

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Mike Halligan, Chairman, on January 22, 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)

Members Excused: None

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 96

Presentation and Opening Statement by Sponsor:

Senator Beck, District 24, sponsor, said the bill designates a portion of the lottery revenue for economic development. The money would be distributed back to the county where the money was raised. He referred the members to the fiscal note.

Proponents' Testimony:

Ray Harbin, Lake County Commissioner, referred the members to Resolution 90-6, page 37, Montana Association of Counties Policy Statements booklet. The resolution asks that a portion of lottery revenue be distributed to counties to be used for economic development. The bill would take 10% of the lottery proceeds in any given county for the county to use as seed money for grants or matches for economic development money and improvement projects. He encouraged Committee support of the bill.

Gordon Morris, Executive Director, Montana Association of Counties, gave the Committee a sheet of mill value comparisons based on county wide taxable values (Exhibit #2). He noted the trend across the state toward an overall erosion of property taxes. Counties, cities and towns across the state are approximately 75% reliant on property taxes. Mr. Morris referred to the economic development statement in the MACO policy booklet (Exhibit #1) on pages 26 and 27. He noted special property tax levies to support economic development corporations, authorized by the legislature, have failed in both Helena and Missoula. Regional economic development activities have been very successful in Hill, Blaine, Liberty Counties - the Bearpaw Development Corporation. Another regional example is the Headwaters Development Corporation. Assistance needs to be provided in order to create other economic development corporations.

The fiscal impact of the bill is \$619,000 the first year and \$700,000 the second year. He estimated 10% of the lottery revenue in Lewis and Clark County would probably pay the majority of the costs associated with the creation of a county economic development corporation. He noted this would probably be true in Missoula. It could be used to support development of the port authority in Yellowstone County.

Opponents' Testimony:

Madalyn Quinlan, Office of Public Instruction, said the lottery, as approved in 1986, estimated raising \$2.9 million during a normal operating year. This money was to be distributed for public schools retirement equalization. In 1989 the legislature changed the distribution so that the revenue would go directly to the foundation program. The money is still used for retirement equalization. She pointed out economic development boards have a source of revenue in the one mill levy available to them.

Eric Feaver, President, Montana Education Association, said he is not opposed to the purpose of the bill, but rather he is opposed to the funding source. He noted there are other bills dealing with juvenile detention and veterans' cemeteries that want lottery money for funding. He said there has been a

misunderstanding as to the retirement provision of the lottery revenue. The money went to equalizing property taxes for purposes of retirement. House Bill 28 partly corrected the misunderstanding by moving the money into the foundation program.

He said the MEA does not mind if the lottery money is used for another purpose, however, he emphasized the revenue must be replaced.

Questions From Committee Members:

Senator Harp asked Mr. Morris to clarify the net and gross proceeds on coal that reduced the valuations.

Mr. Morris, referring to Exhibit #2, said the FY 1990 taxable value less the FY 1990 value equaled an approximate \$330,000 per mill loss by virtue of the changes in HB 28 with regard to the changes in taxation of oil, gas and coal.

Senator Eck if the counties have considered using the one mill levy available to them.

Mr. Morris noted Lewis and Clark County has tried twice and failed both times. Every one mill levy that has been proposed by the counties in Montana has failed.

Senator Van Valkenburg said a significant drop in the taxable value is the reduction of the maximum rate of the personal property tax.

Mr. Morris responded said that is correct. The drop in taxable value due to the passage of HB 20 of the special session was approximately 6% of the FY 1990 total. That compares to approximately 25% - 30% of the other components.

Senator Van Valkenburg pointed out that there was \$20 million of statutorily appropriated general fund money to local governments to compensate for that reduction in taxable value.

Senator Gage asked if there is a similar print out of county budgets for the same time period as Exhibit #2.

Mr. Morris said it would be made available to the Committee as soon as it was back from the printers.

Closing by Sponsor:

Senator Beck closed by saying the people voted in the lottery, but not necessarily where the revenue would be used. That was decided on the floor of the Senate and it was dedicated to the school teachers' retirement. The money would have to be made up if it is removed from the foundation program. The

counties need money for economic development. He suggested the bill could be held as there have been other lottery bills introduced and they should all be reviewed together.

Senator Brown made a clarifying comment stating the lottery money was earmarked for property tax relief. The way that was accomplished was through the funding mechanism for teachers' retirement which has been a chronic source of embarrassment for teachers for a long time. People think the retirement system is getting all the revenue when it was originally understood that the money would be used for property tax relief. The relatively small amount of money generated would not make a significant impact on property taxes. Now it goes directly into the general fund and is no longer associated with property tax relief or teachers' retirement.

Senator Beck said he and the public was not aware of that and if the money is going into the general fund, that should be clarified for the public.

HEARING ON SENATE BILL 122

Presentation and Opening Statement by Sponsor:

Senator Weeding, District 14, sponsor, provides for a ten year extension of the Highway Reconstruction Trust program. The HRT is an accelerated highway reconstruction program which was passed in 1983 and is due to expire July 1, 1993. He noted it is necessary to extend the program during this session rather than the 1993 session to provide the continuity for planners who develop the program. Highway construction involves long detailed planning and a very large investment of money, therefore, the extension needs to be in place long before the expiration date. Contractors also need to have some assurance as to whether this substantial program will be in place during the next ten years as their equipment purchases are predicated on long term planning and anticipation of contracts over a span of several years. A new federal program, the Highway of National Significance designation, will likely drastically reduce the federal highway funds coming into Montana. This cut has been protested by Montana, but no decision has been made to date.

The bill basically extends the Highway Reconstruction Trust with the exception of the new Section 4. That section proposes to take back federal royalties that were originally part of the HRT, but in the 1986 special session were taken from the HRT and put in the foundation program. The new Section 4 provides for 37.5% to go the HRT and 62.5% go to the foundation program. This is the same division that exists prior to the 1986 special session.

Proponents' Testimony:

Ken Dunham, Manager, Montana Contractors Association, said the interstate development drained a lot of funds away from state highways and the establishment of the HRT program in 1983 was a far-sighted commitment to the maintenance and development of the Montana highway system. Montana roads have improved substantially in the past ten years and the Contractors Association does not want to see that slip away over the next ten years. Any change in the federal highway program impacts the state greatly Mr. Dunham said. It becomes imperative to put a mechanism in place during this session to ensure continuation of the Montana highway maintenance and construction long term programs.

Larry Tobiason, AAA Montana, said if federal highway funds are lost Montana could stand to lose \$30 million. Rising fuel costs and the recent hike in the federal gas tax makes the possibility of Montana raising gas taxes for highway construction quite unlikely. He urged adoption of the bill.

Janelle Fallon, President, Montana Highway Users Federation, gave the committee members a pamphlet from the MHUF explaining their purposes, goals and philosophy on highway financing (Exhibit #3). She expressed support for the bill on behalf of the MHUF.

James Tutwiler, Montana Chamber of Commerce, said federal monies have never been the total answer for development of Montana highways. He urged the Committee to adopt the bill and support the Montana highway and road infrastructure.

Opponents' Testimony:

Madalyn Quinlan, Office of Public Instruction, stressed OPI is not opposed to highway funding. She reminded the Committee that 100% of U.S. mineral royalties currently goes to the public school equalization account. The bill diverts \$9 million per year from the equalization account to the HRT. She stressed revenue replacement will be needed for the equalization account which would mean a \$9 million general fund impact. She said it is important to avoid greater and greater reliance on property taxes. Other funding sources must be developed and sources already in place must be protected.

Eric Feaver, President, Montana Education Association, said he is a highway user of long standing. He is very grateful for the vastly improved condition of Montana's roads and highways over the past twenty years. However, he noted, we are dealing with a finite revenue pie. There are bills in this session which pit the schools versus highways, schools versus juvenile detention, and schools versus economic development. Montana schools are decimated because there is just not enough revenue

for what we want to do. This bill represents an \$18 million loss over the biennium in earmarked revenue to public schools. That equals 2% of the schedules of the foundation program over the next biennium. He said this is a major hit on public schools and, if the bill passes, the revenue must be replaced:

Questions From Committee Members:

Senator Eck asked how much the gas tax would have to be raised generate \$9 million.

Bill Salsbury, Department of Highways, said every one cent increase raises \$5 million.

Senator Van Valkenburg asked if the administration supports this bill.

Senator Weeding replied they don't oppose the bill, however, it does not appear in the administration budget.

Senator Towe said 12% of the coal tax goes into the HRT. That provision terminates July 1, 1993. He understood that was continued in Section 2 (a) until 2003. In 15-35-108 it is not continued. He asked if that section would also have to be changed to 2003.

Senator Weeding said it was his intent to extend the HRT to 2003 and if it needed to be changed in 15-35-108 he hoped the Committee would see fit to do so.

Closing by Sponsor:

Senator Weeding closed by pointing to the success of the HRT to this point. The Governor's office indicated they would address this issue next session and had no objection to it be introduced in this session. He said the conflict with the school funding concerns him also. The bill will be considered along with a number of other funding bills and he felt it would take its chances in the mix. Highways have traditionally been funded with earmarked funds and the foundation program has typically been balanced out at the end of the session by the general fund and other sources. There are many measures being considered as funding vehicles for the foundation program this session. He said the proper way to fund highways is to return to the traditional funding through the royalty fund.

EXECUTIVE ACTION ON SENATE BILL 96

Recommendation and Vote:

Senator Towe moved SB 96 be TABLED. The motion CARRIED unanimously with Senator Gage absent.

EXECUTIVE ACTION ON SENATE BILL 70

Amendments, Discussion, and Votes:

Senator Towe moved to adopt the amendments as prepared by the Committee Researcher, Jeff Martin (Exhibit #4). He explained amendments #1 - #4 reinsert language that was stricken. The significant amendment is #5 which inserts the term "willfully, as the term is used in section 6672 of the Internal Revenue Code".

Senator Halligan asked if we were reinstating the 100% penalty code.

Mr. Martin said that is not the case as a specific penalty would have to be established for not paying the withholding tax. The primary reason for inserting the "willfully" language is to be able to rely on federal case law in pressing the DOR position in requiring payment of the withholding taxes. Currently, DOR has to prove a criminal intent rather than simply not paying the tax when due.

Senator Thayer asked which officer or employee is being referred to in amendment #2.

Mr. Martin replied it is the officer that is responsible under the assumption that there is a delegation of authority to carry out those duties.

Senator Thayer asked if that language should be further defined.

Senator Towe said he didn't feel that would be wise. Generally, there is a comptroller, vice-president, or treasurer who is really responsible. The willfulness as defined in the amendment would affect the person whose duty it was and who did not do it.

Senator Van Valkenburg asked to have the question divided, voting on amendments #1 - #4 and #5 separately.

The motion to adopt amendments #1 - #4 CARRIED unanimously.

Senator Van Valkenburg, referring to amendment #5, reminded the Committee the United States Supreme Court two weeks ago handed down a decision which said an individual can not be convicted of willfully failing to pay their taxes when they just disagreed with the tax policy of the United States. He said this penalty is not one which amounts to a criminal sanction. The mental element is not appropriate in this bill as all that is being done is simply an effort to collect taxes due. He said different business entities are being treated disparity inappropriately. Partnerships and sole proprietorships are not subject to the mental element and yet the person whose duty it is to collect the taxes in a corporate entity has the willful element added to their liability.

Senator Towe responded we are talking someone who does not own the corporation or have any financial stake in the corporation is personally liable for paying the tax of the corporation from their own pocket. If they are willful or they know what they are doing, they should pay it from their own pocket. However, he noted, if they are not aware of what is going on and got caught in a situation where another person defalcated the corporation they should not be held responsible. In a partnership, you are responsible for any defalcation of the partners. That is the difference between a partnership and a corporation and Senator Towe felt that difference should be preserved.

Senator Halligan called for a vote on amendment #5. The motion FAILED on a roll call vote (Exhibit #5).

Recommendation and Vote:

Senator Van Valkenburg moved SB 70 Do Pass As Amended.

Senator Towe said he felt he felt passing the bill in this form is a mistake as the potential for liability for people who have no idea they are responsible is very real.

Senator Thayer expressed agreement with Senator Towe and said it is wrong to try to legislate parity between separate entities.

Senator Halligan asked how a limited partner could be found responsible in a limited partnership if there is no management.

Senator Towe said this does not apply to a limited partnership. In a partnership all the partners are equally responsible. Senator Van Valkenburg wants to make a corporation similarly responsible.

Denis Adams, DOR, said there is no doubt the debt is a personal debt under a sole proprietorship or a partnership. In a corporation, where it is not an individual debt, the person who really caused the problem should be held responsible for the payment.

Senator Halligan asked if Senator Towe is right in his explanation.

Mr. Adams said DOR would be looking for the person who did it and he was not sure but what the amendments would result in any corporate officer or employee being responsible.

Senator Van Valkenburg said the responsibility of a corporation is the same as any other person. Corporate entities are treated as a person with respect to many things, however, corporations are given substantial advantages under the law. In particular, people who invest in corporations are given substantial advantages in terms of avoiding personal liability. He said all that the bill is asking is that there be some responsibility for the collection of that which is owed to the state. If that person does not have the ability to collect the money, then, there is not going to be any responsibility. However, if the person has the ability to collect and fails to truthfully account for it or fails to pay it over once it is in their hands, then there is responsibility.

Senator Harp said he felt the corporate shield is not being affected according to Mr. Adams interpretation. He felt the state would go after the individual who failed to fulfill the obligation to the state.

Mr. Adams again said DOR wants to go after the person who has the responsibility.

Senator Towe used the example of a very large corporation with a president, several vice-presidents, and a secretary who are the only stockholders. They hire a treasurer who keeps the checkbook and is clearly the person required to write the check for the withholding tax. The treasurer has no ownership interest in the corporation whatsoever. Assume the president and the secretary need the funds to pay for a large investment that went bad. The treasurer attempts to pay the tax and discovers there is not enough money to do so. He is the responsible person if the word "willfully" is taken out under this law.

Senator Thayer said he would support the bill if he was sure the responsible party is being well defined.

Senator Koehnke asked Mr. Adams who he would go after in Senator Towe's example.

Mr. Adams replied it would have to be looked at on a case by case basis, but he would still have to go after the person who was responsible.

Senator Doherty said he had the same worry as Senator Towe when he was looking at the amendments. But he felt, as Senator Van Valkenburg has said, we need to identify the person who was in on the "scam" and go after him. He felt if the officers have absconded with the funds and the treasurer is unable to pay, the treasurer has not failed to pay. The corporation has failed to pay and the onus is on the corporation.

Senator Towe said the whole purpose of the bill is to make the individual liable.

The motion by Senator Van Valkenburg that SB 70 Do Pass As Amended CARRIED with Senator Towe voting no.

EXECUTIVE ACTION ON SENATE BILL 81

Amendments, Discussion, and Votes:

Senator Harp moved to adopt the amendments as prepared by the Committee Researcher, Jeff Martin (Exhibit #6).

Mr. Martin explained the amendments include an immediate effective date and a retroactive applicability date.

The motion CARRIED with Senators Brown and Gage absent.

Recommendation and Vote:

Senator Harp moved SB 81 Do Pass As Amended. The motion CARRIED with Senators Brown and Gage absent.

EXECUTIVE ACTION ON SENATE BILL 26

Amendments, Discussion, and Votes:

Senator Harp moved the adoption of amendments providing an effective date (Exhibit #7).

The motion CARRIED unanimously.

Senator Towe moved to amend the bill as per the amendments in Exhibit #8.

Senator Towe explained the amendments would keep the base from expanding to 25% from 15% and require that all the money in the trust be invested in Montana.

Senator Towe said the record should reflect that he has an integral interest in the First National Bank of Wibaux.

Senator Harp said he has reviewed a list of investments made by the Board of Investments and they are for the most part very sound investments. However, he said there are some loans made that he would consider questionable. He felt strongly that he was not willing to risk the State's money in unsafe loans just to reach the maximum in-state investment allowed.

Senator Towe responded he would not want the money invested in shaky loans just to ensure that all the money is invested in Montana. He said the money can be invested in Montana by investing in secondary markets and Montana banks.

Senator Van Valkenburg said by limiting the investment base the general fund stands to lose \$240,000 in interest income. He said the Committee should take a firm stance against eroding the income base of the general fund.

Senator Harp warned against making poor investments and creating a mini-S & L problem with the trust funds.

Senator Towe's motion to accept the amendments FAILED on a roll call vote (Exhibit #9)

Senator Towe moved to amend the bill on page 12, lines 7 and 22 to require the Board of Investments to report to every session of the legislature on the investments they have made during the biennium.

The motion CARRIED unanimously with Senator Brown absent.

Recommendation and Vote:

Senator Van Valkenburg moved Senate Bill 26 Do Pass As Amended. The motion CARRIED with Senators Towe and Yellowtail voting no.

EXECUTIVE ACTION ON SENATE BILL 86

Motion:

Senator Gage moved to adopt the amendments as presented in Exhibit #10. Senator Gage said the amendments correct the situation in which the dates in the bill would cut off six months of drilling operations that may have qualified for new

production.

Senator Van Valkenburg asked if there is any effect on revenue gained or lost.

Senator Gage said it could have an effect. If the wells that were drilled between June 30, 1985 and December 31, 1986, were excluded from this allocation those wells could be taxed at the stripper rate (5%) or they could be taxed at an 8.4% rate. There is a possibility for either decreasing or increasing the revenue. The revenue would depend on the situation with each individual lease.

Senator Van Valkenburg said he would like some clarification on the fiscal impact from the Department of Revenue.

Senator Gage withdrew his amendments pending the DOR comments.

ADJOURNMENT

Adjournment At: 10:00 a.m.



SENATOR MIKE HALLIGAN, Chairman



JILL D. ROHYANS, Secretary

MH/jdr