

MINUTES

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

SELECT COMMITTEE ON WORKERS' COMPENSATION

Call to Order: By CHAIRMAN CHASE HIBBARD, on March 19, 1993, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Chase Hibbard, Chairman (R)
Rep. Jerry Driscoll, Vice Chairman (D)
Rep. Steve Benedict (R)
Rep. Ernest Bergsagel (R)
Rep. Vicki Cocchiarella (D)
Rep. David Ewer (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Evy Hendrickson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 686
Executive Action: HB 686

HEARING ON HB 686

Opening Statement by Sponsor:

REP. JERRY DRISCOLL, House District 72, Billings, said this bill would expand the workers' compensation employer payroll tax to all nonfarm employment in the state. He said there were amendments dated March 19, 1993 and he would also offer another amendment to strike "amount equal to .28%" wherever it appeared in the bill and insert ".5% as contained in the other payroll tax bill." REP. DRISCOLL said the amendments are really what the bill is about.

Proponents' Testimony:

Darrell Holzer, Montana State AFL-CIO, said they supported HB 686 and reminded the committee that they remained adamantly opposed to the employee payroll tax.

Opponents' Testimony:

Stan Kaleczyc, Burlington Northern Railroad, said since 1908 railroad employees engaged in interstate commerce had not been covered under the Montana Workers' Compensation (MWC) program and in fact, under federal law, are prohibited from being covered under MWC. He said they were covered under the Federal Employee Labor Act (FELA) which is the federal equivalent to MWC. Mr. Kaleczyc referred to page 2, line 5, that says unless prohibited by federal law, there's an imposed tax on other employments.

Mr. Kaleczyc said under existing law the railroad might be exempt given the language on page 2, line 5, under the commerce clause of the United States Constitution or under the antidiscrimination provision as they relate to taxation. He said there was no case in the United States interpreting a payroll tax provision comparable to that envisioned under HB 686. He said this would potentially buy a lawsuit for the state of Montana over the interpretation and application of that provision to railroad employees.

Mr. Kaleczyc suggested that the committee consider an amendment that would strike the language underscored on page 2 and say "except for those employers whose liability to employees for injury, occupational disease or death as provided under the laws of the United States that there is a tax that would be imposed." He said that would clarify that federal and railroad employees and interstate commerce covered under the FELA would be exempt from this bill which is designed to raise money to help pay for a debt that in no way was created by railroad employers or employees and in fact by federal law they could not have contributed to the problem.

Russ Ritter, representing Montana Rail Link, reiterated the previous testimony and asked the committee to consider the amendment proposed by Mr. Kaleczyc. He said this would take care of their problem with the bill.

Questions From Committee Members and Responses:

REP. BENEDICT said he felt this could be a companion bill to the payroll tax bill already making its way through the process.

REP. DRISCOLL said it could be a companion or in place of. **REP. BENEDICT** asked how much additional money this would raise. **REP. DRISCOLL** said there was \$159 million in railroad payroll in the state and \$7.3 billion in nonfarm wage income. Anyone filing an Income Tax Schedule C would pay.

REP. BENEDICT said he understood the employees are not drawn into this. He was not opposed to making this as fair as possible so that all employers in the state pay into this but he said the employees should shoulder some of the burden also. He asked **REP. DRISCOLL** if the committee passed this bill would he support HB

504 to bring in employees in, too. REP. DRISCOLL responded that he would not.

CHAIRMAN HIBBARD asked Jeff Miller, Administrator of the Income and Miscellaneous Tax Division, Department of Revenue, if he could address the implications of the bill from their perspective. Mr. Miller said his division administers the payroll tax. This bill would expand the base to include railroad workers, casual employment, corporate officers who have been left out, family workers, people who work for room and board and newspaper carriers. He said these people are all in some employee/employer/employment concept. He said there was a question regarding railroad employees. Mr. Miller said their attorneys have not been able to satisfactorily research this.

He said the amendments were quite broad and now go to a net income concept as related to sole proprietors and partnerships, etc. This would be a significant expansion and would involve considerably more administrative issues in terms of trying to collect the tax. He said the most efficient vehicle to collect the tax would be to use the existing income tax returns or corporate license tax returns. He said a person would have an incentive to elect into the workers' comp system to avoid this tax which would create a difficulty in trying to approximate what kind of revenue the amendments would generate. He said they would need further time to analyze that.

REP. COCCHIARELLA asked Mr. Miller if he was testifying as an opponent to this bill or just answering questions. Mr. Miller said he was just commenting on the amendments.

REP. BERGSAGEL asked Mr. Miller about the incentive for those individuals to put themselves into workers' comp and asked what the difference would be with the exception of the benefits of insurance and would it still be based on their income. Mr. Miller said as he understood the amendments, if a person was covered under workers' comp, they would not be subject to this tax. If the person was not currently covered under workers' comp, as a sole proprietor may not be, they would be taxed on the net earnings from the business. If they would elect into coverage, then this tax would not apply.

REP. BERGSAGEL asked what the difference is, whether or not a person elected to be taxed on income or taxed on a payroll basis.

Mr. Miller said on the net income concept, the gross receipts from the business plus expenses would be the net income base as opposed to electing to make a minimum or maximum definition of what would be the base. A person can elect in and establish the minimum to be a salary from \$10,800 to a maximum of \$18,000. He said that net drives the calculation of the premium and that is the significant difference.

REP. BERGSAGEL asked REP. DRISCOLL to respond to that question.

REP. DRISCOLL said he would hope that they would elect in and it would be covered under 504 and they would have to pay .5% on all full gross payroll. He said the worry is if they are going to elect in, they are going to have to pay .5% on gross payroll plus they will have to pay the premium. He said it would not be cheaper for them to elect into the system but if they did, the state would at least get a premium out of them and they would have coverage.

CHAIRMAN HIBBARD asked REP. DRISCOLL about including real estate brokers, doctors, lawyers, and other professionals, whether these amendments would accomplish the same thing. REP. DRISCOLL said they would and referred to Page 2, Section 4 of the amendments. He read from the long list of people to which this tax would apply. CHAIRMAN HIBBARD asked what mechanism he was proposing to collect the money. REP. DRISCOLL said on the income tax form there would be a line on net income on nonfarm income and they would apply the amount of taxes on that line. CHAIRMAN HIBBARD said this was a radical departure from the payroll tax theory - this would be taxing an income, so if a professional didn't employ anyone, would the professional still be liable to pay based upon his or her net income? REP. DRISCOLL said yes, it's the same. If they are the sole proprietor and subject to workers' comp premium, then they have to pay the tax. He said these were the people who had escaped out of the system over the years and they would have to pay the tax also and have a net income.

CHAIRMAN HIBBARD asked REP. DRISCOLL if, under his proposal, the proprietor is in or out, are they still subject to the tax? REP. DRISCOLL responded they would be.

REP. BENEDICT asked REP. DRISCOLL if he proposed this bill as an alternative to HB 504 to include all employers in the state so the employees do not have to pay the tax. REP. DRISCOLL said it was an alternative and said he assumed HB 504 would pass the House and probably the Senate in some form. He said the bill did not include these employments; so when we started the payroll tax they weren't included but should have been. He said this could be amended into HB 504.

REP. BENEDICT asked if the bill was amended to try to make some accommodation for people who are covered under FELA, would REP. DRISCOLL still support the bill? He responded no.

REP. EWER asked if the bill was addressing the sole issue of expanding the payroll tax base? REP. DRISCOLL said they were trying to expand the payroll base and the amount of money that can be taxed. REP. EWER referred to the joint committee bill that would have an alternative with bonds and asked if that bill should pass, would it expand the base for that as well? REP. DRISCOLL said if this bill passed and the other bill passed, then the 3/8 in that bill would bring in about \$3.8 million more in a year. REP. EWER said the bill was solely to expand the base.

CHAIRMAN HIBBARD said we were applying a different test to those persons brought in by the bill and then it's being applied to those who are currently in because we are taxing 5% of their payroll. He said the bill would tax 5% of their income, so that was a very different concept. He said he was trying to determine the equity in that. REP. DRISCOLL said in the other payroll tax on gross income, the people that would be taxed, whether it was called income from their business or payroll is just the way the law looks at it.

REP. BENEDICT said no matter how many employees are on a payroll, the employer pays .28% payroll tax on each one of them as an employer and what happens next is someone who doesn't have any employees gets taxed as his own employee. In other words, this is not an employer payroll tax on those people; it's an employee payroll tax. He said this has set up a category of people who are employees but the rest of the employees would not have to pay employer payroll tax. REP. DRISCOLL said they are the boss and to him the boss is still the employer. He said the people who make money are usually working by themselves.

REP. BERGSAGEL asked if nonprofit corporations, whose purpose is fund raising, would be excluded or included and would the funds they raise be taxed? REP. DRISCOLL said they would not be taxed because they don't file income tax papers.

Closing by Sponsor:

REP. DRISCOLL said the purpose of the bill was to address various employers that have been left out of the system over the years. He said they are not paying the tax that other employers are paying; those being real estate agents, stockbrokers, and other classes of employers and employees who are making money in the state and using the system. He said the tax would be collected once a year instead of quarterly.

EXECUTIVE ACTION ON HB 686

Motion: REP. DRISCOLL moved the amendments dated March 19, 1993.
EXHIBIT 1

Discussion: REP. BENEDICT said he opposed the bill and contrary to what REP. EWER said, he had never intended to vote on this bill until he saw exactly how it read. He believed the bill would not raise the money needed to pay off the unfunded liability. He also didn't agree with not bringing the employees into this process. He said when the employers were brought in years ago, the unfunded liability was less than \$100 million and now it's \$350 million. REP. BENEDICT said workers' comp is costing employees jobs, raises, health insurance and other benefits in this process. He said the more we put on the employer, the fewer jobs and benefits are going to be available.

REP. EWER said he didn't say the committee agreed to vote unanimously on the bill but rather unanimous on the idea and concept. He said the committee agreed to look at increasing the base and the bill tried to do that. He said this issue would expand the base regardless of what comes out of the legislature as to how we expand the payroll tax.

CHAIRMAN HIBBARD said he was in sympathy with trying to expand the base; however, he was not totally comfortable with this approach because of the conversation earlier about the different tests being applied to those employers who have employees and those who do not. He said this would be using a payroll tax for the employers and using a net income tax for the others and believed there was room for tremendous inequities. CHAIRMAN HIBBARD also said he was uncomfortable with the fact that the committee didn't have any idea how many dollars this would add and whether or not the railroads could be brought in.

REP. COCCHIARELLA said she rationalized the approach by equating the .5% payroll tax imposed on employees which equals an 8% surcharge on their income. It would only seem fair that when you are your own boss, you pay a 5% tax on the net. She said this would be paying less than the average worker and she was surprised that the Plan 1 and Plan 2 people did not support the bill because they were being included in the payroll tax to take care of the unfunded liability of the old fund in which they had no part. REP. COCCHIARELLA said this was a state problem and employers are helping employees in the state as far as sharing this. She said this approach was more equitable than the imposed payroll tax on employees.

Vote: REP. DRISCOLL restated the motion to adopt amendments dated March 19, 1993. Motion carried 4 to 2 with CHAIRMAN HIBBARD and REP. BENEDICT voting no. EXHIBIT 2

Motion: REP. DRISCOLL moved to increase the rate from .28% to .5%.

Discussion: REP. DRISCOLL went through the bill to show where the .5% would replace .28%.

REP. EWER said the committee did not know what the rate was going to be and said the notion was whatever the current law would be, this bill would apply to it. Ms. Fox said there could be an alternative way of doing it.

REP. DRISCOLL said the .28% will not pay for it and hopefully, .5% will.

REP. EWER said he acknowledged that there was no base in Montana large enough with the status of .28%.

REP. BENEDICT said he could not support the amendment.

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Vote: REP. DRISCOLL called for the question. Motion carried with CHAIRMAN HIBBARD and REP. BENEDICT voting no. EXHIBIT 3

Motion: CHAIRMAN HIBBARD MOVED to strike subsection (b) and renumber with (c).

Discussion: REP. DRISCOLL said with his amendments the railroads would pay, and with the other amendment the railroads wouldn't pay. He also said they didn't pay anything at the present time.

CHAIRMAN HIBBARD said if this amendment is moved and passes, then the committee would have to try and amend the part out of REP. DRISCOLL'S amendment.

REP. DRISCOLL said if they did that it would kill the bill.

Mr. Kaleczyc said they would have to strike what has now been added to the bill by REP. DRISCOLL which would be striking his amendment number 4(b) and renumber (c) as (b) and this would accomplish what was intended by CHAIRMAN HIBBARD'S amendment.

Vote: Question was called on CHAIRMAN HIBBARD'S motion to strike (b) and renumber with (c). Motion failed 3 to 3 with REPS. DRISCOLL, COCCHIARELLA AND EWER voting no. EXHIBIT 4

Motion/Vote: REP. DRISCOLL MOVED HB 686 DO PASS AS AMENDED. Motion failed 3 to 3 with REPS. DRISCOLL, COCCHIARELLA and EWER voting aye. EXHIBIT 4

ADJOURNMENT

Adjournment: 1:50 p.m.



REP. CHASE HIBBARD, Chairman



EVY HENDRICKSON, Secretary

CH/ev

HOUSE OF REPRESENTATIVES

COMMITTEE

ROLL CALL

DATE _____

[illegible]

Amendments to House Bill No. 686
First Reading Copy

Requested by Representative Driscoll
For the Committee on Workers' Compensation

Prepared by Greg Petesch
March 19, 1993

1. Title, line 8.

Following: "TAX;"

Insert: "PROVIDING FOR A WORKERS' COMPENSATION BUSINESS TAX;"

Following: "39-71-2501"

Insert: ", 39-71-2502,"

2. Title, line 9.

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

3. Page 1, line 18.

Following: "means"

Insert: ": (a)"

4. Page 1, line 21.

Following: "~~39-71-401~~"

Insert: "; (b) employment of a resident of Montana with any
railroad engaged in interstate commerce; and

(c) employment of an officer of a corporation who has
elected not to be bound as an employee under 39-71-401"

5. Page 2, line 3.

Following: line 2

Insert: "Section 2. Section 39-71-2502, MCA, is amended to read:

"39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July 1, 1990, and it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In fulfilling this public purpose by making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this

unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage the people of the state. Therefore, all employers who have employments covered by the workers' compensation laws, including sole proprietors and partners, should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a supplemental source of financing for the unfunded liability.""
Renumber: subsequent sections

6. Page 5, line 8.

Following: line 7

Insert: "NEW SECTION. Section 4. Workers' compensation business tax. (1) There is imposed on the net income of each sole proprietor, partnership, and corporate entity that is not required to pay the workers' compensation payroll tax under 39-71-2503 a tax in an amount equal to 0.28% of net income.

(2) The tax imposed by this section must be reported on the proprietor's, partnership's, or entity's Montana income tax return for the tax year in the form and containing the information required by the department of revenue. The tax must be added to the tax liability computed as required in 15-30-103, 15-30-105, or 15-31-121 after tax credits and before withholding and estimated tax payments are applied. The department of revenue shall first credit withholding, estimated tax payments, and any payment made with the return to the income tax liability under 15-30-103, 15-30-105, or 15-31-121 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(3) The provisions of Title 15, chapter 30, not in conflict with the provision of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department of revenue rulemaking authority apply to the tax, the proprietor, partnership, or entity, and the department of revenue.

(4) The confidentiality provisions of 15-30-303 and 15-31-507 apply to the workers' compensation business tax.

NEW SECTION. Section 5. {standard} Codification instruction. [Section 4] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and the provisions of Title 39, chapter 71, part 25, apply to [section 4]."

Renumber: subsequent section

7. Page 5, line 10.

Insert: "NEW SECTION. Section 7. {Standard} Applicability. [Section 4] applies to tax years commencing after December 31, 1993."

EXHIBIT 2
DATE 2-19-93
HB 686

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
COMMITTEE ON WORKERS COMPENSATION

ROLL CALL VOTE

DATE 3/19/93 BILL NO. 686 NUMBER _____

MOTION: Shirrell - moved to Pass w/ amendments.

4-2

[illegible]

HR:1993
wp:rlclvote.man

SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL VOTE

MOTION: Attest. To Niki D & HFC.

[illegible]

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL VOTE

DATE 3-19-93 BILL NO. 686 NUMBER _____

MOTION: Move the Pass on Bill

Trails

[illegible]

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Select Workers Comp COMMITTEE

BILL NO. HB 686

DATE March 19, 1993 SPONSOR(S) J. Driscoll

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Lorrell Hazer	Mt. St. AFL-CIO	X	
STAN KALECZYC	BURLINGTON NORTHERN NR		X
Russ Ritter	Mt. Rail Lnk		X
Jane Kibb			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.