

HOUSE TAXATION COMMITTEE

46th Legislature

The meeting was called to order in Room 434, at 8:30 a.m., March 14, 1970, by the chairman, Representative Herb Heunneken. A quorum was present. Also present was Randy McDonald, staff attorney.

House Bills 550, 866 and 534 were to be heard.

Representative John Scully, District 76, Gallatin County, presented HB 550 of which he is chief sponsor. He explained that in the 1975 session the

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coal tax pie was split up into allocations to the most appropriate projects. At the time, cultural projects were included for the people of the state. This was eventually dropped and at the time Rep. Scully decided it was not worth fighting for. Last year the bill was amended

to include cultural projects. However, the appropriation committee had allocated almost all the money to parks and recreation with the Fish and Game. He agreed to take the reduced amount for the cultural projects for that year, but never again. It was his understanding that the coal tax money was to be used only for the purchase of parks and their operation and maintenance. The coal tax pie situation has changed, allowing more money to go into this portion of the account.

This year the Interim Finance Committee makes final approval. This was never Rep. Scully's intention. He felt that everyone should have a chance to say what projects get coal tax money.

Rep. Scully proposed amendments (see attached sheet) which would change the percentages in how much is generated for each. One-third of the income from the trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects and two-thirds for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired.

The Historical Society and the Arts Council will only be making recommendations upon the request of the legislators. The intention is that this fund would be used by the state for projects most viable to the state. This will be a long-term program with lasting affects. He felt that we have not recognized our heritage--this is one way to get at this problem. Rep. Scully concluded his presentation saying that he felt the legislature should be deciding who gets this money.

J. D. Holmes, Montana Institute of the Arts Foundation, spoke in support of allocating money to cultural interests. He stated that the Historical Society concurred with this support. However, he asked that the committee consider a few points in making their decisions. Both the Montana Arts Council and the Historical Society are experienced in handling grants. He felt that someone should make recommendations to the legislature, and felt that a joint committee of these two agencies would be one solution.

He submitted written testimony in support from David E. Nelson, Montana Arts Council.

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Mike Koehnke, Office of Budget and Program Planning, spoke concerning recommendations to the legislature. He felt that the long range building program seemed to circumvent the situation, though building plans did need to be identified. He did not feel that we could just leave an open end to allocations to these agencies, and felt that the legislature could make better decisions with the advice of the agencies. In conclusion he stated that it was still important not to go around the long range building process.

Ron Holliday, Department of Fish and Game, spoke in support of HB 550 as is explained in detail in attached testimony.

Sister Joeanne Daley, Montana Arts Advocacy, spoke in support of HB 550. She was very excited about the possibility of setting money aside for cultural things, especially coal tax money. She has traveled throughout the state and worked primarily with smaller communities and can see this money as most important to this program. She endorsed the bill and asked for support from the committee.

Larry R. Johnson, Lewis and Clark Friends of Library, spoke in support of the bill in general, but it appeared that the heart of the bill tied approval to the legislature. He felt that the time element would cause serious problems and felt that some good programs would be lost because of the time lag. He suggested that an appointed board might be more appropriate and more expedient.

In closing, Rep. Scully said that if the projects came to the point where they had to be approved by the long range building program he would rather see the bill killed. He did not feel that this came under long range but should be considered projects approved by the legislature. He recognized the difficulties placed upon the Fish and Game. But, he stated, the benefits to the state far outweighed the inconveniences. He felt that projects that were important enough would not be deterred by having to wait for legislative approval. In response to the Arts Council and the Historical Society making recommendations, he felt that it was important that they only made recommendations upon request by the legislators. The amendments made it clear that they are only the gathering agents. He urged the adoption of his proposed amendments.

Questions from the committee:

Rep. Reichert asked Mr. Johnson if he saw any way to address the problem of looking at these projects. He saw no way, except to make options with regard to purchase of properties. He was concerned that if the money was available, and the legislature was not in session, where would they go. It was explained that the only option with this bill is to wait until the legislature convenes.

Rep. Reichert stated that if the project was worthy enough to receive approval by the Arts Council and the Historical Society, it would most likely be approved by the legislature as well. She liked the bill, but saw a real problem with expediency. She saw the only alternative would be to open the sack during the interim.

Mr. Holmes was asked if he thought the Arts Council and the Historical Society could work together on this. He stated that they had worked well together in the past and saw no problem with this arrangement.

Rep. Williams concurred with Rep. Reichert's concerns with the bill.

Rep. Scully felt that the legislature is much more representative of the people of Montana. He felt that the people of Montana should be given the opportunity to come to the legislature to promote their projects, where they would receive more fair consideration, than before 8 board members.

Rep. Huennekens asked how fast revenue will be generated annually by converting from earmarked to trust funds. It was explained that the money is in trust now, the bill makes it earmarked and the amendment brings it back in trust. They anticipated \$140,000 for cultural projects and \$280,000 for parks for the biennium.

Rep. Hirsch stated that as a landowner, he would be reluctant to give an option to buy land 18 months down the road. Rep. Scully stated that he could show the committee a large number of landowners who would not object to such an arrangement. He stated that an inflation index, as used in a lease, would be built into the base at the time of the agreement. He recognized that we would loose some projects this way, but the overall effect will be better. He did not think it should be left as an open sack through the biennium.

Sister Joanne Daley, responding to the concerns about the two year delay and the representation of the state, assured the committee that any committee set up to review applications would try to be as impartial as possible. This would also assure that the projects would be well thought out before being brought before the committee. She also stated that a citizen's advisory board is set up to carefully review the projects. The Arts Council has worked very well this way with an advisory board and grant applications. In conclusion she stated that a joint force would work very well and would be fair.

Rep. Williams asked about an interim committee. It was explained that this was not feasible, because an appropriation has to be approved by the legislature. It was then suggested that an appropriation could be made to the committee who would then award the money as applications come in. This would be one alternative.

Mr. Holmes stated that he would be in favor of this, but again pointed out the difficulty in acquiring land.

Rep. Scully again stated that he would rather have 150 legislators reviewing the projects and awarding the grants. He had a part in putting the coal tax here in the first place, and had a better understanding of where it was to be spent in the long run. He foresaw children coming before the legislature to promote their projects, and felt this would be a positive experience.

Rep. Williams was still not convinced that the legislators were going to avoid being influenced by special interest groups.

It was explained that money had been going into the trust fund for four years. By the end of the year it was anticipated that there would be about \$1.5 million in interest earned to be used for projects.

Rep. Dassinger asked if the intention was to cut the amount of money going into parks maintenance and operation. This was not the intention. The money was used on a one time shot only. It was an effort to avoid going to the general fund. The operation and maintenance comes from the coal tax.

Rep. Reichert was concerned with the amount that would be lost to inflation, having to wait two years for appropriation. It was explained that a maximum of \$80,000 would be lost for two years.

In response to a question, Rep. Scully stated that he would not vote for the bill if it was not amended as proposed. He stated that there would be no money without his work and felt if it was too difficult to come before the legislature he did not care if the money was there at all.

The hearing was closed on HB 550.

Rep. McBride, District 85, Silverbow County, presented HB 534 of which she is chief sponsor. This bill would clarify "recognized nonfossil forms of energy generation" in the tax code to include passive solar heat.....

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534                   The impact of this bill is uncertain because it is difficult to determine how many home owners would take advantage of the program. Her best estimate was that between 150 - 600 would participate at a cost of between \$18,000 and \$75,000 which is not a substantial impact.

Administration of the program can be done through the Department of Revenue. She felt that it is time for the state to have rules and regulations to meet federal guidelines for alternative energy systems.

Gerhard Knudsen, Department of Natural Resources, stated that the department is in support of the change brought about by this bill.

Kent Curtiss, a designer and builder, projected that there is going to be more and more solar energy in commercial buildings. He asked the committee to consider a few points. First, solar energy has a significant impact on space used. He did not see how the state could consider alternative energy sources without considering solar energy. Second, anything that stimulates this kind of construction is going to create jobs. He asked for the committee's favorable consideration.

John Krigger, a builder, stated that we need more passive solar assistance to help more people become involved with technological advances that can be used by every one; namely, man's enjoyment of the sun.

There were no opponents.

In closing, Rep. McBride presented her statement of intent. This bill was previously heard in Natural Resources Committee and did not receive a recommendation, she hoped this committee will consider her statement in making thier decision.

Rep. Reichert asked Mr. Curtis to explain earth berming. He explained that it was used to protect against wind, and also has insulation value. Placing the dirt against the walls is another technique. He went on to say that the earth helps to store and radiate heat. Another technique is to place the building right into a slope, where you must also consider earth pressure.

There were no further questions, the hearing was closed on HB 534.

Rep. Sheldon, District 22, Mineral County, presented HB 866 of which he is chief sponsor. Rep. Sheldon stated that this bill would be good for the whole state by trying to do something about the impact of natural resource development. The bill would abolish the coal board and replace it with a community development board.

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The coal board would combine with the money used from coal production and take a look at problems all over the state. However, a substantial amount would still go to the coal problems.

Harold Fryslie, Department of Community Affairs, stated that his staff was in support of this bill and had participated in its drafting. An engrossed copy of the bill was provided for the members of the committee, due to communication problems in getting the bill drafted. Also provided was a section by section explanation of the bill which could serve as a statement of legislative intent if the committee so desired.

Mr. Fryslie explained that in 1975, a portion of the coal tax money was set aside to mitigate coal mining impacts to local communities.

Based on surveys and polls taken, Mr. Fryslie stated that this bill provides what the people of Montana really want; property tax relief. The grants will only be for capital improvements. He felt there was a real need to assist public facilities when a major coal production is developed in an area.

He stated that this program is necessary because the impact of the coal companies affect more than their immediate surroundings. A new feature to the previous program will be a loan program. He also stated that it has been determined that this bill would be constitutional.

The board would consist of 7 members, appointed by the governor to 4 year, staggered terms. There were several other requirements and responsibilities of the board that Mr. Fryslie explained to the committee.

Mr. Fryslie went on to explain the program in detail. This explanation is contained in attached sheets. He also provided a listing of federal programs related to this type of program. Another list contained grant applications made to the federal government, which were not granted. He explained that many of these projects could be picked up under this program.

John Fitzpatrick, Deputy Director of the Office of Budget and Program Planning, spoke in support of HB 866 saying that this was not a rewrite of the coal impact law, it is an expansion to include other forms of energy impact. Currently, three counties are receiving coal impact assistance. This bill would extend assistance to all 56 counties. A county could be eligible for

a grant or a loan due to the impact of any form of development requiring community development. The philosophy of the bill says that non-renewable resource development should be taxed as an investment in the future. The intention is to allow all counties in the state to contribute to funds that will contribute back to them.

He further stated that there would be no tax increases in the bill, just reallocation of existing funds. The money now going into the general fund would go into the development fund. The engrossed bill would, however, have a minimal impact on the general fund. The fiscal note for the biennium shows an impact of \$2 million. If the amendments proposed are adopted, the general fund will gain \$600,000, rather than lose the \$2 million.

The administration is strongly behind this bill, as they have been concerned about the coal severance tax. Mr. Fitzpatrick concluded by saying that this is not a major revision, it preserves the original intention, but broadens the base to try to answer a large impact throughout the state.

#### Opponents:

Tom Harrison, Association of Oil Producing Counties, is not an opponent of the bill, but of the timing of the bill. He was concerned about the law suit currently pending concerning the coal tax. The outcome of the case may be contingent in some way with what is done with the existing formula. His major concern was with overstating the formula. The balance involves money generated by the coal tax. Changing the formula now might constitute tipping the balance, making the original formula look like it was not adequate.

Sen. Roskie has stated that you can restructure the coal tax. Under different circumstances there might have been a better tax and better allocations could have been had. The question is whether we will give the second set consideration as a better set of facts. We have to decide whether to take the risk when we are only talking about a slight delay.

He agreed with much of what Mr. Fitzpatrick said, but we have to determine whether this is just a rewrite of a major revision. He was inclined to think the bill was a major revision.

Sen. Manning has introduced a bill with the intention of matching federal dollars more efficiently. It still is a reasonable solution for funding, as the state has a lot of coal collection. This bill takes \$14 million and puts it into the general fund. Mr. Harrison was concerned that the courts may look at this indecision and determine we have done a greater disservice in trying to slice up the coal tax pie. He asked that the committee carefully consider the impact of this bill on any future decisions pending in the courts.

Ed McCaffree, Rosebud County Commissioner, concurred with Mr. Harrison saying that the impacts are just beginning. He was not convinced that one-third going to impacted areas will be sufficient funding. He concluded saying that the committee ought to carefully consider this.

Raymond C. Loveridge, Montana People for Progress (Colstrip people), spoke as a proponent of HB 866; however, he was concerned about the appropriation for funding. Attached testimony explains his views in further detail.

Rep. Sheldon closed saying we have to start major consideration of major problems. This bill does try to look at the long-range impacts, but some of the problems are here today. He anticipates an influx of up to three times the present population in some areas. He was concerned that the impacts are going to be immediate and the local taxpayers are not going to be able to meet the needs with their bonding abilities. The committee is going to have to consider the impact of this legislation on the coal tax suit. Tax matters have been considered throughout this session, but he thought this bill would have a minimal impact on the coal severance tax. If we are going to consider the whole state, all the resource development must pay their fair share. He felt this bill is a major step in the right direction and hoped that the committee would try to do something now about the problem because even if we start now, it will be two or three years before we see any action. He hoped the committee would give this bill serious consideration.

Questions from the committee:

Rep. Dozier asked Mr. Harrison to again explain the effect this bill could have on the coal suit. He explained that it could have the effect of confirming the coal companies ability to tie the money up. If there is a change in the allocation formula now, we could be just giving them the step to do this.

Rep. Dozier asked if he would advocate letting the coal companies say how to spend the tax. Mr. Harrison said the legislature passed the formula and we are stuck now with that formula.

Rep. Huennekens said he doesn't quite follow the oil and gas industries association with the coal tax. I am not quite sure why you are here. Mr. Harrison explained this mainly affects coal counties and he is representing Montana Coal Association serving over 31 counties.

It was explained that the money would stay in the account and pass through to the school trust fund. There would be revolving feature to the funds. The legislature still has the opportunity to adjust allocation of the money as the need arises.

Rep. Reichert asked if the amendments would increase the fiscal note. Mr. Harrison stated that one-third of the money may not be sufficient now, but down the road it would be foolish to invest all the money in these areas when it could be invested throughout the state. He again stated that the major problem was with the timing.

Mr. Fryslie stated that legal advice to him was that this bill is not a substantial change of the coal tax, it still retains the original intention of the allocations.

Rep. Dassinger asked how they were going to determine the political intentions of board member applicants. It was stated that all you could do is ask them. Rep. Dassinger also asked Murdo Campbell if meeting semi-annually was going to be often enough. Campbell said they feel meeting every other month would be better. The bill contains an escape clause addressing this.

Rep. Lien asked that someone from the Attorney General's office be called to answer some of the questions that have been raised. Mr. Harrison stated that this would be done.

Rep. Dassinger was concerned that taking money, originally going to the general fund is diverting them from the general fund. Mr. Fitzpatrick explained that the bill would shift portions going to the general fund into the community development account. The loss would be made up to the general fund from the severance tax. The net effect would be to establish a base, building for the future.

Rep. Dassinger stated that he would agree to raising other taxes by 25% to make up money from these other industries. Harrison said this bill does not propose any tax increases; if the need does arise, this will have to be brought in later.

Rep. Bertelsen pointed out that bentonite was not included in the bill and perhaps it should be.

Rep. Lien stated that grants would be determined by the board, relating to the amount of money available and using it all.

There were no further questions, the hearing closed on HB 866.

#### EXECUTIVE SESSION

Rep. Bertelsen moved that HB 461 DO PASS. Previously adopted amendments open up problems with the whole plea bargaining act. They procure out-of-state witnesses and would have to pay all costs. These are a separate class of defendants.

Rep. Huennekens explained we are dealing with a specific problem in this bill and that is a national move to not pay taxes. It is going to take prosecution to stop them. Historically, they have brought only three suits to court and they have won every one of them. The IRS would restrict to only cases where they felt they were dealing with this threat. It will be the extreme case where they go to court.

Rep. Burnett said the IRS says you are reviewed and the then questionable cases are turned over to the state. He has no objection if the prosecution procedure has to go to the county in which the defendant resides, but objects to the defendant having to come to Helena which is the seat of the IRS offices. Rep. Burnett wants any time spent in Helena to be paid for if the defendant wins the case, otherwise a losing defendant would have to pay income tax and his own expenses.

Rep. Bertelsen moved that previously adopted amendments be deleted. These amendments would allow a defendant to have his suit heard in his home county. Reps. Underdal and Burnett voted NO. Reps. Robbins, Fagg and Gilligan were absent. Motion carried.

Rep. Bertelsen moved an amendment to change page 8, line 22, following: "chapter" strike through "inform" on line 25. Unanimously adopted. Three were absent. Rep. Bertelsen moved that on page 10, line 12, "10" be stricken and "5" inserted. Randy McDonald will rewrite section 7. Unanimously adopted.



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Rep. Burnett moved that on page 10, line 5 "Lewis and Clark County" be stricken, and "defendant's resident county" be inserted. Rep. Fabrega explained 15-30-321, which refers to venue, to which the bill refers.

Rep. Bertelsen moved that HB 461 DO PASS AS AMENDED. Reps. Burnett, Vinger, Underdal voted no. Three were absent as above. Motion carried.

Meeting adjourned at 11:30 a.m.

  
HERB HUENNEKENS, CHAIRMAN

