

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

March 26, 1987

The twenty-second meeting of the Labor and Employment Relations Committee was called to order by Vice Chairman Thayer on March 26, 1987, at 1:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

FURTHER CONSIDERATION OF HOUSE BILL NO. 302: Senator Manning submitted amendments for House Bill 302. Mr. Leo Barry representing Burlington Northern Railroad, has no objections with the amendments.

Mr. Jim Mular representing the Brotherhood of Railway & Airline Clerks, has no objections with the amendments.

Senator Blaylock asked Mr. Mular to explain the amendments. Mr. Mular stated it proposes the criteria of maintaining stations on short line purchases. There are 21 agencies and the purchaser would be a successor to the framework of the law on this bill. Senator Blaylock asked Mr. Mular if the southern railway route will remain the same as the Burlington Northern system. Mr. Mular replied yes, it would also be subjected to a hearing process.

DISPOSITION OF HOUSE BILL NO. 302: Senator Manning made a motion that the amendments be adopted. The motion carried unanimously. Senator Blaylock made a motion that House Bill 302 AND AS AMENDED, BE CONCURRED IN. The motion CARRIED 5-3. See attached roll call vote sheet.

FURTHER DISCUSSION OF HOUSE BILL NO. 381:

Senator Blaylock stated the salon owners who are running their place of business and paying Workers' Compensation and unemployment compensation have a point with the fact they are responsible for these payments and that they only own the building. Senator Blaylock does not feel the booth renters are independent from the person they rent from.

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Senator Blaylock feels if the cosmetologist wants to be independent, they should open their own shop.

Senator Manning asked Ms. Peg Hartman what the penalties are if someone is found breaking the law. Ms. Hartman stated they would have to pay all of the back taxes.

Senator Thayer said he is opposed to this bill because he does not see how it falls within the scope of those people allowed to be private employers. The booth renters are not truly setting their own hours and they are not truly in charge. Whoever owns the building is in control. He feels this bill will open the door to many other bills, for example, garages could start renting their booth out to mechanics. He also said the Workers' Compensation Fund is in bad shape and the more people that are exempt from Workers' Compensation, the longer it will take to make the fund solvent. Senator Thayer does not see what is to prevent any establishment from renting booths under the existing law. This bill would just be a way of not covering people for Workers' Compensation.

Senator Gage stated regardless of whether or not there is an employee/employer relationship, there could be an exemption put in the bill for an election to be exempt from Workers' Compensation. Senator Gage does not feel there is a problem with Workers' Compensation in this bill.

Senator Manning stated under this bill they would be exempt from Workers' Compensation, but they could still apply for and receive it.

Senator Gage feels this bill states if you are an employee, you can elect to be covered by Workers' Compensation or elect not to be covered, but if you are a sole proprietor, you do not qualify for Workers' Compensation coverage. He said this does not make sense.

Senator Blaylock said if they are going to be treated as independent contractors, they are an employer and therefore they are not covered by Workers' Compensation coverage and they cannot be covered by the unemployment insurance law.

Mr. Gomez stated unless the employer elects coverage for these employments, it implies the individual is an employee of the employer who is performing services as defined in the other section.

Senator Keating suggested House Bill 381 be amended on page 8, line 19, put the language back in that was taken out, and add for cosmetologist's services or barber's services, as defined in Section 39-51-204, (1) (1), MCA, and delete the language on page 8, lines 10 and 11.

DISPOSITION OF HOUSE BILL NO. 381: Senator Keating made a motion that the amendments be adopted. The motion carried 4-3. See attached roll call vote sheet. Senator Keating then made a motion that House Bill 381 AND AS AMENDED, BE CONCURRED IN. The motion CARRIED 5-3. See attached roll call vote sheet.

Vice-Chairman Thayer turned the chair over to Chairman Lynch.

DISPOSITION OF HOUSE BILL NO. 772: Senator Manning made a motion to adopt Rep. Brandewie's technical amendments. The motion carried unanimously.

FURTHER DISCUSSION OF HOUSE BILL NO. 772: Senator Galt suggested there be another amendment. On page 2, line 9, that \$25,000 be stricken and insert \$250,000. Senator Keating stated he feels there is a legitimate basis for that amount because since 1974 the school contracts average cost of all projects has been approximately \$600,000. Senator Keating feels the amount of \$25,000 is meaningless to the counties and school districts.


Senator Lynch said he opposes the amendment because having served as the Chairman of the Prevailing Wage Committee, the chief concerns of the school districts was the minor repairs, and they were pleased with \$7,500.

Senator Blaylock stated he is also opposed to the amendment.

DISPOSITION OF HOUSE BILL NO. 772: Senator Galt made a motion to amend House Bill 772 from \$25,000 threshold to a \$250,000 threshold. The motion FAILED due to a 4-4 tie. See attached roll call vote sheet.

Senator Manning made a motion that House Bill 772 AND AS AMENDED, BE CONCURRED IN. The motion CARRIED 5-3. See attached roll call vote sheet.

ADJOURNMENT: There being no further business to come before the committee, the hearing adjourned at 1:50 p.m.

  
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SENATOR JOHN "J.D." LYNCH, Chairman



ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 26, 1987 Bill No. HB 302 Time 1:15 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: Be Concurred In, And As Amended  
(Thayer)

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 26, 1987 Bill No. HR 772 Time 1:40 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: Rep. Brandegee's technical amendments

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ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 26, 1987 Bill No. HB 772 Time 1:50 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: Galt Amendments 4/4 tie

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 26, 1987 Bill No. HB 712 Time 1:55

<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	<del>*</del> X	<del>*</del>

Julie Rademacher  
Secretary

John "J.D." Lynch  
Chairman

Motion: And As Amended, Be Passed In

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ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 26, 1987 Bill No. HB 381 Time 1:15

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: Be Concurred In, And As Amended  
(Manning)

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 26, 1987 Bill No. HB 381 Time 1:40 pm

<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		
Jack Galt	X	X

Julie Rademacher  
Secretary

John "J.D." Lynch  
Chairman

Motion: Amendments

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# STANDING COMMITTEE REPORT

March 26, 1987 ..... 1937

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration HOUSE BILL No. 381

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**COSMETOLOGISTS' UNEMPLOYMENT AND WORKERS' COMPENSATION COVERAGE**

**GRADY (MANNING)**

Respectfully report as follows: That HOUSE BILL No. 381 be amended as follows:

1. Page 8, line 9.

Strike: ";"

Insert: "."

2. Page 8, lines 10 through 11.

Strike: subsection (I) in its entirety

3. Page 8, line 20.

Following: "39-51-204 (1) (1)"

Insert: ", or for cosmetologist's services or barber's services as defined in 39-51-204 (1) (1)"

**AND AS AMENDED,  
BE CONCURRED IN**

~~XXXXXX  
DO PASS~~

~~XXXXXXXXXX  
DO NOT PASS~~

Senator John "J.D." Lynch Chairman.

# STANDING COMMITTEE REPORT

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MR. PRESIDENT

## LABOR AND EMPLOYMENT RELATIONS

We, your committee on.....

### HOUSE BILL

No. 772

having had under consideration.....

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color

## REVISE PREVAILING WAGE RATE LAWS

BRANDEWIE (BROWN)

Respectfully report as follows: That.....HOUSE BILL..... No. 772.....  
be amended as follows:

1. Title, line 4.

Following: "ACT"

Insert: "GENERALLY"

2. Title, lines 7 and 8.

Following: line 6

Strike: line 7 in its entirety through "AND " on line 8

Insert: "TO MEAN EITHER THE HEAVY HIGHWAY CONSTRUCTION WAGE RATE OR THOSE WAGES PAID IN THE PREVAILING WAGE RATE DISTRICT FOR"

Following: "CHARACTER"

Strike: ""

3. Title, line 9.

Following: "SECTIONS"

Insert: "17-5-1526, 17-5-1527, 17-6-325,"

Following: "18-2-401"

Strike: "AND 18-2-402"

Insert: "THROUGH 18-2-403, AND 90-5-114"

4. Page 1, line 14.

Strike: "heavy/highway"

Insert: "heavy highway construction"

DO PASS

DO NOT PASS

CONTINUED

Chairman.

5. Page 2, line 5.  
Following: line 4  
Insert: "(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402."

6. Page 2, line 17.  
Following: line 16  
Insert: "(4) 'District' means a prevailing wage rate district established as provided in [section 1]."  
Renumber: subsequent subsections

7. Page 3, line 3.  
Following: "(5)""  
Strike: "Heavy/highway"  
Insert: "Heavy highway construction"

8. Page 3, line 6.  
Following: "for"  
Insert: "heavy highway construction"

9. Page 3, lines 9 through 13.  
Following: "wages"  
Strike: remainder of line 9 through "performed," on line 13  
Following: "" on line 13  
Insert: "or "standard prevailing wage"  
Following: "means" on line 13  
Insert: ":

(i) the heavy highway construction wage rates applicable to heavy highway construction projects; or  
(ii) "

Following: "than"  
Strike: "heavy/highway"  
Insert: "heavy highway construction"

10. Page 3, line 20.  
Following: ". "  
Strike: "The"  
Insert: "In each district, the"

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11. Page 4, lines 13 and 14.

Following: "wages"

Strike: remainder of line 13 through "performed" on line 14

Insert: "applicable to public works contracts under this part"

12. Page 4, line 19.

Following: "rates"

Strike: "for a district"

13. Page 5, line 3.

Following: line 2

Insert: "Section 4. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works -- wages -- federal exception. (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor and to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the county--or--locality district in which the work is being performed.

(3) In every contract for heavy highway construction, there must be inserted a provision to require the contractor to pay the heavy highway construction wage rates established statewide for such project.

~~(2)~~ (4) No contract may be let to any person, firm, association, or corporation refusing to execute an agreement with the above-mentioned provisions in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such

CONTINUED

a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

~~(3)~~(5) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places such obligation on the public contracting agency."

Section 5. Section 17-5-1526, MCA, is amended to read:

"17-5-1526. Procedure prior to financing projects.

(1) The board may finance projects [other than major projects] under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either \$800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401(4), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the

position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

Section 6. Section 17-5-1527, MCA, is amended to read:



\*17-5-1527. Procedure prior to financing major projects. (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either \$10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over \$1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401+4, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

Section 7. Section 17-6-325, MCA, is amended to read:

"17-6-325. Preference of Montana labor. Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401(4), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one

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person are significantly better suited for the position than the qualifications held by the other persons."

Section 8. Section 90-5-114, MCA, is amended to read:

\*90-5-114. Preference of Montana labor. Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401(4), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Renumber: subsequent sections

14. Page 5, line 7.

Following: line 6

Insert: "NEW SECTION. Section 10. Coordination instruction. If Senate Bill No. 103 and this act are both passed and approved, section 1 (c) of Senate Bill No. 103 is amended so that the language referring to "the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the county or locality in which the work is being performed" will read "the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the public works project."

Renumber: subsequent sections

AND AS AMENDED,  
BE CONCURRED IN

Senator Lynch, Chairman

# STANDING COMMITTEE REPORT

March 26, 19 87

MR. PRESIDENT

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

having had under consideration.....**HOUSE BILL**..... No. **302**.....

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**GRANTING PSC AUTHORITY TO ALLOW CLOSURE OF CERTAIN RAILROAD FACILITIES**

**BRADLEY (THAYER)**

Respectfully report as follows: That.....**HOUSE BILL**..... No. **302**.....  
**be amended as follows:**

1. Page 1, line 14.

Following: "state"

Insert: "on January 1, 1987, or a successor there to,"

**AND AS AMENDED,  
BE CONCURRED IN**

~~XXXX  
DO PASS~~

~~XXXXXXXXXX  
DO NOT PASS~~

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

Proposed amendment to House Bill 302  
Requested by Senator Manning  
Third reading, blue copy

1. Page 1, line 14.

Following: "state"

Insert: "on January 1, 1987, or a successor there to"