

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on March 23, 1991, at 9:20 a.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

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

Announcements/Discussion: NONE.

EXECUTIVE ACTION ON HOUSE BILL 336

Amendments, Discussion, and Votes:

Tom Gomez explained amendments (HB033602.ATG). Senator Pipinich moved amendments above and later withdrew the motion for further amendment.

Senator Keating asked if the sponsor were aware of the amendments. Senator Towe told the Committee the sponsor was not aware of the amendments. He explained the amendments are for the purpose of clarification. He pointed out the intent is not to make the interest part of the penalty. He suggested deleting the reference to interest which would then state the penalty can be up to 100% of the wages; not up to 100% of wages and interest.

Mr. Gomez told the Committee the result would be a clear penalty provision in sub (1), a clear interest provision in sub (2), a clear provision in sub (3) which states none excludes the

obligation of the employer to pay wages due.

Senator Pipinich moved amendments (HB033602.ATG) and delete all underscored language on Page 2, Line 7 and Line 8.

Senator Aklestad offered a substitute motion which delete amendment (4) of HB033602.ATG (Page 1, Line 25 by inserting "may" in place of "must"). He explained this would allow the department latitude in negotiating the penalty.

Senator Towe ruled the Aklestad motion as a request to divide the question.

The Pipinich motion to adopt all but amendment (4) CARRIED UNANIMOUSLY.

The segregated portion of the Pipinich motion (to adopt amendment (4) of HB033602.ATG) CARRIED by a Roll Call Vote with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, Senator Nathe).

Recommendation and Vote:

Senator Lynch moved House Bill 336 BE CONCURRED IN as amended. Roll Call Vote CARRIED with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, Senator Nathe). Senator Pipinich will carry House Bill 336 on the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 342

Amendments, Discussion, and Votes:

Senator Towe explained amendments.

Senator Aklestad moved House Bill 342 BE NOT CONCURRED IN.

Senator Blaylock commented this is a "real problem across Montana". If an individual is hurt while working as a sub-contractor a consistent pattern has been set. That individual the goes to court. He stated the main contractor or the owner "get hit". He told the Committee this is not fair. Others are covered by private insurance.

Senator Towe explained the issue raised by Senator Blaylock is addressed in the amendments.

Senator Lynch pointed out the Committee was speaking to the Aklestad motion and not the amendments.

Senator Towe stated that is correct but asked to explain. A

proposal to address the concern is anyone having proof of coverage for themselves and their employees (to the same extent as workers' compensation) would not have to comply.

Senator Keating asked to make a statement for the record. Some sub-contractors claim to be independent contractors and not employees; and need not be covered under the employers or general contractors workers' compensation; and it is presumed they have covered themselves for medical claims and loss of wages by other means as an independent contractor. The general contractor enters into an agreement with them. There are cases where the independents get hurt on the job and claim to be an employee. He explained in order to avoid those situations, the contractor who is negotiating with the contractee can require proof of coverage. He told the Committee this is the case in his business. If he chooses to preclude liability against himself when hiring a sub-contractor he requires them to provide him with a certificate of insurance for the coverage of those things for which he does not choose to be liable. He stated those who hire him require the same. He explained the problem could be solved if people were to be responsible for themselves in the private sector. He commented House Bill 342 will cause "unwanted and unwarranted" cost and expense on private contractors, who are truly private contractors. These contractors will be forced to buy double premiums; workers' compensation and as part of their health insurance programs, the wage loss and medical plans with private insurance. Many independent contractors have workers' compensation for employees but do not cover themselves because they are "working inside". These employers would then have to have pay a higher premium on themselves. He stated "this is a financial burden on a whole bunch of people".

Senator Lynch stated what is happening at the present time is not right. He commented the bill as written is "not right". If an individual has proof of their own insurance they should be exempted. Senator Lynch offered a substitute motion to move the amendments to House Bill 342 (HB034202.ATG).

Senator Devlin pointed out the sub-contractors must report to the Department of Labor under this amendment. He questioned why the proof cannot be shown to the contractor.

Senator Lynch stated the department has to regulate workers' compensation. The department is responsible for making the exemption from being covered. The department needs this information to make such a determination.

The Lynch motion on amendments (HB034202.ATG) CARRIED with Senator Keating and Senator Aklestad voting NO.

Senator Aklestad stated House Bill 342 as amended still leaves a possibility of the situation arising in which a "little contractor is being punished more than the big contractor". The small contractors is "pounding the nails" while the big

contractor is doing "office work". He told the Committee he acknowledges the problem in which home owners or regular contractors "having to pick up the tab". He stated the sub-contractors should be forced to show proof of insurance. House Bill 342 is creating another problem.

Senator Keating stated the amendment will impact the work load at the Department of Labor. He asked Chuck Hunter of the Department of Labor and Industry to comment on how the procedure would work. Mr. Hunter told the Committee at the present time when an independent contractor applies for an exemption, it is granted. House Bill 342 requires the independent contractor to submit to the department on a quarterly basis proof of insurance. The department will have to adopt a process used every quarter to determine if each has coverage. He explained there is a problem with "comparable coverage". He stated he did not believe there was comparable coverage to workers' compensation. If there is comparable coverage the department is in a position of having to review each insurance package and compare it to workers' compensation. He told the Committee there is a substantial amount of work that did not exist before.

Senator Blaylock asked Pat Sweeney of the State Fund how much of a problem is there. Mr. Sweeney explained there is no "hard data at this point". He stated in speaking with the claims people it is seen occasionally, but not on a "weekly basis".

Senator Doherty asked Mr. Sweeney how many formal dispute cases were handled last year which dealt with whether an individual was an employee or an independent contractor, or the independent contractor claimed he was an employee. Mr. Sweeney stated he did not have that data. Senator Doherty asked Mr. Sweeney if the number '291' meant anything; or if he would dispute the number. Mr. Sweeney said he could not dispute it. Senator Doherty asked Mr. Sweeney if he knew how many times the Montana Supreme Court has had to deal with this question. Mr. Sweeney stated "on more than one occasion".

Senator Towe asked Senator Doherty if he were suggesting there were 291 cases in a year's time. Senator Doherty told the Committee this were a number given to him.

Senator Devlin pointed out no home owners were at the hearing for House Bill 342 to testify; and if there were a problem where were these individuals who have been sued.

Senator Towe commented the fund gets sued for coverage.

Senator Devlin stated there was testimony about homeowners being sued, and contractors with a sub-contractor.

Senator Doherty commented the Montana Building Industry Association and Great Falls Home Builders told the Committee the problem is when someone is hurt they immediately want to be an

employee to get on workers' compensation. If they are not determined to be an employee on workers' compensation they either approach the contractor or the homeowner.

Recommendation and Vote:

The Aklestad motion to BE NOT CONCURRED IN FAILED with four (4) YES (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe); five (5) NO (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe).

Senator Lynch moved House Bill 342 BE CONCURRED IN as amended. MOTION CARRIED with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe). Senator Doherty will carry House Bill 342 to the Senate floor.

EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 13

Amendments, Discussion, and Votes:

Tom Gomez explained amendments (HJ001301.ATG).

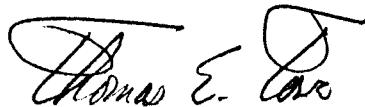
Senator Nathe moved the amendments to House Joint Resolution 13. MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote:

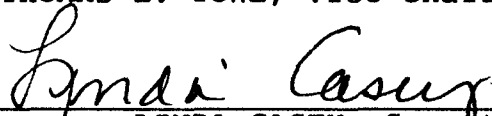
Senator Nathe moved House Joint Resolution 13 BE CONCURRED IN as amended. MOTION CARRIED with Senator Aklestad and Senator Keating voting NO. Senator Doherty will carry HJR 13 to the Senate floor.

ADJOURNMENT

Adjournment At: 10:00 a.m.



SENATOR THOMAS E. TOWE, Vice Chairman



LINDA CASEY, Secretary

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/23/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 26, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 336 (third reading copy -- blue), respectfully report that House Bill No. 336 be amended and as so amended be concurred in:

Strike the Labor and Employment Relations Standing Committee Report dated March 14, 1991 in its entirety and concur in the following amendments:

1. Title, line 5.
Following: "AN ACT"
Strike: "AUTHORIZING"
Insert: "REVISING THE STATE WAGE PROTECTION LAWS; REQUIRING AN EMPLOYER TO PAY A PENALTY TO AN EMPLOYEE"
2. Title, lines 6 and 7.
Following: "RETAIN" on line 6
Strike: remainder of line 6 through "EMPLOYER" on line 7
3. Title, line 15.
Following: "39-3-206,"
Insert: "39-3-208,"
4. Page 1, line 25.
Following: "must"
Strike: "MAY"
Insert: "must"
5. Page 2, lines 7 and 8.
Following: "due"
Strike: remainder of line 7 through "(2)" on line 8
6. Page 2, line 15.
Following: "NOT"
Strike: "EXCEED"
Insert: "be less than"

7. Page 2, line 18.

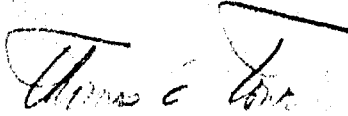
Following: line 17

Insert: "(3) Nothing in this section may be construed to relieve an employer from the requirement to pay an employee the full amount of wages due, including interest, if the employer is found in violation of this part.

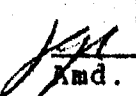
Section 2. Section 39-3-208, MCA, is amended to read:


"39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any party in his or its employ the provisions of which violate, evade, or circumvent this part is unlawful and void, but ~~such~~ the employee may sue to recover his wages earned, together with the ~~5%~~ penalty and interest specified in 39-3-206 or separately to recover the penalty and interest if the wages have been paid."

Renumber: subsequent sections

Signed: 

Thomas E. Towe, Vice Chairman

 3-26-91
Amd. Coord.

 11:20
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 26, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 342 (third reading copy -- blue), respectfully report that House Bill No. 342 be amended and as so amended be concurred in:

1. Page 19.

Following: line 18

Insert: "NEW SECTION. Section 10. Applicability -- exemption.

(1) [This act] does not apply to any construction project bid by an employer prior to October 1, 1991.

(2) Notwithstanding any other provision of [this act], an independent contractor may apply to the department of labor and industry for an exemption from [this act] in the manner provided for in 39-71-401 if the independent contractor can demonstrate, on a quarterly basis, proof of insurance for himself that provides compensation and benefits providing coverage for medical claims and loss of wages resulting from injuries and occupational disease that is comparable to the coverage provided under Title 39, chapters 71 and 72."

Signed: 

Thomas E. Towe, Vice-Chairman

LB 3/26/91
Amd. Coord.

SB 3-26-91 11:20
Sec. of Senate

651038SC.SLB

CLERICAL

HOUSE Bill No. 342

Date: 3/29/91

Time: 3pm

SBA/CAS
(Legislative Council Staff)

Labor & Employment
S / H Standing Committee
Thomas E. Towe
(Chairman) TOWE

S / H Committee of the Whole
(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

Title, line 11.

Strike: "AND"

Title, line 12.

Following: "MCA"

Insert: "; AND PROVIDING AN APPLICABILITY DATE"

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 26, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Joint Resolution No. 13 (third reading copy -- blue), respectfully report that House Joint Resolution No. 13 be amended and as so amended be concurred in:

1. Page 1, line 9.

Following: line 8

Insert: "WHEREAS, legislation has been introduced in the United States Congress to allow railroad corporations to participate in state workers' compensation programs; and"

2. Page 3, line 7.

Following: line 6

Insert: "BE IT FURTHER RESOLVED, that the Legislature of the State of Montana opposes participation of railroad corporations in Montana's workers' compensation system."

Signed: 

Thomas E. Towe, Vice-Chairman

LBj/2/11
Amd. Coord.

SL 3/26 11:30
Sec. of Senate

DATE 3/23/91

COMMITTEE ON Senate Labor

EX. SESS - HB 141-187-336-342-506 HJR13

VISITORS' REGISTER SB 417

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ron Spartz	DLI <u>owner Construction</u>	342		<input checked="" type="checkbox"/>
<u>Nick Maloney</u>	DLI	336	<input checked="" type="checkbox"/>	

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 3/23/91 House Bill No. 336 Time 9:31 Am

NAME	YES	NO
SENATOR AKLESTAD		X
SENATOR BLAYLOCK	X	
SENATOR DEVLIN		X
SENATOR KEATING		X
SENATOR LYNCH	X	
SENATOR MANNING		
SENATOR NATHE		X
SENATOR PIPINICH	X	
SENATOR TOWE	X	
Senator Doherty	X	

Secretary _____

Chairman _____

Motion: MOTION To Adopt Segregated
Amend. # 4

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 3/23/91 House Bill No. 342 Time 9:50 Am

NAME	YES	NO
SENATOR AKLESTAD	X	
SENATOR BLAYLOCK		X
SENATOR DEVLIN	X	
SENATOR KEATING	X	
SENATOR LYNCH		X
SENATOR MANNING		
SENATOR NATHE	X	
SENATOR PIPINICH		X
SENATOR TOWE		X
Senator Doherty		X

Secretary _____

Chairman _____

Motion: _____

BE NOT CONCURRED IN
MOTION FAILS

Reverse Vote
used on
BE CONCURRED IN
AS AMENDED