

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on January 11, 1995,
at 8:00 AM

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

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

Committee Business Summary:

Hearing: HB 100
Executive Action: HB 30, HB 33, HB 34, HB 39, HB 53, HB 98

HEARING ON HB 100

Opening Statement by Sponsor:

REP. JEANETTE MCKEE, HD 60, Ravalli Co. said this bill was being carried on behalf of the Unemployment Insurance Division. This is a housekeeping bill because it contains a variety of changes

to Montana statute. One change is to conform our state law requirements into the federal law requirements, to clarify the statutes which have or have not the potential of being disputed in appeals or other legal actions and to enable the department to have the ability to perform required functions in the most efficient and economical way. Three of the aspects of this bill address conformity issues which are critical in the sanctions imposed by the federal program which can be severe. Three of the areas address provisions that would insure or add efficiencies that result in the division being able to do the job better, three are to clarify statutory requirements in order to monomaniacal disputes. There would be no increase in the cost of administering the program resulting from these provisions.

Proponents' Testimony:

Rod Sager, Administrator, Unemployment Insurance Division, Department of Labor and Industry discussed the changes in the bill. These changes included the election of judges, auditing out of state records, penalty and interest in the use of and transfer of trust funds, corporate officer liability, limited liability company, changes to pension provisions, changes due to profiling, access to governmental records, and conducting hearings and appeals by telephone. Also included in his information were two letters from the U.S. Department of Labor. **EXHIBIT 1**

Opponents' Testimony:

Jerry Driscoll, Montana State Building and Construction Trades said the proponent called this a housekeeping bill except for three sections. He provided amendments. **EXHIBIT 2.**

Don Judge, AFL-CIO provided the information requested by one of the committee members regarding the minimum wage rates in the other states which were provided by the U.S. Department of Labor. **EXHIBIT 3** He said he felt he did not know if the entire bill is unworthy, there are some sections of the bill he feels he has no concern about relative to corporations and the collection of taxes.

Questions From Committee Members and Responses:

REP. LARSON questioned the terms which had been outlined by the opponents. He also asked if the apprentice program would dry up the context of this bill. **Mr. Sager** said there was no problem with the apprentice program. The issue is the source of the funding for the program.

REP. EWER asked if there was a fiscal note prepared for this bill. Are there going to be efforts to replace the money for job training? Can you give the committee assurances that the money will be there? **Mr. Sager** said there was a fiscal note. The department would work with the Job Service Division on any

possibility of job training and funds. The appropriation is approximately \$140,000 per year for the apprentice program. It is not an automatic appropriation.

REP. PAVLOVICH asked if Montana was the only state that is out of compliance. He also asked if there was another bill in the background to fund the program and if that bill does not pass and this bill passes the committee would need to depend on the other bill passing. Mr. Sager said yes. The other bill needs to pass to fund the program.

REP. COCCHIARELLA asked if the department contracted with audits now. Mr. Sager said there were auditors in the department.

REP. ELLIS said if the other bill would not pass, the educational endeavor is not funded. Mr. Driscoll said this was true unless the appropriations committee put a line item into the appropriations.

Closing by Sponsor:

Sponsor closes.

CHAIRMAN SIMON relinquishes the chair to REP. MILLS.

REP. SIMON said regarding HB 100, there are issues needing resolution so the appointment of a subcommittee was established with REPS. ELLIS, Chairman, MCKEE and COCCHIARELLA.

TAPE 1, SIDE B

EXECUTIVE ACTION ON HB 30

Motion: REP. PAVLOVICH MOVED DO PASS ON HB 30.

Discussion: REP. SIMON offered an amendment. The Board of Investments offered information with regard to the issue of Science and Technology. Twenty five percent in-state investment calculation is based upon the total trust invested balances and it is the same either way. The total available for in-state investment was \$109,000 and if Science and Technology is removed and do not count that as a part of the in-state investment, then the total amount is \$132 million.

REP. LARSON said the feeling of the committee was to maximize the amount of coal tax investment in Montana and by excluding the Science and Technology dollars from that count the amount is increased.

REP. SIMON withdrew his amendment.

Vote: Motion that HB 30 Do Pass carried unanimously.

EXECUTIVE ACTION ON HB 33

Motion: REP. ELLIS MADE A MOTION DO PASS ON HB 33.

Discussion:

REP. LARSON questioned the change in the title and suggested an amendment for this change.

REP. ELLINGSON said he suggested that the title should read "refusal, suspension or revocation of license and imposition of administrative fine."

Steven Maly suggested the use of the catch line rather than the title of the bill. There is no need to change the bill only the catch line.

CHAIRMAN SIMON said there may be a bill coming through that also deals with this subject. He also stated he had a person bias against allowing boards the ability to administer administrative fines. He felt there was a problem in the past by allowing this provision to some boards and the Board of Barbers having this kind of authority to issue these kinds of fines would be the same situation.

Motion/Vote: MOTION WAS MADE DO PASS ON HB 33. A vote was taken and passed with all voting yes except REPS. HERRON, BARNETT, SIMON, MILLS, FORBES, MCKEE, KEENAN.

EXECUTIVE ACTION ON HB 34

Motion: REP. PAVLOVICH MOVED HB 34 DO PASS.

Discussion:

REP. ELLIS said he felt the thrust of this legislation is what is the promise for having a regular job on the employer who might have only seasonal employment.

REP. LARSON supports the bill because it is an issue of fairness. There are 500+ school districts in the state and every one of them has the ability to retain those people for the summer maintenance programs. There will be a minimal impact on the unemployment rating of these people, they have the ability to absorb those people to continue their employment.

REP. PAVLOVICH said that during the last session this bill did get out of committee and died on the House floor on a 50-50 vote. Everyone should be treated fairly.

REP. COCCHIARELLA questioned the experience that causes rates to change. The issue of schools is that they are a part of the

whole pot of government which includes local government, schools, counties and the state. That pot is the experience rating for all of those entities and not the individual experience of each school district that determines what their rate will be.

REP. MILLS asked where the fairness to the employer was if this bill were passed.

REP. ELLIS discussed the situation of the reserve in the fund which testimony verifies as \$106 million which is up roughly \$10 million from two years ago. The drain will be approximately \$5 million. That fund was \$45 million in the red.

Motion/Vote: REP. ELLIS MOVED TO TABLE HB 33. A roll call vote was taken which passed with REPS. SIMON, PAVLOVICH, COCCHIARELLA, ELLINGSON, EWER, LARSON and TUSS voting no.

EXECUTIVE ACTION ON HB 39

Motion: REP. PAVLOVICH MOVED DO PASS ON HB 39.

Discussion:

REP. COCCHIARELLA supplied a flow diagram on the coal tax trust.

REP. HERRON stated his opposition to this bill. There is a lot of unfairness in this bill because it sets a minimum wage and then the maximum.

REP. LARSON stated this bill would not affect his business. He said it was a fair bill for workers. A \$.25 wage increase is not going to affect the small employer.

REP. KEENAN stated he disagreed. A major part of his business is waitresses. This will have a huge impact for them.

REP. DEVANEY said in reviewing the schedule of minimum wage there are only five states who have minimum wages higher than Montana and 25 states that seem to be the same. He was also concerned with the result of the federal government passing the increase in minimum wage.

REP. ELLINGSON said he strongly favors this bill.

REP. SLITER said he opposes this bill.

REP. ELLIS indicated his support of this bill.

REP. MARSHALL said he had been an employer for 40 years and that he had never seen a time when minimum wage didn't lose jobs in high markets. Forcing a wage does not create more jobs.

REP. BARNETT said he opposed the bill because with price support and minimum wage that becomes the top. He favored eliminating minimum wage and go on the competitive market.

Motion/Vote: REP. HERRON MOVED TO TABLE HB 39. A roll call vote was taken which passed with all voting yes except REPS. SIMON, PAVLOVICH, COCCHIARELLA, ELLINGSON, EWER, KEENAN and TUSS voting no.

EXECUTIVE ACTION ON HB 53

Discussion:

CHAIRMAN SIMON stated there was another bill that will be making its way through the system addressing some of the concerns of the out-of-state pharmacists. They have worked out an arrangement with the in-state pharmacists. For the purposes of disposing with this bill the committee can resurrect it.

Motion/Vote: REP. COCCHIARELLA MOVED TO TABLE HB 53. A vote was taken which passed unanimously.

EXECUTIVE ACTION ON HB 98

Motion: REP. PAVLOVICH MOVED DO PASS ON HB 98.

Vote: A vote was taken on HB 98 which passed unanimously.

ADJOURNMENT

Adjournment: 10:00 AM.



REP. BRUCE T. SIMON, Chairman



ALBERTA STRACHAN, Secretary

BTS/ajs

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 1-11-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		X
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		




HOUSE STANDING COMMITTEE REPORT

January 12, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Business and Labor report that House Bill 114 (first reading copy -- white) do pass as amended.

Signed: 
Bruce Simon, Chair

And, that such amendments read:

1. Title, line 7.

Following: "EMERGENCY;"

Strike: "AND"

2. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 23.

Following: "service."

Insert: "However, during the period of service, the person may or may not accrue vacation leave or other benefits offered by the employer, at the option of the employer."

4. Page 1, line 25.

Strike: "an"

Insert: "a public"

5. Page 1, line 27.

Following: "service."

Insert: "Nothing in this subsection may be construed to prevent an employee from voluntarily using accrued vacation leave or other already earned benefits during the leave of absence."

6. Page 1, following line 29.

Insert: "NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval."

Committee Vote:

Yes 18, No 2.

101102SC.Hbk



HOUSE STANDING COMMITTEE REPORT

January 11, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 30** (first reading copy -- white) **do pass**.

Signed: _____

Bruce Simon
Bruce Simon, Chair

Committee Vote:
Yes 18, No 0.

091034SC.Hbk



HOUSE STANDING COMMITTEE REPORT

January 11, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Business and Labor report that House Bill 33 (first reading copy -- white) do pass.

Signed: _____

Bruce Simon
Bruce Simon, Chair

Committee Vote:
Yes 11, No 7.

091036SC.Hbk

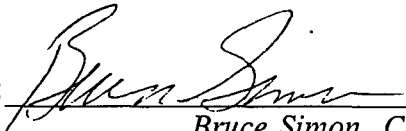


HOUSE STANDING COMMITTEE REPORT

January 11, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 98** (first reading copy -- white) **do pass**.

Signed: 
Bruce Simon, Chair

Committee Vote:
Yes 18, No 0.

091037SC.Hbk

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 1-11-95 BILL NO. HB34 NUMBER _____

MOTION: TABLE

NAME	AYE	NO
Rep. Bruce Simon, Chairman		X
Rep. Norm Mills, Vice Chair, Maj.	X	
Rep. Bob Pavlovich, Vice Chair, Min.		X
Rep. Joe Barnett	X	
Rep. Vicki Cocchiarella		X
Rep. Charles Devaney	X	
Rep. Jon Ellingson		X
Rep. Alvin Ellis, Jr.	X	
Rep. David Ewer		X
Rep. Rose Forbes	X	
Rep. Jack Herron	X	
Rep. Bob Keenan	X	
Rep. Don Larson		X
Rep. Rod Marshall	X	
Rep. Jeanette McKee	X	
Rep. Karl Ohs	X	
Rep. Paul Sliter	X	
Rep. Carley Tuss		X

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 1-11-95 BILL NO. HB39 NUMBER _____

MOTION: TABLE

NAME	AYE	NO
Rep. Bruce Simon, Chairman		X
Rep. Norm Mills, Vice Chair, Maj.	X	
Rep. Bob Pavlovich, Vice Chair, Min.		X
Rep. Joe Barnett	X	
Rep. Vicki Cocchiarella		X
Rep. Charles Devaney	X	
Rep. Jon Ellingson		X
Rep. Alvin Ellis, Jr.	X	
Rep. David Ewer		X
Rep. Rose Forbes	X	
Rep. Jack Herron	X	
Rep. Bob Keenan		X
Rep. Don Larson	X	
Rep. Rod Marshall	X	
Rep. Jeanette McKee	X	
Rep. Karl Ohs	X	
Rep. Paul Sliter	X	
Rep. Carley Tuss		X

HOUSE COMMITTEE ON BUSINESS AND LABOR
Testimony on House Bill 100
January 11, 1995

Mr. Chairman and Members of the Committee:

For the Record, I am Rod Sager, Administrator of the Unemployment Insurance Division, Department of Labor and Industry.

I will proceed to explain the details of House Bill 100.

ELECTION JUDGES Amend section 13-4-106, MCA.

This first change pertains to an unemployment insurance exemption on compensation paid to election judges. We are requesting that the unemployment insurance exemption on election judges be repealed.

To help explain our reasoning for this, it might be helpful if give you some background information. The Unemployment Insurance (UI) program is a federal-state partnership. The U.S. Department of Labor has oversight responsibility over every state's UI program. If a state UI law does not conform to specific federal requirements, they are deemed to be out of conformity.

If a conformity issue is not resolved, the state may lose administrative funding and/or Montana employers may lose their state unemployment insurance credit on their Federal Unemployment Tax Return, Form 940.

i.e. The FUTA tax is 6.2%, however, employers are credited with 5.4% for paying their state UI taxes. Employers would be liable for the entire 6.2% tax should the U.S. Department of Labor impose this "penalty" for the state's failure to correct the conformity issue.

The original bill to exempt election judges from UI coverage was introduced in the 1991 Legislature. The UI Division spoke before a legislative committee at that time to explain that adoption of such legislation would result in a conformity issue with the U.S. Department of Labor.

The conformity issue in this case is that state UI law is prohibited from exempting UI coverage to individuals working for a governmental entity, unless the Federal Unemployment Tax Act (FUTA) has a similar exemption. Since election judges perform services for a county government, which is not exempt from FUTA, the state cannot exempt this employment from UI coverage.

At the hearing, the legislative committee agreed to remove the

exemption from the bill, however, when the legislative council amended the bill, the exemption was inadvertently only removed from Title 39 (UI) and not from Title 13 (Elections). Consequently, there are now two conflicting statutes.

Since then, the U.S. Department of Labor has raised the exemption of election judges as a conformity issue. The state needs to remove this exemption or face consequences of loss of federal funding or elimination of the 5.4% state UI credit employers receive on their Form 940.

AUDITING OUT OF STATE RECORDS Amends section 39-51-603, MCA.

Of the 26,700 employers in Montana, we estimate that 10% maintain their business records out of state. Our statute, in its current form, does not require that employers make their records available to us in Montana. Some of these firms provide us with copies of their records, however, many refuse to.

We, like other state UI programs, are not adequately funded to travel out of state to conduct audits on businesses who chose to maintain their business and payroll records outside Montana. As a consequence, most firms who maintain their records out of state are not audited. These include big conglomerates as well as smaller operations. Though we do not know this is currently happening, our inadequate law may influence some employers to intentionally maintain their records out of state to avoid being audited and paying their fair share of the UI taxes.

We propose to provide a fair playing field by requiring employers, who maintain their payroll records out of state, to produce a copy of those records to us in Montana or to pay costs associated with conducting the audit out of state. This will result in equity to Montana's businesses, a better UI tax program, while at the same time hold down operating costs in auditing out-of-state employers' records.

PENALTY & INTEREST - USE OF AND TRANSFER TO TRUST FUND Amends section 39-51-1301, MCA.

The department proposes to amend section 39-51-1301(3), MCA, penalty and interest on past-due taxes, to provide appropriation of these funds to the department only for administrative purposes under this chapter (Title 39, Chapter 51 - UI laws).

Penalty and interest collected would no longer fund apprenticeship instruction programs under 39-6-103, MCA.

Federal funding levels aren't adequate to meet the expanding technology needs to stay current with service to employers and

claimants. It is a common practice for state UI program's to use their penalty and interest funds for their own administrative purposes.

Current annual P&I revenues run about \$230,000. In FY95 \$140,000 was appropriated for Apprenticeship Instructor Training and about \$50,000 for UI Division Collection Activities, for a total appropriation of about \$190,000.

The UI Division budget request for the 1997 biennium includes a base budget request of \$46,917 each year for UI collection activities, \$100,000 each year for enhancements to maintain the aging benefits system, and a proposal to provide a toll-free telephone line for employers to call the Division for forms, rates, and other information (\$14,775 each year). In addition, there is a separate proposal (legislation being prepared) to fund the UI share (\$125,000 biennial appropriation) of a cost/benefit analysis intended to help the UI Division and the Department of Revenue move toward integrated wage reporting in an effort to streamline and simplify employer reporting to government. These potential UI Program obligations alone would utilize almost all of the projected P&I revenue.

By increasing the appropriation for UI activities, the Department can better meet its customers' needs and Federal demands, and make the changes to our systems that are needed and expected.

The mainframe benefits system is nearing its capacity. New programs are being developed at the national level which the current system will not be able to accommodate. (These programs include already passed legislation such as claimant profiling, the Benefit portion of the North American Free Trade Act and the Trade Adjustment Act, and a new extended benefits program should Montana reach a trigger point). The date logic needs to be upgraded in the near future to accommodate claims that will be active in the year 2000. In addition, the last two Legislative Audits have included recommendations that we should improve our automated benefits system.

In meeting with various employer groups over the past few years, a frequent suggestion for improving service to employers was the installation of a toll-free telephone line. This will certainly help to improve communication and understanding of the laws, and ultimately, should improve compliance over time.

In addition, we have another minor change to this section. We are proposing that any penalty and interest funds collected that are not appropriated would be transferred to the UI trust fund at the end of each fiscal year, rather than at the end of the biennium.

There are two different sections in the UI law that address transfer of penalty and interest money to the trust fund. (39-51-

1301(3) and 39-51-3201(2)) One section (39-51-3201) requires the transfer at the end of each fiscal year and the other section (39-51-1301) requires the transfer at the end of each biennium. This legislation is to provide consistency on transfer of penalty and interest money. In addition, transferring these funds on a fiscal year basis will coincide with state fiscal year accounting procedures.

CORPORATE OFFICER LIABILITY Amends sections 39-51-1303 and 39-51-1304, MCA.

The change to Section 39-51-1303 (1) COLLECTION OF UNPAID TAXES BY CIVIL ACTION, and Section 39-51-1304 (1) LIEN FOR PAYMENT OF UNPAID TAXES LEVY AND EXECUTION is needed to clearly define the department's legal remedies against officers of a corporation [and managers of a limited liability company. The change to this statute was originally directed at corporate officers, however, with the addition of LLC language, we needed to address the managers of LLC's in this area as well.]

I shall begin by first going over some background on how corporate officers are notified of their potential liability. Section 39-51-1105 LIABILITY OF CORPORATE OFFICERS FOR TAXES, PENALTIES, AND INTEREST OWED BY A CORPORATION is the basis for extending liability to corporate officers. This section states that when a corporation is delinquent in filing its annual report with the Secretary of State, that the department (Labor and Industry) shall hold the president, vice president, secretary and treasurer jointly and severally liable for any taxes, penalties, and interest during the period of delinquency.

The process used by the department to collect a debt is to contact the debtor when the debt occurs, explaining the amounts due either by phone or through a Notice of Amounts Due. This is followed with additional Notices of Amounts Due each month.

If this effort is not successful, a lien is filed against the corporation, and an inquiry is made to the Secretary of State's office to determine if the corporation has a period where they are delinquent in filing their annual report. If the corporation is delinquent in filing their annual report, letters are sent to the officers advising them of their portion of the liability. They are given 15 days to respond with payment or to supply proof that they were not officers during the period of corporate filing delinquency. If no response is received, liens are filed against the officers as the first step of the enforced collection process.

The proposed change would clarify the collection remedies we have available in regard to corporate officers [as well as managers of LLC's]. We have pursued corporate officer debts in this manner, and therefore, no new revenue will be generated.

LIMITED LIABILITY COMPANY - UI TAX TREATMENT Amends sections 39-51-201, 39-51-203, 39-51-204 and 39-51-1105, MCA.

Throughout this bill, we address Limited Liability Companies in relation to Unemployment Insurance coverage and tax liability.

Some of you might recall that the last legislative session passed a bill establishing a new type of business entity - limited liability companies or LLCs. That statute did not address issues revolving around payroll taxes and coverage requirements for unemployment insurance purposes. This is being clarified in our bill.

Limited liability companies choose their management style at the time they register with the Secretary of State. They can choose to be member-managed or manager-managed. The manager-managed LLC's operate in the style of corporations and member-managed LLC's operate like partnerships.

With this bill, we are proposing that the manager-managed (corporate-like) LLC's report to UI in the manner as corporations report their officers - with managers reported as employees. We also propose that member-managed (partnership-like) LLC's report to UI in the same manner as partnerships - with the "members" (like partners) not being reported - and reporting only employees who are not members.

We have a number of good reasons to propose this legislation:

1. This proposal keeps in step with the current UI statute on coverage for partnerships and corporations.
2. This proposal adopts the interim policy which was enacted by the Department of Labor and Industry. This policy states, "Limited Liability Companies who have filed with the Secretary of State with 'member managers' will be presumed to be like partnerships. If the Limited Liability Company has filed with the Secretary of State as a 'manager only' entity, it will be presumed to be like a corporation."
3. This interim policy was endorsed as being the correct procedure for UI coverage in an article in the Montana Law Review written by Steven C. Bahls who served as the Chair of the Limited Liability Company Subcommittee of the State Bar of Montana's Tax, Probate and Business Law Section. The Limited Liability Company Subcommittee drafted the Montana Limited Liability Company Act. This article went on to state "The best alternative for the Montana Legislature is to enact the department's interim policy that treats member-managed limited liability companies as partnerships and manager-managed limited liability companies as corporations." The article also states "New statutory language that focuses on

whether the entity is member-managed or manager-managed properly would consider whether members are effectively both employers and employees."

4. This approach will mirror similar policies adopted by the State Fund, IRS and Department of Revenue. The Department of Revenue's rules state the "taxation of a limited liability company in Montana depends upon its federal classification as a corporation or a partnership as determined by the Internal Revenue Service."

5. A limited liability company which files with the IRS as a corporation will be required to report corporate officer (manager) wages for Federal Unemployment Tax Act (FUTA) purposes. If the manager's wages are not reported to state UI as wages, the LLC will be required to pay the full FUTA tax rate of 6.2%. If manager wages are reported to Montana UI, the LLC will receive their state tax credit, reducing the FUTA tax rate to .8%.

In our bill, we propose that the liability of a LLC for unpaid taxes, penalty and interest reflect the current UI statute for liability of corporations and partnerships.

CHANGES TO PENSION PROVISIONS Amends section 39-51-2203, MCA.

Senate Bill 184 passed by the 1993 Montana Legislature put Montana out of compliance with Section 3304 (a) (15) (A) of the Federal Unemployment Tax Act (FUTA), which requires that amounts equal to pension payments be deducted from unemployment benefits if such payments are made under a plan maintained or contributed by a base period or chargeable employer.

A U.S. Department of Labor Regional Office memorandum addressing this issue was received by Montana DOL April 12, 1993. According to U.S. DOL's policy, the memorandum clearly spells out that the contested wording of SB 184 places Montana DOL out of compliance with federal regulations. A more recent letter spells out the seriousness of this language being out of conformance. The Montana UI program can be sanctioned in two ways. First, Montana employers can lose the state unemployment insurance tax credit, currently 5.4%, on their federal tax return. The tax credits amount to nearly \$100 million per annum for Montana employers. Second, the state UI program can lose its administrative funding.

CHANGES DUE TO PROFILING Amend section 39-51-2104, MCA.

The Unemployment Compensation Amendments of 1993, P.L. 103-152, require States to establish a system of profiling all new claimants for regular Unemployment Insurance (UI) benefits.

Profiling is designed to statistically identify claimants, who are likely to exhaust their regular UI entitlement, early in their claim and refer them to reemployment services such as testing and job search assistance to make a successful transition to new employment. States are also required to make ineligible for benefits any "profiled" claimant who fails to participate in reemployment services, unless there is a justifiable cause for the claimant's failure to participate in such services.

Profiling is a federally sponsored program that will be implemented nationwide in various stages. Statistics show that an increasing number of individuals are permanently being displaced from employment. USDOL sees unemployment insurance as a system designed to deal with workers who are on short term layoff and who expect to return to their former employment. Since displaced workers will not return to their former jobs, reemployment services are necessary. Profiling will ensure that displaced workers on unemployment insurance rolls will participate in reemployment services. In order to comply with all the requirements inherent in profiling, however, Section 39-51-2104, MCA, must be amended to reflect the responsibilities assigned to those unemployed workers affected by the program.

ACCESS TO GOVERNMENTAL RECORDS Adds a new section.

Recently the Department was subject to a routine audit conducted by the Legislative Auditor's Office. The results uncovered some potential fraud cases involving individuals attending a university and not informing the UI Division of their student status. Due to institution policies, the auditors could not turn the potentially fraudulent claim information over to the Unemployment Insurance Division. This legislation will allow the Department access to student records so the Division can establish a cross match to prevent future fraudulent claims for UI benefits.

CONDUCT HEARINGS AND APPEALS BY TELEPHONE

Amend sections 39-51-1109, 39-51-2403, 39-51-2404 and 39-51-2407, MCA.

This legislation will permit the department to continue its practice of conducting telephonic hearings in 95% of its unemployment insurance benefit hearings. Telephone hearings are far less expensive for the Department and for the parties than are in-person hearings. Hearings officers and parties need not incur the expense of traveling to other towns. Parties are not precluded from calling witnesses in remote locations. Less travel time by the hearing officers allows for larger individual work loads and more time for issuing decisions.

This legislation is designed to reduce or avoid the significant financial impact required in-person hearings would have on the Department and the parties to our hearings.

If in-person hearings were mandated, and if the Department does not have the resources to travel to the hearing site, claimants (who have lost their jobs, have found no other job and are seeking unemployment benefits) could be forced to travel to Helena or another location to attend their benefit hearings. They would also be required to pay the travel costs of their witnesses. Travel time would lengthen the time required for a decision to be issued, further delaying the possible receipt of unemployment insurance benefits. The inherent delay caused by travel would result in the Department not meeting federally mandated timeliness goals, thus reducing federal money available to the Department for unemployment insurance purposes.

Filename: W:\DATA\UIDSECUR\H0100TST.1ST

U.S. Department of Labor

Employment and Training Administration
1999 Broadway, Suite 1780
Denver, Colorado 80202-5716



January 5, 1995

8TGU-EM

EXHIBIT 1
DATE 1-11-95
HB 100

RECEIVED

JAN 10 1995

DEPT. OF LABOR & INDUSTRY
COMMISSIONER'S OFFICE

Laurie Ekanger, Commissioner
Department of Labor and Industry
P.O. Box 1728
Helena, MT 59624

Dear Commissioner Ekanger:

In 1993 Montana amended its unemployment insurance law in a way which we believe is clearly inconsistent with the Federal Unemployment Tax Act (FUTA). We understand there is opposition to passing a legislative remedy to undo the problem. The purpose of this letter is to alert you to the rationale and sequence of events which will proceed should the problem not be cured in the current legislative session.

First, it may be useful to note that the U.S. Supreme Court has ruled that the federal-state unemployment insurance system, and the federal tax credit mechanism that makes it work, is consistent with the U.S. Constitution in that it does not constitute an undue economic coercion on the states. This is not a federal mandate in the popular sense of that concept. Participation is voluntary. Nonetheless, the advantages of membership are substantial. In states where there is an approved unemployment insurance law, jobless benefits are payable to workers, credits are given employers against the full federal tax, and grants are made to operate employment security programs. The tax credits to Montana employers alone amounts to nearly one hundred million dollars per annum.

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

We believe that the clause in Montana law [under Section 39-51-2203.(2): "A pension plan negotiated under a collective bargaining agreement is considered a direct employee contribution under this section."] does not meet the requirements of UIPL No. 22-87 and Section 3304(a)(15)(A), FUTA. The plain implication is that the "negotiated" pension is treated as a 100 percent offset on the reduction of benefits than would otherwise be required. A "negotiated" pension plan could easily be a 100 percent employer contributed plan. Simply because it would be part of an overall wage and benefits package, or because the argument might be made that wages would be higher if the pension plan was less generous to the workers, does not change this.

The federal requirement is met so long as the employee contributes to the pension plan from which the pension is being paid. Of course, not only must the law be properly amended, but the payment must also be made into and reflected in the plan before this exception to the pension offset requirement may be applied. If Montana law and practice is seen by the Secretary not to be in concert with federal law, Montana state law would not be certified, with the consequent loss of tax credits and grants.

We understand there is some concern about perceived inequities as between those who make actual cash contributions to their pension plan and those who may make such a contribution indirectly through giving up a wage gain in collective bargaining. As we noted earlier, there is no way we could distinguish between what is a freely-bestowed benefit versus one which given up in lieu of something else. Even so, the language of the federal law is clear, and further seems to show that the Congress meant the "contributions made by the individual" to be a quid pro quo for the pension offset forgiveness.

We had agreed not to forward this matter to the Assistant Secretary pending review by the Montana legislature at its next regular session, which is in progress now. We earnestly ask that this matter be taken care of in the housekeeping bill now before the assembly. Should the appropriate action not be taken, at the close of the session we will be required to send this matter forward for immediate action. This might take the form of asking the governor to convene an emergency legislative session pending referral for hearing and decision.

Suffice it to say that we view the present situation in the gravest context, and ask that we not come to an impasse. Please keep me informed of developments, and let me know if there is some way I may help.

Sincerely,



LUIS SEPULVEDA
Regional Administrator

U.S. Department of Labor

Employment and Training Administration
1999 Broadway, Suite 1780
Denver, Colorado 80202-5716



January 10, 1995

8TGU-EM

EXHIBIT 1DATE 1-11-95HB 100

Laurie Ekanger, Commissioner
Department of Labor and Industry
P.O. Box 1728
Helena, MT 59624

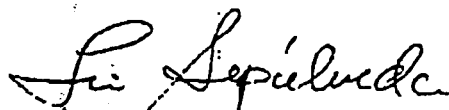
Dear Commissioner Ekanger:

This is in continuing reference to proposed housekeeping legislation to be placed before the current assembly that would repair the inconsistency with federal law created in the 1993 session. I wrote you on this subject on January 5, 1995.

We have been further given to understand that an amendment may be offered to provide that worker participation or membership in a 501(c)(9) organization [beneficiary association for the payment of benefits; Title 26, Internal Revenue Code] constitutes a direct employee contribution to a pension plan, or is an approved exception to the pension deduction requirement. Unfortunately, the proposed criterion is not found in the Federal Unemployment Tax Act, section 3304(a)(15)(A) and (B). If enacted, the proposed amendment would continue to leave the Montana law in conflict with the requirement, even though its scope of workers is more tightly focused, or patterned differently.

I hope this comment and analysis has been useful.

Sincerely,


LUIS SEPULVEDA
Regional Administrator

Working for America's Workforce

Amendments to House Bill No. 100
First Reading Copy

For the House Committee on Business and Labor

Prepared by Eddye McClure
January 10, 1995

1. Title, line 15.

Following: "VIDEOCONFERENCE;"

Insert: "PROVIDING THAT THE REDUCTION IN BENEFITS REQUIREMENT
DOES NOT APPLY TO A PENSION COVERED BY SECTION 501(C) (9) OF
THE INTERNAL REVENUE CODE;"

2. Page 16, line 14.

Following: line 13

Insert: "(3) The reduction required by subsection (1) does not
apply to a pension covered by section 501(c) (9) of the
Internal Revenue Code."



Montana State AFL-CIO

EXHIBIT 3

DATE 1-11-95

HB 100 Donald R. Judge
Executive Secretary

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

406-442-1708

Minimum Wage Rates, as of January 1, 1993

<u>State</u>	<u>Minimum Wage</u>
--------------	---------------------

Alabama	No Law
Alaska	4.75
Arizona	No law
Arkansas	4.00
California	4.25
Colorado	3.00
Conn.	4.27
Delaware	4.25
Dist. of Col.	3.90 to 5.45 depending on job category
Florida	No law
Georgia	3.25
Hawaii	5.25
Idaho	4.25
Illinois	4.25
Indiana	3.35
Iowa	4.65
Kansas	2.65
Kentucky	4.25
Louisiana	No law
Maine	4.25
Maryland	4.25
Mass.	4.25
Michigan	3.35
Minnesota	4.00 to 4.25
Mississippi	No law
Missouri	4.25
Montana	4.00 to 4.25
Nebraska	4.25
Nevada	4.25
Nevada	4.25
New Hampshire	4.25
New Jersey	5.05
New Mexico	3.35
New York	4.25
N. Carolina	4.25
N. Dakota	4.25
Ohio	2.80 to 4.25
Oklahoma	2.00 to 4.25
Oregon	4.75
Penn.	4.25
Rhode Island	4.45
S. Carolina	No law

Summary:

Eight states have minimum wage laws that exceed the federal law.

S. Dakota	4.25
Tenn.	No law
Texas	3.35
Utah	4.25
Vermont	4.25
Virginia	4.25
Washington	4.25
W. Virginia	4.25
Wisconsin	4.25
Wyoming	1.60

Source: U.S. Department of Labor
and Bureau of National Affairs

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

SUB-COMMITTEE

DATE 1/11/95

BILL NO. HB 100 SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jerry Driscoll	Montana State Building Trades Council		X
Rod Sager	Dept. of Labor & Industry	X	
Don Judge	MT STATE AFL-CIO		X

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

HR:1993

wp:vissbcom.man

CS-14