

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

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

**Call to Order:** By Chair Tom Towe, on February 2, 1993, at 1:03 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:** Sen. Aklestad

**Staff Present:** Eddye 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 207  
Executive Action: SB 62, SB 184, SB 207

#### **HEARING ON SB 207**

##### **Opening Statement by Sponsor:**

Sen. Wilson, SD 19, opened the hearing by explaining why the Department of Labor would like to see SB 207 implemented. Sen. Wilson stated SB 207 makes amendments to the code that will result in faster and simpler ways for employers to pay employees. Sen. Wilson stated there are three changes to the Wage Payment Act administered by the Department of Labor. It amends 39-3204 MCA to allow employers to direct deposit wages so long as the employee agrees to that method of payment. It repeals portions of the Wage Payment Act which require interest to be collected on unpaid wages due an employee. SB 270 also will eliminate the need for sheriffs to serve notice of hearings.

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

Chuck Hunter, Department of Labor, stated SB 207 makes minor housekeeping changes, which most businesses already use. Mr.

Hunter repeated the three changes SB 207 makes in the code. Mr. Hunter also stated SB 207 changes the process of serving notices of hearings that will make it standard to use regular mail service, rather than having notices served by sheriffs. He said this can save 30 days on the hearing process.

Darrell Holzer, AFL-CIO, informed the Committee SB 207 is much needed legislation and he supports any way to expedite the process of employees getting wage in a timely and efficient manner. Mr. Holzer suggested amendments be made to SB 207 (Exhibit #1, parts 2 and 3).

Gene Fenderson, Laborers' Union, stated he supports SB 270 with the amendments proposed by Mr. Holzer. Mr. Fenderson has some reservations about sign-up programs offered by employers. He senses there are times when the employers apply pressure on the employee to sign various forms.

Charles Brooks, Montana Retail Association, stated he supports inserting the electronic transfer of payroll checks into the code because it is a timely way to get payments to employees. Mr. Brooks stated he had no problem with the proposed amendments.

Barbara Rant, US West, informed the Committee US West has been using netpay deposits for 6 years and it is nice to know the change will happen and make it legal for them to make the deposits. US West has not kept written records of employees' permission to electronically transfer wages and she hopes it will not be necessary to do so. Ms. Ramp asked the Committee to consider allowing employees to use electronic mail to request changes be made in their netpay deposits.

**Opponents' Testimony:**

None

**Questions From Committee Members and Responses:**

Sen. Blaylock asked Chuck Hunter if the amendments are acceptable to the Department of Labor. Mr. Hunter said the amendment suggestion that requires the Department using certified mail would cost about \$7,500 per year. Mr. Hunter stated otherwise the amendments are fine.

Sen. Towe asked Mr. Hunter if the Department of Labor normally assesses 100% penalties so that if it was increased to 110% it would have very little affect. Mr. Hunter replied that is correct and the Department of Labor has the ability to assess a fine of up to 110% and each case is assessed a very low penalty or a very high penalty. Sen. Towe asked Mr. Hunter if the compensation for interest lost is used to determine the amount of the penalty. Mr. Hunter replied no.

Sen. Towe asked Mr. Holzer, now that he knows the 100% penalty is not generally imposed on a routine basis, does it satisfy his

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

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original concern. Mr. Holzer replied the AFL-CIO does not have a problem with it now. Sen. Towe stated the Department of Labor can look at the loss of interest when assessing the penalty and asked Mr. Hunter if there was any reason that could not happen. Mr. Hunter said the Department certainly could do that.

Sen. Blaylock asked Ms. Rant if she wanted the Committee to amend the bill, so that the employer can receive electronic mail requests from the employee about the wage payment. Ms. Ramp replied yes, US West would like the change. Sen. Towe asked if a permanent record of the electronic consent could be kept. Ms. Rant responded affirmatively.

Sen. Towe asked Mr. Fenderson if he had a problem with Ms. Ramp's suggestion. Mr. Fenderson responded his only concern is when there is pressure put on the employee, whether or not the employee has a personal checking account. Mr. Fenderson stated there are many employees who do not have checking accounts and may be discriminated against because of that.

Sen. Towe asked Mr. Hunter what happens if a hearing notice does not get to the person via regular mail. Mr. Hunter replied once it is established the person did not get the notice the hearing will be rescheduled.

Sen. Towe asked Mr. Holzer if the Department of Labor can prove the notice was sent would it be okay to not require certified mail. Mr. Holzer said that was fine as long as it is incumbent upon the Department to prove the notice was sent.

Mr. Fenderson suggested the Department of Labor needs to internally certify the notice was sent. Mr. Hunter stated there was no problem with that.

Closing by Sponsor:

Sen. Wilson stated he closed.

EXECUTIVE ACTION ON SB 207

Discussion: Eddy McClure read the amendment proposed by Sen. Towe(Exhibit #1, part 5)

Motion/Vote: Sen. Blaylock moved to AMEND SB 207(Exhibit 1, part 2). The motion to amend SB 207 CARRIED UNANIMOUSLY.

Motion/Vote: Sen. Blaylock moved to AMEND SB 207(Exhibit 1, part 3). The motion to amend SB 207 CARRIED UNANIMOUSLY.

Motion/Vote: Sen. Blaylock moved to AMEND SB 207(Exhibit 1, part 4). The motion to amend SB 207 CARRIED UNANIMOUSLY.

Motion/Vote: Sen. Lynch moved to AMEND SB 207(Exhibit #1, part

1). The motion to amend SB 207 CARRIED UNANIMOUSLY.

**Motion/Vote:** Sen. Lynch moved SB 207 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 62**

**Discussion:** Lloyd "Sonny" Lockrem, Montana Contractors Association, stated there was a meeting amongst parties about amendments to SB 62, but no agreements. The Association does support certified payroll and a compromise bill was drafted that incorporates some of SB 62 and many other things. The Department of Labor had a reluctance on the enforcement of certified payroll and much of it was put onto local government. Since the certified payroll issue is controversial, and the linkage between certified payroll and SB 62 is virtually nonexistent it is Mr. Lockrem's position that SB 62 be a single piece of legislation.

Gene Fenderson, AFL-CIO, reported to the Committee there is a bill request in, that is not out, but it touches a number of items and believes the new draft covers SB 62. Mr. Fenderson asked the Committee to table SB 62.

Carl Schwitzer, Montana Contractors Association(MCA), stated MCA would like SB 62 addressed and the certified payroll is a separate issue and encouraged the Committee to look at two separate bills.

Sen. Towe asked Mr. Fenderson if there was a problem with running two separate bills. Mr. Fenderson replied it is a problem because SB 62 has very strong language in it, and because the base of the prevailing wage law cannot be broken.

Lloyd "Sonny" Lockrem, Montana Contractors Association, stated the Association thought breaking the prevailing wage law was a compromise but if it is a big problem it can be changed in the bill(Subsection 3, page 2, line 12-14).

Sen. Towe stated it makes sense for the Committee to wait and not take final action on SB 62. Sen. Blaylock agreed and asked Mr. Fenderson why certified payroll cannot be incorporated into this bill. Mr. Fenderson replied it would be missing the penalties the AFL-CIO feels are necessary in order to enforce this.

**Motion/Vote:** Sen. Lynch moved to PASS CONSIDERATION ON SB 62. The motion CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 184**

**Discussion:** Mr. Bob Jenson, Department of Labor, addressed an amendment to SB 184(Exhibit #2, part 2). Mr. Jenson informed the

Committee he had received notice from the Federal Department of Labor, stating this amendment may constitute a conformity issue. The Federal Department of Labor will not direct employee contribution to the pension fund, but he does not have that opinion in writing. Mr. Jenson went on to say the State of Montana may lose some administrative funding, or employers may lose their tax credit with FUTA. Mr. Jenson informed the Committee he has pressed the Federal Department about how many other states have been penalized, but he has received no answer. Mr. Jenson went on to say if it becomes a problem it can be addressed in the next session. Mr. Fenderson gave the Committee a brief explanation on the differences between existing pension plans, defined benefit plans and defined contribution plans.

**Motion:** Sen. Lynch moved to AMEND SB 184(Exhibit #2, part 3).

**Discussion:** There was some discussion about what may happen if the amendment is not in compliance with Federal law. Sen. Towe asked what the normal procedure is when a state is not in compliance with Federal law. Mr. Jenson responded there is generally a request from the Federal Department to the legislature to clean up the state law in the next legislative session.

**Vote:** Motion to AMEND SB 184 CARRIED with Senators Burnett and Keating voting no.

**Motion/Vote:** Sen. Lynch moved to AMEND SB 184(Exhibit #2, part 2). The motion to AMEND SB 184 CARRIED UNANIMOUSLY.

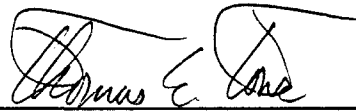
**Discussion:** Sen. Towe raised the issue addressed on page 18, line 11 regarding the right of offset that is granted to someone who has overpaid benefits. Sen. Towe stated his concern that the Department of Labor technically could take advantage of the person by taking the entire amount of the offset and not leave the person any benefits in the future. On child support payments the Department is limited to taking up to 65%. Sen. Towe suggested the Committee insert language that says the Department of Labor is limited in the amount it offsets overpayments of benefits.

**Motion/Vote:** Sen. Lynch moved to AMEND SB 184(Exhibit #2, part 4). The motion to amend SB 184 CARRIED UNANIMOUSLY.

**Motion/Vote:** Sen. Lynch moved to DO PASS SB 184 AS AMENDED. The motion to DO PASS SB 184 AS AMENDED CARRIED with Senator Burnett voting no.

ADJOURNMENT

Adjournment: 2:20 P.M.



SEN. TOM TOWE, Chair



PATRICIA BROOKE, Secretary

TET/pmb

# ROLL CALL

SENATE COMMITTEE LABOR

DATE 2/2/93

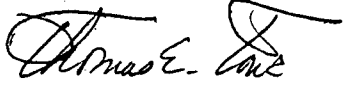
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 3, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 184 (first reading copy -- white), respectfully report that Senate Bill No. 184 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Title, line 24.

Following: line 23

Strike: "AND"

Following: "39-51-3105,"

Insert: "AND 39-51-3206,"

2. Page 9, line 20.

Strike: "section 3309(b) of"

3. 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."

4. Page 18, line 11.

Following: line 10

Insert: "Section 7. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Collection of benefit overpayments. A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment. A benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent. The sum is collectible in the manner provided in this chapter for the collection of past-due contributions unless the department finds that the benefits were received through no fault of the person and the recovery of the benefits would be against equity and good conscience. An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment. Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States.""

Renumber: subsequent sections

-END-

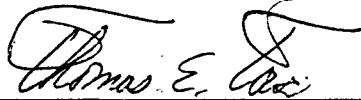


SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 3, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 207 (first reading copy -- white), respectfully report that Senate Bill No. 207 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Page 2, line 11.

Following: "writing"

Insert: "or electronically, if a record is retained,"

2. Page 2, line 22.

Following: "exceed"

Strike: "100%"

Insert: "110%"

3. Page 4, line 4.

Following: "mail"

Strike: "notice of"

4. Page 4, lines 6 and 7.

Following: "after" on line 6

Strike: "the notice of"

5. Page 4, line 12.

Following: "evidence."

Insert: "The department shall by rule provide relief for a person who does not receive the determination by mail."

-END-

Amendments to Senate Bill No. 207  
First Reading Copy

For the Senate Labor Committee

Prepared by Eddye McClure  
February 2, 1993

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. #1

DATE 2/2/93

BILL NO. SB ~~207~~ 207

1. Page 2, line 11.

Following: "writing"

Insert: "or electronically, if a record is retained,"

2. Page 2, line 22.

Following: "exceed"

Strike: "100%"

Insert: "110%"

3. Page 4, line 4.

Following: "mail"

Strike: "notice of"

4. Page 4, lines 6 and 7.

Following: "after" on line 6

Strike: "the notice of"

5. Page 4, line 12.

Following: "evidence."

Insert: "The department shall by rule provide relief for a person  
who does not receive the determination by mail."

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 2/2/93  
BILL NO. SB 184

1. Title, line 24.

Following: line 23

Strike: "AND"

Following: "39-51-3105,"

Insert: "AND 39-51-3206,"

2. Page 9, line 20.

Strike: "section 3309(b) of"

3. 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."

4. Page 18, line 11.

Following: line 10

Insert: "Section 7. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. **Collection of benefit overpayments.** A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment. A benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent. The sum is collectible in the manner provided in this chapter for the collection of past-due contributions unless the department finds that the benefits were received through no fault of the person and the recovery of the benefits would be against equity and good conscience. An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment. Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States."

{ Internal References to 39-51-3206:

39-51-2306                      39-51-3207 }

Renumber: subsequent sections

DATE 2/2/93

SENATE COMMITTEE ON LABOR

BILLS BEING HEARD TODAY: SB 207, Wilson

Name	Representing	Bill No.	Check One Support Oppose	
Darrell Holzer	MT. ST. AFL-CIO	207	X	
BRAXLEY B. TACOTT	MT. CONTRACTOR'S HEALTH TRUST	62	✓	
Angela Phillips	Western Materials	62	✓	
Craig Campbell	Pioneer Ready Mix	62	X	
Steve Eichorn	Pioneer Ready Mix	62	X	
Robert Dieckman	Pioneer Ready Mix	62	X	
Bruce Aubert	Pioneer Ready Mix	62	X	
LON JONES	Western Materials	62	X	
Robert Berland	Western Materials	62	X	
Sonny Lockien	MCA Trusts	62	X	
ROBERT WAGNER	Western Materials	62	X	
JERRY F. JOHNSON	Western Materials	62	X	
Barbara Rant	USWEST	207 amc	amc	
Bill Stevens	MT Food Dist Assn	207	X	
Charles Brooks	MT. Retail Assoc	207	X	
Jim Nys	Self	207	X	

John Manzer

Teamster

### VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY