

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on March 19, 1991, at 3:25 p.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

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

Announcements/Discussion: NONE.

HEARING ON HOUSE BILL 600

Presentation and Opening Statement by Sponsor:

Representative Jerry Driscoll told the Committee House Bill 600 changes the duration of weeks schedule in the unemployment insurance law. He explained under the present schedule in order to qualify for the maximum of 26 weeks an individual must work in every quarter of the year because the ratio is 3.25 times in the base year of the amount made in the highest quarter. House Bill 600 would change the ratio to 2.95 and an individual would not have to work in every quarter to qualify for 26 weeks. He commented the average duration of weeks worked is 14. He pointed out the Fiscal Note indicates during the worst economic times 15 weeks was the average. Representative Driscoll told the Committee people working for a quarter in seasonal work or in a plant which is shut down do not qualify for 26 weeks. In construction, logging or employment where the employer asks the employee to work 40 hours every week or asks them to work overtime, and they made \$6000 in the high quarter; in order to qualify for the 26 weeks an individual would have to make

\$19,500. A worker making \$7000 in the quarter would have to make \$22,850 in their base year and work in all four quarters to qualify. A worker who does not work on Saturday, refuses to work overtime, or takes time off during the week may receive more unemployment. He asserted "this is not fair". In the construction industry, i.e., Colstrip shutdowns, refinery shutdowns, places of employment which demand much overtime; comparing a worker who calls in sick or simply does not show up to someone who shows up everyday, the person who shows up everyday gets less unemployment. He pointed out the fiscal note indicates the effects of House Bill 600 is between zero and \$900,000. An amendment has left the zero but the \$900,000 could be \$1.1 million which is a worse-case scenario in a large recession. He told the Committee people who work for twenty years for the same employer and never take unemployment, when they get laid off and draw unemployment, receive only 26 weeks. An individual could draw unemployment benefits for 26 weeks every year by working for a small employer; working one week, drawing benefits the next. This can be done every other week. He told the Committee this bill does not fix that, it simply makes it "more just for the people who are good workers". It does not "fix the whole system, but it does fix a little bit of it".

Proponents' Testimony:

Gene Fenderson representing the Montana State Building and Construction Trades Council spoke in favor of House Bill 600. Mr. Fenderson told the Committee due to the seasonal work of his members HB 600 affects them as much as any other segment of society. He explained the system now is unfair to the worker attempting to get in as much time as possible during the construction season. The worker ends up with a high quarter, has some low quarters and then receives only 12 to 15 weeks of unemployment. House Bill 600 would remedy this situation.

Opponents' Testimony:

Mike Micone, Commissioner of the Department of Labor and Industry spoke in opposition to the fiscal note for House Bill 600. He explained, if only dealing with one piece of legislation, the potential impact of approximately \$900,000 may not seem much. With the number of bills before this legislature which will cause considerable problems to the unemployment insurance trust fund. He told the Committee House Bill 600 increases the number of benefits weeks from 8 to 12 resulting in an additional cost. The potential for \$900,000, taking into account the other bills, will not be in the best interest of the unemployment insurance trust.

Forrest H. Boles, President of the Montana Chamber of Commerce spoke in opposition to House Bill 600. He stated this legislation will have some impact on the fund. He commented there were sacrifices made by all, workers and employers in 1985. The employers of Montana have attempted to establish an equitable

and fair method of meeting their responsibilities to insure the workers, through no fault of their own, have decent unemployment insurance programs. The efforts made in 1985 are being "chipped away". The fund will be sent to the condition it was in several years ago.

Chad Smith representing the Unemployment Compensation Advisors, an association of small employers spoke in opposition to House Bill 600. Mr. Smith told the Committee HB 600 is very similar to a bill which was killed in 1989. He explained it had no merit at that time because it would increase duration for those who have a lesser attachment to the labor force. He commented the fund must be preserved for individuals who have a greater attachment to the labor force, working year round whenever possible, and to reduce the taxes upon the employers, which has the effect of cutting down job opportunities. He told the Committee the \$900,000 in the fiscal note is a significant amount of money, and should be left in the hands of business to expand and to make more jobs.

Questions From Committee Members:

Senator Devlin asked Representative Driscoll about House Bill 256 which is referenced on Page 2. Representative Driscoll told the Committee the Governor has amended it.

Senator Blaylock asked Representative Driscoll about his statement that an individual could work one week, lay off one week, etc. He asked if this were wide spread. Representative Driscoll said it was not.

Senator Blaylock asked Representative Driscoll if House Bill 600 would endanger the fund. Representative Driscoll explained there is \$90 million in the fund with approximately \$5 million "between the triggers". If the duration of weeks does not go up from 14 weeks it has no affect overall making the zero in the fiscal note correct. If there is a recession the \$900,000 is correct.

Senator Towe asked Representative Driscoll how the ratio is arrived at. Representative Driscoll explained when an individual applies for unemployment benefits their highest quarter's total dollars is divided into the total dollars in the base year.

Closing by Sponsor:

Representative Driscoll told the Committee this bill was not part of changes in 1985, it was amended in 1979. Prior to 1985 there was deficit in the fund. Every employer in the state went to 4.5% regardless of their individual ratio. In 1985 there was a change to reflect individual ratio of that employer. At present the highest rate is 6.5% and the lowest is zero. It reflected the employers history of laying off and hiring, taking a lot from the construction industry because most construction

workers work for more than one employer in a year. The unemployment insurance laws makes one subject to the tax of the individual ratio. Most construction companies are at 6.5% of the first \$13,200. All of a construction workers' wages are subject to the taxation. Since 1985 employer taxes have been cut approximately \$150 million. House Bill 600 will not raise the employer's taxes.

HEARING ON HOUSE BILL 141

Presentation and Opening Statement by Sponsor:

Representative Dan Harrington told the Committee in 1985 the Montana Legislature, following federal mandate, took away the rights of a group of people to collect unemployment compensation in the summer. He explained House Bill 141 restores this right. Individuals who made between \$4,000 and \$6,000 (support personnel in the schools) lost the right to receive unemployment compensation. At the present time there is a move to change this federal status. Legislation has been introduced in Congress in the last two terms to change the language, to give benefits to non-professional employees, and would be optional for the states. The legislation passed by the US House of Representatives failed in the US Senate. A coalition of several labor organizations (American Federation of Teachers, American Federation of State, County and Municipal Employees, National Education Association, United Food and Commercial Workers, etc.) are attempting to get this bill passed in the Congressional session. He was assured by lobbyists from these organizations this bill was a "high priority" and has a "good chance of passing". He commented during the last attempt six other states were paying unemployment to classified employees. He read from a communication from Elk Grove Unified School District in California. It verifies Elk Grove does receive unemployment benefits during the summer. The letter also stated "almost every school district in California has the same provisions". Representative Harrington told the Committee this is an issue of equity and state's rights. He explained many of these individuals seek other employment during the summer and will continue to do so even if House Bill 141 passes. If they are not rehired in the fall and if they have applied for benefits all through the summer they will get receive benefits, but they must sign up every week to qualify. If the school district gives these individuals written contracts they would still not qualify for unemployment. At the present time they are given verbal assurance of rehire. He expressed his hope the federal government would also pass such a law.

Proponents' Testimony:

Representative Bob Gervais spoke in favor of House Bill 141. He told the Committee on the reservations the school districts are the biggest employer. When unemployment is at 85% it is difficult for individuals who are laid off in the summer time.

Terry Minow representing the Montana Federation of Teachers told the Committee House Bill 141 would allow non-professional school employees, i.e., aides, janitors, and secretaries, to receive unemployment benefits during the summer months if those employees are actively seeking employment. It would also require school districts to pay classified employees during the time schools are closed due to an emergency declared by the governor. Both components of the bill are fair and extremely important to school employees. She commented Montana in the past, did allow classified school employees to receive unemployment benefits during the summer months. In the 1989 legislative session a bill similar to House Bill 141 was passed by the House Labor Committee, but failed by a one vote margin on the floor of the House. Ms. Minow told the Committee the issue remains the same, non-professional school employees, like loggers and other seasonal employees, need and deserve the ability to apply for unemployment benefits during the months they are out of work. It is extremely difficult, if not impossible, in towns such as Browning, or even Missoula, to find a job for the two or three months these employees are laid off. In order to be eligible for unemployment benefits an employee must be actively seeking work and are unemployed through no fault of their own. Benefits can only be received after a one week waiting period, and amount to approximately one-half of the employees average salary. In many of these cases this is very little money. Many employees are single parents with limited resources. Wages and benefits vary widely with some non-professional school employees received little more than minimum wage. She explained during the last session schools were closed due to an emergency declared by the governor (extreme weather conditions). Some schools chose not to pay their non-professional employees for the days school was closed. The schools received the same amount of revenue, as if they had been open, and teachers continued to be paid their full salaries. For the classified school employees harsh weather resulted in a two-day loss of pay. Ms. Minow told the Committee the Montana Federation of Teachers and the members throughout Montana urge a do pass recommendation.

Linda Gordon, a bus monitor with the Butte School District for 14 years. She told the Committee the denial of unemployment benefits to non-certified school district employees has been a hardship for many families. She explained she is a single parent with the same amount of bills all year as during the months she is working. She told the Committee she believes non-professional school employees are being discriminated against. She explained there have been questions to both the state and federal levels regarding the "reasonable assurance of a job" language. "You might have a job next year" has been determined to be "reasonable assurance". It is not pointed out if the mill levy fails, or if there is a budget cut the employee will not have a job. She told the Committee there is no reasonable assurance. The federal law protects some federal employees, such as monitor or bus driver for Head Start. These people are entitled to unemployment benefits. Ms. Gordon stated the House attempted to amend House

Bill 141 by stated if there were a letter of intent it would qualify the workers to receive or not receive unemployment. She commented a letter of intent by the school district in Butte "doesn't mean anything". All the school district wants to know is how many individuals will be returning to work. It does not guarantee the job.

Bob Heiser of the United Food and Commercial Workers International Union told the Committee House Bill 141 "is not giving something to people they don't rightfully have coming". He explained the employees must meet all criteria to qualify. Most are not highly paid. It is difficult to seek work for two and one-half month. Most employers want the assurance the applicant will be a long-term employee. He commented it is unfair when a segment of population is not given the opportunity to qualify for unemployment insurance. Individuals doing the same type of work qualify, but those working for school district do not.

Lucina Durkin, a school bus monitor for School District #1 in Butte told the Committee non-professional school employees have dedicated a great majority of their life in taking care of children. They are school bus drivers, school bus monitors, school monitors, and playground monitors. They work for nine months a year, many having worked at the same job for 20 years. She commented it is difficult to "find a job period", much less to find one for three months.

Phil Campbell representing the Montana Education Association spoke in support of House Bill 141. He explained it is unfair that individuals working at schools, and the school closes in the summer, are not entitled to unemployment benefits. He commented these people will not qualify if they are not seeking unemployment. It is unfair to single out a particular group because of where they work.

Don Judge of the Montana State AFL-CIO spoke from prepared testimony in support of House Bill 141 (Exhibit #1).

Opponents' Testimony:

Chuck Hunter of the Montana Department of Labor and Industry told the Committee the department has no opposition to the intent of House Bill 141. He explained Montana would be out of conformity with mandated federal provisions requiring benefits be denied to school employees in these situations who do not have reasonable assurance of returning to work. The change in Montana law in 1983 was made because the federal law was changed to mandate to each and every state in the country the denial of unemployment benefits to non-professional employees in schools. Mr. Hunter presented a letter from the US Department of Labor which pointed out Montana would be out of compliance with federal law (Exhibit #2). If Montana law becomes out of compliance there are "two hammers" the federal government uses.

Administrative grants would be denied. Montana would jeopardize the only money received to administer unemployment system. Credits given to employers on federal tax would be denied. Each employer pays a 6.2% federal unemployment tax. If the employer is paying state taxes on time, and if the state is in conformity with federal law, the federal government offers a 5.4% credit to each employer. If Montana is out of compliance with federal law taxes can be raised on every employer in Montana. With the offset credit an employer pays \$56 per employee on federal unemployment tax. If the offset credit is lost the rate would go to \$434 per employee. If the increase were multiplied over a years time there would be an increase of \$54 million to employers in Montana. Mr. Hunter told the Committee there would be questions as to how soon the federal government would use the "hammer" if House Bill 141 were to become law. He explained there is not a easily specified answer. Most states have annual legislative sessions. If Montana cannot remedy the situation for two years, Mr. Hunter told the Committee he is "not sure what happens". He stressed there is a very issue with the compliance problem. He offered amendments for consideration. The department sees two possibilities which would allow the intent of the legislation to pass and to deal with the conformity issue: 1) change the effective date to July 1, 1993; 2) waiting for bills to pass in Congress which address the issue, i.e., HR 516 (Matsui, California).

Chad Smith representing Unemployment Compensation Advisors asked the Committee if Montana will willing violate the federal law "just because we think we can get by with it". The provisions in House Bill 141 has been in the Montana law in the past. He explained non-professional employees, who take jobs knowing there will be no work during a particular period of time, is no different than the professional employee in the same position. He commented House Bill 141 would increase costs. The fiscal note indicates an annual increase of \$1.7 million. He explained this will affect private business as well as schools. He pointed out if an individual is denied benefits, and was not offered an opportunity for such service for the educational institution for the second of such academic years or terms, such individuals will be entitled to receive retroactive payment. He commented even without a contractual agreement to pay the individual, the individual will not lose the benefits. If there is a reasonable assurance they will receive a job at the end of the year, and they rely upon that, and do not receive the job, they are entitled to benefits.

LeRoy Schramm, Legal Counsel for the University System told the Committee House Bill 141 was not directed at the University System. He explained there are between 150 and 200 employees who would become eligible for benefits, such as food service workers and some in residence halls. With 150 people earning \$9/hour drawing 12 weeks benefits it would amount to \$300,000 per year. He told the Committee school districts have a retirement fund. (Exhibit #3) This fund not only funds retirement but funds

workers' compensation and unemployment compensation. Any increase in rates which school districts experience is a direct pass through to the mandatory which makes up deficiencies in the retirement fund. School districts' operating budgets are not affected. This is not the case with the university system. He explained the individuals being addressed with House Bill 141 are at the bottom of the pay spectrum. He pointed out that is not always the case. There are food service supervisors who will be laid off, with earnings of \$25,000 and \$30,000 per year, will become eligible. Researchers will remain ineligible, while their earnings are \$15,000 to \$16,000 per year. He commented the effect falls unevenly. Mr. Schramm told the Committee he felt the worst situation is when people believe they will be returning to work in the fall and do not. He explained he would support some means of addressing that problem. These individuals are eligible now under the letter of the law. He pointed out, who would file for benefits, believing they will be rehired, knowing they are not eligible in the summer, on the off-chance they will not be returning to work in the fall. He suggested a change in law which would say if an individual is not going back to work in the fall, they should be allowed to draw retroactive benefits in the summer. (Mr. Schramm did not sign the Visitor's Register but his remarks are entered here.)

Questions From Committee Members:

Senator Blaylock asked Representative Harrington about Mr. Schramm's suggestion. Representative Harrington explained these individuals are able to do this now, but they must file every week.

Senator Keating asked Chuck Hunter what benefits might be for these people. Mr. Hunter explained they would draw on the basis of their wage. If they were assumed to be wage-earners at the lower end of the spectrum they would receive the average weekly benefit amount or below. The average weekly benefit is currently in the area of \$150 per week.

Senator Keating asked Representative Harrington why the school district could not hire these individuals for the entire year, and stretch out their salary as they do teachers, or give "standby pay". Representative Harrington explained in most school district the teachers have a choice in the number of checks they wish to receive. He explained the standby pay may work in some situations. Most of these employees make between \$4 and \$6 per hour and if this were extended out it would not be worth their while. He stated he did not understand the comment by Mr. Schramm about the \$25,000 to \$30,000.

Senator Keating pointed out they would be receiving \$150 per week in unemployment benefits. He asked if they make more than that. Representative Harrington told the Committee he was not sure they made much more than that.

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Senator Keating asked if the school districts premiums will go up considerably if these individuals begin to draw benefits. Representative Harrington told the Committee Representative Wanzonried (former Commissioner of the Department of Labor and Industry) felt there would be "very little problem, at least for two years". He explained some people do get jobs and not all will be on unemployment benefits.

Senator Keating asked Chuck Hunter if all of the school districts pay unemployment insurance premiums on their payroll, specifically the Indian schools. He asked if these were subject to state law or are they exempt due to federal status. Mr. Hunter told the Committee the jurisdictional question on reservations is very difficult to answer. The federal government claims they are within the jurisdiction and should be paying taxes; the state attorney general has not agreed with that in every instance. He explained, generally speaking, every school district in the state do not necessarily pay a tax rate. They can elect reimbursable status and can be paid back dollar for dollar the benefit charges accrued to their account, rather than overall rate. He corrected his previous statement about current average weekly benefit amount. It is approximately \$131 per week.

Senator Keating asked if the Browning school district pays unemployment insurance premiums. Mr. Hunter explained he did not have the information but could acquire it for the Committee.

Senator Towe asked Mr. Hunter if there has been any states which have lost monies by passing laws such as House Bill 141. Mr. Hunter told the Committee there are states which have been taken to conformity and have lost federal tax credits, and employers have paid more. He explained he is not certain what the specific issues have been or whether these were non-professional school employee issues.

Senator Towe asked Mr. Hunter how much lead time there would be if it were the case. Mr. Hunter told the Committee he did not know. He explained there is a multi-step process in the compliance process. States are given some amount of time to correct the laws. He is not certain if the full two years would be extended.

Senator Towe pointed out the letter from the US Department of Labor seemed fairly clear House Bill 141 would violate at least two sections of the federal unemployment tax act. He asked Don Judge to comment. Mr. Judge told the Committee it was his understanding no state has been denied employer credits on the basis of this specific law.

Senator Towe asked if other states have actually "defied" the federal government. Mr. Judge suggested Senator Towe ask the department or he will attempt to find the information.

Senator Towe asked if Mr. Judge believed there is some way House Bill 141 is not direct conflict with federal law. Mr. Judge told the Committee he believes it would be in direct conflict with federal law but he "does not believe the sanction would be imposed that fast".

Senator Towe asked Representative Harrington about the holiday and vacation recess pay. He asked if an hourly employee is off for two week during spring vacation would they receive unemployment. Representative Harrington explained under current law there is a one week waiting period. If off for two weeks they would receive one week.

Senator Keating asked Mr. Hunter if there are requirements for drawing unemployment in which the applicant must make themselves available for work. Mr. Hunter explained individuals are required to be actively searching for work during unemployment, but the work has to be suitable and of a nature the claimant is able to perform in his customary occupation. The department does, after a number of week of unemployment, expand what is suitable over time. In the logging industry, many people who are sawyers are not working during those months in which they are off and do draw benefits.

Closing by Sponsor:

Representative Harrington told the Committee many university units have contracted services. These people do work on a part-time basis. They are entitled now to receive unemployment compensation. There are bus drivers on contracted services. They are also eligible for unemployment compensation. He commented many area are covered. He told the Committee the many of the food services for the university is covered. He stated teachers make much more than the individuals in support services. But if a teacher is notified they will not be rehired they are eligible to collect unemployment. He stated this is an inequity. He told the Committee possibly a sunset could be put on House Bill 141 to give these people a period of time until the next session. He did not feel any other amendments would help these workers.

HEARING ON HOUSE BILL 726

Presentation and Opening Statement by Sponsor:

Representative Bergsagel told the Committee House Bill 726 is a request of the Unemployment Insurance Division of the Montana Department of Labor and Industry and was amended by the House Labor Committee. He explained HB 726 would clarify updates and improves the general provisions of the unemployment insurance program.

Proponents' Testimony:

Chuck Hunter of the Department of Labor and Industry explained House Bill 726 was considered a "customer service bill" by the department. He told the Committee through consideration of ideas from employers and claimants, this legislation was conceived to provide better service. He explained House Bill 726 would bring many definitions found throughout the MCA into one place. Procedures for filing liens have been defined. Obsolete terms have been deleted. The date for determining tax rates have been changed in order to provide employers with tax rates earlier. The penalties for obtaining benefits fraudulently have been changed to eliminate the retroactive imposition of penalty, and to eliminate complex calculations.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Aklestad asked why the language on Page 1, Line 25 and Page 2, Lines 1 and Lines 2 stricken.

Senator Towe explained this was because Section 33 was stricken.

Senator Aklestad asked Mr. Hunter if agriculture employment would fall under this act. Mr. Hunter stated that was correct. He explained the definition was not changing, it is being moved verbatim from the section dealing with agriculture employment.

Senator Towe asked Mr. Hunter where the lien provisions were. Mr. Hunter told the Committee in the 1989 session a change was proposed in which the department could file liens on personal property, as well as real property. During the testimony individuals representing title companies presented opposition. They asked for provision to identify the piece of property being attached. They suggested filing a list with the Secretary of State. Over the past two years the department has attempted to work with the legislation. He explained the Secretary of State has no ability, nor willingness to accept those documents from the department.

Closing by Sponsor:

Representative Bergsagel closed on House Bill 726.

EXECUTIVE ACTION ON HOUSE BILL 726Motion:

Senator Pipinich moved House Bill 726 BE CONCURRED IN.

Recommendation and Vote:

Motion to BE CONCURRED IN CARRIED UNANIMOUSLY. Senator Blaylock will carry House Bill 726 to the Senate floor.

HEARING ON HOUSE BILL 729Presentation and Opening Statement by Sponsor:

Representative Angela Russell told the Committee House Bill 729 is an act to delete language requiring an employees disqualification from receiving unemployment benefits for good cause must be attributable to employment. She explained prior to the 1985 legislative session the Montana unemployment insurance tax fund was experiencing a large deficit and was forced to borrow from the federal in order to meet obligations to laid off workers. Montana was not alone in the situation. Several states experienced deficits. The 1985 Legislature responded to the problem by enacting the "so called compromise" House Bill 284. Since 1985 the Montana unemployment insurance trust fund has been able to pay off the federal debt and employers have experienced at least four reductions in the unemployment insurance tax rates, dropping from Schedule 10 to Schedule 1. She explained what happened, happened since 1985, is any return of benefits to those unemployed workers, (part of the "compromise" to save the fund). House Bill 729 is intended to restore one portion of those benefits to workers and would grant the DOLI the authority to review voluntary termination of workers. If workers have chose "for good cause", to quit their jobs which is not attributable to their employment should be found eligible to receive unemployment benefits. If a worker quits the job due to a job-related factor, such as hazardous working conditions, exposure to dangerous chemicals, a significant change in work hours, job location or wages and benefits, the DOLI can find them eligible for unemployment insurance benefits. If a worker quit the job due to a non-job related factor, such as to follow a spouse to another location, personal health, sickness or death of a relative, or to take care of a dependent child they are automatically disqualified from receiving benefits. She told the Committee HB 729 would grant the department the discretion to determine if these were justifiable reasons for voluntarily quitting a job with each case individually reviewed and a determination made on the circumstances. She explained in many cases the workers being denied benefits are women.

Proponents' Testimony:

Representative Bob Gervais spoke in support of House Bill 729.

Don Judge of the Montana State AFL-CIO spoke in support of House Bill 729 from prepared testimony (Exhibit #4).

Gene Fenderson, representing the Montana State Building and

Construction Trades council spoke in favor of House Bill 729. Mr. Fenderson told the Committee House Bill 729 affects his membership a great deal. He explained spouses following construction workers across the state, as projects move, the working spouse is denied benefits. He commented this was not fair. The spouse seeks employment in each area, and should not be denied benefits. He told the Committee of an individual who has been a "flag lady" for eighteen years. She had varicose veins in her legs and could no longer perform the job. She quit, applied for workers' compensation. Workers' compensation stated it could not be determined her condition was from the type of work she was doing. She applied for unemployment insurance compensation. Unemployment stated she could not receive benefits because she quit "not for good cause".

Opponents' Testimony:

Mike Micone, Commissioner of the Department of Labor and Industry spoke in opposition to House Bill 729. He asked to comment on a statement by Don Judge. He told the Committee he found it "ironic", Mr. Judge appeared before the Committee when the department was looking for discretion to apply penalties to allow them (the department) to sell wage claim cases which would get benefits to claimants must faster. Mr. Judge opposed that. He stated it is "interesting", now he (Mr. Judge) wishes to give the department discretion so it "can act out of the goodness of their heart" in ruling on claims for good cause. The department will not have that discretion if House Bill 729 passes. House Bill 729 becomes a philosophical issue. The purpose of unemployment insurance is to act as a safety net where those individuals who have lost employment through no fault of their own. The department is sympathetic to the "real life situations" which occur, and could qualify as good cause. The funding sources for the provision of such benefits should not be tied to the employers. The "good cause" aspect was part of the 1985 "compromise" legislation. He commented it had been stated employers received tax breaks because of the schedule dropping. In the compromise ten schedules were envisioned. Because of the balance in the trust, the rates would vary within those various schedules. He told the Committee he felt it has implied it was never intended for Schedule 1 to be attained. This is not the case. The employers reaching Schedule 1 is due to the economy. If the legislature does not make some changes in regards to transfer of administrative tax funds, Montana will go to Schedule 2 in January 1992. He commented to change the law "this drastically is really a break of the compromise reached in 1985". He pointed to the fiscal note. He explained the department has relied on historic data and in FY 90 there were 3,580 claims which were disqualified. Of those approximately 700 (20%) were requalified. The department is projecting, if HB 729 passes, the department will receive an additional 5,000 claims; 4,000 would be qualified to receive unemployment benefits in 1992, and 3,900 in 1993. When the cost of those numbers are applied, the cost to the trust will be \$1.4 million each year.

Chad Smith representing Unemployment Insurance Compensation Advisors, a representative of small employers spoke in opposition to House Bill 729. He told the Committee before the Committee today are three bills, each costing approximately \$1 million. He commented this is a significant cost. It is important the compromise reached is 1985 is not undone. Funds have been accumulated in the trust fund, but this is not the optimum scheduled amount for the unemployment insurance compensation fund in Montana. The recommendation is estimated at \$150 million. He pointed out going back would penalize business, operations in the state, and employees. Unemployment would be increased. He commented unemployment insurance benefits is not a welfare program for any type of good cause, or financial problem of the individual. The good cause is where the job has failed the employee, where the unemployment is attributable to the employment. ♣

Forrest H. Boles, President of the Montana Chamber of Commerce spoke in opposition to House Bill 729 from prepared testimony (Exhibit #5 and Exhibit #6).

Questions From Committee Members:

NONE.

Closing by Sponsor:

Representative Russell closed on House Bill 729. She told the Committee employer rates are going down. There are extenuating circumstances which should be considered under good cause. She commented with passage of HB 729 the department would have that authority to determine good cause requests for unemployment insurance benefits. She stated it was never envisioned in the compromise that good cause benefits would be given up forever. She told the Committee fairness is the issue. It is not a welfare program. Employees have worked hard and have earned these benefits. Unemployment insurance has become progressively restrictive over the last twelve years. Where seventy percent of unemployed workers received benefits, now only 30% receive benefits. She stated a balance should be created.

EXECUTIVE ACTION ON HOUSE BILL 729

Motion:

Senator Keating moved House Bill 729 BE NOT CONCURRED IN.

Senator Pipinich offered a substitute motion House Bill 729 BE CONCURRED IN.

Discussion:

Senator Keating told the Committee it has taken a long time to get the fund healthy. He explained the employer has been able to reduce overhead somewhat and is able to stay in business. The job is preserved for worker. He stated the fund should be kept healthy to protect those workers who are working, to ensure the benefits are available.

Senator Lynch spoke against Senator Keating's motion. He stated the House of Representatives have chosen these policies be reinstated.

Senator Towe told the Committee "it is grossly unfair" for someone (often a woman) because of no fault of their own are unable to work, and when they return to offer themselves for work the job is unavailable and they are ineligible for unemployment. He stated the problem should be addressed and with \$90 million in the trust fund it can be afforded. Benefits have been withdrawn and reinstated to both the employer and employee.

Senator Lynch asked how the discretion of the Commissioner of Labor work.

Senator Towe explained this is implicit in his administration of the unemployment compensation laws he administers.

Senator Lynch stated if the Commissioner feels it is not good cause he denies it; if he feels it is good cause he could determine benefits.

Senator Towe commented by precedent, in the past following the spouse has been considered good cause and not without good cause. The Commissioner is not bound to follow this.

Senator Keating told the Committee by legislative intent the good cause attributable to employment is being taken away. This is saying it can be good cause for anything. He commented this is a serious change. If someone is working around something they are allergic to, it is attributable to the employment and good cause of quitting the job. This individual can receive unemployment while attempting to find employment in a better environment. Senator Keating stated to take away the "attributable to employment" it is opened "wide up" to many other good causes. The department has looked to the experience in the past and have determined this will cost \$1.4 million. It increases the benefits considerably. He told the Committee the employer experience rating will go up, and the potential for higher wages to the employees who stay on the job is jeopardized.

Senator Devlin commented with House Bill 729 if an individual did not like his job he could file a claim and qualify.

Senator Towe explained this is not the case. The individual

would have to come back and, if it were good cause from the beginning, would qualify.

Senator Blaylock told the Committee the fund was \$10 million in "the hole" and "in danger of having to start paying the federal government". He commented he does "not want having this fund going back in the hole". He stated there is \$90 million, but if it were started again, how fast would it go down. He asked if this would put back all the reasons.

Senator Aklestad pointed out all other bills before the Committee will "take care of all the other provisions". He stated the fund is in "fairly good shape right now, and it got there for all reasons" the Committee has heard. He reemphasized the employers are not asking to have their rates lowered, which were raised considerably in 1985. The fund may be in good shape because the rates were raised too much at that time. He stated the main reason for unemployment insurance benefits is for "where the job leaves the employee, not where the employee leaves the job". He told the Committee House Bill 729 is "blatantly in that situation". He pointed out this is only piece of legislation. He stated "we are not nickeling and diming this thing to death, we're million dollaring it to death". He asked for reason within the Committee to ensure the fund is not in the situation it was in before. He commented these dollars (in the fund) go to the employees out of work.

Senator Towe pointed out the temporary surtax imposed on the employer sunsetted in 1987 and the sponsor told the Committee there have been four reductions in the employer's tax. He told the Committee this is justification to bring one consideration for the employees.

Senator Blaylock asked what the "one thing" is being changed in order for workers to draw unemployment benefits.

Senator Towe explained there is eligibility when the department determines good cause, whether attributed to employment or not. If an individual is sick, or has to take care of a sick child, or a sick spouse, it can be determined as good cause even though not attributable to employment. If the Commissioner makes that determination they would be eligible for unemployment.

Senator Lynch stated if, even under the conditions Senator Towe mentioned, the worker must be available for work.

Recommendation and Vote:

Roll Call Vote on Keating motion FAILED with four (4) YES (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe), five (5) NO (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe).

Roll Call Vote on Pipinich motion CARRIED with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe), four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe).

Senator Doherty will carry House Bill 729 to the floor of the Senate.

EXECUTIVE ACTION ON HOUSE BILL 465

Motion:

Senator Keating moved to recede from previous amendments to House Bill 465. MOTION CARRIED UNANIMOUSLY.

Senator Pipinich moved new amendments to House Bill 465. MOTION CARRIED UNANIMOUSLY.

Senator Pipinich moved House Bill 465 BE CONCURRED IN as amended.

Recommendation and Vote:

Pipinich motion to BE CONCURRED IN as amended CARRIED UNANIMOUSLY. Senator Nathe will carry House Bill 465 to the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 204

Motion:

Senator Devlin moved to TABLE House Bill 204.

Discussion:

Senator Aklestad asked to take action on House Bill 204 as there are individuals at this meeting who wish to speak to the bill.

Senator Pipinich commented Montana Constitution has an eight-hour work day. Any hours over eight is overtime. House Bill 204 is extending this to four ten-hour days.

Senator Towe asked Ron Ommell, President of Ommell Construction in Billings to comment. Mr. Ommell stated House Bill 204 "picks on contractors only". He asked about agriculture. He explained the majority of the work in his company is under the Davis-Bacon prevailing wage which allows a 40-hour work week. No overtime is paid to an employee working 40 hours, in any combination. He told the Committee he has a union

contract with the Laborer's and the Operating Engineers. He commented approximately \$29,000 of overtime did not have to be paid due to the 40-hour work week. (Mr. Ommell did not sign the Visitor's Register but his remarks are entered here.)

Senator Towe asked Mr. Ommell why it is not unfair to the worker (after ten hours) to receive overtime. Mr. Ommell stated there were traffic control people, guard rail, signing, etc. He explained the 40-hour work week is with the traffic control. He told the Committee they work with prime contractors and have no say in the hours worked in the day. He commented a twelve hour work day is fairly common. He stated very few people in the business work less than ten hours a day.

Senator Pipinich asked Mr. Ommell how many days a week his employees work. Mr. Ommell stated there are operations running 24 hours a day, seven days a week from May until September.

Senator Pipinich asked if the workers were staggered, i.e. a twelve and twelve shift. Mr. Ommell explained he attempts to do that. He stated there have been no complaints from any employee (in excess of 350 employees last year) about hours in the eight years he has been in business.

Senator Blaylock asked Mr. Ommell if the employees refuse to work a twelve hour day would they be let go. Mr. Ommell told the Committee employees are hired from the union hall. The union asks how many hours, or the shifts and how many days a week. He stated he has not had any negative comments on the length of hours.

Senator Devlin asked about the effective date of House Bill 204. Mr. Ommell explained under normal circumstances highway lettings are 11 out of 12 months. Work will be taken in June or July and started, depending on weather, in the fall or the spring.

Senator Towe pointed out if House Bill 204 passed it could be considered in Mr. Ommell's bids after the October effective date. Mr. Ommell stated bidding overtime in his business is not easy.

Senator Keating asked Brad Talcott of James Talcott Construction from Great Falls to comment. (Mr. Talcott did not sign the Visitor's Register but his remarks are entered here.) Mr. Talcott pointed out a considerable amount of time was spent on determining whether to pay unemployment benefits to spouses who had to leave their employment to follow their spouse in the construction industry. He asked for flexibility to work longer hours, so spouses would not have to quit, and the worker can go back to be with the family. He stated if the employee wishes to work those hours, this bill is not allowing them to do so. HB 204 reduces all the flexibility of choice of the employee or the employer.

Senator Towe asked Dewey Skelton, owner of SK Construction in Helena to comment. (Mr. Skelton did not sign the Visitor's Register but his remarks are entered here.) Mr. Skelton told the Committee union contractors have a bargaining agreement with the local unions. He stated he is a non-union contractor, but was a union contractor in the past. He commented he did not need labor and industry to dictate the hours his company works. He explained he employs 100 people and sometimes work two shifts in a week, employing 200 people. He stated HB 204 is putting people out of work. He told the Committee he has the same workers since 1978, at the time he was union.

Senator Towe asked Mr. Skelton why shouldn't employees working beyond 10 hours a day get overtime. Mr. Skelton stated the unions have bargaining agreements with their union contractors. There is no need for legislation which dictates to him how many he works.

Senator Keating asked Mr. Skelton how many hours on a shift do his employee work. Mr. Skelton told the Committee they work "four tens".

Senator Keating asked Mr. Skelton if he were giving the employees the opportunity to work double time; in a weeks time they could earn two weeks wages, and then take time off. Mr. Skelton explained that is not correct. He uses two different shifts of workers each working 40 hours. If there are no double shifts, the worker may work 45 hours and receive 5 hours overtime.

Senator Keating asked Mr. Skelton if all his jobs were 10 hours a day, four days a week. Mr. Skelton explained he attempts to run that type of schedule, but there are times when a twelve hour is necessary.

Senator Keating asked who decides whether it is a five day week or a four day week when the work is in irregular schedules. He stated House Bill 204 allows no flexibility in this area.

Senator Towe asked Darrell Holzer of the Montana State AFL-CIO to comment. Mr. Holzer stated this is not a union-non-union issue. He explained this is worker protection. There is a high rate of injury in the construction trades industry. Working beyond 10 hours the accident rates rise and the productivity declines. Workers have agreed to put in the overtime on an as-needed basis by working four-tens for straight time with anything over 40 hours as justifiable overtime.

Senator Towe asked Bob Heiser of the United Food and Commercial Workers to respond. Mr. Heiser told the Committee Gene Fenderson asked him to speak on House Bill 204. He stated this legislation gives the contractor the option of working the 8-hour day and paying overtime after eight hours or working the 10-hour day (four-tens). They are not prohibited from the 10-

hour work day. If it is scheduled at four-tens there will be no overtime until after 10 hours.

Senator Aklestad stated there are conditions beyond the contractors control such as weather.

Senator Aklestad asked Darrell Holzer if he assumed some employees will not get the extra time and others will be hired, or will the employees stay on. Mr. Holzer stated the only way additional employment could be created would be if the employment did not comply with the work schedule causing a vacancy.

Senator Aklestad asked Mr. Holzer if under normal circumstances would the individual work the extra hours if the job were there. Mr. Holzer stated that is correct but once the 40-hours is reached the employee should be fairly compensated.

Senator Aklestad asked Mr. Holzer if safety or overtime was the main concern. Mr. Holzer told the Committee the trade labor movement has always taken a stand for workers safety and health.

Senator Doherty pointed out there is agreement that anything over 40 hours a week is overtime. He stated the question is "how do you get there". He asked Brad Talcott when he paid overtime. Mr. Talcott told the Committee it was after 40 hours.

Senator Doherty asked if House Bill 204 passed would Montana be in conflict with federal law. He asked if there were a preemption.

Senator Lynch asked what good is being done the employee. If rained out two days the employee wants to get in the 40 hours even in it is with three days. He stated an employee should have the opportunity to work the 40 hour week, and if willing, to work "three-twelves".

Senator Towe asked Bob Heiser to comment. Mr. Heiser stated if a worker is scheduled (Monday through Thursday) for four-tens, and it rains on Thursday; Friday would become the fourth day.

Senator Towe stated if there is work for three twelve-hour days plus one-half on another the worker should have the option. Mr. Heiser explained currently there are rainout provisions. If a day is lost on account of weather, the employer is not penalized, they simply pick up the next working day.

Senator Towe asked Lloyd Lockram (representing the Montana Contractors Association Trust) to respond. (Mr. Lockram did not sign the Visitor's Register but his remarks are entered here.) He told the Committee there are no trust funds expended in his appearance. He explained the only way to preclude is two-sixes (two shifts). More people are working but they will not receive the hours. He stated Mr. Ommell is a union contractor who negotiated with Jerry Driscoll (Laborers) which states anything over 40 hours in time and a half. House Bill 204 circumvents and

takes away from labor agreements. He stated these belong in labor agreements not in statute.

Senator Towe told the Committee in Section 218 of the Fair Labor Standards Act it states "a state may enact a minimum wage that is higher than the fed's and work week that is lower than the maximum work week of the feds". He stated as long as there is a higher minimum wage, lower work week House Bill 204 does not "run afoul" of federal preemption.

Senator Keating commented there is no need for House Bill 204. He stated there are bargaining units for unions with contracts, there is an opportunity and flexibility for those who wish to work it out between employer and employee. House Bill 204 will interfere with bargaining units.

Senator Blaylock asked why a law should be passed and not be left to a negotiated agreement. Mr. Holzer told the Committee "trust has been violated so many times; and the fewer things that you leave to chance..".

Senator Towe stated occasionally there will be an individual who will not get the full time they desire; more often people will be asked to work longer hours than they wish to work. They have no recourse, and will not receive overtime.

Senator Blaylock asked Brad Talcott if he asks his employees get a voice. Mr. Talcott told the Committee his employees do have some say. He cited an example of an employee wishing to leave for the weekend. The employee asked to work a few more hours to have 40 hours in by the end of the week. He stated he could not disagree with that. It is important to "keep the employees happy". The worker made the choice to work longer hours on Tuesday in order to be with the family on the weekend.

Senator Aklestad stated this should be under the bargaining contract and the flexibility is being taken away from contractors. He told the Committee all Senators have gotten letters from contractors opposing House Bill 204.

Recommendation and Vote:

The Devlin motion to TABLE CARRIED with Senator Lynch, Senator Pipinich, and Senator Towe voting NO.

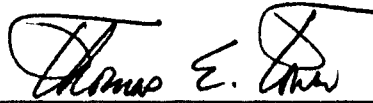
ADJOURNMENT

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

March 19, 1991

Page 22 of 22

Adjournment At: 6:10 p.m.



SENATOR THOMAS E. TOWE, Vice Chairman



LINDA CASEY, Secretary

TET/llc

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/19/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 465 (third reading copy -- blue), respectfully report that House Bill No. 465 be amended and as so amended be concurred in:

1. Page 14, line 4.

Following: "may"

Insert: ", in accordance with rules adopted by the department,"

Signed: _____


Thomas E. Towe, Vice Chairman

144 3-20-91
And. Coord.

SL 3-20 12:30
Sec. of Senate

601119SC.SJI

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 726 (third reading copy -- blue), respectfully report that House Bill No. 726 be concurred in.

Signed: Thomas E. Towe
Thomas E. Towe, Vice Chairman

APR 3 20-91
And. Coord.

SPB 2 20-91
Sec. of Senate

11:35

601123SC.Sj1

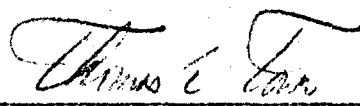
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 729 (third reading copy -- blue), respectfully report that House Bill No. 729 be concurred in.

Signed: _____


Thomas E. Towe, Vice Chairman

1041 3-20-91
And. Coord.

SB 3-20-91 12:25
Sec. of Senate

601127SC.Sj1



DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 3/19/91

BILL NO. HB 141

TESTIMONY OF DON JUDGE ON HOUSE BILL 141 BEFORE THE SENATE LABOR COMMITTEE,
MARCH 19, 1991

~~Madam~~ Chair and members of the Committee, for the record, I am Don Judge representing the Montana State AFL-CIO and we are here today to support House Bill 141 which would allow payment of unemployment insurance benefits or wages and benefits to non-instructional educational system employees during times of emergency closure.

In 1985, the state of Montana was forced by the federal government to exclude these workers from unemployment benefits. The 1989 legislature considered, but did not pass a bill that would have allowed payment of unemployment insurance benefits to nonprofessional school district employees, and other non-teaching staff of educational institutions. This missed opportunity can now be corrected and these workers can be reinstated under our Act's protection.

Unemployment compensation insurance was created to provide a buffer for main street merchants during an economic slowdown by helping to sustain customer buying power. It was also created to help workers temporarily unemployed by providing a partial wage replacement until a job could be found. This useful tool assists the economy in several ways during economic lows.

Such workers include, but are not limited to, cooks, custodians, bus drivers, teachers aids, and clerical workers. These workers face unemployment during holidays, vacations, between academic terms, and during emergency school closures. HB 141 would provide these vital workers with unemployment benefits, or wages and benefits during such times.

Many of these workers serve as the sole financial support of a household. The expected times of unemployment, such as Christmas and summer vacation, are long enough to cause major financial straights, but are not long enough to seek other employment, due to the fact that few employers are willing to hire workers who are only available for a short period of time. They face a choice of trying to make it through a slow time without pay, or seeking other full time employment. The latter choice makes for loss of experienced personal in our schools and other educational institutions.

Today, these workers continue to face temporary unemployment and unexpected loss of pay without a means to combat the related difficulties. House Bill 141 gives these workers the financial security that is needed against expected seasonal employment and Montana's unpredictable weather. It is the extra effort that needs to be made for our educational employees.

For these reasons, we urge your favorable consideration of House Bill 141.

U.S. Department of Labor

Employment and Training Administration
1961 Stout Street
Denver, Colorado 80294



January 29, 1991

8-TGU-DS

Mario Micone, Commissioner
Department of Labor and Industry
P.O. Box 1728
Helena, MT 59624

Attention: Bob Jensen, UI Director

Dear Mike:


Subject: Montana - Repeal of Provisions Implementing the Between and
Within Terms Denial for Nonprofessional Services

Montana House Bill (HB) 141 would appeal subsection (2) of Section 39-51-2108 of the Montana law and amend subsections (3) and (4).

Repeal of subsection (2) and the amendments to subsections (3) and (4) would create a conflict with Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) which requires the application of the so-called between and within terms denial. Specifically, the repeal of Section 39-51-2108(2) would create a conflict with Section 3304(a)(6)(A)(ii), FUTA, which requires States to deny benefits between academic terms based on services performed in a "nonprofessional" capacity for an educational institution. The proposed amendment to Section 39-51-2108(3) would create a conflict with Section 3304(a)(6)(A)(iii), FUTA, which requires the denial of benefits within academic periods based on services performed in a nonprofessional capacity for an educational institution. Finally, the proposed amendment to Section 39-51-2108(4) would create a conflict with Section 3304(a)(6)(A)(iv), FUTA, which requires the denial of benefits between and within terms to certain nonprofessional services performed for educational services agencies. UIPL 4-83 contains an explanation of the Federal law requirements relating to nonprofessional employees.

Please be advised that the amendments made by HB 141 would likely mean that the Montana law would no longer satisfy Federal law requirements for certification with respect to employer tax credits and for payment of granted funds. Therefore, if certification is withheld, all employers who are subject to the Federal tax imposed by Section 3301, FUTA, would lose all tax credit otherwise allowable, and the State could lose administrative grants for its unemployment insurance program.

Sincerely,


LUIS SEPULVEDA
Regional Administrator

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 3/19/91
BILL NO. HB141

a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements shall be prorated to each county in which such district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

20-9-501. (Effective July 1, 1990) Retirement fund. (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-801. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any system referred to in subsection (1) shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

- (a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:
 - (i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;
 - (ii) anticipated guaranteed tax base aid in support of retirement;
 - (iii) net proceeds taxes and local government severance taxes on any other oil and gas production occurring after December 31, 1988;
 - (iv) coal gross proceeds taxes under 15-23-703; and
 - (v) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the

end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

History: En. 75-7204 by Sec. 343, Ch. 5, L. 1971; amd. Sec. 1, Ch. 281, L. 1973; amd. Sec. 1, Ch. 202, L. 1975; amd. Sec. 1, Ch. 121, L. 1977; R.C.M. 1947, 75-7204; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 481, L. 1979; amd. Sec. 5, Ch. 699, L. 1983; amd. Sec. 16, Ch. 695, L. 1985; amd. Sec. 19, Ch. 611, L. 1987; amd. Sec. 4, Ch. 635, L. 1987; amd. Sec. 23, Ch. 655, L. 1987; amd. Secs. 43, 89, Ch. 11, Sp. L. June 1989.

Compiler's Comments

1989 Special Session Amendments: Section 43, Ch. 11, deleted former fourth sentence of (1) that read: "The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204"; at end of first sentence of (2) deleted "and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve"; inserted (3)(a)(i) relating to guaranteed tax base aid; at end of (3)(a)(iii), relating to net proceeds taxes, deleted "for interim production and new production, as defined in 15-23-601"; deleted former (4)(b) that read: "(b) reduce the total retirement

fund levy requirements of elementary school districts and high school districts by the amount available in state retirement equalization aid as calculated and distributed under the provisions of 20-9-532"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Sections 43 and 89, Ch. 11, in (3)(a)(i) substituted "property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicle property taxes imposed under 61-3-504(2) and 61-3-537". Amendment effective August 11, 1989.

Section 89, Ch. 11, at end of (3)(a)(ii), relating to net proceeds taxes, inserted "and local gov-



DONALD R. JUDGE
EXECUTIVE SECRETARY

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(406) 442-1708

TESTIMONY OF DON JUDGE ON HOUSE BILL 729 BEFORE THE SENATE LABOR AND
EMPLOYMENT RELATIONS COMMITTEE, MARCH 15, 1991.

Mr. Chairman, members of the Committee, for the record my name is Don Judge representing the Montana State AFL-CIO, and we are here in strong support of House Bill 729.

Prior to the 1985 legislative session, the Montana unemployment insurance trust fund was experiencing a large deficit, forcing it to borrow money from the Federal Government in order to meet obligations to laid-off workers. Several other states experienced similar deficits, some of which had to borrow hundreds of millions of dollars!

The 1985 legislature responded to this problem by enacting House Bill 284, as a so-called compromise to address the fund deficit and to pay off the money borrowed from the Feds. Some of those provisions included:

- (1) Authorizing a surtax on employers not to exceed .3% of payroll.
- (2) Raising the taxable wage base from 75% to 80% of the annual wage.
- (3) Changing an employer's "experience factor" to provide rate relief to good employers who experience high unemployment.
- (4) Providing for 10 rate classes instead of 7, and increasing rate classification for "deficit employers" to capture more money from employers experiencing higher unemployment.
- (5) Making claimants wait a week to qualify for unemployment benefits between benefit years. No UI benefits would be paid during this week, nor for this week.
- (6) Reducing the maximum individual's benefit amount from 50% to 49% of his or her average weekly wage.
- (7) Redefining the "quit for good cause" section of the law to restrict eligibility for benefits only when an individual quit for a good cause which was "related to his/her employment".

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 4

DATE 3/19/91

BILL NO. HB 729

One additional bill passed in 1985 to address the fund deficit but was not included in this so-called compromise was to prohibit striking workers for receipt of benefits, even if the employer's place of business continued to operate.

Since 1985, the Montana Unemployment Insurance Trust Fund has paid off its federal debt and employers have experienced at least four reductions in their UI tax rates. It is anticipated that another rate reduction may occur later in the spring. Obviously, the impacts of the Champion mill layoffs could impact any potential rate reduction and we won't attempt to ignore that problem before this committee.

Unfortunately, workers haven't been so lucky. No legislation had passed our legislature which would, in any way, restore some of those cuts endured by Montana's working men and women.

Although this committee has heard House Bill 68, which would allow striking workers to qualify for unemployment benefits, that important bill must still pass through this committee, the full Senate and be signed by the Governor.

House Bill 729, if adopted, would restore one portion of those benefits to Montana workers. It would grant the Department of Labor and Industry the authority to make decisions about voluntary terminations of workers that they are now prohibited from making. If they find that workers have "good cause" to quit their jobs, and that cause is not attributable to their employment, they may be found eligible to receive unemployment compensation benefits. Representative Russell has given you some excellent examples of the way our current law works versus the way House Bill 729 proposes to change the law.

Now, I'd like to give you some specifics of the impacts of the change on working men and women.

In 1984, prior to the change in our law, the Department of Labor found that 1,002 of 1,393 persons who quit because of personal health reasons were entitled to benefits.

That same year, they found that 1,268 of 1,346 persons who quit to follow their spouse and keep their families together were entitled to benefits.

One-hundred and twelve of one-hundred and thirteen who quit because the job they were hired for was not available, received benefits.

Five-hundred and twenty-six of six-hundred and ninety one received benefits when they quit to seek better job proposals.

And, seventy two of one-hundred and forty five received benefits when they quit because of a sickness or death of a relative.

Were these good reasons for quitting? Apparently, because the Department of Labor and Industry used their discretion to determine if, in fact, these were justified reasons for voluntarily quitting a job. Each case was individually reviewed and a determination made on the circumstances.

House Bill 729 would not grant any automatic extension of benefits to workers, unlike employers who received automatic rate reductions over the previous six years. It simply provides the Department of Labor the option to decide if favor of such workers.

As you have already heard, too often the workers being denied benefits are women. They quit work to take care of a sick child or parent. They who must quit work to follow a spouse, often a choice in keeping a family together. Are these the workers we want to deny benefits to?

We do not think so and we certainly hope that you will agree with us. Please help Montana's working men and women by returning some balance to our state's unemployment compensation system and give House Bill 729 a "do pass" recommendation.

Thank you.

UNEMPLOYMENT INSURANCE PROGRAM
FACT SHEET COMPARING 1991 LEGISLATION TO 1985 LAW CHANGES
March 11, 1991

(FY92 Fiscal Note Estimates are in Parenthesis)

1991 Proposed Legislation:

1. HB-68 would reinstate the pre-1985 disqualification due to strikes. Montana law has used "stoppage of work" language except for the years since the 1985 law change. The present law was passed in 1985, but was not part of the Trust Fund Solvency solutions.

(Unpredictable Increase in Benefits)

2. HB-141 would eliminate the disqualification of non-professional school employees between terms. The present law was passed in 1985, but was a Federal Conformity proposal rather than part of the Trust Fund Solvency solutions.

(\$1,750,000 Increase in Benefits)

(NOTE: Government rates are designed to be reimbursable in the long term. The cost will result in increased rates to schools, but the rating system does not respond immediately.)

3. HB-256 would change the way benefit amounts are calculated. Methods used in the proposal have never been used.

(\$832,000 Increase in Benefits)

4. HB-600 would change calculations used to determine the duration of a claimant's eligibility. The proposal would reinstate the methodology used prior to 1977.

(\$172,000 - \$1,247,000 Increase in Benefits)

(Impact amended from original version)

5. HB-726 is proposed by the Department mainly to clarify certain parts of the U.I. law. The intent is for the changes to be revenue neutral.

(\$9,030 Reduction in Benefits)

(Impact amended from original version)

6. HB-729 would reinstate the pre-1985 disqualification if a claimant "left work without good cause". The current law was part of the Trust Fund Solvency solutions.

(\$1,436,000 Increase in Benefits)

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 5

DATE 3/19/91

HB 729

UNEMPLOYMENT INSURANCE PROGRAM
LEGISLATION FACT SHEET COMPARING TO 1985
March 1, 1991

1991 Proposed Legislation:

1. HB-68 would reinstate the pre-1985 disqualification due to strikes. Montana law has used "stoppage of work" language except for the years since the 1985 law change. The present law was passed in 1985, but was not part of the Trust Fund Solvency solutions.
2. HB-141 would eliminate the disqualification of non-professional school employees between terms. The present law was passed in 1985, but was a Federal Conformity proposal rather than part of the Trust Fund Solvency solutions.
3. HB-256 would change the way benefit amounts are calculated. Methods used in the proposal have never been used.
4. HB-600 would change calculations used to determine the duration of a claimant's eligibility. The proposal would reinstate the methodology used prior to 1977.
5. HB-726 is proposed by the Department mainly to clarify certain parts of the U.I. law. The intent is for the changes to be revenue neutral.
6. HB-729 would reinstate the pre-1985 disqualification if a claimant "left work without good cause". The current law was part of the Trust Fund Solvency solutions.

UNEMPLOYMENT INSURANCE PROGRAM
LEGISLATION FACT SHEET COMPARING TO 1985
March 1, 1991

Trust Fund Solvency Solution From HB-284 (1985):

Employer related solutions:

1. Increased the taxable wage base from 75% to 80% of average annual wages. This law change is still in effect.
2. Increased average rates on each tax schedule 0.2%, and 'trigger' ratios for each schedule were changed. Ratios enacted were lower than proposed. Ratios have reacted to the increasing trust fund balance so that the average tax rate is now the lowest available on the schedule, 1.4% as compared to 3.2% in 1985. This law change is still in effect.
3. Added a temporary surtax of 0.3% of total wages. The surtax on employers was collected only in the four quarters of calendar year 1985 and the law sunset on July 1, 1987.

Claimant related solutions:

4. Disqualification of claimants changed from "left work without good cause" to "left work without good cause attributable to the employment". HB-729 this legislative session would reverse the 1985 law change.
5. Freeze of claimant's maximum benefit amount. This freeze sunset on January 3, 1987.
6. Reduced the weekly benefit amount calculation from 50% of the claimant's average weekly wage to 49%. This law change is still in effect. HB-256 this legislative session would eliminate the use of weeks of work and thereby the average weekly wage percentage now used to calculate a weekly benefit amount. A comparison between the mechanics of the two methods is difficult.

STATE OF MONTANA
DEPT. OF LABOR AND INDUSTRY
UNEMPLOYMENT INSURANCE DIVISION
P. O. BOX 1720
HELENA, MONTANA 59624
TELEPHONE: (406) 444-3834 (CONTRIBUTIONS BUREAU)

MARCH 1, 1991

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 3/19/91
BILL NO. HB 729

NOTICE OF UNEMPLOYMENT INSURANCE TAX RATES FOR 1991

YOUR CONTRIBUTION RATE FOR 1991 IS 0.9%
THE ADMINISTRATIVE FUND TAX RATE FOR 1991 IS 0.1%
YOUR TOTAL TAX RATE FOR 1991 IS 1.0%

THE TOTAL TAX RATE APPLIED TO YOUR TAXABLE WAGES IS THE AMOUNT DUE TO THE UNEMPLOYMENT INSURANCE DIVISION EACH QUARTER.

THE TAXABLE WAGE BASE FOR 1991 IS \$13,400.00.

THE TAXABLE WAGE BASE FOR 1991 IS 80% OF THE 1989 AVERAGE ANNUAL WAGE IN MONTANA. ALL EXPERIENCE RATED EMPLOYERS HAVE THE SAME TAXABLE WAGE BASE.

THIS IS THE CALCULATION USED TO DETERMINE YOUR CONTRIBUTION RATE:

-----FISCAL YEAR TAXABLE PAYROLLS-----			AVERAGE
1988	1989	1990	TAXABLE
(10-1-87/9-30-88)	(10-1-88/9-30-89)	(10-1-89/9-30-90)	PAYROLL
64,833.62	83,561.41	92,275.31	80,223.45

CONTRIBUTIONS	-	BENEFITS	=	RESERVE	/	AVERAGE		RESERVE
(10-1-81/9-30-90)		(10-1-81/9-30-90)				TAXABLE		RATIO
						PAYROLL	=	
15,236.69		6,018.31		9,218.38		80,223.45		.114909

BASED UPON THIS CALCULATION YOUR RATE CLASS IS ELIGIBLE 06

YOUR CONTRIBUTION RATE IS FINAL UNLESS YOU FILE A WRITTEN REQUEST FOR A REDETERMINATION WITHIN 30 DAYS AFTER YOU RECEIVE THIS NOTICE. THE REQUEST FOR REDETERMINATION MUST EXPLAIN WHY THE EMPLOYER BELIEVES THE ASSIGNED CONTRIBUTION RATE IS INCORRECT. MAIL YOUR REQUEST TO THE ADDRESS AT THE TOP OF THIS PAGE.

Montana Department of Labor and Industry
Unemployment Insurance Division
Contributions Bureau
(406) 444-3834
FAX Telephone (406) 444-2699

RATES FOR 1991

Each February, the Unemployment Insurance Division calculates the rate schedule in effect for the current year. The balance in the Unemployment Insurance Trust Fund is divided by the total wages paid to all employees covered under the Unemployment Insurance program for the previous fiscal year. The resulting ratio determines which of the ten schedules will be in effect for the calendar year.

At the end of 1990, the fund balance was \$90,175,653 as opposed to \$77,554,917 at the end of 1989. The higher fund balance triggered a reduction in the overall contribution rates. We dropped from Schedule III in 1990 to Schedule I for 1991. Tax rates for individual businesses may go up or down each year, depending on their individual experience.

Each employer is given an "experience factor", also called reserve ratio, which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll for the three fiscal years immediately preceding the computation date. A schedule is prepared listing all employers from the highest positive reserve ratio to the lowest deficit reserve ratio. This schedule is segregated into rate classes that will yield approximately the average tax rate in effect for that year. Each employer is assigned a contribution rate based on their reserve ratio.

The 1991 Reserve Ratios assigned to each rate class are:

ELIGIBLE EMPLOYERS

Positive reserve
ratio of:

.136956 or greater
.131439 to .136955
.126088 to .131438
.122416 to .126087
.118326 to .122415
.112212 to .118325
.103421 to .112211
.089622 to .103420
.068156 to .089621
.000000 to .068155

Rate Class:

Eligible 1
Eligible 2
Eligible 3
Eligible 4
Eligible 5
Eligible 6
Eligible 7
Eligible 8
Eligible 9
Eligible 10

Tax rate:

0.0%
0.1%
0.3%
0.5%
0.7%
0.9%
1.1%
1.3%
1.5%
1.7%

UNRATED

2.0%

DEFICIT EMPLOYERS

Negative reserve
ratio of:

-.000001 to -.006782
-.006783 to -.012589
-.012590 to -.027208
-.027209 to -.038674
-.038675 to -.055403
-.055404 to -.080639
-.080640 to -.127386
-.127387 to -.207651
-.207652 to -.340717
-.340718 to -.257.185339

Deficit 1
Deficit 2
Deficit 3
Deficit 4
Deficit 5
Deficit 6
Deficit 7
Deficit 8
Deficit 9
Deficit 10

3.2%
3.4%
3.6%
3.8%
4.0%
4.2%
4.4%
4.6%
4.8%
6.4%

3/19/91

DATE _____
Senate Labor

HB-141-600-726-729

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Chuck Hunter	DOLI	141		X
Lucina Auerkin	A.T.U. #381	141	X	
Linda Gordon	A.T.U. #381	141	X	
MARK LANGDOFF	AFSCME	729 141	X	
DARRELL HOLZEN	MT. ST. AFL-CIO	141 729 600 729 729	X	
BUCK BOLES	MT CHAMBERS	HB 600 HB 729		X
C. HUNTER	DOLI	729	X	
John R. Brooks	MT Retiree Association	600 729		X
LARS ERICSON	MT ST CARPENTERS	729 600	X	
WAD SMITH	unemp Comp Commission	HB 141 600 729		X
Terry Minow	MFT / MFE	141	X	
Don Judge	MT STATE AFL-CIO	HB 141 HB 729	X	
Jim Stucky	IOHE #400	HB 600 HB 729	X	
E. Fender	MT St Bly trade	HB 141 729-600	X	
Bob LERVAIS	H.D. 9	141	X	
BOB LERVAIS	H.D. 9	729	X	
Mike Mica	DOLI	141 729 600 729		X
Don Judge	MT STATE AFL-CIO	HB 141 HB 729	X	
Phil Campbell	MEA	HB 141	X	
Bob Heiser	UFCW	HB 600 141 729	X	
A Russell	H.D. 99	729	X	

(Please leave prepared statement with Secretary)

DATE _____
Senate Labor

[illegible]

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 3/19/91 House Bill No. 729 Time 5:30pm

NAME	YES	NO
SENATOR AKLESTAD	X	
SENATOR BLAYLOCK		X
SENATOR DEVLIN	X	
SENATOR KEATING	X	
SENATOR LYNCH		X
SENATOR MANNING		
SENATOR NATHE	X	
SENATOR PIPINICH		X
SENATOR TOWE		X
Senator Doherty		X

Secretary _____

Chairman _____

Motion: _____

BE NOT CONCURRED IN

FAILED