

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - 2nd SPECIAL SESSION

#### COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on May 22, 1990, at 2:30 p.m.

#### ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Eddy McClure, Attorney, Legislative Council  
Terri Dore, Secretary

Announcements/Discussion: Chairman Russell said that the Senate Labor committee is unable to attend. However, the House committee will hold the hearing on House Bill 1 as planned.

#### HEARING ON HOUSE BILL 1

##### Presentation and Opening Statement by Sponsor:

Representative Thoft, House District 63, stated that this bill will authorize the completion of certain construction projects at Montana State Prison using inmate labor. The projects include a low security housing facility for 96 inmates, prison ranch supervisor housing, an irrigation project, and the building of a dam. The projects are in varying stages of completion. The inmate housing project is desperately needed because the population is nearing the emergency level. If the project is switched to a private contractor, the cost would increase by \$1 million and the question of liability becomes extremely complicated.

##### Testifying Proponents and Who They Represent:

Curt Chisholm, Director, Department of Institutions  
Rep. Bernie Swift, District 64  
Rep. Ed Grady, District 47

##### Proponent Testimony:

Curt Chisholm testified that there is presently a cap of 1100 prisoners but the population has swelled to 1122. The conditions at other correctional facilities are at or above

capacity also. The bill authorizing these projects with the use of inmate labor passed both houses of the Legislature overwhelmingly after leaving the Long Range Building Subcommittee with a favorable recommendation. This project, including the provision stating that inmate labor would be used, was authorized by HB 777 of the 1989 session. In December, 1989 a writ of mandamus was filed in Helena district court by 14 labor unions, 2 private contractors and 5 legislators asking that construction of the projects be stopped because of the use of inmate labor. The court did not award the mandamus action to the plaintiffs but did issue a declaratory judgment stating that the authority on which Mr. Chisholm was operating was flawed without citing specifics. An appeal was filed immediately following the ruling. In addition, the Montana Supreme Court was asked for a stay of execution because the department did not want to act or appear to be acting lawlessly. The Supreme Court rules denied the request saying that there was no court order to be stayed. Based on legal counsel's advice in the Department of Institutions, the Department of Administration, and the Attorney General's office, construction on the project continued.

Mr. Chisholm indicated that the passage of HB 777 was a clear mandate from the Legislature to complete the project. The entire project is about 35% complete and 80% of the appropriation has been spent. This bill does not set precedent nor does it give permanent authority to use inmate labor.

Rep. Swift stood in support of HB 1. The intent of the appropriation was clear when HB 777 passed in the last legislative session. In addition, Montana's capacity to house inmates is at a crisis stage. The inmates are working, obtaining training which benefits Montana as well as the inmate. The financial savings could be as much as \$3 million but could increase significantly if the project is forced to switch to a private contractor. The bill is timely and appropriate and asked the committee's favorable consideration.

Rep. Grady stated that he is a member of the Prison Branch Advisory Committee and the building is extremely needed. The inmates that are participating are volunteers. In addition, there are overseers and engineers on the job at all times. The inmates need to be kept busy and the project is needed to avoid an inmate housing crisis. He urged the committee to give favorable consideration.

Testifying Opponents and Who They Represent:

Jim Murry, Executive Director, Montana State AFL-CIO  
Robert VanDerVere, Helena, Concerned Citizens Lobby  
Ken Dunham, Secretary/Manager, Montana Contractors' Association  
Paddy Dennehy, Butte  
Rep. Red Menahan, District 67  
John Forkan, Montana State Building Trades  
Sen. J.D. Lynch, District 34  
Jack Ball, Central Trades & Labor Council  
Gene Fenderson, Montana District Council of Laborers and  
Local 254  
Terry Minow, Montana Federation of Teachers, Montana Federation  
of State Employees  
Bruce Morris, Western Montana District Council of Laborers  
Rep. Dave Brown, District 72  
Bob Murphy, International Brotherhood of Electrical Workers  
George Howard, AFSME

Opponent Testimony:

Jim Murry spoke in opposition to HB 1 (Exhibit 1).

Robert VanDerVere stood in opposition stating that the use of inmate labor decreases the number of private sector jobs. Many workers are being forced to apply for welfare to support their families.

Ken Dunham expressed opposition to this bill (Exhibit 2).

Paddy Dennehy stated that when legislation is being considered two issues should be addressed: those that will be helped by the bill and those that will be hurt. Convict labor helps the convict and those that promote cheap labor. However, it has already hurt the construction industry. Many have lost their jobs and are being forced to look for work outside of Montana. It has hurt the private contractors who rely on government contracts. It has hurt Montana by the elimination of jobs and the decrease in tax base. Retail businessmen are hurt because there are less dollars being spent. They still must comply with labor laws while the State ignores them. The State ignored the law and the judge's ruling and is now attempting to change the law after it has been broken. If this bill passes, the criminal is victimizing society twice: first, by committing the crime, and second, by taking a law abiding citizen's job.

Rep. Menahan stated that the public is being deceived on this project because it is being touted as a training program when, in fact, the inmates will not be acquiring any useful skills. If the state wants a training program it should develop a full-fledged program similar to the Job Corp where inmates are trained for specific skills.

John Forkan testified that his organization initiated the suit questioning the constitutionality of HB 777. The workers realize that the prison is overcrowded and Montana's financial constraints, but seasonal jobs are being lost to the inmates. The precedent of using inmate labor will easily spread to other areas. A double standard is being used because cattle and products produced at the prison are sold in a manner to prevent competing with free enterprise in Montana. He urged the committee to consider the consequences when allowing inmates to perform work that will take jobs away from workers in the private sector.

Sen. Lynch spoke in opposition to HB 1 stating that he was opposed to this provision of HB 777 in the last legislative session and is a party to the suit. The provision is a detriment to the economy of southwest Montana and sets a far reaching precedent. He implored the committee to not set the progress of the state back by 50 years. The young adults of Montana should not have to go to prison to get a job.

Jack Ball stated that his organization opposes the Stephens' administration proposal to replace Montana construction workers with convict labor. The job market in Montana is poor and the program will only put more Montanans out of work. Montana contractors employ well trained Montana workers and have a history of doing quality work. He urged the committee's opposition to this bill.

Gene Fenderson testified that the question before this committee and the state today is what to do with citizens that have to be incarcerated. The question is as old as civilized man. All civilized nations of the world have learned to use free men in free business rather than convict labor. No matter how the pie is cut, the use of convict labor is morally wrong. He urged the committee to defeat this bill.

Terry Minow, MFT, rose in strong opposition to this bill and urged the committee to give it a Do Not Pass recommendation.

Bruce Morris stated that his organization supports efforts to rehabilitate prisoners and train them for productive work. However, public policy that puts honest, taxpaying Montanans out of work goes too far. It was unconstitutional to insert language into HB 777 that allowed the use of inmate labor. Now that objections have been raised, it is being attempted to create a new law which will retroactively make the language legal. Where will the line be drawn in the future? The furniture being produced at the prison is being sold on the open market in direct competition with Montana business. Released convicts will enter a marketplace where they can't compete because the prison program eliminated private sector jobs.

Rep. Dave Brown is one of the plaintiffs in the lawsuit and testified in strong opposition to SB 1. HB 777 was a major appropriation bill with many programs contained in it. He was in favor of the bill but did not support this provision. With an administration that supports privatization and economic development in Montana, this bill is clearly anti-Montana business. As Chairman of the House Judiciary Committee, a legislator and a Montana citizen, the flouting of the law by this administration over this issue is deplorable. He urged the committee to oppose this bill.

Bob Murphy stood in opposition to SB 1. Presently, there are 43 young people applying for electrician apprenticeships but there are not enough positions to accept all of them. The prison will release workers without total training to perform substandard work that should be done by fully trained electricians.

George Howard rose in strong opposition to SB 1.

Questions From Committee Members:

Rep. Driscoll remarked that there have not been any representatives of the Governor's office at any hearings this session.

Rep. Driscoll commented that page 2, lines 19-21 of SB 1 states that the department now has the authority to sell livestock and agricultural products on the open market. Mr. Chisholm stated that the department is presently doing that now. Rep. Driscoll said that it is his understanding that livestock is sold through sealed bids with the understanding that they be taken out of state which means that it is not a true open market. Mr. Chisholm replied that they have the authority to sell the cattle in Montana but, as a matter of longstanding department policy, they try to avoid competing with Montana cattle owners.

Rep. Driscoll remarked that there were three bills concerning privatization that failed in the last legislative session. It now appears that the administration has changed its policy. He asked Mr. Chisholm if the administration was for or against privatization. Mr. Chisholm replied that one of the Governor's campaign issues supported the concept and he has encouraged the departments to support it wherever it makes sense. He did not feel that SB 1 is anti-privatization. They are simply trying to fix a flaw that was unanimously approved by both the House and the Senate during the regular session. The cell space is desperately needed and they were being constructed with legislative approval. The project was developed during the Schwinden administration, inherited by the Stephens administration, and adopted by the Legislature. Rep. Driscoll disagreed that the vote on the bill was unanimous.

HOUSE COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

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- Rep. Pavlovich asked Mr. Chisholm what type of facility was being built. Mr. Chisholm responded that the facility is a low security building in the low security compound. It does not have sophisticated electronic equipment, gates, etc. It is intended to house low security inmates in single cells.
- Rep. Pavlovich asked if there has been any problem with the inmates returning to their quarters with tools. Mr. Chisholm replied that all inmates are searched when re-entering the compound to insure that nothing of a contraband nature enters the compound. This procedure is followed with all projects where inmates use tools.
- Rep. Pavlovich asked if any inmates had been fatally injured on this project. Mr. Chisholm was unaware of any deaths at the prison attributable to this project.
- Rep. Thomas asked Tom O'Connell, Department of Administration Architectural and Engineering Division, to explain the quality of construction on this project. Mr. O'Connell stated that the architect visits the site about every two weeks and reports to the department on his visits. The reports have indicated that the construction is every bit as good as projects through private contractors.
- Rep. Thomas asked what process would be used to switch the project to a private contractor and the difference in the cost. Mr. O'Connell reviewed a chart (Exhibit 3) that outlines the construction dates and distributed a financial update on project costs (Exhibit 4). If the construction continues with inmate labor, the project will be ready for occupancy about December, 1990. If the construction is switched to private contractors the completion date would be about May, 1991 with good weather.
- Rep. Driscoll asked why it would take from June to October to prepare the bid. Mr. O'Connell replied that it would take 60 days to prepare the specifications and by law, 30 days notice is required for accepting bids.
- Rep. Rice asked the number of inmates involved, how they were selected for the crew, and an assessment of their performance and their morale. Mr. Chisholm replied that inmate crews have been used for a number of projects for many years. Inmates are selected on their skills and on the basis of wanting to participate in normal work activity. Dan Russell added that thirteen inmates are permanently assigned to the project. The work force has been as high as twenty inmates. They work seven hour days, five days a week, and their morale appears to be very high. The inmates apply for the openings, selected for interviews, and then possibly assigned to the project.
- Rep. O'Keefe asked Mr. O'Connell if there was enough money appropriated for this project even if it is completed by

inmate labor. He also asked how cost overruns are handled on this project. Mr. O'Connell responded that there is enough money to complete this project with inmate labor because the materials required have already been purchased. There is no contract so change orders are not necessary. A budget has been set and is being closely monitored.

Rep. O'Keefe asked if the project superintendent makes decisions on changes required from the plans. Mr. O'Connell replied that the procedure being used requires that the project superintendent contact the architect for authorization for changes. Continual contact is maintained between the department, the architect and the project superintendent.

Rep. O'Keefe asked if there was a written record of all changes made to the plans. Mr. O'Connell responded that whenever the plans or specifications are changed, it is done with the concurrence of the project architect. When the project is completed, the state will receive as-built drawings from the architect.

Rep. Cocchiarella noted the absence of the Governor. She asked if a representative could explain to the private business community with a handy hand-out why the declining open market is being further diminished with projects such as this. Mr. Chisholm said there is no such hand-out. However, this project was authorized by the Legislature and it needs to be completed. The public debate on the use of inmate labor should have taken place during the regular session before the bill passed. Chairman Russell stated that Mr. Chisholm was speaking beyond the scope of the question.

Rep. Simpkins asked Mr. Chisholm if the project will be completed because of the lack of funds if this bill does not pass. Mr. Chisholm said that it could not. Rep. Simpkins added that if this bill is killed, then the responsible thing to do is appropriate \$1 million to authorize the completion of the project. Mr. Chisholm added that the department is now operating on the presumption that they can continue to build until the Supreme Court rules.

Rep. Simpkins asked Mr. Dunham what problems contractors would encounter in bidding on a partially completed project. Mr. Dunham replied that there would be problems but they are not insurmountable. Certain considerations would have to be built into the specifications to accommodate materials already purchased.

Closing by Sponsor: Sen. Thoft stated that this project was contained in the Schwinden budget. Committee members are referring to the wrong Governor. Only Jerry Driscoll expressed opposition to the Long Range Planning Subcommittee. The completion of the project is not in jeopardy and the state would have to spend at least another \$1

million to complete it with private contractors. Thirteen men at the prison do not jeopardize the union work force in Montana and the agricultural community is not upset with the feeder cattle program. All complaints should be put aside and do what the constituents of Montana want done and that is to finish the project.

DISPOSITION OF HOUSE BILL 1

Motion: Rep. Smith moved HB 1 DO PASS.

Discussion: None.

Amendments, Discussion, and Votes: Rep. O'Keefe asked the committee to consider amendments (Exhibit 5) to the bill. The Legislature inadvertently authorized the use of prison labor on a minimum security housing unit. These amendments attempt to limit that authorization to this project only. It prevents the use of prison labor on any other projects from prison labor until the regular legislative session. It allows the project to be completed on the schedule that the Department of Institutions has presented but at the same time prohibits inmate labor unless specifically authorized by the Legislature.

Rep. O'Keefe moved his amendments DO PASS.

Rep. Thomas asked if the intent was to make it applicable to this project only and then to terminate the law. Rep. O'Keefe replied that it is applicable only to the prison construction project which is currently authorized in sec. 6. It does not change the intent of the bill but authorizes the use only for the project authorized in HB 777. The intent is also to prohibit inmate labor on any other project.

Rep. Thomas asked if there was any plans for further construction. Rep. O'Keefe knew of no other plans.

Rep. Simpkins stated that the bill says that inmate labor can be used for projects that total less than \$25,000 under a different provision of present law. Rep. O'Keefe agreed.

Rep. Rice asked if the amendment would eliminate the other projects in the original bill - the ranch housing units, irrigation systems and the dams. Rep. O'Keefe responded affirmatively. Mr. Chisholm added that nothing has been done with the dam project. However, the prison ranch housing project is close to completion and the irrigation project is completed.

Rep. Glaser asked Mr. O'Connell what the effect on the projects budget would be if the state had to hire a private contractor to complete the ranch housing project. Mr.



O'Connell replied that it is his understanding that the flooring, paint, and deck materials have been purchased and need to be installed on all three of the units. One of the units needs to be perfataped as well. The materials are on site awaiting installation. He did not know how much funding remained for completion of the project.

Rep. Glaser asked how many non-prison maintenance people are employed at the prison. Mr. Chisholm responded that he did not have the numbers with him but typically, those people act as supervisors in a prison environment.

Rep. Driscoll asked Mr. O'Connell how many square feet the prison ranch houses were and what work needs to be done before the project is totally complete. Mr. O'Connell responded that they are each 2200 square feet, carpet and vinyl needs to be installed in all three, decks built on all three and one needs to be perfataped. Estimated time to completion is the end of July.

Rep. Pavlovich asked Mr. Russell if the housing project could be completed for less than \$25,000. Mr. Russell responded affirmatively. Rep. Pavlovich then stated that there is no problem because of the \$25,000 provision in the law.

Rep. Whalen asked Mr. O'Connell to refer to Exhibit 3 and to explain the statement on the second page that states that the contractor will charge a reasonable premium for accepting responsibility for work that was begun by inmate labor. Mr. O'Connell replied that the estimate includes a contingency of 12% with 5% of that is the department's estimate of unknown work on the project. Rep. Whalen asked Mr. O'Connell who is liable if there are injuries in the housing units after the project is completed. Mr. O'Connell replied that the premium mentioned by Rep. Whalen is not a liability statement but the contractor's estimate of his costs on the project. The issue of future liability on a project is not addressed. In the past, whenever a project has been completed by anyone other than the original low bidder, it has been hard to determine who is responsible for problems that develop. Rep. Whalen asked if anyone has made any provision for liability if this project is completed by a private contractor. Mr. O'Connell stated that his office has talked with insurance and bond representatives and they are willing to provide bonds to contractors who may bid on it at very little additional cost. If there are injuries during construction the bond would cover the claim. After the state accepts the building the question of liability would probably be determined by the courts.

Rep. Whalen asked if it was safe to assume that the private contractor would assume liability under the bid bond. Mr. O'Connell replied that it would not because the bid bond only covers the construction period.

Rep. Glaser pointed out that Rep. Whalen's question is moot if the amendment passes.

Roll call vote was taken. The motion **CARRIED** 12 to 4.

Rep. Driscoll offered three amendments to HB 1. The first (Exhibit 6) requires that the Department of Institutions market the cattle raised at the prison through a Montana livestock yard. It amends the prison industry training program and states that all livestock would be sold on the open market.

Rep. Glaser stated that he had no major concerns with the cattle amendment.

Rep. Thoft stated that the prison cattle are marketed through order buyers. There is possibly only one feed lot in Montana that can handle that many cattle which means that the state may not receive the best price. The ranch is now making money and it should be left alone.

Rep. Thomas encouraged resistance to the amendment. This amendment is possibly beyond the scope of the title of the bill. Rep. Driscoll responded that the amendment also amends the title of the bill and the Joint Rules Committee voted that the amendment is within the scope of the call.

Rep. Driscoll moved **DO PASS** on the amendment. Roll call vote was taken. The motion **FAILED** 7 to 9.

Rep. Driscoll introduced an amendment (Exhibit 7) that would require that all furniture produced at the prison must be marketed to anyone in government that wants to buy it. Presently, it must be sold only to the Department of Institutions or through private dealerships. All other branches of government must purchase it through a dealer.

Rep. Driscoll moved **DO PASS** on the amendment. Roll call vote was taken. The motion **FAILED** on a tie vote.

Rep. Driscoll decided against introducing the third amendment (Exhibit 8).

Recommendation and Vote: Rep. Smith moved that HB 1 **DO PASS AS AMENDED**.

Rep. Driscoll commented that the next time the state needs to save money, they will infringe on a different aspect of private enterprise.

Roll call vote was taken. The motion **CARRIED** 11 to 5.

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ADJOURNMENT

Adjournment At: 4:55 p.m.

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REP. ANGELA RUSSELL, Chairman

## DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 5/22/90

NAME	PRESENT	ABSENT	EXCUSED
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REP. COCCHIARELLA

REP. COMPTON ✓

REP. DRISCOLL ✓

REP. GLASER ✓

REP. KILPATRICK ✓

REP. LEE

REP. O'KEEFE ✓

REP. PAVLOVICH

REP. RICE ✓

REP. SIMPKINS

REP. SMITH ✓

REP. SQUIRES

REP. THOMAS

REP. WHALEN

REP. McCORMICK, VICE-CHAIR ✓

REP. RUSSELL, CHAIR ✓

*Labor  
Security  
Jeri above*

STANDING COMMITTEE REPORT

May 22, 1990

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that HB0001  
(first reading copy -- white) do pass as amended .

Signed: Angela Russell  
Angela Russell, Chairman

And, that such amendments read:

1. Title, lines 5 through 7.

Following: "CONSTRUCTION" on line 5

Strike: remainder of line 5 through "PROJECTS" on line 7

Insert: "OF A LOW SECURITY HOUSING UNIT AT MONTANA STATE PRISON  
AS AUTHORIZED IN SECTION 6, HOUSE BILL NO. 777, LAWS OF 1989"

Following: "MCA," on line 7

Insert: "AND SECTION 22, HOUSE BILL NO. 777, LAWS OF 1989"

2. Page 3, line 25.

Strike: "projects"

Insert: "the project"

3. Page 4, line 3.

Strike: "designated construction projects"

Insert: "prison construction"

4. Page 4, lines 7 through 12.

Following: "1989" on line 7

Strike: remainder of line 7 through "1989" on line 12.

5. Page 4, line 14.

Strike: "projects"

Insert: "project"

*HB0001*

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6. Page 4.

Following: line 17

Insert: "Section 3. Section 22, House Bill No. 777, Laws of 1989, is amended to read:

"Section 22. Authorizing inmate labor for ~~construction of prison projects~~ prison construction. ~~For the purposes of constructing a 96 man housing unit authorized in [section 6]; the ranch housing units and the irrigation system at Montana state prison authorized in [section 7]; and the inspection, study, and renovation of dams at Montana state prison authorized in [section 10(2)];~~ the department of institutions may use inmate labor to construct the projects for purposes of constructing the low security housing unit authorized in [section 6] and is exempt, for the purposes of completing these projects such project, from the provisions of 53-1-301(1)(g). The department of administration may exempt these projects the project authorized in [section 6] from any provisions of Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements."

Renumber: subsequent sections



EXHIBIT 1  
DATE 5/22/90 p.m.  
HB 1

JAMES W. MURRY  
EXECUTIVE SECRETARY

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

(406) 442-1708

**STATEMENT OF JAMES W. MURRY,  
EXECUTIVE SECRETARY, MONTANA STATE AFL-CIO**

**BEFORE A JOINT SESSION OF THE  
HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE  
AND THE  
SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE**

**SPECIAL SESSION -- MONTANA LEGISLATURE  
MAY 22, 1990**

Mr. Chairman, members of the committee, I am Jim Murry, Executive Secretary of the Montana State AFL-CIO, and I'm here representing workers across the state who are opposed to the use of inmate labor.

And, in what perhaps might be a bit unusual, I want to speak up for businesses who stand to lose on this issue. The interests of business and labor coincide in this case because both businesses and their employees suffer if public building contracts are not let out to bid.

Inmates are in prison to be punished for their crimes and to be rehabilitated. We support and participate in efforts to retrain inmates so that they can fit in to society and function in today's workplace upon their release. But when inmate training is used to take contracts away from local businesses and jobs away from local workers, then **workers and businesses** are the ones being punished, not the prisoners.

Imagine this scenario if you will: Inmates are used to build public structures and thus get some on-the-job training, even if it's behind bars. Then, their parole date arrives and they're turned out into the world to find a job and rebuild their lives. Imagine the irony when the ex-con discovers that he can't use what little skill training he received in prison because building contracts are only going to inmate labor gangs -- not former inmates and other private sector workers.

He might literally have to go back to prison to get a job!

That scenario goes beyond the specifics of this question, but it's the logical extension of the precedent you're being asked to set. And we think it's a bad precedent.

The use of inmate labor virtually eliminates the economic benefits of public construction projects, except for material purchases. Whether inmates are going to be substituted for public employees or private sector employees, the bottom line is that virtually no money income is going to be generated from the work done by inmates.

As you know, the wages paid to workers roll over in the economy many times, providing economic benefits that ripple out to a wide variety of businesses and individuals not only in the local area, but across the state. That positive economic ripple absolutely won't happen if public building work is done by inmate labor.

If you decide to authorize the use of inmate labor, look for a minute at the reality of what you have to do to get that done -- look at what the Administration is asking you to do:

-- The Administration is asking you to do something that ordinarily would break half-a-dozen sections of long-standing and well-reasoned Montana law.

-- You're being asked to authorize a no-bid, no-competition, no-rules private contract for a construction project.

-- They want you to approve the use of an untrained, unskilled and unreliable workforce to construct a public building.

-- They want to pay virtually no wages and skip out altogether on paying for workers' compensation and unemployment insurance coverage.

-- They want to ignore the very basic minimum guarantee of competence and responsibility that comes from using bonded contracting companies and skilled craftsmen.

You know as well as I do that if any employer in Montana attempted to operate under those conditions, he likely would end up IN the prison, not building it. And that's as it should be.

Montana's business, contracting and labor laws are for the benefit and protection of all, including business, labor and government. Montana law is clear and unequivocal on the state's dedication to using solid, professional contractors who pay fair wages and compete among their peers for state work.

Allowing prison inmates to engage in full-scale construction projects will effectively gut those sections of Montana law, at least on a project-by-project basis. If that's what this Administration wants, if that's what you as Legislators want, then let's have a debate over that issue. Let's not back-door it by simply exempting certain work from those long-standing laws.

We believe the use of inmate labor, if allowed in this case, will signal a return to the chain-gang mentality that was so prevalent in some states in years past -- a mentality that has been rejected time and again in our supposedly more "civilized" age.

Montana's Constitution for years prohibited inmate labor in order to protect against just such a situation as this. When the Constitution was rewritten in 1972, that provision was dropped. It was widely believed that Montana had progressed to the point where such restrictions were made moot by the collective societal bias against chain gangs and slave labor.

We don't believe anything has happened to change Montanans' position on the use of chain gangs. We believe they still abhor the idea.

The Montana State AFL-CIO, backed up by trade unionists all over the state, is flat-out opposed to giving jobs to convicted felons at the expense of law-abiding, tax-paying businesses and workers. We hope you are, too, and will vote against this bad legislation.





**Montana Contractors'  
Association, Inc.**

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Helena, Montana 59604  
Telephone (406) 442-4162 FAX (406) 449-3199

EXHIBIT 2  
DATE 5/22/90 p.m.  
HB 1

KEN DUNHAM, Secretary · Manager

Statement of Ken Dunham  
Secretary/Manager  
Montana Contractors' Association

HOUSE BILL 1/ SENATE BILL 2 - INMATE LABOR

For the record, I am Ken Dunham, speaking for the Montana Contractors' Association. The Montana Contractors' Association is composed of approximately 60 construction firms, 35 concrete and cement firms, and 180 supplier firms throughout Montana. The Montana Contractors' Association is opposed to House Bill 1 and Senate Bill 2 concerning inmate labor.

The issue of what to do with inmates at Montana State Prison is a complex one, and should be separated from any discussion of the need for more prison facilities.

The issue of what to do with prisoners is a social issue as much as anything, but as it affects the ability of working Montanans to earn a living, it becomes an economic issue as well.

I would expect that requiring prisoners at Deer Lodge to do something to pay part of their upkeep is a popular issue. Most everyone will agree that convicts should be doing something constructive during their time in jail.

But what is being missed in all this discussion is that by having prisoners perform such construction work, jobs are being taken away from productive and tax-paying Montanans. In a state

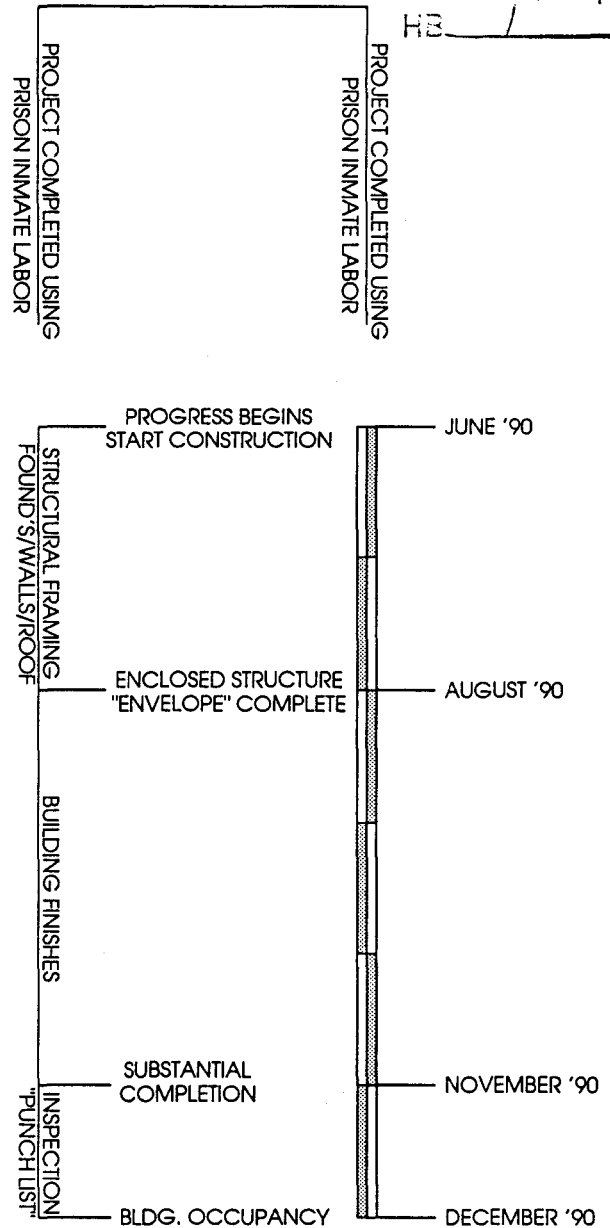
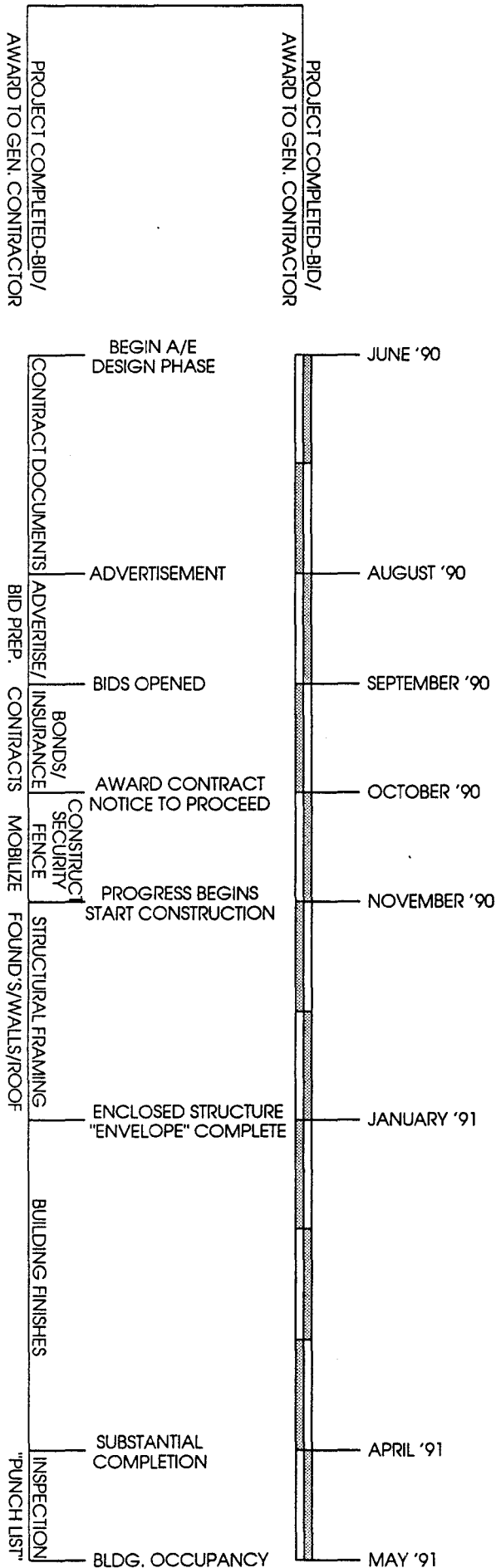
like Montana where jobs are scarce, not many businesses can afford to lose jobs to state agencies performing the same work.

The equally large issue in all this is what kind of job can you expect from prison labor? Even under the best of supervision and the best of working conditions, we cannot really expect a quality job from convict labor on such a project.

Security problems and quality of construction work performed are just two issues in this. How do you ensure a day's work from the prisoners? Work of this type is going to wind up costing the State of Montana much more than it would have had the job been bid out to private contractors in the first place and the state winds up being penny-wise and dollar-foolish.

The Montana Contractors' Association asks that you kill this bill, get the work back in the private sector where it rightfully belongs, and find other ways of occupying convict time.

###



FINANCIAL UPDATE  
LOW SECURITY HOUSING UNIT  
MONTANA STATE PRISON

1. CONSTRUCTION PROGRESS UPDATE 5-16-90

Precast walls and the second floor precast deck have been erected with the exception of two panels on the east side, which have been left out for equipment access. Water, sewer, gas, and electrical service is stubbed into the building, and work is progressing on the electrical rough-in. The structural steel is on site, and will be set in place beginning next week.

Work completed to date can be summarized as follows:

Site work.....	80%
Foundations.....	100%
Floor slab.....	5%
Precast walls (inc. erection).....	95%
Second floor deck and topping.....	50%
Miscellaneous metals.....	55%
Mechanical.....	10%
Electrical.....	15%

2. FUNDS EXPENDED AND ENCUMBERED TO DATE

\$247,961 has been expended as of 3-16-90. An additional \$482,757 has been encumbered on the project.

3. PROJECT BALANCE MAY 16, 1990

Appropriation.....	\$1,184,600
Funds Expended.....	(247,961)
Funds Encumbered.....	<u>(482,757)</u>
Remaining Balance.....	\$453,882

COST ESTIMATE  
BID - LOW SECURITY HOUSING UNIT TO PRIVATE CONTRACTOR  
MAY 18, 1990

Site Work	\$ 106,630
Concrete	45,772
Masonry	5,190
Steel	89,200
Carpentry	13,840
Thermal and Moisture Protection	101,240
Doors and Windows	49,670
Finishes	217,728
Accessories	7,060
Equipment	10,060
Fire Sprinkler	31,300
Mechanical and Plumbing	102,438
Electrical	<u>72,950</u>
	853,078
Inflation (Means 89 - End of 90) 3% and 4%	60,739
Contractor Security Measures 10%	91,381
Winter Construction 9%	80,416
Contingency 12%	130,274
5% bid surplus	
5% accept prison labor	
2% estimate error	
Contractor O.H. & P 15%	182,384
Bonds and Insurance 3%	41,948
State Tax 1%	<u>14,402</u>
CONSTRUCTION COST	1,454,622
Additional Architect Services	30,000
Prison Guard During Construction Hours	16,709
TOTAL PROJECT COST	1,501,331
FUNDS AVAILABLE (5-10-90)	<u>(465,354)</u>
ADDITIONAL FUNDS REQUIRED	1,035,977
ADDITIONAL FUNDS REQUESTED	1,036,000

ASSUMPTIONS:

1. The contractor will accept all materials already purchased or fabricated by the prison, for the job, and that he will not charge an additional mark-up, as is typical for contractor supplied materials.
2. The contractor will charge a reasonable premium for accepting responsibility for work that was begun by inmate labor, and that he had no control over.

3. The project will be bid as one general contract, and that a reasonable number of reputable contractors will submit competitive bids on the project.
4. Contractors will be able to get performance bonds on the project at no additional cost.
5. Term material suppliers, such as concrete, will honor their prices for quotes in spite of the delays in the project.
6. The scope of work will not change significantly except for the addition of a gate through the perimeter security fence, and a 12 foot chain link access corridor and fence around the construction site.

The cost estimate is arrived at by projecting the cost of labor for the work yet to be completed and plus material costs for materials not yet ordered. The cost includes additional design fees, and security requirements for working inside the prison compound. The legislature has appropriated \$1,184,600 for the project; as of 5-10-1990 the account balance is \$465,354. \$1,036,000 additional funds will need to be appropriated to supplement the remaining project balance.

Amendments to House Bill No. 1  
First Reading Copy

Requested by Rep. Hal Harper

Prepared by Tom Gomez  
May 22, 1990

1. Title, lines 5 through 7.  
Following: "CONSTRUCTION" on line 5  
Strike: remainder of line 5 through "PROJECTS" on line 7  
Insert: "OF A 96-MAN, LOW SECURITY HOUSING UNIT AT MONTANA STATE PRISON AS AUTHORIZED IN SECTION 6, HOUSE BILL NO. 777, LAWS OF 1989"  
Following: "MCA," on line 7  
Insert: "AND SECTION 22, HOUSE BILL NO. 777, LAWS OF 1989"
2. Page 3, line 25.  
Strike: "projects"  
Insert: "the project"
3. Page 4, line 3.  
Strike: "designated construction projects"  
Insert: "prison construction"
4. Page 4, lines 7 through 12.  
Following: "1989" on line 7  
Strike: remainder of line 7 through "1989" on line 12.
5. Page 4, line 14.  
Strike: "projects"  
Insert: "project"
6. Page 4.  
Following: line 17  
Insert: "Section 3. Section 22, House Bill No. 777, Laws of 1989, is amended to read:  
"Section 22. Authorizing inmate labor for ~~construction of prison projects~~ prison construction. For the purposes of constructing a 96-man housing unit authorized in [section 6], the ranch housing units and the irrigation system at Montana state prison authorized in [section 7], and the inspection, study, and renovation of dams at Montana state prison authorized in [section 10(2)], the The department of institutions may use inmate labor to construct the projects for purposes of constructing the 96-man, low security housing unit authorized in [section 6] and is exempt, for the purposes of completing these projects such project, from the provisions of 53-1-301(1)(g). The department of administration may exempt these projects the project authorized in [section 6] from any provisions of Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements."  
Renumber: subsequent sections

Amendments to House Bill No. 1  
First Reading Copy

Requested by Rep. Driscoll

Prepared by Doug Sternberg, Council Staff  
May 14, 1990

1. Title, line 7.

Following: "PROJECTS;"

Insert: "REQUIRING THAT CATTLE PRODUCED AT THE MONTANA STATE  
PRISON RANCH BE MARKETING IN MONTANA;"

2. Title, line 7.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "53-1-301"

Insert: "AND 53-30-131"

3. Page 2, line 21.

Following: "market"

Strike: " ; "

Insert: ". However, cattle produced at the Montana state prison  
ranch must be marketed in Montana."

4. Page 4, line 18

Following: line 17

Insert: " Section 3. Section 53-30-131, MCA, is amended to read:

"53-30-131. Prison industries training program -- purpose  
and scope. (1) In addition to any institutional industry operated  
at the Montana state prison under Title 53, chapter 1, part 3,  
the department of institutions shall conduct a prison industries  
training program.

(2) The purpose of the prison industries training program  
is to:

(a) provide innovative and progressive inmate reformation  
and rehabilitation possibilities by exposing inmates to  
worthwhile training;

(b) prepare inmates for release by providing industries at  
the prison that utilize their skills, thus providing experience  
beyond mere training, inculcating inmates with good production  
and work habits, and providing them with a means to earn money  
that will be available to them upon release.

(3) The prison industries training program consists of  
vocational training, on-the-job training, and production  
experience. The department may contract with public and private  
vocational education entities to provide this training.

(4) The program may provide training and experience  
involving cultivation, production, repair, construction,  
refurbishment, service, and related processes involving personal  
property, including but not limited to such items as crops,  
livestock, furniture, office and electrical equipment, and motor  
vehicles. Such products and services, with the exception of  
livestock and agricultural products produced from the Montana



state prison ranch, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities. Cattle produced at the Montana state prison ranch must be marketed in Montana.  
Renumber: subsequent sections

5. Page 5, line 4.

Strike: "[Section 1]"

Insert: "[Subsection (5) of section 1], providing for  
construction of projects authorized in [section 2],"

Amendments to SB 2  
First Reading Copy

Requested by Representative Driscoll

Prepared by Eddye McClure  
May 21, 1990

1. Title, line 7.  
Following: "PROJECTS;"  
Insert: "ALLOWING THE SALE OF PRISON-MADE FURNITURE DIRECTLY TO  
AN INDIVIDUAL BUYER;"  
Strike: "SECTION"  
Insert: "SECTIONS"  
Following: "53-1-301"  
Insert: "AND 53-30-131"
2. Page 3, lines 17 through 19.  
Following: "sold" on line 17  
Strike: "only"  
Following: "wholesale" on line 18  
Insert: ","  
Strike: first "or"  
Following: "outlets"  
Insert: ","  
Strike: "or through" on lines 18 and 19  
Following: "markets" on line 19  
Insert: ", or directly to an individual buyer"
3. Page 4, line 18.  
Following: line 17  
Insert: "Section 3. Section 53-30-131, MCA, is amended to read:  
"53-30-131. Prison industries training program -- purpose  
and scope. (1) In addition to any institutional industry operated  
at the Montana state prison under Title 53, chapter 1, part 3,  
the department of institutions shall conduct a prison industries  
training program.  
(2) The purpose of the prison industries training program  
is to:  
(a) provide innovative and progressive inmate reformation  
and rehabilitation possibilities by exposing inmates to  
worthwhile training;  
(b) prepare inmates for release by providing industries at  
the prison that utilize their skills, thus providing experience  
beyond mere training, inculcating inmates with good production  
and work habits, and providing them with a means to earn money  
that will be available to them upon release.  
(3) The prison industries training program consists of  
vocational training, on-the-job training, and production  
experience. The department may contract with public and private  
vocational education entities to provide this training.  
(4) The program may provide training and experience

involving cultivation, production, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, livestock, furniture, office and electrical equipment, and motor vehicles. Such products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch and prison-made furniture, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities.""

Renumber: subsequent sections

4. Page 5, line 4.

Following: "[Section 1"

Insert: "(5)"

Following: "]"

Insert: ", providing for construction of projects authorized in [section 2] by inmates at the Montana state prison,"

Amendments to House Bill No. 1  
First Reading Copy

Requested by Rep. Jerry Driscoll

Prepared by Mary McCue  
May 18, 1990

1. Title, line 7.

Following: "PROJECTS;"

Insert: "REQUIRING THAT MILK PRODUCED AND SOLD FROM THE MONTANA  
STATE PRISON RANCH BE MARKETING IN MONTANA; INCLUDING THE  
STATE OF MONTANA IN THE DEFINITION OF "PERSON" IN THE LAWS  
REGULATING MANUFACTURED DAIRY PRODUCTS AND MILK PRICES;"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "53-1-301,"

Insert: "53-30-131, 81-22-101, AND 81-23-101,"

2. Page 2, line 21.

Following: "market"

Insert: ", except that milk produced and sold from the Montana  
state prison ranch must be marketed in Montana"

3. Page 4, following line 17.

Insert: "Section 3. Section 53-30-131, MCA, is amended to read:

"53-30-131. Prison industries training program -- purpose  
and scope. (1) In addition to any institutional industry operated  
at the Montana state prison under Title 53, chapter 1, part 3,  
the department of institutions shall conduct a prison industries  
training program.

(2) The purpose of the prison industries training program  
is to:

(a) provide innovative and progressive inmate reformation  
and rehabilitation possibilities by exposing inmates to  
worthwhile training;

(b) prepare inmates for release by providing industries at  
the prison that utilize their skills, thus providing experience  
beyond mere training, inculcating inmates with good production  
and work habits, and providing them with a means to earn money  
that will be available to them upon release.

(3) The prison industries training program consists of  
vocational training, on-the-job training, and production  
experience. The department may contract with public and private  
vocational education entities to provide this training.

(4) The program may provide training and experience  
involving cultivation, production, repair, construction,  
refurbishment, service, and related processes involving personal  
property, including but not limited to such items as crops,  
livestock, furniture, office and electrical equipment, and motor  
vehicles. Such products and services, with the exception of  
livestock and agricultural products produced from the Montana

state prison ranch, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities. Milk produced and sold from the Montana state prison ranch must be marketed in Montana.

Section 4. Section 81-23-101, MCA, is amended to read:

"81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-1802.

(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(g) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(h) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

(i) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

(j) "Licensee" means a person who holds a license from the department.

(k) "Market" means an area of the state designated by the department as a natural marketing area.

(l) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority and also includes those secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(m) "Person" means a person, firm, corporation, ~~or~~ cooperative association, or the state of Montana.

(n) "Producer" means a person who produces milk for

consumption in this state, selling it to a distributor.

(o) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(p) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(q) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail or for consumption on the premises.

(r) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(s) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class which in its discretion it determines to be proper."

Section 5. Section 81-22-101, MCA, is amended to read:

"81-22-101. Definitions. For the purpose of this chapter, the following definitions are adopted:

(1) "Agent" means a person who is authorized by another person to act for him in dealing with a third person.

(2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) "Cheese factory" means a place where cheese, including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese, either cultured or directly acidified, is made for commercial purposes.

(5) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(6) "Code of Federal Regulations" refers especially but is not limited to Title 21 which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health, education, and welfare.

(7) "Cream" means the milk fat which rises to the surface when milk is allowed to stand or which is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(8) "Creamery" means a place where butter is made for commercial purposes.

(9) "Culture" means the harmless lactic acid fermenting bacteria which are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and other similar products.

(10) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(11) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

(12) "Direct acidification", "directly acidified", and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(13) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(14) "French ice cream", "French custard ice cream", "cooked ice cream", "ice custard", "parfaits", and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(15) "Frozen dessert plant" means a place where products named in subsections (27)(a)(iii) through (27)(a)(ix) of this section are made for commercial purposes.

(16) "Fruit ice cream" shall conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than 9% of milk fat.

(17) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(18) "Ice" or "ice sherbet" is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring or added stabilizer composed of wholesome edible material, and must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid. It may contain no milk solids.

(19) "Ice cream" is a frozen product made with pure, sweet

milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. No frozen milk or milk product may be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(20) An "ice cream factory" is a place where ice cream mix is frozen into ice cream for commercial purposes.

(21) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsection (27)(a)(iii) through (27)(a)(v) and (27)(a)(vii) through (27)(a)(xii) are made.

(22) An "ice cream mix factory" is a place where ice cream mix is made.

(23) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(24) "Manufactured dairy product" means an item enumerated in subsection (27) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, "manufactured dairy product" includes but is not limited to:

- (a) ice cream or its mix;
- (b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;
- (c) sherbets of all kinds or their mixes;
- (d) animal or vegetable fat frozen desserts or their mixes;
- (e) frozen confections or their mixes when made in a manufactured dairy products plant;
- (f) water ices or their mixes;
- (g) frozen dessert sandwiches, bars, cones, and similar novelties;
- (h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;
- (i) ice milk or its mix;
- (j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;
- (k) sour cream when cultured or directly acidified;
- (l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;
- (m) buttermilk, cultured or from churned butter or directly



acidified;

(n) butter;

(o) yogurt, low-fat yogurt or flavored yogurt, either cultured or directly acidified or frozen.

(25) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or which manufactures those products listed in subsection (27). If only products of semblance or imitation of dairy products are made, the plant is not considered as a manufactured dairy products plant.

(26) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis free by the United States department of agriculture or in the process of being accredited when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(27) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

(i) butter;

(ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese which are either cultured or directly acidified, and cheese dressings;

(iii) ice cream or its mix;

(iv) frozen dessert or its mix;

(v) sherbets of all kinds or their mixes;

(vi) frozen ice cream bars, sandwiches, cones, and similar novelties;

(vii) frozen desserts or products made in the semblance or imitation of frozen dessert;

(viii) frozen confections or their mixes;

(ix) water ices or their mixes;

(x) ice milk or its mix;

(xi) French ice cream, French custard, or their mixes;

(xii) frozen custard or its mix and frozen yogurt;

(xiii) yogurt, flavored yogurt, and low-fat yogurt;

(xiv) sour cream, either cultured or directly acidified;

(xv) cream cheese, either cultured or directly acidified;

(xvi) buttermilk, either cultured, from churned butter, or directly acidified;

(xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;

(xviii) dry or powdered milk; and

(xix) condensed milk products.

(b) The items specified in subsection (27)(a) of this section shall conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products shall be in accordance with the Montana Food, Drug, and Cosmetic Act.

(28) "Milk or cream station" means a place other than a

creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(29) "Milk sherbet" is the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than 4% by weight of solids.

(30) "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

(31) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

(32) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment which is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners shall be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process which has been recognized by the United States public health service to be equally effective and which is approved by the department.

(33) "Person" means an individual, firm, partnership, corporation, cooperative, ~~or~~ other business unit or trade device, or the state of Montana.

(34) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(35) "Raw milk" or "raw milk products" means milk or milk products which have not been treated by a process of pasteurization.

(36) "Renovated butter" or "processed butter" is the product made by melting and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than 80% of milk fat.

(37) "Safe temperature" means 45 degrees F or less, unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(38) "Skimmed milk cheese" is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.

(39) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(40) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients."

Renumber: subsequent sections

4. Page 5, line 4.

Strike: "[Section 1]"

Insert: "[Section 1(5)], providing for construction of projects  
authorized in [section 2],"

# ROLL CALL VOTE

## LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE	<u>5/22/90</u>	BILL NO. <u>HB 1</u>	NUMBER <u>1</u>
NAME		AYE	NAY
REP. COCCHIARELLA		✓	
REP. COMPTON		✓	
REP. DRISCOLL			✓
REP. GLASER		✓	
REP. KILPATRICK			✓
REP. LEE		✓	
REP. O'KEEFE		✓	
REP. PAVLOVICH		✓	
REP. RICE		✓	
REP. SIMPKINS		✓	
REP. SMITH		✓	
REP. SQUIRES			✓
REP. THOMAS		✓	
REP. WHALEN			✓
REP. MCCORMICK, VICE-CHAIR		✓	
REP. RUSSELL, CHAIR		✓	
TALLY		<u>12</u>	<u>4</u>

*Tim Dore*  
SECRETARY

CHAIRMAN

MOTION: O'Keefe amendments (Exhibit 5)

DP

# ROLL CALL VOTE

## LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE	5/22/90	BILL NO.	HB 1	NUMBER	2 Exhibit 6
NAME		AYE		NAY	
REP. COCCHIARELLA				✓	
REP. COMPTON				✓	
REP. DRISCOLL		✓			
REP. GLASER				✓	
REP. KILPATRICK				✓	
REP. LEE				✓	
REP. O'KEEFE		✓			
REP. PAVLOVICH		✓			
REP. RICE				✓	
REP. SIMPKINS				✓	
REP. SMITH				✓	
REP. SQUIRES		✓			
REP. THOMAS				✓	
REP. WHALEN		✓			
REP. McCORMICK, VICE-CHAIR		✓			
REP. RUSSELL, CHAIR		✓			
TALLY		7		9	

Tom Rose  
SECRETARY

CHAIRMAN

MOTION:

Driscoll - amendments on  
cattle (Exhibit 6)

motion fails

# ROLL CALL VOTE

## LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 5/22/90 BILL NO. HR 1 NUMBER 3 Exhibit 7

NAME	AYE	NAY
REP. COCCHIARELLA		✓
REP. COMPTON		✓
REP. DRISCOLL	✓	
REP. GLASER		✓
REP. KILPATRICK	✓	
REP. LEE		✓
REP. O'KEEFE	✓	
REP. PAVLOVICH	✓	
REP. RICE		✓
REP. SIMPKINS		✓
REP. SMITH		✓
REP. SQUIRES	✓	
REP. THOMAS		✓
REP. WHALEN	✓	
REP. McCORMICK, VICE-CHAIR	✓	
REP. RUSSELL, CHAIR	✓	

TALLY \_\_\_\_\_

Terrence  
SECRETARY

\_\_\_\_\_  
CHAIRMAN

MOTION: Driscoll - prison - made

motion fails on a tie vote.  
Exhibit 7

# ROLL CALL VOTE

## LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE	<u>5/22/90</u>	BILL NO.	<u>HB 1</u>	NUMBER	<u>4</u>
NAME		AYE		NAY	
REP. COCCHIARELLA		✓			
REP. COMPTON		✓			
REP. DRISCOLL				✓	
REP. GLASER		✓			
REP. KILPATRICK				✓	
REP. LEE		✓			
REP. O'KEEFE				✓	
REP. PAVLOVICH				✓	
REP. RICE		✓			
REP. SIMPKINS		✓			
REP. SMITH		✓			
REP. SQUIRES		✓			
REP. THOMAS		✓			
REP. WHALEN				✓	
REP. McCORMICK, VICE-CHAIR		✓			
REP. RUSSELL, CHAIR		✓			
TALLY		<u>11</u>		<u>5</u>	

Tami Dore  
SECRETARY

CHAIRMAN

MOTION:

DPA

Bill as a whole

motion  
11-5

## VISITORS' REGISTER

House Labor

COMMITTEE

BILL NO. HB 1DATE 5/22/90SPONSOR Phyllis

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>Robert K. Murphy</i>	<i>Butte</i>		<i>X</i>
<i>Taddy Deneuf</i>	<i>Butte</i>		<i>X</i>
G. BRUCE MORRIS	MISSOULA, MT		<i>X</i>
<i>Eugene Fenn</i>	<i>Helena</i>		<i>X</i>
Robert K. Murphy	<i>Helena</i>		<i>X</i>
Don N. James	BUTTE		<i>X</i>
Candace Champine	Helena		<i>X</i>
Bernie Swift	Hamilton - Leg Dist #64	<i>X</i>	
Ed Grady	Canyon Creek	<i>X</i>	
Dennis BUTER	MONTANA TAXPAYERS ASSOC	<i>✓</i>	
DAVE BROWN	State Rep. HD #72		<i>X</i>

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



