MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Harrington, on March 3, 1989, at 9:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Dave Bohyer, Legislative Council

Announcements/Discussion: None.

HEARING ON SENATE BILL 52

Presentation and Opening Statement by Sponsor:

Senator Bruce Crippen, District 45, stated SB 52 would allow liens for inheritance and estate taxes to be perfected by the filing of a warrant for disclaimer and executed upon as other liens for the collection of taxes are perfected and executed in the state. Senator Crippen said that under the present law, inheritance and estate taxes are the only taxes administered by the Department of Revenue that are exempt from warrants of restraint. He stated the DOR can file a lien against the property but has no way to perfect the lien under present law.

Testifying Proponents and Who They Represent:

Jeff Miller, Department of Revenue

Proponent Testimony:

Jeff Miller stated the inheritance and estate taxes are unique in that they cannot be collected by filing a warrant of restraint. He stated the foreclosure proceeding for collection under present law, is costly and lengthy. Mr. Miller said warrants of restraint are a much more effective vehicle. He said SB 52 does not change the grace period for heirs to file and pay the taxes. He urged support of the bill.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Rehberg asked Jeff Miller why these two areas of taxes were excluded from the warrant of restraint process in the beginning. Mr. Miller stated he did not have sufficient experience with the tax to answer that question and referred to Mr. Woolright from the Collection Division of the DOR. Mr. Woolright stated that in 1981, when the DOR uniformed its collection procedures under the warrant of restraint, the inheritance and estate taxes were considered to be unliquidated taxes. He said the lien situation was not reviewed in 1981. He said the department advocated using the warrant of restraint to enforce collection, if necessary, and this would not be done until the tax amount had been determined. Rep. Rehberg then asked if a payment schedule for those unable to pay the inheritance and estate taxes immediately was included in the statute. Mr. Woolright replied it was not because the taxes are due and payable upon notification but the policy has been to give a grace period or make a payment arrangement. Rep. Rehberg then asked if SB 52 would effect this policy. Mr. Woolright replied it would not.

Rep. Good asked for an explanation of a warrant of restraint. Mr. Woolright replied it is a state tax lien. She then asked what perfected meant and he replied it means recorded so that it attaches to the specific property.

Closing by Sponsor: Senator Crippen stated the inheritance and estate taxes are not administered and assessed at the moment of death. He said the estate goes through probate and the amount of the taxes is then determined. He thanked the committee.

DISPOSITION OF SENATE BILL 52

Motion: None.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: None. Action will be taken at a later date.

HEARING ON HOUSE BILL 638

Presentation and Opening Statement by Sponsor:

Rep. Jack Ramirez, District 87, stated this bill had been before the house in the last two sessions and it deals with

bonding using the coal tax trust. Rep. Ramirez said the purpose of the bonds is to help the state with its infrastructure needs. He stated the current need in the state for infrastructure repairs and replacement is \$8,000,000.00. Rep. Ramirez said the bill primarily creates the bonding mechanism for use. He said a three fourths vote is still required for the coal tax trust to secure bonds or to pay for them. Rep. Ramirez stated the purpose of the trust was to preserve funds for future generations but the question is how best to use the money for present and future generations. He said the principal, at present, is eroding in value. Rep. Ramirez stated the infrastructure is a tangible item for use of the trust and a very good investment. He said this was not a breach of the trust responsibility but there is the need to address the idea that there is a better use for the coal tax trust fund.

Testifying Proponents and Who They Represent:

Ken Nortdvelt, Director, Department of Revenue Jim Van Arsdale, Mayor, Billings Alec Hanson, League of Cities and Towns Peter Pauly, Montana Association of Realtors Dennis Burr, Montana Taxpayer's Association Don Ingels, Montana State Chamber of Commerce Chris Gallus, Butte Silver Bow Kay Foster, Billings Chamber of Commerce

Proponent Testimony:

Ken Nortdveldt stated his research department had evaluated the loss to inflation of the coal trust principal. He stated the cumulative loss since the beginning of the fund is \$180,000,000.00 in 1988. He said this is the loss in purchasing power dollars. Dr. Nortdveldt stated the annual rate currently is \$17,000,000.00 which is going up with the higher inflation rates. He said the coal trust was established to serve the future of Montana but there is a major capital budget with many needs which provides for future needs. He stated the purchasing power was steadily and slowly eroding and he urged support of the bill.

Jim Van Arsdale stated he agreed with the concept of the bill and investing in the infrastructure was a reliable investment. He urged support of the bill.

Alec Hanson submitted a study by the Coal Tax Oversight Committee. (Exhibit 1). He stated the investment in public works needs to be done and there is a great need to address the infrastructure problem. Mr. Hanson stated the public works program is badly needed now and federal mandates must be met. He said the longer this is delayed, the higher the cost will be. He urged passage of the bill.

Peter Pauly stated his association recognized the problems

in financing the infrastructure needs. He stated the assistance provided in this bill would encourage economic development and urged a do pass.

Dennis Burr wished to be recorded as a proponent to the bill.

Don Ingle added his support for HB 638 stating this had considerable job development potential.

Chris Gallus stated the time was now for support of this program.

Kay Foster said she served on a task force on infrastructure a number of years ago and she hope this need could be addressed with Rep. Ramirez's bill.

Testifying Opponents and Who They Represent:

Rep. Bob Raney, House District 82

Opponent Testimony:

Rep. Raney stated the counties should spend money on the infrastructure and rural communities receive no benefit from HB 638. \$50,000,000.00 is received annually from the coal tax trust fund that is spent in all areas of the state. He said the state is gaining independence with this money and eventually a rebate and no taxes would be possible. Rep. Raney stated ongoing revenue should be used to build and maintain the infrastructure.

Questions From Committee Members: Rep. Patterson asked Rep.

Ramirez if this would be similar to a grant or a bond issue.

Rep. Ramirez replied it could be either one or a combination of the two. He stated many programs do not receive enough funds to pay all of their costs and the difference would be made up from the coal tax funds either by a pure bonding mechanism or a grant.

Rep. Rehberg asked Rep. Ramirez if a three fourths vote is required for each project or for a combination of the issuance itself. Rep. Ramirez replied this would be done by the combination method. Rep. Rehberg than asked Rep. Ramirez to explain this process. He replied, at this point in time, there could be several mechanisms but it would require a three fourths vote and there has been no complaints about any one community or project receiving more money than any other.

Rep. O'Keefe asked Carol Lee Chaney, Department of Natural Resources, Water Development, who was in the hearing audience, if this was established according to the water development bonding. She replied it was almost the exact language. Rep. O'Keefe then asked what is the amount of

bonds outstanding that are backed by the coal tax fund. She replied the amount is \$57,000,000.00. Rep. O'Keefe then asked what the state's bond rating was and Ms. Chaney replied it was double A- for the overall state and the coal tax bonds are usually AlA. Rep. O'Keefe then asked at what level of bonding would the rating drop. Ms. Chaney replied as long as the commitments are met and there is two times coverage available for the debt service, there should be no problem.

Rep. Raney asked Ms. Chaney about the grants mentioned by Rep. Ramirez. Ms. Chaney replied theoretically, grants could be made up to 100% but this has never been done. Rep. Raney stated this bill provides that the money will be spent. Ms. Chaney replied the legislature can set the interest rate if they so choose and the capability is there but it has never been used.

Rep. Schye asked Rep. Ramirez if this required a three fourths vote on the floor. He replied he did not think so, just a majority vote.

Rep. O'Keefe stated he understood it would take a three fourths vote to establish this mechanism. Rep. Ramirez stated he was unsure.

Rep. Driscoll asked Rep. Ramirez if the money is not paid back, where do the funds come from. Rep. Ramirez stated they come from the coal severance tax. Rep. Driscoll then asked if this was not simply taking money out of the coal severance tax fund. Rep. Ramirez replied this bill did not create any debt, it was merely to put the mechanism in place for the legislature to use, by a three-fourths vote, if they choose to do so.

Closing by Sponsor: Rep. Ramirez said the bill had been discussed thoroughly. He said the trillion dollars that might some day be in the coal tax trust, if this ever happens, is not the issue. He stated the real question is what is this worth in real dollars in the future. Rep. Ramirez said the major point to consider is what is the best way to invest the funds.

DISPOSITION OF HOUSE BILL 638

Motion: None.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: None. Action will be taken at a later date.

HEARING ON SENATE BILL 55

Presentation and Opening Statement by Sponsor:

Senator John Harp, District 4, stated SB 55 was requested by the Highway Department and is an act providing that earnings of a judgement are not exempt from execution to satisfy a state debt. Senator Harp said this will conform to the federal law concerning such exemptions. He then turned the time over to other proponents of the bill.

Testifying Proponents and Who They Represent:

Jeff Miller, Department of Revenue

Proponent Testimony:

Jeff Miller stated under present law, a delinquent taxpayer against whom the department files a warrant of restraint to collect taxes, is entitled to two separate exemptions from any type of garnishment. One is the household exemption for which the taxpayer files an affidavit with the court to establish what is necessary to support his/her household. He stated having two exemptions effectively ties up all of the taxpayers assets. Mr. Miller said the federal government has only one exemption which is the household exemption. He said this bill would eliminate the double exemption and leave only the household exemption. He said there is at least \$20,000,000.00 in delinquent taxes outstanding and the bill would put the department on an equal basis with the federal government.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Koehnke asked Jeff Miller why there is so much tax delinquency. Mr. Miller replied there did not seem to be any specific reason for the increasing rate of delinquency, but one possible reason may be the difficult economic times in the state. Rep. Koehnke then asked how long the collection process takes to which Mr. Miller replied approximately two years.

Rep. Driscoll stated in the bill, a taxpayer can only exempt 30 times the minimum wage rate and the department will take the rest of the person's income. He asked Mr. Miller if that was correct. Mr. Miller stated there is another exemption and the two add together. Rep. Driscoll asked what the amount of the second exemption was to which Mr. Miller replied it was a matter of what the taxpayer could

establish to the satisfaction of the judge with whom he/she has filed the affidavit. Rep. Driscoll then stated that the first week of a garnishment, the taxpayer would not have filed the affidavit with a judge at that time, so could the department take everything but 30 times the minimum wage. Mr. Miller referred this question to Mr. Worthington from the collection division who stated the department would only get 25% as the maximum, so the taxpayer would keep 75%. Rep. Driscoll then asked if a taxpayer was getting \$400.00 a week, how much would the department get. Mr. Worthington stated they would get \$100.00. Rep. Driscoll then asked, if the bill passes, how much would the department be able to garnishee. Mr. Worthington replied they could take 100% but they would not take this since the taxpayer could file for Rep. Driscoll stated the first the household exemption. week, the taxpayer has not filed for the household exemption, so how much does the department take. Worthington replied 25%. Rep. Driscoll stated then the bill is unnecessary. Mr. Worthington said under current law, everything can be exempted. He stated that under state law, The first is the \$100.50 of the there are two exemptions. taxpayer's income. The second is the household exemption. It is the excess after the \$100.50 that is concerned in the bill. He said, under this law, there would not be the \$100.50 minimum, but they could file the claim for exemption with the court at the time the levy is served and this must be responded to within five days.

Rep. Good asked if the people know this is going to happen. Mr. Worthington stated the people get a statement of account, a final notice, several phone calls from collectors, and usually one or two letters before any garnishment action is taken, therefore, he did not feel the action would come as any great surprise. He said they try to work with people as much as possible to arrange payments.

Rep. Stang asked Mr. Worthington about his statement that the department never takes 100%. Mr. Worthington replied they had never taken 100% but they used this possibility as a bargaining tool. Rep. Stang replied he had an employee who did have 100% of his income taken since Rep. Stang, as his employer, had to send his check directly to the department. Mr. Worthington stated this was illegal and he did not understand how this could happen.

Rep. Ream asked what would the taxpayer be paying under the proposed law. Mr. Worthington replied they usually tried to negotiate 10 to 15% and they could mandate 100%, but this is never done.

Rep. Patterson asked what expenses are considered before garnishment action is taken such as the case of someone having to pay child support under court order. Mr. Worthington stated two garnishments cannot be honored at one time. He said, in most instances, the department would make

every effort to assist people in this situation and to work out reasonable payments.

Rep. Gilbert asked if this lien would be number one over any other garnishments. Mr. Worthington replied no, the department would simply have to wait in line. Rep. Gilbert then asked if the department used registered or certified letters or just first class mail and assumed the taxpayer received it. Mr. Worthington replied it was sent first class. Rep. Gilbert then stated wouldn't it be wiser to send the notices by registered mail or return receipt requested in order to be certain the taxpayer received the letters. Mr. Worthington stated they make a number of efforts to contact the person and while he understood Rep. Gilbert's reasoning, it would also mean additional budget to do this.

Closing by Sponsor: Senator Harp had to leave the hearing early and therefore made no closing statements.

DISPOSITION OF SENATE BILL 55

Motion: None.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: None. Action will be taken at a later date.

HEARING ON HOUSE BILL 687

Presentation and Opening Statement by Sponsor:

Rep. Ted Schye, House District 18, stated HB 687 was brought to him by the Valley County Commissioners who had found problems with the previous legislation passed in the last session in regard to tax deeds. Rep. Schye submitted a document to the committee from the Valley County Attorney who could not attend the hearing due to the inclement weather. (Exhibit 2). Rep. Schye then turned the time over to Cort Harrington to further explain the amendments and the bill.

Testifying Proponents and Who They Represent:

Cort Harrington, Montana County Treasurer's Association Gordon Morris, Executive Director, Montana Association of Counties

Proponent Testimony:

Cort Harrington stated his association supports the concept of the bill. He submitted proposed technical amendments to the committee. (Exhibit 3). He stated a notice is sent out by registered mail to interested parties regarding a tax This is done by either the department recorder, a third party that bought the tax lien from the county, or the county treasurer. Mr. Harrington said the amendment in the bill states that the notice must be filed prior to issuing the tax deed which is viable for the recorder or the county treasurer but not for the third party assignee. This amendment maintains the thirty day requirement for the third party assignee or purchaser other than the county. Harrington submitted a document concerning the effect of (Exhibit 4). He stated SB 132 addresses similar problems. He submitted proposed amendments to the bill with regard to SB 132. (Exhibit 5). Mr. Harrington stated SB 132 and HB 687 both correct the problems of refunding costs.

Gordon Morris stated his organization supports the bill. He stated the most important amendment to the bill is page 1, section 2, continuing to page 3, which returns the original language to the bill. Mr. Morris said he also supported the amendments to the bill.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Good asked Mr. Harrington what the new language on page 2, lines 14 to 16 meant. He replied that the statute deals with disposition of surplus county property in general. He said this allows the county to offer the property for sale at 70% of fair market value if the property has previously been offered at fair market value and has remained unsold. Rep. Good then asked if the price goes down if the property does not sell at 70%. Mr. Harrington replied the county commissioners then have the authority to redetermine their decision as to the fair market value price.

Closing by Sponsor: Rep. Schye stated SB 132 and HB 687 should be considered together in a subcommittee. He said there are difficult problems that need to be addressed.

DISPOSITION OF HOUSE BILL 687

Motion: None.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Chairman Harrington placed SB 132 and SB 687 in a subcommittee with Rep. Schye as chairman and Representatives Koehnke and Rehberg as committee members.

EXECUTIVE SESSION

DISPOSITION OF SENATE BILL 55 HEARD ON MARCH 3:

MOTION: DO PASS by Representative Good.

DISCUSSION: Rep. Driscoll stated that in Subsection 2 of the bill, it states the restrictions do not apply to any debt due for state tax so the entire income of the taxpayer could be taken until they apply for the household exemption in court.

Rep. Good stated the Department of Revenue gives the taxpayer every opportunity to work out payment plans and she did not think this would come as any surprise to those involved.

Rep. Gilbert stated he had great concern with the fact that the bill would allow the entire income to be confiscated. He said the bill gave the department too much authority that is too easily abused.

Chairman Harrington stated he agreed with Rep. Gilbert.

Rep. Patterson made the motion TO TABLE the bill.

The bill was TABLED by a voice vote of 5 to 13. Representatives Giacometto, Good, Rehberg, Ellison, and Ream voted no.

DISPOSITION OF SENATE BILL 52 HEARD ON MARCH 3:

MOTION: DO PASS by Representative Hanson.

DISCUSSION: Rep. Raney stated he had no idea what the bill did.

Dave Bohyer commented that currently the Department of Revenue cannot execute a lien on estate taxes due. He said under this bill, they would be allowed to seek a warrant of restraint and perfect a lien on the estate taxes due and collect those taxes.

Rep. Gilbert asked about the 180 day waiting period. He asked when the taxes were actually due.

Mr. Bohyer replied that he understood the taxes were due and payable at the end of eighteen months. He said if the taxes are not paid by the end of this time period, the department can then collect interest as well as the amount due.

Rep. Gilbert stated this seemed rather complicated and he had problems with the collection of inheritance taxes at all.

The committee allowed Cort Harrington to comment at this point. He stated that Montana inheritance tax does not apply to the linear heirs or their descendants. He said this was not of major importance in Montana.

Rep. Gilbert stated inheritance taxes amount to millions a year and if this was not important to the state, the bill would not have been introduced.

Rep. Rehberg stated his problem with the taxes was the fact that if someone who is not a linear descendant inherited land, they would have to sell the land to pay the taxes and this amounts to a forced sale. He objects to this.

Rep. Stang asked on funds or land left to Carroll College, which would be inheritance, would they pay tax on this. Cort Harrington replied non-profit organizations do not pay taxes on inheritances.

The bill was PASSED by a 14 to 4 voice vote. Those voting no were Representatives Koehnke, Patterson, Rehberg and Gilbert.

DISPOSITION OF HOUSE BILL 641 HEARD ON MARCH 2:

MOTION: DO PASS by Representative Hanson.

DISCUSSION: Rep. Rehberg proposed and moved an amendment. (Exhibit 6). He stated this amendment exempted port authorities from taxation.

He asked Dave Bohyer to explain.

Mr. Bohyer commented there are two sections under Montana law under which a port authority can be created. One is a local port authority and the other is regional. These are considered tax exempt non-profit governmental entities so this exemption would in no way change the intent of HB 641.

Rep. Rehberg commented that he had specifically asked if this would give the city of Butte an unfair advantage and the answer is no, it would not since their port authority is already in place and this could immediately be applied to them. This in no way would be an unfair advantage.

Rep. Hoffman asked who owns the port authority. Chairman Harrington replied the local government is the owner.

The amendment was PASSED by a voice vote of 17 to 1 with Rep. Gilbert voting no.

Dave Bohyer suggested a technical amendment on page 2, line 12, subsection 2 which reads "prior to holding the hearing, the governing body shall determine that the local economic development organization owns or operates or will operate the

industrial development park". Mr. Bohyer stated this should read "owns and operates or will own and operate."

Rep. Cohen moved the technical amendment. The motion CARRIED by unanimous voice vote.

Chairman Harrington proposed an amendment to change line 10, page 2, striking "has a history" and insert "is engaged."

Rep. Rehberg stated he did not feel this solved the problem. He said the wording should read "has or will be engaged."

Mr. Bohyer commented that as soon as local development corporations are created their purpose is to engage in economic development and "is engaged" is a better definition than "has a history."

Rep. Good moved the amendment. The motion CARRIED by a unanimous voice vote.

Rep. Good made the motion to DO PASS AS AMENDED on the bill.

Rep. Cohen asked if an industrial park was outside the city limits, would it still be tax exempt.

Chairman Harrington replied they would have to petition the county commissioners.

Rep. Ellison stated his problem with the bill was allowing the leasing in competition with other businesses that are not tax exempt.

Rep. Gilbert agreed and he also objected to the fact that port authorities are duty free and under this bill, they would also be allowed to lease buildings and remain tax exempt.

Chairman Harrington stated that the funds received from the leases goes back to local development.

Rep. Ream suggested amending the bill to state that when a property is leased out to a profit corporation, then the property would be subject to taxation.

Rep. Rehberg stated this amounts to de facto earmarking. He stated that he did not think the buildings would be leased at lower rates than other businesses, but the money they retain by being tax exempt, is used to further the expansion of the development area. He stated if they are taxed, the money goes to the general fund and there is no guarantee it will be used for economic development.

After further discussion which revealed considerable concern on behalf of the committee as to the competitive factors of the tax exempt status of the port of authority with other businesses, the committee agreed to hold the bill for further consideration. Rep. Good her DO PASS AS AMENDED motion.

ADJOURNMENT

Adjournment At: 11:00 a.m.

REP. DAN HARRINGTON, Chairman

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DAILY ROLL CALL

TAXATION						COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date March 3, 1989

NAME Harrington, Dan, Chairman	PRESENT	ABSENT	EXCUSED
Ream, Bob, Vice Chairman			
Cohen, Ben		/	
Driscoll, Jerry	V		
Eliott, Jim			
Koehnke, Francis	V		
O'Keefe, Mark			
Raney, Bob		ş -	
Schye, Ted			
Stang, Barry	i		
Ellison, Orval	1/		
Giacometto, Leo		V	
Gilbert, Bob	V		
Good, Susan			
Hanson, Marian	1/6		
Hoffman, Robert	V		
Patterson, John	V/		
Rehberg, Dennis			

STANDING COMMITTEE REPORT

March 3, 1989
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Mr. Speaker: We, the committee on <u>Taxation</u> report that <u>SENATE</u>

<u>BILL 52</u> (blue reference copy) <u>be concurred in</u>.

Signed:

Dan Harrington/Chairman

[REP. WILL CARRY THIS BILL ON THE HOUSE FLOOR]

EXHIBIT /
DATE 3/3/89
HB 63P
Rep. Jack Ramie

MONTANA'S INFRASTRUCTURE NEEDS

The most recent comprehensive reviews of the extent of Montana's problem of deteriorating infrastructure were completed in 1984 by the Governor's Task Force on Infrastructure and in 1986 by the Joint Interim Subcommittee on Infrastructure. The latter group conducted a study on the subject during that interim.

Little has been done since to remedy the problems highlighted in the two reports, and it can be concluded that the situation has worsened. The degree of deterioration of infrastructure and the estimated costs of rehabilitation stated in those previous documents have escalated with the passage of time and as inflation continues. The findings of the 1984 and 1986 reports provide a starting point for assessing Montana's local government infrastructure needs.

Extent of the Problem and Remedial Costs

The Governor's Task Force summarized the problem and estimated the costs of rehabilitation and replacement:

- Roads and Streets: Cities and counties are responsible for maintaining approximately 70,000 miles of roads and streets. Estimated costs of maintenance: \$7,500,000,000.
- Bridges: Of the 2,142 bridges for which cities and counties are responsible, 1,717 are structurally deficient or obsolete. Estimated costs of repair or replacement: \$100,000,000
- Airports: Out of 116 Montana airports, 64 needed repairs or reconstruction. Capital improvement funds from federal or state sources were available to 58% of Montana airports while the rest must rely on self-funding. The federal grant/state match program was expected to fall about \$2,000,000 short of needed funds.
- Water Systems: Incorporated cities and towns reported 264
 needed capital improvement projects. In addition, 98
 of the 279 rural water systems were reported to be in
 need of major upgrading to bring them into compliance
 with state water quality standards. Estimated costs of
 these improvements: \$100,000,000.
- Sewage Treatment and Disposal: On 203 public systems, repair or expansion was needed for systems serving approximately two-thirds of the state's population. Estimated costs: \$231,276,000.
- Solid Waste: Almost one-tenth of the state population was being served by solid waste systems that did not comply with Department of Health standards. Estimated costs

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HB 638
Kep. Vach Ramo

of bringing these systems to compliance was \$1,000,000; estimated cost of maintaining all systems at a compliance level is \$5,400,000. Total estimated costs: \$6,400,000.

Jails: All but one of Montana's 53 county jails needed rehabilitation, expansion, or replacement; 21 of those were more than 30 years old and needed complete renovation or replacement. Estimated cost: \$56,713,000

Dams: A potential for hazard was said to exist at 804 dams in Montana with 672 said to pose significant risk. Some threat to human life was recognized, but mainly the danger was of economic loss. Another 132 dams were ranked as high hazards because a break or failure in any of those would claim more than a few human lives and the economic costs would be excessive. Of these significant hazard and high hazard dams, 64 were identified as owned by the State of Montana, 30 by cities, and five by counties.

Total estimated liability of Montana local governments for infrastructure projects exceeded \$8,000,000,000.

THE STATE'S PARTICIPATION IN THE SOLUTION

As a facilitator or an expediter, the state can play a role in solving this problem, the Task Force recommended, by enhancing local capabilities to finance and maintain public facilities. To achieve this end:

- (1) each local community should determine its own priorities and needs for capital investment;
- (2) the Legislature should authorize new sources of local revenue, using local taxes for local public facilities:
- (3) the Legislature should change statutes and regulations that add to the cost of planning and financing local public works; and
- (4) the state should actively encourage local governments to prepare capital improvement plans.

PINDINGS OF INFRASTRUCTURE SURVEY

The Joint Interim Subcommittee on Infrastructure's 1986 survey found these infrastructure needs of cities and counties:

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HB 638
Rep. Fack Ramine

Table 1

Percent Reporting Facility

CONDITION OF PUBLIC FACILITIES IN CITIES AND TOWNS*

			Needs Major	
	In Good	Needs	Rehabilitation	Number of Cities
	Condition	Repairs	or Replacement	Reporting**
WATER				
Supply	54	23	23	83
Storage	64	22	14	83
Distribution	33	38	29	86
Treatment	63	10	27	59
S EWAGE				
Collection	53	22	25	87
Treatment	62	18	20	77
SOLID				4
WASTE	51	11	38	53
STREETS	18	45	37	93
O I N DA I D			3,	,,,
BRIDGES	27	53	20	15
JAIL	53	13	33	15
-		- •		
LIBRARY	68	15	17	41

^{*} Two facilities (Hospital and Other) are omitted here because fewer than ten respondents indicated their physical condition.

^{**}Excludes respondents who either indicated that their city was not responsible for the facility or did not report its condition.

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HB 638
Rep. Joek Rame

Table 2

CAPACITY OF CITY FACILITY TO MEET COMMUNITY NEEDS

Percent Reporting that the Facility is:

	Adequate for At Least the Next 5 Years		Does Not Meet Existing Need	Number Responding
WATER	-			•
Supply	70	12	18	84
Storage	66	16	18	83
Distribution	n 56	24	20	86
Treatment	69	14	17	58
SEWAGE				
Collection	64	24	12	87
Treatment	72	15	14	81
SOLID				
WASTE	55	20	26	51
STREETS	47	22	31	91
BRIDGES	69	6	25	16
JAIL	53	12	35	17
LIBRARY	77	14	9	43

^{*}Excludes respondents who did not know whether capacity was adequate, as well as those who had indicated that their city was not responsible for the facility.

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HB 638

Rep. Jack Ramue

Table 3 CITY PRIORITIES FOR CAPITAL IMPROVEMENTS

Percentage Distribution

	First Priority	Second Priority	Third Priority	
WATER			_	
Supply	21 9	12 3	5 7	
Storage Distribution	14	22	10	
Treatment	9	13	3	
SEWAGE				
Collection	9	16	9	
Treatment	8	9	10	
SOLID				
WASTE	10	4	12	
STREETS	16	13	33	
BRIDGES	0	0	2	
JAIL	2	0	2	
LIBRARY	0	3	5	
HOSPITAL	0	0	0	
OTHER	2	6	2	
ALL RESPONDING				
CITIES AND TOWNS*	100	100	100	
(Number)	(80)	(69)	(58)	

^{*}Each column includes respondents who had indicated in previous questions that at least three, two, or one of these facilities was inadequate or needed rehabilitation or replacement.

Note: In some cases a priority was assigned by a respondent who had indicated that the facility met existing needs but would be inadequate by 1990.

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HB 638
Rep. Jack Remove

Table 4

CONDITION OF PUBLIC FACILITIES IN COUNTIES*

Percent Reporting Facility

	In Good Condition	Needs Repairs	Needs Major Rehabilitation or Replacement	Number of Counties Reporting**
ROADS	11	58	31	36
BRIDGES	5	42	53	36
JAIL	35	6	59	34
LIBRARY	66	28	7	29
HOSPITAL	58	25	17	24
SOLID WASTE	78	9	13	23

^{*}Water, sewage, and other facilities are omitted here because fewer than ten respondents indicated their physical condition.

Note: For each facility, the total number of respondents is 36.

Butte-Silver Bow and Anaconda-Deer Lodge are not included.

^{**}Excludes respondents who either indicated that their county was not responsible for the facility or did not report its condition.

DATE 3/3/89

HB 638

Rep. Jack Rames

Table 5

CAPACITY OF COUNTY FACILITY TO MEET EXISTING NEEDS

Percent Reporting that the Facility:

		Meets Existing Need But Will Be Inadequate by 1990		Number Responding*
ROADS	42	39	19	36
BRIDGES	31	22	47	36
JAIL	33	11	56	36
LIBRARY	73	14	14	30
HOSPITAL	67	8	25	24
SOLID WASTE	62	29	10	21

^{*}Excludes respondents who did not know whether capacity was adequate, as well as those who had indicated that their county was not responsible for the facility.

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Table 6

COUNTY PRIORITIES FOR CAPITAL IMPROVEMENTS*

Percentage Distribution

	First Priority	Second Priority	Third Priority
ROADS	29	31	12
BRIDGES	23	24	33
JAIL	27	7	38
LIBRARY	0	10	0
HOSPITAL	3	10	17
SOLID WASTE	7	0	0
OTHER**	11	18	0
ALL COUNTIES RESPONDING (Number)	100 (31)	100 (29)	100 (24)

^{*}Each column includes respondents who had indicated in previous questions that at least three, two, or one of these facilities was inadequate or needed rehabilitation or replacement.

Note: In some cases a priority was assigned by a respondent who had indicated that the facility met existing needs but would be inadequate by 1990.

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OFFICE OF COUNTY ATTORNEY
VALLEY COUNTY
P.O. BOX 1187
GLASGOW, MONTANA 59230

DATE 3/3/89 HB 287 Rep. Red Soly

DAVID L. NIELSEN COUNTY ATTORNEY (406) 228-2404 KENNETH L. OSTER CHIEF DEPUTY COUNTY ATTORNEY (406) 225-9015

> VICKI LONG DEPUTY COUNTY ATTORNEY (406) 228-2404

MEMORANDUM

TO:

Ted Schye

FROM:

David L. Nielsen

RE:

House Bill 287

DATE:

March 1, 1989

The purpose of this bill is to amend certain statutes dealing with the application for tax deed and for the subsequent sale of that property which is obtained through tax deed. Since the initial drafting of House Bill 287. I have been advised that Senate Bill 132 covers many of the same areas and I have conferred with the attorney representing the County Treasurers' Association, who authored Senate Bill 132, and I am capitulating to some of his recommendations to make the two bills compatible.

I will discuss the reasoning for the changes by the section of the bill:

Section 1: This amends MCA Section 7-8-2301 which requires that the county has to conduct an auction sale of tax deed land acquired by the county. At the present, the law is not clear as to how many times the county has to put the tax deed land up for sale. In its present form, MCA Section 7-8-2301 could be interpreted as saying that the County Commissioners would have to keep offering the tax deed acquired land at a public auction indefinitely. What this amendment does is require the County Commissioners to offer the land acquired by tax deed at an auction two (2) times and if it does not sell the second time, then the land becomes the County's and they may dispose of it as provided for in other statutory sections.

In paragraph (2) of MCA Section 7-8-2301, the bill proposes amending the definition of fair market value to mean the total of all delinquent taxes and all accrued penalties, interest, and other costs. After this amendment was added it appeared to me that this language is more confusing than what is contained in the present statute and it would be my recommendation that paragraph (2) be left in its existing state and that the definition of fair market value not be redefined as this bill suggests. The reason I don't like the

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definition of fair market value as contained in this bill is that it takes away from the county commissioners all discretion to determine fair market value. If fair market value means the total of all delinquent taxes, all accrued penalties and interest, and other costs, then it becomes meaningless for the county commissioners to even go through the act of determining fair market value. Additionally, it has been our experience in Valley County that some property will never bring, at a public auction, what the taxes owed against it are. A case is point recently was a building located west of Glasgow just off U.S. #2, which is located on State land. The improvement had suffered fire damage and was no where near what the amount of taxes levied against it equaled. We ended up offering it for sale at the minimum Ten Dollars (\$10.00) and were fortunate to get a bid of Fifty Dollars (\$50.00). If we had to continue offering it for the amount of taxes, we would never be able to get rid of it. On the other hand, I recognize that in other areas of the state where land values have not depreciated like they have in Valley County, that certain commercial property may have a fair market value far in excess of the amount of delinquent taxes owed against it. Therefore, I think it is best to not amend paragraph (2) of MCA Section 7-8-2301, which House Bill 287 does.

COUSTM :

Section 2: This amends MCA Section 7-8-2304(2)(b) to provide that if the county commissioners sell the property on a contract that they use a contract which is approved by the Department of Revenue. The present statute says that we have to use a "uniform contract prescribed by the Department of Revenue". When we got ready to sell property in Valley County, I was advised by the Department of Revenue that no such uniform contract exists. The practice is that every county sends in a contract which they wish to use and the Department of Revenue approves it. Therefore, there is no uniform contract and as far as my research indicates, there never has been. This bill simply conforms the law to the actual practice.

Section 3: Section 3 amends paragraph (2)(a) of MCA Section 15-18-114, by stating that when a property tax lien is redeemed and the purchaser of the certificate of sale, which is the basis of that tax lien, is an entity other than the county, the money received from the redemption, including costs, must be distributed to the person who is the purchaser of the tax sale certificate. In applying for a tax deed, costs usually includes the expenses of obtaining pencil

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Mr. Ted Schye
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DATE 3/3/89
HB 287
Rep. Red Serve

abstracts to determine the names and addresses of any parties who have an interest in the property who should be notified before taking of the tax deed and includes the costs of sending out the certified letters with return receipt requested. I am not aware of any statutory definition as to exactly what composes costs. The problem is that the county treasurer upon receiving the money for the redemption would not know what costs are incurred by the purchaser of the tax sale certificate. What happens in these cases is that an individual comes in and purchases from the county the tax sale certificate and then proceeds to get a tax deed by sending an application for tax deed. When the certificate of sale is purchased, the purchaser pays the delinquent taxes plus penalty and interest. When the purchaser applies for the tax deed, he or she may incur additional costs, such as obtaining a pencil abstract on the property and the mailing of notices by certified mail, but the amount of these costs are never given to the county treasurer. If the owner of the property receives a notice of application for tax deed, then the owner can go in to the county treasurer and redeem the property by paying the taxes plus penalty and interest. The county treasurer, upon receiving that money, would not know what the costs were which were incurred by the purchaser of the tax sale certificate. We know that in making application for that deed there is going to be costs if you follow the statute, but the problem is the treasurer isn't going to know what these amount were at the time redemption is attempted by the owner. I could envision a scenario where the owner of the property may come in to redeem on the day before the last day that is allowed and if the treasurer didn't know what the costs where which were incurred by the purchaser of the tax sale certificate, they might very well refuse the redemption which would cause the owner to lose the property even though he tried to redeem it.

- Section 4: The amendments to MCA Section 15-18-212 cure several problems which exist under the present law. Some of these problems are as follows:
 - (1) The first amendment increases the permissible time for the notification for application for tax deed to be not less than 60 days or more than 120 days prior to the date on which the tax deed will be issued. The present law says that the notice must be no less than 60 days or more than 90 days. An additional 30 days is needed for the reason that when the notice of application for tax deed is sent, you have to schedule a date that you are going to issue the tax deed

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which falls somewhere between 60 and 90 days from the date of the notice being sent. Usually on a piece of property several notices are sent which would go to the owners, mortgage holders, tenants, and other occupants of the property. If one of the notices is returned because the person has moved or cannot be found, then paragraph (5) of this statutory section is triggered and you have to then publish a notice of application once a week for two weeks in the newspaper. By the time the original notices are sent out and the county clerk is advised that they are going to have to publish a notice because of a return of one of the notices as undeliverable, there is not sufficient time in the 60 to 90 day period to complete that publication so that the tax" deed can be issued on the date originally set forth in the notice. By expanding the outer limit from 90 to 120 days, this would give the county clerk time, if one of the notice is returned as undeliverable because the address of the owner is not known, to go ahead and publish that notice and still issue the tax deed within the same time period. present, by the time the county clerk gets the notice back as undeliverable, there is not sufficient time to publish a notice and keep it within the time frame and therefore the entire tax deed application process has to start all over again from the beginning. It is not uncommon on some of the tax deed applications to send ten to twelve notices out for the application of tax deed on one parcel of property. becomes very expensive and cumbersome to have to redo that entire process because one of them was undeliverable for the reason that the person had moved or that their forwarding address is unknown. As I have mentioned, this amendment would allow the clerk and recorder to publish those returned notices and still have the tax deed issued within the original time frame.

- (2) In paragraph (5) of MCA Section 15-18-212, the statute presently provides that within this 60 to 90 day period prior to the date of the issuance of the tax deed, you have to publish the notice once a week for two successive weeks. An amendment is needed to this section to clarify whether the time period for the 60 to 90 days commences on the first date of publication or on the last date of publication. This would be an eight day difference. It is recommended that the time period of not less than 60 days commence on the first date of publication.
- (3) In paragraph (7) of MCA Section 15-18-212, the present law provides that the proof of notice must be filed with the

MEMORANDUM Mr. Ted Schye RE: House Bill 287 March 1, 1989 Page 5 of 7 DATE 3/3/89
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county clerk not less than thirty days following the mailing or publiciation of the notice. It is believed that this is a scrivener's error and that it was intended that that notice be filed not more than thirty days following the mailing or publication of the notice. As a practical matter, it doesn't make any difference when that proof of notice is filed so long as it is filed before the issuance of the tax deed. Once that notice is filed, the county treasurer is put on notice that the notice for application of tax deed has been sent and can therefore issue the tax deed. The other problem with the existing law is that even if it were amended to say not more than thirty days following the publication of the notice, we don't know whether that means the first publication or the second publication. Because the courts have upheld that taking of tax deeds must be strictly followed in order to have a valid deed, it is imperative that we know exactly which event is the triggering occurrence for the running of the time period.

(4) Paragraph (6)(h) is proposed to be amended by deleting the words "or expired". The reason for this amendment is that the notice for tax deed application has to contain a statement as to the date that the redemption period expires. It is assumed that the redemption period referred to in this section is that 60 to 90 day period in which the application for tax deed is sent to the land owner. This present statutory language is confusing and makes it appear that the date of the redemption period is the 36 month redemption specified in MCA Section 15-18-111. Even in period considering the provisions of MCA Section 15-18-111, it is obvious that the redemption period will never expire before the 60 to 90 day time period triggered by the sending of the notice, since the sending of the notice is the event that commences the running of the final redemption period. Therefore, for clarity, the words "or expired" are surplusage and can only create confusion.

Section 5: Section 5 deals with an amendment to MCA Section 15-18-213 as relates to the form of the tax deed. The form of the tax deed needs to set forth in the final resolution clause that the consideration paid for the property includes not only the amount the purchaser paid for the tax sale certificate but also for all subsequent taxes, including penalty, interest, and costs in obtaining the tax deed. The present language for tax deeds is confusing in that it makes it appear that the purchaser only paid as consideration the amount of the tax sale certificate for the one year upon

MEMORANDUM Mr. Ted Schye RE: House Bill 287 March 1, 1989 Page 6 of 7 DATE 3/3/89
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Rep. Red Schye

which the application for tax deed is based. In reality, most purchasers, or assignees, who apply for a tax deed, have paid, not only the taxes in the purchase of the tax sale certificate, which is used as the basis for the tax deed action, but have also paid all of the subsequent taxes, including penalties and interest, if the taxes were delinquent before the assignment. An example might be using the delinquent taxes for 1984. The tax sale certificate would be issued in 1985 for 1984 taxes, but since the 36 month redemption period runs from the date of the tax sale certificate which would be in 1985, the owner of that tax sale certificate would pay the taxes for 1985, 1986, and 1987. When the county is the owner of the tax sale certificate, many times the subsequent taxes are also delinquent. Thus when the application for tax deed is sent, it is based upon the delinquency of the 1984 taxes which were sold for tax sale certificate in 1985 but the amount of consideration for the purchase of that property would include all of the subsequent taxes as well. This information is vital to the integrity of the tax deed and should be included on that document for clarity.

Section 6: This section amends MCA Section 15-18-214 which states What the effect of a tax deed is... In (1)(c) of this estion - a tax deed is free and clear of all liens and encumbrances except an interest in the land owned by the United States, this state, or a subdivision of this state. At present the problem the counties are having are with Small Business Administration loans and Farm Home Administration loans. federal government, may, in some of their direct loans have a mortgage which survives the tax deed action because of the supremacy of the federal government. However, this present language in the Montana statute creates problems for loans such as SBA's which are guaranteed loans which are assigned from the financial institution to SBA upon default. SBA is using this statute to boot strap an otherwise conventional loan guaranteed by the federal government into a federal interest which survives the tax deed action. Thus, the federal agencies are enjoying a more superior position in their mortgage than they would if they simply had to rely upon the federal law dealing with supremacy of federal actions. At present, I am not aware of any federal cases which have allowed SBA guaranteed loans the priority that they can have under our present statute. If this statute were amended to state that the tax deed is free and clear of all interest except those owned by the United States, this state, or a subdivision of this state, then the mortgage

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Rep. Led Schye

interest problem would be eliminated, so far as state law is concerned.

It is my suggestion that this section be amended to read:

"(c) When the land is owned by the United States, this state, or a subdivision of this state."

Thus, the words "an interest in" which appear in the present statute would be eliminated. By eliminating these three words we would not need to utilize the language set forth in Section 6 of House Bill 287.

Section 8: I would recommend an effective date of July 1, 1989.

This would allow us to utilize this new provision of law for the tax deed actions which will probably occur in late July through late September. Since most of the tax sale certificates are issued somewhere in the June to August period and under the present law we have to commence tax deed action within 60 days before that time or within 60 days after, it would be important to have an effective date that would cover tax deed sales in 1989 for delinquent taxes occuring in 1985.

EXHIBIT 3

DATE 3/3/8 9

HB 687

Rep. Hed Solinge

AMENDMENT TO HOUSE BILL NO. 687

1. P. 9 line 13

Following: "(7)"

Strike: "In all cases, proof"

Insert: "Proof"

2. P. 9 line 14

Following: "must be filed"

Strike: "by the county clerk, county treasurer, purchaser, or assignee, as appropriate."

3. P. 9 line 16

Following: "clerk"

Insert: ". If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk within thirty (30) days of the mailing or publishing of the notice. If the purchaser or assignee is the county or if the county treasurer is required to give notice pursuant to subsection (3), the proof of notice must be filed."

If the amendments are adopted, subsection (7) would read:

(7) Proof of notice in whatever manner given must be filed with the county clerk. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk within thirty (30) days following the mailing or publication of the notice. If the purchaser or assignee is the county or if the county treasurer is required to give notice pursuant to subsection (3), the proof of notice must be filed with the county clerk before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

Purpose of amendment:

If a purchaser other than the county fails to give notice, the county treasurer is required to give the notice under 15–18–212 (3), MCA. Under the existing statute, the county treasurer looks to see if the proof of notice has been filed. If the proof of notice has not been filed, the county treasurer proceeds to give notice. The treasurer needs a date certain to determine whether to give notice. Under the introduced bill, the treasurer would never know whether to give notice. The introduced bill will work if the county clerk or the purchaser gives notice as required. It does not work if a purchaser other than the county does not give notice. The amendment is intended to correct that problem.

EXHIBIT 4 DATE 3/3/89 HB 687 Reg. Led Schy

15-18-309. Effect of deed. The deed issued under this or any other law this state shall convey to the grantee the absolute title to the lands

described therein as of the date of the expiration of the period for rettion, free of all encumbrances and clear of any and all claims of said dants to said action except the lien for taxes which may have attracted as to the sale and the lien of any special, local improvement gation, and drainage assessments levied against the property, payable the execution of said deed, and except when the land is owned by the UStates or this state, in which case it is prima facie evidence of the repossession accrued as of the date of expiration of such period for redempt

History: En. Sec. 9, Ch. 176, L. 1933; re-en. Sec. 2215.9, R.C.M. 1935; and. Sec. 1

L. 1937; R.C.M. 1947, 84-4170.

EXHIBIT 5
DATE 3/3/89
HB 687
Rep. Ked Schye

AMENDMENT TO HOUSE BILL NO. 687

New Section: Coordination Instructor

- (a) If Senate Bill 132, including the section of that bill amending 15-18-114, is passed and approved, Section 3 of this act amending 15-18-114, is void.
- (b) If Senate Bill 132, including the section of that bill amending 15-18-214, is passed and approved, Section 6 of this act amending 15-18-214, is void.

EXPLANATION

The amendment to 15-18-114(2)(a) in Senate Bill 132 provides:

	, and department of
14	(2) (a) When a property tax lien for which the
15	recorded purchaser is other than the county is redeemed, the
16	moneyreceived-from-the-redemption,-including-penalties-and
17	interest-but-notcosts;mustbedistributed the county
18	treasurer shall distribute to the person listed as the
19	purchaser on the tax sale certificate and in the record kept
20	by the county treasurer the amount the purchaser paid the
21	county for the property tax lien plus any subsequent amount
22	paid pursuant to 15-18-112 plus interest, as specified in
23	15-16-102, from the date of payment until the date of
24	redemption. Any money remaining after distributing
25	redemption proceeds to the purchaser other than the county

SB 132

must be distributed pursuant to subsection (1).

The amendment to 15-18-214(1)(c) provides:

(c) when an-interest-in the land is owned by the United States, this state, or a subdivision of this state.

DATE 3/3/89
HB 64/
Rep. Dus Puilie

Amendments to House Bill No. 641 First Reading Copy

Requested by Rep. Dennis Rehberg For the Committee on Taxation

Prepared by Dave Bohyer March 2, 1989

1. Title, line 6.
Following: "ORGANIZATION"
Insert: "OR PORT AUTHORITY"

2. Page 1, line 21.
Following: line 20
Insert: "(3) "Port authority" means a port authority created
 under 7-14-1101 or 7-14-1102."

3. Page 1, line 23.
Following: "organization"
Insert: "or a port authority"

4. Page 2, line 6.
Following: "that"
Insert: ":(a)"

5. Page 2, line 8.
Strike: "(a)"
Insert: "(i)"

6. Page 2, line 10.
Strike: "(b)"
Insert: "(ii)"

7. Page 2, line 12.
Strike: "(c)"
Insert: "(iii)"

8. Page 2, line 13.
Following: "park"
Insert: "; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102"

VISITORS' REGISTER

	HOUS	E TAX	ATION	(COMMIT	TEE			
	\$\$B.52 Sen. Bruce Crippen			DATE March 3,			1989		
NAME (please p	orint)		RESID	ENCE			SUPPORT	OPPOSE	
Jef Miller			Dept of	Revenue			V		
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#### VISITORS' REGISTER

HOUSE TAXATION	COMMITTEE	
BILL NO. Rep. Jack Ramirez	DATE March 3,	1989
NAME (please print)	RESIDENCE	SUPPORT OPPOSE
Jim Van Arsdule	City of Billings	1
Peter C. Paul	MT. Assoc. of Ren 170	vy L
Dennis RURTR	MT TAXPAYERS	
Du lugels	Mt Chamber of Commen	ce /
	/	

## VISITORS' REGISTER

HOUSE TAXATION COMMITTEE

BILL NO. SB 55	DATE March 3, 1	989
SPONSOR Senator John Harp		
NAME (please print)	RESIDENCE	SUPPORT OPPOSE
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## VISITORS' REGISTER

HOUSE	TAXATION	COMMITTEE
		COUNTITIES

BILL NO. THE TORT	DATE March 3, 1989			
SPONSOR Rep. Ted Schye	·			
NAME (please print)	RESIDENCE	SUPPORT	OPPOSE	
Port Harrington	Count Treasures a	00 /		
David L. Nielsen	Vally Co. att MACO.	~		
Gordon Morris	MACO.	~		