

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 27, 1986

The second meeting of the Senate Taxation Committee was called to order by Chairman Thomas E. Towe at 11:00 am, Thursday, at the State Capitol.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF SB 9: Senator Jack Galt, Senate District No. 16, was introduced as chief sponsor of the bill. He said that the bill would authorize the Department of Natural Resources and Conservation to fund water development bonds in the agricultural community by using the interest and income from the current bonds. Currently he said that most of the funds used were from a percentage of the coal tax, but as that had decreased the need for alternative funding sources had surfaced. He said that it was strictly a loan program, that agriculture was dealing with other serious problems and these funds should be freed for this purpose.

PROPONENTS

Ms. Jo Brunner, Executive Secretary of the Montana Water Development Council, spoke in favor of the bill.

OPPONENTS

None were heard.

Mr. Larry Fasbender, Director of the Department of Natural Resources and Conservation, in response to questions, said that the Department was short of funds to use to sell these bonds. He said that allowing the Department to use the interest and income on the bonds would solve the revenue problem. He distinguished between this and other water development programs by saying this program was the only one available to individuals and not subject to legislative review.

Questions from the committee were called for.

In response to a question from Senator McCallum, Director Fasbender said that 1 1/4 percent of the coal tax now goes to repaying the bonds. He said that can cover all the bonds that are outstanding at this time. This bill would allow income from existing loans to expand the program. He said that default would be the only problem, and that no defaults have occurred at this time.

In response to a question from Senator Towe, Director Fasbender said that a careful cashflow analysis would be required. He said that the bill does give the Department a great deal of flexibility.

Senator Galt closed saying that no general fund money was being used and that this merely allowed the Department to use dollars that were already there.

Senator Mazurek assumed the chair.

CONSIDERATION OF SB 10: Senator Towe said that the purpose of the bill is to change procedures for tax protest payment. He said that now taxes paid to local government can be paid under protest. He said all or any part of that amount can be placed in escrow. The taxpayer can put the entire amount into escrow, not just the protested amount. Nothing in the law prevents this. This bill would change that and allow only the portion genuinely contested to go into escrow. The bill as written would apply to class 11 and class 15 property taxpayers. He noted the procedure that would be used on page 3. He said that at least some technical amendment of the bill would be necessary. He said that not more than 50% of the total tax could be diverted from escrow. He noted that history shows that with few exceptions not more than 50% has been contested and that judgments have never exceeded that amount. Thus he felt that the 50% figure would protect the local government entities from incurring a large debt by not having in an escrow account the amount of taxes that might need to be returned to a taxpayer. He said that the bill might also be amended to make it applicable to all classes of property.

PROPONENTS

Mr. Gordon Morris, Executive Director of the Montana Association of Counties, said they very strongly support SB 10. He suggested that the ability to use the remaining 50% be discretionary and that the bill not require the county commissioners to use the funds. He noted that the Revenue Oversight Committee had studied this and this bill was a step in the right direction.

OPPONENTS

Mr. Mike Zimmerman, an attorney for the Montana Power Company, raised an objection to the bill because it technically would limit a Class 11 taxpayer to challenge more than 50% of a tax bill. He said the bill seemed to limit the right of the taxpayer to protest.

Chairman Towe distributed to the committee Exhibit 1. These amendments addressed the problem Mr. Zimmerman raised.

Mr. Leo Barry, Burlington Northern, said that his company would want the same amendment. He also noted that it could be a problem in just limiting the provisions of the bill to two classes of property taxpayers.

Mr. Keith Anderson of the Montana Taxpayers Association said that if a judgment could not be satisfied by the escrow account a new tax constituency would be required to pay the obligations of a former constituency. He felt the pay back provisions warranted opposition to the bill.

Taxation Committee

March 27, 1986

page three

Mr. Doug Schmidt, Jefferson County Commissioner, said that he questions the form of the bill, although he is not necessarily an opponent. He said that he did not want the counties to be placed in a serious debt situation. He said that bond issues would be the only avenue to generate funding if that happened.

Senator Towe asked if making it a voluntary provision would help. He said it would still be a difficult temptation to fund budgets with money that was protested.

Questions from the committee were called for.

Senator Mazurek asked what problems with HB 704 caused the Jefferson County Commission not to use the bill. Mr. Schmidt answered that the bill required all jurisdictions or no jurisdictions to use the provisions, and while they would have been helpful to the school districts, they did not work at the county level. He said it would have been good for the schools.

Senator Mazurek asked Senator Towe why he was introducing the bill now. Senator Towe said that first it was important to let the counties and local governments know that at least half of the BN taxes would be available if they were paid under protest. Second, he said that he did not think the people could wait for the Revenue Oversight Committee. He said that while this doesn't solve all the problems, it was one clear and easy thing that could be done. He said there was not much dispute about this part of the question.

Senator Towe, in answer to a question from Senator McCallum said that the right to protest cannot be removed and that there must be provision for getting the money paid back if necessary.

Mr. Greg Groepper, Department of Revenue, said again that there were only three instances where the protested amount was greater than 50 percent. He said that two settled for less than that amount.

Senator Towe said few situations would ever need to use these pay back provisions.

Senator Goodover suggested that the bill should come before the budget session in June.

Mr. Leo Barry, Burlington Northern, said that there was substantial legal question about whether the bill would address the BN payment made in protest. He said that would be litigated in federal court and the money would go to the federal court security account and not the counties anyway. He said the bill may not touch that particular problem.

Mr. Groepper said that was in fact what happened in Judge Battin's court in 1980.

Senator Towe noted that the portion of the case related to value would not come under the 4R's Act and would be litigated in state court.

Mr. Gene Phillips said that in the case of Bonneville Power Administration the protested taxes were paid in the counties.

Senator Towe closed saying that the bill doesn't cover everything, but that it does do something obvious and effective. He said the entire amount paid should not be put into escrow when only a small amount of that was protested. He said the 50% rule, while not perfect, was implemented to protect local governments and that the bill would work to relieve their fears and concerns.

CONSIDERATION OF SB 11: Senator Towe was recognized as chief sponsor of the bill. He said that this bill would allow the settlement with the airlines to stand as fair and proper and remove the airline agreement from consideration beside the railroad agreement. He said that is all the bill does and that it does it by separating the airline into a separate class of property.

PROPOSERS

Mr. Les Loble, representing the airlines, said that they support the bill.

OPPOSERS

None were heard.

Senator Halligan asked if the equalization problem still existed. Senator Towe said not if the airlines were in a separate class.

Senator Goodover said that previously the Legislature had tried to reduce the number of classes and now a new one was being added. Senator Towe agreed and said he did not know another way to do what needed to be done.

Senator Mazurek asked what would happen with the airline agreement if both SB 8 and SB 11 were defeated. Mr. Loble answered that the settlement would be void as to the tax rate but that other parts of the settlement would still be effective.

Senator Towe closed without comment.

FURTHER CONSIDERATION OF SB 8:

MOTION: Senator Brown moved that SB 8 do not pass. He said there were two groups of people against the bill--the Republicans and the Democrats. He said that the process by which the settlement was arrived at was the most objectionable thing. He said it was the result of a large taxpayer being able to cut a deal to lower their tax rate as set by the elected Legislature. He said that it was inherently unfair.

Senator Eck said she shared those objections. She said that there was not enough information available to make a decision and that the figures were too confusing without more time. She said that she would prefer now to see open meeting promoted to grapple with the figures.

Senator Neuman made an inquiry about the value of Burlington Northern stock. Mr. Stan Kalczyk, attorney for BN, said that it had approximately doubled in value. He said it was up from about \$35 a share to \$75.

Senator Severson said that there is a certain way established to protest taxes and that these methods must be used.

Senator McCallum said that 12 percent should be used for all utilities. He said it seemed that BN agreed to pay 10.6 million and that the figures were used to fit the amount.

Senator Mazurek said he shared those reservations, but that they ignored the realities of litigation. He said the litigation would be long and costly. He said the Governor wants to make peace with BN and that the Governor has been upfront with the Legislature about what the settlement represents.

Senator Hirsch said he felt a vote for the settlement was a vote for an unfair business climate in Montana. He said he can't justify the different tax rate for the railroads. He said the purpose of the 4R's Act is to tax fairly and that the settlement violates that purpose. He said if the settlement is ratified he could not justify not treating others the same in 1987.

Senator Goodover again suggested that the original HB 240 be revived.

Senator Hager said that at least the bill gives us a signed agreement which has not before been available. He said he didn't want to kill the bill in case it was the last alternative.

MOTION: Senator Hager moved that SB 8 be tabled until Monday, March 31.

Senator Towe spoke against the motion saying that the bill should be killed. He said a major error was made in the negotiation of the agreement because the tax staffs were not involved. He said that the railroad's own expert takes the position that net and gross proceeds are properly included. He said the analysis of the legal argument is in the State's favor and that the settlement is too low.

Senator Mazurek had clarified that tabling until Monday and tabling were procedurally the same motion.

Senator Brown said he had just recieved notice that the House Taxation Committee had passed HB 15 which would tax the railroads at 12 percent. He said that his objections to the bill were fundamental and that the bill should be killed and not tabled.

Senator Halligan said he would support the motion to table. He said that he wanted some commendation for the people who did the negotiations and that the bill should not be just killed.

Question was called on Seantor Hager's motion to table until March 31. Senators Eck, Goodover, Hager, Halligan and Neuman voted yes; Senators Brown, Lybeck, McCallum, Severson, Mazurek and Towe voted no. The motion failed.

Senator Neuman said the uncertainty is the crippling part. He said that the Governor has tried to do something, that he would prefer the settlement to long litigation. He said that BN will pay more anyway because of their increasing value. He said that if the State extends this settlement that perhaps BN will pass the savings on to farmers. He said that BN is our lifeline to exports. He said everybody would gain if Montana's economy could thrive.

Senator Goodover said he still wanted to see the other bills in the Legislature on this subject.

MOTION: Senator Goodover moved that SB 8 be tabled. Question was called. Senators Eck, Goodover, Hager, Halligan, McCallum and Neuman voted yes; Senators Brown, Lybeck, Severson, Mazurek and Towe voted no. The motion carried.

FURTHER CONSIDERATION OF SB 9:

MOTION: Senator Mazurek moved that SB 9 do pass. The motion carried unanimously.

FURTHER CONSIDERATION OF SB 10: Chairman Towe suggested that the bill needed to be amended in keeping with the suggestion offered in Exhibit 1. The amendments were discussed.

MOTION: Senator Lybeck moved that SB 10 be amended per Exhibit 1 and further amended on page 3, line 20 by adding at the beginning of the line "unless the board of county commissioners decides otherwise". The motion carried unanimously.

MOTION: Senator Mazurek moved that SB 10 be amended as follows:

1. Page 4, lines 1 and 2.
Strike: subsection (b) in its entirety
Renumber: subsequent subsection.

The motion carried unanimously.

Senator Towe then offered to the committee amendments (Exhibit 2) which dealt with the policy question of including all classes of property.

MOTION: Senator Halligan moved that SB 10 be amended per Exhibit 2.

After discussion Senator Halligan amended his motion to exclude amendment number 2. Question was called and the motion carried unanimously.

MOTION: Senator Brown moved that SB 10 be amended by striking "or" on page 5, line 18 and inserting "and". The motion carried unanimously.

Discussion followed about whether or not the matter should be left to the Revenue Oversight Committee. Senator Hager clarified that the protested amount in excess of 50% could be spent. Senator Goodover said that he didn't understand it and didn't want it expalined. Senator Towe said that it is a frustrating issue because local governments were left in a bind and HB 704 did not solve their problem. He said that this bill with minimal other implications does help.

MOTION: Senator Eck moved that SB 10 do pass as amended.

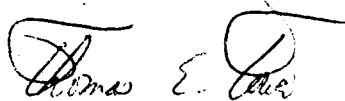
MOTION: Senator Goodover moved that SB 10 be tabled. Senators Goodover, Halligan, McCallum and Mazurek voted yes; Senators Brown Eck, Hager, Lybeck, Neuman, Severson and Towe voted no. The motion failed.

Question was then called on the motion that SB 10 do pass. Senators Brown, Eck, Hirsch, Lybeck, Neuman, Severson and Towe voted yes; Senators Goodover, Hager, Halligan, McCallum and Mazurek voted no. The motion carried.

FURTHER CONSIDERATION OF SB 11:

MOTION: Senator Mazurek moved that SB 11 do pass. With Senators Neuman, Goodover and Hager voting no and all other members voting yes, the motion carried.

Chairman Towe adjourned the meeting at 1:15 pm.



Chairman Thomas E. Towe

Senate Taxation Committee

ROLL CALL VOTE

Date 27 March 86

Bill No. _____

Motion: _____

Attendance

	YES	NO
Senator Brown	✓	
Senator Eck	✓	
Senator Goodover	✓	
Senator Hager	✓	
Senator Halligan	✓	
Senator Hirsch	✓	
Senator Lybeck	✓	
Senator McCallum	✓	
Senator Neuman	✓	
Senator Severson	✓	
Senator Mazurek	✓	
Chairman Towe	✓	

(This sheet to be used by those testifying on a bill.)

NAME: Lester H. Loble IV DATE: 3/27/86

ADDRESS: PO Box 176

PHONE: 442 0070

REPRESENTING WHOM? Northwest Airlines Inc

APPEARING ON WHICH PROPOSAL: SR No 11

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Amendments to SB 10, introduced copy.

1. Page 3, line 21.
Following: "taxes"
Strike: "paid under"
Insert: "deposited in the"
Following: "protest"
Insert: "fund"

SB10.2

Amendments to SB 10, introduced copy.

1. Title, lines 5 and 6.

Following: "PROTEST" on line 5

Strike: "FOR PROPERTY IN CLASS ELEVEN AND CLASS FIFTEEN"

2. Page 2, line 24.

Following: "All"

Strike: "Except as provided in subsection (8), all"

Insert: "All"

3. Page 3, line 9.

Following: "this"

Strike: "in a protest"

Insert: "of this"

4. Page 3, line 10.

Following: "provisien"

Strike: "provisions"

Insert: "provision"

Following: "the"

Insert: "the"

5. Page 3, line 11.

Following: "fund-does"

Strike: "funds do"

Insert: "fund does"

6. Page 3, lines 13 through 20.

Following: "(a)" on line 13

Strike: remainder of line 13 through "tax." on line 20

Following: "of" on line 20

Strike: "class eleven or class fifteen"

7. Page 5, line 12.

Following: "tax"

Strike: "on class eleven or class fifteen property"

SB10.1

STANDING COMMITTEE REPORT

March 27,

19. 86

MR. PRESIDENT

Taxation

We, your committee on.....

Senate Bill

10

having had under consideration.....

No.

first

reading copy (white)
color

DEVISING PROPERTY TAX PROTEST PROCESS FOR CLASS 11 and 15 PROPERTY

Senate Bill

10

Respectfully report as follows: That.....

be amended as follows:

No.

1. Title, lines 5 and 6.

Following: "PROTEST" on line 5

Strike: "FOR PROPERTY IN CLASS ELEVEN AND CLASS FIFTEEN"

2. Page 3, line 9.

Following: "this"

Strike: "in a protest"

Insert: "of this"

3. Page 3, line 10.

Following: "provision"

Strike: "provisions"

Insert: "provision"

Following: "the"

Insert: "the"

4. Page 3, line 11.

Following: "fund-does"

Strike: "funds do"

Insert: "fund does"

5. Page 3, lines 13 through 20.

Following: "(a)" on line 13

Strike: remainder of line 13 through "The" on line 20

Insert: "Unless the board of county commissioners decides otherwise, the"

Following: "of" on line 20

Strike: "class eleven or class fifteen"

XXXXXX

XXXXXXXXXX

Senator Thomas E. Tove,

Chairman.

6. Page 3, line 21.

Following: "taxes"

Strike: "paid under"

Insert: "deposited in the"

Following: "protest"

Insert: "fund"

7. Page 4, lines 1 and 2.

Strike: subsection (b) in its entirety

Renumber: subsequent subsection

8. Page 5, line 12.

Following: "tax"

Strike: "on class eleven or class fifteen property"

9. Page 5, line 18.

Strike: "or"

Insert: "and"

SB10.1

DO PASS AS AMENDED

~~DO NOT PASS~~