

HOUSE TAXATION COMMITTEE  
56th Legislature

Rep. E. N. Dassinger, Vice-chairman, called the meeting to order at 8:30 a.m., March 5, 1979, in room 434, Capitol Building, Helena. Rep. Huennekens was excused, all other members were finally present. Randy McDonald, staff attorney was present.

Bills to be heard were House Bills 869, 768, 852.

Rep. Paul K. Kropp, District #5, Malta, chief sponsor of HB 768, explained this bill is to exempt the transfer of property of a member of the armed forces who dies from wounds received in combat zone from Montana's inheritance and estate taxes. He suggests the effective date be changed from December 31, 1978, to December 31, 1977. He introduced Willis M. McKeon,

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BILL Willis M. McKeon, attorney from Malta, explained HB 768 was introduced at his request. A young man from Montana, Richard Duane Abrahams, never returned from a bombing mission during the war. He was placed on the missing persons status from that day. After voluninous investigation, no record has been found of him and he became associated in the probate of his estate consisting mostly of his accrued salaries and benefits during his period in action and his estate eventually reached approximately \$350,000. The only property that was not accruing during this period was 160 acres of grazing land and a little piece of property that he had bought in Hawaii valued at \$8,000. Had to file a tax report. His father advised him from the beginning that he would have no tax problem. Had Colonel Abrahams not been killed in action, his tax would have been approximately \$64,000, which affect a service man none, and there was no federal inheritance tax due in this estate. \$2,500,000 before any estate tax would be due. He looked forward to preparing the Montana tax. There are no comparable statutes in Montana. No special provisions for this type of situation under the Montana code and anticipated Montana tax would be about \$18,000. He was single, his heirs were his mother and father who lived in some 10½ years in the suspense of his whereabouts. Mrs. Abrahams never survived - she died on October 25.

Talked this over with Tom Stohl when looking into the situation trying to find another service man in this situation, but have found none. Talked with Bill Groff, Rep. Kropp, Rep. Brand and others, and appreciated the fact that Rep. Kropp introduced this bill. It is signed by many sponsors. He thinks this legislation is important to the members of Montana who are in the armed services. In 1975 special income tax exemption was passed exempting service people from Montana state income tax. The federal code has the same tax exemption. He thinks it would be considerate to enact this legislation.

Bob Durkee, VFW, Helena, state adjutant for Veterans of Foreign Wars, had hoped for similar tax legislation. Have been working with Missing in Action's and have them made Killed In Action so that resolution of what to do with them could be made. Unable to determine how many this might apply to in the state. Six or eight are still counted as MIA. The problem that has developed is that the boy may have come from Montana, but he designated a relative in some other state and have lost his identity, but he did come from Montana. The money was all federal salary in the most part for the number of years this boy was declared MIA. The War Department will have to determine if he was a Montana resident.

Tony Cummins, American Legion, Helena, having a regional membership of 12,500, supports this legislation.

There were no opponents.

Rep. Kropp feels the Montana tax code should have a statute like the federal. Hopes this bill does pass.

Questions from the committee - none.

Rep. Les Hirsch, District #52, Miles City, chief sponsor, explained HB 869 is simply to require recording and payment of all mineral rights, not just the conveyed right of entry. It is dealing with all kinds of minerals and mineral rights - whether the owner owns the surface or not.

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869

Opponents -

Charlotte Edwards, past president of the Clerk and Recorders Association, past County Clerk and a past County Treasurer, representing the State Association of County Assessors as their lobbyist, and speaking for herself, thinks it will be very hard to implement this on the local level. The first section is unnecessary because there is a document showing ownership already. The burden to see that each individual would have to do - and would have to go to a lawyer to have this done - would be to find out what each owns. Many individuals have no idea of the exact mineral ownership they have. Would have to go to an abstractor. The statutory filing fee is \$1 if this is considered.

Line 20, page 1, 10¢ per acre registration fee - is this for mineral interest, or for all the land or portion of land an individual owns? Wouldn't it be possible to pay \$1 for each owner? Probably end up with the attorney general. This would be a tremendous amount of bookwork and money collections other than fees. County clerks are not bonded to collect anything but registration fees. Although this is a fee, it is a tax and the county treasurer should be the officer collecting the tax.

Line 23, page 1 - annual mineral fee of \$1 for each single mineral land description - have not worked with this terminology, what does it mean? Problems of interpretations.

Page 2, line 4, where the clerk and recorder would keep all individual records - in Powder River County this would require two extra people. The present education system does not teach much in the land description - have to teach personnel how to describe land properly.

Under the new penalty section, there are over 2 million acres of which approximately 700,000 is under state and federal ownership which would not be covered. Abstracting runs 15¢ an acre for a title report which would give existing ownership. Would be pretty costly to hire a land man or lawyer in this area. The abstractor would then give the county this information before any notices that are supposedly to be sent out by county treasurer (which is another statutory hazy area since they are involved in taxes and not fees) are sent out. Would be setting up almost an abstracting office in the court house. Would benefit oil companies. The going fee runs into a lot of money. Would help lawyers a lot also who are not too proficient in these areas. The main business is working for oil companies, ferreting out these small interests. Should go through the route of sheriff's sale - would be tremendously costly to the counties to

try to ferret out a nebulous ownership problem. For these reasons does not believe it is justified for Montana to go into these areas - very small gain. Suggests some very detailed research be made to cover the problem. Urges the committee to give a do not pass to this legislation. See objections attached.

Stephen M. Williams, attorney for Anaconda Copper Co., Butte, opposes this bill, saying everyone who owns any property would have to record his mineral interest. See testimony attached. \$1 recording fee and 10¢ per acre is very burdensome. Thousands of pages of mineral interests could be recorded for \$1.00. The fiscal note doesn't take into consideration the potential revenue loss to each of these counties if potential mineral interests have to be researched in place. They are real property and the section mentioned is personal property. Recommend do not pass.

Tom Harrison, representing himself, Helena, said the intent of this bill is to consolidate mineral interests. Would be a benefit to those who want to analyze them. Doesn't think average persons would be interested, and subsequently those interests would be picked up by large companies. Fracturing them has made it more and more difficult for mineral rights to be exercised. Want to keep them with the real property. Would make the mineral itself of less value. Might be setting a precedent - maybe could take water rights away under this bill.

Gene Phillips, ASARCO, NERCO, Kalispell, and himself, as an attorney, opposes HB 869, said where there are government lots in many sections, it would require a government survey to determine how many acres have mineral rights. This bill would serve no useful purpose.

Les Loble II, representing the Montana Dakota Utilities Co. and Tenneco Coal Co., Helena, opposed HB 869, opposes because of added cost of doing business. Thinks this is counterproductive.

Don Allen, Montana Petroleum Association, Helena, opposes HB 869, said the oil and gas industry has supported and worked on its own to get some answers to this problem. It is not the problem that it is pictured to be. He feels that it is the hardest problem to find absent mineral right owners. The oil industry is not happy with this bill. It does leave the impression that with the passage of time mineral interests have become fractured. These instruments are recorded and the problem is not with recording - it is locating owners after recordation. The entire emphasis is misdirected and creates more problems than it solves. It is a law of ambiguity.

Peter Jackson, a resident of Madison County, has two railroad sections which may have mineral under them. The federal Land Bank held 50% of them. He owns 2%. Arrangements are very complex on unpatented lands. He doesn't think he could afford an attorney to get that for him. Opposes HB 869.

Leo Berry, Department of State Lands, Helena, Commissioner, recommends HB 869 be amended to exempt state land from filing. State has complete records and they are all recorded so there is no real reason why this bill should apply to state owned minerals and he requests that the state be exempt. See testimony attached.

Rep. Hirsch closed saying some people are saying there is a decent record, and the people who own them are saying we don't know and it would cost us "X" dollars to find out. Doesn't see problem on the part of the county treasurers' offices because the burden of recording interest is the problem of the owner. The use-

ful purpose of this bill is to provide a system that is equitable. We would like to repeal the right of entry mess and replace it with a method of recordation and something that is administrable and that the right of entry has been litigated and litigated so it is almost impossible for counties to administer. Shouldn't be administering that tax any more since now you must know what production capabilities the mineral interest provides. The \$18,000 that has been collected might have been done illegally. Have no objection to raising the fee to \$2. State agencies are being asked to register water rights and hopefully that will make the title more clear. Seems mineral rights should be done the same as water. It would be much more saleable. It is hidden away in deeds and conveyances and should have a handle on it.

Questions from the committee -

Rep. Burnett asked when leased, it is assumed that a piece of ground has oil under it, but you don't know if there is. Mr. Allen said Yes. All this mineral is an assumption - not a known fact that it is there.

Rep. Underdal asked if the 10¢ an acre fee was an annual cost. Most rights are fragmented and don't own any whole right - how would this bill be set up - would owner have to pay on a fragmented portion. Rep. Hirsch said could change the word 'surface' to 'mineral acre'.

Rep. Johnson thinks the bill is baffling - seems that it would be much easier for the oil companies to do their own research. Mr. Allen said it's not really that big a problem. If an owner cannot be located, it is done on a trust basis. As far as holding up oil exploration and oil development, there is no problem. There is no such thing as a clean or clear title. There is a cloud on those titles - you spend thousands of dollars in clearing them.

Rep. Williams said you can get a court order and then the royalty from that goes into a trust account and reverts back to the state. Mr. Allen said there is a bill already through both houses regarding this.

Rep. Reichert questioned why the Burlington Northern wasn't being represented. Tom Dowling advised the BN pays most of the tax. They pay for mineral interests in order to keep them.

Rep. Fabrega asked if you own the surface are you going to have to file an entry right. Mr. Stephen Williams said if you own a fraction or all the minerals, you record and if you own all the minerals the law assumes you own all the mineral rights. Rep. Fabrega asked if you don't record, does that mean they are up for grabs. Line 14-16 become a lien on this property. Rep. Williams said 15-16-401 deals with personal property and execution is carried out as it is on personal property. Rep. Fabrega said if you are the surface owner, you have to pay or you will lose it. Mr. S. Williams said that is true. Rep. Hirsch said a subsequent section would only put a lien against the mineral itself and not against the property taxes.

Rep. Dassinger asked how these are handled in other states? Mr. Allen said they have tried to solve the problem in many states - some have passed laws and some have been found unconstitutional. As far as recordation part - it is not needed. Trust account approach is used. It is not easy to solve. Simply thinks this bill doesn't address the problem, but the recordation is already done. Mr. S. Williams said if you acquire mineral interests by lien you also acquire permission to go in. Lien procedure may be one that you don't desire.

Dennis Lopach, Montana Power, Helena, opposes HB 869.

Rep. Budd Gould, District #98, Missoula, chief sponsor of HB 852 which is an act to create a gaming control board, providing for licensing and regulation of authorized gambling, providing penalties, and sunset date. advised this bill created no new gambling.

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852 J.D.Lynch, representing Elmer Boyce, a business man out of Missoula, would hope to determine what this bill is attempting to do. It does not ask for any additional gaming. No way expands gambling. This bill requires that we should have a state gaming control board for control of the gaming that the legislature has already authorized. This commission in no way can take it upon themselves to expand gambling. It will only be the legislature that will increase gaming. This is not a foot in the door. The legislature will again say no if they do not want to expand gambling.

We are not deriving this type of money shown on the fiscal note. There are over 500 federal stamps on legal gaming devices and the federal government charges \$250 per stamp. Should get 80% of that back to the state. Need a vehicle to get that back. Revenue is important, especially at this time. Might agree that once you accept this kind of money, you get hooked on it. If the legislature is not satisfied with what this gaming commission has done, this bill is repealed. Are asking to see if this gaming commission can be effective. People voted that they were not against gaming per se. They are receiving card games. They did think there would be some revenue from what gaming was allowed. 56 counties have no set rules for charging - should be revenue produced from gaming in this state. It is there - it is limited - and this will keep it limited.

Neil Lynch, Butte, is a proponent of HB 852. In 1974 session in the Senate he moved to have this fee bill killed. Did not feel it was needed at that time, but from his experience he is coming to the conclusion that this is needed. In some parts of the state there is state control - in other parts there is practically no control, and he thinks there has to be uniform throughout the state some type of control. Most people felt they were voting for gambling, but 65% wanted strict control over recognized forms of gambling. The operators and the players who sponsor government, feel any government which legalizes gambling must exercise controls. We have just licensing, which is a preliminary procedure for gambling.

Montana must first create <sup>laws</sup> which will allow acceptable gambling which must be profitable so it can be taxed, must be controlled. A new supervising agency should be created - should be monitored on the Nevada system, but on a much smaller scale. It is a 29 section bill - will try to answer questions.

Charlotte Edwards, Powder River County, would like to substantiate what they are saying - we struggled long and hard to come up with some kind of a licensing fee in Powder River - how much should go to the different entities. It was a big problem for the county attorney and county commissioners. She believes the problem is settled - they are run exactly how the people who run them want to. Believes there should be some direction.

Edith Cox, Helena, voted to continue local control of gambling. Local authorities are having a great deal of trouble controlling it, and if this bill would establish control, she is for

Opponents to HB 852 -

Jan Brown, Montana Association of Churches, Helena, is still opposed to further legalization of gambling until some kind of study has been done on the effects of the present law. Thinks this is a foot in the door to wide open gambling. See her testimony attached.

Jack Williams, Chief of Police, Helena, page 3, section 8--"gaming device means any mechanical or electrical contrivance or machine used in connection with gaming or any game" - machines rake off money? Manufacturers license? Wonder just what a board will cure. Not going to control gambling with 5 or 20 members - you need local law enforcement.

On page 10, section 12--basic license fees? What is it going to be - who is going to say? Limit on gaming devices? This means a person could put as many gambling tables and machines as they want in their place of business. Want to take it from the hands of the legislature and put it into the hands of a board which they are more able to control. They can do it with a 5 member board.

Page 11, section 5--no one under 19 will be able to gamble. You are of age at 18 or if you are married. Will require finger printing - that's required now. People coming in are checked out by the police department. Laxness goes on everywhere. Why does this self-destruct in two years. Montana chief's of police oppose HB 852.

Jane Phillips, St. Paul's Methodist, and other churches vigorously oppose HB 852 - see testimony attached.

Mrs. Josephine M. Guffey, Helena, had a gambling husband - took in washing to raise her family. She feels gambling will not bring in any revenue because it costs so much more for welfare because of homes destroyed by gambling. Feels gambling and drinking go together. Opposed HB 852.

Grover Briggs, Cascade, said gambling has not brought forth the revenue that proponents said it would. Looking at a gaming commission - say that will bring in the revenue. Interesting concept from the light of Mr. William's testimony. The sunset provision in the U.S. and the state politics is very new and while it is written legally, it is designed to self-destruct. To establish its worth in terms of the gambling commission legislation, don't want to take a chance on that sunset provision not working because of the implications in establishing this commission.

Art Kusmann, although working for the Montana Chamber of Commerce as a researcher, is not representing them at this hearing. The present system isn't perfect at all, but rather than creating another government entity, would open up avenues for abuses that would take place. See testimony attached.

D.D. Jacoby, Concerned Citizens of Helena and Montana, Helena, opposes HB 852. Commenting to J.D. Lynch - the gaming commission will cost approximately \$400,000 just to set up 5 people controlling it. How are these 5 people going to control this better than the local government at the present time? Five people will have to be paid at least \$20,000 per year. Can't pay these people and set up this commission and make money at it. People who make money at it will be in other areas to make money - have friends who have prostitution, drugs, gambling. Should be able to find a better way to use this money. Hope you will give this careful consideration not only for yourselves, but for your grandchildren and many generations to come. This reverberation will be felt for many, many years.

Dorothy G. and G. W. Fahrion, Helena are opposed to gambling -- oppose HB 852. See their testimony attached.

Metha Ellen Blenkarn, St. Paul's United Methodist Church, Helena, opposes HB 852. See testimony accompanying.

Dusty Harper, Helena, opposes HB 852. Has seen gambling from working at Las Vegas - very much opposed. See testimony attached.

Patricia C. Harper, St. Paul's United Methodist Church, Helena, opposes HB 852. She feels money that might be spent for a gaming commission might better be used for annual sessions to protect health of legislators. See testimony attached.

Shirley Sheets, St. Paul's United Methodist Church and her own family, opposes HB 852 - need more local control of present laws. See testimony attached.

Questions from the committee -

Rep. Nordtvedt suggested to Mr. Lynch should maybe set up a scaled down version.

Sponsor returned to the meeting and in closing Rep. Gould reiterated the intention is there be no more expansion of gambling. This what the bill will do and the people that are saying that this is a foot in the door, he does not agree with. The purpose is to raise some money and to have one form of control in all 56 counties.

Rep. Johnson asked what salaries of commission be and who would set it up? Rep. Gould answered it would be an appropriations matter as to salaries. Would roughly be set up as a public service commission with pay approximately the same as the PSC.

Rep. Harrington mentioned that people have the right in the constitution to vote on gambling. Mr. Kussman said they had a choice to put into the constitution or let the legislature put it in. Rep. Huennekens advised people can do this under their own right.

Rep. Dozier - page 13, lines 10-12 - would give them a lot of power? Mr. Lynch said specific games not allowed would be checked.

Rep. Sivertsen what gambling devices are referred to on page 3, line 20? Mr. Lynch said gaming devices that are now recognized that are legal - a poker machine that was ruled legal - manufacturing license Williams referred to do business legally and pay no tax on sales of \$100,000. Seven businesses and they are doing business in the state and should be paying some type of tax for doing business in the state. Rep. Sivertsen said no new games would be legal, only those that have been ruled legal.

Rep. Nordtvedt said specific provisions of existing law would prevail.

Rep. Bertelsen asked: Can anyone tell me what percent of the legislature thought they would play poker by putting money in a slot and pulling a lever or pushing a button? Very unusual.

Rep. Fabrega said oponents fear that this will open gambling. How can you say that under this bill this won't happen? Mr. Lynch - are diverting from the bill into widening gambling discussion. This bill does not expand it without any legislative action. Multitudes of revenues will be lost. Thinks the state

should be collecting taxes from the gaming that is already happening. Rep. Fabrega asked what guarantee the bill has that it does not open up gambling? Rep. Gould explained the bill is not intended to do what the opponents are talking about. If you have refinements to put in, that is alright.

Rep. Nordtvedt suggested adding a section 30 that nothing in this act will allow the further expansion of gambling as authorized by the legislature.

Rep. Williams asked if this bill provides for handling bingo by senior citizen groups for recreation only? Rep. Gould is very, very positive that any people or any commission of this type or church bingo would require there be no fee involved.

Rep. Dozier said presently there are local licenses on a local basis. That money was used an awful lot for the diligence they have had - will this bill kill their local revenue? Mr. Lynch said the problem arises with local people setting fees on say a poker table - about the highest license heard of is \$500. That amounts to \$1.25 a day which is really low in a big city. Where you have a state commission setting up those fees, they would come up with fees that would be much more reasonable. Those fees Fifty percent of those fees would go to local people and 50% to the state. Most opposition is from the gamblers themselves rather than the church people.

Rep. Reichert asked if the divisional staff the gaming commission would be allowed be assigned to districts? Rep. Gould said there would be no limit to the staff under these 5 gaming commissioners. For 5 commissioners, probably be one secretary would be all that would be needed. Regional commissioners are going to be in their own region, not in Helena - \$400-\$450,000 over the biennium and the fiscal note guessed it \$500,000. Over one-half of that money would come from the federal money being returned from federal stamps. Rep. Reichert remarked the divisional staff could grow and grow - would there be anything to prevent them from growing? Rep. Gould said the legislature and funding would be the biggest preventive. Rep. Reichert thinks the appropriations hurdle would be the biggest problem.

Rep. Fabrega asked if an existing state department couldn't handle it just as cheaply? Rep. Gould thinks during the first two years - the formative area - this will be a very busy organization. Long day, full time job for 5-7 people. Every person that is an operator or a card dealer does have to be licensed, their background checked, etc.

Rep. Sivertsen said there are 2400 liquor licenses in the state. If this board was designated as a qualified jurisdictional board without the staff, then the local police would still have to police this. Can you estimate what this will cost? Mr. Jack Williams said it will cost an awful lot - 200-300 licenses issued in Helena. It will take more than 5 people. What are the qualifications to be on the board - have to have qualified people and researchers. Finger printing taking pictures, making up cards - takes many hours for their secretary.

Rep. Sivertsen asked if the fee would be set by this board at \$200 with an annual renewal fee? Rep. Gould said the fiscal note is a general license where poker tables would be licensed, then you have a fee on top of that per table. One table at \$100 or \$1,000 so that each table in an establishment is licensed individually as well as the establishment.

Rep. Dozier said it doesn't make any mention of a dealer's license. Charging \$250 per table now in Billings. 418 federal stamps sold for more than \$500 for



which the state will get back \$200 each. Would continue as it is now except that the local communities would come out with much more.

Rep. Fabrega said the fiscal note didn't make an assumption of the manufacturer's fees. Why did they come up with an annual fee of \$200 per license? \$241,000 annual budget would contemplate how many people? Larry D'Arcy, Deputy Director of the department of revenue, said they make a lot of assumptions when making a fiscal note. Boards or commissions are usually attached to administrative licensing side, and investigative side. The fiscal note was made up with figures from the licensing side and investigative side. There are two bureaus within that division. There are investigators throughout Montana located in the same areas where the liquor division has their offices. Makes assumptions for many things.

Rep. Fabrega asked how many of those 2400 bars are engaged in a gambling operation? Jack Williams assumes that about 3/4 of the bars have gambling operations of some sort.

Rep. Dozier asked if there is any constitutional problems with qualifications of applicants. Mr. Williams said if a person has been in Montana for only one year, he has been examined quite extensively.

#### EXECUTIVE SESSION

A subcommittee to study HB 852 was appointed: Dan Harrington, chairman, Reps. Sivertsen, Underdal, Dassinger, Williams were to be members of the committee. Rep. Sivertsen feels problems should be defined. Rep. Underdal mentioned problem of getting appropriations. Rep. Sivertsen - line 17 conflicts with the board; investigative powers as well as administrative need to be clarified. On page 2, just what is a gaming device? Rep. Williams - whether or not we feel that under the limited laws that we have in the state that we need a gaming commission. Rep. Fabrega feels the whole committee should be here to further discuss this matter.

Meeting was adjourned at 11:00 a.m.

REP. E. N. DASSINGER, Acting Chairman

By Herb Huennekens  
REP. HERB HUENNEKENS, Chairman

Josephine Lahti  
Josephine Lahti, Secretary