

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS
MONTANA STATE SENATE

February 17, 1987

The twelfth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on February 17, 1987, at 1:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 313: Senator Chey Blaylock, Senate District 43, sponsor of the bill, stated it was requested by the Department of Labor and Industry. He said the reason for this bill is the difficulty with the definition of independent contractor. With the different definitions independent contractors receive, there are different interpretations from the Unemployment Compensation Division and the Workers' Compensation Division. This bill is an attempt to straighten out the interpretation.

PROPOSERS: Ms. Peg Hartman, representing the Department of Labor and Industry, stated this bill is an attempt to make the process easier for employers. It provides one process for the employers and the department to follow, and will decrease the regulatory authority of the department. On page 9 there were three ways the Unemployment Insurance Division made a decision for independent contractors. It was called the A, B, C Test. This language will be stricken in SB 313, and on page 5, two of these tests will be reinserted in the definition section. This will only change for independent contractor issues.

Mr. Karl Englund, representing the Montana Trial Lawyers Association, stated this bill provides a simple definition for independent contractors in regards to Unemployment benefits and Workers' Compensation benefits. The Trial Lawyers feel a single definition should apply in both instances. Mr. Englund feels there is a problem with the provision on page 12, lines 13-19. The determination of independent contractor status when dealing with a Workers' Compensation situation is removed from the Workers' Compensation Court and put in the Board of Labor. If the Workers' Compensation Court is terminated by legislation presented during this session, and everything dealing with unemployment insurance and workers' compensation is put into the 3 person

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administrative panel as in SB 315, then this provision would be necessary. If the Workers' Compensation Court remains, this would ask a person with a Workers' Compensation problem that is now dealt with in the Workers' Compensation Court, to have the Board of Labor Appeals deal with the independent contractor. The Workers' Compensation Court handles these problems more expeditiously than the Board of Labor Appeals. Therefore, a delay is created in the system. Mr. Englund is concerned with the provision, but they support the intent of the bill to have a standardized definition.

OPPONENTS: Mr. Dennis Bacon, representing himself, stated this bill would greatly affect his Bozeman Montana trucking firm. The bill does not really define the independent contractor. On page 5, line 14, it states the independent contractor will be free from control, but it does not say how much control. The bill also states, "engaged in an independently established trade or occupation", and Mr. Bacon said this needs to be clarified. Mr. Bacon feels under current law, the trucking contractors can make a profit, but if this new statute is passed they will not be able to make a profit. Mr. Bacon feels this bill would have a critical effect on the independent contractor.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 313: Senator Gage asked Ms. Peg Hartman if during the 1983 legislative session there was something that allowed agricultural situations or people who were providing contract services to apply for an exemption from Workers' Compensation taxes. He asked if this bill now allows this for everyone. Ms. Hartman replied the only part that would change is if they apply for an individual contractor's exemption and they do not get it they would still use the same process for appeal as other people. Ms. Hartman pointed out on page 12, line 17, it would be used only in cases not concerning benefits. Ms. Hartman agreed with Mr. Bacon that the definition of independent contractor is difficult to understand, but this law does not change the substance of that definition, it just changes the process.

Senator Gage asked Ms. Hartman why they would be included in this when they are not involved with the benefits. Ms. Hartman replied the auditors routinely audit employers and they might add the record of the employer and find people on the payroll records that are not being reported. The auditor would then inquire why this person is not being reported for tax purposes.

Senator Keating asked Mr. Bacon if he had some people that are employees and other people that are independent contractors that work as drivers. Mr. Bacon replied yes. Senator Keating asked Mr. Bacon if he furnished trucks for the independent contractors. Mr. Bacon replied yes. Senator Keating asked Mr. Bacon if he knows of any independent contractors who have been successful in becoming independent contractors with exemptions. Mr. Bacon said he did not know the answer. Senator Keating stated if you have a distinct group of people that are well defined and can be considered independent contractors, an exemption could be given to that class of people instead of only to individuals. Senator Keating asked Mr. Bacon if this would affect him. Mr. Bacon replied yes, because it gives actual control and it only allows him to appeal at the district court. Senator Keating stated that is a technical phrase which is actually meaningless; it is just standard language in every bill.

Senator Lynch asked Mr. Bacon how this bill will cost him money. Mr. Bacon replied it will cost him money because the provision that allows him to tell people they are independent contractors is being deleted.

Senator Lynch asked Ms. Hartman if this will cost Mr. Bacon money. Mr. Hartman stated it should make it easier because of the deletion of that section. Under current law you have to meet 3 requirements to be an independent contractor. Under the new bill he would only need to meet 2 requirements.

Senator Thayer asked Ms. Hartman how the definition of independent contractor in this bill agrees or disagrees with the new language in SB 315 or SB 330. Ms. Hartman replied this bill assumes the existence of a Workers' Compensation Court. If there is a change in the existence of the Workers' Compensation Court, they have drafted coordination language should it become necessary to use. Senator Thayer stated there is new language in both SB 315 and SB 330 that deals with the independent contractor section of the law. He asked Ms. Hartman if she could give a comparison of differences to the committee. Ms. Hartman stated there is almost no change. The changes reflected in both bills are several minor wording changes. They basically agree except for the existence of the court.

Senator Lynch said Ms. Hartman pointed out the objection by Karl Englund applies only in areas not concerning benefits. Senator Lynch asked Mr. Englund if he still had an objection. Mr. Englund replied he interpreted that to mean they would make the determination for the independent contractor and

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the benefit section would return to the court and the Board would have jurisdiction to decide benefit levels. Mr. Englund stated he would not have an objection if that is what the bill does. Mr. Englund stated if the dispute could lead to benefits then it stays with the court. He would have no objection to that.

There being no further questions of the committee, Senator Blaylock closed.

CONSIDERATION OF SENATE BILL NO. 314: Senator Swede Hammond, Senate District 9, sponsor of the bill stated this is an act to exclude fair workers from payment of unemployment compensation. This bill amends Section 39-3-406, MCA. He said this bill would exclude part time workers from the unemployment compensation fees, as the federal law already does.

PROPOSERS: Mr. Bill Chiesa, representing Metra Park, gave testimony in support of SB 314. His testimony is attached as Exhibit 1.

OPPOSERS: Mr. Jim Murry, representing the Montana State AFL-CIO, stated they have problems with this legislation. Attempts are being made to expand exclusion to this and other worker protection laws. He said they are particularly concerned with exclusions to the unemployment compensation coverage. The state of Montana was ranked 10th in the nation for unemployment recently. They also learned 18.2% of the unemployed workers in Montana were receiving unemployment compensation benefits. He said, the point is more workers are not qualifying for unemployment compensation benefits. The largest reason these people are not qualifying for unemployment benefits is the duration of unemployment. They are exhausting their unemployment compensation benefits and then are not requalifying for benefits. The result is many workers with a good work history, who do not want benefits but would just like to work, have to be on unemployment benefits to take care of their family. This bill would expand the law further to make it more difficult. Mr. Murry urged the committee to oppose this bill.

QUESTIONS (OR DISCUSSION) OF SENATE BILL 314: Senator Blaylock asked Mr. Murry if an employee worked only a week at the fair, would they not be eligible for unemployment benefits. Mr. Murry stated there are people who do not qualify for benefits for working a week or two someplace. He said he does not have these statistics with him, but there are such cases. Many people who have part-time employment are depending on that work to requalify them for benefits.

Senator Blaylock asked Mr. Murry about Mr. Chiesa's statement that without this bill the employee will be laid off and then rehired. Mr. Murry stated he does not understand how that applies. Mr. Chiesa said the problem is, if a fair goes for eight days and they have a part time employee working five consecutive eight hour days, the eight days would put that employee into over time. Mr. Chiesa stated the way for them to deal with this is to lay the employee off and rehire that employee for the remaining three days.

Senator Lynch asked Ms. Hartman if she had some input on this subject. Ms. Hartman believes the way this bill was drafted it will not accomplish what is intended. This bill would have to be amended so it would pertain to what is being said. Senator Lynch asked Ms. Hartman if this bill would affect the money in the unemployment fund. Ms. Hartman replied no. Senator Lynch asked Senator Hammond if he would like to work on this bill to clarify its intent. Senator Hammond stated this is a complete surprise to him. Senator Lynch stated there is a problem concerning the overtime because this is not the overtime section, it is the unemployment section. Mr. Gomez stated in regard to the overtime provision, the correct section is amended, however, the title of the bill has the word unemployment in it. The title should have used the word overtime. Senator Lynch asked Mr. Gomez if the title should say from payment of overtime compensation rather than unemployment compensation. Senator Manning stated the true intent of the bill has not been included in the title. Senator Lynch stated the rules read the title of a bill must reflect the intent of the bill. Mr. Gomez stated the short title which appears on the register SB 314 title is EXCLUDE FAIR WORKERS FROM PAYMENT OF OVERTIME COMPENSATION. Mr. Gomez suggested there was a typographical error. Senator Lynch asked Ms. Hartman if the title is changed to read as was intended, then everything should be in conformity.

Senator Haffey asked if this would change the testimony of the people in opposition. Mr. Murry stated the AFL-CIO does not oppose this as strongly with this clarification. However, they are still against pieces of legislation that weaken laws for workers when they need protection.

There were no further questions from the committee. Senator Hammond closed.

DISPOSITION OF SENATE BILL NO. 313: Senator Keating made a motion that SB 313 DO PASS. The motion CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 314: Senator Thayer made a motion SB 314 be amended. The motion carried unanimously. Senator Keating made a motion that SB 314 AND AS AMENDED, DO PASS. The motion CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 103: Senator Thayer made a motion that SB 103 be amended to include the grey bill's amendments. The motion CARRIED UNANIMOUSLY.

FURTHER CONSIDERATION OF SENATE BILL NO. 103: Senator Blaylock asked what exactly will this bill do. Senator Thayer stated there will either be a plan or they will not have a plan. Senator Blaylock asked Mr. Lloyd Lockrem whether an employee has a choice to go in to a fringe benefit package. Mr. Lockrem replied no, the fringes for a non-union contractor and non-union employee are not negotiated like the process of a collective bargaining unit or a group of contractors. These fringe benefits are predetermined fringes imposed on these contractors by state statutes.

DISPOSITION OF SENATE BILL NO. 103: Senator Thayer made a motion that SB 103 AND AS AMENDED, DO PASS. The motion CARRIED 7-1. See attached roll call vote sheet.

FURTHER DISCUSSION OF SENATE BILL NO. 34: Senator Ethel Harding, Senate District 25, sponsor of this bill stated she has made her own fiscal note, and that it was based on information given by the Department of Labor and Industry. See Exhibit 2. The Department of Labor and Industry informed Senator Harding there was no available data to figure the fiscal impact exactly.

Senator Lynch asked Ms. Hartman what this bill would cost the unemployment fund. Ms. Hartman replied a \$10 million biennium effect.

DISPOSITION OF SENATE BILL NO. 34: Senator Galt made a motion to move the amendments. The motion CARRIED UNANIMOUSLY.

FURTHER DISCUSSION OF SENATE BILL NO. 34: Senator Gage asked Ms. Hartman if these rates were adjusted every year. Ms. Hartman replied yes. Senator Gage asked if the fiscal impact would only have an effect of one year. Ms. Hartman replied yes. Senator Thayer asked Ms. Hartman what month the adjustment would be made. Ms. Hartman stated according

to the law the calculations are made in December, but the actual new rate bases rise in March, the end of the first quarter. Senator Thayer asked Ms. Hartman if this bill were to pass, would the Department of Labor and Industry put in for a rate adjustment in March of 1987 or March of 1988. Ms. Hartman replied she did not recall the exact effective date. Senator Lynch stated the effective date in the bill is October 1, 1987. Senator Harding stated if the effective date was January 1, 1987, it would make it retroactive and that would take care of this year. Senator Lynch stated the fiscal impact would be less if the effective date was not January 1, 1987.

DISPOSITION OF SENATE BILL NO. 34: Senator Keating made a motion to AMEND SB 34 to have an effective date of January 1, 1988. The motion CARRIED 7-1. See attached roll call vote sheet.

FURTHER DISCUSSION OF SENATE BILL NO. 34: Senator Blaylock stated the unemployment fund will be cut by \$5 million. Senator Blaylock asked how much the fiscal impact would be with the adopted amendment. Senator Harding replied the fiscal impact for 2 years will be \$5 million. Senator Blaylock asked Ms. Hartman if she agreed. Ms. Hartman stated the major difference between the two fiscal notes is the number of corporations used in the assumptions. She said in Senator Harding's fiscal note, the corporations number 5,000 and in the department's fiscal note, the corporations number 9,500. Ms. Hartman stated the department got their numbers from the Secretary of State's office and they told Senator Harding they did not have the numbers. The department pulled 700 files of corporations to find out how many corporate officers there were.

Senator Haffey stated it is frustrating to vote on this issue because the bill is trying to exempt people who now pay into the fund but have no hope of drawing benefits. However, Ms. Hartman's assumptions show that 7% of all corporate officers covered by unemployment insurance do draw some benefits. Senator Haffey asked Ms. Hartman, either these people can draw benefits or they cannot draw benefits, which is it. Ms. Hartman said they can draw benefits if they do not employ themselves any longer.

Senator Keating stated he has a personal conflict.

Senator Manning asked Ms. Hartman if the way this bill is amended, can they draw benefits if they are not paying into the fund. Ms. Hartman replied if the person filing for a claim benefit was not listed on the employers list, the department would go to the employer to try to verify employment. Once it is verified the claimant did earn the wages, the department pays the claimant.

DISPOSITION OF SENATE BILL NO. 34: Senator Galt made a motion that SB 34 AND AS AMENDED, DO PASS. The motion CARRIED 7-1. See attached roll call vote sheet.

FURTHER CONSIDERATION OF SENATE BILL NO. 136: Mr. Tom Schneider stated there are amendments for SB 136. Senator Lynch stated on the grey bill on page 7, line 13, following the word "compensation", insert "upon making application and meeting the requirements established by the board". Mr. Schneider stated this means they objected to trying to track all of these people and that would be impossible. With this amendment the burden would be put back on the people to bring the information forward. Senator Keating asked if the employee could buy his way back in the plan. Mr. Schneider replied the board would establish the contribution for the employee to buy his way back in the plan.

Mr. Schneider stated the Teachers' Retirement system deals with compensation in an entirely different manner than the Public Employees Retirement System.

Senator Lynch stated one of the proponents from the Montana Federation of Teachers inquired to make sure it would not affect the qualified status of the plan. They received a letter from the Internal Revenue lawyer in Washington, D. C. The letter states this will in no way effect the qualified status of the plan.

DISPOSITION OF SENATE BILL NO. 136: Senator Manning made a motion to adopt the amendments in the grey bill form. The motion carried unanimously. Senator Keating made a motion that SB 136 AND AS AMENDED, DO PASS. The motion CARRIED UNANIMOUSLY.

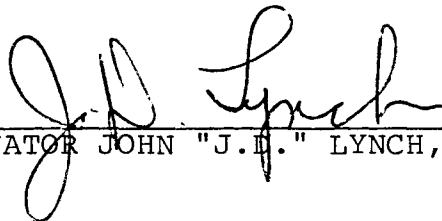
FURTHER CONSIDERATION OF SENATE BILL NO. 280: Senator Thayer asked if the committee could reconsider SB 280. Senator Lynch agreed to the request. Senator Thayer stated he did some independent checking on this matter. He does not feel Montana should be concerned about retaliatory action by other states as the other states also have this policy. Senator Lynch stated SB 280 was amended on February 12, 1987 with unanimous approval, to have a termination date of July 1, 1989.

Senator Galt asked Mr. Bob Robinson from the Workers' Compensation Division if he agrees with Senator Thayer's statement that other states will not take retaliatory action. Mr. Robinson replied Montana has extraterritorial agreements with Idaho, Wyoming, and four or five other states.

When Montana employers cross into their state, they can get a extraterritorial certificate from the Montana Department of Labor and Industry, Compliance Division, so the state of Montana can protect the employer from injuries that occur on the job. Senator Manning asked Mr. Robinson what the term 'all states endorsement' means. Mr. Robinson replied certain private insurance companies that insure, for example, a trucking company, would be provided with an all states endorsement. If the company is based in Kansas and they travel to New York, they would be covered under the New York benefits. Montana would cover employees from another state if they had accepted an extraterritorial agreement from Montana. Senator Galt asked Mr. Robinson if the Department of Labor and Industry still opposes this bill. Mr. Robinson replied the department still has a small problem with this bill because they are afraid of the repercussions between Montana and some neighboring states. The signal the legislature is sending might be of some value with dealings between other states; however, it might also cause some immediate problems.

DISPOSITION OF SENATE BILL NO. 280: Senator Thayer made a motion that SB 280 AND AS AMENDED, DO PASS. The motion CARRIED with a 7-1 vote. See attached roll call vote sheet.

ADJOURNMENT: There being no further business to come before the committee, the hearing adjourned at 2:43 p.m.



SENATOR JOHN "J.D." LYNCH, Chairman

jr

ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 17, 1987

NAME	PRESENT	ABSENT	EXCUSED
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		

Each day attach to minutes.

Feb. 17, 1927

Laurel

— (

NAME: Dennis Bacon DATE: 2-17

ADDRESS: 23 Border Lane Boreman, MT

PHONE: 587-7742

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 313

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb. 17, 1987 Bill No. 313 Time 1:50

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

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb. 17, 1987 Bill No. SB 314 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: And As Amended, Do Pass

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb. 17, 1987 Bill No. SB 314 Time 1:54

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: Amendment SB 314

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Dec. 17, 1987 Bill No. SB 103 Time 1:56 p.m.

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: Amendments with Greg Bill

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb 17 1987 Bill No. SB 103 Time 1:56 pm

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

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Amend with Explanatory Letter 11/1/83

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb. 17, 1987 Bill No. SB 103 Time 1:57

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 As Amended

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb. 11, 1987 Bill No. SB 34 Time 2:10 p.m.

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: Amendment

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Dec 17, 1987 Bill No. SB 34 Time 2:16 p.m.

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: Amend to effect. 1/1/88 - Sen. Keating

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Dec 10 1987 Bill No. SB 34 Time 2:20 p.m.

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: Amended As Do Pass

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Dec 11 1987 Bill No. SB 136 Time 2:22 p.m.

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: Amend to Stay Bill

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb. 17, 1987 Bill No. SB 136 Time 2:35 pm

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: Pass Bill As Amended

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb 17, 1987 Bill No. SP 136 Time 2:27 pm

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

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: As Amended Do Pass

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Dec 17 1987 Bill No. SB 380 Time 3:40 pm

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 As Amended

METRAPARK

FAIRTIME > ARENA > HORSE RACING

February 17, 1987

Senator Lynch, Chairman
Senate Labor and Employment Relations
Helena, Montana

Dear Senator Lynch:

I am appearing here today as the legislative committee chairman for all fairs in Montana. The purpose of S.B. 314 is simple, to save money for local fair boards of 38 counties in Montana.

The United States Department of Labor has a provision that allows facilities such as amusement parks, fairs, and carnivals that (1) do not operate more than 7 months in a calendar year and (2) generate more than 2/3 of its revenue in six months may qualify for a minimum wage and overtime pay exemption.

As is the case with Yellowstone Exhibition in Billings, it takes 18 months to receive the United States Department of Labor exemption (attached) only to find Montana law supercedes the federal regulation.

Senate Bill 314 simply allows those who qualify to receive the exemption. There are many fairs in Montana who use temporary help and find that after the 5th consecutive day of 8 hour employment, they must pay overtime or re-employ new people.

Senate Bill 314 will save fairs in Montana thousands of dollars - dollars that come from local taxpayers.

Sincerely;



Bill Chiesa
Manager

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 2/17/87

BILL NO. SB 314

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



OCT - 8 1986

Mr. Bill Chiesa
Marketing Manager
Yellowstone Exhibition/Metra
P.O. Box 1302
Billings, Montana 59103

Dear Mr. Chiesa:

This is in further response to your letter of September 4, 1985, which was forwarded to this office on January 2 by our Denver Regional Office for reply. You specifically request an opinion on the application of section 13(a)(3) of the Fair Labor Standards Act (FLSA) to employees of the Yellowstone Exhibition. We regret the delay in responding to your inquiry.

The FLSA is the Federal law of most general application concerning wages and hours of work. An employee who is covered under this law must be paid a minimum wage of not less than \$3.35 an hour and overtime pay of not less than one and one-half times his or her regular rate of pay for all hours worked in excess of 40 in a workweek, unless specifically exempt.

Section 13(a)(3) of FLSA provides a complete minimum wage and overtime pay exemption for 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.

It is our understanding that the Yellowstone Exhibition operates in one distinct physical area known as Yellowstone Exhibition/Metra. Metra is a building, which is a public facility, where such events as indoor rodeos, rock concerts, conventions, trade shows, circuses, and ice hockey and basketball games are held. The Yellowstone Exhibition operates the fairgrounds that surround the Metra building. The Yellowstone Exhibition operates such events as the annual Yellowstone County Fair, horse racing activities, and tractor-pulls. There is one general manager who oversees the operation of the Yellowstone Exhibition/Metra.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE

2/17/87

BILL NO.

SB 214

This employee's salary is paid by the Yellowstone Exhibition and Metra. The employees employed by the Yellowstone Exhibition, including those employed in horse racing activities, are paid directly by the Yellowstone Exhibition. The employees employed by Metra are paid by Yellowstone County. There is no interchange of employees between the Yellowstone Exhibition and Metra, and the Yellowstone Exhibition has a separate employer identification number.

Based on the above information it is our opinion that the Yellowstone Exhibition qualifies as a separate amusement or recreational establishment for purposes of section 13(a)(3) of FLSA. It is also our opinion that, although the employees of the Yellowstone Exhibition cannot qualify for exemption under section 13(a)(3)(A) since it is open for more than 7 months a year, it may qualify for exemption under section 13(a)(3)(B) if its average receipts in the preceding calendar year for any six months do not exceed 33 1/3 of its average receipts for the other six months of such year. For purpose of section 13(a)(3)(B), receipts are fees from admissions. A publically-operated seasonal amusement or recreational establishment whose operating costs are met wholly or primarily from tax funds would not qualify for exemption under section 13(a)(3)(B) of FLSA.

It should also be noted that central office employees and construction employees would not qualify for exemption under section 13(a)(3) of FLSA, and must be paid in accordance with its minimum wage and overtime pay requirements.

If you have any questions on this matter, please do not hesitate to let us know.

Sincerely,

S/PVS

Paula V. Smith
Administrator

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 2/17/87
BILL NO. SB 314

MONTANA LEGISLATURE
SPONSOR FISCAL NOTE WORKSHEET

AUTHORITY: Title 5, chapter 4, part 2 of the Montana Code Annotated (MCA).

TO: Ethel M. Harding
Sponsor

Completed worksheets are due in the Speaker's _____ President's ☒ office on or before _____
Note: The copy of the proposed legislation must be returned to the Speaker _____ President _____ with the completed worksheets.

This Sponsor Fiscal Note estimate and statement are requested for:

As Originally Introduced Bill
S.B. 34
H.B. _____
Second Reading (yellow) Copy
Third Reading (blue) Copy
Salmon Reference Copy
Ivory Final Reference Copy

Senate Amendments (pink)
House Amendments (green)
Other, as described Amended

1. Estimated Effect on Revenue and/or Expenditures	First Fiscal Year of Next Biennium FY -88		Second Fiscal Year of Next Biennium FY -89	
	Estimated Amount Under Current Law	Estimated Amount Under Proposed Law	Estimated Amount Under Current Law	Estimated Amount Under Proposed Law
A. Effect on Revenue by Source: (List in Detail)				
Contributions	59,200,000	54,137,500 (5,062,500)	60,250,000	55,106,500 (5,143,500)
TOTAL REVENUE	59,200,000	54,137,500 (5,062,500)	60,250,000	55,106,500 (5,143,500)
B. Effect on Expenditures by Category:				
Personal Services				
Operating Expenses				
Capital Outlay				
Local Assistance, Grants x Benefits & Claims	55,500,000	52,927,500 (2,572,500)	58,000,000	55,427,500 (2,572,500)
TOTAL EXPENDITURES	55,500,000	52,927,500 (2,572,500)	58,000,000	55,427,500 (2,572,500)
NET EFFECT (A LESS B)	3,700,000	1,210,000 (2,490,000)	2,250,000	-321,000 (2,571,000)
C. Fund Information:				
General Fund				
Earmarked Special Revenue Fund				
Fed & Private Special Revenue				
Capital Project Fund				
Proprietary Fund				
Other (describe)				

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 2/17/87

BILL NO. 56 34

SPONSOR FISCAL NOTE WORKSHEET

II. ASSUMPTIONS USED IN OBTAINING ESTIMATES:

(Please list clearly and in detail; use extra sheets if necessary.)
List assumptions made during preparation of the fiscal note. If certain costs associated with the proposed legislation can be absorbed without additional funds, indicate this as an assumption. If no dollar estimates have been presented, list reasons in this space.

1. Unemployment Insurance Contribution receipts previously projected by the Department will be \$59,200,000 in FY88 and \$60,250,000 in FY89. Unemployment Insurance Benefit payments previously projected by the Department will be \$55,500,000 in FY88 and \$58,000,000 in FY89.
2. Estimate that 5000 corporations are covered employers for Unemployment Insurance.
3. Estimate an average of 3 corporation officers' wages would be affected by the proposed law.
4. The average taxable wage base is estimated to be \$12,500 in FY88 and \$12,700 in FY89.
5. The average tax rate will be 2.7% in FY88 and 2.7% in FY89. (.1% Administrative Tax is included)
6. Estimate 7% of all corporate officers covered by Unemployment Insurance will draw some benefits each year.
7. Estimate the Average Weekly Benefit Amount to be \$175 in FY88 and \$175 in FY89, and the
8. Average Duration of unemployment to be 14 weeks.

THESE ARE ALL ASSUMPTIONS: 1,3,4,5,6 and 8 are by the Department of Labor. 2 and 7 are mine based on information received from other sources. Based upon the determination of the Department of Labor there is no available date for exact estimations.

III. DERIVATION OF ESTIMATES:

Show basic calculations or provide a brief description of the technique used to obtain estimates; also, cite sources of basic data used for projections.

	FY88	FY89
Contributions	(\$5,062,500)	(\$5,143,500)
Benefits	(2,572,500)	(2,572,500)
Net Total	(2,490,000.)	(2,571,000.)

SENATE LABOR & EMPLOYMENT
 LAB OR NO. 2
 DATE 2/17/87
 BILL NO. SB 34

MONTANA LEGISLATURE
SPONSOR FISCAL NOTE WORKSHEET

REQUEST NO. _____

IV. AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:
Provide an estimate of the local impact.

N/A

V. LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
Use this space to describe any potentially significant effects the proposed legislation might have on expenditures and/or revenues for subsequent fiscal years, give quantitative estimates whenever possible.

No apparent impact since the required funding will be reallocated among those employees eligible for benefits.

VI. TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:
Explain.

N/A

Person Who Prepared Estimates:

(Name)

(Title or Organization)

(Phone No.)

(Date)

Speaker's Office or President's Office:

Date Received 2/17/87

Date Given to Sponsor _____

SENATE LABEL & ENCL. (2)
DATE 2/17/87
BILL NO. 513 34

STANDING COMMITTEE REPORT

February 17, 1937

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration SENATE BILL No 136

(first) reading copy (white)
color

FULL BENEFITS FOR EMPLOYEES WITH HOURS REDUCED DUE TO BUDGET DEFICIT

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

1. Title, line 5.

Following: "ARE"

Insert: "TEMPORARILY"

2. Page 2, line 14.

Following: "(5)"

Strike: "An"

Insert: "A state"

Following: "reduced"

Insert: "temporarily"

3. Page 2, line 17.

Following: "employee."

Insert: "A reduction in hours resulting from a budget deficit is temporary if it ends on or before the last day of the current fiscal year."

4. Page 3, line 13.

Following: "and"

Strike: "an"

Insert: "a state"

Following: "reduced"

Insert: "temporarily"

DO PASS

DO NOT PASS

(CONTINUED)

Chairman.

February 17,

27

..... 19.....

5. Page 6, line 5.

Strike: "An"

Insert: "A state"

Following: "reduced"

Insert: "temporarily"

6. Page 6, line 8.

Following: "employee."

Insert: "A reduction in hours resulting from a budget deficit is temporary if it ends on or before the last day of the current fiscal year."

7. Page 6, lines 17 through 22.

Following: "deficit." in line 17

Strike: remainder of lines 17 through 22 in their entirety

Insert: "If a state employee's hours have been reduced temporarily as a result of a budget deficit during 1 or more of the 3 consecutive years in which he would otherwise have received his highest average annual compensation, upon making application and meeting the requirements established by the board, his final compensation or salary for purposes of determining his retirement allowance under this chapter must be calculated as if he had been a full-time employee during the entire 3-year period. A reduction in hours resulting from a budget deficit is temporary if it ends on or before the last day of the current fiscal year."

8. Page 7, line 5.

Following: "Title 19,"

Strike: "chapter 3, part 5"

Insert: "chapters 3, 4, 6, and 8"

9. Page 7, line 6.

Strike: "chapter 3"

Insert: "chapters 3, 4, 6, and 8"

10. Page 7, line 9.

Following: "employees"

Strike: "as defined in 2-18-601"

Insert: "of state government agencies"

70480/L:JEA\WP:jj

AND AS AMENDED,
DO PASS

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

STANDING COMMITTEE REPORT

February 17, 19⁶⁷

MR. PRESIDENT

We, your committee on LABOR and EMPLOYMENT RELATIONS

having had under consideration SENATE BILL No. 34

(first) reading copy (white)
EXEMPT SALARIED OFFICERS, OWNERS, AND DIRECTORS FROM UNEMPLOYMENT INSURANCE

Respectfully report as follows: That SENATE BILL No. 34

1. Title, line 5.

Following: "LAW"

Insert: "CERTAIN"

2. Title, line 6.

Following: "CORPORATIONS AND"

Insert: "CERTAIN"

3. Page 1, line 14.

Following: "corporation"

Insert: "or by an officer of a corporation owning
less than 10% of the voting stock"

5. Page 9, lines 17 through 20.

Following: line 16

Strike: subsection (a) in its entirety

Insert: "(a) service performed for a corporation
by a salaried officer or director who owns
10% or more of the voting stock of the
corporation;

DO PASS

(CONTINUED)

DO NOT PASS

Chairman.

February 17, 87
..... 19.....

(n) service performed as a salaried owner or officer of a partnership, association, or sole proprietorship if the individual performing such service owns at least a 10% interest in the assets of the firm or business."

7048r/L:JZA\WP:jj

AND AS AMENDED,
DO PASS

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

STANDING COMMITTEE REPORT

February 17, 1937

MR. PRESIDENT

LABOR AND EMPLOYMENT RELATIONS

We, your committee on.....

SENATE BILL

having had under consideration..... No. 103

(first) reading copy (white)

color

CLARIFIES METHOD FOR PAYMENT OF THE STANDARD PREVAILING RATE OF WAGES

Respectfully report as follows: That..... SENATE BILL No. 103

1. Title, line 4.

Following: "AN ACT"

Strike: "CLARIFYING"

Insert: "REVISING"

2. Title, lines 5 and 6.

Following: "WAGES" on line 5

Strike: remainder of line 5 through "ACT" on line 6.

Insert: "WHEN AN EMPLOYER IS NOT A PARTY TO A COLLECTIVE BARGAINING AGREEMENT; ELIMINATING THE REQUIREMENT TO PAY FRINGE BENEFITS AS WAGES; REPEALING SECTION 18-2-405, MCA;"

3. Page 1, line 10.

Following: "wages"

Insert: "when the employer is not a party to a collective bargaining agreement"

4. Page 1, lines 12 and 13.

Following: ", " on line 12

Strike: remainder of line 12 through "or" on line 13

Following: "or" on line 13

Insert: "an"

Following: "employer"

DO PASS

(CONTINUED)

DO NOT PASS

Chairman.

February 17, 1987

Insert: "who is not a signatory party to a collective bargaining agreement"

5. Page 1, lines 16 through 17.

Strike: subsection (b) in its entirety

Renumber: subsequent subsections

6. Page 1, line 20.

Following: "program"

Insert: ", provided that the contribution is paid irrevocably to a fund, plan, or program that has been approved by the United States department of labor, the internal revenue service, or the Montana commissioner of insurance"

7. Page 1, line 21.

Strike: "any"

Insert: "a"

8. Page 1, line 22.

Following: (1)(a)

Strike: "through (1)(c)"

Insert: "and (1)(b)"

9. Page 2, line 3.

Following: line 2

Insert: "(2) Payment of fringe benefits as provided for in subsection (1) must be on a line-by-line basis in which the amounts designated to a particular benefit may not be applied to other benefits."

10. Page 2, lines 3 through 5.

Strike: subsection (2) in its entirety

Insert: "Section 2. Repealer. Section 18-2-405, MCA, is repealed."

Renumber: subsequent sections

7048n:L:JEA\WP:jj

AND AS AMENDED,
DO PASS

Sen. John J.J.D. Lynch
Chairman

STANDING COMMITTEE REPORT

February 17,

37

19.....

MR. PRESIDENT

LABOR AND EMPLOYMENT RELATIONS

We, your committee on.....

SENATE BILL

314

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

(first) white
reading copy (color)

EXCLUDE FAIR WORKERS FROM PAYMENT OF OVERTIME COMPENSATION

SENATE BILL

314

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

1. Title, line 5.
Following: "OF"
Strike: "UNEMPLOYMENT"
Insert: "OVERTIME"

7043p/L:JEA\WP:jj

AND AS AMENDED,

DO PASS

~~XXXXXXXXXX~~
~~DO NOT PASS~~

Sen. John "J.D." Lynch

Chairman.

STANDING COMMITTEE REPORT

February 17, 19 37

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration SENATE BILL No. 313

(first) reading copy (white)
color

REVISE PROCEDURE FOR DETERMINING STATUS AS AN INDEPENDENT CONTRACTOR

SENATE BILL

313

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

DO PASS

DO NOT PASS

Sen. John "J.D." Lynch

Chairman.

STANDING COMMITTEE REPORT

February 17,

67

19.....

MR. PRESIDENT

LABOR AND EMPLOYMENT RELATIONS

We, your committee on.....

SENATE BILL

280

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

(first) reading copy (white)

OUT-OF-STATE WORKER ~~WERSER~~^{color} IN STATE SUBJECT TO MONTANA WORKERS'
COMP. LAWS

SENATE BILL

280

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

1. Title, line 7.

Following: ";

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING A TERMINATION DATE"

2. Page 2.

Following: line 22

Insert: "NEW SECTION. Section 3. Termination. This
act terminates July 1, 1989.

7048q/L:JEA\WP:jj

AND AS AMENDED,

DO PASS

~~DO NOT PASS~~

SEN. John J.J.D." Lynch

Chairman.

LAW OFFICES
OF
STEVEN H. ORAM
CHARTERED
SUITE 1440
7101 WISCONSIN AVENUE
BETHESDA, MARYLAND 20814
(301) 652-8600

STEVEN H. ORAM*
STUART H. ANOLIK

February 13, 1987

*MEMBER OF MARYLAND AND
DISTRICT OF COLUMBIA BAR

Ms. Terry Minow
Montana Federation of Teachers
810 Hialeah Court
Helena, Montana 59601

RE: Definition of Compensation for Retirement
Purposes/Montana Teachers

Dear Ms. Minow:

The undersigned serves as Special Employee Benefit Counsel to the American Federation of Teachers. In this regard, we have been requested to render an opinion concerning the treatment of a method of defining compensation for qualified retirement plan purposes other than actual dollars received by the employees.

The Internal Revenue Code of 1954, as amended and/or regulations thereunder (hereinafter referred to as, "I.R.C.") does not require that in computing compensation for retirement benefit purposes under a qualified plan, a plan sponsor utilize any specific period or methodology for measuring compensation. The I.R.C. prohibits the use of any definition of compensation which has the effect of discriminating against a grouping of highly compensated employees. It is entirely permissible to utilize a definition of compensation which has the effect of treating one group of employees different from another group of employees.

It is our understanding that due to budgetary constraints in the State of Montana, certain ~~teacher~~^{public employee} employees will be required to take leave without pay. It is possible that a ~~teacher~~^{public employee} forced to take leave without pay will have his compensation averaged for retirement plan purposes effected. As this is not the intended effect, legislation has been introduced to provide that a ~~teacher's~~^{public employee's} retirement benefit shall not be effected by this action. Defining compensation on the basis of a ~~teacher's~~^{public employee's} regular rate without the effect of the forced detriment of leave without pay would not be considered by the I.R.C. or the Internal Revenue Service as discriminatory or impermissibly selective and will not effect the qualified status of the plan.

Sincerely,

Steven H. Oram

Steven H. Oram



MONTANA STATE BUILDING & CONSTRUCTION TRADES COUNCIL

IN AFFILIATION WITH

THE NATIONAL BUILDING & CONSTRUCTION TRADES DEPARTMENT

AMERICAN FEDERATION OF LABOR — CONGRESS OF INDUSTRIAL ORGANIZATIONS

President

Don Gimbel

Secretary-Treasurer

Dan Jones

February 16, 1987

Hon. J.D. Lynch, Chairman
Senate Labor and Employment
Relations Committee
Capitol Station
Helena MT 59620

Dear Senator Lynch:

On Saturday, February 14, 1987 I presented testimony before you and your committee on SB 315 and SB 330.

My comments centered around the abuses of employers who do not pay premiums to Workers' Compensation as required by state law, especially in the construction and logging industries.

There seem to be a number of methods by which an employer can do this, but one of the most blatant is for an employer to tell their workers that they are independent contractors. When employees complain that they need and want workers' compensation coverage, they are told not to worry; that if they get hurt on the job that the employer does not have to turn in coverage reports to Workers' Compensation for up to three months, and that they will be put down as an employee if they are injured on the job.

I believe that this practice is used a great deal by non-union contractors in order to achieve a competitive edge over union contractors who the union can check for benefit coverage.

I also believe that this practice is used much more widely than is believed and that it is costing the Workers' Compensation Fund millions of dollars and forcing fair contractors to pay higher premiums as a result.

I am formally requesting that you, as Chairman of the Senate Labor and Employment Relations Committee, have the State Department of Labor investigate this practice.

page two

I am enclosing copies of the materials which I used in my testimony, and which you have requested.

If I can provide you with further information, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eugene Fenderson", followed by a horizontal line.

Eugene Fenderson
Lobbyist

EF/bcs

Enclosures

cc: Senate Labor and
Employment Relations Committee

COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY

1127 - 11th Street, Suite 550, (916) 445-2125
Sacramento 95814



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JEAN KINDY WALKER
PHILLIP D WYMAN
Assemblyman
RICHARD C MAHAN
Executive Director

NEWS RELEASE: 10:15 a.m.
August 14, 1985

SB=315

SB=330

UNDERGROUND ECONOMY STUDY REPORT RELEASED:

STATE LOSING BILLIONS; CALL FOR ACTION

ON COMMISSION'S TWENTY RECOMMENDATIONS

In a Los Angeles news conference, the State's "Little Hoover Commission" released the results of its broad-based study of State programs to control the underground economy.

Each year the State is losing billions of dollars in taxes due to the underground economy in which employers, employees, and self-employed persons pay or receive cash for work performed or goods sold without paying a single dime in income, payroll, or sales taxes. The most common industries where cash-pay occurs is the construction and garment industries; the evasion of sales tax can be found in almost every part of the retail sector.

The Commission's final report, entitled "A Review of Selected Taxing and Enforcing Agencies' Programs to Control the Underground Economy," sets forth twenty specific recommendations for improvements including reorganizing some or all taxation responsibilities into a central agency; forming a special multi-agency strike force to conduct investigations and prosecutions of blatant tax and cash-pay violations; specific steps to improve information used to identify violators;

expanded and improved enforcement techniques and penalties; and increased fines for repeat violators.

"This year California will lose more than 17 billion in revenues to the underground economy--that's nearly 20 percent of the total income taxes collected in 1984. The State, quite simply, must do more to combat this ever growing problem," stated Nathan Shapell, Chairman of the Commission.

The development of effective, practical recommendations, said Shapell, began with the appointment of a Blue Ribbon Advisory Committee represented by virtually all interested parties including the Chairman of the Assembly Committee on Labor and Employment and Senate Committee on Industrial Relations, the Administration, both labor and employer organizations, and various other experts. The Committee was chaired by Mr. Michael Kasean, a former member of the Commission and a practicing tax attorney.

Urging action on the recommendations proposed in the report, Shapell stated, "The benefits to the State from implementing our recommendations and reducing the size of the underground economy are immense--literally billions are being lost. If we can eliminate only five percent of the problem, the State could realize a \$100 million increase in its income tax revenues alone."

Assemblyman Richard Floyd (D-Hawthorne), Chairman of the Assembly Committee on Labor and Employment, commended the report's recommendations and pledged to pursue the reforms with hearings and legislative proposals for 1986.

COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY

1127 - 11th Street, Suite 550, (916) 445-2125
Sacramento 95814



Chairman
NATHAN SHAPELL

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Assemblywoman

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M. LESTER O'SHEA

JEAN KINDY WALKER

PHILLIP D. WYMAN
Assemblyman

RICHARD C. MAMAN
Executive Director

CHAIRMAN NATHAN SHAPELL'S

STATEMENT AT PRESS CONFERENCE

ON THE STATE'S PROGRAMS

TO CONTROL THE UNDERGROUND ECONOMY

August 14, 1985

Good morning ladies and gentlemen. Thank you for coming. We are here today to announce the release of the Little Hoover Commission's report on California's Underground Economy.

At this very minute, millions of dollars in business transactions are taking place across this State for which there will never be a single dime of income, sales, or payroll taxes paid to the State government. I'm not referring to criminal business such as prostitution or gambling. Rather, I am talking about the largest segment of California's Underground Economy -- the literally hundreds of thousands of daily transactions involving self-employed persons and employers and employees who pay or receive cash for work performed or for goods sold without withholding or reporting the proper income, payroll, or sales taxes.

What may seem to be a small or perhaps trivial problem to those participating, accounts for approximately \$40 billion a year in California in otherwise legal business transactions -- and it's growing.

Experts testifying at our public hearings estimated that California loses more than \$2 billion each year in income taxes alone because our taxation and enforcement system has to date been unable to catch these tax cheaters. That's almost 20 percent of the total income tax the State collected last year.

However, the effect on State government is not limited to the billions of dollars in lost income, sales, and payroll taxes. The participants in the underground economy also fraudulently file for welfare payments and use the Medi-Cal program to pay for their health care. Additionally, there are no contributions to unemployment insurance, disability, or social security although claims against these funds continue, frequently by the worker receiving his or her wages in cash. As a result, the overall price to the honest taxpayer is monumental.

The underground economy can be found in virtually any profession. But the worst cases involve the construction and garment industries where some employees are paid in cash without income or payroll taxes ever being reported.

The continuing growth of the underground economy prompted Governor Deukmejian to ask our Commission to investigate the overall problem and develop recommendations for improving the State's taxing and enforcement mechanisms. Because of the unique problems associated with this issue, our Commission appointed a Blue Ribbon Study Advisory Committee to provide valuable insights and guidance on this study. Virtually all knowledgeable parties were represented including the Chairman of the Senate Committee on Industrial Relations and Assembly Committee on Labor and Employment, the directors of the various State taxing and regulatory agencies, the U.S. Internal Revenue Service, management and employer organizations, employee and union organizations, attorneys specializing in labor and taxation, and a partner of a big-eight accounting firm. These individuals worked with our Commissioners and expert consultant to develop an extensive list of findings and recommendations for substantial improvements.

Simply put, the system to control the underground economy consists of three fundamental elements. First, government must have good information to detect the tax cheaters. Second, government must have adequate enforcement tools to take swift and strong action against participants in the underground economy and to create a major deterrent. Finally, government must have well organized and coordinated resources to maximize its attack on the underground economy, and thereby improve voluntary compliance with the tax laws.

Our study concluded that major improvements are needed in each of these areas. Although our report presents numerous detailed findings, we believe a significant number of the problems exist because of the State's fragmented organization of responsibilities in which three taxing agencies and at least two other enforcement agencies are involved at some level in combating the underground economy.

As a result, each agency operates with (i) objectives that, at times, conflict with one another; (ii) information systems which are not sufficiently coordinated; and (iii) resources that are not maximized towards the enforcement of our tax and labor laws. The end result is the State loses billions of dollars in revenues.

Because the question of organization cuts across the major elements of an effective taxation and enforcement system, our Commission presents two major recommendations for long-term and short-term resolution:

First, we recommend that the Governor and Legislature reorganize some or all State taxation responsibilities into a central agency; the level of reorganization should be based upon a detailed study by a team of experts.

Second, at least until reorganization occurs, we believe the Governor and Legislature should establish a Multi-Agency Strike Force to conduct broad investigations and audits of blatant tax and labor violations leading to the levying of the maximum civil and criminal penalties available. The results of these cases must be extensively publicized so that the word will get out -- you can no longer get away with violating tax and labor laws in California.

Before asking Mr. Michael Kassan, the Chairman of our Advisory Committee to summarize other findings and recommendations outlined in the report, let me just emphasize that the benefits to the State from implementing our recommendations and reducing the size of the underground economy are monumental -- literally billions are being lost. If only a 5 percent improvement is made, it would generate \$100 million in additional income tax alone.

Now I'd like to introduce Mr. Michael Kassan.

AMENDMENT TO SB 280

1. Title, line 7.

Following: ";

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING A TERMINATION DATE"

2. Page 2.

Following: line 22

Insert: "NEW SECTION. Section 3. Termination. This act terminates July 1, 1989.

SENATE BILL 136

Page 7, Line 13: Following "^{*Compensation*}~~COMPOSITION~~" insert: UPON MAKING
APPLICATION AND MEETING THE REQUIREMENTS ESTABLISHED BY THE
BOARD,

AMENDMENT TO SENATE BILL NO. 34

1. Title, line 5.

Following: "LAW"

Insert: "CERTAIN"

2. Title, line 6.

Following: "CORPORATIONS AND"

Insert: "CERTAIN"

3. Title, line 7.

Following: ";

Strike: "AND"

4. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

5. Page 1, line 14.

Following: "~~corporation~~"

Insert: "or by an officer of a corporation owning
less than 10% of the voting stock"

6. Page 9, lines 17 through 20.

Following: line 16

Strike: subsection (m) in its entirety

Insert: "(m) service performed for a corporation
by a salaried officer or director who owns
10% or more of the voting stock of the
corporation;

(n) service performed as a salaried owner
or officer of a partnership, association, or
sole proprietorship if the individual
performing such service owns at least a 10%
interest in the assets of the firm or
business."

7. Page 11.

Following: line 4

Insert: "NEW SECTION. Section 4. Effective date.
This act is effective January 1, 1988."

AMENDMENT TO SB 103

1. Title, line 4.
Following: "AN ACT"
Strike: "CLARIFYING"
Insert: "REVISING"
2. Title, lines 5 and 6.
Following: "WAGES" on line 5
Strike: remainder of line 5 through "ACT" on line 6.
Insert: "WHEN AN EMPLOYER IS NOT A PARTY TO A
COLLECTIVE BARGAINING AGREEMENT; ELIMINATING THE
REQUIREMENT TO PAY FRINGE BENEFITS AS WAGES; REPEALING
SECTION 18-2-405, MCA;"
3. Page 1, line 10.
Following: "wages"
Insert: "when the employer is not a party to a
collective bargaining agreement"
4. Page 1, lines 12 and 13.
Following: "," on line 12
Strike: remainder of line 12 through "or" on line 13
Following: "or" on line 13
Insert: "an"
Following: "employer"
Insert: "who is not a signatory party to a collective
bargaining agreement"
5. Page 1, lines 16 through 17.
Strike: subsection (b) in its entirety
Renumber: subsequent subsections
6. Page 1, line 20.
Following: "program"
Insert: ", provided that the contribution is paid
irrevocably to a fund, plan, or program that has been
approved by the United States department of labor, the
internal revenue service, or the Montana commissioner
of insurance"
7. Page 1, line 21.
Strike: "any"
Insert: "a"
8. Page 1, line 22.
Following: (1)(a)
Strike: "through (1)(c)"
Insert: "and (1)(b)"

9. Page 2, line 3.

Following: line 2

Insert: "(2) Payment of fringe benefits as provided for in subsection (1) must be on a line-by-line basis in which the amounts designated to a particular benefit may not be applied to other benefits."

10. Page 2, lines 3 through 5.

Strike: subsection (2) in its entirety

Insert: "Section 2. Repealer. Section 18-2-405, MCA, is repealed."

Renumber: subsequent sections