

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

February 21, 1987

The fifteenth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on February 21, 1987, at 9:30 a.m. in Room 331 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 315: Senator Haffey, Chairman of the Senate Labor and Employment Relations Subcommittee, gave a summary of the deliberations of the subcommittee. There were many involved in the deliberation process. Employers, employees, insurers, and the Workers' Compensation Division were represented. The subcommittee met Wednesday morning, Wednesday evening and Thursday evening to put together a package that hopefully would allow the state to move forward with the Workers' Compensation statute. It represents a compromise of parties from all sides of the issue. Senator Haffey stated no one from the subcommittee has had the opportunity to read through the completed bill. Senator Haffey suggested the committee might like some time to read the grey bill through before executive action is taken. Senator Haffey said he felt this package can truly work well and it represents a compromise of many parties.

Senator Thayer stated before he could make any final commitment, he would like to read the finished product; however, he suggests a final recommendation be made some time today. Senator Thayer stated this does represent a fairly good compromise and one that is worthy of consideration. Senator Lynch stated the committee would meet later today to take executive action if that is agreeable to the rest of the committee. The committee agreed to meet later this day.

Senator Haffey thanked the many people involved. He suggested it would be best if the committee met early today for executive action because the committee has a commitment to get this bill to the Senate floor. He explained to the committee that technical cross references have not yet been reviewed.

Senator Gage stated the new bill should not be compared to the old SB 315 or SB 330, because this is a new bill. Senator Haffey said Senator Gage's statement is correct, but this new bill will be labeled SB 315.

LABOR AND EMPLOYMENT RELATIONS

February 21, 1987

Page 2

FURTHER CONSIDERATION OF SENATE BILL 359: Senator Haffey stated there are amendments for SB 359, and Mr. Tom Gomez explained the amendments. Senator Haffey stated this bill is now limited to certain situations and does not adversely affect city and county governments in terms of compensation for police officers. Mr. Gomez agreed with Senator Haffey's explanation, and said it has nothing to do with that issue or the overtime compensation problem which arose at the local government level, and that was the Attorney General's original opinion. Senator Thayer asked Mr. Gomez if Congress passed a law establishing a \$2.75 minimum wage youth provision, would that mean in the state of Montana the minimum wage would be \$3.35. Mr. Gomez replied the federal law will generally always supersede the state law. The only case in which this language will change anything is where there is a large employer such as the restaurant industry. One that clearly has gross sales of \$350,000 and affected by interstate commerce and engaged by interstate trade. Those individuals under the federal law would be allowed to facilitate the \$2.25 minimum wage. In that case, Montana's law would supersede the federal law unless the congressional act was worded such as to clearly supersede any law in that area. Senator Gage asked Mr. Gomez what would happen if, after the session ends April 22, 1987, and on May 1, 1987, Congress passes a law that sets the minimum wage higher than the Montana minimum wage. Mr. Gomez replied if the federal law is higher with regard to persons covered by the federal law, they get the wage Congress has determined as being their minimum wage based on the federal law. It does not effect any other employee with regard to coverage by the state law. Senator Gage asked Mr. Gomez if Sections 39-3-402 and 39-3-404 would not apply to an employee. Mr. Gomez stated that is correct because the Montana minimum would not be higher than the federal wage.

Senator Haffey stated the language proposed for SB 359 would be an employee who is receiving \$3.35 an hour in Montana, and if the federal minimum wage goes to \$3.95 an hour, that person in Montana who is receiving \$3.35 an hour would stay at \$3.35 unless they were covered by the federal solely or superseded Montana law. Before October 1986, there were some in Montana who were receiving \$3.35 an hour minimum wage while doing jobs similar to those working for smaller restaurants who only pay \$3.05 an hour because they are not on the federal rate. Senator Haffey continued that the Montana minimum wage rate controls, and there are only limited circumstances where it would not.

Senator Thayer asked what would happen if the federal law

LABOR AND EMPLOYMENT RELATIONS

February 21, 1987

Page 3

passed a law for \$2.75 to be the minimum wage. It would seem the state of Montana could not employ people at \$2.75 per hour to take advantage of the federal program. Senator Haffey explained it works both ways, not being coupled or being coupled with the federal. There is no way to know what Congress will do in the future. Congress could raise the minimum wage or establish a new federal minimum wage law with categories. If Congress raised the minimum wage, those on the minimum wage would like to be tied to the federal law. Senator Keating asked if the amendments on page 3, line 4 will be reinstated. Mr. Gomez replied yes, the committee already acted on that amendment. Senator Keating asked Mr. Gomez if the amounts change. Mr. Gomez replied yes.

Senator Thayer stated he feels the state of Montana should be coupled with the federal law; it would eliminate confusion.

Senator Keating stated every time there has been a raise in minimum wage there has been an increase in unemployment. Senator Keating said he would not like to see the lower paid employees loose their jobs.

Senator Gage stated he was under the impression the reason for not coupling was to solve the problems of firemen. Senator Haffey stated this is being covered elsewhere in the language of the Fair Labor Standard Act. Being uncoupled establishes the state of Montana's minimum wage and it has the potential of cutting both ways. We do not know what Congress will pass or not pass in the future.

Senator Keating stated a problem with restaurants is that they can add part of the tips to the base wage of their employees, so the employer is actually only paying \$2 per hour. Senator Manning stated it bothered him that some restaurant employers use tips as part of the wage base. Senator Haffey stated his purpose for this bill was to take care of the AFLSA problem.

DISPOSITION OF SENATE BILL NO. 359: Senator Manning made a motion that the amendments be adopted. The motion carried unanimously. Senator Manning made a motion that SB 359 AND AS AMENDED, DO PASS. The motion carried unanimously.

Senator Lynch recessed the committee until 1:00 p.m. this day.

The meeting of the Labor and Employment Relations Committee was reconvened by Chairman Lynch on February 21, 1987, at 1:00 p.m. in Room 331 of the State Capitol.

LABOR AND EMPLOYMENT RELATIONS

February 21, 1987

Page 4

FURTHER CONSIDERATION OF SB 315: Senator Lynch explained there would be a new copy of SB 315 with technical changes ready for distribution at 2:30 p.m. in Room 331. Ms. Van Riper explained the amendments to the committee. In addition to technical errors, there are changes the legal staff would like to make on the clean draft. The changes are (1) Section 32, new subsection 2. A new sub section would provide as follows: the parties' failure to reach agreement is not a dispute over which, a mediator or the Workers' Compensation Court, has jurisdiction. (2) Section 56, new subsection 5, line 2 would read as follows: "mediator may issue a report and the parties and mediator may be required to attend." Senator Lynch asked Ms. VanRiper to explain what these changes will do. Ms. VanRiper stated the mediation process is supposed to be confidential, and this is an exception to the confidentiality rule to provide when a mediator makes a decision that one party did not cooperate with the mediation process. This decision can be appealed to the Workers' Compensation Court. The court can call both parties and the mediator in for a discussion whether or not it was a valid determination. Ms. Mary McCue asked interested parties to stop back for a clean copy of the bill because this is a very rough copy of the bill. The copy given out this afternoon will not have been edited or proofed, so if there are still errors, do not be concerned. Senator Lynch stated this is an unusual Labor Committee meeting so he will allow anyone who is involved to make comments. Senator Haffey made a motion that the amendments be adopted, and the motion carried unanimously.

DISCUSSION: Senator Lynch stated he is not going to support this bill, as in his opinion, there are several sections which are bad for the injured worker. Senator Lynch feels this bill will be back in two years due to law suits concerning the definition of injury. Senator Lynch complimented the subcommittee and all parties involved for the sincere effort to produce a bill. However, he does not feel the compromise is much of a change between the present law and the proposed law.

Senator Manning stated he agreed with Senator Lynch's statement and he will vote to get the bill out of committee, but is not sure he can support it 100% on the floor.

Senator Blaylock thanked all people involved in the preparation of the bill. He stated he will support the bill because he is the one who made the motion to change the cardiovascular, pulmonary and stroke language to state they are not injuries. However, he is uneasy with the fact this language could

✓ possibly jeopardize the exclusive remedy, but said this is a good compromise.

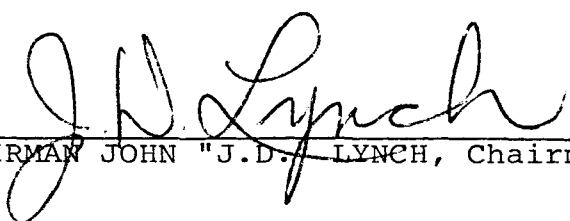
Senator Thayer feels the best way to help employees of Montana is by voting for this bill. This bill will help retain jobs in Montana and get Montana back into the competitive business field. This bill has many features that are an expansion of benefits Montana does not have at the present time. This bill does not detract from injured workers; it tries to abolish some of the abuses of the system and eliminate attorney involvement. Senator Thayer feels this is a bill all members of the Senate can support.

Senator Van Valkenburg thanked all involved in this process. He stated the contents of the law are more important than whose name is on the bill.

Senator Williams thanked the full committee and the sub-committee for their work. He urged support of this bill.

DISPOSITION OF SENATE BILL NO. 315: Senator Haffey made a motion that SB 315 AND AS AMENDED, DO PASS. Senator Haffey's motion carried 7 - 1. See attached roll call vote sheet.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 1:10 p.m.


CHAIRMAN JOHN "J.D." LYNCH, Chairman

February 21, 1987

Mr. President,

WE, YOUR COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS
HAVING HAD UNDER CONSIDERATION SENATE BILL 315, ATTACH
THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

SENATE BILL 315

A statement of intent is required for this bill because
of the following:

The division of workers' compensation needs to adopt
rules to efficiently and fairly implement the Workers'
Compensation Act. There are numerous references throughout
the act to rules, rates, procedures, and forms to be prescribed
by the division. (e.g., 39-71-208, 39-71-307, 39- 71-410,
39-71-604, 39-71-2102, 39-71-2303, and 39-71-2304) However,
there is no explicit statutory grant of rulemaking authority
in the chapter.

The Montana supreme court, in Garland v. The Anaconda
Company, 177 Mont. 240, 581 P.2d 431 (1978), tacitly recognized
39-71-203 as a general grant of rulemaking authority. To
preserve the division's rulemaking authority and extend it to
the amendments promulgated in this bill, the legislature
explicitly grants and extends rulemaking authority to the
division to implement the Workers' Compensation Act.

The division may adopt rules as necessary to implement
the act. The division shall provide the rules, procedures,
and forms specifically referred to in sections of the act
and implement other sections as necessary and appropriate by

STATEMENT OF INTENT

SENATE BILL 315

providing specific guidelines, policies, and procedures
to serve the efficient and fair administration of the act.

STATE
OF
MONTANA
ATTORNEY GENERAL
MIKE GREELY

JUSTICE BUILDING, 215 N. SANDERS, HELENA, MONTANA 59620
TELEPHONE (406) 444-2026

20 February 1987

The Honorable J. D. Lynch
Chairman
Senate Committee on Labor
and Employment
Capitol Station
Helena MT 59620

Dear Senator Lynch:

You have requested additional information concerning Senate Bill 359 and the amendments offered at the hearing on February 19, 1987.

Under the current state of the law, and as interpreted by the Attorney General in 41 Op. Att'y Gen. No. 58 (1986), an employee who is covered by and not specifically exempt from the provisions of the federal Fair Labor Standards Act is not subject to any of the provisions of the Montana Minimum Wage and Maximum Hours Act.

Under SB359 as introduced, an employee who is covered by the federal Fair Labor Standards Act would be subject to the minimum wage provisions of the Montana Act, if the Montana Act established a higher minimum wage than did the federal Act. The bill would ensure that tipped employees received the minimum wage established by Montana law.

Amendments 3 and 4 could potentially create a conflict between federal and state law, as the amended section would have state law supersede federal law in all circumstances. Federal law does allow the state to establish a higher minimum wage and/or a lower maximum work period. The Montana Act provides that hours in excess of 40 in a workweek must be compensated at one and one-half times the hourly wage. Federal law, however, allows an exception for law enforcement and fire protection employees, whereby a longer work period may be established for scheduling flexibility. Federal law also establishes a higher maximum number of hours for law enforcement and fire protection employees. Further, state and local government employees may agree to receive compensatory time at time and one-half in

The Honorable J. D. Lynch

Page 2

20 February 1987

lieu of overtime payments. Amendments 3 and 4 would have the effect of eliminating the federal exceptions for law enforcement and fire protection employees, and could affect the compensatory time exception for state and local government employees. The bill with these amendments should then have a fiscal note.

Very truly yours,

PATRICIA J. SCHAEFFER
Assistant Attorney General

cc: Senator Jack Haffey

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date February 21, 23, 1987 Bill No. SB 315 Time

<u>NAME</u>	<u>YES</u>	<u>NO</u>
John "J.D." Lynch, Chairman	X <i>J.D.</i>	
Gene Thayer, Vice Chairman	<i>GT</i>	
Richard Manning	X <i>RM</i>	
Thomas Keating	X <i>TK</i>	
Chet Blaylock	<i>CMB</i>	
Delwyn Gage	X <i>DG</i>	
Jack Haffey	X <i>J.H.</i>	
Jack Galt	<i>JG</i>	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: STATEMENT OF INTENT SB 315
DO PASS

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb 21, 1987 Bill No. SB 315 Time 1:10 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: Do Pass As Amend

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb. 21, 1987 Bill No. SB 359 Time 9:15 a.m.

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

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Do Pass As Amended

STANDING COMMITTEE REPORT

February 21

87

19.....

MR. PRESIDENT

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

having had under consideration... **SENATE BILL**..... No. **359**.....

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color

REVISE THE STATE MINIMUM WAGE LAW

SENATE BILL

359

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

1. Title, lines 4 through 6.

Following: "AN ACT"

Strike: remainder of line 4 through ", " on line 6

Insert: "TO AMEND SECTIONS 39-3-402 AND 39-3-408, MCA,"

2. Title, line 8.

Following: "ACT"

Strike: ", "

3. Title, lines 9 and 10.

Following: "; "

Strike: remainder of line 9 through "; " on line 10

Following: "PROVIDING"

Insert: "AN"

Following: "EFFECTIVE"

Strike: "DATES"

Insert: "DATE"

4. Page 2, line 22 through page 4, line 3.

Strike: Section 2 in its entirety

Renumber: subsequent sections

5. Page 4, line 5.

Following: "cumulative."

Insert: "(1)"

DO PASS

DO NOT PASS

(CONTINUED)

.....
Chairman.

February 21, 1987.....

6. Page 4, lines 9 through 10.

Following: "except"

Strike: remainder of lines 9 and 10 in their entirety

Insert: "as provided in subsection (2).

(2) Sections 39-3-402 and 39-3-404 shall apply to an employee covered by the Fair Labor Standards Act if state law provides a minimum wage that is higher than the minimum wage established under federal law."

7. Page 4, lines 11 through 14.

Strike: Section 4 in its entirety

Renumber: subsequent sections

8. Page 4, line 19 through line 1, page 5.

Strike: Sections 6 and 7 in their entirety

Insert: "NEW SECTION. Section 5. Effective date. This act is effective January 1, 1988."

AND AS AMENDED,
DO PASS

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

STANDING COMMITTEE REPORT

February 21, 1987

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration SENATE BILL No. 315

(first) reading copy (white)
color

GENERALLY REVISE WORKERS' COMPENSATION LAWS

Respectfully report as follows: That SENATE BILL No. 315

(SEE ATTACHED AMENDMENTS)

AND AS AMENDED,

DO PASS

~~DO NOT PASS~~

**STATEMENT OF INTENT
ADOPTED AND ATTACHED**

Sen. John "T. T. T."

STANDING COMMITTEE REPORT

.....February 21..... 19 87.....

MR. PRESIDENT

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

having had under consideration.....**SENATE BILL**..... No. **315**.....

(first) reading copy (white)
color

GENERALLY REVISE WORKERS' COMPENSATION LAWS

Respectfully report as follows: That.....**SENATE BILL**..... No.....**315**.....

1. Title, lines 5 through 23.

Following: "AN ACT"

Strike: lines 5 through 23 in their entirety

Insert: "TO GENERALLY REVISE THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; TO PROVIDE THAT OBTAINING BENEFITS FRAUDULENTLY CONSTITUTES THEFT; AMENDING SECTIONS 19-12-401, 39-71-116, 39-71-118, 39-71-119, 39-71-203, 39-71-204, 39-71-401, 39-71-407, 39-71-414, 39-71-502, 39-71-503, 39-71-605, 39-71-611 THROUGH 39-71-614, 39-71-701 THROUGH 39-71-704, 39-71-708, 39-71-710, 39-71-721, 39-71-736, 39-71-737, 39-71-741, 39-71-803, 39-71-1003, 39-71-2106, 39-71-2901, 39-71-2903, 39-71-2905, 39-71-2907, 39-71-2909, 39-72-102, AND 45-6-301, MCA; REPEALING SECTIONS 39-71-104, 39-71-121, 39-71-122, 39-71-410, 39-71-705 THROUGH 39-71-707, 39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002, 39-71-1005, 39-71-2906, 39-71-2908, AND 39-72-104, MCA; AND PROVIDING APPLICABILITY DATES AND EFFECTIVE DATES."

2. Pages 1 through 111.

Strike: everything following the enacting clause

(See attached.)

7054a/L:JEA\WP:jj

AND AS AMENDED,

DO PASS

~~ATTACHMENTS~~

STATEMENT OF INTENT ADOPTED
AND ATTACHED

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

.....Chairman.

ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 21, 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.