

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 9, 1983

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

ROLL CALL: All members were present except Senators Crippen, Elliott, Norman, Towe, and Mazurek.

CONSIDERATION OF HOUSE BILL 286: Representative Joe Quilici, House District 84, said this bill raises the salaries of the county tax appeal board members from \$25 a day to \$45 a day. These people have to take time off from their regular jobs to serve on the board, and \$25 a day is not enough.

PROPONENTS

Bob Raundal, chairman of the State Tax Appeal Board, said the \$25 daily compensation was set in 1973 and has not changed since; the raise is long overdue. It is getting hard to keep qualified people on the board. In 1982, the board heard a total of 1,308 appeals in all but nine of the Montana counties. They include appeals by large corporations such as ASARCO, Inc., and do require some expertise.

OPPONENTS

There were no opponents to HB 286.

Questions from the committee were called for.

Senator Hager asked if there were more appeals now than in years past. Mr. Raundal said there were. He also said that the salaries come from the general fund of the state. The fiscal note assumes that the caseload will remain constant for the next two years. The fiscal impact will be around \$52,000.

The hearing was closed on House Bill 286.

CONSIDERATION OF HOUSE BILL 581: Representative Jay Fabrega, House District 44, said this bill will remind the county school superintendents that when they go through the computations for millage required in the budget that they should include in the moneys available for reduction of the property tax on the district the anticipated motor vehicle fees and reimbursement under 61-3-532 and 61-3-536. Subsection (1)(b)(vii) at line 20 on page 2 is a catch all provision. The fiscal note says "Counties budgeted the motor vehicle fees and reimbursement in various ways in 1982-83. [None of the 10 counties audited anticipated the fees or reimbursement

when setting the equalization program requirements. One county did include these funds in setting the voted levies. The remaining 46 counties were not audited.]."

PROPOSERS

Dennis Burr, Montana Taxpayers Association, supports the bill and agreed it is a good way to remind the school districts to get this matter taken care of.

OPPOSERS

Charlene Bailey, Lincoln County Superintendent of Schools, felt anticipation of revenue was not fiscally responsible. Why deal with more variables than is necessary? The school districts anticipated incorrectly and in doing so have compounded their problems. The motor vehicle fees were distributed to the counties as they should have been and were invested. Is that not a better way to handle than anticipating revenue? For the last several years, anticipation has been a choice the counties have had and in Lincoln County, they don't anticipate anything.

Questions from the committee were called for.

Senator Turnage asked Ms. Bailey what the interest rate was on their investments. She replied that last year, they were getting 12%; and now only about 8%.

Senator Turnage asked Dennis Burr why "receive" was included in the language on lines 14-15 on page 2. It is already received. Representative Fabrega said that the state portion of the reimbursement is made during March. He agreed that "received" could be stricken.

Dennis Burr added that the levies are set in July or August. It is quite a while after the levies are set that the state receives them. The state just received them a couple of weeks ago.

Senator Turnage said he thought subsection (1)(b)(v) should stop after "61-3-536" on line 15, page 2.

Representative Fabrega said the legislature does fund the school year based on taxable valuation from the calendar year. Senator Turnage added that a fiscal year slips into two calendar years. Representative Fabrega stated that these are reserve funds that the state reimburses. This situation has developed since the state went to cyclical registration of vehicles and when we changed to the fee system.

Senator Eck asked Ms. Bailey if she was interpreting this law to mean that school districts have a choice of whether or not to anticipate revenue and asked her to explain why. Ms. Bailey said it was set up that way in her office and they were to only anticipate revenue when necessary. She

thought the committee should do some searching where they do anticipate. Regarding Public Law 81-874 federal moneys, three months into the school year, they started getting calls from the feds saying they were cutting back here and cutting back there.

Senator Turnage explained to Ms. Bailey that 52 counties were involved in lawsuits over this problem. That is why legislation has been drafted and presented on this matter in the first place.

The hearing was closed on HB 581.

CONSIDERATION AND DISPOSITION OF HOUSE BILL 644: Representative Dan Yardley, House District 74, said this bill was requested by the Department of Revenue and deals with statutes of limitations on the corporation license or income tax. In the Caterpillar case, the Montana Supreme Court indicated that 15-31-542, MCA, was practically repealed. See Caterpillar Tractor Co., Inc. v. Dept. of Rev., ___ Mont. ___, 633 P.2d 618 (1981).

PROPOSERS

Ellen Feaver, director of the Department of Revenue, said this legislation was drafted as a result of the Caterpillar case. This makes it absolutely clear that if a corporate taxpayer doesn't file a return, the five year statute of limitations does not apply. Without this bill, we can't defend that kind of action, she said.

OPPOSERS

There were no opposers to HB 644.

Questions from the committee were called for.

Senator Turnage questioned Ms. Feaver's comments regarding the Caterpillar case and 15-31-542. Ms. Feaver stated that the court said it was an implied repeal. Senator Turnage wondered what the legislature did to raise that implication. Lynn Chenoweth, assistant administrator of the Natural Resources and Corporation Tax Division of the Department of Revenue, said they followed the amendments made since 1942, and the court said the statute was impliedly repealed in 1956. Senator Turnage said he could see the court saying this would apply retroactively.

The hearing was closed on HB 644.

Senator Turnage moved that HB 644 BE CONCURRED IN. The motion was seconded.

Senator Gage asked Ms. Feaver if the bill was saying that the Department of Revenue determines whether the return is fraudulent so they can do this. Ms. Feaver said that failure to file is the primary application of the bill. Senator Turnage

said that the Department of Revenue would have to prove fraudulent intent in court. A vote was taken on Senator Turnage's motion, and it passed unanimously. Senator Gage will carry HB 644 on the floor.

CONSIDERATION AND DISPOSITION OF HOUSE BILL 658: Representative Ken Nordtvedt, House District 77, said that when motor vehicles were taken off the tax rolls, there was a question about proper inclusion of reimbursement moneys. This bill just deals with reimbursement to the state by the county treasurers, not with the taxpayers and the county treasurers. The state's mandatory 40-mill levy and the permissive 15-mill levy were shorted by many school districts. In January when the session started, Representative Nordtvedt had the legislative auditor's office review this situation in the ten most populous Montana counties and they said that all of the counties then failed to credit the state with their share of the vehicle fee revenue for the 40-mill equalization account. Those ten counties alone shorted the state by \$3 million. The governor and the legislative fiscal analyst are anticipating this revenue in their budgets. Page 3 of the bill says that if an erroneous claim is made by a county superintendent then the county will be obliged to reimburse the state. In Gallatin County, they collected \$1.4 million in motor vehicle fees in 1982 and \$1 million in state reimbursement money, so they have total of \$2.4 million in vehicle fees and state reimbursement. The 40-mill levy gets a portion of that \$2.4 million: $\frac{40}{320}$ equals 1/8, or approximately \$300,000 should have been credited by the county superintendent for motor vehicle fees when making claim for state equalization aid for Gallatin County. The county superintendent failed to realize that that was there when she made her claim to the state for reimbursement of \$300,000 too much.

PROPONENTS

Dennis Burr, representing the Montana Taxpayers Association, supported the bill. This will recover \$6 million to \$7 million that was erroneously claimed by the counties. The school boards wanted this structured the same way as SB 384.

OPPONENTS

There were no opponents to HB 658.

Questions from the committee were called for.

Senator Lynch questioned why "withheld" remained in the bill title, line 8, but it was changed to "adjust" on page 3, line 8. Cort Harrington, the committee's staff attorney, said it would have been proper to change to "adjust" in the title but thought that it was too minor a point to have to send it back to the House for approval. He said no laws have ever been challenged because of insufficiency of title in a bill. Based on this reason, no amendment was made in the title of the bill.

Senator Turnage moved that HB 658 BE CONCURRED IN. The motion was seconded and passed unanimously. Senator Brown will carry the bill on the floor.

DISPOSITION OF HOUSE BILL 581: Senator Turnage moved that the following amendments to HB 581, third reading copy, be adopted:

1. Page 2, line 15.

Strike: "received"

2. Page 2, line 16.

Strike: "during the fiscal year in which the levy applies"

The motion was seconded and passed unanimously.

Senator Turnage moved that HB 581 BE CONCURRED IN AS AMENDED. The motion was seconded and passed unanimously. Senator Goodover will carry the bill on the floor.

DISPOSITION OF HOUSE BILL 286: Senator Lynch moved that HB 286 BE CONCURRED IN. The motion was seconded. The committee discussed the numbers of hearing days being held in each of the counties (i.e., Gallatin and Flathead each had 38 hearing days, and so on). Senator Goodover said the committee should realize that this is the beginning of raising fees of all boards that meet. Senator Severson wondered if there was a problem with getting people to serve on the boards due to the low pay. Other members commented that there hadn't been yet, but that \$25 a day was cheap for handling this type of work.

A vote was taken on Senator Lynch's motion, and it passed unanimously. Senator Lynch will carry the bill on the floor.

CONSIDERATION OF HOUSE BILL 593: Senator Turnage moved that HB 593 be tabled. The motion was seconded and passed, with Senator Halligan voting no.

CONSIDERATION OF HOUSE BILL 641: Senator Turnage moved that HB 641 be tabled. The motion was seconded and passed, with Senator Eck voting no.

CONSIDERATION OF HOUSE BILL 654: Senator Turnage moved that HB 654 be tabled. The motion was seconded. Senator Turnage said we did this before in Senator Hager's bills (SB 80 and SB 334). Senator Eck thought the protest matter was taken care of and that the problem was in the parking districts and other mixed use areas. In the current system, they have to assess equally. For this purpose, it doesn't matter what the frontage or square footage is. It is the benefit of the property that matters.

Senator Goodover commented that if the commission had the authority to establish benefits, they could take the prime property owner and rate him at 45%, and he might not be able to convince the other 55% that the benefit was wrong.

Senator Severson said the only way to get equity was by valuation.

Senator Lynch thought the committee should wait until the full committee was present to vote on the bill.

A vote was taken on Senator Turnage's motion to table, and it passed, with Senators Eck and Lynch voting no.

CONSIDERATION OF HOUSE BILL 716: Senator Halligan moved that HB 716 BE CONCURRED IN. Senator Turnage then stated that he had not had a chance to read the bill or the testimony on the bill since he was absent when it was heard and requested that the committee delay acting on this bill until he had a chance to review those materials. Senator Halligan withdrew his motion.

Senator Turnage said that from a taxpayer's standpoint, you have a million dollar project. The bondhouse can eat up the discount and put it in the bank. The taxpayer pays 100 cents on the dollar and only gets 80 cents on the dollar back.

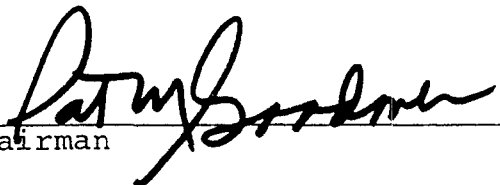
Action will be taken on HB 716 at a later date.

DISPOSITION OF HOUSE BILL 264: The committee's staff attorney, Cort Harrington, explained the amendments he had prepared in accordance with previous committee discussion on the bill.

Senator Turnage moved that the amendments to HB 264 submitted by Cort attached as Exhibit A, be adopted. The motion was seconded and passed unanimously.

Senator Turnage moved that HB 264 BE CONCURRED IN AS AMENDED. The motion was seconded and passed unanimously. Senator Brown will carry the bill on the floor.

The meeting adjourned at 9 a.m.


Chairman

ROLL CALL

SENATE TAXATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 3/9 /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		W	✓
SENATOR TOWE		✓	
SENATOR MAZUREK			✓
<i>Stephens</i>	✓		

Amend HB 264, Third Reading Copy, as follows:

1. Page 2, line 12.

Following: line 11

Insert: "NEW SECTION. Section 2. Amount of credit -- to whom available. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in such taxpayer's principal dwelling prior to December 31, 1986, or who acquires title to a dwelling prior to December 31, 1986, which dwelling is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed, is entitled to claim a tax credit in an amount equal to 10% of the first \$1,000 and 5% of the next \$3,000 of the cost of such system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first \$1,000 and 2 1/2% of the next \$3,000 of the cost of such system, including installation costs, less grants received against the income tax liability imposed against such taxpayer pursuant to chapter 30.

NEW SECTION. Section 3. Taxable years in which credit may be claimed -- carry-over. The tax credit is to be deducted from the taxpayer's income tax liability for the taxable year in which the energy system was acquired by the taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability. Notwithstanding the foregoing provision, no tax credit may be carried over for deduction after the fourth taxable year succeeding the taxable year in which the energy system was acquired.

NEW SECTION. Section 4. Codification instruction. Sections 2 and 3 are intended to be codified as an integral part of Title 15, chapter 32, part 2 and the provisions of Title 15, chapter 32, part 2 apply to sections 2 and 3.

NEW SECTION. Section 5. Coordination. (1) If SB 283 is passed and approved, including the section that repeals 15-32-201 and 15-32-202, MCA, then section 2, 3, and 4 of this act are effective.

(2) If SB 283 is not passed and approved or if passed and approved it does not repeal 15-32-201 and 15-32-202, MCA, then sections 2, 3, and 4 of this act are not effective."

Renumber: subsequent sections.

(2) If a credit is claimed in the subsequent (3) it may not also be claimed under [SB 283].

STANDING COMMITTEE REPORT

March 9

19 83

MR. **PRESIDENT**

We, your committee on **taxation**

having had under consideration **House** Bill No. **644**

Yardley (Gage)

Respectfully report as follows: That **House** Bill No. **644**

third reading copy

BE CONCURRED IN

~~EXRASEX~~

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STANDING COMMITTEE REPORT

March 9 19 83

MR. PRESIDENT

We, your committee on taxation

having had under consideration House Bill No. 581

Fabrega (Goodover)

Respectfully report as follows: That House Bill No. 581

third reading copy, be amended as follows:

1. Page 2, line 15. Strike: "received"

2. Page 2, line 16. Strike: "during the fiscal year in which the levy applies"

And, as so amended

BE CONCURRED IN

XXXXXX

Handwritten initials

STANDING COMMITTEE REPORT

March 9

19 83

MR. **PRESIDENT**

We, your committee on **taxation**

having had under consideration **House** Bill No. **658**.....

Nordtvedt (Brown)

Respectfully report as follows: That **House** Bill No. **658**.....

third reading copy

BE CONCURRED IN

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STANDING COMMITTEE REPORT

March 9

19 83

MR. PRESIDENT

We, your committee on taxation

having had under consideration House Bill No. 286

Quilici (Lynch)

Respectfully report as follows: That House Bill No. 286

third reading copy

BE CONCURRED IN

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STANDING COMMITTEE REPORT

March 9

19 83

PRESIDENT

MR.

TAXATION

We, your committee on

HOUSE

264

having had under consideration Bill No.

McBride (Brown)

HOUSE

264

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

Third Reading Copy (blue) be amended as follows:

- 1. Page 2, line 12.
Following: line 11

Insert: "NEW SECTION. Section 2. Amount of credit -- to whom available. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in such taxpayer's principal dwelling prior to December 31, 1986, or who acquires title to a dwelling prior to December 31, 1986, which dwelling is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed, is entitled to claim a tax credit in an amount equal to 10% of the first \$1,000 and 5% of the next \$3,000 of the cost of such system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a

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March 9

19 83

tax credit in an amount equal to 5% of the first \$1,000 and 2 1/2% of the next \$3,000 of the cost of such system, including installation costs, less grants received against the income tax liability imposed against such taxpayer pursuant to chapter 30.

(2) If a credit is claimed under subsection (1) it may not also be claimed under [SB 283].

NEW SECTION. Section 3. Taxable years in which credit may be claimed -- carry-over. The tax credit is to be deducted from the taxpayer's income tax liability for the taxable year in which the energy system was acquired by the taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability. Notwithstanding the foregoing provision, no tax credit may be carried over for deduction after the fourth taxable year succeeding the taxable year in which the energy system was acquired.

NEW SECTION. Section 4. Codification instruction. Sections 2 and 3 are intended to be codified as an integral part of Title 15, chapter 32, part 2 and the provisions of Title 15, chapter 32, part 2 apply to sections 2 and 3.

NEW SECTION. Section 5. Coordination. (1) If SB 283 is passed and approved, including the section that repeals 15-32-201 and 15-32-202, MCA, then sections 2, 3, and 4 of this act are effective.

(2) If SB 283 is not passed and approved or if passed and approved it does not repeal 15-32-201 and 15-32-202, MCA, then sections 2, 3, and 4 of this act are not effective."

Renumber: subsequent sections.

AND AS AMENDED

BE CONCURRED IN