

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

April 25, 1985

The eighty-second meeting of the Senate Taxation Committee was called to order at 5:45 pm by Chairman Thomas E. Towe in Room 413-415 of the Capitol Building.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF HB 240: Representative Jack Ramirez was recognized as chief sponsor of the bill. He said that this bill was an alternative to SB 48 and was a way of dealing with the 4R's Act problems in isolation. He said that he believed that the bill was technically, legally correct. He said that it defined commercial property in a way that could be sustained in court. He said that gross and net proceeds were not included in the bill as drafted and that it was unfair to include them. He said there were dozens of reasons for not amending the bill and that including gross and net proceeds would be a violation of federal law and result in an expensive law suit.

He said that in defining comparable property, commercial should be compared with commercial and residential with residential. He said the bill does require a sales assessment ratio study. He said the bill should not be changed in any way.

PROPONENTS

Mr. Dennis Burr, Montana Taxpayers Association, said that if a net and gross proceeds part is added to the formula it should be permissive and not mandatory. He said the bill is in compliance with the 4R's Act.

Mr. Greg Groepper, Property Tax Assessment Division, Department of Revenue, said that he disagreed about inclusion of gross and net proceeds and felt that they should be included in the bill. He asked the committee not to leave it as a permissive matter as that would leave a policy decision to an administrative body. He said that he supported HB 240.

OPPONENTS

Mr. Dennis McNair, Burlington Northern, said that he agreed with and supported the definition of comparable properties and the sales assessment ratio studies. He gave the committee a written copy of his testimony for the record (Exhibit 1).

Questions from the committee were called for.

Senator Mazurek asked if the Department of Revenue could not be put in charge of the tax rate. Mr. Burr said that it could be delegated to the Department. Mr. Groepper said that there is too much attention and controversy surrounding the issue. He said that the courts will look for clear legislative direction in the

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handling of the matter. He said that anything the Department did would be suspect.

Representative Ramirez closed saying, "What you are about to do is unconscionable." He said that federal law already states that net and gross proceeds should not be in this formula. He said that at the eleventh hour the Legislature is doing legal extortion against one taxpayer whose taxes will double as a result. He said that Burlington Northern taxes would go from \$9 million to \$17 million or more. He said the sole reason this is being done is to leverage a law suit for the Department of Revenue and to allow them to settle for more than \$9 million. He said, "I have never been so offended by an act of the Legislature." He said the state would spend \$1 million defending a losing law suit. He said that if the railroads are not being adequately taxed then their assessment should be addressed. He said that Burlington Northern is an easy target, but that the amendments are terribly unfair.

Chairman Towe closed the hearing and presented the committee with the amendments in Exhibit 2. He said that amendment number 8 should be deleted from the exhibit. Amendment number 1 includes net and gross proceeds; amendments 2 and 3 include the deflator; the next two are technical and 6 defines commercial property.

Senator Goodover asked about amendment number 7 which strikes lines 17 through 19. Senator Towe said that language is not necessary as it defines something that is already included.

Senator Severson asked at what percent would the railroads be increased. Senator Towe said they would go from 9.25 percent to 15 percent. He said that they are already at 15 percent in the statute. He said that the 4R's Act says that railroads cannot be taxed higher than commercial and industrial properties and are weighted at 9.25 percent. He said the 15 percent comes down to account for inflation. He said that a formula and not a percentage is included in the bill.

MOTION: Senator Halligan moved that HB 240 be amended per amendments 1-7 in Exhibit 2 and that "OF THIS ACT" be removed from 1 and 6.

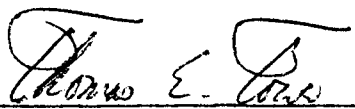
MOTION: Senator Goodover moved as a substitute motion that HB 240 be concurred in without amendment. Senators Goodover, Hager, McCallum and Severson voted yes. Senators Brown, Eck, Halligan, Hirsch, Lybeck, Mazurek, Neuman and Towe voted no. The motion failed.

Question was called on Senator Halligan's motion to amend. Senators Brown, Eck, Halligan, Hirsch, Lybeck, Mazurek, Neuman and Towe voted yes. Senators Goodover, Hager, McCallum and Severson voted no. The motion carried.

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MOTION: Senator Halligan moved that HB 240 be concurred in as amended. Senator Brown abstained. Senators Eck, Halligan, Hirsch, Lybeck, Mazurek, Neuman and Towe voted yes. Senators Goodover, Hager, McCallum and Severson voted no. The motion carried.

Chairman Towe adjourned the meeting.



Chairman

ROLL CALL

SENATE TAXATION COMMITTEE

49th Legislative Session -- 1985

Date April 25, 1985 5:45

Location -- Room 413-415

Name Present Absent Excused

Senator Brown	✓		
Senator Eck	✓		
Senator Goodover	✓		
Senator Hager	✓		
Senator Halligan	✓		
Senator Hirsch	✓		
Senator Lybeck	✓		
Senator Mazurek	✓		
Senator McCallum	5:50		+
Senator Neuman	✓		
Senator Severson	✓		
Senator Towe	✓		



BURLINGTON NORTHERN

HB 240 -- Exhibit 1
April 25, 1985

April 25, 1985

To: Members of the Montana Legislature

From: Dennis McKnire, Regional Director of Property Taxes,
Burlington Northern Railroad

Today, on the 90th day of this Session, you may be considering HB 198, HB 240 and HB 410 -- three bills which affect Montana's property tax system. This system has been under study by the Revenue Oversight Committee of the Legislature for the past two years. Now, because of recent events in the Legislature, I want to discuss with you Burlington Northern's position on these matters.

Burlington Northern does not want to be in an adversarial relationship with the State of Montana. It does want to be treated fairly, be a good corporate citizen sharing in the future of Montana, and pay its fair share of taxes (see enclosed brochure listing taxes paid by county). BN has worked with the Revenue Oversight Committee for the past two years in a mutual effort to develop a property tax system which embodies these principles. BN is willing to pay its fair share of taxes, but at the same time must protect the rights Congress deemed necessary to provide for an efficient, profitable railroad system for the Nation. Those rights include a state tax system that does not discriminate against railroads as compared to other commercial and industrial property.

HB 240, as transmitted to the Senate, will raise BN's taxes approximately \$1.3 million per year. Amendments being considered (especially inclusion of net and gross proceeds) will raise the railroad's taxes approximately an additional \$7.7 million annually. While it may be politically attractive today to opt for such a system of tax increases, I would urge you to consider the long term effects. The additional taxes, especially those caused by the potential amendments, may require the railroad to challenge the proposed system in federal court. The railroad believes the potential success of such a challenge is great. If the railroad were to be successful, the impacts to the counties would be significant.

To understand the impacts, you should consider the results of the previous litigation by BN between 1979 and 1982 on the property tax system. Because it believed the system was unfair and discriminatory, BN was required to deposit with the federal court approximately 70% of its taxes pending the outcome of those suits. Because we don not know what legislation may now be enacted, it is impossible at this point to say whether a legal challenge will be brought or what impact there may be on your locality.

Inclusion of net and gross proceeds in the proposed legislation will virtually assure a legal challenge. The Revenue Oversight Committee's own expert recommended that Montana, in attempting to comply with federal law, should not include net and gross proceeds in its property tax system. No other state, in attempting to comply with federal law, has included net and gross proceeds in its property tax system.

While HB 240, as transmitted to the Senate, may not achieve full compliance with the 4R Act, it narrows the legal issues and reduces the potential exposure of local governments to a successful legal challenge by congressionally protected taxpayers. In contrast, any further amendments to HB 240 which involve net and gross proceeds expand the issues and increase the potential exposure of local governments.

It is imperative that the Legislature adopt a system that is fair and equitable and which complies with mandates of Congress. Burlington Northern urges that you reject any amendments to HB 240 or the other bills that would include the concept of taxes based on net or gross proceeds, or otherwise expand the issues for potential litigation between the taxpayer and the Department of Revenue.

Dennis McKinn

HB 240

be amended as follows:

1. Page 28 through page 29

Strike: subsection (3) in its entirety

Insert: "(3) R = A/B WHERE:

(A) A IS THE TOTAL STATEWIDE TAXABLE VALUE OF ALL COMMERCIAL PROPERTY AS COMMERCIAL PROPERTY IS DESCRIBED IN 15-1-101

(d), INCLUDING CLASS I AND CLASS 2 PROPERTY AND,

(B) B IS THE TOTAL STATEWIDE MARKET VALUE OF ALL COMMERCIAL PROPERTY AS COMMERCIAL PROPERTY IS DESCRIBED IN 15-1-101 (d)

OF THIS ACT, INCLUDING CLASS I AND CLASS 2 PROPERTY,"

2. Page 30, line 9.

After: "Property"

Insert: "AND REDUCE THE TAXABLE VALUE OF PROPERTY DESCRIBED IN SUBSECTION (4) ONLY, BY MULTIPLYING THE TOTAL STATEWIDE TAXABLE VALUE OF PROPERTY DESCRIBED IN SUBSECTION (4) BY "M" PRIOR TO CALCULATING "A" IN SUBSECTION (3) "

3. Page 30, line 10.

Following: line 9

Insert: "(C) THE ADJUSTMENT REFERRED TO IN (4) (B) WILL BE MADE BEGINNING JANUARY 1, 1986 AND IN EACH SUSEQUENT TAX YEAR TO EQUALIZE THE RAILROAD AND AIRLINE TAXABLE VALUES. "

4. Page 30, line 13.

After: "Act]"

Strike: ":"

Insert: "AND,"

5. Page 30, line 14.

Strike: "(A) "

After: "IS THE"

Insert: "EQUALIZED"

HB 240 -- Exhibit 2
April 25, 1985

6. Page 30, line 16.

Strike: "IN MONTANA; AND"

Insert: "AS COMMERCIAL PROPERTY IS DEFINED IN 15-1-101 (d)
OF THIS ACT."

7. Page 30, Line 17.

Strike: Lines 17 through 19 in their entirety

8. Page 37, line 24.

After: "Severability."

Insert: "(1) SHOULD 15-6-134 (3) BE INVALIDATED BY COURT
DECISIONS ARISING FROM PROPERTY TAX APPEALS FILED IN 1986 OR
SUBSEQUENT YEARS, THE PROPERTY TAX CLASSES DESCRIBED IN
SECTION 12 AND SECTION 13 SHALL REPLACE CLASS FOUR PROPERTY
AS CONTAINED IN THIS ACT."

ROLL CALL VOTE

SENATE TAXATION COMMITTEE 49 th Legislative Session -- 1985

Time _____ Date April 25, 1985 Room 413-415

Motion: that HB240 be concurred in
~~Halligan~~ Goodover

Name	Yes	No	Excused
Senator Brown		✓	
Senator Eck		✓	
Senator Goodover	✓		
Senator Hager	✓		
Senator Halligan		✓	
Senator Hirsch		✓	
Senator Lybeck		✓	
Senator Mazurek		✓	
Senator McCallum	✓		
Senator Neuman		✓	
Senator Severson	✓		
Senator Towe		✓	

ROLL CALL VOTE

SENATE TAXATION COMMITTEE 49 th Legislative Session -- 1985

Time _____ Date April 25, 1985 Room 413-415

Motion: amend HB 240 per Exhibit 2
Halligan

Name	Yes	No	Excused
Senator Brown	✓		
Senator Eck	✓		
Senator Goodover		✓	
Senator Hager		✓	
Senator Halligan	✓		
Senator Hirsch	✓		
Senator Lybeck	✓		
Senator Mazurek	✓		
Senator McCallum		✓	
Senator Neuman	✓		
Senator Severson		✓	
Senator Towe	✓		

ROLL CALL VOTE

SENATE TAXATION COMMITTEE 49 th Legislative Session -- 1985

Time _____ Date April 25, 1985 Room 413-415

Motion: that HB 240 be as
amended ~~Goodover~~
Halligan

Name	Yes	No	Excused <i>absent</i>
Senator Brown			✓
Senator Eck	✓		
Senator Goodover		✓	
Senator Hager		✓	
Senator Halligan	✓		
Senator Hirsch	✓		
Senator Lybeck	✓		
Senator Mazurek	✓		
Senator McCallum		✓	
Senator Neuman	✓		
Senator Severson		✓	
Senator Towe	✓		

STANDING COMMITTEE REPORT Page 1 of 2.

April 25, 1985

MR. PRESIDENT

We, your committee on.....

Taxation

having had under consideration.....

House Bill

240

No.....

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(Senator Towe)

House Bill

240

Respectfully report as follows: That.....

No.....

be amended as follows:

1. Page 28, line 3 through line 19, page 29.

Strike: subsection (3) in its entirety

Insert: "(3) $R = A/B$ where:

(a) A is the total statewide taxable value of all commercial property as commercial property is described in 15-1-101

(d), including class 1 and class 2 property and,

(b) R is the total statewide market value of all commercial property as commercial property is described in 15-1-101

(d), including class 1 and class 2 property."

2. Page 30, line 9.

Following: "PROPERTY"

Insert: "and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4) by "X" prior to calculating "A" in subsection (3)"

3. Page 30.

Following: line 2.

Insert: "(c) the adjustment referred to in (4) (b) will be made beginning January 1, 1986 and in each subsequent tax year to equalize the railroad and airline taxable values."

XXXXX
DO PASS

XXXXXXXXX
DO NOT PASS

continued

Chairman.

4. Page 30, line 13.

Following: "ACT!"

Strike: "!"

Insert: "and,"

5. Page 30, line 14.

Strike: "(A)"

Following: "IS THE"

Insert: "equalized"

6. Page 30, line 16.

Strike: "IN MONTANA; AND"

Insert: "as commercial property is defined in 15-1-101 (d)."

7. Page 30, lines 17 through 19.

Strike: Lines 17 through 19 in their entirety

AND AS AMENDED
BE CONCURRED IN

Senator Thomas E. Towe, Chairman