MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 9, 1999 at 3:08 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:
Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 592, HB 395, HB 557, HB 514, 3/9/1999
Executive Action: HB 98, HB 514, HB 592

EXECUTIVE ACTION ON HB 98

Motion: **SEN. KEENAN** moved that **HB 98 BE CONCURRED IN.**

Motion: **SEN. KEENAN** moved that **THE AMENDMENTS BE ADOPTED EXHIBIT(las53a01).**

Discussion:

SEN. THOMAS explained the amendments in **(EXHIBIT 1).**

Vote: Motion that **THE AMENDMENTS BE ADOPTED carried unanimously.**

Discussion:

SEN. BARTLETT asked **SEN. THOMAS** if he chose to leave the definition of farm and ranch the way it was written in the bill when it originally came in.

SEN. THOMAS answered that is correct.

SEN. ELLIS asked if amendment number five was the Department of Commerce amendment.

SEN. THOMAS responded, "yes", however it is now amendment number four.

Vote: Motion that **HB 98 BE CONCURRED IN AS AMENDED carried 8-1 with SEN. BARTLETT voting no.**

EXECUTIVE ACTION ON HB 592

Motion: **SEN. BARTLETT** moved that **HB 592 BE CONCURRED IN.**

Motion/Vote: **SEN. BARTLETT** moved that **THE AMENDMENT EXHIBIT(las53a02) BE ADOPTED. Motion carried unanimously.**

Discussion:

SEN. COCCHIARELLA explained on the top of page 4, she planned to draft an amendment which would help clarify the issue of what time period is covered when someone files a wage and hour claim.

This language seems somewhat unfair. She read Section 3 where it states, "An employee may recover wages and penalties for a period of two years prior to the date in which the claim is filed". If that person had not been paid appropriately, she felt that was unfair. She asked for a sense of what the Committee thinks.

CHAIRMAN KEATING remarked he did not know enough about this to make a decision now, so he asked the Committee to recess the executive action on this until after the bills were heard and they will came back to it and hope there is some informational experts present.

SEN. COCCHIARELLA agreed this would work well.

(THE COMMITTEE RECESSED FROM THIS EXECUTIVE ACTION UNTIL LATER IN THIS MEETING.)

{Tape : 1; Side : A; Approx. Time Counter : 11 - 20}

HEARING ON HB 557

Sponsor: **REP. DAVID EWER, HD 53, Helena**

Proponents: **Nancy Butler, State Fund**
George Wood, Montana Self-Insurer's Association
Don Judge, AFL-CIO
Todd Thun, Montana Nurses Association
Christiana Schweitzer, Montana Trial Lawyer's Association

Opponents: **None.**

Opening Statement by Sponsor:

REP. DAVID EWER, HD 53, Helena, claimed the intention of this bill is to make the information which insurance companies ask for is pertinent to the Workers' Compensation injury. He handed out an example of 'Authorization To Release Health Care Information' which has been used in Montana **EXHIBIT(las53a03).** As you can see, they ask for everything.

This bill attempts to say it is legitimate to ask for this information relating to the Workers' Compensation injury, but the information received should be relevant. If someone has a broken leg it is not relevant to the injury for other information to be exposed.

They have worked hard on this bill and in the House they had all the insurance people and the Department of Labor have come together and crafted the language. If the bill is passed, the health information asked for must be relevant to the claim. There is nothing which would prevent additional inquiries if they need more information on this.

The amendment was added by the House, however, the insurance companies did not like it, so there is a technical amendment he would like to add **EXHIBIT(las53a04).**

Proponents' Testimony:

Nancy Butler, State Fund, stated as an insurance company, they recognize the right to privacy in medical records, however, they do need medical records in order to determine what benefits are payable and what benefits are not payable. This amendment to the Health Care Act provides a definition to what is relevant medical information. The idea is the physicians they work with understand they need relevant medical information. She asked for passage of the amendment.

George Wood, Executive Secretary, Montana Self-Insurer's Association, recommends this bill pass with the amendment which clarifies it was agreed to.

Don Judge, Montana State AFL-CIO, said regarding the 'Authorization Release Agreement' **(EXHIBIT 3),** was discovered by his members in two separate sides of the state. Two unrelated employers engaged in two unrelated types of businesses, one was in the timber industry and the other in the plumbing and pipefitting business. In the release form, the insurance companies which had issued that release form were asking for every piece of personal information which existed anywhere with any medical facility. They can make this request of any information which was available regarding the individuals who had filed a claim under the State Workers' Compensation Act. They found employees who had been asked to sign that form so they could obtain benefits.

On the other hand, **Mr. Judge** exhibited a copy of a 'Claim for Compensation' form which is a release form currently used by the State of Montana **EXHIBIT(las53a05).** He read the small language at the very bottom of the form and stated the insurance companies are accessing information they need in order to appropriately execute the Workers' Compensation Injury Claim for benefits.

One of the major concerns of the country today is health care privacy, not just in Workers' Compensation but also in the

private health care world. The polls have proven people are very concerned about their privacy. This bill goes a step towards providing privacy in Workers' Compensation. It is not without some question and people may still wonder about protecting privacy, but the bill goes a long way towards securing privacy.

If a person has had a mental breakdown or a problem with drug and alcohol abuse 15 years ago, or a history of heart attacks in the family, the Workers' Compensation insurers do not need to know that for a broken arm. They do not need to know if a woman has had an abortion or miscarriage or a mental breakdown when the injury is a broken leg or bad back.

Todd Thun, Montana Nurses Association, informed the Committee in general, the nurses support the scope of limiting information of medical release to third parties. They support HB 557.

Christiana Schweitzer, Montana Trial Lawyer's Association, stood in support of HB 557. Filers of Worker's Compensation claims should have peace of mind in knowing medical information unrelated to the claim they are filing is not being released.

However, regarding line 3 on page 2, striking this line could be potentially dangerous. We should be able to trust our physicians to be discrete in turning over information. She asked the Committee take another look at the pre-existing language and take a look at the bill in its original form.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

None.

Closing by Sponsor:

REP. EWER closed by stating one of the reasons this bill is unanimous is because of the form it is written. He is sympathetic with the trial attorneys and agrees with them, he asks that the language is not changed as it now appears. There are no opponents because what we have is consensus. He suggested only the technical amendment **(EXHIBIT 4)** be added.

{Tape : 1; Side : B; Approx. Time Counter : 20 - 52}

HEARING ON HB 395

Sponsor: **REP. TOM FACEY, HD 67, Missoula**

Proponents: **Sue Spanke, Representing Self, Graphics Specialist**
Don Judge, AFL-CIO
Jerry Driscoll, Montana Building Trades Council
Judy Smith, Representing Self, Missoula
Linda Smith, Representing Self, Missoula
Kate Cholewa, Montana Women's Lobby

Opponents: **None.**

Informational Testimony: **Kevin Braun, Attorney, Department of Labor**

Opening Statement by Sponsor:

REP. TOM FACEY, HD 67, Missoula, informed the Committee HB 395 is a slight policy change in the way Unemployment Insurance benefits are calculated. **EXHIBIT(las53a06)** He read through this exhibit. Both people lost the same job and Mary had higher unemployment benefits because her second job is covered. John's second job is not covered. They are exempting all non-employment from this bill.

Employment is not working in household service, a free-lance newspaper carrier or correspondent, an agriculture worker, a real estate broker, a barber, doing casual labor, being self-employed, being floor installers, a direct seller (such as Avon), a prison inmate, a petroleum land professional, a minister, court ordered community service, work study jobs if in school, a child or spouse of a self-employed person, if you work on US Navy waters, a member of the National Guard, or a public official. Those things are not covered under Unemployment Insurance, therefore, they are not deducted from wages under this bill.

Proponents' Testimony:

Sue Spanke, Graphic's Specialist, Representing Self, stated for the past 15 years, she has run a one-person graphics business and also has been employed in a local restaurant. Her employment has been easily split between her self-employment and her job. Her introduction to the unemployment codes was when it was rumored the restaurant might close on short notice and she might suddenly lose half her income. She decided to find out what her Unemployment Benefit might be. She has never collected Unemployment Insurance and is not covered for self-employment, but her employer has paid into the fund for her for 15 years, and this was the kind of situation the insurance was set up for.

She was shocked to find out she wasn't covered at all because part of her income was self-employment. Eventually, she thought she might be covered, but if she did qualify, due to the manner in which self-employment income is figured into the accounting for benefits, her benefit would be less than half of her co-worker's, even a co-worker who has a second job. That co-worker worked the same number of hours and years which she did and the restaurant had made the same amount of insurance contributions for both.

This discourages people from starting small businesses. She believes the law was designed when one job supported a family. That is not today's reality. Many Montanans work several jobs. Farmers and ranchers may have to work off the ranch. Montana has high levels of partially self-employed workers. Also, to start a new business, a person usually needs to keep his or her day job. The law is not written for these modern situations.

She gave two more examples of people who won't receive benefits because of self-employment and handed out a fact sheet **EXHIBIT(las53a07).**

Don Judge, AFL-CIO, asserted this legislation clarifies how the law should apply relative to how self-employed people are treated. He gave an example of how **CHAIRMAN KEATING** would not be able to collect Unemployment Insurance benefits because he is a Petroleum Landman by profession. We have a lot of employees in Montana who are part-time workers, dual-employed workers, and self-employed workers. The tragedy is those people are trying to provide for their families to discover if they are laid off of their covered employment, the wages they were earning on their self-employment are applied against them. This is a substantial change in the direction of Montana law. If we are going to promote self-employment, we shouldn't allow self-employment to be used against people. In order to qualify for these benefits, these workers still need to be available for, seeking, and accept employment. He referred to HB 179 which clarified self-employment wages could not be used for re-qualification. With that bill, self-employment with unemployment has been taken entirely out of the spectrum of unemployment compensation, except it is used against a worker when he or she draws benefits on their covered employment. He encouraged the passage of this bill.

Jerry Driscoll, Montana State Building & Trades Council, affirmed construction workers would not necessarily qualify under this bill but he believes it should be passed. When a person applies for unemployment benefits, if they were self-employed they cannot use those monies to determine the benefit amount. When that

person gets laid off and has self-employment money, he or she must use that money to offset weekly unemployment benefit amount. That person cannot use that self-employment to qualify, but it is used to disqualify them. This is not the right thing to do.

Judy Smith, Representing Self, Missoula, stated she has worked in Missoula for over ten years with people who expand their own self-employment operations with the **Missoula Community Business Incubator** and with the **Montana Women's Economic Development Group**. Many of the folks she has worked with could only begin their business if they were able to combine an existing job with their efforts at self-employment. She knows from first-hand experience Montana still has some disincentives and barriers for folks who are pursuing self-employment opportunities. This bill gives the opportunity to remove one of those barriers. She reiterated we are one of the largest populations of any state in the country which is working with self-employment. Many of those people combine unemployment with existing jobs and many will have more than one job to support that self-employment opportunity. Also, the wages of many jobs are low. This bill would encourage self-employment by removing the disincentive.

Linda Smith, Representing Self, Missoula informed the Committee she is a small business owner. During the first years of establishing her small business she relied on another job. The print shop she started in 1976 was able to provide employment for a number of people. This bill is a way of eliminating a barrier to self-employment.

Kate Cholewa, Montana Women's Lobby, said they agree with the statements already made. Montana women are starting new businesses in record numbers and they would like to see this bill pass.

Opponents' Testimony:

None.

Informational Testimony:

Kevin Braun, Attorney, Department of Labor and Industry, remarked they appreciate **Rep. Facey** working with the Department on this bill. They believe the change is simple. Under the current law, if they, for instance, have two carpenters who each work 20 hours per week and one of those two also does carpentry on the side in a self-employment endeavor, and both are laid off from their covered employment the one has a potential of having his benefits reduced. ***{Tape : 1; Side : B; Approx. Time Counter : 52 - 78}*** He explained how this can be reduced. The result of this bill is

that neither of those individuals will have their benefits reduced.

The flip side is this bill enables a person who is working part-time in covered employment and is laid off, that individual will not have their Unemployment Insurance benefits reduced by anything they earn in their self-employment and they can work full-time in their self-employment without a reduction of benefits. **Mr. Braun** said the Department can administer this either way.

Questions from Committee Members and Responses:

SEN. COCCHIARELLA referred to **Mr. Braun's** statement regarding the flip side of this bill. She asked if a person were on unemployment if they would have to be able and available for work.

Mr. Braun responded yes, any individual who is receiving Unemployment Insurance benefits is still subject to the eligibility requirement of being able, available and actively seeking work.

SEN. COCCHIARELLA mentioned this bill does not change that criteria.

Mr. Braun said that is correct.

SEN. BARTLETT asked **REP. FACEY** why Sections 2 and 4 were struck in the House.

REP. FACEY answered this bill addressed two policy changes which the House struck. We are now addressing the self-employment wage issue for benefits only.

SEN. THOMAS asked **Kevin Braun** to explain the language in the bill.

Mr. Braun informed the Committee paragraph one is simply not performing work for the purposes of Unemployment Insurance. Employment for the purposes of Unemployment Insurance is covered employment. The definition of total unemployment is performing no work in covered employment. In paragraph two we see reference for partial benefits which this bill is designed for. A person who works part-time in covered employment can qualify for benefits.

Section 2 simply keeps the non-covered employment from being used in computing benefits.

SEN. WILSON asked how a person can be actively seeking employment if he is working full time for himself.

Mr. Braun explained because that person's non-covered employment is not figured in for disqualifying criteria. If the worker makes affirmation to the Unemployment Insurance Division that he or she is able, available and actively seeking work. A person can seek work during their lunch hour or anytime they want.

CHAIRMAN KEATING asked if John was not a graphic artist **(EXHIBIT 6)** and was not making any money as a self-employed graphic artist and he lost his job, would his base wage be $62.40.

Mr. Braun responded this illustration indicates John is also having some self-employment earnings. Therefore, those earnings reduce his benefit amount which he would be entitled to.

CHAIRMAN KEATING inquired if he were not earning that $120 in self-employment, would his weekly benefit amount be $62 with no deductions.

Mr. Braun answered that is correct.

CHAIRMAN KEATING alleged by the same token, Mary is working both jobs which are covered and she loses the one, so she is losing $62.40. Why isn't she drawing unemployment benefits for the $62.40 rather than drawing them for the other job for which she is being paid?

Mr. Braun stated it is because all of her covered employment wages would be in her base period.

John Moe, Chief of Benefits, Unemployment Insurance Division, answered in the case of the person working two jobs in covered employment, the total of the wages in the base period for those two positions are used to determine what the benefit is. Compared to John, the amount of benefits for the person who is working two qualifying unemployment jobs will be higher.

CHAIRMAN KEATING remarked that worker is still working and receiving full pay. Besides receiving full benefits from the job which she lost, she is also getting an additional benefit from the fact she is still working. That increases her base wage but she is really not earning the $62.40. Why not just pay Unemployment Insurance benefits based on the part of employment which was lost?

Mr. Moe asked if he meant they should calculate the benefit based upon just the earnings from the job which is lost.

CHAIRMAN KEATING answered yes.

Mr. Moe said that would be another piece of legislation.

CHAIRMAN KEATING remarked, then it is that way because it is policy.

Mr. Moe responded, yes, that is the law.

CHAIRMAN KEATING asked if a person is working part-time and going to school, which is a self-employment position, and he or she loses his or her part-time job, is it correct they are not eligible for unemployment benefits because they are going to school?

Mr. Moe answered that is correct in most cases.

CHAIRMAN KEATING then asked why going to school is not considered self-employment.

Mr. Moe responded it is also a part of the law relating to attending school.

SEN. THOMAS conveyed the 'Under Current Law' in **(EXHIBIT 6)**, refers to Mary earning $12,000 per year and John is earning $6,000. Both wages are covered unemployment wages. In this case, under the current law Mary receives approximately 75% more than John. John earns half as much as she does. Under this bill we will pay them almost the same amount of unemployment even though John is still making half as much as Mary.

Mr. Moe remarked that is true. The benefits for Mary are based upon wages from two jobs. The benefits for John are based upon wages from one job, if self-employment is called a job in this case. The earnings used to determine the benefits are different. When a claim is made for any individual week, and the earnings from the two positions are reported they have the same effect. The benefits are being decreased.

SEN. THOMAS asked **REP. FACEY** under current law, Mary earns twice as much as John. **(EXHIBIT 6)** She makes $200 and John earns $130, the other half of his wages are self-employment. Under the proposed bill, even though those wage amounts are still the same, Mary is making twice as much as John is, and covered under unemployment income, but we are going to pay them about the same amount of money.

REP. FACEY asked in determining the base wage, why are both employments calculated in the base wage for Mary? She works in

the café and the bookstore and both those wages are covered under unemployment insurance. That is the way the law is written.

SEN. THOMAS inquired if Mary only lives on one of her jobs in this scenario.

REP. FACEY answered yes.

SEN. THOMAS asked if they are both losing the same wages in this scenario.

REP. FACEY answered yes.

CHAIRMAN KEATING asserted if this bill passes, there is an increase in unemployment benefits, overall. He referred to the fiscal note and stated it does not tell him anything about the fiscal impact.

Kevin Braun responded he anticipates people will qualify for more benefits than in the past.

CHAIRMAN KEATING remarked it is safe to assume when more people qualify, the more benefits are paid. He asked if **Mr. Braun** had any idea of what these benefits will do to the fund.

Mr. Braun responded the Trust Fund will probably suffer a negative impact, but they are not sure of the dollar amount. They also anticipate most employers are experience-rated and they will make up the difference to the Trust Fund over the long haul in that their competition rates may increase. As their accounts are being charged with benefits being paid, that will be reflected in their experience.

CHAIRMAN KEATING stated the employers are who will be paying the tab on this.

SEN. COCCHIARELLA asked **Mr. Braun** if under that scenario if that employer pays for Unemployment Insurance on both employees?

Mr. Braun answered that is correct.

SEN. COCCHIARELLA commented that **Mr. Braun** said under the law, if it were to be changed, those employers have already been paying all along for those employees who are laid off.

Mr. Braun responded that is correct.

SEN. COCCHIARELLA said their experience after the fact if they close their doors and lay everybody off, there will not be a gigantic cost of benefits.

Mr. Braun informed there is a schedule which is established in the Unemployment Insurance code. There are a total of ten schedules and then class codes within. The rates fluctuate according to experience.

SEN. COCCHIARELLA thought the difference for an employer cannot be significant in experience rating.

Jerry Driscoll explained the employer who actually laid somebody off might have their mod factor changed. The employer who did not lay anybody off will not be affected by experience rating. The employer who did not lay them off is not charged one cent. If the employer is deficient there would be no change because they are already at 6.5% and that is as high as the law allows. If you are a rated employer who is not deficient, it may go up one or two tenths of one percent.

SEN. MCNUTT remarked if you look at the benefit under the scenario where the self-employed earnings are not in effect. Mary gets more benefit than John by using both her incomes to figure the base. He asked **Kevin Braun** when it is calculated what the employer has to pay back, is it based on the amount of dollars paid in benefits?

Mr. Braun answered there are two things. First, Mary's benefit amount would be $124, which is the base amount. She also experiences a reduction by virtue of her current covered employment, whereas, John has $62 which is based upon the base period wages. It is only after the reduction you see the true differences.

SEN. MCNUTT asked when the charges are assessed to the employer is it based on dollars of benefits paid?

Mr. Braun answered yes.

SEN. MCNUTT stated under this scenario he would prefer to be paying John instead of Mary as an employer.

CHAIRMAN KEATING said when you look at this scenario, Joe lays that person off and he is the person whose experience rate will increase and whose mod factor is going to go up. The $18 extra which Mary is getting, she is receiving because she is still working at Sam's Book Store and Sam is paying Unemployment Insurance premiums on her behalf, so his experience rating is not

going to go up. Her $18 benefit is because Sam is paying Unemployment Insurance.

SEN. ELLIS stated he realizes the unemployment tax is rather minimal. As an employer **SEN. ELLIS** thinks he is paying $350 on about a $125,000 payroll. He asked **Mr. Braun** for a full range of experience an employer can have with the mod factor to put into perspective what we are talking about.

Mr. Braun responded according to the schedules, we see contribution rates from .7% going up to 6.4% for deficient employers. There are certain other categories such as government employees, who are in a different schedule than this.

REP. FACEY clarified it went from .1% to 6.4%. He said approximately 27,000 people in Montana collect Unemployment Insurance and 10% of Montanans work two jobs, so we are now down to 2,700 people. If we assume half the people who were laid off work two jobs, and one is not covered employment. No we have 1,375 workers we are concerned about. The average benefit for Unemployment Insurance in Montana is $150. He said a part-time worker would receive half which is $75. $75 X 1,350 equals $101,250. The average length of employment duration in Montana is 13 weeks. If you multiply 13 times 101,000, it is $1.3M.

Last fiscal year we paid out $59M and collected $64M. We have a Trust Fund balance of $150M. He believes the $1.3M which he estimates might cost, we can afford for the social justice.

SEN. ELLIS reported the Trust Fund has grown a lot in the last four or five sessions. This is also set aside if a calamity hits a certain part of the State.

REP. FACEY answered that if we all had a crystal ball, we would invest in stocks.

Closing by Sponsor:

REP. FACEY closed by stating the State of Wisconsin has legislation similar to this. Montana has an unemployment system which is based on a sixty-year old system. That may not fit today's working environment. We should look at the equal protection clause and the Montana Constitution. Two people doing the same job have benefits which are greatly different. This bill does not change the method in which people qualify for Unemployment Insurance.

{Tape : 1; Side : B; Approx. Time Counter : 78 - 84}

HEARING ON HB 514

Sponsor: **REP. ROGER SOMERVILLE, HD 78, Kalispell**

Proponents: **Carl Schweitzer, Executive Secretary, Montana Subcontractor's Association**
Jack Pallister, President, Montana Subcontractor's Association

Opponents: **None.**

Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, HD 78, Kalispell, explained this bill clarifies a few things for subcontractors. It is an act prohibiting a construction contractor from bringing provisions requiring a subcontractor to waive the rights to a lien or payment bond before payment for labor or materials. The purpose of this bill is to prohibit the unfair and unjust construction clauses, particularly the unfair clauses which require a subcontractor to waive his lien rights. Lien waiver clauses require a subcontractor to give up their lien rights before they even set foot on the construction site and that is unfair.

If a person is a contractor or subcontractor or construction supplier, and material is supplied to a construction site, that person expects to get paid for it. After the work is completed, if the owner doesn't pay for it, a lien can be attached to the owner's property. When the property is sold, the proceeds from that sale will be returned to that person to satisfy the lien. In some cases, some subcontractors get paid back 25 cents on a dollar. If the person completes the construction process and doesn't get paid, they are stuck. General contractors are asking the subcontractors to sign these contracts because they want to hand over a project with no liens to the owner. Liens are a decade-old process of protecting the construction worker and suppliers and gives them the right to get paid for the material. He asked for support of this HB 514.

Proponents' Testimony:

Carl Schweitzer, Executive Secretary, Montana Subcontractor's Association, explained when this bill was introduced it had two parts, but one part was banned by the House. ***{Tape : 2; Side : A; Approx. Time Counter : 84 - 91}*** He handed out **EXHIBIT(las53a08).** This was actually part of a contract in Billings and this particular paragraph was the Lien Waiver Clause which was in that

contract. Other states have actually enacted similar provisions and this bill was copied from a statute passed in Wisconsin. Other states which have enacted it are Maryland, North Carolina, Missouri, Illinois, and a lot of other states. He asked the Committee to support this bill.

Jack Pallister, President, Montana Subcontractor's Association, stated he is a subcontractor, and a prime contractor in many cases. His agreements with any subcontractors does not include this type of language which would not allow them to file a lien on any project. If he had $100,000 agreement with a general contractor and his first pay request was $20,000, if he paid $20,000, along with that he would get a partial lien release waiver. They are asking for that added protection that if they don't get paid and get a bad contractor, there is some recourse for collection.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. SOMERVILLE remarked we need to help the subcontractors out. Not all subcontractors have a large enough organization to have their own attorney and to have an individual who has been 20 years in the state government to understand how to handle contracts and strike those clauses out.

EXECUTIVE ACTION ON HB 514

Motion/Vote: **SEN. ELLIS moved** that **HB 514 BE CONCURRED IN. Motion carried unanimously.**

{Tape : 2; Side : B; Approx. Time Counter : 91 - 115}

EXECUTIVE ACTION ON HB 592

Discussion:

SEN. COCCHIARELLA asked **John Andrew, Department of Labor,** to provide information on this bill.

Mr. Andrew explained he read through the recommendations of the work groups. They concluded by stating the work group recommends recovery under Montana law be the same as under Federal law. It is his understanding as this bill is drafted now, the recovery for the two and three year time period would be the same as under

the Federal law and that two years' recovery would begin on the date the claim was filed as exists under Federal law. If it is a three year violation, the recovery date would go back three years from the date the claim was filed. Essentially, the filing of a claim with the Department of Labor is the same as filing a complaint in court.

SEN. COCCHIARELLA asked **Mr. Andrew** if he would explain to the Committee what her amendment would do. **(EXHIBIT 2)**

Mr. Andrew stated in talking with Department attorneys, if the word 'accrued' is used in there, the accrual is the date the employee quit working for the employer. Then the recovery would be two years prior to the date the employee quit working or three years prior to the date the employee quit working as opposed to when the claim was filed. If 'accrued' were used, it would be a different standard than exists under the federal law now. The claim filing date is now used.

CHAIRMAN KEATING asked if the accrued period was shorter than the claim period in filing the of the claim.

Mr. Andrew responded it would be the opposite, the accrued period would allow for a longer recovery than would be the claim filed.

CHAIRMAN KEATING stated the accrued would begin prior in time than the filing of a claim.

Mr. Andrew answered that is correct.

CHAIRMAN KEATING said if they wait five months and then file the claim, the claim would give them two years, whereas the accrued time will only give 18 months.

Mr. Andrew explained the accrued would begin the day the employee quit. He would only be able to recover two years prior to that. There is a lesser recovery under this than there would be under **SEN. COCCHIARELLA'S** amendment.

SEN. BARTLETT stated not all the wage claims are filed by people who leave their employment.

Mr. Andrew remarked it is very rare that we ever see that. When that occurs it is usually a prevailing wage job when the Department is investigating an employer for non-compliance. In that case, when the Department sends a letter out to the contractor saying they are investigating, that stops the running of the statute for all employees on that job. It is very rare to see an individual still working for an employer who chooses to

file a wage claim. Under that situation, when they file the claim they would be entitled to recovery for two years prior to the date they filed the claim.

SEN. BARTLETT expressed one of the things they had tried to do in HJR 10 working group was to perform some procedures in various employment related processes.

CHAIRMAN KEATING maintained in this case it was the consensus of the Committee to stay with Federal standards.

Mr. Andrew remarked for clarification there is no standard in the Federal law which says a claim must be filed within 180 days. The intent of the Committee was to say if things get filed in that time period, there is a greater likelihood those disputes will be resolved in one common form as opposed to getting drug out. Even if they don't file a wage claim within 180 days, they could still file a claim in court. If they file the claim in court, the clock has been ticking on the claim under Federal law. So they are losing recovery.

SEN. COCCHIARELLA related what this bill is doing is going from no statute of limitations for filing and no limit on recovery time, to a statute of limitations of 180 days for filing. Also, after the claim is filed the claimant can only recover two years even if it has been 180 days, the claimant may only recover six months even though he might have gotten the shaft for ten years.

Mr. Andrew explained right now, if the claim is filed with the Department of Labor, the only thing they can recover for minimum wage and overtime under the Fair Labor Standards Act is what is in that law. We cannot recover any farther back than that. Right now, under Montana law, there is no time period for when those people can file their claim and there is no limit on the recovery.

SEN. BARTLETT stated as part of the working group, she did not understand this and is wondering if other people did. Her impression was the wages could be claimed for a two-year period. The claimant could not go beyond two years.

Mr. Andrew said other than minimum wage and overtime under Federal law, there is no exception.

SEN. BARTLETT remarked her understanding in the working group was that the claimant could recover for a two-year period.

Mr. Andrew reported the working group tried to make the State law similar to Federal law for conformity purposes.

SEN. BARTLETT asked if the Committee might consider an amendment which would specify the employee may recover wages or penalties for a period up to two years. Also, a similar amendment in subsection three where there are repeated violations to recover wages up to three years. If there were wage violations for as much as two years or more, someone could receive recovered wages and penalties for that full two year period.

CHAIRMAN KEATING thought that amendment would include any two year period. There is no beginning time.

SEN. COCCHIARELLA explained that is what she intended in her amendment but it goes beyond that. There were members of that group who didn't understand what this language was saying. She made the statement she thought the language in her amendment went too far.

CHAIRMAN KEATING asked how many people would be affected by this.

Mr. Andrew explained they don't have the data to show how many people would fail to file a wage claim within the 180 days. His sense when he talked with his compliance people is it is not very many.

CHAIRMAN KEATING related since we do not have any experience in this area, he would rather leave the bill as it is and in two years if there is experience in this area to know what is happening, those who are watching this could come back to work on an amendment to fit the circumstances.

SEN. COCCHIARELLA mentioned **REP. SLITER** already addressed this issue.

CHAIRMAN KEATING said he understood **REP. SLITER'S** amendment to read you could file a claim within 24 months rather than 180 days.

Mr. Andrew related that language is in there, the clock is ticking all that time anyway.

CHAIRMAN KEATING stated in other words, a person has to have timely claims. That person cannot wait a few years to figure out he or she has lost something, then go back to try to recover it.

SEN. BARTLETT remarked also, in part the reality of the wage claim is that people don't always immediately know they've had a loss. There is an interest in having them act as soon as they've become aware of the underpayment, but there is no way any can

guarantee they will have the knowledge they were cheated at the time it happens.

SEN. MCNUTT wanted to know how frequently this happens, and why people don't know. If this bill is passes, we will get a better look at how this is affecting people. People may want to get a claim filed and not dilly-dally around with it. He didn't want to withhold anything from somebody, but this might get it done quicker.

SEN. COCCHIARELLA explained she doesn't disagree with that, her problem is with the 180 days, they include those days as part of the time of recovery. She has no problem with people having to file.

SEN. BARTLETT said if somebody knows at the time they leave they got cheated, they will file immediately. They will get a full two years. But most employers in the private sector do not publicize their employee salary and wage information. They deal with each employee individually. She has experienced a reluctance among employees to talk about how much they are earning. In State and County government it is already publicized, but in the private sector is very different, that is why it may take some time for someone to find out they got cheated.

SEN. MCNUTT stated his experience as an employer is that employers can't keep those secrets. His employees know what one another is making.

CHAIRMAN KEATING remarked it seems to him the working committee worked on this 18 months and he doesn't know if this Committee should make a decision of this magnitude in 15 minutes. He asked **SEN. COCCHIARELLA** if she would like to try her amendments.

SEN. COCCHIARELLA answered no, she thinks she will vote against the bill because of that provision. She doesn't believe the working committee had a good understanding of the topic. She doesn't think her amendment will fix that.

Motion/Vote: **SEN. BARTLETT** moved that **HB 592 BE CONCURRED IN. Motion carried 8-1 with SEN. COCCHIARELLA voting no.**

ADJOURNMENT

Adjournment: 5:08 P.M.

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SEN. TOM KEATING, Chairman

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GILDA CLANCY, Secretary

TK/GC

EXHIBIT(las53aad)