

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS**

**Call to Order:** By **CHAIRMAN TOM KEATING**, on January 21, 1999 at 3:00 P.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  
Eddy McClure, Legislative Branch

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

**Committee Business Summary:**

Executive Action: SB 77, SB 67, SB 68

**EXECUTIVE ACTION ON SB 77**

**Motion:** SEN. KEENAN moved that **SB 77 DO PASS.**

**Discussion:**

**SEN. SUE BARTLETT** stated this is the bill in which she asked the Department of Labor to provide the Committee with how prevailing

wages are set. She said John Andrews had some information with him that would help the Committee understand the process in setting prevailing wages, especially regarding those employers who have people working for them in similar types of occupations. The process for setting prevailing wages includes surveying private employers throughout the state who are in similar business and ask for their wage rates for those. The private sector employers can, then, establish what the wage rate is, but they have to participate in the survey. The second point is that it appears the Department of Public Health & Human Services deluded themselves in believing the law did not apply to them, and they chose to ignore it. At a time the legislative session is concerned about jobs and income to the extent this session is concerned about those issues, giving permission to the Department of Public Health & Human Service through their service providers to pay wages lower than the wages to prevail seems to her bad public policy. **EXHIBIT (1as16a01)**

**SEN. BARTLETT** explained she felt the material in this exhibit is pertinent, not only to this bill, but to other bills as well.

**CHAIRMAN KEATING** asked **SEN. BARTLETT** if there were things that related directly to Health & Human Services, and that they ignored those things and no one objected to it.

**SEN. BARTLETT** answered by stating that the information is about the process the Department of Labor & Industry uses to set prevailing wages to extent that the wage rates would be for the type of services the Department of Health is concerned about in this bill. She said in the testimony on the bill, the Director of Health & Human Services said this law had never applied to them and there is nothing she knows of in state law or court decisions that would have ever exempted this department from the prevailing wage law, so the conclusion she is led to believe is that they chose to ignore this law.

**CHAIRMAN KEATING** asked **SEN. BARTLETT** why, in her estimation, are they bringing it in now.

**SEN. BARTLETT** responded she believes they got nervous that someone might point out and challenge them on the fact they were not performing to the law. Now they are seeking to be exempt from that law.

**CHAIRMAN KEATING** stated the mission in Committee is to determine whether they wish to allow the Department of Health & Human Services to be exempt from prevailing wage laws. Evidently, this would not change what they have been doing already nor would it change what the Department of Labor has not been doing.

**SEN. BARTLETT** responded that is correct.

**SEN. KEENAN** said he understands **SEN. BARTLETT'S** concerns, however, his concern is there was an Attorney General's opinion which impacted this law. There was a Committee who worked on this situation before HB 407 at the last session became a factor in this situation. Exempting the Department of Health & Human Services and their contractors was an oversight that needed to be fixed. We fund these contracts, for instance in nursing homes approximately 60% of nursing home costs are funded with Medicaid and funds are appropriated by the legislature on a biennium basis. Without more confusion with more money into those contracts, then nursing homes are going to have to absorb these costs. The impact of this will vary depending upon the location of these nursing homes. His concern is that we will lose contractors and services to people if this prevailing wage is implemented in this area. He said he is willing to withdraw his motion to give the Committee more time to study the material they received today and to get better prepared. He is willing to go forth with it if the Committee would like to do that, either way.

**SEN. THOMAS** stated he didn't believe there was any particular rush on this and appreciated **SEN. KEENAN'S** willingness to withdraw.

**CHAIRMAN KEATING** said he didn't have the desire to postpone it, but will recede to the desires of the Committee. Some of the providers have a great desire for increase in the provider rate and are pleading for a provider rate increase. They realize that if their contracts are subject to prevailing wage laws, then there will not be any contracts because Medicaid is limited by a federal design. If they want to do the work and are subject to

prevailing wage there won't be enough money in the budget and, as **SEN. KEENAN** has mentioned, the providers won't be there because there won't be any contracts, so there won't be any services for those people who need that Medicaid service. That is the purpose of this bill. **REP. EWER** had pointed out, this was an oversight from a bill from last session and this should be corrected. He stated if the hearing is bad, the presenter will lose the bill, then after the fact we hear more testimony.

**SEN. BARTLETT** stated she doesn't believe delaying action will change the vote in the Committee, however, she does want to be clear that these self same providers in all likelihood, have the opportunity to participate by submitting their wage rates to the Department of Labor & Industry in the survey to help establish what the prevailing wage for those occupations would be set at.

If they chose not to participate, they have only themselves to blame. You cannot get a prevailing wage if the employers don't participate by submitting wages for different occupations in their workforce. She thinks this is important enough and asked during the hearing if the Department would get us information.

**CHAIRMAN KEATING** asked **SEN. KEENAN** if he would like to withdraw his motion.

**SEN. KEENAN** said he didn't think so. He was reading through Laurie Eckanger's testimony for this bill and she was the Commissioner of the Department of Labor until November, 1996. She participated with this group as the Director of the Department of Labor. This working group did not consult the Department of Health & Human Services and assumed this was not going to be a problem. This was an oversight. He has decided to go with the vote.

**Vote:** Motion carried 6-3 with **SEN. BARTLETT, SEN. COCCHIARELLA, AND SEN. WILSON** voting no.

*{Tape : 1; Side : A; Approx. Time Counter : 26 - 39; Comments : THE COMMITTEE RECESSED FOR 37 MINUTES, FROM 3:24 P.M. UNTIL 4:02 P.M. }*

#### EXECUTIVE ACTION ON SB 67

**Motion:** **SEN. THOMAS** moved that **SB 67 DO PASS AS AMENDED.**

**Eddy McClure** explained the first amendment drafted by **SEN. MAHLUM.**

**Motion/Vote:** **SEN. THOMAS** moved that the **AMENDMENT DO PASS.**  
**Motion carried unanimously.**

**Motion:** **SEN. BARTLETT** moved that the second **AMENDMENT,** drafted by herself, **DO PASS.**

**SEN. BARTLETT** explained her amendment.

#### Discussion:

**SEN. THOMAS** asked **SEN. BARTLETT** what the purpose of her amendment was.

**SEN. BARTLETT** responded that she did not understand the language in the bill and in investigating found out they do not advertise a position, but offer it to the employees. Also, it is constructive practice for employers in Montana to advertise an exception to the Human Rights Act as a recruiting tool, so they were comfortable in taking it out.

**CHAIRMAN KEATING** stated he realized there is a narrow scope here in that this bill is primarily to serve the University System which sometimes has problems in hiring professors in a job if they cannot offer the spouse some sort of a position as well. That is why the bill is before the Committee. His concern is that once this is in law, it affects everybody outside the University System so maybe we are sneaking up on employers in the private sector. He asked if private sector employers have to advertise a position or if they could utilize this law and hire somebody, offer employment to someone who is qualified for the position or is it discrimination for them not to advertise the job.

**Eddy McClure** stated the job must be advertised but under the Human Rights Act it would not be considered discrimination to advertise employment under this condition.

**SEN. THOMAS** thought this amendment would be a good one. He understands from it that if a school district or college wanted to retain someone else, if the spouse of that individual is qualified they can hire off the job. We are dealing with advertising, we are dealing with offering the spouse a job. This allows them to hire someone who is less qualified than someone else with the scheme of attempting to retain another key employee.

**CHAIRMAN KEATING** asked if there was a requirement someplace in the law that an employer must advertise for a position that comes open. If there isn't, no one else would be in jeopardy by allowing this situation to occur.

**Vote:** Motion that **SEN. BARTLETT'S AMENDMENT** carried unanimously.

**Vote:** Motion **SB 67** carried 7-2 with **SEN. BARTLETT** and **SEN. WILSON** voting no.

#### EXECUTIVE ACTION ON SB 68

**Motion:** **SEN. VICKI COCCHIARELLA** motioned that **SB 68 DO PASS.**

**Motion:** **SEN. COCCHIARELLA** moved that the **AMENDMENT DO PASS.**

**Discussion:** SEN. COCCHIARELLA said Nancy Butler, State Fund would like to work out the situation with the Physical Therapists, but not hang the bill up on those issues, so they will take that up next session.

**Vote:** Motion that the **AMENDMENT DO PASS** carried unanimously.

**Discussion:** SEN. BARTLETT explained when she saw they would be doing executive action on this bill today, she mentioned to Nancy Butler in regard to the procurement of services and the exclusion from the state procurement process in Section 1 of this bill that she would be interested in an amendment that would require a board to establish policies and procedures which ensure some competition in their selection of contractors. The State Fund's concern is if there is a situation in which they need to act rapidly. SEN. BARTLETT conveyed she would like to have language in the bill that would deal with those situations appropriately. She may suggest that language on the Floor since she missed the opportunity. She said she is not concerned about the staff at State Fund, but there could be turn-over, and in the future they would like specific language regarding the types of services covered by the term service-related services.

**Vote:** Motion that **SB 68 DO PASS AS AMENDED** carried unanimously.

**Discussion:** SEN. KEENAN motioned **DO PASS SB 90**, but withdrew the motion after SEN. BARTLETT discussed some concern with lines 25 - 28 on page 1, which included applying preference when the position was a training position.

**CHAIRMAN KEATING** recommended the Committee hold off on executive action and draft a written amendment.

**ADJOURNMENT**

Adjournment: 4:15 P.M.

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SEN. TOM KEATING, Chairman

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GILDA CLANCY, Secretary

TK/GC

**EXHIBIT (las16aad)**