

MINUTES OF THE MEETING  
TAXATION COMMITTEE  
MONTANA STATE SENATE

January 18, 1983

The sixth meeting of the Taxation Committee was called to order at 9:05 a.m. by Chairman Pat M. Goodover in Room 415 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION AND DISPOSITION OF SENATE BILL 42: Harry Berg, the sponsor of SB 42, requested that this bill be tabled because he was working on a new similar bill to introduce. Senator Turnage moved to table SB 42. The motion was seconded and carried unanimously.

CONSIDERATION OF SENATE BILL 96 (CONTINUED): Senator Elliott stated that Senator Towe had an amendment for the committee's consideration. Senator Towe submitted a written amendment to the bill, a copy of which is attached to these minutes, and he felt subsection (c) of the amended language satisfies the constitutional requirements and also the audit trail for congressional purposes. The last sentence on the page of amended language is part of the present statutory language.

Senator Mazurek asked how this legislature can get by with directing future legislatures to appropriate. Senator Towe stated that in order to make SB 409 (1981 session) acceptable, the legislature wanted a measure to get money back into the trust fund. There is no binding obligation here upon future legislatures, he said.

Senator Elliott didn't think the amendment to SB 96 was necessary. He said that in 1981, the legislature did appropriate moneys out and did leave an audit trail of the interest income used from the coal trust fund. He referred to House Bills 500 and 868 from the 1981 session and where that money went. He thought it would be difficult for legislators to explain to their constituents. Senator Elliott felt a statement accompanying the financial statements saying the money for this is part of the interest income from the constitutional trust fund was sufficient for an audit trail.

Senator Gage asked if, in the process of appropriating by future legislatures, they would be aware that Senator Towe's amendment indicates that the appropriation is to be identified as being from those particular funds, and what will happen if the funds are not separately appropriated?

Senator Norman moved that Senator Towe's amendments be rewritten, following today's discussion, and resubmitted to the committee for action. The motion was seconded and unanimously passed.

CONSIDERATION AND DISPOSITION OF SENATE BILL 21: Chairman Goodover stated that several permissive mill levy bills were coming up this session. He said the committee would consider the amendments today and then will consider the amended bill with other permissive mill levy bills when they enter committee. The SB 21 amendments are attached hereto.

There is a 55-mill levy bill before the Local Government committee for general purposes. Cort Harrington said the general purposes local government bill would apply to city or county governments and not to single purpose districts, such as mosquito or soil conservation districts.

Senator Turnage said that the effect of that, then, is a mandatory mill levy, and Senator Towe felt it would be difficult to get a county to levy a full mill.

Senator Eck felt the bill would allow counties which have problems (maybe one-fourth of the Montana counties) to have some flexibility in running their transportation programs. These are funded in part from the mill levies currently allowed for senior citizens. It is ridiculous to try to run two transportation systems when running just one is difficult. Very few counties levy a full mill for senior citizens' programs. We are trusting that the county commissioners will use their discretion in levying the mills.

Senator Towe said that a lot of elderly widows can't drive, or shouldn't drive, and there is no way for them to get to a doctor, the store, etc. If the cities or counties want to run a transportation program, they should have the right to do it.

It was mentioned that the Missoula County mill was raised to \$122,000 and the city mill is half of that.

Senator Severson said his county (Ravalli) didn't really need this because they already have a system for transporting senior citizens and handicapped persons. All a person has to do is call, and someone goes to help.

In response to Senator Hager's questions about using school buses, Senator Gage stated that the school buses were not available for those purposes. This was brought out the other day when the committee was discussing SB 21.

Senator Halligan said if the bill passed as amended, it would supplement existing funds. Senator Halligan moved that the amendments as a whole be adopted. The motion was seconded and passed unanimously. Chairman Goodover stated that the amended bill would be acted upon at a later date.

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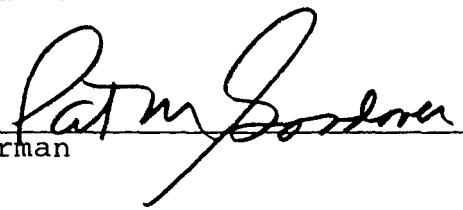
DISCUSSION OF SENATE BILL 100: Senator Mazurek, who is carrying SB 100 for Senator Graham, brought up the matter of Chapter 520, Laws of Montana 1981, which increased the small business investment credit from 20% to 30% of the federal credit. The Legislative Council and the Department of Revenue discussed the effect of the act at this point, since it applied only to taxable years beginning after December 31, 1980, and before January 1, 1983. The question is whether the prior law is reverted to or the prior law is repealed.

Dan Bucks from the Department of Revenue was present and said the department has legal advice that there are two interpretations of the situation: (1) that the law enacted in 1981 repealed the prior law; and (2) that upon expiration of the current law, the prior law is reverted to. Both the executive and legislative fiscal analyst budgets have interpreted that the prior law was repealed as far as the small business investment credit. The Department of Revenue has not taken an official position on this situation yet. We are talking about \$11 million, the small business investment credit (30% of the federal credit) being lost.

Cort Harrington stated that the Legislative Council's interpretation is that this act only applies to the amendment. After those taxable years beginning after December 31, 1980, and before January 1, 1983, it goes back to the prior law. The courts, however, have favored implied repeals, so the committee will have to take some action if the prior law is interpreted as being repealed.

Senator Towe thought this committee should talk to the State Administration Committee and have the bill sent to the Taxation Committee for review. Cort Harrington's explanation is what the legislature intended when this bill was passed in the 1981 session. If there is a misunderstanding, it should not be handled in a code commissioner's bill.

The meeting was adjourned at 9:58 a.m.

  
Chairman

ROLL CALL

SENATE TAXATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 1/18/83

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GOODOVER, CHAIRMAN	✓		
SENATOR McCALLUM, VICE CHAIRMAN	✓		
SENATOR BROWN	✓		
SENATOR CRIPPEN	✓		
SENATOR ELLIOTT	✓		
SENATOR GAGE	✓		
SENATOR TURNAGE	✓		
SENATOR SEVERSON	✓		
SENATOR HAGER	✓		
SENATOR ECK	✓		
SENATOR HALLIGAN	✓		
SENATOR LYNCH			
SENATOR NORMAN	✓		
SENATOR TOWE	✓		
SENATOR MAZUREK	✓		

1/18/83  
SB96

17-5-704. Investment of funds. (1) Money in the coal severance tax bond subfund, the coal severance tax permanent subfund, and the coal severance tax income subfund must be invested in accordance with the investment standards for coal severance tax funds except as provided in subsection (2). Income and earnings from all subfunds must be transferred to and retained in the coal severance tax income subfund.

(2) Beginning on July 1, 1983, the legislature shall appropriate as follows:

(a) 15% to be deposited to the coal severance tax permanent subfund each year; and

(b) an amount to be determined by the legislature <sup>be deposited to</sup> ~~each year~~ to the economic development fund established by [Initiative 95]

(c) the balance <sup>to</sup> ~~shall~~ be available ~~each biennium for appropriation by the legislature.~~ deposited to the general fund and be available each biennium for appropriation by the legislature, <sup>and</sup> ~~provided,~~ ~~however,~~ such funds must be separately appropriated, ~~so the funds may be traced to the coal tax income and earnings.~~ The funds appropriated to the coal severance tax permanent subfund under this subsection may not be further appropriated except by vote of three-fourths of the members of each house of the legislature.

SB 96  
1/18/83

MONTANA LEAGUE OF WOMEN VOTERS SUPPLEMENTAL TESTIMONY ON  
SB 96 SUBMITTED TO THE SENATE TAXATION COMMITTEE ON JANUARY 18, 1983

On January 14, the League of Women Voters testified before you in support of SB 96. We are concerned that resolution of the central issue of earmarking still rests on the interpretation of the constitutional language in Article IX, Section 5, "may be appropriated." If this language means that the funds must be held and appropriated separately, interest and income remain an earmarked fund and will be subject to biennial allocation pressures. If the language has no bearing on how the moneys is held and appropriated then these funds can be deposited in the general fund for appropriation. We urge the Committee to seek a ruling on this question from the attorney general before acting on bills concerning the trust fund income.

Submitted by:  
Ann B. Mulroney

SB21  
1/18/83

Proposed amendment to SB 21 which:

1. includes senior citizens within the scope of the bill;
2. clarifies that local government means a general purpose local government;
3. provides that a local government may not establish an independent transportation system for senior citizens and handicapped individuals without first considering the other two options set forth in the bill; and
4. encourages interlocal agreements to provide regional transportation services to senior citizens and the handicapped.

1. Page 1, line 4.  
Following: "AUTHORIZE"  
Insert: "GENERAL PURPOSE".
2. Page 1, line 6.  
Following: "SERVICES TO"  
Insert: "SENIOR CITIZENS AND"
3. Page 1, line 10.  
Following: "for"  
Insert: "senior citizens and"  
Following: "handicapped."  
Insert: "(1)"  
Following: "A"  
Insert: "general purpose"
4. Page 1, line 13.  
Following: "services for"  
Insert: "senior citizens and"
5. Page 1, line 14.  
Following: "persons."  
Insert: "(2)"  
Following: "The"  
Insert: "general purpose "
6. Page 1, line 16.  
Following line 15 strike line 16 and 17.  
Insert: "(a) contract with public or private transportation providers for services to senior citizens and handicapped individuals; or"
7. Page 1, line 18.  
Following line 17,  
Strike: "(2)",  
Insert: "(b)".

8. Page 1, line 20.  
Following: "providers"  
Strike: "; and"  
Insert: "."

9. Page 1, line 21.  
Following : "(3)"  
Strike remainder of line 21 and 22;  
Insert: " If the general purpose local government determines that it is not in the best interest of senior citizens and handicapped individuals to use the tax levy as provided for in subsection (2) the general purpose local government may use the proceeds of the levy to establish and operate an independent transportation system for senior citizens and handicapped individuals.

(4) General purpose local governments are encouraged to enter into interlocal agreements to provide regional transportation services to senior citizens and handicapped persons and may create regional advisory committees to coordinate regional transportation services."



AN ACT TO CLARIFY THE STATUTES ALLOWING THE INVESTMENT CREDIT; AND TO INCREASE THE SMALL BUSINESS INVESTMENT CREDIT TO 30 PERCENT OF THE FEDERAL CREDIT; AMENDING SECTIONS 15-30-161, 15-30-162, AND 15-31-123, MCA; AND PROVIDING APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-161, MCA, is amended to read:

**"15-30-161. Purpose and definition.** The purpose of 15-30-162 is to allow individuals, estates, and trusts, *including those owning an interest in partnerships and in small business corporations electing to be taxed under the provisions of 15-31-202*, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector."

Section 2. Section 15-30-162, MCA, is amended to read:

**"15-30-162. Investment credit.** (1) There is allowed as a credit against the taxes imposed by 15-30-103 and 15-30-104 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended.

(2) The amount of the credit allowed for the taxable year is the sum of:

- (a) 30% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended;
- (b) the investment credit carryovers carried to the taxable year as provided in subsection (4); and
- (c) the investment credit carrybacks carried to the taxable year as provided for in subsection (4).

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year. In the event the taxpayer's tax liability for the taxable year exceeds \$5,000, the investment credit may not exceed \$5,000 plus 50% of the tax liability in excess of \$5,000. In the case of a husband and wife who file separate returns, the investment credit may not exceed \$2,500 plus 50% of the tax liability in excess of \$2,500 unless the spouse of the taxpayer has no qualified investment for and no unused credit carryback or carryover to the taxable year of the spouse that ends with or within the taxpayer's taxable year.

(4) If any part of the investment credit is not applied against the tax liability for the taxable year because of the limitations imposed under subsection (3), the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the Internal Revenue

Code of 1954, as amended, or as section 46(b) may be renumbered or amended.

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended."

Section 3. Section 15-31-123, MCA, is amended to read:

**"15-31-123. Investment credit.** (1) The purpose of this section is to allow small businesses to take an investment credit as provided for in subsection (3) and to stimulate capital investment by the small business sector.

(2) For the purposes of this section, "small business" means a business that is eligible to elect to be taxed under the provisions of 15-31-202, whether or not such election is made.

(3) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended.

(4) The amount of the credit allowed for the taxable year is the sum of:

- (a) 30% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended;
- (b) the investment credit carryovers carried to the taxable year as provided in subsection (6); and
- (c) the investment credit carrybacks carried to the taxable year as provided for in subsection (6).

(5) Notwithstanding the provisions of subsection (4), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year. In the event the taxpayer's tax liability for the taxable year exceeds \$5,000, the investment credit may not exceed \$5,000 plus 50% of the tax liability in excess of \$5,000.

(6) If any part of the investment credit is not applied against the tax liability for the taxable year because of the limitations imposed under subsection (5), the unused portion shall be carried back and carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code of 1954, as amended, or as section 46(b) may be renumbered or amended.

(7) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended."

Section 4. **Applicability.** This act is applicable only to taxable years beginning after December 31, 1980, and before January 1, 1983.

Approved April 29, 1981.

1/18/83