

MINUTES OF THE MEETING  
TAXATION COMMITTEE  
MONTANA STATE SENATE

January 14, 1981

The fourth meeting of the Taxation Committee was called to order by Chairman Pat Goodover at 8 a.m. in Room 415 of the State Capitol Building.

ROLL CALL: All members were present, with the exception of Senator Healy.

CONSIDERATION OF SENATE BILL 54: Sponsor Senator Bob Brown said that a Department of Revenue problem has prompted consideration of this bill. The past history, as well as proposed action, of this bill is set forth in Attachment #1. Senator Brown said that the Dept. of Revenue wants a provision stating that if someone is going to appeal they have notification of the appeal. When a tax protestor appeals to the State Tax Appeal Board, there is nothing in the law that stipulates notifying DOR if that person further decides to take his case to court thereby risking possible default. There were no proponents or opponents to this bill and questions from the Committee were called for. Larry Weinberg, representative from the DOR was available to the committee for questions.

In answer to questions about why STAB does not notify DOR, Mr. Weinberg said that sometimes there is a communication breakdown between the two, and sometimes DOR is not even named in the action. Sen. Crippen asked if this bill wasn't to prevent a housekeeping problem between the two agencies, rather than as a service to the taxpayer and asked what would be wrong with requiring STAB to inform DOR within 30 days of any appeal. Sen. Brown responded that he thought the wording should be clarified on making personal service on the Dept. of Revenue and that this wording should be considered further in executive session. The hearing was closed on SB54.

CONSIDERATION OF SENATE BILL 55: Sponsor Sen. Bob Brown presented this bill. See Attachment #2. He said this basically is a bill to decrease paperwork. The problem the bill addresses is that people who have to file tax reports for coal severance, oil, etc., have to file this report quarterly and annually and reports must be notarized. The first three sections of the bill repeal the verifying requirement. Section IV of the present bill requires a report to be filed with DOR when a new business opens, and he considered this a needless bit of paperwork for the honest businessman. There were no opponents or proponents so questions were called for from the Committee. Sen. Crippen asked why these codes were in effect to begin with. Mr. Weinberg thought it was so that the Department would know who was in business so they could be contacted. Chairman Goodover asked Sen. Brown to Close and Sen. Brown made a motion that SB55 be passed. Motion carried and SB55 received a unanimous do pass vote.

CONSIDERATION OF SENATE BILL 53: Sponsoring Sen. Bob Brown presented this bill (see Attachment #3). Senator Brown said Sen. Bill Thomas has a bill in the house that would repeal the section we're dealing with in this bill. The situation is that the present statute allows 60 days to bring an action from the date of protest of tax on state-level taxes and 90 days from date of protest on county-level taxes. This bill proposes that both state and county requirements be the same, 90 days. There were no opponents or proponents. Mr. Weinberg told the Committee that Sen. Thomas's bill is a revision of the protest procedure. If it passed, it would repeal the section and amendment before this committee, but he stated the DOR had no problem with that, only with day discrepancy in existing statute.

Mr. Weinberg referred back to Senate Bill 54, the question of service on STAB, and thought the language could be more satisfactory and also provide that "whenever the DOR is not served with the summons and complaint, the complainant shall notify the Department of Revenue in writing of the commencement of the suit within 10 days of filing the action."

The Committee decided to wait for a response from STAB before drafting an amendment to this bill.

CONSIDERATION OF SENATE BILL 3: Senator Norman said he had talked to Rep. Lory and that he had said SB 3 does not bother the Consumer Council. Sen. Norman moved that Senate Bill 3 be given a do pass recommendation. Motion carried and there was a unanimous vote to do pass SB3.

CONSIDERATION OF SENATE BILL 12: Sen. Norman said the committee was talking previously re this bill about page 9, line 25. Concern was that the coal companies pay a tax on mining coal but get no direct benefit. He wanted the bill phrased so that coal companies couldn't come in and argue they wouldn't pay the tax because of no benefit. He suggested striking everything after line 21, page 9, and before line 14, page 10.

Sen. Towe moved that the material on lines 21-25, page 9, and lines 1-14 on page 10 be deleted and the paragraphs following be renumbered. Amendment was carried by unanimous vote. Sen. Towe then moved that on page 1, following the word "spending" on line 25, the words "if applicable" be added. This motion was passed unanimously. Sen. Towe further moved that on page 2, lines 17 through 22 be deleted in their entirety. Discussion indicated that this is the coal severance tax, and it would be inappropriate to state in a bill that we are going to terminate the earmarked funds. The Committee thought that there were bills or a bill in the House concerning earmarked funds and postponed consideration until these could be available.

FURTHER CONSIDERATION OF SENATE BILL 54: Cort Harrington talked on the phone with Bob Randall, State Tax Appeals Board, who said he would have no opposition to having the DOR served if STAB received notice and also had no opposition to striking language concerning

service of all pleadings on STAB. He did think that getting pleadings was important in some cases and suggested wording "upon request of the State Board of Tax Appeals, the Dept. of Revenue shall furnish copies of all pleadings."

Sen. Towe proposed the following amendment: That on line 21, words "state tax appeals board and the" be stricken and words "or taxpayer" inserted after "department of revenue." Further, he proposed that after word "thereon" on line 25 the following be added: "The Dept. of Revenue shall promptly notify the state tax appeals board, in writing, of any such judicial review, but failure to do so shall have no effect on this judicial review. The department of revenue shall, on request, submit to the state tax appeals board a copy of all pleadings and documents." The next sentence would be stricken entirely, with paragraphs 3 and 4 remaining the same. The motion was made, carried unanimously, and Sen. Brown moved that Senate Bill 54 pass, as amended. Motion carried and it was so ordered.

FURTHER CONSIDERATION OF SENATE BILL 12: Sen. Steve Brown had a further comment about this bill. Because he is on the Audit Committee, he is concerned about getting back into a set sunset cycle, and suggested that rather than use standard sunset cycle maybe what was needed was for the Finance and Audit Committees to furnish a report, as they already have the data, and then a value judgment could be rendered. He wondered about the most efficient way to make a value judgment.

Sen. Norman said it was the Legislative Finance Committee that meets often during the interim. They are frustrated because all this money is being collected and there is no way to look at it because it is earmarked. Action was postponed on this bill.

There was no further discussion, and the meeting was adjourned.

  
PAT M. GOODOVER, Chairman

ROLL CALL

TAXATION

COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/14/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat M., Chairman	✓		
McCallum, George, Vice	✓		
Brown, Bob	✓		
Brown, Steve	✓		
Crippen, Bruce D.	✓		
Eck, Dorothy	✓		
Elliott, Roger H.	✓		
Hager, Tom	✓		
Healy, John E. "Jack"		✓	
Manley, John E.	✓		
Norman, Bill	✓		
Ochsner, J. Donald	✓		
Severson, Elmer D.	✓		
Towe, Thomas E.	✓		

Each day attach to minutes.

DATE Jan. 14, 1981

COMMITTEE ON TAXATION

BILL NO'S 53, 54, 55

## VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Laurence Wenberg	D.O.R.	53 ✓	54 ✓
Dwight V. Bul	San Aide	53 ✓	54 ✓
Bill Sternbagen	N.W.M.A.		
Bill Lund	Mt. Mng. Assoc.		
Frank Stuart	Nat. Coal Council		
George J. J. J.	Ill.		

(Please leave prepared statement with agent and

# STANDING COMMITTEE REPORT

January 14 ..... 19<sup>81</sup>.....

MR. President.....

We, your committee on Taxation.....

having had under consideration ..... Senate Bill No. 3.....

Respectfully report as follows: That ..... Senate Bill No. 3.....

DO PASS

Senator Pat M. Goodover

Chairman.

# STANDING COMMITTEE REPORT

January 14 19 51

MR. President

We, your committee on Taxation

having had under consideration Senate Bill No. 55

Respectfully report as follows: That Senate Bill No. 55

DO PASS

Senator Pat M. Goodover

Chairman.

## DEPARTMENT OF REVENUE

## SENATE BILL NO. 54

SB 54 requires an appellant from a decision of the State Tax Appeal Board (STAB) to serve a copy of the petition on the Department of Revenue. At present, the law only requires service on STAB. At present, most appealing parties send the Department a copy of the petition, and the proposed amendment codifies this practice. Failure to notify the Department can lead to a default judgment. Such a judgment then requires the Department to institute an action to set aside the default and reargue the case on its merits. This is both time-consuming and expensive, both for the State and the appellant. In a recently decided case, Department of Revenue v. Davidson Cattle Company, No. 80-292 (December 30, 1980), a default judgment against STAB was set aside by the Montana Supreme Court. The Court noted that the general statute governing appeals in contested cases (2-4-702, MCA) requires notice to be given to the affected agency while the specific statute governing STAB appeals only requires service on STAB. Ruling that the specific governs the general, the Court indicated that notice to the Department does not seem to be required in STAB appeals. In order to bring the STAB appeal procedure and the general appeal procedure into harmony, the Department puts forward the amendments of this bill.

## Section Analysis

Section 1. Amends 15-2-303, MCA. On page 1, lines 21 and 22, the "department of revenue" is inserted as a party required to be served in a STAB appeal.



DEPARTMENT OF REVENUE

SENATE BILL NO. 55

SB 55 simplifies the reporting requirements for certain taxes by eliminating the requirement of verified signatures. Verification (statement by a notary) does not aid the Department of Revenue in collecting the tax and only imposes additional requirements on the taxpayer. Hence, it is beneficial to both the Department and the taxpayer to eliminate the verification requirement. If a taxpayer submits false information, the criminal code is adequate to cover the situation with or without verification.

Additionally, this bill completely eliminates a filing requirement imposed on certain businesses upon commencement of operations. Basically this filing constitutes unnecessary paperwork for the taxpayer and the Department. The burden is placed on the honest taxpayer to file. Presumably this taxpayer will be filing tax returns as well, in which case there is really no need for the initial filing upon commencement of business. The taxpayer who chooses not to file tax returns will in all probability not file the initial form at start-up. Thus, the businessman wishing to comply with the law is required to file additional paperwork, which the Department must then process. This does not seem to serve any useful purpose.

Section Analysis

Section 1. Amends 15-35-104, MCA. On page 2, lines 1 through 3, the verification requirement is deleted for quarterly

coal severance tax reports.

Section 2. Amends 15-36-105, MCA. On page 2, line 25 through page 3, line 4, the verification requirement is deleted for quarterly oil and gas severance tax reports.

Section 3. Amends 15-38-105, MCA. On page 4, line 11, the verification requirement is deleted for the annual gross yield report for mines subject to the Resource Indemnity Trust Tax.

Section 4. Repeals 15-36-111, 15-37-113, 15-37-208, 15-58-103, 15-59-103, and 15-59-202, MCA. The repealer eliminates a filing requirement upon the commencement of business for the following operations:

- 15-36-111 - Oil and gas producers
- 15-37-113 - Metalliferous mines
- 15-37-208 - Micaceous mineral mines
- 15-58-103 - Coal retailers
- 15-59-103 - Cement and gypsum producers
- 15-59-202 - Cement dealers

## DEPARTMENT OF REVENUE

## SENATE BILL NO. 53

SB 53 deals with the period of time during which a person may pay a tax or license fee to the state under protest and file a lawsuit on the matter. At present, the time period is 60 days. For taxes collected at the local level, the protest period is 90 days. In order to achieve uniformity, the Department of Revenue proposes to extend the time for protest of state taxes from 60 days to 90 days. This extension should be of benefit to the taxpayer as well, as a uniform protest period should be less confusing. Additionally, the protestant is required to notify the Department of the filing of an action whenever the Department is not a party. This notification will enable the Department to determine if intervention in the legal proceeding is appropriate because of principles raised in the litigation.

## Section Analysis

Section 1. Amends 15-1-401, MCA. The change from 60 days to 90 days is found on line 3 of page 2. The notification requirement may be found at lines 5-9 of page 2. These changes are discussed above.