MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on March 22, 1989, at 8:00 a.m.

ROLL CALL

Members Present: Fifteen.

Members Excused: Duane Compton.

Members Absent: None.

Staff Present: Eddye McClure, Staff Attorney

Announcements/Discussion: Executive Session to act on bills heard the evening of March 21, 1989.

DISPOSITION OF SB 444

Motion:

SMITH: Moved to DO CONCUR IN.

Discussion:

GLASER: Basically what this bill does is the same thing that Rep. Driscoll and Rep. Smith and I insisted that the division had to do during the last session and they just put that into law.

Amendments, Discussion, and Votes: None.

Recommendation and Vote:

Unanimous vote DO CONCUR IN SB 444.

Rep. Glaser will carry this bill on the House floor.

DISPOSITION OF SB 430

Motion:

DRISCOLL: Moved that SB 430 DO NOT PASS.

Discussion:

DRISCOLL: Last session SB 315 was the big compromise and all the employers came in front of the House Business and Labor Committee and said do not amend this bill. There were amendments offered and not one was accepted by the House committee. They blew it through, now they come in this session saying the bill isn't any good.

They got 428 to separate the fund and I think that is enough changes. This is a 20% cut in benefits. Last session they cut benefits about 40% and they are still going down hill. There must be something else wrong besides just benefits.

WHALEN: I also oppose the bill. Probably one of the most malicious pieces of legislation I have ever seen come through this body towards workers was SB 315 two years ago and this just adds insult to injury.

RICE: That is the thing that strikes me too, a deal is a deal, and I am just wondering if anyone would be able to explain why we are hearing this bill at this time when we worked out such an extensive compromise last session.

I agree we made substantial changes last time. We are making more changes this time and I think making more substantial cuts in benefits is not the responsible thing to do. I think we should wait and see how the reforms that are put in place will affect the system and I move to TABLE the bill.

RUSSELL: We have a TABLING motion.

Amendments, Discussion, and Votes: None.

Recommendation and Vote:

Rep. Rice moved to TABLE the bill.

Vote: SB 430 is TABLED by unanimous vote.

DISPOSITION OF SB 405

Motion:

DRISCOLL: Moved DO NOT PASS SB 405.

Discussion:

DRISCOLL: I think if you look at page 5, new section 5, on the floor of the Senate somebody finally woke up. Without that section this bill would be completely illegal. That section says that it shall be illegal for the employer to deduct any

workers' comp premium from the employee's check. That was put in there way back when the workers' compensation law passed, to make it truly reflect that it was the sole remedy for the worker. In exchange for that, the employer would pay the premium. The little safeguard they put in there was 39-71-406. Now they want to put in a new section — they are not going to repeal that, they are just going to say this doesn't conflict with that law. As the bill was drafted, that wasn't in there. I don't know which senator woke up, but somebody on the floor of the Senate did and put that in.

If a worker has to pay for his own workers' comp insurance, then why do we have the sole remedy still in the other sections of law. This is just a bill to make the workers pay for managers' and doctors' mistakes of the past. You cannot get on workers' comp without a doctor saying you are hurt. If you want to control costs you should get after those doctors who let everybody on the system.

WHALEN: I just want to make an observation. When Gov. Stevens was giving his state of the state address he was talking about fairness and that it was only fair that injured workers help contribute to this system. I think it is unfortunate that this legislation was introduced because by introducing it, that indicates to me that he doesn't recognize that injured workers are heavily subsidizing the system by going out and working for an employer and sacrificing the only real thing that anybody ever has, which is their health and then not getting fairly compensated for it; and, in my estimation, getting grossly undercompensated for it. I think it is too bad that he doesn't recognize the great extent to which employees in this state are presently subsidizing businesses through the workers' comp system.

This bill, if it passed, wouldn't be such a bad bill because I know lawyers would probably start representing injured workers again. I really don't think that the exclusive remedy provision would apply any more.

SIMPKINS: I just want to make sure we have it on the record that we are not talking about a premium here. We are talking about a pay back of a debt. The state has to take responsibility for the way they ran the plan because it was a state plan so, therefore, the \$157 million is a state obligation.

GLASER: I have two things to say. First, if you make this a general obligation of the state of Montana you will set this state back for a long, long, long time.

The second thing is that Sen. Devlin apparently felt that there was a mistake made over in the Senate and he felt that maybe we do whatever we do with this bill, correct that mistake so he asked me, and I'm sure that Rep. Driscoll has

some designs of his own on this particular piece of legislation, that we take Sen. Devlin's amendment and put it on the bill. So I would move the amendment.

Amendments, Discussion, and Votes:

GLASER: Move Sen. Devlin's amendment DO PASS.

Vote: Unanimous vote to DO PASS Sen. Devlin's amendment.

Further Discussion of Bill:

McCORMICK: Rep. Simpkins was talking about a fair bill. I just got a letter this morning from a railroad guy. They are not covered by industrial accident and they have to pay this out of their paycheck. That isn't fair. They are taxing everybody who works. It's not an industrial accident claim, it's a working man's claim.

SMITH: Just to set the record straight on this, two years ago I carried the payroll tax. A lot of my friends sitting right here helped with that. We had a terrible time with it. We had a lot of employers out there who are self insured and they are all paying that tax and we had a battle with it. That bill sunsets in two more years. The battle then is going to be "if the employees don't want to help pay this obligation, we don't want to pay it any more either." So we better start thinking about how we are going to pay off that \$157 million.

I don't like this bill either. I don't like an employee paying it.

WHALEN: I want to respond a little bit to statements made by Rep. McCormick and Simpkins. It is not fair to the employee in the instance that you cited to have to contribute to this when he doesn't receive any benefits. It is not fair to the employer who has to contribute to this who also doesn't receive any benefits. The fact of the matter is that we are cleaning up a mess that was created by, in my estimation, a corrupt governor.

Recommendation and Vote:

DRISCOLL: Moved that SB 405 be TABLED.

Vote: Fourteen to two in favor of TABLING SB 405. Those voting against tabling were Reps. Simpkins and Thomas.

RUSSELL: SB 405 is TABLED.

DISPOSITION OF SB 235

Motion:

DRISCOLL: Moved DO NOT PASS SB 235.

Discussion:

SIMPKINS: I was amazed at the discussion on this during the committee hearing. During this hearing last night we had employees come up and testify for this bill, but we didn't have employees testifying against it. We had business managers and labor unions testifying against it. had employees say that they were unsatisfied when they were in the union with their union pension plan, they dropped the We even heard a man tell us how he lost \$12,000 out of his union pension plan, because he didn't have vested rights. We also heard that in a union plan you have to work for them for ten years before you get vested rights. Driscoll brought up a very good question when he turned around and asked what they did with the money when they had left over money in the new proposed plan. What is done with the money in union accounts when a man changes a job, for instance, he goes from one union to another. After four years in the union his money sits there. If he does not return to that union in seven years, the money is absorbed into the union account.

We find out the federal government has changed the law making all management, all companies, vest in five years, but the unions were exempt, so they can carry on for ten years in their plans. We had Jerry bring up a question on a company that is closing out their plan in order to take advantage of all the extra money they made during the high interest rates. That has nothing to do with this plan, it is an entirely different concept. This plan is based upon an annuity. We also have to look at the idea of what happens to these employees. They get an annual statement. I don't know if the union people get annual statements of their account as to how much money is in their account in their name.

We also find out that this plan is transferrable among other contractors in the state, as well as a couple of other states, as long as they are members of the contractors association and they have taken this plan. Here is one of the first workers' benefit plans that I have heard so far, because we are giving the shaft to the workers in the law.

I thought maybe we should be impartial, we shouldn't take sides, but in our law we definitely take the side of the union against the private contractor who decided not to be union. What do we do under the Davis-Bacon Act? We turn around and make that non-union company pay to that employee cash benefits, and he gets no tax advantage at all. The

employer must pay unemployment insurance and workers' compensation, plus social security, that the union contractor does not have to pay. So, therefore, who hurts? The employee again because he has to pay social security as well and the employee is limited to \$2,000 IRA. Under this plan, the employee can get this plan as well as still have the eligibility for his \$2,000 IRA.

If you look through this plan it has many benefits built in that possibly union plans do not have. A thousand hour build-up time over a period of time; it has an 18-month carry over provision; and he also has the ultimate -- being able to transfer the money from his account into another IRA. You can't do that with a union plan, your money is in the union plan. If you don't work for them for ten years your money is gone.

Keep in mind, the managers of this plan do not have control actually of the money, they have control of the plan; they have control of how it is to be disbursed, to make up the rules on how the game is played. The money is under the control of another party, as well as it is subject to inspection and audits from the United States government, as well as the state Department of Labor.

Therefore, I have to move a substitute motion to DO PASS because I feel that is to the advantage of the employees who asked us to enact this during the hearing last night.

RICE: Question for Jerry (Driscoll). I don't always agree with you, but I respect your integrity. I feel I heard a lot of smoke coming from both sides about what is better for this employee or what is better for that employee. Isn't the reason that all the unions came in to oppose what a non-union contractor can do with his fringe benefits, isn't the real reason they did that is that they are afraid of tougher competition for union contractors? Isn't that the bottom line?

DRISCOLL: Yes, part of the bottom line. This health insurance plan where you have to work 1,560 hours a year to be covered year around and the amount above 130 hours a month would go into the bank. It would take years to get to the thousand hours we are talking about in the bank. Our plan is 1,200 hours a year. You have a chance of getting year around coverage and having some hours in the bank. It is a difference of 360 hours a year less work to be covered the year around. That's the health insurance part of it.

The second part is these are simply annuity contracts and they call it a pension fund. You are limited to the amount of money, plus the interest the administrator makes for you, and or minus the administrative costs.

The question I asked and never got answered last night, what

happens to the money of a person who worked a very short time in construction — and there is quite a bit of that — 100 hours, 40 hours, a guy who works a week, or a couple of weeks and leaves. The answer was that they would keep the company informed of their addresses when, in fact, I know that does not happen with construction workers. If a person had \$100 in there and he did not keep the people informed of his address, the state gets the money after seven years, not the other participants, because it would be an abandoned account and it would go to the state of Montana.

In construction there are lots of times when people don't even know that the contractor is contributing that \$1 an hour to his pension fund, especially when they are young, and all of them are not going to keep that fund apprised of their address at all times. I don't know who gets the money, but I think it would go to the state of Montana after seven years.

McCORMICK: I want to know why if that is such a good plan that the contractors didn't give each one of the committee members a copy of it.

SIMPKINS: Didn't everybody get a copy?

(Secretary's note: Mr. Lockrem had copies of the plan at the hearing Tuesday night, March 21, and I believe he mentioned that he had them for the committee, but neglected to give them to us)

McCORMICK: No, because it isn't worth anything. It's governed by the employers. The union trust is governed by the union and the employers. The employers can close that out after you pass this law and the workers can't say anything about it. A union health and welfare pension plan is governed equally by employers and union members and there aren't any changes unless everybody agrees to it.

I have been looking at this bill real seriously for O'KEEFE: about a month now and looking at both sides of it real hard. I feel we do need to look out for the non-union employers and give them the option of these benefits, but I conducted a little non-scientific poll amongst some of the workers who just finished the Davis-Bacon job, non-union workers, out at the hospital at Fort Harrison. I talked to some people in Jim's (Rice) district and some people in my district and some people in Ed Grady's district, and made some calls and in only two instances did I find an employee who wanted this There are a number of reasons for that. those people are married to state employees and they are covered by a health and medical benefit plan and they would rather have the cash than have duplicate medical coverage forced on them. Some of those people were not interested in medical coverage at all. I think they are wrong. whether or not they are interested, they need to have it. Some of those people had private plans which they used their cash to pay into private pension plans, private health plans. If this money was taken out, the exact same thing that happened with the union would happen to them, they would lose their \$10,000 or \$12,000 that they paid into their own private plan unless they kept paying in.

The problems that I have with it is (1) the transferability question. Dick said they are transferrable -- they certainly are if you have the same plan. According to this law, each employer can select the fringe benefit fund plan or program which they wish to use. In the construction trade some of these guys were opposed to it because maybe in a seven month period they would work for three contractors. That could be three different plans. They would pay into all of them and they essentially would not be able to get that money out. I know we heard some employees there last I think that was good and I think they were people who worked nine and ten months a year for one shop. I think the bulk of the people who work in the trades like that, the non-union people, move so much that these plans aren't going to do them any good. If this bill was to say there is one plan that all contractors must use, it would be a different story, but it doesn't say that.

I have struggled with the thing and I just can't support the bill the way it is.

SMITH: In answer to Mark (O'Keefe). I think it is just in the last year the federal law has really cracked down on that, health insurance in particular. Here is the real problem that I have with it. In logging, for every dollar you pay a guy it is a little over 50% payroll cost, that makes it a little over \$1.50. He gets about half of that, or a little less, for his take-home pay. So what you are doing when you get a tax deductible benefit for him he is actually getting about \$2 a year costs for \$1's worth of recovery. When it is deductible he gets full value on what it costs the employer. There are things I don't like about this but there is some real merit to it and I think that we should do something with it.

KILPATRICK: I wasn't going to talk on this because it is a personal thing, but I think it is necessary. I want to tell this story because it is true and it happened within the last year to me. I belonged to a health plan in our school system. They brought up a brand new idea. The plan cost me \$140 a month for my wife and me on the hospitalization. We took \$40 of it and give it to the insurance company. The insurance company takes this and they administer the plan. The other \$100 we deposit directly into a local bank. When we got this it was understood that if there was any money that they needed, they would write in and take that out to pay for the illness, this type of thing. After a few years if this money accumulated and we had extra money, it would cut our premiums or we would get extra benefits. It was a

marvelous thing and it ran one year and they had \$140,000 left over. We were happy because we thought that meant maybe our premiums were going to be cut. Do you know what happened? The superintendent took \$110,000 to run the school district. He took it right out. The point is that there were teachers and retired people, like me. The school district put the money in and they said "that's not your money, that's our money." As a retired teacher I went to the county attorney to indict him for criminal charges. The county attorney refused to work with us because he said it was a conflict of interest, that he couldn't do it. is no way we could afford a lawyer at this particular point. We lost \$500-\$600 each. They said "we gave you a medical plan, didn't we? You used it." He took my \$600 right out and there wasn't a thing I could do. He got away with it. That is one of those unscrupulous people and I think this is what we are looking at here.

I think this is a lousy plan because it can really cause some problems.

I would like to respond to some of the statements made DRISCOLL: here. I think if you checked the sign-in sheet, there were plenty of people who signed up in opposition to this. were in the gallery and there wasn't time for them to testify. Also, in the case of the union pension or health, that isn't what it is -- they are called Taft-Hartley Trusts -- you have to have equal representation of the employer and the employees. The employees get one vote and the employer gets one vote, no matter how many trustees there are. They must put their heads together and decide whether they are going to vote yes or no, each side, and then if it is a tie vote there is arbitration. As far as the part about Chevron taking the money back to the employer, or reducing their premium costs or their contributions, we were covered by the same law. We could have allowed that to happen but the employers knowing that we would never vote for it didn't bring it up, but it was not illegal. We are covered by the same law as the Chevron pension plan. They knew if they had brought it up to reduce the contribution that the union would have voted no. Consequently, my pension fund has no unfunded liabilities, unlike any state plan, unlike almost all private plans. Last November we were overfunded by \$2 million from earnings in the stock market from which we gave all retirees a thirteenth check. As of April 1 this year, they will get a thirteenth check; all people who are still participants got a 27% increase in their benefits. We do is we provide for our retirees health insurance that is better than a state plan for \$20 a month and we subsidize the rest out of earnings.

This bill does not require them to do anything for the retirees, so when you retire on this plan you are out in the cold, you have no health insurance and there is no requirement to let these people stay in the group, the

retirees. As far as the union people never getting a statement of how much they have; we send out quarterly statements and a yearly fund balance and how much it has grown or shrunk. Also in that letter is an address if you want the total breakdown that is sent to the United States Government Department of Labor where you can get it. It is an extensive report. It is held in the fund administrator's office and also in the department of labor. Anybody, whether you are in the plan or not, can look at it. Under the Freedom of Information Act all you have to do is ask for it. If you want copies, they charge you copying charges like most governments do and ours is called the Laborers' AGC Trust of Montana. It is on file in Washington, D. C. and Spokane, Washington.

You will find after ARISA passed there has been no money missing except in state pension plans because they aren't covered by ARISA. ARISA was supported by the unions, passed by the unions, not by management, to clean up pensions. We had a little loophole and that is what the oil companies and other big employers took advantage of because of the great stock market and interest earnings. They were overfunded. They quit making contributions because they didn't need to to provide the benefits that were in the schedules. Then they decided they were so overfunded that they shut those pensions down for one day, bought everybody that was in there an annuity, took the excess and then the next morning re-opened the pension fund to the tune of \$18 billion in the last three years. Not one union pension fund was shut down or Taft-Hartley Trust, and taken advantage of like that. Not one in this country.

The health insurance that they are offering these people, there are no safeguards that the 130 hours would go to 150 hours or 200 hours. The only safeguard in the Taft-Hartley fringe benefit plans is the employees have one vote and the employer has one vote. Somewhere along the line they decided they might try to appease somebody and say there shall be at least one hourly person on the board of directors. Well on this particular plan, the AGC plan, they put office people into it, that's an hourly person, so they could qualify for this section, one hourly person, that could be the office secretary of some contractor. There are no safequards that the people out there on the asphalt crew or someplace on the construction crew would get anybody on that trust fund. There are no safeguards in here for the employees. They are not here to provide benefits, they are here to save the tax money. We already have \$157 million unfunded liability, this will make it worse.

THOMAS: Jerry probably knows more about this than most any of us here and I appreciate his opinions very much, but I think we also appreciate where Jerry is coming from too.

The plan is not in this bill, nor is Jerry's plan, nor anyone else's, but it is some framework to allow for benefits. There are not many of us who have the best benefits available.

We are hearing, and we heard it last night from Jim Murry, that the AFL-CIO has steadfastly fought for health insurance. We are hearing that all the time as a problem and I think some members here have argued that we shouldn't pass mandated benefits because you shrink the pie of insured people out there. Well the pie of insured people is shrinking and this bill will help that pie grow. Anyway you want to look at it, no matter how you feel about this bill, no matter where you come from, whether you are a "union-or non-union" individual, this bill is going to help people, workers, continue medical insurance in this state. That is what the main framework of this bill is.

In my opinion a vote to pass this bill is a vote to allow workers more continuous benefits in Montana. A vote no is to just allow cash benefits and sporadic benefits availability. That is what this bill is about.

PAVLOVICH: I think we have discussed this long enough. I don't want to call for tabling of the bill, but let's call for the question.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

RUSSELL: We have a DO PASS motion.

A roll call vote was taken and the DO PASS motion was defeated 9 to 7.

Motion:

PAVLOVICH: Moved that SB 235 be TABLED.

Vote: SB 235 TABLED by 14 to 2 vote.

DISPOSITION OF SB 165

Motion:

PAVLOVICH: Moved DO NOT PASS on SB 165.

Discussion:

O'KEEFE: I'm going to move to table this bill when I am done with this but what I would like to do first is to amend out "division administrators". I don't have an amendment prepared. Eddye has amendments by Fred Thomas. I am going to move Fred Thomas's amendments.

Motion:

O'KEEFE: Moved DO PASS the amendments.

Amendments, Discussion, and Votes: No discussion.

Vote: Unanimous vote to DO PASS the amendments.

Further Discussion of the Bill:

PAVLOVICH: I don't know how the rest of the committee feels or how it has been on a lot of their bills, but I have a hard time voting even to table this bill because a lot of these administrators come in and testify against your bill and you don't know whether they got the permission from the governor's office or if they are on their own and they are using state paper. I had one of them come in on one of my bills using paper from one of the departments, passing it out among the employees over there, especially the women, to make sure that they voted against my bill. I don't know where it is all coming from or who is going to stop it, but I asked last night who gives them permission to do this and why do they get permission to do that. Don't we have a policy up here? Are they allowed to come in an testify any time they want, or what is going on? On their free time I have no problem with that. That young lady from the department of labor came in last night and testified on her own time, but I get sick and tired of the administration coming up and undermining our bills. I had another bill another deputy director come over. He doesn't like my bill so what does he do but tell everybody how to kill my bill.

DRISCOLL: If you want them here you have to write them a letter; if you don't want them here, they show up. The administrators and the assistant administrators are just like another lobbyists, you can believe them or not believe them. I don't think they lie to you, they put out their side of it and they are simply just another lobbyist. Sometimes I don't like it and sometimes I do like it, depending on what they say, but this bill says that the governor cannot lay them off but move them down, give them some other duties, but not cut their pay. We are going to create another problem with this bill, putting these people down with a different job, but they still get the money and then we hire another guy getting the same money.

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THOMAS: The bill cuts both ways. In the future you are going to allow a future governor the ability to install his staff. I favor the bill and I am going to vote for it.

Motion:

O'KEEFE: Moved to TABLE SB 165.

<u>Vote</u>: Ten to six for tabling the bill. Those voting against tabling the bill were Glaser, Lee, Simpkins, Thomas, Compton and Smith.

RUSSELL: The TABLING motion has passed.

RUSSELL: Rep. Cohen asked if we might introduce a committee resolution for the employees at Glacier Park. There are about 300-400 seasonal employees. He wants the resolution to ask the park service to establish conditions of employment for their lessees. At present they only require that they meet the federal regulations and they are not subject to the Montana hour and wage law. This is the essence of his resolution.

Is there any discussion on this, is there something we might want to do?

O'KEEFE: I am one of those employers and that is one that I'll stay out of. Quite frankly, I think it is a good idea, but on that one I am going to have to go conflict of interest.

RUSSELL: Is there any objection to a committee resolution being drafted?

No objection.

RUSSELL: Okay, we'll go ahead with the resolution.

ADJOURNMENT

Adjournment At: 9:05 a.m.

REP. ANGELA RUSSELL, Chairman

AR/mo

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-22-89

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NAME	PRESENT	ABSENT	EXCUSED
Rep. Angela Russell, Chairman	V		
Rep. Lloyd "Mac" McCormick, VC	V		
Rep. Vicki Cocchiarella	V	77.00	
Rep. Duane Compton			V
Rep. Jerry Driscoll			
Rep. Floyd_"Bob" Gervais	V	· · · · · · · · · · · · · · · · · · ·	
Rep. Bill Glaser			
Rep. Tom Kilpatrick			
Rep. Thomas Lee	<i>y</i>		
Rep. Mark O'Keefe	V		
Rep. Jim Rice	V		
Rep. Richard Simpkins			
Rep. Clyde Smith	V		
Rep. Carolyn Squires '	V		
Rep. Fred Thomas	V		
Rep. Timothy Whalen	V		

ROLL CALL VOTE

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

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NAME	AYE	NAY
Rep. Angela Russell, Chairman		
Rep. Lloyd "Mac" McCormick, Vice Chairman		-
Rep. Vicki Cocchiarella		-
Rep. Duane Compton	~	
Rep. Jerry Driscoll		1
Rep. Bill Glaser	<u> </u>	
Rep. Tom Kilpatrick		~
Rep. Thomas Lee	<u></u>	
Rep. Mark O'Keefe	•	-
Rep. Bob Pavlovich		-
Rep. Jim Rice	~	
Rep. Richard Simpkins	~ ·	
Rep. Clyde Smith	~	
Rep. Carolyn Squires		-
Rep. Fred Thomas		
Rep. Timothy Whalen		
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OTION:		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

March 22, 1989

Mr. Speaker: We, the committee on HOUSE LABOR AND EMPLOYMENT RELATIONS report that SB 430 was TABLED this date.

Sianed:

ANGELA RUSSELL, Chairman

STANDING COMMITTEE REPORT

3/20/18 00 BOH

March 22, 1989

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Mr. Speaker: We, the committee on <u>Labor</u> report that <u>SENATE</u>

<u>BILL 444</u> (third reading copy -- blue) be concurred in .

Signed

ngela Russell, Chairman

[REP. GLASER WILL CARRY THIS BILL ON THE HOUSE FLOOR]