

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on February 2, 1989, at 3:20 P.M.

#### ROLL CALL

Members Present: All except as listed below.

Members Excused: Mark O'Keefe.

Members Absent: Bill Glaser.

Staff Present: Eddy McClure, Staff Attorney

Announcements/Discussion: Rep. O'Keefe is part of an emergency rescue team and he needed to be excused to tend to his duties there.

We have two bills to hear today. We will begin with Rep. Davis's bill first, HB 427.

#### HEARING ON HB 427

#### Presentation and Opening Statement by Sponsor:

ERVIN DAVIS: HB 427 is a bill proposed by the Board of Education for an act to exempt certain personnel at the Montana School for the Deaf and Blind from the law relating to leave time for state employees, amending Section 2-18-601, MCA, and providing an effective date.

Just before I walked in I received a notice of fiscal note for my signature before printing. I'll see that you get it, but those employees are gone and I can't get it today, but it will be mentioned in the testimony.

I would like to defer most or all questions to the proponents of the bill and then close later. (Written testimony submitted, attached hereto as Exhibit #1).

#### Testifying Proponents and Who They Represent:

CLAUDETTE MORTON, Executive Secretary to the Board of Public Education.

FLOYD McDOWELL, Coalition for the Deaf and Hearing Impaired.

Proponent Testimony:

CLAUDETTE MORTON, proponent. The Board of Public Education asked for this bill to be drafted and obviously supports it. In order to understand why, we need to look at some background information. First, the Montana School for the Deaf and Blind is the only state school that is governed by the Board of Public Education and it has been for a considerable length of time. For several years now the board has had a certain group of employees exempted from the state classification and pay plan under 2-18-103, MCA, because we needed them on a schedule to meet the needs of the students and the school year. The board believed that these people were not considered state employees because of the exceptions in 2-18-620, subsection (2) which in this bill is on line 18 where it says 17 and 18 on the first page except where it says "elected state, county and city officials and school teachers."

A few years ago, employees at Mountain View School brought a suit against the state saying they weren't school teachers but were, in fact, employees. The lower court, and this last year the supreme court, agreed with them that they weren't school teachers because they weren't identified in the part that defines school teachers. They said if they aren't school teachers then they must be state employees. This means several things would change for the group of people who are listed in this bill. Lines 18 through 21 on the first page, the only change in the current law, says "employees mean any person employed by an agency except academic and professional administrative personnel and live-in house parents who have entered individual contracts with the State School for the Deaf and Blind under the authority of the Board of Public Education."

Part of the problem is, basically, we have a school; for all practical purposes, it operates like a school, it runs 180 days with seven PIR days, runs the same calendar as the Great Falls school district because some of the students are mainstreamed in the Great Falls schools. We also have the fact that because it is under the Board of Public Education and funded mostly out of general fund money, it is a state agency, and that makes for some unique problems. The board is always facing the problem of trying to explain and get people to think of it as a school and not as an agency. We recognize that for practical purposes it is an agency but it is and functions like a school.

These people currently do not necessarily work an 8 to 5, 40-hour week. They have time off during MEA conventions, or during the teachers and administrative conventions; they have a longer time over the Christmas holidays. We have contracts with them for the amount of time, and all of the people have been pretty much governed by, even though not all of them are in the collective bargaining unit, they have received the same benefits that have been negotiated for them in the collective

bargaining unit, which means they have professional leave and personal leave and those kinds of things that teachers have. They have a whole different kind of time expectations. We are simply asking for language that will allow them to continue to have the same kind of working conditions they have been having and not, on the other hand, have to do the kind of time that state employees put in.

The side that is a problem to the state is that they would be accruing annual leave, which they don't now. The contracts are for a set time and that is what they are paid for. They have other leaves as options and the sick leave is at a different rate. In fact, as Rep. Davis said, it will cost the state an additional \$122,000 if these people are state employees and accrue annual and sick leave at the rate of state employees. We will have to go to our appropriations subcommittee and tell them they will need, if this bill is not passed, an additional \$122,000 a year in employee costs. When this issue came up and the lawsuit happened, the board went right away to the people and to the union representatives and asked them what they wanted to do; were they state employees or were they teachers, academic personnel. They said they were teachers, that they wanted to be school people. Then we looked at the section of law that defines school teachers. We can't define our people as school teachers because the first rule of being a school teacher in the state of Montana is that they are certifiable by the state. That doesn't sound like a problem, except the Board of Public Education certifies all teachers. We know what it takes to go through the certification process. We don't certify anybody that can't go through a higher education program here in Montana to get their certification. It is a very complicated kind of thing to come up with what a teaching certificate involves and what those endorsements on there are, which means the areas you teach. We don't have endorsements for mobility instructor, which is a person who teaches the blind how to navigate the world they can't see, because we don't have a program like that which trains anybody in Montana. We don't have special certification for a lot of the other areas. If we were to create the administrative rules to have the certification we would be doing it for one, two or three people and we would be doing a lot of different things, a lot of rules for those people. We decided that wouldn't work so we have been working since last summer on what to do about this. Finally, in consultation with lawyers from the attorney general's office and the Department of Personnel, we came up with the fact that we could, since we have used this same language to exempt these people from the pay plan and the classification of state employees, use the same language here and deal with this issue of the leaves.

I have to tell you, and I'm not proud to say this, but the board has been running in terms of contracts with people we perhaps have been a little bit more relaxed than we should have been. The contracts do not at the present time spell out

what I have told you, that is the kinds of leaves that these people get. We have looked only to the collective bargaining agreement and translated that as it applied. The superintendent is working on individual contracts which would spell out the different kinds of leaves and the different kinds of benefits and the expectations of the board for the various employees, as well as their remuneration and their benefits. We will, in addition to that, put in board policy, those general things, so that people can be assured we are not taking them off one plan and then leaving them out totally of other things.

Sandy Richey is the president of the local MFT. She has been very strong in saying this is the way we want to go; we are teachers and we want to negotiate our leaves and our benefits; we do not want to be locked in the state kind of situation because it doesn't work when you are working in a school.

This is basically a housekeeping bill, because of a court decision that did not even involve the School for the Deaf and Blind, but because the School for the Deaf and Blind fits into the same category as Mountain View and Pine Hills, the board is not the board of those, we have this problem. We would appreciate very much, because the issue may come before you again, with Mountain View and Pine Hills, if you would consider it from the perspective of the School for the Deaf and Blind and recognizing that we are making an effort to do what people want.

Since the past superintendent resigned two years ago and the board went through the whole process of hiring a new superintendent, it became aware of the fact that it had not been the kind of board that most schools have in terms of a school board. It has endeavored since that time to act much more like a school board in that it has its committee for the School for the Deaf and Blind which is four members headed by Tom Thompson. The committee goes to the school four to six times a year and meets with faculty, looks at programs and has a specific agenda with the school in terms of evaluation, supervision, policies, updates, all kinds of things. This is one of the places where we realized that our contracts were not in good shape. When we asked for this bill we realized there is some concern by people who say they have all these things now; the honest truth is, they didn't have those things, we just honored those things.

I hope that explains the reason behind this legislation. I will be glad to answer any questions. Ron Sunstad from the Department of Personnel is also here and will answer questions. I do hope this committee will support HB 427.

FLOYD McDOWELL, proponent. I am a proponent as to the basic intent and purposes; opposed as to the timing.

The organization I represent is a newly formed organization, which you may hear more about later on. For those of you who do not remember, I was formerly the superintendent for the School for the Deaf and Blind. I come today representing the group I just mentioned. We favor the bill precisely for the reasons that Claudette Morton has mentioned. Those are things that are needed and I can speak also from personal things in the past. However, there are a few people who have raised some questions with me regarding some of the provision and what they would or might lose. They perceive they could lose some benefits. I think Claudette covered that and answered those fears.

The provisions of this bill are needed in order for the board and the professional people to act in accordance and in a relationship with each other, but there are some people who are not represented by the union or by any negotiating team and those are the people who are concerned. If the board follows through as Claudette has indicated and writes appropriate contracts that will fulfill or allay the fears, then everything is fine.

We oppose the bill, but not in the basic intent or purposes. They had some fears as to the timing, etc. with regard as to coming up with contracts they could see and coming under the provisions of this bill. Otherwise, they feel it is a very good thing.

Testifying Opponents and Who They Represent:

PHIL CAMPBELL, Montana Education Association.

Opponent Testimony:

PHIL CAMPBELL, opponent. It is a little awkward for me to address this bill. First of all, because we do not represent any employees at the School for the Deaf and Blind, but we do represent teachers at Pine Hills and Mountain View. We think they are going to find themselves in a similar situation. I know there is a bill being circulated that deals with a similar topic.

We oppose the bill for several reasons. Claudette mentioned the court case that came up a couple of years ago. It specifically did deal with the Pine Hills teachers, but I think it would also cover the employees at the School for the Deaf and Blind. What was happening at the School for the Deaf and Blind that brought this suit about was that the people were not teachers. They teach, yes, but they are not classified under state law as teachers. Then they said if they were not teachers by law, then they had to be at least public employees and entitled to benefits under the statute. They said they weren't entitled to those benefits either, because under Section 2-18-620 school teachers are excluded. On one hand they denied them benefits of school teachers and

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then denied them benefits of state employees, saying that they weren't entitled. That was the law suit. It went to the supreme court and the supreme court said these people are state employees and entitled to all the benefits state employees are entitled to. They are not excluded as school teachers. They are entitled to the benefits that are laid out in the statutes.

The School for the Deaf and Blind, like Pine Hills and Mountain View, have not given these people their statutory entitlements. I am appalled that the board can stand before you and say if these people are state employees we will have to ask for more money. They are state employees. They are state employees by statute and certainly by ruling of the supreme court and they are, in my opinion, neglecting their duties if they are not asking for sufficient money to provide for the kind of statutory benefits they are entitled to under the statute.

They are state employees. They have a little different working conditions. As Claudette mentioned, at the School of the Deaf and Blind, they are not teachers because in some cases they don't get certified, they can't get certified as they have special qualifications, and we need to hire people with special qualifications. The hours they work are dependent upon the employer. If they want them to work 40 hours a week, I suppose they could have them do that. I think that is clearly a subject of negotiations. Pine Hills and Mountain View teachers work a full 40 hours, but the contract they work under, and I don't know about the School for the Deaf and Blind, says they can. Their work day is not more than 8 hours a day, so if their employer wants them to work 8 hours a day, 40 hours a week, they could do that. I submit to you also that the hours they work, or the days that they work in a year, their benefits are prorated on that basis. They don't get the full compliment of annual vacation days that state employees get if they don't work the time. They don't accrue those vacation times during the summer -- they accrue the time for the days they work.

This bill is attempting to say we don't want these people to have these benefits because it will cost us more money and money they should have already been spending. It shouldn't be an increase, but they obviously have not been giving these people the benefits.

Also, the bill is a little broader than has been painted to you, as just teachers. There are people in here who are live-in house parents. I don't know the details of all of this, maybe they are teachers, it doesn't sound like it, but certainly they are public employees and are entitled to the benefits under the statute. I strongly urge you to kill this bill.

Questions From Committee Members:

RICE: Question for Mrs. Morton. I just want to give you an opportunity to respond if you want to, to some of the things that Mr. Campbell said. Do you not believe that the employees at the School for the Deaf and Blind are in the same situation as the Mountain View and Pine Hills? Would you like to comment?

MORTON: I don't know the conditions and the situations at Mountain View and Pine Hills. I do know the situation at the School for the Deaf and Blind. It is in our collective bargaining agreement that teachers are tenured. We do have a variety of leaves that are not allowable for regular employees. In fact, it was in the discussion with those people that they said they would like to keep it this way. When Mr. Campbell said they haven't been paying their employees. They, ladies and gentlemen, are you. The board only can pay the amount of money that you give us to pay in the appropriations process. We have tried very hard to show that these people are in a unique position and will try to get additional money for them, but we think it is appropriate to get additional money for them for the time we want them to put in.

Mr. Campbell is also right in that they are not just strictly academic people, there are the live-in house parents who are on contract. There are other people who are required because of the fact that the school is a residential school, as well as a day school. For the most part, it is the administrative staff, it is the teaching staff and it is the house parents, and that is what we are talking about. They run during the school year and the only difference is the annual leave situation. They don't accrue any annual leave because they are contracted for these days of work and they then are entitled to the other kinds of leave that we have put in and they do accrue sick leave. I realize Mr. Campbell's concern that if you pass this bill it will set a precedent for the two schools that he represents. MFT, which represents the School for the Deaf and Blind, is not opposed to this bill.

I realize it looks like the traditional employer running rampant over the teachers' and employees' rights. The Board of Public Education has always been very supportive of those employees and will continue to be so. The timing is bad, I will admit that, but our concern is that if we do not bring this to you now, two years would go by, they would be thought of as state employees, we would have to have the money there, and then you would wonder why we were bringing it to you two years down the road. That is where we are, and I know it is bad timing.

DRISCOLL: Question for Phil Campbell. Are the teachers at Miles City still on the state pay plan?

CAMPBELL: Pine Hills, you mean? Yes and no. Last session the legislature appropriated ....

DRISCOLL: Did you get the money?

CAMPBELL: They still have not received the money, no.

DRISCOLL: Two years ago we appropriated extra money for the teachers at Pine Hills and the teachers never got the money?

CAMPBELL: They have not received the money thus far because they are still embroiled in collective bargaining. The state has insisted that they include provisions in their contract, provisions that are already in the statute. They want to extend their work year by the number of days of vacations and holidays without any additional pay. There is a provision in the law for state employees that says you can't get your salary until the contract has been ratified. Now the state has declared an impasse in that situation. We have challenged that before the Board of Personnel Appeals. We don't think an impasse exists there; although the contract has not been settled and they have not received their pay.

DRISCOLL: Question for Claudette Morton. Would you say that the pay plan for the academic people at the School for the Deaf and Blind is closer to the state pay plan, or is it closer to the Great Falls K through 12 teachers?

MORTON: The matrix is more like a teacher pay plan, it is a teacher pay plan rather than a state employee pay plan. People do get additional money for additional education and experience that they accrue and, in fact, they did get their raises that you voted in last session.

DRISCOLL: These individual contracts that you are currently going to be drawing up, how soon do you think you will have those, or at least a sample of them?

MORTON: It is a priority that the superintendent is working on right now, as well as the general policy which we would put in. We don't have a board meeting before March but we could act on that policy in March.

COCCHIARELLA: Question for McDowell. Can you please tell me how many MFT people work at the School for the Deaf and Blind, how many employees are under MFT?

MCDOWELL: I am not that familiar with the school any more. I do know that all of the academic teachers belong to it, as well as the interpreters. I can't give you the exact number. I was there when MFT started its chapter and the people who had supervisory capacities that were outside of the regular classroom were excluded from the MFT contract. For instance, the gentleman who is the coordinator of services with the Great Falls High School, where many children are mainstreamed.



The person who works with infants out in their homes and provides services for deaf infants in their homes. Positions like that are the ones that are included in this bill that Claudette is talking about. They were excluded from membership in the union because they were in a position of having to be a liaison between administration and with parents, etc., and it wasn't felt that it would be appropriate for them to be in the bargaining unit. That would mean that there probably are between 30 and 40 people at the school who belong to the MFT.

COCCHIARELLA: In this bill, on lines 18 and 19, it talks about academic and professional administrative personnel, live-in house parents, does that include any MFT people?

McDOWELL: No.

COCCHIARELLA: I hate to put you on the spot, and maybe you are not the person to ask this question, are you aware of people who are working now or who have worked at the School for the Deaf and Blind who have not been given benefits due them? Sick leave, annual leave, any kind of benefits like that?

McDOWELL: No, I am not aware of any.

COCCHIARELLA: Same question of Claudette Morton.

MORTON: We haven't had annual leave until the law suit for these people. We do have other people who are state employees who work year around and they have been taking their annual leave and their sick leave. So the annual leave hasn't been there. The sick leave has been an allowable accrued thing and I am not aware of anybody who hasn't been able to take that.

Closing by Sponsor:

DAVIS: This was very educational to me, since I was not aware of the situation at all. At this time I will turn it over to you for your serious consideration and I will abide by your wisdom.

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HEARING ON HB 391

Presentation and Opening Statement by Sponsor:

DRISCOLL: HB 391 extends where the money goes from the collection of penalties and interest and the over-due employers contributions to the state unemployment insurance fund.

Presently, that money is used to fund the dislocated workers program, to match federal money, and the apprentice program to match federal money. It is \$320,000 a year. It is not

changing anything, it is just making it permanent, that is where the money would go until another bill came in.

Years ago the fund was used by the division for acquiring land and buildings for the job service offices, and in Bozeman the division, I think it was about 1981, bought some land. Many legislators felt they paid too much for the land so they took that right away from them and then run this money through the general fund and into these programs to match federal money. This bill simply asks to be extended.

Testifying Proponents and Who They Represent:

CLYDE SMITH, Representative.

CHUCK HUNTER, Administrator of the Unemployment Insurance Division.

Proponent Testimony:

SMITH, proponent. I just want to be known as a proponent -- it's a good bill.

HUNTER, proponent. The bill was introduced at the request of the department, so I am here as a proponent. Also here today is Sue Mohr, who is the administrator of the Employment Policy Division. My division is responsible for the collection of these funds, so if you have questions about the collection process I can answer those. Sue might be able to answer questions as to how the funds are used after they are collected.

Testifying Opponents and Who They Represent:

None.

Questions From Committee Members:

PAVLOVICH: Does this go into the general fund or a special fund?

DRISCOLL: It is a special revenue account to fund those programs for a federal match.

RICE: Was there any reason why it was sunsetted in the first place?

DRISCOLL: Last session, as always, we had a budget crunch and there was a move to eliminate some programs and shift money around. The appropriations committee said if you can find some money we'll fund these programs, so they used this money to fund those programs to get the federal match. I don't know exactly, but it is about a million dollars we get out of the federal government for the displaced workers. I'm not sure what the apprenticeship program is; we put about \$100,000 into that and the feds match it, or more than match it, so why it only went for two years, I don't know. I guess it is like most bills when you change funding, they try it for two years to

see if it works and then if it works they don't put a sunset date on it, you have to bring in another bill to change it.

Closing by Sponsor:

DRISCOLL: I close.

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DRISCOLL: The division came to me and asked me to present to you a request for a committee bill to try to fix a problem that cropped up after a legislative audit of the administrative part of the unemployment tax. One tenth of 1% of the taxes that the employers pay on unemployment is put into an administrative fund. It was put there years ago because there was some fear that the federal government would cut back job service offices and the rural offices would be closed.

There is another law on the books that says from any of the funds like that, the interest has to go to the general fund. This money has never been used for administrative, but they put it over in this fund and at the end of the year, if they haven't used it, it goes back into the unemployment insurance fund. The auditor says that the unemployment insurance fund owes the general fund \$417,000. If that happens, the employers' taxes will stay up, or not be cut, by \$4 million to \$5 million dollars a year. The way that the triggering mechanism works in whichever schedule you're on in the unemployment tax depends upon the balance in the unemployment fund. There is a very good possibility that if the trend continues the way it is and if we don't put this \$417,000 into the general fund the employers' taxes on July 1 will be cut by over 18%. They will go from schedule 6 to schedule 4, but at least they will go from 6 to 5 and that's a rate cut for all the employers except deficit employers. The \$417,000, if it was transferred to the general fund, would only allow one step down instead of two. That would keep the employers' taxes \$4 million to \$5 million dollars higher for the whole year. So the general fund would gain \$417,000 and the employers would pay \$5 million if we don't get a bill to exempt this fund. I don't know what section of the law it is, maybe somebody from the division might know, if we don't exempt this fund from that law that says the interest in all these funds has to go to the general fund, the employers are going to have to pay \$4 million to \$5 million more in taxes in 1989.

Madam Chairman, I move that we introduce a committee bill and see if we can take care of this.

At this time Chairman Russell asked for the question on the motion.

The motion passed unanimously.

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DISPOSITION OF HB 391

Motion: Rep. Pavlovich moved to DO PASS.

Discussion: None.

Amendments, Discussion, and Votes: None

Recommendation and Vote: DO PASS.

RUSSELL: Unanimous vote that HB 391 DO PASS.

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DISPOSITION OF HB 427

Motion: Rep. McCormick made a motion to put HB 427 into a subcommittee.

Chairman Russell appointed Representatives McCormick (chairman), Rice and Cocchiarella to serve on the subcommittee.

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DISPOSITION OF HB 323

Motion: Rep. Pavlovich made a motion to TABLE HB 323.

DRISCOLL: It is my bill, there are problems with it. It was introduced at the request of the new division. I'm not going to fight them over a little bill like that.

Vote: Vote taken and resulted in unanimous decision to TABLE HB 323.

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DISPOSITION OF HB 339

Motion: Rep. Thomas made a motion to DO PASS HB 339.

Discussion:

THOMAS: This is the domiciliary care bill and in it is a limit of \$1,500, which is probably as much to be discussed as anything. I think the issue of domiciliary care is fine, the limit is what will be discussed.

SMITH: I think what we are looking at here is probably the amount of the dollars. If it becomes cheaper to put that person in an extended care unit or some form of a home than it is to have his family or wife take care of him, I think that is probably what will happen. I think there is good and bad with this. I feel the \$1,500 figure is probably a little low.

DRISCOLL: I have a problem with the wording on page 3, line 25 and the first two lines of page 4. "The services of the type normally performed by a trained attendant and beyond the scope of normal household duties." If a person is injured on the job so bad that he can't go to work, like the Larsen case, I don't know how much of that is normal household duties, but just simply watching him so he didn't get violent, is that what a trained attendant does? I think that is awfully broad. In the Larsen case if they had given the wife some money to take care of him she wouldn't have taken them to court. I don't know if \$1,500 is right or wrong, but I would like to see some language that says if a spouse has to take care of the other spouse that they get some kind of pay for it and not have to jump through all these hoops to keep their loved one at home with them instead of putting him in a nursing home.

In the Larsen case, that woman was a saint. She didn't sue them to get \$7 an hour 24 hours a day. That is what she asked for but she tried to get something before that. She could have said, "no, I'm divorcing him, put him down in Denver at \$13,000 a month," but she didn't, she kept him at home, and they wouldn't give her a dime for it, that's why she went to court. I would like to make sure, if we do anything with this bill, that the spouse can get something reasonable without jumping through a million hoops and hiring an attorney.

THOMAS: Possibly on page 3 we could delete section 2(a), the requirement that the claimant or his representative make a written demand, etc.

Eddye, Jerry's question is on (d) on page 3 and 4, "services of the type normally performed by a trained attendant beyond the scope of normal household duties." Is that too broad there, should we add or delete something to make it very clear that normal domestic ...

McCLURE: It certainly leaves it open for a lot of different interpretations because it is rather broad.

THOMAS: Could we do something with that to make sure it is clear, just as Jerry is saying, that the spouse can be paid for taking care of the individual at home.

McCLURE: I will be happy to work with you on some appropriate language.

THOMAS: I concur completely with Jerry. This is a cost saving thing. It seems to me they would save money by having them at home anyway.

KILPATRICK: Would there be any objection on page 4, line 7, to just eliminate the maximum limit of \$1,500 per month and leave it as "to the actual, reasonable and necessary charges incurred."

SMITH: I think the problem with doing that, the court ruled and that was \$60,000 or \$61,000 a year or something like that, which is \$5,000 a month, and it's hard for me to envision why anyone should be at home if it cost \$5,000 a month to take care of him. I think they belong in some kind of a treatment center. There has got to be a maximum figure on that.

THOMAS: I agree that there should be some kind of limit. In the workers' comp law we have lots of limits for what we pay doctors, etc.

At this point I would like to withdraw my motion for the purposes of continuing to work on the bill and get some language worked out with Eddy on pages 3 and 4 and maybe Tom and I could work on a limit there.

RUSSELL: You are withdrawing your motion on the DO PASS for purposes of amendment?

THOMAS: Yes.

RUSSELL: Is there any discussion on that?

WHALEN: That was a substitute motion to Rep. Pavlovich's DO NOT PASS motion, is that where we are now?

RUSSELL: Rep. Pavlovich has a DO PASS, but I do think that Rep. Thomas claimed that. So we did have a DO PASS and now he is withdrawing that.

WHALEN: I make a motion that this bill DO NOT PASS and the reason for that is the only thing contained, right now we have on the books Larsen vs. Industrial Indemnity, and the language of that decision is clear. The only thing that is in this bill that varies from Larsen vs. Industrial Indemnity, as I understand it, is it takes out the term "reasonable" in reference to domiciliary care services on page 1, line 23 and inserts a written demand requirement on page 3, line 16, which was specifically inconsistent with the court decision referenced, and on page 4 puts in a \$1,500 limit.

It is my feeling that the entire purpose of this legislation is to take the decision Larsen vs. Industrial Indemnity and to specifically legislate things contrary to what is in that decision, also to put on a limit. It is my understanding that under the Workers' Compensation Act there are provisions with regard to the division having to approve any type of medical treatment that is sought as being reasonable as is already stated in the statute. The only purpose for putting in any kind of an amount like \$1,500 is to insert something that is arbitrary rather than something that is more flexible, like the term "reasonable" that can apply on a fact situation by fact situation case. I think that is the way things ought to be done in this area because each fact situation is different.

KILPATRICK: Point of information. If we vote a DO NOT PASS now and it fails, does that automatically mean that it is a DO PASS?

RUSSELL: We go back to the original motion.

THOMAS: There is no original motion. I withdrew my motion.

RUSSELL: Actually, we don't even need a substitute motion at this point.

We have a DO NOT PASS motion by Rep. Whalen. Is there further discussion on that motion?

DRISCOLL: I personally need some clarification. I understand that the court ruled on this, but also the division has the right to approve reasonable medical bills. I don't know exactly what the court case said, but if it is \$5,000 per month for domiciliary care, and the insurance company or the state division might say "no, he can't stay at home, he's going to the nursing home because it is cheaper." I'm not sure about that, I'd like some time to investigate it because if the court ruled, is that what the court ruled, Tim, that the wife is entitled to \$5,000 in all cases in the future?

WHALEN: I haven't specifically read the decision, but my understanding, in listening to the testimony, was that is what they authorized in that case, but those determinations are made on a case by case basis, so I presume that at some point in the future the division could make a decision as to whether or not care in an institutional facility, as opposed to being at home, would be appropriate under the circumstances.

DRISCOLL: If you read the present law it says what the division has the rights to do. On page 1, line 25, "such other treatment as may be approved by the division for injuries sustained." My fear is that there is no provision for less than \$5,000 a month. The division or insurance company might say "well, we'll put him in a nursing home and he can't stay at home," and I'd like some time to investigate it. I sure don't have enough information right now. If we kill the bill and they don't have a right to put him in domiciliary care for less than \$5,000 a month, they are going to put these people in nursing homes for \$1,500 or \$1,800 a month, and that isn't good for the person who is hurt. I just would like some time to investigate it.

WHALEN: I think even if we pass this legislation, they would have the ability to state what is reasonable, as far as medical care, under the circumstances of any particular case would be an institutional setting, regardless of any provision made for reasonable domiciliary care services.

In view of the apparent need to clarify some of these things,  
I withdraw my motion.

RUSSELL: The motion has been withdrawn and we are back to square  
one.

Vote:

Vote taken and committee voted unanimously to POSTPONE  
CONSIDERATION of this bill until further notice.

RUSSELL: Rep. Thomas, you have some amendments you are going to  
work out with Eddy McClure?

THOMAS: Yes.

- - - - -

DISPOSITION OF HB 347

Subcommittee Report: Handed out proposed amendments to members.

DRISCOLL: Page 8, lines 11 and 12, section 6 of the bill,  
clarifies what the intent of last session's law was. If a  
person gets hurt they do not start claiming benefits until  
they have lost 48 hours or six days, whichever is first.  
those people working those funny shifts, four 10's, or in the  
case of the warehouse at Colstrip they work three 12's, as  
soon as they lost 48 hours they would start receiving  
benefits, or in the case where a person was only working five  
hours a day, as soon as they lost six working days. I think  
that clarifies a lot of the intent. That's the first one.

The other one that is on the back, page 21, the self-employed  
people. The new language talks about calculating benefits if  
you hold more than one job and you get hurt on one of those  
jobs. The problem I had, as it was originally drafted, is  
that on lines 13 and 18 of page 21, it says if you are self-  
employed, a sole proprietor or partner, we would insert the  
words "... who have elected not to be covered," so that if the  
person paid the premium, elected coverage and they were hurt  
they could collect. Basically that's all the amendments do.

Eddy McClure will explain the rest of the amendments.

McCLURE: The change in the title is from the added language in  
section 5, that an employer did not have to notify to  
terminate all benefits. If you look at the title it says  
"clarifying that an insurer is not required to give notice  
prior to reducing biweekly benefits." We put some new  
language in saying "for injuries occurring prior to July 1,  
1987, an insurer must give 14 days' written notice to the  
claimant before reducing benefits from total to partial." The  
fact that he is not required to give notice is misleading in  
the title, so we took that word out.



The rest of the parts of the title are just changes we made for internal structure

On page 6, line 14, we added at the end of "injury," "pursuant to rules adopted by the division." The rest of the amendments were added in from amendments we had, or were give to us.

SIMPKINS: Eddye, on your point #6 .... (did not have his microphone on and could not be understood)

McCLURE: "Whichever is less" is the language Rep. Driscoll requested, but "less than 48" or "six," "whichever occurs first, 48 hours or six days," is that the intent of Rep. Driscoll?

DRISCOLL: Yes.

SIMPKINS: Page 8, lines 11 and 12.

RUSSELL: Rep. Simpkins, you are wanting to change that language to "whichever occurs first," is that right?

(Several people discussing this all at the same time and not using microphones and none of it is distinguishable)

McCLURE: No, just six days' loss of wages.

(Again, several people talking all at once, no microphones, couldn't understand anything)

DRISCOLL: ... If you're talking 8 hour days you're right, if you are talking 10 or 12 hour days, that is not the same because the way the law is now it is "six days loss of wages." (Here he went on to explain about the shifts at the Colstrip warehouse).

If everyone worked 40 hours, Monday through Friday, all the time, six lost days would work, but because a lot of people now are working three 12-hour days for straight time, four 10's for straight time, you need to have a way to say either six days of lost wages for those people who don't work eight hours a day, or 48 hours for those who work more than eight hours a day.

(Simpkins and others discussing this, no microphones on and nothing was distinguishable)

DRISCOLL: I move the bill DO PASS.

I move the amendments DO PASS.

RUSSELL: Is there any further discussion? We have a motion on a DO PASS with amendments as provided.

Vote: Unanimous vote to DO PASS.

McCLURE: Are those the acceptance of both amendments that were welded together, the division's?

Answered "yes"

RUSSELL: Point of clarification. We voted on that bill as amended. Now, is there a problem with that, do we need to separate that out?

WHALEN: Any time there is a vote on the amendments, then you have to vote again on the bill as amended.

THOMAS: You don't need a motion to do what Tim is saying, I think you just declare that we need to revert back to the motion to amend the bill, do that, and then act on the motion to DO PASS.

RUSSELL: So at this point we revert back to the motion to amend.

Vote: Unanimous vote to DO PASS AMENDMENTS.

DRISCOLL: I move DO PASS as amended.

Vote: Unanimous vote to DO PASS HB 347 AS AMENDED.

- - - - -

HB 157

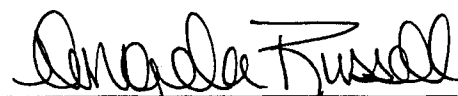
RUSSELL: We have one more bill left that we haven't taken action on and that is HB 157. Is this a bill we want to take care of today or do we want to hold that until Tuesday.

PAVLOVICH: I think we should wait until next Tuesday and it will give us a chance to look at all these amendments on HB 157. (Copy of proposed amendments attached hereto as Exhibit #2).

- - - - -

ADJOURNMENT

Adjournment At: 4:35 P.M.



REP. ANGELA RUSSELL, Chairman

AR/mo

2809.MIN

# DAILY ROLL CALL

## LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-2-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Angela Russell, Chairman	✓		
Rep. Lloyd "Mac" McCormick, VC	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Duane Compton	✓		
Rep. Jerry Driscoll	✓		
Rep. Bob Pavlovich	✓		
Rep. Bill Glaser		✓	
Rep. Tom Kilpatrick	✓		
Rep. Thomas Lee	✓		
Rep. Mark O'Keefe			✓
Rep. Jim Rice	✓		
Rep. Richard Simpkins	✓		
Rep. Clyde Smith	✓		
Rep. Carolyn Squires	✓		
Rep. Fred Thomas	✓		
Rep. Timothy Whalen	✓		

12:45 pm  
2/03/89  
ja

STANDING COMMITTEE REPORT

February 3, 1989

Page 1 of 3

Mr. Speaker: We, the committee on Labor report that House Bill 347 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_  
Angela Russell, Chairman

And, that such amendments read:

1. Title, line 12.

Following: "IS"

Strike: "NOT"

2. Title, page 2, line 1.

Following: "39-71-2304,"

Strike: "39-71-2901, 39-71-2903,"

3. Page 6, line 14.

Following: "injury"

Insert: "pursuant to rules adopted by the division"

4. Page 7, line 24.

Following: "benefits"

Insert: "or reduction to partial benefits"

5. Page 8, line 6.

Following: "division."

Insert: "For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial."

6. Page 8, lines 11 and 12.

Following: "first"

Insert: "48 hours or"

Following: "wages"

Strike: "consecutive days"

IT

12:45 pm  
2/03/89  
jw

February 3, 1989  
Page 2 of 3

Insert: "days' loss of wages, whichever is less, that"

7. Page 21, line 9.  
Following: "actual"  
Strike: "earnings"  
Insert: "wages"

8. Page 21, line 12.  
Following: "actual"  
Strike: "earnings"  
Insert: "wages"

9. Page 21, line 14.  
Following: "partner"  
Insert: "who elected not to be covered"

10. Page 21, line 17.  
Following: "actual"  
Strike: "earnings"  
Insert: "wages"

11. Page 21, line 19.  
Following: "partner"  
Insert: "who elected not to be covered"

12. Page 22, line 25.  
Following: "is"  
Strike: "entitled to"  
Insert: "claiming"

13. Page 24, line 2 through page 25, line 17.  
Strike: sections 15 and 16 in their entirety  
Renummer: subsequent sections

14. Page 25, line 23.  
Following: "[Sections 13"  
Strike: "and 15 through"  
Insert: ", 17, and"

15. Page 25, line 25.

12:45pm  
2/03/89  
ja

February 3, 1989  
Page 3 of 3

Following: "approval." on line 24

Insert: "(2) All other sections of [this act] are effective July 1, 1989."

16. Page 25, line 25.

Following: line 24

Strike: "(2)(a)"

Insert: "(3)"

17. Page 26, lines 3 through 6.

Following: line 2

Strike: subsection (b) in its entirety

12:45 pm  
2/23/89  
ja

STANDING COMMITTEE REPORT

February 3, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House  
Bill 391 (first reading copy -- white) do pass.

Signed: \_\_\_\_\_

15/  
Angela Russell, Chairman



*The Big Sky Country*

427  
EXHIBIT #1  
DATE 2-2-89  
HB 427

## MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE ERVIN DAVIS

DISTRICT 53

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CHARLO, MONTANA 59824

### TESTIMONY

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

FOR THE RECORD, I AM ERVIN DAVIS, REPRESENTATIVE FROM  
DISTRICT 53, LAKE COUNTY.

HB 427 IS A BILL FOR AN ACT TO EXEMPT CERTAIN PERSONNEL AT  
THE MONTANA SCHOOL FOR THE DEAF AND BLIND FROM THE LAW  
RELATING TO LEAVE TIME FOR STATE EMPLOYEES; AMENDING  
SECTION 2-18-601, AND PROVIDING AN EFFECTIVE DATE.

I'D LIKE TO DEFER MOST QUESTIONS TO THE PROPONENTS FOR  
THE BILL AND CLOSE LATER.

ED:BD



Amendments to House Bill No. 157  
First Reading Copy

pg 1 of 5

Requested by Montana Self-Insurer Association

Prepared by Eddye McClure  
January 30, 1989

1. Title, lines 8 through 10.  
Following: "39-71-905,"  
Strike: ", "  
Insert: "AND"  
Following: "THROUGH" on line 9  
Strike: "39-71-910, 39-71-912, AND"  
Following: "MCA"  
Strike: "; " and the remainder of line 10 through "MCA"
2. Page 1, line 13 through page 2, line 3.  
Following: line 12  
Strike: the remainder of line 13 through "unemployed." on page 2,  
line 3  
Re-number: subsequent sections
3. Page 2, lines 14 through 17  
Following: "part."  
Strike: the remainder of line 14 through "chapter 2." on line 17
4. Page 2, line 22.  
Following: "a"  
Strike: "medically certifiable permanent impairment"  
Insert: "permanent medical condition"
5. Page 2, line 23.  
Following: "obtaining"  
Insert: "the"  
Following: "employment"  
Insert: "applied for"
6. Page 2, line 24.  
Following: "employee"  
Strike: "he"  
Insert: "the person"  
Following: "unemployed,"  
Insert: "or underemployed"
7. Page 3, lines 6 through 21.  
Following: line 5

Strike: the remainder of line 6 through "condition." on line 21 2035

8. Page 3, line 24.

Following: "~~chapter -- assessment~~"

Strike: "Assessment"

Insert: "Fund to receive payment from insurer for each death  
under chapter -- assessment"

9. Page 4, line 2.

Following: "~~addition, the~~"

Strike: "The"

Insert: "In every case of the death of an employee under this  
chapter, the insurer shall pay to the fund the sum of  
\$1,000. In addition, the"

10. Page 4, line 7.

Following: "~~When~~"

Strike: "If"

Insert: "When"

11. Page 4, line 20.

Following: "Rules"

Insert: "for certification"

12. Page 4, lines 21 through 23.

Following: "rules"

Insert: "for certification of vocationally handicapped persons"

Following: "~~persons~~" on line 22

Strike: the remainder of line 22 through "part"

13. Page 5, line 1.

Following: page 4, line 25

Strike: "(1)"

14. Page 5, lines 5 through 18.

Following: "discretion,"

Insert: "meets the requirements for vocationally handicapped  
certification"

Following: "~~certification~~" on line 6

Strike: "is vocationally handicapped"

Following: "handicapped." on line 7

Insert: "An employee who is requesting reemployment may be  
certified as vocationally handicapped. An employee who is not  
employed at the time of application for certification must be  
certified as vocationally handicapped before entering new  
employment in order for the new employer to receive the benefits  
of this part."

Following: "~~part.~~" on line 12

Strike: "The" and the remainder of line 13 through "fund." on line 18

3 of 5

15. Page 5, line 22.

Following: line 21

Insert: "insurer liability for compensation limited"

Following: "~~limited.~~"

Strike: "(1)"

16. Page 6, line 1.

Following: "compensation"

Strike: "by the insurer"

17. Page 6, lines 5 through 13.

Following: "dependents."

Insert: "The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund."

Following: line 13

Strike: line 14 through "part." on line 22

18. Page 6, line 25 through page 7, line 7.

Following: "part"

Insert: "-- review by fund"

Following: "~~fund.~~"

Strike: "(1)"

Insert: "Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the insurer"

Following: "~~may be,~~"

Strike: "Within 90 days of the date of a death resulting from a work-related injury and no later than the date by which 94 weeks of benefits have been paid for any work-related injury, the insurer"

19. Page 7, lines 9 through 21.

Following: "injury."

Insert: "The fund thereafter may review, at reasonable times, such information as the insurer has regarding the accident and the nature and extent of the injury and disability."

Following: "~~disability.~~"

Strike: the remainder of line 13 through "unreasonable." on line 21

20. Page 8, lines 4 through 8.

Following: "payments" on line 4

Strike: "in accordance with this chapter"

Following: "~~shall~~"

Strike: "must"

Insert: "shall"

Following: "fund" on line 6

Insert: "for all benefits paid in excess of the insurer's  
liability"

Following: "~~liability~~"

Strike: "in accordance with this part"

21. Page 8, line 11.

Following: "~~shall~~"

Strike: "must"

Insert: "shall"

22. Page 9, line 20.

Following: line 19

Insert: "Section 12. Section 39-71-911, MCA, is amended to read:  
39-71-911. Obligation to make payments on behalf of fund  
not an independent liability. The obligation imposed by this  
part on the ~~employer, carrier, or industrial insurance fund~~  
~~insurer~~ to make payments on behalf of the fund does not  
impose an independent liability on the ~~employer, carrier, or~~  
~~industrial insurance fund insurer~~."

Renumber: subsequent sections

23. Page 9, line 24 through page 10, line 2.

Following: "~~shall~~"

Strike: "for benefits paid in accordance with the provisions of  
this chapter must"

Insert: "shall"

Following: "promptly"

Insert: "on a proper showing"

Following: "months"

Strike: "upon proof of continued eligibility for reimbursement"

24. Page 10, lines 5 through 7.

Following: "to"

Insert: "persons entitled"

Following: "~~entitled~~"

Strike: "injured employee"

Following: "~~fund~~"

Strike: "insurer becomes insolvent and"

Insert: "insurer"

25. Page 10, lines 9 through 15.

Following: "to the"

Insert: "persons entitled to the payments"

Strike: the remainder of line 10 through "repealed" on line 15

504

26. Page 10, line 21.  
Following: line 20  
Strike: "Sections 1 and 2"  
Insert: "Section 1"  
Following: "2]"  
Strike: "are"  
Insert: "is"

27. Page 10, line 24.  
Following: line 23  
Strike: "sections 1 and 2"  
Insert: "section 1"

STANDING COMMITTEE REPORT

February 5, 1988

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House  
Bill 391 (first reading copy -- white) do pass.

Signed: \_\_\_\_\_

15/  
Angela Russell, Chairman

HOUSE LABOR AND EMPLOYMENT RELATION COMMITTEE

DATE 2-2-89

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 2-2-89

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.