

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON TAXATION

Call to Order: By Chairman Bob Brown, on January 24, 1989,
at 8:00 a.m.

ROLL CALL

Members Present: Chairman Brown, Vice Chairman Hager,
Senator Bishop, Senator Crippen, Senator Eck, Senator
Gage, Senator Halligan, Senator Harp, Senator Mazurek,
Senator Norman, Senator Severson, Senator Walker.

Members Excused: None

Members Absent: None

Staff Present: Jill Rohyans, Committee Secretary
Jeff Martin, Legislative Council

Announcements/Discussion: None

HEARING ON SENATE BILL 118

Presentation and Opening Statement by Sponsor: Senator Tom Beck, District 24, sponsor of the bill, said this is another attempt to address the protested tax situation caused by the BPA lines in Western Montana. SB 118 originated in the Revenue Oversight Committee and was drafted by Connie Erickson. Senator Beck asked Ms. Erickson to comment on the bill.

List of Testifying Proponents and What Group they Represent:

Connie Erickson, Legislative Council
Tom Cotton, Elementary Superintendent, Deer Lodge

List of Testifying Opponents and What Group They Represent:

Rick Moe, Superintendent, Boulder Public Schools
James B. McCauley, Jefferson County Commissioner
Dennis Burr, Montana Taxpayers Association
Tom Hopgood, Montana association of Realtors
Doug Schmitz, former Co-commissioner of Jefferson
County
Gordon Morris, Montana Association of Counties

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Testimony:

Connie Erickson, who staffed the Revenue Oversight Committee during the interim, presented the bill to the committee. This bill would allow a taxing jurisdiction to exclude a protested valuation from its taxable valuation for the purposes of setting a tax levy. The protested valuation must exceed 5% of the jurisdiction's total taxable valuation before it can be excluded. This exclusion would constitute a decrease in taxable value for the purposes of SB 71.

The rate of interest on the protested funds would be the rate of interest generated from the state short term investments (STIF), but it would not be less than 6% a year. It could be variable, but lower than 6%. The state would be required to pay the interest that would have been earned on any of the taxes drawn out of the protest fund by a taxing jurisdiction. Currently, a taxing jurisdiction can take out all but the first year money from the protest fund. However, if the protest was decided against the taxing jurisdiction, they have to pay it back. The bill provides the taxing jurisdiction that would pay the principal; the state would pay the interest. On the other hand, if the money stays in the fund, the state retains the interest and the principal goes to the taxing jurisdiction.

The taxing jurisdiction would be allowed to repay a successful tax protest by issuing bonds without an election. In such a case, the annual limit on the property taxes to be levied which pay for the bonds would be removed. Currently it is a 10 mill tax. Those levies would also be excluded from the limitation on the amount of taxes levied in accordance with SB 71.

Tom Cotton, Elementary Superintendent, Deer Lodge, said the school districts in the seven Western counties affected by the protested tax problem are reaching a critical stage. In Powell County, \$3,566,648 is being paid into the protested tax fund. Of that, \$1,228,991 is out of Mr. Cotton's school district. He said they have depleted all their reserves and are in a critical situation. In Mineral, Powell, and Granite counties, \$7,500,000 has been paid in protest against the Bonneville Power line. Much of it is either school or county money. He said two districts are going to be forced to borrow from the protested funds, but most are

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afraid to, because they don't know how they will pay it back if they lose the suit. He stated the bonded indebtedness would not cover the interest. At present 21% of his valuation is protested which means \$140,000 a year out of his general budget.

Opponents:

Rick Moe, Superintendent, Boulder Public Schools, presented his testimony in opposition to the bill (Exhibit 1 and Exhibit 2).

James B. McCauley, Jefferson County Commissioner, said the exclusion of protested taxes when setting mill levies by jurisdiction will cause real bookkeeping complications. The 5% rule, as it relates to I-105, is only of limited benefit as it relates to a protest of this magnitude. He felt the bill does not adequately address that problem. He said the base of interest earnings to Jefferson Company if the bill were to pass would be significant. He said they earn approximately \$50,000 a year from interest on the protested tax fund. He questioned the administrative cost, noting it would come out of the principal if the interest was lost.

He expressed concern that moving the effective date back to 1983 would create another bookkeeping nightmare as they have been able to earn over 6% consistently throughout the protest. He felt the current legislation is simple to administer. This bill is detrimental to counties, and of limited benefit to schools. He felt the current legislation is the most workable except for the payback provision which is a problem.

Dennis Burr, Montana Taxpayers Association, noted this problem has been wrestled with for quite some time. He opposed the provision allowing for exclusion of value from the tax base as both a representative of the Taxpayers Association and as a resident of Jefferson Company. The reason being if a large amount is taken out of the tax base, everyone else who lives in that area will pay the total tax due to the taxing jurisdiction. The protesting entity will pay an increased tax under protest due to the higher mill levies that were established. Essentially, that becomes a penalty on the protester for protesting and a

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penalty on everyone else in the taxing jurisdiction, because one company or individual exercised this right. By allowing expenditure of money from the protest fund, a larger budget can be built.

He noted the attorneys for the companies involved in the lawsuit are aware of the problems being caused by schools and local government. They had appeared before the Revenue Oversight Committee and offered their help in resolving the situation in some way. Mr. Burr felt local governments could work with the companies toward some solutions.

Tom Hopgood, Montana Association of Realtors, said the Association supports the rights of the individual property owner who is now overburdened and overtaxed. He supported Mr. Burr's testimony as excellent and well stated. He said they are certainly sympathetic to the problems caused by the BPA and the tax protest, but the bill unfairly penalizes all the taxpayers in the county for the actions of a few.

Doug Schmitz, former County Commissioner of Jefferson County, felt the most important feature would be extending the payback period should bonds ever be sold for the repayment of protested taxes if the county government should lose the case. He felt the current law works well and the interest on the STIP funds helps the general fund. He opposes all the provisions of the bill except the bonding provisions given sufficient time to amortize it out if it is used.

Gordon Morris, Montana Association of Counties, said he is a "non-opponent". He said the bill is a result of legislation passed in the 48th session dealing with the BPA 500 KV power line. The target of the bill was to establish a state protested tax fund. The various jurisdictions could then draw on that fund. The state would be responsible for the repayment and interest. He felt the bill is salvageable and could be amended on page 8 by striking the language having to do with the "interest earned on the protest fund or income accrued from the investment must be deposited to the credit of the state general fund". Unless you have a state protest tax fund, it makes no sense for the interest on the protested tax funds held by the county treasurer to be payable to the State of Montana. He felt the intent

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for the last three and a half years has been to enhance the use provisions in terms of significant protest monies. The second aspect was to achieve the ability on the part of the various jurisdictions to repay tax protest fund that had been drawn down by local government entities. He referred to the language on page 2, line 13 which refers to "all of the property under protest". It should be clearly stated that it is that property under protest which constitutes 5% or more of the property tax base within the jurisdiction. It is the significant protests by single individual property taxpayer that are the problem. Therefore, if you had a BPA protest, which constitutes 4.5% of your property tax base in a given county, you would have the option, based on the 5% provision, reduce the taxable valuation that one jurisdiction pursuant to that one property tax payer that could be done by simply striking "all of" on page 2, line 13.

He also felt the expanded repayment provision is the most significant part of the bill.

Questions From Committee Members: Senator Crippen asked Mr. Cotton how he survived prior to the time the power lines were taxed.

Mr. Cotton replied they were getting all the funds then, because the valuation was not included. Now it is included and taxes are being assessed against it and the money is being collected. However, the money is going into a protested tax fund. His voted levy is \$680,000 and \$140,000 is going into the tax fund every year.

Dennis Burr said the situation is unique. The lines will either be taxed at full value or at zero. It was suggested to the Revenue Oversight Committee that the lines be exempted until the court case is settled. If the state wins the case, it would be automatically refunded. That would allow the affected counties to get that property off the tax rolls, increase their levies, and enable them to spend all the money they have coming in.

Gene Phillips, Kalispell, an Attorney for the Colstrip owners in the tax protest, said he believes there is now \$14,000,000 tied up in protested funds. The

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first two cases are set for oral argument before the court the on February 8. The next cases begin in June of 1989. The companies will appeal to the U.S. Supreme Court.

The companies are trying to avoid setting a precedence where the companies contracting for service with the Bonneville or WAPA power lines would be taxed.

Senator Crippen asked what effect these would have on the appeals if the power lines were exempted from the tax rolls.

Mr. Phillips answered they would be delighted and would certainly find a way to negotiate the \$14 million. He said they would be open to suggestions.

Senator Gage asked how the county would have gotten along without the valuation from the power lines as opposed to the power line valuation being protested at present.

Mr. Morris said the county has statutory caps on mills. In 1985 when the property became taxable the tax value was \$5000. When the line went on, it went to \$10,000 or doubled the value of a mill. That means if prior to that was levying 25 mills, they would cut the number of mills in half in order to get the same number of dollars. The value of a mill doubled, therefore, the number of mills needed to raise the money to balance the budget was cut in half. Yet, they only realize 50% of the money they anticipate. A county must budget in anticipation of 100% collection of taxes receivable. Yet, here is a tax receivable dilemma where the county knows they will fall short by the amount of the BPA protest.

Closing by Sponsor: Senator Beck closed by saying he feels this a beneficial use tax. He would like to see the opportunity for counties to issue bonds to repay borrowed money put into law. He felt the bill might have to go into a subcommittee for more work.

Senator Brown suggested one way of dealing with the problem might be to suspend application of the tax pending the outcome of the litigation.

HEARING ON HOUSE BILL 34

Presentation and Opening Statement by Sponsor:

Representative Harrington, District 68, said this is a simple bill from the Assessor's Association. It allows assessment notices which are mailed out each year to be mailed directly from the county assessor's office rather than from the Department of Revenue. He said it is not a mandatory provision, but rather establishes a local control option.

List of Testifying Proponents and What Group they Represent:

Marvin Barber, Montana Assessors Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Marvin Barber, Montana Assessors Association, explained the reason for the bill. After an appraiser reviews a price of property he sends his field notes to Helena and a notice of change is sent back to the taxpayer as well as the appraiser. However, the assessor is not aware of the change unless the appraiser brings his records in or the taxpayer complains. The bill simply would allow the assessor to receive the notification of change and save some embarrassment between the assessor and the taxpayer.

Opponents:

None

Questions From Committee Members: None

Closing by Sponsor: Representative Harrington closed.

EXECUTIVE ACTION ON HOUSE BILL 34

Discussion: None

Amendments and Votes: None

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Recommendation and Vote: Senator Eck moved HB 34 BE CONCURRED IN. The motion CARRIED unanimously. Senator Eck will carry the bill.

EXECUTIVE ACTION SENATE BILL 1

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Crippen moved SB 1 DO PASS.

Senator Eck said this bill has a fairly significant impact in the next biennium of over \$3 million.

The motion CARRIED with Senator Eck voting no.

EXECUTIVE ACTION ON SENATE BILL 117

Discussion: Senator Crippen moved SB 117 DO PASS.

Senator Brown said because this a constitutional amendment it will go through the whole legislative process no matter what the recommendation of the committee is. The only way to stop it is to table it.

Senator Gage said it is time to ask the people of the state what they want to do about capping the coal trust.

Senator Eck felt if the people want to do it, they can do it by initiative.

Senator Mazurek said he was concerned about two things. First, if the legislature puts an amendment on the ballot, it carries with it the implicit support of the legislature. The second is in two years the people are going to decide whether to review the whole constitution, and the coal trust will be part of the decision.

Amendments and Votes: None

Recommendation and Vote: Senator Eck made a substitute motion that SB 117 DO NOT PASS. The motion FAILED on a roll call vote. (Exhibit 3).

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Senator Mazurek made a substitute motion to TABLE SB 117.
The motion FAILED on a roll cal vote. (Exhibit 4).

Senator Crippen's original motion that SB 117 DO PASS
FAILED on a roll call vote. (Exhibit 5). Senator
Halligan moved SB 117 DO NOT PASS. The motion CARRIED
on a roll call vote. (Exhibit 6).

EXECUTIVE ACTION ON SENATE BILL 139

Discussion: None

Amendments and Votes: Senator Hager moved to amend the bill
as per the attached standing committee report (Exhibit
7).

Senator Mazurek explained this is in response to the
situation where taxing jurisdictions are having to take
subdivisions back. These following conditions would
apply to the 24 month provision: It must be subdivided
as either residential or commercial lots, there have to
be special taxes (i.e. RSIP or SIDS) and no habitable
dwelling or commercial structure situated on the
property. The thirty six month provision will apply to
all other property.

The motion CARRIED unanimously.

Recommendation and Vote: Senator Hager moved SB 139 DO
PASS AS AMENDED. The motion CARRIED unanimously.

EXECUTIVE ACTION ON SENATE BILL 97

Discussion: A brief discussion was held regarding fiscal
note nonavailability. There seems to be a delay and
the committee asked to have the situation investigated
more thoroughly, and if the process can be speeded up
in any way.

Senator Crippen said this bill has statewide applications.
He said there is no relationship to creation of new
jobs and estimating the economy.

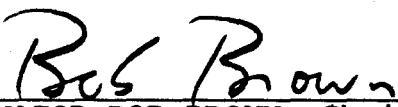
Amendments and Votes: None

SENATE COMMITTEE ON TAXATION
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Recommendation and Vote: After reviewing the fiscal note,
Senator Crippen moved to TABLE SB 97. The motion
CARRIED unanimously.

ADJOURNMENT

Adjournment At: 9:56 a.m.


Bob Brown
SENATOR BOB BROWN, Chairman

BB/jdr

min124jr.sr

ROLL CALL

TAXATION

COMMITTEE

50~~st~~ LEGISLATIVE SESSION -- 1989

Date 1/24/89

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

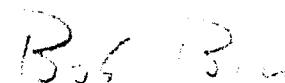
January 24, 1989

MR. PRESIDENT:

We, your committee on Taxation, having had under consideration HB 34 (third reading copy -- blue), respectfully report that HB 34 be concurred in.

Sponsor: Harrington (Bek)

BE CONCURRED IN

Signed: 

Bob Brown, Chairman

1/24/89
J.B.P.
1/24/89

ccr:HB34.124

SENATE STANDING COMMITTEE REPORT

January 24, 1969

MR. PRESIDENT:

We, your committee on Taxation, having had under consideration SB 1 (first reading copy -- white), respectfully report that SB 1 do pass.

DO PASS

Signed,

Bob Brown

Bob Brown, Chairman

1/24/69
J. S. P.M.

SENATE STANDING COMMITTEE REPORT

January 24, 1989

MR. PRESIDENT:

We, your committee on Taxation, having had under consideration SB 117 (first reading copy -- white), respectfully report that SB 117 do not pass.

DO NOT PASS

Signed:

Bob Brown

Bob Brown, Chairman

*H.C.
1/24/89
2:40 P.M.*

#1

SENATE TAXATION

EXHIBIT NO. #1

DATE 1/24/89

BILL NO. SB 118

Rick Moe, Superintendent
Boulder Public Schools

SB118 is legislation that was prepared in response to the request from school districts to provide some state assistance with the BPA Tax Protest Problem. Because in some districts large sums of BPA Taxes are being paid under protest, school districts are experiencing funding shortfalls that are causing district reserves to dwindle or disappear, or are causing districts to have year-end deficits and serious problems with cash flow during the school fiscal year.

Although much of the tax protest money held in escrow accounts is available to the school districts for use, there has been a reluctance to use the money for fear that if the court case involving the tax protest funds is lost by the state/districts, the districts would have to repay the protested monies and interest with a lower district taxable valuation. Districts have to choose between suffering now, possibly suffering later, or both.

Although the Interim Revenue Oversight Committee spent much time discussing the issue during this past year and solicited suggestions for resolving the problem, no proposed language was ever presented to that committee that addressed the needs of the schools. At the last meeting attended by school administrators from affected districts, the request was made to discontinue efforts to resolve the problems through legislation. There seemed to be an unwillingness on the part of committee members to go far enough to incorporate provisions that would provide the kinds of assurances and protections that would encourage the districts to use any legislative changes that might be proposed.

After meeting with the affected school administrators in Missoula last Wednesday and reviewing the provisions of SB118, the school administrators still agree that the provisions of this bill will not come close to addressing the needs of the school districts. At this time we perceive that since the issue was too difficult and complicated to find an acceptable and workable solution during an interim period, it would be unwise and perhaps dangerous to try to throw something together during a busy legislative session.

Although we appreciate the efforts of many legislative members who have been working on our behalf, our position at this time is that SB118 will not bring resolution to our tax protest problems, and we ask that it not be pursued any further.

January 24, 1989

When asked what could be done to help alleviate the problem for the school districts, we responded by asking that legislation be drafted that would

SENATE TAXATION
EXHIBIT NO. #2

1. Allow the school district to have the taxable valuation of the BPA Powerline removed from the district valuation until the law suit is settled. The tax money would still be collected, but it would sit in escrow accounts until the settlement occurred. District could not touch any money collected after the valuation was removed.
2. The school districts would be allowed to use the protested tax money for all the years prior to the valuation being removed. The interest already generated by those monies would remain in the escrow accounts.
3. If the court case is eventually lost by the state/districts, the state would repay the interest on all the protest money that had been paid, and the districts would pay back all the principal amounts of protested taxes that had been paid.
4. A means would be provided whereby the districts could pay back the principal amounts by selling bonds with low or no interest to the state. (Perhaps a 20 year pay back.)
5. If the state/districts were to lose the court case, then foundation payments during the years of protest would be recalculated and the school districts would receive money lost because of distorted valuations.
6. If the court case is won by the state/districts, then, in return for sharing the risks, the state would get all the interest generated by the escrow monies that were or still are in escrow accounts.
7. This proposal was thought to be one that might be of assistance to school districts, but was not proposed for the benefit of other governmental entities, and in fact, it was pointed out that what might be good or needed for school districts may not be helpful for other government entities. It was proposed that no governmental entity be required to share interest benefits with the state unless that entity requested that the state share in the risk-taking. The best means of a district or other entity to trigger and establish a risk/benefit sharing relationship with the state was if the district or entity requested that the valuation be removed. If no such request was made, the state would not have to share the risk of paying back interest money, and nor would the state share the benefit of receiving interest money if the suit were settled in the district/state's favor.
8. The districts wanted clear language that if the suit is settled in favor of the districts/state, the monies still in protested tax escrow accounts would go to the tax entity to which they were intended to (1) pay off debts or deficits, (2) restore reserves, (3) off-set mill levies for the next fiscal year, and (4) refund tax monies to the taxpayer (in this order).

It was felt by the school administrators that legislation that enabled these kinds of things to happen would provide an alternative for school to consider and perhaps implement if they were getting into serious debt because of the BPA Tax Protest Problem.

It was also felt by the school administrators that all of these provisions would have to be included in the legislation if the legislation were to be of any help.

It was also pointed out that attention would have to be given to I-105 related laws that would allow increases in taxation above the 1986 cap if the valuations were removed, and that the protested tax money would not be perceived as "alternate sources of revenue" under the financial emergency provisions of S.B. 71.

Rick Moe, Superintendent **SENATE TAXATION**
Boulder Public Schools EXHIBIT NO. 2
January 24, 1989

1/24/89
SB 118

NAME: James B McCauley DATE: 1/24/89

ADDRESS: Box H

PHONE: 225-4251

REPRESENTING WHOM? Jefferson Co Commission

APPEARING ON WHICH PROPOSAL: SB 118

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X _____

COMMENTS: SB 118 will not accomplish the goals it originally set out to address.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ROLL CALL VOTE

SENATE TAXATION

EXHIBIT NO. 3DATE 1/24BILL NO. SB 117SENATE COMMITTEE TAXATIONDate 1/24 SB Bill No. 117 Time 9:28

NAME	YES	NO
SENATOR BROWN		X
SENATOR BISHOP		X
SENATOR CRIPPEN		X
SENATOR ECK	X	
SENATOR GAGE		X
SENATOR HAGER		X
SENATOR HALLIGAN	X	
SENATOR HARP		X
SENATOR MAZUREK	X	
SENATOR NORMAN	V	
SENATOR SEVERSON		X
SENATOR WALKER	X	

Bill Ladysmith
SecretarySENATOR BOB BROWN
ChairmanMotion: by Senator Eck that
SB 117 do not pass.

SENATE TAXATION

EXHIBIT NO 4

DATE 1/24

BILL NO. SB117

SENATE COMMITTEE TAXATION

ROLL CALL VOTE

Date 1/24 SD Bill No. 117 Time 9:30

NAME	YES	NO
SENATOR BROWN		X
SENATOR BISHOP		X
SENATOR CRIPPEN		X
SENATOR ECK	X	
SENATOR GAGE		X
SENATOR HAGER		X
SENATOR HALLIGAN	X	
SENATOR HARP		X
SENATOR MAZUREK	X	
SENATOR NORMAN	V	
SENATOR SEVERSON		X
SENATOR WALKER	X	

Jill Polyzano
Secretary

SENATOR BOB BROWN
Chairman

Motion: by Senator Mazurek to
table SB117.

ROLL CALL VOTE

SENATE TAXATION

EXHIBIT NO. 5

DATE 1/24

BILL NO. SB 117

SENATE COMMITTEE TAXATIONDate 1/24 SB Bill No. 117 Time 9:32

NAME	YES	NO
SENATOR BROWN	<i>Pass</i>	
SENATOR BISHOP	<i>Pass</i>	
SENATOR CRIPPEN	X	
SENATOR ECK		X
SENATOR GAGE	X	
SENATOR HAGER	X	
SENATOR HALLIGAN		X
SENATOR HARP		X
SENATOR MAZUREK		X
SENATOR NORMAN		X
SENATOR SEVERSON	X	
SENATOR WALKER		X

Bill Polyzano
SecretarySENATOR BOB BROWN
ChairmanMotion: by Senator Crippen that
SB 117 do pass.

SENATE TAXATION
EXHIBIT NO. 6
DATE 1/24
BILL NO. SB 117

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date 1/24 SB Bill No. 117 Time 9:35

NAME	YES	NO
SENATOR BROWN	X	
SENATOR BISHOP	X	
SENATOR CRIPPEN		X
SENATOR ECK	X	
SENATOR GAGE		X
SENATOR HAGER		X
SENATOR HALLIGAN	X	
SENATOR HARP	X	
SENATOR MAZUREK	X	
SENATOR NORMAN	X	
SENATOR SEVERSON		X
SENATOR WALKER	X	

Dill Polyzona
Secretary

SENATOR BOB BROWN
Chairman

Motion: Inj Senator Halligan that
SB 117 do not pass

~~SENATE TAXATION~~

EXIT #7

DATE 1/24

BILL NO. SB 139

SENATE STANDING COMMITTEE REPORT

January 24, 1989

MR. PRESIDENT:

We, your committee on Taxation, having had under consideration SB 139 (first reading copy -- white), respectfully report that SB 139 be amended and as so amended do pass:

1. Title, line 5.

Following: "TO"

Strike: "36"

Insert: "24"

2. Page 1, line 15.

Following: "redemption"

Insert: "Except as provided in subsection (2), redemption"

3. Page 1, line 16.

Strike: "Redemption"

4. Page 2, line 7.

Following: "later"

Insert: "(2) For property subdivided as a residential or commercial lot upon which taxes or special assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within 48~~24~~ months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later."

Re-number: subsequent subsection

AND AS AMENDED DO PASS

Signed:


Bob Brown, Chairman

1/24/89
J.W.P.M.
J.W.P.M.

DATE

Jan. 24, '89

COMMITTEE ON

Radiation

VISITORS' REGISTER