

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN THOMAS F. KEATING, on March 20, 1997,
at 3:25 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)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Eddy McClure, Legislative Services Division
Janice Soft, Substitute Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted:

Executive Action: HB 345, BE CONCURRED IN AS
AMENDED
HB 517, BE CONCURRED IN AS
AMENDED
HB 519, TABLED
HB 252, TABLED

EXECUTIVE ACTION ON HB 345

Amendments: HB034501.AEM & HB034505.ASM (EXHIBITS 1 - 4)

Motion: SEN. STEVE BENEDICT moved do-concur on HB 345 and on
amendment (EXHIBIT 1).

Discussion: Carl Schweitzer, Montana Contractors' Association,
said amendment number 1 through 4 (EXHIBIT 1), involve those drug

tests which are not approved by the Department of Transportation but some companies have been using these to do initial tests. When they hire new employees they are using these tests to prove that the employees are not using drugs or alcohol. They have amended this into the bill so they can continue to use these types of tests as long as the employee shows negative results.

He said when the employee shows potential positive, then the employee has to be re-tested using the Department of Transportation requirements to prove a positive. This is so the employee does not show any false positive tests and the Department of Transportation process has a much higher degree of reliability.

Mr. Schweitzer said amendments 5 and 6 are actually an alternative to amendment 7 (**EXHIBIT 2**). If an employee has a positive test result, the first specimen is sent away and tested and if it comes back positive the employee has the option of having a second vial sent to another lab to be re-tested. The amendment changes the employee paying for the second test to the employer. **Mr. Schweitzer** suggested a third alternative. If an employee wants to be re-tested and it comes back negative, then the employer should pay for it. If it comes back positive a second time, then the employee should pay for it. He said the reason is that if an employee has the first test positive and it is required the employer pay for the second test which he knows will come back positive, this is just an added expense for the employer.

SEN. BENEDICT said he would like to move all the amendments at once because he feels they are all pretty workable.

SEN. SUE BARTLETT asked **Carl Schweitzer** about his comment indicating that regarding amendments 1 through 4, some employers are already using these testing devices.

Mr. Schweitzer answered they are non-DOT (Department of Transportation) testing.

SEN. BARTLETT asked if that is in the State of Montana? She said that is prohibited under current law.

Mr. Schweitzer said he understood what **SEN. BARTLETT** means.

SEN. BARTLETT said so current law states they are supposed to meet the 49 CFR part 40 which apparently is the DOT procedures for testing. She asked if anything is known about the accuracy and reliability of these other instruments that people are using or what to be able to use?

Mr. Schweitzer responded he is not an expert on the drug testing capabilities of other types of equipment. It was brought to his attention by some other legislators used as a pre-employment to check employees before they were hired. If the results were

positive, he thinks they were going through the DOT process to give applicants a second opportunity. He said he does not know the reliability or accuracy of this testing.

SEN. BARTLETT said that may be why some employers are not getting any positive pre-employment tests. It may be the equipment they are using. She said this reminds her of the judiciary they had regarding the equipment which is used for breath tests when someone is stopped for DUI. She said it really makes a difference that you have clearly accurate and reliable equipment with which to do these tests. She said this amendment does not specify that any particular accuracy or reliability standards which she feels is a mistake.

SEN. BENEDICT stated he believes the amendments say if the employer wants to use a test which is not DOT certified, that is his choice and if the results come back positive, the employee can ask for the DOT testing. He does not see that as being an issue.

SEN. BARTLETT stated then employees can have two tests, instead of just one.

SEN. BENEDICT answered not necessarily, if they test positive on the first test at the employers expense then take another test and test negative, the employer will pay for that test too. He is not sure all employers will use home kits or less expensive tests, he thinks they will screen employees really good. If a test is not reliable he believes they will use the DOT tests.

SEN. CASEY EMERSON said that when employers look and talk with an employee he can sometimes tell which test to use. He agreed with **SEN. BENEDICT**.

Vote: The motion carried with 2 opposing votes from **SEN. DEBBIE SHEA** and **SEN. BARTLETT**.

Motion: **CHAIRMAN KEATING** moved amendment (EXHIBIT 2), numbers 1 through 3.

Discussion: **SEN. FRED THOMAS** said he thinks people would like to know why we are adding this.

CHAIRMAN KEATING answered because there is commercial intrastate carriers and controlled substance is a more inclusive phrase than drug.

SEN. BARTLETT said controlled substance is also the term which is included in the definitions so that would provide clarity to what is being said there.

Vote: The motion unanimously carried to add numbers 1 through 3 (EXHIBIT 2) to the amendment.

Discussion: Eddy McClure said amendment #7 is not needed with the adoption of SEN. BENEDICT'S amendment (EXHIBIT 1).

Carl Schweitzer explained amendment numbers 3 through 6.

Number 3 changes the verbiage on page 3, lines 21 and 22. They have added in when an employer puts together their drug testing policy, they must identify what types of tests they use, whether it be pre-employment, random, post-accident, reasonable cause or follow-up.

In referring to number 4, he said all information was confidential and only the tested employee or designated representative of the employer could get the information. Before the amendment, the language in the bill said employers or agents of the employer who are specifically authorized by the tested employee to receive the employees test result. He cited an example of what would often happen. If a company had 100 employees who had to sign a document when hired which tells who the employer's agents are that have access to their information. If those people left the company, the employer would have to get 100 new signatures so they had the employer's representative recorded. The purpose of this amendment is because they feel since the employer is paying for the test, they should have access to that information so they have to designate the representative. He said this is clean-up language.

Mr. Schweitzer said amendment number 5 states the employer can test as a condition of hire instead of any new perspective employee. Before you can bring somebody on board and they become an employee, you have to test them before that moment.

He said number 6 involves the follow-up test. This language clears the issue of having a verified positive test for controlled substance or alcohol before follow-up tests are performed.

Eddy McClure stated she felt the word 'the' should be added after hire.

This was confirmed by several on the committee.

Motion/Vote: The motion carried unanimously to add amendments on (EXHIBIT 2), excluding number 7, to HB 345.

Discussion: CHAIRMAN KEATING explained amendments on (EXHIBIT 3). He said if a worker was in the proximity of an accident and was required to take a test and then was found not to be a direct or proximate cause of the work-related accident, then his records would be purged.

He said that is not a very good idea. This is a drug testing bill. If the employee who is tested after an accident is positive, you cannot very well purge his record and if it is a

negative test, that should be kept in his record to support the fact he was clean at the time.

CHAIRMAN KEATING said he agreed to explain the amendment but does not want to move the amendment because he does not see a need for it.

SEN. BARTLETT said during the last session what they were trying to do was to focus the testing on employees who had been the direct or proximate cause of a work-related accident. An employee who happens to be in the vicinity, what they subsequently found was not the direct or proximate cause of the accident, didn't have anything to do with causing the accident, but it is that employee's test results which should be taken out of the file and destroyed because we assumed that when there is an accident, there could be a few employees in or near the accident site. These employees need to be tested right away or you loose the validity of the test because the body metabolizes these kinds of substances. So they do the testing at the time or shortly after the accident on whatever employees are in the vicinity and could have been the direct or proximate cause of the accident. They gather the investigative material they need, then do an investigation of what did cause the accident. They find out employees #1 and #2 had some role in causing the accident, but employees #3, #4, and #5 simply happened to be there at the time of the accident and had no role in causing the accident. So the test results of employees #3, #4, and #5 should be taken from their folders and destroyed and test results of employees #1 and #2 should stay as part of their record.

SEN. BENEDICT said he believes if a party were even close to an accident they would want those test results in their file.

SEN. EMERSON stated this bill is setting up random drug testing, that certainly is random so why not leave it?

SEN. BARTLETT answered when it is an accident site it is very specific to all employees who are at the accident site rather than random.

SEN. EMERSON said it is still random from the standpoint of not doing it on a daily basis.

SEN. FRED THOMAS asked if the test reflects simply positive or negative or if it is negative and there are some residual of drugs, if that shows up on the test?

SEN. BARTLETT said all of these tests do test for residuals because the active ingredients metabolize so fast.

SEN. DALE MAHLUM said there are so many different things in a test that say what is in it. There are certain criteria set on the tests and they show how far over the median that person shows in their system. There are many different measurements in the

test down to small milligrams. He stated they are very conclusive.

Vote: The motion to add this amendment failed by a 3 to 6 voice vote with **SEN. BARTLETT**, **SEN. SHEA** and **SEN. BILL WILSON** voting in favor of the amendment.

Motion: **SEN. BARTLETT** moved amendments in (**EXHIBIT 4**).

Discussion: **SEN. BARTLETT** stated these amendments are relatively minor.

She said the first amendment adds to the definition of an employee on page 1, line 24, which means an individual engaged in the performance, supervision, or management of work....etc.". She said the reason for that is because later in the bill it talks of the random testing process which must include all supervisory and managerial employees in random selection and testing process. So this makes the definition fit with how it is used later in the bill.

SEN. BARTLETT said amendment number 2 is on page 3, line 12. This is the policies and procedures that an employer must have. Subsection (b) talks about the employers proposal for educating. She stated if this is policies and procedures, it has to be more than a proposal. She said she is simply changing it to read the employer's program for regularly educating or providing information to employees on the health and workplace safety risks associated with the use of controlled substances and alcohol since the whole point of this bill is workplace safety.

She stated the third amendment, page 6, lines 21 and 22 goes back to the wording in the current statute. This pertains to the accident situation and it proposes to make subsection 5 read, "An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to believe that the employee's act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury.....etc".

SEN. BARTLETT explained the last amendment on page 7, line 3. She proposed the limitation on adverse action to read, "No adverse action, including follow-up testing, may be taken....etc."

SEN. BENEDICT asked **Carl Schweitzer** if he agrees with these amendments.

Mr. Schweitzer responded he thinks these are good amendments.

SEN. THOMAS said it seems to him number 3 changes the texture of the bill.

Mr. Schweitzer said he thinks each situation should be considered. If there is an employee whose actions or lack of

actions cause an injury, he thought this amendment changed the verbiage but not the character of what was being suggested here.

SEN. BENEDICT said when we have **SEN. JIM BURNETT'S** drug testing bill in the last session and they talked about this and they all came to the conclusion that wording would fit the drug test in the past.

Vote: It was unanimously decided by voice vote to add amendment **EXHIBIT 4**.

Discussion: **SEN. BARTLETT** distributed **EXHIBIT 5**. She said this is a survey from the American Management Association of employers and managers on drug testing. They found that everybody believed that drug testing would be effective in dealing with workplace drug abuse. But when they pressed the Human Resource Managers in the companies which do test, they found little statistical evidence that their organization's drug testing program resulted in declines and absenteeism, disability claims, accident rates, incidents of employee theft, and incidents of employee violence.

SEN. BARTLETT feels this is significant as she sees bills attempting to be a simple answer to a complex problem. She said simple answers do not work. She believes the current state law in drug testing is appropriate and focused.

SEN. BENEDICT said if random drug testing, or drug testing of any type, helps an accident rate by 9% or even prevents one accident or one disability claim or illness or employee theft, it doesn't matter if the results are huge and astounding. Whatever needs to be done to help people who work with those who use drugs in the workplace and also for the employers who have to pay the insurance premiums.

SEN. BARTLETT said the American Management Association pointed out that 18 of the surveyed firms had discontinued testing programs and the leading reason being that programs were not cost effective.

SEN. WILSON said he has seen drug testing and lived it and has watched it done and from personal experience he knows it does work. He has lived the days when they lined people up against the wall, and you got your luggage and they brought in German Shepherds. He said he did not like that and also did not like being hauled into a hospital after working a shift, but ultimately, from what he has experienced, it works. He said he has struggled with this issue, but people are kidding themselves if they don't believe it's out there.

From personal experience 18 years ago, **SEN. WILSON** said he was the outcast because he didn't take drugs. He said not a year goes by that someone doesn't lose a leg or arm. If you are rolling down the track with 12,000 ton train behind you and there is another train in front of you, you have to be able to perceive

the depth to the switch. It will make a difference between life and death.

SEN. WILSON said if he votes for this bill, there will probably be a lot of talk about him, but drugs are out there and he cannot think of anything else that will effectively deal with this.

SEN. SHEA asked **SEN. WILSON** if he thinks what we have in place right now is working.

SEN. WILSON said what he has seen that works is random testing. He personally saw people value their job much, much more than their habit, so when they would take the drug test they prepared for it.

He also mentioned possibly opening up other sections of the bill to find out who all should be included in this random testing.

Vote: The motion that HB 345 be concurred in with amendments carried with a 7 to 2 voice vote. Those opposing the bill were **SEN. SHEA** and **SEN. BARTLETT**.

{Tape: 1; Side: B; Approx. Time Count: 4:10 p.m.}

NOTE: CHAIRMAN KEATING RELINQUISHED CHAIR TO VICE CHAIRMAN JIM BURNETT.

EXECUTIVE ACTION ON HB 517

Amendments: HB051715.AEM (EXHIBIT 6)

Motion: **SEN. BENEDICT** moved that HB 517 be concurred in. He then moved amendments (EXHIBIT 6).

Discussion: **SEN. BENEDICT** said that in number 2, the words "written authorization" need to be taken out and also take it out of the title.

He said in amendment 4 also scratch out the words "written authorization".

SEN. BENEDICT said these are not amendments that **REP. VICK** has concurred in, they are his own amendments. He felt that the yearly re-authorization was pushing things too far. He said he is trying to simplify this to be a positive check-off system rather than negative. He had Jerome Anderson help him with these so if there are questions **SEN. BENEDICT** cannot answer, Mr. Anderson can. He is trying to make the bill user-friendly and still accomplish the purpose for which it is intended.

NOTE: CHAIRMAN KEATING RETURNED TO CHAIR COMMITTEE.

SEN. EMERSON asked **SEN. BENEDICT** if he were talking every year so that this notice would be sent. He thought the sponsor of the

bill was pretty adamant about the fact that he wanted this done on a yearly basis.

SEN. BENEDICT said he thought the sponsor should take a look at this and didn't think the sponsor would have a chance to think that over. He thinks this needs to be something that works for everybody.

CHAIRMAN KEATING said we are putting a burden on the employer in that he has to fill out the form for every employee at the beginning of every year. This way the employee can say he will make the contribution until he says he will stop. Then he can stop it at anytime.

SEN. EMERSON stated the sponsor will then have a chance when the bill goes to the Floor to reject the amendments.

SEN. BENEDICT said he believes **REP. VICK** is open to making this as good as possible.

Vote: The motion HB 517 be concurred in with amendments carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Count: 4:19 p.m.}

EXECUTIVE ACTION ON HB 519

Amendments: HB051901.AEM (EXHIBIT 7)

Motion: **SEN. SHEA** moved HB 519 be concurred in.

Discussion: **SEN. BARTLETT** said she has an amendment to this bill and the wording is not precisely what she feels is needed yet but it amends the language on page 5, line 28. As this bill came in it simply made every Advanced Practice Registered Nurse licensed in the State of Montana as a nurse practitioner or clinical nurse specialist, a treating physician for Workers' Compensation purposes. She said in talking to the people who are involved with this bill, the one thing they all agree on is that they are willing to have the LPRN practicing as a treating physician similar to the situation with physicians assistants, that is in areas where there is not a physician and as long as there is consultation with a physician on these cases. Her amendments propose to put two limitations into subsection (f), that they have to be an APRN who is in an area that is not served by a physician and who is serving in these cases in consultation with a physician which can be done by phone or computer.

SEN. BARTLETT stated the remaining amendments basically return the language of the statute back to what it is now, that is to restore the term 'treating physician' and strike 'provider', and make it 'treating physician' throughout. She said she is not convinced the wording in amendment 5 is exactly what we need to

accomplish that. If that amendment meets approval, she would like the committee to authorize **Eddye McClure** to work on that language to make sure it states exactly what is intended here.

SEN. BENEDICT asked if we are not talking about a rural area, but in an area where an Advanced Practice Registered Nurse is located but is not being served by a treating physician, will the APRN still be a treating physician?

SEN. BARTLETT responded that is not her intent.

CHAIRMAN KEATING said in discussing the substance and intent of the bill, the bill is to facilitate the rural areas by allowing a nurse practitioner to become a primary care provider in an area where there is not a treating physician.

He said this bill opens the door for an Advanced Nurse Practitioner to be a primary care provider and that opens the door a little too far. He said they just aren't qualified to the level of a position to be a primary care provider. So the language in the amendments is to restore the physician as the primary care provider and to limit to certain areas where there is not a treating physician.

CHAIRMAN KEATING said the language of the bill will do what is already being done in practice. In areas where there is not a treating physician, the insurance companies are paying the claim of the Advanced Nurse Practitioner who handles the injured employee in the first instance. Then the insurance company goes to the injured worker and tells them they have been taken care of very quickly in this emergency situation but now that the emergency is past, to find a treating physician and get an evaluation so that they know exactly what is wrong so the claim can be perfected and the treating physician can determine what program needs to be followed.

He said there is no real requirement to put this into law at this time since that is policy for several carriers. The State Fund may have some trouble with it but their policy is to take care of the injured worker immediately so they can, through their policy allow the nurse practitioner to take care of that emergency. Then the injured worker must go to a treating physician after that for the completion of the help.

CHAIRMAN KEATING stated the amendment to the bill is not needed because that is already being done and if you don't amend the bill, the bill is not needed because a nurse practitioner does not qualify as a primary care provider as a treating physician.

SEN. MAHLUM said he was questioning the rural areas.

CHAIRMAN KEATING said the Workers' Compensation carriers accept the claims from the nurse practitioner in the rural areas. He said **Mr. Worthington** stated they have already contracted with the

person up in Troy who is the provider in the area. So this law is not needed for that purpose.

SEN. BENEDICT said he thinks they hit it right on the head, we do not need the bill. And if the amendments are added, we certainly do not need the bill. He said he will offer a table motion at some point, but to be on the comfortable side he would like to support **SEN. BARTLETT** for putting the amendments on the bill and then see where it goes from there.

SEN. EMERSON said he felt that amendment 2 is absolutely wrong because it says if you look at line 10, page 4, "primary medical service means treatment prescribed by a treating provider" and the amendment changes that to 'physician'. He said then the remainder reads, "for conditions resulting from an injury necessary for achieving medical stability". He said you can't just put "physician" there because someone is going to believe that before you get them to a physician. He said he thinks that has to be taken out.

Eddye McClure explained when they changed to 'providers' throughout the whole bill, most of these sections are in the bill because the word 'physician' was changed to 'provider'. She said the reason it is put back to 'physician' is there are substitutive changes in this section. This is putting the bill back to the way things are now.

SEN. EMERSON stated if we reaffirm it here, that makes it tougher to do. Right now they feel like they are stretching things a little bit. That would slow it down even more.

Ms. McClure said if we go back to treating physician there will be no such thing as a treating provider.

SEN. EMERSON asked if the nurse is taken care of it now?

SEN. BENEDICT answered in some cases, where there is no physician.

SEN. EMERSON said in testimony people were saying the law was being stretched, but what he is saying is that if you go back and reaffirm their has to be a physician, that is going to make it more difficult.

CHAIRMAN KEATING said the action upon a primary medical service is somewhere else in the purpose of the bill. There are provisions for primary medical services in the bill elsewhere and it would be defined to be treated by physicians. He said if there is an emergency, that is covered elsewhere.

SEN. BENEDICT added one of the things the Workers' Compensation insurers in Plans 1,2 and 3 are very concerned about, is if 'provider' is left in the bill. This will open it up to naturopaths and everyone else. We want to leave physicians as

primary care providers. When 'provider' is put in place of 'physician', this opens it up to massage therapists, etc., because provider is such a broad term.

SEN. EMERSON said he sees it a different way and is still against that portion of the amendment.

Vote: Motion to add amendment to HB 519 carried with a 8 to 9 voice vote. **SEN. EMERSON** voted against it.

Motion/Vote: **SEN. BENEDICT** offered a substitute motion to table HB 519. Motion passed 5 to 4 on a Roll Call Vote.

EXECUTIVE ACTION ON HB 252

Amendments: HB025202.ASM & HB025201.AEM (EXHIBITS 8 & 9)

Motion: **SEN. BENEDICT** moved do concur HB 252.

Discussion: **SEN. THOMAS** said this bill is a very significant issue and SB 5, in essence, does the same thing HB 252 does and was tabled. A great deal of work was done on SB 45 and **SEN. THOMAS** believes the House Committee will take that bill off the table tomorrow. He thinks the committee should wait to see what is done with SB 45.

Motion: **SEN. THOMAS** moved to table HB 252.

SEN. BENEDICT said he strongly objects because it is generally understood that a table motion is not offered without at least some discussion on the bill. He said he had the courtesy to allow discussion on HB 519 before it was tabled, he would at least like to have that discussion.

CHAIRMAN KEATING said he would like to have discussion first.

SEN. THOMAS agreed to this and withdrew his motion to table HB 252.

Motion/Vote: **SEN. BENEDICT** moved both amendments (EXHIBITS 8 & 9) be added to HB 252.

Discussion: **SEN. BENEDICT** said EXHIBIT 8 is a simple amendment to make sure that it is Workers' Compensation that we are talking about. He stated the other amendment (EXHIBIT 9) is more technical.

SEN. THOMAS said in the amendment on page 5, line 15, the word 'claims' is being stricken. He said it seems to him this is outside Section 16 of the Constitution because it deals specifically with Workers' Compensation and not just any claim. He does not think this improves the bill but makes it worse.

SEN. BENEDICT said he disagrees and thinks **REP. MOLNAR** had a very valid reason for adding this. He said part of the reason is that when a person declares to be an independent contractor, he states he does not want to be covered under Workers' Compensation nor will he be covered under Workers' Compensation.

SEN. THOMAS said that does not mean it wipes out the clause of the Constitution which guarantees that person the ability to be covered by Workers' Compensation. It states they have full legal redress, so the Constitution guarantees that this cannot be done.

SEN. BENEDICT said he disagrees, neither **SEN. THOMAS** nor he is a lawyer.

SEN. THOMAS said he did not say that.

SEN. BENEDICT said they are very lucky they are not. He thinks what this is trying to say is they are not asking for coverage. He believes the people **SEN. THOMAS** is addressing are people who are employees. Employees have the ability to access Workers' Compensation. He said this bill gives them the ability to say they are not an employee and do not want to be an employee.

SEN. THOMAS said a person still has full legal redress to be what he really is. He encourages an amendment to this bill.

CHAIRMAN KEATING said he thinks this language should be taken in whole in this instance. Under number 1 the independent contractor is defined. It says they are free from control and direction which separates that employer/employee situation, and that they are engaged in an independently established trade, etc. to define the fact that person is working outside of the employer/employee relationship. He stated this section is the biggest cause of the litigation we have concerning Workers' Compensation in the contractor area.

He stated there are so many people saying they are independent contractors who change their mind when they get hurt. He also said there are many cases which have cost people a lot of money just because of the court's interpretation of these very words. In taking this as a whole and tightening it up Section 1 defines an independent contractor and the remaining strengthens that language by stating if that person holds himself out to be an independent contractor, he cannot change his mind. He can quit being an independent contractor anytime he wants to go to work and become an employee, but if he gets hurt as an independent contractor, he cannot back away from it.

CHAIRMAN KEATING added that a person can file a claim anytime they want to, but if this law were to pass, this language would make it more difficult for that individual to change their mind.

SEN. THOMAS stated this language says an individual representing to the public and it does not say he qualifies under Section 1.

It says this individual cannot file a Workers' Compensation claim. **SEN. THOMAS** still believes this still contrasts to the full legal redress in the Constitution.

SEN. BENEDICT said that is what 25-201 does.

SEN. EMERSON when the full legal redress was added to the Constitution, it wasn't aimed at either one of those definitions. Because of different court cases we do not know what is going to be applied, when we say it is going to work one way, it may not. He said it is a weird interpretation which he tried to get amended out two years and it did not work. He said this has been twisted so badly, it has really fouled up the constitution.

Vote: The motion to add the amendments carried unanimously by voice vote.

Motion: **SEN. BENEDICT** moved do concur in HB 252 as amended.

Discussion: **SEN. BENEDICT** said the House did take out of HB 2 all the money for the contractor registration program, so it is gone. He thinks they are reaffirming the fact that they do not want to see SB 45 pass.

CHAIRMAN KEATING said regarding the sections which are being repealed, under the contractor registration section, which is 39-9-101, parts 1 and 2, the law requires that before anybody can perform any work, they have to register as a contractor. He said he does not have a problem with somebody registering as a contractor.

He said but then, when it gives police powers to the Department of Labor by saying that if you are not registered you cannot advertise to work, if you are not licensed and you are on a job and the Department can shut you down if there is some little thing wrong, right or wrong. That job is shut down, then that person is losing money, the person that was contracted with who is paying for the job is also losing money.

CHAIRMAN KEATING said he is having a difficult time with that licensing section with those police powers in the Department of Labor because he does not believe they have demonstrated, in the past, that they are very prudent with their heavy-handedness in regards to rule making and implementing the law. He said he believes they have totally ignored legislative intent and he would really like to tighten up the wording in that section of law so that if there is an infraction or something wrong on the job at least the party has a period of time to correct the situation. If there is a discrepancy out there, the parties should be notified and steps should be taken to correct it without fining somebody, without shutting the job down, etc. That section is repealed which **CHAIRMAN KEATING** said is a real attraction to him.


Substitute Motion: SEN. THOMAS moved to table HB 252.

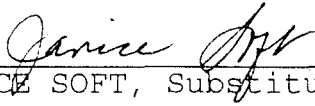
{Tape: 2; Side: A; Approx. Time Count: 4:53 p.m.}


Vote: Motion to table HB 252 carried 5 to 4 on a Roll Call Vote.

ADJOURNMENT

Adjournment: 4:54 p.m.


SEN. THOMAS F. KEATING, Chairman


JANICE SOFT, Substitute Secretary


Transcribed by GILDA CLANCY

TK/GC