

MINUTES

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

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Tom Towe, on March 9, 1993, at 3:03 PM

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None

Staff Present: Eddy McClure, Legislative Council
Kelsey Chapman, Committee Secretary

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

Committee Business Summary:

Hearing: HB 208, HB 445
Executive Action: HB 445, HB 296, HB 208, HB 259, HB 472,
HB 526, HB 287.

HEARING ON HB 445

Opening Statement by Sponsor:

Representative Scott McCulloch, House District 96, told the Committee HB 445 would allow for individuals to attend adult basic education classes while receiving unemployment insurance. Currently the MCA 39-512-37 prohibits any person receiving unemployment from attending any education institution. HB 445 would allow an exemption of this law so an adult could continue or start an adult basic education class while laid-off, and still receive unemployment benefits. The individual is still required to look for work and return to work when a job becomes available. Representative McCulloch told the Committee this would allow for one to better the chances of returning to work. The fiscal impact is minimal, and would cause no drain on the unemployment insurance fund. Representative McCulloch read a statement from

Daryl Wacker, who spent three months before the Board of Labor Appeals for the right to attend school for math and reading improvement. He was allowed to attend these classes when the appeal came back.

Proponents' Testimony:

Mary Dvaresklser, Adult Basic Education Program, School District #2, Billings, told the Committee there were people having to drop out of education when they lost their jobs, due to the current law. Most adult education programs are open entry, open exit programs, meaning the student can begin or leave classes at any time without any penalty. She said education is critical to meet the requirements of higher standards of English, computers and math of the changing job market. The student seeking to attend adult basic education courses has already paid for the courses through the taxation system. The classes are flexible to allow for a person to leave to work. The adult basic education programs also provide career information which would provide an opportunity for the unemployed student to find work.

Jim Tutwiler, Montana Chamber of Commerce, told the Committee HB 445 would allow an unemployed student to receive education that would help get the student a job.

Bill Egan, Montana Conference of Electrical Workers, said the apprenticeship programs utilized now offered similar benefits as HB 445. He said the apprenticeship programs help unemployed workers considerably.

Senator J.D. Lynch, teacher of adult basic education, said when there were lay-offs in Butte in 1983, the Butte VoTech offered retraining for the laid-off workers. These workers still received unemployment because the retraining program was Federal. Any other people unemployed could not attend schooling and receive benefits at the same time.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Aklestad asked Representative McCulloch why there was not an effective date on HB 445. Representative McCulloch said July 1, 1993, was an effective date that had been discussed, but it was not in the Bill. He said he would support an amendment to that affect.

Senator Aklestad asked Jo Ann Fenstadt, Unemployment Insurance Division, Montana Department of Labor and Industry (DOLI) if the adult basic education classes postponed a person's availability to begin work. Ms. Fenstadt said under HB 445, students must look for work and return to work when it became available.

Senator Lynch explained adult basic education was an open program. As soon as a student is called back to work, the student would leave school. There is no quarter or semester set-up.

Senator Towe asked if a person came in and paid tuition, then was called back to work the day after, what would happen. Representative McCulloch said mill levy taxes paid for adult education. Senator Lynch said there was no tuition.

Mary Dvaresklser clarified that adult education and adult basic education were different programs. Adult education is supported by tuition fees, while basic education is supported through state and local taxes.

Senator Blaylock asked Senator Towe if there was a fund to support adult education in the coal tax pie. Senator Towe said the Education Trust Fund had been eliminated.

Closing by Sponsor:

Representative McCulloch closed. He said he would like Senator Lynch to carry HB 445 on the Floor of the Senate.

EXECUTIVE ACTION ON HB 445

Motion\Vote:

Senator Lynch moved HB 445 be amended to provide July 1, 1993, as the effective date. The Motion CARRIED UNANIMOUSLY. Senator Wilson voted YES by proxy.

Motion/Vote:

Senator Lynch moved HB 445 BE CONCURRED IN AS AMENDED. The Motion CARRIED UNANIMOUSLY. Senator Wilson voted YES by proxy.

EXECUTIVE ACTION ON HB 296

Discussion:

Representative Driscoll asked SB 296 be TABLED.

Motion/Vote:

Senator Lynch moved HB 296 be TABLED. The Motion CARRIED UNANIMOUSLY. Senator Wilson voted YES by proxy.

Senator Lynch was assigned to carry HB 445.

HEARING ON HB 208

Opening Statement by Sponsor:

Representative Jerry Driscoll, House District 92, told the Committee HB 208 dealt with the Self Insurers' Guaranty Fund. There are presently 55 self-insurers in Montana who pay into the Self Insurers' Guaranty Fund. The fund guarantees if one of the self-insurers go broke, the fund will pay. HB 208 would require that a deposit made by an employer to the fund would be in an amount agreed to by the fund. The Bill would not include claims entered prior to July 1, 1989, when the fund was not in existence. The Montana Department of Labor and Industry will be able to demand deposits on that money without concurrence of the fund. HB 208 provides that if one of the self-insurers goes broke, the other 54 will have to pay through the fund. This limits the liability of the state for the self-insurers.

Proponents' Testimony:

George Wood, Executive Secretary, Montana Self Insurers' Association, and Montana Self Insurers' Guaranty Fund, told the Committee the money involved in the event of bankruptcy of one of the members would come from the rest of the members. Of the self-insurers in Montana, the schools, counties, and cities do not belong to the fund, and are not required to by statute. The other self-insurers would have to pay the claims of any bankrupt self-insurers.

Bill Egan, Montana Conference of Electrical Workers, rose in support of HB 208.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Keating asked George Wood if HB 208 would be an assigned risk pool for the self-insurers. Mr. Wood answered it was.

Senator Towe asked George Wood if the fund had concurrence power over any other issues than the deposit. Mr. Wood answered the fund had the right to concur with the ability of the employer to self-insure.

Senator Towe asked Mr. Wood if the fund had the right to disapprove and revoke an insurer's PLAN 1 operation. Mr. Wood answered that was correct.

Senator Towe asked if by "concurrence" Mr. Wood meant that if there was a refusal to consent by the fund, an action would not happen. Mr. Wood answered because the authority to approve was with the DOLI, in the event of non-concurrence, the insurer could continue a plan. Mr. Wood said he did not think the fund had absolute veto power over the insurers. Senator Towe said on the larger deposits, the fund had absolute veto power.

Senator Keating asked if there was a statute of limitations on claims. Senator Towe answered he assumed there would be. George Wood answered if the claim had been legally filed, there was no statute of limitations. Senator Towe said if the insurer filed within one year, and there were no legal problems, there would be no limit.

Senator Aklestad asked George Wood what the cap was on the security deposit. Mr. Wood answered the deposit was set on the number of outstanding claims (\$250 thousand to \$2 million).

Closing by Sponsor:

Representative Driscoll told the Committee this was a good way for DOLI to limit its liability.

EXECUTIVE ACTION ON HB 208Motion\Vote:

Senator Blaylock moved HB 208 BE CONCURRED in. The Motion CARRIED UNANIMOUSLY with Senator Wilson voting YES by proxy.

Senator Lynch was assigned to carry HB 208.

EXECUTIVE ACTION ON HB 259

Motion\Vote:

Senator Aklestad moved HB 259 BE CONCURRED IN. The Motion CARRIED UNANIMOUSLY, with Senator Wilson voting YES by proxy.

Senator Christiaens was assigned to carry HB 259.

EXECUTIVE ACTION ON HB 472

Motion\Vote:

Senator Keating moved amendments HB047201.AEM be adopted. The motion CARRIED UNANIMOUSLY, with Senator Wilson voting YES by proxy.

Motion:

Senator Keating moved HB 472 BE CONCURRED IN AS AMENDED.

Discussion:

Senator Lynch asked if the employee could set the employee's own hours. Senator Towe answered this provision had been taken out of HB 472.

Senator Lynch asked that someone clarify that if an employee could not set the hours, that employee would not receive overtime either. Senator Towe said he was correct.

Senator Lynch said without HB 472, the employer had more salary protection. Without the Bill, the employee would get paid overtime, but with the Bill, the employer would be exempt from paying the employee overtime in some cases.

Senator Keating explained that without HB 472, the employer would not let the employee work overtime. The employer would not allow the employee to go beyond 40 hours per week, in order to improve commissions.

Senator Towe explained under HB 472 if the employee earns in a month what would average out to \$6 per hour, or earns more than half the salary in commissions, the employer would not have to pay overtime. If these exceptions do not apply, the employer has to pay overtime.

Vote:

The Motion HB 472 BE CONCURRED IN CARRIED, with Senator Keating, Senator Towe, Senator Burnett, Senator Blaylock, and Senator

Aklestad voting YES. Senator Lynch voted NO, and Senator Wilson voted NO by proxy.

Senator Keating was assigned to carry HB 472.

EXECUTIVE ACTION ON HB 526

Discussion:

Senator Keating said if the Montana Department of Labor and Industry was in an investigation of fraud or abuse of workers' compensation or unemployment, they could receive information from the Montana Department of Revenue, even without SB 526. He continued that SRS wanted information from DOLI. Instead of giving SRS the right to get information from the Montana Department of Revenue, HB 526 requires SRS to go to DOLI to get information DOLI has received from the Montana Department of Revenue.

Senator Towe asked why amendments HB052601.AEM referred to "7B" instead of "7C" on line 24, Page 2. Senator Towe asked if this should be changed. Eddy McClure clarified this should be amended to read "7C".

Motion:

Senator Lynch Moved amendments HB052601.AEM be amended, and as so amended be Adopted.

Discussion:

Eddy McClure said Senator Towe did want SRS to be able to request information directly from the Montana Department of Revenue. The amendments make it so SRS would be able to go to both DOLI and Montana Department of Revenue for information.

Senator Aklestad asked if the amendments would go against the sponsor's intent for HB 526. Senator Keating answered the amendments only changed the channel through which the SRS could receive information.

Vote:

The Motion to Adopt amendments HB052601.AEM CARRIED UNANIMOUSLY. Senator Wilson voted YES by proxy.

Motion\Vote:

Senator Lynch moved HB 526 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY. Senator Wilson voted YES by proxy.

Senator Aklestad was assigned to carry HB 526 on the Floor.

EXECUTIVE ACTION ON HB 287

Discussion:

Eddy McClure explained she was waiting for an amendment, but had Senator Lynch's amendments ready (HB02701.AEM). Senator Lynch asked Jim Murphy, State Fund, to speak to the amendments adopted by the House Labor Committee.

Jim Murphy, State Fund, explained the House amendments.

Senator Towe asked if there was a problem with obtaining information at the present. Mr. Murphy answered there was not any to his knowledge. He continued that some information was available.

Senator Towe asked where the State Fund obtained this information. Jim Murphy answered the fund obtained it through the accounting system.

Senator Towe asked if HB 287 was directed only at the State Fund. Jim Murphy answered that it was. Senator Keating said it did not make any sense for the State Fund to obtain information but not the private carriers and self-insurers.

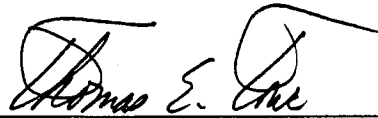
Motion/Vote:

Senator Blaylock moved the amendment (HB028701.AEM) be Adopted. The motion CARRIED UNANIMOUSLY, with Senator Wilson voting YES by proxy.

Further action on HB 287 was delayed.

ADJOURNMENT

Adjournment: 4:00 PM



SENATOR THOMAS E. TOWE, Chair



KELSEY CHAPMAN, Secretary

TET/kc

ROLL CALL

SENATE COMMITTEE LABOR & EMPLOYMENT REL. DATE 3/9/93

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GARY AKLESTAD	X		
SENATOR TOM KEATING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR J.D. LYNCH	X		
SENATOR JIM BURNETT	X		
SENATOR BILL WILSON	X		
SENATOR TOM TOWE	X		

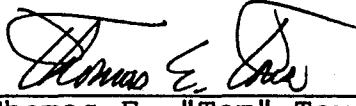
Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 208 (first reading copy -- blue), respectfully report that House Bill No. 208 be concurred in.

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

m Amd. Coord.
11 Sec. of Senate

J. D. Lynch
Senator Carrying Bill

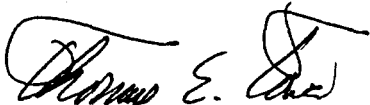
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 259 (first reading copy -- blue), respectfully report that House Bill No. 259 be concurred in.

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

m Amd. Coord.
111 Sec. of Senate

Christiaens
Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 445 (first reading copy -- blue), respectfully report that House Bill No. 445 be amended as follows and as so amended be concurred in.

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

That such amendments read:

1. Title, line 7.
Following: "BENEFITS;"
Strike: "AND"

2. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 3, line 21.
Following: line 20
Insert: "NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 1993."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 472 (first reading copy -- blue), respectfully report that House Bill No. 472 be amended as follows and as so amended be concurred in.

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

That such amendments read:

1. Title, line 7.

Following: "LAWS"

Strike: "WHEN"

Insert: "IF THE EMPLOYEE'S REGULAR RATE OF PAY EXCEEDS 1 1/2
TIMES THE MINIMUM HOURLY RATE APPLICABLE UNDER THE FAIR
LABOR STANDARDS ACT OF 1938 AND IF"

2. Page 7, lines 23 through 25.

Following: "establishment" on line 23

Strike: remainder of line 23 through "SCHEDULE, when" on line 25

Insert: "if the employee's regular rate of pay exceeds 1 1/2
times the minimum hourly rate applicable under section 206
of the Fair Labor Standards Act of 1938 and if"

-END-

M- Amd. Coord.
W Sec. of Senate

Keating
Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 10, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 526 (first reading copy -- blue), respectfully report that House Bill No. 526 be amended as follows and as so amended be concurred in

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

That such amendments read:

1. Title, line 13.

Following: "INDUSTRY"

Strike: "AND"

Insert: "; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO REQUEST CERTAIN TAX INFORMATION FROM "

2. Page 2, lines 19 and 20.

Following: "FROM" on line 19

Strike: ":" on line 19 through "(I)" on line 20

3. Page 2, lines 22 and 23.

Following: "BENEFITS" on line 22

Strike: "; AND" on line 22 through "(II)" on line 23

Insert: ". If the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers' compensation, or occupational benefits, the department of labor and industry may request information from"

4. Page 2, line 24.

Following: "15-30-303"

Strike: "(7)(B)"

Insert: "(7)(c)"

5. Page 7, line 23.

Strike: "NECESSARY TO IDENTIFY"

Insert: "on whether"

6. Page 7, lines 23 and 24.

Following: "TAXPAYER" on line 23

Strike: "AS"

Insert: "who is the subject of an ongoing investigation by the department of labor and industry is"

Following: "EMPLOYEE," on line 23

Strike: "AS"

Following: "OR" on line 24

Strike: "AS"

-END-

m Amd. Coord.
W Sec. of Senate

AKlestad
Senator Carrying Bill

541008SC.Sma

ROLL CALL VOTE

SENATE COMMITTEE LABOR

BILL NO. HB 472

DATE 3/9/93

TIME 3:30

A.M. P.M.

NAME	YES	NO
Senator Aklestad	X	
Sen. Keating	X	
Sen. Blaylock	X	
Sen. Lynch		X
Sen. Burnett	X	
Sen. Wilson		X
Sen. Towe	X	

SECRETARY

Sen. Tom Towe
CHAIR

MOTION: motion by Senator Keating that
HB 472 be concurred in.

Amendments to House Bill No. 445
Third Reading Copy

For the Senate Committee on Labor and Employee Relations

Prepared by Eddy McClure
March 9, 1993

1. Title, line 7.

Following: "BENEFITS;"

Strike: "AND"

2. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 3, line 21.

Following: line 20

Insert: "NEW SECTION. Section 3. {standard} Effective date.

[This act] is effective July 1, 1993."

Amendments to House Bill No. 472
Third Reading Copy

Requested by Senator Towe
For the Senate Committee on Labor and Employee Relations

Prepared by Eddy McClure
March 3, 1993

1. Title, line 7.

Following: "LAWS"

Strike: "WHEN"

Insert: "IF THE EMPLOYEE'S REGULAR RATE OF PAY EXCEEDS 1 1/2
TIMES THE MINIMUM HOURLY RATE APPLICABLE UNDER THE FAIR
LABOR STANDARDS ACT OF 1938 AND IF"

2. Page 7, lines 23 through 25.

Following: "establishment" on line 23

Strike: remainder of line 23 through "SCHEDULE, when" on line 25

Insert: "if the employee's regular rate of pay exceeds 1 1/2
times the minimum hourly rate applicable under section 206
of the Fair Labor Standards Act of 1938 and if"

employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) of this section if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 206 of this title (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(g) *Employment at piece rates*

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understand-

ing as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) of this section are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) *Extra compensation creditable toward overtime compensation*

Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) of this section shall be creditable toward overtime compensation payable pursuant to this section.

(i) *Employment by retail or service establishment*

No employer shall be deemed to have violated subsection (a) of this section by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 206 of this title, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) *Employment in hospital or establishment engaged in care of sick, aged or mentally ill*

Amendments to House Bill No. 526
Third Reading Copy

Requested by Senator Towe
For the Senate Committee on Labor and Employee Relations

Prepared by Eddy McClure
March 4, 1993

1. Title, line 13.
Following: "INDUSTRY"
Strike: "AND"
Insert: "; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO
REQUEST CERTAIN TAX INFORMATION FROM "
2. Page 2, lines 19 and 20.
Following: "FROM" on line 19
Strike: ":" on line 19 through "(I)" on line 20
3. Page 2, lines 22 and 23.
Following: "BENEFITS" on line 22
Strike: "; AND" on line 22 through "(II)" on line 23
Insert: ". If the department of labor and industry discovers
evidence relating to fraud or abuse for unemployment,
workers' compensation, or occupational benefits, the
department of labor and industry may request information
from"
4. Page 2, line 24.
Following: "15-30-303"
Strike: "(7) (B) "
Insert: "(7) (c) "
5. Page 7, line 23.
Strike: "NECESSARY TO IDENTIFY"
Insert: "on whether"
6. Page 7, lines 23 and 24.
Following: "TAXPAYER" on line 23
Strike: "AS"
Insert: "who is the subject of an ongoing investigation by the
department of labor and industry is"
Following: "EMPLOYEE," on line 23
Strike: "AS"
Following: "OR" on line 24
Strike: "AS"

DATE March 9, 1993

SENATE COMMITTEE ON LABOR: Employment Relations

BILLS BEING HEARD TODAY: HB 208 - DRISCOLL, HB 445 - McCULLACH

~~HB 269 - CANCELLED~~

Name	Representing	Bill No.	Check One	
			Support	Oppose
MICHAEL S. MIZENKO	MONT ST. ASSO OF PLUMBERS & FITTERS MONT ST Bldg & CONST COUNCIL	208	X	
MICHAEL S. MIZENKO	MONT ST. ASSO OF PLUMBERS & FITTERS MONT ST Bldg & CONST COUNCIL	296	X	
LARS ERICSON	MT ST CARPENTERS	208	X	
DENNIS ZELER	DEPT. OF LABOR & INDUSTRY	208 296		
Mary Drevish	Adult Educ. School Dist	HB 445	X	
George Wood	Self Insured Ann	HB 208		
Jim Twiliter	MT CHAMBER	HB 445		✓
Tom Taylor	MT. Conf. Electricians	208 296		✓
Sam Walker	Self Ins. Associates	HB 208		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY