

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman, on February 16, 1989, at 1:00 P.M. in room 415 of the State Capitol

ROLL CALL

Members Present: All members were present. Senator Tom Keating, Vice Chairman, Senator Sam Hofman, Senator J.D. Lynch, Senator Gerry Devlin, Senator Bob Pipinich, Senator Dennis Nathe, Senator Richard Manning, Senator Chet Blaylock, Senator Gary Aklestad, Chairman.

Members Excused: There were no members excused.

Members Absent: There were no members absent.

Staff Present: Tom Gomez, Legislative Council Analyst.

Announcements/Discussion: There were no announcements or discussion.

HEARING ON SENATE BILL 405

Presentation and Opening Statement by Sponsor:

Senator Gerry Devlin, Senate District 13, sponsor of SB 405, stated the bill is an act to continue, in effect, the employers' payroll tax, that is the supplemental funding source for the Workers' Compensation State Fund. Senate Bill 405 will provide another supplemental funding source for the workers' compensation state fund through an employees' wage tax, and will provide for collection of the payroll tax by the Department of Revenue. Senator Devlin stated the tax of three tenth of one percent, currently imposed on employers, is now to be taxed against employees. The funds will pay off \$157 million dollars, which is the unfunded portion of the workers' compensation liability figure. The unfunded liability's history is: In 1984-85, the amount was \$28 million; in 1985-86, the amount was \$81 million; in 1986-87, the amount was \$149 million, and currently, the amount is \$157 million. There are two amendments to the bill. Senator Devlin stated a change is necessary on line 21, page 1. The payoff date should be

"1994" instead of "1993". On line 13, the date should also be "1994".

List of Testifying Proponents and What Group they Represent:

Mike Micone, Commissioner, representing the Department of Labor and Industry.

Chris Stogie, representing himself.

Testimony:

Mike Micone, Commissioner of Labor and Industry, submitted written testimony to Senate Bill 405. (Exhibit 1)

Chris Stogie, Saunders County, stated the districts have been hard hit with premiums. We live on the border of Idaho, and we find in the last three years, as of September 1, 1989, the area lost 1,231 jobs out of 4,000 jobs. Saunders County is the worst hit area in the state because of high Workers' Comp rates.

List of Testifying Opponents and What Group They Represent:

Tom Schneider, representing MPEA.

Sam Ryan, representing the Montana Senior Citizens Association.

Jay Reardon, representing the USWA Local 72.

Nadiean Jensen, representing the Montana AFL-CIO.

Bob Heiser, representing the United Commercial Workers.

Testimony:

Tom Schneider, MPEA, stated opposition to SB 405 on behalf of employees who will be taxed for the Workers' Comp funds. Schneider also opposes HB 405 as a businessman. His company employs ten people. The employees are ultimately going to pay the tax. Schneider stated his company pays \$2,500.00 per year in Work Comp taxes. The business was established in 1946, and the company has never had a Workers' Comp claim. Schneider stated history indicates the premium calculations are not based solely on experience. One part of the fund is not subsidizing other fund portions. Senate Bill 405 will increase taxes by an additional three tenths of one percent. The employees will not pay this amount, but will expect to be reimbursed in the form of a salary increase. Schneider is an actuary, and with that training, Schneider stated he would like to know what happen in 1983.

Schneider believes it does not make any difference whether or not the company is funded in 1983, 1999, or 2000. At the point where the amount is totally funded, the conclusion can be made that too much money has been collected, or not enough benefits have been paid to clients. Workers' Comp is not much different than retirement systems, when considering five hundred weeks benefits or life time benefits. Mr. Schneider stated he does not know what is being accomplished by overtaxing now so there will be no future unfunded liability five or ten years from now. We support funding Workers' Comp and getting rid of the unfunded liability, but the bill only shifts the burden back on the employers. The employees are not going to pay three tenth without reimbursements.

Sam Ryan, Montana Senior Citizen Association, stated SB 405 is an unfair bill. The Association recommends a DO NOT PASS action.

Jay Reardon, USWA Local 72, Helena T. and L. Council, vice-president of United Steel Workers of America, and president of the Helena Labor Council, stated opposition to SB 405. Reardon stated the Workers' Compensation was established on the point system to make a no fault insurance plan. Now employees are told they must bail out the employers again. The employees have paid enough. The current average amount paid is \$400.

Nadiean Jensen, Vice-president of Montana AFL-CIO, presented written testimony for Jim Murry. (Exhibit 2)

Bob Heiser, United Commercial Workers, stated opposition to SB 405. The organization does not feel the employees can stand any more income deductions. The state workers' clerks have not had a raise since early 1987. Heiser urged opposition to SB 405.

Senator Bob Pipinich stated opposition to SB 405.

Other opposing witnesses. Jan Van Riper, Nadiean Jensen, Roger Koopman, and Ken Kritz.

Senator Devlin distributed information from the Office of the Legislative Council. (Exhibit 3)

Questions From Committee Members:

Senator Blaylock stated Montana claims to want a better business climate. The industry, suffering grave financial stress, is the logging industry. Montana workers will be without many logging jobs, due to unfunded liability premiums. The premiums are much lower in Idaho.

Senator Blaylock asked if three tenth of one percent on employers,

plus the new proposed three tenth of one percent on employees will pay off the unfunded liability faster. Barr replied yes. Senator Aklestad asked why Idaho's rates are cheaper than Montana when both states are cutting down the same number of trees. Perhaps Idaho is taking better care of the claimants.

Senator Keating asked Mr. Schneider if there is a difference between Idaho and Montana's benefits, and, if so, what is the effect on Montana premiums. Mr. Schneider stated he does not have access to the information to answer this particular question at this time, but would present, if necessary, the answer later. As an employer, Senator Keating asked, if all the laws dealing with Worker's Comp were repealed, and the only governing condition was a sentence that read "The employer will provide worker's comp to the employee on a mutual agreeable basis", would the option be worth considering. The employer would then be able to negotiate benefits and premiums. Senator Keating asked if this would be a better alternative. Mr. Schneider stated it is an unfair question, unless you could negotiate with the insurance provider for the best price. (Exhibit 3)

Senator Pipinich asked if the loggers were better trained in safety procedures, would the accident rate decrease. Yes, it is documented. Rates come down after safety training practices take place.

Closing by Sponsor:

Senator Devlin stated he considers a good safety plan will be a proven benefit to employers. The employee must be taken care of in case of an accident. Senator Devlin discussed the fiscal note.

HEARING ON SENATE BILL 375

Presentation and Opening Statement by Sponsor:

Senator Nathe stated SB 375 is an act limiting the prevailing wage law to public works contracts; removing contract for services and maintenance from the operation of the prevailing wage law. Senator Nathe offered amendments.

List of Testifying Proponents and What Group they Represent:

Bob Jensen, representing the Department of Labor.

Joe McCracken, representing the Lockwood School, Billings, MT.

Bob Anderson, representing MSBA.

Chad Smith, representing the Land Improvement Contractors.

Testimony:

Bob Jensen, Administrator of the Employment Relations Division, Department of Labor and Industry, stated Senate Bill 375 is a controversial bill, but the issues need to be addressed. For several years there has been confusion concerning whether or not services are included in the minimum wage law, and if so, how much. Contracted custodial service is also in question. Periodically, the Montana Department of Administration requests the division to determine whether the division needs to establish a prevailing wage classification in service areas. The classification would include such people as sprinkler servicepersons, fire extinguisher service people, computer repairpersons, audio-visual repairpersons, and security guardpersons. The division is not sure how broad the classification area should be. School district and city-county governments also ask the same question. About three years ago, the Commissioner of Labor appointed a minimum wage advisory council to assist the commissioner and various divisions in determining rates. The committee chairman was Senator Lynch. The group examined the issues, then asked the Commissioner of Labor to obtain an Attorney General opinion. The opinion eventually determined that services were included under the statute, possibly to a greater extent than was acknowledged previously. At this point, the division was alarmed. Two divisions are effected. The division did not have the resources to radically serve the determined needs. Jensen's division, also, did not have the resources. Therefore, the division submitted the SB 375's budget request in the form of said legislation. The fiscal note, written by the Human Service Subcommittee, shows the prevailing wage issue approves 2 1/2 positions because of the General Attorney opinion. If SB 375 passes, there will no longer be a fiscal impact. The division is not unique in dealing with the subject. The federal government is also dealing with the same problem. The federal government has separated out services into a separate act. Unless something is done soon, additional litigation costs for union people, employers, and others will be needed.

Joe McCracken, Superintendent Lockwood School, Billings, Montana stated in 1983, the school district decided to contract housekeeping services. At this time, the school checked with everyone involved to make sure contracting of housekeeping services was ok. The Lockwood Schools contacted the Department of Labor. The School had their own people on staff prior to this decision. McCracken stated he was hired 1985. In spring 1986, McCracken said he put the work out for bid. The question was asked concerning whether or not the school was to pay prevailing wage. Before the school opened the bid, research was completed. McCracken personally contacted the Department of Labor three or four times. The department was uncertain as to whether housekeeping services was included. The department informed Mr. McCracken to go to the County attorney for a final decision. The county attorney sent a letter stating housekeeping services were not subject to the prevailing wage requirement. Therefore, the bids were opened and

offered to a new contractor. About four months later, an ex-employee, a previous contractor filed suit for not being paid the prevailing wage for the six months he worked for the school. The Department of Labor auditor came to Billings for a week in order to go through the employee records. The emphasis was placed on the people employed during this time. In June, 1987, the school received a letter saying the school owed back wages of \$138,000. The school contracts five or six other services. McCracken question if these services are also supposed to be paid at the prevailing wage. Does the school have the right to go into the records to check to see if the employees wages were the prevailing wage. The school contacted the Department of Labor for direction, and followed the opinion of the Department. Mr. Mc Cracken offered written testimony. (Exhibit 5)

Bob Anderson, MSBA, stated support for SB 375.

Chad Smith, Land Improvement Contractors, stated support for SB 375.

List of Testifying Opponents and What Group They Represent:

Gene Fenderson, representing the Laborers International Union.

Jim Murry, representing the Montana AFL-CIO.

Bob Heiser, representing the UFCW.

Dennis McAlpin and Douglas D. Gress representing Capitol Security.

Other witnesses opposing SB 375: Nadiean Jensen

Testimony:

Gene Fenderson, Laborers International Union, stated the union represents craftsmen, but also represent thousands of people employed in the public sector, such as school districts and cities-counties governments. Fenderson stated previous reaction last legislative session was caused by compromised bills. Everyone tried to work out the most advantageous bill, including the school districts, the cities, the counties, the state, and organized labor. The groups came to an agreement concerning what the answer should be. Fenderson expresses regrets for Lockwood School district's legal problems. The situation has a great economic affect, not only on the employers, but on the workers. The federal government has two workers' protection laws. The areas of concern are: 1) when people do new construction, or heavy remodeling; 2) (The Public Service Employee's Act) when people work for the government, and the services are being contracted out. The criteria says if you are going to come in and contract services from a government entity, you will have to pay the wages the government entity is paying their workers. If you are a new

contractor, you cannot cover the wage by under bidding the old contract. The situation is called the China Bowl-Rice Bowl Syndrome. If enough people are unemployed and hungry you will under cut the fellow workers. The worker do not get their entire rights. Fenderson questioned the fiscal note, concerning fringe benefits and construction projects,

Jim Murry, Executive Secretary of the AFL-CIO, offered written testimony against SB 375. (Exhibit 6)

Bob Heiser, UFCW, urged strong support in opposition. If the bill received a favorable recommendation, Mr Heiser stated he will offer amendments at the future time.

Other witnesses who oppose SB 375: Dennis McAlpin, Capitol Security, Douglas D. Gress, Capitol Security, and Robert L. Culp, UPIU.

Questions From Committee Members:

Senator Blaylock asked Mr. McCracken asked why the school opted to go to contracted custodial services. Mr. McCracken stated he was not employed by the school at the time the decision was made. As McCracken understood the situation, the problem was concerning Workers' Compensation.

Senator Lynch asked Director Micone who prevailed upon the governor to initiate the bill. Mr. Jensen stated the Appropriation Subcommittee directed the issue. The division was asked at the time to work towards rectifying the legislation. Two FTE's have been proposed to handle the work load.

Closing by Sponsor:

Senator Nathe urged support of Senate Bill 375.

HEARING ON SENATE BILL 415

Presentation and Opening Statement of Sponsor:

Senator Tom Keating, Senate District 44, stated SB 415 is for the benefit of the restaurateur, the employer. In 1978, the state began to assess premium taxes for Workers' Comp on tips to employers. In December, by rule, an Unemployment Insurance Premium on the tip portions of the wage was decided. The unemployment Insurance Premium on wage-tip portions tax issue has barely gone into effect. The employee gets minimum wage or more depending on the agreement with the employer. This is a base wage, except the federal government has determined that eight percent of the volume of sales generated by waiters or waitresses is taxable as tips. For withholding purposes, social security, and federal unemployment taxes, the employer is assessed a tax on that portion of earnings.

Montana has no income tax on any tips, and no withholding of the employees's wages for unemployment insurance on tips. So the employer, pays more taxes on tips. The employee does not have to pay income tax on the any tips or pay federal income tax on anything over the 8% volume in sales. Furthermore, an employee on the Montana Income Tax form can deduct the income tax they pay the federal government on the eight percent of the sale charged to them. The employers get quite a few fringe benefits, such as, as a waitress generates \$500 in sales, the portion of the tips taxable would be \$40. Fifteen percent, the normal gratuity on \$500 is \$75. The employer is required to pay tax out of his portion of the sales. They are FUTA, FICA, Workers' Comp, and Unemployment Insurance. Senate Bill 415 will exempt employers from paying the Unemployment Insurance Premiums and the Workers' Comp Premiums on the 8% of the volume of sales for tip credit. The State recognizes the 8% factor for the purpose of taxing the employer. Senate Bill 415 may affect the benefits slightly, since unemployment benefits, based on the wage, might be affected if unemployment benefits are drawn. Under Workers' Comp, the medical benefit portion may be affected, and the compensation benefits may be affected slightly. Senator Keating pointed out that the benefits of the tips being taxed free are a sizeable amount. The employers are working on a very narrow profit margin, and if the Legislature doesn't help the employer to stay in business, then all is meaningless. The employee will not have a job.

List of Testifying Proponents and The Group They Represent:

Bonnie Tippy, representing the Montana Innkeepers Association.

Leon Stalcups, representing the Restaurant Association.

Greg Bryan representing MIKA, and Montana Pie Company, Missoula.

Jim Tutwiler, representing the Montana Chamber of Commerce.

Testimony:

Bonny Tippy, Montana Innkeepers Association, stated prior to the 1987 Legislative Session, employers could take a tip credit. When Congress brought the food industry under the Fair Labor Standard's Act in 1967, the government recognized the restaurant employees often received substantial portions of the income. The tipped credit allows the employer to apply a portion of employee's tip income against the employers obligation to pay the minimum wage. Even though tipped credit is recognized in 45 states and by the federal government, in 1987, the Montana Legislature chose to eliminate tipped credit in Montana. Interestingly, in the 1987, the Legislature pass SB 315. The domestic revamp of the Workers' Compensation System, which required employer to pay Workers' Compensation on tips was enacted. In December, the Workers' Compensation passed rules which required that employers now pay

unemployment on tips. The federal government is remarkably consistent. The new legislation on minimum wage proposes the increase be raised from 40% to 50%. The federal government recognize tips as wages for purposes of taxation. So employers pay social security on tips and federal unemployment. Employees pay income tax on tips, as well. Montana continues to be only one in five states that does not recognize tip credit. Tipped employers do not have to pay any Montana income tax on tips. The amount the Montanan pays in federal income tax concerning tipped income can be deducted from Montana Income Tax. Montana does not recognize tips as wages for establishment of minimum wage for purposes taxation, but for purposes of employers taxation. Ms Tippy stated SB 415 must establish, firmly and without doubt, whether Montana tips do or do not count as wages for any purpose.

Leon Stalcups, Restaurant Association, presented written testimony. (Exhibit 7)

Greg Bryan, MIKA and Montana Pie Company, Missoula, Montana urged passage of SB 415.

Jim Tutwiler, Montana Chamber of Commerce, Helena, Montana urged passage of SB 415.

List of Testifying Opponents and the Group They Represent:

Jim Murry, representing the AFL-CIO.

Testimony:

Jim Murry, Executive Secretary of the AFL-CIO, stated tipped employees are among the lowest paid workers in the state. The workers often work bad hours, work at minimum wage, and work without retirement benefits or health plans. The people are at the bottom of the economic ladder, and they are among the least able to cope with the potential devastating effects of job displacement. If anyone is entitled to some kind of a fringe benefit, these people fit the criteria. Tipped employees have to pay income taxes on their tips, which by federal law are generally calculated at 8%. Those tips are income for those employees and for income tax purposes. Senate Bill 415 would ignore the reality, and the result would be to let the employers, the Workers' Compensation, and the unemployment division ignore tipped income for the unemployment and Workers' Compensation Benefit Program. This would set up a double standard. The declaration of public policy states the wage law benefits should be a reasonable relationship to actual wages law, as a result of work related injury or disease. In addition, state public policy states one of the goals is to maintain purchasing power for workers who are unemployed, through no fault of their own.

Questions from the Committee Members:

Senator Blaylock asked Ms Tippy what she thought of a proposal whereby the state would mandate waitresses and all service personal to be paid \$8.00 an hour, to guarantee a forty hour work week, and to be paid vacations, retirement, hospitalization benefits. Tips would be outlawed. Ms Tippy replied most waitresses would reject such a proposal because most waitresses make more money. Ms Tippy stated she believed the small restaurants were marginal. The problem is not immediate, the rank and file people, who usually go to dinner once a month, will cut back and not go out to dinner, and business will go broke.

Closing by Sponsor:

Senator Keating stated the opponents on this measure tend to exaggerate. Waiters and waitresses do make good hourly wages, when figuring base wage plus tips. Many of the employees are not at the low end of the pay scales. If the employees were to add in all the tips, they would probably exceeded the minimum requirements in order to obtain benefits. Medical benefits under Workers' Compensation are not effected. Senator Keating stated the employer should be given a break, so employers can stay in business.

HEARING ON SENATE BILL 420

Presentation and Opening Statements by Sponsor:

Senator Gary C. Aklestad, Senate District 6, sponsor of SB 420, stated the bill complies with a federal judge's ruling. Senator Aklestad stated the bill is an act to revise the Montana Unemployment Insurance Law to conform with a federal district court decision nullifying provisions that allow the Department of Labor and Industry to interpret violations of the federal labor law. The Department of Labor made a ruling. The ruling should have been made under the jurisdiction of National Federal Relations instead of the Department of Labor. The federal court ruling was that the State department was out of line in the ruling. Senate Bill 420 coincides with the federal ruling. Senator Aklestad explained the amendments.

List of Testifying Proponents and the Groups They Represent:

Mike Micone, representing the Department of Labor.

Testimony:

Mike Micone, Commissioner of Labor, stated SB 420 came to light with the decision of Judge Batten. We have reviewed the bill and have found it to comply with Judge Batten's decision. The Department concurs in SB 420.

List of Testifying Opponents and The Groups They Represent:

Jay Reardon, representing the Helena Trades and Labor Local 72.

Jim Murry, representing the Montana AFL-CIO.

Dan Edwards, representing the Oil Chemical and Atomic Workers.

Gene Fenderson, representing the MT State Building and Trades Union.

Bob heiser, representing the UFCW.

Testimony:

Jay Reardon, Vice-president Helena Trades and Labor Local 72 USUA, and member of Montana Board of Labor Appeals stated SB 420 was unconstitutional and void to the end that it requires determination by state agencies by state matters. The state cannot make a finding of an unfair labor act. The matter is a responsibility of fact finding. An easy way to abide to Judge Batten's decision is for the Department of Labor's referees to have a findings of facts that includes a unfair labor practice before benefits can be awarded to an employee on strike. If there is a finding of an unfair labor practice by the federal government, then those employees should get benefits. If SB 420 is passed, as proposed, then even if there was a finding of an unfair labor practice, those employees would no longer be eligible for benefits. He cannot be discharged and usually gets wages. If an employee, through no fault of his own and because of a violation of federal labor law, goes on strike, the employee is protected by federal law. The employee would not be entitled to unemployment insurance. The language of the bill can stay the same. All is needed is a finding of facts with the unemployment referrers with the Board of Labor Appeals if there was in fact an unfair labor Practice. Mr. Reardon urged the defeat of SB 420.

Jim Murry, Executive Secretary of the Montana State AFL-CIO, submitted written testimony. (Exhibit 8)

Dan C. Edwards, Oil Chemical and Atomic Workers, Billings, MT, stated if SB 420 passes, it can only encourage later disruption within the state. We don't need laws to encourage strikes, walk outs and other labor disruptions.

Gene Fenderson, MT State Building and Trades Union, stated he would like to go on record opposing SB 420.

Bob Heiser, UFCW, stated he would like to go on record opposing SB 420.

Questions from the Committee:

Senator Lynch asked Director Micone for an interpretation of SB 420. Director Micone gave an interpretation.

Senator Keating asked if the National Labor Relation Board finds the employer wrongfully was locked out the work place or was in the wrong in the dispute, will the employee collect back wages. Yes, providing the employee struck for unfair labor practices, and the employee is discharged during a strike. The employer must rehire and pay back wages and benefits. The employer will have to repay unemployment benefits.

Senator asked about the Decker Coal Strike. Was the employer in violation. The Decker Coal Strike has not been settled. The unemployment benefits were paid to the strikers. If it is determined the employer was wrong, the workers should get back wages, and the state will be reimbursed for the unemployment benefits paid. Yes.

Closing Statements from the Sponsor:

Senator Aklestad stated the employees will get their back wages. There are state rule mechanisms to get the money back. Yes, the money has not come back, even though the mechanisms are to provide for the situation. If it is found after the national ruling is made, the Decker case is proven wrong, then I will be willing to change the law.

HEARING ON SENATE BILL 421

Presentation and Opening Statements from the Sponsor:

Senator Gary C. Aklestad, Senate District 6, sponsor of SB 421, stated the bill is an act to authorize the governor to enter into agreements with any Canadian Province, granting reciprocal application of the Workers' Compensation Laws of this State to Montana Employers and Workers. Senate Bill 421 establishes conditions for reciprocal agreements and requires denial of reciprocity if no agreement is reached. Senate Bill 421 is a Workers' Compensation bill pertaining to U.S. Workers Compensation problems. The Montana truckers currently must pay Canadian and U.S. Workers' Compensation. There have been meetings between the U.S. and the Canadian provinces to discuss the problem, but no answers have been found. Senate Bill 421 states, if the answers are not found, Montana will charge Canadian employers workers' compensation allowances in order to recoup losses, there is a need to have a reciprocal agreement between Canada and the U.S. The bill informs the governor we would like to have the bill made into law within six months.

List of Testifying Proponents and the Groups They Represent:

Ben Havdahl, representing the Montana Motor Carriers Association.

James Tutwiler, representing the Montana Chamber of Commerce.

J. E. Williams, representing the J.E. Williams Trucking, Inc. Billings, Montana.

Jim Murry, representing the Montana AFL-CIO.

Testimony:

Ben Havdahl, Montana Motor Carriers Association, submitted written testimony in favor of SB 421. (Exhibit 9 and 9A)

James Tutwiler, Montana Chamber of Commerce stated he would like to go on record in support of SB 421. Mr. Tutwiler stated for the past few months, prior to the current session, the Montana Chamber of Commerce conducted a survey to ascertain problems within Montana's business community. One of the problem-situations, heard time and time again, concerns trucking in Canada and workers' compensation issues. Agreements with Canada or business opportunities may not boom in the next five years, but, if these plans mature in the years ahead, there should be opportunities to increase transport across the Canadian boarder.

J. E. Williams, J.E. Williams Trucking Inc. Billings, Montana, stated his firm filled out a form submitted by the Workers' Compensation Board of Manitoba in November of 1986. The Billing's trucking firm was told they would be required to register with the Workers' Compensation Board of Manitoba, or else the licence would be revoked. Mr. Williams stated his wife wrote the Manitoba Board and refused to comply. The Manitoba Board started to charge the trucking company retroactively to 1985. Consequently, we asked for a \$2,372,95 refund. The rates the Montana trucking firm had to pay were: In 1986, the price was \$4.80; in 1987, the price was \$5.28; and in 1988, the price was \$6.50. In Utah, the trucking firm must sign a document stating they have Workers' Compensation coverage in Montana. Mr. Williams stated strong support of SB 421. (Exhibit 10)

Jim Murry, Executive Secretary of the Montana AFL-CIO stated, in the previous Senate Bill 420 testimony, there was inaccurate information given by the Montana Department of Labor. The Decker Decision was not thoroughly understood. Mr. Murry presented the committee with the AP New article printed in the Great Falls Tribune. (Exhibit 11) Jim Murry stated he would like to go on record in support of SB 421. The Montana labor movement is in support of the reciprocal agreement with Canada. The AFL-CIO thinks it is in Montana's best interest to have an equally close relationship with Canadian businesses. Murry stated he would like to suggest a change in section two concerning a change in the reciprocal agreement. The agreement should read: an agreement entered into under (section 1) must contain provisions that extend

to Montana employers and workers the same privileges, benefits and exemptions from payment of taxes and premium for workers' compensation coverage as provided under the law of the state. Mr. Murry suggested the wordage should be: as provided under the law of Canada. So the Montanans working in Canada, who are injured, will be paid under the Canadian laws instead of the laws of Montana.

List of Testifying Opponents, and The Groups They Represent:

George Wood, representing the Montana Self Insurers Association.

Bill Palmar, representing the Workers' Compensation Division of the Department of Labor and Industry.

Testimony:

George Wood, Montana Self-Insurers Association, stated he sees problems with the state of Montana trying to negotiate with Canada. The Montana employees working in other countries and states are in different jurisdiction. Montana should have a reciprocity agreement. When Montanans do business in a foreign jurisdiction, a reciprocity agreement is necessary. It is important the Montanan is taken care of in a jurisdiction which he/she is familiar. If he/she could not get satisfaction in the foreign jurisdiction and is injured, he could possibly become a charge of the state. Under the reciprocity agreement, Montana would take care of Montanans. We do not need to deal with international treaty agreements.

Bill Palmer, Administrator, Workers' Compensation Division, stated Former Director Bob Robinson had contacted the provinces and have had a tough time trying to establish a working agreement with the Canadian provinces. Palmer stated he hopes SB 421 will resolve the situation. Palmer stated it is grossly unfair to have to pay two premiums for coverage under Workers' Compensation laws pertaining to the two countries.

Questions From the Committee Members:

Senator Blaylock asked if Montana truckers are only having trouble with Manitoba Province, or are there other provinces. At the present time, Mr. Williams stated he trucks into Alberta, Saskatchewan, Ontario and Manitoba. Manitoba is the only province he is experiencing trouble. British Columbia is currently charging Workers' Compensation for going into their province. Washington motor carriers are having substantial problems dealing with British Columbia.

Closing Statements by Sponsor:

Senator Aklestad stated SB 421 does not just cover truckers, but would cover other entities. Senator Aklestad stated he would not

want to change the bill so there would not be reciprocity, jeopardizing the other employees under the Canadian Law.

ADJOURNMENT

ADJOURNMENT: The meeting was adjourned at 3:56 p.m.

GCA/mfe



Senator Gary C. Aklestad, Chairman

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: February 16, 1989

	PRESENT	ABSENT	EXCUSED
SENATOR TOM KEATING	X		
SENATOR SAM HOFMAN	X		
SENATOR J.D. LYNCH	X		
SENATOR GERRY DEVLIN	X		
SENATOR BOB PIPINICH	X		
SENATOR DENNIS NATHE	X		
SENATOR RICHARD MANNING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR GARY AKLESTAD	X		

COMMISSIONER'S OFFICE

BILL NO. SB 405

STAN STEPHENS, GOVERNOR

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STATE OF MONTANA

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HELENA, MONTANA 59624

February 16, 1989

TESTIMONY BEFORE THE SENATE LABOR COMMITTEE ON SENATE BILL 405

BY MIKE MICONE, COMMISSIONER OF LABOR & INDUSTRY

Mr. Chairman and members of the committee, my name is Mike Micone, Commissioner of Labor and Industry. I'm testifying in support of Senate Bill 405 to continue the workers' compensation payroll tax for employers and to extend it to employees.

First of all, I will say that there is one universal truth -- no one likes taxes. No one wants to pay them, create them, continue them or increase them.

Yet we -- tax creators and taxpayers -- do all of those things with taxes. But the public will only accept taxes if they're fair, reasonable and if they accomplish a purpose that is supported by the public.

Senate Bill 405 makes the payroll tax more fair. Both employers and employees benefit from the workers compensation system, but right now only employers pay the tax to help make the insurance fund solvent.

Both employers and employees, as well as state law and court decisions, have also played a part in creating the unfunded liability. It only makes sense that both play a part in reducing the liability.

The current and proposed extension of the payroll tax is reasonable -- three-tenths of one percent, or just 30 cents on every 100 dollars of payroll or wages.

But most of all, the payroll tax for employers and employees accomplishes a purpose the public supports -- reducing the unfunded liability.

Many people, both Montanans and out-of-state people who might be thinking about coming to Montana, see the unfunded liability in workers' compensation as a major deterrent to a good business climate. Just as you don't want to carry a large debt in your own home or business, Montanans don't want to continue a large debt in the workers' compensation system.

Montanans want to reduce and eventually eliminate the unfunded liability. And it's not just business or employers that want to reduce the debt. Workers also perceive the workers' compensation unfunded liability as a threat to the well-being of the system that is supposed to help pay their medical expenses and replace lost wages in case of injury. They want the system to succeed as much as employers do.

Workers and employers are concerned about the impact of the unfunded liability on future economic development in the state. We must do all we can to make Montana more attractive to out-of-state business -- that means more business for Montana employers, and more jobs for Montana employees.

The last Legislature made dramatic changes in workers' compensation law. You saw the problems, and made considerable reforms. But that reform -- while going a long way towards helping get the workers' compensation fund back on its feet and anchored in reality -- needs to continue.

As I noted in the beginning, no one really likes taxes. But time and time again, studies have shown that the public is willing to continue to pay taxes, and even to increase what they pay, if they see a real benefit.

Eliminating one of Montana's major stumbling blocks to an improved economic climate will benefit all Montanans. I urge you to support Senate Bill 405.



JAMES W. MURRY
EXECUTIVE SECRETARY

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HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF JIM MURRY ON SENATE BILL 405 BEFORE THE SENATE LABOR COMMITTEE, FEBRUARY 16, 1989

Mr. Chairman, members of the committee, for the record my name is Jim Murry and I am executive secretary of the Montana State AFL-CIO. I'm here today to oppose Senate Bill 405.

Most of the proposed solutions to the unfunded liability in the state Workers' Compensation system fall squarely on the backs of the workers that are supposed to be protected by the system. The discussion in the Legislature, by the governor and by a sadly misinformed press has failed to focus on the real problem with the system: on-the-job accidents.

Let me share with you a few facts we've compiled from official state and federal government reports:

-- The number of workers who are hurt or made sick on the job in Montana is **higher** than the national average, and is increasing **faster**.

-- The increase in work-place injuries in Montana from 1986 to 1987 is nearly **triple** the national rate, and the state's increase in workdays lost due to injuries is **five times higher** than the national average.

-- Accidents at private-sector jobs in Montana increased by nearly 4,000 in 1987, even though there were 1,000 **fewer** persons employed.

-- If annual workplace injuries in Montana continue to grow at the rate of 17.5 percent, the 26,849 injuries recorded in fiscal year 1987 will rise to almost 220,000 injuries by the year 2000.

We're particularly concerned about the statistics in the service and mining sectors. Injuries in service sector employment in Montana rose by 23.1 percent from 1986 to 1987, compared with a corresponding national increase of only 7.8 percent.

If, as the Department of Labor and Industry projects, most new jobs in Montana are going to be in the service sector, then we absolutely must do something to curb the rate of injury there. If this trend continues, the percentage of injuries in the service sector will be greater than its corresponding share of employment. High-risk occupations like mining and manufacturing often have injury rates in excess of their proportion of total employment, but low-risk occupations such as service work should not. In essence, the service sector is becoming a high-risk occupational field.

TESTIMONY OF JIM MURRY, PAGE TWO
SENATE BILL 405
FEBRUARY 16, 1989

I also want to point out that service-sector workers are among the lowest paid in the state and are among the least likely to have health insurance. They have little or no ability to face the potentially devastating cost of a work-place accident.

As for mining, we're very concerned about an 86 percent increase in accidents, especially in light of only slight overall changes in employment there. (Montana Department of Labor and Industry monthly employment reports show average annual mining employment of 5,800 in 1986, 5,700 in 1987, and 6,000 in 1988.) That's a potentially very costly accident trend.

Workplace injuries are clearly a serious problem in Montana, not only for the workers who suffer, but also for the Workers' Compensation system that must pay the damages. We cannot continue to have these kinds of injury rates and still expect a solvent fund with affordable premium rates.

Now, think for just a minute about what this bill asks workers to do. Think about the absurdity of the idea of making workers PAY for the injuries they suffer on the job. That's like fining the victim of a mugging. And that's how workers will feel if this passes: they'll feel mugged.

The Montana Constitution (Section 16 of the Declaration of Rights) clearly defines the employer-employee bargain. The Constitution states that workers give up their right to sue over injuries in exchange for an employer-provided compensation plan. We think that forms a serious constitutional question for this bill.

Further, the Declaration of Public Policy in the Workers' Compensation Act (MCA 39-71-105 and other citations) refers to coverage being provided to workers. A clear legal case could be made against workers paying for coverage that by law and constitution is supposed to be provided.

The proposed tax on workers is essentially a payroll deduction to help pay for the cost of the insurance. It is against Montana law (MCA 39-71-406) for an employer to make such a payroll deduction to pay any part of the cost of the insurance. We question whether it's appropriate for the state to make a payroll deduction that is illegal for employers to make. The section I just quoted points out again the law's clear intent -- that employees should not pay.

We can't support continued erosion of a constitutionally mandated system, and continued attempts by employers to shift their part of the bargain onto workers.

We urge you to give S.B. 405 a "do not pass" recommendation.



SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2 page 2 of 3
DATE February 16, 1989
BILL NO. SB 405

JAMES W. MURRY
EXECUTIVE SECRETARY

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

(406) 442-1708

February 15, 1989

The Honorable Stan Stephens
Governor of Montana
Capitol Station
Helena, Montana 59620

Dear Governor Stephens:

High premium rates aren't crippling the Montana Workers' Compensation system. Non-paying employers aren't crippling it. And neither are overly generous benefit payments.

What's crippling our Workers' Compensation system is the same thing that's crippling and injuring Montana workers: on-the-job accidents.

I'd like to share some thoughts about that with you. I'll skip over the usual issues of premium rates, benefit levels, privatization, and the proposed tax on workers. As you know, organized labor has very strongly held opinions on those subjects, not all of which you share. I want to put those aside for now because we feel even more strongly that those are minor issues compared with the alarming rate of injuries at job sites in Montana.

Let me share with you a few facts we've pulled together from official state and federal government reports:

-- The number of workers who are hurt or made sick on the job in Montana is **higher** than the national rate, and is increasing **faster**.

-- If workplace injuries in Montana continue to rise at what I hope is the abnormally high rate of 17.5 percent annually, the 26,849 injuries recorded in FY 87 will rise to almost 220,000 injuries by the year 2000.

-- The increase in work-place injuries in Montana from 1986 to 1987 is nearly **triple** the national rate, and the state's increase in workdays lost due to injuries is **five times higher** than the national average.

-- There were nearly 4,000 more accidents at private-sector jobs in 1987, even though there were 1,000 **fewer** persons employed in the state.

We're particularly concerned about the statistics in the service and mining sectors. As you can see from the charts, injuries in the service sector in Montana rose by 23.1 percent from '86 to '87, compared with a corresponding national increase of only 7.8 percent. The service-sector injury rate is increasing far faster than the sector's employment is increasing.

If, as the Department of Labor and Industry projects, most new jobs in Montana in the next many years are going to be in the service sector, then we absolutely must do something to curb the rate of injury there. If this trend continues, the percentage of injuries in the service sector will be greater than its corresponding share of employment. High-risk occupations like mining and manufacturing often have injury rates in excess of their proportion of total employment, but low-risk occupations such as service work should not. In essence, the service sector in Montana is in danger of becoming a high-risk occupational field.

As for mining, we're very concerned about an 86 percent increase in accidents, especially in light of only slight overall employment fluctuations there in recent years (Montana Department of Labor statistics indicate average mining employment was 5,800 in 1986, 5,700 in 1987 and 6,000 in 1988). Without having access to the volumes of data collected by the Workers' Compensation Division, I don't want to venture a theory as to the cause. However, I do want to point to it as a potentially costly trend.

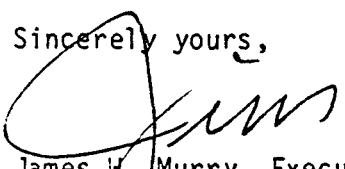
The point I'm getting at with all of these comparisons is that workplace injuries are a serious problem in Montana, not only for the workers who suffer, but also for the Workers' Compensation system that must pay the damages. We cannot continue to have the kinds of injury increases we've seen in the most recent years and still expect to have a solvent fund with affordable premium rates.

A major part of the solution must fall not on making basic changes to the system, but on educating employers about the need to provide a safe work environment. The burden of providing a safe work place falls on the employer, but the burden of excessive injury rates when safety is ignored falls on the backs of workers who suffer and employers who must pay the costs of that suffering. (Of course, your proposal to tax workers for their own injuries would place even more of the burden on their backs.)

In testimony earlier this legislative session, I made reference to the need for additional emphasis and spending on safety, and I reiterate that concern here, based on the statistics I've just outlined. If we don't address the problem of injuries in the workplace, we'll end up crippling not only the injured workers, but also the insurance fund and the state's taxpayers, who likely would have to bear the burden.

I submit these comments in a sincere effort to focus attention on what we in the trade union movement believe is a serious problem that needs immediate attention. Thank you for taking our views into consideration.

Sincerely yours,



James W. Murry, Executive Secretary
Montana State AFL-CIO

cc: All members of the Montana Senate
All members of the Montana House

OCCUPATIONAL INJURY AND ILLNESS RATES PER 100 FULL TIME WORKERS

DATE February 16, 1989BILL NO. SB 405

Industry group (excludes gov't)	Montana			United States		
	1985	1986	1987	1985	1986	1987
Private sector total	8.0	8.2	9.0	7.9	7.9	8.3
Ag, forestry, fishing	15.4	12.9	13.2	11.4	11.2	11.2
Mining	8.5	6.3	7.9	8.4	7.4	8.5
Construction	17.3	17.5	14.8	15.2	15.2	14.7
Trans. & Utilities	7.5	7.4	7.6	8.6	8.2	8.4
-- Communication	4.9	2.2	3.5			
-- Electric, gas and sanitary	5.9	6.8	7.8			
Wholesale trade	7.2	7.6	8.7	7.2	7.2	7.4
Retail trade	5.9	5.8	7.2	7.5	7.8	7.8
Finance, insurance and real estate	1.4	1.1	1.1	2.0	2.0	2.0
Services	6.3	6.9	7.8	5.4	5.3	5.5

Of the injuries or illnesses that resulted in lost workdays in all private sector employment, the average number of lost workdays for each case was:

	1986	1987	% change
Montana	61.6	80.2	+ 30.1%
U.S.	65.8	69.9	+ 6.2%

Sources: -- U.S. Department of Labor (Release #88-562), Dec. 19, 1988
 -- Montana Division of Workers Compensation, 1988 annual report

ACCIDENTS AND INJURIES BY INDUSTRY TYPE

Industry group (excludes gov't)	Montana		percent change	percent of total	U.S. (,000)		percent change	percent of total
	86/87	87/88			1986	1987		
All private sector	22,851	26,849	+17.5%	100.0	5,492.0	5,845.5	+6.4%	100.0%
Agriculture	1,588	1,789	12.6	6.6	86.4	95.0	9.9	1.6
Mining	567	1,055	86.1	3.9	55.7	59.3	6.5	1.0
Construction	2,443	2,411	- 1.3	8.9	641.2	631.2	-1.5	10.8
Manufacturing	4,045	4,919	21.6	18.3	1,865.1	2,087.2	11.9	35.7
Trans. & utilities	1,750	1,958	11.8	7.3	400.6	422.5	5.5	7.2
Wholesale trade	1,645	1,659	0.1	6.2	387.1	403.8	4.3	6.9
Retail trade	4,390	5,112	16.5	19.1	1,032.8	1,052.4	1.9	18.0
Fin., insur., & real estate	204	288	40.3	1.0	112.7	112.2	0.1	1.9
Services	6,219	7,658	23.1	28.5	910.4	981.9	7.8	16.8

Sources: -- U.S. Department of Labor (Release #88-562), Dec. 19, 1988
 -- Montana Division of Workers Compensation, 1988 annual report

Technical note: Montana statistics are compiled on a fiscal year basis (June to June), while federal statistics are for the calendar year.

STATE OF MONTANA

Office of the Legislative Auditor

STATE CAPITOL
HELENA, MONTANA 59620
406/444-3122

DEPUTY LEGISLATIVE AUDITORS:

MARY BRYSON
Operations and EDP Audit
JAMES GILLET
Financial-Compliance Audit
JIM PELLEGRINI
Performance Audit



LEGISLATIVE AUDITOR:
SCOTT A. SEACAT
LEGAL COUNSEL:
JOHN W. NORTHEY

MEMORANDUM

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3 page 1 of 7

DATE February 16, 1989

BILL NO. SB 405

TO: Legislative Audit Committee
of the Montana Legislature

FROM: Julie Barr, Audit Manager *JB*

DATE: January 27, 1989

RE: State Compensation Insurance Fund

At the request of the Legislative Audit Committee, we prepared an analysis of the future financial status of the State Compensation Insurance Fund (SCIF). We analyzed the effect on the cash flow and the unfunded liability given three situations. This memorandum discusses the assumptions used and the results of our analysis.

ASSUMPTIONS

We used assumptions which describe a situation where no major economic changes occur during the projected period. These assumptions are:

1. Total Plans I, II, and III covered payroll grows one percent each year after fiscal year 1987-88.
2. Plan III percentage share of the market remains constant at 51%.
3. Average premium per \$100 of covered payroll is \$3.98, with no increase in the 1989 premiums.
4. Incurred liability for an accident year maintains a level that is comparable to the premium level.
5. Interest rate on investments remains a constant 7 percent.

6. Medical and compensation payments increases at the same percentage rate as premium income.
7. Payroll tax assessed as stated on Attachments A, B, and C.
8. Major challenges to SB 315 will fail in the courts.
9. The June 30, 1988 unfunded liability is attributed to pre July 1, 1987 cases. The majority of the undiscounted payments on these cases will occur by June 30, 1992.

RESULTS OF ANALYSIS

Attachment A and Table 1 below presents the future financial status of the SCIF given the .3% payroll tax assessed employers sunsets June 30, 1991. As shown, the fund does not experience a cash flow problem but the unfunded liability would not be paid off by June 30, 1999.

WORKERS' COMPENSATION FUND
Projected Financial Operation

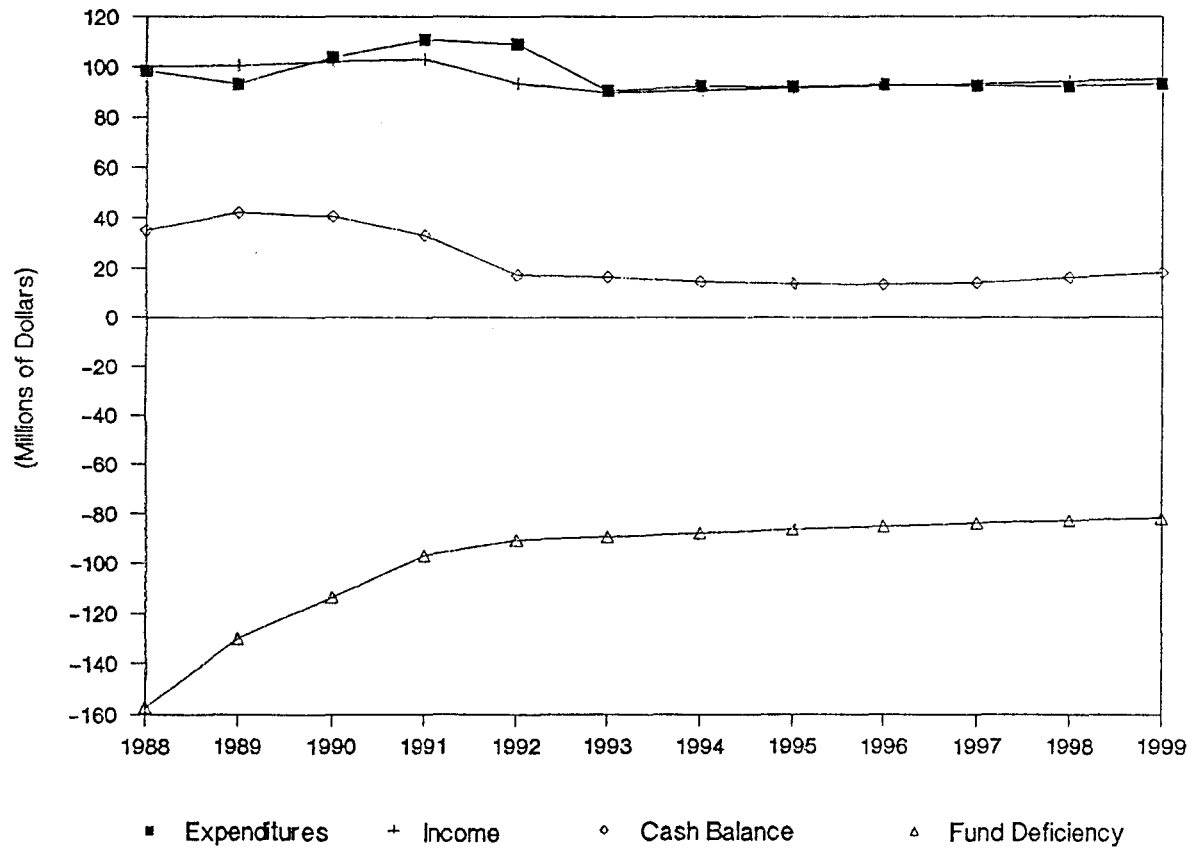


TABLE 1

Attachment B and Table 2 below presents the future financial status of the SCIF given the .3% payroll tax assessed employers does not sunset. As shown, the fund does not experience a cash flow problem and the unfunded liability would be paid off by June 30, 1997.

WORKERS' COMPENSATION FUND Projected Financial Operation

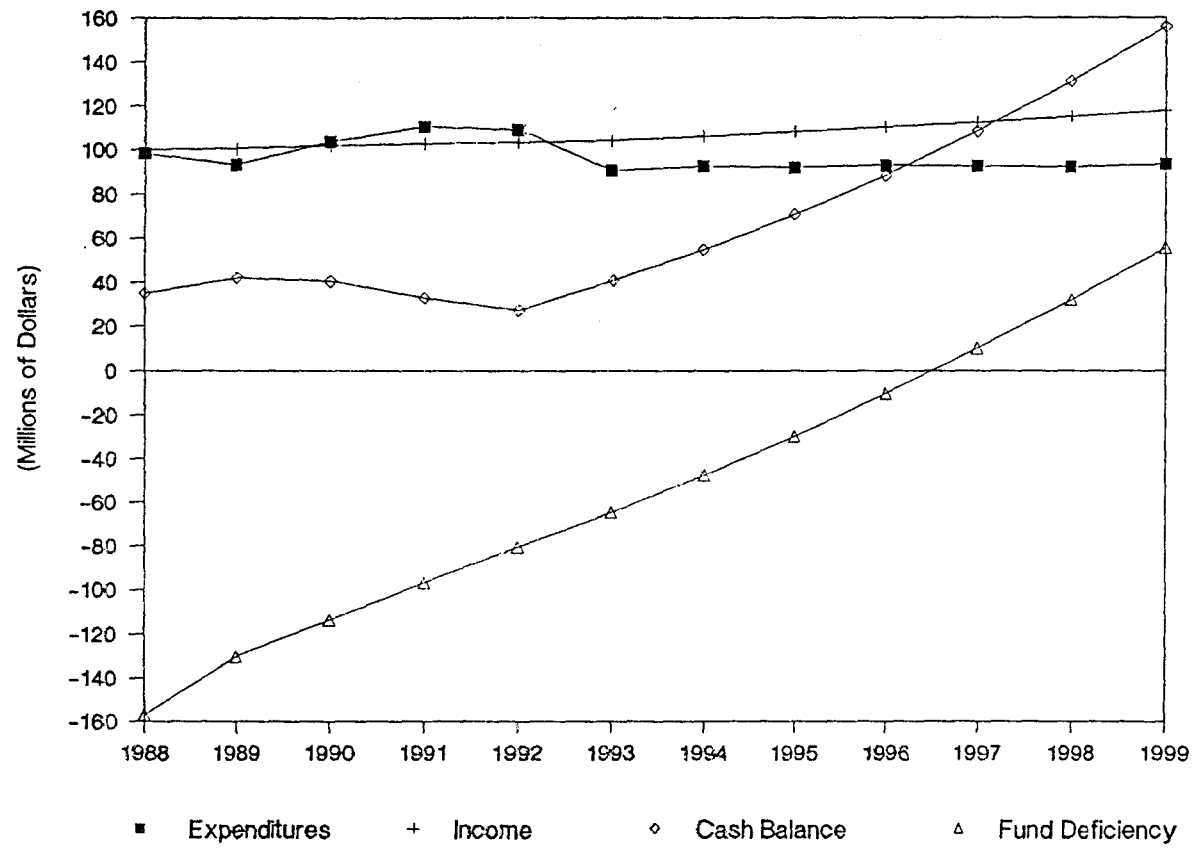


TABLE 2

Attachment C and Table 3 below presents the future financial status of the SCIF given the payroll tax does not sunset and .3% is assessed to both employers and employees. (The Governors proposal). As shown, the fund does not experience a cash flow problem and the unfunded liability would be paid off by June 30, 1994.

WORKERS' COMPENSATION FUND Projected Financial Operations

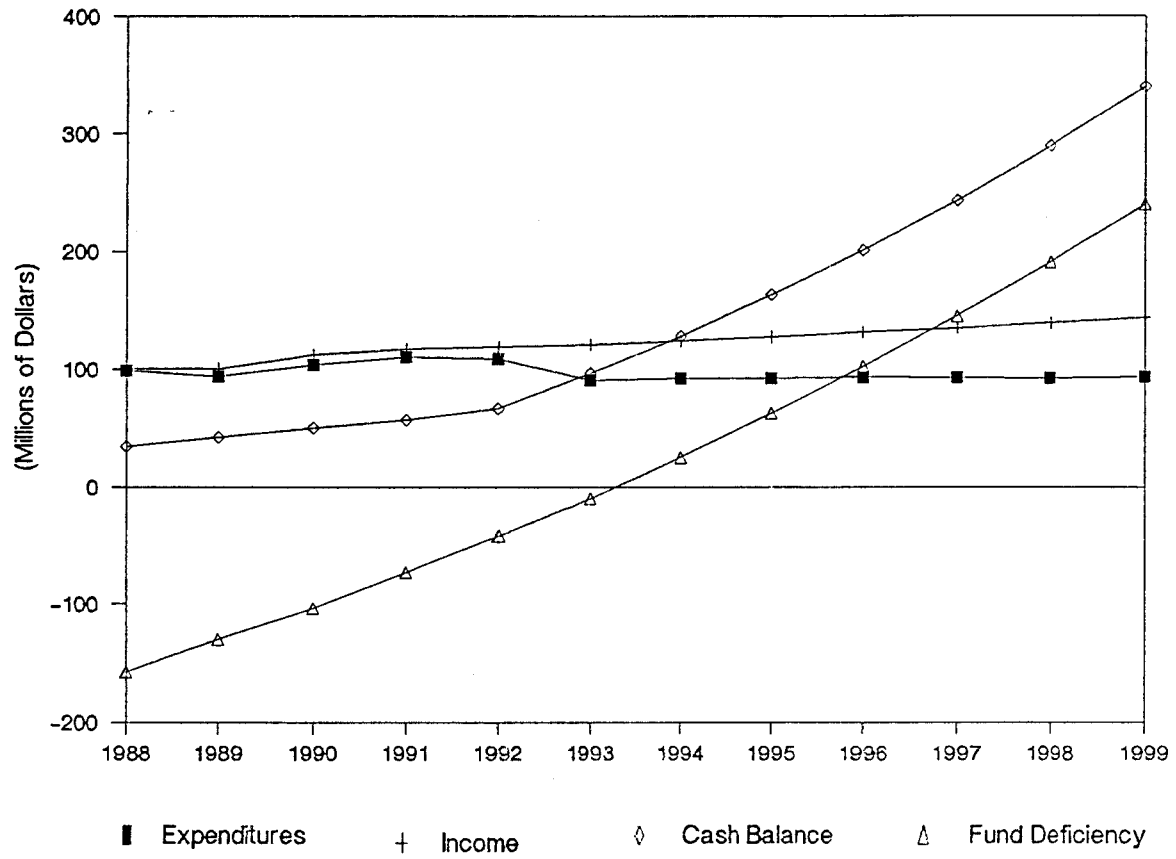


TABLE 3

JB/k/11

Enclosures

SB 405

2-16-89

Amendments to Senate Bill No. 405
First Reading Copy

For the Senate Committee on Labor and Employment Relations

Prepared by Tom Gomez, Staff Researcher
February 16, 1989

1. Title, line 10.
Following: "PAYROLL"
Insert: "AND WAGE"

STATE
OF
MONTANA

ATTORNEY GENERAL
MIKE GREELY

JUSTICE BUILDING, 215 N. SANDERS, HELENA, MONTANA 59620
TELEPHONE (406) 444-2026

VOLUME NO. 42

OPINION NO. 60

CONTRACTS - What constitute "public works contracts" subject to standard prevailing wage requirements;

LABOR AND INDUSTRY, DEPARTMENT OF - What constitute "public works contracts" subject to standard prevailing wage requirements;

LABOR RELATIONS - What constitute "public works contracts" subject to standard prevailing wage requirements;

PREVAILING WAGE - What constitute "public works contracts" subject to;

CODE OF FEDERAL REGULATIONS - 29 C.F.R. §§ 5.2(i)-(k) (1987);

MONTANA CODE ANNOTATED (1987) - Sections 18-1-102, 18-2-401 to 18-2-432, 18-2-403, 18-2-431;

MONTANA CODE ANNOTATED (1985) - Section 18-2-403;

MONTANA CODE ANNOTATED (1981) - Sections 18-2-403, 18-2-422;

MONTANA CODE ANNOTATED (1978) - Sections 18-2-401, 18-2-403 to 18-2-405;

MONTANA LAWS OF 1987 - Chapter 561;

MONTANA LAWS OF 1981 - Chapter 139;

MONTANA LAWS OF 1973 - Chapter 375;

42 Op. Att'y Gen. No. 60
Page 2
1 February 1988

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 4 page 2 of 8
DATE February 19, 1989
BILL NO. SB 375

MONTANA LAWS OF 1931 - Chapter 102;
REVISED CODES OF MONTANA, 1947 - Section 41-701;
UNITED STATES CODE - 40 U.S.C. §§ 276a to 276a-7; 41
U.S.C. §§ 351 to 358.

HELD: The term "public works contracts" in section 18-2-403(2), MCA (1987), includes all contracts subject to the requirements of section 18-2-403(1), MCA (1987).

1 February 1988

Mary M. Hartman, Commissioner
Department of Labor and Industry
P.O. Box 1728
Helena MT 59624

Dear Commissioner Hartman:

You have requested my opinion concerning the following question:

Do the standard prevailing wage rate provisions in sections 18-2-401 to 432, MCA (1987), apply to public contracts which provide for the rendering of nonconstruction-related services?

Based on a review of the legislative history associated with Montana's prevailing wage statute, I conclude that its provisions continue to apply, as they have since 1973, to service contracts entered into by the state, counties, municipalities or school districts.

Sections 18-2-401 to 432, MCA (1987), are commonly referred to as Montana's "Little Davis-Bacon Act." Thompkins v. Fuller, 40 St. Rptr. 1192, 1195, 667 P.2d 944, 948 (1983). Enacted in 1931 shortly after passage of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-7, it initially required "all contracts hereafter let for state, county, municipal and school construction, repair

and maintenance work under any of the laws of this State" to include an employment preference provision for bona fide Montana residents and a provision mandating the contractor to "pay the standard prevailing rate of wages in effect as paid in the county seat of the county in which the work is being performed[.]" 1931 Mont. Laws, ch. 102, § 1. The statute has been extensively modified since 1931, and several of the amendments are presently relevant.

In 1973 the word "services" was added to the first sentence of section 41-701, R.C.M. 1947. 1973 Mont. Laws, ch. 375. As amended, the statute's employment preference and standard prevailing wage requirements were thus extended to all contracts "let for state, county, municipal, school, heavy highway or municipal construction, services, repair and maintenance work[.]" The effect of the amendment was to broaden the statute's scope beyond contracts dealing only with construction-related matters and to encompass contracts concerned with the provision of "services." See Feb. 7, 1973, Minutes of House Labor and Employment Relations Committee (statement of R. L. Rampy). This extension of minimum wage standards to service contracts paralleled the passage of the Federal Service Contract Act, 41 U.S.C. §§ 351-58, in 1967. See generally American Federation of Labor v. Donovan, 757 F.2d 330, 333 (D.C. Cir. 1985) ("The Service Contract Act ... provided the third leg in Congress' support of labor standards in federal contracting. Workers on federal or federally funded construction contracts were already protected under the Davis-Bacon Act ... which was enacted in 1931, while those performing work under federal supply contracts were protected under the Walsh-Healey Public Contract Act ... passed by Congress in 1936"). When the Commissioner of Labor and Industry was given general rulemaking authority under the Montana statute in 1985 (§ 18-2-431, MCA (1987)), he was accordingly directed to consider Federal Service Contract Act rates in determining standard prevailing wage levels. House Bill 387 (49th Reg. Sess.) (statement of intent), reprinted in 2 MCA Annot., § 18-2-431 (1986).

As a result of the 1978 recodification, the lengthy section 41-701, R.C.M. 1947, was divided and placed into sections 18-2-401(1), 18-2-401(3), 18-2-403, 18-2-404(1), and 18-2-405, MCA (1978). Section 18-2-403(1), MCA (1978), contained the first sentence of section 41-701, R.C.M. 1947, and read:

1 February 1988

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 4 page 4 of 8

DATE February 19, 1988

BILL NO. SB 375

In all contracts hereafter let for state, county, municipal, school, or heavy highway construction, services, repair, and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work and must further pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed.

The statute was amended in 1981 to add, most significantly, a new subsection to section 18-2-403, MCA (1978), and a new section, § 18-2-422, MCA (1981). 1981 Mont. Laws, ch. 139, §§ 2, 4. Section 18-2-422, MCA (1981), stated that "[a]ll bid specifications and contracts for public works projects must contain a provision stating for each job classification the prevailing wage rate, including fringe benefits, that the contractors and subcontractors must pay during construction of the project[,] while the new subsection to section 18-3-403, MCA (1978), provided that "[f]ailure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places such obligation on the public contracting agency" (§ 18-2-403(3), MCA (1981)). The 1981 amendments also modified section 18-2-403(1), MCA (1978), to require that the bid specifications for all contracts subject to such provision include a provision setting out the employment preference and standard prevailing wage rate requirements. 1981 Mont. Laws, ch. 139, § 2. The terms "public works contract" and "public works projects" used, respectively, in sections 18-2-403(3) and 18-2-422, MCA (1981), were not defined, and there is no indication from the minutes of pertinent legislative hearings as to the scope those terms were intended to have. See Jan. 8 and 13, and Feb. 3, 1981, House Labor and Industry Committee Minutes; Mar. 5 and 7, 1981, Senate Labor and Employment Relations Committee Minutes. The changes effected in 1981 were instead discussed in broad terms and were designed generally to strengthen the statute's enforceability. No intent to modify its substantive reach appears either in the changes themselves or the associated legislative history.

During the 1987 legislative session, finally, substantial changes were enacted in the geographical areas used for determining applicable standard prevailing wage rates for all public contracts except heavy highway construction contracts now subject to uniform, statewide prevailing wage rates. 1987 Mont. Laws, ch. 561, §§ 1-4. Pursuant to these amendments, the employment preference and standard prevailing wage rate requirements in section 18-2-403(1), MCA (1985), were separated into distinct subsections which read:

(1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the district in which the work is being performed.

§ 18-2-403(1), (2), MCA (1987). No reported discussion of the term "public works contracts" used in section 18-2-403(2), MCA (1987), appears in pertinent committee minutes. See Feb. 18, 1987, House Business and Labor Committee Minutes; Mar. 24 and 26, 1987, Senate Labor and Employment Relations Committee Minutes. Except for the exclusion of all public contracts of \$25,000 or less from coverage under the statute (1987 Mont. Laws, ch. 561, § 2), there was no expressed intent to modify the substantive scope of the statute.

As stated above, no question exists that public contracts for services unrelated to construction matters were subject to the employment preference and standard prevailing wage rate conditions prior to the 1987 amendments. The issue becomes, therefore, whether those amendments were intended to limit application of the prevailing wage requirement to a class of public contracts smaller than that subject to the employment preference requirement in section 18-2-403(1), MCA

1 February 1988

(1987). Resolution of this issue is in large measure controlled by well-settled canons of statutory interpretation.

The goal of all statutory construction is to ascertain and implement legislative intent. E.g., *Burritt v. City of Butte*, 161 Mont. 530, 534, 508 P.2d 563, 565 (1973); *State ex rel. School District No. 8 v. Lensman*, 108 Mont. 118, 128, 88 P.2d 63, 67 (1939). Search for that intent begins with the language of the statute itself and, if such language is unambiguous, ends there. *Lewis & Clark County v. State*, 43 St. Rptr. 2150, 2153, 728 P.2d 1348, 1350 (1986); *W.D. Construction, Inc. v. Board of County Commissioners*, 42 St. Rptr. 1638, 1641, 707 P.2d 1111, 1113 (1985). However, when ambiguity does exist, legislative intent can be inferred from both internal and external sources--i.e., from a careful reading of all provisions in the statute and from, most typically, extant legislative history. See, e.g., *Lewis & Clark County v. State*, supra ("[i]f intent cannot be determined from the context of the statute, we examine the legislative history"); *McClanathan v. Smith*, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980) ("[w]here there is doubt about the meaning of a phrase in a statute, the statute is to be construed in its entirety and the phrase must be given a reasonable construction which will enable it to be harmonized with the entire statute"); *Hostetter v. Island Development Corporation*, 172 Mont. 167, 171, 561 P.2d 1323, 1326 (1977) ("[t]his is one section of the [act] and it is the duty of this Court to interpret it in such a manner as to ensure coordination with other sections of the Act, and fulfill legislative intent"); *Aleksich v. Industrial Accident Fund*, 116 Mont. 127, 137, 151 P.2d 1016, 1020 (1944) ("[t]o ascertain the intention of the legislature the Act must be read as a whole and, where possible, conflicting and ambiguous parts made to harmonize"). My duty, like that of a court, is thus "to give effect to the objects of the statute [and] to construe it so as to promote justice[.]" *Mackin v. State*, 37 St. Rptr. 1998, 2002, 621 P.2d 477, 481 (1980); accord *LaFontaine v. State Farm Mutual Automobile Insurance Company*, 42 St. Rptr. 496, 499, 698 P.2d 410, 413 (1985).

Instantly, the term "public works contracts" in section 18-2-403(2), MCA (1987), is not defined and is arguably susceptible to different interpretations. The Montana Supreme Court, for example, has construed the term "public contracts for ... public works of all kinds" in section 18-1-102(1)(a), MCA (1987), as including a contract for janitorial services. *State ex rel. Great*

Falls Mr. Klean v. Montana State Board of Examiners, 153 Mont. 220, 226, 456 P.2d 278, 281 (1969). The Commissioner of Labor and Industry, however, issued a declaratory ruling in 1982 construing the term "public works projects" in section 18-2-422, MCA (1981), to include only construction-related activity and thereby concluded that other public contracts, while subject to the standard prevailing wage rate requirement, need not contain a provision setting forth the prevailing wage rate for each job classification. The ruling relied heavily for its conclusion upon the definitions of the terms "building" or "work," "construction," and "public building" or "public work" appearing in United States Department of Labor regulations implementing, inter alia, the Davis-Bacon Act. 29 C.F.R. §§ 5.2(i)-(k) (1987). These definitions limit the scope of such terms to construction-related activity.

Although the issue is not free from doubt, the more reasonable interpretation of the term "public works contracts" in section 18-2-403(2), MCA (1987), is an expansive one consonant with the 1973 amendment to the statute extending both employment preference and standard prevailing wage requirements to contracts for services. An interpretation restricting section 18-2-403(2), MCA (1987), to construction-related contracts would exempt, of course, service contracts from the latter requirement without any apparent legislative intent to undo partially what had been accomplished 16 years earlier. Such a major change in labor standards law seems clearly unintended by the 1987 amendments whose objective, as developed above, was to strengthen the statute's remedial provisions; there was, conversely, no discernible intent to alter its reach except for exclusion of contracts with a value of \$25,000 or less. Whatever the precise reason for use of the term "public works contracts" in subsection 2 of section 18-2-403, MCA (1987), rather than simply the term "contracts," I find the scope of that subsection and the previous subsection to be coterminous with respect to the type of public contracts covered. Cf. Johnson v. Marias River Electric Cooperative, Inc., 41 St. Rptr. 1528, 1532, 687 P.2d 668, 671 (1984). (Legislature did not intend to abrogate sub silentio established right of children to recover damages for the wrongful death of a parent by adoption of the Uniform Probate Code).

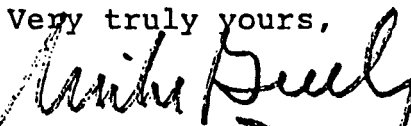
Lastly, my interpretation of the term "public works contracts" in section 18-2-403(2), MCA (1987), is not inconsistent with the Commissioner's 1982 declaratory

ruling as to section 18-2-422, MCA (1981). The Commissioner realized that section 18-2-403(1), MCA (1981), directed bids for public contracts and the contracts themselves to require payment of standard prevailing wage rates and was thus concerned only with the discrete question of whether section 18-2-422, MCA (1981), mandated such bids and contracts to include not only a statement of that requirement but also the actual wage rate, including fringe benefits, for each employee job classification of the contractor or subcontractor performing work on the "public works project[.]" The central term in his ruling was therefore not "public works contract," as used in section 18-2-403(3), MCA (1981), but rather "public works projects," as used in section 18-2-422, MCA (1981). When read in its entirety, the latter provision is clearly directed to construction-related contracts which, like service contracts, represent a form of a "public works contract." The declaratory ruling should not be viewed as concluding that the term "public works contract" in section 18-2-403(3), MCA (1981), refers only to construction-related contracts; instead, that provision, now codified as section 18-2-403(5), MCA (1987), applies only to that class of public works contracts subject to the requirements of section 18-2-422, MCA (1987).

THEREFORE, IT IS MY OPINION:

The term "public works contracts" in section 18-2-403(2), MCA (1987), includes all contracts subject to the requirements of section 18-2-403(1), MCA (1987).

Very truly yours,



MIKE GREELY
Attorney General

LOCKWOOD SCHOOLS
ELEMENTARY AND JUNIOR HIGH SCHOOL

District 26 — Yellowstone County

BILLINGS, MONTANA 59101

1932 U.S. Hwy. 87
Route 2 Phone 252-6022

TRUSTEES
GARY L. FORRESTER
CHAIRMAN
DARRELL ELLIOTT
JUDY JOHNSON
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PHONE 252-6022

CAM CRONK
JUNIOR HIGH PRINCIPAL
PHONE 259-0154

MICHAEL BOWMAN
INTERMEDIATE PRINCIPAL
PHONE 248-3239

DARRELL RUD
PRIMARY SCHOOL PRINCIPAL
PHONE 252-2776

February 15, 1989

Labor and Employment Relations
Montana State Capitol
Helena, Montana

Attention: Mr. Gary C. Aklestad, Chairman

Dear Mr. Aklestad:

The Lockwood Schools District #26 are in support of the Senate Bill 375. We feel that this bill would clarify and save valuable time and money in the future. For an instance, I should like to state some of the facts which occurred to our school, and would have been prevented if this bill has been in force.

Spring 1983 - Spring 1986

- A. Superintendent and School Board discussed feasibility of using contracted service for custodial work; decision made in favor.
- B. C.B.M. awarded initial contract for 1983-84 School Year; ultimately subsequent years, 1984-85 and 1985-86.

Spring 1986

- A. Bidding process was initiated again; two bids received June 5, 1986.
- B. Question raised concerning prevailing wage issue; Lockwood School did not know the answer; decided to conduct an investigation; postponed bid opening until June 17 board meeting.
- C. Superintendent participated in three to four phone calls with Mr. Plowman, Department of Labor, and received no definite response; direction was then sought from Yellowstone County Attorney's Office, as directed by Department of Labor. The opinion handed down from Dave Hoefer of that office stated that the prevailing wage matter did not apply to Lockwood School (this opinion was received by telephone and was later followed up with a letter dated August 8, 1986).

Mr. Gary C. Aklestad

-2-

February 15, 1989

- D. With the above legal determination made, the contract for custodial services was awarded to Billings Janitorial Service at the July 15, 1986, Board Meeting.

November 1986

- A. An employee of C.B.M. filed a claim against C.B.M. for not paying prevailing wages during the time he was working for Lockwood School.
- B. After reviewing all C.B.M. records, the Department of Labor notified us in June 1987, that we owed over \$138,000 to C.B.M. employees for back pay.
- C. On April 25, 1988, I received notice of a hearing from the Department of Labor.

The Lockwood School Board and I strongly support Senate Bill 375 in the hope that other schools will not have future problems such as this.

Thank you.

Sincerely,



Joe C. McCracken
Superintendent

cc: Tom Keating, Vice-Chairman
Chet Blaylock
Gerry Devlin
Sam Hofman
J. D. Lynch
Richard E. Manning
Dennis G. Nathe
Bob Pipinich
Tom Gomez
Mary Florence Erving

JAMES W. MURRY
EXECUTIVE SECRETARY110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Jim Murry on Senate Bill 375 before the Senate Labor Committee, February 16, 1989.

Mr. Chairman, members of the committee, for the record I am Jim Murry, executive secretary of the Montana State AFL-CIO. I am here today to oppose Senate Bill 375.

This bill seeks to eliminate service and maintenance work from the protections of what has come to be called the "Little Davis-Bacon Act," based on the federal "Davis-Bacon Act." The effect of this bill is to slash wages for employees doing service and maintenance work at all levels of government.

The payment of fair wages that provide a decent standard of living is in the public interest, which is why publicly funded projects are subjected to such standards. Removing those protections will immediately place many of those employees in minimum-wage settings where they receive poverty level wages and few or no benefits. And when their income is dropped to those low levels, they likely will be eligible for and will make use of other means of public assistance available to low-income persons.

Such a move to cut wages flies in the face of the stated public policy of Montana's wage and compensation laws (MCA 39-3-401). It is the public policy of the State of Montana, and I quote,

"...to safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and sustain purchasing power..."

It also flies in the face of the opinion of Montana's chief legal officer issued one year ago this month. At the request of the Montana Department of Labor, the Montana Attorney General ruled that Montana law has, since 1973, included service and maintenance work under prevailing wage protections. The very strongly worded opinion made it very clear that the Legislature intended those protections, at least in part to comply with federal standards that apply to national public works projects.

There has been no change in conditions or public interest since that opinion was issued, and no compelling reason to alter the law has arisen.

We urge you to give this bill a "do not pass" recommendation.

SB 375
2-16-89

Amendments to Senate Bill No. 375
First Reading Copy

Requested by Representative Nathe
For the Senate Committee on Labor and Employment Relations

Prepared by Tom Gomez, Staff Researcher
February 17, 1989

1. Page 7, lines 15 and 16.
Following: "and" on line 15
Strike: "contracts for"

2. Page 7, line 19.
Following: "pay"
Strike: "during construction"
Following: "~~project~~"
Insert: "under the public works contract"

3. Page 7, line 25.
Following: "employed"
Strike: "on that"
Following: "~~project~~"
Insert: "under the public works"

Stalcup

TESTIMONY

**SUBMITTED BY: THE MONTANA INNKEEPERS ASSOCIATION
350 NORTH LAST CHANCE GULCH
HELENA, MONTANA 59624
449-8408**

SB415-Exclude tips from wages subject to payment of workers' comp and unemployment benefits

HISTORY OF BILL

Prior to the 1987 legislative session, employers could take what is known as a "tip credit". When Congress brought the food service industry under the Fair Labor Standards Act in 1967, it recognized that restaurant employees often receive a substantial portion of their income in tips. It created what is known as the tip credit, which allows an employer to apply a portion of an employee's tip income against the employer's obligation to pay the minimum wage.

Even though "tip credit" is recognized in the vast majority of states and by the federal government as well, in 1987, the Montana Legislature chose to eliminate it. Interestingly, in that same session, the Legislature passed SB315, the massive revamp of the workers compensation system. In that bill, the requirement that employers pay workers compensation on tips was enacted.

Just this December, the unemployment division promulgated rules which require that employers pay unemployment on tips as well.

Let's examine how the federal government treats tips. They are remarkably consistent, particularly for federal government. First and foremost, they recognize tip credit. As a matter of fact, the newest legislation on minimum wage increases raises tip credit from 40% to 50%. As they recognize tip credit, they recognize tips as wages for purposes of taxation. Therefore, employers and employees pay social security on tips, employers pay federal unemployment on tips, and employees must pay income tax on tips. This federal income tax is computed based on 8% of actual sales. In other words, if a tipped employee responsible for waiting on tables has "sales" of \$500. in a month, then \$40.00 is considered taxable income.

Now let's look at Montana and their record of consistency regarding tips. First, Montana is one of only 5 states which do not recognize the "tip credit", so for purposes of establishing minimum wages, tips do not count. Also, tipped employees in Montana do not have to pay any Montana income taxes on tips. As a matter of fact, the amount they pay in federal income taxes on tips can be deducted from their Montana income taxes. In other words, in our state, we do not recognize tips as wages for either establishment of minimum wage nor for purposes of employee taxation. Yet for purposes of employer taxation, we do. It seems that this entire issue is weighted heavily in favor of employees and against employers. It is really an issue of fairness. Either tips are wages or they are not wages. They should not be treated as wages for one purpose but not for others.

What Senate Bill 415 will do is simply remove the requirement that employers pay Montana employer taxes on tips. We must establish firmly and equally that tips in Montana do or do not not count as wages for any purpose.



JAMES W. MURRY
EXECUTIVE SECRETARY

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

(406) 442-1708

Testimony of Jim Murry before the Senate Labor and Employment Relations
Committee on Senate Bill 420, February 16, 1989

Mr. Chairman and members of the Committee, for the record, I am Jim Murry, Executive Secretary of the Montana State AFL-CIO. We are here today to oppose Senate Bill 420.

This bill is a real slight-of-hand when you consider its title, its rhetoric and its actual effect. The court did determine that the state could not interpret federal law. ~~and the state could not interpret federal law.~~

However, what Senate Bill 420 would do is to deny unemployment benefits to workers when the federal government decides that a strike is the result of unfair labor practices. It does not merely prohibit the state from making interpretations of federal law. It penalizes the victims of lawbreakers by denying them state unemployment benefits.

The reasoning behind this legislation is either very convoluted or simply mean-spirited. Working men and women deserve unemployment benefits when they are forced out of work because of unlawful and unfair labor practices. Under the terms of this bill, the National Labor Relations Board could find an employer guilty of unlawful violations, and the workers still would not qualify for unemployment benefits. This bill deserves a proper burial and we urge a prompt adverse committee report on Senate Bill 420.

Thank you.

SB 420

2-16-89

Amendments to Senate Bill No. 420
First Reading Copy

For the Senate Committee on Labor and Employment Relations

Prepared by Tom Gomez, Staff Researcher
February 17, 1989

1. Page 3, line 3.

Following: "occurs"

Insert: "pertaining to collective bargaining, hours, wages, or other conditions of work"

2. Page 3, line 8.

Following: line 7

Insert: "(4) An individual otherwise disqualified from receiving benefits under this section is entitled to unemployment benefits if a court or agency of the federal government has determined that the labor dispute was caused by the employer's violation of any law of the United States pertaining to collective bargaining, hours, wages, or other conditions of work."

STATEMENT BY BEN HAVDAHL, MONTANA MOTOR CARRIERS ASSOCIATION
on SENATE BILL 421

Mr. Chairman, members of the committee, for the record, I'm Ben Havdahl, representing the Montana Motor Carriers Association. MMCA supports the passage of Senate Bill 421.

The requirements in SB 421, would allow the Governor of Montana to enter into a reciprocity agreement with Canadian Provinces similar to the agreement Montana now has with North Dakota which would recognize an employer's coverage for Workers' Compensation insurance in effect in Montana to be in effect in the respective Canadian Province when that employer is operating in the province on a temporary basis. A prime example of the type of employer I'm referring to is a Montana based interstate motor carrier operating in and out of the Canadian Provinces.

To my knowledge, the Canadian Provinces of Manitoba, British Columbia, and Alberta all require a Montana based carrier (or a carrier based in any other state) to provide a fully paid Workers' Compensation policy issued by those provinces on any workers (employees) that may be temporarily employed there notwithstanding the fact that that employee is fully covered for Workers' Compensation insurance in their base or home state. The result is that the carrier ends up paying double premium. He pays the full premium in Montana and in the Canadian Province. In fact, he may end up paying a premium three times or more if he operates the same employee in more than one province.

Under the current situation, Montana does not require a Canadian trucker

operating in Montana to have a fully paid up Montana Workers' Compensation policy in effect before he can operate here.

Senate Bill 421 provides that a reciprocity agreement between Montana and the respective Canadian Province may be effected within 6 months after the effective date of SB 421.

If an agreement cannot be effected by that time, the bill requires the employer from any Canadian Province to have a paid up Montana Workers' Compensation policy if he decides to operate temporarily in Montana.

MMCA strongly supports this approach. We feel that it will stimulate the provinces into considering reciprocity agreements.

We intend to communicate with my counterparts in the respective provinces in hopes that they in turn will communicate with the provincial agencies administering their Workers' compensation programs. Members of the respective provinces' motor carrier association will also be informed.

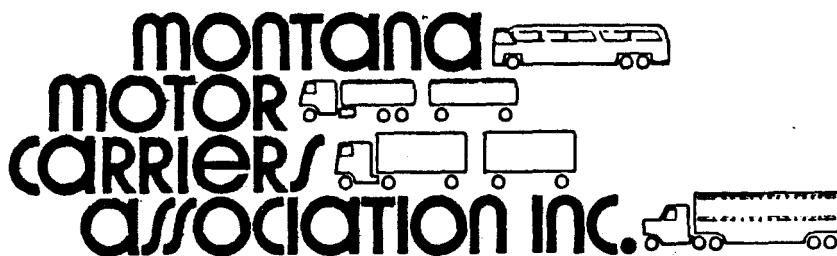
It's interesting to note that the truckman rate in Manitoba for example is \$6.50 per \$100 of payroll. This compares to \$16.59 per \$100 in Montana. That's almost 2 1/2 times the Montana rate.

Mr. Chairman, I've taken the liberty of reproducing a file of letters written by my counterpart in Washington State outlining the problems with British Columbia and from the Montana Division of Workers' Compensation to the Boundary Commission

appealing to that group for help and from MMCA to the Department of Highways in response to Canadian Provinces request for a regulation to haul heavier Canadian weights on trucks into Montana's intermodal terminal at Shelby.

Also Mr. Chairman, I've copied the reciprocal agreement Montana recently reentered into with North Dakota as an example of the agreement that could be initiated with the Canadian Provinces.

Thank You.



B.G. HAVDAHL, EXECUTIVE VICE PRESIDENT
501 NORTH SANDERS
P.O. BOX 1714, HELENA, MONTANA 59624
TELEPHONE: AREA CODE 406 442-6600

September 6, 1988

Martin A. Sangster
P.O. Box 81086
Seattle, WA 98108

Dear Marty,

Thanks for your letter of August 16, 1988 and the phone conversation relating to the problems of Canadian Provinces assessing full premiums for Workers Compensation Insurance on carriers operating temporarily i.e., in and out of Canada. This practice is being followed by Alberta and Manitoba and of course British Columbia. I believe that Saskatchewan also requires full premium payment, although I'm not certain.

We have had a number of our carrier members complain about having to pay both Montana and the various Provinces full premiums on temporary operations. The Administrator of our Worker's Compensation office, Bob Robinson, has tried, in vain, to convince the Manitoba and Alberta to accept some sort of reciprocity with Montana but has not been successful. Bob made a strong appeal to Lt. Governor, Gordon McOmber as Chairman of the Western Province Boundary Commission to try to effect some resolution of the problem. See Bob's letter of April 29, 1988 enclosed.

Our President Bob Gilbert is a Legislator from Sidney, Montana, over near the North Dakota border. He has been successful in obtaining a North Dakota Extra-Territorial Agreement signed by Montana and North Dakota. I'm enclosing a copy of that file. Perhaps a similar agreement can be effected between the Western Canadian Provinces and the bordering states on a state by Province basis.

The suggestion in your letter that Washington, and I'll add Idaho, Montana and North Dakota, enact legislation and/or regulations requiring the full assessment of Workers Compensation premiums on all Canadian Truckers entering the border states could well get the attention of the Provinces. It seems to me that if some other way can be worked out, that it would be a better solution. Retaliation seems only to lead to more problems.

I've enclosed a letter from Manitoba to one of our carriers as an example of their reaction when the carrier appealed to them.

MEMBER



If a meeting of certain border states legislator and/or workers compensation administrators along with the Provinces administrators or such is contemplated, we would be happy to attend and support a program to resolve the problem. I'm sure we can obtain both Legislative support and Administration support in Montana.

The current Governor, Ted Schwinden and Lt. Governor, Gordon McOmber will be replaced come January 1, 1989. I do feel that whomever is elected here will support us on this with the Provinces.

Thanks again for your call and letter. Right now it appears that I won't be at the Oregon convention. As mentioned I have a medical appointment in Seattle the week of September 26, 1988. We can discuss the matter in a more challenging environment, if you're game.

Regards,



B.G. Havdahl
Executive Vice President

BGH/ks
encl

WASHINGTON TRUCKING ASSOCIATIONS

AFFILIATED WITH AMERICAN TRUCKING ASSOCIATIONS, INC.

August 16, 1988

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9-A page 2 of 4
DATE February 16, 1989
BILL NO. SB 421

Mr. Ben Havdahl, Executive Vice President
Montana Motor Carriers Association, Inc.
P. O. Box 1714
Helena, MT 59624-1714

Dear Ben:

This letter will serve as a confirmation to my phone call of yesterday.

We in Washington State have experienced some difficulty with the Province of British Columbia in the area of industrial insurance.

Washington State has an excellent industrial insurance program offering full coverage to their insureds and covering their activities while out of State. This of course includes trips into British Columbia.

British Columbia also has an industrial insurance program and they have, unfortunately, been requiring our carriers who are in their Province for any appreciable length of time to insure under the British Columbia program.

This means of course that they are paying duplicate premiums.

The fact of the matter is that the Washington program is better and any driver who is injured in British Columbia would naturally prefer to be treated by his own doctor, his own hospital, and close to his own family in the State of Washington. It is therefore strictly a money maker for the Province of British Columbia and does not benefit the driver or his employer in any way.

A good friend of ours, State Representative Karen Schmidt, is an active member of the Washington State Transportation Committee as well as an active participant in the National Conference of State Legislators Transportation Committee. She is interested and anxious to proceed with the rectifying of this situation. She has spoken to our Department of Employment Security and they feel that these obvious inequities should be rectified. They feel, in fact, that unless British Columbia is willing to alter their requirements that our State can administratively enact regulations which would require British Columbia truckers to take out industrial insurance in Washington State. This should at the least serve as an attention-getter!

She would like to have a meeting of the delegates to the National Conference of State Legislators from the States of Washington, Idaho

Mr. Ben Havdahl
Page 2

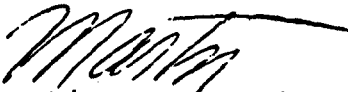
and Montana as well as from the provinces of British Columbia and Alberta. The date is undetermined.

Would you determine what treatment your truckers are receiving in British Columbia and in Alberta so we can establish some uniform goal.

If you are interested, would you also contact a friend on your own Transportation Committee to get them involved in this undertaking. This is obviously something that could benefit all of our members who operate in Canada and could, through the organizational efforts and contacts established in Canada, create an atmosphere which would lead to the solution of other problems we share in our relationships with the Canadian provinces.

Please let me know what kind of treatment you are receiving from the two provinces involved and also what the reaction is of your local officials.

Best regards,



Martin A. Sangster
Executive Vice President

MAS:10

DEPARTMENT OF LABOR & INDUSTRY

DIVISION OF WORKERS' COMPENSATION

TED SCHWINDEN, GOVERNOR

MARGARET "PEG" CONDON BLDG.
5 SO. LAST CHANCE GULCH



STATE OF MONTANA

HELENA, MONTANA 59601

April 29, 1988

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9A, page 3 of 4
DATE February 16, 1989
BILL NO. SB 421

Gordon McOmber
Lieutenant Governor
LIEUTENANT GOVERNOR'S OFFICE
State Capitol, Room 207
Helena, MT 59620

Dear Lieutenant Governor McOmber:

Montana employers, especially those in the trucking industry, the Workers' Compensation Division, and the State Compensation Insurance Fund, are experiencing a significant problem in dealing with some of our Canadian counterparts concerning the application of workers' compensation insurance coverages. I am bringing this issue to your attention in the hope that, as chairman of the Western Provinces' Boundary Commission, you could encourage the commission to consider the problem and help find a solution without further hindering international commerce.

The main issue is that the province of Manitoba refuses to recognize Montana workers' compensation insurance coverage for Montana truckers who are temporarily driving into the province for pick up or delivery. As a result, the Montana employer is required to cover his employees while in Canada under a Canadian policy. Montana law also requires that the employee be covered under his Montana policy while in Canada. The result is that the employer is paying double premiums during the period in which the employee is in Canada. The trucking industry has asked us to intercede on their behalf with the Manitoba authorities. Our attempts have been unsuccessful to say the least. It appears that the approach that Manitoba is taking is beginning to spread to other western Canadian provinces.

Past practice has been to recognize insurance coverage from another jurisdiction as long as the employment is temporary or transient in nature.

I have met on several occasions with the directors and representatives of Montana Motor Carriers Association concerning this issue. They are as frustrated as I am with the lack of progress in resolving this problem.

Page Two
Gordon McOmber, Lieutenant Governor

April 28, 1988

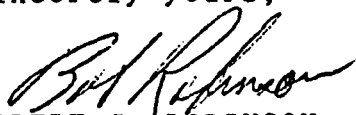
As you can see from the attached letter from Senator Farrell, the industry proposes that we start stopping Manitoba based trucks as they cross the border and require that a Montana insurance policy be provided. The result of this action will be an international border commerce dispute.

Could this issue be considered by the Boundary Commission as a means of developing a solution that will be equitable and fair to employers, employees, and insurers?

This Division is willing to provide to the Boundary Commission with any information that we have available or could develop. I am sure that the Motor Carrier Association in Montana would be very interested and would take a very active role in any deliberations before the commission.

If you have any questions, please don't hesitate to call.

Sincerely yours,


ROBERT J. ROBINSON
Administrator

RJR/bac

attachment

cc: Senator Bill Farrell
Ben Havdahl
Terry Cohea



SERVICE LABOR & EMPLOYMENT
BILL NO. 9A page 4 of 4
February 16, 1989
BILL NO. SB 421

B.G. HAVDAHL, EXECUTIVE VICE PRESIDENT
501 NORTH SANDERS
P.O. BOX 1714, HELENA, MONTANA 59624
TELEPHONE: AREA CODE 406 442-6600

July 15, 1988

Gary Wicks, Director
Montana Department of Highways
Highway Building
2701 Prospect Avenue
Helena, MT 59601

Dear Gary:

You recall our conversation relating to a request to your office to allow Canadian trucking firms to haul Canadian weights under a special permit to Shelby, Montana. You asked me to solicit some reaction to the request from Montana truckers. You indicated that the interest in allowing the Canadian weights on the highway to Shelby would foster free trade of certain commodities including fertilizer, petro-chemicals, forest products and others. As I recall, you suggested that Canadian provinces, i.e. Alberta, for example, allows tandem axle weights of 37,000 pounds, thereby increasing the gross weight allowable by tractor trailer combinations considerably above the present Montana allowable of 34,000 pounds per tandem axles.

First of all, MMCA members would like to see free trade fostered with our Canadian neighbors. The problem is that the benefit of what is being requested by the Canadians enures 100% to them and if Montana truckers would be allowed similar weights from Shelby, north to Canada there would be exactly zero benefit to Montana truckers. All the freight flows from Canada to Shelby and none the other way, according to the carriers I talked to.

It's been our experience, the Canadian provinces have not been willing to work with Montana in establishing reciprocity for Workers Compensation coverage requirements. They require Montana truckers to pay 100% of their premiums on their policies covering a driver before a carrier can operate there. It doesn't matter if the driver is fully covered with a Montana state fund policy. The result is double payment. Montana apparently does not require or is not enforcing the requirement for Canadian truckers in Montana. MMCA feels Montana should make the same requirement of Canadian truckers, at least until they agree to back off of their position.

Also, Canadian provinces have not encouraged "free trade" due to their strictness in issuing economic authority to Montana carriers so they can operate going into Canada. All the commodities you mentioned are strictly regulated by Canadian provinces. Canadian Carriers virtually operate freely from Canada to Montana under ICC authority issued by ICC under current "defacto deregulation" policy of ICC. A similar policy does not exist with authorities in Canadian provinces.

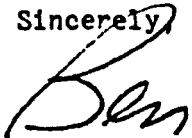


MMCA carriers that I discussed the weight request with were not so unhappy about the permitting of the excess weight as they were with other problems outlined herein. If Montana could secure cooperation of Alberta, Manitoba, British Columbia and others in this area, I'm sure much of the resistance to the weight allowables would be lessened.

I'm enclosing a copy of a letter by Bob Robinson to Lt. Governor Gordon McOmber for your information.

I realize that Worker's Compensation is not your responsibility, however, I thought you would be interested in the matter since it bears heavily on Montana truckers operating in Canada. You may even be inclined to discuss the matter with Lt. Governor McOmber. If so, and we can resolve the problem, hats-off to "free trade".

Sincerely,



B. G. HAVDAHL

encl.
BGH/cs



The Workers Compensation Board of Manitoba

333 Maryland Street • Winnipeg R3G 1M2 • Telephone 786-5471, rural Manitoba call Toll Free 1-800-362-3340

204-786-

SHRINE LABOR & EMPLOYMENT
ENRICH NO. 10 page 1 of 5
DATE February 16, 1989
BILL NO. 58 421

J. E. Williams Trucking Inc.
P.O. Box 30371
Billings, Montana
U.S.A. 59107

November 18, 1986

Your File Number is 921248-1

Dear Sirs:

Thank you for completing and returning the Board's questionnaire.

Should your firm employ and payroll workers other than executive officers of the corporation in connection with trucking activities in this province, you will be required to register with the Workers Compensation Board of Manitoba. We would point out that this will apply even should the workers be residents of the United States but who have occasion to enter this province.

Should you have any further questions concerning this matter, please contact the writer.

Yours truly,

D. R. Jarvis
Senior Assessor

DRJ/dlh

*Access 1/2
Need name Manitoba
WCB
Received from*

J. E. Williams Trucking Inc.
BOX 30371 - 305 SUGAR AVE.
BILLINGS, MONT. 59107
406-248-7397

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10 page 2 of 5
DATE Feb. 16, 1989
BILL NO. SB 421

2-12-87

Workers Compensation Board of Manitoba
333 Maryland St.
Winnipeg, Manitoba R3G 1M2

Attn: D. Licoppe

File # 811479-5

This letter is in regards to the Workers Compensation you say I have to pay in Manitoba.

I have taken this matter up with the Montana Workers Compensation Board that you are requiring we pay this additional workers comp fee and they advise me this is very illegal. We are not required to pay workers comp but once.

As I stated in my telephone call, We run thru 34 states and 3 provinces of Canada, and are not required to pay this fee to any one but you. This is very unfair. I know of at least 12 more truckers, some also from Billings and other Cities, and we are the only one you are sending your letter to.

I would like a refund of the \$2372.95 that I sent to you and will not be sending any more. If you would like to know the requirements of this state, I suggest you call the Workers Compensation Board in Helena, Montana who is the ruling body for this state. If we had to pay this Workers comp fee to every state we travel thru we could not stay in business.

Our Workers Compensation thru the State of Montana is very expensive, and it covers our workers wherever they travel.

If we had an injury in Canada, our Montana Workers Comp is required to cover the injury.

Please refund my \$2372.95 I have paid to you,

If you would like the name of the person to contact with our State Workers Compensation Board, I will gladly provide this information and address for you.

Awaiting your reply,

Lottie Williams
Lottie Williams

J.E. Williams Trucking Inc.



The Workers Compensation
Board of Manitoba

333 Maryland Street • Winnipeg R3G 1M2 • Telephone 786-5471, rural Manitoba call Toll Free 1-800-362-3340

10 page 3 of 5
Feb 16 1987
BILL NO. SB 421

J.E. Williams Trucking Inc.
Attn: Lottie Williams
Box 30371
BILLINGS, MT
U.S.A. 59107

February 26, 1987

Your Firm Number is 098459-1

Dear Madam:

We are in receipt of your letter dated February 12, 1987, stating that you feel that you are not required to pay workers compensation to our Board. However, The Workers Compensation Act of Manitoba, states that any firm that employs workers within the Province of Manitoba, which falls within the compulsory provisions of our Act, is required to maintain a registration with our Board.

Trucking comes within the compulsory provisions of The Workers Compensation Act of Manitoba, and as your firm has workers hauling into or through our Province, your firm is required to maintain a registration with the Board.

With regards to The Workers Compensation Board of Montana, they may not require you to register with other provinces or states. However, as it was stated earlier, the Manitoba Board requires that any firm trucking through Manitoba be registered with our Board.

In order to update your file, we ask that you submit an actual report of wages for 1986 on the enclosed Employer's Payroll Statement, as well, as a reasonable estimate for 1987. Only the wages made while hauling in the Province of Manitoba, should be reported to our Board, regardless of the residence of the worker.

If you have any questions regarding the above, please contact the Assessment Department.

Yours truly,

P. Wiebe

P. Wiebe
Assessing Officer

PW/sf
Enc.

IMPORTANT:

To serve you better

- Proper Identification is required whenever you contact the Board. Please give your name and claim or firm number.
- If you make an appointment before coming to the Board's offices, it will help avoid delays.



The Workers Compensation
Board of Manitoba

333 Maryland Street • Winnipeg R3G 1M2 • Telephone 786-5471, rural Manitoba call Toll Free 1-800-362-3340

DATE Feb. 16, 1989 10 page 4935
BILL NO. SB 421

Department of Labor & Industry
Division of Workers' Compensation
Attn: Robert J. Robinson, Administrator
Margaret "Peg" Condon Bldg.
5 So. Last Chance Gulch
HELENA, MT U.S.A. 59601

June 30, 1987

Ref. No. 098459-1

RECEIVED
7 JUL 7 1987
DIVISION OF WORKERS'
COMPENSATION

Dear Mr. Robinson:

I apologize for the delay in my response to your letter of May 6, 1987, in which you request that Montana based trucking firms delivering goods to Manitoba be exempted from paying workers' compensation premiums while in Manitoba.

We have reviewed the information which you have provided on the operations in Manitoba of J.E. Williams Trucking Inc. and have determined that this firm is required to maintain a registration and pay workers' compensation assessments in Manitoba. Under our legislation any person or firm engaged in custom trucking must register with our Board to cover its workers while in Manitoba, as any worker injured in this province in the course of their employment is eligible to claim compensation, regardless of their place of residence.

In earlier correspondence Mrs. Williams advised us that Manitoba was the only Canadian jurisdiction in which their firm was required to pay assessments. We checked with a number of other Canadian provinces and find that in those jurisdictions where American trucking firms are exempted from paying workers' compensation premiums there is a legislative exclusion or exemption of one sort or another for foreign owned businesses. There is no such exemption or exclusion in the Manitoba Workers Compensation Act and therefore, registration is required. We find ourselves in similar circumstances to your State, in that we also have no way under our legislation to portion premiums. While we do have inter-provincial agreements with most other Canadian provinces for the avoidance of duplicate assessments, we have no such arrangements with any of the States, nor is there any provision in our legislation to make such agreements, should we desire to do so.

Continued.../2

IMPORTANT:

To serve you better

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Department of Labor & Industry
Division of Workers' Compensation
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Although we are unable to exempt Montana based trucking firms operating in Manitoba from paying assessment premiums, you may wish to advise these employers that under our legislation workers in covered industries are prohibited from taking legal action against their employers, other registered employers or workers of other registered employers for injuries which occur in the course of their employment.

Should you have any questions, please contact me.

Yours truly,

Dave Einarson
Director of Assessments

Direct Line (204) 786-9554

/ic

Decker unfair in mine strike, labor board says

SHERIDAN, Wyo. (AP) — The 13-month-old strike by the United Mine Workers members against Decker Coal should be declared an unfair labor practice strike, according to the Advice Section of the National Labor Relations Board.

The section, in a memo to the NLRB's regional office in Denver, concluded the company was guilty of unfair labor practices by failing to give the union information it requested before Decker declared an impasse in contract talks and walked out of negotiations on Sept. 30, 1987.

"You can't be at an impasse if you have not provided the information that has been requested," said Clinton Elges, an NLRB spokesman.

W. Bruce Gillis Jr., the NLRB's Denver region director, said the memo authorizes him to issue a complaint against the company, but he added the NLRB will try to reach a settlement with the UMW and the company, a joint venture of Peter Kiewit Sons and NERCO Inc., before issuing a complaint.

About 250 workers at Decker's southern Montana coal mines went on strike on Oct. 1, 1987, claiming the company was guilty of unfair labor practices.

The workers offered to return to work unconditionally on June 27, but the company said 152 of the workers were guilty of strike misconduct and would not be reinstated.

The names of other workers were placed on a preferential hiring list for consideration as openings occurred in Decker's work force.

Elges said if the recommendation is upheld, Decker will have to reinstate striking miners, a condition that will probably be included in any settlement with the company.

Elges said if the NLRB cannot reach a settlement agreeable to both parties, a complaint will be issued and a hearing will be set before an administrative law judge. The judge's ruling can be appealed to the NLRB itself and then to the courts.

EXTRATERRITORIAL RECIPROCITY AGREEMENT BETWEEN
THE WORKERS COMPENSATION BUREAU OF THE STATE OF
NORTH DAKOTA AND THE DIVISION OF WORKERS' COMPENSATION
OF THE STATE OF MONTANA

WHEREAS, the North Dakota Workers Compensation Law authorizes the North Dakota Workers Compensation Bureau to enter into agreements of reciprocity for workers' compensation purposes with other states; and

WHEREAS, the Montana Workers' Compensation Act authorizes the Division of Workers' Compensation to enter into agreements of reciprocity for workers' compensation purposes with other states; and

WHEREAS, the employers who conduct operations in the State of North Dakota are required, on occasion, to have North Dakota employees temporarily employed or performing services in the State of Montana; and

WHEREAS, the employers who conduct operations in the State of Montana are required, on occasion, to have Montana employees temporarily employed or performing services in the State of North Dakota; and

WHEREAS, the North Dakota Workers Compensation Bureau and the Montana Division of Workers' Compensation desire to enter into an agreement whereby the employers and employees of each of the respective states may continue to be entitled to the protection and benefits provided by the workers' compensation laws of their respective home states;

IT IS HEREBY AGREED, for the purpose of this agreement of reciprocity, a North Dakota employer is an employer domiciled in the State of North Dakota, and a Montana employer is an employer domiciled in the State of Montana.

IT IS FURTHER AGREED, for the purpose of this agreement of reciprocity, a North Dakota employee is a person hired to work in North Dakota and normally works in the State of North Dakota, and a Montana employee is a person who resides in Montana and normally works in the State of Montana.

IT IS FURTHER AGREED BETWEEN THE North Dakota Workers Compensation Bureau and the Montana Division of Workers' Compensation:

The North Dakota Workers Compensation Bureau, in keeping with the provisions of the North Dakota Workers Compensation Law, will provide protection for North Dakota employers under its jurisdiction, and benefits to their North Dakota employees who may be injured in the course of employment while working temporarily in the State of Montana. In the event of injury to one of these employees, the exclusive remedy would be that provided by the North Dakota Workers Compensation Law if an extraterritorial certificate has been issued;

The Montana Division of Workers' Compensation, in keeping with the provisions of the Montana Workers' Compensation Act, will provide protection for Montana employers under its jurisdiction and benefits to their Montana employees who may be injured in the course of employment while working temporarily in the State of North Dakota. In the event of injury to one of these employees, the exclusive remedy would be that provided by the Montana Workers' Compensation Act if an extraterritorial certificate has been issued;

"Temporary" employment in either the State of North Dakota or the State of Montana for purposes of this agreement of reciprocity shall normally mean a maximum of six (6) months

per any twelve-month period; however, extensions or adjustments may be approved based upon the circumstances of the employment situation;

The North Dakota Workers Compensation Bureau will, upon request and on behalf of the North Dakota employer, issue or renew a certificate of extraterritorial coverage to the Montana Division of Workers' Compensation, and the Montana Division of Workers' Compensation will, upon request and on behalf of the Montana employer, issue or renew a certificate of extraterritorial coverage to the North Dakota Workers Compensation Bureau;

Certificates of extraterritorial coverage shall be accepted, denied, or canceled, at the discretion of the North Dakota Workers Compensation Bureau or the Montana Division of Workers' Compensation;

The North Dakota employer while performing work in the State of Montana will be subject to the safety codes of the State of Montana, and the Montana employer while performing work in the State of North Dakota will be subject to the safety codes of the State of North Dakota.

IT IS MUTUALLY UNDERSTOOD this agreement will not apply to Montana resident employees of the North Dakota employer hired to work or while working in the State of Montana nor to the North Dakota resident employees of the Montana employer hired to work in the State of North Dakota. Montana employers may provide a North Dakota policy for North Dakota residents temporarily working in North Dakota. North Dakota employers must provide a Montana policy for Montana resident employees.

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IT IS ALSO MUTUALLY UNDERSTOOD that if an extraterritorial certificate has been issued, premium payments on the earnings of North Dakota employees while working in the State of Montana will be made to the North Dakota Workers Compensation Bureau, and premium payments on the earnings of Montana employees while working in the State of North Dakota will be made to the Montana insurance carrier.

IT IS FURTHER AGREED this agreement of extraterritorial reciprocity shall become effective on the 1st day of July, 1988, and further that this agreement shall remain in full force and effect until superseded or modified by the parties to this agreement.

Signed this ____ day of _____, 1988, at Bismarck, North Dakota.

NORTH DAKOTA WORKERS COMPENSATION BUREAU

Chairman

Commissioner

Commissioner

Signed this ____ day of _____, 1988, at Helena, Montana.

MONTANA WORKERS' COMPENSATION DIVISION

Administrator

APPROVED: Dated this ____ day of _____, 1988.

GOVERNOR of the STATE OF MONTANA

LABOR COMMITTEE

VISITORS' REGISTER

51st LEGISLATIVE SESSION

DATE: February 16, 1987

LEAVE PREPARED STATEMENTS WITH SECRETARY! PLEASE!!!

PRINT: NAME	REPRESENTING	Check One	
		Support	Oppose
Bob Jensen	Dept. of Labor	375	
Leon Staley	Restaurant Assoc	415	
Mike Micore	Dept. of Labor & Industry	375 405 420	
Bob Heiser	UFCW		405 420
Kew Tutz	Paperworkers - 885		405
Nadrian Jensen	AFL-CIO		405
Jan Van Riper	self 3330 Horseshoe Bend Helena		415 405
Lawrence Shadron	SNV	415	
Sam Ripan	M.S.C.A		405
Bob ANDERSON	MSBA	^{SB} 375	
CITAD SMITH	Land Improvement contractors	^{SB} 375	
Ray Foster	Billings Chamber	421	
Robert L. Culp	UPIA - 885		405
Dennis McAlpin	Capital Security		375
Douglas R. GRESS	Capital Security		375
Guy Beardon	USWA LOCAL 72 Helena T+L Council		375 405 420
Sam Ripan			375-420
Terry Minow	MFT		375-420
Darcia Mor	Browning, Kalzeyski, Berry & Hovey		
JOE McCRACKEN	LOCKWOOD SCHOOLS, BILLINGS, MT	^{SB} 375	
Bill Palmer	Rev of Workers Comp	^{SB} 405	

LABOR COMMITTEE
VISITORS' REGISTER
51st LEGISLATIVE SESSION

DATE: Feb 16, 1989

LEAVE PREPARED STATEMENTS WITH SECRETARY! PLEASE!!!

PRINT: NAME	REPRESENTING	Check One	
		Support	Oppose
Bonnie Tippy	Montana Inkeepers Assn	X 415	
Greg Bryan	MIKA + MONTANA Pie Company	X 415	
Margaret Chadson	Montana Inkeepers Assn	X 415	
Ray Brandewie	" " "	X 415	
Ben Haddan	Montana Motor Carriers Assn	X 421	
J.E. Williams	J.E. Williams Trucking Inc. (Billings)	X 421	
Jim Tutwiler	MT CHAMBER COMMERCE	X 415 421	
Jim Phillips	Gov's Office	X 405	
Sam Pearson	Helena Trades + Laborers Union Local 172		415
Jim Murray	Mont. State AFL-CIO		415 421
Joe Zito	Local 3038 Bowlers		421
Chris Murphy	Local 3038 Bowlers		"
Leon Stakup	Montana Restaurant Assn	415	
Hiram Shaw	Workers' Comp		
Robert L. Culp	UPTE Local 885	415	415
Ken Tritz	Paperworkers 885		420 415 421
EUGENE FENDERSON	Mt. St, Bldg, & Trades		375-405- 415, 420 421
Norman H. Grosfield	Self		405
Angie Ward	Mt. Self Insurers Assn.	421	
Bob Heiser	UFCW	422	
DAN C. Edwards	Oil, Chemical & Atomic Workers Union		X 420

