

HOUSE BILL NO. 421

INTRODUCED BY BRANDEWIE, SCHYE, COMPTON,
C. SMITH, FULLER, ASAY, E. SMITH, H. HAMMOND, JONES

BY REQUEST OF THE
DEPARTMENT OF COMMERCE

IN THE HOUSE

January 23, 1985	Introduced and referred to Committee on State Administration.
January 25, 1985	Fiscal Note requested.
January 29, 1985	Fiscal Note returned.
February 21, 1985	Committee recommend bill do pass. Report adopted. Bill printed and placed on members' desks.
February 22, 1985	Revised Fiscal Note returned. Second reading, do pass. Considered correctly engrossed.
February 23, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 25, 1985	Introduced and referred to Committee on State Administration.
March 21, 1985	Committee recommend bill be concurrent in. Report adopted.

March 23, 1985

Second reading, concurred in.

March 26, 1985

Third reading, concurred in.
Ayes, 50; Noes, 0.

Returned to House.

IN THE HOUSE

March 27, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

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HOUSE BILL NO. 421
INTRODUCED BY Dr. [Signature] Sch [Signature] Crofton [Signature]
BY REQUEST OF THE E. Smith [Signature]
DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT OF COMMERCE TO USE UNSALARIED AIR SEARCH AND RESCUE VOLUNTEERS FOR WHOM THE DEPARTMENT MUST PROVIDE WORKERS' COMPENSATION COVERAGE; AMENDING SECTIONS 39-71-118 AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Air search and rescue volunteers -- expenses -- workers' compensation coverage.

(1) The department may temporarily employ an airman or other person who volunteers to aid in the aerial search for a missing aircraft being conducted by the department.

(2) The department and volunteer stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The department must have each volunteer covered by the Workers' Compensation Act in Title 39, chapter 71, during the course of the volunteer's assistance.

(3) Volunteers are not salaried employees and are not entitled to wages and benefits. The department may in its

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discretion reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for fuel, oil, food, and lodging.

Section 2. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and workman defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116(3) are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-302 through 53-3-305 and any juvenile performing work

1 under authorization of a district court judge in a
2 delinquency prevention or rehabilitation program;

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

12 (d) students enrolled and in attendance in programs of
13 vocational technical education approved by the state board
14 of public education at designated postsecondary vocational
15 technical centers; or

16 (e) an airman or other person employed as a volunteer
17 under [section 1].

18 (2) If the employer is a partnership or sole
19 proprietorship, such employer may elect to include as an
20 employee within the provisions of this chapter any member of
21 such partnership or the owner of the sole proprietorship
22 devoting full time to the partnership or proprietorship
23 business. In the event of such election, the employer must
24 serve upon the employer's insurer written notice naming the
25 partners or sole proprietor to be covered, and no partner or

1 sole proprietor shall be deemed an employee within this
2 chapter until such notice has been given. For premium
3 ratemaking and for the determination of weekly wage for
4 weekly compensation benefits, the insurance carrier shall
5 assume a salary or wage of such electing employee to be not
6 less than \$900 a month and not more than 1 1/2 times the
7 average weekly wage as defined in this chapter."

8 Section 3. Section 39-71-401, MCA, is amended to read:
9 "39-71-401. Employments covered and employments
10 exempted. (1) Except as provided in subsection (2) of this
11 section, the Workers' Compensation Act applies to all
12 employers as defined in 39-71-117 and to all employees as
13 defined in 39-71-118. An employer who has any employee in
14 service under any appointment or contract of hire, expressed
15 or implied, oral or written, shall elect to be bound by the
16 provisions of compensation plan No. 1, 2, or 3. Every
17 employee whose employer is bound by the Workers'
18 Compensation Act is subject to and bound by the compensation
19 plan that has been elected by the employer.

20 (2) Unless the employer elects coverage for these
21 employments under this chapter and an insurer allows such an
22 election, the Workers' Compensation Act does not apply to
23 any of the following employments:

- 24 (a) household and domestic employment;
25 (b) casual employment as defined in 39-71-116(3)

1 except employment of a volunteer under [section 1];

2 (c) employment of members of an employer's family
3 dwelling in the employer's household;

4 (d) employment of sole proprietors or working members
5 of a partnership other than those who consider themselves or
6 hold themselves out as independent contractors and who are
7 not contracting for agricultural services to be performed on
8 a farm or ranch or for broker or salesman services performed
9 under a license issued by the board of realty regulation;

10 (e) employment for which a rule of liability for
11 injury, occupational disease, or death is provided under the
12 laws of the United States;

13 (f) any person performing services in return for aid
14 or sustenance only except employment of a volunteer under
15 [section 1];

16 (g) employment with any railroad engaged in interstate
17 commerce, except that railroad construction work shall be
18 included in and subject to the provisions of this chapter.

19 (3) A sole proprietor or working member of a
20 partnership who holds himself out or considers himself an
21 independent contractor and who is not contracting for
22 agricultural services to be performed on a farm or ranch or
23 for broker or salesman services performed under a license
24 issued by the board of realty regulation must elect to be
25 bound personally and individually by the provisions of

1 compensation plan No. 1, 2, or 3, but he may apply to the
2 division for an exemption from the Workers' Compensation Act
3 for himself. The application must be made in accordance with
4 the rules adopted by the division. The division may deny the
5 application only if it determines that the applicant is not
6 an independent contractor. When an application is approved
7 by the division, it is conclusive as to the status of an
8 independent contractor and precludes the applicant from
9 obtaining benefits under this chapter.

10 (4) Each employer shall post a sign in the workplace
11 at the locations where notices to employees are normally
12 posted, informing employees about the employer's current
13 provision of compensation insurance. A workplace is any
14 location where an employee performs any work-related act in
15 the course of employment, regardless of whether the location
16 is temporary or permanent, and includes the place of
17 business or property of a third person while the employer
18 has access to or control over such place of business or
19 property for the purpose of carrying on his usual trade,
20 business, or occupation. The sign will be provided by the
21 division, distributed through insurers or directly by the
22 division, and posted by employers in accordance with rules
23 adopted by the division. An employer who purposely or
24 knowingly fails to post a sign as provided in this
25 subsection is subject to a \$50 fine for each citation."

1 NEW SECTION. Section 4. Extension of authority. Any
2 existing authority of the department of commerce to make
3 rules on the subject of the provisions of this act is
4 extended to the provisions of this act.

5 NEW SECTION. Section 5. Codification instruction.
6 Section 1 is intended to be codified as an integral part of
7 Title 67, and the provisions of Title 67 apply to section 1.

8 NEW SECTION. Section 6. Effective date. This act is
9 effective on passage and approval.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN210-85

Form BD-15

In compliance with a written request received January 25 19 85, there is hereby submitted a Fiscal Note for H.B. 421 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 421 allows the Department of Commerce to use unsalaried air search and rescue volunteers for whom the department must provide workers' compensation coverage.

ASSUMPTIONS:

It is estimated that approximately 80 hours of flying time will be expended by volunteers in a year's time in aircraft searches.

A figure of \$20 per hour is used for the pilot of a search plane with \$20 for each observer. Most search planes carry a pilot and an observer.

FISCAL IMPACT STATE SPECIAL REVENUES:

	<u>FY 86</u>	<u>FY 87</u>	<u>Total Biennium</u>
Expenditures			
Personal Services	\$200	\$200	\$400
Total cost to special earmarked revenue fund:	\$200	\$200	\$400

Based upon: 80 hours flying time X \$40 per hour X \$5.41 per \$100 = \$173 in premium each year.

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 29, 1985

STATE OF MONTANA
FISCAL NOTE

Revised
REQUEST NO. FNN210-85

Form BD-15

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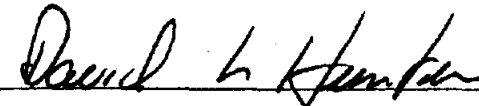
It is estimated that approximately 380 hours of flying time will be expended by volunteers in a year's time in aircraft searches.

A figure of \$20 per hour is used for the pilot of a search plane with \$20 for each observer. Most search planes carry a pilot and an observer.

FISCAL IMPACT STATE SPECIAL REVENUES:

	<u>FY 86</u>	<u>FY 87</u>	<u>Total Biennium</u>
Expenditures			
Personal Services	<u>\$822</u>	<u>\$822</u>	<u>\$1,644</u>
Total cost to special earmarked revenue fund:	\$822	\$822	\$1,644

Based upon: 380 hours flying time X \$40 per hour X \$5.41 per \$100 = \$822 in premium each year.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 22, 1985

HB 421

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

1 HOUSE BILL NO. 421
 2 INTRODUCED BY D. Schaefer Compton
 3 Fuller Smith
 4 BY REQUEST OF THE E. Smith
 5 DEPARTMENT OF COMMERCE

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT
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 21 Compensation Act in Title 39, chapter 71, during the course
 22 of the volunteer's assistance.

23 (3) Volunteers are not salaried employees and are not
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1 discretion reimburse volunteers for their otherwise
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 22 or domestic service is excluded.

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9 to students enrolled in vocational training programs as
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19 proprietorship, such employer may elect to include as an
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15 the course of employment, regardless of whether the location
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24 knowingly fails to post a sign as provided in this
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HOUSE BILL NO. 421

INTRODUCED BY

DeLoach
Fuller
BY REQUEST OF THE *E. Smith*
W. H. ...
Compton
John

DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT OF COMMERCE TO USE UNSALARIED AIR SEARCH AND RESCUE VOLUNTEERS FOR WHOM THE DEPARTMENT MUST PROVIDE WORKERS' COMPENSATION COVERAGE; AMENDING SECTIONS 39-71-118 AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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(2) The department and volunteer stand in the
relationship of employer and employee for purposes of and as
those terms are defined in Title 39, chapter 71. The
department must have each volunteer covered by the Workers'
Compensation Act in Title 39, chapter 71, during the course
of the volunteer's assistance.

(3) Volunteers are not salaried employees and are not

entitled to wages and benefits. The department may in its
discretion reimburse volunteers for their otherwise
uncompensated out-of-pocket expenses, including but not
limited to their expenditures for fuel, oil, food, and
lodging.

Section 2. Section 39-71-118, MCA, is amended to read:
"39-71-118. Employee, worker, and workman defined. (1)

The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor
other than an independent contractor, who is in the service
of an employer, as defined by 39-71-117, under any
appointment or contract of hire, expressed or implied, oral
or written. The terms include aliens and minors, whether
lawfully or unlawfully employed, and all of the elected and
appointed paid public officers and officers and members of
boards of directors of quasi-public or private corporations
while rendering actual service for such corporations for
pay. Casual employees as defined by 39-71-116(3) are
included as employees if they are not otherwise covered by
workers' compensation and if an employer has elected to be
bound by the provisions of the compensation law for these
casual employments, as provided in 39-71-401(2). Household
or domestic service is excluded.

(b) a recipient of general relief who is performing
work for a county of this state under the provisions of



1 53-3-302 through 53-3-305 and any juvenile performing work
2 under authorization of a district court judge in a
3 delinquency prevention or rehabilitation program;

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

13 (d) students enrolled and in attendance in programs of
14 vocational technical education approved by the state board
15 of public education at designated postsecondary vocational
16 technical centers; or

17 (e) an airman or other person employed as a volunteer
18 under [section 1].

19 (2) If the employer is a partnership or sole
20 proprietorship, such employer may elect to include as an
21 employee within the provisions of this chapter any member of
22 such partnership or the owner of the sole proprietorship
23 devoting full time to the partnership or proprietorship
24 business. In the event of such election, the employer must
25 serve upon the employer's insurer written notice naming the

1 partners or sole proprietor to be covered, and no partner or
2 sole proprietor shall be deemed an employee within this
3 chapter until such notice has been given. For premium
4 ratemaking and for the determination of weekly wage for
5 weekly compensation benefits, the insurance carrier shall
6 assume a salary or wage of such electing employee to be not
7 less than \$900 a month and not more than 1 1/2 times the
8 average weekly wage as defined in this chapter."

9 Section 3. Section 39-71-401, MCA, is amended to read:

10 "39-71-401. Employments covered and employments
11 exempted. (1) Except as provided in subsection (2) of this
12 section, the Workers' Compensation Act applies to all
13 employers as defined in 39-71-117 and to all employees as
14 defined in 39-71-118. An employer who has any employee in
15 service under any appointment or contract of hire, expressed
16 or implied, oral or written, shall elect to be bound by the
17 provisions of compensation plan No. 1, 2, or 3. Every
18 employee whose employer is bound by the Workers'
19 Compensation Act is subject to and bound by the compensation
20 plan that has been elected by the employer.

21 (2) Unless the employer elects coverage for these
22 employments under this chapter and an insurer allows such an
23 election, the Workers' Compensation Act does not apply to
24 any of the following employments:

25 (a) household and domestic employment;

1 (b) casual employment as defined in 39-71-116(3)
2 except employment of a volunteer under [section 1];

3 (c) employment of members of an employer's family
4 dwelling in the employer's household;

5 (d) employment of sole proprietors or working members
6 of a partnership other than those who consider themselves or
7 hold themselves out as independent contractors and who are
8 not contracting for agricultural services to be performed on
9 a farm or ranch or for broker or salesman services performed
10 under a license issued by the board of realty regulation;

11 (e) employment for which a rule of liability for
12 injury, occupational disease, or death is provided under the
13 laws of the United States;

14 (f) any person performing services in return for aid
15 or sustenance only except employment of a volunteer under
16 [section 1];

17 (g) employment with any railroad engaged in interstate
18 commerce, except that railroad construction work shall be
19 included in and subject to the provisions of this chapter.

20 (3) A sole proprietor or working member of a
21 partnership who holds himself out or considers himself an
22 independent contractor and who is not contracting for
23 agricultural services to be performed on a farm or ranch or
24 for broker or salesman services performed under a license
25 issued by the board of realty regulation must elect to be

1 bound personally and individually by the provisions of
2 compensation plan No. 1, 2, or 3, but he may apply to the
3 division for an exemption from the Workers' Compensation Act
4 for himself. The application must be made in accordance with
5 the rules adopted by the division. The division may deny the
6 application only if it determines that the applicant is not
7 an independent contractor. When an application is approved
8 by the division, it is conclusive as to the status of an
9 independent contractor and precludes the applicant from
10 obtaining benefits under this chapter.

11 (4) Each employer shall post a sign in the workplace
12 at the locations where notices to employees are normally
13 posted, informing employees about the employer's current
14 provision of compensation insurance. A workplace is any
15 location where an employee performs any work-related act in
16 the course of employment, regardless of whether the location
17 is temporary or permanent, and includes the place of
18 business or property of a third person while the employer
19 has access to or control over such place of business or
20 property for the purpose of carrying on his usual trade,
21 business, or occupation. The sign will be provided by the
22 division, distributed through insurers or directly by the
23 division, and posted by employers in accordance with rules
24 adopted by the division. An employer who purposely or
25 knowingly fails to post a sign as provided in this

1 subsection is subject to a \$50 fine for each citation."

2 NEW SECTION. Section 4. Extension of authority. Any
3 existing authority of the department of commerce to make
4 rules on the subject of the provisions of this act is
5 extended to the provisions of this act.

6 NEW SECTION. Section 5. Codification instruction.
7 Section 1 is intended to be codified as an integral part of
8 Title 67, and the provisions of Title 67 apply to section 1.

9 NEW SECTION. Section 6. Effective date. This act is
10 effective on passage and approval.

-End-