

MINUTES OF THE
SENATE RULES COMMITTEE

April 1, 1987

Chairman Van Valkenburg called the meeting to order at 11:00 in Room 331, State Capitol. All members were present. Also present were Senator Hager, Senator Manning, Greg Petesch, Gene Fenderson, John North and former Senator Lloyd Lockrem.

Senator Van Valkenburg stated that the purpose of the meeting was to discuss Senate Bill No. 103. Senator Hager made a motion on the floor of the Senate to move the bill to the Rules Committee for the purpose of determining whether the Governor's proposed amendments to the bill fell within the title of the bill.

Senator Hager stated that the purpose of the bill as drafted was to address how fringes were paid on jobs that have the Davis-Bacon rate of wages paid. Sen. Hager said the purpose of the bill was to address jobs that were funded with local and state money. The Governor's amendment expands that so that the employer would be required to have those funds intact for all workers, even those employed privately. Sen. Hager further stated that he had requested a brief on this from the Legislative Council, but hadn't received one yet.

Mr. Petesch, representing the Legislative Council, stated that he did not have a response ready in writing, but could answer orally. He stated that as he reviewed the amendatory veto, he still believes it to be within the title of the bill. It still doesn't require that an employer pay fringe benefits as wages. He stated that it is a germane amendment; it adds a second proviso to the language in subsection 1(B): an employer would still have the option of paying wages and fringe benefits directly in cash or could make payments to this program. The Governor has added a second criteria that the program would have to meet to be an eligible program.

Mr. Lockrem, representing the Montana Contractors' Association, stated that the bill clearly states in the title that it is revising the method of payment. He said the Governor's amendment expands it beyond that into the private sector. Lockrem cited Sec.18-2-403, MCA, which states that provision of the law applies only to state or locally funded projects. The section also states that the contracting person would have to have all the provisions of the prevailing wage, including the fringes. He stated that he feels that amendment, as a condition, goes far beyond the scope of the title.

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Mr. North, legal counsel for the Governor's office, said that this adds a condition that is applicable only to public contracts and it only puts a condition on the ability of the contractor to pay the standard prevailing rate of wages on the public contract. That means that the employer can pay the standard prevailing wage into a pension plan if he operates that for his private contracts. That makes it germane to the title in that it is a condition upon payment of standard prevailing rate of wages on public contracts only. The employer is free not to maintain that for his private contracts and then for his public contracts, at that point, subsection 1(A) kicks in and he has to pay directly to the employee in cash.

Sen. Van Valkenburg asked if anyone wished to address the committee. Seeing no one, he asked if the committee was ready to take action.

Senator Himsel said that he understood that the committee's only decision was whether it is within the scope of the bill. Sen. Van Valkenburg said that was correct. He stated that whether it was a good idea or not would be debated on second reading. The Rules Committee's concern here is whether the Governor's amendments are within the scope of the title of the bill. Sen. Himsel then stated that he would conclude that the amendments were within the title of the bill, without a doubt.

Senator Aklestad asked when the main portion of the bill was revised. Sen. Hager answered that the language was changed in the Senate Labor and Employment Relations Committee.

Senator McCallum asked if the provision concerning the Davis-Bacon Act was stricken in committee or by the Governor. Sen. Van Valkenburg answered that the Governor's amendments make no changes to the title of the bill. The Governor's other amendments do these things:

- 1). page 1, line 16, strike "a"
This is just a grammatical change.
- 2). page 2, lines 3 and 4, strike reference to the Montana Commissioner of Insurance

MOTION; Senator Blaylock moved that the Rules Committee recommend that the Governor's amendments are properly within the scope of the title of the bill. Question called. With Senator Aklestad voting no, all other members voting yes, the motion carried.

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NEXT ORDER OF BUSINESS; Senator Aklestad asked if the Committee was going to decide on the Governor's vetoes and how many times they can be brought up on to the floor. Sen. Van Valkenburg said it should be discussed. He stated that after he had made the comment on the floor the other day that a motion to override the Governor's veto could take place at any time, and could go on day after day, Senator Hager pointed out Joint Rule 6-31 on page 23. The question arises in the last sentence where it says the veto is sustained. Does that preclude further action on the veto if the Rules say that you take a vote and the veto is sustained, can you go any further that?

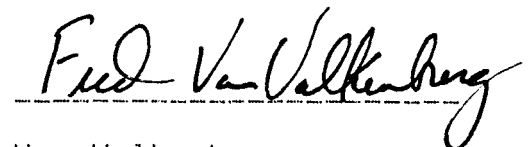
Senator Norman cited 6-8 (2), Joint Rules. It would seem that you could reject it today, then change your mind. Senator Himsl said that a veto is a legislative action. He asked if this section does not refer to that legislative action of the veto that was on 6-31. You could reconsider the veto action just as you would reconsider other action. Sen. Norman said that would finally dispose of it if the Senate overrode it and sent the bill back to the Governor.

Senator Aklestad there should be time limits, just as there is in in other legislative action. Norman said in 6-8, Joint Rules, if you don't get the 2/3 vote for the override, that doesn't permanently reject it. They can come back again. Sen. Aklestad said the only reason he brought it up was so that there was no abuse.

Senator Van Valkenburg stated that he was not comfortable dealing with that subject now. He directed Mr. Petesch to do some research to find what the precedent is on overrides of vetoes. He stated that the Rules Committee might have to meet prior to acting on any motion.

Senator Van Valkenburg stated that he would like to give Senator Manning one more chance to override the veto.

ADJOURNMENT; Senator Van Valkenburg adjourned the meeting at 11:35 a.m.



Van Valkenburg
Chairman

State of Montana
Office of the Governor
Helena, Montana 59620
406-444-3111

TED SCHWINDEN
GOVERNOR

March 26, 1987

The Honorable William J. Norman
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, MT 59620

Dear Senator Norman and Representative Marks

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return Senate Bill No. 103, "AN ACT ~~CLARIFYING~~ REVISING THE METHOD FOR PAYMENT OF THE STANDARD PREVAILING RATE OF WAGES UNDER THE PROVISIONS OF THE "LITTLE DAVIS-BAGON-ACT" 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; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE" without my signature and recommend the attached amendments for the following reasons.

Under current law, a non-union contractor is required to pay fringe benefits as wages on all public contracts. Senate Bill 103, as passed, authorizes that contractor to pay those fringe benefits as wages, or to pay them into a pension plan approved by certain federal or state agencies.

Because public contracts represent only a small portion of most contractors' work, this requirement may lead to the creation of temporary pension and benefit plans for individual public projects. My third amendment limits payment of pension and benefit contributions on public contracts to pension and benefits plans that the contractor maintains for his private contracts as well.

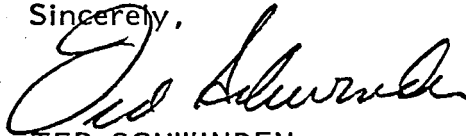
My second and third amendments remove unnecessary state duplication of federal functions by striking the provision for approval of fringe benefit plans by the State Auditor.

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My first amendment corrects a grammatical error that resulted from amendments in the bill before passage.

I urge your concurrence in this these amendments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ted Schwinden".

TED SCHWINDEN
Governor

GOVERNOR'S AMENDMENTS
TO SENATE BILL 103
(Reference Copy)

1. Page 1, line 16.
Following: "18-2-403"
Strike: "a,"
2. Page 2, line 2.
Following: "LABOR"
Strike: ", "
Insert: "or"
3. Page 2, line 3.
Following: "SERVICE"
Strike: ", OR THE MONTANA COMMISSIONER OF INSURANCE"
Insert: "and provided that the employer also makes contributions to that plan for his employees whenever he is performing a private sector contract"

STANDING COMMITTEE REPORT

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..... 19.....

MR. PRESIDENT

Senate Rules

We, your committee on.....

Senate Bill

103

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

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CLARIFIES METHOD FOR PAYMENT OF THE STANDARD PREVAILING RATE OF WAGES

103

Respectfully report as follows: That..... **Senate Bill**..... No.....

The Senate Rules Committee recommends that the Governor's amendments to Senate Bill No. 103 are properly within the subject of the bill.

XXXXXX
DO PASS

XXXXXXXXXX
DO NOT PASS

.....
Vaa Valkenburg

Chairman.