

**MINUTES**

**MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By **CHAIRMAN TOM KEATING**, on February 9, 1995, at 1:00 p.m.

**ROLL CALL**

**Members Present:**

Sen. Thomas F. Keating, Chairman (R)  
Sen. Gary C. Aklestad, Vice Chairman (R)  
Sen. Steve Benedict (R)  
Sen. Larry L. Baer (R)  
Sen. James H. "Jim" Burnett (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Sue Bartlett (D)

**Members Excused:** Senators excused to present bills in another hearings:  
Sen. Fred R. Van Valkenburg (D)  
Sen. Bill Wilson (D)

**Members Absent:** None.

**Staff Present:** Eddy McClure, Legislative Council  
Mary Florence Erving, Committee Secretary

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

**Committee Business Summary:**

Hearing: None

Executive Action:	SB 179	TABLED
	SB 264	DO PASS AS AMENDED
	SB 238	DO PASS AS AMENDED
	SB 85	DO PASS
	SB 201	DO PASS AS AMENDED

*{Tape: One; Side: One}*

**EXECUTIVE ACTION ON SB 179**

**Motion:**

SENATOR WILSON MOVED SB 179 DO PASS

**Discussion:** None.

Motion/Vote:

SENATOR WILSON MOVED SB 179 DO PASS. The motion FAILED with SENATORS BAER, BENEDICT, BURNETT, EMERSON, AKLESTAD, AND KEATING voting NO.

Motion:

SENATOR BENEDICT moved to TABLE SB 179.

Discussion:

SENATOR BENEDICT stated he did not favor a floor fight on SB 179.

Motion/Vote:

SENATOR BENEDICT moved to TABLE SB 179. The motion PASSED with SENATORS BARTLETT, VAN VALKENBURG, AND WILSON voting NO.

EXECUTIVE ACTION ON 264

Motion:

SENATOR AKLESTAD MOVED SB 264 DO PASS.

Discussion:

Eddy McClure directed the committee's attention to amendment SB 026403.AEM, dated February 7, (EXHIBIT 1) On amendment #4, there is a word change. Change the word "strike" to "insert". SENATOR GAGE agreed on the amendment 26402.(EXHIBIT 2) The amendment was distributed February 7th. The amendment 26403 is the State Fund, Department of Labor and Jacqueline Lenmark's consensus amendment. It was drawn up separately from SENATOR GAGE's amendment.

CHAIRMAN KEATING stated consideration will be made on the SB026403.AEM amendments, first.

Motion:

SENATOR BENEDICT moved to AMEND SB 264 (SB026403.AEM)

Discussion:

SENATOR BENEDICT stated the amendments SB026403.AEM were proposed by the State Fund. A consensus group was put together. Agreement was between the State Fund, private insurers, Terry Keating, and Howard Recht. Eddy McClure stated the first amendment was done for internal reference. A new section was added. Number 1 through 14 was replaced by the new 1 through 15. CHAIRMAN KEATING stated the first amendment corrects a technical/clerical matter. Number 2 is on page 2, line 6. and

strikes "person" and inserts "professional employer organization (PEO)". "An employee leasing arrangement means a leasing arrangement by contract under which a person hires its own employees and assigns the employees to work at a particular place. The word "person" means an individual company, partnership, corporation, etc.

Number 3 is on Page 4, Lines 21 and 22. **Eddy McClure** stated the amendment was drawn up to address MOD experience factors. It replaces the existing subsection 9. **CHAIRMAN KEATING** instructed committee members to strike section 9, plus the first two lines on page 12. The section is struck and then number 9 is inserted. A professional employer organization that applies for Work Comp coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experienced modification factor for each client, employer, etc. The PEO or client locations cannot "cheat" on the mod factor and obtain Workers' Compensation. On page 15, line 1, a new section is added, which provides Workers' Compensation to a client employer, etc. **CHAIRMAN KEATING** requested **Jacqueline Lenmark** to explain the amendment.

**Jacqueline Lenmark, American Insurance Association**, stated the new section 15 refers to the old subsection 9, which is related to the insurance company. The first subsection is language, already in the bill. The second is language that was recommended by the NCCI to insure recording integrity between the insurance company and the rating organization. The third section is language, modeled after NAIC's model language. The mechanism is for the insurance company to audit the insurance policies. The purpose is to ensure the mod factor is calculated correctly and the classification is correct. The language is acceptable to the State Fund, AIA, and Mr. Terry Keating.

**SENATOR AKLESTAD** asked how the first set of amendments affect the fiscal note. **Jacqueline Lenmark** stated the amendment has no adverse impact. The amendments are directed to the relationship between the company and their insurer or the NCCI. The amendment allows the data base to be used to set rates. The fiscal note, if anything, should be improved.

**Lawrence Hubbard, State Fund Compensation Insurance**, stated the amendment should not affect the fiscal note. The State Fund will notify policy holders about the legislation and the coverage availability.

**SENATOR AKLESTAD** asked who gets the experience rating. **Jacqueline Lenmark** stated the experience rating stays with the client employer. **SENATOR KEATING** explained the professional employment organization and the client location are co-employers. The PEO will be the employer for purposes of providing Workers' Compensation insurance. However, the modification factor will be applied to the client location. So, the employees of the client location and their experience will affect the modification

factor. Should the client location leave the PEO and go to another carrier for workers compensation, the mod factor goes with the client location.

Motion/Vote:

The motion to amend SB 264, SB026403.AEM, CARRIED UNANIMOUSLY.

Motion/Vote:

SENATOR BENEDICT moved to AMEND SB 264 (SB026401) (EXHIBIT 3).

Eddy McClure described amendment SB026401.AEM and stated the amendments were drafted by Mr. Terry Keating.

CHAIRMAN KEATING pointed the committee's attention to page 1. The definition of the Professional Employment organization is: The PEO assumes the responsibility for payment of employee wages, payroll related taxes, and employee benefits. The amendment inserts between "employees" and "payroll related taxes" the phrase, "Workers' Comp premiums", to specify that the PEO is responsible for the payment of Work Comp premiums. SENATOR AKLESTAD asked if there is financial criteria. CHAIRMAN KEATING stated the bill requires a \$50,000 net worth. A license must be obtained from the department. The unrestricted license cost will be \$700. SENATOR BENEDICT stated that if the uninsured and underinsured employer fund is still required, the PEO will also pay into that fund. SENATOR EMERSON asked if it was possible for the PEO to take over all activities described, but then refuse to pay for the Workers' Compensation. CHAIRMAN KEATING stated that under the PEO arrangement, with the client location and under the co-employment arrangement, the PEO is the employer of record, and is required by law to provide Workers' Compensation.

The second amendment is on page 9, line 21 & 22. The committee was instructed to strike the last sentence of small "a", and insert "that the disclosure must provide that the PEO..." The amendment is a minor language change. CHAIRMAN KEATING stated the PEO is an entity, a group is more than one PEO with a single owner. One person could own four PEOs.

Amendment 3 is tricky because section 9 was struck, and a new section 9 was entered. The amendment follows the new section nine, which deals with the operation of a client, as to whether or not all or a portion of the client's operation are subjected to a professional employer organization or an employee leasing arrangement. Both must be insured by the same insurer to make sure the same Workers' Comp carrier is covering all the clients operations. Amendments 4 and 5 are technical replacements. Amendment 14 allows the inspection of records by public employees. Amendment 14, page 15, changes the two title 37's to title 39's. Title 39 is the Department of Labor.

SENATOR BENEDICT stated the prior amendment changes are more technical than substantive. CHAIRMAN KEATING stated the "single" insurer is a substantive change.

Vote:

The motion to amend SB 264 CARRIED UNANIMOUSLY.

Discussion:

CHAIRMAN KEATING stated the last amendment is SB026402. On page 10, line 24, the department wants to strike "or group". In doing so, the unemployment insurance department would require separate reports for each client location from the PEO (EXHIBIT 2).

Vote:

The motion to amend SB 264, SB026402, CARRIED UNANIMOUSLY.

SENATOR BENEDICT stated the State Fund requested a conceptual amendment to correct an oversight on the third amendment, just passed. (SB0264.03.AEM) CHAIRMAN KEATING told the committee the amendment will strike lines 21 through line 22, page 4.

Motion:

The motion to amend SB 264 CARRIED UNANIMOUSLY. All amendments passed were consolidated into SB026403.AEM dated February 7th (EXHIBIT 4).

Discussion:

SENATOR BARTLETT submitted the AFL-CIO amendment. SENATOR BARTLETT stated the amendment pertains to section 10 and ends on page 12. The amendment identifies what practices are prohibited, and adds a new subsection 3. The amendment change adds "as a deceptive practice, the PEO may not enter into an agreement to assign employees to work for a person where there is a labor dispute, involving the person's facility function or enterprise." Obviously, the concern is about PEO's reputations of being in the strike breaking business or otherwise disrupting labor/management relations in difficult circumstances (EXHIBIT 5).

Motion:

SENATOR BARTLETT moved to AMEND SB 264.

Discussion:

SENATOR BENEDICT stated opposition to the amendment. The amendment was not a consensus idea; therefore, in fairness to the absent sponsor, the committee should move the bill to the floor. SENATOR BARTLETT may make amendments at that time.

**SENATOR EMERSON** asked about assigned employees. Can more employees be assigned, or are the employees employed by the business. **SENATOR BENEDICT** stated a PEO brings in employees to work for an employer. **SENATOR BARTLETT** stated the definition on page two explains in detail about a PEO. A PEO can do two things under statute. They can do a professional employer arrangement, which is co-employing. Generally, people, who had been working for a small business, choose to go into a co-employment relationship with a PEO. The business keeps the same employees, or, line 5, they do an employee leasing arrangement, where the employees are employees of the PEO. The PEO assigns the employee to work for another person. They can staff, manage or assist in the staffing and management of a facility, or they can function on an ongoing basis.

**CHAIRMAN KEATING** told **SENATOR BARTLETT** that her interpretation is correct; however, the client has every right to deny an employee the PEO assigns in the business place. Also, if the client does not like the PEO arrangement, he/she can terminate the contract. The PEO does not necessarily have the final employment say. The employee is the employee of the PEO and a co-employee of the client location. They are under a professional advisory arrangement. The client can, with 30 days notice, cancel the contract and be on their own, and the PEO has no control. So, the PEO does not necessarily have distinct control, as **SENATOR BARTLETT** stated. Although **SENATOR BARTLETT'S** interpretation of the language is accurate, the conditions are not that specific. **SENATOR BARTLETT** stated the concept may be correct in the professional employer arrangement, as defined in the bill, but a PEO can also enter into employee leasing arrangements. The employee leasing arrangement is a different set up. The PEO could, in fact, assign it's own employees to another employer's work place for a specific function.

Vote:

The motion has been made. It has been moved that the underlined language number 3, be amended into SB 264.

A roll call vote was taken with **SENATORS BAER, BENEDICT, BURNETT, EMERSON, AKLESTAD, AND KEATING** voting NO. **SENATORS BARTLETT, WILSON, AND VAN VALKENBURG** voting YES. The motion to amend SB 264 FAILED.

Motion:

**CHAIRMAN TOM KEATING** moved SB 264 DO PASS AS AMENDED.

Discussion:

**SENATOR AKLESTAD** requested a clarification on page 4, lines 21 and 22, concerning the conceptual amendment. Since section 9 was taken out of the bill, how are the recording and financial requirements satisfied. **Jacqueline Lenmark** stated the new

language in the old section and the revised language in section 9 takes care of all the recording requirements. If this language remained in the bill, it would conflict with the new section adopted in the earlier amendment. **Jacqueline Lenmark** offered an apology, since the groups had agreed previously on this amendment. **SENATOR AKLESTAD** asked how the amendment impacts the bill. **Chuck Hunter, Administrator, Employment Relations Division, Labor and Industry**, stated there is no fiscal impact, whatsoever. **Mr. Hubbard** expressed agreement.

**The DO PASS AS AMENDED motion for SB 264 CARRIED UNANIMOUSLY.**

**EXECUTIVE ACTION ON SB 238**

**Motion:**

**SENATOR FRED VAN VALKENBURG** moved SB 238 DO PASS.

**Discussion:**

**CHAIRMAN KEATING** stated the committee has moved the bill and then has taken up the amendments.

**Motion:**

**SENATOR FRED VAN VALKENBURG** moved to AMEND SB 238 (EXHIBIT 5).

**Discussion:**

**SENATOR VAN VALKENBURG** explained the amendment was suggested by the Commissioner of Higher Education's office to ensure the alternative benefit package cannot exceed the cost of the permanent employee state benefits.

**SENATOR AKLESTAD** asked if the temporary employees would have the latitude to negotiate. **SENATOR VAN VALKENBURG** answered yes.

**SENATOR EMERSON** questioned if 3 and 4 are the same. **SENATOR VAN VALKENBURG** stated the amendment deals with issues of retirement and codification, according to title 19. The benefit package negotiated cannot exceed what the individual would be entitled to under PERS.

**SENATOR AKLESTAD** asked why are labor organizations put into the bill. **Ms. McClure** offered the title identifies collective bargaining. **SENATOR VAN VALKENBURG** stated an individual person cannot negotiate. The negotiations take place between a collective bargaining agent and the university system, rather than John Doe and the university system. **CHAIRMAN KEATING** stated the essence of the bill is about the bargaining unit for temporary work, concerning university negotiating benefits. This would not preclude an individual from negotiating the best terms

possible in seeking employment or temporary services at the university. These people would not have to go through a bargaining unit to do so. **SENATOR VAN VALKENBURG** stated he did not think the amendment would relate to temporary employment of university people. These people are in a different category regarding other benefits and may be impacted. **SENATOR VAN VALKENBURG** replied they would not be impacted. The bill is not intended to allow temporary workers to draw unemployment benefits. People who go to work for the university system have to get on the state health care insurance program, after they have worked for six months. If the person only works for 90 days, and they already have a health care package with the union, etc., they may negotiate with the employer to get a different benefit. The temporary 90 day benefit can be to their advantage. **SENATOR AKLESTAD** asked if it would clarify the situation if the state dealt directly with the health benefits concerning temporary employees. **SENATOR VAN VALKENBURG** stated it would not benefit the temporaries because they want as much flexibility as possible to negotiate within the monetary guideline. The employer and employee, in this instance, are in agreement, but they would like to negotiate within the budgetary constraints, so it will work better for both. It is a win for everyone.

Motion:

The motion to amend SB 238 PASSED, with **SENATOR BURNETT** voting NO.

Mo/Vote:

The DO PASS AS AMENDED motion for SB 238 PASSED.

Discussion:

**SENATOR VAN VALKENBURG** stated to the extent the University system is hiring someone who is a skilled laborer or craft person, there will be an agreement with the local contractors, electricians or plumbers to bring someone in for a temporary job. The bill gives the people the option to negotiate an agreement with the carpenter's union.

{Tape: Tape 1, Side 2

**SENATOR KEATING** asked **SENATOR VAN VALKENBURG** if the U of M did not have a bargaining agreement, then the U of M could hire on a temporary basis. Since a union contract is in place, the affected worker is the employee that is temporary and bargained for. The bill would not supersede, but amends/substantiates the bargaining agreement.

**SENATOR BAER** asked if the packaged benefits could exceed the state mandated benefits. **SENATOR VAN VALKENBURG** referenced amendments 3 and 4, which stated "employer contribution may not



exceed the costs of the benefits the employee would otherwise be entitled to."

**SENATOR BENEDICT** stated SB 238 allows the university system to bring in skilled contractors, who, otherwise, may not have been brought in. **SENATOR EMERSON** expressed concern about busy contractors that are paid more elsewhere, and the university system not able to meet the going wage. **SENATOR VAN VALKENBURG** stated SB 238 does not prohibit the university from paying a competitive wage. The money would apply to benefits only. Permanent employees's pay would include a retirement benefit, unlike the temporary employee. SB 238 allows the temporary to accept benefits they can currently use, and not accept retirement benefits.

**SENATOR AKLESTAD** asked if SB 238 is revenue and expenditure neutral. Yes. **SENATOR VAN VALKENBURG** stated the amount cannot go higher than temporary employees, who are currently being hired, without the opportunity to negotiate for an alternative benefit package.

Vote:

The DO PASS AS AMENDED motion for SB 238 CARRIED, with SENATORS AKLESTAD, BURNETT, AND BAER voting NO.

EXECUTIVE ACTION ON SB 85

Motion:

SENATOR BENEDICT moved SB 85 DO PASS.

Motion:

SENATOR BENEDICT moved to AMEND SB 85 (SB008501.AEM) (EXHIBIT 6).

Discussion:

The amendment tightens the definition of what a public works project is to make sure the definition complies to construction projects.

**Eddy McClure** stated the definition is contained in Section 18-1-101. **SENATOR BENEDICT** amendment deals with part 4 and places that definition to a state's public work contract. The first three amendments pertain to the title and body of the bill. The fourth amendment puts in a new section 5, at the request of the Department of Administration who had concerns about the previous definition of public works contracts. The bill defines public works, to mean heavy and highway construction or construction of a building, facility, or structure by a public agency. Item "e" is the amended section. **SENATOR BENEDICT** stated the Department of

Administration explained that public works projects in other areas of law are sometimes defined as "grass seeding" or "cutting grass". The amendment allows for specificity, so it pertains only to construction projects. (Page 2, AFL-CIO amendment 5, concerning page 4, line 23) The term "public works project" is seldom used. The word will be changed to "contract". The amendment strikes the entire subsection 7, and redesigns part 4 for the Department of Administration. The state public works contract means "a contract that is let by the state and financed with state money for heavy and highway construction or construction of a building, facility, or structure. The term does not include a contract that is let by a municipality, county, school district, or other political subdivision and that is financed in part with state money. As used in this subsection, "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during constructions, alteration, repair, maintenance, and remodeling."

The rest of the amendments are basically "clean ups". The word "state" had not been used in previous statutes. (Amendment 10, page 5, line 24. The bill now defines construction so the language is not necessary. Although, the word "service" is not included. Amendment 12 is an applicability amendment, to make sure the contracts applies to contracts entered into on or after October 1, 1995.

**SENATOR KEATING** asked about Amendment 7, which says, "The term does not include a contract that is let by a municipality, county, school district, or other political subdivision and that is financed in part with state money. **Ms McClure** stated the language is in the original bill, page 4, lines 25, 26, and 27. This was part of the original definition. We have now expanded the works project, to be a contract that is "let" by the state, not "initiated" by the state and added to the original definition. **SENATOR KEATING** asked if the bill is limited to just state projects. **SENATOR BENEDICT** stated the opposite is true. The bill is limited. The only place where Little Davis Bacon Act will apply will be to State projects. The Little Davis Bacon Act is coming off local projects. **SENATOR EMERSON** asked if there is a special reason why it is not being taken off everything. **SENATOR BENEDICT** stated that could happen, if the legislature so chose. The bill was tailored because there is so much federal money funneled in to state projects. It didn't appear worthwhile to bring state projects in because the Federal Davis Bacon Act will apply, anyway.

**SENATOR AKLESTAD** asked why the compliance does not affect the 1995 summer construction workers. **SENATOR BENEDICT** stated there are contract negotiations in process and contracts are being "let", currently. It is not the intent to affect or to make contractors re-bid the contracts. **SENATOR AKLESTAD** asked if there will be Little Davis Bacon Act projects in small towns that would not be under contract. **SENATOR BENEDICT** stated he is trying to

identify the contracts that are "let bids", which is a contract procedure. The threshold is \$25,000, and anything over that amount is a "let to bid contract". The main concern is the word "project", which does not show up often in statutes.

Vote:

The motion to amend SB 85 (SB008501.AEM) CARRIED UNANIMOUSLY.

Discussion:

SENATOR BARTLETT stated the amendment concern provisions with tax exempt bonds. There are instances in which the state "lets" the contract. SENATOR BENEDICT is trying to hold local governments out from the prevailing wage requirement, but to leave those in place at the state level. SENATOR BARTLETT stated the original introduced bill deals with tax exempt bonding provisions. The amendments are designed to specify the state would still be subject to prevailing wage, even if the funding mechanism was the tax exempt bonds.

SENATOR BENEDICT stated resistance to the amendment. After discussing the amendments with Senator Bartlett, there is concern about hospitals. There are many expensive bonding projects involving hospitals. The possibility still exists that these amendment will pull them into the "web". SENATOR BENEDICT expressed concern, stating it is not his contention to force a collective bargaining agreement into law, at anytime. Senate Bill 85 does that by saying "unless the contractor performing the work is entered into a collective bargaining agreement, covering the work performed.

SENATOR BARTLETT asked for clarification. Eddy McClure stated the language is existing law. The only change was to change the word to "public works". The language was stricken in the original bill because of SENATOR BENEDICT'S request. Even if there was a small amount of state money in the school project, SENATOR BENEDICT wanted to make sure the majority of the money came from local voters, and the project would not be tied back to the state in any way.

SENATOR BENEDICT MOVED SB 85 DO PASS AS AMENDED. A roll call vote was taken. The MOTION CARRIED, with SENATORS BARTLETT, VAN VALKENBURG, WILSON, AND KEATING voting no.

EXECUTIVE ACTION ON SB 201

Motion:

SENATOR BURNETT MOVED SB 201 DO PASS.

Motion:

**SENATOR BARTLETT** moved **DO PASS AS AMENDED** and requested amendment SB020101.AEM be distributed (**EXHIBIT 7**).

Discussion:

**SENATOR BARTLETT** explained the current bill is broad. The intent of the amendment was to narrow the bill to employees who may have caused accident to be subject to post accident drug testing. Amendment 3 would strike the words on lines 26 "employee has been involved in" and replace "employees' act or failure to act as the direct cause of a work related accident. Subject to drug testing findings would be a criteria for continuation of employment.

**SENATOR BARTLETT** stated she talked with **Mr. Allen** about increasing the amount of property damage from \$500 to \$5000. If there was reason to believe an employee had caused an accident and a drug test was done within a relative short period of time, and the employee was found innocent, the accident records would be removed from the employee's work record and be destroyed.

**SENATOR BURNETT** stated mining accidents, for the most part, exceed \$5,000, so \$500 is not that great of an amount. **SENATOR BAER** expressed concern over the term "direct cause". An approximate cause could be more correct than the "direct cause". If the committee limits the wordage to "direct cause", the committee is limiting the intent to reach anyone who is under the influence, and somehow contributes to the injury. **SENATOR BAER** proposed to strike "direct" and insert "proximate".

Vote:

**SENATOR BURNETT** moved the amendment. The amendment **PASSED UNANIMOUSLY**.

Discussion:

**SENATOR BENEDICT** stated \$2,500 would be a good compromise. **SENATOR BENEDICT** stated he would to strike \$5,000, and insert \$2,500.

Motion:

**SENATOR BENEDICT** moved to amend SB 201.

DISCUSSION:

**SENATOR BARTLETT** resisted the amendment. \$5,000 property damage is minimal, given today's cost. An individual subjected to a drug test, as a condition for continuing employment, is a grave situation. The accidents need to be a significant impact.

The amendment passed, with four senators voting no.

SENATOR VAN VALKENBURG stated Mr. Dan Edwards is available to offer testimony concerning proposed drug testing changes.

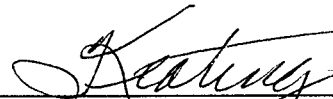
Dan Edward, Oil, Chemical and Atomic Workers, Billings, MT. Mr. Edwards stated in last session's testimony the committee was willing to go to \$10,000. In a heavy industrial setting, particularly in the mines and refineries, It takes very little to get to a \$5,000. The language "where the employers has reason to believe" was more than adequate. Mr. Edwards stated what is not wanted is for everyone having to offer a urine specimen.

VOTE:

The DO PASS AS AMENDED motion for SB 201 CARRIED, with SENATORS BARTLETT AND VAN VALKENBURG, voting NO.

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 2:55 p.m.



SENATOR TOM KEATING, Chairman



MARY FLORENCE ERVING, Secretary

TK/mfe

MONTANA SENATE  
1995 LEGISLATURE  
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE FEBRUARY 9, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	*		
SUE BARTLETT	*		
STEVE BENEDICT	*		
JIM BURNETT	*		
CASEY EMERSON	*		
FRED VAN VALKENBURG			*
BILL WILSON			*
GARY AKLESTAD, VICE CHAIRMAN	*		
TOM KEATING, CHAIRMAN	*		

SEN:1995  
wp.rollcall.man  
CS-09

## SENATE STANDING COMMITTEE REPORT

Page 1 of 3  
February 9, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration SB 85 (first reading copy -- white), respectfully report that SB 85 be amended as follows and as so amended do pass.

Signed:   
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, line 5.

Following: "ON"

Insert: "A STATE"

Following: "WORKS"

Strike: "PROJECTS"

Insert: "CONTRACT"

2. Title, line 8.

Strike: "AND"

Insert: "DEFINING "PUBLIC WORKS" AND "STATE PUBLIC WORKS";"

3. Title, line 9.

Following: "17-5-1526,"

Insert: "18-1-101,"

Following: "MCA"

Insert: "; AND PROVIDING AN APPLICABILITY DATE"

4. Page 4, line 3.

Insert: "Section 5. Section 18-1-101, MCA, is amended to read:

"18-1-101. Definitions. (1) Unless the context requires otherwise, in this title "department" means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.

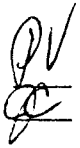
(b) "Montana-made" means manufactured or produced in this state and made with the:

(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or

(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.

(c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

(d) "Public agency" means a department, commission, council, board, bureau, committee, institution, agency,

 Amd. Coord.  
Sec. of Senate

341749SC.SPV



government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(e) "Public works" means heavy and highway construction or construction of a building, facility, or structure by a public agency.

~~(e)~~(f) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103."

Renumber: subsequent sections

5. Page 4, line 23.

Strike: "project"

Insert: "contract"

6. Page 4, lines 25 through 27.

Strike: subsection (7) in its entirety

Renumber: subsequent subsections

7. Page 5, line 13.

Insert: "(8) "State public works contract" means a contract let by the state and financed with state money for heavy and highway construction or construction of a building, facility, or structure. The term does not include a contract that is let by a municipality, county, school district, or other political subdivision and that is financed in part with state money. As used in this subsection, "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling."

Renumber: subsequent subsection

8. Page 5, line 18.

Following: "in"

Insert: "state"

9. Page 5, line 23.

Following: "A"

Insert: state

10. Page 5, line 24.

Strike: "services, repair, or maintenance"

Insert: "construction"

11. Page 6, line 22.

Following: "A"

Page 3 of 3  
February 9, 1995

Insert: "state"

12. Page 8, line 28.

Insert: "NEW SECTION. Section 12. Applicability. [This act]  
applies to a public works contract entered into on or after  
October 1, 1995."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 3  
February 9, 1995


MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration SB 264 (first reading copy -- white), respectfully report that SB 264 be amended as follows and as so amended do pass.

Signed:   
Senator Thomas F. Keating, Chair

That such amendments read:

1. Page 1, lines 20, 26, and 28.  
Page 2, line 10.  
Page 3, lines 13, 14, 16, 18, 25 and 28.  
Page 6, line 17.  
Page 7, line 17.  
Page 8, lines 6, 10, 15, and 19.  
Page 11, lines 23 and 24.  
Page 12, line 11.  
Page 13, lines 25, 26, 27, and 28.  
Page 14, lines 3, 4, and 22.  
Page 15, lines 1 and 2.  
Strike: "14"  
Insert: "15"
2. Page 2, line 6.  
Following: "a"  
Strike: "person"  
Insert: "professional employer organization"
3. Page 4, lines 21 and 22  
Following: line 20.  
Strike: line 21 and 22 in their entirety
4. Page 9, line 9.  
Following: "employees,"  
Insert: "workers' compensation premiums,"
5. Page 9, lines 21 and 22.  
Following: "work." on line 21  
Strike: remainder of line 21 through "group" on line 22  
Insert: "The disclosure must provide that the professional employer organization"
6. Page 10, line 24.  
Following: "organization"  
Strike: "or group"

  
Amd. Coord.  
Sec. of Senate

341738SC.SPV

7. Page 10, line 25.

Following: line 26

Insert: ", "

Following: "39-51-201"

Insert: ", and shall keep separate records and submit quarterly wage lists for each of its clients"

8. Page 11, line 27 through page 12, line 2.

Strike: subsection (9) in its entirety

Insert: "(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:  
(a) the client employer's corporate or business name;  
(b) the client employer's taxpayer or employer identification number;  
(c) the client employer's risk identification number;  
(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and  
(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer."

Renumber: subsequent subsections

9. Page 12, line 5.

Strike: "and employers' liability"

10. Page 12, line 8.

Strike: "or employers' liability"

11. Page 12, lines 13 through 15.

Following: "(12)"

Strike: remainder of line 13 through "individual" on line 15

Insert: "A sole proprietor or a working member of a partnership"

12. Page 14, line 9.

Following: "confidential"

Strike: remainder of line 9 through "disclosure"

Insert: "and may not be published or be open to public inspection, except to public employees in the performance of their public duties"

13. Page 14, line 14.

Strike: "state" through "duties"

Insert: "public employees in the performance of their public"

duties"

14. Page 15, line 1.

Insert: "NEW SECTION. Section 15. Workers' compensation insurer requirements. (1) An insurer that provides workers' compensation insurance to a client employer of a professional employer organization shall base classifications and rates applicable to the payroll of a worker who is subject to either a professional employer arrangement or an employee leasing arrangement as though the worker has been a direct employee of the client employer. If an experience modification has been established for the client employer, that experience modification must be audited using the factors in subsection (3) and must be applied by the insurer to the premium for the client employer's workers.

(2) The insurer of a professional employer organization shall report to the workers' compensation advisory organization all data by client, including payroll by classification and liabilities for each client during the term of the policy.

(3) An insurer shall audit policies issued to a professional employer organization within 90 days of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to determine whether all classifications, experience modification factors, and estimated payroll used with respect to the development of the premium charged are appropriate.

(4) All operations of a client, whether or not all or a portion of the client's operations are subject to a professional employer arrangement or employee leasing arrangement, must be insured by the same insurer."

Renumber: subsequent sections.

15. Page 15, line 2.

Strike: "37" in two places

Insert: "39" in two places

-END-

DATE February 9, 1995  
BILL NO. SB 179

MONTANA SENATE  
1995 LEGISLATURE  
LABOR AND EMPLOYMENT RELATIONS COMMITTEE  
ROLL CALL VOTE

DATE February 9, 1995 BILL NO. SB 179 NUMBER #1

MOTION: Senator Wilson: Do Pass

NAME	AYE	NO
LARRY BAER		★
* SUE BARTLETT	★	
STEVE BENEDICT		★
JIM BURNETT		★
CASEY EMERSON		★
* FRED VAN VALKENBURG	★	
BILL WILSON	★	
GARY AKLESTAD, VICE CHAIRMAN		★
TOM KEATING, CHAIRMAN		★
* Notes Gathered		

MONTANA SENATE  
1995 LEGISLATURE  
LABOR AND EMPLOYMENT RELATIONS COMMITTEE  
ROLL CALL VOTE

DATE February 9, 1995 BILL NO. SB 264 NUMBER #2

MOTION: Accept AFL-CIO Amendments  
offered by Senator Sue Bartlett

NAME	AYE	NO
LARRY BAER		X
SUE BARTLETT	X	
STEVE BENEDICT		X
JIM BURNETT		X
CASEY EMERSON		X
FRED VAN VALKENBURG	*	
BILL WILSON	*	
GARY AKLESTAD, VICE CHAIRMAN		*
TOM KEATING, CHAIRMAN		*

MONTANA SENATE  
1995 LEGISLATURE  
LABOR AND EMPLOYMENT RELATIONS COMMITTEE  
ROLL CALL VOTE

DATE February 9 BILL NO. SB 85 NUMBER #3

MOTION: moved SB 85 Do Pass as Amended

NAME	AYE	NO
LARRY BAER	*	
SUE BARTLETT		*
STEVE BENEDICT	*	
JIM BURNETT	*	
CASEY EMERSON	*	
FRED VAN VALKENBURG		*
BILL WILSON		*
GARY AKLESTAD, VICE CHAIRMAN	*	
TOM KEATING, CHAIRMAN		*



Amendments to Senate Bill No. 264  
First Reading Copy

Requested by Senator Keating  
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure  
February 9, 1995

1. Page 1, lines 20 and 26.  
Page 2, line 9.  
Page 3, lines 14, 16, 18, 25 and 28.  
Page 7, line 17.  
Page 8, lines 6, 10, and 19.  
Page 11, lines 23 and 24.  
Page 12, line 11.  
Page 13, lines 25, 26, and 27.  
Page 14, lines 3 and 22.  
Page 15, lines 1 and 2.  
Strike: "14"  
Insert: "15"

2. Page 2, line 6.  
Following: "a"  
Strike: "person"  
Insert: "professional employer organization"

3. Page 11, line 27 through page 12, line 2.  
Strike: subsection (9) in its entirety  
Insert: "(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:  
(a) the client employer's corporate or business name;  
(b) the client employer's taxpayer or employer identification number;  
(c) the client employer's risk identification number;  
(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and  
(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer."

Renumber: subsequent subsections

4. Page 15, line 1.

Strike: "NEW SECTION. Section 15. Workers' compensation insurer requirements. (1) An insurer that provides workers' compensation insurance to a client employer of a professional employer organization shall base classifications and rates applicable to the payroll of a

worker who is subject to either a professional employer arrangement or an employee leasing arrangement as though the worker has been a direct employee of the client employer. If an experience modification has been established for the client employer, that experience modification must be audited using the factors in subsection (3) and must be applied by the insurer to the premium for the client employer's workers.

(2) The insurer of a professional employer organization shall report to the workers' compensation advisory organization all data by client, including payroll by classification and liabilities for each client during the term of the policy.

(3) An insurer shall audit policies issued to a professional employer organization within 90 days of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to determine whether all classifications, experience modification factors, and estimated payroll used with respect to the development of the premium charged are appropriate."

Renumber: subsequent sections

Amendments to Senate Bill No. 264  
First Reading Copy

Requested by Senator GAGE  
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure  
February 7, 1995

1. Page 10, line 24.  
Following: "organization"  
Strike: "or group"
  
2. Page 10, line 25.  
Following: line 26  
Insert: ", "  
Following: "39-51-201"  
Insert: ", and shall keep separate records and submit quarterly  
wage lists for each of its clients"

Amendments to Senate Bill No. 264  
First Reading Copy

Requested by Senator Gage  
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure  
February 4, 1995

1. Page 9, line 9.  
Following: "employees,"  
Insert: "workers' compensation premiums,"
2. Page 9, lines 21 and 22.  
Following: "work."  
Strike: reminder of line 21 through "group" on line 22  
Insert: "The disclosure must provide that the professional employer organization"
3. Page 12, line 2.  
Following: "workers."  
Insert: "All operations of a client, whether or not all or a portion of the client's operations are subject to a professional employer arrangement or employee leasing arrangement, must be insured by the same insurer."
4. Page 12, line 5.  
Strike: "and employers' liability"
5. Page 12, line 8.  
Strike: "or employers' liability"
6. Page 12, lines 13 through 15.  
Following: "(12)"  
Strike: remainder of line 12 through "individual" on line 15  
Insert: "A sole proprietor or a working member of a partnership"
7. Page 14, line 9.  
Following: "confidential"  
Strike: remainder of line 9 through "disclosure"  
Insert: "and may not be published or be open to public inspection, except to public employees in the performance of their public duties"
8. Page 14, line 14.  
Strike: "state" through "duties"  
Insert: "public employees in the performance of their public duties"
9. Page 15, line 2.  
Strike: "37" in two places  
Insert: "39" in two places

Amendments to Senate Bill No. 264  
First Reading Copy

Requested by Senator Keating  
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure  
February 9, 1995

1. Page 1, lines 20, 26, and 28.  
Page 2, line 10.  
Page 3, lines 13, 14, 16, 18, 25 and 28.  
Page 6, line 17.  
Page 7, line 17.  
Page 8, lines 6, 10, 15, and 19.  
Page 11, lines 23 and 24.  
Page 12, line 11.  
Page 13, lines 25, 26, 27, and 28.  
Page 14, lines 3, 4, and 22.  
Page 15, lines 1 and 2.  
Strike: "14"  
Insert: "15"
2. Page 2, line 6.  
Following: "a"  
Strike: "person"  
Insert: "professional employer organization"
3. Page 4, lines 21 and 22  
Following: line 20.  
Strike: line 21 and 22 in their entirety
4. Page 9, line 9.  
Following: "employees,"  
Insert: "workers' compensation premiums,"
5. Page 9, lines 21 and 22.  
Following: "work." on line 21  
Strike: remainder of line 21 through "group" on line 22  
Insert: "The disclosure must provide that the professional  
employer organization"
6. Page 10, line 24.  
Following: "organization"  
Strike: "or group"
7. Page 10, line 25.  
Following: line 26  
Insert: ", "  
Following: "39-51-201"  
Insert: ", and shall keep separate records and submit quarterly  
wage lists for each of its clients"
8. Page 11, line 27 through page 12, line 2.

Strike: subsection (9) in its entirety

Insert: "(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:  
(a) the client employer's corporate or business name;  
(b) the client employer's taxpayer or employer identification number;  
(c) the client employer's risk identification number;  
(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and  
(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer."

Renumber: subsequent subsections

9. Page 12, line 5.

Strike: "and employers' liability"

10. Page 12, line 8.

Strike: "or employers' liability"

11. Page 12, lines 13 through 15.

Following: "(12)"

Strike: remainder of line 13 through "individual" on line 15

Insert: "A sole proprietor or a working member of a partnership"

12. Page 14, line 9.

Following: "confidential"

Strike: remainder of line 9 through "disclosure"

Insert: "and may not be published or be open to public inspection, except to public employees in the performance of their public duties"

13. Page 14, line 14.

Strike: "state" through "duties"

Insert: "public employees in the performance of their public duties"

14. Page 15, line 1.

Insert: "NEW SECTION. **Section 15. Workers' compensation insurer requirements.** (1) An insurer that provides workers' compensation insurance to a client employer of a professional employer organization shall base classifications and rates applicable to the payroll of a worker who is subject to either a professional employer arrangement or an employee leasing arrangement as though the worker has been a direct employee of the client employer. If an experience modification has been established for the client employer, that experience modification must be audited using the factors in subsection (3) and must be applied by the insurer to the premium for the client

employer's workers.

(2) The insurer of a professional employer organization shall report to the workers' compensation advisory organization all data by client, including payroll by classification and liabilities for each client during the term of the policy.

(3) An insurer shall audit policies issued to a professional employer organization within 90 days of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to determine whether all classifications, experience modification factors, and estimated payroll used with respect to the development of the premium charged are appropriate.

(4) All operations of a client, whether or not all or a portion of the client's operations are subject to a professional employer arrangement or employee leasing arrangement, must be insured by the same insurer."

Renumber: subsequent sections.

15. Page 15, line 2.

Strike: "37" in two places

Insert: "39" in two places

## AMEND SENATE BILL 238 AS FOLLOWS:

Page 1, amend lines 14 and 15 as follows:

(2) As used in this section, "temporary employee" means an employee of the university system hired into a position which is not permanent who has negotiated an alternative benefits package through a labor organization certified to represent employees of the university system in accordance with Title 39, Chapter 31. The employer contribution to such alternative benefits package may not exceed the cost of the state benefits which the employee would otherwise be entitled to through employment.



Amendments to Senate Bill No. 85  
First Reading Copy

Requested by Senator Benedict  
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure  
January 30, 1995

1. Title, line 5.  
Following: "ON"  
Insert: "A STATE"  
Following: "WORKS"  
Strike: "PROJECTS"  
Insert: "CONTRACT"

2. Title, line 8.  
Strike: "AND"  
Insert: "DEFINING "PUBLIC WORKS" AND "STATE PUBLIC WORKS";"

3. Title, line 9.  
Following: "17-5-1526,"  
Insert: "18-1-101,"  
Following: "MCA"  
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

4. Page 4, line 3.  
Insert: "Section 5. Section 18-1-101, MCA, is amended to read:  
"18-1-101. Definitions. (1) Unless the context requires otherwise, in this title "department" means the department of administration provided for in Title 2, chapter 15, part 10.  
(2) Unless the context requires otherwise, in this part the following definitions apply:  
(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.  
(b) "Montana-made" means manufactured or produced in this state and made with the:  
(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or  
(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.  
(c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.  
(d) "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.  
(e) "Public works" means heavy and highway construction or construction of a building, facility, or structure by a public agency.  
~~(e)~~(f) "Resident bidder" means a bidder whose residence is

in this state as determined under 18-1-103." "  
{Internal References to 18-1-101: None.}  
Renumber: subsequent sections

5. Page 4, line 23.  
Strike: "project"  
Insert: "contract"

6. Page 4, lines 25 through 27.  
Strike: subsection (7) in its entirety  
Renumber: subsequent subsections

7. Page 5, line 13.  
Insert: "(8) "State public works contract" means a contract let by the state and financed with state money for heavy and highway construction or construction of a building, facility, or structure. The term does not include a contract that is let by a municipality, county, school district, or other political subdivision and that is financed in part with state money. As used in this subsection, "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling."  
Renumber: subsequent subsection

8. Page 5, line 18.  
Following: "in"  
Insert: "state"

9. Page 5, line 23.  
Following: "A"  
Insert: state

10. Page 5, line 24.  
Strike: "services, repair, or maintenance"  
Insert: "construction"

11. Page 6, line 22.  
Following: "A"  
Insert: "state"

12. Page 8, line 28.  
Insert: "NEW SECTION. Section 12. Applicability. [This act] applies to a public works contract entered into on or after October 1, 1995."

Amendments to Senate Bill No. 201 BILL NO. SB 201  
First Reading Copy

Requested by Senator Bartlett  
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure  
February 8, 1995

1. Title, line 5.

Following: "AN"

Strike: "EMPLOYEE HAS BEEN INVOLVED IN"

Insert: "EMPLOYEE'S ACTS OR FAILURE TO ACT IS THE DIRECT OR  
PROXIMATE CAUSE OF"

2. Title, line 6.

Strike: "\$500"

Insert: "\$2,500; PROVIDING FOR REMOVAL OF REQUIRED TEST FROM  
EMPLOYEE'S WORK RECORD"

3. Page 1, line 26.

Following: "an"

Strike: "employee has been involved in"

Insert: "employee's acts or failure to act is the direct or  
proximate cause of"

4. Page 1, line 27.

Strike: "\$500"

Insert: "\$2,500"

5. Page 2, line 8.

Following: "tests."

Insert: "The written record of a blood or urine test of an  
employee who is required to submit to testing pursuant to  
subsection (1)(c)(ii) and whose acts or failure to act is  
subsequently found not to be the direct or proximate cause  
of a work-related accident must be removed from the  
employee's work record and be destroyed."

DATE February 9, 1995

SENATE COMMITTEE ON Labor + Employment Relations

BILLS BEING HEARD TODAY: \_\_\_\_\_

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<u>David L. Edwards</u> <u>POB 21635</u> <u>Billings, MT 59104</u> <u>406-669-3253</u>	<u>OCAWU</u> <u>Cyl Chemical &amp;</u> <u>House, Workers</u> <u>ZNA UNION</u>	<u>SB201</u>		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY