

MINUTES OF THE MEETING  
TAXATION COMMITTEE  
MONTANA STATE SENATE  
Third Special Session

June 21, 1986

The fifth meeting of the Senate Taxation Committee was called to order by Chairman Thomas E. Towe at 8:07 am, Saturday, in Room 413-415 of the Capitol.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF SB 12: Senator Chris Christiaens, Senate District 17, was recognized as chief sponsor of the bill. He said that the Resource Indemnity Trust deposits would be diverted to the general fund for purposes of funding environmental work in the state. He discussed how the trust functioned, noted its constitutional status and discussed the amounts that are collected by the trust. He said that it does not appropriate any of the principle of the trust. He said that the constitutional discretion of the Legislature should be exercised at this time.

PROPOSERS

Mr. Larry Fasbender, Director of the Department of Natural Resources and Conservation, appeared in favor of the bill, noting that he was the sponsor of the original piece of legislation creating the trust. He said the intention had been to use taxes to help the state through severe times and he thought the time was now. He said the method proposed does not violate the constitution. He said the choices are not easy ones, but that the operation of government must be funded and that the money would be used for the same purposes that the trust interest is currently used for. He said that it is not an easy, but is a necessary thing to do.

Mr. Dave Hunter, Director of the Office of Budget and Program Planning, addressed the three-year length of the diversion. He said that looking at the history of difficult economic times in Montana he felt that the situation should be rectified in three years. He said that by then agriculture, oil and gas and personal income should all be recovering. Thus, he predicted a growth in revenue sources by 1989. He said that the \$4 million from this bill and the \$7 million in the next bill (SB 13) were indispensable to solving the budget crunch of this special session.

OPPOSERS

Mr. Gary Langley, Executive Director of the Montana Mining Association, said they oppose the use of the Resource Indemnity Trust (RIT) for any purpose other than that related to the general extraction of the taxed items. He said they had no quarrel with the Governor generally, but that this money is to go into the trust and should be deposited there, or they feared that another tax would be levied to accomplish its original purpose.

Mr. George Oschenski, Montana Environmental Information Center, said they also oppose SB 12. He said there are constitutional and legal problems with the bill. He said the tax had been levied to get important problems addressed. He said that within a short period of time the trust money would be needed to match federal funds. He said that already this fund is paying for general government functions that could be questioned. He said there is no way economic forecasting can be done three years ahead to be certain that this money will not still be needed by the general fund. He said that the EIC will not support any new taxes on the industry to do what was intended for the RIT.

Mr. Ted Rollins, ASARCO, said that his organization supports the Montana Mining Association positions.

Ms. Janelle Fallan, Executive Director of the Montana Petroleum Association, said that petroleum companies have been cutting their budgets 20 to 40 percent to try to survive. She said that 67 to 70 percent of the RIT has come from the petroleum industry, while little has been returned for reclamation from oil and gas. She said the industry has a proven reclamation record and that the dollars should be used for their original purpose.

Mr. Don Peoples, Executive Director of Butte-Silver Bow, said that there is a constitutional problem with diverting funds away from the RIT. He said that he represents an area bearing deep, serious scars of mining. He said the problems are not only aesthetic, but also health related. He said significant progress has been made and that the legislative commitment not to divert RIT funds into the general fund should be continued. He said they have asked the Supreme Court to take original jurisdiction to give a declaratory judgment in this matter. He said that they certainly sympathized with the serious budget problems of the state.

Mr. Jack Heinrick, Stillwater Protective Association of the Northern Plains Resource Council and a Stillwater County rancher, said that they oppose the bill. He said that first, it is in violation of Article 9, Section 2 of the Constitution; that it is not a 3-year transfer, but likely a permanent allocation to the general fund and that there are other ways of raising money. He suggested that Senator Neuman's bill to cap non-farm income used on income taxes could raise substantial dollars for the state.

Representative Dave Brown, Butte-Silver Bow legislator, said that he opposed the bill. He read from the minutes of the meeting in which then Senator Larry Fasbender had supported the legislation.

Mr. Ward Shanahan, an attorney for the Montana Mining Association, submitted his testimony in writing (Exhibit 1). He said that the bill would open a hole which would bleed endlessly into the general fund.

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Ms. Jo Brunner, Executive Director of the Montana Water Development Association, agreed that eventually a permanent diversion of funding would occur. She said she also was concerned about defining "total environment". She noted that the programs eliminated would be local programs.

Senator Dorothy Eck, Senate District 40, also opposed the bill. She said the discussions of how RIT funding should be used are honest ones. She said that the mining industry opposed the tax, but that they also tried to tie it to mining and reclamation. Constitutionally the placement of the RIT should be further researched, she said. She said that whether it is properly used now or not, many environmental problems do need addressing. She said that she knew the ongoing functions of state government needed to be funded and that some things such as collecting water data, were particularly important as they related to this bill. She said the long-term position must be examined regarding the use of the funds. She said this was not necessary to balance the state budget and more appropriate means of funding should be found.

Chairman Towe said he needn't testify because the mining interests had so well represented his point of view in this case.

Questions from the committee were called for.

Senator Eck asked Mr. Fasbender how this was designated for this purpose in the general fund? Mr. Fasbender then explained how RIT money was used and said that it went for these purposes. He said many of these programs already receive general fund support.

Mr. Hunter assured Senator Mazurek that the money can be exactly tracked. He said that HB 500 is specifically amended as to identify RIT diversions.

In answer to a question by Senator Towe, Mr. Fasbender explained that in the current biennium the RIT interest is going both into the general fund and into the other projects. In the second year very little goes to the general fund.

In response to a question from Senator McCallum, Mr. Fasbender said that the trust cannot be violated constitutionally but that if the diversion into the trust does not occur that programs will be cut back.

Mr. Fasbender answered a question from Senator Eck saying that currently one-half of the \$9 million was used for the operation of state government, while in the second year it would go largely to the projects. He said that long range planning had asked them to continue to accept applications and to make priority recommendations to the Legislature for action. He said that all 22 projects previously funded are okay, and that some will not need additional

Senator Hirsch asked Mr. Shanahan to address the legal questions. Mr. Shanahan said that the Constitution directs creation of the fund and what money must go into it. He said that the definition of "total environment" would be left to the Supreme Court.

Senator Halligan asked if this would be considered an appropriation bill. Mr. Jim Lear, committee staff from Legislative Council, said that he was not prepared to address this.

Senator Towe asked the Governor's attorney, Mr. John North, to discuss the legal issues. Mr. North said that the Legislature was required to provide for the fund by depositing taxes as they shall "from time-to-time impose". He said that since 1973 one-half of one percent had been the tax, but that the Legislature had the constitutional right to change that. Senator Towe said that he interpreted that to mean that a repeal of the tax entirely was okay, but that if it was levied it had to go into this fund. Mr. North said his position was that it could not be defined as principle until it was deposited into the trust. He illustrated this by showing the difference in the coal tax trust language. He said that the taxes could be levied for another purpose.

Senator Towe then asked Mr. Hunter to provide the committee with information about how this would fit into the amendments to HB 500. He asked also for information showing the tracing of the money.

Mr. Lear then was prepared to address the appropriation issue. He said that in comparing this to coal severance tax trust it seemed that the bill was in order.

Senator Christiaens then closed on the bill saying that the Legislative Fiscal Analyst had recommended elimination of the trust and that the Governor's choice had been to fund the programs. He said, however, that priorities for the money have changed and that as the funds would be used only for those programs already funded by the interest he felt it should be supported. He said that all interest from current principle would be used as it is now.

The hearing on SB 12 was then closed.

CONSIDERATION OF SB 13: Senator Dave Fuller, Senate District 22, was recognized as chief sponsor of the bill. He said that he was supporting this diversion of dollars from the education trust fund as a part of the Governor's package. He said the bill would divert \$21 million over the next three years from the Local Impact Educational Trust Fund into the general fund. He said that long range planning had heard the concept but not the bill. He also submitted to the committee a necessary technical amendment (Exhibit 2).

Senator Fuller concluded saying that he did not like the bill, that he did not philosophically support it and that his support was totally pragmatic. He said that the only alternative to bills like this would be to raise taxes in a time of recession and said

he opposed that.

#### PROPOSERS

Mr. David Hunter, Director of the Office of Budget and Program Planning, said that the bill was a pragmatic solution to help the state with the budget problems. He said that not a single WAMI or WICHI student would be cut off. He said that it would freeze the trust, but that the same amount would continue to be available. He said it was a pragmatic way to reduce the dollars in savings when they were needed elsewhere.

#### OPPOSERS

Dr. Bill Anderson, Office of Public Instruction, said that in 1949 the state funded local schools at a level of about 92 to 93 percent. He said now it is down to 53 percent and that the local property tax payers are picking up the difference. He said that this bill would leave local property tax payers with 75 percent of the burden. He said that already with the cuts the state was looking at a \$34 million shortfall in education. He said the 1987 shortfall would be even greater and the property tax payer would be hit even harder.

Mr. Phil Campbell, Montana Education Association, said that in light of the Senate's action of yesterday in freezing the level of the school Foundation Program his organization opposed the Legislature taking even more from education. He said the raid on the trust would be long term and that the Governor should be looking at other revenue sources. He said that divert dollars earmarked for education is wrong and not the proper way to handle this.

Mr. Bruce Moerer, Executive Director of the Montana School Boards Association, said that he opposed the bill.

Mr. Russ Brown, Northern Plains Resource Council, said that his organization opposed all reallocation of coal tax money and that the money would likely not return to its original purpose.

Mr. Mike Dahlem, Montana Federation of Teachers, said that the bill was a band-aid approach when long-term solutions were needed.

Questions from the committee were called for.

In response to a question from Senator Mazurek, Mr. Hunter said that Senator Regan's SB 6 would move mine leasing dollars to the Foundation Program and coal tax trust dollars to the Foundation Program. He said that would be separate money. The impact of Senator Regan's bill was roughly estimated at about \$17 million.

Senator Towe clarified the amendments with Mr. Jim Oppedahl of the Office of Budget and Program Planning.

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In response to a question, Mr. Hunter said that it was the assessment of the Governor's office that Montana would return to a more normal economy in the next three years. He said that was the reason for the sunset in the bill at the end of FY 89. He noted that it would again require Legislative action to continue the diversion. He said if the revenue difficulties are not resolved by then, then other priorities would be set.

Senator Towe asked Mr. Hunter if it made sense to diminish the Foundation Program. Mr. Hunter said that in the short term it was a good move to divert the deposits to the general fund. He said the discussion was based on a judgment of the economy and that the Governor's assessment was that times would be less difficult in three years.

Senator Fuller closed saying that this was one of the cars in the train of the Governor's package and that it needed to get over the mountain.

The hearing on SB 13 was then closed.

FURTHER CONSIDERATION OF SB 12:

MOTION: Senator Mazurek moved that SB 12 be tabled.

Question was called and a roll call vote was taken. Senators Brown, Eck, Hager, Hirsch, Lybeck, Severson, Mazurek and Towe voted yes; Senators Goodover, Halligan, McCallum and Neuman voted no. The motion carried.

FURTHER CONSIDERATION OF SB 13:

MOTION: Senator Goodover moved that SB 13 be amended as follows:

1. Page 2, line 12.  
Following: "26%"  
Strike: "5.28%"  
Insert: "6%"

Following: "July 1, 1987,"  
Strike: "13.3%"  
Insert: "17.5%"

The motion carried unanimously.

MOTION: Senator Goodover moved that SB 13 do pass as amended.

He said that he supported this because he supported all efforts to de-earmark funds.

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Senator Eck said that she could support it more easily if it were put into the Foundation Program instead of the general fund.

Senator Severson said he would somewhat agree, but he wanted to see if the work could be done in another bill. He said he had real problems with hurting education when the bite could come out of the bureaucracy in Helena. He said that education should be the last place cut.

MOTION: Senator McCallum moved as a substitute motion that SB 13 do not pass.

Senator Towe said that he thought it shortsighted to take the money forever out of the trust and spend it. He said that would make future shortfall even more difficult to handle.

Senator Hirsch said that the bill simply means that for three years the state would be unable to save money.

Senator McCallum said that once tax is implemented it is hardly ever changed and that in his experience sunsets have not been effective. He said that if SB 13 passes, the committee should acknowledge that it would stay in place forever. He said the days of a \$50 million surplus were gone.

Senator Severson agreed saying that the general fund is simply not as accountable.

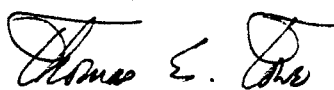
Senator Eck said that fifty percent of the Governor's cuts have come from education and thirty-six percent of that from higher education. She said some alternate revenue would need to be produced.

Senator Hirsch said that he was concerned about closing the door, wondering what the options for the next few days would be.

Senator McCallum said he wished he could help in the understanding of these things. He said it is the result of a situation that has been building up for years. He said it has been too easy to say yes to people who sincerely felt justified in their programs.

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

Chairman Towe adjourned the meeting at 9:57 a.m.

  
Chairman

519-86

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## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
George Chenski	MT. ENV. INF. CNTR	SB 12		X
Daniel Hunter	OBPP			
Jim Emmel	OBPP			
Tom Rathjens	ASARCO, Inc.			X
Edward Granahan	Hard Mining Assoc.	SB 12		X
Jim Jensen	MT. Environ. Info. Center	SB 12		✓
Mary A. Lancel	MONTANA MINING ASSN.	SB 12		✓
Bill Anderson	CPI	SB 13		X
Dave Brown	State Rep. - Butte-Silver Bow	SB 12		X
Jack Anderson	MFA / SPA	"		X
Phil Brown	North Plains	SB 12		X
Phil Campbell	MEA	SB 13		X
Dave Deppen	MEEA			
Mardo A. Campbell	MT. Coal Board			
Mike Dahlman	NET			
Dave Brown	State Rep. Butte-Silver Bow	SB-13		X



STATEMENT OF WARD SHANAHAN  
SENATE BILL 12

Members of the Committee:

Senate Bill 12 is an attempt to abandon the objectives of the Resource Indemnity Trust established by Article IX Section 2 of the 1972 Constitution. This provision and particularly subsections 2 and 3 were adopted by the people of Montana as a special amendment.

My principal objection to Senate Bill 12 is that it wholly ignores the clear directive of the Constitution to establish a fund of 100 million dollars known as the Resource Indemnity Trust Fund. That fund has not yet been established. In fact it is only half way to its goal.

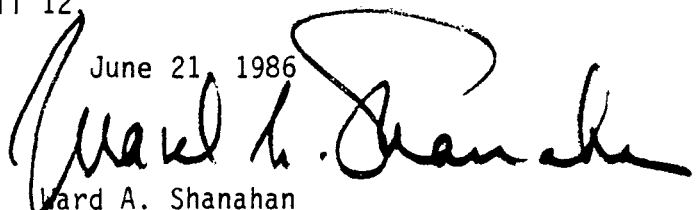
We in the mineral industry know all too well the principal argument which convinced the people of Montana to pass this Constitutional provision. It was, as you all remember, that minerals are a non-renewable resource, and something had to be created as a permanent replacement for these lost assets. Senate Bill 12 defeats this purpose.

The second and major objection to Senate Bill 12 is that it is further subject to legal challenge by ignoring the clear "RECLAMATION" purpose of Article IX Section 2 (Mont Const. 1972). The sponsors have attempted to do indirectly, that which you would not allow them to do directly, divert tax money intended for creation of the Resource Indemnity Trust Fund into the general fund. This is done by a transparent insertions of the words "total environment" into Section 1 of the Bill. The casual reader is led to believe something laudable is intended by this, but its real intent is to create a breach in the fund that will bleed endlessly into the general fund. Total environment is meant to mean, anything you want it to mean, when convenience requires it.

Our industry has been made to pay the people of Montana an indemnity for damage we are accused of causing. A trust has been established to manage the use of these funds. The purpose of this fund is to rectify this damage. When you have diverted it as Senate Bill 12 proposes, will we be asked once again to pay a bill we thought we had already paid, or were paying?

Our industry requests that it be given fair consideration in this matter. Please reject Senate Bill 12.

June 21, 1986



Ward A. Shanahan  
Tax Committee, Montana Mining Assoc.  
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PROPOSED AMENDMENT TO SB 13  
SPECIAL SESSION 6/86  
INTRODUCED VERSION

1. Page 2, line 12.  
Following: "26%"  
Strike: "5.28%"  
Insert: "6%"

Following: "July 1, 1987,"  
Strike: "13.3%"  
Insert: "17.5%"

# NORTHERN PLAINS RESOURCE COUNCIL

Field Office  
Box 858  
Helena, MT 59624  
(406) 443-4965

Main Office  
419 Stapleton Building  
Billings, MT 59101  
(406) 248-1154

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Box 886  
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Testimony presented in opposition  
to Senate Bill 12  
by  
Jack Heyneman, Chairman NPRC

Mr. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD, MY NAME IS JACK HEYNEMAN. I LIVE AND RANCH OUTSIDE OF FISHTAIL, MT. IN STILLWATER COUNTY. I'M TESTIFYING IN OPPOSITION TO SENATE BILL 12 AS CHAIRMAN OF NORTHERN PLAINS RESOURCE COUNCIL, AND AS A MEMBER OF THE STILLWATER PROTECTIVE ASSOCIATION, AN AFFILIATE OF NORTHERN PLAINS WITH MEMBERS IN STILLWATER, CARBON AND YELLOWSTONE COUNTIES.

MR. CHAIRMAN, THE STILLWATER PROTECTIVE ASSOCIATION FORMED OVER TEN YEARS AGO TO MONITOR HARD ROCK MINING DEVELOPMENT AND TO PROTECT OUR AGRICULTURAL INTERESTS FROM THIS PERCEIVED THREAT. MANY OF OUR MEMBERS RANCHES LIE JUST OUTSIDE A GEOLOGICAL FORMATION KNOWN AS THE STILLWATER COMPLEX. NORTH AMERICA'S LARGEST KNOWN CONCENTRATION OF "STRATEGIC MINERALS", SUCH AS PLATINUM, PALLADIUM AND CHROME. IN FACT, THE STILLWATER MINING COMPANY HAS RECENTLY RECEIVED A PERMIT TO MINE PLATINUM AND PALLADIUM AT THE EVENTUAL RATE OF 1000 TONS A DAY.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. WE HAVE HAD A DIRECT INTEREST IN THE FORMATION OF THE RESOURCE INDEMNITY TRUST FUND, THE RATE OF TAXATION AND THE DISTRIBUTION OF ITS INTEREST EARNINGS FOR OVER TEN YEARS. IT IS BECAUSE OF THAT DIRECT INTEREST THAT WE RISE IN OPPOSITION TO THIS BILL'S PROPOSED REALLOCATION OF RIT FUNDS TO THE GENERAL FUND.

OUR OPPOSITION IS FOR SEVERAL REASONS WHICH I'D LIKE TO SUMMERIZE. FIRST, IT HAS ALREADY BEEN MENTIONED, AND WE STRONGLY CONCUR THAT ARTICLE IX, Section 2. OF THE MONTANA CONSTITUTION IS QUITE CLEAR WHEN IT SAYS. "ALL LANDS DISTURBED BY THE TAKING OF NATURAL RESOURCES SHALL BE RECLAIMED." AND THEN CONTINUES: "THE LEGISLATURE SHALL PROVIDE FOR A FUND, TO BE KNOWN AS THE RESOURCE INDEMNITY TRUST OF THE STATE OF

MONTANA,....." AND THEN CONCLUDES THAT THIS FUNDS PRINCIPAL SHALL REMAIN INVIOATE, AND GUAARENTEED BY THE STATE AGAINST LOSS OR DIVERSION".

\* RIT EARNINGS, ALONG WITH THE METAL MINES LICENSE TAX, ARE THE ONLY STATE SOURCES OF FUNDING FOR IMPACTS. YOU ARE PROBABLY AWARE, THROUGH OUR PAST LEGISLATIVE EFFORTS THAT WE ARE VERY CONCERNED WITH LAND AND WATER RECLAMATION THE EFFECTS OF MINING ON WATER QUALITY, AND QUANTITY. AND THE "BUST" PHASE OF MINING THE SOCIAL AND ECONOMIC IMPACTS RESULTING FROM MINING SHUTDOWN. WE HAVE QUESTIONED IN THE PAST, THE ADEQUACY OF WHAT WE CONSIDER VERY MINIMAL FUNDING AVAILABLE FOR THESE IMPACTS. AND WE FEEL THAT IT IS IMPERATIVE that RIT FUNDS ARE USED FOR MINING AND OTHER RESOURCE DEVELOPMENT IMPACTS AND NOT SIPHONED OFF FOR OTHER USES.

\* WE ARE ALSO DEEPLY CONCERNED THAT THIS WILL NOT BE A "TEMPORARY" THREE YEAR TRANSFER. AGENCIES AND INSTITUTIONS HAVE HISTORICALLY SHOWN AN AMAZING ABILITY TO EXPAND TO THE LEVEL OF FUNDING AVAILABLE, AND WERE CONVINCED THAT ONCE THIS MONEY IS REALLOCATED, IT IS GONE FOREVER.

\* FINALLY, WE CAUTION YOU AGAINST TAKING THIS SHORT TERM, BUDGETARY CRUNCH APPROACH. WE FEEL THAT WE SHOULD BE LOOKING AT METHODS OF LONG TERM REVENUE ENHANCEMENT AND OPPOSED TO TRANSFERING REVENUES THAT ARE RESULT OF A SPECIFIC TAX ON CERTAIN INDUSTRIES TO THE GENERAL FUND.

(for example)

MR. CHAIRMAN, ON BEHALF OF THE NORTHERN PLAINS RESOURCE COUNCIL AND THE STILLWATER PROTECTIVE ASSOCIATION; I THANK YOU FOR THE OPPORTUNITY TO COMMENT IN OPPOSITION TO SENATE BILL 12.