

House Bill 11

In The House

January 6, 1981	Introduced and referred to Committee on Labor and Industry.
January 16, 1981	Committee recommend bill do pass as amended.
January 19, 1981	Bill printed and placed on members' desks. Second reading do pass.
January 20, 1981	Correctly engrossed. Third reading passed.

In The Senate

January 21, 1981	Introduced and referred to Committee on Labor and Employment Relations.
March 9, 1981	Committee recommend bill concurred as amended.
March 10, 1981	Second reading concurred.
March 12, 1981	Third reading not concurred.

In The House

March 13, 1981	Returned from Senate not concurred.
----------------	-------------------------------------

1 HOUSE BILL NO. 11
2 INTRODUCED BY SPILKER
3 BY REQUEST OF THE STUDY COMMITTEE ON STATE MANDATES AND
4 THE EFFECTS OF STATE-OWNED PROPERTY ON LOCAL GOVERNMENTS
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW WORK PERIODS
7 OTHER THAN 40 HOURS A WEEK TO BE ESTABLISHED BY COLLECTIVE
8 BARGAINING BETWEEN COUNTIES AND MUNICIPALITIES AND THEIR
9 EMPLOYEES' COLLECTIVE BARGAINING AGENTS; TO PROVIDE FOR
10 OVERTIME PAYMENT OR COMPENSATORY TIME OFF FOR OVER 40 HOURS'
11 AVERAGED WORKWEEKS AND OTHER SITUATIONS; ALLOWING NONEXEMPT
12 COUNTY AND MUNICIPAL EMPLOYEES TO ELECT TO RECEIVE
13 COMPENSATORY TIME OFF IN LIEU OF OVERTIME COMPENSATION;
14 AMENDING SECTION 39-3-406, MCA."
15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17 NEW SECTION. Section 1. Establishment of a local
18 government employee workweek through collective bargaining.
19 (1) A county or municipality and the collective bargaining
20 agent for employees of the county or municipality may, by
21 agreement, establish a workperiod other than the workweek
22 provided in 39-3-405 for determining when an employee must
23 be paid overtime.
24 (2) The workperiod must be expressed in multiples of
25 weeks.

1 (3) An employee who works in excess of 40 hours a week
2 averaged through the established workperiod must be paid
3 overtime at a rate of not less than 1 1/2 times the hourly
4 rate at which he is employed.
5 (4) The agreement may provide for overtime benefits in
6 addition to those required by subsection (3). The benefits,
7 including monetary compensation, compensatory time off, or a
8 combination of both, may be provided for working during
9 other determinable situations, including hours worked:
10 (a) in excess of an established workday;
11 (b) during scheduled days off; and
12 (c) on holidays.
13 NEW SECTION Section 2. Compensatory time off for
14 nonexempt local government employees. (1) County and
15 municipal employees eligible for overtime compensation under
16 Title 39, chapter 3, part 4, who are not members of a
17 collective bargaining unit, may elect to receive
18 compensatory time off in lieu of overtime compensation.
19 (2) An election to receive compensatory time off shall
20 be made by the employee on the employee's individual time
21 reporting sheet. Each workweek the employee shall have the
22 option of electing to allocate all, any, or none of the
23 overtime hours worked that workweek towards compensatory
24 time off. Overtime hours worked by the employee that he has
25 not specifically elected to be treated as compensatory time

HB 11

1 off is overtime and subject to the provisions of 39-3-405.

2 (3) Compensatory time off may be accumulated and
3 expended beyond the workweek. The employee may not accrue
4 more than 80 hours of compensatory time off. Each hour of
5 overtime worked that would, if credited towards compensatory
6 time off, cause the employee's accumulation to exceed 80
7 hours is overtime and subject to 39-3-405.

8 (4) Upon termination from employment, for whatever
9 cause, the employee shall be compensated for accrued
10 compensatory time off, not to exceed 80 hours, at a rate of
11 not less than 1 1/2 times the hourly rate at which he had
12 been employed.

13 Section 3. Section 39-3-406, MCA, is amended to read:

14 "39-3-406. Exclusions. (1) The provisions of 39-3-404
15 and 39-3-405 shall not apply with respect to:

16 (a) students participating in a distributive education
17 program established under the auspices of an accredited
18 educational agency;

19 (b) persons employed in private homes whose duties
20 consist of menial chores such as baby sitting, mowing lawns,
21 cleaning sidewalks;

22 (c) persons employed directly by the head of a
23 household to care for children dependent upon the head of
24 the household;

25 (d) immediate members of the family of an employer or

1 persons dependent upon an employer for half or more of their
2 support in the customary sense of being a dependent;

3 (e) any persons not regular employees thereof who
4 voluntarily offer their services to a nonprofit organization
5 on a fully or partially reimbursed basis;

6 (f) handicapped workers engaged in work which is
7 incidental to training or evaluation programs or whose
8 earning capacity is so severely impaired that they are
9 unable to engage in competitive employment;

10 (g) apprentices or learners, who may be exempted by the
11 commissioner for a period not to exceed 30 days of their
12 employment;

13 (h) learners under the age of 18 who are employed as
14 farm workers, provided that such exclusion shall not exceed
15 a period of 180 days from their initial date of employment
16 and further provided that during this exclusion period wages
17 paid such learners may not be less than 50% of the minimum
18 wage rate established in this part;

19 (i) retired or semiretired persons performing part-time
20 incidental work as a condition of their residence on a farm
21 or ranch;

22 (j) any individual employed in a bona fide executive,
23 administrative, or professional capacity as these terms are
24 defined and delimited by regulations of the commissioner;

25 (k) any individual employed by the United States of

1 America.

2 (2) The provisions of 39-3-405 do not apply to:

3 (a) an employee with respect to whom the United States
4 Secretary of Transportation has power to establish
5 qualifications and maximum hours of service pursuant to the
6 provisions of 49 U.S.C. 304;

7 (b) an employee of an employer subject to the
8 provisions of part I of the Interstate Commerce Act;

9 (c) an individual employed as an outside buyer of
10 poultry, eggs, cream, or milk, in their raw or natural
11 state;

12 (d) a salesman, partsman, or mechanic paid on a
13 commission or contract basis and primarily engaged in
14 selling or servicing automobiles, trucks, mobile homes,
15 recreational vehicles, or farm implements if he is employed
16 by a nonmanufacturing establishment primarily engaged in the
17 business of selling such vehicles or implements to ultimate
18 purchasers;

19 (e) a salesman primarily engaged in selling trailers,
20 boats, or aircraft if he is employed by a nonmanufacturing
21 establishment primarily engaged in the business of selling
22 trailers, boats, or aircraft to ultimate purchasers;

23 (f) an employee employed as a driver or driver's helper
24 making local deliveries who is compensated for such
25 employment on the basis of trip rates, or other delivery

1 payment plan, if the commissioner finds that such plan has
2 the general purpose and effect of reducing hours worked by
3 such employees to or below the maximum workweek applicable
4 to them under 39-3-405;

5 (g) an employee employed in agriculture or in
6 connection with the operation or maintenance of ditches,
7 canals, reservoirs, or waterways not owned or operated for
8 profit and not operated on a sharecrop basis and which are
9 used exclusively for supply and storing of water for
10 agricultural purposes;

11 (h) an employee with respect to his employment in
12 agriculture by a farmer, notwithstanding other employment of
13 such employee in connection with livestock auction
14 operations in which such farmer is engaged as an adjunct to
15 the raising of livestock, either on his own account or in
16 conjunction with other farmers, if such employee is:

17 (i) primarily employed during his workweek in
18 agriculture by such farmer; and

19 (ii) paid for his employment in connection with such
20 livestock auction operations at a wage rate not less than
21 that prescribed by 39-3-404;

22 (i) an employee of an establishment commonly recognized
23 as a country elevator, including an establishment which
24 sells products and services used in the operation of a farm,
25 if no more than five employees are employed by the

1 establishment;

2 (j) a driver employed by an employer engaged in the
3 business of operating taxicabs;

4 (k) an employee who is employed with his spouse by a
5 nonprofit educational institution to serve as the parents of
6 children who are orphans or one of whose natural parents is
7 deceased or who are enrolled in such institution and reside
8 in residential facilities of the institution so long as the
9 children are in residence at the institution and so long as
10 such employee and his spouse reside in such facilities and
11 receive, without cost, board and lodging from the
12 institution and are together compensated, on a cash basis,
13 at an annual rate of not less than \$10,000; or

14 (l) an employee employed in planting or tending trees;
15 cruising, surveying, or felling timber; or transporting logs
16 or other forestry products to a mill, processing plant,
17 railroad, or other transportation terminal if the number of
18 employees employed by his employer in such forestry or
19 lumbering operations does not exceed eight;

20 ~~(m) an employee of a county or municipality that has~~
21 ~~established a different workperiod through collective~~
22 ~~bargaining as provided in [section 11] or~~

23 ~~(n) overtime hours that an employee of a municipality~~
24 ~~or county has chosen to be credited to compensatory time off~~
25 ~~in lieu of overtime compensation as provided in [section~~

1 2]."

-End-

Approved by Committee
on Labor & Employment
Relations

HOUSE BILL NO. 11

INTRODUCED BY SPILKER

BY REQUEST OF THE STUDY COMMITTEE ON STATE MANDATES AND
THE EFFECTS OF STATE-OWNED PROPERTY ON LOCAL GOVERNMENTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW WORK PERIODS
OTHER THAN 40 HOURS A WEEK TO BE ESTABLISHED BY COLLECTIVE
BARGAINING BETWEEN COUNTIES AND MUNICIPALITIES AND THEIR
EMPLOYEES' COLLECTIVE BARGAINING AGENTS; TO PROVIDE FOR
OVERTIME PAYMENT OR COMPENSATORY TIME OFF FOR OVER 40 HOURS*
AVERAGED WORKWEEKS AND OTHER SITUATIONS; ALLOWING NONEXEMPT
COUNTY AND MUNICIPAL EMPLOYEES TO ELECT TO RECEIVE
COMPENSATORY TIME OFF IN LIEU OF OVERTIME COMPENSATION;
AMENDING SECTION 39-3-406, MCA."

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

NEW SECTION. Section 1. Establishment of a local
government employee workweek ~~WORKPERIOD~~ through collective
bargaining. (1) A county or municipality and the a
collective bargaining agent for employees of the county or
municipality may, by agreement, establish a workperiod other
than the workweek provided in 39-3-405 for determining when
an employee must be paid overtime.

(2) The workperiod must be expressed in multiples of
weeks.

(3) An employee who works in excess of 40 hours a week
averaged through the established workperiod must be paid
~~overtime at a rate of not less than 1 1/2 times the hourly
rate at which he is employed~~ COMPENSATED FOR THOSE HOURS AT
A RATE OF NOT LESS THAN 1 1/2 TIMES THE HOURLY RATE AT WHICH
HE IS EMPLOYED, OR IN ACCORDANCE WITH ANY COMPENSATING
TIME-OFF PROVISIONS OF THE AGREEMENT.

(4) The agreement may provide for overtime benefits in
addition to those required by subsection (3). The benefits,
including monetary compensation, compensatory time off, or a
combination of both, may be provided for working HOURS
WORKED during other determinable situations, including hours
worked:

- (a) in excess of an established workday;
- (b) during scheduled days off; and
- (c) on holidays.

NEW SECTION Section 2. Compensatory time off for
nonexempt local government employees WHO ARE NON-BARGAINING.
(1) County and municipal employees eligible for overtime
compensation under Title 39, chapter 3, part 4, who are not
members of a collective bargaining unit, may elect to
receive compensatory time off in lieu of overtime
compensation. COMPENSATORY TIME OFF MAY BE ACCUMULATED AND
EXPENDED BEYOND THE WORKWEEK.

(2) An election to receive compensatory time off shall

1 be made by the employee on the employee's individual time
 2 reporting sheet. Each workweek the employee shall have the
 3 option of electing to allocate all, any, or none of the
 4 overtime hours worked that workweek towards compensatory
 5 time off. Overtime hours worked by the employee that he has
 6 not specifically elected to be treated as compensatory time
 7 off is ABE overtime and subject to the provisions of
 8 39-3-405.

9 ~~{3}--Compensatory--time--off--may--be--accumulated--and~~
 10 ~~expended--beyond--the--workweek--The~~

11 NEW SECTION. SECTION 3. COMPENSATORY TIME NOT TO
 12 EXCEED EIGHTY HOURS -- COMPENSATION UPON TERMINATION. (1)
 13 AN employee, WHETHER A MEMBER OF A COLLECTIVE BARGAINING
 14 UNIT OR NOI, may not accrue more than 80 hours of
 15 compensatory time off. Each hour of overtime worked that
 16 would, if credited towards compensatory time off, cause the
 17 employee's accumulation to exceed 80 hours is overtime and
 18 subject to 39-3-405.

19 ~~{4}{2}~~ Upon termination from employment, for whatever
 20 cause, ~~the--employee~~ AN EMPLOYEE, WHETHER A MEMBER OF A
 21 COLLECTIVE BARGAINING UNIT OR NOI, shall be compensated for
 22 accrued compensatory time off, not to exceed 80 hours, at a
 23 rate of not less than 1 1/2 times the hourly rate at which
 24 he had been employed.

25 Section 4. Section 39-3-406, MCA, is amended to read:

1 "39-3-406. Exclusions. (1) The provisions of 39-3-404
 2 and 39-3-405 shall not apply with respect to:

3 (a) students participating in a distributive education
 4 program established under the auspices of an accredited
 5 educational agency;

6 (b) persons employed in private homes whose duties
 7 consist of menial chores such as baby sitting, mowing lawns,
 8 cleaning sidewalks;

9 (c) persons employed directly by the head of a
 10 household to care for children dependent upon the head of
 11 the household;

12 (d) immediate members of the family of an employer or
 13 persons dependent upon an employer for half or more of their
 14 support in the customary sense of being a dependent;

15 (e) any persons not regular employees thereof who
 16 voluntarily offer their services to a nonprofit organization
 17 on a fully or partially reimbursed basis;

18 (f) handicapped workers engaged in work which is
 19 incidental to training or evaluation programs or whose
 20 earning capacity is so severely impaired that they are
 21 unable to engage in competitive employment;

22 (g) apprentices or learners, who may be exempted by
 23 the commissioner for a period not to exceed 30 days of their
 24 employment;

25 (h) learners under the age of 18 who are employed as

1 farm workers, provided that such exclusion shall not exceed
2 a period of 180 days from their initial date of employment
3 and further provided that during this exclusion period wages
4 paid such learners may not be less than 50% of the minimum
5 wage rate established in this part;

6 (i) retired or semiretired persons performing
7 part-time incidental work as a condition of their residence
8 on a farm or ranch;

9 (j) any individual employed in a bona fide executive,
10 administrative, or professional capacity as these terms are
11 defined and delimited by regulations of the commissioner;

12 (k) any individual employed by the United States of
13 America.

14 (2) The provisions of 39-3-405 do not apply to:

15 (a) an employee with respect to whom the United States
16 Secretary of Transportation has power to establish
17 qualifications and maximum hours of service pursuant to the
18 provisions of 49 U.S.C. 304;

19 (b) an employee of an employer subject to the
20 provisions of part I of the Interstate Commerce Act;

21 (c) an individual employed as an outside buyer of
22 poultry, eggs, cream, or milk, in their raw or natural
23 state;

24 (d) a salesman, partsman, or mechanic paid on a
25 commission or contract basis and primarily engaged in

1 selling or servicing automobiles, trucks, mobile homes,
2 recreational vehicles, or farm implements if he is employed
3 by a nonmanufacturing establishment primarily engaged in the
4 business of selling such vehicles or implements to ultimate
5 purchasers;

6 (e) a salesman primarily engaged in selling trailers,
7 boats, or aircraft if he is employed by a nonmanufacturing
8 establishment primarily engaged in the business of selling
9 trailers, boats, or aircraft to ultimate purchasers;

10 (f) an employee employed as a driver or driver's
11 helper making local deliveries who is compensated for such
12 employment on the basis of trip rates, or other delivery
13 payment plan, if the commissioner finds that such plan has
14 the general purpose and effect of reducing hours worked by
15 such employees to or below the maximum workweek applicable
16 to them under 39-3-405;

17 (g) an employee employed in agriculture or in
18 connection with the operation or maintenance of ditches,
19 canals, reservoirs, or waterways not owned or operated for
20 profit and not operated on a sharecrop basis and which are
21 used exclusively for supply and storing of water for
22 agricultural purposes;

23 (h) an employee with respect to his employment in
24 agriculture by a farmer, notwithstanding other employment of
25 such employee in connection with livestock auction

1 operations in which such farmer is engaged as an adjunct to
 2 the raising of livestock, either on his own account or in
 3 conjunction with other farmers, if such employee is:

4 (i) primarily employed during his workweek in
 5 agriculture by such farmer; and

6 (ii) paid for his employment in connection with such
 7 livestock auction operations at a wage rate not less than
 8 that prescribed by 39-3-404;

9 (i) an employee of an establishment commonly
 10 recognized as a country elevator, including an establishment
 11 which sells products and services used in the operation of a
 12 farm, if no more than five employees are employed by the
 13 establishment;

14 (j) a driver employed by an employer engaged in the
 15 business of operating taxicabs;

16 (k) an employee who is employed with his spouse by a
 17 nonprofit educational institution to serve as the parents of
 18 children who are orphans or one of whose natural parents is
 19 deceased or who are enrolled in such institution and reside
 20 in residential facilities of the institution so long as the
 21 children are in residence at the institution and so long as
 22 such employee and his spouse reside in such facilities and
 23 receive, without cost, board and lodging from the
 24 institution and are together compensated, on a cash basis,
 25 at an annual rate of not less than \$10,000; or

1 (l) an employee employed in planting or tending trees;
 2 cruising, surveying, or felling timber; or transporting logs
 3 or other forestry products to a mill, processing plant,
 4 railroad, or other transportation terminal if the number of
 5 employees employed by his employer in such forestry or
 6 lumbering operations does not exceed eight;

7 ~~(m) an employee of a county or municipality that has~~
 8 ~~established a different workperiod through collective~~
 9 ~~bargaining as provided in [section 1]; or~~

10 ~~(n) overtime hours that an employee of a municipality~~
 11 ~~or county has chosen to be credited to compensatory time off~~
 12 ~~in lieu of overtime compensation as provided in [section~~
 13 ~~2]."~~

-End-

1 HOUSE BILL NO. 11

2 INTRODUCED BY SPILKER

3 BY REQUEST OF THE STUDY COMMITTEE ON STATE MANDATES AND
4 THE EFFECTS OF STATE-OWNED PROPERTY ON LOCAL GOVERNMENTS

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW WORK PERIODS
7 OTHER THAN 40 HOURS A WEEK TO BE ESTABLISHED BY COLLECTIVE
8 BARGAINING BETWEEN COUNTIES AND MUNICIPALITIES AND THEIR
9 EMPLOYEES' COLLECTIVE BARGAINING AGENTS; TO PROVIDE FOR
10 OVERTIME PAYMENT OR COMPENSATORY TIME OFF FOR OVER 40 HOURS'
11 AVERAGED WORKWEEKS AND OTHER SITUATIONS; ALLOWING NONEXEMPT
12 COUNTY AND MUNICIPAL EMPLOYEES TO ELECT TO RECEIVE
13 COMPENSATORY TIME OFF IN LIEU OF OVERTIME COMPENSATION;
14 AMENDING SECTION 39-3-406, MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 NEW SECTION. Section 1. Establishment of a local
18 government employee workweek WORKPERIOD through collective
19 bargaining. (1) A county or municipality and the A
20 collective bargaining agent for employees of the county or
21 municipality may, by agreement, establish a workperiod other
22 than the workweek provided in 39-3-405 for determining when
23 an employee must be paid overtime.

24 (2) The workperiod must be expressed in multiples of
25 weeks.

1 (3) An employee who works in excess of 40 hours a week
2 averaged through the established workperiod must be paid
3 ~~overtime at a rate of not less than 1 1/2 times the hourly~~
4 ~~rate at which he is employed~~ COMPENSATED FOR THOSE HOURS AT
5 A RATE OF NOT LESS THAN 1 1/2 TIMES THE HOURLY RATE AT WHICH
6 HE IS EMPLOYED, OR IN ACCORDANCE WITH ANY COMPENSATING
7 TIME-OFF PROVISIONS OF THE AGREEMENT.

8 (4) The agreement may provide for overtime benefits in
9 addition to those required by subsection (3). The benefits,
10 including monetary compensation, compensatory time off, or a
11 combination of both, may be provided for working HOURS
12 WORKED during other determinable situations, including hours
13 worked:

14 (a) in excess of an established workday;

15 (b) during scheduled days off; and

16 (c) on holidays.

17 NEW SECTION Section 2. Compensatory time off for
18 nonexempt local government employees WHO ARE NON-BARGAINING.
19 (1) County and municipal employees eligible for overtime
20 compensation under Title 39, chapter 3, part 4, who are not
21 members of a collective bargaining unit, may elect to
22 receive compensatory time off in lieu of overtime
23 compensation. COMPENSATORY TIME OFF MAY BE ACCUMULATED AND
24 EXPENDED BEYOND THE WORKWEEK.

25 (2) An election to receive compensatory time off shall

1 be made by the employee on the employee's individual time
 2 reporting sheet. Each workweek the employee shall have the
 3 option of electing to allocate all, any, or none of the
 4 overtime hours worked that workweek towards compensatory
 5 time off. Overtime hours worked by the employee that he has
 6 not specifically elected to be treated as compensatory time
 7 off ~~is~~ ARE overtime and subject to the provisions of
 8 39-3-405.

9 ~~{3}--Compensatory--time--off--may--be--accumulated--and~~
 10 ~~expended--beyond--the--workweek--The~~

11 NEW SECTION. SECTION 3. COMPENSATORY TIME NOT TO
 12 EXCEED EIGHTY HOURS -- COMPENSATION UPON TERMINATION. (1)
 13 AN employee, WHETHER A MEMBER OF A COLLECTIVE BARGAINING
 14 UNIT OR NOT, may not accrue more than 80 hours of
 15 compensatory time off. Each hour of overtime worked that
 16 would, if credited towards compensatory time off, cause the
 17 employee's accumulation to exceed 80 hours is overtime and
 18 subject to 39-3-405.

19 ~~{4}{2}~~ Upon termination from employment, for whatever
 20 cause, ~~the--employee~~ AN EMPLOYEE, WHETHER A MEMBER OF A
 21 COLLECTIVE BARGAINING UNIT OR NOT, shall be compensated for
 22 accrued compensatory time off, not to exceed 80 hours, at a
 23 rate of not less than 1 1/2 times the hourly rate at which
 24 he had been employed.

25 Section 4. Section 39-3-406, MCA, is amended to read:

1 "39-3-406. Exclusions. (1) The provisions of 39-3-404
 2 and 39-3-405 shall not apply with respect to:

3 (a) students participating in a distributive education
 4 program established under the auspices of an accredited
 5 educational agency;

6 (b) persons employed in private homes whose duties
 7 consist of menial chores such as baby sitting, mowing lawns,
 8 cleaning sidewalks;

9 (c) persons employed directly by the head of a
 10 household to care for children dependent upon the head of
 11 the household;

12 (d) immediate members of the family of an employer or
 13 persons dependent upon an employer for half or more of their
 14 support in the customary sense of being a dependent;

15 (e) any persons not regular employees thereof who
 16 voluntarily offer their services to a nonprofit organization
 17 on a fully or partially reimbursed basis;

18 (f) handicapped workers engaged in work which is
 19 incidental to training or evaluation programs or whose
 20 earning capacity is so severely impaired that they are
 21 unable to engage in competitive employment;

22 (g) apprentices or learners, who may be exempted by
 23 the commissioner for a period not to exceed 30 days of their
 24 employment;

25 (h) learners under the age of 18 who are employed as

1 farm workers, provided that such exclusion shall not exceed
 2 a period of 180 days from their initial date of employment
 3 and further provided that during this exclusion period wages
 4 paid such learners may not be less than 50% of the minimum
 5 wage rate established in this part;

6 (i) retired or semiretired persons performing
 7 part-time incidental work as a condition of their residence
 8 on a farm or ranch;

9 (j) any individual employed in a bona fide executive,
 10 administrative, or professional capacity as these terms are
 11 defined and delimited by regulations of the commissioner;

12 (k) any individual employed by the United States of
 13 America.

14 (2) The provisions of 39-3-405 do not apply to:

15 (a) an employee with respect to whom the United States
 16 Secretary of Transportation has power to establish
 17 qualifications and maximum hours of service pursuant to the
 18 provisions of 49 U.S.C. 304;

19 (b) an employee of an employer subject to the
 20 provisions of part I of the Interstate Commerce Act;

21 (c) an individual employed as an outside buyer of
 22 poultry, eggs, cream, or milk, in their raw or natural
 23 state;

24 (d) a salesman, partsman, or mechanic paid on a
 25 commission or contract basis and primarily engaged in

1 selling or servicing automobiles, trucks, mobile homes,
 2 recreational vehicles, or farm implements if he is employed
 3 by a nonmanufacturing establishment primarily engaged in the
 4 business of selling such vehicles or implements to ultimate
 5 purchasers;

6 (e) a salesman primarily engaged in selling trailers,
 7 boats, or aircraft if he is employed by a nonmanufacturing
 8 establishment primarily engaged in the business of selling
 9 trailers, boats, or aircraft to ultimate purchasers;

10 (f) an employee employed as a driver or driver's
 11 helper making local deliveries who is compensated for such
 12 employment on the basis of trip rates, or other delivery
 13 payment plan, if the commissioner finds that such plan has
 14 the general purpose and effect of reducing hours worked by
 15 such employees to or below the maximum workweek applicable
 16 to them under 39-3-405;

17 (g) an employee employed in agriculture or in
 18 connection with the operation or maintenance of ditches,
 19 canals, reservoirs, or waterways not owned or operated for
 20 profit and not operated on a sharecrop basis and which are
 21 used exclusively for supply and storing of water for
 22 agricultural purposes;

23 (h) an employee with respect to his employment in
 24 agriculture by a farmer, notwithstanding other employment of
 25 such employee in connection with livestock auction

1 operations in which such farmer is engaged as an adjunct to
 2 the raising of livestock, either on his own account or in
 3 conjunction with other farmers, if such employee is:

4 (i) primarily employed during his workweek in
 5 agriculture by such farmer; and

6 (ii) paid for his employment in connection with such
 7 livestock auction operations at a wage rate not less than
 8 that prescribed by 39-3-404;

9 (i) an employee of an establishment commonly
 10 recognized as a country elevator, including an establishment
 11 which sells products and services used in the operation of a
 12 farm, if no more than five employees are employed by the
 13 establishment;

14 (j) a driver employed by an employer engaged in the
 15 business of operating taxicabs;

16 (k) an employee who is employed with his spouse by a
 17 nonprofit educational institution to serve as the parents of
 18 children who are orphans or one of whose natural parents is
 19 deceased or who are enrolled in such institution and reside
 20 in residential facilities of the institution so long as the
 21 children are in residence at the institution and so long as
 22 such employee and his spouse reside in such facilities and
 23 receive, without cost, board and lodging from the
 24 institution and are together compensated, on a cash basis,
 25 at an annual rate of not less than \$10,000; or

1 (l) an employee employed in planting or tending trees;
 2 cruising, surveying, or felling timber; or transporting logs
 3 or other forestry products to a mill, processing plant,
 4 railroad, or other transportation terminal if the number of
 5 employees employed by his employer in such forestry or
 6 lumbering operations does not exceed eight;

7 ~~(m) an employee of a county or municipality that has~~
 8 ~~established a different workperiod through collective~~
 9 ~~bargaining as provided in [section 1]; or~~

10 ~~(n) overtime hours that an employee of a municipality~~
 11 ~~or county has chosen to be credited to compensatory time off~~
 12 ~~in lieu of overtime compensation as provided in [section~~
 13 ~~2]."~~

-End-

1 HOUSE BILL NO. 11

2 INTRODUCED BY SPILKER

3 BY REQUEST OF THE STUDY COMMITTEE ON STATE MANDATES AND
4 THE EFFECTS OF STATE-OWNED PROPERTY ON LOCAL GOVERNMENTS5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW WORK PERIODS
7 OTHER THAN 40 HOURS A WEEK TO BE ESTABLISHED BY COLLECTIVE
8 BARGAINING BETWEEN COUNTIES AND MUNICIPALITIES AND THEIR
9 EMPLOYEES' COLLECTIVE BARGAINING AGENTS; TO PROVIDE FOR
10 OVERTIME PAYMENT OR COMPENSATORY TIME OFF FOR OVER 40 HOURS'
11 AVERAGED WORKWEEKS WORKPERIODS AND OTHER-SITUATIONS FOR OVER
12 40-HOUR WORKWEEKS; ALLOWING NONEXEMPT COUNTY AND MUNICIPAL
13 EMPLOYEES TO ELECT TO RECEIVE COMPENSATORY TIME OFF IN LIEU
14 OF OVERTIME COMPENSATION; AMENDING SECTION 39-3-406, MCA."15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:17 NEW SECTION. Section 1. Establishment of a local
18 government employee workweek WORKPERIOD through collective
19 bargaining. (1) A county or municipality and the A
20 collective bargaining agent for employees of the county or
21 municipality may, by agreement, establish a workperiod other
22 than the workweek provided in 39-3-405 for determining when
23 an employee must be paid overtime.24 (2) The workperiod must be expressed in multiples of
25 weeks.1 (3) An employee who works in excess of 40 hours a week
2 averaged through the established workperiod must be paid
3 ~~overtime at a rate of not less than 1 1/2 times the hourly~~
4 ~~rate at which he is employed~~ COMPENSATED FOR THOSE HOURS AT
5 A RATE OF NOT LESS THAN 1 1/2 TIMES THE HOURLY RATE AT WHICH
6 HE IS EMPLOYED, OR IN ACCORDANCE WITH ANY COMPENSATING
7 TIME-OFF PROVISIONS OF THE AGREEMENT.8 (4) The agreement may provide for overtime benefits in
9 addition to those required by subsection (3). The benefits,
10 including monetary compensation, compensatory time off, or a
11 combination of both, may be provided for working HOURS
12 WORKED during other determinable situations, including hours
13 worked:

- 14 (a) in excess of an established workday;
-
- 15 (b) during scheduled days off; and
-
- 16 (c) on holidays.

17 NEW SECTION. Section 2. Compensatory time off for
18 nonexempt local government employees WHO ARE NONBARGAINING.
19 (1) County and municipal employees eligible for overtime
20 compensation under Title 39, chapter 3, part 4, who are not
21 members of a collective bargaining unit, may elect to
22 receive compensatory time off in lieu of overtime
23 compensation. COMPENSATORY TIME OFF MAY BE ACCUMULATED AND
24 EXPENDED BEYOND THE WORKWEEK.

25 (2) An election to receive compensatory time off shall

1 be made by the employee on the ~~employee's individual time~~
 2 ~~reporting sheets. Each workweek the employee shall have the~~
 3 ~~option of electing to allocate all, any, or none of the~~
 4 ~~overtime hours worked that workweek towards compensatory~~
 5 ~~time off AN ANNUAL BASIS ON A FORM AND AT A TIME DESIGNATED~~
 6 ~~BY THE COUNTY OR MUNICIPAL EMPLOYER.~~ Overtime hours worked
 7 by the employee that he has not specifically elected to be
 8 treated as compensatory time off is ARE overtime and subject
 9 to the provisions of 39-3-405.

10 ~~(3) Compensatory time off may be accumulated and~~
 11 ~~expended beyond the workweek. The~~

12 NEW SECTION. SECTION 3. COMPENSATORY TIME ~~NOT TO~~
 13 ~~EXCEED EIGHTY HOURS. COMPENSATION UPON TERMINATION~~
 14 ~~DETERMINED BY THE LOCAL GOVERNING BODY OF A COUNTY OR~~
 15 ~~MUNICIPALITY. (1) AN employee, WHETHER A MEMBER OF A~~
 16 ~~COLLECTIVE BARGAINING UNIT OR NOT, may not accrue more than~~
 17 ~~80 hours of compensatory time off. Each hour of overtime~~
 18 ~~worked that would, if credited towards compensatory time~~
 19 ~~off, cause the employee's accumulation to exceed 80 hours is~~
 20 ~~overtime and subject to 39-3-405. (1) THE LOCAL GOVERNING~~
 21 ~~BODY OF A COUNTY OR MUNICIPALITY SHALL SET THE MAXIMUM~~
 22 ~~NUMBER OF HOURS THAT MAY BE ACCRUED AS COMPENSATORY TIME OFF~~
 23 ~~BY A LOCAL GOVERNMENT EMPLOYEE WHETHER OR NOT THE EMPLOYEE~~
 24 ~~IS A MEMBER OF A COLLECTIVE BARGAINING UNIT.~~

25 ~~(4)(2)~~ Upon termination from employment, for whatever

1 cause, the ~~employee~~ AN EMPLOYEE, WHETHER A MEMBER OF A
 2 COLLECTIVE BARGAINING UNIT OR NOT, shall be compensated for
 3 accrued compensatory time off, ~~not to exceed 80 hours,~~ at a
 4 rate of not less than 1 1/2 times the hourly rate at which
 5 he had been employed.

6 Section 4. Section 39-3-406, MCA, is amended to read:

7 *39-3-406. Exclusions. (1) The provisions of 39-3-404
 8 and 39-3-405 shall not apply with respect to:

9 (a) students participating in a distributive education
 10 program established under the auspices of an accredited
 11 educational agency;

12 (b) persons employed in private homes whose duties
 13 consist of menial chores such as baby sitting, mowing lawns,
 14 cleaning sidewalks;

15 (c) persons employed directly by the head of a
 16 household to care for children dependent upon the head of
 17 the household;

18 (d) immediate members of the family of an employer or
 19 persons dependent upon an employer for half or more of their
 20 support in the customary sense of being a dependent;

21 (e) any persons not regular employees thereof who
 22 voluntarily offer their services to a nonprofit organization
 23 on a fully or partially reimbursed basis;

24 (f) handicapped workers engaged in work which is
 25 incidental to training or evaluation programs or whose

1 earning capacity is so severely impaired that they are
2 unable to engage in competitive employment;

3 (g) apprentices or learners, who may be exempted by
4 the commissioner for a period not to exceed 30 days of their
5 employment;

6 (h) learners under the age of 18 who are employed as
7 farm workers, provided that such exclusion shall not exceed
8 a period of 180 days from their initial date of employment
9 and further provided that during this exclusion period wages
10 paid such learners may not be less than 50% of the minimum
11 wage rate established in this part;

12 (i) retired or semiretired persons performing
13 part-time incidental work as a condition of their residence
14 on a farm or ranch;

15 (j) any individual employed in a bona fide executive,
16 administrative, or professional capacity as these terms are
17 defined and delimited by regulations of the commissioner;

18 (k) any individual employed by the United States of
19 America.

20 (2) The provisions of 39-3-405 do not apply to:

21 (a) an employee with respect to whom the United States
22 Secretary of Transportation has power to establish
23 qualifications and maximum hours of service pursuant to the
24 provisions of 49 U.S.C. 304;

25 (b) an employee of an employer subject to the

1 provisions of part I of the Interstate Commerce Act;

2 (c) an individual employed as an outside buyer of
3 poultry, eggs, cream, or milk, in their raw or natural
4 state;

5 (d) a salesman, partsman, or mechanic paid on a
6 commission or contract basis and primarily engaged in
7 selling or servicing automobiles, trucks, mobile homes,
8 recreational vehicles, or farm implements if he is employed
9 by a nonmanufacturing establishment primarily engaged in the
10 business of selling such vehicles or implements to ultimate
11 purchasers;

12 (e) a salesman primarily engaged in selling trailers,
13 boats, or aircraft if he is employed by a nonmanufacturing
14 establishment primarily engaged in the business of selling
15 trailers, boats, or aircraft to ultimate purchasers;

16 (f) an employee employed as a driver or driver's
17 helper making local deliveries who is compensated for such
18 employment on the basis of trip rates, or other delivery
19 payment plan, if the commissioner finds that such plan has
20 the general purpose and effect of reducing hours worked by
21 such employees to or below the maximum workweek applicable
22 to them under 39-3-405;

23 (g) an employee employed in agriculture or in
24 connection with the operation or maintenance of ditches,
25 canals, reservoirs, or waterways not owned or operated for

1 profit and not operated on a sharecrop basis and which are
2 used exclusively for supply and storing of water for
3 agricultural purposes;

4 (h) an employee with respect to his employment in
5 agriculture by a farmer, notwithstanding other employment of
6 such employee in connection with livestock auction
7 operations in which such farmer is engaged as an adjunct to
8 the raising of livestock, either on his own account or in
9 conjunction with other farmers, if such employee is:

10 (i) primarily employed during his workweek in
11 agriculture by such farmer; and

12 (ii) paid for his employment in connection with such
13 livestock auction operations at a wage rate not less than
14 that prescribed by 39-3-404;

15 (i) an employee of an establishment commonly
16 recognized as a country elevator, including an establishment
17 which sells products and services used in the operation of a
18 farm, if no more than five employees are employed by the
19 establishment;

20 (j) a driver employed by an employer engaged in the
21 business of operating taxicabs;

22 (k) an employee who is employed with his spouse by a
23 nonprofit educational institution to serve as the parents of
24 children who are orphans or one of whose natural parents is
25 deceased or who are enrolled in such institution and reside

1 in residential facilities of the institution so long as the
2 children are in residence at the institution and so long as
3 such employee and his spouse reside in such facilities and
4 receive, without cost, board and lodging from the
5 institution and are together compensated, on a cash basis,
6 at an annual rate of not less than \$10,000; or

7 (l) an employee employed in planting or tending trees;
8 cruising, surveying, or felling timber; or transporting logs
9 or other forestry products to a mill, processing plant,
10 railroad, or other transportation terminal if the number of
11 employees employed by his employer in such forestry or
12 lumbering operations does not exceed eight;

13 (m) an employee of a county or municipality that has
14 established a different workperiod through collective
15 bargaining as provided in [section 1]; or

16 (n) overtime hours that an employee of a municipality
17 or county has chosen to be credited to compensatory time off
18 in lieu of overtime compensation as provided in [section
19 2]."

-End-

March 9, 1981

SENATE STANDING COMMITTEE REPORT
(Labor & Employment Relations)

That House Bill No. 11 be amended as follows:

1. Title, line 11.

Following: "AVERAGED"

Strike: "WORKWEEKS"

Insert: "WORKPERIODS"

Following: "AND"

Strike: "OTHER SITUATIONS"

Insert: "FOR OVER 40 HOUR WORKWEEKS."

2. Page 3, lines 1 through 5.

Following: "on" on line 1

Strike: the remainder of line 1 through "off" on line 5

Insert: "an annual basis on a form and at a time designated by the
county or municipal employer"

3. Page 3, lines 11 through 18.

Following: "TIME" on line 11

Strike: the remainder of lines 11 through 18

Insert: "determined by the local governing body of a county or
municipality. (1) The local governing body of a county or
municipality shall set the maximum number of hours that may be
accrued as compensatory time off by a local government employee
whether or not the employee is a member of a collective bargaining
unit"

4. Page 3, line 22.

Following: "off"

Strike: ", not to exceed 80 hours,"