

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON INCOME/SEVERANCE TAX

Call to Order: By BOB REAM, on April 12, 1991, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Dan Harrington, Chairman (D)
Rep. Bob Ream, Vice-Chairman (D)
Rep. Jim Elliott (D)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Marian Hanson (R)
Rep. Jim Madison (D)
Rep. Bea McCarthy (D)
Rep. Tom Nelson (R)
Rep. Bob Raney (D)

Members Excused: Rep. Barry Stang (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.

Subcommittee Discussion on SB 464

Motion: REP. M. HANSON RECOMMENDED THAT SB 464 BE CONCURRED IN.

Discussion:

REP. GILBERT opposed the motion. He stated two things they were doing with the bill: (1) the state is becoming a tax collecting agency for the tribes; and (2) the state is giving up all of the income it will receive. That money will be going to the tribes with no assurance that those dollars will be used in a manner that is beneficial. He was concerned with the RITT. Should an oil well accident occur and they don't have the RITT or General Fund sources, then the state will have to clean up the mess. If the tribes want to tax, they should tax; and if it's double taxation, the oil companies can adjust to it.

REP. RANEY asked Robert Turner, DOR, if the state could legally have state severance tax and the RITT on oil and gas produced on the reservation. Mr. Turner said he yes. Greg Petesch, LFA, said if the tribe challenges the tax, all indication points to

their winning. This bill, as introduced, will allow the collections to be received so that some government entity will get a benefit. It is up to the tribe as to what they want to do. SB 464 puts in place is an attempt to preempt legal challenges through state taxation. REP. M. HANSON said if an agreement can be reached with the tribes, then the issue is settled.

REP. GILBERT said he asked the question in full committee, if the reservation were collecting their own taxes and are they putting the RITT portion in the RITT fund. The answer was no. They were putting it in the General Fund; so the state has no deal with the reservations. All those taxes will go into the reservation's General Fund for their expenditures, and the state will clean up the mess out of its money. If the deal had guarantees that RITT portion would go in and clean up the mess, that is a different issue. REP. REAM asked if it would be part of a cooperative agreement. REP. GILBERT said hopefully, but he doubted it. REP. ELLIOTT said it could or it could not; but it's a chance the state must take to negotiate with the tribes. The odds of the state winning in judicio are slim. REP. RANEY said under existing law we can't do anything, and asked what would be wrong with taking the chance that the state could reach an agreement with the tribes to contribute to the RITT. The tribe won't give the state the severance taxes, but they may give us RITT. REP. GILBERT asked Mike Stephen, Montana Oil, Gas, and Coal Company, if the state was collecting severance taxes on the Blackfoot or Fort Peck Reservations. Mr. Stephen said severance taxes are being collected from non-Indian that reside within the boundaries of the reservation. The Indians cannot be taxed.

REP. REAM said Sections 4, 5, and 6 have to do with the RITT. It doesn't look specific on how the tribes would use the RITT. Greg Petesch, LFA, said it isn't specific because SB 464 deals with the collection of the tax not the usage of the tax. If you mandate that the tribes use the tax in a certain way, there is no incentive for them to enter into the agreement. SB 464 applies to both severance and the RITT.

Motion: REP. REAM moved the amendments to SB 464. Motion carried unanimously.

Discussion:

REP. RANEY said that the oil and gas counties had some concerns on the bill and he wanted to know what they were. Mike Stephen said they were concerned that SB 464 sets a precedent in that the state will be collecting the tax. They do recognize the double taxation; however, the tribes have fought to be sovereign and they should operate as sovereign entities. Therefore, they should collect their own tax. We still tax people and provide services within counties and non-Indians still pay property taxes. On the other hand, tribes do not provide for the services on the reservation. A tax should provide some type of service. We have a tax that would be normally going to the state. Why are

we giving it away to an entity that does not plan to provide any services for it? REP. RANEY asked if by a cooperative agreement, the tribes would allow the state to keep some of the money other than administration costs. Greg Petesch said that was unlikely because the bill requires the tribes enact a tax identical to a state tax. It allows the DOR to conduct 5% for administrative expenses which is now necessary for refunds. The rest would go to the tribe. REP. RANEY said the state will then become the tribes tax collectors. REP. ELLIOTT said he understood that the state would take a percentage for collecting the tax. REP. GILBERT said 5% is no big percentage and we have no control over the amount we collect.

REP. ELLIOTT said the only other alternative is to adjudicate. REP. RANEY said why would there even be adjudication if the state is not collecting taxes and the tribes decide to collect their own. REP. ELLIOTT said adjudication would occur in other areas. Presently, the state charges and collects the taxes on tribal members for gasoline and other fuels. Greg Petesch said currently the state is collecting tax on the reservations from non-Indian producers. If the tribes enacts a tax, it would apply within the exterior boundaries of the reservation. The state is collecting and getting the tax money now; and the tribes can challenge that and will win. REP. GILBERT said the state cannot collect taxes on oil owned by the Tribes. We are collecting on the fee land that is held within the boundaries of the reservation by non-Indians. The tribes are now saying that they want to collect taxes on all of it and keep the money. Here is where we get back to services. What services are the tribes going to provide to non-Indians? The state will be providing the services and will not be receiving any money.

Vote: Recommendation that SB 464 Be Concurred In carried 6 to 3 with REPS. FOSTER, GILBERT, and RANEY voting no and REP. STANG absent.

Subcommittee Discussion on SB 411

SEN. FRITZ, Sponsor of SB 411, stated the bill alters the permissible use of the bed tax by the Historical Society to encompass the Capitol tour's program. It was the recommendation of the Income/Severance Subcommittee to Table the bill. He asked that they reconsider their action, as the Capitol tourist business will be over by July 1.

Questions/Discussion by Committee:

REP. ELLIOTT asked if there was an alternative source of funding for the Capitol tours. SEN. FRITZ said no, not in the Historical Society's view. If the bill is Tabled, the Historical Society will be out of the tourist business. REP. M. HANSON asked if he had considered amending House Bill 2. SEN. FRITZ made the suggestions to pass the bill with a sunset, which will enable the Historical Society to conduct tours for two years.

REP. REAM asked what the source of funding was before they started using this source. SEN. FRITZ said it was in the Historical Society's budget. Bryan Cockhill, Montana Historical Society, said when they had the big cuts in 1986 and 1987, it was General Fund at that time. It had been passed on to the Society by the Governor's Office. It was in 1987 that the bed tax was passed and was urged by the Governor's Officer to conduct the tours out of the bed tax money. REP. MCCARTHY said it was the feeling of the committee that it was a misuse of the money. The committee felt the Society should find a different source for the money, not that they didn't want the tours. Mr. Cockhill state that the Society new they were going to have problems with their audits. They went to the Governor's Budget Office and asked them to consider a modification that would allow them General Fund money. REP. ELLIOTT said it seems that the Governor is interested in having the tours continue and suggested that the Governor's Office fund them.

REP. REAM said the tours uses up 1/2 of 1% that is allocated from the bed tax. Mr. Cockhill said there has been several discussion on what the revenue estimate will be. The Society's estimate is \$52,000. It is likely they will not use all the funds so they estimate the use of \$21,000. REP. REAM asked if there was any discussion on increasing the 1% to 1.5%. SEN. FRITZ said there had been a discussion, but the travel industry was against the bill because of the threat of raising the bed tax. Mr. Cockhill said the suggestion that the Governor's Office funds it was fine, but the present process works very well.

SEN. FRITZ said if the committee decided not to reconsider its action and the proposed amendment to House Bill 2 failed, then the Governor's feet will be held to the fire for the money for the tours.

REP. REAM said there is enough to do with the funding available on the installation or maintenance of roadside historical signs. Mr. Cockhill said they were prevented from putting in the traditional roadside sign because of the acquisition of right of way by the Highway Department. We are putting up interpretive signs on historical buildings which are legal.

Motion/Vote: Recommendation to RECONSIDER THE TABLE MOTION on SB 464 failed unanimously.

Subcommittee Discussion on SB 468

Motion: REP. ELLIOTT RECOMMENDED THAT SB 468 BE CONCURRED IN.

Discussion:

Greg Petesch, LFA, said SB 468 clarifies how to define gross value for purposes of computing the various severance taxes.

Vote: Recommendation that SB 468 Be Concurred In carried unanimously.

Subcommittee Discussion on SB 461

Motion: REP. ELLIOTT RECOMMENDED THAT SB 461 BE CONCURRED IN.

Discussion:

REP. REAM said there were two amendments from the DOR. EXHIBIT 1 Bob Turner, DOR, said the amendment on the appropriation was incorrect because, in the Senate, the effective date was changed to Jan 1, 1993. Greg Petesch, LFA, in #4, following \$215,023, strike "for fiscal year 1992 and \$173,748". REP. REAM asked if this would bring in \$37 million a year. REP. GILBERT said it would be a one time money.

Motion: REP. ELLIOTT moved to amend SB 461 by moving the date back on Page 6, Line 21.

Discussion:

REP. RANEY said there was sensibility in leaving it as it is. Instead of giving the state \$37 million to squander on one time projects, this would give us \$18 million in each biennium. The majority of the money will wind up funding projects that should be funded by on going revenue. REP. REAM said he would support the amendment because all of the dog and cat bills are now in the Senate, and they are one time expenditures totaling \$10 million. All of the one time expenditure could be funded under this bill and relieve the General Fund of the \$10 million.

REP. MCCARTHY suggested that the bill and amendments be taken to the full committee for discussion. REP. REAM asked the committee to deal with all the amendments except #2 and #4. REP. RANEY said if all the amendments are dealt with except those two, they will be leaving a bill that is not in proper form heading for the full committee. All of the amendments should be left on. If the committee doesn't like them then the full committee can change them.

Vote: Motion on REP. ELLIOTT amendment failed 3 to 7 with REPS. ELLIOTT, MADISON, and REAM voting aye.

Motion/Vote: Motion on the amendments in their entirety and striking "for fiscal year 1992 and \$173,748" carried 8 to 2 with REPS. ELLIOTT and REAM voting no.

Motion/Vote: REP. REAM RECOMMENDED THE SUBSTITUTE MOTION THAT SB 461 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 9:00 a.m.

Bob Ream

BOB REAM, Chair

Lois O'Connor

LOIS O'CONNOR, Secretary

BR/lo

Amendments to Senate Bill No. 461
Third Reading Copy

Requested by DOR and Technical
For the Committee on Taxation

Prepared by Lee Heiman
April 10, 1991

Technical:

1. Page 1, line 19.
Insert: "additional amount"
Insert: "penalty"

2. Page 6, line 23.
Strike: "1991"
Insert: "1992"

Department of Revenue Proposals:
Appropriation:

3. Title, line 11.
Following: "QUARTER;"
Insert: "TO PROVIDE AN APPROPRIATION;"

4. Page 6.
Following: line 19
Insert: "NEW SECTION. Section 3. Appropriation. There is appropriated from the general fund to the department of revenue \$215,023 [for fiscal year 1992 and \$173,748] for fiscal year 1993 to implement the provisions of [this act]."
Renummer: subsequent section

Clarification of penalty applicability:

5. Page 1, line 24.
Following: "15-30-202,"
Strike: "or"

6. Page 1, line 25.
Following: "section,"
Insert: "or through a combination of employer withholding and estimated tax,"

7. Page 5, line 15.
Following: "tax"
Insert: ", withholding tax, or a combination of both"