

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - SPECIAL SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Senator Vaughn, on December 16, 1993, at 11 A.M.

ROLL CALL

Members Present:

Sen. Eleanor Vaughn, Chair (D)
Sen. Jeff Weldon, Vice Chair (D)
Sen. Jim Burnett (R)
Sen. Harry Fritz (D)
Sen. John Hertel (R)
Sen. Bob Hockett (D)
Sen. Bob Pipinich (D)
Sen. Bernie Swift (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Council
Sylvia Kinsey, Committee Secretary

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

Committee Business Summary:

Hearing: HB 87
Executive Action: HB 87

HEARING ON HOUSE BILL 87

Opening Statement by Sponsor: Representative Cocchiarella, HD 59, said she had served on the Select Committee on Workers' Comp. and had an experience in her district where an out-of-state prime contractor from another state came in to build twelve eightplexes. She told the history of the contractor and said she was concerned with how someone could come in with a record of injuries and cancellation of Workers' Comp. and take a contract away from local contractors with a good record and insurance. She believed with people who were building buildings in this state that Workers' Comp. should be a requirement to create a fair playing field for our in-state contractors. We tell them they have to prove to us that you have Workers' Comp. She pointed out that the people in Montana who have Workers' Comp. have rates

that are contingent upon those people who come in and take advantage of some loop hole that lets them take a bid without complying with our Workers' Comp. unemployment requirements. She passed out an amendment (exhibit 1) and said HB 87 passed the floor of the House 91-6. The bill does not change any requirements for Workers' Comp or unemployment that we have on statute. This amendment would take homeowners out of the issue and they would not have to be a part of dealing with someone in the local government who would hassle them in the process of doing their own work on their own property.

Proponents' Testimony: Mark Watson, City Administrator for Billings, said he has conducted a lot of leg work on this bill and, recognizing the action on the House, it appears this proposal is one of great interest. Initially they were opposed to this bill because there are a lot of logistical sides of the equation on how this building permit process will be affected. They hear from the Chamber of Commerce, construction groups, etc. asking how can we make things good for business in their community. They are concerned that standard contractors might have trouble receiving a building permit if the verification process has to go in requiring a lot of information about Workers' Comp. They are concerned with the length of time required, and believed departments, agencies, etc. had to work together to assist in this process so there would be no delay to the business person taking out the permit. They would need access to the Workers' Comp. files on contractors status in regard to active insurance files, and felt this should be supplied by the Department of Labor along with the terminals and not be a cost of the local building permit agencies. They believe this bill is a workable solution but are opposed to imposing more costs on local governments, but it should allow us to work in partnership and in tandem with the state to address this situation.

Don Allen, Coalition of Workers' Comp. System Improvement, said many were concerned with where Workers' Comp was going and the feeling was that we had to address some of these issues. He said efforts of the Legislature, the Governor and other groups as well as the Coalition, collectively addressed many of the issues. This bill is another part of that effort to make sure everyone does comply and is aware of how it works. He said it was very important to see that everyone is in compliance and playing the game fairly and not slipping through the cracks.

James Tutwiler, Chamber of Commerce, said they support this bill. He said over the past several years they have seen an increase in the fraud and abuse of Workers' Compensation. He said this bill, if administered properly so it does not penalize legitimate contractors with delay and a costly application process, speaks to the abuse and fraud of Workers' Comp. in Montana.

Alec Hansen, League of Cities and Towns, said he had received phone calls where people were concerned that Cities would become

client officers as a part of the Workers' Comp. compact. He said with the amendments, he believed this bill will work, but they do not want to get into a situation where cities and towns have to chase down all the information to make sure people are in compliance. He said as long as there is not a lot of additional work involved, cities and towns will be in support of this bill.

Jim Brown, Building Codes Bureau, Department of Commerce, handed in his testimony. (exhibit 2) He said there were two amendments prepared and Representative Cocchiarella had indicated only one was handed out. He handed out the second amendment. (exhibit 3)

Carl Schweitzer, Montana Contractors' Association, said they see this bill as important because the last Legislature passed a bill that required out of state contractors to have Montana Work Comp. coverage to do construction in Montana. He believed this would give a check system to see that they do have this coverage. He said they also support this bill as another process in tightening up the Workers' Comp. process.

Opponents' Testimony: Nancy Griffin Executive Officer, Montana Building Industry Association, spoke as an opponent to House Bill 84 and gave written testimony. (exhibit 4)

Brant Salo, Building Inspector for Helena, said the biggest concern on a jurisdictional basis is what is it going to do to our department. They are understaffed and do not want to be put into the position of having to administer and police some other action that is being passed down to us from the state level.

Informational Testimony: None.

Questions From Committee Members and Responses: Senator Tveit asked Ms. Griffin what she meant by the biggest problem being the independent contractors exemption. Ms. Griffin said you could eliminate the contractors exemption eventually in the construction industry. You probably also need to eliminate the sole proprietor exemption where people are actually working on job sites. She believed every worker on a job site should have insurance.

Senator Tveit asked if the independent contractor did not need insurance today and Ms. Griffin said he applies for a certificate, answers yes to the 20 questions, gets the certificate and then cancels.

Senator Tveit asked about the new up-front deposit. If the independent contractor signs for that and it is delivered the money is there on account. Ms. Griffin said the independent contractor or property owner was exempt.

Senator Tveit said any home owner that hires someone to help build his house, does not have to have Workers' Comp. but would

be in big trouble on liability if someone were hurt.

Senator Hockett told Representative Cocchiarella that in this special session he had been quite critical of bills that come through that have potential fiscal impacts with no fiscal note attached to them. He said it sounded as though there would be some additional FTE's (full time employees) involved with additional cost and asked if she would comment on it. Representative Cocchiarella said under Workers' Comp. and unemployment at the present time, if you are a legitimate business person, you have proof in your hand that you have Workers' Comp. All this bill is asking is to have that attached to a building permit or a check-off, or even the affidavit signed. There is no fiscal impact in this bill. All the person has to do is walk in with a certificate, the premium was paid in advance, and is a check-off process that requires no more money and no more FTE's unless the Dept. of Labor wanted to get into the process with an on-line hook up.

Senator Hockett asked Mr. Brown if he agreed with the statement that it would cost no more money. Mr. Brown said he had prepared a fiscal note yesterday and it was prepared on the proposed language which said an applicant had to furnish proof of compliance with unemployment insurance and Workers' Comp. Their interpretation of proof was that they had to provide a written document, and there were no exemptions, showing that they either had coverage currently or were lawfully exempt from coverage. Based on that, their proposed impactment was that they would need two FTE's to handle it and it would cost over \$21,000 in the remainder of fiscal year '94 and a little over \$40,000 in fiscal year '95. With this proposed revised language, if we can accept verification in the form of an affidavit rather than proof, he saw a significant relaxation of the requirements and it would probably not have the impact on us as it would have the way it was originally drafted.

Senator Swift asked if the two amendments would also clear up the question of independent contractors and Mr. Brown asked to use the words, instead of "independent contractor", a "building owner, home owner or design professional", then his feeling would be that he would have a clear conscience saying those people are exempt.

Senator Swift asked if the question of "person engaged in construction" would cover the independent contractor or professionals that do finish work, floor covering, etc. Representative Cocchiarella said this bill does not change the law of who has to comply with Workers' Comp. If you receive an independent contractor exemption, that is the proof you would show on your building permit process.

Senator Swift said it only requires a local inspector to be sure they have that permit. Representative Cocchiarella said only the permit certificate was necessary and should be displayed.

Senator McClernan asked Mr. Salo if the views he had given represented only his own or did he represent the city of Helena and was told they were his own views and he had not had time to review the bill or amendments as he would like to do.

Closing by Sponsor: Representative Cocchiarella said again that a lot of things were brought out that has nothing to do with this bill. She agreed independent contractors are a problem, but the bill does not change the law. She said when you walk into a business the forms have to be hanging on the walls, so they have the proof.

EXECUTIVE ACTION ON HOUSE BILL 87

Motion: Senator Fritz moved both amendments. (exhibit 1 and exhibit 3)

Discussion: Asked what the amendments really do, David Niss said he had not seen them before today. Senator Fritz said the first set of amendments say the person engaged in the construction of the business rather than a general submission. A person engaged in the plumbing business, a person engaged in the electrical business, it just makes that specific rather than just saying "requiring submission". The second set of amendments simplifies the procedure, it answers the concerns of compliance without filing a lengthy form and having it run through the process.

Chair Vaughn said she believed it would relieve the liability for some. When they submitted that affidavit they would then be responsible for the fact that they signed an affidavit and submitted it and it should take some of the responsibility off the other groups.

David Niss said he believed Senator Fritz's explanation was correct, but concerning the first amendment, he did not understand why the language on line 20 and 21 was drafted as it was. Compliance with the statute, as it would read if signed and passed by the Governor is obtained if the application requires proof, which if both amendments were passed, could consist of the affidavit. There is no violation of the statute itself if that proof is not submitted. The statute is complied with if the application says you must submit "so and so" because the statute does not say that a person engaged in the construction business must submit proof of Workers' Comp. insurance. It only says the "application must require" and if they don't comply, then who monitors that.

Senator McClernan said his other question was how this would be enforced. Senator Fritz said the way Mr. Niss explained it, it sounds as though you can come in with an application, claim one thing and get the permit, if it turns out you lied, you get in trouble.

Senator McClernan asked who checks to see if you are lying and Senator Fritz said he did not think a check to see if you are lying is the purpose of this bill. Senator Burnett said the thing you have to look at is that there is a penalty if you did lie. There would be a problem when you got caught.

Senator McClernan said Workers' Comp. is a real problem in this state and he would rather do something where he was certain the problem was taken care of rather than something that just looks that way.

Senator Swift said the building inspector mentioned this issue and wondered if he was to check it or who. On page 2 it says the "Department determines", and wondered if the department really has to get involved.

Senator McClernan said the question to him was whether or not this could be enforced.

Senator Tveit said at the bottom of page 3 it says "An inspection tag may not be issued until proof of compliance with ...has been submitted to the department." It appeared if it has not been done, then it is up to the department.

Vote: The motion to accept the amendments passed unanimously.

Motion/Vote: Senator Fritz moved HB 87 as amended, be concurred in.

Discussion: Senator Hockett said he would speak against the bill and against the motion. He believed this was an example of government at it's worst because we are in special session, we are dealing with a problem that we know exists, but we have had very short notice to even talk about it. A part that has not been addressed is that we are leaving out the independent contractor and this is a big part of the problem. He would like to defer this to the regular session where people would have the opportunity to talk about it. He said he also questioned the sponsor's statement that this would not cost money. He said he would vote against the motion.

Senator Fritz said the Senate, in it's regular session, defeated a bill bringing independent contractors under Workers' Comp. To complain that this bill does not do what the Senate voted not to do, is an odd argument. This bill attempts to plug one small loophole in the Workers' Comp laws.

Vote: The motion to concur in HB 87 as amended passed 7 voting yes, 3 voting no, roll call vote. (Senator Pipinich left his yes vote with the chair. Senator Forrester to carry the bill.

Senator Weldon presented the Chair with a plaque to express thanks for what she has done for the committee and the leadership she has shown.

ADJOURNMENT

Adjournment: 11:59 A.M.



SENATOR VAUGHN, Chair



SYLVIA KINSEY, Secretary

EV/sk

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
December 16, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration House Bill No. 87 (third reading copy -- blue), respectfully report that House Bill No. 87 be amended as follows and as so amended be concurred in.

Signed: Senator Vaughn
Senator Eleanor Vaughn, Chair

That such amendments read:

1. Page 1, lines 20 and 21.

Following: "require" on line 20

Strike: remainder of line 20 through the first "of" on line 21

Insert: "a person engaged in the construction business to submit"

2. Page 1, line 25.

Following: " "

Insert: "Proof of compliance may be in the form of an affidavit verifying that the applicant has any required coverage. The affidavit is subject to the provisions of 45-7-203."

3. Page 2, lines 9 and 10.

Following: "require" on line 9

Strike: remainder of line 9 through the first "of" on line 10

Insert: "a person engaged in the plumbing business to submit"

4. Page 2, line 14.

Following: " "

Insert: "Proof of compliance may be in the form of an affidavit verifying that the applicant has any required coverage. The affidavit is subject to the provisions of 45-7-203."

5. Page 3, line 10.

Strike: "the submission of"

Insert: "a person engaged in the electrical business to submit"

6. Page 3, line 14.

Following: " "

Insert: "Proof of compliance may be in the form of an affidavit verifying that the applicant has any required coverage. The affidavit is subject to the provisions of 45-7-203."

7. Page 3, line 16.

Strike: "January"

Insert: "April"

-END-

M- Amd. Coord.
MC Sec. of Senate

Forrester
Senator Carrying Bill

161250SC.Sma

12-16-93

Bob Spinich

Amendments Yes

as amended

HB-87 Yes

Amendments to House Bill No. 87
Third Reading Copy

Requested by Representative Cocchiarella
For the Committee on

Prepared by Greg Petesch
December 14, 1993

1. Page 1, lines 20 and 21.
Following: "require" on line 20
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Insert: "a person engaged in the construction business to submit"
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Insert: "a person engaged in the plumbing business to submit"
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Strike: "the submission of"
Insert: "a person engaged in the electrical business to submit"
4. Page 3, line 16.
Strike: "January"
Insert: "April"

State Adm.
SENATE ~~EXHIBIT~~
EXHIBIT NO. 1
DATE 12-16-93
BILL NO. HB 87

12-16-93
HB 87

ex 103
SENATE *Hadm*
EXHIBIT NO. 2
DATE 12-16-93
SEN. NO. HB 87

BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE

TESTIMONY CONCERNING HB 87 BY JAMES F. BROWN, CHIEF

The Department is neither a proponent or opponent of this legislation and we are cognizant of the unemployment insurance and worker's compensation problems that are addressed by the proposed legislation. However, the legislation as presently written will have a severe impact on the Building Codes Bureau and on local government building departments. Our concerns are as follows:

1. Requiring "proof" of compliance with unemployment insurance and worker's compensation laws will severely impact the Bureau and its ability to process permits in a timely fashion. The Bureau is presently overwhelmed by the workload caused by the building boom of the last two years and cannot absorb additional work. At least two additional clerical positions would be needed to handle the additional load and construction projects would be held up anywhere from one week to one month. The Bureau's additional costs would be \$40,000 per year.
2. The Bureau issues 12,000 electrical, 1,000 building and 1,200 plumbing permits annually. Approximately 50% of the electrical and building permits are issued to building owners who are not required to be covered by Title 39, Chapter 51 and 71.
3. Since it will be the Bureau that will be refusing to issue permits and allow start of construction until all of the paperwork is in, the Bureau will be the focus of criticism for the public and we will be accused of creation of more red tape and obstacles to business development.

If this bill is destined for passage, the Department recommends substituting the word "certification" for the word "proof" wherever the word proof is used in the text. The Department also suggests addition of the following sentence to each Sections 50-60-108(2), 50-60-507(1), and 50-60-607, MCA. "Homeowners, building owners and design professionals are not required to submit proof of compliance with the coverage requirements of Title 39, Chapters 51 and 71 prior to being issued a permit."

Finally, the Department offers that the objectives sought by HB 87 can be met without this legislation and with the resources in place at this time. Our proposal is that the Department of Labor and Industry work out an agreement with the Building Codes Bureau and the eleven local governments that issue electrical permits covering all of Montana to make monthly reports to the Department of Labor and Industry listing all electrical permits issued during the

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HB 87

previous month. These listings can include location of project, name and address of owner, and name and address of electrical contractor. The Bureau can print these reports by county. With the projects located and owners identified, the Department of Labor and Industry can then undertake the task of determining who all of the contractors and subcontractors are on the project and determine whether or not the employers comply with Title 39, Chapters 51 and 71. This plan would limit commitment of resources, to the agency with the statutory responsibility for unemployment insurance and worker's compensation compliance and it should effectively identify almost all construction projects in the State.

The Building Codes Bureau now makes such reports to the Department of Revenue, who have an enforcement problem similar to that of the Department of Labor and Industry. The procedure has worked well for the Department of Revenue, while keeping the demands on the Bureau's resources to a minimum and at the same time avoids creation of more unnecessary red tape and delay for the public.

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epw 3

SENATE *Stataadm*
EDUCATION
EXHIBIT NO. 3
DATE 12-16-93
BILL NO. NB 87

Amendments to House Bill No. 87
Third Reading Copy

Requested by Representative Cocchiarella
For the Committee on

Prepared by Greg Petesch
December 16, 1993

1. Page 1, line 25.

Following: "._"

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2. Page 2, line 14.

Following: "._"

Insert: "Proof of compliance may be in the form of an affidavit verifying that the applicant has any required coverage. The affidavit is subject to the provisions of 45-7-203."

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HB 87

epk/4
SENATE SUBCOMMITTEE
EXHIBIT NO. 4
DATE 12-16-93
BILL NO. HB 87
State Comm.

Proof of Work Comp & Unemployment as Condition of Building Permit

Recommend:
Do Not Pass

- OFFICERS:**
- Bob Graf III, President
 - John Helgeson, 1st Vice President
 - Bob [unclear], Jr., 2nd Vice President
 - [unclear] Meek, Treasurer
 - [unclear] Steen, Past President
 - Tom Dean, Bozeman, National Rep.
 - Jim [unclear], Missoula, Builder Rep.
 - Frank Armknecht, Bozeman, Associate Rep.

Nancy Griffin, Executive Officer, Montana Building Industry Association.

Representing six local homebuilders associations, nearly 900 small business members with over 32,000 employees.

1. Ineffective Solution to a critical uninsured employers problem.

This is a piecemeal approach to assuring that independent workers in the construction field are covered on the jobsite; or that out of state contractors pay Montana work comp. Our organization has been an active supporter of this effort, we've advocated in previous legislative sessions elimination of the independent contractor exemption and sole proprietor exclusions for the construction industry.

As long as property owners are exempt from submitting proof of compliance--and they were before the sponsor's proposed amendment was submitted--there will be an out. If someone wants to get out of paying work comp, this bill won't change that.

The intent is important, but the practical effect is no effect. So why do it.

2. Puts compliance verification responsibility on local government building inspection departments.

Some questions which arise are:
(1) What happens if the builder who gets the permit gets fired by the property owner and that property owner hires someone else. Does the issuer of the building permit have to monitor personnel changes on the job?

(2) What happens if the builder who gets the permit lets his policy lapse during the course of the job? Does the local government agency have liability for the responsibility of assuring continuous compliance?

- CHAPTERS:**
- Flathead Building Assoc. 752-22
 - Missoula Building Industry Assoc. 43-4423
 - Bozeman Building Industry Assoc. 58-30
 - Homebuilders Assoc. of Billings 252-7533
 - S.W. Montana Building Industry Assoc. 585-31
 - Great Falls Homebuilders Assoc. 452-HOME

Affiliated With



(3) What are the liabilities for the property owner if they are the applicant for the building permit, no compliance proof required; yet a worker, on the payroll of a subcontractor, gets injured on their property?

(4) Will each of the different permit agencies on the local and the state level administer the permit requirement in the same way? Some may require all subs on the job to submit proof of compliance, some only the general, some only the electrician.

3. Creates a new function for building inspection officials.

Historically, building inspectors certify that buildings are built to adopted codes, meet energy standards, and conform with local land use regulations. It is not their job to certify that workers or business involved in the construction of the building are operating in accordance with laws which apply to their individual circumstances.

4. Doesn't change work comp compliance requirements.

The sponsor has advocated that this legislation doesn't change work comp compliance requirements--and that is the problem with it. That is where the problem is. I want to make it clear that our organization supports the intent that all workers, even sole proprietors, working in the construction industry need to carry worker's injury coverage. It is not only important for reasons of worker protection; but to create an equitable competitive business climate.

We support the intent of this bill; but inappropriate agencies are responsible for enforcement. This is a bill which won't do what it should do, and opens up administration problems which will only serve to inconvenience building inspectors and legitimate premium paying employers.

I don't agree with the sponsor that even an ineffective solution is better than no solution; or that a piecemeal approach will substitute for addressing the real problem of the uninsured employer in the construction industry.

DATE 12-16-93

SENATE COMMITTEE ON State Admin

BILLS BEING HEARD TODAY: HB 87

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jim Brown	Bldg Code Bureau, DDC	HB 87	informational	
W. H. JELLISON	BLDG CODES BUREAU	HB 87	INFORMATIONAL	
MARK WATSON	City of Billings	HB 87	✓	
Nancy Griffin	Builders Assoc.	HB 87		—

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY