

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Dorothy Eck, Vice Chairman, on
February 7, 1991, at 8:00 a.m.

ROLL CALL

Members Present:

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)

Members Excused:

Mike Halligan, Chairman (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 HOUSE BILL 53

Presentation and Opening Statement by Sponsor:

Representative Nisbet, District 35, sponsor, said the bill was introduced at the request of the Department of Commerce. The bill as amended increases the license fees for the petroleum licensing program by approximately 25%. It also clarifies the status of licenses for measuring devices upon a change in ownership of such devices. The increase in license fees is to help fund the equipment needs of the weights and measures bureau. The Bureau has a substantial inventory of older equipment, some dating back to the 1940's. The repair costs are very high. The loss of productive time and finances to cover repair costs has negatively impacted the ability of the Bureau to perform its duties.

Proponents' Testimony:

Jim Kembel, Public Safety Division, Department of Commerce, presented his testimony in support of the bill (Exhibit #1).

Ronna Alexander, Montana Petroleum Marketers, said the 90 member organization of bulk and retail petroleum dealers support the bill.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Van Valkenburg said the bill as introduced would have increased revenue by approximately \$80,000 per year with some net increase to the general fund. As amended, the bill generates only \$20,000 per year and has a negative impact on the general fund of approximately \$45,000 over the biennium. Senator Van Valkenburg asked Mr. Kembel if he gets the appropriation for new equipment that has been presented to the Appropriations Committee would he adjust the figures in this bill for repair and maintenance.

Mr. Kembel stated he has a planned 3.3 year pay back to the general fund for the new equipment at the new fee rates. The new fees would bring in \$20,000 a year. The first year increase to the general fund would be \$62,386 and the second year \$4,353. The total increase would be \$66,739.

Senator Gage asked for further clarification about repair costs to old equipment as opposed to the new equipment costs.

Mr. Kembel said the repair costs have not been reduced because of the volatility of gas prices. He said he had to ask for a \$13,000 supplement this year because of repairs and gas prices. He said the equipment is old, the hoists were built in 1940. The trucks have over 150,000 miles on and the routinely carry 5000 to 10,000 pound loads. The truck repairs have amounted to \$14,000 so far this fiscal year.

Closing by Sponsor:

Representative Nisbet closed.

EXECUTIVE ACTION ON SENATE BILL 115

Amendments, Discussion, and Votes:

The committee researcher, Jeff Martin, presented a "gray bill" showing how the Blaylock amendment's are integrated into the bill (Exhibit #2).

Senator Harp said there needs to be a definition of utilities.

Senator Towe asked why corporation taxes were not included in Section 2.

Senator Blaylock said he wants the bill to pass and doesn't want to draw the opposition of the corporations.

Dennis Burr said he felt that the issue is more of a utility issue than a corporation issue. If the local jurisdiction taxes the corporate income of the utility, it becomes part of the rate base statewide because of the uniform rate structure.

Senator Van Valkenburg had asked the Department of Revenue to provide information as to how an income tax might be best administered and applied with respect to the allocation of income between the area of one's residence and one's source of income.

Jeff Miller, DOR, replied there are two methods of assessing the local option tax:

1. Residency Basis - 100% of the earnings are attributed to the residence
2. Sourcing - point of earnings basis which can be done either on a proration basis or a separate accounting basis

Mr. Miller said DOR has prepared amendments which would tie the sourcing basis to current law and definitions.

Senator Van Valkenburg said he was concerned with the ease with which a person can move their residence out of a county where the local option tax is applied. According to the bill, one can avoid half the tax if he moves which seems create an incentive. He wondered how to avoid that flight from the taxing area.

Senator Blaylock said he was aware of the problem. He preferred the residency basis. Under the sourcing basis, the people who live outside the taxing jurisdiction would be able to say they didn't get a chance to vote on the issue.

Senator Harp asked DOR which method they prefer in terms of administrative costs.

Jeff Miller replied said there is considerable expense involved in the sourcing method. The costs are much lower for the residency basis. The prorata point of earnings basis is much more expensive. The residency basis piggy-backs the state.

Senator Towe presented proposed amendments to the bill (attachment #3). He said his amendments would provide for the Public Service Commission to recognize an increase in utility bills in only one local jurisdiction to reflect the tax on the sale of the utility's sales.

Senator Thayer said the consumer is going to pay the higher tax, not the corporation.

Senator Towe pointed out he doesn't want the whole state to pay for the rate increase. His amendments would authorize the higher bill in the impact area only.

Dennis Burr said there is the question of other large corporations operating in the local option district such as IBM. The question becomes how to determine what the tax is in just that local jurisdiction.

Senator Van Valkenburg said the local people should have the option of instituting a property tax in the local jurisdiction for the support of local government and services, not for schools.

Senator Eck asked if this would be a local option to abolish I105.

Senator Van Valkenburg said he thought it could be called that.

Senator Blaylock said this bill gives local communities a chance to do something. They have been starved by I105. He said he took sub (c), page 2, out of the bill because of the anticipated opposition.

Senator Van Valkenburg said the bill, as per the proposed amendments, is nothing other than a local option sales tax. He said it needs another "leg" - the property tax option.

Senator Towe asked if anything more needed to be done over and above reinserting sub (c), page 2.

Alec Hansen, Montana League of Cities and Towns, said all that would have to be said would be "cities would be able to exceed I105 by a vote of the people".

Senator Thayer said he thought the intent of Il05 was not so much to freeze the current property tax base as much as it was to demand that the legislature devise an alternative form of taxation. The mandate was given to the legislature to revise the whole taxation system in Montana which the legislature has failed to do.

Senator Gage asked how the gas tax would fit in this legislation. The Constitution mandates 60% of a gas tax it goes to highways and it can only be imposed by a vote of the people.

Senator Harp said there is currently in statute a local option gas tax.

Dennis Burr said a general sales tax applied to gasoline would not have to be applied to roads and a vote of the people. He said under Il05 there can be a property tax increase with a vote of the people. He said Helena did it and put on six mills. He did not think there needed to be any additional language in the bill. The third "leg" is already available.

Senator Gage asked Mr. Don Bailey, representing Gordon Morris, Montana Association of Counties, for an opinion. Mr. Bailey submitted a letter from Gordon Morris regarding the issues under discussion (Exhibit #4).

Senator Gage expressed a concern about counties where there is an Indian reservation where the population is exempt from many state and local taxes. If the taxing jurisdiction is based on the residence basis, would they be exempt from the tax while being equal recipients of the proceeds? He thought a way out may be by including reservation governments as local governments so that they might enter into a cooperative agreement with the local governments if they so chose.

Senator Eck said if the definition of inter-local government does not include tribal governments it might have to be included in the bill.

Some general discussion was held reviewing and comparing Senator Blaylock's proposed amendments with those proposed by MACo.

Senator Towe attempted to make a motion to begin amending the bill.

Senator Van Valkenburg objected strenuously and said no action should be taken on the bill without the Chairman and Senator Yellowtail being in attendance (both were presenting bills in other Committees).

There followed a discussion of "philosophical viewpoints" by various of the Committee members.

Senator Van Valkenburg asked Jeff Martin to prepare a new gray bill which would add the local option property tax excluding Il05 provision and limiting the income tax just to the residents of the local government that imposes the tax. Also, the property tax should not be chargeable on non-mill revenue with respect to the guaranteed tax issues of the foundation program. He expressed concern with the problem of cities and counties forcing a county wide issue, however, he felt Senator Blaylock's amendments probably addressed that concern adequately.

Senator Towe said the bill would then, in effect, keep the individual income tax. He asked if Senator Van Valkenburg would want to retain the regulated utility services and strike line (c) altogether and replace it with a property tax line.

Senator Van Valkenburg said that was what he proposed.

A great deal of discussion was held between Alec Hansen, League of Cities and Towns and Mr. Bailey, MACo.

Senator Gage said REA's are not regulated utilities and should be included.

Senator Eck wanted inter-local agreements with Indian reservations included in the bill.

Senator Brown asked said if schools are to be exempted, he would want to see an amendment drafted to address the community colleges in the local jurisdictions.

ADJOURNMENT

Adjournment At: 10:00 a.m.


SENATOR MIKE HALLIGAN, Chairman


JILL D. ROHYANS, Secretary

MH/jdr

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 2/7/01

52nd 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.

2/1/91

TAXATION

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7 day of Feb., 1991.

Name: W. James Kembel

Address: Public Safety Div / DOC

Telephone Number: 444-3934

Representing whom?

DOC

Appearing on which proposal?

Do you: Support? ✓ Amend? Oppose?

Comments:

Attached

WEIGHTS & MEASURES BUREAU
PUBLIC SAFETY DIVISION
DEPARTMENT OF COMMERCE

SENATE TAXATION

EXHIBIT NO. 1

DATE 2/7/91

BILL NO. HB 53

TESTIMONY ON HOUSE BILL NO. 53

House Bill No. 53 is at the request of the Department. The proposed bill increases the license fees for the petroleum licensing program and also clarifies the status of licenses for measuring devices upon a change in ownership of such devices.

The reason for the proposed bill is to offset the cost of equipment, for the Weights & Measures Bureau, to the general fund. The decision was made during the budget process that equipment costs needed to be covered by some other means than simply putting a greater demand on the already troubled general fund monies.

The decision was made to increase the fees for petroleum devices because currently even though there are 6,939 weighing devices generating \$138,781 there are 10,343 measuring devices generating only \$76,863. In other words 40% of the devices licensed (weighing devices) are currently generating 64% of the revenue, while 60% of the devices licensed (measuring devices) are currently generating 36% of the revenue. As proposed by the bill the ratio would be (weighing devices) still equal 40% of the licensed devices would generate 48% of the revenue and (measuring devices) still equal 60% of the licensed devices would generate 52% of the revenue.

In addition the licenses for weighing and measuring devices have been handled differently when there was a change in ownership. As proposed both types of devices would be handled in the same manner. If there is a change in ownership, of the measuring devices, and the devices remain at the same location the existing license will continue to remain in force. If however ownership changes and the measuring devices change location a new license will be required. The reason for the method of operation is that as long as the measuring devices remain in the same location the Bureau does not have to do additional testing. If the equipment is moved new testing is required and thus more expenses for the Bureau need to be addressed.

The Bureau has a substantial inventory of older equipment that is constantly breaking down. The loss in productive time and finances to cover repair of equipment is negatively impacting the Bureau's ability to perform the statutory duties.

SENATE TAXATION

EXHIBIT NO. 1DATE 2/7/91FILE NO. #A53

The equipment purchases scheduled in the budget is as follows:

Item	FY92	FY93	Reason
Package Scales	7,000	0	Need 7 to do inspections
Cable Hoists	15,000	0	Need 5 replace worn out ones
25 gal LPG Pro	5,000	0	Need to do small meters
2t Trk.(M4160)	24,000	0	Current truck 150,000 mi. plus
1/2t Pu(M4434)	11,386	0	Current truck 135,000 mi. plus
1/2t Pu(M4419)	0	11,700	Current truck 111,000 mi. plus
3/4t Pu(M5841)	0	12,653	Current truck 123,000 mi. plus
Micro Balance	10,000	0	Need to keep lab. certified
100 gal. Prover	2,500	0	Need to keep lab. certified
100 gal. Prover	2,500	0	Need to replace worn out
Computer	5,000	0	To automate laboratory
TOTAL	82,386	24,353	

In the future the equipment needs of the Bureau will continue, thus requiring the need for additional funding. As an example in 1994 the Bureau will need to replace a 1/2 ton pickup and a 2&1/2 ton truck and in 1995 will need to replace a semi-truck. In addition in 1994 there is going to be a change in the weighing device testing requirements and the Bureau will need to increase the amount of weights they have available by 10,000 pounds at a cost of approximately \$1.20 to \$1.50 per pound, for a total cost of \$12,000 to \$15,000.

EXHIBIT NO. 2
DATE 2/17/91
BILL NO. SB 115
Snd Legislature

LC 0605/01

"GRAY" BILL

LC 0605/01

1 INTRODUCED BY Senate BILL NO. 115 Don Nelson
2 Amended by Senate
3 Amended by House
4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A LOCAL
5 GOVERNMENT TO IMPOSE ANY TYPE OF TAX NOT PROHIBITED BY LAW
6 THE TAX"
7 IF IT IS APPROVED BY THE ELECTORATE OF THE LOCAL GOVERNMENT;
8 PROVIDING FOR ADMINISTRATION OF THE TAX; AND PROVIDING CIVIL
9 AND CRIMINAL PENALTIES NECESSARY FOR ADMINISTRATION OF THE
10 TAX."
11
12 STATEMENT OF INTENT
13 A statement of intent is required for this bill because
14 the department of revenue is granted rulemaking authority
15 under [section 3] for the administration of a local option
16 income tax. The legislature intends that the department
17 adopt rules that:
18 (1) define income subject to a local income tax;
19 (2) specify the conditions under which a taxpayer who
20 resides in a jurisdiction that imposes a local income tax is
21 liable for the tax;
22 (3) specify the conditions under which a taxpayer who
23 is not a resident of the jurisdiction imposing a local
24 income tax but whose principal place of business or
25 employment is in the jurisdiction is liable for the local
income tax;

 MONTANA LEGISLATIVE COUNCIL

1 (4) provide for the necessary forms and required
2 procedures for reporting taxes; and
3 (5) establish procedures for the efficient
4 administration of a local income tax, including the
5 collection and timely remittance of the proceeds from the
6 income tax to the jurisdiction imposing the tax.
7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9
10 NEW SECTION. Section 1. Definitions. As used in
11 [sections 1 through 6], the following definitions apply:
12 (1) "Department" means the department of revenue.
13 (2) "Enabling authority" means a proposal approved by
14 the electorate in accordance with 7-5-136 that enables a
15 local government to impose a tax.
16 (3) "Local government" means the government of a county
17 or a municipality.
18 (4) "Municipality" means an incorporated city, town, or
19 city-county consolidated government.
20 NEW SECTION. Section 2. Authorization of local option
21 tax. (1) Subject to the provisions of the enabling
22 authority, a local government may impose upon its residents
23 and upon transactions within its jurisdiction:
24 (a) taxes on individuals except utility services;
25 (b) taxes on the sale of goods or services; or
(c) ~~any other type of tax not prohibited by law~~

LC 0605/01

LC 0605/01

SENATE TAXATION

EXHIBIT NO. 2

DATE 2/7/91

BILL NO. 5B115

1 The proposal to impose a tax authorized by this
2 section may be initiated by a petition of the electorate, as
3 provided in 7-5-131 through 7-5-135, or by a referendum
4 proposed by the governing body.

5 (3) The proposal must state:

6 (a) the specific type of tax the local government
7 proposes to impose;

8 (b) the proposed tax rate;

9 (c) proposed exclusions and exemptions, if any;

10 (d) the proposed duration of the tax;

11 (e) the purpose for which the proceeds of the proposed
12 tax would be used; and

13 (f) the estimated total annual revenue to be produced
14 by the proposed tax.

15 (4) In addition to the provisions required by
16 subsection (3), the proposal must grant the governing body
17 authority to establish administrative procedures, rules,
18 penalties, and other powers that are consistent with the
19 approved enabling authority.

20 (5) Except as provided in [section 6], the enabling
21 authority may not be amended or repealed by the governing
22 body without a vote of the electorate.

23 NEW SECTION. Section 3. Local option income tax --
24 administration -- nonresidents. If the tax authorized by
25 [section 2] is a percentage of the state income tax

1 liability of residents of a county or municipality or of
2 persons earning or receiving income from activity in the
3 county or municipality, the following provisions apply:

4 (1) A local option income tax must be administered by
5 the department, and the department shall adopt rules for the
6 administration of the tax.

7 (2) Money collected by the department must be credited
8 to a local income tax account in the fiduciary fund of the
9 state treasury.

10 (3) The department shall return the tax proceeds to the
11 jurisdiction where they were collected after deducting:

12 (a) the amount of refunds;

13 (b) a reserve for anticipated refunds; and

14 (c) an amount for administering the tax, not to exceed
15 1% of the proceeds collected in each jurisdiction.

16 (4) A taxpayer whose principal place of business or
17 employment is in a jurisdiction with a local income tax but
18 who lives outside the boundaries of that jurisdiction is
19 liable for one-half the rate of the income tax.

20 NEW SECTION. Section 4. Enforcement -- penalties for
21 nonpayment -- interlocal agreements. (1) Subject to any
22 restrictions in the enabling authority, a governing body may
23 enforce the provisions pertaining to the imposition and
24 collection of the tax by establishing:
25 (a) criminal penalties, not to exceed the penalties for

SENATE TAXATION

EXHIBIT NO. 2

DATE 2/19/91

BILL NO. 518 115

LC 0605/01

LC 0605/01

1 violation of an ordinance as set forth in 7-5-109; and
2 (b) civil penalties that are monetary amounts, either
3 fixed or in percentages, enforceable in a justice's, city,
4 or municipal court.

5 (2) A governing body may contract or enter into
6 interlocal agreements with other local governments or state
7 agencies for the administration of a tax authorized by
8 [section 2].

NEW SECTION. Section 5. Distribution of tax proceeds.

10 (1) The proceeds of a tax authorized by [section 2] must be
11 used for the purpose stated in the enabling authority,
12 except that the governing body may use a portion of the
13 proceeds for the administration of the tax.

14 (2) A local option tax imposed by a county must be
15 levied countywide, and unless otherwise provided by
16 agreement with municipalities, the county shall distribute
17 the proceeds based on the point of origin of the tax
18 revenue. After a pro rata deduction for its administrative
19 expenses, the county shall distribute tax revenue collected
20 within each municipality to the municipality and shall
21 retain tax revenue not collected within any municipality.

NEW SECTION. Section 6. Double taxation prohibited.

23 (1) A local option tax may not be levied on the same person
24 or transaction by more than one local government.

25 (2) If the electorate of a county approves a local

1 option tax after the electorate of a municipality in the
2 county has approved a local option tax on the same person or
3 transaction at the same or a higher rate, persons and
4 transactions in the municipality are exempt from the county
5 tax as long as the municipal tax is in effect. If the
6 municipal tax is at a lower rate than the county tax, the
7 governing body of the municipality shall repeal its tax
8 without a vote of the electorate.

NEW SECTION. Section 7. Codification instruction.

10 [Sections 1 through 6] are intended to be codified as an
11 integral part of Title 7, chapter 6, and the provisions of
12 Title 7, chapter 6, apply to [sections 1 through 6].

-End-

→ (a) sales tax revenue based on the point of origin of the
sales tax revenue;

(b) income tax revenue based on the relative population of
the municipalities to the county derived from the most recent
population estimates provided by the U.S. bureau of census, or if
estimates are not available, derived from the 1990 census.

(3) After a pro rata deduction for its administrative
expenses, the county shall distribute tax revenue to each
municipality as provided in subsection (2) and shall retain tax
revenue not distributed to the municipalities.

Amendments to Senate Bill No. 115
First Reading Copy

Requested by Senator Towe
For the Committee on Taxation

Prepared by Jeff Martin
February 5, 1991

1. Page 2, line 7.

Following: line 6

Insert: "(6) establish procedures to administer any other tax imposed under this bill that is already collected statewide, if requested to do so by a local jurisdiction. The procedures should provide for the deduction of appropriate administrative costs for the collection and distribution of the tax to a local jurisdiction."

2. Page 3, line 23.

Following: line 22

Insert: "(6) For the purposes of this section, if a local jurisdiction imposes a tax on the sale of utility services, the public service commission is authorized to recognize an increase in utility bills in only one local jurisdiction to reflect a tax on the sale of services by a utility company in that jurisdiction."

MONTANA
ASSOCIATION OF
COUNTIES

2711 Airport Road
Helena, Montana 59601
(406) 442-5209
FAX (406) 442-5238

TO: Chairman Mike Halligan and Members
Senate Taxation Committee

FROM: Gordon Morris, Executive Director

RE: SB 115

DATE: February 6, 1991

SENATE TAXATION

EXHIBIT NO. 4

DATE 2/7/91

BILL NO. SA 115

I wish to emphasize in the strongest terms possible that a local option tax authorized under SB 115 should be imposed county-wide subject to an interlocal agreement between the local governments. This is the only way to avoid a stampede to get to the electorate first. Such a county-wide local option tax must be subject to an agreement between the local governments and must be submitted to the entire county electorate.

Further the local option tax authorized and imposed by a county under section 5, page 5, must take into account the fact that 50% of the people in Montana live outside the incorporated city and town limits. Yet, these same people do business in the cities and towns.

To distribute tax proceeds on a "point of origin of the tax revenue" basis is a disservice to county residents. Any local option tax authorized to be imposed by a county must be levied county wide, and unless otherwise provided by agreement with municipalities, the proceeds should be distributed based on population. As a result I would urge an amendment to page 5, line 17:

strike: "point of origin of the tax revenue."
insert: population of the various local government units in the county.

Further on page 5, line 19 and 21.

strike: "within each municipality to the municipality and shall retain tax revenue not collected within any municipality."

In closing, I regret MACo and the League appear pitted against one another on this issue. I assure you county commissioners feel strongly about this position and would oppose any local option tax distributed on the point of origin.

MACo