

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE MINUTES
February 15, 1983

The House Labor and Employment Relations Committee convened on February 15, 1983 at 12:30 p.m., in Room 224K of the State Capitol with Chairman Williams presiding and all members present except Rep. Ellerd, who was excused. Chairman Williams opened the meeting to an executive session.

EXECUTIVE SESSION

HOUSE BILL 359 Rep. Brown passed copies of her suggested amendments to the committee members. A copy is Exhibit 1 of the minutes. She said they had to leave "superintendent" alone and plan to change with the rules. She moved the amendments. Rep. Hannah requested the amendments be divided so Rep. Brown changed the motion to moving the first two amendments on Exhibit 1. Rep. Hannah said he hoped the committee realized they were saying with these amendments that youth cannot apply for or work on a job that might have a strike. Rep. Brown's motion carried with Reps. Hannah, Jones, Farris and Addy voting no and absent were Reps. Harper, Pavlovich and Ellerd. Rep. Brown moved the third amendment on Exhibit 1 and this motion carried unanimously with all present (same absent).

Mr. Kane responded to a question that there are limitations since the intent of the law is to protect the children. He responded to another question that this bill would have no impact on the Flathead berry crop as they are covered by federal law.

Rep. Miller asked why it hasn't passed in past sessions. Mr. Kane said discussion has never been as thorough as this time, and it might have been the number of pages in the bill and they felt it should be studied first, but the study wasn't funded. Otherwise, he said, he just didn't know why.

Rep. Seifert mentioned that in a rural state such as ours many 13 and 14 year olds are ready, able and wanting to work on ranches, and it is better for them to work. It was pointed out that page 3, lines 8-11 doesn't prohibit this work as long as they have the written consent of their parents.

Rep. Hannah moved to amend on page 4, following "grounds" to strike lines 11 and 12.

Rep. Farris said she didn't feel that the money the kids earn or the incentive they get from shoveling snow and cutting grass is so great that we should spoil the bill with amendments when other kids can be severely harmed.

Rep. Hannah mentioned that it is important to realize that our society is changing as we become more automated, as for instance snow blowers as opposed to shovels. He said he felt the law might be shutting them down to a degree that we don't need to do. Rep. Hannah also mentioned that nationwide we had 13,000 amputees last year and if there was any known breakdown of that number by age groups. There wasn't.

Chairman Williams asked about the possibility of lowering age limits by two years. Mr. Kane said our law would not then be consistent in that regard with the federal law and it would probably lower the safeguards for young people. Mr. Kane said there is an office in Washington, DC, that offers assistance to states on this subject.

Chairman Williams called for a voice vote on Rep. Hannah's amendment and it failed to carry.

Rep. Thoft moved AS AMENDED DO PASS and this motion carried with Reps. Miller, Jones, Smith, Seifert and Thoft voting no and Rep. Ellerd, absent.

Rep. Brown moved that the statement of intent be accepted and this motion carried unanimously with all present. (Ex. 2)

HOUSE BILL 655 Rep. Dozier handed copies of suggested amendments to the members of the committee. A copy is Exhibit 3 of the minutes. He moved the amendments be accepted. This motion carried with Reps. Miller, Hannah and Thoft voting no and Rep. Ellerd, absent.

Rep. Driscoll moved AS AMENDED DO PASS.

Rep. Hannah expressed concern that problems may be created by passage of this bill. He felt that if the operator is involved in both construction and line work he would need two licenses.

Rep. Addy also expressed concern at exempting a piece of equipment that has a man in it. He said he was not vehemently opposed but had bad feelings.

The question was called and the motion carried with Reps. Addy, Jones and Brown voting no, and Rep. Ellerd, absent.

Rep. Dozier moved the statement of intent which is part of Exhibit 3. This motion carried unanimously with all present, Rep. Ellerd absent.

HOUSE BILL 309 Chairman Williams said this bill had been waiting for a fiscal note which was now before the committee. David Hunter, Department of Labor and Industry, at Chairman Williams' request went over the fiscal note.

Rep. Harper moved the amendments which are Exhibit 4 of the minutes. He said there were two or three sets that were submitted and after pushing them by as many people as seemed interested, these before the committee were the outcome.

Rep. Harper mentioned that in the past two years personnel of the Highway and Fish, Wildlife and Parks Departments have used the Board of Personnel Appeals as a mechanism for grievance procedures only four times.

Mr. Hunter said union members will use binding arbitration and only the managerial and nonunion people will go to the board.

Rep. Driscoll said since this procedure would be free, except for attorney costs, he would recommend to his union people that they use this route first since the union has to pay \$1,000 for similar arbitration.

The question was called and a roll call vote taken on Rep. Harper's motion of adopting the amendments. This motion carried with 9 voting yes, 7 no (Dozier, Bachini, Driscoll, Jones, McCormick, Pavlovich, Smith), and 1 absent (Ellerd).

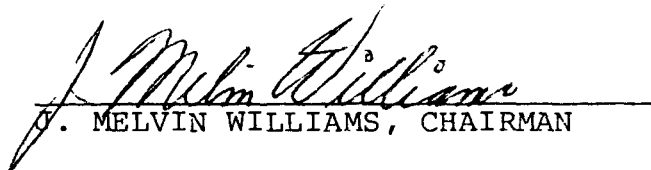
Rep. Driscoll moved DO NOT PASS.

Rep. Harper moved a substitute motion of AND AS AMENDED DO PASS. A roll call vote was taken and resulted in a tie with 8 voting for and 8 against (Dozier, Bachini, Brown, Driscoll, Jones, McCormick, Pavlovich, Smith), and 1 absent (Ellerd). HB 309 did not receive any recommendation and so remains in the committee.

Chairman Williams requested the subcommittee on HBs 603 and 281 to be ready by Thursday.

Meeting adjourned at 1:45 p.m.

Respectfully submitted,


O. MELVIN WILLIAMS, CHAIRMAN

Emelia A. Satre, Sec.

Exhibit 4
Jon's
statement

SUGGESTED AMENDMENTS TO HB 359 - 2/10/83

1. Page 10, line 24
Strike: "and"

2. Page 10, line 25.
Following: "operations"
Insert: "; and (18) or by any employer who is engaged in a
labor dispute"

3. Page 14, lines 2 through 10.
Strike: subsection (4) in its entirety
Renumber: following subsection

Ex. ²
Woody's

STATEMENT OF INTENT

H Bill No. 359 [LC 475]

Approved

A statement of intent is required for this bill because it grants the Department of Labor and Industry rulemaking authority concerning child labor regulation. This bill intends that the Department adopt rules insuring that each child have an opportunity to work while at the same time protecting the child's physical and moral well being and the educational process. The Department may look to the federal law which this act is modeled after for guidance in promulgating rules.

Co. or in Govt

HOUSE BILL 655

Amend page 1, line 17 through line 18

Following: "and rear-end loaders"

Strike: "or line trucks and bucket trucks"

Insert: ."

Amend page 1, line 19

Insert a new subsection (3) to read as follows:

(3) The provisions of this chapter shall not apply to line trucks and bucket trucks engaged in the maintenance or repair of existing facilities in accordance with rules adopted by the Department.

STATEMENT OF INTENT

It is intended by this bill to amend Section 50-76-101, MCA, to exclude from the provisions of Title 50, Chapter 76, line trucks and bucket trucks engaged in the maintenance or repair of existing facilities. Such trucks engaged in new construction are not excluded.

Because line trucks and bucket trucks are similar to other equipment included in this chapter, it is necessary to define and distinguish them. These trucks are not exclusively used for maintenance or repair and may be adapted for new construction.

The Division of Workers' Compensation is delegated the rule making authority to define the vehicles and exclude those intended by this amendment.

AMENDMENTS TO HOUSE BILL 309 - February 7, 1983

1. Title, line 7.
Following: "FOR"
Insert: "CERTAIN"

2. Title, line 7 through line 10.
Following: "EMPLOYEES;"
Strike: line 7 through "PARKS;" on line 10

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

5. Page 1, line 16.
Strike: all of the bill following the enacting clause
Insert: "Section 1. Section 2-18.1001 is amended to read:
 "2-18-1001. Highway-department-personnel-grievances Grievance procedure - hearing - exclusions - rules. (1) Unless otherwise provided by law, An 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-a state executive branch agency who has been employed by the state at least six calendar months and who has been terminated, demoted, suspended or laid off for more than 40 working hours, transferred to another geographical location involuntarily, or reprimanded in writing, after exhaustion of all other internal agency administrative remedies is entitled to a hearing on the matter 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 is also be basis for a grievance and shall entitles the employee to a hearing before the board for resolution.
 (3) The procedure for handling grievances must be designed so that a final decision is made no later than 90 days following the filing of the grievance, except that this time may be extended by mutual agreement of the agency and the grievant.
 (4) Employee holding the positions covered by sections 2-18-103 and 2-18-104 are excluded from the provisions of this section.
 (5) The board of personnel appeals may adopt procedural rules for handling employee grievances.

Section 2. Section 2-18-1002 is amended to read:

"2-18-1002. ~~Grievance-procedure---hearing~~ Board of personnel appeals to hear grievances - evidence - order. (1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances ~~of-personnel-of-the-department-of-highways~~ filed under 2-18-1001.

(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~~ employing 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."

Section 3. Section 2-18-1003 is amended to read:

"2-18-1003. Enforcement Judicial review of board order - petition in district court - costs and fees. (1) The board, the affected state agency, or the aggrieved employee may petition for the enforcement review 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 set the matter for hearing. After the hearing, 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 ~~may~~ 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 the prevailing party."

NEW SECTION. Section 4. Grievance procedure and negotiated procedure mutually exclusive. Nothing in sections 2-18-1001 through 2-18-1003 limits the rights of exclusive representatives and employers under 39-31-310, except that no grievance may be pursued under section 2-18-1001 through 2-18-1003 and the procedures negotiated by an exclusive representative. The filing of a grievance under one procedure constitutes a waiver of the right to pursue the matter under the other procedure. However, after filing and upon mutual agreement of all parties, a grievance may be transferred from one process to the other.

Section 5. Section 87-1-403, MCA, is amended to read:

"87-1-403. Regulation of employees by director. ~~{1}-The-director may-suspend-without-pay,-reduce-in-rank,-or-remove-any-employee-at any-time-for-cause,-providing-that-any-person-who-has-been-continuously-employed-for-1-year-or-more-immediately-preceding-any-suspension-or-discharge-may-demand-and-receive-a-hearing-before-the department-on-the-charges-filed---The-action-of-the-department resulting-from-such-a-hearing-constitutes-final-administrative~~

~~action-for-purposes-of-filing-a-grievance-with-the-board-of
personnel-appeals-as-provided-in-87-1-205.~~

{2} The director shall rate all employees on the basis of merit and efficiency in accordance with rules adopted by the department to secure a proper rating of each person employed. The salaries of employees shall be fixed by the department, and travel expenses as provided for in 2-18-501 through 2-18-503, as amended, shall be allowed employees while upon official business away from designated headquarters."

NEW SECTION. Section 6. Repealer. Sections 2-15-1006, 2-18-105, and 87-1-205, MCA, are repealed.

NEW SECTION. Section 7. Codification instruction. Sections 1 through 6 are intended to be codified as a part of Title 2, chapter 18, part 10, and definitions of 2-18-101 apply to sections 1 through 4.

NEW SECTION. Section 8. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 9. Effective date. This act is effective on July 1, 1983."

STATE OF MONTANA

REQUEST NO. 324-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 5, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 309, Amended pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 309, amended, would establish a uniform grievance process for state employees before the Board of Personnel Appeals.

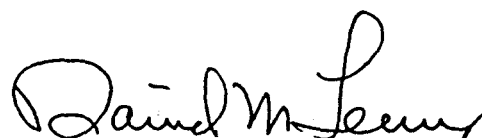
ASSUMPTIONS:

- 1) The Board of Personnel Appeals can handle the workload associated with the legislation assuming the grievance and appeals officer position (#33), currently a vacant staff position, is included in the board's staffing level for fiscal years 1984 and 1985. The costs to include this position are therefore the only additional costs.
- 2) The Board of Personnel Appeals can absorb costs of proposed legislation relating to administration, operating expenses and costs pertaining to the function of the existing five-member quasi-judicial Board of Personnel Appeals.
- 3) Additional general and earmarked fund money may be required for back pay awards and attorney's fees under section 6. Estimated annual cost: \$4,000 back pay; \$28,000 attorney's fees.

FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
<u>Additional Costs</u>		
Salary & Benefits of Appeals Officer	\$ 25,468	\$ 25,033
Back Pay and Attorneys Fees	<u>32,000</u>	<u>32,000</u>
Increase Costs to General Fund	<u>\$ 57,468</u>	<u>\$ 57,033</u>

FISCAL NOTE 12:E/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-9-83