

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

March 10, 1983

The meeting of the Labor Committee was called to order by Chairman Gary C. Aklestad on March 10, 1983, at 1:00 p.m. in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF HOUSE BILL NO. 302:

Chairman Aklestad introduced Representative Hal Harper, sponsor of House Bill No. 302, to the Committee and Representative Harper presented the bill to the Committee.

House Bill No. 302 is an act authorizing the Department of Labor and Industry to borrow money from the Federal Unemployment Trust Fund and providing for the payment of interest on the borrowed money.

Representative Harper told the Committee that they are 1.9 million in the hole, and they need a measurement to pay the interest charges back which must be paid by the first of October. They cannot use Trust Fund money to pay this so another source is needed.

PROPOSERS OF HOUSE BILL NO. 302:

Harold Kansier, Administrator of the Unemployment Insurance Division of the Department of Labor, stated they are in support of House Bill No. 302. He stated that they must have a special provision to collect interest in order to pay the interest required. The rate of interest is 10 percent for 1983. The interest at no time can exceed 10 percent.

Laurie Zink, representing the Montana State AFL-CIO, stated they support House Bill No. 302. L. Zink read prepared testimony by Jim Murry, Executive Director of Montana AFL-CIO, to the Committee. This printed testimony is attached. (Exhibit No. 1)

Forrest Boles, representing the Montana Chamber of Commerce, stated that they support House Bill 302, but they would like to see a different method of paying the loan.

Robert Holding, representing the Montana Wood Products Association, stated that they support House Bill 302.

Dave Goss, representing Billings Chamber of Commerce, stated that they support House Bill 302.

Jim Hughes, representing Mountain Bell, stated that they support House Bill 302.

OPPONENTS OF HOUSE BILL NO. 302:

John Hollow, attorney for Montana Home Builders, stated that they oppose House Bill No. 302. Mr. Hollow stated that this bill will increase unemployment insurance rates. He would suggest that subsection 2 be deleted and the bill should be sent back for an appropriation.

Mr. Hollow further stated that we must face the fact that we are trying to attract employers and this bill in part discourages it.

George Allen, representing the Montana Retail Association, stated that they oppose House Bill 302. Mr. Allen's printed testimony is attached. (Exhibit No. 2)

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 302:

Senator Keating: For how long can we borrow this money?

Representative Harper: We can borrow for two years before there is an additional assessment against the state employers under the Federal Unemployment Tax Act.

Senator Keating: Is there another bill that will increase costs to pay this money?

Representative Harper: Our hopes are based on an economic recovery.

Senator Galt asked about the interest rate.

Representative Harper stated that it was 10 percent.

Senator Goodover: How much are you going to borrow?

Representative Harper: About 10 million.

Senator Gage: Would two checks be necessary?

Representative Harper: No, I don't believe so.

Harold Kansier: Explained the procedure to the Committee.

Senator Goodover: Is there any consideration given to assessing two-thirds to the employer and one-third to the employee?

Forrest Boles: That proposal has been tried in other states, but those kinds of approaches don't work too well.

Senator Blaylock: Where is the cut off for the tax base?

Harold Kansier: \$8,200 for 1983.

Senator Galt would like to question Jim Murry about his testimony that was presented here today.

In closing, Representative Harper stated that this is the fairest way to collect the money needed and urged a Do Pass on the bill.

Chairman Aklestad called the hearing closed on House Bill No. 302.

CONSIDERATION OF HOUSE BILL NO. 568:

Representative Harper, sponsor of House Bill No. 568, presented the bill to the Committee.

House Bill No. 568 is an act to extend the time for the use of Reed Act money as provided for in section 192 of Public Law 97-248.

Representative Harper stated that currently about \$167,000 was involved.

PROPOSERS OF HOUSE BILL NO. 568:

Harold Kansier, Administrator for the Unemployment Insurance Division, stated that they support House Bill No. 568. He told the Committee that this bill is an extension of the Reed Act Funds by ten years. It is a provision so that when funds are available to them, they can use them for benefit purposes.

OPPONENTS OF HOUSE BILL NO. 568: None were present at the hearing.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 568:

Senator Goodover asked for an explanation of the Reed Act and Mr. Kansier explained the Act to the Committee.

Representative Harper made closing remarks in support of House Bill No. 568.

Chairman Aklestad called the hearing closed on House Bill No. 568.

CONSIDERATION OF HOUSE BILL NO. 623:

Chairman Aklestad introduced Representative Jerry Driscoll, sponsor of House Bill No. 623, to the Committee, and Representative Driscoll presented the bill to the Committee.

PROPONENTS OF HOUSE BILL NO. 623:

Laurie Zink, representing Montana State AFL-CIO, read prepared testimony by Jim Murry, Executive Director of Montana State AFL-CIO, to the Committee. This printed testimony is attached. (Exhibit No. 3)

Dick Kane, Administrator of Labor Standards Division, stated that they support House Bill 623.

Mr. Kane presented a copy of two complaints to the Committee. This copy is attached. (Exhibit No. 4)

OPPONENTS OF HOUSE BILL NO. 623:

Forrest Boles, representing the Montana Chamber of Commerce, stated that they oppose House Bill No. 623. They feel this bill could be a form of harrassment legislation, and employers don't need that. They also feel the bill is unnecessary.

Dennis Taylor, representing the Personnel Division, Department of Administration, stated that they oppose House Bill 623 mainly for the following reasons:

- (1) Bad language--insufficient guidance to employers.
- (2) Failure to provide appeal rights for employers.
- (3) Administrative procedures it establishes. They are not necessary because protection provisions are currently in place.

Mr. Taylor's printed testimony is attached. (Exhibit No. 5)

George Allen, representing the Montana Retail Association, stated that they oppose House Bill 623. They have a problem with line 23 on page 1.

Dave Goss, representing the Billings Chamber of Commerce, stated they oppose House Bill 623. They feel the bill is too vague and it would cause too many problems.

Robert Holding, representing the Montana Wood Products Assoc., stated that they oppose House Bill 623. They feel the bill is unnecessary.

LeRoy Schramm, representing himself, presented amendments to House Bill 623 to the Committee on behalf of Don Robinson of Billings. These amendments are attached. (Exhibit No. 6)

Mr. Schramm explained the amendments from Mr. Robinson to the Committee. He feels that these changes would tighten up the bill and make it a worthwhile bill.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 623:

Senator Lynch: Were all of these objections voiced in the House?

Dennis Taylor: No, they were not.

Senator Lynch: What is the Administration's position?

Dennis Taylor: I don't believe the Administration has taken a position on the bill.

Senator Keating: Have you done any study to determine how many employees you would need to administer this?

Dick Kane: I don't believe we would have to take on any more employees. Many of the complaints could be resolved informally.

Senator Gage: What would this bill do that the Human Rights Commission can't do?

Anne MacIntyre: Human Rights has a provision that prohibits retaliation. It only applies to retaliation for complaints of discrimination so that if someone is retaliated against because they file a workers' compensation complaint, the Human Rights Commission would not have jurisdiction of that retaliation complaint.

Senator Aklestad: Do you have any complaints other than the one from the lady in Kalispell?

Dick Kane: We get 2 to 4 calls a month, but we don't keep a record of the calls.

Representative Driscoll made closing remarks in support of House Bill No. 623.

Chairman Aklestad called the hearing closed on House Bill No. 623.

ACTION ON HOUSE BILL NO. 270:

Senator Lynch moved that House Bill No. 270 Do Pass, but he withdrew his motion.

No action was taken on House Bill No. 270 at this meeting. The Committee wanted more time to study the bill.

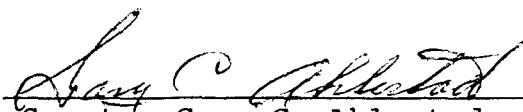
ACTION ON HOUSE BILL NO. 525:

No action was taken on House Bill No. 525 at this meeting. The Committee wanted more time to consider amendments to the bill, including Senator Galt's suggestion relating to allowing employers to mandatorily retire persons solely because they reach a certain age.

ACTION ON HOUSE BILL NO. 554:

Senator Blaylock moved that House Bill No. 554 Be Concurred In. On a Roll Call Vote, the Committee voted 5-3 that HOUSE BILL NO. 554 BE CONCURRED IN. The Roll Call Vote is attached.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 2:20 p.m.



Senator Gary C. Aklestad, Chairman

mn

ROLL CALL

LABOR

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 3/10/83

[illegible]

March 10, 1983

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Margaret Redfield	myself	269	✓	✓
Ed Buckholz	Montana Chamber	302	✓	
" "	" "	623		✓
Bob Helling	mt. Wood Products Assoc	302	✓	
" "	" "	623		✓
Dave Goss	Billings Chamber of Commerce	302	✓	
" "	" " " "	623		✓
Judy Brown	Personal Dev. Dept. of Ed.	623		✓
Mike Cronin	MAA	623		
JAMES HUGHES	MOUNTAIN BELLS	302	✓	
George Allen	MT. Retail Assn	302		✓
Harold Hansen				
Laurie Zink (for Jim Murry)	MT. State AFL-CIO	302, 623	✓	
George Allen	MT. Retail Assn	623		✓
Anne MacIntyre	Human Rights Comm	525, 554	✓	

(Please leave prepared statement with Secretary)



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARYZIP CODE 59624
406/442-1708TESTIMONY OF JIM MURRY ON HOUSE BILL 302, BEFORE THE SENATE COMMITTEE ON
LABOR AND EMPLOYMENT RELATIONS, MARCH 10, 1983

I am Jim Murry, executive secretary of the Montana State AFL-CIO.

I am here today to speak in strong support for House Bill 302. This bill allows the Montana Department of Labor and Industry to borrow money from the Federal Unemployment Trust Fund. The Montana Unemployment Insurance Trust Fund is rapidly going broke, and projections are that it could be \$22 million in the red by the end of the biennium.

The drain of the state's unemployment insurance trust fund is a direct and obvious result of Reaganomics. As these economic policies continue to devastate our country, more people are forced to draw unemployment insurance and fewer employers are paying into the fund.

Money must be restored to the fund, to help cushion the blow of unemployment for jobless Montanans. Other methods have been proposed to replenish the fund. Among these are proposals to reduce benefits for the unemployed and to raise taxes for the employers. The Montana State AFL-CIO believes that it is not the fault of jobless workers that the economy is in such dire straits. House Bill 174 presents a reasonable alternative, by reducing employer tax rates and removing the wage base. This would have the effect of closing the loophole for large employers, while reducing the tax rate and raising nearly \$27 million over the biennium. But if House Bill 174 doesn't pass, or if the economy gets even worse, then the option must be left open to keep the funds solvent by borrowing the money from the federal fund.

This method has been used in the past. Because of the recession, which began in 1975, Montana's fund borrowed from the federal government. It borrowed \$1.4 million in 1976, \$7.9 million in 1977 and \$1.2 million in 1978. Those loans were repaid promptly by Montana's fund as the economy improved and as certain changes were made in the law.

Frankly, the Montana State AFL-CIO does not believe that the economy is going to improve rapidly. We cannot agree with President Reagan who seems to think that prosperity is just around the corner. However, we do not think that the people of this country will stand much more of his insane economic policies.

It is interesting to note that even conservative business groups are beginning to speak out against those policies. Organized labor, and other groups committed to social and economic justice, have spoken out against these policies since they began. Now, business groups, alarmed at economic conditions and ballooning federal deficits are calling for the President to change his court.

The Bi-Partisan Appeal on the Budget Crisis, a group composed of 500 government, business and academic leaders, along with five former Treasury Secretaries, says it is concerned that the current fiscal course is "senseless" and "threatens to lock the economy in stagnation for the remainder of this century." That group, along with the National Association of Manufacturers, the American Business Conference and the National Association of Independent Business, is seeking changes in the present economic course. Organized labor may not agree with all their proposals to change that course, but we are pleased they are finally realizing the errors of the President's economic policies.

The point is that the President will eventually have to change his course, or the people of this country will elect someone to do so. We cannot and will not continue to have 11.4 million Americans unemployed,

business bankruptcies on the rise, family farmers forced off their land and continued cuts in programs to help those in need. When the economy changes for the better, Montana will be able to pay back the loan from the federal government.

In the meantime, unemployed workers and hard-pressed employers will not have to pay an even higher price than they already are for the disaster of Reaganomics.

The Montana State AFL-CIO urges your support for House Bill 302. It does not commit the state to borrow. It merely allows that option in case the legislature doesn't provide enough money to meet unknown economic crises over the next two years.

Thank you very much.

Exhibit No. 2
Submitted by George Allen
March 10, 1983

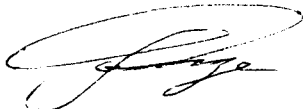
Mr. Chairman and Members of the Committee:

I am George Allen from the Montana Retail Association. I am here today to oppose House Bill #302. This is an act authorizing the Department of Labor to Borrow money and to provide for the payment of interest on that same money.

I have a problem with this bill. The businesses that employ people in the lower wage scale are the 100 percent employers. They are paying more than their fair share into the Unemployment Insurance Fund now. If we borrow money and are required to pay interest on that money, the burden will fall on the shoulders of the small businesses that are paying for the fund now.

There is another bill that will be heard by this committee that will address this problem in a more equitable manner. If I could be bold enough to make a suggestion, it would be to hold up on acting on House Bill #302 until you have a chance to look at House Bill #174.

Respectfully Submitted,



GEORGE E. ALLEN
Executive Vice President
Montana Retail Association

Submitted by Jim Murry
March 10, 1983



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON HOUSE BILL 623, BEFORE THE SENATE COMMITTEE ON
LABOR AND EMPLOYMENT RELATIONS, MARCH 10, 1983

I am Jim Murry, executive secretary of the Montana State AFL-CIO. I am here today to speak in support of House Bill 623. This bill prohibits retaliation against an employee by an employer because the employee has filed a complaint or participated in a proceeding under the law.

The Montana State AFL-CIO believes that this bill provides an essential protection to employees. Employers sometimes retaliate when an employee has made a complaint or instituted a proceeding or grievance against the employer. This bill will protect the jobs of workers who exercise their legal rights.

That protection is even more important during times of high unemployment such as we are now experiencing. There are over 42,000 Montanans out of work according to the latest unemployment figures, and the fear of job loss, without any legal protection, could well mean that an employee who had a just and legitimate complaint, would be afraid to file a complaint for fear of employer retaliation.

According to the Labor Standards Bureau of the Montana Department of Labor, at least three calls a month are received from employees questioning employers' practices on wages, hours or working conditions. There would probably be more, if employees were not fearful of losing their jobs. Some who call have already lost their jobs because they had asked the employer about a certain issue.

For example, a woman in Kalispell who worked at a beauty shop was not receiving the state's minimum wage. She asked her employer about it and was promptly fired. She filed a claim with the Department of Labor, which was able to get her back wages, but she is still out of a job.

Another recent case was a man who worked at a tire shop and complained to his boss that he was not being paid for overtime. He was fired, and also filed a claim and received the pay which was due him. However, he didn't get his job back either. Although these two employers had violated the law regarding wages, it was not against the current law for them to retaliate against the employees.

Without the protection offered by this bill, the legal rights of an employee who is intimidated by an employer would be effectively denied. Employees must be able to exercise those rights by protection under the law.

We urge you to vote for House Bill 623.

Thank you.

HB-623

Employer

Curtis Barton Hair Design - Woman complained because of minimum wage and was fired. \$214.00 was recovered. 5-6-82

Employee - Teresa Rene Bartow

Employer

Kalispell Tire - Arthur Apsey worked for Kalispell Tire. He asked about overtime and was fired. \$904.68 was recovered.

Employer

Montana Appliance - Conrad

Employee

Dorothea Simonsen was a bookkeeper. She called State Citizen Advocate and ask whether other employees should be paid travel time to and from job. Was fired by employer. 6-9-82

Testimony on HB623 by Dennis M. Taylor,
Administrator, Personnel Division,
Department of Administration, before
the Senate Labor Committee March 10, 1983

Mr. Chairman, members of the committee, my name is Dennis Taylor,
Administrator of the Personnel Division, Department of Administration.

I appear before you today in opposition to HB623 and would like to present three major objections to the bill.

Objection 1 - My first objection to HB623 concerns its vague language which provides insufficient guidance to employers on what actions are prohibited and apparently over-broad protections to employees.

For example, Section 2 prohibits "retaliation" against employees for participating in legal proceedings but leaves retaliation undefined. It is consequently possible that an employee could pursue a charge of retaliation based on the fact that he was given an undesirable assignment sometime after serving on jury duty or based on the fact that his work load was increased after a two week absence for jury duty.

Section 2 further prohibits retaliation against an employee because the employee has "participated in any manner" in an investigation or "proceeding under law" including some specified proceedings such as "a claim for worker's compensation" plus "any other administrative proceeding" and (4) "any other proceeding for the protection of the public health, safety, or welfare."

Under this language it is unclear whether an employer is prohibited from taking any or all of the following actions:

- (1) disciplining an employee who on his own initiative attends a public hearing on air quality standards on company time, (2) disciplining a public employee for disrupting a public hearing on administrative rule changes conducted by his employer, (3) suspending an employee who himself is under investigation for embezzlement, or (4) transferring an employee who has suffered repeated injuries and initiated repeated worker's compensation claims to a lighter duty assignment.

Such vague and apparently all encompassing prohibitions greatly increase an employer's liability and reduce his ability to manage.

Objection 2 - My second objection to HB623 concerns its failure to provide appeal rights to employers.

Section 8 provides for court enforcement of an administrative decision favoring the employee but provides no right of appeal to the court for the employer.

Objection 3 - My third and most significant objection to the bill and the administrative procedure it establishes is that they are not needed because the protections provided are currently in place.

Employees are already protected from wrongful or retaliatory discharge or other adverse actions through the courts as a result of several recent judicial decisions. In Keneally v. Orgain, 37 St. Rep. 154 (1980), the Court recognized an independent cause of action which can be brought in District Court for "wrongful discharge". Essentially, if the employee was discharged for any reason which violates public policy, he can sue the employer to obtain relief.

Examples of wrongful discharge given by the courts include discharge because the employee refused to commit perjury, discharge for assertion of a Worker's Compensation claim, and discharge because the employee refused to submit to sexual harassment. There are numerous other cases in other states in which employees have prevailed in proving wrongful discharge for reasons similar to those in Section 1 of the bill. Employees can therefore already go directly to court with these claims.

If the employer does not discharge the employee but takes some other action with a retaliatory motive, the Montana Supreme Court has created another right of action called "breach of covenant of good faith and fair dealing." Gates v. Life of Montana, 39 St. Rep. (1982). This new action can also be brought directly in District Court, and can conceivably cover any retaliatory treatment including discharge.

In addition, many public sector employees already have access to either negotiated binding arbitration or an administrative grievance process - either of which provides broader protections than the protections provided by HB623.

State employees currently have a variety of administrative grievance processes to resolve charges of all types of wrongful discharge or adverse actions - not just those taken in retaliation for participating in legal proceedings.

Current negotiated arbitration processes plus existing employee grievance processes ending in review by an independent board (the BPA for employees of the Department of Highways and Fish, Wildlife and Parks and the Merit System Council for employees of agencies under federal merit system requirements) would make the HB623 administrative process an expensive redundancy for a large majority of executive branch employees.

Most importantly, the protections provided by HB623 are already available to all private and public sector employees through the courts, making HB623 unnecessary.

Amend HB 623 as Follows:

1. page 1, line 16
after: "any"
insert: "lawful"
2. page 2, line 18
delete: the entire line
insert in its place: "relating to:"
3. page 2
delete: lines 1 and 2*
4. page 3, line 16
after: "whole"
insert: "for actual damages. Neither exemplary nor
punitive damages shall be allowed."
5. page 4, line 7
just before the period, insert: "provided that the
department has rendered a final decision within the
prior 30 days."
6. page 4, line 7, 8, and 9
delete: the entire last sentence

* * * * *

*Alternative amendment for page 2, line 1:

page 2, line 1
after: "other"
insert: "statutorily created"

NAME: Dick Kane DATE: 3/10/83

ADDRESS: Helena

PHONE: 449-5600

REPRESENTING WHOM? Labor Standards Div

APPEARING ON WHICH PROPOSAL: HB - 623

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Labor Standards Division receives 2 or 3
calls per month from people who have been fired
because they have filed a complaint or engaged
about a law.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dennis Taylor, Jr. Japer Brown DATE: 3-10-83

ADDRESS: Mitchell Building

PHONE: 449 - 3871

REPRESENTING WHOM? Personnel Division, Dept. of Admin.

APPEARING ON WHICH PROPOSAL: HB 623

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS: Please see attached testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE COMMITTEE LABOR

Date 3/10/83 House Bill No. 554 Time 2:17

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN	✓	
JACK GALT		✓
PAT GOODOVER		✓
DELWYN GAGE	✓	
CHET BLAYLOCK	✓	
JOHN LYNCH	✓	
DICK MANNING	✓	
GARY AKLESTAD, CHAIRMAN		✓

Margie Nichols
Secretary

Gary L. Aklestad
Chairman

Motion: Senator Blaylock moved that House Bill No. 554
Be Concurred In.

Carried 5-3.

(include enough information on motion--put with yellow copy of committee report.)

Senator Christensen will carry on floor.

STANDING COMMITTEE REPORT

March 10, 19 83

MR. **PRESIDENT:**

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

having had under consideration **HOUSE** Bill No. **554**

Howe (Christiaens)

Respectfully report as follows: That **HOUSE** Bill No. **554**

BE CONCURRED IN
~~REPLY~~

U/C