

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By CHAIR CAROLYN SQUIRES, on January 22, 1991, at 3:00 p.m.

#### **ROLL CALL**

##### **Members Present:**

Carolyn Squires, Chair (D)  
Tom Kilpatrick, Vice-Chairman (D)  
Gary Beck (D)  
Steve Benedict (R)  
Ed Dolezal (D)  
Jerry Driscoll (D)  
Russell Fagg (R)  
H.S. "Sonny" Hanson (R)  
David Hoffman (R)  
Royal Johnson (R)  
Thomas Lee (R)  
Mark O'Keefe (D)  
Bob Pavlovich (D)  
Jim Southworth (D)  
Fred Thomas (R)  
Dave Wanzenried (D)  
Tim Whalen (D)

**Members Excused:** Vicki Cocchiarella (D)

**Staff Present:** Eddye McClure, Legislative Council  
Jennifer Thompson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

#### **HEARING ON HB 112**

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

**REP. JERRY DRISCOLL, House District 92,** stated the same provision in HB 112 is contained in Department Bill LC 1231. To prevent duplication if that bill passes, he proposed HB 112 be tabled.

#### **EXECUTIVE ACTION ON HB 112**

**Motion/Vote:** REP. DRISCOLL MOVED HB 112 BE TABLED. Motion carried unanimously.

HEARING ON 140

Presentation and Opening Statement by Sponsor:

REP. BOB RANEY, House District 82, distributed EXHIBIT 1 & 2

Proponents' Testimony:

Stan Bradshaw, Trout Unlimited, stated an incident that happened in the past year suggested a void in the code of ethics. An employee of the Water Quality Bureau while investigating a violation of water quality, entered negotiations for a job with the company he was investigating. The employee finished his investigation and then went to work for the company. The Water Quality Bureau initiated enforcement action for the water quality violation. Their primary, if not sole witness, was working for the company against whom they were seeking action. This bill provides a notification provision so a state agency has a chance to make an adjustment.

C.B. Pearson, Executive Director of Common Cause in Montana, stated support for HB 140 with the "in writing" amendment.  
EXHIBIT 3

Opponents' Testimony: none

Questions From Committee Members:

REP. SONNY HANSON said to REP. RANEY, there are several cases where at an association meeting a person will say "you're tired of working for the Highway Department; why don't you come and work for me." Then it evolves and there's no specific meeting. The bill reads as if it's addressing a specific meeting. There could be many casual meetings or communications that would be in violation of this that would restrict normal flow of conversations. REP. RANEY said that if ethics are being practiced in government, that person would then turn to the individual making the offer and say that he would like to talk about it and is going to notify his supervisor. REP. HANSON said it reads "without first notifying." In other words, it's an offhanded conversation. The minute that an outside employer makes the discussion, he is in violation. REP. RANEY said yes. The language says that the solicitor accept employment or engage in communications or meetings to consider employment. A casual conversation saying I would like you to work for me would not be the same thing.

REP. STEVE BENEDICT said to REP. RANEY an employee might visit about a potential job and then decide against it, he certainly wouldn't want to jeopardize his position with the supervisor. REP. RANEY said if a person enters into a discussion then the role is reversed. Instead of being obligated to the employer, the person would be obligated to someone who is not his employer. If a person wants to work in the regulatory agencies in Montana

then there is now a new restriction. The bill does not prevent a person from seeking another job; it says if a person is going to, he must first notify his supervisor.

REP. HANSON stated to REP. RANEY a case where an individual requested a job interview, and his boss found out about it and immediately terminated him. A situation is then created where the employee would not be considered for further advancement. REP. RANEY said he didn't think that would take place in Montana government, especially when literally everybody is looking for another job because of the pay. This bill only has to do with a regulator seeking a job with someone he regulates. That's a small amount of people in the government. For example, if an employee works in Fish and Game and he is a biologist working fish projects and somebody wants him to work in the coal fields, that is not somebody he's regulating. That employee does not have to notify his supervisor.

REP. DOLEZAL asked REP. RANEY if the power in the bill would be diminished if the portion "or engage in communications or meetings" on lines 8 and 9 of Page 2 were deleted. REP. RANEY said it would. That is how a job is obtained. It would leave a loophole that the bill is trying to close.

**Closing by Sponsor:**

REP. RANEY closed HB 140.

**HEARING ON 68**

**Presentation and Opening Statement by Sponsor:**

REP. TIM WHALEN, House District 93, stated this bill returns Montana to the pre-1985 law that was passed when the unemployment insurance trust fund was at a crisis point. Part of the compromise to remedy the problem of not enough money in the trust fund and recognizing that relief had to be given to employers and their rates was the elimination of benefits to workers that were involved in a labor dispute with their employer where there was not a stoppage of work. In Montana the trust fund has been returned since 1980 to the highest level ever. It is time to remove the restriction that was placed on eligibility for unemployment benefits in that 1985 compromise. The fiscal note shows the impact estimated at \$40,000 per year and will not significantly impact the \$90 million trust-fund balance. It is a fairness bill. If there is a labor dispute with an employer and the employees are required to go on strike to make their point, under the current law they lose their entire livelihood. Even though there is not a stoppage of work and the employer is continuing to operate and derive economic benefit, there is very little incentive for employers to bargain with the employees out on strike. Generally the employer has substantial resources and the employees have limited resources. Only in limited cases, where there is not a stoppage of work and the employer is

deriving benefits from the continued operation of his business would those unemployed workers be allowed to obtain unemployment benefits. If the strike shuts down the employer, these employees don't get any unemployment benefits.

**Proponents' Testimony:**

**Don Judge, Executive Secretary, AFL-CIO,** stated support of HB 68. **EXHIBIT 4** In addition, he referred to REP. WHALEN's statement about the 1985 legislation that was not part of the compromise package to help resolve the funds deficit.

**Gene Fenderson, Montana State Building and Construction Trades Unions,** stated that since the Reagan/Bush administration, there have been many changes in the labor relations of this country. The rules were to keep an even playing field in labor relations so neither side became too strong or too weak, and there would be meaningful negotiations. With those administrations pushing for strikers to be permanently replaced, the economic bargaining field was thrown off balance. An employer can permanently replace an employee and still does not have to pay him unemployment. That is unfair.

**Darrell Holzer, President, Yellowstone Central Labor Council,** said to put employees and employers back on common ground for the good of the worker and Montana.

**Dan Edwards, International Representative for Oil, Chemical, and Atomic Workers' International Union,** stated there is no union that has been impacted more by the unfair change that was made by this legislation in 1985 than the OCAW. If a refinery shuts down and the employer is impacted to the same degree as the employees, that is the economic warfare that happens in the collective bargaining process. The employer, particularly in the oil industry, has a distinct advantage that should not be.

**Bob Heiser, United Food and Commercial Workers' Union,** stated prior to the current law the UFCW had two strikes in Montana in 19 years. This bill isn't going to enhance strikes; it will put workers back on a playing field along with the employer so they will still be able to meet their financial obligations.

**Curt Brennon, Montana District Council Laborers,** stated support of HB 68.

**Phil Campbell, Montana Education Association,** stated this bill will balance the collective bargaining process. It is unfair to say this bill will pay people to go on strike. They only receive benefits if the business continues to stay open.

**Tom Casey, John Osborn, John Bomar, Mike King, Jerome Verbanac, Roger Knapstad, James Verbanac,** all members of United Steel Workers of America, AFL-CIO Local 72, stated their support of HB

68.

**Opponents' Testimony:**

**Louis Day, Refinery Manager, Cenex,** stated opposition to HB 68.  
**Exhibit 5**

**Chad Smith, Unemployment Compensation Advisors,** stated unemployment benefits should be paid to individuals who are unemployed through no fault of their own. For 39 years of the unemployment compensation program, strikers were disqualified for benefits, but in 1978 a Montana Supreme Court Decision in Continental Oil Company versus the Board of Labor Appeals ruled that stoppage of work meant a stoppage at the plant and not a stoppage by the striker. In 1985 the amendment made it clear that the strikers' action, not the plants operation, caused the disqualification for benefits. This problem has arisen in 19 states when in each time by interpretation the strikers were allowed to draw benefits. Each time there has been an immediate amendment by the legislature of that state following the judicial decision to solve the problem. No state has gone back to the previous language after making it clearly understood that the stoppage was by the striker and not by the business. Benefits are paid when the job fails the worker, not when the worker walks off the job. Some employers can't stop their operations such as public utilities and hospitals. For example, the Missoula Community Hospital in 1978 had a strike that cost the hospital \$94,000. That \$94,000 had to be added on to hospital bills in a nonprofit operation in order to balance their books. The Chamber of Commerce has figures that will show that the cost of one strike will be many times the \$40,00 annual cost in the fiscal note. The state must maintain a position of neutrality in a strike and should not make payments to either side. Unemployment benefits to strikers encourages strikes.

**Forrest Bowles, President, Montana Chamber of Commerce,** stated the unemployment compensation getting out of the red was a separate issue. In 1986 through 1988, contrary to what Mr. Judge said, there were 20 strikes. Some of those people drew benefits. If the employer violates NLRB rules, then strikers receive benefits. During the Decker Coal Company case from 1986 to 1988, the benefits paid during that three-year period could have been as high as \$8 million but there was over \$1 million paid in unemployment benefits to strikers. The public strongly supported the bill that denied unemployment benefits to strikers in 1985 and still does. Striking workers do not meet the requirements to collect unemployment insurance which state that the person must be available for and seeking work. Montana employers with no stake in the outcome of the strike would be forced to subsidize the strikers.

**Mike Grimes, auto dealer and Chairman of Montana Auto Dealers,** stated that his corporation faced a ten week strike. Being a franchise, the business had to stay open. If a franchise closes

its doors for seven consecutive days in the auto business, it is terminated. The business was losing \$1,000 per day and no one from the State of Montana was helping make up the losses.

**Steve Turkiewicz, Executive Vice President, Montana Auto Dealers Association,** stated opposition to HB 68. **EXHIBIT 6** The fiscal note does not accurately portray 46 potential claimants to the fund. For example, in 1989 the teachers went on strike in Great Falls for 20 days with about 778 employees.

**Charles Brooks, Executive Vice President, Montana Retail Association and Montana Tire Dealers Association,** stated his opposition to HB 68. **EXHIBIT 7** The fiscal note is grossly understated. One member was involved in a strike in 1987. If the 34 employees on strike had been paid the maximum for six months, the impact to the fund would have been \$135,000.

**Questions From Committee Members:**

**REP. BENEDICT** asked **Mr. Judge** how much of Montana's work force is represented by organized labor. **Mr. Judge** said approximately 15 percent of those eligible for representation. **REP. BENEDICT** asked if **Mr. Judge** was suggesting that 85 percent of those Montana employers that are not involved in any bargaining issues would be subsidizing those employees who chose to engage in an informational picket. **Mr. Judge** said those employers who do have strikes would pay higher rates of taxes because of the those strikes. Their experience rating would go up as a result of those strikes. Therefore, they would eventually be paying the cost of those strikes, but the fund itself would pay the full cost of the burden to begin with.

**REP. DRISCOLL** asked **Mr. Bowles** how much taxes have been lowered to employers since the balance of the deficit in the unemployment insurance fund was balanced. **Mr. Bowles** said there are different schedules depending on the amount of the balance in the fund. The fund has reached a point where employers who are the best rated employers will pay a lower tax. He didn't know the average rate. Labor gave up some benefits, and the employers contributing the most to the problem paid the most increase.

**REP. DRISCOLL** asked **Chuck Hunter, Department of Labor and Industry,** prior to 1985 when the fund had a deficit, did every employer automatically went to about 4.3 or 4.5 percent whether he was a deficit employer or not. At that time the total tax collections for the fund were approximately \$57 million per year. The anticipated income to the fund this year about \$37 million or about a \$20 million per year less tax on the employers every year since 1987 when the fund finally became balanced. **Mr. Hunter** said he couldn't answer in detail. The reduction in taxes, particularly since 1987, is essentially correct. Tax rates have gone down every year since 1987. In 1985 \$65 billion was collected in taxes; in 1990 over \$35 million was collected so there is a reduction over that period of time.

REP. WANZENRIED asked Mr. Smith about no other state in the United States pays benefits when there's no stoppage of work. Mr. Smith said there have been 19 states that have faced this situation as a result of the interpretation by the courts. REP. WANZENRIED said according to a summary by the Department of Labor there are only 23 states that disqualify for some kind of test based on stoppage of work. How do you account for 27 states that aren't in compliance with that model law then? Mr. Smith said that according to his information, there have only been 19 cases where this has arisen in the courts. These 19 are probably in the 23 mentioned.

REP. FAGG asked Mr. Hunter if the \$90 million balance in the fund was a little low, and if he agreed with the fiscal note that it would cost only about \$40,000 per year. Mr. Hunter said yes that he had stated the Federal Government and banking people who have been asked to develop standards for trust fund solvency have suggested an appropriate level of trust fund balance would be about 1.5 times the high cost of benefit payout. In 1982 or 1983 the high cost was about \$90 million. Using an 18-month projection, a trust fund balance would be needed of approximately \$150 million. That projection measurement has not been officially adopted in Montana. Regarding the fiscal note, strikes and work stoppages don't follow a regular pattern. The data used to develop the fiscal note was developed over the last two years, and there was a low amount of activity. There has been higher activity in the past, but it's difficult to predict.

REP. JOHNSON asked REP. WHALEN if he could give an example where the employer does not lose money at the same time as employees out on strike are losing money. REP. WHALEN said anytime there is a labor dispute both sides could suffer. An employer might be willing to spend \$1 million trying to break a union because of the long-term benefits of paying non-organized employees lesser wages and benefits over an extended period of time. Example, the Cenex strike in 1984 where Lou Day said that the cost to them in unemployment benefits was approximately half a million dollars. REP. WHALEN said the amount of money paid to the Pinkerton Detectives and strike breakers was many times more than half a million dollars that was paid to the strikers. In evaluating the fairness issue, the economic wealth of the players must be looked at. If you compare a person on unemployment benefits of \$192 per week for a total of 26 weeks to an employer who is continuing to refine in the case of Cenex with about 30,000 barrels of crude oil per day. Even if this bill is passed there will still be a big difference in bargaining power between the parties. REP. JOHNSON asked if an employer is not making any money during the strike, the employees will not get unemployment benefits. REP. WHALEN said the terminology that is used is stoppage of work. An employer can still be open when there has been a substantial stoppage of work which would deny unemployment to the workers out on strike. It is not fair to have the employees with family obligations suffering and the employer substantially continuing his operation. Presuming this bill passes, getting 49 percent of

the average wage prior to the strike is cutting your pay in half to go on strike and being limited to 26 weeks worth of benefits.

REP. SOUTHWORTH asked Mr. Judge to comment on the effect of the bargaining process. Mr. Judge said it has been a dramatic effect on collective bargaining. In the case of the Decker Coal Company, the striking workers believe that one of the reasons they were forced into a strike is that their employer knew they would be denied benefits and they couldn't last very long. The employers who think they shouldn't be required to pay any of the cost have paid for the cost of the change in the 1985 law. When tens of millions of dollars are taken out of an economy, main street businesses are the ones that are impacted.

REP. DRISCOLL asked Mr. Smith if he had read the Continental Oil case of 1978. Mr. Smith said yes. REP. DRISCOLL said isn't it a fact that production during the strike went up. Mr. Smith said he didn't believe it said that. REP. DRISCOLL asked, in testimony given in that case, wasn't the ruling that there was no stoppage because the product going out the pipeline had not decreased and the Supreme Court said in a ruling there had to be a reduction. Mr. Smith said he didn't attend the trial, so he didn't know what testimony was offered. The stoppage of work as written in the statute at that time referred to stoppage of work at the plant and not by the striker. REP. DRISCOLL asked about the 19 cases taken to court and the legislature immediately changed the law. Mr. Smith said he didn't mean immediately, but they did change it. In Montana it took a few years. REP. DRISCOLL asked him why it took Montana seven years to change it. Mr. Smith supposed it was because of the constituency of the legislature.

REP. BENEDICT asked Mr. Bowles if he thought this legislation would align the state with labor in terms of giving an edge to labor in a dispute. Mr. Bowles said when the bill was enacted in 1985, there were editorials in most major newspapers, and people in general agreed that this was unfair. A union worker doesn't get unemployment if a plant closes, but a non-union worker who works at a plant that must stay open, like a hospital, gets unemployment benefits. That's not fair.

REP. JOHNSON asked Mr. Judge about Mr. Campbell's previous statement that if a business continues to stay open employees should receive unemployment benefits. Mr. Judge said that is the law as proposed would be interpreted. If the business continues to substantially operate, the workers would be entitled to the benefits. If the business does not continue to operate, the workers would be denied the benefits. REP. JOHNSON asked how that would affect public employees. Mr. Judge said they would continue to receive the benefits as long as they were available, seeking, and accept work if it offered. REP. JOHNSON asked how a city would be operated. Mr. Judge said he thought each major department is considered a separate department. If there were certain sections of government that would close down, it's



possible those people would be denied benefits. If other sections continued to substantially operate, it's possible they would be granted the benefits.

CHAIR SQUIRES asked Mr. Smith didn't the employer of the Missoula Community Hospital choose not to pay into the unemployment insurance fund? Mr. Smith said he had no knowledge that they didn't pay it. They were billed and are responsible for it. It's on a dollar for dollar basis; hospitals don't pay on a tax rate. \$94,000 was for the strike in 1978. CHAIR SQUIRES asked isn't the turn around time in employment for nurses pretty fast? Mr. Smith said he didn't know; the strike went on for a number of weeks. CHAIR SQUIRES said the strike went on for eight and a half months. She then asked if Mr. Smith was aware of an actual work stoppage. Mr. Smith said no; the hospital did not close down. CHAIR SQUIRES asked if he knew what the census in that hospital was at that time. Mr. Smith said no. They couldn't close down. CHAIR SQUIRES asked if he was aware of a work plan in place if and when the departments needed additional staff. Mr. Smith said he wasn't a participant in any of the negotiations.

Closing by Sponsor:

REP. WHALEN apologized for misstating that this bill was part of a compromise package in 1985. Stoppage of work refers to the employers operation not the individual employee's work. Employees may collect benefits so long as their activities do not substantially curtail the operations of the employer. In regard to the previous question of departments in the government closing, stoppage of work would be determined on a case by case basis. Many of the opponents feel that the employees do not suffer as a result of a labor dispute. Even if this bill is passed it will still be in favor of the employer because under Montana's unemployment laws an employee is entitled to collect half of the wage prior to the strike for six months. REP. WHALEN said REP. BENEDICT is under the impression that this is going to align the state with employees. In most strikes the state is aligned with the employer. In the Cenex strike of 1984 when there was violence from the employer or employee, the sheriff arrested five employees. Four out of the five cases juries acquitted those employees after hearing their testimony. Every time the union called when an employer tried to run over an employee, the sheriff or state police would say they would look into it and there was never any charges brought against the employer. This bill won't put employees on the same playing field with employers, but it will help.

EXECUTIVE ACTION ON HB 28

Discussion:

REP. WANZENRIED, Chairman of the Subcommittee for HB 28, said this bill would eliminate the requirement that a document not to

be sent out with the bid specifications when a public agency was going bid on a project. Similarly, they did not want to have the document attached to the contract. The amendments effectively strike a compromise. **EXHIBIT 8** The effect of these amendments is to require that the Prevailing Wage Rate document not be attached to the bid specifications, but the bid specifications include a statement that the prevailing wage rate for the positions and that the prevailing wage for those positions be paid. The contractors are put on notice that they have to find out the prevailing wage rate. After the contract is awarded, the contract itself must contain the prevailing wage rates paid in that particular area. The contract must have the prevailing wage rates as an integral part. The third amendment on line 25 "may" is changed to "shall." The department is required to have the certified payroll records submitted to it if there are allegations that the prevailing wage rate has not been paid. It was discretionary, and it is now mandatory that happen.

**REP. BENEDICT** asked **REP. HANSON** if he concurred with the amendments. **REP. HANSON** said yes. The financial statement that went with this bill will remain in place because there will be just one document attached to the contract. The printing cost will be reduced.

**REP. BENEDICT** asked **REP. WANZENRIED** if the amendment would change the fiscal note. **REP. WANZENRIED** said the savings will be greater.

**Motion/Vote:** **CHAIR SQUIRES** moved to adopt amendments to HB 28. Motion carried unanimously.

**Motion/Vote:** **REP. WANZENRIED MOVED HB 28 DO PASS AS AMENDED.** The motion carried unanimously.

#### **EXECUTIVE ACTION ON 68**

**Motion:** **REP. DRISCOLL MOVED HB 68 DO PASS.**

**Discussion:** **REP. WANZENRIED** pointed out that he was responsible for convening the committee that put together the compromise package in 1985. The issue of amending the law as a part of that package was specifically considered by the committee and specifically rejected. It wasn't rejected because of the fiscal impact. The savings to the trust fund, had that law been in affect as it was changed ultimately in 1985, would have varied from \$18,000 up to \$800,000 in other years. It was rejected because of the fairness issue.

**CHAIR SQUIRES** stated to **REP. JOHNSON** that she was involved in the strike at the Missoula Community Hospital that lasted eight and a half months. Her employer chose not to participate in the state plan. When the workers went on strike they presented to the employer a plan for people to come in and work in the hospital in the areas that were depleted by the strike. The employer chose

not to take any of the employees in but imported people from other hospitals that were employed by the same company that managed the Missoula Community Hospital. Her people applied for unemployment almost immediately upon strike and did not receive it until one day before Christmas. There were over 100 RN's and 56 LPN's that also went on strike. The hospital census on a weekly basis fluctuated from 53 to 58. Employment has to be impacted by approximately 20 percent. The hospital never went down to 20 percent; they continued to operate at that 53 to 58 percent census. Therefore, that business continued to operate on almost a full scale without having respect for those workers who wanted to work for them. CHAIR SQUIRES stated that she supported HB 68. The hospital chose not to use the workers out on strike when they offered. The neo-natal unit stayed open and those employees were considered "our people" because there were no other neo-natal nurses. Intensive Care Unit nurses would have been provided but the employer chose not to use them. They chose to use other people and bedded them down with 12 hour shifts, fed them, etc.

REP. JOHNSON that he was not sure that HB 68 addresses that particular problem. He is concerned about keeping those employers in business. For instance, when there was a strike at the Sheraton Hotel in Butte, he hoped the strikers didn't put it out of business because that business was needed in Butte. This bill does not take care of non-profit corporations.

REP. BENEDICT said the issue is whether there is a subsidizing of striking. REP. WHALEN said there was no incentive to strike with low benefits. He failed to say there are union strike funds to go along with unemployment benefits. When they are put together it's not a bad package. REP. BENEDICT said he is in favor of HB 68 because it represents the 85 percent of employers that don't have anything to do with a problem that exists between an employee and an employer.

REP. SOUTHWORTH stated that he was part of the 1984 Cenex strike and supports this bill.

REP. THOMAS encouraged voting no. This should not be under unemployment insurance, which is for people who are unemployed through no fault of their own.

Vote: Motion carried 11 to 7. EXHIBIT 9

#### EXECUTIVE ACTION ON 140

#### Discussion:

REP. O'KEEFE moved to adopt amendments to HB 140. Motion carried unanimously.

REP. HANSON stated he had an additional amendment to replace the word "communications" with "negotiations" on line 9. Ms.

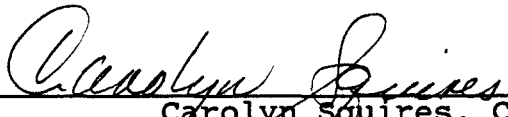
**McClure, Legislative Council**, said she would draft an amendment and incorporate it into the previous amendment. **EXHIBIT 10**

**Motion/Vote:** REP. HANSON moved to adopt the amendment to HB 140. The motion carried 14 to 3 with REPS. O'KEEFE, DOLEZAL, AND SQUIRES voting no.

**Motion/Vote:** REP. JOHNSON MOVED HB 140 DO PASS AS AMENDED. Motion carried unanimously.

**ADJOURNMENT**

**Adjournment:** 5:45 p.m.

  
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Carolyn Squires, Chair

  
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Jennifer Thompson, Secretary

CS/jt

# HOUSE OF REPRESENTATIVES

## LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 01/22/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA			✓
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN			
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

HOUSE STANDING COMMITTEE REPORT

January 22, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that House Bill 28 (first reading copy -- white) do pass as amended.

Signed: Carolyn Squires, Chairman

And, that such amendments read:

1. Title, lines 4 through 8.

Following: "TO" on line 4.

Strike: "ELIMINATE THE REQUIREMENT"

Insert: "REQUIRE "

Following: "SPECIFICATIONS" on line 5.

Insert: "INCLUDE A STATEMENT REQUIRING PAYMENT OF THE PREVAILING WAGE DEVELOPED BY THE COMMISSIONER OF LABOR AND INDUSTRY"

Following: "AND" on line 5.

Insert: "THAT"

Following: "18-2-403" on line 7.

Insert: ",18-2-422,"

Following: "MCA;"

Strike: the remainder of line 7 through "MCA;" on line 8.

2. Page 2, line 21.

Following: line 20.

Insert: "(5) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency.

Section 2. Section 18-2-422, MCA, is amended to read:

"18-2-422. Bid specification ~~and contract~~ to contain prevailing wage rate provision -- wage rates included in contract. All bid specifications ~~and contracts~~ for public works projects must contain a ~~provision stating for each job classification~~ statement requiring, for each job classification, payment of the prevailing wage rate as developed by the commissioner, including fringe benefits, that the contractors and subcontractors must pay during construction of the project. The prevailing wage rate must be included as a contractual provision in all contracts let for public works projects."

Renumber: subsequent sections

1-22-91  
JDS

January 22, 1991  
Page 2 of 2

3. Page 2, lines 22 through 25.

Following: "records."

Strike: the remainder of line 22 through line 24.

Insert: "The"

Following: "department" on line 25

Strike: "may"

Insert: "shall"

HOUSE STANDING COMMITTEE REPORT

January 22, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House  
Bill 68 (first reading copy -- white) do pass .

Signed: Carolyn Squires  
Carolyn Squires, Chairman



5:25 AM  
1-23-91  
JDD

HOUSE STANDING COMMITTEE REPORT

January 22, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 140 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires  
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "IN"

Strike: "COMMUNICATIONS"

Insert: "NEGOTIATIONS"

2. Title, lines 7 and 8.

Following: "TO" on line 7.

Insert: "FIRST"

Following: "SUPERVISOR" on line 8.

Insert: "AND DEPARTMENT DIRECTOR IN WRITING"

3. Page 2, line 9.

Strike: "communications"

Insert: "negotiations"

4. Page 2, line 11.

Following: "first"

Strike: "notifying"

Insert: "giving written notification to"

Following: "supervisor"

Insert: "and department director"

8:30 AM  
1-23-91

## TABLED BILL

Labor & Employment Relations  
Name of Committee

January 22, 19 91  
Date

The following bill HB 112

was TABLED, by motion, on January 22, 19 91.

*Jennifer Thompson*  
For the Committee

*J.D. Delmonico*  
For the Chief Clerk

\_\_\_\_\_  
Time

CS-04  
1991

\_\_\_\_\_  
Date

House Bill 140  
State Employee Seeking Employment  
With A Person or Persons He/She Regulates  
January 22, 1991

- Purpose - To provide in statute that a person employed by the State of Montana in a position where he/she regulates other people under Montana law, must first notify his/her supervisor and Department Director, in writing, before commencing any activity seeking employment with the person he/she regulates.
- Reason - Government should not only be open and trustworthy, it should appear that way as well. This act will help reduce suspicion of state employees employed in regulatory positions and give government a better image. This is not to say that any present employee is engaged in any suspect activity, but to show our determination that such activity does not take place.

Bob Roney

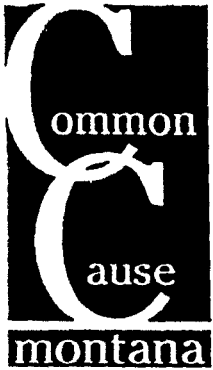
Amendments to House Bill No. 140  
First Reading Copy

Requested by Representative Raney  
For the Committee on House Labor and Employee Relations

Prepared by Eddye McClure  
January 14, 1991

1. Title, lines 7 and 8.  
Following: "TO" on line 7.  
Insert: "FIRST"  
Following: "SUPERVISOR" on line 8.  
Insert: "AND DEPARTMENT DIRECTOR IN WRITING"

2. Page 2, line 11.  
Following: "first"  
Strike: "notifying"  
Insert: "giving written notification to"  
Following: "supervisor"  
Insert: "and department director"



TESTIMONY OF COMMON CAUSE/MONTANA

IN SUPPORT OF HOUSE BILL 140

22 JANUARY 1991

P.O. Box 623  
Helena, MT  
59624  
406/442-9251

Madame Chairwoman and members of the House Labor and Employment Relations Committee for the record my name is C.B. Pearson, Executive Director of Common Cause in Montana. Common Cause/Montana represents Montanans who want open, accessible and democratic government in Montana.

On behalf of the members of the organization we would like to speak in support of House Bill 140 and add what we believe to be a friendly amendment.

We would ask that at the end of Section (2) (f) the following be added: "in writing".

We believe that HB 140 is a good government reform. HB 140 helps increase public confidence in public officials and government. It helps ensure that those who work for the public will place the public's interest above their own interest and above private interest. This bill provides needed guidance to employees who may find themselves in a compromising position. It is a good addition to Montana's existing conflict of interest statutes.

We urge a "do pass" on House Bill 140.



EXHIBIT 4  
DATE 1/22/91  
HB 68

DONALD R. JUDGE  
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DON JUDGE BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE ON HOUSE BILL 68, JANUARY 22, 1991.

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Madam Chair, members of the committee, for the record my name is Don Judge and I'm here today representing the Montana State AFL-CIO to testify in support of House Bill 68.

The purpose of House Bill 68 is undeniable. It is to return the balance between Montana's workers and their employers as it relates to our state's unemployment compensation system. It would reverse a tragic decision made by the Legislature in 1985 to deny striking workers unemployment compensation benefits when their employer used strikebreakers to subvert the collective bargaining process.

Previous to 1985, striking workers would not automatically receive unemployment benefits, nor would they be automatically denied such benefits. If a business is shut down during a strike, workers would have been denied UI benefits. If an employer used strikebreakers so that the business continued to operate, then the striking workers could have been found eligible to receive such benefits.

That system provided an economic balance between the employer and his workers. If one was to lose money, then both would lose money. If one was to continue to receive an income, then both would continue to receive an income. This balance generally meant that both parties to negotiations would work hard at reaching a settlement, either before or during a strike.

In 1985 the situation changed. We don't have to look far to see the impact on Montana's workers and our economy. Since 1985, workers have been far more reluctant to strike. Their concern for feeding their families, making payments on homes cars and college tuition for their kids, and realizing that they would automatically be denied unemployment benefits during a strike boxed them in.

Employers, on the other hand, became much more aggressive in their negotiations. Recognizing that they held the upper hand, economically, they engaged in massive concessionary bargaining. Some employers, mostly large out of state corporations, extracted millions of dollars from Montana's workers and its economy.

Testimony of Don Judge  
House Bill 68  
January 22, 1991

Armed with their new boldness, such corporations in Montana's western timber industry extracted wage concessions amounting to approximately \$3,600 per employee, per year, beginning in 1986. Many of these workers will not even reach their old 1986 wage levels until sometime this year. Those concessions, made to corporations which were earning record profits, took tens of millions of dollars from western Montana and our state.

Here in East Helena, another large out of state corporation, ASARCO, extracted approximately \$8,500 per worker, per year, in 1986. Again, millions of dollars left mainstreet Montana to go to corporate headquarters located elsewhere.

Madam Chair, the list of concessionary wage give-backs in Montana since the adoption of the change in our unemployment law could go on and on. It would include miners, store clerks, restaurant workers, mechanics, building trades workers and many more. It's no surprise that Montana's average annual income has not kept pace with the nation. We need only to look at the poor decision to deny workers UI during a strike to see why.

One last point, Madam Chair. The fiscal note on this bill indicates that the cost of providing such benefits to eligible striking workers from January 1989 to December 1990 would have amounted to approximately \$40,000 per year.... About one one-thousandth of one percent of the UI fund's expenditures each year!

What we believe the fiscal note should show is what this law, in its current form, has cost Montana's workers and our economy. We believe that fiscal responsibility dictates a return to fairness and balance in those systems of state government that so strongly impact our economy.

No one likes a strike. Not workers, not employers, not communities. But no one likes economic tyranny, either. Passage of House Bill 68 will help us avoid both. Thank You.



EXHIBIT 5  
DATE 1/22/91  
HB 68

CENEX • Post Office Box 909 • Laurel, Montana • 59044-0909 • Phone (406) 252-9326

Louis J. Day  
Refinery Manager  
Petroleum Division

January, 1991

Testimony of Louis J. Day  
Before the House Labor and Employment Committee  
House Bill 68

I am Lou Day, Refinery Manager for Cenex at Laurel, Montana. My testimony here today is to encourage you not to approve the changes in the Montana unemployment compensation law as proposed in House Bill 68.

The payment of unemployment benefits to strikers simply because the company being struck is willing to bear the additional expense of continuing its operation or services is neither fair nor just to employers.

During a five month strike at the Cenex Refinery in 1984 more than a half million dollars were paid to the strikers in unemployment compensation. I am convinced that the strike would have been settled much sooner if the strikers had not received these benefits.

Proponents of this bill claim the change creates a balance between labor and management. For negotiations to be accomplished on a fair and equitable basis, each side must face a substantially equal risk. When strikers receive unemployment compensation they can go into a strike situation with the knowledge that there are only two likely courses of events. First, that they will be successful in shutting down the business or secondly, that the business will continue operation (at considerable additional expense) and strikers will receive unemployment compensation. Either situation weighs the delicate negotiation balance in favor of labor, regardless of who finances unemployment benefits. There is a basic unfairness in a situation that requires employers to finance both sides of a labor dispute.

Montanans have been working hard in recent years to promote new business enterprises and increase job opportunities. When Governor Schwinden signed the present law in 1985 he concluded it would be interpreted as a logical extension of our efforts to improve Montana's attractiveness to potential new employers.

I encourage you to continue promoting a favorable climate for employers coming into this state by not approving House Bill 68.

Thank you.



HOUSE BILL ~~208~~ 68  
HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE  
STEVE TURKIEWICZ  
MONTANA AUTOMOBILE DEALERS ASSOCIATION  
JANUARY 22, 1991

Madame Chairman and members of the Committee, the Montana Automobile Dealers Association opposes House Bill 68.

Besides our philosophical opposition to the concept of subsidizing striking workers with employer paid premiums to the Unemployment Insurance Trust Fund, the franchise auto dealers have an unique aspect regarding their franchises and closing the doors for any reason, including a strike.

Most franchise agreements contain provisions giving the manufacturer the right to immediately terminate, without notice, the franchise if the dealer fails to conduct business for between 5 and 7 business days, depending on the specific franchise. The language is explicit and does not provide for exceptions such as strikes.

Dealers do not relish the idea of a labor dispute that results in a strike and their employees on the picket line. But, they also, don't wish to jeopardizes their livelihood and the livelihood of their employees with the termination of the franchise.

So, the dealerships have to remain open in order to maintain jobs of all employees, even those on the picket line.

House Bill 68 would put dealerships in the situation of having to pay higher unemployment insurance premiums in the event of a strike at the dealership and employees participate in the strike. Because the dealer has to keep the doors open or face the real potential of losing the franchise and closing the doors for good.

Madame Chairman, members of the committee, for this reason and those expressed by the opponents to House Bill 68, we respectfully urge your recommendation for House Bill 68 be "do not pass".



DATE 1/22/91

Executive Office HB 68  
318 N. Last Chance Gulch  
P.O. Box 440  
Helena, MT 59624  
Phone (406) 442-3388

TESTIMONY  
JANUARY 22, 1991  
HOUSE BILL 68

MADAM CHAIRPERSON AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD, I AM CHARLES BROOKS, EXECUTIVE VICE PRESIDENT OF THE MONTANA RETAIL ASSOCIATION AND ITS AFFILIATES: MONTANA HARDWARE IMPLEMENT ASSOCIATION AND MONTANA TIRE DEALERS ASSOCIATION. I AM HERE TO OPPOSE HOUSE BILL 68.

HB 68 CREATES A STATE POLICY OF SUBSIDIZING STRIKERS BY MONTANA EMPLOYERS. THIS BILL FORCES ALL MONTANA EMPLOYERS TO SUBSIDIZE LABOR DISPUTES FOR ONLY 15% OF THE WORKFORCE THROUGH EMPLOYER'S PREMIUM TO THE UNEMPLOYMENT INSURANCE FUND. WE RETAILERS STRONGLY OPPOSE THIS FORCED SUPPORT OF STRIKERS.

WE ASK YOU, IS IT FAIR FOR RETAILERS TO SUBSIDIZE A STRIKE THROUGH THE UNEMPLOYMENT FUND, WHEN WE ARE NOT A PARTY TO THE DISPUTE??

IT SEEMS TO US THAT IS PRESICELY WHAT THIS BILL WOULD REQUIRE.

WE URGE YOU, GIVE HB 68 A DO NOT PASS VOTE.

THANK YOU FOR THE OPPORTUNITY TO PRESENT THIS TESTIMONY.

Amendments to House Bill No. 28  
First Reading Copy

For the Subcommittee on House Labor and Employee Relations

Prepared by Eddy McClure  
January 16, 1991

1. Title, lines 4 through 8.

Following: "TO" on line 4.

Strike: "ELIMINATE THE REQUIREMENT"

Insert: "REQUIRE "

Following: "SPECIFICATIONS" on line 5.

Insert: "INCLUDE A STATEMENT REQUIRING PAYMENT OF THE PREVAILING  
WAGE DEVELOPED BY THE COMMISSIONER OF LABOR AND INDUSTRY"

Following: "AND" on line 5.

Insert: "THAT"

Following: "18-2-403" on line 7.

Insert: ",18-2-422,"

Following: "MCA;"

Strike: the remainder of line 7 through "MCA;" on line 8.

2. Page 2, line 21.

Following: line 20.

Insert: "(5) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency.

**Section 2.** Section 18-2-422, MCA, is amended to read:

**"18-2-422. Bid specification and ~~contract~~ to contain prevailing wage rate provision -- wage rates included in contract.** All bid specifications and ~~contracts~~ for public works projects must contain a ~~provision stating for each job classification statement requiring, for each job classification,~~ payment of the prevailing wage rate as developed by the commissioner, including fringe benefits, that the contractors and subcontractors must pay during construction of the project. The prevailing wage rate must be included as a contractual provision in all contracts let for public works projects."

Renumber: subsequent sections

3. Page 2, lines 22 through 25.

Following: "records."

Strike: the remainder of line 22 through line 24.

Insert: "The"

Following: "department" on line 25

Strike: "may"

Insert: "shall"

EXHIBIT 9  
DATE 1/22/91  
HB 68

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL VOTE

DATE 1/22/91 BILL NO. 68 NUMBER         

MOTION: Do Pass

NAME	AYE	NO
REP. JERRY DRISCOLL	✓	
REP. MARK O'KEEFE	✓	
REP. GARY BECK	✓	
REP. STEVE BENEDICT		✓
REP. VICKI COCCHIARELLA	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. H.S. "SONNY" HANSON		✓
REP. DAVID HOFFMAN		✓
REP. ROYAL JOHNSON		✓
REP. THOMAS LEE		✓
REP. BOB PAVLOVICH	✓	
REP. JIM SOUTHWORTH	✓	
REP. FRED THOMAS		✓
REP. DAVE WANZENRIED	✓	
REP. TIM WHALEN	✓	
REP. TOM KILPATRICK, VICE-CHAIRMAN	✓	
REP. CAROLYN SQUIRES, CHAIR	✓	
TOTAL	11	7

Amendments to House Bill No. 140  
First Reading Copy

Requested by Representative Raney  
For the Committee on House Labor and Employee Relations

Prepared by Eddye McClure  
January 14, 1991

1. Title, line 6.  
Following: "IN"  
Strike: "COMMUNICATIONS"  
Insert: "NEGOTIATIONS"

2. Title, lines 7 and 8.  
Following: "TO" on line 7.  
Insert: "FIRST"  
Following: "SUPERVISOR" on line 8.  
Insert: "AND DEPARTMENT DIRECTOR IN WRITING"

3. Page 2, line 9.  
Strike: "communications"  
Insert: "negotiations"

4. Page 2, line 11.  
Following: "first"  
Strike: "notifying"  
Insert: "giving written notification to"  
Following: "supervisor"  
Insert: "and department director"

## VISITORS' REGISTER

Labors & Empl Relations COMMITTEEBILL NO. 112DATE 1/22/90SPONSOR Jerry Oriscoll

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<u>Barbara Reif</u>	<u>USWEST Communications</u>	<u>✓</u>	
<u>K. Amy Pifer, Dept. of SRS</u>	<u>P.O. Box 5955, Helena</u>	<u>✓</u>	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Labor & Employment Relations COMMITTEE BILL NO. 140  
 DATE 1/22/91 SPONSOR(S) Bob Ramey

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
CB. Pearson	Common Cause/Montana	HB 140		✓
Jim Jensen	METC	HB 140		✓
Stan Bradshaw	Montana Great/Minutef	140		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Labor & Empl Relations

COMMITTEE

BILL NO.

68DATE 1-22-91SPONSOR(S) Tim Whalen

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Roger Kneipstad	Local #72 <sup>United Steel Workers</sup>			X
James M. Verbanac	Local 72			X
Steve Manning	Local 72			X
Jim Luthardt				
Mike King	Local 72			X
Francis Balcerzak	Local 72			X
Bryan Balcerzak	Local 72			X
Lillian Glickman	MT. Ref. Co.		X	
Mike Dusterhoff	MT. Ref. Co.		X	
Phil Campbell	MEA			X
Don Judge	MT STATE AFL-CIO	HB 68		X
John M. Boman	Local 72			X
Curt Brennan	MT. West Council Laborers			X

**PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.**



## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Laborn + Empl. Relations COMMITTEE BILL NO. 108  
 DATE 1/22/91 SPONSOR(S) Jim Whalen

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John Day	Conrad	HB 68	✓	
Al Bueckle	Montana Chamber	HB 68	✓	
Charles R. Brooks	MT Rptn / Assoc	HB 68	✓	
Ken Dunham	MT Contractors' Assoc.	HD 68	✓	
Joanne P. Chance	MT Technical Council	68	-	-
Bob Heiser	IL F.C.W.	68	<del>✓</del>	✓
MARK LANGDORE	AFSCME	68	<del>✓</del>	✓
Tom Schneider	MPETA	68		✓
KATHY ANDERSON	MT Used Prod Assn	68	X	
Dan Edwards	OCIA	68		✓
Dorelli Holzer	Hillstone, Cont'l	68		✓
Janelle Fallon	MT Petroleum	68	✓	
E FENDERSON	MT ST Bldg Trade	68	<del>✓</del>	✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Labor & Empl. Relations COMMITTEE BILL NO. 68  
DATE 1/22/91 SPONSOR(S) Tim Whalen

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
<u>John Osborn</u>	<u>Local 72</u>	<u>48</u> <u>68</u>		<u>X</u>
<u>Jenna Flanagan</u>	<u>Local 72</u>	<u>48</u> <u>68</u>		<u>X</u>
<u>Tom Casey</u>	<u>Local 72 E.H.N</u>	<u>48</u> <u>68</u>		<u>X</u>
<u>Raymond West</u>	<u>Local 544 T.T.Z</u>	<u>68</u>		<u>X</u>
<u>Norie A. Hechathorn</u>	<u>Self</u>	<u>68</u>		<u>X</u>
<u>Harley E. Hechathorn</u>	<u>Local 72 E.H.N</u>	<u>68</u>		<u>X</u>
<u>George Kasperman</u>	<u>A.F.S.C.M.C.</u>			<u>X</u>
<u>Leon Staley</u>	<u>Mont Restaurant Assoc</u>	<u>68</u>	<u>X</u>	
<u>Charles R. Smith</u>	<u>Unemp Comp Advisors Inc.</u>	<u>68</u>	<u>X</u>	
<u>Steve Turkiewicz</u>	<u>Mt. Auto Dealers Assn</u>	<u>68</u>	<u>X</u>	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

1-22-91

I give my power  
to act to  
Jesse Howard  
to act as member  
in office 1-1-98  
Sincerely  
Jesse Howard

1-22-91

I give my power  
on all motions to  
Rep. Tommy Hansen  
in Labor Comm. on  
22 Jan 91.  
Thomas Rex