

MINUTES OF THE MEETING
TAXATION COMMITTEE
HOUSE OF REPRESENTATIVES
50TH LEGISLATIVE SESSION

February 11, 1987

The meeting of the Taxation Committee was called to order by Chairman Ramirez, on February 11, 1987, at 9 a.m. in Room 312B of the State Capitol.

ROLL CALL: All members were present. Also present was Dave Bohyer, Researcher, Legislative Council.

CONSIDERATION OF HOUSE BILL NO. 361: Rep. Jack Ramirez, House District #87, sponsor of HB 361, said the bill simply provides for a one year period to sort out new property tax valuations.

PROPONENTS OF HOUSE BILL NO. 361: Greg Groepper, Administrator, Property Assessment Division, DOR, told the Committee he supported the concept outlined in the bill.

Bob Holding, Montana Association of Realtors, said HB 361 is a very good bill, allowing the average taxpayer a chance to look at his or her tax situation and to appeal tax assessments, if necessary.

Dennis Burr, Montana Taxpayers Association, stated his support of the bill.

OPPONENTS OF HOUSE BILL NO. 361: There were no opponents of the bill.

QUESTIONS ON HOUSE BILL NO. 361: Rep. Patterson asked how many appeals were pending before the STAB right now. Greg Groepper replied 10,900 appeals had been filed and that an additional 3,000 appeals need to be heard at the county level. He said STAB has 21,000 appeals for this appraisal cycle, or approximately 2.2% of appraisals.

CLOSING ON HOUSE BILL NO. 361: Rep. Ramirez made no closing comments.

CONSIDERATION OF HOUSE BILL 436: Rep. Jack Ramirez, House District #87, sponsor of HB 436, said the bill is extremely important in that it provides for annual appraisals, rather than continue the five-year appraisal cycle. He explained that if the five-year cycle is continued, the state will eventually end up with lower and lower taxable percentage rates.

Rep. Ramirez advised that appraisals on personal property are completed on an annual basis, at about 4.5% of market

TAXATION COMMITTEE

February 11, 1987

Page 2

value, and that there is no balance between real and personal property taxes. He said the mechanics of the bill are flawed, but the general idea is sound, and that DOR could take agricultural and timber lands out and replace them with a sales assessment ratio study. Rep. Ramirez explained the bill prescribes a 10% decrease through a computer run, for a smaller decrease each year.

PROPOSERS OF HOUSE BILL NO. 436: Dennis Burr, Montana Taxpayers Association, said he would support the bill because it would keep assessed value closer to market value.

Bob Holding, Montana Association of Realtors, said he supported the concept of the bill because he believed it to be an important issue.

OPPOSERS OF HOUSE BILL NO. 436: Greg Groepper, DOR, told the Committee he could not support the bill as written, because of the expense involved, but that he was willing to work with Rep. Ramirez to revise the bill.

Don Judge, Montana AFL-CIO, said a problem exists in that no one knows what amendments will be placed on the bill, and read from a prepared statement in opposition to HB 436 (Exhibit #1). He stated that mortgage prices fluctuate constantly, and that he sees a problem for local governments, in the continuous turnover of assessments.

QUESTIONS ON HOUSE BILL NO. 436: Rep. Raney asked Greg Groepper to address the statements made by Don Judge. Mr. Groepper replied that Rep. Ramirez' concept would split the state into 4-6 market areas, as opposed to individual adjustments. He added that he suspected Mr. Judge was correct in estimating that the bottom could fall out of the market in several counties.

Rep. Raney asked if local governments could compensate for losses via mill levies. Mr. Groepper replied it would depend upon what the legislature does with I-105. Rep. Ramirez added that taxpayers have the right to have their property assessed at market value every year, but in his community, 1982 values aren't even close to what actual values are.

Rep. Williams asked if the bill would be applicable if the bill to put appraisals back in the counties were to pass. Rep. Ramirez replied that it probably could be done, but he did not believe county appraisals were realistic.

CLOSING ON HOUSE BILL NO. 436: Rep. Ramirez stated that if a property tax reduction measure for tax relief is passed and HB 436 does not pass, the resulting simplified system will get out of balance immediately.

CONSIDERATION OF HOUSE BILLS NO. 336 AND 337.: Rep. Paul Pistoria, House District #36, sponsor of HB's 336 and 337, said HB 336 would allow county assessors to supervise appraisers in each county. He provided copies of the report of the Legislative Auditor, on the DOR, (Exhibit #2), and said that market value allegedly increased 120% under reappraisal. Rep. Pistoria also provided copies of Great Falls Tribune articles from August 7, 1986, and October 12, 1986 (Exhibits #3 and #4).

Rep. Pistoria stated that DOR has needed straightening out since 1972.

PROPOSERS OF HOUSE BILLS NO. 336 AND 337: Lorna Frank, Montana Farm Bureau, read from a prepared statement in support of the bills (Exhibit #5).

Gordon Morris, Montana Association of Counties, said he supported the bills, with reservations concerning SB 336.

OPPOSERS OF HOUSE BILLS NO. 336 AND 337: Dennis Burr, Montana Taxpayers Association, said that on page 2, line 5 of HB 336, state appraisers cannot work in more than one county. He advised it would make the legislation more efficient to allow appraisers to work in more than one county.

Dick Gasvoda, Cascade County, stated his concurrence with statements made by Gordon Morris. He told the Committee that prior to DOR, he worked with the Board of Equalization, which was not as efficient because board members were always leaving. He explained that county appeals boards administer assessment and then rule whether or not they are correct, and said such boards are comprised of county commissioners, who are also involved in spending this money.

Mr. Gasvoda stated that from 1959 to 1972 every commercial building in Montana had a different rate of appraisal. He said small inequities are becoming more of an issue, but the current process is still better than that proposed by the bills. Mr. Gasvoda added that the same issues were defeated by ballot in 1977.

Greg Groepper, DOR, said he believed the concept of a single supervisor is a good one, but DOR needs the ability to make determinations as to who is best suited for supervision. He asked that the Committee give HB 336 a do not pass recommendation.

Referring to HB 337, Mr. Groepper said the Legislative Auditor's office made recommendations exactly opposite of those intended by HB 337. He read from an article by Terry Cohea, now Executive Assistant to the Governor, which was written in 1978 (Exhibit #6), and said the bill will result

in a \$13 million increase in property taxes if it passes. Mr. Groepper added that due process of the Constitution demands the state be involved in appraisals and assessments.

Phil Campbell, Montana Education Association, stated he opposed the bills, as they are a step backward.

Claire Wilkin, Appraiser, Golden Valley County, and member of the Montana Appraisers Association, read from a prepared statement in opposition to both bills (Exhibit #7).

QUESTIONS ON HOUSE BILLS 336 AND 337: Rep. Williams asked if local appraisals and a permissive levy would be tied together to raise necessary revenue. Gordon Morris replied it would not be done at current level, and that revenue to fund the proposals is the responsibility of the Legislature.

Rep. Williams asked if it could be accomplished with general fund dollars. Gordon Morris replied it could not.

Rep. Ellison asked what annual appraisal bills do to mill levies. Gordon Morris replied there is merit to annual appraisals.

Rep. Ellison asked if the counties could once again handle annual appraisals, and how much of a mill levy increase would be required. Gordon Morris replied it would take about 4 mills or \$1.5 million, but actual costs would vary from county to county.

Rep. Raney asked what number of county assessors are actually qualified to do appraisal work. Greg Groepper replied that none are qualified right now.

Rep. Raney asked if county assessors were required by statute to obtain certain levels of knowledge and/or certification. Greg Groepper replied that statutory requirements apply only to appraisers, and that the first voluntary assessors school was held in the Fall of 1986.

Rep. Raney asked how it could be expected that assessors make proper assessments without appropriate knowledge. Greg Groepper replied that problems exist with some assessors who have a hard time learning the assessment process. He added that appraisers who are unable to learn the process are replaced.

Rep. Koehnke asked how many assessors participated in the voluntary assessors school. Greg Groepper replied that approximately 30 assessors and/or their deputies participated, and that about 63% of those passed the course.

Rep. Ellison asked if assessment problems would be alleviated if county assessors were required to complete assessment certification. There was no response.

Rep. Sands asked if Rep. Pistoria had correctly reported on property tax reductions for commercial property in Cascade County. Greg Groepper replied that Rep. Pistoria was correct, and that the problem has been corrected. He said the recession hit Cascade County earlier than it did other parts of the state.

CLOSING ON HOUSE BILLS NO. 336 AND 337: Rep. Pistoria stated he found that appraisers in Cascade County were not answering questions and were referring calls to DOR in Helena, while they were also charging taxpayers \$.25 per copy for assessment information. He said HB 336 is a simple bill, and asked the Committee to amend the bill, if necessary.

CONSIDERATION OF HOUSE BILL NO. 412: Rep. Tom Hannah, House District #86, sponsor of HB 412, said it is a simple bill to provide local governments with the flexibility to enter into temporary agreements, in order to forego changing a portion or all of an S.I.D. (special improvement district).

Rep. Hannah explained that if a rural property, which is part of an S.I.D. assessment, were undeveloped and situated at the end of a road, the landowner could put off paying S.I. D.'s until the property was developed.

PROPOSERS OF HOUSE BILL NO. 412: Robert Holding, Montana Association of Realtors, stated his support of the bill.

OPPOSERS OF HOUSE BILL NO. 412: Bruce McKenzie, Vice President of General Counsel for D.A. Davidson, stated the bill isn't practical in the manner in which it works, as assessments are used to repay bonds. He explained that there would be no funds for repayment if such property were exempted, and asked if it were fair to shift the burden to general taxpayers. Mr. McKenzie added that if property is accessible, then there is a strong argument that an improvement has been made.

QUESTIONS ON HOUSE BILL NO. 412: Rep. Williams asked Rep. Hannah for his analysis of Mr. McKenzie's statement. Rep. Hannah replied that he did not disagree, but referred to the argument over local government control. He said the bill states local governments "may" enter into such agreements.

Rep. Williams asked if other taxpayers would not then be subsidizing developers who cannot pay S.I.D.'s. Rep. Hannah replied that would be true.

CLOSING ON HOUSE BILL NO. 412: Rep. Hannah closed without comment.

DISCUSSION OF INFRASTRUCTURE BILL HEARINGS: Chairman Ramirez advised that infrastructure bills would not be referred to a subcommittee, and would be acted upon by the Committee as a whole, in the interest of time.

CONSIDERATION OF HOUSE BILLS NO. 383 AND 384: Rep. Paul Rapp-Svrcek, House District #51, sponsor of HB's 383 and 384, said the bills provide the opportunity to meet, in part, the requirements of I-105, to reduce the size of DOR, to save state dollars, and to provide property tax relief.

Rep. Rapp-Svrcek said HB 383 would freeze residential property taxes at 1982 levels, and bases taxable value on acquisition value, which would remain the same as long as the taxpayer owned his or her home. He explained that the value would change when a home was sold, and said the fiscal note projects a savings of \$850,000 by eliminating appraiser positions. Rep. Rapp-Svrcek added that the bill would not create additional work for local governments.

Rep. Rapp-Svrcek said he did not believe the state would lose revenue, but the bill would change the cycle in which revenue would be received. He stated the average turnover of residential home ownership is seven years, which would cause revenues to increase.

Rep. Rapp-Svrcek provided copies of proposed amendments (Exhibit #8), and said amendment #5 addresses the issue of those who transfer property in an attempt to minimize taxes.

Rep. Rapp-Svrcek said HB 384 addresses new housing construction, and requires appraisal at the point of occupancy. He said the property tax could also be based on insured value or with regard to improvements.

PROPOSERS OF HOUSE BILLS 383 AND 384: There were no proponents of the bills.

OPPONENTS OF HOUSE BILLS 383 AND 384: Greg Groepper, Property Assessment Division Administrator, DOR, stated he would oppose the bills without the proposed amendments, because they would be impossible to administer.

Sally Smith, Madison County Appraiser and Legislative Representative for the Montana Appraisal Association, read from a prepared statement on non-residential land classification (Exhibit #9). Ms. Smith said she was confused about the section of law dealing with residential property, as agricultural land is also non-residential land. She asked the Committee to give the bill a do not pass recommendation.

QUESTIONS ON HOUSE BILLS NO. 383 AND 384: Rep. Williams asked Rep. Rapp-Svrcek if he wanted to return appraisals to the counties. Rep. Rapp-Svrcek replied that, for practical purposes, it would be better to leave this responsibility with the state.

Rep. Koehnke asked if the bill addressed the sale of property to descendants for lesser sums of money. Rep. Rapp-Svrcek replied that a issue is addressed on page 17 of the bill.

Rep. Gilbert asked if the projected \$850,000 savings in appraiser salaries were annually or biennially, and asked Rep. Rapp-Svrcek if he really wanted to put an additional \$7,767,000 burden on taxpayers, as indicated by the fiscal note. Rep. Rapp-Svrcek replied that the \$7,767,000 referred to in the fiscal note pertains to new construction.

Chairman Ramirez asked if, assuming the bill was put into effect in 1940 and a family lived on property they purchased then for \$5,000, while a new family purchases property next door today for \$50,000, that would be equitable. There was no response.

Rep. Patterson asked if the bill included rental property. Rep. Rapp-Svrcek replied rental property is included in Class 20 property and, thus, in the bill.

Rep. Hoffman asked if the bills were similar to Proposition 13 in California. Rep. Rapp-Svrcek replied that the bills are somewhat similar, in that they allow for an annual decrease of 2%.

CLOSING ON HOUSE BILLS 383 AND 384: Rep. Rapp-Svrcek advised that land is not addressed in the bills, that they address housing only and include housing situated on agricultural land. He stated his concurrence with Chairman Ramirez' concern about equity, and asked the Committee to give the bills favorable consideration.

DISPOSITION OF HOUSE BILL NO. 361: Rep. Ellison made a motion that HB 361 DO PASS. The motion CARRIED unanimously (Rep. Hanson was excused and did not vote).

DISPOSITION OF HOUSE BILLS NO. 383 AND 384: Rep. Ellison commented that retired persons who may want to move to a smaller residence may be harmed by the bills.

Rep. Gilbert made a motion that HB 383 DO NOT PASS, and then withdrew his motion to make a substitute motion to TABLE the bill. The motion CARRIED, with all members voting aye except Rep. Keenan, who voted no.

Rep. Gilbert made a motion that HB 384 be TABLED. The motion CARRIED, with all members voting aye except Rep. Keenan, who voted no.

DISPOSITION OF HOUSE BILL NO. 336: Rep. Williams made a motion that HB 336 DO NOT PASS.

Rep. Raney made a substitute motion to amend the bill on page 2, line 7, by replacing the "," with a "." and striking the remainder of the sentence. The motion CARRIED unanimously.

Rep. Hoffman stated he felt it would be unjust to kill the bill at this point.

Rep. Harrington advised that appraisal problems are nothing now, compared to inequities in the counties in the past. He stated there is nothing redeeming in the bill to promote returning appraisals to the counties.

Rep. Ellison said he didn't believe the Committee would have time to remedy the bill.

Chairman Ramirez commented that the Committee could work on the bill forever, but the philosophical ideals of the opposition would kill the bill, no matter what is done.

Rep. Asay stated he thought the present system needs cleaning up, but that it should not be accomplished by returning appraisals to the counties.

Rep. Schye made a substitute motion to TABLE HB 336. The motion carried with all members voting aye, except Reps. Ellison and Hoffman.

DISPOSITION OF HOUSE BILL NO. 337: Rep. Schye made a motion that HB 337 be TABLED. The motion CARRIED with all members voting aye, except Reps. Hoffman and Ellison.

ADJOURNMENT: There being no further business before the Committee, the meeting was adjourned at 11:04 a.m.


Representative Jack Ramirez,
Chairman

DAILY ROLL CALL

HOUSE TAXATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2-11-87

NAME	PRESENT	ABSENT	EXCUSED
REP. RAMIREZ			
REP. ASAY	7		
REP. ELLISON	7		
REP. GILBERT	7		
REP. HANSON	7		
REP. HARP	7		
REP. HARRINGTON	7		
REP. HOFFMAN	7		
REP. KEENAN	7		
REP. KOEHNKE	7		
REP. PATTERSON	7		
REP. RANEY	7		
REP. REAM	7		
REP. SANDS	7		
REP. SCHYE	7		
REP. WILLIAMS	7		

STANDING COMMITTEE REPORT

FEBRUARY 11 19 87

Mr. Speaker: We, the committee on HOUSE TAXATION


report HOUSE BILL NO. 361

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Representative Jack Ramirez Chairman


FIRST reading copy (WHITE)
color



JAMES W. MURRY
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59624
406/442-1708

HB

#1
2-11-87
436

TESTIMONY OF DON JUDGE ON HB 436 BEFORE THE HOUSE TAXATION COMMITTEE
FEBRUARY 11, 1987

Mr. Chairman, my name is Don Judge and I am here today on behalf of the Montana State AFL-CIO to testify in opposition to HB 436.

This bill would require on-site appraisals of 20 percent of all property in classes 3, 4, 12, 13, and 14 annually. The property which is appraised annually will be used as a representative sample to assess the remaining 80 percent of property tax rates.

Mr. Chairman, our primary concern over this bill is the uncertainty it places on assessments of property tax values. With annual on-site reappraisals on properties throughout the state, taxable revenues may significantly decrease or increase depending on assessment values of representative samples.

Severe fluctuations in property tax revenues may occur. Should assessed values drop appreciably, local governments may find themselves without the monies necessary to operate vital community services.

Under the provisions of Initiative 105, state, county or local governments would be unable to recoup this revenue shortfall by increasing the taxable values of properties. It should also be noted that this 20 percent representative sample could result in a property tax increase for the remaining 80 percent of property taxpayers; which again violates the provisions of Initiative 105.

Currently, property is assessed every five years, which allows cities, towns, counties and school districts to more accurately predict or forecast taxable revenues. With annual reappraisals, the potential exists for instability in rates, uncertainties in revenues available and possible errors in forecasting budgets. Local policymakers need the stability in our current appraisal system to operate governments efficiently and provide vital community services.

Finally, this bill would needlessly cost the state general fund an additional \$840,000 to administer.

For these reasons, we urge you to oppose HB 436.

2-11-87
EKH
HB 3364 337

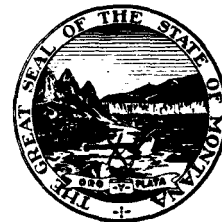
EXHIBIT #2
DATE 2-11-87
HB 3364 337

State of Montana
Office of the Legislative Auditor

Performance Audit
Property Assessment Division
Department of Revenue

This report contains recommendations for improvements in the controls over the property valuation process and the property reappraisal program. Major recommendations concern:

- ▶ Improving management controls over the property valuation process and the property appraisal program.
- ▶ Enacting legislation to place the assessment function under direct control of the Department of Revenue.
- ▶ Improving controls over division and county data processing.



Direct comments/inquiries to:
Office of the Legislative Auditor
Room 135, State Capitol
Helena, Montana 59620

THIS IS AN EYE OPENER WHICH OUR CITIZENS OF GREAT FALLS SHOULD KNOW

I WILL NOT FORGIVE JOHN LAFAYER, STATE REVENUE DEPARTMENT DIRECTOR, GREGG GROEPPER & RANDY WILKE OF THE STATE TAX ASSESSMENT DIVISION FOR DECEIVING ME BY NOT TELLING ME & OUR TAXPAYING CITIZENS OF GREAT FALLS & CASCADE COUNTY THE TRUTH. IT WAS NOT A MISTAKE EITHER, AFTER YOU HEAR WHAT HAPPENED. ENOUGH IS ENOUGH & IT MUST BE KNOWN, ESPECIALLY WHAT HAS OCCURRED REGARDING OUR APPRAISAL & TAXABLE VALUE WHILE ALL 3 WERE ON VACATION AT THE SAME TIME.

THIS IS THE MOST IMPORTANT TIME OF THE YEAR TO SETTLE THIS ISSUE WHEN THEY ARE REQUIRED BY STATE LAW TO FINALIZE THE PROPERTY APPRAISAL, TAXABLE VALUE & TO DETERMINE ALL MILL LEVIES FOR EACH COUNTY IN THE STATE. ALL 3 WERE GONE WHEN NEEDED TO RESOLVE THIS SERIOUS EVALUATION. THIS IS TERRIBLE.

THE SAME GOES FOR TOM KOTYNSKI, CITY EDITOR & RICH ECKE, REPORTER WITH THE TRIBUNE. WHAT THEY DID TO ME SHOWS THAT THEIR WORD MEANS NOTHING. THEY NEVER DID WRITE UP THE TRUE STORY. I OUGHT TO KNOW BECAUSE I DEAL WITH THEM OFTEN. I NEVER INFORM THEM OR ANYONE ELSE FROM HEARSAY.

THIS RESULTED FROM THE BORDERED TAXABLE FIGURES BELOW.

THE FOLLOWING ARE THE REASONS FOR THE ABOVE COMMENTS:

On July 8th, 1986, I met with Pat Ryan, County Commissioner, at his office. While there, he showed me a copy which he just received, of a list of several Great Falls Commercial Property Owners Taxable Values for 1985 & 1986 as the result of the State Assessment Division dated June 9th, 1986. It was sickening to see how much Several Property Taxable Values were enormously lowered from 1985 for 1986. We both discussed this as being the WHOLE TAX PROBLEM here. WHY would the Appraisal Office decrease the Taxable Values. Imagine it, 1 month had elapsed since June 9th to the day that I received this copy.

I then told Pat Ryan that I was going to Helena with this copy & show it to Gregg Groepper, Director of the Property Tax Assessment Division, who oversees such. (Charlie Nebel, County Assessor, does not make the appraisals, only documents the appraisal figures for the State.)

Then, on Friday, July 11, 1986, I drove to Helena with this copy to see Gregg Groepper. The secretary told me that he was on vacation. I, then, asked for Randy Wilke who was also on vacation as was John LaFaver. Therefore, all 3 were on vacation at the same time, which surprised me. I was told by the Secretary that I could see Mary Buswell, Acting Director for Groepper. I met with Mary Buswell who was very courteous. She had not known of this copy before. After looking over the copy, she stated, "Paul, this looks as though this is the WHOLE TAX PROBLEM in Great Falls."

She told me, "Paul, I will have someone in Great Falls with this copy next week, Monday, July 14th to check into these discrepancies with the Appraisal Office to see what happened. Yes, this looks as though this is the Whole Taxable Problem in Great Falls & Cascade County." She stated that she would contact me July 14th. I called her. She told me someone was sent to Great Falls. So, on Friday, July 18th, I called her again to see what happened. She told me that Erwin "Swede" Schock & 2 others were in Great Falls all week going over the copy of the Property Taxable Owners and would meet with "SWEDE" either tonight or Monday morning, July 21st and let me know the outcome.

After I talked to Mary Buswell at 4:30 P.M. Friday, July 18th, I met with Tom Kotynski, City Editor and Rich Ecke, Reporter with the TRIBUNE. I asked them if they had seen this copy, especially Ecke, because he had written stories back and forth about Tax Complaints by the Local Government and the School System. They had not. I, also, told them the whole story with Mary Buswell and the State Property Tax Assessment Division as above. Right away, Kotynski said, "Paul, this is HOT MATERIAL & MUST BE EXPOSED right away." they both said, "NO DOUBT, that this is the WHOLE TAX PROBLEM here." Then, Kotynski stated, "Paul, we are certainly going to RECOGNIZE YOU FOR FURNISHING US THIS MATERIAL & STORY. It must be reported right away." Kotynski told Ecke to write it up on Monday, July 21st because it was too late today.

The week starting Monday, July 18th, all I heard around the Courthouse was that "SWEDE" & others from Helena were here adjusting figures in the Appraisal Office. I asked them who sent them here? All stated they were here adjusting taxable figures in the appraisal office. NONE KNEW THAT I WAS RESPONSIBLE for them being here except Pat Ryan.

I waited for the story and the publishing of the list of Taxable Property Owners by the Tribune. A week later, on Thursday, July 24th, Ecke had a story in the Tribune. But, NONE was mentioned. Instead, Ecke wrote only what Groepper told him Tuesday, July 22nd. (I saw the written copy of the conversation Ecke had with Groepper.)

and Ecke listen to him, instead of me. That same day, I told Ecke how terrible he was & also chastized Kotynski. They both deserved it.

Yes, the Citizens of Great Falls, it was A COMPLETE COVER-UP. Probably, one reason is because the List shows that the TRIBUNE got a \$22,117 Taxable Value decrease for 1986. I asked Ecke, "what did Kotynski say when we met Fri., July 18th?" "Oh, I wrote you up." I didn't see it, nor did the Public.

This is so important, I felt this is the only way the Public would know the truth . . . by a paid AD. Otherwise, no one would have known about this serious Problem which is supposedly being corrected. Thank God.



PAUL G. PISTORIA

EXP. 8-11-87
DATE 8-11-87
HB 3364337

Rec'd - Tues. July 8, 1986 - Paul G. Pistoria Date - June 9, 1986
Filing of Commercial Property Valuations as a Result of State Assessment

THIS IS THE COPY, DATED JUNE 9, 1986, OF COMMERCIAL PROPERTY OWNED BY FROM GREAT FALLS, WHO WERE PICKED AT RANDOM AND WERE TO RECEIVE ENORMOUS TAXABLE DECREASES, AND OTHERS WHO WILL RECEIVE SLIGHT INCREASES FOR 1986.

The List of Names which were determined by the APPRAISAL OFFICE here and the STATE PROPERTY TAX ASSESSMENT DIVISION in Helena, were taken from the County Assessor's Office here, NOT from Charles Nebel, the Assessor.

It is here in Black and White . . . not MADE UP by ME or CHARLES NEBEL. This is what prompted ME to take the copy to Helena on Friday, July 11th, 1986. There are a few duplications but, I felt the whole list of names should be shown as made up.

If this list was adopted for 1986, there would be a LOSS of several million dollars in Tax Revenue for Cascade County. WHY place the TAX BURDEN ON PROPERTY OWNERS?

I do not blame the county Commissioners, the City Officials and the School System for complaining as they did. This is the CAUSE of our TAX REVENUE LOSS. IT WAS NOT A MISTAKE either. IT WAS A COVER-UP. this is the WHOLE PROBLEM, THANK GOD, I EXPOSED THEM AND ADJUSTMENT IS NOW BEING MADE. It will be interesting to see what they did.

Property/Business Name	1985 Assessor's Roll Taxable Value	1986 County Seal Rec. Tax File Taxable Value	Difference Incr. or Decr.
Lewis Comb.	13,813	20,021	3,628
Slottum	4,076	3,228	311
A.C. Glens	1,413	1,726	
Stanley Allen	2,423	939	
Johnson Medicine	8,482	8,081	
United Material	3,133	3,318	
United Material	6,168	3,489	
Slac, City Cons.	7,064	6,332	
Magister Motors	6,321	3,944	
Anderson Blending	6,824	3,028	
Rainbow Motel	61,767	27,086	
P.A. Davidson	72,326	72,077	
Northwest Bank	103,104	47,772	
Belmont Bldg.	20,966	10,477	
The Inn	66,263	40,982	
G.F. Fed. Bld.	46,012	20,773	
Palmer Bros.	4,978	2,244	
Mar's Laundry	6,363	10,231	
Pinkel Bros.	9,111	4,112	
Benett Motors	20,242	20,223	
Grish Bldg.	10,766	13,946	
Apenn	139,076	60,186	
Strala Bldg.	73,730	74,362	
Peperone	107,996	48,736	
First Bank	3,983	17,912	
Gregory Lbr	23,081	10,781	
G. Williams	7,873	3,333	
White, Inc.	10,333	13,034	
Montana Pkg.	10,950	8,336	
Western Office	13,196	8,446	
Jerry Noble Tire	10,393	9,010	
Firestone Tire	16,631	13,877	
Bettrey	22,983	20,117	
Northern School	9,273	11,832	
Taylor Bros.	122,235	35,194	
Edie's Bld.	9,543	35,194	
G-Mare	104,876	8,934	
G.F. Clinic	200,200	47,346	
Columbia Grain	34,783	90,287	
Poulson's	45,179	82,697	
Polmer Duncan	3,777	20,397	
G.F. Pch	23,101	3,321	
Super 6 Lodge	38,623	20,896	
Holiday Village	469,982	26,467	
Thomas, Dean	23,022	341,325	
Heritage Inn	223,044	9,942	
Lightner, Johnson	9,811	101,608	
Mail Ferry	16,106	4,430	
Pad. Hild & Son	37,641	7,371	
City Motors	36,481	48,625	
General Bldg.	29,843	92,266	
Falls Const.	8,926	10,291	
Talcent Tank	127,212	4,717	
G.F. Tribune	403,987	102,095	
Bettrey Foods	33,433	296,316	
Volk Const.	62,046	31,377	
Slottum	45,308	28,012	
Mont. Flour Mills	61,747	38,770	
Rainbow Motel	103,104	27,866	
Northwest Bank	66,263	47,772	
The Inn	46,012	40,982	
G.F. Fed. Bld.	139,076	20,773	
Peperone	107,996	90,186	
Gregory Lbr	23,081	10,781	
Montana Pkg.	10,950	8,336	
Taylor Bros.	122,235	35,194	
G-Mare	104,876	47,346	
G.F. Clinic	200,200	90,287	
Heritage Inn	43,129	30,397	
Peperone	107,996	24,467	
G.F. Tribune	403,987	102,095	
Bettrey Foods	33,433	296,316	
Slottum	62,046	31,377	

If this hadn't been exposed, it would have gone unnoticed.

I understand that not until Monday, July 27th, were the adjusted appraisal figures being documented.

Governor Ted Schwinden, due to the blunders made by the Revenue Dept. Director and his subordinates such as: (1) the Poker Machine Mess, (2) The closing of the Liquor Stores, the shortage of name brand liquor, the firing of Howard Heffelfinger & I can't be convinced, as many others, how \$1.4 million can be made up to Balance the Budget the department needs to be cleaned up.

If THE STATE PROPERTY TAX DIVISION & their Appraisal Office here, Tom Ketyne, Rich Ecke of the Tribune try to challenge or contradict ME, do not believe THEM because I told it as it is — the TRUTH.

ANY CONSTITUTIONAL EVENT A PERSON WILL BE APPROPRIATE TO HELP ME PAY FOR

#4
2-11-87
336 Y 337
Bette Malper

We've been offered some hot up...

County looks forward to unexpected tax bonus

By CLAIR JOHNSON
Of The Gazette Staff

The 1986 tax year is probably one that most taxpayers and officials would rather forget. Taxpayers gaped at new real-estate appraisals. Tax collectors and adjusters have been buried with paperwork.

But the result of all the changes, so far, appears to be good news for Yellowstone County. The taxable valuation on real property has gone up about \$12.2 million from what it was estimated for the 1986-87 fiscal year. Assessor Max Lemington said late last week a higher taxable valuation means the mill will raise more money than initially calculated when the county set its 1986-87 budget. A mill is equal to one-tenth of a cent in value of the mill in a specific county, derived by dividing the total taxable value of real property in that county by 1,000.

County Finance Director Jerry Thomas said increased valuation means that the county would collect \$23,000 more than it had expected if all revenue projections were met. But protested and delinquent taxes are still unknown factors in the budget, he said.

The main reason that the valuation increased, Thomas said, is because of a \$1.3 million mistake in the tax statement for Continental Oil Co.

Taxes for the company's land appeared on its tax bill, but there were no taxes for the hardware, including the refinery. The assessment on the refinery was not included in the taxable valuation for the portion of School District 2 outside of Billings, which includes Continental Oil. The error increased the taxable value in that school district by \$4.89 million, Lemington said.

"The Comco deal was a blessing," Thomas said.



SHAWHAN CREEKMORE KEENAN

Other factors in the higher real property valuation are reappraisals, adjustments and corrections in tax statements. Those changes appear to be offsetting the decrease, but Thomas said he is still concerned about the protested taxes. "I'm

(More on Taxes Page 10A)

1986 tax appeals simplify 3-member board

By CLAIR JOHNSON
Of The Gazette Staff

If you protested and appealed your property taxes and you're serious about getting them reduced, be patient. The Yellowstone County Tax Appeal Board is working as fast as it can.

So far, the board has heard about 700 appeals for 1986 taxes. Chairman John Shawhan said there are about 2,000 more to go. The three-member board is lucky if it hears nine appeals a day. At that speed Shawhan said it will take "about 250 days to clear 1986 up."

He said never in his 14 years as a member of the board has he seen so many tax appeals.

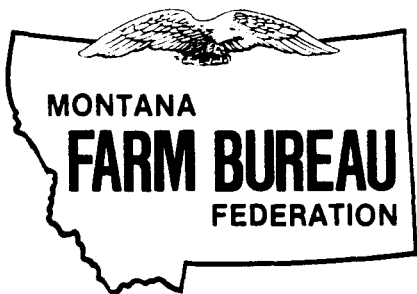
He attributed the volume to the state's real-estate reappraisals in 1986.

The board is appointed by the county commissioners. When Shawhan talked Betty Creekmore and Earl Keenan into serving on the board three years ago, he said he warned them that "1986 was going to be a bearcat."

He joked recently that "the only reason I'm still on the board is because everybody quit." According to the county's description of the tax appeal board, the group meets "whenever there are enough tax appeals to hear in one afternoon, which is generally once a month during summer and fall."

Shawhan said "Well, they had to write

(More on Board Page 10A)



P.O. Box 6400
~~502 South 10th~~

Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Lorna Frank
BILL # HB-337 DATE 2/11/87
SUPPORT XXXX OPPOSE

#5
2-11-87
3374336

Mr. Chairman, members of the committee, for the record my name is Lorna Frank, representing Montana Farm Bureau.

We support HB-337. For several years Farm Bureau members have believed that the responsibility of property tax assessments should be restored to the counties by initiative and under the policy direction of a state county equalization commission or board.

We urge this committee to give a do pass recommendation to HB-337.
Thank you.

SIGNED: _____

Property Tax Assessment:

A Century-Long Struggle For Structured Discretion

This article was prepared as a class paper. It reflects neither the opinions of the Montana Legislative Council, Ms. Cohea's employer at the

time of publication, or the Office of Budget and Program Planning, her current employer.
by Teresa Olcott Cohea*

"Broad discretion and judgment lie at the very core of the property tax."

For the past 100 years, the history of property tax assessment in Montana has been a series of legislative and administrative efforts to limit and structure county assessors' discretion. The history of these efforts, which included legislation, constitutional amendments, court decisions, and administrative rule-making, is instructive since it provides a well-documented case study of how a vital state function involving great discretion can be made reliable and open to citizens.

Property tax assessment is an excellent subject for studying discretion, since it requires assessors to make complex decisions on the characteristics and comparability of widely varying types of property. The Montana Supreme Court has consistently recognized the need for judgment and expertise in assessment and has been hesitant to substitute its judgment for that of an assessor:

...the court will ordinarily not interfere with the action of ... (assessors) to correct mere errors of judgment. It is only when they act fraudulently or maliciously, or the error or mistake is so gross as to be inconsistent with any exercise of honest judgment, that courts will grant relief.
Unforth v. Livingston, 23 Mont. 558, 59 P.916,917 (1900)

The legislature must rely on the expertise and judgment of assessors since the procedure for assessing every type of property in the state can hardly be written into statute, even if legislators or their draftsmen had the expertise to do so: new varieties of property appear, values rise, and complex formulas for depreciation must be developed. Moreover, assessors can determine the best method of assessing property on a case-by-case basis, which the legislature cannot do through statute. Clearly, assessors must have some degree of discretion in order to perform their duties.

However, far too much discretion can be delegated to or exercised by assessors. If clear legislative standards and administrative procedures guide assessors' work, then their discretion may be limited to a ministerial or non-policy level

designed to implement legislative policies. In Montana, however, clear standards and procedures were absent or ignored for most of the last century and assessors exercised discretionary authority of the highest order, making policy decisions of a most sensitive nature. Their discretionary authority at times surpassed that wielded by the legislature.

The importance of structuring such discretion is obvious. Assessors determine the appraised or assessed value to which the statutory tax rates and the locally determined mill levies are applied. Their decisions touch all property-owning citizens and have a direct economic effect on their lives. If their decisions are based on unwritten standards that are in direct conflict with state law and, further, their assessments are often lowered on a case-by-case basis by individual taxpayers' pressure, citizens are unprotected by U.S. constitutional requirements of due process and equal protection and Montana constitutional requirements for uniform assessment of property. Moreover, assessors could and did for decades exercise political power far exceeding their scope of authority. Since local governments are financed largely through property taxation and the assessor controls the base from which this revenue is raised, he can exercise budgetary power statutorily given to county, city, and school district officers:

After a unit of government has reached its maximum levy limitation, its future budgetary policy is largely in the hands of the assessor. The decision made in his office as to the percentage of market value that will be used for assessment purposes is almost controlling. Moreover, decisions made by the assessor are more apt to be influenced by consideration of his political future than by the legitimate revenue needs of local government. Thus we have the spectacle of the county assessor, whose sole function is to find and value property at its full value, charting the fiscal policy of most local governments. (Montana Legislative Council, *Property Taxation in Montana*, 1960, p. 31)

The legislature's struggles to limit and structure assessors' discretion are not over, but its efforts over the past seventy years have insured that 1) detailed procedures for assessment are published in the Montana Administrative Code; 2) that these procedures comply with legislative standards; and 3) formalized procedures for citizens' participation in rule-making and opportunities for appeals against assessments exist. This paper will discuss the steps—and mis-steps—in the process of obtaining the right mixture of statute, rule, and discretion.

*Teresa Cohea is a Legislative Researcher on the staff of the Montana Legislative Council, Helena, MT. Her responsibilities include those of Staff Researcher, Revenue Oversight Committee, and Coal Tax Oversight Committee.

Between 1891 and 1977, Montana statute required that "all taxable property must be assessed at its full cash value."

which was defined as "the amount at which the property would be taken in payment of a just debt due from a solvent debtor" (84-401 and 84-101, R.C.M. 1947). This statute was never, in its 74 year tenure, adhered to. County assessors and, later, the State Board of Equalization evolved a system of fractional assessment under which all property in the state was assessed at some *fraction* of full cash value. As recently as 1977, MAC rules required assessors to value business inventories at 60% of dealer's cost, oil field machinery at 40% of current market value, and airplanes at 66 2/3% of wholesale value. This system of fractional assessment totally disrupted legislative tax rates, drastically reduced local governments' tax bases, and caused massive shifts in tax burden.

This system of fractional assessment did *not*, in my opinion, arise because the statutes were unnecessarily vague, delegating authority without meaningful standards. The legislature provided a standard for assessing ("full cash value") and a definition of that standard. Statutes did not specify methods for assessment but left that to assessors, who would use their expertise and discretion to establish the best methods of determining full cash value. Most state legislatures and courts have concurred that such judgments are an appropriate area for assessors' discretion. The continued violation of the statute requiring assessment at full cash value resulted not from careless delegation of authority but from the structure of tax administration established by the 1889 constitution.

Article XVI, section 5 created the office of assessor in each county and provided for his local election. Statutes implementing the section required him to find and assess all taxable property in his county at "full cash value" (84-401 and 84-406). However, the necessity of getting elected every four years provided a strong temptation for assessors to ignore this statute, particularly in view of the history of county independence and the travelling distance from Helena in the early days of statehood. The rewards for underassessment were many: 1) taxpayers receiving an individual "break" on an assessment would be grateful; 2) keeping assessments low would insure that statewide mills raised the least possible revenue in that county and shifted the tax burden to some other county; and 3) by lowering assessments assessors would force city and county commissioners to raise mill levies in order to raise the same amount of revenue, thus pushing the political liability of taxes into their laps. Assessors would have been less than human if they had not yielded to these pressures, since taxpayers' hostility toward taxes usually settles, unfairly and illogically, on assessors.

The legislature discovered how strong the temptation had been when it appointed a Tax and License Commission in 1917 to determine why property assessments varied so markedly from county to county. The Commission found that the following *average* rates of assessment were prevailing in the counties: land-30% of full value; cattle-45% of full value; sheep-40% of full value; horses and mules-52%

of full value; and hogs-18% of full value. The only property assessed at the statutory level was the money belonging to widows and orphans, which was revealed by court records. Further, the Commission learned that these rates were set in an annual meeting of county assessors who "resolved themselves into a sort of legislative assembly and proceeded to fix the values at which different species of property shall be assessed."

Needless to say, these fractional assessments were in direct conflict with statute and assessors were far exceeding their statutory authority in setting such rates. What's more, this extralegal "legislature" did not have much more success in controlling its members than the legitimate legislature. During the year between meetings, the assessors vied among themselves for the most "competitive" assessments. The Commission found in 1918 that assessments in different counties for first class grain land ranged from \$5.21 to \$47.29 per acre, first class hay land from \$10 to \$26.62 per acre, work horses from \$49 to \$75.65, and dairy cows from \$33.92 to \$100.

After reviewing the gap between statute and practice, the Commission concluded "that the present system . . . is a failure and results in unjust discrimination and is utterly inadequate." Believing that legislative control over assessment must be reasserted, the Commission recommended a bill to the 1919 legislature that continued the assessment of property at full cash value but dropped the tax rate to the value county assessors were actually using for the various types of property. To illustrate, the tax on a \$1000 parcel of land is calculated below according to the statutory method, the method actually used by assessors in 1917, and the proposed method:

Statutory method	Actual practice, 1917	Proposed method
1. Valued at 100%	1. Valued at 30%	1. Valued at 100%
2. Taxed at 100%	2. Taxed at 100%	2. Taxed at 30%
3. Multiplied by mills	3. Multiplied by mills	3. Multiplied by mills
4. Tax due = \$200 ($\$1000 \times 100\% \times 100\% \times 200m$)	4. Tax due = \$60 ($\$1000 \times 30\% \times 100\% \times 200m$)	4. Tax due = \$60 ($\$1000 \times 100\% \times 30\% \times 200m$)

The bill passed, creating seven classes of property taxed at rates varying from 7% to 100% of the assessed value, which was 100% of full cash value. The legislature, thus, in 1919 clearly recognized the dangers of allowing assessors the discretion to set effective tax rates through extralegal fractional assessments. It hoped to end this practice by setting in statute both the standard of assessment and the tax rate. In upholding the constitutionality of the new law, the Montana Supreme Court noted that the chief purpose of the bill was "to relieve administrative officers from the apparent necessity of continuing the legal fiction of full valuation in the face of contrary facts." The court also affirmed in this case that it was the legislature's duty to provide a uniform system of assessment throughout the state. (*Hilger v. Moore*, 56 Mont. 146, 82 P. 477, 483 (1919)).

This was the first of several times in which the legislature sought to control assessors by enacting their practice into law. One could argue that the legislature, in having

legislation follow practice, was benefitting from the "creative nibbling" theory of administrative law: the legislature had given assessors sufficient discretion to investigate and chart a course, allowing them to create a solution to a large problem by nibbling at individual cases. However, this was not true in Montana's history of property tax assessment. Assessors were not experimenting with the best way to assess; rather, they were substituting their judgment for legislators' on what the state's tax policies should be. The legislature modelled statute on existing practice in this instance only as an attempt to control future practice.

The legislature also took another step toward controlling assessors at this time. The 1889 constitution created a three-member State Board of Equalization to "adjust and equalize the valuation of the taxable property among the several counties of the state." However, when the Board attempted to raise assessments in one county to nearer the statutory full cash value, the Supreme Court ruled that the Board had the power to decrease assessments but not to increase them. The 1916 legislature placed a constitutional amendment on the ballot to give the Board much broader power:

The state board of equalization shall adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of the county assessors and the county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties, between classes of property, and between individual taxpayers. (Article XII, section 15)

The electorate approved the amendment, which became effective in 1917. In 1923, the legislature passed a bill detailing and further broadening the Board's powers. Notably, the Board was empowered "to prescribe rules and regulations, not in conflict with the constitution and laws of Montana, to govern county boards of equalization and the assessors of the different counties in the performance of their duties." Further, it could require the county attorney to start proceedings against any assessor who violated statutory assessment laws. The bill also established hearing procedures for taxpayers' appeals against assessments and for Board changes in assessment rules. (84-708)

Seemingly, the legislature in 1923 had gained control over assessment by requiring assessors to exercise ministerial level discretion within standards set by the legislature and reviewed by the State Board of Equalization, which exercised broad delegated quasi-legislative and quasi-judicial authority within its area of expertise. However, neither the statutory changes embodied in the 1919 classification law nor the 1917 constitutional amendment touched the fundamental problem of tax assessment: county assessors were still elected by local citizens and in direct contact with them. The three-member Board and its small staff were totally inadequate—and probably quite unwilling—to police 56 county assessors. The Board limited itself to hearing individual taxpayers' appeals from county equalization boards and lowering the assessment of whole classes of property when one county varied too markedly from others.

U.S. census data showed that assessors continued to drift away from full cash value throughout the next decade, despite admonitions from the Attorney General and the Montana Supreme Court. In 1931, the court in *State ex. rel. Schoonover v. Stewart* reiterated that statute requires that "all taxable property must be assessed at its full cash value. The section has not been changed since its enactment . . . ; and its mandate is the law today." Neither assessors nor the Board had the power, the court said, to establish fractional assessment.

The 1930's were, however, not a politic time to raise assessments, particularly on farm land. As the Depression deepened and more property taxes became delinquent, assessments fell further and further from full cash value. By 1950, the average market value of an acre of irrigated farm land in Montana was \$99, but its average assessed value was \$32, less than it had been in 1921.

The State Board of Equalization expressed great concern over these falling assessments and county assessors' neglect of statute. In 1954, they informed the legislature that the classification law

is necessarily anchored to the full cash value provisions of section 84-401, and when we deliberately cut loose from that anchor we begin to drift. The administration of the law has so deteriorated over the years that we now have . . . a classification law within a classification law. (*Sixteenth Biennial Report*)

However, the Board did not use its statutory authority to correct the situation. Although the legislature had given it power to adopt all necessary rules to govern assessors, the Board issued no body of rules to guide assessors between 1923 and 1962. The Board did, with the assistance of the assessors' professional association, compile assessment guides and valuation schedules for various property and distribute them to assessors, but it did not make their use mandatory. Nor did the Board ever during these 40 years use its power to begin proceedings against a county assessor who violated state law by assessing at less than full cash value. In fact, the Board itself violated this law by lowering assessments to bring them down to the statewide average. Even when the legislature passed a Reclassification and Reappraisal Act in 1957 to bring residential property assessments to full value, the Board and assessors determined what fraction of this new value would be used. A legislative committee called this action "entirely unacceptable" and "beyond the power of the legislature to give the State Board of Equalization the arbitrary power to require (fractional assessment)," but it was uncertain how to correct the situation. The committee finally decided that the only way to control assessment was to establish fractional assessment by statute. Members argued that legislators would at least be aware of and consider what fraction of full value was to be used under this system. However, the subcommittee's proposed bill did not pass.

By 1960, the county assessors and the State Board of Equalization had totally usurped legislative control over assessment. The Board's annual meeting with assessors—established by statute as a training session the Board held for

assessors—continued as a “legislature” in which tax policy was set. The Board and assessors became local government “jet watchers,” who felt it was their duty to limit the amount of tax cities and counties could raise under the statutory maximum mill levies. A Board member later testified before a Congressional committee investigating Montana’s assessment procedures that the Board’s and assessors’ purpose was to alter existing statutory taxing and bonding limitations by making them more restrictive than contemplated by law. (Subcommittee on Intergovernmental Relations hearing, Billings, 22 August 1972)

Even the Montana Supreme Court came to disregard the legislature as the proper body to set standards for assessment and taxation. In a 1965 decision, which extended and made explicit a decision issued in 1960, the court held that the State Board of Equalization had the constitutional authority to compel fractional assessment of property and that legislative control over the Board and assessment procedures was “directory” only. The court based its decision on the belief that the legislature and court had left the fractional assessment rates used by the county assessors and the Board unchallenged for so long that the practice had become acceptable.

This decision was puzzling to many in light of the legislature’s past attempts to end fractional assessment and the court’s 1931 ruling (which stood until 1960) that fractional assessment was illegal. However, the legal profession’s puzzlement over this decision was small compared to citizen bewilderment when their tax assessment notices arrived. Statute said that houses were assessed at 100% of full value and taxed at 30%, but the assessors and the Board had arrived at an agreement that 40% of 95% of the house’s market value determined the house’s assessed value, to which was applied the statutory tax rate of 30% and the mill levy. By law, a house valued at \$10,000 should pay \$600 if the local mill levy was 200 ($\$10,000 \times 30\% \times 200$ mills), but it actually paid only \$228 ($\$10,000 \times 95\% \times 40\% \times 30\% \times 200$ mills). Most taxpayers assumed they had received a “tax break” and left well enough alone, not realizing that everyone was getting the same “break” and higher mills were being levied to compensate. Had the taxpayer wished to pursue the matter, he would have had difficulty. The rules of assessment were not printed in any public document and assessors were often reluctant to tell citizens the formula that was used. One legislator reported that the State Board of Equalization refused to tell even him what fractional assessments were used!

Clearly, administrative discretion was almost unbounded at this point. Citizens had superficial safeguards: they could appeal their assessments through a procedure established by statute. But they were not allowed to know the standards and procedure used to determine the assessments. Such safeguards were not, in fact, any safeguard at all.

Prodded by legislative outcry over this secrecy and assured of judicial sanction for fractional assessment, the Board did begin to publish its rules in the early 1960’s and to require that assessors follow them. While this was in one sense a step toward structuring assessors’ discretion, the

rules were in direct conflict with statute. Section 84-401 still required all property to be assessed at 100% of full cash value, while a Board rule published in 1962 directed assessors to value agricultural land on its productive capacity rather than its full cash value and a 1963 rule ordered assessors to value all residential property at 40% of full value. The 1962 rule lowered the taxable value of agricultural land to 60% of market value, since productive capacity averaged 20% of market value. Residential property’s taxable value under the Board’s rule was 12% ($40\% \times 30\%$). The legislature had established the same tax for both types of property, but the Board’s rules had effectively doubled the burden on residential property compared to agricultural land.

When 26 assessors refused to follow the 1962 rule, the Board brought an original proceeding in the Supreme Court to force its use. The court held the rule invalid because the Board had not held public hearings prior to its issue as section 84-710 required, but the court did *not* question the Board’s authority to make such a rule directly conflicting with statute. It is noteworthy that the Board’s legislative grant of authority to make substantive rules read: the Board “may prescribe rules and regulations, *not in conflict with the constitution and laws of Montana . . .*” (emphasis added). (84-708)

One observer commented forcefully on this “odd species of administrative rule-making” in 1973:

The State Board of Equalization, by its alteration and disregard of the legislature’s statutory tax and spending policy, considers its legislative rule-making power to be superior to that of the legislative branch of government. Through the 40% rule the State Board has denominated itself a “fourth branch” of state government. (Sullivan, “Real Property Assessment in Montana,” 34 Montana Law Review 305)

So the matter stood in 1972 when the Constitutional Convention met. The assessed value of agricultural land had dropped 27% between 1925 and 1970, although real estate sales showed a 300% increase. Residential property was valued as low as 12% of market value in some counties and as high as 32% in others. The Convention’s Committee on Revenue and Finance was, however, determined that this situation should not continue. Its report asserted that:

The details of any tax administration system should be left to the legislature, which is best qualified to develop the most efficient, modern and fair system necessary for the needs of the day. Tax administration should be established by the legislature and administered by the executive branch of government, not by a constitutional board which is immune from control by the people. A constitutionally enshrined board is less answerable for its activities and is freer to ignore the mandates and directives of the legislative assembly.

The Convention concurred. The new constitution omitted any mention of the State Board of Equalization. Instead, article VIII, section 3 provides “The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.” Section 4 reinforces the state’s control by requiring that “All taxing jurisdictions shall use the assessed valuation of property

established by the state." The next legislature implemented these provisions by designating the assessors as "agents of the department of revenue" and stating that "The department of revenue shall have full charge of assessing all property subject to taxation and equalizing values . . ." (84-02)

The new constitution at last resolved the basic problem of property tax assessment administration: assessors, while still elected, are now agents of the state and must follow assessment procedures set by the Department of Revenue. Instead of a three-member Board with a small staff overseeing assessors' decisions, the Department of Revenue can use its large trained staff to assist and supervise local assessors.

The legislature was finally in a position to control the standard of assessment as well as the tax rate. The 1973 legislature did not, however, rise to the challenge. Fearing to do "too much too fast," the legislature gave the Department of Revenue the power in statute which the former State Board of Equalization had by constitutional amendment (Article XII, Section 15). This was the section upon which the Supreme Court based its argument that the Board had the power to establish fractional assessments. A bill to require that "all taxable property must be assessed at its full cash value *and not at any percentage thereof*" did not get out of committee.

The Department of Revenue was, understandably, reluctant to take the giant step of raising all assessments to full cash value without a clear legislative mandate. The passage of the 1973 act seemed to be a mandate for quite the opposite--continued fractional assessment. In late 1972 and early 1973, the Department promulgated over 50 pages of rules in the newly-established Montana Administrative Code, containing the written and unwritten rules the Board of Equalization had used. These rules were all based on a fractional assessment of full cash value.

The legislature itself adopted some of the Board's rules of fractional assessment, enacting them into statute. The 1973 session amended 84-401 to read "All taxable property must be assessed at its full cash value *except the assessment of agricultural land shall be based upon the productive capacity of the land when valued for agricultural purposes . . .*"

Supporters argued that the reduced tax rate the Board had wanted agricultural land might help conserve it. Two years later, the legislature further amended the section by enacting the Board's 40% rule: "All taxable real property must be assessed at 20% of its full cash value . . ." The Department of Revenue had requested the amendment because one large county refused to recognize the Department's rule that real property must be assessed at 40% of its full cash value and taxed at 30%, which was to its taxpayers' definite advantage in school equalization funding.

By passing these amendments, the legislature at last formally recognized in statute fractional assessment. The amendments increased legislative control in that both the standard of assessment and the tax rate were set in statute. However, personal property continued in its legal limbo. No standard for its assessment was set in statute, but

Department rules required assessment at various fractional rates.

A legislative subcommittee, appointed in 1975 to consider the equity of the various tax rates contained in the property tax classification system, discovered that the recent amendments had done little to end the confusion surrounding property tax assessment. After studying the Department's rules for several months, the subcommittee found that 23 different tax rates were being applied to property, instead of the 11 established by law. Members concluded that the question of equity could not even be approached until 1) the legislature knew what the effective rate of tax (as modified by Department rules) was for each type of property and 2) the legislature controlled both the assessment rate and the tax rate. Members further concluded that the standards of assessment and the procedures for taxation must be simplified so that both legislators and citizens would easily understand the basis of taxation when they began discussing the difficult question of equity among the classes.

With these objectives in mind, the subcommittee recommended changes in both the standard of assessment and the tax rates. It substituted "market value" for "full cash value" as the standard for assessing since market value "is one of the few concepts of value with a concrete meaning, understood by all persons who buy and sell goods." The subcommittee's bill removed property that is rarely sold from this requirement and provided an alternate, well-defined standard of assessment for each case. Hoping to end the days of fractional assessment forever, the subcommittee clearly defined market value and included in its bill the provision that "the Department of Revenue or its agents may not adopt a lower or different standard of value from market value (except as expressly exempted) in making the official assessment and appraisal of the value of property . . ." (84-401). The bill then dropped the tax rates for property to the effective rates the Department was setting through its rules. Thus, a car, which under the existing system was assessed (by rule) at 66 2/3% of market value and taxed at 20% (statute), had an effective tax rate of 13.3%. The subcommittee's bill raised the assessment level to 100% of market value and set the tax rate at 13.3%. The bill's intent was to keep the tax rate the same for all types of property as it had been under the then-existing rules.

The Department of Revenue firmly supported the bill during the session, seeking law that would end its anomalous position by giving legislative mandate to raise assessments to full value. The bill passed the House 94 to 1 and the Senate 47 to 0. The Department is revising its administrative rules and valuation schedules to comply with this new law. The legislature's Revenue Oversight Committee has reviewed most of these rules to determine whether they are consistent with legislative intent. Committee members are currently studying the equity of the tax rates set in the property tax classification system, confident that they understand the effective rates of taxation and control them.

Thus, for the third time, the legislature has changed statute to reflect administrative practice. As a study of

"realities about the administration of government programs," the history of property tax assessment may be in having statute flow from administrative policy-making rather than legislative policy-making direct administrative procedures. However, all government programs involve a mixture of statute, rule, and discretion. If programs are to meet changing conditions, statutes must be changed as administrators find new circumstances and legislators formulate new policy. Citizens' needs for open, predictable, and useful law can be met when legislators exercise control over agencies by carefully structuring administrative responsibility and by reviewing agency rules and agencies, in their turn, inform legislators of changing circumstances and gaps between theory and practice.

In the case of property tax assessment, legislators—frustrated by trying to change tax policy when they didn't have control over the most basic element (assessment), but mindful of the profound economic effect of requiring assessors to meet the letter of the law after nearly a century of fractional assessment—had to recognize that two steps were necessary before the situation could be resolved. The structure of tax administration had to be changed so that assessors and the Department were obligated to follow legislative decision and, secondly, the legislature had to enact into law what assessors were actually doing. This gave the legislature control over property tax assessment and procedure without risking citizens' need for continuing,

predictable tax policy. In essence, the legislature had to compromise with the existing practice before it could gain the control necessary to structure assessors' discretion.

Now, it appears that the correct mixture of statute, rule, and discretion exists in the property tax assessment program. The legislature has established clear standards of assessment. The Department of Revenue has the authority to adopt substantive rules, detailing the best methods of assessment. Assessors may use their judgement within these standards and rules to value individual property. If the rules are inadequate to value certain property, assessors can report this to the Department. The Department can request legislation if a gap between statute and reality develops. The legislature, in its turn, can review the Department's rules, evaluate its administration of the statutes, and seek its advice. This system seems to incorporate the necessary checks on power while offering a chance for growth in the law to meet changing circumstances.

However, active cooperation and vigilance by each branch of government is still necessary. Montana has a century-long history of conflict between statute and administrative practice in property tax assessment. Whether the recent changes, designed to structure the discretion exercised by the Department of Revenue and the county assessors, are sufficient to prolong the past year's harmony between statute and rule into a new century remains to be seen.

PRIOR ISSUES OF BUREAU OF GOVERNMENT RESEARCH PUBLICATIONS ARE AVAILABLE ON REQUEST:

Montana Public Affairs Reports

1. November 1967. Ellis Waldron and Emilie Loring, "The 1967 Montana Legislative Assembly."
2. February 1968. David Mason and William Crowley, "A Proposal to Modernize Montana's Judicial System." (photocopy only)
3. April 1968. Senator Mike Mansfield, "China: Retrospect and Prospect."
4. October 1968. Ellis Waldron, "Constitutional Issues in 1968."
5. February 1969. Thomas Payne, "The 1968 Election in Montana" and Ellis Waldron, "Apportionment for the 1970s."
6. May 1969. Emilie Loring, "The 1969 Montana Legislative Assembly."
7. October 1970. Ellis Waldron, "Montana Constitutional Revision Issues in 1970."
8. June 1971. Elizabeth Eastman, "The 1971 Montana Legislative Assembly."
9. January 1972. Elizabeth Eastman, "The 1971-1972 Montana Constitutional Convention."
10. March 1972. "Montana's Municipal Reapportionment Case."
11. April 1972. "Montana's Proposed Constitution of 1972."

12. June 1972. Ellis Waldron, "Montana's 1972 Constitutional Election."
13. December 1972. Thomas Payne and Elizabeth Eastman, "The Montana Voter and the 1972 Constitutional Election."
14. February 1973. Jerry Holloron, "Voter Review of Local Government in the 1972 Montana Constitution."
15. June 1973. June Thornton, William Tomlinson and Melvin L. Thornton, "The Setting of Sulphur Dioxide Standards in Montana."
16. September 1973. John R. McBride and Arnold J. Silverman, "Forty Percent of the Nation's Coal: Development of the Northern Plains."
17. April 1974. James J. Lopach, "The Montana Public Service Commission: A Profile of Weakness."
18. June 1974. Peter Koehn and James Lopach, "Review of Local Government: Democracy Montana Style."
19. July 1974. Lauren S. McKinsey and Louis D. Hayes, "Regional Energy Development in Comparative Federal Systems."
20. April 1975. Robert E. Eagle, "The 1973-74 Montana Legislative Assembly."
21. March 1976. David E. Wanzenried and Peter Koehn, "Voter Review of Local Government in the 1975 Montana Legislature."
22. June 1977. Lonn Hoklin, "Cabin Creek Realities."

23. April 1978. Robert Eagle, Lar Autio, Laureen France, Barbara Huber, and Gary Walton, "The 1977 Montana Legislature."
24. June 1978. James J. Lopach, "The Coal Tax Challenge."
25. July 1978. William C. Barlet, "The Homestead Property Tax Relief Act and the State Budgetary Process."

Occasional Series

1. Wilson, Ellis. *Profiles. The Montana Legislative Assembly*. Prepared for the Montana-Idaho Assembly of State Legislatures in American Politics. Missoula, Montana, December 1-4, 1966. 22 pp. 1970.
2. Wilson, Ellis. *A Guide to Montana Legislative Documents*. 23 pp. 1970.
3. Dale A. *Handbook for Montana Municipal Officers: Digest of Montana Statutes Governing Municipal Corporations*. 512 pp. 1969. Revised 1971.
4. Lopach, James J. and Lauren S. McKinsey. *Handbook of Montana Forms of Local Government*. 226 pp. July 1975.
5. Lopach, James J. and Lauren S. McKinsey. *Local Government in Montana: Power for the People* (Two-part high school text). 211 pp. August 1975.
6. Schwartz, Howard and Angela Santamaria (eds.). *Should Religious Values Influence Politics?* 109 pp. 1975.
7. Louis D. *Federalism: The American Experience*. 97 pp. February 1976.
8. Robert E. and Frank M. Bryan. *Teacher's Manual for Local Government in Montana: Power to the People*. 35 pp. June 1976.
9. Peter and Thomas Payne (eds.). *Local Government: Problems and Perspectives*. 178 pp. May 1976.
10. Peter and James J. Lopach. *Profile of Montana Local Government Study Commissioners*. 67 pp. September 1976.
11. Peter. *The 1974 Election of Montana Local Government Study Commissioners: Candidates, Concepts, and Voter Participation*. 103 pp. September 1976.
12. Peter and Jan Konigsberg. *Conduct of Local Government Review in Missoula, Montana: Dynamics of a City-County Consolidation Proposal*. September 1976.

1. Lopach, James J. and Peter Koehn. *Montana Local Government Review: Analysis and Summary*. September, 1977.
2. Lopach, James J., Margery H. Brown, and Kathleen Jackson (eds.). *Tribal Constitutions: Their Past—Their Future*. August 1978.

Occasional Papers in Local Government Series

1. January 1974. James J. Lopach, Peter Koehn, and Lauren S. McKinsey, "Montana Voter Review of Local Government Forms: Procedural Considerations," 103 pp.
2. June 1974. James J. Lopach and Lauren S. McKinsey, "Montana Voter Review of Local Government Forms: New Alternative Forms of Montana Local Government," 109 pp.
3. December 1974. Ann Smoyer, Michael Riley, et al., "The Great Falls Commission-Manager Referendum of 1972," 24 pp.
4. March 1975. Lauren S. McKinsey, "Suggested Guidelines for Evaluating Alternative Forms of Local Government and Assessing Community Needs," 32 pp.
5. June 1975. Lauren S. McKinsey and R. June Thornton, "Montana Local Government in Review," 20 pp.
6. June 1975. James J. Lopach and Robert E. Eagle, "Changing Governments in Great Falls: Transition Amid Dissent," 80 pp.
7. June 1975. Art Weydemeyer, "Working Bibliography for Montana Local Government Study Commissioners," 23 pp.
8. July 1975. Lauren S. McKinsey, "A Procedural Checklist for Local Government Study Commissions," 53 pp.
9. August 1975. Lauren S. McKinsey and Peter H. Koehn, "Lake County, Montana: Growth of a Small Government," 84 pp.
10. April 1976. Lauren S. McKinsey, "The Voters Choose," 36 pp.
11. April 1975. Don Oylear, "A Study Commissioner's Manual: Electronic Media and Voter Information," 8 pp.
12. October 1976. James J. Lopach, "Local Governments in Transition," 28 pp.

MONTANA PUBLIC AFFAIRS REPORT

Bureau of Government Research—University of Montana

James J. Lopach, Director

Thomas Payne, Editor

The Report presents the results of research and responsibly developed recommendations on matters of public concern. The statements and opinions expressed are the responsibility of the contributing authors and do not reflect positions of the Bureau or the University unless so indicated. Published bimonthly during the academic year. Single copies or subscriptions available on request.

February 11, 1937

Mr. Chairman, Members of the Committee;

My name is Claire Wilken, Secretary/Treasurer of the Montana Appraisal Association.

I have taken leave time to be here to represent the Association. We have polled our membership of 105 members and the Association will go on record as opposing H.B. 336/337.

The members of the Montana Appraisal Association know that our present system of the property taxation process is not perfect but we believe that the power to control and direct the Administration of statewide property tax valuation, assessment and equalization should be maintained under the strict supervision of the highest state authority possible. The State Legislature.

Since you are the law making body elected by all Montanans, you clearly have the obligation and authority that can assure and guarantee all Montana taxpayers the right of being treated in a uniform and impartial manner when being taxed under our ad valorem taxing concept.

Article XVI of the old Constitution created the office of Assessor in each county and provided for his local election. Statutes implementing the section, required him to find and assess all taxable property in his county at "full cash value". However, the necessity to getting elected every 4 years provided a strong temptation for Assessors to ignore those statutes, particularly in view of the history of county independence.

Assessors would have been less than human if they had not yielded to these pressures since taxpayers hostility toward taxes usually settles, unfairly and illogically, on Assessors.

The Appraiser is not now under those political pressures.

So the matter stood in 1972 when the Constitutional Convention met. The assessed value of agricultural land had dropped 27% between 1925 and 1970, although real estate sales showed a 300% increase. Residential property was valued as low as 12% of market value in some counties and as high as 32% in others.

These are some of the reasons that Property Tax Administration was shifted to the State.

We also express great concern for the state School Foundation Program and the University Levy. Prior to 1973, while under Assessor Control, unequal assessments caused some counties to pay more than their fair share of that tax burden.

If the Legislature relinquishes the authority of the taxing process and places it under the control the the locally elected Assessors, we can expect to see some of the local offices yeild to the pressure and often hostile emotions of thier friends and voters. These offices should not and will nto be put in that compromising position if H.B. 336 is defeated.

Please do not pass House Bill 336 or any other similar legislation under a false belief that local control will be more equitable for all taxpayers. It is not possible.

Statutory requirements for Certification (15-7-106) would pertain to Assessors if H.B. 336 passes. As Appraisal Supervisors, they would be required to be certified in all aspects of the appraisal process. Certification training takes approximately 2 1/2 years to complete, if all courses are satisfactorily completed. Currently if an Appraiser

fails to satisfactorily complete Certification training, he is terminated as specified in the Condition of Employment Agreement.

What would happen if an Assessor failed Certification requirements?

At present we are obligated to furnish Work Plans to the State Office outlining our reappraisal projections. We are closely monitored by the State to keep track of our production and we are subject to Annual Performance Appraisals.

Another portion of H.B. 336 deals with travel. Getting the Reappraisal Plan, mandated by statute, completed with the current financial restraints, it has become necessary to shift resources.

Under H.B. 336, with Appraisers unable to travel there would be a substantial increase in cost to provide the counties currently understaffed with the required personal to complete the reappraisal cycles on time.

Under H.B. 336, travel would not be possible. Consequently, smaller county appraisers, who could complete reappraisal in less than the time frame allotted, would not be fully utilized, thus waisting resources.

Instead of regressing, we feel that our efforts should be directed toward improving on the system we have, with constructive criticism and positive suggestions that can be implemented by you, the Legislature.

Thank you for this opportunity to express our views on H.B. 336.



Claire Wilken, Secretary/Treasurer
Montana Appraisal Association

Amend House Bill No. 384, Introduced Copy

1. Title, line 7.

Strike: "COUNTY ASSESSORS"

Insert: "THE STATE"

Following: "PROPERTY"

Insert: "BASED ON 1982 MARKET VALUES, EXCEPT THAT
RESIDENTIAL PROPERTY CONSTRUCTED, TRANSFERRED, OR ACQUIRED
AFTER JANUARY 1, 1989 MUST BE ASSESSED"

2. Page 1, line 18.

Strike: "County assessors"

Insert: "The state"

Following: "property"

Insert: "based on 1982 market values, except that
residential property constructed, transferred, or acquired
after January 1, 1989, must be assessed"

3. Page 2, line 10.

Strike: "county assessors"

Insert: "the state"

Following: "property"

Insert: "based on 1982 market values, except that
residential property constructed, transferred, or acquired
after January 1, 1989, must be assessed"

4. Page 2, line 13.

Strike: "county assessors"

Insert: "the state"

Following: "property"

Insert: "based on 1982 market values, except that
residential property constructed, transferred, or acquired
after January 1, 1989, must be assessed"

Feb. 11, 1987

EXHIBIT #9
DATE 2-11-87
HB 383

Honorable Chairman and members;

I would like to thank you for the opportunity of speaking in opposition to H.B. 383. My name is Sally Smith and I am chairman of the Legislative Committee for the Montana Appraisers Association of 105 members. As a tax appraiser for the State of Montana, I have some professional knowledge regarding the subjects addressed in H.B. 383. My main concerns can best be expressed by the following questions:

There is a list of definitions (section 2) for terms used in H.B. 383; however one very important definition is not shown--that of nonresidential land. For instance, in section 4 there is a detailed description on agricultural land classification...do I assume that ag land is nonresidential land? If this is a correct assumption, then what about section 5, subsection (a) which states "all nonresidential property must be appraised on its market value in the same year". Is this a suggestion that ag land be taxed at market value?

Also, new section 19 (line 23 and 24)... how is the "acquisition value" determined? I quote the fiscal note regarding this particular portion of H.B. 383 "It will be difficult to determine whether transactions are made for the purpose of avoiding taxes. Nothing in the proposal prohibits artificially low sale prices that are intended to lower taxes".

If you can logically show how H.B. 383 would make for a more equitable taxing system, I would most heartily recommend it's passage but it fails both the logic and impartiality tests as outlined by the questions herein. In fact, I see H.B. 383 opening new problems regarding the basic cornerstone of the property taxation system, a fair and equitable valuation.

I sincerely recommend that you deny passage of H.B. 383.

Thank you.

MISSOULA COUNTY

BOARD OF COUNTY COMMISSIONERS

• Missoula County Courthouse • Missoula, Montana 59802

(406) 721-5700

EXHIBIT

DATE

2-11-87

HB

412

BCC-87-080
February 9, 1987

Jack Ramirez, Chairman
House Taxation Committee
Montana House of Representatives
Capitol Station
Helena, MT 59620

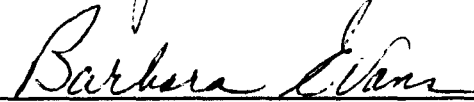
Dear Chairman Ramirez:


We are writing in support of HB-412, which would allow boards of county commissioners to abate assessments within rural special improvement districts for property owners who have demonstrated that they received no benefit from the project, if the bill is amended to allow the commissioners to re-spread the district. Without this option, annual assessments that would have been paid by such exempted property owners would not be paid and would accumulate and eventually become an obligation of the county general fund at the end of the term of the bond issue rather than of the district which requested the formation of the R.S.I.D.

Sincerely,

MISSOULA BOARD OF COUNTY COMMISSIONERS


Janet L. Stevens, Chairwoman


Barbara Evans, Commissioner


Ann Mary Dussault, Commissioner

BCC/lm

cc: Missoula Legislative Delegation
John DeVore, Operations Officer
Missoula County
Gordon Morris, Executive Director
MACo

BILL NO.

HB 361

DATE _____

2-11-87

SPONSOR

RAMIREZ

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

TAXATION

COMMITTEE

BILL NO. ^{HB} 336

DATE 2-11-87

SPONSOR PISTORIA

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

TAXATION

COMMITTEE

BILL NO.

HB 337

DATE _____

2-11-87

SPONSOR

PISTORIA

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

BILL NO.

HB 384

DATE _____

2-11-87

SPONSOR

RAPP-SURCEK

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

TAXATION

COMMITTEE

BILL NO.

HB 436

DATE _____

2-11-87

SPONSOR

RAMIREZ

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

TAXATION

COMMITTEE

BILL NO. HB 565

DATE 2-11-87

SPONSOR PISTORIA

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.