

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

February 17, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on February 17, 1987 at 7:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members present.

HOUSE JOINT RESOLUTION NO. 28 - Support For Efforts To Develop Commercial MHD Technology, sponsored by Rep. Dave Brown, House District No. 72, Butte. Rep. Brown stated that the MHD technology has been in the development stages in Montana since the mid 1970's and in the development stages nationally for the last two or three decades. He said we are getting close to having a technology that is near commercial. He added this resolution basically differing from previous resolutions in the last three sessions indicates support by this committee and legislature for near commercial retrofit of the Corette power plant in Billings.

PROPOSONENTS

John Sherick, President of MSE, and operating contractor of MHD facility in Butte. Mr. Sherick stated that significant progress has been made in two years. He said they have installed a coal-fired combustor and are now producing power from coal in Butte, and have the largest test facility in the world, producing power from coal with MHD. He added the second significant accomplishment in the last two years has been the formation of the MHD Development Corporation. He commented that in 1986 they submitted a proposal to do the conceptual design of the retrofit of the existing Corette plant in Billings. He explained that the retrofit would represent the next stage of development of MHD and would be the proof of concept or near commercial proof of the technology. He commented although things have gone well in the technology, the same funding state with the administration exists, and the 1988 budget submitted to Congress called for zeroing out the MHD program, and it has been through strong Congressional support from the Congressional delegation and strong support from the state of Montana that it has been continued to be restored. He said it is this resolution called for every two years from the legislature and from the state of Montana that gives the federal government a clear indication of the support of the state.

Karla Gray, representing Montana Power Company. Ms. Gray stated that it is the Corette plant that is on the line for the commercial phase of MHD, and they think it is an important project not only for the state of Montana but for the country.

OPPONENTS

None.

QUESTIONS

None.

CLOSING

Rep. Brown made no further comment.

HOUSE BILL NO. 719 - Generally Revise Lien Laws Concerning Agricultural Products Suppliers, sponsored by Rep. Dave Brown, House District No. 72, Butte. Rep. Brown stated this bill deals with all suppliers of all agricultural products in one bill. She said there won't be any additional legislation by suppliers or providers needing a lien. He said there currently is no lien available to most of these suppliers at the present time. He commented the financial institution has the choice in this bill and if they don't wish to allow the lien there won't be one over the bank's position, and if in the event that the financial institution feels that there was not sufficient funds or lines of credit, the supplier would then have the option of filing a lien but his lien would be behind that of the financial institution. He said this bill is essential to suppliers of agricultural products, and to farmers and ranchers.

PROPOSERS

Kurt Krueger, Montana Petroleum Marketers Association. Mr. Krueger stated that this bill revises the total lien laws concerning suppliers of agriculture. He said at the present time Montana has statutes that recognize a series of liens, but the suppliers and providers of agricultural products have no available means to place a lien or collect on crops or materials they provide. He commented that unlike a provider of a product that can be repossessed, the supplier of petroleum products and fertilizer products are used and cannot be repossessed. He commented that this is a compromise piece of legislation, that allows the financial institution to participate in the establishment of this lien.

Pam Langley, representing the Montana Agricultural Business Association. Ms. Langley stated she is concerned about the

survival of the family farms in Montana which are dependent on the survival of the farm suppliers as well as the banks. She said this bill is a good compromise bill, because bankers, farmers, and agricultural suppliers all need to communicate, and this bill assures that they do just that. She commented that this is a good compromise bill for the following reasons: it would require that bankers and farmers do sound financial planning, and agricultural suppliers cannot circumvent that planning process; they need to respond when the farmers need the agricultural product, the fuel, fertilizer, or chemical; an agricultural supplier cannot assume he has the automatic right to file a priority lien. He added they must work with the banks and farmers; banks have to tell the suppliers that the farmers have a sufficient line of credit to pay for the fertilizer.

OPPONENTS

George Bennett, lawyer, Montana Bankers Association. Mr. Bennett stated that the fuel dealers and chemical dealers say they don't have a lien and need one. He said they do have a lien. He commented under the Uniform Commercial Code, they have the same lien that bankers have, but what they don't have is a preferential lien. He said this bill is unfair and unworkable by creating unfair preferences for a select group of suppliers, and would make it more difficult for farmers and ranchers to obtain credit. Exhibit No. 1.

Phillip Johnson, Director, Montana Bankers Association. Mr. Johnson stated submitted written testimony. Exhibit No. 2.

Bob Pyfer, governmental relations, Montana Credit Unions League. Mr. Pyfer stated that there are not many credit unions that issue agricultural loans, but they do have a few that are important lenders in their areas, and as a trade association, they caution them in entering into loans of this type. He said this is a complicated system which would cause uncertainty as to the strength of security interest. He commented that a potential for litigation exists, and could have a chilling effect on the availability of credit.

QUESTIONS

Rep. Pavlovich asked Mr. Krueger if he was on the interim committee that discussed the lien laws, and if there was some compromise made. Mr. Krueger stated the lien law committee reviewed the liens for all areas of the statute for the state of Montana, and did not have much time to discuss the agricultural lien laws. He said that he suggested they come to the legislature to address this.

Rep. Simon asked if a bank examined their financial records and was willing to say that the person had sufficient credit to issue that loan, why wouldn't they loan them the money. Mr. Krueger responded they often do, and this assures that there is either a lien or a sufficient line of credit to help the collection of the debt.

Rep. Simon asked what is the potential for a law suit if the bank states that a farmer had sufficient credit, but it turned out he did not. Mr. Krueger responded that there is not; the bank would file a lien on that year's crops.

Rep. Smith asked if this is forcing the bank to guarantee that loan. Mr. Krueger responded that two things are being allowed, buying a line of credit for a period of time; and at the end of that time period, the letter of credit expires, and the supplier is allowed to have a lien.

Rep. Swysgood asked if the lien is on the livestock too. Mr. Krueger responded that at the present time, the way the bill is written, livestock is included. He said that Rep. Brown has drafted amendments that address that issue and would remove livestock and feed from the bill.

Rep. Swysgood asked why they think that the banks should be the central clearinghouse for credit information for suppliers. Mr. Krueger responded that suppliers are not in the credit business, they are in the petroleum or fertilizer business. He said all they are doing is having that farmer sign a release and asking for records that are already there so that suppliers can be informed of the financial history of that farmer.

Rep. Hansen asked if, under the Uniform Commercial Code they did not have the right to the lien. Mr. Krueger responded that these are not products that can be repossessed because of the disposable nature.

Rep. Hansen asked if they have a preference on the liens by the time they are filed, and if they file a first lien, would they have the first preference. Mr. Krueger responded that most of the financial institutions have preference because they have been lending to this individual for years, and renewing the line of credit on his farm, equipment, and that year's crop. He said all they are asking for is a lien on that year's crops with their permission.

CLOSING

Rep. Brown stated that his concern is that the banking industry has done a 180 degree flip on what they said on Rep. Miller's bill. He said the banking industry has in a

large part contributed to the agricultural problems by changing the ground rules on loans in the middle of the process. If the suppliers, people that provide the seeds, people that provide the product that allows that farm to operate, are prevented by the banking industry to be involved in the process to help protect their credit worthiness, then the whole farming industry would suffer.

HOUSE BILL NO. 449 - Investing Part of Retirement Funds and Coal Tax Trust in Venture Capital, sponsored by Rep. Bob Marks, House District No. 75, Clancy. Rep. Marks stated this bill would allow the Board of Investments to invest some of their retirement funds into venture capital. He said the bill changes the current law relative to the investment and the prudent expert rule to allow them to invest up to 3% of the retirement funds in venture capital companies. He commented that the Board of Investments is very conservative and the retirement funds are safe with or without this bill. He added that those people that may have concerns about using some of the retirement funds for venture capital should consider that they are investing in Montana's future. He said in the long-term, if a better business climate can be built in Montana, those retirees will be one of the main beneficiaries of that.

PROPONENTS

San Hubbard, Executive Director, Science and Technology Alliance. Mr. Hubbard stated that one of the reasons that the Alliance exists is to invest in the very early stages of projects. He said there are a large number of companies with a very significant growth potential that exist in this state. He commented that the science and technology fund and other venture capital funds as exist in Montana are inadequate to help those companies realize their true growth potential over a four or five year period of time.

James Biundo, Assistant Treasurer, Trust Investments, U.S. West, Denver. Mr. Biundo stated that U. S. West is a significant investor in venture capital. He commented on the objectives in making venture investments and how U.S. West manages the process from their perspective.

Jack Tankersley, general partner and co-founder of Three-Venture Capital Partnerships, Denver. Mr. Tankersley presented a brief overview of venture capital and how it has been developed in this country. He showed slides reviewing four major studies in venture capital studies.

Terry Winters, general partner, Columbine Venture Fund, Denver. Mr. Winters explained the mechanics of venture investing, how the flow of funds works, and how limited partnerships work. He showed a slide regarding the venture capital flow of funds process and the criteria they use when they evaluate the process.

Tom Cable, managing partner, Cable and House Ventures, Seattle. Mr. Cable explained the economic impact as they have seen it in particularly in the state of Washington, and showed slides.

Tom Schneider, representing the Montana Public Employees Association. Mr. Schneider stated that it is not advisable to limit your law to investments within the state, because by limiting what is done in this area, the risks are increased rather than decreased. He commented they are interested in it because they have reached a point in the pension plans in Montana that an additional contribution isn't available, nor can the employees be expected to continually increase their contributions, but these areas still continue to need attention. He added if they can improve the return of the money, then they can improve the people's benefit structure. He said the economy is at stake and the chance of expanding the chance of opportunity in the state. He said they support the amendments that have been submitted to the committee.

Dick Bourke, President, Development Corporation of Montana. Mr. Bourke stated that Development Corporation is the only venture capital firm in Montana. He said they feel as other proponents of the bill that by allowing for this type of investment by the public pension funds, it will go a long way to increasing the return of the fund as well as allowing for access to out-of-state capital by in-state companies worthy of seeing that capital.

Stuart Doggett, representing the Montana Chamber of Commerce. Mr. Doggett stated they supported the bill.

OPPONENTS

Leo Berry, representing the Association of Montana Retired Public Employees. Mr. Berry stated that the Association is not opposed to venture capital and Rep. Marks should be commended in his efforts to try to improve Montana's economy and provide additional capital for the state. The Association represents people whose livelihood depends on the funds that are being proposed to be invested, and that is the reason they are interested in the bill, he said. He commented the amendment only addresses retirement funds, and the reason is that there are constitutional statutory

restrictions on the other type of funds that the Board of Investment invests, such as the coal tax, the RIT, and school trust funds, and are not subject to the provisions of this bill. He added the concern of the retirees is that their funds are the only ones being considered for investment in this system. He said if a system was enacted that all the funds, including the two state funds, the coal tax funds, the school trust funds and the general fund were willing to invest their moneys in some of these capital ventures, then perhaps, the retirees would feel more comfortable in investing their money also, and somewhat share the risks.

QUESTIONS

Rep. Wallin asked Rep. Marks to comment that the original intent of the bill was completely changed by the amendment. Rep. Marks responded that in talking to people involved in venture capital companies and funds, it seemed to be too limiting to include strictly Montana entities. He said if more flexibility is allowed in the placement of these moneys, more money could be brought into the state than if it was restricted to Montana investments.

Rep. Brown asked Rep. Brown that because of the amendment to the bill, all the bill is saying is that the Board of Investments is "urged", and they could choose to ignore this entirely, and the bill would be meaningless. Rep. Marks responded that the Board would not be disinclined to get into venture at the present time, and the way the amendment was drafted, it allows the discretion of the Board and the members. He said this is a positive business statement.

CLOSING

Rep. Marks stated that, regarding the rate of return on the present investment of the retirement funds, when there is a decline in interest, there is a decline in the growth of those funds. He said if you base that on the solvent dollar, or inflated dollar values or real dollar values, those funds do not grow very well, and the benefits would not be realized that the retirees would like from them.

HOUSE BILL NO. 728 - Defining Temporary Service Contractors As Employment Agencies, sponsored by Rep. Mary Ellen Connelly, House District No. 8, Whitefish. Rep. Connelly stated this bill is a housekeeping measure for the Department of Labor, which changes the definition of employment agencies and clarifies the duties of the department concerning the employment agencies.

PROPOSERS

Joseph Moore, legislative coordinator, Montana People's Action. Mr. Moore stated that this bill is in the interest of low and moderate income members. He said the Job Service exists for employees and job seekers alike. He commented that with jobs not available, and wages being low for those jobs, a state agency should not be required to work with an organization that further lowers the job seekers' wages by charging fees once they are employed.

Don Judge, representing the Montana State AFL-CIO. Mr. Judge stated this issue arose because of one bad example of an employment agency operating in the state of Montana. He said it is a bad policy for the state of Montana to be referring information gathered at the taxpayer's expense and referring it to the private sector. He commented that the Job Service should find jobs for people, and not be providing lists and names of people to an employment agency that would abuse the rights of working people and would circumvent the provisions of the laws regarding workers' compensation, unemployment compensation, and the rights to discharge because of injuries occurring on the job. He added these private employment agencies are unfair to Montana employees. He submitted an example of a private temporary employment agency. Exhibit No. 3.

OPPOSERS

John Elder, owner, Express Temporary Service, Billings. Mr. Elder stated he wanted to correct some statements made by the proponents. He said his temporary service is not an employment agency. He said it does not take money from any applicant; it is an employment contractor, and they follow all the laws of the state of Montana, and pay workers' compensation. He commented that many people use them, and employ full time people that work for the service. The temporary agency in Flathead Valley that Mr. Judge referred to is a specific case that does not fall in the bounds of temporary service firms. He said they are not an employment agency, and they do not charge fees to the applicants. He added that what is referred to in the bill is not the traditional temporary service firm, and until the Department of Labor can study this, the bill should be rejected.

Noel Stout, President of Arrow and Andex Temporary Help. Mr. Stout stated that he hopes the committee would not perceive the temporary help industry by the service referred to in the Flathead Valley. He commented they are not an employment agency, they do not collect money from the people they refer, and are not listed as a contractor of labor. He said they are strictly a temporary help industry, and their

industry should not be penalized by a specific case. He said the law states that every business has to pay taxes, and is unlawful to take anything away from a person's income which they do. He added that this bill would impose a hardship on them and could put them out of business, by undue paper work, higher costs, restrictions and regulations.

Ken Travis, agent, Andex Temporary Service, Helena. Mr. Travis stated that this bill would not help the employment picture in Helena or for the state.

Roger Koopman, owner, general manager, Career Concepts, and Personnel Leasing, Bozeman. Mr. Koopman stated that the committee should not overreact by penalizing the whole industry with a bill that has not been thought out and is not appropriate because of one situation. He commented that an employment agency and a temporary help service are distinctly different concepts. He said a temporary help service rents out their employees on specific temporary assignments that may last for a temporary time, and no fee is charged for the temporary placement work. He added an employment agency is in the business of finding people permanent employment and charge a contingency fee, a fee that is contingent on finding a person employment that they will accept and keep for a period of time. He said to pass a bill that refers to a temporary agency as an employment agency and include the temporary agency under all the statutes that now regulate employment agencies is not appropriate.

QUESTIONS

Rep. Thomas asked Bob Jensen, Administrator, Personnel Division, Department of Administration, for his interpretation of the language on page 2, section 3, lines 20 and 21, of the bill. Mr. Jensen responded that the temporary service contractor would be an employment agency under this act, and probably would be treated like any other private employment agency. He said that is the reason for the cross reference on line 20, providing that the Job Service not refer to the private agency.

Rep. Thomas asked at present does the Job Service refer people or data to employment agencies and temporary service agencies. Mr. Elder responded that the Job Service does not refer people to private employment agencies, they do refer people to temporary help contractors. He stressed that the temporary help contractors are not agencies or brokers, they are employers.

Chairman Kitselman asked if services such as Manpower or Kelly Girl are agencies or employers. Mr. Stout responded that they are employers.

CLOSING

Rep. Connelly stated this bill is requiring that Job Service do the job they are specified to do.

HOUSE BILL NO. 699 - Exclude Outside Salesmen From Overtime Compensation Requirements, sponsored by Rep. Norm Wallin, House District No. 78, Bozeman. Rep. Wallin stated this bill is an act to exclude outside salesmen from overtime compensation requirements from the state wage laws. He said an outside salesman does the greater share of his work hours away from the establishment of his employer and away from direct supervision. He commented that the amount of time spent selling can't be controlled by the employer, and this bill recognizes that.

PROPOSERS

George Moore, Executive Director, Montana Press Association. Mr. Moore stated that the approach that they have taken on this bill is to basically seek conformity with the fair labor standards and regulations of the U. S. Department of Labor. Exhibit No. 4. He said having the exemption would enhance employment opportunities for the salesperson, enhance the marketing climate, generate increased sales for the retail service sectors, and would make the job more rewarding for the salesperson, both professionally and financially because of commissions involved.

Robert Bullock, advertising salesperson, Bozeman Chronicle. Mr. Bullock stated that selling is such that it can't be done on a 40 hour week. He said that he can manage his time more efficiently if he can work more hours when the need arises, and therefore, both the newspaper and he will benefit by his being able to do his job most efficiently.

Ron Scoles, account salesman, Billings Gazette, Billings. Mr. Scoles stated that he feels it is up to him to best see fit on how to do his job, and if this was set at a 40 hour week, there is no time for him to do his job efficiently. He wants to be able to govern his time, but if he is restricted to a 40 hour week, he said, he would not be able to do that.

Fred Lindstrom, Bozeman Daily Chronicle. Mr. Lindstrom stated that he likes the freedom to work the hours he wants and the way he wants. He said the type of work they do cannot be restricted to a 40 hour week.

Gary Sullivan, Missoulian Newspaper. Mr. Sullivan stated he does not want to be paid overtime, or be restricted to a 40 hour week. He said that sales is a different type of job than one that can be done from 8 a.m. to 5:00 p.m., and wants to be able to work as many hours as he needs to get the job done.

Joann Davis, Billings Gazette. Ms. Davis stated she agrees with all the other speakers, and that she did not want to be restricted to a 40 hour week.

Rick Robbins, Billings Gazette. Mr. Robbins stated that they can't keep proper hours, and wants to be able to set his own hours.

Loretta Breslin, Billings Gazette. Ms. Breslin stated she represents the other 13 salespeople for the Gazette. She said they want to be treated as professionals and be able to manage their own time, and all support this bill.

OPPONENTS

Don Judge, representing the AFL-CIO. Mr. Judge stated they consider this another piece of exclusionary legislation that has been offered by the newspaper this year. He said there is nothing that stops these people from working an excess of 40 hours a week; the law simply demands that they be paid overtime for such work. He commented that if additional exclusions from the law are continually allowed and the laws are continually changed in the state, the base will eventually be taken from the economic development. He added that the less that is required by law to pay people and treat people fairly, the more chance there is for abuse of that law.

QUESTIONS

Rep. Cohen asked for explanation regarding the reference in the bill to the term "who is excluded under 29-USC-213-31". Rep. Wallin responded that exclusions are listed in the bill. Mr. Voeller responded that outside salesmen are exempt under federal law, and that law states that if a person spends 80% or more of his time selling outside the office, he is exempt. He said this bill would assure conformity of this with federal regulation.

CLOSING

Rep. Wallin stated the federal law states specifically, and the bill is attempting to adopt the federal regulations. He said this bill is in the interest of both the employers and employees.

EXECUTIVE ACTION

ACTION ON HOUSE JOINT RESOLUTION NO. 28

Rep. Pavlovich moved that House Joint Resolution No. 28 DO PASS. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 449

Rep. Pavlovich moved that House Bill No. 449 DO PASS.

Rep. Brandewie moved amendments proposed by Rep. Marks. The motion carried unanimously.

Rep. Swysgood moved an amendment to reinsert the stricken lines on sub (3) "nothing contained in this section prevents the investment of any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana". The motion carried with Reps. Simon, Smith, and Kitselman opposed.

Rep. Simon stated that the language of the amendment was negative, and is not the message that was intended.

Rep. Pavlovich moved that House Bill No. 449 DO PASS AS AMENDED. The motion carried with Rep. Bachini opposed.

HOUSE BILL NO. 723 - Fund Workers' Compensation Uninsured Employers Fund With Payroll Fee, sponsored by Rep. Tim Whalen, House District No. 93, Billings. Rep. Whalen stated this bill provides that a penalty be imposed on the uninsured employer. He said that the reason this bill is attempting to fund in the manner it provides is because it is not realistic to go after marginal employers that are having a difficult time. He said most of them are small businesses and competitive industries, and if they could afford to they would buy the insurance. He recommended to the Committee to insert in subparagraph 5, page 2, "up to 1/2 of 1 percent". He said with the 1/2 of 1% payroll fee, \$20 million would be raised.

PROPONENTS

Don Judge, representing Montana State AFL-CIO. Mr. Judge stated that for several sessions they have supported some method of funding for the uninsured employer. He said they prefer that all employers pay in accordance to their responsibilities, but there are many instances of employees injured and claims filed on uninsured workers, and it has become a problem in the state. He commented that no employer wants to be charged an additional rate for someone that isn't paying workers' compensation. He said they have been unable to sufficiently staff the Workers' Compensation

Division to be able to enforce these laws, and this would give both the Division and other employers some encouragement to seek enforcement of the law.

Rep. Jerry Driscoll, House District No. 92, Billings. Rep. Driscoll stated that the problem with the uninsured employers fund is that it is almost insolvent with claims pending. He said the Study Commission has recommended that the Division pay off the lost time to the injured workers in front of medical claims and to spend the money as it is received, as presently they are holding the money because there are too many claims against the fund. He commented that this is indirectly being paid anyway, through a payroll tax, property tax, or in some way, because when a person is injured on the job and the employer has no insurance because he did not purchase workers' compensation, those people become eligible for general assistance. If the Division was given some money, they could enforce the law requiring these employers to have the insurance, he said.

OPPONENTS

George Wood, Executive Secretary, Montana Self Insurers Association. Mr. Wood states that they oppose this bill because it is an employers' tax, because the more people employed and the more wages paid, the higher the tax. He said what we have here is an attempt to make the employers pay for the unfunded debt they are not responsible for because they did live up to their obligations.

Hiram Shaw, Division of Workers' Compensation, Department of Labor and Industry, stated he was available to answer questions.

QUESTIONS

Rep. Smith asked Rep. Whalen if he had found out how much money it would take to fund this. Rep. Whalen responded he did not because there was no effort by the Division to determine the nature of the injuries of the workers working for uninsured employers.

Rep. Smith stated that this request for around \$20 million, to fund something that they don't even know how much it is going to cost, is foolish. He said there are better ways to spend the \$20 million.

Rep. Swysgood asked if this bill is implemented and a fund created, the same problem is going to exist, at the expense of those employers that continue to make payments, that there still will be employers that refuse to pay the insurance. Rep. Whalen responded this is a public policy choice of who should suffer, the small businesses because of the

competitive nature of the markets that are having a difficult time meeting all their costs, or the injured worker that is not going to be compensated for his injuries, or the employer that has been doing better and can afford to pay the costs.

Rep. Thomas stated that this bill is not going to work and hoped that Mr. Judge would work with others to get something that will work that is fair, and maybe in the next session can address funding the uninsured workers compensation fund.

Mr. Judge responded that they have been working with the Advisory Council of the Workers' Compensation Division, but there are no answers. The fact is that there are people violating the law and there are no mechanisms for enforcing the law, but they will accept the challenge and continue to work at finding a way.

CLOSING

Rep. Whalen stated that the most fair way to compensate the injured workers is to have the employer pay for it, but the fact is that there are some employers that are not carrying workers' compensation insurance. He said that part of the problem may be that the Division is not enforcing the laws, but he suggests that most employers are conscientious and would carry workers' compensation if they are capable. He commented that it may be unfair to impose this tax on the employers that are doing better by the Montana economy, but it is imminently more unfair to make the injured worker pay for it. He added there is no mechanism that will be completely fair because of the nature of the situation but somebody is going to have to pay for somebody else.

EXECUTIVE ACTION - February 17, 1987 - 11:00 a.m.

ACTION ON HOUSE BILL NO. 723

Rep. Smith explained that they have a problem of an excess of \$100 million in the state fund that in some way has to be acquired or benefits can't be paid, and because of the condition the fund is in right now, there isn't anything that can be done.

Rep. Smith moved that House Bill No. 723 BE TABLED. The motion carried with Reps. Hansen, Driscoll, McCormick, and Cohen opposed.

ACTION ON HOUSE BILL NO. 699

Rep. Wallin moved that House Bill No. 699 DO PASS.

Rep. Cohen moved an amendment on line 9, strike the language from the word "who" through that subparagraph 1, and insert after the word "outside", insert the language "advertising media".

Rep. Cohen stated this would change the paragraph to read as follows: "an employee employed in a capacity outside advertising media salesmen, from the overtime compensation provisions of the fair labor standards act." Rep. Cohen stated that this would include all the newspaper salesmen, the radio and television and regular salesmen.

The motion failed by tie vote, 9 to 9.

Rep. Wallin reconsidered his vote to pass the amendment as that was the an important part of the bill, he said. This changed the vote to 10-8. The motion to accept the amendment carried.

Rep. Wallin moved that House Bill No. 699 DO PASS AS AMENDED. The motion carried with a vote of 10 to 8.

ACTION ON HOUSE BILL NO. 719

Rep. Glaser moved that House Bill No. 719 BE TABLED. The motion carried 10 to 8.

ACTION ON HOUSE BILL NO. 728

Rep. Driscoll moved that House Bill NO. 728 DO PASS.

Rep. Driscoll moved to amend on page 1, line 20-22, after "employment agency", insert "temporary service contractors", and on page 2, line 20-21, strike the new language.

Rep. Driscoll stated this would answer their concerns about the regulation of the temporary service contractors. He said they would not be put under the same regulations as the employment agencies, but still would not require the Department to test and make referrals to these employment agencies or temporary service contractors.

Rep. Simon moved a substitute motion that House Bill No. 728 BE TABLED. The motion failed by tie vote, 9 to 9.

There was further discussion regarding the amendments offered.

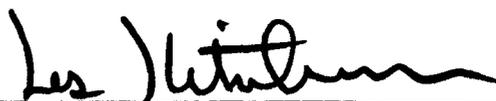
Rep. Swysgood stated that there was a considerable amount of confusion on the definitions of temporary service contractors and employment agencies in the bill.

Business and Labor Committee
February 17, 1987
Page 16

Rep. Swysgood moved that House Bill No. 728 BE TABLED. The motion carried with a voice vote of 10 to 8.

ADJOURNMENT

The meeting adjourned at 11:50 a.m.

A handwritten signature in black ink, appearing to read "Les Kitseleman", written in a cursive style. The signature is positioned above a horizontal line.

REP. LES KITSELMAN, Chairman

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 17, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

STANDING COMMITTEE REPORT

February 17

19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 699

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

REP. LES KITSELMAN

Chairman

AMENDMENTS AS FOLLOWS:

1) Page 3, line 8

Following: "of"

Insert: "advertising medium"

2) Page 3, line 9

Following: "salesman"

Strike: "who is excluded under 29 U. S. C. 213(a) (1)"



FIRST

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STANDING COMMITTEE REPORT

February 17, 1987 19

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 449

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> do pass | <input type="checkbox"/> be concurred in | <input checked="" type="checkbox"/> as amended |
| <input type="checkbox"/> do not pass | <input type="checkbox"/> be not concurred in | <input type="checkbox"/> statement of intent attached |

REP. LES KITSelman Chairman

AMENDMENTS AS FOLLOWS:

1) Title, line 5
Following: "FUNDS"
Strike: "AND OF THE COAL TAX TRUST"

2) Page 2, lines ¹⁸ through 25
Strike: subsection (a) in its entirety
Insert: "Nothing contained in this section prevents the investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(a) The board of investments is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies."

3) Page 3, lines 1 through 7
Strike: subsection (b) in its entirety
Renumber: subsequent subsection

STANDING COMMITTEE REPORT

February 17

19 67

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE JOINT RESOLUTION NO. 28

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

REP. LES KITSELMAN

Chairman

MS
FIRST

reading copy (WHITE)
color

WITNESS STATEMENT

EXHIBIT 1
DATE 2/17/87
HB 719

NAME GEORGE T. BENNETT BILL NO. H.B. 719
ADDRESS 111 NO. MAIN HELENA DATE 2/17/87
WHOM DO YOU REPRESENT? MONTANA BANKERS ASSOCIATION
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: H.B. 719 killed on second reading (as H.B. 819) in the 1985 session, 62 to 33, as an unfair and unworkable bill.

H.B. 719 (as H.B. 819) was considered and rejected by the Joint Interim Subcommittee on Lien Laws; See minutes of the subcommittee of Nov. 14, 1986

H.B. 719 should be rejected as unfair and unworkable as creating unfair preferences for a select group of suppliers. Bill would make it more difficult for farmers and ranchers to obtain credit

WITNESS STATEMENT

EXHIBIT 2
DATE 2/17/87
HB 719

NAME Phillip B Johnson BILL NO. HB 719
ADDRESS Montana Bankers Assoc - Helena DATE 2/17/87
WHOM DO YOU REPRESENT? Montana Bankers
SUPPORT _____ OPPOSE XX AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1) The bill requires the release of confidential records which potentially leaves the bank open to bad faith lawsuits for breach of the Financial Privacy Act. We're not interested in releasing such information unless it's under a court subpoena.

2) Banks are not central clearing houses for the underwriting and guaranteeing of credit (via irrevocable letters of credit) for everyone.

3) Section 4 - should require immediate release, subject to penalty within 30 days of payment in full.

4) We see Agricultural Suppliers - Salesmen over-selling their products and expecting banks to underwrite unwanted sales.

5) A 15 fee for this consideration (release of information and the letter of credit) is unreasonably low.

6) 90 Days is too long to file such liens (Section 3)

7) Under our present central lien filing why are we writing legislation involving the clerk's & recorder's offices - Aren't we supposed to centralize with the secretary of State's office.

WITNESS STATEMENT

EXHIBIT _____

DATE 2/10/87

HB 719

NAME [Handwritten Name] BILL NO. [Handwritten]

ADDRESS [Handwritten Address] DATE _____

WHOM DO YOU REPRESENT? [Handwritten Name]

SUPPORT [Handwritten] OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*was happy to see in the budget that
agriculture products subsidies will allow
passage of [unclear] the [unclear]
intended to [unclear] [unclear] [unclear]
[unclear] and [unclear]*

*I would have preferred no increase
in the [unclear] to provide
in [unclear] [unclear]*

[Handwritten Signature]

HB 728

EXHIBIT 3
DATE 2/19/87
HB 728

FLATHEAD VALLEY LABOR CONTRACTORS, INC.

EMPLOYEE HANDBOOK

June 1985

June 1985

WELCOME TO. . .

FLATHEAD VALLEY LABOR CONTRACTORS, INC.,

Flathead Valley Labor Contractors, Inc., a Division of Industrial Personnel, Inc., is a strong and growing Company. We specialize in the recruitment of only hardworking, honest members of the workforce. Our clients depend on us to provide the extra help they do not have readily available and they expect us to perform at the peak of our ability. Should we fall short of this goal, irreparable damage to our reputation will occur. Therefore, the highest standards of employee conduct must be followed at all times. Our standards are high.....and challenging. We trust that you will meet that challenge and enjoy being a part of our team.

This booklet is designed to help you become familiar with some of the policies and standards regarding your work for the Company. Please read it thoroughly and carefully.

Max G. Johnson, Manager
Flathead Valley Labor Contractors, Inc.

TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
EMPLOYMENT WITH FLATHEAD VALLEY LABOR CONTRACTORS, INC.	1
UNEMPLOYMENT AND WORKERS' COMPENSATION	1
QUALIFICATIONS AND ABILITY	1
JOB ASSIGNMENT PROCEDURES	2
WAGES	2
HOURS OF WORK	3
INJURY PREVENTION	4
RULES OF CONDUCT	6
AFFIRMATIVE ACTION	7
SEXUAL HARASSMENT AND RACIAL HARASSMENT	7
IN CONCLUSION	7

EMPLOYMENT WITH FLATHEAD VALLEY LABOR CONTRACTORS, INC.

Employees of Flathead Valley Labor Contractors, Inc. are classified as temporary or regular. Only those employees who are classified as regular shall be entitled to the group benefits discussed in an additional handbook.

REGULAR CLASSIFICATIONS ARE LIMITED TO JOURNEYMEN MILLWRIGHTS, ELECTRICIANS, CARPENTERS AND RELATED CONSTRUCTION TRADES OR WATCHMEN. Those classifications are determined by this office only. Regular classifications have various minimum pay rate requirements which must be met in addition to other criteria. If you are not informed (by this office) that you are in a "regular" classification, you can assume that you are temporary. If you have any questions pertaining to your status with Flathead Valley Labor Contractors, Inc., please contact the office.

UNEMPLOYMENT AND WORKERS' COMPENSATION

You are covered, by Flathead Valley Labor Contractors, Inc., for all legally regulated employment benefits. You are not covered by any benefits, regulated or otherwise, offered by our client companies to their regular employees.

In the event you make a claim for either Workers' Compensation or Unemployment Compensation, you must list Flathead Valley Labor Contractors, Inc. as your employer, not a client company to whom you were assigned.

QUALIFICATIONS AND ABILITY

We are proud of the reputation we have developed for providing above average, temporary personnel to our clients. We continually strive to employ only the best people in the work force, those who have the old-fashioned work ethic. We continually monitor the work attitude of our employees. Those who maintain the level we expect will get the most work. They will also receive our maximum effort in assisting them in obtaining a permanent position. GOOD ATTITUDE is displayed in many ways. Below we list a few of the criteria we use in judging our employees.

1. Eagerness to work.
2. 110 percent effort on the job.
3. Positive response to any reasonable job assignment.
4. Cooperation with supervisors.
5. Pleasant personality.
6. Quick response in getting to the assigned job site.
7. Proper physical appearance - dress, haircut, neatness, etc.
8. Skills and Ability.

In all instances, the Company retains the right to judge the qualifications and ability of individual employees. Hires, terminations and job assignments will be based upon these judgements.

Employees who feel they have been mistreated due to the application of the qualifications and ability policy may request reconsideration. The decision of the resident manager is final.

JOB ASSIGNMENT PROCEDURES

Since the purpose of Flathead Valley Labor Contractors, Inc. is to provide temporary personnel for various companies, the duration of each job will vary. Once an assignment is completed, you will be returned to the call list to be reassigned to another job. This does not constitute a "layoff".

Once a job assignment is completed, you are responsible for notifying the office as to your available status. DO NOT depend upon someone else notifying us that your job has ended.

Reassignment to another job will depend upon your skills and your performance on previous assignments.

You will be contacted by telephone when an assignment becomes available. Therefore, it is imperative that you maintain a means of telephone communication. We strongly suggest that you also check in periodically when you are not working.

WAGES

A. Pay Scale

* Flathead Valley Labor Contractors, Inc. does not establish specific pay rates for each job. In most cases, you will be paid a wage comparable to that paid employees of the company to which you are assigned. We attempt to equal the wage policies of each client company, but minor variations may occur.

* In those cases where a company does not have an established wage for a specific job, this office and the client company will determine a fair wage which you will receive.

B. Overtime

Regardless of the overtime pay policies of client companies, Flathead Valley Labor Contractors, Inc. employees will receive overtime pay computed at time and one-half. This will be paid for hours worked in excess of 40 hours in a given work week. (See D. below)

C. Timekeeping

When assigned to a job, you will be given a time sheet (2 part) for that job. Upon reporting to the work site, give the time sheet to the resident supervisor. Upon completion of the job, the time sheet will be returned to you with the hours worked filled in. You will sign the sheet and return the yellow copy to the office.

Your copy must be signed by you and the supervisor.

If your assignment extends into the next two week pay period, return your copy to the office as above and obtain a new time sheet for the new pay period.

You are responsible for the return of all time sheets to our office by the MONDAY following the end of each pay period.

D. Pay Periods/Pay Days

We operate on a two week pay period. Each period begins on a MONDAY and ends on the SUNDAY, 14 days later. Overtime is computed during each individual week of the two week period.

* Payday falls on the Friday after the end of the pay period. Paychecks are picked up at the office unless other arrangements are made.

E. Advances

Pay advances (draws) will be given for extreme emergencies only.

HOURS OF WORK

P44

A. Reporting for Work

You are expected to report to your assigned job in sufficient time to be ready to start work promptly at the beginning of your shift, and to stay at your work station during working time until properly relieved, unless excused or in case of emergency. However, there may be a situation that requires you to report for work "as soon as possible" after the time you are called by our office. In such cases, you are expected to report for work no later than 45 minutes from the time of our call.

When you arrive at your assigned job site, report to the supervisor in charge. That person's name will be given to you when our office contacts you for the assignment. As you report, you are required to ask that supervisor to inform you of his plant safety rules and regulations.

B. Absences from Work

If you must miss a shift, while you are on a job assignment, you are expected to notify our office as far in advance of shift starting time as possible. Acceptable reasons for missing work are limited to dire emergencies only. Unless you are legitimately ill or have an emergency, you are expected to report for work and be on time. Lack of transportation is not a legitimate excuse.

C. Refusal to Work

We operate on the assumption that you have come to us requesting available work. We assume that you will accept any reasonable assignment--regardless of location, day or time of job, job content or pay rate. Should you refuse a job assignment, you are subject to termination. We are required to report a refusal-to-work to the Job Service, which could jeopardize your qualification for unemployment benefits. 7 P44

As long as you are on Flathead Valley Labor Contractors, Inc. payroll, we assume you are available for work 24 hours a day, seven days a week during periods between job assignments."

If you are notified of a job assignment, it may be necessary for you to change previous personal plans in order to report for work.

INJURY PREVENTION

There is no such thing as an "accident". We firmly believe that any injury is simply the result of inattention and carelessness. We do not accept any excuse for an injury, as all injuries can be prevented if each person is constantly aware of and avoids work hazards.

Your individual safety attitudes and habits are a primary condition of your continued employment with the Company. Personal negligence which endangers your own safety or that of a co-worker cannot be tolerated under any circumstances. Employees who practice unsafe or unhealthy activities on the job or who neglect posted safety and health regulations, will be subject to disciplinary action and possible dismissal.

A. Reporting Injuries

All on-the-job injuries must be reported immediately to our office no matter how minor the injury may seem.

Unless there is a medical emergency, failure to properly report an accident or injury before seeking medical attention may result in a delay of benefits or denial of your claim. It may also result in disciplinary action, including discharge.

In the event we wish further medical information on a claim, we may require you to see a specialist of our choosing. The opinion of our specialist will weigh heavily in the determination of a claim.

B. Safe Work Rules

Violation of safety rules will be sufficient for disciplinary action. "Ignorance of the rules" is no excuse and you should ask if you are unsure. For special emphasis, a few of the general rules are listed here:

1. Obey posted signs.
2. Do not run.
3. A lock-out device must be used when working on powered equipment. (See below)
4. Approved hardhats are to be worn at all times on the job site.
5. Safety shoes are highly recommended.
6. No riding on mobile equipment.
7. Lift from a crouch, carry the weight with your legs.
8. Gloves (in good repair) are required when handling wood.
9. Ear protection will be worn in designated areas.
10. Safety glasses will be worn when grinding, using punches, at designated stations and when blowing down.
11. Two-man job tasks, where specified, will never be attempted alone.
12. Always be aware of your surroundings. Never stop thinking of the hazards that are present.

C. Lockout Procedure

Each millwright, electrician, or other employee assigned to mechanical construction or maintenance work, is required to provide lock out device and padlock and carry them on their person during those assignments. You and you alone are responsible for locking out a piece of equipment and removing your respective lock and/or lock out device.

If more than one person is working on a piece of equipment, each will place their lockout device and/or padlock on the lock out station and will remove them when they finish their work.

Anyone failing to remove a lock out device and/or padlock when leaving the job will be called back to personally remove it. In other words, for your protection, no one but you is allowed to remove your lock from a piece of equipment.

If you find yourself in a situation where you do not have a lock or lock out device, contact the person in charge on the job site as to the procedure you must follow.

LOCK OUT PROCEDURE:

1. Before starting work on any equipment, the switch or valve controlling its source of power must be properly "Locked Out" by the person or persons working on the equipment. These are the four steps to properly "Lock Out".
 - a. Shut off the source of power at the switch or valve where source of power is supplied from the main line.
 - b. Place your lock out device on the switch or valve and padlock your device.
 - c. Test unit control to make sure you have the right switch or valve before working on equipment.
 - d. When the job is complete, and only then, remove your lock personally.

Failure to comply with these proceedings will result in disciplinary action up to and including discharge.

DEVIATION FROM THE PROCEDURE MAY COST YOU YOUR LIFE!!!!!!!!!!!!!!

D. Dress Code

1. Clothing
 - a. A shirt of some type shall be worn. Tank tops are not acceptable. Shirts must come to the belt - no cut-off shirts.
 - b. Bib overalls are acceptable.
 - c. No shorts allowed, must be long pants.
2. Footwear
 - a. Prudent leather workboots are required. Safety shoes are highly recommended.
 - b. Rubber boots may be worn during bad weather months.
 - c. All boots must be above the ankle.
 - d. No tennis shoes of any type.
 - e. No oxfords of any type.

E. Safety Apparel

You are required to provide your own hardhat, which must be worn at all times while on plant premises. Hearing and eye protection may be supplied if your job requires these protective devices. Your job may require other special safety and health equipment or apparel. Some of this equipment or apparel may be provided and some may be your responsibility to supply. Be sure that you wear the proper apparel or equipment at all times. You will be advised as to what special equipment or apparel is required for your job.

RULES OF CONDUCT

Most employees do not need a list of rules or regulations to guide their personal conduct. Normally employees respect the person and safety of others and follow the directives from proper authority. Our clients depend on us to provide the very best extra help they do not have readily available. Therefore we must always perform at the peak of our ability.

The following list is not intended to describe all situations where discipline may be necessary. It does represent important rules and policies that if violated will result in immediate disciplinary action or termination.

1. Smoking outside designated areas.
2. Unauthorized absence.
3. Failure to report for work without notifying our office.
4. Tardiness.
5. Leaving work before quitting time without notifying and getting permission.
6. Bringing intoxicants or narcotics into or consuming intoxicants or narcotics on the job site.
7. Reporting for duty while under the influence of intoxicants or narcotics.
8. Non-conformance with posted Fire Protection programs.
9. Removal of property from the jobsite without written permission.
10. Sleeping on duty.
11. Violation of safe work rules.
12. Intimidation and/or molestation of any individual or group of employees.
13. Neglect of duty or loafing on the job.
14. Gross misconduct including horseplay or fighting.
15. Destruction or defacing property due to a willful act.
16. Failure to conform to prescribed procedures.
17. Theft or destruction of property belonging to or in charge of another employee.
18. Failure to obey posted regulations.
19. Unauthorized use or operation of equipment.
20. Willful falsification of Company records.

Do not lose sight of the fact you are working for Flathead Valley Labor Contractors, Inc. Should you have any questions or complaints regarding job assignments, wage rates, etc., contact our office and we will answer them. DO NOT take complaints to the company where you are assigned.

ment of Labor that such employment of under- age minors was unlawful. *Mashburn v Tribble* (1953, DC Ga) 24 CCH Lab Cas ¶ 67873.

Secretary of Labor was entitled to permanent injunction restraining defendant employer from violating child labor provisions of Fair Labor Standards Act, where employer had violated such provisions by employing, suffering, and permitting "oppressive child labor" to work in production of goods for interstate commerce, despite fact that employer was part-time family business manufacturing bumper tops for vegetable storage and shipment, employing extra help during business seasons, and was not properly manufacturer seeking to increase wealth by paying low wages and using child labor, but on contrary, like employees, wore "the yoke of poverty" and struggled for existence, not for wealth. *Mitchell v Thaxton* (1958, DC Ga) 34 CCH Lab Cas ¶ 71313.

Secretary of Labor was entitled to injunction permanently enjoining defendant employer, his agents, servants, employees, and all persons acting or claiming to act on his behalf and interest, from violating child labor provisions of Fair Labor Standards Act, where it was shown that such employer had violated provisions of 29 USCS § 212(e) by employing "oppressive child labor" during school hours in harvesting of tomatoes for commerce, and had violated provisions of 29 USCS § 212(a) by delivering tomatoes for shipment in commerce within 30 days of such employment. *Mitchell v Carmichael* (1958, DC Ill) 36 CCH Lab Cas ¶ 65042.

Secretary of Labor was entitled to injunction permanently restraining defendant employer from violating child labor provisions of Fair Labor Standards Act through employment of children during school hours in picking of figs, children during school hours in picking of figs,

§ 213. Exemptions

(a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 [29 USCS §§ 206, 207] shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act except that [that] an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in

fact that violations had ceased prior to institution of suit not making case moot, since defendant intended to continue to expose himself to risk of employing oppressive child labor in future by continuing to use minor children, although he indicated that hours would be restricted to non-school time, and fact of exception to child labor provisions of Fair Labor Standards Act permitting children to work in agriculture outside of school hours making it all the more mandatory that child labor provisions be strictly enforced as to employment during school hours. *Mitchell v Munier* (1958, DC Cal) 38 CCH Lab Cas ¶ 65781.

Injunction against violations of child labor provisions of Fair Labor Standards Act would be granted, where employer was custom broker of wool and mohair who employed, suffered, and permitted to work in and about his place of business four minors under age of 16 years, in loading on and unloading from trucks of wool and mohair for out-of-state purchasers. *Mitchell v Witting* (1961, DC Tex) 42 CCH Lab Cas ¶ 31071.

Secretary of Labor was entitled to permanent injunction against violations of child labor provisions of Fair Labor Standards Act, where defendant farm operator employed children under 16 years of age to pick cotton, substantial quantity of which was shipped in interstate commerce, and children were employed during school hours, and where violations of Act continued to occur even after defendant employer had been informed thereof by investigator for Wage and Hour division of Department of Labor, and after employer had given assurances that such violations would cease. *Goldberg v Daniels* (1962, DC Ga) 45 CCH Lab Cas ¶ 31314.

his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4) [29 USCS § 203(s)(4)]), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s) [29 USCS § 203(s)] or such establishment has an annual dollar volume of sales which is less than \$225,000 (exclusive of excise taxes at the retail level which are separately stated). A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

(3) any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year; or

(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: Provided, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agriculture labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and

essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section;

(e) Who is compensated for services on a salary or fee basis at a rate of not less than \$170 per week (\$150 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week (or \$200 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of either of work described in paragraph (a) (1) or (3) of this section, which includes work requiring the consistent exercise of discretion and judgment, or work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

48 FR 11390, May 7, 1973, as amended at 40 FR 7092, Feb. 19, 1975)

Postponed Regulations: Paragraph (e) in 541.3 was revised at 46 FR 3014, Jan. 13, 1981. In accordance with the President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of paragraph (e) set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

541.3 Professional.

(e) Who is compensated for services on a salary or fee basis at a rate of not less than \$280 per week beginning February 13, 1981 and \$225 per week beginning February 13, 1983 (\$225 per week beginning February 13, 1981 and \$250 per week beginning February 13, 1983 if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of

board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than \$320 per week beginning February 13, 1981 and \$345 per week beginning February 13, 1983 (or \$260 per week beginning February 13, 1981 and \$285 per week beginning February 13, 1983 if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1) or (3) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

541.5 Outside salesman.

The term "employee employed * * * in the capacity of outside salesman" in section 13(a) (1) of the act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

- (1) Making sales within the meaning of section 3(k) of the act, or
- (2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph (a) (1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer: *Provided*, That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

541.5a Special provision for motion picture producing industry.

The requirement of §§ 541.1, 541.2, and 541.3 that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$200 a week (exclusive of board, lodging, or other facilities).

Postponed Regulations: Section 541.5a was revised at 46 FR 3014, Jan. 13, 1981. In accordance with the President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of § 541.5a set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

541.5a Special provision for motion picture producing industry.

The requirement of §§ 541.1, 541.2, and 541.3 that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$320 per week beginning February 13, 1981 and \$345 per week beginning February 13, 1983 (exclusive of board, lodging, or other facilities).

541.5b Equal pay provisions of section 6(d) of the act apply to executive, administrative, and professional employees, and to outside salesmen.

Effective July 1, 1972, the Fair Labor Standards Act was amended to include within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesmen under section 13(a)(1) of the act. Thus, for example, where an exempt administrative employee and another employee of the establishment are performing substantially "equal work," the sex discrimination prohibitions of section 6(d) are applicable with respect to any wage differential between those two employees.

541.6 Petition for amendment of regulations.

Any person wishing a revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, either in support of or in opposition to the proposed changes. In determining such future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. House Bill No. 719

DATE February 17, 1987

SPONSOR Rep. Dave Brown

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<i>Todd ...</i>	<i>...</i>		
<i>...</i>	<i>...</i>		
<i>...</i>	<i>...</i>		
<i>...</i>	<i>...</i>	✓	
<i>...</i>	<i>...</i>	✓	
Sharon Schroeder	Schroeder Bros Ranch		✓
Bob Prier	<i>...</i>		✓
David S. Riddle	<i>...</i>	✓	
Hurt Krueger	West Petro Mkters Assn	✓	
John Cirall	Montan AgBusiness Assn	✓	
<i>...</i>	<i>...</i>	✓	
<i>...</i>	<i>...</i>		
<i>...</i>	<i>...</i>		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. House Bill No. 699

DATE February 17, 1987

SPONSOR Rep. Norm Wallin

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
George W. ^{VPR} Boeck	Dist. Press Assn.	X	
Loretta Breelin	Billings Gazette	X	
Jan. Johnson	Billings Gazette	X	
Ron Scaler	Billings Gazette	X	
Jack Robbins	Billings Gazette	X	
Noel Stoff	ARROW ANDERSON		X
Wynne Smith	Bozeman Star-Journal	X	
G. W. Winnell	Bozeman Star-Journal	X	
Robert E. Phillips	Bozeman Star-Journal	X	
Mike Smith	Bozeman Star-Journal	X	
Jay D. Killeck	Missoula Newspaper	X	
Sharon Schroeder	Missoula Newspaper	X	
Mike Huller	Development Record	X	
Dan J. Kelley	Montana Herald	X	
Don Judge	MT STATE AFL-CIO		X
Jim Wall	Billings		
Paul Turner	Billings MT Production	X	

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VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. House Bill No. 449

DATE February 17, 1987

SPONSOR Rep. Bob Marks

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
			✓
Jim Schmitter	MPSA	✓	
Leo Henry	AMIRE		✓
Jim Salerno	AMIRE		✓
Bob Marks		✓	
DICK BOARKE	DNS WRD. OF MT.	✓	
Patrick McKelvey		X	
Tom Ryan	Levellow	✓	
Stuart Daggatt	ML Chamber of Commerce	✓	
James J. Brando	U S WEST, Denver, Co	✓	
Thomas J. Cable	Cable & Coase Ventures	✓	
William D. Swail	The Centennial Fund	✓	
Benjamin Hagan			
Harry Hoff	Gene Fund Grant		

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