

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chair Tom Towe, on January 26, 1993, at 1:00 P.M.

ROLL CALL

Members Present:

Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: None

Members Absent: None

Staff Present: Eddy McClure, Legislative Council
Patricia Brooke, Committee Secretary

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

Committee Business Summary:

Hearing: SB 184
Executive Action: SB 160, SB 15, SB 91

HEARING ON SB 184

Opening Statement by Sponsor:

Senator Blaylock, Senate District 43, opened the hearing by stating SB 184 is a Department of Labor and Industry bill intended to conform state statutes with federal statutes to prevent the loss of administrative funding and federal unemployment tax credits for employers. SB 184 will clarify several provisions of the state statutes and streamline the administration of the unemployment insurance program in Montana.

Proponents' Testimony:

Bob Jenson, Administrator-Unemployment Insurance Division, explained SB 184 clarifies the unemployment insurance program (Exhibit #1). Mr. Jenson proposed an amendment to strike section 3309b, line 20, on page 9 because the section addresses

the University System exemption mandated in FUTA which is already in 3306b.

Rep. Jerry Driscoll, House District 92, stated he was a proponent of the bill only if section 4, page 14 and 15 is amended, dealing with pensions and unemployment. The section is written so negotiated pensions are not recognized as employee contributions. Rep. Driscoll stated his proposed amendments to SB 184.

Eugene Fenderson, District Council of Laborers, was going to oppose SB 184 but with the proposed amendment by Rep. Driscoll he stated he can support the bill. He stated people draw small pensions sometimes when they are laid off and they have to seek supplements to the pension. Mr. Fenderson noted the section regarding the independent contractors broadens the definition of independent contractors who are able to receive unemployment. He has not seen the fiscal note which would result from the broadening of the provisions of the bill.

Leroy Schram, University System, wanted to impress upon the committee the reason for the amendment proposed by Mr. Jenson. He stated that work study students are excluded from drawing benefits by both state and federal law. Page 9, lines 19 and 20 inadvertently covers work study students because it is not in 3909B. The amendment maintains the status quo.

John Manzer, Teamsters Union, rose in support of SB 184 provided the amendment proposed by Rep. Driscoll is adopted.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

Sen. Blaylock asked Rep. Driscoll to state his amendment again. Eddy McClure read the amendment and Rep. Driscoll said it is intended to clarify that pensions are direct employee contributions.

Sen. Towe asked Rep. Driscoll if negotiated pensions are generally considered employer or employee contributions. Rep. Driscoll responded that for FICA purposes they are employer contributions and deferred for tax purposes.

Sen. Keating asked if they are negotiated or unnegotiated pensions and Rep. Driscoll responded unnegotiated.

Sen. Aklestad asked Rep. Driscoll if there is a cap on how much pension can be drawn before an individual is unable to get unemployment. Rep. Driscoll said there is no cap as the bill is written.

Sen. Aklestad asked Rep. Driscoll if SB 184 has a place to instill a cap. Rep. Driscoll responded he would not be interested in doing that unless department heads were subject to the cap.

Sen. Towe asked Mr. Jenson if he is sure the federal government will accept the amendments. Mr. Jenson responded he is not certain the federal government will accept it. Sen. Towe asked why Mr. Jenson is uncertain about the acceptance. Mr. Jenson answered that federal government is concerned about carte blanche negotiated agreement.

Sen. Towe asked Rep. Driscoll if he had any comments on whether the feds will accept the amendments or not. Rep. Driscoll said many states are not in federal conformity on this issue.

Sen. Keating asked Leroy Schrom about the section referring to work study students which the university would like amended. Mr. Schrom explained it was a double exclusion and therefore an inclusion.

Sen. Aklestad asked if there is any way to resolve the situation of people drawing large pensions and unemployment. It was suggested that that is an issue beyond the scope of SB 184.

There was a discussion of how much child support payments are held in offset. Mr. Jenson explained the Department of Labor generally does not take more than 50%. Sen. Towe asked if it would be a good idea to state that 50% is the maximum allowed to be withheld from offset of overpayments in order to prevent abuse. Mr. Jenson stated he would not have any problems with that.

Sen. Aklestad asked if the proposed amendment on page 12, line 2 makes for less or more authority and work for the employer or employment insurance division. Mr. Jenson answered it does not create more work.

Closing by Sponsor: Sen. Blaylock closed.

EXECUTIVE ACTION ON 184

Motion: Sen. Aklestad moved to AMEND SB 184 (Exhibit #2, part 1).

Vote: Motion to adopt the amendment CARRIED UNANIMOUSLY.

Motion: Sen. Blaylock moved to AMEND SB 184 (Exhibit #2, part 2).

Vote : Motion to adopt the amendment CARRIED with Senators

Burnett and Lynch voting no.

Discussion: Sen. Towe explained a need to amend page 18, section 6, line 9. If somebody has received an overpayment of compensation benefits and then becomes unemployed, this gives them the right to an offset so they take the unemployment entitlement until the payment is repaid. Sen. Towe feels the system is open to abuse and the unemployed person receives nothing because he is making repayments. It was suggested to give the Department of Labor legal authority to collect the overpayment not to exceed 50% of any one payment. Sen. Towe asked the Department of Labor to report back to the Committee on this issue.

EXECUTIVE ACTION ON SB 160

Discussion: Eddy McClure presented the proposed amendments (Exhibit #3). She clarified the intent of the amendments to SB 160 is to exhaust the grievance procedure in 120 days at which point the employee or employer can file a civil suit. She also explained the other amendments. Senator Rye stated his approval of the amendments.

Motion/Vote: Sen. Keating moved to adopt the amendments. The motion to amend SB 160 CARRIED UNANIMOUSLY.

Motion: Sen. Lynch moved SB 160 DO PASS AS AMENDED.

Vote: The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 15

Motion: Sen. Lynch moved to AMEND SB 15 (Exhibit #4).

Vote: The motion to amend SB 15 CARRIED with Senators Aklestad and Burnett voting against them.

Motion: Sen. Blaylock moved SB 15 DO PASS AS AMENDED.

Discussion: Sen. Aklestad spoke against SB 15. He argued complete authority is taken away from school boards with SB 15. He questioned the validity of mandating binding arbitration by statute. Sen. Towe questioned why the school parties should be forced to go to court when binding arbitration will work. Sen. Towe stated binding arbitration is an excellent way to handle the disputes between school parties and almost always cheaper. Sen. Keating stated SB 15 interjects the state into the collective bargaining procedure and he does not think the state should be there. Phil Campbell stated schools have no where to go on a breach of contract and it is necessary to find a solution, preferably in legislation rather than the court system.

Vote: The Committee voted in favor of SB 15 DO PASS AS AMENDED with Senators Aklestad, Keating, and Burnett voting no.

EXECUTIVE ACTION ON SB 91

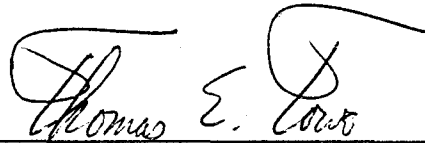
Motion: Sen. Lynch moved SB 91 DO PASS AS AMENDED.

Discussion: Sen. Towe stated the intent of SB 91 is to allow total temporary benefits to inmates at pre-release centers.


Vote: The Committee voted SB 91 DO PASS AS AMENDED with Senators Aklestad and Keating voting against.

ADJOURNMENT

Adjournment: 2:20 P.M.



SEN. TOM TOWE, Chair



PATRICIA BROOKE, Secretary

TET/pmb

ROLL CALL

SENATE COMMITTEE LABOR DATE 1/26/93

[illegible]

FO8

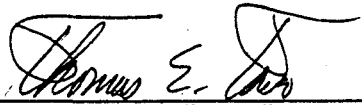
Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 27, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 15 (first reading copy -- white), respectfully report that Senate Bill No. 15 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, line 5.

Following: "IN"

Insert: "SCHOOL"

2. Page 1, line 15.

Following: "(2)"

Strike: "An"

Insert: "Except as provided in subsection (5), an"

Following: "may"

Strike: "must"


Insert: "may"

3. Page 2, line 6.

Following: line 5

Insert: "(5) An agreement to which a school is a party must contain a grievance procedure culminating in final and binding arbitration of unresolved and disputed interpretations of agreements."

-END-

 Amd. Coord.
Sec. of Senate

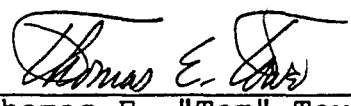
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 27, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 91 (first reading copy -- white), respectfully report that Senate Bill No. 91 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, lines 7 and 8.

Following: "PROGRAMS" on line 7

Strike: remainder of line 7 through "PROGRAMS" on line 8

2. Title, line 9.

Following: "AMENDING"

Strike: "SECTIONS 39-71-118 AND"

Insert: "SECTION"

3. Page 1, lines 13 through page 5, line 25.

Strike: section 1

Renumber: subsequent section

4. Page 6, line 3.

Following: "(1)"

Strike: "A"

Insert: "Except as provided in subsection (2), a"

5. Page 6, line 12.

Following: "A"

Strike: "claimant"

Insert: "person"

6. Page 6, lines 13 and 14.

Following: "program" on line 13

Strike: remainder of line 13 through "program" on line 14


7. Page 6, lines 15 and 16.

Following: "eligible"

Strike: the remainder of line 15 through "39-71-118" on line 16

Insert: "for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)"

-END-

 Amd. Coord.
Sec. of Senate

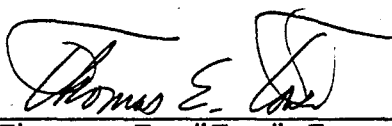
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SENATE STANDING COMMITTEE REPORT

Page 1 of 3
January 27, 1993


MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 160 (first reading copy -- white), respectfully report that Senate Bill No. 160 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, line 6.
Following: "HOURS;"
Insert: "AMENDING SECTION 39-2-903, MCA;"
2. Page 1, line 14.
Strike: "discharge or otherwise"
3. Page 1, line 21.
Following: "(i)"
Strike: "impairs"
Insert: "affects in any manner"
4. Page 1, line 22.
Following: "or"
Strike: "threatens"
5. Page 2, line 19.
Following: "employees'"
Strike: the remainder of line 19
6. Page 3, line 5.
Following: "action"
Insert: "-- limitation"
Strike: "An"
Insert: "(1) Except as provided in subsection (2), an"

 Amd. Coord.
Sec. of Senate

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7. Page 3, lines 9 and 10.

Following: first "and"

Insert: "the court"

Following: "may" on line 9

Strike: through "costs,"

Insert: "require any reasonable measure to correct the discriminatory practice and to rectify the harm, pecuniary or otherwise, to the person discriminated against"

Following: second "and" on line 9

Insert: "may allow"

Following: "fees" on line 10

Insert: "to the prevailing party"

Following: line 10

Insert: "(2) Prior to filing a civil action under subsection (1), an employee shall, within 120 days of the alleged violation, initiate any internal grievance procedure available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action."

8. Page 3, line 11.

Following: line 10

Insert: "Section 3. Section 39-2-903, MCA, is amended to read:

"39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. The legal use of a lawful product by an individual off the employer's premises during nonworking hours is not a legitimate business reason.

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.""

Renumber: subsequent section

-END-

ROLL CALL VOTE

SENATE COMMITTEE Labor BILL NO. SB 184

DATE 1/26/93 TIME 1:50 A.M. P.M.

[illegible]

Patricia Brooke
SECRETARY

Sen. Tom Torne
CHAIR

MOTION: By Sen. Blaylock that SB184 Be
AMENDED.

ROLL CALL VOTE

SENATE COMMITTEE Labor BILL NO. SB 15

DATE 1/26/93 TIME 1:55 A.M. P.M.

NAME _____

YES

NO

[illegible]

Patricia Brooke
SECRETARY

Sen. Tom Torne
CHAIR

MOTION: By Sen. Lynch that SB 15 BE AMENDED.

ROLL CALL VOTE

SENATE COMMITTEE Labor BILL NO. SB 15

DATE 1/26/93 TIME 2:10 A.M. (P.M.)

NAME

YES NO

[illegible]

Patricia Brooke
SECRETARY

Sen. Tom Torne
CHAIR

MOTION: By Sen. Blaylock that SB15 DO PASS
AS AMENDED.

ROLL CALL VOTE

SENATE COMMITTEE Labor BILL NO. SB 91

DATE 1/26/93 TIME 2:15 A.M. P.M.

NAME _____

YES NO

[illegible]

Patricia Brooke
SECRETARY

Sen. Tom Torne
CHAIR

MOTION: By Sen. Lynch that SB 91 DO PASS AS
AMENDED

SB-184

UNEMPLOYMENT INSURANCE CONFORMITY AND CLARIFICATION BILL

TESTIMONY PRESENTED BY: BOB JENSEN
ADMINISTRATOR - UNEMPLOYMENT INSURANCE DIVISION

39-51-204 - Clarifies that a parent or guardian cannot waive another's rights to unemployment benefits.

39-51-204 - Clarifies the administrative responsibility for reviewing and issuing determinations on an individual's employment status when a claim for UI benefits is filed.

39-51-204 - Clarifies that exclusions from employment do not apply to governmental entities and some non-profit organizations unless excluded under FUTA.

39-51-1219 - Allows transfer of eligible experience ratings under prescribed circumstances.

39-51-2110 - Removes reference to Section 203(a) (7) of the Immigration and Nationality Act regarding payment of benefits to aliens.

39-51-2203 -Revises reduction of benefits because of amount received from certain other sources to reflect federal requirements regarding to the offset of benefits due to the receipt of pension.

39-51-2508 - Defines extended benefits qualifying wages.

39-51-3105 - Clarifies the Department's authority to collect overpayment through offset of current entitlement.

New Section - Prevents loss of administrative funding or employer tax credits if new legislation conflicts with federal conformity requirements.



DEC 11 1992

MEMORANDUM FOR: LUIS SEPULVEDA
Regional Administrator
Denver

FROM: *Barbara Ann Farmer*
BARBARA A. FARMER
Administrator
for Regional Management

SUBJECT: Montana - 1993 Legislation

We have reviewed the October 22, 1992, letter from the Montana agency providing assurance that Montana intends to amend its State statutes in the 1993 legislative session to conform with Federal law requirements relating to independent contractors, pension offset, and extended benefits. A draft bill was attached.

The draft bill contains a proposed change to Section 39-51-204(4) that continues to provide that an individual found to be an independent contractor for purposes of Worker's Compensation will be found to be an independent contractor for the purposes of unemployment compensation, but corrective language is provided to eliminate the implied waiver of benefit rights, and the new paragraph (5) states that Section 39-51-204 does not apply to services required to be covered by Section 3304(a)(6)(A), of the Federal Unemployment Tax Act (FUTA). Although the proposed change to Section 39-51-204(4) would satisfactorily resolve the issues with respect to Federal law requirements, it is worth calling attention to the possible adverse effects for certain private sector employers that could arise in the event that the Internal Revenue Service finds that some of the individuals found to be independent contractors under the terms of Section 39-71-401(3) are, in fact, employees. In addition to other penalties, employers of these individuals would be subject to the full FUTA tax, without benefit of any offset credit, and the workers will not be eligible to collect unemployment compensation to which they might have been entitled.

The proposed change to Section 39-51-2203 satisfactorily addresses our concerns with respect to the pension offset requirements in Section 3304(a)(15), FUTA. Further, the proposed change to Section 39-51-2508 satisfactorily addresses our concerns with respect to the requirements of Section 202(a)(5), of the Federal-State Extended Unemployment Compensation Act of 1970.

Please continue to monitor Montana's progress with respect to the remedial legislation needed to correct the exemption for election judges in Section 13-5-106, per the assurance provided in their October 22 letter.

EXHIBIT 1
DATE 1-26-93
SB 184

Amendments to Senate Bill No. 184
First Reading Copy

For the Senate Labor Committee

Prepared by Eddye McClure
January 27, 1993

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 1/26/93
BILL NO. SB 184

1. Page 9, line 20.

Strike: "section 3309(b) of"

2. Page 15, line 21.

Following: "contribution."

Insert: "A pension plan negotiated under a collective bargaining agreement is considered a direct employee contribution under this section."

Amendments to Senate Bill No. 160
First Reading Copy

Requested by Senator Towe
For the Senate Labor Committee

Prepared by Eddy McClure

January 22, 1993

1. Title, line 6.

Following: "HOURS;"

Insert: "AMENDING SECTION 39-2-903, MCA;"

2. Page 1, line 14.

Strike: "discharge or otherwise"

3. Page 1, line 21.

Following: "(i)"

Strike: "impairs"

Insert: "affects in any manner"

4. Page 1, line 22.

Following: "or"

Strike: "threatens"

5. Page 2, line 19.

Following: "employees'"

Strike: the remainder of line 19

6. Page 3, line 5.

Following: "action"

Insert: "-- limitation

Strike: "An"

Insert: "(1) Except as provided in subsection (2), an"

7. Page 3, lines 9 and 10.

Following: first "and"

Insert: "the court"

Following: "may" on line 9

Strike: through "costs,"

Insert: "require any reasonable measure to correct the
discriminatory practice and to rectify the harm, pecuniary or
otherwise, to the person discriminated against"

Following: second "and" on line 9

Insert: "may allow"

Following: "fees" on line 10

Insert: "to the prevailing party"

Following: line 10

Insert: "(2) Prior to filing a civil action under subsection
(1), an employee shall, within 120 days of the alleged
violation, initiate any internal grievance procedure

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 1/26/93
BILL NO. SB 160

available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action."

8. Page 3, line 11.

Following: line 10

Insert: "Section 3. Section 39-2-903, MCA, is amended to read:

"39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. The legal use of a lawful product by an individual off the employer's premises during nonworking hours is not a legitimate business reason.

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule."

{ Internal References to 39-2-903:
2-18-101 }

Renumber: subsequent section

Amendments to Senate Bill No. 15
First Reading Copy

Requested by Senator Lynch
For the Senate Labor Committee

Prepared by Eddye McClure
January 18, 1993

1. Title, line 5.

Following: "IN"

Insert: "SCHOOL"

2. Page 1, line 15.

Following: "(2)"

Strike: "An"

Insert: "Except as provided in subsection (5), an"

Following: "may"

Strike: "must"

Insert: "may"

3. Page 2, line 6.

Following: line 5

Insert: "(5) An agreement to which a school is a party must
contain a grievance procedure culminating in final and
binding arbitration of unresolved and disputed
interpretations of agreements."

DATE Jan. 26 1993

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 184

Unemployment Ins. Laws

Name

Representing

Bill
No.

Check One
Support Oppose

Bob Jensen	Dept of Labor	SB-184	X	
Don Waldron	MREA	SB184	X	
Chad Hecht	MNA			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY