MINUTES

MONTANA SENATE
51st LEGISLATURE - SPECIAL SESSION

FREE CONFERENCE COMMITTEE ON HB 20

Call to Order: By Chairman Delwyn Gage, on July 11, 1989, at 1:55 p.m., Room 331, Capitol

ROLL CALL

Members Present: Senator Delwyn Gage, Senator Gene Thayer, Senator J. D. Lynch, Representative Ted Schye, Representative Fritz Daily, Representative Ed Grady

Members Excused: None

Members Absent: None

Staff Present: Greg Petesch

Announcements/Discussion:

Chairman Gage indicated that it is no secret that the Governor would like personal property at 4%, and would like this bill to go down to him with that provision in it. He also reported that the Governor has talked to many of them about a severability clause in this bill, and has indicated he would put it in, if the bill came to him as the Senate passed it, or would invite the conference committee to put that in. He then pointed out that a copy of a memorandum from the Governor's office has been distributed to each of the committee members regarding the bonding provisions which indicates that, from their legal people and from Dorsey-Whitney, this does not require a two-thirds vote. A copy of the memorandum is attached as Exhibit 1. He indicated that these seem to be the three areas which are of the biggest concern, at this point.

Chairman Gage stated that, as far as he is concerned, those are the bottom lines, and he is not interested in negotiating the canola out and passing two bills, or doing anything other than those things. He added that, if the committee members want to sit here all afternoon talking about other things, they can do that, but he wants them to know that is his bottom line, noting it may not be negotiation, but that is the way it is, and the committee might as well know it right off the bat.

Senator Lynch stated that, for the record, he wants to reiterate that he is opposed to every attempt to combine the

bills, noting that he voted for both bills. He added that he is convinced in his mind, and he is not a legal expert, that the constitution requires a three-quarters vote on capping that severance tax, be it they call it a privilege tax or whatever they want to call it, that he does not think they can change the name, but he guesses that is up to the court to decide. He indicated that he does not like them being combined, that he thinks it was inappropriate to do so, but that he voted for the bill as it passed the Senate with the combination, reluctantly, and would do so again. He added that he would much rather see two bills, but understands the political realities, and that it will not happen the way it should happen.

Senator Thayer indicated that, from his perspective, he will back the Majority Leader on this issue. He stated that he firmly believes that, if they had the 4% tax in, the Anhauser-Busch plant would be under construction in Montana right now. He indicated that, every time they try to piece-meal this thing together, it is just too late, that these big corporations do not reveal their plans to build anything, and the Butte people were damn lucky to find somebody who would even talk to them about their plans on this canola plant because it usually does not work that way. He added that, in the first place, the big corporations do not want to reveal what they are doing because it escalates land costs, gets a lot of speculation going, that it gets cities and states competing against each other, and they are just not interested in that.

Senator Thayer pointed out that he is not blowing hot air here, that he had a talk with the individual who made the decision on where that plant would be built, and these are his words. He stated that Montana would have had that plant, if they had this bill in, adding that he thinks it is critically important that they do something, that this is their opportunity to do it, and he is standing firm on this position.

Representative Schye asked Senator Thayer if he is willing to take that the bill will stand in court, and the tax relief will happen immediately. He indicated that he agrees with a lot of the things Senator Thayer is saying, but that he does not think this bill will work, and there are a lot of people who agree that it will not work. He pointed out that Senator Thayer is betting on tax relief in a bill which is not going to give tax relief for at least as long as it is in the courts, that there will possibly be an injunction. He noted that Senator Thayer is saying he is not willing to work on a compromise bill that will give tax relief, which they know

will work, that both the Majority Leader and Senator Thayer are saying they are willing to take this bill, noting that, if it goes to court, nobody gets tax relief until it is proven in the courts, and that they are not willing to work on a compromise.

Senator Thayer asked Representative Schye what he is offering as funding in lieu of capping the coal trust. Representative Schye responded that he is not sure, that they can sit down and work on those, but they are not willing to work, that they just heard that from both the Senator here and him, that they are not willing to work on any compromises or any negotiation at all. Senator Thayer indicated that, if Representative Schye is willing to work. Representative Schye pointed out that is not what was said. Senator Thayer then indicated that he just does not think there are any other options out there, other than the one they have before them, which is why he stated what he did. He added that he guesses they will get as many opinions about whether something is legal or not as there are attorneys that they want to talk to and, with the severability clause, it does not in any way jeopardize the canola plant, in any event.

Representative Daily indicated that it is almost kind of ironic because he agrees with both Representative Schye, and especially with what Senator Lynch said. He added that he voted for the bill the way it was in the House, and he guesses he will have to live with that. He further indicated that it almost seems ironic that they would be talking about two bills which are going to get them out of this session, that one is this bill, obviously, and the other is the school equalization bill, and that, before it is over, he thinks both of them will be back in court, if they pass them, but that he guesses that is what has to happen in order to resolve the issue.

Representative Daily stated that it would really be a tragedy to lose the canola plant over not having personal property tax relief, and that he knows what Senator Thayer has said is true, too. He then reported that the Chief Executive talked with the people from Stauffer who expressed the same concerns and may be leaving, if they do not have some personal property tax relief. He stated that he knows, in his own mind, what they are doing is not the best way to do it but he does not know of a better way, that, if he knew of a better way, he would have it before them but he does not know of a better way at this point. He indicated that he does have some amendments he would like to propose and, when the time comes, he will be happy to do that.

Representative Daily indicated that he would like to have Greg Petesch address this committee. He pointed out that others on this committee have heard the Governor's part of the bill, that he never has, and he will be carrying this bill in the House, adding that he does not really like that, but that is the way it goes. He then indicated that he would like to have Mr. Petesch give his opinion as to the constitutionality of the bill the way it stands, with both bonds and the coal severance tax. He stated that he thinks it is important, that they are the Legislature's council and should tell them what they think, adding that he has never had that opportunity and would like to have that opportunity.

Chairman Gage asked Representative Daily if the committee could hear Representative Grady first.

Representative Grady indicated that he would like to ask Representative Schye a question, that he is not ready to make a decision at this time, and would like to hear some more testimony. He then indicated that Representative Schye said they will probably end up in court, noting that he knows there are threats of injunctions and lawsuits and everything else, that this is nothing new because they are up here making laws and hear that every day, and asked Representative Schye if he thinks there is a threat, now, of picking and choosing as far as giving certain industries breaks in their taxes and not doing anything for existing industries. Representative Schye responded that he agrees.

Representative Grady pointed out that businesses are closing, moving out of state, that they are not addressing them but are picking and choosing to try to get new industry. Representative Schye stated that he agrees, that he does not like those bills, either. Representative Grady pointed out that they are subject to a discrimination suit right now. Representative Schye responded that he does not disagree with that, but he thinks that, when they are talking about the subject they are talking about right now, and are threatened with a law suit, a lot of those are not idle threats, that the law suit will be there. He again stated that those are not threats, that the law suits will be there and he would just about guarantee that. He added it will not be him because he does not have the money, but that he knows people who are already filing behind a lot of the law suits. He then stated that he has no idea whether it will win or not, but that, if he is going to bet on something, he would rather bet on a sure deal than on something which might not happen.

Chairman Gage asked Mr. Petesch to respond to Representative Daily's request.

Mr. Petesch indicated that he thinks the legal issues involved in this bill are two, and are fairly distinct, but that there have been a lot of allegations regarding the coal severance tax portion of the bill, first of all. He further indicated that he thinks the legislative authority to reduce severance tax rates was clearly established, last session, with the window of opportunity. He pointed out that, whether they can reduce that rate to a point where they may be impairing water bond contracts is a separate issue from their authority to reduce the severance tax rate. He then indicated that he does not think anyone can answer the question of whether the privilege tax in this bill is the severance tax referred to in the constitution and requires a three-quarters vote, adding that he has never seen any case which dealt with anything even remotely similar to that, and he thinks their best guess is as good as anybody else's on that issue.

Mr. Petesch then indicated that, on the water bond impairment issue, he thinks there are some precedence there, and they need to be aware of them. He reported that there has never been a court case in Montana where they have tried to switch one stream of revenue for another stream of revenue which is dedicated to those bonds, but that those bonds in 747, and previously issued, were issued with a three-quarter vote, not just a two-thirds vote, because they are actually taking money out of that permanent trust with those bonds. He indicated that people who allege that trust fund has never been tapped are not exactly right, that the stream of revenue dedicated to flowing in to that trust fund has been tapped every time new water bonds are issued with a three-quarters vote.

Mr. Petesch then pointed out that another part of the constitution requires a two-thirds vote of each House for the incurring of state debt, and he contends that, when they issue privilege bonds and pledge the privilege tax to those, they are authorizing the incurring of new state debt, they are authorizing privilege bonds to be issued. He indicated that one of the basis for his opinion is, as they may recall, in the special session of 1986, they ran out of money and had capitol renovation bonds which were issued to renovate this building and put air-conditioning in, for one thing. He reported that they decided they needed to free-up the cigarette tax revenue which would go to pay off those long-range building bonds, and that he and Bill Johnstone out of the Minneapolis office of Dorsey-Whitney, bond council at that time, agreed that, in order to not use those bonds for the

purpose to which they had been issued, and to use them to pay the debt service on the other long-range building bonds, thereby freeing-up cigarette tax revenue for the general fund, a two-thirds vote was required to do that. He added that they are going a step beyond that, it seems to him, in authorizing issuance of new full-privilege tax water bonds, which is why he feels this requires a two-thirds vote.

Mr. Petesch indicated that he is giving the committee conservative advice because he thinks that, when they are dealing with the credit of the state, that is the way they should go, and is why he feels they need that two-thirds vote. He added that he thinks that, because they have never attempted to switch one source of revenue for another in backing bonds which have already been issued, as was pointed out by Ms. Ellingson in her memorandum, he thinks they will end up with a test case on this, even if they do get a two-thirds vote, and he thinks that, without the two-thirds vote and without the appropriation of that money in this bill, they will not be issuing those bonds.

Senator Lynch asked Mr. Petesch if one part of the bill maybe requires a majority vote, and another part requires a two-thirds vote, and if the entire bill, as it comes out with a severability clause and whatever, requires a two-thirds vote, in his opinion. Mr. Petesch responded that the two-thirds vote is only required for the pledge of the credit of the state to create that new state debt. He explained that they could have that section of the bill, if they put it in, which they have not yet, severed from the rest, if the whole bill fails to get a two-thirds vote. He noted that they can only vote on the bill as a bill, that they can not vote on portions of the bill but, if they have that in there, and if the bill fails to get the two-thirds vote, then that section appropriating that money and pledging the credit of the state to that debt would drop out of the bill, and they would have a coordination instruction for that section, if they put it in.

Chairman Gage indicated he received something from Carroll South, noting that he does not know about the water bonds and he may have misunderstood him completely, but he, in his presentation, indicated that in those bonds it talks about severance tax or a replacement tax, and asked Mr. Petesch if that is in the water bonds, or does that really have anything to do with what he is saying.

Mr. Petesch responded that has partially to do with what he is saying. He indicated that, for the bonds which have already been issued, in the event coal mining ceased, they

would still have to make payments on those bonds even though they were not collecting any severance taxes because they pledged the full faith and credit of the state in backing those bonds. He added that they could have a stream of revenue, a new tax which they enacted, go to the payment of those bonds, that they would not be impairing the contract on those existing bonds, which is what that clause refers to.

Chairman Gage then asked Mr. Petesch if the fact that they are even questioning whether or not they are putting an obligation on a different revenue stream indicates that there is a difference between severance tax and privilege tax, noting that some are saying call it anything they want, it is still a severance tax.

Mr. Petesch responded that he thinks that enhances their argument, that he thinks the argument that this is a different tax is enhanced by the fact that they have left some severance tax in place, and that he thinks the argument is hurt somewhat by the fact that it is calculated in an identical manner. Chairman Gage indicated that is nothing new, Mr. Petesch agreed that is nothing new, and Chairman Gage noted that they have resource indemnity trust conservation and severance taxes and all of those are calculated in exactly the same manner.

Representative Daily asked Mr. Petesch if there is any way to fix it. Mr. Petesch responded that he believes the amendments which were severed in the Senate from Senator Gage's original motion, because it was an appropriation appropriating the proceeds to that bond fund and to the debt service on those bonds, and having a two-thirds vote requirement for the enactment of that section, would help the bill. He added that, if they do not get that two-thirds vote, he thinks they are right back where they began. He indicated that he thinks that, at least, is something they can do, that, if they put that in the bill and get that vote, they have enhanced their test case considerably.

Representative Schye noted that he was not on the Natural Resources Committee, or anything, and asked, when they talk test case, what are they talking about. Mr. Petesch responded that, when the state issues bonds and there are legal issues involved in the validity of those bonds, bond council will not underwrite those bonds until that legal issue has been resolved. He reported that they had a test case when they first did coal severance tax bonds, because there was a question of whether they could pledge, for the lifetime of those bonds, that three-quarters vote for future legislatures, and the court said they could. He added that an almost

identical thing was tried for science and technology economic development bonds, patterned after that water bond statute, and the court threw that out on so many different constitutional grounds that it is almost unbelievable they could think up that many. He indicated that, until the question of the legality of the issuance of those bonds has been resolved, they will not be able to sell those bonds, and no one will buy them. He added that is what the test case is, that it is a friendly law suit to test the validity of that statute authorizing those bonds.

Representative Schye asked Karen Barclay, Director, Department of Natural Resources and Conservation, if they would go into a test case immediately, if this bill passes. Ms. Barclay responded no, not necessarily. She indicated that, as she thinks they are aware, bond council has issued a memo which indicates they feel that it is defensible argument that, in fact, the debt has already been incurred through HB778 and, therefore, what they are doing in this case is merely pledging this new tax to cover the bonds which have been authorized already. She added that, in further discussions, they have basically said that they have not had enough time to thoroughly investigate every possible alternative or resolution, but feel it is a very good argument that the debt has been incurred by the two-thirds vote required and, therefore, they can proceed with the bond sales.

Representative Schye then asked Ms. Barclay, if it is taken to court right away, would they have to have a test case. Ms. Barclay responded that there have been indications there would be an injunction, litigation, or whatever, and that, obviously, that would hold up the issuance of bonds because, in that event, no one would be willing to purchase the bonds, that it would be difficult for people to purchase the bonds. Representative Schye then asked, if they are held up, how long do these test cases take. Ms. Barclay responded that she thinks the last test case was two years. Representative Schye asked, on a lot of the water projects, if it does go into the courts, a test case, would the bonds not be issued for over two years, possibly, noting that is a scenario which could happen, hypothetically.

Ms. Barclay responded that he asked if there are any ways to fix it, and indicated that she thinks there are probably ways to address some of the concerns which have been mentioned. She pointed out that one which was suggested is that perhaps they put this language into the bill, and that, then, if that would pass by the two-thirds majority, that would fix the

concern over the two-thirds majority, and HB20 would only require the simple majority.

Representative Grady asked Ms. Barclay how much federal dollars is tied up in these water projects. Ms. Barclay asked if he is referring to the new ones which have just been authorized. Representative Grady indicated that he is referring to the ones this bonding would affect. Ms. Barclay responded that there are some federal dollars involved in some of the projects, Middle Creek being one of them, and, in that case, it is really not matching dollars, that they indicated they would utilize their money first and, if they needed additional monies, they would authorize the bonds, so that really is not necessarily matching.

Representative Grady asked if they would not lose that, if this did get delayed for a year and a half or two years. Ms. Barclay responded no, and added that, in checking into it, they feel they can continue with that project but, if they needed additional bonding from the state, there would be a potential delay. She then indicated that they are, in fact, currently scheduled to get the federal monies, but that it is anyone's guess as to what will happen with those federal appropriations. She added that she believes that is the only one which had federal money tied up in it.

Representative Schye asked Ms. Barclay, if they go into a test case, what does it cost and who pays for it. Ms. Barclay responded that they also tried to take a look at that and, on the first test case, she thinks it was about $80,000. Representative Schye asked if that was a cost to the state. Ms. Barclay responded yes.

Representative Daily indicated that he has three, and possibly a fourth amendment which he would like to show Senator Thayer before he offers them. He distributed copies of the amendments to the committee members, copies of which are attached as Exhibits 2, 3 and 4.

<u>Motion</u>: Senator Thayer offered a motion that his proposed amendment to HB20 to include a severability clause be adopted.

Senator Thayer explained that the amendment is simply a severability clause which basically says that, if one or any other parts of this bill are declared invalid, the other parts are valid. He added that this is the same severability clause Chairman Gage was talking about earlier.

Chairman Gage indicated that, as he understands it, this language says that the property tax relief portions are severable, and would have to be funded in some other manner than capping the coal trust, if the coal trust cap is declared unconstitutional. He asked Senator Thayer if that would characterize the amendment pretty well.

Senator Thayer responded that he does not think so. He stated that the sole purpose of the amendment, as far as he is concerned, is to make sure that, if the coal tax is challenged and found to be invalid, or if the bonding part of the bill is challenged and found to be invalid, the canola part of the bill is still in place. He indicated that this bill really has three distinct parts to it, that one is the canola part of it, one is the bonding part of the water project, and the other is the coal severance tax, noting that, in his opinion, he thinks the other two will possibly be challenged and, whether they will hold up or not, he does not have a clue. He added that the purpose of the amendment is so that at least they do not lose that project over these other sections, and that is his sole purpose in making the amendment.

Chairman Gage asked Mr. Petesch to address that, and asked if those portions of the bill which deal with property tax reform would be considered severable, if capping the coal trust and the bonding were declared to be unconstitutional.

Mr. Petesch responded that this is a standard severability clause which is included in most bills when they put in a severability clause. He explained that, the way the bill currently stands, there is a non-severability clause in it which means that the whole bill stands or falls, as a package, so that, if the court found a specific subsection of this bill invalid, the whole bill would fall. He explained that the severability clause says that, if a portion of this bill is found invalid, anything that is not tied to that invalid portion, and which can stand on its own, would. He added that he thinks they have several scenarios which could come about, that the severance tax could be declared unconstitutional, and all the personal property tax relief in this bill would remain. He noted that the problem they will have, then, is they have an appropriation in the other bill which they will have to fund somehow, but indicated that he thinks that is one scenario, and that he thinks the personal property tax relief, the severance tax and the bonding thing are not all tied together in this bill, if the severability clause is put in.

Chairman Gage indicated that would be his understanding, and is what he was trying to express. He explained that he thinks

those property tax provisions are severable, and would leave them with finding a mechanism of some kind to pick up those dollars, which capping the coal trust pick up, in some other manner for property tax relief, that this would be his understanding of it. He stated that he, personally, is not opposed to a severability clause with regard to the canola portion of it, if they can get an amendment of some kind which says, if the coal trust capping is determined to be unconstitutional, as it is accomplished in this, all of those sections, with the exception of the section dealing with canola, are not severable from the coal trust capping.

Motion: Senator Lynch offered a substitute motion that HB20 be amended to provide that, if coal trust capping is determined to be unconstitutional, as it is accomplished in this, all of those sections, with the exception of the section dealing with canola, are not severable from the coal trust capping.

Senator Lynch asked Mr. Petesch if that is possible to do, and Mr. Petesch asked if they would have everything but the classification of canola as Class 5 non-severable, with that section as severable. Senator Lynch responded that is right, and Mr. Petesch indicated, yes, they can draft it.

Senator Thayer asked Chairman Gage what would be the purpose of that. Chairman Gage responded that would mean, if the Supreme Court, or whoever tests this, says this bill is unconstitutional as far as the coal trust is concerned, all of those sections, with the exception of Class 5, would be void, as well, so that they will not have to pick up funding for reducing all of those other classes from some other source. He added that he does not know, at this time, if they have another source to do that with, but it would leave a guarantee in there that, regardless of what else happens to this bill, Class 5 property would be as it presently is in the bill, noting that he is not sure what the total ramifications of that are.

Senator Thayer asked if this would be any property in Class 5, not just the canola plant. Chairman Gage referred to Section 41, page 46 of the bill, and stated that Class 5 is at 3% right now, so it would not cost a penny to fund any of Class 5, if the rest of the bill failed.

Senator Lynch pointed out that they are moving the canola seed oil from Class 6 to Class 5, so they would be fine, there. Chairman Gage indicated that is correct, and explained that, if everything except Section 41 is void in this bill, on

determination that this bill is unconstitutional, Section 41 would remain.

Senator Thayer indicated that he still is not clear in his mind what the distinction is between the original motion, and Senator Lynch's motion. Senator Lynch explained that the original motion would have said that, if the coal tax, which he thinks is most in jeopardy because of the three-quarters vote, is found unconstitutional, they would still have reduced personal property taxes. He pointed out that they talk about a black hole, but that would leave something in the neighborhood of $47 million a year for which there is no funding. He added that their obligation is to have a balanced budget, and he thinks they would automatically have to come back into session because they would not have done that.

Senator Lynch then pointed out that this says they are relying on, noting that is their whole bone of contention, the constitutionality of a majority vote on the severance tax. He added that there was a non-severability clause in it, anyway, in his own bill, before he jumped in on HB20, so this is nothing new, but he is saying he is keeping his non-severability clause, that he is keeping their's separate on HB20, which was only intended for one purpose which was Anhauser-Busch, so, if they go to court and have litigation, it is separate and, if it is ruled unconstitutional, they have not reduced everything and the state owes $47 million a year, which they do not have.

Chairman Gage added that, since the canola property is in a class which is already at 3%, if that constitutional provision fails, they are still at 3%, which they were at originally, so it has no effect on Class 5 property, at all, this bill does not, as it presently exists.

Senator Thayer indicated that he is not sure they should not be obligated, that he thinks it is critically important that they get to this level, regardless of how it gets funded. He added that, if it does not work this way, he thinks they should find a different way to do it. Senator Lynch stated that the Governor himself, in SB22, has the non-severability, that it all won or died together, and the Governor has no objection to this, that it was in his bill. Chairman Gage noted that is true.

<u>Vote</u>: The substitute motion by Senator Lynch passed with Representative Daily, Representative Grady, Representative Schye, Senator Gage and Senator Lynch in favor, and Senator Thayer opposed.

Motion: Representative Daily offered a motion that HB20 be amended to include a coordinating instruction.

Representative Daily indicated that, as most of the committee members know, Representative Rehberg has HB50, which he believes must pass if this bill is going to pass because it has a mechanism for getting the tax relief money back to local governments and school districts. He added that, if they do not do that, there is a possibility that local governments or school districts would be left out in the cold without any funding, or at least the funding from this source, and he thinks it is really an important amendment.

Chairman Gage asked Representative Daily if he also wants to leave the Class 5 property out of this motion, as well, or if he wants to include it, and say that, if HB50 is not passed and approved, this bill, with the exception of Class 5 property, is void. Representative Daily indicated that he thinks they would want to put with the exception of Class 5 in there, and asked Mr. Petesch. Mr. Petesch responded that they could do that, that the Class 5 was not tied to the re-appropriation money because that is a new thing, and there is no loss of revenue due to the Class 5, so they could do that.

Representative Rehberg indicated that his question would be, with the severability they put in on the last motion and this coordination, if, for some reason, HB50 does not pass, can the severable parts of HB20 still go into effect. Mr. Petesch responded no, not the way this would work. He explained that this amendment would have tied them entirely together so if one was not passed and approved, they would both be void. He added that, if this bill is passed and approved, and HB50 is not, with this new amendment, the Class 5 section of the bill would still become effective. Representative Rehberg indicated that is what he is saying; canola goes in, and personal property does not go in, and stated that is the problem with the bill, that it negates the entire reason for hooking them together.

Chairman Gage indicated that is true. Representative Rehberg further indicated that, if he understands it correctly, if they are going to require a three-quarter vote in HB50, and they are currently sitting at a majority plus a few votes, they obviously kill HB50, and the severable parts of HB20 still pass. Mr. Petesch indicated that he is not sure anyone proposed a three-quarter vote on HB50. Representative Rehberg responded that all he is saying is if they put in language for

a three-quarter vote. Chairman Gage indicated it is two-thirds, and Representative Rehberg acknowledged that.

Mr. Petesch then stated that his understanding of the two-thirds vote would be only for one section of the bill, that only the remainder of the bill would require a majority vote and, if the bill failed to get the two-thirds vote, that one section would fail, not the entire bill. Representative Rehberg asked if that is dealing with the water bonds, only, and not dealing with the rest of the coal tax capping. Senator Thayer pointed out that the amendment does not mention two-thirds. Representative Rehberg responded that the language which was discussed earlier about the water bonds did mention two-thirds and, if they are hooked all together, his fear is that, with all the severability and coordination, there may have been something left behind if the entire HB50 did not receive the necessary two-thirds vote.

Chairman Gage stated that he thinks the best thing to do would be to adopt this amendment, as it stands, and both bills ride on HB50. Representative Rehberg indicated not if that is excepted. Chairman Gage responded that it says, if HB50 is not passed and approved, this act is void. Representative Rehberg indicated that he does not believe that is correct with what they just did with the severability. Mr. Petesch stated that the severability and coordination are separate issues, that severability deals with legal challenges to the bill, and the coordination clause ties the passage of this bill to the passage of another bill. He added that the intent behind this amendment would be that they could not simply pass this bill, and then have HB50 not pass, so that local governments would have no replacement revenues, that this is the intent of this amendment. Mr. Petesch then indicated that there has been a motion suggested that the canola section of this bill should not be tied to the passage of HB50, so that, if this bill is passed and approved, and HB50 is not, the canola section would remain valid and the rest of this bill would not, pointing out that those are their two options. Chairman Gage stated that, from his perspective, he would rather see the two bills ride together.

Representative Daily stated that he would like for them to at least vote on keeping the canola part separate, that he would like to insert in this amendment that the canola part needs to be part of the Class 5 property, noting that he does not know how to do that. He then indicated that he has to emphasize over and over, and over again, that, if they lose part of this bill, it would be a tragedy to lose that plant because of part of the bill, that it is totally asinine to

think they would lose that plant over part of this bill. He added that he hopes HB50 passes, too, that he thinks it is an important part of the bill.

Motion: Representative Daily offered a substitute motion to include a coordinating instruction in HB20, and to provide that the section regarding Class 5 property not be tied to the passage of HB50 under the coordination clause.

Chairman Gage indicated that the other side of the coin is, if they except canola from this bill, there is no meat for HB50, particularly. Representative Daily stated that he does not agree with that, that he thinks HB50 is a very important part of this whole process. He indicated that, if they do not have HB50, they probably should not have any of it, and asked how they can take the money from local governments and not have a replacement for them, noting that is why they need HB50, for a replacement mechanism. He indicated that, if they do not have the wisdom to do that, he can not imagine that they would do that, adding that he certainly would not do that.

Senator Thayer indicated that he thinks there is precedence in the Legislature, that things have been voted on, in the past, that the money was never appropriated, and they died down in room 108, that it has happened plenty of times in the past. He added that he would rather keep them hooked up.

Representative Daily pointed out that another thing they need to keep in mind is that they do not have canola, yet, that it is not in place, and the passage of this bill does not guarantee that the canola plant will be there. He added that it helps and, hopefully, the passage of this bill will be the ingredient which will get the canola plant to Montana, but that another thing to keep in mind is that the canola part of the bill does not need any replacement revenue because it is not here yet. He noted that they are talking brand new money with canola, if it gets here, and that is why he would like the amendment as Mr. Petesch has suggested, and has made that motion.

Representative Grady indicated that this amendment would bring it back to what he spoke to earlier that, if this bill is challenged, it lets them go ahead on the canola and give the tax break there, but they have done nothing for anybody else, that they go right back to what he said earlier. He stated that he wants to see the canola plant, too, and he wants to see Anhauser-Busch, that he wants to see them all bring jobs

in here, but somewhere they have to stop picking and choosing, that they have to look at the whole card in this. He indicated that he guesses the reasoning for a lot of them agreeing to vote for the amendment to put this in the bill is because that is the way the majority of them feel, that they have to start doing something for all business in the state but, now, if they do this, they have untied the knot.

Representative Daily stated that he does not agree with that, that he does not think there is any question that any one of them on this committee does not want to see some personal property tax relief for businesses, pointing out that how they get that is the question. He indicated that he knows they are losing businesses without it, that they all know that in this room, and he certainly would love to see them do that to encourage businesses to stay in Montana, but does not think this amendment does that. He noted that all this amendment says is, if HB50, the way it is proposed right now, the way that Mr. Petesch has suggested, does not pass, they still do not lose the canola thing, and what Representative Grady is saying is that, if HB50 does not pass, they would lose canola, too.

Representative Grady indicated the way it is now, without the amendment, and with Representative Daily's amendment, it would segregate the canola plant from the rest of the bill. Representative Daily indicated that is right.

Senator Lynch pointed out that HB50, as he understands it, is to replace lost revenue to local governments, that the canola plant is no lost revenue, HB50 does not affect it, and so why tie it to this bill. He reiterated that HB50 does not affect the canola plant. Representative Grady responded that he is not necessarily talking about lost revenue. Senator Lynch indicated that he is saying that HB50 is a replacement for whatever local governments lose, as he understands it, and asked if that is correct. Representative Grady responded that is correct. Senator Lynch continued that there is no loss of revenue on the canola end of it, so HB50 should not have an effect on canola because there is no lost revenue, which is the difference, that it is not an existing plant which they will lose like Stauffer Chemical. He added that Anhauser-Busch would not have been affected because it is not lost revenue, that it is not there yet.

Chairman Gage indicated that they would have a lot more clout behind HB50 with the amendment as it was originally prepared, than they do with excepting Class 5. Senator Lynch responded that all they can do by killing HB50 and passing these bills

is deny local government, hamstring them to the tune of $47 million a year, and that the only loser would be local government and school districts. Chairman Gage pointed out that they are saying, if this bill does not pass, and HB20 does, the canola bill remains. Senator Lynch responded yes. Chairman Gage continued that what he is saying is, from his perspective, they lose a lot of clout with regard to HB20, with an amendment that de-couples canola from it.

Vote: Substitute motion to include a coordinating instruction in HB20, and to provide that the section regarding Class 5 property not be tied to the passage of HB50 under the coordination clause failed in a tie vote, with Representative Schye, Representative Daily, and Senator Lynch in favor, and Representative Grady, Senator Gage and Senator Thayer opposed.

Chairman Gage indicated that they will revert to the original motion, and called for a vote.

Vote: Motion that HB20 be amended to include a coordinating instruction passed unanimously.

Chairman Gage reported that he needs to attend a meeting in the president's office, and asked that the committee recess for about 15 minutes.

Upon Chairman Gage's return, the committee reconvened.

Senator Thayer reported that, in the Senate, Senator Walker offered an amendment which would treat the existing canola plants in the same manner as the new one, but explained that the language was designed so that, if a new one does not come in which gets a tax break, the existing ones do not get a break either, that it is contingent upon a new one coming in. He pointed out that the first paragraph would have to be stricken because it speaks about after the effective date, and the language will have to be re-worked, which Mr. Petesch has not had time to do yet. Mr. Petesch noted that he has it, and Senator Thayer suggested that Mr. Petesch explain it. Mr. Petesch referred the committee to page 47 of the bill, line 8, and indicated that if they just put a colon after the word "that", and outline that to say "provided that subsection (a) operators of such facilities employ a minimum of 15 full-time employees", and insert a semi-colon there and then a new subsection (b), "a canola seed oil processing facility locates in the State of Montana after (the effective date of this act)." so that machinery and oil used in canola seed process-

ing facilities would be in this class, upon two conditions happening, that they employ at least 15 people in that facility, and the second trigger is that a new facility comes in. He indicated that, if either trigger is not met, the existing plants are not affected.

Motion: Senator Thayer offered a motion that HB20 be amended to provide that existing canola seed oil processing plants in the state not qualify for the reduced tax rate provided for in the bill, unless a new canola seed oil processing plant locates in the state.

Vote: Motion that HB20 be amended to provide that existing canola seed oil processing plants in the state not qualify for the reduced tax rate provided for in the bill, unless a new canola seed oil processing plant locates in the state, passed unanimously.

Senator Thayer indicated that he would like to offer a motion that the committee reconsider their action on the severability clause. He noted that he was the only one voting against the severability clause, and indicated he would like to explain why he voted that way, in hopes of talking the rest of the committee into going along with it. He then indicated that one of the complaints they always hear is that they do not have a consistent tax policy, and here they are trying to pass a bill which is going to be loaded with all kinds of loopholes, and they are saying that, if somebody challenges it and the court rules against it, it is automatically defeated, and, by God, they are not funding it, no way.

Senator Thayer pointed out that there is really no commitment, on the part of the Legislature, behind a bill like that and it seems to him that, if they are really trying to do something for jobs in the State of Montana, they should put forth something they are willing to put everything behind. He added that, if that means coming up with some kind of a new tax source, in the event the court would invalidate this for any reason, it seems to him that passage of the bill should have the full faith and credit of the legislators voting for it so they can tell the businesses and people of this state, the employees, and all of the people who will be affected by this major piece of legislation, that they fully intend to do this, that this is a consistent tax policy on the part of the people of Montana. He indicated that, by putting in that language, he believes they have said that they really do not mean this because, if those seven wise men do not like this, they are backing off, and he does not think that is the right message to send out there.

Senator Thayer indicated that Representative Daily said this is an important bill to him, that he voted for it and went on the line in the House to cause this committee to be formed, adding that he applauds him for what he did. He stated that, by God, he thinks it is up to them, now, to set the record straight and say they mean business, folks, that this is real, and is something they can depend on.

Motion: Senator Thayer offered a motion that the committee reconsider their action on the amendment to HB20 providing for a severability clause, for the purpose of taking a new vote on that issue.

Senator Lynch stated that he strongly resists the motion. He then indicated that this non-severability was in SB22, that it was agreed upon, by the Governor, that it would remain in there, but for them to pass a $47 million bill, with the possibility that there is no money there, is totally irresponsible. He pointed out that they are obligated to have a balanced budget and, if they pass a bill, laudatory that it may be, which is found unconstitutional, and then say they will just go back in special session and find another means to fund it, that his vote is contingent upon the fact that there is a fund there, that there is something which he knows what is going on.

He further indicated that the very agreement from the Governor's office was that the non-severability was in SB22, that the Governor repeatedly said there was to be no black holes, but that this is an enormous black hole they are leaving. Senator Lynch noted that they are close, albeit not a very good thing to him because there is a combination of bills, but that to say that, if the bill should pass without a funding source and, if the funding source in it is unconstitutional and all of a sudden the state is in the red to the tune of close to $100 million, is totally irresponsible.

Senator Thayer stated that he disagrees, obviously, or he would not have made the motion. He indicated that he thinks this is so important to the economic vitality of Montana, that he does not care how they fund it, they should fund it and this is the only way they are ever going to get the state moving. He added that he thinks it deserves a special session, if that is necessary, that it deserves whatever it takes to get this thing funded, and funded properly, and to send out the right signal to all of those people who may come to this state but, in particular, to the people who are already here. He added that those businesses which are

struggling to stay in business and employ people in this state are the same people, in the same jobs, who are sending their kids to school, that they are trying to find money for them and the whole thing is tied together. He stated that, if they do not do something to get Montana moving, economically, the school situation will solve itself because there will not be any kids here to educate, pretty soon. He indicated that he thinks it deserves their full faith and backing, adding that, if the Governor had another view, that is the Governor's view, not his, that he has not consulted with him about it.

Representative Daily stated that, ideally, it would be nice to do what Senator Thayer is saying, that it would be nice to have a permanent source of funding by which they could offer personal property tax relief, but they do not have that and this is the best that they have, right now before them, that this is the only mechanism. He indicated that this mechanism does have some funding in it, noting that, as Senator Lynch said, if they do what Senator Thayer is saying and pass this bill without some kind of replacement revenue, they will be back here looking for $47 million. He then said, let's face reality, here, that they have to face reality every once in a while around this joint. He pointed out that they can not find money to fund the school system, and asked how the hell are they going to find $47 million to fund personal property tax relief, if they do not use this mechanism. He added that it sounds nice but is not realistic, that what they are saying is not realistic.

Representative Grady indicated that he appreciates what Senator Thayer is trying to do, too, and pointed out that he looks at the problem with workers compensation which has over a $200 million, maybe a $250 million hole, which he is sure they will have to bail out sooner or later, and the school thing, too, will probably end up with an unfunded balance, if they ever pass one out of here. He stated that he would like to do this and thinks they could probably come up with the money, that, sooner or later, they are going to have to but, to keep adding to the debt they have now, he would have a problem with it.

<u>Vote</u>: Motion that the committee reconsider their action on the amendment to HB20 providing for a severability clause, for the purpose of taking a new vote on that issue failed, with Senator Thayer in favor, and Representative Daily, Representative Grady, Representative Schye, Senator Gage and Senator Lynch opposed.

Motion: Senator Thayer offered a motion that the committee accept the Conference Committee Report.

Representative Schye asked what the Conference Committee Report will have, besides the amendments they added on it. Representative Daily responded HB20, as it was received in the House. Chairman Gage added, as the House received it, plus the amendments of the Conference Committee.

Vote: Motion that the committee accept the Conference Committee Report passed with Representative Daily, Representative Grady, Senator Gage, Senator Lynch and Senator Thayer in favor, and Representative Schye opposed.

ADJOURNMENT

Adjournment At: 3:20 p.m.

DELWYN GAGE, Chairman

DG/mhu
FCCHB20.711

ROLL CALL

FREE CONFERENCE COMMITTEE ON HB 20
51ST LEGISLATIVE SPECIAL SESSION

DATE: July 11, 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DELWYN GAGE	✓		
SENATOR J. D. LYNCH	✓		
SENATOR GENE THAYER	✓		
REP. FRITZ DAILY	✓		
REP. TED SCHYE	✓		
REP. ED GRADY	✓		

EXHIBIT NO. 1
DATE 7/11/89
BILL NO. FCCHB20

State of Montana
Office of the Governor
Helena, Montana 59620
406-444-3111

STAN STEPHENS
GOVERNOR

MEMORANDUM

DATE: July 7, 1989

TO: Senator Del Gage

FROM: Rick Bartos, Chief Legal Counsel Rick Bartos

RE: Water Projects and Governor's personal property tax bill.

Attached please find a copy of a legal memorandum received by bond counsel Mae Nan Ellingson of the Dorsey-Whitney Law Firm. The memorandum clarifies an earlier memorandum that has been misused by individuals opposed to the Governor's personal property tax reduction bill.

This memorandum provides that her original memorandum "recommended proceeding in the most conservative manner possible." It also provided that her original memorandum reviewed the initial bill without any of the amendments that were placed in the bill by the Senate.

Most notable, a conservative bond counsel opinion provides substantiation that a 2/3 vote is not required to substitute the source of payment for a debt that has been duly authorized and approved by the requisite majority. Dorsey and Whitney would defend the state's position on this matter.

It is the opinion of Department of Natural Resources and Conservation that no water project enacted by House Bill 778 are

in jeopardy. The bond rating is not affected.

The argument that the bill violates the Montana Constitution in that the legislature has not authorized the state to incur debt for the water project is false. The legislature has already provided a 2/3 vote for the state to incur the debt through the passage of House Bill 778. The Constitutional provision has been satisfied. House Bill 778 and the amendments to the Governor's personal property tax bill pledges monies necessary to secure the past, present and any future obligations as a result of the water projects.

We have also communicated with Dorsey and Whitney attorneys Bill Johnstone, Minneapolis office, and Jim Manning, bond counsel with the Great Falls office.

I have also attached a legal memorandum that addresses the other constitutional challenge regarding the ability of the legislature to divert the coal severance tax. It is self-explanatory. If you have any questions, please contact me, Dave Darby or Karen Barclay.

EXHIBIT NO. 1 p 23
DATE 2/11/89
BILL NO. FCC HB20

DORSEY & WHITNEY

MEMORANDUM

VIA FACSIMILE

TO: Karen Barclay, Director
Department of Natural Resources & Conservation

Dave Ashley, Director
Department of Administration

Caralee Cheney, Chief
Water Development Bureau

FROM: Dorsey & Whitney
Mae Nan Ellingson Mae Nan Ellingson

DATE: July 7, 1989

RE: S.B. 22

In connection with our memorandum to you dated June 28, 1989 and the proposed amendments to Senate Bill 22, you have asked for clarification as to why we concluded that the sections of the bill pledging and appropriating the coal privilege tax to the payment of the outstanding and authorized coal severance tax bonds required approval by a 2/3 vote of each house of the legislature.

In drafting the proposed amendments, we recommended proceeding in the most conservative manner possible to resolve any doubts that the act of reducing the coal severance tax and replacing it with the coal privilege tax did not violate the State's contractual obligation with the bondholders and did not violate the State constitutional requirement that debt be authorized by a 2/3 vote of each house of the legislature.

EXHIBIT NO. 7
DATE 7/11/89
BILL NO. FCC HB20

DORSEY & WHITNEY

Ms. Karen Barclay
Mr. Dave Ashley
Ms. Caralee Cheney

July 7, 1989
Page 2

This specific issue, i.e., what is required by the constitution to substitute one stream of revenue for another stream of revenue pledged to the repayment of a duly authorized debt, has not been addressed by the Montana supreme court.

We believe it is arguable that a 2/3 vote is not required to substitute the source of payment for a debt that has been duly authorized and approved by the requisite majority, as is the case with the State's outstanding and authorized coal severance tax bonds and those authorized to be issued by H.B. 778.

Sections 17 and 18 of S.B. 22 do not attempt to create a new debt, but rather pledge the coal privilege tax to the payment of the coal severance tax bonds and authorize the previously approved coal severance tax bonds to be issued as coal privilege tax bonds, and thus it is arguable that these sections do not require approval by a 2/3 vote of each house of the legislature.

It should be noted that the concern raised in our earlier memorandum regarding the ability to issue bonds authorized by H.B. 778 dealt more with the fact that S.B. 22 as originally proposed made no reference to those bonds, and without the amendments we suggested, which have now been incorporated into S.B. 22 at Section 17 and 18, those bonds could not be issued.

MNE:mb

EXHIBIT NO. 1 pg. 3
DATE 7/11/89
BILL NO. FCC HB20

DATE: June 26, 1989

MEMORANDUM

TO: Governor Stan Stephens

FROM: Rick Bartos, Legal Counsel

ISSUE: Whether the Montana Legislature may, by majority vote, alter, amend or delete the Coal Severance Tax found in Section 15-35-101, et seq., MCA, without violating Article IX, Section 5, of the Montana Constitution.

Coal Severance Tax is not constitutionally mandated. What is mandated is that if there be a coal severance tax, 50% of that tax shall be allotted to the Permanent Trust Fund. The power of taxation remains with the legislative branch of government. The legislature has the power to replace the coal severance tax. It may also impose a comparable privilege tax. Regardless of the method of taxation, the Coal Severance Tax would be reduced.

The legislature has previously exercised such powers with the Coal Severance Tax. They have also taxed natural resources by net and gross proceeds. To suggest that the legislature cannot alter the Coal Severance Tax would mean that at the time of the adoption of the Montana constitutional language the legislature was:

(1) Obligated to impose the coal severance tax at the same rate and in the same manner in perpetuity;

(2) Would be permanently prohibited from altering the coal

severance tax without a constitutional change. Both instances call for absurd results. Neither statutory nor constitutional construction should lead to absurd results, if reasonable construction will avoid it. Grossman v. State of Montana, 682 P.2d 1319 (Mont. 1984).

Previous legislative enactments have recognized the volatile nature of coal severance taxation. See Sections 15-35-101 through 15-35-205, MCA.

Section 15-35-108, MCA, states in part that severance taxes collected under this chapter [chapter 35] are to be allocated in a means provided by Article IX, Section 5 of the Montana Constitution. The history of legislative changes to this enactment dates back to 1973 (Sec. 2, Chapter 432, L. 1973) and as recently as the 1989 Montana legislature. Alteration of taxation method required simple majority vote of each house of the legislature.

The proposed legislation affect is not retroactive. It is prospective. The legislation does not alter or reduce or impede the present Permanent Coal Trust Fund.

The Montana Constitution specifically provides that taxes shall be levied by general laws for public purposes. Article VIII, Sec. 1, Montana Constitution. There is no prohibition of the elimination of a particular tax. Further, the power to tax, which implies the authority not to impose a tax, remains with the legislature, shall never be surrendered, suspended or constructed away. Article VIII, Sec. 2, Montana Constitution.

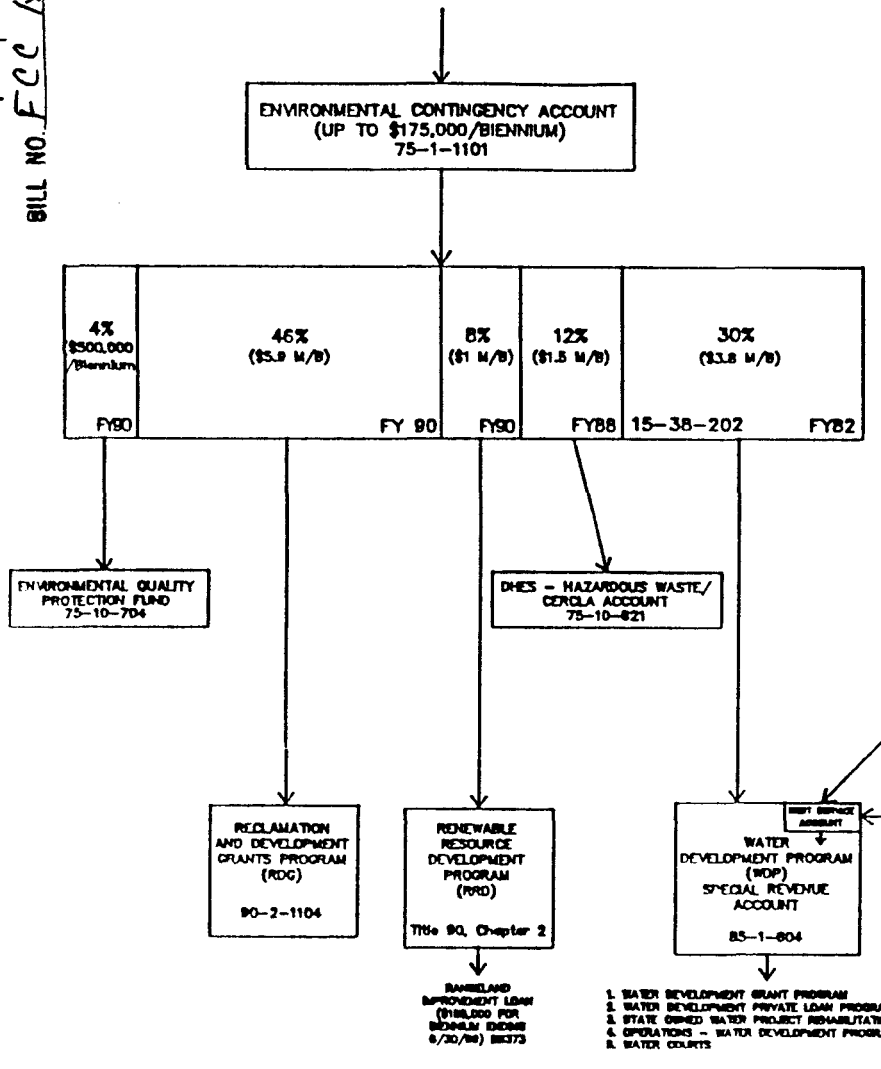
EXHIBIT NO. 1 pg 7
DATE 7/11/89
BILL NO. FCC HB20

CONCLUSION: The Montana Legislature may, by majority vote of both houses, alter, amend, reduce or delete the Coal Severance Tax found in Section 15-35-101, et seq., MCA, without violating Article IX, Section 5, of the Montana Constitution.

DATE 7/11/89
BILL NO. ECC HB20

RESOURCE INDEMNITY TRUST INTEREST INCOME

($12.9 MILLION/BIENNIUM FY88–89 ESTIMATE)



COAL SEVERANCE TAX

($122.9 MILLION/BIENNIUM FY88–89 ESTIMATE)

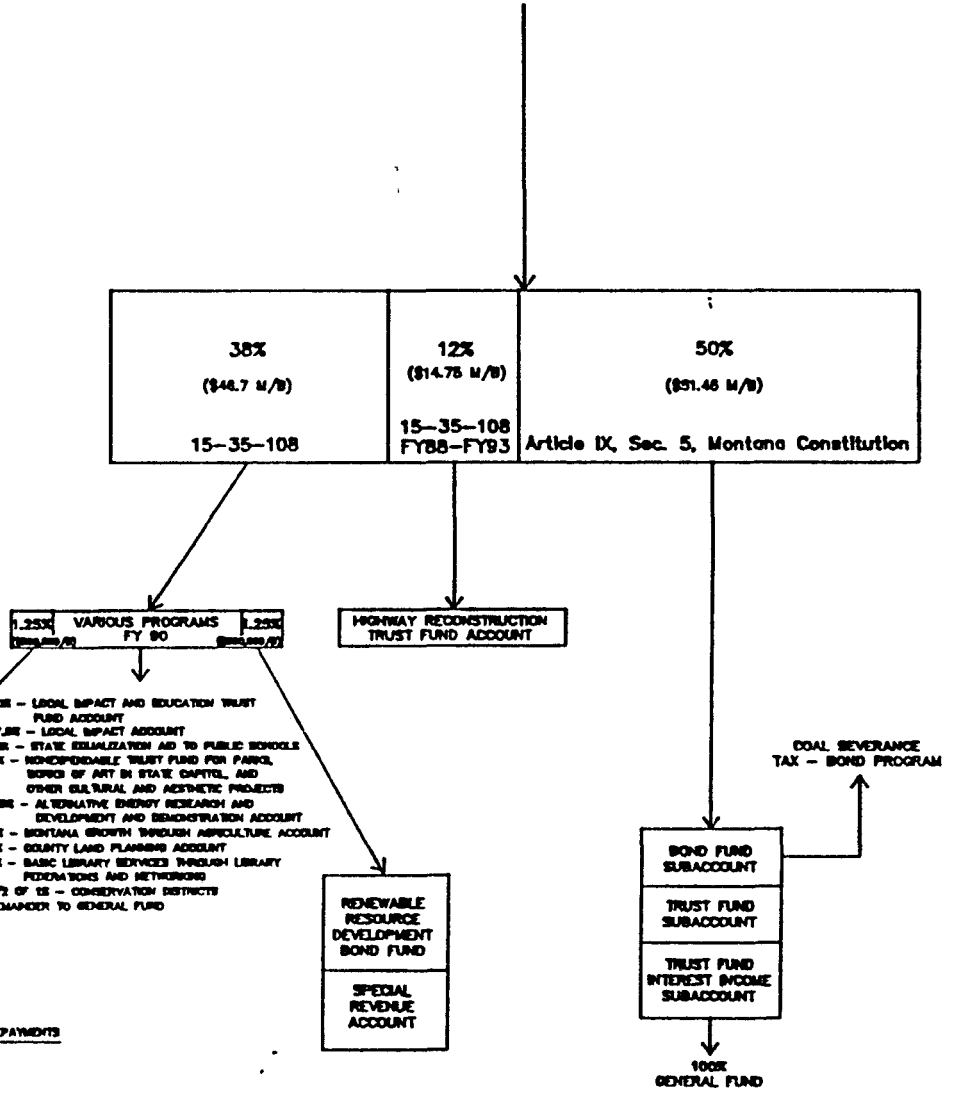


EXHIBIT NO. 1
DATE 2/11/89
BILL NO. HB 20

HOUSE BILL NO. 774

INTRODUCED BY CONNELLY

BY REQUEST OF THE LONG-RANGE BUILDING SUBCOMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE WATER DEVELOPMENT PROGRAM; TO APPROVE THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AND LOANS TO POLITICAL SUBDIVISIONS AND LOAN AGREEMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS; TO AUTHORIZE COAL SEVERANCE TAX BONDS FOR CERTAIN PROJECTS APPROVED BY THE 50TH LEGISLATURE; TO APPROPRIATE COAL SEVERANCE TAX INCOME FOR DEBT SERVICE; TO AUTHORIZE THE CREATION OF A STATE DEBT; TO PLACE CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific [illegible] development projects and activities [illegible] the state water development program. [illegible] previous sales of coal severance tax bonds may [illegible] for the projects approved in [this act]. The legislature finds that

the water [illegible]

provisions of [illegible]

coal severance [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

GROUP A. [illegible]

[section [illegible]

[illegible]

[illegible]

EAST BENCH IRRIGATION [illegible]

[illegible]

GROUP B [illegible]

[section [illegible]

may [illegible]

bond is [illegible]

term and must [illegible]

for the remaining [illegible]

REFERENCE BILL

Loan Amount

LAKE COUNTY/BIG ARM SEWER DISTRICT

Big Arm Sewer $2,283,893

SOMERS COUNTY WATER AND SEWER DISTRICT

Somers Sewer $3,151,960

GROUP C Notwithstanding the conditions set forth in [section 6], the interest rate for projects in this group may be 3% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

Loan Amount

CITY OF BOZEMAN

Lyman Creek Water System Improvement $ 386,893

CITY OF GLENDIVE

Water Treatment Plant $1,075,000

NORTON COMMUNITY

Gravity Water Company Water System

Improvement Phase $1,222,550

CITY OF WHITEFISH

Water Treatment and Distribution 6,035,800

TOWN OF WINAUX

Water Storage Reservoir/Transmission

[illegible] 250,000

Water and Sewer District Wastewater

System Improvements 584,014

GROUP D Notwithstanding the conditions set forth in [section 6], the interest rate for projects in this group may be 1% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

Loan Amount

TOWN OF FAIRVIEW

Water Treatment Facility Improvements $ 258,250

CITY OF MILES CITY

Water Treatment/Presedimentation Basin 1,532,910

PARK COUNTY WATER DISTRICT/GARDINER

Gardine Pressure Zone Improvements 360,500

GROUP E Notwithstanding the conditions set forth in [section 6], the interest rate for projects in this group must be sold at the rate at which the state bond is sold for 20 years.

Loan Amount

TOWN OF BROWNING

Sewage Treatment Facility Improvements $447,014

ANACONDA/DEER LODGE COUNTY

Wastewater Treatment Plant Effluent

Disposal 500,000

EXHIBIT NO. [illegible]
DATE 2/11/89
BILL NO. [illegible]

[illegible]

Sec [1]. (a) The legislature [illegible] water project for rehabilit[illegible] severance tax bonds [illegible] in House Bill [illegible]. The board of examiners [illegible] tax bonds for this project [illegible] this section. The state [illegible] loan is [illegible] [illegible] MIDDLE CREEK DAM REHABILITATION [illegible]

(b) Bonds may [illegible] after the water users for this project [illegible] contractual agreements provid[illegible] of the cost of repair and rehabilitation [illegible] equal to that which must be [illegible] this section. The repayment [illegible] pledged, dedicated, and appropriated [illegible] special [illegible] services bond account [illegible] treasury for the benefit of the bonds [illegible]

NEW SECTION. Section 2. [illegible] semiannual payment due for Lakeside County [illegible] wastewater collection treatment and disposal facilities from September [illegible] 1988. The 20-year loan term is extended to [illegible] years, at the same interest rate as approved by the [illegible] legislature.

NEW SECTION. Section 3. Appropriation -- creation of [illegible]

[illegible] provided [illegible] section [illegible] Montana [illegible] rehabilit[illegible] particular [illegible] water develop[illegible] the issuance of [illegible] bonds author[illegible]

(3) [illegible] hydroelectric [illegible]

EXHIBIT 9
DATE 2/11/89
BILL NO. Fcc HB20

[illegible]

[illegible] and [illegible] pay [illegible] not to exceed $10,000 [illegible] revenues [illegible] between the [illegible] water users [illegible] expend revenues in an [illegible] from the 1987 Series A [illegible] for replacement and [illegible] equipment and [illegible]

[illegible] connection [illegible] issuance of coal severance [illegible] may pay the principal and interest on the bonds when due from the debt service account [illegible] respects manage and use the funds within [illegible] bond account for the benefit of the bonds. The [illegible] shall exercise its discretion to enhance [illegible] and shall select the most [illegible] for the state. [illegible] prior to the completion [illegible] permanent [illegible] service account to pay the debt service [illegible] during this period. Earnings in excess of debt service, if any, must be allocated to the water development state special revenue account [illegible] purposes allowed under

[illegible]

severance tax bonds, loan principal, interest, and bond issuance fees borrowed from bond proceeds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

NEW SECTION. Section 4. Projects not completing requirements -- loans reauthorized. The legislature finds that the following water development projects for which coal severance tax bonds were authorized to be issued by the 50th legislature in House Bill No. 7, Laws of 1987, may not complete the requirements necessary for the loan transaction prior to June 30, 1989. Coal severance tax bonds for the projects described in this section are reauthorized in the amounts listed at the interest rates authorized by the 50th legislature in House Bill No. 7, Laws of 1987, and described in this section to enable financing during the 1990-91 biennium, if necessary.

GROUP A. Notwithstanding the conditions set forth in Section 61, the interest rate for the project in this group may be 1% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
[illegible]	

EXHIBIT NO. 1 29.15
DATE 2/11/89
BILL NO. FRC HB 20

Water Supply Construction $150,000

GROUP B Notwithstanding the conditions set forth in [section 6], the interest rate for projects in this group may be 3% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
EVERGREEN WATER AND SEWER DISTRICT	
Wastewater Facilities	$3,226,908

GROUP C Notwithstanding the conditions set forth in [section 6], the interest rate for projects in this group may be 2% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
EAST GLACIER	
Water System	$484,270
PONDERA CONSERVATION DISTRICT	
Irrigation System Rehabilitation	750,000

NEW SECTION. Section 5. Conditions of loans. (1) Disbursement of funds under [this act] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval [illegible] project by the [illegible] conservation [illegible] not affect [illegible]

(b) [illegible] project [illegible] the recommendation [illegible] renewable [illegible] evaluations [illegible] biennium [illegible] conditions specified [illegible] approved loan amount [illegible]

(d) execution [illegible] of natural resources [illegible]

(e) accomplishment of [illegible] considered necessary by the department to accomplish the purpose of the loan [illegible] department of [illegible]

(2) [illegible] severance [illegible] department [illegible] the administration [illegible] complete the loan [illegible]

NEW SECTION. [illegible]

EXHIBIT NO. 1 pg 14
DATE 2/11/89
BILL NO. FCC HB20

Loans made from proceeds of coal severance tax bonds must be at interest rates specified in [section 1], except that when loan requests are reduced, interest rates must be recalculated based on the methodology described in the renewable resource and water development program project evaluations and recommendations report for the 1990-91 biennium. If the bonds or notes bear interest at an adjustable rate, the department of natural resources and conservation shall establish, at the time of the sale of each bond, an assured rate of interest thereon as if the bond bore interest at a fixed rate. The assured rate of interest so established must be the rate of interest on the bonds for the purpose of calculating the interest rates on the loans pursuant to [section 1].

NEW SECTION. **Section 7.** Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made and purchased by and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to such political subdivisions or local government entities.

[illegible] established [illegible] receive a loan [illegible] established for the

amount of the loan upon award of the loan by the department of natural resources and conservation.

NEW SECTION. **Section 9.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 10.** Requirements for approval of state debt. Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

NEW SECTION. **Section 11.** Effective date. [This act] is effective on passage and approval.

-End-

EXHIBIT NO. 1 DATE 2/11/89 BILL NO. FOR HB 20

[illegible]

[illegible] and administration expenses not to exceed $10,000 [illegible] Series A administration subaccount revenues [illegible] between the [illegible] Missouri water users [illegible] The department may also expend revenues in an [illegible] from the 1987 Series A [illegible] for replacement and [illegible] project equipment and [illegible]

[illegible] coal severance [illegible] principal and [illegible] from the debt service account [illegible] the funds within [illegible] the bonds. The [illegible] repurchase [illegible] most [illegible] prior to the completion [illegible] accounts to [illegible] during this period, [illegible] in excess of debt service, if any, must be allocated to the water development state special revenue [illegible] under

[illegible]

[illegible] severance tax bonds, loan principal, interest, and bond issuance fees borrowed from bond proceeds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

NEW SECTION. **Section 4.** Projects not completing requirements -- loans reauthorized. The legislature finds that the following water development projects for which coal severance tax bonds were authorized to be issued by the 50th legislature in House Bill No. 7, Laws of 1987, may not complete the requirements necessary for the loan transaction prior to June 30, 1989. Coal severance tax bonds for the projects described in this section are reauthorized in the amounts listed at the interest rates authorized by the 50th legislature in House Bill No. 7, Laws of 1987, and described in this section to enable financing during the 1990-91 biennium, if necessary.

GROUP "A" Notwithstanding the conditions set forth in [section 6], the interest rate for the project in this group may be 1% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remainder of the [illegible]

[illegible]	Loan Amount
[illegible]	

Loans made from proceeds of coal severance tax bonds must be at interest rates specified in [section 1], except that when loan requests are reduced, interest rates must be recalculated based on the methodology described in the renewable resource and water development program project evaluations and recommendations report for the 1990-91 biennium. If the bonds or notes bear interest at an adjustable rate, the department of natural resources and conservation shall establish, at the time of the sale of each bond, an assured rate of interest thereon as if the bond bore interest at a fixed rate. The assured rate of interest so established must be the rate of interest on the bonds for the purpose of calculating the interest rates on the loans pursuant to [section 1].

NEW SECTION. **Section 7. Private and discount purchase** of [illegible] loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made and purchased by and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to such political subdivisions or local government entities.

[illegible] **Section** [illegible] **Appropriations.** [illegible] receive a loan [illegible] an appropriation is established for the

amount of the loan upon award of the loan by the department of natural resources and conservation.

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 10. Requirements for approval of state debt.** Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

-End-

DATE 2/11/89
BILL NO. FCC HB20

EXHIBIT NO. 2
DATE 7/11/89
BILL NO. FCC HB20

Amendments to House Bill No. 20
Reference Reading Copy

For Conference Committee

Prepared by Lee Heiman
July 11, 1989

1. Page 66, lines 2 through 6.
Strike: "Nonseverability" on line 2 through "invalid." on line 6
Insert: "Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] in invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

EXHIBIT NO. 3
DATE 2/11/89
BILL NO. FCC HB20

SUGGESTED AMENDMENT TO HOUSE BILL 20

PAGE 66, LINE 7, INSERT:

NEW SECTION. SECTION 60. COORDINATION INSTRUCTIONS. IF HOUSE BILL 50 IS NOT PASSED AND APPROVED, (THIS ACT) IS VOID.

RENUMBER FOLLOWING SECTION:

EXHIBIT NO. 4
DATE 2/11/89
BILL NO. FCC HB20

SUGGESTED AMENDMENTS TO HOUSE BILL 20

PAGE 2, LINE 11, STRIKE: (g) machinery and equipment used in canola seed oil processing facilities PROVIDED THAT THE OPERATORS OF SUCH FACILITIES EMPLOY A MINIMUM OF 15 FULL-TIME EMPLOYEES AND LOCATE IN THE STATE OF MONTANA AFTER (THE EFFECTIVE DATE OF THIS ACT).

PAGE 2, LINE 11, INSERT: (g) MACHINERY AND EQUIPMENT USED IN CANOLA SEED OIL PROCESSING FACILITIES PROVIED THAT SUCH FACILITIES LOCATE IN THE STATE OF MONTANA AFTER THE EFFECTIVE DATE OF THIS ACT AND EMPLOY A MINIMUM OF 15 FULL-TIME EMPLOYEES.

(h) IF A NEW FACILITY QUALIFIES FOR THE REDUCED TAX RATE PROVIDED BY SECTION (1), PART (g) OF THIS ACT, ALL EXISTING CANOLA SEED PROCESSING FACILITIES EMPLOYING A MINIMUM OF 15 FULL-TIME EMPLOYEES WILL QUALIFY FOR THE SAME RATE.

EXHIBIT NO. 5 pg 1
DATE 7/11/89
BILL NO. FCC H620

Amendments to House Bill No. 20
Reference Reading Copy

Requested by Free Conference Committee

Prepared by Greg Petesch
July 11, 1989

Mr. President and Mr. Speaker:

We, your Free Conference Committee on House Bill No. 20, met and considered:

House Bill No. 20 in its entirety.

We recommend that House Bill No. 20 (reference copy -- salmon) be amended as follows:

1. Title, page 2, line 4.
Following: ";"
Insert: "PROVIDING SEVERABILITY AND NONSEVERABILITY PROVISIONS; PROVIDING A COORDINATION PROVISION;"

2. Page 47, line 8.
Following: "that"
Insert: ": (i)"

3. Page 47, line 9.
Following: "employees"
Insert: ";"

4. Page 47, line 10.
Strike: "locate"
Insert: "(ii) a canola seed oil processing facility locates"

5. Page 66, line 3.
Strike: "this act"
Insert: "sections 1 through 40 and 42 through 55"
Strike: "is"
Insert: "are"

6. Page 66, line 5.
Following: "parts"
Insert: "of [sections 1 through 40 and 42 through 55]"

7. Page 66, line 7.
Following: line 6
Insert: "NEW SECTION. Section 60. Severability. If a part of [this act] is invalid, [section 41] is severable from [this act] and remains in effect in all valid applications."

NEW SECTION. Section 61. Coordination. If House Bill No.

EXHIBIT NO. 5 pg 2
DATE 2/11/89
BILL NO. FCC HB20

50 is not passed and approved, [this act] is void."
Renumber: subsequent section

And that this Free Conference Committee Report be adopted.

For the Senate:	For the House:
Sen. Gage, Chairman	Rep. Daily, Chairman
Sen. Thayer	Rep. Schye
Sen. Lynch	Rep. Grady

EXHIBIT NO. 6 pg 1
DATE 7/11/89
BILL NO. FCC HB20

Amendments to House Bill No. 20
Reference Reading Copy

Requested by Representative Daily
For the Free Conference Committee

Prepared by Greg Petesch
July 1, 1989

1. Title, line 17.
Strike: "FIVE"
Insert: "SIX"

2. Title, page 2, line 1.
Strike: "15-6-135, 15-6-137,"
Insert: "15-6-136 THROUGH"

3. Page 46, line 11 through page 49, line 21.
Strike: section 41 in its entirety
Insert: "**Section 41.** Section 15-6-136, MCA, is amended to read:

"**15-6-136. Class six property -- description -- taxable percentage.** (1) Class six property includes:

(a) livestock and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit;

(b) items of personal property intended for lease in the ordinary course of business, provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than $5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; ~~and~~

(c) machinery and equipment used in a malting barley facility~~.~~; and

(d) machinery and equipment used in canola seed oil processing facilities provided that the operators of such facilities employ a minimum of 15 full-time employees and locate in the state of Montana after [the effective date of this act].

(2) "Malting barley facility" means a facility the principal purpose of which is to malt malting barley. The term does not apply to a facility the principal purpose of which is to store, mix, blend, transport, transfer, or otherwise do anything with malting barley, except malt malting barley. However, any machinery or equipment the principal purpose of which is to store, mix, blend, transport, transfer, or otherwise handle malting barley or other machinery or equipment that is used in or is otherwise an integral part of a facility that malts malting barley is machinery or equipment of a malting barley facility for the purposes of this section.

(3) "Canola seed oil processing facility" means a facility

EXHIBIT NO. 6 pg 2
DATE 7/11/89
BILL NO. FCC HB20

that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

~~(3)~~(4) Class six property is taxed at 4% of its market value.""