

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Mike Halligan, Chairman, on January 15, 1991, at 8:00 a.m.

ROLL CALL

Members Present:

Mike Halligan, Chairman (D)
Dorothy Eck, Vice Chairman (D)
Robert Brown (R)
Steve Doherty (D)
Delwyn Gage (R)
John Harp (R)
Francis Koehnke (D)
Gene Thayer (R)
Thomas Towe (D)
Van Valkenburg (D)
Bill Yellowtail (D)

Staff Present: Jeff Martin (Legislative Council).

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

Announcements/Discussion: None

HEARING ON SENATE BILL 26

Presentation and Opening Statement by Sponsor:

Senator Manning, District 18, sponsor of the bill, said the bill is being introduced at the request of the Coal Tax Oversight Subcommittee. It revises the authority of the Board of Investments to invest the Permanent Coal Tax Trust Fund, eliminates the authority of the Board of Investments to guarantee loans, eliminates the Economic Development Guaranty Fund and the In-state Investment Fund, allows the Board of Investments to invest up to 25% of the Permanent Coal Tax Trust Fund in the Montana economy, eliminates the Loan Loss Reserve Fund, authorizes Montana capital companies to issue and sell debentures to the Permanent Coal Tax Trust Fund, and allows an additional service fee discount to financial institutions on certain small business loan participations. The bill also repeals sections 17-5-1519, 17-6-306, and 17-6-315, MCA.

Proponents' Testimony:

Dave Lewis, Executive Director, Board of Investments, presented his testimony in support of the bill (Exhibit #1). He noted the bill revises the statutes to conform with the rules under which the Coal Tax Oversight Subcommittee operates.

Opponents' Testimony:

No one spoke in opposition to the bill.

Questions From Committee Members:

Senator Towe asked Mr. Lewis to explain the repealers.

Mr. Lewis said the sections being repealed (17-5-1519, 17-5-1510, and 17-5-1520, MCA) all relate to loan guarantees. Section 17-6-315, MCA deals with the loan loss guarantee fund. There is approximately \$460,000 in the fund at this time. This is a separate guarantee fund for the coal tax loan fund. This is the only fund with a loan loss guarantee and there have been no losses to date. If there are losses in other funds, they are simply written off under current income. The \$460,000 would be deposited in the general fund as the loan loss guarantee fund has been built over the years from income that has been withheld from the general fund over the years.

Senator Towe said he feels a very significant change is being made by no longer requiring a 25% investment but "allowing" an investment "up to 25%".

Mr. Lewis said the Board of Investments has been concerned over a technical violation of the statutes because there is \$68 million in the in-state investment fund (that amount being equal to the 25%). The demand for loans has totalled \$44 million. The remainder of the fund (\$24 million) is invested in the short term investment pool. That \$24 million is not invested in Montana, as required, because there has been no demand for the additional funds nor any loans offered to the Board.

Senator Towe expressed concern that the \$44 million would plummet if the requirement to invest it in Montana were repealed. He felt the Board should be required to invest the money in Montana even if it means investing in home loans or Montana bank certificates of deposit. He felt it is up to the Board to develop sources to invest the money.

Mr. Lewis said there just is not the demand from banks for the money.

Senator Eck asked if micro-business investments could tap the same 25% in-state investment fund.

Mr. Lewis replied there is a coordinating clause in the micro-business bill. If SB 26 were to pass, they would simply take their money from the trust and it would be applied to the 25% of the trust that has been set aside for in-state investment.

Senator Eck asked if an review analysis of the past and current in-state loans which covers problems such as reasons loans are not granted could be provided to the Committee.

Mr. Lewis indicated he would provide that information.

Senator Gage asked if the bill should have a July 1 effective date.

Mr. Lewis said the original draft had that date and from an accounting standpoint it is very necessary. He asked that July 1 be amended into the bill.

Senator Doherty asked why the Supreme Court found the guarantee program unconstitutional.

Mr. Lewis said the issue was guaranteeing bonds and he offered to bring some information on the decision to the Committee.

Senator Towe said one of the repealers which takes out the in-state investment fund does refer to the 15% of the annual income earnings. He said there is reference to the 15% in Section 6. In the 1989 session the 15% from the permanent trust was taken and used for the general fund. He asked if the 15% was preserved for in-state investment or if it was taken as well.

Mr. Lewis said that 15% was taken as well. The in-state investment fund simply gets whatever proportion for in-state investment that the legislature sets for the entire fund.

Senator Van Valkenburg said the fiscal note indicates approximately \$550,000 of new revenue will be generated for the general fund during the biennium. He asked Mr. Lewis to explain how that will occur.

Mr. Lewis explained that, to date, a portion of the application fees and interest on the loans has been diverted to the loan loss reserve. That is where the current balance of \$425,000 has come from. The figure is derived by assuming the same rate of growth for next year as this year.

Senator Van Valkenburg asked if there would be reduced income as a result of an increase in the subsidized loan rate.

Mr. Lewis said that under the Board's rules, the reduced rate has been applied to the entire loan. It would not change what is currently being done. It is a matter of the legislature approving current procedure.

Senator Van Valkenburg said the fiscal note indicates that current law states that the in-state investment fund is 25% of the income to the coal trust as opposed to 25% of the entire trust. This bill has the effect of changing from 25% of the income to 25% of the total trust. As a result, a great deal more money will be made available for in-state investment at the discretion of the Board of Investments.

Mr. Lewis indicated that is correct. The Board feels it is appropriate to consider the entire trust amount. From a diversification standpoint and for safety of principal and maintenance of income the 25% should not be exceeded.

Senator Eck said the problem with new business incentives is outreach, publicity, and promotion of the funds. She asked if that is being adequately pursued.

Forrest Boles, Montana Chamber of Commerce, said he was not sure of the extent of the publicity but knew that all seven major local development corporations are aware of the fund. He said there is a concern about some small local capital companies having to reach a certain level of investment before they can participate, however, that will probably be addressed in some other legislation.

Senator Towe commented on the enormous amount of bookwork entailed in obtaining a loan from the in-state investment fund. He said there are plenty of loans out there and a good secondary market if the system can be modified to make the application and granting process operate more efficiently. He noted the retirement funds were invested somewhere between 50% - 70% in home loans before the Board of Investments was created. Now the money is invested primarily out of state. Along with the job credit, a sufficiently low interest rate should attract many more loans applications.

Mr. Lewis said the average yield on the coal tax loans is about 8.7%. The rest of the coal trust portfolio runs about 10%. The Board of Investments has established a prudent level of incentive without exceeding the constitutional issue of maintaining the flow of revenue. He felt this is an important public policy issue and the legislature is the proper body to deal with it. He further noted there are \$120 million in residential loans in the Board's portfolio. That is a major

secondary market for the state, but the state market is only one of many secondary residential loan markets. He further pointed out the outreach effort is very comprehensive and all lenders in the state are well informed of the Board of Investments' loan market capabilities.

Closing by Sponsor:

Senator Manning said this is a good bill which will create incentives for business expansion in the state. There is a great need to develop new employment opportunities and this bill is one vehicle to aid in that development.

HEARING ON SENATE BILL 41

Presentation and Opening Statement by Sponsor:

Senator Brown, District 2, said the bill is introduced at the request of the Department of Revenue. The bill transfers the collection and assessment on passenger tramways from the Department of Revenue to the Department of Commerce. There are fifteen tramways in the state requiring a yearly inspection which is the responsibility of the Department of Commerce. The assessment is 1/4 of .01% of the gross receipts of all passenger tramways or a minimum of \$100 for a total of approximately \$28,000 for 1990. The whole amount goes to the Department of Commerce to fund the inspections. Currently, the Department of Revenue collects the fee and then transfers it to Commerce. Under the provisions of the bill, the fee collection and inspections would all be a function of the Commerce Department.

Proponents' Testimony:

Jeff Miller, Administrator, Income and Miscellaneous Tax Division, Department of Revenue, said Senator Brown had correctly summarized the bill. The bill is motivated by taxpayer convenience. All other aspects of tramway regulation are handled by Commerce. He said both agencies and the taxpayers would be better served by streamlining the process in this manner.

Jim Kimball, Administrator, Public Safety Division, Department of Commerce, expressed support for the bill. The Tramway Safety Board oversees this operation and the supporting budget. He felt this change allows for the most efficient operation of the program.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Gage asked why the Act applies to taxable year beginning July 1, 1991, and then make the Act effective on passage and approval.

Jeff Miller, said DOR is responsible for collecting the fee for the fiscal year now in effect. This gives time to notify the users of the changes and have the process in place at the beginning of the next fiscal year. The reporting period is six months into the fiscal year.

Senator Towe asked if the bureaucratic savings justify transferring the collection from the DOR whose job it is to collect and disperse taxes.

Jeff Miller replied that Commerce presently has numerous occupational licensing obligations and do collect fees of this nature on a regular basis. It is a very small population of taxpayers and, as practical consideration, makes more sense to transfer the duties from DOR.

Closing by Sponsor:

Senator Brown closed.

EXECUTIVE ACTION ON SENATE BILL 41Discussion:

Jeff Martin, Committee Researcher, pointed out the language on lines 19 and 20, "July 1 to July", should be amended to reflect July 1 through June 30.

Amendments, Discussion, and Votes:

Senator Towe moved to amend the bill on line 20 by striking "to July 1" and inserting "through June 30".

The motion CARRIED unanimously.

Recommendation and Vote:

Senator Brown moved Senate Bill 41 DO PASS AS AMENDED. The motion CARRIED unanimously.

Further Discussion on Senate Bill 26:

Senator Towe expressed concern about the in-state investment program. He felt the bill should include a provision to require a review and report to the legislature showing how well businesses are informed of the program and how they are utilizing it. He felt that could possibly be contained in a statement of intent. He again stated it is necessary to make the fund attractive enough to encourage investment by dropping the interest rate or other establishing further incentives. He said he would work on a draft statement of intent.

Senator Yellowtail asked Jeff Martin to ask the auditor's office if they had comments on the bill and investment procedures.

Senator Halligan asked Mr. Martin to draft amendments for effective and applicability dates.

HEARING ON SENATE BILL 61Presentation and Opening Statement by Sponsor:

Senator Crippen, District 45, sponsor of the bill, said the bill was brought to the Revenue Oversight Committee and is introduced at the request of the Department of Revenue. The bill provides that a Montana net operating loss for a trader business can be calculated only from items related to income taxable in Montana.

Senator Crippen cited, as an example, a person who, in 1989, lived in Idaho. While in Idaho he received a \$200,000 gain from the sale of securities. In early 1990, the individual moves to Montana and pays the federal income tax on the \$200,000, but pays federal income tax on the \$200,000 gained on the securities while he was a resident of Idaho. Under Montana law, he would have a loss when he pays his 1990 Montana income tax because his federal tax deduction exceeds his Montana income. Under current law, then, a taxpayer can create a Montana net operating loss to be carried forward because of the large federal tax paid on the income that he received while he was a resident of Idaho. Under Montana law that loss can be carried forward as an offset against future Montana income. In essence, the loss he incurred while a resident of Idaho is inuring to his benefit as a resident of Montana.

SB 61 would provide that only federal taxes attributable to income taxed by Montana would be allowed to create a Montana net operating loss. There would be no effect on full year resident Montana taxpayers. The bill has a retroactive applicability date to the beginning of the tax year to which the bill applies, which is required by the Legislative Council.

Proponents' Testimony:

Jeff Miller, Administrator of the Income and Miscellaneous Tax Division, Department of Revenue, said, by rule, DOR has been administering the tax laws this way for many years. DOR was recently challenged on the basis that the rule exceeded the statute and, upon review by the DOR counsel, DOR agreed and settled in favor of the taxpayer. As a result, DOR is requesting specific language mandating the Montana net operating loss must only be calculated based on activities and income subject to Montana tax. Mr. Miller said DOR does not anticipate a large revenue impact, rather they are interested in adjusting a gross inequity.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Towe asked Mr. Miller if this applied only to individual income tax and not corporate license tax.

Mr. Miller indicated the bill applies only to individual income tax.

Senator Towe asked why it would not apply to corporate license tax.

Mr. Miller replied the full amount of a business loss is considered to be deductible. DOR does not get into separate accounting issues. Corporation loss is a separate consideration.

Senator Thayer asked if the individual who challenged Montana law had an opportunity to file an amended return in his home state.

Mr. Miller said he had done that successfully. He further noted that solution would vary from state to state.

Closing by Sponsor:

Senator Crippen closed.

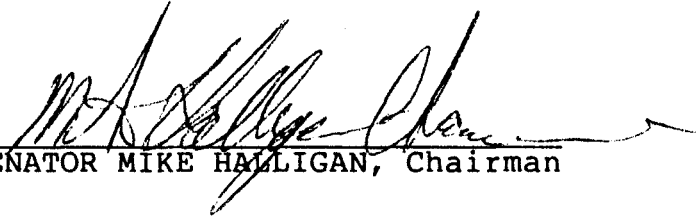
EXECUTIVE ACTION ON SENATE BILL 61

Recommendation and Vote:

Senator Towe moved SB 61 DO PASS. The motion CARRIED
unanimously.

ADJOURNMENT

Adjournment At: 9:20 a.m.



SENATOR MIKE HALLIGAN, Chairman



JILL D. ROHYANS, Secretary

MH/jdr

DATE 1/15/91

COMMITTEE ON Legation

BILL NO. SB 26

61

VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 1/15/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. HALLIGAN	X		
SEN. ECK	X		
SEN. BROWN	X		
SEN. DOHERTY	X		
SEN. GAGE	X		
SEN. HARP	X		
SEN. KOEHNKE	X		
SEN. THAYER	X		
SEN. TOWE	X		
SEN. VAN VALKENBURG	X		
SEN. YELLOWTAIL	X		

Each day attach to minutes.

DATE 1/15/91

BILL NO. SB 36

DEPARTMENT OF COMMERCE
BOARD OF INVESTMENTS

STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 442-1970

TELEFAX (406) 449-6579

HELENA, MONTANA 59620



SENATE BILL 26

Background:

Senate Bill 26 originated from discussions the Board of Investments had with the Legislative Audit Staff during the annual audit in the summer of 1989. The audit staff pointed out the need to revise the coal tax loan statutes to reflect:

- 1) the Supreme Court decision that found the Board's loan guarantee program unconstitutional,
- 2) the need to establish legislative authority to apply the job creation interest rate credit to all coal tax loans,
- 3) and the need to establish in statute a maximum size for coal tax loans.

As a result of these discussions, the Board approached the Coal Tax Oversight Subcommittee and initiated discussions concerning management of the loan program. These discussions with the subcommittee led to Senate Bill 26.

Discussion of Sections

Sections 1 through 4

These sections are amended only to reflect the elimination of the guarantee program found unconstitutional by the Supreme Court and to coordinate statutory references.

Sections 5 and 6

These sections eliminate the old In-State Investment Fund and recognize that the Board should endeavor to invest up to 25 percent of the total Permanent Trust Fund in the Montana economy. The effect of this change is to statutorily recognize what the Board established by policy. The statutory change will allow the Board to apply the reduced rate of interest to a larger number of loans. The current In-State Investment Fund totalled \$68 million as of June 30, 1991. This bill would have increased that to \$112 million as of June 30. The Board had \$44.5 million of commercial loans outstanding as of December 30, 1990. That amounted to \$37 million in the In-State Funds and \$8.5 in the rest of the Coal Trust Fund.

SENATE TAXATION

EXHIBIT NO. 1

DATE 1/15/01

BILL NO. 56

Senate Bill 26

page 2

Sections 7 and 8

This eliminates the guarantee provisions found unconstitutional and revises the language of the sections to reflect the change in terminology proposed in the previous sections.

Section 9

This establishes the limit for a single loan at one percent of the total trust. This would limit a loan to \$4.6 million at the current time. Larger loans could be made if they were booked in other funds, but the reduced interest rate could only be applied to the amount booked in the Coal Trust Fund.

Section 10 through 16

These sections revise references to the In-State Fund in related statutes.

Section 17

This section provides statutory authority for the job credit interest rate reduction the Board has established. The intent of this program is to create jobs in Montana by allowing a .05 percent interest rate reduction for each qualifying new job created in the state. The maximum interest rate reduction is 2.50 percent.

Section 18

This is a new section suggested by the Coal Tax Oversight Subcommittee and designed to provide an incentive to lenders to originate small loans for sale to the Board. This provides the lender with an additional .5 percent service fee for loans smaller than .05 percent of the trust (currently about \$225,00). The Board is not normally offered loans of that size as most lenders would prefer to keep those in their own portfolio.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 15, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration (first reading copy -- white), respectfully report that Senate Bill No. 41 be amended and as so amended do pass:

1. Page 1, line 20.
Strike: "to July 1"
Insert: "through June 30"

Signed: _____

Mike Halligan
Mike Halligan, Chairman

Jan 15-91
Ad. Coord.

SP 1/15 11:35
Sec. of Senate

81117SC.S++


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SENATE STANDING COMMITTEE REPORT


Page 1 of 1
January 15, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 61 (first reading copy -- white), respectfully report that Senate Bill No. 61 do pass.

Signed: 

Mike Halligan, Chairman

 1-15-91
Cmd. Coord.

SB 115 11:35
Sec. of Senate