

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on February 16, 1989, at
3:30 P.M.

ROLL CALL

Members Present: All Present,

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Staff Attorney.

Announcements/Discussion: We have six bills to hear this
afternoon, I am going to allot one-half hour for each of the
bills. We will start out with Rep. Harrington's bill, HB
644.

HEARING ON HB 644

Presentation and Opening Statement by Sponsor:

REP. HARRINGTON: To give you a little history of this type of
legislation, in 1977, 1979 and 1981 there were moves to take
away unemployment compensation for non-professional workers
in school districts. These are workers such as bus drivers,
bus attendants, cafeteria workers, secretaries, or anybody
else who worked in the schools who were laid off at the end
of the school year, waiting for the next year. In 1983 a
federal mandate came saying that they were going to pass
laws saying that if the Montana unemployment compensation
did not comply with this change then we would lose some
money as far as our unemployment compensation. They reached
out and took away the ability to collect unemployment
compensation from this group of people. These are people
who work directly for the school district. If you worked on
a school bus that was not connected directly with the school
district you would be entitled to collect unemployment if
you were unable to find a job during your off period.

I feel it is very important to recognize the fairness issue
in this. Many other seasonal workers are not prohibited
from collecting this, but this is one group of people and I
have to add that many of these people are very low income.
I hope the committee will look favorably on this bill.

Testifying Proponents and Who They Represent:

TERRY MINOW, Montana Federation of Teachers.

LINDA GORDON, School Bus Monitor for School District #1.

LUCINA DURKIN, Uncertified Bus Monitor for School District #1.

TOM SCHNEIDER, Executive Director of Montana Public Employees Association.

NADIEAN JENSEN, Executive Director of AFSME.

DON JUDGE, Montana State AFL-CIO.

TONI NIKLAS, Montana Education Association.

VICKI COCCHIARELLA, Representative.

JERRY DRISCOLL, Representative.

Proponent Testimony:

TERRY MINOW, proponent. We rise in strong support of this measure and we do have classified units in the following areas: Browning, Bigfork, Kalispell, Stevensville, Great Falls, Missoula, Billings, Helena and Boulder.

The wages of classified school employees are traditionally below wages offered to similar positions in any other branch of state government. These workers do not enjoy the same holidays as other state employees, they receive 7, generally, as opposed to 12. Some districts offer no paid holidays. These workers are increasingly single heads of household and it is very difficult for them to get through the summer without assistance.

I would like to read the wage scale at one of our units:

Aides and attendance clerks.	\$3.50 per hour
Custodians	\$4.50 an hour
School secretaries	\$4.50 per hour
Administrative secretaries	\$5.25 per hour
Study hall proctors	\$6.00 per hour

The point is, these people are very low paid and it is very difficult for them to get through the summer if they can't find any other employment and that is the position they are in right now.

I do have an amendment that deals with the same group of employees. During the recent school closure which was declared by the governor, some classified employees did not receive pay. The schools received their compensation from

the state during this time. Teachers were paid because they are salaried employees. If your wages were this low, you can imagine what impact this would have on your total pay benefits.

I have talked to Rep. Harrington about my proposed amendment which I am passing around (attached hereto as Exhibit #1). There is one change I would like to make in the amendment, instead of "salary," I think it would be better to use the term "wages," because these people generally receive wages. The heart of the amendment is nonprofessional and school employees must receive full salary and benefits for those days not rescheduled. If the school rescheduled the days that they are closed during a time of emergency, we are not asking that these people be paid. If they do not reschedule the days, we feel that it is fair. They are receiving the money from the state for those days and for those employees it is definitely an equity issue and that is the reason the bill would apply retroactively.

Testifying Opponents and Who They Represent:

LINDA GORDON, proponent. I feel very strongly that we are being discriminated against in two ways. First, we know this was passed by the federal government that no non-certified school district employees will receive unemployment benefits, but I do know for a fact that in three states they are receiving these benefits, Washington, Illinois, and California. I have checked with these people and they work the same as we do, have the same time off as we do and they said the reason they are getting it is because it is not enacted by their state government. Second, we are the only seasonal employees who have our employment compensation taken away. We probably make the least amount of money of other seasonal employees; therefore, we would receive the minimum amount of money. Right now I am a single parent with three children and when we did receive unemployment we did make it from year to year, now it is hard to survive. You can't look for a job during that time off, employers aren't going to spend money to train you for a few months when you are going back. Each one of you should realize that we do work with your children. We might not be certified, but we still work with your children. We drive them to school, we assist them on the playground. We probably have closer contact with them than some certified people. I have twelve years with the school district and I like the job and I would like to stay with it. It benefits my children that I am home with them during the off time. I would like to see us get our unemployment back so we can survive because we have the same bills that you people do.

LUCINA DURKIN, proponent. (Said essentially the same thing as Linda Gordon).

TOM SCHNEIDER, proponent. I support this bill. In 1983 we did

not oppose the legislation that took the unemployment benefits away and the reason we didn't do that is because we were told that the federal law had mandated that we had to give up the benefits and now we find out that some states didn't give up the benefits. I think that leaves you feeling kind of ridiculous not having opposed it in the first place. So we support this bill and would just like you to know that nine-month employees in school districts don't get balloon payments at the end of the year. Their employment is suspended for a period of time and they have no money coming in so we would hope that you support this bill.

NADIEAN JENSEN, proponent. Something that hasn't been mentioned are the school employees who work the 9 and 10 month periods. Their benefits such as vacation time, etc. are prorated, so you are not looking at them getting a full three weeks off. You're looking at them hopefully getting two and from that point on there is no income into that family. There are probably two and a half months of no income before they go back to work. I ask you to support HB 644.

DON JUDGE, proponent. Read from written testimony, copy of which is attached hereto as Exhibit #1.

TONI NIKLAS, proponent. I want to reiterate what everyone else has said and go on record in support of this bill.

VICKI COCCHIARELLA, proponent. I want to go on record as a proponent for those part time nine, ten, eleven month employees at the University of Montana.

JERRY DRISCOLL, proponent.

Testifying Opponents and Who They Represent:

CHUCK HUNTER, Administrator of the Unemployment Insurance Division.

BOB ANDERSON, Montana School Board Association.

CHAD SMITH, Unemployment Advisors.

Opponent Testimony:

CHUCK HUNTER, opponent. I'm not here to speak about the content or the intent of the bill, merely to point out what we see as a technical area you might need to address. The Federal Unemployment Tax Act mandates certain provisions to the states in the administration of their program. One of those mandates in the federal law deals with this very issue, the denial or the disqualification of benefits for employees of educational institutions between and within those terms. The federal act is pretty clear on the point that we must,

as a state, deny benefits under those conditions. This bill would be an issue with the federal law and we feel there would be a conformity issue that would arise if this bill were passed.

BOB ANDERSON, opponent. We are opposed to HB 644. As a former school administrator who has hired many school employees over a number of years, school lunch employees, school bus drivers, school aides, some of the clerical help, secretaries, I think most were hired under the normal process of advertising for these positions, notice was given, application made, interviews took place. All those that I was involved with were always informed in advance that these positions would only be for a specified period of time. Normally, those were for nine months. The employees I have dealt with in the past were fully informed and knew this. They knew there were no benefits during the summer months. Many took these positions because they did want the summer months or the vacation time that was available. I think probably what we are looking at here is another unfunded liability to the state similar to the workers' compensation program. I am not sure that we in the school business want to take part in that kind of activity when we are already in a serious situation with regard to funding at this time.

CHAD SMITH, opponent. I am appearing on behalf of Unemployment Compensation Advisors, an independent association of employers interested in unemployment compensation in Montana. I think it is important to point out first in this bill that we are talking about a job that someone takes with the understanding that there is going to be a period of about three months during the summer when there would not be employment. In other words, it isn't something you would insure against, if you have any faith in the term unemployment insurance, it is something that is inevitable. It is something they understand when they take the job. It is something that should not create an opportunity to draw benefits. It is inequitable on top of that because we have one group of professional employees who are not entitled to get it and we have another group of nonprofessional employees who, under this bill, would be entitled to get it. There is no reason for the distinction. Both are in the same class. They both understand that during the summer months there would be no payment of benefits.

I want to point out too that the source of the money to pay these benefits is in a separate fund that is contributed to by government agencies, the state, cities, counties, the school districts, and they have a tax which is assigned to all of the employers in this particular group. At the present time the tax is about 4/10 of 1%. If we put a greater burden on this fund we are going to put a greater burden on not just the school district, we're going to put a greater burden on all the local and state governments to

make up this difference. I think it should be understood that this then becomes a general tax that is going to affect all tax payers.

This is not the first time that this amendment has been attempted. We have been in and out of this type of disqualification for a number of years, but it was part of the package that was considered to make the unemployment compensation fund solvent and we shouldn't at this time start shooting holes in it because if we do we are going to be destined eventually for the same type of problem we had about six years ago. We oppose the bill.

Questions From Committee Members:

PAVLOVICH: Question of Mr. Smith. Do these people pay into the fund?

SMITH: The employee? No. This is not a payroll deduction type of thing. The employer pays this. The school district, in this case, pays it.

RICE: Question for Hunter. You mention that if this was to be passed it would create a conformity problem with the federal government. What does that mean? What is the risk or result of that particular problem?

HUNTER: The conformity process with the federal government is something they look at in terms of certain payment standards in the states. If you fall out of conformity with the mandated provisions, the risk there is they start fooling with the tax structure in your state. Right now the federal unemployment tax is 6.2%, but they offer to states or to businesses in each state who pay their state taxes on time a 5.4% offset credit, making the effective tax rate .8%. If you fall out of conformity and if they take you to issue on conformity, they start reducing the amount of offset credit that they provide to employers. The first step there is a 2.7% reduction of the offset credit. If you fail to come into conformity at that point, they take off that other 2.7%, so the entire 5.4% offset credit is done away with.

We have heard some testimony that there are some other states which are not enforcing this provision. I would assume that the federal government is in the midst of a conformity process with them at this point, but I don't know that for sure.

DRISCOLL: Question for Mr. Smith. In your testimony you said that if a person was not given their job back in the following school year that they got retroactive benefits. Isn't it true that if they don't file a card every week through the summer, then they do not get anything.

SMITH: They have to comply with the law, that's correct. It

starts in line 13 with the work "if" and continues through the balance of the paragraph. They have to maintain contact during that period so if there is another job available during that recess portion of three months they will be able to take it.

DRISCOLL: They also have to every week, or every two weeks, send a card back to the division. That is filing a claim in a timely manner on line 18, isn't that what they have to do?

SMITH: Correct, they have to stay in contact with the employment office during that entire period so the office knows where they are if there is an opportunity to offer them a job they can present it to them.

SIMPKINS: Question for Judge. You mentioned that if someone was out in search of a job and they refused a job, let's say someone wanted to employ them without the three-month barrier and they said no they wanted to go back to the school.

JUDGE: Then they would lose the benefits, is my understanding.

SIMPKINS: When these jobs were set up originally, were they set up as cheap temporary type of employment, or were they set up as career type employment?

JUDGE: The law doesn't differentiate between whether the job is seasonal or temporary in the sense of coverage that applies under unemployment compensation for these workers. It simply says if you are unemployed and you have worked the qualified periods, you are entitled to the benefits as long as you were available and would accept a job if offered.

Closing by Sponsor:

HARRINGTON: I would just like to remind you that there are the states of Washington, California and Illinois, that do allow these people to take part in the unemployment compensation program. I feel it is a fairness question and I feel that it is very important that the committee recognizes this. I feel it is a fairness question.

I also want to mention that Bob Gervais has some prepared testimony that I will submit to the committee in just a few minutes, in favor of this testimony. (Attached hereto as Exhibit #2).

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HEARING ON HB 622

Presentation and Opening Statement by Sponsor:

DRISCOLL: HB 622 is a bill that will require safety training in

the work place or have a board or a fund that would train people in safety. There are 25,000 workers hurt on the job every year in Montana, 9,000 lost time accidents, and that is why we have \$157,000,000 unfunded liability, that's why we have workers' comp rates that are among the highest in the middle of the western states. The way this should work is this board would be unpaid. They would contract with employers or with private people who are skilled in safety, to go to the employer's work place because in a lot of cases a small employer cannot afford to have a safety engineer on the job or to have safety training. These people would look at the work place, find the things that are unsafe, help the employer to correct them and train the workers in a safe manner of doing certain tasks. Today to testify in favor of this bill we have Julie Holzer who is the president of the Oil, Chemical and Atomic Workers of Laurel.

Testifying Proponents and Who They Represent:

JULIE HOLZER, Cenex Refinery in Laurel, also president of Pioneer Local #2443, Oil, Chemical and Atomic Workers International Union representing the refinery and rebargaining unit.

DON JUDGE, Montana State AFL-CIO

DAN EDWARDS, International Representative with the Oil, Chemical and Atomic Workers Union. Stationed in Billings but covers all of Montana for the Union.

Proponent Testimony:

JULIE HOLZER, proponent. I am here to testify in support of HB 622 which would allow for occupational health and safety training and education through a state administered grant program. For the past year I have been involved in worker health and safety training with employees of several different companies. It has been my experience that workers who have had company sponsored training were often uninformed and misinformed regarding workplace hazards. Intentional or not, company training is often inadequate and done to suit company needs rather than worker concerns. With this proposed legislation these programs could teach workers how to assess and control workplace hazards, whether those hazards deal with heavy lifting, effects of working with video display terminals, or handling job stress and burnout.

The issue of exposure to toxic chemicals and hazardous wastes alone should be a major consideration. There are more than 50,000 chemicals in use in our modern society today. The government has tested less than 300 of those chemicals to determine if they are harmful. Of the known cancer-causing chemicals, OSHA has regulations for about a third of those deadly chemicals. Because of the latency period of some of these carcinogens we could be facing

industrial disease of major proportion by the end of this century from chemicals whose hazards we are not even aware of yet. Workers must be able to make a determination about the hazards of the chemicals they handle. They must understand the use and the limitations of personal protective equipment. Federal agencies such as OSHA have been created to protect workers from such workplace hazards. We have laws requiring chemical labeling and material safety data sheet, but most workers are unaware of how OSHA works and if they don't understand what a material safety data sheet is how can they use it? Most important, workers need to understand what their rights are to insure their own health and safety and I believe we can teach them that. Our effort to educate workers about safety can be beneficial for Montana employers as well. We can assist employers with government required training. We can help reduce on-the-job injuries and increase productivity, because an employee who is safety indoctrinated will have a lower incidence of lost time accidents.

A major issue this legislative session has been Montana's workers' compensation system. Some employers complain that premium rates are too high. Other complain that the benefits are too high, and some say the court is out of control, but that's not the real issue. The real issue is the alarming rate of on-the-job accidents in Montana. Our accident rate is higher than the national average and it is increasing faster than the national average. That takes a terrible human toll on the workers and places an enormous burden on the workers' compensation system and the employers who fund it. The most effective solution to that problem is to educate workers and their employers about workplace hazards.

DON JUDGE, proponent. As you have already heard, HB 622 would establish an occupational safety board with responsibility for improving workplace safety. The board would be authorized to enter into contracts with organizations who provide employee training, awareness programs and practices which prevent occupational injury or disease. We believe that this bill represents a very forward looking solution to something that isn't even mentioned in the bill -- the workers' compensation deficit.

(Talked about injury and safety statistics).

This bill addresses that problem head on and unlike so many other proposals does not place the burden on the workers who are being hurt or made sick on the job. We heartily endorse this proposal and urge you to give it a do pass recommendation.

DAN EDWARDS, proponent. (Talked about injuries and safety). One of the things that I have found out in my experience in working with the union health and safety program for five

years, is that employees have a great deal of interest in meaningful health and safety training.

I would suggest that for the small price tag involved here, it would be a very good investment. I urge you to give this bill a do pass recommendation.

Testifying Opponents and Who They Represent:

BUCK BOLES, Montana Chamber of Commerce.

CHARLES BROOKS, Montana Retail Association.

LAURIE SHADOAN, Bozeman Chamber of Commerce.

KAY FOSTER, Billings Chamber of Commerce.

GEORGE WOOD, Montana Self Insurers Association.

Opponent Testimony:

BUCK BOLES, opponent. Read from written testimony which is attached hereto as Exhibit #3.

KAY FOSTER, opponent. Submitted written testimony, Exhibit #4.

LAURIE SHADOAN, opponent. We are also in opposition to HB 622 for the reasons stated by Buck Boles.

I would like to relate an incident which occurred recently with regards to my business that I was unaware of. The state workers' comp division has a program in place which you can receive credits toward implementing safety programs. When calling the division I was told that my premium could not be reduced any further because of the safety record I had. I feel it is unfair for all businesses to have to pay for the safety of other businesses. I did calculate what this percent would be for my business and it would be \$5,500. This bill is in duplication of existing programs currently in place.

CHARLES BROOKS, opponent. Written testimony, Exhibit #5.

GEORGE WOOD, opponent. Our objection to this bill does not go to the merits of what Rep. Driscoll is trying to accomplish. We are well aware of the consequences of poor safety programs and in the members of our association the emphasis on safety is probably the highest of any employer's group in the state. Our objection to the bill is the funding. It's another tax. It's a payroll tax. We oppose that for one thing and the other thing is that payroll tax works unfairly for my group in the sense that we represent those higher paying industries. The percentage placed on us is higher than any of the mercantile industries, for instance, that pay \$3.35 or \$4.00 when ours is two or three times that. For the same employee, we are going to pay two and three times as much as someone else. The payroll tax seems to be the coal tax of the late 1980's, it seems to be the place that we are going to tax.

At meetings I have attended, I have had many people say to me that as long as you have a payroll tax you have indicated to us that your business climate is not good.

I have nothing to say against the merits of the proposal. It is the financing of the proposal that causes me a great deal of difficulty. For that reason I ask you to do not pass.

Questions From Committee Members:

WHALEN: Question for Ms. Shadoan. I believe in previous testimony before the committee you stated that you have a couple restaurants in Bozeman. I received a copy of a letter that Jim Murry sent the governor the other day. The letter it indicated that in Montana injuries in service sector jobs has increased by something like 30% last year, it is five times higher than the national average and accounts for 26,000 odd injuries a year.

I am curious as to whether or not you have any insight as to how all those accidents are happening in your industry.

SHADOAN: It isn't happening in my restaurants. I have a very low unemployment and my workers' comp rate is fine too.

WHALEN: I'll direct that question to the representative of the Montana Chamber, Buck Boles, maybe you could respond to that question. Also, what is going on in Montana the last couple of years?

BOLES: I don't have any information on why the rate is increased either. I do know, for example, in the logging industry there has been a real emphasis on safety programs being put forth by the industry to help impact their workers' comp rates. I hope that will continue in other industries. I would guess that more strict reporting requirements may have some impact on those numbers because those have been imposed and employers are more diligent about reporting injuries than they once were. That could be a factor.

WHALEN: Does the chamber make any effort to canvass its members in the businesses it represents with regard to what they are doing insofar as safety is concerned?

BOLES: No, we haven't done that in the past.

SIMPKINS: Question of Don Judge. Do you have in the unions now safety training programs that are made available to the employers?

JUDGE: Some unions do, some unions don't. It varies by union.

SIMPKINS: Would the employers who take advantage of your service be exempt from this tax then because they are already included in a safety training program?

JUDGE: We have not exempted anybody from that tax.

Closing by Sponsor:

DRISCOLL: I think there are some mistakes in arithmetic in some of the opponents. I have .0125% and if she is paying \$5,000 under this bill she would have a four million dollar payroll. I think she forgot to add a zero. I think her bill would be closer to \$590 a year. Anyway, when the workers' comp division sets rates, they set rates on occupational classification codes. If your employees are in an occupation and they are very safe and you never have an accident, then they give you a modification factor if you pay more than \$2,500 a year in premiums.

I'll give you an example of what happened in the trucking industry to a friend of mine. The rate for truckers was about \$9. He had a modification factor of .9. He has never had an accident, had nine trucks, the rate is now over \$17 and he is at .85 of \$17 instead of .9% of \$9. His rates went up because of what other truckers were doing. There is nothing you can do about it, they just keep going up and up. Because the other truckers aren't safe, his rates go up.

I've been trying for years to figure out a bill where we could force the mod factor higher, faster, but all that does is put people out of business. This bill, hopefully, would train people in safety and we wouldn't keep hurting and maiming people and causing the employers' rates to go sky high. If the private sector is going to do it, fine. I wish they would start. They don't want any more government. The private sector is going to do it. When?

This bill will raise probably \$4,000,000 a year. The Oil, Chemical Workers Union spends \$10,000,000 a year in the nation training about 30,000 workers. Somehow we've got to get to those people who are causing the accidents and some safety training would be a good place to start. I hope you will give favorable consideration to the bill.

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HEARING ON HB 694

Presentation and Opening Statement by Sponsor:

SQUIRES: HB 694 will strengthen the existing requirements for employers to provide safety equipment for employees and for employees to use that equipment. The purpose of this bill is to help address the serious increase in the accident/injury rate among Montana workers and the growing awareness of occupational disease and toxic exposure problems. Again, state and federal statistics indicate that job related injuries are increasing in Montana. This bill attempts to require recognition that healthy working conditions and a safe work place are basic rights of Montana workers. By doing so we hope to reduce accidents and

illnesses caused by working conditions, thereby not only reducing the terrible human toll of accidents but also helping to hold down employers' workers' compensation insurance premiums. If this program will help hold down the accident rates, it will reduce workers' compensation claims and benefits which will ultimately result in savings to Montana employers. In my mind, this is a pro-employer bill.

The changes in section 1 essentially makes existing law on employer-furnished safety devices more clear by adding that the employer must purchase them. Existing law states that employers must furnish such equipment, but leaves unanswered the question of who should pay. This bill would make it very clear that employers must furnish and pay for the equipment needed to do the work in a safe manner.

The bill also adds the notion of health related safety equipment to the traditional definition of safety equipment with increasing threats to workers' health, equipment designed to prevent the spread of diseases should be included in the traditional definition of safety equipment.

Section 2 strengthens existing provisions that require the use of safety equipment and adds again the reference to health related equipment, as well as protective clothing. I think this bill makes the existing law more clear. It strengthens the employers obligation to provide a safe work place, as well as the employees' obligation to use safe work habits. It is a bill that could help address the high accident rates we have here in Montana and perhaps help out our workers' compensation system and the employers who fund it. I reserve the right to close.

Testifying Proponents and Who They Represent:

ROBERT L. CULP, Safety and Health Committee Chairman for Local #885 United Paperworkers International Union in Missoula, Montana.

JOE ZITO, Local #3038, Lumber Production Industrial Workers Union, Bonner, Montana.

DON JUDGE, Montana State AFL-CIO.

JULIE HOLZER, President of the Oil, Chemical and Atomic Workers Local Union, Laurel, Montana.

REP. O'KEEFE, Representative.

Proponent Testimony:

ROBERT L. CULP, proponent. Submitted written testimony which is attached hereto as Exhibit #6.

JOE ZITO, proponent. Submitted written testimony which is attached hereto as Exhibit #7.

DON JUDGE, proponent. Rep. Driscoll made it very clear in the last bill that maybe what we ought to be doing with employers in Montana is ask them to address the safety issues with regards to their workers, rather than spreading the burden around, as it were. Current law makes it very clear that in Montana employers have an obligation to provide a safe work place at their expense and employees have an obligation to work in a safe manner. Existing law also clearly requires that employers furnish the safety equipment needed to make their work place safe. Some employers have charged employees for the price of that equipment. This bill correctly clarifies that the intent of the law is for the employer to bear the cost of making his or her work place safe. Existing law also clearly requires that workers use the safety equipment furnished to them. This bill makes good changes that increase the workers' obligation to use that equipment and to take care of that equipment properly. The bill also clarifies the definition of safety equipment to include health related devices and protective clothing, both of which are necessary for a safe work place.

HB 694 clearly will have a beneficial effect on the very high rate of accidents on the job in Montana and thus could help employers with their workers' compensation premium rates and the workers' compensation fund in general. Most importantly, it could reduce the human toll associated with work place injuries, diseases and deaths, and to us that makes sense. We think this is a good bill that clarifies the safety obligations of both the employer and the employee and we urge you to give it a do pass recommendation.

JULIE HOLZER, proponent. Being an oil worker and working in an oil refinery, the amount of safety gear that we have to put on every time we walk into that plant would probably amaze you. We wear everything from head to toe. If we were required to furnish our own equipment it would be difficult to maintain our homes, let me tell you. We support this bill.

REP. O'KEEFE, proponent. As a graduate student in Missoula, I went to work in one of the lumber mills working 20 hours on weekends as a fire and safety guard. I was furnished with my equipment, steel toes Sorels, which I didn't even know they made, all the way up to safety glasses and gloves, chaps, etc. I worked for one and a half months before I received any pay because of the cost of the equipment. The week after I was laid off as the fire guard, they intentionally burned the building down. Especially for part time employees it is a very serious detriment to making any money on these jobs when you have to buy your own safety equipment.

Testifying Opponents and Who They Represent:

GEORGE WOOD, Executive Secretary of the Montana Self Insurers Association.

KEITH OLSON, Montana Loggers Association.

GORDON SANDERS, Champion International.

Opponent Testimony:

GEORGE WOOD, opponent. In most cases, except for the one example given here of gloves, the members of my group do provide personal safety equipment. The question we have on this bill is one of meaning. I can't tell you what health safety devices are. What are "protective gloves?" In the case where they use three pairs a week, if that what the job requires, then the employer should furnish them. What are protective gloves -- rubber gloves in a restaurant?

The other problem in this bill is that it is kind of open ended. All of us have to have a great deal of fear of what federal agencies do and this bill says that if the feds change the regulations we automatically are going to be in there.

What if we say to our employees, you can't come to work in those tenny runners, you have to wear some decent shoes for support. We are requiring him to wear decent shoes -- do we have to provide all his footwear while he is working, even though it isn't special work? So there are some things in here that I think Rep. Squires could clarify.

We certainly wouldn't oppose it, but as it stands now it is too open ended and we don't know what we are getting into. I would say with amendment we could support it, but as it is now we would ask that you do not pass.

KEITH OLSON, opponent. We oppose HB 694, but we don't oppose this bill for financial reasons or because we don't support safety gear, especially in our industry. We have some logistical problems with what this bill might require. In our industry the average employer has about five employees. That can be a terrific problem if this bill is going to require that employer to inventory a host of different types of safety options. We also have problems with the fact that we don't have a confined work space. People going to work in the woods don't go through a gate in the morning and come out in the afternoon where they can pick up and drop off safety equipment. There is just a host of stuff out there, gloves, hard hats, chaps, eye protection, ear protection, you name it and we are finding in our industry that through a number of efforts that this stuff is being used and used successfully more and more of the time. Yet it is a

developing industry with different kinds of gear in eye protection, different types and styles of hard hats and this bill may prohibit some employee preference as to what kind of hat he wears, what kind of gloves he's going to wear, what kind of ear and eye protection. Chain saws is another good example. Sawyers in our industry have a passionate faith toward certain brands. Chain saws also have chain brakes and other types of required or mandated safety gear on them. Are we going to get in the position where an employer is going to tell an employee that he is going to use this type of a saw.

The Montana Logging Association has a full time safety man and we promote a full time loss control program and have all throughout the 1980's. It has been a very successful program and continues to be. The timber industry has sponsored a sawyer certification where we give professional status to timber fallers who complete the certification program. Champion and other firms have contractual incentives with independent logging contractors that are really enhancing the promotion and use of safety devices. We have some very independent characters out there working in the woods and the way this bill is written, I have some concern that they may actually defy some of the provisions. We hesitate to promote legislation which could make an outlaw of an employee who says I'm going to alter this face screen or I'm going to alter this type of hearing protection that was provided to me by my employer because I don't think it is necessarily effective or safe. We'd prefer to work through the safety incentive efforts we have in place.

HB 694 may, and for some minimum safety standards, create a situation where employees may be able to challenge an employer's safety program because it goes too far by claiming it exceeds statutory requirements. I'm a little confused as to any type of penalty requirements or any of the penalties that would come from the bill when it says that an employee may not remove, displace, damage, destroy, or carry off, the equipment. What is going to happen if he does. What is the employer's obligation -- fire the guy or send him home; shut down the operation? If he removes a safety device and gets injured, does he not qualify for work comp benefits? I don't know and maybe Rep. Squires can answer some of those questions. With all due respect, too, Rep. Squires, we appreciate the fact that you have a real interest in the health and safety of employees in this industry and in Montana and I hope you appreciate that we in the logging industry share that, but we see some logistical problems with this bill. We appreciate this opportunity to bring this to your attention.

GORDON SANDERS, opponent. Champion views this legislation as excessive in terms of cost to the employers in the state of Montana. Champion complies with state and federal laws in providing safety equipment and clothing, either at cost, or

furnished in the case of specific safety equipment or devices to meet certain job functions. It is Champion's experience over the years that effective safety programs result from cooperative efforts which dovetail awareness with employee involvement and sharing of costs. The cooperative atmosphere which results creates a commitment which is the catalyst driving any successful program. To date this program for Champion has been effective in providing a safer work place with fewer loss time accidents.

In summary, Champion proposes HB 694 as burdensome to the employer and will interfere with the commitment developed thus far through employee participation.

Questions From Committee Members:

None.

Closing by Sponsor:

SQUIRES: In regards to Mr. Woods' remarks on lines 24 and 25, I think that is pretty self-explanatory as to what types of equipment we're requiring here.

In regards to Mr. Olson's testimony, I also want to compliment Mr. Olson in his efforts in the logging industry in doing what he can for reduction of injuries. I have followed him in the Montana Logger and seen the vast improvement there, but one injury is just one injury too many in my mind.

The Champion International gentleman who spoke in opposition to this bill, I really don't know what to say about that. There is some equity in there but yet there is some disparity and I think that those issues need to be really dealt with.

What I am asking for you folks to do is to see that the industries provide at a lower cost to employees some of the safety equipment. There is still an increase in worker's accidents and part of it is due to the lack of safety equipment. I think it is imperative upon the people here in this legislature who are constantly saying that workers' compensation is escalating that we take some method and protect the workers of Montana.

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HEARING ON HB 695

Presentation and Opening Statement by Sponsor:

WHALEN: I do have two handouts to pass out to the committee. The first handout is an amendment and I will explain that in a little bit (attached hereto as Exhibit #8). The second

is a letter I received in October of 1988 from Congressman Pat Williams which is the genesis of this bill (attached hereto as Exhibit #⁹).

I think the letter from Congressman Williams does an adequate job of explaining the reason for the need of this legislation.

Briefly, this legislation does two things. (1) It puts the law back in the same shape it was in prior to the 1985 session, insofar as what is commonly referred to as "strike benefits." That is not to say that all striking workers under that law at that time were entitled to unemployment insurance benefits. There had to be a stoppage of work.

(2) The second amendment has to do with one specific type of seasonal employees. It is meant to deal with students going to college. When they work in the summer and maybe get laid off in the middle of the summer, when they had expected to work the full summer, that they would be able to obtain unemployment benefits for the remainder of the summer. The way the bill was originally drafted it was a broad exception which would have allowed them to collect benefits while they were going to school and that wasn't what I was intending. Therefore, we need to adopt that amendment if the committee decides to pass the bill.

I'd like to go back to the first thing that the bill does and explain to you why I feel it is necessary. First of all, the concept I learned in contracts class in law school, which is really common sense, is that when you have a disparity of bargaining power between parties, oftentimes you are going to end up with contracts which, in the legal sense, we refer to as being unconscionable. We learned that to initiate good contracts an equality of bargaining power between the parties was necessary. Of course, that is the whole concept behind the trade union movement and that is to have as near as practicable an equality of bargaining power between the parties. Now, particularly in the case of large industrial employers, you do not have that equality when there is a strike and there is not a stoppage of work. When there is not a stoppage of work, the employer's business continues on pretty much as usual. The workers who are striking to obtain fair wages and benefits are out on their own, they are not receiving any compensation and, under the present law, they're not receiving any unemployment benefits and for all practical matters are not working and they are unemployed. In order to get a little bit of the equality of bargaining power back into the scene between employers and employees in this state, we need to put this law back into effect.

As a matter of a little history, in 1985 there was a move afoot to repeal this law as it stood, where if there was not a stoppage of work that the striking employees would be

entitled to unemployment benefits. There was a crisis in the unemployment insurance fund and many, many people found it popular at that time to help correct out the problem with the unemployment insurance fund to go after the so-called strike benefits. Right now, it is my understanding, there is \$2.8 million in the unemployment insurance fund and that is approximately \$1.5 to \$2 million dollars in excess of what is needed right now to pay the unemployment insurance benefits that are projected to occur in the future.

With that I will leave the bill to the proponents and opponents and I reserve the right to close.

Testifying Proponents and Who They Represent:

KEN TRITZ, Missoula.

JULIE HOLZER, Cenex Refinery, Laurel, Montana. President of the Oil, Chemical and Atomic Workers Union.

DON JUDGE, Montana state AFL-CIO.

BOB HEISER, United Food and Commercial Workers.

Proponent Testimony:

KEN TRITZ, proponent. Read from written testimony, copy of which is attached hereto as Exhibit #10.

JULIE HOLZER, proponent. It is no secret that the driving force for the passage of SB 81 in 1985 that Tim referred to was the strike at the Cenex Refinery in 1984. As you recall, SB 81 denied unemployment benefits for striking workers, even if there was no work stoppage. Since 1985, I have been involved in two contract negotiations with Cenex Refinery and, believe me, we have paid a big price for SB 81.

Concessionary bargaining now is the rule rather than the exception. When our back is against the wall the last tool a worker has is a strike, but a strike is only effective if it creates economic difficulties for both the company and the workers, promoting earnest negotiating. When a company is able to continue their operations in a strike situation with outside workers at a lower rate of pay, there is no longer any economic pressure for them to bargain. The unemployment benefits given to workers in a no work stoppage situation helps to even the balance, which is delicate at best. No one loves a strike, but when the scales are tipped to the employer's advantage you give them an incentive to promote outrageous concessionary bargaining at the bargaining table. For those reasons I urge you to support HB 695.

DON JUDGE, proponent. This bill would simply return the status of the unemployment insurance law, with regards to strikers,

to the status it was in pre-1985. That provided the balance of power and economic power between the employers and their workers. The balance between labor and management needs to be reestablished.

Since 1985, workers have been far more reluctant to strike. They are concerned about feeding their families, making payments on their homes, cars and college tuition for their kids. Employers, on the other hand, have been far more aggressive in recognizing that workers who are denied unemployment compensation cannot afford to go on strike. This employees' hesitation and the employers' aggressiveness have produced devastating impacts for workers. Armed with their new boldness, out-of-state corporations in Montana's western timber industry extracted wage concessions amounting to approximately \$3,600 per employee and spend almost \$7 million less per year on western Montana's main street business. Here in East Helena where an out-of-state corporation extracted approximately \$8,500 in concessions per year per employee, the community impact has been almost \$1.7 million per year in lost wages.

The list could go on and on for concessionary wage givebacks in Montana since the adoption of this current law prohibiting strikers from receipt of unemployment benefits. It includes miners, store clerks, restaurant employees, mechanics and building trades workers. We need not wonder nor ponder why Montana's annual average income has fallen or why main street merchants are failing. We believe we only need to look at such lousy policy decisions as this one that was adopted in 1985 to find our answers. Montana's workers, whether they are union or not, are friends and neighbors and that is true of our main street merchants as well. Both need help and HB 695 is a step in the right direction.

As Julie said, no one likes a strike. We should do everything we can to avoid striking and avoid those confrontations, but unfortunately there are simply times when a strike and the threat of withholding services may be necessary. The best laws are those which encourage fair and rapid settlements. HB 695 would do just that and for these reasons we ask your favorable consideration.

BOB HEISER, proponent. We want to go on record in support of this bill for all the reasons mentioned by Julie and Don.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

WHALEN: Close.

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RUSSELL: We have two more bills to hear after we come back from the House. We have executive action needed on about seven or eight bills.

Recessed at 5:05 p.m.

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RECONVENED at 5:45 p.m.

RUSSELL: Before we get into the hearings, we have two more bills to hear tonight, then we have executive action on nine bills.

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HEARING ON HB 710

Presentation and Opening Statement by Sponsor:

DRISCOLL: HB 710 amends the rehabilitation section of the workers' comp law. If a person is hurt and cannot return to their former employment, the rehabilitation people are supposed to help him/her obtain a job. Presently, what happens is if there is a job available, anywhere in the state because of the way the present law is written, your benefit is cut in half because some place in this state there is a parking lot attendant job and you could possibly do it and that is what happens to you. What this says is "whenever possible" restore workers to a job that pays a wage of what they were capable of earning prior to the injury.

Testifying Proponents and Who They Represent:

JAN VAN RIPER, Attorney in private practice in Helena.

DON JUDGE, Montana state AFL-CIO.

Proponent Testimony:

JAN VAN RIPER, proponent. I am not representing any group, I am here supporting this because I am concerned about what is happening in this area of workers' compensation with clients that I have.

What this bill attempts to do is iron out a "glitch" in the new law that was passed last session. From a worker's perspective there are a lot of glitches in the new law, but this one seems to avail itself of straightening out on behalf of an injured worker and also saving money for the insurance companies.

At the start of the session there were public hearings on both sides. The common theme running through the stories that were being told by the injured workers, at least on the Senate side, had to do with this area of retraining and rehabilitation.

As an example, an injured worker goes on compensation and then a private rehabilitation counselor may or may not visit with that person. The counselor comes up with some finding that this person, based on their age, education, experience, etc., can do some certain jobs. What we are seeing very frequently are jobs like Keno caller, cashier at a convenience store, clerk, a lot of minimum wage kind of jobs. So this person who was earning \$14 per hour is now being told that he can go out and do these jobs at minimum wage or slightly above minimum wage. Then their benefit rate is cut, even though they don't go perform that work. If there is a finding that they can do it, their benefit rate is cut substantially. In a case like that, they would be entitled to some subsidy. The subsidy would be between \$14 an hour and let's say it is a \$4 an hour job they supposedly are able to do, so the difference there would be \$10. They are entitled to 2/3 of that differential. The state's average weekly wage which right now is \$149.50.

Another example, there was a woman who testified that she was working at a job that paid something along the lines of \$8 per hour. I don't remember precisely the job. It was something like a Keno caller job that was identified for her, but it was in Darby. She was working out of Butte. Her benefit rate was cut and she is then entitled to a differential if there is any.

So you might be wondering what's wrong with that because they are at least entitled to a differential -- there are at least a couple of things wrong with it. One, if you heard these people tell their stories, or if you saw some of these people who come into my office, it is actually devastating to them. Here were people who were able to earn a particular salary and wanted to work at a particular occupation. They weren't especially attracted to a job being a keno caller, or whatever is identified for them, and now they are being told that they better go do this because if they don't they are going to be paid at a rate that assumes they are doing it anyway. From that perspective it is not a real neat system.

(She talked at length about how the system works with the differential and subsidy payments)

It would make much more sense to retrain that person into something so they can go back out, earn something close to what they were earning before and then the company would not have to subsidize them. I believe you would be potentially looking at a cheaper claim cost. There are other economic reasons for doing it also. One being the tax base situation. If you are releasing all of these injured workers out into lesser paying jobs, that affects your tax base. At the end of 500 weeks these people, who perhaps have been subsidized, are no longer subsidized and they are earning minimum wage or slightly above minimum wage. They might be eligible for some public assistance money, so it seems to me to make all the sense in the world to try whenever possible to restore these people's abilities to earn.

When the legislature looked at the entirety of the workers' compensation situation last session there was a pretty widespread feeling that they wanted to get rid of the concept of loss of future earning capacity which was built into the old system. There was a feeling that it really caused some problems and was very expensive. I want to clarify that the intent of this bill is not to reinstitute the notion of loss of future earning capacity. The intent is to, whenever possible, restore an injured worker's earning capabilities to what they demonstrably enjoyed at the time of the injury.

I am told some of the private carriers, and perhaps self insurers, are settling cases under the new law in lump sums. By doing that, some of those claimants are afforded opportunities for retraining. I have not had that happen personally with my clients. The problem is that the state fund is not doing that and the state fund insures the majority of the workers. I think they are not doing it because they don't have the authority to do this in terms of providing the retraining because the legislation, as it reads right now, mandates them to return the worker to work without any reference at all to what they were earning prior to the time of injury. It seems to me that from the perspective of all those people who aren't insured now and in the future by the state fund and also by the insurance carriers who aren't necessarily settling the cases and affording retraining opportunities, that this law is necessary.

DON JUDGE, proponent. We think the intent of this legislation is very good. We have already given you the statistics. You all have them on the increase of injuries in the work place for the last year in Montana. The problem with the current law is that those people are considered returned to work even though they may not be able to go back to work at a job that would put them in a former earning capacity prior to

the time they were injured. We think this bill addresses that problem and we encourage you do give it a do pass recommendation.

Testifying Opponents and Who They Represent:

GEORGE WOOD, Executive Secretary of the Montana Self Insurers Association.

Opponent Testimony:

GEORGE WOOD, opponent. What this bill does is undo what was done in SB 315. That bill established that the purpose of rehabilitation was to return the worker to employment at the earliest possible date with the minimum of retraining.

(He talked at length about the difference between "capable of earning" and "earning").

I suggest that this bill be defeated.

Questions From Committee Members:

SIMPKINS: Question for Jan Van Riper. On line 15, and I had the same thing circled here, "was capable of earning," I have a hypothetical situation, bringing back your \$14 an hour employee who lost that job because he got a new job in Montana, which has happened many times; he now has had a job at \$9 an hour for two years and he is injured on the job. What base are we going to use there? \$9 or \$14?

VAN RIPER: I think the way this is currently written you would probably use \$14.

I am sensitive to this question of loss of future earning capacity. Surprisingly enough, even though I represent claimants, I am not a fan of loss of future earning capacity. I think it carries some evils with it. There have been some suggestions to go ahead with this language for the most part but change it so that you are restricted to the wages actually earned at the time of the injury. The problem associated with that is that it is not infrequent when somebody has a very good history of past earnings and for whatever reason is not working there any more, has been working for a short period of time at a lower paying job, have every expectation of going back to higher earnings, but is injured in the lower paying job. So if we amended this to simply talk about wages at the time of the injury those people would be hurt.

Closing by Sponsor:

DRISCOLL: On page 3, the whole key to the rehabilitation law is right there. Lines 18 on, the first appropriate option to put the person back to work is returned to the same

position. If that is not possible, then returned to a modified position. If that is not possible, item C "return to a related occupation suited to the claimant's education and marketable skills." There aren't ten people in this country who can't be parking lot attendants and so they go to seed. That's what they say they can do.

A friend of mine is a brick layer, making \$18 an hour and that is exactly what they did. They said there is a job downtown at the parking lot, city of Billings, therefore you are retrained, you can do that job, you have the skills. They give you a little dexterity test and they give you another test to see if you can read and write, count money, and if you can do that you can do any job and they pay \$3-\$4 an hour.

The problem with the law is that "C" should probably be after "G" on page 4, then it might work. The priorities are listed, 1, 2, 3, and nobody ever gets past 3. What we are trying to do is emphasize whenever possible. There is no way my friend, the brick layer, will ever go back to it, so it is not possible for him to be returned to \$18 an hour. He is capable of being returned to \$8 or \$9 an hour and not being forced into a minimum wage job. So being a rehabilitation specialist under this law is very simple -- you give them the test, you can see that they can count, they can read and write, and then you go to the paper and say there is a parking lot attendant job open, you can do it, your benefits are cut in half. That is exactly what is happening out there. "C" should at least be moved down below "G" to make the law work.

Nobody get retraining any more. They haven't sent anybody to any kind of training, except adult education, since this bill was passed. I hope you can pass this bill, or at least try to amend it and make it work.

RUSSELL: This closes the hearing on HB 710.

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HEARING ON HB 719

Presentation and Opening Statement by Sponsor:

REP. MENAHAN: HB 719 is an act on privatization of state services. This bill is to protect workers who are now working for the state. The purpose of my bill is that state employees be given some consideration in keeping their jobs rather than just being contracted out. Specifically, my intent is to protect state employees from privatization. One of the reasons I came through with this bill is that I was chairman in 1979 of the General Services Appropriations Committee Budget and for the previous eight years this capitol building was a shambles. It was a disgrace to the

state of Montana and it was privatized to a couple different businesses. I could through some of the horror stories with you of what happened to our state employees. There was theft from the offices. There was one lady who had left her shoes in her office and wore here snow boots home. When she returned the next morning her shoes were gone. The people who had cleaned her office also wrote four-letter words on the papers she had left on her desk and tacked them up on the wall and that is what she met in the morning. I went with her and we tried to find out who did it. Everyone denied any knowledge of what happened. They didn't have the same staff day after day, they were always changing staff and that is what we are going to go back to.

You notice now you can walk around this building and see shined floors; before when you walked here you could slide on the floors with the gravel. There was no shine to any of the floors in this building, it was a disgrace. When I brought this up to the legislators that this was the road I was going to go it received unanimous approval.

I am very concerned about the employees we have here who are the security staff, cleaning staff, etc. They have already received notice that their services are no longer required. Why is it we always pick on minimum wage earners. I thought if we were going to privatize something we should privatize those that are making \$40,000 and on up.

Testifying Proponents and Who They Represent:

TOM SCHNEIDER, Montana Public Employees Association.

TERRY MINOW, Montana Federation of Teachers and Montana Federation of State Employees.

NADIEAN JENSEN, AFSCME.

DON JUDGE, Montana state AFL-CIO.

Proponent Testimony:

TOM SCHNEIDER, proponent. Appearing in support of HB 719.

Privatization has become a big issue and it was a big issue through the last campaign. It has left the employees in a situation where they are very nervous. On top of having wage freezes and everything else, now morale has gone another step down because of all the talk about privatization. This is not an issue that is new. Besides the situation that Rep. Menahan talked about, we have had bills in the last two sessions dealing with privatizing liquor stores and privatizing printing. There may be areas that should be privatized. We should have a system that will determine what should be privatized, how it should be privatized and how the employees are going to be protected if it is determined that privatization should take place. I

think this bill does that. This bill will give the employees a feeling that someone cares about them, but it also tells people that there may be areas that we should take a look at privatization. I think it is a good bill and you should take a good look at it. This bill certainly is far better than the bill the Senate will be considering tomorrow which has no protections for anyone.

TERRY MINOW, proponent. We rise in strong support of HB 719. This bill is a strong response to the question of privatization. The heart of the bill would be contained in the following provisions:

- (1) it would provide that the contracting agent clearly demonstrates that the proposed contract would result in actual overall cost savings to the state;
- (2) the contract would not cause the displacement of state employees;
- (3) it would provide for protection of quality of services; it states that privatization would not be allowed if the state agency cannot provide higher quality services; and
- (4) it would also provide that a state agency may not contract for work solely on the grounds that savings will result from lower contractor pay rates or benefits.

The last part of the bill, section 5, would form a contract review board and that board would review proposals on privatization. The state has had experience with privatization and two examples that I would like to give you are the childrens' center which was formerly part of the Warm Springs Hospital. It was moved to Billings and then was privatized by Rivendale. The cost to the state has risen by a tremendous amount under that provision. Along with that, some of our people who worked for the Department of Institutions moved to Billings to work for Rivendale. They came back to work for the Department of Institutions and I can tell you that if the state of Montana is a better employer than Rivendale then we are looking at a pretty poor employer.

Another example is privatization of pharmaceutical services at the Montana State Hospital. Once again, costs are astronomical compared to what they were under the state of Montana.

The issue of privatization is before us now. This bill requires that if privatization is to occur, it will occur in an orderly fashion, that workers and state services will be protected and that the privatization will not simply be a vehicle for cutting wages. Please give this fair bill a do pass recommendation.

NADIEAN JENSEN, proponent. We rise in support of HB 719 mainly because of the protections for the employees of the state of Montana. I ask your support of this bill.

DON JUDGE, proponent. We support this legislation.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

RUSSELL: Question for Rep. Menahan. I assume that there is a fiscal note that is being developed on this?

MENAHAN: I don't know that there would be. We're not asking for more employees or anything. These people would be FGEs that would be figured into the state budget at the present time. These are the people who are now working for state government and would be in the general budget.

THOMAS: If you are going to contract this out, is the contract going to say you will hire these five people that are working there now. Will the wage be set in that situation too?

MENAHAN: What we are trying to say is that we don't want them to lose wages if they are contracted out. They get the jobs and they get the salary to go with it. It says in the bill that they can't come in and cut services and cut wages. In the 60's that is what they did. They cut wages and the people who had it got rich.

SIMPKINS: Let's look at the printing department. We have 25 printers sitting in one of the shops here. Let's say they cut this down and there are now ten printers out there that are going to be displaced. Can they be absorbed in some other type of job in the state that they can physically do and be paid at least the same wage, or do they have to be given a printing job at that salary someplace?

MENAHAN: I think if they were given another job that would suffice as long as they were considered and given the other jobs.

Closing by Sponsor:

MENAHAN: In section 5, you notice that we have a contract review board that consists of three members appointed by the governor. The board must include one member who is a state employee, one member from the state employees' union and

one member from the general public. There is a sense of fairness here and I think that is what we have to consider with our employees before we start privatizing things.

I have a friend who is a two or three star general and he is in charge of procurement with the military and I asked him what his biggest job was as a military person and he told me that his biggest job was making sure that the private area wasn't taking advantage of the United States government. That's his #1 job, so I hope we have someone here who watches that they also don't take advantage of our state employees.

RUSSELL: This closes our hearing on HB 719.

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RUSSELL: We are now ready to go into executive session. We have three carry-over bills, we have had some subcommittees assigned and I think some of you may be ready. Let's go back to HB 157.

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DISPOSITION OF HB 157

Motion: By Rep. Pavlovich, to TABLE HB 157.

Subcommittee Report:

REP. PAVLOVICH: Rep. Driscoll is on the phone so I will make the subcommittee report. We had a very good meeting last night for three hours and we discussed this very thoroughly. We have come to the conclusion that we are going to TABLE the bill.

RUSSELL: We have a tabling bill on the floor and as I understand there is no debate on that.

SMITH: That was a unanimous vote.

RUSSELL: We have a motion on the floor to table the bill.

Vote: HB 157 is TABLED by a unanimous vote.

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DISPOSITION OF HB 508

Motion: Rep. O'Keefe moved a DO PASS on HB 508.

Subcommittee Report:

O'KEEFE: We have separate amendments. They are dated February

8, 1989.

Amendment #1 cleans up the title.

Amendment #2 cleans up the title.

Amendment #3 goes to some of the objections that we heard in committee.

Page 2, line 7, following "work" we insert "within two years from the date of injury." In other words, we put the language that was in the law back in.

Page 2, line 12, following "abilities" we insert "an absolute preference to a position that provides wages comparable to those earned in his former position." That was the administrative position which is already in effect in the department in these cases as answered to Bill Palmer to Jerry Driscoll when he asked that question. It simply clarifies that it is an absolute preference, something they have already done administratively.

Page 2, line 13, following subsection 3, we reinserted "this preference applies only to employment with the employer for whom the employee was working at the time the injury occurred." Again, putting the original language back into the law.

Page 2, line 18, following "continue" we have inserted "during the period of injury." There was a concern by the opponents of the bill that somebody could be paying these health insurance benefits for the rest of the guy's life unless that was clarified. Paula Darko did not intend to do that and a number of the opponents identified that as a problem. We are saying here "during the period of injury," and I understand the department will interpret that as long as he is under a doctor's care for that injury.

#7, page 2, line 22, after the word "time" we put the words "the employer's release from the provisions of this subsection in the event the employee is terminated pursuant to subsection 1(a) or 1(b)."

The amendments which Paula offered I would also like to move:

Page 2, line 18, that is the short list prepared February 7 by Eddy McClure, following "continue" we inserted "during the period of injury."

The sponsor concurs with the amendments. Simply leave the law the way it was and state that the rehiring preference is an absolute preference. We felt that statement had to be made, that it is an absolute preference and that's about all the bill will accomplish at this point.

Discussion:

SIMPKINS: Let's go down to the health insurance benefits. I don't understand this term, so when you say you have achieved 100% or maximum healing, does that cut off the obligation of that employer? Go down to line 18, page 2. It says the employer shall continue any health benefits and then you modified that slightly, during the period of the injury. Does the period of injury, we're talking about a time period here, cease once he has achieved maximum healing?

O'KEEFE: Yes, that is my understanding, and at that point he also has that absolute preference for reemployment.

SIMPKINS: What if he turns it down?

O'KEEFE: I would think that if he turned it down at that time he is out looking for other work.

SMITH: I'd like to make a comment on that. Particularly on Paula Darko's district. I know a lot of people over there, they are small loggers. One of the things we have been working on and we are having a bad time getting done is getting those guys to carry health insurance for their employees. What we are doing here is saying that if an employee gets injured, the employer could get stuck for benefits for him for two solid years. That's way over \$3,000. That's really not encouraging employers and particularly small ones, to buy health insurance on their crew. I think it is a bad one.

KILPATRICK: What are you referring to?

SMITH: What I am referring to, Tom, is the amendment that says if a guy gets hurt, the employer is going to pay health insurance on him for up to two years. For a small operator where maybe he only has one or two or three guys working for him, this could be disastrous.

THOMAS: If you are buying health insurance then you have to continue it, so if you don't buy it then you don't have to continue it.

SMITH: It is real difficult for those small guys to even buy it in the first place, but when they do a guy could work for a day, get hurt, and they just spent over \$3,000 for health insurance premiums and that's pretty tough on a small operation.

THOMAS: You are carrying the medical benefits, you're injured, obviously you can't buy other medical insurance, but you've got so long on COBRA. To be carried on that policy you

would have to pick up the premium yourself if you are the injured worker, but does COBRA apply in that case or what?

SMITH: I am making reference to the fact that I always paid all the premium on my employees, so do a lot of the rest of them.

RUSSELL: Does that answer your question Rep. Thomas, or do you have a further question?

THOMAS: Question of Driscoll. Do you know much about COBRA? Does an injured worker who is unable to work for a period of time fall into the COBRA criteria then, for continuing on that policy? The employee would have to pay the premium as far as I know, but how does that work?

DRISCOLL: COBRA simply says that if you leave the employment and there is health insurance at that employment they must offer you the same policy at 102% of the premium, the 2% being administrative costs. So if you get laid off or injured, they have to offer it to you at whatever the premium the employer was paying, plus 2%. The employee has to pay it.

SIMPKINS: Let's clarify where we have been. I would like to ask Clyde Smith on this one. From line 18 to 22, with reference to insurance, that it may be detrimental to the employee because it would encourage the employer not to buy the insurance to start with, is that what you are saying, Clyde?

SMITH: I don't think these guys are right on this. The employee did not quit, you did not fire him, and we are saying he has absolute preference to come back to work. I think you would have to continue to pay the premiums.

O'KEEFE: This might be a question for Clyde. I'm reading this and it says the employer shall continue during the period of injury any health insurance benefit provided to the worker during times of employment. If he didn't have health insurance benefits, they are not there to continue. If he had health insurance benefits, then it seems to me that he has the right to have those continued for the two year period during the period of that injury. I don't read this as saying everybody and his brother has got to go out and get a health insurance policy on their workers.

THOMAS: Let me answer that. What Clyde is saying is that he has been encouraging small logging operations to buy health insurance for their employees. Now we are saying to the employer who buys it for the employees that should one of them get injured, the employer is going to have to continue that health coverage on that injured employee until he is well, or the limit whatever it is. That will discourage them from buying the health insurance to start with because they can't afford to be paying it for the employees, plus injured employees.

SIMPKINS: I'll address this to Fred (Thomas) because maybe he is a little more into it than anybody here. There is a minimum number of employees that it makes it automatic that you are required to buy health insurance, right?

THOMAS: No, you don't have to provide medical for any group.

DRISCOLL: There is no law that I know of that requires an employer to furnish health insurance to anybody. Senator Kennedy in the United States Senate had a bill that would require employers to provide health insurance to their employees. Groups have different laws than private policies. I think an employer can buy a group policy from Blue Shield now for as few as three people. I would like to ask Rep. Smith, doesn't the Loggers Association have a group policy and just about anybody can get into it if you are in the logging business?

SMITH: That is correct and we try to encourage the guys to use it. What I am really getting at here, Jerry, is if a guy was hurt on your job, you had insurance, he didn't quit, you did not fire him, I believe under this bill that technically he is an employee for two years, even though he has no earnings, and you'd have to pay that premium for him.

GLASER: If the employer is responsible then they would be responsible for continuing to pay that benefit after the employee was injured. We're talking about construction jobs now.

DRISCOLL: Well I'm not familiar with the electricians' trust, but if it was our trust fund, the employer remits to the trust fund \$1.75 an hour for every hour of work. After that, all words where it says employer in the trust document, employer means the trust fund -- that's how ours works. In the case of COBRA the employee would pay 102% of the premium to the trust fund, not to the employer. Most construction unions have trust funds for health insurance. Whenever you look at the trust document, with the exception of the payment of the money times the actual hours worked, the way ours reads, there is a second definition of employer and it refers to the trust fund as the employer then. So when the federal government started taxing for sick leave, you have to pay the social security on sick leave, the law says the employer has to pay their share of the social security on sick leave, well the trust fund pays it in our case, not the employer, it does not go back on the person you used to work for, it's out of the trust fund.

GLASER: You don't perceive, Jerry, that this particular proposed law would change that relationship?

DRISCOLL: It wouldn't in our case. It would in the case of Clyde. The employer would have to pay whatever the premium

is for the period. I guess I wouldn't be against putting it into employers of ten or more employees. In the case of the little logger I guess it would bankrupt him, or in your case, Rep. Glaser, it would probably put a little hurt on your company, but I think the intent is to get the people the health insurance so they have something to live on to protect their family if they get sick because they can't work.

O'KEEFE: Maybe I've found the solution here. I don't know if it is a good solution for either side of the issue but maybe we could amend that to read "the employer shall continue to provide health insurance benefits, minus the actual cost of premiums required to provide these benefits." In other words, if the injured worker pays for the continuation of those benefits, either from their benefit check or whatever source of income they have, then the employer doesn't get nailed and the health benefits are still in existence for the injured worker. Would some type of arrangement like that solve that problem?

SMITH: I believe that would solve the problem. By the way, I'm not talking about me, I had a guy off for two years and I paid him anyway. I am thinking of the little guy out there who has only one or two guys working for him. You dump another \$3,000-\$4,000 over a two-year period and that would hurt him.

GLASER: What we have tried to do in our firm when people have been injured is to give them a job that they can handle during the time so he can afford to feed his family. Unfortunately, a lot of times medical doctors won't go along with that.

RUSSELL: Rep. O'Keefe, did you want to make a substitute motion on the amendment, specifically #6?

O'KEEFE: I would like to move the amendments that are prepared, now.

RUSSELL: Is there any further discussion on the amendments as presented already?

Vote:

Amendments PASSED by unanimous vote.

O'KEEFE: I would like to offer another amendment which essentially will say that the employer shall continue any health insurance benefits at the cost of the injured worker.

I would ask the committee to trust the drafter on that and move that amendment.

DRISCOLL: I think the language would have to say "must allow the injured worker to pay the premium" because if both family

members are working and the spouse had health insurance, they may not want to continue it. I think it should be put in there that the employer must allow the worker to participate in the health insurance and the employee, if they want to, to pay the premium.

GLASER: May I add one thing to that? If I recall correctly, most of these premiums have a limit of 18 months, the drafter may want to check into this. My policy says that I can only hold somebody who is not actually employed there for 18 months.

THOMAS: You're right, but if it says state law that you must continue coverage, then that would prevail.

RUSSELL: Does our researcher have the basic intent of this amendment? (she answered yes) Any further discussion?

Vote: Question to members re: latest amendment by Rep. O'Keefe on section 6.

Amendment PASSED unanimously.

Recommendation and Vote:

O'KEEFE: I move the bill DO PASS as amended.

RUSSELL: Any further discussion on the bill as amended?

Question: HB 508 as amended.

HB 508 as amended, PASSED, unanimously.

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DISPOSITION OF HB 639

Motion: Driscoll moved DO PASS on HB 639.

Also moved to amend HB 639.

Discussion:

DRISCOLL: The fiscal note is not printed yet but it will show \$320,000 a year, that is what the department is going to submit to the budget office.

I will explain the proposed amendments. The amendments restore the stricken language on the bottom of page 1, and line 1 on page 2 would read "1.50 to 1.75" it would reinstate 1.50. That's the way I asked the department to estimate the fiscal note. The average duration of benefits is about 14 weeks, the average weekly amount is about \$136. When this bill changed, they estimated 8/10 of 1% reduction in benefits and restoring it they estimate an 8/10 increase

in benefits. They have the historical data, so they should be pretty close on the cost.

RUSSELL: Rep. Driscoll, there are also some amendments here on the table I think that deal with page 1.

DRISCOLL: Those are the amendments I am moving. It restores the stricken language on the bottom of page 1. The bill makes it more fair to people who do not work for a full quarter. And I'll tell you what it does for people who are legislators -- the state does not pay workers' comp insurance on us and if any one of us goes home and gets laid off or doesn't have a job to go back to, you have a dead quarter and you will only receive about 22 weeks instead of 26. I don't care if you have worked for that employer for ten years. Now that is probably self-serving, but to restore it to the way it was it gives those employees who work seasonal and in factories that close down in the winter a chance at being eligible for 26 weeks, whether they draw them or not is immaterial, they are at least eligible for them.

Vote:

RUSSELL: Question on amendments.

Amendments DO PASS unanimously.

DRISCOLL: Moved that HB 639 DO PASS as amended.

Question to DO PASS as amended.

HB 639 DO PASS as amended, unanimously.

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DISPOSITION OF HB 622

Motion:

DRISCOLL: I move DO PASS on HB 622.

There are two sets of amendments, one was drafted by the Department of Administration, because they want to use the word "account" instead of "fund," and I move that amendment.

Vote:

Amendment DO PASS, unanimously.

DRISCOLL: I have another amendment. What this amendment does is it takes the payroll tax of .0125 out of the bill and replaces it with "any employer whose loss ratio exceeds 75%" because of injuries they would pay 3/10. So the lady who

testified from the restaurant, would not have to pay anything. People who are safe now and who do not have injuries and do have a loss ratio of less than 75%, they wouldn't have to pay it. If they had a loss ratio of 75% or greater then they would have to pay 3/10 and it would be yearly. So the way it would work is that if in 1990 you had a loss ratio of 75% or greater, then in 1991 you would have to pay this 3% payroll tax into this fund. If you had a loss ratio of less than 75% you would not be assessed.

It also requires that with self insurers the division would use the Montana rates as if they had bought insurance from the state to figure out their loss ratio. If their loss ratio was 75% or greater they would also pay. It would also require that private insurance companies furnish to the division their loss ratios and if any employer that they insure has a loss ratio of 75% or greater, then the division would bill those employers.

Some how we have to get a handle on the accidents in this state, they are outrageous. I think there are a lot of reasons for this and one of them is that Montana has one of the highest productivity rates in the nation. I think that people are in too big a hurry and they get hurt and our rates are going through the sky. The safe employer who is not hurting anybody, his rates are going up too because of the class codes.

Rep. Smith has a .93 modification factor. It used to be that loggers were at 17% or 18%, now they are at \$38 and he only has to pay 93% of \$38. He used to have to pay only 93% of \$17 and he wasn't hurting anybody. We aren't doing a thing in this state for safety and at least there will be a little fund there, maybe it's more bureaucracy, maybe it isn't, but somehow we have to get some money to these small employers to train in safety.

It is just outrageous, \$157 million in debt; 25,000 people a year getting hurt; 9,500 people on lost time accidents. We have to do something and I hope this will work.

THOMAS: Question for Jerry. This would be setting up a level 3/10 of 1%, would it not, your amendment?

DRISCOLL: Yes. Strike the .0125 and replace it with 3/10 on those employers that it applies to.

THOMAS: I completely agree with what you are trying to do here, but it seems to me that this should be a percentage of their premium instead of their payroll because that's the incentive there.

DRISCOLL: Either way I guess.

SMITH: Jerry just hit on the point I was going to bring up to

Fred, when you are talking 3/10 of 1% on gross payroll in the state of Montana, there is a lot of difference in the amount of money that is generated than if you made it 3/10 of 1% on premium dollars it wouldn't amount to anything.

THOMAS: I wasn't suggesting that we take the 3/10 on premiums. I was just saying a percentage of premiums, not 3/10, I agree. I just think the penalty should be severe, whatever it is.

LEE: Help me to understand something. This loss ration, 75%, I don't understand that.

DRISCOLL: If you had a million dollars in premium, I'm talking like a major employer, and I like to use round numbers. If you had a million dollars in premium paid, or would have been paid, those people would probably be self insured, and you had losses of \$750,000 or more then you would be assessed this. So if you bring it down to something more practical, say \$100,000, you had losses incurred of \$75,000, then you would have to pay this.

I just picked 3/10, I know it is the same as the other payroll tax and the only reason I am using this is that I know that 3/10 of 1% on all employers brings in \$12 million a year. If you figure 50% of the employers have a 75% loss ratio or greater, then it will bring in enough money to maybe run the program. If it wasn't such a crunch we could get a fiscal note but there is no way we are going to get a fiscal note until after the 45th day now.

GLASER: Question of Jerry. Was the Department in here on this thing?

DRISCOLL: They were in the room but they didn't testify. They were here on something else so I talked to them out in the hallway about these amendments when the opponents -- that lady from Bozeman really hit the nail on the head, why should she be punished when she isn't hurting anybody -- and so I talked to Murphy from the division and Palmer and Hiram Shaw. They can get this data. I suppose the appropriations committee would scream if they want to see the bill, but it is another duty for them but they said they could do it.

GLASER: My concern is not whether they can get the data or not, but I would hate like heck to go home and be home for nine months and find another form in my mailbox that people are hollering about.

SOMEBODY: Can they do it without another form?

DRISCOLL: I doubt it, if you aren't at a 75% loss ratio you won't receive a form.

Vote:

Driscoll moved a DO PASS as amended on HB 622

The motion has passed as amended.

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DISPOSITION OF HB 644

Amendments, Discussion, and Votes:

RUSSELL: As you will remember, the amendment dealt with a word change from "salary" to "wages". Eddy will you please go over these amendments. The amendment was at the request of Ms. Minow.

McCLURE: The people referenced in the governor's closure were not going to be paid if they were scheduled, so she had me amend these people into the bill to provide that they would get salary and benefits. Then she wanted to change the word salary to wages, so we will be amending the bill to provide for non-professional people who would get unemployment benefits, wages and benefits, if there is an emergency closure that is not rescheduled.

So one part of the bill that was drafted by Rep. Harrington is for unemployment benefits, she added in a proposed amendment (I didn't get this as I had to put in a new tape)

RICE: Jerry, maybe you can answer my question. I asked Mr. Hunter about this conformity issue with federal law and what that meant and he said the result would be if we didn't conform we would be subject to the risk of losing our 5.4% offset credit. I still don't know what that means.

DRISCOLL: Unemployment is a federal law, it's not a state law like workers' comp, and in that federal law it says that if the states wish to take over the duties of running their own unemployment insurance fund they must comply with these following things. If you don't conform to the federal law the federal tax is 6.2% of the first \$7,000. If you conform to the federal law they give you 5.4% discount so you end up paying 6/10 of 1% to the federal government. That's for administrative costs. If you are not in conformity with federal law then you pay the feds 6.2% on the \$7,000 and you pay the state whatever they charge. I don't know how the states of California and Illinois and everybody else get away with it. They come in here all the time and say this is a conformity issue and sometimes I don't think they read the regs exactly right, they like to pass these laws and everybody just bought into it in 1983. I guess California and those other states investigated better than we did and they didn't buy into it. But if it is a conformity issue and the bill becomes law, we'll be back in special session

because the employers will scream bloody murder.

GLASER: Question for Rep. Driscoll. We put one group back in a couple years ago, aren't we just talking about the cooks?

DRISCOLL: In Billings we aren't talking about the school bus drivers because they work for a private contractor, but in other parts of the state the school bus drivers work for the school district. You are talking about janitors, cleaning people, cleaning people, secretaries, anybody who is not a teacher or an administrator who works for a school district, who gets their check from the school district and not from a contractor that works for the school district.

Last session there was a bill in there to exempt school bus drivers, even if they worked for a private contractor, from unemployment. These are the people who work directly for the school who are not teachers or administrators.

GLASER: These people don't make hardly any money at all. The unemployment insurance that the bus drivers get because they only work 3 or 4 hours a day is only about \$30 a week. If I remember right when we looked at this thing two years ago, there is not a great fiscal impact on this.

COCCHIARELLA: I just wanted to tell you about a situation at the University of Montana. There are some secretaries in some departments who have been talking among themselves and saying that maybe they could work eleven months and get their twelve month job done in eleven months and take a month off in the summer and share those duties, forward their phones, so that the department business is still covered but take some cuts. I think that those kinds of people could save some money if we could make those people eleven month contracts. They would voluntarily take those kinds of cuts as long as they knew that they could have some unemployment compensation, at least something to get them by for that time. It may even be that they would be willing to take ten month positions. In that way those people could help save the system some money as long as they knew they had some money coming in to pay their power and rent.

SMITH: I don't have a problem with doing this but are they going to pay the unemployment rate like everybody else does?

RUSSELL: Does somebody have an answer to that or do you want to call somebody from the audience to answer that?

DRISCOLL: Government doesn't pay the rate -- they can do one of two things -- they can pay a rate which cannot exceed 1.5% or they can directly reimburse the cost. So what the state does for all government is they take an all-government rate, cities, counties, school districts and the state and they take it as one great big group and then they apply a rate to

it. This might effect the rate a little bit, but taken as a whole it would effect the rate very minutely.

RUSSELL: We have a DO PASS motion as amended.

Vote:

HB 644 has PASSED AS AMENDED unanimously.

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DISPOSITION OF HB 694

Motion: Representative Squires made a DO PASS motion.

Discussion:

SQUIRES: I realize there are problems with this particular bill but I think it is imperative that it at least get to the floor. All I am asking for is for state and federal laws to be put in here to require the employer to provide the particular safety equipment that people need as far as employment is concerned. There is some disparity out there because Stone Container does provide the particular equipment; Champion International doesn't on the gloves, etc. I think this is an equalization type thing and that is what I am after and trying to protect the worker, take down the workers' comp rate and protect those individuals. I would like to get together with Eddy and get some amendments on this but I didn't have time to do that.

As far as Mr. Olson is concerned, he was talking about chain saws, that's not what I am interested in. I don't consider that safety equipment. I am talking about the protective equipment that goes on an individual, hard hat, respirator, ear plugs, chaps, those kinds of things, and I would be willing to work with that.

SMITH: Mark O'Keefe remarked that he worked nearly all summer to pay for his boots and I don't remember what all else. Now let's say this happens to a logger out there. A new pair of cork boots is nearly \$200; chaps about \$50 or \$60; hard hat, ear plugs, visor, eye shield; you're looking at \$300. Suppose that guy comes to work, picks his gear up today, and he just leaves, he's gone and your gear goes with him. It would work a terrible hardship on small employers.

KILPATRICK: On page 2, lines 8 and 9, or right in that area, it says a person may not remove, display, damage, destroy, carry off or refuse to use, safety equipment. I know they might steal it, but regardless it's there and I think it is a good idea.

SQUIRES: We talked about some type of punitive problems on both the employee and the employer and is there not some kind of

recourse in the state law to the effect, or am I wrong about that.

McCLURE: That's what we need to explore, like what is there now. In talking with some people from the labor industry, there is some recourse that either the employer or employee can go through. If the employer doesn't provide the equipment or the employee takes it. When I worked at Champion I had to check in all my equipment the company gave me on my last day.

GLASER: My concern when you look at these things, none of them are really rifles, they are shotguns. I have a question of Rep. Smith. What are you going to do with a pair of size 14 DD cork boots when you buy them for somebody?

SMITH: It is even worse than that. Suppose the guy weighs 300 pounds and I never hire anybody again that weighs over 180 and we have a real problem -- it is all useless.

DRISCOLL: I think you will find that if the person does not return that equipment, you keep his check. I have had employers who have kept the last check of the employee of \$300 or \$400 until the hard hat came back, which was worth \$6 or \$8, and they were perfectly within their rights in doing that.

SQUIRES: That is what I was going to indicate, if we just could look at the recourse here for the employee and employer and try to clean this up, I really would like to try to get it out.

WHALEN: I think we ought to cut out all this nonsense. For that matter, Mark O'Keefe spent a month and a half paying off his equipment and after he quit his job he didn't have any use for it either. Either you are going to recognize that you are going to furnish a safe place to work for these people and that includes whatever equipment that goes along with it, or you aren't going to perform the job.

Vote:

Nine votes for the passage of the bill; seven against.

(Those voting against were Thomas, Smith, Compton, Kilpatrick, Simpkins, Lee and Glaser).

HB 694 has PASSED.

RUSSELL: Rep. Squires, you are going to be working with our researcher on that before it gets to the floor?

SQUIRES: Yes.

DISPOSITION OF HB 695

Motion: Rep. Whalen moved the bill DO PASS.

Also I move the amendments that haven't been drafted in technical form which would take care of the problem that is contained in the bill. Right now, on summer employment for college students, the way the bill is drafted, it would allow that college student to collect benefits while they are back in school and this could be construed as being a "college scholarship program" and that wasn't the intent of what I was trying to do in this bill. Chuck Hunter was going to work with Greg Pettish to draft some amendments to accomplish this result: A student gets out of school and starts working for an employer and it is the student's intent that he work the entire summer. It is the understanding with the employer that he work the entire summer so he can earn enough money throughout the summer months so he has some money when he goes back to school. Circumstances change and the employer has to lay off the student in the middle of the summer. We want it amended so he would be able to collect unemployment benefits until the end of the summer.

They are working on those amendments, but I'd like to move the concept of those amendments for the purpose of voting.

Discussion:

GLASER: In years past, when we have been late in the session like this and the staff was going to work on the amendments then committee chairmen have actually held executive sessions on the floor in the back of the room.

I was thinking that we wouldn't have to come back to this room to actually vote on the amendments that Rep. Whalen is having prepared.

RUSSELL: I believe we have until tomorrow at 5:00 p.m. If you are willing to meet tomorrow we probably can do that.

WHALEN: I think whatever is drafted is going to be basically technical in nature, but what the amendments would do is assure that if a student is laid off in the middle of his summer vacation, give him unemployment benefits until the end of the summer vacation, that is all the amendment would do. I think we could go ahead and adopt what Eddy McClure has in her hands, but from talking with Chuck Hunter he thinks some other changes need to be made internally in the bill in order accomplish the result that we all concede needs to be accomplished.

SIMPKINS: Tim, in the long run, I envision this affecting very few people. Is this portion of the bill really that

essential to the rest of it?

WHALEN: Maybe what we ought to do is just eliminate that whole part of the bill if that is going to create a lot of problems with everybody.

DRISCOLL: I think that this portion of the law is not necessary because in my conversation with Chuck Hunter he indicated that that if a person is eligible for unemployment and is actively seeking summer work, even if they are going to re-enroll in the fall, if they are otherwise qualified, he indicated that they would qualify and they could draw. The key to it is that when he gets out of school he has to be actively seeking employment. They do check on these college

kids more than they do other people because they don't want it to be used as a scholarship fund.

Amendments, Discussion and Votes:

WHALEN: I withdraw the amendment and propose a substitute amendment to amend all of the portion of the bill that relates to attempting to obtain benefits for college students. The bill would be in the form that it changes the law to conform to the way it was in 1985 prior to the amendments, which eliminated benefits for striking workers where there was not a stoppage of work.

RUSSELL: Any discussion on Rep. Whalen's amendment to strike all that portion dealing with the students?

Vote:

Amendments PASSED.

Motion:

Whalen moved the bill as amended DO PASS.

Discussion:

DRISCOLL: I wish to address Rep. Simpkins' concerns about the stoppage of work. The first case that I am aware of where stoppage of work went to the supreme court was the Oil Chemical Workers vs. Conoco Oil in Billings. The judges in that case ruled that stoppage of work meant stoppage of the plant production, not the individual stoppage of work. They went on further to rule that if there was no substantial reduction in production of the plant or business, then it was not a stoppage of work. So if they only ran an emergency crew there would definitely be a substantial reduction, so they wouldn't receive unemployment, or if they did I don't understand how they got it.

How it used to work, if you went on strike and the employer

replaced you with other people and continued to operate and had no substantial reduction in productivity, then you were qualified for unemployment. The key words in the supreme court case were substantial reduction.

SIMPKINS: When you get in a hospital situation where you have an emergency room you have to maintain, yes, I can understand stopping elective surgery, for instance. Say you went down to 30% manning, it would not be considered stoppage and these people who went on strike would not be eligible for unemployment insurance.

DRISCOLL: Yes, at 30% they definitely would not be eligible for unemployment benefits under the bill, as drafted, or as it used to be in the law, because that would be a substantial reduction in the income of that hospital. In the case of Conoco, there was absolutely no reduction in production prior to the strike and during the strike, so the judge said there was no stoppage of work, just a change of employees.

WHALEN: It would be my intent with this bill, if it were to pass, that all of the body of case law that construed the statute prior to it being amended in 1985 would apply to this law. I know there has been a lot of case law that interpreted exactly what stoppage of work meant, etc., whether it related to private industry or a hospital or something like that. It would be my intention that case law would apply to this statute as well, if passed.

SIMPKINS: What you are saying then, Tim, that police departments and things like that that go minimum crews just for the protection of the people, would not be considered a work stoppage?

WHALEN: I don't know if I can answer that question. I am not familiar with all the case law that developed, but this has been in the law for a long time and there is a substantial amount of case law that has developed. I do know that in all of those cases, both the employer and the employee were parties to the action and something was worked out through those court decisions.

RUSSELL: Rep. Whalen, what did you do with the amendments by Greg Pettish? Were you going to move those also?

WHALEN: I withdrew those amendments and offered a substitute amendment which passed, eliminating all attempt to provide benefits to college students.

RUSSELL: We now have a motion on the floor to PASS AS AMENDED.

Vote:

Thirteen votes in favor of PASS AS AMENDED and three votes against. Those voting no were Lee, Thomas and Simpkins.

HB 695 has PASSED AS AMENDED.

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DISPOSITION OF HB 710

Motion: Rep. Driscoll moved DO PASS.

Rep. Driscoll also moved TO AMEND.

Discussion:

DRISCOLL: On page 2, line 16; page 3, line 17; and on page 4, line 12.

George Woods' complaints were that you get back to loss of earning capacity. With this amendment you would have to prove loss of earning capacity. Someone couldn't just say that he was going to be a doctor one day so, therefore, he has lost his capability of earning capacity. I guess the amendment says if a person is working as a logger or truck driver and there was no work and they took a job at \$4 or \$5 an hour, they got hurt in the first two weeks, that they wouldn't figure everything on that \$4 or \$5 an hour figure. At least they would have to prove in their recent employment history that they did make some money once.

RUSSELL: Eddy, do you have all the particulars of that?

McCLURE: Yes.

Vote:

Unanimous vote IN FAVOR of the amendments.

Motion:

Rep. Driscoll moved DO PASS HB 695 as amended.

Motion:

Rep. Whalen moved another amendment.

On page 3, lines 22 and 23 where you see subsection (c) in section 2 that that be moved down below to subsection (g) which appears on page 4, line 4. In other words, subsection (c) would be moved below subsection (g). From a technical point of view (d), (e), (f) and (g) would be renumbered and then (c) would become (g).

Discussion:

THOMAS: Why are you doing that?

WHALEN: The reason for doing it was the discussion during the testimony and one of the comments was that none of the workers under the present rehab program get beyond subsection (c). They are all told they can be parking lot attendants and that is all the further the rehab gets. In other words, they don't get any rehab from the practical point of view. So what that would do is make that the last option instead of close to one of the first options.

RICE: Jerry, you worked on the Governor's Council thing on this and this is the way it came out last session. I know you were talking about it, but I really didn't take you seriously. Are you really serious and do you really think this is a good idea?

DRISCOLL: You mean about where (c) is? Well, the Governor's Council bill was not adopted. After we studied it for 18 months, the division came in with their own bill and what happened was that the (a) through (g), in my opinion, got placed wrong. You could amend it two ways. You could not adopt the amendment I put on there or you could take Tim's amendment. I think with the amendment that is already on there, if they want a related field where they are going to put you back to work, they would have to take into consideration whenever possible your past earning capacity.

The rehabilitation counselors go the employer and ask him if he can take the guy back, or they look at the medical history and if the doctor says he can't go back to his former employment, so they ask the employer if he can modify a job to get this guy back to work. The employer says he can't afford to modify the job, or just can't do it, so then they get to (c) and the law says that "return him to a related occupation suitable to the claimant's education and marketable skills," they can find him a job like that. So that's the end of it. Everything after (c) is worthless in the law except a very few cases. I guess if you moved it down below (g) they'd have to send you to college before they could do this. I think it is in the wrong place but I don't think that way down below (g) is right either.

So I think that amendment would be unnecessary.

KILPATRICK: I don't think it states any place in there that you have to follow it in order. That may be assumed, but that isn't what it states. It says here are your options.

SOMEBODY: No, it says in order.

WHALEN: I withdraw the amendment and offer a substitute amendment that (c) be inserted between present (e) and (f) and that way at least there is some retraining, but it would be before the long-term retraining or self-employment.

RUSSELL: We have a substitute motion to replace (c) between (e)

and (f). Any discussion?

Vote:

DO NOT PASS substitute motion.

RUSSELL: We are back to the original motion DO PASS AS AMENDED.

Vote:

HB 710, DO PASS AS AMENDED, with one no vote from Rep. Lee.

- - - - -

DISPOSITION OF HB 719

Motion: Rep. Pavlovich made a motion to DO PASS.

Discussion:

COCCHIARELLA: I just want to address a concern of Rep. Simpkins. This doesn't preclude the legislature from privatizing printing operations if they so choose. This sets up a situation where if an individual, say the janitors in the Capitol, they want to look at privatizing that, then they can look at those individual things. It has nothing to do with what we pass out of here in those larger incidents.

Vote:

Ten yes votes for DO PASS OF HB 719; six votes against by Simpkins, Thomas, Rice, Glaser, Lee and Smith.

DO PASS HB 719.

- - - - -

FURTHER DISCUSSION ON HB 628:

SIMPKINS: I would like to move that we reconsider HB 628 which was Rep. Simon's bill the other day because we had a question on that bill, the definition of "outside salesman." I do have the federal regulations and laws that define the outside salesman. I would like to see if that would satisfy the committee's questions on this. (Copy of the federal regulations and laws attached hereto as Exhibit #11 at the request of Rep. Simpkins).

RUSSELL: We have a motion to reconsider HB 628.

MCCORMICK: I'm against that motion, the federal law is not doing anything for people under contract. I don't care what the federal law says, the people he's trying to get out are under contract and you're doing away with that contract.

Motion:

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

February 16, 1989

Page 49 of 49

SQUIRES: I would like to make a motion to TABLE this bill.

Vote: Twelve votes in favor to TABLE HB 628, four against.

(I did not get the names of the no votes -- it was the end of the meeting and everyone was talking at once and they just wanted to get out of there)

- - - - -

ADJOURNMENT

Adjournment At: 7:55 P.M.



REP. ANGELA RUSSELL, Chairman

AR/mo

4009.MIN

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 2-16-89

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEEBILL NO. 710DATE 2-16-89SPONSOR DRISCOLL

NAME [(please print)]	RESIDENCE	SUPPORT	OPPOSE
Jan Van Riper	Helena	✓	
Mike Sherwood	MTLA	✓	
Don Judge	MT STATE AFL-CEO	✓	
Gray Wood	mt. Self Insurance Bk.		X
Ted Doney	Rehabilitation Bn. of MT		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

BILL NO. 695 _____

DATE 2-16-89 _____SPONSOR WHALEN _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Julie Holzer	Billings	X	
Dan Edwards	Billings	X	
Ken TRITZ	Missoula	X	
Robert L. Culp	Frenchtown	X	
Don Judge	MT STATE AFL-CIO	X	
Nadine Jensen	AFL-SCME	X	
Bob Heiser	UFCW	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

BILL NO. 694DATE 2-16-89SPONSOR SQUIRES

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John L. Grewell	Silesia, MT		X
Charles E. KEELER	G.T. FALLS, MT		X
Julie Hober	Billings	X	
Dan Edwards	Billings	X	
Robert L. Culp	Frenchtown	X	
Ken Tritz	MISSOULA	X	
Joe Zifo	MISSOULA	X	
Chris Murphy	MISSOULA	X	
Dor Judge	MT STATE AFL-CIO	X	
Nadine Jensen	AFSCME	X	
Don Allen	MWPA		X
GORDON SANDERS	MISSOULA		X
Gayle Ward	Int Self Insurance Assoc		X
Ben Haddad	MT Motor Carriers Assoc		X
Keith Olson	MWA		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

BILL NO. 644DATE 2-16-89SPONSOR HARRINGTON

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
F.H. Buck Bules	MONTANA BUCK HELON		
Charles R. Brooks	Montana Retail Association		X
Terry Minow	MFT	X	
Linda Gordon	School Dist. No. 1, Butte	X	
LUCINA DUKKIN	SCHOOL DIST. NO 1, BUTTE	X	
Ioni Niklas	Montana Education Assoc	X	
Bob Anderson	MSBA		X
Tom Schneider	WPEA	X	
CHAD SMITH	unemployment Comp Advisor		X
DON Judge	MT STATE AFL-CIO	X	
Nadrian Jensen	AFSCME	X	
J. R. A. Schram	Board of Regents		X
CHUCK HUNTER	DEPT. OF LABOR & INDUSTRY		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

BILL NO. 622

DATE 2-16-89

SPONSOR DRISCOLL

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Julie Holzer	Billings	X	
Don C. Edwards	Billings	X	
F.H. Buck Jones	MONT. CHAMBER HELEN		X
Charles R. Brooks	Montana Ret. / Assoc.		X
Bob Heiser	U.F.C.W.	X	
Kay Foster	Billings Chamber		X
Don Judge	MT STATE AFL-CIO	X	
Nadine Jensen	AFSCME	X	
Ray Ward	mt Self Insured Assn		X
Leon Stalcup	Mont Restaurant Assn		X
Laurie Shadon	Bozeman Chamber		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

(V)^{4a} is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.⁵

(4)^{5a} (A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate government agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

^{4a} As added by section 5 of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

⁵ Similar language was added to the Act by the Fair Labor Standards Amendments of 1966. Those amendments also excluded from the definition of employee "any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been employed in agriculture less than thirteen weeks during the preceding calendar year." These individuals are now included.

^{5a} As added by section 4(a) of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.⁶

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation,⁷ or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor⁸ shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor⁹ certifying that such person is above the oppressive child labor age. The Secretary of Labor¹⁰ shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than

⁶ As amended by section 3(b) of the Fair Labor Standards Amendments of 1949.

⁷ As amended by section 3(c) of the Fair Labor Standards Amendments of 1949.

⁸ Reorganization Plan No. 2 of 1946 provided that the functions of the Children's Bureau and of the Chief of the Children's Bureau under the Act as originally enacted be transferred to the Secretary of Labor.

⁹ Ibid.

¹⁰ Ibid.

FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED

(29 U.S.C. 201, et seq.)

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938."

Finding and Declaration of Policy

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. *The Congress further finds that the employment of persons in domestic service in households affects commerce.*

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.²

Definitions

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.³

(c) "State" means any State of the United States or the

District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee *and includes a public agency,⁴ but does not include* any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) *Except as provided in paragraphs (2), (3), and (4), the term "employee" means* any individual employed by an employer.

(2) *In the case of an individual employed by a public agency, such term means—*

(A) *any individual employed by the Government of the United States—*

(i) *as a civilian in the military departments (as defined in section 102 of title 5, United States Code),*

(ii) *in any executive agency (as defined in section 105 of such title),*

(iii) *in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,*

(iv) *in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or*

(v) *in the Library of Congress;*

(B) *any individual employed by the United States Postal Service or the Postal Rate Commission; and*

(C) *any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—*

(i) *who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and*

(ii) *who—*

(I) *holds a public elective office of that State, political subdivision, or agency,*

(II) *is selected by the holder of such an office to be a member of his personal staff,*

(III) *is appointed by such an officeholder to serve on a policymaking level,*

(IV) *is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or*

² As amended by section 3(a) of the Fair Labor Standards Amendments of 1949.

³ Public agencies were specifically excluded from the Act's coverage until the Fair Labor Standards Amendments of 1966, when Congress extended coverage to "employees of a State or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence * * *"

⁴ As amended by section 2 of the Fair Labor Standards Amendments of 1949.

for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.⁸¹

(b) The Secretary of Labor,⁸² or any of his authorized representatives, shall make all investigations and inspections under section 11(a) with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

(c) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.⁸³

(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

Exemptions

SEC. 13.⁸⁴ (a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection)⁸⁵ and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), (or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged

ed in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(5)), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s).⁸⁶ A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry;⁸⁷ or

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center,⁸⁸ if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year, except that the exemption from sections 6 and 7 provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 6, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture;⁸⁹ or

(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of

⁸¹ Effective January 1, 1977, the Fair Labor Standards Amendments of 1974 deleted a clause at the end of this sentence which had read "or such establishment has an annual dollar volume of sales which is less than \$200,000 (exclusive of excise taxes at the retail level which are separately stated)." The \$200,000 test was in effect during calendar year 1976. A \$225,000 test was in effect during calendar year 1976. Prior to January 1, 1976 a \$250,000 test was in effect.

⁸² See section 13(g), which makes additional limitations on the applicability of the section 13(a)(2) and section 13(a)(6) exemptions to certain conglomerates.

⁸³ Added by section 11 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977.

⁸⁴ The last clause of section 13(a)(3) of the Act was added by section 4(a) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978. See also section 13(b)(29) of the Act, as added by the 1977 Amendments.

⁸⁵ As amended by section 10(a) of the Fair Labor Standards Amendments of 1949.

⁸⁶ See footnotes 8 and 30.

⁸⁷ Section 10(h) of the Fair Labor Standards Amendments of 1949 as amended by section 8 of the Fair Labor Standards Amendments of 1961.

⁸⁸ Section 13 as amended by section 11 of the Fair Labor Standards Amendments of 1949; by Reorganization Plan No. 6 of 1950; and as further amended by the Fair Labor Standards Amendments of 1961, 1966, 1974, and 1977.

⁸⁹ As amended by the Education Amendments of 1972, 86 Stat. 286 at 275, effective July 1, 1972.

essential part of and necessarily in-
to the work described in para-
s (a) through (c) of this section;

Who is compensated for services
salary or fee basis at a rate of not
than \$170 per week (\$150 per
if employed by other than the
ral Government in Puerto Rico,
Virgin Islands, or American
oa), exclusive of board, lodging, or
r facilities: *Provided*, That this
graph shall not apply in the case
an employee who is the holder of a
license or certificate permitting
practice of law or medicine or any
their branches and who is actually
engaged in the practice thereof, nor in
case of an employee who is the
er of the requisite academic
ee for the general practice of
line and is engaged in an intern-
or resident program pursuant to
practice of medicine or any of its
ches, nor in the case of an em-
ployed and engaged as a
er as provided in paragraph
of this section: *Provided further*,
an employee who is compensated
salary or fee basis at a rate of not
than \$250 per week (or \$200 per
if employed by other than the
ral Government in Puerto Rico,
Virgin Islands, or American
oa), exclusive of board, lodging, or
r facilities, and whose primary
consists of the performance
or of work described in paragraph
1) or (3) of this section, which in-
cludes work requiring the consistent
use of discretion and judgment, or
work requiring invention, imagina-
tion or talent in a recognized field of
endeavor, shall be deemed to
all of the requirements of this
on.

PR 11390, May 7, 1973, as amended at 40
092, Feb. 19, 1975]

Postponed Regulations: Paragraph (e) in
3 was revised at 46 FR 3014, Jan. 13,
in accordance with the President's
Memorandum of January 29, 1981 (46 FR
Feb. 6, 1981), the effective date was
postponed indefinitely at 46 FR 11972, Feb.

Text of paragraph (e) set forth above
in effect pending further action by
issuing agency. The text of the post-
poned regulation appears below.

Professional.

Who is compensated for services on a
salary or fee basis at a rate of not less than
\$320 per week beginning February 13, 1981,
\$325 per week beginning February 13,
1983 and \$250 per week beginning February
13, 1983 if employed by other than the Fed-
eral Government in Puerto Rico, the Virgin
Islands, or American Samoa, exclusive of

board, lodging, or other facilities: *Provided*,
That this paragraph shall not apply in the
case of an employee who is the holder of a
valid license or certificate permitting the
practice of law or medicine or any of their
branches and who is actually engaged in the
practice thereof, nor in the case of an em-
ployee who is the holder of the requisite
academic degree for the general practice of
medicine and is engaged in an internship or
resident program pursuant to the practice
of medicine or any of its branches, nor in
the case of an employee employed and en-
gaged as a teacher as provided in paragraph
(a)(3) of this section: *Provided further*, That
an employee who is compensated on a
salary or fee basis at a rate of not less than
\$320 per week beginning February 13, 1981,
and \$345 per week beginning February 13,
1983 (or \$260 per week beginning February
13, 1981 and \$285 per week beginning Febru-
ary 13, 1983 if employed by other than the
Federal Government in Puerto Rico, the
Virgin Islands, or American Samoa), exclu-
sive of board, lodging, or other facilities,
and whose primary duty consists of the per-
formance either of work described in para-
graph (a) (1) or (3) of this section, which in-
cludes work requiring the consistent exer-
cise of discretion and judgment, or of work
requiring invention, imagination, or talent
in a recognized field of artistic endeavor,
shall be deemed to meet all of the require-
ments of this section.

§ 541.5 Outside salesman.

The term "employee employed
in the capacity of outside salesman" in
section 13(a) (1) of the act shall mean
any employee:

(a) Who is employed for the purpose
of and who is customarily and regular-
ly engaged away from his employer's
place or places of business in:

(1) Making sales within the meaning
of section 3(k) of the act, or

(2) Obtaining orders or contracts for
services or for the use of facilities for
which a consideration will be paid by
the client or customer; and

(b) Whose hours of work of a nature
other than that described in para-
graph (a) (1) or (2) of this section do
not exceed 20 percent of the hours
worked in the workweek by nonex-
empt employees of the employer: *Pro-
vided*, That work performed incidental
to and in conjunction with the em-
ployee's own outside sales or solici-
tations, including incidental deliveries
and collections, shall not be regarded
as nonexempt work.

§ 541.5a Special provision for motion pic- ture producing industry.

The requirement of §§ 541.1, 541.2,
and 541.3 that the employee be paid
"on a salary basis" shall not apply to
an employee in the motion picture
producing industry who is compensat-
ed at a base rate of at least \$200 a
week (exclusive of board, lodging, or
other facilities).

Postponed Regulations: Section 541.5a was
revised at 46 FR 3014, Jan. 13, 1981. In ac-
cordance with the President's Memorandum
of January 29, 1981 (46 FR 11227, Feb. 6,
1981), the effective date was postponed in-
definitely at 46 FR 11972, Feb. 12, 1981.

The text of § 541.5a set forth above re-
mains in effect pending further action by
the issuing agency. The text of the post-
poned regulation appears below.

§ 541.5a Special provision for motion picture producing industry.

The requirement of §§ 541.1, 541.2, and
541.3 that the employee be paid "on a salary
basis" shall not apply to an employee in the
motion picture producing industry who is
compensated at a base rate of at least \$320
per week beginning February 13, 1981 and
\$345 per week beginning February 13, 1983
(exclusive of board, lodging, or other facili-
ties).

§ 541.5b Equal pay provisions of section 6(d) of the act apply to executive, ad- ministrative, and professional employ- ees, and to outside salesmen.

Effective July 1, 1972, the Fair
Labor Standards Act was amended to
include within the protection of the
equal pay provisions those employees
exempt from the minimum wage and
overtime pay provisions as bona fide
executive, administrative, and profes-
sional employees (including any em-
ployee employed in the capacity of
academic administrative personnel or
teacher in elementary or secondary
schools), or in the capacity of outside
salesmen under section 13(a)(1) of the
act. Thus, for example, where an
exempt administrative employee and
another employee of the establish-
ment are performing substantially
"equal work," the sex discrimination
prohibitions of section 6(d) are appli-
cable with respect to any wage differ-
ential between those two employees.

§ 541.6 Petition for amendment of regula- tions.

Any person wishing a revision of any
of the terms of the foregoing regula-
tions may submit in writing to the Ad-
ministrator a petition setting forth the
changes desired and the reasons for
proposing them. If, upon inspection of
the petition, the administrator be-
lieves that reasonable cause for
amendment of the regulations is set
forth, the Administrator will either
schedule a hearing with due notice to
interested parties, or will make other
provision for affording interested par-
ties an opportunity to present their
views, either in support of or in oppo-
sition to the proposed changes. In de-
termining such future regulations,
separate treatment for different indus-
tries and for different classes of em-
ployees may be given consideration.

PAGE 3
KEN TRITZ TESTIMONY
FEBRUARY 16, 1989

EXHIBIT 10
DATE 2-16-89
HB 695

3 of 3

THERE ARE MANY MORE DETAILS ABOUT THIS NEGOTIATING PERIOD BUT
TIME DOES NOT PERMIT DETAILS.

I WILL BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

I AGAIN URGE YOU TO VOTE FOR THIS NECESSARY LEGISLATION.

THANK YOU FOR YOUR KIND ATTENTION.

TRAILER HOUSES ON SITE. THE UNION LEADERSHIP WAS FACED WITH SOMEWHAT OF A DOUBLE WHAMMY. FEDERAL LAW SAYS WE COULD BE PERMANENTLY REPLACED AND STATE LAW SAYS WE ARE NOT ELIGIBLE FOR UNEMPLOYMENT COMPENSATION EVEN IF THE EMPLOYER CONTINUES TO RUN THE MILL.

WE WITHDREW OUR LETTER OF TERMINATION THE DAY BEFORE THE STRIKE WAS TO COMMENCE.

THE COMPANY TERMINATED THE CONTRACT, DECLARED THAT WE WERE AT IMPASSE AND IMPLEMENTED ITS FINAL OFFER. THE COMPANY REDUCED MANY WAGES AND BENEFITS TO THE TUNE OF ABOUT \$7,000.00 PER EMPLOYEE OVER THE LIFE OF THE PROPOSAL. MISSOULA AND MONTANA ARE THE VICTIMS AS WELL AS OUR MEMBERS.

BEFORE THE UNEMPLOYMENT COMPENSATION LAW WAS CHANGED, THE COMPANY AND THE EMPLOYEES HAD ABOUT THE SAME AMOUNT OF PENALTY IF THEY DID NOT REACH AGREEMENT ON A CONTRACT. IF EMPLOYEES WENT ON STRIKE THEY LOST ALL INCOME AND THE COMPANY LOST INCOME. NOW THE EMPLOYEES LOSE THEIR INCOME BUT THE COMPANY CAN CONTINUE TO OPERATE, PERMANENTLY REPLACE ITS WORK FORCE AND CONTINUE TO MAKE PROFITS. THE COMPANY HAS NO ECONOMIC INCENTIVE TO NEGOTIATE IN A REASONABLE MANNER.

THE UNION MADE AN OFFER TO THE COMPANY FOR A THREE YEAR CONTRACT WITH WAGE INCREASES OF 0% 1st YEAR, 0% 2nd YEAR AND 3% THE THIRD YEAR. IT WAS REJECTED BY THE COMPANY WITHOUT DISCUSSION.

TESTIMONY OF KEN TRITZ
BEFORE THE HOUSE LABOR COMMITTEE
FEBRUARY 16, 1989

EXHIBIT 10
DATE 2-16-89
HB 695
pg 1 of 3

MADAME CHAIRPERSON, MEMBERS OF THE COMMITTEE.

THANK YOU FOR THE OPPORTUNITY TO SPEAK ON HB-695. I ASK YOU
TO VOTE YES ON HB-695.

MY NAME IS KEN TRITZ. SOME PERSONAL AND UNION BACKGROUND ARE IN
ORDER. MY WIFE, SANDY, AND I HAVE LIVED AT 2020 WOODLAWN AVENUE
IN MISSOULA FOR ABOUT 20 YEARS. DURING THIS TIME I HAVE BEEN
EMPLOYED AT THE PULP AND PAPER MILL WEST OF MISSOULA AS AN
INSTRUMENT MECHANIC. I AM IN MY 11TH TERM AS PRESIDENT OF
LOCAL 885, UNITED PAPERWORKERS INTERNATIONAL UNION. I HAVE
PARTICIPATED IN SIX ROUNDS OF NEGOTIATIONS STARTING IN 1973. LOCAL
885 REPRESENTS THE PRODUCTION AND MAINTENANCE EMPLOYEES AT THIS
PAPER MILL. WE HAVE APPROXIMATELY 560 MEMBERS.

OUR LAST ROUND OF NEGOTIATIONS BEGAN IN MAY, 1987. I HAD PARTICIPATED
IN THE NEGOTIATIONS OF 1973, 1975, 1977, 1979 and 1981. NEGOTIATIONS
WERE ALWAYS VERY DIFFICULT. BUT, WE WERE ABLE TO COME TO A REASONABLE,
FAIR AND EQUITABLE CONTRACT. IN 1987, THE COMPANY ATTITUDE APPEARED
TO CHANGE. THE GIVE AND TAKE AT THE BARGAINING TABLE WAS GONE AND
REPLACED BY A TAKE IT OR LEAVE IT ATTITUDE ON THE PART OF THE COMPANY.
THE UNION MEMBERSHIP NOTED THE CHANGE AND VOTED TO GO ON STRIKE
AUGUST 17, 1987.

THE COMPANY FULLY INTENDED TO CONTINUE TO OPERATE THE MILL IF WE
DID STRIKE. IN FACT IT OPENED A HIRING HALL AND MOVED ABOUT 18

EXHIBIT 9
DATE 2-16-89
HB 695

2 of 2

The Honorable Timothy J. Whalen
Page 2
October 18, 1988

My thanks for your consideration of the above. I would appreciate hearing your thoughts about these concerns and about any other matters you may wish to discuss.

Best regards.

Sincerely,



Pat Williams

PAT WILLIAMS
MONTANA, WESTERN DISTRICT

MAJORITY DEPUTY WHIP

COMMITTEES:

BUDGET

CHAIRMAN
TASK FORCE

ON HUMAN RESOURCES

EDUCATION AND LABOR

CHAIRMAN
POSTSECONDARY EDUCATION

SUBCOMMITTEES:
ELEMENTARY, SECONDARY AND
VOCATIONAL EDUCATION

EMPLOYMENT OPPORTUNITIES
LABOR STANDARDS
SELECT EDUCATION



EXHIBIT 9
DATE 2-16-89
HB 695

pg 1 of 2

2457 RAYBURN BUILDING
WASHINGTON, DC 20515
(202) 225-3211

DISTRICT OFFICES:

BUTTE
(406) 723-4404
FINLEN COMPLEX
59701

HELENA
(406) 443-7878
32 N. LAST CHANCE GULCH
59601

MISSOULA
(406) 549-5550
302 W. BROADWAY
59802

Congress of the United States

House of Representatives

Washington, DC 20515

October 18, 1988

The Honorable Timothy J. Whalen
Montana State Representative
101 Avenue C
Billings, Montana 59101

Dear Tim:

I am writing you and other members of the Montana Legislature to share a concern about Montana's Unemployment Insurance laws. As you know, Judge Battin recently ruled that in order for the state to pay benefits to workers unemployed due to a labor dispute, using the clause regarding unfair labor practices by management, the state must first submit the question of an unfair labor practice to the National Labor Relations Board for formal determination.

Securing a determination from the NLRB is regrettably a slow and arduous process which may take as long as two years. It is a process which may unfairly delay or deny benefits to deserving workers. The Montana Legislature had every intention that those workers receive benefits. It is my hope the Legislature may explore avenues to address this potential inequity that I believe tilts the collective bargaining balance heavily in favor of management.

In addition, as the Legislature examines the Unemployment Insurance law for the state, I would urge you to consider making an exception in the prohibition on payment of benefits to striking workers for seasonal workers, particularly students whose summer and vacation earnings make an educational dream possible. For those folks who otherwise meet the eligibility requirements to draw benefits, it would seem a cost effective alternative to causing a student to drop out. It is very difficult for student workers to replace expected summer earnings when they are unexpectedly unemployed in mid-season. The partial replacement offered by short-term unemployment compensation may make the difference.

Amendments to House Bill No. 695
First Reading Copy

Requested by Representative Whalen
For the Committee on Labor

Prepared by Greg Petesch
February 16, 1989

1. Page 4, line 24.

Strike: line 24 in its entirety through "the" on line 25

2. Page 5, line 1.

Following: page 4, line 24

Strike: "school"

Following: "year"

Strike: "or during any prescribed school term"

3. Page 5, line 3.

Following: "institution"

Insert: "and has qualified under 39-51-2105(3)"

Local 3038
Lumber, Production and Industrial Workers, AFL-CIO
P.O. Box 8441
Missoula, Montana 59807

TESTIMONY OF JOE ZITO, LOCAL 3038, LUMBER, PRODUCTION AND INDUSTRIAL WORKERS
UNION, ON HOUSE BILL 694, BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS
COMMITTEE, FEBRUARY 16, 1989

Safety is very important to each and every one of us, in and out of the
workplace, union and non-union alike.

Montana labor law provides that employers must furnish safety equipment.
Unfortunately, the words that should have followed this section of the law
were not included. They are: "bear the cost". Currently, we have workers
paying for these safety items through payroll deductions. This is one of the
problems that face Montana workers today.

At the Bonner operation alone, workers that pull veneer from chains onto
carts, pay from \$5.50 to \$7.00 for each pair of leather gloves. These gloves
are absolutely essential for this type of work. And when you consider that
these workers wear out two to three pair of gloves a week, that amounts to a
cost of about \$50-\$60 per month for each worker.

These same workers buy leather aprons to protect themselves from log
slivers. The cost of these aprons is approximately \$14 each. In addition,
our maintenance and non-maintenance workers purchase safety shoes that cost
about \$60 or more, and work gloves at \$1.74 to \$2.49, depending on the size.

As we know, corporate profits don't buy groceries in Montana. Workers'
paychecks buy the groceries and are spent on mainstreet.

I feel that current law allows an injustice to Montana workers and that
with the passage of House Bill 694, we will set things right. A vote for this
bill is a vote for Montana workers. Thank you.

EXHIBIT 6
DATE 2-16-89
HB 694

Madam Chairperson House Labor Committee.

My name is Robert L. Culp I reside at 16845 Mullan Road Frenchtown, my mailing address is P.O. box 161 Frenchtown Mt. 59834.

I am the Safety and Health Chairman for Local 885 of the United Paperworkers International Union in Missoula, Mt.

I am FOR House Bill 694, requiring employers to furnishing safety equipment for its employees. The employer that I work for at this time furnishes my safety equipment. In the future they may decide to require its employees to buy their own safety equipment. The job that I do, requires me to work around hot corrosive chemicals, noisy environment, dusty air and other hazardous conditions. If I were required to buy my own hard hat, face shield, safety glasses, hearing protection, dust mask ect. would add up very quickly. Most safety equipment must be replaced frequently to insure they do not create a safety and health problems themselves.

I would like you to vote in favor of House Bill 694 to insure that the Montana worker has the proper safety equipment nessary to do the job, so when the work day is over, they are capable of going home to their family healthy and injury free.

THANK YOU.

EXHIBIT 5
DATE 2-16-89
HB 622

Executive Office
318 N. Last Chance Gulch
P.O. Box 440
Helena, MT 59624
Phone (406) 442-3388

Testimony
February 16, 1989
HB 622

Madam Chairman and Members of the Committee;

For the record, I am Charles Brooks, representing the Montana Retail Association. I am here today in strong OPPOSITION to HB 622.

The Occupational Training Program is just another tax on the already over burdened business enterprises in this state. From July to October of last year, I traveled over 11,000 miles in our state talking with retailers about their economic concerns, and the most talked about issue was NO MORE ADDITIONAL TAXES ON BUSINESS. Most of the retailers made it quite clear that we must reduce the tax burden in order for them to continue in business.

This additional tax on payroll sends the wrong message to our current business enterprises as well as new ones that are considering locating in the state. We need to encourage, not discourage, expansion of both new as well as those currently operating in our state.

We ask for a DO NOT PASS ON HB 622.

Thank you for the opportunity to appear before you today.



EXHIBIT 4
DATE 2-16-89
HB 622

February 16, 1989

TESTIMONY IN OPPOSITION TO HB622

I am Kay Foster and I represent the Billings Chamber of Commerce in opposition to HB 622. While the Billings Chamber supports and recommends training programs for employees to reduce occupational injury and disease, we are unable to support the recommendations contained in this bill and, particularly, the additional payroll tax on employers to fund this massive program. At a time when many Montana businesses are struggling to remain profitable, and being assessed a .03% payroll tax to fund the liability in the Worker's Compensation program, this additional tax should be rejected.

The attention centered on the Workers' Compensation program and the liability the State has incurred has made Montana employers acutely aware of the necessity of effective risk management and employee safety programs and this legislature should continue to encourage and reward these employer efforts. It is not appropriate, however, to assess every Montana employer for such training without regard to their own training program and safety record.

We hope you will look to positive means to encourage employee safety programs and reject the expensive and complicated program contained in HB622.

In the matter of funding, we cannot recommend or support the further taxing of Montana's employers. Employers already must cope with some of the highest personal property taxes in the nation. Currently employers pay a hefty payroll tax toward the workers compensation unfunded liability and may have to continue such payments beyond the period initially set by the last legislature. Surely now is not the time to impose yet another payroll tax at a point when we are looking for creative ways to make Montana competitive.

We submit this bill has other inequities as well. The payroll tax mentioned has no cap on wages taxed or time limitation and presumably would run indefinitely regardless of how much money accumulates in it. Employers would be taxed without regard to the number of people employed or the injury risks associated with the particular business. Thus an employer with hundreds of employees, engaged in a low injury rate industry, would be compelled to pay a higher proportion of tax dollars indefinitely for a program that was never requested or needed.

In conclusion, our opposition to this bill is not founded upon any disregard or inattention to the prevention of accidents and injuries through education. Rather we oppose HB 622 because it needlessly increases government, adds still more taxes on employers, and offers still another example of asking government to do what private enterprise can accomplish more creatively and efficiently. For these reasons we recommend to the Committee that HB 622 be rejected.

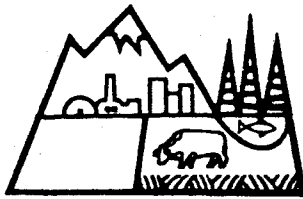


EXHIBIT 3
DATE 2-16-89
HB 622

pg 1 of 2

P O BOX 1730

• HELENA, MONTANA 59624

• PHONE 442-2405

TESTIMONY BY Buck Boles

MONTANA CHAMBER OF COMMERCE

BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

HOUSE BILL 622

FEBRUARY 16, 1989

Madam Chairman, Members of the Committee, I am Buck Boles of the Montana Chamber of Commerce. As an advocate of business throughout Montana, we recognize that safety in the work place is very important for the employer and the employee. Moreover, we are strongly in support of education and training efforts which lead to a better understanding and application of accident and injury avoidance measures. We do not, however, believe that the creation of another governmental board and the imposition of another tax upon employers as called for by HB 622 is necessary, or desirable in terms of enhancing safety in the work place.

Our reasons for not supporting this bill are clear and direct. We believe training programs to enhance safety can best be achieved through private enterprise and not through the creation of another government entity or board at a time when less not more government is needed.

2/16/89

Members of Committee,

EXHIBIT 2
DATE 2-16-89
HB 644

Please record me as ~~proponent~~ proponent
for H.B. (644). I have twenty phone
messages supporting and about 12 phone
calls from my School District asking me
to support this Bill.

Representatives are aware where the schools
are the biggest employer. The unemployment
rate is 45% to 80% on the Blackfoot Reservation
alone. These messages are from Cut Bank,
East Glacier and Browning. Many are single
parents have to go on welfare during summer
months and also get food stamps & commodities.

Thank you

Representative Bob Lewis
H.D. 9



EXHIBIT 1
DATE 2-16-89
HB 644

JAMES W. MURRY
EXECUTIVE SECRETARY

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

(406) 442-1708

Testimony of Don Judge before the House Labor and Employment Relations
Committee on House Bill 644, February 16, 1989

Madam Chair and members of the Committee, for the record, I am Don Judge representing the Montana State AFL-CIO and we are here today to support House Bill 644 which would allow payment of unemployment insurance benefits to nonprofessional school district employees.

Federal government requirements forced the State of Montana to exclude these workers from unemployment insurance benefits in 1985. This exclusion was unfair then and continues to be unfair today. Because there is now some hope that Montana may exercise its rightful authority in this area, we hope that you will see fit to reinstate these workers under our Act's protections.

Unemployment compensation insurance was created to provide a buffer for main street merchants during an economic slowdown by helping to sustain consumer buying power. It was created to help workers temporarily unemployed by providing partial wage replacement until a job could be found. Over the years, this program has proven an important economic tool, assisting the economy during the lows of recessions and depressions.

In the name of fiscal responsibility, proposals are sometimes made to limit coverage of this economic safeguard. Denial of benefits to employees such as cooks, custodians, bus drivers, teachers' aides and clerical workers in our school districts and educational institutions has been one such endeavor. These workers are traditionally underpaid and hold jobs with little opportunity for internal advancement. And yet, they serve as an integral part of the education of our youth. Without them, our systems couldn't function.

Many of these workers serve as the sole support of a household. When the school term ends, they must seek other employment in order to pay for basic necessities. The fact is, few employers are willing to hire workers who are available for only a few months each summer. Unemployment benefits provide a necessary buffer for those employees who are actively searching for work, but who are not successful in finding a job.

We need to reinstate this safety valve. Nonprofessional workers employed by school districts now have to seriously consider the possibility of being able to find summer employment or of surviving without an income. This is a grave disincentive to work for the school districts. Montana schools are the losers when this happens. We lose the valuable expertise and experience which comes with years spent on the job by seasoned employees.

For these reasons, we urge your favorable consideration of House Bill 644.
Thank you.

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that HOUSE BILL 719 (first reading copy -- white) do pass.

Signed: _____
Angela Russell, Chairman

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that HOUSE BILL 710 (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Page 2, line 16.

Following: "injury"

Insert: ", as demonstrated by past employment history"

2. Page 3, line 17.

Following: "injury"

Insert: ", as demonstrated by past employment history"

3. Page 4, line 12.

Following: "injury"

Insert: ", as demonstrated by past employment history"

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that HOUSE BILL 695 (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Title, lines 7 and 8.

Following: "WORK;"

Strike: remainder of line 7 and line 8

2. Page 2, line 6.

Following: "due to"

Strike: ":"

3. Page 2, line 7.

Strike: "(a)"

4. Page 2, lines 10 and 11.

Following: "disability" on line 10

Strike: remainder of line 10 through "39-51-2307" on line 11

5. Page 3, lines 9 through 11.

Following: line 8

Strike: subsection (3) in its entirety

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that HOUSE BILL 694 (first reading copy -- white) do pass.

Signed: _____
Angela Russell, Chairman

5. Page 3, line 20.

Following: "Applicability"

Strike: "date. [This act]"

Insert: ". (1) [Section 1]"

6. Page 3.

Following: line 22

Insert: "(2) [Section 2] applies retroactively, within the
meaning of 1-2-109, to emergency closures on or after
January 1, 1989."

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that HOUSE BILL 644 (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Title, line 5.

Following: "BENEFITS"

Insert: "OR WAGES AND BENEFITS"

2. Title, line 8.

Following: "AND"

Strike: "AN"

Following: "APPLICABILITY"

Strike: "DATE"

Insert: "DATES"

3. Title, line 7.

Following: "HOLIDAYS"

Insert: "OR DURING AN EMERGENCY CLOSURE"

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 20-9-806 AND"

4. Page 3.

Following: line 15

Insert: "Section 2. Section 20-9-806, MCA, is amended to read:

"20-9-806. School closure by declaration of emergency. If a school is closed by reason of declaration of emergency by the governor:

(1) the pupil instruction days lost during the closure need not be rescheduled to meet the minimum requirement for pupil-instruction days that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment; and

(2) nonprofessional school employees must receive full wages and benefits for those days not rescheduled."

Renumber: subsequent sections

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that HOUSE BILL 639 (first reading copy -- white) do pass as amended.

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Page 1, lines 23 through page 2, line 1.
Following: "~~Least~~"
Insert: "At Least"
Following: "~~Then~~"
Insert: "But Less Than"
Following: "~~1.00~~" on line 24
Insert: "1.00"
Following: "~~1.25~~"
Insert: "1.25"
Following: "8"
Insert: "8"
Following: "~~1.25~~" on line 25
Insert: "1.25"
Following: "~~1.50~~"
Insert: "1.50"
Following: "~~10~~"
Insert: "10"
Following: "~~1.50~~" on line 1 of page 2
Strike: "0 to"
Insert: "1.50"

Insert: "whose loss ratio exceeds 75% in any year,"

6. Page 5, line 7.

Following: "equal to"

Strike: "0.0125%"

Insert: "0.3%"

7. Page 5, line 8.

Following: "payroll"

Strike: "in the preceding calendar quarter"

8. Page 5, line 9.

Following: "must"

Insert: "be paid quarterly and"

9. Page 5, line 10.

Following: "programs."

Insert: "The division of workers' compensation shall compute the loss ratio of self-insurers, using the state fund rate. An insurance company writing workers' compensation insurance in Montana shall furnish the division with the loss ratio of each employer insured."

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Labor and Employment Relations report that HOUSE BILL 622 (first reading copy -- white) do pass as amended.

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Page 4, line 22.
Following: line 21
Strike: "fund"
Insert: "account"
Following: "program"
Strike: "fund"
Insert: "account"
2. Page 4, line 25.
Following: "in the"
Strike: "fund"
Insert: "account"
Following: "The"
Strike: "fund"
Insert: "account"
3. Page 5, line 3.
Following: "The"
Strike: "fund"
Insert: "account"
4. Page 5, line 5.
Following: "for"
Strike: "fund"
Insert: "account"
5. Page 5, line 6.
Following: "against"
Strike: "each"
Insert: "any"
Following: "39-71-117,"

February 17, 1989
Page 2 of 2

7. 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)."

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Labor and Employment Relations report that HOUSE BILL 508 (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Title, lines 9 and 10.

Following: "TO"

Strike: the remainder of line 9 through "WORK" on line 10

Insert: "PROVIDE A WORKER AN ABSOLUTE PREFERENCE TO A POSITION
PROVIDING WAGES COMPARABLE TO THOSE EARNED IN HIS FORMER
POSITION"

2. Title, line 13.

Following: line 12

Insert: "TO RELEASE THE EMPLOYER FROM CONTINUED HEALTH INSURANCE
BENEFIT RESPONSIBILITIES UPON TERMINATION OF EMPLOYEE;"

3. Page 2, line 7.

Following: "work"

Insert: "within 2 years from the date of injury"

4. Page 2, line 12.

Following: "~~abilities~~"

Strike: "his former job upon his return to work"

Insert: "an absolute preference to a position that provides wages
comparable to those earned in his former position"

5. Page 2, line 13.

Following: "(3)"

Insert: "This preference applies only to employment with the
employer for whom the employee was working at the time the
injury occurred."

6. Page 2, line 18.

Following: "continue"

Insert: "during the period of injury"

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-16-89

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