

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Sen. Tom Towe, on February 9, 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: 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 256, SB 270
Executive Action: SB 270, SB 256, SB 223

HEARING ON SB 256

Opening Statement by Sponsor:

Sen. Charles Swysgood, Senate District 37, introduced SB 256. He informed the Committee SB 256 bill addresses a situation that occurred during the adoption of SB 383 in July of 1991 when defining an employee in terms of a resident or non-resident of Montana. The definition of a non-resident employee as interpreted by the State Fund resulted in the disallowing of non-resident drivers employees' workers' compensation coverage. Sen. Swysgood said prior to the change in law the coverage for the employees was allowed. Sen. Swysgood stated there will be an amendment offered by the Department of Labor and he is in agreement with the amendment.

Proponents' Testimony:

*Mike Micone, Montana Motor Carriers' Association, distributed an

amendment to the Committee(Exhibit #1) and repeated the information that with the adoption of SB 383 in the 52nd Legislature, which defined an employee in the state as a resident or non-resident of the state, changes resulted in disallowing non-resident drivers' employees' workers' compensation coverage. Mr. Micone stated the risks of driving in the Montana are the same regardless of residence. Mr. Micone stated the Montana Motor Carriers' Association is asking the Committee to amend the law to cover non-residence drivers of Montana-based carriers. Mr. Micone submitted written testimony(Exhibit #2).

Jim Murphy, State Fund, stated the amendments submitted by the Montana Motor Carriers' Association allows for an election by the employer, rather than mandated. Secondly, the amendment goes beyond the trucking industry, to other types of industries with similar type problems with non-resident employees they may want to elect to cover under Montana insurance.

George Wood, Executive Secretary, Montana Self-Insurers' Association, rose in support of SB 256 and urged the Committee pass the bill.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

Sen. Lynch asked Sen. Swysgood if non-resident employees pays a pro-rated amount in other states. Sen. Swysgood replied if a non-resident employee is employed by a Montana carrier, it is unclear if they have to pay premiums in two states. Sen. Swysgood said he would like to see them pay premiums in only one state.

Sen. Lynch asked if an injury which occurred in another state will be covered by the Montana plan. Sen. Swysgood replied the Montana carriers' coverage will apply to an injury in another state.

Sen. Aklestad asked Sen. Swysgood to insert an effective date of July 1. Sen. Swysgood apologized for the oversight and asked the Committee to consider inserting July 1 as the effective date.

Sen. Towe asked Mike Micone what is missing in the law right now that SB 256 is needed. Mr. Micone stated there is a new Section C which discusses a resident of Montana who does not meet the requirements of Section B of the law.

Sen. Towe clarified his understanding of the intent of SB 256 is

to attempt to reach those persons who might be a non-resident but controlled by a resident Montana company. He said the employee who resides outside of Montana, employed by a Montana company, can elect to be covered by Montana insurance. Mr. Micone affirmed this is the intent of SB 256.

Sen. Towe asked George Wood if there existed a void in the law that would allow employers to not elect coverage for employees. Mr. Wood responded SB 256 is not to make employers choose whether or not to elect coverage, but rather to elect that the benefits be Montana benefits.

Sen. Aklestad asked Jim Murphy what the fiscal impact will be. Mr. Murphy responded there will be very little fiscal impact because the employer will have to pay premiums in accordance with the amount of benefits to be paid.

Closing by Sponsor:

Sen. Swysgood closed the hearing by saying SB 256 will potentially bring in to Montana more insurance policies and industry. SB 256 does a good job at addressing a situation created in the last session.

HEARING ON SB 270

Opening Statement by Sponsor:

Sen. Keating, SD 44, Billings, explained the to Committee that SB 270 deals with the unemployment insurance administrative tax, commonly called the "admin tax." The admin tax is .1% of payroll for some and .05% of payroll for those without an experience rating. The tax has to be paid in conjunction with the unemployment insurance tax and goes into the Unemployment Insurance Trust Fund to used for paying unemployment benefits. The UI admin tax has been used to finance the Job Service program, employment relations, legal services and research safety and training. The Legislative Auditor determined the money was flowing into a federal special revenue account for which there was no authority for appropriations. The Legislative Auditor said, in order to have accepted accounting practices, the admin tax would have to flow into a state special revenue account and be kept separate from the federal special revenue account. SB 270 establishes the statutory appropriation into a state special revenue account. Sen. Keating said it is the intention of the legislation that any unused portion of the admin tax beyond a certain level of the fund balance should flow to the Unemployment Insurance Trust Fund. SB 270 gives direction to the Department of Labor, in conjunction with the Office of Budget and Planning, regarding the flow of money from the State Special Revenue Fund into the Unemployment Trust Fund. Sen. Keating said it permits the Legislature to make appropriations of the unused portion of the UI tax through the appropriations process. Sen. Keating said at the present time there is some question whether the Legislature can appropriate federal special revenue. SB 270 will straighten out the confusion.

Proponents' Testimony:

Laurie Eckinger, Department of Labor, informed the Committee Sen. Keating explained the intent of SB 270 completely. The Department of Labor wanted to make sure the language in SB 270 is something everyone understands.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

Sen. Blaylock asked Ms. Eckinger if SB 270 is set up exactly the way the Department of Labor would like it to be. Ms. Eckinger answered SB 270 is the result of many people working together to set things up the way the Department of Labor would like.

Sen. Aklestad asked Ms. Eckinger if the admin tax would be a permanent tax. Ms. Eckinger answered she was unaware the admin tax had been imposed temporarily.

Sen. Towe asked Ms. Eckinger if it is the intent of the new fund to use the monies for administrative purposes as authorized by the Department's appropriations. Ms. Eckinger replied in the affirmative. Ms. Eckinger added one of the goals of this legislation is to give the Department authority to shift monies from the Unemployment Insurance Fund within the 10% margin. Ms. Eckinger clarified it is not a new fund being set up, rather it is designating the existing fund previously called a Federal Special Revenue Account in the statute. She said this was incorrect according to general accounting procedures. The fund will now be called a State Special Revenue Account and the money will flow properly into the State Special Revenue.

Sen. Towe stated he was concerned that if there is more than 10% in the difference between federal and state funds SB 270 will not be effective. Sen. Towe proposed an amendment to eliminate the 10% limit.

Closing by Sponsor:

Sen. Keating closed.

EXECUTIVE ACTION ON SB 270

Motion/Vote: Sen. Lynch moved to AMEND SB 270 (Exhibit #4). The motion CARRIED UNANIMOUSLY.

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

February 9, 1993

Page 5 of 5

Motion/Vote: Sen. Lynch moved SB 270 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 256

Motion/Vote: Sen. Lynch moved to AMEND SB 256(Exhibit #5, part 5). Motion CARRIED UNANIMOUSLY.

Motion/Vote: Sen. Lynch moved to AMEND SB 256(Exhibit #5, part 1-4). Motion CARRIED UNANIMOUSLY.

Motion/Vote: Sen. Lynch moved SB 256 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 223

Discussion: Eddy McClure explained the technical amendments submitted by Senator Bartlett(Exhibit #6, parts 1-3, 5-7).

Motion/Vote: Sen. Blaylock MOVED TO AMEND SB 223. The motion CARRIED UNANIMOUSLY.

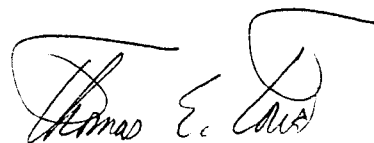
Discussion: Sen. Aklestad stated his concern about the language in SB 223 that refers to freight elevators. Chuck Hunter stated the Federal Code has extensive information about freight elevators and SB 223 could include a reference to the Federal Code. Sen. Towe stated language to amend SB 223 in reference to freight elevators(Exhibit #6, part 4).

Motion/Vote: Sen. Keating moved to AMEND SB 223(Exhibit #6, part 4). The motion CARRIED UNANIMOUSLY.

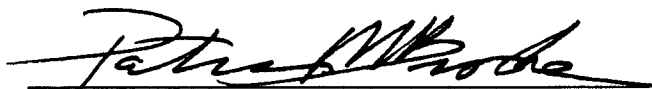
Motion/Vote: Sen. Keating moved SB 223 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 2:50 P.M.



TOM TOWE, Chair



PATRICIA BROOKE, Secretary

TET/pmb

930209LA.SM1

ROLL CALL

SENATE COMMITTEE LABOR

DATE 2/9/93

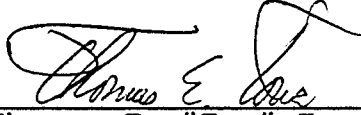
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SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 10, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 223 (first reading copy -- white), respectfully report that Senate Bill No. 223 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Page 1, line 11.
Following: "section"
Strike: "13"
Insert: "12"

2. Page 1, line 18.
Page 1, line 20.
Page 3, line 21.
Page 3, line 24.
Page 15, line 1.
Page 15, line 2.
Page 15, line 5.
Page 15, line 7.
Page 15, line 9.
Page 15, line 12.
Page 15, line 14.
Page 15, line 16.
Page 15, line 19.
Page 15, line 21.
Page 16, line 2.
Page 16, line 5.
Following: "through"
Strike: "14"
Insert: "13"

3. Page 7, line 24.
Following: "a"
Strike: remainder of line 24

4. Page 7, line 25.
Following: "apparatus"
Insert: ", except for a freight elevator permitted for use under the child labor provisions of the federal Fair Labor Standards Act of 1938"

5. Page 8, lines 16 and 17.

Following: "(16)" on line 16

Strike: remainder of line 16 through "helper" on line 17

Insert: "riding outside a motor vehicle to assist in transporting
or delivering goods"

6. Page 14, lines 12 through 22.

Strike: section 11 in its entirety

Renumber: subsequent sections

7. Page 15, lines 5 and 6.

Following: "employment" on line 5

Strike: remainder of line 5 through "certificates" on line 6

Insert: "records"

Following: "employer" on line 6

Strike: remainder of line 6

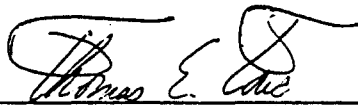
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Seante Bill No. 256 (first reading copy -- white), respectfully report that Seante Bill No. 256 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Title, lines 5 and 6.

Strike: "DRIVER" on line 5 through "STATE" on line 6

2. Title, line 7.

Following: "STATE";

Insert: "PROVIDING FOR ELECTION OF COVERAGE FOR CERTAIN
NONRESIDENTS;"

Strike: the first "AND"

3. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

4. Page 8, lines 3 through 7.

Following: "(c)"

Strike: remainder of line 3 through "state" on line 7

Insert: "a nonresident of Montana who does not meet the
requirements of subsection (6)(b) and whose employer elects
coverage with an insurer that allows an election for an
employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(7) An insurer may require coverage for all nonresident
employees of a Montana employer who do not meet the requirements
of subsection (6)(b) or (6)(c) as a condition of approving the
election under subsection (6)(c)"

5. Page 8, line 14.

Following: line 13

Insert: "NEW SECTION. Section 4. Effective date. [This act] is
effective July 1, 1993."

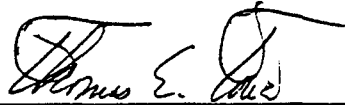
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 270 (first reading copy -- white), respectfully report that Senate Bill No. 270 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Page 4, lines 11 through 14.

Following: "types" on line 11

Strike: remainder of line 11 through "10%" on line 14

-END-

Proposed Amendments to Senate Bill 256
From the State Compensation Mutual Insurance Fund

SENATE LABOR & EMPLOYMENT
AMENDMENT NO. ~~1~~ #1
DATE 2/9/93
BILL NO. SB 256

1. Page 8, lines 3 through 7

Strike: subsection (c) in it's entirety

Insert: "(c) a non-resident of Montana who doesn't meet the requirements of 6 (b), if the employer elects coverage, the insurer allows such an election and the employer meets all the following :

- i) the employees are hired in Montana;
 - ii) the wages are paid from Montana;
 - iii) the employees are supervised from Montana; and;
 - iiii) the business records are maintained in Montana.
- A) An insurer may require coverage for all non-resident employees of a Montana employer that do not meet 6 (b) or 6 (c) as a condition of approving the election."

TESTIMONY ON SB 256 BEFORE
THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE
FEBRUARY 9, 1993

PRESENTED BY:
MIKE MICONE
MONTANA MOTOR CARRIERS ASSOCIATION

Mr. Chairman and members of the committee. For the record, my name is Mike Micone, representing the Montana Motor Carriers Association. We are here today to ask for your concurrence of SB 256, an act that clarifies the definition of a nonresident driver and working for a Montana company.

The problem was created in the 1991 Legislature with the adoption of SB 383, defining an employee in this state as it applies to a resident and a nonresident of Montana. As interpreted by the State Fund, the definition of a nonresident employee resulted in disallowing nonresident driver employees Workers' Compensation coverage when previous to the change in the law coverage for these employees was allowed.

Many nonresident drivers of Montana carriers who drive in several states end up performing their principal work duties in Montana. The State Fund interpreted the law to mean a "majority" of a nonresident driver's time had to be spent in the state and disallowed claims on that basis.

The interstate common and contract motor carrier industry is a unique group of employers having both resident and non resident drivers operating in multiple states throughout the United States. The risks are the same regardless of residence and both types of employees are "controlled and employed by a Montana employer."

MMCA is asking the 1993 Legislature to amend the law to cover nonresident drivers of Montana based carriers. The key element in the amendment is on page 8, lines 3 through 7. It reads:

(c) A nonresident of Montana who is employed as a driver by an interstate common or contract carrier based in and doing business in this state, whose employment duties area controlled from Montana by the motor carrier, and who is dispatched from this state.

The intent is that the nonresident driver will be similar to the conditions set out for a resident in the law, namely, "controlled within this state."

As a result of the State Fund interpretation of the law, MMCA surveyed carriers as to the number of nonresident drivers employed by their firms. Wages paid to some known 278 MMCA member nonresident drivers amounted to approximately \$7 million per year based on an average of \$25,000 per driver per year. The new current state fund rate is \$26.26 per \$100 of wages, for over-the-road drivers with towing units under classification 7219. The potential loss of premium based on the rate effective January 1, 1993 to the State Fund, now being paid by these employers, is estimated to be \$1,838,200 annually.

SB 256 will ensure, not only that drivers working for Montana carriers have adequate coverage, but also that a significant premium continues to be received by the State Fund.

We urge your concurrence of SB 256.

DEPARTMENT OF LABOR AND INDUSTRY

EXHIBIT NO. 3

COMMISSIONER'S OFFICE

DATE 2/9/93BILL NO. SB 270

MARC RACICOT, GOVERNOR

P.O. BOX 1728

STATE OF MONTANA

(406) 444-3555
FAX (406) 444-1394

HELENA, MONTANA 59624

SB270

TESTIMONY OF DEPARTMENT OF LABOR & INDUSTRY
SUPPORTING

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE EMPLOYMENT SECURITY ACCOUNT; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO TRANSFER UNAPPROPRIATED FUNDS IN THE EMPLOYMENT SECURITY ACCOUNT TO THE UNEMPLOYMENT INSURANCE FUND; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO TRANSFER MONEY BETWEEN FUND TYPES; AMENDING SECTION 39-51-404, MCA; AND PROVIDING AN EFFECTIVE DATE."

BACKGROUND: The Unemployment Insurance Administrative Tax is an employer payroll tax equal to .1% of payroll. The tax was enacted in the 1983 legislative session. Its original purpose was to hold employment security services harmless in the face of potential federal cutbacks, to prevent closure of Job Service Offices in rural communities. Over the years this tax has been appropriated by the legislature for other employment and training programs as well.

PURPOSE: This bill seeks to address technical issues in the law that have been identified in the budgeting process and in past audits. Specifically, the bill does four things:

1. Eliminates language describing how the U.I. Administrative Tax funds can be used. All of this language has been substantially superseded in the general appropriations act (1991 HB2).
2. Changes the designation of the UI Admin Tax account from "federal special revenue" to "state special revenue." This change is in accordance with generally accepted accounting procedures.
3. Describes a procedure for transferring excess UI Admin Tax funds into the Unemployment Insurance Trust Fund account to pay UI claims. Current law has been subject to differing interpretations.
4. Allows for shifting between fund source not to exceed total appropriated budget. UI Admin tax is used to hold Job Service harmless in the event of federal cutbacks. However, the federal fiscal year begins three months after the state fiscal year. This provision allows adjustment between the federal funding source and the UI Admin tax funding source if the federal funding source varies from estimates by 10% or less.

SUMMARY: This bill cleans up and clarifies management of the UI Admin Tax. For this reason the Department of Labor & Industry urges DO PASS SB270. For more information call Laurie Ekanger or Brian McCullough at 444-3555.

Quality Works

Amendments to Senate Bill No. 163
First Reading Copy

For the Senate Labor Committee
Prepared by Eddy McClure
February 1, 1993

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 2/9/93
BILL NO. SB 163

1. Page 3, line 3.
Following: "aid"
Strike: "a policyholder, management, or an employer"
Insert: "an insured employer"
2. Page 3, line 15.
Following: "to"
Strike: "policyholders or employers"
Insert: "an insured employer"
3. Page 3, line 21.
Following: "advise"
Insert: "insured"
4. Page 3, line 22.
Following: "the"
Strike: "policyholder's"
Insert: "insured employer's"
5. Page 4, line 4.
Following: "activities."
Insert: "(1)"
6. Page 4, line 6.
Strike: "(1)"
Insert: "(a)"
7. Page 4, line 9.
Strike: "(2)"
Insert: "(b)"
8. Page 4, line 14.
Strike: "(a)"
Insert: "(i)"
9. Page 4, line 16.
Strike: "(b)"
Insert: "(ii)"
10. Page 4, line 18.
Strike: "(c)"
Insert: "(iii)"
11. Page 4, line 21.
Following: line 20
Insert: "(2) An employer who employs temporary workers shall include those workers in the employer's safety program. A temporary services contractor shall provide a safety program

for employees not employed by other employers."

12. Page 5, line 11.

Following: "comprehensive"

Insert: "and effective"

13. Page 5, line 23.

Strike: "policyholder or employer"

Insert: "insured employer"

14. Page 6, line 4.

Following: "its"

Strike: remainder of line 4

Insert: "insured"

15. Page 6, line 9.

Following: line 8

Strike: "policyholder's or"

Insert: "insured"

16. Page 6, line 12.

Following: "to"

Insert: "insured"

17. Page 6, line 15.

Following: "each"

Strike: "policyholder or"

Insert: "insured"

18. Page 6, lines 23 and 24.

Following: "years" on line 23

Strike: remainder of line 23 through "commissioner" on line 24

19. Page 7, line 9.

Following: "vacancy"

Strike: remainder of line 9 through "expires"

20. Page 9, line 6.

Following: "program"

Insert: "-- expenditure accounting"

21. Page 9, line 18.

Following: line 17

Strike: "an insurer's"

Insert: "the"

22. Page 9, line 25.

Following: line 24

Insert: "(3) The state fund shall separately account for money
expended under [sections 1 through 11 and 39-71-2311]."

23. Page 10, line 4.

Following: line 3

Strike: "policyholders or"

Insert: "insured"

EXHIBIT 5
DATE 2-9-93
SB 256

That such amendments read:

1. Title, lines 5 and 6.

Strike: "DRIVER" on line 5 through "STATE" on line 6

2. Title, line 7.

Following: "STATE";

Insert: "PROVIDING FOR ELECTION OF COVERAGE FOR CERTAIN
NONRESIDENTS;"

Strike: the first "AND"

3. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

4. Page 8, lines 3 through 7.

Following: "(c)"

Strike: remainder of line 3 through "state" on line 7

Insert: "a nonresident of Montana who does not meet the
requirements of subsection (6)(b) and whose employer elects
coverage with an insurer that allows an election for an
employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(7) An insurer may require coverage for all nonresident
employees of a Montana employer who do not meet the requirements
of subsection (6)(b) or (6)(c) as a condition of approving the
election under subsection (6)(c)"

5. Page 8, line 14.

Following: line 13

Insert: "NEW SECTION. Section 4. Effective date. [This act] is
effective July 1, 1993."

-END-

That such amendments read:

1. Page 1, line 11.
Following: "section"
Strike: "13"
Insert: "12"

EXHIBIT 6
DATE 2-9-93
BY SB 223

2. Page 1, line 18.
Page 1, line 20.
Page 3, line 21.
Page 3, line 24.
Page 15, line 1.
Page 15, line 2.
Page 15, line 5.
Page 15, line 7.
Page 15, line 9.
Page 15, line 12.
Page 15, line 14.
Page 15, line 16.
Page 15, line 19.
Page 15, line 21.
Page 16, line 2.
Page 16, line 5.
Following: "through"
Strike: "14"
Insert: "13"

3. Page 7, line 24.
Following: "a"
Strike: remainder of line 24

4. Page 7, line 25.
Following: "apparatus"
Insert: ", except for a freight elevator permitted for use under
the child labor provisions of the federal Fair Labor
Standards Act of 1938"

5. Page 8, lines 16 and 17.
Following: "(16)" on line 16
Strike: remainder of line 16 through "helper" on line 17
Insert: "riding outside a motor vehicle to assist in transporting
or delivering goods"

6. Page 14, lines 12 through 22.
Strike: section 11 in its entirety
ReNUMBER: subsequent sections

7. Page 15, lines 5 and 6.
Following: "employment" on line 5
Strike: remainder of line 5 through "certificates" on line 6
Insert: "records"
Following: "employer" on line 6
Strike: remainder of line 6

-END-

DATE 2-9-93

SENATE COMMITTEE ON Labor Committee

BILLS BEING HEARD TODAY: SB 256

SB 270

| Name | Representing | Bill No. | Check One | |
|---------------|--------------------------|----------------|-----------|--------|
| | | | Support | Oppose |
| MIKE MICONE | MTCA | 256 | X | |
| George Wood | MT Self Insurance Assoc. | 256 | X | |
| TERRY KLEIN | SCMDF | 256 | | |
| Jim Murphy | State Fund | 256 | X | |
| Lucie Thoenen | Labor & Industry | 270 | X | |
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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY