MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Mike Halligan, Chairman, on January 23, 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 116

Presentation and Opening Statement by Sponsor:

Senator Jerry Noble, District 21, sponsor, said he introduced the bill on behalf of the Montana tobacco and candy wholesalers. The main points in the bill are the repeal of the 72 hour rule for affixing stamps to cigarettes, authorization of an new method of affixing the stamps, and enabling wholesalers to offer premiums with the cigarette sales. The Department of Revenue has worked closely on the bill and is in agreement with the sponsor and the wholesalers on the methods for streamlining procedures in the bill.

Proponents' Testimony:

Mark Staples, Executive Director, Montana Association of Candy and Tobacco Distributors, presented his testimony to the Committee in support of the bill (Exhibit #1).

Mike Parker, Secretary/Treasurer, Pennington's Incorporated, Great Falls, presented his testimony in support of the bill (Exhibit #2).

Steve Buckner, President, Montana Association of Tobacco and Candy Distributors, presented his testimony in support of the bill (Exhibit #3).

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Gage questioned the consanguinity clause on page 6, line 5, of the bill.

Jeff Miller, Director, Income and Miscellaneous Tax Division of the Department of Revenue, said this is part of the statute that deals with the whole concept of fair trade in cigarettes. It has nothing to do with taxation as, at this point, the tax had already been paid. There are a lot of vestiges of this sort of language in the law which, in theory, say the DOR is going to be in the position of regulating minimum price in the marketplace after the tax has already been paid. DOR is in an awkward position re enforcement of the law as the consequence does not increase or decrease the tax.

Senator Gage asked if the provision really needed to be in the law.

Mr. Miller replied no, it did not.

Senator Van Valkenburg, referring to the fiscal note, said there appears to be a $40,000 loss of interest earnings to the general fund, however, Senator Noble feels there will be virtually no impact. He asked Mr. Miller to respond.

Mr. Miller said the wholesalers would like to defer payment of the tax for 30 days, if possible. DOR felt the "pay as you go" option was a good incentive for the wholesalers. The provision would delay collection for only one month - the deferral would be one month's interest only.

Senator Van Valkenburg wondered if the repeal of the prohibition on promotional items would raise the possibility of market domination by one or two distributors or companies.

Mr. Miller responded the wholesalers convinced DOR that marketing strategies work for everyone else. All the wholesalers deal with the same companies so market domination does not seem to be a potential issue. He pointed out this is not a tax issue.

Senator Eck expressed concern that promotional items might be very appealing to minors and have the effect of enticing them to begin smoking. She pointed out there seems to be a big movement towards curtailment of promotion of tobacco products these days.

Mr. Staples responded the tobacco industry has introduced legislation on the federal level to prevent sale of tobacco products to minors. He said the promotional items are not intended to lure new customers, rather, they hope to capture a larger share of the already established market.

Senator Towe asked if 16-10-202 is an important part of the bill.

Jerome Anderson, Tobacco Institute, responded the question of 16-10-202 has arisen consistently over the years in Montana. The opinion of many legal scholars has been that the statute did not prevent the use of trade incentives together with sales of the product. It is somewhat ambiguous and DOR has not wanted to be in the position of trying to regulate the marketplace. The use of the trade incentive is a competitive incentive and is used in other areas such as sale of alcoholic beverages. The idea that incentives cannot be used is somewhat archaic.

Senator Towe said the fiscal note impact is, in reality, $495,000 because of the delay in the one month collection.

Mr. Miller said this is a one-time postponement, therefore it is $495,000 that will not be collected in 1992 that otherwise might have been. The interest lost would $40,000.

Mr. Buckner pointed out this is based on the assumption that all those who currently pay cash would defer payment of the tax for thirty days. Everyone does have that option now if they choose to be bonded. He felt there would not be a substantial change if the bill were to pass.

Mr. Miller said 52.5% of the wholesalers pay cash now. The bill, if passed, would grant a 30 day grace period if the wholesaler chose to utilize it. The effect would be to delay payment for 30 days, one time only.

Closing by Sponsor:

Senator Noble closed saying he is asking for fairness in tax policy. Twenty percent of the cigarettes being wholesaled in Montana are coming from outside the state. Those wholesalers do not pay the tax until the product is sold in Montana. He said he is trying to make things easier for the Montana wholesalers and help Montana businesses more competitive in the marketplace. The legislation cleans up the statutes and updates procedures and methods for both the Department of Revenue and the wholesalers.

HEARING ON SENATE BILL 77

Presentation and Opening Statement by Sponsor:

Senator Koehnke, District 16, sponsor, said the bill is attempting to encourage the use and production of gasohol. With the concern at present about OPEC and oil production this is a good time to concentrate on increased gasohol production. That production also has the added benefit of increasing the usage and value of agricultural and wood products in Montana. Gasohol also cuts down on pollution problems due to decreased emissions. The bill extends the sunset provision ten years to the year 2001. This coincides with federal law and helps encourage plant expansion and production. He presented proposed amendments to the Committee which increase the incentive payments (Exhibit #4).

Proponents' Testimony:

Lorraine Gillies, Montana Farm Bureau, expressed support for the bill.

Thomas Kryzer, Billings, presented his testimony in support of the bill (Exhibit #5).

Gene Radermacher, Billings, presented his testimony in support of the bill (Exhibit #5).

Chris Kaufmann, Montana Environmental Information Center, expressed support for the bill as gasohol is a cleaner fuel to burn, more environmentally safe, and lessens dependence on non-renewable resources.

Don Sterhan, a private business consultant from Helena, said he has been working with the ethanol industry for the past three years, most recently with Alcotech Partnership in Ringling. Alcotech is the only ethanol producer in Montana. He said this is an agricultural value added industry. Production of ethanol will stimulate job growth in both the agricultural and urban economies. He said there is a need nationwide for ethanol. The tax incentive is important as it is difficult to secure the necessary long term financing when the incentives sunset in two years. Although, the cap increase may not be needed currently, if production increases, it would be an important component. He noted Alcotech doesn't want to become reliant on incentives, however, they need help while they are seeking and developing new markets. They are making a great deal of progress and foresee a good growth pattern emerging for the industry. He noted there are other benefits that can emerge from the ethanol industry such as development of new technology.

Neva Hassanen, Northern Plains Resource Council, expressed support for the bill and for the increased production and promotion of ethanol. She said Kansas has a full spectrum of development from ethanol production including cattle feed, aqua culture, and greenhouse development.

Kay Norenberg, Women Involved in Farm Economics, presented her testimony to the Committee (Exhibit #6).

Shirely Ball, National WIFE, was unable to appear in person. Kay Norenberg submitted her testimony (Exhibit #7).

Al Kurki, Executive Director, Alternative Energy Resources Organization, expressed support for the bill. He supported the previous testimony and said the added dimension for rural development and the wise use and development of a new class of fuel is most important.

Senator Tveit, District 11, expressed his support, saying we need to create our own energy industry in this country. He said the development of ethanol technology will be very beneficial to the agricultural industry.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Eck asked if the Department of Revenue supports the bill.

Denis Adams, Director, DOR, said the Department stands in support of the bill.

Senator Eck wanted to be sure all the problems of previous legislation were covered in the bill, citing the trouble the Amsterdam ethanol plant encountered.

Norris Nichols, DOR, said there were several factors involved in the Amsterdam situation. Poor management contributed to the problems, he said. The other difficulty the Amsterdam plant encountered was the provision that said the fuel had to be manufactured and marketed in Montana. The law is now changed so that the fuel can be exported from the state.

Senator Van Valkenburg asked if the administration has a position with regard to raising the limit on the caps.

Bill Salsbury, Department of Highways, said the Governor has a policy of supporting the development of ethanol. Because there is a drain on highway funding, the administration would prefer a phase in of incentives in order to facilitate planning and lessen the impact.

Senator Towe said there is only one company involved in ethanol production and they indicated they could not begin to reach the cap level.

Mr. Salsbury said the cap needs to be in place for future development possibilities.

Closing by Sponsor:

Senator Koehnke closed and noted the Governor supports using ethanol in state vehicles and there are two bills being introduced to implement that action.

HEARING ON SENATE BILL 93

Presentation and Opening Statement by Sponsor:

Senator Gage, District 5, sponsor, submitted information to the Committee explaining the determination of the valuation of coal at "mine mouth" (Exhibit #8). The coal industry and DOR have had difficulty determining the mine mouth value. There are problems determining what exactly direct costs through extraction and total direct costs are as well as other variable factors. The bill is an attempt to keep the RIT tax relatively tax neutral but simplify the base on which the base is calculated. In order to do that, the method of valuing the coal at the mine mouth is being increased. Consequently, if that value is going to be increased by the method of valuation, a certain percent of the tax must be reduced in order to arrive at the same amount of tax that is being paid. The fiscal impact is minimal. The whole intent of the bill is simplify and clarify the computation of the mine mouth value on which the RIT tax would be based.

Proponents' Testimony:

Jim Mockler, Executive Director, Montana Coal Council, said the RIT tax has been in place since 1973. Because of change of administration and interpretation of the RITT law, a great deal of confusion has resulted in just exactly what factors are to be used in the calculations. The bill would establish the basis of the tax on the contract sales price which is the basis for the contract severance tax and gross proceeds tax, the other two taxes that are paid on coal. Administratively, this method would save DOR a tremendous amount of money. A federal fee of 35 cents a ton is paid on coal; a minimum of 17.5 cents comes back to Montana for mitigation of natural resource damage. So far the coal industry has paid over $62 million into that fund which goes directly to the Department of State Lands. It is administered by the Department of State Lands and is spent every year, to date in 37 different counties. Mr. Mockler feels the industry is paying their fair share, the impact of the bill is minimal, an the administrative costs that are saved far outweigh the costs. It is impossible to come up with an exact figure because the RITT tax is confidential. He said .4% is the closest figure the Coal Council could determine, which he felt would cost about $200,000. He said they would be willing to pay the extra just to have all the taxes based on one level. He presented a paper determining the RITT at .4% and .5% for calendar years 1988 and 1989 to the Committee (Exhibit #9).

Tom Ebzery, representing NERCO, which operates the Spring Creek Mine north of Decker, said their production in 1988 was 4.7 million tons, in 1989 6 million tons, and in 1990 7.1 million tons. He said this is a bona fide problem that needs to be solved and he expressed for the bill. He felt the .33 would be revenue neutral and .4 would be a slight increase, however, he agreed with Mr. Mockler that a slight increase would be fine if it finally eliminated the many problems associated with the tax.

Diana Tickner, Western Energy Company, said she also felt the bill would mean a slight increase but they support it as it does make the administration of the tax easier for both the companies and the Department.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Towe asked for an explanation of the decision.

Mr. Ebzery said to the best of his memory in 1983 -84 the Department of Revenue had a difference of opinion as to where the value was of the definition of "gross extraction from the ground" (the gross value of the product at the time of extraction). The DOR believed the time of extraction was later in the process and the companies believed it was at the mine face. Judge Bennett agreed with the coal companies and the value was established at the mine face.

Closing by Sponsor:

Senator Gage closed by saying anytime there is talk about oil, gas, or coal, everyone thinks there is mischief in it. He assured the Committee there is no mischief in this bill. It simplifies the process, establishes a base, sets a price and the rates for it.

EXECUTIVE ACTION ON SENATE BILL 86

Amendments, Discussion, and Votes:

Senator Gage asked Jeff to draw amendments striking the dates and inserting language that would say "if there is old production and new production on a lease, this is the method you will use to apportion that production between old and new". Senator Gage moved the amendments.

Senator Towe said he was uncomfortable with this method of amending bills, however, if Jeff Martin would draw the amendments and have both Senator Gage and Senator Towe review them before they are submitted, he would agree to the motion.

The motion CARRIED with Senator Harp absent. (See attached standing committee report (Exhibit #10) for amendments in approved final form.)

Recommendation and Vote:

Senator Eck moved SB 86 Do Pass As Amended. The motion CARRIED unanimously.

ADJOURNMENT

Adjournment At: 10:00 a.m.

SENATOR MIKE HALLIGAN, Chairman

JILL D. ROHYANS, Secretary

MH/jdr

DATE 1/23/91

COMMITTEE ON Taxation

SB 93, 77, 116

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Oppose
Denis Adams	DOR			
TOM KRYZER	Self	SB77	✓	
DIANNA TICKNER	WESTERN ENERGY	SB93	✓	
Kay [illegible]	WIFE	SB77	✓	
GENE A. RADERMACHER	SELF	SB77	✓	
[illegible]	Totems [illegible]	SB116	✓	
Rep. Mike Foster	House Dist #32	SB77	✓	
Gordon Doig	Alcotech	SB77	✓	
Jim Mockler	MT. Coal Council	SB93	✓	
LORNA FRANK	FARM Bureau	SB77	✓	
Kim Enkerud	MT Stockgrowers	SB77	✓	
[illegible] Nelson	HD 19	SB77	✓	
Don Steppler	HD 21	SB77	✓	
Steve Bucker	~~[illegible]~~ Service Dist.	SB116	✓	
MIKE [illegible]	[illegible]	SB116	✓	
Chris Kaufmann	MEIC	SB77	✓	
Don [illegible]	self /Alcotech	SB77	✓	
John Tubbs	DNRC	SB93		
Neva Hassanein	NPRC	SB77	✓	
Al Kurki	AERO	SB77	✓	
Bill Salisbury	Dept of Highways	SB77		
Kay Foster	Billings Chamber	SB77	✓	
Charles R. Brooks	MT Retail Assoc	SB116	✓	
Lorraine Gillies	M Farm Bureau	SB77	✓	
Tom Ebzery	Nerco	SB93	✓	
Shirley Ball	Nashua	SB77	✓	

(Please leave prepared statement with Secretary)

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ROLL CALL

SENATE TAXATION COMMITTEE

DATE 1/23/91

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.

SENATE TAXATION
EXHIBIT NO. 1
DATE 1/23/91
BILL NO. SB 116

TESTIMONY OF MARK STAPLES, EXECUTIVE DIRECTOR
MONTANA ASSOCIATION OF TOBACCO & CANDY DISTRIBUTORS
BEFORE SENATE TAXATION COMMITTEE
ON JANUARY 23, 1991
REGARDING SENATE BILL 116

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS MARK STAPLES. I'M THE EXECUTIVE DIRECTOR OF THE MONTANA ASSOCIATION OF TOBACCO AND CANDY DISTRIBUTORS. SENATE BILL 116 IS THE PRODUCT OF EXTENSIVE WORK BY BOTH THE DEPARTMENT OF REVENUE AND THE ASSOCIATION WHICH I REPRESENT, TO RID THE CIGARETTE SALES TAX ACT OF UNNECESSARILY CUMBERSOME AND CONFUSING SECTIONS, WHICH HAVE WORKED TO THE DISADVANTAGE OF THE MEMBERS OF MY ASSOCIATION. THESE PROPOSED CHANGES DO NOT SEEK TO MODIFY IN ANY WAY THE PERCENTAGE OF THE TAX COLLECTED OR TO WHOM THESE TOBACCO PRODUCTS CAN BE SOLD. IN ORDER OF THEIR APPEARANCE IN THE BILL, THE SALIENT FEATURES OF THIS REVISION OF THE CIGARETTE SALES ACT AND THE CIGARETTE SALES TAX LAW ARE THE FOLLOWING:

THE FIRST STREAMLINING THAT THIS BILL CONTAINS IS AT SECTION 3, WHICH IS AT THE TOP OF PAGE 7. IT SIMPLY REPEALS WHAT WAS ONCE CALLED THE 72-HOUR RULE, WHEREBY THE WHOLESALER HAD TO AFFIX THE TAX STAMP TO EACH AND EVERY CIGARETTE PACKAGE ON HIS PREMISES WITHIN 72 HOURS OF RECEIVING THEM INTO THE WAREHOUSE. THIS BILL WOULD REQUIRE THAT THE TAX STAMP BE AFFIXED BEFORE HE <u>SELLS</u> THE PRODUCT OUT OF THE WAREHOUSE. FOR DECADES THE DEPARTMENT OF REVENUE HAD NOT ENFORCED THIS 72-HOUR RULE. IT ORIGINALLY WAS CREATED WHEN THE TAXES ON CIGARETTES WERE MINIMAL AND THIS WAS ONLY METHOD OF MONTHLY REPORTING. NOW THAT THE TAXES ARE IN THE HUNDREDS OF

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THOUSANDS OF DOLLARS MONTHLY, THERE ARE VERY STRINGENT MONTHLY REPORTING REQUIREMENTS ANYWAY AND THE 72-HOUR RULE HAS BASICALLY BECOME A VESTIGE OF ANOTHER ERA. HOWEVER, THE DEPARTMENT OF REVENUE, AS THEY SHOULD, HAS ADOPTED THE POSITION THAT IF IT'S ON THE BOOKS, LET'S ENFORCE IT, AND IF IT SHOULDN'T BE ON THE BOOKS, LET'S GET RID OF IT. THUS, IT PUTS AN UNDUE BURDEN ON THE WHOLESALER TO COMPLY WITH THIS UNNECESSARY RULE, AND ALSO, FOR THOSE WHO PAY CASH FOR THEIR STAMPS, UNNECESSARILY TIES UP THEIR VERY IMPORTANT CASH FLOW. THE DEPARTMENT AGREES AND CONCURS WITH THIS REPEAL OF THIS 72-HOUR RULE.

THE SECOND CHANGE IS IN SECTION 4, SUBSECTION 2, WHEREBY THE DEPARTMENT WILL ALLOW A CHANGE FROM THEIR CURRENT METHOD OF STAMPING CIGARETTES, WHICH IS VIA A METERED MACHINE, TO A HEAT-APPLIED MACHINE. THIS ALLOWANCE IS NECESSARY FOR TWO REASONS. THE COMPANY, PITNEY-BOWES, THAT MANUFACTURES AND SERVICES THE MACHINES THAT ARE NOW UTILIZED IS GOING OUT OF THE TAX STAMPING BUSINESS, AND THUS, EACH OF THE WHOLESALERS IS GOING TO HAVE TO MOVE TO A HEAT-APPLICATION SYSTEM WITHIN FIVE YEARS, WHICH IS THE PITNEY-BOWES DEADLINE. THE DEPARTMENT OF REVENUE PREVIOUSLY PROHIBITED THE USE OF ANY MACHINES BUT THOSE IN USE RIGHT NOW, AND RECOGNIZING WHAT IS HAPPENING WITH PITNEY-BOWES, THE DEPARTMENT IS NOW SIMPLY ALLOWING THE NECESSARY TRANSFER TO THE HEAT-APPLIED SYSTEMS, WITH, OF COURSE, THEIR APPROVAL OF EACH MACHINE THAT IS TRANSFERRED TO.

THE NEXT ITEM TO BE STREAMLINED IS SECTION 6. MOST WHOLESALERS IN MONTANA PAY TAXES ON THE PRODUCTS THEY DEAL IN WHEN THEY SELL THEM. THE WHOLESALERS IN THIS INSTANCE PAY THE TAX ON PURCHASE.

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THE FOURTH CHANGE IS THE REPEAL OF SECTION 16-10-202, MCA, WHICH HAS BEEN INTERPRETED BY THE DEPARTMENT OF REVENUE AS PROHIBITING THE SALE OF CIGARETTES IN COMBINATION WITH OTHER ARTICLES AS A VIOLATION OF THE BELOW COST SELLING PROHIBITION THAT APPLIES TO CIGARETTE SALES. THIS BILL WOULD ALLOW CIGARETTES TO BE SOLD WITH SUCH ATTACHMENTS AS A LIGHTER, A PAIR OF SUNGLASSES, CIGARETTE HOLDER OR SOME OTHER PREMIUM, WITHOUT BEING SAID TO VIOLATE BELOW COST SELLING BY INCLUDING SUCH AN ARTICLE.

FINALLY, SECTION 16-10-305, MCA, IS REPEALED. THIS SECTION PROVIDED THAT RETAILERS HAD TO PAY WITHIN 7 DAYS THE WHOLESALERS FOR TOBACCO PRODUCTS THEY BOUGHT FROM THEM. IN PRACTICAL APPLICATION, THERE ARE TIMES WHEN THIS SIMPLY IS NOT POSSIBLE BECAUSE OF LARGER COMPANY'S CORPORATE PRACTICES, AND WHOLESALERS HAVE BEEN PAID LATER THAN 7 DAYS. THIS BILL WOULD NOT EFFECT THE DEPARTMENT OF REVENUE AS THE WHOLESALER STILL HAS TO PAY IN THE AMOUNT OF TIME THAT <u>HE</u> HAS TO PAY AND IT SIMPLY ALLOWS THE WHOLESALER TO GIVE THAT CREDIT TO GOOD RETAIL CUSTOMERS THAT THEY MAY NEED AND IN TRUTH HAVE BEEN DEMANDING FOR SOME TIME.

IN CONCLUSION, THIS BILL IS A PRODUCT OF A WORKING COOPERATIVE RELATIONSHIP BETWEEN THE WHOLESALERS AND THE DEPARTMENT OF REVENUE. IT REFLECTS THE DEPARTMENT OF REVENUE'S PHILOSOPHY OF ENFORCING THE STATUTES THAT ARE ON THE BOOKS AND GETTING OFF THE BOOKS OR CHANGING STATUTES THAT ARE NO LONGER WORKABLE AND AS SUCH, IT DOES NOT EFFECT THE RATE OF TAXATION IN MONTANA, CONSUMERS IN MONTANA, OR THE REVENUES TO THE STATE OF MONTANA. I URGE YOU ON BEHALF OF THE TOBACCO WHOLESALERS AND THE WORK THAT THEY HAVE DONE WITH THE

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DEPARTMENT OF REVENUE TO PLEASE GIVE YOUR CONSIDERATION ~~FOR A DO~~ PASS RECOMMENDATION FOR THIS BILL.

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POSSIBLE QUESTION:

NOW DOES THAT MEAN THAT THEY PAY AT THE MOMENT THEY'RE PURCHASED? NOT NECESSARILY. THEY CAN, ACCORDING TO THE LAW NOW, EITHER BUY THEIR TAX STAMPS AT THE TIME THAT THEY PICK THEM UP OR THEY CAN PAY FOR THEM 30 DAYS LATER. HOWEVER, THE PRICE OF THAT STAMP IS ESTABLISHED AT THE TIME OF PURCHASE RATHER THAN AT THE TIME OF SALE. THIS WOULD REALLY MAKE NO DIFFERENCE EXCEPT THAT WHEN THE NUMEROUS TAX INCREASES THAT WERE APPLIED IN THE PAST CAME TO PASS, THOSE PRODUCTS IN INVENTORY IN THE WHOLESALER'S WAREHOUSE, UPON WHICH THE TAX HAD ALREADY BEEN PAID, WERE THEN TAXED AGAIN IN THE WAREHOUSE. THIS HAS BECOME KNOWN AS THE FLOOR TAX. AGAIN, THIS IS THE ONLY WHOLESALE PRODUCT IN MONTANA THAT WE KNOW OF THAT IS SUBJECT TO THIS FLOOR TAX. THE EFFECT THIS BILL WOULD BE THAT IF A PERSON PAID A CERTAIN PRICE FOR THE TAX STAMPS UPON PURCHASE, THEN PUT THOSE PRODUCTS INTO INVENTORY AND WHILE THEY'RE IN INVENTORY A TAX INCREASE WENT THROUGH, THEY WOULD BE GIVEN A CREDIT FOR THE TAX THEY HAD ALREADY BEEN PAID AND THEN WHEN THEY SOLD THE PRODUCT, TAXED AT THE NEW RATE, AND THAT CREDIT WOULD GO AGAINST IT. THUS, THEY ARE TAXED ON SALE RATHER THAN ON PURCHASE.

SENATE TAXATION
EXHIBIT NO. 2
DATE 1/23/91
BILL NO. SB 116

TESTIMONY OF MIKE PARKER, SECRETARY/TREASURER
PENNINGTON'S INCORPORATED
BEFORE THE SENATE TAXATION COMMITTEE
ON JANUARY 23, 1991
REGARDING SENATE BILL 116

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD, MY NAME IS MIKE PARKER. I'M SECRETARY/TREASURER OF PENNINGTON'S INCORPORATED OF GREAT FALLS, SHELBY AND HAVRE, MONTANA. I'M HERE TODAY ON BEHALF OF OUR COMPANY AND MY 70 FELLOW EMPLOYEES TO URGE YOUR FAVORABLE CONSIDERATION OF SENATE BILL 116.

PENNINGTON'S HAS BEEN A FAMILY-OWNED MONTANA BUSINESS SINCE 1946. THE CURRENT STATUTES THAT GOVERN SALES AND DISTRIBUTION OF CIGARETTES WITHIN THE STATE PREDATE THE FOUNDING OF OUR COMPANY. THE STATUTES FOR THE MOST PART WERE WRITTEN WHEN CIGARETTE TAXES AMOUNTED ONLY TO PENNIES PER CARTON. SENATE BILL 116 WILL BRING THE STATUTES INTO LINE WITH ECONOMICS AND INDUSTRY PRACTICES THAT PREVAIL IN 1991.

FOLLOWING THE 1989 STATE CIGARETTE TAX INCREASES, MONTANA WHOLESALERS WERE SINGLED OUT FOR IMPOSITION OF A FLOOR TAX ON PREVIOUSLY TAXED INVENTORIES. OUT-OF-STATE WHOLESALERS AND MONTANA RETAILERS WERE NOT TAXED. SIMILARLY, STATE BEER AND WINE TAX INCREASES ARE NOT IMPOSED ON EXISTING STOCKS. SENATE BILL 116 PROVIDES FOR THE EQUITABLE TAXATION OF CIGARETTES AT RETAIL AND WHOLESALE AND IN-STATE AND OUT-OF-STATE WHOLESALERS. ADDITIONALLY, IT PROVIDES FOR THE TAXATION OF CIGARETTES SIMILAR TO THE MANNER IN WHICH WE TAX BEER, WINE AND BULK FUEL.

PROVISIONS OF THIS BILL ARE IMPORTANT TO PENNINGTON'S AND I BELIEVE IMPORTANT AS WELL TO AN INDUSTRY THAT CONSISTS PRIMARILY

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OF FAMILY-OWNED MONTANA BUSINESSES. I WILL BE AVAILABLE AND WOULD BE PLEASED TO ANSWER ANY QUESTIONS COMMITTEE MEMBERS MAY HAVE. AGAIN, I URGE YOUR FAVORABLE CONSIDERATION AND A DO PASS RECOMMENDATION FOR SENATE BILL 116.

SENATE TAXATION
EXHIBIT NO. 3
DATE 1/23/91
BILL NO. SB 116

TESTIMONY OF STEVE BUCKNER, PRESIDENT
MONTANA ASSOCIATION OF TOBACCO & CANDY DISTRIBUTORS
BEFORE SENATE TAXATION COMMITTEE
ON JANUARY 23, 1991
REGARDING SENATE BILL 116

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

MY NAME IS STEVE BUCKNER. I AM THE PRESIDENT OF THE MONTANA ASSOCIATION OF TOBACCO AND CANDY DISTRIBUTORS. I AM ALSO ONE OF THE OWNERS OF OUR FAMILY BUSINESS, SERVICE DISTRIBUTING, INC. WITH WAREHOUSES LOCATED IN LIVINGSTON, BOZEMAN AND HELENA.

ONE PORTION OF THIS BILL BEFORE YOU DEALS WITH THE REPEAL OF SECTION 16-11-113 - THE "72-HOUR" LAW. LAST YEAR, FOR THE FIRST TIME IN 43 YEARS, THE DEPARTMENT OF REVENUE DECIDED TO START ENFORCING THIS SECTION OF THE CIGARETTE LEGISLATION WITHOUT ANY PRIOR NOTIFICATION TO WHOLESALERS. IT WAS RECOMMENDED BY THE DEPARTMENT OF REVENUE THAT OUR LICENSE BE SUSPENDED FOR 3 DAYS. THIS SUSPENSION WOULD HAVE DRASTICALLY HURT OUR BUSINESS AND SO WE APPEALED. WE WON OUR APPEAL AND AFTERWARDS AGREED WITH THE DEPARTMENT OF REVENUE THAT THERE IS NO REASON TO KEEP THE 72-HOUR LAW ON THE BOOKS. IT IS AN OUTDATED MODE OF RECORD-KEEPING FOR CIGARETTES.

IT WAS CIRCUMSTANCES SUCH AS THIS THAT LED US TO WORK TOGETHER WITH THE DEPARTMENT OF REVENUE TO ELIMINATE AMBIGUITY AND UPDATE PORTIONS OF THE CIGARETTE LEGISLATION.

THIS BILL WILL HELP THE DEPARTMENT OF REVENUE WITH ENFORCEMENT OF CIGARETTE LAWS AND CREATE A BETTER WORKING CLIMATE FOR MONTANA WHOLESALERS. PLEASE VOTE YES ON SENATE BILL 116.

TAXATION
EXHIBIT NO. 4
DATE 1/23/91
BILL NO SB 77

Amendments to Senate Bill No. 77
First Reading Copy

Requested by Sen. Koehnke
For the Committee on Taxation

Prepared by Jeff Martin
January 21, 1991

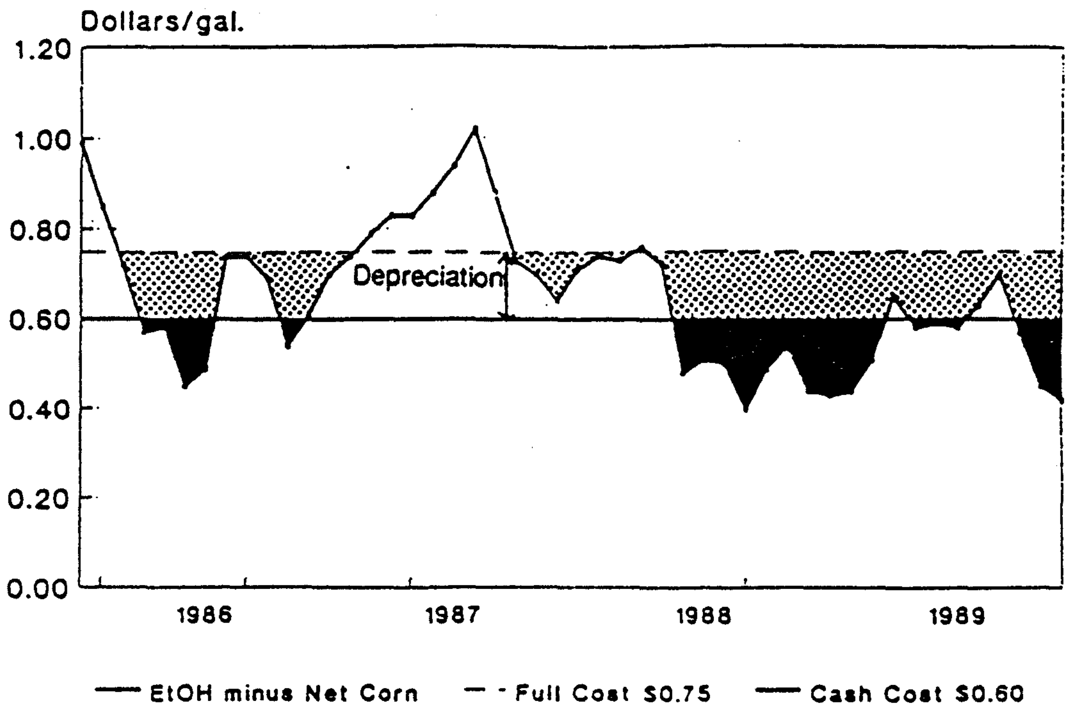
1. Title, line 6.
Following: "2001;"
Insert: "INCREASING THE MAXIMUM TOTAL INCENTIVE PAYMENTS IN ANY CONSECUTIVE 12-MONTH PERIOD TO $6 MILLION; INCREASING THE MAXIMUM INCENTIVE PAYMENT TO AN ALCOHOL DISTRIBUTOR IN ANY CONSECUTIVE 12-MONTH PERIOD TO $1.5 MILLION;"

2. Page 4, line 3.
Strike: "$1,250,000"
Insert: "$6 million"

3. Page 4, line 7.
Strike: "$1 million"
Insert: "$1.5 million"

4. Page 4, line 14.
Strike: "$1 million"
Insert: "$1.5 million"

Ethanol Price-Feedstock Spread
Dry-Milling ($/Gal)



SENATE TAXATION
EXHIBIT NO. 5
DATE 1/23/91
BILL NO. SB 77

Before the

SENATE TAXATION COMMITTEE

Mike Halligan, Chairman

Testimony In Support

of

Senate Bill 77

as amended.

Room 413-415
State Capitol
Helena, Montana

January 23, 1991
8:00 A. M.

Gene A. Radermacher
3203 Third Avenue North
Billings, Montana 59101
406-245-5132

Thomas C. Kryzer. P. E.
P. O. Box 339
Billings, Montana 59103
406-656-8460

Ethanol may be the fuel of the future

By HARRY P. GREGOR
Special to The Washington Post

President Bush recently proposed that the United States gradually phase in vehicles that run on clean, alternative fuels such as methanol, ethanol and compressed natural gas.

No matter which of these — or others — we finally select, it will have momentous consequences for America's air quality, public health and economy as well as the ecological future of the planet.

Any serious contender for an alternative vehicular fuel must meet six criteria. It must:

- Be comparable in cost to gasoline.
- Be renewable — derived from a virtually inexhaustible energy source.
- Produce minimal pollution.
- Not come from fossil fuels and thus not add net carbon dioxide to the atmosphere, exacerbating the greenhouse effect.
- Be easily transported, stored and suitable for reasonably priced vehicles.
- Be producible using technologies already proven to be feasible, in amounts large enough to fulfill our most pressing needs soon and ultimately to supply a tion of our national demand.

The only alternative fuel that can meet these requirements is ethanol — ethyl alcohol. It is already being produced from starch (corn) and sugar (cane and beet) crops. And it has been proven on the road: In Brazil, ethanol from sugar cane now powers 2 million vehicles.

There is no doubt that world agriculture can soon produce enough biomass feedstock to replace an appreciable fraction of the liquid fossil-derived fuels we now consume. Ultimately, alcohol fuel can become our major liquid energy source. A land mass equal in area to 10 percent of the Amazon rain forest can produce enough biomass to satisfy all of the energy requirements for both Americas in the year 2000.

Moreover, of the alternative fuels the president mentioned, ethanol is the only one which meets the Clean Air Act requirements for low pollution while adding no net carbon dioxide to the atmosphere. The latter is imperative if we are to avoid disastrous global warming from the greenhouse effect.

Ethanol is ideally suited to use in vehicles, which are collectively responsible for over 40 percent of the nation's air-quality problem. Cars emit numerous pollutants including: noxious organic gases, of which benzene and other aromatics are the worst; particulate matter in the form of smoke and soot (largely from diesel fuel); oxides of nitrogen; and carbon monoxide.

Even without combustion, vaporized fuel escapes from the carburetor, fuel line and gas cap. In the presence of sunlight, it reacts with oxygen in the air to form ozone. Although "closed-loop" carburation, better gas caps and vapor-recovery fuel nozzles can alleviate much of this problem, as a practical matter evaporative fuel losses cannot be eliminated.

Hence another advantage of ethanol: It is less volatile than other alternatives. Evaporative pressures, as measured by industry standards, are 2.2 for ethanol, 4 for methanol and 10 for gasoline.

Methanol and ethanol burn with anearly colorless and odorless flame, cleaner than natural gas and much cleaner than gasoline or diesel fuel. They also burn cooler. This is important because in the engine, high flame temperatures lead to reactions with nitrogen from air to produce oxides of nitrogen (NOx). Alcohols make only one-fifth as much NOx.

Incomplete combustion of any fuel results in carbon monoxide. All the alternative fuels make less of it than gasoline, possibly because they allow the catalysts to be more efficient.

Incomplete combustion of alcohols also produces compounds called aldehydes. Methanol yields formaldehyde, a carcinogen and the active ingredient in embalming fluid. Ethanol leads to acetaldehyde — rather benign despite its name. (When you drink an alcoholic beverage, the ethanol is metabolized to acetaldehyde, and then to carbon dioxide and water.)

In addition, efficient auto motors require fuels having a high-octane number — that is, fuels that do not burn too quickly, producing engine "knock." Gasoline requires anti-knock additives; but methanol and ethanol naturally have very high octane numbers, which is one reason why ethanol is used to fuel racing cars.

Admittedly, cold starts with alcohols present problems. Gasoline blends provide volatile components to ease starting; but they also cause pollution. There are, however, volatile substances that can be added to alcohols without increasing pollution (while also acting as a denaturant to keep people from drinking the fuel).

And alcohol tanks would have to be larger than conventional gas tanks, since ethanol has two-thirds the energy content of gasoline. (Methanol has about one-half.)

The modifications required to convert existing gasoline vehicles to alcohol use are trivial and inexpensive, largely involving use of fuel-line and tank materials designed to contain alcohol. No engine modifications as such are required.

According to motor-industry experts, manufacturers will be able to optimize engine designs and build vehicles to use ethanol efficiently and with minimum pollution-if ethanol has been established as the alternative fuel of choice.

It should be. Ethanol is the sole alternative fuel that does not add net carbon dioxide to the atmosphere and is derived from renewable biomass. Methanol is a fossil fuel derived from coal, petroleum or natural gas, and adds to the sum of greenhouse gases.

Both sugar and starch feedstocks are readily fermented into ethanol. Starch from corn is the primary U.S. candidate, given present supply and price. Starch has sold for 2 cents a pound in recent years.

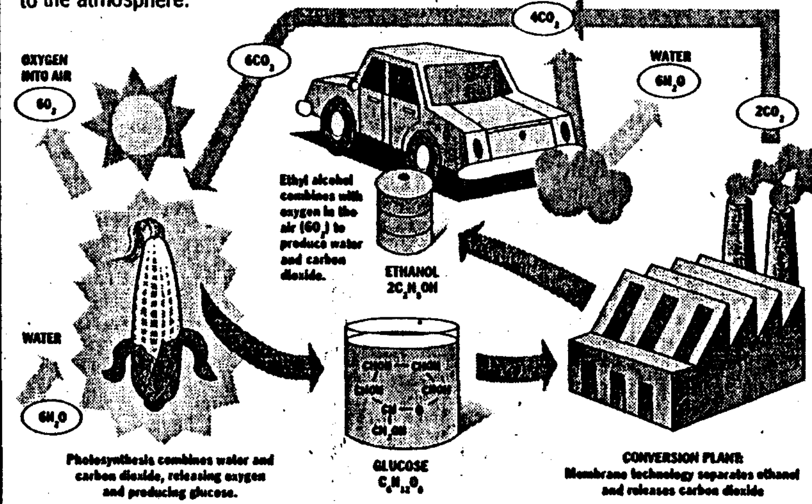
Currently 350 million bushels of corn per year are converted into 100-percent alcohol for blending with gasoline for gasohol. Ethanol at about 97 percent concentration is cheaper to produce and a superior fuel.

One bushel of corn yields 2.5 gallons of alcohol. The fuel potential is substantial: Current U.S. production of 7.5 billion bushels per year could be increased by 5 billion per year given proper incentives, with the ethanol produced satisfying 13 percent of U.S. gasoline needs.

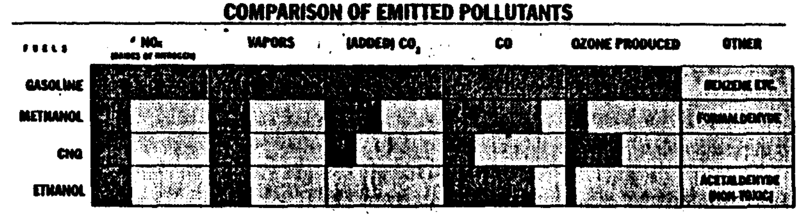
While starch is the major component of corn, it constitutes only 17 percent of the value of that crop, with the remainder in oil and gluten meal and feed, all of which have substantial domestic and foreign markets.

ETHANOL - TANKING UP FOR TOMORROW

Unlike many other alternatives, production and use of ethyl alcohol (ethanol) adds no additional carbon dioxide to the atmosphere.



COMPARISON OF EMITTED POLLUTANTS



ETHANOL ADVANTAGES

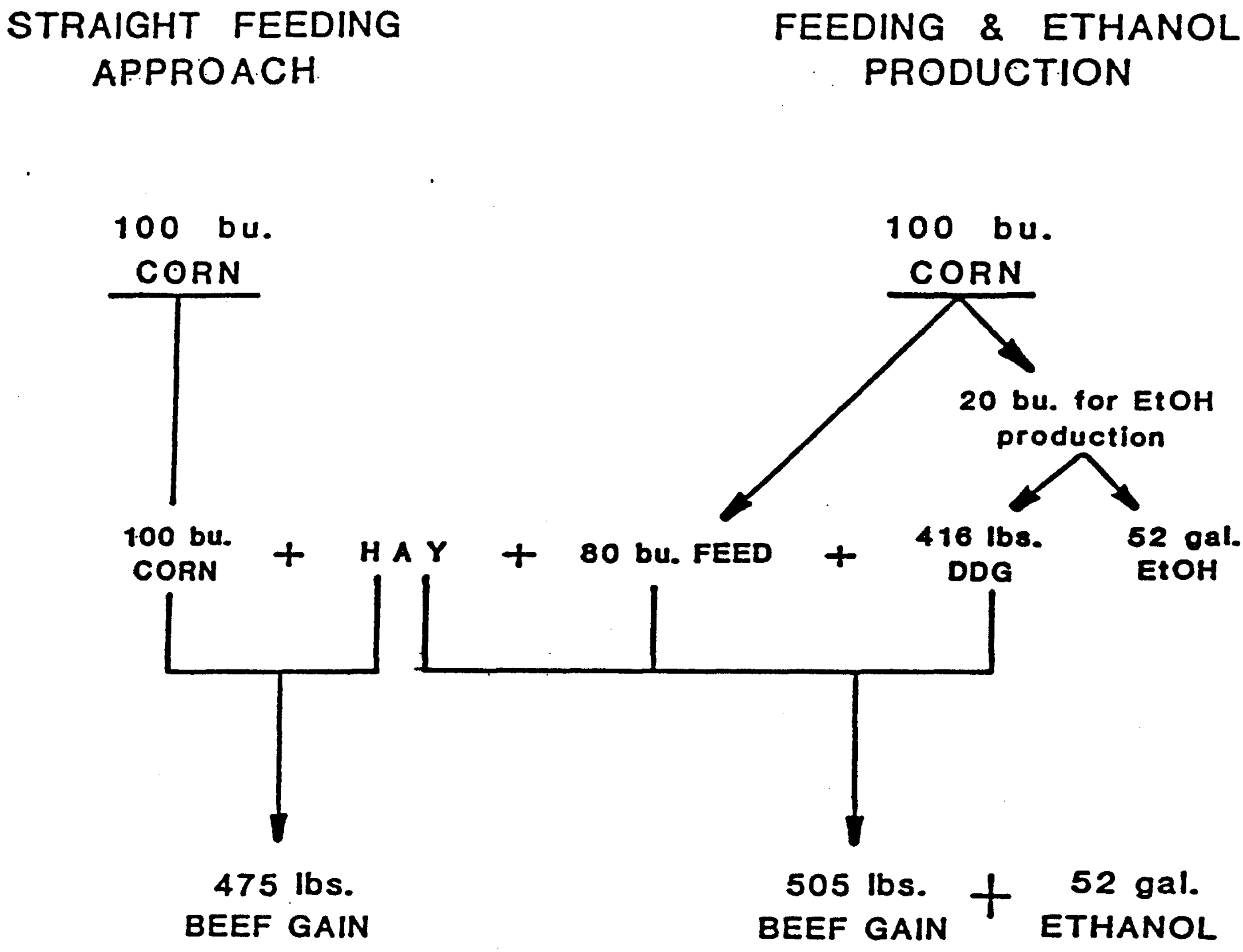
* LEAD-OCTANE REPLACEMENT
* VAPOR PRESSURE CONTROL
* OCTANE BLENDING STOCK
* AROMATIC REPLACEMENT
* OXYGENATED BLENDING STOCK
* IDENTIFICATION BY EPA AS "LOW POLLUTION FUEL"
* REFORMULATED GASOLINE BLENDING STOCK
* FUTURE POTENTIAL USE OF "ETBE" (ethyl tertiary butyl ether).

YIELD of ETHANOL

FROM VARIOUS FEEDSTOCKS

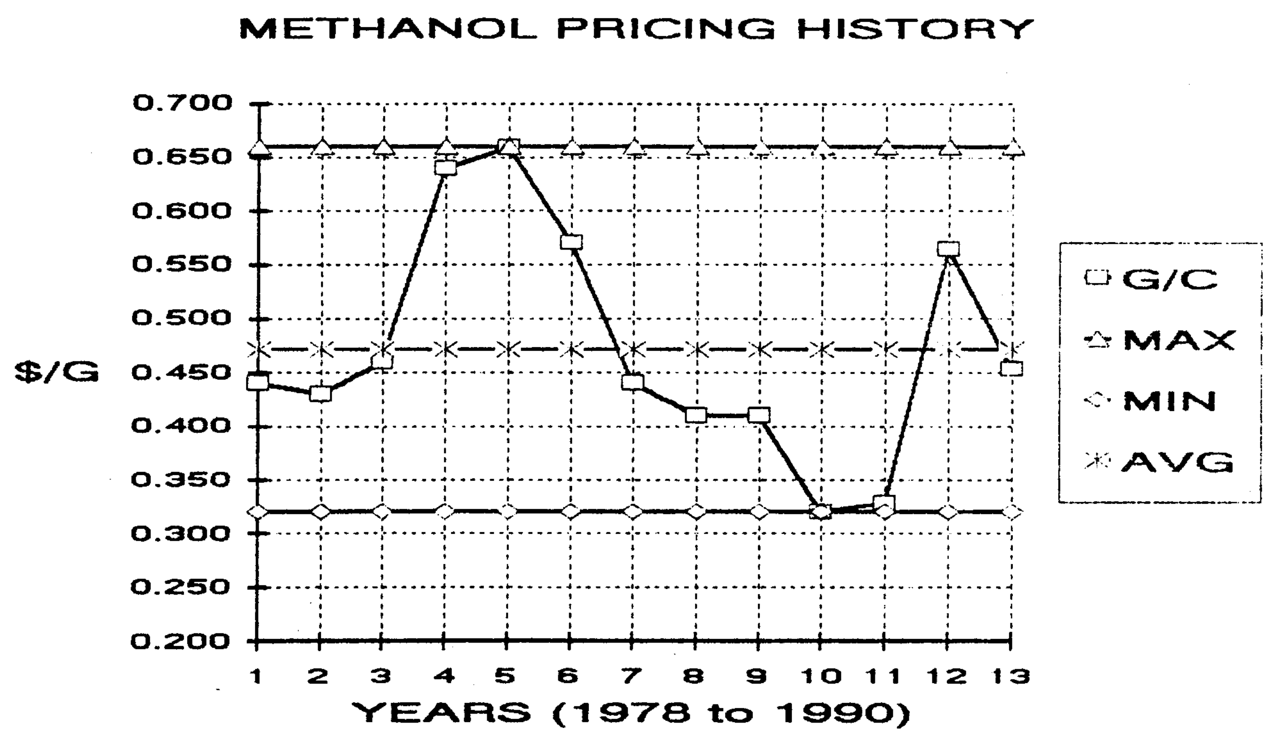
FEEDSTOCK	GALLON PER BUSHEL	GALLONS PER DRY TON
CORN	2.5	105
WHEAT	2.6	102
BARLEY	2.1	103

EFFICIENCY OF GRAIN UTILIZATION

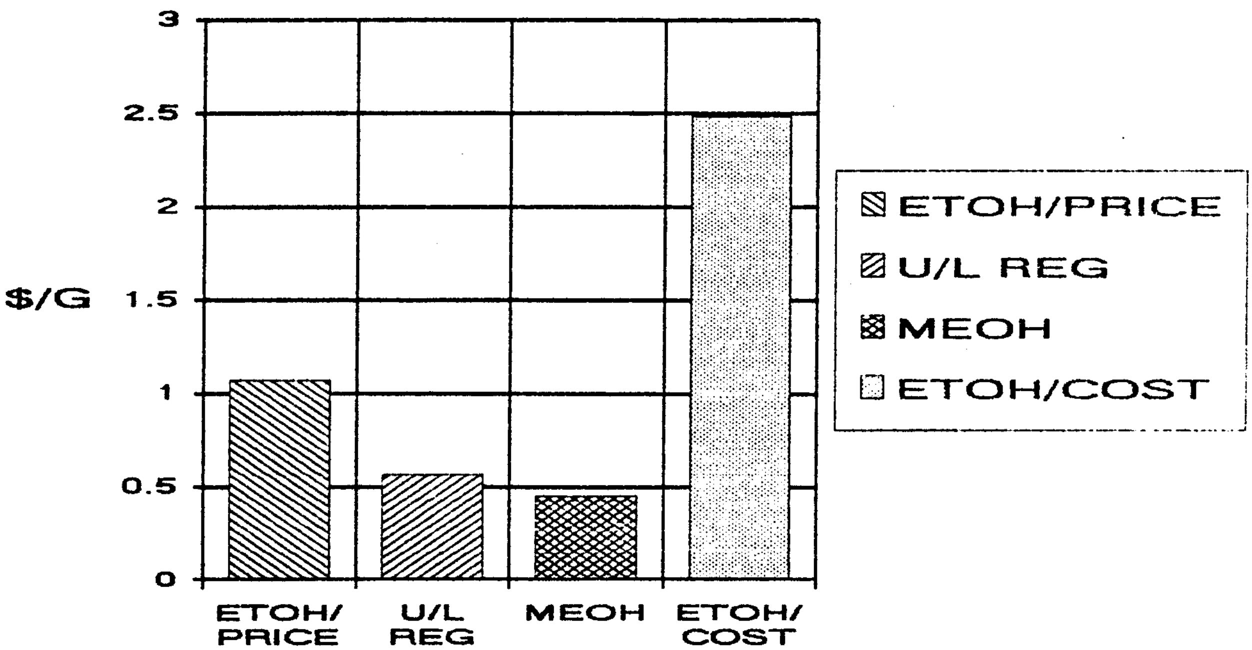


ETHANOL AND MONTANA

* 500 MILLION GALLONS ANNUAL GASOLENE SALES
* 50 MILLION GALLONS ANNUAL ETHANOL PRODUCTION AT 10%
* $100 TO $125 MILLION ETHANOL PLANT CAPITAL INVESTMENT
* 500 TO 1000 NEW ETHANOL JOBS IN MONTANA
* $10 TO $20 MILLION ANNUAL IN NEW ETHANOL WAGES
* $10 TO $15 MILLION ANNUAL IN LOCAL PURCHASES OF GOODS & SERVICES
* ADDED NEW REVENUE TO STATE AND LOCAL GOVERNMENTS
* ADDITIONAL NEW AGRICULTURAL BASE "VALUE ADDED" INDUSTRIES
* MULTIPLIER EFFECT OF THE ADDED "NEW DOLLARS" TO MONTANA
* $27 MILLION ANNUAL ETHANOL PRODUCER INCENTIVE


METHANOL PRICING HISTORY
$/G
0.700
0.650
0.600
0.550
0.500
0.450
0.400
0.350
0.300
0.250
0.200
1 2 3 4 5 6 7 8 9 10 11 12 13
YEARS (1978 to 1990)
G/C
MAX
MIN
AVG

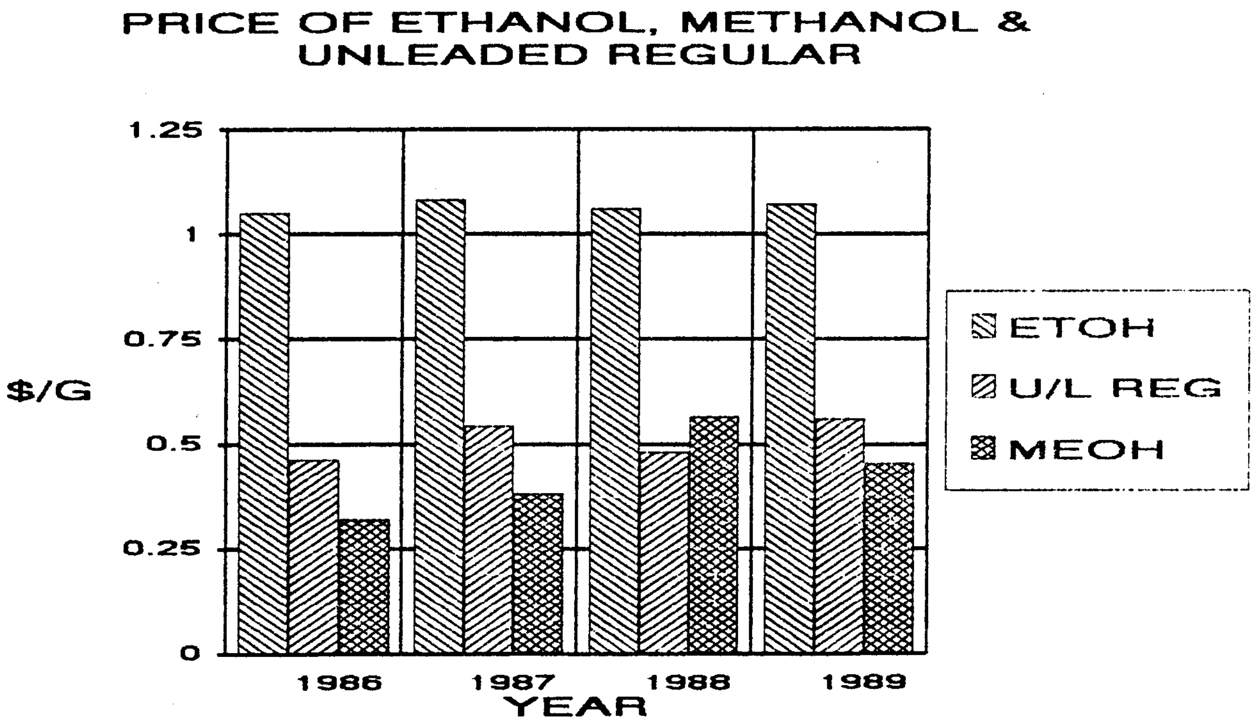
PRICE & COST COMPARISON

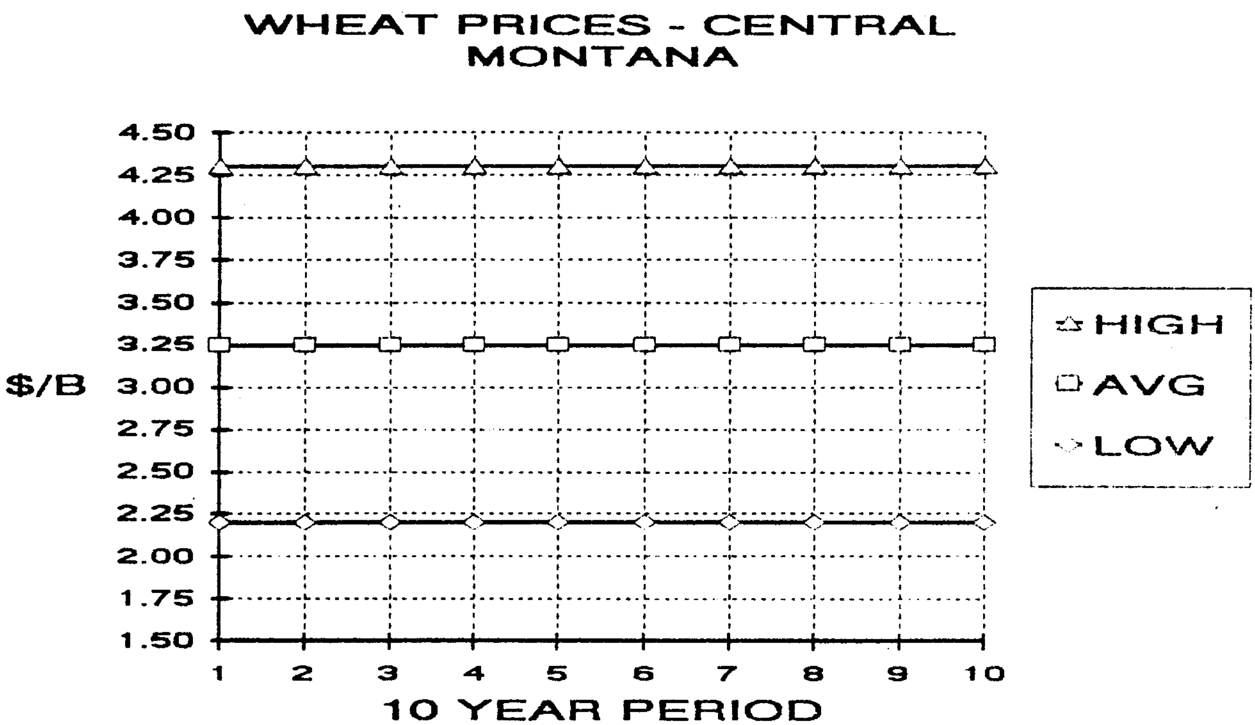


ETHANOL PRODUCTION ECONOMICS

(All costs are in dollars per gallon)

RAW MATERIALS		\$1.60
UTILITIES		\$0.30
PLANT LABOR		\$0.40
FIXED COSTS		\$0.25
CAPITAL COSTS		\$0.35
BY-PRODUCTS	(credit)	\$0.40
TOTAL		\$2.50


PRICE OF ETHANOL, METHANOL &
UNLEADED REGULAR
$/G
1.25
1
0.75
0.5
0.25
0
1986
1987
1988
1989
YEAR
ETOH
U/L REG
MEOH



WHEAT PRICES - CENTRAL MONTANA
$/B
4.50
4.25
4.00
3.75
3.50
3.25
3.00
2.75
2.50
2.25
2.00
1.75
1.50
1
2
3
4
5
6
7
8
9
10
10 YEAR PERIOD
HIGH
AVG
LOW

SENATE TAXATION
EXHIBIT NO. 6
DATE 1/23/91
BILL NO. SB 77

WIFE Women Involved In Farm Economics

Kay Norenberg
SB 77

The promotion and use of ethanol is an issue WIFE supports and has been actively involved since WIFE's inception in 1977.

WIFE lobbied extensively for this legislation when it was originally introduced and we continue to support the concept of an incentive for ethanol.

Numerous studies have pointed out the benefits:

Cleaner Air-Environmentally sound

American Jobs-Economically smart

Reduces dependence on foreign oil AND ethanol is a Renewable source of energy.

Despite all these benefits, government also needs to contribute by supporting and making available these incentives.

WIFE speaks in favor of SB 77.

SENATE TAXATION
EXHIBIT NO. 7
DATE 1/23/91
BILL NO. SB 77

Testimony from Shirley Ball, on SB 77.

I am sorry that a meeting conflict will not allow me to be at this hearing. I am writing to lend my support to **SB 77** to extend the time for the incentive allowed to ethanol producers. I have had opportunities to examine the benefits of ethanol. In 1987, the Congress directed the USDA to study the **"Cost Effectiveness of Ethanol"**, and I was a member of the study panel. I have been on the Renewable Energy Advisory Council with the DNRC. As national WIFE Energy Chairman, I attend national ethanol conferences, and I helped to organize Montana ethanol meetings, in Glasgow in November, and in Helena on Jan. 16.

The USDA panel was charged with assessing how ethanol relates to farm income, domestic economy, energy security, and foreign trade, as well as government expenditures. The panel recognized the need for incentives for the ethanol industry and this testimony is quoted from the "Summary and Conclusions" portion of the study.

"The findings of this report provide important considerations for policy makers. Incentives provided to date have been effective in encouraging ethanol production, but incentives must be reliable and consistent in order to induce the ethanol industry to continue or expand production, given an unstable energy market based on cartel-influenced oil prices. The ethanol industry relies on federal and state support to remain viable in the face of such instability."

"If ethanol is to be encouraged, it would be useful for the federal government to seek state cooperation in providing stable and consistent incentives for ethanol production across the U.S. This would help facilitate a nationwide market for ethanol that would be less concentrated in those states with the greatest incentives. Similar incentives in every state and locality would allow ethanol marketers to devote less time to tapping the most favorable incentives and more on promoting and distributing their product to the broadest market possible."

Other national studies have agreed that incentives are necessary. In addition it is documented in the studies that the benefits to economic development and to rural communities in the **value added process** more than offset costs of incentives.

Another point made in the study was that virtually **all energy** industries (including gas, coal, oil, hydro, and solar), **receive some form of goverment support** that lowers costs or encourages production and distribution and that it is reasonable to extend support to a **renewable, environmentally sound, and domestic fuel.**

I would recommend the total cap mentioned in (4), be raised in order to encourage growth within the industry. The current cap will only allow for one full incentive for one ethanol facility. If it is raised and other facilities come on line, they will be able to get a full incentive, but if other facilities do not become a reality, the additional funding will not be used and no increased cost.

Support SB 77

Shirley Ball
Nashua MT

SENATE TAXATION
EXHIBIT NO. 8
DATE 1/23/91
SB 93

Illustrative Computation Under 4/6/74 Rules

"Total Costs of Operation

"Excavation	$ 1,000,000.00
Loading	250,000.00
Hauling	500,000.00
Crushing	500,000.00
Maintenance & Supplies	100,000.00
Property taxes on equipment	50,000.00
Severance, RITT, Gross Proceeds & Fed. taxes	3,500,000.00
Royalties	50,000.00
Reclamation	500,000.00
Supervisor & overhead costs	200,000.00
Depreciation	250,000.00
Total costs	$ 6,900,000.00
Gross Sales	$10,000,000.00
Less Total Costs	6,900,000.00
Profit	$ 3,100,000.00

"Gross Sales			$10,000,000.00
Less:	Post mining expenses		
	Hauling	$500,000.00	
	Crushing	$500,000.00	
	Maintenance & Supplies	$100,000.00	$ 1,100,000.00
			$ 8,900,000.00

"Less: Indirect costs attributable to both Mining & post mining operations 1,100,000/6,900,000 =15.9% x

Taxes on equipment	$ 50,000 =	$ 7,971.00	
Severance, RITT, etc.	$3,500,000 =	$557,971.00	
Supervision & overhead	$ 200,000 =	$ 31,884.00	
Depreciation	$ 250,000 =	$ 39,885.00	
Profit	$3,100,000 =	$494,203.00	1,131,914.00
Taxable Value			$ 7,768,086.00"

As explained in more detail later, the effect of defendant' 12/20/82 amendment would be to tax gross sales.

Although perhaps not all encompassing or the only way coal is mined and processed in the state of Montana, the following method is agreed for purposes of this lawsuit to be a typical method of strip mining coal in the state of Montana, to-wit:

1. Topsoil is removed by scrapers and either stockpiled for use in reclamation of the area or applied to an area currently being reclaimed.

2. Overburden is then removed by either a dragline or by use of a mechanized "shovel" and trucks. The overburden is also either used in

SENATE TAXATION
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SB 93

was interpreted to mean the gross value of the product at the "mine mouth" which in the case of these plaintiffs had been interpreted by the Department of Revenue as gross value at the time the coal was taken from the pit and loaded onto a truck. The instructions sent to the coal companies to aid them in their computation under the 4/6/74 rules and an illustrative computation follow:

Instructions Implementing 4/6/74 Rules

"RITT: VALUATION OF COAL AT MINE MOUTH

"During the recent audits of the coal RITT, the Montana Department of Revenue has had problems in trying to arrive at a uniform method of valuing coal at mine mouth. This meeting is to obtain input from the various coal companies to help resolve this problem.

"To begin with, this department will give what it believes to be the correct method of computing mine mouth value and request your ideas and comments. In helping to determine the mine mouth value, we have used the case of Hillard vs. Big Horn Coal Company, 549 P., 2nd 293, as a guideline.

"To derive a mine mouth value, we computed as follows:

"Gross sales

"Less: Post mining costs to include

1. Crushing
2. Transportation
3. Expenses of post mining equipment to include
   a. depreciation
   b. labor
   c. supplies
   d. property taxes

"Less: Indirect costs attributable to both mining and post mining operations based on % to total costs to include:

1. Severance tax
2. Gross Proceeds
3. RITT
4. Black Lung
5. Federal reclamation tax
6. Supervisory costs
7. Sales & general expenses
8. Depreciation
9. Net profit

"Royalty and reclamation costs are not deductible.

"Attached is a simplified example of a computation for mine mouth value."

SENATE TAXATION
EXHIBIT NO. 9
DATE 1/23/91
BILL NO. SB 93

COAL RITT AT .4% & .5%
CALENDAR YEARS 1988 & 1989

COMPANY	QTR	C.S.P.	RITT @ .4% (A * .004)	RITT PAID @ .5% CURRENT LAW	DIFFERENCE (B - C)
		A	B	C	D
TOTALS	1/88	$85,451,805	$341,807.22	$0	
	2/88	$57,767,988	$231,071.95	$0	
	3/88	$61,859,742	$247,438.97	$0	
	4/88	$67,758,014	$271,032.05	$0	
		$272,837,549	$1,091,350.20	$1,054,542.70	$36,807.50
	1/89	$57,429,142	$229,716.57	$0	
	2/89	$59,094,849	$236,379.40	$0	
	3/89	$64,150,573	$256,602.29	$0	
	4/89	$67,624,245	$270,496.98	$0	
		$248,298,808	$993,195.23	$992,114.16	$1,081.07

SENATE TAXATION
EXHIBIT NO. 10
DATE 1/23/91
BILL NO. SB 86

SENATE STANDING COMMITTEE REPORT

January 23, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 86 (first reading copy -- white), respectfully report that Senate Bill No. 86 be amended and as so amended do pass:

1. Title, line 7.
Following: "PRODUCTION;"
Insert: "CLARIFYING THE ALLOCATION OF NEW PRODUCTION;"

2. Page 8, lines 9 and 10.
Strike: "a producing" on line 9 through "1986" on line 10
Insert: "has new production"

3. Page 8, line 22.
Strike: "completed after December 31, 1986,"
Insert: "producing new production"

Signed: ______________________
Mike Halligan, Chairman

1-23-91
Amd. Coord.

Sec. of Senate

151342SC.SJI