

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Tom Nelson, on February 2, 1993, at
3:08 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Tim Whalen

Members Absent: none

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

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

Committee Business Summary:

Hearing: HB 296, HB 208, HB 332
Executive Action: HB 260, HB 73

HEARING ON HB 332

Opening Statement by Sponsor:

REP. DAVID EWER, HD 45, Helena, sponsor, said the Helena Vo-Tech asked him to carry the bill. He stated Vo-tech students are the only students who are covered by workers' compensation. None of the university students are covered by workers compensation.

Proponents' Testimony:

Alex Capdeville, Director of Helena Vo-Tech Center, stated Helena is not the only Vo-Tech which supports passage of this bill. Billings, Butte, and Missoula Vo-Techs are also in support of HB 332. However, they are not in support of HB 332 to criticize workers compensation. The Vo-Techs are the only unit in the university system which pays workers compensation on all the students.

Prior to 1970, with school districts, we had no access to school claims. The Vo-Techs believes the students would be better served with health care insurance coverage seven days per week.

Dennis Lerum, Missoula Vo-Tech Center, stated he concurs with what Mr. Capdeville testified and would like to be on record in support of HB 332.

Willard Weaver, Great Falls Vo-Tech Center, stated he also concurs; however, he added that if the students work, they are still covered by workers compensation.

Gene Fenderson, Labors' Union, stated that the Vo-Techs process 150 students per year through basic and upgrade training. Also he stated he recognizes that classroom instruction should be exempt from workers compensation.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SQUIRES asked **Mr. Capdeville** what the plan is with nurses, mechanics, and cooks on their work programs. If these students are placed in an organization with health insurance, what resources do they have if they are injured?

Mr. Capdeville stated that through the court claim process if a student is hurt on the job, they are covered. However, he stated he wasn't positively sure.

REP. SQUIRES told **Mr. Sweeney** that she is concerned with injuries which could possibly occur in cooking classes. Her concern is what covered the students have.

Jim Murphy, State Fund, stated that there must be a replacement policy if workers compensation is taken away.

REP. SQUIRES asked if the students pay any money for this insurance.

Mr. Murphy stated that no, the students don't pay any money for the insurance.

REP. SQUIRES asked **Mr. Capdeville** if a student is hurt, what happens?

Mr. Capdeville stated there is currently no employer/employee relationship here. Furthermore, these students need insurance to be covered.

REP. COCCHIARELLA asked **Dave Evenson, Office of the Commissioner of Higher Education**, if a student in a training program would be covered by workers' compensation.

Mr. Evenson stated they are looking to replace workers compensation with insurance benefits.

REP. SQUIRES stated the medical field is frequently exposed to the HIV virus, but these students will receive only minimal coverage.

Mr. Lerum indicated that he has followed these medical problems closely. Motivation to make it better is to give them seven days per week of health insurance.

CHAIRMAN NELSON asked **Mr. Fenderson** if he could put an amendment together which would broaden the bill to include classroom instruction.

Mr. Fenderson stated he has been told that the title of the bill is not broad enough to do so.

REP. GALVIN asked if the current benefits would be held in place until the new coverage takes over.

Mr. Fenderson stated yes, they have talked about this possibility.

REP. MILLS asked if these students currently get insurance.

Mr. Fenderson stated that currently there is no health care insurance in the Vo-Tech centers. If this bill passes, health care insurance will be implemented.

REP. MILLS asked **Mr. Fenderson** if a car drops on a student, would he be covered?

Mr. Fenderson stated that if the Vo-Tech was liable, yes the student would be covered.

REP. DRISCOLL asked if these students are forced contribute to student health services.

Mr. Evenson stated that students are not required to pay because there are no student health services in the Vo-Tech.

REP. COCCHIARELLA stated they pay only if they attend more than half-time. At the University of Montana, students can opt out if they wish. She asked if these students were hurt in a lab situation, how they would be covered.

Mr. Evenson stated that if the school was liable, the school would pay. If no liability is found, the student uses their own resources.

REP. TUSS, Unemployment Insurance, stated that if Vo- Tech

students go into a lab situation the institution doesn't use workers' compensation benefits. The reason is because there is not an employer/employee relationship. Furthermore, he stated most of the students at the Vo-Tech are not employed for pay, but for internship programs.

Mr. Murphy stated he was not sure of this statement.

Alex Capdeville indicated that under the law, there is no claim for loss of wages.

REP. SIMON asked Mr. Murphy how they determine the rates for students who are not paid wages, if benefits are usually paid on a payroll based.

Mr. Murphy stated that in 1973, since there was no payroll at that time, the State Fund agreed to use \$80 per month per student as their payroll. This agreement still stands today.

REP. SIMON asked Mr. Murphy if the training in the classroom is not under payroll, why they are required workers compensation.

Mr. Murphy stated he was not sure of the program.

REP. TUSS referred to the State Fund and asked how this impacts self-insured students.

Mr. Murphy stated the State Fund is neither a proponent nor opponent of the bill. If a student is not working for pay they are not covered.

CHAIRMAN NELSON asked how many claims have been filed since 1973.

Mr. Murphy stated he can't tell the exact number of claims; however, there has been approximately \$60-\$70,000 paid for claims. These claims have been primarily medical.

CHAIRMAN NELSON stated that in reality this insurance would be accident medical coverage as he sees it.

Mr. Murphy stated that it is rare students work at another job. If they do and are injured on the other job, the employer is subject to pay workers' compensation.

CHAIRMAN NELSON stated that by passing this bill it will give a blanket coverage, but no choice.

Closing by Sponsor:

REP. EWER closed on HB 332 by stating this bill is small but not insignificant.

HEARING ON HB 208

Opening Statement by Sponsor:

REP. DRISCOLL, HD 92, Billings, sponsor, opened on HB 208 by

stating this is a simple bill. The bill requires that deposits by employers to the Montana Self-Insurers Guaranty Fund required by the Department of Labor and Industry be in an amount agreed to by the Montana Self-Insurers Guaranty Fund.

In 1984, the sugar factory in Billings went broke. Injured workers had no place to go and no coverage. The following session, the legislature created an insurance fund called the Self-Insurance Fund. He stated that Rep. Whalen helped two clients sue the state because they had no insurance.

This bill attempts to ensure that if a self-insurer goes broke, the rest of those in the fund pick up the cost; and furthermore, the state of Montana has no liability. If the amount exceeds \$250,000, the other self-insurers pick up the cost. The Department of Labor decides the bond.

Proponents' Testimony:

Dan Walker, U.S. West, stated he has been the President of the Self-Insurer Fund since July 1, 1989. The purpose of this bill will be to protect workers and the state and is the result of ongoing work with the state fund and the department.

George Wood, Montana Self-Insurers' Association, stated that all self insurers must belong to the fund. If one of the members doesn't pay, the Association must take them to court. Furthermore, they have a partnership with the Department of Labor. He urged the committee to pass HB 208.

Chuck Hunter, Department of Labor, stated he wanted to clarify who is liable and to call attention to gray areas. The department approves the applications of self-insurers. Two years ago the guaranteed fund was also part of this. If the department is responsible for the fund, it should also have some say. If the department wants to raise the bond and if the guarantee fund doesn't agree they have control. If approved to become a member and if they ever become unable to pay claims or any obligations, who assumes responsibility? If bankruptcy is declared the guarantee fund is set up to take on using security deposit. If they are just not paying, the department can use the security deposit set aside.

Mr. Hunter referred to section 206 and the set level of security which is appropriate. In the past, if everyone didn't agree on someone in the pool, that prevailed. He asked that the committee strongly consider these options.

The department's concern is that their rule-making authority has been stricken by this bill. He stated the only responsibility the department has is to actually access the security fund. The rule-making authority is important for the department to keep. He stated everyone on the committee should ask themselves what role they want the department to play in deciding who is approved and the appropriate amount for the security deposit. Currently the department, unlike the guarantee fund, can use money only to

pay the claims. The department is not an insurance company. The department has authority but no resources to pay for administering the claims.

Questions From Committee Members and Responses:

REP. COCCHIARELLA asked **Mr. Wood** to comment on the information **Mr. Hunter** gave on the fund security.

Mr. Wood stated the authority to finally decide who will be self-insured is with the department. The fund has the authority to approve cash security deposits. The only valid point **Mr. Hunter** made was the fact concerning the cost of administration. Circle K is the only corporation which has gone bankrupt. The Department is bonded and hires a third party to administer claims.

REP. SIMON asked **Mr. Hunter** what process there is for the ongoing reevaluation for those who are self-insured so they don't get themselves stuck.

Mr. Hunter stated the department has a thorough financial review annually. Any self-insurer having problems must report them immediately. They check with Dow Jones and other financial institutions. Furthermore, the department receives reports on those businesses on a watch. Those on a watch status must report more frequently.

CHAIRMAN NELSON asked **Dan Walker** if he could presume that each of the 55 members have commercial stop-loss insurance, and would the fund carry them?

Dan Walker said no, they wouldn't be covered.

Closing by Sponsor:

REP. DRISCOLL closed on HB 208 by stating these 55 self-insurers are some of the biggest employers in the state. Furthermore, they have many of assets. If the self-insurers guaranteed fund decides to change the amount of the deposit, they need to put it in writing. This would limit the cost of attorneys to decide who is at fault.

HEARING ON HB 296

Opening Statement by Sponsor:

REP. DRISCOLL, HD 92, Billings, sponsor, opened on HB 296 by stating that this bill will require out-of-state employers in the construction business to obtain coverage in Montana. Montana contracts to other states because the other states pay lower rates of workers' compensation. Prior to receiving a job with a construction company, a bid is sealed and not opened until the bid-letting. Montana cannot compete with the low rates of workers' compensation in other states. This bill will still allow those construction companies to come from out-of-state

however, they must get Montana coverage or become self-insured.

Out-of-state construction companies usually only come to work for approximately six months. Furthermore, they don't hire Montana employees. This is the reason their workers' compensation is lower.

He stated this bill will level the playing field and make it legal to hire Montana employees. He also stated that he had an amendment to submit to the staffer.

Proponents' Testimony:

Ron James, Business Agent, referred to the Cosco in Billings. He stated that Texas construction workers built this building. The 25 employees were all hired from out-of-state. Furthermore, his union of construction companies had 59 unemployed construction workers at the same time. Their contractors are at a disadvantage. He urged the committee to support HB 296.

Eugene Fenderson, Laborers Union, stated the Helena Walmart and Shopko stores were built by contractors from Idaho. He wanted to be on the record in support of HB 296.

John Manzer, Montana Teamsters Union, stated that this bill will bring fairness to local contractors and will protect jobs in Montana. He urged the committee to support HB 296.

Darrell Holzer, Montana AFL-CIO, stated that his organization is in support of HB 296.

Carl Schweitzer, Montana Contractors Association, stated he is here to represent 80 contractors both union and non-union. He stated that everyone of these contractors support HB 296.

Bill Lincoln, Montana Conference of Electrical Workers (MCEW), stated that this bill creates selectivity. He stated his organization supports HB 296.

Russ Ritter, Washington Corporation, stated that for the same reasons above, his organization supports HB 296.

Don Allen, Coalition for Workers Compensation Improvement, referred to a similar bill the Labor Committee will be hearing at a later date. He stated that it is very similar to this one and the coalition is in full support of both bills.

Chuck Cashwell, Engineers IUOE #400, stated this bill will put Montana workers in a better position.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. ELLIS asked REP. DRISCOLL about the statement he made earlier dealing with iron workers.

REP. DRISCOLL stated he mentioned earlier about masonry and that the rate is \$43 per hundred and in Wyoming everything is \$7.50 per hundred. The other states will not raise their rates.

REP. ELLIS asked REP. DRISCOLL if this will solve any problems or if the real problem is the rate for all employees. Furthermore, he asked if other states, such as California, subsidize workers' compensation rates.

REP. DRISCOLL stated that he is not sure, but he doubts that California subsidizes its rates.

REP. HANSON asked REP. DRISCOLL stated he is opposed to HB 296 because the benefits are against employment protection. This bill will increase the other state's prices rather than ensuring they pay Montana benefits. He also asked REP. DRISCOLL if he believes the other states won't retaliate.

REP. DRISCOLL stated that is exactly what the other states would do.

REP. HANSON stated the problem he has with the bill is that as long as employers work in Montana, they must pay benefits. Why worry about cost rather than benefits?

REP. DRISCOLL stated that if an out-of-state contractor didn't buy a contract from Montana, they get the other states benefits.

REP. HANSON asked why the bill couldn't be amended to pay Montana benefits, but not Montana rates.

REP. DRISCOLL stated that you have to pay Montana rates to receive Montana benefits.

REP. SIMON asked REP. DRISCOLL if this bill will create problems with contractors who have a short-term contract such as two or three days.

REP. DRISCOLL stated that it shouldn't create a problem because it only takes one day to get the paperwork approved through the State Fund if they pay a deposit.

REP. SIMON asked if the effective date could be waived for those contractors who already have signed a contract.

REP. DRISCOLL stated that under the existing law, they must be here six months. He wants the bill passed before the construction season starts.

Closing by Sponsor:

REP. DRISCOLL closed on the bill by stating he passed a similar bill last session very easily; however, there was a technical flaw which kept Montana construction companies from taking their employees out of the state. He referred to page two of the bill

and stated that the stricken section takes care of the flaw.

EXECUTIVE ACTION ON HB 260

Motion: REP. DRISCOLL MOVED HB 260 DO PASS.

Discussion:

REP. HANSON stated he is for reduction of workers compensation not an expansion. Furthermore, he is in opposition to HB 260.

REP. SIMON stated that these firefighters are exposed to serious threats; however, the presumption that all medical problems are a result of the job and not the life style is not fair.

Motion/Vote: REP. SIMON MOVED HB 260 BE TABLED. A role call vote was taken. The motion CARRIED 9 to 7.

EXECUTIVE ACTION ON HB 73

Motion: REP. DRISCOLL MOVED HB 73 DO PASS AS AMENDED.

Discussion:

REP. HANSON stated he thought that if a bill was amended and not resolved, the amendments come off automatically.

REP. DRISCOLL said these working poor will only receive \$65 per week if they are eligible. They also must be actively seeking work and be available for work.

REP. ELLIS stated that he understands that if one of these workers signs a contract for the next year, they can't get benefits. Furthermore, it is clear that there will be no more money for the schools because cost are greater.

REP. PAVLOVICH said that mine workers in Silverbow County receive benefits. Furthermore, this is a small group of people.

REP. SIMON indicated he supports the bill because it is an issue of fairness. These people already pay the taxes, but can't receive benefits. This small group has been singled out.

REP. HANSON stated that these employees take these jobs knowing they will be off for the summer. It is a privilege to be off three months. He said he is opposed to the bill.

REP. COCCHIARELLA asked REP. HANSON if construction workers, loggers and other seasonal workers take jobs they know are seasonal. Furthermore, she asked him if they receive benefits?

REP. HANSON stated that these examples are project specific. These seasonal employees want to work all year, but are not permitted by the weather.

REP. COCCHIARELLA stated that at the University of Montana, the University has a habit of hiring relatives for summer jobs instead of regular employees. This discrimination cuts off the working poor.

Motion/Vote:

REP. ELLIS called for the question. A role call vote was taken. The motion to DO PASS AS AMENDED **FAILED** due to a tie vote for the second time.

REP. DRISCOLL asked the committee if they would pass the bill if he could show them how to take money from those already making more rather than the working poor. Most of the committee stated they might be willing to change their minds.

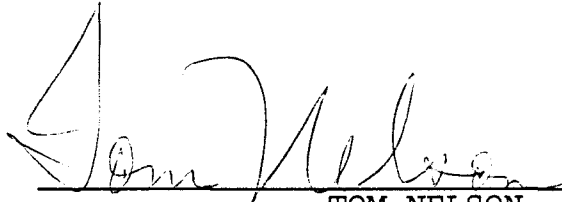
HOUSE LABOR & EMPLOYMENT RELATIONS COMMITTEE

February 2, 1993

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ADJOURNMENT

Adjournment: CHAIRMAN NELSON adjourned the meeting at 5:00 p.m.



TOM NELSON, Chair



CHERRI SCHMAUS, Secretary

TN/CS

HOUSE OF REPRESENTATIVES.

LABOR

COMMITTEE

ROLL CALL

DATE _____

2/2/93

[illegible]

HOUSE OF REPRESENTATIVES

LABOR

COMMITTEE

ROLL CALL VOTE

DATE 2/2/93 BILL NO. HB 260 NUMBER _____

MOTION: Table

NAME	AYE	NO
REP. TOM NELSON, CHAIRMAN	✓	
REP. GARY FELAND, VICE CHAIRMAN	✓	
REP. STEVE BENEDICT	✓	
REP. VICKI COCCHIARELLA		✓
REP. JERRY DRISCOLL		✓
REP. ALVIN ELLIS	✓	
REP. PAT GALVIN		✓
REP. SONNY HANSON	✓	
REP. NORM MILLS	✓	
REP. BOB PAVLOVICH		✓
REP. BRUCE SIMON	✓	
REP. CAROLYN SQUIRES		✓
REP. BILL TASH	✓	
REP. ROLPH TUNBY	✓	
REP. CARLEY TUSS		✓
REP. TIM WHALEN		✓

HOUSE OF REPRESENTATIVES

LABOR

COMMITTEE

ROLL CALL VOTE

DATE 2/2/93 BILL NO. HB 73 NUMBER _____

MOTION: Do Pass as amended

NAME	AYE	NO
REP. TOM NELSON, CHAIRMAN		✓
REP. GARY FELAND, VICE CHAIRMAN		✓
REP. STEVE BENEDICT		✓
REP. VICKI COCCHIARELLA	✓	
REP. JERRY DRISCOLL	✓	
REP. ALVIN ELLIS		✓
REP. PAT GALVIN	✓	
REP. SONNY HANSON		✓
REP. NORM MILLS		✓
REP. BOB PAVLOVICH	✓	
REP. BRUCE SIMON	✓	
REP. CAROLYN SQUIRES	✓	
REP. BILL TASH		✓
REP. ROLPH TUNBY		✓
REP. CARLEY TUSS	✓	
REP. TIM WHALEN	✓	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LABOR COMMITTEE BILL NO. HB 332
DATE FEB, 2, 1993 SPONSOR(S) FWER

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Vernon Lerum</i>	<i>Mslg Vo Tech Center</i>	<i>✓</i>	
<i>WILLARD WEAVER</i>	<i>GREAT FALLS VO-TECH</i>	<i>✓</i>	
<i>John Appleby</i>	<i>Helena Vo Tech</i>	<i>✓</i>	
<i>Chuck Cashell</i>	<i>INJOE #400</i>	<i>✓</i>	
<i>Dave Emerson</i>	<i>CHIE</i>	<i>✓</i>	
<i>Jeaneline Benmark</i>	<i>Am. Ins. Assoc.</i>	<i>✓</i>	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LABOR

COMMITTEE

BILL NO.

HB 208

DATE FEB. 2, 1993 SPONSOR(S)

DRISCOLL

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
George Wood	MT. SELF INSURERS ASSOC	✓	
John Maley	M.F.T. / M.F.T.S.E	✓	
Dan Walker	US WEST	✓	
Chuck Hunter	DOLI	✓	
Chuck Carbell	TUOE #400	✓	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LABOR COMMITTEE DRISCOLL BILL NO. HB 296
DATE FEB. 2 1993 SPONSOR(S) DRISCOLL

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Carl Schweitzer	Mont Cont Assoc	✓	
John A. Hanger	Teamsters Union	✓	
John Malone	M.F.T. / M.F.T.S.F.	✓	
Russ Ritts	Wash Contractors	✓	
Wm Egan	IBEW Conf.	✓	
Jacqueline Denmark	Am. Ind. Assoc.	✓	
Paul Coble	UOIE #400	✓	
Dor Allen	CWCSI	✓	

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