

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

February 5, 1987

The eighth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on February 5, 1987, at 1:00 p.m. in Room 413-415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 166: Rep. Tom Jones, House District 4, sponsor of the bill, stated the purpose of this bill is to rectify a mistake made last session. Rep. Jones gave an example to explain the bill. He said if he was to buy a piece of property from Senator Lynch with a 50% down payment, and Senator Lynch built a building on the property, then the department realizes there should have been a withholding and unemployment insurance due.

PROPOSERS: There were none present.

OPPOSERS: Mr. Chuck Hunter, Chief of the Contributions Bureau, Unemployment Insurance Program of the Department of Labor, stated most taxing authorities in our state and in other states have a difficult time with taxpayers who do not want to pay their taxes. Currently, the Unemployment Insurance Program has an account receivable balance of approximately \$5 million, and that figure seems to be going up 20-25% yearly. The most effective means of securing these taxes is the filing of liens, although that alone doesn't always do the trick. There is a lot of competition for the money among other people who are seeking those funds and also filing a grievance. In the last session, as part of the aid to bring the fund to a solvent status and give the Unemployment Insurance Program tools to collect the taxes, the legislature gave them a priority for filing liens. It stated a judgement would be due when the taxes were over due. The Unemployment Insurance Program had the ability to back the liens after working with the employers for a time, and the priority gave a good handle on meeting the competition from the I.R.S. and private businesses who are also looking to collect money. If we loose the ability to have the

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the priority of liens it will affect the ability to collect some of the \$5 million and the result will be less money in the fund. The overall effect will be raising rates to all businesses because of money not collected. The Department of Labor is opposed to losing this priority, and they urged the committee to take this into consideration.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 166: Senator Lynch asked Rep. Jones if this bill would give the I.R.S. first count. Rep. Jones replied no, the I.R.S. takes their turn at the date they file a claim.

Senator Lynch stated the legislature fought to get the fund solvent, and wondered if this bill will lead the state in the wrong direction, as one more thing that will add to the cost of unemployment insurance. Rep. Jones replied no, all they have to do is get their work done and if they have a claim, file it.

Senator Keating asked Mr. Hunter to explain the difference between a lien and a certificate. Mr. Hunter replied if there is a lien already from the mortgage company, the division cannot go in front of the preexisting liens. Their priority would come at the time of filing and would go behind any existing liens at that point; however, they can be back dated. Senator Keating asked if this could be done with a certificate. Mr. Hunter replied a certificate is really a form of filing a lien and they are almost identical under the law. The certificate is just something sent to the court and when it is received by the court it becomes official. Senator Keating asked if the difference is that a lien can be back dated but a certificate cannot. Mr. Hunter stated he does not think that is true. The certificate is what is sent to the court to perfect the lien. Senator Keating asked if we accept this bill, would the lien be eliminated and not filed. Mr. Hunter replied no, a lien could still be filed, but it would not have the same priority. The lien would go in on the same day filed. Currently, if taxes are due in six months and a certificate is sent in today, it is filed as a lien as of six months ago when it is officially registered by the courts. Senator Keating asked why it was not filed six months ago. Mr. Hunter stated the Contribution Bureau will work with an employer a period of time to try to obtain payment. Senator Keating stated he was an employer and was told he owes unemployment compensation and he was already mortgaged to the bank. He told the division he would not pay and they told him they would sue. Senator Keating asked Rep. Jones if the division could do something to the mortgage. Rep. Jones replied yes, their claim would go before the bank's claim.

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Senator Lynch stated the division makes every attempt to obtain payment and the lien is the last alternative. Senator Lynch stated he does not see any problem with the present procedure. Rep. Jones stated it is a matter of fairness. Senator Lynch stated they are making efforts to collect, and the final option is to seek a lien. Rep. Jones stated he was trying to eliminate the predating of the liens. Senator Keating asked Rep. Jones if the lien takes precedence before the items of existence. Rep. Jones replied no. Senator Keating asked if a lien is filed against a new business and because they back date the liens, would this come before the bank's mortgage, and what effect would it have on the bank. Rep. Jones replied the bank would be stuck. The problem is the information in the offices for withholding taxes is that it is not open to the public. Senator Lynch asked Rep. Jones if passing this bill would force the division to file the lien when the unemployment is due. Rep. Jones replied they could do that, or open books to title companies. Senator Lynch asked Rep. Jones if he wants the end result to be liens filed every time anyone is past due. Rep. Jones replied no. Senator Lynch stated he feels this would be the result.

There being no further proponents or opponents, Rep. Jones closed.

CONSIDERATION OF HOUSE BILL NO. 170: Rep. Tom Jones, House District 4, sponsor of the bill said it is an identical situation to HB 166. The division has the same privileges of withholding taxes by predating their claims.

PROPOSERS: There were no proponents present.

OPPOSERS: Mr. Ken Morrison, representing the Department of Revenue stated they are strongly opposed to this piece of legislation as it would reverse legislation from last session. A bill was proposed last session to establish a lien priority for withholding tax trust money. This is not individual income tax or corporation license tax; this is withholding taxes, money taken by employer from the employee to the employee's taxes. This is held in trust by the employer 30 to 120 days before being submitted to the state. In the bill, under Section 1, it says taxes held in trust for the state in the name of the employee is then submitted to the state and the employee claims that withholding on their individual returns. The purpose of the law discussed by the Revenue Oversight Committee was to preserve assets of delinquent employers so the state can get their trust funds back. Currently there is \$5 million in this trust that they have not been able to collect. If an employer has not timely

remitted their withholding taxes, the Department of Revenue will contact the employer, try to establish the liability, and send out statements. There is a time period normally up to 100 days before the department begins the lien collection by filing with the court. Once this is done, the department can establish liens on various pieces of property. At the last legislative session the lien filed would be established on the day the employer should have remitted the trust money to the state of Montana. Once the warrant has been filed and they begin the lien process, the department goes back to that date the taxes were actually due. Mr. Morrison said this piece of legislation will do that. It does not put the department in front of the bank, but it does allow them to get in front of the I.R.S. or other creditors that come along after the money was due to the state. The I.R.S. does have a lien priority not exactly the same as this, but once they determine taxes are due the federal government, their lien is established at that point, not at the point they filed their warrants.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 170: Senator Haffey asked Mr. Morrison to give an example of the harm the present language gives to employers. Mr. Morrison stated they became aware of the potential harm during the House hearings of this bill from Rep. Jones' witnesses from the title companies. These witnesses brought up the problems their companies would have issuing clear titles. During the time they are issuing titles, the state can jump over that and go back prior to the point when taxes were due and should have been remitted by the employer and establish their lien. The title companies were concerned about the third party that comes in and purchases property belonging to an employer who is delinquent on withholding taxes. There is a lien on that property and the title company does not know the lien exists. When they issue a clear title to a third party who bought the property from a delinquent employer, they are buying property with a lien. The title company is somewhat in jeopardy because they issued a clear title. Senator Haffey asked if this is an information or communication problem.

Senator Lynch asked Mr. Morrison if this communication problem will be solved. Mr. Morrison replied there is no statutory provision, but they will provide a letter to employers informing them their taxes are paid.

Senator Thayer asked Mr. Morrison if the Warrant of Distrainment and the Notice of Lien are the same thing. Mr. Morrison replied the Notice of Lien is a court document that gives authority to file a lien and to notify the involved party. It is the legal document that gives authority to attach property. Senator Thayer asked Mr. Morrison if they have to always file the actual lien. Mr. Morrison replied the

lien is the last resort, as is the Warrant of Distrainment. The main objective is to get the employer to pay.

Senator Lynch asked if there is a reason there is no fiscal note. Mr. Morrison replied it is very difficult to calculate.

Senator Gage stated the two bills, HB 166 and HB 170 look similar, but HB 170 concerns a third party's funds that have been withheld and HB 166 concerns an employer's fund that is being withheld.

There being no further proponents or opponents, Rep. Jones closed stating this bill would keep the third party, who does not owe, from having to pay.

CONSIDERATION OF SENATE BILL NO. 234: Senator Mike Halligan, Senate District 29, sponsor of the bill, stated this bill provides discretion to the Commission of Labor for unpaid wages. If you are on the job and quit or get laid off, and the wages are not paid, there are several avenues to pursue. One route is to file a wage claim with the Commissioner of Labor. This bill deals with the discretion allowed the Commissioner of Labor in respect to wage assignments and the settlement capability.

PROPONENTS: Ms. Jan Van Riper, representing the Department of Labor and Industry, stated if a person has a claim against their employer for unpaid wages they can assign that claim to the Department of Labor and Industry and the department would take the responsibility for collecting. Under the current law, the department has no discretion - they have to take all claims. Once the department takes all claims, they hold the claims in trust on behalf of the employees. This means there is a fairly high burden of responsibility and they have to do whatever is necessary and feasible to collect the wages. The lack of discretion, coupled with the trust, is the reason the department has trouble with the bill. The problems they have are resources and a conflict of interest. As a trustee holding claims, there should not be a conflict of interest. The department will exercise discretion by allowing the department to weigh and balance the amount of the claim and the strength of the claim verses what it is going to take to collect money on the claim against the staff resources. This bill would also allow the department to make reasonable judgments on taking assignments or decline assignments where there is a potential for conflicts of interest. Ms. Van Riper stated under the present law, when the department takes an assignment they have no discretion to settle or compromise the

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claim without the consent of the wage claimant. The problem with this is often there are wage claimants involved in the same lawsuit against the same employer, and most claimants and the employer want to settle the case to avoid protractive litigation. They seek to settle it on the amount of the wage without the added penalties and interests.

OPPONENTS: Mr. Don Judge, representing the AFL-CIO, said they understand the difficulties the Department of Labor has in trying to determine which is the priority case to handle, and to treat all wage earners equally under the law. Mr. Judge stated a \$50 wage claim filed by a person making \$3 per hour is just as important to that claimant as a \$250 wage claim filed by someone making \$10 an hour. The level of interest by the department should not be determined by the amount of wage claim filed. This piece of legislation would grant the Department of Labor full discretion in accepting or rejecting claims. It would also allow the department full discretion in accepting or rejecting any amount of the wage claim settlement. The AFL-CIO thinks this is wrong. They think the time and labor a working person has to offer is very important, and it is worth money regardless of the amount due to these individuals and regardless of the problem and burden for the staff of the Department of Labor. Each person has a legitimate wage claim and it deserves the attention of the department. This bill would allow for too much mischief, and people who truly deserve their \$25 wage claim may be pushed aside in favor of the \$200 wage claim. The money is important to each individual regardless of the amount.

QUESTION (OR DISCUSSION) ON SENATE BILL NO. 234: Senator Lynch stated in the instance where 30 employers are involved and 28 employers agree, but 2 do not for some reason, he feels the department has little enough help that they have to pursue those 2 claims for an indefinite amount of time. Mr. Judge stated if the 28 employers wish to agree that would relieve the department of those employers. If 2 do not feel a compromise is right, the AFL-CIO feels it is the responsibility of the Department of Labor to enforce the law.

Senator Thayer asked Mr. Judge if a settlement is based on settling all 30 claims, how fair would that be to the other 28 employers involved. Mr. Judge stated he would like to hear from the Department of Labor concerning that question. Mr. Judge said currently the department does not have the authority to make those negotiations except on an individual wage claim basis. Ms. Van Riper stated there are cases when 28 employers are allowed to settle and the other 2 continue to pursue the case, but there are also cases with an all or nothing deal.

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Senator Gage suggested a provision be added to the bill that would state an assignment of claim may, pursuant to this section, provide an option giving expressed authorization to the commissioner to settle. Ms. Van Riper stated when they assign a claim to the department there would have to be an option that the department could not receive the full amount of the wage.

Senator Lynch stated Mr. Gomez had suggested changing the word "may" to "shall" and leave the rest of the new language in this bill intact. Mr. Judge stated this would only improve the bill in the sense the department cannot reject any claims, but it still says the department has the option of settling for less than the claimant is due. If this language is used, in order to file a claim, the claim must contain a provision stating the department can settle for less.

Senator Keating asked Ms. Van Riper how often the department has cases that deal with settling for less. Ms. Van Riper said she did not have statistics available, but said a conservative estimate of the number of wage claims that go to litigation would be approximately 40 cases per year. Senator Keating asked Ms. Van Riper if there is a negotiation when they file claims. Ms. Van Riper stated they do not feel they have the authority to negotiate.

Ms. Van Riper asked if she could discuss the language switch of "may" to "shall". Ms. Van Riper feels this change would be better than leaving the whole statute intact and it probably would not solve the conflict of interest issue.

Senator Haffey asked Ms. Van Riper to address the harm issue for the employees relative to the benefit to the state by giving the department discretion. Ms. Van Riper replied if the department was given discretion, many people for whom the department would not accept an assignment, would be people with very small claims, for example, \$25.

Senator Gage asked Ms. Van Riper if presently the department has the authority to accept settlements on claims. Ms. Van Riper did not feel the department has authority to settle without the claimant's written consent. Senator Gage asked if the department gets written consent at the time a claim is filed. Ms. Van Riper stated the department does not feel they can make it a condition of taking an assignment because the statute states the department must accept each assignment. There is another provision that states when

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an assignment is accepted, there must be authorization from the claimant in order to settle. Senator Gage explained that is why he suggested there be an option that authorization be given at the time the claim is filed. Ms. Van Riper stated it is proposed when a claim is assigned they also assign the option to settle if deemed appropriate.

Senator Keating stated the language reads when the claimant signs the claim, the claimant must agree to accept whatever is settled. He thought Senator Gage meant rather than saying the claimant must provide expressed authorization to settle, the claimant would have the option to say he does not want to settle for anything less than the full amount, or that he will take less than the full amount. The way this bill is written, the claimant is not given that option. Ms. Van Riper stated the department would prefer to have more discretion. Senator Blaylock asked Ms. Van Riper if the language was changed to give the claimant the option, would the claimant have the discretion to allow the division to settle, and would the division have objections to this option. Ms. Van Riper replied there would be objections. She said it would be better to give them the option because there would be some situations where the claimant would give the department the option to settle for less. Also, there would be claimants who would not give the department the options. Ms. Van Riper suggested if the option is written into the language, then couple it with the Department of Labor having the option to reassign the claim.

Senator Haffey suggested language which states the employee can sign a consent form to allow the department to settle or adjust claims. Ms. Van Riper asked if this language would state the department would have the option to take the claim, but once they took it they would not be allowed to reassign the claim. Senator Haffey replied yes, unless the claimant agreed to allow the department to reassign the claim. Ms. Van Riper stated Senator Haffey's suggestion would be a better permutation than the original suggestion.

Senator Gage stated the option is deleted if the word "may" is added because if the department does not think they can settle for the full amount of the claim, then the department will probably not take the claim. Ms. Van Riper said that is not always the case. The department would probably be inclined not to take claims that would have that problem. Senator Haffey asked Ms. Van Riper what this bill would be solving. Ms. Van Riper stated the work load would be elevated.

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She stated the department is facing the risk of lawsuits because there could be a breach of fiduciary duty if they do not do everything possible to obtain the claim.

There being no further proponents or opponents, Senator Halligan closed by stating when he was an intern during law school, he worked for the County Attorney's office and spent a great portion of his work load on wage claims. He would call an employer and inform him of the law and suggest the employer pay the claimant what was due. He would also inform the employer of the penalty if he did not pay. Senator Halligan said he is not suggesting there are not valid claims, but with the restricted funding, the discretion could help set up rules for claims.

DISPOSITION OF HOUSE BILL NO. 170: Senator Keating made a motion that HB 170 Be Concurred In. Senator Gage made a substitute motion that HB 170 be Not Concurred In. Senator Gage stated this is money that is withheld from the employees and the employee does not have an option of choosing to have the money withheld or not. The employee needs some protection from the employer. Senator Lynch agreed with Senator Gage. Senator Keating stated this is not taking away the right of the Department of Revenue to collect the trust proceeds, it is just stating they cannot file their lien after title insurance has been issued. This would make the third party claimant responsible for wages withheld by the previous owner. Deleting the priority date, the back dating of the lien would not preclude the department from collecting the trust proceeds. Senator Lynch feels the department can solve much of their problems by issuing a clear statement there are no wages due. Senator Thayer asked Senator Keating how the third party would be responsible for wages withheld by the previous owner. Senator Keating stated the lien is against the property and the Department of Revenue could bring up the previous lien. The lien could have been back dated, and under the law the lien was in effect when the title insurance was closed. Senator Thayer stated the Interim Lien Study Committee was working to eliminate the hidden liens. Senator Gage made a substitute motion that HB 170 BE NOT CONCURRED IN. Senator Gage's motion CARRIED 6-2. See attached roll call vote sheet.

FURTHER CONSIDERATION OF HOUSE BILL NO. 166: Senator Gage stated HB 170 protects the employee and HB 166 is the employers fund. Senator Lynch stated anything that would put the unemployment fund into greater jeopardy would be a mistake.

DISPOSITION OF HOUSE BILL NO. 166: Senator Thayer made a motion that HB 166 Be Concurred In. Senator Gage made a substitute motion that HB 166 BE NOT CONCURRED IN. Senator Gage's motion CARRIED 5-3. See attached roll call vote sheet.

DISPOSITION OF SENATE BILL NO. 242: Senator Manning made a motion that SB 242 DO PASS. The motion CARRIED UNANIMOUSLY.

FURTHER CONSIDERATION OF SENATE BILL NO. 34: Mr. Chuck Hunter representing the Department of Labor, stated the amendments for SB 34 change the corporate officers to corporate officers of closely held corporations. In terms of the fiscal impact, 53% of the corporations listed only family members as the officers. Based on this information, there is a reduction on the cost of 12% of the yearly receipts to approximately 5%. The department figured the fiscal impact would be between \$3 million and \$4 million yearly with the amendment. In addition to these amendments, Senator Harding requested a further amendment that would make the amendments retroactive.

Senator Blaylock asked Mr. Hunter if this bill will cost the Unemployment Compensation Fund approximately \$3 - 4 million a year. Mr. Hunter replied yes. Senator Thayer asked Mr. Hunter if the \$3 - 4 million cost is based on the new calculations, and if all 53% of the corporations opt out. He also asked how the department can make an assumption that all 53% will opt out. Mr. Hunter replied the department did not assume all 53% would opt out. They took 53% of the employer pool and from that point they looked at the ones which would financially benefit from opting out, which was a much smaller portion.

Senator Blaylock stated this issue was presented at the last legislative session. The Unemployment Compensation Fund was \$10 million in the hole and the legislature took courageous action in fixing the fund. The unemployment tax had to be increased and the benefits had to be reduced. Now this bill will put the fund back in the hole.

Senator Keating stated this is a fairness issue because it taxes someone who is not going to benefit from the fund.

Senator Lynch stated some people can have the advantage of incorporating for liability reasons rather than being a sole proprietorship. He asked if the advantage of a corporation outweighs the advantage of a sole proprietorship.

Senator Keating stated he must pay unemployment taxes; however, he cannot draw unemployment benefits. He could collect the

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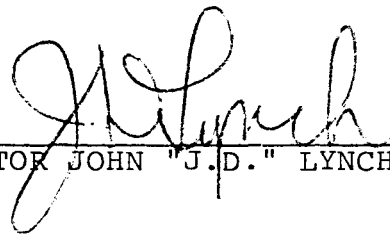
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unemployment benefits if he dissolved the corporation.

Senator Lynch proposed the committee not act further on this bill until there is more information available.

ADJOURNMENT: There being no further business to come before the committee, the hearing adjourned at 2:20 p.m.



SENATOR JOHN "J.D." LYNCH, Chairman

jr

ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 5, 1987

NAME	PRESENT	ABSENT	EXCUSED
John "J.D." Lynch Chairman	X		
Gene Thayer Vice Chairman	X	X	
Richard Manning	X		
Thomas Keating	X		
Chet Blaylock	X	X	
Delwyn Gage	X		
Jack Haffey	X	X	
Jack Galt	X		

Each day attach to minutes.

NAME: CHARLES HUNTER DATE: _____

ADDRESS: 212 OLIVE ST. HELENA

PHONE: _____

REPRESENTING WHOM? DEPT. OF LABOR & INDUSTRY

APPEARING ON WHICH PROPOSAL: HB 166

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE?

COMMENTS: HB 166 WOULD NEGATIVELY AFFECT
THE UNEMPLOYMENT INSURANCE DIVISION'S
ABILITY TO COLLECT PAST-DUE TAXES.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Janice S. VanRiper DATE: 2/5/87

ADDRESS: Capital Station

PHONE: 444-3663

REPRESENTING WHOM? Dept. of Labor & Industry

APPEARING ON WHICH PROPOSAL: SB234

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date February 5, 1987 Bill No. SB 247 Time 2:05 p.m.

<u>NAME</u>	<u>YES</u>	<u>NO</u>
John "J.D." Lynch, Chairman	X	
Gene Thayer, Vice Chairman	X	
Richard Manning	X	
Thomas Keating		
Chet Blaylock	X	
Delwyn Gage	X	
Jack Haffey	X	
Jack Galt	X	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Do Pass

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date February 5, 1937 Bill No. HB 166 Time 2:00 p.m.

<u>NAME</u>	<u>YES</u>	<u>NO</u>
John "J.D." Lynch, Chairman	X	
Gene Thayer, Vice Chairman		X
Richard Manning	X	
Thomas Keating		X
Chet Blaylock	X	
Delwyn Gage	X	
Jack Haffey	X	
Jack Galt		X

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Bill Not Considered In
Adverse Committee Reports
(Gage carry)

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date February 5, 1987 Bill No. HB170 Time 1:55

NAME	YES	NO
John "J.D." Lynch, Chairman	X	
Gene Thayer, Vice Chairman		X
Richard Manning	X	
Thomas Keating		X
Chet Blaylock	X	
Delwyn Gage	X	
Jack Haffey	X	
Jack Galt	X	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Do Pass Be Not Pursued In
Reverse Committee Report
(Stop Passes)

STANDING COMMITTEE REPORT

February 5, 19 87

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration HOUSEBILL No. 170

third reading copy (blue)
color

Jones (Gage)

DELETE PROVISION SETTING LIEN PRIORITY OF WITHOLDING TAXES

Respectfully report as follows: That HOUSE BILL No. 170

BE NOT CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

.....
Sen. John "J.D." Lynch Chairman.

STANDING COMMITTEE REPORT

February 5..... 19.37...

MR. PRESIDENT

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

having had under consideration... HOUSE BILL..... No. 165.....

third reading copy (blue)
color

Jones (Gage)

DELETE PROVISION SETTING LIEN PRIORITY OF WITHOLDING TAXES

Respectfully report as follows: That... HOUSE BILL..... No. 166.....

BE NOT CONCURRED IN

~~XXXXX~~

~~XXXXXXXX~~

.....
Sen. John "JDD." Lynch Chairman.

STANDING COMMITTEE REPORT

February 5, 19 87.....

MR. PRESIDENT

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

having had under consideration **SENATE BILL**..... No. **242**.....

first reading copy (white)
color

ALLOW WORKERS' COMPENSATION DIVISION ACCESS TO EMPLOYER PREMISES

Respectfully report as follows: That **SENATE BILL**..... No. **242**.....

DO PASS

~~DO NOT PASS~~

.....
Sen. John "J.D." Lynch Chairman.