

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE MINUTES  
February 1, 1983

The House Labor and Employment Relations Committee convened at 12:30 p.m. on February 1, 1983 in room 224K of the State Capitol with Chairman Williams presiding and all members present except Rep. Farris who was excused. Chairman Williams opened the meeting to a hearing on House Bill 497.

HOUSE BILL 497

REPRESENTATIVE TOM ASAY, District 50, chief sponsor, said the bill is an attempt to provide professional law enforcement people to help prevent incidents that could lead to violence. He said he didn't intend to turn the highway patrol into government strong men or into a strike-breaking force. He said a labor dispute near Colstrip is what prompted this bill. He said the highway was closed and this could have had serious consequences. The highway patrol was allowed to be used for information and, while they didn't stop traffic, they informed that a strike was in progress. He said a lot of people needed to use the highway. He noted that the highway patrol is a group of professional law enforcement people and no other body is held in higher regard.

JOHN SCULLY, representing the Montana Sheriffs and Police Officers, said he understood the concern of the union people. He said a few of their objections would be the use of the patrol as a strike-breaking force. He said before the highway patrol would respond, they would need to have a request from the head of police or the sheriff's department and then they would have to receive permission of the head of the highway patrol and could then respond only if the attorney general wished them to do so. The possibility for the highway patrol to come in and do the duties of the police if they were striking does exist, but that is not the intent of the bill. He said they would welcome any amendments from the labor people that would strengthen the sponsor's intentions and make the bill more satisfactory to labor. Also, very few small town law enforcement officers have had any professional background in handling large crowds. They could sometimes use the assistance of the highway patrol. He said in the Colstrip incident, they did manage traffic. The statute completely bars the patrol from taking part in a labor dispute. The highway patrol should manage the highway when called on to do so.

CHUCK O'REILLY, Helena, Sheriff of Lewis and Clark County, representing Montana Sheriffs and Police Officers, said the bill had been introduced at their request. He said primarily in small towns there are not adequate resources to deal with incidents like that which occurred in the Colstrip area. The highway patrol did move in on the highway to try to control the traffic but the attorney general pulled them out, citing this statute. The Chief of Police Association also stands in favor of

the bill. Their representative was unable to be present.

BILL OLSON, Helena, Montana Contractors, said the presence of the highway patrol would act as a deterrent to possible violence. If you spot them while driving down the highway, you slow down. Adoption of this piece of legislation would help both labor and management to better control the situation when a strike occurs.

REPRESENTATIVE JERRY DRISCOLL, District 69, spoke as an opponent. He said he was involved in the strike and was there. The day before the incident at Colstrip, the contractor decided he was going to work behind our picket line. We called the sheriff of Yellowstone County and told him there was a possibility that things might get out of hand. It was 6 a.m. in the morning. There were 40 deputies, three cars and two pick-ups loaded with non-union employees brought by the contractor, and there was about 200 picketers on about 10 miles of the road. At that time we shut that road down. We shut down the county road. Then two sheriff's deputies parked their cars blocking the road. We went to them and asked if the road was closed. They said the road is closed to the union. We asked them to please close it to everyone from Colstrip to Sarpy Creek. Then we went back to the parking lot to find the two cars and deputies gone. We thought they had gone on to Sarpy Creek. We asked again for the deputies to close the road and they again said it was closed to the union. 300 people started up the road anyway - with no intention of destroying equipment. Unknown to us, there were 1,000 people on that side of the hill. As we proceeded up the road, the deputies would ask us to please return to the highway. Then the sheriff's deputies fired tear gas canisters at us. Then the deputies declared the road closed to everyone but ranchers - closed to the contractors and us. The union people then returned to the state highway and the incident was over. They didn't need the highway patrol - all they needed to do was to say the road was closed to the contractor. No equipment was hurt, no one was hurt. We didn't want to tear up anything - all we wanted was fairness from the law enforcement.

TOM SCHNEIDER, MPEA and the Highway Patrol Unit, said he represents 160 highway patrolmen. He said the section of law that is being discussed was put there in 1943 and it was put there for a reason. The reason is that the highway patrol is not set up for this type of work. Their obligation to the state is traffic control on the state highways. They don't want to cross picket lines. We don't feel the highway patrol are trained or equipped for this type of duty and there aren't enough highway patrol men in the state. There are only 210 highway patrolmen in the entire state. That leaves us with an average of 27 highway patrolmen to work state-wide each day of the week - 24-hour

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shifts and 7 day scheduling. How can a force this size be used in this manner? The bill requests the highway patrol's assistance. If the request is made, the highway patrol is obligated to respond, according to the language of this bill. Every occurrence, the highway patrol would have to respond to. The highway patrol works very closely with the sheriff's office, and very closely with other law enforcement agencies. Don't think they can continue on a good basis the first time this is denied. They are trying to remain very neutral and keep the rapport with other law enforcement agencies. Don't think this is a good bill. The effectiveness and image to the people of the highway patrol would be hurt very much the first time they are used in this type of a situation.

MIKE GREELY, Attorney General, spoke in opposition. He said his concern with the bill is that the highway patrol is a division of the justice department and under the attorney general. Montana's highway patrol is principally a traffic enforcement agency. They enforce traffic laws and assist motorists in times of emergency. They can do a better job helping when the need arises. They have not received training or equipment. The leading role in law enforcement should be in the local agencies. We don't want the concept of a state police - state law enforcement. We must make sure that local agencies are not over-dependent on the state for something like enforcement. He also noted a personal view concerning the labor movement and said that instead of conflicting with the wants and needs of working people, the state should be in alliance with them. He said he did not want to be a part of labor's problem, he wanted to be a part of the solution. He is glad that it is not the attorney general who can throw the weight of the patrol against the working men and women.

MITCH MIHAILOVICH, State Building Trades, spoke next in opposition and a copy of his testimony is Exhibit 1.

JIM MAYES, Operating Agency, Local 400, spoke next in opposition and a copy of his testimony is Exhibit 2.

LARRY PERSINGER, Laborers Local Union #1334, Butte, spoke next in opposition and a copy of his testimony is Exhibit 3.

ARLYN PLOWMAN, Cement Workers #239, spoke next in opposition and a copy of his testimony is Exhibit 4.

DON JUDGE, Montana State AFL-CIO, spoke next in opposition and a copy of his testimony is Exhibit 5.

REPRESENTATIVE ASAY in closing said this is requesting the highway patrol to assist untrained sheriffs and deputies. This is a

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difficult thing to handle in rural areas and things can get out of hand. We are not talking about a show of force. He said he doesn't consider the bill anti-labor or anti-union. Labor has to have a place in the chain of events in our society. You can't expect people to work and not have a unified voice to speak for them. I have every respect for collective bargaining. Unions came into being because industry was abusive - to change them now would be ridiculous. We need to keep them. The reason for this bill is to prevent a bad situation from happening- we are not trying to do any of the things we are being accused of.

Questions were asked by the committee.

Rep. Ellerd asked Mr. Greely if the highway patrol were trained well enough to go into prisons to help quell violence. He responded that the state has contingency plans for the prison. The highway patrol would secure the parameters of the prison and not go into the walls.

In response to a question, it was stated the national guard is trained in riot control and have the equipment and also some sheriff's deputies.

Rep. Addy asked if, since this is a 1943 law, the situation has changed since then. Mr. Asay said in their area there is a big industrial complex coming in and they have been a rural area. They are not used to being exposed to that number of people. Rep. Addy said it appeared to him this is a dispute between labor and management - a domestic relations problem - which is one of the most difficult problems. We hear the management might want to call the highway patrol in. They have an advantage in this bill. What corresponding help are we giving to the unions? Rep. Asay said it is not an extension of management. It is not management. The sheriff would call them in. Rep. Addy asked if the highway patrol would intervene to correct management. Rep. Asay said yes, if management is blocking the highway and causing it to not be used, because highways are their responsibility.

Rep. Driscoll asked Mr. O'Reilly how much lead time he would need if faced with a potential problem and needed assistance from a riot squad. Mr. O'Reilly responded that Cascade County has people trained for riots but he didn't know how fast they could get there or how many they could spare.

Rep. Dozier asked how many times in the past year this type of incident has occurred. Mr. Asay said only once that he knew of.

Mr. Schneider responded to a question that the only formal training for highway patrolmen is about seven to nine weeks before

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they become law enforcement officers and they are not trained for just this kind of duty. The national guard is the only force on a state-wide basis trained for riots.

Mr. Ellerd asked would the highway patrol have jurisdiction over county roads. Mr. O'Reilly said they would have jurisdiction on any state or county road - any road in the state having to do with traffic.

James T. Milar, Butte, BRAC, signed as opposing the bill.

Chairman Williams closed the hearing on this bill and opened the meeting to a hearing on HB 414.

HOUSE BILL 414

REPRESENTATIVE KELLY ADDY, District 62, sponsor of this bill, said the bill was at the request of the Department of Labor and covers the case where the business goes under and employers use the corporation laws to avoid paying their employees. The bill specifies five times when chief operating heads are held liable for unpaid wages and the corporate veil can be pierced.

DON JUDGE, Montana State AFL-CIO, spoke next in support of the bill and a copy of his testimony is Exhibit 6 of the minutes.

DICK KANE, Labor Standards Division, said they had a logger that incorporated ten different times and each time the Labor Standards Division received more and more claims against corporations that had no assets. Their day of reckoning won't come. He urged support of the bill.

MITCH MIHAILOVICH, State Building Trades, spoke next in support and a copy of his testimony is Exhibit 7 of the minutes.

JIM MAYES, Operating Engineers, Local 400, spoke next in support and a copy of his testimony is Exhibit 8 of the minutes.

ARLYN PLOWMAN, Cement Workers #239, spoke next in support. He said this is a good bill that will close a loop-hole which often victimizes workers.

REPRESENTATIVE ADDY closed.

Questions were asked by the committee.

Rep. Ellerd asked what was done when the scoundrels didn't have any money. Mr. Addy said if the individual has gone broke, nothing can be done - this is after the ones that have bled off

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the assets. Rep. Ellerd asked if there was any criminal penalty for something like this. Rep. Addy said no.

Rep. Bachini asked if they can go after the personal property. Rep. Addy said yes - that is his purpose.

Chairman Williams closed the hearing on this bill and opened the meeting to a hearing on HB 277.

HOUSE BILL 277

REPRESENTATIVE CLYDE SMITH, District 18, chief sponsor, said this bill is at the request of the Department of Labor and Industry. He said the reason for the change in the law is this: at the present time we have independent contractors and they are such until they get hurt. Suddenly, they acquire an employee status and want to be paid out of the unemployment compensation fund. Under this act, an independent contractor can exempt himself but will have to have proof that he has done so. He had passed out to the members a substitute bill and this is Exhibit 9 of the minutes.

GARY BLEWETT, Division of Workers Compensation, Department of Labor, spoke next in support and a copy of his testimony is Exhibit 10 of the minutes.

ARLYN PLOWMAN, Cement Workers #239, spoke next in support and a copy of his testimony is Exhibit 11 of the minutes.

ROBERT N. HELDING, Montana Wood Products Association, spoke in support of the bill as amended. He said this bill makes sense and he earnestly supports it.

DON JUDGE, Montana State AFL-CIO, urged the adoption of the bill as it would give the Division a chance to work as it was intended to. A copy of his testimony is Exhibit 12 of the minutes.

GENE PHILLIPS, LHC Inc., spoke in support of the bill. He said they might have been the cause for the bill to occur. He said a few years ago a client who has a small log hauling company had a terrible accident which involved an employee and an independent contractor hauling logs for the client. The employee was killed and the independent contractor was sued. He had no liability and this caused his client to be dragged in as they tried to prove he was an employee. It went to the Supreme Court and the decision was that he was an independent contractor. This bill would more clearly differentiate these independent contractors from employees.

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BEN HAVDAHL, Montana Motor Carriers Association, said he supported the bill for the reasons given by Mr. Phillips and Mr. Holding.

GEORGE WOOD, Montana Self Insurance Association, spoke in support.

JOHN HOLLOW, Montana Home Builders Association, spoke as a co-ponent. He said as he reads the bill, if you apply the court's decision as to what is an employee, you are likely to end up with a lot of employees and few independent contractors. It was his experience that if the independent contractor is unemployed with starving wife and kids, the courts tend to interpret the law so he becomes an employee. They are looking for a deep pocket. He suggested putting into the statement of intent some guidelines as to what decision you want to apply. He also asked about the employee that has a night-time job as an independent contractor. There should be a mechanism that would cover him without needing to go to court to get a determination. He also asked that the amount of paper work be kept down for those wishing to be independent contractors.

REPRESENTATIVE SMITH in closing said the bill was a joint effort primarily of the Division of Worker's Compensation and the Timber Association.

Questions were asked by the committee.

Rep. Thoft asked concerning agriculture. How would sheep shearers be considered? Mr. Blewett responded that the bill does not define. What it does is say if a party wants to be an independent contractor he has to buy his own insurance and get a written exemption. He said the definition of independent contractor is subtle. The method of pay, owning his own equipment, hours worked are all factors. He said there is a whole body of legal cases.

Rep. Hannah asked if they would need to set up additional rules. Mr. Blewett said they would need rules to receive an application of exemption and what is the grievance procedure for objections.

Rep. Hannah asked if it is more difficult for one to become licensed as an independent contractor in the state. Mr. Blewett said no.

Rep. Driscoll said the bill does not speak to the independent contractor but to the one hiring him. He can ask: show me your insurance or your exemption. This would protect the employer.

Chairman Williams closed the hearing on this bill and opened the meeting to a hearing on HB 406.

HOUSE BILL 406

REPRESENTATIVE CLYDE SMITH, District 18, said the bill was at the request of the Department of Labor and Industry and would collect an additional premium from the employers to provide additional funds for the uninsured employers fund. He felt this should be assessed against the employers because they are the only ones that can do anything to correct the problem. A goodly portion of the problem is from the independent contractors claiming employees' rights. If the previous bill passes, two years from now we should only need half as much.

GARY BLEWETT, Division of Worker's Compensation, spoke next in support and a copy of his testimony is Exhibit 13 and Exhibit 14 contains exhibits passed to the committee.

LARRY PERSINGER, Laborer's Local #1334, spoke next and a copy of his testimony is Exhibit 15 of the minutes.

ARLYN PLOWMAN, United Cement, Lime and Gypsum Workers Union #239, spoke next in support and a copy of his testimony is Exhibit 16.

DON JUDGE, Montana State AFL-CIO, rose in support and due to a time press handed in his testimony which is Exhibit 17 of the minutes.

KEITH OLSON, Montana Logging Association, spoke as a co-ponent. He said he had a philosophical problem about having a tax on employers that uphold their end and regularly pay into the fund. The burden should be imposed on those that create the problem.

REPRESENTATIVE JERRY DRISCOLL, District 69, said he rose as a proponent.

GEORGE WOOD, Executive Secretary, Montana Self Insurers, spoke as an opponent and a copy of his testimony is Exhibit 18 of the minutes.

JOHN HOLLOW, Montana Home Builders, spoke as an opponent. He said he too had a philosophical problem with having to pay extra when you have complied with the law to make up for others that haven't complied. He suggested HB 227 be passed and given two years to work and in the meanwhile fund this deficit from the general fund rather than setting up an extra tax on the employers.

REPRESENTATIVE SMITH in closing reminded Mr. Hollow that his people are creating 20% of the problem so they should help to pay for it.

Meeting adjourned at 3 p.m.

Respectfully submitted,

Emelia A. Satre, Sec.

  
J. MELVIN WILLIAMS, Chairman



WITNESS STATEMENT

Name Mitch M. Kharlovich Committee On \_\_\_\_\_  
Address 1900 ELM BUTTE Date 2-1-83  
Representing STATE Bldg Trades Support \_\_\_\_\_  
Bill No. HB 497 Oppose X  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

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Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Tom Schneider  
 Address Box 716  
 Representing MPAA - HP  
 Bill No. HB 497

Committee On Labor  
 Date 2/1/83  
 Support \_\_\_\_\_  
 Oppose X  
 Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Assistance mandate assistance  
 1. All dependent on sheriff for other services. Very difficult to turn down -
  2. Current prohibition included in 1943
  3. Patrolman are a union and
  4. Cannot be forced to cross picket lines -
- Not trained or equipped
- Not enough H.V. officers - Less than 88 patrolmen on duty at any one time.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



**BUILDING AND CONSTRUCTION TRADES COUNCIL**  
 IN AFFILIATION WITH  
**BUILDING AND CONSTRUCTION TRADES DEPARTMENT**  
**AMERICAN FEDERATION OF LABOR—CONGRESS OF INDUSTRIAL ORGANIZATIONS**

Address of Writer \_\_\_\_\_

MONTANA STATE BUILDING AND  
 CONSTRUCTION TRADES COUNCIL  
 P. O. BOX 2242  
 BUTTE, M.T. 59701

MITCH MIHAILOVICH, PRESIDENT  
 MONTANA STATE BUILDING AND CONSTRUCTION TRADES COUNCIL  
 HOUSE LABOR COMMITTEE, FEBRUARY 1, 1983

My name is Mitch Mihailovich, and I am the president of the Montana State Building and Construction Trades Council. That is the organization for all affiliated labor unions which do building and construction work.

We are against House Bill 497. There is no need for such a bill. Lockouts by employers or strikes by employees occur in fewer than 2% of all contract negotiations. And of the few strikes which do happen, violence is extremely rare in Montana, even though such events always make the front page headlines.

And even in the extremely rare cases when there is some sort of violence on the part of strikebreakers or strikers, there is never a need for the highway patrol, because local law enforcement authorities have been able to handle anything that has happened in the last few decades.

The biggest strike in recent years was the construction strike in the spring of last year. Despite thousands of workers being on strike, and tensions running very high, the only injury that I know about was when a striker in Big Timber was hit by a car driven by a strikebreaker.

Even though that bit of violence involved a car, there was no need for the highway patrol to intervene.

Local law enforcement authorities have been able to handle the few strikes and lockouts which have occurred up to now. There is no reason to believe that they won't be able to handle the few which occur in the future.

[Original letterhead had union "Bug"]

# International Union of Operating Engineers

LOCAL 400

Affiliated with AFL-CIO

Montana



**BILL BURLINGAME**  
Business Manager &  
Financial Secretary

**HEADQUARTERS**  
2737 Airport Road  
Helena, Montana 59601  
Telephone: (406) 442-9597

**JOHN SLATTERY**  
President

**D. F. "DAVE" JOHNSTON**  
Vice President

**LOUIS LAYMAN**  
Treasurer

**RALPH REID**  
Rec. Corres. Secretary

TESTIMONY OF JIM MAYES, BEFORE THE HOUSE LABOR COMMITTEE OPPOSING HOUSE BILL 497, FEBURARY 1, 1983.

I am Jim Mayes, representing the Operating Engineers, Local 400.

It looks to me like House Bill 497 is an attempt to give management another tool for breaking strikes by threatening police actions whenever feelings run high on a picket line. Of course, we always oppose actions which try to give management the upper hand.

But there is an even greater danger in this bill. House Bill 497 is a foot in the door toward a state police force. If this legislature wants to create a state police, then it ought to be addressing the issue head on, instead of approaching it through the back door. I don't think the people of Montana want a state police force, and I certainly don't think we can afford it at this time, when budgets are so tight.

House Bill 497 moves in that direction by adding greatly to the responsibilities of the Highway Patrol. What is to prevent them from being included in some other law enforcement situation, like helping with a dragnet for a murder or helping solve other sorts of violent crime? Those are areas that local law enforcement officials need help with, not labor disputes. But all of those kinds of assistance lead toward a state police force.

I don't think that is what we want.

Thank you.

TESTIMONY OF LARRY PERSINGER  
LABORERS LOCAL #1334  
IN OPPOSITION TO HOUSE BILL 497  
BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE  
FEBRUARY 1, 1983

I am Larry Persinger representing Laborers Local Union #1334, and I am based in Butte. Butte is known for being a tough town. And Butte union members are known for being tough. We have had a few strikes in Butte, and you always read about them in the headlines of your paper. You don't read about the numerous contracts that are settled without lockouts or strikes.

Even though you have read about strikes in Butte, you haven't read about any strikes which involved any kind of violence, either against the strikers or on the part of the strikers, which the Butte police couldn't handle. Our police are also union members, and they are able to keep matters under control. Only in the history books do you read about riot situations that get out of control.

The danger in this bill is not the danger of riots, but the danger to public safety which would happen when the Highway Patrol is taken off the highways. There are too few Highway Patrol officers now. Every time some local authority wanted to call them in, the highways would be virtually unattended for that period of time in some areas of the state.

We ask that you oppose House Bill 497.

WITNESS STATEMENT

Name ARLYN PLOWMAN Committee On LABOR  
Address BOZEMAN Date 2-1-83  
Representing CEMENT WORKS #234 Support \_\_\_\_\_  
Bill No. 497 Oppose X  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

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SEE STATEMENT

2.

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Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



UNITED CEMENT, LIME AND GYPSUM WORKERS  
LOCAL UNION NO. 239 AFL-CIO  
THREE FORKS, MONTANA

Arlyn Plowman

NAME OF WRITER

Box 804

ADDRESS

Three Forks, Montana 59752

CITY, STATE AND ZIP

TESTIMONY OF ARLYN PLOWMAN, ON HOUSE BILL 497, BEFORE THE HOUSE COMMITTEE ON  
LABOR AND EMPLOYMENT RELATIONS, FEBRUARY 1, 1983

Chairman, members of the committee, my name is Arlyn Plowman and I am representing the United Cement, Lime, Gypsum and Allied Workers, Local 239, Three Forks.

We believe House Bill 497 is unnecessary and bad legislation.

We see no need to involve the Highway Patrol in the collective bargaining process.

The Highway Patrol is not trained for this type of duty.

It would be a waste of money to train them for the rare occasions, if ever, they would be assigned to a labor dispute.

In the collective bargaining process a labor dispute is the exception, rather than the rule. On those few occasions where there is a labor dispute, emotions and tensions are intense. Often the involvement of law enforcement agencies increase those emotions and tensions.

The Montana Highway Patrol is not a State Police. They have enough to do as it is. They don't need additional duty.

Thank you.



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Box 1176, Helena, Montana

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JAMES W. MURRY  
EXECUTIVE SECRETARYZIP CODE 59624  
406/442-1708TESTIMONY OF DON JUDGE ON HOUSE BILL 497, BEFORE THE HOUSE LABOR AND  
EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 1, 1983

I am Don Judge, representing the Montana State AFL-CIO.

You have heard from these other labor leaders about reasons for opposing House Bill 497. In addition to their reasons, I would like to add two more for opposing this bill.

This bill deals strickly with collective bargaining, and the delicate balance between labor and management which must be maintained. That balance gives both sides the incentive to negotiate fairly and quickly toward a mutually beneficial settlement.

House Bill 497 does not preclude a local government from asking the Highway Patrol to serve as strikebreakers. Obviously their capacity to completely replace striking workers is limited. But any legthening of a strike through the use of the Highway Patrol as strikebreakers only intensifies the potential for real emergencies and turns the bargaining balance over to the employer. The result is longer, potentially more violent labor disputes, which are more expensive to employers and employees. And the very intent of this bill --- to keep down violence, would be turned on its head, so that this bill will actually help promote potentially violent situations.

The second reason we oppose this bill is that it puts a very great additional responsibility on the Highway Patrol. But nowhere in this bill do I see any money appropriated for training, nor for salaries. It makes no sense to be sending untrained people into a situation where they are not needed, when their presence may help create a dangerous situation which really will require training. We ask

that you vote no on House Bill 497. Thank you.



## VISITOR'S REGISTER

LABOR AND  
HOUSE EMPLOYMENT RELATIONS

COMMITTEE

BILL HR 497DATE 2/1/83SPONSOR ASAY

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Chuck O'Reilly	Helena	Mont Shuff & Pease Off.	✓	
John Smith	Bozeman	" "	C	
Bill Olson	Helena	MT. Contractors	✓	
Don Judge	Helena	MT. STATE AFL-CIO		X
MIKE GREELY	HELENA	DEPT OF JUSTICE		X
M. M. H. Louch	Butte	St Bldg Trades		X
R. Dranger	Butte	Laborers Local #1354		X
Thomas Schneider	Helena	INPEA - H. P. Unit		X
James Mular	Butte	BRAC		X
Allen Plowman	BOZEMAN	CEMENT WORKERS		X
Sam Matar	Butte	B		
Gene Mays	Helena	LOCAL 400 IUOE		X
Tom Combs	French	Rep Dist 50-	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name James T Mular Committee On Labor  
Address Butte Date \_\_\_\_\_  
Representing BRAC Support \_\_\_\_\_  
Bill No. 497 Oppose X \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

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Box 1176, Helena, Montana

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JAMES W. MURRY  
EXECUTIVE SECRETARY

ZIP CODE 59624  
406/442-1708

TESTIMONY OF DON JUDGE ON HOUSE BILL 414, BEFORE THE HOUSE LABOR  
AND EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 1, 1983

I am Don Judge, representing the Montana State AFL-CIO. We support House Bill 414, as one small means of helping to protect workers.

These are times of record bankruptcies. We can certainly understand the hardship that businesspeople are going through, along with family farmers and ranchers, when they face the threat of losing everything they have ever worked for, because of the Federal Administration's recession.

But working people also face a hardship when the employer closes. Workers are usually people of lower means than the owners, at least until the time of a closure. They have not shared greatly in the potential rewards of the business, so they shouldn't bear a disproportionate share of the risk.

House Bill 414 is similar to laws in Kansas and Michigan, which are aimed at employers who use the corporation laws to avoid paying their employees. Here in Montana there have been people who have formed as many as eight different corporations, leaving employees to hold the bag whenever one corporation fails. The corporation laws shelter the officers from liability, so that they can use the assets or simply abscond with them, to the detriment of their employees.

House Bill 414 does not make the chief operating person and corporate officers liable for unpaid wages in all circumstances. Instead, it

specifies five times when such people would be, and ought to be, personally liable for wages. These are instances when they have had direct control over the non-payment of wages.

The first instance is when the corporation is subject to Montana corporate law and fails to file the annual corporate report with the Montana Secretary of State as required by law. Such failure to file is often an intentional deception to avoid disclosure that funds to pay the employees' wages are in trouble (and therefore then the business is in trouble).

The second instance is when the corporation operates for 30 days after it has become insolvent. In such a case, money has been made, but has been siphoned off into other activities rather than paying the employees wages.

The third case of liability occurs when the chief operating person or corporate officer mixes "substantial assets" of the corporation with personal assets. When that person is using corporate funds as if they were his or her own, then it is only right for that person to be personally liable for any unpaid wages.

The fourth case occurs when the corporation disposes of its assets and breaks up the company, without paying wages. Here again is an example of money coming in, but the chief operating person or corporate officers choosing to bilk their employees in favor of doing something else with the money.

The final instance occurs when the head of the organization maintains that the corporation is a sole proprietorship, partnership or unincorporated association or organization. Here again, one person is responsible for the promises made to the employees, and should be responsible for delivering on those promises.

It is always a disaster when a company fails, owing wages to its employees for work they performed on the strength of a promise of payment. When that non-payment is the fault of the chief operating person or corporate officers of the company, then they should be held personally responsible for making good on their promises. This bill does not hold them responsible except under the five instances when they choose to defraud their employees.

We ask that you support House Bill 414.

Thank you.

WITNESS STATEMENT

Name Mitch Michalovich Committee On \_\_\_\_\_  
Address 1900 Elm Butte Date 2-1-83  
Representing State Bldg Trades Support X  
Bill No. HB 414 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



## BUILDING AND CONSTRUCTION TRADES COUNCIL

IN AFFILIATION WITH

## BUILDING AND CONSTRUCTION TRADES DEPARTMENT

AMERICAN FEDERATION OF LABOR—CONGRESS OF INDUSTRIAL ORGANIZATIONS

Address of Writer \_\_\_\_\_

THE MONTANA STATE  
BUILDING AND CONSTRUCTION TRADES COUNCIL  
FEBRUARY 1, 1983  
MONTANA, 59701

MITCH MIHAIOVICH, MONTANA STATE BUILDING AND CONSTRUCTION TRADES COUNCIL,  
FEBRUARY 1, 1983, HOUSE LABOR COMMITTEE, HOUSE BILL 414.

I am Mitch Mihailovich, representing the Montana State Building and Construction Trades Council.

We are here to support House Bill 414.

In the construction industry there are a number of fly-by-night operators. Often these contractors will skip town, owing money to their employees as well as other creditors.

Sometimes these contractors can use the corporation laws to avoid responsibility by folding up one corporation and forming another one. I can't describe every detail in this bill, but as I understand it, the overall point of it is to make the head of a corporation personally responsible for wages owed to employees, under certain circumstances.

We all know that the construction industry is in serious shape, and contractors are going bankrupt. We also know that sometimes there is nothing that can be done about it, and everybody loses.

But when the contractor or corporation officer has some money available and decides not to pay wages with it, it only seems fair for that person to be responsible. The intent of House Bill 414 is a good one. Its effect will be to put the employees at the front of the line of creditors. Those workers who have already performed the work, need the money desperately. We ask you to support House Bill 414. Thank you.

(Union Bug removed for duplicating)

# International Union of Operating Engineers

LOCAL 400

Affiliated with AFL-CIO

Montana



**BILL BURLINGAME**  
Business Manager &  
Financial Secretary

**HEADQUARTERS**  
2737 Airport Road  
Helena, Montana 59601  
Telephone: (406) 442-9597

**JOHN SLATTERY**  
President

**D. F. "DAVE" JOHNSTON**  
Vice President

**LOUIS LAYMAN**  
Treasurer

**RALPH REID**  
Rec. Corres. Secretary

TESTIMONY OF JIM MAYES, BEFORE THE HOUSE LABOR COMMITTEE, SUPPORTING  
HOUSE BILL 414, FEBRUARY 1, 1983.

I am Jim Mayes, representing the Operating Engineers, Local 400. We support House Bill 414, because it will provide a little more protection for workers who get cheated out of their paychecks.

When a person goes to work for an employer, there is an agreement between them, sometimes written down in a contract and sometimes verbal. The person agrees to do certain work and the employer agrees to pay a certain amount and provide certain fringe benefits.

When a business fails, that is always a tragedy, for everyone involved. But what isn't fair is for the people responsible for the business to refuse to pay their workers for work they have already done.

House Bill 414 doesn't affect every business that goes belly up. It just affects ones in which the person responsible for making decisions has the choice of what to do with money remaining, and makes the choice not to pay the workers. In that case the decision-maker should be personally responsible for their part of the agreement made with the workers.

House Bill 414 is simply a matter of fairness.

Thank you.



LABOR AND

COMMITTEE

DATE 2/1/83

SPONSOR ADDY

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name ARLEN PLOWMAN Committee On LABOR  
Address BOZEMAN Date 2-1-83  
Representing CEMENT WORKERS #239 Support X  
Bill No. 414 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. THIS IS A GOOD BILL THAT WILL  
CLOSE A COOP HOLE WHICH OFTEN  
VICTIMIZES WORKERS.
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

#B 277 with proposed amendments incorporated into the bill.

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING WORKERS' COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS AND PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE; AMENDING SECTION 39-71-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-401, MCA, is amended to read:  
"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection subsections subsection (2) and (3) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117, and and to all employees as defined in 39-71-118, and--to-all-sole proprititorw-or-working-members-of-a partnershie-who-consider -themselves-or-hold-themselves-out-as independent-contractors--A-sole-proprietor-or-working-member-of-a partnership-who-considers-himself-or-holds-himself-out-as an independent-contractor-shall-elect-to-be-bound-by-the-provisions of compensation-plan-No.-1,2,or-3. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116(3);
- (c) employment of members of an employer's family dwelling in the employer's household;
- (d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors;
- (e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (f) any person performing services in return for aid or sustenance only;
- (g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor MUST ELECT TO BE BOUND PERSONALLY AND INDIVIDUALLY BY THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3 BUT HE may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of independent contractor and precludes the applicant from obtaining benefits under this chapter.

Amend lc585

Proposed amendment to HB 277.

1. Page 1, line 13.

Following: "~~subsection~~"

Strike: "subsections"

Insert: "subsection"

2. Page 1, line 14.

Following: "(2)"

Strike: "and (3)"

3. Page 1, line 15.

Following: "39-71-117"

Strike: "7"

Following: "and"

Insert: "and"

4. Page 1, line 16 through line 22.

Following: "39-71-118"

Strike: inserted material through line 22.

5. Page 2, line 25.

Following: "contractor"

Insert: "must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but he"

H STATEMENT OF INTENT  
Bill No. 277 [LC 585]

Under the law in effect prior to the enactment of this act, independent contractors were exempt from coverage under the Workers' Compensation laws. Many times, the determination of whether a worker is an independent contractor is made after a worker, for whom no contributions have been made, is injured and files a claim. This act provides a method for a before-the-fact determination of the independent contractor status. The act is not intended to make independent contractors subject to the Workers' Compensation Act but requires that they apply for that status to be exempt.

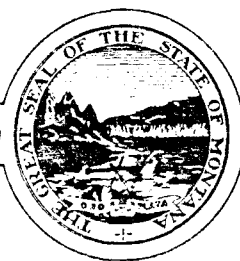
This bill authorizes the Division of Workers' Compensation of the Department of Labor and Industry to adopt rules to implement this act. It is the intent of the Legislature that the Division will provide an application form and provide for a hearing if the applicant disagrees with the Division's initial determination. Any substantive rules adopted pursuant to this act must be consistent with the statutory definition of "independent contractor".

Ex. 10

222 B 277



**DIVISION OF  
WORKERS'  
COMPENSATION**



TED SCHWINDEN, GOVERNOR

815 FRONT STREET

STATE OF MONTANA

HELENA, MONTANA 59604

TESTIMONY OF GARY BLEWETT ON HOUSE BILL 277, BEFORE THE HOUSE LABOR AND  
EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 1, 1983

I am Gary Blewett, Administrator of the Division of Workers' Compensation, in support of substitute language for House Bill 277. The substitute version of this bill provides for mandatory workers' compensation coverage for independent contractors unless they elect not to be covered and that election is approved by the Division. An election not to be covered would be disapproved if the applicant was found not to be an independent contractor but was, in fact, an employee.

This is opposite of the situation under current law. Independent Contractors do not now have to have coverage for themselves unless they elect coverage. This arrangement allows for two recurring problems: (1) So-called independent contractors who have an accident on a job often will seek coverage as an employee after the fact, and (2) independent contractors often do not insure their employees, when they have them, due to confusion about what is required of independent contractors.

The first problem happens because the distinction between an independent contractor and an employee is subtle. An independent contractor is one who renders occupational services free from the control or direction of the employer and is engaged in an independently established trade, occupation, profession, or business. How free a person is from control is arguable and

often is in court after a so-called independent contractor has an accident. If the court determines the claimant is an independent contractor, the claimant loses all right to workers' compensation benefits, and the insurer is relieved from all liability. If, on the other hand, the court determines that the claimant is an employee, then the claimant receives workers' compensation benefits, and liability for such payments is placed upon the employer's insurance carrier even though no premium has been collected by it for the assumption of such risk.

The second problem is, perhaps, an even greater one in that it creates what seems to be a growing population of uninsured employers. The fact that the owners of businesses that are independent contractors currently do not have to seek either insurance or exemption creates an atmosphere of disregard for any coverage at all. This is partly due to confusion about what is required of independent contractors and partly due to their changing circumstances. From time to time only the owner or the partners may be providing the contracted services, but at other times they may have others (i.e. employees) working with them on a contract. Current law says that when the owner or partners are doing the work, insurance is not required, but when an employee is on the job then that employee, at least, must be covered. Unfortunately, the insurance is frequently not purchased because the independent contractor only infrequently has employees.

House Bill 277 with substitute language addresses the most important objective of the Workers' Compensation Act--it promotes coverage for everyone who is an employee while minimizing uninsured circumstances. It achieves this by requiring those who hold themselves out or consider themselves to be



independent contractors to either purchase workers' compensation insurance or seek official exemption from the Division. If they are approved for the exemption, they are precluded from receiving workers' compensation benefits. However, if they are not certified as exempt independent contractors, insurers will either collect premium for the risk directly from the independent contractor or from the employer of an alleged but uncertified independent contractor.

By requiring the decision about coverage to be up front, the Division can carry out its compliance function within the scope of its current staff. The proposed legislation is largely self-enforcing through the concern of employers for their own financial well-being. An employer will require independent contractors to either have insurance or a Division certificate of exemption; otherwise, they will be subject to premium payments on an alleged independent contractor who will be treated by insurers as an employee.

The proposed legislation, with substitute language, will overcome deficiencies in current law, and I urge your support.

## WITNESS STATEMENT

Name ARLEN PLOWMAN Committee On LABOR  
Address BOZEMAN Date 2-1-83  
Representing CEMENT WORKS #239 Support X  
Bill No. H.B. 277 Oppose \_\_\_\_\_  
Amend X

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

1. SEE STATEMENT

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Ex. 111

A.B. 277



UNITED CEMENT, LIME AND GYPSUM WORKERS  
LOCAL UNION NO. 239 AFL-CIO  
THREE FORKS, MONTANA

Arlyn Plowman

NAME OF WRITER

Box 804

ADDRESS

Three Forks, Mt. 59752

CITY, STATE AND ZIP

Testimony of Arlyn Plowman on House Bill 277 before the House  
Committee on Labor and Employment Relations, February 1, 1983.

Chairman, Members of the Committee, my name is Arlyn Plowman  
and I am representing United Cement, Lime, Gypsum and Allied  
Workers Local 239, Three Forks.

We support House Bill 277.

While the problem of independent contractors has not surfaced  
in our experience, we believe strongly, that every worker  
ought to be covered by Workers' Compensation Insurance.

Too often employers who do not meet their legal and moral  
obligations have an economic advantage over those who do.

When, for the sake of an economic advantage, an employer  
shirks his responsibilities that employer is not only being  
unfair to his workers, he is also putting an additional  
burden on our society.

There should be no incentives for anyone not to meet his  
or her obligations. This bill would remove one of those  
incentives.



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Box 1176, Helena, Montana

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JAMES W. MURRY  
EXECUTIVE SECRETARY

ZIP CODE 59624  
406/442-1708

TESTIMONY OF DONALD R. JUDGE IN SUPPORT OF HOUSE BILL 277, BEFORE THE HOUSE  
LABOR AND EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 1, 1983

---

I am Don Judge, representing the Montana State AFL-CIO.

The Montana State AFL-CIO supports House Bill 227. This bill, as amended by the proposals of the Workers' Compensation Division is an attempt to provide workers' compensation coverage to more Montana employees.

There are loopholes in Montana law today which allow some corporations, particularly in the lumber and construction industries, the ability to deny workers' compensation and unemployment insurance benefits to their workers. This loophole is in the listing of exemptions. Each session, this legislature faces an attempt to expand the exemptions so that more employees will be denied coverage.

In recent years, there has been an increasing trend to call additional employees in certain industries independent contractors. This saves the employer from paying workers' compensation premiums. In especially dangerous industries, that can be a substantial savings for the company.

House Bill 277 requires that so-called independent contractors have workers' compensation coverage, unless they are determined to be independent contractors by the division. There will be several effects of that provision.

First, it could work a financial hardship on so-called independent contractors, so that they will try very hard not to let the prime employer force them into the position of being called independent contractors.

The second effect will be that the so-called independent contractor may be forced to have insurance against disaster. When injuries strike, as they do so often in the industries which most make use of so-called independent contractors, coverage will be provided. This will protect the worker. It also protects the company from lawsuits brought by injured workers. These are workers who, when they are not able to work due to work-related accidents, claim that they were really employees rather than independent contractors.

Not every independent contractor will be covered. In fact, every independent contractor has the option of refusing coverage by applying to the Workers' Compensation Division for exemption. The Division must accept that application, unless it finds that the person or persons are not really independent contractors. That ruling will then be binding on both the contractor and the company.

If the person is ruled to be in fact an independent contractor, then no benefits can be received under this act. And the company subcontracting with the independent contractor has no liability.

If however, the person is found to be an employee, the company must provide coverage under workers' compensation.

House Bill 277 is an excellent way to extend coverage to more workers in dangerous occupations, and to provide clarity as to who is and isn't covered for the protection of both the workers and the companies involved.

We recommend that you give this bill a "do pass" recommendation.

WITNESS STATEMENT

Name JIM MAYES Committee On LABOR  
Address 2737 AIRPORT Rd Date \_\_\_\_\_  
Representing LOCAL 400 ELUOE Support X  
Bill No. 277 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

LABOR AND  
HOUSE EMPLOYMENT RELATIONS COMMITTEE

DATE 2/1/83

[illegible]

FORM CS-33

WITNESS STATEMENT

Name GENE PHILLIPS Committee On \_\_\_\_\_  
Address KALISPELL Date 2/1/83  
Representing LHC INC. Support X  
Bill No. HB 277 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

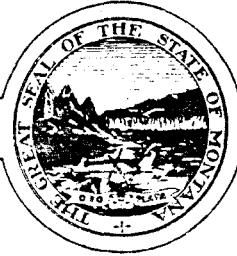
2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



**DIVISION OF  
WORKERS'  
COMPENSATION**

TED SCHWINDEN, GOVERNOR

815 FRONT STREET

**STATE OF MONTANA**

HELENA, MONTANA 59604

TESTIMONY OF GARY BLEWETT ON HOUSE BILL 406, BEFORE THE HOUSE LABOR AND  
EMPLOYMENT COMMITTEE, FEBRUARY 1, 1983

---

In 1977 Montana passed the provisions of the Uninsured Employers Act. The purpose of the Act was to pay an injured worker of an uninsured employer the same workers' compensation benefits the worker would receive had the employer been properly insured.

The legislature recognized, at that time, that some employers will not voluntarily carry workers' compensation insurance. It also recognized that workers' compensation benefits are the most appropriate method of dealing with an industrial accident. However, benefits can only be paid if the Uninsured Employers Fund is adequately funded.

It is the Division position that unless a stable source of revenue is found to provide funding for the Uninsured Employers Fund, workers whose employers fail to obtain the coverage will not receive adequate protection. It seems that there will always be employers who do not provide compensation insurance for their employees. The underlying philosophy behind workers' compensations calls for the protection of all employees.

Since the Uninsured Employers Act became effective, the Division has conducted more than 2,700 investigations of suspected uninsured employers and has assessed almost 1.7 million dollars in fines and penalties. However, of

this amount, less than \$700,000 has been collected. To date the Fund has expended more than \$691,000 in paying benefits and administrative costs of operating the Fund. When the account was declared insolvent in January of 1981, 196 injured employees had received benefits. As of June 30, 1982, almost 1,400 employers had been fined. However, of this number, almost half of the fines were referred to the Department of Revenue for collection. The distribution of uninsured employers identified during the past five years is widespread among all sectors of Montana's economy (see attachment).

The present method of funding the Uninsured Employers Fund by penalty assessment against uninsured employers has not provided sufficient income to administer the program nor to pay benefits on a sound financial basis. The present penalty assessments are determined by an audit of uninsured employers and are assessed at either double the premium the employers would have paid had they been properly insured or at a minimum of \$200, whichever is greater.

During the last legislative session, a bill was introduced and defeated which would have assessed all insurance carriers, including the State Fund, a percentage of premium collected for the express purpose of providing adequate funding to the Uninsured Employers Fund.

The remaining alternatives for augmenting the collection of fines and penalties are to combine a rigorous enforcement program with either general funds or an assessment of gross payroll. The Division comes before you with a proposal for enforcement and assessing gross payroll. The proposed legislation on independent contractors represents one part of the enforcement effort.

The choice of proposing an assessment of gross payroll rather than general fund is philosophical. The premise upon which the Workers' Compensation Act rests is that the employer should be responsible for the consequences of injury and disease in the workplace. To the extent that an irresponsible employer evades the law, society needs to establish some means of protecting the innocent employee. An assessment on identifiable employers is to be preferred to a general tax on the entire population since such a tax is in fact collecting substantially from employees in addition to employers.

The proposal in this Bill would provide the Division with authority to assess each employer in the state a premium to be calculated as a percent of the gross wage paid to each employee. The Division would have the authority to establish procedures for the collection of this premium by making it an obligation of the various insurance companies and the self insurers (self-insured employers) to collect and remit the premium to the Division of Workers' Compensation for deposit into the Uninsured Employers Fund. It would be the responsibility of the Division to determine the amount of funds needed for such purposes for each fiscal year. Assessments would have to be sufficient to maintain an actuarially sound fund, establish a catastrophe reserve and maintain reserves which would meet anticipated and unexpected losses. This Bill also states that the reserves or surplus would necessarily have to be adequate, but not excessive, for the intended purpose of the Act. Should the Division collect funds in excess of its needs in a particular year, credits will be allowed in the subsequent year for the average. By the same token if needs exceed funds collected, an additional assessment will be required in the following assessment period.

The amount of assessment required in addition to fines and penalties collected would be between 3 and 4 cents per hundred dollars of payroll each year of the next biennium. This would mean that over half of Montana's firms would pay something less than \$12 a year into this fund. The larger the firm, the more it would pay (see attachment).

If the Uninsured Employers Fund is to become solvent, we must believe in the wisdom of providing in the most efficient, most dignified, and most certain form, financial and medical benefits for victims of work-connected injuries, even though the injured worker's employer has failed to do so. The Division will maintain its responsibility to seek out and find employers who are not complying with the Act and continue to enforce the provisions already provided by statute.

H.B. 406 UNINSURED EMPLOYERS FUNDING--AFFECT ON EMPLOYER PAYROLLS

A. Payroll Range	Under \$10,000				\$10,000-24,999				\$25,000-49,999				\$50,000-99,999				\$100,000-249,999				\$250,000-499,999			
Total Payroll *	\$24,604,177				\$70,277,757				\$113,515,482				\$185,908,340				\$361,853,390				\$323,762,343			
Number of Employers	8,561				4,233				3,165				2,611				2,316				945			
Average Payroll	\$ 2,874				\$16,602				\$ 35,866				\$ 71,202				\$156,241				\$346,270			
Uninsured Employer Assessment @ .00031503	\$ .91				\$ 5.23				\$ 11.30				\$ 22.43				\$ 49.22				\$ 109.09			
<hr/>																								
B. Payroll Range	\$500,000-999,999				\$1,000,000-2,499,999				\$2,500,000-4,999,999				\$5,000,000-9,999,999				\$10,000,000-24,999,999				\$25,000,000-& over			
Total Payroll	\$296,794,847				\$332,304,133				\$229,987,529				\$129,928,014				\$188,009,385				\$187,393,412			
Number of Employers	428				225				66				19				12				3			
Average Payroll	\$ 693,445				\$ 1,476,907				\$ 3,484,660				\$ 6,838,316				\$ 15,667,449				\$ 62,464,471			
Uninsured Employer Assessment @ .00031503	\$ 218.46				\$ 465.27				\$ 1,097.77				\$ 2,154.27				\$ 4,935.72				\$19,678.18			

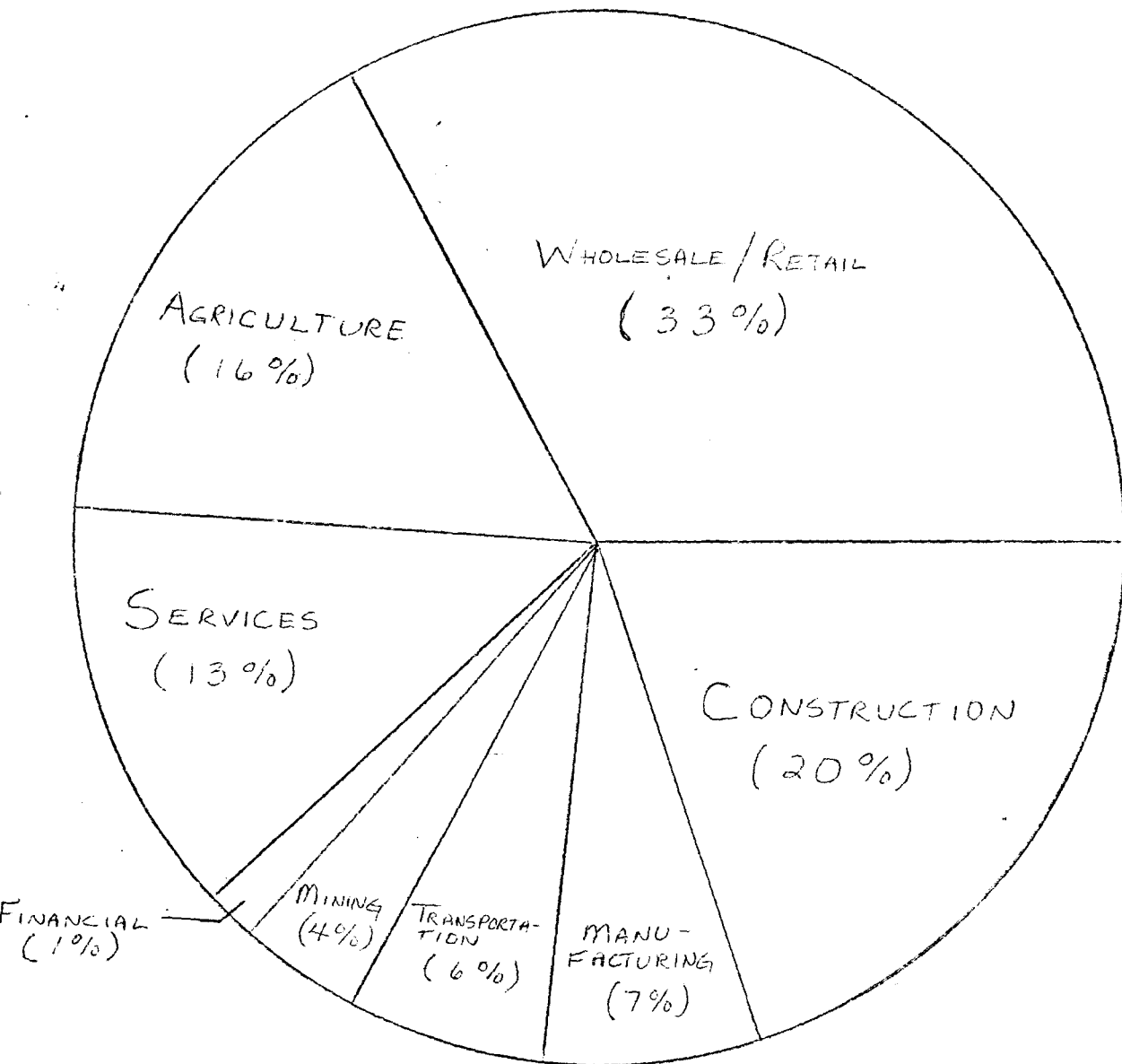
\* Does Not Include State & Local Government and Most of Agriculture.

Source: Employment Security Experience Rating Report ES-204 -- 12/31/82

Exhibit 14

#B 406

# DISTRIBUTION OF UNINSURED EMPLOYER CASES BY INDUSTRY



WITNESS STATEMENT

Name Larry Persinger Committee On \_\_\_\_\_  
Address 1800 Phillips Ave Butte Date 2-1-'83  
Representing Laborer's Local #1334 Support ☒  
Bill No. 406 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

TESTIMONY OF LARRY PERSINGER  
LABORERS LOCAL #1334  
IN SUPPORT OF HOUSE BILL 406  
BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE  
FEBRUARY 1, 1983

I am Larry Persinger, representing Laborers Local 1334. We support House Bill 406, to help fund the Uninsured Employers Fund of Workers' Compensation.

Montana law is concerned about the employee who is injured on the job and then finds out that the employer doesn't have insurance. You can't expect each employee to be checking on the employer all the time.

So Montana created an uninsured employer's fund to pay claims for workers who were hurt on the job. Unfortunately, the fund is usually broke. The kind of employer who doesn't provide workers' compensation coverage in the construction business is usually one with few or no assets. Either that, or they are contractors who move around from place to place.

When the employee is hurt, the contractor leaves the state, so there is no way for the fund to collect any money on behalf of the injured worker.

House Bill 406 provides funding for employees who are injured, and are in severe need of help for their medical bills and to survive the layoff forced by their injury.

We ask you to vote yes on House Bill 406.



WITNESS STATEMENT

Name AIZEN PLOWMAN Committee On LABOR  
Address BOZEMAN Date 2-1-83  
Representing CEMENT WORKS #239 Support X  
Bill No. 406 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

*SEE WRITTEN STATEMENT*

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



UNITED CEMENT, LIME AND GYPSUM WORKERS  
LOCAL UNION NO. 239 AFL-CIO  
THREE FORKS, MONTANA

Arlyn Plowman

NAME OF WRITER

Box 804

ADDRESS

Three Forks, Montana 59752

CITY, STATE AND ZIP

TESTIMONY OF ARLYN PLOWMAN, BEFORE THE HOUSE COMMITTEE ON LABOR AND EMPLOYMENT  
RELATIONS ON HOUSE BILL 406, FEBRUARY 1, 1983

Chairman, members of the committee. My name is Arlyn Plowman. I am representing the United Cement, Lime, Gypsum and Allied Workers, Local 239, Three Forks.

We support House Bill 406, because it is a move to correct a problem, namely employers who fail to provide workers' compensation insurance for their employees.

We do not believe workers should suffer because their employer is irresponsible. And fails to meet his legal obligations and moral responsibilities.

It is only natural that a worker assumes that his or her employer has obtained the insurance coverage mandated by law. It is a tragedy when an injured worker finds out that this is not always the case.

A worker with an occupational injury or illness without adequate workers' compensation insurance becomes an unwilling liability to the community when social agencies are forced to pick up the obligations of unscrupulous employers.

We urge that you look favorably on House Bill 406 in an effort to protect Montana's workers and communities.

Thank you.




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 Box 1176, Helena, Montana
 

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 JAMES W. MURRY  
 EXECUTIVE SECRETARY

 ZIP CODE 59624  
 406/442-1708

TESTIMONY OF DONALD R. JUDGE IN SUPPORT OF HOUSE BILL 406, BEFORE THE HOUSE  
 LABOR AND EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 1, 1983

---

I am Don Judge, representing the Montana State AFL-CIO.

House Bill 406 provides an excellent way of funding the uninsured employers fund for workers' compensation. This has been a pressing need in this state.

Workers' compensation provides some financial help to a worker who was injured on the job. Without such insurance, either through the state or through a private insurance carrier, the worker stands to lose everything through one industrial accident.

Some employers, however, refuse to provide their employees with coverage, usually without the knowledge of the employee. When such an employee is injured, the only recourse is the uninsured employers fund, which is presently funded by fines collected and taxes recovered from the offending employer.

The fund is usually underfunded by a substantial amount, however. When the employer either skips town or goes broke, the fund is unable to collect anything. And consequently, the employee is left to face a disastrous financial burden with little help.

The amount of increase on employer premiums to fund this program is minimal. But the difference it makes to the employees of an uninsured business can be the difference between a life shattered by financial debt and one in which recovery is possible.

According to House Bill 406, the fund is to be self-supporting, so premiums can rise or fall according to the costs associated with accidents among uninsured employers. That may provide incentive for insured employers to notify the Division when another employer is shirking their responsibility.

The most important result, however, is protection of workers. And in the long run, that of course protects the taxpayer from having to bear society's responsibility to the injured worker who is overwhelmed by debts.

Please give House Bill 406 a "do pass" recommendation. Thank you.

VISITOR'S REGISTER  
LABOR AND

BILL

HB 406

DATE 2/1/83

SPONSOR

SMITH

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name George Wood Committee On Labor  
Address Missoula Date 2/1/83  
Representing MT. Self Insurance Co. Support \_\_\_\_\_  
Bill No. HR 406 Oppose ☒  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

HOUSE BILL 406

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS GEORGE WOOD, EXECUTIVE SECRETARY OF THE MONTANA SELF-INSURERS ASSOCIATION, AND I ARISE IN OPPOSITION TO HOUSE BILL 406.

THE PURPOSE OF THIS BILL IS TO PROVIDE ADEQUATE FUNDING FOR THE UNINSURED EMPLOYERS FUND. THE MERITS OF THE UNINSURED EMPLOYERS FUND MUST BE QUESTIONED WHEN ONE CONSIDERS THAT SINCE ITS ENACTMENT, THE LEGISLATURE HAS NOT PROVIDED ADEQUATE FUNDING.

THE PURPOSE OF THIS FUND IS TO PROVIDE WORKERS COMPENSATION BENEFITS TO INJURED WORKERS WHOSE EMPLOYER HAS NOT COMPLIED WITH THE WORKERS' COMPENSATION ACT AND OBTAINED THE REQUIRED COVERAGE.

THE PRESENT LAW PROVIDES FOR ASSESSMENTS AGAINST THE UNINSURED EMPLOYER AND LIMITS HIS LIABILITY TO \$30,000.00. THIS WILL NOT PAY FOR DEATH OF A CLAIMANT OR A MODERATELY SEVERE ACCIDENT IN WHICH MEDICAL CLAIMS MAY EXCEED \$30,000.00. THE LAW EVEN GIVES THE WORKERS' COMPENSATION DIVISION THE RIGHT TO COMPROMISE THE AMOUNT DUE THE FUND FROM THE UNINSURED EMPLOYER. (SECTION 39-71-506)

OUR FIRST OBJECTION TO HOUSE BILL 406 IS A MATTER OF PHILOSOPHY. WE ARE REQUIRED BY THE LAW TO PROVIDE WORKERS COMPENSATION COVERAGE FOR OUR EMPLOYEES. WE DO. WE OBJECT TO PAYING FOR WORKERS' COMPENSATION BENEFITS TO EMPLOYEES OF EMPLOYERS WHO HAVE NOT COMPLIED WITH THE LAW. I'M SURE YOU WOULD AGREE THAT IT WOULD NOT BE REASONABLE TO ASK YOU TO PAY HOSPITAL AND MEDICAL EXPENSES WHICH I INCUR AND CANNOT PAY BECAUSE I FAILED TO OBTAIN HEALTH AND ACCIDENT INSURANCE. YET THIS BILL GOES ONE STEP FURTHER AND REQUIRES US TO PROVIDE THE MONEY TO PAY THE CLAIMS AGAINST AN EMPLOYER WHO IS IN VIOLATION OF THE LAW REQUIRING EMPLOYERS TO PROVIDE WORKERS' COMPENSATION COVERAGE.

SECTION 4 PROVIDES SOME REAL PROBLEMS. PARAGRAPH (a) "IF FUNDING SOURCES PROVIDED IN SUBSECTION (1) THROUGH (3) ARE INADEQUATE..." THEY ARE OR THERE WOULD BE NO NEED FOR THIS BILL.

"THE DIVISION SHALL ASSESS AGAINST AND COLLECT FROM EVERY EMPLOYER A PREMIUM TO BE CALCULATED AS A PERCENTAGE OF GROSS WAGE PAID TO EACH EMPLOYEE."

THIS, OF COURSE, MEANS THAT THE COST TO EVERY EMPLOYER, WHETHER SELF-INSURED, INSURED WITH A PRIVATE INSURER OR WITH THE STATE FUND WILL INCREASE.

I HAVE BEEN ADVISED THAT THE DIVISION ASSESSMENT FOR FISCAL 1984 WOULD BE .00031503 IN HOPES OF RAISING A MILLION DOLLARS. THE ASSESSMENT FOR 1985 IS PROPOSED AT .00032198 WHICH ONE WOULD ANTICIPATE WOULD RAISE ANOTHER MILLION DOLLARS. YOU SHOULD NOTE HERE THAT THERE IS NO LIMITATION ON THE PERCENTAGE AMOUNT THE DIVISION CAN ASSESS AGAINST EMPLOYERS.

ACCORDING TO FIGURES SUPPLIED ME BY THE WORKERS' COMPENSATION DIVISION, THE GROUP I REPRESENT, MONTANA SELF-INSURERS, PAID 503,270,064.23 IN WAGES IN MONTANA IN CALENDAR YEAR 1981. USING THE ASSESSEMENT FIGURES PERVIOUSLY GIVEN, MONTANA SELF-INSURERS WOULD BE ASSESSED \$158,545.00 FOR THE UNINSURED EMPLOYERS FUND IN FISCAL YEAR 1984.

ONE SELF INSURED, WHOSE GROSS PAYROLL WAS 58,734,372 WOULD BE ASSESSED \$18,503.00. ONE WHOSE PAYROLL WAS 8,614,469.00 WOULD BE ASSESSED \$2,713.00 AND ONE WHOSE PAYROLL WAS 5,013,412 WOULD BE ASSESSED \$1,579.00. THESE ARE LARGE ASSESSMENTS AND INDICATE THAT THE LARGER THE EMPLOYER, THE MORE STABLE THE EMPLOYMENT, THE HIGHER THE WAGES PAID, THE LARGER THE ASSESSEMENT WILL BE. THERE IS NO LIMITATION ON THE AMOUNT OF INDIVIDUAL GROSS WAGES TO BE ASSESSED NOR IS THERE A LIMITATION ON THE ASSESSEMENT ON THE EMPLOYERS GROSS PAYROLL. ASSESSEMENTS ARE TO BE PAID ON CLAIMS WHICH ARE IN NO WAY THE RESPONSIBILITY OF THE INSURED EMPLOYER. WE THEN HAVE IN SECTION 4 (A) A STATE AGENCY GIVEN THE RIGHT TO MAKE A PERCENTAGE ASSESSMENT, WITHOUT LIMITATION, ON THE PAYROLL OF THE EMPLOYERS LIMITED ONLY BY THE AMOUNT OF EMPLOYERS GROSS PAYROLL.

TO ADD INSULT TO INJURY, SECTION 4 (b) CHARGES THE EMPLOYER WITH THE COSTS INVOLVED IN COLLECTING THE ASSESSEMENT AND SECTION 4 (c) PROVIDES THAT THE COST OF ADMINISTERING AND DISBURSING THE FUNDS SHALL BE INCLUDED IN THE ASSESSMENT.

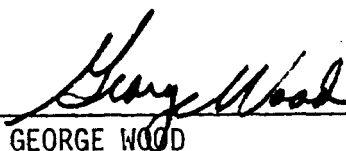
MONTANA EMPLOYERS ARE ALREADY ASSESSED TO PAY FOR THE OPERATION OF THE WORKERS' COMPENSATION DIVISION.

THE AMOUNT TO BE RAISED BY THE ASSESSMENT IS DISCRETIONARLY WITH THE DIVISION AND SHALL INCLUDE "AN ACTUARIALLY SOUND CATASTROPE RESERVE, RESERVES ACTUARIALLY DETERMINED TO MEET ANTICIPATED AND UNEXPECTED LOSSES AND SUCH OTHER RESERVES AND SURPLUS AS MAY BE DETERMINED BY THE DIVISION."

THE ONLY DEFINITE PROVISION IN THE BILL IS THAT WE, ALL MONTANA EMPLOYERS, WILL PAY.

IF THE PURPOSES OF THE SUBSEQUENT INJURY FUND ARE VALID THEN ADEQUATE FUNDING SHOULD BE NOT JUST THE RESPONSIBILITY OF THE EMPLOYER WHO IS COMPLYING WITH THE LAW. IT WOULD SEEM THAT ALL MONTANA CITIZENS HAVE AN OBLIGATION AND RESPONSIBILITY TO PROVIDE ADEQUATE FUNDING. CONSIDERATION SHOULD BE GIVEN TO FUNDING FROM THE GENERAL FUND AS WELL AS THE WAGES OF INDIVIDUAL EMPLOYEES ARE NOT COVERED IN THE BILL.

THE BILL AS WRITTEN WORKS AN INJUSTICE ON THE MONTANA EMPLOYER WHO HAS COMPLIED WITH THE LAW AND I RESPECTFULLY REQUEST THAT THIS COMMITTEE REPORT HOUSE BILL 406 "DO NOT PASS."



GEORGE WOOD  
Executive Secretary  
Montana Self-Insurers Association



# STANDING COMMITTEE REPORT

February 8, 1983

## SPEAKER:

MR. ....

## LABOR AND EMPLOYMENT RELATIONS

We, your committee on .....

HOUSE 406  
Bill No. ....

having had under consideration .....

First reading copy ( white color )

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE WORKERS' COMPENSATION DIVISION TO COLLECT A PREMIUM FROM INSURED EMPLOYERS TO PROVIDE ADDITIONAL FUNDING SOURCES FOR THE UNINSURED EMPLOYERS' FUND; AMENDING SECTION 39-71-504, MCA."

HOUSE 406  
Bill No. ....

Respectfully report as follows: That.....

DO PASS

STATE PUB. CO.  
Helena, Mont.

NEIL WILLIAMS

Chairman.

COMMITTEE SECRETARY

# STANDING COMMITTEE REPORT

February 3,

83

19.....

**SPEAKER:**

MR. ....

## LABOR AND EMPLOYMENT RELATIONS

We, your committee on .....

HOUSE

414

having had under consideration ..... Bill No. ....

**First**

**white**

reading copy ( ..... )  
color

**A BILL FOR AN ACT ENTITLED: "AN ACT HOLDING THE CHIEF OPERATING  
PERSON AND CORPORATE OFFICERS INDIVIDUALLY LIABLE FOR UNPAID  
WAGES OF EMPLOYERS OF A CORPORATION."**

HOUSE

414

Respectfully report as follows: That ..... Bill No. ....

DE-PAGE

# STANDING COMMITTEE REPORT

February 1, 19 83

MR. **SPEAKER:**

We, your committee on **LABOR AND EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **497**

**First** reading copy ( **white** )  
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW HIGHWAY PATROL  
OFFICERS TO PERFORM DUTIES IN CONNECTION WITH LABOR DISPUTES UPON  
REQUEST OF LOCAL LAW ENFORCEMENT AUTHORITIES; AMENDING SECTION  
44-1-1002, MCA."**

Respectfully report as follows: That **HOUSE** **497**  
Bill No.

**DO NOT PASS**

**XXXXXX**  
**DO PASS**