MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Nelson, on March 9, 1993, at 3:05 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (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)

Members Excused: Rep. Whalen & Rep. Tuss

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 223, SB 329, SB 342 & SB 381
Executive Action: None

HEARING ON SB 223

Opening Statement by Sponsor:

REP. SUE BARTLETT, SD 23, Lewis and Clark County, sponsor, opened on SB 223 by stating that this bill was developed to revise child labor laws. This bill was developed to do three things. These three things are to conform to Montana statutes, to define hazardous jobs for those under 18, and to estimate the maximum hours per day a 14 and 15 year old can work. This bill prohibits work during school hours, unless it is an apprenticeship program.

The passage of SB 223 is long overdue. Montana needs one set of standards.

Proponents' Testimony:

REP. JIM RICE, HD 43, Helena, co-sponsor, stated that there have been several cases in Helena with unfair labor practices.

Chuck Hunter, Department of Labor, began his testimony with some history dealing with child labor. He stated that the laws for child labor were written in 1907 and are out of date. This bill will prohibit employment that is detrimental to a child's health. This bill will also level out federal and state standards.

Father Jerry Lowney, Professor at Carroll College, provided the committee with several handouts. **(SEE EXHIBITS 1,2,3, & 4)** He stated that this bill is a family bill. The bill is pro-education, pro-child, and pro-human life. Governor Racicot also supports SB 223.

Tim McCauley, self, stated that he is a parent of four children, two college students and one junior high student and one elementary student. He stated that being a parent is trying at times. This bill provides limits for children to follow dealing with work. Obtaining a job allows the children to mature; however, causes stress and conflicts at school.

Wendy Bermingham, Junior at Helena High School, stated that she is an employee at taco place here in Helena. She needs the extra money; however, she also needs school, a social life and sports. She showed the committee burns on her arms that she has received at work. She stated that the work environment for young employees needs to be made safe.

Jessica Batson, Junior at Helena High School, stated that she is an employee at Taco Bell here in Helena and her concern is with those students who close Taco Bell on school nights. These students who close, don't get home until 1 or 2 am.

Nancy Coopersmith, Office of Public Instruction, stated that students already have a full-time job attending school. This bill is in the best interest of the youth. She encourages students to work, but a limited amount.

Sharon Hoff, Montana Catholic Conference, stated that this bill ties in well with a seminar in late 1991 that was titled "Putting Children and Families First." Her organization supports SB 223. **(EXHIBIT #5)**
She quoted **Pope Leo** in stating that society needs to take steps to assure safety and the future of children.

Harley Warner, Association of Churches, referred to a newspaper article and stated that the statistics show that a student working less hours maintain a higher grade point average. For

example, those students who work 1 to 4 hours per week maintain a grade point average of 3.4 and those working 21 or more hours per week maintain a grade point average of 2.6.

Larna Frank, Montana Farm Bureau, stated that SB 223 deserves the committees support.

Phil Campbell, Montana Education Association, stated that his organization supports SB 223.

Jamie Doggett, Montana Cattlewomen, stated that her organization supports SB 223.

Paulette Coleman, Maternal Child Health, stated that her organization supports SB 223.

Charles Brooks, Montana Retail Association, stated that this bill mirrors the federal regulation. He stated that his organization supports SB 223.

Charles Walk, Executive Secretary Montana Newspaper Association, stated that his organization supports SB 223.

Pam Egan, Montana Family Union, provided the committee with written testimony. **EXHIBIT #6**

David Owen, Montana Chamber of Commerce, stated that his organization supports SB 223.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SIMON asked **SEN. BARTLETT** to refer to page 8, line 9 of the bill. He asked her if the word "processing" only deals with meat processing?

SEN. BARTLETT stated that she was not sure if it was just meat or not, but she referred him to Chuck Hunter.

Chuck Hunter stated that this section does only deal with meat processing.

REP. COCCHIARELLA asked Father Lowney how this bill will effect daycares or group homes?

Father Lowney referred to page 2, lines 16 through 19, and read the definition of domestic service.

REP. COCCHIARELLA stated her concern that babysitting is different that domestic services. She then asked Chuck Hunter the same question.

Chuck Hunter stated that he agrees, babysitting is different than

domestic services.

REP. MILLS asked **SEN. BARTLETT** to refer to page 8, subsection 5 dealing with freight elevators. He asked if this would apply to a youth taking flowers to a hospital room using a freight elevator?

SEN. BARTLETT stated that this bill does not disallow the use of freight elevators.

REP. BENEDICT told Chuck Hunter he feels this is a terrible bill; furthermore, it does not take care of agriculture. He asked Mr. Hunter if this bill would allow a 15 year old football player, who weighs 180 pounds, to load hay onto a truck?

Chuck Hunter replied no, a 15 year old is not allowed to unload anything off a truck, regardless of the contents.

REP. BENEDICT asked Mr. Hunter to refer to section 5, subsection c, line 9. He stated that this section disallows a youth to work at a radio station, even if it is a very easy job.

Chuck Hunter stated that clerical work is permitted and he believes this would cover that scenario.

REP. BENEDICT referred to the bill and stated that working in communication is prohibited for youth.

Chuck Hunter stated that there needs to be some clarifying rules developed upon the passage of this bill.

REP. BENEDICT asked Mr. Hunter if this bill also disallows a 15-year old from driving a tractor?

Chuck Hunter stated that this bill will not disallow the operation of any farm vehicles if the youth have their parents consent.

REP. MILLS asked Mr. Hunter if he could hire anyone under 16 to drive a car on his farm?

Chuck Hunter stated that driving is not prohibited on the farms.

REP. MILLS then asked Father Lowney the same question.

Father Lowney stated that he is not sure this is the case, because in the federal standards it is prohibited for anyone under the age of 16 to operate a tractor.

CHAIRMAN NELSON asked Chuck Hunter if this bill would take precedence over the federal statutes even though they are or will become parallel?

Chuck Hunter stated that this bill would take precedence in some

cases, but not in others.

REP. ELLIS asked Mr. Hunter what the motivation would be, for compliance with the act, if it is not parallel with the federal regulations?

Chuck Hunter stated that the passage of this bill will bring both the state and federal statutes parallel.

Closing by Sponsor:

SEN. BARTLETT closed on SB 223 by stating that the current laws are out-of-date. This bill is a good faith effort to provide protection for children working in hazardous occupations during the school year. She emphasized the importance of school and homework.

HEARING ON SB 381

Opening Statement by Sponsor:

SEN. GARY FORRESTER, SD 49, Lockwood, sponsor, stated that this bill is an attempt to bring employers in compliance with workers compensation laws. Furthermore, this bill will stop employers from misclassifying their employees.

Proponents' Testimony:

Keith Olsen, Montana Logging Association, stated that this bill could help Montana gain the competitive advantage over the other states. He stated that his organization supports SB 381.

Bill Egan, Montana Conference of Collectible Workers, stated that his organization supports the bill for the same reasons listed above.

Ron James, Construction Ironworkers, stated that workers compensation rates are currently at 63 percent. His organization supports SB 381 and thinks it is a fair bill.

Eugene Fenderson, Montana District Council of Laborers, stated that the passage of this bill will put all employers on a level playing field. His organization supports SB 381.

Lars Erickson, Executive Secretary Montana State Council of Carpenters, stated that the best part of the bill is that the money collected goes into a fund for the program itself.

Darrell Holzer, Montana State AFL-CIO, stated that he supports SB 381 for the same reasons given above.

Roger Tippy, Beer and Wine Retailers, stated that the scope of this bill is hard to understand. He proposed a set of amendments to clarify the scope.

Jacqueline Lenmark, American Insurance Association, stated that her organization supports SB 381 for the above stated reasons.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. BENEDICT asked Roger Tippy if he would object to taking out the proposed amendment up to $200 or more?

Roger Tippy stated that he would not object.

REP. DRISCOLL told Mr. Tippy that the employer must knowingly rate the employee wrong, under the scenario you gave, the employer did not knowingly rate the employee wrong.

REP. DRISCOLL asked Mr. Tippy what the fine is now if the employer is caught misclassifying employees?

Roger Tippy stated that he is not sure it is illegal, but they can assess past charges. Assessment of back premiums can be fined.

REP. DRISCOLL stated that the employer who deliberately lies, gets less penalty than those who don't buy a policy at all.

Roger Tippy stated that he hopes those who lie are treated more harshly.

REP. MILLS asked Mr. Tippy if there is any consistency in the set determination by the department, for back pay on premiums?

Chuck Hunter stated that he believes the classification is a difficult process. The employer must show clear intent before charged.

REP. SIMON asked Mr. Hunter if the department will have problems proving the intent of the employer?

Mr. Hunter stated that he is not sure, because the department has not done this before.

REP. SIMON asked Mr. Hunter if there is a statute of limitations in determining the amount of penalty and how far back it can go.

Mr. Hunter stated that there are currently no statutes.

REP. SIMON asked **SEN. FORRESTER** if he would allow a proposed statute of limitations?

SEN. FORRESTER stated yes, he would allow the proposed statute of limitations.

REP. HANSON asked **SEN. FORRESTER** how this bill would effect a

secretary who drives to the mailbox to get the mail?

SEN. FORRESTER stated that if the secretary's employer tells the whole truth when being rated, there should not be a problem.

REP. HANSON stated that he disagrees because the rating is based on the greatest risk performed, even if it is only performed once per day.

Closing by Sponsor:

SEN. FORRESTER closed on SB 381 by stating that this bill will help keep employers honest.

HEARING ON SB 342

Opening Statement by Sponsor:

SEN. BILL WILSON, SD 19, Great Falls, sponsor, stated that SB 342 covers four major changes. The changes include allowing contractors to pay fringe benefits in cash, increasing benefits to employees who are shorted and if there are two or more violations they are suspended for three years.

Proponents' Testimony:

John Andrew, Department of Labor, proposed an amendment to the committee. He referred to page 8, line 18 through 23 and stated that this is a contradiction.

Eugene Fenderson, Montana District Council of Laborers, stated that this bill goes back a number of years. He stated that non-union contractors have paid into insurance or pension funds, but now are not allowed to continue. If an employer cheats ten times and is only caught once, this is not fair. He stated that at least there should be a 20 percent charge plus court costs. He referred to page 10 and the certified payroll on a weekly basis. Employers keep certified payroll on state employers. The passage of this bill will make the system work better and do away with the large fiscal note.

Bill Egan, Conference of Electrical Workers, stated that this bill is more than a fair compromise. This bill allows non-union employers and employees to pay into funds for their future. He stated that his organization supports SB 342 and its proposed amendments.

Lars Erickson, State Council of Carpenters, stated that this bill will protect honest employers union or not.

Darrell Holzer, Montana State AFL-CIO, stated that this bill passed the senate with a vote of 41 to 7. He stated that his organization is in support of SB 342.

Opponents' Testimony:

Lloyd Lockram, Health Care Trust, referred to page 14 of the bill. His organization supports the passage of SB 342.

Carl Schweitzer, Montana Contractors Association, stated that his organization is opposed to SB 342 because there could be a problem with monitoring the certified payrolls. He asked the committee to consider sending SB 342 to a sub-committee.

Mike Micone, Department of Labor, (EXHIBIT #7).

Questions From Committee Members and Responses:

REP. PAVLOVICH asked if the amendment was brought up in the Senate?

REP. WILSON stated no.

Closing by Sponsor:

SEN. WILSON closed on SB 342 by stating that everyone wins.

CHAIRMAN NELSON appointed **REP. HANSON, REP. MILLS, AND REP. DRISCOLL** to a subcommittee on SB 342.

HEARING ON SB 329

Opening Statement by Sponsor:

SEN. TERRY KLAMPE, SD 31, Missoula, sponsor, opened on SB 329 by stating the three different concepts of the bill. The three concepts are tax exempt bonds, prevailing wage and nonprofit organizations. The purpose of the bill is to revise prevailing wage on projects financed from bond proceeds after 6/30/93. **SEN. KLAMPE** stated that this bill is a reasonable request with a very narrow focus. He referred to 501(c)(3) organizations of Internal Revenue Code Annotated. He stated that SB 329 will clear up any confusion about paying prevailing wage.

Proponents' Testimony:

Mae Nan Ellington, Dorsey and Whitney, stated that SB 329 will clarify the kind of bonds prevailing wage applies to. She provided the committee with written testimony. **EXHIBIT #8**

Bill Egan, Montana Confederation of Electrical Workers, stated that 501(c)(3) is very broad designation and has lots of room for mischief. He stated that his organization supports SB 329 without the proposed amendments.

Eugene Fenderson, District Council, stated that the language in the bill needs to be straightened out. He stated that his

organization supports SB 329 without the proposed amendments.

Russ Ritter, Washington Contractors, stated that his organization supports the original bill and the proposed amendments.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. DRISCOLL told Mae Nan that 17-5-1526, MCA, applies to bonds on specific projects. He asked her if the standard rate of prevailing wage is the same on all the bonds?

Mae Nan stated yes, that under 17-5-1526, MCA, refers to bonds issued by the board of investments under the economical bond act and it would apply, as written, to all bonds written by them.

REP. DRISCOLL referred to section 4, line 10 and 11 of the bill which states that prevailing wage must be paid unless the project is owned and operated by an nonprofit organization. If ice rink gets money from the city of Missoula; therefore, they do not have to pay prevailing wage.

Mae Nan stated that this is the way it appears; however there may have been a mistake. You are correct if the city issued their bonds under title 90 chapter 5.

REP. DRISCOLL asked **SEN. KLAMPE** why they need the amendment if the city of Missoula is selling the bond and financing the rink?

SEN. KLAMPE stated that **REP. DRISCOLL** picked out a flaw in the way the bill was brought from the Senate to the House. We are prepared to deal with this if the other amendment offered today doesn't go through. With the proposed amendment, this language does not need to be added because it is already there.

Closing by Sponsor:

SEN. KLAMPE closed on SB 329 by apologizing for the flaw in the bill. He reminded that prevailing wage requirement was implemented in 1991. The passage of this bill will allow a nonprofit organization to get a bond for less because it is tax exempt. He encourage the committee to concur with the bill.

ADJOURNMENT

Adjournment: Chairman Nelson adjourned the meeting at 6:10 p.m.

TOM NELSON, Chair

CHERRI SCHMAUS, Secretary

TN/CS

HOUSE OF REPRESENTATIVES

LABOR COMMITTEE

ROLL CALL DATE 3/9/93

NAME	PRESENT	ABSENT	EXCUSED
REP. TOM NELSON, CHAIRMAN	✓		
REP. GARY FELAND, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. JERRY DRISCOLL	✓		
REP. ALVIN ELLIS	✓		
REP. PAT GALVIN	✓		
REP. SONNY HANSON	✓		
REP. NORM MILLS	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL TASH	✓		
REP. ROLPH TUNBY	✓		
REP. CARLEY TUSS			✓
REP. TIM WHALEN			✓

SB 223

EXHIBIT
DATE LABOR 3/9/93
BILL SB223

SUMMARY OF PROPOSED CHILD LABOR BILL
STATE OF MONTANA

BACKGROUND: Most states have comprehensive Child Labor legislation regulating the hours minors may work and the hazardous occupations in which they may not work. Montana has not had comprehensive regulation of child labor. Recent research and publicity have pointed to the increased need for legislation, regulation and enforcment of child labor standards. The proposed legislation has received support from various religious, education, and labor organizations as well as from child advocates.

HAZARDOUS OCCUPATIONS are defined in the bill so that all minors under eighteen who have not received a high school diploma or passing score on the General Development exam, or registered in a state or federal apprenticeship program may not be employed in extremely hazardous occupations such as mining, hazardous manufacturing, and working involving hazardous chemicals, radioactive substances, or operating dangerous equipment.

Minors fourteen or fifteen of age are additionbally prohibited from being employed in occupations that are slightly less hazardous, but posing sufficient danger to threaten the life or health of individuals at that age.

Minors fourteen years of age and under are prohibited from employment

EXCEPT

that all minors may be employed:

1. By their parents or guardians.

2. In agriculture or farming with written consent of the their parents or guardians or on a farm or in a home owned by their parents or guardians or or on a farm where the parent or guardian is also employed.

3. In the delivery or collection of newspapers, periodicals or circulars.

4. In casual, community, non-revenue raising, uncompensated activity, (such as religious and charitable volunteer work).

5. As an actor, model or performer.

6. As a legislative aide.

7. In casual domestic work at a person's home.

Additional exceptions are provided for student-learners an apprenticeship programs.

WORKING HOURS FOR MINORS

Except in the above-mentioned occupations in which all minors may be employed,

Minors 14 or 15 years of age

1. May not be employed before 7 a.m. or after 7 p.m., except during the summer holiday.
2. May not be employed more than:
   a) 3 hours on any school day;
   b) 18 hours in any week when school is in session;
   c) 8 hours in any day when school is not in session;
   d) 40 hours in any week when school is not in session; or
   e) 6 days a week.

Certain exceptions are provided for including the delivery of newspapers, and so on.

OTHER PROVISIONS include means of enforcement, power of the Department of Labor to adopt rules and definitions, and various penalties.

EXHIBIT
DATE
HB

After-school job may lead teens into trouble

By the Associated Press

DENVER — Teens who work after school are more likely to break the law and tempt trouble than those who don't have jobs, according to a study that turns assumptions about work and responsibility on its head.

Such findings aren't new, but the study conducted at the University of Colorado at Boulder is the first such survey that's national in scope, said sociology professor Delbert Elliott, who heads the ongoing research.

"In that sense, it's a little different," Elliott said of the survey's nationwide view. "The finding is a very robust finding."

The study found teens who work before graduating from high school are about 1½ times more likely to commit criminal offenses and use alcohol, and are more than twice as likely to experiment with marijuana.

"To be honest, we didn't believe it," Elliott said of the initial results. "You know — idle hands are the devil's workshop."

Researchers were so skeptical at first, he said, they figured they overlooked something. But when the numbers were reckoned again to account for potentially skewing factors, the results were the same.

Elliott emphasized that the findings mean only that work poses a greater risk of delinquency; trouble is far from inevitable.

"The research has indicated there are indeed some positive benefits from going to work," Elliott said.

But on the negative side, he said, the survey showed "a job may replace interest in school. Then what happens is a decline in educational aspiration ... and in activities surrounding the school."

The findings come from a long-term survey. Each time, survey subjects — who cross the economic and ethnic spectrums — are asked confidentially if they broke the law or used drugs or alcohol. Those who worked as teens were employed in a wide range of jobs — in fast-food restaurants, in retail stores, as gofers in professional firms.

Elliott said parents may counter the risk of trouble by better supervising their employed offspring.

SB 223

Tidyman's fined for labor violations ■

MISSOULA (AP) — The Tidyman's supermarket chain has been fined $75,350 for violating federal child-labor laws at stores in Missoula, Idaho, and Spokane, Wash.

Labor Department spokesman Larry Wilson said 106 minors have been employed at Tidyman's stores in the three states in violation of the federal Fair Labor Standards Act.

Minors as young as 15 have operated equipment considered hazardous. Other citations included employment of a child under 14 and use of 15-year-olds for hours exceeding federal standards.

Wilson said the violations apparently resulted from a lack of knowledge about regulations. "I don't believe there was any indication that there was any purposeful intent to violate the law." He said "they have been very cooperative."

3-1-92

EXHIBIT
DATE
HB

Sunday, September 6, 1992

Fast-food work unsafe, group claims

CHICAGO (AP) — Dishing up fast food may be hazardous to teenagers' health, according to a workplace study that estimates thousands of youngsters get hurt working at the corner eatery.

The report released Saturday by the Chicago-based National Safe Workplace Institute also chastises the Labor Department for lax enforcement of child labor laws.

A Labor Department spokeswoman called the report dishonest. Officials at McDonald's Corp., the largest U.S. fast-food chain and one of the nation's largest employers of teens, also disputed the report's claims, as did Burger King.

The report estimates that of 5.5 million workers ages 12 to 17, some 71,660 were hurt and 139 died in 1990 as a result of their jobs.

Of those, the report says, about 20,000 were hurt in the restaurant industry — primarily working with fast-food — as a result of slips and falls, cuts, burns, electrical shock, vehicle accidents, heavy lifting, chemical exposure and sleep loss.

Adolescents get hurt anywhere they are employed, whether laboring on a farm, at a hotel, in the garment industry or at a supermarket. But the single largest number of work-related injuries among teenagers occur in food service, the report says.

Joseph A. Kinney, executive director of the non-profit institute that produced the report, said he hopes it will provoke national debate on teen labor practices.

"A lot of parents have this idea that work in the fast-food industry is fairly benign and safe and that their kids won't be injured," Kinney said in an interview Friday.

According to the report, "the fast-food industry typically will hire youngsters off the street and place them in jobs with substantial risk of burns, lacerations and slips and falls with little or no training."

When teen-age employees get hurt, fast-food managers often insist they be treated as personal rather than business-related, the report contends.

It also says that fast-food outlets in suburban areas, where cheap adult labor is scarce, routinely violate child labor laws by employing children under age 14 and scheduling employees under 16 to work after 7 p.m. on school nights.

Under federal law, 14- and 15-year-old employees may work no more than three hours on a school day or 18 hours in a school week, and may not work between 7 p.m. and 7 a.m. except during the summer, when they may work until 9 p.m.

Burger King is fighting a Labor Department lawsuit that charges the Miami-based chain violated child labor laws by employing teen-agers under 16 to work during hours and in occupations that are not permitted.

Burger King spokeswoman Cori Zywotow said the company has not employed anyone under 16 for the past year.

Labor Department spokeswoman Carol McCain said the report incorrectly says there are just 93 federal child labor inspectors checking 2 million businesses. She said the agency employs 841 inspectors, all of whom inspect for violations of all labor laws, including child labor laws.

EXHIBIT #4 LABOR 3/9/93

EXHIBIT #4
DATE 3/9/93
BY SB223

SB223

Too Old, Too Fast?

Millions of American teenagers work, but many may be squandering their futures

BY STEVEN WALDMAN AND KAREN SPRINGEN

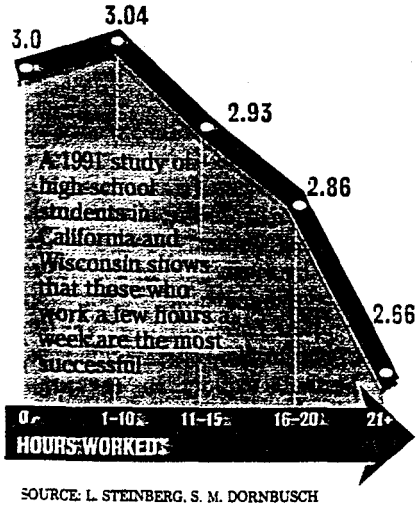
Anyone who thinks teenagers spend their afternoons playing hoops, hanging out at the mall—or, for that matter, studying—should meet 18-year-old Dave Fortune of Manchester, N.H. He wakes up at dawn, slurps some strawberry jam for a sugar rush, goes to the high school until 2:30 p.m., hurries home to make sure his little sister arrives safely, changes and goes off to his job at a clothing store. He gets home at around 10:30, does maybe an hour of homework—"if I have any"—and goes to sleep around midnight. The routine begins anew five hours later. Fortune knows he's sacrificed some of his school life for his job. He misses playing soccer and baseball as he did in junior high, and he had to give up a challenging law class because he had so little time for studying. "I have to work," Dave says. "I *have* to work."

A peek in Fortune's closet suggests otherwise. His back-to-school wardrobe: two leather jackets, six sweaters, 12 pairs of jeans, four pairs of shoes, two pairs of sneakers, two belts, "loads of shirts," and a half-dozen silk pants and shirts that would make a jockey proud. Price tag for the spree (with his store discount): $550.

After-school jobs have become a major force in teen life. More than 5 million kids between 12 and 17 now work, according to Simmons Market Research Bureau. Teens are twice as likely to work as they were in 1950. The change has been fueled by the growth of the service sector after World War II, the rise of the fast-food industry in the 1960s and '70s and an increase in the number of girls entering the work force. About two thirds of seniors today work more than five hours a week during the academic year. While Wally Cleaver's afternoons were occupied by varsity track, basketball and hanging around with Eddie Haskell, Brandon Walsh on "Beverly Hills, 90210" waits on tables at the Peach Pit because his wealthy parents think it will teach him responsibility—and so that he could buy a Mustang convertible.

As political attention focuses on improving the quality of high schools—and producing a highly trained work force better fit for global competition—states have begun restricting the hours teens can work during the school year. In their senior year, about 47 percent of male student workers and 36 percent of females put in more than 20 hours per week at their jobs. Psychologists and teachers see the strain on students. They have lit homework, and teachers w watch exhausted students keep their heads up all too by lowering standards. "Ev ries why Japanese and Germ ish students are doing bett says Laurence Steinberg, professor at Temple Univers son is they're not spending noons wrapping tacos."

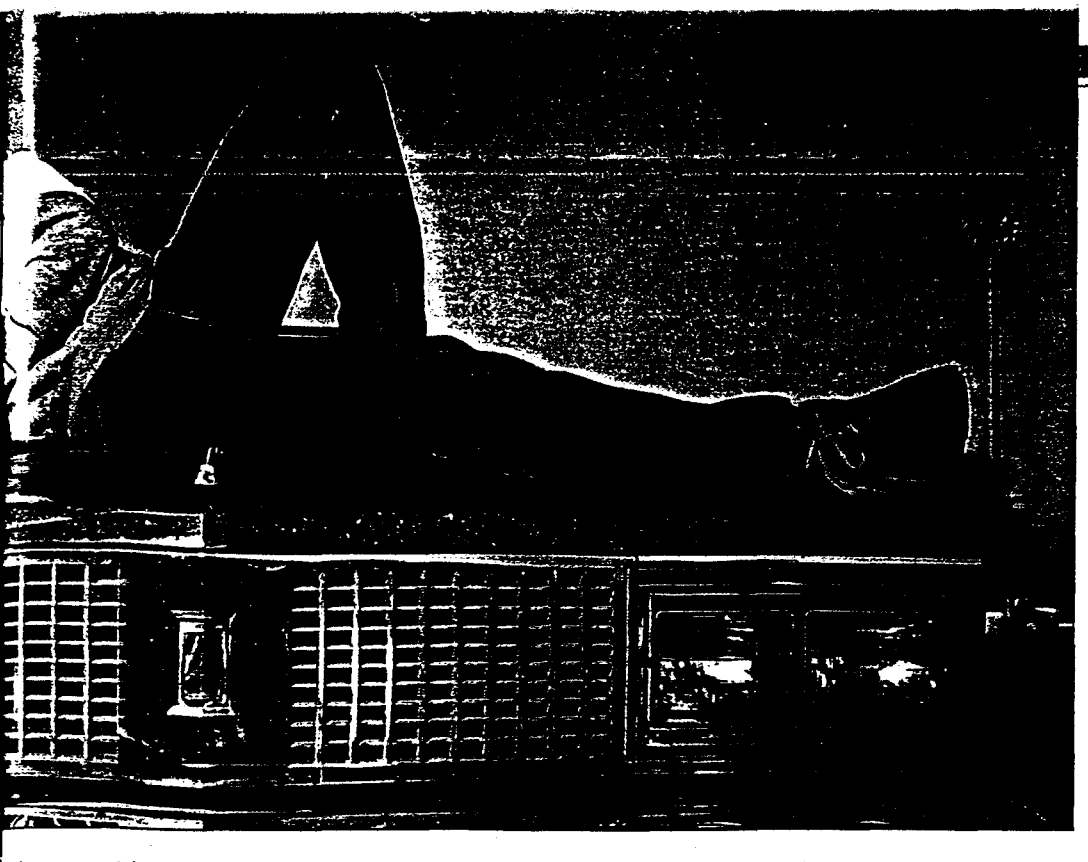
Grade-Point Averages



SOURCE: L. STEINBERG, S. M. DORNBUSCH

MICHAEL SZPISJAK He dou

DAVID FORTUNE
Working nights at a clothing s
less time for homework—'if I ha
it allows for a well-stocked



hours—with his father's approval—even though both knew it might hurt his studies

KRIS MILLER
'I'm losing my kid,' says Betty Miller, whose daughter, Kris, fixes pastries at a restaurant

MARVIN SILVER
Because he put in so many hours at a department store, he was able to eat with his parents only on weekends

The significance of after-school work goes beyond sagging test scores and eyelids. In interviews with 64 high-school students in New Hampshire, Iowa, Virginia, Illinois and Maryland, an unsettling picture emerges. The prevalence of youth employment has transformed what it means to be a teenager. Kids who take jobs by choice, not necessity, have worked themselves into what one scholar called "premature affluence"—the ability to finance consumer binges even as their parents are cutting back.

They buy clothing with all the well-heeled restraint of Imelda Marcos. Many have cars, which they use to go on lavish dates. Despite the recession, only 10 percent of high-school seniors surveyed last year said they were saving most of their earnings for college, and just 6 percent said they used most of it to help pay family living expenses. Finally, jobs even play a role in changing the relationships between teens and their parents. Pulled in many directions, parents grant their working children striking amounts of autonomy. Working at the local McDonald's, in short, has enabled many teens to buy out of adolescence.

There are those, of course, who must work. The recession has forced some kids into the labor force to help their parents survive. Teachers, students and social scientists also agree that work can teach discipline, self-respect and efficiency. Fortune's father, for example, insisted his son work to learn some responsibility—and the son says he has. Some studies show that kids who work moderately actually do better in school than those who don't take jobs at all. Students on the verge of dropping out—or into criminality—can be kept on track by a good job. It can even teach tolerance by forcing them to meet kids of different social cliques.

Nonetheless, educators worry that while the benefits of work have been known for years, a range of problems has been left unexplored. Some are apparent at Pembroke Academy, a public high school near Concord, N.H.:

■ Vanessa Thompson saw her grades plummet from B's to D's when she increased her schedule last year from 25 to 30 hours a week at a movie theater and Lady Foot Locker. "You either do homework at study hall or it just doesn't get done," she says. Her boss at the shoe store questioned whether she was keeping up with school. "Of course I lied to her because I needed the hours," Thompson says. "School's important but so's money. Homework doesn't pay. Teachers say education is your payment, and that just makes me want to puke."

■ Andrew Cutting points to a small red scar above his right eye, a reminder of what might be called a job-related injury. Last month Cutting was in study hall writing a composition when, midsentence, he fell asleep, slamming his head down on the tip of his pen cap. "It hurt wicked bad," he says. "I felt like an idiot." He was tired from pumping gas at a nearby Mobil station the night before. He says he's managing his sleep better now and will keep the job so he

CLOCKWISE FROM TOP: MICHAEL L. ABRAMSON, JOHN FICARA—NEWSWEEK, ROBERT TRIPPETT—SIPA, SCOTT THODE—JB PICTURES

can buy a car and pay for his own clothes instead of the "queer shirts with butterflies on the collar" his parents get. His head probably hurts less, too.

■ Artie Bresby stocks shelves at Shaw's Supermarket. To sustain his job pace, he takes six Vivarin pills (equivalent to about 15 cups of coffee), plus two liters of turbo-charged Mountain Dew. That, however, did not stop him from dozing off during a group interview with NEWSWEEK.

Are these three the exception or the norm? Their schedules, at least, are typical. A 1989 study by the state of New Hampshire found that 77 percent of seniors were employed and more than half of them worked more than 20 hours. Does working too much really hinder academic performance? Some scholars cite Japan, where students do better in school—and work at jobs less. According to a forthcoming study by University of Michigan professor Harold Stevenson, 74 percent of juniors surveyed in Minneapolis worked—compared with 21 percent in Sendai, Japan. Indeed, almost half the public schools in Tokyo prohibit students from working.

Other U.S. studies have shown a more direct link between hours worked and academic achievement. A study by the Educa-

'Needing and Wanting Are Different'

BY JIMMY CARRASQUILLO

Mom, can I have some money?" Those are the words my mother used to hear all the time. In return, I heard, "Why don't you get a job? Not to make me happy, but so that you have your own money and gain a bit more responsibility." So last year I got a job with Montgomery Ward's photo studio, working about 25 hours a week. For $5 an hour, I was a telephone salesman, trying to persuade people to come in for a free photograph.

All this was during football season and I was on the team as a kicker. To do football and homework and my job at the same time became really hard. I was burning out, falling asleep at school, not able to concentrate. My first class was physics and I hated it. I'd just sit there with my hand on my cheek and my elbow on the desk, and start dozing. One day the teacher asked my partner what I was doing and she said, "Oh, he's sleeping." The teacher came to the back of the class and stared at me. The whole class looked at me for about two minutes and laughed.

My third-period history teacher was really concerned. She was cool. A lot of times, I'd fall asleep in her class. She'd scream, "Wake up!" and slam her hand on my desk. I'd open my eyes for about two minutes, pay attention and go back to sleep. She asked me if I could handle school, football and work. I said, "Yeah. I'm doing OK so far." She said, "Why? Why all this?"

I told her it was for the things I need, when actually it was for the things that I wanted. Needing and wanting are different. Needing something is like your only shoes have holes in them. But when a new pair of sneakers came out and I liked them, I'd get them. My parents didn't feel it was right, but they said, "It's your money, you learn to deal with it." Within two years I had bought 30 pairs. My parents would laugh. "You got your job, you got your money—but where's your money now?" They didn't realize how much my job was hurting my schoolwork.

My priorities were screwed up. On a typical night I did about an hour of homework. A lot of times it was hard for me to make decisions: do I want to be at work or do I want to be at practice? Do I want to worry about what I'll have today or what I'll have in the future? Sometimes I felt there was no right choice. One week in the winter I had to work extra days, so I missed a basketball game and two practices. (I'm on that team, too.) When a substitution opportunity came at the next game, the coach looked at me and said, "OK, we're running I-5," a new play they had developed during the practices I had missed. I told him I didn't know it, so he told me to sit back down. I felt really bad, because there was my chance to play and I couldn't.

I really did resent work. If I hadn't been so greedy, I could have been at practice. But I kept working, and the job did help me in some ways. When you have a lot of responsibilities, you have to learn how to balance everything. You just grow up faster. At home, your parents always say, "I pay the bills so while you're here you're under my rules." But now with my money I say, "No, no no. You didn't pay for that, I did. That's mine."

Slowly, I've come to deal with managing money a lot better. At first, as soon as I had money, it was gone. Now it goes straight into my bank account. This year I decided not to work at all during football season. I have a lot more time to spend with other players after the game and feel more a part of the team. I've only fallen asleep in class once so far. I'm more confident and more involved in the classes. My marks are A's and B's, a full grade better than this time last year. I'm hoping that will help me get into a better college. I don't go shopping as much. I look at all the sneakers in school and think, "I could have those," but I don't need them. Last year I thought that being mature meant doing everything. But I'm learning that part of growing up is limiting yourself, knowing how to decide what's important, and what isn't.

Carrasquillo is a senior at Wakefield High School in Arlington, Va.

KATHERINE LAMBERT

'I WAS GREEDY'
'My third-period history teacher was really concerned. She'd scream, "Wake up!" and slam her hand on my desk. I'd go back to sleep.'

KATHERINE LAMBERT

MARY CLARK

She's proud to help her single mom by working as a baby-sitter. But last March she broke down and sobbed in class when the pressure of her school assignments was too much.

tional Testing Service concluded that kids who work longer hours are less likely to take biology and chemistry courses, and earn lower achievement scores in math, science, history, literature and reading. Another study of more than 68,000 students nationally linked working more than 20 hours to increased cigarette and alcohol use, less sleep and more truancy. While the author of the ETS study points out that these kids might not do well in school even if they weren't working, other researchers say that a heavy workload exacerbates poor performance.

Slipping standards: The job frenzy may even harm students who don't work. Some teachers demand less. Knowing that students were unlikely to read books outside class in part because of their job schedules, Ken Sharp, an English teacher at Pembroke, has his pupils spend a week reading a play aloud in class. A study of 1,577 Wisconsin teenagers in the early 1980s revealed that teachers shortened reading assignments, simplified lectures and reduced out-of-class assignments—all to accommodate teen work schedules. It "was a factor in demoralizing teachers and giving the students, in turn, a message that little of significance would happen at school," wrote Linda M. McNeil, the Rice University professor who conducted the study.

In some schools, standards are so low that it's become easy to get decent grades even while holding down a time-consuming job; there just isn't that much schoolwork to do. Parents, too, may lower expectations. Michael Szpisjak, a senior at Glenbrook South High School in Glenview, Ill., more than doubled his hours at a publishing company, though he knew it would hurt his grades. His father encouraged him to work. "Usually people at the bottom of the class are the most successful if you measure it in terms of how much money they make," says Stephen Szpisjak.

Teen work is also threatening extracurricular activities—which can be the best part of high school. Musical aptitude of students has declined since the days when "work was limited to summers and maybe a paper route," because students no longer have time to practice, says Terry Grossberg, the band teacher at Waukegan High in Illinois. William Turner played wide receiver his freshman year at Largo High in suburban Maryland, but quit last year to bag groceries so he'd have money for "clothes and girls." It turned out that was the year the team went to the state semifinals. His grades dropped as well, from 3.67 down to 2.50, so he cut back on his job this year.

Every individual reacts differently to work, but two groups seem immune to a job's detriments: weak and gifted students. "Some kids are not real good students, but at work, they're Queen of the May," says guidance counselor Gloria Mueller of Glenbrook South. The other group is that small slice at the top: the Roboteens who manage to do, and excel at, everything. John Fiorelli of Glenbrook wakes up at 5:30, runs three miles, earns grades in the top 10 percent, runs seven or eight miles after school for the cross-country team, serves as senior-class president and still works 15 to 20 hours washing dishes at a nearby hospital. "I like the pressure," he says.

Kids willingly make the sacrifice in part because high school's frenzy of consumerism has grown only more intense. Teens have always coveted thy friends' belongings, but could do little about it when their pockets were empty. But teen earning power increased from $65 billion in 1986 to $95 billion last year, far outpacing inflation and parental income, according to Teenage Research Unlimited, a marketing firm. Teens spent $82 billion in 1991, and have maintained the pace despite the recession. The more money Johnny has, the more he buys.

Some run-of-the-mill purchases by middle-class teens capture the 90210-ish expectations of teen life: Chris Lamarre, who works at a Manchester carpet store, bought his girlfriend a $100 Gucci watch and himself a $600 car stereo. Mary Kane of Olney, Md., spent $1,000 of her earnings from Lady Foot Locker to go to Cancún for eight days with her friends. More and more students at Glenbrook South are spending hundreds of dollars to get beepers—not to consummate drug deals, but to retrieve messages from friends. Blame it on peer pressure: when you go out with friends, "you don't want to say, 'I can't do that, I don't have the money'," explains Kirsten Fournier, a senior at Manchester West High.

The growth of the youth spending culture raises an ironic question: wasn't work

MICHAEL L. ABRAMSON

JOHN FIORELLI

'I like pressure,' says the senior, who gets top grades, runs cross-country and works 15 to 20 hours a week

Exhibit #4
3-9-93 — SB-223

supposed to teach kids the "value of the dollar"? Well, in a way, it does. "You see a two-for-one deal at a store and you're like, 'Whoaaa!' " says Chris Weir of Pembroke. Jerald Bachman, program director of the University of Michigan's Institute for Social Research, argues that students who develop premature affluence become accustomed to spending large percentages of their take-home pay. Why can Rasheda Stevenson, a Largo High senior, who worked 20 hours a week last year as a cashier, be so profligate? "If I see some dress shoes and they're, like, $80," she says, "my mother's going to wait until they go on sale. But if I want them I can get them right then and there. I don't have bills to pay. I don't have any children. It's just me." Stevenson has 20 pairs of dress shoes—and "a purse to go with every pair"—plus 10 pairs of tennis shoes.

The most important thing students can "buy" with their jobs is an altered relationship with their parents. Time after time, students say employment gave them more freedom. Parents who would contemptuously refuse to buy their children a shelf of color-coordinated Nikes can take the posture "It's your money; you can spend it on what you want." The net effect is that teens can feel, and are treated, more like adults. "It was like I just lived there, like a tenant," says Marvin Silver of Largo High. Last year he had dinner with his parents just on weekends while he was working at Morton's department store roughly 25 hours a week. "I'm losing my kid," says Betty Miller, whose daughter, Kris, a Wakefield High senior, fixes pastries and cappuccino at Bistro Bistro four and a half hours, four nights a week.

Teens in Two Societies

In different cities, here's where teenagers get their money and how they spend their time.

	Sendai, Japan	Minneapolis, U.S.
Percent working	21%	74%
Mean number of hours worked weekly	9.8 hrs.	15.6 hrs.
Percent feeling stress at least once a week	43.4%	71.2%
Portion of spending money from parents	94.7%	47.5%
Weekly amount received from jobs and parents	$86	$205
Percent dating	36.8%	84.5%
Weekly TV watching	16.7 hrs.	12 hrs.

SOURCE: UNIVERSITY OF MICHIGAN

MARTIN SIMON—SABA

RASHEDA STEVENSON
For this senior, having a job means the affluence of owning 20 pairs of dress shoes—all with matching purses

Parents often agree to the new arrangement because maintaining authority has become so difficult. Vetoing a son's purchase of Calvins or a used Mustang would mean forcing him to swim against a tidal wave of materialism at school. Patricia Turner, mother of the Largo student who missed the football championship, says parents now confront the extra fear that if they don't allow their kids to earn the trappings of adolescence legally, they will be lured by the easy money of drug dealing.

Cash relief: A kid's self-sufficiency can also relieve a parent of financial burden, even if the teen isn't directly pitching in for rent. But saying that a daughter can't sacrifice the glee club to buy a car means that parents might have to pick her up at school; with both working, that might be impossible. By accepting this assistance, parents in effect sell some of their authority for cash relief. They're selling too low, says Dr. Lawrence Hartmann, past president of the American

ANDREW CUTTING

Pumping gas gives him money for a car and clothes. But he 'felt like an idiot' when he fell asleep in study hall and bruised his head on the tip of his pen cap.

Psychiatric Association. "Parents should be parents, and children should be children."

For those empathetic children who try to take care of their families as well as do "youthful" activities, the pressure can be enormous. Mary Clark's mother encourages her to participate in Wakefield High activities because "you're only young once." But Mary was proud she was able to pay for redecorating her room so she wouldn't have to ask her mom, who is single and holds down two jobs, as a waitress and a secretary. But taking on so much can be overwhelming. Last March, she was baby-sitting three nights a week, helping take care of her nephew, trying to learn her lines for her role in "Julius Caesar" and worrying about an academic project soon due. She sat in class realizing that in addition to all that, she wasn't understanding the algebra lesson. In the middle of class, she broke down and quietly sobbed.

Only in recent years have states, parents and business owners tried to preserve the numerous benefits of work while eliminating the excesses. Washington state last month imposed a 20-hour limit for 16- and 17-year-olds while school is in session—half the previous level. Wisconsin, Indiana, New York, North Carolina and Maine have restricted work hours this year, and, since 1990, eight other states have changed their rules. But some business groups have mobilized to block restrictions. In Washington state, fast-food companies bused in burger flippers to protest against the proposed reduction to 20 hours a week.

Such restrictions mean nothing, of course, if they're not enforced. A child-labor crackdown by former labor secretary Elizabeth Dole has all but disappeared under the administration of Lynn Martin. The number of federal investigators has dropped from 970 to 841 in three years, and the department has asked for only 825 next year. States have cut back, too. Illinois now has only 13 child-labor inspectors for the entire state, down from 18 five years ago. And while lax enforcement can lead to sleepy students, it also allows for far worse: more than 71,000 teenagers were injured at work in 1990, according to a recent study by the National Safe Workplace Institute.

Burger bonus: Attitudes of individual bosses range from cruel to paternal. One student said he was forced to miss graduation ceremonies to keep his job. "I would have employers write me the nastiest letters because I wouldn't drop a chemistry class because they wanted a kid to work at 1 [p.m.]" says Manchester West principal Robert Baines. "I finally wrote back and said, 'Please leave them alone until 2:33'." Yet other students reported that their supervisors helped them with homework or crafted schedules around exams and athletics. The owners of 25 McDonald's in Baton Rouge, La., last year started offering bonuses to kids with good grades. A 3.0 average earns an extra 15 cents per hour. Schools are increasingly taking the posture that if students are going to work, it should at least be at a meaningful job. High-school students in rural Rothsay, Minn., actually run the local hardware and grocery stores so students can gain supervised experience tied to a curriculum. A program in Chicago helps teens run New Expression, a paper with a circulation of 70,000.

Ultimately, though, it is neither legislators nor employers who will have to solve the conundrum of teen work. Most parents are proud of their children earning a paycheck, but find themselves unaware of the problems their children's jobs can create. All parents want the best future for their kids. Once upon a time, after-school work seemed a perfect way to teach sons and daughters a little something about the real world and reward them with some cash at the same time. Now, for too many teenagers, too much o a wise thing may be squander ing that very future.

With Marcus Mabry in Washingto

PHOTOS BY SCOTT THODE—JB PICTURES

VANESSA THOMPSON

Thompson (left) saw her grades drop from B's to D's last year after she increased her working hours from 25 to 30 a week. 'Teachers say education is your payment,' she says, 'and that just makes me want to puke.'

SB 223

EXHIBIT #2
DATE 3/9/93
SB

Montana Catholic Conference

March 9, 1993

Mr. Chairman, members of the committee -

My name is Sharon Hoff representing the Montana Catholic Conference. As Conference Director, I serve as the liaison for the two Roman Catholic Bishops of the State of Montana in matters of public policy.

The Montana Catholic Conference supports SB 223.

In late 1991, the U. S. Catholic Bishops wrote a document called "Putting Children and Families First."

In this document the bishops state: "Our nation is failing many of our children. Our world is a hostile and dangerous place for millions of children. As pastors in a community deeply committed to serving children and their families, and as teachers of a faith that celebrates the gift of children, we seek to call attention to this crisis and to fashion a response that builds on the values of our faith, the experience of our community and the love and compassion of our people.

In 1891 Pope Leo XIII published an encyclical entitled Rerum Novarum (The Condition of Labor). Pope Leo's writing decisively shaped Catholic social teaching to the current day. Regarding child labor, Pope Leo stated "Great care must be taken always to prevent the employment of children in factories until they are sufficiently mature in mind and body and character. Calls which are made too early upon the strength of youth can beat it down, like new-grown grass too tender to be trodden, and quite destroy all possibility of education."

It is not easy to promote all legislation, especially when some interferes with our personal self interest, but when it comes to protecting children and

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CARE & SHARE

youth, we must take strong steps to assure their safety and their future. SB 223 supports children and affirms their value in our society. I urge your support of SB223.

Montana Family Union
AFL-CIO

110 West 13th Street
P.O. Box 1176
Helena, Montana 59624
406-442-1727

Don Judge
President

Pam Egan
Executive Director

EXHIBIT 6
DATE 3/9/93
HB SB 223

The Associate Membership Program of the Montana State AFL-CIO

TESTIMONY OF MONTANA FAMILY UNION ON SB 223
BEFORE THE HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS,
MARCH 9, 1993

Mr. Chairman, members of the committee, for the record, I am Pam Egan, Executive Director of the Montana Family Union. I am here today in support of Senate Bill 223.

Montana children work for a variety of reasons; some because their parents want them to learn responsibility and the value of hard work, some to earn extra spending money, some to help pay for college. These can be noble goals.

Unfortunately, bad economic policy has made it necessary for some children to have to work to help their families put food on the table. But it's the government's responsibility to fix the economic problems, not let child workers pay the price.

We must remember that a child who is exploited in the workplace learns neither responsibility, nor the value of hard work.

What that child does learn is that employers have no responsibility to their workers. An exploited child learns that hard work is not rewarded with dignity, respect or fairness. They learn that their education is worth less than their paycheck. They learn that workers, and children, are expendable -- to dangerous equipment, to hazardous chemicals, to excessive hours -- but that profits are not.

The Montana Family Union believes that all young people have a right to a decent childhood. Excessive hours and hazardous conditions undermine that right.

We believe that all children deserve to have an education -- one that will prepare them to enter the adult work force when the time comes. We believe it is unconscionable for children to be exploited by unscrupulous employers for the sake of profits.

Current Montana law does very little to protect children from many hazardous occupations and does nothing to protect them from excessive hours.

This bill begins to correct those problems. While we wish it were even stronger, it is an important step in the right direction.

The Montana Family Union respectfully urges a favorable recommendation on Senate Bill 223.

EXH #1
LABOR 3/9/91

FILED, ENTERED AND NOTED
IN CIVIL DOCKET
FEB 25 1991
LOU ALEKSICH, JR., CLERK
By Deputy Clerk

EXHIBIT
DATE 3/9/91
HB SB 34
#1

AO 450 (Rev. 5/85) Judgment In a Civil Case

United States District Court

DISTRICT OF MONTANA - Billings Division

UNITED INDUSTRY, INC. and its subsidiaries, and SILLIAM LEE WIX,
Plaintiffs,

vs

THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY and its Commissioner MIKE MICONE,
Defendants.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: CV 89-67-BLG-JFB

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT IS GRANTED, AND THAT DEFENDANT'S AND DEFENDANT-INTERVENORS' MOTIONS FOR SUMMARY JUDGMENT ARE DENIED.

FEBRUARY 25, 1991
Date

LOU ALEKSICH, JR.
Clerk

(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

UNITED INDUSTRY, INC. and its subsidiaries, and WILLIAM LEE WIX,	)	CV 89-67-BLG-JFB
Plaintiffs,	)	
THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY and its Commissioner MIKE MICONE,	)	
Defendants.	)	MEMORANDUM OPINION AND ORDER

Presently pending before this Court are cross Motions for Summary Judgment in this declaratory judgment action. For the reasons set forth below, plaintiffs' Motion is granted, defendants' Motion is denied, and defendant-intervenors' Motion is also denied.

Facts and Procedural Background

Plaintiffs filed this action seeking a declaratory ruling, pursuant to 28 U.S.C. §2201 and Rule 57, Fed.R.Civ.P., that a provision of Montana's prevailing wage statute for public construction projects is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq. ("ERISA"). Montana's Little Davis Bacon Act, otherwise known as the Montana Prevailing Wage Act, provides in part that:

> [a]ll public works contracts . . . must contain a provision requiring the contractor to pay the standard prevailing rate of wages, including fringe benefits for health and

> welfare and pension contributions and travel allowance provisions, in effect and applicable to the district in which the work is being performed.

Mont. Code Ann. §18-2-403(2). Another provision of this Act directs that "[w]henever the employer is not [a] signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages." Mont. Code Ann. §18-2-405 ("Section 405" or "§405").

Plaintiff United Industries and some of its subsidiaries are not signatories to collective bargaining agreements, but they do participate in ERISA-approved employee benefit plans administered by the Montana Contractors Association. Plaintiff William Wix is an employee of Pioneer Ready Mix, a United Industries subsidiary that is not a signatory party to a collective bargaining agreement. Plaintiffs contend that §405--requiring non-signatory parties to collective bargaining agreements to pay fringe benefits in the form of cash wages--violates ERISA, which provides a uniform and comprehensive body of federal law to govern employee fringe benefits, including welfare and pension plans. They contend, among other allegations, that Montana's statutory scheme impermissibly dictates that funds originally earmarked for contribution to ERISA benefit plans must be paid to their employees directly as cash wages. Thus, plaintiffs assert that §405 imposes additional conditions, not contemplated by

Congress, on those employers who participate in ERISA benefit plans but who have not signed collective bargaining agreements.

In moving for a declaratory judgment that §405 is preempted, plaintiffs originally named as defendants only Montana's Department of Labor and Industry, and its Commissioner who is charged with administration of the law ("the State"). On October 30, 1989, however, this Court granted a Motion to Intervene brought by the Montana District Council of Laborers and International Union of Operating Engineers, Local 400 ("Unions"). In so ruling, this Court found that the Unions had an interest in "preserving [Montana's] statutory scheme" and the "resulting competitive edge" favoring union employers over those employers who use non-union labor. See Order of October 30, 1989, at 4-5.

Discussion

This Court finds that it has original jurisdiction to decide this declaratory judgment action pursuant to 28 U.S.C. §1331. See generally Hydrostorage, Inc. v. Northern California Boilermakers Local Joint Apprenticeship Committee, 891 F.2d 719, 725 (9th Cir. 1989), cert. denied, 111 S.Ct. 72 (1990); Stone & Webster Engineering Corp. v. Ilsley, 690 F.2d 323, 327-28 (2d Cir. 1982), affirmed, 463 U.S. 1220 (1983). Furthermore, the Court finds that a "substantial controversy" exists between the parties, who have adverse and immediate legal interests at stake, depending on the outcome of this

action. See National Basketball Asso. v. SDC Basketball Club, Inc., 815 F.2d 562, 565 (9th Cir.), cert. dismissed, 484 U.S. 960 (1987); Nuclear Engineering Co. v. Scott, 660 F.2d 241, 251-52 (7th Cir. 1981), cert. denied, 455 U.S. 993 (1982).

All parties have moved for summary judgment. Rule 56(c), Fed.R.Civ.P., states that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The parties agree that the question of preemption is a purely legal dispute that may be decided on motions for summary judgment, based upon affidavits and stipulated facts.

Having carefully considered the briefs, arguments, and materials on file, the Court is now prepared to rule.

A. ERISA's Preemption Provision.

ERISA "established a comprehensive federal statutory scheme designed to protect two types of 'employee benefit plans': 'pension' plans and 'welfare' plans." Retirement Fund Trust of Plumbing v. Franchise Tax Board, 909 F.2d 1266, 1269 (9th Cir. 1990) (footnotes omitted). Because Congress intended to create a uniform body of law in this field, ERISA contains a broad preemption provision, "whereby federal law 'will supersede any and all State laws insofar as they may now or

hereafter relate to any employee benefit plan' under the Act." Id. quoting 29 U.S.C. §1144(a) (footnote omitted).1/

The scope of ERISA's preemption provision is one of the most widely litigated issues in labor law. As an initial matter, any analysis of preemption issues "must be guided by respect for the separate spheres of governmental authority preserved in our federalist system." Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 522 (1981). In passing ERISA, the Supreme Court has held that "Congress did not intend to pre-empt areas of traditional state regulation." Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 740 (1985). Yet, ERISA clearly contemplates some preemption of state law. 29 U.S.C. §1144(a).

To strike the proper balance between respect for the states' traditional police powers and ERISA's preemption provisions, the Ninth Circuit Court has devised a two-prong test to determine whether preemption of a state law is appropriate. A state law may be preempted if it both (1) "relates to" and (2) "purports to regulate," directly or indirectly, an employee benefit plan. Hydrostorage, 891 F.2d at 729; Local Union 598, Plumbers & Pipefitters Industry Journeymen & Apprentices Training Fund v. J.A. Jones Constr. Co., 846 F.2d 1213, 1218 (9th Cir.), affirmed, 488 U.S. 881

1/ ERISA contains some specific exceptions to this broad preemption provision. See 29 U.S.C. §1144(b). None of these exceptions apply to the instant case.

(1988). The parameters of this two-pronged test are explained more fully below.

1. State laws that "relate to" ERISA plans.

Generally, "[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825, 108 S.Ct. 2182, 2185 (1988)(citation and emphasis omitted). A state law that directly affects the administration of ERISA plans is therefore preempted. Id. This is true even if the state law does not explicitly mention ERISA plans, and it is true even if the state law advances ERISA's underlying purposes. Id., at 2185-86 ("Legislative 'good intentions' do not save a state law within the broad pre-emptive scope of §514(a) [29 U.S.C. §1144(a)].").

Nevertheless, not every state law that touches on ERISA benefit plans will be preempted. "Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 100 n.21 (1983); see also Retirement Fund Trust, 909 F.2d at 1274; J.A. Jones Constr. Co., 846 F.2d at 1220. Thus, the Ninth Circuit Court recognizes that a "'neutral' state law of general application with a 'tangential' impact on a plan does not 'relate to' ERISA and is not preempted." Retirement Fund Trust, 909 F.2d at 1280-81.

2. Laws that "purport to regulate" ERISA plans.

The second prong of the Ninth Circuit Court's test for preemption of a state law under ERISA requires that the state law must "purport to regulate" the administration of ERISA plans. "A law purports to regulate a plan if it attempts to reach in one way or another the terms and conditions of employee benefit plans." Hydrostorage, 891 F.2d at 729 (citing J. A. Jones, 846 F.2d at 1218 and Lane v. Goren, 743 F.2d 1337, 1339 (9th Cir. 1984)). Although the criteria for judging whether a statute "purports to regulate" ERISA plans is not entirely clear, the case law reveals that the Courts must examine both (1) the plain language of the statute for explicit references to ERISA, and (2) the overall effects that the statute may have on administration of ERISA plans. See, e.g., Retirement Fund Trust of Plumbing, 909 F.2d at 1281; Hydrostorage, 891 F.2d at 730.2/

2/ Even though the words "purport to regulate" may imply that a statute's explicit purpose must be to affect an ERISA plan before it may be preempted, the case law clearly indicates that a statute may implicitly "purport to regulate" ERISA plans, and therefore may be preempted. The Supreme Court, in fact, consistently demands that the lower courts look at the effects of state laws on ERISA plans, even when the laws are outwardly silent with respect to ERISA. See, e.g., Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 10, 13 (1987) (examining the possible effects of state law on employer's administration of ERISA plan, especially whether state law would unduly complicate plan administration); Metropolitan Life, 471 U.S. at 739 (recognizing that indirect state actions bearing on ERISA plans may encroach on areas of exclusive federal jurisdiction); Alessi, 451 U.S. at 525 (examining effects of workers' compensation law on employer administration of ERISA plan).

Thus, even though a state law may be outwardly silent with respect to its impact on ERISA plans, the law will be preempted--it will be held to "purport to regulate" ERISA plans--if it unduly influences the administration of ERISA plans. Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1404 (9th Cir. 1988) (ERISA preempts only those state laws affecting administration of covered plans); Nevill v. Shell Oil Co., 835 F.2d 209, 212 (9th Cir. 1987) ("[S]tate law is preempted if the conduct sought to be regulated by the state law is part of the administration of an employee benefit plan."). As the Second Circuit Court observed,

> What triggers ERISA preemption is not just any indirect effect on administrative procedures but rather an effect on the primary administrative functions of benefit plans, such as determining an employee's eligibility for a benefit.

Howard v. Gleason Corp., 901 F.2d 1154, 1157 (2d Cir. 1990) (quoting Aetna Life Ins. Co. v. Borges, 869 F.2d 142, 146 (2d Cir.), cert. denied, 110 S.Ct. 57 (1989)).

B. Preemption of §18-2-405, M.C.A.

Turning to the facts of this case, ERISA will only preempt §405: (1) if §405 "relates to" ERISA benefit plans, and (2) if §405 "purports to regulate," either directly or indirectly, ERISA benefit plans. Hydrostorage, 891 F.2d at 726; J.A. Jones Constr. Co., 846 F.2d at 1218. "A law 'relates to' an employee benefit plan . . . if it has some connection with or reference to such a plan." Mackey, 108 S.Ct. at 2185.

Clearly, §405 does not make explicit "reference to" ERISA plans. It speaks only generally of the need for non-union employers to pay "negotiated fringe benefits" as cash wages. For the same reason, §405 does not explicitly "purport to regulate" ERISA plans.

Because the language of §405 is silent with respect to its relationship to ERISA plans, the Court may only find that the state law is preempted (1) if it has some indirect, but significant, "connection with" ERISA benefit plans, and (2) if the overall effect of §405 is to influence the administration of such plans. In application, these two factors merge. The Ninth Circuit Court acknowledges that when a Court finds that a state law influences the administration of ERISA benefit plans, and thus "purports to regulate" them, the state law necessarily has a "connection with" ERISA plans. J.A. Jones Constr. Co., 846 F.2d at 1218. The Court will therefore focus its inquiry on the effects of §405 on the administration of ERISA benefit plans in Montana.

One effect of §405 on employers who are not signatory to collective bargaining agreements is to discourage their participation in ERISA plans. See Affidavit of Lloyd Lockrem, para. 17. Employers using non-union labor who wish both to comply with §405 and to participate on behalf of their employees in ERISA benefit plans must pay fringe benefits twice. Section 405 requires that they pay the fringe benefits in cash wages; ERISA contemplates that the employer will pay

the fringe benefits as contributions to welfare and pension plans. Thus, non-union employers who comply with state law and who participate in ERISA plans are inevitably placed at a competitive disadvantage compared to employers using union labor. See Affidavit of Joel T. Long, para. 11. Their costs of providing fringe benefits is higher.3/

"A statute which mandates employer contributions to benefit plans and which effectively dictates the level at which those contributions must be made has a most direct connection with an employee benefit plan." J.A. Jones Constr. Co., 846 F.2d at 1219 (emphasis added). Because §405 is a mandatory statute and participation in ERISA plans is voluntary, non-union employers faced with paying fringe benefits twice as a result of the state law will choose not participate in ERISA plans if they want to remain competitive with employers using union labor in bidding for public works projects. See Affidavit of Joel T. Long, para. 23. Thus, although §405 does not mandate specific employer contributions to ERISA benefits plans, it does "effectively dictate the level at which those contributions" will be made by employers using non-union labor: The level of contribution will be zero.4/

3/ Both the State and the Unions explicitly recognize that §405 effectively compels employers using non-union labor to pay fringe benefits twice, if they also wish to contribute to ERISA plans. See Commissioner's Brief in Support of Motion for Summary Judgment, at 6; Brief in Support of Unions' Motion for Summary Judgment, at 12.

4/ A drop in non-union employer contributions to ERISA plans is a simple, straightforward economic consequence of §405,

Because §405 will cause non-union employer contributions to ERISA benefit plans to drop, §405 will significantly influence and directly affect the administration of some ERISA plans--it may even cause some plans to fail for lack of funding. This will have a direct effect on "the primary administrative functions of [ERISA] benefit plans." Howard, 901 F.2d at 1157. The Court therefore finds that §405 has a "connection with" and implicitly "purports to regulate" ERISA plans. For this reason, the Court holds that §405 is preempted to the extent that it requires employers who are not signatory to collective bargaining agreements to pay those fringe benefits in cash wages that they would otherwise contribute to ERISA employee benefit plans, as defined by 29 U.S.C §1002 and elsewhere in ERISA.

The Court also believes that preemption of §405 is warranted on a separate ground. Because §405 permits employers who are signatory to collective bargaining agreements to make

4/ not an unsubstantiated fact, as the State and Unions argue. Furthermore, the Court rejects the State's and Unions' contention that §405 should not be preempted because its primary effect is to raise the cost of doing business for employers who use non-unionized workers, and that this is not a sufficient reason for preemption. While §405 may in fact raise some employer costs, it will necessarily have a direct effect on employers' contributions to ERISA plans as well. Because of the double payment problem, employer contributions to ERISA plans will inevitably drop. This effect on the plans themselves, not the employers' costs of doing business, constitutes the Court's principal concern.

fringe benefit contributions to ERISA benefit plans without incurring extra cash wage costs, the Montana statute creates: (1) incentives for employers to sign collective bargaining agreements to reduce the cost of paying fringe benefits under both ERISA and §405, and (2) incentives for employees to unionize so they are not subject to higher income taxes on fringe benefits paid only as cash wages. See General Electric Co. v. New York State Department of Labor, 891 F.2d 25 (2d Cir. 1989), cert. denied, 110 S.Ct. 2603 (1990) (fringe benefits paid as cash may have less value to employees than ERISA plan contributions). Standing alone, ERISA itself favors neither employer-created ERISA benefit plans nor union-sanctioned ERISA plans; the federal statute is neutral. The effect of the Montana law is to advance a goal that Congress has not endorsed in ERISA: it turns ERISA's employee protection provisions into a mechanism to foster a more heavily unionized workforce. Congress clearly did not have this goal in mind when it passed ERISA. See generally H.R. Conf. R. No. 93-1280, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 5038, 5038-39 (ERISA designed to regulate administration of all private pension plans uniformly). For this reason, the Court believes that §405 must also be preempted. Fort Halifax Packing Co., 482 U.S. at 8 (purpose of Congress is the "ultimate touchstone" in ERISA preemption analysis); Shaw, 463 U.S. at 98 (ERISA preempts those laws affecting the underlying

purpose of the Act).5/

In finding that ERISA preempts §405, the Court rejects the State's and the Unions' argument that §405, as part of Montana's prevailing wage statute, is a neutral law of general applicability. These parties argue that the fundamental purpose of the statute is to ensure that "all workers receive the same contribution toward fringe benefits, regardless [of] whether a collective bargaining agreement, an employment contract or a benefit plan exists." See Brief in Support of Commissioner's Motion for Summary Judgment, at 7. Thus, the State and Unions maintain the §405 is analogous to a minimum wage law, and merely represents an exercise of Montana's traditional police powers. In short, they argue that §405 is a "neutral" statute, that has only an incidental effect on ERISA plans, if, in fact, it has any effect at all.

The Court generally agrees that Montana's prevailing wage statute is not preempted by ERISA. Section 18-2-403(2), M.C.A., for example, requiring public works contractors to pay their employees the "standard prevailing wage" including fringe benefits, is a valid expression of the state's interest in protecting local wage standards. As mentioned above, "Congress

5/ The Court recognizes that §405 was originally enacted in 1931, well before Congress passed ERISA. Nevertheless, ERISA's preemption provision applies to "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." Retirement Fund Trust, 909 F.2d at 1269 (quoting 29 U.S.C §1144(a)).

did not intend to preempt areas of traditional state regulation" in passing ERISA. Metropolitan Life, 471 U.S. at 740.

Nevertheless, §405 goes beyond a traditional manifestation of Montana's police powers and is not a "neutral" statute. By its very terms, §405 treats the fringe benefit contributions of employers using union labor differently from the fringe benefit contributions of employers using non-union labor: "Whenever the employer is not [a] signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages." Mont. Code Ann. §18-2-405. Section 405 clearly discriminates between employers using a unionized workforce and employers using non-union labor. The Court therefore rejects the State's and Unions' contention that ERISA does not preempt §405 because it is a neutral law of general applicability.

Conclusion

ERISA preempts any state law that "relates to" and "purports to regulate," either directly or indirectly, employee health, welfare, and pension plans. The Court finds as a matter of law that §18-2-405, M.C.A., discourages fringe benefits contributions to ERISA plans by employers using non-union laborers. As a consequence of these lower contributions, the administration of ERISA plans in Montana will be directly affected. Thus, §405 has a sufficient

connection with, and effect on, the administration of ERISA benefit plans to warrant preemption under 29 U.S.C. §1144(a).

Furthermore, by allowing employers using unionized labor to contribute freely to ERISA plans, while requiring employers using non-unionized laborers to pay fringe benefits in cash before making ERISA plan contributions, §405 turns ERISA's provisions into a device to promote unionization of Montana's workforce. Congress expressed no such preference for union labor in passing ERISA, and Montana law cannot indirectly inject such a goal into a federal statutory scheme. Section 405 must be preempted for this reason as well.

In so ruling, the Court limits the preemptive effect of ERISA to those fringe benefits that implicate the concerns of the federal statute--employee welfare benefit plans and employee pension plans. Montana may still require those employers who are not signatories to collective bargaining agreements to pay other fringe benefits as cash wages.

For the foregoing reasons,

IT IS ORDERED that plaintiffs' Motion for Summary Judgment be and hereby is granted. Section 18-2-405, M.C.A., is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1144(a) to the extent that it requires employers who are not signatories to collective bargaining agreements to pay as cash wages any health, welfare, and pension benefits that they would otherwise contribute to

federally approved ERISA benefit plans, as defined by 29 U.S.C. §1002 and elsewhere in ERISA.

IT IS FURTHER ORDERED that defendant's and defendant-intervenors' Motions for Summary Judgment be and hereby are denied.

The Clerk is directed forthwith to notify counsel for the respective parties of the making of this Order.

Done and dated this 19th day of February, 1991.

James H. Hancock
Senior U.S. District Judge

ORDER\8967\02

EXHIBIT #8
DATE 3/9/93
HB SB329

LABOR 3/9/93

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TO: Members of House Labor and Employment Committee

FROM: Dorsey & Whitney

DATE: March 9, 1993

RE: SB 329

The 52nd Legislature in 1991 enacted HB 591, which provides as follows:

> A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

That bill has been codified in the public contract laws at Section 18-2-403(4). At least three significant problems have arisen relating to this law: (1) it is not clear what bonds are referred to in the phrase "tax-exempt industrial revenue bonds"; (2) because the law is not codified or referred to in any of the statutes relating to the issuance of tax-exempt bonds, most issuers and underwriters of bonds, bond counsel, borrowers and others working with tax-exempt bonds have been unaware of the law, with the result that the law may often but inadvertently have been violated; and (3) because the law refers to "a contract let for a project" it is not clear how it applies in the case of a total construction program of which a bond-financed project might be but a part.

We encourage this committee and the legislature to approve legislation which would: (1) clarify which type of bonds the prevailing wage requirement applies to, (2) direct that the provision be codified or referred to in the appropriate bond statutes, (3) clarify how it applies to large undertakings of which bond-financed projects are but a part, and (4) establish that if and to the extent the prevailing wage

requirement applies to bond-financed projects, it applies only to projects financed by bonds issued after the effective date of the clarifying legislation.

Background of HB 591. HB 591 was introduced in the 1991 session as a bill entitled "A Bill to Require that a Contract Let for a Project Costing More Than $25,000 and Receiving a State Tax Exemption Contain a Provision Requiring the Contractor to Pay the Standard Prevailing Wage." Even though HB 591 was amended in the House Taxation Committee to substitute the term "financed in whole or in part by tax-exempt industrial revenue bonds" for "receiving a state tax exemption," a significant change in concept, the status sheet through the legislative session continued to define the bill as "Prevailing Wage Law Applies to Tax Exempt Project". This may explain, at least in part, why persons involved with the issuance of tax-exempt industrial revenue bonds did not attend the committee meetings, did not offer comments in 1991, and were generally not aware of the passage of the law. I have reviewed the testimony on HB 591 before both the House Taxation Committee and the Senate Taxation Committee, and do not find anywhere a clear statement of the intent of the sponsor of the legislation as to the applicability of the proposed legislation. Those minutes also reflect a misunderstanding of "tax-exempt industrial revenue bonds." To aid the Committee in appreciating the problem which the law has created and determining how to amend the law, we think it might be helpful to describe the term "tax-exempt industrial revenue bonds", who issues them in Montana and for what purposes.

Overview of Industrial Revenue Bonds. Before 1968, the Internal Revenue Code permitted the issuance of state and local bonds on a tax-exempt basis even if the proceeds of the bonds were used completely for private purposes. As a general rule, State statutes authorized the issuance of such bonds where the State or local government found that tax-exempt financing could serve, foster or encourage within its jurisdiction a public interest or public purpose, such as economic development and job creation through industrial, manufacturing, and commercial projects. Similarly, tax-exempt financing was made available to organizations providing goods and services of benefit to the community, such as hospitals and other health care facilities, pollution control facilities, multifamily housing, hydroelectric facilities and recreation facilities. The State statutes authorizing these bonds generally characterized them as industrial revenue bonds ("IRB's"), industrial development bonds ("IDB's"), or economic development bonds. In 1968, Congress amended the Internal Revenue Code to include a definition of "industrial development bond". In essence an industrial development bond was an issue of bonds more than 25% of the proceeds of which was used in the trade or business of a

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non-exempt person and more than a major portion of the principal and interest of which was secured by, or was to be derived from, payments in respect of property used in a trade or business. With the 1968 amendment interest on industrial development bonds became subject to federal income taxation unless the bonds were within one of several exceptions.

The state or municipality issuing industrial development bonds was rarely if ever the obligor on the bonds. Most often, the issuer would loan the proceeds of the bonds to the private borrower, who would agree to use the proceeds to construct or acquire a particular facility and to repay the loan at times and in amounts sufficient to pay the principal of and interest on the bonds when due. In Montana, like most states, the enabling legislation provided that the issuer had no pecuniary liability on the bonds so issued. Since no public money was involved, other than the proceeds of the bonds which were repayable by the private borrower, and the project was not a public facility, such projects have not generally been subject to the competitive bidding requirements or other laws applicable to public projects or contracts. Similarly, recognizing the private character of the bond-financed projects, the projects are normally subject to property taxes, unless the financing itself is for a tax-exempt organization, such as a hospital.

Over the years and particularly since 1986, the restrictions on tax-exempt financing for the benefit of private parties have increased. With the adoption of the Internal Revenue Code of 1986, the term "industrial development bonds" or IDB's" as they were called, was removed from the Code. Instead, the 1986 Code now refers to "private activity bonds," which are defined so as to include all bonds which were industrial development bonds but also includes a variety of other bonds which were not industrial development bonds.

Under the Code as it currently exists, private activity bonds bear interest exempt from federal income taxes only if they satisfy many statutory requirements and regulations and are issued for one of the following purposes:

A. Exempt Facilities Bonds
   (1) airports,
   (2) docks and wharves,
   (3) mass commuting facilities,
   (4) facilities for the furnishing of water,
   (5) sewage facilities,
   (6) solid waste disposal facilities,

(7) qualified residential rental projects,
(8) facilities for the local furnishing of electric energy or gas,
(9) local district heating or cooling facilities,
(10) qualified hazard waste facilities, or
(11) high-speed intercity rail facilities;

B. Qualified Student Loan Bonds; or

C. Qualified 501(c)(3) Bonds (this includes hospitals).

In Montana, there are currently five entities that are specifically authorized to issue "private activity bonds". In addition, the State, through the Board of Examiners, may issue bonds which would generally be deemed to be "private activity bonds" for purposes of the Code, even though the facility financed is owned and operated by the State. The Broadwater Dam project is a good example. Similarly, cities are authorized by Title 7, chapter 7, part 44, to issue revenue bonds to finance various facilities, including airports and public parking facilities; such bonds, because of the "non-governmental use" of the facilities, may also be private activity bonds. In addition, cities and now counties are authorized to issue tax increment bonds for certain purposes and some of such bonds may also constitute private activity bonds. To complicate matters further, they may bear interest that is not tax-exempt for federal tax purposes.

1. Cities and counties have been authorized since 1965 under the provisions of Title 90, Chapter 5, Part 1, MCA, to issue bonds to finance projects for "commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, or medical facilities; higher education facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; and any combination of these projects." Bonds issued to finance some of these projects, even though permitted by Montana law, would no longer qualify for federal tax exemption. While the title of Chapter 5 of Title 90 is "Industrial Development Projects," the statute itself does not use that term with reference to bonds issued under that law. (Generally, the title of the bonds would reflect the nature of the project for which the bonds were being issued, for example, "Hospital Revenue Bonds", "Solid Waste Facility Bonds" and would not likely be called "Industrial Revenue Bonds.") Was it the intent of HB 591 that the prevailing wage requirement extend to all types of bonds issued by cities and towns under this Act?

2. The Board of Investments is authorized to issue bonds for the same types of projects as those for which cities and counties may issue bonds, under the Economic Development Bond Act of 1983. As with the cities and counties, some of the authorized purposes may no longer be eligible for tax-exempt financing under the Code.

3. The Montana Health Facility Authority (the "MHFA") is authorized by Title 90, Chapter 7, Part 3, to issue bonds for eligible health facilities that are owned and operated by nonprofit corporations. Under this statute, the MHFA provides tax-exempt financing to hospitals, as well as small nonprofit corporations which construct, with tax-exempt bonds, facilities such as day care centers and group homes in local communities, which may in turn provide services to State clients on a contract basis with the State.

4. The Montana Board of Housing is authorized under Title 90, Chapter 6, Part 1, to issue bonds to finance both single family and multifamily housing.

5. The Montana Higher Education Student Assistance Corporation is authorized to issue Qualified Student Loan Bonds. Since those bonds would not finance projects within the meaning of 18-2-403(4), those bonds probably are not at issue here.

Under current Montana law, interest on bonds issued by Montana governmental entities is exempt from state income tax, whether or not such interest is exempt from federal income tax.

Currently, the laws governing the issue of private activity bonds by the Board of Investments and cities and counties do require contracts for the construction of bond financed projects to require that contractors give a preference to Montana labor. See 90-5-114, 17-5-1526 and 17-5-1527, MCA.

Current State of Confusion. Since HB 591 did not define the term "tax-exempt industrial revenue bonds," it is difficult to determine to which of the bonds described above the legislation was meant to apply. Because the Code no longer uses the term "tax-exempt industrial revenue bonds" (and did not include the term when HB 591 was passed), there is no extraneous definition to assist in interpretation. Under the 1954 Code definition (i.e., pre-1986), bonds issued to finance hospital projects owned and operated by a 501(c)(3)organization, would not

in most cases be industrial revenue bonds, but such bonds are likely to be private activity bonds under the 1986 Code. The committee minutes shed some light on the intent, but are in themselves confusing. It appears from the February 14 hearing in the House Taxation Committee, that the proponents believed that taxes or other public money was being used for the projects being financed. Two separate statements indicated that because the contractors were being paid from public funds to complete the projects, there was no reason to not make them subject to the prevailing wage. (Perhaps because of the discussion about public monies being used for these types of projects, it was deemed appropriate to codify HB 591 in Title 18, which is the title reserved for Public Contracts. No other provisions of the public contract law apply to projects financed with tax-exempt bonds, except the Montana labor preference which is clearly indicated in provisions of the pertinent bond law.) It is unclear, however, that the decision to require prevailing wage rested on whether public funds were actually being used. One proponent indicated an intent to have the provision apply when cities, counties and the State were issuing tax-exempt bonds to promote industrial and commercial expansion.

One proponent indicated that it was not the intent to have it apply to Board of Housing programs. It was suggested that an amendment would be offered to exempt the Board of Housing, but it does not appear that such an amendment was offered. No mention was made of an intent to have the statute apply to hospitals or other health care projects, but subsequently to enactment of the legislation a proponent has contended that its intent was to have it apply to hospitals.

Uncertainty as to Meaning of "Project". HB 591 by its terms applies to "a contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds." The term "project" is also used in the laws we referred to above which authorize the issuance of certain types of state and municipal bonds. If bonds are issued to finance a "project" which is but one component of a facility, it seems reasonable to interpret HB 591, if applicable, as meaning the bond-financed project, but it is also possible because of the phrase "financed in whole or in part" that the "project" under HB 591 is the total facility of which the bond-financed project is but a part. For example, the City of Great Falls has announced its intent to issue tax increment industrial infrastructure bonds to finance certain public improvements (streets, sewers, utilities, etc.) related to the American Ethanol project. The tax increment bonds will be issued in the approximate amount of $10,000,000-$12,000,000, but the total costs of the project are expected to be $80,000,000-$90,000,000. The contract for the improvements financed by the City's bonds would be subject to the prevailing wage law because the contract

would be a public contract as public money is being used to finance the improvements. There is a question under the statute whether the use of the tax increment bonds would cause the remainder of the project to be subject to the prevailing wage law. This uncertainty should be eliminated and would be eliminated in two respects by the adoption of the amendments proposed by Senator Klampe.

Policy Decision. We do not discuss whether it is good public policy to require that contracts for construction of projects financed in whole or in part with bonds which are private activity bonds under the Internal Revenue Code should contain a provision that the contractor pay the prevailing wage. That is obviously a policy decision for the legislature, and no doubt arguments may be made on both sides of this issue. (It should be noted, however, that the issuance of tax-exempt bonds is one of the few economic development tools that governmental entities in Montana have. We have not undertaken a survey of other states to determine how many require the payment of prevailing wages as a condition for tax-exempt bonds, but we do know that a substantial number of our neighboring states do not.) Our concern as lawyers, and more specifically as bond counsel and as counsel for state and local governments issuing private activity bonds, is that whatever the legislative decision, it should be expressed clearly. We think HB 591 is not clear and that parties most affected by its provisions (issuers and borrowers alike, as well as financial advisors and legal counsel) have not been aware of its existence. We therefore recommend that it be reconsidered and that if the prevailing wage requirement is retained, that it be clarified and made effective to contracts entered into with respect to bonds issued after a future date (e.g., July 1, 1993).

SB 329, as amended, would: (1) require the prevailing wage be paid on all contracts in excess of $25,000 for projects financed by tax-exempt revenue bonds; and (2) codify the requirement in the sections of law authorizing cities and counties, the Board of Investments and the Montana Health Facility Authority to issue tax-exempt bonds; and (3) provide that the provisions will be applicable for projects financed with bonds issued after July 1, 1993. As amended, the legislation no longer uses the term tax-exempt and instead refer to bonds issued by the entities described in the bill. This seems consistent with what we now understand to be the original intent and avoids having to try to define in the statute the terms "tax-exempt bond", "private activity bond" or "industrial revenue bond".

Re: Executive Action in Labor Committee

Date: 3/9/93

Caelyn Squires is designated to provide my vote by proxy

Caelyn Hess

3/9/93

0730

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR COMMITTEE BILL NO. SB 342

DATE 3/9/93 SPONSOR(S) WILSON

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Sonny Lockman	MCA Trusts		✓
[illegible]	Salem	X	
Darrell Holzer	mt. st. AFL-CIO	X	
Carl Schweitzer	Mt Const Assoc		—
Ron N. Jones	Ironworkers	X	
Pam Egan	Mt Family Union AFL-CIO	X	
[illegible]	MT Coop Elect Assn	—	
CARS ERICSON	MT ST CARPENTERS	—	

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Gary Feda	Sabra Dunn	✓	
Darrell Holzer	Mt. St. AFL-CIO	✓	
J. Bruce Morris	Carpenters Union	✓	
Ron H. James	Ironworkers Union	✓	
Pam Egan	Mt Family Union AFL-CIO	✓	
Roger Tippy	Mt Beer & Wine Wholesalers	(Amend)	
Jacqueline Lenmark	Am. Ins. Assoc.	✓	
Mike Egan	MT Coop. Elect Assn	✓	
CARS ERICSON	MT ST. CARPENTERS	✓	

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LABOR COMMITTEE BILL NO. SB223

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Charles R. Brooks	MT Ref. L Assoc	X	
SHARON HOFF	MT CATHOLIC CONF	X	
Darrell Holzer	mt. St. AFL-CIO	X	
Chuck Wells	MT Newspaper Assn	X	
D. Bruce Morris	Carpenters Union	✓	
Lorna Frank	MT. Farm Bureau	X	
Pam Egan	MT Family Union	X	
CHUCK HUNTER	D.O.L.I.	X	
Nancy Coopersmith	OPI	X	
John Maher	MFT/MFSE	X	
Ron James	Ironworkers Lo 841	X	

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. SB 223

DATE 3/9/93 SPONSOR(S) Bartlett

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Phil Campbell	MEA	X	
Wendy Remingham	Teens	X	
Jessica Barron	Teens	X	
Tim McCauley	Self	X	
David Cowgill	MT Chamber of Commerce	-	
Tom Paxton	ALTERNATIVE H.S. Helena	X	
JAMIE DOGGETT	MT Cattlewomen	X	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR COMMITTEE BILL NO. SB 329

DATE 3/9/93 SPONSOR(S) KLAMPE

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ernie Fenderson	Salon	without amendment	
Russ Ritter	Wash Corp	X	
Darrell Holzer	Mt. St. AFL-CIO	w/o amend X	
Ron James	Ironworkers	X	
Mike Logan	MT Conf. Sheet Wkrs	X	

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