

## MINUTES

### MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on March 21, 1991, at 3:05 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 882

##### Presentation and Opening Statement by Sponsor:

Representative Angela Russell told the Committee House Bill 882 is an act to require a state agency which operates within or contracts for a state construction project within an Indian reservation give a preference in hiring to qualified Indian residents of the reservation. She explained it was brought to her attention when openings come up within the Crow Reservation is Plenty Coups State Park no Indians have been employed. She explained there were other examples where state money was used. There are qualified individuals who do not have a chance to apply, or do not get selected if they do apply. The unemployment rates are extremely high on all reservations in Montana. The rates may be even higher as individuals quit looking for work. The major employer on reservations are the federal governments, the schools, and the tribes. She told the Committee House Bill 366, which she sponsors, would provide 15 to 16 FTEs for the Department of Family Services for child abuse and neglect. She

expressed her hope these positions would consider qualified Indian applicants. She explained the TERO programs, tribal employee rights programs which exist on most reservations in Montana. Not all reservations have TERO programs. House Bill 204 would strengthen tribal employment within each of the reservations.

Proponents' Testimony:

Denver Atkinson, Director for Tribal Employment Rights office in Poplar spoke in support of House Bill 204. He told the Committee when speaking to problems regarding state jobs during the past three years, with changes in administration in the highway department, there have been problems in making positive steps toward employment on reservations. He explained the state highway department needed a right-of-way to do road work on the reservation. In exchange for the right-of-way the tribe negotiated directly with the state to perform a percentage of the road work, such as providing the natural resources, i.e., gravel, water, dirt, etc. There was also negotiation for performing fencing, seeding and reclamation. He explained this was the first time a reservation has negotiated directly with the states to do a portion of the contracting work. He told the Committee there is a district office located in Wolf Point, Glasgow, and in Culbertson where there were 60 positions in those three. There were two American Indians. He explained one hurdle faced is the constant excuse there are not enough American Indian applicants. He commented the reason is partially due to the update of those applications every three months. There was a negotiation of the positions in those three district offices, the state highway department will employ 15% American Indians. In the eastern district the highway department has agreed to hire 10% American Indians in permanent full-time positions. Many are entry level positions. He explained a situation where new road work was done from Culbertson to 1,000 feet on the reservation; from the Canadian border to south of Scobey to 1 mile on the Fort Peck Reservation; from Glasgow to the reservation line in Nashua; north from Circle 8 miles of the project was completed. Mr. Atkinson attempted to negotiate. He told the Committee he was "told in a nice way to go to hell". He was told the project was off the reservation, it utilized unions, etc. He commented the reservation is at 65% unemployment with Montana's at 9%, and nationally at 11%.

Pat Smith representing the Confederated Salish Kootenai Tribes told the Committee the Flathead Tribes do not have a TERO Office. He explained for that reason the tribes would benefit from House Bill 882. He commented there is no ability to advocate for increased tribal employment on state projects. The unemployment percentages on Flathead reservations are 30%. Lake County statistics is at 10%.

Gene Fenderson representing the Laborers' International Union's Montana District Council of Laborers, as its president

and business manager, spoke in support of House Bill 882. He explained for many years in the labor agreements heavy highway construction and building construction negotiations have encouraged the hiring of minorities when working on and around reservations. He commented employers they deal with on a day to day basis used the unions as an excuse of why they could not hire minorities because they had to hire out of union hiring halls. He told the Committee this is untrue. The contractor can get minorities from the union or directly from the TERO offices.

Anne McIntyre, Administrator of the state Human Rights Commission told the Committee the Commission has not taken a position on the merits of House Bill 882. She presented the Committee with an amendment to House Bill 882 (Exhibit #1). She pointed to Section 3 on Page 3. The bill clarifies the provisions of Chapter 3 of Title 49 are coordinated with House Bill 882. She pointed out there is no provision to coordinate the meaning of House Bill 882 with Title 49 Chapter 2 (the Human Rights Act). She asked the bill be clear if someone grants a preference in accordance with HB 883 they are not in violation of the Human Rights Act.

#### Opponents' Testimony:

NONE.

#### Questions From Committee Members:

Senator Devlin asked Ms. McIntyre if she presented the amendments to the House. Ms. McIntyre told the Committee she did not. She was not following the bill.

Senator Devlin asked Representative Russell if she had seen the amendments proposed by Anne McIntyre. Representative Russell told the Committee the amendments were workable.

Senator Lynch commented he "wished this could have done without law". He asked Representative Russell if there could be a reversal. If there was a preference on the reservation jobs, everything off the reservation would not hire Indians. Representative Russell stated she did not know of a lot of Indian people getting jobs off reservations.

Senator Keating asked Laurie Ekanger about the "substantially equal" language. Ms. Ekanger, Administrator of the State Personnel Division told the Committee this language was in other preference laws. She explained a substantial difference in qualifications is looked for between the two top candidates. If there is not a substantial difference they are considered to be substantially equal.

Senator Towe asked Mr. Atkinson if he were concerned about preference outside the reservation or within. Mr. Atkinson

stated just within the reservation at this time.

Senator Towe asked if the TERO ordinance applied to any state contractor or state agency within the reservation. Mr. Atkinson stated it would.

Senator Towe asked Mr. Atkinson if the work could stopped until there was compliance. Mr. Atkinson said this was correct but he did not wish to hinder any work either.

Senator Towe asked Representative Russell if her intent was House Bill 882 only apply for work on the reservation. Representative Russell stated this was correct. She explained it is within the exterior boundary. She suggested an amendment may be needed.

Senator Blaylock asked Representative Russell if this could reverse. Representative Russell told the Committee state services are on reservations and so few people are hired. She stated some "small steps" need to be made. If an employer does not want an Indian person to be hired they can make barriers. She stated this was the case at Plenty Coup State Park. A teacher working there was leaving. He told white teachers the position was opening and not to tell the Indians.

#### Closing by Sponsor:

Representative Russell closed on House Bill 882. She explained the Indian jobless number is extremely high. She asked that the state some responsibility. A study done out of the University of Denver said American Indians are severely undercounted in unemployment figures because they give up and drop out. She told the Committee the study's findings indicate a racist attitude toward Indians by government officials through hiring practices. The study said "it is not an explicit racism, it's an unconscious racism. There is nothing in that is outright bigoted but it is protected by white prerogative".

#### EXECUTIVE ACTION ON HOUSE BILL 882

#### Amendments, Discussion, and Votes:

Senator Lynch moved to amend House Bill 882 on Page 3, Lines after the word "agency" insert "for work to be performed within the exterior boundaries of the reservation". He included the amendment offered by Anne McIntyre of the Human Rights Commission. Motion CARRIED with Senator Devlin and Senator Keating voting NO.

Senator Lynch moved House Bill 882 BE CONCURRED IN as amended.

Senator Keating told the Committee he did not agree with putting hiring preferences into the law. He commented he has

worked on all reservations in Montana and has been involved in operations which hire individuals on the reservation; and involved with TERO. He stated there are jobs available for those people who want to work. The problem is "people do not stay on the job". He told the Committee this would create problems for the highway department because the residents of the reservations will be able to insist there be a quota or set of hiring practices. He stated if there is the "slightest disagreement" people will file with the Human Rights Commission. He explained he sympathizes with the fact these people cannot get jobs sometimes, but does not feel it is all discrimination. He stated some of the reason jobs are not available to some people is because they are not qualified; or if qualified, they do not stay on the job.

Senator Lynch told the Committee he agreed with Senator Keating but "unfortunately the job isn't getting done".

Senator Towe commented 65% unemployment is high. He stated House Bill 882 is not going to do anything not already in place.

Senator Keating stated Senator Towe's remark implies the 65% unemployment rate is someone's fault. Senator Keating told the Committee he did want to interfere with private negotiations between people. He stated the "Indians are just as much a people in this state as anybody else. They have every right to negotiate and present themselves for hire at any time." Senator Keating stated he did not want to pass laws to require someone to be hired by someone else.

#### Recommendation and Vote:

Lynch motion House Bill 882 BE CONCURRED IN as amended CARRIED with Senator Devlin and Senator Keating voting NO. Senator Towe will carry House Bill 882 to the Senate floor.

#### HEARING ON HOUSE BILL 643

#### Presentation and Opening Statement by Sponsor:

Representative Carolyn Squires told the Committee House Bill 643 would provide protection for state employees whose positions eliminated as a result of privatization, reorganization or closure of a state agency. She explained HB 643 recognizes the importance of state employees skills and experience in providing services. Privatization jeopardizes the economic security and well-being of these valuable employees. Layoffs resulting from privatization of state services means the loss of experienced state workers. Layoffs can also be unexpectedly costly to the state. When workers are laid off because of privatization substantial costs are incurred. These include:

- 1) Loss of an asset. the state has a substantial investment in its employees. Their talents are necessary for the future economic development of our state. This cannot

worked on all reservations in Montana and has been involved in operations which hire individuals on the reservation; and involved with TERO. He stated there are jobs available for those people who want to work. The problem is "people do not stay on the job". He told the Committee this would create problems for the highway department because the residents of the reservations will be able to insist there be a quota or set of hiring practices. He stated if there is the "slightest disagreement" people will file with the Human Rights Commission. He explained he sympathizes with the fact these people cannot get jobs sometimes, but does not feel it is all discrimination. He stated some of the reason jobs are not available to some people is because they are not qualified; or if qualified, they do not stay on the job.

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- 1) Loss of an asset. the state has a substantial investment in its employees. Their talents are necessary for the future economic development of our state. This cannot

happen without trained workers. Recycling jobs from \$7 an hour to minimum wage without benefits does not make good sense for Montana's future.

2) Economic costs. State tax revenues are reduced when employees are laid off because these people without jobs do not earn taxable income.

3) Social problems occur. Job loss has been shown in various studies to produce increases in alcohol, drug abuse, child abuse, and spouse abuse.

4) In-house employee morale. This is hard to calculate the cost of layoffs and the effects on the morale of the remaining public workers. Remaining workers worry their jobs are the next to be privatized. This threat of job loss reduces productivity.

The intent of House Bill 643 is to retain state employees and state service whenever possible. If not possible, transitional assistance would be provided. It attempts to mitigate the cost associated with a layoff. It provides reasonable protection for state employees in jobs slated by allowing the state employee to transfer to any open state job for which they are qualified, providing relocation assistance if a move is necessary for re-employment, providing for no loss of wages or benefits upon taking another state position, making available job counseling and retraining, continued health insurance contributions until the employee finds another job or twelve months, and providing severance pay at 5% of salary multiplied by years of service for those not transferring to another state position. Representative Squires the fiscal note is the second she has requested. She presented the Committee with a report obtained from the Legislative Auditor (Exhibit #2). She explained her areas of concern are under the conclusion. She told the Committee she has found the fiscal note to again be in error. Representative Squires offered amendments to House Bill 643.

#### Proponents' Testimony:

Mark Langdorf, field representative for the American Federation of State, County and Municipal Employees International Union spoke in support of House Bill 643. He told the Committee AFSCME is the larger public employee AFL-CIO affiliate in the United States representing 1.25 million employees. He explained revenues would suffer because individuals are unemployed and not drawing which is taxable. As a result economics of the community will suffer. He suggested the state governments image as an employer would be damaged. State employment is not an attractive situation.

Darrell Holzer representing the Montana State AFL-CIO spoke in favor of House Bill 643 from prepared testimony. (Exhibit #3)

Tom Schneider representing the Montana Public Employees Association spoke in support of House Bill 643. He told the

Committee privatization "sounds wonderful" and when "we say we can save money, that sounds wonderful", but when we privatize people are put out of work. He commented it is important to provide protection for these individuals, some of which have spent their whole lives working for the state of Montana. He stated no one works for the state of Montana in a job which was not created by the Legislature. He explained it is the legislators responsibility to decide how to treat the employees when it is decided those jobs are no longer available.

Bob Heiser of the United Food and Commercial Workers International Union told the Committee House Bill 643 would protect state employees. He pointed to the fiscal note, Department of Revenue. He stated those individuals are represented by his union. Senate Bill 458 would eliminate those jobs. He stated the administration expressed concern for those individuals. He suggests House Bill 643 would provide that protection.

Terry Minow representing the Montana Federation of Teachers, Montana Federation of State Employees spoke in favor of House Bill 643. She told the Committee MFT/MFSE is not in support of privatization or reductions in force. She explained when those unfortunate events do take place, state employees deserve the benefits in House Bill 643. She commented the state of Montana has not been "very good to its employees over the last decade".

Gene Fenderson representing the Montana State Building and Construction Trades Council spoke in support of House Bill 643. He stated House Bill 643 does not go far enough. He explained there is a responsibility to those people employed. Mr. Fenderson told the Committee the Laborers' International Union has had more experience and spent more money than anyone with privatization with the current administration. He stated they plan to continue to protect the employees and their jobs. He commented in every case where privatization has taken place in this state, it has done so because a private contractor paid lower wages and had no or less benefits. Mr. Fenderson said he did not believe this is the way a society should treat its citizens.

#### Opponents' Testimony:

Laurie Ekanger, Administrator of the State Personnel Division told the Committee she was neither an opponent nor a proponent. She explained when HB 643 was introduced in the House there were a number of mechanical concerns. She commented the sponsor and proponents have made changes which would make the bill easier to implement if it passes. She pointed out other concerns. On Page 2, Line 13 the bill would provide wage protection for someone laid-off and transferred into another job. She commented this is not clear. If someone has been laid off from a grade 16 senior research position; and they apply for another job in another agency at a grade 13 or 14 junior research



position, they bring with themselves a higher cost to the agency. It is possible it would become a hindrance for the employee. The agency would look at that cost and not select them. Ms. Ekanger explained at present anyone who transfer from one department to another, if a lower level job, does not have salary protection. On Page 3, sub (2); if an employee chooses to seek or secures a job elsewhere, with a different employer, they are entitled to a number of benefits, i.e., relocation expenses, retraining, and job counseling. She commented it would be easier if there were a time limit on the extension of those benefits. She pointed to Page 4, Line 12. She told the Committee HB 643 was originally drafted to address strictly the privatization of an institution. By amendments it applies to the closure of any agency. She explained Section 5 requires six months notice on the part of the employer if management decides to privatize, reorganize or close an agency. Those decisions are not always in the hands of management as federal funds come and go. She stated they would not be able to comply with the six month notice requirement. Ms. Ekanger told the Committee actions the Legislature takes are often effective October 1, or on passage, or July 1. The six month notice requirement, if the Legislature chose to reorganize or close a service would not be in their ability to meet. She pointed out the benefits are not funded, the agency would be absorbing these benefits. She commented lay offs may happen sooner in order to accommodate the additional costs.

#### Questions From Committee Members:

Senator Keating asked Scott Seacat if there is a requirement any privatization which is undertaken by the executive branch must be proven to be cost effective or is a savings to the state. Mr. Seacat explained there is no official requirement for proof. There is a requirement the agencies document those dollars savings and provide them to the Legislative Audit Committee. He stated the agency did not have to prove cost effectiveness to privatize.

Senator Blaylock asked Representative Squires to respond to the comments made by Laurie Ekanger. Representative Squires told the Committee her preference is to do the higher amount. She stated in regards to the six month notice it is imperative every effort is put in by the agencies to notify the employees. In the private sector there is a requirement.

Senator Towe asked Representative Squires if there should be a time limit on the relocation or retraining benefits. Representative Squires explained every attempt should be made by state government to assume these workers. She commented if the Committee wishes to set a time limit she would consider the amendment.

Senator Keating asked about the Boulder developmental center. He pointed out there would be a staff decrease of 576 people in the down sizing. The turn over rate was testified to

be 33% in the facility. He asked Representative Squires if there is five year requirement are the number calculated on the basis how many employees who have more than five years. Representative Squires deferred the question to Maureen Rude of the Legislative Auditors Office. Ms. Rude explained the Department of Institutions attempted to calculate based on their current situation.

Senator Keating asked Ms. Rude if there were any indication those with more than five years are part of turn over of 33%. Ms. Rude explained they estimated based on the total amount of employees.

Senator Keating stated individuals with longevity in an agency are those who will stay; the turn over is generally in the entry level.

Senator Keating pointed out in the last several sessions state agencies jobs in human services have been reduced because there are more non-profit corporations which are contracting with SRS to deliver these services. He commented there is a displaced worker program with the Department of Labor. All of these are handled by the private non-profit corporations. He asked if these figures are reliable. When the state contracts for these private services many of the state employees follow the services by going to work for the community based organizations. He asked how many leave state employment and follow along with the delivery of those services. Representative Squires told the Committee she did not have those figures. She explained the issue is privatization, privatizing of an agency such as the liquor stores, the women's correctional facilities, etc., and dislocating workers. Ms. Rude pointed out if the individual followed the job HB 643 does not apply. She explained most of the provision apply to someone who does not have a job waiting for them when the agency is closed or privatized. The severance pay, relocation expense and health insurance may follow them.

Senator Towe stated if there were a closure, privatization or reorganization this would apply. If there were a reduction in force, and the agency remained open this would not apply. Ms. Rude explained Senator Keating's question was if the function was contracted and those employees went with the contractor. She stated some of these provisions would not apply because they had employment.

Senator Towe told the Committee he did not agree. He stated if there is a closure, a reorganization, or a privatization it does not state these individuals are not immediately reemployed, they would still have the rights to these benefits.

Senator Keating commented Ms. Rude stated not all of them would be exempt. He pointed to Page 3, sub (2) it states, "if an employee secures a job in the state with an employer other than the state, as a result of privatization, reorganization, or

closure of an agency, the employee is entitled to:" relocation expenses. If that employee has had five years of service. They would not need access to retraining and career development.

Senator Towe stated when there was a major reduction in force in Boulder and Warm Springs those workers were put into the community and the "money followed them through". He asked if this were a privatization. Representative Squires explained there are also other agencies and groups which can help with these "costs", as well as assisting the worker. There can be a coordination among agencies.

Senator Keating asked if this includes to university system. Representative Squires explained it included classified employees but not the professors.

Senator Nathe asked Representative Squires if others using JTPA in training programs are charged for services. Representative Squires told the Committee they are not charged. They must meet certain qualifications.

Senator Keating asked about Page 3, sub (d), regarding severance pay. He asked if the state give severance pay now in a reduction of force situation. Representative Squires referred the question to Scott Seacat. Mr. Seacat told the Committee currently severance pay is illegal.

Senator Keating asked if all employees would receive the 5% severance pay, not just those with five years or more of service.

Senator Towe explained this would be the case. It would be at a reduced amount because it is multiplied by the number of the employees' consecutive years of service.

Senator Devlin asked Representative Squires if an employee went out of state for a job would he be eligible for these benefits. Representative Squires stated if an employee chooses to seek or secures a job in the state with an employer other than the state as a result of privatization. She told the Committee her assumption was this would be in-state.

Senator Nathe asked Laurie Ekanger if a state employee can accumulate 48 days vacation time and upon retirement use the 48 days. Ms. Ekanger explained an employer can accumulate two times their annual earnings. If a person earns 15 days per year they can accumulate up to 30 days. If an individual has only worked for the state for five years 30 days is the maximum. If they have worked for 25 years, 48 days is the maximum. Each five year increment of service gives another three days.

Closing by Sponsor:

Representative Squires closed on House Bill 643. She told the Committee HB 643 is important to the dislocated state

employees and is imperative some assistance be provided. She explained there is coordination of other finances. She commented if the agencies, departments or institutions are privatized the state should accept its responsibility and attempt to get these people back into the workforce.

### HEARING ON HOUSE BILL 846

#### Presentation and Opening Statement by Sponsor:

Representative Menahan told the Committee House Bill 846 would allow public inspection of competitive sealed bids and proposals for privatization. He presented an amendment for Page 3, Line 16 to replace the word "may" with "will".

#### Proponents' Testimony:

Terry Minow of the Montana Federation of Teachers spoke in support of House Bill 846. She explained when privatization took place at data entry in the Department of Administration they requested a copy of the bids of the private contractors. MFT was told by the department this was not allowed under current policy. She stated House Bill 846 recognizes the public's right to know what is happening to their services and their tax dollars.

Darrell Holzer of the Montana State AFL-CIO spoke in favor of House Bill 846 from prepared testimony (Exhibit #4).

Tom Schneider of the Montana Public Employees Association spoke in support of House Bill 846.

Gene Fenderson of the Montana State Building and Construction Trades Council spoke in favor of House Bill 846. He told the Committee there is a problem in state government on this process. He commented the state is required under law to negotiate with unions, but will not give this information.

Bob Heiser of the United Food and Commercial Workers International Union spoke in support of House Bill 846. He told the Committee UFCW is in support of this bill but is not in favor of privatization.

Mark Langdorf, field representative for the American Federation of State, County and Municipal Employees spoke in support of House Bill 846. He told the Committee AFSCME believes HB 846 is a good government bill and positive for the public to be able to scrutinize bids.

#### Opponents' Testimony:

Bob Marks of the Department of Administration spoke in opposition to House Bill 846. He offered amendments (Exhibit #5). He commented a portion of the bill is not necessary. He

stated House Bill 846 covers two separate functions, a request for bids and a request for proposals. He explained a difference exists in the handling of this by the state. The unnecessary portion is in reference to inspection of bids. Bids are already open to the public. He recommended on Page 4, Lines 4 through Lines 12, striking all underlined after "2-6-102". Mr. Marks also suggested on Page 3, Line 21 insert "and the public" after "bidder". He told the Committee attached to Exhibit #5 is an example of bids. He stated the new language in House Bill 846 promotes confusion. Singling out certain awards for special treatment raises questions about whether the remaining awards should be public. Mr. Marks stated the competitive sealed bid proposal is made public. He commented the portion dealing with services rather than products causes him concern. He told the Committee this process is used when the price is not the only criteria the state agencies needs to consider in making the award. The Department of Administration is involved in bid processing for other agencies. Currently proposals are accepted from competing vendors and the state agency. They enter into a simultaneous confidential negotiation with the proposer. He explained if the state wished to secure a service and there were two proposals with a very wide range of difference which were made obvious to the two proposers, no negotiation would be possible. He told the Committee House Bill 846 would keep the state from getting "the best deal".

David Brown of First Bank of Helena spoke in opposition to House Bill 846. He told the Committee First Bank has recently completed a contractual arrangement with the Department of Administration; a request for proposal for banking services. The banking services contract included the diverse types of services including depository relationships with the Department of Labor and Industry, Department of Administration, the Treasury Department, Department of Commerce, Montana Board of Investments, the state lottery, Social and Rehabilitation Services, Security Custody Safe Keeping and Settlement Procedures for the Board of Investments \$3.8 billion of securities. He explained this process started April 1, 1990, and concluded on October 1, 1990. First Bank was awarded a three-year contractual arrangement. He told the Committee the process entailed many hours of work on the part of First Bank to assist in defining the product and providing the most cost effective service. He commented the "best and final bid process" under the RFP is "at best a delicate compromise with the state and private enterprise". The state enters into simultaneous confidential negotiations. The award basis is not based on price only. He explained the reason First Bank was able to feel comfortable with the process was because they felt confident the purchasing division individuals would not divulge the bank's confidential information to other bidders.

#### Questions From Committee Members:

Senator Towe asked Representative Menahan if the request for proposal section intended to be public disclosure before the

negotiations were completed. Representative Menahan explained he "would like to see them during or before". He explained this would not apply to the situation with First Bank because the invitation for bids is issued by a state agency to contract with the private sector for services conducted by state employees and after five employees are laid off. Neither of these applies the First Bank.

Closing by Sponsor:

Representative Menahan closed on House Bill 846.

HEARING ON HOUSE BILL 857

Presentation and Opening Statement by Sponsor:

Representative Mark O'Keefe told the Committee House Bill 857 is a privatization disclosure act. He explained a review process is setup on privatization of five or more state employees. He told the Committee he took the bill in its first draft form to the administration and received a letter from Bob Marks, Director of the Department of Administration (Exhibit #6). He commented the purpose of the bill is to keep the state of Montana "out of trouble". He told the Committee he believes in privatization. If privatization is done properly and reviewed correctly there are instances in which money can be saved through privatization. The bill will also cover instances which currently are done with contracted services which may be done cheaper if done with "publicization"; money can be saved by putting services in the hands of the state. A system would be set up which deals properly with privatization. He presented the Committee with a schedule handout (Exhibit #7). He explained the major problem the administration had with House Bill 857 in the House was the time table. He commented this is a 120 day review process which the public is involved in. Labor representatives would like to see 180 days; the administration would like 30 or 60 days.

Proponents' Testimony:

Tom Schneider of the Montana Public Employees Association told the Committee he supported House Bill 857 with concern about the time table. He stated he would rather have more than 30 days because this is only a recommendation of the audit committee. If the recommendation is against privatization and privatization is proceeding anyway, it does not allow time to do anything.

Terry Minow of the Montana Federation of Teachers spoke in support of House Bill 857. She told the Committee the bill addresses one of the most important issues before the 1991 Legislative Session. She explained privatization as a concept, and as a reality has been favored by Governor Stephens since his election. She commented the policy "looks good on the surface;

and the surface is all that most Montanans have seen". The Montana Federation of Teachers' members' experience with privatization of data entry services in the Department of Administration "prove the need" for House bill 857. She told the Committee the privatization process is "cloaked in secrecy, cost savings are not accurate, the quality of services are not adequately protected, there is no follow through to protect the services." She presented the Committee with proposed amendments (Exhibit #8).

Darrell Holzer of the Montana State AFL-CIO spoke in support of House Bill 857 from prepared testimony. (Exhibit #9)

Mark Langdorf of the American Federation of State, County and Municipal Employees International Union spoke in support of House Bill 857. He told the Committee AFSCME has been tracking privatization for approximately five years and believes privatization of government services is "sold to the taxpayers to save money, but doesn't do that". House Bill 857 allows the study of real cost in dollars. He commented privatization has many negative impacts which HB 857 would address.

Bob Heiser of the United Food and Commercial Workers International Union spoke in favor of House Bill 857. He told the Committee although in favor of House Bill 857 UFCW was not in favor of privatization.

Gene Fenderson of the Montana State Building and Construction Trades Council spoke in support of House Bill 857.

### Opponents' Testimony:

Bob Marks, Director of the Department of Administration spoke in opposition to House Bill 857. He explained many concerns have been incorporated through amendments. He commented there was testimony with "lambasting of the Stephens' administration as if they were the first and only people who ever contracted work out, and that's a fallacy". He explained all governments, local, state and federal; as well as all parties. This is an effort to save taxpayers money and deliver satisfactory services. He told the Committee there has been some "unfair discussion" of the quality of work done by the private sector. He commented contracting with the Department of Administration has saved money and have done quality work. He stated this was not done in secrecy. All individuals being displaced were offered work within government.

Charles Brooks, Executive Vice President of the Montana Retail Association spoke in opposition to House Bill 857. He reminded the Committee of a recommendation he made of a theme, "we've always done it that way". Mr. Brooks told the Committee he would present written testimony at a later time.

Fred Stout, President of Mars Stout presented prepared

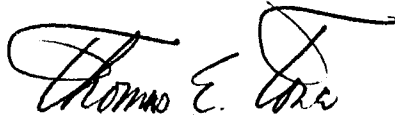
testimony which is neither in opposition or support of House Bill 857 (Exhibit #10).

Closing by Sponsor:

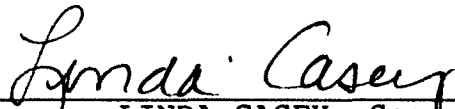
Representative O'Keefe closed on House Bill 857. He told the Committee he did not "lambast the governor or the administration" nor did he intend to. He explained this is an administrative process which "cuts the legislature in on the deal". The legislature creates the FTEs and the jobs; and should look at what the administration is doing prior to the decision to cut the jobs. The final decision is still with the administration. He commented he "fully expects to have a Democratic governor" in two years. It does not matter what party the governor is with. He stated this is an important administrative procedure which should be followed. He pointed out the security guards were privatized; now they are coming back. A mistake was made. He suggested the mistake could have been stopped and the state could have been saved some money.

ADJOURNMENT

Adjournment At: 5:00 p.m.



SENATOR THOMAS E. TOWE, Vice Chairman



LINDA CASEY, Secretary

TET/11c



ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/21/91

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 2  
March 26, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 882 (third reading copy -- blue), respectfully report that House Bill No. 882 be amended and as so amended be concurred in:

1. Title, line 8.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 49-2-303, 49-2-403, AND"

2. Page 3, line 5.

Following: "awarded"

Insert: "by a state agency"

3. Page 3, line 6.

Following: "project"

Strike: "by a state agency"

Insert: "within the exterior boundaries of an Indian reservation"

4. Page 3.

Following: line 21

Insert: "Section 3. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or

mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section

(4) The application of a hiring preference as provided for in [sections 1 and 2] may not be construed to be a violation of this section."

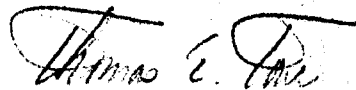
Section 4. Section 49-2-403, MCA, is amended to read:

"49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) and (4) and 49-3-201(5), sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination ~~unless the nature of the service requires the discrimination~~ except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Renumber: subsequent sections

Signed:



Thomas E. Towe, Vice-Chairman

LB 3/26/91

Amd. Cobrd.

SB 3/26 10:30

Sec. of Senate

CLERICAL

House Bill No. 862

Date: 3/28/91

Time: 4 PM

MER  
(Legislative Council Staff)

LABOR  
S / H Standing Committee  
[Signature]  
(Chairman)

S / H Committee of the Whole  
  
(Sponsor)

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

Amendment # 4, in (3)  
Keep period at end of (3) ("... section.")  
add period in added (4) ("... section.")

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

Amendments to House Bill No. 882  
Third reading copy (blue)

Prepared by Anne L. MacIntyre  
March 21, 1991

1. Page 1, line 8.

Following: "AMENDING"

Strike: "SECTION"

Insert: "Sections 49-2-303, 49-2-403 and"

2. Page 3.

Following: line 21

Insert: "Section 3. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment.

[Subsections 1 -3 as in existing law].

(4) The application of an employment preference as provided for in [sections 1 and 2] may not be construed to constitute a violation of this section."

"Section 4. Section 49-2-403, MCA, is amended to read:

"49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3), 49-2-303(4), and 49-3-201(5), sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination ~~unless-the-nature-of-the-service requires-the-discrimination~~ except for the legally demonstrable purpose of correcting a previous discriminatory practice.

"[Subsection 2 as in existing law]."

Renumber: subsequent sections

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 3/21/91

BILL NO. H8882

STATE OF MONTANA

Office of the Legislative Auditor

STATE CAPITOL  
HELENA, MONTANA 59620  
406/444-3122

DEPUTY LEGISLATIVE AUDITORS:

MARY BRYSON  
Operations and EDP Audit

JAMES GILLET  
Financial-Compliance Audit

JIM PELLEGRINI  
Performance Audit



LEGISLATIVE AUDITOR:  
SCOTT A. SEACAT

LEGAL COUNSEL:  
JOHN W. NORTHEY

March 18, 1991

Representative Squires  
Capitol Station  
Helena, MT 59620

Dear Representative Squires:

Enclosed is a memorandum discussing your request for a review of the fiscal note developed by the Office of Budget and Program Planning (OBPP) for HB643. In summary, the fiscal note represents the maximum fiscal impact if all eligible employees use the maximum benefits under HB643. We found the estimates were overstated because FTE at the Women's Correctional Facility were included twice. In addition, funds for training and other benefits for liquor store employees may also be included in the fiscal note for SB 458 (liquor store closure). It is difficult to estimate the number of employees who will actually use benefits provided and how much of the benefits they will use without knowing each employee's situation.

If you need additional information or have any questions please call me or Maureen Rude at 444-3122.

Sincerely,

Handwritten signature of Jim Pellegrini in cursive script.

Jim Pellegrini  
Deputy Legislative Auditor  
Performance Audits

JP/v/yy3.1tr

Enclosure

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 3/21/91

BILL NO. HB643

Office of the Legislative Auditor

Analysis of Fiscal Note to HB 643

Legislative Request 91L-91  
March 18, 1991

In response to a request to review the fiscal note prepared by the Office of Budget and Program Planning (OBPP), we reviewed calculations and assumptions used by the various departments to calculate projected maximum impact of HB 643.

Background

The bill as drafted would provide job training, severance pay, relocation costs, and other benefits for employees whose positions are eliminated as a result of privatization, reorganization, or closure of an agency. The fiscal note, as drafted, includes the maximum potential costs estimated by the two agencies most likely to be impacted in the fiscal 93 biennium, the Departments of Institutions and Revenue.

Conclusion

The fiscal note represents the maximum fiscal impact if all eligible employees use the maximum benefits under HB 643. Our review indicates the fiscal note may be overstated by approximately \$60,000 for FY 91-92 because SB 458 (liquor store closures) also calls for training and benefits, which would have separate funding. The fiscal note is overstated by approximately \$160,000 in FY 92-93, due to SB 458 and double calculation of FTE at the Women's Correctional Facility.

It is difficult to estimate the number of employees who will actually use benefits provided by HB 643, and how much of the benefits they will use without knowing each employee's situation. It is not likely all employees will receive or use the benefits offered under HB 643. However, as many of these lost jobs will be in small towns in Montana, the employees will probably use more of the services than have been used by employees previously laid off. Department of Administration janitors used only about 12 percent of funds set aside for them (for training). It is probable employees laid off as a result of Department of Institutions and Department of Revenue proposals will use more than 12 percent of the estimates in the fiscal note.

SUMMARY/ANALYSIS OF ESTIMATES

Department of Institutions-The department is planning to downsize the number of employees at the Montana Developmental Center. In addition, the department and Legislature are considering building

a new Women's Correctional Facility, which may or may not be in the same area as it is now.

1. The department estimates decreases in FTE due to downsizing of the Montana Developmental Center of 38.81 FTE in FY 91-92, and 78.86 FTE in FY 92-93. The Executive Budget indicates staff decreases of 56.80 FTE in FY 91-92 and 97.85 FTE in FY 92-93. If a Women's Correctional Facility is built at a new location and current FTE are unable to move, the department estimates a total of 28.85 FTE in FY 91-92, and 28.85 FTE in FY 92-93 could potentially receive benefits under this bill. According to the Legislative Fiscal Analyst's Budget Analysis, the Women's Correctional Facility has only 28.85 FTE, indicating maximum cost projections for that facility are doubled.
2. The department estimates 38 percent of these employees have five or more years of service. Without a detailed analysis of work histories of the employees affected it is difficult to determine whether this assumption is correct.
3. The department estimates 10 percent of employees will transfer to other state jobs and receive relocation benefits at \$1,000 each. It is difficult to estimate how many of these employees will obtain jobs outside of state government and the town they are currently living in.
4. The department estimates all employees eligible (five years of service) for retraining will take advantage of retraining costs. Again, it is difficult to estimate how many employees will actually take advantage of this service.
5. The department assumed 50 percent of employees would take advantage of job counseling and vocational guidance. It is likely many employees could receive this counseling and guidance from their local job service, at no additional cost to the state. The fiscal note includes \$44,000 for these services for Department of Institutions employees.
6. The department assumed all eligible employees would take advantage of a year worth of insurance contributions. This will not apply if the employee gets another job with the state or with a business with health insurance. It is difficult to estimate the number of eligible employees who will not obtain employment for a year, or who will obtain employment with a business which does not provide insurance coverage.
7. The department estimates 90 percent of terminated employees would receive severance pay (based on the assumption mentioned in #3, 10 percent of employees would transfer to other state jobs, and therefore would not receive severance pay). The department estimated average wages and benefits at \$22,822 per



employee, and average length of service at three years. The Department of Administration (DofA) calculates average state employee wages for all state employees at \$20,000 with seven years of service. DofA's assumption would make maximum severance pay \$7,000 per employee, or \$924,000.

Our review indicates the fiscal year 1992-93 estimate is overstated by approximately \$130,000, because the FTE at the Women's Correctional Facility were included twice in the department's calculation.

Department of Administration (DofA)-The OBPP obtained estimates of costs from DofA but did not use these estimates in calculating fiscal impact of the bill.

Department of Revenue-The department plans to withdraw the state from the retail liquor and table wine sale business. The plan would create a package store license, and the state would not be contracting out this service.

1. The department estimated maximum costs assuming every employee currently working at state liquor stores would collect the maximum severance pay (which assumes none of the employees would obtain jobs with state government). The estimate also assumes every eligible employee would use the maximum relocation, training, counseling, and insurance benefits. It is unlikely every eligible employee currently working at the liquor stores would use \$1,000 to relocate, \$2,000 of training, \$500 of vocational counseling (which as stated above may be obtained through the job service), \$1,800 of insurance benefits, and \$7,000 of severance pay.
2. The department's proposal for Senate Bill 458, withdrawing the state from the retail liquor business includes the following key element:

"Stores would be closed as agency contracts terminate, and the others would be closed as a store lease comes due and all full-time employees who worked in the store when legislation was approved have voluntarily terminated employment."

If this is in fact the case, then none of the employees would be eligible for benefits listed in HB 643.
3. The department's proposal for Senate Bill 458 also includes funds for training and other benefits for laid off employees. The proposal includes \$25,000 in FY 91-92 and \$12,500 in FY 92-93 for training, and \$35,000 in FY 91-92 and \$17,500 in FY 92-93 for other benefits. This indicates the fiscal note may be duplicating funding by \$60,000 for FY 91-92 and \$30,000 for FY 92-93 because the fiscal impact is included in HB 643 as well as SB 458.

### Costs Not Estimated by the Fiscal Note

There is no estimate in the fiscal note for costs associated with Section 4, part (1)(a), which says the employee is entitled to a wage or salary that is equivalent to or higher than the wage or salary of the employee's previous position; or part (1)(b) which says the employee is entitled to retention of all rights, benefits, and privileges held prior to the transfer. It would be difficult to estimate these costs without knowing the current situation of each employee.

### Benefits Provided to Employees Previously Terminated

When the Department of Administration contracted for janitorial services, a letter of Agreement between the state and union allowed for:

- A. A \$1000 contribution to health insurance for two employees.
- B. A training fund of \$11,000, which allowed for \$1,000 per laid-off employee.

The Department of Administration paid \$2,000 for health insurance under this agreement. In addition, the department paid \$1,350 for training courses (12 percent of total training funds allocated).

v/yy3.mem



DONALD R. JUDGE  
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DARRELL HOLZER ON HOUSE BILL 643, BEFORE THE SENATE LABOR  
COMMITTEE, MARCH 21, 1991.

-----

Mr. Chairman, Members of the Committee, for the record my name is Darrell Holzer, representing the Montana State AFL-CIO, and we rise in support of House Bill 643.

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

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

Key concepts contained in this bill include several general protections that would provide these dislocated employees a hiring preference for job openings in other state institutions, departments or agencies and access to all announcements to state job vacancies.

The bill goes on to provide that employees who transfer to another state job are entitled to a wage at least equivalent to that of their previous position, the retention of all collective bargaining rights and the state's contribution to health insurance. Those employees who stay with the state and those who choose to seek other employment would be provided assistance with relocation expenses and would have access to retraining and to employment counseling. In addition, those employees who seek employment with someone other than the state would be eligible for up to a 12 month extension of state's contribution to employee's group health insurance and severance pay.

Those persons who are 50 years of age or older who choose to retire as a result of privatization would be entitled to an early retirement allowance.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 3/21/91

BILL NO. HB643

Testimony of Darrell Holzer  
House Bill 643  
Senate Labor Committee

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

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

Thank you.



DONALD R. JUDGE  
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DARRELL HOLZER HOUSE BILL 846, BEFORE THE SENATE LABOR AND  
EMPLOYMENT RELATIONS COMMITTEE, MARCH 21, 1991

---

Mr. Chairman and Members of the Committee, for the record my name is Darrell Holzer and I'm here today representing the Montana State AFL-CIO, in support of House Bill 846.

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

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

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

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

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 4

DATE 3/21/91

BILL NO. HB 846

Amendment to HB 846 (Third Reading)

Page 4, lines 4 through 12.

Following: "2-6-102"

Strike: remainder of lines 4 through 12 in their entirety

Renumber: subsequent sections

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 5  
DATE 3/21/91  
BILL NO. HB 846

FISH & GAME Bids.

STATE OF MONTANA  
 BID # 3197-F

Bid Tabulation For Item # 1

PURCHASE  
 02/27/

M T	Vendor	(original)	M T	(preference)	Comment
Y	Easter Seal Adult Training Ctr	NO BID		NO BID	[
Y	Guardian Building Maintenance	NO BID		NO BID	[
Y	Montana Janitorial Systems	NO BID		NO BID	[
Y	Northern Rocky Mountain	NO BID		NO BID	[
Y	Kevin Connor Construction	\$\$ 9,643.1500	N	\$\$ 9,643.1500*	[
Y	Bompert Cleaning Service	\$\$ 10,813.3300	N	\$\$ 10,813.3300	[
N	Pride Professional Services	\$\$ 10,535.9500	N	\$\$ 10,852.0285	[
Y	Service Master Contract Serv.	\$\$ 11,961.8400	N	\$\$ 11,961.8400	[
Y	Kleen King	\$\$ 13,435.4000	N	\$\$ 13,435.4000	[

SENATE LABOR & EMPLOYMENT  
 EXHIBIT NO. 5  
 DATE 3/21/91  
 BILL NO. HB 846

LEE METCALF

STATE OF MONTANA  
BID # 3197-F

Bid Tabulation For Item # 7

PURCHASE  
02/27/

M T	Vendor	(original)	M T	(preference)	Comment
Y	Bompart Cleaning Service	\$\$ 35,816.2400	N	\$\$ 35,816.2400*	[
Y	Kevin Connor Construction	\$\$ 38,598.9500	N	\$\$ 38,598.9500	[
Y	Davis Maintenance	\$\$ 42,548.6100	N	\$\$ 42,548.6100	[
N	Pride Professional Services	\$\$ 45,071.9000	N	\$\$ 46,424.0570	[
Y	Service Master Contract Serv.	\$\$ 52,871.5900	N	\$\$ 52,871.5900	[
Y	Kleen King	\$\$ 58,347.2500	N	\$\$ 58,347.2500	[

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 5  
DATE 3/21/91  
BILL NO. HB 844



# DEPARTMENT OF ADMINISTRATION

## DIRECTOR'S OFFICE

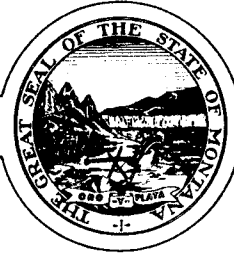
STAN STEPHENS, GOVERNOR

MITCHELL BUILDING

# STATE OF MONTANA

(406) 444-2032

HELENA, MONTANA 59620



February 5, 1991

Representative Mark O'Keefe  
State Capitol  
Helena, Montana 59620

Dear Representative O'Keefe:

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

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

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

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

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

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

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 3/21/91

FILE NO. 43857

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

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

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

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

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

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

*report*  
*which would be beyond the state's control*

*pg 17-18*

*P:4 line 8-11*

*\* TO THE LEGISLATIVE AUDITOR*

Representative Mark O'Keefe  
February 5, 1991  
Page 3

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

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

Thank you for the opportunity to respond.

Sincerely,



Bob Marks, Director  
Department of Administration

OFFICE OF THE LEGISLATIVE AUDITOR  
 PROPOSED PRIVATIZATION ANALYSIS TIMELINE

MILESTONE	DAY	DURATION
IMPLEMENTATION DATE	0	
30 DAY ADVANCE RELEASE REQUIRED	30	30
REPORT PRINTING	35	5
REPORT FINALIZATION	45	10
AUDIT COMMITTEE HEARING RECOMMENDATION/REPORT APPROVAL	46	1
MAIL TO AUDIT COMMITTEE TWO WEEKS IN ADVANCE	60	14
REPORT REVISION	74	14
COMMITTEE PUBLIC HEARING ON PROPOSED PRIVATIZATION	75	1
MAIL TO AUDIT COMMITTEE TWO WEEKS IN ADVANCE	89	14
PRIVATIZATION ANALYSIS	119	30
PROPOSAL SUBMISSION TO AUDIT COMMITTEE	120	1
		----- 120

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 7

DATE 3/21/91

BILL NO. HB857

SUGGESTED AMENDMENTS TO HB857

- 1) Section 4, paragraph 2 after "members of the public" add "elected bargaining agents or employee representatives."
- 2) Section 3, paragraph 5-Add and "the costs incurred in the discontinuation of such a contract."
- 3) Section 3, paragraph 8- Delete semi-colon and add "which shall remain comparable to existing state rates."

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 8  
DATE 3/21/91  
BILL NO. HB 857



DONALD R. JUDGE  
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DARRELL HOLZER ON HOUSE BILL 857, BEFORE THE SENATE LABOR AND  
EMPLOYMENT RELATIONS COMMITTEE, MARCH 21, 1991.

---

Mr. Chairman, Members of the Committee, for the record my name is Darrell Holzer, representing the Montana State AFL-CIO, and we rise in support of House Bill 857.

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

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

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

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

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

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

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 9  
DATE 3/21/91  
BILL NO. HB857

Testimony of Darrell Holzer  
House Bill 857  
Senate Labor Committee

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

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

Thank you.

**TESTIMONY FOR HOUSE BILL 857**

**MARCH 21, 1991**

**by**

**FRED STOUT**

**SENATE LABOR & EMPLOYMENT**

EXHIBIT NO. 10

DATE 3/21/91

BILL NO. HB 857



Mr. Chairman:

I am here to testify on House Bill No. 857.

My name is Fred Stout, and I am the President of M.A.R.S. STOUT, a consulting data processing company headquartered in Missoula. I am here to provide testimony that, hopefully, will add information to assist you in formulating an opinion regarding privatization review processes. I am not here to support or oppose HB 857, but to add a perspective that seemed to be lacking during the prior hearing in the House.

Clarification is in order regarding the accuracy of the current data entry work completed by M.A.R.S. STOUT under a State contract awarded by competitive bid. I will provide some background information which needs to be presented for my testimony to be relevant to the intent of HB 857.

M.A.R.S. STOUT is a company known nationally for its consultation role for large national corporations for the Targeted Jobs Tax Credit program. (T.J.T.C.)

T.J.T.C. is a preferential hiring program passed by Congress in 1978 to assist persons who are traditionally difficult to employ, such as welfare recipients, SSI, economically disadvantaged youth, Vietnam veterans, AFDC recipients, and rehabilitation clients. We have gained success by efficiency of processing information by being competitive, by handling sensitive information in a confidential manner and by providing accurate reporting for our clients. We strive to provide the same quality of service to the users of the data entry work conducted for about 37 users in State government.

A reference was made in the House hearing that tainted the accuracy of our work. The statement was based on a report from the Legislative Audit Committee, written by Vicki Rauser, which Representative O'Keefe interjected in his verbal testimony.

The reference stated that apparently the accuracy appears to be within acceptable ranges for OPI work for the years 1988-1991, with the exception of 1990 actual completed by M.A.R.S. STOUT. The report stated that 61 errors were committed on the sample taken from 1.7 to 1.8 million keystrokes. Projecting this to the total work equated to .87 hundreds of one percent above allowable contractual limits. This infers a very analytical, accurate, empirical evaluation of the data which is not accurate. The memo to Representative O'Keefe from the Legislative Auditor also states that, and I quote the statement from the memo: "We determined whether the errors were attributable to data entry personnel through discussion with OPI personnel. The other errors occurred primarily during OPI's initial review of the various documents." I must declare this as considerably less than solid empirical statistic data to interject into analysis of keystroke accuracy.

I contacted Vicki Rauser by phone twice last week to obtain written information and to elaborate on the rationale, program logic and methodology of the audit. When asked if I could have the data in writing and review the documents to see what actual document review transpired, she said she would check to see if this was acceptable

policy from her supervisors. I had asked for a decision by Tuesday, March 19, 1991, this week. She returned my call and stated that the two gentlemen who needed to give an opinion on this review process were busy with legislative matters and hearings and it would be difficult to get an opinion by March 19, 1991. We discussed the possibility of having a legislator request the report, which we both agreed as an option and which we thought must be within the realm of acceptable protocol, rather than releasing it to a private citizen, ----- even if the subject of the study. I presume that this would be the procedure that I will eventually follow, but time and the very busy legislative schedules did not permit it for this hearing.

The report did say, "The OPI data is one of 33 data entry jobs outlined in the contract." The investigation looked at one application of the approximately thirty million keystrokes completed in the five and one-half months of our existence.

I ask you to consider the following facts:

Quality assessment for data processing, contrary to first impressions, is not easily defined on empirical, objective, accurate basis. Many variables exist as exhibited by the Office of Public Instruction application. It is a voluminous work of variable and poorly defined format, which consists of data which was encoded over the State by 547 school districts and as a result, frequently lacks coding clarity and quality. Instructions for proper entry are essential to place data in proper and correct fields. Handwriting is often a matter of interpretation due to illegibility. Definition is lacking to establish what is an error and who should receive the blame if it was keypunched as the data entry operator read it.

The project came to us in the early days of our operation, and on a rush basis. It had been sent to the State Data Entry Unit several weeks before the unit was closed. No one informed us that the work had been pending with the State until a call from OPI as to progress alerted us to its very existence.

We implemented an all out effort to complete the program, which we did between the dates of November 5th, through December 3, 1990. We completed 3,448,826 keystrokes in that time for OPI, in addition to our daily work requirements. We had ten M.A.R.S STOUT employees, two of which were former Information Services Data Entry unit employees. In addition to the two former Data Entry personnel, five of the remaining seven employees have had data entry experience with other State agencies. We have hired four of the nine remaining full time and part time State Data Entry unit employees when the unit closed, including Barbara Twiggs, who was the manager/supervisor of the unit. In addition, we hired extra temporary staff as profiled below:

- \*Three persons from Express Temporary Services--all had data entry experience.
- \*Four persons from community at large--3 of which are employed or have been employed by the State.
- \*Four persons currently working for the State and working extra hours for us, including Byrl Newman, former Supervisor of IDS data entry unit with 15 years experience and Barbara Twiggs, who has 22 years of experience and was the former Manager/Supervisor of the ISD data entry unit.

If bonafide errors occurred, as they will, who was responsible?

In consideration of the above, is it reasonable to conclude from this one sample that our firm is deficient in providing a quality service?

Can it be considered to be fair and fall within acceptable business relations to "judge" the performance of our firm, and to imply, at a minimum, that a general problem regarding keying accuracy exists, based upon the limited analysis performed?

The point of this testimony and to make this statement germane to this hearing, I ask you to be objective. Monitoring of all contracts is desirable, acceptable and essential; but please, when doing so, be objective. Millions of dollars of contracts are awarded each year out of necessity and in the best interest of the overburdened taxpayer. Data Entry is an insignificantly small portion of the total private contracts, but it has the notoriety of being "privatized". The highly politicized, overused term, "privatization" has an emotional impact even when uttered. The fact remains, that contracts with the private sector, such as road and bridge construction, has existed long before the emotional implication evolved.

I ask each of you to look at the issues objectively, weight the consequences to state workers, savings to the taxpayer, efficiency of the operation on an objective basis.

We agree that if programs are implemented, monitoring makes good sense and is essential. Please, I ask again, implement valid monitoring, seek to be objective, drop the political biases and do not use invalid methodology to scrutinize on-going projects. Firms like ours, who can provide accurate cost effective work, should not be judged on poorly designed invalid monitoring methods.

Monitoring properly by all means, but as of today, I think the methods relevant to our operation have lacked professional review standards.

One wonders at the motives of introduction of so called "sub-standard" performance in a House Committee hearing when in five and one half months, the Administrators of ISD, the Directors of the Department of Administration, the staff at ISD (with which we contracted) has had only one complaint issued about our work. We were never contacted in all the time frame of our contract with a statement of dissatisfaction.

Monitoring should be motivated to improve procedures where necessary. Only then does it have a validity to improve the tasks being performed. It has no validity if motivated to sustain a political viewpoint that "privatization" is good or bad.

DATE 3/21/91

COMMITTEE ON Senate Labor

HB 643-846-857-882

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
MARK LANGDOFF	AFSCME	643 857 846 882	X	
Charles R. Brooks	MT Retail Association	846 857		X
Bob Heiser	UFCW	643, 846 857	X	
Fred Stout	MAPS STOUT	857		
Mike Trevor	DOA/ISTD	846/857		X
Debra Kuhn	DOA/ISSD	846/857		X
Jim Stucky	IUE Local #400	643 857 846 882	X	
Nick Rotering	Dept. of Highways	882		
Tom Schuster	MPEA	643 846 857	X	
Garrett Hobbs	mt. st. AFL-CIO	643 846 857	X	
DAVID BROWN	First BK-Helena	HB 846		X
Denver Atkinson	Ft. Peck Tribes	H 882	X	
DAN EDWARDS	OCAW	882	X	
DAN EDWARDS	OCAW	846, 857, 643	X	
Eugene Jones	MT St. By Barber	643 846 857	X	
Eugene Jones	Salmon Union	882	X	
Terry Mironow	MET/MFSE	846, 857, 843	X	

(Please leave prepared statement with Secretary)

