

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN THOMAS KEATING, on March 4, 1997, at 3:16 P.M., in Room 413/415.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)

Members Excused: Sen. Bill Wilson (D)

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: HB 367, HJR 10, HB 407;
2-24-97
Executive Action: None

HEARING ON HB 367

Sponsor: REP. HALEY BEAUDRY, HD 35, Butte

Proponents: Don Judge, AFL/CIO

Opponents: None

Opening Statement by Sponsor:

REP. HALEY BEAUDRY, HD 35, Butte, said this bill is for blasting licenses. Currently, a blaster must wait one year, after passing the test, to get a license to go to work as a blaster. This bill will change the law so that when a blaster passes his test, he can get his license right away.

The word "post-training" is taken out, so he does not need to have post-training experience. He still has to have experience which has changed from one year to two years. There is not much likelihood that there will be jobs in Montana, such as large highway jobs or dam jobs, which last more than one year. With one year experience they can get a blasting license after having only seen one type of blasting, detonation system, explosives system, one media with one type of rock.

Proponents' Testimony:

Don Judge, Montana State AFL/CIO, said organized labor initiated the first blasting licenses in the State of Montana. They support the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked REP. BEAUDRY where in the bill it refers to the licensing after the experience.

REP. BEAUDRY said on line 17, it states at least two years experience in construction blasting.

SEN. EMERSON stated that REP. BEAUDRY also said a person wouldn't have to wait a year post-training.

REP. BEAUDRY responded in line 17 "post-training" is taken out.

Closing by Sponsor:

REP. BEAUDRY said blasting is not the right profession for trial and error.

HEARING ON HJR 10

Sponsor: CHASE HIBBARD, HD 54, Helena

Proponents: Pat Haffey, Department of Labor & Industry
 Pat Clinch, Montana State Council of Firefighters
 Dean Randash, NAPA Auto Parts
 Frank A.J. Braun, Golden Nugget Body & Paint
 Jamie Neer, Jamie's Auto Body
 Rob Armstrong, RoCo Auto, Great Falls
 Riley Johnson, National Federation Independent Business
 Don Judge, AFL/CIO
 David Owen, Montana State Chamber of Commerce

Opponents: None

Opening Statement by Sponsor:

REP. CHASE HIBBARD, HD 54, Helena, said last summer he met with three small businessmen who are his constituents in Helena. They talked about some of the problems they have encountered in today's business environment. That meeting led to about five meetings past fall. This included most of the Helena delegation, House and Senate members, members from the Townsend delegation as well. Also, the Human Rights Commission attended the meetings as did the Department of Labor.

They came up with four specific solutions to their problems. A number of their concerns involved the relationships and a difficulty in understanding and working through the myriad of laws affecting employer and employee relations.

REP. HIBBARD referred to EXHIBIT 1, which is a list of both federal and state laws which apply to employment. There are 21 federal laws, there are 7 additional federal laws for public employers, there are 8 poster requirements and on the other side of EXHIBIT 1 there are 36 state laws related to employment. If you add 21 federal laws and 36 state laws, the total is 57 different laws which apply to the employee/employer relationship, plus an additional 7 for a public employer.

It is often very difficult for these small business people with 10 or fewer employees to fully comprehend and work their way through this system whenever they have a problem. Larger firms often have a Human Resources Department. They have lawyers on staff who are specialists and know how to deal with many of these problems when they arise.

REP. HIBBARD said in referring to EXHIBIT 2, there are nine different venues which apply when a problem occurs. There are two for Workers' Compensation, two for Human Rights, one for Wrongful Discharge, one for Unemployment, one for Wage & Hour, one for Safety, and one for Independent Contractor. Frequently, when a claim occurs in one of these venues, there also might be an issue in another venue and the facts are pertinent in each venue at the same time. This is confusing, expensive and time-consuming.

One of the specific ideas from the meetings last fall was to direct the Department of Labor to undertake an exploration of trying to condense these into a single venue, under a single roof, that could hear things that are now in multiple jurisdictions. This would help people through this very complicated system.

This resolution requests the Department of Labor to set up a group over the interim of interested and knowledgeable persons, including employers and employees to work on this problem and come back to the next legislative session with a report.

Proponents' Testimony:

Pat Haffey, Commissioner, Labor & Industry, said she has a background in personnel administration and has had personal experience with the confusing processes in trying to resolve different disputes.

The large majority of businesses in Montana are small businesses which certainly cannot afford to have personnel systems or legal counsel when each of these issues arise.

She commends the Department of Labor's commitment to working hard on this project, and hopefully they can return in two years with having streamlined the confusion somewhat. She encouraged the passage of HJR 10.

Pat Clinch, Montana State Council of Professional Firefighters, said they support HJR 10 and are willing to offer a member of their organization to serve on this committee.

Dean Randash, NAPA, said he would like to comment on another issue that hopefully, will be looked at in regard to the Commission.

In one situation an employee is upset with an employer. In a case which went through the Department of Labor and the Human Rights Commission, a female employee was discharged. She left the job and went to the Department of Labor, charged that she did not receive over-time pay and claimed harassment. The Department of Labor investigated it and within 48 days they had made a ruling in favor of the employer.

This person then changed venue and claimed differential treatment and sex discrimination with regard to the Human Rights Commission. The claim was made 183 days, which is three days over the limit. The Commission accepted it, they took 25 months to process it and then ruled in favor of the employer. They had a lack of jurisdiction on it and the five witnesses and claimant failed to establish a case of unlawful discrimination.

This same person could then talk to a trial lawyer, claim that she had not been treated in good faith and fair dealing, which is a violation of public policy. The employer would then be defending himself in the court system with regard to those charges which would take several years. In that time, if the employer denied unemployment benefits they would have to defend themselves, and lastly, when the claimant has exhausted those resources, would probably claim Workers' Compensation or stress on the job.

Mr. Randash stated something should be inserted into the law which says the claimant has to progress to courts of appeal, rather than just going through the venue system trying to get government remedy with regard to claims. He supports HJR 10.

Frank Braun, Golden Nugget Body & Paint, Billings said he is representing his daughter who is owner of the business.

They incurred expense about three years ago when her daughter had a foreman in the business who she had to demote and this person quit. He filed charges for wrongful discharge and also for overtime pay. His daughter had been paying this employee management wages and once she demoted him, he became an hourly employee.

We are faced with some very complicated labor laws today, as **REP. HIBBARD** indicated, in both the federal and state spectrum.

Mr. Braun said his daughter had pretty much run her business by herself until she get in trouble, then she called dad. They met with their lawyers and the first thing they told them was that she had better budget \$10,000 for this claim.

After this man quit they found he had been stealing, their inventory of materials and supplies decreased about \$2,000, so obviously things were going out the back door.

In talking with their attorneys, they came under the forum for settlement of the wrongful discharge suit. They were told they could not get out of the overtime pay because they did not have records to prove anything. They considered a civil suit against this employee, but he had nothing. Their attorneys told them they could consider a criminal suit if they wanted to, but they would have four different venues going at the same time, with attorney costs.

They bought out of the case. They actually paid this man who stole thousands of dollars, to get rid of the case. That is wrong. **Mr. Braun** feels there should be a dispute resolution process, where both an employee and employer can come. They had several people who testified they had employees, and they were afraid to discharge because they didn't have the money to fight a wrongful discharge suit. Those men needed to be able to go to someone for help.

Mr. Braun said he has been an employee most of his life and is not against the labor laws implemented now. As he grew older, it was great security to know that his employer couldn't discharge him because he wasn't as fast as he was when he was younger and he was getting paid more. But he believes there has to be a place where employer and employee can come together and resolve their dispute for minimum amount of money.

Jamie Neer, Jamie's Body Shop, Helena, said that small business is the backbone of this whole United States. It seems that year after year, everybody has lost sight of what this country is built on. They seem to think that because you're in business you have a money bush you can pick an unlimited supply of funds from.

Mr. Neer said this bill will help the employers and employees. If either has a problem or a question they have somewhere to go.

The Department of Labor was present to help put this bill together. **Mr. Neer** said he called the Department with a question, they invited him over and gave him advise. He tried this same thing back in 1992 and they wouldn't give him the time of day. So he feels things are progressing in a positive way.

Rob Armstrong, RoCo Auto, Helena, said he has just started his business in Helena. He supports this bill.

He has already had to fire an employee. If he had to hire an attorney and put up \$10,000, he would be out of business. **Mr. Armstrong** said he would like to see someone who can judge both sides fairly, and not be impartial.

Riley Johnson, National Federation of Independent Business, said there are no more complaints about employee/employer relationships than this one. This is without a doubt the worst fear that small businesses have. A lot of this fear is perceived because over the last four or five years they have worked closely with the Department of Labor and have seen a great turn around in the Department. There is a great willingness of the Department to cooperate and communicate.

The employers are getting to the point they are afraid to hire anyone. **Mr. Johnson** thinks we need to get to the point that they aren't afraid of their own state government. They support HJR 10.

Don Judge, Montana State AFL/CIO, said they recognize there is a myriad of activities regarding employment dispute resolution. The unions have a final binding agreement procedure and something which culminates in a final decision for most of the employment relations disputes. That is not true for most of the employees in the State of Montana, and they believe the system could be made more efficient and affective.

On behalf of the AFL/CIO, he is present to offer their support in working with the Department of Labor in trying to come up with something that makes more sense.

David Owen, Montana State Chamber of Commerce, said they support the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SEN. CASEY EMERSON said about seven years ago he signed up for a course put on by the Job Service, which was suppose to make

employees more aware of how they can do things without getting into trouble. The first thing they handed out was a pamphlet that had 40 to 50 questions in it. The title was Which Of These Questions Can You Ask A Prospective Employee? They found out the answer to this was none of them. That is because there were words, possibly in a court decision, that could not be used. They could not ask them where they live, if they drove a car, if they owned a car, their age, and a lot of other things that may be worthwhile knowing. **SEN. EMERSON** asked **Pat Haffey**, in doing the study, just because you ask where they live that is discriminatory. Is it possible to work on that issue?

Pat Haffey, Department of Labor, said they can work on that. As with so many other projects, it is not the messenger of the vehicle but also how it is carried forward. If there is an explanation for why those questions are asked, they have to be able to explain why they are asked. They will have to either eliminate the questions or at least be to explain them.

SEN. DALE MAHLUM said to **Don Judge** that he has been a small business person for many years, and to see **Mr. Judge** come in with small business people who have testified today and to see you on the same playing field and not objecting to them, he thinks is a real miracle.

Mr. Judge responded it may surprise him that on the next bill some of them will be on the same side as well.

CHAIRMAN KEATING said he recalls small employers speaking to him in the past few years that if they were to discharge someone, that person could appeal to the Board of Labor Appeals and if they lost, they could go to the Human Rights Commission. If they lost there they could find another venue. It occurred to him that the employer was not protected against that double jeopardy. The employee could loose the case one place and then take it someplace else. The first case would not hold against the plaintiff. The defendant is then suffering double jeopardy. An employee can do serious damage to a business if they are given the opportunity to chase a number of venues against the employer. **CHAIRMAN KEATING** asked **Pat Haffey** if the Department would seriously consider that topic when the Committee is approaching these various problems for employer/employee relations?

Ms. Haffey responded she thinks that is valid and the Department would address those issues.

CHAIRMAN KEATING asked **Dean Randash** if the employer is at a disadvantage and should this topic be seriously considered?

Mr. Randash answered this is a disadvantage and he would certainly work at trying to come to a resolution. The fear of being sued is constant and really creates hostility towards our judicial system. It creates hostility on the part of the employer towards employees, and nothing is benefited from it.

Closing by Sponsor:

REP. HIBBARD said working with these people has been a very gratifying experience. These are hard-working business people who have been frustrated with the system and really don't know how to progress through the system. They have had trouble comprehending how to work through problems as they come up. He believes this is one step in addressing the complications and the problems. There is a number of perceived problems and real problems that these people face in doing business in today's environment.

The perceived problems can be dealt with through education, the real problems will have to be dealt with through solutions like this. He appreciates the committee's consideration.

HEARING ON HB 407

Sponsor: REPRESENTATIVE DAVID EWER, HD 53, Helena

Proponents: John Andrew, Department of Labor & Industry
Alec Hansen, Montana League of Cities & Towns
Tim Burton, Lewis & Clark County
Carl Schweitzer, Montana Contractor's Association
Debra Fulton, Department of Administration
Lance Melton, Montana School Board Association
Don Judge, Montana State AFL/CIO
Jerry Driscoll, Montana State Building Trades

Opponents: None

Opening Statement by Sponsor:

REP. DAVID EWER, HD 53, Helena, said this bill deals with prevailing wage issues.

He stated over a year ago, the Department of Labor asked several people to form a committee to look at possible ways to clarify and further define occupations in the area of prevailing wage. He said this only pertains to wages and jobs that are public occupations in public governments. Representatives from local governments, cities, towns and counties, as well as organized labor and private sector folks such as the Contractor's Association, the School Board, and state government served on that committee. The Department of Labor was asked to administer prevailing wage laws and the Department of Administration has a lot of contracts.

This is a consensus bill. It is also a compromise bill, it is a bill where people neither win everything nor lose everything.

The Department of Labor initiated this bill because they had a problem of enforcing prevailing wage under current law. All

occupations are covered. The potential universe is unlimited. Since that was not a good position for the Department of Labor, they wanted to narrow the scope of the occupations, which HB 407 does.

That was also an important concession by organized labor. In return, organized labor helps the Department of Labor so that calls can be answered quickly and matters can be resolved.

Also, under current law our construction areas in the state include 10 regions. This is not practical. This bill gives the Department of Labor the authority to reduce the number of regions to possibly one region. That may make it easier to administer this rule.

REP. EWER said the committee who worked on this bill defined service and occupations for the first time. This bill allows the Department of Labor to use other data in determining prevailing wage when there is insufficient data. We have always had a problem in the state regarding insufficient data in determining the prevailing wage in each particular region.

REP. EWER said the committee worked diligently every month for approximately ten months to bring this consensus bill together.

Proponents' Testimony:

John Andrew, Department of Labor of Industry, stated HB 407 represents the work-product of a diverse group of individuals.

From the Department of Labor's perspective, this bill clearly defines those areas of the law that are subject to the services portion of the prevailing wage law, ultimately that will result in a better product for their customers.

The bill also makes the definition of public works projects consistent throughout the statute and it clarifies methods for interim rate setting.

In brief, this legislation addresses long-standing concerns of the Department of Labor, the Department of Administration and those groups who have participated in the formulation of the bill.

Alec Hansen, League of Cities & Towns, said they agree with the final product of this bill.

He said this gives the Department of Labor some flexibility in determining the prevailing wage rates. Since there are now 10 districts across the State of Montana, sometimes this doesn't work. They get into situations where the wages in one area are based on the market rates in another area. Under this bill, if the Department is inclined, they could implement an urban rural rate, which would be more reflective of the market conditions in

the cities and towns where this work is being done. As it is now, the flexibility is not there. They may be able to figure rate based on project costs and exemptions which would work better for the cities and towns.

At one time there were five districts and the first time **Mr. Hansen** heard of prevailing wage, someone phoned him from Harlowtown and asked him why they had to pay the wage on a public works job. **Mr. Hansen** investigated this and found the prevailing wage rates in Harlowtown were being set on the market rates being paid in Silverbow County. It is difficult to explain to someone in Harlowtown that they are paying the wages based on the labor market in Butte. That was under the old law, and we then went to 10 districts under the new law and there are still problems.

Mr. Hansen stated another important factor is that this bill clears up some confusion over the application law and the types of services it covers. This lists the occupations that are covered by the act. Anytime we can get rid of confusion in law it is doing the public a service. He supports HB 407.

Tim Burton, Chief Administrative Officer, Lewis & Clark County, said he served on the committee as Montana Association of Counties' representative.

This bill does further define what services are covered. This is preferable for local government to determine whether or not they are in compliance with the law. Right now the situation exists that they operate under the Attorney General's opinion. **Mr. Burton** said it is certainly to the local government's advantage to ask the legislature for clarification. He supports this bill.

Carl Schweitzer, Montana Contractors' Association, said the reason the Contractors' Association got involved in this bill is they would like to see the prevailing wages enforced in this state. They believe the matter is one of competition which creates unfair competition when one person gets a job and doesn't pay prevailing wage when another employer bid the job and anticipates paying it.

This bill does not go all the way in enforcement, but **Mr. Schweitzer** believes it is a step in the proper direction. He supports HB 407.

Debra Fulton, Administrator of General Services, Department of Administration stated the Department of Administration has several interests in this bill and that they are a major contractor, both for construction contracts and service contracts.

The major concern they have with prevailing wages in the service area is that their purchasing division frequently has a problem. Agencies call to ask for a contract. For example, if the Department of Agriculture needs a beekeeper in Ekalaka, they know

they must have a prevailing wage in their contract. So the Department of Administration has to call the Department of Labor to get the prevailing wage for beekeepers in Ekalaka. Since there isn't one, the Department of Labor cannot produce one. Not being able to define those services is a real confusion to local governments.

Ms. Fulton stated they would like to be able to define these services and are in support of this bill.

Lance Melton, Montana School Board's Association, said they concur with prior comments of the proponents.

They had a couple of technical concerns in the House and are gratified by the sponsors of the bill to work with them in making the changes. He urged a do-concur from the committee.

Don Judge, Montana State AFL/CIO, said they have worked with large and small businesses over the past months on this bill. This is something they believe will benefit Montanans, workers and employers alike, and they urge the passage of this bill.

Jerry Driscoll, Montana State Building & Construction Trades, said they support the bill, especially the section on the 10 districts. The amendments on page 6 will allow the Department of Labor to put districts together that are alike.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

SEN. EMERSON said he understands the need for prevailing wage since the Bacon Act. He asked **REP. EWER** if that is the only thing which brings about the necessity for prevailing wage.

REP. EWER responded that the existence of Little Davis Bacon has been in affect for many, many years. He believes the idea is that the public sector should encourage solid work performance. He thinks this is part of it and the other part is public interest in paying people a liveable wage.

He said HB 407 tries to clarify when we should say that prevailing wage applies. At the present it applies to all occupations and the reality is the Department of Labor cannot enforce that. **REP. EWER** said he believes everyone on the committee who worked on this bill would say the best alternative to this bill would be the resources to enforce the law. It is not practical for **REP. EWER** to ask for a big appropriation.

REP. EMERSON asked if **REP. EWER** was stating that if it wasn't for the Little Davis Bacon Act, there would be no need for this law.

REP. EWER responded that is a fair assessment.

CHAIRMAN KEATING asked REP. EWER in regard to the definition on page 3, line 15, is the \$25,000 the minimum amount of the contract which would fall under the Little Bacon Davis Act?

REP. EWER answered that is correct. He thinks this is current law which they have tried to make the same terminology. They tried to put it in a different position to try to make it the same under public works contract. They don't actually define public works contract for construction or nonconstruction services, but that minimum now is current law.

CHAIRMAN KEATING said then for clarification, the contract less than \$25,000 is not subject to the prevailing wage rate.

REP. EWER responded that is correct.

Closing by Sponsor:

REP. EWER said he appreciates the support of the proponents. Again, this is a consensus bill. It is not a public bill and not everyone gets what they want in this bill. He asked for the support of HB 407.

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

March 4, 1997


Page 13 of 13

ADJOURNMENT

Adjournment: 4:10 p.m.



SEN. THOMAS F. KEATING, Chairman



GILDA CLANCY, Secretary

TFK/GC