

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Tom Hager, Vice Chairman, on
March 16, 1989, at 8:00 a.m.

ROLL CALL

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

Members Excused: Senator Brown

Members Absent: None

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

Announcements/Discussion: None

HEARING ON HOUSE BILL 642

Presentation and Opening Statement by Sponsor:

Representative Strizich, District 41, sponsor, said the bill was introduced to establish a minimum tax and collection procedures for the Dangerous Drug Tax Act of the 1987 session. The passage of the Act has resulted in almost \$5 million in assessments. However, the collections totalled only \$45,000. The bill makes several changes in the Act which will make it more effective:

1. It allows the Department of Revenue to proceed with the tax assessment and collection without regard to criminal prosecution.
2. It suspends a tax lien during any period of incarceration of the person being taxed.
3. It sets a minimum tax on small quantities of drugs as set forth in the criminal code.
4. It redistributes funds to provide an increase in the funds returned to the Department of Justice for use in enforcement activities.

The net effect will result in increased collections for the Department of Justice and improved procedures for collection which will allow the Department of Revenue to better administer the collection process.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members:

Senator Gage asked if the \$100 an ounce included any amount up to an ounce.

Representative Strizich replied it covers any possession up to an ounce.

Senator Eck asked why the collection have been so low when so much has been assessed.

Representative Strizich replied the key issues have been that forfeitures and seizures under the criminal code had precedence over the tax assessment and collection. Many of the cases are delayed over a period of one to two years and the assets in a case can be dissipated during that period. It also means a long tracking period on the part of the Department often with no results.

Closing by Sponsor: Representative Strizich closed.

HEARING ON HOUSE BILL 685

Presentation and Opening Statement by Sponsor:

Representative Daily, District 69, sponsor, said the bill provides for a tax abatement program for restoration, rehabilitation, expansion, and new construction of certified residential and commercial properties located in national register historic districts.

List of Testifying Proponents and What Group they Represent:

Lee Tuott, Butte Silver-Bow Planning Director

Marcella Shirfy, Historic Preservation Officer, Montana
Historical Society

Paul Powers, former Historical Preservation Officer in
Butte-Silverbow

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Lee Tuott, Butte-Silverbow Planning Director, presented his
testimony in support of the bill (Exhibit #1).

Marcella Shirfy, Historical Preservation Officer, Montana
Historical Society, presented her testimony in support
of the bill (Exhibit #2).

Paul Powers, formerly the Historic Preservation Officer in
Butte, said he developed the proposal as a result of
working with a number of people in Butte and across the
state who were discouraged by the assessment on their
properties when they wanted to make improvements. The
bill allows for improvements to be made without being
penalized and provides the incentive for private and
commercial development in historic districts. Often, a
great deal of money must be expended to make these
properties viable and this bill helps take some of that
burden off those people who are interested in restoring
some of the historic properties in the state.

Questions From Committee Members:

Senator Mazurek asked how the tax increment districts will
mesh with the provisions of this bill.

Mr. Tuott replied the bill states if there is an exemption
under another provision such as a tax increment
district, then there will be no tax break under the
provisions of this bill.

Closing by Sponsor:

Representative Daily closed by saying this bill only applies to local taxes and provides a bit of help and incentive to local people and communities to rehabilitate and improve historic buildings in their areas. He urged the committee to approve the bill.

HEARING ON HOUSE BILL 603

Presentation and Opening Statement by Sponsor:

Representative Raney, District 82, sponsor, said the Environmental Protection Agency has been passing a lot of rules and regulations which have the effect of law, especially concerning leaking underground storage tanks, hazardous waste disposal, and solid waste management. HB603 addresses leaking underground storage tanks. In Montana there a lot of privately owned gas stations and distributorships. The new guidelines from EPA are so burdensome that is difficult for the smaller operations to remain in business. The guidelines require \$1 million worth of insurance and clean-up of any leak at any underground petroleum tank site. This bill will assist those small businesses by creating the Petroleum Storage Tank Release Clean-up Plan. The Governor has proposed some amendments which will be explained later in testimony by Steve Visocan.

Representative Raney said the plan is to have discovered all the leaking tanks in the next two year period. There will undoubtedly be a significant number of leaks found in tanks in Montana. The tank owner, when he discovers a leak, will notify the Department of Health and Environmental Sciences, and then prepare a plan for the clean up. That plan will be forwarded to the Department which will then approve the plan and advise the local government of the approval. The owner then proceeds with the clean up maintaining documentation of expenses and procedure which he submits to the Petroleum Tank Release Compensation Board for reimbursement. The Board reviews the claim and determines the eligible expenses for reimbursement. The owner then replaces the tanks and the lines. The fund is intended to assist him and insure him on the environmental release. The cost of the tank and the lines are the responsibility of the owner.

The funding comes from a 3/4 cent a gallon fee assessed on distributors of gasoline. The fund will accumulate until it reaches \$8 million. The fee then drops off and will not be reinstated until the fund drops below \$4 million. It is anticipated the majority of the work will be done in the first two to three years and that after that period the fund will reach the \$8 million and not drop significantly thereafter.

List of Testifying Proponents and What Group they Represent:

Steve Visocan, President, Montana Petroleum Marketing Association
Rona Alexander, Executive Director, Petroleum Marketing Association (a six state group)
Pat McCutcheon, Insurance Agent, Helena
Dan Stockton, President, Stockton Oil
Ted Neuman, Montana Council of Cooperatives
Norris Nichols, Administrator, Motor Fuels Tax
Larry Mitchell, Department of Health and Environmental Sciences
Division, Department of Revenue
Chris Kaufman, Montana Environmental Information Center
Janelle Fallon, Executive Director, Montana Petroleum Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Steve Visocan, President, Montana Petroleum Marketing Association, said he only wished to highlight some points in the bill. He said the owner will be entitled to reimbursement only if the leak is identified after the effective date of this bill. If the tank is an underground tank, it must have been properly registered. The release (leak) must have been accidental, and except for the release, the tank must have been managed in a proper and prudent manner and in accordance with all state and federal laws. Tanks located at a refinery, or oil and gas production facility, tanks owned by a railroad, tanks belonging to the federal government, farm and residential tanks smaller than 1100 gallons, and tanks owned or operated by a person convicted of serious offense regarding the management of tanks are all excluded from the bill.

Costs eligible for reimbursement are the reasonable costs associated with the clean up and the compensation of third parties for bodily injury and property damage.

Costs not eligible are the costs of replacing the tanks and the lines, legal costs, or any costs incurred before the effective date of the bill.

The EPA has specified three ways to meet the financial requirements in their guidelines. One of the methods is to establish a state fund such as already exist in 24 other states. Another alternative is to carry insurance at the \$1 million dollar level. Currently, no one in Montana writes insurance at that level and if it were to become available, it would be out of reach for the small businessman. The third alternative is to be self insured. In order to be self insured, you must have \$10 million of net worth.

The fee is assessed only on gasoline because the state currently does not have a method for reporting diesel purchases or sales.

The EPA requirements only apply to underground tanks, however, the bill covers both above and below ground tanks because the potential for leaks exists with both.

Mr. Visocan passed out a sheet which explains the proposed amendments to the bill (Exhibit #3). He also passed out the proposed amendments (Exhibit #3a). Exhibit #4 explains the revisions to the fiscal note. The amendments remove the two year amnesty period and increase the fee from 3/4 cent to 1 cent per gallon for the first two years. It then decreases to 3/4 cent per gallon. The amendments include clean up language re the future payments for eligible costs if the fund has insufficient money and expansion of the Board's rule making authority to include the review and approval of corrective action plans.

Rona Alexander, Executive Director, Petroleum Marketing Association, presented her testimony in support of the bill (Exhibits #5 and #5a). She also gave the committee members copies of a survey regarding expected station closures by state (Exhibit #6).

Pat McCutcheon, Insurance Agent, Helena, spoke about the difficulty of finding insurance coverage to meet the EPA \$1 million requirement. Surety bonds and self insuring are both very difficult and very expensive.

Affordability is almost impossible, availability is almost non-existent. The one policy that is available is extremely expensive and require stringent tests on an ongoing basis.

Dan Stockton, President, Stockton Oil Company, presented his testimony in support of the bill (Exhibit #7). He pointed out both Wyoming and South Dakota have enacted similar legislation.

Ted Neuman, Montana Council of Cooperatives, said the small rural operator could not afford insurance coverage even if it were available. He urged the committee to seriously consider adopting the legislation.

Norris Nichols, Administrator, Motor Fuels Tax Division, Department of Revenue, presented clean up language amendments regarding the collection of the fees (Exhibit #8). He said he had a question about the language on page 17, line 21, regarding notification of when to implement the tax and when to stop it.

Larry Mitchell, Department of Health and Environmental Sciences, presented his testimony in support of the bill (Exhibit #9). He said with the amendments the Governor's Office is satisfied with the bill and funding and the solvency of the fund. He said the checks and balances are well written into the bill.

Chris Kaufman, Montana Environmental Information Center, said this is an environmentally sound bill. The potential for leaks is great in Montana and the passing on of the cost of the fund to the consumer is appropriate for the protection they are offered under this bill.

Janelle Fallon, Executive Director, Montana Petroleum Association, presented proposed amendments and her testimony in support of the bill (Exhibit #10). She pointed out amendment #5 should change the effective date to effective on passage and approval.

Questions From Committee Members:

Senator Mazurek asked who has above ground tanks.

Janelle Fallon responded there is not the concern about above ground tanks. Her feeling is that owners of above ground tanks should clean up after themselves until the EPA adopts rules for them which are being drawn up currently.

Senator Mazurek asked if diesel tanks are covered.

Mr. Visocan replied diesel tanks are covered, however, the fee is not collected on diesel fuel sales.

Senator Norman asked if it would take a 3/5 vote of the legislature and a constitutional vote since the gas tax will not be used for highway construction.

Mr. Visocan answered this was questioned at one time and after research the Legislative Council said it would not due to the language in the bill that says the purpose and intent for which it is being collected deems it a fee being paid by the distributors, not a tax on the consumer.

Closing By Sponsor:

Representative Raney closed by saying he sponsored the bill because he was interested in the health and environmental issues and also because it helps the small operators stay in business. He said he preferred the bill as it passed the House as it offers the small operators more protection than they have under the Governor's amendments. He also said he preferred to have the above ground tank provisions left in the bill.

ADJOURNMENT

Adjournment At: 10:00 a.m.



SENATOR BOB BROWN, Chairman

BB/jdr

MIN316a.jdr

ROLL CALL

TAXATION

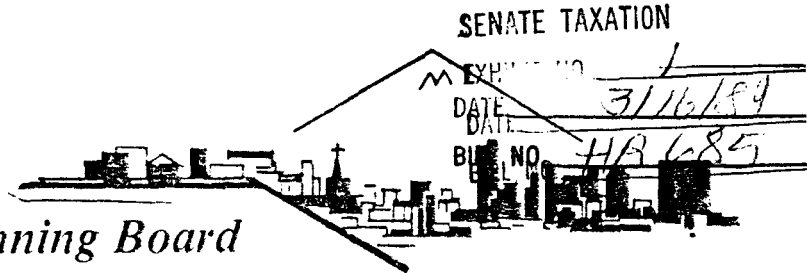
COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3/16/89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BROWN			X
SENATOR BISHOP	X		
SENATOR CRIPPEN	X		
SENATOR ECK	X		
SENATOR GAGE	Y		
SENATOR HAGER	X		
SENATOR HALLIGAN	X		
SENATOR HARP	X		
SENATOR MAZUREK	X		
SENATOR NORMAN	X		
SENATOR SEVERSON	↓		
SENATOR WALKER	↓		

Each day attach to minutes.



Butte-Silver Bow Planning Board

March 16, 1989

Honorable Bob Brown, Chairman
Senate Taxation Committee Members
Montana Centennial Legislature
Helena, MT 59601

RE: HB685 - Testimony in Support
of Passage

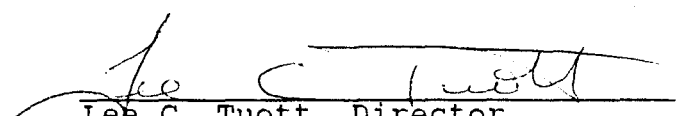
Gentlemen and Ms. Eck:

On behalf of Butte-Silver Bow, I am testifying in support of HB685. The purpose of HB685 is to provide an incentive to owners of historic properties to restore and rehabilitate historic structures. The statute encourages this activity by providing for a property tax abatement to owners for additional taxes which would result from the improvements to their property. The tax abatement or "freeze" would be effective for at least five (5) years plus a 12 month construction period, if applicable. This bill also provides for a similar tax abatement for expansion of existing buildings and structures and new construction within the historic district which meets design review criteria as being compatible to the historic area.

HB685 provides guidance for local governments which implement the statute; for the lawful administration of the program including the designation of a local review board or the State Historic Preservation Officer; the development of review standards and criteria; and the implementation of other local options. The abatement allows for a one time benefit per property. The abatement runs with the property and a change in ownership does not terminate the tax benefit.

I urge the Committee to approve HB685. It is especially appropriate, as Montana celebrates its centennial, that the Legislature consider the preservation of the State's legacy of historic properties as an important goal.

Sincerely,


Lee C. Tuott, Director
Butte-Silver Bow Planning Board

LCT/dka

Montana Historical Society Statement - HB685

The Montana Historical Society is very pleased that this legislation-- encouraging the rehabilitation of historic properties through tax abatement-- has been introduced. We find its goals and the procedures it proposes to be sound, workable, and appropriate to our Montana situations. This legislation specifically offers Montana communities the opportunity (not the obligation, since this is a local option measure) to create concrete, limited financial incentives for owners of historic properties to improve that property. It also encourages construction of new buildings on available space within historic districts.

Virtually no grant program now exists to help private owners with the rehabilitation of significant historic property. Federal tax incentives are available to owners of income-producing historically significant property. But private homeowners living in and working to maintain historic houses are currently offered no dollar incentive for their good stewardship and often feel as if they are penalized for improvements through increased appraisals. The same is true for owners of commercial property who make small, steady improvements.

Communities now--in ways that have been less true--value their historic commercial and residential neighborhoods as resources enjoyed by tourists and sought after by new residents. Communities also now recognize the need to limit strip development--to limit the land area for which community water, sewer, and street services can be provided. This legislation, then, gives communities with a real interest in encouraging new construction and investment in their historically distinctive neighborhoods a mechanism to use.

The financial incentives that a community can choose to use with the authority provided in this bill are not large or out-of-proportion with

the longterm financial benefit derived by the community. The reinvestment in historic property encouraged by this bill will pay itself back to the community quickly. But we believe that the possibility of being rewarded--even slightly--or at least not penalized--for being a good steward of a historic property will result in increased private commitment to Montana's heritage.

The duties given to the Preservation Office, Montana Historical Society are ones we carry out in other instances and are appropriate for us. This legislation encourages the development of community preservation offices and commissions. We're pleased to see that. The legislation has the support of existing local preservation programs in communities such as Bozeman and Missoula. It can be of use to many other communities with well-established historic districts and growing local preservation organizations such as Great Falls, Miles City, Lewistown, Kalispell, Billings, and smaller communities such as Hardin and Red Lodge. We find this bill, then, to be a practical, workaday way--this Centennial year--to assist in preservation of our heritage.

Marcella Sherfy
Preservation Officer
Montana Historical Society

- Preservation Forum
- Editorial Advisory Board
- Chair, Sally G. Oldham
- Vice President, Programs and Services - National Trust
- Bernd Foerster, FAIA
- Professor, College of Architecture and Design,
- Kansas State University
- Robert C. Giebner
- Professor of Architecture,
- University of Arizona
- H. Ward Jandl
- Chief, Technical Preservation Services Branch, National Park Service
- Nellie Longworth
- President, Preservation Action
- Loretta Neumann
- Vice President, Foresight Science & Technology, Inc.
- Gregory B. Paxton
- Executive Director, Georgia Trust for Historic Preservation
- Richard J. Roddewig
- President, Clarion Associates, Inc.
- Edward F. Sanderson
- Executive Director, Rhode Island Historical Preservation Commission
- J. Reid Williamson, Jr.
- President, Historic Landmarks Foundation of Indiana
- National Trust Representatives
- Katherine Adams
- Regional Coordinator
- Arnold M. Berke
- Editor, Preservation News
- Thomas J. Colin
- Editor, Historic Preservation
- Linda V. Ellsworth
- Director, Mid-Atlantic Regional Office
- Marcia Myers
- Vice-President, Maritime Preservation
- Kate Perry
- Government Affairs Counsel
- Frank E. Sanchis
- Vice President, Stewardship of Historic Properties
- Dwight L. Young
- Director, Planned Giving
- Office of Preservation Services
- Director/Editor:
- Catharine McGuire Gilliam
- Program Associates/ Associate Editors:
- Margaret N. DeLaittre
- Elizabeth Kennedy
- Program Associate/ Membership Development:
- Laura Skaggs
- Editorial and Production Assistant:
- Polly Arenberg
- Design:
- Andrea Legg DeRose,
- DeRose Design

2 Historic Preservation As An Urban Design Strategy
Excerpts from the remarks made by leading architect Cesar Pelli to the Cleveland Preservation Symposium 3, in presenting his design for a major new building in downtown Cleveland.

6 Preservation by Negotiation: The Atlanta Process
By Constance Beaumont
A major Critical Issues Fund grant assisted community leaders in Atlanta with developing a comprehensive historic preservation program through mediated negotiation.

8 The Effectiveness and Fiscal Impact of Tax Incentives for Historic Preservation
By Susan G. Robinson
Guidelines and techniques can be used to facilitate the development of policies that are both effective in achieving preservation and practical in terms of fiscal impact upon the community.

16 Resource Directory: Railroad Properties
A guide to Organizations, Publications, Programs and Expertise

Departments

- 18 National Notes
- 19 State Dispatch
- 20 Preservation Advocate
- 21 Newsmakers
- 22 Network
- 23 Maritime
- 24 Rural
- 25 Worth Knowing

National Trust for Historic Preservation
EXHIBIT NO. 2401
1785 Massachusetts Ave., N.W.
Washington, D.C. 20036
DATE 3/16/89
(202) 673-4296

- J. Jacob Billinger
President
- Bonnie R. Cohen
Senior Vice President
- David A. Doheny
Vice President and General Counsel
- John L. Heyl
Vice President, Resources Development
- Marcia Myers
Vice President, Maritime Preservation
- Sally G. Oldham
Vice President, Programs and Services
- Frank E. Sanchis
Vice President, Stewardship of Historic Properties

Publisher:
Margaret Byrne Heimbold

Associate Publisher:
Constance Burr

Preservation Forum (ISSN 0893-9403) is published quarterly by the National Trust for Historic Preservation. Forum members of the National Trust receive four issues of Preservation Forum, and six issues of Forum Newsletter as benefits of membership. Annual dues are \$75.00. Qualifying individuals may subscribe to Preservation Forum and Forum Newsletter for \$18.00 per year. Second class postage paid at Washington, D.C. Postmaster: Send address changes to Preservation Forum, 1785 Massachusetts Ave., N.W., Washington, D.C. 20036. Copyright © 1988, National Trust for Historic Preservation in the United States.

Of the total amount of base dues, 20% is for a subscription to Preservation Forum, 4% is for a subscription to Forum Newsletter, 8% is for a subscription to Historic Preservation and 4% is for a subscription to Preservation News for one year.

Support for the National Trust is provided in part by matching grants from the U.S. Department of the Interior, National Park Service, under provisions of the National Historic Preservation Act of 1966. The opinions expressed in this publication are not necessarily those of the U.S. Department of the Interior or the National Trust for Historic Preservation.

To obtain an Author's Guide and to submit articles or other material, write to the Editor of Preservation Forum. Material published in Preservation Forum is provided by members and other contributors. The journal is a forum to express opinions, encourage debate, and convey information of importance to Forum members of the National Trust. Inclusion of material or product references does not constitute an endorsement by the National Trust.

Photo Credits: Page 3, Wolfgang Hoyt Photography; courtesy of Jacobs, Visconsi & Jacobs; p. 4, Nesnadny & Schwartz; courtesy of Jacobs, Visconsi & Jacobs; p. 18 top, Clark Schoettle; bottom, Bob Thall; p. 19 top, S.F. Public Library, courtesy of Lucy Kortum; bottom, Historic Preservation Foundation of North Carolina; p. 20 left, Kathleen M. Reinburg, Foresight Science & Technology, Inc.; right, Ray Gilley-Gilley & Hinckel Architects; p. 21, Jack E. Boucher for Historic American Buildings Survey (Goeldner), Historic Albany Foundation (Dunning-Vaughn); p. 22, Image Network; p. 23, MacGuire-Reeder, Ltd. Photos on pp. 7; 9; 10; 12; 16; 17; and back cover from National Trust audiovisual collections.

The Effectiveness and Fiscal Impact of Tax Incentives for Historic Preservation

by SUSAN G.
ROBINSON

Susan G. Robinson is a manager with the Government Finance Research Center of the Government Finance Officers' Association in Washington, D.C. She is responsible for a variety of research, training and advising projects in the areas of financial management and planning.

Ms. Robinson received a Bachelor of Science degree in political science from the University of Utah and a Master of Public Administration degree from the George Washington University.



The quality and character of a city's built environment influence a wide range of business and residential location decisions, and can serve as either a dampener or catalyst for tourism and other cultural activities. Because of these factors, historic preservation has become recognized as an important economic development tool.

Financial Incentives—How They Work

The protection and enhancement of the assets found in our built environment becomes a question of setting priorities and making difficult choices. Financial considerations for the local government, for individuals and for developers are frequently the primary factors upon which the decision to preserve, rehabilitate, or demolish a building rests. These considerations can include the cost of rehabilitation, the value of the site in alternative uses, the current or potential use of the building, and the taxes paid on the property.

Although local land use and zoning regulations have been used in the past to protect specific historic buildings and sometimes neighborhoods, they are typically unresponsive to the financial pressures faced by owners of historic properties. On the other hand, limited public resources generally constrain the local government's ability to provide meaningful subsidies for historic preservation.

The primary purpose of the Government Finance Research Center's (GFRC) study for the Atlanta Historic Preservation Negotiation Project was to examine various types of policies and proce-

dures used to promote effective and fair preservation programs. Specifically, it analyzes the fiscal impacts, both short- and long-term, of selected publicly provided financial incentives for historic preservation. The study provides guidance for evaluating the effects of certain incentive programs on both the landowner's decision to improve the property and on the city's resources. The ultimate goal was to provide guidelines and techniques that could be used to facilitate the development of a policy that is both effective in achieving preservation and practical in terms of fiscal impacts on the community.

Financial incentives attempt to affect market forces in a way that recognizes community values and makes financially feasible the preservation of local history and heritage found in the built environment. They are intended to relieve the economic pressure to demolish older, usually smaller, buildings and to redevelop to the highest use.

There are many variations on the incentive theme. A summary of the factors that justify the use of financial incentives follows.

Preservation: The continued use, restoration or adaptive reuse of historic buildings is a public benefit and property owners who invest in these properties and thereby extend their economic life, should be rewarded for contributing to the public's benefit.

Compensation: Justification for financial incentives is most frequently based on the notion that owners of historic buildings are unfairly burdened by historic preservation laws that prevent alteration or demolition of their buildings. The logic continues that property owners should be compen-

sated for their inability to develop their property to its highest and best use.

Protection: Incentives are also used to protect property owners from market forces (demand for downtown development) or government regulations (high zoning floor area ratio (FAR)), which escalate their property assessment values and their operating costs.

Land Use Planning: Incentives are used to counter the economic forces that encourage land speculation in the central business district, leading to demolition of existing buildings, vacant property, and leap frog development.

Uncertainty About Federal Rehabilitation Credits: Because federal tax credits for historic rehabilitation have been reduced, many feel that incentives provided by state and local governments may be the only tools available to maintain current preservation activity levels, regardless of other justifications.

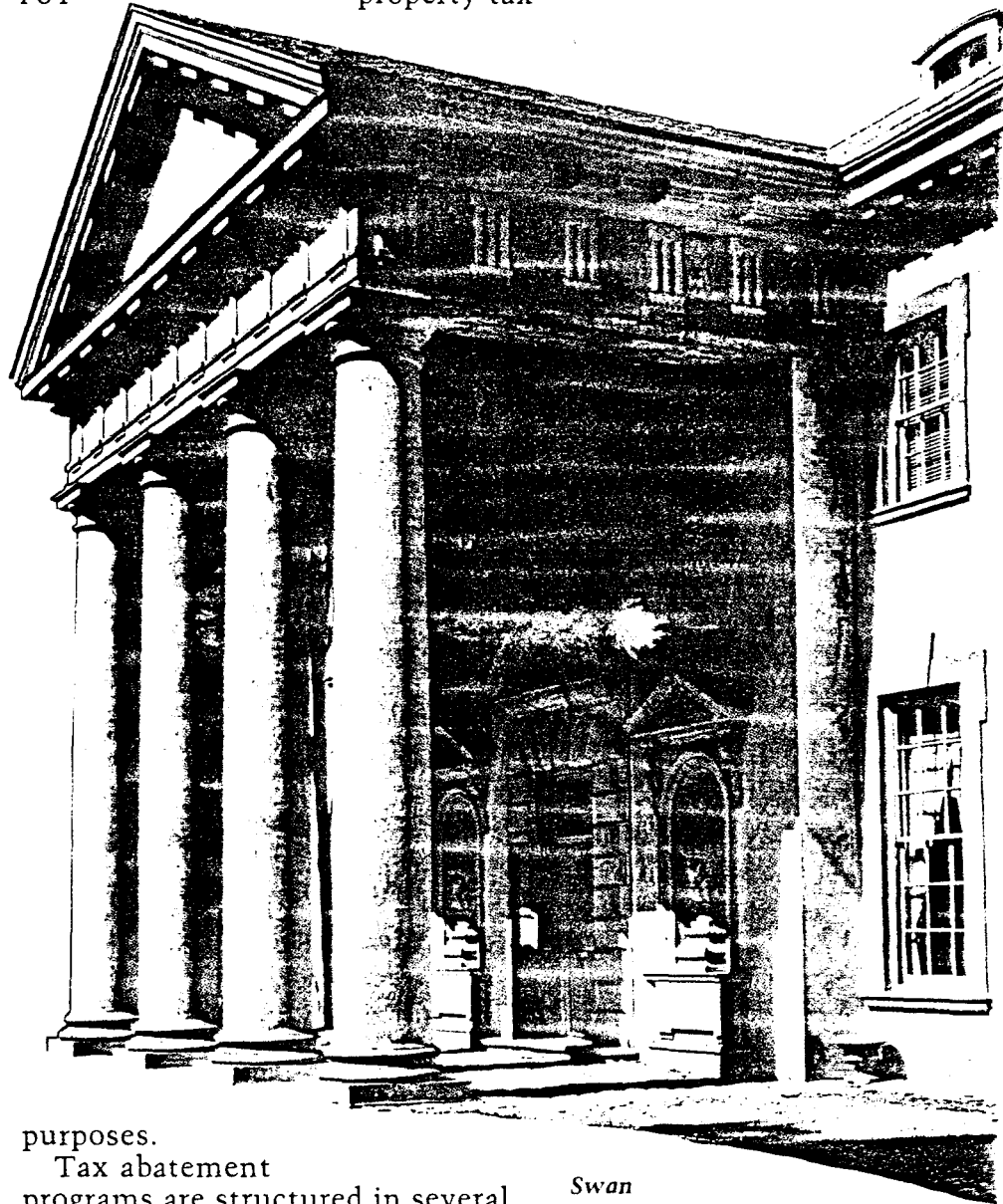
State and Local Tax Incentive Programs

Several state and local governments have enacted legislation that encourages historic preservation through tax relief. The local government provisions generally center on the ad valorem taxation of private property, since it is their primary source of revenue. Local governments do not have the inherent power to levy taxes or grant tax relief, but derive this power from the state constitution or other state legislation. Consequently, enabling legislation must generally be enacted before property tax relief can be provided for historic property owners.

Property Tax Abatement

Tax abatement is a procedure that decreases or delays the taxes due on property over a fixed period of time. By lessening the tax burden on the owners of historic preservation projects, a major operating expenditure is reduced. A tax

abatement program can compensate for the fact that frequently the property tax functions as a disincentive for building rehabilitation or improvement because such activity results in revaluations and steep increases in assessment for property tax



purposes.

Tax abatement programs are structured in several ways. For instance, the program can provide a "full" tax abatement. Although called an abatement, a 100 percent tax abatement on a specific property would essentially constitute a tax exemption. Abatement programs are more typically structured to reduce a specific percentage of taxes due, or are accomplished by applying a lower tax rate than usual. A program that uses a specific percentage

Swan House (Atlanta Historical Society), designed by Philip Trammel Schultze.

SENATE TAXATION

EXHIBIT NO. 24 p 3

DATE 3/16/89

BILL NO. HB 685

would, for example, be defined as a 25 percent abatement on the property taxes due. A variant is a program structured to provide a lower effective tax by assessing at a lower ratio than other property (e.g., at 30 percent of actual market value rather than 40 percent). In either approach, the local government must determine the length of time for which the tax abatement is available: i.e., five, ten, or more years. Generally, at the end of that period, the assessment returns to the current market value or the assessment ratio to its full rate.

Property Tax Credit

Another approach that can be taken to provide economic relief for historic property owners involves granting a credit upon fulfillment of certain conditions, such as rehabilitation or restoration. The tax credit allows for the subtraction from a presented tax bill, so that as Richard Westin in *Lexicon of Tax Terminology* defines it, a credit is "an amount that directly offsets tax liabilities, as opposed to a deduction that only offsets income". The primary advantage of a tax credit is that it specifically links the amount spent on improvement to the tax subsidy. Tax credit programs are also relatively easy to administer, since the burden of providing documentation is shifted to the property owner and the amount of the credit must be determined only once—at the time the property qualifies.

A few states—New Mexico, Montana, and California—provide for credits on state income taxes to encourage historic preservation. New Mexico established its program because its property tax exemption was found to be unconstitutional. Property owners can now claim a credit equal to one-half of their rehabilitation costs up to a maximum of \$25,000, or five years of tax liability, whichever is less.

In the state of Maryland, local governments are allowed to provide a credit against real property tax up to ten percent of maintenance

and restoration costs for properties in locally designated historic districts; and a credit of five percent of expenses incurred in constructing buildings that are architecturally compatible with the historic district in which they are located. Both credits may be spread over a period of up to five years. The state of Washington also allows for credits against local real property tax bills.

Property Tax Freeze

The tax freeze approach provides tax relief by holding tax payments at prerehabilitation levels and not taxing increases in value for qualifying properties. Using this method, a rehabilitated building has its assessment frozen at the level before rehabilitation and retains that value for a specified period of years. The length of the freeze ranges from five years in some states to as many as fifteen years in others.

According to various authors, this type of financial incentive for historic preservation appears to be the most widely used approach. Some programs or state statutes provide that assessment freezes be limited to residential buildings, others solely to commercial buildings, and still others are for any building type.

Sales Tax Exemption

A sales tax exemption on goods used for historic preservation purposes was also proposed by the Atlanta Historic Preservation Negotiation Project. A sales tax exemption for historic preservation can be used separately, or in conjunction with, more substantial financial incentive programs, such as the tax abatement and tax freeze methods described above. The preservation goal is accomplished by reducing construction costs for the project being contemplated. Used alone, the sales tax exemption method, representing a small component of capital costs, does not appear to provide sufficient "incentive" or cost reduction to the property



Beach-Dickey House in Atlanta's Inman Park neighborhood.

Tax Abatement Case Study: San Antonio, Texas.

In June 1980, the city of San Antonio instituted a program to encourage the preservation and rehabilitation of historic buildings. The program provides tax abatements for commercial and residential structures. Commercial structures that have been restored and certified receive a 100 percent property tax abatement for five years after verification. After that, the property is appraised at current market value and assessed at half that value for the next five years. Ten years after certification the property assessment returns to the current market value.

Certified and approved residential structures receive a freeze on assessed value for ten years after certification. At the end of that period, the assessment returns to the current market value. The impetus for both San Antonio ordinances came from the authorizing legislation passed by the Texas legislature in 1977.

Prior to approving the ordinances, the city council reviewed alternative incentive mechanisms. The use of an assessment freeze (as opposed to an assessment abatement) was rejected by the city council for commercial property as providing too little monetary incentive for restoration. The assessment freeze was viewed as sufficient for the residential market, since residential home buyers may weigh the bottom line impact from

property taxes somewhat less heavily than commercial ventures.

At the time of this report, there were 110 properties in San Antonio receiving an abatement or assessment freeze; 33 residential and 87 commercial. The market value of the property is \$86.7 million. Since enactment of the historic preservation ordinances, city staff estimate that approximately \$200 million in historic preservation and restoration has taken place. This investment has been split about evenly between residential and commercial property.

For city council review of the ordinances, staff prepared an analysis that projected the impact of various tax incentive packages. Each of these scenarios projected 20 years of assessments, with the first ten years serving as the period of incentive operation. The incentive packages examined ranged from full abatement for the ten years to an assessment freeze. The assumptions that drove the alternative scenarios were based on actual properties in San Antonio that had been rehabilitated in which the impact on assessments was known. The tax receipts resulting from the alternative scenarios over the 20 years were compared to tax receipts if no restoration had been done and receipts remained flat throughout the period. Under the assumptions used, the tax receipts generated from restored property exceeded those received from unrestored property in all cases; the proportions ranged from 1.26 times to 3.65 times unrestored property tax receipts. The analysis con-

cluded that the incentives would not damage the city's tax collections, and could improve them. Although this analysis is incomplete (the study did not consider inflation-driven increases in property values), the conclusion is credible.

In practice, the results in San Antonio have exceeded the projections. This may be partially a result of the city's policy of terminating the incentive mechanism if the property changes ownership. When restored property is sold, the city returns the assessment to full value, and thus receives full tax collections. This impedes property changing hands while the abatement is in effect.

The administration of the historical preservation program has been relatively easy, according to San Antonio Historic Preservation staff members. By placing much of the administrative burden on the applicant, the paperwork handled by the city staff is minimized. The approval process for historic sites is handled by the city's building inspectors, who coordinate with the Historic Preservation staff. The city is currently working with overlying and underlying jurisdiction (school districts, the county, etc.) to develop a more consistent incentive property tax mechanism among the local governmental jurisdictions. It is hoped that this will improve the incentives and streamline the process for applicants.

owner to spur historic preservation efforts.

Individual Tax Savings vs. Costs to the City

The primary purpose of the GFRC report was to develop methodologies for assessing the effectiveness and fiscal impacts of incentive programs for historic preservation in the city of Atlanta. The property tax incentives described above represent foregone tax revenues to the city as well as tax savings for individuals owning historic properties. These foregone revenues are the opportunity costs the city must absorb in order to encourage the preservation of the community's historic structures.

Public Sector Benefits vs. Costs

To determine the financial feasibility of property tax incentive programs, it is important to develop a means of evaluating each program in terms of its costs (foregone revenues) to the local government and its benefits to the community. Just as businesses evaluate their potential activities and future investments with a bottom-line perspective, so too must a local government evaluate its financial decisions. To be financially viable the public benefits of an incentive program should not only outweigh the public costs but the program should generate the maximum benefit for the community relative to the costs incurred. However, the simplicity and elegance of this theory are greatly complicated by the fact that public costs and benefits are difficult to quantify.

The GFRC developed a property tax model to measure the direct public expenditures (foregone revenues) of the tax incentive methods described above. The model also demonstrated the time value of each—which of the alternatives generated public benefits sooner or costs later. The property tax model was applied to a hypothetical At-

lanta building, and to 37 "endangered" historic sites (under certain hypothetical conditions). This presented the range and magnitude of the cost to the city of different types of incentive programs. Initial review of the tax incentives and their uses indicated that for income-producing properties, the property tax taken alone as a project cost component was not powerful enough to foster rehabilitation, but could influence land use decisions in that direction by increasing rates of return.

Given the study assumptions, application of each of the proposed incentive programs provides tax revenues that are equal to, or greater than, those under current law over a twenty-year period. However, this is only true if it is assumed that the property will not be rehabilitated without the incentive program; if the property is renovated without incentives, greater revenues are realized under current law. The foregone revenues in the early years vary considerably as does the margin of increase in revenues. These are important factors in program design; the choice of a specific alternative rests on program objectives and the locality's ability or desire to subsidize preservation activities in the early years of the program.

Using a simplified pro forma, city officials should be able to estimate the impact of the property tax on the property owner's total costs and anticipated rates of return. The city is then in a position to evaluate the potential value of a given tax incentive in terms of the property owner's hurdle rate.

Measuring the Benefits of Historic Preservation

Ideally, before any tax incentive program is implemented, a fiscal impact study that projects the public costs and benefits of the proposed action should be undertaken. However, many of the benefits in the case of historic preserva-



Mull House, Inman Park.

Tax Credit Case Study: Seattle, Washington.

In 1985, the Washington State Legislature adopted a law that allows a special valuation for certain historic properties. The incentive mechanism operating in this case is a reduction in the property valuation that corresponds to the value of improvements made on the property. In order to receive the credit against property taxes, the property owner must make improvements to the property equal to at least 25 percent of the pre-rehabilitation value of the structure. The credit, which acts as a reduction in assessed value to create a special valuation, applies to the property for 10 years after approval by the local review board.

The following examples will clarify the operation of the Washington program. In the first case, assume a \$50,000 structure exists on a \$100,000 parcel of land. The owner performs the minimum level of restoration of the structure (\$12,500) to apply for the program. Upon approval of the special valuation application, the assessor increases slightly the appraised value of the property and structure to \$152,000. Consequently, the special value on the tax rolls is \$140,000 (\$152,000 less the \$12,500 of restoration cost). In another case, assume the structure and land values of the first case. If the owner performs \$175,000 in restoration on the structure and land at \$165,000 the special valuation is \$0. It will remain at

\$0 until the property value (land and structure) exceeds \$175,000.

A property owner must live in a local jurisdiction that has implemented the state law in order to benefit from the program. There are currently 12 such jurisdictions in Washington. The local government must identify the types of historic properties that are eligible and designate a local review board to approve applications. The state developed three broad criteria to guide localities in their evaluation of properties. These include: properties listed in the National Register of Historic Places, or contributing to the significance of a National Register Historic District; properties listed in the Local Register of Historic Places established by the local government; and properties that are of a class approved by the local government.

After improvements are approved and the special valuation has been applied, the property owner must agree during the ten years to maintain the property, to obtain approval before making additional improvements and to make the property available to the public once a year. If property owners violate any of these provisions, they stand to lose the special valuation and must pay back taxes and incur a penalty equal to 12 percent of back taxes.

Applications for special valuation to the local assessor must be made within 24 months of the initiation of restoration work. If property receiving a special valuation is sold, the new owner may continue to enjoy the benefits of

the valuation if an agreement is signed with the local review board ensuring that satisfaction of the program requirements continues throughout the balance of the period.

After the applicant submits an application to the assessor, the assessor reviews the application and, within ten days of receipt, submits it to the local review board. The local review board approves or denies applications no later than December 31 of the application year. Upon approval, the board notifies the applicant, the assessor and the state within ten days. The board then executes an agreement with the applicant and returns the application to the assessor. The assessor records and files the agreement with the county recording authority. The special valuation is calculated and entered into the tax rolls as a value separate from the normal assessed value.

Since 1985, when the program was adopted in Seattle, 36 properties have received special valuation and a total of approximately \$100 million in restoration costs have been approved. The feeling within the city is that the program is an effective means of encouraging historic preservation, and it is increasingly easy to administer as staff improves the communication channels with the county assessor's office and state preservation office

tion are difficult to measure in quantitative terms. Beyond the financial considerations, some of which can be quantitatively measured, many factors worthy of consideration can only be discussed in a qualitative sense.

For example, specific historic preservation projects may have substantial neighborhood effects. That is, as a result of such a project, other structures may be rehabilitated and the character of the neighborhood substantially changed. Population changes, such as the out-migration from central cities, may be reversed. These changes have real economic impacts, although they may not be easily measured. The benefits are often marginal or incremental; the effects are secondary (indirect or induced) rather than primary. The GFRC attempted to quantify these benefits whenever possible and identified many of the measurement issues that must be addressed in developing a tax incentive program.

Pro Formas and the Property Owner's Rate of Return

The report examines a method (pro forma analysis) that local governments can, and should, use to assess the impact of alternative incentive programs on commercial property owners' investment decisions. All commercial properties are subject to investment decisions—acquisition, new construction, or rehabilitation—and are examined for their impact on the owner's net profits and rate of return on invested capital. The final measure of the efficacy of a given incentive program is its impact on investor behavior. Does the program provide significant economic inducement to the landowner to assure retention and/or rehabilitation of the historic structure in question? Current fiscal and economic development pressures require that city policymakers understand not only public finance but private real estate finance as well to evaluate

the effects of incentives. An important tool in this analysis is pro forma. A pro forma is a projection of the anticipated financial performance of a project. Landowners use pro formas to gauge the sensitivity of a project's operating income and rate of return to external changes in the economy and to government regulations and incentives. The analysis of a project's pro forma by the city improves its negotiating position and should leave little doubt as to the explicit (or implicit) rates of return the owner expects and how that can be influenced by the city. The detail of the pro formas will differ, but some sense of how the tax incentives discussed above would work can be gained by examining how incentives would affect the pro forma. Tax incentives may affect the rate of return on investments in the property by lowering the cost of construction, the cost of financing, the operating expenses, or more indirectly, by improving the prospects for gross revenues. The GFRC report applied the tax incentives alternatives to the pro forma of a hypothetical rehabilitation project in Atlanta.

Conclusion

The methodologies developed to analyze the fiscal impact and effectiveness of tax incentives for the historic preservation of the city of Atlanta are applicable to many other local governments. Although additional steps are necessary before an incentive program could be implemented, this report provides a basis for measuring the potential cost and benefits of such a program. □

The full research report, on which this article is based, co-authored by John E. Peterson and Susan G Robinson, is available from the Government Finance Research Center, Government Finance Officers Association, 1750 K Street, N.W., Suite 200, Washington, D.C. 20006. (202) 429-2750. The cost is \$16, including postage.

This article is a summary of a report prepared by the Government Finance Research Center as part of a National Trust Critical Issues Fund Grant to the Atlanta Historic Preservation Negotiation Project.

Tax Freeze Case Study: State of Oregon.

In 1975, the state of Oregon enacted an historic preservation tax incentive program that allows the freezing of tax assessments on National Register of Historic Places' properties for 15 years. The program is administered by the state.

Although there is no tax credit or abatement associated with the program and no physical restoration of property is required, the Oregon program has been successful. Residential or commercial property approved by the state and meeting all procedural and maintenance requirements met, receive the abatement. Part of Oregon's success with the tax assessment freeze stems from the state's tax structure. Oregon does not have a state income tax; therefore, the property tax is relatively more significant to citizens there than in other states.

Under Oregon's program, an owner of a property listed in the National Register can have the market value of the property frozen for 15 years. During this period, the property owner may choose to restore and improve the property without facing an increased property tax bill as a result of reassessment. The market value is restored at the end of the period, as are the property taxes. The logic of the program is to postpone the negative consequences (increased taxes) of restoring historic sites. By postponing that cost to property owners, the state is encouraging investment in historic preserva-

tion. The greatest advantage of the program, other than meeting preservation goals, is the ease with which the program is administered.

Since the program began in January, 1976, the state has placed 843 properties with value of approximately \$120 million on the frozen assessment roles. However, there is no plan for administering the return of historic properties to their full valuations, the first of which will occur in 1991. The legislation that established the property tax assessment freeze is scheduled to cease in 1993 absent further legislation. At that point the state will have had 17 years of experience with the existing program, and legislators will be able to examine the program's costs and benefits, as well as the administration of historic properties after the freeze has lapsed.

When ownership of property with a frozen assessment transfers, the assessment freeze may be transferred if the new owner agrees to abide by the terms of the program. The new owner may also choose to reapply for the entire 15 year assessment freeze. The new property owner will again be required, at a minimum, to maintain the condition of the property at a level equal to when it was designated as historic. The penalty for failure to abide by the statute is the amount of taxes that have been avoided multiplied by a 15 percent additional charge.

The Oregon program is not without problems. In periods of rapidly rising property values, individuals have used the program as a hedge against rising property taxes. The fact that there is no requirement to

improve or enhance the property makes this type of strategy easier to exploit. A second problem is the converse of the first. Oregon was hurt more than most states by the recession of the early 1980s. The impact of the recession was the deflation in the housing market. As a result, some properties approved for the program had assessments frozen above the true market value as property values dropped. This removed the primary reason for participating in the program. The economy's subsequent improvement has largely resolved this problem.

A third problem with the Oregon program is one shared by all programs that provide property tax incentives; namely, the shift of taxes not collected from historic properties to properties not so designated. The City of Salem, Oregon has examined this issue extensively and has concluded that the tax shift is very small. Under a "worst-case" scenario in which 75 percent of assessable property is designated historic and property values increase at 3 percent annually, the shift to undesignated properties amounts to only two cents per \$1,000 after 15 years.

A final problem with the Oregon program is that because it does not require actual rehabilitation to take place, it is difficult to evaluate the real value of the tax freeze incentive in terms of actual restoration of historic properties.

SENATE TAXATION

EXHIBIT NO. 3

DATE 3/16/89

BILL NO. HB603

PURPOSE OF PROPOSED AMENDMENTS TO HB603

Remove the two year amnesty period and \$25,000 deductible after 2 years.

Require that tank owners/operators share in the first \$35,000 of expenses.

Increase the petroleum storage tank cleanup fee from 3/4 of a cent per gallon to one cent per gallon for the first two years.

"Clean-up" text involving future payment for eligible costs if the fund has insufficient money at the time a claim is approved.

Expand the Board's rulemaking authority to include the review and approval of corrective action plans.

Amendments to House Bill No. 603
Third Reading Copy

For the Senate Committee on Taxation

Requested by Rep. Raney
March 16, 1989

1. Page 2.
Following: line 3
Insert: "(c) providing procedures for the review and approval of
corrective action plans;"
2. Page 2, line 4.
Strike: "(c)"
Insert: "(d)"
3. Page 2, line 8.
Strike: "(d)"
Insert: "(e)"
4. Page 9, lines 15 and 16.
Strike: ":" on line 15 through "(a)" on line 16
5. Page 9, lines 17 and 18.
Following: "act]" on line 17
Strike: "and" on line 17 through "1991" on line 18
6. Page 9, lines 19 through 25.
Strike: "all" on line 19 through "release" on line 25
Insert: "50% of the first \$35,000 of eligible costs and for 100%
of subsequent eligible costs up to a maximum total
reimbursement of \$982,500"
7. Page 10, line 1.
Following: "money"
Insert: "to pay approved claims for eligible costs"
8. Page 10, line 3.
Following: "reimbursement"
Insert: "for the costs at that time"
Following: "."
Strike: "If and when"
Insert: "When"
9. Page 17, line 12.
Strike: "equal to 0.75 cent"

10. Page 17, line 15.

Following: "distributor."

Insert: "The fee must equal:

(a) 1 cent for each gallon of gasoline distributed
from July 1, 1989 through June 30, 1991; and

(b) 0.75 cent for each gallon of gasoline distributed
after July 1, 1991."

11. Page 20.

Following: line 10

Insert: "(c) providing procedures for the review and approval of
corrective action plans;"

12. Page 20, line 11.

Strike: "(c)"

Insert: "(d)"

13. Page 20, line 15.

Strike: "(d)"

Insert: "(e)"

REVISIONS TO FISCAL NOTE FOR HB603

ASSUMPTIONS:

1. The Underground Storage Tank data base shows 18,000 underground storage tanks at 9,000 facilities, or an average of 2 underground storage tanks per site.
2. Approximately 4,000 underground storage tanks are required by EPA to be leak tested by December, 1991.
3. If a 14% leak rate is assumed at 2,000 sites (4,000 tanks), then 280 investigations/cleanups will be initiated over the biennium or 140 per year.
4. EPA has estimated that 85% of the cleanups will cost less than \$36,000. This would be 119 sites.
5. We estimate that cleanup at 60 sites will cost \$18,000 each, cleanup at another 60 sites will cost \$35,000 each, and cleanup at the other 20 sites will cost \$85,000 each.
6. If the owners/operators pay 50% of the first \$35,000 of eligible costs, the total outlay to owners/operators for cleanup in year one and two will be \$2,940,000 each year.
7. According to the Department of Revenue, Gasoline sales in Montana were 437MM gals in 1987 and 443MM gals in 1988. Assuming sales of 440MM gals in the next two years, a fee of one cent per gallon will bring in \$4,400,000 per year.
8. This excess of revenue over pay out would leave \$360,000 for expenses associated with operating the program and a \$1,100,000 cushion to cover potential higher payouts associated with third party liability and higher cleanup costs.

EXXON

SENATE TAXATION

EXHIBIT NO. 5

DATE 3/16/89

BILL NO. HB 603

STORY DISTRIBUTING CO.300 EAST GRIFFIN DRIVE - P.O. BOX 1201
BOZEMAN, MONTANA 59715*Testimony
House Bill 603*

Mr. Chairman, members of the Committee:

For the record, my name is Doug Alexander and I reside in Bozeman, Mont.

I am a petroleum marketer and would be considered as a small to medium sized distributor. I distribute product to retail stores, farm and commercial accounts and to a cardlock facility.

I am here to ask that you vote for HB602. I am also here to explain to you two of the factors that this bill will help to minimize. Those factors are insurance and the financial responsibility requirement dictated by the federal government. I have included with my testimony, a copy of my 1988 and 1989 pollution insurance bill from Federated Insurance, the only company willing to quote insurance for pollution from underground tanks in the state of Montana. Please note that my premium has increased from \$10,800 as of March 1, 1988 to \$18,100 on March 1, 1989. Please note further that the amount of \$18,100 is for a six month period only, so my actual comparable cost is \$36,200, if there are no increases after the six months renewable period. This amounts to a 235% increase. As you may understand, I plan to cancel this portion of my insurance.

The cost is too prohibitive and totally unreasonable.

Even if the cost was reasonable, the policy does not meet the federal requirements that have been previously outlined in testimony to you. The deductible is \$25,000 and the limits are \$500,000 for each incident with a \$1,000,000 aggregate limit, exactly half of what is needed.

EXHIBIT NO. 5 p2
DATE 3/16/89
BILL NO. HB 602

I feel that I am representative of most of the petroleum distributors in the State of Montana. I have never had a chargeable underground leak and three of the insured tanks are part of the most modern underground tank installation in the state. In addition to the cost of insurance, the non availability of required insurance as per the federal guidelines, I am also faced with a bank calling the notes on three of my locations that were financed with the condition that I have pollution insurance. I ask for you to vote in favor of HB 602. I would hope that you would find it encouraging that an industry such as our is willing to adopt a plan that is a burden on our business but helps to solve the environmental and social problem that exists with underground tanks.

YOUR ACCOUNT NO.	YOUR MARKETING REPRESENTATIVE	DATE
63 817 1	FIRST WEST INC	8-515 1/25/88

SENATE TAXATION
 000 05 287 10 15
 EXHIBIT NO. 5 p3
 DATE 3/11/88 MOUNT
 NEW POLICY PREM. 10,000.00
 BILL NO. 45 603

EFFECTIVE DATE	POLICY NO.	REASON FOR THIS MEMO
3/01/88	610579	POLLUTION LIABILITY COVER

STORY DISTRIBUTING COMPANY,
 A MONTANA CORPORATION
 P O BOX 1201
 BOZEMAN MT 59715

MEMO

INFORMATION ONLY
 THIS AMOUNT WILL BE INCLUDED
 IN YOUR NEXT STATEMENT
 YOUR ACCOUNT BILL DAY IS 0



INSURED'S NAME AND ADDRESS

AN IMPORTANT NOTICE OF PREMIUM AND COVERAGE CHANGES

FEDERATED MOVES TO STRENGTHEN THE FUTURE OF POLLUTION INSURANCE

We are pleased to present you with the renewal of your Pollution Liability Coverage. This letter will outline important changes in this coverage. Please review it and your policy to understand what these changes will mean to you.

Federated Insurance is a major insurer of petroleum marketers in the United States. The company currently insures about 8000 marketers, and a substantial number have pollution insurance with Federated.

Affordability and availability of pollution insurance is a major concern for the petroleum marketer. The petroleum industry has noted an escalation in the number and size of pollution losses. Proposed EPA regulations have intensified the interest in pollution insurance, and the absence of many other major insurers of petroleum marketer's pollution exposures has added to the availability problem.

In keeping with our efforts to maintain the premium for the petroleum marketer's coverage at an affordable level, Federated is implementing refinements in the pricing program. This includes a \$25,000 per incident deductible. Policy limits are \$500,000 for each pollution incident with a \$2,000,000 aggregate limit.

These changes will produce a more equitable pricing structure. It allows the best price to those petroleum marketers who are taking action to control their pollution exposures. We believe these changes are positive steps in keeping pollution insurance affordable and available.

PRICING AND COVERAGE CHANGES

Our new pricing program will impact each insured to a different degree. The impact on your policy will depend on the location condition and leak detection methods of your facilities.

A \$25,000 deductible will apply to each pollution incident. This new deductible offsets much of the premium increase needed.

YOU MUST CONTINUE TO NOTIFY US OF POLLUTION INCIDENTS. THESE MUST BE REPORTED EVEN THOUGH THE EXPENSES ARE EXPECTED TO BE UNDER \$25,000.

The policy limits of your policy are \$500,000 for each pollution incident with a \$2,000,000 aggregate limit.

(continued on reverse side)

EFFECTIVE DATE	POLICY NO.	REASON FOR THIS MEMO
3/01/89	9081848	POLLUTION LIABILITY

EXHIBIT NO. 5
 DATE 3/16/89
 BILL NO. HB 603

STORY DISTRIBUTING COMPANY,
 A MONTANA CORPORATION
 P O BOX 1201
 BOZEMAN MT 59715

INSURED'S NAME AND ADDRESS

MEMO

THIS INFORMATION ONLY
 THIS AMOUNT WILL BE INCLUDED
 IN YOUR NEXT STATEMENT
 YOUR ACCOUNT WILL PAY IS 05.



AN IMPORTANT NOTICE OF PREMIUM AND COVERAGE CHANGES

FEDERATED MOVES TO STRENGTHEN THE FUTURE OF POLLUTION INSURANCE

We are pleased to present you with the renewal of your Pollution Liability Policy. This letter will outline important changes in this coverage. Please review this letter and your policy to understand what these changes will mean to you.

Federated Insurance is a major insurer of petroleum marketers in the United States. The Company currently insures about 8000 marketers, and a substantial number have pollution insurance with Federated.

Affordability and availability of pollution insurance is a major concern for the petroleum marketer. The petroleum industry has noted an escalation in the number and size of pollution losses. EPA regulations have intensified the interest in pollution insurance, and the absence of many other major insurers of petroleum marketer's pollution exposures has added to the availability problem.

PRICING AND COVERAGE CHANGES

In order to respond more rapidly to the changing conditions affecting the pollution insurance marketplace, your pollution liability policy will now be issued with a 6-month policy period.

The limits of your policy are now \$500,000 for each pollution incident with a \$1,000,000 aggregate limit.

Newly acquired locations and/or entities will not receive 30 day automatic coverage. Coverage must be specifically requested on each new location. The location must meet underwriting requirements before it will be added for pollution liability coverage.

Commercial General Liability, Garage Liability and Umbrella coverage will have an additional Pollution Exclusion Endorsement attached. This endorsement will further limit any pollution coverage available under these coverages.

Consigned Product Locations, locations in which your interest is the product only, must now be specifically scheduled for Pollution Liability coverage. To be scheduled, a consigned product location must meet all new location requirements. By billing for product at the time delivered, you may eliminate the need to schedule such locations, as this transfers ownership of the product to the operator (customer).

If you wish to maintain pollution coverage on locations or tanks sold to others, you must schedule them for Pollution Liability coverage.

HB 603 Donna Alexander

PETROLEUM TANK RELEASE CLEAN UP FUND

My testimony is to furnish you with statistics on the impact of these financial responsibility requirements and the relation to the current status of tanks in Montana.

Our Association which consists of six states, belongs to a National Assoc., Petroleum Marketers of America which represents approximately 11,000 independent businessmen. These petroleum marketers are very diversified in their operations and account for nearly 55% of the gasoline sold in the United States. In addition to their wholesale operations, they own nearly 19,000 convenience stores. To assess the impact of these regulations, PMAA distributed a survey in November of 88' which measured several things:

1. The number of stations owned that were likely to close.
2. The location of the stations.
3. The number commercial tanks likely to close.(explain)
4. The amount of money spent in the last year on the replacement and upgrading of tanks, and what is anticipated being spent in 89'.
5. The insurance coverage marketers currently have.

Touching briefly on the national level, over 2100 distributors in 35 states responded to the survey, and their answer to the first question was that over half, or some 27,000 gas stations owned, nationwide, will close. Keep in mind there is also a large segment of stations that owned by individual retailers or single station owners, and the impact on this group will be even more devastating.

The tables are very interesting and perhaps of greater significance than the sheer number of stations closing is the location of these stations. Let's look directly at the responses from Montana.

- Table 1
- Table 2
- Table 3

Table 4- Federated Insurance is the only company we're aware of that has written pollution liability coverage in Montana. Out of the whole petroleum population in the state they have only 84 policies written, and none of these meet the EPA requirements.

In information gathered by the Dept. of Health & Environmental Sciences, they report aprox. 18,000 USTs in their data base, of which aprox. 11,000 fall under the EPA regulations, as tanks of 1100 gallons or less are exempted. The average facility in Mt. has two tanks, the average size is 5000 gallons, the average age is 14.5 years.

44 leaks were reported last year

Further information from the Dept. concerning leaks themselves, show that ~~the underground storage tank staff worked on over 60 leak projects during 88'. Of those, 44 occurred that year. Others are continuing projects from past years.~~ Since July of 88' the Dept. has received notices of 106 tanks that have already been closed and none of those reported a serious leak, although, all had some degree of contamination. Of those tanks that were closed only maybe 25% were replaced.

~~We don't have any concrete figures for what the average leak costs. EPA has released average cost figure of \$56,000. If we were to use that figure the 44 leaks that occurred last would have cost \$2,484,000. I believe the average is lower for Montana and Larry Mitchell with the Dept may be able to address those questions. Also, if there are questions dealing with the cost of tanks, and installation there is a person in the audience who is in that business, Mr. Larry Boadwater of Broadwater Ent.~~ *defined that 85% of the leaks cost less than \$25,000.*

TABLE 1: 1988 UNDERGROUND TANK SURVEILL NO. H.B. 603
 EXPECTED STATION CLOSURES,
 BY STATE

State	Number of Respondents	Total Stations Expected to Close	%Stations in Population Areas <10,000	%Stations in Population Areas 10,000-49,999	%Stations in Population Areas 50,000+
al	56	467	72.81	19.06	8.1
az	11	14	50.00	14.29	35.7
ca	105	312	33.01	28.53	38.46
co	45	158	60.76	14.56	24.68
fl	56	127	44.09	18.11	37.8
ga	31	243	52.26	27.57	20.16
ia	233	278	82.01	9.35	8.63
id	5	14	50.00	50.00	0.0
il	249	619	70.60	15.83	13.5
in	86	347	62.25	18.16	19.60
ioma ¹	21	52	50.00	9.62	40.38
ks	76	101	79.21	11.88	8.9
mi	126	238	72.69	13.87	13.45
mo	74	208	68.75	15.38	15.87
ms	22	177	72.32	22.60	5.0
mt	27	56	37.50	60.71	1.7
nc	127	839	55.30	30.99	13.71
ne	127	335	78.81	21.19	0.0
nm	20	57	38.60	45.61	15.7
ny	46	124	62.90	15.32	21.77
oh	82	500	*	63.60	*
ok	35	124	63.71	25.81	10.4
pa	95	429	70.63	15.38	13.9
sc	60	331	59.52	25.08	15.41
tn	45	379	65.17	27.18	7.6
ut	11	21	80.95	4.76	14.2
wa	37	84	64.29	10.71	25.00
west ²	23	49	42.86	32.65	24.49
wi	162	273	75.82	14.65	9.5
wv	17	53	54.72	32.08	13.2
wy	18	88	71.59	18.18	10.23
*** Total ***	2128	7097	61.21	24.87	13.0

*Incomplete/Insufficient data; excluded from averages

¹ioma = vt, ri, ma, nh, me

²west = ut, id, mt, nv

56
 x 2
 102

TABLE 2: 1988 UNDERGROUND TANK SURVEY
NUMBER OF COMMERCIAL TANKS EXPECTED
TO CLOSE, BY STATE

SENATE TAXATION

EXHIBIT NO. 6 p 2

DATE 3/16/89

BILL NO. HB 603

STATE	Number of Respondents	Estimated Commercial Tanks Supplied	Commercial Tanks Expected to Close	% of Commercial Tanks Expected to Close
al	56	1009	683	67.69
az	11	1161	*	*
ca	105	13202	6569	49.76
co	45	729	460	63.10
fl	56	2008	1210	60.26
ga	31	757	368	48.61
ia	233	2399	872	36.35
id	5	145	55	37.93
il	249	*	3749	*
in	86	1905	1131	59.37
ioma ¹	21	796	279	35.05
ks	76	655	359	54.81
mi	126	4204	2451	58.30
mo	74	374	237	63.37
ms	22	212	159	75.00
mt	27	600	437	72.83
nc	127	2036	1154	56.68
ne	127	551	*	*
nm	20	176	135	76.70
ny	46	7049	1697	24.07
oh	82	*	1707	*
ok	35	339	252	74.34
pa	95	2713	1278	47.11
sc	60	671	345	51.42
tn	45	676	439	64.94
ut	11	309	178	57.61
wa	37	3251	798	24.55
west ²	23	1925	444	23.06
wi	162	2744	1836	66.91
wv	17	339	149	43.95
wy	18	460	281	61.09
*** Total ***	2128	53395	29750	46.93**

*Incomplete/Insufficient data; excluded from averages

¹ioma = vt, ri, ma nh, me

²west = ut, id, mt, nv

**Based on complete responses only

TABLE 3: 1988 UNDERGROUND TANK SURVEY DATE 3/16/89
MARKETER EXPENDITURES ON
TANK UPGRADES AND REPLACEMENTS
1986-1988 AND PLANNED 1989

STATE	Number of Respondents	UST Expenses Last 3 Years	UST Expenses Planned 1989
al	56	3052500	2200000
az	11	560000	400000
ca	105	5340000	5442500
co	45	1472500	1805000
fl	56	3602500	3782500
ga	31	1575000	1695000
ia	233	4650000	4385000
id	5	145000	82500
il	249	6300000	6352500
in	86	4162500	3415000
ioma ¹	21	1512500	1605000
ks	76	1255000	1622500
mi	126	5367500	4775000
mo	74	2457500	1890000
ms	22	795000	800000
mt	27	715000	832500
nc	127	6152500	6707500
ne	127	*	*
nm	20	717500	982500
ny	46	2940000	2477500
oh	82	4530000	4530000
ok	35	1035000	1120000
pa	95	3390000	3445000
sc	60	2042500	2280000
tn	45	2122500	1985000
ut	11	392500	605000
wa	37	885000	1192500
west ²	23	737500	727500
wi	162	4615000	4082500
wv	17	750000	700000
wy	18	827500	1025000
*** Total ***	2128	74100000	72945000

*Incomplete/Insufficient data; excluded from averages
 1ioma=vt,ri,ma,nh,me
 2west=ut,id,mt,nv

TABLE 4: 1988 UNDERGROUND TANK SURVEY
Pollution Liability Insurance
Coverage, by State

EXHIBIT NO. 6 p 24
DATE 3/16/89
BILL NO. HB 603

STATE	%Marketers with No Pollution Liability Coverage	Insurance Not Available	Insurance Unaffordable	Other
al	46.67	9.80	54.90	35.29
az	54.55	33.33	66.67	0.00
ca	43.14	47.06	50.98	1.96
co	58.14	28.57	67.86	3.57
fl	37.04	30.00	50.00	20.00
ga	50.00	7.41	44.44	48.15
ia	83.62	34.54	63.40	2.06
id	20.00	0.00	100.00	0.00
il	53.01	29.55	70.45	0.00
in ¹	44.19	36.59	60.98	2.44
ioma ¹	33.33	12.50	25.00	62.50
ks	77.78	36.84	52.63	10.53
mi	21.43	37.93	58.62	3.45
mo	39.73	16.28	81.40	2.33
ms	16.67	15.79	63.16	21.05
mt	48.15	53.85	46.15	0.00
nc	45.31	28.57	62.34	9.09
ne	71.31	*	*	*
nm	60.00	30.77	69.23	0.00
ny	73.91	60.87	32.61	6.52
oh	35.37	*	*	*
ok	75.00	40.00	60.00	0.00
pa	44.21	52.38	42.86	4.76
sc	42.37	10.34	58.62	31.03
tn	51.11	20.00	70.00	10.00
ut	45.45	40.00	60.00	0.00
wa ²	32.43	50.00	33.33	16.67
west ²	26.09	33.33	50.00	16.67
wi	44.44	40.85	59.15	0.00
wv	41.18	0.00	100.00	0.00
wy	33.33	33.33	66.67	0.00
Average	51.48	32.51	59.60	7.90

*Incomplete/Insufficient data; excluded from averages

¹ioma = vt, ri, ma, nh, me

²west = ut, id, mt, nv

(This sheet to be used by those testifying on a bill.)

NAME: DAN STOCKTON JR. DATE: 3/16/89

ADDRESS: 1607 4th AVE. N - Billings

PHONE: 406-245-6376

REPRESENTING WHOM? MONTANA PETROLEUM WORKERS & STOCKTON OIL CO

APPEARING ON WHICH PROPOSAL: H.B. 603

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: see Exhibit #7

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE TAXATION

EXHIBIT NO. 7

DATE 3/16/89

BILL NO. HB 603

Wholesale Petroleum Distributor

(406) 245-6376
P.O. BOX 1756 - 1607 4th AVE. N.
BILLINGS, MONTANA 59103

STOCKTON
OIL
COMPANY

March 16, 1989

SENATE TAXATION COMMITTEE
Sanator Bob Brown, Chairman

Testimony RE: House Bill #603-An act providing for the cleanup of polution caused by leaking petroleum storage tanks.

My name is Dan Stockton Jr., I am president of Stockton Oil Company in Billings. Our company was founded by my father Dan Stockton Sr. in the 1940's. We currently supply petroleum products throughout Montana, east of the Continental Divide, to all classes of buyers.

I am addressing the insurance issue regarding polution coverage for storage tanks including their lines. From its founding, our company has been insurance consciuous and responsible, we have historacally had in excess of one million dollars polution coverage. Through 1985 our petroleum related insurance package and umbrellas included polution coverage. Starting in 1986, our insurance company, Federated Insurance, who has covered approximately 70% of the insured petroleum marketers in this region, started writing polution coverage under a separate policy. Our insurance policy covers twenty locations and fifty-five underground tanks. Many of these locations are on property owned by other parties. The following is a brief history of the last four years polution insurance:

<u>YEAR</u>	<u>COVERAGE</u>	<u>DEDUCTABLE</u>	<u>COST PER 12 MTHS</u>
1986	One Million Dollars	\$1,000	\$11,000
1987	One Million Dollars	\$10,000	\$11,000
1988	One Million Dollars	\$25,000	\$27,000
1989 (1st 6 mths)	Half Million Dollars	\$25,000	\$48,000
1989 (2nd 6 mths)	Half Million Dollars	\$25,000	\$96,000

Total Claims (1)

In December of 1988 the U.S. Environmental Protection Agency underground storage tank regulations became a law. The law states that our company must maintain one million dollars of polution liability insurance or prove a financial net worth of ten million dollars. On February 1, 1989, my insurance aniversary date, Federated lowered their maximum coverage to \$500,000, doubled their rates for six months, and redoubled their rates for the next six months. This

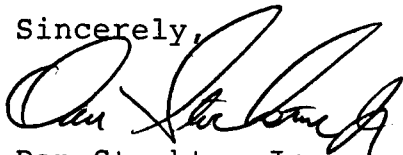
Page 2

eliminated any possibility of our conforming to the law. Stockton Oil Company was forced to drop their pollution liability insurance, for the first time in over forty years, in order to maintain solvency. Even if we could afford to pay \$8,000 per month for this coverage, we still would not meet federal regulations.

We have no knowledge of any insurance company writing the required insurance in Montana. This leaves our company, our associates and our environment at great risk.

These are just a few reasons House Bill #603 will provide fair uniform protection satisfying all affected parties. I ask you to please support this bill.

Sincerely,



Dan Stockton Jr.
President

DS/ljk

AMENDMENT TO HOUSE BILL NO. 603

1. Title, line 16.

Following: "FUND;"

Insert: "PROVIDING FOR THE ADMINISTRATION AND COLLECTION OF THE FEE;"

1. Page 17, line 10.

Following: "fee"

Insert: "--administration of the tax--penalty, interest, warrant for distraint, and statute of limitations"

2. Page 18, line 1.

Strike: "7"

Insert: "30"

3. Page 18.

Following: line 6

Insert: "(5) The department of revenue shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208, 15-70-209, 15-70-210, 15-70-211, 15-70-212, 15-70-221(2), and 15-70-232 shall apply to the fee. The provisions of 15-70-203, 15-70-204, 15-70-207, 15-70-221(1), 15-70-222, 15-70-223, and 15-70-224 shall not apply to the fee."

amhb603

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

SENATE TAXATION
EXHIBIT NO. 9 p.1
DATE 3/16/89
BILL NO. HB 603



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

Underground Storage Tank Program
(406) 444-5970

Prepared Statement - Larry Mitchell, DHES
HB 603 - Petroleum Release Cleanup Fund
February 14, 1989

The cost of cleaning up releases from underground storage tanks is typically beyond the means of most tank owners.

These high costs of investigation and remediation drove Congress to require that tank owners obtain financial responsibility to pay for cleanups no later than October 1990. Montana must adopt financial responsibility regulations equal to federal minimums. EPA recently promulgated federal rules that allow several methods of providing financial responsibility. Most are not available to the majority of tank owners. One method is through the establishment of a state cleanup fund. HB 603 proposes to establish such a fund.

Other states have found that few options exist for tank owners. As of August 1988, 24 states have established or proposed petroleum cleanup funds through a variety of methods with differing levels of coverage. Federal LUST Trust funds are provided to states to pay for enforcement, investigation, emergency response and corrective action under limited circumstances. However all costs are subject to cost recovery from the responsible party. States often find themselves in the no win situation of spending time and public funds litigating to recover cleanup funds from a tank owner who didn't have the money to conduct the cleanup in the first place.

It has been the department's experience that unless a tank owner is insured for pollution liability or is financially sound enough to self insure, cleanups are rarely conducted beyond the investigation phase if at all. The environment and public health and safety is nearly always compromised in deference to the economic reality of the owner's ability to proceed. The existence of a cleanup fund would provide funds to investigate releases and conduct any remedial action necessary to protect the public and the environment.

It is important to recognize that by all estimates, a large number of tank leaks will be discovered in the next few years. The amnesty provision in this bill will result in very heavy workloads during the first two years of the program. The fund will only remain solvent by virtue of governments inability to

SENATE TAXATION

EXHIBIT NO. 9 p.2

DATE 3/16/89

BILL NO. HB 603

Prepared Statement, Larry Mitchell, DHES
HB 603
Page 2

oversee cleanup plans and process claims. Other state fund programs are still too new or different from that proposed in HB 603 to make workload comparisons possible. Nearly all are suffering from staff shortages needed to administer the program. HB 603 wisely proposes to separate DHES regulatory cleanup oversight from claims payment through the establishment of an independent board for claims processing. These efforts must be adequately staffed and funded in order to manage the program efficiently to the satisfaction of all.

In summary DHES supports the investigation and cleanup of petroleum releases from underground storage tanks. We cannot continue to ignore the problem. It does not go away. There have already been too many losses; of businesses due to financial ruin and of groundwater resources for present and future uses.

prepsthb.603

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

SENATE TAXATION
EXHIBIT NO. 9 p. 3
DATE 3/16/89
BILL NO. HB 623



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

Underground Storage Tank Program
(406) 444-5970

February 14, 1989

Re: Financial Responsibility for USTs - Federal EPA Requirements

Financial Responsibility will be needed for all UST owners by October of 1990. Most UST owners will need to show \$1 million per occurrence and \$1 million annual aggregate.

The EPA allowable mechanisms for financial responsibility as listed in 40 CFR 280.

1. Financial test of self-insurance - Company must show a tangible net worth of at least \$10 million
2. Guarantee - parent company guarantees to pay for cleanup, the parent must meet the financial test of self-insurance
3. Insurance
4. Risk retention group
5. Surety bond - performance bond of required amount of coverage
6. Letter of credit - showing required amount of money is set aside
7. State Fund
8. Trust Fund - set up by owner

The insurance coverage will be extremely hard to get for most of the UST owners within Montana. The tanks which are over 10 years old and do not meet the present EPA design requirements are not being covered. The design requirements are: cathodic protection; spill protection; overflow prevention; and leak detection. Presently only a handful of facilities meet all of these requirements.

Other states throughout the country have also found that insurance is not an option for the majority of the UST owners and therefore have set up state funds to help cover tank cleanup

SENATE (ROOM)

COMMITTEE NO.

9 P.H.

DATE

3/16/89

BILL NO.

HR 613

costs. The states which presently have state funds in place for corrective action and third-party liability include:

Alabama; Delaware; Florida; Georgia; Illinois; Indiana; Louisiana; Minnesota; Mississippi; New Hampshire; New Jersey; New Mexico; New York; Oregon; South Carolina; South Dakota; Tennessee; Vermont; and Virginia.

States which are proposing state funding mechanisms to aid owners in corrective action and third-party liability include:

California; Colorado; Iowa; Massachusetts; and Wyoming.

Many of the other states are also looking at state funds for financial responsibility because of the difficulty for UST owners to procure other financial responsibility mechanisms.

SENATE TAXATION

EXHIBIT NO. 10 p.1

DATE 3/16/89

BILL NO. HB 603

Amendments to HB 603
March 16, 1989

1. Page 3, line 18
delete "solely"
2. Page 3, line 19
amend to read "support a program to pay for corrective
action and PAYMENTS TO THIRD PARTIES FOR damages
3. Page 7, delete lines 8-9 in their entirety
4. Amend all references to "petroleum storage tanks" to
"UNDERGROUND petroleum storage tanks," beginning in the
title.
5. Page 9, delete lines 16-20 in their entirety
6. Page 9, line 23
delete \$25,000
add \$50,000

Proposed by the Montana Petroleum Association

Reasons for amendments:

1. On page 16, administrative costs are listed as a use of the fund.
2. Payments to third parties are provided for on page 8.
3. and 4. Delete above ground storage tanks.

Performance and industry standards are very different for ASTs and USTs. Even including only those ASTs under 30,000 gallons greatly expands the scope of the program.

Federal UST programs deal only with USTs, including federal financial responsibility and corrective action regulations. It is wasteful to use fund money to remedy AST leaks rather than reserving the fund to correct costly, difficult UST leaks.

AST leaks are more easily detected and responsible parties more easily identified with less investigation of the extent of contamination. Cleanup is fairly straightforward compared to USTs.

EPA recognizes the significant difference between ASTs and USTs. EPA and the American Petroleum Institute are both working on AST regulations. Until ASTs must meet such requirements, it is not fair to UST owners that AST owners have the same access to the fund. The same insurance problems of USTs do not exist for ASTs.

5. Delete amnesty provisions

Amnesty makes enormous demands on the fund and requires responsible operators to subsidize those with problems.

6. Payment by the responsible party of the first \$50,000 would be in line with several other states and federal recommendations. It would also make the fund go further.

