

## MINUTES

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

#### COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on February 7, 1989, at 3:00 P.M.

#### ROLL CALL

Members Present: All present.

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Staff Attorney.

Announcements/Discussion: We have two bills to hear today, HB 508 and 532. We will hear Rep. Bud Gould's bill, HB 532, first.

#### HEARING ON HB 532

#### Presentation and Opening Statement by Sponsor:

REP. GOULD: I bring you today HB 532. You have heard quite a bit on the floor of the house about supported employment and you have heard from all the other bills regarding supported employment, you have heard that this bill doesn't cost anything -- wrong. This bill does have just a little bit of money in it, on page three down at the bottom and it may be that we will have to send this to appropriations if this committee passes the bill.

There are people here from the Department of Institutions, SRS, Dennis Taylor head of the DD division is here. By the governor's request no agency people are able to testify as proponents or opponents to bills, but they are here to answer any questions that you have and I hope that you will ask them a lot of questions.

Supported employment is a program that will put people to work. It will take people off the rolls where they are being supported by the public to where they can be at some point tax payers. That is the ultimate goal in all of the programs we are involved in, trying to make people tax payers.

I will now turn this over to Steve Waldron.

STEVE WALDRON: The Director of the Montana Council of Mental

Health Centers. In addition to that I am also a member of the Montana Supportive Employment Demonstration Project. The Project is a five-year grant from the United States Department of Education to conduct this Montana Supportive Employment Demonstration Project and to build capacity in Montana for serving people with severe disabilities in order to get them into paid employment. The goal of the project is to insure that by 1992 60% of adult Montanans with severe disabilities are employed and retained in integrative work settings. Currently in the country between 50% and 80% of working adults with disabilities are unemployed. In Montana where 8.1% of the working-age population report one or more disabilities, 53% of adults with disabilities are unemployed. Obviously the situation for persons with severe disabilities is even worse.

The first question you might ask is what is supported employment? It is a method of assisting persons with severe disabilities to getting into paid employment. It does not pay the salaries of the persons with the disabilities. We have been able to find employers who will employ these people and the supportive appointment staff works with employers to develop jobs for persons with severe disabilities and to assist the person who is severely disabled in keeping that job, hence the term "supported employment." The support comes often times from someone who is called a job coach who works with individual disabled persons, on the job and off the job, in order to keep them employed. The Montana Supportive Employment Demonstration Project, MSED, has developed some statistics and the Voc-Rehab folks have generously put these together. I will hand them out to you. (Attached hereto as Exhibit #1). I think you will find in the start of the year of this project, this is dated from 11 months ago, we have 102 people with severe disabilities who have been placed in supportive employment and of those 102 they have gross earnings of \$121,260. That is pretty impressive considering there is considerable cost in a start-up year and we expended about \$143,000 in this first year. While it did cost a little bit more than was gained in gross earnings for these individuals, for the employment portion of it, that is going to reverse in the future. We are talking about that first year.

One of the problems that we have is with the current funding streams that are available for short term supported employment, short term assistance. The persons with the severe disabilities that we are dealing with, and we are talking about severe disabilities, let me assure you. We are talking about people who have long term ongoing disabilities, such disabilities as traumatic brain injury, developmental disabilities, severe disabling mental illness, plus other disabilities that are listed there, and often these people will have multiple disabilities. The statistics we have here represent an average of 4.3 months of employment per client and the average earnings of the

client per month was \$280, with an average wage of \$3.28 per hour. We have set up multi-agency service committees to deliver supportive employment services in nine Montana communities and they are listed at the bottom of that handout. The bill that you have before you provides the long term ongoing support once the short term intensive service to get these people into employment is completed. The longest we can possibly keep anyone in short term employment is 18 months. On the average it is much shorter than that. Consequently, in order to provide the long term ongoing support and keep these people employed, most of whom are employed in the private sector, we are going to have to have some funding streams, hence this bill.

This bill comes out of the Priorities for People Process, it is a budget building process. Several disability groups got together and developed the bill that is before you now. The bill requires that we continue to cooperate, that there is a unified supported employment services program. The long term support that is in this bill will be done through three agencies who must enter into cooperative agreements -- the Developmental Disabilities Division of the Department of SRS, the Voc-Rehab, and Visual Services Division of the Department of the SRS, and the Treatment Services Division of the Department of Institutions. They are expected to coordinate their efforts to assure that we have a smooth, efficient delivery system and efficient use of available resources.

There are a number of people here to testify who have a great deal more expertise than I have and they can fill you in on any of the gaps that I have left. I will close by saying that when I started working with supportive employment about a year and a half ago I was immediately excited by what this means to disabled people. One of the most therapeutic things you can do for a disabled person is to provide them with paid employment -- useful work. That is what supportive employment does and I hope you find considerable merit in the bill.

Testifying Proponents and Who They Represent:

CRIS VALENKATY, Lobbyist on behalf of the developmentally disabled of the state of Montana, both providers and consumers of these services.

LORRIE HEFENIEDER, Employed by MSED and based out of Job Connection, Inc. in Billings.

THOMAS M. POSEY, Montana Alliance for the Mentally Ill, the National Alliance for the Mentally Ill, and a member of the team that put together this original bill.

LINDA L. ALLRED, Mental Health Services, Inc. at Montana Home.

JOHN THORSON, Mental Health Association of Montana.

Proponent Testimony:

CRIS VALENKATY, proponent. Supported employment has been one of the most highly successful programs that we have offered in the last few years for developmentally disabled people.

When a child is born that is handicapped, expectations of that family change somewhat compared to those of us who have normal children. We hope that our kids will maybe go to college. When a handicapped child is born that family goes through a process first of acceptance and finally they get so they develop some hopes for those kids. I will tell you after working with families for six years, the highest hope that families have for that disabled child is that they will work in supported employment and become a tax paying citizen and also be able to live semi-independently. In Montana we have about 65 people graduating from special education each year and there are no slots in our current service for those people that we have just invested 22 years of technology in. This would be a natural continuum of services for those people. It is the least expensive model of service that this state can provide for adults. With no opening slots I feel that this is one of the best ways Montana can spend its money in order to provide service for the developmentally disabled.

LORRIE HEFENIEDER, proponent. Job Connection, Inc., also referred to as JCI, is probably the oldest agency in Montana providing supportive employment. This corporation came into existence in 1982 to find out if people with more severe disabilities could work if they were given more individual help. It is important to remember this history because very few people believe that the concept would be successful. JCI started working solely with people with developmental disabilities that needed an opportunity to move out of the sheltered workshops.

I would like to share the following statistics with you regarding JCI services. Currently in Billings there are 58 people working who do have severe disabilities. Their ages range from 22 to 63. Individuals working who are developmentally disabled have IQs ranging from 36 to 72. The average number of hours worked per week is 21 1/4 and the average hourly wage is \$3.45, paid by the employer. The average number of months employed is 32, which is over 2 1/2 years and the overall job retention rate is 73%. The average monthly earnings is \$324 per person. For fiscal year 1988 JCI consumers earned about \$175,450 and the total corporation expenses were about \$175,000, so there is a difference of \$450; in other words, the gross salaries made by the people that have been served is more than the operational expenses of JCI. About 40% of the clients that we have helped to provide employment have no other source of

income other than the wages they earn from their jobs. Sixty percent of the individuals served received SSI or SSDI payments but often at a reduced level because of their employment. Total wages should have generated about \$3,000 in state taxes, approximately \$6,400 in federal taxes, as well as these individuals contributing to the social security system. The majority of individuals now served were previously enrolled in day treatment or sheltered facilities where they contributed less to society, they were more dependent on governmental assistance for their daily needs and the cost to the tax payer to maintain them was significantly higher.

Employers associated with JCI generally report that their employees with disabilities maintain a positive work attitude; that they have proven to be very reliable employees; that there has actually been a decrease in the turnover rates for entry level positions, and that they appreciate the fact that if a question or problem arises that there is a job coach who can help resolve the problem. Within the last few years other provider agencies in Montana have begun to provide supported employment for people with severe disabilities and their results have been very positive as well.

This is a very exciting concept because we are looking at providing an opportunity for people to actually go into integrated work environment, to work with non-handicapped individuals, to be paid a wage commensurate with their productivity and that they have been able to develop friendships with non-handicapped people. Supportive employment is very superior compared to some traditional employment programs because we are looking at positive outcomes; we are looking at definite outcomes; we're not emphasizing a lot of prerequisite skills that are needed prior to going into employment or emphasizing prevocational skills, and I think it is very economical.

THOMAS M. POSEY, proponent. Today I testify on my own behalf. Ten years ago I was treated as having a serious mental illness. Upon release from the hospital the one thing I needed worse than anything else was a job. The reason for that was that I simply had no money. I attempted to find a job and every time I was truthful and admitted that I had been treated for a mental illness, for some reason I was unable to attain employment, even though I possessed three degrees above a bachelor's. I finally went to work in a car wash. The car wash down the street had turned me down when they found out that I had been treated for mental illness, so the next day I lied. They put me to work and I was constantly in fear that somebody would find out and when they did that would mean that I was going to lose that job. Today I don't need a job but I may tomorrow. I never know. The illness can always recur. The medicines might cease to work. With supportive employment at least I would know that

there was a place where I could work, be productive, and still have some of the protection that is needed during that very fragile time until the human spirit is capable of overcoming the stigma that the illness places upon it.

I am also a member of the board of the National Alliance for the Mentally Ill. We recently did a survey of over 4,800 consumers of mental health services and asked them were the five most necessary things in their life. No. 1 was housing; No. 2 was employment. I talked with people in hospitals, just out of hospitals constantly. I have yet to find one that has said he/she wanted to continue to live on SSI or SSD or welfare -- they want to work, but they want to work in a job at which there is some security that the nature of their illness is not going to be used against them. Also in a job where regardless of where the level of functioning they are at at that time there is going to be some kind of a safety net that would catch them in case they should fail. That's what supportive employment does -- it provides the safety net and it provides that type of job security.

The fiscal note on this bill is not that large compared to the number of people that will be returned to productive society and once again be allowed to earn their way and take care of themselves.

LINDA L. ALLRED, proponent. I am a supported employment specialist and job coach. I am here to support HB 532. I have been in supported employment for a long time. I worked on the first supportive employment program for the mentally ill in Utah and I'm proud to say it is still in existence. The people who started with me originally in the program are still working after three years, some have passed on to individual placement.

I am very much in favor of supported employment. When we first started this idea it was very difficult to convince clinical therapists that their people could leave them and go out and be employed. Clinical Therapists had a very big problem originally letting go of their clients and expecting that they could go out in the community and work because they had never done this before. What is the first thing that somebody asks you when you meet them? -- what kind of job do you do, who do you work for? That is something that none of these people with disabilities have, that identity was taken away from them and now with supportive employment we are giving that identity back to them and it is a very important identity. Probably the best example that I can give you of that is one person who I had on my crew working had a very bad crises and had to be hospitalized. He was put in the stress unit in isolation. That was at midnight. The next morning at 8:00 a.m. the only person he wanted to see was his boss, which was me, nobody else was allowed in

to see him. When I went in the only question he had was if he had lost his job. I told him no, that was what supportive employment was all about, his job was still there and he was still working, and for him to just get through this situation and come back. Within three days he was stable, he was out of the hospital and he was working. His normal hospital stay was anywhere from six months to two years. That was the difference between having a job to come back to, something there for him, something to give him an identity.

Right now up here in supportive employment we have four people working in individual placements. The extended services part is a very important thing and especially for the chronically mentally ill, for the head trauma, because for so long a period of time they are going to need the additional support when their crises situations come up or behavioral problems to retrain. It's a very important part of supportive employment to be able to follow along -- for them to know that there is somebody behind them, supporting them, helping them emotionally, physically or whatever they need, to keep going and keep that identity that they have.

Informational sheets submitted by Allred attached here as Exhibit #2.

I support HB 532 and I hope you will support it and pass it.

JOHN THORSON, proponent. We urge your support of this legislation. Our association which is a 1,500 member non-profit organization in the state feels that supportive employment is a very useful therapeutic device for many individuals. We advocate the funding of supportive employment programs, we second the remarks that have been made here this afternoon.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

RICE: For Mr. Waldron. Steve, I just carried a bill regarding support services in the House, it just passed through a reading today and I think it may be helpful for the committee since we just discussed that bill to know what the difference between that bill and this one, if you could comment. That one was a much narrower bill and maybe you could explain the differences.

WALDRON: That allowed some transfer of funds and it is very

limited. I haven't worked with that bill very much except to talk to some of the voc-rehab folks and they explained it to me and I recommend that you direct that question to Bob Yonter from the voc-rehab division. I'm sure he will be able to answer it much better than I can.

RICE: I have another question for you, Steve. On the handout that you gave to the committee, it shows the number of people who have entered employment and have been supported with the support services and I'm a little confused. If you are asking us to approve the program how come these people have already been involved in the program and where did the funding come to support these people? Could you explain that a little bit?

WALDRON: Yes. That is important to understand. The people who have been in this program are in short-term supported employment and it is intensive short-term supported employment. Once they go through that then the agencies who deal with these various disabled clients have to have some way of paying for the long-term ongoing support. That's what this bill does. I can only speak for the mental health system and there are others here who can speak for other systems, but right now I think there are about 35 we can carry on with current resources on this long-term support. Persons with a chronic illness whether it be mental illness, developmental disabilities, brain injury or whatever, often times are going to require some long-term support, several years of support, and so that is the need for this bill, to have some sort of funding mechanism so that we can keep these people in supportive employment once they go through that short term intensive phase.

RICE: Then if I could have my first question answered by whomever you referred to, Steve.

YONTER: The bill you just passed was a change in definition for extended services. We currently serve persons through an extended employment program in Montana who are severely disabled. We serve them in sheltered workshops. Your bill allowed us to change that definition so that we could serve them also in the community in integrated settings outside the sheltered workshops so we could use that resource for those clients who are currently limited to sheltered employment and convert that resource out to supportive employment, which for some people it would be a more appropriate vocational outcome than working in the workshops.

This bill addresses a population that currently isn't being served within the voc-rehab system and essentially it addresses the need for long-term support for individuals who are severely disabled and who are anticipated without time limit to require some kind of support on the job site, so there is a distinction there. One is a change in definition



and this one actually creates funding streams for people who couldn't currently participate in supportive employment because it wasn't there for them.

PAVLOVICH: Steve, you served on appropriations a long time, what do you think your chances are of getting this million dollars?

WALDRON: I suspect that they are probably going to double the amount because of their heartfelt concern for people who are disabled. Seriously, it's good public policy to put people in paid employment. The concern over the fiscal cost of this is a legitimate concern and I have no doubt that should you find this ought to be the sort of public policy that we follow in the state, the appropriations committee will scrutinize the fiscal ramifications very closely.

SIMPKINS: I guess Steve can answer the question again because I listened to the idea that we would save money on some of the programs that we have now, is that correct, or is this going to be in addition to all the programs we do have now?

WALDRON: I think some of the programs will be able to convert some resources; others it is going to be difficult to convert some resources. If the question is, will there be a net savings, I don't know. We do have some statistics on the income tax that's been generated in these gross earnings this first year and I think some of the state's money will come back through income tax earnings.

RUSSELL: Steve, can you tell me how much of this is going to be federal dollars that's over and above what we have down here from appropriations?

WALDRON: All of the money in this bill is general fund. In addition to the Montana Supportive Employment Demonstration Project, that is all federal funds -- it is a time-limited grant to build capacity. It is a five-year program. There is also some funding called Title 6(c) which are federal funds and once again that is that short-term intensive funding and then there is a little bit of federal funds called Title 110 and I don't know what all those titles mean. Once again, that can only be used for the short-term intensive supportive employment. When you get a disabled person and put them into a job initially it takes a lot of time working with that person on and off the job and it is really intensive. Once you get them stabilized on the job then there is no funding to keep them in the job and that is the problem that we face.

Closing by Sponsor:

GOULD: I would like to close by stating one thing and I don't think I have ever said to anyone else. None of us really know how long we are going to be members of the Montana

legislature. I was elected in 1974 and before the session started in 1975 I went to Boulder and at that time there were close to 900 people, patients at Boulder. There were 450 FTEs, the average salary at that time for an FTE in Boulder was approximately \$225 per month. The people were tied into beds, tied into wheelchairs. They sat all day in their own defecation, urine; there were incidents of rape; incidents where if people wouldn't eat their food, attendants might shove a spoon down their throat. I can see those things with two glass eyes just as clearly as any one of you people can see them simply by the sounds, the smell and the description made to me. Today there are less than 200 people at Boulder. We have approximately the same number of FTEs. They are all well paid, dedicated people who enjoy their jobs and who enjoy working on a one-to-one basis with the patients at Boulder.

Now, what has happened to the other people is the amazing part of the story and the rest of the story. That is, it's just like if any of you people have a plant at home that is in a very small pot, you probably have a very small plant. If you take that plant out of that little small pot, replant it in a large plan with good dirt, good fertilizer, sun and water you have a large plant instead of a small plant. That's what has happened with the DD program in Montana and deinstitutionalization. Who knows if this will be any of our last sessions in the legislature, but if it happens to be mine and I'm asked what is the thing I am the proudest of that has taken place in the state of Montana since I have been in the legislature, it would be the change in the situation at Boulder, deinstitutionalization, what we have done for the mentally retarded. This bill is another tool in that program. I hope you will see fit to continue what we are doing. It all costs money and it has cost us a great deal of money to change the way that Boulder used to be and it's going to cost a great deal more money in the future in order to take care of these people who, through no fault of their own, have the problems that they do.

RUSSELL: This closes the hearing on HB 532.

- - - - -

#### HEARING ON HB 508

#### Presentation and Opening Statement by Sponsor:

REP. DARKO: HB 508 deals with a situation that exists currently in our law and I am going to explain why this bill is here. It is here to deal with the problems that we have encountered in our county and I will stress that I don't think the problem would be there if it were not for I 105

but I will go ahead and explain it and this legislation is the result of the only way we could figure to deal with the problem that exists.

Currently the employers have the right to terminate employment of a person who has filed a work comp claim. They do have preference for rehire within two years after they are laid off if an opening exists. What I am trying to do is say that an employee cannot be terminated for filing a work comp claim. In our county we have three deputy sheriffs who are about to be fired from their jobs because they have filed work comp claims. I will give you specific instances of two of the situations, I don't know what the third one was as I just recently heard about it. In one instance an officer was making an arrest of a DUI. He was out of his car, he was parked at the side of the road. The person he was arresting became uncontrollable, he tried to restrain him and he was injured. His injury took him off work. The doctor gave him a release to go back to work but it is a chronic problem and he will have to have surgery in order to keep on his job because it is an aggravating injury. The sheriff there said if he took time off he would fire him.

The other instance is of an officer who was called out to one of the schools. There was a suspicious character out there. He went out to investigate. He detained the man and called into the sheriff's office to get a report about the man he was holding. The man was a child molester, he had a record. The man ran off, the officer went after him and was injured. He is now off work and needs extensive surgery and the sheriff told him he would fire him if he took the time off to have the surgery. I recently called home and found out there is another officer that this happened to.

I feel that this is a result of I 105. The sheriff doesn't have the money to keep them on but just because they perform a job and it's required of their job that they take risks, they shouldn't be fired. This problem exists. This bill is here to deal with it. In our sheriff's department right now the deputies are ready to walk. We have a real bad tinder box situation up there. I don't think it is fair. I was not aware that the situation existed but it does. They have talked with their association; they have talked with their legal counsel. Their contention is that they aren't going to do anything to take risks in their job. They aren't going to go to bars; they aren't going to family disputes, because if they are injured they can be fired from their job. Many of the people in law enforcement are in there for their career. One of the officers has 18 years in law enforcement. He has a family. It isn't fair for a person who has made a career of law enforcement, such as this person has, to be under the gun like this.

I know there is going to be a lot of opposition to his bill.

But it is not fair for those people who take risks in their job for the good of the public to be able to be fired for performing their job and they are injured.

Testifying Proponents and Who they Represent:

JIM MURRY, Executive Secretary of the Montana State AFL-CIO.

JERRY DRISCOLL, Representative, House District 92, Billings.

MIKE SHERWOOD, Legislative Counsel to the Montana Trial Lawyers Association.

BOB HEISER, Lobbyist for the United Food and Commercial Workers.

NADIEAN JENSEN, Executive Director of the Montana State Council No. 9, American Federation of the State and County Employees.

Proponent Testimony:

JIM MURRY, proponent. Read from written testimony, attached hereto as Exhibit #3.

JERRY DRISCOLL, proponent. HB 508 is probably one of the few bills in this session which will actually save the workers' compensation division money. Under the present system you are under the thumb of a doctor when you can return to work and what the benefits will be after you return to work. He releases you for "light duty" is normally what he does to try to beat the system. Under this bill if he gives you a medical release to return to work and you refuse to return to work, then you would lose any preference going back to that job, you would also lose the medical payments that the employer would be making for you, and under other sections of law you would lose your benefits because you refused suitable work. Now the opponents are going to tell you how much it is going to cost you, how much it is going to cost the businesses to provide these benefits. Why we have \$157 million deficit is because the doctors keep these people on a program too long because their incentive is to keep treating them so they keep their money flowing in from the system.

Senate Bill 315 from last session cut benefits to injured workers. That's all it did. It didn't touch anybody else in the system. At that time the system was paying injured workers about 45% of the total dollars taken in, the rest was going to all other providers. SB 315 lowered the 45% and the worker got nothing. All we are asking in this bill is that the worker gets his job back. The incentive then for the employer to reemploy that person and get them off the system is great. The employer then may go to the doctor and say either fix it or give me a determination that he can never return to work and quit milking the system and blaming

the injured worker.

MIKE SHERWOOD, proponent. For those of you who are concerned about SB 315 and its effectiveness about lawyers, I will be here representing injured victims and my constituents that do so but I don't want you to think that the efforts to eliminate lawyers from the system were not effective. Most of the people who were representing people before July 1, 1987 are no longer doing so. I am here because of a commitment on behalf of my constituency to continue to represent injured workers and we support this bill for the reasons set forth by the other proponents.

BOB HEISER, proponent. We come in support of this bill. We feel that this bill is very good legislation. It enables the injured employee to have some hope of being able to return to their former job once they have been injured on that job while working for the employer. These individuals did not go out there and purposely get injured so they could sit at home or things of that nature. They were out there working for the employer and we feel the employer owes that employee some type of obligation and that obligation would be the right to return to their former employment when they are released by their doctor to return to work.

NADIEAN JENSEN, proponent. I rise in support of HB 508. I have members who I represent who are coerced by their employer because they have been injured on the job and they wish to file for workers' comp, they have been advised if they do so then the employer will go out to prove that they are trying to defraud the system. I think there needs to be some protection for the workers and this is a very good bill and I would ask you to support HB 508.

Testifying Opponents and Who They Represent:

JIM TUTWILER, Public Affairs Manager for the Montana Chamber of Commerce.

LAURIE EKANGER, Administrator of the State Personnel Division, Montana Department of Administration.

MIKE MICONE, Commissioner of the Department of Labor and Industry.

BARRY L. HJORT, US West Communications.

JIM VAN ARSDALE, Mayor, City of Billings.

KAY FOSTER, Billings Chamber of Commerce.

LAURIE SHADOAN, Bozeman Chamber of Commerce.

SHELLY LAINE, City of Helena.

DON ALLEN, Executive Director, Montana Wood Products Association.

TOM HERZIG, Montana Chapter of the National Electrical Contractors Association.

GEORGE WOOD, Montana Self Insurers Association.

Opponent Testimony:

JIM TUTWILER, opponent. Read written testimony, attached hereto as Exhibit #4.

LAURIE EKANGER, opponent. The Administration opposes this bill as well, for the reasons laid out by the previous opponent. It clearly outlines a lifetime reinstatement right to the exact position; it doesn't allow the employer the flexibility to try to make accommodations and it doesn't put any kind of time limit at all. The other concern to us is the language on page 2, lines starting on 18, that seem to offer lifetime health coverage as well by the employer. Another problem that this would pose to an employer is that with the combination of being covered under the employer's plan, as well as having a lifetime reinstatement ride, would make this individual forever more a primary health care responsibility of the employer because Medicare has recently come out with regulations that employees who have a reinstatement right are no longer primary under Medicare but would be primary under the employee. The combination of all of these things creates a real unworkable burden for an employer the way it is presently written and we urge you do not support it.

Written testimony also submitted and attached hereto as Exhibit #5.

MIKE MICONE, opponent. We oppose HB 508. We believe that SB 315 which was passed two years ago provides a provision for injured workers to allow them to return to work and although they would not be guaranteed the exact job they had at the time of the injury, if a position was open they certainly had preference for that particular job. I certainly think that SB 315 which has been in effect now for less than two years should be given the opportunity to function and work and we believe it has been working.

The provision dealing with insurance, although it does not directly effect our department, I can say our department is certainly concerned about the business climate and the economic future of the state. This clearly is going to send a signal to those who wish to locate in the state of Montana; a signal that is bad business. Any time an employer is mandated to provide benefits over and beyond what is normally attributable to employees, sends a signal that they are not going to be coming into the state. I can

certainly sympathize with the problem that Rep. Darko has with the problem in her district, but she has stated that she has introduced this bill as a result of I 105 which was passed. If there is a problem with the sheriff and deputies I certainly believe that is not a problem with the system, but is a problem of personalities and that should certainly be worked out in that local area.

This bill is not going to be an incentive to get employees back to work, but we believe a disincentive. We hope that the committee will look for other means to assist Rep. Darko in resolving her problem, but I don't believe HB 508 is the mechanism.

BARRY L. HJORT, opponent. We appear in opposition to HB 508. Essentially I appear today as an opponent; although, I confess, when I read this bill I wasn't exactly certain what Rep. Darko was attempting to achieve and after hearing her explanation I am still somewhat in the dark. It seems to me that the problem with the deputies in the constituent area where she provides representation is one of possible loss of jobs because those deputies have filed or are in the process of filing workers' comp claims, they do have adequate remedies under existing law in two respects. First of all it is clearly illegal in Montana at the present time under existing law for an employer to terminate an employee for filing a claim for workers' compensation. I think everyone here would agree and accept that as a true proposition. If the problem goes beyond that with the deputies and what we have is a situation where they are acting under an existing disability or they are operating under certain medical restrictions, it seems to me that they have additional adequate legal remedies available to them. They may well qualify for handicapped status under our handicapped laws, if that is the case. The sheriff is certainly at his own peril taking threatening action to terminate their employment because there well may be claims on their behalf under that act.

Nonetheless, given the specifics of this particular bill, I would echo the concerns that Mr. Micone indicated to you. I would indicate that as far as the employer that I represent is concerned, this bill would wreak havoc with our collective bargaining contracts and let me tell you why. Under our collective bargaining contracts as they exist now, if an employee is injured working for US West Communications that employee has the opportunity upon being released to return to work to his or her old job. If the limitations or medical restrictions are such that the employee can't qualify to do that old job, our bargaining contracts require that an alternative job be provided to that employee given the limitations and medical restrictions. As I understand this bill, as drafted, it would require the return of the employee to his or her former job, period, and in many cases it is simply not a practical sort of solution. Let me give

you an example: a lineman who has to do a certain amount of lifting, climbing poles or be in a position where he or she is responsible for a lot of activity, has a back injury and has medical restrictions. They are not able to do that. They can't return to their old job and do the job that has to be performed, so under our bargaining contract they would be provided and alternative job. This bill would prevent that.

I am also uncertain about what is required here in terms of health insurance. A number of lawyers with whom I have spoken have read this and nobody reads it in the same fashion, so at a minimum it seems that the language does need to be cleaned up.

JIM VAN ARSDALE, opponent. I speak against HB 508 for very simple reasons. (1) The old law gives more than adequate protection, (2) if an injury to an employee leaves the city shorthanded, as long as we keep the job open, and in my judgment a two year grace period is sufficient and should not be extended for life or an undetermined length of time. We have compassion for our employees. It takes a long time to train these employees. We do not want to see the employee leave the employment of the city, if at all possible we can see that he/she is going to be healed of his injury or what have you, but to keep that job open for a long period of time we definitely think it is unreasonable and uneconomical for city government as well as private industry.

I encourage you to do not pass HB 508.

KAY FOSTER, opponent. I agree with all of the comments made so far speaking against this bill. We do have the feeling that Rep. Darko has a problem in her area but we do not feel that the changes made to this law will in any way address the problems which she has presented to us. As Rep. Driscoll has said, perhaps one of the reasons for the \$157 million deficit in the system is that the doctors keep people from returning to work. Asking that there be an indefinite period of time that a job must be kept for a worker it seems to me it works just contrary to what he is trying to achieve, so we hope that you will vote against HB 508.

LAURIE SHADOAN, opponent. We also are against HB 508 for the same reasons that Jim Tutwiler already told you and to make sure that we are not sending out a further small business message. I would hope that we would address the real problem and I believe that the real problem is what I 105 has done. Not taking away what I 105 has done but addressing that problem and reducing property taxes.

SHELLY LAINE, opponent. The city of Helena opposes HB 508. The city is particularly concerned about the changes made in subsection 2. The city firmly believes in the statute as it



is now written, that is giving the healed worker preference for a comparable position that becomes vacant. However, to demand that an employee be given back his actual job regardless of the time elapsed is unworkable. The city believes in treating all employees fairly. To have to terminate an employee because a previously injured worker is now ready to return is unfair. Positions vacated must be filled and the operations of the city must continue. With a statute such as the one proposed, positions vacated by injured workers could become increasingly difficult to fill.

DON ALLEN, opponent. We too oppose HB 508 for the following reasons: First of all, it skirts the layoff in plant closure provisions of contracts in existence today. Seniority is a very sacred part of those contracts to the workers and the old job that may be guaranteed may not even exist. For example, if you had four fork lift operators and say the junior member was injured and yet some years later came back -- perhaps at that time you have only two fork lift jobs left, so what is going to happen to the senior worker then when you do not have those other positions. HB 508 skirts those kinds of provisions in the layoff plant contracts.

The health benefits -- now the trust that pays it for 27 months after the 27 months is up on this bill then the employer would then be required to pay that and I think that is a very serious change and a big departure from current law. The reinstatement part we see no problem with. We think that is already in the contracts that exist. Even in non-union work agreements it exists there and it is fair and I think no one would have a problem with that.

Also agreed with other previous testimony opposing HB 508.

TOM HERZIG, opponent. Two points -- (1) is subsection 2. In the construction industry the contractor varies his work force depending on his work load. Some days he may have 20 or 30 people in his employ and other days he will be down to one or two. If one of those employees was injured when the work force was expanded and had to reemployed when work was slow, there wouldn't be a position for him to fill.

Finally, (2), we have a jointly administered management and labor trust for the IBEW (International Brotherhood of Electrical Workers) in the state and our contributions are based on the amount of hours a man or woman works. We would have a tough time administering our trust in light of subparagraph 3. We urge you not to pass this bill.

Written testimony also submitted and attached hereto as Exhibit #6.

GEORGE WOOD, opponent. Discussion of this bill is not in the usual field that I testify before this committee. It is not

a workers' compensation bill, no matter how you look at it, it is an employment bill that sets certain provisions.

I call your attention to the fact that in Section 4 which is in the present law, the division, the department, and the workers' compensation courts have no jurisdiction over this section. This is a section in which jurisdiction lies in the district court. Rep. Darko's problem concerning the deputy sheriffs can be resolved in the district court, not by this type of legislation.

I recommend that this bill do not pass.

Questions From Committee Members:

DRISCOLL: Question for Laurie Ekanger. I call your attention to page 2, subsection 2, lines 6 through 12. Has your division written administrative rules on that section? Have you written administrative rules on what "preference" means?

EKANGER: We don't have rule writing authority under the Workers' Compensation Act.

DRISCOLL: In your opinion, is this "preference" an absolute preference or a tie breaker like the veterans?

EKANGER: I think we have looked at this on a case-by-case basis and we haven't given an interpretation in our office on this because we don't have rule writing authority. I believe we worked with some individuals in state government where this has come up and we have worked with them. I think it is an absolute preference but I don't want you to quote me on that because I haven't worked with one for awhile.

DRISCOLL: For Bill Palmer. Is this an absolute preference or a tie breaker preference?

PALMER: The division has looked at that provision and our position is that this is an absolute preference, not a tie breaker.

Closing by Sponsor:

DARKO: I do believe that the people who testified against this bill have legitimate concerns. I feel the reason I brought this bill here is also legitimate. They have kind of played that down as a local problem. I don't think it is a local problem. I think we are just beginning to see what I consider a broadening problem. I talked to deputies in Kalispell and the reason they aren't here is because their sheriffs won't let them have the time off. The sheriff's departments are understaffed; the sheriffs are split -- there is no way that their association can come together on this.

To narrow this bill down, I have an amendment. (Attached hereto as Exhibit #7). There was some concern on Section 3 -- I do have an amendment that the health insurance would only continue during the period of injury and that narrows that concern. Some of the people were concerned about a lifetime opening on the job. I would have no objection if that was reduced to two years. If the committee wants to do that, they may. Right now the way the law reads is that they have an absolute preference if there is a job available. They have no obligation to rehire if a job opening does not occur. With reducing staff and scaling back of department jobs, there is no way that a job will be there. That was the concern of these deputies. I don't think it is a local problem.

I guess I get tired of people saying if we pass a bill like this the state will become more known as a poor place to do business. What about the other side of the question? I think it is a poor place to be an injured worker. It is a poor place for anybody to have to take risks on their job if they are not guaranteed the right to their job when they come back. It is not their fault that they were injured. You can't legislate against something for the minority who will abuse it, you have to legislate for the majority who will use the bill. I feel the bill serves a needed purpose and if you want to scale it down to address some of the concerns that the people voiced here I think that would be alright, but I really do feel that it is a needed piece of legislation.

RUSSELL: This closes the hearing on HB 508.

- - - - -

#### DISPOSITION OF HB 532

Motion: DO PASS on HB 532 made by REP. PAVLOVICH.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Unanimous vote to DO PASS HB 532.

- - - - -

#### DISPOSITION OF HB 339

Motion: DO PASS motion on HB 339 made by REP. THOMAS.

Discussion: Rep. Thomas asked that Staff Attorney Eddy McClure explain the language changes.

EDDYE McCLURE: Rep. Thomas asked that I tighten up the language on section 2. I reread the Larsen case and I discovered that with the exception of A the language is exactly the language that came out of the court case. I talked with Steve Shapiro of the workers' comp division, who drafted the bill, just to discuss it because I was nervous about tampering with the language. In talking with Mr. Shapiro the D section that Rep. Thomas was concerned about -- the broad language and the service of the type that is normally performed by a trained attendant and are beyond the scope of normal household duty -- we decided that the court purposely left that language broad. For example, possibly scrubbing a bath tub is not beyond normal household duties, but in a situation where treatment required that to be done six times a day, might be. They wanted the discretion and the broadness left in the bill that they could make that determination. By specifying certain types of duties or certain types of things that would be done by a trained attendant and not by the spouse, we might be narrowing it so much that people would not be getting payment for certain types of duties. The division said they had not had any type of problem in interpreting this particular situation. The rest of the criteria came straight out of the Larsen case almost word for word.

The Larsen case did deal specifically just with the spouse, but as Steve Shapiro and I talked about, in certain cases there may not be a spouse. There may be a family member or someone who is not even related. The reason they left that broad is to allow for someone who the person happened to live with or close related person, not necessarily a spouse, to perform those services. Part A, as Rep. Thomas talked about, makes a written demand. In the Larsen case the court impugned that the employer had to have some kind of notice that the care was necessary, that the person was in need of domiciliary care and four out of five justices talked about constructive notice which is "written constructive," more than just something that he was aware of.

[At this point Eddy asked that Jim Murphy explain how the division arrived at the \$1,500 per month figure. The tape was turned over but did not record his answer, then follows some questions from the committee]

DRISCOLL: Question of Jim Murphy. You said you called nursing homes and the price was between \$1,500 and \$2,400 per month. That is good for how long?

MURPHY: That is their current fees and I would assume they are subject to increases or decreases depending on their costs.

DRISCOLL: But the bill as presented says "the maximum limit of \$1,500 per month" and that could not be changed for two years because of legislative approval. So you want to limit these people by law, but the nursing homes can charge

whatever they want, you would have to pay it, on the other section of existing law page 1, line 25 and page 2, line 1 says other such treatment approved by the division.

MURPHY: This wouldn't preclude any care in a nursing home or extended care facility. That would still be treated exactly the same as under existing law.

DRISCOLL: Eddy said that in the Larsen case the judges said that there didn't have to be a written notice or there did have to be, what did you say, Eddy?

EDDYE McCLURE: I said that basically they said constructive notice. They impugned that to mean, if you look on the last page, have impugned some type of constructive notice upon the employer either because of the severity of his industrial injury or because the representative had knowledge that domiciliary care would be required.

DRISCOLL: Didn't they rule that they got two and a half years back pay in that case? So under this law there would be no back pay until they demanded or put it in writing, is that how you read the bill?

McCLURE: I'm not sure I follow you.

DRISCOLL: On the bill, page 3, lines 16 and 17, "the claimant or his representative makes a written demand on the insurer." That's not what the judges ruled. As I understand it, the judges ruled that if the insurer had any idea that this be necessary then he has to pay it back to when the person started working, not when he makes written demand, is that correct?

McCLURE: Reading from the case, the first step requires that the employer know of the employee's needs for medical services at home. They have impugned that to mean constructive notice, some type of letter, phone call, and in this bill the drafter put written notice.

THOMAS: I'm open to taking Section A out on 16 and 17 there. I'm not one to like the written notice aspect, but I don't believe that even having that in there specifies a time that the benefits would begin. I don't believe that it is that restrictive, Jerry, that it would say that at the time of written notice forward you could receive the benefits. I guess I can understand the reason for coming up with some sort of notice that we want this stuff but I don't like the idea that a technicality could prevent somebody from receiving these benefits and that is why I don't like the written demand wordage and I'm not sure what to change it to though.

WHALEN: Point of clarification. Is there a motion pending on the floor?

RUSSELL: Yes, Rep. Thomas moved the bill. I asked Rep. Thomas the last time we were in executive session to address the need for an amendment and Eddy McClure clarified that we didn't need an amendment. So now we are back discussing the motion, but it appears that there is still some concern about an amendment.

WHALEN: Is there an amendment pending on the floor right now?

RUSSELL: Not right at this moment.

O'KEEFE: I guess I have a problem with the \$1,500 cap. In the Larsen case, I just did some quick numbers, in listening to Mr. Murphy here, nursing homes run \$1,500 to \$2,400 per month, I'll take an average of \$2,000 per month, 40 hour work weeks, nursing homes are getting about \$12 per hour. In the Larsen case, if we had used the \$1,500 per month cap, that person providing that care would have gotten about \$2.65 per hour at 139 hours per week, which they were awarded by the courts. Even at a minimum wage, our current minimum wage, not counting the bill we kicked out of here, it would take \$1,955 per month to pay that person a state minimum wage. It seems to me we are dealing with apples and oranges and we are using a cap here which doesn't consider 40 hour weeks or the amount of time that is put into that domiciliary care for family members and I think it is a little bit unfair. The state is willing to pay \$12 per hour to a nursing home to put a man in, but if they stay at home as in the Larsen case right here, we'd be paying \$2.65 an hour. That cap really gives me a problem because of that.

WHALEN: I think I stated this the other day, and I still feel this way, the Larsen case stands on its own and I think it is clear that the only purpose of this bill is to erode what is contained in the Larsen decision and there is no reason other than that and so in view of that I don't think this legislation is necessary and I am going to move a substitute motion that it DO NOT PASS.

Discussion on the Substitute Motion:

THOMAS: I would like to through a couple of amendments out, if we might. I would like to go to Page 3, Section 2(a) on Line 16 -- Eddy could clean this up but I would like to take that "written demand" out and put something in that would read "claimant or his representative" -- could I refer this to Eddy. "Constructive notice upon the employer" would be kind of what we want to say.

McCLURE: What about "if the employer receives constructive notice that domiciliary care is required," or something like that. Is that your intent?

(Several people talking at once, nothing understood)

RUSSELL: Eddy, do you have that language?

McCLURE: I'm reading from the court case. Some courts have impugned a type of constructive notice upon the employer.

GLASER: It should read "upon the insurer."

SIMPKINS: You are talking about the insurer shall pay, then you say "if the insurer receives constructive notice from either the employee or his representative."

THOMAS: I further move to amend on page 4, starting on line 5, that subclause 2 there, "payment for domiciliary care services," We could tack on the end of the clause, "subject to a maximum of \$1,500 per month," and then Eddy and I worked out the language there to read "plus an annual consumer price index adjustment" and CPI is defined in the statutes, so what this would be doing would be to add in an inflation factor, so I would move those two amendments.

RUSSELL: We have two amendments on the floor. Does everybody understand what that is, do I need to have Eddy go over that again for us?

McCLURE: I think the amendment in A is "if the insurer receives constructive notice from the employer or his representative" and in 2, Rep. Thomas wants to provide after "month," "plus an annual consumer price index adjustment."

(talk here back and forth between Rep. Simpkins and Eddy)

I think it is just so there is some notice that the person is in need of the care.

McCORMICK: That No. 2 there you can't leave maximum limit of \$1,500 in there if you are going to add something to it to make it more. The maximum says \$1,500. That's the limit. You have to take that out of there.

THOMAS: Mac, to address directly to your comments there. Whether this committee should arrive at an agreed limit, then that would be increased each year by the consumer price index, so if it is 5% CPI you would add about \$75 to the \$1,500, so it would be \$1,575 limit next year and the year after that you would increase it by the CPI again. The idea is that whatever we agree upon as the limit should we do that, then it would be increased each year by an annual CPI so it would keep up with the rate of inflation as best we know how to.

McCORMICK: Well if a person is hurt and goes into a rest home it is \$2,400, you can go to this bill and say we only pay \$1,500, that's the maximum limit.

SMITH: I think what we are looking at here is if we make that figure too high and it is cheaper to put them in a nursing home, I don't think you will ever see anybody get any domiciliary care payments -- just stick them in a nursing home. They're not going to take a chance of being drug into court to pay \$5,000 a month if they can get by for \$1,500 or \$2,000. That's the danger of making that figure too high.

KILPATRICK: Question of Jim Murphy. You have other cases where you have a maximum limit like this, right? That you pay for domiciliary care, maybe not necessarily that, but other things that you put a maximum amount on. The point I am trying to bring out is, is there any of them that you actually go to the maximum on?

MURPHY: Right now the way we arrive at fees for domiciliary care is through negotiation on a claim-by-claim basis and we would continue to do that. The fees and medical benefits are limited by fee schedules and the division puts out a fee schedule every year that limits all other types of medical services, doctors, chiropractors and those types of things. Those are limited by the fee schedule and that is applied by all insurance companies, state fund included.

KILPATRICK: I talked about this last time. On page 4, lines 5 and 6, payment for domiciliary care service is limited to the actual reasonable and necessary charges incurred. Wipe the rest out. If you have a real extenuating case, such as the Larsen case, it might go over \$1,500. What do you think of this?

SMITH: I think if I was the insurance carrier in this case I would say the heck with it, I'm not going to get exposed to a Larsen treatment, we'll keep him in a home. That's the danger of putting a limit on.

SIMPKINS: May I suggest to Fred that we separate this motion because it sounds like we agree on one, but we still haven't settled the other and we keep bouncing back and forth and I might suggest that we settle this one on Part A, Line 16 on 3. Would Fred be willing to separate his amendment?

Amendments, Discussion, and Votes:

RUSSELL: Any further discussion on the amendment on Section A? Eddy can you go back over that for us again so we can take a vote on that?

McCLURE: Line 15 following "if", A would now read "the insurer receives constructive notice from the claimant or his representative".

RUSSELL: Vote taken on amendment and unanimously passed.



Recommendation and Vote: Amendment unanimously PASSED.

More Discussion:

SIMPKINS: I presume the second amendment is still on the floor. The one problem I am hearing, we're talking this \$2,400, keep in mind when you get that figure you have room, board, sheets, linen, it is not just wages, so you just can't divide the figure by hours and say they are getting \$12 an hour. You are getting restaurant meals, they are being charged off that way; you are getting linen service and this sort of stuff that is built in, it is a normal household chore. So when you are talking about that and you are talking about the option of the therapeutic value of staying at home, there has to be some trade offs. Your \$1,500 figure is not too low when you consider the other parts of that being involved. Now if you are considering that a locked in figure that is another matter, so I think we are getting a little mixed up on our terminology.

O'KEEFE: I guess that is one reason why it really is too low. The \$2,400 provides meals; \$1,500 doesn't cover meals; it doesn't cover laundry service; it doesn't cover recreational opportunities. There are added expenses when you have them at home.

THOMAS: I would like to move a substitute motion on my second amendment to retain the body of the second amendment, but I would also include in that amendment, striking \$1,500 and inserting \$2,000. I don't know that \$2,000 is magic, but it seems to be more in the middle of the \$1,500 to \$2,400 figure, but I would just like to explain that I think it is important that we put this bill on law and that we give guidance as to what the limits and what this service will be paid at. That's the intent of this, it is not the intent of this bill to rob a family from being compensated for taking care of an injured member of the family. That's not the purpose of this bill. The purpose of the bill is to say, yes we are going to pay domiciliary care but we are going to be careful in how much is paid out. That only makes sense. It doesn't make sense not to say we are going to pay reasonable and necessary charges incurred, it doesn't make sense not to do that because if you just go out of whack and pay unreasonable fees and costs in this area you are taking that money from another injured worker somewhere. There is only so much money. All this bill is doing is recognizing domiciliary care as a valuable service. In a lot of cases I think it will be less costly to put these injured people, if it is possible, in the home and be taken care of by family members. Where else would you want them? By the same token we are saying that we are not going to get carried away with how much we pay. That is all this is doing.

RUSSELL: Rep. Thomas, would you read that complete substitute amendment that you have there.

THOMAS: I'm going to ask Eddy to read it.

McCLURE: Line 7, subject to a maximum limit of \$2,000 per month, plus an annual consumer price index adjustment.

WHALEN: I would like to oppose the amendment. First of all it has been suggested to the committee that if the price tag on this domiciliary care service gets too high that everybody will be in a nursing home and if you look at the Larsen decision the court said apart from the criteria that the party had to meet in order to obtain domiciliary services and no where in there does it say the cost not be beyond a certain amount. The criteria they used is that under the preponderance of the credible medical evidence demonstrates that home nursing care is necessary as the result of the accident and describes a reasonable degree of the nature and extent of the duties to be performed by the family members and, secondly, the services that are performed under the direction of a physician. If a physician says that regardless of the cost that the better treatment is at home, then that is where the treatment is going to be under the supreme court decision. It doesn't say anything about what is the cheapest service.

THOMAS: I'm going to use Rep. Kilpatrick's suggestion that we strike line 7 on page 4 so that it will say "payment for domiciliary care services is limited to the actual, reasonable, and necessary charges incurred."

RUSSELL: So you are withdrawing your substitute motion and your other motion -- you are withdrawing both of those and resubmitting another motion, another amendment.

THOMAS: This is the third motion on the second amendment.

RUSSELL: Are we clear on what we are doing? We're striking everything on line 7.

A new amendment.

Thomas's latest motion on the amendment, striking all of line 7.

Vote:

Vote was 14 to 2 in favor of the amendment. Smith and Lee voted against it.

The amendment has PASSED.

- - -

Now we are back to the DO NOT PASS motion.

DRISCOLL: Eddye, will you answer if page 3 (c), is that in the court ruling? We have to cut the doctors in for a piece of the action otherwise you can't have this?

McCLURE: Yes it is.

DRISCOLL: So we have to pay the doctor off forever too.

McCLURE: Services performed at the direction of a physician.

DRISCOLL: Is (d) in the court case and exact words that are in the law?

McCLURE: I will read from the court case, "... services rendered are of the type normally rendered by trained attendants and are beyond the scope of normal household duties."

DRISCOLL: How about (e)?

McCLURE: A means to determine with reasonable certainty the approximate value of the services performed.

The court case says the employer knows of the employee's need for medical services at home resulting from industrial injury.

SIMPKINS: The way I understand this is that the medical bills themselves are not included in this limitation. Medical bills are not included; if you have psychiatric care, doctor's care, medicines, that is a different matter altogether and is not even being addressed by this bill and that is continuous. You could have \$5,000 worth of medical bills every month, plus this.

RUSSELL: It also appears that we will have to amend the title of this too since these other amendments have gone if we pass the bill.

WHALEN: Point of clarification. Did we do anything on line 23 on page 1?

RUSSELL: I don't believe we acted on anything today.

WHALEN: I am going to withdraw my DO NOT PASS motion.

RUSSELL: So we are back to the DO PASS motion by Rep. Thomas.

DRISCOLL: I don't know whether I should support the motion or not, I'll tell you what is going to happen ....(had to turn tape over here), we're all going to be sorry for our vote today.

THOMAS: I think Rep. Driscoll's comments are taken very well and I will pledge to keep this bill in as close shape as it is right now. This is my bill and I will pledge to do the best

I can because I don't have a problem with what it says right now.

RUSSELL: Are we ready for the question, the do pass motion with the amendments, the two amendments in the body of the bill and in the title we have added.

Vote:

Thirteen to three in favor of DO PASS AS AMENDED. Those voting against it were McCormick, Pavlovich and O'Keefe.

HB 339, DO PASS AS AMENDED.

- - - - -

HB 427

RUSSELL: I understand that the subcommittee on HB 427 is meeting so we cannot act on that today.

- - - - -

HB 157

RUSSELL: HB 157, subsequent injury. I think I will put this into a subcommittee because there are a number of amendments that have been introduced and I would like to have Rep. Driscoll, Rep. Pavlovich and Rep. Smith on the subcommittee. If the three of you would work on HB 157 and try to get that back to us either Thursday or Tuesday.

- - - - -

HB 508

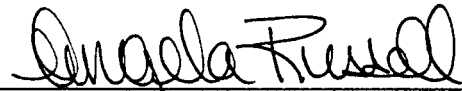
RUSSELL: We have one other bill and that is the one we heard today by Rep. Darko, HB 508. Are we ready to take some action on 508 or is this something we need to put into a subcommittee.

DRISCOLL: I would suggest you put it in a subcommittee because I guess the opponents to a degree are right; carrying the health insurance forever would be prohibitive, but there has to be some direction given to the departments and to the employers that these people do not have a veteran's preference rehire, that they have got to rehire these people and get them off the system. When we put that together last session we assumed that it was an absolute preference for the next available job and that isn't how it is turning out.

RUSSELL: I appoint Rep. O'Keefe, Rep. Kilpatrick and Rep. Glaser. Please get together and bring back some amendments or whatever you need to do to handle this bill.

ADJOURNMENT

Adjournment At: 5:25 P.M.

A handwritten signature in cursive script, reading "Angela Russell", written in dark ink.

---

REP. ANGELA RUSSELL, Chairman

AR/mo

3209.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 Paulovich             | ✓       |        |         |
| 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            | ✓       |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |

STANDING COMMITTEE REPORT

February 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that HOUSE BILL 339 (first reading copy -- white) do pass as amended .

Signed: Angela Russell  
Angela Russell, Chairman

And, that such amendments read:

1. Title, lines 7 and 8.

Following: "LIMIT"

Strike: "ON SUCH SERVICES"

Insert: "BASED ON ACTUAL REASONABLE AND NECESSARY CHARGES  
INCURRED"

2. Page 3, lines 16 and 17.

Following: "(a)"

Strike: the remainder of 16 through "insurer" on line 17

Insert: "the insurer receives constructive notice from the  
claimant or his representative"

3. Page 4, lines 6 and 7.

Following: "incurred" on line 6

Strike: ", " through "month" on line 7

STANDING COMMITTEE REPORT

February 8, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that HOUSE BILL 532 (first reading copy -- white) do pass.

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



SUPPORTED EMPLOYMENT  
Vocational Rehabilitation Program  
The Department of Social and Rehabilitation Services

People with severe disabilities who need ongoing support to maintain their employment after they are placed into competitive employment, are candidates for Supported Employment through the vocational rehabilitation system if a funding source other than Vocational Rehabilitation can be found to pay for the support services. Since the Supported Employment program became fully operational approximately eleven months ago, 102 people with severe disabilities have been placed with the following results:

| <u>Client Disability</u> | <u>#Placed in Work</u> | <u>Gross Earnings</u> |
|--------------------------|------------------------|-----------------------|
| Physical Disability      | 1                      | \$1,072               |
| Visual Impairment        | 2                      | \$1,508               |
| Hearing Impairment       | 2                      | \$1,011               |
| Mental Retardation       | 45                     | \$45,260              |
| Seizure Disorder         | 2                      | \$1,232               |
| Traumatic Brain Injury   | 4                      | \$2,783               |
| Mental Illness           | 35                     | \$38,650              |
| Learning Disability      | 3                      | \$7,439               |
| Other                    | 8                      | \$22,305              |
| Totals                   | 102                    | \$121,260             |

The above effort (through December, 1988) represents an average of 4.3 months of employment per client. The average monthly earnings for a client was \$280. The average hours worked per week by Supported Employment clients was 20.5, with a range of 1 hour per week to 40 hours per week. The average hourly wage was \$3.28 per hour, ranging from \$1.01 per hour to \$5.28 per hour.

Fifty one employers in Montana hired Supported Employment clients. All types of businesses were represented, although the majority of placements were in service industry jobs.

Vocational Rehabilitation has set up multi-agency service committees to deliver Supported Employment services in nine Montana communities. Those communities are: Conrad, Great Falls, Kalispell, Missoula, Miles City, Billings, Bozeman, Butte, and Helena.

**SUPPORTED EMPLOYMENT: A DEFINITION**

EXHIBIT 2  
DATE 2-7-89  
HB 532  
pg 1 of 6

**Supported Employment is**

- for persons with severe disabilities for whom competitive employment at or above minimum wage is unlikely, and who, because of their disabilities, need intensive ongoing support to perform in a work setting;
- conducted in a variety of settings, particularly worksites in which persons without disabilities are employed;
- supported by an activity needed to sustain paid work by persons with disabilities, including training, supervision and transportation.

PROBLEMS

EXHIBIT

2

DATE

2-7-89

- 90% of severely handicapped adults are served in non-vocational ~~HP~~-oriented Day Treatment Centers. 532  
2046
- Less than 2% of severely disabled individuals in sheltered employment settings ever leave to enter competitive employment.
- Average monthly worker wage in Day Treatment Centers is 60¢ per day.
- 80% of severely disabled individuals in sheltered employment settings are provided services in segregated facilities.
- Parents are fearful that their disabled children will lose Social Security or Medicaid benefits if they enter competitive employment.
- Lack of community awareness of employment potential of severely disabled individuals.
- Conflicting contingencies and regulations of funding agencies makes collaboration among agencies extremely difficult.

## NEEDS

EXHIBIT 2  
DATE 2-7-89  
HB 532

- New approaches to solving the high unemployment problem among disabled individuals.
- Utilization of more appropriate methods of training and support to help larger numbers of severely disabled individuals be more productive in a work setting.
- Coordination among school system and adult service programs for handicapped to plan and serve increasingly large numbers of special education graduates.
- Transition programs for special education students to better prepare students for work and adult living.
- Improved technologies for training and supervising severely disabled workers in community employment to enable them to be competitively employed.
- Increased community employment opportunities for greater likelihood of higher wages for disabled workers.
- Integrated work settings for disabled individuals to have more opportunities for normalized living.
- Effective tracking, case management and transition planning systems to help handicapped individuals make a smooth transition into employment.
- Education for parents and family members of persons with disabilities to encourage independence and lessen over-protectiveness.
- Employer and community awareness of employment potential of severely disabled individuals to be heightened.

PREMISES OF COMMUNITY-BASED EMPLOYMENT

EXHIBIT 2

DATE 2-7-89

HB 532

4046

- Work is a desirable, if not a necessary, life activity.
- No individual should be excluded from working based solely on the fact that he or she has a disability.
- The working community will change stereotypical thinking about disabled workers with direct experience, and will accept and value the contributions made by them.
- An integrated environment, where disabled individuals work and live alongside non-disabled people, stimulates behavior which is more normal.
- Every human being has untapped potential, and has the right to realize it.

## FEATURES OF SUPPORTED EMPLOYMENT

EXHIBIT 2

DATE 2-7-81

WFB 532

5 of 5

### Employment

- The primary outcome for each severely disabled worker enrolled in this program is a permanent job at a minimum of 20 hours per week, receiving a competitive wage and with the same working conditions as other workers performing similar jobs for that employer.

### Ongoing Support

- Providing the ongoing on-the-job support in a specific job, rather than training for future job possibilities.

### Jobs Not Services

- Emphasis is on obtaining employment and providing whatever individualized support is needed to keep that job, rather than providing generalized skill training.

### Full Participation

- The assumption is that everyone, regardless of the severity of disability, has the capacity to work, and to participate in normal work settings, if appropriate, ongoing support can be provided.

### Social Integration

- As people with severe disabilities become employed in normal work settings, they become more skilled at social interaction with non-disabled people. One of the important functions of this program is to foster integration and social contact with co-workers and others who are not disabled.

### Flexibility of Employment and Support

- Because the program provides employment and normalization, a wide variety of job opportunities will be developed in the communities where severely disabled workers live. Workers will be matched with the jobs most appropriate to their skills and interests, and support will be tailored to individual needs of both the employer and the worker.

## ANTICIPATED BENEFITS

EXHIBIT 2  
DATE 2-7-89  
HB 532

6 of 6

### For the Individual with a Disability

- The development of supported employment as an adult service alternative should create opportunities for a more independent life.
- Higher wages for the severely disabled will be achieved.
- Integration in the work place will result in acceptance at the work place.
- Real work for real wages will result in greater self-esteem and improved self image.

### For Parents

- Parents will become more knowledgeable in the areas of transition planning, the value of supported employment, and existing adult services through a special training contract with the Utah Parent Information and Training Center.
- The characteristics of supported employment; namely, real work for real wages, community integration and ongoing assessment. Education and advocacy will result in improved parent/child relationships in the home.

### For Agencies

- Provide services to increased numbers of disabled individuals at a decreased cost.
- Networks and vehicles to coordinate services and share information will be developed among agencies and programs.
- Interagency planning will be enhanced.
- Agency staff will develop expertise in transition planning, supported employment and in providing services to the disabled.

### For the Community

- Presentations and brochures will educate communities about the value of supported employment programs and of the employment potential of people with severe handicaps.
- New attitudes toward the disabled will create employment alternatives as employers think of ways to utilize this resource.
- Higher wages to a traditionally low paid group of people will stimulate local economies and reduce the need for other income subsidies for this population.
- Supported employment services are not only cost effective but more humanly effective and will benefit everyone.



EXHIBIT 5  
DATE 2-7-89  
HB 508

JAMES W. MURRY  
EXECUTIVE SECRETARY

110 WEST 13TH STREET  
P.O. BOX 1176  
HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF JIM MURRY BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS  
COMMITTEE, FEBRUARY 7, 1989

Mr. Chairman and members of the Committee, for the record, I am Jim Murry, Executive Secretary of the Montana State AFL-CIO. I am here today to support House Bill 508 which would strengthen an injured worker's rights to re-employment once that injury has healed.

This bill does several things. First, it prohibits the termination or lay-off of an employee who has filed a workers' compensation claim unless the employee has received a medical release to return to work and refuses to do so or if the injury is serious enough that the worker may not ever return to his job.

Secondly, this legislation requires an employer to rehire an injured worker in his former job when he is able to return to work. The present state law merely allows the worker preference for rehiring if a vacancy exists. Injured workers who are able to return to their jobs following the healing process of their injuries should know that their jobs will be available to them. An injured worker has many obstacles to overcome during the healing and rehabilitation process he must undertake. Knowing that the job will still be available to them is a definite advantage for those workers. It would act as a stimulus on the road to recovery and would be a fair and equitable treatment of a condition over which the worker had no control.

Finally, this bill would require continuation of health insurance benefits during the time of the injury. While workers' compensation covers the actual injury, other illnesses to the worker or to his family are not covered except through health insurance benefits. Lack of health insurance benefits to the worker and his family can easily result in financial ruin or serious health risks because of delayed medical attention.

The concepts embodied in this bill are fair to all concerned -- to the injured worker who wants to become a contributing member of society again; to the employer who wants to treat those injured at his workplace fairly and humanely; and to the worker's family who must exist in today's high-cost health care industry.

I strongly urge you to give a favorable Committee recommendation to House Bill 508.



TESTIMONY

JAMES TUTWILER, PUBLIC AFFAIRS MANAGER

MONTANA CHAMBER OF COMMERCE

BEFORE THE HOUSE LABOR AND EMPLOMENT

RELATIONS COMMITTEE ON HB 508

February 7th 1989

Madam Chairman, Members of the Committee, for the record, I am James Tutwiler, Public Affairs Manager of the Montana Chamber of Commerce. We appreciate the opportunity to appear before this Committee today and to offer testimony on HB 508.

The bill before you would revise the legal obligations of an employer toward an injured worker. While it is certainly true that employers should and in fact do have specific obligations to an injured employee, the bill in question would, in our opinion, expand such obligations beyond a reasonable point of fairness and practicality.

As amended HB 508 would only permit discharge or termination of an injured employee if the worker refuses to return or, because of medical reasons, is unable to return to work. Would

than the employer be barred from discharging an employee whose 2 of 3  
injuries were derived from willful or grossly negligence acts or  
or substandard performance in the conduct of his or her  
employment duties?

With respect to page 2 of the bill, lines 6 thru 12, the employer is obligated to give the returning injured worker his former job irregardless of the length of time required for the worker to recover. By striking the time limit of 2 years and the job preference provisions of the current statute the employer is left in a precarious position. If the position vacated by the injured worker is career attractive, the employer will find it difficult if not impossible to hire a qualified replacement for a job position that offers no stability or permanency. The injured worker may recover from his injuries sufficiently to return to work but not be capable of performing those specific duties required in the job position he originally held. Removal of the 2 year provision is especially burdensome. Under this bill the employer is expected to maintain the job position vacated by the injured worker for an indefinite and unlimited period of time -- perhaps years. Under these provisions management goes out the window because the employer would be denied the option of expanding, contracting or diversifying his business in anyway that would change, modify or eliminate the job position vacated by the injured worker. We submit that businesses simply cannot operate in such a manner.

Providing of continued health insurance is another concern. While the language is not entirely clear to us, the bill appears to require that an employer continue health insurance for an injured worker for an indefinite period. If such is the case, employers would be asked to pay health insurance costs for years before a worker declared disabled reached the age of 65.

In summary, we believe the current rules, regarding employer obligations to injured workers are fair and reasonable to both parties. Adoption of the language in HB 508, however, would severely and unnecessarily burden Montana employers and further contribute to Montana's perceived image as a poor place to do business. For these reasons Madam Chairman, Members of the Committee, we hope you will reject HB 508..

DEPARTMENT OF ADMINISTRATION - TESTIMONY OPPOSING HB 508  
Revising the obligations of an employer toward an injured worker

- I. Current preference is reasonable and workable:
  1. Provides an absolute preference for a period of 2 years for any comparable positions that becomes vacant.
- II. We endorse the idea of a re-employment preference for Montana's injured workers.
  1. The current law provides a realistic, flexible preference that serves the needs of both the employee and the employer.
  2. It provides a strong preference for workers to fill any comparable position where they are physically and vocationally able to succeed.
  3. It provides a realistic time frame for the employer.
- III. The revisions proposed in HB 508 represent an undue hardship for Montana's employers:
  1. Person must be reinstated to their former job -
    - a. No matter how many years have passed since the injury.
    - b. No matter if the former job exists or is needed.
    - c. No matter how long another employee has successfully filled the position.
  2. It would require that other workers be laid off to reinstate an injured worker when no vacancy exists.
  3. A worker who was employed for 9 months and was injured and remained disabled for 4 years would be able to displace a worker who had successfully performed the job for the 4 year period.
    - a. You have an employee who has worked for your company for 4 years being displaced by an employee who worked for your company for 9 months.
    - b. The duties of the job may have changed dramatically.
    - c. The skills required to do the job may be markedly different.
    - d. The employer may have to provide significant training to allow the injured worker to take over the job that is being successfully performed by a more senior employee.
- IV. HB 508 actually restricts the re-employment options for many injured workers.
  1. It limits the re-employment right to the workers former position.
    - a. If they are unable to perform in the former position they receive no preference.
    - b. Current law provides a preference for comparable positions for which they qualify.
- V. Paragraph (3) requires the extension of insurance benefits to the returning worker with no limitations:
  1. Small employers may be faced with covering medical cost for employees returning to work after years of leave.
  2. These medical cost may be unrelated to the original injury.
  3. The employee may only work a few hours a day or week perhaps for the primary purpose of gaining those insurance benefits.

For further information contact Laurie Ekanger, Administrator, State Personnel Division, 444-3871.

MONTANA CHAPTER  
NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

P. O. BOX 1249

HELENA, MONTANA 59601

EXHIBIT #6  
DATE 2-7-89  
HB 508



406/442-8330

February 7, 1989

Angela Russell, Chairman  
House Labor Committee

Re: House Bill 508

Dear Chairman Russell:

The Montana Chapter National Electrical Contractors Association is opposed to House Bill 508. Our objection specifically relates to Sections II and III.

With regard to Section <sup>I(b)(2)</sup>~~II~~, we feel the existing language is workable but the new language is not. Electrical contractors have a fluctuating work force depending upon the amount of work they have at a particular time. I've seen contractors go from twenty to thirty electricians when they had a lot of work to two or three when construction work was slow. To expect a contractor to employ a former employee at sometime in the future is not always possible. Certainly, it is reasonable to give an injured person preference over other applicants.

With respect to Section <sup>I(b)(3)</sup>~~III~~, our contracts with labor provide for contributions to a health and accident trust based on the number of hours paid or worked. For this trust to provide benefits to some workers regardless of the number of hours worked would be a nightmare, i.e. it would be extremely difficult to administer.

Sincerely,

Thomas L. Herzig  
Manager/Secretary  
Montana Chapter N.E.C.A.

TLH/mw

EXHIBIT #7  
DATE 2-7-89  
HB 508

Amendments to House Bill No. 508  
First Reading Copy

Requested by Representative Darko  
For the Committee on House Labor and Employee Relations

Prepared by Eddye McClure  
February 7, 1989

1. Page 2, line 18.

Following: "continue"

Insert: "during the period of injury"

2. Page 2, line 22.

Following: "time."

Insert: "The employer is released from the provisions of this subsection in the event the employee is terminated pursuant to subsection 1(a) or 1(b)."

## VISITORS' REGISTER

House Labor

COMMITTEE

BILL NO. 508DATE 2-7-89SPONSOR Ducko

| NAME (please print) | RESIDENCE                 | SUPPORT | OPPOSE |
|---------------------|---------------------------|---------|--------|
| JAMES TUWILER       | MT CHAMBER COMMERCE       |         | ✓      |
| Leon Stalcup        | MT Restaurant Assoc.      |         | ✓      |
| Jim Murry           | Mont. State AFL-CIO       | ✓       |        |
| Bob Heiser          | U.F.C.W.                  | ✓       |        |
| Kay Foster          | Billings Chamber          |         | ✓      |
| Jim Van Arsdale     | City of Billings          |         | ✓      |
| MARY L. LORT        | US West Comm.             |         | ✓      |
| Shelly Lamm         | City of Helena            |         | ✓      |
| Nadine Jensen       | A.F.S.C.M.E.              | ✓       |        |
| Mike Voeller        | Lee Enterprises           |         | ✓      |
| Mike Sherwood       | MTLA                      | ✓       |        |
| George Ward         | MT. Self Insurance Assn   |         | ✓      |
| Tom Herzig          | MT Chop NECA              | ASSN    | ✓      |
| Laurie Ekanger      | MT Dept. of Admin.        |         | ✓      |
| Mike Micone         | DEPT. OF LABOR & INDUSTRY |         | ✓      |
| Don Allen           | MT. Wood Products Assn    |         | ✓      |
|                     |                           |         |        |
|                     |                           |         |        |

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

House Labor

BILL NO. 532

2-7-89

SPONSOR David

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

CS-33