

MINUTES OF THE MEETING  
TAXATION COMMITTEE  
MONTANA STATE SENATE

January 15, 1987

The sixth meeting of the Senate Taxation Committee was called to order at 8:00 A.M. on January 15, 1987 by Chairman George McCallum in Room 413/415 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 71: Senator Gage, Senate District 5, presented this bill to the committee. He stated this is a fairness issue and that is what brought the bill into being. I-105 passed in the last election freezing six classes of property in the State of Montana. This bill puts the remaining 13 classes of property in the same category as the those in I-105. It really doesn't have anything to do with what is in those classes, but is simply to treat those classes fairly. Should someone be faced with paying a higher millage on a class that is not covered in I-105 and took it to court, the courts would say you can't put more mills on one class of property than another.

PROPOSERS: Dennis Burr, representing the Montana Taxpayers Association, gave testimony in support of this bill. He stated that he thinks I-105 freezes the taxes on most of the property that this bill considers in that the mill that you had last year is the same as next year and it is illegal to charge different millage to different types of property. They audit local governments and there are some problems with legality of mill levies. This will have to be challenged unless something like this is done. He does not think this is the ultimate answer to I-105. This has to be done to keep local governments from trying to put different millage on different property.

James D. Mockler, Executive Director, Montana Coal Council, gave testimony in support of this bill. He stated we do not have a problem in the counties that we operate on assessed taxes but we do feel that it would be nice to be treated as the rest of the taxpayers. If we have a problem we have to go to court.

Gary Langley, Executive Director, Montana Mining Assn., gave testimony in support of this bill. He stated that

we believe, for the sake of equity, that the mining industry should be treated the same as everyone else.

Janelle Fallan, Montana Petroleum, gave testimony in support of this bill. She stated there is a real concern for the reasons addressed and for that reason she supports this bill.

OPPONENTS: Don Judge, Montana State AFL-CIO, gave testimony in opposition to this bill. Their arguments against this bill are the same as against I-105. That soon we would be faced with lawsuits by the corporations of the state of Montana declaring that there would be discrimination in taxation. It is their assumption that the fiscal impact on state and local governments and school districts across the state of Montana will be impacted significantly if this legislation is passed as opposed to simply I-105. He stated with the fiscal impact facing this state this bill should be given a do not pass.

Alec Hansen, Montana League of Cities and Towns, gave testimony in opposition to this bill. He stated Representative Bardanouve said that I-105 is Pandora's Box but to me it is more like a house of mirrors. Every time you look at it you see something different. This question of tax equity is just one of the problems with I-105. He has no problem with what Senator Gage is proposing but he thinks the legislature should come up with a tax reform package that will comply with what the voters are trying to say in I-105.

Alan Tandy, City Administrator of Billings, gave testimony in opposition to this bill. He stated I-105 was intended to send a message to the legislature. He would prefer to see energy put into tax reform than to simply extend the message to include other classes of property. I-105 has been acknowledged to be flawed in the area of annexing property.

Eric Feaver, President, Montana Education Association, gave testimony in opposition to this bill. He stated we were one of the groups that worked the hardest against I-27 and even harder against I-105. This bill is one effect of I-105. We must come up with a response to I-105 and eliminate legal action that may ensue but SB 71 is not that substantive response.

Greg Groepper, Administrator, Property Assessment Division, representing the Department of Revenue, gave some technical comments to the committee on this bill.

He stated many of the people at this hearing have addressed the same points. Senator Gage's intent with this bill is an issue of fairness and the result of what will happen as we proceed down the path of I-105. You cannot apply different mill levies to different types of property. This is a fundamental problem that the sponsor of I-105 did not leave direction on how to address. There will be substantial litigation unless you take a look at this and address this issue. There is a fundamental question of whether they can come up with a way of addressing how to allocate the mills when you freeze a certain amount of property. Another issue to address and consider is what to do in a county where the tax base has been severally eroded in loss of oil production or so forth. How will they recover that revenue.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked Mr. Tandy if section 2(c) addressed his concerns that this bill would not be effective if the alternative revenue sources to replace revenue lost were established.

Mr. Alan Tandy said yes if the legislature takes that action. Our concern is in taking this series of action first. My primary point was in a tax increment district do you freeze the mills or do you freeze the valuation. He reviewed the workings of a tax increment district in relation to taxes. In a tax increment district there is a value amount placed on the district. Thereafter, any increase in taxable value, the mills that are left by the increment value in the district, goes into a district fund that is used to improve the taxable value of the district. This is allowed until the expiration of the district.

Senator Crippen said then we do have instances now where we have a freeze on property.

Senator Eck asked Jim Lear if what the committee was really addressing with this bill is an initiative that was passed and that proposal is unconstitutional.

Jim Lear said he did not have a ready answer as to whether or not this would be constitutional by itself.

Senator Eck said isn't this bill before us the same language as in I-105 other than the classification of property.

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Jim Lear said he did not draft this bill. He said it seems to be parallel to the language in I-105.

Senator Lybeck said he realizes that we did not get a fiscal note and the reason for that. He asked Senator Gage if he had some idea of the impact of this bill.

Senator Gage said if you assume that local and state spending is going to continue to escalate then this has a fiscal impact. If we assume we can hold the line this has no impact at all.

Senator Crippen said we obviously have a problem as evidenced by I-27 and I-105, that the people of this state feel that property tax is too high. He asked Mr. Judge what he had to offer to alleviate the problem.

Mr. Judge said our legislature for the state of Montana and the citizens of the state of Montana made an assumption that he thinks is fundamentally incorrect. People are assuming that we are the only state that is suffering economically. There are thirty-one states that are in as bad a shape or worse than Montana. That has to do with things that are happening outside the boundaries of the state and worldwide on economy. He would suggest looking to those areas to tax people who are doing okay in the state and who are able to pay. We agree there is a property tax problem in Montana and we want to do what we can to assist the legislature in coming up with a response to that. Farmers would be willing to pay taxes on income but they have no income and couldn't pay a sales tax.

Senator Gage closed by stating I-105 is reality. We have to deal with that whether this bill passes or not. All we are asking is to put everybody on the same level

Hearing closed on SB 71.

CONSIDERATION OF SB 64: Senator Halligan, Senate District 29, presented this bill to committee. He said this bill is merely the culmination of the tax conference in early September. Our economic development seems to be tied to transportation in and out of the state. Montana ranks very highly with respect to virtually all other services. In looking at research and development firms they do not rely on transportation. This bill is an act providing a 5-year corporation license tax exemption for research and development firms and classifying all property owned

and used by a research and development firm as class four property. On page 10, lines 1-3, property described in subsections (1)(d) and (1)(e) is taxed at one-half the taxable rate established in subsection (2)(a). He said why not do these types of things for the research and development firms so that we can attract and compete with the best of them. The Department of Revenue has some clarification language on the corporate license tax five year holiday and to make sure they are classified as research and development.

Lynn Chenoweth, Department of Revenue, said he is here to propose a couple of minor changes in the language of the bill. He said his changes do not change the intent of the bill but provide clarification. In the phrase that is used several times in the bill "first 5 years of activity", he would recommend that phrase be changed to "first 5 tax periods of activity within Montana." His second concern is with corporations that are not strictly research and development firms but have a research and development department. Would you want to exempt the whole firm or the research and development department of the firm. His only other change would be to recommend that this property be placed in class 5 instead of class 4.

PROPOSERS: None.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Bishop referred to page 7, line 13, "incorporated under the laws of this state", and said this would be limited to corporations incorporated under the laws of this state. He asked Senator Halligan if this would apply to a corporation coming from out of state being newly incorporated in Montana.

Senator Halligan said yes.

Senator Mazurek said this is pretty far reaching and that one of the things that he can recall from the conference was that they tended to discourage tax gimmicks such as this.

Senator Halligan said he understands and agrees although he feels this tax incentive should work to draw research and development firms to Montana.

Senator Neuman said in view of I-105, if you give property tax relief do you have to raise the amount of revenue to compensate. He asked Senator Halligan to respond.

Senator Halligan said he did not have an answer to that.

Jim Lear said I-105 does not include class 5 property and that is why class 5 was recommended by the Department of Revenue.

Senator Neuman said if we adopt Senator Gage's bill we haven't answered that question.

Senator Hager asked Senator Halligan if he considered allowing partnerships or individuals to get this break.

Senator Halligan said with the expense involved with major scientific research most individuals could not afford this. This would almost have to be the kind of capital that a corporation would be able to generate.

Senator Severson said this is just another tax break to fragment our tax system. He said you are talking about such a minimal amount in this particular tax incentive and it does not look like it will encourage anybody to come to Montana because of this.

Senator Halligan said he thinks the corporation tax holiday would be a major incentive.

Senator Hager referred to wheat crackers that were previously produced in Montana and to gasoline produced from grain and asked Senator Halligan if he anticipated that this might help the agriculture industry.

Senator Halligan said absolutely, it is a primary industry in Montana.

Senator Mazurek asked Mr. Chenoweth, as a general rule, what impact is five years going to have.

Mr. Lynn Chenoweth said the fiscal note attached to the bill does not attach a dollar amount but we anticipate the fiscal impact to be fairly small. Research and development firms are in the business of incurring expenses and very often never see a profit.

Senator Crippen said that is all the more reason for this bill.

Senator Halligan closed.

FURTHER CONSIDERATION OF SB 3: Senator Mazurek asked Gary Fritz to furnish the committee with information that he had received in talking with Bill Johnstone, Bond Counsel for the Department.

Gary Fritz said he did talk with Bill Johnstone, Bond Counsel, and Mr. Johnstone said the commitments that the state has made to the bond buyers so far says that 50% of the Coal Severance Tax will go through the bond fund. If the legislature decides to do something else, it could create serious problems for the existing bond program. The coal trust fund is actually three funds, the bond fund, permanent fund and income fund. Those three funds comprise the trust fund as a whole. Fifty percent of the coal severance tax has to go through the bond fund of the trust fund. After it does that the legislature can do whatever with the money, but 50% of the severance tax must flow through the bond fund.

Senator Crippen asked if he had spoken with Mr. Johnstone about alternative ways to handle this.

Mr. Fritz said Mr. Johnstone said that there may be ways that the state can replace those funds with other funds so that pledge is still met. We must be very careful on how that is done. The test is whether or not that is substantially different in what the state originally pledged to the bond holders. The courts take a close look at any kind of change in the original commitment to the bond holders.

Senator Crippen suggested waiting until we review the opinion from Mr. Johnstone.

Jim Lear said he has spent considerable time on this issue and it appears to him that there has been a lot of misunderstanding surrounding SB 3 in relation to the impact of the bond rating of the state. He said it is misleading to believe that this act, if approved by the voters, that it would automatically discontinue 50% of the money being directed into this trust fund. That simply is not the case. What this would do would be to remove, not the deposit of the coal severance tax money, but the constitutional amendment to deposit in the coal tax fund. This is not self-executing and does not supersede existing law which directs 50% of the money from coal tax into the trust fund. It does not in any way do anything to the money going into the fund right now and cannot impair the bond rating if it doesn't do that.

Senator Eck said she thinks Mr. Lear does not understand what the bond counsel is saying. It is the constitutional requirement that they are concerned about.

Jim Lear said the constitution does not direct the money to go into the bond fund. Section 17-5-703, approved by the legislature, requires that 50% of the coal tax go into a permanent fund.

Chairman McCallum said the committee would await action on this bill until Jim Lear has discussed the bond rating with Bill Johnstone and the committee has Mr. Johnstone's opinion to review.

DISPOSITION OF SB 1: Senator Neuman said what he was trying to do in the amendments prepared by Jim Lear and furnished to the committee, attached as Exhibit 1, was to insert as many of the coal board members as possible on the commission.

Jim Lear reviewed the amendments to the committee.

Senator Neuman made a motion to adopt the amendments.

Senator Hager asked if Senator Neuman was adding a member to the board.

Senator Neuman assessed his amendments and made a further motion to strike the language on the top of page 4, lines 1 and 2.

Senator Mazurek said he does not have a real problem with what Senator Neuman is trying to do. He does not know if this is that important, but essentially this has been negotiated and enacted by North Dakota and he wonders if this change will require North Dakota to go back and re-enact the compact.

Jim Lear said he has the January 7, 1986 analysis of this bill by Paul Verdon and he indicates that changes have been made that may substantiate North Dakota's amendments of those changes.

Senator Mazurek said he had asked the question whether North Dakota had enacted this and his information was that North Dakota had already enacted.

Senator Crippen said we are now taking one resident out.

Jim Lear said a member on the coal board in that area would automatically be appointed.

Senator Crippen said he thinks there should be a resident from that area involved in this thing to obtain the local impact.



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Senator Hager said the way the bill was presented there would be the Chairman of the Montana Coal Board, one Montana resident appointed by the Governor and the legislative council would appoint one. With this amendment you are taking away the legislative council person, which he thinks is important.

Senator Eck said she thinks that this isn't really very important as there won't be any need for this for the next 5-20 years down the road. She thinks the amendments help the bill.

Senator Neuman's motion was approved by the committee with Senator Hager opposed.

Senator Brown moved that SB 1 DO PASS AS AMENDED. The motion carried with Senator Neuman opposed.

ADJOURNMENT: There being no further business the meeting adjourned at 9:45 A.M.

  
SENATOR McCALLUM, CHAIRMAN

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ROLL CALL

TAXATION

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1-15-87

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NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR NEUMAN	✓		
SENATOR SEVERSON	✓		
SENATOR LYBECK	✓		
SENATOR HAGER	✓		
SENATOR MAZUREK	✓		
SENATOR ECK	✓		
SENATOR BROWN	✓		
SENATOR HIRSCH	✓		
SENATOR BISHOP	✓		
SENATOR HALLIGAN, VICE CHAIRMAN	✓		
SENATOR McCALLUM, CHAIRMAN	✓		

Each day attach to minutes.

DATE January 15, 1987

COMMITTEE ON Senate Taxation

SB 64/SB 71

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
<del>Gary Goyner</del>	DOR	<del>SB 71</del>		
<del>Eric Deer</del>	MEA	SB 71		
Mary Barber	assessors assoc	SB 71	✓	
Alan Snyders	MT. Chamber of Commerce	SB 64/71		
Dennis Burr	MON TAX	SB 71	✓	
Alan Tandy	City of Billings	SB 71		
Janelle Jalkan	MT Petroleum	SB 71	✓	
Kim Mockler	MT Coal Council	SB 71	✓	
Don M. [unclear]	MT Bell	SB 71		
Alice [unclear]	MLCT	SB 71		
Bill Verwoert	City of Helena	SB 71		
Mary A. Langley	Mont. Mining Assn	SB 71	✓	
Jeff Justus	State Librarian	SB 71		
Don Judge	MT STATE AFL-CIO	SB 71		

Amend Senate Bill No. 1, Introduced Copy

1. Page 3, lines 22 and 23.

Following: ";"

Strike: "one"

Insert: "two"

Following: "Montana"

Strike: "resident, residing in the area impacted by the  
plant"

Insert: "coal board members"

2. Page 3, line 24.

Following: "Montana"

Insert: ", one of whom resides in the area impacted by the  
plant, if possible, or in another coal impact area of the  
state"

SENATE TAXATION

EXHIBIT NO. 1

DATE 1-15-87

BILL NO. SB-1

# STANDING COMMITTEE REPORT

January 15, 1987

MR. PRESIDENT

We, your committee on SENATE TAXATION  
having had under consideration SENATE BILL No. 1  
first reading copy ( white )  
color

## BEACH-WIBAUX PLANT IMPACT ASSISTANCE INTERSTATE COMPACT

Respectfully report as follows: That SENATE BILL No. 1

be amended as follows:

1. Page 3, lines 22 and 23.

Following: ";" on line 22

Strike: "one"

Insert: "two"

Following: "Montana"

Strike: "resident, residing in the area impacted by the  
plant"

Insert: "coal board members"

2. Page 3, line 24.

Following: "Montana"

Insert: ", one of whom resides in the area impacted by the  
plant, if possible, or in another coal impact area of the  
state"

3. Page 4, lines 1 and 2.

Following: ";" on line 1

Strike: remainder of line 1 through "council," on line 2

AND AS AMENDED

DO PASS

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SENATOR GEORGE McCALLUM, Chairman.