MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 19, 1991, at 10:10 a.m.

ROLL CALL

Members Present:
Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

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

Announcements/Discussion:

HEARING ON HOUSE BILL 697

Presentation and Opening Statement by Sponsor:

Representative Ed McCaffree, District 27, said HB 697 allows the judge of a court of limited jurisdiction to serve or summon jurors, by mail or orally (page 1, lines 16-22). He explained that it is the same procedure used in district court right now.

Proponents' Testimony:

Patricia Bradley, Montana Magistrates Association, said the bill was requested by the Magistrates, and would expedite juror selection for courts of limited jurisdiction by allowing those courts the option of summoning jurors for trial duty, rather than asking a sheriff, or police officer to do so. She advised the Committee that the District Court serve notice to prospective jurors by telephone or by mail, and it makes sense that justice and city courts should use this process as well (Exhibit #1). Ms. Bradley asked the Committee for a favorable ruling on HB 697.

Opponents' Testimony:

There were no opponents of HB 697.

Questions from Committee Members:

Senator Crippen asked what happens, under the present law, if a juror fails to show. Ms. Bradley replied that, depending on the circumstances, the judge schedules an Order to Show Cause hearing to find out why the juror did not appear before the court as ordered.

Senator Crippen commented that if jurors are contacted verbally, the courts would know that the jurors were, indeed, contacted. Senator Crippen asked what would happen if the juror was served by mail, but did not receive the Summons, and asked if the Clerk of Court would follow up by phone. Ms. Bradley replied that the court would follow-up, and said it would not be the juror's fault, in such instances. She further stated that, usually, a jury panel is selected from a jury list at the end of the session. Ms. Bradley advised the Committee that the court then sends out a questionnaire, which potential jurors complete and return to the court. She further advised that a phone call costs $1.38, and postage costs $.29.

Senator Crippen asked how the difference between costs of telephone calls versus postage is handled. Ms. Bradley replied that the bill addresses situations where a jury panel has been established.

Senator Crippen commented that it's completely optional to call a prospective juror.

Senator Towe asked why the court is issuing summons' rather than the sheriff. Representative McCaffree replied that, in rural areas, law enforcement personnel are not always available to serve a summons.

Senator Towe asked if the justice of the peace would serve the summons. Representative McCaffree replied that the Justice of the Peace or the Clerk of Court would be allowed to serve the summons.

Closing by Sponsor:

Representative McCaffree made no closing comments, other than to thank the Committee for the hearing.

EXECUTIVE ACTION ON HOUSE BILL 697

Motion:

Senator Towe made a motion that HB 697 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously. Senator Grosfield was asked to carry the bill.

HEARING ON HB 419

Presentation and Opening Statement by Sponsor:

Representative John Mercer, District 50, told the Committee he was the chief sponsor of HB 419, which was drafted at the request of the Department of Administration. He said the bill eliminates the certified mail requirements for tort claims against the state. Representative Mercer stated that if one wants to sue the state a written claim must first be filed, and the claim must then be either denied or accepted. He said current law requires that notice of denial or acceptance be sent by certified mail, and that HB 419 would eliminate that requirement. He advised the Committee that if the Department makes no response, it means the claim is denied. Representative Mercer explained that certified mail is an unnecessary administrative hassle for the Department, in this instance.

Proponents' Testimony:

Brett Dahl, Administrator, Tort Claims Division, Department of Administration (DOA), said DOA supports HB 419 because it will save the state money, and allow for more timely and efficient processing of claims filed against the state (Exhibit #2). He advised the Committee that the Tort Claims Division receives 500-700 claims annually, ranging from property damage to bodily injury or wrongful death.

Mr. Dahl further stated that the Division investigates and defends or settles those claims with merit, denying all others. He said that the Division is now required to send denial letters via certified mail, resulting in additional administrative processing of these claims, resulting in postage costs of $1500 and $2000 annually. He stated that this is inefficient and unnecessary since claims are automatically denied within 120 days by statute, even if Tort Claims doesn't mail a denial letter. Mr. Dahl noted that there have been problems with claimants failing to pick up denial letters.

Proponents' Testimony:

There were no opponents of the bill.

Questions from Committee Members:

Senator Mazurek asked about the mailing of denial letters. Mr. Dahl replied that denial letters are sent by certified mail, except those which are not processed within 120 days, and they are automatically denied.

Senator Crippen asked if there was a presumption of denial in this process. Mr. Dahl replied there is not, and said current statute was abandoned by previous legislators before he came to Tort Claims. He explained that it was decided that if the Department did not respond, it would have the same effect as a denial.

Senator Crippen commented that he has a lot of constituents who deal with the Departments of Revenue and Administration, and have had claims. He said these constituents approached him because they had to wait 120 days, but did not receive any correspondence from the state during that time. Senator Crippen stated that these people have a presumption of a denial facing them, and asked if that length of time were not a little bit unreasonable. Representative Mercer advised Senator Crippen that he assumed the 120-day period would allow the Division time to properly review the claim so as not to unnecessarily deny claims that are valid, or to accept a claim that may be invalid. He said he hoped that the Department would reply by mail, to everyone, and that he didn't see anything wrong with the Department using regular mail.

Senator Crippen asked what would happen if the claims are not in the mail, and if that means the claims in the mail are still valid, even though this bill sets up a presumption of denial. Representative Mercer said he didn't believe the bill sets up a presumption of denial. He advised the Committee that the House Appropriations Committee has spent $15-$25 million more than the Governor intended, and needs the $2000 savings from HB 419. Representative Mercer said he didn't know how to protect claims sent to the Department prior to the time that the bill takes effect.

Senator Crippen commented that the proponents are talking about raising and saving money, yet want to use certified mail. He asked why people aren't notified by phone or wire transfer. Representative Mercer replied that Tort Claims is sending claims checks by certified mail now, and wants to continue this practice.

Closing by Sponsor:

Representative Mercer thanked the Committee for the hearing, and said he would be willing to meet with them in a subcommittee, if necessary.

HEARING ON HOUSE BILL 290

Presentation and Opening Statement by Sponsor:

Representative Steve Benedict, District 64, said HB 290 is a very simple bill and puts into statute permission for district court clerks to maintain their records on a computer system. He stated that it does not mandate computer systems for districts which do not have capabilities.

Proponents' Testimony:

Tom Harrison, Montana Association of Clerks of Court, said the Montana Supreme Court is working with the Clerks of Court and other agencies who deal with those courts, to upgrade and/or implement computer systems. He explained that the Court makes certain that the various lists, and documents, and indexes maintained by the Clerks of Court will be appropriately recorded on a computer data base.

Questions from Committee Members:

Senator Rye asked if there are laws prohibiting certain actions and if, unless something is prohibitive, it is considered acceptable. Tom Harrison replied that the methodology for maintaining these various lists and indexes is in handwritten, long form, and said there is a concern that, when the Clerks switch over to computers, they may overstep the prescribed bounds. He agreed that it seems to be a more reasonable interpretation to say that records are only being maintained in a different form.

Senator Towe asked if the probate and naturalization records, witnesses, warrants, etc., are the kinds of things that be put on computer. Tom Harrison replied that the Clerks would like the ability to put anything on the computer, in any more efficient manner.

Closing by Sponsor:

Representative Benedict made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 290

Motion:

Senator Halligan made a motion that HB 290 BE CONCURRED IN.

Discussion:

There was no discussion on the motion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously. Senator Rye was asked to carry the bill.

HEARING ON HOUSE BILL 159

Presentation and Opening Statement by Sponsor:

Representative Mary Ellen Connelly, District 8, told the Committee she was reading The Wall Street Journal last summer, and saw an article on a law in Connecticut. She said it seemed that similar legislation could help Montana resolve some of its problems with workers' compensation. Representative Connelly explained that the bill would allow a person bidding on construction projects, to sue the successful bidder if that bidder didn't pay the standard prevailing wage, unemployment insurance, or a Workers' Compensation premium.

Representative Connelly told the Committee that the IRS claims that it loses between $1 and 1.6 billion annually to fraudulent contractors. She said the bill would be in the best interests of labor, management, and industry.

Proponents' Testimony:

Eugene Fenderson, Montana State Building Construction Trades Council, said he supports the bill as an internal mechanism to aid the construction industry in policing itself. He commented that an underground economy (cash) in the construction industry appears to be more and more prevalent. Mr. Fenderson explained that unemployment and workers' taxes, as well as prevailing wage, are not paid.

Mr. Fenderson advised the Committee that there have been very few studies that have ever been done on the underground economy in Montana, but California looked into this issue via its Hoover Committee, in 1985. He said California law states that anyone who pays for or is a recipient of substantial work performed without conforming transactions to the appropriate taxing authority is participating in an underground economy.

Mr. Fenderson further advised the Committee that such transactions are commonplace in the construction, fast food, security guard, small retail shop, and personal services industries. He said the practice violates revenue and taxation codes, unemployment insurance codes, and the labor code.

Mr. Fenderson reported that another study was conducted by the Office of the Inspector General of the United States, who came to a similar conclusion. He said special tax audits by the IRS and state agencies indicate that as many as 50 percent of contractors are now engaging in some form of illegal activities. He further advised that this cheating is driving the honest contractor out of business. Mr. Fenderson urged the Committee to support the bill.

Darrell Holzer, Montana State AFL-CIO, read from prepared testimony in support of the bill. He said the bill would afford decent contractors and the public protections against unscrupulous contractors who would bend or break the rules in order to win a bid. Mr. Holzer said the bill is about fairness, and making people follow what is in the law in the first place. He urged the Committee to support HB 159 (Exhibit #4).

Ron James, Ironworkers Local 841, said the Local is comprised of more than 300 members in Montana, and asked the Committee to support the bill.

Lars Erickson, Montana State Council of Carpenters, provided a copy of the Connecticut state law, bulletins, and articles from The Wall Street Journal, The Engineering News Report, a national trade publication, the National Joint Heavy and Highway Construction Committee, construction news bulletins, an article from the Journal of National Affairs, and clippings from various publications (Exhibit #3). She stated that each of these articles reached the same conclusion: that there are unscrupulous contractors competing against honest contractors for the illegal advantage.

Mr. Erickson, told the Committee that state and local governments, as well as the federal government, are being cheated out of tax revenue, unemployment insurance premiums, and workers' compensation income. He said their employees are being cheated out of wages and adequate coverage, and the taxpayers are being made to pay. He advised the Committee that, currently, state governments are unable to correct the problem, as they don't have enough people to police the jobs, nor do they don't have enough money. Mr. Erickson said HB 159 may not cure all the ills, but it is certainly better than what exists now. He told the Committee that this is not union versus management, but is an industry problem which needs to be corrected.

Opponents' Testimony:

There were no opponents' of the bill.

Questions from Committee Members:

Senator Mazurek asked why the drafters restricted this only to the next low bidder. He asked what would happen if the second lowest bidder has the same problem. Representative Connelly replied that this was discussed in the House Judiciary Committee, and was amended to present language.

Senator Mazurek asked if that means on this particular job, or any time in the past, or what the House Judiciary Committee had in mind. He read the language stating that an individual can bring an action against the successful bidder if the successful bidder does not pay a standard minimum wage, contribute to unemployment, or pay workers' compensation premiums. Representative Connelly replied that it applies to that specific job, and the idea was that it would apply to one specific contract at a time.

Senator Harp commented that state agencies are supposed to oversee these things. He said prevailing wage and unemployment compensation would be Department of Labor issues, and workers' compensation would be a Mutual Fund issue. He asked if there is a breakdown with existing agencies, and why they are not, basically, doing these things right now. He then asked what must be done to strengthen the law, and requested that Gene Fenderson comment. Mr. Fenderson, said Senator Harp directly hit on the issue. He said there have been a great many problems, not only under this administration, but in previous administrations with the coordination and investigation of contractors.

Mr. Fenderson further stated that it took a long time to get the Department of Labor and the Workers' Compensation Division to combine their audits to save manpower and time. He said the drafters also tried to involve the Department of Revenue and the Labor Standards Division, in the hope that the bill would relieve some of the pressure of those agencies, by allowing this form of self-policing of the industry.

Chairman Pinsoneault said a contractor from Lake County recently called him and said, "You would be astounded as to how much of this goes on." Senator Pinsoneault told the Committee he was surprised by the call, and asked if the "Crimestopper" approach would work with this sort of thing. He also asked how the amount is arrived at. Senator Towe replied that basic damages would be for the loss of profits that a contractor would have received had he or she received the bid.

Senator Towe asked if it was the intent of the drafters to limit the amount of damages to only those persons that could show that they would have been the successful bidder. Mr. Fenderson replied that each contractor would work off a certain profit margin on a particular job. He said the drafters felt, in talking with the industry, that what the unsuccessful bidder lost was basically his profit margin, and that is what the contractor would go after.

Senator Towe asked if it would be an absolute defense for a special bidder to come in and say, "It wouldn't have made any difference, you were so far ahead and above me anyway, that you wouldn't have gotten the job." Mr. Fenderson replied that the drafters wanted the bill to apply even if there is a billion dollar bid with a $500,000 difference, and the contractor didn't pay his or her taxes.

Senator Crippen asked what happens if a subcontractor is involved in this, and the contractor pays the prevailing wage, but the subcontractor doesn't. Mr. Fenderson replied that those areas would involve one subcontractor going after the other subcontractor for loss of that project. He explained that where the general contractor had an obligation to force regulations on the subcontractors, the law would apply.

Mr. Fenderson advised the Committee that other bills introduced this session attempt to address that, because the general contractors have ended up paying for some things that the subcontractors should not have done.

Senator Grosfield commented that there is no codification instruction, as to where this will end. He addressed confidentiality on page 2, and said he is not sure how much that means because there are no penalties. He asked why the bill did allow for people to be advised when they are the next lowest bidder, and said that is all that should be necessary. Mr. Fenderson, replied that this would depend upon how some agencies open those bids up, and what information they give out. He said different contractors bid in different ways, and that some are called "take-off sheets".

Mr. Fenderson advised the Committee that the information on how bids are put together is very confidential, and that the bill tries to protect that process.

Senator Grosfield commented that he did not believe the contractor needed to know anything other than whether he or she was the next lowest bidder. Mr. Fenderson replied the problem is that this issue deals with public versus private works. He commented that many times, in private works, no one knows who the second bidder was, and that in the public sector everybody knows what those prices were.

<u>**Closing by Sponsor:**</u>

Senator Harp closed for Representative Connelly who had to leave for another hearing. He commented that the Committee has discovered that there are some problems, and that corrections to House Judiciary amendments are necessary. Senator Harp further commented that the Committee needs to address procedures on handling civil bids, and the confidentiality section of the bill. He said he believes HB 159 is a good and necessary bill, and that he hoped it would be closely examined in Executive Session.

EXECUTIVE ACTION ON HOUSE BILL 419

Amendments, Discussion and Votes:

Senator Mazurek made a motion to strike the inserted language on page 1, lines 24-25, so payments won't have to be made by certified mail. The motion carried unanimously.

Motion:

Senator Towe made a motion that HB 419 BE CONCURRED IN AS AMENDED.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously. Senator Pinsoneault was asked to carry the bill.

HEARING ON HOUSE BILL 421

Presentation and Opening Statement by Sponsor:

Representative David Hoffman, District 74, said he is presenting the bill, at the request of the Supreme Court Commission on Courts of Limited Jurisdiction, to clarify certification and training requirements for judges of those courts. He stated that the bill would allow that certification requirements of the justices of the peace and municipal court judges be taken care of in the same manner. Representative Hoffman told the Committee that the bill changes existing statutes to ensure that these certification requirements are transferred to municipal court judge statutes and vice versa.

Proponents' Testimony:

Patricia Bradley, Montana Magistrate's Association, said HB 421 is a housekeeping bill, and that the Commission on Courts of Limited Jurisdiction asked Greg Petesch, Director of Legal Services, Legislative Council, to review and update statutes concerning training, qualification and certification of judges (Exhibit #5).

Ms. Bradley stated that new language on page 2 requires that an appointing authority for a new judge must notify the Commission of that appointment immediately. She said that any newly appointed judge cannot assume his or her office unless a certificate of completion of course of education and training has been filed with the Commission. Ms. Bradley told the Committee that HB 421 is a simple bill, conforming the statutes to current practice, and asked them for a favorable ruling.

Opponents' Testimony:

There were no opponents' of HB 421.

Questions from Committee Members:

Senator Towe asked who appoints the judges of limited jurisdiction, and if the bill addresses appointing temporary judges to fill in while someone is gone on vacation, or if it addresses filling a vacancy. Representative Hoffman replied it addresses vacancies, and said county commissioners, appoint justices of the peace.

Senator Halligan asked if attorneys would have to complete the certification process. Representative Hoffman replied that he thought they would.

Closing by Sponsor:

Representative Hoffman, made no closing comments, except to ask that the Committee pass the bill out.

EXECUTIVE ACTION ON HOUSE BILL 421

Motion:

Senator Halligan made a motion that HB 421 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously. Senator Doherty was asked to carry HB 421.

EXECUTIVE ACTION ON HOUSE BILL 228

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Halligan made a motion to approve the amendments provided by Leo Berry for Burlington Northern. The motion carried unanimously.

Recommendation and Vote:

Senator Brown made a motion that HB 228 BE CONCURRED IN AS AMENDED. The motion carried unanimously, and Senator Brown was asked to carry HB 228.

EXECUTIVE ACTION ON HOUSE BILL 735

Motion:

Senator Harp made a motion that HB 735 BE NOT CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

Senator Harp's motion that HB 735 BE NOT CONCURRED IN failed 6-6 in a roll call vote (attached).

Senator Towe made a motion that HB 735 BE TABLED. The motion failed failed 6-6 in a roll call vote (attached).

No further action was taken on HB 735 this date.

EXECUTIVE ACTION ON HOUSE BILL 272

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Yellowtail offered an amendment, "to add the flexibility that a tribal facility be an option for the tribal agency to utilize under the same terms of agreement and same conditions as the municipal facility."

Chairman Pinsoneault commented that, assuming that retrocession does not take effect for awhile, this would be an excellent alternative for the sentencing judges. He said it would be particularly good for the District Court Judge in Lake County where tribal members appear as defendants, and that there is an excellent drug rehabilitation program at Blue Bay.

Senator Yellowtail thanked Chairman Pinsoneault, and said the amendment adds the element of access to another facility, and contains the projections. He said he believes there has to be a safeguarded cooperative agreement.

Chairman Pinsoneault asked if Representative Bradley is aware of the amendment. Senator Yellowtail replied she is, and that he believes it was her idea.

Senator Yellowtail made a motion to approve his amendments, and the motion carried unanimously.

Recommendation and Vote:

Senator Towe made a motion that HB 272 BE CONCURRED IN AS AMENDED. The motion carried unanimously, and Chairman Pinsoneault said he would carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 303

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe made a motion to approve amendments #1, #2, #4, and #5. He said the key to the amendments is on page 2, line 14, following the existing language, "provided that private information is released only in response to an emergency call involving an immediate threat to the person's safety and property." Senator Towe stated that, in other words, it is not a blanket requirement, but only the information necessary should be released, and that he believes that is a legitimate request.

Senator Towe explained further that the persons' whose names are unlisted would not be released unless it stood in response to a call involving immediate threat to that person or his or her property.

Senator Towe's motion to amend HB 303 carried unanimously.

Recommendation and Vote:

Senator Mazurek made a motion that HB 303 BE CONCURRED IN AS AMENDED. The motion carried unanimously. Senator Doherty was asked to carry the bill.

ADJOURNMENT

Adjournment at: 11:35 a.m.

Dick Pinsoneault

Senator Dick Pinsoneault, Chairman

Joann T. Bird

Joann T. Bird, Secretary

DB/jtb

SENATE STANDING COMMITTEE REPORT

March 19, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 697 (third reading copy -- blue), respectfully report that House Bill No. 697 be concurred in.

Signed: [signature]
Richard Pinsoneault, Chairman

1004

3-19-91
Amd. Coord.

Sec. of Senate

591247SC.Sji

SENATE STANDING COMMITTEE REPORT

March 19, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 290 (third reading copy -- blue), respectfully report that House Bill No. 290 be concurred in.

Signed: ______________________
Richard Pinsoneault, Chairman

3-19-91
Amd. Coord.

Sec. of Senate

591250SC.Sji

SENATE STANDING COMMITTEE REPORT

March 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 419 (third reading copy -- blue), respectfully report that House Bill No. 419 be amended and as so amended be concurred in:

1. Title, lines 7 and 8.
Following: "MAIL;" on line 7
Strike: remainder of line 7 through "MAIL;" on line 8

2. Title, line 9.
Following: "DATE"
Insert: "AND AN APPLICABILITY DATE"

3. Page 1, lines 24 and 25.
Following: "department." on line 24
Strike: remainder of line 24 through "mail." on line 25

4. Page 2, line 13.
Following: "date"
Insert: "-- applicability"

5. Page 2, line 14.
Following: "approval"
Insert: "and applies to all claims submitted on or after [the effective date of this act]"

Signed: ______________________
Richard Pinsoneault, Chairman

LB 3/20/91
Amd. Coord.

SM 3/20 1:25
Sec. of Senate

601135SC.SLB

SENATE STANDING COMMITTEE REPORT

March 19, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 421 (third reading copy -- blue), respectfully report that House Bill No. 421 be concurred in.

Signed: ______________________
Richard Pinsoneault, Chairman

jc 3/19/91
Amd. Coord.

3/19
Sec. of Senate

591252SC.SJI

SENATE STANDING COMMITTEE REPORT

March 19, 1991

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 228 (third reading copy -- blue), respectfully report that House Bill No. 228 be amended and as so amended be concurred in:

1. Title, line 8.
Following: "~~RESPONDING~~"
Insert: "DIRECTLY"

2. Page 1, line 20.
Strike: "an"

3. Page 1, line 21.
Strike: "OCCASION"
Insert: "a release"
Following: "involving"
Insert: "a"
Following: "hazardous"
Insert: "or deleterious"

4. Page 1, lines 21 and 22.
Following: "substance" on line 21
Strike: remainder of line 21 through "75-10-602," on line 22

5. Page 1, line 25.
Strike: "(1)"

6. Page 2, line 3.
Following: "~~to~~"
Insert: "directly"

7. Page 2, lines 5 through 8.
Strike: subsection (2) in its entirety

8. Page 2, line 11.
Strike: "6"
Insert: "7"

9. Page 2, line 12.
Strike: "6"
Insert: "7"

Signed: [signature]
Richard Pinsoneault, Chairman

BW 3/19/91 Amd. Coord.
SB 3-19-91 Sec. of Senate
2:50

591431SC.SLB

SENATE STANDING COMMITTEE REPORT

March 19, 1991

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 272 (third reading copy -- blue), respectfully report that House Bill No. 272 be amended and as so amended be concurred in:

1. Title, line 6.
Following: "GOVERNMENTS"
Insert: ", TRIBAL GOVERNMENTS,"

2. Page 3, lines 3 and 9.
Page 4, lines 20 and 23.
Page 5, line 13.
Page 12, line 22.
Page 13, lines 7 and 10.
Page 21, lines 14 and 16.
Following: "through"
Strike: "14"
Insert: "15"

3. Page 3, lines 1 and 8.
Following: "section"
Strike: "9"
Insert: "10"

4. Page 3, lines 21 and 22.
Page 8, line 8.
Following: "local"
Insert: "or tribal"

5. Page 4, line 25.
Page 5, line 6.
Page 12, line 25.
Page 13, line 3.
Following: "government"
Insert: ", tribal governments,"

6. Page 5, line 20.
Page 11, lines 7 and 17.
Page 12, line 16.
Following: "government"
Insert: ", a tribal government,"

7. Page 7
Following: line 4
Insert: "(7) "Tribal government" means a federally recognized Indian tribe within the state of Montana."
Renumber: subsequent subsection

8. Page 7, line 13.
Page 10, line 2.
Following: "section"
Strike: "8"
Insert: "9"

9. Page 7, lines 20 and 21.
Following: "government" on line 20
Strike: "or"
Insert: ","
Following: "government" on line 21
Insert: ", or a tribal government"

10. Page 8, lines 12, 20, and 25.
Following: "government"
Insert: "or a tribal government"

11. Page 8, line 13.
Following: "judges"
Insert: "or the tribal judges"

12. Page 9, line 21.
Insert: "<u>NEW SECTION.</u> Section 7. **Community corrections facilities and programs operated by tribal governments.** (1) A tribal government may establish, maintain, and operate a community corrections facility or program to serve the needs of offenders who are sentenced to the facility or program by a judge as provided in [section 9].

(2) A tribal government may enter into an agreement with the department, pursuant to Title 18, chapter 11, part 1, for the purpose of providing community corrections facilities or programs for offenders. The agreement must provide for strict accountability procedures and practices for the conduct and supervision of offenders assigned or sentenced to a facility or program operated by a tribal government.

(3) A tribal government operating a community corrections facility or program may accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant to an agreement with a unit of local government, a nongovernmental agency, or a judicial district. If an offender is rejected by the tribal government after initial appearance and the offender is a court referral, the offender must be remanded to the custody of the sheriff of the county in which the facility or program is located. The tribal government shall notify in writing the sentencing judge who, after considering the tribal government's reasons for rejection, shall appropriately modify the sentencing order."
Renumber: subsequent sections

March 19, 1991

13. Page 10, line 5.
Following: "government"
Insert: "or tribal government"

14. Page 10, line 12
Following: "government"
Insert: ", a tribal government,"

15. Page 18, line 23.
Page 19, line 18.
Following: "<u>section</u>"
Strike: "<u>8</u>"
Insert. "9"

Signed: [signature]
Richard Pinsoneault, Chairman

LB 3/19/91
Amd. Coord.

SE 3-19-91 2:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

March 19, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 303 (third reading copy -- blue), respectfully report that House Bill No. 303 be amended and as so amended be concurred in:

1. Title, lines 8 and 9.
Following: "COMPANY" on line 8
Strike: "OR TELECOMMUNICATIONS PROVIDER"

2. Title, line 12.
Strike: "ENTITIES"
Insert: "LOCAL EXCHANGE TELEPHONE COMPANIES"

3. Page 2, line 14.
Following: "numbers"
Insert: ", provided that the subscriber information is released only in response to an emergency call involving an immediate threat to personal safety or property"

4. Page 3, lines 4 and 5.
Following: "COMPANY" on line 4
Strike: "OR OTHER TELECOMMUNICATIONS ENTITY"

Signed: [signature]
Richard Pinsoneault, Chairman

LB 3/19/91
Amd. Coord.

SF 3-19-91 5:50
Sec. of Senate

19 mar 91

HB 697

Montana Magistrates Association

March 19, 1991 before the Senate JUdiciary Committee

HB 697, an act to allow judges to summon jurors by mail

Testimony by Pat Bradley, Lobbyist

Mr. Chairman and Committee Members:

This legislation was requested by the Montana Magistrates Assn.

It will expedite juror selection for courts of limited jurisdiction by allowing the court itself the option of summoning jurors for trial duty, rather than having to order a middle agency, a sheriff or a policeman, to do so.

It will allow the court the option of notifying jurors orally or by mail, whichever process is more efficient and cost-effective.

These changes would conform procedure for justice and city courts to that procedure used by district courts. District court clerks serve notice to prospective jurors by telephone or by mail, and it makes sense that justice and city courts should use this process as well.

We ask your favorable ruling on HB 697.

Thank you.

P. Bradley

19 Mar 91

HB 419

March 19, 1991

Members of the Judiciary Committee
TESTIMONY IN SUPPORT OF H.B. 419

Mr. Chairman, Members of the Committee:

My name is Brett Dahl, Administrator of Tort Claims, Department of Administration. We support H.B. 419 because it will save the State money, and allow for more timely and efficient processing of claims filed against the state.

By way of background, the Tort claims Division annually receives 500 to 700 claims which range from property damaged to bodily injury or wrongful death.

We investigate, defend, or settle those claims with merit, and all others we deny. Under the present statute, we are required to send denial letters via certified mail.

This results in additional administrative costs to process these claims plus the additional postage. It is also inefficient and unnecessary since claims are automatically denied within 120 days (by statute) anyway if we don't mail a denial letter. We have also experienced numerous problems w. claimants failing to pick up their denial letters.

We offer that H.B. 419 will improve our claims administration function and cost less to administer. We thank you for your consideration and urge your support.

HB 159

PUBLIC ACT NO. 90-273

AN ACT CONCERNING ACTIONS FOR DAMAGES RESULTING FROM VIOLATIONS OF UNEMPLOYMENT AND WORKERS' COMPENSATION STATUTES BY BIDDERS ON CONSTRUCTION CONTRACTS.

(NEW) Any person, firm, association or corporation which suffers damages as a result of a competitive bid for a project involving the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement or renovation of a building or structure not being accepted due to another person, firm, association or corporation knowingly violating the provisions of chapter 567 or 568 of the general statutes, may bring an action for damages in the superior court. For the purposes of an action brought pursuant to this section, employee status shall be determined by the applicable provisions of the Internal Revenue Code of 1986, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended.

FACTS ON PUBLIC ACT NO. 90-273

I. PURPOSE: The purpose of Public Act 90-273 is to clean up illegal practices in the construction industry by allowing private law suits in instances when construction employers compete unfairly by willfully failing to make contributions for unemployment and workers' compensation.

II. THE PROBLEM

A. A growing number of employers in the construction industry are competing unfairly by willfully failing to make unemployment and workers' compensation contributions as required by law.

1. The construction industry is highly competetive, with the lowest bidders frequently being awarded work.
2. Connecticut law requires employers to cover employees with workers' compensation insurance and to pay unemployment taxes.
3. Below are the hourly labor costs of a typical legitimate commercial-construction contractor:

wages	$17.80
benefits	3.00
social security	1.33
workers' compensation	4.57
unemployment taxes	1.08
TOTAL	$27.78

Of the $27.78 an hour labor costs, $6.98 is for unemployment, workers' compensation and social security. An employer who illegally fails to pay these legally mandated costs can save more than $6.98 per hour, or 26%, on labor costs. Thus, illegitimate employers gain an unfair advantage over employers who operate legally, driving legitimate employers out of business or into becoming law breakers themselves.

4. Illegitimate employers avoid paying unemployment and workers' compensation by illegally classifying their workers as independent subcontractors.
5. According to the IRS, at least 38% of all employers who classify workers as independent subcontractors should be treating their workers as employees according to the law.

B. The State of Connecticut's mechanisms for enforcing the coverage requirements of the workers' compensation and unemployment compensation acts have been inadequate.

Exhibit #3
3/19/91

1. Before PA 90-273, only the State and the workers had standing to sue employers who violated the coverage requirements of the unemployment and workers' compensation acts.
2. Workers who are illegally classified as subcontractors have not proven to be good enforcers because they are either willing participants in the scheme, they do not know better or they are afraid of being fired.
3. The State is too overburdened and does not have enough personnel to keep up with employers who violate the law in this manner.

C. Before PA 90-273 the law did not recognize the damage done to the construction industry by illegitimate operators.

D. Who are the winners and losers when an employer illegally treats employees as independent subcontractors?

1. Losers:
   Connecticut's Second Injury Fund--Lost Revenue
   Connecticut and U.S. Unemployment Funds--Lost Revenue
   Social Security Administration--Lost Revenue
   U.S. Treasury--Lost Revenue
   Health Care & Insurance Industries--Rising Costs
   Construction Workers--Substandard Working Conditions
   Legitimate Construction Employers--Lost Jobs & Profits
   Construction Unions--Lost Job Opportunities for Members
   Contractor Associations--Lost Job Opportunities
   Construction Industry--Lowered Standards
2. Winners:
   Construction Employers Who Break The Law

III. SOLUTION: PA 90-273 makes the willful violation of the coverage requirements of the workers' compensation and unemployment compensation acts in the construction industry subject to private law suits by industry participants.

A. PA 90-273:

1. recognizes the harm done to the construction industry by this form of unfair competition by allowing fair employers, employer associations and employee associations to sue for their damages,
2. deters violations of the workers' compensation and unemployment compensation acts by creating a new cause of action against law breakers for private parties,
3. gives the construction industry the ability to prosecute law breakers in order to clean its own house, and
4. this is all done with little to no cost to the State.

Exhibit # 3
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THE WALL STREET JOURNAL.

VOL. CCXVI NO. 41 ★★★ EASTERN EDITION TUESDAY, AUGUST 28, 1990 CHICOPEE, MASSACHUSETTS 50 CENTS

Labor Letter

A Special News Report on People And Their Jobs in Offices, Fields and Factories

A NEW CONNECTICUT LAW targets construction-firm cheaters.

Companies that lose contracts can sue winning bidders who evade paying unemployment and workers' compensation, under a law taking effect Oct. 1. James Lohr, director of the Carpentry Industry Partnership, a labor-industry group based in Norwalk, says such practices are "a severe problem for legitimate contractors" who make the required payments.

"I can now make the enforcement people do their job," says Michael Hobbs, a New Canaan contractor. The IRS says that at least $1.6 billion a year in tax revenue has been lost nationally; it estimates that 38% of employers misclassify workers as contractors, avoiding unemployment, workers' compensation and Social Security taxes. Joint union-industry groups in California and Illinois show interest in similar legislation.

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Fairfield County
BUSINESS JOURNAL

Special Report Education

Volume 21, Number 30 Published Every Week Single Copy 75¢ Week beginning August 13, 19

Contractors have new law in battle against scofflaws

Abusive use of 'subs' costs industry jobs, work; state clears way for unfair competition lawsuits

By JOAN STABLEFORD

Fairfield County's construction industry is caught in the triple vise of a declining local economy, a credit crunch and a sluggish real estate market.

Those factors are not the only evils, however, industry officials say.

Illegal practices by some disreputable contractors have aggravated the industry's problems, damaging the image of honest companies trying to make a living in the competitive construction trades.

Contractors, laborers, union officials and associations are fighting back — and hope to nail the offenders with lawsuits in the state courts. The target: contractors who abuse employees by classifying them as independent contractors to avoid paying benefits, said Jim Lohr, director of the Carpentry Industry Partnership.

A new state law that takes effect Oct. 1 will help contractors who live by the law — and lose out in competitive bidding to violators as a result — fight back.

"This is a severe problem for contractors who pay employees benefits as required by law," Lohr said.

The Carpentry Industry Partnership, founded earlier this year, is composed of representatives from Carpenters' Union Local 210, who formally joined with management area contractors in an effort to clean out dishonest contractors.

"We cannot rely on the state to police the industry (so) we took our own action," Lohr said.

Public Act 90-273 is one of the most potent weapons in their arsenal. The new law allows contractors to file private lawsuits in instances of unfair competition stemming from a company's willful failure to make unemployment and workers' compensation payments.

"In this economy, the new law is

the lowest bidders frequently being awarded work," Lohr said.

"Five years ago when there were plenty of building jobs the practice was not so prevalent. Now, there are few jobs and many laborers are out of work. Working under the table is becoming more commonplace," Lohr said.

According to the local carpenter's union, the average hourly laborer in Connecticut costs an commercial construction contractor $17.80 for wages, $3 for benefits, $1.33 for Social Security, $4.57 for workers' compensation and $1.08 for unemployment taxes, for a total cost per hour of $27.78.

A contractor illegally hiring an employee as an "independent contractor" can save $6.98 an hour — or 26 percent — of the average hourly labor cost.

According to the Internal Revenue Service, at least 38 percent of all construction workers nationwide employ workers illegally.

"Prior to this law, only the state and

Exhibit # 3
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Contractors can use a new state law to halt construction industry abuses

Continued from Page One

ers who violated coverage requirements," Lohr said. "Now, contractors and associations can also sue."

Hauling violators into court will not be easy, he acknowledged.

"Subcontractors have not proven to be good enforcers because they are either willing participants in the scheme, (they) may not know any better, or are just afraid of being fired," Lohr said.

The state lacks sufficient personnel to monitor the industry properly, construction officials said.

Anthony J. Minervini, co-owner of Nutmeg Interiors, a drywall and acoustical contractor based in Stamford, said contractors who avoid paying benefits to workers can reduce their costs by 30 percent in the bidding process.

"It puts us and (others) who try to operate legally at a distinct unfair advantage," Minervini said.

The practice also hurts the worker, Minervini noted.

"Some contractors don't carry workmen's compensation. When the worker gets hurt, if he has no medical insurance, the legally operating contractor and the public end up paying astronomical insurance costs," he said.

The average cost for workmen's compensation for one construction worker is $18 out of every $100 earned, Minervini said.

"It angers you further after you spend hours preparing a fair bid on a project and then unfair bidding happens," said Minervini, who claimed that some non-union contractors operate this way.

"But I am not saying all non-union workers do this," he added.

"With this new law, illegal contractors will find out very soon that they can't play the game any longer. It's not fair to us or to the state," he said.

Minervini is convinced that many honest contractors will take advantage of the new law and sue in state Superior Court.

"There is always someone trying to beat the system. Going to court and suing is the only way to clean up their act. It's the only way to operate fairly," he said.

Nutmeg Interiors, co-owned with Glenn Silkman, began in 1979. It currently employs 35 workers.

"We started in a recession. We took a shot and it was slow for a while. However, it is much slower now," Minervini observed. "When the developer can't get money to build, we are hurt."

THE local construction industry has been nailed by a slumping economy and hammered by unscrupulous contractors within the industry.

Photo by Joan Stableford

Contractor Chappy LeBlond of LeBlond Limited, New Canaan, said he has adopted a wait-and-see attitude until the first test case is filed under the new law.

"We're suspicious when somebody enters the bidding process and no one knows him. Then the bids are opened and there is a big disparity," LeBlond said. "For example, three bids are within range, $75,000, $80,000 and $82,000, and then one is almost half that amount. You know something is wrong when the bid is 30 to 40 percent less than the others and is below what it would cost to do the job."

LeBlond said the new law should help change the public's perception of the contracting industry.

"I'm tired of people saying constant negative things about contractors. You always hear the horror stories. No one has anything good to say about us," said LeBlond.

The practice of avoiding paying benefits is widespread in the industry, he said, but the new law will give the industry "muscle to rid it of the cheaters."

LeBlond, who has owned his company for 13 years, employs 20 workers. The firm specializes in residential construction, restorations and renovations in the high-end segment of the market.

According to Matt Capece, general counsel for the carpenter's union, the issue of cheating has a direct impact on all members of the industry.

"Contractors who play by the rules and are fair to their employees are fed up and very disturbed by the illegal practices," Capece said. "Some believe they must either break the law or go out of business just to compete and so they formed the labor-management group and lobbied for the new law."

Despite the costs and time involved in civil litigation, Capece believes contractors will sue in instance of unfair bidding.

Under the state law, determining who is an employee and who is an independent contractor will be bas'd on current IRS regulations.

"Generally, if the person employed is under another person's control for how the work is performed, then he is an employee. If a contractor supplies that person with lumber to do the job, then he is an employee. If the contractor tells him when to report for work, when to break for lunch, and when to go home, he is an employee. If the person is paid by the hour, he is an employee. If the person was not involved in the bidding process, he is an employee," said Capece.

Contractors should not be overly concerned about frivolous lawsuits, he said, noting that "if a person falsely brings a lawsuit against another individual or company, there are penalties" under the "vexatious law principle."

When a lawsuit is filed, investigators will visit the job site during the discovery process. If the contractor claims he employs only "subs" that's a big clue, said Capece. If a certificate of workmen's compensation has not been filed with the state by the contractor, then the lawsuit has merit, he added.

> "Contractors who play by the rules and are fair to their employees are fed up and very disturbed by the illegal practices. Some believe they must either break the law or go out of business just to compete and so they formed the labor-management group and lobbied for the new law."
>
> —Matt Capece, general counsel for Carpenters Union Local 2

According to the CIP, when an company treats regular employees as independent subcontractors, it withholds revenues from the state's Second Injury Fund, the state and federal Unemployment Compensation Funds, the Social Security Administration and the U.S. Treasury.

In addition, illegal workers suffer from substandard working conditions while legitimate employers lose jobs and wages.

This new state law does not affect mediation between contractors and the American Arbitration Association, which handled 5,130 cases last year, a record for the 65-year-old organization.

"Locally, we've seen a six percent increase in the number of construction cases for the first five months of 1990. Construction claims now comprise more than half of all claims in our Hartford office," said Karen Jalkut, regional vice president for the arbitration association.

Unresolved conflicts between contractors or subcontractors and owners account for 46 percent of all arbitration cases filed. Architects and engineers accounted for less than 10 percent of the disputes, figures show.

"The construction caseload is growing," noted Robert Coulson, president of the arbitration association. "The AAA offices have implemented new procedures to reduce processing time (and the) National Construction Industry Arbitration Committee has played an active role in monitoring and streamlining the construction arbitration rules."

The Carpentry Industry Partnership has 4,000 union members and an undetermined number of area contractors representing road builders, drywall installers, and commercial and residential construction companies. The group, which meets monthly, is governed by a board of trustees consisting of an equal number of labor and management representatives.

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BUSINESS

Contractors, carpenters union decry unscrupulous practices

By Louisa Shepard
Staff Writer

Construction contractors in Fairfield and Litchfield counties are banding together to fight competitors they say are hiring workers illegally.

In concert with Carpenters Union Local 210, based in Norwalk, these union and non-union contractors hope to publicly expose unscrupulous contractors who hire full-time construction workers as subcontractors, a direct violation of federal labor law. Those companies then are able to submit lower bids on construction projects, effectively shutting out contractors who play by the rules.

"The bottom is falling out of the construction industry because of a black market," said state Rep. George Jepsen, D-Stamford, who is employed as a lawyer for Local 210. "They are performing work that is in fact illegal."

As described by Jepsen, construction workers from other states are drawn to Connecticut by the availability of work and high wages. Often young and unafraid of injury, they agree to be taken on as "subcontractors" without benefits, even though they work full-time as carpenters, he said. Frequently they are paid in cash, and their employers avoid costs such as Social Security taxes.

The contractors also avoid paying other benefits mandated by the federal government for full-time workers, such as workers' compensation and unemployment contributions.

The group, represented by a year-old Carpentry Industry Partnership, is holding a press conference tomorrow in Darien to detail specific examples of the growing problem.

And on Monday a new Connecticut law goes into effect that gives the contractors some ammunition against the illicit competition. The law, the first of its kind in the country, enables any company that loses a job after Oct. 1, 1990, to a contractor who hired workers illegally to sue that contractor for damages.

"We've been dealing with this problem over a long period of time," said John McCarthy, executive assistant to the commissioner of the Connecticut Department of Labor.

McCarthy said he believes the practice mushroomed during the booming construction era of just a few years ago. Now the problem is made worse by the economic downturn and consequent lack of work.

Contracts for future construction in the state slumped 30 percent in July from a year ago to $245.01 million. In Fairfield County, contracts for building fell 45 percent, to $51.02 million. These figures, which include residential, non-residential and so-called "non-building" or infrastructure, are the most recent available and were compiled by F.W. Dodge, a division of McGraw-Hill Information Systems Co.

"If things get tighter, the impulse may be stronger to attempt to cut corners," McCarthy speculated.

Spokesmen for the union and the contractors maintain that the appropriate government agencies that police these violations — the labor department and the Internal Reve-

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Building

■ Continued from Page B8

nue Service — are too short staffed to monitor all the construction firms in the state.

"There is a strong feeling that this activity is below the surface a bit, and not always recognized," said McCarthy.

Michael Hobbs, president of Hobbs Inc., a union contractor based in New Canaan since 1954, said the practice is spreading. "The savage competition has contributed to the problem," he said.

According to the state, the hourly labor costs for a construction contractor are about $27.75 per worker. Of that, about $7, or 25 percent, can be avoided by hiring a worker as an independent contractor.

Hobbs said he pays more than $100,000 in premiums for his 27-carpenter shop, which adds up t[illegible] percent to 30 percent of his [illegible] costs — costs that contractors [illegible] hire carpenters illegally do not [illegible] to pay.

As a result, the unscrupulous [illegible]struction contractor can make lo[illegible] bids on projects, sometimes un[illegible]cutting other companies by hund[illegible] of thousands of dollars. Legitim[illegible] contractors then lose out, unabl[illegible] compete, they charge.

"I enjoy competition immens[illegible] but I want fair competition," [illegible] Richard Vidal, owner of V[illegible] Brown & West Ltd., a non-uni[illegible] contractor based in New Cana[illegible] since 1978.

The problem is not just in C[illegible]necticut. The IRS estimates that [illegible] least $1.6 billion a year in tax re[illegible]nue is lost nationally because of [illegible] practice.

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NATIONAL JOINT HEAVY AND HIGHWAY CONSTRUC E

111 MASSACHUSETTS AVENUE, N. W. • WASHINGTON, D. C. 20001 • (202) 842-2713 Vol. 6, No. 3 September, 1990

IN CONNECTICUT

Cheater's Beware!

On October 1, 1990, Public Act 90-273, went into effect in the state of Connecticut. The purpose of this act is to clean up illegal practices in the construction industry where contractors are misclassifying workers and illegally classifying them as independent contractors in order to gain a competitive advantage. The act allows private law suits to be brought against contractors who willfully engage in this practice.

The incentives for both the contractors and employees to foster this scam are multitudinal. Connecticut law requires employers to cover their employees with workers' compensation insurance and pay unemployment taxes. The contractor saves money by misclassifying a worker as an independent contractor in order to avoid paying workers' compensation insurance, unemployment taxes, social security taxes, etc. Now when the contractor bids a job he has significantly cut his cost, and is at an unfair competitive advantage over the legitimate contractor who properly classifies their employees.

The catalyst that fuels this "runaway train" is the fact that, according to the Connecticut Business and Industry Association, Connecticut's workers' compensation costs are currently running 190% of the national average. A contractor can save between 26% to 30% on labor costs by not contributing to workers' compensation insurance, and the state mandated unemployment tax. Furthermore, until Public Act #90-273, the State of Connecticut's enforcement mechanisms have been grossly inadequate when it comes to ensuring employers have correctly classified their workers. So contractors and workers that cheat are rarely investigated or caught. According to John A. McCarthy, Executive Assistant to the Labor Commissioner, "We have a backlog of complaints . . . in recent years, there's been more cheating."

Although there are no official estimates on the number of contractors that are involved in this illegal exercise, one local labor expert estimates that more than 50% of the residential construction firms in the state misclassify their workers as independent contractors. Not surprisingly, Connecticut is not the only state that has this problem. According to a General Accounting Office random sample of 408 employers that use the independent contractor classification on their federal tax returns, 157 or 38% are probably misclassified and should have counted these independents as employees.

What these employers totally disregard is the future health of Connecticut's economy and the workers that live there. This type of behavior is one of the reasons that workers' compensation rates situation exists where a few legitimate contractors are paying proper compensation rates, and they have to make up for the many illegitimate ones that are not. Not to mention the drain on the state's treasury when one of these so-called "independent contractors" gets injured on a job. Chances are they wind up getting medical care at a public hospital because they do not have health insurance, which costs the taxpayers money, instead of the employer. Additionally, if the injury is debilitating, and there are no compensation benefits available, the worker will need public assistance in order to feed and house his family. It obviously affects the amount of funding in the State's unemployment programs because these independent contractors do not pay unemployment taxes.

Under this new law a private party has legal standing to sue a contractor for damages if they can prove they lost competitive bids or wages to contractors that break the law. Previously, only state or federal agencies could sue in such cases, and due to the insufficient resources available for enforcement of such laws, something else had to be done. This law gives the construction industry the ability to be its own "watch-dog" and police itself. While it will help the state collect on workers' compensation and unemployment taxes that were previously lost. All this is done at little or no cost to the taxpayers of the state.

To further make life difficult for these cheaters, the Internal Revenue Service (IRS), has almost 400 officers investigating employers who misclassify workers. They are part of a program called the Employment Tax Examination program. A major component in this program revolves around monitoring. The IRS will cross-reference company returns that report independent contractors with the individuals' returns using the company's Employer Identification Number (EIN). The IRS tests who is an independent contractor using 20 "common law" principals, which are spelled out in it's Publication 539. According to Publication 539, the general rule of thumb is that an individual is not an independent contractor if the employer has the right to control the means and methods of accomplishing the results of the work being performed and if the employer has the right to discharge the employee.

The act drew broad-based support by a coalition which consisted of unions, the AGC and government agencies. One thing is for sure, in Connecticut, there are several "private parties" just waiting for the opportunity to test this new law. Hopefully, when the first contractor that gets nailed it will act as a deterrent to the rest of the cheaters, and go a long way toward eliminating

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CONSTRUCTION LABOR REPORT
Employment Developments in the Construction Industry

Vol. 36, No. 1790 August 1, 1990

CONN. CONTRACTORS THAT UNDERBID BY MISCLASSIFYING CAN BE SUED

A new Connecticut statute (PA 90-273) to be effective Oct. 1, 1990, will enable any person, firm, association, or corporation to sue for damages after losing a competitive bid to a contractor that misclassified workers as subcontractors to avoid workers' compensation and other government-mandated labor costs.

The new Connecticut law applies the criteria to distinguish subcontractors and employees that are outlined in 1986 federal Internal Revenue Service guidelines.

Connecticut is the first state in the nation to enact such a law, according to Jim Lohr, executive director of the Carpentry Industry Partnership, which strongly supported the law. There has been a growing problem in Connecticut for legitimate contractors that operate at a competitive disadvantage when bidding against those contractors that avoid government-mandated labor costs, he said. Lohr cited a 1989 General Accounting Office report that indicated that up to 38 percent of contractors that had been interviewed by IRS agents may have misclassified employees as subcontractors (35 CLR 828, 11/1/89).

State Statutory Provisions

The new Connecticut statute reads in pertinent part:

"Any person, firm, association, or corporation which suffers damages as a result of a competitive bid for a project involving the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement or renovation of a building or structure not being accepted due to another person, firm, association or corporation knowingly violating the provisions of chapter 567 or 568 of the general statutes, may bring an action for damages in the superior court. For the purposes of an action brought pursuant to this section, employee status shall be determined by the applicable provisions of the Internal Revenue Code of 1986, or any subsequent corresponding Internal Revenue Code of the United

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COCKSHAW's
Construction Labor News+Opinion

The Authoritative Industry Advisory Since 1971

P.O. Box 427 Newtown Square, PA 19073 (215) 353-0123 FAX (215) 353-0111

August 8, 1990

Jim Lohr, Executive Director
Carpentry Industry Partnership
P. O. Box 2245
Norwalk, CT 06852

Dear Jim:

I appreciate your sending me the <u>very</u> informative material on the new law which deals with contractors who fail to pay workers' comp, social security and unemployment insurance.

The Connecticut situation mirrors problems faced by legitimate contractors ALL across the country! I've been covering construction for 25 years and, to my knowledge at least, your state is the first to pass such legislation.

Frankly, I don't give a damn what a contractor's labor relations policies are. But, in my view, employers who fail to pay such mandated benefits deserve "anything they get." That applies to companies which do not provide basic health and welfare benefits -- another issue that must be addressed.

Not only to such contractors undercut fair competition, they also cheat their employees who <u>need</u> the protection. Ultimately, <u>every</u> taxpayer ends up paying the costs.

The actions taken in Connecticut deserve wide coverage and I plan to give them this exposure. I'll be giving you a call later this week or early next week to get more details. I am especially interested in background on legislative effort that resulted in 90-273's enactment.

Thanks again for "filling me in." I look forward to following up with you within the next few days.

With warmest personal wishes,

Pete

Peter A. Cockshaw
Editor & Publisher

PAC:jem
cc: S. Lucassen, General President, United Brotherhood of Carpenters

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The Hour BUSINESS

Construction firms targeted

New state law hits tax evaders

By JOHN SEWARD
Hour Staff Writer

NORWALK — The heat is getting turned up on companies that save on employment taxes by illegally classifying employees as independent contractors.

State legislation effective Monday is expected to raise the stakes for cheating, while U.S. Rep. Christopher Shays, R-4th, said a congressional subcommittee may hold hearings on the matter next year.

Until recently, enforcement was left to state and federal agencies. But under Connecticut's new law, contractors can sue competitors who underbid them by incorrectly classifying employees as subcontractors. Recourse to the courts is now open to anyone claiming damages.

"We're targeting contractors," said Matthew Capece, a staff attorney for Carpenter's Local 210 based in Norwalk. Capece said several area contractors may be sued by the labor union under the new law, although he would not say which ones.

Despite its illegality, the practice is widespread in the construction industry where up to 25 percent of labor costs can be cut by avoiding payroll taxes such as Social Security, workers' compensation and unemployment, according to proponents of the new law.

"It's a clear exploitation of workers," said Shays. "We think it's a national problem of major proportions."

On the federal level, congressional hearings on the matter may begin next year in two separate subcommittees.

"We're interested in fairness and in lost revenue," said Lisa Phillips, a staff member of the House Government Operations Subcommittee on Employment and Housing that plans to hold the hearing. Also planning a hearing is the Subcommittee on Commerce, Consumer and Monetary Affairs.

The federal government loses about $1.6 billion annually because of improperly classified workers, according to a 1989 study by the General Accounting Office. The GAO found 38 percent of contractors it surveyed were engaged in the practice.

A crack down on the practice last year in Western states net-

Please See NEW LAW, Page 16

Proponents

Members and allies of a labor-management group called the Carpentry Industry Partnership support a new law concerning the classification of workers. Left to right, James Lohr, John Cunningham, state Sen. Richard Blumenthal, Robert Fontana, and Michael Hobbs.

New law

Continued From Page 15

ted the Internal Revenue Service $13.3 million in unpaid employment taxes. More than half of the guilty firms were in the construction industry.

Subcommittee Chairman Tom Lantos, a Democratic Representative from California, agreed to tentatively schedule the hearings at the request of Shays, its ranking Republican.

Hailing passage of the new state law, John Cunningham, president of a local carpenters' union and a trustee of a labor-management group, cited what he called evidence of violations occurring at a job site in Darien where General Mills Corp. is having a Red Lobster restaurant renovated.

Cunningham called on major corporations like General Mills "to enact policies requiring contractors they hire to abide by local and federal labor and tax laws."

A spokesman for Red Lobster, based in Orlando, Fla., said the firm already has such policies but said he was unaware of details regarding the Darien construction contract.

"It goes without saying," said Walter R. Monroe, a vice president of Red Lobster. "The question is, how far down the line does one hold responsibility?"

A spokesman for the contractor, Total Property Management of New England Inc. in Sandwich, Mass., said workers on the Darien site are either direct employees or fit federal definitions of independent contractors.

"Dollars and cents rule this world," said James F. Schmidt, vice president of the contracting firm. "This is basically a union issue. They're hurting for work so they're looking for a new angle."

Michael D. Hobbs, president of a New Canaan-based residential contracting company, said he was "extremely pleased" that Shays believes the issue merits congressional attention.

"On the surface it's not a sexy issue," Hobbs said. "But neither was the savings and loan crisis."

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The Hour BUSINESS

onstruction ethics

Jew statute could nip illegal hiring

By JOHN SEWARD
Hour Staff Writer

NORWALK — Construction ns that cut their labor costs l beat the competition by ille-ly hiring laborers as subcon-ctors rather than as employ- may find themselves zapped lawsuits once a new state tute takes effect Oct. 1.

'The unethical guy is sitting there with a huge advan-e," said Michael D. Hobbs, a w Canaan-based residential ntractor. "We need a success-test case that will make peo- aware of this."

Contractors can illegally save up to 26 percent on labor costs by classifying workers as sub-contractors and failing to provide government-mandated employee benefits such as unemployment insurance and workers' compensation insurance.

But under the new law, private parties can sue for damages if they can prove they lost competitive bids or wages to contractors who shirk paying worker benefits.

Until now, only state or federal agencies had legal standing in such cases, and law-abiding contractors complain that state and federal regulators lack sufficient resources to keep track of violations.

"There's always more illegality than any government can find," said John A. McCarthy, executive assistant to the state labor commissioner.

'We have a backlog of complaints," said McCarthy, adding that "in recent years, there's been more cheating."

Under Internal Revenue Service withholding guidelines, an individual is an independent contractor if the employer has the right to "control or direct only the result of the work and not the means and methods of accomplishing the result." IRS guidelines also contain a list of 20 additional factors defining the term.

The General Accounting Office, a federal agency, found in a random sampling of employers that 38 percent wrongly classified employees as subcontractors.

Labor costs comprised 23 percent of Connecticut's 1989 $7.15 billion residential construction market, according to a report from the state Department of Housing.

Please see next page

Statute

Continued from preceding page

In the region's residential contracting, a labor expert said more than 50 percent of residential construction firms use subcontractors rather than employees as laborers, thus diverting a substantial amount of money from programs such as state unemployment insurance, workers' compensation and Social Security taxes.

Contractors who avoid paying for the benefits "can significantly underbid us," said Chappy LeBlond, another New Canaan-based contractor. "We lose a lot of projects."

Unions, management and government interests coincided in passage of the recent bill. "It's like apple pie," said James Lohr, director of the Carpentry Industry Partnership, a Norwalk-based labor-management organization. The group was instrumental in devising the new law and is engaged in publicizing its passage.

"We want to level the playing field," said Matthew F. Capece, a trustee of the labor-management group and assistant counsel for Carpenter's Local 210, a Norwalk-based labor union that operates in Fairfield and Litchfield counties.

LeBlond and Hobbs are both officers of the labor-management group.

LeBlond claimed that companies and individuals hiring contractors whose personnel aren't covered by workers' compensation insurance may leave themselves open to liability in the event of injuries. "It's the consumer who pays," LeBlond said.

"This isn't an issue for contractors only," said Hobbs who spends about $100,000 annually on benefits for 25 employees. "When the unemployment compensation fund goes bust, the state borrows from the federal government and everybody pays."

Hobbs predicted that come Oct. 1, "Somebody's going to get banged" under the new law. "There are going to be a lot of people like me who are going to be looking at this."

EX 7
19 Mar 91
HB 159

DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

Testimony of Darrell Holzer before the Senate Judiciary Committee on House Bill 159, March 19, 1991.

Mr. Chairman, members of the Committee, for the record my name is Darrell Holzer representing the Montana State AFL-CIO and we are here in support of House Bill 159.

House Bill 159 would afford decent contractors, and the public, protections against unscrupulous contractors who would bend or break the rules in order to win a bid. The essence of this bill is to allow a losing bidder to sue the winning bidder if he can prove that unfair advantages were used to win. What it says, quite simply, is that when public construction jobs are up for bid, the taxpayers who are footing the bill won't stand for any inequities in the bidding process.

Current law allows fraudulent contractors to break the law by refusing to pay workers' compensation, prevailing wage or unemployment insurance premiums, thereby letting them submit a lower bid based on lower costs. That's a practice that Montana contractors and workers should no longer be forced to endure.

Good jobs with fair and decent wages for Montana workers, and good contracts with equitable profits for Montana contractors will translate into a much-needed contribution to Montana's Main Street economy.

This bill is about fairness -- fairness to contractors and fairness to workers. It's about making people follow what we all think is the law in the first place. We urge you to support House Bill 159.

Thank you.

19 Mar 91

HB 421

Montana Magistrates Association

March 19, 1991, before the Senate Judiciary Committee

HB 421, an act to clarify training requirements for judges.

Testimony by Pat Bradley, Lobbyist for MMA

Mr. Chairman and Comimmittee Members:

This is a housekeeping bill. The Commission on Courts of Limited Jurisdiction asked Greg Petesch to review and update statutes concerning training, qualification and certification of judges and this bill is the result of that review.

The thrust of the new language on page 2 is that an appointing authority for a new judge must notify the commission of that appointment immediately. Secondly, any newly appointed judge cannot assume his or her office unless a certificate of completion of course of education and training has been filed with the commission.

On page 3, the bill addresses training and certification of municipal judges which was not in the statute.

On page 5 language is added to qualifications of those persons who act in a temporary absence for a judge.

On page 6, the bill provides that the election board shall certify election results to the supreme court.

This is a simple bill which conforms the statutes to current practice. We ask you favorable ruling. Thank you.

P. Bradley

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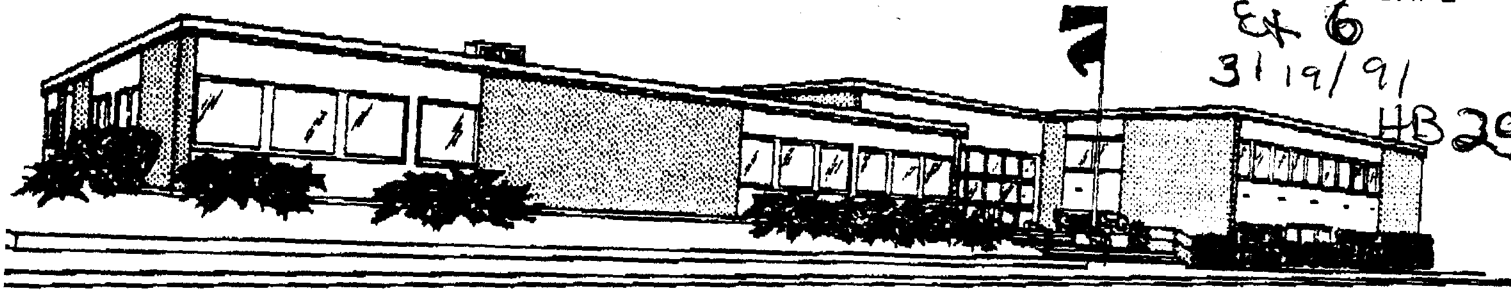
Ex 6
3/19/91
HB29



Office of:
Clerk of District Court
Ardelle Adams

County of Dawson

207 W. Bell
Glendive, MT 59330

P.O. Box 1009
Phone (406)365-3967

3-19-91
~~Lig~~

TO: SENATE JUDICIARY COMMITTEE

FROM: Ardelle Adams, Clerk of District Court, Dawson County

RE: HB 290

DATE: March 14, 1991

I'm writing in support of HB 290, bill requiring governmental entities to pay certain fees. The Clerks of District Court need to maintain on a computer system the records requried by statute.
Thank you for your consideration on this bill and I urge you to due pass.

Thank You,

Ardelle Adams
Ardelle Adams

Ex. 7
3-19-91
HB 303

Amendments to House Bill No. 303
Third Reading Copy (BLUE)

For the Committee on Judiciary

Prepared by Valencia Lane
March 18, 1991

Trial Lawyers
1. Title, lines 8 and 9.
Following: "COMPANY" on line 8
Strike: "OR TELECOMMUNICATIONS PROVIDER"

Trial Lawyers
2. Title, line 12.
Strike: "ENTITIES"
Insert: "LOCAL EXCHANGE TELEPHONE COMPANIES"

NW Tel. System (Phillips)
3. Title, line 13.
Strike: "15,000"
Insert: "50,000"

U.S. WEST
4. Page 2, line 14.
Following: "numbers"
Insert: ", provided that the subscriber information is released only in response to an emergency call involving an immediate threat to personal safety or property"

T...al Lawyers
5. Page 3, lines 4 and 5.
Following: "COMPANY" on line 4
Strike: "OR OTHER TELECOMMUNICATIONS ENTITY"

N.W. -el. Systems (Phillips)
6. Page 3, line 5.
Strike: "15,000"
Insert: "50,000"

hb030301.avl

Ex. 8

19-Mar-91
HB 419

Amendments to House Bill No. 419
Third Reading Copy (BLUE)

For the Committee on Judiciary

Prepared by Valencia Lane
March 19, 1991

1. Title, lines 7 and 8.
Following: "MAIL;" on line 7
Strike: remainder of line 7 through "MAIL;" on line 8

2. Title, line 9.
Following: "DATE"
Insert: "AND AN APPLICABILITY DATE"

3. Page 1, lines 24 and 25.
Following: "department." on line 24
Strike: remainder of line 24 through "<u>mail.</u>" on line 25

4. Page 2, line 13.
Following: "date"
Insert: "-- applicability"

5. Page 2, line 14.
Following: "approval"
Insert: "and applies to all claims submitted on or after [the effective date of this act]"

hb041901.avl

ROLL CALL VOTE #1

SENATE COMMITTEE JUDICIARY

Date 03-19-91 Bill No. 735 Time 11:35

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan	✓	
Sen. Harp	✓	
Sen. Mazurek		✓
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe		✓
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: HB 735 not be concurred in.

SF-3 (Rev. 1987)

ROLL CALL VOTE #2

SENATE COMMITTEE JUDICIARY

Date 3-19-91 Bill No. 735 Time 11:35

NAME	YES	NO
Sen. Brown		/
Sen. Crippen	/	
Sen. Doherty		/
Sen. Grosfield	/	
Sen. Halligan		/
Sen. Harp	/	
Sen. Mazurek	/	
Sen. Rye	/	
Sen. Svrcek		/
Sen. Towe		/
Sen. Yellowtail		/
Sen. Pinsoneault	/	

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: HB 735 be tabled.

DATE 3/19/91

COMMITTEE ON Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Check One Oppose
DARRELL HOLZER	MT ST. AFL-CIO	HB159	X	
LARS ERICSON	MT. ST. CARPENTERS	HB 159	X	
Ron N. James	Ironworkers Lo 841	HB159	X	
[illegible]	Mt St Bldg Trades	HB159	X	
Jim [illegible]	IUOE #400	HB159	X	
Pat Bradley	Mt Magistrate Assn	HB697	X	
Pat Bradley	" " "	HB421	X	

(Please leave prepared statement with Secretary)