

MINUTES

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

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, January 6, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

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

Committee Business Summary:

Hearing: HB 30, HB 47
Executive Action: HB 47

HEARING ON HB 30

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Lewis & Clark Co., said this bill was brought before the committee by the Board of Investments and is to clarify exactly how the board is to calculate 25% of the tax

trust fund that it is to invest into the Montana economy. That issue was voted upon by the people in 1982 and they chose a percentage of the coal tax trust fund to be invested in Montana businesses. The board is attempting to comply with that law but it is unclear exactly how they are to make that calculation. There are a number of sub-funds the money is deposited into before it becomes a part of the coal tax trust fund.

Proponents' Testimony:

Carroll South, Executive Director, Board of Investments said the law includes all of the sub-funds that are listed in the fiscal note. The severance tax is levied on all coal extracted in the state. Fifty percent is dedicated to the permanent trust. The other 50% is spent based on statute in several other areas. At the top of the trust is the coal severance tax bond fund. These had been issued over the years by the Department of Natural Resources to the general public and institutions. The proceeds of those bonds are then lent to water users. The legislature established this fund as a surety to those bond holders that there will always be money to pay them back. The second tier was created in 1989 when school districts were having a difficult time selling bonds for their capital improvements. The legislature decided they would help school districts by setting up another sub-fund in the trust that would again insure bond holders would be paid. The legislature then created the Treasure State Endowment which is another sub-fund within the trust. All of the sub-funds in the trust are constitutionally protected. The reason for clarification is most of the sub-funds were created after the initial legislation that authorized the 25% in-state investment program. All of these funds are being considered as part of the trust. The second variable is the allocating to the Board of Science and Technology. As the bill was drafted \$23.6 million would not be considered a part of the 25% invested. Twenty-five percent of all of the sub-funds of the trust does not include the \$23.6 million allocated to Science and Tech as part of the 25%.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. PAVLOVICH asked how much money was in the permanent trust now. **Mr. South** said there was \$531 million in the trust as of June 1, 1994.

REP. LARSON asked why the Science and Technology loans were excluded. **Mr. South** said the legislature establishes public policy and if they wish to include that within the 25% it can do so.

CHAIRMAN SIMON asked that if this bill were not successful would that then send a message that the Science and Technology money terminology should read "may" and instead of "shall be". He also said there was some concern about Science and Technology in that it may not even be there in the future so this would further clarify making a definite policy decision about whether or not that \$25 million is included in the mix. **Mr. South** said he preferred specific direction. If the allocation were taken away, another bill would be necessary.

REP. ELLIS said it was a fact that these investments are a little less liquid and whether this would play into the fact that this bill is before us. **Mr. South** said this bill has nothing to do with the kind of investments. The board's concern and interest is simply a clarification as to whether that allocation is part of the 25% or not.

CHAIRMAN SIMON said the investment that Science and Tech is making is investment in Montana industry. **Mr. South** affirmed this.

Closing by Sponsor:

REP. HARPER said that in reviewing the fiscal note, the Board of Investments has a good track record. The permanent trust is an endowment that is 10% of all of the general fund expenditures. So it is truly an endowment in the way it supports and funds the in state.

HEARING ON HB 47

Opening Statement by Sponsor:

REP. DON LARSON, HD 58, Missoula County, said this bill was established by the Department of Labor and Industry. This bill revises the laws relating to the Board of Personnel Appeals by allowing substitute management and labor representatives at board proceedings. This bill authorizes the board and its hearings officers to conduct hearings and appeals by telephone or by video conference. It requires that money forfeited for failure to pay standard prevailing wages be deposited in the employment security account rather than in the unemployment insurance administration account. It clarifies decisions by the board and by a hearings officer that are reviewed and affirmed by a district court which may be reduced to an enforceable order or judgment. This bill would also conform rulemaking authority of the commission of labor and industry to the Montana administrative procedure act.

It would eliminate the board's cost sharing for factfinding not initiated by the board and repeal the restaurant, bar, and tavern wage protection act.

Proponents' Testimony:

John Andrew, Department of Labor and Industry supports this bill. This bill has many sections but many of these provisions are similar in nature and represent clarification of procedural problems identified by the department and its appellate board. This bill would represent balanced representation on the board, assure cost control in the factfinding proceedings area, memorialize the current process of conducting telephone hearings while dealing with potential cost items associated with pending litigation which involves the telephone hearing process. This bill would also remove a rather burdensome lot who provide a minimal amount of recovery for employees of the state.

Mark Staples, Montana Tavern Association, stated this bill was thought to be a protective measure and was not discriminate against the entire industry to assume this was the industry that would not pay its employees until three years experience. The board bore that responsibility only to find that coverage was not available. Four million dollars is being held up in terms of those kinds of security instruments.

Melissa Case, Hotel Employees and Restaurant Employees Union supports this legislation especially the portion of the bill dealing with repealing the restaurant bar and tavern wage protection act. **EXHIBIT 1**

Stuart Doggett, Executive Director, Montana Innkeepers Association said he supported this legislation and compliments the department for coming forward with a good bill that is timely and needed simply to repeal the Restaurant, Bar and Tavern Act.

Don Judge, AFL-CIO said he was really not a proponent or opponent but was in support of the hearings process by the telephonic method which is moving into the new age. He said he had participated in such hearings on behalf of the insurance division and this has made it much easier for all parties to conduct those hearings rather than having people come to Helena. There is no opposition from the public employee affiliates to the change in the cost of the factfinding relative to the board currently paying 1/3 of that cost. This will now require the union to pay 1/2 the cost and the employer to pay 1/2 the cost rather than having the state provide 1/3 the cost of factfinding.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ELLIS stated that on page 2, lines 13-18, where the board is allowed to appoint another member, he asked why the board was

allowed to appoint another member instead of the Governor? **Mr. Andrew** said the discussion that occurred on the board was to the effect of the chair being already appointed in that manner by the board. Some of the thinking is it gives the board the ability to pick an individual. The Governor already makes many appointments and the feeling was since they have the ability to appoint the chair that the board would also have the ability to do the alternates. The board does have rulemaking authority. Assuming that happens, input would be received from the public as to mechanisms about appointing the alternates.

REP. ELLIS questioned the rulemaking authority. **Mr. Andrew** said the matter is based on court precedent. It is a claim filed under the wage payment act under which there is also rulemaking authority. **REP. ELLIS** then asked how extensive the rules are and can an average employer understand pretty well his responsibility or are these rules so extensive that it is hard for the average person to understand. **Mr. Andrew** stated there were two things being discussed. This particular section of law deals with the rules that deal with interpretation of the minimum wage and overtime law. They define what constitutes hours of work, regular rate of pay, overtime, etc. These rules are lengthy and are patterned very much after the federal rules which provide for a minimum wage and overtime law. These rules may be easy for one person to define and difficult for another.

CHAIRMAN SIMON asked if this were a temporary appointment. **Mr. Andrew** said yes. The alternate for the chair is one individual who has had experience with the board. Essentially, that is a permanent alternate appointment. In the time the current chair has been on the chair he has been there for all of the meetings. Alternates will be called on a very infrequent basis.

REP. EWER asked if there were any other boards that have been empowered to select another board member when these board members are appointed by the Governor. **Mr. Andrews** said he was not aware of any but that he was also not that well versed on boards. He felt it was a unique circumstance that the Board of Personnel Appeals now picks its alternate presiding officer.

REP. EWER then questioned the bill as it was drafted now as far as an alternate being picked by fellow board members and not by the Governor. **Mr. Judge** stated he was not objectionable to the way the bill was drafted now. It will be used rarely but in fact will be a good option rather than having a board that is imbalanced on a hearing. Currently, the board can conduct a hearing where there are two employee representatives, an employer representative and a neutral and this constitutes the majority of the board. The employers do not have their fair share of that

board. The same thing can happen if an employee representative does not show up for a hearing the board hears the case with 2 employers, 1 neutral and 1 employee representative.

REP. EWER then said in regard to telephone conference calls - he had a distinctive bias against that because if he did have a grievance, when there is a meeting face to face it would be more appropriate. Constituents have called who have had very heart rendering stories of how they have been hurt by their employer and after going to the board, the board reviews the case and the employee loses. At least these people went face to face in the hearing they were granted. Is this really the way to go. There is something that you can get face to face that you cannot get over the telephone line. Mr. Judge said that after having been at the negotiating table for a number of years, and having participated in a number of hearings, he concurred that the best way of conducting hearings is doing it face to face. That however, is not always possible and for some individuals filing appeals it is in fact precluded. They are not covered on their transportation mileage to get to those meetings. In one case the hearing would not have occurred on a timely basis had all the parties by necessity come together for that hearing. The appellate was in Arlee, Mr. Judge was in Billings and the board was in Helena attempting to conduct the hearing. The claimant was the person saying he would rather have the hearing conducted in this manner rather than having the hearing conducted a few months later. It is permissive, not mandatory.

REP. OHS asked if hearings were now being conducted by telephone. Melanie Simmons, Supervisor, Hearings Bureau, Department of Labor and Industry said that two-thirds of the hearings are conducted by telephone. Most of the collective bargaining hearings are held in person.

Closing by Sponsor:

REP. LARSON said again that telephone conference calls was an option. There are approximately 1800 hearings per year or approximately six per day. They are keeping the cost of government down.

TAPE 1, SIDE B.

EXECUTIVE ACTION ON HB 47

Motion: REP. LARSON MOVED DO PASS ON HB 47.

Discussion:

REP. ELLIS said he was concerned with the fact of a disparity of influence regarding the board when a governor appointee is not made. It would be better to have the Governor make an appointment.

Motion: REP. ELLIS MOVED THE AMENDMENT OF CONCEPT.

Discussion:

REP. LARSON said he would object to the amendment because of the nature of their business, they have so many hearings they cannot be waiting for the Governor to make an appointment. That may take days or weeks or months and they are doing an incredible amount of hearing matters. It is imperative that the board be constituted for these hearings.

REP. COCCHIARELLA said the importance of timing this is the big issue. If the board is not balanced or at least the members would not be able to get the number of hearings done that are required. Some of the appeals go on and on. If the Governor were asked what he would choose he would probably say he would not need to make that appointment.

REP. ELLIS said he understood that the makeup of the board was not being done but all people who represent labor or management do not see the issue as the same and still believe there is some opportunity for mischief.

CHAIRMAN SIMON then reminded the committee that this bill was introduced by the request of the department so it would be assumed this is the Governor's bill and therefore he approves of this procedure.

REP. EWER said he concurred in some ways and said he was concerned about the precedent of having board members in a judicial capacity select the wrong board members. Expediency may be important today but one way of going around this is that of having the Governor have a pool of alternates. He makes hundreds of appointments and he does it through his staff. Having five extra is not a problem for the Governor's office. The integrity of the process is then preserved.

Motion/Vote: A roll call vote was taken which failed 8-10 with REPS. SIMON, PAVLOVICH, COCCHIARELLA, DEVANEY, FORBES, MARSHALL, MCKEE, OHS, SLITER and TUSS voting no.

Motion/Vote: A MOTION WAS MADE ON HB 47 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 30

Motion: REP. PAVLOVICH MOVED HB 30 DO PASS.

Discussion:

REP. LARSON said that he supported this bill.

REP. COCCHIARELLA said it might be good if the Department of Natural Resources explain the flow charts.

REP. ELLINGSON said he could understand why this bill was being brought because there does seem to be an ambiguity in the current statute. He then stated he would like other input from the members of the committee as to the merits of the relative publicity merits of excluding the \$23.6 million or including it. He asked which is the preferable way to resolve the ambiguity.

CHAIRMAN SIMON then stated he wished to relinquish the chair to **VICE CHAIRMAN MILLS**.

Motion: **REP. SIMON** MOVED AN AMENDMENT THAT LANGUAGE MAY NOT BE CHANGED TO "MUST BE INCLUDED."

Discussion:

REP. SIMON stated the reason for his motion was that these monies are in-state investments and are high risk investments but they are nonetheless investments in Montana. There is some question among some members as to the validity of making those investments to begin with and they are seeing no return. They are investments and fall within the spirit of what the people passed when they said that 25% of the coal trust must be invested in Montana and there is no reason to exclude those investments just because they are high risk investments from the calculating of the 25% of the coal trust that goes into Montana investment.

REP. SIMON then stated "may not" be changed to "must be included."

REP. EWER said he would support this amendment. He said he felt the Board of Investments did not care. They were indifferent. Hopefully they will agree with the effect of the amendment and what it does. It makes the pool larger. If you take 25% of what the current trust amount is inclusive of the allocation which was made previously. It was carved out several years ago and given to Science and Technology for that reason. The board does not care because they get more to do.

REP. LARSON asked if the amount of coal tax money to maximize is invested in Montana or is it minimized. By completely reversing this as **REP. SIMON** is proposing, the amount of coal tax is being minimized.

REP. EWER said he needed clarification.

REP. LARSON said by including the coal tax Science and Technology alliance money in the 25% you are minimizing the amount of discretionary money that is being spent on the Montana economy by the Board of Investments. That is high risk capital none of which would have a return. You are reducing by \$24 million the amount of money that can be spent on housing loans and business loans in Montana. That is the effect of **REP. SIMON'S** amendment. The board is asking to exclude it because it is a unique kind of investment that is not showing a return. By excluding it you are going to broaden the coal tax money that is invested.

REP. EWER said that with respect he would disagree because the investments can be characterized. Twenty-five percent of the current asset base of coal severance tax plus the 25% is a larger base. It is more money for the Board of Investments to invest.

REP. ELLIS said he agreed. If the bill is taken as it stands there is \$508 million dollars of which 25% is taken a part of. The figure is larger with REP. SIMON'S amendment.

REP. PAVLOVICH said there are confusion on whether there is more or less money.

Motion: REP. PAVLOVICH MADE A SUBSTITUTE MOTION TO WITHDRAW HIS MOTION ON THE DO PASS.

Discussion:

REP. PAVLOVICH said that when Mr. South returned on Monday with his report the matter will be taken up at that time.


REP. SIMON said he supports REP. PAVLOVICH'S motion to delay action on this bill.

Vote: A vote was taken to withdraw motion which passed unanimously.

REP. MILLS returned the chair to REP. SIMON.

ADJOURNMENT

Adjournment: 10:20 AM.



REP. BRUCE T. SIMON, Chair



ALBERTA STRACHAN, Secretary

BTS/ajs

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 1-6-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		



HOUSE STANDING COMMITTEE REPORT

January 6, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 47** (first reading copy -- white) **do pass**.

Signed:

A handwritten signature in dark ink, appearing to read "Bruce Simon", is written over a horizontal line.

Bruce Simon, Chair

Committee Vote:
Yes 18, No 0.

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HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 1-6-95 BILL NO. HB 47 NUMBER _____

MOTION: ELLIS AMENDMENT

NAME	AYE	NO
Rep. Bruce Simon, Chairman		X
Rep. Norm Mills, Vice Chair, Maj.	X	
Rep. Bob Pavlovich, Vice Chair, Min.		X
Rep. Joe Barnett	X	
Rep. Vicki Cocchiarella		X
Rep. Charles Devaney		X
Rep. Jon Ellingson	X	
Rep. Alvin Ellis, Jr.	X	
Rep. David Ewer	X	
Rep. Rose Forbes		X
Rep. Jack Herron	X	
Rep. Bob Keenan	X	
Rep. Don Larson		X
Rep. Rod Marshall		X
Rep. Jeanette McKee		X
Rep. Karl Ohs	X	
Rep. Paul Sliter		X
Rep. Carley Tuss		X

Mr. Chairman, members of the committee for the record my name is Melissa Case. I am here today representing the Hotel Employees and Restaurant Employees Union. We are in support of the portion of the bill dealing with repealing the Restaurant Bar and Tavern Wage protection act. We are supporting the repeal for the following reasons:

- It is not being effectively enforced now, the Dept. is inadequately staffed and will face more cuts that will impact this program. The act is certainly not a deterrent to opening a new business.
- There are other hurdles for opening a business , especially in liquor and gaming, as a result most individuals do not go into it lightly. They have loans and financing and a long term financial plan. Default and closure is unlikely.
- Actual R, B, T Act bond money collected in closed businesses since 1986 is

-wages : \$13,365.28

-Unemployment Insurance: \$11,401.11

-Workers Comp.: \$5,708.80

This amount is nothing compared to the \$1,517,865 in bonds currently on file with the state. It is obvious that this is an overkill approach.

- There is ample and increasing financial support and counseling for small business to avoid defaulting on payroll or payroll taxes, we should be using these programs.
- There are other ways workers can collect wages if an employer attempts to default. It is relatively easy to obtain an attorney, since unpaid wages can be collected as treble damages in court.
- If a new business is inclined to have a collective bargaining agreement, they will be able to pay out more in workers wages and benefits if they do not have to come up with bond money.
- Insurance companies report that the bonds required are getting harder and harder to secure, making the Act even more impossible to enforce.

Thank You for your time, I hope you will support passage of H.B 47.

Melissa Case

H.E.R.E

Amendments to House Bill No. 28
First Reading Copy

Requested by the Department of Commerce
For the Committee on Business and Labor

Prepared by Stephen Maly
January 5, 1995

3594

1. Title, line 7.
Following: "CHANCE;"
Insert: "AND"
Strike: "; AND PROVIDING AN EFFECTIVE DATE"

2. Page 2, line 4.
Strike: Section 2 in its entirety.

BUSINESS + LABOR

DATE 1-6-95

BILL NO. HB 30

SPONSOR(S)

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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor SUB-COMMITTEE DATE 1/6/95
BILL NO. HB 47 SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Don Judge	MT STATE AFL-CIO	Information	
John Andrew	State of Montana - Dept of Labor	✓	
Melissa Case	H.E.R'E	✓	
MARK STAPLES	MONTA TAVERN ASSOC	✓	
Pat Clinch	MT state council Firefighters	Information	
Stuart Daggett	Montana Innkeepers Assoc.	X	

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