

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES, on February 19, 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)
Tim Whalen (D)

Members Excused:

Thomas Lee (R)

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

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

Announcements/Discussion: REP. WANZENRIED said the Subcommittee
on HB 837 will meet in Room 312-1 at 11:00 a.m. on February
20, 1991.

HEARING ON HB 124**Presentation and Opening Statement by Sponsor:**

REP. BOB GILBERT, House District 22, Sidney, said in 1981 the federal tax money used to support the Job Service in Montana was short. The Unemployment Fund was in trouble. At that time, Job Service went to the employers throughout the state asking for an additional one-tenth of 1 percent on top of the payroll tax to keep it open. The employers consented. In the past year the Job Service said its offices may have to be closed because it was short of money. This raised questions with the Job Service Employer's Committee. As a member of that committee, he did some investigating and found that the one-tenth of 1 percent raised \$2.7 million in 1990 and \$295,000 in interest. \$551,000 was spent on the Job Service offices. The balance was spent as follows: \$543,000 for the Unemployment Relations Division, \$186,000 for legal services, \$247,000 for the Research Safety and Training Division, \$216,000 for displaced homeworkers, \$106,000 to New Horizon Daycare, and \$26,000 to New Horizons. The money was spent in areas that it was not intended for. He proposed the following amendment: "The Department shall, based on its estimation of federal funding for each biennium, maintain a balance of funds in the assessment account sufficient to guarantee the maintenance of local services at the level established during the 1990-91 base years. If federal funding for Job Service is less than the amounts appropriated in the General Appropriations Act, the Department may request a budget amendment to replace the shortfall in the federal funds with assessment funds." Currently, there is a reserve account. Many people who have special projects are after that administration money. The money was never intended for those purposes. The Job Service offices should be kept open and the existing programs should be preserved that are benefiting from these dollars. If the federal money is cut for the Job Service, the reserve account should be kept available, so there would be enough money to carry it through until the next Legislature meets.

Proponents' Testimony:

Judith Carlson, Human Resource Development Council, stated her support with the amendments. The intent of Unemployment Insurance Administrative Tax is as Rep. Gilbert said, but the programs he is offering amendments for are very necessary to the people of Montana.

Opponents' Testimony:

Don Judge, Executive Secretary, AFL-CIO, said it was requested that the bill be held until a way was found to fund apprenticeship and the training programs that are currently

funded with Carl Perkins dollars. This year Carl Perkins money, which is federal money, can't be used to fund the apprenticeship and training programs in accordance with federal regulations. Other alternative sources of funding could be pursued, which include penalty interest money in Unemployment Insurance (UI) or the administrative tax money. If the amendments allow for the funding of apprenticeship and training programs, the AFL-CIO would be supportive of the bill.

Sue Mohr, Montana Job Training Partnership Act, said job training funds, which are federal funds from Congress, have been cut in Montana by \$1 million beginning July 1, 1991. Last year \$10 million of job training funds were allocated across the state. There will be 500 less participants this year because of the cut. When the employment and training programs are cut, services won't be provided in rural areas. If the amendment was passed in Subsection (4), Page 3, pertaining to the effective date, would the funds appropriated to programs, such as displaced homemaker programs, have to be returned because of the effective date. Expanding the definition beyond the payment of strictly public employment offices would help to solve the problems. Montana Job Training Partnership programs have tied in with some programs funded from this tax. The Private Industry Councils provide about 60 percent of the funds, and the state provides 40 percent. Those partnerships have worked well in combining enough funds to provide programs statewide.

Questions From Committee Members:

REP. KILPATRICK asked **Ms. McClure** if the amendment was passed out. **Ms. McClure** said the amendment was not drafted but will be brought to the Committee on Thursday, February 21.

REP. DRISCOLL asked **REP. GILBERT** if the ultimate intent of the bill is to keep Job Service Offices open, and it could not be closed because the money was spent elsewhere or transferred into the trust fund. **REP. GILBERT** said yes.

REP. BENEDICT asked **REP. GILBERT** if he could answer the concern about the retroactive date of 1983 and whether those funds would have to be paid back. **REP. GILBERT** said the intent of the bill is not to be retroactive. That is all current language. The beginning of the third quarter of 1983 was the first year the tax went into effect. "Administrative purposes" was stricken from Subsection 4, Page 3, and "the payment of expenses of administration of public employment offices" was added. There is no intent to make anyone pay the funds back. It was federal money. **REP. BENEDICT** said **Ms. Mohr's** concern was if the funds would have to be paid back if they were used for something other than what was intended. **REP. GILBERT** said no; there was no intent to do that.

Closing by Sponsor:

REP. GILBERT said he wanted enough money to keep Job Service open above what was given by the Federal Government. If there is money left over from what is necessary to run Job Service, the rest could be used for the programs of the Job Training Partnership Act. He would prefer the federal dollars be used at the Job Service offices, and the excess could be used for other programs as long as they didn't get too large to take the place of Job Service. Many programs that the money is being used for are run through the Job Service offices. If the offices close, the contact points for those people being served by this money would be gone.

HEARING ON HB 643**Presentation and Opening Statement by Sponsor:**

REP. CAROLYN SQUIRES, House District 58, Missoula, presented written testimony and amendments. EXHIBIT 1 AND 2

Proponents' Testimony:

George Hagerman, Executive Director, American Federation of State, County and Municipal Employees (AFSCME), Council 9, presented written testimony for HB 643, HB 857, and HB 846. EXHIBIT 3

Michael Messina, Labor Economist, AFSCME, presented written testimony. EXHIBIT 4

Tom Schneider, Montana Public Employees Association, stated his support of HB 643, HB 846, and HB 857. Privatization affects people who made a commitment to an employer and who have done what they committed to. Some of the people affected have spent 25 to 30 years doing a good job for the State of Montana. State employees have a right to expect a future. It is difficult to say that money is saved by shifting these jobs. It is politically expedient to tell the general public that public jobs will be turned over to the private sector to be done better and to save money. HB 643, HB 846, and HB 857 should provide a process that proves there is a savings of money. The service set up by the legislature to be provided to the public will be done better. The employees should be protected so they are provided with something other than welfare or destitution. It is difficult to continue health insurance and retirement benefits by changing people from the public sector to the private sector. The retirement plans are not transferrable to the private sector. In some cases health insurance is not transferrable from one employer to another.

Terry Minow, Montana Federation of State Employees, presented written testimony for HB 643, HB 857, and HB 846. EXHIBIT 5

Gene Fenderson, Montana State Building and Construction Trades Union, stated his support for HB 643 as amended. The reasons for privatization are to cut wages and benefits. In taking over operations, there has not been a private contractor who gave better benefits or pay increases.

Bob Heiser, United Food and Commercial Workers' Union, stated his support for HB 643, HB 846, and HB 857.

Christian Mackay, AFL-CIO, presented written testimony for Don Judge. **EXHIBIT 6**

Mark Cress, Department of Administration (DOA), State Personnel Division, stated support for any effort to bring more benefits to displaced state workers. Some concerns are: (1) HB 643 should be more clear on the weight of employee preference it extends to displaced workers. (2) The benefits extended to a laid-off worker have no dollar or time amount in the original bill, but the amendments place some limitations. (3) Section 4 requires the contractual rights of the employee to transfer with him to a new state position. That could create difficulty when that employee may be working under a different collective bargaining agreement, or he may have contradictory benefits and privileges from employees he is working with. (4) The original bill only applies to employees at the Department of Institutions. State benefits should be uniform, so employees who are displaced from other departments would have similar protection. (5) The term reorganization is fairly undefined, and it may apply to any personnel action which may not involve the displacement of a worker. (6) The benefits that are extended by HB 643 should be funded through appropriation.

Opponents' Testimony: None

Questions From Committee Members:

REP. DRISCOLL asked **Mr. Cress** why the bill couldn't be funded from the savings of privatization. **Mr. Cress** said he didn't know. **REP. DRISCOLL** asked if there had been positions privatized other than the guards and janitors in the capitol building and the key-punch operators in the Mitchell Building. **Mr. Cress** said he didn't know. **REP. DRISCOLL** said guards and janitors are grade 7; what is the grade for key-punch operators? **Mr. Cress** said they range from grade 5 to 7.

REP. O'KEEFE asked **Mr. Messina** to give his opinion of the fiscal note. **Mr. Messina** said the fiscal note looks at the cost of implementing the bill. The employment cost could be considerable if employees are not given new state jobs. The amendments address fiscal impact items. Preference will be given to senior employees who meet minimal job qualifications or through retraining as specified in Section 1 (d). Relocation of employees to another state job will be only for employees with five years of service. Retraining and career development will be

for employees with five years of service, and the costs are not to exceed \$2,000. For employees who have not been able to transfer to another state job, they will get relocation expenses if they have five years of service, and the expense is not to exceed \$1,000. Health insurance will continue for employees who have five years of service. The retirement portion has been amended out of the bill.

REP. THOMAS said Section 4 states if an employee was moved, he would receive an equivalent or higher wage than the previous position. An unfair situation could be created where an employee may earn more money than the people he is working with in the same positions. REP. SQUIRES said the employee transferring into that new position would get paid a wage that was the same as the other employees. REP. THOMAS said the bill entitles the employee to an equivalent wage. For example, an employee is earning \$10 per hour and his job is reorganized. If he is moved to a new position where other employees are earning \$7 per hour, it is not fair to the people earning the lower wage. REP. SQUIRES referred the question to REP. DRISCOLL. REP. DRISCOLL said that is happening right now.

REP. THOMAS said Page 2, Line 17, refers to the access of retraining and career development programs at the state's expense. Would people have access to similar training and career development now, for example, the employees at Darby and Stoltz that were laid off due to the lack of timber. REP. SQUIRES asked if he was referring to the project challenge response team that went to Darby. REP. THOMAS said yes. REP. SQUIRES said the employees would be eligible for that also. Coordination is needed between those activities to assure the employees get the appropriate retraining or relocating. If there is a career change, more money would be needed. REP. THOMAS asked if these employees would receive more benefits than the employees laid off at Darby. REP. SQUIRES said not necessarily. The Project Challenge could be used in coordination with the Job Service. All the agencies should be used that provide money for the dislocated workers. There will be applications for dollars for discretionary funds also to help retrain these people. REP. THOMAS said Page 3, Section (d), contains a continuation of employer contributions to the employee's group health insurance for 12 months. REP. SQUIRES said the bill indicates that the state would continue to pay health insurance until the employee finds a job or the 12 month period is completed.

Closing by Sponsor:

REP. SQUIRES said state employees are a vital resource. HB 643 will help make the transition when the administration moves into its privatization effort.

HEARING ON HB 857Presentation and Opening Statement by Sponsor:

REP. MARK O'KEEFE, House District 45, Helena, said HB 857 is to keep privatization from happening behind closed doors. It would be a process open for public review and participation from the affected employees. He presented a letter from the Department of Administration. **EXHIBIT 7** The bill addresses the letter as follows: (1) The questions of Item 1 are answered on Page 1, Line 24 through Page 2, of the bill. "Displaces" means if the proposal will result in the lay-off, demotion, or involuntary transfer to a new location of five or more employees, they will be covered under the protections of this bill. (2) The bill addresses Item 2 of the letter on Page 1, Lines 17 - 18, where the program is extended to the judiciary and legislative branches of government. (3) The bill addresses Item 3 of the letter on Page 4, Lines 8 - 11. Language has been included which identifies services performed by an agency that may be performed more cost effectively by the private sector. The auditor can examine contracted services. (4) In regard to Item 4, according to Scott Seacat, Legislative Auditor, contracted services are already being reviewed. There are no FTEs (Full Time Employees), and no additional expense to the legislative branch or the auditor. The displacement definition answers the concern about which of the 107,000 expenditures would have to be reviewed. 5. Item 5 refers to Section 3. Subsections (1) and (2) of the bill are not speculative as stated in Item 5 of the letter. The DOA particularly has difficulties with Subsection (3). The bill asks for a list of names of the affected employees, which is not hard to determine in a privatization plan. He presented an audit from the Office of the Legislative Auditor that was done on the contracted services of John Larson, Attorney. **EXHIBIT 8** He received \$444,518 in the last eight years from state government. Was it necessary to privatize the services that this one contracted individual has performed? He presented an audit from the Office of the Legislative Auditor showing how well the Governor's authorized privatization of the key-punch operators is being done. **EXHIBIT 9.** Page 2 of the handout shows that M.A.R.S. Stout has been performing below the allowable limit in 1990 as set in the contract for private services. The error range is at 3.87 percent. In 1989 there was a 0 percent error range for state employees to .59 percent in 1990. A process is needed to anticipate the negative effects of privatization.

Proponents' Testimony:

Michael Messina, Labor Economist, AFSCME, presented written testimony. **EXHIBIT 10**

Joyce Perszyk, AFSCME Council 9, presented written testimony. **EXHIBIT 11**

Gene Fenderson, Montana State Building and Construction Trades Union, stated his support of HB 857.

Christian Mackay, AFL-CIO, presented written testimony for Don Judge. **EXHIBIT 12**

Opponents' Testimony: None (See Informational Testimony)

Informational Testimony:

Bob Marks, Director, Department of Administration, stated he was between an opponent and a proponent. He was pleased that Rep. O'Keefe incorporated DOA's comments into the bill. There are some concerns. State government has contracted services out for years which is not exclusive to a particular political administration. Privatization of custodial services started in the previous administration. It is good that the bill allows the Legislative Auditor's Office to look for work that should be put out for bid in its review of state agencies. The process is lengthy; it would take four months to get from the idea stage to the implementation stage. In DOA, the employees to be affected by privatization were notified up front. Labor representatives were asked to respond within a period of time, and they didn't choose to do so. He presented a pamphlet from the Legislative Audit Committee on the Analysis of Privatization Proposals, HB 100 of the 51st Legislature. **EXHIBIT 13.** It showed that the reviewed departments had complied with the provisions of HB 100. A cost-effective analysis was sent to the Budget and Program Planning Office for approval. The Legislative Auditor had a post review. A committee on general government was shown that \$500,000 would be saved in the operations that were contracted through the next biennium. In two instances of privatization in the last year, the personnel officer was asked to find positions for people who would be displaced. When the data entry was privatized, all of those people who had worked in that unit are now employed and many with state government. The Department asked other state agencies to cooperate in helping place those people. The contractor that took over the data entry offers profit sharing for the employees. He has not heard any complaints. The letter and direction of the law were followed. Page 3, Subsection 3, Line 6, refers to estimating the effect of proposed privatization on the employment status. It is hard to estimate unless it is known what the people will do after they are displaced. They may move to another section of government or the private sector. The same would apply for Subsection 6, Line 17 and Subsection 8. It can't be known beforehand what the effects will be until after it has been put into place.

Forrest Bowles, President, Montana Chamber of Commerce, said he wasn't really an opponent. Privatization is an opportunity for government to have options where the private sector may do the job more efficiently. If this is a process meant to be positive, the Chamber would not be in opposition.

Questions From Committee Members:

REP. WHALEN said there is no requirement on the quality of work if positions are privatized. There have been problems this session in the Capitol with wallets missing. That is a quality issue. There are people who are not directly accountable to anyone in DOA, but maybe indirectly through the contracting agency. One handout presented by Rep. O'Keefe indicates the increase in error rate in the data entry area. He asked **Mr. Marks** how the DOA would feel if something like that was reviewed beforehand. **Mr. Marks** said when DOA put out the Request for Proposals (RFPs), quality was included. When the proposals came back to DOA, the administrators responsible for putting the contracts together, negotiated with the contractor and included quality. Blue Cross/Blue Shield is the contractor handling health claims for DOA, and there have been no complaints. He referred the questions to **Mike Trevor**, **Administrator, Information Services Division**, said he is responsible for the data entry division. He did not know of the errors. His first concern is quality, and he asked the operational personnel if there were errors or if jobs were getting done according to the schedules. He has not heard one complaint from an agency as far as their job not being key-punched adequately where it was impacting the time period or accuracy. It was stated in previous testimony that the contractor was subcontracting with a contractor in Salt Lake City. That is inaccurate. For years a contractor in Salt Lake City was used as a back-up in case an unanticipated job came up. The Office of Public Instruction (OPI) needed a big job done right at the time the contractor was taking over. The Salt Lake City contractor was used to help OPI through the transition, but it was not subcontracted by the new contractor. Strong language for quality of work was included in the RFPs when bids were solicited. **REP. WHALEN** asked if there was anything in the contracts so state agencies would have some recourse if quality wasn't up to standards with the lowest bidder. **Mr. Trevor** said yes.

Closing by Sponsor:

REP. O'KEEFE said HB 857 is written for whoever is in the governor's seat. The Governor followed the letter in the direction of the law given by the Legislature according to HB 100. That letter given by the Legislature last session wasn't complete or clear. This bill makes it very clear. The employee groups would like to have six months instead of 120 days. The Administration would like to have 60 days. The language is compromised language. A good bipartisan statement should be sent to the state employees of this state that they are valued.

HEARING ON HB 846

Presentation and Opening Statement by Sponsor:

REP. William "RED" MENAHAN, House District 67, Anaconda, said HB 846 will allow inspection of the competitive sealed bids from the RFPs for state services. Page 4, Section 2, states the bids will be subject to the following requirements: (a) bids must be available for the inspection if the invitation is issued by a state agency to contract with the private sector to provide services now being conducted by state employees. (b) acceptance of the bids would result in the displacement of five or more state employees. Page 7, Section 3, pertaining to sealed bids, states the contract award is subject to the requirements of Subsection (5). Subsection (5) states that the proposals must be available if they are solicited by a state agency to contract with the private sector and would result in the loss of five or more state employee jobs.

Proponents' Testimony:

George Hagerman, Executive Director, Montana Council 9, AFSCME, stated his support of HB 846.

REP. O'KEEFE said HB 846 will make the information of privatization available to the public, the public employee groups, and affected members of the state workforce. Both HB 857 and HB 846 should be passed, so the Governor will have a choice of how he opens up privatization to public review.

Christian Mackay, AFL-CIO, presented written testimony for Don Judge. EXHIBIT 14

Opponents' Testimony:

Bob Marks, Director, Department of Administration, said the language on Page 4 is not necessary because the government does open the bid process to the public. There is a concern on Page 7 where RFP's would be open to the public. In asking for a contract for services, RFP's are sent to a number of individuals. The issuing agency will review them and choose the one that best met the criteria. Often after they are open to the public, there's an opportunity for an agency to negotiate with the best proposer. From a competitive side, leverage would be lost on being able to strike a better deal. Proposers don't want their competitors to see what their particular proposal was.

Questions From Committee Members:

REP. BENEDICT asked REP. MENAHAN if Subsection 4 and 5 of Section 3 were in conflict. Section 3, Subsection 4, says that proposals must be open to avoid disclosure of contents to competing offerors during negotiations. Subsection 5 says proposals must be available for public inspection after the

proposals are opened. REP. MENAHAN said the intent is to make the employees aware of what is being proposed. REP. BENEDICT asked if it circumvented the competitive procedure. REP. MENAHAN said after the bids are open, it doesn't. REP. BENEDICT said they aren't bids; they are proposals. A proposal is different than a bid. REP. MENAHAN said he didn't see that it would. The proposal would just be made for public inspection.

REP. O'KEEFE asked if the proposals are open for public inspection after they're accepted by the department that is contemplating privatizing state employees with a state agency contract, would there be any competitive negotiation advantage to the state to have two different proposals. Would it be an advantage for the state to ask the bidders if either one could do better than the other? REP. MENAHAN said yes.

REP. JOHNSON asked REP. MENAHAN if bidders would be detoured from being competitive on the first go around if the state says it will be negotiated once the bids are in. REP. MENAHAN said no. REP. JOHNSON said it would by the description that REP. O'KEEFE just gave. REP. MENAHAN said he didn't perceive that it could be said who could go with a lower amount or provide less service.

REP. DRISCOLL asked REP. MENAHAN if there were five requests for proposals open, and specifications were written from the best part of each one, wouldn't everyone be on equal footing because they could bid the specifications. REP. MENAHAN said yes.

Closing by Sponsor:

REP. MENAHAN closed the hearing on HB 846.

HEARING ON HB 726

Presentation and Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, House District 17, Malta, said HB 726 will combine the definitions of contributions and assessments under the single term "taxes." It places the exclusions for agricultural and domestic employment in the same section with other exclusions. It will provide clear authority to the Department of Labor to allocate certain payments, such as, severance or termination pay, to weeks other than the week they were paid. It will remove the requirement of filing a listing of personal property in order to perfect a lien with the Secretary of State since the Secretary of State has no ability or procedure for accepting such a filing. It changes the procedure and date for determining the overall tax rate, so employers may be notified sooner. It changes the penalty for obtaining benefits fraudulently from 18 percent per year computed from the same time fraud occurred to a flat 33 percent of benefits fraudulently obtained. This penalty would be imposed at the time of the decision. It allows the Department to disqualify an individual who has been suspended for misconduct.

Current law allows this action only for termination of misconduct.

Proponents' Testimony:

Chuck Hunter, Department of Labor and Industry, presented amendments. **EXHIBIT 15.** The first amendment corrects a drafting error. The second amendment changes the effective date of when taxes are computed which addresses the issue in the fiscal note. He presented written testimony. **EXHIBIT 16.** The bill changes the procedure for setting the rates for subsequent years. In the fiscal note, a clause states that this change would have an impact of about \$4.3 million on the Trust Fund in reduced collections. That happens because if the cut-off date is moved, the fund balance in the Unemployment Insurance Trust Fund fluctuates over time. If the current date of December 31 is moved to November 30, traditionally there is a higher Trust Fund balance at November 30 than at December 31. A higher Trust Fund balance will usually result in a lower tax-rate schedule the following year. A higher rate of tax would not be collected. However, in the subsequent year since those taxes were not in the Fund, that would trigger potentially a different change in the schedule the following year. In effect, there is a potential reduction tax in collection in one year deferred to the subsequent year. The amendment changes the date from November 30 to October 31. According to analysis of the Trust Fund balance over the past seven years, the October 31 date is very close to the December 31 date. By using the October date, this bill would allow employers to receive their rate notices earlier but would not have the outcome that is stated in the fiscal note. The second part of the fiscal note deals with the bill allowing a different procedure for charging penalty on fraud overpayments. Currently, when benefits are obtained fraudulently there is an 18 percent per annum penalty that is imposed at the time of the decision. Typically two years after the fact, a court decision is relied on to get the information to establish that there was fraud. Two years of interest at 18 percent is 36 percent. If it is longer, the interest may be 42 percent. This provision would change it to a flat 33 percent. The Department's interest is not necessarily in the percentage, but in changing the procedure to a flat percent assessed at the time the decision is reached, and not to have an unclear amount that grows over time and is hard for claimants and employers to calculate.

Opponents' Testimony: None

Questions From Committee Members:

REP. WHALEN asked **Mr. Hunter** if he knew the penalty on an insurer who does not pay benefits within a timely period or refuses to pay benefits. **Mr. Hunter** said he didn't know the specific figures, but thought it was tied to the prime rate plus a percentage under a proposal already seen by the Committee.

REP. DRISCOLL asked **Mr. Hunter** why the bill contains the language on Pages 36-37, which says extended benefits can be reduced because of a Federal Deficit Control Act. In the past if there were extended payments, the difference was paid. **Mr. Hunter** said it is not a federal mandate; it allows the Department to not pick up that additional share. If there is a reduction under the Gramm-Rudman-Hollings Act and this legislation was not enacted, the state employers would pick up the additional share. Instead of being at fifty - fifty, if the Gramm-Rudman-Hollings Act sequestered 3 percent, the state would pay the additional percent. The federal share would be 47 percent and the state share would be 53 percent. **REP. DRISCOLL** said Page 40 states a new employer is someone who hasn't been subject to the payments for three fiscal years preceding the contribution date and has established a record. How can he not pay and establish a record. **Mr. Hunter** said the record can be established within one year. The Department would know if an employer has had more benefits charged than he has paid in taxes within one year. The previous definition said that three full years of experience were needed before a rate could be computed. Since the last Legislature, new employers have been assigned a rate based upon their industry average instead of a computed rate. **REP. DRISCOLL** asked if it affected the three-year average of deficit employers. **Mr. Hunter** said no. **REP. DRISCOLL** said on Page 42 the new language states a payment may not be required if hours or wages were not reduced. Unemployment can't be drawn if wages or hours are not lost. **Mr. Hunter** said there is a provision in the law where a claimant can draw partial benefits if he becomes unemployed, begins working part time, and is still looking for full-time employment. This provision applies to the employer who is providing that part-time employment. The language says that the employer can't be charged for benefits unless he reduces the part-time hours that he is providing to that person. **REP. DRISCOLL** said in the title it states to revise qualifications for benefits for leaving work without good cause. Is Section 33 the only part of the bill that addresses that? **Mr. Hunter** said yes.

CHAIR SQUIRES asked **Mr. Hunter** if it was still his intention to address the severance pay in the rulemaking process. Hearings will be held on the rulemaking process to establish an option as to whether the severance pay would be received in full and the 26 weeks of unemployment would be received immediately, or the severance pay could be spread out over the time period of a weekly wage and then receive the 26 weeks. **Mr. Hunter** said yes; in the rule making process, public hearings would be held for all affected parties. The Department's interest is to make sure claimants have knowledge of how the various provisions would affect their benefits. Claimants and employers would be allowed to direct the Department on how that should be done in the rulemaking process. **CHAIR SQUIRES** asked if this bill solves the problem that happened with the Intermountain closure in Missoula in deciding what to do with severance pay and the pay period. **Mr. Hunter** said yes.

REP. WHALEN asked Mr. Hunter what his understanding was of the change in the law that affected benefit payments to aliens in Section 18. Mr. Hunter said the federal law mandates that benefits be paid to aliens only under certain, unique conditions. They have to reside in this country under the Color of Law and have their green card. There are other strict provisions to paying benefits to aliens. The law was changed with an act that required employers to request information on alien status. Language was provided to the Department in 1987 to be inserted into the Code to make sure there was conformity. Two years later the Department was notified that the language was incorrect. This is the corrected version. No changes result from this language.

Closing by Sponsor:

REP. BERGSAGEL closed the hearing on HB 726.

HEARING ON HB 807

Presentation and Opening Statement by Sponsor:

REP. ROYAL JOHNSON, House District 88, Billings, presented amendments. EXHIBIT 17. The intent of the bill was to make the provisions and exemptions under Workers' Compensation the same as they are under Unemployment Insurance (UI), so they would be equal. If a person was exempt or included in Workers' Compensation, the person would be the same under UI. He asked that a subcommittee be appointed to work with the proponents and opponents. There was problem as a result of paper carriers being included in this situation. They were included under one side and not under the other.

Proponents' Testimony:

REP. DRISCOLL said that Ms. McClure drafted the bill exactly as he asked, and it is a mess. It can be fixed. The problem was not just with news boys but cosmetologists, travel in construction, and other issues. People have come before the Legislature and received an exemption to Workers' Compensation and forgot to get on the UI list, so then the state auditors audit the employer and say this person was an independent contractor and a Workers' Compensation premium isn't owed. Then the UI auditor says the person is not an independent contractor and the employer owes a UI premium. The intent of the bill is to clean up the law. He had Ms. McClure draft the bill in which agriculture, college students, and all elected officials would be exempted from Workers' Compensation; that is not the intent.

Mike Voeller, Lee Enterprises, said the amendment regarding Page 2, Subsection (g) was to have been in the bill but was inadvertently omitted. The other amendments accomplish the intent that if Workers' Compensation administratively recognizes a person as an exempt employee, UI will and vice versa. Sections

3 and 4 mandate coordination between the two. There is a conflict with the newspaper carriers between the UI exemption and the Workers' Compensation exemption. The Workers' Compensation exemption is appropriate and should be included with the other amendments. Workers' Compensation does have problems because too many statutory UI exemptions were taken over and put in the Workers' Compensation portion, and that could be accommodated easily in a subcommittee.

Chuck Walk, Executive Director, Montana Newspaper Association, stated his support for the concept of the bill on behalf of **Forrest Bowles** of the Montana Chamber of Commerce and **Charles Brooks** of the Retail Association.

Chuck Hunter, Department of Labor and Industry, said it would be good if employers did not have two standards to deal with if the exemptions can be made the same for Workers' Compensation and UI. There are some areas where different exemptions are needed. The issues can be addressed in the subcommittee.

Opponents' Testimony: None

Questions From Committee Members:

REP. WHALEN said the public policy reasons for Workers' Compensation and UI are different. What can be done to keep the public policy issues separate but at the same time make things easier for employers? **Mr. Hunter** said the two programs are set up for somewhat different purposes and some exemptions need to be different. There are a number of issues that similar individuals are involved in on one side or the other, but the rules are slightly different. For the areas that UI and Workers' Compensation have to deal with, it should be brought under a common definition and policy.

REP. DRISCOLL asked **Mr. Hunter**, when a construction worker receives travel pay where he doesn't have to turn in motel or meal receipts but just receives a certain amount of money per day, Workers' Compensation says that is not wages for the purposes of collecting premium. UI says it is, and taxes have to be paid on part of that money. Can the travel pay issue be made the same for Workers' Compensation and UI for the independent contractor? **Mr. Hunter** said that could be amended in the bill, however, **REP. WANZENRIED** has a bill which deals with that very issue.

Closing by Sponsor:

REP. JOHNSON closed the hearing on HB 807.

CHAIR SQUIRES appointed a subcommittee for HB 807 with **REP. DRISCOLL** as Chairman, and **REPS. JOHNSON** and **COCCHIARELLA** as committee members.

EXECUTIVE ACTION ON HB 726

Motion: REP. DRISCOLL MOVED HB 726 DO PASS.

Motion: REP. DRISCOLL moved to adopt amendment No. 6. EXHIBIT 18

Discussion:

REP. DRISCOLL said the amendment would strike Sections 19 and 20, which pertain to extended benefits if they are ever triggered. The Sections cut back benefits for people who have been out of work the longest. A reduced benefit would be received after the person has been out of work a longer time. The Division wants to save money, but it shouldn't be saving money on these people.

REP. JOHNSON asked REP. DRISCOLL to explain further. REP. DRISCOLL said the only way to receive extended federal benefits is under certain conditions of the rate of unemployment. There is a formula in the law. If a person has drawn out all of his state UI benefits and that state is eligible for extended benefits, the federal government will trigger in a federal extension. Part of it is paid by the state and part by the federal government. Under Sections 19 and 20 benefits could be lowered if the Federal Deficit Reduction Act requires it, and the federal contribution would be reduced. If Montana went to extended benefits because of the work situation, and the Federal Emergency Deficit Control Act said there would be, for example, a 10 percent cut, the benefits would be reduced 10 percent after the person has been out of work for 26 weeks already. It is not the right place to save money. REP. JOHNSON asked if the 10 percent is taken off by the federal government, then does the state have to cover that 10 percent. REP. DRISCOLL said yes, if the amendments are accepted. The State Fund would pay it. Under the present law, the state pays half and federal government pays half. If the language is left in the bill and the Federal Emergency Deficit Control Act requires a cut, the laid-off worker would receive a reduced amount. With the amendments, the laid-off worker would still receive the same amount, the federal government would pay a lesser amount, and the state's share would be higher because it would pick the percentage that is called for. Under the present law if there is no Federal Emergency Deficit Control Act percentage triggered, each would pay half.

Vote: AMENDMENT NO. 6. Motion carried 17 - 1, with REP. BENEDICT voting no.

Motion: REP. DRISCOLL moved to adopt amendment No. 11.

Discussion:

REP. JOHNSON asked REP. DRISCOLL to explain the amendment. REP. DRISCOLL said the amendment strikes Section 33. The present law says a person is disqualified for unemployment if he is fired with good cause. The amendment states a person is disqualified

for unemployment if fired or suspended. Presently, if a person is suspended from employment, he can draw unemployment after he has put in a waiting week. REP. JOHNSON asked if it was due to misconduct whether it was a discharge or a suspension. REP. DRISCOLL said yes; misconduct charged by the company.

REP. WHALEN said the provision wasn't needed. If there is a suspension, that implies the employee will be back to work later. The conflict between the employer and employee would be resolved, and the employee should be paid if the employer isn't paying him.

Vote: AMENDMENT NO. 11. Motion carried 14 to 4 with Reps. Johnson, Benedict, Lee, and Thomas voting no.

Motion: REP. DRISCOLL moved to amend Section 29 and 30.

Discussion:

REP. DRISCOLL said on Page 53, Section 29, Line 10, the penalty of 33 percent would be changed to two points over prime which was the same language used in HB 336. The same language should be inserted in Section 30, Page 54, Line 20. It is what the worker would receive if he is shorted on his wages, and the bills should be consistent.

REP. BENEDICT asked if previously there was a 5 percent penalty per day for 20 days on the employer. REP. DRISCOLL said the language was MAY assess no more than 100 percent and no less than 2 points over prime. REP. BENEDICT suggested doing the same for this bill. REP. DRISCOLL consented to his suggestion.

Motion: REP. FAGG made a substitute motion to incorporate Rep. Benedict's amendment into Rep. Driscoll's amendments, AMENDMENT NOS. 9 AND 10.

Ms. McClure asked for clarification. REP. DRISCOLL said it will read "the Department may assess a penalty equivalent to" and then insert the language used in HB 336.

Vote: AMENDMENT NOS. 9 AND 10. Motion carried unanimously.

REP. DRISCOLL asked Ms. McClure if this bill needed to be coordinated with HB 385. The language is similar on Page 53, Lines 17 through 25. Ms. McClure said she would check with the language of HB 385 and Chuck Hunter. If the language needed coordinating, she would do so. Mr. Hunter said language is needed to eliminate the retroactive application of the penalty.

Motion/Vote: REP. DRISCOLL moved that the amendments be drafted by Ms. McClure. Motion carried unanimously.

Motion/Vote: REP. JOHNSON moved to adopt amendment Nos. 4, 5, and 7 (Chuck Hunter's amendments). Motion carried unanimously.

Motion/Vote: REP. JOHNSON MADE A SUBSTITUTE MOTION THAT HB 726 DO PASS AS AMENDED. EXHIBIT 18. Motion carried unanimously.

EXECUTIVE ACTION ON HB 846

Motion: REP. O'KEEFE MOVED HB 846 DO PASS.

Motion: REP. WHALEN moved to amend HB 846. EXHIBIT 19

Discussion:

REP. WHALEN said the information would be released to the public the same time it is released to everyone else, so on Page 4, Line 5, "when" would make more sense instead of "after" and likewise on Page 7, Line 6. With the word "after," it would be open ended and could be anytime. REP. HANSON said he disagreed with the term "when." The information would be considered and evaluated, possibly other organizations would get their data, and eventually a decision would be made. The information should be available at that time. Should it be opened to the public at the same time? REP. O'KEEFE said the intent of the bill does require the word "when." He worked with the Auditor's office and Tom Gomez in drafting the bill under Rep. Menahan's bill draft request. The intent is for the information to be public knowledge when the proposals are open and not after they have gone through the process of selecting a bidder and awarding a contract.

Vote: Motion to amend carried 13 to 5 with Reps. Johnson, Hanson, Lee, Benedict, and Thomas voting no.

Motion/Vote: REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT HB 846 DO PASS AS AMENDED. Motion carried 13 to 5 with Reps. Johnson, Hanson, Lee, Benedict, and Thomas voting no.

EXECUTIVE ACTION ON HB 857

Motion: REP. O'KEEFE MOVED HB 857 DO PASS.

Motion: REP. WHALEN moved to amend HB 857. EXHIBIT 20

Discussion:

REP. WHALEN said the quality of work issue should be addressed in the new Section 3, Subsection 7. REP. O'KEEFE said he didn't have a problem with inserting the specific wording.

Vote: Motion to amend carried unanimously.

Motion: REP. BENEDICT moved to amend HB 857.

Discussion:

REP. BENEDICT proposed an amendment to change "120" to "90," on Page 2 line 12, and "75" to "60" on Line 13. Scott Seacat, Legislative Auditor, said the 120 days accommodates the Legislative Audit Committee's schedule. REP. BENEDICT withdrew his amendment.

REP. FAGG said the bill is an attempt to have a legislative committee oversee the actions of the governor, which is not constitutionally appropriate.

REP. DRISCOLL said after last session, the Governor privatized the janitors of Capitol Building and the Department of Administration. The first year of the biennium, the contract to clean the Capitol was \$75,000, and the second year is \$101,000. Before the privatization, there were six state employed janitors. There is no oversight. When he was elected to leadership he tried to get rid of the janitors off the third and fourth floors during the legislative session and use legislative employees. A contract was assigned for the whole year, so if the janitors were not used, the contractor would have been paid anyway. It is costing \$26,000 to clean up after this legislature.

REP. DRISCOLL said during the last session when the big appropriations bill was sent to the Governor, it was his amendment that he put on the bill. REP. DRISCOLL voted against it, but it was passed with 51 votes for it. The Legislature "caved in," but it did not ask the Governor to privatize.

Motion/Vote: REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT HB 857 DO PASS AS AMENDED. Motion carried 12 to 6 with Reps. Hanson, Johnson, Benedict, Thomas, Lee, and Fagg voting no.

EXECUTIVE ACTION ON HB 643

Motion: CHAIR SQUIRES MOVED HB 643 DO PASS.

Motion: CHAIR SQUIRES moved to amend HB 643. EXHIBIT 2

Discussion:

Ms. McClure explained the amendments.

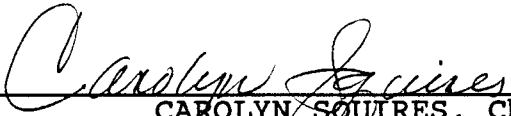
REP. O'KEEFE asked CHAIR SQUIRES if it was the intent of the bill to cover legislative employees. REP. SQUIRES said HB 643 covers employees of state agencies and excludes university faculty and legislative elected officials.

Vote: Motion to amend carried unanimously.

Motion/Vote: REP. DOLEZAL MADE A SUBSTITUTION MOTION THAT HB 643 DO PASS AS AMENDED. Motion carried 11 to 7 with Reps. Hanson, Thomas, Johnson, Lee, Benedict, Fagg, and Hoffman voting no.

ADJOURNMENT

Adjournment: 6:20 p.m.



CAROLYN SQUIRES, Chair



JENNIFER THOMPSON, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 2/19/91

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	✓		

Jennifer

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HOUSE STANDING COMMITTEE REPORT

February 22, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that House Bill 726 (first reading copy -- white) do pass as amended.

Signed: *Carolyn Squires*
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, page 1, lines 14 and 15.

Strike: "TO REVISE" on line 14 through "BENEFITS;" on line 15

2. Title, page 1, line 24 through page 2, line 1.

Strike: "TO" on line 24 through "MISCONDUCT;" on line 1

3. Title, page 2, line 8.

Following: "39-51-2302,"

Strike: "39-51-2303, 39-51-2509, 39-51-2510,"

4. Page 10, line 3.

Following: "~~(2), (3)~~"

Insert: "(2), (3),"

5. Page 27, line 7.

Following: "taxes"

Insert: ",penalties, and interest"

6. Page 36, line 9 through page 37, line 24.

Strike: sections 19 and 20 in their entirety

Renumber: subsequent sections

7. Page 39, line 9.

Following: "~~December 31~~"

Strike: "November 30"

Insert: "October 31"

8. Page 53, line 6.

Following: "him"

Insert: ", "

9. Page 53, line 10.

Following: "~~due.~~"

Insert: "the department may assess"

Following: "penalty"

Strike: "equivalent to 33%"

Insert: "not to exceed 100%"

10. Page 54, line 19.

Following: "received"

Insert: " , "

Following: "~~year,~~"

Insert: "the department may assess"

Following: "penalty"

Strike: "equivalent to 33%"

Insert: "not to exceed 100%"

11. Page 56, line 20 through page 57, line 10.

Strike: section 33 in its entirety

Renumber: subsequent sections

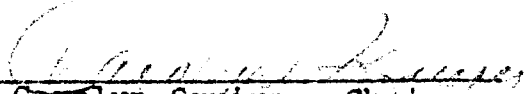
HOUSE STANDING COMMITTEE REPORT

10:05
2-20-91
JDB

February 20, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House
Bill 846 (first reading copy -- white) do pass as amended .

Signed: 
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "SERVICES"

Strike: "AFTER"

Insert: "WHEN"

2. Page 4, line 5.

Page 7, line 6.

Following: "inspection"

Strike: "after"


Insert: "when"

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 857 (first reading copy -- white) do pass as amended.

Signed: 
Carolyn Squires, Chairman

And, that such amendments read:

1. Page 3, line 23.
Following: "costs"
Insert: "and quality"

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 3

Mr. Speaker: We, the committee on Labor report that House Bill 643 (first reading copy -- white) do pass as amended.

Signed: Carolyn Squires
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "STATE"

Strike: "INSTITUTION"

Insert: "AGENCY"

2. Page 1.

Following: line 14

Insert: "(1) "Agency" means an agency as defined in 2-18-101."

Renumber: subsequent subsections

3. Page 1, lines 16 and 24.

Page 2, line 8.

Strike: "institution"

Insert: "agency"

4. Page 1, line lines 17 and 18.

Strike: subsection (2) in its entirety.

Renumber: subsequent subsection

5. Page 2, line 2.

Following: "agencies"

Strike: "; and"

Insert: ". Preference must be given to the more senior employee who meets minimal job qualifications or who can meet job qualifications with retraining as provided in [section 4(1)(d)]."

6. Page 2, line 16.

Following: "state"

Insert: "for a qualified employee who has at least 5 years of service"

Following: ";

Insert: "and"

10:05
2-20-91
JDB

February 20, 1991
Page 2 of 3

7. Page 2, line 18.

Following: "expense"

Strike: "; and"

Insert: "if the employee has at least 5 years of service and the total costs do not exceed \$2,000."

8. Page 2, lines 19 and 20.

Strike: subsection (1)(e) in its entirety

9. Page 2, line 21.

Following: "employee"

Strike: "chooses to seek"

Insert: "secures"

Following: "job"

Insert: "in the state"

10. Page 2, line 23.

Following: "an"

Strike: "institution"

Insert: "agency"

11. Page 2, line 25.

Following: "state"

Insert: "if the employee has at least 5 years of service and the total relocation costs do not exceed \$1,000"

12. Page 3, line 2.

Following: "expense"

Insert: "if the employee has at least 5 years of service and the total costs do not exceed \$2,000"

13. Page 3, line 4.

Following: "expense"

Insert: "for a period up to 6 months and not exceeding a total cost of \$500"

14. Page 3, line 7.

Following: "less"

Insert: ", for an employee with 5 years or more of service"

15. Page 3, line 11.

Following: "service" on line 10

Strike: "with the institution"

16. Page 3, lines 13 through 18.

Strike: subsection (3) in its entirety

Re-number: subsequent subsection

10:05

2-20-91

J.D.P.

February 20, 1991

Page 3 of 3

17. Page 3, line 25.
Following: "the"
Strike: "institution"
Insert: "agency"

JENNIFER

CLERICAL

House Bill No. 643

Date: 2/20

Time: 1:30

(Legislative Council Staff) caj

☒ Labor
S / H Standing Committee
Carolyn Squires
(Chairman)

☐ S / H Committee of the Whole
(Sponsor)

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

5. Insert :. "...who meets meets minimal..."

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

Private management of the food service program has affected the quality of the food. Before the program was privatized, all food was prepared primarily by scratch. Mostly prepared foods are now served. This has resulted in a drastic decline in the number of students and staff taking advantage of the food service program.

In addition to managing the food service program at the College, the contract with ServiceMaster includes catering services. As I understand it, under the terms of the contract, the College gets 5% of the profits from the catering business while ServiceMaster gets 95%. Not a bad deal for ServiceMaster! It looks even better when you consider the fact that the preparation of the food is all done by cooks at the College working on state time. It looks as though ServiceMaster is also getting free use of such items as kitchen equipment, supplies, and electricity.

The second service contracted out was management of the physical plant at the College. About one year ago the College contracted with ServiceMaster to provide this service. It is my understanding that the contract is costing the College about \$154,000. Exactly what the College is getting for their money is not clear.



The Big Sky Country

EXHIBIT _____
DATE 2/19/91
HB 643

MONTANA HOUSE OF REPRESENTATIVES

SUBJECT: Synopsis of HB 643, Bill to Provide Protections for State Employees in the Event of Privatization

* * * * *

HB 643 recognizes the importance of state employees' skills and experience in providing state services. Layoffs resulting from privatization of state services means the loss of experienced state workers. Privatization jeopardizes the economic security and well-being of these valuable employees.

When state government lays off employees because of privatization substantial costs are often overlooked. These include:

1. Unemployment Compensation. The employer pays the entire costs of unemployment insurance benefits during the first 26 weeks of unemployment, and half the costs of extended benefits paid through the 39th week of unemployment. Some laid off workers may qualify for various public welfare programs because of their economic circumstances.
2. Loss of Tax Revenues. Layoffs reduce state tax revenues because people without jobs do not earn taxable income.
3. Social Problems. Layoffs have been shown in various studies to produce increases in alcohol and drug abuse and mental illness.
4. In-House Employee Morale. One hard-to-calculate cost of layoffs is the effect on the morale of remaining public workers. The threat to the remaining employees of job loss reduces productivity.

The intent of HB 643 is to retain state employees in state service wherever possible; and when that is not possible, to provide some transitional services. In addition, the bill attempts to mitigate the costs associated with layoffs.

HB 643 provides reasonable remedies to state employees in jobs slated for privatization by:

1. Allowing state employees to transfer to any open state job for which they are qualified; *or can attain qualifications with some retraining;*
2. Providing relocation assistance if a move is necessary for re-employment;

5 years

The intent of HB 643 is to retain state employees in state service wherever possible; and when that is not possible, to provide some transitional services. In addition, the bill attempts to mitigate the costs associated with layoffs.

HB 643 provides reasonable remedies to state employees in jobs slated for privatization by:

1. Allowing state employees to transfer to any open state job for which they are qualified; *or can attain qualifications with some retraining;*
2. Providing relocation assistance if a move is necessary for re-employment;
3. Providing for no loss of wages or benefits upon taking another state position (i.e. transfer);
4. Making available job counseling and retraining for state employees;
5. Continuing health insurance contributions for state employees until they find another job or 12 months, whichever is first; and
6. Providing severance pay at 5% of salary multiplied by years of service for state employees who do not transfer to another state job.

cc: Gary Moore
Bob Meyer
George Hagerman

Amendments to House Bill No. 643
First Reading Copy

Requested by Rep. Squires
For the House Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 19, 1991

1. Title, line 7.

Following: "STATE"

Strike: "INSTITUTION"

Insert: "AGENCY"

2. Page 1.

Following: line 14

Insert: "(1) "Agency" means an agency as defined in 2-18-101."

Renumber: subsequent subsections

3. Page 1, lines 16 and 24.

Page 2, line 8.

Strike: "institution"

Insert: "agency"

4. Page 1, line lines 17 and 18.

Strike: subsection (2) in its entirety.

Renumber: subsequent subsection

5. Page 2, line 2.

Following: "agencies"

Strike: "; and"

Insert: ". Preference must be given to the more senior employee who meets minimal job qualifications or who can meet job qualifications with retraining as provided in [section 4(1)(d)]."

6. Page 2, line 16.

Following: "state"

Insert: "for a qualified employee who has at least 5 years of service"

Following: ";

Insert: "and"

7. Page 2, line 18.

Following: "expense"

Strike: "; and"

Insert: "if the employee has at least 5 years of service and the total costs do not exceed \$2,000."

8. Page 2, lines 19 and 20.

Strike: subsection (1)(e) in its entirety

9. Page 2, line 21.

Following: "employee"

Strike: "chooses to seek"

Insert: "secures"
Following: "job"
Insert: "in the state"

10. Page 2, line 23.
Following: "an"
Strike: "institution"
Insert: "agency"

11. Page 2, line 25.
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Insert: "if the employee has at least 5 years of service and the
total relocation costs do not exceed \$1,000"

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Insert: "for a period up to 6 months and not exceeding a total
cost of \$500"

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Following: "less"
Insert: ", for an employee with 5 years or more of service"

15. Page 3, line 11.
Following: "service"
Strike: "with the institution"

16. Page 3, lines 13 through 18.
Strike: subsection (3) in its entirety
Re-number: subsequent subsection

17. Page 3, line 25.
Following: "the"
Strike: "institution"
Insert: "agency"

EXHIBIT 5
DATE 2/19/91
HB 643, 857, 846

WRITTEN TESTIMONY OF
GEORGE HAGERMAN
EXECUTIVE DIRECTOR
AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES (AFSCME), COUNCIL 9
HB-643, HB-857, HB-846

SUBMITTED TO:
HOUSE LABOR COMMITTEE

FEBRUARY 19, 1991

Good afternoon, Mr. Chairman, members of the Committee. My name is George Hagerman and I am the Director of Montana State Council 9 of The American Federation of State, County, and Municipal Employees. ~~Prior to becoming the Director I worked as a LPN at Montana State Hospital for approximately 16 years.~~

Increasing evidence show the failure of privatization to reduce long-term costs or to improve the quality and efficiency of services. So called "Savings" are generally achieved through substandard wages, inadequate benefits and creative accounting practices. In addition to questionable savings, privatization can result in a decline in the quality of service, increased opportunities for corruption, and disadvantaged citizens being further isolated from the services they need.

AFSCME appreciates the opportunity to speak to you today about the limits of privatization. It is because of these limitations and the impact of privatization on valuable state employees that we urge the committee to support HB-643, HB-857, and HB-846.

I would now like to introduce two people who are here today to share their experience and knowledge of privatization with the committee.

Michael Messina- A Labor Economist in The Research Department at AFSCME
Headquarters in Washington, D.C.

Joyce Perszyk- A Secretary employed by the State and Secretary of AFSCME
Council 9's Executive Board.



AFSCME®

American Federation of State, County and Municipal Employees, AFL-CIO

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TDD (202) 659-0446

EXHIBIT 7

DATE 2/19/91

HB 643

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Jack Merkel
Trenton, N.J.

Gary Moore
Olympia, Wash.

Henry Nicholas
Philadelphia, Pa.

Russell K. Okata
Honolulu, Hawaii

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Belmont, Calif.

Joseph P. Puma
Albany, N.Y.

Thomas A. Rapanotti
Baltimore, Md.

Joseph P. Rugola
Columbus, Ohio

Kathy J. Sackman
Pomona, Calif.

Burhman D. Smith
Philadelphia, Pa.

Linda Chavez-Thompson
San Antonio, Tex.

Garland W. Webb
Baton Rouge, La.

Testimony

of

Michael Messina

Labor Economist

AFSCME

on HB 643

Before

The Montana House Labor Committee

February 19, 1991

in the public service

My name is Michael Messina and I am a Labor Economist in the Research Department of the American Federation of State, County, and Municipal Employees. AFSCME is the largest public employee union affiliated with the AFL-CIO in the United States and represents 1.25 million workers across the country.

I am grateful for the opportunity to speak before you today in support of HB 643. This bill recognizes the importance of state employees' skills and experience in providing state services. Privatization jeopardizes the economic security and well-being of these valuable employees. Layoffs resulting from privatization of state services means the loss of experienced state workers.

Layoffs can also be unexpectedly costly to the state. While a state agency may determine that privatizing a service is cheaper, substantial costs related to the displacement of workers are often overlooked. These include:

Unemployment Compensation

The employer pays the entire cost of unemployment insurance benefits during the first 26 weeks of unemployment, and half the cost of extended benefits paid through the 39th week of unemployment. In addition, some laid off workers may qualify for various public welfare programs because of their economic circumstances.

Economic Costs

State tax revenues are reduced when employees are laid off because people without jobs obviously do not earn taxable income. In addition, unemployed people do not have money to spend in the community. As a result, the economy of a community can suffer as wages that support local businesses and create jobs disappear. This can ultimately increase the number of people in need of public welfare programs.

Productivity

One hard-to-calculate cost of layoffs is the effect on the morale of remaining workers. The threat that their jobs may also be privatized reduces productivity.

Decrease in Human Capital

When an employee is laid off because their job is privatized, the employer loses a substantial investment in human capital. Time and money spent recruiting and training employees is lost.

Other Costs

Another hard-to-calculate cost is the damage to a state government's image as an employer. One significant attraction of public employment is the perception that there is job security. If this aspect is eliminated, it could increase the difficulty of

attracting high-calibre candidates to public employment.

In addition, studies have shown that job loss can contribute to alcohol and drug abuse. Since governments typically maintain physical and mental health systems, this effect can impose additional costs.

AFSCME urges this committee to support HB 643 as a way to protect one of Montana's greatest assets -- the people who have decided to devote their working lives to state service. We also urge support of this bill because it will help the state avoid the costs associated with employee job loss.

This bill does not prohibit the state from laying off workers if a service is privatized. It requires that state employees affected by privatization be given preference for other state job vacancies. In addition, the bill protects the standard of living of these employees. When an opportunity for a transfer is not possible, the bill provides transitional assistance. The state of Montana owes its employees no less. Thank you very much.

TESTIMONY OF TERRY MINOW, MONTANA FEDERATION OF STATE EMPLOYEES,
GIVEN BEFORE HOUSE LABOR COMMITTEE, FEB. 19, 1991, ON
PRIVATIZATION BILLS (HB 643, HB 857, HB 846)

The Montana Federation of State Employees is in strong support of HB 643, HB 857 and HB 846. These three bills, along with two more bills, HB 803 and HB 804, sponsored by Representative Menahan, address one of the most important issues before the 1991 Legislative Session.

Privatization, as a concept and as a reality, has been favored by Governor Stan Stephens since his election. It is a policy that looks good on the surface, and the surface is all that most Montanans have seen. These bills force the Governor to strip back the shiny surface of privatization and reveal it for what it is--a flim flam scheme for cutting wages and benefits.

Our members' experience with privatization of data entry services in the Department of Administration proves the need for these bills. I am convinced that privatization in data entry would not have occurred if these bills were in place.

How is privatization accomplished now? First, it is cloaked in secrecy. The effected employees heard about the privatization through rumors--and were kept in the dark for months about what was happening to their jobs. Legislators were not informed about the privatization, and were not allowed to inspect the bids. Union representatives were not provided lists of affected employees, privatization plans or the last day of work. And there was no public forum for legislators, employees, unions or the people receiving the services to challenge or question the privatization.

Cost savings are not accurate. Training, indirect costs, transitional costs, unemployment compensation, equipment costs, the costs of reassuming the contract if the bidder can't provide the services--all of these costs were not included in the cost comparison.

The quality of services is not adequately protected. In the data entry privatization, data processing work has been subcontracted to Utah. At least one interim legislative committee was working off outdated information due to the privatization.

There is no follow-through. We have heard many rumors about the quality of services--rumors of the data being lost, or rerun by various agencies. We have heard rumors of costs, such as the cost of the telephone lines, being shifted back to state government. What information has been provided to this legislature about the true costs of privatization of data entry? I haven't seen any.

The public's interest in having certain functions provided by state employees is not considered. The information processed by

tne data processors included confidential information from the Board of Crime Control, information on family planning, etc. Other information being processed by the private vendor includes hunting license applications, a situation where no back-up document exists if an error is made.

Cost savings are achieved by cutting wages. The private vendor is paying wages that make vo-tech students chuckle. When wages are substandard, and no benefits are provided to workers, the quality of the employee goes down, and so does the quality of work.

We urge you to take a good hard look at these bills. If there are areas that need strenthening, please make the appropriate amendments. Give all three bills a "Do Pass" consideration. The people of Montana are depending on it.



EXHIBIT 6
DATE 2/19/91
HB 643

DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DON JUDGE ON HOUSE BILL 643, BEFORE THE HOUSE LABOR COMMITTEE, FEBRUARY 19, 1991.

Madam Chair, Members of the Committee, for the record my name is Don Judge, representing the Montana State AFL-CIO, and we are here today in support of House Bill 643.

This committee has heard extensive testimony today concerning the problems organized labor has with the concept of the privatization of state institutions. We must, however, face the fact that privatization is a prime objective of the present administration, despite the objections voiced today. If any such privatization plan does become a reality, HB 643, the "State Employee Protection Act" must be an integral part.

State workers who, through no fault of their own, are dislocated do to the privatization, reorganization or closure of a state institution must be afforded the protections offered in this bill.

Key concepts contained in this bill include a provision guaranteeing these dislocated employees a hiring preference for job openings in other state institutions, departments or agencies. It also gives them access to all announcements of state job vacancies.

HB 643 goes on to provide that employees who transfer to another state job are entitled among other things, to the retention of the state's contribution to their group health insurance, and of all collective bargaining rights, assistance with relocation and with access to retraining and employment counseling.

Employees seeking employment with someone other than the state would qualify for up to a 12 month extension of state's contribution to their group health insurance and severance pay. These workers would also be eligible for retraining and counseling services.

Those persons who are 50 years of age or older who choose to

retire as a result of privatization would be entitled to an early retirement allowance.

This bill also contains an important provision requiring six month's notice prior to the privatization, reorganization or closure of a state institution. This is a minimum notification proposal that would allow workers the time necessary to seek other employment and to prepare, in part, for the inevitable disruption that a lay-off brings.

There will be costs associated with this piece of legislation. However, when measured against the human costs to workers and their families who are forced to make career and life-changing decisions because of privatization, these costs are both reasonable and justifiable. These dedicated public employees deserve, as a minimum, the protections offered in this legislation in recognition of their past service and commitment to this state. We hope that you will support HB 643.

Thank you.

DEPARTMENT OF ADMINISTRATION
DIRECTOR'S OFFICE

STAN STEPHENS, GOVERNOR

MITCHELL BUILDING



STATE OF MONTANA

(406) 444-2032

HELENA, MONTANA 59620

February 5, 1991

Representative Mark O'Keefe
State Capitol
Helena, Montana 59620

Dear Representative O'Keefe:

Thank you for the opportunity to comment on your bill draft. We've briefly reviewed your privatization bill and would offer the following comments and questions.

1) The bill would establish a time consuming and highly inefficient process that agencies would face when deciding whether to perform services "in-house" or under contract. Consequently, agencies would be interested in how often they would be required to undertake the procedure outlined in the bill. Our administrators had questions regarding whether this procedure would be required in the following situations:

a) We contract with engineers and architects for various services. We also have state employees performing similar services. When would a privatization plan be required?

b) We contract for the operation of a photocopy pool (where the machines are owned by the private sector and the state buys copies). We also contract for printing. About 75% of state agencies printing work is performed in the private sector while the remainder is done by state employees. Would we be required to complete a privatization review for each printing job sent to the private sector, for the program as a whole, or not at all?

c) A similar situation exists in the Tort Claims Division where we have state employees and private counsel defending state agencies in tort actions. Does the phrase "contracting with the private sector to administer a program" release the agency from the privatization review process where the private sector is administering less than the agencies' entire program.

d) We contract for systems development and we also have state employees performing similar work. If the 120 day limit applies

to this work it would needlessly delay critical work requested by agencies.

e) We contract for some janitorial, data entry and security services. Are current contracts (of which the state has in excess of \$75 million annually) "grandfathered"? If not, the July 1 effective date, without allowing 120 days for plans to be reviewed, if required, would result in a disruption of critical services.

2) It is viewed as "unfair" to have a bill like this apply only to the executive branch. Certainly the legislative and judicial branches contract for services and should be subject to the bill. Is there good reason that legislative agencies can contract for services without the same scrutiny as that given executive agencies?

3) The bill ignores those situations where taxpayers would be better served by agencies pursuing contracted services. We suggest that you consider language requiring the legislative auditor to "identify programs currently being conducted by an agency which may be administered more cost effectively by contracting with the private sector." The provision of public service can be performed by state employees or under contract. This bill creates an attitude or environment that presumes that providing services with employees is the preferred method. This is not always the case. The bureaucratic and time consuming process established by this bill will lead state managers to not consider contracting for services when that may be in the taxpayers interest.

4) Section 4 states "During audits of state agencies the legislative auditor must review contracted services expenditures of each agency." In September of 1987 the Legislative Auditor released a report entitled "State Agency Use of Contracted Services." The report indicates "Thirty of 87 Contracted Services categories were chosen for review based on dollar amounts expended, and/or type of category. This resulted in reviewing categories which accounted for 70% of total fiscal year 1985-86 contracted service expenditures. Approximately 107,000 Contracted Services transactions totaling \$66,022,875 were recorded in fiscal year 1985-86. This accounts for about 4% of all state expenditures." The bill should give agencies better guidance as to which of these 107,000 transactions would be subject to the review requirement.

5) Much of the information requested in Section 3 would be speculative at best. Subsection (3) and (6) would be particularly difficult to quantify because the impact on state benefit and

Representative Mark O'Keefe
February 5, 1991
Page 3

assistance programs depend on what employment RIFed employees find after termination.

We hope you will incorporate our concerns into your draft. If not, we will need to oppose the bill as written. Privatization efforts just in our department this current biennium have allowed us to go to our Appropriations Subcommittee with over \$500,000 in savings during the coming biennium. I believe that this bill, as written, would discourage similar cost savings measures in the future and not serve the best interests of the state or it's citizens.

Thank you for the opportunity to respond.

Sincerely,



Bob Marks, Director
Department of Administration

Office of the Legislative Auditor

EXHIBIT 8
DATE 2/19/91
HB 857Contracted Attorney Fees
Legislative Request 90L-75

December 3, 1990

Review Requested

We reviewed and compiled contracted services payments to John Larson, Attorney, from all agencies for fiscal years 1986-87 through 1989-90. We also obtained information from Senate payroll records to determine gross wages paid to John Larson for his work as Secretary of the Senate. We collected information based on payments specifically coded to John Larson as a vendor. Any services not coded to him, by name, would not be included in this memorandum.

Prior Audit Work

John Larson contracted with the Office of Public Instruction (OPI) from fiscal year 1981-82 through fiscal year 1988-89. We summarized OPI legal expenditures through fiscal year 1985-86 as part of our audit of Contracted Services (report number 87P-35). These expenditures are provided below.

Payment Information

We performed a computer search of contracted services records, by vendor, for fiscal years 1986-87 through 1989-90. In 1986-87 and 1987-88, John Larson contracted only with the Office of Public Instruction. OPI payments to John Larson are summarized in the following chart.

Contracted Services Payments to John Larson, Attorney
Office of Public Instruction

<u>Fiscal Year</u>	<u>Expenditure</u>
1981-82	\$ 24,757.99
1982-83	23,999.09
1983-84	25,745.49
1984-85	37,450.65
1985-86	59,670.44
1986-87	90,016.81
1987-88	39,386.03
1988-89	<u>26,266.50</u>
Total	<u>\$327,293.00</u>

Source: Compiled by the Office of the Legislative Auditor from the Statewide Budgeting and Accounting System.

In fiscal year 1988-89, John Larson contracted with OPI and the Department of Health and Environmental Sciences (DHES). In fiscal year 1989-90, he contracted with DHES and the Department of Administration (DofA). In 1988-89, DHES paid him \$9,293.33 for professional services. In fiscal year 1989-90, total payments made to John Larson by DHES were \$83,412.66. The DofA also paid John Larson \$472.50 in fiscal year 1989-90.

As Secretary of the Senate (a state employee position), John Larson received gross wages of \$19,473.81 in fiscal year 1988-89, and \$4,472.51 in fiscal year 1989-90.

The following table presents total payments made to John Larson by year and by agency for fiscal years 1986-87 through 1989-90.

<u>State Agency Expenditures</u> <u>John Larson, Attorney</u> <u>Fiscal Years 1986-87 through 1989-90</u>				
<u>Agency</u>	<u>Fiscal Year</u>			
	<u>1986-87</u>	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>
OPI	\$90,016.81	\$39,386.03	\$26,266.50	0.00
DHES	0.00	0.00	9,293.33	\$83,412.66
DofA	0.00	0.00	0.00	472.50
Senate	<u>0.00</u>	<u>0.00</u>	<u>19,473.81</u>	<u>4,472.51</u>
Totals	<u>\$90,016.81</u>	<u>\$39,386.03</u>	<u>\$55,033.64</u>	<u>\$88,357.67</u>
Source: Compiled by the Office of the Legislative Auditor from the Statewide Budgeting and Accounting System.				

EXHIBIT 0
DATE 2/19/91
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State Agency Expenditures
John Larson, Attorney
Fiscal Years 1981-82 through 1989-90

Fiscal Year	Expenditure
1981-82	24758
1982-83	23999
1983-84	25745
1984-85	37451
1985-86	59670
1986-87	90017
1987-88	39386
1988-89	55134
1989-90	88358
Total	444518



LEGISLATIVE AUDITOR:
SCOTT A. SEACAT
LEGAL COUNSEL:
JOHN W. NORTHEY

STATE OF MONTANA
Office of the Legislative Auditor

STATE CAPITOL
HELENA, MONTANA 59620
406/444-3122

EXHIBIT 9
DATE 2/9/91
HB 857

DEPUTY LEGISLATIVE AUDITORS:

MARY BRYSON
Operations and EDP Audit
JAMES GILLET
Financial-Compliance Audit
JIM PELLEGRINI
Performance Audit

February 7, 1991

Representative Mark O'Keefe
Capitol Station
Helena, MT 59620

Dear Representative O'Keefe:

Transmitted herewith is the information you requested concerning privatization of data entry with respect to the Office of Public Instruction.

Please call if you have any further questions.

Sincerely,

Vickie Rauser
Vickie Rauser
Senior Auditor

VR/v/cc4.1tr

Enclosure

MEMORANDUM
Legislative Request: 91-L49

Subject: Data Entry Services for OPI's Database--with the primary question being: Has there been a reduction in the quality of data entry services with the privatization of data entry.

To date we have the following information concerning data entry of OPI's trustee reports and budget reports.

1. ISD Data Entry performed the services for '88 Actual, '89 Budget, '89 Actual, and most of '90 Budget (OPI performed some of the '90 Budget data entry).
2. M.A.R.S. Stout, a Missoula based firm, performed data entry for '90 Actual.
3. Rocky Mountain Data Control, a Salt Lake City based firm performed data entry for '91 Budget.
4. Both of the contracted firms were to key-verify the data. M.A.R.S. was held to a 97% accuracy for keyed and key-verified documents and Rocky Mountain was held to an error rate of less than 1%.
5. The charge for M.A.R.S. was \$2.20/m keystrokes and the charge for Rocky Mountain was \$1.85/m keystrokes.
6. We noted the following information during our review of the files:

<u>Data Base</u>	<u>Total Errors</u>	<u>Data Entry Errors+</u>	<u>Error Rate Range</u> <u>99% Confidence</u>
a. '88 Actual	24	17	.22% - 1.05%
b. '89 Budget	0	0	0%
c. '89 Actual	1	1	-.04% - .09%
d. '90 Budget	8	6	.02% - .27%
e. '90 Actual	80	61	-.59% - 4.39%*
f. '91 Budget	not verified as of 2-7-91.		

+ We determined whether the errors were attributable to data entry personnel through discussion with OPI personnel. The other errors occurred primarily during OPI's initial review of the various documents.

* The error rate range for just data entry errors is (-.97% to 3.87%) at 99% confidence.

Based on the above analysis, data entry accuracy appears to have been within acceptable ranges for all data bases except the '90 Actual. The upper limit of 3.87% is above that allowed by the contract with M.A.R.S. Stout. The OPI data is one of 33 data entry jobs outlined in the contract.



AFSCME®

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EXHIBIT _____
DATE 2/19/91
HB 857

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Testimony

of

Michael Messina

Labor Economist

AFSCME

on HB 857

Before

The Montana House Labor Committee

February 19, 1991

in the public service

My name is Michael Messina and I am a Labor Economist in the Research Department of the American Federation of State, County, and Municipal Employees. I have been studying the issue of privatization for the past five years.

AFSCME is the largest public employee union affiliated with the AFL-CIO in the United States and represents 1.25 million workers across the country. The on-the-job experiences of our members at all levels of government has shown us that the use of private firms to deliver public services has serious shortcomings. These difficulties often include deterioration of service, increased costs, corruption, as well as significant social and economic costs. It is because of these drawbacks that AFSCME supports HB 857 . The bill requires a careful assessment of these problems before a service is privatized. I am grateful for the opportunity to express our views here.

AFSCME believes that privatization is an abdication of responsibility rather than a commitment to improving government. It is a trendy public policy that is being sold to taxpayers as a way of saving money and improving services. In fact, it seldom does either. AFSCME's experiences with contracting out public services to the private sector have shown major shortcomings in the following areas:

The Cost in Dollars

Contracting out frequently costs more, not less, than in-house provision of service. Even what looks like a savings is often an illusion -- the real costs to the jurisdiction are not usually considered. A new layer of bureaucracy may be created to deal with the bidding process, to administer the contract, and to monitor the results. The new duties of training and supervising contractor personnel are added to the jobs of those still employed by the jurisdiction. They often have to complete or correct work done by the contractors. The use of public equipment and facilities is often not included in the costs of the contracted services. Even if the dollar amount on the contract looks cheaper, the amount paid may be higher as the contractor renegotiates because of cost overruns or loopholes in the contract.

Often, governments are not able to draft contract specifications adequately, which may lead to decreased quality and quantity of services. It is extremely difficult to write a contract which ensures that government gets the services it wants for the agreed upon price. Tasks regularly performed by public employees turn out to be omitted from a contract. Costs may escalate over time as the government becomes dependent upon the contractor and thus vulnerable to cost increases, especially if equipment is sold and skilled workers take other jobs.

Loss of Public Confidence

Not only is the cost of contracting out usually higher than expected, but there is also a high price to pay in government credibility. The contractor's goal is to maximize profits, which leads to cutting corners on service quality -- perhaps hiring inexperienced, transient personnel at low wages, skimping on contract requirements, or providing inadequate supervision. Inexperienced governments often write contracts that omit services currently being provided, or include big loopholes for contractors such as inadequate bonding or excessive escalation allowances. A contractor has the clear right to refuse to do anything -- even the smallest task -- that isn't in the contract. This means that the services the public has come to expect will no longer be provided in the same fashion or at the same level.

The flexibility to respond to unforeseen situations not covered by bid specifications is reduced, sometimes having a devastating impact on a government's ability to provide needed services. When citizens complain about a contracted service, the government becomes only a middleman who can often do little more than complain in turn to the contractor or enter into costly contract renegotiations or termination proceedings.

However, the problem goes beyond the issue of incompetence or unresponsiveness. The use of consultants and contractors to perform public services frequently leads to widespread corruption --bribery, kickbacks, collusive bidding, "wired" contracts, conflicts of interest, and charges for work never performed.

Cost in Social Terms

In addition to increasing costs and damaging the perception of government, there are also some very serious consequences of contracting that may be more subtle.

Traditionally, the public sector has provided greater employment opportunities for women and minorities, both in terms of absolute numbers and higher level jobs. Professor Marilyn Dantico of Arizona State University and the Joint Center for Political Studies in Washington, D.C. studied how privatization affects these groups of workers. She found that the practice adversely affects women and minorities at a disproportionately higher rate. Fewer government jobs mean fewer hiring opportunities for women and minorities.

Because women and minorities are better represented in professional and supervisory positions in the public than in the private sector, contracting out tends to contribute to a decline or stagnation in their careers as these jobs move to the private sector. Upward mobility is greatly reduced and the number of minority and female workers at supervisory levels drops.

Additionally, women and minorities may find their opportunities constrained even more severely as privatization tends to occur more frequently in areas where women and minorities have been concentrated. The private firms which take over public services or functions usually have two groups of workers -- high level management and the workers. The ability for women and minorities to move from lower to higher skilled

positions becomes extremely limited since many mid-level positions are eliminated.

Negative Economic Impact

Some proponents claim that privatization merely shifts jobs from the public to the private sector. This is not the case, however. Even though the number of private sector jobs may increase as the public sector decreases, the quality of the jobs changes. Comparisons of similar private and public service providers indicate that private firms rely more heavily on unskilled labor than do governments. While it appears that the work to be done is the same, jobs are frequently redefined with a resulting "deskilling" of positions. This results in lower pay scales for entry level workers in the private sector. In conjunction with this downgrading, the private sector almost always provides entry level workers with fewer benefits and less opportunity for advancement than does the public sector.

Theoretically, it may be possible for government to spend a similar amount of money to provide similar services both directly and through a contractor. But, in the former system, government may create a number of jobs for middle class workers with the attendant benefits (insurance, retirement, etc.), while in the latter system, adequate salaries and benefits may be sacrificed to provide greater profit to company owners. The distribution of the money has changed -- jobs with lower wages and benefits are created, middle income jobs eliminated, and more goes to those

who own the companies.

Contracting out correctional facilities, the most recent target in the push for privatization, raises additional serious legal, ethical, and public policy questions.

Although a state may contract out the management and operation of its correctional facilities, can it relinquish the legal responsibility for the incarceration of inmates? The fact that a state government has a legal contract with a private corporation that has liability insurance may not necessarily protect the state government. At the very least, it is sure to involve a long and costly legal challenge which most state governments cannot afford.

Is there a conflict between the private, profit-oriented corporation which seeks to maximize profits by keeping correctional facilities operating at maximum capacity, and the state's responsibility to house, train, and rehabilitate inmates? Many states are currently being critized for simply "warehousing" inmates. Transferring this warehousing function to a private corporation will not improve the current criminal justice system. Based on experience, it may subject the system to even greater abuse.

What about the routine, quasi-judicial decisions that affect the legal status and well-being of inmates? Should a private corporation employee be allowed to use force, perhaps deadly, against a prisoner? Should such an employee make recommendations to parole boards, or bring charges against a prisoner for an

institutional violation, possibly resulting in a later release time?

Imprisonment strikes at the most cherished notion in our philosophical and political heritage -- the concept of individual liberty and freedom. We should not be prepared to turn over to the private sector this uniquely governmental function of imposing punishment on our fellow citizens.

In conclusion, privatization is not a panacea for the current problems facing government. Rather, the tendency towards increased privatization is a shortsighted solution which creates more problems than benefits. AFSCME urges this committee to support HB 857 . By supporting this bill you would require state agencies to carefully consider the problems of contracting out before a service is privatized. You would also provide an opportunity for the citizens of Montana to participate in the discussion. HB 857 also requires the state to examine services already privatized. With no oversight, there is no way of knowing whether privatization was the correct decision.

AFSCME members want effective and efficient government. We not only deliver the services but we are also citizens -- taxpayers and users of services. With more competent public management, there would be no need for contracting out in many of the instances in which it is now being considered or has already happened. Good public sector managers should be able to effect the same kinds of economies and efficiencies that private managers achieve -- and without the added problems that

contracting brings.

If the State of Montana is to continue its history of responsible and responsive government, public agencies must consider all the consequences of privatization. By supporting HB 857 you would require them to do so. You can do no less and still retain the support and confidence of the citizens. Thank you very much.

**Testimony of Joyce Perszyk
Local 2235 AFSCME Council 9
Before the House Labor Committee
on HB 857**

February 19, 1991

My name is Joyce Perszyk. Until last August I worked as a Secretary III at Northern Montana College for 11 years. I am a member of AFSCME Local 2235 and until last August I was President of the Local. Our Local members include the cooks, custodians, secretaries, and clericals at the College. I am also Secretary of the Executive Board of AFSCME Council 9.

I am here today to voice my support for HB 857. My experience and the experiences of my co-workers with privatized services at the College lead me to take this position. Let me share with you our knowledge and observations of two services that were privatized at the College.

First, about two years ago the College contracted with a company called American Food Management to provide management of the food service program. Six months later, this company was sold to ServiceMaster Inc.

The changes in management have been very disruptive for the cooks. During this short two year period, we have gone through four full-time managers and four assistant managers.

The contract calls for ServiceMaster to supply all cleaning supplies, except consumables, and to provide new vacuums, floor polishing equipment, and carts. To this day, the custodians are still using left over state supplies and equipment, in addition to the ServiceMaster supplies and equipment.

In addition, the bid submitted by ServiceMaster included a resume of the Manager who would be assigned to the College. This man's credentials looked great. However, the manager ultimately assigned to run the physical plant had very limited experience. This individual lasted less than one year. We are now on our fourth manager.

As part of the sales pitch, ServiceMaster promised they would send their professionals in to show custodians how to do the job better. However, the only training provided was a one hour session on how to use ServiceMaster's vacuum cleaners. No training was provided on how to properly use the company's cleaning supplies. In fact, OSHA required Material Safety Data Sheets on the various cleaning solvents were distributed just this past week.

Even though the contract states that the ServiceMaster manager can't direct state workers, in reality he does. This has resulted in workers having two bosses -- ServiceMaster's manager and the Director of Fiscal Affairs. When the Director of Fiscal

The contract calls for ServiceMaster to supply all cleaning supplies, except consumables, and to provide new vacuums, floor polishing equipment, and carts. To this day, the custodians are still using left over state supplies and equipment, in addition to the ServiceMaster supplies and equipment.

In addition, the bid submitted by ServiceMaster included a resume of the Manager who would be assigned to the College. This man's credentials looked great. However, the manager ultimately assigned to run the physical plant had very limited experience. This individual lasted less than one year. We are now on our fourth manager.

As part of the sales pitch, ServiceMaster promised they would send their professionals in to show custodians how to do the job better. However, the only training provided was a one hour session on how to use ServiceMaster's vacuum cleaners. No training was provided on how to properly use the company's cleaning supplies. In fact, OSHA required Material Safety Data Sheets on the various cleaning solvents were distributed just this past week.

Even though the contract states that the ServiceMaster manager can't direct state workers, in reality he does. This has resulted in workers having two bosses -- ServiceMaster's manager and the Director of Fiscal Affairs. When the Director of Fiscal

Affairs isn't aware of or disagrees with a decision of ServiceMaster's manager, the worker is often left in the middle. Worker morale suffers. We have seen the number of grievances increase dramatically since management of the physical plant was privatized.

As someone who has experienced, first hand, the results of privatization, I don't see any benefit to the College. As a taxpayer and a concerned citizen of the State of Montana, I want effective and efficient management of state services. I don't believe that is what ServiceMaster is providing to the College. I see disrupted and inexperienced management, state hand-outs to a profit making company, broken promises, and wasted state money. I believe that HB 857 will help guarantee that such mistakes and misguided approaches to management won't happen. Thank you.



EXHIBIT 12
DATE 2/19/91
HB 857

DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DON JUDGE ON HOUSE BILL 857, BEFORE THE HOUSE LABOR COMMITTEE, FEBRUARY 19, 1991.

Madam Chair, Members of the Committee, for the record my name is Don Judge, representing the Montana State AFL-CIO, and we rise in support of House Bill 857.

According to this Governor, privatization of public workers' jobs would seem to be the cure-all for our ailing public services. Many state and local governments have experimented with privatization. Often times these experiments end in disaster.

In Phoenix Arizona, privatization cost more than the publicly announced private contract because of hidden costs such as government-paid repairs and adjustments to faulty contract work.

In New York City, private contracting of \$2 billion worth of work each year has led to mayoral scandals, and allegations of wrongdoing that involve both public and private officials.

Along with the alleged benefits of privatization come layoffs, pay cuts, loss of worker benefits, and job security. In other words, privatization is not always the magical potion that it is made out to be.

House Bill 857 would require that any state agency planning to privatize services make their intentions public. The public hearing required under this bill is a mark of good government which grants access to input for those who would be affected by privatization. If workers are at risk of losing their jobs due to privatized services, it is only fair to allow them a public forum so they can voice their opinions and concerns. If the public faces changes in delivery of services, they should also be afforded the opportunity to have input.

House Bill 857 would hold the agency advocating privatization accountable for budgets, effected personal, estimated cost savings, and estimated current and future economic impacts of the proposed privatization. It would also make the agency explain and justify their privatization plan.

Testimony of Don Judge
House Bill 857
House Labor Committee

Montana is lucky to have a highly productive workforce, in both the public and private sectors. We should treat these workers with respect, especially as we promote workers as one of our State's greatest assets for economic development.

The AFL-CIO has always supported honesty and fairness in the workplace. House Bill would require that honesty in a situations that have a large effect on this state's workplace. For these reasons, we urge your favorable consideration of House Bill 857.

Thank you.

Legislative Audit Committee

State of Montana



Report to the Legislature

December 1990

State Agency Transfers of Personal Services Funds

Analysis of Privatization Proposals

House Bill 100 of the 51st Legislature

Direct comments/inquiries to:
Office of the Legislative Auditor
Room 135, State Capitol
Helena, Montana 59620

90SP-45



LEGISLATIVE AUDIT COMMITTEE

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Helena, MT 59620
(406) 444-3122

December 1990

The 52nd Montana State Legislature:

This report is in response to Section 7 (1) of House Bill 100. House Bill 100 requires the Legislative Audit Committee to review and report to the 52nd Legislature on long-term budget impacts resulting from agency transfers from personal services to other categories. This report presents information on transfers made from personal services to other categories, our analysis of privatization proposals, and projected cost savings.

We wish to express our appreciation to the Office of Budget and Program Planning and the departments involved for their cooperation.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John Cobb".

Representative John Cobb, Chairman
Legislative Audit Committee

A handwritten signature in dark ink, appearing to read "Greg Jergeson".

Senator Greg Jergeson, Vice-Chairman
Legislative Audit Committee

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Chapter I

Introduction

Purpose of Study

The Legislative Audit Committee is required, by House Bill 100 of the 51st Legislature, to review and report on transfers made from personal services to any other expenditure category. The purpose of the review is to determine and report the long-term budget impacts of such transfers. HB 100 of the 51st Legislative Session contained language on transfers of personal services funds. This language is paraphrased below:

- No funds appropriated for personal services or indicated in legislative intent as having been appropriated for personal services may be expended under any other category. Except, an agency may request a transfer of funds from the approving authority if it is based on documented cost savings.
- In addition, if an agency is unable to recruit and hire professional positions funded in the appropriation, funds appropriated for personal services may be used to fund an agreement or contract to provide services that are identical to those services performed by an authorized position. The amount used for the agreement or contract may not be more than the amount authorized for the position less any vacancy savings requirement. The agency director shall certify that the agency is unable to fill the position and that the services performed by that position are necessary.
- The approving authority shall submit its analysis of the documented cost savings to the Legislative Auditor. Wages and fringe benefits must be separately documented from other cost savings. The Legislative Audit Committee shall review the approving authority's analysis and report to the 52nd Legislature on potential long-term budget impacts.

The approving authority for executive branch agencies is the Office of Budget and Program Planning (OBPP). OBPP issued Management Memo 2-90-1 which discusses transfers from personal services to other categories and the required documentation for making transfers. Executive Branch agencies are required to provide OBPP with information on salaries, benefits, and operating expenses associated with all transfers from personal services. We received transfer information from OBPP

Chapter I

Introduction

throughout the last year. We received transfer documentation after the transfers were approved by OBPP. We received no transfer information from other approving authorities (Supreme Court, legislative committees, and Board of Regents).

State Payments for Contracts For Services

Contracting for services is a common method for state agencies to accomplish goals. Some of the transfers discussed above increase expenditures for contracts with private vendors. In fiscal year 1989-90, state agencies spent almost \$195 million on contracts for services with vendors outside of state government. Approximately \$134 million of these contracts were Department of Highways contracts for road construction. State agencies also spent \$18.5 million on services from other state agencies.

The following table lists expenditures on contracts for state agencies which made transfers with long-term impact. The amounts shown are all contracts for services with private vendors, and do not include services from other state agencies.

Table 1

Expenditures on Contracts for Services
with Private Vendors
For Fiscal Year 1989-90

<u>Agency</u>	<u>Expenditure</u>
Department of Administration	\$4,284,422
Department of Commerce	6,634,757
Department of Institutions	2,233,190
MT Developmental Center	119,167
Department of Social and Rehabilitation Services	8,122,192

Source: Compiled by the Office of the Legislative Auditor from the Statewide Budgeting and Accounting System.

Chapter II

Temporary Transfers

Introduction

We reviewed each transfer and determined whether it had a long-term budget impact. Some transfers were made to alleviate a temporary problem; for example, hiring a temporary employee to fill in for an ill employee. We performed a limited review of temporary transfers because there is no long-term budget impact. We mention them here for informational purposes only.

Temporary Transfers

- The Department of Fish, Wildlife and Parks transferred \$46,825 to contracted services for a study of the Little Missouri River Basin Water Reservation study. The department granted the money to MSU's Cooperative Fisheries Unit. This eliminated the need for 1.5 temporary FTE and achieved a cost savings of approximately \$7,500. Since this was for a single study, there is no long-term budget impact.
- The Department of Natural Resources and Conservation transferred \$477 to contracted services to hire a work study student during the extended absence of an employee. The department estimated a one-time cost savings of \$1,257.
- The Department of Revenue transferred funds to contract with the private sector for mail handling during receipt of income tax returns. The department estimates fiscal year 1989-90 savings at \$1,170. The department will contract with the private sector in future years only if favorable bids are received.

Chapter III

Transfers with Long-Term Impact

Introduction

There are several different types of transfers an agency can make. Transfers to contracted services can involve contracting a service with the private sector or with another state agency or state program. Some contracts with private sector businesses were necessary because the state agency was unable to fill a position with a qualified applicant. Agencies have also transferred personal services funds to equipment. Cost savings occur because updated equipment can increase efficiency and lower FTE requirements.

We projected costs for future years using a 2.5 percent inflationary factor. We used 2.5 percent because it was the amount of increase provided to state employees in the past two fiscal years and personal services are the major share of costs for services reviewed. We also used a 2.5 percent inflationary increase for contract costs, unless the contract was established for the entire period (i.e., fiscal years 1990-91, 1991-92 and 1992-93).

This chapter details agency transfers which impacted expenditures in this biennium and should impact budgets for the next biennium.

Department of Administration

The Department of Administration contracted with the private sector for janitorial, security, and data entry services.

Janitorial Services

The department contracted all janitorial services as of July 1, 1989. The department estimates actual savings of approximately \$120,000 for fiscal year 1989-90. Contracts for years with legislative sessions will generally have less cost savings, so the contracts for fiscal year 1990-91 were more expensive than previous contracts. We projected cost savings from contracting janitorial services of \$92,102, \$97,644, and \$98,500 for fiscal years 1990-91, 1991-92, and 1992-93, respectively.

Chapter III

Transfers with Long-Term Impact

Security Services

The department contracted for capitol security services as of November 1, 1990. The department entered into a three-year contract with a private vendor. As a result, costs should stay the same over the three-year period. We projected cost savings of \$31,546, \$49,454, and \$56,891 for fiscal years 1990-91, 1991-92, and 1992-93, respectively. The first year of the contract is only a partial year; therefore, first year cost savings are lower. According to department officials, the actual costs of the contract will be \$3,000 less than expected due to negotiations with the contractor.

Data Entry Services

The department contracted for data entry services as of October 12, 1990. The department entered into a three-year contract with a private vendor at a set rate. Contract costs should remain steady over the three-year period. We projected cost savings from contracting at approximately \$100,000 less over the three-year period than the department's projections because we believe the department will realize the \$100,000 in cost savings from lower keystroke volumes rather than from contracting. Keystroke volumes are lower because state agencies are now keying in their own payroll and accounting data. We projected the department's total cost savings (from contracting and from lower volume) at \$72,831, \$103,659, and \$110,374 for fiscal years 1990-91, 1991-92, and 1992-93, respectively. The first year of the contract is only a partial year; therefore, first year cost savings are lower.

In addition to analysis required by HB 100, we completed legislative requests for specific information on each of DoFA's requests for transfers. Information gathered for legislative requests varied depending on information requested by legislators. Copies of request information are available from the Office of the Legislative Auditor.

Chapter III

Transfers with Long-Term Impact

Department of Commerce

The Department of Commerce contracted for services for various functions within the department.

Weights and Measures Bureau

The bureau eliminated a full-time position and contracted for temporary services during peak season for issuing licenses. The bureau determined a full-time permanent position was no longer needed. We projected the department's cost savings for Weights and Measures at \$29,674, \$30,416, and \$31,176 for fiscal years 1990-91, 1991-92 and 1992-93, respectively.

Health Facilities Authority

The authority was relocated to the Board of Investments in June of 1989. The relocation allowed the authority to eliminate two FTE and receive administrative support and professional consultation from board staff. In September of 1990 the Board of Investments requested and was granted an additional FTE, partially because of work related to the authority. The authority will pay for one-half of the new position. As a result, the department's overall cost savings through relocating the authority will not be as high as projected initially. We projected the department's cost savings at \$24,324, \$20,991, and \$21,575 for fiscal years 1990-91, 1991-92 and 1992-93, respectively. Cost savings go down in fiscal year 1990-91 because the authority will then be paying for a full year's costs for the new position at Board of Investments.

Office of Research and Information Services

The department had an economist position which had been vacant since 1989. The department chose to contract for economic analysis rather than hire for the position because of current needs for several economic studies. The department determined the change will be permanent. Assuming the position had been filled and subsequently privatized, we projected cost savings for the department of \$10,008, \$10,258, and \$10,514 for fiscal years 1990-91, 1991-92 and 1992-93, respectively.

Chapter III

Transfers with Long-Term Impact

Department of Family Services, Pine Hills School

The Department of Family Services, Pine Hills School, contracted with a private chemical dependency service to provide treatment for residents at Pine Hills School. Treatment was previously provided by a state employed counselor. The contract will provide a wider range of services and resources. Projected cost savings are \$2,050, \$2,101, and \$2,153 for fiscal years 1990-91, 1991-92 and 1992-93, respectively.

Department of Institutions, Montana Developmental Center

The Department of Institutions, Montana Developmental Center, purchased a new food service system to meet Department of Health and federal Health Care Financing Administration standards. The new system requires less manpower and less weekend work for food preparation. The department eliminated 10 FTE as a direct result of the new system. In addition, habilitation staff now are able to devote more time to habilitation training rather than serving food. In addition to cost savings from personal services, department officials believe cost savings will be achieved through less food waste and food savings, however the system has not been in place long enough to estimate food cost savings yet. Projected cost savings are \$168,062, \$172,687 and \$182,160 for fiscal years 1990-91, 1991-92 and 1992-93, respectively.

Department of Social and Rehabilitation Services

The Department of Social and Rehabilitation Services eliminated a clerical position and purchased word processing equipment for quality control field staff. The clerical position would have involved several part time positions to provide assistance to field staff. Prior to this change quality control field staff were hand writing correspondence. The equipment purchase was a one time expense; therefore, there were no cost savings in fiscal year 1989-90. Projected cost savings are \$16,462, \$16,874, and \$17,296 for fiscal years 1990-91, 1991-92 and 1992-93, respectively.

Chapter III

Transfers with Long-Term Impact

OBPP Budget Process

OBPP officials indicated the Executive Budget for fiscal years 1991-92 and 1992-93 will contain recommendations for decreases in agency budgets where agencies indicated there will be long-term impact.

Chapter IV

Summary

Summary

We projected cost savings for each agency based on actual costs for fiscal year 1989-90. We added an inflationary factor of 2.5 percent to all state costs, and to contract costs if contracts were not in place through 1992-93. We also determined which funds cost savings will affect. OBPP officials indicate the Executive Budget will include recommendations for decreases in agency budgets for agencies achieving cost savings.

The following table summarizes total projected cost savings and funds affected, by agency, by project.

Chapter IV

Summary

Table 2

Total Projected Cost Savings
Personal Services Transfers
 For Fiscal Years 1990-91, 1991-92, and 1992-93

<u>Agency/Program</u>	<u>Fund</u>	<u>FY</u> <u>1990-91</u>	<u>FY</u> <u>1991-92</u>	<u>FY</u> <u>1992-93</u>
Department of Administration				
Janitorial	Proprietary*	\$ 92,102	\$ 97,644	\$ 98,500
Security	Proprietary*	31,546	49,454	56,891
Data Entry**	Proprietary*	72,831	103,659	110,374
Department of Commerce				
Weights & Measures	General	\$ 29,674	\$ 30,416	\$ 31,176
Health Facilities	Proprietary	24,324	20,991	21,575
Research & Information	General	10,008	10,258	10,514
Department of Family Services	State Special			
Pine Hills School	Revenue	\$ 2,050	\$ 2,101	\$ 2,153
Department of Institutions				
MT Developmental Center	General	\$168,062	\$172,687	\$182,160
Department of Social and	50% General			
Rehabilitation Services	50% Federal	\$ 16,462	\$ 16,874	\$ 17,296
Total For All Agencies		<u>\$447,059</u>	<u>\$504,084</u>	<u>\$530,639</u>

*State agencies pay for janitorial and security services through rental assessments. Actual cost savings may affect various agencies and funds. Data entry fees are assessed to agencies using services by the department.

**Includes totals from contracting and from lower keystroke volume.

Source: Compiled by the Office of the Legislative Auditor



EXHIBIT 14
DATE 2/19/91
HB 846

DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DON JUDGE ON HOUSE BILL 846, BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 19, 1991

Madam Chair and Members of the Committee, for the record my name is Don Judge and I'm here today representing the Montana State AFL-CIO, in support of House Bill 846.

Representative Menahan's bill is intended to address a problem found in current law, which allows the privatization of public services without a public inspection of the cost of doing so. Currently, state workers' jobs may be privatized and public services sold to the lowest bidder, and no public scrutiny is provided until after the fact.

House Bill 846 would require that bids offered to purchase such public services in which the jobs of five or more state employees are affected, be available for public inspection after the bids are opened by the state. In this way, public employees and the public served by these programs up for sale will be able to review and respond to the bidders' proposals.

We believe that such inspection and ability to respond will ensure that irresponsible bids will be exposed and quality public services could be allowed to continue.

We encourage your support of House Bill 846 and would recommend you give it a "do pass" recommendation. Thank you for considering our views.

HB 726 - UI General Revision

Amendments:

Page 10, line 3 (39-51-202) - The agricultural and domestic coverage should also be specified in this subsection, and should read:

"(5)(7) any employing unit which, having become an employer under subsection (1), (2), (3), (4), (5), or (6) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or"

Page 27, line 7 (39-51-1105) should be corrected for consistency and technical accuracy as follows:

taxes, penalties, and interest thereafter accruing."

Page 39, line 9 (39-51-1121) - cutoff date should be changed from November 30 to October 31. This change will eliminate the \$4.3 million fiscal impact to the trust fund as shown on the fiscal note making it revenue neutral, and will still allow us to determine employer contribution rates by the first week of January. Change as follows:

"(2) "Cutoff date" means December 31 October 31

GENERAL REVISIONS BILL
UNEMPLOYMENT INSURANCE PROGRAM

Effects of the Bill:

- Combines the definitions of "contributions" and "assessments" under the single term "taxes".
- Places the exclusions for agricultural and domestic employment in the same section with all other exclusions, rather than a separate section.
- Provides clear authority to the Department to allocate certain payments (such as severance pay or termination pay) to weeks other than the week they were paid.
- Removes the requirement of filing with the Secretary of State a listing of personal property in order to perfect the lien, since the Secretary of State has no ability or procedure for accepting such a filing.
- Adopts federally mandated language regarding payment of benefits to aliens, and regarding approved training under the Job Training Partnership Act.
- Provides that the state may reduce its matching share of extended benefit payments in the same percentage that the federal share is reduced due to the Gramm Rudman Hollings Act.
- Deletes the term "unrated employer" from the statute since changes made during the past legislative session made the term obsolete.
- Clarifies that non-profit and governmental employers who are providing employment to a person also drawing partial benefits may not be charged for benefits for that individual, so long as there is no reduction to his hours or wages.
- Changes the procedure (date) for determining the overall tax rate so that employers may be notified sooner.
- Changes the penalty for obtaining benefits fraudulently from 18% percent per annum, computed from the time the fraud occurred, to a flat 33% of the benefits fraudulently obtained. This penalty would be imposed at the time of the decision finding fraud.
- Allows the Department to disqualify an individual who has been suspended for misconduct. Current law allows this action only for termination for misconduct.

PROPOSED AMENDMENTS TO House BILL NO. 807

_____ Bill No. _____ is amended to read as follows:

1. Title
Following: "APPLICABILITY DATE"
Insert:

"AND REQUIRING THAT A FINDING OF THE INDEPENDENT CONTRACTOR STATUS OR EMPLOYMENT EXEMPTION OF THE WORKER'S COMPENSATION DIVISION BE REPORTED TO THE UNEMPLOYMENT INSURANCE FUND AND THAT A FINDING OF INDEPENDENT CONTRACTOR STATUS OR EMPLOYMENT EXEMPTION BY THE UNEMPLOYMENT INSURANCE FUND BE REPORTED TO THE WORKER'S COMPENSATION DIVISION."

2. Pages 2 and 3
Beginning Line 24, Page 2, through Line 3, Page 3
Subsection (g)

Strike: Subsection (g) completely
Insert: NEW SUBSECTION (g)

"(g) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers."

3. Page 7
Following Line 19
Insert: NEW SUBSECTION (4)

"(4) An employment deemed exempt for purposes of an employer's contributions to the workers compensation fund under the provisions of 39-71-401 shall also be considered exempt from the provisions of this chapter."

4. Page 7
Following: New Subsection (4)
Insert: NEW SUBSECTION (5)

"(5) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) shall be deemed an independent contractor for the purposes of this chapter."

5. Page 12
Following Line 22
Insert: NEW SUBSECTION (t)

"(t) Services deemed exempt for the purposes of employer contributions to the unemployment insurance fund under the provisions of 39-51-203."

6. Page 14
Following Line 1
Insert: NEW SUBSECTION (f)

"(f) An individual found to be an independent contractor by the department under the terms of 39-51-203(4) shall be deemed an independent contractor for the purposes of this chapter."

7. Page 15
Following Line 20
Insert: NEW SECTION

Section 3. A finding by the department that a particular employee is an independent contractor or that a particular employment is exempt from provisions of this chapter it shall be reported to the Division of Worker's Compensation."

Renumber: subsequent sections

Suggested Statute Number: 39-51-604

8. Page 15
Following: New Section 3
Insert: NEW SECTION

"Section 4. A finding by the department that an individual is an independent contractor or that a particular employment is exempt from the provisions of this chapter, shall be reported to the unemployment insurance fund for the purposes of an employer's contribution to that fund."

Renumber: subsequent sections

Suggested Statute Number: 39-71-211

Amendments to House Bill No. 726
First Reading Copy

For the House Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 22, 1991

1. Title, page 1, lines 14 and 15.
Strike: "TO REVISE" on line 14 through "BENEFITS;" on line 15
2. Title, page 1, line 24 through page 2, line 1.
Strike: "TO" on line 24 through "MISCONDUCT;" on line 1
3. Title, page 2, line 8.
Following: "39-51-2302,"
Strike: "39-51-2303, 39-51-2509, 39-51-2510,"
4. Page 10, line 3.
Following: "~~(2), (3)~~"
Insert: "(2), (3),"
5. Page 27, line 7.
Following: "taxes"
Insert: "penalties, and interest"
6. Page 36, line 9 through page 37, line 24.
Strike: sections 19 and 20 in their entirety
Renumber: subsequent sections
7. Page 39, line 9.
Following: "~~December 31~~"
Strike: "November 30"
Insert: "October 31"
8. Page 53, line 6.
Following: "him"
Insert: ", "
9. Page 53, line 10.
Following: "~~due.~~"
Insert: "the department may assess"
Following: "penalty"
Strike: "equivalent to 33%"
Insert: "not to exceed 100%"
10. Page 54, line 19.
Following: "received"
Insert: ", "
Following: "~~year,~~"
Insert: "the department may assess"
Following: "penalty"
Strike: "equivalent to 33%"
Insert: "not to exceed 100%"

EX. 18
2-19-91
HB 726

11. Page 56, line 20 through page 57, line 10.
Strike: section 33 in its entirety
Renumber: subsequent sections

Amendments to House Bill No. 846
First Reading Copy

For the House Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 19, 1991

1. Title, line 6.
Following: "SERVICES"
Strike: "AFTER"
Insert: "WHEN"
2. Page 4, line 5.
Page 7, line 6.
Following: "inspection"
Strike: "after"
Insert: "when"

EXHIBIT 20
DATE 2/19/91
HB 857

Amendments to House Bill No. 857
First Reading Copy

Requested by
For the House Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 19, 1991

1. Page 3, line 23.
Following: "costs"
Insert: "and quality"

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. 124

DATE 2/19/91 SPONSOR(S) Rep. Bob Gilbert

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[illegible]

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. HB 643

DATE 2/19/91 SPONSOR(S) Rep. Carolyn Squires

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tom Schneider	MPEA	X	
Michael Messina	AFSCME	X	
CHARITAN MACKAY	AF L-CIO	X	
Bob Heiser	UFCW	X	
MARK CRESS	ADMINISTRATION	X	
DAN Edwards	OCAW	X	
George Haysman	AFSCME	✓	
Terry Munson	MESI	✓	
JAY BERTON	Helena Central Labor Council	✓	
E Fenderson	St Blg traders	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. HB 726

DATE 2/19/91

SPONSOR(S) Ernest Bergsagel

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Al Bush Boles	Art Chamber		
Chuck Hunter	DEPT OF LABOR & IND.	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. HB 807

DATE 2/19/91 SPONSOR(S) Rep. Royal Johnson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Chuck Wall	MNA	amend	
HH Buck Bole	Mont Chamber	u. amend	
Mike Voeller	Lee Enterprises	V (amend)	

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**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. HB 846

DATE 2/19/91 SPONSOR(S) Rep. Wm. "Red" Menahan

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Tom Schneider</i>	<i>MPEA</i>	<i>X</i>	
Michael Messina	ATSCME	<i>X</i>	
CHRISTIAN MACKAY	AFL-CIO	<i>X</i>	
Bob Heiser	ULFCW	<i>X</i>	
Mike Trevor	DOA / ISD		<i>X</i>
DAN EDWARDS	OCBW	<i>X</i>	
George Wapernick	AFSCME	<i>✓</i>	
Terry Munow	MFSE	<i>✓</i>	
Jay RETHEDON	Helenor Central Labor Council	<i>✓</i>	
E. Fenderson	MT St Bly. trades	<i>✓</i>	

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**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. 857

DATE 2/19/91

SPONSOR(S) Rep. Mark O'Keefe

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tom Schneider	MPEA	X	
Joseph Derynyski	AFSCME	X	
Michael Messine	AFSCME	X	
LHA STAN MACKAY	AFL-CIO	X	
Bob Heiser	UFCW	X	
Mike Trevor	DOA/ISD		X
DAN Edwards	OCAW	X	
George Hagerman	AFSCME	✓	
Terry Munoz	MFESE	✓	
Jay Rendon	Helena Central Labor Council	✓	
E Fendun	Int St Bldg Trades	✓	
HH Balas	Int Chamber	amend	

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