

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN TOM KEATING, on March 14, 1995, at
3:00 P.M.

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None.

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

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

Committee Business Summary:

Hearing: None.

Executive Action: HB 66, HB 68, HB 432, HB 414, HB 264,
HB 272, SB 354

{Tape: One; Side: One}

EXECUTIVE ACTION ON HB 66, HB 68, and HB 432

Discussion:

CHAIRMAN KEATING stated the bill combines HB 66, HB 68, and HB 432. The representative bill number is coordinating the set of bills, and the bills are put into a Gray Bill. Ms. McClure stated there is a change in the set of amendments. The amendments were given to the Department of Commerce, Justice and Labor on Friday, and to the committee members on Saturday (EXHIBIT 1). REPRESENTATIVE HERRON and the Labor Department submitted amendments, which were included in the new amendments (EXHIBIT 2). Two sections of the codes were in two of the bills. One was based on SENATOR BARTLETT'S concerns, and the language SENATOR

BARTLETT preferred was used. Concerning section 39-71-201, the second amendment, page two, is in HB 66 and HB 432. The amendment from HB 66 was used. The Department of Labor requested the HB 432 language. The amendment is on page 7. **CHAIRMAN KEATING** asked what makes the amendment different. **Ms. McClure** replied the amendment deals with the same administration fund and includes the boiler inspection from the Department of Commerce. In the amendment, the issuing of operating engineer licenses has been struck. The issuing of licenses was handled differently in HB 432.

Chuck Hunter stated HB 432 needed an additional adjustment. In HB 66 and HB 68 there is a switch from the Department of Labor doing licensing inspection. The switch would be about inspections being paid for by administrative assessment, to being paid for by a fee for service. The Department of Commerce would receive both the licensing and inspection fees, and the money would not go into the administration fund. The corresponding reference, "fees being deposited", would be struck. Collected fees would not, necessarily, pay for the entire licensing and inspection programs. The Department would know in two years if the fees fully funded the program. The Department expects the assessment would continue to subsidize the program for the next biennium, to some degree. **Mr. Hunter** stated he talked to insurers, particularly to the self-insurers and private insurers. The proposed consensus language allows the Department of Commerce to have access to assessment funds, under the HB 432 language, for the next biennium only. The amount would be used to fund the program, above what is collected. **CHAIRMAN KEATING** asked if the HB 432 language is exact, or does the language have to be changed. **Mr. Hunter** stated the language would have to be amended. On line 22 HB 432, the language addresses the Department of Commerce's administrative expense. The language is acceptable, if it could be next biennium limited. **Ms. McClure** asked if **Mr. Hunter** agreed to the proposed June 30, 1997 ending date. **Mr. Hunter** replied yes. The date would give the Department two years of experience to ascertain if the fees paid the costs. If not, the Department could raise the fees in the 1997 legislature or they could seek to extend the use of the administrative assessment. **CHAIRMAN KEATING** recapitulated the executive action on the gray bill. On page 2, the committee would delete HB 66 and write-in HB 432. **CHAIRMAN KEATING** asked if there is a reduction in fees. **Mr. Hunter** replied no. It is a redirection of fees. **Ms. McClure** stated HB 432 has an amendment on line 17. Everything in the HB 432 version came into the new bill, including the biennium information. The biennium ends on June 30, 1997. **SENATOR AKLESTAD** asked if there was an exact date, rather than a sunset provision. **Ms. McClure** stated fee monies would go to pay the biennium expense. It is a fee sunset.

CHAIRMAN KEATING asked the committee to consider page one, and asked what bill number was used. **Ms. McClure** stated the committee used one of the existing bills. The new bill is an amendment to HB 68. This is not a committee bill, it is a

substitute bill. Under rule 4120, it says that everything after the enacting clause has been stricken. The reason why HB 68 was chosen was because it started out as a "cat and dog" bill. It had safety laws, boiler license fees, and everything else. The other two bills were "renew government bills", which were considered too specific. The bill with the broadest title was used. According to the rules, the bill became a substitute bill after the enacting clause was struck and the title was amended. **CHAIRMAN KEATING** explained the HB 68 amendments. On page one, the title and line, down to section one, is the same language as language in HB 68. Above section one, strike everything following the enacting clause. House Bill 68 is struck completely. Amendments were added. Section one is from HB 66. **CHAIRMAN KEATING** asked the committee members if they wanted to discuss or question the amendments. No discussion or questions were offered.

Section two has been changed from HB 66 to HB 432, and has been amended with a sunset provision. **CHAIRMAN BARTLETT** asked **Mr. Hunter** about the Department of Commerce's request. The Department proposed to strike the fee schedule for licenses and replace the fee schedule with language, which would allow the Department of Commerce to establish fees by administrative rule. This would limit the account balance from growing astronomically. **CHAIRMAN KEATING** asked if the Department was able to set fees by rules, would the biennium language still be needed. **Mr. Hunter** replied the language would still be needed. The license fees would be set by rules and would be commensurate to administration costs. The boiler inspection fees are set in statute. The Department of Labor did not think the fees would fully fund the program for two years. So the Department predicted a step-wise process was needed, which could go from assessment funding to a fully funded fee-for-service program. The statutorily set fees are expected to cover approximately 70 to 80% of the boiler inspection expense, while the administrative assess fund would fund the additional 20 to 30% for the next biennium. **CHAIRMAN KEATING** asked for assurance that the fees would be spent only after the fees were appropriated by the legislature. **Mr. Hunter** said agreed.

CHAIRMAN KEATING stated the committee members agreed to take, section 2 from HB 432, as amended. Section three came from HB 432. Section four, license and required endorsements, came from HB 432. Section five, HB 432, is regarding applications for license endorsements. **CHAIRMAN KEATING** asked **Mr. Hunter** if Commerce and Labor agreed with the memorandum. **Mr. Hunter** stated the new information about the two year proposal had not been discussed. Otherwise, the amendments were be acceptable. **CHAIRMAN KEATING** asked **Mr. Hunter** what parties are helped by the sunset provision. **Mr. Hunter** replied the sunset helps the insurers, who are paying for assessments. **SENATOR AKLESTAD** asked about section 11. What staff member from what Department would determine if the situation was safe or not safe. **Mr. Hunter** stated the Department of Labor safety inspector would make the

determination. The inspector would determine, using OSHA standards for public sector employers, cities, counties, and municipalities.

CHAIRMAN KEATING stated section 11 and 12 are without amendments. **Ms. McClure** stated there was an amendment request by **REPRESENTATIVE JACK HERRON** to add the word "heating" after the word "and". In HB 68, the language said "heating supply", it should be "heating and supply". The amendment corrects a technical error.

Section 14, addresses the agriculture license, which was already in the bill. The mint growers amendment is complete. **SENATOR AKLESTAD** asked if agriculture had a class of engineers in the previous statute. **Ms. McClure** was not sure. **CHAIRMAN KEATING** stated the amendment would established a new class. That class would be defined in Section 15. **CHAIRMAN KEATING** asked if 150 pounds is the correct weight, according to the equipment. The figure is correct. **CHAIRMAN KEATING** addressed the agricultural class, engineer application ". . . the licensee must be eighteen years, must successfully pass a written exam, and must be competent to operate a boiler."

Section 15 covers the mint growers. Section 16, according to **Ms. McClure**, contains "flip of the coin" language. **Ms. McClure** stated she used **SENATOR BARTLETT's** language. **SENATOR BARTLETT** explained the variations between HB 66 and HB 68 occur on page nine, subparagraph three. When people trained in vo-tech setting or Department approved institutions or training programs, the training and credits may be applied toward licensing requirements in the form of experience. One version left the experience decision to the Department's discretion, while the other bill left the decision to the Departmental rule. **SENATOR BARTLETT** stated she would prefer the instructions to be written as rules, so everyone would be treated the same. The Department of Commerce would write the rules.

Section 17 is acceptable. **Ms. McClure** stated. **CHAIRMAN KEATING** asked if this section is under the sunset provision. **Ms. McClure** said no, section 18 came from the Department of Commerce. **SENATOR AKLESTAD** asked about the fund monies. **CHAIRMAN KEATING** stated the instructions in the amendment talk about the Department of Commerce's funds. The Department is subject to the appropriation. The fees cannot exceed 50% of one year's appropriation. If the Department received an excess of 50% of the annual cost, the Department would have to reduce the fees. **CHAIRMAN KEATING** stated the Department can establish fees by administrative rule, just as they can lower fees by administrative rule. The legislation limits the Department in what monies could be kept in the account balance, if the fees exceed the appropriation by 50%, then the fees have to be reduced. **SENATOR AKLESTAD** asked if fees were too low, would the Department increase the fee amount. **SENATOR BENEDICT** explained if the Department's cost exceeded the appropriation amount, and the

fund balance did not exceed the 50% excess, the Department could return to the Legislature and ask for additional appropriation authority. **CHAIRMAN KEATING** read, ". . . appropriation approved by the legislature". The Department cannot spend, unless the spending is approved. The fund balance cannot be more than 50% of the annual appropriation. If the amount exceed the 50%, the fees have to be reduced. The \$2M fund balance potential is alleviated. **SENATOR EMERSON** asked if the fund exceeded the annual appropriation by \$2.5M would the legislature ask for an \$5M appropriation increase? **CHAIRMAN KEATING** stated the legislature could accept the increase or deny the increase.

Sections 19, 20, 21, 22, and 23 were acceptable. **CHAIRMAN KEATING** asked if the age, 18 years or older, was made consistent throughout the bill. **Ms. McClure** said yes.

Section 24 is about the application for license fee, etc. **SENATOR AKLESTAD** asked if the section is Labor's or Commerce's. **CHAIRMAN KEATING** stated section 24 deals with the Commerce Department. **SENATOR AKLESTAD** stated there are no restrictions, no matter what the administrative cost is, that is the amount of money which would be required. **SENATOR AKLESTAD** pointed out the language does not offer real restrictions, regarding administrative cost. **CHAIRMAN KEATING** asked if the language is different than other language. **Ms. McClure** stated the language is the same. **CHAIRMAN KEATING** asked if the fees are difference than the fund balance fees. The language reads "...the applicant for an engineer's licenses shall pay a fee according to the class of license for which application is made, as specified by administrate rule." **CHAIRMAN KEATING** asked if the language he read out loud would apply to all the different licenses listed in the section. **CHAIRMAN KEATING** stated section 24 addresses the crane hoist license. He read: "...must be charged as required for operating steam engine boilers and steam driven machinery under chapter 74." **CHAIRMAN KEATING** continued to read "the appropriate fees, applications for license, must be made to the Department of Commerce and submitted with the appropriate fees. **CHAIRMAN KEATING** asked if the fees are the same fees that were discussed in Section 18. Would section 18 be an omnibus for all the particular licenses. Instead of having to write a limited-fund balance for each one of the licenses, would all licenses be taken care of in one paragraph. The amount of the balance would be limited to the balance, not to exceed one half of one year's annual appropriation. **Mr. Hunter** stated the crane and blasters' licenses are not listed in section 18. The list is for boiler licenses. The crane and blasters' licenses are dealt with elsewhere. **SENATOR AKLESTAD** stated the other section has restrictions, concerning the fees and the way money is handled.. but this section has no restrictions. **Mr. Hunter** stated he read and compared the two bills. At the bottom of section 24, the language says the same fee must be charged. The requirement is by statute, and it is for any licensed steam engine operator. Hoisting and crane operators have 1st, 2nd, and 3rd class licenses. These are the fees that will be set up for the boiler

sections. **CHAIRMAN KEATING** asked about chapter 74. Does the chapter 74 reference 50-74-309? Yes. The language "must be charged", is in statute. The law is about obtaining a license to operate a steam engine, boiler, or steam driven machinery under 74. So 1st, 2nd, 3rd class, low pressure, traction, etc., are applicable to the crane operating license. Do the same fee limits in section 18 apply to fees in section 24. Yes.

Section 25 addresses the revocation of licenses, and section 26 addresses the crane inspectors. **CHAIRMAN KEATING** asked about the standard effective date. **Ms. McClure** stated HB 432 has a July 1, effective date, while HB 66 and HB 67 have no effective dates, which means that October 1 is the effective date. **Ms. McClure** reported she checked with the respective Departments. They preferred the July 1 date, but that is a policy decision for the legislature to make. **Mr. Hunter** stated for biennium and budgeting purposes, it would be easier for the transfer function to start at the beginning of the biennium.

Motion:

SENATOR BENEDICT moved to AMEND HB 68 (sections 1 through 27, Memorandum, dated March 11, 1995, and the title).

Discussion:

SENATOR AKLESTAD recapped the major changes. The authority was transferred to the Department of Commerce; an agricultural license was incorporated; an 18 years of age requirement was changed; and the Department of Commerce has more rule making authority.

CHAIRMAN KEATING stated there is a split. Commerce Department does the licensing, and the Department of Justice does the inspecting. **Mr. Hunter** stated, as the bill is written, the functions of licensing and inspecting boiler go from Labor to Commerce. Commerce receives the ability to set fees for licensing and rules. Commerce gets a new fee schedule for boiler inspections, in statute. There are new classifications for agricultural steam boilers, and there is a lightening of the requirements for obtaining licenses. Certain kinds of training, in lieu of experience, can now be substituted. **SENATOR VAN VALKENBURG** stated steam boiler regulatory requirements will be done by the Department of Commerce. Nothing should be designated to the Department of Justice. **SENATOR BARTLETT** stated HB 432 addressed the Department of Justice. All three bills are consolidated into one bill. **Mr. Hunter** stated the original HB 432 had requirements coming from both Labor and Justice and going into Commerce. The bulk of Justice's fire considerations were pulled out. **SENATOR BARTLETT** stated the only Justice consideration, now, is the inspection of fire extinguishers, etc. It comes out of Justice and goes into Commerce.

Vote:

SENATOR BENEDICT moved to AMEND HB 68. The motion to amend HB 68 CARRIED UNANIMOUSLY.

Motion/Vote:

SENATOR EMERSON MOVED HB 68 BE CONCURRED IN AS AMENDED. The Motion CARRIED UNANIMOUSLY

CHAIRMAN KEATING asked Mr. Hunter for a short written narrative to summarize the changes. The information will be used for floor debate and will not be entered into hearing minutes. SENATOR EMERSON will carry the bill.

EXECUTIVE ACTION ON HB 66

Motion/Vote:

SENATOR EMERSON MOVED to TABLE HB 66. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON 432

Motion/Vote:

SENATOR EMERSON MOVED to TABLE HB 432. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON 414

Discussion:

CHAIRMAN KEATING stated HB 414 is a housekeeping issue about the classification and rating committee. The committee will be known as the classification and review committee. There is nothing controversial, and there are no amendments.

Motion/Vote:

SENATOR BENEDICT moved HB 414 BE CONCURRED IN, the motion PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 264

Motion:

SENATOR BENEDICT moved HB 264 BE CONCURRED IN.

Discussion:

SENATOR FRED VAN VALKENBURG stated he tried to discuss the negative affects of HB 264. Passage of HB 264 will lead to more

strikes in the beginning of the school year. The bill takes away *steps and lanes*, which the teachers have had. The teachers get nothing in return. One reason why the school board association said passage was necessary was because of the \$15M mandate, *steps and lanes*. House Bill 264 is a funded mandate. The legislature allows school districts to increase budgets, up to 4%. The amount is sufficient to pay the expected 4% increase. According to MEA staff, who researched the topic since the original hearing, the total *steps and lanes* cost is approximately \$7M. It is not \$15M to \$20M, as the school board association had indicated. Nonetheless, the cost is significant. **SENATOR VAN VALKENBURG** stated the school boards will virtually end up giving teachers the *steps and lanes* in the end, anyway. The passage of HB 264 will encourage more work stoppages. Kids will not go to school in September, and there will be Labor strikes.

SENATOR GARY AKLESTAD asked **SENATOR VAN VALKENBURG** if the *steps and lanes* automatically continue, even when the contracts expire. If the teachers do not receive the increase, will they strike. **SENATOR VAN VALKENBURG** answered yes. **SENATOR AKLESTAD** stated the sponsor's intent is not to have *steps and lanes*.

SENATOR EMERSON stated when he taught school, collective bargaining was not an issue. **SENATOR EMERSON** said he personally knows the teachers; therefore, he disagrees with Senator Van Valkenburg's position. He does not think the majority of teachers will strike. In all actuality, House Bill 414 may pressure teachers to reach an agreement. *Steps and lanes* cannot continue to be automatic. A big down-turn in the economy is inevitable. The legislature cannot "tie the school board's hands" by allowing the *steps and lanes* to be mandatory. Teachers can "hold off" and wait for what they want. **SENATOR BENEDICT** stated he is going to vote in favor of HB 414. The legislature needs to restore balance into the collective bargaining process. Local school districts need to have an equal position in the bargaining process. School districts are required to bargain in good faith over wages, terms, and conditions in the work place. Local control must be given back to the school boards.

SENATOR BAER stated the Constitution delegates local control to school boards. Every year, school boards have less and less autonomy in exercising their duties. **SENATOR BAER** stated HB 414 is a good, positive step. **SENATOR BARTLETT** stated HB 414 makes an legislative exception to the unfair Labor practice statutes and to the collective bargaining statutes, dealing with the length of contracts. Alleged abuses can be substantiated, and then upheld. If HB 414 is approved, the decisions of the board of personnel appeals, which were upheld by the district court would be jeopardized. **SENATOR BARTLETT** asked how many more exceptions to the unfair Labor practices is the legislature going to enact. The decision of the Board of Personnel Appeals was upheld by district court, but the decision was not addressed by the supreme court because of muteness. Certainly, the decision of the board must have had some substance, rooted in Labor relations law and

decisions, if the District Court upheld the decision. By approving this bill, the legislature is substantially changing the collective bargaining premise. That is: "It is all right, if you don't like a decision on an unfair Labor dispute, you can come to the legislature and request an exception. It is all right for there to be a unilateral change in working conditions, when the condition is mandatory, subject to bargaining." It is an extremely poor precedent for the legislature to be setting. **SENATOR BARTLETT** stated she faults the people who brought the bill and had the bill drafted as an amendment to the unfair Labor practice section of the collective bargaining statutes. The change, they wanted to make, was not made in the proper place.

Vote:

The BE CONCURRED in motion for HB 414 PASSED by Roll Call Vote, with **SENATORS BARTLETT, VAN VALKENBURG, and WILSON** voting NO. **SENATOR BENEDICT** will carry the bill on the floor.

SENATOR BENEDICT asked **CHAIRMAN KEATING** if there will be other bills heard in the Labor and Employment Relations Committee. **CHAIRMAN KEATING** explained that he has been asked by the contractor's association and another group. They want a committee bill to clean-up the contractor's licenses. The bill is coordinated with **SENATOR FORRESTER's** bill. IF **SENATOR FORRESTER's** bill goes through, then the bill will not be needed. The bill would clean up public contractor's licensing. and the bill would stand alone. No money has been appropriated. There is a licensing stipulation, but it does not do anything. There is a fee of 1% of the proceeds that goes into the general fund. That part would be kept, but it would not be called a license fee, anymore. It would be a tax. If the hearing is necessary, the committee would draft a committee bill. The group has been asked to wait until HB 272 has been heard and acted on.

EXECUTIVE ACTION ON HB 272

Motion:

SENATOR BARTLETT moved HB 272 BE CONCURRED IN.

Discussion:

SENATOR BENEDICT stated he has amendments to pass to committee members (**EXHIBIT 3**). Although he was not at the Saturday committee hearing, he discussed the bill with proponents and opponents to find out what was the largest objection to the current practice. Apparently, the largest objection was the deceptiveness of the term, service charge. The service charge does not go to the employees. The amendment basically addresses the service charge, which is not distributed to the employees. **SENATOR AKLESTAD** asked if the term, "service charge" would be struck in the contracts. **SENATOR BENEDICT** stated the service

charge would have to be explained. The customers have to be told that the service charge is an administrative service charge. The service charge does not automatically go to the employees, as tips. Many restaurants pay the employees the monies the businesses receive for service charges, and the employees also receive the tips and gratuities. Businesses will have to explain the service charge is not distributed to employees, if the business retains the service charge for other fees or costs accrued by management. **SENATOR WILSON** asked **SENATOR BENEDICT** to explain how the businesses will explain the new law to the customers, and how the employer will conspicuously notify the customer.

{Tape: One; Side: Two}

SENATOR BENEDICT stated the customer would be given a bill and/or a charge slip. The service charge information will be printed on the document, perhaps at the bottom of the document. The explanation will notify the customer about the service charge. It is not a tip and it is not distributed to the employees. A written/printed narrative would clearly describe the policy. **SENATOR WILSON** expressed concern about the billing process. The discussion could be held with an entirely different group of people than the group of people sponsoring the banquet. Consequently, the individual people, the guests, etc, who attend the banquet would not be informed. **SENATOR BENEDICT** said that is not the point. Whoever pays the bill will know that the service charge is not distributed to the employee.

CHAIRMAN KEATING stated he received a copy of the DELAWARE statutes, which deals with the service charge (**EXHIBIT 4**). The Delaware legislation reads, "A service charge is an obligatory sum of money included in the statement of charges. Clear and conspicuously notice must be made on either the menu, the placard, the front of the statement of charges or other notice given to the customer indicating that all or part of the service charge is the property of the management. ... such notice must be clearly printed, stamped, or written in bold type. A service charge assessed to customers, patrons, or guests without such notice, is the property of the primary direct service employee. For the purpose of this section, type, which is at least 18 points, or a quarter of an inch on the placard, an eighth of an inch or larger on all other notices shall be considered clear and conspicuous." Delaware law says that the bill, menu or the contract must state, conspicuously, the service charge goes to the management. If it does not, and there is a service charge written on the document, it is a tip. The notice must be in large print.

SENATOR BENEDICT offered to explained further the rational of the amendment. **SENATOR BENEDICT** stated he still believes the tip pool, the wage, or any other kind of enumeration for services should be left between the employer and the employee. In cases where the employer and employee have a collective bargaining

agreement, the tip pool, wage, or other enumeration can be part of the bargaining tool. **SENATOR BENEDICT** stated he does not think the legislature should dictate what the employer should pay the employee. The amendment takes care of the claims that the provider is not being up front or honest concerning where the services charges are going.

SENATOR WILSON stated there are not very many collective bargaining agreements in the industry. Therefore, it is difficult to be fair in the bargaining process. The bulk of affected employees are nonunion. **SENATOR WILSON** stated he would appreciate it if the proposed legislation would include specific language to let people, who are attending the banquet, know the business's policy on service charge. House Bill 272 is too broad.

SENATOR BENEDICT stated he thinks the amendment covers the issue and does so, conspicuously. **SENATOR BAER** stated he was surprised there was an amendment. This is not the amendment that he anticipated. From the looks of the amendment, it changes the entire character of the bill. **SENATOR BAER** stated he would like to hear from the proponents of the bill. **Melissa Case** stated she received the amendment right before the hearing started. The scope of the bill has been changed dramatically. Many proponents worked exceptionally hard to develop an encompassing solution. House Bill 272, as it was written, correctly addressed the issue. The opponents distributed another set of amendments, and impaired the character of the bill even more so. **Ms. Case** stated she encouraged the committee to take a close look at the original bill. The bill does what the proponents want the bill to do. **Ms. Case** stated she would encourage the committee members to question the Department of Labor, since the amendment may be more difficult to enforce than the original bill. The proponents reject the submitted amendments.

Ms. McClure asked **SENATOR BENEDICT** about amendments 5 and 6. The amendments will take out the "service charge" language in two places (section 304-34-01). Sections 3 and 4 can be deleted. On page 4, line 6, the language defines tips and gratuities (34-02K). Service charges are covered in 34-01. Other changes clean up technical errors. If the language is removed, the sections can be deleted.

SENATOR BENEDICT asked about amendment number 5, section 7 of the amendment. **Ms. McClure** answered amendments, numbered 5 and 6, are alright. Number 7 deals with the applicable date. Numbers 5 and 6 talk about the tax treatment, which would work with part two of the bill. The sections would be treated the same. Part of the title needs to be deleted. The tax law provision would be taken out of the title, and the sections would be struck from the bill. **SENATOR BENEDICT** asked to make a conceptual amendment.

SENATOR WILSON re-requested the specific language. He wanted the service charge language used and displayed in a conspicuous manner. **Ms. McClure** stated **SENATOR WILSON's** request would be accomplished similar to the Delaware Statutes. **SENATOR WILSON**

asked **SENATOR BENEDICT** if he would agree to the Delaware statutes. **SENATOR BENEDICT** said no, but the amendments could be offered later.

SENATOR AKLESTAD asked if the words "service charge" would be struck from each place they appear in the proposed bill. **Ms. McClure** stated the words do not appear in all sections of the bill. For example, section one deals with the Labor law. **SENATOR AKLESTAD** asked about page one, line 27. Would the words "service charge" stay in this section of the bill. **Ms. McClure** stated the "service charge" notation would be struck. **SENATOR BENEDICT** needs to define and insert a reference as to how "service charge" will be used in the bill. **SENATOR BENEDICT** is not going to define service charge under federal law. He is going to define service charge by state law. Page two, line 26 describes the Labor statute. The service charge language in section 34 will be deleted because the term "service charge" is later described in the Labor law section.

Sections 4 and 5 have tax code language that needs to be struck. Rather than striking the language, the sections could be taken out. This is a committee decision.

The last amendment deals with effective dates, the dates the contract is entered into. **SENATOR AKLESTAD** asked for a clarification on **SENATOR WILSON's** concern. The concern is about the banquet people, who are paying the tab. They may not know about the "service charge", since they had nothing to do with signing the original banquet contract. Somehow, the service charge policy should be conspicuous. The policy concerning the service charge money, which goes to management, not to the server, needs to be displayed or somehow communicated to the public, so they can decide if they will leave a tip. **SENATOR AKLESTAD** asked about the customers buying individual meals. If there is a service charge, how will the customers be notified. Will there be a notice on the wall? **CHAIRMAN KEATING** explained the amendments are weak. The posted wall notification might be acceptable, if the banquet area was the only area affected by HB 272. That is not the case when a restaurant has both a separate eating area and a separate banquet area. The posting notification method would also work under the following circumstance. The "management keeps the service charge" decision is a policy, and the employees receive an hourly wage, so the customers know the servers are not getting tips. In this case, the notification placard would be appropriate. The customers would know the facts, and if the people want to leave a tip, they can. The amendment does not destroy the tip issue.

CHAIRMAN KEATING stated the Delaware language would include private clubs. **CHAIRMAN KEATING** stated the Montana Club, Helena, has a fixed price on the menu, and, in addition, a service charge is added. This money, supposedly, goes to the waiters. However, the law says the management can not have anything to do with tip pools. Management can not require a tipping pool. **CHAIRMAN**

KEATING explained if the Delaware language was law, every business would have to conspicuously give notice to the public. The business would have to display/communicate the service charge policy. If the business did not display the policy, the service charge becomes a gratuity, in whole, and is distributed to the servers. **SENATOR BENEDICT** stated if **CHAIRMAN KEATING** wants the language in the bill, **SENATOR BENEDICT** would allow the language. **CHAIRMAN KEATING** stated he likes the Delaware language better than the "soft" language in the **BENEDICT** amendment. There are definite ramifications. The banquet waitresses/waiters are bringing this amendment before the committee. Because of management changes in policy, they lost part of their income. They were receiving the full service charge before, and they were averaging about \$12.00 per hour. Now, the average salary is approximately \$8.00 or \$9.00. Management decided other people had to be considered.

In the absence of an employee tip pool, management distributed the service charge in a different way. All the waitresses/waiters were treated the same, whether they worked breakfast, lunch, or dinner. The service charge amounts were different because of the percentage calculations of the prices of the meals. A dinner meal costs more than a breakfast meal. There was disparity between the amounts of tips for breakfast, lunch and dinner meals. The banquet waitresses/waiters, whether they worked in the morning or in the evening, were paid the same amount. The setup people, the busboys, the dishwashers, and the other people who helped serve the meal did not realize any of the service charge money until management decided to equalize pay for everybody.

House Bill 272 deals with banquets servers and does not deal with the larger number of waitresses/waiters who get tips on the tables. The exception may be rare occasions when management sets up a special breakfast and adds a service charge. **CHAIRMAN KEATING** stated he does not want to destroy tipping, but if the original bill passed, management will charge the full price for a meal and will not have a service charge. Management will pay the banquet waitresses/waiters whatever they want for wages. There will not be a gratuity. Nor will management have to conspicuously advertise that gratuity is not part of the service charge. The public will not know to leave a tip. If the bill uses language that requires notification, there are no sanctions against management. The only management ramification for failure to notify, is the service charge becomes a gratuity and is the property of the server. **SENATOR BENEDICT** stated he would like to see the amendment pass. **SENATOR BILL WILSON** is correct, the Delaware language is needed.

CHAIRMAN KEATING stated if a committee member entertained the idea of rewriting the amendment, he would postpone executive action until the language was drafted correctly. **SENATOR BENEDICT** withdrew his amendment.

CHAIRMAN KEATING explained the reason the amendment would be re-written would be to change the service charge definition; put teeth into notification, and allow management to run their business the way they want. If the business do not want to fool with notification, the service charge becomes a gratuity and the banquet waitresses get what they want.

SENATOR BAER stated he understood one of the major problems is the bill's reference to employees preparing and servicing the food and beverage. Other people work banquets, not just the waitresses/waiter. Bus people, people in the kitchen, and people who set up and take down the tables and chairs are among the other workers. **SENATOR BAER** expressed concern about these people. House Bill 272 does not address the entire problem. **SENATOR BAER** stated he had additional concerns about changing the character of the bill, which, in turn, effects the title's meaning. **CHAIRMAN KEATING** explained the language is "An act clarifying certain Labor laws to include a service charge received by employees. **SENATOR BAER** replied the bill clarifies the waitress/waiters will receive the service charge. Now they are not going to receive the service charge. They will have no say in the matter if the company decides they are going to raise their pay in lieu of tipping. **CHAIRMAN KEATING** stated the proposed Delaware language says they "may" receive the service charge, if management does nothing.

SENATOR BENEDICT stated it was time to go to plan 2. **SENATOR WILSON** stated he would rather see the committee vote either yes or no on the **BENEDICT** amendment. The only thing about the Delaware amendment is that it would make a bad amendment better. He would rather see the committee deal with the **BENEDICT** amendment, as it was introduced. **SENATOR BENEDICT** stated he has already withdrawn the amendment and would like to move another amendment.

Motion:

SENATOR BENEDICT MOVED TO AMEND HB 272 (Amendment set 2) (EXHIBIT 5).

Discussion:

The second set of amendments for HB 272 would confine the legislative remedy to the problem actually described by the proponent witnesses. The amendments deal with the banquet setting. If the service charge is distributed by the restaurant to the banquet employees, the distribution must be equal among all banquet employees. They would include preparers, dishwashers, utility people, servers, set up persons, captains, supervisors and all other banquet personnel. The amendment is more of a fair and equitable distribution of the service charge.

SENATOR AKLESTAD asked how is the terminology "service charge" defined, and is the service charge automatically a tip to those

people described. **SENATOR BENEDICT** stated if the restaurant decided not to distribute the service charge to the employees, it would be required to disclose the fact to the banquet customers. If management decided to distribute the service charge among the employees, management has to distribute the charge equally with the food preparers, dish washers, utility people, servers, setup persons, captains, supervisors, and all other banquet personnel. **SENATOR AKLESTAD** asked how notification would be handled. **SENATOR BENEDICT** stated the same way, as the first set of amendments describe.

CHAIRMAN KEATING stated "we are splitting the baby again". **CHAIRMAN KEATING** stated he is not in favor of dictating to anybody how to run their business. We are government, because we have already written Labor laws lanaguage into statute. Now, the Legislature is being asked to settle a dispute. In order to settle that dispute, both sides are saying be specific, and designate who is going to get what. In one instance the service charge, which is at a rate that amounts to a normal tip or gratuity in the open restaurant. It is called a service charge and the banquet waitresses want the whole 15-16% for carrying the food from the kitchen and serving the food to the customers. This is what the waitresses want in their bill. Management says the service charge ought to be offset and pay some of the other help as well. **CHAIRMAN KEATING** stated he does not want to dictate as to who gets what piece of the service charge. Management has a point in that they should be able to pay the people for the services. After all, all of the services, including the waitress and the setup, etc. is to the benefit of the patron to make certain that they get a nice setting, a nice dinner, etc. If the legislature start being specific, the legislature in then directing somebody's business. He stated if there was to be any amendment to the bill it should contain general provisions rather than specific provisions. The language should force management and Labor to get together and work things out. **SENATOR BENEDICT** stated he likes the first set of amendments better and would have been more than willing to work with people on the language in the first set, but the amendments looked as though they would go no place. That is why the second set of amendments were proposed. **SENATOR BURNETT** stated management should not mention gratuity, if they want to raise the price of the meal, raise the price. Then Labor and management can handle the problem afterwards. The legislature should not be dictating the business.

SENATOR VAN VALKENBURG stated under either set of amendments there is no enforcement mechanism whatsoever. What happens if the committee passes the bill without amendments? Yes, the restaurants can and in many cases will simply add what has been the service charge in to the cost of the meal. Life will go on in that fashion, but the restaurant and hotel workers have said they understand and accept that possibility. That is the simplest most straightforward way to deal with the problem. Just pass the bill without amendments.

CHAIRMAN KEATING stated the reason why he likes the Delaware Code is that it has a built in penalty, It is an either/or situation. Either you notify the public, and the service charge is managed, the way management wants to. If management does not want to fool with the service charge, then the money goes to the waitress. It has a built in penalty, and it requires conspicuous notice.

SENATOR BENEDICT said he would withdraw the amendments and offer a different motion, but if the motion does not succeed, the amendment will be offered for the second time.

Motion: **SENATOR BENEDICT** WITHDREW HIS MOTION TO ADOPT THE AMENDMENTS AND OFFERED A SUBSTITUTE MOTION TO POSTPONE ACTION ON THE BILL.

Discussion: **SENATOR WILSON** stated he does not think anybody's mind will be changed. The parties that brought the bill forth are not going to be happy with the bill, and probably do not want the bill unless it is the same way the bill came from the House.

SENATOR BENEDICT stated he would oppose the motion. **CHAIRMAN KEATING** stated an amendment would change his mind. **SENATOR BARTLETT** stated if in this particular instance, what was wrong with how things used to be done. Management gave no clear testimony or rationale for why the change was made. House Bill 272 simply put "things" back to where they were before management decisions and changes. The public understood before management made decisions. **SENATOR BENEDICT** explained one of the reasons why management is not comfortable with the bill is because the tip pool is now just being spread between the servers and not between everybody else in the business. **SENATOR BARTLETT** stated that decision was supposed to be an employee decision, not the management's decision under current law. Whether the bill passes or not, the law remains. **CHAIRMAN KEATING** explained the tip pool is amongst the employees. Management has been claiming the service charge as management income for their purposes. Management has been using part to offset administrative costs, part to cost of doing business, part to increase salaries and pay other people involved in the banquet services. It is a whole can of worms that could be discussed until dooms day. **SENATOR BARTLETT** asked what is wrong with the way things used to be done. **CHAIRMAN KEATING** answered because things are changing. Management is having a hard time dealing with the service charge, as a whole gratuity to the banquet waitresses/waiters. Payroll taxes, Work Comp premiums and the cost of doing business, as well as competition. Management has to be competitive or they are out of business, unless they get a casino game into the establishment. **CHAIRMAN KEATING** stated the motion is to postpone debate while the committee contemplates an amendment or no amendments.

Vote: THE MOTION TO POSTPONE ACTION CARRIED WITH SENATORS BARTLETT AND WILSON voted NO.

EXECUTIVE ACTION ON SB 354Discussion:

Chris Racicot, representing Montana Builders Industry Association, explained MBIA's plight.

Lance Melton, Attorney, Department of Commerce, stated he lends support to the MBIA's request for the committee to carry a bill repealing the licensure requirement of public contractors. Public Contractor is a licensing program that is housed in the Department of Commerce. The program was recently transferred from the Building Codes Bureau to the Professional and Occupational Licensing Bureau. The licensing is unique among the other licensing programs. It is the only program where the license fees do not go towards enforcement of the specific licensure requirement and for discipline of licensees who violate ethical codes. Basically, under the public contracting licensing requirements there is approximately \$250K raised annually for the license fees. \$15 thousand is set aside for administrative expenses related to the program. With \$250K in the program, there is essentially no regulations or methods of enforcing the provision by the Department of Commerce. If the bill is carried by the committee, it would have a fiscal impact. There would be a loss of General Fund revenues. The Department of Commerce's position is that the Department cannot do anything with the amount of funds in place to enforce the act. It is essentially a revenue raising measure, without any enforcement on the licensure provisions. There is a separate taxing requirement on the gross receipts on public contracts, done by public contractors. This provision is retained in the proposed bill. **Mr. Melton** stated there would be a larger fiscal impact, if the provision was removed. The building association is not opposed to retaining the gross receipts tax for the public contracts. Page two talks about retaining the definition of public contractors which would be repealed under the first section, Title 37, chapter 71. A small, but important, additional statement, was omitted. The language was about subcontractors. **Mr. Melton** stated he could clarify and correct the language for consideration the next day. The Department of Commerce supports the building industry's request to roll back the licensure requirements. There is a coordination instruction in the proposed bill which would provide, if **SENATOR FORRESTER's** bill passed, for another licensure requirements for these individuals. If that bill is not passed, then this act would be void. If Senate Bill 354 passes and this is not repealed, then the Department will be asking the contractors to go to different sources for their licensing. They are not going to be enforced or regulated out of the public contracting licensing requirement.

CHAIRMAN KEATING stated SB 354 went through the Labor and Employment Relations Committee. The bill is an important piece of legislation. The committee recognizes the important affect, and the bill is well received and has had a lot of support. It

will probably go through the House. **CHAIRMAN KEATING** asked the committee to consider a committee bill to take care of the housekeeping.

SENATOR BENEDICT asked what **Mr. Melton** meant when he talked about General Fund impact. **Mr. Melton** described the license requirement. When an independent contractor fees comes in at approximately \$250K, but only \$15K is set aside in special revenue account for enforcement of the licensure requirement in disciplinary actions. The remainder goes to the General Fund. So if the license requirement is rolled back, that revenue source will not be available. **SENATOR VAN VALKENBURG** asked if the amount was annual or biannual amount. The \$250K is an annual figure. **SENATOR BENEDICT** asked if the contractors are coming to the state and asking for one half million dollars. **Mr. Melton** stated their position is a licensure requirement in every other professions is licensed in the Department of Commerce. The individual pays a fee, etc. **SENATOR BENEDICT** asked, is not the fee left in place, the fee called an excise tax, and the left it in place under this bill, then get rid of the licensing requirements with the Department of Commerce. Just go with the excise tax. **Mr. Melton** replied that is essentially what is happening. They are not getting anything in return for the money they are paying. It is a special tax. Generally, the special taxes are tied to services that are brought back to the industry, weeding out individuals who are violating ethical standards and making the industry look bad. It also assures the license requirements is followed. There is not way to go under the law. The money is an excise tax and there are license requirements that cannot be enforced, the reason why the MBIA takes issue with the legislation. **SENATOR BENEDICT** stated this is a tax on the tax payers, public works, rather than an excise tax on the contractors are paying. **Mr. Melton** stated he needed to make a clarification. There are two taxes involved with the public contractors. The tax on public contracts is contained in this bill with a large fiscal impact. It is actually one percent of the gross receipts on any contract a public contractor enters into, which is retained under this bill. The amount is approximately \$1M annually. The other tax is specific. The Department of Commerce is paid a fee in order to have a license the contractor can place on the wall. The license will not be enforced or discipline if there is a violation. The two fees are tied to the nature of the work involved. The other is a tax that is essentially paid for enforcement, regulation and qualification. **CHAIRMAN KEATING** asked if under **SENATOR FORRESTER'S** bill, the contractors will still pay the license fees, but they will be regulated. **Mr. Melton** stated **SENATOR FORRESTER'S** bill does involve payment of a licensure fee. It is a separate license fee. It will be an additional revenue source that currently does not exist. The Department of Labor is picking up a license fee and a revenue source in Labor and not dropping a corresponding license fee and revenue source from Commerce.

CARL SWITZER, Contractor, stated it should be pointed out that the fee in **SENATOR FORRESTER's** bill goes into a State Special Fund to operate the program. It is a registration of all contractors, public and private. What is being taken away in this bill is a specific hit on the General Fund. The reason for the request is that the public contractor licensing had at one time hopes of what **SENATOR FORRESTER's** bill is trying to do. The licensing of contractors has never been implemented. It is not right to have a registration bill that provides contract scrutiny. There is a separate contract for public contractor, where it is only a revenue source for the state. **Ms. McClure** stated **REPRESENTATIVE TUSS** has a bill that deals with similar information. **Greg Petesch, Legislative Council**, said **REPRESENTATIVE TUSS's** bill would not accommodate the activity. **Mr. Melton** stated Senate Bill 200 was the only vehicle to accomplish the positive outcome. **SENATOR BARTLETT** asked if it was possible to amend some of HB 200 into **SENATOR FORRESTER's** bill. **Mr. Switzer** stated **SENATOR FORRESTER's** bill does not deal with the public contractors. This is totally new legislation.

CHAIRMAN KEATING stated if the committee retained the contractor's fee, which is a \$.5 million hit on the General Fund. In **SENATOR FORRESTER's** bill, the fee would not be bill. The legislature could use the \$.5M to administer the program. **Mr. Melton** said this fee will only be on public contractors. **SENATOR FORRESTER's** bill will charge a fee on every contractor. The questions and answers are apples and oranges.

Chris Racicot, Executive Director of the Montana Building Industry Association, stated the association has been working with **SENATOR FORRESTER's** bill. The association has actually changed position to facilitate the program. Part of the problem with the public contractor's license program is there are no minimum qualification of the public contractors license program, no enforcement mechanism. Anybody can get a public contractor's license. Essentially, a lot of contractors obtain the public contractors license. The unscrupulous contractor hold themselves out to the public as licensed with the state. The public has the notion that somehow they are protected. The public is misled. The association attempted to fix the problem with HB 29, which was initiated through the Department of Commerce. HB 29 would have taken 16% from the fee and put the money toward administrative functions. An additional 14% of the additional money would go towards the education of public. This has been accomplished in **SEN. FORRESTER's** bill. It was the feeling of the Appropriations Committee that the whole program was worthless; consequently the bill was tabled. The mechanism is no longer available. That is why we are presenting our plight to you, today.

SENATOR AKLESTAD stated there is a problem, but a problem is also being created when there is a \$500,000 hit on the General Fund. **SENATOR AKLESTAD** stated he does not think, at this point in time, unless the association can come up with some other ways to get

the problem worked out without the \$500,000 hit on the General Fund the bill would pass. There is too big a hit on the General Fund. **Mr. Switzer** suggested if the hit on the General fund is what the committee found difficult, maybe the legislation can be changed from a licensing bill to a "If you do public works then you have to pay a fee to do public works." He noted **Chris Racicot's** testimony is very valuable. We do not want a registration bill or a licensing bill that looks like an endorsement, but it is **NOT**. He asked if there was some way to have a committee bill (**EXHIBIT 6**).

{Tape: Two; Side: One}

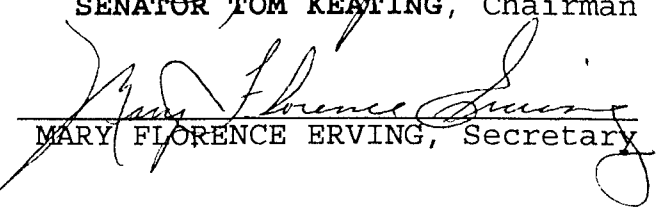
CHAIRMAN KEATING invited the participants to return with an edited version, which does not have a \$500,000 hit on the General Fund.

ADJOURNMENT

Adjournment: The meeting was adjourned at 4:59 p.m.



SENATOR TOM KEATING, Chairman



MARY FLORENCE ERVING, Secretary

TK/mfe

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 17, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 272 (third reading copy -- blue), respectfully report that HB 272 be amended as follows and as so amended be concurred in.

Signed: 
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, line 7.

Following: "INDUSTRY;"

Insert: "REQUIRING AN EMPLOYER TO PROVIDE PROPER NOTICE TO A CUSTOMER REGARDING WHO RECEIVES SERVICE CHARGE;"

2. Title, line 8.

Strike: "IMMEDIATE EFFECTIVE"

Insert: "APPLICABILITY"

3. Page 2, lines 1 through 3.

Following: "bill" on line 1

Strike: remainder of line 1 through "agreement" on line 3


Insert: "and collected by the employer in lieu of a tip. If the employer keeps all or a portion of the service charge, the employer shall give the customer notice. The notice must be clearly and conspicuously stated on the banquet menu and final bill. A written agreement between the customer and the employer must indicate that all or a portion of the service charge is treated as the property of management instead of as a tip or gratuity. For purposes of this section, type that is at least 10-point type or larger on all notices is considered clear and conspicuous. If notice is not provided, the service charge is the property of the nonmanagement employees involved in providing banquet services or must be distributed pursuant to a tip pool agreement."


4. Page 3, lines 1 through 3

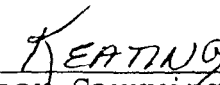
Following: "bill" on line 1.

Strike: remainder of line 1 through "agreement" on line 3

Insert: "and collected by the employer in lieu of a tip. If the employer keeps all or a portion of the service charge, the employer shall give the customer notice. The notice must be clearly and conspicuously stated on the banquet menu and final bill. A written agreement between the customer and the employer must indicate that all or a portion of the service

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 Sec. of Senate

 Senator Carrying Bill

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charge is treated as the property of management instead of as a tip or gratuity. For purposes of this section, type that is at least 10-point type or larger on all notices is considered clear and conspicuous. If notice is not provided, the service charge is the property of the nonmanagement employees involved in providing banquet services or must be distributed pursuant to a tip pool agreement."

5. Page 7, line 16.

Following: "5."

Strike: "Effective date"

Insert: "Applicability"

Following: "act]"

Strike: remainder of line 16

Insert: "applies to contracts entered into on or after the [effective date of this act]."

-END-


SENATE STANDING COMMITTEE REPORT


Page 1 of 1
March 15, 1995


MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 414 (third reading copy -- blue), respectfully report that HB 414 be concurred in.

Signed: 
Senator Thomas F. Keating, Chair

 Amd. Coord.

 Sec. of Senate



Senator Carrying Bill

601328SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 15, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 264 (third reading copy -- blue), respectfully report that HB 264 be concurred in.

Signed: 
Senator Thomas F. Keating, Chair




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Sec. of Senate


Senator Carrying Bill

601329SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 14
March 15, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 68 (third reading copy -- blue), respectfully report that HB 68 be amended as follows and as so amended be concurred in.

Signed: 
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, line 5

Following: "ACT"

Insert: "GENERALLY"

Strike: "CERTAIN"

Following: "LAWS;"

Insert: "TRANSFERRING THE LICENSING OF CONSTRUCTION BLASTERS, BOILER AND STEAM ENGINE OPERATORS, AND CRANE AND HOIST OPERATORS TO THE DEPARTMENT OF COMMERCE FROM THE DEPARTMENT OF LABOR AND INDUSTRY; AUTHORIZING THE DEPARTMENT OF COMMERCE TO ESTABLISH APPROPRIATE TRAINING COURSES; CLARIFYING BOILER ENGINEER EXPERIENCE REQUIREMENTS; ESTABLISHING A NEW CLASS OF LICENSE FOR SEASONAL AGRICULTURAL PURPOSES; TRANSFERRING LICENSURE FUNCTIONS OF THE FIRE PREVENTION AND INVESTIGATION PROGRAM FROM THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF COMMERCE; TRANSFERRING BOILER SAFETY AND INSPECTIONS FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE DEPARTMENT OF COMMERCE;"

2. Title, line 13.

Strike: "AND"

Following: "SECTIONS"

Insert: "37-72-101, 39-71-201, 50-5-115, 50-39-101, 50-39-102, 50-39-103, 50-39-104, 50-39-106, 50-39-107,"

Following: "~~50-74-101,~~"

Insert: "50-74-101,"

3. Title, line 14.

Strike: "AND"


Insert: "50-74-303, 50-74-304,"


Following: "50-74-305,"

Insert: "50-74-307, 50-74-309, 50-74-312, 50-74-314, 50-74-317, 50-76-102, 50-76-103, 50-76-104, 50-76-106, AND 50-76-110,"

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"


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4. Page 1, line 18 through page 6, line 22.

Strike: everything following the enacting clause

Insert: "Section 1. Section 37-72-101, MCA, is amended to read:

"37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions. (1) ~~No~~ A person may not engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of ~~labor and industry~~ commerce;

(d) "explosive" has the meaning given in 61-1-506.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection ~~must~~ shall comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under ~~and implementing~~ 82-4-231(10)(e)."

Section 2. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department and the boiler inspections the department of commerce must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department and, for the biennium ending June 30,

1997, for the administrative expenses of the department of commerce for the purposes of 50-74-101:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for ~~inspection of boilers and~~ issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$200. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon claim therefor."

Section 3. Section 50-5-115, MCA, is amended to read:

"50-5-115. Receiverships. (1) If receivership has not already been instituted under medicaid or medicare, upon notice to the facility, the department may file a complaint in district court for receivership under any of the following conditions in addition to applicable conditions listed in 27-20-102:

(a) a facility is operating without a license and residents are in danger of serious physical or mental harm;

(b) a facility intending to close has not made arrangements within 30 days before closure for the orderly transfer of

residents;

(c) a facility is abandoned by an owner; or

(d) a life threatening situation exists for the residents of the facility.

(2) If the department believes or has received notice from the department of justice that there is an emergency that presents or might present an immediate and serious threat to the health or safety of patients or residents of a facility, a receiver may be appointed by the court upon an ex parte application by the department. If a receiver is appointed upon an ex parte application, notice must be given by the department to the facility within 24 hours of issuance of the receivership order and a hearing must be offered the facility by the court within 10 days of issuance of the order to determine whether the order will be continued.

(3) The department shall maintain a list of persons qualified to act as receivers.

(4) The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20, parts 2 and 3.

(5) Whenever possible, receivers must be paid from the income of the facility; ~~however~~ However, receivers may be paid from the patient protection account provided for in 50-5-232. The court shall direct the amount of payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to discharge any obligation of the entity making the payments owed to the facility.

(6) The powers and duties of the receiver include:

(a) the duty to protect the health, welfare, and safety of the residents;

(b) the power to hire, discipline, and fire staff;

(c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by 27-20-302."

Section 4. Section 50-39-101, MCA, is amended to read:

"50-39-101. **License and endorsements required.** (1) A person or entity shall obtain a license from the department of justice commerce before engaging in the business of servicing fire extinguishers or before engaging in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems. Each

individual, except an apprentice, employed by the licensee to perform services under the license ~~must~~ shall obtain from the department an endorsement to sell, service, or install:

- (a) fire alarm systems;
- (b) special agent fire suppression systems; or
- (c) fire extinguishing systems.

(2) The license and endorsement or endorsements must be prominently displayed at the business premises, and copies must be carried by the person conducting each installation or servicing and must be shown to anyone requesting to see them.

(3) It is a misdemeanor to knowingly or purposely service a fire extinguisher or sell, service, or install a fire alarm system, special agent fire suppression system, or fire extinguishing system without the required license and endorsement."

Section 5. Section 50-39-102, MCA, is amended to read:

"50-39-102. Application for license and endorsements. (1)

An application for a license and any endorsements must be made on a form prescribed by the department of ~~justice~~ commerce.

(2) The department shall annually issue a license and endorsement to an applicant who:

(a) submits satisfactory proof that the applicant is properly equipped and staffed to provide the sales or services to be licensed and endorsed; and

(b) submits satisfactory proof that the applicant is insured to engage in the business covered by the license and endorsement or endorsements.

(3) The department shall:

(a) issue an endorsement to an applicant who scores a passing grade on an examination devised or approved by the department; and

(b) annually renew the endorsement upon payment of the endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department."

Section 6. Section 50-39-103, MCA, is amended to read:

"50-39-103. Inspections, examinations, and hearings authorized. The When requested by the department of justice commerce may, the department of justice shall conduct inspections, of the applicant's business facilities and shall report to the department of commerce the results of its inspection. The department of commerce may consider the inspection report and conduct examinations, or hearings to determine an applicant's qualifications."

Section 7. Section 50-39-104, MCA, is amended to read:

"50-39-104. **Violations and penalties.** The department of ~~justice~~ commerce may deny, revoke, suspend, or refuse to renew a license or endorsement for falsification of an application or for a violation of this part or a rule promulgated by the department under 50-39-107."

Section 8. Section 50-39-106, MCA, is amended to read:

"50-39-106. **Deposit of fees.** The fees collected under 50-39-105 must be deposited in an account in the state special revenue fund to the credit of the department of ~~justice~~ commerce and appropriated to the ~~department~~ department of commerce and the department of justice to administer this part."

Section 9. Section 50-39-107, MCA, is amended to read:

"50-39-107. **Rulemaking authority.** The department of ~~justice~~ commerce may adopt rules to implement this part."

Section 10. Section 50-71-103, MCA, is amended to read:

"50-71-103. ~~Public contractors~~ **Contractors** subject to chapter -- contract provision required. Every (1) A contractor performing services for the state or any of its political ~~subdivision thereof shall be~~ subdivisions is required to comply with the safety rules, codes, and provisions of this chapter as a part of ~~his~~ the contract.

(2) The requirement imposed by subsection (1) must be expressly stated in a contract between a contractor and a governmental entity."

Section 11. Section 50-71-323, MCA, is amended to read:

"50-71-323. **Order directing additions, repairs, and improvements, or changes.** (1) Whenever the department, after a ~~hearing had upon its own motion or upon complaint~~ an inspection and a closing conference with an employer and an employee representative, finds that an employment or place of employment is not safe or that the practices, ~~or methods, or operations,~~ or processes ~~employed or used in connection therewith by the employer~~ are unsafe or do not afford adequate protection to the life and safety of the employees in ~~such employments and the employment or place of employment,~~ the department shall ~~make and enter and serve such~~ issue an order relative thereto as may be necessary to render such outlining the unsafe or inadequate practices, methods, operations, or processes currently used and directing additions, repairs, improvements, or changes in the employment or place of employment safe and that are necessary to protect the life and safety of employees in such the employment and places or place of employment.

(2) The department may in the order direct that ~~such~~ additions, repairs, improvements, or changes be made and ~~such~~

~~that~~ safety devices and safeguards be furnished, provided, and used ~~as that~~ are reasonably required necessary to render such ensure a safe employment or ~~places place~~ of employment ~~safe in the manner and~~ within the time specified in the order."

Section 12. Section 50-74-101, MCA, is amended to read:

"50-74-101. Department Definition -- department to formulate rules. (1) As used in this chapter, the term "department" means the department of commerce.

(2) The department shall ~~formulate~~ adopt definitions and rules for the safe construction, installation, operation, inspection, and repair of equipment covered by this chapter. The definitions and rules ~~so formulated shall~~ must follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers."

Section 13. Section 50-74-219, MCA, is amended to read:

"50-74-219. Fee for special inspection. Whenever, ~~upon request of the owner or operator of any boiler, it is necessary for the a department inspector to make a special trip for the inspection of the~~ inspects a boiler, the a mileage and per diem allowed fee by law shall must be charged and collected by the department prior to issuance of an inspection certificate in accordance with the following schedule:

- (1) operating certificate, \$20;
- (2) internal inspection, \$40;
- (3) external inspection:
 - (a) hot water heating and supply, \$15;
 - (b) steam heating, \$20; and
 - (c) power boiler, \$30; and
- (4) special inspection, \$50 per hour plus expenses."

Section 14. Section 50-74-303, MCA, is amended to read:

"50-74-303. Engineer's license classifications. (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into ~~four~~ five classes, namely: first-class engineers, second-class engineers, third-class engineers, agricultural-class engineers and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into ~~four~~ five classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of 100 pounds per square inch gauge saturated steam pressure and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Agricultural-class engineers are licensed to operate steam boilers that operate not in excess of 150 pounds per square inch saturated steam pressure and that:

(i) are not operated for more than 6 months of the year; and

(ii) are not operated for purposes other than the harvesting or processing of agricultural products.

(e) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature."

Section 15. Section 50-74-304, MCA, is amended to read:

"50-74-304. Requirements for engineer's license. Each applicant for an engineer's license must be physically and mentally capable of performing the required duties and shall meet the following minimum requirements for the class of engineer's license for which application is being made:

(1) An applicant for a low-pressure engineer's license must be 18 years of age or older, must have at least 3 months' full-time experience in the operation of a boiler in this classification, under an engineer who holds a valid low-pressure or higher license, is required to successfully pass a written examination prescribed by the department, have passed his 18th birthday, and must be found to be competent to operate a boiler in this classification by the department.

(2) An applicant for an agricultural-class engineer's license must be 18 years of age or older, is required to successfully pass a written examination prescribed by the department, and must be found to be competent to operate a boiler in this classification.

~~(2)~~(3) An applicant for a third-class engineer's license must be 18 years of age or older, must have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, is required to successfully pass a written

examination prescribed by the department, ~~have passed his 18th birthday,~~ and must be found ~~to be~~ competent to operate a boiler in this classification by the department.

~~(3)~~(4) An applicant for a second-class engineer's license must be 18 years of age or older and:

(a) must have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and must be found ~~to be~~ competent to operate a boiler and steam-driven machinery in this classification by the department; or

(b) shall hold a valid third-class engineer's license, and must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and must be found ~~to be~~ competent to operate a boiler and steam-driven machinery in this classification by the department.

~~(4)~~(5) An applicant for a first-class engineer's license must be 18 years of age or older and:

(a) must have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and must be found ~~to be~~ competent to operate a boiler and steam-driven machinery in this classification by the department;

(b) shall hold a valid second-class engineer's license, and must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and must be found ~~to be~~ competent to operate a boiler and steam-driven machinery in this classification by the department; or

(c) shall hold a valid third-class engineer's license, and must have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully ~~passed~~ pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and must be found ~~to be~~ competent to operate a boiler and steam-driven machinery in this classification by the department."

Section 16. Section 50-74-305, MCA, is amended to read:

"50-74-305. **Exceptions to requirements for engineer's license.** Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification holding a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, successfully passing a written examination prescribed by the department, and found ~~to be~~ competent to operate a boiler and steam-driven machinery in that classification shall by the department must be granted a license in that classification.

(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the department may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant ~~having who has~~ training in the operation of steam or water boilers and steam machinery and who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other department-approved institution or training program in the classification for which ~~he~~ the applicant is applying may, ~~at the discretion of the~~ pursuant to department rule, be credited with ~~a maximum of 6 months'~~ experience toward a first-, second-, or third-class or low pressure engineer's license."

Section 17. Section 50-74-307, MCA, is amended to read:

"50-74-307. **Requirements for traction licenses.** An applicant for a traction engineer's license must be 18 years of age or older, must have at least 6 months' full-time experience in the operation of steam traction engines, is required to successfully pass a written examination prescribed by the department, ~~have passed his 18th birthday,~~ and must be found ~~to~~ be competent to operate a traction engine by the department."

Section 18. Section 50-74-309, MCA, is amended to read:

"50-74-309. **License fees.** ~~Applicants~~ An applicant for an engineer's license shall pay fees a fee according to the class of license for which application is made, as specified ~~in the following schedule:~~

- ~~(1) first class~~ ————— \$30
- ~~(2) second class~~ ————— \$20
- ~~(3) third class~~ ————— \$12
- ~~(4) low pressure~~ ————— \$ 8
- ~~(5) traction~~ ————— \$12
- ~~(6) renewal of license~~ ————— \$ 4
- ~~(7) replacement of lost certificate~~ ————— \$ 2 by

administrative rule, commensurate with program area costs approved by the legislature. All fees must be deposited in the state special revenue fund for the use of the department. The account balance may not exceed one-half of 1 year's approved appropriation without either a reduction in fees or an increase in appropriation approved by the legislature."

Section 19. Section 50-74-312, MCA, is amended to read:

"50-74-312. Review of license rejection. (1) If any person who has applied An applicant for a license under the provisions of this chapter and whose application has been rejected feels aggrieved, he may, at any time after the lapse of 10 days and within 45 days after the date of his the rejection, in writing set forth the causes of his grievance in writing any arguments opposing the rejection and request a department review by the department. Such The request must be addressed to the department and shall must be signed by the rejected applicant.

(2) Within 2 days after receiving such the request, the department shall notify the applicant in writing that on a certain day, which shall not be less than 5 days or more than 30 days after the date the department receives receipt of the written request, the department shall review and evaluate the application and any arguments opposing the rejection of the license application.

(3) The applicant may appear in person at the review if he so desires. At least 2 days before the day set for the review, the applicant may designate in writing to the department of commerce the name of an engineer holding a valid license of equal or higher grade with than the one applied for, and such the engineer may present himself in testify on behalf of the applicant upon the day and at the hour fixed for at the review.

(4) After the review is completed, if the department of commerce decides determines that the applicant is entitled to the license he has applied for license, the department shall without delay issue a the license. accordingly but, if If the department rejects the applicant affirms the decision to not issue the license, it is a final rejection and he must not be granted another examination for the space of 45 days after such last rejection, when he may again apply the applicant is required to reapply to take the license examination, as provided by in 50-74-309 through 50-74-311, and may not take the examination within 45 days of the final decision to not issue the license."

Section 20. Section 50-74-314, MCA, is amended to read:

"50-74-314. Complaints and revocation of license. Whenever a complaint is made against an engineer holding who holds a license is made alleging that he, through negligence, want of skill, or inattention to duty, the engineer permitted his a

boiler to burn or otherwise become in bad condition or alleging that ~~he~~ the engineer has been found intoxicated or under the influence of drugs while on duty, it is the duty of the department to make a thorough investigation of the charge and upon satisfactory proof of ~~such~~ the charge to revoke the license of the engineer pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Section 21. Section 50-74-317, MCA, is amended to read:

"50-74-317. When unlicensed person may operate. (1) In case of accident, sickness, or any unforeseen ~~prevention of the event that prevents a~~ licensed engineer, employed by any an owner, renter, or user of an engine or boiler, from performing required duties, the owner, renter, or user may for 15 days employ any person ~~of the age of 18 years or over whom he may consider of age or older whom the owner, renter, or user considers~~ competent to run the engine or boiler.

(2) Although ~~such~~ the person ~~so~~ employed may not be the holder of an engineer's license, ~~he~~ the person ~~shall~~ must have reasonable qualifications acceptable to the department.

(3) ~~The~~ A person ~~so~~ employing ~~the~~ an unlicensed engineer shall immediately notify the department.

(4) ~~No~~ An owner, renter, or user of boilers or steam machinery ~~shall be allowed to so~~ may not employ unlicensed engineers for more than 15 days in any ~~one~~ 1 calendar year."

Section 22. Section 50-76-102, MCA, is amended to read:

"50-76-102. Hoisting engine license required. (1) (a) It is unlawful for ~~any~~ a person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects without first obtaining a license ~~therefor~~ from the department of commerce.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section ~~shall~~ apply to the operation of the engines and machinery named ~~herein~~ in this section.

(2) First-class hoisting engineers ~~shall~~ must be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers ~~shall~~ must be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section ~~shall~~ do not apply to hoists and cranes defined in 50-76-103."

Section 23. Section 50-76-103, MCA, is amended to read:

"50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any hoisting equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of above more than 6 tons and or a boom length of more than 25 feet without first obtaining a license from the department of commerce. This equipment includes overhead trolley cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 ~~shall apply~~ applies to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class hoisting engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b)(i) An applicant for a first-class hoisting engineer's license must be 18 years of age or older and shall have:

(A) must have no less than 3 years' experience operating equipment requiring a second-class hoisting engineer's license or ~~shall otherwise be shown to be equivalently competent~~ demonstrate equivalent competency by examination; and

~~(B) passed his 18th birthday; and~~

~~(C)(B)~~ is required to passed pass a written test prescribed by the department of commerce.

(ii) An annual physical exam is required of all licensees.

(c) Second-class hoisting engineers are licensed to operate hoisting equipment with a manufacturer's rating of 6 tons ~~and or~~ a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d)(i) ~~Applicants~~ An applicant for a second-class hoisting engineer's license must be 18 years of age or older and shall:

(A) must have no less than 2 years' experience in actual operation of hoisting equipment covered by this section or ~~shall otherwise be shown to be equivalently competent~~ demonstrate equivalent competency by examination; and

(B) is required to successfully pass a written examination prescribed by the department of commerce; and

~~(C) have passed their 18th birthday.~~

(ii) An annual physical exam is required of all licensees.

(e) Third-class hoisting engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) ~~Applicants~~ An applicant for a third-class hoisting engineer's license ~~shall~~ is required to successfully pass a written test prescribed by the department of commerce and ~~shall~~ must be ~~at least 18 years old~~ at least 18 years of age or older before receiving ~~this~~ a license.

(3) The department of commerce shall reexamine each

licensed engineer or operator every 5 years during the anniversary month of ~~his~~ the issuance of the license if the licensee has not worked at the trade for 5 years."

Section 24. Section 50-76-104, MCA, is amended to read:

"50-76-104. Application and fee for license. Application for licenses ~~shall~~ must be made to the department of commerce ~~in the same manner and the~~ and submitted with the appropriate fee that is set commensurate with the cost of administering this program, to be deposited in the state special revenue fund for use by the department. The same fee ~~shall~~ must be charged as required by law for obtaining a license to operate steam engines, boilers, and steam-driven machinery under chapter 74 of this title."

Section 25. Section 50-76-106, MCA, is amended to read:

"50-76-106. Revocation of license. The department of commerce may revoke any license issued under this chapter for any of the reasons for which the department of commerce may revoke a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title."

Section 26. Section 50-76-110, MCA, is amended to read:

"50-76-110. Crane inspector. The department of commerce shall employ at least one crane inspector. He ~~The crane~~ inspector shall hold a first-class hoisting engineer's license under this chapter for a minimum of 1 year and must have a minimum of 3 years' experience operating cranes."

NEW SECTION. **Section 27. Effective date.** [This act] is effective July 1, 1995."

-END-

MEMORANDUM

TO: Members of Senate Labor and Employment Relations
FROM: Eddye McClure, Staff Attorney *Eddye*
DATE: March 11, 1995
RE: Substitute Bill Combining HB 66, 68, and 432

Attached is a copy of the amendment for House Bill No. 68 which incorporates material from House Bills No. 66 and 432 into House Bill No. 68 as a substitute bill.

(1) Beside each section is a number noting from which bill the section has been taken;

(2) All amendments suggested or brought to the hearing have been included and noted "**sugg. amend.**" The suggested amendment related to the "**mint growers**" has been noted;

(3) Section 50-74-305 was amended differently in HB 66 and 68. The "**SB**" beside that section denotes that the section now amends the section to include the language requested by Senator Bartlett during the hearing;

(4) Section 50-74-308, amended in HB 66 only to change was removed from the combined bill as the amendment to 50-74-101 in HB 432 contains the definition of "Department of Commerce" for all of chapter 74. Therefore, it was unnecessary to amend 50-74-308.

(5) House Bills 66 and 68 had an October 1 effective date. HB 432 had a July 1 effective date. The combined bill, at the request of the departments has the **July 1** effective date.

Amendments to House Bill No. 68
Third Reading Copy

For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 7, 1995

1. Title, line 5

Following: "ACT"

Insert: "GENERALLY"

Strike: "CERTAIN"

Following: "LAWS;"

Insert: "TRANSFERRING THE LICENSING OF CONSTRUCTION BLASTERS,
BOILER AND STEAM ENGINE OPERATORS, AND CRANE AND HOIST
OPERATORS TO THE DEPARTMENT OF COMMERCE FROM THE DEPARTMENT
OF LABOR AND INDUSTRY; AUTHORIZING THE DEPARTMENT OF
COMMERCE TO ESTABLISH APPROPRIATE TRAINING COURSES;
CLARIFYING BOILER ENGINEER EXPERIENCE REQUIREMENTS;
ESTABLISHING A NEW CLASS OF LICENSE FOR SEASONAL
AGRICULTURAL PURPOSES; TRANSFERRING LICENSURE FUNCTIONS OF
THE FIRE PREVENTION AND INVESTIGATION PROGRAM FROM THE
DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF COMMERCE;
TRANSFERRING BOILER SAFETY AND INSPECTIONS FROM THE
DEPARTMENT OF LABOR AND INDUSTRY TO THE DEPARTMENT OF
COMMERCE;"

2. Title, line 13.

Strike: "AND"

Following: "SECTIONS"

Insert: "37-72-101, 39-71-201, 50-5-115, 50-39-101, 50-39-102,
50-39-103, 50-39-104, 50-39-106, 50-39-107,"

Following: "~~50-74-101~~,"

Insert: "50-74-101,"

3. Title, line 14.

Strike: "AND"

Insert: "50-74-303, 50-74-304,"

Following: "50-74-305,"

Insert: "50-74-307, 50-74-309, 50-74-312, 50-74-314, 50-74-317,
50-76-102, 50-76-103, 50-76-104, 50-76-106, AND 50-76-110,"

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

4. Page 1, line 18 through page 6, line 22.

Strike: everything following the enacting clause

Insert: "**Section 1.** Section 37-72-101, MCA, is amended to read:

"37-72-101. Construction blasting restrictions -- license
required -- definitions -- exemptions. (1) No A person may not
engage in the practice of construction blasting unless licensed
or under the supervision of a person licensed as a construction
blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of ~~labor and industry commerce~~;

(d) "explosive" has the meaning given in 61-1-506.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection ~~must~~ shall comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under ~~and implementing~~ 82-4-231(10)(e)."

Section 2. Section 39-71-201, MCA, is amended to read:

66 **"39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and ~~issuance of licenses to operating engineers~~ as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$200. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund

the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon claim therefor."

Section 3. Section 50-5-115, MCA, is amended to read:

432 **"50-5-115. Receiverships.** (1) If receivership has not already been instituted under medicaid or medicare, upon notice to the facility, the department may file a complaint in district court for receivership under any of the following conditions in addition to applicable conditions listed in 27-20-102:

(a) a facility is operating without a license and residents are in danger of serious physical or mental harm;

(b) a facility intending to close has not made arrangements within 30 days before closure for the orderly transfer of residents;

(c) a facility is abandoned by an owner; or

(d) a life threatening situation exists for the residents of the facility.

(2) If the department believes or has received notice from the department of justice that there is an emergency that presents or might present an immediate and serious threat to the health or safety of patients or residents of a facility, a receiver may be appointed by the court upon an ex parte application by the department. If a receiver is appointed upon an ex parte application, notice must be given by the department to the facility within 24 hours of issuance of the receivership order and a hearing must be offered the facility by the court within 10 days of issuance of the order to determine whether the order will be continued.

(3) The department shall maintain a list of persons qualified to act as receivers.

(4) The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20, parts 2 and 3.

(5) Whenever possible, receivers must be paid from the income of the facility, ~~however~~ However, receivers may be paid from the patient protection account provided for in 50-5-232. The court shall direct the amount of payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to

discharge any obligation of the entity making the payments owed to the facility.

(6) The powers and duties of the receiver include:

(a) the duty to protect the health, welfare, and safety of the residents;

(b) the power to hire, discipline, and fire staff;

(c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by 27-20-302."

Section 4. Section 50-39-101, MCA, is amended to read:

"50-39-101. License and endorsements required. (1) A person or entity shall obtain a license from the department of justice commerce before engaging in the business of servicing fire extinguishers or before engaging in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems. Each individual, except an apprentice, employed by the licensee to perform services under the license ~~must~~ shall obtain from the department an endorsement to sell, service, or install:

(a) fire alarm systems;

(b) special agent fire suppression systems; or

(c) fire extinguishing systems.

(2) The license and endorsement or endorsements must be prominently displayed at the business premises, and copies must be carried by the person conducting each installation or servicing and must be shown to anyone requesting to see them.

(3) It is a misdemeanor to knowingly or purposely service a fire extinguisher or sell, service, or install a fire alarm system, special agent fire suppression system, or fire extinguishing system without the required license and endorsement."

Section 5. Section 50-39-102, MCA, is amended to read:

"50-39-102. Application for license and endorsements. (1) An application for a license and any endorsements must be made on a form prescribed by the department of justice commerce.

(2) The department shall annually issue a license and endorsement to an applicant who:

(a) submits satisfactory proof that the applicant is properly equipped and staffed to provide the sales or services to be licensed and endorsed; and

(b) submits satisfactory proof that the applicant is insured to engage in the business covered by the license and endorsement or endorsements.

(3) The department shall:

(a) issue an endorsement to an applicant who scores a passing grade on an examination devised or approved by the department; and

(b) annually renew the endorsement upon payment of the

endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department."

Section 6. Section 50-39-103, MCA, is amended to read:

432 "50-39-103. **Inspections, examinations, and hearings** authorized. The When requested by the department of justice commerce may, the department of justice shall conduct inspections, of the applicant's business facilities and shall report to the department of commerce the results of its inspection. The department of commerce may consider the inspection report and conduct examinations, or hearings to determine an applicant's qualifications."

Section 7. Section 50-39-104, MCA, is amended to read:

432 "50-39-104. **Violations and penalties.** The department of justice commerce may deny, revoke, suspend, or refuse to renew a license or endorsement for falsification of an application or for a violation of this part or a rule promulgated by the department under 50-39-107."

Section 8. Section 50-39-106, MCA, is amended to read:

432 "50-39-106. **Deposit of fees.** The fees collected under 50-39-105 must be deposited in an account in the state special revenue fund to the credit of the department of justice commerce and appropriated to the department department of commerce and the department of justice to administer this part."

Section 9. Section 50-39-107, MCA, is amended to read:

432 "50-39-107. **Rulemaking authority.** The department of justice commerce may adopt rules to implement this part."

Section 10. Section 50-71-103, MCA, is amended to read:

68 "50-71-103. **Public contractors Contractors subject to chapter -- contract provision required.** Every (1) A contractor performing services for the state or any of its political subdivision thereof shall be subdivisions is required to comply with the safety rules, codes, and provisions of this chapter as a part of his the contract.

(2) The requirement imposed by subsection (1) must be expressly stated in a contract between a contractor and a governmental entity."

Section 11. Section 50-71-323, MCA, is amended to read:

68 "50-71-323. **Order directing additions, repairs, and improvements, or changes.** (1) Whenever the department, after a hearing had upon its own motion or upon complaint an inspection and a closing conference with an employer and an employee representative, finds that an employment or place of employment is not safe or that the practices, or methods, or operations, or processes employed or used in connection therewith by the employer are unsafe or do not afford adequate protection to the life and safety of the employees in such employments and the employment or place of employment, the department shall make and enter and serve such issue an order relative thereto as may be

~~necessary to render such outlining the unsafe or inadequate practices, methods, operations, or processes currently used and directing additions, repairs, improvements, or changes in the employment or place of employment safe and that are necessary to protect the life and safety of employees in such the employment and places or place of employment.~~

(2) The department may in the order direct that such additions, repairs, improvements, or changes be made and ~~such that~~ safety devices and safeguards be furnished, provided, and used as ~~that~~ are reasonably required ~~necessary to render such ensure a safe employment or places place of employment safe in the manner and within the time specified in the order.~~

Section 12. Section 50-74-101, MCA, is amended to read:

"50-74-101. Department Definition -- department to formulate rules. (1) As used in this chapter, the term "department" means the department of commerce.

(2) The department shall ~~formulate~~ adopt definitions and rules for the safe construction, installation, operation, inspection, and repair of equipment covered by this chapter. The definitions and rules ~~so formulated shall~~ must follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers."

Section 13. Section 50-74-219, MCA, is amended to read:

"50-74-219. Fee for special inspection. Whenever, ~~upon request of the owner or operator of any boiler, it is necessary for the a department inspector to make a special trip for the inspection of the~~ inspects a boiler, the a mileage and per diem allowed fee by law shall must be charged and collected by the department prior to issuance of an inspection certificate in accordance with the following schedule:

- (1) operating certificate, \$20;
- (2) internal inspection, \$40;
- (3) external inspection:
 - (a) hot water heating and supply, \$15;
 - (b) steam heating, \$20; and
 - (c) power boiler, \$30; and
 - (4) special inspection, \$50 per hour plus expenses."

Section 14. Section 50-74-303, MCA, is amended to read:

"50-74-303. Engineer's license classifications. (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into ~~four~~ five classes, namely: first-class engineers, second-class engineers, third-class engineers, agricultural-class engineers and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into ~~four~~ five classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and

hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of 100 pounds per square inch gauge saturated steam pressure and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Agricultural-class engineers are licensed to operate steam boilers that operate not in excess of 150 pounds per square inch saturated steam pressure and that:

(i) are not operated for more than 6 months of the year; and
(ii) are not operated for purposes other than the harvesting or processing of agricultural products.

(e) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature."

66 Section 15. Section 50-74-304, MCA, is amended to read:

"50-74-304. **Requirements for engineer's license.** Each applicant for an engineer's license must be physically and mentally capable of performing the required duties and shall meet the following minimum requirements for the class of engineer's license for which application is being made:

(1) An applicant for a low-pressure engineer's license must be 18 years of age or older, must have at least 3 months' full-time experience in the operation of a boiler in this classification, under an engineer who holds a valid low-pressure or higher license, is required to successfully pass a written examination prescribed by the department, have passed his 18th birthday, and must be found to be competent to operate a boiler in this classification by the department.

MINT (2) An applicant for an agricultural-class engineer's license must be 18 years of age or older, is required to successfully pass a written examination prescribed by the department, and must be found to be competent to operate a boiler in this classification.

~~(2)~~(3) An applicant for a third-class engineer's license must be 18 years of age or older, must have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, is required to successfully pass a written examination prescribed by the department, have passed his 18th birthday, and must be found to be competent to operate a boiler in this classification by the department.

~~(3)~~(4) An applicant for a second-class engineer's license must be 18 years of age or older and:

(a) must have at least 2 years' full-time experience in the

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operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, have passed his 18th birthday, and must be found to be competent to operate a boiler and steam-driven machinery in this classification by the department; or

(b) shall hold a valid third-class engineer's license, and must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, have passed his 18th birthday, and must be found to be competent to operate a boiler and steam-driven machinery in this classification by the department.

~~(4)~~(5) An applicant for a first-class engineer's license must be 18 years of age or older and:

(a) must have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, have passed his 18th birthday, and must be found to be competent to operate a boiler and steam-driven machinery in this classification by the department;

(b) shall hold a valid second-class engineer's license, and must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, have passed his 18th birthday, and must be found to be competent to operate a boiler and steam-driven machinery in this classification by the department; or

(c) shall hold a valid third-class engineer's license, and must have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully passed pass a written examination prescribed by the department, have passed his 18th birthday, and must be found to be competent to operate a boiler and steam-driven machinery in this classification by the department."

68 Section 16. Section 50-74-305, MCA, is amended to read:

"50-74-305. **Exceptions to requirements for engineer's license.** Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification holding a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, successfully passing a written examination prescribed by the department, and found ~~to be~~ competent to operate a boiler and steam-driven machinery in that classification shall by the department must be granted a license in that classification.

(2) Operating experience in a classification accumulated in the United States military services or the merchant marine

service satisfactory to the department may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

SB (3) An applicant ~~having who has~~ training in the operation of steam or water boilers and steam machinery and who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other department-approved institution or training program in the classification for which ~~he the applicant~~ is applying may, ~~at the discretion of the~~ pursuant to department rule, be credited with ~~a maximum of 6 months'~~ experience toward a first-, second-, or third-class or low pressure engineer's license."

66 Section 17. Section 50-74-307, MCA, is amended to read:
"50-74-307. **Requirements for traction licenses.** An applicant for a traction engineer's license must be 18 years of age or older, must have at least 6 months' full-time experience in the operation of steam traction engines, is required to successfully pass a written examination prescribed by the department, have passed his 18th birthday, and must be found to be competent to operate a traction engine by the department."

66 Section 18. Section 50-74-309, MCA, is amended to read:
"50-74-309. **License fees.** ~~Applicants~~ An applicant for an engineer's license shall pay ~~fees~~ a fee according to the class of license for which application is made, as specified ~~in the following schedule:~~
(1) ~~first class~~ ——— \$30
(2) ~~second class~~ ——— \$20
(3) ~~third class~~ ——— \$12
(4) ~~low pressure~~ ——— \$ 8
(5) ~~traction~~ ——— \$12
(6) ~~renewal of license~~ ——— \$ 4
(7) ~~replacement of lost certificate~~ ——— \$ 2 by
administrative rule, commensurate with program area costs approved by the legislature. All fees must be deposited in the state special revenue fund for the use of the department. The account balance may not exceed one-half of 1 year's approved appropriation without either a reduction in fees or an increase in appropriation approved by the legislature."

Sugg.
Amend

66 Section 19. Section 50-74-312, MCA, is amended to read:
"50-74-312. **Review of license rejection.** (1) ~~If any person who has applied~~ An applicant for a license under the provisions of this chapter ~~and whose application has been rejected feels aggrieved, he may, at any time after the lapse of 10 days and within 45 days after the date of his the rejection, in writing set forth the causes of his grievance in writing any arguments opposing the rejection and request a department review by the department. Such~~ The request must be addressed to the department and shall must be signed by the rejected applicant.

(2) Within 2 days after receiving ~~such the~~ request, the department shall notify the applicant in writing that on a certain day, ~~which shall~~ not be less than 5 days or more than 30

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days after the date the department receives receipt of the written request, the department shall review and evaluate the application and any arguments opposing the rejection of the license application.

(3) The applicant may appear in person at the review if he ~~so desires~~. At least 2 days before the day set for the review, the applicant may designate in writing to the department of commerce the name of an engineer holding a valid license of equal or higher grade with than the one applied for, and ~~such the~~ engineer may ~~present himself in~~ testify on behalf of the applicant ~~upon the day and at the hour fixed for at~~ the review.

(4) After the review is completed, if the department of commerce ~~decides~~ determines that the applicant is entitled to the license he has applied for license, the department shall without delay issue a the license. ~~accordingly but, if~~ If the department rejects the applicant affirms the decision to not issue the license, it is a final rejection and he must not be granted another examination for the space of 45 days after such last rejection, when he may again apply the applicant is required to reapply to take the license examination, as provided by in 50-74-309 through 50-74-311, and may not take the examination within 45 days of the final decision to not issue the license."

66 Section 20. Section 50-74-314, MCA, is amended to read:

"50-74-314. **Complaints and revocation of license.** Whenever a complaint is made against an engineer holding who holds a license is made alleging that he, through negligence, want of skill, or inattention to duty, the engineer permitted his a boiler to burn or otherwise become in bad condition or alleging that he the engineer has been found intoxicated or under the influence of drugs while on duty, it is the duty of the department to make a thorough investigation of the charge and upon satisfactory proof of ~~such the~~ charge to revoke the license of the engineer pursuant to the contested case provisions of the Montana Administrative Procedure Act."

66 Section 21. Section 50-74-317, MCA, is amended to read:

"50-74-317. **When unlicensed person may operate.** (1) In case of accident, sickness, or any unforeseen ~~prevention of the event that prevents a~~ licensed engineer, employed by any an owner, renter, or user of an engine or boiler, from performing required duties, the owner, renter, or user may for 15 days employ any person ~~of the age of 18 years or over whom he may consider of age or older whom the owner, renter, or user considers~~ competent to run the engine or boiler.

(2) Although ~~such the~~ person ~~so~~ employed may not be the holder of an engineer's license, he the person shall must have reasonable qualifications acceptable to the department.

(3) The A person ~~so~~ employing the an unlicensed engineer shall immediately notify the department.

(4) ~~No An~~ owner, renter, or user of boilers or steam machinery ~~shall be allowed to so~~ may not employ unlicensed engineers for more than 15 days in any ~~one~~ 1 calendar year."

66 Section 22. Section 50-76-102, MCA, is amended to read:

"50-76-102. Hoisting engine license required. (1) (a) It is unlawful for ~~any a~~ person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects without first obtaining a license ~~therefor~~ from the department of commerce.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section ~~shall~~ apply to the operation of the engines and machinery named ~~herein~~ in this section.

(2) First-class hoisting engineers ~~shall~~ must be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers ~~shall~~ must be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section ~~shall~~ do not apply to hoists and cranes defined in 50-76-103."

66 Section 23. Section 50-76-103, MCA, is amended to read:

"50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any hoisting equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of above more than 6 tons ~~and or~~ a boom length of more than 25 feet without first obtaining a license from the department of commerce. This equipment includes overhead trolley cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 ~~shall apply~~ applies to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class hoisting engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b)(i) An applicant for a first-class hoisting engineer's license must be 18 years of age or older and shall have:

(A) must have no less than 3 years' experience operating equipment requiring a second-class hoisting engineer's license or ~~shall otherwise be shown to be equivalently competent~~ demonstrate equivalent competency by examination; and

~~(B) passed his 18th birthday; and~~

~~(C)~~ (B) is required to pass a written test prescribed by the department of commerce.

(ii) An annual physical exam is required of all licensees.

(c) Second-class hoisting engineers are licensed to operate hoisting equipment with a manufacturer's rating of 6 tons ~~and or~~ a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d)(i) ~~Applicants~~ An applicant for a second-class hoisting engineer's license must be 18 years of age or older and shall:

(A) must have no less than 2 years' experience in actual operation of hoisting equipment covered by this section or shall ~~otherwise be shown to be equivalently competent~~ demonstrate

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equivalent competency by examination; and

(B) is required to successfully pass a written examination prescribed by the department of commerce; and

~~(C) have passed their 18th birthday.~~

(ii) An annual physical exam is required of all licensees.

(e) Third-class hoisting engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) ~~Applicants~~ An applicant for a third-class hoisting engineer's license ~~shall~~ is required to successfully pass a written test prescribed by the department of commerce and shall must be at least 18 years old years of age or older before receiving this a license.

(3) The department of commerce shall reexamine each licensed engineer or operator every 5 years during the anniversary month of ~~his~~ the issuance of the license if the licensee has not worked at the trade for 5 years."

66 Section 24. Section 50-76-104, MCA, is amended to read:

"50-76-104. **Application and fee for license.** Application for licenses ~~shall must~~ be made to the department of commerce ~~in the same manner and the~~ and submitted with the appropriate fee that is set commensurate with the cost of administering this program, to be deposited in the state special revenue fund for use by the department. The same fee ~~shall must~~ be charged as required by law for obtaining a license to operate steam engines, boilers, and steam-driven machinery under chapter 74 of this title."

66 Section 25. Section 50-76-106, MCA, is amended to read:

"50-76-106. **Revocation of license.** The department of commerce may revoke any license issued under this chapter for any of the reasons for which the department of commerce may revoke a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title."

66 Section 26. Section 50-76-110, MCA, is amended to read:

"50-76-110. **Crane inspector.** The department of commerce shall employ at least one crane inspector. ~~He~~ The crane inspector shall hold a first-class hoisting engineer's license under this chapter for a minimum of 1 year and must have a minimum of 3 years' experience operating cranes."

432 NEW SECTION. Section 27. {standard} Effective date. [This act] is effective July 1, 1995."

-END-

HB 66 Amendments (continued)

10. Page 9, line 18
Strike: "AND"
Insert: "or"

11. Page 10, line 6
Strike: "AND"
insert: "or"

-End-

PROPOSED AMENDMENTS TO HB 66

SENATE LABOR AND EMPLOYMENT COMMITTEE

AMENDMENT REQUESTS BY REPRESENTATIVE JACK HERRON
February 28, 1995

1. Page 4, line 10
Following: "for"
Strike: "AN AGRICULTURAL CLASS ENGINEER'S LICENSE OR A"
Page 4, line 12
Strike: "THE APPROPRIATE" and insert "this"
Strike: "'is required to" and insert "under an engineer who
holds a valid low-pressure or higher license,"
Page 4, line 12
Insert: "THIS" after "boiler in"
2. Page 4, line 16
Insert "NEW SECTION, Section (2):
"(2) An applicant for an agricultural-class engineer's
license must be over 18 years of age, must complete a
prescribed training course approved by the department of
commerce, is required to successfully pass a written
examination prescribed by the department of commerce and
must be found to be competent to operate a boiler in this
classification."
3. Page 4, line 16
Strike (2)
Insert (3)
Renumber subsequent subsections
4. Page 6, line 3
Strike: "having"
Insert: "who has"
5. Page 6, line 4
Insert "and" before "who"
6. Page 6, line 6
Strike: "at the discretion of the"
Insert: "pursuant to the"
7. Page 6, line 7
Insert "rule" after "commerce"
8. Page 6, line 7
Strike: "a maximum of 6 months"
9. Page 6, line 7
Strike "or" before "third-class"
Insert "or low-pressure" following "third-class"

AMENDMENT
HB 272
SET NO. 1

1. Page 1, line 27.
Following: "3402(k)"
Strike: "AND SERVICE CHARGES THAT ARE COVERED BY SECTION 3401"
2. Page 1.
Strike: Line 30 through line 3, page 2.
Insert: "(b) If an employer adds a service charge to the customer's bill in lieu of a tip or gratuity and does not distribute the service charge to the employee preparing or serving the food or beverage either directly or pursuant to a tip pool agreement, the employer shall disclose to the customer in a conspicuous manner that the service charge is not distributed to the employee."
3. Page 2, line 26.
Following: "3402(k)"
Strike: "OR SERVICE CHARGES THAT ARE COVERED BY SECTION 3401"
4. Page 2
Strike: Line 30 through line 3, page 2.
Insert: "(c) If an employer adds a service charge to the customer's bill in lieu of a tip or gratuity and does not distribute the service charge to the employee preparing or serving the food or beverage either directly or pursuant to a tip pool agreement, the employer shall disclose to the customer in a conspicuous manner that the service charge is not distributed to the employee."
5. Page 4, line 6.
Following: "3402(k)"
Strike: "OR SERVICE CHARGES THAT ARE COVERED BY SECTION 3401"
6. Page 7, line 7.
Following: "3402(k)"
Strike: "OR SERVICE CHARGES THAT ARE COVERED BY SECTION 3401"
7. Page 7, line 16.
Following: "Section 5"
Strike: Remainder of line 16.
Insert: "Applicability. This act shall apply to banquet contracts entered into after the effective date of this act."

Citation	Copr. (C) West 1995 No claim to orig. U.S. govt. works	Rank(R)	Page(P)	Database	Mode
DE ST TI 19 s 902		R 1 OF 1	P 1 OF 4	DE-ST	TERM
19 Del.C. s 902					

DELAWARE CODE ANNOTATED
TITLE 19. LABOR
PART I General Provisions
CHAPTER 9. MINIMUM WAGE

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Current through Second Sess. of the 137 Del. Gen. Assembly (1994) Ch. 469

s 902 Minimum wage rate.

(a) Every employer shall pay wages at the rate of not less than \$3.35 per hour to every employee in any occupation, except as may be otherwise provided under this chapter, until such time as the minimum wage is set by the United States government at an amount in excess of \$3.35 per hour. Upon the establishment of a federal minimum wage in excess of \$3.35, the minimum wage in this State shall be equal in amount to the federal minimum wage, except as may otherwise be provided under this chapter.

(b) Gratuities received by employees engaged in occupations in which gratuities customarily constitute part of the remuneration may be considered wages for purposes of this chapter in an amount equal to the tip credit percentage, as set by the federal government, of the minimum rate as set forth in subsection (a) of this section. In no event shall the minimum rate, under this subsection, be less than \$2.23 per hour.

(c) For purposes of this section:

(1) An employee engaged in an occupation in which gratuities customarily constitute part of the remuneration shall be any worker engaged in an occupation in which workers customarily and regularly receive more than \$30 per month in tips or gratuities.

(2) "Gratuities" means monetary contributions received directly or indirectly by an employee from a guest, patron or customer for services rendered where the customer is entirely free to determine whether to make any payment at all and, if so, the amount.

(3) A "primary direct service employee" is one who in a given situation performs the main direct service for a customer and is to be considered the recipient of the gratuity.

(4) A "SERVICE CHARGE" is an obligatory sum of money included in the statement of charges. Clear and conspicuous notice must be made on either the menu, placard, the front of the statement of charges or other notice given to the customer indicating that all or part of the SERVICE CHARGE is the property of the management. Such notice must be clearly printed, stamped or written in bold type. A SERVICE CHARGE assessed to customers, patrons or guests without such notice is the property of the primary direct service EMPLOYEE(S). For the purposes of this section, type which is at least 18 point (one-fourth inch) on the placard, or 10 point (one-eighth inch) or larger on all other notices shall be considered clear and conspicuous.

(d)(1) Any gratuity received by an employee, indicated on any receipt as a gratuity, or deposited in or about a place of business for direct services rendered by an employee is the sole property of the primary direct service employee and may not be taken or retained by the employer except as

required by state or federal law.

(2) Employees may establish a system for the sharing or pooling of gratuities among direct service employees, provided that the employer shall not in any fashion require or coerce employees to agree upon such a system. Where more than 1 direct service employee provides personal service to the same customer from whom gratuities are received, the employer may require that such employees establish a tip pooling or sharing system not to exceed 15% of the primary direct service employee's gratuities. The employer shall not, under any circumstances, receive any portion of the gratuities received by the employees.

(3) The Department may require the employer to pay restitution if the employer diverts any gratuities of its employees in the amount of the gratuities diverted. If the records maintained by the employer do not provide sufficient information to determine the exact amount of gratuities diverted, the Department may make a determination of gratuities diverted based on available evidence.

(19 Del. C. 1953, s 902; 55 Del. Laws, c. 18, s 1; 56 Del. Laws, c. 134, s 1; 56 Del. Laws, c. 339; 57 Del. Laws, c. 691; 59 Del. Laws, c. 470, s 1; 64 Del. Laws, c. 84, s 1; 65 Del. Laws, c. 436, s 1; 66 Del. Laws, c. 28, s 1; 67 Del. Laws, c. 141, ss 1, 3, 4.)

19 Del.C. s 902
DE ST TI 19 s 902
END OF DOCUMENT

AMENDMENT
HB 272
SET NO. 2

1. Page 2, line 1.
Following: "to"
Strike: "the"
Insert: "a banquet"
Following: "tip"
Strike: ". It is collected by the employer and must be"
Insert: "or gratuity if the service charge is"
Following: "distributed"
Insert: "equally among the following banquet employees"
2. Page 2, line 2.
Following: "directly"
Strike: "to the employee preparing or serving the food or beverage"
3. Page 3, line 3.
Following: "agreement"
Strike: "."
Insert: ":"
Insert:
 - "(i) Banquet food preparers;
 - "(ii) Banquet dishwashers;
 - "(iii) Banquet utility persons;
 - "(iv) Banquet servers;
 - "(v) Banquet set up persons;
 - "(vi) Banquet captains;
 - "(vii) Banquet supervisors; and
 - "(viii) All other banquet personnel."Insert: "(c) If an employer adds a service charge to a banquet customer's bill in lieu of a tip or gratuity and does not distribute the service charge to the employees as set forth in subsection (b), the employer shall disclose to the banquet customer in a conspicuous manner that the service charge is not distributed to the employees."
4. Page 3, line 1.
Following: "to"
Strike: "the"
Insert: "a banquet"
Following: "tip"
Strike: ". It is collected by the employer and must be"
Insert: "or gratuity if the service charge is"
Following: "distributed"
Insert: "equally among the following banquet employees"

5. Page 3, line 2.
Following: "directly"
Strike: "to the employee preparing or serving the food or beverage"
6. Page 3, line 3.
Following: "agreement"
Strike: "."
Insert: ":"
Insert:
 "(i) Banquet food preparers;
 (ii) Banquet dishwashers;
 (iii) Banquet utility persons;
 (iv) Banquet servers;
 (v) Banquet set up persons;
 (vi) Banquet captains;
 (vii) Banquet supervisors; and
 (viii) All other banquet personnel."
Insert: "(c) If an employer adds a service charge to a banquet customer's bill in lieu of a tip or gratuity and does not distribute the service charge to the employees as set forth in subsection (b), the employer shall disclose to the banquet customer in a conspicuous manner that the service charge is not distributed to the employees."
7. Page 7, line 16.
Following: "Section 5."
Strike: Remainder of line 16.
Insert: "Applicability. This act shall apply to banquet contracts entered into after the effective date of this act."

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**** Bill No. ***

Introduced By *****

By Request of *****

6
3-14-95 SA
354

A Bill for an Act entitled:

"AN ACT REPEALING THE LICENSE REQUIREMENT FOR PUBLIC CONTRACTORS; REPEALING SECTIONS 37-71-101, 37-71-102, 37-71-103, 37-71-104, 37-71-105, 37-71-201, 37-71-202, 37-71-203, 37-71-204, 37-71-211, 37-71-212, 37-71-213, 37-71-301, AND 37-71-302, MCA, AMENDING SECTIONS 15-50-205 and 15-50-206, MCA, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. {standard} Repealer. Sections 37-71-101, 37-71-102, 37-71-103, 37-71-104, 37-71-105, 37-71-201, 37-71-202, 37-71-203, 37-71-204, 37-71-211, 37-71-212, 37-71-213, 37-71-301, and 37-71-302, MCA, are hereby repealed.

{ Internal References to 37-71-101:
15-50-205 15-50-206 37-71-204
Internal References to 37-71-102: None.
Internal References to 37-71-103: None.
Internal References to 37-71-104: None.
Internal References to 37-71-105: None.
Internal References to 37-71-201: None.
Internal References to 37-71-202: None.
Internal References to 37-71-203: None.
Internal References to 37-71-204: 15-50-205
Internal References to 37-71-205: None.
Internal References to 37-71-211: None.
Internal References to 37-71-212: None.
Internal References to 37-71-213: None.
Internal References to 37-71-301: None.
Internal References to 37-71-302: None. }

Section 2. Section 15-50-205, MCA, is amended to read:

"15-50-205. ~~Additional license~~ tax imposed on gross receipts

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from public contracts. (1) ~~In addition to the fees enumerated in 37-71-204,~~ e Each public contractor, unless he constructs or works on a federal research facility, shall pay to the department of revenue ~~an additional~~ license fee in a sum equal to 1% of the gross receipts, as defined in 15-50-101, from public contracts during the income year for which ~~the license is issued~~ the public contractor receives payment.

(2) The ~~additional~~ license fee shall be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as specified in ~~37-71-101(3)~~ this section.

(3) A "public contractor" within the meaning of this section, includes any person who submits a proposal to or enters into a contract for performing public construction work in the state with the federal government or state of Montana, or with any board, commission, or department thereof, or with any board of county commissioners or any city or town council, or with any agency of any of them, or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price thereof exceeds the sum of \$5,000."

{ Internal References to 15-50-205: None. }

Section 3. Section 15-50-206, MCA, is amended to read:

"15-50-206. Withholding license fee from payments -- refunds.

(1) The prime contractor shall withhold the additional 1% license fee from payments to his subcontractors and inform the department of revenue on prescribed forms of the amount of the additional 1%

license fee in his account to be allocated and transferred to the subcontractor. The notification to transfer portions of the additional 1% license fee must be filed within 30 days after each payment is made to subcontractors. If any prime contractor fails to file the required allocation and transfer report at the time required by or under the provisions of this chapter, a penalty computed at the rate of 10% of the additional 1% license fee withheld from subcontractors shall be due from the prime contractor.

(2) The state, county, city, or any agency or department thereof, as described in ~~37-71-101(3)~~ 15-50-205 for whom the contractor is performing public work shall withhold, in addition to other amounts withheld as provided by law, 1% of all payments due the contractor and shall transmit such moneys to the department of revenue. In the event that the 1% of gross receipts, as defined in 15-50-101, is not withheld as provided, the contractor shall make payment of these amounts to the department within 30 days after the date on which the contractor receives each increment of payment for work performed by the contractor.

(3) Any overpayment of the 1% of gross receipts, as defined in 15-50-101, withheld or paid by any contractor hereunder shall be refunded by the department of revenue at the end of the income year upon written application therefor."

{Internal References to 15-50-206: None.}

NEW SECTION. Section 4. {standard} Effective date. (1)

[Sections 1-3 and this section] are effective on passage and

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approval.

NEW SECTION. Section 5. Coordination instruction. If
Senate Bill 354 is not passed and approved, then [this act] is
void.

-END-