passed a law saying you can't do it.

Dennis Taylor, Department of Administration, was requested to respond and he said it took eight long years to get this system. Parts of it is behind us and lessons have been learned. He said he would have to begin that process again. Provides that an individual employee can grieve their allocation to a class. We have a standard methodology that is published and available for all. He said their applications or methods are subject to scrutiny.

Rep. Dozier said that talking about the classification system, I was one of the holdouts to make it legal about not being able to grieve against the classification system. People don't understand the classification system. Administrators don't pay any attention to the domino effect. Administration blew it.

Rep. Addy asked Mr. Hunter to respond. Hunter said the question is if you can appeal the assignment of a class to a grade. The legislature last session prohibited the moving of a group to a new grade. This bill deals with appeal where an individual is incorrectly classified. He is being assigned duties that are not in the assignment. He said where a group is moved to a new grade there is significant financial effects on the state. He said this often results in the domino effect.

The question was called on Driscoll's amendment and a roll call vote was taken. There were 7 yes and 7 no and 3 absent. The yes votes were Reps. Dozier, Addy, Bachini, Driscoll, McCormick, Pavlovich, and Smith. Absent were Reps. Hannah, Farris, and Thoft.

The motion failed as it was a tie.

Rep. Addy moved AND AS AMENDED DO PASS. This motion carried with 8 yeas and 6 nos and 3 absent. The nos were Reps Dozier, Bachini, Driscoll, McCormick, Pavlovich and Smith. Absent were the same three.

HOUSE BILL 308 Rep. Driscoll moved DO PASS. Harper moved a substitute motion of DO NOT PASS. The motion carried with Reps. Driscoll and Seifert voting no while absent were Reps. Hannah, Farris, and Thoft.

HOUSE BILL 384 Rep. Dozier moved DO PASS. He said this was his third session and every session there is a bill

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in on this. He felt his bill cleared things up and that it was a good workable bill. Rep. Jones said people are not necessarily in agreement on this, but just resigned. It was found that suggested amendments that had been presented were missing and while a new copy was found, Dozier withdrew his motion so the committee could move on the next bill.

HOUSE BILL 174 Rep. Harper said he has asked the Department to work up some more figures and requested the bill be held until this additional information was obtained. Permission was granted.

HOUSE BILL 314 Rep. Dozier moved DO NOT PASS. Rep. Harper said 50% of the bill is a good bill. Rep. Williams said he concurred. The motion carried unanimously with all present. Reps. Hannah and Seifert and left votes also for a do not pass. Absent were Reps. Thoft and Farris.

HOUSE BILL 256 Rep. Ellerd said the unemployment compensation money should all be used to pay unemployment benefits. Chairman Williams asked if he felt there had been enough abuses to put it in the statutes. Rep. Ellerd said assuming there wasn't any abuses at all, it should be put in the statutes so they are not in a position to buy land with this money. Rep. Pavlovich agreed that something should be done. Mr. Hunter responded to a request for information by saying there is a title problem--to change the bill as the bill says to put the money in the general fund. The procedures for making it a committee bill were discussed. Rep. Ellerd said he didn't want to go to the expense of printing and going through the process if there are going to be enough objections. If the bill is going to be killed, we might as well do that now.

Rep. Driscoll said he wished to request a committee bill also to address waitress tips in light of what has happened in the federal law. The bill would exempt 3/4 of what is reported from Montana taxation. He said under newly enacted federal law the gross receipts of the restaurant will be divided up among the tipped employees and 8% will be considered their tips and Montana laws follow the federal law and that is why the request.

It was decided to wait until the regular committee meeting tomorrow to decide on the committee bills.

HOUSE BILL 384 Chairman Williams returned the attention of the committee to this bill as the amendments were now available. A copy of these amendments is Exhibit 2 of the minutes. Rep. Harper moved DO PASS as amended by the amendments, with the one small change on the third line of the

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amendments, changing "will" to "shall." Rep. Jones said this will help the restaurants. The motion carried with Reps. Ellerd, Hannah, and Seifert voting no. Absent were Reps. Thoft and Farris.

HOUSE BILL 378 Rep. Pavlovich moved DO PASS. The feeling of the committee was that the bill should be held until a similar bill came to the committee and could be checked on. Rep. Pavlovich withdrew his motion.

Meeting adjourned at 9:05 p.m.

Respectfully submitted,

  
J. MELVIN WILLIAMS, CHAIRMAN

Emelia A. Satre, Sec.

SUGGESTED AMENDMENTS TO HB 309

1. Title, line 7.

Following: "EMPLOYEES"

Insert: "BEFORE THE BOARD OF PERSONNEL APPEALS"

2. Title, lines 7-10.

Strike: "TO DISCONTINUE EMPLOYEE GRIEVANCE APPEAL FUNCTIONS OF THE BOARD OF PERSONNEL APPEALS FOR THE DEPARTEMENTS OF HIGHWAYS AND FISH, WILDLIFE, AND PARKS;"

3. Title, line 11.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 2-18-1001 THROUGH 2-18-1003, AND"

4. Title, line 12.

Following: "2-18-105"

Strike: "2-18-1001 THROUGH 2-18-1003,"

5. Page 1, lines 18 and 19.

Strike: ", as delineated in [sections 1 through 6]"

6. Page 1, line 21.

Strike: "[sections 1 through 6]"

Insert: "[this act]"

Following: "apply"

Insert: "(1) "Board" means the board of personnel appeals established by section 2-15-1705."

Renumber: following subsections

7. Page 3, line 3.

Following: "location,"

Insert: "allocation or reallocation of the employee's position to a class, *and the class to a grade*"

8. Page 3, line 8 through page 4, line 7.

Following: "3:"

Strike: the remainder of line 8, page 3 through line 7, page 4

Insert: "Section 2-18-1001 is amended to read:

"1-18-1001. Highway department personnel grievances hearing. Grievance procedure - line limit.

(1) An employee of the department of highways aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action and who has exhausted all other administrative remedies is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion or retaliation by an employee's supervisor or the department of highways employing agency against an aggrieved employee because the employee has filed or attempted to file a grievance with the board shall also be a basis for a grievance and shall entitle the employee to a hearing before the board for resolution."

9. Page 4.

Following: line 12.

Strike: Sections 4, 5 and 6 in their entirety

Insert: "NEW SECTION. Section 4. Section 2-18-1002 is amended to read:

"2-18-1002. Grievance procedure--hearing--order. (1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances of ~~personnel of the department of highways~~ employees.

(2) If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the ~~department of highways~~ agency requiring such action of the ~~department~~ agency as will resolve the employee's grievance. Upon a showing by the affected agency that the board's order will unreasonably interfere with the agency's statutory responsibilities, the board shall reconsider its action.

(3) In any hearing the board is not bound by statutory or common-law rules of evidence."

NEW SECTION. Section 5. Rule making authority. (1) the board may adopt procedural rules necessary to carry out the purposes of [this act].

NEW SECTION. Section 6. Section 2-18-1003 is amended to read:

"2-18-1003. Enforcement of board order--petition in district court--court costs: (1) The board or the aggrieved employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(2) The court may grant costs and attorney's fees to a prevailing plaintiff."

10. Page 6, line 11.

Strike: "2-18-1001 through 2-18-1003,"



House Bill 384

Restaurant, Bar and Tavern Bill Amendments

The amendements to the original printed bill are found on page 4, section 4.

On line 7, the word "may" is changed to "<sup>shall</sup>will". Line 7 would then read "commissioner <sup>shall</sup>will waive the provisions of 39-3-640 for any".

On lines 17 and 18 delete "commissioner deems it necessary for the protection of the state of Montana or the employees of a".

On line 19 after the word "tavern" insert "defaults on the payment of wages, payroll taxes, or workers' compensation premiums."

Line 17 through the end of section four would then read "the person operating a restaurant, bar or tavern defaults on the payment of wages, withholding taxes or workers' compensation premiums".