

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN THOMAS F. KEATING, on February 6, 1997, at 3:15 p.m., in Room 413/415.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: Sen. James H. Burnett; Sen. Debbie Bowman Shea

Members Absent: None

Staff Present: Eddy McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 233, 2-3-97; SB 251, 2-3-97
Executive Action: SB 41, DO PASS AS AMENDED
HB 115, DO CONCUR

HEARING ON SB 233

Sponsor: SEN. ROBERT DEPRATU, SD 40, Flathead County

Proponents: Don Waldron, Montana Rural Education Association &
Montana Bus Contractors Association
Lance Melton, Montana School Board Association
Donna Hall, Hall Transit, Montana School Bus
Contractors' Association
David Owen, Montana State Chamber of Commerce

Opponents: Jerry Driscoll, Building Trades Industry
Don Judge, AFL/CIO

Opening Statement by Sponsor:

SEN. BOB DEPRATU, SD 40, Flathead County, sponsored SB 233. This is a bill for an act which is entitled, "An act denying unemployment insurance benefits to non-professional school employees employed by a private contractor if the services were provided pursuant to a contract between an employer and the educational institution and the contract was for services which could have been performed by the educational institution's employees, amending Section 39-51-2108, MCA; and providing an immediate effective date and an applicability date."

This bill is to put private contractors, particularly those with school bus employees and school bus drivers, on the same level playing field as those school districts who own their own buses. It provides if the employee were to return to work in a subsequent session from one school year to the next, they would not be paid unemployment benefits during the summer months. If they work for a school district, they are not entitled to unemployment benefits. Through this the cost to the schools would be lowered because it would put the cost of the private employer on the basis as it is for the school districts who own their own buses. An amendment to this bill was distributed.
(EXHIBIT 1)

Proponents' Testimony:

Don Waldron, Montana Rural Education Association & Montana School Bus Contractors' Association, stated SB 233 puts the private contractor and the schools on the same basis. The key to this is as **SEN. DEPRATU** stated, that this is any service the school district could provide themselves but has elected to privatize because they can save. They are using this as a means of making the dollars go further in the school system and they feel this is an opportunity to do that.

In Great Falls the contractors can collect unemployment, Stevensville contractors cannot collect, and they can in Missoula. So that the committee can see what they are up against, there are people being treated differently and they would like to see the law changed. With the rates eventually coming down over a period of time, the private contractor can possibly save some money and save the schools some money.
(EXHIBITS 2 & 3)

Lance Melton, Montana School Board Association, concurred with **Mr. Waldron's** comments and said he is also speaking on behalf of the school administrators of Montana. **Loren Frazer, Executive Director** is out of town and asked **Mr. Melton** represent him. He supports this bill.

Donna Hall, Hall Transit of Great Falls, President of Montana School Bus Contractors' Association, supported SB 233. The whole group feels that paying unemployment insurance benefits to

seasonal employees is not proper use of the tax dollars and also feel it would be more fair if all received it or none received it. There are other states which have addressed this issue which are Minnesota and South Dakota. There are no unemployment benefits to either type employee, they would like to see this happen in Montana.

David Owen, Montana State Chamber of Commerce, stated this is a bill he never thought he would see. In the past he has argued against bills presented which would extend unemployment benefits to people under school contracts. He has checked with his membership, and the business community has a strong feeling when you take a job and you know you will not be working during the summer, that is part of the plan. We should not be extending benefits on that basis.

Mr. Owen said **REP. HARRINGTON** has presented this in the past and this has been an argument that bothered **Mr. Owen**. There is much unfairness in employees of private contractors being able to collect unemployment benefits and the school contractors not. **Mr. Owen** stated two years ago that we need to take those benefits away from employees of private contractors. He is delighted to see SB 233 which will bring some balance.

Opponents' Testimony:

Jerry Driscoll, Building Trades Industry, said he was present to represent himself. If you work for a private contractor, your unemployment benefits will be taken away. Most of the people make minimum wage, usually \$7 per hour on the high side. If they work four hours per day and draw unemployment, they may get \$100 to \$140 per week. They always want to say they are going to save money, they do not know where the loopholes are. A fire chief, depending upon how he leaves work, can receive his pension and unemployment at the same time.

When **Governor Stephens** decided not to run, and **Governor Racicot** became Governor, there were four department directors who were eligible to take their pension and unemployment at the same time. **Mr. Driscoll** stated he does not know if they did this. You can legally in this state draw unemployment every other week for the rest of your life. People making \$7 an hour or less who work part time because they took the job knowing they wouldn't be able to work in the summer. Maybe they took the job because it is the only job they could find. You can't just get unemployment just because you are laid off, you must actively seek work. You must be able and available for work. You must search for work. These are people who must go out and search for work in the summertime or they cannot collect unemployment. But once you retire, until they start taking your unemployment, you search for work and go to places where you know they aren't hiring.

Mr. Driscoll stated last session they took these benefits away from construction workers, but they did not take it away from the

bosses. Most of the people who testified in favor of this bill, when they get ready to retire, can have pension and unemployment. He asked that we plug that loophole and quit picking on the poor people.

Don Judge, Montana State AFL/CIO, stated he is more concerned that we have some folks up here who are going to get the advantage, the profit out of this bill.

(Note: The following is Mr. Judge's testimony verbatim) It is unfair that these workers get unemployment compensation and we have to pay the penalty of the premiums of unemployment comp. and the school districts don't. They weren't in the hearing the other day to try to fix it. They weren't over there trying to help us provide that protection for those workers. They were not giving us a hand to make this unfairness fair.

Mr. Judge said let's take the comments of **David Owen** to an extreme and see how well they would do in the State of Montana, a state that suffers anywhere from three to six months' worth of winter when you can't work! Or has spring break-up in the forest where the timber workers can't work! Do you think that those timber workers are going to be loyal to that timber mill down in Ravalli County? Or up there in Libby, or over in any other part of this state where they harvest timber? If they know that they are going to be denied unemployment compensation simply because God has said you can't work. Do you think they will come back to that company and work for them? Well, that is the ultimate conclusion of what **David Owen** just argued.

People work in Montana. They know they are going have this seasonal employment, exclude them? How about construction workers? Right now you are going to find the Montana contractors coming into this state asking people to develop an apprenticeship program to the state because they can't find enough electricians, they can't find enough operating engineers, they can't find enough workers to do the work in the State of Montana. Why? Well for one thing, we don't pay as well in Montana as they pay in some of those other states around here. But let's take them off unemployment comp. and see how many of Montana's qualified construction workers are going to stick around in this state and help us build the coal strips, and help us build the hospitals and help us build the public buildings and the other things we need. If we are going to tell them you're only valuable to us when you are actually working and we're not going to help you stick around in Montana in the off-season, and you guys think about that in terms of any other reasonable job that's out there.

Sure workers know they are going to be working reasonable employment. But they also know that Montana, which has one of the healthiest unemployment compensation trust funds in the country, healthier than it has ever been in the history of our state....and I've worked with **CHAIRMAN KEATING** over many years in that trust fund when we thought it was going to go broke, when we

were talking about borrowing money from the feds, and now it is so healthy that if you guys looked at it and said, gosh, there's over a hundred million dollars here, available to fund the State of Montana, you might actually think about dipping into it. Well, **Jerry Driscoll's** right, you are not talking about the highest waged workers in the State of Montana.

But you are talking about some workers who have some very important jobs. We want them to take commercial driver's license tests, we want them to drive our kids to school every day, and we don't want to end up reading about a school bus overturned in a ditch with a hundred dead kids on it, like we sometimes read about those bus drivers down in Mexico. We want them to do a responsible job for us in taking our kids safely to and from school. And we want those cooks to be able to cook the meals that don't have the poisons in them, so that when our kids eat lunch at school during the day, they don't come home sick in the evening. And we want those people who are on those playgrounds to make sure that our kids don't swing and jump off the swings and break their little legs. There is somebody out there saying don't do that. And when we've got aids working with the disabled kids in those classrooms, we want them to be able to treat those kids appropriately in the classrooms. We're not talking about a bunch of bums here. But we are talking about part-time employees, we are talking about low-paid employees and we are talking about seasonal workers. And if there is anything that is going to establish the difference between how this legislature and previous legislatures and future legislatures feel about average working Montanans, it is legislation like this. This deserves to be buried.

Questions From Committee Members and Responses:

SEN. THOMAS asked **Jerry Driscoll** how we rectify the difference between the school teacher and the school bus driver. They have the same time but we don't allow teachers unemployment. **Mr. Driscoll** answered if the School Board gives a teacher a written contract guaranteeing they will return in September they cannot draw unemployment, but if they do not give them that written contract they can draw unemployment. **SEN. THOMAS** said so if they are not rehired they can go on unemployment. **Mr. Driscoll** said they can be rehired but they have to have a teacher's contract, if they are not going to be called back they file a claim. Normally they give the teacher a contract. Sometime they don't renew their contract because they do not have tenure and then they can draw unemployment.

SEN. BARTLETT asked **Don Waldron**, if it is not also possible for school districts and teachers to agree that the amount of money they will be paid on the basis of their work during the school year will be broken into 12 payments and paid year around or they can be negotiated to making payments just during the school year. **Mr. Waldron** answered this is true, teachers can elect nine, ten or twelve months.

SEN. WILSON asked **Mr. Waldron** as an example, if **Mr. Waldron** were working for Beach Transportation and was to hire **SEN. WILSON** to drive school bus, what are the mechanics of the process if he wanted to come back in the fall, is he guaranteed that? **Mr. Waldron** said he would answer that question as if there is no contract signed. If there is no negotiated agreement, there is a clause in this bill that they have to be reasonably sure they have employment in the fall in order for this to trigger. The smart thing for them to do is to register every week in the summer in case they are not hired in the fall. If a driver is not hired again in the fall, they can collect their unemployment retroactively back to June. But Beach Transportation should give them something in writing stating they intend to hire them, that is also in the bill.

SEN. WILSON said that is real nice, he can retroactively collect unemployment, but what is he to do all summer? Are you getting the same people, are they coming back or are people dropping out? What is the longevity of employment? **Mr. Waldron** answered since **SEN. WILSON** mentioned Beach Transportation, he probably has as much turn-over as anyone because he uses a lot of college drivers. But normally bus drivers stay for a good length of time. He can think of instances where towns have one contractor that has three busses and those drivers have been there seven or eight years. He has been a past president of an association of drivers and contractors and he has given out awards for 25 years with no accidents, some 17 years with no accidents. So they have been there a long time.

SEN. WILSON asked if this measure might tie into that longevity. He would think you would lose long-time people if you were to deny them unemployment benefits. **Mr. Waldron** responded he understands what **SEN. WILSON** is stating, but he does not believe it is that great. He believes a lot of their drivers drive for private or school districts because they want to drive during that time. It fits into what they are doing, whether it is a young person who has seasonal work or if it is someone who has a ranch, many of them stay for other reasons than just what the pay is. It is the timing and the time off is important to them.

SEN. MAHLUM asked **Mr. Waldron** if a lot of the drivers are retirees that maybe have taught school for 25 years and they want to keep busy. **Mr. Waldron** answered that used to be the case. But he believes that 70% of their drivers are women. These women are not in their 60s, but mid-age. **SEN. MAHLUM** stated in Missoula he has observed the Beach Transportation operation for many years, his children road on the bus and his grandkids are still riding the bus, and it seemed there are a lot of college students who earn their way through college by scheduling their courses so they could drive bus in the morning and they could drive bus in the afternoon. He asked if these students would be eligible to collect unemployment benefits. **Mr. Waldron** stated they would be working for Beach Transportation. They are going to college and working for Beach but in the summer if they don't

find a job, as it stands now, they can collect unemployment. This bill would prevent that.

SEN. MAHLUM stated he knows in the summertime there are a lot of forest fires and things that bus drivers are continually working. **Mr. Waldron** responded that is true. This is one thing contractors have called to speak to him about. They ask what they do if that happens and his response is that usually happens in late August and early September and the biggest worry is getting them off the fires to get the school busses back to start school. For example, if this would happen on the 20th of August and they would have to put half their fleet out to put out fires, those drivers are called first to go back to work. So they may not be off all summer. But that won't have any affect on this, if it happened in June it might have an affect.

SEN. BARTLETT said that the committee may recall that on the Audit Committee, there was an issue in this last biannual about students and unemployment insurance. She asked that someone from the Unemployment Insurance Division might address that question about whether a student who is full time and at school, but has arranged their class schedules so that they can drive a school bus during the K - 12 school year, would on the basis of that employment be eligible for benefits during the summer, or if they are ineligible because of their student status.

John Moe, Bureau Chief, Unemployment Insurance Benefits, stated what **SEN. BARTLETT** is saying is correct. A student who is a full-time student cannot receive unemployment insurance. **SEN. BARTLETT** asked **Mr. Moe** if even though they worked for a school bus service and drove school bus and had that employment in addition to there full time student status, could they collect? **Mr. Moe** responded they would not be eligible for benefits as long as they are attending school. In the summer they would be if they are not attending school.

SEN. EMERSON asked **Don Waldron**, if there is a law which states you cannot hire those bus drivers for the nine months and then pay them over twelve months like teachers? **Mr. Waldron** answered he is not sure. Since most use hourly wages, we pay hourly on a monthly basis in the school districts. Some contractors might be paying twice a month. So he doesn't think any contractors are paying over the twelve months. He is not sure that they could, and does not think so.

CHAIRMAN KEATING asked **Donna Hall** to respond. She stated there is a contractor in Hamilton who is paying his employees over a twelve month period. When he hires his employees, he explains to them they will work over the whole school year and shows them what they will be paid for working those days. Then he splits that amount up into twelve payments so they can get paid all summer. He does this because he does not want them to draw unemployment on his rate. This can be done. The only variable to that is the person who works only six or eight weeks and quit.

A lot of people will do that to fill in a job. A good percentage of men do that who are retirees. There are the younger guys who also do this, who are working two jobs.

SEN. WILSON asked **Ms. Hall** if he went to work for her, what she pays. She said she pays \$6.85 per hour. She said they pay their bus drivers for two-hours per run for a total of four hours, to get into their bus and make a run. This is 20 hours per week which is \$140. He asked if you spread that out for twelve months if that is down to minimum wage. **Ms. Hall** said that is correct. She can understand how people feel about that. But she has 80% of her people come back. She has a lady who has been there 25 years and people who have been there two. She has people who stay five to seven years. One of the reasons people like this job is because they're home when their kids are home. But still, there is a man whose trying to support his family, who is working two jobs who needs this job.

CHAIRMAN KEATING asked **John Moe** what the rates for the school districts for Unemployment Insurance are. **Mr. Moe** responded the rates for the school districts vary depending upon whether they have chosen to be an experienced-rated employer, or have chosen to participate in the government rate. In the experience rating, the rate would depend on the amount of unemployment which was charged to their account compared to the amount that had been paid into their account. The different school districts in Montana range the full range of the rates which could be assigned in the current rate schedule.

CHAIRMAN KEATING stated he would like a comparison between the rates for the contracted school bus by a private bus owner and the rate that the school district would be held to if the drivers were school employees. Since the school district employees are prohibited from drawing unemployment benefits, that has to impact the experience rating of that school district. **Mr. Moe** said he could answer by possibly providing a rate schedule, but the rate schedule for government entities is quite a bit lower, but they pay that on the full salary of the workers where the experience-rated employers pay up to a maximum of \$16,000. You can look at the two rate schedules and see the various rates and the range and try to draw your own conclusions.

CHAIRMAN KEATING asked **Lance Melton** if he could help with that question. **Mr. Melton** referred the question to **Howard Bailey**, Program Administrator, Montana School Groups Insurance Authority. **Mr. Bailey** stated the unemployment insurance program consists of 111 members. In the last report they had 15,000 employees reporting their wages in the unemployment insurance program. Under this program the schools pay the Department back when a claim is paid. The rates for the school districts which are in this program vary from .2 of 1% to .7 of 1% per \$100 of payroll plus an administrative fund tax of .5%. So all the schools are somewhere in that area.

CHAIRMAN KEATING said then the high end of that would be 7.2. He asked **Ms. Hall** what her experience rate is. **Ms. Hall** responded they are at 4. **CHAIRMAN KEATING** asked if that is because her employees draw unemployment? **Ms. Hall** responded that is correct.

Closing by Sponsor:

SEN. DEPRATU said he would like to make a couple of points. To keep this in perspective, we need to realize our society has developed many different types of jobs and professions. We have part-time jobs, we have seasonal jobs, we have full-time jobs, we have professionals, we have hourly workers and we have people who are trained to do different things in different positions and people have different desires.

He said he has personal knowledge of several mothers who drive school busses for the simple reason it is a way to make a little extra money for their family. They are able to take or pick up their children from home and they don't have to use day care. They can take them to school on their bus route, the kids can ride with them through the bus route back home at night, and in the summer they can be home with their children. This fits their particular family lifestyle and it works very well for them. He thinks when most people hire out in these positions, they do know they are seasonal and part-time. They may use them as stepping stones to a better job or just to serve their particular purpose because it builds a need and works very well for them.

About half the school districts in our great state own their own busses and don't seem to have a problem hiring bus drivers and many of them have very long-term bus drivers who are not able to draw unemployment benefits. The other thing which is important to note in this bill is that a person is not re-employed by the private bus contractor, that person is eligible for unemployment and it can be retroactive depending on when they first applied. He feels this bill is needed.

{Tape: 1; Side: A; Approx. Time Count: 3:52 p.m.}

HEARING ON SB 251

Sponsor: SENATOR BARRY "SPOOK" STANG, SD 35, St. Regis

Proponents: Leo Ward, Montana Schools Group Insurance Authority
Howard Bailey, Montana Schools Group Insurance Authority
Lance Melton, Montana School Board Association
Robert Botterbush, Montana State Job Service Employers
Don Waldron, Montana Rural Education Association & Montana Bus Contractors
Gail Gray, Office of Public Instruction

**Steve Turkiewicz, Montana Auto Dealers'
Association**

David Owen, Montana State Chamber of Commerce

Jane Karas, Montana University System

Don Judge, AFL/CIO

Dick Brown, Montana Hospital Association

Bob Vogel, Montana School Board Association

Opponents: None.

Opening Statement by Sponsor:

SEN. BARRY "SPOOK" STANG, SD 35, St. Regis, presented SB 251. He referred to his grey bill, see (EXHIBITS 4,5 & 6) which he has amended. He stated three years ago he was involved in a program which involved the Office of Public Instruction and school workshops across the state. He was involved in one in Polson, Montana and one of the key things that business people were interested in was what their liability was. They wanted to know what they were going to have to pay if one of the kids in their business got hurt and how they are going to be protected.

This bill will help to eliminate some of the ambiguities in the law regarding Workers' Compensation, coverage of students enrolled in schools and volunteers. The current ambiguities in the law are making it so that people are very skeptical of having these kids in the business and trying to train them, they just do not know where their liability is.

The grey bill contains the amendments which are supported by the School Board Association and were brought to them by people who are involved in Workers' Compensation and thought maybe this bill might have gone a little too far. So this bill is an amendment of rights for treatment of paid students of employees and unpaid students of volunteers. The amendment adequately assures that it will only address those students enrolled in training programs through their school program, which includes elementary, high school, and post-secondary education.

Proponents' Testimony:

Leo Ward, Claims Counsel, Montana Schools Group Insurance Authority, said this bill actually makes sense because there is a hole in the law which the insurers for the schools became aware of. Montana Schools Group Insurance Authority is a self-insurance pool which has about 80% of the premium and payroll for the schools in Montana. They were concerned because schools were coming to them and stating they have kids who are in work-based learning activities. These are high school kids, college kids, some middle school kids that are going out into the community as part of their education and actually being on-site with business partners.

These kids are sometimes just job shadowing, which means all they do is watch, they don't participate. Some participate and are not paid, some participate and are paid, so there is a wide variety of kids out there in these situations. There may be thousands of them around the state right now. The schools wanted to provide Workers' Compensation coverage for those kids so they would be productive.

The question came to **Mr. Ward** as an attorney, who has been involved for ten years in Workers' Compensation issues in Montana, if the schools will get the exclusive remedy if they provided Workers' Compensation coverage under these circumstances. His answer was maybe or maybe not. That is why we are here. There are two ways to change the law of Workers' Compensation in Montana. One way is a test case before the court, through the Workers' Compensation Court to the Supreme Court.

The other way which **Mr. Ward** believes to be the appropriate method as a defense attorney, is to go to the legislature which is supposed to be where Workers' Compensation is defined and made. They are in support of SB 251 because we need a legislative solution to this problem.

{Tape: 1; Side: B; Approx. Time Count: 4:00 p.m.}

He believes if the schools pay the Workers' Compensation benefits they may not be found to be employers under the law, even though they paid a Workers' Compensation premium and thought they were protected by the exclusive remedy, the court could rule otherwise. The business partner, on the other hand might be sitting out there uninsured and in some cases they are if they elect to be uninsured. Those would be the people at the greatest risk in a case like this because if those kids are injured on their premises, they can be exposed as an uninsured employer which means they could be sued in both the Workers' Compensation Court and in the District Court.

Mr. Ward stated it seemed like a major problem as he represents the business partners and well as the school districts. They have exposure and concern. Initially the bill had an exemption and the people **Mr. Ward** talked with did not like that, they wanted there to be some definite terms regarding who provided the Workers' Compensation and under what circumstances. Those concerns became the amendments in the grey bill (**EXHIBIT 4**). He explained the changes in the bill. Page 2, amendment to 116, the definitions section of the Workers' Compensation Act, the reference to the term "business partner", because they wanted to make clear who they were talking about.

These are the people in the community, the business people, the government entities. These are the places where these kids are working. They want it to be clear. This is what they are talking about. On page 5, the amendment to number 37, they

defined "work-based learning activity" so there is no confusion. They tried to make it clear that they are talking about kids who are involved in work-based activities which are connected to their school-based activities, so it is not overly broad. He stated he is talking about a very specific situation where these kids are sent out by their schools to participate in these work-based activities.

On page 6 is a small change in subsection (9). This is an amendment for 118, section C is referring to on-the-job location and rehabilitation training. **Mr. Ward** is not sure what the purpose of this original amendment was years ago to the act, but he wanted to make sure there wasn't conflict between this section that shows on page 8, which is the meat of this particular bill, Section 118, subsection (9).

The students which are in elementary, secondary or post-secondary educational institutions who are involved in work-based learning activities, who are paid wages by the school, which is a very small percentage of cases, or by the employer, which is a large percentage of cases of those who are paid wages, shall be considered the employee of the entity who pays the wages for all purposes under the chapter. The student who is not paid wages by the business partner or the educational institution would be considered a volunteer under the act. That means the business partner of the school can elect to cover the student as a volunteer.

In most cases **Mr. Ward** would recommend to the entity, the business or schools that there be some kind of election of Workers' Compensation coverage. He said in Montana it is smart to provide coverage to volunteers. The amendment to the grey bill was suggested by **Mark Cadwallader, Legal Counsel, Department of Labor**, because a mistake was made under subsection 4 referring to the effective date being based on claims for benefits. Of course, the effective date is based on the date the injury occurred. That is why that technical change has been made.

Mr. Ward has discussed this particular legislation with the people in education, the School Board Association, with the people at State Fund, with the Plan 1 insurers, the other self-insurers and some of the people who represent business partners, also with Senators and Representatives and they feel this bill most practically addresses this particular issue.

Howard Bailey, Program Administrator, Montana Schools Group Insurance Program, stated this work-based learning activity is very important to the schools and to the students at the schools. Some of the individuals who are in the program are the ones who need a lot of help and they are out there trying to learn and get a job. **Mr. Bailey** said they answer questions almost daily on this issue from schools and about the concern of Workers' Compensation. They would appreciate the support of this bill.

Lance Melton, Montana School Board Association, said the reason this bill has changed is because they are trying to find the best way possible and the way that is most acceptable to allow them to get these programs off the ground and to keep them off the ground. Right now we have business partners in the community graciously giving their time, supervision, and allowing these students to come in and learn vocational training that is very important. Not everybody is going to college at the conclusion of high school and this program is a valuable means of getting people into work-based settings and helping them understand what this particular job might be like.

It is not really fair when we are asking the business partner to give that time and effort and really help the schools out to basically invite them into a potential track. This bill is clear-cut. If a student is paid wages then you are an employee and covered under Workers' Compensation, if you are not you are a volunteer and subject to the provisions of the chapter on volunteers. **Mr. Melton** said they believe this is a real sensible approach.

Bob Botterbush, State Coordinator, Montana State Job Service Employers' Council, stated they are composed of 21 local committees who are all volunteer business people and civic leaders who are working with their local Job Service office on unemployment and school-to-work issues. **Mr. Botterbush** is also a volunteer. They feel that this bill would be very beneficial in those activities. Many local committees have indicated they would like to get into job shadowing as a school-to-work transitional program, but have not proceeded with it because of the Workers' Compensation issues. They feel this would be a step toward that program.

Don Waldron, Montana Rural Education Association, said they have three concerns. One is the concern for the welfare of the student, and the liability of the employer and the school. He believes this bill will help solve this issue. He stated **Loren Frazer, School Administrator of Montana,** is also in support of this bill.

Gail Gray, Office of Public Instruction, supported SB 251 with the amendments. They believe it will help address concerns by schools, by parents, and by employers regarding Workers' Compensation issues. They believe it will make more work-based learning activities available to students and urge a do-pass of this bill.

Steve Turkiewicz, Executive Vice President, Montana Auto Dealers' Association, said many of their member participate in the program as business partners throughout the state. They are very concerned about the grey area we have with the circumstances on Workers' Compensation and look forward to a solution. They support this bill.

David Owen, Montana State Chamber of Commerce, stated this is one of those cases that it seems the world is developing faster than we can keep our laws and regulations up to date. Having young people come to businesses is good for that business sometimes, and sometimes it is an act by that business to just help education. From the amendment to the grey bill it seems real clear, if the business wants exclusive remedy, they should have them Workers' Compensation.

Regarding the question of volunteers, **Mr. Owen** has told the people at school-to-work transition is that the more complicated you make this, the more expensive you make it, the less of it we will have. If we can find a way to encourage exclusive remedy, this bill seems to have some balance and brings us a step closer to having a world where 75% of those kids who don't go to college might get some experience. They encourage the support of SB 251.

Jane Karas, Montana University System, said they support this amended bill. They have numerous students who are placed in work-based learning experiences and this bill provides opportunities for these students to continue those experiences and have expanded opportunity. They urge the support of SB 251.

Don Judge, Montana State AFL/CIO, said as far as this bill goes, it is a good bill for people who are out there in a paid situation. He would like to caution everyone that there is still a huge vacuum that is out there regarding school-to-work people who will be out in jobs in which they are volunteers and unpaid. Under the current situation, this bill does nothing to fix, if those kids are injured out there, there is a question of liability. That question is going to end up in the courts which is whether or not the employer where they are working liable for injuries that occur without Workers' Compensation coverage, or is the School District who assigned those kids to work in that employer's location liable for law suit from injuries resulting.

Mr. Judge is suggesting that we have not fixed all, but this bill does go forward to fix at least one problem and one piece of confusion in the system. He believes this bill should be passed.

Dick Brown, Montana Hospital Association, stated they administer a self-funded trust for 13 hospitals in the State of Montana. There is also a self-funded trust for hospitals in the eastern part of the state which has about 15 hospital members. They deal with the issue of SB 251 daily. They currently cover all of the volunteer students, the nurses, lab technicians, etc. who are in their hospitals.

This bill does fix part of the problem. The Hospital Association's biggest concern is the lingering liability. If a nurse is injured, will the liability fall on the hospital or the University System? They support this bill.

Bob Vogel, Montana School Board Association, said they have some exciting things happening in work-based learning in Helena and this bill will clear away an obstacle in expanding those things. They support SB 251.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SEN. BENEDICT asked **Leo Ward** on page 2, lines 13 and 14, the definition of business partner means the community or business organization that provides the premises for work-based learning activities for students, shouldn't there be a reference somewhere in there to a local government entity or political subdivision?

SEN. BENEDICT said to him a community organization and a business organization are two entities which are fairly obvious, but he does not believe they relate to a political subdivision or somebody picking up trash for the city or that type of thing.

Mr. Ward answered he thinks that is something that would be prudent. They were trying to be as brief in their descriptions and changes as they could, but based on what **SEN. BENEDICT** is saying **Mr. Ward** believes he is correct.

CHAIRMAN KEATING asked **Mr. Ward** in regard to some of the testimony stating the volunteers are not covered here, and that there is some potential liability for the business partner or the school if the volunteer is injured, if the community partner or the school in not having volunteers have to pay minimum wage for someone who is doing this part-time work? If for Workers' Compensation purposes the requirement would be that everybody would have to be paid and not have volunteers, you would have to pay minimum wage. **Mr. Ward** responded this is correct.

CHAIRMAN KEATING said then depending upon the environment and the type of work, the Work. Comp. rate would depend on that. Are these jobs so risky that there would be a pretty high insurance premium for a minimum wage job? **Mr. Ward** responded this depends on the job. We also have child labor laws that try to limit the risk to children in the working environment, depending upon their age. He believes those laws, as applied and enforced, direct where these children could be working in less risky environments. However, because the schools have risk involved in what they are doing, he encourages them to put only these kids out in places that can attempt to certify safe environments for work. Under those circumstances, the premium is not going to be as high as something of risk. For example, he would not encourage schools to send kids to logging mills, areas like refineries, etc. He doesn't think they are allowed to under labor laws anyway. The premium should be very minimal for most of the employment we are talking about.

SEN. BARRY STANG answered **CHAIRMAN KEATING'S** question. He said you do not have to pay them to have covered, but if they are volunteers they will be covered at the rate of the job description you give them. If they are placed in the store as a checker, the same rate would be paid as on the regular store checkers although they are not being paid wages. If they are in a secretarial pool, they would be covered under the same rate as secretaries, even though a wage is not paid.

CHAIRMAN KEATING said if then, a business partner could cover himself on that volunteer basis by voluntarily paying for that insurance premium. He asked if the schools could pay the premium. We want a school-to-work program which gives the kids some practical experience in the market place. If it is going to be too expensive to the business partner, he is not going to take on that business expense to help out. But, if he can be reimbursed out of school tuition, for instance, for the premium for that coverage, whether he pays it or whether the school pays it, you can have co-employment in this state. You can have two employers if you want to. If the school wanted to be a co-employer with the business partner in the work place, the school could reimburse the company partner.

Howard Bailey answered a lot of the schools he talks to do one of two things. They either will reimburse the business partner for the amount of the premium, if funds are available, or in some instances they will even reimburse the employer wages if there is money available. So it can be done if there is money available. The premiums are good way because they are so small. You assume a wage, you do not pay a wage, and report that under the classification they are working under.

CHAIRMAN KEATING stated from the answers he has gotten to his questions, it would seem to him although there appears to be a hole in this bill with regard to volunteer coverage, there are means for both school and the partner to cover themselves to avoid that liability of the volunteer worker. He does understand it is optional, but it appears to him there are a lot of business partners out there who are willing to help train kids. After all, the businessman is looking for competent labor force and education is part of that. If they are willing to help young people become part of the labor force and they can pay a little bit to cover themselves, that possibility should exist.

SEN. BENEDICT states he would support that statement but it is also incumbent on the school districts to educate a lot of the small employers in the state. They do need to provide coverage for those volunteers because there is a lot of small employers which that never even enters their mind. **CHAIRMAN KEATING** said he hopes **Mr. Owen** and **Ms. Gray** will take that information to their organizations.

Closing by Sponsor:

SEN. STANG said he thinks everyone realizes what the problem is. As an employer, he personally would not have a problem if the school was required to provide that coverage. He doesn't know if the schools would support that, but in his opinion the one or two hours a day these kids come into his business and work, he is getting free help to begin with. If he had to pay Workers' Compensation on them the one or two hours each day they're working, it is not going to amount to a lot of money.

If the committee wants to work on this bill to fill that hole, **SEN. STANG** thinks that will make a lot of people more comfortable, but if the hole cannot be filled, this is a beginning. As a business person who has used these kids before, he has found this is a good tool. He finds it quite offensive to attend a basketball game and the kids in the concession stand can't make change. He believes there is opportunity for these kids to go out into these businesses to learn how to work in the business and if nothing else, to learn how to make the correct change. He used to bring kids into his store to cut meat but because of child labor laws, he can no longer do that. But at least he can teach them to do other things in his business. This is a good beginning to make these kids self-sufficient when they graduate from school.

EXECUTIVE ACTION ON SB 41

Amendments: SB004101.AEM (EXHIBIT 7)

Motion: **SEN. BENEDICT** moved do-pass on SB 41 with amendments.

Discussion: **Eddy McClure** explained the amendments. On page 11, line 23, the language is being put back into the bill that got stuck. On page 12, line 9 at the end of "sentence" after "department", a new sentence is being inserted. (Note: **Ms. McClure's** explanation of this is inaudible on tape.)

CHAIRMAN KEATING asked **Nancy Butler, State Fund**, what these amendments do. **Ms. Butler** responded that on page 11, the section addresses subrogation and that when a worker is injured you have a third party action. For example, you are in a auto accident and someone else caused that accident, you can sue that owner of the vehicle in addition to getting Workers' Compensation. In this section on line 24, you could do a compromise settlement just on that third party subrogation interest the insurance company might have but leave the rest of your Workers' Compensation case alone. The language was struck on line 24 allowing that type of settlement. It is not used daily but once in awhile. It is a tool they want available.

CHAIRMAN KEATING asked if they want the whole stricken language back. **Ms. Butler** responded that may not be re-opened by the Department. The amendment allows part of the stricken language

in the bill which is the part regarding the comprised settlement.

CHAIRMAN KEATING asked if the amendment of dispute between the insured and the claimant concerning subrogation is a dispute subject to mediation requirements? **Ms. Butler** stated she is trying to do on page 11, beginning on line 21 is to bring back that language, and then bring in 7 on line 6 on page 12. These are companion sections. One is when the injured worker is still living one is when the injured worker is deceased. So in one it is your heirs and personal representative settling the case and on the next page it is you yourself settling the case. **Ms. Butler** stated the two sections should be consistent, so she thought the thing to do is insert the mediation language to make both sections alike. She talked to several people regarding this situation.

Vote: The motion passed unanimously by voice vote that SB 41 do-pass with amendments.

EXECUTIVE ACTION ON HB 115

Amendments: None.

Motion: SEN. BENEDICT moved do-concur on HB 115.

Discussion: None.

Vote: The motion carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 4:35 p.m.



SEN. THOMAS F. KEATING, Chairman



GILDA CLANCY, Secretary

TFK/GC