

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES, on February 5, 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)
Thomas Lee (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)
Tim Whalen (D)

Staff Present: Eddy McClure, Legislative Council
Jennifer Thompson, Committee Secretary

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

HEARING ON HOUSE JOINT RESOLUTION to

RESTORE MONTANA'S DISLOCATED WORKER FUNDS

Motion/Vote: REP. DRISCOLL MOVED HOUSE JOINT RESOLUTION TO RESTORE MONTANA'S DISLOCATED WORKER FUNDS BE INTRODUCED AND SPONSORED BY THE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS. EXHIBIT 1. Motion carried unanimously.

HEARING ON HB 356

Presentation and Opening Statement by Sponsor:

REP. GARY BECK, House District 48, said HB 356 is an act to require appointment, to the Board of Personnel Appeals, of two

persons who are full-time employees or full-time elected officials of a labor union or an association recognized by the Board.

Proponents' Testimony:

Gene Fenderson, Montana State Buildings and Construction Trades Unions, stated the Board of Personnel Appeals is a neutral party that stands before both management and labor. The Board should be as impartial as possible. In the last few years, people appointed as employee representatives to the Board sometimes lacked the experience or the fair judgment. This bill will equalize what the law originally intended, which was to have strong advocates on both sides. All members should have the same qualifications and there is one neutral member. The Building Trades Union wouldn't object to an elected official instead of a full-time elected official.

Phil Campbell, Montana Education Association (MEA), proposed removing "full-time" before "elected" on Pg. 1, Ln. 25. In MEA, most elected officials are not full-time. The President of MEA and a local president in Billings are the only two full-time employees. Currently, the differences in requirements for management representatives are to have management experience in collective bargaining and labor representatives are to have experience as being a member. This type of politics causes shenanigans. For example, in the most recent appointment to represent labor on the Board, the person fit the qualifications under the bill as member, but the person was a retired kindergarten teacher with no collective bargaining experience. It is a disservice to the Board and to all laborers. Being a member of a union is not enough. This bill will assure that people appointed will have experience in the collective bargaining process and labor law.

Don Judge, Executive Secretary, AFL-CIO, presented written testimony. EXHIBIT 2. HB 356 bill not only affects the public sector but the private sector in terms of the wage claims. A few years ago the Board of Personnel Appeals was given the responsibility of private sector wage claim work. The law was to resolve disputes between public sector employees and employers and play a key role in collective bargaining, so there would be a stable relationship. When the Board is allowed to take one side or the other, without adequate debate and discussion internally, there is instability in the collective bargaining process.

Tom Schneider, Montana Public Employees Association, stated his support of HB 356 with the amendment.

Opponents' Testimony:

Mike Micone, Commissioner, Department of Labor and Industry, stated the Board of Personnel Appeals is administratively attached to the Department of Labor and Industry, and the

Employment Relations provides the administrative support to the Board. The Board is a quasi-judicial board that hears appeals arising from decisions that are made within the Legal Services Division. The hearings and appeals that go before Board of Personnel Appeals deal with collective bargaining agreements, unfair labor practices, collective bargaining for nurses, wage and hour violations, etc. The Board has consistently voted almost unanimously on every occasion upholding the actions of the hearing officer of the Department. The consistent voting pattern hasn't changed over the years. Board members are statutorily obligated to be impartial decision makers. The Board hears appeals following an impartial hearings officer. This bill is narrowing the decision-making authority of the Governor. The provision in the bill to make it retroactive to January, 1989, will reflect on decisions by the Department. There is a possibility that members that currently serve on the Board would be removed, and the Department may have to go back and hear many cases.

Questions From Committee Members:

REP. FAGG asked REP. BECK what was the reason for the retroactive applicability date. REP. BECK said in the statute, if the date wasn't included it wouldn't exist, so January 1, 1989, was included. REP. FAGG said there might be a due process problem with previous cases or possibly removing someone from the Board. Would there be a problem making it effective on passage and approval. REP. BECK said it could be worked out.

REP. WANZENRIED said he talked with Ms. Eddye McClure, LC Attorney, and referred the previous question to her. Ms. McClure said that in drafting the bill the Department of Labor stated two members were appointed to the Board on January 1, 1989. It is a standard procedure when drafting bills relating to boards with staggered terms, to place a retroactive applicability date on them to affect persons appointed at particular times. When this bill was drafted, the appointment date given to the Council by the Department for the two labor appointees was January 1, 1989. Therefore, the bill was drafted to apply to anyone on the Board appointed after January 1, 1989. Since no other appointee's criteria of appointment was changed, the bill would not affect past or future appointees, other than the two labor appointees changed. The next appointment would have to follow these qualifications.

REP. FAGG asked Ms. McClure if there would be a reason for the retroactive applicability day if it would not take place until the time the next people were appointed. Ms. McClure said the intention of the retroactive applicability date was to go back and pick up two particular labor appointees. The Board has staggered appointments. According to the Department at the time of the drafting January 1, 1989, was when the two particular positions were appointed and the bill takes effect from that point, meaning those two particular people cannot be re-appointed

nor can any other new labor people be appointed using the old criteria. If the Department's date of January 1 for appointment of the labor people was correct, there was no problem. However, the two labor people that the bill affects were appointed January 2, not January 1, 1989. Because of that information, the "after January 1" date would affect the two appointed January 2. It could be solved by amending the bill to change January 1 to January 2.

REP. JOHNSON asked Mr. Micone how he would answer REP. FAGG'S question. Mr. Micone said the retroactive date goes back to the members appointed in January, 1989, and would immediately affect those individuals when they could not finish out their term.

REP. DRISCOLL asked Ms. McClure if it would be the same if the law applies to people appointed after passage and approval of this act. Ms. McClure said yes. Since people are confused about how retroactive applicability dates work, it would be less confusing to say that it applies to persons appointed after the "effective date of this act."

Closing by Sponsor:

REP. BECK stated the bill was fair and impartial. The Governor would still have the same authority. There's five people on the Board and three of them are directly influenced by the appointment of the Governor.

HEARING ON HB 305

Presentation and Opening Statement by Sponsor:

REP. JIM RICE, House District 3, Helena, sponsored HB 305 on behalf of the Department of Labor and presented amendments. EXHIBIT 3. The Department is currently holding many hearings by telephone, instead of having people drive to the hearing location. This bill is to clarify the authority of the Department to do this.

Proponents' Testimony:

William O'Leary, Chief Legal Counsel, Department of Labor and Industry, stated support for HB 305. EXHIBIT 4

George Wood, Executive Secretary, Montana Self Insurers Association, referred to the amendment that removes Sections 5 and 6, which pertains to the Workers' Compensation Act and the Occupational Disease Act. There should be adequate records of these hearings. It's difficult for a tape to pick up exact words. If two people are talking, it's difficult to say who's doing the questioning or answering. A user tax pays for the cost of the Workers' Compensation and Occupational Disease sections. His association is willing to assume the additional cost if there is one. The Supreme Court would not accept a taped record as the

primary record in a disputed case. Occupation Disease hearings take longer because there are usually many witnesses and a great deal of money involved.

Opponents' Testimony:

Tim Rearden, Workers' Compensation Judge, stated he opposed the bill but wanted to provide the Committee a perspective of the person listening to the tapes and referred to Workers' Compensation cases only. In 1987 and 1989 the Legislature expanded the authority of the Department of Labor to hear these cases. The Department is the first level hearing for all cases on whether the statute of limitations should be extended beyond the twelve-month period, it hears all occupational disease claims, it makes decisions regarding the uninsured employers fund, segregation allocations, rehabilitation benefits etc. These cases involve tremendous amounts of money. Unemployment Insurance (UI) has to have hearings held and completed within a certain time period, but Workers' Compensation cases do not. Tape recordings have many sections where the testimony is inaudible, or there may be nothing recorded on the tape. The records of court reporters are substantially better. It's difficult to understand four or five people talking at once on the telephone. In the courtroom the court reporter would stop the proceedings. It creates a very inadequate and poor record to review. There are some due process concerns in terms of an effective cross examination of a witness who may be 300 miles away. The face to face approach makes it is easier to judge credibility.

Phil Campbell, Montana Education Association, proposed the following amendment: after "the hearings may be conducted by telephone" insert "by mutual consent of the parties." There are times when a telephone hearing would be appropriate if it is not a complicated case and the parties agree. With the amendment, he stated support for the bill.

Don Judge, Executive Secretary, AFL-CIO, stated there must be three protections: 1. The parties must agree to the hearings before they are conducted by telephone. 2. Tapes should be provided to people who can satisfy the Department that they can't afford to pay for copies of the transcripts. 3. Provisions must be made so workers do not have to cover the cost if the tape was inaudible.

Questions From Committee Members:

REP. PAVLOVICH asked REP. RICE if he agreed with the amendments. REP. RICE said he had seen them and referred the question to Mr. O'Leary. Mr. O'Leary said that if Sections 5 and 6 were deleted there would remain a question of whether there is an obligation to hold hearings with a court reporter being present. The time element and fiscal impact would create problems. There are many aspects of Workers' Compensation that are routinely heard and the tape recordings submitted are adequate for the review. It is

hard to distinguish which hearings are going up for appeal.

REP. WHALEN asked Mr. O'Leary how many UI claims are appealed to the District Court each year. Mr. O'Leary said he didn't know. REP. WHALEN asked if he was aware that a District Court will not review a UI case unless there is a transcribed written record, and the Court won't review a tape. Mr. O'Leary said District Courts will review tapes, whether it is applicable to UI he didn't know. REP. WHALEN said there is a Supreme Court decision that specifically says they will not review a UI case absent a transcribed record.

REP. DRISCOLL said the Workers' Compensation telephone hearings are done on certain issues. He asked Mr. O'Leary if the bill was trying to get the injured worker to pay for the transcript, or if there was a problem with the telephone hearings being legal. Mr. O'Leary said it has never been decided in the State of Montana if there are some constitutional problems with telephone hearings. There isn't a budget to develop transcripts and provide them to the court. It was because of a Yellowstone County District Court order that this bill came about. The individual appealing the decision would have to assume the cost of the appeal. REP. DRISCOLL asked if there was a half-an-hour hearing on the telephone on a UI case, how much would the transcript cost if the Court wanted one. Mr. O'Leary said he didn't know. The Department looks at 1,500 of them a year. REP. DRISCOLL said, "you don't know how much they cost, you just want the worker to pay it." Mr. O'Leary said it wouldn't necessarily be the worker that would pay for it. It may be an employer if the appeal was made by him.

REP. WANZENRIED asked Mr. O'Leary what problem was being solved by this bill. Mr. O'Leary said the Department wants authorization to conduct telephone hearings because of the work load, and if transcripts are required, the appealing party is to pay the cost. REP. WANZENRIED said Pg. 1 of the fiscal note says the number of transcripts provided by the Department would remain unchanged. A flat rate of \$196 is charged per issue. Doesn't the Department already have the authority to charge if it is being done now? Mr. O'Leary said he didn't agree with the basis of the computation. REP. WANZENRIED asked if this bill will provide the authority to conduct the telephone hearings. Mr. O'Leary said yes. REP. WANZENRIED said even though there is general authority, specific authority is needed to conduct the interviews. Mr. O'Leary said the Courts are complaining about receiving tapes which predominantly result from telephonic hearings. The Department looks upon the comments of the Courts as a direct threat on the ability to conduct telephone hearings and to have the tape record available on appeal. If there is an appeal, the appealing party would be obligated to reduce the taped hearing to a record. If a District Court or the Workers' Compensation Court said they were not going to listen to any more taped phone calls, there would be a big problem.

REP. BECK asked Mr. O'Leary if the Department is conducting and taping telephone interviews, what procedure insures the quality of the tape or to keep people from talking at once. Mr. O'Leary said a year ago when the Department got the Workers' Compensation cases, it obtained state-of-the-art telephone equipment. The Department hadn't had the type of criticisms from the Courts as Judge Rearden talked about.

REP. DRISCOLL asked Mr. O'Leary if UI appeals are already done by phone if both parties agree to it, will that change if this bill does not pass. Mr. O'Leary said a pre-conference is held and issues are resolved, and the parties are informed that there will be a telephone conference. At that time their permission is not sought. REP. DRISCOLL said he received a letter that said to come to Helena or he would be called. Mr. O'Leary said he was given an option.

CHAIR SQUIRES asked Judge Rearden if he opposed the bill with the amendments. Judge Rearden said he didn't fully oppose the bill but opposed bad tapes and transcripts. Removing Workers' Compensation eliminates the problem because they have a high percentage of appeals.

Closing by Sponsor:

REP. RICE stated that \$6 million could be lost if UI hearings are not completed under certain time schedules. The only way the Department of Labor can meet the federal mandates is to have the hearings telephonically. Presently, the meetings are being held by telephone, but there is no specific authority given under the law. If the amendments are adopted to strike Workers' Compensation, the Department will be forced to have court reporters and transcripts at every Workers' Compensation hearing. That will have a big impact on the Department's budget.

HEARING ON HB 336

Presentation and Opening Statement by Sponsor:

REP. RICHARD SIMPKINS, House District 39, Great Falls, said HB 336 is the collection of wages in a labor dispute between an employer and an employee. Presently, the law permits the Department of Labor to levy a penalty against the employer at 5 percent per day, not to exceed 20 days, which is 100 percent. This can be a hinderance in settling a negotiated claim. If the employee waits, he could get the 100 percent penalty because the penalty used to be given to the employee. The state would receive no compensation for the negotiation phase of the process. This bill would give a different type of compensation to the employee and compensate the state for having to intervene in obtaining the back wages. It would provide a better incentive for a rapid settlement between the employee and employer. The Department would collect the 5 percent penalty per day if it chooses to do so. He presented amendments. EXHIBIT 5

Ms. McClure stated a correction to the amendments. The third amendment should say "Page 5" instead of "Page 3."

Proponents' Testimony:

Mike Micone, Commissioner, Department of Labor and Industry, presented written testimony. EXHIBIT 6

Opponents' Testimony:

Don Judge, Executive Secretary, AFL-CIO, presented written testimony. EXHIBIT 7

Phil Campbell, Montana Education Association, stated opposition. If the Department needs money, it should amend the bill to recover attorney fees which are allowed under other sections of the law. If an employee has a wage claim, he can go to court and receive the penalty and attorney fees. The penalties help settle the claims instead of prolonging them.

Gene Fenderson, Montana State Building and Construction Trades Union, stated he agreed with the testimony just given. The penalties should be tripled instead of doubled.

Questions From Committee Members:

REP. HOFFMAN asked Ms. McClure, in reference to the ability of the Department to take a default judgment, does the party against whom the default is taken have a remedy in the event of excusable neglect. Ms. McClure said she didn't know, but the Department may know.

REP. THOMAS asked Mr. Judge if he would change his position on the bill if the proposed amendment would allow interest to be charged on the back wages due. Mr. Judge said if the interest would be given to the Department and the penalty would be given to the employees, that would be okay. There would be additional income. The employee who has waited for 20 days would be entitled under current law to 100 percent of the lost wages. If the bill is adopted with the amendments, the employee would only be entitled to the New York prime interest plus 2 percent, which would be a smaller amount of money. That wouldn't change the major objection. REP. THOMAS asked if he would want the penalty to go to the employee as it is now. Mr. Judge said yes. REP. THOMAS asked if he would want the interest to go to the Department. Mr. Judge said he didn't have an objection to the Department collecting the interest; he was just defending what the employee has coming to him now.

REP. DRISCOLL asked Mr. Micone how many times the penalty was collected at 100 percent. Mr. Micone said that the law mandates to charge 5 percent per day. In every instance a case will go longer than 20 days, so the 100 percent penalty is collected in every occasion. The Department does collect the penalty; the law

mandates it.

Closing by Sponsor:

REP. SIMPKINS stated previous testimony said that almost every case exceeds 20 days. Up to 20 days is fine, but beyond 20 days there is no incentive to settle the case. Under this proposal, the employer pays the employee the percentage, and he has to pay the penalty to the Department. There would be an ongoing percentage being charged against those wages until the case was settled. The whole purpose of this bill is to get the money due the employee as soon as possible. Beyond 20 days the law doesn't have any bargaining power. The employee would be given compensation at a rate higher than most people can earn on their money. In addition, he stated to Ms. McClure where it says, "the rate may not exceed" the word "annualized" may need to be inserted.

CHAIR SQUIRES asked Mr. Micone to clarify the technical note in the fiscal note Section 4, Subsections 3 and 4, referring to the payroll taxes due to the Department of Labor. As of July 1, 1991, the employer payroll tax would be collected by the Department of Revenue. Mr. Micone said it refers to the payroll tax to pay out the unfunded liability in Workers' Compensation. That function had been transferred to the Department of Revenue effective January 1, 1992.

Ms. McClure asked Mr. Micone if it should say payroll taxes due to the Department of Revenue instead of Department of Labor in Subsections 3 and 4. Mr. Micone said yes.

HEARING ON HB 342

Presentation and Opening Statement by Sponsor:

REP. WANZENRIED, House District 7, Kalispell, stated that HB 342 deals with the construction trade industry, home building, and independent contractors. It would remove the exemptions that members of the Home Building Construction Industry are currently entitled to qualify for an exemption from coverage under Workers' Compensation. It would require anybody involved in the industry to carry Workers' Compensation coverage. Page 3 lists the occupations that would be required to carry Workers' Compensation coverage. These occupations are the most hazardous in the Workers' Compensation field. The independent contractor status that is allotted to any occupation complicates Workers' Compensation. Under current law, an independent contractor is a person engaged as an independently established trade, occupation, profession, or business. The independent contractor has been and will continue to be free of control or direction over the performance of the services under the contract. In the absence of a contract, the degree of control is the important variable. For example, a home builder may serve as a general contractor and subcontracts the work out. As soon as there is an injury, that

person or firm will argue that he is an employee of the home builder or the general contractor. Aside from what the law says an independent contractor is, in performing the services an independent contractor is assumed to be an employee. Home construction would remain competitive in Montana and home owners would get the most service for their dollar. An amendment on Page 8 strikes existing language and carries to Page 9 pertaining to cosmetologists and barbers. This bill has no effect on current law.

Proponents' Testimony:

Don Chance, Montana Building Industry Association, said about one third of the Association takes advantage of the current exemptions in the Workers' Compensation law. About one third do not cover themselves under Workers' Compensation insurance. This bill does three things: 1. Eliminates exemptions that currently exist for people engaged in physical labor on a construction site. 2. Employers are directly responsible for themselves and their employees covered by Workers' Compensation Insurance if engaged in the construction. A third party would not be held responsible in case a person had not appropriately carried Workers' Compensation Insurance. The liability falls directly on the responsible party. 3. An enforcement threat is established to ensure compliance. The Association made the decision that the problems had to be addressed despite the substantial increased insurance costs. Too many innocent people, workers, contractors, honest small businesses, homeowners, and etc. are being hurt. Everyone should be covered because the industry has a high accident rate. Homeowners are being held liable as third parties. Legitimate general contractors are having to compete against outfits without Workers' Compensation Insurance. Those who pay into the system are carrying the costs for the entire industry. Most of the accidents are entering back in the insurance trust whether they were covered by premium or not. As the inequity increases, the rates rise. This is a moral obligation on the industry's part to resolve this problem. This bill is supported by the Montana Building Industry Association, Flathead Builders' Association, Helena Home Builders' Association, Missoula Building Industry Association, Great Falls Home Builders' Association, and the Bozeman Building Industry Association.

Chuck Hunter, Department of Labor and Industry, said the current exemption process, from the Department's perspective, can only look at the relationship on paper. Many times the exemptions granted based on those relationships on paper are not the same relationships at the workplace. The proposed language does two things for the industry: 1. It doesn't specify who pays this cost. It only specifies that independent contractors must have coverage. 2. Once coverage is mandated, everyone in the industry will be operating on the same level.

Mark Lindsey, General Contractor, Helena, said the independent

contractor exemption in the current law is causing serious problems throughout the industry. Sole proprietors, partners, and corporate officers can exclude themselves from Workers' Compensation Insurance by obtaining the exemption. More contractors claim this exemption because of the rise in premiums. Many general contractors are now operating entirely without employees to avoid paying the premiums. They exempt themselves as the owners of the firms, and they hire subcontractors with or without the exemption to do the project. Part of the industry is operating legally or illegally without coverage. If an independent contractor is injured, he is usually awarded Workers' Compensation benefits because he is an employee of the general contractor or the homeowner and is entitled to benefits. The enforcement of the current law is put upon the contractor, and he is liable for back premiums and medical costs of an individual if it is determined that the individual is an employee. A homeowner could be liable if he is contracting directly with the injured party.

Bob Ross, Family Construction Company, Kalispell, said under the current law, those most in need of protection under Workers' Compensation do not have it. Under this bill everyone would be covered. Currently, most Workers' Compensation claims would not be covered by homeowner's liability insurance policy. It assures the homeowner that he would not lose everything based on an accident of someone claiming an exemption and becomes an employee. In the construction industry with subcontracting being done more, it is difficult to ensure that everyone is carrying coverage with the activity and time constraints. This bill protects the workers, the contractors, and homeowners. More people will be brought into the Workers Compensation Fund, which the legitimate contractors are supporting anyway.

Ken Dunham, Manager, Montana Contractor's Association, stated his association represents heavy highway or commercial building contractors. When an independent contractor is injured on the job, they suddenly become that employee. Most of the building contractors have faced major law suits.

Tim Dean, General Contractor, Bozeman, stated he hired a carpenter to roof a residential home he was building. The carpenter fell off the roof and filed a claim as an employee. Therefore, he (Tim Dean) was liable and had to pay. Three months later the carpenter was involved in a direct bid against Dean Construction. The carpenter didn't have a license, Workers' Compensation or Unemployment Insurance and his bid could not be beat. Mr. Dean stated he had an established business, he carries Workers' Compensation, he pays federal and state Unemployment Insurance, and he warranties his homes for ten years. He is concerned how that carpenter represents the industry.

Jim Caras, Missoula Homebuilders, stated he was a legal subcontractor in the cabinet manufacturing business. Many independent contractors do not have Workers' Compensation

Insurance, and they are fine until they get hurt. Then they go after the homeowner or the general contractor.

Gene Fenderson, Montana State Building and Construction Trades Union, said that over one third of the industry is working without coverage and the other two thirds is paying for their defaults. He proposed an amendment for Page 3, Line 12, where it says, "of buildings or other structures"; all construction should be covered under this, for example, utility work, highway work, home building, or commercial structures. The Committee may consider if that covers all aspects of the industry. Page 17 pertaining to the enforcement, it is workable with the Department so the declared independent contractors have the same coverage as other contractors in the construction field.

David Stein, Stein Builders, Properties, Improvement Company, Great Falls, stated his support on behalf of the Great Falls Home Builders' Association with the amendment.

Lars Ericson, Montana State Council of Carpenters, stated his support of HB 342.

Don Judge, Executive Secretary, AFL-CIO, stated his support with Gene Fenderson's amendment and presented written testimony.

EXHIBIT 8

Opponents' Testimony: None

Questions From Committee Members:

REP. HANSON said to REP. WANZENRIED that he recalled a bill defeated last session that would allow the owner of a business out from underneath the payment of Workers' Compensation Insurance. The reason was that they could not collect on it, so they wanted to be excluded from paying into it. He asked REP. WANZENRIED if they can file claims and draw on it. REP. WANZENRIED said he wasn't familiar with that legislation. The bill requires any individual to cover himself with Workers' Compensation and would be eligible to file if injured.

Closing by Sponsor:

REP. WANZENRIED said the Legislature should look at the independent status as a whole as it applies to UI and Workers' Compensation.

EXECUTIVE ACTION ON HB 44

Discussion:

REP. DRISCOLL stated that the Committee was waiting for the Attorney General's opinion.

CHAIR SQUIRES deferred executive action until the Committee

received the Attorney General's opinion.

EXECUTIVE ACTION ON HB 141

Motion: REP. O'KEEFE MOVED HB 141 DO PASS.

Discussion:

Ms. McClure said there was a request to get a copy of the California statute which was received from Chuck Hunter. She explained amendments of the California language to be inserted into the bill. EXHIBIT 9. It gives a definition of reasonable assurance of employment. Written statements have to be given to the employee prior to the end of the first academic term, and it must inform the employee that he may file a claim for benefits and the determination for eligibility will be made by the department and not by the employer.

REP. FAGG asked Ms. McClure with the amendments would the bill be in compliance with federal regulations. Ms. McClure said yes; that is what Mr. Hunter believes. REP. FAGG asked if Mr. Hunter supported the bill with the amendments. Ms. McClure said he looked over the amendments last week.

REP. THOMAS asked Ms. McClure if it was her assessment that the amendments brought the bill into compliance with the federal statute. She said there wasn't a mechanism for determining reasonable assurance. Once this mechanism in place, Montana would be within the federal statute.

Motion/Vote: REP. KILPATRICK moved to amend HB 141. Motion carried unanimously.

Motion: REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT HB 141 DO PASS AS AMENDED.

Discussion:

REP. THOMAS said that the unemployment compensation tax is the highest tax paid, except for Workers' Compensation in the more hazardous areas. The fiscal note shows a large amount of money. When people go to work for the school districts, they know that their jobs last for nine months. He asked REP. DRISCOLL if teachers could receive unemployment for the summer like the nonprofessional workers. REP. DRISCOLL said teachers are given a contract by April 1 that they will be rehired for the next term. If they are not rehired, they get their whole salary. REP. THOMAS asked if the district guaranteed rehire for the nonprofessional school employees, they would not be eligible for unemployment benefits. REP. DRISCOLL said that is what the amendments do. If the school district will give the nonprofessional employees a written assurance that they will be rehired in September, they can't draw unemployment. They don't receive their salary that they would have earned, but they can

file retroactive unemployment benefits. REP. THOMAS said HB 141 as amended says if the school district guarantees their re-employment in September, they are not eligible for unemployment benefits. REP. DRISCOLL said yes.

REP. PAVLOVICH asked REP. DRISCOLL if secretaries would be included. REP. DRISCOLL said with the amendments, anybody who works for a school district that is given written assurance to be rehired and are rehired in September would be included.

REP. JOHNSON asked REP. DRISCOLL if the people who run the buses have a contract with the school district in time to give their employees the assurance. REP. DRISCOLL said if it's a contractor to a school district, for example, in Billings, those people can draw unemployment because they don't work directly for the school district. The towns where the school districts run their own bus system would be affected.

Vote: HB 141 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 187

Motion: REP. DRISCOLL MOVED HB 187 DO PASS.

Motion/Vote: REP. DRISCOLL moved to amend HB 187. EXHIBIT 10.
Motion carried unanimously.

Motion: REP. DRISCOLL MADE A SUBSTITUTE MOTION THAT HB 187 DO PASS AS AMENDED.

Discussion:

REP. DRISCOLL said SB 11, sponsored by Sen. Thayer, goes along with the package of bills about Workers' Compensation in the construction industry. That bill will change the preference for Montana contractors bidding against out-of-state contractors to make it reciprocal with those other states. Currently, if a Wyoming contractor comes to Montana, there is a 3 percent preference for a Montana contractor. If a Montana contractor goes to Wyoming there is a 5 percent preference. SB 11 will change it to 5 percent both ways. With HB 187, SB 11, and HB 342, the Montana contractors are more competitive in the surrounding states.

REP. WANZENRIED asked REP. DRISCOLL if he knew what the impact will be in shifting the rates away from the higher paying contractor, which are usually union contractors, to non-union in the short-term range. REP. DRISCOLL said if the Division were to do it correctly it would take a wage rate that is in between and the percentages now used to figure a dollar amount per hour. In the construction industry, except some contractors in the home building industry, every injured employee is eligible for the maximum benefit amount in weekly lost time anyway, and the medical bills are the same no matter what the income was before

the injury. The rate will change a few dollars either way depending what the employer is paying the employees.

REP. JOHNSON said there could be problems in record keeping. Perhaps the solution could be that the employers could pay the prevailing Workers' Compensation rate. Out-of-state employers would have to pay the Montana rate. This possibility needs to be researched.

Vote: HB 187 DO PASS AS AMENDED. Motion carried 17 to 1 with REP. WANZENRIED voting no.

EXECUTIVE ACTION ON HB 232

Motion: REP. COCCHIARELLA MOVED HB 232 DO PASS.

Motion/Vote: REP. O'KEEFE moved to amend HB 232. EXHIBIT 11. Motion carried unanimously.

Motion/Vote: REP. COCCHIARELLA MADE A SUBSTITUTE MOTION THAT HB 232 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 356

Motion/Vote: REP. DRISCOLL moved to amend HB 356. EXHIBIT 12. Motion carried unanimously.

Motion/Vote: REP. BECK MOVED HB 356 DO PASS AS AMENDED. Motion carried 16 to 2 with Reps. Benedict and Thomas voting no.

EXECUTIVE ACTION ON HB 342

Motion: REP. COCCHIARELLA MOVED HB 342 DO PASS.

Discussion:

REP. HOFFMAN said on Page 8, Paragraph 3, Line 20, the paragraph reads that a sole proprietor or a working member of a partnership can apply for an exemption from Workers' Compensation if he is contracting for cosmetologists, barber, or construction trades services. REP. WANZENRIED must not have intended for this to be included in the bill. Ms. McClure said it reads that a sole proprietor who holds himself out must carry Workers' Compensation coverage for his employees. Unless he is contracting, he may apply for an exemption for himself. REP. HOFFMAN said unless he is construction trades services, he may apply for himself. The barbers and cosmetologists have been put in the same category as the construction trade workers. Under the old statute the cosmetologists and barbers were completely removed. He suggested the way the bill should read, a sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor "except one who is contracting for cosmetologist services or barber services as defined in that

statute," must elect to be bound personally or individually by the provisions of Workers' Compensation Plan 1,2, or 3, but unless he is contracting for construction trade services, he may apply to the Department for an exemption. Ms. McClure said she thought the intent was to group them with cosmetologists and barbers. REP. HOFFMAN said the way he reads the old statute, it should be the opposite. Construction trade workers are to be in a different category by themselves where they can apply for an exemption and the cosmetologists and barbers don't have to elect to do so.

REP. COCCHIARELLA WITHDREW HER MOTION THAT HB 342 DO PASS.

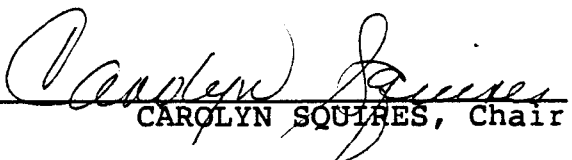
REP. DRISCOLL asked Ms. McClure with the way the bill is written, can a sole proprietor get an exemption in the construction industry. Ms. McClure said yes. REP. DRISCOLL said that is not the intent of the bill. The intent is exactly opposite; the intent is that nobody in construction can be exempt from having a policy.

REP. DRISCOLL asked Ms. McClure to research Section 8, if the general contractor knows and can be proven that he knows that the subcontractor does not have a policy, to find out if there could be a third person lawsuit against him.

CHAIR SQUIRES deferred Executive Action on HB 342 until February 7, 1991.

ADJOURNMENT

Adjournment: 5:45 p.m.


CAROLYN SQUIRES, Chair


JENNIFER THOMPSON, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 2/5/91

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	✓		

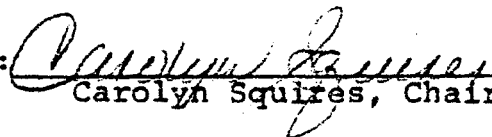
7.30
2-6-11
JDB

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that House Bill 141 (first reading copy -- white) do pass as amended.

Signed: 
Carolyn Squires, Chairman

And, that such amendments read:

1. Page 2, lines 4 and 5.

Following: "or" on line 4

Insert: "has been provided a written statement indicating the following to the individual no later than 30 days before the end of the first of the academic years or terms:

(a) whether there is a"

Following: line 4

Insert: "reemployment"

2. Page 2, line 7.

Following: "terms"

Insert: ";

(b) whether it is stated that the individual has no reasonable assurance of reemployment and that the individual should file a claim for benefits at the close of the academic year or term;

(c) if it is stated that the individual has reasonable assurance of reemployment, that the written statement inform the employee that he may file a claim for benefits and that the determination for eligibility for benefits is made by the department and not by the employer; and

(d) if it is stated that the individual has reasonable assurance of reemployment, that the individual is entitled to a retroactive payment of benefits if he:

(i) is not offered an opportunity to perform the services for the education institution for the subsequent academic years or terms;

(ii) is otherwise eligible and filed a claim for each week benefits are claimed; and

(iii) filed a claim for retroactive benefits no later than 30 days following the commencement of the subsequent academic year or term"

1.30
2-6-91
JDB

February 6, 1991
Page 2 of 2

3. Page 3, lines 13 and 14.

Following: "~~section.~~"

Strike: the remainder of line 13 through "term" on line 14

Insert: "(4) For the purposes of this section:
(a)"

4. Page 3, line 17.

Following: "institutions"

Insert: "; (b) "reasonable assurance" includes but is not limited to an offer of employment or assignment made by the educational institution if the offer or assignment is not contingent on enrollment, funds, or program changes. An individual who has been notified that he will be replaced and does not have an offer of employment or assignment to perform services for an educational institution is not considered to have reasonable assurance."

CLERICAL

H Bill No. 141

Date: 2/6

Time: 12:40 p.m.

(Legislative Council Staff) caj

☒ Labor
S / (H) Standing Committee
(Chairman) Charles J. ...

☐ S / H Committee of the Whole
(Sponsor) _____

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

2. Insert: (d) (i) "opportunit^{ly}"
spelling
"educational"

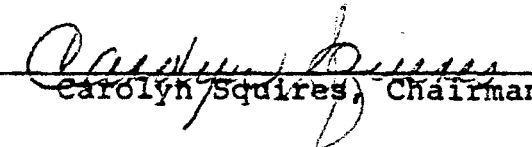
~~4. Insert:~~ consistency with (4) (6)

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that House Bill 187 (first reading copy -- white) do pass as amended.

Signed: 
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 11.

Following: "39-71-116,"

Insert: "39-71-402, 39-71-426,"

2. Page 5, line 4.

Following: "means"

Strike: "any"

Insert: "an"

3. Page 8, line 4.

Following: "2"

Insert: "and plan No. 3"

4. Page 8, line 9.

Following: line 8

Insert: "Section 4. Section 39-71-402, MCA, is amended to read:

"39-71-402. Extraterritorial application and reciprocity -- exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another

February 6, 1991
Page 2 of 2

state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) The provisions of this section do not apply to the construction industry as defined in 39-71-116."

Section 5. Section 39-71-426, MCA, is amended to read:

"39-71-426. Reciprocal agreements with Canadian provinces -- exception. (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116."

Renumber: subsequent sections

7.2.2
2-0-41
JDB

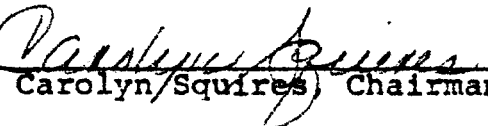
HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 232 (first reading copy -- white) do pass as amended .

Signed: _____


Carolyn/Squires, Chairman

And, that such amendments read:

1. Page 1, line 16.

Following: "court"

Strike: "of"

Insert: "in the county in which the claim arose or to the
district court of"

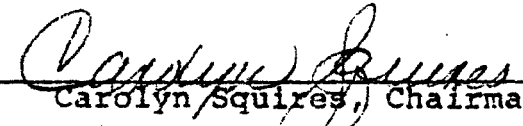
HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 356 (first reading copy -- white) do pass as amended .

Signed:


Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "OR"

Strike: "FULL-TIME"

2. Title, line 8.

Strike: "A RETROACTIVE"

Insert: "AN"

3. Page 1, line 25.

Following: "or"

Strike: "full-time"

4. Page 2, line 22.

Following: "2."

Strike: "Retroactive applicability"

Insert: "Applicability"

5. Page 2, lines 23 and 24.

Following: "applies"

Strike: remainder of line 23 through "1-2-109,"

Following: "after"

Strike: "January 1, 1989"

Insert: "[the effective date of this act]"

EXHIBIT 1
DATE 2/5/91
HB HJR 29

HOUSE JOINT RESOLUTION
to
Restore Montana's Dislocated Worker Funds

Whereas, Job Training Partnership Act Title III funds used to train dislocated workers were increased nationwide by 14 percent for fiscal year 1991, and

Whereas, Montana's share of those funds was cut by 18 percent for the same year, and

Whereas, 5 of the top 7 states whose funds were cut are western states who continue to suffer the effects of the oil recession, and

Whereas, Montana's number of dislocated workers is increasing, and

Whereas, the amount of funds with the U.S. Department of Labor available for discretionary uses increased by \$14 million in fiscal year 1991, and

Whereas, the total cuts amount to \$17.8 million.

Therefore, let it be resolved that the Montana Legislature encourage the U.S. Secretary of Labor allocate national reserve funds to those states including Montana which received dislocated worker cuts.

Ex. 1
2/5/91
HJR 29

U.S. Department of Labor
JTPA Title III Dislocated Worker
Funding Cuts

<u>State</u>	<u>%</u>	<u>\$</u>
Louisiana	- 39	7,533,868
Arizona	- 30	1,686,392
Colorado	- 28	1,989,818
Kentucky	- 19	1,681,021
Wyoming	- 19	186,281
Montana	- 18	302,313
Oklahoma	- 18	1,101,246
Mississippi	- 10	849,669
Arkansas	- 8.5	145,354
Maryland	- 8.5	300,409
New Mexico	- 6	189,959
Hawaii	- 5	25,892
Nevada	- 5	63,396
Wisconsin	- 5	251,725
Texas	- 3	1,227,744
Tennessee	- 2	135,323
Alabama	- 1	88,162
North Dakota	- 1	4,405
West Virginia	- .3	18,779
	TOTAL	17,781,756



EXHIBIT 2
DATE 2/5/91
HB 356

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, February 5, 1991

Madam Chair and members of the committee, for the record I am Don Judge, and I am here today to testify on behalf of the Montana State AFL-CIO in support of House Bill 356.

This bill would make a simple clarification to Montana law regarding the appointment of labor members to the Board of Personnel Appeals. The requirements of House Bill 356 would mandate that the labor representatives on this board be either full-time employees or full-time elected officials of a labor union or association.

Although this somewhat restricts the field of potential appointees, we believe that past history of appointments mandates something be done to return the balance to a board which has significant power to impact and influence labor relations in the state of Montana.

Under current law, two members of this five member board are required simply to have had "experience as a member or employee of an employee organization". This has allowed for board members to come from the ranks of management based upon previous membership or experience in an employee organization, or bargaining unit.

We believe that the drafters of the law providing for the Board of Personnel Appeals never intended for this to happen, and we would urge your support in adopting House Bill 356 to return a balance to a regulatory board so important to workers and their organizations in our state.

Please give House Bill 356 a do pass recommendation.

Thank you.

Amendments to House Bill No. 305
First Reading Copy

For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 5, 1991

1. Title, line 12.
Following: "39-51-1109,"
Insert: "AND"
2. Title, line 13.
Following: line 12
Strike: "39-71-204, AND 39-72-612,"
3. Page 2, lines 7 and 8.
Following: "court" on line 7
Strike: remainder of line 7 through "supreme court" on line 8
4. Page 4, line 14 through page 6, line 8.
Strike: sections 5 and 6 in their entirety
Renumber: subsequent sections

DEPARTMENT OF LABOR AND INDUSTRY

LEGAL SERVICES DIVISION

EXHIBIT 4
DATE 2/5/91
HB 305



STAN STEPHENS, GOVERNOR

P.O. BOX 1729

STATE OF MONTANA

LEGAL - (406) 444-4493
HEARINGS - (406) 444-4662

HELENA, MONTANA 59624

February 5, 1991

TESTIMONY BEFORE THE HOUSE LABOR COMMITTEE ON HOUSE BILL 305

**BY WILLIAM E. O'LEARY, CHIEF LEGAL COUNSEL OF THE DEPARTMENT
OF LABOR AND INDUSTRY**

Madam Chair and members of the committee.

HB 305 Tape Recordings as part of appeal record;
 Telephone Hearings Authorized

HB 305 is submitted at the request of the Department of Labor and involves hearings that are conducted daily.

The Legal Services Division is composed of a legal staff and hearing unit composed of eight hearing officers. These Hearing Officers daily hold many and varied hearings regarding all labor issues - workers' compensation and wage and hour issues, collective bargaining disputes and unemployment insurance tax and benefit issues.

I understand Mike Micone the Labor Commissioner provided you with copies of a report to the Governor and the State concerning Department activity. On page 14 & 15 the current activity of the Legal Services Division is described. The Hearing Officer Unit in 1990 processed 2000 files an increase of 78% over 1989. That figure in turn represents an increase of 94% over 1988.

The 2000 files processed in 1990 in round figures consists in 1600 unemployment insurance benefit cases. The remaining 400 cases involve workers' compensation and wage and hour issues, collective bargaining disputes and unemployment insurance tax matters.

Because of the urgency in which these hearings must be held for example the Federal Department of Labor requires us to process 60% of all appeals in 30 days and 80% in 45 days, at least two Hearing Officers regularly hear and decide 6 - 8 unemployment insurance benefit hearings daily - all by telephone in order to meet these minimum requirements. Since all other issues - wage and hour, workers' compensation, unemployment insurance tax issues - all impact employers and employees throughout the State these hearings are also conducted by telephone as a convenience to all parties. If we required all employers and employees to attend in person hearings at a particular site not only would the Department miss its minimum hearing requirement but each party would be required to miss work, take supporting witnesses with them, and travel to Helena or another town in Montana.

Because of these problems the Department historically holds telephone hearings in the vast majority of these 2000 hearings. If persons so request in person hearings are given.

In recent months several District Courts have issued warnings to the Department threatening to eliminate telephone hearings or criticizing the existence of a tape recording being used on appeal.

If telephone hearings are not permitted the Department could not handle the resulting work load and still stay current with the current work load or meet federal requirements.

HB 305 would permit the Department Of Labor and Industry to hold telephone hearings for all subject matter within which it has jurisdiction, this would include wage and hour, unemployment insurance issues, workers' compensation and collective bargaining.

I urge your support of HB 305

Amendments to House Bill No. 336
First Reading Copy

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

Prepared by Eddye McClure
February 6, 1991

1. Title, line 7.

Following: "DUE;"

Insert: "REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE ANNUALIZED
INTEREST ON UNPAID WAGES;"

2. Page 1, line 23.

Following: "~~shall~~"

Strike: "must"

Insert: "may"

3. Page 2, line 7.

Following: "due."

Insert: "The employer shall also pay the employee annualized
interest on the unpaid wages from the date the wages were
due. The interest must be calculated by the department and
compounded annually, but the annualized rate may not exceed
2 percentage points a year above the prime rate of major New
York banks on the date of settlement."

4. Page 5, lines 9 and 10.

Following: "wages" on line 9

Strike: ", "

Insert: "or"

Following: "taxes"

Strike: remainder of line 9 through "premiums" on line 10

DEPARTMENT OF LABOR AND INDUSTRY

COMMISSIONER'S OFFICE



STAN STEPHENS, GOVERNOR

P.O. BOX 1728

STATE OF MONTANA

(406) 444-3555

HELENA, MONTANA 59624

February 5, 1991

TESTIMONY BEFORE THE HOUSE LABOR COMMITTEE ON HOUSE BILL 336

BY COMMISSIONER MIKE MICONE, THE DEPARTMENT OF LABOR AND INDUSTRY

Madam Chair and members of the committee.

HB 336 is before you at the request of the Department. The purpose for this legislation is threefold:

1. A technical correction of a provision in a legislative enactment in 1989 that allows the department to enter into a default order against an employer for wages due and the determination is not appealed by the employer. This correction is in Section 3 of the bill.
2. The second purpose is to clarify the bond provision as outlined in Section 4. Presently, the operator of a restaurant or bar is required to file a bond with the Department equal to double the amount of the projected semimonthly payroll. The purpose of the bond was to assure employees were guaranteed their wages. If the business is to cease operations, it is our intention that the proceeds of the bond will first be used to pay wages owing to employees; remaining proceeds would pay payroll taxes due and owing. None of the proceeds would be used to pay workers' compensation premiums.\
3. The third provision of the bill (Section 1) is a change that will enable the Department to bring about a more timely resolution to contested wage cases. Presently the Department is required to impose a penalty equal to 5% per day of the wages due and unpaid, not to exceed 100%. This penalty becomes part of the settlement to the employee. There is no leeway in the law for the Department to settle cases.

Our proposal is to allow the Department to impose a penalty up to 100% and the proceeds collected would revert to the Department for the operations of the legal unit. We agree with the amendment offered by the sponsor that gives accumulative interest to the claimant separate and apart from the penalty imposed.

The Department presently is acting on behalf of the claimants receiving no fees for the services performed. In addition, if the claimant refuses to settle for the amount of wages owed and insists on the penalty, Department expenses expand accordingly by requiring our legal staff to obtain depositions or pay travel expenses to Helena for a trial.

A classic example is a wage claim case of 93 workers against Centel filed in 1984. While the exact damages based on the number of workers and hours is still disputed, the Department would like to settle the case for what we believe is owed. We believe settlement would avoid costly discovery and extended trial. Several of the claimants have demanded the penalty thus protracting our efforts to settle.

Many times our hearing officers attempt to negotiate settlements prior to the hearing. Employers are opposed to paying any penalty and the employee, upon hearing of the 100% penalty, refuse to settle for the wages owed.

We believe that providing for interest to be paid to the claimant and allowing the Department flexibility will go a long way toward resolving cases and get the aggrieved workers their wages in a more timely manner.

We encourage passage of HB336.

5 June 1989

Department of Labor & Indust.
State of Montana
Commissioners Office
PO Box 1728
Helena, Montana

59624

RE: Wage Claim against
Wilco-Center

In 1983 we installed several Public Business Exchanges and wired many buildings including the State Capitol Complex and three major state Universities in Billings, Bozeman, and Missoula, Mont. We worked many long hard hours cutting over the new phone system. During the tenure of our employment in 1983, we obtained copies of our union labor Contract and noted several discrepancies in the contract including prevailing wage and the per diem in the contract. On discovering we weren't being paid properly we filed a petition six years ago and now understand the issue is going to court Oct 6, 1989. We the undersigned feel that we should have due wages and compensations that should have been paid to us years ago.

W. H. H. H.
C. H. H. H.
C. H. H. H.
C. H. H. H.

Ex. 6
215/91
HB 336

Michael J Duffin Po Box 302

ELDRIDGE, IL 62027

John P. Ford

RR I Box 118

John Wyrick

Hillview ILL 62050

527 Potter St. Whitehall ILL
62092

Rick Lawson

Box 143

Hillview, IL
62050

Roger B. Cox

Box 21

Hillview, ILL.

Marilyn R. Cox

Box 21

Hillview, ILL.

Ralph D. Cox

Box 132

Hillview, IL

Robby E. Hurt

Box 64

Hillview, IL

Matthew J. Iners

Box 27

ELDRIDGE, IL 62027

OLY EDRIDGE



EXHIBIT 7
DATE 2/5/91
HB 336

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, February 5, 1991

Madam Chair and members of the committee, for the record my name is Don Judge and I am here today to testify on behalf of the Montana State AFL-CIO in opposition to House Bill 336.

As has been described to you, this bill would amend current law to provide that fines assessed against an employer for failure to pay wages in accordance with the time frame specified in law, would be paid to the Department of Labor rather than to the employee effected.

For employees who may be forced to wait for several months to collect back wages, this could mean the difference in ability to pay bills long overdue, to cover medical costs long overdue, or to simply furnish food for their table. Although we appreciate that there are costs involved with the Department of Labor in investigation and collection of such wages, we also believe that the moral obligation of the State is to do so within the regular funding sources available. Currently the fund used to support wage claim activities is the Unemployment Insurance Administrative Tax Revenue. This seem to us to be an appropriate financing arrangement for this activity.

Madam Chair, members of the committee, this is a simple bill which may create significant problems for employees who are already facing difficulties as a result of their employer's wage default. It is our opinion that House Bill 336 is a bad idea and should be given a "do not pass" recommendation by this committee.

Thank you.



EXHIBIT 8
DATE 2/5/91
HB 342

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, February 5, 1991.

Madam Chair and members of the Committee, for the record I am Don Judge, here to testify on behalf of the Montana State AFL-CIO in support of House Bill 342.

As the sponsor has described to you, this bill would mandate workers' compensation coverage for independent contractors engaged in a construction trade.

We find some irony in this bill, as it hasn't been too long ago that independent contractors were vying to remove themselves from the requirements of mandated workers' compensation coverage. The argument used then was that these individuals were people who should be excluded because:

1. They were free from control or direction over the performance of their services, and
2. They were engaged in an independently established trade, occupation, profession or business.

Now we find that these individuals are realizing the necessity of having workers' compensation protection in the dangerous occupations of the construction industry.

Madam Chair, members of the committee, it has always been our belief that workers in any occupation should be afforded the protections of medical costs incurred and stop gap provisions for lost wages as a result of on-the-job injuries. We are highly supportive of the efforts of these independent contractors to mandate workers' compensation protection in this industry.

In addition, we also see a positive impact in passing this legislation on good contractors already providing workers' compensation protection for their workforce. House Bill 342 should level the playing field for these contractors with those contractors who deny this basic protection when bidding for construction jobs.

We urge this committee to give House Bill 342 a do pass recommendation.

Thank you.

Amendments to House Bill No. 141
First Reading Copy

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

Prepared by Eddy McClure
January 30, 1991

1. Page 2, lines 4 and 5.

Following: "or" on line 4

Insert: "has been provided a written statement indicating the following to the individual no later than 30 days before the end of the first of the academic years or terms:

(a) whether there is a"

Following: line 4

Insert: "reemployment"

2. Page 2, line 7.

Following: "terms"

Insert: ";

(b) whether it is stated that the individual has no reasonable assurance of reemployment and that the individual should file a claim for benefits at the close of the academic year or term;

(c) if it is stated that the individual has reasonable assurance of reemployment, that the written statement inform the employee that he may file a claim for benefits and that the determination for eligibility for benefits is made by the department and not by the employer; and

(d) if it is stated that the individual has reasonable assurance of reemployment, that the individual is entitled to a retroactive payment of benefits if he:

(i) is not offered an opportunity to perform the services for the education institution for the subsequent academic years or terms;

(ii) is otherwise eligible and filed a claim for each week benefits are claimed; and

(iii) filed a claim for retroactive benefits no later than 30 days following the commencement of the subsequent academic year or term"

3. Page 3, lines 13 and 14.

Following: "~~section.~~"

Strike: the remainder of line 13 through "term" on line 14

Insert: "(4) For the purposes of this section:

(a)"

4. Page 3, line 17.

Following: "institutions"

Insert: " (b) "reasonable assurance" includes but is not limited to an offer of employment or assignment made by the educational institution if the offer or assignment is not contingent on enrollment, funds, or program changes. An individual who has been notified that he will be replaced

EX. 7
2/5/91
HB 141

and does not have an offer of employment or assignment to perform services for an educational institution is not considered to have reasonable assurance."

Amendments to House Bill No. 187
First Reading Copy

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

Prepared by Eddye McClure
January 29, 1991

1. Title, line 11.

Following: "39-71-116,"

Insert: "39-71-402, 39-71-426,"

2. Page 5, line 4.

Following: "means"

Strike: "any"

Insert: "an"

3. Page 8, line 4.

Following: "2"

Insert: "and plan No. 3"

4. Page 8, line 9.

Following: line 8

Insert: "Section 4. Section 39-71-402, MCA, is amended to read:

**"39-71-402. Extraterritorial application and reciprocity --
exception.** (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of

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the agreeing states.

(5) The provisions of this section do not apply to the construction industry as defined in 39-71-116."

Section 5. Section 39-71-426, MCA, is amended to read:

"39-71-426. Reciprocal agreements with Canadian provinces -- exception. (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116."

Renumber: subsequent sections

EXHIBIT 11
DATE 2/5/91
HB 232

Amendments to House Bill No. 232
First Reading Copy

Requested by Representative O'Keefe
For the House Committee on Labor and Employee Relations

Prepared by Eddy McClure
January 30, 1991

1. Page 1, line 16.

Following: "court"

Strike: "of"

Insert: "in the county in which the claim arose or to the
district court of"

Amendments to House Bill No. 356
First Reading Copy

For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 6, 1991

1. Title, line 6.
Following: "OR"
Strike: "FULL-TIME"
2. Title, line 8.
Strike: "A RETROACTIVE"
Insert: "AN"
3. Page 1, line 25.
Following: "or"
Strike: "full-time"
4. Page 2, line 22.
Following: "2."
Strike: "Retroactive applicability"
Insert: "Applicability"
5. Page 2, lines 23 and 24.
Following: "applies"
Strike: remainder of line 23 through "1-2-109,"
Following: "after"
Strike: "January 1, 1989"
Insert: "[the effective date of this act]"

**HOUSE OF REPRESENTATIVES
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Labor & Employment Relations

COMMITTEE

BILL NO. 356

DATE 2/5/91

SPONSOR(S) Gary Beck

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Tom Schneider	MPZA	X	
Robert F. Murphy	International Brotherhood Electrician Workers	X	
Helen D.			
Jim Stucky	Operating Eng. Local 400	X	
Tamara A. T.			
Phil Campbell	MEA	X	
Nick J. J.	DLI		X
Eng. Jones	At St. Bly Trade	X	

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Wm E O'Leary	Don't Labor & Industry	✓	
JOHN MORRIS	FLATHEAD BA	✓	
George Wood	Montana Self Interest Assoc	✓	
Phil Campbell	MSA	Amended ✓	
Don Judge	MT STATE AFL-CIO	Amended ✓	

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Robert K. Murphy, Helen.	International Brotherhood Electrical workers		X
Jim Stucky Towson MT	Operating Eng 400		X
Mark Landolt	AFSCME		X
Phil Campbell	MEA		X
Mike Irvine	DLI	X	
Ernie Fink	MT St Bly Trailer	X	X

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Labor & Employment Relations

COMMITTEE

BILL NO. HB 342

DATE 2/5/91

SPONSOR(S) Dave Wanzenried

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JOHN NORRIS	FLATHEAD NDA	X	
Robert K. Murphy. Helena.	International Brotherhood Electrical Workers.	X	
Tim DEAN - BOZEMAN	BIA of Southwest MT.	X	
Robert D. Ross	Flathead Building assoc.	X	
David Steen	GT. FALLS H.B.A. & STEEN BUILDERS	X	
Don Judge	MT STATE AFL-CIO	X	
GENE PHILLIPS	ALLIANCE AMER. INSURERS		X
DON CHANCE	MT. BUILDING INDUSTRY	X	
Jim Caras	Missoula Homebuilders	X	
Eugene Fender	MT State Bldg Indus.	X	
Ken Dunham	MT Contractors' Assoc	X	
LARS ERICSON	MONT. STATE CARPENTERS	X	

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