

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Tom Nelson, on March 2, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Benedict, Rep. Whalen

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

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

Committee Business Summary:

Hearing: SB 91, SB 160 & SB 184
Executive Action: None

HEARING ON SB 160

Opening Statement by Sponsor:

Sen. David Rye, SD 47, Yellowstone County, sponsor, opened on SB 160 by referring to a article in the July 1989 issue of State Government News. He read part of the article to the committee. Sen. Rye stated that the purpose of SB 160 is to allow employees to do anything they want on their off time, as long as it is legal. The employers can prohibit smoking and drinking while

working, but not while off duty.

Proponents' Testimony:

Jerome Anderson, a private attorney in Helena, stated that a number of other states already have adopted similar legislation into current law. He recognizes the fact that these employees can raise the insurance rates for the businesses. Activities performed by the employee, off-the-job must not effect their performance on-the-job.

Steve Brown, IBM, stated that his concern with the bill deals with the definition of a lawful product. Currently, there is no definition in the bill.

Charles Brooks, Montana Retail Association, stated that this bill reminds him of the memorandum sent out by the first JC Penny store restricting the employees outside activities. For example, this memorandum restricted the employees from smoking and drinking. Furthermore, the employees had to be in bed by 9 p.m. He stated that America has come a long way since those days and businesses can not regulate the activities of their employees while off duty. The employees outside activities should not effect their rate of promotion or raises.

Leo Berry, Burlington Northern Railroad, stated that employees are already subject to federal testing requirements. He referred to page 5, line 3 of the bill. He then referred to page 1, and page 2.

Opponents' Testimony:

Bruce Moerer, Montana School Board Association, stated that he has no problem with the concept of the bill, except in one area. The area he is concerned with is the area dealing with school employers and students. He referred the committee to page 1. He asked that an amendment be accepted by the committee that exempts school employees from the bill. He referred to page 5 and stated that he is concerned with the current language. He stated that Senator Rye is receptive to his proposed amendments.

Lauren Frazer, School Administration, stated that he has the same concerns as Mr. Moerer, but his concerns deal more with the bus drivers. He stated that the way the language reads, if a bus driver has alcohol on his/her breath, the school would have to prove he/she is not capable of operating the bus.

Don Waldron, Montana Rural Education Association, stated that he has the same concerns as the Mr. Frazer. He then referred to page 2 of the bill. He stated that page 2 helps, but he still sees a problem.

Questions From Committee Members and Responses:

REP DRISCOLL asked Sen. Rye why the wording "effect in any manner" was used in the bill and not the word "impaired".

SEN. RYE replied that he does not know. He referred Rep. Driscoll to Mr. Anderson. Mr. Anderson told Rep. Driscoll that these amendments were proposed by Senator Toews.

REP. MILLS told Sen. Rye that he has employees that work all over. These employees drive his vehicles. He asked if he is responsible if they wreck his vehicle?

SEN. RYE told him that he is not responsible as long as it is job related, and the employees were driving a company vehicle.

REP. TASH asked Sen. Rye if he was willing to except the proposed amendments?

SEN. RYE stated that he can live with the proposed amendments because the bill is modeled after similar legislation in 20 other states.

REP. DRISCOLL asked Mr. Moerer had any proposed amendments.

REP. DRISCOLL asked Mr. Moerer if this bill also includes superintendents who have a drink at lunch.

Mr. Moerer stated that the proposed amendment covers all school employees.

Closing by Sponsor:

SEN. RYE closed on SB 160 by apologizing for all the amendments. He referred to page 2, lines 4 through 8 and stated that these sections take care of a potential problem that could arise at certain places of employment. An example of a potential problem is an employer of the Mormon Church who smokes and drinks. He again stated that an employees business is his/her own on their off time.

HEARING ON SB 91

Opening Statement by Sponsor:

SEN. CHRISTIAENS, SD 18, Cascade, Sponsor, stated that the purpose of SB 91 is to extend worker's compensation coverage to prerelease and diversionary programs. He stated that as inmates, these employees are required to pay child support, restitution and they must start a savings account. This bill will extend the inmates' coverage if they are employed outside the prison. This bill does not cover those who are seriously injured. This bill will help inmates transition back into the community. The employers of these inmates pay workers compensation anyway, the inmates might as well receive full benefits.

Proponents' Testimony:

Jim Pomroy, Administrator, Correction Division of Corrections and Human Services, referred to 39-71-118 MCA and stated that this excludes inmates from some of the worker's compensation benefits. These inmates are unable to meet their financial obligations if they are hurt while working. These injuries may cause inmates to return to prison until they are able to work again.

Opponents' Testimony: None**Questions From Committee Members and Responses:**

REP. PAVLOVICH asked Mr. Pomroy if the prison picks up the tab if an inmate is hurt while part of the prerelease program.

Mr. Pomroy stated that they prison must find a bed for them if they are unable to work. This room and board is costly to the prison.

REP. SIMON asked Sen. Christiaens to explain who is covered if the end of the bill, from line 19 down, is taken out.

SEN. CHRISTIAENS stated that originally this bill was suppose to cover those performing community service.

REP. SIMON asked Sen. Christiaens what category house arrest falls under, the diversionary or prerelease program.

Sen Christiaens stated that house arrest falls under probation or parole, but it can be used once in a while under diversionary programs. The bill was only intended to apply to residents of the prison because when the inmates are on parole, they are eligible for worker's compensation benefits.

REP DRISCOLL asked Mr. Pomroy if prerelease is considered a correctional institution? He referred to page 6, line 7 of the bill.

Mr. Pomroy stated that prerelease is not considered a correctional institution.

REP. DRISCOLL asked Jim Murphy if the compromise in 1987 means that if an inmate is hurt they receive workers compensation benefits, but not temporary total disability?

Jim Murphy stated that those inmates in a prerelease center must be able to work, or they return to prison.

REP. DRISCOLL asked why an inmate cannot file on an old claim? He referred to page 6. He stated that these inmates are eligible for temporary total disability and medical benefits, but not rehabilitation.

REP. TASH told Mr. Pomroy that he toured the prison last month and saw drawers full of medication that were assigned to these inmates, but refused. He asked if these drugs cost the state money?

Mr. Pomroy stated that at the present time, those inmates on prerelease pay for their own prescriptions unless they are very expensive.

REP. HANSON stated that he feels this bill is just a way to increase the budget for the institutions and to cut medical expenses outside the unit.

Mr. Pomroy stated that this bill is a means of providing compensation. He stated that these inmates are already eligible for medical benefits, this bill just allows them to receive money also.

REP. HANSON stated that the employer pays worker's compensation and the state is not involved.

Mr. Pomroy replied that the state is not involved.

REP. MILLS asked Mr. Pomroy how long it takes for these employees to work their way back up to prerelease if they are hurt on-the-job? He also asked what the criteria is for moving back up to prerelease.

Mr. Pomroy stated that it depends on how many beds are available. The process could take weeks, months or even years. The criteria is that the inmate must be able to work full-time without problems. Furthermore, they must find their own job.

REP ELLIS asked Mr. Pomroy if the employers pay worker's compensation, how their wage is determined?

Mr. Pomroy stated that the wage is whatever the employer chooses to pay.

Closing by Sponsor:

SEN. CHRISTIAENS closed by stating that society needs to do everything possible to make these inmates taxpayers rather than tax users.

HEARING ON SB 184

Opening Statement by Sponsor:

SEN. BLAYLOCK, SD 43, Yellowstone County, sponsor, opened on SB 184 by stating that the purpose of the bill is to generally revise unemployment insurance laws. He referred to page 4, line 11 through 16. He stated that this section was originally stricken from the bill; however, the newspaper is worried that

because this part is stricken, it makes a difference under worker's compensation laws. He referred to page 15, line 17 through 24. He referred to the handout that he provided.

(EXHIBIT #1)

Proponents' Testimony:

Bob Jensen, Unemployment Insurance Division, stated that there are 19 pages to this bill, but only 9 different issues. (EXHIBIT #2)

Tom Hobgood, Lee Enterprises, stated that he is representing the daily newspapers. He referred to page 4, line 11 through 16. He stated that the newspaper has a legitimate concern, if minors are able to waive their own rights.

Opponents' Testimony:

Darrell Holzer, AFL-CIO, stated that his organization has been watching this legislation. He stated that he is not really a proponent or an opponent of SB 184.

Questions From Committee Members and Responses:

REP. COCCHIARELLA asked Bob Jensen if there is any consideration given to the 50 percent that the employers pay.

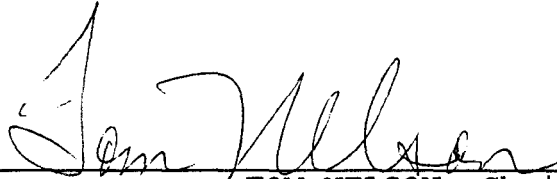
Bob Jensen stated that there is no evidence of a direct employer contribution.

Closing by Sponsor:

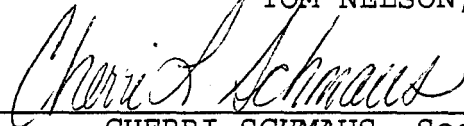
Sen. Blaylock closed on SB 184.

ADJOURNMENT

Adjournment: Chairman Tom Nelson adjourned the meeting at 4:30.



TOM NELSON, Chair



CHERRI SCHMAUS, Secretary

TN/CS

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

FEB 2 1993



EXHIBIT 21
DATE 2/2/93
HB SB 184

MEMORANDUM FOR: LUIS SEPULVEDA
Regional Administrator
Denver
FROM: *Barbara Ann Farmer*
BARBARA ANN FARMER
Administrator
for Regional Management
SUBJECT: Montana Pension Offset

A facsimile transmittal from Drew Anderson, Montana agency, asked for a prompt review of a proposed amendment to that State's pension offset provision. Specifically, we were asked if a proposed amendment to the Montana law would create an issue with respect to the requirements under Section 3304(a)(15)(B) of the Federal Unemployment Tax Act (FUTA). Specifically, he wanted to know about the proposed amendment adding the following to subsection (2) of Section 39-51-2203 of the Montana Unemployment Insurance Law (MUIL): "A pension plan negotiated under a collective bargaining agreement is considered a direct employee contribution under this plan." The effect of this amendment would be that no reduction would be made in unemployment benefits due to receipt of payments under such pension plans.

Section 3304(a)(15)(A), FUTA, requires that amounts equal to pension payments be deducted from unemployment benefits if such payments are made under a plan maintained or contributed to by a base period or chargeable employer. Subparagraph (B) of Section 3304(a)(14) is the only method States may use to limit the deduction otherwise required by Federal law. Any reduction in the pension offset under subparagraph (B) requires that State law specify that the offset is reduced because the individual has contributed to the pension plan. In addition, the law must provide the percentage by which the offset shall be reduced (0-100 percent) and whether the reduction applies to other pension plans. This interpretation is set forth in Unemployment Insurance Program Letter (UIPL) No. 22-87.

-2-

We believe that the proposal to consider any pension plan negotiated under a collective bargaining agreement to be considered a direct employee contribution, does not meet the requirements as described in UIPL No. 22-87. The plain implication is that the "negotiated" pension would be treated as a 100 percent offset on the reduction of benefits that would otherwise be required. A "negotiated" pension plan could easily be a 100 percent employer contributed plan. Simply because it would be part of an over-all wage and benefits package, or because the argument might be made that wages would be higher if the pension plan was less generous to the workers, does not change this.

We suggest that any proposed change in Montana's pension offset provisions be guided by UIPL No. 22-87.

Please convey our review comments to the Montana agency.

(EXH #4) # J

EXHIBIT
DATE 3/2/92
HB SB 184

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.

Amendments to Senate Bill No. 184
Third Reading Copy

Requested by Sen. Blaylock
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 2, 1993

1. Page 15, line 21.

Following: "1"

Strike: "A"

Insert: "Except as provided by federal law, a"

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Labor COMMITTEE BILL NO. SB 91
DATE 3-2-93 SPONSOR(S) C. Christiaens

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Poney	DCHS	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Labor

COMMITTEE

BILL NO. SB160

DATE 3-2-93

SPONSOR(S) D. Rye

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Charles R. Brooks	NAT Retail Assoc	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Don Waldron	MREA	<input type="checkbox"/>	<input checked="" type="checkbox"/> Needs amendment
Norm Anderson	Tobacco Inst.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Labour

COMMITTEE

BILL NO.

18184

DATE March 2, 1993

SPONSOR (S)

G. Blaylock

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.