

*M. M. M.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Senate BILL NO. 233

INTRODUCED BY

*Richard D. Steen*  
*HARP*  
*Bitney*

*Leenan*  
*DENNY*  
*Mills*  
*Thompson*

A BILL FOR AN ACT ENTITLED: "AN ACT DENYING UNEMPLOYMENT INSURANCE BENEFITS TO NONPROFESSIONAL SCHOOL EMPLOYEES EMPLOYED BY A PRIVATE CONTRACTOR IF THE SERVICES WERE PROVIDED PURSUANT TO A CONTRACT BETWEEN AN EMPLOYER AND THE EDUCATIONAL INSTITUTION AND THE CONTRACT WAS FOR SERVICES THAT COULD HAVE BEEN PERFORMED BY THE EDUCATIONAL INSTITUTION'S EMPLOYEES; AMENDING SECTION 39-51-2108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 39-51-2108, MCA, is amended to read:

"39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. (1) Benefits based on service in employment defined in ~~subsections (5) and (6) of 39-51-203(5) and (6) and subsections (2) and (3) of 39-51-204(2) and (3)~~ are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment ~~which~~ that begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract or reasonable assurance of a contract to perform services in any ~~such~~ capacity for any ~~such~~ educational institution for both ~~such~~ academic years or both ~~such~~ terms.

(2) Benefits based on services in any other capacity for an educational institution ~~shall~~ must be denied to any individual for any week ~~which~~ that commences during a period between 2 successive academic years or terms if the individual performs ~~such~~ services in the first of ~~such~~ the academic years or terms and there is a reasonable assurance that the individual will perform ~~such~~ the services in the second of ~~such~~ the academic years or terms. If any individual is denied benefits and was not offered an opportunity to perform ~~such~~ the service for the educational institution for the second of ~~such~~ the academic years or



1 terms, ~~such~~ the individual ~~shall be~~ is entitled to a retroactive payment of the benefits for each week for  
 2 which the individual filed a timely claim for benefits and for which benefits were denied ~~solely by reason~~  
 3 ~~of the denial provided for in~~ pursuant to this section.

4 (3) Benefits based on services described in subsections (1) and (2) ~~of this section shall~~ must be  
 5 denied to any individual for any week ~~which that~~ commences during an established and customary vacation  
 6 period or holiday recess if ~~such~~ the individual performs ~~such~~ the services in the period immediately before  
 7 ~~such~~ the vacation period or holiday recess and there is reasonable assurance that ~~such~~ the individual will  
 8 perform ~~such~~ the service in the period immediately following ~~such~~ the vacation period or holiday recess.

9 (4) Benefits based on services described in subsections (1) and (2) ~~of this section~~ to an individual  
 10 who performed ~~such~~ services for an educational institution while in the employ of an educational service  
 11 agency ~~shall~~ must be denied as specified in subsections (1), ~~(2), and~~ through (3) ~~of this section~~. The term  
 12 "educational service agency" means a governmental agency or governmental entity ~~which that~~ is  
 13 established and operated exclusively for the purpose of providing ~~such~~ the service to one or more  
 14 educational institutions.

15 (5) Benefits based on services described in subsections (1) and (2) to an individual who performed  
 16 the services for an educational institution while in the employ of a private contractor must be denied as  
 17 specified in subsections (1) through (3) if:

18 (a) the services were provided pursuant to a contract between the employer and the educational  
 19 institution; and

20 (b) the contract was for services that could have been performed by the educational institution's  
 21 employees."

22

23 **NEW SECTION. Section 2. Effective date -- applicability.** [This act] is effective on passage and  
 24 approval and applies to claims for benefits on or after [the effective date of this act].

25

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0233, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill denying unemployment insurance benefits to nonprofessional school employees employed by a private contractor if the services were provided pursuant to a contract between an employer and the educational institution and the contract was for services that could have been performed by the educational institution's employees.

ASSUMPTIONS:

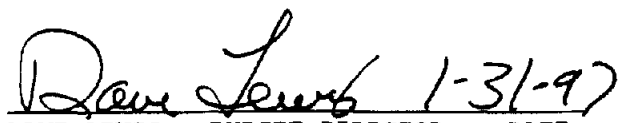
1. Contractors that supply services to schools that may be affected by this bill would be: bus drivers, food service and janitorial.
2. Sufficient facts are not readily available to provide an acceptable estimate for a fiscal note.

FISCAL IMPACT:

Passage of SB 233 will have no material fiscal impact on the state.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Most of the fiscal impact of SB 233 will be felt by local government. The implied reduction of the unemployment insurance rates of the affected contractors should translate into lower contracts, and reduced school costs. Unfortunately, a timely, accurate estimate of the impact is not available.

 1-31-97

DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/1/97

BOB DEPRATU, PRIMARY SPONSOR      DATE

Fiscal Note for SB0233, as introduced

**SB 233**

## SENATE BILL NO. 233

INTRODUCED BY DEPRATU, SLITER, HARP, BITNEY, LAWSON, MAHLUM, KEENAN, DENNY, MILLS,  
MCNUTT, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT DENYING UNEMPLOYMENT INSURANCE BENEFITS TO  
NONPROFESSIONAL SCHOOL EMPLOYEES EMPLOYED BY A PRIVATE CONTRACTOR IF THE SERVICES  
WERE PROVIDED PURSUANT TO A CONTRACT BETWEEN AN EMPLOYER AND THE EDUCATIONAL  
INSTITUTION AND THE CONTRACT WAS FOR SERVICES THAT COULD HAVE BEEN PERFORMED BY THE  
EDUCATIONAL INSTITUTION'S EMPLOYEES; AMENDING SECTION 39-51-2108, MCA; AND PROVIDING  
AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 39-51-2108, MCA, is amended to read:

**"39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations.** (1) Benefits based on service in employment defined in ~~subsections (5) and (6) of 39-51-203(5) and (6) and subsections (2) and (3) of 39-51-204(2) and (3)~~ are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment ~~which that~~ begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract or reasonable assurance of a contract to perform services in any ~~such~~ SUCH capacity for any ~~such~~ educational institution for both ~~such~~ academic years or both ~~such~~ terms.

(2) Benefits based on services in any other capacity for an educational institution ~~shall~~ must be denied to any individual for any week ~~which that~~ commences during a period between 2 successive academic years or terms if the individual performs ~~such~~ services in the first of ~~such~~ the academic years or terms and there is a reasonable assurance that the individual will perform ~~such~~ the services in the second of ~~such~~ the academic years or terms. If any individual is denied benefits and was not offered an opportunity

1 to perform ~~such the~~ service for the educational institution for the second of ~~such the~~ academic years or  
 2 terms, ~~such the~~ individual ~~shall be~~ is entitled to a retroactive payment of the benefits for each week for  
 3 which the individual filed a timely claim for benefits and for which benefits were denied ~~solely by reason~~  
 4 ~~of the denial provided for in~~ pursuant to this section.

5 (3) Benefits based on services described in subsections (1) and (2) ~~of this section shall~~ must be  
 6 denied to any individual for any week ~~which that~~ commences during an established and customary vacation  
 7 period or holiday recess if ~~such the~~ individual performs ~~such the~~ services in the period immediately before  
 8 ~~such the~~ vacation period or holiday recess and there is reasonable assurance that ~~such the~~ individual will  
 9 perform ~~such the~~ service in the period immediately following ~~such the~~ vacation period or holiday recess.

10 (4) Benefits based on services described in subsections (1) and (2) ~~of this section~~ to an individual  
 11 who performed ~~such~~ services for an educational institution while in the employ of an educational service  
 12 agency ~~shall~~ must be denied as specified in subsections (1), ~~(2), and~~ through (3) ~~of this section~~. The term  
 13 "educational service agency" means a governmental agency or governmental entity ~~which that~~ is  
 14 established and operated exclusively for the purpose of providing ~~such the~~ service to one or more  
 15 educational institutions.

16 (5) Benefits based on services described in subsections (1) and (2) to an individual who performed  
 17 the services for an educational institution while in the employ of a private contractor must be denied as  
 18 specified in subsections (1) through (3) if:

19 (a) the services were provided pursuant to a contract between the employer and the educational  
 20 institution; and

21 (b) the contract was for services that could have been performed by the educational institution's  
 22 employees."

23  
 24 NEW SECTION. Section 2. Effective date -- applicability. [This act] is effective on passage and  
 25 approval and applies to claims for benefits on or after [the effective date of this act].

26 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0233, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act denying unemployment insurance benefits to nonprofessional school employees employed by a private contractor if the services were provided pursuant to a contract between an employer and the educational institution and the contract was for services that could have been performed by the educational institution's employees.

ASSUMPTIONS:

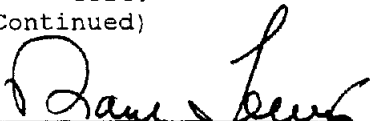
Unemployment Insurance Trust Fund:

1. The Department of Labor and Industry does not have information available to estimate the number of claimants who might be affected by this proposal.
2. The proposal would disqualify an unknown number of unemployed workers from receiving Unemployment Benefits between school terms or holiday recess.
3. The reduction of benefit payments to effected workers would save the Montana Unemployment Insurance Trust Fund an unknown amount and temporarily increase the Trust Fund balance
4. The increase in the Trust Fund balance would accumulate and then occasionally reduce tax rates for experience rated private employers to compensate for the reduced expenditures.

Unemployment Insurance Administration:

5. In the Montana Unemployment Insurance system, wages reported by employers for each covered employee are the basis for determining the monetary eligibility, weekly benefit amount, duration, and maximum benefit amount of that employee if a Unemployment Insurance (UI) claim is filed. Current UI computer systems collect wage data by individual employee for each reporting employer. These systems do not currently have the ability to recognize two different types of wages for an individual employee. In the case of this legislation, wages would be of two types - - wages for services provided to private entities and wages for services provided to school entities. Significant computer system modifications would be required.
6. The integrated nature of the UI automated benefits accounting system would require a parallel manual system to initially administer affected claims until the automated system was modified to meet the immediate implementation date. The manual system to process initial determinations and payments would require a grade 13 FTE at an estimated cost of \$31,677 (personal services/benefits and overhead) for each 500 affected claims upon passage. The actual number of affected claims is unknown.
7. Initial manual processes to administer payments (assumption 1) would later require manual intervention to (a) provide yearly 1099 statements, (b) collect overpayments, (c) provide tax withholding services, (d) accurately charge payments to employer accounts, therefore, effecting assigned tax rates, and (e) provide accurate information about claimants to other agencies. The department cannot estimate the extent of the cost to perform these functions, but even a few claims processed in this manner cascade throughout other processes and is considered far-reaching.
8. Extensive U.S. Department of Labor reporting requirements would be compromised by an interim manual system. Manually tallied statistics would be compiled and combined with automated statistics on a weekly, monthly, quarterly, and yearly basis. An estimated 0.5 FTE, grade nine, would be required at a cost of \$14,400.
9. The automated benefits accounting system would require extensive modification to administer this proposal. Up to \$300,000 is estimated for such changes.
10. Additional personnel resources would be required to administer this proposal once the automated system is modified. Under this proposal, affected claims would require additional fact finding, adjudication, charging processing, appeals, etc. The unknown number of affected claims does not allow an accurate estimate of the cost.

(Continued)

 3.15.97  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

BOB DEPRATU, PRIMARY SPONSOR DATE

Fiscal Note for SB0233 second reading

Am SB 233 #2

FISCAL IMPACT:

**Trust Fund Expenditures:**

SB 233 would reduce the amount of benefit payments from the Unemployment Insurance Trust Fund by an unknown amount.

**Trust Fund Revenues:**

The unknown amount of reduced benefit payments would result in a reduction in tax rates to employers. The reduction of tax rates would happen occasionally as the reduced benefit payments accumulate and thus trigger a lower rate schedule.

**Administrative Expenditures:**

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	1.5	1.5
Personal Services	46,077	46,077
Operating Expenses	300,000	0
Total	<u>346,077</u>	<u>46,077</u>
<u>Funding:</u>		
Federal Special (03)	346,077	46,077

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Occasional reduction of tax rates for experience rated private employers.

TECHNICAL NOTES:

This bill is incompatible with automated systems and processes. With the bill being effective upon signature, it would be impossible to implement because of the significant system and process changes that are necessary. Required automated system changes are extensive and would divert resources from action being taken to prevent collapse of that system by the year 1999. The current system is unable to accommodate the year 2000 and must be replaced or repaired. Consequently, the department would be unable to pay benefits beyond December 31, 1998 without taking action.

## SENATE BILL NO. 233

INTRODUCED BY DEPRATU, SLITER, HARP, BITNEY, LAWSON, MAHLUM, KEENAN, DENNY, MILLS,  
MCNUTT, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT DENYING UNEMPLOYMENT INSURANCE BENEFITS TO  
NONPROFESSIONAL SCHOOL EMPLOYEES EMPLOYED BY A PRIVATE CONTRACTOR IF THE SERVICES  
WERE PROVIDED PURSUANT TO A CONTRACT BETWEEN AN EMPLOYER AND THE EDUCATIONAL  
INSTITUTION AND THE CONTRACT WAS FOR SERVICES THAT COULD HAVE BEEN PERFORMED BY THE  
EDUCATIONAL INSTITUTION'S EMPLOYEES; AMENDING SECTION 39-51-2108, MCA; AND PROVIDING  
AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 39-51-2108, MCA, is amended to read:

**"39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations.** (1) Benefits based on service in employment defined in ~~subsections (5) and (6) of 39-51-203(5) and (6) and subsections (2) and (3) of 39-51-204(2) and (3)~~ are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment ~~which that~~ begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract or reasonable assurance of a contract to perform services in any ~~such~~ **SUCH** capacity for any ~~such~~ educational institution for both ~~such~~ academic years or both ~~such~~ terms.

(2) Benefits based on services in any other capacity for an educational institution ~~shall~~ **must** be denied to any individual for any week ~~which that~~ commences during a period between 2 successive academic years or terms if the individual performs ~~such~~ services in the first of ~~such~~ **the** academic years or terms and there is a reasonable assurance that the individual will perform ~~such~~ **the** services in the second of ~~such~~ **the** academic years or terms. If any individual is denied benefits and was not offered an opportunity



1 to perform ~~such the~~ service for the educational institution for the second of ~~such the~~ academic years or  
 2 terms, ~~such the~~ individual ~~shall be~~ is entitled to a retroactive payment of the benefits for each week for  
 3 which the individual filed a timely claim for benefits and for which benefits were denied ~~solely by reason~~  
 4 ~~of the denial provided for in~~ pursuant to this section.

5 (3) Benefits based on services described in subsections (1) and (2) ~~of this section shall~~ must be  
 6 denied to any individual for any week ~~which that~~ commences during an established and customary vacation  
 7 period or holiday recess if ~~such the~~ individual performs ~~such the~~ services in the period immediately before  
 8 ~~such the~~ vacation period or holiday recess and there is reasonable assurance that ~~such the~~ individual will  
 9 perform ~~such the~~ service in the period immediately following ~~such the~~ vacation period or holiday recess.

10 (4) Benefits based on services described in subsections (1) and (2) ~~of this section~~ to an individual  
 11 who performed ~~such~~ services for an educational institution while in the employ of an educational service  
 12 agency ~~shall~~ must be denied as specified in subsections (1), ~~(2), and~~ through (3) ~~of this section~~. The term  
 13 "educational service agency" means a governmental agency or governmental entity ~~which that~~ is  
 14 established and operated exclusively for the purpose of providing ~~such the~~ service to one or more  
 15 educational institutions.

16 (5) Benefits based on services described in subsections (1) and (2) to an individual who performed  
 17 the services for an educational institution while in the employ of a private contractor must be denied as  
 18 specified in subsections (1) through (3) if:

19 (a) the services were provided pursuant to a contract between the employer and the educational  
 20 institution; and

21 (b) the contract was for services that could have been performed by the educational institution's  
 22 employees."

23  
 24 NEW SECTION. Section 2. Effective date -- applicability. [This act] is effective on passage and  
 25 approval and applies to claims for benefits on or after [the effective date of this act].

26 -END-