

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES, on January 31, 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)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)

Members Excused:

Thomas Lee (R)
Tim Whalen (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 251

Presentation and Opening Statement by Sponsor:

REP. JERRY DRISCOLL, House District 92, stated HB 251 extends the life of the Joint Select Committee on Workers' Compensation. During the interim the Committee did not generate much legislation, but it did provide understanding to the Workers' Compensation system. The \$15,000 comes out of the Workers' Compensation account and not the General Fund.

Proponents' Testimony:

SEN. PAUL SVRCEK stated that he served on the Joint Select Committee. In Montana the Workers' Compensation issue is very big and complicated, and it has problems. The Committee hired its own actuary during the interim. At the end of the interim the actuary's report was received, and the Committee began to gain understanding of the Division and the Fund. Progress has been made, but there is still a long way to go. This Committee is a good vehicle to gain understanding.

James Tutwiler, Montana Chamber of Commerce, stated that the Joint Select Committee does detailed work on the problems of the Workers' Compensation system. It also gives the business community an opportunity to look into the system between sessions and to respond accordingly.

Gene Fenderson, Montana State Building and Trades Council, stated support for HB 251.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor: REP. DRISCOLL closed the hearing on HB 251.

EXECUTIVE ACTION ON HB 251

Motion/Vote: REP. PAVLOVICH MOVED HB 251 DO PASS. Motion carried unanimously.

HEARING ON HB 256

Presentation and Opening Statement by Sponsor:

REP. JERRY DRISCOLL, House District 92, said when filing for unemployment insurance, there are two determinations of eligibility: 1. The reason the employee left work. 2. The wages in the base period. Currently, under the law a base period of 20 weeks of employment is required, and the employee must make 7 percent of the state's wage. The employer provides the amount of weeks worked in a quarter on a reporting form. 30 percent of those forms are in error. For example, some employers put down thirteen weeks because there's thirteen weeks in a quarter. That affects the weekly wage and the amount of benefits the individual can draw. This bill would change the system to a percentage of the wages. Under this bill, to qualify for benefits, the quarters would be divided by the formula in the bill to determine eligibility and the amount of money per week. It doesn't change the maximum benefit level in Montana.

Proponents' Testimony:

Chuck Hunter, Department of Labor and Industry, stated that the Department requested this bill be introduced by REP. DRISCOLL. The weeks of work problem results many errors in UI payments. 29 percent of all claims paid are in error. The eligibility requirements are to have base period of 20 weeks of work within a calendar year and to have 7 percent of the state's annual wage. The proposed legislation would eliminate the weeks of work system and would use monetary information to make the eligibility determination. It is a combination method between 1.5 times high quarter and the flat rate amount. He then presented written testimony to explain background and the new system to determine eligibility. **EXHIBIT 1**

Chad Smith, Unemployment Compensation Advisors Association, stated the fiscal note says in the current law for fiscal year 1992, \$43 million would be raised to \$43.8 million. The adjustment to remove the mechanical problems in computation should not be coupled with an increase in benefits; that doesn't have any relationship to unemployment. He had asked Chuck Hunter how to make the bill revenue neutral but to keep all the mechanical provisions that are proposed. Mr. Hunter said on page 2, line 22, if the second percentage was reduced to 1.85 instead of 1.9, it would eliminate the increase and reduce it to a revenue neutral position. There would be no additional drain on the Fund. With the amendment, he stated his support of the bill.

Gene Fenderson, Montana Building and Trades Unions, stated his support of the total bill. The nature of the work of the members is seasonal. Many people may work three to four months out of the year. That gives them a high quarter and little income in the other three quarters, and they are not entitled to unemployment. Under the new system, it would even out the unfairness.

James Tutwiler, Montana Chamber of Commerce, stated support and recommended consideration of Mr. Smith's adjustment to make it a revenue neutral bill.

Lauri Shadoan, Bozeman Chamber of Commerce, stated that she employs 90 people, and it is a manual system to figure out weekly whether an employee worked or is off a week. She has sent in forms with the number of weeks filled out only to get them back saying that they were incorrect. The system needs to be changed. She stated her support of Mr. Smith's amendment to change the percentage to 1.85 to make the bill revenue neutral.

Opponents' Testimony: None

Questions From Committee Members:

REP. DRISCOLL said to Mr. Smith the fiscal note shows that \$43 million will be paid out under current law and will be raised to \$48,832,000. "Would you support an amendment that \$43 million be spent, because \$37 million is being spent now. You are worried

about the \$800,000 and not worried about the \$7 million." Mr. Smith said he could only rely on the projections for 1992 and 1993. He didn't compute it and relied on the Department of Labor and the Legislative Council to determine the impact of the bill. If it were in effect at the present time, instead of \$37 million it would be \$800,000 more than that now. In an effort to make mechanical changes, overall costs should not be increased.

REP. BENEDICT asked Mr. Hunter to elaborate on Mr. Fenderson's comment that the bill doesn't call for any increase in the number of people that would be qualifying and would allow people who are presently not qualified to qualify. Mr. Hunter said that Mr. Fenderson was referring to the change that would involve a two-step procedure. If a change was proposed that only went to 1.5 times high quarter, that would discriminate against people who are in seasonal industries with wages that are concentrated in a portion of the year. That is the historical opposition to 1.5 times high quarter. This proposal would also allow someone to qualify under the flat rate of half of the state's average annual wage, which allows those people who currently draw under the weeks of work system to remain in the system.

REP. WANZENRIED asked Mr. Hunter the significance of the 1.9 percent, and if it was changed to 1.85 percent, what is the Department's position on the bill. Mr. Hunter said the 1.9 percent calculation was one of many calculations made as the bill was modeled to be in the range of revenue neutral. The 1.9 figure was agreed upon with the sponsor. The Department's interest is in changing to a method that calculates eligibility based upon the dollar figures rather than the weeks of work. REP. WANZENRIED asked as far as the Department is concerned, would there be any objections if it was changed to 1.85 percent. Mr. Hunter said no, as long as it was okay with the sponsor.

Closing by Sponsor:

REP. DRISCOLL stated that the fiscal notes of last session showed substantially more than \$37 million on the amount of money to be spent in unemployment, but \$37 million was actually paid. The 1.9 percent more closely reflects the way the law used to be in the 1970s. He doesn't believe there is an \$800,000 increase. When the fiscal notes are figured, there are many variables. The current law is under Schedule 1, which is the lowest taxes. The \$800,000 will not increase the taxes up to Schedule 2. This bill is a change in the way it is figured. 1.75 could be used, but every time that number is lowered the laid-off worker gets less money. Because of the 20 week factor an employee can't draw unemployment even if he worked 19 weeks, made \$10,000, and worked every hour of overtime the contractor would give. Under this law that employee could. There are ways to get around the 20 weeks, for example, an employee has worked 19 weeks and needs another week to qualify, that employee would only have to work one hour the next week to meet the 20 week factor. Employees that have seasonal work are penalized. He doesn't want the 1.9 percent

changed. It more closely reflects what employees would be eligible for under the present law. If the 1.9 percent is changed to 1.85, kill the bill.

HEARING ON HB 280

Presentation and Opening Statement by Sponsor:

REP. FRED THOMAS, House District 62, stated that HB 280 would amend the current Workers' Compensation statute to provide a financial incentive to employers to develop a modified or alternative position for an injured worker. It will provide a financial incentive for an injured worker to accept such a position if it is offered. The current statute allows an injured worker who has not reached maximum healing to refuse a position offered by his employer without affecting the worker's benefits. As a result, there is no clear financial incentive for the worker or the employer to return the injured worker to work. There is a potential for cost savings. Page 2, line 8, says if the treating physician releases the worker to return to the same, a modified, or alternative position with the same employer at an equivalent or higher wage than he was receiving at the time of the injury, the worker is no longer eligible for temporary total disability benefits even though maximum healing has not been reached. He presented two amendments. EXHIBIT 2. The amendment of Pg. 2, Ln. 9, keeps an employer from offering a job to the injured party that is out of the injured party's realm or past position. The Labor Department has to work with employers so that this bill would be functional and utilized.

Proponents' Testimony:

Mike Micone, Commissioner, Department of Labor and Industry, stated his support of HB 280. EXHIBIT 3. In addition, he had no objection to the amendments but said the second amendment was redundant.

George Wood, Executive Secretary, Montana Self Insurers Association, stated the bill was necessary to give the employer and employee an incentive to return to work when a job is available, and the employee doesn't have to accept it at a reduced wage.

James Tutwiler, Montana Chamber of Commerce, said the bill has a reasonable prospect of benefiting both employers and employees. Montana ranks high among other states in the expenditure of payments per \$1,000 of premium in the category of temporary total disability. This bill will help address that problem.

Michael Sherwood, Montana Trial Lawyers Association, stated support of the bill as amended. It gives the worker an opportunity to get back in the work place.

worker an opportunity to get back in the work place.

Jim Murphy, Executive Vice President, State Fund, stated support of the bill as amended.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

REP. THOMAS closed HB 280.

EXECUTIVE ACTION ON HB 256

Motion/Vote: REP. DRISCOLL MOVED HB 256 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 280

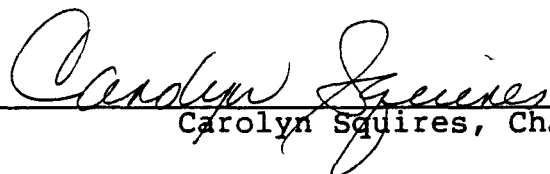
Motion: REP. THOMAS MOVED HB 280 DO PASS.

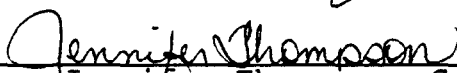
Motion/Vote: REP. THOMAS moved to amend HB 280. EXHIBIT 4.
Motion carried unanimously.

Motion/Vote: REP. THOMAS MADE A SUBSTITUTE MOTION THAT HB 280 DO PASS AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 4:00 p.m.


Carolyn Squires, Chair


Jennifer Thompson, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE

1/31/91

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	✓		

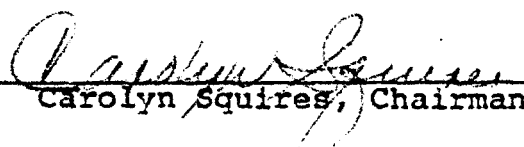
HOUSE STANDING COMMITTEE REPORT

January 31, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House
Bill 251 (first reading copy -- white) do pass .

Signed:


Carolyn Squires, Chairman

HOUSE STANDING COMMITTEE REPORT

January 31, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House
Bill 256 (first reading copy -- white) do pass .

Signed: Carolyn Squires
Carolyn Squires, Chairman

HOUSE STANDING COMMITTEE REPORT

January 31, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 280 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires
Carolyn Squires, Chairman

And, that such amendments read:

1. Page 2, line 10.

Following: line 9

Insert: "that the individual is able and qualified to perform"

2. Page 2, line 14.

Following: "the"

Insert: "modified or alternative"

3. Page 2, line 15.

Following: "available"

Insert: "for any reason"

Chuck Hunter

Testimony on House Bill 256
"Weeks of Work"

EXHIBIT 1
DATE 1/31/91
HB 256

29% of all UI claims in Montana are paid in error
5050 claimants overpaid
4100 underpaid

although a large[#] of claims, small dollar error
\$457,000 overpaid
\$359,000 underpaid
net effect of only \$100,000 out of \$40 million

the problem is not really money - it is hassle and error, and its all related to this problem with "weeks of work"

some background

To be eligible for benefits, you need :
20 weeks of work
income greater than 7% of AAW, currently \$1176

philosophy - you need some income to qualify, also "attachment"

there are 3 ways used in the 50 states to measure "attachment"
weeks of work
1 1/2 high quarter
flat amount system

we are one of 8 states using weeks of work. We are proposing using a combination of the other two.

There are several major problems with weeks of work.

1. Employers are required to report weeks of work to us. along with wages. Wages are easy - they are report to us, IRS, revenue, workers comp, all the same. UI is only one that requires weeks of work.
2. Definition of week is confusing to employers - 1 hour or 100 is a week.
3. Accounting systems are not set up this way.

Result of this is reporting errors - 1/3 of all claims have them.

Claims are overpaid, claims are underpaid. We spend time trying to correct them. When we find the errors, claimants have to pay the overpayments back, even though they did not cause the error. And employers have to spend additional time with their records.

Its a mess.

ing new system that uses both 1 1/2 high quarter
unt to determine eligibility.

nes high quarter, we look at all the wages in the
four quarter period. You identify the highest
then look to see if the claimant earned at least 1
amount in the other three.

ows you to see if a claimant had wages spread out
year - is there substantial "attachment" to the

is method is for those folks who have very high
quarter, like someone who goes to alaska, or
action job with lots of overtime.

ssa. if a claimant didn't qualify under 1 1/2
puter would look at the second option:

er than 50% of the average annual wage. This would
er for people who had very high earnings in one

Effect:

qualifying under new system would be almost the

led 71 new claimants
2 fewer claimants

population of about 32,000 claimants

ffects on race or gender.

in construction workers eligibility, no other

would also effect the way benefit amounts are

was 49% of average weekly wage, but now, no
so new method is needed.

higher of two calculations:

the 2 highest quarters, which would tend to
seasonal workers, or

ntire base period wages, which tends to benefit
ose earning were more evenly through 4 quarters

increased benefits in 1990 by 1.9%, \$832,000

wage

7% average annual

effect in SFY 90

um and minimum

wages in base year

either method with
uits)

fits by 1.9% or
the margin of
the actual results
to year
)
go up, some

35.79
\$137.60

29%
5050 people
: \$457,000
: 4100 people
: \$359,000

deserve
caught
ting errors
nts

EXHIBIT 2
DATE 1/31/91
HB 280

AMENDMENT TO HOUSE BILL 280
First Reading Copy

Requested by Representative Thomas
For the Committee on Labor and Employment Relations

1. Page 2, line 10.

Following: "same employer"

Insert: ", which is work the individual is able and qualified to
perform,"

EXHIBIT 2
DATE 1/31/91
HB 280

Amendment
House Bill 280
(Introduced)

1. Page 2, line 14.
Following: "benefits if the"
Insert: "modified or alternative"
2. Page 2, line 15.
Following: "longer available"
Insert: "for any reason"

DEPARTMENT OF LABOR AND INDUSTRY
COMMISSIONER'S OFFICE



STAN STEPHENS, GOVERNOR

P.O. BOX 1728

STATE OF MONTANA

(406) 444-3555

HELENA, MONTANA 59624

January 31, 1991

TESTIMONY BEFORE THE HOUSE LABOR COMMITTEE ON HOUSE BILL 280

BY MIKE MICONE, COMMISSIONER OF LABOR AND INDUSTRY

Madam Chair and members of the committee.

I don't want to repeat what Representative Thomas has already stated as he has done an excellent job in explaining HB 280 to you. I do want to express to you the importance Governor Stephens places on the passage of this legislation.

The first issue is obvious. That is, the sooner an injured worker can be returned to work, the lower the cost to the system which results in holding premiums in line for the employer. But more important, the sooner an injured worker can be returned to a productive role, the faster the healing process of his/her injury.

Montana's labor force is very proud of the work they do and want to be part of the team that has their signature on the finished product. They can't be involved in this effort if they are sitting on the sidelines.

This legislation will require a great deal of cooperation from employers as they are being asked to maintain the level of wages of the employee even though the worker is performing a less productive task. The Governor will ask the insurers in the state to work with their policyholders in implementing the program. The Governor is committed to this program and we will intercede where necessary to obtain the cooperation of employers that have questions or fears.

This in no way reduces our responsibility to enforce safety standards in the public sector. And we will continue our efforts to make all workplaces - safe workplaces.

We encourage your approval of HB 280.

Amendments to House Bill No. 280
First Reading Copy

For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
January 31, 1991

1. Page 2, line 10.

Following: line 9

Insert: "that the individual is able and qualified to perform"

2. Page 2, line 14.

Following: "the"

Insert: "modified or alternative"

3. Page 2, line 15.

Following: "available"

Insert: "for any reason"

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Labor & Employment Relations **COMMITTEE** **BILL NO.** 251
DATE 1/31/91 **SPONSOR(S)** Jerry Driscoll

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Julie Hafner	OCAW	X	
George Wood	MT. Self Insurance Assoc	X	
Ernest Fard	MT. St. Bly Trade	X	
James Tutwiler	MT. Chamber	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**

Labor & Employment Relations

COMMITTEE

BILL NO. 256

DATE 1/31/91

SPONSOR(S) Jerry Driscoll

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CHUCK HUNTER	DEPT. OF LABOR & INDUSTRY	X	
Mike McNamee	✓ ✓	X	
Chapman H Smith	unemp emp advisors	X with amendment	
Julie Hafner	OCAW	X	
Eugene Fend	Not St Bly leader	X	
Laurie Shadban	Bozeman Chamber	X	
James Tutwiler	MT Chamber	✓	

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**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Labor & Employment Relations

COMMITTEE

BILL NO. 280

DATE 1/31/91

SPONSOR(S) Fred Thomas

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Mike McNamee	DCI	X	
George Wood	MT Self Insurance Assoc	X	
Michael Sherwood	MT L.A.	X as amended	
Jim Murphy	State Journal	X	
JAMES T. TWILER	MT Chamber	✓	

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