

MINUTES

MONTANA SENATE 51st LEGISLATURE - SPECIAL SESSION COMMITTEE ON LABOR AND EMPLOYMENT

Call to Order: By Chairman Gary Aklestad, on July 10, 1989,
at 10:50 a.m., Room 331, Capitol

ROLL CALL

Members Present: Senator Sam Hofman, Senator Gerry Devlin,
Senator Bob Pipinich, Senator Richard
Manning, Senator Chet Blaylock, Senator
Gary Aklestad

Members Excused: Senator Tom Keating, Senator J. D. Lynch,
Senator Dennis Nathe

Members Absent: None

Staff Present: Tom Gomez

Announcements/Discussion:

Chairman Aklestad reminded the committee that a joint hearing was held with the House committee on this bill, and reported that he sent a notice to the sponsor, Representative Driscoll, so he could be part of the discussion because the bill has changed quite a bit compared to the original bill the committee heard. He indicated that they will not have a full-blown hearing because he is sure Representative Driscoll will explain, noting that he thinks most of the committee members are aware of what changes have taken place in the bill. Chairman Aklestad added that he understands there may be some technical amendments.

Chairman Aklestad then asked Representative Driscoll to explain the changes in the bill.

Discussion: **HB 56**

Representative Driscoll reported that, when they had the joint committee, the freezes were in, that the committee took them out, and the floor of the House put them back in. He referred to the bottom of page 18 and page 19, and indicated it is paid for by accelerated corporation payments, only, which is what would pay the \$20 million, or about.

Chairman Aklestad reported that Senator Crippen's bill was on the floor, yesterday, noting that he sees the \$5,000, and

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asked if the amendment is exactly the same as the corporate side of Senator Crippen's bill. Representative Driscoll responded that he is not sure, but does not think so, that it may be, but would have to be checked. He indicated this is only the corporate. Chairman Aklestad pointed out that he clarified that by saying the corporate, and again asked if this is the same as the corporate side of Senator Crippen's bill. Chairman Aklestad then asked Mr. Gomez if that was \$5,000 and above. Mr. Gomez responded it was.

Representative Driscoll indicated that the division asked for an amendment on page 36, new section 12, exemption from notice requirement. He reported that the law, right now, says that they have to give 30 days notice to make any change in rates, and this would roll back the rates, so they would not have to comply with the 30 day notice. Chairman Aklestad asked if that is just in this case. Representative Driscoll responded just in this case, just one time, that it is effective July 1, 1989, in response to the provisions of this act, so it is only the one-time exemption.

He added that it provides \$6 million over the biennium, and about \$20 million in one-time money from accelerated collections, which would be invested and, at the estimated 7%, would bring in \$1.5 million a year in interest, which would also be deposited in the workers compensation fund. He indicated that, after the total \$20 million was collected and deposited, they would have a balance of about \$49 million being invested, and would be actuarially sound.

Questions from the Committee:

- Q. Chairman Aklestad asked Representative Driscoll if he understands him to say the purpose of that money would not be for expenditure, that just the interest would be used.
- A. Representative Driscoll responded maybe some day.
- Q. Chairman Aklestad asked how it is directed, in the bill.
- A. Representative Driscoll responded that it is paid to the unfunded liability, but will be deposited in the workers compensation account, invested by the Board of Investments and, as those bills come in, they would pay them off.
- Q. Chairman Aklestad asked if, then, the purpose would be to pay those bill off, if need be.

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- A. Representative Driscoll responded yes but indicated that, whether they use the \$20 million to pay off the bills, or new premiums to pay off the bills, is just a technicality, and that they want to leave as much in the Board of Investments as they can, being invested, so they get the return on the money.
- Q. Chairman Aklestad asked if the main thrust of that effort is to forestall the increase in premiums.
- A. Representative Driscoll responded that it will definitely stop the raise in premiums.
- Q. Chairman Aklestad noted except that the raises within a category might go high or low.
- A. Representative Driscoll indicated that a class code which had a bad experience would still have a raise, and that individual employers who have a bad modification factor would still get a raise. He cited the example that loggers went up 19% and, without the 22% raise July 1st, they would probably see a slight reduction or a freeze.
- Q. Senator Blaylock indicated that Representative Driscoll said a slight freeze, and asked if that is a freeze at 22%.
- A. Representative Driscoll responded that he does not know, that it was \$38, and they went to \$45, that the difference is 19%, which was a little bit less than the average, and they will go back to \$38, or possibly a little bit lower.
- Q. Senator Pipinich asked if the loggers will do that.
- A. Representative Driscoll responded yes, that they do not have a bad experience, that they just took a 22%. He added that, in other class codes, however, he thinks iron workers will still get a raise because their class code had a bad experience, plus they would get 22% less raise than they have now.
- Q. Senator Pipinich then asked what is their category.
- A. Representative Driscoll responded it was \$12, and went to \$24.

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- Q. Senator Pipinich pointed out that they are getting a lot of heat from the jockey association.
- A. Representative Driscoll reported that got fixed, that the jockeys were fixed, but not all the horsemen. He indicated that their class code deserved 100% raise but, through investigation by the department, they found that only 15% of those people were paying, that, because of the nature of the industry, people would come into the state, be here for two or three months, and leave before the premium was due. He reported that, now, the division is going to require the horseracing board to collect \$220 from everybody who applies for a license, up front, to put in workers compensation, and that the horsemen agreed to that.
- Q. Senator Blaylock indicated that this keeps them safe for one year, and asked if they do not know what will happen in the next year.
- A. Representative Driscoll responded no, they do not. He pointed out that they need only about \$19.5 million, and are being given \$6 million in freezes, \$20 million in cash, plus the investment income. He added that, barring bad experience this year, if the loss ratio does not go any higher than 88%, as it was in 1988, they probably will not have a raise. He further indicated that, if it goes down to 85%, as they are hoping, there will probably be no rate increase but, if they go to a 95% loss ratio, or something else happens, there is no way to control it.
- He then indicated that the other part of it is if the truckers association or loggers association, or some other industry groups put in place safety programs. He cited the example that the Montana Loggers Association put their's into effect a couple of years ago, that four or five years ago they were at over 100% loss ratio but, in the last three years, they only had 38%. He indicated that will bring their class code down, over time, that it takes four years for that element to take effect. He added that figures into the whole program, if they keep the loss ratio down, noting that, if there is a raise in 1990, he does not anticipate very much, they will get an extra \$9 million, or \$9.5 million, over and above what they asked for in rate increases in July of 1989.
- Q. Senator Devlin asked how much the total funds raised by this bill will be.

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- A. Representative Driscoll responded \$20 million from the general fund, and \$3 million, each year, in freezes.
- Q. Chairman Aklestad indicated that it is not general fund, anymore.
- A. Representative Driscoll pointed out that it says general fund in the bill.
- Q. Senator Devlin asked where is the money that this raises, by accelerating all this, and how much is that.
- A. Representative Driscoll responded \$20 million. He indicated that he believes Representative Thoft's amendment says they will accelerate just the corporations, which goes into the general fund, that 25% of the corporate acceleration goes to school funding, and 75% goes to workers compensation, but it frees up \$5 million of general fund. He further explained that Representative Thoft's amendment accelerates the corporations who owe more than \$5,000 in a year, puts it in the general fund, and that this appropriates it from the general fund.
- Q. Senator Devlin asked if it puts it in, then takes it out, almost the same dollars.
- A. Representative Driscoll responded right, and indicated that they have \$3 million a year in freezes, that over the biennium it is \$6 million and then, depending on how fast the \$20 million is deposited, they get the interest on that.
- Q. Senator Devlin asked if that goes right into the workers compensation fund.
- A. Representative Driscoll responded that it goes to workers compensation, the Board of Investments invests it, and it does not go back to the general fund.
- Q. Senator Blaylock asked if that is a possibility of \$6 million a year.
- A. Representative Driscoll responded that the freezes are \$6 million a year, and they are anticipating a 7% return on short-term investments.

Chairman Aklestad noted that would be \$1.4 million per year.

Representative Driscoll indicated that he does not know how fast that money will get in there but, for fiscal year 1991, it will all be there, that they will have at least \$1.4 million for that fiscal year and, for the last half of this fiscal year, they will have some.

- Q. Chairman Aklestad asked if there was any consideration given to the freeze, making it retroactive, and asked that he clarify that because the Supreme Court has ruled that they can not do that. He noted that the Supreme Court has also indicated several times that, if they specifically give a reason why they are doing something, they would go along with that. He again asked if any consideration has been given to making that retroactive, with a clause specifically in there to designate to the Supreme Court why they made that portion retroactive.
- A. Representative Driscoll reported that Mr. Sweeney did not think they could do that but, if they do it, he thinks there has to be a severability clause. He pointed out that, if that portion is not upheld, it will be separate from the rest of the bill so that in those thirty days, or whatever it takes, the people who were injured between July 1st and whatever date that is would get the maximum. He indicated that they should put a severability clause in, noting that he thinks it is a good idea, but he does not know if they have time in the House.

Discussion:

Chairman Aklestad indicated that it would possibly save administrative costs, and would save premium costs from July 1st of this year to the time the Governor signs it, whenever that is, noting that, if they roll this thing, it should not be long, that this could be on his desk by Wednesday.

Representative Driscoll indicated that would be fine with him, but that, if they do that, they should put a severability clause in so that, if it is found illegal by the Supreme Court, it does not throw out the whole bill. Chairman Aklestad agreed that they should put in a severability clause so that, if it is tossed out, the rest of the bill would be intact, and those individuals entitled to a law suit would recoup their losses back to July 1st.

Chairman Aklestad then asked Representative Driscoll if he thinks the House will go for that, in committee, so they do not have to horse around, pointing out that there is no use

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for them to do something, here, if it is not going to pass in the House. Representative Driscoll responded that a lot of people asked him that, in the House, but he did not have the answer from Mr. Sweeney as to what he thought about it, so he went with it the way it was.

There was general discussion regarding an amendment to add a severability clause, as well as the technical amendments. Chairman Aklestad asked Mr. Gomez to explain the technical amendments.

Mr. Gomez indicated that the technical amendments are really rather simple, that it is only two things, the first of which is to make effective immediately the 1989 amendments to the law on payment of medical and hospital benefits, in order to make good their use of this law, which occurs on page 29. He explained that the language on page 29, Section 7, really does not exist yet, that this section includes amendments made in the 1989 session. Chairman Aklestad indicated that it does not say new section, and is not underlined, and asked how can it not be there. Mr. Gomez responded because this is the way the law will appear when it is codified and they have put in all the 1989 amendments. He indicated that, in order to make valid the use of this section, they need to make effective immediately those 1989 amendments which appear in Section 23, Chapter 613.

Chairman Aklestad asked how that will correlate with his proposal to go back, retroactive, to July 1st with the severability clause; how that will interact with his suggestion that it be retroactive. Mr. Gomez responded that they match perfectly.

Mr. Gomez then indicated that the next thing the amendments do is correct an erroneous internal reference to the section in this bill which makes available the \$20 million to the workers compensation tax account. He referred to page 35, line 12, and pointed out that it says Section 2 but, on line 17, Section 11 is the section which makes the appropriation of money, and this is just a little oversight.

Motion: Senator Manning offered a motion that the technical amendments to HB56 be adopted.

Vote: Motion passed unanimously by the committee that the technical amendments to Hb56 be adopted.

Chairman Aklestad indicated that this bill is still appropriating general fund money, that they are anticipating that

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portion of Senator Crippen's bill will be enacted, the money will then go to the general fund, and they will take it back out the other way. Mr. Gomez explained that the parts of Senator Crippen's bill which provide for the accelerated corporate license and income tax payments is actually in this bill, and provides for the accelerated tax payments to generate revenue, but that revenue already goes to the general fund and they are making a direct appropriation out of the general fund, in anticipation of those monies being deposited there.

Chairman Aklestad asked if, regardless of Senator Crippen's bill, this bill will take the corporation acceleration put into the general fund, and also if they have the mechanism to pull it back out of the general fund, and for the use of it. Senator Devlin responded that is correct, noting that the amendments he had only took \$15 million. Chairman Aklestad asked, if Senator Crippen's bill dies, will they still have a mechanism.

Senator Hofman asked if this brings in about \$50 million. Chairman Aklestad responded no, \$20 million, that, in this bill, they are only accelerating the corporate side, which brings in approximately \$20 million, and only for \$5,000 due from a corporation. He noted that the personal side is another \$30 some million, which is what he tried to do on the floor, pull the personal side out and leave the corporate side in. Senator Pipinich indicated that they turned right around and did it with this bill, for that purpose.

Senator Pipinich then asked Chairman Aklestad if they are going to put his amendments on the bottom of this amendment. Chairman Aklestad responded no, that it has to be separate. Senator Pipinich asked if it has to be a separate motion. Chairman Aklestad responded that it has to be a separate motion with some strong boiler-plate language to satisfy the court because, in the past, they have indicated, if they are given direction to what the Legislature is thinking, they may not even have considered it, or would have considered it in a different light. He then asked if the committee understands what they are trying to accomplish, adding that they will need a separate severability clause.

Motion: Senator Devlin offered a motion to come up with some boiler-plate language for the bill to go back retroactive to July 1st.

Chairman Aklestad pointed out that HB56 was introduced and had a hearing prior to July 1st of this year, and the Legislature

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was actively involved in trying to do something along these lines prior to that time. Mr. Gomez indicated that there is already a severability clause in the bill in Section 13 on page 36, noting the point being well-taken concerning the retroactive applicability of the provisions imposing and continuing these, and all they need to do is have a motion to provide for retroactive applicability of those provisions providing for a continuation of these to July 1, 1989.

Chairman Aklestad indicated that they need some type of language as to why they are asking for that retroactive date, that the Supreme Court wants to know what they are hanging their hat on. Senator Blaylock suggested that Mr. Gomez draw it up saying that the House and Senate were considering this before July 1, 1989 and, because of other bills being passed, this had to be re-visited, that the \$20 million was put in from another source than what was being considered at the time, and the committee, therefore, asks that the active date be July 1, 1989, if this bill would be put into effect.

Chairman Aklestad asked Mr. Gomez if the severability clause is broad enough to cover the whole gambit. Mr. Gomez responded that the severability clause specifically applies to this act, which is the entirety of the bill before the committee. Chairman Aklestad indicated they want to make sure, so that they are correct, and further asked Mr. Gomez if the severability clause will cover the retroactive portion. Mr. Gomez responded yes, and pointed out that the statement by Senator Blaylock as to the rationale would suffice, if it were simply added to the record, into the minutes, so as not to further complicate this bill. Senator Blaylock noted that he thinks it would be good that it just be made part of the record.

Chairman Aklestad asked Mr. Bohyer if, in the past, the Supreme Court has looked at the record, also. Mr. Bohyer responded that he has not done too much research in that area, but that yes, minutes of legislative meetings are used. Chairman Aklestad asked if the committee would agree that their intent for the retroactive applicability date be included in the minutes. The committee responded that they would agree.

Vote: Motion passed unanimously by the committee that HB56 be amended to be retroactive to July 1st.

Motion: Senator Manning offered a motion that HB56, as amended, be concurred in.

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Mr. Gomez indicated that, because HB56 does contain the accelerated tax payments under SB14, which is those accelerated payments for corporate license and income taxes, some consideration should or might be given to coordinating the provisions of HB56 relating to those tax payments and those provisions in SB14, in the event SB14 passes. Senator Pipinich stated that they have them in Section 11. Mr. Gomez indicated that his suggestion, if the committee wishes to consider that so as to prevent any conflicts in the law, is that they have one or the other provision in the bill eliminated, if both are passed.

Senator Manning withdrew his motion that HB56, as amended, be concurred in.

Chairman Aklestad indicated that he does not follow, and Mr. Gomez explained that SB14 has virtually the same language as found on pages 15 through 24, which provide for the accelerated tax payments of corporate license and income taxes, including the provision concerning the \$5,000 requirement for the estimated tax due. He added that, to the extent that SB14 relates to this, and may be changed in any particular way, they need to make sure that, if SB14 is enacted, and this bill is also enacted, the provisions in this bill will apply, and supercede whatever is done in SB14, to prevent any problems which may result from enactment of both bills. He indicated that this is the kind of problem which occurs when they graft into one bill the substance of another bill which is moving through the legislative process and has, in fact, been approved by the Senate and now is in the House.

Chairman Aklestad asked Mr. Gomez, if they both pass, how they can supercede this one. Mr. Gomez responded all that would be required is a coordination provision which would say that, if both bills are enacted, the provisions in SB14 relating to accelerated tax payments for corporate license and income taxes are void, and the provisions of HB56 will apply, or are valid, so that they make sure that only one of these is going to be the law.

Motion: Senator Blaylock offered a motion that HB56 be amended to provide that the language in HB56, pertaining to accelerated tax payments for corporate license and income taxes, take precedence over SB14, in the case both are enacted.

Vote: Motion passed unanimously by the committee that HB56 be amended to provide that the language in HB56, pertaining to accelerated tax payments for corporate

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license and income taxes, take precedence over SB14, in the case both are enacted.

Motion: Senator Manning offered a motion that HB56, as amended, be concurred in.

Chairman Aklestad asked if everyone understands all the amendments, or if they should briefly run through them. The committee members responded that they understood the amendments.

Vote: Motion passed unanimously by the committee that HB56, as amended, be concurred in.

Chairman Aklestad indicated that the extra language, instead of being in the bill, will be part of the record, so they will not see it on the Senate floor, as far as the retroactive portion, and the portion regarding superceding will be part of the bill. He noted that the technical changes will be also be added to the bill.

Senator Blaylock asked how the lawyers and the people out there will know the effective date is July 1st. Mr. Gomez responded that they approved the amendment concerning the retroactive date, but not the rationale, so they will still have a retroactive applicability date.

ADJOURNMENT

Adjournment At: 11:25 a.m.



GARY C. AKLESTAD, Chairman

GCA/mhu
HB56AM.710

ROLL CALL

LABOR COMMITTEE
51ST LEGISLATIVE SESSION

DATE:

July 10, 1989

a.m.

NAME	PRESENT	ABSENT	EXCUSED
SENATOR TOM KEATING			✓
SENATOR SAM HOFMAN	✓		
SENATOR J. D. LYNCH			✓
SENATOR GERRY DEVLIN	✓		
SENATOR BOB PIPINICH	✓		
SENATOR DENNIS NATHE			✓
SENATOR RICHARD MANNING	✓		
SENATOR CHET BLAYLOCK	✓		
SENATOR GARY AKLESTAD	✓		

Amendments to House Bill No. 56
Third Reading Copy

For the Senate Committee on Labor and Employment Relations

Prepared by Tom Gomez
July 10, 1989

1. Title, line 2.
Strike: "AND"

2. Title, line 4.
Following: "DATE"
Insert: "FOR THIS ACT AND FOR SECTION 23, CHAPTER 613, LAWS OF 1989,"
Following: "AND"
Insert: "PROVIDING"

3. Page 35, line 9.
Following: "fund."
Insert: "The account consists of:"

4. Page 35, line 10.
Strike: "(2) All"
Insert: "(a) all"
Following: "~~and~~"
Insert: "including"

5. Page 35, lines 11 through 13.
Following: "tax" on line 11
Strike: remainder of line 11 through "are" on line 13
Insert: "; and
(b) revenue appropriated to the account under [section 11].
(2) All money in the tax account is"

6. Page 37, line 5.
Strike: "IS"
Insert: "and section 23, Chapter 613, Laws of 1989, are"

Amendments to House Bill No. 56
Third Reading Copy

For the Senate Committee on Labor and Employment Relations

Prepared by Tom Gomez
July 10, 1989

1. Title, page 2, line 2.
Strike: "AND"

2. Title, page 2, line 4.
Following: "DATE"
Insert: "FOR THIS ACT AND FOR SECTION 23, CHAPTER 613, LAWS OF 1989;"
Following: "AND"
Strike: "AN"
Insert: "PROVIDING"
Following: "APPLICABILITY"
Strike: "DATE"
Insert: "DATES"

3. Page 35, line 9.
Following: "fund."
Insert: "The account consists of:"

4. Page 35, line 10.
Strike: "(2) All"
Insert: "(a) all"
Following: "and"
Insert: "including"

5. Page 35, lines 11 through 13.
Following: "tax" on line 11
Strike: remainder of line 11 through "are" on line 13
Insert: "; and
(b) revenue appropriated to the account under [section 11].
(2) All money in the tax account is"

6. Page 36, line 15.
Following: line 14
Insert: "NEW SECTION. Section 15. Coordination instruction. (1) If this bill and Senate Bill No. 14 are both passed and approved, then [section 1, Senate Bill No. 14] is amended so language that reads: "\$20 million is allocated to the workers' compensation tax account under 39-71-2504" will read: "\$20 million is allocated to the state general fund and is appropriated as provided in [section 11, House Bill No. 56]".
(2) If this bill and Senate Bill No. 14 are both passed and approved, then [section 7, Senate Bill No. 14] and the amendments contained in [sections 5 and 6, Senate Bill No. 14] are void."
Renumber: subsequent sections

EXHIBIT NO. 2 pg 2
DATE 7/10/89 a.m.
BILL NO. N356

7. Page 36, line 15.
Following: "APPLICABILITY."
Insert: "(1)"

8. Page 36, line 18.
Following: line 17
Insert: "(2) [Sections 4 through 9] apply retroactively, within
the meaning of 1-2-109, to July 1, 1989."

9. Page 37, line 5.
Strike: "IS"
Insert: "and section 23, Chapter 613, Laws of 1989, are"