TAXATION COMMITTEE
45TH LEGISLATURE

Chairman Herb Huennekens called the committee to order at 10:00 a.m., April 1, 1977, in room #434, Capitol Building, Helena. All members were present except Rep. Steve Waldron who was excused. Senate Bill 211 is to be heard.

Sen. Thomas E. Towe, Billings, District #34, sponsor of SB 211 explained it as follows: the mineral interests in Montana have become so severed from the surface interests it is difficult to understand who owns property in the state because nobody has to act to keep their interests up to date. Generally, coal, gas and oil interests are established.

SENATE BILL 211

Instead of presuming the minerals will be abandoned, this uses the taxation approach that is already in the law - if you don't pay your taxes on real property, after three years the county can sell it for the taxes and then after a period of redemption, generally 5-6 years, the county can take it in for taxes and then sell it. This bill places minerals on that same basis so if you don't pay your taxes on them, the county can sell them. The surface owners will have the first option to buy the mineral rights. The old Constitution prohibited taxation of these mineral rights, but the new Constitution allows this to be done.

If mineral interests are being productive, or if they are physically or legally incapable of being productive, they are exempt.

If mineral interests have not been severed from the use of the surface, they are presumed to have no value. If you own the surface and the mineral rights, you have no separate values. If they are severed, there are all kinds of other rights. If severed, there are no severed rights. If any part of the minerals have been severed, then all the minerals are presumed to have a value of not more than $1 per acre. After property has been sold several times, and the mineral interests separated and severed, they will still have a value of $1 per acre for the total interest which will make a tax of about 2½¢ per acre, depending upon the mill levy. If you own half the minerals, your taxes would be half of the 2½¢, etc.

If the cost of a title search would cost more than it would be worth, it would not have to be done by the county assessor. However, any landowner who wants the county to tax his mineral interests can provide the assessor with pertinent information and then the assessor will be required to impose the tax if the information provided is reliable and available and in that way the 5-6 year tax deed requirement period could be started. Mineral rights can be purchased at the county tax sale within one year by the surface owner who has the first option to purchase a tax deed to the mineral rights.

SB 211 repeals the existing right of entry tax which is the most unfair and discriminate tax we have. This will show about a $200,000 loss to the state and will save the Burlington Northern about $200,000, so it would appear they are about the only ones paying this tax. The right of entry tax varies from $7.10 to 12¢ per acre in counties for the same kind of property. Sen. Towe handed out Exhibit A which shows existing right of entry tax revenue, and how it compares with SB 211 proposals. Under this bill other property not now taxed could be

subjected if it subjected half of the mineral interests. This is intended to be a bill to help clean up titles to mineral interests.

Sen. William Mathers supports SB 211.

Senator Watt supports this bill stating this has been an issue ever since he has been here. This has been studied and have just simply found no way to solve this problem, and as far as he can see, SB 211 will do so.

OPPONENTS:

Jim Mockler, representing the Montana Coal Council, feels HB 722 is a better bill than SB 211. SB 211 only applies to part of the mineral rights. Don't see how we can possibly arrive at any value for the minerals. A county can decide if they want to put this into effect. The county assessor, at his option, can attempt to find the rightful owners of the severed right, then he may tax that right. There is no equal taxation. He can bring up one 40 acre parcel from which the mineral rights are severed and tax them, and do nothing with the next one. Where is the equal application of this? The amount of return in revenue would be minimal; however, the assessor will have to tax that mineral right if information is supplied to him - this will cost the county without a compensating return.

Stephen M. Williams, representing the Anaconda Co., stated the money involved is very small, but the taxation principle would not be upheld and provide equalization. The principal purpose of this bill is to cure up a problem of fractionalized mineral interests - HB 722 does the same thing. SB 211 does not address this problem. We don't see any problem with them as they are. If the surface owners also own the minerals, they do not have any value, but if the mineral right is severed, the mineral interests are worth taxing. This is exactly opposite of what the tax laws are trying to solve - equal taxation. Severed mineral rights are to be taxed but no mention of non-severed mineral rights.

The DOR put an arbitrary 32¢ per acre taxable value on O'Connell ranch land in Lewis and Clark County and they sued the DOR and won the case. This case was never appealed and in Judge Bennett's decision, he stated a uniform tax must be assessed on uniform property. SB 211 is exactly opposite from this decision. Implementation of this tax is going to cost more than the revenue brought in, then the county does not have to apply this tax. In areas where minerals are most fractionalized, the county assessor will never apply the tax. This is the leeway, and shows the inequity of this tax. This bill doesn't cure fractionalized mineral interests because county assessors don't have to implement the tax. This bill does not do either of the things Senator Towe says it does. It would impose another tax on our lands besides the change from net proceeds concept to a gross proceeds concept, and now this $1 per acre tax. He would like to know where the $1 per acre valuation came from because the DOR has no information on any value of the mineral wealth below the surface. This is an unfair, inequitable tax, and respectfully request that SB 211 not be concurred in.

Mr. Williams presented the committee with a hand out from John Sullivan, attorney in Helena, strenuously opposing SB 211 - Exhibit B.

Edward W. Nelson, Montana Taxpayers Association, Helena, opposes SB 211. The county does not have to perform. It is going to create a cost and local officials can reqard or penalize those providing information on mineral interests. The way the tax is imposed, particularly in the way the tax man has the option on doing this is an improper philosophy and may indeed cause more problems than it will ever cure. They oppose SB 211.

Gorham E. Swanberg, representing the Montana Railroad Association, thinks this bill will promote indiscriminate mining because it states "unless such mineral interests are being productive" and this would encourage owners of mineral rights to start digging. This is contrary to what the Legislature has been doing in the past. You no longer have to mine on an unpatented claims to keep them for yourself. By going out and starting to mine, the state would have a great deal of difficulty stopping mining in some scenic place if someone wanted to mine to avoid taxation. It would be harder to stop oil wells if they were taxed. It will be difficult for the state to say "we have taken your money for 10-15 years, but we are not going to allow you to mine. There is a question of constitutionality.

SB 211 imposes an artificial value of $1 regardless of what the mineral rights might be worth. They have taken a valuable right, given it back to the surface owner, eliminating any tax. This is discriminating between two groups of people. He contends that it is unfair to take that right. He spoke about the O'Connell case - the taking of mineral rights is arbitrary and contrary to the fundamental basis of our society. This bill repeal that tax and the courts have already said that it cannot be. This bill will be declared unconstitutional when it gets to the courts. Any tax is apt to continue after the surface owner gets the land back. Buying mineral rights through an auction establishes a value that might be taxed. Urges this bill not be concurred in.

Don Allen, Director of Montana Petroleum Association, Billings, stated they are in sympathy with trying to solve this problem, but this bill is not looking at the total problem. This is not impeding production. Suggests this issue be assigned to a priorities committee for study. In checking prior studies, there have not been any easy answers found, although the tax approach has been tried. It is not an important problem in holding up exploration in Montana. The power to tax or not to tax seems to be a real hangup in the bill, and it will hopefully increase the taxes because more mineral rights will be taxed. The net proceeds from oil production doubled in Montana from the price going up and not from increased production. It is very doubtful if the problem could be solved where the option is given to the county assessor. He concludes that the nominal fee would have to be mandated, not optional. There was some concern that this would be a problem of conflict. Believes it could be studied and a better solution found.

Gene Phillips, representing Pacific Power & Light, Decker Coal Co., ASARCO, Inc., concurs in the remarks so far. Mineral interests are presumed to have no value unless a separable value can be conclusively established. You can conclusively establish a value of that coal and it could be subject to the tax on its full cash value. The Decker coal could be valued at $540,000 per acre, and if taxed at cash value, the farmers who have this coal under their land will be bankrupt. Oppose SB 211.

Neil J. Lynch, Montana Mining Association, Butte, opposes this bill. It addresses itself to a problem in Montana because mineral rights have been severed and divided among heirs, and through sales. Under SB 211 a speculator could come in and pick up these mineral rights through a tax deed and get title to this property - many

people would be deprived of a valuable interest in a mineral right.

Senator Towe wished to leave the hearing at 11:00, so he closed with the agreed upon provision that other opponents present would be heard.

Sen Towe stated that because the counties have the option of imposition, it was an inequitable administration and it might fall under improper handling, is no worse than the right of entry tax. SB 211 puts the tax on an economic basis and they are required to tax if it is feasible and would pay for the cost of sending notices to interested persons.

The question of constitutionality because of the equal protection clause arose. Any part of the severed interest is now taxed - any part not severed is not taxed. The reason it will pas the equal protection claus is that it has no separate value - they wouldn't insist on keeping it severed if they didn't think it was worth some value. If, after 5 years and a tax title is taken, and nobody wants to pay, apparently it doesn't have any value, so we assume that once again it is merged with the property and then it has no value again.

Referring to the comment by Mr. Williams - not all property is taxed under its full cash value. Class 1-7 are definitely excluded from the description of full cash value. The O'Connell case was based on the fact that the DOR imposed a value of its own. In this situation, we are putting in a statutory requirement. The option to tax or not to tax was doubtful. The right to hold it separate is a right. We are not talking about a valueless interest. There is a concern about a conclusively established value - no tax and no value could be higher than $1. There would be notice given to these people and they have a right to pay the tax within a year and keep title to the mineral rights.

Rep. Hand said he would like the opportunity to sever off mineral interest and leave it to his wife, and thinks that it is his right to be able to leave a mineral interest to one of his heirs.

Tom Winsor, Montana Chamber of Commerce, advised this should be turned into an out-and-out revenue matter. Even as it is, it is a revenue measure, but you are taxing on a potential and not on an actual value. This philosophy has been rejected by this committee many, many times. This issue arises because of misuse of ability to tax on its use or value. It is not right to tax ranch land with a potential for subdivision as a subdivision, and it is wrong to tax a mineral right because it might have value if a mineral is developed. His organization opposes the bill and this principle.

John Lahr, Montana Power Co., registered their opposition to this bill.

Max Johnson, an individual from Helena, expressed that, as a matter of fairness - back in the 30's people who owned land and were forced to leave because they couldn't pay their taxes, were advised to keep their mineral rights to the land they let go for 50¢ an acre. They were told at that time they might have some recouping of their losses by retaining their mineral rights, and many of them are not now in Montana, although many are still in the state, and he thinks this bill would be unfair to them.

Also opposing SB 211 were Lloyd Crippen, Anaconda Co., Helena; and Peter Jackson, WETA, Helena, Montana.

Questions from the committee included how the cost of a title search could be determined too high when the value of the minerals in the searched mineral right property were not known. How many counties would do this type of work even for a 1/2 interest. To what extent would the county assessor go to notify people. Could the DOR outline methods under which county assessors could require mineral rights to be searched? If you reserve a mineral right on the presumption that it has a value, don't see why you can't presume the right to tax it. Would the physical act of going to the courthouse to reserve the mineral right show value?

It is becoming very popular to incorporate farms, but the mineral rights are being reserved to individuals because any future values from the rights would be hard to get refunded should they prove valuable, so mineral interests are severed whether they are valuable or not.

If an attempt is made to tax both non-severed and severed mineral interests, the question of constitutionality would be eliminated.

The reservation or sale of a mineral right does not seem to have a great deal of significance in the sale of property.

Taxing on the cash value of proved value mineral rights would be unfair. The arbitrary $1 value could be changed at any time.

If information is supplied to the county assessor, it has to be taxed, and they would have to bill the owner for the tax however small. It would seem that the reserved half interest would be valuable if the severed half had taxable value. If half the mineral right is reserved, the bill presumes to tax all the right.

Surface property is taxed at productive value and not at market value.

In answer to the question of percentage of mineral ownership a company desires to have under lease before they will begin exploration, Mr. Allen advised that any place where there is great potential, it varies as to percentage. If over 51% of leases are signed, an oil company can come onto land that has no mineral rights and do seismic exploration.

Since it has been finally agreed that you can't take mineral rights away from owners, this is the only way to get mineral rights back to surface owners.

Hearing closed at 12:00 noon.

Herb Huennekens

REP. HERB HUENNEKENS, CHAIRMAN