MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 217

Call to Order: By **CHAIRMAN VICKI COCCHIARELLA**, on April 14, 2005 at 10:30 A.M., in Room 350 Capitol.

ROLL CALL

Members Present:
Sen. Vicki Cocchiarella, Chairman (D)
Rep. Bob Bergren (D)
Rep. Llew Jones (R)
Rep. Jim Keane (D)
Sen. Sam Kitzenberg (R)
Sen. Lane L. Larson (D)
Rep. Scott Mendenhall (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Annie Glover, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: None.
Executive Action: SB 217

The tape was barely audible throughout the meeting and the notes were not sufficient to go off of alone. Therefore, the following is roughly transcribed with sections, unfortunately, left out. There were often sections where it was impossible to determine who was speaking and there were no written notations.

MADAM CHAIR COCCHIARELLA reviewed the issue being addressed by SB 217. She indicated that there were two wage surveys to which contractors do not respond. She felt that the bill was trying to address that problem. She asked that **REP. JONES** go through the rationale for his amendments.

REP. JONES handed out a spreadsheet on the effects of SB 217 on the first-year apprentice minimum hourly wage rates. He indicated that this was the basis for his rationale. He felt that in certain areas, apprentices are earning too much money. He attempted to deal with the fact that the prevailing wage map deals with prevailing wage jobs and not with apprenticeships.

EXHIBIT(frs80sb0217a01)

MADAM CHAIR COCCHIARELLA clarified that **REP. JONE'S** information was based on the survey that was done for existing data from both the maps. Her perspective came from dealing with State employee pay issues where the matrix is skewed and certain grades are underpaid. She discussed amendment SB021704.abc.

EXHIBIT(frs80sb0217a02)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 6.1}

SEN. LARSON explained his amendment, SB021704.abc. He started with Page 1, Line 26. He commented that with the existing system an apprentice could be making more than a journeyman. The first amendment would make it so that an apprentice could be paid no less than the lowest paid journeyman. His next amendment was on Line 27. The purpose of this was to attract quality apprentices. As a compromise, he wanted a starting wage of no less than 45% of the hourly wage. He informed the Committee that only those apprentices starting after October 17 would be affected, those who had begun before this would be grandfathered in. He was afraid that if the bill remains at 40% then some would be starting at a lower rate than their predecessors.

{Tape: 1; Side: A; Approx. Time Counter: 6.1 - 9.7}

REP. MENDENHALL asked if the effective date would be in October.

SEN. LARSON did not know if the rate would be set to start at the end of a program. He asked if, other than those who were under a collective bargaining agreement, there was a percentage at which apprentices start at.

Mark Maki, Supervisor of Montana's Apprenticeship Program, Workforce Services Division, Department of Labor and industry, informed the Committee that they usually followed patterns established by the trade. They use it on a statewide basis. He indicated that carpenters, as a rule, start off at 60% and end up at 85% or 90%. He noted that there were circumstances where they have the opportunity to set the progression schedules based off of economics in an area or certain circumstances that might arise in a particular shop. He reported that the existing administrative rule stated that apprentice wages must start at no less than 50% of an applicable journeyman hourly wage, subject only to a lower wage as required by a collective bargaining agreement. He informed the Committee if there is an existing collective bargaining agreement they will start with their rate, only in the absence of the agreement would they go to the administrative rule where apprentices are started at 50%.

REP. JONES followed up by asking if the wage rate had to increase to the full amount.

Mr. Maki replied that if the Program has made an agreement with an employer and there has been a rate scale set they are obligated to go to the full percentage.

{Tape: 1; Side: A; Approx. Time Counter: 9.7 - 14.4}

REP. KEANE wondered if "mandate" was used and a committee decided that an apprentice was not ready to go to the full percentage then the employer would have the right not to increase their pay to 80%.

Mr. Maki agreed that there were various circumstances when an apprentice is kept from receiving certain levels.

REP. KEANE inferred that "mandate" was not a proper word to use, because there are other things that come into play with the increases.

Mr. Maki asserted that "mandate" would not be the appropriate language.

MADAM CHAIR COCCHIARELLA commented that it is not mandated for an apprentice's employer to sign an agreement on their pay scale, it is their will to sign it.

Mr. Maki agreed that apprenticeships are strictly voluntary on the employer's behalf.

REP. JONES wondered if an employer, who had signed the agreement, could choOse not to pay an apprentice the full percentage.

Mr. Maki replied that they could not.

REP. JONES followed up by asking if there was a possibility that an apprentice might achieve the journeyman rate.

Mr. Maki answered that there was a possibility.

{Tape: 1; Side: A; Approx. Time Counter: 14.4 - 17.2}

MADAM CHAIR COCCHIARELLA wondered if it was possible under current law that an apprentice might receive journeyman wages.

Mr. Maki responded that there was a high degree of possibility that the situation would not exist.

MADAM CHAIR COCCHIARELLA clarified that there were some journeymen who did not perform and do not get the increases that other journeymen receive.

Mr. Maki affirmed that not all journeymen are equal and not all are paid equal.

REP. KEANE was curious how an apprentice could be paid more than a journeyman if the wages of the journeyman are the base for the apprentice's wages.

Mr. Maki explained that the theoretical question that was posed was "is there any law or regulation that would not allow an employer to pay an apprentice more than a journeyman." The answer that he gave to this question was that there is nothing out there that would say an apprentice could not make more than a journeymen. He asserted that common sense in an average situation was that it would not happen but there is still the possibility that it could happen.

REP. KEANE followed up by stating that it would be the choice of the employer.

Mr. Maki agreed that it would be an employer's choice.

REP. KEANE provided an example of where an employer chose to pay an apprentice the California scale. This caused the apprentice to make over twice as much as the journeymen from Montana.

{Tape: 1; Side: A; Approx. Time Counter: 17.2 - 21.9}

SEN. LARSON presented a scenario where workers were working a prevailing wage job but were also working part time doing nonprevailing wage jobs. He wanted to know if, in this situation, the apprentices' wages would be tied to the prevailing wage scale.

Mr. Maki replied that they would be.

SEN. LARSON followed up by saying that in reality, if there was an apprentice earning 90% on the prevailing wage job with other journeymen in the same shop, the apprentice could possibly make more than the journeymen.

Mr. Maki agreed with **SEN. LARSON'S** scenario.

{Tape: 1; Side: A; Approx. Time Counter: 21.9 - 23}

REP. JONES went through a scenario, using actual numbers for the wages, which resulted in an apprentice making more than a journeyman.

MADAM CHAIR COCCHIARELLA commented that **REP. JONES'** scenario was how it would work without SB 217.

Mr. Maki went through the maps of apprenticeship wage regions with the Committee members for clarification.

EXHIBIT(frs80sb0217a03)
EXHIBIT(frs80sb0217a04)

MADAM CHAIR COCCHIARELLA asserted that one of the problems was why the survey provided by Mr. Maki was different from the prevailing wage survey, when the same data is used.

REP. MENDENHALL thought that the issue came down to the base start amounts. He understood that if an independent employer received the survey they would not respond. If this did occur, then it was a survey issue.

REP. KEANE indicated that in the prevailing wage survey of the ten districts, they may allow for all of the contractors. The issue is that if another survey is done it might not be sent to the same population.

Mr. Maki responded that the existing survey that is done for apprentices in rural areas are sent to existing apprenticeship

sponsors operating in those regions. The results are based off of response from them.

{Tape: 1; Side: A; Approx. Time Counter: 23 - 34.6}

REP. JONES indicated that when independent employers get a survey for prevailing wage, they do not fill it in because they do not do prevailing wage jobs.

MADAM CHAIR COCCHIARELLA felt that the Department needed to be more persistent in getting the surveys out to independent contractors.

There was a discussion on the use of and production of the prevailing wage surveys. The Committee members tried to figure out what was wrong with the surveys and how they could be better applied. They also discussed the prevailing wage and how it was determined in the ten districts.

{Tape: 1; Side: A; Approx. Time Counter: 34.6 - 43.4}

MADAM CHAIR COCCHIARELLA asked when the next survey was scheduled.

Mr. Maki answered that it had just been finished over the summer. He noted that surveys were taken every two years for apprentice rates, so it would be done again in 2006.

The Committee discussed the surveys, and their implications for independent contractors. They addressed the different wages presented by the two surveys. They talked about the differences in wages that would occur by changing the rate percentage for apprentices.

MADAM CHAIR COCCHIARELLA thought that they might be able to delay the effective date until the next survey came into place. She felt that the problem could be mitigated by one survey and one set of data that would include all of the data.

SEN. KEANE pointed out that there were two surveys, one that people could choose not to fill in and another conducted every two years, specifically targeting people to survey. His thought was that the people running the other survey should ask the Department to include everyone in the apprentice survey.

{Tape: 1; Side: A; Approx. Time Counter: 43.4 - 59.9}

REP. JONES insisted that contractors in small areas would not be able to pay their apprentices more and would be drastically hurt

by increasing the pay scales starting rate to 45%. It was asserted that the reason there is an apprenticeship program is so employers could train individuals like they want them to be trained, to do the job that they need. Not hiring apprentices would not be an option for many contractors.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 10.2}

John Andrew, The Department of Labor and Industry, indicated that he was not involved with the rate setting methodology, but had a basic understanding. He added that the prevailing wage was done on a district survey basis, and the surveys go out to all contractors who are registered and do commercial work. He noted that plumbers and electricians were different because they had their own registration process. He informed the Committee that the data, when it was sent back, would be looked at on a district basis. He asserted that the prevailing wage law had many different classifications of workers. He understood that the survey methodology, when the data came into the research and analysis section, stated that they needed to have data for at least five workers from each of the classifications on which they base the prevailing wage rate. He noted that if they have data from five workers then that is what they use to determine the rates of that classification of workers. If there is insufficient data, he explained, they would then look at the district to see if there was an existing collective bargaining agreement that had been submitted. If it had been, then that is what they would use as the prevailing wage. If there is no collective bargaining agreement in the district then they would look to the next contiguous district and use that data until they find the five workers needed to determine the prevailing rate.

{Tape: 1; Side: B; Approx. Time Counter: 10.2 - 12.3}

REP. JONES asked what the percentage of the applied wage was.

Mr. Andrew did not know because he was not involved in the actual rate-setting. He commented that it was a problem to find enough data to know what the rate should actually be set at.

Motion: MADAM CHAIR COCCHIARELLA moved that SB 217 BE CONCEPTUALLY AMENDED IN SECTION 1.

Discussion: They discussed the bill, tape inaudible.

MADAM CHAIR COCCHIARELLA said that her idea was to phase in the increase.

SEN. LARSON wanted to see the prevailing wage determined from one survey. He asked if it would be acceptable to keep the 40% and change the effective date until 10/1/06.

The Committee members discussed ways in which to use one survey to get all the information needed to determine a correct prevailing wage.

{Tape: 1; Side: B; Approx. Time Counter: 12.3 - 23}

MADAM CHAIR COCCHIARELLA asked if there was language they could add to the original Section 1A of the bill that would strengthen the response of contractors to the surveys.

Mr. Maki was not sure what could be put in the statute that would serve as enticement.

SEN. LARSON wondered why there couldn't be a one-on-one basis for the pay scale, so that each contractor could base wages off their own employees.

REP. KEANE asserted that it would be the most confusing situation in the state of Montana because prevailing wage has been in effect for so long. He noted that an individual shop could cause the need for many FTE.

SEN. LARSON inserted that there would be no need for a survey.

REP. KEANE felt that if they were going to do that then they should not have an apprentice. He asserted that it was for education, not for random workers. He indicated that the reason apprentices are paid a different rate is because they are under the Fair Labor Standards Act and they have an agreement.

Substitute Motion: SEN. LARSON made a substitute motion that SB 217 BE AMENDED WITH AMENDMENT # SB 217-1. Motion passed unanimously by roll call vote with REP. BERGREN voting aye by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 23 - 42}

ADJOURNMENT

Adjournment: 11:30 A.M.

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SEN. VICKI COCCHIARELLA, Chairman

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ANNIE GLOVER, Secretary

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BRITT NELSON, Transcriber

VC/ag/bn

Additional Exhibits:

EXHIBIT(frs80sb0217aad0.PDF)