

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By DAN HARRINGTON, CHAIR, on January 31, 1991, at 9:00 a.m.

ROLL CALL

Members Present:

Dan Harrington, Chairman (D)
Bob Ream, Vice-Chairman (D)
Ben Cohen, Vice-Chair (D)
Ed Dolezal (D)
Jim Elliott (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
Marian Hanson (R)
David Hoffman (R)
Jim Madison (D)
Ed McCaffree (D)
Bea McCarthy (D)
Tom Nelson (R)
Mark O'Keefe (D)
Bob Raney (D)
Ted Schye (D)
Barry "Spook" Stang (D)
Fred Thomas (R)
Dave Wanzenried (D)

Staff Present: Lee Heiman, Legislative Council
Lois O'Connor, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 334

An act revising the taxation of certain livestock.

Presentation and Opening Statement by Sponsor:

REP. SWYSGOOD, House District 73, Dillon, stated HB 334 was introduced because of action taken last session on the average inventory of livestock which was deleted from the assessment date. HB 334 deals with the assessment of cattle that is moved out of state not the cattle that remain in the state. There is a discrepancy between the cattle and operators who operate in more than one state. HB 334 will allow the operators to prorate and

pay tax on the number of month they are in the state. Currently, operators pay tax for a full year if the cattle are in the state on March 1. This affects all border counties.

Some operators are in the state with full herds, and in May they move out of state where they have property; they no longer receive the services in Montana, yet they are required to pay the tax. If an operator from Idaho comes to Montana in June, he is taxed only for the time he is here. We do not afford that same opportunity to our own operators.

Amendments were offered with HB 334 to insert, under the definition of livestock, "llamas, domestic bison, and domestic elk" in that description. The other amendments change the language where it refers to days, and changes it to months.

EXHIBITS 1,2

Proponents' Testimony:

Rick Hartz, Beaverhead County Assessor, stated two years ago he testified in favor of the bill that created this problem. It eliminated the method of situs taxation. It solved problems they were having with the inter-county movement of cattle, but it let this problem slip through. We now have a situation where our producers in the border counties, who move out of state during the year, are treated in an unfair manner as compared to a producer who comes into the state from other border states. A producer from Beaverhead County, who summers in Idaho, is taxed for twelve months because his livestock resides here on March 1. A producer coming from Idaho is prorated from the time he comes into Montana to the balance of the year. There is no recourse available for our producers to get a refund.

The language in HB 334 allows an assessor to make an additional assessment on livestock if the initial report is incorrect. For example, if our producer says he will be in the state for four months, is taxed for that, and we find out he has been for six or eight months, we can make an additional assessment on his livestock. He urged passage of HB 334.

Jim Hagenbarth, Montana Stockgrower's Association, gave a brief history of his family operation. They have been moving livestock across the Montana - Idaho border since the 1880s. Their base is in Dillon where their fall, winter, and spring range is. Their summer range is in Spencer, Idaho. When they had average inventory, the method of assessment worked well for determining an accurate assessment of livestock when they had taxable size in Montana. With the passage of HB 35, the average inventory was dropped at the request of the Assessors, and March 1 was the only option made. No mechanism was included to equitably tax livestock moved interstate within the tax year.

He gave legal opinions by the Revenue staff. Cattle entering the state Feb. 1 and leaving Feb. 28, will be taxed for eleven months

even though they had a taxable situs of one month. Cattle entering the state Jan. 30 and leaving in July, would be taxed for twelve months because they were in the state on March 1. These cattle have a taxable situs of six months and are being taxed for twelve months. Cattle entering the state on April 1 and leave May 1, are taxed for nine months. Their taxable situs is one month. His livestock leave the state in May or June and return in November or December, have a taxable situs of six or seven months; yet, he is taxed for a full year. The financial impact on his operation in 1990 by the March 1 method of assessment compared to the average inventory method, was an increase of his personal property and tax on livestock at 98% which is \$7,600. His tax has doubled; yet, his demand on public services in the county and state, nor has his number of cattle at the time of taxable situs, did not increase. This creates an unfair tax burden on the interstate livestock operations. HB 334 will correct this inequity.

Jim Peterson, Montana Stockgrower's Association, stated HB 334 is a fair and equitable answer to this problem and urged committee support.

Opponents' Testimony: None

Questions From Committee Members:

REP. MCCARTHY asked REP. SWYSGOOD if there was a fiscal note. REP. SWYSGOOD said he had asked for a fiscal note, but it hadn't been prepared yet. He was told it would be hard to estimate the fiscal impact because of the small number of people who may take advantage of this opportunity.

REP. ELLIOTT asked Jim Hagenbarth asked if his cattle were taxed in Idaho. Mr. Hagenbarth said they pay per capita fees through the Department of Agriculture.

Closing by Sponsor:

REP. SWYSGOOD stated the testimony from the proponents of HB 334 sums up why the bill was introduced. It will correct the inequity for livestock producers that previous legislation brought about.

Announcements:

CHAIR HARRINGTON said that HB 334 would be sent to the Property Tax Subcommittee.

HEARING ON HB 312

An act to assume state funding of youth court expenses.

Presentation and Opening Statement by Sponsor:

REP. HOFFMAN, House District 74, Sheridan, is introduced to address the current problem of state district court funding which is in a crisis. Article 2, Section 16 of the state Constitution grants to the people a right to a speedy remedy for every injury of person, property, and character in the justice courts. Because of the inadequate funding, persons have been denied this constitutional right. On April 1, 1990, District Courts in Cascade County closed their doors until a start of the new fiscal year on July 1. Many counties could have done the same; but chose to levy more mills which violate statute, but felt they were protected by an order from the District Court judge that required more mill to be levied. In June 1990, a committee established by the state studied this issue and came up with HB 312.

Proponents' Testimony:

John Stephenson, Great Falls Attorney, stated he was the chairman of the State Bar Committee which studied district court funding. He provided written testimony. **EXHIBIT 3**

SEN. MAZUREK stated he was a member of the State Bar Committee that looked into this issue. HB 312 is entirely consistent with what the Legislature has done in the criminal law area. The juvenile court costs are an application of criminal laws that have already been passed. If we pass laws mandating that they be enforced, then we must be consistent on how we require them to be paid for. He urged the committee's support.

Dick Gasvoda, Cascade County Commissioner, said over the ten years he has been a Commissioner, they have fought a good fight over court funding, and have lost. Cascade County is sitting on a large deficit. They have the authority to levy 6 mills, which comes to \$540,000, additional nontax revenue, and criminal cost reimbursements to help with the court costs. Each additional year, they fall short to fund district courts. Since 1981, they have received court orders to adequately fund the court. We have done this in a negative way, in that, they have allowed the deficit situation to grow. In 1986, there was a ballot issue for 7.5 mills to be levied to remove the deficit situation. We put it to the vote of the people and it was soundly defeated. In 1989 and 90, General Fund revenue has been put into the District Court fund. Our deficit peaked in June of 1988 when it reached \$655,211. In 1990, they had another setback. The Board of Investments, seeing no light at the end of the tunnel, decided they would not finance their deficit.

Gordon Morris, Montana Association of Counties, submitted testimony from the Ravalli County Commissioners. **EXHIBIT 4** He read from MACO's adopted policy statements: "Montana Counties support state findings in the District Courts in conjunction with the concepts that the courts are a state system. A major district court case could place undue financial burden on counties which do not have the fiscal capacity to absorb these costs. Since county government has little or no control over the cost of the District Court, the state should assume more of the full burden." This is a legitimate statewide problem.

Two amendments were suggested: (1) On Page 6, Section 3, Line 6 strike "state funding after expenditure of county district court funds" and (2) Reinstate the language struck on Page 16, Lines 12 - 16. This would say that any amount collected in regard to the 7% law that was not fully exhausted goes back to the counties as it does currently under the Department of Commerce on a prorated basis after they have collected 100% of the allowable criminal reimbursement expenses.

Denny Moreen, State Bar of Montana, went on record in support of HB 312.

REP. DOLEZAL stated Great Falls is in financial difficulty when they must go against the school reserve funds to get the money for District Courts. He urged the committee's support of HB 312.

Opponents' Testimony: None

Questions From Committee Members:

REP. COHEN asked if someone would explain what the tax provisions are in the bill. How is it going to generate new income? **REP. HOFFMAN** said HB 312 may have to use General Fund appropriations and is not sure why it is in the Taxation Committee. There is no method in the bill to raise the additional funds requested. There is a program in place which raises \$2.5 million a year which is used to reimburse criminal court costs in District Courts. Any excess is used to fund civil court costs when counties have levied the maximum mills under the grant in aid program. It is a three tiered funding process: (1) an absolute reimbursement of criminal court costs in District Courts which is funded by the 7% of the 2% vehicle tax; (2) county mills, and (3) grant in aid which is money left over after the reimbursement.

REP. HARRINGTON said there is the FY90 levy and the proposed levy, and asked if the bill as proposed would be raising the levies. **REP. HOFFMAN** said the language in the fiscal note, as proposed levies, is confusing as it is in place by statute. The bill does not require the counties levy the maximum. **REP. HARRINGTON** asked if **REP. HOFFMAN** wanted this money to come directly from the General Fund. **REP. HOFFMAN** said yes.

REP. MCCARTHY asked if HB 312 shouldn't be referred to the Appropriation Committee. REP. HOFFMAN said he would be willing to go along with that proposal. REP. REAM stated it isn't a revenue bill in the sense that it affects revenues. We are not changing taxation and should not have come to the Taxation Committee.

REP. WANZENRIED said the budgets must be adopted by counties by September. How much supplemental appropriations are the counties going to be faced with in FY93? REP. HOFFMAN said he didn't know. County Commissioners don't have any control over how much is in the budget. REP. O'KEEFE said Lewis and Clark County has a problem because there is a statute that says if the State of Montana is a defendant, they will proceed in District Court #1, Lewis and Clark County. Citizens in Lewis in Clark County pay for cases that have nothing to do with this county. He was hoping that the committee appointed to look into this problem would have come up with some suggestions on how to solve the problem. There should have been a revenue source put into the bill. It is not the duty of the Taxation Committee to find the funding for this program.

REP. HARRINGTON asked why they have the proposed levy as shown on the chart. Mr. Hagenbarth said the proposed levy is a misnumber. It is not the proposed levy; it is the statutory levy. If the statutory levy is levied to the maximum, you would end up with what they are calling the proposed levy revenue. It is not really proposed; it is statutory. REP. HARRINGTON said they are giving the committee both figures to show them that they could take care of the problem by putting the proposed levies on the counties. For example, the assumed counties on welfare or equalization in education. Mr. Hagenbarth said in the handout there is a paper written by Jim Getz who writes the way the current levy statute is written, it is unconstitutional. By allowing the counties to levy the maximum mills will not raise sufficient funds.

REP. MCCARTHY said two years ago Great Falls was in a similar situation with the Legislature and asked where the money came from at that time. Mr. Hagenbarth said they came to the Legislature two years ago, and the only resources they received was the criminal cost reimbursement. Those monies that were plugged in 1989 and 1990 came from their General Fund. Newell Anderson, DOC, made a suggestion about the mill levy definition. There is only one function the mill levy performs in all the District Court fundings; it is a means test. As the system exists today, before you can get a grants in aid after the reimbursement, you must have levied, raised, or spent the maximum amount of mills established by law. If a county has not raised or spent the maximum, then they are not eligible for the grant in aid or criminal court reimbursements. With HB 334, the means test intention is there. The intent is to deal with the reimbursement program expanded from criminal reimbursement to include juvenile probation. After this process takes place and

after a county has spent the maximum allowable levies, then the means test of that revenue kicks in. If the means test of mill levies is met, the counties, under the proposed legislation, are eligible for grant in aid and entitled to reimbursement.

REP. ELLISON asked **REP. HOFFMAN** if the committee had considered having each county levy up to its maximum and have the state reimburse them. **REP. HOFFMAN** said they didn't have a funding recommendation, so this was not considered.

REP. O'KEEFE said money was raised by property taxes for schools and was confused because he heard them say that if you raise money through property taxes it won't be an equal funding mechanism. **Mr. Anderson** said if every county received a 14 mill levy, some counties won't levy anything and some counties will levy 14 mills. Some taxpayers will be paying more per capita for the courts than others. **REP. HARRINGTON** said this is happening now.

REP. STANG said we have a system where there are a number of counties that have state assumption of welfare and asked **Gordon Morris** what mill levy would have to be set for all 56 counties to take a state assumption of District Courts. **Mr. Morris** said his answer would be an educated guess. Property tax revenues raised for District Courts in FY91 was \$6.8 million after adjustments. Approximately 4.5 mills would have to be levied statewide. He cautioned the committee that to do this they would have to deal with constitutionality. The courts require full funding. The idea of property tax being used to equally fund the courts would be inappropriate. **REP. STANG** said counties fund schools with a large amount of property tax and schools are similar to District Courts and asked why it was appropriate to fund the schools with a statewide levy on property tax and not District Courts. **Mr. Morris** there is a difference with what is done with the 40 mill school equalization money. That money is being used to equitably distribute the burden of school financing. It has nothing to do with the other local levies.

CHAIR HARRINGTON told the committee if HB 334 needs to be funded, it shouldn't be in this committee. This question would be taken up in Executive Action.

Closing by Sponsor:

REP. HOFFMAN said District Courts are a state function. As a state function, funding should be drawn from the broadest tax base possible. This tax base would be the General Fund. The process has already begun to shift the burden to this tax base by legislation passed in a previous session. HB 334 leaves the 4, 5, and 6 mills in place. It provides for local control. The budget still has to go through the County Commissioners. If this is taken from the counties, it would be similar to school equalization. This money will be collected at the local level and the property tax will go to the state and redistributed back

to the counties. This is the option left to us if we do nothing on HB 334. We must attempt to find the funding.

HEARING ON HB 338

An act amending the laws relating to tax credit for the purchase and installation of low emission wood or biomass combustion devices.

Presentation and Opening Statement by Sponsor:

REP. REAM, House District 54, Missoula, stated Title 15, Chapter 32 of the MCA is the chapter that deals with energy related ecological tax incentives. The main part of this chapter is located in Section 2 and 3 of HB 338. This chapter offers tax incentives for alternative forms of energy and nonfossil forms of energy generation. The codes included wood stoves. In 1985, he carried a bill which changed the definition to restrict the tax credit to wood stoves which were low in emissions. This was to address specific problems that many cities in western Montana had where these cities are located in valleys that have temperature inversions. Air pollution has shifted from industrial sources to wood stoves as the major pollutant.

The technology has shifted itself. They have developed highly efficient wood stoves. Now, under EPA regulation, the wood stoves on the market must meet the EPA standards of emissions. It no longer makes much sense to give this tax incentive. On Lines 14 - 18, HB 338 deletes "wood stoves" and inserts "the pellet stoves" which are now on the market. The emissions from these stoves are very minimal. On Line 20, HB 338 changes the emission rate from 6 to 2.5 grams per hour. Section 3 changes the tax credit.

Proponents' Testimony:

Robert Raisch, DHES, provided written testimony. **EXHIBIT 5**

Jan Gilman, DHES, Missoula, provided written testimony. **EXHIBIT 6**

Opponents' Testimony: None

Questions From Committee Members:

REP. RANEY said the problem he sees is that the bill restricts who can qualify because there are many areas in the state where you can not get pellets. **Robert Raisch** said pellets are becoming more available. The cost of the pellets are higher. **REP. McCAFFREE** asked why they went from 6% to 2.5% emission rate which is below the standard. **Mr. Raisch** said it is the DHES's opinion that the technology in the last few year has developed to where we have much cleaner burning wood stoves. It seems unwarranted to target the credit money for those clean burning stoves.

REP. ELLIOTT asked Mr. Raisch how many taxpayers in the last few years have taken advantage of the tax credit. Mr. Raisch said it is difficult to pin that number down because this tax credit is included on the tax form with other things like solar and other energy sources. It is estimated that \$18,000 is going into the program.

REP. DOLEZAL asked if the 2.5% is the standard that all wood pellet stoves have. Mr. Raisch said no. The existing program has rule making in place which describes how wood stoves are tested by the manufacture to determine whether they qualify. Ninety five to one hundred percent of the pellet stoves would qualify.

REP. FOSTER said he could see the advantage to new home builders and asked what about the person who has a conventional wood stove. Would there be a big incentive to switch over. Mr. Raisch said yes because these are the people they are targeting. They want them to take the old stoves out. This tax credit could mean \$200 for the person purchasing the new stove. REP. RANEY asked if the homeowner can burn pellets as cheaply as hard wood. Mr. Raisch said it depends on the situation. Some people in the Libby area burn three tons of pellets per year. This comes to \$320 a year which is fairly competitive with other energy sources.

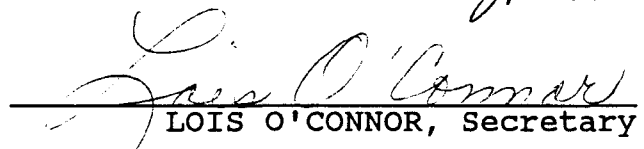
Closing by Sponsor:

REP. REAM said technology has changed. We are not getting away from the original intent of this chapter of law. It is to encourage nonfossil forms of fuel use, but not to the detriment to the health of the citizens.

ADJOURNMENT

Adjournment: 12:00 p.m.


DAN HARRINGTON, Chair


LOIS O'CONNOR, Secretary

9am

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL

DATE 1/31/91

NAME	PRESENT	ABSENT	EXCUSED
REP. DAN HARRINGTON	✓		
REP. BEN COHEN, VICE-CHAIRMAN	✓		
REP. BOB REAM, VICE-CHAIRMAN	✓		
REP. ED DOLEZAL	✓		
REP. JIM ELLIOTT	✓		
REP. ORVAL ELLISON	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. MARIAN HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. BEA MCCARTHY	✓		
REP. TOM NELSON	✓		
REP. MARK O'KEEFE	✓		
REP. BOB RANEY	✓		
REP. TED SCHYE	✓		
REP. BARRY "SPOOK" STANG	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		

HOUSE BILL NO. 334
Introduced by Representative Swysgood

- 1.) Statement of Intent, page 1, line 13
Following: Sections
Insert: "15-24-921,"
- 2.) Page 3, line 5
Following: "15-24-"
Strike: "922"
Insert: "921"
- 3.) Page 3, line 6
Strike: "15-24-922, et. seq. through page 4, line 7
"prorated".
Insert: 15-24-921. Per capita tax levy to pay expenses of enforcing livestock laws. (1) In addition to appropriations made for such purposes, a per capita tax is hereby authorized and directed to be levied by the county assessor on all poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as hereinafter specified.

(2) As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, and asses, llamas, domestic bison and domestic elk.
- 4.) Re-insert Old Section 2 as section 3
Re-number: subsequent sections
- 5.) Page 4, line 16 in old section 3 (now Section 4)
Following: "livestock"
Strike: "must"
Insert: "shall"
Following: "fund"
Insert: "upon request"

Amendments to House Bill 334.

1. Pg 1, line 9- strike (days) and add months.
2. Pg 1, line 10- starting after for, strike (a period shorter than).
3. Pg 1, line 11- strike (days) and add months.
4. Pg 2, line 3- strike (days) and add months.
5. Pg 2, line 8- strike (days) and add months.
6. Pg 2, line 9- strike (days) and add months.
7. Pg 2, line 15- strike (days) and add months.
8. Pg 2, line 17- starting at ratio, strike (ratio of the number of days the livestock have taxable situs in the state to the number of days the livestock were taxed, multiplied by the original tax due.) and add difference between the original prorated amount paid and the subsequent amount owed after the actual number of tax situs months are determined at the end of the tax year.
9. Pg 3, line 2- strike (days) and add months.
10. Pg 3, line 4- strike (days) and add months.
11. Pg 3, line 21- strike (days) and add months.
12. Pg 3, line 23- strike (days) and add months. Also after livestock, add do not.
13. Pg 3, line 24- strike (days) and add months.
14. Pg 4, line 12- strike (on the average inventory basis or) and add and
15. Pg 4, line 19- strike (on the average inventory basis or) and add and

FINAL DRAFT
December 10, 1990

REPORT OF THE
DISTRICT COURT FUNDING COMMITTEE
STATE BAR OF MONTANA

A. Introduction

District courts across the state are facing increasing financial shortfalls and the State Bar of Montana, at its annual meeting in June of 1990, passed a resolution to establish a committee to address the funding problem. The committee is broad based and includes in its membership a state senator, a state representative, two district judges, a clerk of court, the president of the League of Women Voters, two county commissioners as well as several practicing lawyers. The membership is as follows:

- John D. Stephenson, Jr. - Chairman - Attorney, Great Falls
- The Honorable Dale Cox - District Judge - Glendive
- M. David Hoffman - Attorney - State Representative
- Ted O. Lympus - County Attorney - Flathead County
- Joseph Mazurek - Attorney - State Senator
- The Honorable Tom Olson - District Judge - Bozeman
- Joy Bruck - President - Montana League of Women Voters
- James H. Goetz - Attorney - Bozeman
- Janet Kelly - Commissioner - Custer County
- Lori Maloney - Clerk of Court - Butte-Silver Bow
- Harry Mitchell - Commissioner - Cascade County
- Damon L. Gannett - President - State Bar of Montana - Attorney

Three subcommittees have been designated to perform specific tasks: the Information Subcommittee chaired by Lori Maloney, the Legislative Subcommittee chaired by Joe Mazurek, and the Litigation Subcommittee chaired by James Goetz.

The committee has received assistance from a number of state and association officials including Newell Anderson, Administrator of the Local Government Services Division, Department of Commerce, Jim Oppedahl, administrator of the Montana Supreme Court, Gordon Morris and Sandra Oitzinger of the Montana Association of Counties, Bob Mullen representing the Governor's office and George Bousliman, executive director of the State Bar of Montana. These individuals have been extremely helpful to the committee in providing background information, financial statistics and other data.

B. District Court Funding Shortfalls are a State-Wide Problem

The district courts of the state of Montana are running out of money. State-wide the district courts cost approximately \$15 million annually. District court funding shortfall is currently estimated to be approximately \$3.4 million annually.¹ This funding crisis does not impact all counties equally. Some Montana counties, typically less populated counties with high tax bases, have sufficient resources to operate their courts, without even tapping their authorized district court mill levies.² Other counties, however, particularly the larger urban counties, cannot

¹ Source: Montana Association of Counties (MACO), Appendix Exh. A. The Committee's definition of "shortfall" as used in this report is the amount by which annual district court expenditures exceed the annual revenues which can be raised from the state reimbursement and Grant-In-Aid programs, the county district court mill levy, and miscellaneous revenues designated by statute for the district courts.

² Ibid.

raise sufficient revenues from the statutory financial sources designated for court operations. The problem is currently most acute in Cascade County which has accumulated a deficit of almost one-half million dollars. Cascade County was forced to suspend civil jury trials from March 31, 1990, to July 1, 1990, due to lack of funds. Although the deficit has been temporarily paid off, Cascade County ran out of funds at the end of November 1990 and is expected to register warrants and curtail services.³ During the fall of 1990 Custer County is operated under a court order which permitted deficit financing until the first installment of the 1990 property tax was paid.⁴ Currently 36 counties in Montana are having serious financial problems in operating their courts.⁵

C. Present Sources of District Court Funding

District court budgets pay for the expenses of the clerk of court, jury and witness fees, judicial support staff salaries, indigent defense costs and juvenile probation expenses. Judges' salaries are paid directly by the state, and are not included within the district court budgets.⁶

³ Great Falls Tribune article, 11/29/90, Appendix, Exh. B.

⁴ Appendix, Exh. C.

⁵ Exhibit A: counties identified as having "serious financial problems in operating their courts" are those on Exhibit "A" which exhibit "shortfalls" of at least 10% of their budgets, or \$10,000 whichever is greater.

⁶ M.C.A. §3-5-211; Mont. Const. Art. VII, Sec. 7.

The district courts are principally funded through a three tiered system which derives revenue from a combination of state reimbursement and local property tax levies.

1. The first tier provides reimbursement by the state to the counties for certain criminal expenses pursuant to Section 3-5-901 M.C.A.⁷ This section provides that "to the extent money is appropriated," the state shall reimburse all counties for certain designated criminal case expenses as follows:

- (a) Court reporters salaries (prorated for criminal cases);
- (b) Transcripts;
- (c) Witness fees;
- (d) Juror fees;
- (e) Indigent defense costs; and
- (f) Psychiatric exams.

Funding is provided through Section 61-3-509⁸ M.C.A. which specifies that 7% of the 2% tax collected on light vehicles shall be used for funding such criminal case expenses. This funding source has generated more than two million dollars annually, and since 1986 has been sufficient to reimburse 100% of qualifying criminal expenses for all counties.⁹ The reimbursement program is administered by the Department of Commerce.

⁷ The full text of §3-5-901 M.C.A. is included in the Appendix, Exh. D.

⁸ The full text of Section 61-3-509 M.C.A. is included in the Appendix, Exh. D.

⁹ Source: Department of Commerce, Appendix, Exh. E.

2. The second tier of district court funding is a special county mill levy provided by Section 7-6-2511.¹⁰ The authorized amount of mill levy is six mills for first and second class counties, five mills for third and fourth class counties and four mills for fifth, sixth and seventh class counties. This county mill levy is the principal funding source for the state's district courts and will provide approximately \$7.5 million during fiscal year 1990.¹¹

3. The third tier of district court funding is the grant-in-aid program provided by Section 7-6-2352 M.C.A.¹² This section provides that the Department of Commerce shall make grants, to the extent funds are available after payment of criminal court expenses under Section 3-5-901, for all other authorized district court expenditures, after the county has demonstrated that it has spent for appropriate district court expenses an amount equal to the maximum district court mill levy authorized whether or not assessed. In recent years the grant-in-aid program has provided only minor assistance to the district courts, approximately \$25,040 in 1989 and \$111,970 in 1990, whereas eligible grant requests were approximately \$1 million dollars in each year.¹³

¹⁰ The full text of §7-6-2511 M.C.A. is included in the Appendix, Exh. D.

¹¹ MACO, Appendix Exh. F, p. 12.

¹² The full text of §7-6-2352 is included in the Appendix, Exh. D.

¹³ See Appendix, Exh. E.

4. In addition to the above sources, district courts receive revenues from licenses, permits, filing fees and other sources which contribute a relatively minor amount to the district court funding total.

D. Deficiencies in Court Funding System

The present district court funding system fails to provide sufficient revenues to operate Montana's district courts, and court expenses continue to rise, while funding sources remain static. Taxable values in Montana, that is, the value of a mill, declined between fiscal years 1985 and 1989 by 16% from \$2,330,883 to \$1,942,950. At the same time, the U.S. Consumer Price Index as an indicator of the cost of doing business, went up 43 points.¹⁴ In fiscal year 1989, \$13,211,097 was budgeted and \$12,957,567 was spent on district court functions. For fiscal year 1990, the sum of \$15,101,636 has been budgeted, and if current spending is in the same ratio to the budget figure as in 1989, the resulting increase over 1989 will approach \$2 million.¹⁵ Although the criminal court cost reimbursement program under Section 3-5-901 has heretofore been able to fund 100% of eligible criminal cost expenses, the funding sources from light vehicle taxes remain relatively static. In 1990, this source of revenue is expected to produce \$2.6 million, in 1991 \$2.8 million.¹⁶

¹⁴ Source: MACO

¹⁵ Appendix, Exh. F, pp. 10, 12.

¹⁶ Source: Department of Commerce.

EXHIBIT 3
DATE 1-31-91 HB
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Under current law, the state is under no obligation to increase the funding; in fact, the present statute provides that the state's obligation to fund such expenses is limited "to the extent that money is appropriated" and the statute further provides that the counties are responsible for the payment of these expenses to the extent they are not appropriated by the legislature.¹⁷ Except for the statutory funding source from light vehicle taxes, the state has not appropriated any other funds for the district courts.

The district court county mill levy authorized by Section 7-6-2511 is subject to the inherent weaknesses of the property tax system. Mill levy values vary significantly from county to county. For example, in Rosebud County which has a population of 12,300 people, each mill has a value of \$229,015 whereas a mill in Park County which has an identical population is worth only \$21,527.¹⁸ Park County levies its full authorized five mill levy of \$107,635, whereas Rosebud County which could raise as much as \$1,374,090 from its mill levy does not even tap this source of funding, because it has ample revenues from other sources to cover court expenses.¹⁹

It is estimated that the district court funding shortfall, i.e. the difference between necessary court expenditures and revenues generated under the state criminal court reimbursement system, the district court county mill levy, the grant-in-aid

¹⁷ Section 3-5-901 M.C.A.

¹⁸ Source MACO, Appendix, Exh. F. p. 12.

¹⁹ Ibid.

program, and court fees, is approximately \$3.4 million.²⁰ Counties have bridged this gap by resorting to taking money out of other county budgets, thus, depriving other departments of needed revenue, registering warrants or otherwise borrowing funds, or in some cases levying in excess of the authorized maximum.

E. The Present District Court Funding System is Subject to a Constitutional Legal Challenge

Article II, Section 16 of the Montana Constitution provides in part:

Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character . . . Right and justice shall be administered without sale, denial or delay.

In interpreting similar language in the 1889 Constitution, the Montana Supreme Court said:

It [the predecessor to Art. II, Sec. 16] means no more nor less than under the provisions of the Constitution and the laws constituting them, the courts must be accessible to all persons alike, without discrimination, at the time or times and the place or places for their sitting, and afford a speedy remedy for every wrong recognized by the law as being remedial. (*Shea v. North Butte Mining Co.*, 55 Mont. 522, 179 P. 499 (1919)).

The principal cause of district court funding problems has been the inadequacy of funds generated by local property taxes where mill levy values have failed to keep up with increasing costs. The result is that some counties are not able to fund their courts from authorized revenue sources, whereas other counties have no problem meeting these obligations because their mill values are

²⁰ Source: MACO, Appendix, Exh. A.

much higher. This creates unequal burdens upon local taxpayers because taxpayers who happen to reside in "poor counties" must pay relatively larger percentages of their property wealth than taxpayers who happen to reside in "rich counties." Furthermore, when courts are forced to shut down or curtail their operations such as has occurred in Cascade County, civil litigants are denied access to the courts altogether. The result is that both civil litigants are and taxpayers in "poor counties" are denied equal protection under the law as compared to persons who reside in "rich counties."

The Litigation Subcommittee, chaired by James H. Goetz, has written a legal memorandum on this subject, and it is the Subcommittee's conclusion that a legal challenge to the present court funding system, based upon the rationale in the Helena Elementary School District case would likely be successful.²¹ In that case the Montana Supreme Court invalidated the Montana system of school finance because of its inordinate reliance on widely disparate local property tax funding sources which resulted in a denial of a quality of educational opportunity for many of the school children of Montana.

This report also notes that from time to time district courts in various counties have temporarily solved their funding dilemmas by issuing orders requiring the county commissioners to fund the courts. See, e.g. *Board of Commissioners v. District*

²¹ 236 Mont. 44, 784 P.2d 412 (1989). A copy of the Subcommittee report is attached to Appendix, Exh. G.

Court, 182 Mont. 463, 597 P.2d 728 (Mont. 1979). However, these powers may only be used in budgetary emergencies or where established methods of providing the court with necessary assistance have failed (*Board of Commissioners of Flathead County, supra; Butte-Silver Bow Local Government v. Arnold Olsen, District Judge* 228 Mont. 77, 743 P.2d 564 (1987)).

Thus, the expedient of resorting to court order to fund the district court works only in limited emergency type situations, and does not present a solution to the state-wide problem of inadequate court funding sources.

F. Proposed Legislative Solution

The committee has considered two separate options to resolve the district court funding problem. One option is to pursue litigation with the purpose of obtaining a ruling from the Montana Supreme Court similar to that issued in the *Helena Elementary School District* case, requiring that the Legislature devise a solution to provide the district courts adequate funding within constitutional guidelines. The second option is to propose a legislative solution, and present a bill for the consideration of the 1991 Legislature. In view of the fact that the solution to the problem must ultimately come from the Legislature, it was the decision of the committee to first pursue a legislative solution, before resorting to litigation. It has been noted that efforts were made to seek a legislative solution to the school funding problem, before resulting to litigation, and after several

unsuccessful attempts to have legislation passed, the *Helena Elementary School District* suit was finally filed.²²

It is the unanimous opinion of the committee that the district courts are a state function. When a major crime is committed, a violation of state law has occurred, and it is in the interest of the people of the entire state that that criminal be prosecuted and brought to justice. However, prior to 1985, the burden of prosecuting the criminal fell upon the particular county in which the crime was committed and situations were experienced where counties were forced to expend large sums, far beyond their authorized court budgets, to try the case. The much publicized "Mountain Man" case in Madison County and the Duncan McKenzie murder case in Pondera County are two recent examples. The Legislature recognized this statewide responsibility, when it passed present Section 3-5-901 which provided for state reimbursement of certain criminal court expenses incurred by the counties. Other court functions are also a state function. The expenses for juvenile probation tend to fall most heavily upon the urban counties, but the juveniles involved may have migrated from rural counties to urban centers. Likewise, civil case filings tend to concentrate in the urban centers, although many of the civil litigants may reside in outlying counties. The district courts of each county are open to citizens from all over the state, regardless of their residence. However, Montana provides relatively

²² See editorial of The Independent Record, December 6, 1990. - Appendix, Exh. H.

little state funding to the district courts. In fact, Montana ranks 50th among the states in amount of state revenue allocated to the judiciary, and 45th in the percentage of state revenue allocated to the judiciary.²³

The committee considered proposing legislation which would require that the district courts be funded exclusively by the state, but in recognition of the budgetary restraints which exist at the state level of government, as well as at the county level, decided instead to propose a bill which provides increased responsibility for state funding, but retains the revenue sources provided by the district court mill county levy. A copy of the new proposed bill is included as Exhibit J to the Appendix.

The proposed new legislation is modeled after existing Section 3-5-901. Section 7-6-2352, the present "grant-in-aid" section, would be repealed, but its operative provisions are incorporated as Section 5 of the proposed new bill.

The first principal change in existing Section 3-5-901 is to make state funding mandatory, as opposed to discretionary as under present law. Secondly, the provisions stating that the district courts will be funded from county sources, if state money is not appropriated, have been deleted. The proposed bill also adds juvenile probation as a new category to be funded from the "first tier" of state reimbursement funding (see proposed Section 3-5-901(b)). Juvenile probation expenses statewide for fiscal year 1989 were \$2,747,444 and are projected to be \$3,167,190 for fiscal

²³ Appendix, Exh. I.

year 1990.²⁴ The "second tier" of district court funding will continue to be provided by the local district court mill levy. After these funds have been levied and spent, the state shall, upon receiving applications, reimburse counties for all other appropriate court expenditures. Procedures for verification that both the funds expended from the mill levy as well as the funds proposed to be expended from the proposed state reimbursement comply with statutorily authorized court expenditures remain the same as in the former grant-in-aid program (present Section 7-6-2352). Administration of the state reimbursement program would continue to be handled by the Montana Department of Commerce.

In summary, the proposed legislation shifts more of the responsibility for funding the district courts from the counties to the state, while preserving the three-tiered funding approach which is presently in effect and preserving the present county mill levy system. This bill is seen as being neutral with respect to its effects upon "local control" of judicial functions.

G. The Fiscal Consequences of the Proposed New Legislation

State revenues from the light vehicle tax which are statutorily designated for the district courts are estimated to approximate \$2.8 million annually in fiscal years 1991 and 1992.²⁵ It is expected that nearly all of this money will be required to fund the criminal court reimbursement program at

²⁴ Source: MACO.

²⁵ Appendix, Exh. E.

existing levels. The estimated costs for the juvenile probation program which would be fully reimbursed by the state under the proposed legislation are \$3.2 million annually.²⁶ It is anticipated that even with full state funding of the juvenile probation expenses and the criminal reimbursement program, some counties will still sustain funding shortfalls after having imposed their maximum county district court mill levies. However, at this time the Committee is not able to estimate the amount of such additional shortfalls, and therefore recommends that a state appropriation of \$6 million annually (\$12 million for the biennium) be adopted for state funding of the district courts.

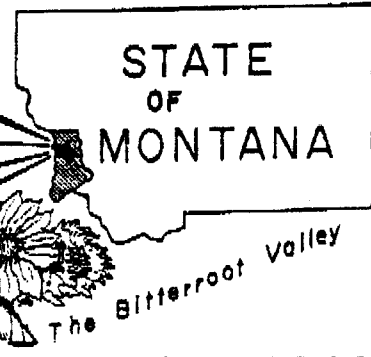
²⁶ Appendix, Exh. F, p. 10.

APPENDIX

- Exhibit A - MACO calculation of district court funding shortfall
- Exhibit B - Article, Great Falls Tribune, November 29, 1990
- Exhibit C - Order dated October 11, 1990, from Custer County District Court
- Exhibit D - Current court funding statutes
- Exhibit E - Montana Department of Commerce - nine year history of state reimbursement and grant-in-aid programs
- Exhibit F - MACO - 1989-1990 county district court fund budgets and expenditures
- Exhibit G - Memorandum of legal subcommittee
- Exhibit H - Editorial, Independent Record, December 6, 1990
- Exhibit I - State government judicial and legal expenditures for FY 1988 with per capita and percentage of general government expenditure rankings
- Exhibit J - Proposed new legislation LC 106

Exhibit 3 also contained the exhibits described in the Appendix (Exhibits A-J). The originals are stored at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)

COUNTY OF RAVALLI



HAMILTON, MONTANA 59840

Courthouse Box 5001
January 31st, 1991

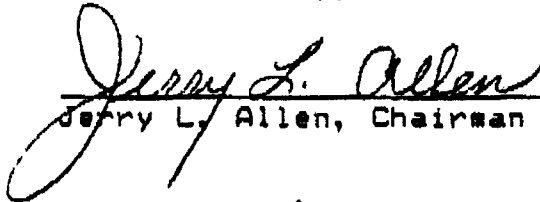
Taxation Committee
Room 437
State of Montana
Capitol Station
Helena, MT 59621

RE: HB 312 State Assumption of County District Court Expenses
Hearing Room 437 9 AM

To Whom It May Concern:

For the record, the members of the BOARD OF COUNTY COMMISSIONERS, Ravalli County, Montana would like to submit the following testimony regarding the above referenced bill. We unanimously support HB 312 regarding the State Assumption of County District Court Expenses. Please PASS this bill.

Sincerely,
BOARD OF COUNTY COMMISSIONERS
Ravalli County, Montana


Jerry L. Allen, Chairman

absent
Steven D. Powell, Member


Allen C. Horsfall Jr., Member

EXHIBIT 5
DATE 1-31-91
HB 338

TESTIMONY
ON
HOUSE BILL NO. 338

BEFORE THE TAXATION
COMMITTEE OF THE MONTANA
HOUSE OF REPRESENTATIVES

BY ROBERT RAISCH
AIR QUALITY BUREAU
MONTANA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING TO TAX CREDIT FOR THE PURCHASE AND INSTALLATION OF LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; INCREASING THE TAX CREDIT; REDEFINING A LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICE; EXTENDING THE DATE FOR WHICH THE ENERGY TAX CREDIT MAY BE TAKEN TO DECEMBER 31, 1996; REDEFINING THE TAX EXEMPT STATUS OF LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; REDEFINING THE AVAILABILITY OF VENTURE CAPITAL AND OTHER INCENTIVES TO BUSINESSES INVOLVED WITH LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; AMENDING 15-32-102 AND 15-32-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

INTRODUCTION

Nine communities in Montana are exceeding the state and federal ambient air quality standards for particulate (PM-10) and two communities are exceeding carbon monoxide standards. Smoke from residential wood burning is a significant contributor to the air quality problem in most of these communities. This bill would represent a significant step toward improving air quality, by providing a substantial financial incentive to convince homeowners to convert from older polluting wood stoves to state-of-the-art low emission pellet stoves.

SPECIFIC TESTIMONY

The current Montana law provides for a tax credit for the purchase and installation of any wood stove which has been certified as emitting particulate matter at a rate less than 6.0 grams per hour. This bill would limit the tax credit to only the very cleanest residential wood heating devices: pellet stoves which have a certified emission rate less than 2.5 grams per hour. An additional benefit is that pellet stoves also emit substantially less carbon monoxide and toxic air pollutants.

Since the federal new source performance standards prohibit the sale of wood and pellet stoves with emission rates greater than 7.5 grams per hour for noncatalytic devices and 4.1 grams per hour for catalytic devices, it seems unnecessary to provide a tax credit for the only type of stove that the public can legally purchase. Instead, the department supports the concept of limiting the credit to only the very cleanest devices.

Availability is not a problem since over fifteen qualifying models are currently on the market, including several models which are popular in Montana. Furthermore, this bill should stimulate the demand for wood pellets and provide a boost to a developing Montana pellet industry. It should also be noted that pellets are made from sawmill wastes, some of which are still being disposed of throughout Montana by landfilling, open burning or incineration in tepee burners.

The current Montana law provides a tax credit of ten percent (10%) of the first \$1,000.00 of the cost of purchasing and installing a low emission wood stove and five percent (5%) of the next \$3,000.00. This bill would double the credit to twenty percent (20%) of the first \$1,000.00 and ten percent (10%) of the next \$3,000.00. The doubling of the amount of credit will be offset by the fact that fewer stoves will qualify for the credit. Although the cost to the

state will remain relatively constant, the credit will be large enough to stimulate stove change out, while targeting the purchase of the very cleanest stove available.

This bill would also extend the applicability of the tax credit from December 31, 1992 to December 31, 1996. This extension is important since it would encompass the time period during which the Federal Clean Air Act requires communities to come into compliance with PM-10 and carbon monoxide standards. And finally, this bill would replace the outdated Oregon test method for certifying the emissions with the nationally recognized EPA method.

In summary, the department believes this bill will be a benefit to air quality and public health while at the same time boosting the Montana economy.

PARTICULATE EMISSIONS BY TYPE OF WOOD STOVE

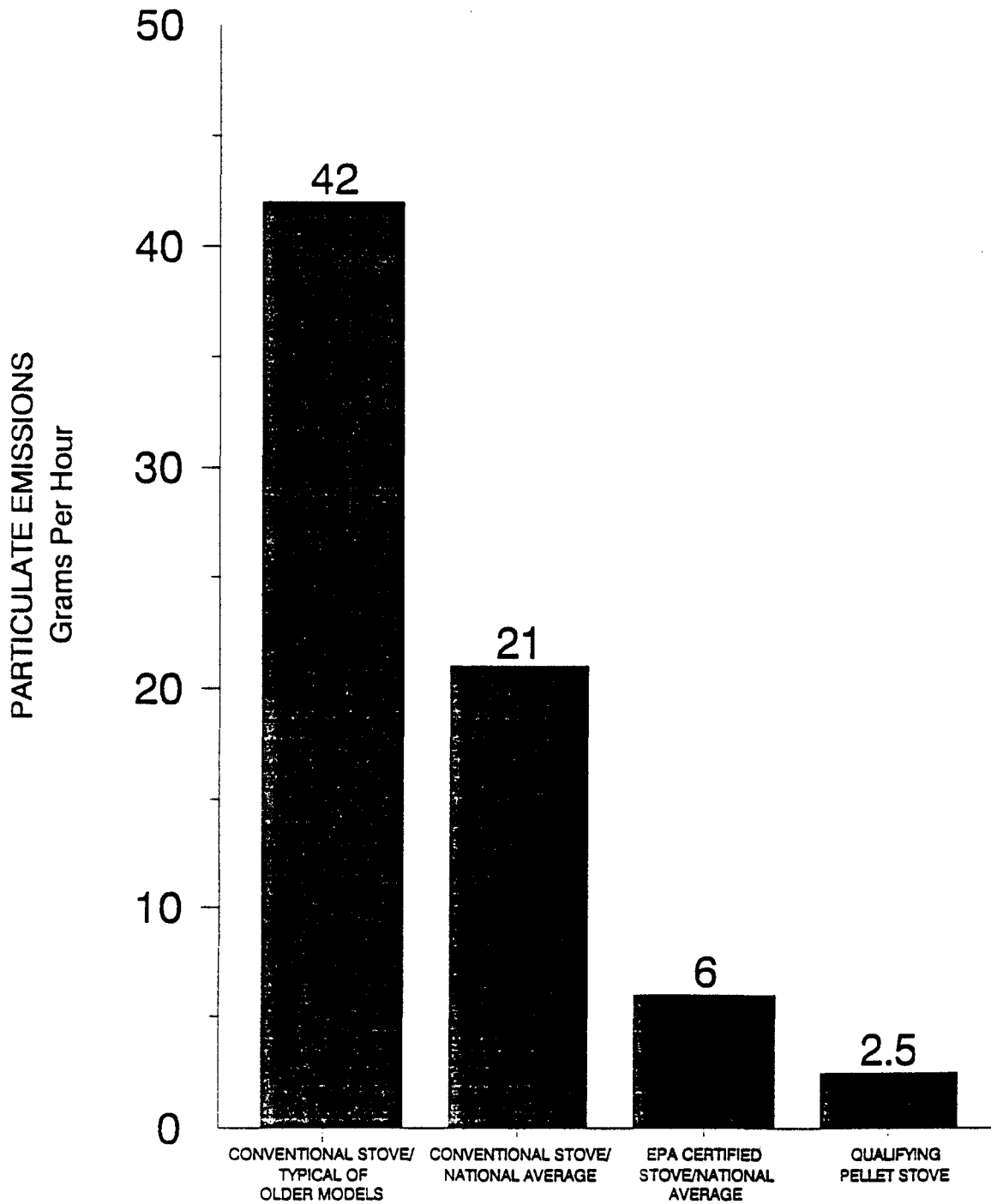




EXHIBIT 6 (406) 721-5700

DATE 1-31-91

HB 338

Testimony for the House Taxation Committee concerning House Bill 338.

Chairman, Members of the Committee:

My name is Jim Carlson. I am the Director of Environmental Health at the Missoula City-County Health Department.

The Department supports House Bill 338. The Missoula City-County Health Department worked very diligently in encouraging the Legislature to pass the original version of this bill three sessions ago. The existing legislation provides for a tax incentive for low emission woodstoves and was designed to encourage citizens of the State to purchase and install woodstoves which were considerably cleaner than many of the conventional stoves available on the market at that time. Two years ago the Environmental Protection Agency developed regulations and standards for the manufacturer and sale of all woodstoves sold within the United States. Because wood combustion devices sold in the United States must now meet very tight emission standards, the Montana Tax Credit Bill is no longer an encouragement for people to buy clean burning woodstoves. It is an encouragement for people to buy woodstoves which are more polluting than most other forms of household energy.

Because the Federal Government has allowed only clean burning stoves to be manufactured and sold, it is now appropriate to remove the incentive provided by current state law for stoves burning cordwood. However, pellet stoves have been shown through emission testing to have emission levels significantly lower than devices which burn cordwood. Pellet stoves utilize waste bark and sawdust from Montana's lumber mills, which would otherwise be burned in teepee burners and hog fuel boilers. Because the pellet stove industry represents a more efficient and lower emission alternative to cordwood stoves, we feel that the tax credit for low emission biomass combustion devices should be switched from woodstoves to pellet stoves as a method of lowering the emissions of pollutants in communities throughout Montana. This bill is also a method of encouraging more development of the pellet manufacturing industry in the State of Montana.

This bill deserves passage. It is a bill which will encourage the development of the pellet manufacturing industry in the State of Montana. It will likely result in larger revenues to the State General Fund, because it eliminates the tax credit given to stoves which burn cordwood.

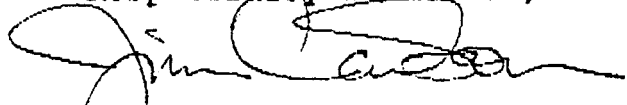
Ex. 6

1-31-91

HB 338

I appreciate the opportunity to provide you with this information.
If you have any questions or concerns about this bill, please don't
hesitate to call me at 523-4755.

Respectfully Submitted,



Jim Carlson, Director
Environmental Health

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. HB 334
 DATE 1/31/91 SPONSOR(S) Rep. Suys 9000
 PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPOSE
Rick Hartz	Beaverhead Co. Assessor	X	
Jim Hagenberth	Mont. Independence Ass. & Self	X	
John Sku Fen	Dept. of Livestock	X	
Carol Masher	Mt. Little Women	X	
J Jim Pitman	MSG A	X	
Suzanne Brooke	NLSGA MWSGA	X	
Marian Clark	MSG A	X	
Rep Dolezal		X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

TAXATION COMMITTEE BILL NO. HB 312
DATE 1/31/91 SPONSOR(S) Rep. Hoffman

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Larry Tashende	Cascade City	✓	
Denny Mooren	State Bar	✓	
DICK GASVODA	CASCADE COUNTY	✓	
Harry Mitchell	✓ ✓	✓	
Gordon Morris	MACo	✓	
Noell Anderson	Dept. of Commerce	—	
John Stephenson	self.		
Janda Atzinger	MACo		
John Witt	MACo Clatsop County	✓	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. HB 338
DATE 1/31/91 SPONSOR(S) Rep. Resm

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Robert Rasmussen	Montana Dept of Health & Env. S.	X	
Jim Jensen	Montana Dept of Health and Missoula County	X	
Jim Jensen	MEIC	X	
Suzantha Sanchez	MAPP	X	
Ava Prunski	MAPP	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.