

MINUTES OF THE MEETING
TAXATION COMMITTEE
49TH LEGISLATURE
SPECIAL SESSION III
HOUSE OF REPRESENTATIVES

July 1, 1986 P.M.

The twelvth meeting of the taxation committee was called to order in room 312-1 of the state capitol by chairman Gerry Devlin at 4:12 p.m.

ROLL CALL: All members were present as were Dave Bohyer, researcher for the legislative council, and Alice Omang, secretary.

CONSIDERATION OF SENATE BILL 17: Dave Bohyer distributed to the committee exhibit 1 and 2, which are committee of the whole amendments.

Senator Eck, senate district 40, Bozeman, stated that the bill provides that they get 14 3/4 months of income tax in 1987, so it will have an impact on this year's revenue, but from then on, there will be no impact. She indicated that at the initial hearing in the senate, they had agreed to amend it so that it just included the twenty larger taxpayers.

PROPOSERS: Senator Towe, senate district 46, Billings, said that it is a good bill.

Terry Minow, representing the Montana Federation of Teachers and the Montana Public Employees' Association, indicated that this was a short-term solution to a long-term problem, but it would help them get through the next fiscal year.

Karl Gray, representing the Montana Power Company, said that she rises as a sort of an opponent on this bill, they have worked with the sponsor very closely through the course of this bill, and in the form in which it is before this committee, they have no objections to this bill as it precisely mirrors their federal withholding practices.

Taxation Committee
July 1, 1986 P.M.
Page Two

Gordon Morris, representing the Montana Association of Counties, testified that this funding goes to the local block grant program, which they think is an essential program and they support this bill.

Tom McGree, representing the Mountain Bell Telephone Company, indicated that they agree that this will mirror what they do with the federal returns and they would support this bill.

Alec Hanson, representing the Montana League of Cities and Towns, informed the committee that they support this bill as it is a method of funding about 75% of the deficit in the motor vehicle reimbursement account and they believe it is critical and important.

Bruce Moerer, representing the Montana School Boards' Association, stated that they hope this goes to fund the block grant program and funding of this program is very necessary.

George Allen, representing the Montana Retail Association, went on record as supporting this bill as amended.

Dan Bucks, deputy director of the department of revenue, said that he was neither a proponent or an opponent, but wanted to be available to answer any questions. He advised that they worked with the sponsor and other members of the senate on the language they have before them at the present time and the effect of that language will be to place these larger employers on the same withholding basis that they are on for federal purposes.

Don Peoples, chief executor for Butte-Silver Bow, wanted to be recorded as a proponent of this bill.

Taxation Committee
July 1, 1986 P.M.
Page Three

There were no further proponents.

OPPONENTS: There were none.

QUESTIONS ON SENATE BILL 17: Representative Sands asked when the senate amended this bill from \$600,000 to \$300,000, who was affected.

Mr. Bucks responded that he could not identify the companies, because the names of those companies are covered by the confidentiality statutes, but basically the employers must have at least 500 employees, and in going from \$600,000 to \$300,000, the group that is affected includes both public and private employers from federal government to local government and includes the largest corporate employers.

Chairman Devlin noted that this period just covers April, May and June and asked if this still addresses that much money.

Mr. Bucks replied that is correct and they have gone over those figures very carefully and those employers represent a significant number of the withholding in Montana. He advised that the majority of income tax is paid through withholding and this is \$8.9 million out of \$180 million in income taxes.

Chairman Devlin asked if the larger school districts would be affected by this.

Mr. Bucks answered that there are some larger districts who are affected by this as they are now affected by federal withholding.

Chairman Devlin asked if they would use this as a precedent, are there other areas of tax collection that could be used in the state.

Mr. Bucks responded that the legislature establishes the due dates for taxes and there have been other

Taxation Committee
July 1, 1986 P.M.
Page Four

proposals in prior sessions to make taxes due on an earlier basis and which ones are feasible are really dependent upon the accounting practices of the industries affected and what is desirable is entirely up to the legislature.

Chairman Devlin asked if there are other quarterly payments that could be accelerated by the legislature.

Mr. Bucks replied, "Yes."

There were no further questions.

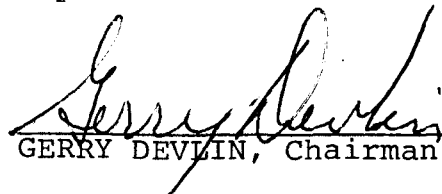
Senator Eck concluded that this is not an answer to any long-term problems, it doesn't solve the problems when they come back in January and they are going to have a whale of amount of work to do and they need to get their heads together and come up with a solution.

The hearing on this bill was closed.

EXECUTIVE SESSION

DISPOSITON OF SENATE BILL 17: Representative Harp moved that this bill BE CONCURRED IN. A vote was taken on the motion and the motion passed with 11 voting aye and 9 voting nay. See roll call vote #1.

ADJOURNMENT: There being no further business, the meeting was adjourned at 4:39 p.m.


GERRY DEVLIN, Chairman


Alice Omang, Secretary

DAILY ROLL CALL

TAXATION

COMMITTEE

49th LEGISLATIVE SESSION -- 1986

Second Special

Date

2/1/86

NAME	PRESENT	ABSENT	EXCUSED
DEVLIN, Gerry, Chairman	✓		
WILLIAMS, Mel, Vice-Chairman	✓		
ABRAMS, Hugh	✓		
ASAY, Tom	✓		
COHEN, Ben	✓		
ELLISON, Orval	✓		
GILBERT, Bob	✓		
HANSON, Marian	✓		
HARRINGTON, Dan	✓		
HARP, John	✓		
IVERSON, Dennis	✓		
KEENAN, Nancy	✓		
KOEHNKE, Francis	✓		
PATTERSON, John	✓		
RANEY, Bob	✓		
REAM, Bob	✓		
SANDS, Jack	✓		
SCHYE, Ted	✓		
SWITZER, Dean	✓		
ZABROCKI, Carl	✓		

STANDING COMMITTEE REPORT

July 1

19 8-

Mr. Speaker: We, the committee on TAXATION
report SB 17

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

third

blue

reading copy ()
color

ROLL CALL VOTE

COMMITTEE

Date: _____ Bill # SB 17 Number _____

Motion: _____

Name	Aye	Nay
DEVLIN, Gerry, Chm.		✓
WILLIAMS, Mel, V.Chm.	✓	
ABRAMS, Hugh	✓	
ASAY, Tom		✓
COHEN, Ben	✓	
ELLISON, Orval		✓
GILBERT, Bob		✓
HANSON, Marian		✓
HARRINGTON, Dan	✓	
HARP, John	✓	
IVERSON, Dennis		✓
KEENAN, Nancy	✓	
KOEHNKE, Francis	✓	
PATTERSON, John		✓
RANEY, Bob	✓	
REAM, Bob	✓	
SANDS, Jack		✓
SCHYE, Ted	✓	
SWITZER, Dean		✓
ZABROCKI, Carl	✓	
Totals	11	9

COMMITTEE OF THE WHOLE AMENDMENT

Page 1 of 2

Exhibit 1

SB 17

July 1 - P.M.

Dave Bohyer

6/30/36

DATE

6:00

TIME

MR. CHAIRMAN: I MOVE TO AMEND Senate Bill

No. 17

second

reading copy (yellow) as follows:
Color

1. Page 1, line 12

Following: "SUBSECTION"

Strike: "(4)"

Insert: "(3)"

2. Page 1, lines 16 through 18.

Following: "441" on line 16

Strike: remainder of line 16 through "YEAR" on line 18

3. Page 1, line 20.

Following: "and"

Insert: ", except as provided in subsection (2),"

4. Page 1, line 22.

Following: "QUARTER."

Insert: "Quarterly returns for employers paying weekly shall be used to summarize and adjust payments and request refunds of overpayments."

5. Page 2, line 2.

Following: "shall"

Strike: "file"

Insert: "remit"

6. Page 2, lines 3 and 4.

Following: "WEEKLY" on line 3

Strike: remainder of line 3 through "by" on line 4

Insert: "payment to"

7. Page 2, line 5.

Following: "department"

Strike: "and shall pay therewith"

Insert: "for"

(continued)

ADOPT

REJECT

June 30, 1986

8. Page 2, line 7.

Following: "preceding"

Strike: "reporting period"

Insert: "week"

9. Page 2, lines 8 and 9.

Following: "(b)" on line 8

Strike: "(3)"

Following: "insert" on line 9

Strike: "RETURN required in subsection (2)(a) and the accompanying"

Insert: "weekly"

Renumber: subsequent subsections

10. Page 2, line 13.

Following: "DUE"

Strike: "UNLESS A DIFFERENT DATE IS SPECIFIED BY THE DEPARTMENT"

SB17.2

ADOPT

REJECT

FCX

COMMITTEE OF THE WHOLE AMENDMENT

Exhibit 2

SB 17

July 1, 1986 - P.M.

Dave Bohyer

7/1/86

DATE

2:00

TIME

MR. CHAIRMAN: I MOVE TO AMEND

SB

No. 17

2nd reading copy (yellow) as follows:
Color

Page 2, line 1.

Strike: "\$600,000"

Insert: "\$300,000"

SB17.1

ADOPT

REJECT

(2)

VISITORS' REGISTER

COMMITTEE

BILL NO. SB 17

DATE _____

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>A. Morris</i>	<i>MA Co</i>	✓	
<i>Phil Campbell</i>	<i>MSA</i>	✓	
<i>GEORGE OCHENSKI</i>	<i>MEIC</i>	✓	

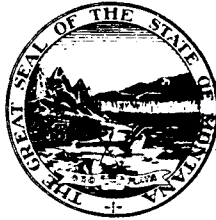
IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE MEMBERS

ALLEN C. KOLSTAD
CHAIRMAN
M. K. DANIELS
VICE CHAIRMAN
JACK E. GALT
J. D. LYNCH

Dave Boyer



Montana Legislative Council

State Capitol
Helena, MT. 59620

(406) 444-3064

HOUSE MEMBERS

RALPH S. EUDAILY
REX MANUEL
ROBERT L. MARKS
JOHN VINCENT

DIANA S. DOWLING

EXECUTIVE DIRECTOR
CODE COMMISSIONER

GREGORY J. PETESCH

DIRECTOR, LEGAL SERVICES

ROBERT PERSON

DIRECTOR, RESEARCH

SHAROLE CONNELLY

DIRECTOR, ACCOUNTING SERVICES

HENRY C. TRENK

DIRECTOR, LEGISLATIVE SERVICES

HELEN J. MACPHERSON

DIRECTOR, SECRETARIAL SERVICES

June 30, 1986

TO: Representative Mel Williams
FROM: Brenda Desmond, Staff Attorney *BCD*
RE: Taxation Constitutional Amendment Initiative

You have inquired about the legal issues involved in challenging the upcoming election on the proposed taxation constitutional amendment. In this memo I will address what I believe are the three major issues involved. These are: (1) standing of plaintiffs to bring a challenge; (2) procedure used in a challenge; and (3) potential legal bases for a challenge.

1. Standing to sue.

Standing is a requirement that the plaintiff has been injured or threatened with injury by the governmental action complained of. Standing focuses on the question of whether the person bringing the action is the proper party to fight the lawsuit, not whether the issue itself is appropriate for court decision. The Montana Supreme Court has stated that the following elements are the minimum required to establish standing to sue a governmental entity:

- (1) the complaining party must clearly allege past, present, or threatened injury to a property or civil right;
- (2) the alleged injury must be distinguishable from the injury to the public generally, but the

injury need not be ~~exclusive~~ to the complaining party; and

- (3) the issue must represent a "case" or "controversy" as is within the judicial cognizance of the state sovereignty. Mont. Wilderness Ass'n. v. Board of Health, 171 M 477 (1976).

Persons suing the state in their capacity as either electors or taxpayers who have alleged the above elements have prevailed in standing disputes in a variety of situations. In some cases, even where a party has not established the above elements, that person has been found to have standing to sue. For example, in Grossman v. State of Montana, 41 St. Rep. 804 (1984), a taxpayer/elector challenged the validity of the statutes providing for the issuance of water development bonds backed by coal severance taxes. The Supreme Court ruled that Grossman had standing even though he did not establish the second element--he had alleged no direct adverse impact that would not be felt by any other citizen resident, elector, or taxpayer of the state. The court applied its newly created "special circumstances" rule stating:

It is when special circumstances, presenting issues of an urgent or emergency nature exist requiring speedy determination, that we deem it wise to accept original jurisdiction, and to recognize standing of an ordinary taxpayer for that proceeding. 41 St. Rep. at 810.

The most recent Supreme Court challenge to a ballot issue was the case of State ex rel. Harper v. Waltermire, 41 St. Rep. 2212 (1984), in which plaintiffs filed an original action in the Supreme Court to enjoin the election on the balanced budget initiative. The plaintiffs in the case were individuals and the organization Common Cause. The plaintiffs were successful in their challenge, and the ballot issue election was enjoined. The Supreme Court did not discuss standing in its opinion.

A quick review of Montana Supreme Court cases on standing indicates that the Supreme Court generally adheres to the same rules and requires, as a condition of standing, that the three elements noted above are satisfied. The Court's application of the rules does not appear to be always consistent. The Supreme Court has applied the rules very strictly at times and at other times has been more generous to the plaintiff.

The Revenue Oversight Committee may not have better grounds for standing than does any ordinary citizen. The Committee probably does not have an interest that is different from or superior to the interest of a taxpayer that could be harmed by the adoption of the proposed constitutional amendment. As you will see in the third section of this memo, counties and other local governments and political subdivisions may have a valid objection to the proposed constitutional amendment. Thus a county, association of counties, or other local government entities may be able to satisfy the standing requirements.

2. Procedure used in a challenge.

A person wishing to challenge the proposed constitutional amendment would probably follow the procedure used in the Harper case mentioned above. In that case, plaintiffs filed an original action in the Montana Supreme Court and requested a writ of injunction and a declaration that the proposed balanced budget initiative was unconstitutional and void. Plaintiffs also sought to enjoin the secretary of state and other election officials from certifying a ballot and delivering a voter information pamphlet containing discussion of the ballot initiative.

It is probably advantageous to a plaintiff in a case of this type to file an action directly in the Supreme Court because

of the time involved in appealing a District Court decision. Although the Supreme Court exercises restraint in determining whether or not to take original jurisdiction of a dispute, both the Harper and Grossman cases support original jurisdiction of the Supreme Court in a case of this type.

3. Potential legal bases for a challenge.

The following are examples of at least three legal arguments that could be considered as bases for a challenge to the proposed taxation constitutional amendment: (1) the amendment conflicts with Article VIII, Section 2, of the Montana Constitution; (2) the amendment could cause impairment of contracts, in violation of the state and federal constitutions; and (3) the amendment initiative violates Article XIV, Section 11, of the Montana Constitution.

First, the proposed constitutional amendment may conflict with Article VIII, Section 2. This section provides: "The power to tax shall never be surrendered, suspended, or contracted away." (Emphasis added.) The initiative does not propose to repeal this section. Second, the proposed amendment may cause an illegal impairment of contracts. Local government law authorizes local governments and political subdivisions to issue general obligation bonds and to pledge the full faith and credit of the local government entity for the payment of bonds. Counties regularly finance county projects through bonding and provide a typical example of the problem that may arise. Section 7-7-2265, MCA, directs counties to levy a separate tax on county taxable property to finance payments of principal and interest on any bonds issued. If a county is no longer able to levy this tax, it may not be able to make payments agreed upon in a bonding agreement. Thus the contract between the county and the bondholders may be impaired. Third, the form of the initiative may conflict with Article XIV, Section 11, of the

Constitution. This section provides: "If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately." One interpretation of Article XIV, Section 11, is that only one section of the Constitution may be proposed to be amended in a single ballot issue. It should be pointed out that another interpretation of Article XIV, Section 11, is that any number of constitutional provisions may be proposed to be amended in a single ballot issue as long as they are of the same general subject matter.

Please let me know if you have any questions or if you need any further information.