

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE

Call to Order: By Senator Aklestad, on April 18, 1989, at
9:00 a.m. in the State Capitol

ROLL CALL

Members Present: Senator Aklestad, Senator J. D. Lynch,
Senator Jerry Devlin, Representative Driscoll,
Representative Harrington, Representative Smith

Members Excused: none

Members Absent: none

Staff Present: Tom Gomez and Mary McCue, Legislative
Council Staff, Senate Secretary Mary Florence Erving

Announcements/Discussion: None

FREE CONFERENCE COMMITTEE ON HOUSE BILL 28

House Bill 28 sponsored by Rep. Harrington is an act revising the state minimum wage laws to require the state minimum wage to be set in accordance with federal law, but not to exceed \$4.00 an hour; increasing the minimum monthly wage for farm workers and establishing a lower minimum wage for employees who are newly hired.

Senator J.D. Lynch asked if a person worked from June 1, 1989 and works until September 15, 1989 and let go; then does the same thing in 1990, is he always under the same hiring date. He said I don't think you want to do that.

Senator Aklestad responded that an employee probably won't go back and work for that employer again. If he works there year after year, the employer usually give them a better wage.

Senator Devlin said in section 3, where an employee makes \$3.33 per hour, if the employee has not been previously employed by that employer. That section would cover than problem.

Rep. Harrington said that so we understand what we're doing, we are going to change the Statement of Intent and we still

need the Statement of Intent for the first part, because of the department's rule making will coincide with the facts. Senator Lynch said that the third paragraph down, will be reworded so that when the Federal Government come in with their training; new hiree training time, whatever they come in with, will have jurisdiction on these employers 360 - 205 and above and wherever they establish that figure. But the employers below that will have 120 days training time frame and the language has been changed to encompass that.

Mary McCue directed the committee to the general provisions at the beginning of the Code, a day is midnight to midnight, unless you say otherwise. So when you say, days in the Code your are talking about that. Rep. Driscoll stated the employers will know exactly the date of hire. He said it is surprising what employers can read into a bill.

In the Statement of Intent, it is the intent of the Legislature that employers do not lay people off to take advantage of this act. They do not want employees hired, fired, rehired and refired. So this gives employees that guarantee. If this happens to them, they can go to the Labor Department and file a grievance.

Senator Aklestad stated that with this amendment, we are establishing the training time at 120 days, this being different than the federal guidelines.

Senator Lynch asked if 180 days take precedence over the 120 days on the jurisdiction of the state? The feds could have 180 and we could have 120 days. It's important to know that if they go to 180 days, our law, the training wage will not only apply to those persons under state law, it will also apply to those persons under federal law, because our law is less training time. It prevents a subminimal wage for a shorter period of time, therefore, giving the employees more wage protection under Montana law. So our law would supercede the federal law. So all those persons who are covered under the federal law are going to end up having to go with 120 days of our law and pay a cash wage of \$3.35 per hour with no tip credits. Under the federal law they are going to raise the tip credits 50% to make up the difference.

Senator Aklestad said I don't want the state to have to set up training programs. Senator Lynch said I want to keep the owner honest in their training of people. He said people can not be productive at first until they are trained. During this time that will be evaluated to become a better employee.

Senator Lynch said he had a problem with businesses that

have a very high turnover rate. We can't guarantee the people can stay. If the feds come in at 90 we could establish 120 days, because of the tip credit and poor economy.

Rep. Driscoll said the wordage is "not to exceed 120 days". Rep. Harrington said I think 180 days is too long, I like 120 days. Senator Devlin said there should be some clarification.

Mary McCue asked what is the employer to have in mind at 120 days? Did they mean work days or calendar days?

Tom Gomez said calendar days are used. The number of days since the employee was hired. If we have a shorter period for the training wage, our law will be subject to the larger question. So our law would provide the employers \$366.500 and above.

Rep. Driscoll said you are going to have to write this very carefully. Senator Aklestad said this will have to be reworked. We would establish the 120 days.

Senator Lynch asked what happens if we pass cuts every session, but have to be rehired at the minimum wage each time?

Senator Devlin said if the employee has not been previously employed by the establishment. He said the big hangup is they don't hire that same person, there will be about to be least alone doing the job.

The Statement of Intent will be changed because of the rule making to qualify with the feds.

Third paragraph will be reworded to say 120 days training wage.

Rep. Harrington said I think the \$3.35 per hour should stay.

ADJOURNMENT

Adjournment At: 9:30 a.m.


SENATOR GARY C. AKLESTAD, Chairman

ROLL CALL

FREE CONFERENCE COMMITTEE

April 18, 1989

All members were present:

Senator Gary C. Aklestad, Chairman
Senator Jerry Devlin
Senator J.D. Lynch

Representative Dan Harrington, Chairman
Representative Jerry Driscoll
Representative Clyde Smith

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Mr. Speaker/Mr. President:

We, your Free Conference Committee on House Bill 28 met and considered:

House Bill 28 (third reading -- blue) and the Senate Labor and Employment Relations Committee's amendments to House Bill 28 (pink sheet) dated March 23, 1989.

We recommend that HOUSE BILL 28 (reference copy -- salmon) be amended as follows:

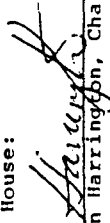
1. Title, lines 16 and 17.
Strike: "AND" on line 16
Following: "MCA" on line 17
Insert: "; AND PROVIDING A DELAYED EFFECTIVE DATE"
2. Page 1, line 19.
Following: line 18
Insert: " STATEMENT OF INTENT"

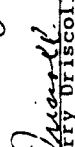
A statement of intent is required for this bill because [section 2] grants the commissioner of labor and industry authority to adopt rules to establish the minimum wage provided for in 39-3-404(1). It is the intent of the legislature that the commissioner, in adopting rules, shall establish a minimum wage that is the same minimum hourly wage rate as provided under the federal Fair Labor Standards Act, but not to exceed \$4 an hour."

3. Page 4, line 12.
Strike: "180"
Insert: "120 calendar"
4. Page 4.
Following: line 22
Insert: "NEW SECTION. Section 5. Effective date. [This act] is effective January 1, 1990."

And that this Free Conference Committee Report be adopted.

For the House:


Rep. Dan Harrington, Chairman


Rep. Jerry Driscoll


Rep. Clyde Smith

For the Senate:


Sen. Gary Aklestad, Chairman


Sen. Gerry Devlin


Sen. J.D. Lynch

ADOPT

REJECT

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HB 28