

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON TAXATION**

**Call to Order:** By Senator Mike Halligan, Chairman, on March 6, 1991, at 8:00 a.m.

#### **ROLL CALL**

**Members Present:**

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

**Members Excused:**

Robert Brown (R)

**Staff Present:** Jeff Martin (Legislative Council).

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

**Announcements/Discussion:**

Senator Van Valkenburg presented a draft bill for consideration as a committee bill (Exhibit #4). He explained the draft is in response to the request the committee made before transmittal for a bill which would allow a local option repeal of I105. Senator Van Valkenburg asked Jeff to review the draft for the committee.

Mr. Martin explained the bill allows the voters to remove the limitations of I105. Mills can be levied against property and there is an option for reimposing the limitation.

Senator Harp asked if it was structured for a calendar year with a review provision for the governing body. Mr. Martin said the decision of the voters will remain in effect until there is another vote changing the action.

Senator Van Valkenburg said the reimposition of the limitation was not part of the original committee discussion. However, he has no objection to it if the committee agrees.

Senator Eck felt there needed to be specific direction in the bill as to defining the purpose of the election.

Senator Van Valkenburg said the bill was drafted to address all taxing units after Senator Brown had expressed concern about community college levies. With the committee's approval, Senator Van Valkenburg said he would sign the draft so the bill could come before the committee for the necessary amendments. The committee members agreed that Senator Van Valkenburg should proceed on that basis.

### HEARING ON HOUSE BILL 58

#### Presentation and Opening Statement by Sponsor:

Representative Driscoll, District 92, sponsor, said the bill clarifies the bill passed last session which allows forgiveness of property taxes on businesses that have been closed for more than six months when the new owners keep the business open for three years. The bill allows for subordination of the tax lien to the financing loan.

#### Proponents' Testimony:

Cal Cumin, Economic Development Director, Yellowstone County, said it is very important to give the first position to the lender. He urged the committee to pass the bill.

Kay Foster, Billings Chamber of Commerce, said the unions, the city and the county all support the bill.

#### Opponents' Testimony:

There were no opponents.

#### Questions From Committee Members:

Senator Harp inquired about the Pierce packing plant and what had happened with that property in Billings.

Representative Driscoll replied the SBA has a \$2.5 million lien against the property and \$1.5 is owed in back taxes. The property is deteriorating and has been vandalized. The financing to reactivate the plant was denied because the bank did not want to be in second position. The county cannot resell the property because it is in bankruptcy court.

#### Closing by Sponsor:

Representative Driscoll said the bill is needed in order to get businesses open again and give an advantage to the new owners

in their financing.

HEARING ON HOUSE BILL 135

Presentation and Opening Statement by Sponsor:

Representative Lee, District 49, presented the bill to the committee as per Exhibit #1. He said the bill aligns the statutes with the Supreme Court decision as outlined in Exhibit #2.

Proponents' Testimony:

There were no proponents.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

There were no questions.

Closing by Sponsor:

Representative Lee closed.

HEARING ON HOUSE BILL 151

Presentation and Opening Statement by Sponsor:

Representative Stang, District 52, said the bill allows for a refund of property taxes on migratory property upon presentation of proof of taxes paid in another state. The bill originally passed in the 1987 session and was eliminated in the 1989 special session. He said the bill was amended in the House of Representatives, however, the Department of Revenue has proposed clerical amendments to present.

Proponents' Testimony:

Keith Olson, Executive Director, Montana Logging Association, said many of the members of his organization live on the Idaho border and have equipment that is used in both states. He said the bill is a simply matter of equity and is not intended to be a means of avoiding payment of taxes.

Dennis Burr, Montana Taxpayers Association, expressed support for the bill. He noted the fiscal note indicated there could be loss of revenue. He said the same case can be made that there will be an increase in revenue as some companies will again be bringing equipment into the state that have not since the statute was eliminated two years ago.

Forrest Boles, President, Montana Chamber of Commerce, said the bill keeps Montana businesses competitive and urged the committee to support the bill.

#### Opponents' Testimony:

There were no opponents.

#### Questions From Committee Members:

Senator Van Valkenburg asked Mr. Morrison about the changes in the bill during the past sessions. Mr. Morrison, DOR, replied there was a problem of proration of property moving in and out of the state. The Department of Revenue introduced a bill with a front end proration and no refund if the property were taken out of state. This bill retains the front end proration but allows a refund if the property is taken out of the state during the year.

Senator Van Valkenburg asked if this bill represents an expansion from the 1989 law. Mr. Morrison replied that applying the provisions to all property does expand the bill.

Senator Doherty asked if Montanans get a similar refund in Idaho. Mr. Morrison replied both the Montana and Idaho Departments are attempting to align the statutes.

Senator Towe wondered if property entered the state in January, left for Idaho in February, and then was taken to North Dakota where there is no property tax, would the owner then be able to get a Montana refund for the full eleven months. Mr. Morrison said the amendments are intended to address that issue (Exhibit #3).

Representative Stang said it is intended that the property owner pay only for the time the property is in the state. The proof of payment from another state, such as Idaho, should take care of the "over-refund" question.

Senator Thayer asked if there is a problem when the tax rates differ between states. Mr. Morrison replied that is not an issue. The owner only needs to have paid the tax. It is not intended to be a dollar for dollar refund.

**Closing by Sponsor:**

In closing, Representative Stang said the property owner should not get a credit for higher taxes than were paid in Montana. He asked the committee to address that concern in the bill.

**HEARING ON HOUSE BILL 580****Presentation and Opening Statement by Sponsor:**

Representative Schye, District 18, sponsor, said the bill was introduced at the request of the Revenue Oversight Committee. He asked the DOR and OPI representatives to further explain the bill.

**Proponents' Testimony:**

Jan Thompson, Office of Public Instruction, said the bill is intended to clean up the guaranteed tax base calculations implemented as part of HB 28 of the 1989 session. Under current law, several different tax years are used to collect data used in the GTB calculation. DOR transmits taxable valuations for school districts and counties to OPI. OPI does their calculations in June and July for the ensuing school fiscal year. DOR is unable to get the information to OPI in time for them to calculate the GTB subsidies and distribute them to the counties and districts. Therefore, the bill allows OPI to "lag" the GTB for one year to determine the district's eligibility for subsidy. Once that is determined, OPI will use the current year ANB or student count in the districts and counties to determine the subsidies that they are eligible for in the current year. There are no major changes or fiscal impacts in the bill other than using calendar year 1990 information or fiscal 1991 information to do the 1992 guaranteed tax base calculations.

Ken Morrison, DOR, said this solves the problem they have had with the calculations. It is not possible for DOR to provide the taxable value information as early as OPI needs it. This would allow a year's delay and solves a major reporting problem.

**Opponents' Testimony:**

There were no opponents.

Questions From Committee Members:

Senator Halligan said he has received a letter from Greg Petesch, Legislative Council, stating there is a conflict with this bill and SB 17 and SB 82. Ms. Thompson replied there is no longer a conflict with SB 82 due to the amendments put in the bill in the House. She said she would investigate the conflict with SB 17 and report back to the committee.

Closing by Sponsor:

Representative Schye closed.

EXECUTIVE ACTION ON HOUSE BILL 58

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Recommendation and Vote:

Senator Harp moved HB 58 Be Concurred In.

Senator Towe said he thinks this is the wrong approach. It is best for the county to get the property back and sell it. He emphasized his belief that Montana property taxes should not be subordinated to any lien at any time.

Senator Thayer felt this situation could arise anywhere in Montana. If there is property that could be rehabilitated and another business established by the forgiveness of the taxes owed, he felt that opportunity should be made available.

The motion CARRIED unanimously.

EXECUTIVE ACTION ON HOUSE BILL 135

Recommendation and Vote:

Senator Van Valkenburg moved HB 135 Be Concurred In.

The motion CARRIED unanimously.

EXECUTIVE ACTION ON SENATE BILL 345

Discussion:

Senator Gage reviewed the provisions of the bill for the committee members. There followed a general philosophical discussion of the bill with no substantive decisions being made.

ADJOURNMENT

Adjournment At: 10:00 a.m.

  
\_\_\_\_\_  
SENATOR MIKE HALLIGAN, Chairman

  
\_\_\_\_\_  
JILL D. ROHYANS, Secretary

MH/jdr

3/6/91

Adaptation

HB 58 HB 135 HB 151 HB 580

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)



ROLL CALL

SENATE TAXATION COMMITTEE

DATE 3/6/91

52<sup>nd</sup> 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.

STATE TAXATION

EXHIBIT NO. 1

DATE 3/6/91

BILL NO. H.R. 135

HOUSE BILL 135

REMOVE DEPOSIT REQUIREMENT FOR INDIGENTS IN QUIET TITLE ACTION

This bill implements the court decision in Ball v. Gee. In that case the court held that the deposit requirement contained in 15-18-411, and the waiver of defenses contained in 15-18-412, MCA, violated the procedural due process provisions of the U.S. and Montana Constitutions for a person who was indigent. The bill provides that if a person is found to be indigent, he is not required to file the deposit and does not waive any defenses he may have in the quiet title action due to the failure to file the deposit.

Ball, Plaintiffs and Respondents, v.  
Gee, Defendant and Appellant  
47 St.Rep. 1196

[1] This case is similar to others in which the courts have considered the effect of the costs of going to court on the rights of the indigent to use the court system. The United States Supreme Court holds that the imposition of filing fees and court costs violates indigents' rights to due process, but only if the fees effectively exclude indigents from the only forum empowered to settle grievances involving interests of basic importance in our society or fundamental rights. *Boddie v. Connecticut* (1971), 401 U.S. 371, 374, 91 S.Ct. 780, 784, 28 L.Ed.2d 113, 116-17; *United States v. Kras* (1973), 409 U.S. 434, 445, 93 S.Ct. 631, 638, 34 L.Ed.2d 626, 635-36; *Ortwein v. Schwab* (1973), 410 U.S. 656, 659, 93 S.Ct. 1172, 1174, 35 L.Ed.2d 572, 575-76.

Similarly, appeal bonds violate indigents' rights to due process if they are not afforded a full and fair opportunity to litigate the issues before a competent court prior to appeal. *Lecates v. Justice of Peace Court No. 4* (3rd Cir. 1980), 637 F.2d 898, 911; *Oaks v. District Court* (D.R.I. 1986), 631 F.Supp. 538, 546; *Elam v. Workers' Compensation Court* (Okla. 1983), 659 P.2d 938, 940; *Delaware Speech and Hearing Center, Inc. v. Lantz* (Del.Super. 1985), 490 A.2d 1083, 1085. Even when indigents have been given an acceptable opportunity to litigate the issues in a lower court, an appeal bond is still unconstitutional if it has no rational relationship to any valid state objective and arbitrarily discriminates against indigents. *Lindsey v. Normet* (1972), 405 U.S. 56, 79, 92 S.Ct. 862, 877, 31 L.Ed.2d 36, 54; *Merchants Ass'n v. Conger* (1979), 185 Mont. 552, 555, 606 P.2d 125, 126.

As in most other cases considering indigents' filing fees, costs, and appeal bonds, the present appellant contends that the deposit required by sec. 15-18-411(1), MCA, violates his constitutional rights to due process, access to the courts, and equal protection. We decline to analyze each of these issues, as the procedural due process requirements of U.S. Const. amend. XIV, sec. 1, and Art. II, sec. 17, Mont. Const., are sufficient to answer the present question.

The Fourteenth Amendment to the United States Constitution and Article II, sec. 17, of the Montana Constitution provide that no person shall be deprived of property without due process of law. For over a century, the United States Supreme Court has consistently held that before a citizen can be deprived of property, procedural due process guarantees that person a right to be notified and a right to be heard. *Fuentes v. Shevin* (1972), 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556, 569; see also *In re K.L.J.K.* (1986), 224 Mont. 418, 421, 730 P.2d 1135, 1137. In applying this mandate to conveyances of property by tax deed, this Court holds that a tax deed issued without sufficient notice is void as a violation of the owner's right to due process. *Lowery v. Garfield County* (1949), 122 Mont. 571, 584, 208 P.2d 478, 485. It is also apparent that in a quiet title action, the state must give the owner an opportunity to be heard. As a right, fundamental to due process, the state cannot abrogate that opportunity (because of the owner's inability to pay.) See *Bentley v. Crist* (9th Cir. 1972), 469 F.2d 854, 856.

3

SENATE TAXATION  
EXHIBIT NO. 3  
DATE 3/16/91  
BILL NO. HB 151

Amendments to House Bill 151  
Third Reading Copy

Prepared by David L. Nielsen  
Department of Revenue  
(2/19/91)

1. Page 3, line 7.  
Following: "BY"  
Strike: "THE RATIO"

2. Page 3, line 8.  
Following: line 7  
Strike: "OF"  
Following: "MONTHS"  
Strike: "REMAINING IN THE YEAR AT THE TIME"  
Insert: "THAT THE PROPERTY WAS IN THE STATE"

3. Page 3, line 9.  
Following: line 8  
Strike: "THE PROPERTY WAS REMOVED"  
Following: "BY"  
Strike: "12."  
Insert: "THE NUMBER OF MONTHS FROM WHEN THE PROPERTY WAS FIRST IN THE STATE TO THE END OF THE YEAR. "MONTH" MEANS ANY PART OF A CALENDAR MONTH."

**REASONS FOR CHANGES:**

1. The word "ratio" was eliminated to avoid double division by the same denominator.

2. The formula for refund was changed to accommodate the possibility that property would be brought back into the state after the prorated taxes were first computed. Also, dividing by 12 rather than the remaining months in the year, gives a mathematically incorrect result. For example, if the annual tax is \$200 and the property is brought into the state on July 1st and removed September 30th, the refund under the recommended formula would be \$100 times 3 months divided by 6 months, or \$50. Under the current language the refund would be \$100 times 3 months divided by 12, or \$25.

3. "Month" is defined for clarity and for consistency with §1-1-301(2), MCA.

SENATE TAXATION  
EXHIBIT NO. LC 2027/01  
DATE 3/6/91  
BILL NO. ~~28~~ N/A

1 BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_

3 BY REQUEST OF THE SENATE

4 COMMITTEE ON TAXATION

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE ELECTORATE  
7 OF A TAXING UNIT TO EXEMPT THE TAXING UNIT FROM THE PROPERTY  
8 TAX LIMITATIONS SET FORTH IN TITLE 15, CHAPTER 10, PART 4,  
9 MCA; AND AUTHORIZING THE REINSTATEMENT OF THE LIMITATIONS BY  
10 THE ELECTORATE OF THE TAXING UNIT."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Local property tax limitations

14 removed if approved by local voters. (1) (a) The limitations  
15 set forth in this part on the amount of taxes that may be  
16 levied do not apply to a taxing unit if the voters in the  
17 taxing unit approve the removal of the limitations at a  
18 regularly scheduled election..

19 (b) The voters of a taxing unit that has been exempted  
20 from the property tax limitations of this part may provide  
21 that the limitations once more apply to the taxing unit if  
22 the reinstatement is approved by the voters at a regularly  
23 scheduled election. Unless otherwise provided in the  
24 petition or resolution submitting the question to the  
25 voters, property taxes are limited to the amount levied for

3/6/91  
N/A

the taxable year in which the election is conducted.

(2) The governing body of the taxing unit may refer the question of exempting the taxing unit from the limitations of this part or of reinstating the limitations to the voters, or if the taxing unit is a county, city, town, or consolidated local government, the electorate may initiate putting the question to the voters as provided in 7-5-132.

(3) Any exemption or reinstatement of limitations approved by the voters pursuant to this section is effective for tax years beginning after December 31 of the year the question is approved by the voters.

NEW SECTION. Section 2. Codification instruction.

[Section 1] is intended to be codified as an integral part of Title 15, chapter 10, part 4, and the provisions of Title 15, chapter 10, part 4, apply to [section 1].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 6, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 58 (third reading copy - blue), respectfully report that House Bill No. 58 be concurred in.

Signed: \_\_\_\_\_

Mike Dalligan, Chairman

LB 3/6/91  
Amd. Coord.

SB 3-6-91 11:15  
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 6, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 135 (third reading copy -- blue), respectfully report that House Bill No. 135 be concurred in.

Signed: \_\_\_\_\_

Mike Halligan, Chairman

*5-6-91*  
Amd. Coord.

*SP 5-6-91 11:15*  
Sec. of Senate