MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Mike Halligan, on February 13, 1991, at 8:08 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 JOINT RESOLUTION 15

Presentation and Opening Statement by Sponsor:

Senator Eleanor Vaughn told the Committee it is important to those using social security funds and to those who hope to use them in the future that social security funds be used only for social security benefits and be put in a trust fund. The recommendation came from the Senior Citizen's Legacy Legislature as a top priority.

Proponents' Testimony:

Hank Hudson of the Governor's Office on Aging told the Committee the social security trust fund will be growing in the coming years. He explained when the "baby boomers" retire a large trust fund will be needed. There is concern this fund would be viewed as a possible way to resolve federal fiscal problems.

Opponents' Testimony:

NONE.

Questions From Committee Members:

NONE.

Closing by Sponsor:

Senator Vaughn closed on Senate Joint Resolution 15.

EXECUTIVE ACTION ON SENATE JOINT RESOLUTION 15

Motion:

Senator Towe moved to ADOPT SJR 15.

Discussion:

Senator Towe asked what "used falsely" means on Page 2, (2). Senator Van Valkenburg explained it is used to make the budget look more balanced than it is.

Amendments, Discussion, and Votes:

Voice Vote was called.

Recommendation and Vote:

Motion to ADOPT CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 272

Presentation and Opening Statement by Sponsor:

Senator Bill Farrell explained Senate Bill 272 was in response to legislation in the 1989 session that failed to define "industrial infrastructure" and "infrastructure". He explained there is no definition under Urban Renewal or Infrastructure law. He told the Committee through review of the Minutes of the Hearing on Senate Bill 472, the Committee and the Legislature defined it as defined in Senate Bill 272. He explained he has been approached with a different interpretation. He suggests that Senate Bill 272 is the definition intended. He said attorneys working in this area have expressed confusion in that the legislature was not clear in what they considered industrial infrastructure. The concern is whether the money could be used as all or a portion of a companies costs in acquiring land, construction of buildings, buying equipment, etc., and, even if the taxes were collected they are not sure those bonds couldn't be used and the tax money given back in the form of an infrastructure grant. Senator Farrell opposed Senate Bill 472 because he was not clear what the bill actually did. He explained it was to promote business, but should define infrastructure. He pointed to another issue in which the Constitution states taxes shall be levied for a public purpose; and use of an expanded version of infrastructure could cause problems in regards to what the taxing powers of the state can be used for. He questioned whether an industrial revenue bond can be created and given to a private individual to buy a building, equipment, remodel, etc.; or is this considered economic development.

Proponents' Testimony:

NONE.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Thayer asked Senator Farrell if something has happened in which a community has tried to go beyond what is normally considered infrastructure. Senator Farrell explained there had been proposals that have gone beyond what was testified to in Committee or what the Legislature intended. He cited an example from a local development corporation, in which the individual is asking other local development corporations if they could match the proposal. He explained this was a broader interpretation than was intended.

Senator Thayer explained that during the last session the intent was not to go beyond infrastructure. He asked Senator Farrell if he were sure there was not a definition in the code. Senator Farrell told the Committee he was sure.

Senator Gage asked Jeff Martin what "unless the context requires otherwise" cover. Mr. Martin explained the term was standard language when doing definitions.

Senator Towe asked Senator Farrell what specifically he was concerned about. Senator Farrell explained there has been a proposal for asbestos cleanup, purchasing of equipment, a building, and land purchase by a private corporation. A local government's taxing authority is being used to provide grants without limitation.

Senator Towe asked Senator Farrell if he does not think it is appropriate to use infrastructure tax increment financing for industrial purposes for asbestos removal, etc. Senator Farrell explained that was correct. Senator Towe asked if he wanted to preclude that as a public purpose, for example, what if the building or equipment used by, owed by and operated by the municipality. Senator Farrell explained that is included in the tax increment district, and is a public service.

Senator Towe cited another example. He asked if a company determines they are in need of a street and sidewalks, and these would be available for public use, but would continue to be the companies property would it be excluded unless it is publicly owned. Senator Farrell told the Committee Senate Bill 272 addresses that. The company would pay for it.

Senator Eck commented that the purpose of the act is to allow an area to set priorities for how those tax dollars are spent within the area. She told the Committee the tax increment district has the purpose to use tax dollars for public purposes especially needed by that area.

Senator Van Valkenburg asked Rick Jones from the Business Development Division what problems under the current industrial infrastructure financing act there are, and how Senate Bill 272 would address those problems. Mr. Jones explained the statutes do not clearly define what elements are included in infrastructure and what are not. He told the Committee the issue is how broad the definition is, and if it includes areas that are privately owned and available for public use, or publicly owned and privately used on a lease basis.

Senator Van Valkenburg asked if there are problems in Montana now in the way the act is being interpreted from community to community. Mr. Jones explained there are clear differences in how it is being used.

Senator Gage asked Senator Farrell if the intention was to include the railroad spur owned by the state. Senator Farrell responded this would be included if the state owned the land.

Senator Towe asked Senator Farrell about the termination in the other act. He pointed out Senate Bill 272 refers to the Tax Increment Financing Industrial Development Act in which it states "an industrial district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4293". He explained 7-15-4292 says "there shall be no more bonds issued after January 1, 1990." He asked if this was an "exercise in futility". Senator Towe explained there is a possibility that some bonds already sold, but the money may not have been committed, would be affected.

Senator Doherty asked Rick Jones which communities have interpreted the act differently, what interpretations have been done, and how has the "playing field been made not level". Mr. Jones told the Committee each community interprets it differently.

Senator Doherty asked which communities has used it. Mr. Jones explained only a few communities employ tax increment financing.

Senator Doherty asked how many. Mr. Jones told the Committee Butte and Missoula are using the industrial.

Senator Doherty asked what the different interpretation is. Mr. Jones explained the difference is what the public purpose is; whether it is to provide the necessary facility, or if it goes beyond that to job creation and tax bases.

Senator Halligan asked Mr. Jones if the local government can buy the building and lease it back to a microbusiness. He explained he has been in touch with two local government increment districts who find the bill extremely limiting and do not support the legislation. Senator Farrell explained taking money away to help private business was not what the public purpose was defined for. He said if that building is publicly owned it would be covered under this. He further explained it could be done under tax increment like urban renewal and would fall under another section of the law. But he said he was not clear on it and did not think anyone else was.

Senator Towe commented the original increment financing was designed to help downtown core areas and is limited to that. He explained most industrial areas are not in the core areas, and the original bill's purpose was to allow that same financing mechanism out of the core area over to the industrial area. He questioned whether the Committee wanted to be that limiting, as there is sometimes a valid public purpose in providing a building, a street, land or equipment that would be used for public purpose but would not be owned by the municipality.

Senator Farrell stated the original intent was for example; a city had 200 acres and a tenant was found that would be the anchor tenant in that 200 acre industrial park. The taxes that would be paid would then go into the development of streets, roads, sewers, water systems, etc. He explained that is what the legislature was presented with last time, and that is how the system would work. There was nothing stated about the bonds being sold, with the business buying the building. He stated the Committee could choose to amend the bill and include what the legislature intended in industrial revenue. He stressed his concern regarding the definition.

Senator Gage asked why this bill went through Business and Industry last session and in this Committee this session. Senator Halligan explained it had been requested to go to Business and Industry but he felt this committee should deal with the issue.

Senator Van Valkenburg said the bill should be in the Taxation Committee and should have been last session.

Senator Eck asked if it were true that it has to be approved by the local government. Senator Farrell said the local government has to approve.

Closing by Sponsor:

Senator Farrell closed Senate Bill 272.

HEARING ON SENATE BILL 275

Presentation and Opening Statement by Sponsor:

Senator Delwyn Gage presented Senate Bill 275 to the Committee. He explained it would repeal nuisance taxes, and has already been considered in the Governor's budget. He explained he spoke with cement industries representatives that indicated this has cost them out of state contracts.

Proponents' Testimony:

Jeff Miller, Administrator of the Income Tax Division explained the handling of the certificates of good standings cost more than the $1 fee.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Van Valkenburg asked Jeff Miller how many cement and gypsum dealers and producers there were in Montana. Mr. Miller explained there are two cement producers, five cement retailers, and one coal retailer.

Senator Van Valkenburg expressed his concern regarding what percentage of the reduction in revenue is going to an individual cement producer or dealer. Mr. Miller told the Committee he could confirm that information and get it back to them.

Senator Van Valkenburg asked for a breakdown on the cement and gypsum tax between producers and retailers. Mr. Miller explained the cement producers paid $131,000, the retailers paid $500, with no tax paid on the gypsum.

Senator Towe expressed agreement with eliminating the coal retailers license at only $11 a year. He questioned repealing the license tax on cement producers that are paying $131,000. Mr. Miller explained most of the cement is destined for out of state consumption and can make the difference in contracts.

Senator Eck commented this case was similar to coal with no data as to whether this would make a difference, except where the companies say it does. Mr. Miller explained he had no data with him but would return information to the Committee as to whether or not the producers have presented evidence as to the impact on their bidding.

Senator Eck asked Mr. Miller if this was the same bill presented in the 1989 session. Mr. Miller explained that legislation had a combination of taxes, but failed.

Senator Eck asked Jeff Miller if he would explain about the $1 fee to obtain a tax clearance certificate. Mr. Miller explained as corporations close their books, file financial statements or seek bank loans they need certification from the department they are "current and in good standing as regards to their taxes".

Senator Eck commented that local governments filing certificates such as this are increasing the fee instead of eliminating the fee. She asked Mr. Miller if the department had determined what the cost is to the department for sending out the tax clearance certificates. Mr. Miller said they did not, but the function was one they were willing to do.

Senator Harp asked Mr. Miller how many cement producers there were. Mr. Miller told the Committee they were Elk River and Trident.

Senator Towe asked about the coal retailer license. He commented the $11 tax collected indicates there are not many coal retailers. Mr. Miller explained the rate is five cents per ton. There was one retailer who paid the $11.

Senator Towe asked if this were a matter of enforcement, and if there was a possibility there are more retailers who are not paying the tax. Mr. Miller explained his perception was there were not.

Senator Towe explained Montana's coal tax is frequently compared to Wyoming. He said Wyoming has a tax of 5% on the retail sale of coal.

Closing by Sponsor:

Senator Gage closed on Senate Bill 275.

EXECUTIVE ACTION ON SENATE BILL 111

Motion:

Senator Eck moved Senate Bill 111 DO PASS as amended.

Discussion:

Senator Thayer explained he believed the intent of Senate Bill 111 was to encourage new business.

Senator Halligan told the Committee each section of the bill is explained on Page 2. He wants retail businesses to be encouraged to purchase equipment to collect. He also felt manufacturers should be encouraged to purchase equipment in order to establish a market. He explained the bill is comprehensive but can be focused if the Committee chooses.

Senator Doherty commented the incentive would be attractive to smaller places that cannot afford the investment larger communities can.

Senator Halligan told the Committee it is important to receive feedback from individuals in the industry to determine the effectiveness of this legislation.

Senator Eck expressed concerned over the definition of "reclaimed materials". She explained the issue is either reclaimable or recyclable, and in speaking of reclaimable material to not describe it as refuse.

Senator Van Valkenburg asked if a broader discussion about the philosophy of tax credits could take place. He explained if there were a way to quantify not only the cost of the tax credit but to quantify the economic impact, a particular tax credit could be discussed; but without this information this would be a response "to the fad of the day".

Senator Gage told the Committee a bill being introduced in the House is requesting that Montana be a part of the Northwest Economic Region (Oregon, Washington, Idaho, Montana, Alaska, British Columbia, and Alberta). Through this and the Western Legislators Conference Resource Committee he now serves on a recycling sub-committee. He cited some recycling examples in plastics that are working, but there are others such as newspapers where the price is so low it is not profitable. In many cases more energy is used in recycling than with virgin materials being produced.

Senator Harp explained he did not believe a tax credit "makes or breaks a business". He told the Committee when putting together a business plan there are many components that go into its ability to stay in business. He cited transportation costs, taxes, insurance, workers' compensation. He explained in some cases a small item such as a tax credit is needed.

Senator Towe commented credits can be expensive, but tend to emphasize public policy by encouraging new business, and encouraging existing business to become involved in reclamation.

Amendments, Discussion, and Votes:

Senator Eck moved to amend Senate Bill 111 on page 3 and throughout the bill by deleting the term "reclaimed material" and inserting the term "reclaimable material".

Recommendation and Vote:

Senator Eck motion to amend CARRIED with Senator Thayer and Senator Gage voting NO.

The motion to DO PASS as amended CARRIED with Senator Thayer and Senator Gage voting NO.

Senator Towe moved to RECONSIDER Senate Bill 111. The motion CARRIED.

Senator Towe moved to add a "sunset clause" of four years to expire December 31, 1995. Senator Gage asks for direction to bring the report to the 1993 Session. Senator Towe added to his motion to direct the Department of Revenue to report to the 1993 and 1995 Legislature as to the impact of the credit. Motion CARRIED.

Senator Halligan addressed Page 8 regarding the limitation of credit. To ensure a credit was not available for waste incinerators, which was not adopted in the amendments.

Senator Towe moved amendment on Page 8 of the "gray bill" to insert section 4. Senator Van Valkenburg asked what was wrong with allowing the use of reclaimed material to produce energy even if it is being burned. Senator Halligan explained the facilities for clean up is not adequate. Motion CARRIED with Senator Harp, Senator Gage and Senator Van Valkenburg voting NO.

Senator Eck moved DO PASS as amended. Motion CARRIED with Senate Thayer, Senator Harp and Senator Gage voting NO.

EXECUTIVE ACTION ON SENATE BILL 122

Motion:

Senator Harp moved to amend Senate Bill 122 as presented (sb0122a.adb).

Discussion:

Jeff Martin explained the amendments.

Senator Eck told the Committee she is concerned with the concept. She questioned how much this generates, and this is money that could be used for infrastructure, parks, etc. She told the Committee the highways were the only in good condition. She said this should be funded from the gas tax.

Senator Harp commented the primary highways which were built in the 30s and 40s need additional work.

Recommendation and Vote:

Motion to amend CARRIED with Senator Eck voting NO.

Senator Van Valkenburg suggested waiting for the additional amendments before taking further action.

ADJOURNMENT

Adjournment At: 9:40 a.m.

SENATOR MIKE HALLIGAN, Chairman

Linda Casey

LINDA CASEY, Secretary

MH/llc

Amendments to Senate Bill No. 122
First Reading Copy

Requested by Senator Cecil Weeding
For the Committee on Taxation

Prepared by Dave Bohyer
February 5, 1991

1. Title, line 7.
Following: "SECTIONS"
Insert: "15-35-108"
Following: "20-9-343"
Insert: ","

2. Page 4, line 23.
Following: line 22
Insert: "**Section 5.** Section 15-35-108, MCA, is amended to read:

"**15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, ~~1993~~ <u>2003</u>, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1¼% to the credit of the renewable resource development bond fund;

(e) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) 2/3 for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1¼% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. (Terminates July 1, ~~1993~~ 2003--sec. 7, Ch. 541, L. 1983.)

15-35-108. (Effective July 1, ~~1993~~ 2003) Disposal of severance taxes. Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1¼% to the credit of the renewable resource development bond fund;

(e) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) 2/3 for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1¼% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state.""

Renumber: subsequent sections

3. Page 5, line 4.
Strike: "6"
Insert: "7"

4. Page 5, line 7.
Following: "through"
Strike: "4"
Insert: "5"

db\amends\SB0122A.ADB

SENATE STANDING COMMITTEE REPORT

February 14, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Joint Resolution No. 15 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 15 do pass.

Signed: [signature]
Mike Halligan, Chairman

2-14-91
Amd. Coord.

2-14-91
Sec. of Senate

341328SC.Sji

SENATE STANDING COMMITTEE REPORT

February 14, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 111 (first reading copy -- white), respectfully report that Senate Bill No. 111 be amended and as so amended do pass:

1. Title, line 7.
Strike: "RECLAIMED"
Insert: "RECLAIMABLE"

2. Title, line 9.
Following: "MATERIAL;"
Insert: "PROVIDING A LIMITATION TO THE TAX CREDIT;"

3. Title, line 11.
Strike: "AND"
Insert: ","
Following: "DATE"
Insert: ", AND A TERMINATION DATE"

4. Page 1, line 24.
Page 2, lines 4, 6, and 15.
Page 3, lines 2 and 23.
Page 4, lines 4, 13, 17, and 20
Page 5, lines 2, 5, 8, 10, 14, and 23.
Page 7, line 5.
Strike: "reclaimed"
Insert: "reclaimable"

5. Page 3, line 12.
Strike: "Reclaimed"
Insert: "Reclaimable"

6. Page 3, line 15.
Following: "waste"
Insert: ", as defined in 75-10-203,"

7. Page 4, line 3.
Strike: "5%"
Insert: "25%"

8. Page 4, line 6.
Strike: the first "for"
Insert: "only in"

9. Page 4, lines 6 and 7.
Strike: "and" on line 6 through "years" on line 7

10. Page 4, line 8
Strike: "1990"
Insert: "1992"

11. Page 4, line 10.
Strike: "1990"
Insert: "1992"

12. Page 4, lines 10 and 11.
Strike: "," on line 10 through "purchased" on line 11.

13. Page 4, line 20.
Strike: "solely"
Insert: "primarily"

14. Page 5, line 6
Following: "sale"
Strike: ","
Insert: "or"
Following: "processing"
Strike: ", or disposal"

15. Page 6, line 7.
Strike: "July"
Insert: "January"

16. Page 6, lines 13 through 18.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections.

17. Page 6, line 20.
Strike: "a particular"
Insert: "the taxable"

18. Page 7, line 9.
Following: line 8
Insert: "NEW SECTION. Section 4. Limitation of credit. Not withstanding the provisions of [sections 2 and 3], a tax credit may not be claimed for an investment in property used to produce energy from reclaimed material."
Renumber: subsequent sections

19. Page 7, line 20.
Strike: "5"
Insert: "6"

20. Page 7, line 21.
Following: 20
Insert: "NEW SECTION. Section 7. **Reports by department of revenue.** The department of revenue shall report to the 53rd legislature and the 54th legislature on the amounts of the credit claimed under [sections 2 and 3], the number and types of businesses claiming the credit, and the general effectiveness of the credit."
Renumber: subsequent section

21. Page 8, line 1.
Strike: "4"
Insert: "5"

22. Page 8, line 3.
Following: line 2
Insert: "NEW SECTION. Section 9. **Termination.** [This act] terminates December 31, 1995."

Signed: Mike Halligan
Mike Halligan, Chairman

2-14-91
Amd. Coord.

SB 2-14-91 1:35
Sec. of Senate

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 2/13/91

LEGISLATIVE SESSION

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

Each day attach to minutes.

DATE 2/13/91

COMMITTEE ON Taxation

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Oppose
Denis Adams	DOR			
Rick Jones	DOC	SB272		
Gordon Morris	MACo			

(Please leave prepared statement with Secretary)