

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Senator Gary C. Aklestad, on March 9,
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, and Senator Gary C. 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 HOUSE BILL 249

Presentation and Opening Statement by Sponsor:

Representative William Glaser, House District 98, sponsor of HB 249, stated the section of the Unemployment Insurance Code deals with the method the division uses for resolving tax appeals. The section has been revised in both of the past 2 months. In 1985, the section was amended to read, that tax appeal hearings would be held under the Montana Administrative Procedures Act (MAPA). Under MAPA, tax appeals were held as contested case hearings, which were more formal than the prior hearings and generally required an individual to be represented by an attorney. In 1987, the section was amended to eliminate the requirement that hearings be held according the MAPA, so that hearings could be less formal and employers and claimants alike could represent themselves, if so desired. In addition, the section referenced the appeals process concerning the

benefit portions of the law. The goal was to make the tax appeal process and the benefit appeal process the same.

The 1987 amendment did not clarify that tax appeal hearings would not be held under the rules of evidence, as is the case of the benefit appeals process. House Bill 249 is designed to provide clarification. Under the amendments, proposed by HB 249, both tax and benefit appeal hearings would be conducted in the same manner, allowing individuals to represent themselves in an informal appeal hearing. Although, either a claimant or an employer could be represented by counsel, if they wanted a counsel. Statutory rules of evidence would not apply to either type of hearing. Should either party wanted a more formal proceeding, the Administrative Rules relating to Unemployment Insurance will provides that option. HB 249 has been revised and approved by the Employment Security Advisory Council, which is composed of leaders from the business, labor, and legislative communities.

List of Testifying Proponents and What Group they Represent:

Bob Jensen, representing the Employment Relations Division of the Department of Labor and Industry.

Riley Johnson, Helena, MT, Representing the National Federation of Independent Business.

Testimony:

Bob Jensen, Administrator of the Employment Relations Division, Department of Labor and Industry, stated the issue in HB 249 to remove the Rules of Evidence from the Unemployment Insurance Tax Payroll is the same issue the committee dealt with three weeks ago when the Board of Personnel Appeals was established to hear wage claims. Part of the bill would also have removed the rules of evidence. The intent of HB 249 is to allow the unrepresented participants and respondents to represent themselves in the administrative proceedings. The division doesn't believe the people should have to go to the expense of hiring an attorney to represent them, when the issues are not that complex. The division recommends the committee offer a Be Concurred In recommendation for HB 249.

Riley Johnson, Helena, MT, Representing the National Federation of Independent Businesses, stated support of HB 249 due to the fact small businesses with 1,2,3, employees do not have the time or money to hire attorneys to go through the process.

List of Testifying Opponents and What Group They Represent:

There were no testifying opponents.

Questions From Committee Members:

There were no questions from the committee members.

Closing by Sponsor:

Representative Glaser urged the committee to give a BE CONCURRED IN recommendation for HB 249.

HEARING ON HOUSE BILL 508

Presentation and Opening Statement by Sponsor:

Representative Paula Darko, House District 2, Libby, Montana, stated HB 508 is a somewhat different bill, originally introduced in the House. HB 508 has been amended with good amendments. Representative Darko stated HB 508 is an act to revise the legal obligations of an employer toward an injured worker under the Workers' Compensation Act; to prohibit an employer from terminating or laying off an injured worker because he has filed a claim for benefits, except under certain circumstances; to provide a worker an absolute preference to a position providing wages comparable to those earned in his former position; to require all seniority and benefits accruing to the worker must be reinstated to the worker upon his return to employment; to release the employer from continued health insurance benefits responsibilities upon termination of an employee, amending section 39,71-317, MCA; and providing an effective date.

Representative Darko explained she has worked with a group of Lincoln County deputy sheriffs to draft HB 508. A work related injury and lack of funds caused the local, Lincoln County Sheriff to terminate an injured deputy. House Bill 508 provides for an injured worker to only be terminated or laid off because he has filed a claim under this chapter or chapter 72 of this title unless, one of the following conditions exists: 1) The worker has received, from his treating physician, a medical release to return to work, and the worker refuses to go back to work for the employer; 2) It appears, determined by his treating physician, the worker's injury is of a nature the worker may never be able to return to his job. House Bill 508 established an absolute preference about workers being able to get the job back within two years after the date of injury. When an injured worker is capable of returning to work within two

years from the date of injury and has received a medical release to return to work, the worker must be given an absolute preference over other applicants for a position that becomes vacant, if the position is consistent with the worker's physical condition and vocational abilities. This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred. All seniority and employment benefits accruing to the worker prior to the date of the injury must be reinstated to the worker upon his return to employment. The employer shall allow the injured worker the option of paying for any health insurance benefits provided to the worker during times of employment, whether or not the health insurance benefits are dependent on the injured worker working a required number of hours or days in any period of time, the employer is released from the provisions of this subsection in the event the employee is terminated pursuant to subsection (1)(B). Representative Darko passed information to the committee and an amendment from Dennis Casey, State Land Commissioner. (Exhibit 1,2,&3.)

List of Testifying Proponents and What Group they Represent:

Representative Jerry Driscoll, House District 92, representing his constituents.

Don Judge, representing the Montana State AFL-CIO

Gene Fenderson, representing the Laborers' International Union.

Donald L. Winkler, representing the Lincoln County Sheriff Department.

Bob Heiser, representing the United Food and Commercial Workers,

Michael Sherwood, representing the Montana Trial Lawyers Association.

Ed Plies, representing the Montana State County of Professional Fire Fighters and the Montana State Fireman Association.

Testimony:

Representative Driscoll, House Representative 92, stated last session SB 315 overhauled the Workers' Compensation fund, but the only part of the bill the workers' received was the preference in rehiring after injury on the job. The preference was never determined to be an absolute or simply

a veteran tie breaker preference. House Bill 249 clarifies the preference to be an absolute preference, if the person is qualified to return to work and there is a job. The bill lets the injured employee stay in the group health insurance plan, if the injured person pays the premium under the same rate paid by the employer. Under the new law, if an individual is hurt, the individual is destitute within a few weeks. The first thing that happens to an individual is they lose the health insurance. COBRA is a federal law that says if an individual is terminated from employment and there is a group health insurance available, the single person can stay in the plan for eighteen months and a family can stay in the plan for thirty-six months.

Don Judge, Montana State AFL-CIO, offered written testimony in support of HB 508. (Exhibit 4)

Gene Fenderson, Laborers International Union, Helena, stated the union supports the legislation, but the proposed law may not go far enough. Gene Fenderson stated he negotiates member agreement's with Montana construction companies. Small and large Montana contractors have stated during negotiations if one of their employees files a claim against the construction companies, the individual will never work for them again. The union feels HB 508 addresses such unfair practices, and urges passage of HB 508.

Donald L. Winkler, Lincoln County Sheriff Department Employee, stated he has thirteen years of law enforcement experience: 10 year with the Denver Colorado Police Department, and 3 years with the Lincoln County Sheriff Department. Mr. Winkler discussed the facts concerning the Lincoln County deputy sheriff situation which prompted HB 508. Mr. Winkler presented the committee written testimony. (Exhibit 5)

Bob Heiser, Billings, MT, International Representative for Commercial Workers, stated support of HB 508. Mr. Heiser stated he liked the bills better in the original form. Members of the organization have been terminated due to the various interpretations by employers. Absolute preference has been to the discretion of the employer.

Michael Sherwood, Montana Trial Lawyers Association, stated support of HB 508.

Ed Plies, Montana State County of Professional Fire Fighters and the Montana State Fireman Association, stated support of HB 508.

List of Testifying Opponents and What Group They Represent:

Bob Jensen, representing the Employment Relations Division of the Department of Labor and Industry.

George Wood, representing the Self Insurers of Montana.

Laurie Ekanger, representing the State Personnel Division, Department of Administration.

David Hemion, Executive Director, representing the Montana Chamber of Commerce.

Kim Enkerud, representing the agricultural organizations and the Montana Stockgrowers Association.

James Tutwiler, representing the Montana Chamber of Commerce.

Ben Havdahl, representing the Montana Motor Carriers Association.

Charles Brooks, representing the Montana Retailer Association, the Montana Hardware and Implement Dealer, and the Montana Tire Dealers.

Don Allen, representing the MWPA.

Bonny Tippy, representing the Montana Innkeepers Association.

Bob Moranwic, representing the Missoula Chamber of Commerce.
Testimony:

Bob Jensen, Administrator of Employment Relations Division, Department of Labor and Industry, stated Director Micone could not be present, but wanted the record to show his position on the bill. Micone testified against the introduced bill in the House. Micone did not believe HB 508 kept with good state economic development. At this point, HB 508 will require a careful reading to understand the extent the amendment differs from current statutes.

George Wood, Executive Secretary of Self Insurers, stated opposition of House Bill 508. The amendment could be accepted by the industry, but changes are needed. Line 19 has been changed, therefore, the title of the bill must be amended should the committee decided to accept the bill. A business cannot lay off employees because someone has filed a claim. The bill does not say the person has to loose any time or be disabled. Many people file a claim to protect their interests. The person may have post accident complications, and although they are not disabled at the

present time, the person wants to protect themselves for the future. The layoff provision is viable since the individual filed a claim. We have no objection if someone files a claim for termination. The problem is how the business staffs the operation. Absolute preference is one type of preference, which depends on what type of employment is being considered. Absolute preference conflicts with the old requirements concerning whether the company is under an affirmative action program or an union contract. One method of calling people back to work after a layoff is to use a list specifying certain criteria. The health and accident situation creates a particular problem. The business pays health and accident premiums, and then the business has trouble getting money from the employees when it is determined the person must pay the money back. Mr Wood questioned what action is taken to protect the business's financial interest. There is no plan that is uniform. Mr Wood requested HB 508 be NOT CONCURRED IN.

Laurie Ekanger, Administrator of the State Personnel Division, stated the administration opposes the bill, as an employer, for the following reasons: 1) The employer's position against terminating the employee is open ended. The personnel officers use two conditions which tends to drag on the situation and places the situation in an employee-employer relationship limbo; and 2) The rights to self insurance are indefinitely made open ended. The language could be a problems because it says the employees are entitled to self pay for coverage, just like they were working. The labor relations people say the bill is a problem because there are no exception, such as the cases concerning conflicting bargaining agreements. Ms Ekanger stated opposition to the legislation.

David Hemion, Executive Director of the Helena Chamber of Commerce, stated the Chamber supports Workers' Compensation issues in matters where operating costs are not increased for business. To enable the economy to grow and to create new jobs, the cost of business must be kept competitive. The Chamber appreciates the amended version, however, the sections that prohibits employers from discharging workers, who have filed claims, could serious jeopardize the ability of Montana Businesses to appropriately manage their employees and others, concerning serious liability questions. The Chamber understands the intent of the bill, which is to fairly protect injured workers. However, the bill creates the potential for court challenge in the areas of discharging employees and of cause. The legislation applies to all employers, not just the law enforcement bureau. Mr. Hemion offered written testimony. (Exhibit 5)

Kim Enkerud, representing agricultural organizations and the Montana Stock Growers Association, stated many farm families hire ranch help. They are concerned about the requirement of the employer to give a former employee absolute preference over other applicants for the job that becomes vacant within two years from the date of the injury. If a person injured was a valuable employee, the person, in most cases, would be asked to return to the job. However, in some cases, when the person is negligent or not capable, the employer would not want to hire the person back. The employer should not be forced to do so. (Exhibit 6)

James Tutwiler, Montana Chamber of Commerce, stated when SB 508 was debated in the House, the Chamber vigorously opposed the bill because it was a business punitive bill. Specifically, it required a two year period of time the employer would be required to rehire the injured employee in the exact same job. The language was apparent. The employer could become a lifetime provider of insurance coverage for an injured worker. Those portions of the bill have been amended. The Chamber can support that portion of the bill. The reason why the Chamber does not support the bill at this time is because there is no recourse for the employer concerning temporary lay off conditions or situations that deals with economic factors.

Ben Havdahl, Montana Motor Carriers Association, stated the employers in the Association are opposed to the legislation for the above stated reasons.

Lauri Shadoan, Bozeman Chamber of Commerce, stated opposition to HB 508. The particular problem the Chamber is concerned about is the employee not being able to come back to a job because the job no longer exists.

Charles Brooks, Executive Vice-President of the Montana Retailer Association, representing the Montana Hardware and Implement Dealers and Montana Tire Dealers, stated members of the association are concerned about absolute preference. The employers say the legislation puts them into a unfair, disadvantage concerning how they operate their business.

Don Allen, MWPA, stated concern the legislation does not go far enough in dealing with the absolute preference. Don Allen urged opposition to HB 508.

Bonny Tippy, Montana Innkeepers Association, stated opposition to HB 508.

Bob Moranwic, Missoula Chamber of Commerce, stated the bill has been improved, but the language determination of lay offs and workers' comp claims makes the bill unsatisfactory.

There were no further opponents.

Questions From Committee Members.

Senator Blaylock asked Representative Darko for the significant changes concerning HB 508. Representative Darko stated there was a concern of the time period, so the two year time limit was put on the bill concerning the job. Another concern by members of the House was the idea of placing a worker into a similar job at a comparable wage. The insurance concern was amended to give the employe the option of purchasing health insurance under certain conditions. The absolute preference language was put in because there has not been clarification concerning the issue in any statute. If a worker is injured, the worker does not have a job, and a job comes open, the employee should be able to come back under an absolute preference situation. The preceding changes were solutions to the problems voiced in the House. The title also needs to be changed.

Senator Bob Pipinich asked if the person gets absolute preference, only if the person's rights are in place. Yes. Representative Darko stated, currently, if a job is available within two years, and the party has been off work and is on workers' compensation benefits, the person will get the job back, but there is no guarantee.

Don Judge stated the bill offers guarantees that are important to working people. There will be an absolute preference instead of just a preference. This is fair because the employee was qualified to complete the job requirements before he/she was injured. The legislation will require the employers to allow the employees to continue participation in group health insurance plans. The language, concerning the time frame for continued health participation, must be clarified.

Senator Nathe asked Don Judge about bargaining agreements concerning absolute preference. Does the legislation supersedes a bargaining agreement in labor issues. Judge stated, generally, when a position become open, or a position with comparable job description and wages come open, there are contract provisions allowing for seniority rights. In many cases, the job is not really open until certain people have opted not to accept the job. Then it is open to anyone. There are seniority rights within agreement and contracts. The seniority would not be lost, but the person would not gain seniority while laid off the job. The seniority clause in the collective bargaining agreements will supersede the absolute preference. If a person has

more seniority and is also on a layoff situation, the person would be rehired because of seniority.

Senator Blaylock asked what is meant by absolute preference. Judge stated the conflict is what we thought was the current absolute preference definition. Employers are saying the employee has preference over some people, but not preference over other people. If there is somebody more qualified, the employer may want the more qualified person. The AFL-CIO believes the intent of the current law is to say if there is a job that comes available, and the injured person is qualified, then the person has a right to take the job. In order to make the interpretation absolutely clear, the AFL-CIO wants the word "absolute" to be in the law.

Senator Devlin stated the absolute preference should supersede "any other situation." Judge stated if a worker was injured, certainly, there was a contract established with that worker at the date of the injury. The benefits and process available at the time of the accident are guaranteed and protected by the Constitution. The same application applies to collective bargaining agreement. Perhaps, the bill should be amended to accept the provisions of collective bargaining agreement, if the committee thinks it advisable.

Senator Nathe asked if the committee saw any conflict with Equal Opportunity Employment, Affirmative Action and TARO agreements. Don Judge stated the AFL-CIO does not see any disagreement with other federal laws

Closing by Sponsor:

Representative Darko stated there are people, who, because they filed a workers' comp claim, whether legitimate or not, are being intimidated by employers or have been threatened to be fired because they filed a workers' comp claim. The bill can be tightened up. It is not the intent of the legislation to extend the insurance beyond two years. Representative Darko urged passage of HB 508.

EXECUTIVE ACTION

DISPOSITION OF HOUSE BILL 377

Amendments and Votes:

Senator Blaylock explained the Amendment on HB 377. The title is changed to reflect the following idea: " Post a notice for Medicare patients of their policy on accepting services based on a medicare assignment." Lines 14 and 15

are to be amended to comply with the above language. Page 1, line 13 following of, strike: and certain medicare.

Senator Lynch stated he does not think the language is needed. The bill is clean.

Senator Blaylock made a motion to accept the amendment. The motion failed.

Recommendation and Vote:

Senator Lynch moved HB 377 BE CONCURRED IN.

The motion carried. Senator Lynch will carry the legislation.

DISPOSITION OF HOUSE BILL 541

Discussion:

Senator Aklestad stated, in case there is any duplication, the governor will be able to coordinate the legislation. If the committee desires, the department people will offer explanations.

Tom Gomez stated the amendment is different than previous governor's amendments. The amendment is similar to a House Welfare Committee amendment. The amendment will coordinate this program with other vocational and rehabilitation services and programs administered by the Department of SRS with funding under the federal rehabilitation act of 1973. The legislation will provide a continuation of services.

Tom Gomez stated there is a standard clause in the appropriation bill prohibiting a transfer of funds within departments or with line items. The clause is to supersede any restrictions.

The amendment is just doing what the department does now. If the amendment just referenced the rehab programs already going within the department, the amendment is not necessary. It is what we are doing now. If things are trying to be moved around, outside of the rehab programs, the federal regulations will not allow this to happen.

Senator Lynch stated the amendment is redundant. Ms Bullock stated the SRS works closely with Job Service. It is not an overlapping of funds. We are a JEFCA program operator and receive Department of Labor dollars to place people with disabilities, etc. The federal funds are regulated differently for each program, and the client eligibility criteria is also different.

Senator Aklestad stated he is concerned whether or not there is any overlapping of any program, and, if so, what programs overlap. Gomez stated the amendment indicates coordination. There are two programs that are the subject of SB 541. They are for the rehabilitation of the blind and visual impaired and for the employment of the handicapped. The requirement in subsection one assures the governor the programs are coordinated with the Shelter Workshop Program, Community Homes and Independent Living programs, adult rehabilitation programs for people who are disabled, and all future programs funded under the federal rehabilitation act of 1973. On page 19 line 23 through page 20, line 12, the department asks to share administrative personnel, operations and policies to insure uniformed administration necessary under the act. This provision is what applies to the programs funded under the federal rehabilitation act. Gomez commented the programs have a common element, being in the same department, same division and having the same funding.

Senator Aklestad stated he requested the amendment. The governor's office specifically asked for language Russ Cader, chief legal council for SRS, had prepared.

Amendments and Votes:

Senator Devlin moved the amendment.

Recommendation and Vote:

A roll call vote was taken. Senators Keating, Hofman, Devlin, Nathe, and Aklestad voted YES. Senators Lynch, Pipinich, and Blaylock voted NO.

The DO PASS motion was confirmed.

DISPOSITION OF HOUSE BILL 541

Discussion:

The bill has been previously amended.

Recommendation and Vote:

Senator Lynch moved HB 541 BE CONCURRED IN AS AMENDED.

The motion passed. Senator Keating will carry the bill.

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

March 9, 1989

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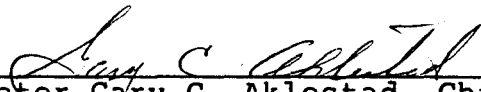
DISPOSITION OF HOUSE BILL 249

Recommendation and Vote:

Senator Keating moved BE CONCURRED IN on HB 249. The motion passed. Senator Hofman will carry the bill.

ADJOURNMENT

Adjournment At: The meeting was adjourned at 2: 17 p.m.


Senator Gary C. Aklestad, Chairman

GCA/mfe

Minutes.309

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: March 9, 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		

SENATE STANDING COMMITTEE REPORT

March 10, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration HB 249 (third reading copy -- blue), respectfully report that HB 249 be concurred in.

Sponsor: Glaser (Hofman)

BE CONCURRED IN

Signed: _____
Gary C. Aklestad, Chairman

J.C. 14
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SENATE STANDING COMMITTEE REPORT

March 10, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration HB 377 (third reading copy -- blue), respectfully report that HB 377 be concurred in.

Sponsor: Daily (Lynch)

BE CONCURRED IN

Signed: 
Gary C. Aklestad, Chairman

Y.C.
3/11/89
10:57
B.M.

SENATE STANDING COMMITTEE REPORT

March 10, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration HB 541 (third reading copy -- blue), respectfully report that HB 541 be amended and as so amended be concurred in:

Sponsor: Gould (Keating)

1. Page 20, line 8.

Following: "programs"

Insert: ", except as provided in [section 15]."

2. Page 20, line 13.

Following: line 12

Insert: "NEW SECTION. Section 15. Coordination requirements -- consolidation of programs authorized. (1) The governor shall assure that services under Title 53, chapter 19, part 1, are coordinated with programs and services in Title 53, chapter 7, parts 1 through 3, that are administered by the department of social and rehabilitation services with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under Title 53 with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government.

(3) The governor may transfer employees, appropriations, and spending authority necessary to accomplish the coordination of services as mandated by this section. The authority contained in this subsection is limited to the programs and services described in subsection (1). This subsection supersedes any restrictions on the transfer of employees, appropriations, and spending authority contained in [House Bill No. 100]."

Renumber: subsequent sections

3. Page 21, line 5.

Following: "13,"

Strike: "16"

Insert: "17"

4. Page 21, line 7.

Following: "14"

Strike: ", 15"

Insert: "through 16"

Strike: "17"

Insert: "18"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Gary C. Aklestad, Chairman

scrhb541.310

2/10/89
10:57

3-9-89

HB 508

Editorial off base

Seldom, if ever, have I taken public issue with an editorial. I find that privately I agree about as much as I disagree with the opinions presented on the editorial page. What I am taking issue with is the irresponsible reporting of HB508 and what it now contains as it was passed from the House. If the author of the editorial on Feb. 24 had taken time to read the amended bill before he unleashed his barrage, he would have found a good bill as did 91 members of the House who approved the bill on Feb. 21.

The purpose of the bill is noble. I discovered, prior to the session, that law enforcement officials who are injured in the line of duty and file a work comp claim, can be fired from their job. I introduced the bill because these officers and deputies should not lose their jobs, their benefits, and career achievements if they are injured during an arrest. No worker should suffer this after any work related injury.

HB508 does not allow an employer to fire an employee unless he refuses to return to work or is never able to return to work. The worker will be given an absolute preference for two years for any job which becomes vacant and which meets his job skills. The worker receives a disability payment from Workers' Compensation to make up the lower wages so he doesn't have to go back to comparable wages. The bill states this.

The bill still provides for accrual of seniority and employment benefits. It now requires employers to allow the injured worker to have available to him group insurance should the injured worker desire to pick up the cost.

The bill still goes a long way toward addressing the problems of the injured worker and business has not been stuck, as you say.

The editorial page has a lot of power; along with that power it also has a responsibility. That responsibility is to take time to find out the truth and report facts to the readers. It can then judge and take a position based on fact. Your editorial did neither.

I hope the Chamber of Commerce and business community does not take direction from you very often without researching facts. They will then be guilty of an even bigger breach of responsibility than you.

Paula Darko, representative
Capitol Station

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SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2 page 1 of 1

DATE March 9, 1989

BILL NO. HB 508

Darko bill is not bad now

Rep. Paula Darko, D-Libby, has taken strong exception to an *IR* editorial that appeared on Feb. 24 (see letter elsewhere on this page).

The editorial was critical of House Bill 508, sponsored by Darko, and urged the business community to oppose it when it is heard in the Senate.

Darko was the victim of a cruel mistake.

HB508, as passed by the House, said that if an injured worker who was collecting workers' compensation payments is able to return to work within two years from the date of injury that former employee must be given "an absolute preference to a position that provides wages comparable to those earned in his former position." The bill also provided that the employer shall continue "during the period of injury, any health insurance benefits provided to the worker during times of employment, whether or not the health insurance benefits are dependent on the injured worker working a required number of hours or days in any period of time."

AN IR VIEW

We questioned how any business, large or small, could operate under the strictures written into Darko's bill.

Last week Rep. Mark O'Keefe, D-Helena, told us the *IR* editorial regarding HB508 was wrong. He said the bill was amended on the House floor.

After a considerable amount of discussion O'Keefe obtained a third reading (final) copy of the bill as passed by the House. To his surprise, the amendments were not included. The *IR* editorial was accurate, but the bill wasn't because the printers omitted the amendments.

The amendments which should have been included in the final House copy of the bill made dramatic changes.

The first amendment says the injured person who is able to return to work within two years of injury must be given "an absolute preference over the other applicants for a position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities."

The section regarding health insurance also underwent a dramatic change. It was amended to read: "during the period of injury, the employer shall allow the injured worker the option of paying for any health insurance benefits..."

Changing the preference provision and allowing an injured worker to pay his or her full insurance premium during the period the individual is off the job is a far cry from the bill that the House originally "passed."

The bill was reprinted with the correct amendments, was placed on third reading and was passed by the House a second time last Saturday.

Amendments to House Bill No. 508
Third Reading Copy

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

Prepared by Tom Gomez, Staff Researcher
March 16, 1989

1. Title, lines 11 and 12.
Following: "PREFERENCE" on line 11
Strike: remainder of line 11 through "POSITION" on line 12
Insert: "OVER OTHER APPLICANTS FOR A POSITION THAT BECOMES VACANT IF THE POSITION IS CONSISTENT WITH THE WORKER'S PHYSICAL CONDITION AND VOCATIONAL ABILITIES"
2. Page 2, line 13.
Following: "given"
Insert: ", to the extent allowed by law,"
3. Page 3, line 13.
Following: "SUBSECTION"
Strike: "IN THE EVENT"
Insert: "if:
(a)"
4. Page 3, line 14.
Following: "(1)(B)"
Insert: "; or"
(b) 2 years have elapsed from the date of injury"
5. Page 3, line 23.
Following: line 22
Insert: "NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].
NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."
Renumber: subsequent section

SENATE
EXHIBIT NO. 4 page 1 of 1
DATE 3-9-89
BILL NO. SB 508



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EXECUTIVE SECRETARY

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406/442-1708

Testimony of Don Judge before the Senate Labor and Employment Relations
Committee on House Bill 508, March 9, 1989

Mr. Chairman and members of the Committee, for the record, I am Don Judge representing the Montana State AFL-CIO in support of House Bill 508.

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

Second, it requires an employer to grant an absolute preference for rehiring an injured employee when he or she is able to return to work. It would also reinstate seniority and other unused employment benefits accruing to the worker prior to the date of the injury.

An injured worker has many obstacles to overcome during the healing and rehabilitation process. Restoring seniority and employment benefits would act as a stimulus on the road to recovery.

Finally, this bill would allow an injured employee the option to continue to participate in an employer's health insurance coverage during the time of the injury. House Bill 508 does not require the employer to pay for these benefits, it merely allows the employee the option of paying for them and continuing his coverage. While workers' compensation covers the actual injury, other illnesses to the worker or his family are not covered except through health insurance benefits. The lack of those benefits to a worker and his family can easily result in financial ruin or serious health risks because of delayed medical attention.

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

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

Thank you.



I am testifying as a proponent of house bill 508. This bill has been drafted by Officers from my Department, (Lincoln County Sheriff's Office) and introduced by Representative, Paula Darko. We are attempting to change the current Worker's Comp law dealing with the employer's ability to lay off an individual who has been injured on duty. The current law has been interpreted to mean that an employer has the exclusive right to dismiss an employee who has been injured while working. The only obligation the employer has, is to re-hire this individual within a two (2) year period, if another opening should arise.

I have witnessed the inadequacies of this law first hand. Recently, one of our Officers had been injured, on duty, while attempting to arrest a wanted felon. The arrestee physically resisted and caused severe injury to the Officer. The Sheriff became aware of this law through our Worker's Comp insurer and had the County Attorney's Office research the ramifications of laying off an injured individual. The Sheriff was informed by the insurer that the law had been interpreted as stated above. Because of this interpretation, and the Sheriff's actions, the Officer feared that lay-off was imminent. This Officer has held off obtaining surgery for fear that an extended recovery period would cost him his position with the Sheriff's Office. He had been informed that his recovery period could range up to one year. Although he would be covered under Worker's Comp., he would be without a job and income following recovery. This Officer opted to take a disability retirement, as our department is in a financial crunch and in the process of laying off Officers. It appeared that there would be no opening for this Officer to return to, within the two year period, therefore leaving him with no income. If the financial situation changes, the Officer may elect surgery and return at that time. It appears, however, that the delay has caused permanent damage and surgery may no longer correct the problem.

As the law now stands, an Officer who is injured, while in the line of duty can be layed off solely at the employer's whim. Even if a doctor can assure the Officer's return within a certain period of time, the Sheriff can still lay the individual off. The individual can only hope that an opening will arise within a two year period. This leaves an employer with a certain amount of power, and in the case where there may be a dislike between the employee and the employer, the employer may now use this loop hole to dismiss an otherwise competent employee.

Law Enforcement has a unique problem. We are sworn to respond to life-threatening situations. If we fail to do so, we can be dismissed and/or sued and charged criminally. If we do respond to this situation, and are injured, we can now be dismissed. This catch 22 says we will risk our safety and if we are hurt, we will lose our livelihood, income and job.

With this bill, we are trying to put a balance back in the law. As it stands now, this is not Worker's Comp., but Employer's Comp. We need our protection, not punishment and abandonment for doing our sworn jobs.

We have been placed in a compromising position, being damned if we do and damned if we don't. Worker's Comp. needs major reforms as we all know, but quick fixes without researching the ramifications will not correct the problems.

We currently have another Officer awaiting surgery for a duty-related injury, but has elected to wait until this law has been corrected. This places another Officer back on the street, which is a liability to his fellow Officers, the public and the Department. He fears going on Worker's Comp., and losing his job. It's a hell of a way to save the system money.

This bill affects all employees, not just Law Enforcement.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 5 1061

DATE 3-9-89

BILL NO. HB 508

STATEMENT BY DAVID HEMION
EXECUTIVE DIRECTOR
HELENA AREA CHAMBER OF COMMERCE
SENATE LABOR COMMITTEE
MARCH 9, 1989
H.B. 508

THE HELENA CHAMBER OF COMMERCE SUPPORTS RESOLUTION OF WORKERS COMPENSATION ISSUES IN A MANNER THAT DOES NOT INCREASE COSTS TO BUSINESS. IF WE ARE TO ENABLE OUR ECONOMY TO GROW AND CREATE NEW JOBS, WE MUST KEEP COSTS TO BUSINESS REASONABLE AND COMPETITIVE.

THE CHAMBER APPRECIATES THE AMENDMENTS WHICH HAVE BEEN MADE TO H.B. 508, HOWEVER IN OUR OPINION, THE SECTION WHICH WOULD PROHIBIT EMPLOYERS FROM DISCHARGING WORKERS WHO HAVE FILED CLAIMS CLAIMS COULD SERIOUSLY JEOPRODIZE THE ABILITY OF MONTANA BUSINESSES TO APPROPRIATELY MANAGE THEIR EMPLOYEES AND OPENS SERIOUS LIABILITY QUESTIONS.

WE UNDERSTAND THAT THE INTENT OF THIS LEGISLATION IS TO FAIRLY PROTECT INJURED WORKERS, HOWEVER THE WORDING OF THIS BILL CREATES THE POTENTIAL FOR CHALLENGE TO THE PROCESS OF LAWFULLY DISCHARGING EMPLOYEES FOR CAUSE.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. ~~61~~ 61 of 1

March 9, 1989 DATE 3-9-89

BILL NO. H.B. 508

To: Senate Labor Committee

From: Montana Stockgrowers Association, Montana Cattlemen, Montana Association of State Grazing Districts

Subject: House Bill 508 - An act revising the legal obligations of an employer toward an injured worker under the workers' compensation act.

Mr. Chairman, members of the committee:

My name is Kim Enkerud. I am representing the Montana Stockgrowers Association, Montana Cattlemen, and the Montana Association of State Grazing Districts. These organizations represent about 4000 ranch families, many of whom hire help on their ranches.

We are concerned with Section 1, subsection 2, which would require an ~~employer~~ employer to give a former employee an absolute preference over other applicants for the job that becomes vacant, if he asks for it within 2 years of the date of the injury.

If the person who was injured was a valued employee, in most cases he would be asked to return to his former job. However, in some cases, when the person was negligent or not a suitable hired person, we would not want to hire him back and should not be forced to do so if an opening was available.

We urge the committee to not concur with House Bill 508.

Thank you.

(This sheet to be used by those testifying on a bill.) 3-9-89

NAME: Riley Johnson / NFIB DATE: 3-9-89

ADDRESS: 534 N. Last Chance Gulch #202, Helena, MT

PHONE: 442-2107

REPRESENTING WHOM? National Federation of Independent Business

APPEARING ON WHICH PROPOSAL: HB-508

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENT: Montana's 6,000 NFIB members oppose
HB-508. It places undo and additional restrictions
on Montana's small and independent business owners.
Keeping jobs open for long periods of time is perhaps
fine for large firms, but to small business that
exists on shorter time periods and fluctuating
labor schedules it will create unnecessary
paperwork and impossible to budget help.

Please Vote "No" on HB-508. We have enough
of a problem paying for current workers' Comp
without holding open jobs for years.

[Handwritten signature]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

3-9-89

Amendments to House Bill No. 541
Third Reading Copy

Requested by the Governor
For the Senate Committee on Labor and Employment Relations

Prepared by Tom Gomez, Staff Researcher
March 9, 1989

1. Page 20, line 8.

Following: "programs"

Insert: ", except as provided in [section 15]."

2. Page 20, line 13.

Following: line 12

Insert: "NEW SECTION. Section 15. Coordination requirements -- consolidation of programs authorized. (1) The governor shall assure that services under Title 53, chapter 19, part 1, are coordinated with programs and services in Title 53, chapter 7, parts 1 through 3, that are administered by the department of social and rehabilitation services with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under Title 53 with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government.

(3) The governor may transfer employees, appropriations, and spending authority necessary to accomplish the coordination of services as mandated by this section. The authority contained in this subsection is limited to the programs and services described in subsection (1). This subsection supersedes any restrictions on the transfer of employees, appropriations, and spending authority contained in [House Bill No. 100]."

Renumber: subsequent sections

3. Page 21, line 5.

Following: "13,"

Strike: "16"

Insert: "17"

4. Page 21, line 7.

Following: "14"

Strike: ", 15"

Insert: "through 16"

Strike: "17"

Insert: "18"

HB 541, HB 243

HB 308

3-9-89

1 of 3

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

P.O. BOX 4210



STAN STEPHENS, GOVERNOR

STATE OF MONTANA

HELENA, MONTANA 59604-4210

March 7, 1989

Senator Gary Aklestad, Chairman
Labor and Employment Relations Committee
Room 413/415
State Capitol
Helena, Montana 596

Dear Senator Aklestad:

As requested, I am providing information to you and your Committee regarding the relationship of the Vocational Rehabilitation (VR) Program (HB 541), the VR Extended Employment/Supported Employment Legislation (HB 243), and the Independent Living Program (HB 308). These bills are all state enabling legislation to allow us to provide a continuum of services to Montanans with disabilities, especially severe disabilities.

HB 541, the Vocational Rehabilitation state enabling legislation, allows the state agency to purchase any service necessary to get a person with a disability into employment, return to employment or maintain employment.

HB 243, the VR Extended Employment/Supported Employment Legislation, allows the state agency to buy Sheltered Employment services from a sheltered workshop or Support Services from an organization once the disabled person is placed into employment and closed out of VR services. According to federal law, a person cannot concurrently be a VR client and a sheltered employee, or a recipient of Support Services.

HB 308, the Independent Living Legislation, is state enabling legislation that allows the state agency to purchase any kind of services necessary to improve the quality of a disabled person's life regardless of whether they will ever be employed. That is, employment is not the priority goal of this piece of legislation. Integration into community life is.

H B 541, 243308

3-9-89

2063

Senator Gary Aklestad

Page 2

March 7, 1989

A summary explanation of what these, and others administered by the SRS VR Division do, is attached.

Please let me know if I can provide you any other information.

Sincerely,



Margaret A. Bullock

Administrator

Rehabilitative/Visual Services

**PROGRAM SUMMARY
VOCATIONAL REHABILITATION AND VISUAL SERVICES
FISCAL YEAR 1988**

The Rehabilitative and Visual Services Divisions, together known as Vocational Rehabilitation (VR), provide services to persons with disabilities to assist them with their return to employment. For persons not able to enter competitive employment, VR provides independent living, supported employment, and extended employment services. Services are delivered from ten field offices across the state.

Funding

Federal Section 110 funds provide most of the funding for the VR program. Other federal funding sources include Supported Employment, Independent Living, Job Training Partnership Act (JTPA), Social Security, and Inservice training funds. State funds include Workers Compensation and general fund. Both general fund and workers compensation funds are used to match the federal funds. The 1988 total budget for VR was \$8.4 million.

Services Provided

1. Section 110

VR uses Section 110 funding to assist persons with disabilities prepare for and obtain employment. Section 110 services are the largest part of the VR program. Funding for these services is 71% of the total budget.

In fiscal year 1988, VR served 7,787 persons (1,746 of whom were on public assistance) and rehabilitated 843 (removing 70 from public assistance rolls). Client wages increased from an average of \$14 per week at referral to \$167 per week at closure. National statistics show a return on investment of ten dollars for every dollar spent in the Section 110 VR program.

The disabilities served under the Section 110 services include the following:

<u>Disability</u>	<u>Number Served</u>
Orthopedic--cerebral palsy, multiple sclerosis, stroke, arthritis, accidents, injuries	4,232
Mental illness, mental retardation, alcoholism, behavior problems	1,548
Blind/visually impaired	831
Deaf/hearing impaired	272
Amputations	82
Other--cancer, cardiac, digestive, respiratory, learning disability	825

The services provided and number of persons served in 1988 are listed below:

<u>Service</u>	<u>Number of Clients</u>
Counseling and placement	7,787
Diagnosis and evaluation	2,869
Physical/mental restoration	573
College or University	968
Other post secondary training	642
High school	124
Personal and vocational adjustment	173
Post employment	34
Orientation & mobility/rehab teaching	815
Other services (serv. to family, etc.)	942

2. Independent living

- Purpose: to assist persons with severe disabilities live independently in the community
- Number served: 544
- Examples of disabilities served: head injured, spinal cord injured, multiple sclerosis, blind
- Services: peer counseling, skill instruction, transportation, housing modifications, readers, drivers, information and referral; ski recreation program; swim therapy program; senior peer companions for older blind persons

3. Supported employment

- Purpose: to place and train persons with severe disabilities requiring ongoing support in jobs and to develop the necessary interagency support networks for those persons
- Number served: 248
- Examples of disabilities served: mental retardation, serious mental illness, head injury
- Services: job placement, training, job coaching

4. Extended employment

- Purpose: to provide sheltered employment and work activity services to persons with severe disabilities who are not capable of competitive work
- Number served: 65
- Examples of disabilities served: mentally ill, borderline intellectual functioning with behavior problems
- Services: sheltered employment services from rehabilitation facilities

5. Workers compensation

- Purpose: to provide rehabilitation services to industrially injured persons
- Number served: 1,594
- Examples of disabilities served: industrially injured
- Services: all services provided under the Section 110 program

6. Visual services medical

- Purpose: to preserve and restore sight for persons with eye problems
- Number served (paid services): 93
- Examples of disabilities served: eye problems
- Services: laser treatment, cataract removal, eye surgery

LABOR COMMITTEE
VISITORS' REGISTER
51st LEGISLATIVE SESSION

DATE: April 9, 1989

LEAVE PREPARED STATEMENTS WITH SECRETARY! PLEASE!!!

PRINT: NAME	REPRESENTING	Check One	
		Support	Oppose
Donald L Winkler	Lincoln County Sheriff's Dept	508	
SHARON A. WINKLER	Lincoln Cty SHERIFF DEPT	508	
Georg Ward	Mt. Self Insurance Assoc.		508
Rob Genser	Dept of Labor & Industry	249	508
Riley Johnson	NFIB	249	508
Jim Tutwiler	MT CHAMBER COMMERCE		508
Charles Brooks	MT. RETIRED ASSOC.		508
Ernie Fender	Mt State Bldg Union	508	
Bill Palmer	Min. Wash. Group		
Walt Dupes	myself Big Fork		
Levitt Kincaid	Business Bozeman		
Marye Burbeck	SRS	249	
Rob Morawic	Missoula Chamber		508
Bonnie Lippy	Montana Smokeeaters		508
Kim Enkerud	MT Stockgrowers		508
Laurie Ekanger	MT Dept. of Admin		508
Jimmy Driscoll	Blye	508	
Michael Sherwood	MTLRA	508	
Don Cole	NWPA		508
Ben Braddy	MMCA		508
Nancy Juyfin	Montana G's Lobby	508	
Riley Johnson	NFIB	249	

ROLL CALL VOTE

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: March 9 BILL NO: SB 541 TIME: _____

Gov's Amendments pass

VOTE:	YES	NO
SENATOR TOM KEATING	X	
SENATOR SAM HOFMAN	✓	
SENATOR J.D. LYNCH		X
SENATOR GERRY DEVLIN	✓	
SENATOR BOB PIPINICH		✓
SENATOR DENNIS NATHE	X	
SENATOR RICHARD MANNING		X
SENATOR CHET BLAYLOCK		✓
SENATOR GARY AKLESTAD	X	

5 4