MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIR CAROLYN SQUIRES** on March 20, 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)
Jerry Driscoll (D)
Russell Fagg (R)
David Hoffman (R)
Thomas Lee (R)
Royal Johnson (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Dave Wanzenried (D)
Fred Thomas (R)
Tim Whalen (D)

Members Excused:

Ed Dolezal (D)
H.S. "Sonny" Hanson (R)

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

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

HEARING ON SB 31

Presentation and Opening Statement by Sponsor:

SEN. TOM TOWE, Senate District 46, Billings, said the present statute prevents all pre-employment testing and all random testing. SB 31 allows very limited pre-employment testing. It preserves the prohibition against all random testing. It adds protections for employees if testing does take place. The bill adds two more exceptions: 1. In which the employer provides to its employees a comprehensive drug and alcohol rehabilitation program that is paid for by the employer; 2. in which the employer employs ten or fewer employees. The testing must be

performed only by drug testing laboratories certified by the National Institute of Drug Abuse (NIDA). On page 4, a verification of the test results must be as follows: (i) There is an initial test that must meet the requirements of the U.S. Food and Drug Administration for commercial distribution. There are initial cut-off levels, which are the guidelines adopted by NIDA. If NIDA changes those, it would be automatically accepted in Montana. (ii) If the initial test is positive, then there is a confirmatory test. The confirmation test must be using a gas chromatography mass spectrometry technique. The laboratory is required to report all tests that are negative on the initial report or negative on the confirmatory test. The tests can only be reported as positive if they meet the cut-off levels, and they must be reviewed by a medical review officer. The drug-testing laboratory shall retain all specimens for at least one year. If there is a federal preemption (in the transportation industry there has been a federal preemption), it would be narrowly construed to limit the extent of the preemption. A comprehensive drug and alcohol rehabilitation program must be designed according to the qualified testing program set forth in Section 3. Written policies and procedures must be available at least 60 days prior to implementation for review by all employees. The policies must contain, at a minimum, the items on Page 8. On Page 9 the drug testing will not be disclosed except to the tested employee or to a person who is authorized by him to receive the information. It can be used in the event of an accident involving death, physical injury, or property damage in excess of $5,000, only when there is a particular suspicion with an individual. It may not be released to the employer unless it has gone through a medical review officer. It is recommended that the employer may require the affected employee to participate in an appropriate drug rehabilitation program. However, it may be grounds for dismissal if that is part of the employer's plan. There is a protection for the privacy of the samples and chain of custody procedures, and the plan must go through the same requirements for the initial test and the confirmatory test. On Page 12, the medical review officer must be available in all situations where there is testing by the employer. The employer may contract with a local physician who is familiar with drug testing. The job of the medical review officer is to verify and interpret the tests. If the individual is taking medication, that may suggest why the test was positive. The officer is required to review the medical history records and to interview the individual to determine if the test was positive because of a prescription drug. The medical review officer must review the matter before the employee is returned to duty if he was suspended because of a positive test. The officer cannot release the results even if they were confirmed positive on both tests unless, in his medical opinion, it was due to the use of illegal drugs. Only then can he report it to the employer. Otherwise, the employer finds out nothing. If it is found that the test was positive because of a prescription drug, then the test must be reported as negative. Page 14 says if the medical review officer is unable to determine with scientific certainty

what the test results are, he must report it as negative. There is confidential communications. A provision on Page 15 specifically applies to alcohol testing, which may be blood, breath, or urine. The requirement for a NIDA certified laboratory applies to drug testing and not necessarily to alcohol testing. There is a great possibility of error with the existing situation. If a laboratory isn't certified, there is a chance that one out of four persons who test positive are not positive. The tests need to be more accurate. If an employer has more than ten employees, he must have a comprehensive drug and alcohol rehabilitation in place and only then can he use pre-employment testing.

Proponents' Testimony:

SEN. LARRY STIMATZ said various studies and experts have determined that testing in the workplace would be helpful in developing a drug-free workplace.

Dan Edwards, International Representative, Oil, Chemical, & Atomic Workers International Union, said public employees may be excluded with the way the bill is currently worded, which is not the intent of the bill. If an amendment is needed to include public employees, he supports it. He presented written testimony. **EXHIBIT 1.** He presented written testimony for **Jeffrey Renz, Legal Director, ACLU (American Civil Liberties Union). EXHIBIT 2.**

SEN. RICHARD PINSONEAULT said care should be taken so an employee isn't fired because of incorrect test results. The testing incorporated with NIDA is important. The cut-off levels, the guidelines, and the confirmatory tests are good. There are many protections. He stated an example of a woman with a chemical addiction who went through IBM's rehabilitation program. If it had not been in place, she would have been terminated. She is recovered and has been promoted.

Steve Browning, Attorney, IBM, Montanans for a Drug-Free Society, said the bill is a compromise. It is not perfect but is a profound improvement over the existing law. There is unease among employee groups that drug testing can be unfair. SB 31 assures fairness, reliability, and confidentiality of the tests. The key to the bill is the use of a medical review officer, who is independent from the employer, employee, or job applicant. It is the medical review officer's responsibility to assure that the test results are accurate, valid, reliable, fair, and take into account any medical condition of the employee or job applicant.

Dean Schanz, Oil, Chemical, & Atomic Workers (OCAW), Exxon Refinery in Billings, stated his support of SB 31 on behalf of 160 members of the OCAW, and is opposed to any amendments.

James Tutwiler, Montana Chamber of Commerce, said the Chamber is part of the coalition of the Montanans for a Drug-Free Society. The bill is a profound improvement over the drug treatment, testing, and surveillance programs available. The bill takes a major step toward pre-employment screening in a responsible and beneficial way to potential employees and to the employer. The Chamber is disappointed that the bill does not contain a provision for testing while on the job beyond the limited conditions that permit such testing. Employers have a responsibility to society to be part of the nationwide effort to work toward a drug-free society.

Janelle Fallan, Montana Petroleum Association, presented written testimony, which included an amendment, for **John Genova, Refiner Manager, Exxon Company, EXHIBIT 3**

Byron Roberts, Transportation Division, Montana Department of Commerce, said the Transportation Division administers federal grant programs through the Urban Mass Transportation Administration. It funds primarily public bus systems in major cities and bus systems for the elderly and handicapped around the state. The Division is responsible for assisting communities in implementing federally imposed drug testing rules, but there are none at this time. He presented written testimony, which included an amendment. **EXHIBIT 4**

Dan McGowan, Montana Transit Association, presented copies of three transmittals from the Montana Transit Association and the Missoula Urban Transportation District stating support with the amendment proposed by the Department of Commerce. **EXHIBIT 5**

Kay Foster, Billings Chamber of Commerce, urged the Committee to consider the amendment offered by Janelle Fallan, Exxon. A legislative issues questionnaire distributed by the Billings Chamber contained the question, "Do you favor random drug testing in the workplace where there are safety concerns." Two hundred forty-one people answered yes and 31 answered no. The suggestion by Exxon is not random drug testing but would allow only testing with annual physicals and if the job is a safety sensitive position. She stated her support with the amendment.

Ed Logan, Pipefitter/Welder, Exxon Refinery, Billings, said there isn't a drug problem at the Refinery. The Exxon amendment is completely unnecessary. Exxon reserves a right to classify what is and what is not a safety-sensitive position. There might be 28 safety-sensitive positions today, but there is no guarantee that Exxon wouldn't change it to 128 positions tomorrow. He stated his support with no amendments.

Bruce McCandless, City of Billings, stated support of SB 31 with the amendments proposed by Mr. Roberts, Department of Commerce. As operators of large mass-transit systems in Montana, there are concerns of potential effects of UMPTA (Urban Mass Transportation

Administration) regulations concerning random drug testing and post-accident testing.

Riley Johnson, National Federation of Independent Businesses, stated the members are in favor of stronger testing.

Opponents' Testimony:

Scott Crichton, Executive Director, American Civil Liberties Union of Montana, presented written testimony. **EXHIBIT 6**

Questions From Committee Members:

REP. PAVLOVICH asked **Mr. Roberts** if his amendment, which pertains to the urban transportation and losing money for the different communities on the transit system, would fit better in HB 110. **Mr. Roberts** said he wanted to be assured that it was heard somewhere and thought SB 31 was the logical bill. It is a crucial problem.

REP. PAVLOVICH asked **SEN. TOWE** if he was a member of the Senate Judiciary Committee. **SEN. TOWE** said yes. **REP. PAVLOVICH** asked if he would accept the amendment of the Department of Commerce to be put in HB 110, sponsored by Rep. Gilbert, so the money wouldn't be lost. **SEN. TOWE** said he agreed that the Legislature needs to be careful about money, but he didn't agree that the Legislature should anticipate what Congress is going to do and let suggested legislation in Congress dictate policy in Montana. He didn't approve the amendment for SB 31 and probably not for HB 110. Generally, when Congress makes a provision saying money will be withheld, it allows the Legislature an opportunity to react before the provision would take effect. There is plenty of time to respond after Congress makes a statement. **REP. PAVLOVICH** said Congress is in session year around and Montana is not. There is a possibility that the money could be lost. **SEN. TOWE** said if there is that type of problem it needs to be dealt with, but generally in an act of Congress there is time for the states to conform their existing laws before the act takes effect.

REP. DRISCOLL asked **Mr. Browning** to address Page 3, Lines 17-25. It is in the existing law except for the change of a NIDA certified laboratory. Presently when a urine sample is taken, one sample is taken and sent to the laboratory. If the person being tested is found guilty on the first two samples, he has an opportunity to pay for a third test himself. In order to have adequate confirmation for the person who pays for the third test, shouldn't the laboratory take three separate samples instead of one bag-full that is sent to a laboratory and then separated. **Mr. Browning** said typically when a sample is taken, the sample is adequate in volume to accommodate more than one test. The sample is shipped back with the observation of the chain of custody requirements. A small portion of the sample is used for the initial screen. If the initial screen is positive, then another part of the sample is used for the confirmatory test. If that

tests positive then the employee, after meeting with the medical review officer, is notified that he has a positive test. The person is given the opportunity to explain the test. At his own expense, the person can obtain a confirmatory test by an independent NIDA laboratory. The remaining portion of the sample, could be sent to the other laboratory. If there isn't enough specimen left, the only alternative would be to draw another sample.

REP. DRISCOLL asked Mr. Crichton to address Page 3 Line 21-23. One sample is taken and sent to the laboratory. The laboratory splits it into three samples. Is that following the law, or shouldn't three samples be taken at the place the person is being tested. One sample could be kept at the place where the sample was taken. If the other two samples ended up positive, then the person could send the third sample to a laboratory of his choice for a confirmatory test. That is not happening. Is that section being violated now? **Mr. Crichton** said the ACLU deals with drug testing of people who are on parole, probation, or within the custody of institutions. The ACLU has had very little experience with workplace drug testing results being challenged.

REP. DRISCOLL asked **SEN. TOWE** if he would accept an amendment requiring that three separate samples must be taken in the presence of the person being tested at the place where the sample is actually taken. If the first two tests are positive, the third sample wouldn't be in the control of a laboratory in some other state. It would be in the control of someone in the town where the person was tested. **SEN. TOWE** said he didn't object. For illegal drugs, those tests become stale quickly. It is probable that the third sample won't be any good by the time it gets to the laboratory.

REP. DRISCOLL asked **Mr. Edwards** the same question. **Mr. Edwards** said he didn't object, but it may be difficult to decide where to keep the third sample. Section 2 is old law, which didn't require confirmation. A NIDA certification has been adopted. NIDA procedures require that 60 milliliters of urine be collected. That is a sufficient amount that if the first test goes through and comes back positive, then there is a second test. It is all part of the same sample. The 1987 law was intended to safeguard a person who was tested. In blending with the old law, the NIDA procedures take care of part of that, but the new law creates this ambiguity that implies there could be three samples.

REP. COCCHIARELLA said on Page 6, Line 20, employee is defined. She asked **SEN. TOWE** how that would apply to public employees. **SEN. TOWE** said the old law does not differentiate between public and private employees, therefore, the public employer and the private employer would be bound by the old law. The new section defines employer to mean a person or entity in the private sector on Page 6, Lines 24-25. Therefore, the new section would only apply to a private employer. The old law has been inadvertently

limited to private employers only, which is not the intent of the bill. He proposed an amendment to strike "in the private sector" from Lines 24-25, Page 6. **REP. COCCHIARELLA** asked **Ms. McClure** if the amendment would include public employees. **Ms. McClure** said, "In the private sector" on line 24 and "private" on Line 21 should be removed.

REP. COCCHIARELLA said constituents are concerned about the definition of a hazardous work environment. There may be a loophole in the pre-employment testing that is currently done. **SEN. TOWE** said if the employee works in a hazardous work environment or in a job where the primary responsibility is security, public safety, or fiduciary responsibility, there can be pre-employment testing today. There would be pre-employment testing under this bill. In Section (b), Page 2, an employer is entitled to pre-employment test if he employs ten persons or less, and if he employs over ten persons he must have a comprehensive drug and alcohol rehabilitation program. **REP. COCCHIARELLA** asked if a teacher (assuming public employees are included in the bill) could be pre-employment tested when he has to sign a new contract every year. **SEN. TOWE** said no. That teacher is employed even though he has to renew the contract every year. **REP. COCCHIARELLA** asked if a retail clerk worked at Buttreys for a month and was pre-employment tested under Section (B), would he have to be tested again if he quit his job and went to work for a new employer under the same union. **SEN. TOWE** said he could be pre-employment tested because it is a new employment situation. If the employer has one of the three items in Section 1, pre-employment testing could apply. If the employee is going to work for a subsidiary, that would not be a new employment situation and pre-employment testing could not be done.

REP. WHALEN said Page 1 says, not only as a condition for employment," but it also says, "or continuation of employment." **SEN. TOWE** told **REP. WHALEN** that he was reading it wrong. Line 21 says a person may not require (i) as a condition for employment or continuation of employment a person to take a polygraph test or any form of mechanical lie-detector test. It is talking about lie detector tests and not drug tests -- not blood or urine samples. Item (ii) says as a condition for employment a person to submit to a blood or urine test except for employment. The condition for employment is pre-employment testing. On Line 11, Page 2, says "And" (iii) as a condition for continuation for employment an employee to submit to blood or urine test unless the employer has reason to believe that the employee's faculties are impaired because of alcohol or illegal drug use. Testing can be done after employment only if (iii) applies. **REP. WHALEN** said the language allows large employers who have rehabilitation programs in place and any employer with ten or fewer employers to drug test whenever they want. **SEN. TOWE** said that is correct. Testing must comply with Section 3, Page 7, which is a qualified testing program. It is expensive. The hiring of a medical review officer is expensive. It is contemplated that the expense of testing will be so great that it is very unlikely that an

employer with ten or fewer employees will want to test, but it is possible. **REP. WHALEN** asked if the independent medical review officer was contracted by the employer. **REP. TOWE** said correct. **REP. WHALEN** said the employee or agent who represents the employee has no input into the designation of that medical review officer. **REP. TOWE** said he was probably accurate. If it becomes an issue, it could be considered in the collective bargaining agreement.

REP. WHALEN asked if the confirming test, which is a gas chromatography test, was a breathalyzer test instead of a blood or urine test. **Mr. Edwards** said the gas chromatography test is the "cadillac" of tests. It takes a master's degree or an equivalent of training to run it. It is a very expensive and sophisticated machine. It is almost error free. **REP. WHALEN** asked if the test is for blood or urine. **Mr. Edwards** said in the case of drugs, it must be urine. Breath or blood tests are used for alcohol. **REP. WHALEN** said it could not be a breath sample. **Mr. Edwards** said no.

REP. WHALEN said the language on Pages 1-2 requires a large employer that is conducting tests to have a rehabilitation program. If a person tests positive, the employer has the option to allow the person to be put into the rehabilitation program provided by the employer, but if the policies and procedures adopted by the employer say that the person is fired, then this employee gets no rehabilitation. **SEN. TOWE** said he was correct.

REP. JOHNSON said to **Mr. Roberts** under the current law there isn't the same problem that he referred to with regard to his proposed amendment. **Mr. Roberts** said currently there isn't drug testing in the transit industry, so it doesn't affect anything. There is a possibility of a bill that will be presented to Congress in which the Urban Mass Transportation Administration will be allowed to impose "these types" of drug testing and the sanctions would result in the loss of federal money.

CHAIR SQUIRES referred to Mr. Robert's testimony pertaining to the disqualification of federal funds by the U.S. Government. The Legislature has recently dealt with an issue in regard to unemployment insurance and being out of compliance. It takes about two years to issue a warning. What is the urgency for this particular amendment right now, when normally the reprimands of the U.S. Government don't occur immediately? **Mr. Roberts** said the urgency is that the Legislature only meets every two years. The last time the rules were imposed, local transit operators were to comply with the rules by December 21, 1990. The amendment is restrictive only to the transit industry. **CHAIR SQUIRES** said the Legislature establishes the laws and brings the state into compliance with the U.S. Government. It would be more likely that this particular department would not impose a sanction until the next legislative session, and it could be resolved at that time. **Mr. Roberts** said that is a possibility. In the event that it occurs, this amendment would be needed.

CHAIR SQUIRES asked **Mr. Schanz** to address the concern about the amendment offered by Exxon pertaining to the drug testing on the high risk safety sensitive positions. An annual physical was indicated. Is it a requirement for every person at that refinery to have an annual physical or is it only for those 28 people. **Mr. Schanz** said there are requirements for different positions. When the drug and alcohol program was imposed, the federal government says it has to be negotiated. They did not negotiate the safety sensitive positions. They could add more to the number of safety sensitive positions.

CHAIR SQUIRES said she is a nurse and has collected specimens, sent them to a laboratory, and has had them come back contaminated. There is a possibility that the second or third sample could be contaminated. It doesn't make sense to use one specimen and then divide it up. **Mr. Edwards** said in his opinion he would just have drug testing for probable cause. "Under current law, they can test any way they want to." Under SB 31, if the procedures set forth in the NIDA guidelines are followed, the likelihood of contamination or getting samples mixed up is very low.

REP. COCCHIARELLA asked **SEN. TOWE** when state employees could be pre-employment tested. **SEN. TOWE** said they would have to go through the same requirements.

Closing by Sponsor:

SEN. TOWE said the bill is a compromise. Every time someone is tested today without the safeguards of this bill, there is a 25 percent chance that the person will test positive with no drug use. The errors in the sampling must be stopped. He urged support of the public employee amendment on Page 6, Lines 21, 24, and 25. There is no problem with the amendment proposed by Rep. Driscoll on Page 3 making it clear that when the sample is initially obtained, it would be sufficient to allow the employee to use the same sample to send to the laboratory of his choice. The Exxon amendment which would allow for testing for hazardous employees on a random basis only at the annual physical, has been rejected by the subcommittee, and he opposed it. He urged the rejection of the amendment suggested by Mr. Roberts from the Department of Commerce. There isn't such urgency. The Transportation Department tried to put that in a rule and failed because it was thrown out of court. When they tried to put it in legislation previously, it was defeated twice. The Legislature is capable of making policy for Montana. If Congress does act, there will be time for the Legislature to reconsider the matter.

HEARING ON SB 342

Presentation and Opening Statement by Sponsor:

SEN. RICHARD PINSONEAULT, Senate District 27, St. Ignatius, said SB 342 addresses a specific problem as it relates to FELA

(Federal Employees Liability Act) cases where the injured employees only recourse is to sue. The doctrine of forum non conveniens means a certain place is not a convenient forum and the case should be filed elsewhere. When a case is dismissed on this doctrine, state courts can say this is the wrong place. A FELA case in 1990 involved an injured plaintiff that wasn't from Montana, the injury occurred in Nebraska, and the plaintiff had filed suit in Montana. The District Court said since it was a FELA case it could be heard in Montana. Burlington Northern (BN) was the other party involved and asked the Supreme Court for writ of supervisory control to request that the case shouldn't be handled in Montana. The Montana Supreme Court said no. "Two cases that preceded this were aberrations of the doctrine, they said unanimously that it was a FELA case and we don't care where the plaintiff is from or where the accident occurred. He is in your court and that is his day in court in Montana." Most of the cases were tried in larger towns in Montana where there are law firms that specialize in this area. In Cascade County, the plaintiffs are represented by out-of-state law firms. The injuries occurred outside of Montana, and the defendants are not from Montana. The plaintiff has no connection with Montana, and Montana is bearing all the court costs. Those cases are taking up the court calendar and time. When BN went to the Supreme Court for writ of supervisory control, they stated that Cascade County at one time closed their doors because they were back logged. SB 342 places forum non conveniens statutorily as it applies to FELA cases.

Proponents' Testimony:

Leo Berry, Attorney, Burlington Northern Railroad, presented written testimony and a list of plaintiffs. **EXHIBIT 7.** The bill was amended in the Senate and is more restrictive than when originally introduced. Page 1, Line 19, says a District Court "may" dismiss. It doesn't require the District Court to do anything. The injured party can file their case, and the District Court can dismiss the case if the Court decides that it is not the proper forum. On the list of plaintiffs, there are only two people who had any connection with Montana.

Randy Cox, Attorney, Missoula, said if the plaintiff from a FELA case is from out of state, typically the lawyers are from out of state because most of the FELA specialists are from Minneapolis, Portland, or Denver. The witnesses are not from Montana because the accident happened out of state. The medical providers are from out of state because the injured person seeks medical treatment where he lives. Under the existing law, there is no way that BN could go to the trial judge and say that a case shouldn't belong in Montana, and it should be tried elsewhere. If it were any other defendant in the United States, it would be likely that the judge would grant the motion. If the railroad worker actually lives in Montana, has close ties to Montana, or has been seeking medical treatment in Montana, the trial judge would be told and in all likelihood he would allow the case to be

tried in Montana. If there is no connection, the trial judge ought to have the opportunity to refer the case elsewhere. The effect on the courts is not overwhelming but is substantial because there are many civil cases waiting trial. If these few cases were removed it would make some difference. It is an issue of fairness. "Why should someone from out of state with an out-of-state case entirely be able to come to Great Falls and try their case. If they tried their case in federal court the federal court would kick it out." The federal courts apply forum non conveniens but the state courts do not. This bill changes that.

Larry Fasbender, Cascade County, said there will not be a significant difference in the costs of the Cascade County Courts. It will have some effect. These cases add to the burden on Cascade County. The Courts in Montana have difficulty with funding. There are some time constraints. SB 342 doesn't prevent a judge from continuing to have a case heard in Montana. As a matter of fairness to the state, courts, and people involved, there should be a doctrine available to determine the most convenient place to hold a trial. The decision should be left up to the judges.

Opponents' Testimony:

Lynn Baker, Attorney, Great Falls, said his firm represents injured railroad employees against Burlington Northern Railroad and Montana Rail Link. His firm currently has about 35 railroad clients and has filed about eight lawsuits in Cascade County since 1986. Federal law allows railroaders to sue the railroad they were injured on wherever that railroad has tracks. The law recognized that railroads routinely move their employees from state to state. Over the past several years BN has waged a campaign to limit the rights of injured railroad employees. SB 342 is an attempt to prevent such employees from choosing where their lawsuits will be filed. BN has circulated a list of cases which supposedly show filings by out-of-state railroaders since 1986. Most of those railroaders have some connection with Montana and the cases are properly filed. In previous testimony it was stated that only two of the cases have a connection with Montana. In one case, Floyd Counts, worked for BN in Livingston until the shops were closed and he was forced to move to Nebraska. Floyd was injured in Nebraska, but he had his back surgery and extensive physical therapy in Montana. That case was filed in Cascade County, and BN opposed the filing. BN argued that the proper place to file was Nebraska since Floyd wasn't a Montana resident and wasn't injured in Montana. There are many similar cases. When BN has the ultimate power to transfer its employees outside of Montana to maintain employment, limiting the rights of injured railroad workers is unfair. BN has supplied a list that only lists the names of out-of-state attorneys. For example, when the Eckman firm is listed, the law firm of Hartelius, Ferguson, and Baker should be listed because it is involved in every lawsuit that the Eckman firm has in Montana.

His firm does 90 percent of the pre-trial paperwork and 50 percent of the trials. Every case that is filed in the State of Montana has a Montana attorney associated with that case. The extent of the work varies. BN has singled out Cascade County of the main example of the damage done to the court system by allowing out-of-state railroaders to file their cases wherever they choose. The BN's version of these facts is different than it was in the Senate Judiciary Committee. It was indicated that the cases were clogging the court system and costing Cascade County money. That is not true. According to the Clerk of Court, Cascade County, after researching the effect of the BN cases on the court system, the filings have almost no affect on the budget. Almost all railroad cases filed in Cascade County since 1986 have been settled before trial. The cost to the Court in taking a railroad case to trial for five days is between $2,500 and $3,500. Cascade County benefits from the few railroad cases that go to trial. His law firm tried a case in January, 1991, which involved a Great Falls railroader. About $15,000 was spent; $12,000 directly to Cascade County and $3,000 went to other parts of Montana in preparation for trial. Even cases that don't go to trial benefit Cascade County. Money is spent on depositions, doctors' testimony, court reporter fees, etc. There are only insignificant costs to the county court system. The Montana Supreme Court is monitoring the cases filed in Montana by out-of-state railroaders. If those filings become burdensome to Montana, the Supreme Court will close the door.

John Larson, Attorney, Missoula, said his name would also appear in the list of out-of-state cases, with the firm of Yeager and Yeager. As local counsel he is responsible for all motions that are argued to the court. In a recent case tried in Great Falls, he argued procedural motions when the BN tried to change the venue of the case. He knows of no trial ever taking place involving an out-of-state plaintiff who was injured out of state. There is no trial cost. The cases are settled. They are a minimal amount in the caseload of the state. There are over 27,000 civil cases in Montana. If Mr. Berry's list was updated, there would probably be less than 20 active out-of-state cases. The effect of these cases on the system is very minute. The law is clearly articulated by the Supreme Court. BN has to prove abuse of the system, and they haven't been able to convince the Supreme Court. BN has come before the Legislature for relief that it should be able to get from a Court if they had the facts to prove their point. Fort Worth doesn't want an injured railroad worker who works and is injured in Montana to pick the location for the trial. They will try to implement the "second leg of this scheme" next session. The amendment placed on the bill is not fair. BN is saying that they cannot get a fair trial in any county in Montana, particularly when there is an out-of-state plaintiff. That isn't correct.

James Mular, Chairman, Joint Rail Labor Legislative Council, said he agreed with Mr. Berry pertaining to FELA giving the option to railroad employees as travelers engaged in interstate commerce to

select the forum where to get compensation for injury. That has been in place for 80 years. What hasn't been said is that many employees for the past seven years have been relocated. In the Transportation Communication Union comprised of carmen, the seniority district extends from Bainville, Montana to Vancouver, British Columbia to Beaver, California to Billings, Montana. Another district annexes Billings and extends as far as Oklahoma and goes up to Nebraska. FELA takes care of injured workers premised on the fact that they are engaged in interstate commerce, unlike the person who is in the mining industry and is covered under Workers' Compensation. BN shouldn't be able to write its own laws so that Ft. Worth can dictate the choice of the forum where railroaders can sue for personal injuries. Almost 1,700 railroad employees in Montana have been relocated in the seniority districts.

Don Judge, Executive Secretary, AFL-CIO, said not too long ago BN said there couldn't be a two-way rear-end telemetric device on trains because federal law prohibited it, and now when federal law says the states can allow employees to file cases in any state in the country, BN says that is a bad idea, and federal law shouldn't allow it. It would restrict Montana to accept those cases. BN has cut its workforce in Montana. Many Montanans were forced to relocate with the closure of the plants. They have connections to Montana, and they should be allowed to file the claims against BN when BN has operations located in Montana. An injured worker may want to file the case where his surgery and rehabilitation will be. It is an economic boom for Montana. BN should not be allowed to restrict where an injured worker files a case.

Richard Van Aken, Transportation Communications' Union, Lodge 528, Great Falls, said the bill represents a threat to the legal rights of the members. This bill will not solve the Cascade County Courts' problems.

Questions From Committee Members:

REP. JOHNSON asked **Mr. Berry** to address the comment by Mr. Judge about the federal law allowing the filing of cases. **Mr. Berry** said FELA, which is the railroad workers' form of Workers' Compensation, allows a railroad worker to file a case in state or federal district court in any jurisdiction in which it can fine the railroad. His misstatement of the law is the principle of forum non conveniens that is contained in the bill is applicable in federal court and in almost every other state in which these cases are filed. That is why the case was thrown out of Nebraska. The other error is that this bill somehow restricts where a case can be filed. Page 2 says the case can be filed anywhere. It doesn't restrict the right to file a case. The bill says that if there is some reason for the case to be in Montana, the judge has discretion to keep it in Montana. If there is no reason for the case to be here, for example, if the doctors, witnesses, etc. are out of state, the court may dismiss

the case, but doesn't have to. **REP. JOHNSON** asked if the court makes the decision. **Mr. Berry** said the court makes the decision; the court says this is not the proper place but does not tell the person where to file.

REP. SOUTHWORTH asked **Mr. Baker** to comment. **Mr. Baker** said this is another attempt to bridge the rights of injured employees.

CHAIR SQUIRES referred to the list of injured people and attorneys from out of state. She asked **Mr. Baker** if he did some of the work for the out-of-state attorneys. **Mr. Baker** said yes. **CHAIR SQUIRES** said the in-state attorneys lay the ground work, and then the attorney from out of state tries the case or the case never goes to court. **Mr. Baker** said yes. Every time there is an out-of-state attorney on the list, there is an in-state attorney that is actively involved in the case. It depends on the out-of-state attorney as to how much the in-state attorney does. An out-of-state attorney must associate with a Montana attorney or get licensed here.

CHAIR SQUIRES asked **Mr. Berry** why the other names weren't listed. **Mr. Berry** said the other names weren't listed because they were local counsel and not the primary attorney for the case. The firm that files the complaint is the firm that is listed. Every out-of-state counsel has to associate a local counsel. Quite often the local counsel does nothing more than sign the documents and does not participate in the case. **CHAIR SQUIRES** said it seemed deceptive since the local attorneys names were not included indicating that they were also working on the cases. **Mr. Berry** said there was no attempt to mislead. He would not suspect this bill to be in a labor committee, but in a judiciary committee. It is common knowledge among lawyers that local counsel must be associated with on every case. **CHAIR SQUIRES** asked how many of the cases were settled out of court. **Mr. Berry** said on the right-hand side of the list shows an "O" for open files and a "C" for closed. He didn't know if the files were closed prior to trial or if they were litigated. He referred the question to Mr. Cox. **Mr. Cox** said 90-95 percent of FELA cases and all civil cases are settled prior to trial. **CHAIR SQUIRES** said if they are settled out of court, what is the big concern. **Mr. Cox** said usually there is considerable amount of work prior to the case settling. For example, in the accident that happened in South Dakota with a South Dakota plaintiff, there is a series of depositions taken out of state because that is where the witnesses and treating physicians are. If the case were transferred to South Dakota, the Montana lawyer wouldn't be involved.

CHAIR SQUIRES asked **Mr. Baker** if the previous comment was appropriate. **Mr. Baker** said it may be appropriate, but it doesn't happen in every case. BN doesn't like Montana juries or Montana forum and would like to move the cases out of state. His firm has been involved in cases in other states that have been moved to different jurisdictions and have followed those cases.

If a Montana attorney's name appears on the pleadings, that attorney is just as responsible as any out-of-state attorney for the handling of that case under the rules of ethics in the State of Montana.

REP. BENEDICT asked **Mr. Cox** if his work for BN was just FELA cases or a variety of work. **Mr. Cox** said he handles just the FELA cases with very few exceptions. **REP. BENEDICT** asked if he was "cutting his own throat" by sending the cases out-of-state. **Mr. Cox** said he had plenty of work to do.

REP. THOMAS asked **Mr. Cox** why the cases are filed in Great Falls. **Mr. Cox** said the plaintiffs' lawyers believe that the jury verdicts on the whole will tend to be higher in Great Falls than other places. For a while everybody wanted to file their cases in Butte, and Missoula went through a "hot" phase. He had a conversation with an out-of-state plaintiff's lawyer who was representing some people in a head-on train collision in Colorado. The lawyer was seriously considering filing the case in Great Falls because he thought he would get more money in Great Falls than in Denver.

Closing by Sponsor:

SEN. PINSONEAULT said Montana plaintiffs should not have to stand in line when there are out-of-state plaintiffs using the courts in Cascade County. That occurs because there are firms in Cascade County that specialize in FELA cases. A lawyer will go to an area where he will get a good deal for his client. This bill is a fairness issue. If there is an economic boom to Great Falls, that is fine. "But all we are saying is, as Mr. Cox has said, at least give us the chance to go to the judge and ask him." The bill has been narrowed to allow the party make a motion to change the location to where the trial should more appropriately be held. In response to Don Judge's testimony, if employees are relocated and maintain their jobs, they are better off than many other working people in Montana.

EXECUTIVE ACTION ON SB 420

Motion: **REP. DRISCOLL MOVED SB 420 BE CONCURRED IN.**

Motion: **REP. BENEDICT** moved to amend SB 420. EXHIBIT 8

Discussion:

REP. BENEDICT said the amendment removes the Plan 2 insurers. The Plan 2 insurers and the private insurers don't have a big share of the market. There are 25 to 30 different carriers who write Workers' Compensation in Montana. They operate in 50 states. Tailoring a plan just for Montana employers would cause more of a burden than many of those insurers are willing to undertake. It would possibly lead to the withdrawal of some insurance carriers in Montana that are writing Workers'

Compensation. There are no strong objections to the amendment except Riley Johnson from the National Federation of Independent Businesses (NFIB).

REP. DRISCOLL said he didn't know what the amendment accomplished. The bill says a medical deductible must be offered in amounts of $500. It doesn't say a premium must be reduced. If an insurance company must offer a deductible they may say, "you can pay the first $500, but you're going to pay the same premium." Then nobody will take it from those insurance companies.

REP. BENEDICT said the amendment was proposed by Jacqueline Terrell. He asked her to address the amendment. **Ms. Terrell, American Insurance Association,** said, "we are not requiring you to give this deductible with any reduction in premium." There is inconsistency in that logic if the purpose of the bill is to reduce the cost of Workers' Compensation. If an insurance company is offering that deductible at a higher cost to a potential insured simply so he won't take it, it is an unnecessary exercise. It might as well not be offered. The amendment has been requested because some companies do offer deductibles, and their product is marketed with that deductible as a convenience to the policy holder. Other companies market their products in different ways and they don't offer the deductible. If an insurance company has only one policy holder in Montana, this policy requirement is going to increase the cost for the perspective Montana insured. It is more beneficial to the entire system if the insurance companies were not required but could negotiate freely. The State Fund is in a different position because it has 60 percent of the market. It is one company, not many different companies representing only 15-20 percent of the market. **REP. DRISCOLL** said the language in the bill is permissive, except for "must" offer. The bill used to say "may" offer. Prior to 1989 this could have been done anyway, because the insurance company still has to pay the bill and then charge the employer. Couldn't that have been done anyway in 1985 or 1983? **Ms. Terrell** said yes; there was the option to offer the deductible, and some of the companies do that. The objection is being required to offer it because if the insured wants that provision, the insurance company isn't in a position to it freely. There is the option. The insurance company could charge more for it, and then the insured wouldn't take it. The requirements on the deductibles in increments of $500 do not always dovetail well with the type of policy that a particular company might want to purchase. It might be better for the Legislature not to specify a dollar amount for that deductible.

REP. PAVLOVICH said he is a private independent businessman and is covered under the state plan. He doesn't understand why the private insurers should be excluded.

Vote: **SB 420 AMENDMENT.** Motion fails 3 to 12. **EXHIBIT 9**

Discussion:

REP. THOMAS asked if the increment of $500 could be changed. **REP. DRISCOLL** said he didn't oppose the change. **REP. BENEDICT** said he agreed with Rep. Thomas. It could be left up to the insurance company as to how much they want to offer for deductibles.

REP. THOMAS asked **Ms. Terrell** if there is going to be a deductible how could it be written to be more easily applied. **Ms. Terrell** said the easiest way would be to designate the minimum amount and not to specify the increments because the market will dictate the increments that would be the most appropriate.

REP. DRISCOLL said on the bottom of Page 1 says the medical deductible must be offered no less than $500. **Ms. McClure** suggested, "the medical deductible must be offered in the amount of at least $500." "Increments up to a total of $2,500 per claim" would be struck. She stated she would rework the language.

Motion/Vote: **REP. DRISCOLL** moved to amend SB 420. **EXHIBIT 10.** Motion carried unanimously.

Motion/Vote: **REP. DRISCOLL MADE A SUBSTITUTE MOTION THAT SB 420 BE CONCURRED IN AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON SB 220

Discussion:

REP. WHALEN said there isn't a way that the bill can be fixed. It was presented as a clean-up bill for some archaic language. Mr. Berry previously testified that it was something he had been planning on since 1985. He didn't say what the reason was for waiting until now to do it. A great deal of the language being deleted from the current railroad regulation statute is language used in connection with several current lawsuits pertaining to depot closure orders of the Public Service Commission (PSC).

Motion/Vote: **REP. WHALEN MOVED TO TABLE SB 220.** Motion carried 11 to 7. **EXHIBIT 11**

EXECUTIVE ACTION ON SB 342

Motion: **REP. JOHNSON MOVED SB 342 BE CONCURRED IN.**

Discussion:

REP. KILPATRICK said the list contains 25 cases from Billings and 23 from Great Falls. They are not all in Great Falls; there are a few in other areas including Butte and Missoula.

Motion/Vote: **REP. SOUTHWORTH MADE A SUBSTITUTE MOTION THAT SB 342 BE TABLED.** Motion carried 17 to 1. **EXHIBIT 12**

ADJOURNMENT

Adjournment: 6:45 p.m.

CAROLYN SQUIRES, Chair

JENNIFER THOMPSON, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 3/20/91

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	✓		

CS05COM.man

3-21-91
JDP

HOUSE STANDING COMMITTEE REPORT

March 21, 1991
Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 420 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Carolyn Squires, Chairman

Carried by: Rep. O'Keefe

And, that such amendments read:

1. Page 1, lines 24 and 25.
Following: first "OF" on line 24
Insert: "at least"
Following: "$500"
Strike: remainder of line 24 through "CLAIM" on line 25

TABLED BILL

LABOR & EMPLOYMENT RELATIONS
Name of Committee

3/21, 19 91
Date

The following bill SB 342

was TABLED, by motion, on 3/20, 19 91.

Jennifer Thompson
For the Committee

For the Chief Clerk

9.50 am
Time

3.21-91
Date

CS-04
1991

TABLED BILL

LABOR & EMPLOYMENT RELATIONS
Name of Committee

3/21, 1991
Date

The following bill SB 220

was TABLED, by motion, on 3/20, 19 91.

Jennifer Thompson
For the Committee

B A Lane
For the Chief Clerk

9:50 am
Time

3-21-91
Date

CS-04
1991

The following Bill

as TABLED,

of the Committee

For the Chief Clerk

EXHIBIT 1
DATE 3/20/91
SB 31

OCAW
Oil, Chemical & Atomic Workers
International Union, AFL-CIO

Dan C. Edwards
International Representative
P.O. Box 21635
Billings, MT 59104

406 / 669-3253 (Home)

S.B. 31

Testimony of:

Dan C. Edwards, International Representative
Oil, Chemical and Atomic Workers Int'l Union, AFL-CIO
P.O. Box 21635
Billings, MT 59104

Testifying March 20, 1991, before the House Labor and Employment Relations Committee in SUPPORT of SB 31.

SB 31, which is before you today, is a product of a lot of hard work and compromise as this Bill worked its way through the Senate Judiciary Committee during the first half of the session. As Senator Towe noted during testimony before the Senate, it is a Bill that neither side is particularly pleased with, but it is a Bill that they can live with. More importantly, it is Bill that adds important protections to those employees that are subject to urine drug testing. It maintains the protections offered under the current State law while adding safeguards that require testing be done by a NIDA Certified laboratory and that the results of testing be first reviewed by a medical doctor under the Medical Review Officer (MRO) provisions.

My strong message to this committee is to pass SB 31 WITHOUT amendment.

DEPARTMENT OF COMMERCE AMENDMENT:

I just became aware last night of an amendment to SB 31 which is supported by the State Department of Commerce which will allow random and other urine drug testing currently prohibited if such testing was required by the U.S. Department of Transportation (DOT). This amendment will be offered under the quise that the U.S. Department of Transportation Urban Mass Transportation Administration (UMTA) will cut huge sums of money from the State if this amendment is not passed.

This simply is not true. Such an amendment is not necessary. Where urine drug testing is clearly mandated by federal law or regulation, the federal regulation preempts state law so this amendment is not needed.

EXHIBIT 1
DATE 3/20/21
HB SB 31

UMTA has previously tried, unsuccessfully, to impose such regulations. The U.S. Court of Appeals for the District of Columbia ruled that UMTA did not have the rule making authority to impose its rules. UMTA then attempted to get a law through Congress to give it authority to implement its desired regulations. This too was unsuccessful.

Two things are clear regarding UMTA. (1) UMTA is not about to pull federal funding until Congress gives it clear authority to impose its urine drug testing requirements on states. (2) Even if in the future Congress should give clear authority, the State legislature has to have an opportunity to change any conflicting State law that isn't preempted, after that authority has been given. In other words, we don't have to cross that bridge until we come to it. It should be noted that Congress has yet to expressly authorized urine drug testing.

If, in fact, UMTA should be given a clear mandate by Congress, then the State law, current law or as amended by SB 31, would be preempted. SB 31 was specifically worded to take such preemption into consideration.

I urge you give SB 31 a "Do Pass" with NO AMENDMENTS.

Thank you. I'll be glad to take questions at the conclusion of the hearing.

EXHIBIT 1
DATE 3/20/91
SB 31

FILE
10-8-90

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Amendment of Rule 38.5.2202 and Adoption of a New Rule Regarding Investigation and Reports of Accidents	NOTICE OF AMENDMENT AND ADOPTION OF RULES REGARDING FEDERAL PIPELINE SAFETY REGULATIONS INCLUDING DRUG-TESTING REQUIREMENTS

TO: All Interested Persons

1. On February 8, 1990 the Department of Public Service Regulation published Notice of Proposed Amendment and Adoption at page 275, issue number 3 of the 1990 Montana Administrative Register. Requests were received for a hearing and on April 12, 1990 the Department of Public Service Regulation published a Notice of Public Hearing to consider the above matter at page 698, issue number 7 of the 1990 Montana Administrative Register.

2. The Department of Public Service Regulation has adopted and amended the rule as proposed with the following changes:

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The public service commission hereby adopts and incorporates by reference the U.S. Department of Transportation Pipeline Safety Regulations, Code of Federal Regulations, Title 49, Chapter 1, Subchapter D, Parts 191~~,~~ and 192, including all revisions and amendments enacted by the department of transportation on or before the effective date of this rule, October 12, 1990 ~~and--199~~. A copy of CFR Title 49, Chapter 1, Subchapter D, Parts 191~~,~~ and 192 ~~and--199~~ may be obtained from the U.S. Department of Transportation, ~~Materials-Transportation-Bureau,--Office-of Operations--and--Enforcement--(Pipeline--Safety)~~ Research and Special Programs Administration, Western Region, Pipeline Safety, 555 Zang Street, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 2701 Prospect Avenue, Helena, Montana 59620.

Comments: No comments were received regarding Parts 191 and 192. As adopted, ARM 38.5.2202 now incorporates the latest revisions to Parts 191 and 192. All comments received were regarding Part 199. Since substantial changes were made to Part 199 they have been adopted as new rules II through XIII.

3. The Commission has adopted the rule as proposed:

RULE I 38.5.2220 INVESTIGATION AND REPORTS OF INCIDENTS OF INTRASTATE GAS PIPELINE OPERATORS

Comments: No comments were received.

4. The Commission has adopted the following new rules as stated above. Random and post-accident drug testing requirements are not being adopted. Other minor revisions to 49 C.F.R. 199 as proposed have also been made. Since the PSC does not enforce 49 C.F.R. Parts 193 and 195, all references to those parts have been deleted. Due to the date these rules are being adopted, § 199.1(b) is being deleted as unnecessary.

phencyclidine (PCP). In addition, for the purposes of reasonable cause testing, "prohibited drug" includes any substance in schedule I or II if an operator has obtained prior approval from RSPA, pursuant to the "DOT procedures" in 49 C.F.R. part 40, to test for such substance, and if the department of health and human services has established an approved testing protocol and positive threshold for such substance.

(9) "State agency" means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009). AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE IV. 38.5.2305 DOT PROCEDURES (1) The anti-drug program required by this subchapter must be conducted according to the requirements of this subchapter and the DOT procedures. In the event of conflict, the provisions of this subchapter prevail. Terms and concepts used in this subchapter have the same meaning as in the DOT procedures. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE V. 38.5.2307 ANTI-DRUG PLAN (1) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this subchapter and the DOT procedures. The plan must contain:

(a) Methods and procedures for compliance with all the requirements of this subchapter, including the employee assistance program;

(b) The name and address of each laboratory that analyzes the specimens collected for drug testing; and

(c) The name and address of the operator's medical review officer; and

(d) Procedures for notifying employees of the coverage and provisions of the plan. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE VI. 38.5.2309 USE OF PERSONS WHO FAIL OR REFUSE A DRUG TEST (1) An operator may not knowingly use as an employee any person who:

(a) Fails a drug test required by this subchapter and the medical review officer makes a determination under ARM 38.5.2315(4)(b); or

(b) Refuses to take a drug test required by this subchapter.

(2) Paragraph (1)(a) of this rule does not apply to a person who has:

(a) Passed a drug test under DOT procedures;

(b) Been recommended by the medical review officer for return to duty in accordance with ARM 38.5.2315(3); and

(c) Not failed a drug test required by this subchapter after returning to duty. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

(a) Review the results of drug testing before they are reported to the operator.

(b) Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

(i) Conduct a medical interview with the individual tested.

(ii) Review the individual's medical history and any relevant biomedical factors.

(iii) Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.

(iv) If necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

(v) Verify that the laboratory report and assessment are correct.

(c) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT procedures may be returned to duty.

(d) Ensure that an employee has been drug tested in accordance with the DOT procedures before the employee returns to duty.

(4) The following rules govern MRO determinations:

(a) If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.

(b) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to an employee assistance program, or to a personnel or administrative officer for further proceedings in accordance with the operator's anti-drug program.

(c) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system.

(5) A copy of all drug test results shall be provided to the person tested.

(6) The person tested must be given the opportunity to rebut or explain the results of all drug tests and retests. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE X. 38.5.2317 RETENTION OF SAMPLES AND RETESTING

(1) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT procedures. Within this 365-day period, the employee or his representative, the operator, the administrator, or, if

ject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this subchapter. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE XIII. 38.5.2323 RECORDKEEPING (1) Each operator shall keep the following records for the periods specified and permit access to the records as provided by paragraph (2) of this rule:

(a) Records that demonstrate the collection process conforms to this subchapter must be kept for at least three years.

(b) Records of employee drug test results that show employees failed a drug test, and the type of test failed (e.g., post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least five years, and include the following information:

(i) The functions performed by employees who failed a drug test.

(ii) The prohibited drugs which were used by employees who failed a drug test.

(iii) The disposition of employees who failed a drug test (e.g., termination, rehabilitation, leave without pay).

(iv) The age of each employee who failed a drug test.

(c) Records of employee drug test results that show employees passed a drug test must be kept for at least one year.

(d) A record of the number of employees tested, by type of test (e.g., post-accident), must be kept for at least five years.

(e) Records confirming that supervisors and employees have been trained as required by this subchapter must be kept for at least three years.

(2) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, or as required by a court of law. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the administrator or the representative of a state agency upon request. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

5. Comments: The Oil, Chemical and Atomic Workers International Union, Local 2-493 (OCAW) submitted written and oral comments in opposition to the random and post-accident drug testing requirements contained in the proposed rules. OCAW did not oppose the reasonable cause and nonrandom return-to-duty testing provisions. OCAW did not take a position on pre-employment testing.

The American Civil Liberties Union (ACLU) submitted written and oral comments in opposition to pre-employment and random drug-testing. At the hearing the ACLU also expressed some reservations regarding the scope of the proposed post-accident testing. The ACLU did not take a position on return-to-duty testing and did not oppose reasonable cause testing.

The ACLU's objections to pre-employment testing were not stated in specific terms. The ACLU's statement simply ex-

EXHIBIT 2
DATE 3/20/91
HB SB 31

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION

P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086

State Office
335 Stapleton Building
Billings, Montana 59101

BOB ROWE
President

SCOTT CRICHTON
Executive Director

JEFFREY T. RENZ
Litigation Director

March 20, 1991

Labor Committee
Montana House of Representatives

TESTIMONY OF JEFFREY T. RENZ
Legal Director, ACLU of Montana

I. Proposed Changes Regarding Federal Pre-emption.

Last year, the Montana Public Service Commission courageously refused to implement urine-testing requirements for intra-state pipeline workers demanded by the Department of Transportation. Those requirements would have trampled upon the right of privacy in the Montana Constitution.

I presented testimony at the hearing on those proposed regulations. My research convinced me of several important points:

1. Although asked repeatedly, and although various pieces of legislation had been offered, Congress has <u>never</u> enacted legislation expressly authorizing urine testing, with the exception of criminal law.

2. In the absence of such express authorization, the Bush Administration cannot compel the States to implement urine-testing policies, especially where such policies would violate the State's organic law, e.g. Montana's right to privacy.

EXHIBIT 3
DATE 3/20/91
HB SB 31

Statement for the Record on SB 31
Amending the Drug Testing Law

By John Genova, Refinery Manager, Exxon Company, U.S.A.
Montana House Committee on Labor and Employment Relations
March 20, 1991

I appreciate this opportunity to testify for the record in support of SB 31, amending the drug testing law. Although Exxon supports the bill, we would like to see it amended to allow post employment testing for safety sensitive jobs. This would help employers with hazardous work environments to better assure the protection of employee and community safety.

Because the majority of jobs at the Exxon Billings refinery are considered hazardous, we already conduct preemployment testing under current law. This bill would extend that privilege to other Montana employers. In addition, our present drug testing program meets all the provisions and safeguards for a qualified drug testing program and employee confidentiality provided for in SB 31. We also have a comprehensive, state of the art rehabilitation program which supports recovery through disability pay, medical insurance coverage, and company-paid after-care programs.

Exxon's sole interest in conducting drug testing is to ensure employee and community health and safety. We take great pains to protect employee privacy in all aspects of the workplace, and drug testing is no exception. Further, while all employees are informed when hired that drug or alcohol use on the job is strictly prohibited and grounds for termination, we want employees with substance abuse problems to step forward to receive help. No employee is ever terminated due to the request for help in overcoming chemical dependency.

The Billings Exxon refinery employs about 250 full-time employees and about 100 contract employees. About 60 percent of our employees belong to a union. The refinery operates 24 hours a day/seven days a week, processing up to 44,000 barrels (1.8 million gallons) of crude per day from which we produce propane, gasoline, diesel, aviation gasoline, jet fuel, and asphalt. As you can imagine, if not operated under safe conditions, running a refinery can be hazardous. That is why we have 25 different programs to address safety in facilities, procedures, and personnel behavior. We have a well trained, conscientious group of employees and an excellent safety record at our facility because we all work at it. Safety is at the top of our priorities at all times.

To those who say that drug use is not a problem in Montana, preemployment tests conducted at our Billings refinery reveal that

EXHIBIT 3
DATE 3/20/91
HB SB31

about 10 percent of our applicants fail due to a drug dependency problem. According to 1989 data from the National Institute on Drug Abuse (NIDA), about 22 percent of the U.S. workforce between the ages of 20 and 40 have used illegal drugs within the last year, and 12 percent within the last month. A Montana Gallup poll conducted July 1990 for the Institute for a Drug Free Workplace found that 25 percent of workers surveyed had seen or heard of illicit drug use by coworkers on the job and 36 percent had seen or heard of drug use by coworkers before or after work. The same survey also revealed that 93 percent thought periodic drug testing in safety sensitive jobs was a good idea. In a Billings survey conducted last September by Eastern Montana College, 77 percent of the those surveyed supported random drug testing.

Exxon does not conduct random testing in Montana because it is against the law. However, it is our corporate policy to random test certain safety sensitive positions where not prohibited by law. We also randomly test all senior executives, and post rehabilitation employees. There are about 28 positions that would qualify as safety sensitive at the Billings refinery. These jobs are primarily supervisory personnel who are responsible for running the refinery, and are expected to make independent decisions. About 8 "step-up" union positions would also be included since they fill in for some of these supervisory positions.

Why do we do this? Statistics tell us that random testing works as a deterrent to drug use. For example, since random testing was implemented by the Department of Transportation in 1983, the number of those testing positively dropped from 23 percent to 6 percent.

We recognize there is opposition to random testing in Montana for reasons of privacy. In the spirit of meeting our safety objectives while also addressing objections to random testing, we ask the Labor committee to consider amending the present bill to allow testing during annual physicals for safety sensitive positions. As an aid to the Committee, proposed amendment language which includes a tight definition of safety sensitive positions, is attached to our testimony. While we have no pride of authorship, we believe this amendment would help employers to discover any potential drug dependency problems while also addressing privacy concerns about random testing.

In closing, we recognize the struggle the state faces in protecting employee privacy balanced against the need to ensure safe industry operations. We have seen the benefits of preemployment testing at our Montana refinery, and urge you to support broadening post employment testing to allow testing during annual physicals for safety sensitive positions.

EXHIBIT 3
DATE 3/20/91
HB SB 31

Amendments to SB 31--Third Reading Copy

1. Page 2, line 16, following "use":
   Strike: ","
   Insert: "OR UNLESS THE EMPLOYEE WORKS IN A SAFETY SENSITIVE POSITION, IN WHICH CASE THE EMPLOYER MAY CONDUCT ANNUAL PHYSICALS WITH DRUG TESTS ON THOSE WORKERS."

2. Page 7, following line 15:
   Insert: "SAFETY SENSITIVE POSITION" MEANS A JOB WHICH:
   (1) PRESENTS A CLEARLY SIGNIFICANT LIFE THREATENING DANGER TO THE EMPLOYEE SO OCCUPIED, HIS FELLOW EMPLOYEES, OR THE GENERAL PUBLIC, AND IS PERFORMED IN A MANNER OR PLACE INHERENT WITH OR INSEPARABLE FROM SUCH DANGER, AND
   (2) REQUIRES THE EXERCISE OF DISCRIMINATING JUDGMENT OR A HIGH DEGREE OF CARE AND CAUTION, AND
   (3) IS SUBJECT TO LIMITED OR NO DIRECT SUPERVISION DURING THE MAJORITY OF TASKS PERFORMED."

EXHIBIT 4
DATE 3/20/91
HB SB 31

SENATE BILL 31
TESTIMONY

Before the House Committee on Labor and Employment Relations
by the Montana Department of Commerce

On November 1, 1988, the Urban Mass Transportation Administration (UMTA) of the U.S. Department of Transportation published Regulation 49 CFR, Part 653 establishing mandatory drug testing of employees of public bus systems receiving Federal funding. This rule applied to transportation systems in 14 Montana communities, including city bus systems in Billings, Great Falls, Missoula, Butte, Helena and Kalispell. The UMTA rule mandated that local transit systems implement five categories of drug testing including pre-employment, reasonable cause, following an accident, on a random basis, and returning to duty following a positive test.

Sanctions for not complying with this rule included termination of Federal funding for transit. Montana was in the position of losing up to 5.7 million annually in transportation funding to Montana communities. Rules were to have gone into effect on December 21, 1990.

Fortunately, on January 19, 1990, the U.S. Court of Appeals for the District of Columbia issued a decision stating that UMTA did not have rule making authority in the area of public safety necessary to impose these requirements, and thereby, invalidating mandatory drug testing within the transit industry.

To remedy this situation, bills were introduced in both houses of Congress to reestablish these regulations in the form of law. These proposals would have preempted state law; however, the proposals were defeated.

The U.S. Department of Transportation is now proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

For this reason, it is essential that Senate Bill 31 be amended in the House to provide transit operators authority to implement federally mandated drug testing.

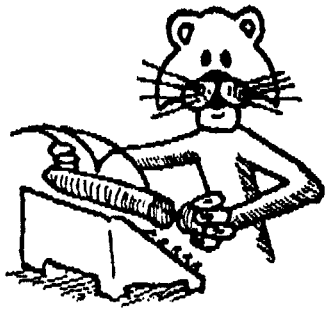
In order to accomplish this, the following amendment to Senate Bill 31 is proposed:

Page 6, Line 6

(D) <u>THIS ACT SHALL NOT RESTRICT DRUG TESTING OF SENSITIVE SAFETY TRANSPORTATION EMPLOYEES IF SUCH TESTING IS REQUIRED BY THE U.S. DEPARTMENT OF TRANSPORTATION AND IF NONCOMPLIANCE WOULD RESULT IN LOSS OF FEDERAL FUNDS. FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF FEDERAL PREEMPTION.</u>

We respectfully urge your inclusion of this amendment and passage of Senate Bill 31.

EXHIBIT
DATE 3/20/91
HB SB31



mountain line

Missoula Urban Transportation District
1221 Shakespeare, Missoula, Montana 59802 (406) 543-8386

SENATE BILL 31
TESTIMONY

Before the House Committee on Labor and Employment Relations
by the Montana Department of Commerce

The U. S. Department of Transportation is proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

The Missoula Urban Transportation District (MUTD) could not maintain its current level of service if federal funds were withheld. The MUTD currently receives $322,000 in federal annual operating assistance. Additionally, up to 80% of the MUTD's capital needs are funded with federal assistance. A loss of these funds will surely jeopardize the MUTD's future and will have an immediate negative impact upon the system's passengers and to the Missoula community.

For this reason it is essential that Senate Bill 31 be amended in the House to provide transit operators authority to implement federally mandated drug testing.
In order to accomplish this, the following amendment to Senate Bill 31 is proposed:

Page 6, Line 6

(D) THIS ACT SHALL NOT RESTRICT DRUG TESTING OF SENSITIVE SAFETY TRANSPORTATION EMPLOYEES IF SUCH TESTING IS REQUIRED BY THE U. S. DEPARTMENT OF TRANSPORTATION AND IF NONCOMPLIANCE WOULD RESULT IN LOSS OF FEDERAL FUNDS. FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF FEDERAL PREEMPTION.

We respectfully urge your inclusion of this amendment and passage of Senate Bill 31.

Respectfully Submitted,

James M. Dolan
Chairperson
MUTD Board of Directors

EXHIBIT 5
DATE 3/20/91
HB SB31

MTA

Montana Transit Association

SENATE BILL 31
TESTIMONY

Before the House Committee on Labor and Employment Relations
by the Montana Department of Commerce

The U. S. Department of Transportation is proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

Fourteen Montana public bus systems are affected by this bill, including urbanized public transit systems in Billings, Butte, Helena, Great Falls, Missoula, and Kalispell. A loss of federal funds through UMTA will surely jeopardize the future of transportation in these communities and will affect transit passengers who may lose the service upon which they rely.

For this reason it is essential that Senate Bill 31 be amended in the House to provide transit operators authority to implement federally mandated drug testing.

In order to accomplish this, the following amendment to Senate Bill 31 is proposed:

Page 6, Line 6

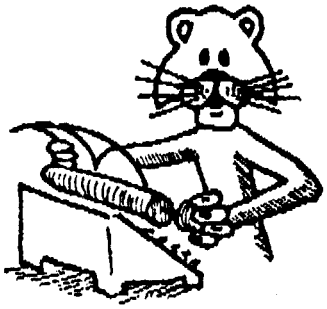
(D) THIS ACT SHALL NOT RESTRICT DRUG TESTING OF SENSITIVE SAFETY TRANSPORTATION EMPLOYEES IF SUCH TESTING IS REQUIRED BY THE U. S. DEPARTMENT OF TRANSPORTATION AND IF NONCOMPLIANCE WOULD RESULT IN LOSS OF FEDERAL FUNDS. FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF FEDERAL PREEMPTION.

The officers and members of the Montana Transit Association respectfully urge your inclusion of this amendment and passage of Senate Bill 31.

Respectfully Submitted,

Mary G. Plumley
Officer
Montana Transit Association

EXHIBIT 9 P. 02
DATE 3/20/91
HB SB31



mountain line

Missoula Urban Transportation District
1221 Shakespeare, Missoula, Montana 59802 (406) 543-8386

SENATE BILL 31
TESTIMONY

Before the House Committee on Labor and Employment Relations
by the Montana Department of Commerce

The U. S. Department of Transportation is proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

The Missoula Urban Transportation District (MUTD) could not maintain its current level of service if federal funds were withheld. The MUTD currently receives $322,000 in federal annual operating assistance. Additionally, up to 80% of the MUTD's capital needs are funded with federal assistance. A loss of these funds will surely jeopardize the MUTD's future and will have an immediate negative impact upon the system's passengers and to the Missoula community.

For this reason it is essential that Senate Bill 31 be amended in the House to provide transit operators authority to implement federally mandated drug testing.

In order to accomplish this, the following amendment to Senate Bill 31 is proposed:

Page 6, Line 6

(D) THIS ACT SHALL NOT RESTRICT DRUG TESTING OF SENSITIVE SAFETY TRANSPORTATION EMPLOYEES IF SUCH TESTING IS REQUIRED BY THE U. S. DEPARTMENT OF TRANSPORTATION AND IF NONCOMPLIANCE WOULD RESULT IN LOSS OF FEDERAL FUNDS. FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF FEDERAL PREEMPTION.

We respectfully urge your inclusion of this amendment and passage of Senate Bill 31.

Respectfully Submitted,

Mary G. Plumley

Mary G. Plumley
General Manager

EXHIBIT 6
DATE 3/20/91
HB SB 31

March 20, 1991

Madam Chair, members of the Committee: For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana.

The existing drug testing law in Montana is one of the best in the nation. It strikes an effective balance between protections for public safety and protections for workers' privacy rights. It was arrived at by nearly unanimous bi-partisan support in the 50th legislature. It reflects Montana's concerns for their constitutitionally protected right to privacy.

It has been targeted by the Bush administration as an impediment to his "war on drugs". Big business, lead by IBM, failed in the last legislature in their attempts to expand random and pre-employment testing. They have returned again this session with several bills- the worst of which was SB 138 sponsored by Sen. Stimatz from Butte.

Sen. Tom Towe's SB 31 originally would not expand who in Montana must be tested as a condition of employment. Rather it would insure that those who are already being tested (workers "in hazardous work environments or in jobs the primary responsibility of which is security, public safety or fiduciary responsibility") would be tested by the highest standards. That is, NIDA (National Institute on Drug Abuse) metabolite levels and testing protocol would have to be followed.

Considerable debate led to a compromise that tabled SB 138 and incorporated the better parts of that bill into SB 31. The hybrid that is before you today expands pre-employment testing while further protecting those who are tested. The further exceptions to who can be tested accommodates IBM ("in which the employer provides to the employees a comprehensive drug and alcohol rehabilitation program that is paid for by the employer or through a policy of health insurance that is paid for by the employer, provided that no part of the cost may be paid from a collectively bargained health and welfare trust fund") and those workplaces "in which the employer employs ten or fewer employees".

Arguably there are real benefits to this bill for those who are employed or who are being tested. They include protections of NIDA guidelines, required confirmatory tests at the employers expense, clear protocol for testing and reporting test results, the mandatory involvement of a medical review officer, and protections of workers confidentiality. Still, the compromise bill met a 6 to 6 vote on a motion to table in the Senate Judiciary Committee with those voting to table not being convinced that the existing law was seriously flawed and in need to overhaul. It finally passed out of the committee with a 7 to 5 vote, and passed the senate 42 to 7.

While the ACLU is opposed in principle to drug testing an an intrusion of one's privacy, we went on record supporting SB 31 in its original form. However, with the amendments expanding pre-employment testing to include big international businesses and small work sites in Montana, we have virtually gutted the existing law. What businesses does that leave if we exclude big businesses and small businesses? Who is left? I must rise in opposition to this bill as it stands. I encourage you to either recommend a DO NOT PASS or amend out the further pre-employment exceptions in the compromise. I also would hope you would resist other amendments that would attempt to impose further exceptions, be they pre-employment or

EXHIBIT 7
DATE 3/20/91
HB SB 342

March 20, 1991
Senate Bill #342
Burlington Northern Railroad

Senate Bill 342 does two things. It implements the Montana Supreme Court's decision in Haug v. Burlington Northern Railroad that a plaintiff can file a tort action against an out-of-state defendant in any district court (page 2, line 7). It also establishes the legal principal of "forum non-conveniens" for Federal Employers Liability Act cases in which the accident occurs outside Montana and the injured worker is not a Montana resident.

The Federal Employers Liability Act (FELA), a federally mandated form of workers' compensation, allows an injured railroad worker to file an action in state or federal court. Historically the railroad worker could sue his/her employer wherever he/she could find it. That principle has its roots in an era preceding modern forms of transportation. With the advent of expanded and convenient air transportation, plaintiffs' lawyers have developed a system of sophisticated forum shopping.

You have been or will be made aware of the funding crisis in several state district courts, including Great Falls. Montana's venue statutes, and the courts' interpretation of those statutes, compound that fiscal crisis. In most states the statutes are more restrictive or the courts apply the legal principle of forum non-conveniens. That principle allows the court to move a case to a more proper jurisdiction. Montana does not allow actions brought under the FELA to be moved to a more proper jurisdiction.

Attached is a copy of district court actions brought against Burlington Northern Railroad in Montana courts where the accidents occurred outside Montana, and the injured worker is not a Montana resident. As you can see, most of the filings are in state district court ("C"). In the time period reviewed, 1986-1990, 25 cases were filed in Great Falls in which the accident occurred outside Montana. You will see similar filings in Billings, Butte and Missoula.

The first case noted, William J. Anderson, a South Dakota case, was originally filed in Nebraska. Burlington Northern filed a motion to dismiss on the principle of forum non-conveniens. That motion was granted and the case dismissed. It was then refiled in Great Falls. Burlington Northern again filed a motion to dismiss; it was denied on the grounds that forum non-conveniens does not apply to FELA cases filed in Montana.

While the state court funding problems are not solely related to these filings, it is without doubt that these cases have contributed to the financial burdens placed on the system. There is not a legal or moral rationale that justifies burdening Montana courts with these cases that have no relationship to Montana or the local jurisdiction.

The venue statutes should be amended to make the legal principle of forum non-conveniens statutorily applicable to FELA cases. SB 342 does just that. It does not require the court to do anything. It merely authorizes the court to dismiss the case when another forum is more proper.

LIST BY CLOSED/OPEN DATE

OLLOWING IS A LIST OF PLAINTIFFS WHO HAVE BROUGHT SUIT AGAINST BURLINGTON NORTHERN IN THE ATE OF MONTANA WHEREIN THE INCIDENTS OCCURRED IN STATES OTHER THAN MONTANA. THIS LIST IS OR ALL SUITS PENDING EFFECTIVE 12/4/90, AS WELL AS THOSE CLOSED 1/1/86 THROUGH 12/4/90.

= Court Filed In
= State District Court
= United States District Court
P/CLS - Open or Closed
C/86 Closed in 1986, etc...

PLAINTIFF	ATTORNEYS	ACCIDENT LOCATION	SUIT CITY	CT	OP/CLS
CASES IN OPEN STATUS					
William J. Anderson Star Route Hot Springs, SD 57747	Yaeger Firm Minneapolis, MN	Edgemont, SD	Great Falls	C	O
Dennis L. Belden 724 E. Loucks St. Sheridan, WY 82801	Eckman Firm Minneapolis, MN	Bill, WY	Great Falls	C	O
James D. Belden 515 King St. Sheridan, WY 82801	Eckman Firm Minneapolis, MN	Sheridan, WY	Great Falls	C	O
Richard E. Bennett Box 105 Keybull, WY 82426	Morrisard Firm Aurora, CO	Himes, WY	Billings	C	O
Wayne A. Berumen 611 West 51st St. Casper, WY 82601	Doshan Firm Minneapolis, MN	Nacco Junction, WY	Great Falls	C	O
Lloyd A. Brown 4 Timm Drive Sheridan, WY 82801	Doshan Firm Minneapolis, MN	Sheridan, WY	Great Falls	C	O
Robert F. Cardona Box 37 Wilsall, MT 59086	Deparcq Firm Minneapolis, MN	Alliance, NE	Billings	E	O
Floyd H. Counts P.O. Box 896 Hemingford, NE 69348	Eckman Firm Minneapolis, MN	Alliance, NE	Great Falls	C	O
Ralph & Mary Jane Crisman Williston, ND	Bjella Firm Williston, ND	Fort Buford, ND	Great Falls	E	O
Michael H. Deluna 204 Wyoming Ave. Sheridan, WY 82801	Morrisard Firm Aurora, CO	Sully Springs, ND	Billings	C	O

EXHIBIT 7
DATE 3/20/91
HB SB 342

PLAINTIFF	ATTORNEYS	ACCIDENT LOCATION	SUIT CITY	CT	OP/CLS
Randall K. Dickerson 547 Morehead St. Chadron, NE 69337	Eckman Firm Minneapolis, MN	Bill, WY	Great Falls	C	O
Charles J. Doran P.O. Box 534 Greybull, WY 82426	Sands Firm Chicago, IL	Lovell, WY	Billings	E	O
Thomas S. Douglas 1618 Edwards Sheridan, WY 82801	Doshan Firm Minneapolis, MN	Sheridan, WY	Great Falls	C	O
Tasha Faxon Box 148 Upton, WY 82730	Morrisard Firm Aurora, CO	Antelope, WY	Billings	C	O
William D. Ford 338 Adkins Ave. Sheridan, WY 82801	Morrisard Firm Aurora, CO	Sheridan, WY	Billings	C	O
Ardis J. Harrod 150 W. 11th, Space 1 Sheridan, WY 82801	Morrisard Firm Aurora, CO	Sheridan, WY	Billings	C	O
Edgar R. Hernandez P.O. Box 162 Greybull, WY 82426	Doshan Firm Minneapolis, MN	Minnesela, WY	Great Falls	C	O
Thomas L. Johnson 538 Meridian Sheridan, WY 82801	Morrisard Firm Aurora, CO	Sheridan, WY	Billings	C	O
Edward R. Jolley 38 Kelly Drive Sheridan, WY 82801	Doshan Firm Minneapolis, MN	Parkman, WY	Great Falls	C	O
George G. Kobielusz Box 66 Wyarno, WY 82845	Doshan Firm Minneapolis, MN	Sheridan, WY	Great Falls	C	O
Edwin K. McFall 1625 S. Fenway Casper, WY 82601	Morrisard Firm Aurora, CO	Casper, WY	Billings	C	O
Robert S. Meeker Box 228 Ranchester, WY 82839	Doshan Firm Minneapolis, MN	Sheridan, WY	Great Falls	C	O

AINTIFF	ATTORNEYS	ACCIDENT LOCATION	SUIT CITY	CT	OP/C S
James C. Scott 1124 E. 28th St. Spokane, WA 99206	Bricker Firm Portland, OR	Spokane, WA	Butte	C	O
CLOSED IN 1986					
Walter F. Dietel S. 1304 Skipworth Spokane, WA 99206	Hoyt Firm Great Falls, MT	Yardley, WA	Great Falls	E	C/86
William H. Jeanneret 7309 Country Homes Blvd. Spokane, WA 99208	Bricker Firm Portland, OR	Parkwater, WA	Silver Bow	C	C/86
Francis J. Tomsche 1041 Adair Ave. Sheridan, WY 82801	Morrisard Firm Aurora, CO	Dutch, WY	Billings	E	C/86
John E. Yeager 17 Davis Tee Sheridan, WY 82801	Morissard Firm Aurora, CO	Sheridan, WY	Billings	E	C/86
CLOSED IN 1987					
Barney R. Averill Box 534 Big Horn, WY 82833	Morrisard Firm Aurora, CO	Arvada, WY	Butte	C	C/87
Jeffrey Vitamanti (PR for Diane & Anthony) Address Unknown	Hoyt Firm Great Falls, MT	Colburn, ID	Missoula	D	C/87
CLOSED IN 1988					
Mary D. Cook 417 S. 6th St. Greybull, WY 82426	Morrisard Firm Aurora, CO	Greybull, WY	Billings	E	C/88
Timothy J. Friend 1020 Burton Sheridan, WY 82801	Morrisard Firm Aurora, CO	Sheridan, WY	Billings	E	C/88
Shirley Houser (Pers. Rep. for Rex) 11215 West 76th Way Arvada, CO 80005	Yaeger Firm Minneapolis, MN	Broomfield, CO	Great Falls	C	C/88
Robert G. Johnson 324 W. 5th St. Apt. A Alliance, NE 69301	Regnier Firm Great Falls, MT	Alliance, NE	Great Falls	C	C/88

EXHIBIT 7
DATE 3/20/91
HB SB 342

PLAINTIFF	ATTORNEYS	ACCIDENT LOCATION	SUIT CITY	CT	OP/CLS
Charles M. O'Brien 6822 N. Smith Spokane, WA 99207	Yaeger Firm Minneapolis, MN	Spokane, WA	Great Falls	C	C/88
Phillip R. Stazel 15[illegible] McHenry Drive S. Liberty Lake, WA 99019	Hoyt Firm Great Falls, MT	Newhauser, ID	Great Falls	C	C/88
CLOSED IN 1989					
Patrick J. Cardinal 6924 N. Jefferson Spokane, WA 99208	Hoyt Firm Great Falls, MT	Kettle Falls, WA	Great Falls	C	C/89
Martin H. Cheney Box 756 Rochester, WY 82839	Roberts Firm Bozeman, MT	Parkman, WY	Livingston	C	C/89
Vernon L. Edeler P.O. Box 286 Greybull, WY 82426	Morrisard Firm Aurora, CO	Worland, WY	Billings	C	C/89
Gary D. Epple P.O. Box 883 Guernsey, WY 82214	Morrisard Firm Aurora, CO	Gillette, WY	Billings	C	C/89
Edwijen V. Garcia, Jr. 134 W. 8th St. Lovell, WY 82431	Doshan Firm Minneapolis, MN	Bonneville, WY	Billings	E	C/89
Gene J. Healy 504 Locust Yankton, SD 57078	Morrisard Firm Aurora, CO	Newcastle, WY	Billings	C	C/89
Robb D. Hitchcock 3347 Stagecoach Casper, WY 82604	Morrisard Firm Aurora, CO	Casper, WY	Billings	C	C/89
Ray J. Hofmeister, Jr. P.O. Box 2513 Gillette, WY 82717	Hubbell Firm Kansas City, MO	Elkhorn, WY Coal Creek Jct.	Billings Billings	C C	C/89 C/89
Richard Layman 61[illegible] Arrowhead Drive Gillette, WY 82716	Eckman Firm Minneapolis, MN	Gillette, WY	Billings	E	C/89
John M. Luoma 1572 Lane 11 Lovell, WY 82431	Richter Firm Billings, MT	Lovell, WY	Billings	C	C/89

EXHIBIT 7
DATE 3/20/91
HB SB342

LAINTIFF	ATTORNEYS	ACCIDENT LOCATION	SUIT CITY	CT	OP/C S
Albert F. Peccia P.O. Box 268 ayton, WY 82836	Morrisard Firm Aurora, CO	Bill, WY	Billings	C	C/89
Andrew L. Sams 51 Highway 335 heridan, WY 82801	Morrisard Firm Aurora, CO	Gillette, WY	Billings	C	C/89
LOSED IN 1990					
James R. Erickson P.O. Box 361 ig Horn, WY 82833	Yaeger Firm Minneapolis, MN	Lariat, WY	Billings	C	C/90
John A. Ericson 555 E. Joseph pokane, WA 99207	Hoyt Firm Great Falls, MT	Spokane, WA	Great Falls	C	C/90
arie A. Hattenburg . 5321 Chase Road Newman Lake, WA 99025	Hoyt Firm Great Falls, MT	Odessa, WA	Great Falls	C	C/90
era Hoffman (Pers. Rep. for Ralph) Rt. 4, Box 234 inot, ND 58701	Yaeger Firm Minneapolis, MN	West Fargo, ND	Great Falls	C	C/90
Walter L. Rieck P.O. Box 372 asin, WY 82410	Morrisard Firm Aurora, CO	Sage Creek Spur, WY	Great Falls	C	C/90

EXHIBIT A
DATE 3/20/91
HB SB 420

Amendments to Senate Bill No. 420
Third Reading Copy (Blue)

For the House Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 20, 1991

1. Page 1, lines 18 and 19.
Following: "3" on line 18
Strike: remainder of line 18 through "2" on line 19

EXHIBIT 7
DATE 3/20/91
HB SB 420

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL VOTE

DATE _____ **BILL NO.** HB 420 **NUMBER** _____

MOTION: Amendment

NAME	AYE	NO	
REP. JERRY DRISCOLL		✓	
REP. MARK O'KEEFE		✓	proxy
REP. GARY BECK		✓	
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA		✓	
REP. ED DOLEZAL		✓	proxy
REP. RUSSELL FAGG			
REP. H.S. "SONNY" HANSON			
REP. DAVID HOFFMAN			
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE		✓	proxy
REP. BOB PAVLOVICH		✓	
REP. JIM SOUTHWORTH		✓	
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED		✓	proxy
REP. TIM WHALEN		✓	
REP. TOM KILPATRICK, VICE-CHAIRMAN		✓	
REP. CAROLYN SQUIRES, CHAIR		✓	
TOTAL	3	12	

EXHIBIT 10
DATE 3/20/91
HB SB420

Amendments to Senate Bill No. 420
Third Reading Copy (Blue)

For the House Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 21, 1991

1. Page 1, lines 24 and 25.
Following: first "OF" on line 24
Insert: "at least"
Following: "$500"
Strike: remainder of line 24 through "CLAIM" on line 25

EXHIBIT 11
DATE 3/20/91
HB SB 220

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL VOTE

DATE _____ **BILL NO.** SB 220 **NUMBER** _____

MOTION: TABLE

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

EXHIBIT 12
DATE 3/20/91
HB SB 342

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL VOTE

DATE _____ **BILL NO.** SB 342 **NUMBER** _____

MOTION: Table

NAME	AYE	NO
REP. JERRY DRISCOLL	✓	
REP. MARK O'KEEFE	✓	
REP. GARY BECK	✓	
REP. STEVE BENEDICT	✓	1
REP. VICKI COCCHIARELLA	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG	✓	
REP. H.S. "SONNY" HANSON	✓	
REP. DAVID HOFFMAN	✓	
REP. ROYAL JOHNSON		✓
REP. THOMAS LEE	✓	
REP. BOB PAVLOVICH	✓	
REP. JIM SOUTHWORTH	✓	
REP. FRED THOMAS	✓	
REP. DAVE WANZENRIED	✓	
REP. TIM WHALEN	✓	
REP. TOM KILPATRICK, VICE-CHAIRMAN	✓	
REP. CAROLYN SQUIRES, CHAIR	✓	
TOTAL	17	1

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR & EMPLOYMENT RELATIONS **COMMITTEE** **BILL NO.** SB 31

DATE 3/20/91 **SPONSOR(S)** Sen. Tom Towe

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DEAN SCHANZ WORDEN MT	OCAW	✓	
ED LOCATOR - BILLINGS, MONT.	O.C.A.W.	✓	
Steve Browning	IBM -		
Kay Foster	Billings Chamber	✓	
Dan Edwards	OCAW	✓	
Charles R. Brooks	MT Retn. Ass'n	✓	
Byron Roberts	MT. Dept of Commerce	✓	
Dan McGowan - Helena	MT Transit Assoc.	✓	
Jamie Fallan	MT Petroleum	✓	
Bruce McCandless	City of Billings	✓	
Kathy Anderson	MT Wood Prod. Assn	✓	
Scott Crichton	ACLU		✓
James Tutwiler	MT Chamber	✓	
Riley Johnson	NFIB	✓	

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR & EMPLOYMENT RELATIONS **COMMITTEE** **BILL NO.** SB 342

DATE 3/20/91 **SPONSOR(S)** Sen. Richard "Dick" Pinsoneault

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
LYNN BAKER 600 CENTRAL, GREAT FALLS	SELF		✓
John W Laes 2906 Garfield Missoula	Self		✓
~~BTDR Richard Sherwood~~	~~BTDR~~		
Leo Berry	BWRR	✓	
Randy Cox	BWRR	✓	
Jacqueline N Terrell	Am. Ins. Assoc.		
James T. Mular	Regional Legis Dir TCU Mont Joint Rail Labor Legis Bd		X
Larry Fasbender	Cascade County	X	
Don Judge	MT STATE AFL-CIO		X
Richard VanAken	Transp. Commun. Union Great Falls Lodge 528		X
C J [illegible]			X
Raymond West	UTU		X
Dan Edwards	OCAW		X

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