

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By Senator Thomas E. Towe, Vice Chair, on March 26, 1991, at 3:10 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 807**

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

Representative Royal Johnson told the Committee House Bill 807 was an attempt to make workers' compensation and unemployment insurance exemptions consistent. He explained an area specifically addressed was newspaper carriers.

##### **Proponents' Testimony:**

Mike Voeller a lobbyist for Lee Enterprises Inc. told the Committee their primary concern was with the section regarding unemployment insurance exemption for newspaper carriers and free lance correspondents. He explained it is the same exemption as the workers' compensation statutes. He commented House Bill 807 received a unanimous vote in the House Labor Committee, was placed on the consent calendar and passed 99 to zero.



SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

March 26, 1991

Page 2 of 26

Chuck Walk, Executive Director of the Montana Newspaper Association spoke in support of House Bill 807.

Chuck Hunter of the Department of Labor and Industry told the Committee the department worked with workers' compensation and the sponsor of House Bill 807 to "clean up" some of the difference in exemption between workers' compensation industry and unemployment insurance program. He explained there are many exemption which need to be different, but HB 807 allows for the writing of rules for those exemptions which can be consistent. Mr. Hunter explained a new exemption is created in the unemployment insurance law for newspaper carriers. House Bill 807 will give the ability to write consistent rules for unemployment insurance and workers' compensation. The employer will then know which exemptions would apply to employees in both unemployment insurance and workers' compensation.

Jim Murphy of the State Fund told the Committee there are no exemption changes in the current workers' compensation act. The exemptions will remain the same.

Opponents' Testimony:

Don Judge of the Montana State AFL-CIO requested an amendment which would eliminate the exemption of unemployment insurance for newspaper carriers and include them back on workers' compensation coverage.

Questions From Committee Members:

Senator Lynch asked if the department has the authority of exemptions. Mr. Hunter said the department did not have the authority.

Senator Towe asked if the department has the authority to decide who is and who is not an independent contractor. Mr. Hunter told the Committee that was correct. Senator Towe asked if the determination is made that someone in heavy industry is an independent contractor, the department will be making the decision this individual is not required to have workers' compensation or unemployment compensation coverage. Mr. Hunter explained that is correct; but is no different from what authority the department currently has.

Closing by Sponsor:

Representative Johnson told the Committee an amendment is needed. He explained on the red fiscal note there is mention of an incorrect reference in the bill. It should be Title 39, Chapter 51 not Chapter 71.



EXECUTIVE ACTION ON HOUSE BILL 807Amendments, Discussion, and Votes:

Senator Lynch moved to amend House Bill 807 to correct the reference of Title 39 by deleting Chapter 71 and inserting Chapter 51. MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote:

Senator Blaylock moved House Bill 807 BE CONCURRED IN as amended. MOTION CARRIED UNANIMOUSLY. Senator Lynch will carry House Bill 807 on the Senate floor.

HEARING ON HOUSE BILL 837Presentation and Opening Statement by Sponsor:

Representative Jerry Driscoll told the Committee House Bill 837 is a major rewrite of the workers' compensation system. He explained it would re-define definitions of 'temporary/total' and 'permanent/partial'. Workers job pool is re-defined. House Bill 837 determines by a formula the amount of award based on age, education, and work experience if permanently or partially disabled. It changes the present 500 weeks wage loss system to 350 weeks of an "impairment award"; and puts in 8 weeks of rehabilitation. If retraining is necessary there is up to 104 weeks of retraining available. The worker has more input into the retraining. He told the Committee HB 837 is revenue neutral and would not cause any rate increase to the employer; it is more fair to the worker. He asked any amendments offered be considered very carefully as not to upset the "delicate balance" of the bill.

Proponents' Testimony:

Norm Grosfield, an attorney in Helena spoke in support of House Bill 837. He told the Committee HB 837 is a joint effort of a number of interest groups concerned about two primary problems in the present delivery system; the area of permanent/permanent partial benefits and the payment of rehabilitation benefits. He explained under the current law there is no rehabilitation benefit even though it is listed in the law. Any effort of bona fide rehabilitation can be negated. Most of the sectors of the workers' compensation system are in agreement that that is a problem. He told the Committee representatives of the State Fund, the self-insurers, labor through Jerry Driscoll, the Chamber of Commerce, and the rehabilitation industry worked on the bill. After the bill was introduced there were questions by the Department of Social and Rehabilitation Services and the Trial Lawyers Association. After meeting with these groups the concerns were worked out. He



commented workers' compensation is a technical and complex area. He offered two technical amendments. Mr. Grosfield explained a repealer was struck, which should not have been struck, when the bill was being put together, and an internal reference to a subsection (on Page 26) which would create problems. Mr. Grosfield presented a written statement to the Committee (Exhibit #1).

George Wood, Executive Secretary of the Montana Self-Insurers Association spoke in support of House Bill 837. He told the Committee his organization was consulted by Representative Driscoll.

James Tutwiler of the Montana Chamber of Commerce asked to be on record in support of House Bill 837. He explained the Chamber worked in the drafting of the bill. He commented it would allow for a better system for individuals injured on the job.

Michael Sherwood representing Montana Trial Lawyers Association spoke in favor of House Bill 837. He told the Committee a representative of the association was involved in the latest drafting of the bill. He commented HB 837 passed the House 100 to zero. He explained passage of House Bill 837 would render House Bill 506 needless.

Jacqueline Terrell representing the American Insurance Association told the Committee the association generally supports House Bill 837. She explained they understand compromises were made and recognizes many positive changes. She commented there are technical problems and would ask for further study by the interim committee on workers' compensation. She told the Committee some of the member companies, especially those in Montana, do not take a position of support.

Gene Phillips on behalf of the Alliance of American Insurers spoke in favor of House Bill 837.

Pat Sweeney representing the State Fund told the Committee the State Fund was involved in the drafting of the legislation at the request of the sponsor. He explained a number of compromises were made on both sides. He commented the State Fund feels House Bill 837 is a good bill and discussion with their actuary have indicated preliminarily it as a revenue neutral bill.

John Whiston, an attorney from Missoula told the Committee he was the representative of the trial lawyers who participated in the negotiations which led to the drafting of House Bill 837. He commented he went back over approximately half a dozen of his clients which have settled in the last year. He explained some would come out a little better under HB 837; some a little worse. He commented those coming out better were more deserving. He stated it provides a real opportunity for real rehabilitation, real assistance in getting people re-trained in the manner they feel is most appropriate.



Ted Doney representing the Rehabilitation Association of Montana, an organization of private rehabilitation providers involved in the workers' compensation system explained the association was involved in the discussion and participated in the drafting of House Bill 837. He commented the association supports the objective of the bill which make needed improvements to the workers' compensation system. He told the Committee there are concerns about how the legislation will be implemented, and the information which is provided the injured worker on his entitlements under the bill. He stated the Department of Labor will work with them in the adoption of rules which will address their concerns. He presented written testimony from Bill Crivello, President of the Rehabilitation Association of Montana (Exhibit #2).

#### Opponents' Testimony:

Pat Stephenson of Intermountain Claims in Billings spoke in opposition of House Bill 837 (Exhibit #3).

Gary W. Bandbury spoke in opposition to House Bill 837 from a prepared witness statement (Exhibit #4).

#### Questions From Committee Members:

Senator Aklestad asked Mr. Stephenson if he would point out areas of the bill in which the litigation he spoke of could take place. Mr. Stephenson told the Committee on Page 22, Line 17 in which it states "Upon approval, the agreement constitutes a compromise and release settlement and may not be re-opened by the department". He explained HB 837 has deleted "or by any court". He stated any compromise settlement made under the bill is nothing more than a lump-sum advance because (at a given date in the future) the claimant can assert a claim for further benefits. Deleting "or by any court" the claimant does not have to go through the court to show there has been a material or mutual mistake. He pointed to Page 32, Line 1. The rehabilitation section "has drastically changed from the existing code". He explained the time frames (that an insurer has) are outlined. He commented once an injured worker reaches maximum medical improvement and cannot return his former job position, the insured is to appoint a rehabilitation provider who does a vocational assessment, and determines if the individual can return to work in a normal labor market. If the injured worker disagrees with that determination, under HB 837, he can make demand for rehabilitation benefits. He told the Committee there is nothing in HB 837 which can precludes the 104 weeks of benefits from being litigated; nor is there anything which precludes the 104 weeks of benefits from being compromised. He commented injured parties will seek legal counsel to receive a portion.

Senator Blaylock asked Mr. Grosfield to comment on Mr. Stephenson's statement. Mr. Grosfield explained "or by any



SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

March 26, 1991

Page 6 of 26

court" has been taken out because of a case which went to the Supreme Court which declared it is unconstitutional to preclude courts from reviewing and considering re-opening of settlements. He told the Committee a bill drafted by the Legislative Council in an effort to address that. Senator Towe pointed out the bill Mr. Grosfield was referring to was House Bill 506 which the Senate Labor Committee has not yet acted on. Mr. Grosfield explained currently there is no type of bona fide rehabilitation program. He commented there was a desire to provide the flexibility to allow private rehabilitation vendors to adopt a reasonable rehabilitation program which could be agreed upon by the injured worker. He commented every effort is made by all parties in workers' compensation to attempt to resolve cases. He stated most insurance companies and insurance representatives would want that flexibility. In order to provide a bona fide and fair program the flexibility is necessary to either resolve the rehabilitation benefit issue or to set up a bona fide program through a rehabilitation vendor.

Senator Blaylock asked George Wood lump-sum. Mr. Wood told the Committee there are no eligibility requirements for rehabilitation. The workers' compensation court has ruled an individual may be eligible but not entitled. He explained this one sets up some eligibility requirements. The individual is not eligible until the steps are gone through and there is an agreement. He told the Committee lump-sums by themselves are not bad.

Senator Towe stated currently an individual who presents eligibility requirements has to present a certificate from a physician, certificate from a rehabilitation provider, etc. He asked Mr. Wood if now there will be injected into that system litigation over whether there is or is not a right to rehabilitation. Mr. Wood told the Committee once eligibility standards are set there is a possibility of litigation. Most of the eligibility standards are very straight forward.

Senator Towe asked Representative Driscoll if what makes the bill revenue neutral is permanent partial is being reduced from 500 weeks to 350 weeks. Representative Driscoll explained currently, on a wage loss system, of up to 500 calendar weeks and by the Ingraham decision these can be lump-summed.

Senator Towe asked if the monies gained for rehabilitation is through cutting it from 500 to 350. Representative Driscoll explained 104 weeks would be added for rehabilitation.

Senator Towe asked Representative Driscoll what is this legislation doing for meaningful rehabilitation which was not in before. Representative Driscoll explained present laws says in rehabilitation the rehabilitation counselor shall try to return the individual to work at the former employer, former job, or former employer, modified position, or anything in the state of Montana which the individual's education and job skills allow

LA032691.SM1



them to perform. He stated "they always come out with parking lot attendant, 7-11 clerk, etc.; anyone with an eighth grade education and isn't in a wheel chair can do those jobs". He commented in the last year or two the division has sent 13 people to SRS for rehabilitation. "There is no rehabilitation in the '87 law". The worker has some say in what he is being re-trained to do.

Senator Towe asked if there were a negotiation between the claimant and the insurer as to what type of rehabilitation plan will be adopted. Representative Driscoll explained if the rehabilitation expert says they can find the individual a job, they have ten weeks to do so. If at the end of those ten weeks if there is no job the individual can do, and the rehabilitation expert has given leads to those jobs, the individual can an opportunity to go for the remainder of the 104 weeks in rehabilitation, i.e., trade school.

Senator Keating asked Mr. Doney if he could explain what vocational rehabilitation is. Mr. Doney referred the question to Kent Kleinkoff, part-owner of a private rehabilitation firms. Mr. Kleinkoff explained vocational rehabilitation is a system of assessing and evaluating a person's professional abilities, training, education, skills, work history, and whatever else may be included in his ability to find work of any kind. He stated in order to work in the industry a vocational rehabilitation counselor must be certified by national certification board, must have advanced training and must pass a national exam.

Senator Keating asked Mr. Kleinkoff if they attempted to find "just any job, a similar job, or a better job". Mr. Kleinkoff told the Committee the original goal of the workers' compensation act which was to return an injured person to work as soon as possible after the injury with a minimum of retraining. He explained the purpose of the '87 act was to attempt to return individual to their original job. If this was not possible, and a modified or alternative job could not be found, the counselor was to find something the person could do, after assessing the workers skills, work history, abilities, etc. He commented the manner in which the '87 law was interpreted and put into place, those in the rehabilitation have not "been real happy with". He stated "we haven't been allowed to do what we feel our training and education and credential prepare us for, which is to help people get back to work".

Senator Keating asked Mr. Kleinkoff if House Bill 837 improves on the '87 act. Mr. Kleinkoff told the Committee he thinks there is an opportunity in the bill to allow the flexibility in the original evaluation (Page 31, Line 11). He explained one of the eligibility requirements is the completion of a rehabilitation plan. In practice the rehabilitation plan will be closely followed by the insurer or the adjuster; and the injured worker will have input into it. Section D, Line 18, requires concurrence by the injured worker. He expressed his



hope in the event HB 837 passes the insurance industry will utilize rehabilitation in a professional manner.

Senator Keating asked Representative Driscoll about Page 31, Line 18, regarding the rehabilitation plan between the injured worker and the insurer. If the plan calls for expenditure of funds the department shall authorize SRS to use funds. He asked if those were medicaid funds. Representative Driscoll explained the department has 1% charge on claims paid which goes into a rehabilitation fund in the workers' compensation system.

Senator Keating asked if workers' compensation takes a portion of their premiums, gives it to SRS to expend for rehabilitation. Representative Driscoll explained under Plans 1, 2, and 3 it is 1% of the actual claims paid in the previous year.

Senator Aklestad stated if the weeks are being reduced, there would be savings there, and more monies would be spent in rehabilitation. He asked Representative Driscoll to give an example in rehabilitation which would be different; and takes more funds but would be "doing the right things". Representative Driscoll gave the example of an individual, making \$12 an hour on construction or logging, who had a serious leg or back injury. The doctor tells this worker to stay on level ground, and do no more climbing. If that person had this type of job they probably had high school math or better. Under the current law there is no way the rehabilitation counselor could not say this individual could not perform work in a grocery store. Under House Bill 837 maybe this individual could get six months or a year of training in rewinding electric motors, or something like that. If this person asked the rehabilitation counselor for one year to finish the plan. If the individual has the vocational skills or education to perform anything in the workers' job pool in Montana they (the counselor) have to say that is what the individual is going to do.

Senator Towe asked Representative Driscoll who designates the rehabilitation provider. Representative Driscoll told the Committee the insurance company designates. Senator Towe asked if there were a provision for the claimant who does not agree with the plan of the provider. Representative Driscoll explained they must come to an agreement.

Senator Towe asked Mr. Grosfield if there were opportunity for the claimant to disagree to the plan of the provider. Mr. Grosfield explained it was stated on Page 31, Line 18. Mr. Grosfield told the Committee (as part of this record) it should be understood the worker must agree to it. If there is a dispute and there cannot be agreement, it is left flexible; the insurer can appoint another one, or the claimant could retain their own rehabilitation counselor. Under current law there are disputes regarding rehabilitation benefits and those go before the workers' compensation court.



Senator Towe asked about the ten week period while waiting to begin the rehabilitation plan; and the eight week period. Mr. Grosfield explained the eight week period is a period, if the injured worker wishes the rehabilitation counselor to attempt to find him employment, can be used for. This eight week period is separate and apart from the 104 weeks. He explained the ten week period is the waiting time between the time is entered into and the time the plan starts.

Closing by Sponsor:

Representative Driscoll told the Committee the 1987 law "did two really bad things; it installed a wage-loss system after being cautioned not to do so. He explained there were 5,300 open claim files at the department prior to the 1987 law. There is now 10,600 because the files cannot be closed. The Supreme Court Ingraham decision stated these can be lump-summed. House Bill 837 eliminates the wage-loss system and goes back to an indemnity award system; and adds rehabilitation benefits. He told the Committee a person with a slight impairment, and does not need rehabilitation, will get less; but the person with an injury that will not allow them to return to their former employment should be able to receive rehabilitation if they choose. He requested Senator Blaylock carry House Bill 837.

HEARING ON HOUSE BILL 730

Presentation and Opening Statement by Sponsor:

Representative Dave Brown told the Committee House Bill 730 was intended to retain rail station facilities in communities of 2,000 or more inhabitants and at least one in each county where railroad operates. It does not require railroads to re-open agencies which were closed before January 1, 1991. He explained this legislation is vital in keeping the laws of agency for railroads in Montana. Prior to 1969 railroads were required to maintain agency facilities in towns of 100 or more inhabitants and at least one in each county. In 1969 the law was amended to 1000 or more inhabitants. The Montana Public Service Commission declined to close anymore agencies and were sued by the Burlington Northern Railroad in 1985. The 9th Circuit Court of Appeals upheld Montana's station law. At the time there were 66 BN agencies in Montana, two Union Pacific, two BA&P stations, one Sioux Line and one Central of Montana. In 1987, BN came to the legislature for relief. The Legislature amended the station law striking the population criteria and one in each county. He explained "ambiguous definitions of public convenience and necessity" were substituted. House Bill 730 addresses in a clearer manner the definition of public convenience and necessity. At the present time there are four Montana Rail Link stations, 25 BN stations, two UP stations, one Montana Western,



one Central Montana and one RERAS. He told the Committee the Burlington Northern stations open as of January 1, 1991 are Froid, Sidney, Glendive, Terry, Forsyth, Hardin, Laurel, Billings, Great Falls, Fort Benton, Wolf Point, Glasgow, Malta, Harlem, Havre, Shelby, Sweetgrass, Browning, Columbia Falls, Whitefish, Kalispell, Eureka, Libby, Helena, and Garrison. Those pending Public Service Commission closure are Hardin and Columbia Falls. Those petitioned for closure are Sidney and Fort Benton. Those scheduled for closure petitions are Wolf Point, Malta, Browning, Libby, Eureka, and Kalispell. Montana Rail Link stations open as of January 1, 1991, are Missoula, Helena, Livingston and Laurel. Union Pacific stations: Butte-Silver Bow and Dillon; RERAS in Anaconda; Montana Western stations in Butte; Montana Central station is Denton. He asked for an amendment to House Bill 730 which would require station equipment, business forms, and documents necessary to provide safe, adequate and sufficient, just, and reasonable rail service be left in place. He commented in the Columbia Falls BN had removed all equipment, records, etc. one year before making applications for closure. He asked for a letter from Art Lloyd of Amtrak be entered into the record (Exhibit #5).

#### Proponents' Testimony:

James T. Mular, Chairman of the Montana Joint Railway Legislative Council and representative of the Transportation Communications Union spoke from prepared testimony in support of House Bill 730 (Exhibit #6). He stated on April 1, the way billing and accounting at Great Falls centralized agency will be shifted to Fort Worth, Texas. There will be some accounting or billing out of Whitefish but the Great Falls facility will be reduced. He told the Committee House Bill 730 does nothing to Burlington Northern.

Representative Tim Whalen told the Committee in 1989 he had introduced the Idaho statute to the Montana Legislature. This passed the House but removed in the Senate. The language inserted was not clear. The PSC has taken the position this only allows the public to testify but not testify any type of guidance as to how the testimony is to be used. He explained he re-introduced the bill this session but did not pass. He told the Committee he is convinced if House Bill 730 does not pass the only depots which will remain open in Montana are four Montana Rail Link depots. Currently Burlington Northern has 25 open and half are "on the chopping block"; Union Pacific have two and both are "on the chopping block". He stated since 1987 when Representative Dorothy Bradley's bill took the population criteria out 60 depots have been closed; and, with rare exception, the community input taken at the PSC hearings is ignored; and continues to be true after the 1989 amendments. He stated he did not believe the PSC is interested in keeping these depots open.



Don Judge of the Montana State AFL-CIO spoke from prepared testimony in support of House Bill 730 (Exhibit #7).

Opponents' Testimony:

Leo Berry, a Helena attorney representing the Burlington Northern Railroad told the Committee there were towns, because of the way transportation system changed throughout the years, which had not "seen a train in a five years"; and yet there were station agents mandated by law to be there. House Bill 730 proposes going back to that type of system. The system is not based on public policy, or in consideration of what the needs of the shippers in the area are, or the public needs. He stated if there is to be an efficient transportation system there must some type of ability to "streamline" the system. He told the Committee he not is aware of an instance in which the shipping community has opposed a closure which the PSC has granted. He cited an example of a hearing in Terry in which the commission denied the closure because those using the service opposed the closure. He presented the Committee with copies of the existing law (Exhibit #8). He explained the current law is clear. He pointed out the first paragraph in which all station agencies in existence on January 1, be maintained. In the second paragraph it states if the railroad demonstrates to the PSC the agency is not needed for public convenience and necessity the PSC must authorize its closure. He stated the PSC interpreted this to mean only the shipping public. Representative Whalen and the unions told the PSC the general public should be considered. He pointed out in determining public convenience and necessity the commission shall weigh and balance the facts and testimony presented at the hearing, including those presented by the general public.

Pat Keim, Director of Governmental Affairs for Burlington Northern Railroad spoke from prepared testimony in opposition to House Bill 730 and presented the Committee with a handout which he explained (Exhibit #9 and Exhibit #10). Mr. Keim also presented the Committee with a copy of a letter from Sue Martin of Amtrak (Exhibit #11).

John Fitzpatrick, Director of Community and Governmental Affairs for Pegasus Gold Corporation spoke in opposition to House Bill 730. He explained Pegasus ships approximately 600 carloads per year of zinc concentrate to smelters in Canada and in Oklahoma, and to the port of Vancouver for export. He expressed his concern for about extra costs. He commented by maintaining unneeded railroad stations cannot be in the best interest of the community. He stated he believes the existing is sufficient to allow people to express their concerns and these concerns will be taken into consideration by the Public Service Commission.

Bonnie Ordesson representing Holnam Inc., of Trident, Montana told the Committee as a shipper she is opposed to House Bill 730. She stated last year they shipped in excess of 200,000



tons of cement by rail to six states and two Canadian provinces. She commented as the shipping agency for her company she has not had problems. She told the Committee she has access to the railroad twenty-four hours a day. She commented this would create a cost increase for her.

Bob Stephens representing the Montana Grain Growers Association told the Committee of their opposition to House Bill 730 because any costs would be passed on to the farmer.

Don Allen of the Montana Wood Products Association told the Committee their members are part of the shipping public. He commented the availability of timber is difficult in many areas. He stated more and more businesses have to ship logs to mills. He explained there is need for an efficient and cost efficient transportation system. In areas where there is a need to ship they will support keeping those areas open through the PSC hearings process.

Pam Langley, Executive Director of the Montana Agri-Business and representing the Montana Grain Elevators Association and the Montana Seed Trades Association spoke in opposition to House Bill 730.

John Greene representing the Montana Western Railroad and RERAS railway told the Committee they are not involved because of an amendment. He explained he was not planning on testifying. He stated in Butte, Montana Western Railroad has handled over 2,000 carloads of grain. The markup and margin is at the bottom line. He told the Committee House Bill 730 will increase costs.

Three letters were entered into the record in opposition to House Bill 730 (Exhibit #12(a), #12(b), and #12(c)).

#### Questions From Committee Members:

Senator Keating asked Pat Keim if the list he handed out were depots which closed. Mr. Keim told the Committee this were correct. These are locations which were open in some cases as late as 1989.

Senator Keating asked about the two agencies which are Amtrak (Wolf Point and Browning). He asked if Malta should be listed. Mr. Keim explained this was an oversight; Malta should be listed.

Senator Keating asked if people could go to Browning to get a train. Mr. Keim said that was correct. Burlington Northern performs services for Amtrak there. Senator Keating stated Glasgow is larger than Wolf Point. He asked if Amtrak stopped at Glasgow. Mr. Keim said Amtrak stops at Glasgow but several years ago informed BN to pull the support for that agent. There is BN agent but Amtrak does not utilize it.



Senator Blaylock stated the individuals who use the railroad are shippers, yet there are no shippers supporting House Bill 730. He asked Representative Brown to comment. Representative Brown told the Committee "if I were in their shoes I would too. If BN called me up and said, I'm worried about cost if this bill passes; I'd come in and testify".

Senator Towe stated when having hearings before the PSC on public convenience and necessity, this same things happens. He stated no one opposes it. He asked Representative Brown to comment. Representative Brown told the Committee in the House Committee hearing Commissioner Oberg sent testimony saying BN handles their shippers well; and not many object when there is an agency closing. It is usually the communities or the other infrastructure which surrounds the shippers.

Senator Devlin asked Mr. Keim about the Amtrak letter. Mr. Keim explained it was a letter he received from Amtrak. Senator Devlin asked if BN takes an agency out would Amtrak quit stopping there. Mr. Keim stated he did not read that in the letter. He explained under the contract BN has with Amtrak it was agreed at certain locations where there were agents; the agent would also perform services for Amtrak with Amtrak being responsible for a portion of the cost of the agent's salary. In some cases Amtrak is responsible for 100% of the agent's salary. He told the Committee if BNs removal of an agent from that location would cause Amtrak's costs to increase, Amtrak would have to access those costs and make a "business judgment".

Senator Doherty asked Wayne Budt, Administrator of the Transportation Division of the Public Service Commission what the commission's position was on House Bill 730. Mr. Budt told the Committee the commission is neutral on the bill and believe it is a legislative decision.

Senator Keating asked Leo Berry about his testimony regarding two or three agency closure applications in which shippers appeared and the application for closure was denied by the PSC. Mr. Berry told the Committee he has taken part in some of the agency station closure hearings. He reviewed the record and in any instance where a shipper opposed a closure, the PSC denied the closure. Mr. Berry commented "any innuendo that there was a threat involved is inaccurate".

Senator Doherty asked Mr. Berry if BN has "captive shippers"; do "they do what you want them to do". Mr. Berry explained he did the agency closure at Cutbank in which there were one or two shippers which use the Cutbank facility. He told the Committee the shipper testified in favor of the closure because he received his services from Great Falls. BN was not aware the shipper was going to appear.

Senator Lynch asked Bob Stephens if he represented farmers. Mr. Stephens told the Committee he represented the Montana Grain



Growers Association. Senator Lynch asked if most people were members. Mr. Stephens stated he did recall how many memberships they had, but there was a considerable number.

Senator Towe asked Representative Whalen what his response is to the BN contention of not needing the depot agents. Representative Whalen stated the person cannot perform a useful service because BN "strip them out of everything". Representative Whalen stated "there is a better piece of legislation in the House" and all the emphasize was "to kill that piece of legislation because it was defensible". It provided a definition for public convenience and necessity. He stated a shipper testified against a closure in Hysham and the depot was closed.

#### Closing by Sponsor:

Representative Brown told the Committee in cases where there are support it plays a factor. He stated he had a conversation with Representative Ron Marlenee about his (Marlenee's) concern of how BN operates in Montana and its impact on grain and grain growers and elevators. He commented with the absence of competitive rail services in this state, it makes it easier for one railroad to operate. He referred to the Amtrak letter Mr. Keim presented. He pointed out Mr. Keim's letter does not "say much different" from the letter he (Representative Brown) submitted. He explained when Danny Oberg testified in the House on Representative Whalen's bill he stated the PSC was neutral but had allowed him to testify on his own behalf and his "primary concern with the current statute which sets the criteria for evaluating the future of agency operations is that it is my experience there's a gap between what many legislatures expect and what the law says". Mr. Oberg further noted from Commission Order 5982 the commission determines there are two tests to apply in determining whether an agency may be closed, 1) pre-89 Legislature which requires a railroad to demonstrate that agency is not required to meet convenience and necessity of the shipping and public, and 2) prior to the 1989 amendments requires the commission to consider in addition to testimony on shipping any other facts and testimony related to burdens to the general public if the application were granted to close the agency. He requested Senator Bob Brown carry House Bill 730 on the Senate floor.

#### HEARING ON HOUSE JOINT RESOLUTION 38

#### Presentation and Opening Statement by Sponsor:

Representative Carolyn Squires told the Committee House Joint Resolution 38 deals with the wood products industry which is in distress. She stated in Missoula and in Libby there have been massive reductions in force and as of this day there have been no notices for return to work. At the request of the House



Labor Committee HJR 38 was drafted to encourage the Montana State AFL-CIO, the Montana Job Training Partnership Act, the Department of Labor and Industry and the Department of Commerce to actively seek additional federal discretionary funds to assist in employment training and needs. She explained the Title III allocations to Montana have been drastically reduced. With the massive layoffs and many of the workers not able to return to the wood products industry retraining is necessary.

Proponents' Testimony:

Don Judge of the Montana State AFL-CIO spoke in support of House Joint Resolution 38 from prepared testimony (Exhibit #13).

Bob Heiser of the United Food and Commercial Workers International Union spoke in support of House Joint Resolution 38. He told the Committee UFCW has used the excellent dislocated worker programs in Billings.

Bob Anderson of the Montana Department of Labor and Industry spoke in support of HJR 38.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Keating asked Representative Squires why we should support a resolution for federal funding when there is an interior problem and Montanans are not allowed to cut timber. Representative Squires told the Committee she did not believe the individuals who have been dislocated should be penalized because timber sales have been stopped. She stated the president of the local union at the Champion mill in Missoula has been involved in the working out of the Kootenai and Lolo accords. Many of his fellow workers have been involved in the process and have attended meetings to attempt to overcome the problems. It is not through their fault they are dislocated. She stated the price is down, the market is soft, etc.

Senator Keating stated the individuals who represent those dislocated workers are supporting the environmental movements which are stopping the productivity.

Senator Doherty asked Don Judge what has been being done to attempt getting workers back to work. Mr. Judge explained there is an effort by the trade union movement in Western Montana and the timber industry to attempt to resolve the wilderness issue; and through a series of negotiations have been able to receive an agreement with the mainstream conservation community to access approximately 98% of the suitable timber in the Lolo-Kootenai National Forest which are about 63% of the timber base for Montana. He told the Committee Senator Baucus has introduced



legislation and it is their hope the other three members of the Montana delegation will support it.

Closing by Sponsor:

Representative Squires closed on House Joint Resolution 38.

EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 38

Motion:

Senator Blaylock moved House Joint Resolution 38 BE CONCURRED IN.

Discussion:

Senator Aklestad pointed out HJR 38 is a repeat of another resolution which has passed the Senate. He stated he understands this pertains directly to the wood products industry, but the substance (seeking additional training funding) is the same.

Senator Towe commented the other resolution dealt with JTPA itself and the lack of Montana receiving its fair share. He explained the focus of HJR 38 is not on JTPA but the massive layoffs in the wood products industry.

Recommendation and Vote:

Blaylock motion BE CONCURRED IN CARRIED UNANIMOUSLY. Senator Lynch will carry House Joint Resolution 38 on the Senate floor.

Senator Devlin stated (for the record) if the Committee does not discuss the bills still in Committee in depth it does not mean they will not be discussed on the floor.

EXECUTIVE ACTION ON HOUSE BILL 152

Amendments, Discussion, and Votes:

Senator Lynch moved to amend House Bill 152 on Page 1, Line 20 after the word "hour" insert ",excluding the value the tips received by the employee and the special provisions for a training wage". 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).

LA032691.SM1



explained the amendment would allow for a training wage provision for those individuals below \$500,000. He stated at the present time the individual from the Boulder Tasty Freeze will have to pay more wage to a starting employee than any big company (Dupont) in the United States. He told the Committee this is unfair to a small business.

Senator Lynch stated there is a great deal of difference in training someone in Dupont or any technical field than there is in learning how "to flip a hamburger over and back". He stated this is an abuse of the training wage.

Senator Aklestad told the Committee this individual is now going to be paying \$4.25 an hour cash because there is no tip credit, no training wage. Any bigger company which qualifies over the \$500,000 minimum can pay a training wage; and on the national scale can use tip credits which is 40% of the minimum wage. In Montana, none of this can be counted. A big company is getting a break.

The Aklestad motion to amend FAILED with four (4) YES (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe); five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe).

Senator Keating moved an amendment on Line 22 change \$110,000 to \$350,000. He stated many businesses which help train young people, give them responsibility, as well as pocket money, fall into that category below \$350,000. He suggested giving them the opportunity to pay at least \$4 per hour.

Senator Lynch pointed out the Chamber of Commerce was in support of House Bill 152 without amendment.

Senator Towe suggested it would be difficult for anyone to live on \$4.25 per hour.

Senator Devlin stated in most cases these individuals are working for \$4.25 as a second job.

The Keating motion to amend (\$110,000 to \$350,000) FAILED with four (4) YES (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe); five (5); four (4) NO (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe).

Senator Lynch moved House Bill 152 BE CONCURRED IN as amended.

Senator Devlin asked where the \$110,000 figure came from.

Senator Towe asked Don Judge to respond to Senator Devlin's question. Mr. Judge told the Committee it was a result of some

LA032691.SM1



negotiation in the House.

Recommendation and Vote:

Motion for House Bill 152 BE CONCURRED IN as amended 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 Lynch will carry House Bill 152 on the Senate floor.

EXECUTIVE ACTION ON SENATE BILL 417

Amendments, Discussion, and Votes:

Senator Lynch moved to TABLE Senate Bill 417.

Senator Aklestad asked for the motion to TABLE to fail. He told the Committee Senator Williams made a valid point by offering Senate Bill 417. He commented he did not agree with amounts. He believes the amounts in the bill to be unreasonable and has discussed this with Senator Williams. He suggests a percentage figure be used. He stated those receiving the same coverage as those paying higher premiums would at least be paying the administrative costs. The other employers are "picking up the tab". He suggested \$1 per \$100. It would raise \$1.5 million and would increase the percentage of those paying 58 cents on a \$100. He told the Committee at the present time it cost \$8 for administrative costs.

Senator Aklestad told the Committee Senator Williams should be extended the privilege of discussing Senate Bill 417 on the Senate floor. He stated it is an important issue.

Recommendation and Vote:

The motion to TABLE 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).

EXECUTIVE ACTION ON HOUSE BILL 837

Amendments, Discussion, and Votes:

Senator Lynch moved to amend House Bill 837 with amendments suggested by Norm Grosfield. Motion CARRIED UNANIMOUSLY.

Senator Lynch moved House Bill 837 BE CONCURRED IN as amended.

Recommendation and Vote:



The motion for House Bill 837 to BE CONCURRED IN as amended CARRIED with six (6) YES (Senator Aklestad, Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); three (3) NO (Senator Devlin, Senator Keating, and Senator Nathe voting NO. Senator Blaylock will carry House Bill 837 on the Senate floor.

#### EXECUTIVE ACTION ON HOUSE BILL 506

##### Amendments, Discussion, and Votes:

Senator Blaylock move to TABLE House Bill 506.

Senator Devlin asked for a point of order on a motion to table. He stated there should be no discussion. If a Senator wishes to discuss a tabled bill he can ask the Senator making the motion to withdraw for debate.

Senator Towe ruled (after asking for the will of the Committee) there would be no discussion on a motion to table.

##### Recommendation and Vote:

The motion to TABLE CARRIED with eight (8) YES (Senator Blaylock, Senator Devlin, Senator Doherty, Senator Keating, Senator Lynch, Senator Pipinich, Senator Nathe, and Senator Towe); one (1) NO (Senator Aklestad).

#### EXECUTIVE ACTION ON HOUSE BILL 68

##### Amendments, Discussion, and Votes:

Senator Keating moved House Bill 68 BE NOT CONCURRED IN.

Senator Lynch made a substitute motion House Bill 68 BE CONCURRED IN.

Senator Lynch stated if a business continues the point of a strike is futile because there is no loss on both sides. He stated he hopes there are no strikes, but the whole idea is when there is a strike both sides suffer in order to get to the bargaining table to reach a resolution. If the business continues there is no opportunity to force negotiation.

##### Recommendation and Vote:

The motion for House Bill 68 BE CONCURRED IN 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 Blaylock will carry House Bill 68 to the floor of the Senate.



EXECUTIVE ACTION ON HOUSE BILL 204

Amendments, Discussion, and Votes:

Senator Blaylock moved to reconsider the Committee's action on House Bill 204.

Senator Aklestad stated there are contractors who will be negatively impacted because of HB 204. He told the Committee it was his hope the best would be done for the majority of the employees and employers of Montana rather than being dictated to by a minority, in this case, "the labor unions dictating policy for this state". He asked when the other 84% of the workforce in Montana would be taken into consideration.

Senator Towe told the Committee he was in support of the legislation. He pointed out HB 204 includes a four-day ten-hour workday provision. He stated if someone wishes to work someone more than ten hours in one day (no matter the circumstances) they should be compensated with overtime.

Senator Devlin told the Committee he has received letters from employees which stated if they missed a few days work they would like to make it up in order to receive the 40 hours in a week.

Senator Pipinich commented he received a petition with the names of 350 people in support of the bill. He told the Committee he received two and three letters from the same "outfit".

Senator Blaylock told the Committee he would not support House Bill 204 on the Senate floor. He explained he received a letter from five union contractors in his area who are very much opposed to HB 204, as well as other union and non-union people who want to be allowed to work these shifts.

Senator Doherty stated there is a constitutional prohibition against anything less than overtime for 8 hours of work. There is an exemption written in. The construction industry is not written in, and could be. He stated five eights or four tens is flexible.

The motion to remove House Bill 204 from the table CARRIED by Roll Call Vote 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 Blaylock moved amendments to House Bill 204.

Senator Towe explained the amendments which would strike the existing provision which defines the construction industry and inserts language which is consistent with two other bills; there



SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

March 26, 1991

Page 21 of 26

is a coordinating amendment with House Bill 187 and House Bill 342.

The motion to amend House Bill 204 CARRIED with eight (8) YES (Senator Aklestad, Senator Blaylock, Senator Doherty, Senator Devlin, Senator Lynch, Senator Nathe, Senator Pipinich, and Senator Towe); one (1) NO (Senator Keating).

Senator Blaylock moved to amend House Bill 204 for inclusion of an effective date. Motion CARRIED with eight (8) YES (Senator Aklestad, Senator Blaylock, Senator Doherty, Senator Devlin, Senator Lynch, Senator Nathe, Senator Pipinich, and Senator Towe); one (1) NO (Senator Keating).

Senator Blaylock moved House Bill 204 BE CONCURRED IN as amended.

Senator Lynch asked if House Bill 204 does not pass would the ten-hour day be on the books at the present time. Could the present system be taken to court because they are not excluded anywhere in the law.

Senator Towe stated there is a question as what that the constitutional amendment reads, what it means. He stated if it means, what it seems to mean, it states a normal day is eight hours.

Senator Keating stated there is a qualifying statement in the constitution which says the Legislature may extend those work hours for the general welfare.

Senator Lynch asked if the Legislature has done this for the construction industry.

Recommendation and Vote:

The motion for House Bill 204 BE CONCURRED IN as amended 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 Aklestad told the Committee the timing for Senate Bill 417 (by the time Senator Williams could get it off the Table in Committee and down on the Senate floor) would be too late. He asked for a minority report.

EXECUTIVE ACTION ON HOUSE BILL 141

Amendments, Discussion, and Votes:

LA032691.SM1



Senator Aklestad moved House Bill 141 BE NOT CONCURRED IN.

Senator Lynch offered a substitute motion for House Bill 141 BE CONCURRED IN.

Senator Lynch stated he shares the concern about the unemployment fund. He stated these individuals are not being treated fairly. These lower paid employees are available for work and the work is not there; they do not receive unemployment benefits. In the high paying industries and weather conditions do not allow them to work in January or February; they are eligible. The lower paid employees are being separated.

Senator Keating stated it is not known whether someone will be out of work in the wintertime. In this situation individuals take jobs knowing there will be no work through the summer. They agree to take the job knowing there will not be employment for a period of time during the year. He told the Committee they should get paid as the teachers do by getting paid for the nine months of work over the twelve month period. Drawing on the unemployment insurance fund increases the premiums to the school districts. The school district should negotiate with these individuals for an annual wage.

Senator Devlin stated there will be a \$3.4 million impact on the fund. Federal law states these individuals are not eligible. He commented Montana can preempt the federal law. He commented these individuals know there is not unemployment insurance when they took the job.

Senator Blaylock stated there can be no general statement across the state about school districts. He told the Committee in Laurel and in Chinook and in Rudyard a number of the personnel, many janitors work all summer. He explained those in Laurel may be out in June, and by the middle of July they go back to work. He commented the individuals most impacted by the summer may be the cooks and cooks helpers who go back a couple of weeks before school resumes. He stated there is not that much down time. He commented "that's a pretty heavy hit on unemployment". He stated he was in the Legislature and did what he could "to rescue that fund from disaster".

Senator Towe stated there was a letter from the US Department of Labor which raised questions about conflicting with existing law. He told the Committee there was an amendment which would answer that.

Senator Lynch withdrew his motion House Bill 141 BE CONCURRED IN; and made a new substitute motion to amend House Bill 141 on Page 5, Line 16 following Line 15 insert a new section, "Section 3 Conflict of Laws. If the US Secretary of Labor finds a provision of [this act] to be in conflict with the federal unemployment tax act then that provision of this act in conflict with the federal unemployment tax act is invalid"; and



renumber the subsequent sections.

Senator Aklestad stated if this is found invalid it negates this bill, but there is a potential to lose the grant monies of approximately \$50 million.

The motion to amend CARRIED with six (6) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, Senator Nathe, and Senator Towe); three (3) NO (Senator Aklestad, Senator Devlin and Senator Keating).

The Aklestad motion to BE NOT CONCURRED IN as amended CARRIED by a Roll Call Vote with five (5) YES (Senator Aklestad, Senator Blaylock, Senator Devlin, Senator Keating, and Senator Nathe); three (3) NO (Senator Lynch, Senator Pipinich, and Senator Towe). Senator Doherty was absent for the vote.

Senator Lynch requested a Minority Report on House Bill 141.

#### EXECUTIVE ACTION ON HOUSE BILL 187

##### Amendments, Discussion, and Votes:

Senator Keating moved to amend House Bill 187 (HB018702.ATG). Senator Keating explained there was an agreement made as to how insurance premiums would be formulated. He told the Committee the amendment was agreed to by all parties. He asked Jacqueline Terrell to explain the amendment. Ms. Terrell explained the amendment proposes a method of giving those contractors who pay high wages, (above average weekly wage) a way of applying to the workers' compensation insurer for a premium credit. She stated as the bill original concept was to completely change the method of premium calculation for the construction industry from total payroll to hours worked. She told the Committee there is no state in the United States which calculates their premiums in that way. The problem Representative Driscoll was attempting to address is the problem of those contractors who pay very high wages, and who may, as a result, have a disproportionate burden in their workers' compensation premium. The amendment addresses the problem but does not require the State Fund or private carriers to completely re-design a workers' compensation system for construction. She explained the concept Representative Driscoll presented during the hearing was a system in which a contractor would be penalized if they were paying under the average weekly wage; and rewarded if paying over the weekly wage. It also would have required the State Fund and private carriers to re-design the workers' compensation system. This proposal codifies a method of addressing the problem that has already been adopted in Florida, Missouri, Delaware, and Oregon. Construction and the insurance industry agreed to this proposal in Iowa but it was not implemented there.



Senator Nathe asked what the net effect will be. Ms. Terrell explained the net effect will be a revenue neutral plan. It will put a minimal rate increase into the workers' compensation system for construction which will be applied across the board. The contractors paying over the average weekly rate will be entitled to apply for a credit. She explained the advantage to this proposal is the other benefits employers receive are not deleted. The employer is still eligible for volume discount, experience modification factor, etc.

Senator Towe asked if there will be a premium increase what is the benefit of the bill. Ms. Terrell explained the premium increase will apply across the board to make the board revenue neutral. Representative Driscoll's purpose in this bill was to give relief to those employers paying their workers high wages. Those employers can go to the State Fund or private insurers and request a refund.

The Keating motion to amend CARRIED UNANIMOUSLY.

Senator Keating moved the amendments as prepared by McClure with a construction definition and coordination with House Bill 204 and House Bill 342. Motion CARRIED UNANIMOUSLY.

Senator Keating moved House Bill 187 BE CONCURRED IN as amended. Motion CARRIED with eight (8) YES (Senator Aklestad, Senator Blaylock, Senator Devlin, Senator Doherty, Senator Keating, Senator Lynch, Senator Pipinich, and Senator Towe); one (1) NO (Senator Nathe). Senator Harp will carry House Bill 187 on the Senate floor.

#### EXECUTIVE ACTION ON HOUSE BILL 600

##### Amendments, Discussion, and Votes:

Senator Aklestad moved to TABLE House Bill 600.

Motion to TABLE House Bill 600 CARRIED with five (5) YES (Senator Aklestad, Senator Blaylock, Senator Devlin, Senator Keating, and Senator Nathe); three (3) NO (Senator Lynch, Senator Pipinich, and Senator Towe). Senator Doherty was absent.

#### EXECUTIVE ACTION ON HOUSE BILL 643

##### Amendments, Discussion, and Votes:

Senator Lynch moved House Bill 643 BE CONCURRED IN.

Senator Keating moved House Bill 643 BE NOT CONCURRED IN.



SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

March 26, 1991

Page 25 of 26

Senator Keating told the Committee HB 643 is not "well thought out". He stated it destroys the economics of administering state government.

Senator Lynch stated some consideration and special preference should be given (when privatization takes place) to an employee with several years of service. He commented "if the administration doesn't like it they are going to veto it anyway".

Senator Keating told the Committee through the years changes and modifications of programs have taken place under one governor or another. He stated many of Montana workers are being "robbed" by other states because of Montana's pay scale. House Bill 643 would only add to the cost of efficiency of government. There would be no privatization or reorganization if HB 643 passes because it would "make the system unworkable".

Senator Aklestad moved a substitute motion for all motions pending to TABLE House Bill 643. Motion FAILED by virtue of a tie vote with four (4) YES (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe); four (4) NO (Senator Blaylock, Senator Lynch, Senator Pipinich, and Senator Towe). Senator Doherty was absent.

The Keating motion, House Bill 643 BE NOT CONCURRED IN FAILED with four (4) YES (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe); four (4) NO (Senator Blaylock, Senator Lynch, Senator Pipinich, and Senator Towe). Senator Doherty was absent.

Senator Lynch withdrew his motion and requested passing consideration of House Bill 643 for the day.

EXECUTIVE ACTION ON HOUSE BILL 875

Amendments, Discussion, and Votes:

Senator Lynch moved amendments (HB087501.ATG). Motion FAILED on a tie vote of four (4) YES (Senator Blaylock, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe).

Further action will wait until Senator Doherty has had an opportunity to vote on the amendments to House Bill 875.



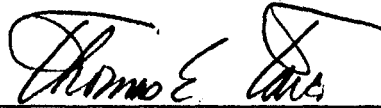
SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

March 26, 1991

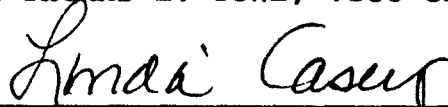
Page 26 of 26

ADJOURNMENT

Adjournment At: 7:20 p.m.



SENATOR THOMAS E. TOWE, Vice Chairman



LINDA CASEY, Secretary

TET/11c



ROLL CALL

NATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/26/91

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.

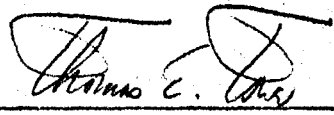


SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 27, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 68 (third reading copy -- blue), respectfully report that House Bill No. 68 be concurred in.

Signed: 

Thomas E. Towe, Vice-Chairman

LB 3/27/91

And. Coord.

SP 3/28

Sec. of Senate

8:40

660942SC.SLB



# MINORITY REPORT

## SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 1, 1991

MR. PRESIDENT:

We, the minority of the committee on Labor and Employment Relations having had under consideration House Bill No. 141 (third reading copy -- blue), respectfully report that House Bill No. 141 be amended and as so amended be concurred in:

1. Page 5, line 16.

Following: line 15

Insert: "NEW SECTION. Section 3. Conflict of laws. If the United States secretary of labor finds a provision of [this act] to be in conflict with the Federal Unemployment Tax Act, then the provision of [this act] in conflict with the Federal Unemployment Tax Act is invalid."

Renumber: subsequent sections

Signed: \_\_\_\_\_

J.D. Lynch

Signed: \_\_\_\_\_

Bob Pipinich

Signed: \_\_\_\_\_

Tom Towe

LB 4/1/91  
Amd. Coord.

SR 4/1 2:00  
Sec. of Senate



# MAJORITY REPORT

## SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 1, 1991

MR. PRESIDENT,

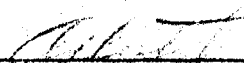
We, the majority of the committee on Labor and Employment Relations having had under consideration House Bill No. 141 (third reading copy -- blue), respectfully report that House Bill No. 141 be amended and as so amended not be concurred in:

1. Page 5, line 16.

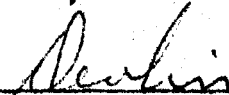
Following: line 15

Insert: "NEW SECTION. Section 3. Conflict of laws. If the United States secretary of labor finds a provision of [this act] to be in conflict with the Federal Unemployment Tax Act, then the provision of [this act] in conflict with the Federal Unemployment Tax Act is invalid."


Renumber: subsequent sections

Signed:   
Gary Aklestad

Signed:   
Chet Blaylock

Signed:   
Gerry Devlin

Signed:   
Tom Keating

Signed:   
Dennis Nathe

LB 4/1/91  
Amd. Coord.

SP 4/1 2:00  
Sec. of Senate

10120000 012



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 1, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 152 (third reading copy -- blue), respectfully report that House Bill No. 152 be amended and as so amended be concurred in:

1. Page 1, line 19.

Following: "206"

Insert: "(a)(1)"

2. Page 1, line 20.

Following: "hour"

Insert: ", excluding the value of tips received by the employee and the special provisions for a training wage"

Signed: \_\_\_\_\_

  
Thomas E. Towe, Vice-Chairman

LB 4/1/91

Amd. Coord.

\_\_\_\_\_  
Sec. of Senate



SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
April 2, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 187 (third reading copy -- blue), respectfully report that House Bill No. 187 be amended and as so amended be concurred in:

1. Title, lines 7 through 10.

Following: "INDUSTRY";" on line 7

Strike: remainder of line 7 through "PAYROLL" on line 10

Insert: "REQUIRING A METHOD OF COMPUTING WORKERS' COMPENSATION PREMIUM RATES FOR THE CONSTRUCTION INDUSTRY THAT DOES NOT IMPOSE A HIGHER PREMIUM SOLELY BECAUSE OF AN EMPLOYER'S HIGHER RATE OF WAGES"

2. Page 5, lines 4 through 7.

Following: "any"

Strike: remainder of line 4 through "structure" on line 7

Insert: "the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site"

3. Page 8, lines 3 through 8.

Strike: section 3 in its entirety

Insert: "NEW SECTION. Section 3. Premium rates for construction industry -- filing required. (1) With respect to each classification of risk in the construction industry under plan No. 2, the rating organization described in 33-16-1005 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at the Montana average weekly wage as reported by the department.

(3) The rating organization shall file a revenue neutral plan for new and renewed policies by July 1, 1992, for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

690928SC.SLB



(4) The state compensation mutual insurance fund, plan No. 3, shall adopt the plan filed by the rating organization or adopt a credit scale plan that meets the requirements of this section."

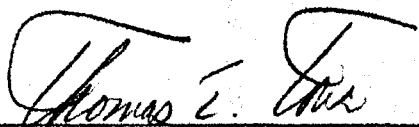
4. Page 15, line 2.

Following: line 1

Insert: "NEW SECTION. Section 11. Coordination instruction.

The definition of "construction industry" in [section 2(6) of this act] is intended to coordinate with the definitions of "construction industry" in House Bills No. 204 and 342."

Renumber: subsequent section

Signed: 

Thomas E. Towe, Vice-Chairman

LB 4/2/91

Amd. Coord.

JB 4/2

Sec. of Senate



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 2, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 204 (third reading copy -- blue), respectfully report that House Bill No. 204 be amended and as so amended be concurred in:

1. Title, lines 12 and 13.

Following: "," on line 12

Strike: "AND"

Following: "MCA" on line 13

Insert: "; AND PROVIDING AN APPLICABILITY PROVISION"

2. Page 2, lines 22 through 25.

Following: "means"

Strike: remainder of line 22 through "structure" on line 25.

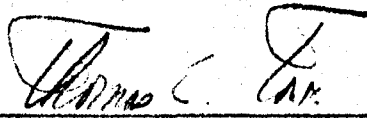
Insert: "the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site"

3. Page 10.

Following: line 17

Insert: "NEW SECTION. Section 6. Coordination instruction. The definition of "construction industry" in [section 3(2) of this act] is intended to coordinate with the definitions of "construction industry" in House Bills No. 187 and 342.

NEW SECTION. Section 7. Applicability. [This act] does not apply to bids for construction projects let before October 1, 1991."

Signed: 

Thomas E. Towe, Vice Chairman

 4-2-91  
Ad. Coord.

SB 4-3 10:50  
Sec. of Senate

691325SC.8j1



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 1, 1991

MR. PRESIDENT,

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 807 (third reading copy -- blue), respectfully report that House Bill No. 807 be amended and as so amended be concurred in:

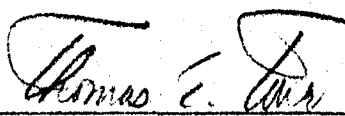
1. Title, line 9.

Following: "CHAPTER"

Strike: "71"

Insert: "51"

Signed: \_\_\_\_\_

  
Thomas E. Towe, Vice-Chairman

LB 4/1/91

Amd. Coord.

\_\_\_\_\_  
Sec. of Senate



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 1, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 837 (third reading copy -- blue), respectfully report that House Bill No. 837 be amended and as so amended be concurred in:

1. Title, line 11.

Following: "~~39-71-1019,~~"

Insert: "39-71-1019,"

2. Page 26, line 3.

Following: "jurisdiction"

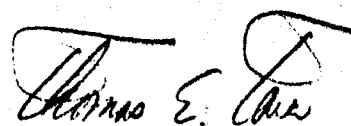
Strike: "under subsection (1)"

3. Page 38, line 4.

Following: "~~39-71-1019,~~"

Insert: "39-71-1019,"

Signed: \_\_\_\_\_

  
Thomas E. Towe, Vice-Chairman

LB 4/1/91  
Amd. Coord.

\_\_\_\_\_  
Sec. of Senate



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 27, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Joint Resolution No. 38 (third reading copy -- blue), respectfully report that House Joint Resolution No. 38 be concurred in.

Signed: \_\_\_\_\_

Thomas E. Towe, Vice-Chairman

LB 3/27/91  
Amd. Coord.

SL 2/27 12:00  
Sec. of Senate

660940SC.SLB



FROM: Norm Grosfield, Attorney at Law  
Post Office Box 512, Helena, MT 59624

DATE: March 10, 1991

House Bill 837 was drafted to correct various problems that currently exist in the benefit payment system under the Montana Workers' Compensation Act. It is an effort by several interest groups concerned about delivery of benefits under the Act and difficulties with the administration of various provisions of the Act primarily involving the payment of permanent partial disability benefits and rehabilitation assistance for injured workers.

The primary changes in the proposed bill include a modification of the current provisions regarding the payment of permanent partial disability benefits. Currently, such benefits are paid on the basis of a medical impairment rating, and wage supplement payments. The impairment award can fairly easily be established based on the rating granted usually by the treating physician. However, the difficulty in administering the Act in regard to permanent partial disability involves wage supplement benefits. The benefits were intended to pay a differential between what a worker was making at the time of an injury, and what the worker could reasonably expect to make after an injury. However, the difficulty with the current system involves unreasonable and unrealistic expectations as to injured workers' reemployment opportunities. It is often suggested that individuals should seek employment for which they have no experience, no qualifications, and which may be far removed geographically from the worker's long established residence. Further, it is difficult to determine what post-injury income estimate should be used in determining the differential, whether an averaging of wage levels for potential positions should be calculated, or whether the low or high incomes in potential positions should be used. In addition, it is burdensome to continue to monitor fluctuations in actual wage payments, and to keep cases open for years while wage supplement payments are being made. The practical result of the wage supplement approach is that there are many unknowns; and oftentimes it is unfair to the worker in light of the practicalities of the work place, and the unrealistic expectations as to an individual's ability to return to employment.

Under current law, there are very few instances when any true rehabilitation program is suggested or initiated, due to the very restrictive nature of current rehabilitation entitlement provisions in the law. The bill would propose a bona fide rehabilitation benefit allowing a claimant to receive up to 104 weeks of monetary assistance at the temporary total disability rate if the worker is unable to physically return to the worker's prior employment.

To offset the cost for a bona fide benefit while a worker is being retrained, permanent partial payments have been reduced to a maximum potential of 350 weeks and are further reduced utilizing a formula that attempts to place objectivity into the determination of permanent partial awards.

Various minor changes are also being proposed that are required to either delete references to portions of the law that are being repealed or to modify or clarify various provisions in relation to the administration of the Workers' Compensation Act.



HOUSE BILL 837  
Senate Labor Committee

Testimony of William J. Crivello  
President, Rehabilitation Assn. of Montana  
March 26, 1991

Mr. Chairman, Members of the Committee, I wish to offer a few brief comments with regard to House Bill 837. These comments are offered on behalf of the Rehabilitation Association of Montana and the Montana Chapter of Rehabilitation Professionals in the Private Sector. I am presently President of this professional association, and I am also employed as Branch Manager for Crawford Health & Rehabilitation Services of Montana. Crawford Rehabilitation Services provides rehabilitation services on behalf of the State Compensation Mutual Insurance Fund, as well as for self-insured employers and private insurers throughout the state.

We previously testified before the House Labor Committee with regard to this Bill. We recognize that it is an effort to ameliorate some of the problems which have resulted from the 1987 Workers' Compensation legislation. However, while there have been difficulties with regard to the 1987 legislation, our analysis of post-1987 cases reaching closure by rehabilitation specialists shows that forty-two percent of all cases resulted in medical release and return to employment at the job of injury, modified or alternative work, or new employment with new employers. Additionally, forty percent were medically released for alternative jobs, but had not yet returned to work at the time of closure. This does not necessarily reflect negatively on the overall impact of rehabilitation components in the 1987 legislation.

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 2  
DATE 3/26/91  
BILL NO. HB 837



It has been evident, however, that lack of clarity or compliance in the Law resulted in insurers becoming over-reliant upon the mere identification of job alternatives, with little or no provision of service to the injured worker. As rehabilitation professionals, it has never been our preference to postulate minimum wage job options without affording injured workers some type of real rehabilitation assistance, in the form of job placement services, or development of a viable and practical rehabilitation plan to help them get employed again. Like others throughout the industry, we recognize the need to design a cost-effective, responsible rehabilitation component into the system. Further, we recognize that in many instances, unskilled or entry-level employment alternatives may be viable and appropriate for a number of injured workers. Nonetheless, we believe the intent of the Workers' Compensation law is to provide actual services to the injured worker--services which are designed to get them back into regular employment.

We look to the changes proposed in the new legislation with some degree of optimism, particularly as they relate to the potential for the injured worker to be eligible to receive viable rehabilitation services. However, we believe that the Bill, as proposed, may also be prone to abuse, and may result in inappropriate diversions from what would otherwise appear to be reasonable and appropriate rehabilitation entitlements.



We believe that this and other proposed legislation may enhance the early return of injured workers to employment with their employers of injury or to new employers. We also believe that early intervention and return to work assistance most certainly proves beneficial not only to the employer and the insurer, but also to the injured worker. Our primary concerns at this time lie with regard to how the insurers will project rehabilitation service eligibility to injured workers, and the professional demeanor with which they contract for services with rehabilitation professionals.

The proposed legislation appears to address some of our concerns, as well as those of others who have experienced frustration with regard to some of the rehabilitation parameters of the 1987 legislation. We recognize an obvious effort to eliminate some of the ambiguities and uncertainties inherent to the present system, and we applaud the intention to eliminate the practice of over-reliance on identification of jobs, with no regard for the need to provide actual return-to-work assistance for those injured workers desiring or requiring it.

We do not necessarily believe that the elimination of required assessments and prioritized return-to-work options will ultimately improve the system, though it was evident that prior ambiguities in these sections of the Law did create significant problems.



We are committed to professional, responsible, and cost-effective rehabilitation services within the Workers' Compensation system. We will continue to assist in promoting the concept of cost-effective rehabilitation services for injured workers, with the specific purpose of assisting them in returning to gainful employment in an expedient manner. In that regard, we offer these comments for your consideration. We are, of course, always available to address any questions you may have with regard to our stated concerns.

Respectfully submitted

William J. Crivello, M.S., C.R.C.  
President

tap



WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 26<sup>th</sup> day of March, 1991.

Name: PAT STEPHENSON

Address: 848 Main Suite 7  
Billings, MT 59105

Telephone Number: 248-9303

Representing whom?

Intermountain Claims

Appearing on which proposal?

HB 837

Do you: Support?        Amend?        Oppose? X

Comments:

See ATTACHED STATEMENT

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 3/26/91

BILL NO. HB837

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY





## INTERMOUNTAIN CLAIMS

of Montana, Inc.

848 MAIN, SUITE 7  
406 248-9303

P.O. BOX 50626  
BILLINGS, MT 59105

March 25, 1991

RE: House Bill 837

### INTRODUCTION:

Four years ago, in 1987, Montana's 50th Legislature passed a comprehensive Workers' Compensation reform bill entitled Senate Bill 315. As with any comprehensive reform bill, concerning the Workers' Compensation statutes, there has been a considerable amount of litigation which has served to further clarify the statutes, as written, in Senate Bill 315.

At this time our Legislature is being asked to consider a new comprehensive reform bill entitled House Bill 837. HB 837 will substantially increase attorney involvement and litigation in Montana Workers' Compensation claims; HB 837 can provide significantly less money in a settlement for a severely injured worker, and can provide for substantially more in a settlement for a less injured worker; HB 837 permits a claimant to compromise his vocational rehabilitation benefits, even without entering a vocational rehabilitation plan; and the terminology, or lack of terminology in clarification of several sections of HB 837 simply invite additional litigation.

### INCREASED ATTORNEY INVOLVEMENT:

39-71-741, MCA, deals specifically with compromise settlements, lump sum payments, and lump sum advance payments. This section of the Workers' Compensation Code confirms that upon approval (of a settlement agreement), "The agreement constitutes a compromise and release settlement and may not be reopened by the Division or by any Court." HB 837 has specifically deleted "or by any Court" from the section referred to under 39-71-741, and has also removed "or by any Court" from the subrogation settlement agreement which was provided on Page 11, Number 7, of HB 837.

As stated on the existing Petition for Compromise and Release Settlement, "The claimant understands that by signing this Compromise and Release Settlement Petition, both the named insurer and the claimant agree to assume the risk that the condition of the claimant, as indicated by reasonable investigation to date, may be other than it appears, or may change in the future. The claimant understands that this Petition represents a Compromise and Release Settlement and, if approved, may not be reopened by the Division or by any Court."

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 3/26/91

BILL NO. HB 837



RE: House Bill 837  
March 25, 1991  
Page Two

On Page 11, Page 22, and Page 23, HB 837 specifically removes the terminology, "or by any Court" from the settlement agreement. By removing "or by any Court" HB 837 will not allow for any binding settlements under the Workers' Compensation Act. HB 837 will permit the claimant, or the claimant's attorney to repetition the Court, or to simply assert a claim for further damages, at any time after a compromise settlement has been reached.

In the rehabilitation section, HB 837 provides <sup>claimant's</sup> for one hundred four weeks of "rehabilitation benefits" at the maximum total rate. At this time, the maximum total disability rate is \$299.00 per week, thus one hundred four (104) weeks of "rehabilitation benefits" amounts to \$31,096.00.

Nowhere in HB 837 are there any guidelines provided requiring an injured worker to complete a vocational rehabilitation plan, once initiated. Also, HB 837 does not preclude a claimant from compromising his "rehabilitation benefits" into a lump sum settlement.

As HB 837 provides for an entitlement for rehabilitation benefits, but does not provide a requirement that a claimant actually undergo one hundred four (104) weeks of rehabilitation, or training, this section regarding "rehabilitation benefits" simply adds an additional \$31,096.00 to any possible settlement an attorney may wish to negotiate.

If an injured worker does not wish to undergo rehabilitation, but through his counsel has compromised a percentage of the one hundred four (104) weeks of rehabilitation benefits, and agreed to a compromise settlement, under HB 837, the same injured party can, at a later date, reassert a claim for the balance of the rehab benefits. The preceding statement is made with the understanding that HB 837, as stated above, has attempted to remove "or by any Court" from the agreement which constitutes a compromise settlement under the Workers' Compensation Act. Those factors discussed above very clearly confirm HB 837 encourages increased attorney involvement and litigation.

#### REHABILITATION BENEFITS:

When an injured Montana worker is unable to return to his former position because of a job-related disability, for several years Montana Workers' Compensation law has required a vocational rehabilitation consultant be appointed to complete an employability assessment which would include vocational testing. In many instances, this is the only opportunity an injured worker has to utilize the expertise of a certified vocational counselor, to assist the injured worker in seeking realistic job opportunities.

HB 837 has removed the incentive for an injured worker to cooperate with a vocational rehab counselor in attempting to return to the work force, as the incentive for not returning to work is the opportunity for the claimant to simply make demand for the one hundred four (104) weeks of total disability benefits, which at the maximum rate, of \$299.00 a week, amounts to \$31,096.00. Therefore, if an



RE: House Bill 837  
March 25, 1991  
Page Three

injured employee can in fact return to work in a modified position, or return to work in his own labor market, it would be in the worker's best interest to not fully cooperate with the vocational rehabilitation provider, and simply claim entitlement to the one hundred four (104) weeks of rehabilitation benefits, in order to increase the amount of any possible settlement by up to \$31,000.00.

Although this writer does not assume to know what is best for injured workers in the State of Montana, if we are to have a "rehabilitation section" in the Workers' Compensation Act, we should also provide the incentive for an injured worker to utilize the vocational rehabilitation services, rather than simply providing a potential entitlement of up to \$31,000.00 to compromise rehabilitation benefits.

Senate Bill 315 clearly established return to work priorities for an injured worker, which allowed for on-the-job training programs or retraining programs, if the claimant was unable to return to work in his normal labor market. HB 837 provides a radical change to the current case law in effect, and will most certainly result in substantial further litigation regarding an injured worker's entitlement to the one hundred four (104) weeks of total benefits. HB 837 specifically does not preclude rehabilitation benefits from being compromised, or settled, which simply allows an injured worker to make claim for up to \$31,000.00, in addition to his partial disability entitlement, without ever completing a vocational rehabilitation plan.

#### PERMANENT PARTIAL DISABILITY:

In reviewing HB 837's criteria for permanent partial disability benefits, it is quite clear that entitlements for less severely injured employees will be more, under HB 837, while permanent partial disability entitlements for more severely injured employees will be less. We find this portion of the Bill to be contrary to any reasonable interpretation of Workers' Compensation Law.

Although HB 837 has provided a reduction in total PPD benefits, from five hundred (500) weeks to three hundred fifty (350) weeks, this reduction is quite misleading when one computes possible entitlements for injured workers.

We have attached three examples of possible entitlements under the existing statutes, as compared with HB 837. As confirmed by the enclosed examples, an injured worker who has sustained a minimal wage loss, but has been restricted to medium labor, as outlined on the enclosed examples, actually would be entitled to a larger lump sum award under HB 837, as compared with the existing statutes. However, a more severely injured worker, with a more restricted labor market, and a much greater wage loss would be entitled to far less under HB 837, as compared with the existing statutes.



RE: House Bill 837  
March 25, 1991  
Page Four

The enclosed examples drastically show the inequities as provided in the permanent partial disability entitlement as outlined by HB 837, and if one does not include the potential claim for "rehabilitation benefits", this Bill is grossly inequitable.

It should be noted that the PPD entitlements examples included, and referred to above, are based on a "wage loss" determined by utilizing the average actual earnings of an injured worker at the time of the injury, as compared to documented earning capability, determined by a vocational consultant, after the injured worker has reached maximum medical improvement. HB 837 does not provide a definition for wage loss, and in doing so allows a potential for subjective future wage loss claims, which will simply encourage additional litigation.

SUMMARY:

As confirmed above, the PPD entitlement under HB 837 is grossly inequitable in comparing entitlements between severely injured workers, and less injured workers, as compared with the PPD entitlement provided for in our current statutes.


The rehabilitation section of HB 837 simply encourages litigation, on almost every claim in which a claimant cannot return to his former job position, regarding the possible entitlement to a cash award for the rehabilitation benefits. The rehabilitation section itself provides no improvement, of any kind, over the existing statutes involving rehabilitation, and return to work priorities.

HB 837, in 39-71-741, MCA which pertains to compromise settlements and lump sum payments, deletes "or by any Court" from the previous requirement which read, "Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the Division or by any Court." This deletion, in and of itself is enough to reject HB 837, as this deletion will essentially negate any compromise settlement under the Workers' Compensation Act, allowing a claimant to reassert an additional claim for further benefits, any time after a settlement has been reached.

In summary, HB 837 provides no improvement over the current Workers' Compensation and Occupational Disease statutes, however HB 837 substantially encourages attorney involvement and litigation in Montana Workers' Compensation claims. HB 837 should be rejected by the Senate, as this Bill provides no improvement, of any kind, over the existing Workers' Compensation and Occupational Disease statutes.

Respectfully submitted,

INTERMOUNTAIN CLAIMS OF MONTANA

  
Patrick W. Stephenson  
President



# PPD ENTITLEMENT - EXAMPLE #1

1) 32 year old warehouse worker, High School education; \$1.50/hr. wage loss; previously capable of heavy labor; now restricted to medium labor; 10% impairment; max. rate for PPD; \$12.00/hr. earned on job prior to injury.

Existing code; PPD Entitlement (Lump Sum)

1)	.10% impairment		
	.10 X 500 wks. = 50 weeks X \$149.50 = \$7,475.00		
	PV Discount @ 8%	=	\$ 7,206.21
2)	\$1.50 X hr. wage loss X 40 hrs. = \$60.00		
	X 2 ÷ 3 = \$40.00/wk.		
	\$40.00 X 450 wks. = \$18,000.00; PV Discount		
	8%		
	Total Lump Sum PPD		<u>13,015.17</u>
			\$ 20,221.38

HB 837

1)	.10% impairment - no discount		
	.10 X 350 = 35 wks. X \$149.50	=	\$ 5,232.50
2)	Age + 2% ; .02 X 350 = 7 wks. X		
	\$149.50	=	1,046.50
3)	Education + 2% ; .02 X 350 = 7 wks. X		
	\$149.50	=	1,046.50
4)	Wage loss + 10% ; .10 X 350 = 35 wks. X		
	\$149.50	=	5,232.50
5)	Labor factor + 15%; .15 X 350 = 52 wks. X		
	\$149.50	=	7,848.75
	Total PPD Entitlement *		<u>\$ 20,406.75</u>

\* Does not include potential claim for "Rehabilitation Benefits" of \$31,096.00 under HB837



# PPD ENTITLEMENT - EXAMPLE # 2

2) 32 year old warehouse worker; High School education; \$6.00/hr. wage loss; previously capable of heavy labor; now restricted to light duty labor; 10% impairment; max. PPD rate, \$12.00/hr. earned on job prior to injury.

Existing code; PPD Entitlement (Lump Sum)

1) .10% impairment		
50 wks. X \$149.50 = \$7,475.00		
PV Discount @ 8%	=	\$ 7,206.21
2) \$6.00/hr. wage loss X 40 hrs. = \$240.00		
\$240.00 X 2 ÷ 3 = \$160.00/wk: limited to		
max. PPD rate of \$149.50 per week		
450 wks. X \$149.50 = \$67,275.00		
PV @ 8%	=	<u>48,644.19</u>
		\$ 55,850.40

If case is settled for 500 weeks, lump sum, and Impairment Awarded is not prepaid, PPD Entitlement will be:

500 wks. @ \$149.50: PV @ 8% discount	=	\$ 52,254.16
---------------------------------------	---	--------------

HB 837

1) .10% impairment - no discount	=	\$ 5,232.50
2) Age + 2%	=	1,046.50
3) Education + 2%	=	1,046.50
4) Wage loss + 20% X 350 = 70 wks. X \$149.50	=	10,465.00
5) Labor factor + 20% X 350 = 70 wks. X \$149.50	=	<u>10,465.00</u>
Total PPD Entitlment *		\$ 28,255.50

\* Does not include potential claim for "Rehabilitation Benefits" of \$31,096.00 under HB 837



# PPD ENTITLEMENT - EXAMPLE #3

3) 32 year old warehouse worker; High School education; no wage loss, previously capable of heavy labor, now restricted to medium labor; .10% impairment; max. PPD rate; employee restricted from returning to previous job position, but can return to work with the same employer in a modified position, with no wage change.

Existing code; PPD Entitlement (Lump Sum)

1) 10% impairment \$7,475.00 (50 wks. X \$149.50)	=	\$ 7,206.21
PV Discount @ 8%		-0-
2) No wage loss		
Total		\$ 7,206.21

HB 837

1) 10% impairment	=	\$ 5,232.50
2) Age + 2%	=	1,046.50
3) Education + 2%	=	1,046.50
4) Wage loss	=	-0-
5) Labor + 15% .15 X 350 = 52	=	7,848.75
Total		\$ 15,174.25



WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 26 day of March, 1991.

Name: Gary W Banbury

Address: 858 Cobb Hill

Bozeman MT 59715

Telephone Number: 406 - 587-7381

Representing whom?

Cyprus Industrial Minerals

Appearing on which proposal?

HB 837

Do you: Support?        Amend?        Oppose? X

Comments:

On behalf of Cyprus Minerals a self Insured Mining Co  
employing over 200 people in Madison and Gallatin Counties

Our position on this bill is that through the diligent  
efforts of all parties involved this bill has been negotiated  
into double talk and legal rhetoric.

In sure the parties meant good and represented  
faithfully their constituents "but" I taken this to  
a labor negotiation where after a painful give and take  
you get a contract that neither party can live with.  
It causes the labor group to lose support and the  
plant to close down

I ask you to consider this bill a No solve  
no satisfy and No win document.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. EXH 4

DATE 3/26/91

OTC



Please consider rejecting this bill in favor of current  
legislation that although not working perfect, will  
work better than ~~this~~.





March 20, 1991

Mr. Pat Keim,  
Director Public Affairs  
Burlington Northern Railroad  
36 North Last Chance Gulch  
Helena, Montana 59601

Dear Mr. Keim:

W. M. "Peach" Smith has passed on to me your request for a letter relative Amtrak service at Malta, Wolf Point, Browning, and other locations along the route of our EMPIRE BUILDER in Montana. This is in line with the proposed legislation before the Montana Legislature.

Should Burlington Northern remove services at Malta, Wolf Point and Browning, Montana, as well as other locations along the route of the EMPIRE BUILDER, Amtrak can make no guarantee that service can be maintained at any level. Sharing of costs, per contract between Burlington Northern and Amtrak, at these and other locations make these stops affordable and provides services, employment and goods to many communities. We would be unable to continue services if obliged to absorb all costs.

Due to our own budgetary constraints, and the need to continually reduce our dependance on Federal subsidies, we cannot make any promises at any location in Montana if Burlington Northern removes services.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arthur L. Lloyd", written over a horizontal line.

Arthur L. Lloyd, Director  
Public Affairs - West

cc: Sue Martin  
W. M. Smith  
D. Brown, State of Montana  
Ron Scolaro

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 5

DATE 3/26/91

BILL NO. HB730



**HOUSE BILLS ~~626-2000~~ 730**  
**OPEN BN STATIONS JANUARY 1, 1991**  
**1990 CENSUS**

**MONTANA CITIES & TOWNS INCLUDING POPULATION**

Froid 195	Sidney* 5,217	Glendive 4,802	Terry 659	Forsyth 2,178	Hardin* 2,940
Laurel 5,686	Billings 81,151	GT Falls 55,097	FT Benton* 1,660		Wolf Point 2,880
Glasgow 3,572	Malta 2,340	Harlem 882	Havre 10,201	Shelby 2,763	Sweet Grass N/A
Browning 1,170	Columbia Fls* 2,942	Whitefish 4,368	Kalispell 11,971	Eureka 1,043	
Libby 2,532	Helena 24,569	Garrison N/A			

TOTAL 25

\*PENDING HEARINGS FOR PSC CLOSURE IN 1991 TOTAL 4

**MONTANA RAIL LINK**

Missoula 42,987	Helena 24,569	Livingston 6,701	Laurel 5,686
<b>RARUS</b> Anaconda 10,278	<b>MWR</b> Butte/Silverbow 33,336	<b>CENTRAL OF MONTANA</b> Denton 350	

**UNION PACIFIC**

Butte/Silverbow 33,336*	Dillon 8,424*
----------------------------	------------------

\*MPSC Closure hearing held January 9-10, 1991

**SENATE LABOR & EMPLOYMENT**  
 EXHIBIT NO. 6  
 DATE 3/24/91  
 BILL NO. HB 730

(SEE REVERSE SIDE)



W.M. 1  
Greg Talbot LDB

TRANSPORTATION DIVISION

9401 Indian Creek Parkway  
P.O. Box 29136  
Overland Park, Kansas 66201-9136  
Telephone (913) 661-4320

November 15, 1990

Mr. J. T. Johnston  
Director Contract Administration  
National Railroad Passenger Corporation  
60 Massachusetts Avenue, N.E.  
Washington, D. C. 20002

Dear Mr. Johnston:

Reference my letters dated April 3 and July 20, 1990 regarding notice of intent to change job assignments and petition for closure of the "avoidable" passenger stations at Wolf Point and Malta, Montana.

This is to advise that in January 1991, Burlington Northern intends to file for petition of closure of the agency at Malta, Montana. The agency at Browning, Montana which also handles no freight business will likewise be included in petition for closure.

Since no reply has been received to date to the above referenced letters, would appreciate your involvement in insuring a response to this request before December 5, 1990. Please advise date and level of staffing, if any, Amtrak intends to provide at Malta and Browning, Montana.

Sincerely,

W. A. Peil  
NRPC Operations Officer

cc: ☒ L. W. Bullock  
☒ J. E. Lawrence

Jim Mulon  
Bob Penner thought you might  
like to read this.  
If you could call me sometime  
I would like to talk to you  
about this, thank you

Robert Swingen  
agent Malta work 654-1622  
Home 228-4736





March 20, 1991

Mr. Pat Keim,  
Director Public Affairs  
Burlington Northern Railroad  
36 North Last Chance Gulch  
Helena, Montana 59601

Dear Mr. Keim:

W. M. "Peach" Smith has passed on to me your request for a letter relative Amtrak service at Malta, Wolf Point, Browning, and other locations along the route of our EMPIRE BUILDER in Montana. This is in line with the proposed legislation before the Montana Legislature.

Should Burlington Northern remove services at Malta, Wolf Point and Browning, Montana, as well as other locations along the route of the EMPIRE BUILDER, Amtrak can make no guarantee that service can be maintained at any level. Sharing of costs, per contract between Burlington Northern and Amtrak, at these and other locations make these stops affordable and provides services, employment and goods to many communities. We would be unable to continue services if obliged to absorb all costs.

Due to our own budgetary constraints, and the need to continually reduce our dependance on Federal subsidies, we cannot make any promises at any location in Montana if Burlington Northern removes services.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arthur L. Lloyd", written in a cursive style.

Arthur L. Lloyd, Director  
Public Affairs - West

cc: Sue Martin  
W. M. Smith  
D. Brown, State of Montana  
Ron Scolaro





DONALD R. JUDGE  
EXECUTIVE SECRETARY

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

(406) 442-1708

Testimony of Don Judge of House Bill 730 before the Senate Labor and  
Employment Relations Committee, March 26, 1991

-----

Mr. Chairman, members of the Committee, I am Don Judge, representing the Montana State AFL-CIO. I would like to offer testimony in support HB 730.

Members and affiliates of the Montana State AFL-CIO have adopted several resolutions on railroad station closures as a result of legislation passed in 1987. These resolutions make it clear that the labor movement is concerned with station closures and their impact on the economy and well being of Montana communities.

A station represents more than just another facility for the railroad to maintain. To a small rural community, in this case communities over 2,000 in population or a county seat, a station is part of their economic lifeline.

Support for such local station houses is not a sentimental hearkening back to the past, but a resolute move to prepare for the business, transportation, and economic needs of Montana in the future.

Unions and the members they represent recognize that staffed stations are a vital link to moving Montana forward. In an age where rural America, and rural Montana, are floundering, we don't think it's wise to pull another rug from under their feet. Economic growth and development depend on a vital and usable transportation system. HB 730 could move Montana forward towards a brighter future.

We urge you to support House Bill 730 and give it a "do pass" recommendation. Thank you for considering our position.

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 7  
DATE 3/26/91  
BILL NO. HB 730



**69-14-202. Duty to furnish shipping and passenger facilities.** (1) Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility. In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 8

DATE 3/26/91

BILL NO. HB 730



HB 0730 TESTIMONY

P.C. KEIM

FOR THE RECORD, MY NAME IS PAT KEIM. I AM DIRECTOR OF GOVERNMENT AFFAIRS FOR BURLINGTON NORTHERN RAILROAD. I AM HERE AS AN OPPONENT TO HB 00730.

AS MOST OF YOU KNOW THIS IS NOT THE FIRST TIME THE SUBJECT OF MAINTANENCE OR CLOSURE OF RAILROAD AGENCIES HAS COME BEFORE THE LEGISLATURE. YOU DEALT WITH THIS IN THE 1987 SESSION. IT IS UNFORTUNATE THAT THE SUBJECT IS BEFORE YOU AGAIN BECAUSE ONE OF THE PROPONENTS THINKS THEY CAN NOW GET A BETTER DEAL.

THERE ARE NO NEW ARGUMENTS THIS TIME AROUND. THE SUBJECT MATTER IS THE SAME AS THE LAST TIME. NOTHING HAS CHANGED EXCEPT THAT A FEW MORE AGENCIES HAVE BEEN CLOSED AFTER THE PSC HELD THE REQUIRED HEARINGS. AT THOSE PROCEEDINGS THAT WERE FOLLOWED BY CLOSURE NO SHIPPERS APPEARED IN PROTEST. AT THE COUPLE OF HEARINGS WHERE A SHIPPER DID APPEAR THE AGENCIES WERE ORDERED TO REMAIN OPEN.

I SUBMIT TO THIS COMMITTEE THAT THE UNDERLYING ISSUE ON THE PART OF SOME OF THE PROPONENTS IS NOT SERVICE, BUT JOB PROTECTION. IT'S THE SHIPPER AND THE COMMUNITIES THAT WE'RE HERE TO SERVE AND IF THE SHIPPER AND THE COMMUNITIES DON'T NEED THE SERVICE THEN THE AGENCY POSITION IS NOT NEEDED AND KEEPING IT BECOMES AN UNREASONABLE BURDEN AND COST. WHERE WE HAVE BEEN ALLOWED TO CLOSE AGENCIES SERVICE TO THE SHIPPING PUBLIC HAS CONTINUED, AND IN SEVERAL LOCALITIES SHIPMENTS HAVE ACTUALLY INCREASED.

PROPONENTS TELL OF HOW THE AGENT IS NEEDED FOR SAFETY TO CHECK PASSING TRAINS. THE AGENT IS ONLY THERE 40 HOURS PER WEEK MINUS HOLIDAYS. WHO CHECKS THEM THE OTHER 128 HOURS PLUS HOLIDAYS? AND WHO IS LOOKING AT THE OTHER SIDE OF THE TRAIN? BN HAS INSTALLED AUTOMATIC WAYSIDE FAILED EQUIPMENT DETECTORS LOCATED STRATEGICALLY THROUGHOUT. OUR SYSTEM TO PERFORM THESE INSPECTIONS AROUND THE CLOCK. THEY ARE HIGHLY RELIABLE.

PROPONENTS TELL OF HOW THE LOCAL EMERGENCY SERVICES NEED THE AGENT AS A CONTACT SOURCE. THE TRUTH IS THAT THIS HAPPENS VERY SELDOM AND WHEN IT DOES HAPPEN USING THE LOCAL AGENT OFTEN ONLY DELAYS THE RESPONSE BY ADDING ANOTHER PARTY TO THE COMMUNICATION LOOP. THIS IS BECAUSE WE HAVE EMERGENCY 1-800 PHONES AT OUR DISPATCHING AND SECURITY OFFICES THAT ARE MANNED AROUND THE CLOCK. POLICE, FIRE, AND SHERIFFS' OFFICES HAVE THOSE NUMBERS THAT THEY CAN CALL 24 HOURS A DAY. WHERE THERE IS AN AGENT HE IS ONLY THERE 40 HOURS PER WEEK.

IT IS UNREASONABLE FOR THE STATE TO SET STANDARDS BASED ON ANYTHING BUT SOUND PUBLIC POLICY. HB 0730 CREATES AN ARTIFICIAL STANDARD UNRELATED TO PUBLIC POLICY CONSIDERATIONS.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 9

DATE 3/26/91

BILL NO. HB 730





## BURLINGTON NORTHERN RAILROAD

PAT KEIM  
Director, Government Affairs

139 North Last Chance Gulch  
Helena, Montana 59601  
(406) 442-1296

March 14, 1991

Mr. Rick Foote,  
Editor, Montana Standard  
P.O. Box 627  
Butte, MT 59703

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 10  
DATE 3/26/91  
BILL NO. HB 730

Dear Rick:

During my recent visit, you raised the question about traffic level fluctuations at the stations BN has been authorized to close. You will recall that I had cited statistics showing that, while we had closed numerous stations since 1987, our business volume increased by 23 to 25%.

Here are the statistics for the stations closed in 1989. You will note that I have included data from 1986 to 1988. I have also calculated the % of change (+ or -) between 1989 - 1990 and 1986 - 1990.

It must be kept in mind that the numbers are badly skewed at Opheim, Scobey, Plentywood, Richland, and Medicine Lake. As you may know, northeastern Montana has experienced a severe drought since 1984. Shipments through 1987 and part of 1988 were buoyed by grain coming out of storage. Very little was left in storage after that time.

	<u>1989 CARS</u>	<u>1990 CARS</u>	<u>CHANGE</u>	<u>% CHANGE</u>
Chester	119	652	+ 533	+ 92%
Stanford	197	443	+ 246	+ 56%
Lewistown	698	1018	+ 320	+ 32%
Cut Bank	1896	2901	+ 1005	+ 35%
Opheim	0	45	+ 45	+ 100%
Scobey	438	419	-19	-5%
Plentywood	276	94	-182	-66%
Richland	35	22	-13	-37%
Medicine Lake	18	49	+ 31	+ 63%

	<u>1986 CARS</u>	<u>1990 CARS</u>	<u>CHANGE</u>	<u>% CHANGE</u>
Chester	55	652	+ 597	+ 92%
Stanford	284	445	+ 161	+ 36%
Lewistown	518	1018	+ 500	+ 49%
Cut Bank	1030	2901	+ 1871	+ 64%
Opheim	47	45	-2	-5%
Scobey	446	419	-27	-7%
Plentywood*	715	94	-621	-87%
Richland	12	22	+ 10	+ 46%
Medicine Lake	32	49	+ 17	+ 35%

\*New elevator went on line at Mere, about 5 miles outside Plentywood, and took much of the business.



Rick Foote  
March 14, 1991  
Page 2

I believe that this situation demonstrates that the presence or removal of the agency has no relationship to the business volume. Volumes are driven by market conditions, rates, and service consistency across the system from point of origin to destination. None of these conditions are within the realm of the local depot agent.

Sincerely,

  
Pat C. Keim



	Montana	Washington	Oregon	Wyoming	North Dakota
# of Agencies	23	10	5	6	4
BN Miles of Track	3,137	3,031	643	966	3,2465
<u>1990</u>					
Carloads Originated	71,007	391,101	91,812	1,090,561	147,827
Carloads Terminated	<u>11,637</u>	<u>528,340</u>	<u>133,513</u>	<u>84,742</u>	<u>42,710</u>
Total for 1990	82644	919,441	225,325	1,175,303	190,537



## Agency Work Performed

Location of Agency	None	Bills of Lading	Car Orders	Demur.	Match/Tracing	Other Non Agency Work
Browning	X					Amtrak
Columbia Falls	X					
Eureka	X					
Forsyth	X					
Fort Benton	X					
Froid	X					
Garrison	X					Interchange
Glasgow	X					
Glendive - Centralized Agency	X	X	X	X	X	
Great Falls - Centralized Agency		X	X	X	X	Sups. Yard Office
Hardin	X					
Harlem	X					Utility Bills, RUIA Claims
Havre	X					Sups. Yard Office, Greb, Utility Bills, Car Tracing, TOFC, Switching Instructions, RUIA Claims, Car Delay Reports, Staty and Matl. Regn.
Helena (MRL)			X		X	
Kalispell	X					
Laurel		X	X	X	X	Phone Bills of Lading to Mso., Sups. Yard Office
Libby	X					
Livingston (MRL)		X	X	X	X	Sups. Yard Office
Missoula - Centralized Agency (MRL)		X	X	X	X	
Malta	X					



# Agency Work Performed

Location of Agency	None	Bills of Lading	Car Orders	Demur.	Match/Tracing	Other Non Agency Work
Shelby	X					Compass Reporting Switching Lists
Sidney	X					
Sweetgrass	X					CP Interchange, Compass Reporting, Customs
Whitefish		X	X	X	X	
Wolf Point	X					Amtrak, RUIA Claims



## **MONTANA'S RAILROAD AGENCY LAW**

Montana would become the only state to mandate that railroads maintain agencies on the basis of location and population if HB 730 is adopted. This law is a wasteful expense for Montana's shippers, consumers, and railroads because the need for service is unrelated to location or population. In all states, agency functions have been streamlined and consolidated at centralized locations, and decisions to do so have been based on service and demand rather than population.

When this law is discussed, those who advocate its continuation usually do so on the following beliefs: that when an agency is closed, line abandonment will follow, service will suffer, or the agent will be unemployed.

In each instance, the belief is incorrect.

**Agency closures will not cost agents their jobs, railroad service will not suffer, and the action is not a prelude to abandonment.**

If the Montana statute mandating local agencies is left alone, the decision on whether or not an agency remains open will be made based on the service that a community needs, not on an artificial population or location standard required by law.

At some agencies where Amtrak provides scheduled service, Amtrak has contracted with the railroad to provide staffing. Should the railroad choose to remove its agent, the contract requires that Amtrak must provide an alternative for its passenger services.

Prior to 1987, railroads were required to maintain and staff agencies at each town with populations greater than 1,000. In 1987, the legislature modified the law so that the railroads could petition to close agencies. If the railroad could demonstrate that the agency was not needed for public convenience and necessity, it could be closed. The Public Service Commission interpreted that as only applying to shippers' convenience and necessity. In 1989 the test was broadened to consider the general public's needs.



## **QUESTIONS AND ANSWERS ABOUT RAILROAD AGENCIES IN MONTANA**

### **1. WHAT WILL HAPPEN TO LOCAL AGENCIES IF THE PROPOSED LEGISLATION PASSES?**

Under the proposed legislation, decision-making authority to determine whether the agency is required by either shippers or the public will be taken from the Public Service Commission.

### **2. WHAT IS A LOCAL AGENCY?**

An agency is a local railroad office staffed by an agent responsible for receiving car orders and billing instructions from customers. The agent acts as a middleman in relaying requests for service to a regional customer service center.

### **3. WHAT FUNCTIONS DID THE LOCAL AGENCY HISTORICALLY PERFORM?**

Agencies date back to the era when railroads ran passenger trains and before computers had been invented. Local agents had a multitude of assignments including selling passenger tickets, loading milk cans and baggage, and handling U.S. Mail. They were also responsible for loading and unloading merchandise which was shipped in less than full carloads, handling livestock, collecting charges, salvaging and selling damaged freight, and physically checking on all cars. They handled a variety of paper work and delivered and billed Western Union telegrams.

### **4. WHAT EFFECT HAS MODERN TECHNOLOGY HAD ON THE DUTIES OF LOCAL AGENTS?**

Because of changes in society and advances in business technology, the local agent no longer handles Western Union telegraphs and seldom serves passengers or performs most of the functions once necessary. Car orders, record keeping, freight billing, and yard handling are, for the most part, computerized and handled through a customer service center.

### **5. ARE LOCAL AGENCIES STILL NEEDED TO SERVE LOCAL CUSTOMERS?**

No. Modern business practices have changed the way railroads operate and the way customers can best be served. Historically, agents ordered cars and provided customers with information about their shipments. Today, that information is handled by a customer service center. The customer service center, via computer, can instantly determine the location, content, destination, and shipper and receiver on virtually any car on the U.S. rail system. The local agent does not order cars. Instead, the order is relayed to a regional service center.

Railroad customers can gain immediate access to the information and service needed by directly phoning regional customer service centers. This is no different than the way people routinely contact the reservation centers of airlines, car rental agencies, hotels, or the regional service offices of trucking companies.



**6. WITHOUT A LOCAL AGENCY, HOW DOES A CUSTOMER GET SERVICE OR ASSISTANCE?**

Customers simply call the customer service center using toll free lines. These centers are on call 24 hours a day to handle requests for service, and inquiries about shipments. If personal contact with a railroad representative is required, staff members at the customer service centers can arrange it.

**7. HOW IS THE CLOSING OF A LOCAL AGENCY RELATED TO TRACK ABANDONMENT?**

The presence of an agency does not assure continued rail service nor does removal of an agency lead to abandonment -- traffic volume and operating costs are the determining factors. Some branch lines are in question because of low traffic volume and high costs. Eliminating local agencies is one way railroads can reduce costs, making the continuation of service feasible. Railroads have closed many agencies in important main and branch line communities and the customers are often better served by customer service centers. Agency closings have NO effect on train schedules or service.

**8. WHEN A LOCAL AGENCY IS CLOSED, WHAT HAPPEN TO THE AGENT?**

There are currently 23 agents in Montana. They all have seniority as union members and are guaranteed employment. They might move to other locations with the railroad where jobs are available. Or they might remain in their present location and receive compensation until retirement.

At some agency locations, there are also other railroad employees. These employees would remain at those locations and continue the work they now do.

**9. ARE OTHER RAILROADS DOING THE SAME THING?**

Agency consolidations are an industry trend. All major railroads face the same pressure to become more efficient and to better serve their customers. As a result, all railroads are instituting consolidated customer service centers.

**10. DO ANY OTHER STATES MANDATE AGENCY RETENTION BASED ON POPULATION OR LOCATION?**

No. HB 730 would make Montana's law unique. No other state requires that agencies be maintained on the basis of population or location. The cost of maintaining unnecessary agencies imposed by the eighty year old law is estimated at more that \$1 million per year -- a cost ultimately borne in part by Montana shippers and consumers. By way of comparison, Burlington Northern maintains 4 agencies in North Dakota, 6 in Wyoming, and 23 in Montana.



# Montana's most boring job

## Townsend won't mind if MRL gets rid of depots and 'babysitter'

By SHERRY JONES  
IR Staff Writer

**M**ontana Rail Link wants to close its depots in Townsend and Toston — and neither the City Council nor the woman who staffs the two stations is complaining.

The company will present its case for the closings Wednesday at 2 p.m., at a public hearing before the state Public Service Commission in the Broadwater County Courthouse.

Said Townsend Mayor Mary Alice Upton: "We're not going to protest it."

The closing of both depots would mean the loss of only one job, a temporary employee Upton called "a babysitter."

Diana Guptill of Three Forks won't argue with that assessment. "I see no need to have someone here full-time," she said.

Rail Link hired Guptill last December to staff the Townsend station. Her job, according to MRL spokesman Orson Murray: "She answers the phone and directs the calls to Missoula."

And the phone, he said, hardly ever rings. "It is boring," said Guptill, who landed the job through a temporary services agency. "There's actually nothing to do."

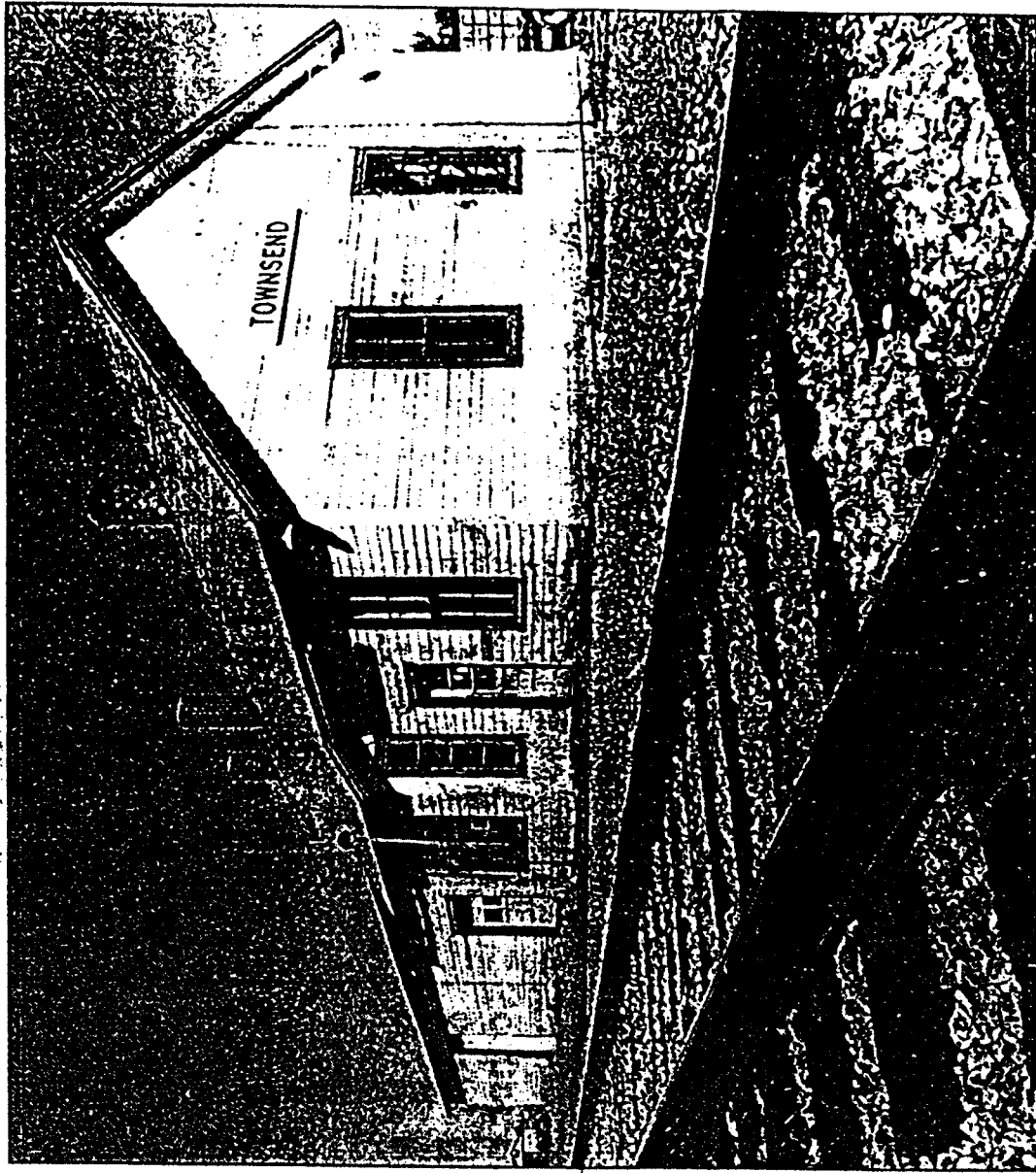
From 7:30 a.m. to 3:30 p.m. each weekday, Guptill — Townsend's version of the fabled "Maytag repairman" — fills her time watching TV, reading, sewing, doing jigsaw puzzles and panning for gold in front of the depot.

"I've gotten some flakes," she said. "I'll never get rich, but it breaks the monotony."

Once in a while, crew members or shippers will use the station phone or radio. Once in a while.

"Many times, weeks have gone by with nobody stopping in," she said. Then with a laugh, she added, "It's so lonely that if anybody does come

The reason Guptill is so bored is because she's



The Townsend depot, where the phone hardly ever rings. (Staff photo by Gene Fischer)

not needed, Murray said. "We can provide the same or better services through our centralized agency in Missoula," he said.

Trains stop at either depot for loading and unloading freight — full carloads at a time, Murray said. The shipper puts the cargo into the rail car, with the assistance of rail crews already on the scene. Guptill usually just watches.

"It's quite a similar operation," Murray said. Should the PSC give the nod to the depot clo-

tures, Rail Link will choose from several options for the old building. On Wednesday the company also will ask for permission to move the structure.

"Then we'll determine if we need it," Murray said. "If not, we'll put it up for sale, sell it to the city for one dollar or whatever comes up."

Although the Townsend Council has plans for the city's depot, other groups have been talking about using it, Upton said.



# Opinion

## *Democrats and labor unions try to invade governor's office*

Just who runs the executive branch of state government?

Is it the governor, who presumably has broad constitutional powers; or is it the Legislature, the Democratic Party and state workers' labor unions?

Judging from bills submitted by the Democratic majority in opposition to Gov. Stan Stephens' efforts to contract some state services to the private sector, Democrats and labor unions are doing their best to invade the executive office.

And they may succeed.

Three bills were endorsed by the House Labor Committee last week that would establish the process a government agency must follow in privatizing government services. They require broad benefits for workers who might lose their jobs and require agencies to release detailed plans four months in advance of any actual contracting to the private sector.

Another bill would require the governor to make public the identity and bids of companies that seek to take over functions now handled by state workers. We have no argument with that measure.

The furor started last year when the governor, true to his campaign pledge, started a modest privatization program. He replaced some clerical employees, janitors and security personnel with workers contracted from private firms. The furor escalated when the

governor proposed closing the Galen State Hospital and transferring patients to community centers and private nursing homes.

The three bills now working their way through the legislative process are an attempt to tie the governor's hands. The most punitive measure would give workers losing jobs to private firms a hiring preference for other state positions — with no loss of wages or benefits. It also would provide moving assistance, severance pay, job counseling, temporary health insurance benefits and job retraining for those who don't find a job elsewhere in state government.

If enacted, those benefits would probably wipe out any savings gained from trimming the state work force through privatization.

It also would slap the public in the face. Stephens was elected in 1988, in part, because he pledged to make government more efficient and less costly. A majority of voters supported the pledge.

Privatization would not affect a large number of jobs. For the most part it would deal with routine services and a few other functions (such as liquor stores) that should have been moved to the private sector years ago. The key factor throughout is whether contracted services would provide equal or better results at less cost.

We are uncertain if this newspaper, or the voters, can support state pay increases if the Legislature insists on hamstringing efforts to make government more efficient.



# OPINIONS

## It isn't broken, so don't fix it

At least half of the Montana mindset that holds that every town must have a school and a railroad depot is alive and well in the minds of some Montana legislators.

Prior to 1987, railroads were required to maintain and staff agencies (depots) at towns with a population of more than 1,000. In 1987 the Legislature modified the law so that the railroads could petition to close agencies if the railroad could demonstrate that the agency was not needed for public convenience and necessity. The Public Service Commission (PSC) interpreted the law as only applying to shippers' convenience and necessity. In 1989 the test was broadened to consider the general public's needs.

### AN IR VIEW

In addition the '87 Legislature passed another law clearly defining public convenience and necessity.

Two bills have been introduced in the House that are aimed at once again micromanaging the railroads that are doing business in Montana.

One bill would restore the population criterion by mandating that the railroads couldn't close agencies in towns with a population of 2,000 or more people. The second bill, which redefines "public convenience and necessity," is so vague it will be virtually impossible for the PSC to grant a railroad's request to close a depot.

In 1987 there were 62 agencies in Montana. In 1990 there were 26 (23 owned by BN and three owned by Montana Rail Link). Each agency costs about \$45,000 a year to operate. This figure includes wages, benefits, utilities, etc.

Since 1986 the total number of car loadings in Montana increased from 322,313 to 401,447, an increase of 79,134 carloads. That's a 23 percent increase. Since 1986 the number of carloads terminating in Montana increased from 39,015 to 48,840 — a 25 percent increase of 9,825 cars.

It seems to us that if the railroads can close 36 agencies over the course of three years and post a healthy increase in traffic the public is being well served.

Establishing a minimum population of 2,000 is arbitrary and has nothing whatsoever to do with whether the depots are needed in communities of this size.

Shippers and residents in the communities should be allowed to voice their concerns about a depot's proposed closure to the PSC, which should then make the decision based on the testimony.

The law should be left alone.



# opinions

## Starting to roll

It's been almost two years since the state lightened up on its requirements for railroad freight offices, but the new system seems to be starting to work.

Until the 1937 legislative session, Montana required the railroads to maintain freight offices in every county seat and every town of 1,000 or more population. It caused an unnecessary hardship on the railroads, who wanted to consolidate their freight office operations in fewer locations. At the time the legislature took up the issue, BN had 62 freight agencies in Montana, compared with 16 in Washington, 8 in Wyoming and 6 in North Dakota.

The new law allowed for closure of freight offices, if the railroad could show the Public Service Commission that no major inconvenience or other impact on the shippers and general public would be caused. The PSC has received some of the railroad's applications, held hearings, and granted most of them.

The primary opponents to the closure of the offices, as might be expected, have been railroad union representatives who want to protect the jobs of the freight agents. Only a few shippers and other members of the public have objected.

In mounting their protests, the railroad folks have come up with some pretty thin arguments. One is that the freight agencies need to be maintained because of "livestock kills —" the occasional cow that gets killed by a passing train. Union spokesmen argue that the freight agent needs to be there to record and process the farmer's claim against the railroad — a pretty silly justification to keep an agency open.

Their latest argument is almost as silly — they are beginning to claim the agency should be kept open for safety reasons — so that the agent will be on hand to perform "roll-by" inspections of the trains. It seems when the unions run

out of other job-protection arguments, they often resort to "safety" claims — long on emotion and short on logic.

It makes you wonder how the ranchers of Wyoming or North Dakota got by with so few places to put in a claim when a cow gets killed . . . and how "safe" the trains travelling through those states are, with so few freight agents to "inspect" them.

Anyway, the slow bureaucratic process of earning PSC approval has been underway for several months now. In the meantime, BN sold off the southern line to MRL, so MRL is also applying to close some agencies. Most of the completed closure applications — less than a dozen so far — have been granted, but the PSC has refused a couple of them. More applications are in the mill. It's something that has taken far too long to get going. At least it's moving now, and we can hope the PSC keeps it an objective and expeditious process.



# Rail agents debated

By CHARLES S. JOHNSON  
Tribune Capitol Bureau

HELENA — Railroad shippers and unions lined up on opposite sides Friday over a bill that would no longer require Burlington Northern to maintain station agents determined to be unnecessary.

At issue was House Bill 302, by Rep. Dorothy Bradley, D-Bozeman, which would free railroads from the requirement to maintain freight agents in county seats and other towns with populations of at least 1,000 through which the railroad runs.

The House Business and Industry Committee did not act on the bill.

It would allow a railroad to ask the state Public Service Commission for permission to close station agencies deemed unneeded for "public convenience and necessity."

She called the current requirement "a bad and outdated law" that made sense early in the century when railroad agents sold tickets for passenger trains, handled baggage and did other business.

With the elimination of some of these duties and with modern telecommunications, Bradley said BN should be allowed to set up regional centers that customers could call on toll-free numbers to arrange for rail shipments. Buses, airlines and car rental agencies already use regional computerized facilities, she said.

Bradley quoted a North Dakota official who said a similar move there had worked well and didn't cause loss of services.

BN has 62 agencies in Montana, compared with 16 in Washington, 8 in Wyoming and 6 in North Dakota.

## Legislature

Bill Francis, regional vice president of BN Railroad, Seattle, said agencies wouldn't be closed unless it was in the best interest of customers.

Opponents questioned whether BN would pass on any savings to shippers, but Francis said the railroad's record shows it passes on savings.

Lorna Frank of the Montana Farm Bureau Federation said farmers and ranchers could benefit from lower freight rates made possible through some of the \$2 million BN would save under the bill.

But James Mular of the the Brotherhood of Railway and Airline Clerks asked "where's the cost savings?" if agents receive their required job protection.

Francis replied that the savings would come gradually as the agents retire or find other jobs.

The bill was supported by the Montana Chamber of Commerce and shippers representing a bean plant in Fairview, the Columbia Falls Aluminum Co. and ready-mix dealers.

Unions, however, argued that BN was only trying to eliminate the agencies to make even more profits while not providing service.

The state AFL-CIO's Jim Murry said the law now assures that rail service will be maintained in Montana communities.

Terry Murphy of the Montana Farmers Union said Montana has tried to cooperate with BN but has received little cooperation in return.



# BN agency closings debated

By STEVE SHIRLEY  
IR State Bureau

Montana shippers joined Burlington Northern officials Friday in calling for legislation allowing the railroad to close certain freight agencies.

They said shipping rates would decline and the economy would benefit.

But BN employees, unions and the Montana Farmers Union countered that railroad agents would suffer, rail service would deteriorate, and more branch lines would be abandoned.

Members of the House Business and Labor Committee heard the testimony on House Bill 302 by Rep. Dorothy Bradley, D-Bozeman. They didn't take immediate action on the bill.

State law currently requires BN to maintain freight agencies in counties through which it passes and in communities with

populations over 1,000.

Bradley's bill would scrap the old standards and allow BN to close agencies not needed to maintain "public convenience and necessity." The state Public Service Commission would decide on proposed closures after hearings.

BN claims many local agents no longer handle vital business. It says customers can now arrange to ship their products by calling a computerized service center.

Bradley said she talked with one local agent who felt like he hadn't worked full-time for 10 years. The man estimated working two hours at most during daily eight-hour stint, she said. She called the current law "bad and outdated."

W.W. Francis, BN's regional vice president in Seattle, said the railroad would try to close about 30 agencies if the bill passes,

with busier ones staying open. He said agents have guaranteed job protection. He noted many are close to retirement.

Francis didn't guarantee that savings from closures would be passed on to shippers in rate breaks, but said past history has indicated BN reduced rates when it took steps to become more efficient. He said rates dropped 17 percent in the last five years.

Nine speakers representing shippers also endorsed the bill, saying they expect lower rates if BN can modernize its operations.

Martin Dibbold, manager of the phosphate plant at Garrison, said his operation is closed because it can't compete with others, but lower rates could make it more competitive. "I feel like this bill is a step in the direction of trying to save my job and 125 other jobs," he said.



## *Network of 60 rail agencies is too costly for ratepayers*

A committee hearing this morning may go a long way toward determining if the Burlington Northern Railroad's image is permanently tarnished in Montana — or seeing if the Legislature is willing to take off the boxing gloves and seek a partnership for economic improvement and lower rail rates.

At issue is House Bill 302, sponsored by Rep. Dorothy Bradley, D-Bozeman, which would give the Public Service Commission the option of holding hearings leading to the closure of some — or most — of the 60 freight agencies in Montana which BN says are outmoded and expensive to maintain.

The railroad is spending \$2 million per year to keep the agencies open. That cost is borne by customers through their rates.

State law presently requires the BN to maintain a freight agency in all county seats and other communities with 1,000 or more population. BN officials claim that local station agents no longer handle any vital business. Customers arrange for grain and freight shipments by telephone to a computerized service center. Car orders, record keeping, freight billing and yard handling are coordinated through a central office.

This trend toward consolidation and cost-saving is evident in all states but Montana, the railroad adds. North Dakota currently has six agencies and Wyoming has eight.

If agencies are closed, station agents would keep their jobs through union seniority agreements. Their most likely options would be to relocate or take early retirement.

Opposition to this measure will come from those who feel that rail service would suffer or that agency closures would be a prelude to branch line abandonment.

Bradley says, however, the experience in North Dakota is just the opposite. She quotes a member of that state's regulatory agency who says centralized service costs less and tends to keep marginal branch lines in operation.

We agree. Railroad regulation in Montana has remained in the dark ages, particularly with regard to mandated business and operational practices that are as outdated as steam locomotives.

If the BN demonstrates that agency closures will result in lower rates, the House Business and Labor Committee should approve the measure.



# OPINIONS

## A railroad bill that should pass

Montana is unique in many ways and some of the unique aspects of this state deserve to be treasured.

On the other hand, we have some unique features that aren't so great.

One of the not-so-great aspects of Montana is a law regarding railroad station agents.

Montana has a law on the books that dates back to the turn of the century. It requires railroad agents and an agency in every town of 1,000 or more population and every county seat.

It's the only state in the nation with such a law on the books.

In other states, agencies are either required or closed based on public convenience and necessity.

The Burlington Northern Railroad has some 60 agents in Montana, while North Dakota and Nebraska have fewer than seven. Montana's agency requirement costs BN in excess of \$2 million a year.

That's \$2 million a year that has to be borne by the shippers in this state. Like it or not, artificial costs such as those required by Montana's unique law do have an effect on rates.

Agencies date back to an era when railroads ran passenger trains and before the advent of computers. Local agents had a multitude of assignments, including selling passenger tickets, loading milk cans and baggage and handling the U.S. mail. They also had many other duties.

AN  
IR  
VIEW

Because of changes in society and advances in business technology, the local agent no longer handles Western Union telegraphs and seldom serves passengers or performs most of the functions once necessary. Car orders, record keeping, freight handling and yard handling are, for the most part, computerized and handled through a customer service center.

Rep. Dorothy Bradley, D-Bozeman, is the principal sponsor of House Bill 302 which would take Montana's "unique law" off the books, bring this state fully into the 20th century and send a positive signal to business.

Bradley's bill would eliminate the agency requirement for an agency in every community with 1,000 people and/or county seat.

The bill states that "if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility."

Many agents have virtually nothing to do. We're sure there are a lot of good people, all but sitting on their hands, who would like to have their talents fully utilized. Bradley's bill gives the BN the opportunity to do just that.

Furthermore, it's highly unlikely that passage of HB 302 would result in immediate and wholesale closure of agencies in Montana.

The hearing process before the state Public Service Commission is going to take time and the BN is going to have to prove its case before the PSC will act.

It's probable that four, five or six years from now there will only be a handful of agents doing the work once handled by the 60 or so now on the job.

But, unlike the present law, Bradley's bill provides realistic criteria for keeping or closing an agency — public convenience and necessity.

It's a long overdue bill that deserves to become a law.



JAN 26 1987

MONTANA  
PRESS CLIPPING SERVICE

A Division of  
Montana Press Association  
1900 N. Main, Suite C  
Helena, MT 59601

Livingston Enterprises  
Livingston, Montana

# opinions

## Freight-agent law outdated

This is the year Montana and its legislature are supposed to be searching their makeup and reviewing their attitude toward business. A lot of the state — this town and county included — have borne the brunt of the state's "anti-business" reputation.

The Burlington Northern brought the attitude to the front burner by cutting back its operations in Montana, including the shutdown of the local locomotive shops. There's a railroad bill being debated at the legislature that should be a real bellwether about how seriously the state wants to tackle its anti-business reputation.

The bill deals with freight agencies. Current Montana law, which dates in this case back to 1907, requires every county

seat on a rail line, and every town of over 1,000 persons on a rail line, to have a full-time freight agent. The idea dates back to when agents did a lot of things they don't do now — including servicing passengers, taking telegrams and loading milk cans.

Times, they are a-changing. No other state requires freight agents on the basis of location or population, but Montana still does. It costs the railroad an estimated \$2 billion a year to keep 60 freight agents on the job around Montana, when they could get by nicely with a small handful. In all of North Dakota there are only six agents, and Wyoming has only eight.

Rep. Dorothy Bradley of Bozeman has introduced HB302, a bill to abolish the agency requirement based on population or location, and make the requirement bas-

ed on need or traffic. The Public Service Commission would be empowered to decide if an agency is needed or not, based on evidence presented by the railroad and the general public.

That's quite a departure from tradition, or at least reputation, for Rep. Bradley. A few years ago, she was branded as being the most anti-business legislator in Helena, because of her strong stands on environmental issues. Rep. Bradley is a very sharp legislator, and can readily see the freight-agent law is outdated and needs repealing.

Most folks would have to agree. There's no sense requiring freight agents where they are not needed. A state which retains that kind of law on its books deserves an anti-business reputation.

Arguments against the repeal hold little water. Critics say shutting down the agencies just paves the way to abandonment of a line — but abandonment has to go through a review process based on traffic and need. In fact, the more we can help the railroad lower its overheads, by shutting down unneeded agencies, the more the railroad is likely to operate a line.

Other critics want to hang onto the law, just to protect the people who are currently freight agents from losing their jobs. It's just that kind of protectionism that gives the state a bad name for business.

The freight-agency law needs to be abolished, and Rep. Bradley's bill is a fair solution. The state would be silly not to enact it.



Amtrak

March 26, 1991

Mr. Pat Keim  
Director, Public Affairs  
Burlington Northern Railroad  
36 North Last Chance Gulch  
Helena, Montana 59601

Dear Mr. Keim:

Per your request, I have reviewed the issues surrounding the proposed bill (730) in the Montana legislature that would require railroads in the state to maintain agencies in certain locations. I have also discussed Art Lloyd's previous letter to you with affected Amtrak departments, including the Assistant Vice President-Operations and Planning.

We find Art Lloyd's letter factually accurate. But to clarify our position, Burlington Northern's decision to close its agency in a location served by Amtrak would not necessarily mean that Amtrak would also discontinue staffing at that location. However, without BN's sharing of costs for the agent position, Amtrak would need to take a hard look at the financial impact of maintaining the position. We would consider total costs of staffing and related facility expenses, projected revenues, and whether or not there are travel agents in the community who could provide ticketing services for our customers. If projected revenues would not cover the additional costs of continuing to staff the station, then we would be forced to discontinue staffing.

Each location would need to be considered on a case by case basis. There is no guarantee that we would be able to continue service at all locations.

Sincerely,



Sue S. Martin  
Senior Director  
Public Affairs

cc: W. M. Smith  
Arthur Lloyd  
Jim Barber  
Jim Larson

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 11

DATE 3/26/91

BILL NO. HB 730



I AM WRITING THIS LETTER TODAY BECAUSE THE WEATHER DID NOT PERMIT MY APPEARANCE IN VOICING MY OPPOSITION TO HB 730

AS A BN SHIPPER WITH MODERN METHODS OF COMMUNICATIONS, TELEPHONES AND FAX MACHINES THE DAYS OF AGENTS IN EVERY TOWN HAVE BECOME OBSOLETE AND CLUMBERSON IN DOING BUSINESS. TODAY FOR SERVICE WE CALL GT FALLS OR SEATTLE INSTEAD OF THE LOCAL AGENT WHO IN TURN WOULD CALL GT FALLS OR SEATTLE. THUS WE SAVE 1 STEP BY CALLING DIRECT WHICH ALSO AVOIDS ANY MISUNDERSTANDINGS THAT CAN HAPPEN THE MORE PEOPLE INFORMATION HAS TO PASS THROUGH.

IT ALSO AS A MONTANIAN WOULD LIKE TO SEE MORE JOBS BUT <sup>WHAT</sup> WE NEED ARE PRODUCTIVE JOBS NOT JOBS THAT HAVE LOST THEIR VALUE AND BECOME A BURDEN ON THE ~~RE~~ OTHER PARTS THE ECONOMY TO SUPPORT THEM

YOURS TRULY

PETE VANDER VEN

CENTENNIAL MILLS

HAURE MT.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 12(a)

DATE 3/26/01

BILL NO. HB 730



Buying and selling  
the basics.



Steel/Hides/Furs/Recycling

1401 3rd Street N.W.  
P.O. Box 1549  
Great Falls, Montana 59403  
(406) 727-6222

March 25, 1991

Senator Thomas R. "Tom" Towe  
Capitol Station  
Helena, MT 59620

Dear Senator Towe:

I am concerned about House Bill 730 which would require railroads to maintain agencies in any town of 2,000 or more people, and in any county through which the railroad has trackage, without regard to any shipper need for such agency.

I feel this places an undue burden on the railroads and creates added cost to their operations. Ultimately, the added cost is passed on to the shipping public in the form of higher rates. Our company ships a high volume of rail shipments, which results in a large annual freight bill. We do not need any unnecessary increase in our freight costs.

In the early days of railroading, these agencies were needed from the railroad operating standpoint, as well as serving public needs, i.e. passenger service, livestock and other commodities shipped. Today, passenger service is practically non-existent, livestock is shipped by truck, there are no more LCL (less than carload) shipments, and the number of grain elevators is greatly reduced.

We are approaching the 21st century. The communications technology available now allows the shipping public to do business with the railroads at a central location. We at Pacific Hide & Fur Depot find it very convenient to work with the railroads, using today's technology.

We are opposed to this bill and ask that you do not allow it to become law.

Sincerely yours,

George O'Dora

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 12(6)

DATE 3/26/91

BILL NO. HB 730





Senate Labor and Employment Committee

*A Division of Cominco American Incorporated*

March 22, 1991

Gentlemen:

As a native Montanan and one of 140 employees of a business whose economic viability is as dependent on railroad freight rates as it is its' own operating costs, I would like to strongly object to HB730.

The costs forced upon railroads by such political action are eventually reflected in freight rates. When the political action results from an emotional response to a business decision based on economics, the results are an unwarranted added cost of doing business in Montana as well as a strong anti-business signal to potential newcomers.

Most consumables must be freighted into the state and most production out so that freight rates are of disproportionate importance to living or doing business in Montana. They are certainly one of the significant determining factors in the attraction or more appropriately lack of attraction of new non-resource or even "value added" businesses.

It's time for actions which will help retain our existing employers as well as provide an improved climate for new businesses with jobs to attract our departing youth.

Respectfully,

HUGH D. MOORE  
Assistant Manager

HDM:kc

SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. 12(c)  
DATE 3/26/91  
BILL NO. HB 730





DONALD R. JUDGE  
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DON JUDGE ON HOUSE JOINT RESOLUTION 38 BEFORE THE SENATE LABOR  
AND EMPLOYMENT RELATIONS COMMITTEE, MARCH 26, 1991

-----

Mr. Chairman, members of the Committee, for the record, I'm Don Judge representing the Montana State AFL-CIO, and we rise in support of House Joint Resolution 38.

The wood products industry appears to be collapsing! Automated mills, loss of value-added processes, and an inability to settle environmental appeals have all taken their toll on Montana wood product workers. Our workers are in trouble. It is incumbent upon the State of Montana to respond to this crisis with our best available resources and human service providers.

There is no better program to meet this crisis than Project Challenge: Work Again. Project Challenge: Work Again has been working with dislocated workers for almost a decade. Through that time, we have enabled workers to find productive jobs at good wages. Last year, about 85 percent of the people served through the program were placed in jobs at an average of over \$8.00 per hour. In the 10-county CEP area around Helena, Butte, and Anaconda, the workers averaged over \$9.00 per hour after participating in Project Challenge: Work Again.

All job training program operators in Montana are reliant upon a stable base of funding to provide services to those people who are dependent upon the help. Unfortunately, the effects of the economic recession are being felt more rapidly on the East Coast, and the bulk of job training funds are being skewed to the eastern United States. Overall, Montana received an average of 10% cut in funds for next year for all JTPA programs, and anticipates another \$1 million for the following year.

The EDWAA dislocated worker program actually received an increase in funds nationally; but Montana fell victim to the eastern recession and was cut by 18 percent for next year. Statewide, that means over a \$300,000 cut in funds, which means over 200 fewer dislocated workers will be served. For State Fiscal Year 1993, we may see an even larger cut if the populous eastern states continue to increase their share of funds.

SENATE LABOR & EMPLOYMENT

13  
3/26/91  
HJR 38



This cut does not mean Montana's economy is in good shape. Almost every day, you can read in the newspapers about layoffs and shutdowns in the wood products industry. Hundreds of Montana workers are finding themselves unemployed--in an industry not easy to find re-employment.

The statistics clearly show that Project Challenge: Work Again is worthwhile. Now, with the massive layoffs in Missoula and Libby, and the secondary impacts to come, Project Challenge is needed now more than ever. House Joint Resolution 38 can help make those necessary funds available. The benefits could help Project Challenge assist dislocated workers, and ultimately, Montana's economy.

The need is valid and is necessary right now. We urge you to take a small step to help our states economy. Give House Joint Resolution 38 a "do pass." Thank you.



DATE

3/26/91

COMMITTEE ON

Senate Labor

HB 730 - 807 - 837

HJR 38

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Harry Bauling	Cypress Mineral	837		X
Chas. Brown	Cypress Mineral	837		X
Pat Stephenson	Intermountain Claims	837		X
James T. Mular	TRANSP. COMM. UNION (TCU) Mont JT Rail Labor Legis Council	730	X	
Pat Zeim	Beaumont Northern	730		X
J.W. Greene	Mont Western RR	730		X
Bonnie Udassar	Holham Inc. - Trident MT	730		
Leo BERRY	BWR	730		X
Michael J. Sherwood	MTLA	837	X	
Ches. Shurt	MVA	807	X	
John Whiston	self	837	X	
BGB ANDERSON	DLI	038	X	
Alan Miles	DLI	HR 837	X	
Norm Grosfield	Self	837	X	
JAMES Tuttenkel	mt chamber	837	✓	
Bab Stephens	2nd Grain Growers Assn	730		X
Pam Langley	Montana Agri Business Montana Grain Growers Assn	730		X
Audrey Janette	Vocational Services Inc.	837	X	
Elz W Pratt	DLI - Self	837		
Kay Foster	Billings Chamber	807	X	
Kay Foster	Billings Chamber	837	✓	
Pat Sweeney	STATE FUND	837	✓	
Chuck Hunter	DOLI	807	✓	
Wally Vacker	Lee Epyangris	807	✓	
Longwood	mt self Insurance Assn	837	✓	
GENE PHILLIPS	ALLIANCE AMER. INS	837	✓	



DATE \_\_\_\_\_

COMMITTEE ON

## Senate Labor

HB 730 - 807 - 837 - HJR 38 (Cont'd)

# VISITORS' REGISTER

[illegible]



ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 3/26/91 House Bill No. 204 Time 6:15pm

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: \_\_\_\_\_

TAKE FROM TABLE

MOTION CARRIED



ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 3/26/91 House Bill No. 204 Time 6:26pm

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 Concurred In  
AS AMENDED



ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 3/26/91 House 141  
~~Senate~~ Bill No. ~~97~~ Time 6:40pm

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		

Secretary

Chairman

Motion:

Be Not Concurred  
In As Amended

CARRIED