

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - 1st SPECIAL SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Raney, on July 6, 1989, at 2:05 p.m.

ROLL CALL

Members Present: All with the following exceptions:

Members Excused: Reps. Hannah and McDonough

Members Absent: None

Staff Present: Hugh Zackheim, Environmental Quality Council
Gregory Petesch, Legislative Council

Announcements/Discussion: Chairman Raney announced that there would not be a time limit on testimony or questioning but asked that repetitions be avoided.

HEARING ON SENATE BILL 22

Presentation and Opening Statement by Sponsor:

Rep. Dennis Rehberg, District 88, carried the bill in committee for Sen. Gage who is attending a meeting of the Senate. Rep. Rehberg stated that he doubted anyone in the room would argue that personal property tax relief is necessary in the State of Montana today. Many of those attending the Senate hearing were not large corporation but small homeowners who are looking at the results of the Special Session to see if they can afford to stay in Montana. The Governor's lawyers have determined it is possible to cap the Coal Tax Trust for the purposes of property tax relief and it does not have to have a 3/4 vote of both houses. He believes that the people of Montana are willing to vote for such a measure because they want personal tax relief. When Rep. Pavlovich's bill was presented to the House Taxation Committee, he stated at that time that he intended to take the Governor's personal property tax relief and amend it into his bill because he had been working with the Governor to find an additional \$8 million to lower the total property tax relief to 4%. Without the additional \$8 million the property tax relief would only be lowered to 6% because there was opposition in the Senate to tying property tax relief to gambling.

Rep. Rehberg expressed his dismay that this bill was assigned to this committee rather than the House Taxation Committee. He stated did a cursory review of House

Journals and established that in the regular session there were 19 bills introduced dealing with the Coal Severance Tax and all 19 bills were referred to either Taxation or Appropriations committees. He expressed his hope that this bill would be discussed for its merits rather than the bill itself. He did not feel that this committee was the appropriate committee to hear this bill.

Rep. Harper expressed concern that Rep. Rehberg was chastising the committee before the hearing on the bill and asked that the hearing be limited to the bill. Rep. Rehberg replied that he was attempting to insure that the bill receive as fair a hearing as possible.

Rep. Rehberg stated that personal property tax relief is something that this legislature has supported as evidenced by the "Canola" bill, Rep. Cohen's bill on personal property tax relief, Rep. Giacometto's bill and Rep. Addy's. He felt that this bill (SB 22) was the only long range, fair form of personal property tax relief because it encompasses everyone. He believed that the bill will be upheld if it is brought before the court system regarding constitutionality.

Testifying Proponents and Who They Represent:

Dr. Kenneth Nordtvedt, Director, Department of Revenue
Dennis Burr, Montana Taxpayers Association
Don Peoples, Chief Executive, Butte/Silver Bow
Bob Burpee, Canbra Foods
Forrest "Buck" Boles, Montana Chamber of Commerce
Riley Johnson, Independent Business
Art Seiler, self
Jim Shaw, self
Rep. Dick Nelson, District 6
Tom Hopgood, Montana Assn. of Realtors
Ed McHugh, self
Jerry Jack, Montana Stockgrowers
Lorna Frank, Montana Farm Bureau
Charles Brooks, Montana Retail Assn.
Laurie Shadoan, Bozeman Chamber of Commerce
Alec Hansen, Montana League of Cities & Towns
Evan Barrett, Economic Development Corp. of Butte

Proponent Testimony:

Dr. Kenneth Nordtvedt stated that the Stevens' administration wholeheartedly supports this bill. Property tax relief has been one of their main goals from the time of the campaign and are convinced that Montana's chances of economic recovery and job creation hinge very critically on the reduction of personal property tax relief. He described a comparison of 14 western states with similar agriculture land and Montana is at the bottom of the list with the

highest effective tax rates. Depending on the city, there is between 3.8% and 4.4% effective tax rate on business property. Four of those states exempt business property from taxation entirely and the other states range from .8% to Montana's high rate of 4.4%. There is no way, particularly with modern business, in which the ratio of personal property to employment and personal property to real property in the make-up in the modern business is ever going to be competitive and attract business to this state with these kind of rates. If we can't recognize that Montana is in an economic crisis now, then when will the state recognize this? Each year we slip further and further behind where this nation is going and where the other advanced nations of the world are going. Our economy the job opportunities for our people are looking more and more like third world nations. Why do the majority of our university graduates have to leave this state to find the kinds of employment they have trained for many years. There are many attractive features in this state that could draw. You have changed the coal tax severance tax rate by majority vote in previous legislative sessions for purposes of stimulating coal production in this state, you, by majority of vote, have reduced the severance tax rate at least once. This bill goes through exactly the same procedure and reduces that severance tax rate again and creates another tax. So the legal precedent is there. The Coal Severance Tax rates have been reduced already by previous legislators. We strongly feel that it is not fair to the communities of Montana to try to reduce personal property taxes by the piecemeal way in which one community after another comes in with a bill to grant tax relief for a very specific industry that they have a chance of getting. The whole state needs these kinds of tax relief. There is going to be a growing unfairness between old business and new business, businesses in this community verses businesses in that community.

Dennis Burr testified in support of SB 22. He spoke about two main issues: personal property tax rates in Montana and the diversion of the coal severance tax. Personal property tax rates seem to be a big problem in Montana now, but there wasn't much said about it five or ten years ago. That is partly because the problem has developed over the last three years. The tax rate was adjusted every time property was reappraised to insure that local governments were not given a wind fall in tax revenue as a result of reappraisal which raised the value of property. Personal property is the main issue we are talking about and there are in classes of 11%, 13% and 16%. Some were a little lower, some were higher. In fact, manufacturing machinery, up until 1975, was in class 4 with real property. In 1976 we reappraise raised values on real property by 47%. The legislature didn't want that to translate into a 47% tax increase so the classification was lowered to 8.5%. In 1986 it was the same procedure but the

classification was lowered at that time from 8.5% down to 3.86%. Both times personal property tax was left at their hired level. The problem is relatively new. In fact, if it was left at 12% starting in 1975, we would have an average mill levy in the state now of 155 rather than 280 which is the average now. That is what has created the problem. Since 1985 we've lost \$8 million from the tax roles and manufacturing machinery, \$73 million in oil field equipment, \$26 million in trucks, which is a total of over \$310 million in personal property that has come off the tax roles since 1985. This is a very serious problem and we have supported sales tax bills and other major bills to try to reduce personal property taxes. One thing insisted on is that there be replacement revenue to local governments if these classification are reduced. State revenue to compensate local government is important because Montana has been so slow at providing revenue share between the state government and local governments. Montana is about 68% of the national average in revenue that is collected by the state and funneled down to local governments in Montana. Montana is rated as having the number one educated work force in the nation and number one in productivity in the work force. Montana is 41st in per capita income and 47th in a balanced tax system. In the tax area the main difference between our old Constitution and the one that was adopted in 1972 is flexibility given to the legislative branch of government.

Don Peoples stated that he supports SB 22. Personal property taxes are indeed a disincentive for a location of industry in Montana. That may be the reason why some industries are looking at moving out of the state. Look at personal property taxes and see the effect. The argument that they are a disincentive can be found in Butte. Personal property taxes do effect the decisions of companies to locate in Montana. Something has to be done with personal property taxes to bring us somewhere to the average. Many people say that in weighing opportunities or locating companies one of the last things they look at is personal property taxes, which in most states are the average. They are not average in Montana. Our personal property taxes are considerably higher than they are in neighboring states. One problem is the funding of the replacement revenue. Many people feel that the coal severance tax is the wrong way to go. This should not get hung up on the replacement revenue. Look at other alternative sources of revenue that might be used to replace revenue. Local governments have to be guaranteed that they are going to have replacement revenue. It has to be dollar for dollar replacement, otherwise, all you will be doing is raising the millage at the local level. Montana is interested in doing something with their personal property taxes, bringing them down so it is not a disincentive for location of services in Montana.

Bob Burpee stated that his company located in Lethbridge, Alberta is seriously looking at Butte, Montana for a site for a \$20 million refinery. That particular refinery has enormous spin-offs, not only for the city of Butte, but for the State of Montana in terms of developing a very solid base business. Montana is one of three states that they are looking at relative to location. One prime element that is not equal is the personal property tax. To put that into perspective, the difference between residing in Idaho and residing in Montana is some \$600,000 per year in tax. Given this is a long term business, \$600,000 per year over a number of years is a significant sum and for this company that would be a show stopper. He supports the revisions to the personal property tax.

Forrest Boles testified in support to SB 22. Exhibit 1.

Riley Johnson testified in support to SB 22. Exhibit 2.

Art Seiler stated that there are four aspects to whether personal property tax really affects manufacturing businesses. If you arbitrarily took about \$4 million worth of machinery, which is really a small factor if you took a 10% personal property tax on that then it will be \$400,000 per year. The second is growing and expanding when a manufacturer considers a new piece of production equipment, if you consider the income versus the cost. Generally, if a machine will pay out in two years after taxes, you buy it no matter what it costs. The third angle is that of the obsolete machines. Machines should pay out in two and one half to three years. Machines often get obsolete in three, four or five years. That is why they have to pay out. Finally, the point of survivability every business has ups and downs. When we have to survive we can't afford this kind of a tax. The property tax is deadly to this industry. The 7% is too high, even 4% is too high.

Jim Shaw testified in support of SB 22. He is an ex-rancher, ex-Senator and soon to be ex-Montanian. About twelve or fifteen years ago he was in trouble with his ranch and realized that the best way of salvaging it was to sell it. He put it on the market and after a lot of people came to look at it, one guy came along and had enough money to walk in buy it. He said he had one more thing he had to look at and he looked at the amount of taxes paid compared to what he had to pay in North Dakota. He burned rubber all the way back to North Dakota. That is fact, since then things have turned even a little worse and the ranch is gone. Mr. Shaw talked with a friend in Eastern Montana who owns a contracting business is leaving Montana with his \$11 million business. His personal property taxes are atrocious. In the first year in North Dakota, he can redeem the cost of a building that he had built to work on his machinery by less property taxes. This is serious, half of the business is already gone. It looks like Eastern Montana is going to get

hit hard and in the ranching community a lot of those ranches belong to banks, insurance companies and are sitting there empty. There is no personal property taxes being drawn on them today, but they are still paying the real estate. This is a good bill and I hope this committee thinks that too.

Rep. Richard Nelson testified that regarding the part of the bill that deals with personal property taxation adjustments, particularly for smaller businesses and manufacturing plants. There have been several attempts to attract more or less hypothetical businesses, but it is more important to keep encouraging existing, progressive and expanding industry. He noted that Mr. Thompson had just installed \$500,000 worth of equipment in his business. As a result of that installation over \$1 million worth of products have been shipped out of the state, 30% being distributed worldwide. This plant is manufacturing the only type of this equipment in the world today. Roads are adequate in the state for distribution, the equipment on the floor of the business and the \$500,000 worth of computer equipment is a major problem in terms of taxable value for the business. Essentially, Mr. Thompson buys this equipment over again every year when he pays his taxes. The temptation is very strong for Mr. Thompson to move. The personal property tax is keeping customers away from the state and will continue to drive new business development away. Instead, a new business will easily put in \$100 million to \$200 million in capital equipment investment.

Tom Hopgood stated that the realtors are small businessman in the State of Montana. They are directly affected by the high rate of personal property taxes. Moreover, they are directly affected by the economic status of the State of Montana and believe that high personal property taxes are first of all, causing businesses not to locate in this state. Secondly those businesses are not in the state buying property. They are not bringing in employees that are buying and selling property. The realtors, as are nearly every other group of small businessman in Montana being represented today hurt by property taxes. Property tax reform is long been one of the themes of the Montana Association of Realtors and personal property tax reform is a cornerstone of economic development in Montana.

Ed McHugh stated he represents five small businesses that are operated in Helena totalling 120 employees. Forty five of the employees are with the Cloverleaf Dairy, 35 employees with Dairy Land, 35 employees with the Ice Cream Parlor & Restaurant, and 5 employees with the McHugh Mobile Home Park. Dairy Land is a popsicle plant that can only operate five months out of the year due to weather, they do ship into other states. The Mobile Home park is one of the nicest parks in Montana with 235 rental units. There is a higher vacancy today than they have had in the last ten

years telling them that the economy in Helena is down. He is in the process of deciding if he will stay in business or close and this committee will determine a large part of the decision. The personal property taxes in Montana are horrendous. Montana has the highest the personal property taxes, very high real estate, high unemployment and high industrial accident. If you live in Helena you are under the highest priced water in the United States, you are also paying very high sewer, garbage and service charges. This personal property relief is absolutely necessary for the small businessmen of Montana and necessary to his small business.

Jerry Jack stated that at their recent convention in Billings, the only resolution that they passed concerned tax reform in Montana. That is an extremely serious issue in the state and the only mechanism that is a possible solution is the reduction of personal property taxes.

Lorna Frank stated that they support SB 22 because they feel that the state should do property tax relief, not on a piecemeal basis, but on the entire state. Doing the piecemeal is what caused the trouble in the first place. They hope that this committee will take a look at it this year and give personal property tax relief and reform to the State of Montana.

Charles Brooks stated that the property tax on a facility in Louisiana and the tax on a facility in Billings were identical as far as the size of the land, building and equipment were concerned. The taxes in Louisiana were one-half of the taxes in Billings. As he traveled the main streets in Montana and looked at the many stores that had been closed he say that it was very depressing. Something must be done in Montana to overhaul the burdens in the tax system and SB 22 certainly would do that.

Laurie Shadoan stated that there is more than just the "Canola Bill" being held hostage. The National Science Foundation is looking at Bozeman to name them a national engineering research center with a grant of \$7.5 million, but there are two red flags that are thrown up. One is the property tax levels. They are watching what the committee is doing to see whether they give the \$7.5 million grant. The other red flag is the match of private and state dollars for funding buildings.

Alec Hansen stated that his testimony is technical in nature and he would like to propose an amendment. This is a two bill package, SB 22 and HB 50. SB 22 cuts the rates on personal property taxes and identifies a source of replacement revenue. HB 50 appropriates the funds back to schools, cities and counties to compensate them for the loss of

personal property tax revenue. HB 50 includes coordination instructions which say that it will not go into effect unless SB 22 is passed. Exhibit 3.

Evan Barrett stated that he has testimony on behalf of his organization which deals with the need for property tax reductions and the need for adequate replacement revenues for local government. They do not have a position as an organization as to the source of the revenue. There is no question that reducing personal property taxes on business equipment and machinery would be an economic advantage to Montana, both in terms of recruiting businesses and in terms of retaining businesses. Local governments and the services they can deliver cannot be hampered. People are interested in going to a community where services are provided, good services, good education, good schools. Adequate money for services and a low enough tax situation is a balanced approach to this problem. In terms of the replacement revenue, it is essential for local governments to not lock in property tax reduction without locking replacement revenue. It is not fair to the local governments to do that. Enacting a source of replacement revenue that is not necessarily going to meet the Constitutional requirements in Montana places the local governments in jeopardy. Montana needs to be competitive for people that are here and competitive for people that may want to come and do business here. You must start working from the effective rate backwards, rather than percentages forward. If we look at 1.5% effective rate, and you figure that when you are done with equalization, there will be a statewide average of about 300 mills. The 300 mills at a 6% rate is an effective rate of 1.8%, 300 mills at 7% is an effective rate of 2.1%, which incidently was the Governor's initial proposal. He requested that the committee work on adequate revenue sources that are rock solid to accomplish this and to set the rates so that Montana is competitive, but not rock bottom. Eliminating a disincentive and not trying to create an incentive.

Testifying Nopponents and Who They Represent:

Sen. Cecil Weeding, District 14

Nopponents Testimony:

Sen. Cecil Weeding stated that there are many parts of this bill he would support and would not support. He does not support the direction where the proceeds are intended to go should this bill prevail. Nevertheless, he does find some merit in the concept to basically solve an school equalization problem. He finds the bills lacking in that they rely heavily on a property tax solution to the equalization problem. There is some inherent problems with property tax that simply can't be solved. It hits the rural areas very hard. It hits low income areas and benefits high income

areas. That problem needs to be addressed with something besides a property tax. He presented amendments that would be to strip all of the privilege sales tax language out of the bill, revert it back to a severance tax, and it would be straight forward and clean. Exhibit 4.

Testifying Opponents and Who They Represent:

Verner Bertelsen, self

Jim Jensen, Montana Environmental Information Center

Richard Parks, Northern Plains Research Council

Mike McGrath, self

Dan Kemmis, self

Donna Small, Montana Democratic Party

Harriett Meloy, League of Women Voters

Russ Brown, Thomas Towe

Jim Kelble, MAPP

Tom Schneider, self

Rep. Dorothy Bradley, District 79

George Ochenski, self

Sen. Dorothy Eck, District 40

Joseph Moore, Montana Rainbow Coalition

Rep. Angela Russell, District 99

Opponent Testimony:

Verner Bertelsen expressed his opposition to SB 22 and said he has a tremendous concern with what this legislation supposes to do. There has been effort to use the funds for varied purposes. All of them have failed when they came up against the 3/4 vote of the Legislature. He didn't think he would have to try to protect the future of the coal trust for the people of Montana. This would effectively destroy the coal trust if you were to take it from the fund. Once that road is taken you can be well assured it would never go back. It would also bring in to question many of the things that coal funds now do. The long run effect on the trust itself will be to destroy it because inflation will eat it up. If that trust is removed immediately bonding price is going to go up. One large, most secure sources of income to the State of Montana right now is from the trust fund. If we continue to put the money into the trust fund, in a few years that source of income would be bigger than the income from all of the coal companies combined. When we came here we pledged to uphold the Constitution, we pledged to uphold the substance, not just the form. The problem with the legislation in one respect is that it is really Robin Hood in reverse, it takes from the trust and future generations to give to those who have. In a sense it tries to use mirrors, it says we will take something Montana is getting, and cut down something else Montana is getting by putting the two together we will have more than we now have. It frankly doesn't work that way, you would have less. Montana needs to be careful. This is not the way to solve the taxation problem. Please withstand this ill advised legislation and drive against the tax for the trust and let

us not impair Montana's constitutional Coal Trust Fund on the altar of Canola. Exhibit 5.

Jim Jensen stated the coal tax is found in Section 9 of the Constitution under environment and natural resources. Beyond the rational purpose, sending the bill to this committee gives this committee a political opportunity. Committee member asked for point of order. Mr. Jensen then stated that the committee should kill this bill and deal with the issues that brought the Legislature here.

Richard Parks testified in opposition to SB 22. Exhibit 6.

Mike McGrath stated that from his background in three years of studying severance taxes and excise taxes, he believes that SB 22 has serious constitutional flaws. Article 9, Section 5 of the Montana Constitution is the provision that established the Constitutional Trust Fund. It provides that the principle of that trust fund shall remain inviolate unless appropriated by a vote of 3/4 of the members of each house of the Legislature. That provision was passed by the voters of the State of Montana in 1976 and added as an amendment to our Constitution. There was a second vote of the people of the State of Montana on this issue as well. In 1982, the voters passed I-95, which added certain language to Section 17-6-303 of the Montana Codes Annotated regarding purpose of the Trust Fund. Those sections provide that the purpose of the Trust Fund is to compensate future generations for loss of value of a depletable resource and to meet impacts caused by coal development. And secondly to develop a strong, stable and diversified economy which meets the needs of Montana residents both now and in the future while maintaining and improving a clean and healthful environment. Thus, the voters of the State of Montana have spoken twice regarding the Constitutional Trust Fund. SB 22 is obviously designed to circumvent the requirements of Article 9, Section 5 of the Montana Constitution. For those reasons, the Court may hold that provision is unconstitutional in this bill. It isn't the fact of lower rates that makes the bill unconstitutional, the United States Supreme Court made it clear that it is the legislatures prerogative to establish tax rates. It is the provisions to circumvent the Trust Fund part of the severance tax that have a Constitutional impairment. There is a second problem that is more serious. A severance tax is what tax courts and tax officials call an excise tax. The privilege tax is the same thing. It is not a property tax. A privilege tax is in effect an excise tax. There isn't any difference in substance between the Montana coal severance tax as it presently exists and the coal privilege tax that would be proposed in parts of SB 21. For those reasons the Constitution of the State of Montana would require that 50% of the income from the privilege tax would

be required to be placed in the Constitutional Trust Fund. Obviously, SB 22 does not do that, therefore, he does not believe the provision would withstand Constitutional muster.

Dan Kemmis stated that SB 22 amounts to nothing less than a broken promise, a very severe and very unsavory broken promise. Essentially what the people of Montana did in 1976 when they established the Constitutional Trust Fund was to promise themselves and future generations that as soon as we collected the Coal Severance Tax that we would set aside half of it for perpetuity in the form of a trust fund. That was a solemn promise as it is possible for people to make to themselves. There is no more solid way to make a promise than through the adoption of a Constitutional Amendment. This bill is nothing other than the breaking of that promise. The efforts that have been made to suggest that there is precedent for what is being done here simply will not stand. Dr. Nordtvedt has suggested that in the past, that the severance tax has been reduced. Mr. Kemmis stated that he doesn't think that was good public policy, but regardless of that there were arguments that could be made for why that was good public policy. The arguments were that it would increase coal production, at least encourage the increase of coal production. The purpose of this bill is to subvert the Constitution of Montana. There is no other purpose, there can be no other purpose. So many other states' wealth was built out of states like Montana.

Donna Small testified in opposition to SB 22. Exhibit 7.

Harriett Meloy supported the permanent Coal Tax Trust Fund, and not support the capping of the trust fund, which is essentially what SB 22 does. She said in 1972, we the people, made a promise to the state that there would be a fund of money left over when the reasons for the use of coal are past, and she felt we should stay loyal to that pledge. She was also speaking for the Montanans for the Coal Tax Trust. This is an organization made up largely of legislators and former legislators plus a few other Montanans who are concerned about the preservation of the Coal Tax Trust Fund. They oppose SB 22 as an attempt to circumvent the clear mandate of the Montana constitution. She quoted the Constitution and said to reduce the Coal Severance Tax by 24% and create another tax on coal calculated in the same manner at the exact same level, but under a different name is nothing but a poorly conceived subterfuge to avoid the constitutional mandate.

Russ Brown said he had been asked to submit for the record a letter from past senator Tom Towe from Billings, Exhibit 8. Mr. Brown said SB 22 represents the worst in political trade off's. It's goal is not a lofty goal of improving the business climate or helping to create jobs in Butte; it's goal is to subvert the Constitution of the State of Montana. SB 22 reduces the coal severance tax to 1% and then creates

a new tax exactly equal to the reduction, using the same definitions and deductions. This so called privilege tax even has a "window of opportunity" in the exact same language of the Coal Severance Tax. Mr. Brown went on to parallel the language in the constitutional protection and the privilege tax. He pointed out the difference is that the collected tax does not go to the Trust Fund but directly to the General Fund. He urged the committee to defeat the bill.

Jim Kelble expressed opposition to SB 22. Everyone agrees we need to lower personal property taxes, and a way must be found to lower the rates with a permanent source of revenue to replace it to local governments. Property taxes in Montana have become a sort of swimming pool with holes in the bottom. Some of the tax breaks since 1981 have included railroad property tax breaks, inventory repeal, net proceeds on oil, agriculture livestock, commercial vehicles, windfall profits deduction, etc. All of these tax breaks amounted to about 1/2 a billion dollars since 1981, and with the tremendous amount of revenue pouring out of the tax system, certainly a reform of the tax system should be done. The Governor wanted a permanent on-going source of revenue for education. It appeared to him that this bill would create a black hole between future revenues and expenditures and an increasing amount from the General Fund is needed to cover tax expenditure in lowering property taxes. This bill is horrible fiscal policy and he would urge it do not pass.

Tom Schneider had heard earlier that this challenge and subversion of the Coal Severance Tax was again an issue in this time of apparent focus on school equalization as the number one priority. He was incredulous since it was hard to believe this type of subversion was at our door step. Mr. Bertelsen gave a very impassioned presentation and it reflected the disbelief and outrage he held for this fund that the people of Montana adopted in 1972 and which has been upheld since then. The bill tears at the heart, soul and philosophy of that endowment program. Mr. Barrett warned of the dangers of building property tax relief on something so questionable as the constitutionality of this raid on the severance tax, it will inject absolute risk into the business community. As a businessman, he would view that as worthless. Finally, this bill is going to divert tremendous energy, effort and attention away from school equalization, away from meaningful property tax equalization and relief into a blood bath. This may end up in the courts and may wind up being worthless in terms of property tax relief, and would urge the committee to refocus their attention on the school equalization, and to defeat this bill. Exhibit 9.

Rep. Dorothy Bradley said she is an opponent with an amendment, Exhibit 10. She did not begrudge business equipment property tax relief, but this is a very bad scheme and she

felt she had a better one. Her first problem was that by her calculations, there is a loss of revenue to the local jurisdictions. By the analysis she has from Curt Nichols, LFA it will lose about \$31 million a year when everything is in place to different taxing jurisdictions. By 1991 when the coal tax is down as far as it is scheduled to, it will only bring in \$22 million so far as the trust diversion is concerned. HB 50, would replace to the local taxing jurisdictions only half of what they stand to lose by this bill. This means someone is going to lose, either the General Fund in funding the state, or local jurisdictions. With the coalition sales tax proposal the very first expenditure was replacement revenue to all the local jurisdictions that lost any money in property tax relief. She felt it was very unacceptable to let natural resources become the foundation for business tax relief. She pointed out how the sales tax proposal had protected businesses, etc. The third point was comprehensive reform, this is one more band aid and it is not a big one. When reform happens, little disabled children and old ill people in nursing homes cannot be left behind, the revenue will not be there in two years to take care of those people. There is nothing here for higher education, and she felt this was important to economic survival in the state. She pointed out that the students, businesses, and professors are being picked off by other states that can offer more. She had supported the trust at the time it was passed, and one thing that was in everyone's mind was diversifying revenue in this state and not become totally reliant on resources that some time in the future will be gone. It is happening and at her last calculation nearly 10% of the General Fund is coming from the interest from the trust fund. She pointed out that only 10 years after the fund was built up it cannot be managed.

Rep. Bradley said she was submitting a "fun" amendment. If the trust is broken in this legislature, it should be done creatively, and not slink out of the 3/4 vote. This will put Montana on the map as being something special. This amendment would set up with a small piece of the "privilege tax" a rail reconstruction trust account that is based similar to our highway reconstruction trust account, except it is a much lower rate. The highway trust has spent \$18 million in the last 3 years, and all this amendment is for \$2.3 million a year. The highway trust took 6% in '86 and '87 and was raised to 12% in '88, and that was perhaps a wise use, but so is this. This could make Montana special.

George Ochenski remarked that in Rep. Rehberg's opening statement he said this is a good bill and we should take it to the people. Maybe it has been taken to the people, since over half the people who just testified as opponents testified on their own behalf. Few of the proponents represented themselves, only one manufacturer from Philadelphia did, the remainder represented a lot of businesses, or a Canola plant. Dr. Nordtvedt said these are outmoded notions.

Property tax reform is not an outmoded notion, and he has faith that the Legislature will come to some resolution on the property tax issue, but not by busting the coal trust. With the people coming here to testify is a clear indication that the coal tax trust is not an outmoded notion. As a natural resource lobbyist, he had to wrestle along with the committee in regard to resource extraction industries. Basically, Montana's resource extraction industry rises and falls on the tidal wave of world prices. When the wave comes in the population comes in, the mines boom, and the exploration is good and everything is rosy. In regard to the three legged stool mentioned, how short is the leg that we build upon the world market for coal and a continuing tax that comes from the extraction of coal? He mentioned the global environment, the green house effect, and said the world is changing and it is foolish to tie our future to the extraction of coal. This is not a conservative policy, it is not a new policy, it is a continuation of the last three years of chipping away at the coal tax, and that Montana's economy must be built on sustainable industry.

Sen. Dorothy Eck said her opposition to this bill started because she was offended at the subterfuge of the constitutional trust fund. Local governments should be held harmless and it is apparent that even if HB 50 should pass, this bill does not, in the long run, hold local governments harmless; once more they are losing their tax base. She thought there had been an agreement in the Legislature that if local government was cut they would make sure that there were adequate replacements, and this bill does not do that. This bill comes as a measure that is going to take care of personal property tax relief, and it does not do that. It will not do so, because it does not have much chance of holding up constitutionally. One of the things that has been circulating but not presented here today, is the ballot language that set up the trust fund to begin with. Exhibit 11. She read from the exhibit, and said it does not say Coal Severance Tax, it says coal taxes, and she thought the courts would agree that this bill will not stand up. There was a simpler method for those who really support property tax relief, and she would suggest you talk to Rep. Cohen and discuss HB 48, which she felt could have a real opportunity of providing some personal property tax relief in this session. She hoped the committee would follow that bill, that it would go out, and that it might become a compromise measure to this one which is flawed.

Joseph Moore urged members to kill the bill in committee. To kill the bill would be a favor to the proponents, to the Montana taxpayers, the Montana Farm Bureau, the Montana Stockgrowers, the Montana Retail Association, and the Montana Independent Business who support this bill. They believe that if this bill is passed, there will be a screech of outrage from the citizens of Montana and they will view these people as self serving bandits, so he would urge the

committee to do a favor for these people and kill the bill in committee.

Rep. Angela Russell opposed the renaming of this tax account to divert it for personal property tax relief, and as other opponents have stated, our state is in need of equitable tax reform, but did not believe this is the route to go. In the late '60's and early '70's she worked with her tribe in south eastern Montana, and at that time they suddenly discovered that they had tremendous coal resources on the reservation, and in fact, the estimates went up to 18 billion tons of coal on their land. She had been hired by the tribe to do a lot of public education around the whole issue of coal development, both pros and cons. She recalled the tribal leader saying this coal resource can either be a blessing or it can be a curse for people. Coal is a non-renewable resource, and she was proud to be a Montanan because back in 1972 there were some far sighted people who decided to put some of this money into a trust fund for future generations. She felt that was commendable, and would applaud those people who were far sighted to make those decisions. She had given a speech in Bozeman recently and had done research on women, particularly Native American women in politics, and took a look at the Mohawk form of government. Many say our own U.S. government is modeled on the Mohawk government. One of the things that had impressed her was their farsightedness, the fact that any decision the Mohawk people made, they felt needed to be made for seven generations ahead. She felt the basic philosophy today should be looking ahead for seven generations for any policy decision made, still holds true in Montana, and she hoped the committee would defeat this bill.

Questions From Committee Members:

Rep. Cohen asked Rep. Rehberg about a fiscal note on the bill.
(At this time they were passed out).

Chairman Raney announced they would not take executive action on this bill today. Rep. Giacometto said he planned on making a motion for a do pass on this bill as soon as this hearing was over, since it was a special session and this bill should be acted on as rapidly as possible.

Chairman Raney said they have just been through 2 hours and 25 minutes of hearing, the questions from the committee are still to come, the fiscal note has just now been laid on the desk, and there are hundreds of unanswered questions remaining. He would argue against an immediate executive action on the bill.

Rep. Addy asked for a point of order. He asked if it is not the Chairman's prerogative to decide when executive action will

be taken on a bill. Chairman Raney said that was his understanding, it would be his ruling, and if his ruling were protested it should be taken to the Rules Committee.

- Rep. Cohen said that on page 2 of the bill, it talks about a privilege tax or an extraction of coal. We have heard a number of people who are opponents of the bill that felt the extraction of coal differed in any significant way from the severance tax, and asked Rep. Rehberg if he would like to discuss the fact that there is no definition of these terms in the bill, and his opinion of the difference?
- Rep. Rehberg deferred to the attorney from the Governor's Office, but did tell him that early on in his legislative career he feared attorneys standing up and making statements about the constitutionality of a bill. He said he did not fear that any more.
- Rep. Cohen asked in the event that this bill were to pass and were tied up in the courts for a period of time, if he felt that it would be doing exactly what they didn't want to do in providing a message to businesses both in and out of this state. Rep. Rehberg said the message is already there. We can't be trusted because a tax break is given and a tax break and is taken it away. He felt it would be sending the right kind of message and he was sure it would be upheld.
- Rep. Cohen stated that Mr. Nichols from the LFA office said there would be a loss of \$31 million to various tax jurisdictions as a result of this reduction in personal property taxes. Property taxes for railroads and airlines are based on a weighted average of other similar properties, and therefore will be an additional loss of revenue from railroads and airlines. He asked Rep. Rehberg if he had any idea how much that would be? Rep. Rehberg said they have, and will continue to make every effort to see that the local governments lose no money. He told the Education Committee, and he intended to do the same on the floor, that HB 50, as written, does not have the correct numbers, but until such time as SB 22 has passed this legislature in some form that we know what numbers can be plugged in, they have no accurate estimate. Curt Nichols is correct but the numbers are incorrect. They have made every effort along the way to say they will correct that and the local governments will be out no money when they are done with it.
- Rep. Cohen stated that of the \$31 million that Rep. Bradley told us about and the additional \$1.2 million the railroads and airlines will receive, add up to a pretty hefty total, \$32.2 million in lost revenue per year. He asked if there was going to be enough revenue from this new coal privilege tax to make up that money? Rep. Rehberg said the reason there is a short fall is not because of the coal privilege tax, but because of the fact that they were not successful in getting it down to the 4%, so the bill is still written at

6% and there is an amazing difference of cost; there is a lot of money that is lost when you can't lower it from 6% to 4%, and it won't be a loss because they won't lower the rates to 4%.

- Rep. Cohen asked what the numbers were that Rep. Bradley used? Rep. Rehberg said the numbers he had before him were calculated at 6% in the bill as amended, and they come out to \$32.2 million. Rep. Cohen asked how much money do you expect to bring in on an annual basis from this new coal privilege tax. Rep. Rehberg replied there will be as he understands the numbers, approximately \$21 million from the coal severance, \$10 million from the General Fund and \$2 million from income tax.
- Rep. Cohen asked if he was proposing \$10 million from the general fund and an additional \$2 million from income tax? He thought the income tax was already a part of the general fund. Rep. Rehberg said he could not tell exactly how or where that was taken from, but if he understood it correctly, it is part of the money that was found by Judy Rippingale.
- Rep. Cohen asked if in these schedules for the new privilege tax found on page 5, the schedules are virtually identical to the old schedules for the coal severance tax. It shows that following June 30, 1991, there will be a decrease in the money that will be brought in by this tax. He asked how much less money will be coming in. They were looking at \$11 million a year and it will be more per year. It would be the difference between \$21 million and \$32 million is \$11 million to make up. Rep. Rehberg said that is one of the questions that he asked early on. What is the result of the coal severance tax being lowered, and it was told he would have to ask Dr. Nordtvedt, since he was told that had been factored in and there should be no loss.
- Rep. Cohen said he could not find the fact that Dr. Nordtvedt told you something completely reassuring. He referred him to Section 43 in the bill, page 56, the section dealing with the tax freeze imposed by I-105. It seemed to him that with this large proposed reduction on these various classes that have been combined, that perhaps I-105, the terms and conditions are restricting any increase in mill levies by various governing jurisdictions might be lifted. This bill does not, in fact lift them and meet all the requirements of I-105 to lift the restrictions. Rep. Rehberg said it was written with the belief that there is no equalization that will pass this legislature that will not repeal I-105.
- Rep. Cohen asked if that meant I-105 not merely for school districts but also for municipal government. Rep. Rehberg said he could not answer that question, but had been told it was one of the reasons it was not included in this bill.

- Rep. Cohen asked if Rep. Rehberg would have no compunction to repealing I-105. Rep. Rehberg answered that he had every reason in the world to oppose any repeal of I-105, and will continue doing so.
- Rep. Cohen said I-105 specified certain classes of property that must receive property tax reduction for the automatic repealer to take effect. He asked if Rep. Rehberg could tell him which of those classes are not included in this bill. Rep. Rehberg said he could not, and Rep. Cohen said one of those classes of property was a class of real property, the one that contains all of our homes and if there was any reduction for property taxes for home owners in this bill. Rep. Rehberg said he would assume not, since it is a personal property tax reduction act. Rep. Cohen said they are saying personal property and yet he had a list of the sub classes that fall into this personal property, machinery other than farm, mining and manufacturing; manufacturing machinery, mining machinery, oil field equipment. He asked if it was that kind of commercial equipment that was talked about when they say personal property. Rep. Rehberg said if it is not real property, then it would be personal. Rep. Cohen said that all property, not real property, is referred to by this euphemism of personal property, though it is not owned by persons but in most cases owned by corporations and large businesses. Rep. Rehberg said he failed to see the direction of this questioning and suggested Rep. Cohen speak to either Mr. Nordtvedt or Mr. Bartos, an attorney. He said he could not make any sense out of what Rep. Cohen was trying to say.
- Chairman Raney said Rep. Cohen was trying to get him to define what personal property was as opposed to real property. Rep. Rehberg said he would have to ask someone else since in his mind, the bill covers the classes that are considered personal property.
- Rep. Cohen asked Rep. Rehberg if he still felt this bill should be amended and sent out to the people to have them vote on whether or not this should be done. Rep. Rehberg said he would have to ask the Governor's people if they are willing to accept that compromise. Rep. Cohen asked if he would support an amendment that would have this go to the people for a vote, and Rep. Rehberg said he would have to tell him at a later date.
- Rep. Brooke asked if this bill was killed in the Senate committee. Rep. Rehberg answered that it was tabled and it has since been revived. He is carrying the bill for Sen. Gage, but believed the bill was passed since it would not be there if it had not passed. Rep. Brooke asked if he could tell her if this bill was amended into a better form since it was tabled? Rep. Rehberg answered that originally the reason it was tabled was because the Governor came to him

and asked if he and Sen. Gage were willing to carry this legislation. They said they had a particular problem with the video tax increase in the bill. The Governor said if he could find a replacement for \$8 million to get that to 4% which was his goal, he would be willing to allow them some compromise on that bill. Mega-bucks became the area of compromise that they thought might be acceptable to both bodies. When SB 22 was introduced it did not have mega-bucks, and so it was \$8 million short and would have only lowered personal property tax to 6%. In House Taxation committee, which is where this concept was first heard and discussed, SB 22 was placed in the mega-bucks bill, which was Rep. Pavlovich's bill. At that time the Senate made the determination in Senate Taxation that since the bill was coming over complete with mega-bucks and Senate Bill 22, that it should become the vehicle. They tabled the bill. When Sen. Brown and a number of other anti-gambling people in the Senate realized there was some kind of gambling in a personal property tax relief bill, they withdrew their support for personal property tax relief. It then became necessary for SB 22 to be revived and be sent over to the House to be the vehicle used.

Rep. Brooke asked if he was telling her that there was not any amendment done in Senate Taxation after it was tabled and just revived because of the actions of the House. Rep. Rehberg said he could not answer that question since he did not know.

Sen. Eck then explained that Senate Taxation heard the bill, and did not feel there was any serious intent of amending it. They tabled the bill with two Republicans voting to table, and it was their intent that the bill die. They did not consider it to be a viable instrument for property tax reform. It was then blasted out of committee and sent directly to the floor. She did not think the gambling issue had anything to do with it in Senate Taxation.

Rep. Kadas asked Rep. Rehberg if he thought I-105 was repealed in the equalization bills? Rep. Rehberg responded he thought they would be repealed and had assumed that there would be some consideration for I-105 within the education bills.

Rep. Kadas remarked that I-105 is repealed for schools in the equalization bills; it is not affected for cities, counties or other local taxing jurisdictions. He was also interested in the revenue numbers projected from the new privilege tax and the cost base. The intention was to keep local governments revenue neutral in this whole thing. He said Rep. Rehberg had 6%, which he guessed they were shooting for in the bill and asked if the 6% was a long term solution, or would it be phased down to 4% later on? Rep. Rehberg said if he understood the numbers correctly he did not believe it could be phased down to 4% without some other source of replacement revenue.

Rep. Kadas asked if 6% was as low as it goes. Rep. Rehberg said 6% was the goal, and he was not sure it even made that.

Rep. Kadas said \$31 million was to cover 6%. In FY '91 there is \$21 million from new privilege tax, \$10 million from general fund and \$2 million of income tax. Rep. Rehberg asked that the question be referred to Dr. Nordtvedt, since he had the information.

Rep. Kadas asked Dr. Nordtvedt if the numbers are accurate, first \$31 million in costs, \$21 million from the privilege tax, \$10 million from general fund and \$2 million in income tax. Dr. Nordtvedt said he was using \$30 million in his head, but for purposes of argument, took \$31 million as the cost for 6%. First there would be the privilege tax, and they are not counting on the full \$21 million long term, because that tax rate is scheduled to go down again in a year, so they took the lower figure of \$17 million long term from the privilege tax. At 4% it was \$2 million that would be recovered in higher corporate and income taxes because when you reduce a businesses deductibility of \$42 million in personal property taxes, and assume the average individual or corporation is in a 5% marginal tax rate, that will buy \$2 million more of income tax collections. Then the remainder comes from the general fund, and they are counting on something less than the annualized stream of revenue that the LFA discovered between the regular and special session. He said \$17 million + \$2 million + \$12 million to get to the \$31 million.

Rep. Kadas said he did not want to use \$31 million if it was the wrong number. He wanted to use the right number. Dr. Nordtvedt said it was within \$1 million.

Rep. Kadas said that Rep. Harper had told him the budget office said it was \$32 million. He asked what the first fiscal year of this whole program was. Dr. Nordtvedt said it would be on the assessments on the personal property for tax year '90 because they could not do it for '89 since the tax assessment rolls are already done. Personal property assessed for FY '90 are payable November '90 and May of '91. Rep. Kadas asked if that was how the bill was written and Dr. Nordtvedt said he was not sure. He was mainly interested in discussing questions on what they want to do, and not get hung up on particular language that will do it.

Rep. Kadas said he was the one that is going to vote on this bill, and will probably not vote for it. Before it leaves committee he would want to know that it holds together in a legal sense. He wanted to ask questions to someone who can answer them, and meant the specific questions about the bill. Dr. Nordtvedt said he tried to be specific, and believes they want to do this as early as possible. The whole purpose of this bill was that it was crucial that they reduce personal property taxes as early as they can to help

the economy of Montana. The earliest year it can be done in a practical sense would be for the assessments of personal property in 1990.

Rep. Kadas asked with regard to the privilege tax they were lowering effective rate of the severance tax, and assumed they would continue that route downward with the privilege tax. He asked if that \$17 million was equal to a 15% severance tax and if that is as low as it will go, or will it go another step down. Dr. Nordtvedt said he believed that was the last ratchet. Rep. Kadas asked if that was also based on the continuation of the present production and price and since that leaves anywhere between \$11 million and \$13 million short, are they going to get that from the general fund. Dr. Nordtvedt answered that is correct.

Rep. Kadas stated that puzzled him. He had been working on the school equalization bill under some considerable pressure from the administration to provide a balanced bill that relied on no additional general fund revenue. Now, the administration says they have a bill that has a \$10 million to \$13 million deficit. If it is an additional general fund cost and all other general fund obligations are already obligated, then it sounds like a deficit to him. In his bill, if he had that much additional general fund cost, it was called a deficit.

Dr. Nordtvedt said that before Rep. Kadas took that revenue stream, he should have asked the Governor's office. As long as he remembered it was assumed they would use that new revenue stream for personal property tax relief.

Rep. Kadas asked what new revenue stream and Dr. Nordtvedt said the new revenue stream was coming from the higher tax collections discovered by the LFA post regular session. Rep. Kadas asked what this revenue stream was, and Dr. Nordtvedt said he believed the total quoted for the biennium was \$41 million, but they should try to annualize it to find out what the rock bottom amount per year it represents. He thought it was in the ball park of the \$11 million they were talking about.

Rep. Kadas said according to the figures from LFA and if you look at the equalization bill that the Senate just heard, in FY '91 it will be \$5.1 million of additional revenue; in FY '92 it will be about the same and in FY '93 it is about the same, so they are still \$5 million short. Dr. Nordtvedt asked if they have revised the \$41 million, and Rep. Kadas said that is what it was all along. Dr. Nordtvedt said there is \$31 million still to account for. Rep. Kadas answered that there is \$5 million in FY '91, \$5 million in FY '92, \$5 million in FY '93 and in 1989 there is \$11 million or \$12 million and in FY '90 there is \$12 million or \$13 million. Dr. Nordtvedt asked if they were saying this was a one time revenue source and not a re-estimate of the

on-going revenue sources. Rep. Kadas said he was saying that is what Dr. Nordtvedt telling him.

Dr. Nordtvedt said if the consensus was that they were going to accept as authority on the on-going revenue base, did they agree the \$41 million was not a new on-going revenue base. Rep. Kadas agreed that they have to find \$6 million somewhere else.

Rep. Kadas said he was puzzled again because the administration's reaction to the revised revenue estimate was that the LFA was over estimating. There wasn't that much money now. Now he saw the administration coming in with a bill and counting on even more money than was in the revised revenue estimate. Dr. Nordtvedt said he did not think he had made any public statement about that revenue at all. Rep. Kadas said the budget office certainly did, and in the end, if you look at their document, they accepted it with some phrases about the optimism about the state economy, etc. Dr. Nordtvedt said he would let the budget director speak for himself.

Mr. Darby said he would give several sequences of numbers. The first question that came up was the funding of a bill such as this at a 6% personal property tax level and the original funding for that, based on full funding with the program in effect for both years of the biennium was \$31.169 million. The original proposal would be to fund that with about \$20.2 million in coal severance tax the first year, \$22.8 million in the second year, and with general fund of \$10.2 million and \$10 million the second year. The bill, however, is written to phase in during FY 90, so the inherent offsetting cost is not the full amount during FY 90 and to phase in during FY 90 at 4%. The 4% numbers for FY 90 if you were phasing it in at 4% would be \$18.6 million of the coal privilege tax stream, that would accrue from the new bill, and the second year of the biennium it would require \$21 million of the coal severance tax stream, a \$5.5 million carry over from the first year, and it would require \$15.4 million of general fund. Therefore, in terms of using both general fund and a coal privilege tax, there is no problem with funding the bill and it balancing the first year of the biennium. The second question was, even at 6%, what happens with the principle funding sources, and netted out interest lost. What happens in terms of a continuing revenue stream from the LFA estimates. There are about \$11 million in increased tax revenues exclusive of the foundation program the first year of the biennium. That is an increased continuing flow, and it is about \$5.1 million the second year of the biennium. If it is assumed that the next biennium they are going to have the same revenue, they are going to have \$16 million, if they assume only the \$5 million they only have \$10 million; if they are somewhat optimistic about the revenue projections, perhaps they will have \$20 million. The support that would be required from the general fund at 6% to continue it through the '92 - '93

biennium would be approximately \$10 million a year, and that is with reduced coal severance taxes to 15%. That \$20 million may be high or low and there are a number of factors that will affect what would be a continuing income type stream. They are, if it is \$5 million a year, almost \$10 million shy, if it is not, they have a balance.

Rep. Kadas asked if Mr. Darby if he accepted the LFA figure that there is \$5 million in on-going revenue on an annual basis in FY '91, how does he get to \$10 million or \$20 million in '92 or '93. It seemed to him if there was \$5 million annual in '91, that they can count on \$5 million annual in '92 and another \$5 million annual in '93 and that's about it. Mr. Darby said they are not absolutely sure they can count on the \$5 million. They don't have what they would call fairly firm trends beyond that. They have already said they don't know exactly what caused it, except that federal tax reform increases revenue now. It is a legitimate concern whether or not they would have a full \$20 million of revenue in the second year of the biennium.

Rep. Kadas said with regard to the privilege tax flow they gave numbers that they are going to have \$20.2 million in FY '90 and \$22.8 million in FY '91. Mr. Darby answered the actual amount projected for the two years would be \$20.2 million in the first year of the biennium and \$22.8 million in the second year. The \$20.2 million in the first year would have to add to it an additional \$5.6 million that would come from the privilege tax that the Governor had proposed would go to increased school funding for the upcoming year.

Rep. Kadas asked how they can have increasing revenues in the second year when they have a tax that is decreasing from 20% to 15%. Mr. Darby said the total stream for the first year would be \$20.2 million plus \$5.6 million, about \$25.8 million in FY '90 and will be \$22.8 million in FY '91 and for the next biennium it will net out at about \$31.7 million for both years of the next biennium after they net out the interest lost.

Rep. Kadas said we have already passed a law during the last session that they were going to reduce the coal tax indiscriminately from 30% to 25% to 20% to 15%. Those reductions are happening now. He asked how the revenue can increase when they have a 5% reduction in the total tax. They are not going to have that much increased production. Mr. Darby said he must be giving the wrong numbers because they are not increasing, they are, as Rep. Kadas suggested, decreasing. He was talking about \$25.8 million in '90 total coal tax stream, \$22.8 million in FY '91 total coal tax stream, and that is a drop of about \$3.5 million. He was talking about a net, after interest, or a gross of about \$34 million the next biennium, so the coal tax stream is decreasing as Rep. Kadas suggested.

Rep. Kadas asked if at any point in the Governor's equalization bill, did they count on the increased revenue estimates. Mr. Darby answered no and added that in terms of the increased revenue estimates, that the current projections, assuming no bills passed the legislature, would leave about \$75 million in the general fund if none of the increased revenue projections were used for other programs or other bills. Of that, some can be construed as increasing new revenue, other is one time revenue. So, in none of these projections or proposals do they drop below the \$40 million reserve the Governor has asked the Legislature to consider as a prudent floor. The question is of that \$35 million difference between the \$40 million and the \$75 million, how much of that is continuing revenue and could legitimately be replacement revenue for this bill or any other bill requiring a revenue stream, and which part of that is one time revenue that would not be there the next biennium.

Rep. Kadas said he has been struggling with an equalization bill for three weeks now to make sure that it had on-going revenues that balanced with on-going expenditures, and that was at the absolute insistence of the Governor. Now they have a bill that's at the request of the Governor, that depends largely on one time revenues. They do not have a revenue stream to cover the costs they are incurring.

Mr. Darby said currently the revenue stream at 6% would come very close. He said there is quite a bit of difference between having an unfunded liability of \$41 million on up and having a revenue stream where an optimistic projection would provide you with \$20 million and a pessimistic projection would provide you with \$10 million. While he was not necessarily defending anything being out of balance, if they are looking at fairly close in balance, that is a big difference.

Rep. Kadas asked if it was the administration's position that \$10 million to \$20 million of non-on-going revenue was acceptable in whatever they are spending it for? Mr. Darby answered that he thought the individual bills and situations would have to be advanced on their merits. On behalf of this bill, he would not express total comfort at the difference between the \$10 million and the \$20 million biennial figure. On the other hand, they are talking about supporting a bill that both parties, at least in the terms of personal property tax relief, have indicated they feel is a fairly important piece of legislation. It is needed in Montana and was the type of bill that most prognosticators seem to think would improve the business climate, which again can improve the economic picture in Montana. Those are the things that encourage the revenue projections and that is something that, if they feel the revenue projections are \$12 million rather than \$20 million of the biennium,

probably was a factor in this case. A similar analysis of

the school bill, the degree to which it might not be in perfect balance, might also be considered on its' merits.

- Rep. Kadas asked if it is the Administration's position, that it is more appropriate to run an unfunded balance with regard to funding personal property tax relief than it is to fund school equalization. Mr. Darby said it was not necessarily more appropriate but it might be economically safer.
- Rep. Moore asked Mr. Boles if he could give an estimate of how many businesses have moved out of Montana because of high property tax to states with lower property tax. Mr. Boles said he did not have a number for that, but could name a couple that left for problems with workers' compensation tax, personal property tax, income tax, etc. Haliburton Company in Glendive is an example. They was a furniture manufacturer in Stevensville who left in the last year or so. There are some trucking firms, etc. and the numbers are hard to come up with since there was more than one reason involved.
- Rep. Moore asked Mr. Boles if the number one priority of tax reform with these businesses was because of the personal property tax burden. Mr. Boles said yes.
- Rep. Moore asked Dr. Nordtvedt if in Wyoming, since their coal trust fund brings in about \$75 million a year would he say that might have something to do with the fact that their personal property tax is lower. Dr. Nordtvedt did not know if it was connected or not. He does know that the total tax burden in Wyoming is one of the highest in the nation on taxes paid per capita.
- Rep. Moore asked Dr. Nordtvedt if they do go into the trust fund, because of I-95 where 25% of the coal trust is set aside for investment in Montana how are people going to view the decision to use 25% of the coal trust money. Dr. Nordtvedt stated that they would have to rely on investing and reinvesting some portion of the \$400 million that will be in the trust. They are not going into that \$400 million trust, it is just a change in the future coal taxes.
- Rep. Moore stated that she was talking about money that will continue to build that \$49.2 million in that instate investment fund. Dr. Nordtvedt stated that he doesn't think they would be adding to it in the future.
- Rep. Moore stated that in 1987 there was \$39 million and for 1988 they dropped to \$38 million and asked if Ms. Waldron knew why they dropped \$1 million in the earnings on the coal trust. Ms. Waldron stated that she does not know the reason for that. Dr. Nordtvedt stated that since the trust has never shrunk, it would have to be that the average interest rates went down.

Rep. O'Keefe asked Rep. Rehberg if he had talked to Sen. Gage about putting an amendment on the bill on the House floor or in this Committee to protect that bonding mechanism. Rep. Rehberg stated that he has not because he was not aware that Sen. Gage was not successful in getting that put on in the Senate.

Rep. O'Keefe told Rep. Rehberg that this amendment stated that the legislature through the enactment of this section by vote of 2/3 of the members of each house pledges, dedicates and appropriates from the coal sales tax all money necessary for the bond program. He asked Rep. Rehberg if he realized that a 2/3 vote was required on this bill to keep our coal severance taxing, bond authority whole? Rep. Rehberg stated that he was aware that it would not affect any existing bonds and that any future bonds would still necessitate a 2/3 vote, so he felt that the bill without the amendments would allow for a vote and 2/3 of all the members of the legislature would allow for that vote.

Rep. O'Keefe asked Greg Petesch for his interpretation of the 2/3 amendment for HB 778, and if this amendment was not put in this bill and this bill does not pass by a 2/3 vote, can the committee bond for these projects, in his opinion, in the next two years? Greg Petesch responded negatively.

Rep. O'Keefe asked Karen Barclay for her interpretation. Ms. Barclay stated that there is a difference of opinion as to the 2/3 and the simple majority. They were taking a very conservative approach and are working on some language that would address that very issue. One of the options is to have new legislation that would cover the bonds that Rep. O'Keefe was referring to, all of the projects described that had already been approved. Because they were talking about a new revenue stream into a new holding account and it would be incurring new debt because of that new revenue stream, it would require that 2/3 vote. But the bill only requires a simple majority so at this time they need new language to amend this bill. She recommended that they have new legislation specifically tying those projects to the bill - some coordinating language to the existing bill would require the 2/3 on that legislation but not on this.

Rep. O'Keefe asked Ms. Barclay if this legislation only requires 51% and passes without that language, they either need a new bill to fund those projects, or need to get that 2/3 vote language in this bill and get this passed by a 2/3 vote to bond that \$25 million worth of economic and social development already ongoing. Ms. Barclay stated they have received a number of different interpretations on that basic point they want to take a very conservative approach. Those projects are very important to Montana and by taking a very conservative approach they are coming up with some language

that would either address it in the existing bill or perhaps coordinating the two bills that would require the 2/3 vote on the new legislation but not on this legislation.

Rep. O'Keefe asked Rep. Rehberg what was going to happen to small municipalities, counties and agriculture if they take too much. Rep. Rehberg stated that this will withstand the constitutional question.

Rep. Addy asked Sen. Gage if it was his opinion that the passage of this bill was crucial to the Governor approving a school equalization bill? Sen. Gage answered affirmatively.

Rep. Addy asked Sen. Gage if he had discussed any other revenue sources if it turned out that breaking the coal trust was not acceptable to the required number of members of the legislature? Sen. Gage stated that the only thing that has been discussed to his knowledge was a sales tax. He was not aware of any other sources available.

Rep. Addy asked Sen. Gage if the committee passes property tax relief would the Governor approve an equalization bill. Rep. Addy stated that unless the coal trust is broken or a sales tax is passed, the Governor is not going to approve any property tax relief, so the bottom line seems to be that until the legislature either breaks the coal trust or passes the sales tax without a vote of the people, they are not going to have an equalization signed by the Governor. Sen. Gage stated that he couldn't answer that because he wasn't sure what the Governor would and would not sign.

Rep. Addy asked Rep. Rehberg if in his opening remarks he said that 19 other bills had been assigned to the Taxation Committee involving the coal tax. Rep. Rehberg stated that his statement was that Rep. Simpkins had gone through the journals and those bills had been referred to various committees other than Natural Resources.

Rep. Addy asked Rep. Rehberg if any of those bills had the effect of capping the trust fund. Rep. Rehberg said they did not.

Rep. Harper remarked to that Sen. Gage that only one person mentioned the Coal Trust Tax Fund and that was the sponsor Rep. Rehberg. Rep. Harper asked Sen. Gage if it was his opinion that if an acceptable revenue source could be found to a majority in both houses, that the Governor might look with favor upon that. Sen. Gage stated that he would not presume to speak for the Governor, but his comments to the Senate Taxation Committee were to the effect that he will be working hard to find a permanent source for doing what this coal trust is doing now and putting that severance tax back in place.

Rep. Harper asked Ms. Barclay if the committee had to amend this bill or suspend the rules and introduce a new bill to cover

bonding for the water projects that we have passed in the regular session. Ms. Barclay stated that they have been working with the bond counsel and they are trying to come up with the simplest solution to this confusing problem. This is not new bonding but is the bonding authority that was previously approved.

- Rep. Kadas asked Mr. Boles if because of this Special Session, most businesses were going to suffer. Mr. Boles stated that the business climate has been such that businesses are just hanging on by their fingernails.
- Rep. Giacometto asked Mr. Boles this type of legislation addressed the substantial tax increase on those insignificant three out of ten people in the state? Mr. Boles stated that they are very concerned about the winners and losers. One thing to do is address personal property tax which is an obvious inequity. It has been a political football for years in this state has caused a business climate that has been a deterrent to development.
- Rep. Giacometto stated to Mr. Boles that when there are those separate issues of the school equalization and doubling allow the mills in the eastern part of the state that is a lot of small businesses, grocery stores, farms and ranches that do have personal property, if substantially help those small business. Mr. Boles said absolutely.
- Rep. Cohen asked Dr. Nordtvedt if what Mr. Burr was discussing the reappraisal cycle and the reappraising of real property and then the rates changes. Dr. Nordtvedt stated that during the years when real property was gaining value, they reduce the classification rate so that the taxpayers did not have a big jump in their taxes.
- Rep. Cohen asked Dr. Nordtvedt if all of the commercial equipment, was reappraised. Dr. Nordtvedt stated that it was reappraised annually with trending factors and depreciation factors calculated into it.
- Rep. Cohen stated more often than not depreciation reduces that value to the taxable value. Dr. Nordtvedt said it is constantly being replaced has never been subject in modern times in Montana to a major reclassification downward like real property was done at least twice. In fact, the ratio of effective tax rates on personal property has grown steadily upward relative to real property.
- Rep. Cohen asked Dr. Nordtvedt if income producing property was being taxed at a higher rate than the rate on real property. Dr. Nordtvedt said in some cases commercial, land, real improvements used for dwellings and apartments are taxed at a higher rate.

Rep. Cohen asked Dr. Nordtvedt if it was income producing similar to the same class with our homes. Dr. Nordtvedt said the commercial items in class four had experienced the same protection as the homes by being together in class four and that is why there has always been great resistance to the attempts to split class four and separate those two types of property.

Rep. Cohen asked Dr. Nordtvedt the historical basis for property using the taxation of property to fund government. Dr. Nordtvedt stated that he thinks we taxed property because it was the most readily available to tax historically.

Rep. Moore asked Mr. Darby if he knew the Governor's opinion on HB 21? Mr. Darby stated that a number of suggestions were raised and that bill may be one. The Governor has gone on record as supporting a broadly based sales tax across the state as opposed to selective sales taxes. While he cannot provide the Governor's view on a specific bill, that is a position he has taken consistently and he did look at a number of sources of potential revenue.

Rep. Addy asked Mr. Darby if that the Governor would rule out a 5 cent pop tax? Mr. Darby stated that he was not exactly sure what the Governor would or would not allow.

Rep. Addy remarked to Mr. Darby that we got to find middle ground. So how do we get around this dilemma? Mr. Darby said the honest answer he could give was to act favorably upon this bill. The legislature has the prerogative of deliberating and offering other proposals to deal with this issue. It is not his place to suggest what those should be.

Rep. Addy asked Mr. Darby if there would be an equalization bill if they did not tap the Coal Tax Trust and pass the sales tax? Mr. Darby stated that he is not the proper person to ask that particular question. It goes without saying that of the independent pieces of legislation the administration has recognized this and both issues are important to the state. There has been bi-partisan agreement and the Governor supports the legislature acting on both of those bills.

Rep. Brooke asked Mr. Darby if there is a selective tax that is to support using the natural resource tax. Mr. Darby stated that we are talking about using an existing revenue stream that is in place as opposed to levying of new taxes.

Rep. Raney asked Sen. Gage how he justified setting Montana up to become totally dependent upon energy taxes, when current policy is to make it stable throughout many lifetimes. Sen. Gage stated that it is his perception at this time that this is a step to try to get away from that. He said this bill can get property taxes down to a level that they are competitive and at least retaining industry and hopefully

inviting industry into Montana and give us a much broader tax base. In the not-too-distant future we will have a method of energy that does not rely particularly on coal.

Rep. Raney asked Sen. Gage if it is a risky situation when three, four or five years down the road the Courts say one section of this bill is unconstitutional. Sen. Gage stated that he is not sure how that would work but the Court would probably let us know.

Rep. Raney asked Sen. Gage if can we tax federal lands under the privilege tax rather than the severance tax. Sen. Gage said that he could not answer the question.

Rep. Raney asked Sen. Gage if he knew how this legislation affects the tax increment districts in Montana. Sen. Gage said that he could not answer.

Rep. Cohen asked Mr. Darby what the impacts were for the local governing districts and also the statewide impacts. Mr. Darby stated that the fiscal note of the bill that the committee had was based on a bill originally written at 4 percent and will be revised.

Rep. Cohen asked Sen. Gage if this bill does not pass, would schools be able to open on September 1. Sen. Gage stated the only thing he could recall with regard to that was there were people who felt that if HB 6 does not pass then schools can not open.

Rep. Cohen asked Sen. Gage if he thought there was some connection between this bill and HB 6. Sen. Gage said only in the context that without HB 6 there were those who were saying the schools cannot open.

Rep. Kadas asked Sen. Gage if this bill was connected in any way to HB 28. Sen. Gage thought it was and explained that when you reduce property taxes from 16% to 4% (or 6% as this bill is presently), then an argument can be made to the Governor to move from his position on mills.

Closing by Sponsor: Rep. Rehberg requested that both he and Sen. Gage be allowed to close. Chairman Raney agreed to the request.

Rep. Rehberg thanked the Chairman for his patience and remarked that he did an admirable job of giving this bill a fair hearing. He stated that Rep. Bradley is probably the only person in the room who can chastise the entire Legislature for their inaction on the sales tax and tax reform. He also pointed out to Rep. Bradley that many of the people that supported her sales tax reform are the same people who are supporting this bill.

There is no fairness of taxation. Everyone recognizes that something has to be done with personal property tax because there was no opposition to it. The "canola" bill was fair and it passed, but that bill shows only a small portion of the problem that Montana is facing today. Should they be separated and do something special for them or should the problem be addressed for all. Fairness is the question. One should not expect to hear from the hundreds of representatives of the companies who decided not to come to Montana because our property tax sticks out like a sore thumb. When looking for a new house, some are eliminated because they do not fit needs. Montana is eliminated from companies' lists because property taxes are too high, workers' compensation is high and in combination, they decide not to locate here. A number of special interests testified in favor of the bill and represent the special kinds of people who would be moving to Montana if property tax relief were passed.

Is it fair to give personal property tax relief to Anheuser-Busch or Canola and not give the same to the people who are here already? What about those people who want to expand and stay here and provide additional jobs? It is not fair. Fairness also has to deal with replacement revenue. A sales tax was tried for personal property tax relief and it did not pass. That is a portion of that three-legged stool. The other two legs of that stool are property tax and income tax. Is it fair to continually raise property tax or, worse yet, income tax? The income tax being raised is going to hit the same people that you are trying to help with personal property tax relief. That does not expand our economy. That does not diversify our economy. People are standing up and saying the coal industry owes us a future. We do not want to be tied to the industry so we are setting this money aside for a rainy day. If that philosophy is true, we want to take that money from those extractive industries and put it into something that diversifies our economy and brings people to the state and keeps them here. The worst possible way for that personal property tax relief to be done would be with an income tax increase and that is all that this Legislature has proposed. It is an additional tax. Maybe this is just a pot of gold but it is there and times have changed.

For former Rep. Bertelsen, he wished there was someone at the meeting who was an original drafter of the Montana Constitution because that person would look him in the eye and say "Shame on you. We wrote those things for a reason. They are there for a reason and you are changing our words." That is the same thing that Mr. Bertelsen is saying to them about the coal tax. The same screams were probably made in 1972 when the Constitution was changed. People were probably saying if it was good enough then, it is good enough now. The nature of Montana has changed and we need to go forward with that change. We need to get away from

our extractive industries and diversify our economy. The only way we can do that is to encourage those that are here and try to bring in new people. It is not good enough to say that it was set up for a reason. He stood by his statement that if it was put on the ballot and asked the people of Montana if they supported capping the Coal Tax Trust for personal property tax relief, they will say yes.

To Rep. Harper, he did not want to belabor the issue but it was said that something must be found that is acceptable to the majority of both houses. On Saturday, this bill was probably acceptable to a majority of both houses. Now, he did not know, but sitting in this committee, he doubted it because the House will never get an opportunity to vote on this bill. He begged the committee to let the Legislature vote on it because he believed that a majority of both houses will vote to pass this bill. He had seen it happen in Taxation Committee and in other committees because of the rule of overturning an adverse committee report. He believed this proposal was acceptable to a majority of both houses and he hoped the committee would give it that chance.

Sen. Gage thanked Chairman Raney for allowing him to close on the bill also and apologized for his scheduling conflicts.

Sen. Gage first addressed Rep. Brooke's concern about selectivity of taxes. He pointed out that taxes have been imposed selectively on gas, coal and many things in the state. Those who think that oil, gas and coal are not a benefit to school districts or counties because there are none in a particular area, should take a look at the whole foundation program concept. Assuming that the figures of 20% of the tax base of Montana is from oil, gas and coal, means that 20% of that 45 mills is being paid by oil, gas and coal. The benefit from that 20% is going into the foundation program and out to those who get less than is collected from the mandatory mills in that area.

The selectivity is what has created the situation they are facing today. If classes had been moved in taxability percentages equally, the problem would not be present today. Based on 1987 production on oil and gas, 80% of the sale price of gas, the taxable gross of gas, is subject to mill levies. That is five times as high as the 16% property tax and 56% of the sale price of oil is subject to mill levies. Coal has, to this point, been 45% taxable by mill levies which is nearly triple the 16% property tax. Every class has been addressed except Class 1 and 2 and no one has been willing to address them prior to this. Sen. Gage felt that the bill was constitutional and there are those who think otherwise. This bill was simply asking if 50% plus 1 of the Legislature think this is the route to go. He personally thought it was or he would not have introduced the bill.

DISPOSITION OF SENATE BILL 22

Motion: Rep. Giacometto moved SB 22 Do Pass.

Discussion: Rep. Giacometto stated that debate on this bill should be immediate because of the nature of the special session. This bill addresses property taxes across the state and every issue that has been brought up - the luxury tax and the sales tax - have been handled in Taxation Committee where this bill should be. Those bills died in both the regular and special session in committee and all other efforts have been killed. The parties should work together toward a solution. It is a bill that will give property tax relief across the state to everyone. This bill will equalize the effect of winners and losers across the state.

Rep. Raney stated there are still many unanswered questions such as what happens in FY 92. Other bills are being passed in this session that will affect the General Fund ending balance and this bill will, too. The issue of how this will affect I-105 has not been discussed. No one could answer how this bill would affect the taxing of federal land. The effect on tax increment districts has not been discussed. It is not proper to send a bill from committee until the answers are known.

Rep. Giacometto said that many of those same issues were raised about the bill that just passed the House on the education issue. There was no fairness in that process.

Rep. Harper asked Rep. Giacometto if he was aware that the Senate amended this bill today into the "canola" bill. Rep. Giacometto replied affirmatively and reminded Rep. Harper that there are two separate bodies and they should act as such and proceed with this legislation. Rep. Harper asked if Rep. Giacometto was concerned that that amendment is outside the scope of the title of the bill and that it is contrary to the rules. Rep. Giacometto responded that he did not agree with Rep. Harper.

Rep. Harper made a substitute motion that the vote on this bill be passed until the next meeting of this committee.

Rep. Giacometto remarked that he was elected to take care of the people in his district as well as those of the entire state.

Roll call vote was taken on Rep. Harper's motion. The motion
CARRIED 9 to 7.

Amendments, Discussion, and Votes: None

Recommendation and Vote: None

HOUSE COMMITTEE ON NATURAL RESOURCES

July 6, 1989

Page 34 of 34

Chairman Raney announced that the committee will reconvene at 11:00 a.m. on July 7, 1989 for executive action.

ADJOURNMENT

Adjournment At: 6:45 p.m.



REP. BOB RANEY, Chairman

BR/td

120706A.min

DAILY CALL VOTE

HOUSE NATURAL RESOURCES COMMITTEE

DATE 7/12/87

NAME	PRESENT	ABSENT	EXCUSED
REP. ADDY	X		
REP. BROOKE	X		
REP. CLARK	X		
REP. GIACOMETTO	X		
REP. GILBERT	X		
REP. HANNAH			X
REP. HARPER	X		
REP. KADAS	X		
REP. McDONOUGH			X
REP. MOORE	X		
REP. O'KEEFE	X		
REP. OWENS	X		
REP. ROTH	X		
REP. SMITH	X		
VICE-CHAIRMAN COHEN	X		
CHAIRMAN RANEY	X		

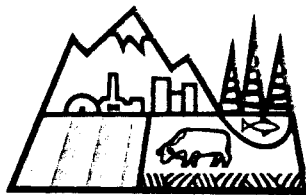


EXHIBIT 1
DATE 7/6/89
HB SB 22

MONTANA CHAMBER OF COMMERCE

P. O. BOX 1730

• HELENA, MONTANA 59624

• PHONE 442-2405

TESTIMONY BY FORREST BOLES

MONTANA CHAMBER OF COMMERCE

STATEMENT IN SUPPORT OF SB 22

HOUSE NATURAL RESOURCES COMMITTEE - JULY 6, 1989

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS FORREST BOLES, PRESIDENT OF THE MONTANA CHAMBER OF COMMERCE.

THANK YOU FOR THE OPPORTUNITY TO APPEAR TODAY IN SUPPORT OF LEGISLATION THAT IS SO CRUCIAL TO MONTANA'S ECONOMIC FUTURE AND HAS SUCH AN IMPRESSIVE LIST OF CO-SPONSORS FROM BOTH SIDES OF THE AISLE.

YOU HAVE HEARD STATEMENTS BY A GREAT MANY PEOPLE IN THE COURSE OF THE REGULAR SESSION AND IN THIS SPECIAL SESSION ABOUT THE VITAL NEED FOR PERSONAL PROPERTY TAX REFORM. WE NEED THAT REFORM TO ALLOW OUR EVER SMALLER NUMBER OF BASIC INDUSTRIES TO GROW AND WE'VE SEEN AT LEAST TWO CASES WHERE SPECIAL RELIEF HAS BEEN CONSIDERED FOR NEW PLANTS LOOKING AT LOCATING IN MONTANA. NO ONE WILL DISPUTE THAT WE DESPERATELY NEED THOSE GOOD JOBS AND THE EXPANSION OF THE TAX BASE THEY REPRESENT.

OUR "THREE LEGGED STOOL" OF REVENUE, PERSONAL AND CORPORATE INCOME TAX, PROPERTY TAX AND NAT, RESOURCE TAXES HAS UNEVEN LEGS AND IT IS NOT STABLE OR VERY REASSURING TO EITHER THE TAX RECIPIENT OR THE TAX PAYER. MANY OF US BELIEVE WE NEED THE FOURTH LEG REPRESENTED BY A SALES TAX. SINCE THAT IS MOST UNLIKELY IN THIS SESSION AT LEAST WE MUST ALL TRY TO FIND OTHER WAYS TO CREATE THE CLIMATE THAT WILL GENERATE JOBS FOR OUR CITIZENS.

YOU HAVE ALL HEARD THE COMPARISONS OF PERSONAL PROPERTY TAX BURDENS OF MULTI STATE COMPANIES SUCH AS GENERAL MILLS. OR WESTERN SUGAR AND HOW

Ex. #,
7-6-89
SB22

COMPANIES LIKE SEMITool ARE BEING WOODED BY OTHER STATES WITH MUCH LOWER PROPERTY TAXES. FOR A MOMENT THOUGH I WANT YOU TO CONSIDER THE TOTAL TAX BURDEN OF EMPLOYERS UP AND DOWN MAIN STREET AND IN SMALL OPERATIONS ALL OVER THE STATE. SOON MONTANAS ALREADY EXCESSIVE WORKERS COMPENSATION COSTS WILL BE EVEN HIGHER, REAL PROPERTY TAX RATES ARE AT NEARLY THEIR MAXIMUM ACCEPTABLE LEVEL, THE STATE CORPORATION INCOME TAX CARRIES THE HIGHEST MARGINAL RATE IN THE COUNTRY, THE PERSONAL PROPERTY TAX IS WAY OUT OF LINE, IN SPITE OF POSITIVE REFORM THE UNEMPLOYMENT COMPENSATION TAXES ARE HIGHER THAN MANY STATES AND THERE IS A POSSIBILITY THAT A SURCHARGE ON INCOME TAXES WILL BE RENEWED.

PLEASE UNDERSTAND THAT FOR THE AVERAGE BUSINESS PERSON IN MONTANA THERE JUST IS NO BREATHING ROOM. THE SITUATION IS NOT GOOD.

WHEN YOU LEAVE HELENA AFTER ENACTING SCHOOL EQUALIZATION LEGISLATION YOU WILL HAVE PLACED AN ADDITIONAL BURDEN ON BUSINESS TAXPAYERS PROBABLY SOME MORE THAN OTHERS. BUT IT WILL COST. GIVE THE BUSINESS COMMUNITY SOME HOPE THAT YOU CAN SEE THE NEED FOR TAX REFORM, THAT EXPANSION AND GROWTH OF JOBS IS DESIRABLE AND ENCOURAGED.

PASSAGE OF THIS LEGISLATION, UNLIKE SOME OF THE OTHER BILLS YOU HAVE CONSIDERED IS MORE THAN A "SIGNAL" IT IS A MEANINGFUL, MAJOR STEP TOWARD TURNING OUR ECONOMIC OPPORTUNITIES AROUND. PERSONAL PROPERTY TAX RELIEF IS A TOP PRIORITY OF THE MONTANA CHAMBER OF COMMERCE. I HOPE YOU MAKE IT ONE OF YOURS AND PASS SB 22.

THANK YOU.

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

EXHIBIT 2

DATE 7/12/89

HB SB 22

NAME: J. RILEY Johnson

DATE: 7-6-89

ADDRESS: 534 N. Last Chance Gulch #202 Helena, MT 59601

PHONE: 442-2107

REPRESENTING WHOM? National Federation of Independent Business (NFIB)

APPEARING ON WHICH PROPOSAL: SB-22

DO YOU: SUPPORT? ☒

AMEND? ☐

OPPOSE? ☐

COMMENT: Small business in Montana needs help. We have been hit with a new minimum wage rate, a 22% increase in workers' comp. and will likely see another surtax on income. Something has to give to keep our largest employer in Montana an incentive to keep our doors open and hiring people. Also, we need the incentive for new business to come to Montana. SB-22 can be the one "bright spot" to come out of this special session that will show our small business owners in Montana that the legislators are concerned and willing to help. NFIB's 6,000 Montana members urge passage of SB-22. Not fair either - some counties enforce, some do not.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Alex Hansen

EXHIBIT 3

DATE 7/6/89

HB SB 22

SUGGESTED AMENDMENT TO SENATE BILL 22

PAGE 49, LINE 2, INSERT:

NEW SECTION. SECTION 49. COORDINATION INSTRUCTIONS. IF
HOUSE BILL 50 IS NOT PASSED AND APPROVED, (THIS ACT) IS VOID.

RENUMBER FOLLOWING SECTIONS:

DATE 7/16/89

HB SB 22

SENATE COMMITTEE OF THE WHOLE AMENDMENT

June 30, 1989 10:47 am

Mr. Chairman: I move to amend SB 22 (second reading copy -- yellow) as follows:

1. Title, lines 9 through 12.
Following, "j" on line 9
Strike: remainder of line 9 through "j" on line 12
Insert: "APPROPRIATING MONEY THAT WOULD OTHERWISE BE DEPOSITED IN THE COAL SEVERANCE TAX TRUST FUND TO STATE EQUALIZATION AID FOR EDUCATION,"
 2. Title, line 17.
Strike: "15-35-103,"
 3. Title, line 18.
Strike: "20-9-383,"
 4. Title, line 20.
Following: "DATE AND"
Strike: "APPLICABILITY DATES"
Insert: "A TERMINATION DATE"
 5. Page 1, line 22 through page 2, line 5.
Strike: statement of intent in its entirety
 6. Page 2, line 8 through page 10, line 12.
Strike: sections 1 through 10 in their entirety
Re-number: subsequent sections
 7. Page 37, line 19 through page 39, line 4.
Strike: section 38 in its entirety
Re-number: subsequent sections
 8. Page 40, line 8 through page 41, line 24.
Strike: section 41 in its entirety
Re-number: subsequent sections
 9. Page 47, line 18.
Following, line 17
Insert: NEW SECTION. Section 33. Appropriation. There is appropriated to the superintendent of public instruction for state equalization aid to public schools all money in the coal severance tax bond fund that would be transferred to the coal severance tax permanent fund under 17-5-703(2) during fiscal years 1990 and 1991."
- Re-number: subsequent sections

CWSD2201.630

Wackman

Page 2 of 2
June 30, 1989

10. Page 48, lines 1 through 17.
Strike: section 47 in its entirety
Re-number: subsequent sections

11. Page 49, lines 2 through 5.
Strike: section 50 in its entirety
Insert: NEW SECTION. Section 38. Three-fourths vote. Because (section 33) appropriates money dedicated to the coal severance tax permanent trust fund, unless [this act] is passed by a three-fourths vote of each house of the legislature, [section 33] is void.

July

NEW SECTION. Section 40. Termination. [This act] terminates July 1991.

ADOPT

REJECT

Signed,

Wackman
Senator Wackman

CWSD2201.630

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

EXHIBIT 5

DATE 7/6/89

HB SB 22

NAME: Kerner Bertelsen DATE: 6-8-89

ADDRESS: 327 Weinschmidt Flat Rd., Odessa, Mont. 59854

PHONE: 793-5559 or 442-2579

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: Senate Bill 22

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENT:

Surely the people of Montana did not
put the coal income into a constitutional Trust
Fund expecting that a mere re-naming of
the law could steal its revenue and destroy
the intent and integrity of the Trust.

This is an insult to the people of Montana

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NORTHERN PLAINS RESOURCE COUNCIL DATE 7/6/89
FILE SB 22

Field Office
Box 858
Helena, MT 59624
(406) 442-9216

Main Office
419 Stapleton Building
Billings, MT 59101
(406) 848-1154

TESTIMONY IN OPPOSITION TO SB 22

JULY 6, 1989

Mr. Chairman, members of the committee, my name is Richard Parks. I am Secretary of the Northern Plains Resource Council, a grass roots organization of about 6000 members and supporters.

I appear today on behalf of NPRC to state our opposition to SB 22. I also own the Parks' Fly Shop in Gardiner MT, and I know this bill will not help me.

Senate Bill 22 is an unconscionable attempt to do an end run around the will of the people of this state and the Montana Constitution to have a coal trust fund funded by coal production taxes. Fifty percent of coal production taxes are intended to be placed in the Coal Tax Trust Fund. Whether you want to call this tax a Coal Severance Tax or a Coal Privilege Tax does not matter. Fifty percent is Constitutionally intended to be placed in the permanent coal trust fund. We question the constitutionality of SB 22 on these grounds.

The supporters of this bill have been trying to get rid of the coal severance tax for so long that they are now resorting to tactics that are back door and highly questionable. It is dirty pool to attempt to do this during this special session when lawmakers are under extreme pressure and tight timeframes. This bill should be defeated. In addition to the constitutionality question, there are many other very destructive things about this bill.

Elimination of the Coal Severance Tax and the consequent capping of the Coal Trust Fund is particularly disturbing. Currently, the trust fund provides the state with \$ 37 million per year in solid, stable and predictable revenue which not subject to the fluctuations of a natural resource economy. It is these very fluctuations that have caused lawmakers enormous problems in adequately funding necessary services to run the state.

We believe it is in the state's best interest to build an endowment which will generate stable income. In fact, we would favor putting more coal severance tax money into the trust. Wyoming's coal trust fund currently provides over \$75 million in yearly income. But it does so only because the trust fund has not been raided or capped. We ask you as lawmakers to take a long term view of the needs of this state when establishing tax policy and maintain the trust as the legacy we all envisioned it to be. As Senator Yellowtail so aptly put it, the trust fund is "Montana's Endowment". It is our golden goose. Don't kill it.

Senator Gage is correct: the precedent has already been set for reduction of the Coal Severance Tax. This is the confirming end result of what we believed then and now to be poor public policy. It is difficult for us to understand why, in a time of budget crisis you are considering cutting taxes on an industry enjoying enormous profits, and at the expense of our educational system. It makes much more sense, in the search for needed revenue to keep the Coal Severance Tax at its present level. Instead of being battered by another \$11 million tax break, our state could be \$5.75 million closer to funding current education costs and the Trust Fund would be receiving an equal increase in the endowment. This step is fiscally conservative and prudent. We have already lost \$25 million since FY 88 in coal severance tax revenue.

Real tax relief is having sufficient investment in our trust funds to eliminate other taxes. SB 22 would effectively kill this dream.

Other states such as Colorado have robbed their trust funds in an attempt to balance a budget: in 1983 the Colorado legislature raided the \$36 million trust in a futile attempt to balance the budget. Today the state is still in a budget crunch but they no longer have a \$4.5 million boost from their trust fund because the trust is no longer there.

You must have heard the terrifying phrase, "Severe interest penalty for early withdrawal." That is what we face if we cap the trust.

Capping the Coal Trust condemns our children, and the education of their children, to a hand to mouth public fiscal policy totally vulnerable to the vicissitudes of the contemporary market. Unless we continue to build this trust, its buying power will decline and be able to contribute less and less to our educational system. It is imperative that we preserve the current revenue stream to the Trust Fund.

The Western Organization of Resource Councils, of which Northern Plains is a member, recently completed research on the natural resource taxation policies of Colorado, Montana, North Dakota and Wyoming. All Montana legislators received a copy of this study. The study conclusively demonstrates the need to constitutionally protect Trust Fund accounts. Every state which has left funds unprotected has had the trusts raided, in some cases to the point of elimination. You need look no further than the fate of our own Education Trust Fund to confirm that.

Make no mistake whatever weasel words are used to rationalize it this bill is a blatant attempt to circumvent the intent and will of the people of Montana who established this protected Trust.

Ex. #6

7-6-39

SB 22

The sponsors of this bill evidently believe they can run roughshod over the will of the people of this state by shoving aside the Constitution. It is inappropriate to propose such changes during a hurried special session when a majority of Montana's citizens are deprived of a meaningful opportunity to participate in the process!

We thank you for this opportunity to appear and ask you to give a
DO NOT PASS RECOMMENDATION to SB 22.

MONTANA DEMOCRATIC PARTY

EXHIBIT 7DATE 7/6/89SIB 22

TESTIMONY OF MONTANA DEMOCRATIC PARTY VICE CHAIRMAN DONNA SMALL, BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE -- JUNE 6, 1989

Thank you Mr. Chairman, members of the Committee. My name is Donna Small, Vice Chairman of the Montana Democratic Party. We are here today to testify in opposition to Senate Bill 22, which by questionable legal means seeks to cap the Coal Tax Trust Fund and use the proceeds for personal property tax relief.

Members of the Committee, the Montana Democratic Party remains firm in our opposition to the use of the trust fund revenue portion of the coal tax to finance general government operations. At our Platform Convention last summer, delegates unanimously adopted the following resolution: "We support the Constitutional Coal Tax Trust Fund as a true endowment for the people of Montana and we oppose any attempt to change the Constitution or use the principal of the fund for general operating expenses of state government."

We further believe that Governor Stephens' attempt to circumvent the constitutional restraints on the use of coal trust funds to be not only deceitful but dishonest. In 1976, the people of Montana clearly and overwhelmingly directed that those funds could only be diverted by a three-fourth's vote of the Legislature. To claim, as Governor Stephens does, that those restrictions can be avoided simply by changing the name of the tax to a "privilege tax" is an affront to every Montanan.

Mr. Chairman, the Montana Democratic Party supports the passage of true, equitable tax reform in 1989. However, we must keep in mind that the key elements of personal property tax reform are: Uniformity of rates, competitiveness with similar states and insuring that business pay its fair share - no more, no less - of taxes. It should be noted that most of those who pay personal property taxes will benefit from the reduced millage requirements in the school equalization bills. Given that as a starting point, we believe the Montana Legislature can enact legislation that will

Montana Democratic Central Committee • Steamboat Block, Room 306 • P.O. Box 802 • Helena, MT 59624 • (406) 442-9520

Executive Board

Bruce Nelson Chairman Fort Benton	Donna Small Vice Chairman Helena	Deborah Hanson Secretary Miles City	Rich De Jana Treasurer Kalispell	Gail Stoltz Executive Director Helena	Evan Barrett Nat'l Committeeman Butte	Sherlee Graybill Nat'l Committeewoman Great Falls
Boni Braunbeck Lewistown	Ralph Dixon Billings	Virginia Egli Glendive	Nancy Harte Helena	Chas Jeniker Butte	Rhonda Lankford Missoula	Debbie Lesmeister Helena
Richard Nellen Bozeman	Danny Oberg Havre	Jim Pasma Havre	Brenda Schye Glasgow	Mary Sexton Hamilton	David Smith Missoula	Bill Thackeray Havre
Kay Blehm Democratic Women's Club Billings	Marlene Egan Co. Chairs Assoc. Great Falls	Dennis Small Young Democrats Missoula	Sen. Bill Norman Missoula	Rep. John Vincent Bozeman	Sen. Fred Van Valkenburg Missoula	

Ex. #7

7/6/81

SB 22

page 2

solve the equalization question as well as implement equitable personal property tax reform.

Members of the Committee, the Montana Democratic Party believes that Senate Bill 22 is nothing more than a semantic shell game that seeks to dupe the state Constitution. To enact it would be beneath the dignity of this body and an insult to the people of Montana. For these very compelling reasons, we hope you will give Senate Bill 22 a "Do Not Pass" recommendation. Thank you.

EXHIBIT 8DATE 7/6/89~~4B~~ SB 22

Thomas E. Towe
2739 Gregory Drive South
Billings, MT 59102

TESTIMONY IN OPPOSITION TO S.B. 22

I oppose S.B. 22. It represents the worst in political trade-offs.

Its goal is not a lofty goal of improving the business climate or helping to create jobs in Butte. Its goal, plain and simple, is to subvert the Constitution of the State of Montana.

S.B. 22 reduces the Coal Severance Tax to 1% and then creates a "new" tax exactly equal to the reduction, using the same definitions and deductions.

This new so-called "Privilege Tax" even has a "Window of Opportunity" in the exact same language of the Coal Severance Tax.

It has a phasecut of the deduction for federal royalties identical to the Coal Severance Tax -- even including calculations for years 1984, 1985, and 1986 -- which have long since become outdated by the formula which has been in place since September 30, 1987.

Fifty percent of the new "Privilege Tax" is even retained to support the water bonding program created in 1981 by the flow of funds from coal tax collections before they are placed in the Trust Fund. However, unlike the existing coal tax, the excess money not needed to pay bond payments goes directly to the General Fund instead of to the Trust Fund. See page 19, lines 20-25. This diversion is needed to replace the revenue that would otherwise be lost by local governments from the reduction of personal property taxes in Sections 41 and 42.

In other words, the bulk of the coal tax collections that now go into the Trust Fund would be divested by this bill to pay for personal property tax relief for business and industry.

To call it a "Privilege Tax," and thereby attempt to remove it from the Constitutional protections granted to the Coal Tax, is not only a subterfuge but open deceit; it is a lie. It is a lie to the Supreme Court. It is a lie to the people of Montana.

Yesterday, we all heard a Federal District Judge sentence Col. Oliver North for lying to Congress. Is it any more justified for this Legislature to lie to the people by telling them this new tax is not a severance tax when it clearly is a severance tax?

I urge you to defeat this bill. The credibility of the Montana Legislature may depend on it.

(This sheet to be used by those testifying on a Bill EXHIBIT 9
DATE 7/6/89

NAME: Tom Schneider DATE: 7/6/89
#B SB 22

ADDRESS: 451 S. Park

PHONE: Home 442-1848 Office 442-0479

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: ~~HB~~ S.B. 22

DO YOU: SUPPORT? AMEND? OPPOSE? X Strongly

COMMENT:

I adamantly oppose this attempt
to virtually eliminate the coal severance
tax !!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Bradley

Amendments to Senate Bill No. 22
Third Reading Copy

Requested by Representative Bradley
For the Committee of the Whole

EXHIBIT 10
DATE 7/6/89
FILE SB 22

Prepared by Greg Petesch
July 6, 1989

1. Title, line 17.
Following: "BACKING;"
Insert: "CREATING A RAIL RECONSTRUCTION TRUST ACCOUNT;"
2. Page 19, line 18.
Following: line 17
Insert: "(1) 5% to the rail reconstruction trust account created
by [section 53];"
Renumber: subsequent subsections
3. Page 68, line 11.
Following: line 10
Insert: "NEW SECTION. Section 53. Rail reconstruction trust
account -- use. (1) There is a rail reconstruction trust
account in the state special revenue fund. The rail
reconstruction trust account consists of 5% of the
collections from the privilege tax on coal.
(2) The department of commerce shall use the funds in
the account to administer a program to initiate, plan,
design, and carry out projects that:
(a) augment rail passenger service in Montana;
(b) provide matching funds to communities for
developing intermodal transportation facilities;
(c) build or acquire more sidings and track to make
freight and passenger rail systems more compatible; or
(d) acquire and provide uses for abandoned rail
lines; or
(e) improve and diversify available uses of existing
rail systems.
(3) The department of commerce shall submit proposed
projects to the legislature for funding.
Renumber: subsequent sections
4. Page 69, line 10.
Strike: "53"
Insert: "54"
5. Page 69, line 23.
Following: line 22
Insert: "(1)"
6. Page 69.
Following: line 25
Insert: "(2) [Section 53] is intended to be codified as an
integral part of Title 60, chapter 21, and the provisions of
Title 60, chapter 21, apply to [section 53]."

EXHIBIT 11

DATE 7/6/89

HB 22

Page One

CONSTITUTIONAL AMENDMENT NO. 3

Attorney General's Explanatory Statement

This proposed amendment to the Montana Constitution would add a new section to the Article on Environment and Natural Resources. The amendment would create a trust fund which would be funded by one-fourth (1/4) of the money received from the coal severance tax. Beginning in 1980 one-half (1/2) of the coal severance tax would be used to fund the trust. Income and interest from the trust could be spent by a majority vote of the legislature. The principal of the trust, which the legislature has termed "permanent", could only be spent by a three-fourths (3/4) vote of the legislature.

The following is a copy of the title and text of the proposed Constitutional Amendment as passed by the second regular session of the Forty-fourth Montana Legislature and approved by W. Gordon McOmber, President of the Senate, and Pat McKittrick, Speaker of the House of Representatives on the 19th day of April, 1975.

CHAPTER NO. 499
MONTANA SESSION LAWS 1975
SENATE BILL NO. 407

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO THE CONSTITUTION TO REQUIRE THE LEGISLATURE TO DEDICATE A PORTION OF THE COAL SEVERANCE TAX TO A PERMANENT TRUST FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article IX of the Montana constitution is amended by adding a new section 5 that reads as follows:

Section 5. Severance tax on coal—trust fund. The legislature shall dedicate not less than one-fourth (1/4) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

Section 2. When this amendment is submitted to the qualified electors of Montana, there shall be printed on the ballot the full title and section 1 of this act and the following words:

☐

For a permanent trust fund from coal taxes.

☐

Against a permanent trust fund from coal taxes."

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

SB22

NAME: Jim Shaw DATE: 7/6/89

ADDRESS: Hodges R.T. Wibaux

PHONE: 365-3274

REPRESENTING WHOM? me

APPEARING ON WHICH PROPOSAL: _____

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

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

VISITORS' REGISTER

Natural Resources COMMITTEEBILL NO. SB 22DATE 7-6-89SPONSOR Gage

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Riley Johnson	NFIB	X	
Mike McGrath	HECENA		X
Gordon Morris	MT Assn of Counties		
James Kelble	MARD		X
Gordon Morris	MAG.		
Laurie Shadon	Bozeman Chamber	X	
Tom Schindler	Helena		X
MTA	H.D #6 / Lelyal	Y	
Charles R. Brooks	MT ROTA, LASSOC	X	
Joseph Meert	MT Rainbow Coalition		X
Tom Hopgood	MT Assoc. Realtors	/	
Donya Small	MT Democratic Party		X
Jim Jensen	MEIC		X
Harriett Aeloy	MLWV - Montanans for the Environment		✓
Richard Clarke	APRC		✓
Buc Forrest-Boles	MT CHAMBER C.	✓	
KATHY ANDERSON	MT WOOD PRODUCTS	X	
Mike McCreary	Dept of Labor Industry	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resources

COMMITTEE

BILL NO. SB 22DATE 7/6/89SPONSOR Agf

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Verner Dertelsen	Orando, Mont		✓
Andy Koops	CANTON, NY		✓
Lashawn Dale	Helena		✓
Cennie Erickson	"		
Rob Blotkamp			
Ray McKenna	"		✓
Roger DeBrumpeken	Flower Mt	✓	
Bill Strizich	GTF		✓
M. E. CONNELLY	KALISPELL		✓
C. W. Ludwig	SD 14	✓ ?	
Lorna Frank	Bozeman ^{Form} Bureau	✓	
Kerry Jack	MT Stickgravers	✓	
John Pines	VEEDERSTONE CO.	✓	
Angela Russell	Hodge Cross		✓
Caroleyn Squin	MSLA		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

COMMITTEE ON Natural Resources

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)