

HOUSE TAXATION COMMITTEE
46th Legislature

Rep. Herb Huennekens, Chairman, called the committee to order in room 434, Capitol Building, Helena, at 8:30 a.m., February 13, 1979. All members were present except Rep. Fagg. Staff Attorney, Randy McDonald was present.

Bills to be heard were 520, 523, and 524 all House Bills.

Rep. E.N.Dassinger, District #50, Forsyth, chief sponsor said HB 524 takes railroads out of class 7 and puts them into class 11.

HOUSE BILL John Delano, representing the Burlington Northern and Milwaukee and Union Pacific, Montana Railroad Association, said
524 he is representing the BN and UP here today. The Milwaukee is in bankruptcy and cannot pay any property tax.

HB 524 would bring Montana law into compliance with Section 306 of Public Law 94-210 by taxing transportation property at the same rate as industrial and commercial property in the same assessment jurisdiction. See testimony attached.

John Severson, BN tax division, talking about one section of HB 524, said Congress became very concerned about deterioration of the railroads in the U.S. because several are in bankruptcy. Public law 210 is the result. Railroads have always been in a higher class than other properties. There are no passenger trains any more because of highways and trucking. Section 306 entitles us to go directly to federal district courts if discrimination is shown between us and other similar type property.

Jim Douglass, Tax Attorney for Union Pacific, Omaha, said the department of revenue is stuck between a rock and a hard place - have federal statutes saying railroads should be taxed the same as business and industrial property - Montana department of revenue says it should be taxed at 16% - commercial and industrial property should be taxed at 8.55%. A federal law at this time has been ruled to be constitutional and probably all the agreements that have been made are constitutional. District Court in Montana would have to follow the Arizona case if it goes to court. The federal law was actually passed in 1976 and gave states 3 years to implement it, and the 3 years ended February 5, 1979, and Section 306 of this law is now in effect. He was with the State of Wyoming department of revenue before December and this is a problem all states will have to face.

Jim Kenaley, BN, Billings, supports HB 524.

Tom Dowling, attorney representing railroads, supports HB 524. See his analysis of HB 524 attached.

There were no opponents -

Rep. Dassinger closed pointing out the impact shown on the fiscal note could be changed if the way the department taxes were altered even though the railroads were put in a different classification. Centrally assessed classification could be used and then divide income by 10% to get an investment figure. If that rate were changed to a different percentage, they could possibly collect close to the

same amount of revenue and still have railroads in the same class as under the present law.

Mr. Severson said should not get confused by capitalization rate - at present they are receiving 1.94% on their investment. Other regulated utilities must be separate from railroads and are earning about 6%.

Rep. Sivertsen asked if we have a little choice in this matter on the state level? Bill Groff advised this can be settled by a court action. There is a possibility that this has done away with the classification system. Doesn't know what a court would do.

Rep. Sivertsen asked Mr. Burr if this is something we have to do, in your opinion? What is your opinion as to alternatives? Mr. Burr advised they cannot assess higher than other properties of like nature. They use a 10% profit figure to work backwards in figuring investment. They use replacement costs on other property and if used that for railroads, it would be 6-8 times as high as other ways would. The tax rate cannot be higher on railroads than on other property. They use the same mill levies. Classification percentage is not the same as the tax rate. HB 524 puts railroads in class 11 property where all other commercial property is. They will litigate if not handled through legislation. Other courts have said the federal law is constitutional.

Rep. Sivertsen asked ^{why} Class 11 was chosen for railroad property. He was told they chose that because commercial and industrial property is taxed in that class. Railroads do have machinery and equipment that is locally assessed and is in the class that Dennis refers to. In the case of the BN that is in the 16% classification, but also have locally assessed property and that would stay as it is currently taxed.

Rep. Nordtvedt asked if it would be feasible to assess through appraisers - persons who check instead of using central assessment? The value is according to miles or line which puts it lower. Would have to figure some salvage value.

Rep. Dassinger asked if there are some states that apply levies differently than Montana does. Mr. Severson said they pay the same levy as other jurisdictions charge.

Rep. Dassinger asked if they passed the law because of mill levies. Mr. Burr said the entire legislation was aimed at southern states, but applies to every state.

Rep. Huennekens asked what the capitalization ratios were as compared to 1-10 here. Mr. Burr advised capitalization is not too relevant here since federal law specifies true market value. The department is attempting to get a market value through other methods because they don't sell railroads. They are not discriminating between assessment of railroads and other equipment.

Rep. Nordtvedt asked if the railroads wanted the bill. They seriously do want the bill.

Mr. Severson said they disagree with the department of revenue in several areas in arriving at value.

Rep. Dassinger asked if the difference could be made up by different procedures in taxation and arrive at the same tax income. Mr. Burr said you could lower the rate that they are in and still produce more tax revenue. Value of BN is 17% of what they report as replacement cost depreciated (as taxable value) and get more than we are now.

Mr. Severson thinks Mr. Burr is aware of the pitfalls in using replacement cost of railroads as an assessment value.

Rep. Huennekens asked if going into federal court, could Montana be considered to be discriminatory? He was told each state would be required to show that they are not discriminating against railroads in comparison with other similar property in that class. Mr. Burr said Montana wouldn't be the same as in the Arizona case.

Rep. Vinger asked if a court case could be won. Mr. Burr feels they might have a pretty good case. The federal law pertains to assessment. If the assessment is discriminatory, they can go to court.

Rep. Fabrega asked if increase the value and decreased the rate and take a different look at railroads, what would be the outcome on the same basis as we looked at other property and put them in 8.77% class? Mr. Burr said the replacement cost depreciated would be \$108 million - \$33 million current assessment. Unit value of assessment on utilities is a good way to tax, which is what the department does.

Rep. Nordtvedt asked what fraction of railroads assessed value is due to the underlying real estate and what is the machinery and equipment worth? He was told the track and right-of-way is about 20% of total value--arbitrary figures and are not realistic because of land grant right-of-ways.

Mr. Kenaley said the unit value has worked out to be the best way of valuing. Dislikes court to have to decide something that the legislature can decide on. It is the best means of coinciding with federal law.

The question of whether federal law seems to be interfering with state taxation arose.

Rep. Williams asked if Public law 210 affects other utilities. Mr. Burr said other operating utilities would want the same treatment as railroads would receive. Montana Power is assessed exactly the same as railroads now. Mr. Severson mentioned public law regarding railroad revitalization act does not include other transportation or other utilities.

Rep. Bertelsen said it was mentioned that they could possibly be in Class 10 - could you justify transposing them to that class? Mr. Burr said all industrial property is in at 8.55% - need a composite rate if this were to be done. Could do this through legislation. Rep. Bertelsen asked if they are prepared to compromise on this somewhere between 8.7% and 11%? Mr. Douglass said railroads would be happy to be taxed wherever other commercial and industrial similar property is being taxed. It all boils down to how you define what is commercial and industrial property.

Rep. Dassinger asked if the aircrafts are centrally assessed. Mr. Burr said Yes, at 16%.

Rep. Daniel Kemmis, District #94, Missoula, chief sponsor said HB 520 was introduced because of a problem with the conservation easement law with the way in which easements are taxed. This bill would require the Department of Revenue assessments of property subject to a conservation easement reflect the change in the fair market value resulting from the granting of the easement.

HOUSE BILL

520

Rep. Kemmis asked that this bill be tabled.

There were no questions from the committee.

Rep. Wes Teague, District #69, Billings, chief sponsor of HB 523, said this bill was introduced as a tax incentive for persons to improve their homes. It would exempt from property taxes the value of any improvements produced by repairing or maintaining existing property. Property that is exempt would be taxed after three years. If improvements are made only for purposes of reselling, would not approve of tax incentives being received.

HOUSE BILL

523

There were no opponents.

Rep. Teague closed saying this replaces the previous allowance of a certain percentage each year. If you prefer a 5-year incentive, that is o.k. with him.

Questions from the committee -

Rep. Dozier asked if this applied only to homes. Rep. Teague said this would apply to commercial property also.

Rep. Lien asked if this replaced the incremental tax break and replaces it with a 3-year incentive? This is so.

Rep. Vinger asked if this would cause the department of revenue less work. Mr. Burr said this would cause quite a little work in the department.

Rep. Nordtvedt suggested the department wouldn't have to do all that tracking. Mr. Burr said if exempt for 3 years, the department would have to keep track of it some way.

Rep. Teague said the money involved is small, and psychologically it gives people an incentive to improve. Mr. Burr said it probably wouldn't be too big an amount. Question of burdening the department of revenue with the provisions set forth on page 4, lines 13-20 arose. If this is passed, it would be applicable everywhere, but MELDA can only be applied if a locality accepts it.

Rep. Fabrega asked who determines when an improvement was done? Rep. Teague said it would go back to the building permit. Rep. Bertelsen asked if you would remove the effect of Melda?

EXECUTIVE SESSION

HOUSE BILL 461 - Rep. John Scully, Chairman of the Judiciary Committee, reported on HB 461. He is sending a letter with recommendations from the Judiciary Committee on leaving the jurisdiction proceedings in the defendant's area. The statute of limitations was too long when set at 10 years. The committee recommends 3 years for a misdemeanor and 5 years for a felony. The federal system is for 3 years plus 3 more if something wrong is found.

There is a problem with the attempt provision which should be a misdemeanor and actual evasion which should be a felony. The title would have to be amended.

Rep. Williams asked how lines are drawn between attempt and actual evasion. Rep. Scully said the court and the department of revenue would have to make the decision whether a misdemeanor or a felony.

HOUSE BILL 181 - Rep. Williams moved HB 181 DO PASS. Rep. Fabrega moved proposed amendments be adopted. No noes on amendment adoption. Reps. Robbins and Fagg were absent. Motion to DO PASS AS AMENDED was unanimously adopted. There was some discussion among committee members that a committee bill be proposed. Rep. Nordtvedt suggested a person who had a refund coming should get interest on it the same as he is charged when an underpayment is found.

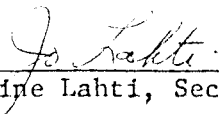
HOUSE BILL 471 - Rep. Williams moved HB 471 DO PASS. Rep. Lien made a motion for all motions pending of DO NOT PASS. Motion carried with 8 voting Yes and 7 voting No. Reps. Huennekens, Dassinger, Williams, Fabrega, Bertelsen, Hirsch, Reichert voted No. Reps. Harrington, Robbins, Fagg, Dozier were absent.

HOUSE BILL 520 - Rep. Fabrega moved that HB 520 BE TABLED as Rep. Kemmis, requested. Unanimously adopted.

Meeting adjourned at 10:45 a.m.



REP. HERB HUENNEKENS, Chairman



Josephine Lahti, Secretary