

SENATE BILL 353

Introduced by Towe

2/11	Introduced
2/12	Referred to Taxation
2/12	First Reading
2/12	Fiscal Note Requested
2/16	Fiscal Note Received
2/18	Fiscal Note Printed
3/05	Hearing
4/01	Committee Report--Bill Passed as Amended
4/03	2nd Reading Do Pass Motion Failed
4/03	2nd Reading Indefinitely Postponed

1 Senate BILL NO. 353  
 2 INTRODUCED BY Law

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE SALES  
 5 TAX ON CIGARETTES AND TOBACCO OTHER THAN CIGARETTES;  
 6 GUARANTEEING DISPOSITION OF TAXES EQUAL TO REVENUES  
 7 COLLECTED IN FISCAL YEAR 1990; PROVIDING FOR DISPOSITION AND  
 8 APPROPRIATION OF THE TAX INCREASES TO FUND THE UNIVERSITY  
 9 SYSTEM AND TOBACCO-RELATED EDUCATION, RESEARCH, OR HEALTH  
 10 CARE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE  
 11 QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 16-11-111,  
 12 16-11-119, 16-11-202, 16-11-206, AND 17-5-408, MCA; AND  
 13 PROVIDING AN EFFECTIVE DATE."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 16-11-111, MCA, is amended to read:  
 17 "16-11-111. Cigarette sales tax. There is hereby  
 18 levied, imposed, and assessed and there ~~shall~~ must be  
 19 collected and paid to the state of Montana upon cigarettes  
 20 sold or possessed in this state the following excise tax  
 21 ~~which shall~~ that must be paid prior to the time of sale and  
 22 delivery of cigarettes: ~~is~~ 43 cents on each package  
 23 containing 20 cigarettes and, when packages contain more or  
 24 less than 20 cigarettes, then a tax on each cigarette equal  
 25 to 1/20th the tax on a package containing 20 cigarettes."

1 **Section 2.** Section 16-11-119, MCA, is amended to read:

2 "16-11-119. Disposition of taxes -- retirement of  
 3 bonds. All ~~moneys~~ money collected under the provisions of  
 4 16-11-111, less the expense of collecting all the taxes  
 5 levied, imposed, and assessed by ~~said--section,~~ shall  
 6 16-11-111, must be paid to the state treasurer and deposited  
 7 as follows:

8 (1) 70-89% 29.67% or \$8,199,904, whichever is greater,  
 9 in the long-range building program fund in the debt service  
 10 fund type; ~~and-29-11%~~

11 (2) 12.19% or \$3,367,117, whichever is greater, in the  
 12 long-range building program fund in the capital projects  
 13 fund type;

14 (3) 40.7% in the general fund for appropriation to the  
 15 university system; and

16 (4) the remainder in the tobacco education and  
 17 preventive health care fund account in the state special  
 18 revenue fund."

19 **Section 3.** Section 16-11-202, MCA, is amended to read:

20 "16-11-202. Tax on sale of tobacco other than  
 21 cigarettes -- imposed on retail consumer -- rate of tax. (1)  
 22 All taxes paid pursuant to the provisions of this section  
 23 ~~shall--be-exclusively~~ are conclusively presumed to be direct  
 24 taxes on the retail consumer, precollected for the purpose  
 25 of convenience and facility only. When the tax is paid by

1 any other person, such ~~the~~ payment ~~shall be~~ is considered as  
 2 an advance payment and ~~shall be~~ is added to the price of  
 3 tobacco products, other than cigarettes, and recovered from  
 4 the ultimate consumer or user. Any person selling tobacco  
 5 products, other than cigarettes, at retail shall state or  
 6 separately display in the premises where such ~~the~~ products  
 7 are sold a notice of the tax included in the selling price  
 8 and charged or payable pursuant to this section. The  
 9 provisions of this section ~~shall~~ in no way affect the method  
 10 of collection of such ~~the~~ tax as hereinafter provided in  
 11 this part.

12 (2) There is hereby levied, imposed, and assessed upon  
 13 tobacco products, other than cigarettes, sold or possessed  
 14 in this state and there ~~shall~~ must be collected and paid to  
 15 the state of Montana a tax of ~~12-1/2%~~ 25% of the wholesale  
 16 price of such ~~the~~ products to the wholesaler, ~~excepting~~  
 17 ~~therefrom such products as may be.~~ Products that are shipped  
 18 from Montana and destined for retail sale and consumption  
 19 outside the state of Montana are exempt from the tax."

20 **Section 4.** Section 16-11-206, MCA, is amended to read:

21 "16-11-206. Wholesaler's discount -- disposition of  
 22 taxes. (1) The taxes specified in this part that are paid by  
 23 the wholesaler ~~shall~~ must be paid to the department in full  
 24 less a 5% defrayment for his collection and administrative  
 25 expense ~~and shall be deposited by the department in the~~

1 ~~long-range-building-program-debt-service--fund.~~ Refunds of  
 2 the tax paid ~~shall~~ must be made as provided in 15-1-503 in  
 3 cases where the tobacco products purchased become unsalable.

4 (2) Revenue from the tax on tobacco products, other  
 5 than cigarettes, must be deposited by the department as  
 6 follows:

7 (a) 50% or \$893,111, whichever is greater, to the  
 8 long-range building program debt service fund;

9 (b) 35% in the general fund for appropriation to the  
 10 university system; and

11 (c) the remainder to the tobacco education and  
 12 preventive health care fund account, provided for in  
 13 [section 6]."

14 **Section 5.** Section 17-5-408, MCA, is amended to read:

15 "17-5-408. Percentage of income, ~~corporation license,~~  
 16 ~~and cigarette tax pledged. (i)-(a)-The state pledges and~~  
 17 ~~appropriates and directs to be credited as received to the~~  
 18 ~~debt service account 9.8% for fiscal year 1990 and 8.7% for~~  
 19 ~~fiscal year 1991 of all money received from the collection~~  
 20 ~~of the individual income tax and 1% for fiscal year 1990~~  
 21 ~~and 10.5% for fiscal year 1991 of all money, except as~~  
 22 ~~provided in 15-31-702, received from the collection of the~~  
 23 ~~corporation license and income tax as provided in 15-1-501,~~  
 24 ~~and such additional amount of said taxes, if any, as may at~~  
 25 ~~any time be needed to comply with the principal and interest~~

1 and-reserve-requirements-stated-in-17-5-405(4):

2 (b)--No--more--than---the---percentages---described---in  
3 subsection-(1)(a)-of-such-tax-collections-may-be-pledged-for  
4 the--purpose--of--17-5-403(2).--The-pledge-and-appropriation  
5 herein-made-shall-be-and-remain-at-all--times--a--first--and  
6 prior--charge-upon-all-money-received-from-the-collection-of  
7 said-taxes:

8 (2) The state pledges and appropriates and directs to  
9 be credited to the debt service account 70-89% 29.67% of all  
10 money or \$8,199,904, whichever is greater, received from the  
11 collection of the excise tax on cigarettes which that is  
12 levied, imposed, and assessed by 16-11-111. The state also  
13 pledges and appropriates and directs to be credited as  
14 received to the debt service account 50% of all money or  
15 \$893,111, whichever is greater, received from the collection  
16 of the taxes on other tobacco products, which taxes are or  
17 may hereafter be levied, imposed, and assessed by law for  
18 that purpose, including the tax levied, imposed, and  
19 assessed by 16-11-202. Nothing herein-shall-impair in this  
20 section impairs or otherwise affect affects the provisions  
21 and covenants contained in the resolutions authorizing the  
22 presently outstanding long-range building program bonds.  
23 Subject to the provisions of the preceding sentence, the  
24 pledge and appropriation herein made shall--be in this  
25 section are and remain at all times a first and prior charge

1 upon all money received from the collection of all taxes  
2 referred to in this subsection-(2) section."

3 NEW SECTION. **Section 6.** Account established --  
4 appropriation. There is a tobacco education and preventive  
5 health care fund account in the state special revenue fund.  
6 Money deposited in the account may be appropriated only to  
7 fund programs in tobacco-related education, research, or  
8 health care.

9 NEW SECTION. **Section 7.** Effective date. If approved by  
10 the electorate, sections 1 through 6 are effective July 1,  
11 1993.

12 NEW SECTION. **Section 8.** Submission to electorate. The  
13 question of whether sections 1 through 6 of this act will  
14 become effective shall be submitted to the qualified  
15 electors of Montana at the general election to be held in  
16 November 1992 by printing on the ballot the full title of  
17 this act and the following:

- 18  FOR increasing the cigarette tax by 25 cents and the  
19 tobacco tax by 50% to fund the university system and  
20 tobacco education and preventive health programs.  
21  AGAINST increasing the cigarette tax by 25 cents and  
22 the tobacco tax by 50% to fund the university system  
23 and tobacco education and preventive health  
24 programs.

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0353, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act increasing the sales tax on cigarettes and tobacco other than cigarettes; guaranteeing disposition of taxes equal to revenues collected in fiscal year 1990; providing for disposition and appropriation of the tax increases to fund the university system and tobacco-related education, research, or health care; providing that the proposed act be submitted to the qualified electors of Montana; and providing an effective date.

ASSUMPTIONS:

1. If approved by the electorate the proposal is effective July 1, 1993.
2. There would be no impact in this biennium.

FISCAL IMPACT:


No impact in the current biennium.

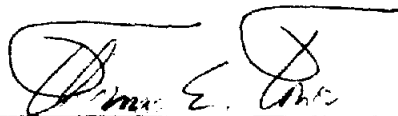
LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Based on assumptions for FY93 and no decrease in consumption, the impact for FY94 would be as follows:

Revenues:

	<u>FY '94</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Cigarette Tax	11,037,000	25,090,000	14,053,000
Tobacco Tax	820,000	1,572,000	752,000
Total	11,857,000	26,662,000	14,805,000
<u>Distribution of Revenues:</u>			
Debt Service (05)	8,644,129	9,093,015	448,886
General Fund (01-University)	0	10,363,590	10,363,590
Tobacco Education (02)	0	3,838,278	3,838,278
Capital Projects (05)	3,212,871	3,367,117	154,246
Total	11,857,000	26,662,000	14,805,000

  
 ROD SUNDSTED, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

  
 THOMAS E. "TOM" TOWE, PRIMARY SPONSOR      DATE  
 Fiscal Note for SB0353, as introduced      **2/18/91**  
**SB 353**

APPROVED BY COMMITTEE ON TAXATION

SENATE BILL NO. 353  
INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE SALES TAX ON CIGARETTES AND TOBACCO OTHER THAN CIGARETTES; GUARANTEEING--DISPOSITION--OF--TAXES---EQUAL---TO---REVENUES COLLECTED IN FISCAL YEAR 1990; PROVIDING FOR DISPOSITION AND APPROPRIATION OF THE TAX INCREASES TO FUND THE UNIVERSITY SYSTEM AND TOBACCO RELATED EDUCATION, RESEARCH, OR HEALTH CARE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA, AMENDING SECTIONS 16-11-111, AND 16-11-119, 16-11-202, 16-11-206, AND 17-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax. There is hereby levied, imposed, and assessed and there shall must be collected and paid to the state of Montana upon cigarettes sold or possessed in this state the following excise tax ~~which shall~~ that must be paid prior to the time of sale and delivery of cigarettes: ~~10~~ 43 21 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, then a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes."

Section 2. Section 16-11-119, MCA, is amended to read:  
"16-11-119. Disposition of taxes --- retirement --- of bonds --- All moneys money collected under the provisions of 16-11-111, less the expense of collecting all the taxes levied, imposed, and assessed by said section, shall 16-11-111, must be paid to the state treasurer and deposited as follows:

(1) 70.09% 29.67% or \$8,199,904, whichever is greater, in the long range building program fund in the debt service fund type; and 29.11%

(2) 12.19% or \$3,367,117, whichever is greater, in the long range building program fund in the capital projects fund type;

(3) 40.7% in the general fund for appropriation to the university system; and

(4) the remainder in the tobacco education and preventive health care fund account in the state special revenue fund."

Section 2. Section 16-11-202, MCA, is amended to read:

"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate of tax. (1) All taxes paid pursuant to the provisions of this section ~~shall be exclusively~~ are conclusively presumed to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by



1 any other person, such the payment shall-be is considered as  
 2 an advance payment and shall-be is added to the price of  
 3 tobacco products, other than cigarettes, and recovered from  
 4 the ultimate consumer or user. Any person selling tobacco  
 5 products, other than cigarettes, at retail shall state or  
 6 separately display in the premises where such the products  
 7 are sold a notice of the tax included in the selling price  
 8 and charged or payable pursuant to this section. The  
 9 provisions of this section shall in no way affect the method  
 10 of collection of such the tax as hereinafter provided in  
 11 this part.

12 (2) There is hereby levied, imposed, and assessed upon  
 13 tobacco products, other than cigarettes, sold or possessed  
 14 in this state and there shall must be collected and paid to  
 15 the state of Montana a tax of ~~12-1/2%~~ 25% 14.58% of the  
 16 wholesale price of such the products to the wholesaler,  
 17 excepting therefrom such products as may be. Products that  
 18 are shipped from Montana and destined for retail sale and  
 19 consumption outside the state of Montana are exempt from the  
 20 tax."

21 Section 4, Section 16-11-206, MCA, is amended to read:  
 22 "16-11-206. Wholesaler's discount-----disposition of  
 23 taxes. (1) The taxes specified in this part that are paid by  
 24 the wholesaler shall must be paid to the department in full  
 25 less a 5% defrayment for his collection and administrative

1 expense and shall be deposited by the department in the  
 2 long-range building program debt service fund. Refunds of  
 3 the tax paid shall must be made as provided in 15-1-503 in  
 4 cases where the tobacco products purchased become unsalable.  
 5 (2) Revenue from the tax on tobacco products, other  
 6 than cigarettes, must be deposited by the department as  
 7 follows:

8 (a) 50% or 9893,111, whichever is greater, to the  
 9 long-range building program debt service fund;

10 (b) 35% in the general fund for appropriation to the  
 11 university system; and

12 (c) the remainder to the tobacco education and  
 13 preventive health care fund account, provided for in  
 14 section 6."

15 Section 5, Section 17-5-400, MCA, is amended to read:

16 "17-5-400. Percentage of income, corporation license,  
 17 and cigarette tax pledged. (1) (a) The state pledges and  
 18 appropriates and directs to be credited as received to the  
 19 debt service account 9.8% for fiscal year 1990 and 8.7% for  
 20 fiscal year 1991 of all money received from the collection  
 21 of the individual income tax and 11% for fiscal year 1990  
 22 and 10.5% for fiscal year 1991 of all money, except as  
 23 provided in 15-31-702, received from the collection of the  
 24 corporation license and income tax as provided in 15-1-501,  
 25 and such additional amount of said taxes, if any, as may be at

1 any-time-be-needed-to-comply-with-the-principal-and-interest  
2 and-reserve-requirements-stated-in-17-5-405(4);

3 (b)--No---more---than---the---percentages---described---in  
4 subsection-(1)(a)-of-such-tax-collections-may-be-pledged-for  
5 the-purpose-of-17-5-403(2).--The-pledge--and--appropriation  
6 herein--made--shall--be--and-remain-at-all-times-a-first-and  
7 prior-charge-upon-all-money-received-from-the-collection--of  
8 said-taxes;

9 (2)--The--state--pledges-and-appropriates-and-directs-to  
10 be-credited-to-the-debt-service-account-70-89% 9-67% of--all  
11 money or-987,199,904, whichever-is-greater, received-from-the  
12 collection--of--the--excise-tax-on-cigarettes-which that -is  
13 levied, imposed, and-assessed-by-16-11-111. The--state--also  
14 pledges--and--appropriates--and--directs--to--be-credited-as  
15 received-to-the-debt-service-account 50%--of all--money or  
16 9893,111, whichever-is-greater, received-from-the-collection  
17 of--the--taxes-on-other-tobacco-products, which taxes are-or  
18 may-hereafter-be-levied, imposed, and-assessed--by--law--for  
19 that--purpose,--including--the--tax--levied,--imposed,--and  
20 assessed-by-16-11-202. Nothing-herein-shall-impair in--this  
21 section--impairs--or--otherwise-affect affects the-provisions  
22 and-covenants-contained-in-the-resolutions--authorizing--the  
23 presentiy--outstanding--long-range--building--program-bonds.  
24 Subject-to-the-provisions-of--the--preceding--sentence,--the  
25 pledge--and--appropriation--herein--made--shall--be in-this

1 section-are and-remain-at-all-times-a-first-and-prior-charge  
2 upon-all-money-received-from-the--collection--of--all--taxes  
3 referred-to-in-this-subsection-(2) section-4

4 NEW-SECTION:--Section-6:--Account-----established-----  
5 appropriation:--There--is-a-tobacco-education-and-preventive  
6 health-care-fund-account-in-the-state-special-revenue--fund:  
7 Money--deposited--in-the-account-may-be-appropriated-only-to  
8 fund-programs-in--tobacco-related--education,--research,--or  
9 health-care;

10 NEW SECTION. SECTION 3. COORDINATION INSTRUCTION. IF  
11 HOUSE BILL NO. 764 IS PASSED AND APPROVED AND IF IT INCLUDES  
12 AN ALLOCATION OF 2 CENTS OF THE CIGARETTE SALES TAX TO THE  
13 LONG-RANGE BUILDING PROGRAM FUND FOR STATE VETERANS' NURSING  
14 HOMES, THE PERCENTAGE ALLOCATION TO THE LONG-RANGE BUILDING  
15 PROGRAM FUND IN THE CAPITAL PROJECTS FUND IS CHANGED FROM  
16 18.01% TO 19.59% AND THE PERCENTAGE ALLOCATION TO THE  
17 LONG-RANGE BUILDING PROGRAM FUND FOR STATE VETERANS' NURSING  
18 HOMES IS CHANGED FROM 11.10% TO 9.52%.

19 NEW SECTION. Section 4. Effective date. "If approved by  
20 the--electorate,--sections-1-through-6-are-effective-only-if  
21 1993, [THIS ACT] IS EFFECTIVE JULY 1, 1991.

22 NEW SECTION. SECTION 5. APPLICABILITY. [THIS ACT]  
23 APPLIES TO CIGARETTES AND OTHER TOBACCO PRODUCTS SOLD AND  
24 DELIVERED TO CUSTOMERS AFTER JUNE 30, 1991.

25 NEW-SECTION:--Section-8:--Submission-to-electorate:--The



1 question-of-whether-sections-1-through-6-of--this--act--will  
2 become---effective--shall--be--submitted--to--the--qualified  
3 electors-of-Montana-at-the-general-election-to--be--held--in  
4 November--1992--by--printing-on-the-ballot-the-full-title-of  
5 this-act-and-the-following:

6  FOR-increasing-the-cigarette-tax-by-25-cents-and-the  
7 tobacco-tax-by-50%-to-fund-the-university-system-and  
8 tobacco-education-and-preventive-health-programs.

9  AGAINST-increasing-the-cigarette-tax-by-25-cents-and  
10 the-tobacco-tax-by-50%-to-fund-the-university-system  
11 and--tobacco---education---and---preventive---health  
12 programs.

-End-