

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN TOM KEATING, on March 11, 1995, at
1:30 P.M.

ROLL CALL

Members Present:

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

Members Excused: Sen. Steve Benedict (R)

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: HB 272

Executive Action: None

{Tape: One; Side: One}

HEARING ON HB 272

Opening Statement by Sponsor:

REPRESENTATIVE JAY STOVALL, HD 16, stated HB 272 is an act clarifying certain labor laws and tax laws to include a service charge received by employees of the food, beverage, and lodging industry. House Bill 272 amends the labor act to define service charge. A constituent approached REPRESENTATIVE STOVALL about a Billings hotel that charged a 18% gratuity rate, before the money had always gone to the employees. Nonetheless, the policy was changed and the money began to go back to the business. Although the employee's hourly wage was increased, the take home pay was decidedly less.

Proponents' Testimony:

Melissa Case, Hotel Employers and Restaurant Employees Union, stated concern from the many waitresses/waiters she represents. **Ms. Case** explained that tips and gratuities are the sole property of the people receiving the tip. The problem HB 264 attempts to correct is a loophole in the tip or gratuity definition, concerning a service charge. The gratuity is intended for the same purpose, it is perceived by the public to be the same. House Bill 272 amends the MCA to define the language to be consistent with the definitions of tips and gratuity. House Bill 272 passed out of House Business and Labor committee with a margin of 18 to 7, and passed second reading with a vote of 99 to 1. **Ms. Case** discussed the bill. On page 1, line 24 through page 2, line three, the term service charge is defined to mean an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool agreement. The definition is the crux of the bill.

Ms. Case directed the committee's attention to the following section of the proposed bill. Page 2, twenty-two to 28 excludes service charge, as it excludes tips and gratuities. Page 2, line 30, "Service Charge" means an arbitrary fixed charge added to the customer's bill by an employer... . Page 4, line 67 concerns Section 3401 of the Internal Revenue Code of 1954.

Eddy McClure, legislative staff person, drafted the proposed bill. **Ms.. Case** stated the hotel industry has taken service charge monies and used the funds to increase employee wages. Although the employees did get a raise, the money did not begin to equal former wage levels. More important, the customer is confused about who gets the service charges. The identical language is still in the contract. There is confusion on the contracts, where the word tip, gratuity and service charge are used in the same contract. The language confuses the public. **Ms.. Case** stated a concern that the problem will not be solved, even if the bill passes because the industry will come up with another term for a service charge. The union does not think another term would be as deceptive a term, as is "service charge". The word is tied to and perceived to be the same as a tip or gratuity. The union believes, after talking to John Andrew, Labor Department, the definition would cover other terms, as long as those terms' true definition was consistent with the one used to define service charge. The definition still says it is a service charge, and the union believes that it would still be covered under HB 272. The bill closes a loophole in current law and attempts to end what is considered to be an unfair business practice.

Kelly Sondeno, Holiday Inn Banquet Server, Billings, MT stated her wages were cut in half by the Holiday Inn system, due to the new "service charge" policy. Service charges had previously be

distributed to the employees. Some people may think the wages were high, but there are other factors that need to be considered. The banquet servers are on call seven days a week; must work split shifts; work seasonal months and may be required to be at work at 5:00 a.m. The odd works hours could end well after a 10:00 p.m. meal and the subsequent clean up activities. Other times, the waitresses/waiters are on call and need to be ready to come to work. Sometimes, they are called to come to work and other times they are not called. **Ms. Sondeno** stated concern with the pay rate and hourly schedule, since the gratuities are retained by management. **Ms.. Sondeno** stated she was placed in uncomfortable positions when customers asked her if part of the charge was for tips. Customers think that any percentage, added to the meal, is a server's tip. The terms tip, gratuity and service charge are used interchangeable and believed by the customer to be the same. **Ms.. Sondeno** handed out exhibits (**EXHIBIT 1**). **Mr. Joe Sarne, Billings, MT** wrote a letter to support HB 272. **Ms. Sondeno** urged the committee to support HB 272.

Kathy Malyevac, President, MT State Council of Hotel Employees and Restaurant Employees (HERE), Butte, MT, stated the council represents hundreds of tipped employees, including banquet tipped employees at many of the major banquet facilities (**EXHIBIT 2**). The facilities include the Northern in Billings, the Heritage in Great Falls, the Outlaw Inn in Kalispell and the Copper King Inn in Butte and Fairmont Resort in Anaconda. In most cases, tipped employees earn minimum wage and rely on their tips to live. The work is seasonal, part time, and allows for few benefits. Until 1994, tips, even if they were called something else like gratuity or service charges, were passed along to the employees. Last year (1994), some major banquet employers in Montana began retaining gratuity or service charges. The practice resulted in a dramatic loss of income for the employees and was deceptive to the customer, who generally thought a gratuity or service charge goes directly to the employees. The council has no problem with employers setting a fair price for the goods and services; they have full leeway to set a price per plate, per event, or per meal. When employees negotiate how tips are to be divided among themselves in an establishment, they make fair decisions. **Ms.. Malyevac** provided copies of tip pool agreements negotiated into Union Contracts (**EXHIBIT 3 & 4**). The tips are received by the employees providing the services. House Bill 272 continues the tip protection to all banquet employees.

Connie Sullivan, Billings Petroleum Club, Billings, MT stated she was a waitress at the Billings Petroleum Club for over five years. **Ms. Sullivan** stated HB 272 is not just a banquet waitress issue. As a dining room waitress in a club that routinely added service charge to all checks, the dining room waitresses had the same problem as banquet servers. **Ms. Sullivan** stated she left her job because of the tip issue. Customers were surprised the service charge was not going to the servers. As members of a private club, they assumed the waitresses/waiters received the

money. The service charge always appeared on their bill. On June 17, 1992, Jim Gunderson, General Manager Billings Petroleum Club, wrote Job Service, "Since the Billings Petroleum Club is a private club that charges a service charge and not a gratuity, we can allocate any percentage to the employees, whether it is 12.5%, 10% or 0%. House Bill 272 is about notice to their customers. **Ms. Sullivan** asked for support of HB 272.

Lynette Russell, Livingston, MT stated she worked in the food service industry for over twenty years. **Ms. Russell** stated she is a single mother of three children, and the industry afforded a better life for her children than another job that would have provided an hourly wage or minimum wage. **Ms.. Russell** stated concern about the growing practice in both large and small Montana cities. More employers are assessing and keeping the service charges. **Ms. Russell** stated she worked for a caterer and received an hourly wage. At one of her jobs, when the customers asked her about the tip, she replied it was included in the bill. She was wrong. Afterwards, the employer kept the tip, and she received only a minimum-type wage. When **Ms. Russell** discussed the situation with her second employer, the employer thought it was a good idea and contemplated keeping the service charges, as well. **Ms. Russell** stated she cannot afford to work for \$6.00 an hour. She does not want to work in a situation where the customer has the wool pulled over their eyes.

REPRESENTATIVE NORMAN MILLS, HD 19, Billings, MT stated he is a member of the Billings Petroleum Club. **REPRESENTATIVE MILLS** stated when he found out the service charge did not go to the servers, he let his opinion be known. **REPRESENTATIVE MILLS** stated he does not know what the club has done to solve the problem, since he has been legislating in Helena. The same situation is happening at other hotels, such as the Northern Hotel and the Holiday Inn West. **REPRESENTATIVE MILLS** urged the committee to support HB 272. The people work to maintain their families. Sometimes the tips make the wages. Back in 1944, **REPRESENTATIVE MILLS** stated he had dinner at the Ambassador Hotel, New York City, New York. The waiter said he paid more than \$20,000 out of his pocket to management, so that he could work at the Ambassador Hotel. He knew what the money was for and what it would be used for. He had a choice to work at the Ambassador or not to work at the Ambassador. People affected by HB 272 do not have the choice, the choice is made by the employer in an unfair and uneven manner.

Don Judge, MT AFL-CIO, Helena, MT, stated he is not going to review the historical agenda of tip related legislation in Montana, although there has been a great deal of similar legislation over the years. Current law allows for the employees to keep their tips and be paid minimum wage. House Bill 272 is not an effort to repeal the provision, but an effort to make clarification. When employers use deceptive practices to get around statutes, the legislature needs to fix the law. Especially when the employers do not obey the law or interpret the law

according to management's wants. Organized Labor became aware of the problem when a letter carriers organization scheduled a banquet at the Holiday in Billings. More than 150 people attended the banquet. They signed a contract for an 18% service fee. One side of the document said service fee, the other side said gratuity, and they understood the employees would receive the monies. They were concerned to find out the management received the added monies.

Blaine Jensen, Holiday Inn West Banquet Server, Billings, MT read letters from the Holiday consumers (EXHIBIT 5).

Curtis B. Haney, Executive Director, Friendship House of Christian Service, Billings, MT, submitted written testimony in support of HB 272 (EXHIBIT 6).

Dennis L. Hall and Robyn Butler-Hall, Billings, MT, submitted written testimony in favor of HB 272 (EXHIBIT 7).

Denise Gorham, Billings, MT, submitted written testimony in favor of HB 272 (EXHIBIT 8).

Anthony Ulmar, Billings, MT, submitted written testimony in favor of HB 272 (EXHIBIT 9).

Jody and Gordon Renner, Billings, submitted written testimony in favor of HB 272 (EXHIBIT 10).

Opponents:

Stuart Doggett, Montana Innkeeper Association, stated opposition to HB 272. **Mr. Doggett** stated there is a great deal of information that was not presented during House debate, and that information would be presented at this time. The association does not attempt to create overt tension between employees and employers, who are experiencing specific labor and wage disputes. The concern is about policy implications in a state-wide industry. **Mr. Doggett** highlighted the following. The bill fails to recognize the many ways the industry handles banquets, tips, services charges and wages for hotel and motel employees. No uniform method of handling these topics existed. Other properties assess a service charge which is then used to increase the hourly wage of banquet employees working at the property, There is no magic formula on how tips and service charges should be handled. Each business and each hotel's operation is different. As a result, operators should continue to be afforded flexibility to establish a system that treats the employees fairly and creates a system that delivers quality service for all guests. As an association manager and a meeting planner, **Mr. Doggett** stated he had been notified by a Billings facility that they had, and others were moving towards the practice of a service charge. There is no secret. Passage of HB 272 insures more government involvement in private sector operations. The association suggested the legislature let the current system

work. Understand there are good employers and there are bad employers. Good employers can keep employees year after year and retain good, hard working employees. There is constant turnover, from a manager's level to the most entry level position. The managers with the best and fairest management systems have the most success and enjoy successfully serving the public. The association urges the committee to seriously consider the impact of HB 272 and urges the committee to defeat the proposed legislation.

Mark Zovic, District Director, Larken Inc, Bloomington, MN, stated opposition to HB 272. Larken Inc. is concerned that government is getting involved in private sector operations. The flat fee only goes for banquet waitresses. The dining room and lounge waitresses get 100% of their tips. In the banquet area, most people came out equal or better. There was a great disparity between what banquet waitresses/waiters made for wages for the different shifts, breakfast, lunch, or dinner. The top waitresses/waiters at dinner time could come in, work two or three hours, get their tips, and leave. The rest of the waitresses/waiters would have to work at minimum wage, work their shifts, and clean up. Larken tried to set the wage rate at \$8.00 an hour for all functions, and made the change in order to be fair to all workers. Marriott has also worked towards correcting like-problems. The best solution is to level the playing field and give \$8.00 an hour or a rate. The wage issue is reviewed on an ongoing basis and factors in other increases. Only banquet waitresses/waiters are involved in HB 272. All other waitresses/waiters get one hundred percent of tips.

Lonnie Funk, Regional Vice President, John Q Hammons Hotels, Kansas City, MO; former 12 year general manager of Holiday Inn, Billings; and former president Montana Innkeepers Association, stated the intent of HB 272 is to require the employer to include service charge as part of the employee wage. The current policy in Banquet Employee Compensation system is: The company currently pays the service employees a flat hourly wage, somewhere between \$7 and \$9.50 an hour. The average is approximately \$8.00 an hour, depending on the length of service and job responsibility. In the Hammons system, no tipping or gratuity, paid to the employees by the guests, are required. The service charge, paid by the customer to the hotel, is considered hotel revenue. The Holiday Inn, John Q Hammons Hotels oppose HB 272 because it would mandate that service charges be paid to service employees as part of their wages. The history of the service charge is interesting. In July 1993, 35 of the 37 John Q Hammons Hotel converted to the flat wage compensation system for banquet servers, banquet set ups, banquet management, kitchen management, catering management, and food and beverage directors. The two hotels that are exceptions were excluded due to pre-existing union contracts. Prior to changing to the new format, Hammons researched how other major hotels companies were compensating their banquet employees. The process took over four months to complete. The list of employers who were interviewed

was Holiday Inn, Sheraton, Red Lion, Marriott, and Radisson, and Ramada. One hundred percent of Marriott's are utilizing the same format that Hammons is using. Hammons completed a comprehensive wage survey in all 37 hotel markets, for all affected positions that were formally included in a tip distribution system. The average wage was determined by taking the minimum wage, and determining the average hourly tip throughout the course of the year. Hammons took all of the gratuity, divided by the number of hours worked, and arrived at an average per hour. The minimum wage was calculated, plus the average hourly banquet tip, and the two figures were added together. They added an additional 25, and came up with the decided wage. There was never an effort to take the money and distribute it back to the hotel (**EXHIBIT 6**).

Mr. Funk stated the hotel choose the flat wage compensation format for the following reasons. One, the system was the most commonly accepted system throughout the country for compensating banquet and management employees. Two, the system allowed the hotel to easily track, and consistently pay competitive wages. Three, the hotel could guarantee employees the wage they were going to be paid, whether they worked a breakfast, lunch, dinner, coffee break or reception. To date, there have been no other legislative challenges to the compensation system, as it is becoming a very common practice in most states. The history of the transition of the property in Billings is as follows: In 1993, the hotel raised the hourly banquet servers' wages from a minimum of \$4.25 plus a portion of the gratuity to a wage of \$6.75 to \$9.25 and hour, depending on length of service and job responsibility. There is a starting wage, a ninety day rate, and a one year rate. The change did not impact any of the restaurant employees. The employees received 100% of their tips. The wages, determined in July, 1993, were increased again by 25¢ per hour on January 7, 1994. The wage is currently between \$7.00 and \$9.50. There are three full time servers, three part time servers, and one supervisor currently employed, who had worked in the former distribution system of a current staff of 26. The hotel has had no problems recruiting applications for servers at a starting rate of \$7.00 per hour.

In 1993, employees utilized the right to try an organize a collective bargaining unit. The banquet wage item was a key issue. The union was voted down 99 to 17. In 1994 and the early part of 1995, some employees again utilized their rights to try organizing collection bargaining. The banquet wage was still one of their issues. This time the union was voted down 91 to 47. It is apparent that the minority voice of opposition is now attempting to get the state legislature to enact a law that they believe will mandate. They should receive the hotel's service charge revenue. Holiday Inn, Billings and John Q Hammond Hotels is opposed to this legislation for the following reasons. One, it will inquire the employer to include service charge as part of the employees wage. As a result, Hammons Hotels will be required to pay local than competitive wages. Two, Hammons Hotels will be forced to raise the prices, which could make the hotel

uncompetitive in the market and reduce revenues. Third, Hammons Hotels could be forced to lay off employees or substantially reduce the number of employees in the respective department or other departments to help offset the wage cost increase. The hotel is already paying the highest hourly wage in the market. The hotel believes the owner of the business should have the right to decide where the tipping or gratuity are required. The majority of the employees feel that the flat, hourly wage system is fair because the employees know what hourly wage they are going to make per hour, whether they are working breakfast, lunch, dinner, coffee break or reception in a seasonal concept. In establishments where banquet business is large portion of the overall operation, it is no longer practical to utilize service charge distribution, as a form of compensation. It creates a huge discrepancy in wages for similar work for department to department by taking away of hotel revenue necessary to pay other employees. Equal pay for equal work is the theme. **Mr. Funk** stated he was not sure if it was fair that the hotel pays a banquet employee \$12.00 per hour to work the banquet, and then pay a maid \$5.00 per hour to clean rooms for eight hours. The hotel believes a service charge required from the customer to be paid to the hotel is hotel revenue. The hotel has the legal right to do whatever the hotel wishes with the revenue, just as every other business. Business and other industries, such as banks, repair shops, clothing stores and private clubs require the customers to pay service charges. The same businesses do not allow tipping. There is no reason to single out the hotel industry. The flat wage system is fair to all employees, according to the hotel. The state government should be involved in how employees are paid to the extent the hotel requires minimum wage and other conditions. Uniformity between all employees is the goal. Where state government attempts to provide special benefits to certain classes of employees, the state unfairly penalizes those classification whose wages must necessarily be reduced to pay for the additional benefits mandated by state law. No other state in the union has this type of legislation. It was attempted in California and was abandoned because it proved to be unworkable. John Q Hammons Hotel, along with the sister company, Winegarden and Hammons, do business in 38 states. There have been no challenges to the compensation system in another state. **Mr. Funk** urged the committee to reject HB 272.

Tom Hopgood, Attorney, representing Holiday Inn, Billings, stated he has seen more than one bill this session come out of the House by a 99 to 1 vote margin only to stall in the Senate. House Bill 272 is like the little boy who tried to kill the goose that laid the golden egg. **Mr. Hopgood** stated he "sees" a situation in a small number of hotels, which are paying their banquet employees the highest wages in the market. The hotels eliminated the existing tip pools that existed. The gratuities were split among the people who worked there and imposed a service charge. Then, they increased the wages in hopes of equalizing the wages in the work force. Some of the employees did not get paid as much and

had to work longer hours to get the same amount. Some employees, perhaps the majority, ended up making more. There is a legislative attempt to go back to the old way of doing things. The banquet people want to keep the higher wages and also get the tips.

Mr. Hopgood stated when he takes his car into the auto mechanic for new parts, and when the work is done, there is a service charge. All the labor charges that are paid for the mechanic do not go to the mechanic. The charges goes directly to the owner of the franchise, who turns around and pays a flat wage. Likewise, for value added service, the attorney uses a paralegal services to do certain legal work. The paralegal is paid a fixed salary. The charge for the paralegal's time is subtracted from the total charge. The difference is the service charge. The paralegal does not get the difference between the salary and what is charged out. The amount goes into the operating fund, used to pay the overhead. All of the value added goes to the person that is providing the service, rather than to the owner of the business.

Questions from Committee Member and Responses:

SENATOR EMERSON stated the bill talks about IRS, section 3401. **Eddy McClure** stated there is a definition of language and an explanation of what a service charge is under the IRS code. **Ms. McClure** stated she would get **SENATOR EMERSON** a copy of IRS codes. **SENATOR EMERSON** asked if the definition ties it in with a tip. **Ms. McClure** stated there are two sections of IRS Codes listed in the bills. The federal government deals with the definition separately and under difference sections. **CHAIRMAN KEATING** stated it deals with the income tax levels, or the percentage of tips that are subject to income tax and the payroll tax. The IRS ruled that 8% of the gross proceeds from the restaurant were considered the level of tipping and that would be subjected to income tax.

SENATOR EMERSON stated generally tips are given to try to get better service. Tips are like merit pay. Was there lowering of the service level because the tips didn't get back to the waitress. There was no apparent tipping to the waitress/waiter. **Mr. Funk** replied that if the overall service records were surveyed for the last couple of years. Whatever drops in customer service perception would probably be due to management's ability to properly manage and train the employees, versus from the employee's way they did their job. There is a lot of pride within the banquet service staff to ensure the customer is well taken care of. Taking care of the customer means repeat business. The wage, whether it is paid by a minimum wage, plus a portion of gratuity or flat wage is totally determined upon by how many hours are worked. The waitresses/waiters work only when there is business.

SENATOR VAN VALKENBURG recapitulated **Mr. Funk's** testimony about the industry practices' nation wide and how those practices apply to what is happening in Montana. The John Q Hammons Hotels is the Holiday Inn Corporation. What is the real issue is not what are the wages of employees, but whether the customers are being deceived in the contract. The hotel-restaurant people have highlighted the fact that what the Hammons Hotel referred to as a service charges, is included in the contract and acknowledged as a gratuity. How can customers not be deceived, as to what is the purpose of the charge, when it is written in the contract. The Right to Life Association had a banquet at the Holiday. Their contract said the service charge is a gratuity. **Mr. Funk** stated he did not know what the date was of the example contract, which was passed out by the proponents. But the hotel revised the contracts on more than one occasions to correct the inconsistencies relating to service charge or gratuity. Employees brought it to the hotel's attention. Employees in the sales and catering departments and/or in the contract and sales departments have had outdated contracts for two or three years. The hotel is at fault for being inconsistent and for not properly informing the customers. The corporation acknowledges the fault and takes full responsibility. At the same time, however, the hotel is in the process of making sure that like problems do not happen on a continuous basis. It was never the intention of the corporation to misinform the customer. The hotel has seven people in the office, and sometimes, as in everybody's business, all the information may not be conveyed to each person in the exact same manner. Fourteen hotels are inconsistent in management practices and may not have informed all their people. Sometimes, the person who signed the final check is not the same person that signed the contract and may not even be aware of the practice. A company does not stay in business in Montana or anyplace else by deceiving the customer.

SENATOR VAN VALKENBURG asked why won't the company either charge the full charge amount for the meal, the amount they want to charge for the meal. The companies should be able to say "this is how we do business", rather than break up the charge into \$8.00 a plate, plus the service charge. Why won't the Holiday Inn simply put out a sign on the table that informs the customer not to tip the employees and to inform the customer the Holiday employees are paid more than what other restaurants pay their employees. Simply tell the customers what the hotel is really doing. **Mr. Funk** replied legislation may be passed and hotels may end up doing exactly what **SENATOR VAN VALKENBURG** described. However, from a good business practice point of view, hotels need to better inform customers. The situation that is being discussed may be the exception, not the rule. The Holiday Inn works approximately 250 functions per month. Certainly, there may be people who did not understand or were not listening to the information being discussed concerning such issues. Perhaps, they were not even told, but there are other cases where the customers were told and the customers did understand. Competition takes care of any problems. If the company deceived

the public, they go elsewhere. **SENATOR VAN VALKENBURG** stated he is concerned about whether or not all employees are sharing the tip. "Waitpeople" do a fine job, but there are dishwashers, bus people, cooks, etc. who might not be sharing the tip money. The people who serve the customers directly may or may not have to do work that is as hard of work as the other workers have to do.

SENATOR VAN VALKENBURG stated he liked the idea about the service charge. In a sense, the service charge might be distributed to every employee, as opposed to just the waitress/waiter who has the one-on-one contact with the customer.

Ms. Case explained there is a tip pool agreement. The tip laws are the absolute property of the person receiving the tip. So management cannot be involved in the negotiation of the tip pool agreement. **Kathy Malyevac** tried to point out that employees are responsible for negotiating tip pool agreements. A tip pool agreement could read that the waitress/waiter received tips, and a certain proportion goes to the cook, the dishwasher, etc. Tip pool agreements do happen. In union negotiated contracts, the tips are negotiated for the cooks, wait staff and for dishwashers. **Ms. Case** stated it has been her experience, as a former waitress, the practice of having a tip pool was done without organized labor's intervention. The practice is common. It is uncommon for management to negotiate tip pool agreements, since tips are the sole property of the employees receiving tips.

SENATOR BURNETT asked **Mr. Funk** if the hotel would go to a pooling agreement. **Mr. Funk** replied the hotels would not necessarily go to a tip pool arrangement. **SENATOR BURNETT** stated he was interested in the topic, called wages. Wages have been increased to take care of the difference. **Mr. Funk** replied the hotel would have the option of two or three different alternatives, should the law become a reality. One, obviously, would be to go back to the tip distribution system. Another would be to list the entire price. The price would be the set amount, and the employees would continue to be paid the same, as they are today. The hotel has certain labor margins that must be worked within. Other costs continue to escalate. Every time an increase happens, something else has to be adjusted. There must be returns on investments. All options would be considered to determine how things can be kept level. **Mr. Funk** stated the new policy came as a result of trying to be fair, and trying not to impact the restaurant employees. The adjustment was arrived at by trying to pay the same wage to every person, every shift.

{Tape: One; Side: Two}

SENATOR SUE BARTLETT asked Attorney Tom Hopgood how often he tipped the mechanic who worked on his car. **Mr. Hopgood** said that he doesn't tip his mechanic. **SENATOR SUE BARTLETT** asked **Mr. Hopgood** how often does his clients tip the paralegal at his law office. **Mr. Hopgood** stated the paralegals do not get tips. Why, then, are the examples **Mr. Hopgood** gave considered analogous to an industry where it is customary to tip the waitress. **Mr.**

Hopgood stated that is the point he was trying to make. In a situation where a business is adding a service, such as a mechanic or a paralegal, that service charge added for the service performed goes to the owner of the business. The owner makes it possible for the mechanic, paralegal, etc. people to have a job. In this situation, it is also a service charge. It is not a tip. **SENATOR SUE BARTLETT** stated it is a tip. So, why does changing the name, make a difference, given the historical practice of the hotel and restaurant business. **Mr. Hopgood** stated there is a difference between a tip and a service charge. A service charge is something that goes for the job that is done, not something that is extra. Instead of a tip, the banquet workers received an increase in wages. There is no tip. Instead there is a service charge. The service charge enables the owner to pay the increased wage, which the employee is given, instead of a tip. **SENATOR BARTLETT** asked **Mr. Hopgood** if he was aware that in Montana it is illegal for employers to take the tips from employees and use those tips to increase wages. **Mr. Hopgood** said he was not aware of the law. The statute is the tip laws that have been referenced to earlier in the hearing debate. **SENATOR BARTLETT** asked **Mr. Hopgood** if this is simply an effort by the hotel and restaurant industry to call a rose by a different name, and be able to get around the law. The law specifies they cannot take tips from the employees in order to increase the wages. Is this an effort to avoid coming under the strict letter of the law. **Mr. Hopgood** said he heard testimony about the service charge being misleading, confusing, and a fairness issue. In addition, it has been alleged that the customer thinks the money is going to the person who is serving the meal. If there is a problem, **Mr. Hopgood**, stated he would suggest looking at a statute enacted in another state. The particular statute required disclosure that the service charge was not distributed to the employee. If that is truly what the legislation is after, "not misleading the customer, misrepresenting, and eliminating confusion", the Holiday would work with **Ms. McClure**. The Holiday would disclose the service charge does not go to the people providing the service.

SENATOR BILL WILSON asked **Lynette Russell** if she would object to answering a somewhat personal question. **Ms. Russell** did not object. **SENATOR WILSON** asked if **Ms. Russell** was on any type of government assistance. **Ms.. Russell** stated the service industry is a seasonal business. In the winter, **Ms. Russell** stated she receives heating assistance, but has tried to avoid any other type of assistance. **Ms. Russell** stated she had to take another job on many occasions. It would be different if she worked for minimum wage. **Ms.. Russell** stated she works a job where she received tips or gratuities because the situation works best for her. **SENATOR WILSON** stated the program **Ms. Russell** is on is energy share, which is not a government assistance. Utility customers contribute to a pool that is distributed to those people who need assistance. **SENATOR WILSON** asked **Ms. Russell** what was her usual wage is. **Ms. Russell** stated she is working for \$5.00 per hour, plus tips. As the law reads now, **Ms. Russell**

reported she sees violations of what happens to the tips she currently makes. **Ms. Russell** explained she was asked by the owner to pay, out of tip money, the bills for customers who walked out of the businesses without paying the bill. A couple of days ago, when she received tip money, money had been taken out of the tip and, evidently, paid against her open check. **Ms. Russell** stated every place she has ever worked, all of the other employees are tipped out, the dishwasher, bartender, etc. **SENATOR WILSON** commented on **Ms. Russell's** testimony, asking if **Ms. Russell** would rather receive tips, rather than just get the higher wages. **SENATOR WILSON** asked if by getting the wages, plus tips, could she better keep the attitude of a productive person. **Ms. Russell** said yes. She stated paralegals and auto mechanics make more than \$6 to \$9 per hour. If she was making \$9.00 an hour or more, she would be pleased. Anything less than \$10.00 an hour does not pay for housing and food, the reason why people take two jobs. The service charge is a growing practice. The new practice may force people to have to have two jobs. **Ms. Russell** stated she would rather work for an hourly wage, plus tips.

CHAIRMAN TOM KEATING asked **Connie Sullivan** what was the hourly wage she had made at the Petroleum Club. **Ms. Sullivan** stated the wage was \$4.25, without any pay increases. **CHAIRMAN KEATING** asked if she received the minimum wage in the beginning, plus gratuity. **Ms. Sullivan** replied she made the \$4.25 plus 12.5%. It was 15% on the customer's bill. Two and one half percent went to the busers and 12.5% went to the server. **CHAIRMAN KEATING** asked who arranged the tip pool. Was the tip pool between the employees, or at the direction of the employers. **Ms. Sullivan** stated management initiated the tip pool. **CHAIRMAN KEATING** asked if **Ms. Sullivan** ever determined what her hourly wage was when she added the hourly wage plus tips. The money varied because of the nature of the business. Valentine day was always busy, but other days were not. **Ms. Sullivan** stated, at tops, she could make as much as \$150 in tips, plus four or five hours worth on minimum wage. On other days, the tips may be only \$75. **Ms. Sullivan** stated she was making well over \$10.00 an hour, on an average.

CHAIRMAN KEATING asked **Ms. Case** about the language of the bill. **SENATOR VAN VALKENBURG** pointed out the theme was about customer notification and was woven through most of the testimony. The Holiday complaints were over the service charge not being gratuity. Customer notification seems to be the biggest point of contention. There is nothing in the bill that requires customer notification, regarding the industry's meaning of service charge, gratuity, or tip. Even if the legislation passes, if the employer uses other names, there still is no legal requirements for customer notification. **Ms. Case** stated she had talked briefly about how the legislation should be structured and how the language should be written. If you call "this" a service charge, and all the money goes to the employee, there is no problem. If the name of the service charge is changed, the employers would still come under the law. The money would still

have to be given to the employee. The reason why the union choose not to go with just a notification is because there is a variety of people dealing with the contract. The person signing the contract may or may not be the person who pays for the bill. To eliminate the vast amount of confusion, it was easier to say "if you are going to say service charge, tip, gratuity, etc., treat them all the same." **CHAIRMAN KEATING** stated the legislation is written for the expressed benefit of banquet waitresses/waiters. The legislation does not affect general waitressing. The waitresses/waiters in the restaurants and in other places are still keeping the tips left on the table. **Ms. Case** stated there is some exception to those rules. **CHAIRMAN KEATING** stated he was wondering if there was any impact on the restaurant's waitress/waiters. **Ms. Case** replied if it is a tip, the employee keeps the money. In the case of the Petroleum Club, the service charge goes through management. When people go to private clubs and/or pay by credit card, and the term, service charge, is used, the law might affect some floor waitresses. **SENATOR KEATING** said in some restaurants, management will say there is no tipping, but there is a 16% service charge that is added in lieu of tip. The customer pays the tab, and believes that is the tip for the waitress (because the 16% is historically the amount used to compute tip amounts). If there is are restaurant and banquet waitresses in the same establishment, a problem may arise when management says there is no tipping. The restaurant waitress/waiter will be impacted. If the banquet waitresses/waiters force this kind of language on the employer, the employer can price everything and not allow tipping. . **Ms. Case** stated she understands the concern about adverse effect on pooled waitresses. The union realized the risk, but it would be bad public policy to put up a sign that says "no tipping". **Ms.. Case** does not think restaurants would establish that practice. **CHAIRMAN KEATING** recapitulated. The committee is asked to impose a law for the benefit of a small group within the food service industry. For every action, there is a reaction. Legislative mistakes have been made before and the subsequent adverse impact if found out later. **CHAIRMAN KEATING** stated the theme of tipping is historical. Sixteen percent has been the norm, nothing less. If 20% is given, the waitress understands a good job was done. Customers realize the normal tip percentage is 16%, whether they are at a banquet or at a restaurant. Tipping is a part of the whole program. That is why it is perceived as dishonest by the manager to "say" service charge is 16%, because that is the customary rate of tip. So the customer presumes the service charge is going to the employee. Customer notification is the area that really is the topic of discussion. If the union wants to take the service industry and the banquet waitresses back to where they were, and management says that is not fair to all the employees. It is not helpful to the business. There is no language in the law that says they have to require tipping or gratuity in a banquet situation. Management can go to just a single price for the banquet and not have a service charge, and continue to pay the hourly wage. The employer will still be conceived as being competitive because everyone else will be

adding a gratuity. If the employers are paying the waitresses/waiters \$8.50 to \$9.00 a hour, the customer negotiating the contract will feel the situation is fair.

CHAIRMAN KEATING said there is no gratuity in the price, if you liked the service and want leave money on the table, a person can leave money. Sometimes, banquet customers have asked to leave cash, only to find out the tip was not included in the check.

CHAIRMAN KEATING asked **Ms. Case** if she thought the proposed language will accomplish what the union set out to do. **Ms. Case** stated she

wished she could stand up in front of a legislative committee, all the time, and say she was absolutely sure the language will accomplish the task. The drafting was a complex process, so a diligent, fine-tuning attempt has already been made. The objection and intention was covered within the legislation. **Ms. Case** stated the industry would like to let people believe that they are dealing with only one hotel, that is not the case. We purposely did not want to parade in people for a dog and pony show, but to bring in a solid group of representatives to expose a growing practice across the state. **Ms. Case** stated she believed the bill will accomplish the goals. Notification will probably not go as far. By saying the service charge remains hotel revenue, there is still no disclaimer in place to state the cash will be used for tips. Clarification is needed. If a service charge is charged, the management needs to give the money to the employees. After receiving the customer's letters, the intent was known. If the employer charges an additional 18%, the money needs to go to the employees. If service charges are going to be eliminated and the employees are going to be kept at the hourly wage, the employees are no worse off than they were when the process began. The union has no intention of stopping the industry from raising prices as much as they want. **CHAIRMAN KEATING** asked how do you respond to the comment, "the breakfast banquet waitresses will receive smaller gratuity than the evening banquet waitresses. **Ms. Case** stated they would respond by saying we really appreciate the folks at the top of the industry taking it on themselves to make wages fair by reducing tip income. In fact, it is commonly accepted by those at the bottom that the seemingly higher wage for banquet servers is part of the compensation for both the short hours, the irregularity of the work, and the various other factors that make banquet work both unstable and difficult. It is incredibly hard to budget families and be a banquet waitress/waiter.

Closing by Sponsor:

REPRESENTATIVE JAY STOVALL stated he is a very conservative businessman, but, he does not believe the legislation is a labor issue. One of his constituents, who worked for the Holiday Inn Hotel for years, had to accept the change of policy. The effects were negative. The constituent had been and continued to be a good waitress/waiter. The Holiday Inn provided good service. Management decided to change the policy, and did so. If the business wanted to lower the wages, why not lower the wages. The

end result was the same. The employer took away the tips and raised the wages, but the take home pay was substantially less. Years of loyal service did not make a difference. Most people believe the service charge, gratuity and tip are synonymous, and the money goes to the employee. If the money does not go to the employee, then that is deception. If the hotel does not want the workers to get the money, the hotel can raise the price of the meals; refuse to put on the service charge; and/or charge an hourly wage. **REPRESENTATIVE STOVALL** stated the bill is a matter of fairness and honesty. The bottom line is: If the employers pays workers fair wages, pay the workers honestly, not deceptively. **REPRESENTATIVE STOVALL** urged the committee to pass HB 272.

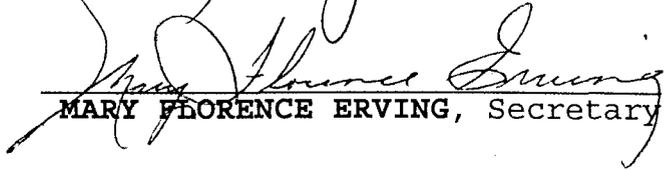
CHAIRMAN KEATING stated **Eddy McClure** distributed a Memorandum, a substitute bill, combining HB 66, HB 68, and HB 432. **Ms. McClure** asked the committee members to review the document for discussion at the next meeting. **Eddy McClure** stated she distributed the document to the Departments of Labor, Commerce, and Justice, with comments.

ADJOURNMENT

Adjournment: The meeting was adjourned at 5:05 p.m..



SENATOR TOM KEATING, Chairman



MARY FLORENCE ERVING, Secretary

TK/mfe

SUPPORT HOUSE BILL 272

LEGISLATIVE LABOR & EMPLOYMENT

EXHIBIT NO. #1

DATE March 11, 1995

BILL NO. HB 272

H.B. 272...THE FACTS

House Bill 272 is a simple bill providing a definition to the term "service charge". Service charges have recently been taken away from banquet employees yet the language in the banquet contracts remains the same.

This bill defines "service charge" as an arbitrary fixed charge added to the customers bill by an employer in lieu of a tip. It is collected by the employer and must be distributed either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool agreement."

In 1993 prior to having their tips taken away the average banquet employee at the Holiday Inn made anywhere from \$9.73 per hour to \$17.00 per hour. Now the highest paid employee makes \$9.25 per hour, significantly less than before tips were taken away.

IF YOU WENT INTO A RESTAURANT AND LEFT A TIP ON THE TABLE AND THE OWNER TOOK IT AND KEPT IT YOU WOULD BE MAD. THAT IS WHAT IS HAPPENING AND THAT IS WHAT WE WANT TO STOP!

The language in the contract is deceptive, even the department of revenue assumed that employees received all service charges when they drafted the fiscal note. This language results in confusion among customers.

This is a fair business practice bill.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. # 01

DATE March 11, 1995

BILL NO. HB 272

March 10, 1995

Senate Message No. 444-4800

I Support H.B. 272

As a local businessman, I am often responsible for customer and employee banquets and meetings.

At a recent dinner banquet, the waitress overheard me comment that I felt a flat fee tip for service personnel is appropriate but an 18% "gratuity" applied to room fees and slide projector is not. The waitress told me that the 18% "gratuity" didn't even go to the employees.

This is not right.



Joe Sarne

Testimony of Kathy Malysvac
H.B. 272, 3-11-95

SENATE BILL NO. _____
HOUSE BILL NO. 2
DATE 3-11-95
BILL NO. HB 272

Mr. Chairman, members of the Committee,
for the record my name is Kathy Malysvac

I am President of the Montana State
Council of Hotel Employees and Restaurant
Employees

State wide we represent hundreds of
tipped employees including banquet tipped
employees at many of the major banquet
facilities in Montana including the
Northern in Billings, the Heritage Inn
in Great Falls, the Outlaw Inn in
Kalispell and the Copper King Inn + Fairmont
Resort in Butte.

In most cases tipped employees
earn minimum wage and rely on their
tips to live. There is a seasonal nature
to this work and is often part time with
few benefits.

Until this past year, tips, even when
called something else, like gratuity or
service charge, were passed along to the
employees. Within this past year, some of
the major banquet employers in Montana
began to retain the gratuity or service
charge. This resulted in a dramatic loss
of income for the employees and was
deceptive to the customer, who generally
thinks a gratuity or service charge goes

directly to the employees

We have no problem with employers setting a fair price for their goods & service. They have full leeway to set a price per plate, per event, or per meal.

What we have found is when employees negotiate how tips are divided among themselves in an establishment, they make fair decisions.

I have provided copies of the tip pool agreements negotiated into Union Contracts with some of Montana's largest and most significant hospitality industry employers. What you will notice in all cases these tips are received by the employees providing the services. H.B. 272 provides that protection for all banquet employees. We encourage you to pass H.B. 272.

LABOR AGREEMENT

Between

HOTEL EMPLOYEES & RESTAURANT EMPLOYEES LOCAL 457

and

BUTANA CORPORATION dba COPPER KING INN
(CULINARY DIVISION)

Term: JUNE 15, 1993 to JUNE 14, 1995

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III	EMPLOYMENT AND HIRING	3
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VI	PART-TIME EMPLOYEES	4
VII	CLASS "B" COOK	5
VIII	APPRENTICES	5
IX	HOLIDAYS	7
X	SICK LEAVE	9
XI	VACATIONS	9
XII	CALL OUT	11
XIII	BUSINESS AGENT	11
XIV	DEFINITIONS OF WORK DUTIES	12
	SECTION 1: CAFES, RESTAURANTS, Drive-Ins and Take-Out Foods	12
	SECTION 2: Luncheonette and Delicatessen Work	14

(G) Tips paid on a bill by the host of a banquet or formal party shall be divided by the Employer among the personnel involved in the direct preparation or services provided for each party or banquet, on the basis of thirty-five (35%) percent to all kitchen personnel directly involved in the preparation or service, and sixty-five (65%) percent to the remainder of the involved personnel.

(H) All regular employees who have been on the payroll for one (1) year or more shall be entitled to three (3) unpaid personal days per year. A request for an unpaid personal day shall be made at least seven (7) days in advance. It shall not be granted for holidays or special events unless the Employer so stipulates. Granting the request is subject to the sole discretion of the Employer. Denial of a request shall not be subject to the grievance or arbitration provisions of this agreement.

ARTICLE XVIII

CONTRACT MINIMUMS

No present employee shall suffer a reduction in hourly or daily rate of pay or a loss of any fringe benefits presently enjoyed due to the signing or operation of this Agreement. Nothing herein shall be construed to prevent the payment of wages in excess of the minimum wage scale as set forth in Article V and Appendix "A," it being understood that the Employer may place superior wages, hours, working conditions and other employee benefits in effect and may reduce the same to the minimums herein prescribed without the consent of the Union.

ARTICLE XIX

NO STRIKE - NO LOCKOUT

(A) The Union agrees that it will not authorize, encourage, engage or participate in any strikes, slowdowns, work stoppages or picketing, nor will the Employer engage in any lockout of employees during the life of this Agreement, or any renewal hereof; it being understood, however, that if the provisions of Article XXIX (Term of Agreement) of this Agreement are complied with by either party and the parties are unable to agree on the terms of any renewal, then and only in that event, the Union shall have the right to engage in a lawful strike or the Employer may engage in any lawful action.

(B) In the event of the violation of the provisions of this section, the Union will promptly order its members to return to work and if the Union does so, the Employer will not hold the Union

EXHIBIT 3
DATE 3-11-95
XI HB 272

LABOR AGREEMENT

BETWEEN

RADISSON NORTHERN HOTEL

AND

HOTEL, MOTEL AND RESTAURANT EMPLOYEES
AND
BARTENDERS UNION LOCAL #56

March 3, 1994 to April 30, 1995

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VII	Discipline, Grievances, Arbitration	6
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X	Wages	9
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	ADDENDUM "A"	11
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ARTICLE IX

SICK LEAVE

Section 1. Sick leave hours are based upon straight time hours worked or paid up to six (6) days per year with the right to accumulate a maximum of eighteen (18) days.

Section 2. Sick leave with full pay shall be allowed commencing the second day of an illness or first day of an accident or hospitalization.

Section 3. If the Employer requires a doctor's certificate, it will be requested by the Employer at the onset of illness or accident.

Section 4. Falsification of illness or injury shall be grounds for immediate discharge.

Section 5. An employee will be given one (1) week additional vacation every three (3) years if no sick leave is used during that period of time.

Section 6. For any employee with a medical leave of absence the Employer will make every effort to return the employee to his/her previous position contingent upon his/her ability to perform the assigned duties of the position.

ARTICLE X

WAGES

Section 1. The wages for the classifications of the Employer are attached as ADDENDUM "A" of this Agreement.

Section 2. No contracts or understanding shall be made between the Employer and his employees, either as individuals or groups, which would minimize the wages or working conditions in any form. This does not prevent the Employer from paying a superior craftsman a higher wage nor reducing such merit raises if the employee fails to retain the status as a more proficient employee.

Section 3. Gratuities are the property of the employee and shall be retained by the employee in addition to the established wage in this Agreement.

Section 4. On all pre-arranged banquet functions to which gratuities are added to the bill or are otherwise arranged for with management, the following division formula shall prevail:

A. On parties to which fifteen percent (15%) or more has HB 272 been added as gratuity; fifteen percent (15%) of this gratuity may be set aside for supervisors; eighty-five percent (85%) to the waitress and /or waiters (and others so designated by the customer) who served the function. If buspersons are used in the serving of the function, they shall receive ten percent (10%) of the waitresses and/or waiters share.

B. On parties to which less than fifteen percent (15%) has been added as gratuity, ten percent (10%) of this gratuity shall be set aside for supervisors; ninety percent (90%) to the waitresses and/or waiters (and others so designated by the customer) who served the function. If buspersons are used in the serving of the function, they shall receive ten percent (10%) of the waitresses and/or waiters share.

C. An accounting of the distribution of all gratuities for each and every function as outlined above shall be made not less often than once every week. The Employer shall maintain a record of this distribution and such records and information shall be available to Banquet Employees, and authorized Union representatives upon request.

ARTICLE XI

SAVINGS CLAUSE

If any word, paragraph or section of this Agreement is finally declared illegal, or in conflict with Federal Law, State Law, or rule established code, by other United States Supreme Court decisions, both parties hereto agree that such word, paragraph or section shall become inoperative at that time, and only then, to the extent to which it affects this Agreement. It is further agreed that in such event and if such illegality goes to the essence of this Agreement, both parties will meet as soon as practicable and negotiate toward a substitute clause.

ARTICLE XII

TERM OF AGREEMENT

This Agreement is effective March 3, 1994 and continues to April 30, 1995. If either party desires to extend or modify the terms of this Agreement, notice must be given to the other party a minimum of sixty (60) days prior to the expiration of the Agreement.

LABOR AGREEMENT

BETWEEN

THE BEST WESTERN HERITAGE INN

AND

THE HOTEL, MOTEL, RESTAURANT AND
TAVERN EMPLOYEES UNION,
LOCAL NO. 101

SEPT 16 1994
4
DATE 3-11-95
BILL NO. HB 272

TERM: SEPTEMBER 16, 1994 TO SEPTEMBER 15, 1997

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IV	MANAGEMENT RIGHTS	3
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X	MEALS	6
XI	HEALTH AND WELFARE	7
XII	UNIFORMS	7
XIII	INJURY ON DUTY	7

ARTICLE XVIII

BUSINESS AGENT

The Employer agrees that an authorized representative of the Union shall be permitted to make reasonable visits with members of the Union during business hours at their place of employment. The authorized representative of the Union shall also be permitted to interview employees concerning grievances and to ascertain whether or not the terms of the Agreement are being followed. The Union representative shall notify the General Manager or Assistant General Manager of their presence on the premises. The Union representative shall not interfere with the normal work of any employee.

ARTICLE XIX

MISCELLANEOUS PROVISIONS

(A) The Employer agrees to keep a copy of this Agreement posted at a place adjacent to the work area in each department of the employees covered by this Agreement.

(B) The Union House Card is, and shall remain the property of the Union, and shall be surrendered by the Employer on demand.

(C) Tips and gratuities are the property of the employee and form no part of their compensation, and are to be retained by them. Employees shall not be required to pool tips and gratuities received, with the exception of Banquet employees. Tips paid on a bill by a host of a banquet or other catering functions shall be divided by the Employer among the Banquet employees involved in each banquet or catering function according to the current formula used in the division of tips, a copy of which shall be provided to the Union.

(D) Contributions and collections for charitable purposes shall be handled on a voluntary basis and no deduction from wages shall be taken from the employee's pay.

(E) An employee shall not be charged for breakage so long as such breakage is not the result of extreme carelessness or maliciousness; or for overcharging or undercharging a customer or for a customer's walking out of the establishment without paying his or her bill, so long as the employee exercises reasonable care to prevent such incidents.

(F) Employees shall not be personally responsible for errors when cashing checks unless they violate specific written orders from the Employer regarding the procedures of cashing checks, guest charges and credit card procedures and foreign exchange.

(G) Each employee shall be permitted a ten (10) minute rest period during each four (4) hours worked. Rest periods shall be uninterrupted, except in case of emergency, and shall not be taken in conjunction with a lunch break unless mutually agreed to by the Employer and employee.

FILE # MTS

PLEASE SIGN AND RETURN
John Q. Hammons Hotels, Inc.
HOLIDAY INN BILLINGS PLAZA
CATERING DEPARTMENT RESERVATION

DATE May 22, 1995

DEF _____

FAX: _____

DAY Friday DATE July 23, 1992

ORGANIZATION Midwest Software IN CHARGE Julie Pierson

ADDRESS P.O. Box 128, 102 E 1st St., Laurel, MT 59044 PHONE: 520-7000

METHOD OF PAYMENT PAYMENT UPON COMPLETION HOME: _____

COCKTAILS

TIME _____ PRICE _____ NUMBER _____ ROOM _____

SPECIAL REMARKS _____ HOSTED NO HOST

MEAL

TIME 12:00PM PRICE _____ NUMBER 15-20 ROOM Palais

MEALS LESS THAN 15 PEOPLE SUBJECT TO ROOM RENTAL CHARGE

SPECIAL REMARKS _____ SET _____

MEETING

ARRIVAL TIME 8:00AM TO 5:00PM NUMBER 15-20 ROOM Yellowstone

SPECIAL REMARKS _____ ROOM RENTAL/C W/Planned meal

COFFEE SET-UP

TIME _____ AM

_____ PM

Bar Requirements _____

EXHIBIT 4

DATE 3-11-95

HB 272

MENU

Special Set-up Instructions and
Special Audio Visual Equipment Requested

CLASSROOM/LECTURE

U-shape/seating

**FINAL GUARANTEE TO BE GIVEN
48 HOURS PRIOR TO FUNCTION**

CLIENT WILL BE BILLED FOR FINAL GUARANTEE IF A LESSER NUMBER OF PEOPLE
ATTEND.
WEEKEND FUNCTIONS MUST TURN FINAL GUARANTEE IN BY THURSDAY.
MONDAY AND TUESDAY FUNCTIONS IN BY FRIDAY

CANCELLATION POLICY HOTEL POLICIES (SEE REVERSE SIDE)
I have read the above contract and the Hotel's Catering Policies and Procedures printed on the
reverse side and agree to the terms and conditions. This booking will remain tentative, subject to
cancellation by the Hotel, until this contract is signed and received by the Hotel prior to the function.

**AT THE HOTEL'S DISCRETION
WE RESERVE THE RIGHT TO REASSIGN
THE ABOVE ALLOCATED SPACE.**

SIGNATURE/TITLE _____ DATE _____

HOTEL POLICIES

1. The Hotel's Catering Department requires a guaranteed attendance count 48 hours prior to the date of the function. Charges will be based on no less than 100% of the guaranteed number. The Hotel will be prepared to serve 5% more than the guaranteed number up to 15 plates. Weekend functions must turn in final guarantees by Thursday at 5:00 P.M. If there are 2 menu items selected, both will be priced at the higher price. Exact guarantee required on multiple menu selections.
2. Meal functions of less than 15 people in a private banquet room, are subject to a room rental charge.
3. A 16% gratuity is added to the total bill for all food and coffee breaks; and a 16% gratuity is added to the total bill for all hosted liquor.
4. Payment in full is required upon completion for all catering functions unless prior credit arrangements have been established with the Hotel.
5. A deposit is required for all catering functions unless prior credit/payment arrangements have been established with the Hotel.
6. If a function must be cancelled, the deposit will be refunded in full if the Hotel has received notification of the cancellation at least 30 days prior to the function. (Refunds for cancellations of major Christmas parties, etc. are at the discretion of the Hotel). It will be at the discretion of the Hotel whether to refund a deposit if cancellation notification is received less than 30 days prior to the scheduled function.
7. All banquet checks must be signed by the person in charge or a designated representative at the completion. Any discrepancies in counts or changes should be identified and resolved at that time.
8. Final menu selections must be submitted two (2) weeks prior to the function to insure the availability of the desired menu items.
9. No food or beverage of any kind will be permitted to be brought into any banquet/meeting rooms by any guest.
10. A cash bar exists when the guest purchases drinks individually. There is no bartender fee when liquor sales total over \$75.00 per bar. If the \$75.00 minimum is not met, there will be an additional \$30.00 fee per bartender.
11. Function guests will be admitted to the banquet room and expected to depart at the times stated in the catering contract, unless otherwise approved by the General Manager.
12. The Hotel may require that the customer obtain and pay for bonded security personnel when valuable merchandise or exhibits are displayed or held overnight in the Hotel.
13. The customer is responsible for the arrangements and appearance of shipping crates of merchandise, exhibits, or any other items to and from the Hotel. The Hotel must be notified in advance of shipping arrangements to insure proper acceptance of these items upon arrival at the Hotel.
14. The Hotel is not responsible for damage to or loss of any items left in the Hotel prior to or following any function.
15. The Hotel reserves the right to move functions to other banquet/meeting rooms other than those appearing on the catering contract without prior notification.
16. The customer is responsible and shall reimburse the Hotel for any damage, loss, or liability incurred to the Hotel by any of the Customer's guests or any persons or organizations contracted by the customer to provide any services or goods before, during, and after the function.
17. Any items to be put on any meeting room or lobby walls, or any directional signs, must be approved by the Hotel.
18. The Hotel shall not be liable for non-performance of this contract when such non-performance is attributable to labor troubles, disputes or strikes, accidents, government (Federal, State and Municipal) regulations of, or restrictions upon travel or transportation, non-availability of food, beverage, or supplies, riots, national emergencies, acts of God and other causes whether enumerated herein or not, which are beyond the reasonable control of the Hotel, preventing or interfering with the Hotel's performance.
19. Any newspaper advertisements must be approved by the Hotel.

EXHIBIT 4
 DATE 3-11-95
HB 272

BANQUET

Folio #17008

CHARGE TO COMPANY Midwest Software

BY Julia Pierce

STREET (LUNCH)

CITY

DATE	SERVER	ROOM NO	
3/20/95	<u>MB</u>	Poolside	4518A

1			
2			
3	Chk Perm @ \$8.25		<u>132.00</u>
4			
5			
6	17% SERVICE CHARGE		<u>22.44</u>
7			
8			
9			
10		TOTAL	<u>\$154.44</u>
11			
12			
13			
14			
15			

Handwritten signature

REV 1-80

March 1, 1995

Senator Keating
Montana Legislature
Capitol Station
Helena, MT 59624

Dear Senator Keating,

As tipped employees, we are writing you to support H.B. 272, the Tip Protection Act, which will come before you in the Senate Labor and Employment Relations Committee soon.

This is a good bill which makes it clear to the foodservice customer which part of their bill is for the actual cost of the meal and service and which part is the tip for the foodserver.

Thank you for your support of this bill.

Sincerely,

Wilhelmina Johnson
1447 Tony Ave
Billings, Mont. 59101

Dean Dordall
1430 Lynn "D"
Billings, MT. 59102
(406) 259-8026

Lewis Lux
11 King A-Hur
Billings, MT 59105

Kathy Zarzosa
702 So 31st
Billings, MT 59101

Beace Sawsonman
2808 3rd Ave South
Billings, Mt. 59101

Nora J. Malm
3610 Gamma
Beq. Mt. 59101

Joe Belonax
640 70 15 #8
Billings Montana 59101

Ron Cleveland

Richard May
1843 Natalie St.
Billings, MT 59105

Marjorie Zedych
Steve Kosakowski

Sharon White
302 36th St W
Blgo.

Joy K Weeks

1115 1/2 N 25th
Blgo 59101

Joy Spawson
1248 Ponderosa
Blgo. MT 59102

JAMES PERSON
361 PROSPECTORS
BUILDINGS, MT
59105

James Boy
7700 1/2 1st St. D.
Blgo 1114 59107

Susan Suelich
536 Cook
Blgo MT 59102

Jason Besel
608 Broadway Ave.

James Wright
2535 Rockwood St.

Kelly Soudero
BR 28
Dumby 59129

Laura Johnson
414 KATHY LN
Blgo, MT 59105

Jane LaValley
628 Birch Ln.
Billings, MT 59105

Sherry Holckelberg
246 D 1st Street
Wordev MT. 5908

Maucha Dukart
25 Goldust Dr.
Billings, Mont. 59102

Anne Barnes
PO Box 50397
Billings, MT 59105

Friendship House of Christian Service

Curtis B. Haney, Director

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. # 6

DATE March 11, 1995

BILL NO. HB 272

March 6, 1995

The Honorable Thomas Keating
Chairman, Labor & Industry Committee
Montana State Legislature
Helena, Montana

Dear Mr. Keating and Committee Members,

Reference is made to legislation concerning consumer information and fairness, which my experience testifies to.

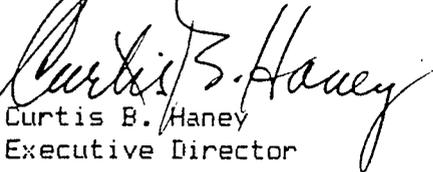
In March, 1994, the Billings Plaza Holiday Inn refrained from telling us that a service charge included in our contract for a hotel entertainment event did not directly compensate Holiday Inn staff as a customary gratuity.

Upon inquiring about the Holiday Inn policy, we learned that no banquet "tips" were included in the contracted percentage charged, and staff was deprived of tips unless banquet customers were wise to the policy.

We stand in opposition to such a policy and think it unconscionable business practice to withhold such information from the customer.

We support any and all legislation that attempts to tighten fairness to both the consumer and the worker in Montana. This is especially necessary in a state and city that is on the upswing in the tourism trade.

Sincerely,


Curtis B. Haney
Executive Director

A Center for Caring and Sharing

3123 8th Avenue South - Billings, Montana 59101 - (406) 259-5569

March 2, 1995

Senator Thomas Keating
Helena, Montana

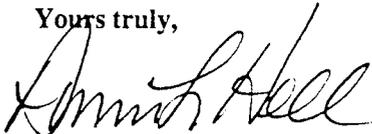
Dear Senator Keating:

It is my understanding that you and your fellow lawmakers have an opportunity to correct an injustice being perpetrated upon a group of Montana workers as the result of a deceit by certain business owners.

It should not be lawful for a restaurant or other service oriented business to itemize a charge as be for "service" or as a "gratuity" unless it goes to those providing the service. It is my understanding that in some cases, this charge is not being passed on to the service personnel for whom it was intended and this is wrong. In these cases the "tip" is going toward profits, a pure act of deceit upon customers who believe that they are providing, as Webster says, "a gift of money for a service.

I urge to correct this wrong by supporting with your vote legislation which would prevent such actions.

Yours truly,



Dennis L. Hall



Robyn Butler-Hall

1841 Arcadia Dr.
Billings, MT 59102

TO: Senator Tom Keating

FR: Denise Gorham

*Representing the Class of 1974 Reunion Committee for
Billings Senior High, Billings West High and Billings Central High*

On July 29, 1994, our high school class reunions held an all school gathering at the Holiday Inn Trade Center. Our bill for the evening totaled approximately \$6000. We were very disappointed to learn that a 17% service charge (almost \$1000) which was added to our bill was not a tip for the waitresses, bartenders and those who worked the hardest to provide good service but simply a profit given back to the company. If we had clearly understood this procedure when we signed the contract, we would have specified that the 17% service charge be given to the employees as a tip.

We all feel we were misled and are thoroughly disgusted in the Holiday Inn's poor management of their employees tips.

We are totally in support of any and all legislation that will insure the welfare of and protect the tips of employees in the restaurant business.

Denise Gorham
2036 Bitterroot Drive
Billings, MT 59105
(406) 248-2625



August 4, 1994

SENATE LABOR & EMPLOYMENT

EMBIT NO. #9

DATE 3-11-95

BILL NO. HB 272

Anthony Ulmar
Holiday Inn
5500 Midland Rd.
Billings, MT 59101

Dear Anthony:

A 20 year class reunion only comes once in a lifetime. And, when planning an event for 500 or more people, there is a lot of time and energy expended into making it a success. The bigger the crowd, the more time needed to plan the event and the bigger expectations become.

We all represent the planning committee for the Billings Senior, Billings West, Billings Central High Schools Class of '74. We live in Billings and you'll find us just as active and involved in coordinating other community events. We were thrilled with the idea of having an all-school event on Saturday. Due to the recommendations of past committees, we chose to have the event at the Holiday Inn. At this point in time, none of us will ever recommend that another class have their all-school gathering at the Holiday Inn, unless you can guarantee the items listed below will be resolved.

We feel the following issues need to be resolved:

1. **Recommend a buffet dinner. The amount of food was not adequate for the price we paid.** We had a positive experience working with catering. They were very accommodating to our needs and expectations, however, there was an obvious communication breakdown between catering and the food / bar service. Our count for the evening was 530 people, however, when we realized the food was dwindling, we paid for an additional \$400 in food. *We paid an average of \$9.09 per person for food that would barely suffice for a toddler.* What a disappointment for everyone. We were embarrassed by the amount of food we received for \$9.09 per person. There were questions as to whether we actually received everything we ordered!!!
2. **You need at least 3 bars set up for the event.** We were told there would be 3 bars setup for the event, however, only 2 bars were set up. People waited in line over 20 minutes to purchase a beer that cost them \$2.25 per bottle! Some people were so fed up that they left and went to other establishments to purchase beverages. What a shame!
3. **The staff was not adequate to facilitate all our needs.** We commend the employees who did their very best to accommodate us, however, it was not adequate for a crowd our size. They worked hard to cover-up the shortage of employees. They didn't look bad...the company looked bad.
4. **Lastly, the 17% service charge.** Yes, we did sign a contract agreeing to pay the fee, however, we were all disgusted to discover that it all went back to the company and none of the people who worked the hardest would ever be rewarded with tips. Your bartenders, waitresses and cooks are the most valuable resources you have. Without them, you have nothing but an empty building. Treat them well, treat them fairly. They know what needs to be changed..listen to them. Never loose sight that someday, one of them could be your boss.

We relied on the expertise of the catering staff and the helpfulness of the employees to make our expectations come true. Unfortunately, we feel it was beyond their control to fulfill our expectations. It was very obvious to us that corporate cutbacks and reductions caused the dissatisfaction we feel today.

Our goal is to speak as loud as we can for change. We try to support local businesses and will recommend good experiences to others. On the flip side, we will let others know if there have been bad experiences. We are all very disappointed in management's lack of professionalism for this event. The Holiday Inn has lost credibility in the community and it is partially due to the items listed above. Once again, it is our request that all of the issues be resolved.

Billings Senior High, Billings West High, Billings Central High School
Class of '74 Reunion Committee

January 29, 1995

RECEIVED & FILED
10
March 11, 1995
HB272

Dear Sirs,

My wedding was held at the Holiday Inn, on September 3, 1994. When I paided the catering department, I was under the impression that the 17 percent was for the serving staff. I asked to even make sure, and the lady who handled the account told me that it would go the all of the servers. They did a great job, and ~~at~~ deserved a tip. But ~~we~~ received one. My opinion as a server, is that any and all tips should go to the servers who work very hard for a decent wage.

Sincerely

Jody Penner
Gordon Penner

PS. If you would like to ask us any questions, please feel free to call me at 406-655-9764.

E

D

BILL NO.

11
 March 11, 1995
 HB 272

HOUSEBILL 272 SENATE COMMITTEE TESTIMONY

I. Introduction:

Lonnie Funk

Position: Regional Vice President for John Q. Hammons Hotels, Inc.

Former Position: General Manager of the Holiday Inn Billings

Montana Born & Raised In Billings

Resident of Billings through 1989

Past President of Montana Innkeepers Association

II. Understanding of Intent of Housebill 272:

1. Requires the employer to include service charge as part of the employee wage.

III. Current Holiday Inn Banquet Employee Compensation System:

1. In our system for compensation of banquet employees, we currently pay the service employees a flat hourly wage of between \$7.00 and \$9.50 an hour, depending upon their length of service and job responsibility. In our system, no tipping or gratuities paid to our employees by the guests are required ~~_____~~. The service charge paid by the customer to the hotel is considered hotel revenue.

Average @ \$8.00

IV. Position:

1. The Holiday Inn Billings and John Q. Hammons Hotels is opposed to Housebill 272 because it would mandate that service charge we believe to be hotel revenue be paid to service employees as part of their wages.

V. History:

1. In July 1993, 35 of the 37 John Q. Hammons Hotels converted to the flat wage

compensation system for banquet servers, banquet setup, banquet management, kitchen management, catering management and food & beverage directors. The two hotels that are exceptions were excluded due to preexisting union contracts.

a. Prior to changing to this format:

◦ We researched how other major hotel companies were compensating their banquet employees.

A Month process

◦ Including in that list would be Holiday Inn, Sheraton, Red Lions, Marriott, Raddison and Ramada.

100% utilizing flat wage

b. We completed a comprehensive wage survey in all 37 hotel markets for all the positions that were formerly included in the tip distribution system.

→ *How wage was determined*

c. We chose the flat wage compensation format for the following reasons:

◦ This system was the most commonly accepted system for compensating banquet and management employees.

◦ It allowed us to easily track and consistently pay competitive wages

◦ We could guarantee to our employees the wage they were going to be paid, whether they were working a breakfast, lunch dinner coffee break or reception.

Note: To date there have been no other legislative challenges to this compensation system as this is becoming a very common practice in most states.

*determined by
minimum wage
+ average hourly tip
GROSS WAGE
TOTAL # of hours*

VI. History of Transition in Billings:

1. In July 1993 we raised the hourly wage for banquet servers from the minimum wage of \$4.25 plus a portion of the gratuity to a wage of \$6.75 to \$9.25 an hour depending upon the length of service and job responsibility.

assume

In the RESTAURANT employees get 100% of the tips

2. The wages for those job classifications were increased by ~~25¢ per hour~~ ^{HB 272} on Jan 7, 1995. We currently pay \$7.00 to \$9.50 an hour.

Note: There are three full-time servers, three part-time servers and one supervisor currently employed who had worked in the former distribution system of a staff of a current staff of 26. *WE HAVE HAD NO PROBLEM RECRUITING APPLICATIONS FOR SERVICE FOR A STARTING pay of \$7.00 HOUR*

3. In 1993 some employees utilized their right to try and organize a collective bargaining unit. The banquet wage system was one of their key issues.

The union was voted down 99 to 17.

4. In 1994 and the early part of 1995 some employees again utilized their rights to try and organize a collective bargaining unit. The banquet wages were again one of their issues.

The union was voted down 91 to 47.

5. It is apparent that this minority of upset employees is now attempting to get the state legislature to enact a law that they believe will mandate that they should receive our service charge revenue.

VII. The Holiday Inn Billings and John O. Hammons Hotels is Opposed to this Legislation for the Following Reasons:

1. It will require the employer to include service charge as part of the employee wage. As a result:
 - a. We would be required to pay higher than local competitive wages.
 - b. We would be forced to raise our prices, which could make us uncompetitive in the local market which ~~would~~ ^{could} reduce our revenues.
 - c. We could be forced to layoff employees or substantial reduce hours of employees in this or other departments to help offset the wage cost increase.
2. We are already paying the highest hourly wage in the market.

- 3. The owner of a business should have the right to decide whether tipping or gratuities are required.
- 4. We believe a majority of the employees feel that the flat hourly wage system is fair because the employees now know what hourly wage they are going to make per hour whether they are working a breakfast, lunch, dinner, coffeebreak or reception.
- 5. In establishments where banquet business is a large portion of the overall operation, it is no longer practical to utilize service charge distribution as the form of compensation, because it creates a huge discrepancy in wages for similar work from department to department by taking away portions of hotel revenue necessary to pay other employees.

EQUAL PAY FOR EQUAL WORK. \$12.00 + plus ROOM vs 5.00+ FOR CLUB

- 6. We believe that a service charge required from the customer to be paid to the hotel is hotel revenue. We have the legal right to do whatever we wish with our revenue, just as every other business has. Businesses in many other industries, such as banks, repair shops, clothing stores and private clubs, require that their customers pay service charges, but do not allow tipping. There is no reason to single out the hotel industry and confiscate their revenue. *Especially in light of fact the flat wage system is the most fair system for all employees involved.*

VIII. Conclusion:

- 1. The State Government should be involved in how we pay our employees to the extent that they require minimum wages and other conditions, which are uniform to all employees. Where State Government attempts to provide special benefits to certain classes of employees, state laws unfairly penalize those classifications whose wages must necessarily be reduced to pay for the additional benefits mandated by state law.
- 2. No other State in the Union has this type of legislation. It was attempted in California and was abandoned because it proved to be unworkable. ~~XXXXXXXXXX~~

JOH Hammons Hotel ALONG with Winegrow and Hammon Hotels does business in 38 STATES. THE HAS BEEN NO challenge to this compensation system in any other STATE.

We respectfully request that the committee oppose HB 272



John Q Hammons
HOTELS

EXHIBIT 11
DATE 3-11-95
#1 HB 272

Via Fax

March 1, 1995

Senator Tom Keating
Capital Station
Helena, Montana 59620

Dear Senator Keating,

I am writing to you about HB 272, which I understand has been forwarded to your Labor and Employment Committee. I am the Regional Vice President of John Q. Hammons Hotels and I oversee the Holiday Inn in Billings.

Our organization is **opposed** to this legislation for the following reasons:

- 1) The intent of the bill is to require the employer to include service charge as part of the employees' wage.
- 2) In our system for compensation of banquet employees, we currently pay the service employees a flat hourly wage of between \$7.00 and \$9.50 an hour, depending upon their length of service and job responsibility. In our system, no tipping or gratuities paid to our employees by the guests are required or allowed.

This banquet compensation system is currently utilized by the Holiday Inn and other service establishments in Montana. This is the common system for compensating banquet employees in most other states.

- 3) The rationale for this system is straight forward - -
 - a. The owner of a business should have the right to decide whether tipping or gratuities are required.
 - b. Where flat hourly wage systems, such as ours are utilized, the employee knows what they are going to make per hour, whether they are working a breakfast, lunch, dinner, coffee break or reception.

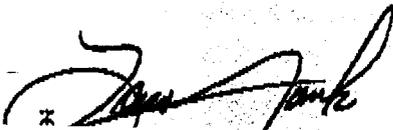
Senator Tom Keating
March 1, 1995
Page 2

- c. In establishments where banquet business is a large portion of the overall operation, it is no longer practical to utilize service charge distribution as the form of compensation, because it creates a huge discrepancy in wages for similar work from department to department by taking away portions of hotel revenue necessary to pay other employees.
 - d. This flat wage is determined by taking a competitive wage survey. The Holiday Inn is already paying the highest wages for banquet employees in Billings.
- 4) We believe that a service charge required from the customer to be paid to the hotel is hotel revenue. We have the legal right to do whatever we wish with our revenue, just as every other business has. Businesses in many other industries, such as banks, repair shops, clothing stores and private clubs, require that their customers pay service charges, but do not allow tipping. There is no reason to single out the hotel industry and confiscate their revenue.
 - 5) The State Government should be involved in how we pay our employees to the extent that they require minimum wages and other conditions, which are uniform to all employees. Where State Government attempts to provide special benefits to certain classes of employees, state laws unfairly penalize those classifications whose wages must necessarily be reduced to pay for the additional benefits mandated by state law.
 - 6) No other State in the Union has this type of legislation. It was attempted in California and was abandoned because it proved to be unworkable. The State of Delaware does require notification to the guest that the service charge is not paid to the employees to avoid any implication that the guest might be misled. We would not be opposed to wording that would require this type of notification, but we do not agree that the proposed changes in the law are warranted.

Senator Keating, I would like to discuss this issue with you over the phone. Also, I would appreciate your recommendation about how to communicate my feelings with your committee. Please give me a call at work at 816/891-7788 or at home at 816/587-7521 at your earliest convenience.

Sincerely,

JOHN Q. HAMMONS HOTELS, INC.



DATE 3-11-95

SENATE COMMITTEE ON HB 272

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Blaine Jensen</i>	Proponent - Self	272	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Guy D. Chilson, Jr.</i>	Self	272	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Christine Sullivan</i>	Self	272	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Lynette Russell</i>	Self	272	<input type="checkbox"/>	<input type="checkbox"/>
<i>Jon Doh</i>	self	272	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Kathy Malyszec</i>	MT State Council ^{of NERE}	272	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Mary Hall</i>	Self	272	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Day Judge</i>	MT STATE AFL-CIO	HB272	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Kelly Sordano</i>	Holiday Inn Employees	HB272	<input type="checkbox"/>	<input type="checkbox"/>
<i>Jeri Titus</i>	Self	HB272	<input type="checkbox"/>	<input type="checkbox"/>
<i>Melissa Case</i>	Hotel Employees + Rest. Employees	HB272	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Secky Fascione</i>	HOTEL + REST. UNION	HB 272	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Tom Hopgood</i>	Holiday Inn - B/S	HB272	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Lennie Funk</i>	Holiday Inn B/S	HB272	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

