

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51ST LEGISLATURE - FIRST SPECIAL SESSION

#### COMMITTEE ON RULES

Call to Order: By Chairman Harper, on July 7, 1989 at 1:40 PM.

Members Present: Rep. Harper, Rep. Vincent, Rep. Driscoll, Rep. D. Brown, Rep. Iverson, Rep. Mercer, Rep. Ramirez, Rep. Addy, and Rep. Quilici. Rep. Hannah is excused.

#### ORDER OF BUSINESS

APPEAL OF THE RULING OF THE SPEAKER: BASED ON JOINT RULE 40-90, AND ARTICLE V, SECTION 11, SUBSECTION 2, OF THE MONTANA CONSTITUTION, SENATE AMENDMENTS TO HB 20 ARE IMPROPERLY BEFORE THE MONTANA HOUSE OF REPRESENTATIVES; AND BASED ON HOUSE RULE 50-150, SUBSECTION 7, A MOTION TO APPROVE A BILL TO APPROPRIATE THE PRINCIPAL OF THE COAL TRUST FUND REQUIRES A THREE-FOURTHS VOTE OF EACH HOUSE; AND BASED ON ARTICLE VIII, SECTION 8, MONTANA CONSTITUTION, NO STATE DEBT SHALL BE CREATED UNLESS AUTHORIZED BY A TWO-THIRDS VOTE OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE.

Rep. Harper: The meeting will begin. Speaker Vincent, if you'd like to lead off.

Speaker Vincent: I want to just emphasize two things to begin. One, I made the ruling for three different reasons.

One, there has been expressed by a large number of members, of the, several members of the Democratic caucus a very deep concern about the constitutionality of this particular approach, in this particular legislation, most specifically the Senate Amendments to House Bill 20.

Secondly, because in my own personal interpretation of the rules and intent and legislative history surrounding the coal trust I happen to agree personally with those concerns. But probably most importantly at this juncture of the session, because I think that this is the quickest way to determine the will of the House and the most straight forward way to do that. And again I want to emphasize the reason for that. I have made a ruling. If that ruling is affirmed by the House Rules Committee a majority on the floor of the House can over turn my ruling and can overturn the determination of the House Rules Committee. If they do that then we would proceed, uh, with uh, debate on Senate Amendments to House Bill 20. If on the other, if on the other hand, the ruling were to be upheld, my ruling were to be upheld, in House Rules and on the floor as well, then the Senate Amendments to House

Bill 20 would not be further considered. So I think its the best way to get to the bottom line. The best way to find out just exactly where we are and whether the majority of the House feels that we can proceed, given the questions that have arisen, or whether they feel that the Senate Amendments and what's happened to House Bill 20 should preclude further consideration.

The, I read the, I read my references in, in order, not quite in order. I think that the constitutional question takes priority and then the alteration of the bill through the process. My understanding is that in Natural Resources Committee today there has been some new information shed on the water bonding requirement, the two thirds vote requirement there and that question is arguable. We have people on both sides as I'm sure there will be on these questions as well. I guess the, the, only, further thing is that on Joint Rule 40-90, the alteration and amendment of a bill through, its passage through the House and the Senate changing the original purpose. I think I've been in Rules Committee meetings each and every session I've served in the Legislature, and I think that different Rules Committees have made different determinations on that particular rule. But I think that it's an open question, and I think it's one that we ought to get out of the way and deal with and proceed from there. I think ultimately the constitutional question however, is the, is the most critical of them all. Thank you.

Rep. Harper: All right. Jack.

Rep. Ramirez: Thank you Mr. Chairman. Since I appealed the ruling I guess I should start out and explain why.

First of all, I do think that this is probably the simplest way to get these issues resolved and so I welcome the ruling of the, of the Speaker.

The second thing is I do believe that there are despite the arguments on, on, what ever arguments may be made, there are legitimate arguments on both sides of this issue. There is no question about that. I think there are legitimate concerns expressed right down the line as the Speaker has suggested. I think there are legitimate differences on the other side.

One of the reasons that I appeal, is, is the fact that I think that we have an opportunity to get out of this session quickly if we resolve this, if we overrule the Speaker. But, I want to go to the merits. I don't think we should do that lightly. But, I do want to go to the merits of the ruling. And I first want to examine the constitutionality or the requirement of the two-thirds vote on this bill. I disagree with the Speaker's position on that. I think that while there is an argument as to whether a two-thirds vote might be needed to reaffirm the indebtedness that is the guarantee and so on, that for this bill in it's present

posture we do not need a two-thirds vote. That we don't... and by doing that we may call into question the guarantee of the bonds, or the subsidy of the bonds. But the amendment that would have reaffirmed that guarantee or subsidy was not put on this bill as I understand it, and therefore, we do not need the two-thirds vote at this time. Now if there is still remaining after we, if we would pass this bill, if there was still remaining a legitimate question on the guarantee or subsidy of the bonds, which I think there would be, because everybody has said it's arguable either way, we could correct that so that we did not jeopardize these projects. We could correct that through a separate bill and at that point I would think everyone would want to do that. It would be in everyone's interest to do that, there would be no reason not to do it. And I would think that we could get the support to do it in time, if this bill were to pass. But at this point with the present language of the bill, this bill only needs a majority vote on that stand point, in my opinion, because we do not attempt to reaffirm the indebtedness or the guarantee. That was already, -- the original indebtedness was already done with a two-thirds vote and any further affirmation of that could be done at a separate time.

The second issue is the constitutionality of the taxes being imposed here. I recognize what the constitution says. It says the principal of the trust shall remain inviolate except with a three-fourths vote. And the question then is, can the Legislature by majority vote as a policy matter reduce the severance tax, because that is what this bill does. It reduces the severance tax, and we have precedent for reducing the severance tax by majority vote. We did that, as a matter of fact, in the last session, and that is what this bill does.

Now in its place then, it creates a privilege tax. And while someone might argue that that's just a change of a word, it isn't. It's a change of a tax, it is a reduction of the severance tax, and it is the creation of a new tax in its place. A tax on a different basis, not on the severance of the coal but upon the privilege of mining it. It may seem like fine distinctions to some people, but we make those fine distinctions time after time after time in tax law. And I don't think there's any question but that this is constitutional. We are not in any way interfering with the principal that is already in the trust. We cannot do that without a three quarter vote. But we can alter it by a majority vote, and there is absolutely nothing in the Constitution which forbids it. We can alter the amount of money which goes into the trust, and that's all we're doing here.

The third point I think is really the closest question, and that is, are we so changing the purpose of this bill as to in effect alter its original purpose. And I've seen this issue on questions actually more clear than this go either way. We had that. Usually it just ends up kind of a political fight rather

than anything on principle. But, but, there is an argument either way. The argument I'm going to make, because I think it's the one that will get us out of here possibly, and resolve our differences, is that it, this meets both the rule and the Constitutional requirement. The original purpose of this bill was to grant personal property tax relief. It was to grant that at least initially to a particular type of facility. It still does that. That purpose has not changed in any way. It still grants personal property tax relief to the same facility, but it expands it, and we've dealt with this before. We have dealt with it for example in the bill on the Anheuser-Busch plant in which we altered that to expand the purpose. We included some plants in Great Falls, we included some other, some other things in that bill, and it was not, or at least I think the effort was made to do that, may have done it. But the argument was not defeated on the basis of the rules or the change in the purpose. It was an expansion of the bill and I think in many, many instances we have expanded bills that started out with perhaps a more narrow purpose but we have expanded the same purpose, that is, to grant personal property tax relief, not to just to one or a limited number of people, but to a broader number of people. So I don't think the purpose of this bill, in the broadest sense, has changed. I think as a practical matter, and again, I acknowledge the legitimate and deep concerns that people who might disagree with my analysis have about this, but I think this decision can go either way. I think people can either justify what happens or criticize it either way it goes. And one of the reasons I feel so strongly about it is that I'm afraid that we're going to be at a terrible impasse if we don't get personal property tax relief through, and I think this is our only hope of getting it through.

Rep. Harper: OK. Jack, let me ask you to clarify one point. You said that, you've made that statement a few times, that passing this bill is the way to speed the session. But the reason that the Speaker and I were late coming on to the floor was because we were talking to Del Gage. And Del told us that, at this point in time with the slow progress they're making on the education bill, there was no way we would be done by tomorrow, and that we would be in next week. Now, are you saying something different?

Rep. Ramirez: Well...

Rep. Harper: What are you saying there?

Rep. Ramirez: No.

Rep. Harper: Are you saying that bill is being held up because this bill isn't moving? What are you saying there?

Pre. Ramirez: I'm not saying anything of the kind. I have no

idea what the Senate is doing. I haven't talked to the Senate leadership today, as a matter of fact at all, about what's going on. The only person I've talked to is Swede Hammond, who I happened to bump into on my way to a hearing, and he said that they were working on the bill, but they had a lot of work to do and it would take them, I think he said, I, I bumped into him about eleven o'clock. They had taken up and disposed of three issues. I asked him how long it was going to take and he said it could take all day or even into tomorrow. That's the only thing I know, that's the only communication I've had.

Rep. Harper: So, there's really no basis for that particular statement, that this would speed it up. You don't know whether that's going to have any effect.

Rep. Ramirez: Hal, you're trying to make more out of it than, than,....

Rep. Harper: I, I just want to understand what your saying, Jack.

Rep. Ramirez: I know. What I'm saying is that I believe, to get out of here, I don't know whether it's tomorrow, or Monday or Tuesday, but to get out of here as soon as we can, having done our work, that the personal property tax issue is going to have to be resolved. And therefore that that's my point, that this issue needs to be resolved. It seems to me the only way it's probably going to be resolved, I know there are other bills, there's HB 48, but I don't think that will do it, and I think this is a key element in getting us out of here at some, at some reasonable period of time, which may be tomorrow. I don't know, it depends on when they get the equalization bill processed. It may be Monday or Tuesday.

Speaker Vincent: Mr. Chairman, I think that is, that's relevant, in a, in a sense, but we need to, we need to conduct our business according to the rules and the House by majority vote can determine what those rules are, so that whatever we do should be done under the rules, and that's why we're having a rules committee meeting now. We all want to get out of here just as quickly as possible, we know that, and that there are as you suggested, other vehicles that may or may not provide whatever adequate personal property tax relief is to, to get us out of here. I, I think those are relevant factors, you have to deal with reality here, but right now I think we need to stick to a discussion and a vote and get back down to the floor relative to the ruling, so that the House can have it's say in the matter.

Rep. Harper: All right. Representative Addy.

Rep. Addy: Well, I just, I'll begin with the expediency argument. The only reason it would be more expedient for us to

rule this way, it would get us out of here sooner if we ruled the way the Minority Leader has asked us to rule, is because the Governor will veto anything, and the Senate will not complete work on any school equalization bill until we have delivered to the Governor personal property tax relief, across the board. I mean, to heck with the fact that we could get a twenty-three million dollar business, a twenty-three million dollar business in Butte. Until you give the tax breaks to who we say you give them to, we aren't going to finish what you are here for, which is equalization. There is linkage. And if the Governor were willing to consider each issue separately on its own merits, that would not be the case. We are in that bind because you always complain about the three-fifths rule. You have a two-thirds rule sitting down on the second floor. And that's the only reason that that is the case, and I think that is something that Ted Schwinden never did.

The fact that the two-thirds is arguable. Yesterday the director of the DNRC was saying it requires a two-thirds vote. Overnight, after the hearings, they called back their bond counsel and got a separate opinion faxed up in the middle of executive session this morning. And as far as they could push bond counsel was to say it is arguable. And when you say it is arguable, what you are saying we aren't going to sell any bonds until the argument is eliminated, which means that the thing has to be, the water bonds will not be sold until it has been litigated through the district courts and up through the Supreme Court. And at the very least, by leaving that argument in the bill, by not facing the two-thirds issue in a straight forward and up-front manner you have impaired all of those water projects in the other bill.

And then, you say that Article 9, Section 5 speaks only to the principal of the trust, and I guess I read the first sentence as being relevant here, rather than the second. I think it's the one that's directly operative. It says the Legislature shall dedicate not less than...if I can just read it... not less than one-half of the interest of the severance tax to the trust fund. You say we can reduce the severance tax, that's, I'm sorry, I'm having to read the first and the last sentence in the paragraph.

Rep. Ramirez: What, what are you reading?

Rep. Addy: Article 9, Section 5. It requires the Legislature to dedicate at least 50 per cent of the severance tax to the trust fund after December 31st, 1979. And to say that this is no longer a severance tax because now it is a privilege tax is a very fine line indeed. It's the line between reality and the twilight zone, I think though, because in substance what is the privilege on? The privilege is on the right to sever coal, and no matter what you call it, as long as you design it that way, as long as you implement it that way, and as long as the incidence of the tax occurs as a result of severing coal, a non-renewable

natural resource, from the ground you've got a severance tax. It is a tax on the privilege of severing, and it is a tangled, tangled web you weave with that kind of an argument, If, by changing words we can completely gut the intent and there has never been any argument as to what the intent of the people was when they passed that constitutional provision. There has never been any question of the intent to what the Legislature was. If you want to look at intent, just read the ballot language for a permanent trust fund on the coal tax. There has never been any question but what that was the intent. All you are doing is, is skirting the intent of the people through their Constitution as a Legislature, because you have the muscle on the second floor, and you might have a shot at it on the third.

Rep. Harper: John.

Rep. Mercer: Mr. Chairman. I think that the decision that's to be made by the rules committee here today would probably have less to do with the rules that it has to do with politics. And I want to address the rules, but before I do I guess I'm a little bit concerned about whether we're going to have a clean vote on this issue by handling it this way because really, what you're doing is, instead of getting a clean vote on whether the coal tax money should be diverted and used for personal property tax relief, you're injecting all these questions regarding rules. And it's not impossible that someone would say well, I agree that this particular bill, in the way that it's been amended, violates the rules, but yet I'm for that bill in and of itself, such that SB 22, which has been tabled by the Natural Resources Committee, might still pass. So I don't agree that we're getting a clean vote on this bill simply by bring it to the Rules Committee.

The three issues are really, has the bill's purpose been changed, and I've sat through a few of these meetings and seen that, in fact I can't think of one where any time we've ever ruled that something was beyond the purpose. And I can think of a zillion bills that I've carried myself involving boat taxes that were expanded to include other classes and different types of boats, automobile tax bills that have been expanded to include different categories, and things like that. And I just think that, that the real question and purpose is that is it a totally different concept or idea. Do you take a tax bill and stick something that's a topic totally unrelated, such as, you know, the size of a motor vehicle or something like that. This bill is a personal property tax relief bill, and it's simply being expanded for further personal property tax relief. I think it's very clearly the same purpose. The bonding question regarding two-thirds, that's not a problem for this bill. That is something that has to do with the water projects, and indeed, if this passes there is no question that we could suspend our rules for that bill, run it through to take care of anyone's concerns regarding the two-thirds deal.

But the last thing regarding the coal severance tax, it does boil down to a great deal of semantics because, Kelly, you're saying that three-quarters, or the coal severance tax proceeds, fifty percent are to be placed in the permanent coal tax trust. And there is no provision in the Constitution that allows the Legislature, by any vote, to prevent money from going into the permanent coal tax trust. By three quarter vote they can take it out, but there's nothing that allows it to stop it from going in. And therefore, this bill would simply be either constitutional or unconstitutional. It has nothing to do with the three-quarters vote. And I've never thought that it was the job of the Speaker to preside as a super Supreme Court and make some kind of ruling that a bill is unconstitutional and therefore cannot be considered by the Legislature. I think that's a job for a different branch of government. The three-quarters vote issue is only when you are trying to remove money from the principal of the trust and this bill doesn't seek to do that, so the three quarter vote has nothing to do with it.

Then the last thing regards a, is a severance tax, is a privilege a severance tax by any other name. And again I believe that's a legal question, but I think that if we were sitting here debating it in addition to the current and existing coal severance tax of 15%, the question of whether an additional privilege tax of 14%, on top of the existing severance tax, and the question was does fifty percent of that have to go into the permanent coal tax trust fund or could it all be used to fund equalization or personal property tax relief, everyone would agree that it does not, because the Legislature has the authority to implement a privilege tax in addition to a severance tax. And simply because we're exercising our authority to reduce the severance tax which we have established in past sessions, at the same time exercising our authority to implement a privilege tax, which we clearly have the authority to, combining those things together does not make it illegal. And in any event, the questions that are involved are ones of a legal nature and are really not ones of rules. The only rules question that is before us I think, is whether this bill, it violates the question of whether there is more than one purpose. And I think that sure, you can make an argument on either side for precedent to say that it does not.

Rep. Harper: Let me ask you one question for clarification, John. You say that the three-quarter vote has nothing to do with the amount of money going into the trust. Why the need to change the name in this bill then, from severance to privilege?

Rep. Mercer: OK. It's my feeling that the Montana Constitution requires that everything that comes from the coal severance tax, 50% of that must go into the trust, and there's, the only way you can stop would be to amend the Constitution. Once it's in the trust the Legislature by three-quarter vote can take money out.



This money never gets in the trust because it's changed to a privilege tax, and that's the difference.

Rep. Harper: So you're saying that the change to the privilege tax is to get around that Constitutional provision. That's what I understand you are saying.

Rep. Mercer: That's correct.

Rep. Harper: OK. Representative Addy.

Rep. Addy: Well, I just want to respond very briefly to two points that you made, John. The first one is, you said that if this were in addition to the 15% severance tax that everyone would agree. Well, I don't know about that. I'm not so sure that it would be as certain that anybody's going to sue, but I don't think everyone would agree, because this is a question of form versus substance. And you're saying because of the form we can ignore the substance of what we're doing, and I just vehemently disagree with that as a proposition for any court to take. When the courts become that result oriented you might as well (pause) call themselves the Legislature and get on with it.

And you say that there really isn't a rules question here. Well, there is a rules question here. The question is whether this bill is properly before the House, and if we are correct, that it requires a three-fourths vote of each house to become effective, it did not receive a three-fourths vote in the Senate, it is not properly before the House, and it should be returned to the Senate until such time as three-fourths of the members of that body do vote in favor of the bill. And until then we have a rules problem because the bill is not properly before the House.

Rep. Harper: OK.

Rep. Dave Brown: I just have a question on (pause) John, on your argument, John Mercer, on the difference between a privilege tax and a severance tax, there was my, I ask a question because I have some concerns about what was formerly SB 22, creating a situation for the coal industry, where they'll never have that tax ever lowered again, that we're locking it in a fashion (unintelligible). We have already given them a break but we'll never be able to do it again. And, and in view of that concern I ask the question, what happens to our ability to tax coal mined on federal lands if we call it a preference tax. It's my understanding that the administration, somebody went to probably the Interior Department to get the answer to that, and that they came back and said they viewed the preference tax as a severance tax. So I guess my question is, you know, whether we call it a preference tax or a severance tax, it's still a severance tax under our Constitution. And I guess that bothers me.

Rep. Mercer: Well...Mr. Chairman.

Rep. Harper: John.

Rep. Mercer: That's a legal question, Dave. I don't, I mean, it's just a legal question. Is it a severance tax or is it not, and certainly if the Supreme Court wants to rule that it is they have that power, but if we have the power to eliminate the severance tax, which we do, would the Supreme Court then say that other taxes on coal companies then are severance taxes? I mean it's just, it's just a question of we're the ones who establish whether there's a severance tax or not, and the Constitution says "the" severance tax. We're the ones who define what "the" severance tax is.

Rep. Harper: Joe.

Rep. Quilici: Well, Mr. Chairman, I think to follow up on that a little bit, that maybe the three learned attorneys here might get an answer to that bill. Yesterday during the hearing we heard a lot of the opponents and proponents. Some of the proponents argue, they come from one attorney here in Helena, and he talked about the severance tax and the privilege tax. And he says it was determined that a severance tax and a privilege tax is an excise tax. In the event that they are an excise tax, they're one and the same. If they are one and the same, do we need a three-quarters vote to abide by the Constitution, if they are one and the same?

Rep. Mercer: Mr. Chairman.

Rep. Harper: John.

Rep. Mercer: This is a point that I'm trying to make, is that if we're trying to appropriate, take money from the coal tax principal, then you need a three-quarters vote, because the Constitution requires that 50% of all the coal tax go into the permanent trust. The Legislature has no authority by three-quarter vote or unanimous vote to intercept money before it goes into that permanent trust fund if it's a severance tax. That's why I don't think this is a matter for three-quarter vote or a matter of rules for the Legislature. It's a matter of law. Is a privilege tax a severance tax? If it is, under the Constitution then 50% of it has to go into that trust. If it's not, then the Legislature by majority vote can do whatever they want to. That's really what the question is.

Rep. Quilici: Well that's, Mr. Chairman, that's exactly what I'm getting at. Is a privilege tax a severance tax as this attorney down there thought it was proven. He says a severance tax and a privilege tax are the same. They're an excise tax. In that event they are determined to be the same, and if they aren't

then, like you said, if it's considered to be a severance tax it's a three-quarters vote.

Rep. Mercer: Even if it's considered to be a severance tax, if we passed it by three-quarters vote, we still can't take it because it has to go into the, from the coal tax trust.

Rep. Harper: John, how is this tax change, how is this tax collected? Any different from a severance tax, is that under exactly the same guidelines? Kelly.

Rep. Addy: I think we had the answer to that in committee. The answer was it's the same. And I, Representative Quilici, the point that I'm making, I'm just trying to make it as clearly as I can. That point that I'm making is if it looks like a fish, smells like a fish, and it swims like a fish, it's not a pig.

Rep. Ramirez: But it's not necessarily a fish. (laughter)

Rep. Harper: John, you're next.

Rep. Ramirez: Well, I wanted to first respond to what Kelly said, and that is that he said it's, a privilege tax would be collected just like the severance tax, but the point was also made in the hearing that the RIT tax is also collected precisely that way, the severance tax, and so, and yet no one argues that the RIT tax is a severance tax. All of these are ...

Rep. Addy: It's on coal. We're talking coal here.

Rep. Ramirez: Yea, that's right. No one argues that it's a severance tax. The, uh, the point of all this is that all of these taxes, whether it's a, whether it's a severance tax or a privilege tax or even your, even your gross proceeds tax, they're all based in part on the same thing. They're all based on the same thing except there's a different stage, so to speak, at which you are, are looking at this. In the gross proceeds, in the severance you tax the severance of the coal, that act of severing it. In the privilege tax you tax the privilege of the person to be able to do that.

Rep. Harper: Jack, excuse me. Is there any difference in the calculations between those two?

Rep. Ramirez: In this bill there isn't, but I don't...why does there have to be, it doesn't make any difference.

Rep. Harper: Well, what you're saying is just totally artificial distinctions.

Rep. Ramirez: No, they aren't artificial. They may be artificial distinctions to you but they are distinctions in the

law that are recognized. And the third distinction is on the value of the coal, that's where we do the gross proceeds, but they're all, they're all on one different, a little bit different aspect, each one of them. But the point remains if you go back to just the basic principle, if your argument is correct you could not lower the severance tax. And yet we know we can lower the severance tax. We have lowered the severance tax by majority vote. We have therefore affected the amount of money from severance tax going into the coal tax trust. We have affected the amount of principal that is in the coal tax trust by lowering the severance tax, and we have the same right to do it here by majority vote. That is a policy decision that the Constitution does not speak to. It does not say how much of a severance tax you must have. If you wanted to put that in the Constitution you could have said, we will have a severance tax of so much and then that would have taken the policy decision away from the Legislature, but that was not done, and to, what you're trying to do is expand the Constitution into an area that was not addressed. And it could have very easily been addressed specifically.

Rep. Harper: Well. Members of the committee, in my opinion we're talking about two entirely different issues, because in this case you have lowered the severance tax to 1%. You've kept 1%, otherwise people would say you have eliminated the severance tax. And you've changed it. You have changed it with another tax name. Quite a bit different, entirely different than when we lowered the severance tax. That was an entirely different operation, an entirely different purpose. The purposes of those bills were entirely different. (Pause) John.

Speaker Vincent: Just a couple of comments. First, I want to reemphasize how strongly I feel that for different reasons there are three legitimate rules questions involved here. I think there's a question of degree, but I think all three are legitimate and I think it's incumbent upon a legislature to conduct itself constitutionally, to try to proceed as it should under the rules, the ultimate rules of the state established under the Constitution. And I think that we can get a straight up and down vote on the rules and I think they, that vote will parallel, the vote on the bill itself. I think, I think this is such a strong issue, and you said, Representative Mercer, that it will be decided on a political basis. If that's true it's true on both sides of the aisle and those that want this bill are going to tend to look at the rules one way, and those that don't might look at it the other way and we're all trying to look at it objectively. But I think we have an obligation to try to proceed under the law, under the rules, and under the Constitution.

One pragmatic note here, I think this discussion has brought out that there is no question that there are serious questions here relative to constitutionality. What I want to come out of this

session with is unchallengeable personal property tax relief. Personal property tax relief that will not be a potential court case for the next two years. If we, if this bill passes, and it may well, it will be challenged in the courts. If there's an injunction there will be this massive black cloud over this issue for the next year, the next year and a half, into the next session. No one will get any personal tax relief. Any major corporation that's thinking of moving in is going to look at that uncertainty. They don't like uncertainty, and they're going to say maybe we ought to go elsewhere because we don't know whether we're going to get that personal property tax relief or not. We just don't know. And we sitting here today, and if I, and if I'm correct in my interpretation, then at some point on down the line a court is going to determine that this, that this does not stand constitutional muster, and we're going to have wasted a lot of time. At the same time I have no guarantee that a court would rule that way, but I from everything I've heard around here in the last several days, there is no doubt that a large number of people committed to the Constitution and committed to the trust will challenge this. And as far as I know, I'm no attorney, but if that challenge is made, the chance of a delayed implementation of any act, whether it's ultimately found constitutional or not, is pretty high I would think, and there would be a lot of uncertainty in that.

Rep. Harper: Jerry.

Rep. Driscoll: Well, Representative Ramirez, in your opening you said that there was nothing in here about water bonds, but the title on Line 20 says "providing for water bond backing". If you're providing for backing of water bonds, why doesn't it need two-thirds? If you put the state into debt, you're putting some money up for backing.

Rep. Ramirez: Well, I'm going on what, what was told me and what Karen Barkley indicated (unintelligible) and that is that the provision that actually would get the guarantee was not put into this bill, and that, that this bill in and of itself does not require the two-thirds vote. Now if you want to, the question then is whether you need to do anything else or not, by way of a separate bill to contain the language that was not put into this bill.

Rep. Driscoll: Well, was the title incorrect then?

Rep. Ramirez: It could very well be, Jerry. See, there were several, there were several amendments that were proposed in the Senate. One of them was not adopted. It is the one that was not adopted, it is my understanding, which is the one that would require the two-thirds vote if it were in here. Now, the, that's why Karen Barkley said to me yesterday and she said again today, this bill in and of itself does not need a two-thirds vote. If

you don't have a two-thirds vote... well, it doesn't need a two-thirds vote, period. If you were to amend it for that one provision to go in here, then you would need a two-thirds vote for that to be effective. But it isn't in here, so then the question arises, do you need that language in the statutes or don't you. The bond counsel's memo this morning said it is arguable that you do not need it. It is also arguable that you do need it, and so, that language could be put in a separate bill if this bill passes by a majority vote, to be put in a separate bill and passed, if there is any doubt in anybody's mind. And we would then eliminate that issue and that's a very clean way to handle it.

Rep. Harper: Jerry.

Rep. Driscoll: Mr. Chairman, it's hot in here.

MOTION BY REP. DRISCOLL: I move that the Speaker was right.

Speaker Vincent: One comment. If we needed a bill like that, ironically, it would take a two-thirds vote to get it introduced.

Rep. Ramirez: Exactly. It means that if, you know, if you wouldn't get it introduced you couldn't get it passed anyway. At that point people would, I would think if, if this bill passed and if they thought there was some question then about it's impact on bonds, that they would, that you would be able to get that kind of a vote.

Rep. Addy: There just might be thirty-four members of the House that would be inclined to vote against that bill if this were to happen.

Rep. Ramirez: I, I know, Kelly, but it wouldn't be because they, it would be because they at all costs would rather have the bonds fail, because then that way they could prevent this kind of use of the, of the money. And that's fine, if people wanted to do that, that would be their right.

Rep. Harper: All right. We've got a motion on the floor.

Speaker Vincent: I think we've gone on long enough and said everything that can be said. Again, I want to make sure that my intent is absolutely clear here. I think that this is such a, an important issue that a rules determination is essentially a vote on the bill. I think that's the way it's going to play. I haven't talked to a legislator today that thinks otherwise. I think that it's straight up and down. The majority on the floor of the Montana House will make the ultimate decision. I think we ought to vote here and get down and let them do it and then

proceed.

Rep. Harper: Can someone read me the title of the bill, as it was amend, as it was introduced and as it has amended? (a copy of the bill is handed to Rep. Harper). OK. (He reads) "AN ACT TO CLASSIFY AS CLASS FIVE PROPERTY THE EQUIPMENT AND MACHINERY USED TO PROCESS AND PACKAGE CANOLA SEED OIL". That's the old title.

The new title. "AN ACT REDUCING TO A SINGLE RATE THE PROPERTY TAX RATE ON CERTAIN PERSONAL PROPERTY; COMBINING PERSONAL PROPERTY CLASSES; REVISING COUNTY CLASSIFICATIONS AND DEBT AND LEVY LIMITATIONS OF LOCAL GOVERNMENTS, INCLUDING SCHOOL DISTRICTS; CLASSIFYING AS CLASS FIVE PROPERTY THE EQUIPMENT AND MACHINERY USED TO PROCESS CANOLA SEED OIL; IMPOSING A PRIVILEGE TAX ON THE EXTRACTION OF COAL AND ALLOCATING THE MONEY; PROVIDING A PRIVILEGE TAX CREDIT; PROVIDING WATER BOND BACKING; REDUCING THE SEVERANCE TAX ON COAL TO 1 PERCENT;" and amending about ten lines of sections, repealing sections, providing an effective date and applicability dates. All right. You ready for the question?

Speaker Vincent: Before we take the vote I would remind everybody that the ruling of the Rules Committee will be subject to debate on the floor of the House if one Representative makes the appropriate motion.

Rep. Harper: All right. Let's have a roll call vote. All those in favor vote "aye", those opposed vote "no". That's on upholding the Speaker's ruling. (Pause) Yip.

ROLL CALL VOTE ON DRISCOLL MOTION:

Secretary: Harper, "aye"; Vincent, "aye"; Addy, "aye"; Brown, (no response); Driscoll, "aye"; Quilici, "aye"; Hannah,

Chairman Harper: He votes "no". (by proxy vote)

Secretary: Iverson, "no"; Ramirez, "no"; Mercer, "no".

Rep. Ramirez: Rep. Brown?

Rep. Brown: It's five to four.

MOTION CARRIED.

Rep. Harper: All right, the motion passes. The meeting can be adjourned, let's go back to the floor.

Adjournment at 2:20 PM.

  
Hal Harper, Chairman

HOUSE RULES COMMITTEE

ROLL CALL

DATE: 7-7-89

ROOM: 437

TIME: 1:40 pm.

	PRESENT	ABSENT	EXCUSED	
HARPER, Hal (D), Chairman	✓			
VINCENT, John (D), Vice Chair	✓			
ADDY, Kelly (D)	✓			
BROWN, Dave (D)	✓			
DRISCOLL, Jerry, (D)	✓			
QUILICI, Joe (D)	✓			
HANNAH, Tom (R)			✓	
IVERSON, Dennis (R)	✓			
MERCER, John (R)	✓			
RAMIREZ, Jack (R)	✓			



ROLL CALL VOTE

HOUSE COMMITTEE      RULES

DATE July 7, 1989 BILL NO. HB 20SA TIME 2:20 PM

[illegible]

Kay Turman  
Secretary

Hal Harper  
Chairman

Motion: BY REP. DRISCOLL - I move the Speaker's ruling was  
correct. (Speaker's ruling stated in full on page 1  
of attached minutes.)

MOTION PASSES by 5 to 4 vote.