

SENATE BILL NO. 276

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE SENATE

JANUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 7, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 8, 1989	PRINTING REPORT.
FEBRUARY 9, 1989	SECOND READING, DO PASS.
FEBRUARY 10, 1989	ENGROSSING REPORT.
FEBRUARY 11, 1989	THIRD READING, PASSED. AYES, 46; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
FEBRUARY 20, 1989	FIRST READING.
MARCH 13, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 16, 1989	SECOND READING, CONCURRED IN.
MARCH 18, 1989	THIRD READING, CONCURRED IN. AYES, 89; NOES, 2.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 1, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 3, 1989

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 5, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *276*
2 INTRODUCED BY *Blaylock*
3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
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5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE BOARD
6 OF PERSONNEL APPEALS AS A REVIEW BOARD FOR WAGE CLAIMS;
7 REVISING WAGE CLAIM PROCEDURES; INCLUDING ALL PREVAILING
8 WAGE CASES UNDER WAGE CLAIM REVIEW PROCEDURES; AMENDING
9 SECTIONS 18-2-407, 39-3-201, AND 39-3-212, MCA; AND
10 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."
11

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

13 **Section 1.** Section 39-3-201, MCA, is amended to read:

14 "39-3-201. Definitions. The following are the
15 definitions used for the purpose of this part:

16 (1) "Board" means the board of personnel appeals
17 provided for in 2-15-1705.

18 (2) "Commissioner of labor" refers to the director,
19 commissioner, or chief of the labor department of labor and
20 industry as such the department is defined by law, or any
21 person or persons designated by him for the purpose of this
22 part.

23 (3) "Department" means the department of labor and
24 industry as provided for in 2-15-1701.

25 (4) "Employ" means permit or suffer to work.

1 ~~(3)~~(5) "Employee" includes any person who works for
2 another for hire.

3 ~~(4)~~(6) "Employer" includes any individual,
4 partnership, association, corporation, business trust, legal
5 representative, or any organized group of persons acting
6 directly or indirectly in the interest of an employer in
7 relation to an employee but shall not include the United
8 States.

9 ~~(5)~~(7) "Wages" includes any money due an employee from
10 the employer or employers, whether to be paid by the hour,
11 day, week, semimonthly, monthly, or yearly and shall include
12 bonus, piecework, tips, and gratuities of any kind."

13 **NEW SECTION. Section 2. Hearing.** (1) When the
14 commissioner determines that a wage claim exists and if he
15 fails to settle the claim with the parties, he shall cause
16 the matter to be brought to a hearing before a department
17 hearings officer. The hearing must be conducted according to
18 contested case procedures under Title 2, chapter 4, part 6,
19 except that the hearings officer is not bound by statutory
20 or common-law rules of evidence.

21 (2) The decision of the hearings officer is final
22 unless further review is initiated pursuant to [section 3]
23 within 15 days after the decision is mailed to each party's
24 last-known address. The period may be extended by the board
25 for good cause.

1 NEW SECTION. Section 3. Appeal to board. If a party
 2 is aggrieved by the decision of the hearings officer, he may
 3 appeal the decision to the board of personnel appeals. The
 4 hearing before the board is for review only, and the
 5 submission of new or cumulative evidence is not allowed
 6 unless the board finds that good cause is shown for the
 7 failure to produce the evidence before the hearings officer.
 8 When a decision is rendered by the board, the board shall
 9 mail copies of the decision to each interested party at his
 10 last-known address, and to the department. The decision is
 11 final unless an aggrieved party requests a rehearing or
 12 initiates judicial review, pursuant to Title 2, chapter 4,
 13 part 7, by filing a petition in district court within 30
 14 days of the date of mailing of the board's decision.

15 **Section 4.** Section 39-3-212, MCA, is amended to read:
 16 "39-3-212. Court enforcement of commissioner's
 17 determination administrative decision. ~~A-determination-by~~
 18 ~~the-commissioner-of-labor-and-industry-made-after-a-hearing~~
 19 ~~as--provided-for-in-parts-2-and-4-of-this-chapter~~ A decision
 20 of the hearings officer, if the decision is not appealed to
 21 the board, or a decision of the board, if judicial review is
 22 not sought, may be enforced by application by the
 23 commissioner to a district court for an order or judgment
 24 enforcing the ~~determination-if-the-time-provided-to-initiate~~
 25 ~~judicial--review--by--the--employer-has-passed~~ decision. The

1 commissioner shall apply to the district court where the
 2 employer has its principal place of business or in the first
 3 judicial district of the state. A proceeding under this
 4 section is not a review of the validity of the
 5 commissioner's-determination administrative decision."

6 NEW SECTION. Section 5. Continuing jurisdiction of
 7 commissioner. For all wage claims filed, the commissioner
 8 has continuing jurisdiction to revise, modify, alter,
 9 cancel, and amend all orders, findings, and determinations
 10 made by the department at any time. The commissioner does
 11 not lose jurisdiction unless and until the jurisdiction of a
 12 claim and its subject matter has been taken by a court of
 13 competent jurisdiction as provided for in [sections 3 and
 14 4].

15 **Section 6.** Section 18-2-407, MCA, is amended to read:
 16 "18-2-407. Forfeiture for failure to pay prevailing
 17 wages. (1) Any contractor, subcontractor, or employer who
 18 shall pay workers or employees at less than the standard
 19 prevailing wage as established under the public works
 20 contract shall forfeit to the contracting agency the sum of
 21 \$25 a day for each worker so underpaid.

22 (2) Whenever it shall appear to the contracting agency
 23 or to the Montana commissioner of labor that there are
 24 insufficient moneys due to the contractor or the employer
 25 under the terms of the contract to cover such penalties, the

1 Montana commissioner of labor may, within 90 days after the
2 filing of notice of completion of the project and its
3 acceptance by the contracting agency, maintain an action in
4 district court to recover all such penalties and forfeitures
5 due. Nothing in this part shall prevent the individual
6 worker who has been underpaid or the commissioner of labor
7 on behalf of all the underpaid workers from maintaining an
8 action for recovery of the wages due under the contract as
9 provided in Title 39, chapter 3, part 2."

10 NEW SECTION. **Section 7. Extension of authority.** Any
11 existing authority to make rules on the subject of the
12 provisions of [this act] is extended to the provisions of
13 [this act].

14 NEW SECTION. **Section 8. Codification instruction.**
15 [Sections 2, 3, and 5] are intended to be codified as an
16 integral part of Title 39, chapter 3, part 2, and the
17 provisions of Title 39, chapter 3, part 2, apply to
18 [sections 2, 3, and 5].

19 NEW SECTION. **Section 9. Effective date.** [This act] is
20 effective July 1, 1989.

21 NEW SECTION. **Section 10. Applicability.** [This act]
22 applies to all wage claims filed with the department after
23 July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB276, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an Act entitled: "An Act establishing the Board of Personnel Appeals as a review board for wage claims; revising wage claim procedures; including all prevailing wage cases under wage claim review procedures; amending Sections 18-2-407, and 39-3-212, MCA; and providing an immediate effective date."

ASSUMPTIONS:

1. Five board members will require one additional meeting day while in Helena to serve in a review capacity for wage claims for each monthly meeting of the Board of Personnel Appeals;
2. Per diem costs for each board member is \$50/day;
3. Five board members x 12 monthly meetings x \$50/day = \$3,000.

FISCAL IMPACT:

	<u>Current</u>	<u>FY90</u>		<u>Current</u>	<u>FY91</u>	
<u>Expenditures:</u>	<u>Law</u>	<u>Proposed</u>	<u>Difference</u>	<u>Law</u>	<u>Proposed</u>	<u>Difference</u>
		<u>Law</u>			<u>Law</u>	
Federal & Private Special Revenue	\$ -0-	\$3,000	\$3,000	\$ -0-	\$3,000	\$3,000

Ray Shackleford 2/3/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Chet Blaylock 2/3/89
CHET BLAYLOCK, PRIMARY SPONSOR DATE

Fiscal Note for SB276, as introduced

SB 276

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 3 appeal the decision to the board of personnel appeals. The
 4 hearing before the board is for review only, and the
 5 submission of new or cumulative evidence is not allowed
 6 unless the board finds that good cause is shown for the
 7 failure to produce the evidence before the hearings officer.
 8 When a decision is rendered by the board, the board shall
 9 mail copies of the decision to each interested party at his
 10 last-known address, and to the department. The decision is
 11 final unless an aggrieved party requests a rehearing or
 12 initiates judicial review, pursuant to Title 2, chapter 4,
 13 part 7, by filing a petition in district court within 30
 14 days of the date of mailing of the board's decision.

15 **Section 4.** Section 39-3-212, MCA, is amended to read:

16 "39-3-212. Court enforcement of commissioner's
 17 determination administrative decision. A-determination-by
 18 the-commissioner-of-labor-and-industry-made-after-a--hearing
 19 as--provided-for-in-parts-2-and-4-of-this-chapter A decision
 20 of the hearings officer, if the decision is not appealed to
 21 the board, or a decision of the board, if judicial review is
 22 not sought, may be enforced by application by the
 23 commissioner to a district court for an order or judgment
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1 commissioner shall apply to the district court where the
 2 employer has its principal place of business or in the first
 3 judicial district of the state. A proceeding under this
 4 section is not a review of the validity of the
 5 commissioner's-determination administrative decision."

6 **NEW SECTION. Section 5.** Continuing jurisdiction of
 7 commissioner. For all wage claims filed, the commissioner
 8 has continuing jurisdiction to revise, modify, alter,
 9 cancel, and amend all orders, findings, and determinations
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 11 not lose jurisdiction unless and until the jurisdiction of a
 12 claim and its subject matter has been taken by a court of
 13 competent jurisdiction as provided for in [sections 3 and
 14 4].

15 **Section 6.** Section 18-2-407, MCA, is amended to read:

16 "18-2-407. Forfeiture for failure to pay prevailing
 17 wages. (1) Any contractor, subcontractor, or employer who
 18 shall pay workers or employees at less than the standard
 19 prevailing wage as established under the public works
 20 contract shall forfeit to the contracting agency the sum of
 21 \$25 a day for each worker so underpaid.

22 (2) Whenever it shall appear to the contracting agency
 23 or to the Montana commissioner of labor that there are
 24 insufficient moneys due to the contractor or the employer
 25 under the terms of the contract to cover such penalties, the

1 Montana commissioner of labor may, within 90 days after the
2 filing of notice of completion of the project and its
3 acceptance by the contracting agency, maintain an action in
4 district court to recover all such penalties and forfeitures
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6 worker who has been underpaid or the commissioner of labor
7 on behalf of all the underpaid workers from maintaining an
8 action for recovery of the wages due under the contract as
9 provided in Title 39, chapter 3, part 2."

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11 existing authority to make rules on the subject of the
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13 [this act].

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16 integral part of Title 39, chapter 3, part 2, and the
17 provisions of Title 39, chapter 3, part 2, apply to
18 [sections 2, 3, and 5].

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 19 commissioner, or chief of the ~~labor~~ department of labor and
 20 industry as ~~such~~ the department is defined by law, or any
 21 person or persons designated by him for the purpose of this
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-End-

STANDING COMMITTEE REPORT

March 13, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that SENATE BILL 276 (third reading copy -- blue) be concurred in as amended .

Signed: _____


Angela Russell, Chairman

[REP. DRISCOLL WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 2, line 14.
Strike: "commissioner"
Insert: "department"
2. Page 2, line 14 and line 15.
Strike: "he" in both instances
Insert: "it" in both instances
3. Page 4, lines 6 through 14.
Strike: section 5 in its entirety
Renumber: subsequent sections
4. Page 5, lines 15 and 18.
Following: "2"
Strike: ", "
Insert: "and"
Following: "3"
Strike: ", and 5"

HOUSE ?

SB 276

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