

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON TAXATION**

**Call to Order:** By **CHAIRMAN CHASE HIBBARD**, on February 16, 1995,  
at 8:00 a.m.

#### **ROLL CALL**

##### **Members Present:**

Rep. Chase Hibbard, Chairman (R)  
Rep. Marian W. Hanson, Vice Chairman (Majority) (R)  
Rep. Robert R. "Bob" Ream, Vice Chairman (Minority) (D)  
Rep. Peggy Arnott (R)  
Rep. John C. Bohlinger (R)  
Rep. Jim Elliott (D)  
Rep. Daniel C. Fuchs (R)  
Rep. Hal Harper (D)  
Rep. Rick Jore (R)  
Rep. Judy Murdock (R)  
Rep. Thomas E. Nelson (R)  
Rep. Scott J. Orr (R)  
Rep. Bob Raney (D)  
Rep. John "Sam" Rose (R)  
Rep. William M. "Bill" Ryan (D)  
Rep. Roger Somerville (R)  
Rep. Robert R. Story, Jr. (R)  
Rep. Emily Swanson (D)  
Rep. Jack Wells (R)  
Rep. Kenneth Wennemar (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Lee Heiman, Legislative Council  
Donna Grace, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: HB 127  
HB 469  
HB 470

Executive Action: HB 127 (Discussion Only)

{Tape: 1; Side: A.}

HEARING ON HB 127

Opening Statement by Sponsor:

REP. DON LARSON, House District 58, Seeley Lake, said HB 127 is a straightforward bill that would allow a special improvement district, specifically a refuse district, to assess capital construction costs across all the land within its boundaries. Because of a quirk in the law, refuse districts are unable to assess the costs of a transfer site or a landfill across all the property in the district. He said there is an amendment to the bill which would strike the entire bill and replace it with a clarification to the present law. The bill, as originally drafted, would have placed a two mill tax on all land and improvements and that was found to be inappropriate. EXHIBIT 1.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ROSE said that his district is in court over this issue. REP. LARSON said the main point of the bill is that the refuse district is for the members of the district only. If someone comes to the transfer site with garbage from outside the district, there is a charge. If you live within the district, you dump for free. What the bill does is allow a portion of the capital construction costs to be assessed across all the property in the district. All other special improvement districts have the ability to do this but, for some reasons, refuse districts do not.

REP. REAM asked who would be responsible for the refuse district. REP. LARSON advised that it could be any local governing body or a specially created district.

Closing by Sponsor:

REP. LARSON said he would recommend passage of the bill because it brings capital construction costs assessment in line with other special districts.

HEARING ON HB 469

Opening Statement by Sponsor:

**SAM KITZENBERG**, House District 96, Glasgow, advised that HB 469 would provide an opportunity and incentive to make an impact on the state's youth through training. A lot of discussion on School-to-Work programs is taking place in Montana at the present time. HB 469 would offer employers a tax credit of \$2,500 per student and provide for workers' comp insurance to be paid by the school district. **REP. KITZENBERG** provided an outline of a presentation given by Mark Cadwallader, Staff Attorney, Montana Department of Labor and Industry, on the workers compensation issue. EXHIBIT 2.

Proponents' Testimony:

**Robert White**, Bozeman Area Chamber of Commerce, said a survey of members of the Chamber recently revealed that there has been a serious decline in the work incentive of people hired today. This bill would help by enabling Montana high school students to develop work ethics. He strongly supported the bill.

**Don Waldron**, Montana Rural Education Association, said there would be costs to the school districts but the legislation is worthwhile because it will give high school students a chance to get the experience and training they need.

**David Owen**, Montana Chamber, testified in support of the bill. He said the Chamber became aware of the School-to-Work program several months ago. He said that employers are as concerned about good work attitudes as they are about skills. Bringing young people into the work environment is important. He said this bill would help connect business and education.

**Tom Harrison**, Montana Society of Certified Public Accountants, went on record in support of the bill. He said the bill seems to be designed for corporate entities and he suggested that the opportunity should be extended to other employers.

**Jane Karas**, Director of Workforce Development, Montana University System, said she was involved in School-to-Work at the state level and would support HB 469. She said various state agencies, including representatives from the Governor's office, have been examining the issues related to workers compensation tax, child labor laws, and other liability issues related to the School-to-Work program. It is a very complicated issue and she thanked Rep. Kitzenberg for his support. However, they are studying the best way to support all of Montana's employers, students and schools.

Opponents' Testimony:

**Michael Keating, Montana School Boards Association and the Montana Schools Services Foundation**, rose, reluctantly, in opposition to the bill because he recognized the importance of the School-to-Work concept. **Mr. Keating** emphasized the importance of better preparing young men and women coming out of high school for real life in the work force. On the other hand, they rise dramatically in opposition to this bill as a means of accomplishing that because the practical implications of the legislation would serve as a deterrent to the program rather than an incentive for expansion. He said it was important to consider this legislation in context with law already in effect and that being considered in this session of the Legislature. The Senate has passed a Constitutional amendment giving voters a chance to reject unfunded mandates to units of local government. Another bill in the Senate also prohibits unfunded mandates to local governments, including school districts. **Mr. Keating** noted that there are several provisions in HB 469 which are in violation of the Senate bills mention. It treats a school as an employer when the school is not the employer because the district would have no control over the safety of the workplace in which a student was assigned work responsibilities.

*{Tape: 1; Side: B.}*

In conclusion, **Mr. Keating** testified that there were a number of issues created by HB 469 that would deter schools' participation in the program.

Questions From Committee Members and Responses:

**REP. REAM** asked if the provisions of HB 469 would apply to the university and the vo-tech schools. **REP. KITZENBERG** said it would. **REP. REAM** asked if the students would have to be full time students. **REP. KITZENBERG** said that might be a legitimate concern. He said he had tried to include all the options in the bill and would have no objection to amendments or additions.

**REP. REAM** said he also had some concern that the bill provides for a tax credit rather than a tax deduction because there might be an incentive for some employers to use students and not hire regular employees. **REP. KITZENBERG** agreed that the bill could be amended to make it a tax deduction instead of a tax credit. He also explained that, according to the legislative staff person, the bill as written would apply to all employers and not just corporations.

**REP. BOHLINGER** supported the bill's concepts, however, he was concerned about burdening schools with the cost of workers' comp insurance and suggested that the \$2,500 tax credit should be enough incentive for an employer to hire young and inexperienced workers. **REP. KITZENBERG** said other states offer only the credit and make no special provisions for workers' comp insurance. **REP.**

**BOHLINGER** asked if there were any estimates of what the tax credit might cost. **REP. KITZENBERG** said he had hoped the DOR would give him cost figures, however, they have not. The Legislative Council indicated that costs would be minimal because the jobs would pay minimum wage and would be for a few hours a week.

**REP. ELLIOTT** said he thought McDonald's would be happy to hire these students and receive the tax break. He asked if there was a definition of "employer" in the School-to-Work program. **REP. KITZENBERG** said this was another area that needed exploration because a definition would have to be created. He disagreed with the statement that a school is not an employer because in some respects it would assume that role. He advised that 80% of Montana's high school students do not graduate from college and something must be done for them.

**REP. STORY** asked if it was true, as the opponent to the bill indicated, that the school would have little control over students in this program. **Mr. Waldron** said students are not allowed to go out into workplaces without guidance and limitations set by school board policy. He said the faculty of the high school continues to be involved by supervising the student and visiting the workplace.

**REP. SWANSON** asked Mr. Keating if school districts would have the workers' comp classification required to cover these students. **Mr. Keating** said the self-insurance fund administered by the Montana School Services Foundation, under which most schools are covered, has a two-rate classification -- one for professionals and the other covering all other employees.

**REP. MURDOCK** asked if the goal of the program was to get students into the workplace to teach work ethics rather than to learn a lifetime job skill. **REP. KITZENBERG** said some students have found areas of interest through the jobs they have had and have gone on to pursue careers in those fields, but teaching work ethics is also important. He also noted that it had been his experience that students having a part-time job, or who were participating in extra-curricular activities, were much more likely to stay in school.

**REP. ELLIOTT** said he understood there was some ambiguity in the bill about who would be considered the employer. **Mr. Cadwallader** explained that existing law includes in the definition of employee "someone who is involved with or receiving on-the-job vocational training under the federal or state vocational training program." Under existing law, the students would be the employees but there is a question of whose employees they would be. **REP. ELLIOTT** then asked whether the student (or his parents) would be able to sue if the student were injured on the job and did not receive satisfactory coverage from either the employer or the school district. **Mr. Cadwallader** explained that workers' comp law includes a "document of exclusive remedy" that says a

person who is hurt on the job cannot sue, in court, the immediate employer because the exclusive remedy "flows to" the employer who provides the workers' comp coverage. There is a chance there could be a lawsuit if an accident occurred through negligence of a third party because that would not be protected by the exclusive remedy.

**REP. REAM** said that if the school was providing the workers' comp insurance, the true employer would be the third party. **Mr. Cadwallader** pointed out that there is a distinction between unpaid work experience which is often contemplated under School-to-Work and paid work experience which also occurs under School-to-Work programs. In the unpaid situation, the entity where the student is performing the work would be the employer and, in that situation, a suit could be brought against the place where the student is doing the work. It was his opinion that under Montana law, if a student is being paid it would create an employee-employer relationship and the entity that pays the salary, provided it has workers' comp coverage, would gain the exclusive remedy and would be protected from suit.

*{Tape: 2; Side: A.}*

**CHAIRMAN HIBBARD** said that he understood that an ambiguity had been created in the bill that was not entirely clear. However, in a School-to-Work situation, where the school is the employer who pays the premium, the exclusive remedy would extend to the school and there would be a chance that the job provider would not be covered by the exclusive remedy and there would be a chance of liability. **Mr. Cadwallader** said that was correct.

**REP. FUCHS** asked someone to explain the concept of the School-to-Work program. **Ms. Karas** said Montana does not have this system in place but is examining the concept. The program would broaden the education, economic and career opportunities for students. The three basic components are a work-based learning component, a school-based learning component, and the connecting activities. The work-based learning component can be an on-site work experience, job shadowing, or a school-based enterprise in which the students run a business. The school-based learning component looks at integrating academic and occupational learning and also linking secondary and post-secondary education. The connecting activities, that Montana does not have now, would show students how what they are learning in school and what they are doing on the job are linked. She said that 85% of high school students do have part-time jobs and the program would not find new jobs for all these students, but it would assist in teaching them how what they are learning in school is linked to the jobs they already have.

**REP. SOMERVILLE** asked if this program would remove the incentive for a student to go out and find his own job. **REP. KITZENBERG** said this was another aspect that would have to be worked out.

REP. WENNEMAR asked if the child labor aspects had been addressed in the bill. REP. KITZENBERG said other sections of Montana law cover that issue.

REP. ARNOTT said she thought workers' comp was the major deterrent to this program and the employer should be held responsible for those costs with some sort of deductible provided. REP. KITZENBERG said he assumed that would be a possibility and it would be up to the Committee to amend the bill to create something better.

REP. REAM asked if the program would cover summer employment. Ms. Karas said the school board would develop the program based on available resources and community interest. However, the program must include a learning component.

CHAIRMAN HIBBARD said an important part of the bill was the \$2,500 credit per student tax credit. Since the fiscal note does not deal with the total cost, the Committee may be somewhat reluctant to act on anything that does not have an accurate price tag. He asked why the fiscal note did not deal with the cost. REP. KITZENBERG said the \$2,500 figure was obtained from the Oregon legislation. Other states are still exploring tax credits and may provide a credit for a percentage of the wages paid. However, he indicated that he had no idea what the total cost of the program would be.

Closing by Sponsor:

REP. KITZENBERG said the bill addresses a need in the State of Montana. The bill would give the employer an incentive to become involved and make the program more effective. He said he would appreciate the Committee's positive action.

{Tape: 2; Side: B.}

HEARING ON HB 470

Opening Statement by Sponsor:

SAM KITZENBERG, House District 96, Glasgow, said the purpose of HB 470 is to adjust property tax limits to the rate of inflation, which would provide critically needed budget flexibility for local governments in Eastern Montana. The text of Rep. Kitzenberg's opening statement is attached as EXHIBIT 3.

Proponents' Testimony:

Gordon Morris, Montana Association of Counties, rose in support of HB 470 because he had a good understanding of I-105 and he agreed with the assumptions in the fiscal note. The cap limiting taxes is measured in terms of mills or dollars. If measured in mills, taxable values have increased; if measured in dollars,

taxable values have decreased. The fact is that, if talking in terms of dollars, they are at 1986 values without recognizing that the increases in taxable value have not keep pace with inflation. This is the problem in Eastern Montana. Some areas have lost as much of 50% of their taxable value between 1986 and 1994 for a variety of reasons, and, as a result, the mills have come nowhere close to generating the revenue equal to the revenue in 1986, adjusted for inflation. **Mr. Morris** suggested that in Section 1 of the bill the triggering mechanism should be measured in terms of the value of a mill. If the value of a mill, adjusted for property changes in the jurisdiction during the course of a year by way of new property coming onto the tax rolls, is less than the consumer price index, the bill would allow the county to increase tax revenues by a percent equal to that, regardless of how many mills it would take. The bill can be made to work and he hoped the Committee would consider the idea and take into account the dire situation in Eastern Montana.

**Alec Hanson, League of Cities and Towns**, said he represented the organization that had asked Rep. Kitzenberg to introduce the bill. He presented the Committee with a copy of a letter from the City of Glendive in support of the bill. EXHIBIT 4. He also presented a written analysis comparing the per capita value of Class 4 property in selected counties across the state. EXHIBIT 5. **Mr. Hanson** emphasized that the analysis pointed out a need that must be addressed. I-105 does not apply uniformly and is causing severe financial problems for selected groups of local governments, primarily in Eastern Montana. He said he was appearing before the Committee on behalf of the third class cities and towns in that area. He pointed out that the town of Nashua is on the edge of bankruptcy and there is no way, under current law, that it can solve its problems. I-105 today applies to only about 15% of all properties. In 1989, the school funding legislation, removed 65% of all taxes from I-105 and, since that time areas of the state that have had significant increases in valuation are technically under I-105 but it does not cause a problem because they are able to keep up with inflation and additional costs, and for these cities and towns it is not much more than a nuisance. However, it is a very serious limitation in the cities and towns that have lost valuation. The only thing that is keeping these cities and towns going, and the difference between a balanced budget and a financial crises, is gambling revenue. He said the voters, when they went to the polls in 1986, were voting on a selective tax which would apply uniformly and, after eight years, it has become apparent that it does not apply uniformly. He offered to work with the Committee to make the bill acceptable.

**Tom Kibbe, Clerk-Treasurer, City of Scobey**, commended Rep. Kitzenberg for bringing the bill before the Committee. He explained the problems faced by the City of Scobey as a result of I-105. He said the bill is not a cure-all, but it would provide some help to them.



{Tape: 3; Side: A.}

Opponents' Testimony:

**Dennis Burr, Montana Taxpayers Association**, spoke in opposition to HB 470. He pointed out that the bill includes many exceptions to the original language of I-105. He said there are counties in Eastern Montana that could increase their mill levies legally by more than 1000% right now and it is probably fear and common sense that prevent them from doing it. The reason is that oil and gas were taken out of the property tax base and made a local government severance tax. When the revenue came out of the property tax base, it meant that levies could go up on property to produce as much revenue as property taxes previously raised. At the county level there is flexibility but the population could not support the increases because population is decreasing. If the population is declining, the governments will have to decline as well, at least in terms of cost. This bill says that even if a county is losing population and there are less people to serve, the government would still be able to grow at an inflationary rate. He said he could sympathize with these areas but there is flexibility in the current law.

Questions From Committee Members and Responses:

**REP. ELLIOTT** asked Mr. Hanson if he could get a breakdown of how many governmental units could have raised their mill levies, and how many actually did, as a result of oil and gas being removed from Class 4 properties. **Mr. Hanson** said he could provide that information. He said some of the local government units do have flexibility but this bill is intended for the places that do not have that flexibility, primarily the cities and towns that don't get a share of the severance tax. He said that cities that have not had an increase in valuation are limited to the amount of money collected in property taxes in 1987. **REP. ELLIOTT** said the argument had been made that part of the taxable valuation in these counties had declined because of the change in oil and gas from mills to the local government severance tax and also that reimbursement from the state for Class 9 property would reflect a decrease in the taxable valuation. **Mr. Hanson** said that local government severance tax money would not have any affect on the numbers he had presented to the Committee. The \$17 million that goes back to the local governments through the personal property tax reimbursement program is only \$1.6 million for cities and towns and the larger cities would receive over 60% of that. **Mr. Morris** answered the same question by stating that counties are the primary beneficiary of the local government severance tax and the Eastern Montana counties are the principal recipients because the tax is tied to oil, gas and coal. Taking the local government severance tax plus the personal property tax reimbursement into account, and adjusting the value of the mills in 1995, it would still be below the 1986 level. Adjusting for inflation, it would be well below the 1986 level.

**REP. BOHLINGER** said that if HB 470 was put into place, more tax dollars would be squeezed out of financially burdened communities because populations are shrinking and resources are reduced. **Mr. Burr** said that would be correct because it would allow governments to continue to increase at the rate of inflation. **REP. BOHLINGER** asked Mr. Burr to comment on consolidation of counties and cities to take advantage of the resources that are available. **Mr. Burr** said it might save money and, if there was money to be saved, it would be in the populous counties of Western Montana and not in the sparsely populated counties in Eastern Montana.

**REP. FUCHS** asked if the sponsor would consider an amendment that would allow taxing jurisdictions to enact a local no-exclusion sales tax. The sponsor did not respond.

**REP. REAM** said the data on taxable valuation is restricted to Class 4 property and the dollars coming into the county apply to all property. **Mr. Hanson** replied that he had used Class 4 property because 71% of all the property in cities and towns is in that class. He said he was trying to illustrate that by increasing property taxes in some cities and towns in Eastern Montana in accordance with this bill, the per capita taxable value would still be low.

**REP. STORY** asked if any of the cities and towns have tried to run a voted levy. **Mr. Hanson** said he was not aware of any cities that had because the law requires the declaration of a financial emergency which is a complicated process and the emergency levy is good for one year only.

*{Tape: 3; Side: B.}*

**REP. ELLIOTT** commented that all taxing jurisdictions across the state are scrambling for more tax dollars, yet, on the other hand, taxpayers are becoming more burdened and his question was, "Why?" **Mr. Burr** said it is the give and take between government and citizens and, hopefully, the elected government officials are trying to buy the best service they can honestly and legitimately provide. The citizens see the needs but must also look in their own pockets and weigh the benefits of a government service against the price. Somewhere a balance must be achieved. **Mr. Hanson** answered the same question by saying that governments do provide good services and the financing problems are at the local levels.

**REP. ROSE** asked if there had been any decrease in administrative costs in the counties experiencing decreases in valuation. **Mr. Morris** said there had been no appreciable decrease in staff although some counties have gone to sharing staff.

Closing by Sponsor:

REP. KITZENBERG said that HB 470 attempts to address a very serious problem in Eastern Montana and he thanked the individuals who appeared as proponents. He said that a level of government services must be provided even though there have been decreases in population. He concluded by stating that he would like to see HB 470 passed out of the Committee.

EXECUTIVE ACTION ON HB 127

REP. ROSE said he had some reservations regarding this bill because his county has been involved in litigation over the issue and it has caused a lot of animosity in the community.

REP. ELLIOTT said he would need more information before he could vote on the bill.

REP. STORY said he also had concerns about the bill and would like the opportunity to visit with individuals in his district before discussing the bill further. He said that Rep. Larson had furnished him with further information in the form of a letter which he read to the committee and asked to have it entered into the record. EXHIBIT 6.

CHAIRMAN HIBBARD announced that further executive action on HB 127 would be postponed.

ADJOURNMENT

Adjournment: 11:30 A.M.



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CHASE HIBBARD, Chairman



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DONNA GRACE, Secretary

CH/dg

# HOUSE OF REPRESENTATIVES

## Taxation

ROLL CALL

DATE 2/16/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Chase Hibbard, Chairman	✓		
Rep. Marian Hanson, Vice Chairman, Majority	✓		
Rep. Bob Ream, Vice Chairman, Minority	✓		
Rep. Peggy Arnott	✓		
Rep. John Bohlinger	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Rick Jore	✓		
Rep. Judy Rice Murdock	✓		
Rep. Tom Nelson	✓		
Rep. Scott Orr	✓		
Rep. Bob Raney	✓		
Rep. Sam Rose	✓		
Rep. Bill Ryan	✓		
Rep. Roger Somerville	✓		
Rep. Robert Story	✓		
Rep. Emily Swanson	✓		
Rep. Jack Wells	✓		
Rep. Ken Wennemar	✓		

EXHIBIT 1  
DATE 2/16/95  
HB 127

Amendments to House Bill No. 127  
First Reading Copy

Requested by Rep. Larson

Prepared by Bart Campbell  
February 8, 1995

1. Title, line 4.  
Strike: "A 2-MILL TAX"  
Insert: "AN ASSESSMENT"
2. Title, line 5.  
Strike: "AND IMPROVEMENTS"
3. Title, line 6.  
Following: "IMPROVEMENTS"  
Insert: "; AND AMENDING SECTION 7-13-326, MCA"
4. Page 1, lines 10 through 21.  
Strike: Sections 1 and 2 in their entirety
5. Page 1, line 22.  
Insert: "

**Section 1.** Section 7-13-236, MCA, is amended to read:

**"7-13-236. Revenue bonds and obligations.** (1) The commissioners may issue revenue bonds, including refunding bonds, or borrow money for the acquisition of property, construction of improvements, or purchase of equipment or to pay costs related to planning, designing, and financing a solid waste management system.

(2) Revenue bonds may be issued in a form and upon terms as provided in 7-7-2501.

(3) Bonds or loans may be payable from any revenue of the solid waste management district, including revenue from:

(a) service charges authorized in 7-13-233;

(b) grants or contributions from the state or federal government; or

(c) an assessment on each lot or parcel of land in the district based on the area of each lot or parcel in relation to the total area of all lands to be assessed; or

~~(e)~~(d) other sources."

First Annual SCHOOL TO WORK conference  
December 3, 1994  
Kwa Tuk Nak Lodge, Polson Montana

**"Liability for students involved in workplace learning environments: Spotting some of the issues."**

Presented by  
Mark Cadwallader  
Staff Attorney, Montana Department of Labor and Industry

**A. Introduction.**

Thank you for having me here today. And even though it is Saturday morning, I'm dressed up in my "impersonating an adult" costume, and I'm going to have to say some things that sound like a lawyer speaking. First, let me read the fine print of the disclaimer:

"This is general information, not legal advice. Consult your own attorney for additional information and advice before applying the general information given here to any particular situation."

**B. Three perspectives: the school  
the business employer  
the student**

My remarks today will look at some legal issues surrounding the school to work program. There are at least three perspectives from which to analyze those issues: the school, the business employer, and the student perspective. I'll try to keep all three in mind during my talk. While all three major players have an interest in making the school to work program be successful, it is likely that each has a different view as how the program should be run.

My comments will focus more on the area of workers' compensation issues, because that is my area of expertise, and the area that the Department of Labor is involved.

**C. Public liability insurance vs. workers' compensation:  
the doctrine of exclusive remedy**

In order to begin the discussion, I need to draw a distinction between public liability insurance and workers' compensation insurance, and discuss the doctrine of exclusive remedy. The term "exclusive remedy" means that a worker who is covered under the Montana Workers' Compensation Act and is injured on the job cannot sue the worker's direct employer or co-workers for the injury, but instead must be content to accept the benefits provided for by the Workers' Compensation Act. The amount of "fault" or negligence is not at issue.

Compare that to regular public liability insurance that provides the policyholder with coverage in the event that a non-employee gets hurt as the result of something that policyholder is responsible for doing. Determining who is at fault (negligent) is a major issue. Public liability insurance does not cover injuries to the policyholder's employees.

Even if a worker is receiving workers' compensation benefits, the injured worker has the right to sue most anybody else who negligently contributed to the worker being injured. That is known as a third-party suit. It includes somebody who is directly involved (like the manufacturer of a defective product that causes an injury), and it also might include somebody who either knew (or should have known) that the worker was being placed in a dangerous situation, if that person has a duty not to send the worker into a dangerous situation.

Once we use the word "student" in the place of worker, you may begin to see that there are a variety of issues that arise. From the perspective of the student worker, being covered by workers' compensation has the advantage that it is a no-fault system (at least that's the theory, anyway.) The student worker cannot sue the employer because of the exclusive remedy. The student could sue a negligent third-party, however.



Viewed from the perspective of somebody who has the liability exposure, I think that the party who can claim a person as an employee for workers' compensation purposes has an advantage because liability is limited by the exclusive remedy. Currently Montana law recognizes that only a single "employer" is able to take advantage of the exclusive remedy protection, so both the school and the business can't both claim the student at the same time.

**D. Examining the various risks.**

Montana law requires all employers to carry workers' compensation insurance on their employees. Sole proprietors and working members of partnerships do not have to carry coverage on themselves. However, if you are somebody's employee, you are supposed to be covered. Incidentally, all the employees are covered under a policy, not just those whom the employer lists and pays premium upon.

How do you tell when somebody is your employee? There is a statute that defines who is an employee, section 39-71-118, Montana Code Annotated. Let's look at the statute:

**39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or "worker" means:

(a) . . .

(b) . . .

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers . . . .

Part of that statute says that a student who is involved in on-the-job vocational training under a state or federal vocational training program, whether or not the student is getting paid, is an employee if the student is not on the premises of the school. The real question is, whose employee is the student worker?

While the statute defines a student worker as an "employee" in certain situations, it does not specify who is the student's employer. Let's assume that the student worker is being paid for the work experience. I think that the student is the "employee" of the business where they are working. Assuming that the business has workers' compensation insurance, the business is protected from a third-party lawsuit.

There are two cases that I am aware of from the Montana Workers' Compensation Court looking at the issue of workers' compensation liability in an on-the-job training situation. One case, decided in 1991, held that developmentally disabled workers engaged in on-the-job training, and receiving pay (although less than half of minimum wage) were employees, and the employer had to pay premium on those wages to the employer's workers' compensation insurer.

The workers were involved in recycling work about one and a half hours a day, and spent four and a half hours a day learning academic and functional tasks. Incidentally, I note that the employer was using federal funding and private donations to pay the wages, and even after selling the recycled raw materials, was operating "in the red." The Court found that unlike unemployment insurance law, there is no statutory exemption that removed those workers from coverage under the Workers' Compensation Act.

The other case looked at an on-the-job training program that the Job Service had established with a local business, using JTPA funds. The business owner did not have the required workers' compensation coverage that he had certified that he had in order to qualify for participation in the JTPA program. When the trainee got hurt on the job and filed for workers' compensation benefits, he found out that the business did not have coverage. He asked the Workers' Compensation Court to find that the Job Service covered his claim. In that 1989 decision, the judge said that the worker was not entitled to get benefits from the Job Service workers' compensation insurer.

But the judge did comment that the worker could sue the business for benefits and perhaps even the Job Service for not making sure the business had proper coverage.

That case raises the question of whether a school has liability for a student worker's injuries, regardless of the employer's liability. I suggest that the school may have a duty to make some reasonable inquiries as to whether the business at which the student is working (as part of a school to work program) is reasonably safe. Likewise, the school should make sure that the business has workers' compensation insurance. If not, the school might be found to be negligent and thus subject to third party liability. How much inquiry is needed, I can't say for certain. But I want to raise the issue. I don't think that a school has a duty make sure that a workplace is 100% safe, but it may well be appropriate to have somebody take a look at the worksite to see if there are obvious safety problems.

Let's look at a different situation. (Lawyers love to change the fact pattern just a little, and then give you a different answer to almost the same question.) Let's assume that the student is not being paid and is in the intern situation that John described as part of his opening remarks. Given the way the current law is written it is my opinion that a student might be found to be the employee of the school, not the business. I'm not sure however: the matter has not been decided by any Montana court yet, to the best of my knowledge. If so, then it's the school that is protected by the exclusive remedy, while the business has liability exposure to its negligence or that of its regular employees. And that exposure would likely be covered by a public liability insurance policy. If the business is instead found to be the employer, despite the fact that the student is not being paid, then the claim is made against the business' workers' compensation insurer.

#### **E. Other areas of liability.**

Another issue is the question of transportation liability. Rick Bartos will have some more to say on those issues. Just let me say that waivers and releases signed by parents are nice to have, but don't count on them to keep the school out of court.

What about unemployment insurance? Fortunately, I can pretty safely say that there is no obligation to pay Unemployment Insurance contributions on remuneration paid to full-time students in a school to work program, where the work is for credit and an integral part of the academic program. The specific exemption is in section 39-51-204(1)(i) and (j), MCA.

What about child labor laws? What about minimum wage issues? While there are some provisions that take job training programs out of the requirements of paying a minimum wage, there are both state and federal statutes that are involved. Keep in mind that children of certain ages are prohibited from certain kinds of work. Montana re-wrote its child labor laws in 1993, so you probably should take a look at how things have changed. There is also federal law in the area, under the Fair Labor Standards Act. The area of the law is more detailed than I can do justice to in the time I have; I apologize that all I can do is mention it in passing. I do have a handout on Montana child labor laws, which should be in your packet of material. It gives a telephone number to call for more information.

#### **F. Looking at the cost of providing workers' compensation coverage.**

A little while ago, I said that all the employees of an employer are covered by a workers' compensation insurance policy, regardless of whether or not they are listed and reported to the insurer. Workers' compensation rates, as many of you know, are usually based on the amount you pay a worker. Rates run from about 50 cents for every \$100 in payroll to over \$140 for every \$100 in payroll, depending on the occupation of the worker.

But how do you apply that sort of formula to an unpaid student intern? There are no wages upon which to base the premium calculation. Do you assume a rate based on minimum wage? Do you assume some percentage of entry level wages? I don't have the answers, I'm afraid, and it gets more complicated.

Not only do wages form the basis for computing the premium paid to the insurer, but the wages also form the basis for calculation of some of the wage loss benefits payable to a disabled worker. Is there any reason to pay wage loss benefits to a student who isn't earning anything to begin with? Maybe there is. I'll tell you what I think, but once again, there are no clear answers.

In my opinion, there is no good reason to pay wage loss benefits to student learners while they are still in high school. (I'm ignoring situations where the student has an after school job for pay.) One reason is that an unpaid intern is not relying on wages for economic survival. But what about the student who sustains a serious injury just before graduation? The kind of injury that will prevent the student from entering or competing in the labor market? The sort of injury that may limit the student's ability to earn a competitive wage? Should that student's rights to benefits be different because the injury occurred 5 days before graduation rather than 5 days after? I don't know. But from the student's perspective, it is an important issue.

The costs of providing workers' compensation insurance are tied to the cost to having to replace lost wages, not only during a temporary disability, but for permanent partial disabilities, too. If an insurer doesn't have to pay wage loss benefits of any kind, then the premium ought to be less. And keeping costs down is something that whomever the employer is, school or private business, is interested in.

As I said, I don't have answers to all these questions. I will point out that Montana law provides that persons who are performing community service under a court order are covered for certain kinds of workers' compensation benefits if they get hurt, but that they don't get other benefits, such as wage loss benefits. Here is the statute:

**39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or "worker" means:

. . .  
. . .

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

The employer, as defined in 39-71-117(3), generally means the entity using the services of the worker.

Now I don't necessarily suggest that this should be a model for the school to work program. But I want to point out that the Legislature has gotten creative when faced with a similar situation, albeit in a different context. The questions remain "Who should get the benefit of the exclusive remedy of workers' compensation, and how should that entity bear the cost?" and "What benefits should student learners get if they get injured while gaining work experience as part of a school to work program?"

**G. Conclusion.**

I realize that I've probably raised more questions than I've answered. I don't mean to throw cold water on the school to work program, but I think that it is important for all the players to look at these issues sooner, rather than later. Hopefully we can enter into a dialogue and address these concerns before they turn into problems. Thank you.

EXHIBIT 3  
DATE 2/16/95  
HB 470

TESTIMONY ON HOUSE BILL 470

IT IS DIFFICULT TO RECOMMEND CHANGES TO A LAW THAT WAS APPROVED BY A PUBLIC VOTE, BUT AFTER 8 YEARS OF AMENDMENTS, EXEMPTIONS, IRREGULAR GROWTH AND INFLATION, IT IS TIME TO ANALYZE INITIATIVE 105 AND WHAT IT IS DOING TO MUNICIPAL AND COUNTY GOVERNMENTS ACROSS THE STATE.

THE INITIATIVE LOST MUCH OF ITS INTENDED EFFECT WHEN PUBLIC EDUCATION LEVIES, WHICH REPRESENT ABOUT 65 PERCENT OF PROPERTY TAX COLLECTIONS WERE EXEMPTED FROM THE FREEZE BY THE 1989 LEGISLATURE. THIS DECISION, COMPELLED BY THE THREAT OF EQUALIZATION SUITS, GAVE CITIES, TOWNS, COUNTIES AND SPECIAL DISTRICTS THE EXCLUSIVE RESPONSIBILITY TO HONOR THE INTENT OF THE INITIATIVE.

OVER TIME, INCREASES IN VALUATION DUE TO NEW CONSTRUCTION AND REAPPRAISAL, WHICH ARE EXEMPT FROM THE FREEZE, HAVE BOOSTED TAX COLLECTIONS FOR LOCAL GOVERNMENTS IN THE GROWTH AREAS OF THE STATE. THESE CITIES AND COUNTIES HAVE BEEN ABLE TO KEEP PACE WITH INFLATION BECAUSE FROZEN MILLS APPLIED TO AN EXPANDING TAX BASE HAVE PRODUCED ADDITIONAL REVENUE.

NOW, AFTER 8 YEARS, IT IS OBVIOUS THE I-105 APPLIES ONLY TO THOSE CITIES AND COUNTIES, LOCATED PRIMARILY IN EASTERN MONTANA, WHERE PROPERTY VALUES HAVE BEEN STATIC OR DECLINING. A LAW THAT WAS INTENDED TO APPLY UNIFORMLY DOES NOT TOUCH SCHOOLS, AND IT IS NOT MUCH MORE THAN A NUISANCE IN JURISDICTIONS WHERE PROPERTY VALUES AND TAX COLLECTIONS HAVE INCREASED AT A RATE EQUAL TO OR HIGHER THAN INFLATION. THE FREEZE, AS YOU WILL HEAR FROM THE PROPONENTS, IS A SERIOUS PROBLEM IN AREAS OF THE STATE WHERE VALUES HAVE NOT INCREASED, BECAUSE THESE GOVERNMENTS ARE FORCED TO BALANCE BUDGETS WITH REVENUES THAT HAVE BEEN DEPRECIATED BY 8 YEARS OF INFLATION.

UNDER THE LAW, CITIES AND COUNTIES CAN INCREASE MILLS IF VALUES DECLINE AS LONG AS REVENUES DO NOT EXCEED THE AMOUNT COLLECTED IN FISCAL YEAR 1987. THIS MEANS THAT THE FREEZE IS ABSOLUTE, IN CITIES LIKE GLASGOW, GLENDIVE AND SIDNEY WHERE THE LOSS OF TAXABLE VALUE OVER THE LAST 8 YEARS RANGES FROM 15 TO 30 PERCENT. THE LAW ALSO CAUSES FINANCIAL PRESSURES IN CITIES LIKE HAVRE AND LEWISTOWN WHERE VALUATIONS HAVE INCREASED AT RATES WELL BELOW THE INFLATION INDEX.

AT THE SAME TIME, CITIES AND COUNTIES IN THE GROWTH AREAS OF THE STATE HAVE SEEN VALUATION INCREASES OF 20 AND 30 PERCENT. WHILE THESE MILL LEVIES ARE FROZEN AND MANY HAVE BEEN CUT, HIGHER VALUES PRODUCE REVENUES THAT ARE ADEQUATE TO COMPENSATE FOR THE RISING COSTS OF GOVERNMENT SERVICES.

I DO NOT THINK PEOPLE VOTED IN 1986 FOR A SELECTIVE TAX FREEZE THAT APPLIES IN THE REAL WORLD TO ONLY THOSE CITIES AND COUNTIES IN EASTERN MONTANA AND ISOLATED AREAS WEST OF THE DIVIDE WHERE ECONOMIC CONDITIONS HAVE DEPRESSED PROPERTY VALUES.



THE PURPOSE OF THIS BILL IS TO ADJUST THE PROPERTY TAX LIMIT TO THE RATE OF INFLATION, WHICH WILL PROVIDE SOME CRITICALLY NEEDED BUDGET FLEXIBILITY FOR LOCAL GOVERNMENTS IN MY AREA OF THE STATE.

IF HB-470 IS APPROVED, THE TAX LIMIT WILL BE ADJUSTED TO THE RATE INFLATION FOR GOVERNMENT PURCHASES. THIS ADJUSTMENT WILL HELP ONLY THOSE CITIES AND COUNTIES WHERE TAX VALUES HAVE BEEN STATIC OR DECLINING, BUT IT WILL NOT APPLY IN AREAS OF THE STATE WHERE REVENUES HAVE INCREASED AS A RESULT OF NEW CONSTRUCTION AND REAPPRAISAL. THE INTENT OF THIS BILL IS TO BALANCE THE EFFECTS OF THE FREEZE BY MAKING IT MORE UNIFORM AND EQUITABLE.

MEMBERS OF THE COMMITTEE MAY HAVE OTHER IDEAS ON WAYS TO ACCOMPLISH THE PURPOSES OF THIS BILL, AND I AM OPEN TO YOUR SUGGESTIONS AS LONG AS THEY RECOGNIZE THAT A FEW CITIES AND COUNTIES IN EASTERN MONTANA SHOULD NOT BE HELD TO STANDARDS OF ACCOUNTABILITY THAT DO NOT APPLY ACROSS THE BOARD.

I REALIZE THAT THIS IS A BOLD PROPOSAL, BUT DESPERATE SITUATIONS SOMETIMES REQUIRE DRASTIC SOLUTIONS, AND I ASK YOU TO LISTEN TO THE ARGUMENTS OF THE PEOPLE FROM EASTERN MONTANA WHO ARE HERE TODAY REQUESTING NOTHING MORE THAN A FAIR CONSIDERATION AND SQUARE DEAL.

EXHIBIT 3  
DATE 2-16-95  
HB \_\_\_\_\_

The following table shows the wide variation in per capita mill values for selected Montana cities:

CITY	POPULATION	MILL VALUE	PER CAPITA MILL VALUE
GLASGOW	3,572	\$3,412	\$ .95
GLENDIVE	4,802	5,153	1.07
HAMILTON	2,737	5,078	1.85
HAVRE	10,201	9,734	.95
KALISPELL	11,917	22,389	1.88
MALTA	2,340	2,267	.97
WHITEFISH	4,368	9,591	2.20

It is obvious from these numbers that Montana is separated into two states -- the expanding and the declining or the rich and the poor.

The bill we are proposing will provide no additional tax authority for areas of the state where the increase in taxable value has been sufficient to cover the costs of inflation. The help will go to those cities, towns and counties that are locked into 1987 revenues under I-105, and it will work to promote financial balance across the state.

Local governments that are up against the limits will have the authority to increase mill levies under this proposed bill. These higher levies will be applied to lower values and the per capita tax load will continue to be well below the amounts collected in the growth areas of the state.

The following examples show the widening gap between city tax collections in different areas of the state. The per capita tax load in Havre was \$111 last year, which compares with the \$201 that was collected in Kalispell. In Glasgow the tax per person was \$138, which was more than 20 percent less than the \$166 that was collected in Hamilton. Valuations and tax payments are considerably lower in Eastern Montana, and if mill levies are adjusted for inflation under this proposed bill, the cost of government will still be less than it is in the developing areas of the state.

I hope this letter and the additional information that we develop before the hearing will allow us to make a winning argument for this vital bill.

Thanks for your help, and best wishes for a happy holiday.

Sincerely,



Alec Hansen  
Executive Director

February 14, 1995

Dear Representative Hibbard,

We are writing you concerning House Bill 470 and more particularly indexing I-105. Since 1986 I-105 has controlled the tax levies of cities and counties in Montana. Since the inception of this measure the Governmental Price Index has risen over 29%. Thus inflation alone has had a very detrimental effect on local government.

This Initiative is having a very stifling effect on the service which we have always provided and are expected to provide. New requirements handed down through unfunded mandates and regulations are creating additional pressures on scarce resources. Cities and counties are operating on current year expenses while funding for these expenses is based on 1986 dollars.

There is a very real difference between eastern and western Montana concerning I-105. Taxable value is increasing in western Montana thus I-105 has very little effect in that area. In fact with the additional value these areas have the ability to generate considerably more tax revenue at lower levies. The opposite is true in eastern Montana. Taxable value in many areas has steadily declined since 1986. This decline has forced increased levies to obtain the same tax revenues as 1986. This in conjunction with inflation and unfunded mandates have put a substantial burden on the ability to provide needed services.

Originally I-105 placed restraints on cities, counties, and schools. Schools were soon exempted from these provisions and the State and Federal governments were never included in this tax restraint. In fact while cities and counties reduced and reorganized the State and Federal governments carried on business as usual, many years resulting in deficit spending.

Now, in recent years reduction of government seems to be a nation wide trend. Eastern Montana cities and counties have been forced to reduce government since 1986 due to I-105. We are not opposed to reducing government, however, it has come to the point of reducing essential services due to the constraints placed on local government by I-105. We simply have reduced as far as possible and are at a point of reducing the essential services which encompass the very existence of local government.


There are checks and balances at all levels of government, however, nowhere are these checks and balances held so close as they are in local government. The citizenry of a local government have an immense impact on the types of services and the tax rates of that government. If the people oppose a tax increase the message is heard loud and clear at the local level. If this

message is ignored the people elect new officials who will represent them as they desire. This check and balance dissipates the further the government is away from the people but we can assure you that it is the pervasive force behind local government. As well it should be.

It is interesting that when this initiative was voted on the citizens of Dawson County , voted almost three to one against I-105. The voters of this county did not want this initiative but it was forced upon them and they are now the ones left to contend with these cuts in service.

We are not asking to repeal the provisions or intent of I-105, but rather to allow these provisions to become more realistic by indexing them to an inflationary factor. These local governments have complied with the intent of the initiative by reducing government but simply cannot survive in 1995 using 1986 dollars.

Sincerely,

  
Frank Burke  
Mayor  
City of Glendive

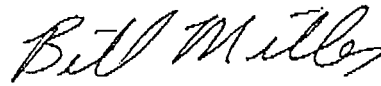
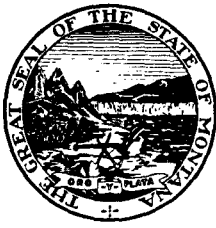
  
Bill Miller  
Council President  
City of Glendive

EXHIBIT 5  
DATE 2/16/95  
HB 470

TAXABLE VALUATION  
SELECTED CITIES AND TOWNS  
1987-1994

CITIES/TOWNS	1994 VALUE	1987 VALUE	% CHANGE
Billings	\$121,033,667	\$130,242,574	(7%)
Bozeman	31,310,293	23,712,379	32%
Butte	55,027,530	38,145,752	44%
Columbia Falls	4,195,692	3,339,147	25%
Dillon	3,792,142	3,437,910	10%
Glasgow	3,400,066	3,984,250	(15%)
Glendive	5,151,280	7,411,992	(30%)
Great Falls	68,383,445	54,497,969	25%
Hamilton	5,089,040	3,831,158	33%
Havre	9,973,681	9,413,237	6%
Helena	40,875,515	34,544,320	18%
Kalispell	18,760,094	17,394,331	8%
Lewistown	5,242,576	4,959,899	6%
Libby	3,011,798	3,219,984	(6%)
Miles City	7,154,579	8,239,133	(13%)
Missoula	64,868,891	47,170,823	37%
Polson	4,151,483	3,307,304	25%
Roundup	1,531,146	1,686,622	(9%)
Shelby	2,279,591	2,581,995	6%
Sidney	4,701,256	5,943,801	(21%)
Whitefish	7,188,393	5,936,120	21%
Wolf Point	1,909,043	2,238,141	(15%)



*The Big Sky Country*

EXHIBIT 6  
DATE 2/16/95  
HB. ~~127~~ 127

## MONTANA HOUSE OF REPRESENTATIVES

Bob,

A couple points I should have made on House Bill 127, the Capital Construction Cost bill for refuse districts:

1) It is OPTIONAL. The commissioners MAY issue an assessment against every property in the district. They may also issue it against only the IMPROVED properties in the district.

2) With the dramatic change in garbage regulations in the past couple years nearly every city, county and garbage district has had to close its landfill and/or build a transfer site. By allowing this financing option for these governing units we allow them to broaden the tax base and lower the rate for all taxpayers.

3) The bill is important in view of the increasing need to supply infrastructure developments in Montana--sewer, water, and garbage. The issue is fair assessment of all who will benefit. All other SIDs are permitted to assess the capital construction costs against all the properties in the district.

I hope you will share this with the committee during executive action.

*From: Rep. Don Larson*

## VISITOR'S REGISTER

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. HB 469  
 DATE 2/16/95 SPONSOR(S) Rep. Kitzenberg

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
MARK CADWALLADER	DEPT. LABOR & INDUSTRY	469		
Howard Bailey	MSF	469	X	
Michael Keady	MSBA/MSF	469	X	
Robert White	Bozeman Chamber			X
David Owen	mt chamber			✓
Jane Karas	MOS	469		✓

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Invocation COMMITTEE BILL NO. HB 470  
DATE 2/15/95 SPONSOR(S) Rep. Kitzinger

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Gordon Morris	MACo	470		✓
David Ovent	mt Chamber	470		✓
Tom Kiese	City of Sobey	470		✓

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