

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Mike Halligan, Chairman, on March 7, 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 412

Presentation and Opening Statement by Sponsor:

Senator Crippen, District 45, sponsor, said the bill deals with the sales assessment ratios, shortens the reappraisal cycle, and introduces the co-efficient of dispersion concept. In 1985, the legislature reduced the taxable value to 8.55% of market value to 3.86% of market value. In the early 1980's, there were large increases in valuation. In order to bring some equity to the system and avoid large taxes on the values, the taxable value was reduced. This created problems for both Great Falls and Billings as the 1985 appraisals were based on the 1982 values. Property values were very high in Billings in 1982, while conversely, they were lower than market value two areas in Great

Falls. By the time the 1986 tax bills were issued, the market values in Billings had dropped substantially, yet the bills were based on the 1982 values.

HB 436 and HB 703 were both designed to rectify those problems with a sales assessment ratio. HB 703 clarified some of the problems in the original bill, HB 436. The Supreme Court then found that the methods used in the sales assessment ration as applied to the 1990 tax year was unconstitutional because it unfairly discriminated against certain owners of real property. The unconstitutionality was applied to the end of the year.

Senate Bill 412 attempts to address the Supreme Court ruling and clarify the procedures for appraising real property. Senator Crippen noted the legislature has the option of doing nothing and rolling back to the 1982 values. If the 1982 values were used there could as much as a 25% decrease in property values and well as an increase of 30-31% in some areas. This, of course, would create chaos, spawn numerous lawsuits and dramatically shift the tax bases all over the state in 1994. The bill addresses the sales assessment ratio problem in an orderly and cost efficient manner. It allows reappraisal to be completed on time, it shortens the next reappraisal cycle to three years, and will eliminate the sales assessment ratio after 1993.

Senator Crippen reviewed the bill for the committee noting appeals procedures in Section 1. Section 2 designates condominiums as residential property, removes trailer houses from area adjustments, and establishes selective reappraisal. There are two criteria in Section 2 which determine selection for reappraisal. The first uses the assessment level in relation to the market value. The second is the magnitude of the variation on how individual properties' assessment level varies from the market value, i. e., the co-efficient of dispersion. In 1991, there is one way of appealing. If the assessment level for a particular area is less than 80% of the market value of the area in the tax year 1991 study, then a selective reappraisal can be done by the Department of Revenue. This is primarily done in Great Falls and will carry through in 1992 and 1993 and is designed particularly for cities where there are rapidly increasing market values in relation to the assessment values. Section 3 establishes the agricultural reappraisal cycle for three years beginning in 1994. Section 4 establishes a three year reappraisal cycle for timberland beginning in 1994. Section 5 extends the agricultural land formula permanently, Section 6 deletes "weighted mean" assessment level for taxes years beginning after Dec. 31, 1993. Section 8 repeals the sales assessment ratio study for tax years after Dec. 31, 1993, and shortens the reappraisal cycle to three years. The bill is effective upon passage and approval.

Senator Crippen presented the committee with a review of Montana's property tax system as prepared by the Department of Revenue (Exhibit #1).

Proponents' Testimony:

Denis Adams, Director, Department of Revenue, presented his testimony in support of the bill (Exhibit #2) and reviewed pertinent sections of Exhibit #1 with the committee members.

Dennis Burr, Montana Taxpayers Association, said the Supreme Court did not say there could not be annual adjustments, but rather that the values that were being adjusted were so out of step with reality that adjusting them would not make anything better. It might even worsen the situation. As a result, the Court told the legislature, "if you don't fix it, you won't get any property tax revenue at all". Mr. Burr said it is necessary to have a workable plan. However, he felt the co-efficient of dispersion needs to be used in the first year. He suggested there needs to be language which speaks to the disparities in general rather than to just the low assessments in Great Falls. Regarding the appeals procedures on page 5, Mr. Burr suggested it is very difficult for the people in the far ends of the state to file suit in Helena, even though it is convenient for the Department.

Jim Tillotson, Billings City Attorney, said there are problems with the interim year procedures. He asked why there is a reappraisal only if there is an underassessment. An overassessment at a certain level should also trigger a reassessment. He suggested there be a better definition of the co-efficient of dispersion and asked why it is not a factor in the 1991 reappraisal.

Mike Matthew, Chairman, Yellowstone County Commission, said the average taxpayer cannot appeal the sales assessment ratio because of the incredible complexity of the rules and procedures. The current bill will make it possible for the local taxpayer to deal with his particular problem himself. If the adjustments are not kept in place, Yellowstone County, at 47.5 mills, would pay \$1.2 million more in taxes and would have no choice but to file some sort of suit on school equalization.

Kay Foster, Billings Chamber of Commerce, presented her testimony in support of the bill (#Exhibit #3).

Speaking neither as a proponent or opponent, John McNaughton, Chairman, State Tax Appeals Board, said he wished to present a technical amendment suggestion on page 3, line 3, striking "appeal" and inserting "review". He said the Chief Counsel of Department of had recommended the change.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Because of a shortage of time, Senator Halligan asked the committee members to hold their questions for a future meeting. He noted this bill is one of the few he would consider appointing to a subcommittee for a comprehensive review and consideration. The entire committee will review the bill at a later date also.

Closing by Sponsor:

Senator Crippen closed by saying the option of doing nothing about the reappraisal situation is not responsible. He noted the appeal process in the bill is very good and workable. He said he would be happy to work with the committee on the bill.

HEARING ON SENATE BILL 384**Presentation and Opening Statement by Sponsor:**

Senator Lynch, District 34, sponsor, said this is the bill that was passed last session and then vetoed by the Governor. He said his fear last session was that vocational technical schools would become "step-children" of the university system when they were put under the Board of Regents. This bill reaffirms the support of the state for all vo-tech programs in the community colleges, the five vo-tech schools, and Northern Montana College by imposing a two mill levy. The two mills will ensure a permanent and stable source of income for these schools which serve the whole state. He said vo-tech programs train people to go to work. They meet the needs of their students as well as the needs of employer and the business sector.

Proponents' Testimony:

John Hutchinson, Commissioner of Higher Education, expressed support for vo-techs and community colleges on behalf of the Regents. He noted vo-techs are underfunded when compared to their peer facilities. Salaries are low and institutional and instructional support levels are not what they should be. They are profoundly equipment intensive and their equipment, in most cases, needs to be "high-tech" in order for the students to be trained in the latest programs.

Mr. Hutchinson noted the Center for Vocational-Technical Education Research and Curriculum and Personnel Development at Northern Montana College, which is very important and has great potential, is virtually dormant. SB 384 would provide much needed operational funding. Mr. Hutchinson introduced Don Kettner, President, Dawson Community College, Jud Flower, President, Miles Community College, Bill Daehling, President, Northern Montana College, and Grady Barnamon, Deputy Commissioner

for Vocational-Technical Education. He further urged the committee to give the vo-techs the support they need to fill the critical educational needs of an important segment of the educational community.

Charles Brookes, Vice President of Montana Retail Association and it's affiliate the Hardware and Implement Dealers Association, expressed support for the bill for several reasons. He said vo-techs are the main source of diesel mechanics for implement dealers. The vo-techs work very closely with the dealers. The implement dealers are very concerned about the vo-techs as they have a significant impact on the dealerships and the farming and ranching community of the state. Certainly, the association has concerns about additional taxes, as well, he noted. However, this bill is important to the students and the business and farm and ranch sectors of Montana, and he urged the committee to support the two mill levy and the bill.

Bill Daehling, President, Northern Montana College, spoke in support of the bill. He noted part of the funds raised in the bill would go to support the research and development center at NMC which was established through Carl Perkins funding several years ago and is now essentially dormant. The support services the center can offer community colleges, vo-tech schools, and communities are vitally important.

Jim Fitzpatrick, Montana Council on Vocational Education, said the Council supports a stable and adequate funding system for the vo-tech programs in the state. Montana's economic strength and competitiveness depends on the capacity to build and maintain a quality work force. He noted studies have shown the workforce of the future will increasingly be one that is more reliant on vocational training.

Leon Stalup, Montana Restaurant Association, expressed support for the bill.

Opponents' Testimony:

Dennis Burr, Montana Taxpayers Association, said he has served on the Education Commission for the 90's and has visited a number of the vo-tech schools and programs across the state. They are easily the most impressive of the higher education institutions in the state. He emphasized he does not disagree with anything that has been said in support of the vo-tech programs in Montana and, in fact, deplores the lack of support they have been given in the last twenty years.

Mr. Burr said the other side of the coin is that Montana is a high property tax state, being 4th in the nation in our reliance on property taxes and 5th in the nation in property taxes as a percentage of personal income. His main objection is that he does not believe the bill will result in increased funding for vo-techs. The \$3 million per year will end up being

a general fund subsidy. His objection to the bill is based on the fact that property taxes will increase, but funding for the vo-techs will not.

Kay Foster, Montana Chamber of Commerce, said, as a business organization, the Chamber agrees that vo-tech programs are a very important and vital segment of education. However, post-secondary education should be funded by the state and certainly not by increased property taxes.

Gloria Paladichuk, Richland County Commissioner, said the bill creates new taxing authority which is outside of 1105. The people of Montana have said they do not want more taxes and a bill of this nature flies in the face of the express wishes of the taxpayers.

Questions From Committee Members:

Senator Towe asked how the allocation of funds to the various components of the system would work.

Mr. Hutchinson replied \$64,000 would be given to the research center at Northern Montana College. The balance would be distributed on the basis of how far away the institution is from the peer average and review of the program needs. The Board of Regents would prefer to have the full responsibility for disbursement of the money.

Closing by Sponsor:

Senator Lynch closed said students who are not going to attend college need to go to work. They need to attend vocational-technical schools for "better than poverty level" job training. The vo-techs are part of the statewide system and deserve statewide support.

EXECUTIVE ACTION ON HOUSE BILL 580

Amendments, Discussion, and Votes:

Senator Eck moved to adopt the amendments as proposed by the Office of Public Instruction (Exhibit #4).

The motion CARRIED unanimously.

Recommendation and Vote:

Senator Eck moved HB 580 Be Concurred In As Amended.

The motion CARRIED unanimously. Senator Gage will carry the bill on the floor.

EXECUTIVE ACTION ON SENATE BILL 345Discussion:

Madelyn Quinlan, Office of Public Instruction, said Senator Van Valkenburg had asked her to attend the meeting to present the OPI opinion of the bill. OPI favors the adjustment that takes place in the bill. The bill will distribute the money across 45 statewide mills, but not the additional 10 county equalization mills or the 40 mill statewide levy. The amendment pertains to coal, oil, and gas.

Recommendation and Vote:

Senator Towe moved SB 345 Do Pass.

Senator Van Valkenburg mentioned the amendments as proposed by the Department of Revenue (Exhibit #5).

Senator Gage noted the amendments are needed to include the necessary information in the code in case the Governor's energy bill and SB 373 do not pass. Senator Gage reviewed the amendments which revise the taxation of natural resources and clarifies the definition of gross value for computation of local government severance tax.

Senator Van Valkenburg moved the amendments be adopted.

Senator Yellowtail stated he felt the amendments were not appropriate for inclusion in this particular bill.

Senator Towe asked Mr. Adams if a committee bill might not be better than adding the amendments to SB 345.

Mr. Adams replied he would be satisfied with either approach.

Senator Van Valkenburg withdrew his motion to adopt the amendments.

The committee then considered action on Senator Towe's motion that SB 345 Do Pass.

The motion CARRIED unanimously.

Senator Towe moved to request a committee bill to reflect the intent of the proposed amendments (Exhibit #5).

The motion CARRIED with Senators Harp, Yellowtail, and Halligan voting no.

ADJOURNMENT

Adjournment At: 10:00 a.m.



SENATOR MIKE HALLIGAN, Chairman



JILL D. ROHYANS, Secretary

MH/jdr

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 3/7/91

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	✓		
SEN. YELLOWTAIL	✓		

Each day attach to minutes.

DATE

3/7/91

COMMITTEE ON

Legislation

SB 384

SB 412

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
W. Kettner	DCC	384	✓	
Vudson H. Flower	Miles Comm. College	384	X	
Jim Tillotson	City of Billings	412	✓	
Gordon Morris	MAC	384		✓
Mike Mathew	Yellowstone Co	412	✓	
Wesley Adams	DOR	412	-	
Kay Foster	Billings Chamber	412	✓	
Kay Foster	Billings Chamber	384		✓
Clara Paladuk	Richland Co.	384		✓
Gordon Morris	MAC	412	✓	
Bice Dukering	NMC	384	✓	
Jim Fitzpatrick	MCUE	384	✓	
Len Schump	Mont. Prod. Assoc	384	✓	
Charles Brooks	Implement Dealers Assoc	384	✓	
Jeanne Burr	mt typ year Assoc	384		✓
" "	" " "	412	✓	

(Please leave prepared statement with Secretary)

THE STATE OF MONTANA'S PROPERTY TAX SYSTEM

EXHIBIT NO. 1
DATE 3/7/91
BILL NO. SB 412

As a result of a recent court decision, Montana's property tax system needs fixing. The purpose of this memorandum is to explain the basics of the system, the court decision and some possible solutions.

HOW PROPERTY TAXES ARE DETERMINED

The taxes on a particular property are determined by the assessed value of the property, the tax rate for the class of property and the mill levy as set by the local officials.

$$\text{assessed value} \times \text{tax rate} \times \text{mill levy} = \text{tax}$$

Mill Levy -- Mill levies are determined by the governing body of each taxing jurisdiction. The budget as set by the local officials is divided by the total taxable value in the jurisdiction. This number is calculated in tenths of a cent. One tenth of a cent equals one mill. The number of mills times the **taxable** value of a particular property equals the tax.

Tax Rate -- The taxable value is determined by the tax rate times the assessed value. The tax rate is determined by the classification of the property. The legislature has put residential and most commercial real property in class four. The rate for class four property is 3.86%. This percentage times the **assessed value** equals the taxable value of the property.

Assessed value -- Property is assessed at 100% of **market value**. The market value of a property is determined by an appraisal. Appraisals are done by the Department of Revenue's appraisal staff in each county.

CHANGING MARKET VALUES

Market values change over time depending on economic conditions and other factors. The legislature has provided for property to be reappraised every five years in order to keep the assessed value current with market value.

The Department has been unable to complete a reappraisal of all real property in Montana within the five year period. The last reappraisal was scheduled to be completed in 1984 but was not completed until 1986. New reappraised values were scheduled to apply in 1991. The legislature extended the cycle two years and also allowed for one extra year for appeals prior to the new values actually taking effect. New values will now apply beginning in 1994.

The values determined in the 1986 reappraisal are based upon the value of the property in 1982. A constant base year is necessary to insure equality since the actual appraisals took place over a seven year period.

The legislature was concerned that the long period between reappraisals was causing inequitable results in areas where market values had changed significantly since 1982. In 1987 and in 1989, the legislature enacted legislation to adjust market values between appraisals.

SALES/ASSESSMENT RATIO STUDIES

The legislation, HB 436 in 1987 and HB 703 in 1989, requires the Department to conduct a study of assessed values as compared to the market values based on actual sales. The assessed value of property, as shown on the county property tax records, is compared to the sales price from realty transfer certificates filed with the county.

The state is divided into areas with similar property and an average ratio is determined for each area. If the study shows an increase or decrease in market value by more than 5%, all property within the area is adjusted by the percentage which brings the average to within 5%.

As a result of the above study, assessed values were increased in some areas and decreased in other areas. The largest increases were in Cascade county and western Montana. The largest decreases were in Yellowstone county and eastern Montana.

THE SUPREME COURT DECISION

A property owner in the area with the largest increase, the downtown area of Great Falls, was the first appeal to reach the Montana Supreme Court. The court scrutinized the study and its effect on the taxpayers in the particular area. It concluded that the assessed values in this area were so different from market values, a blanket percentage adjustment made matters worse rather than better.

The court determined that the legislation was unconstitutional, as it applied to this area. It delayed the effect of the decision until the end of the 1990 tax year except for those people who had filed appeals. As a result, local governments did not have to refund a large amount of taxes where assessed values were increased or collect additional taxes where assessed values were decreased.

The court delayed the decision in order to give the **legislature an opportunity** to resolve the problems it saw in the assessed values for downtown Great Falls.

POSSIBLE SOLUTIONS

Clearly, the Montana Supreme Court expects the Legislature to address what it sees as a problem with the current property tax system. If the legislature does not address the problem, all sales/assessment ratio adjustments made over the last few years are invalid. Dramatic increases and decreases in assessed values will result. When the current reappraisal is completed in 1993, the changes will again be dramatic but in the opposite direction.

Two separate issues -- The problem can be separated into two separate issues. The first is the short term problem of what to do until the current reappraisal cycle is completed. The second is the long term problem of making sure we do not end up in this situation again. The solution to the short term problem does not have to be the same as the solution to the long term problem.

A plan -- It is clear that the court will require the legislature to enact a plan to cure the problem of unequalized assessed values between individual properties. The plan can take various forms but it must address the inequities found by the court and provide a method for keeping assessed values relatively current with market values in the future.

Reappraisals -- Obviously the best method for keeping values current would be a reappraisal every year. Clearly this is not possible for the short term and not practical for the long term. However, reappraisals on a more frequent basis than every five or seven years may be possible in the future with the help of computer assisted appraisals.

Ratio studies -- Adjustments based on a sales/assessment ratio study are possible as part of a solution to either the long term or the short term problem. However, they can not be the entire solution. These adjustments address the inequities between areas which have different economic factors affecting market values. However, they do not address the inequities between individual properties within an area. The court has said that the inequities between individual properties must be addressed.

Selective reappraisals -- Selective reappraisals coupled with area wide adjustments are possible as a solution to either the long term or the short term problem. If the study of an area shows a statistically significant variance between assessment levels for individual properties, the property in the area would be reappraised. The reappraisal would correct the problem between individual properties within an area.

CONCLUSION

The most important consideration is that the legislature develop a plan which will keep assessed values relatively close to market values over the long term. The legislature is the appropriate body to develop this plan. The court will not unreasonably interfere with the legislature's judgement as long as there is a plan in place which assures equity for taxpayers over the long term.

SB 412
SALES ASSESSMENT RATIO - SHORTENED REAPPRAISAL CYCLE
Senator Crippen

This bill is necessary as the Montana Supreme Court ruled that the sales assessment ratio as applied for the 1990 tax year unfairly discriminated against certain owners of real property. The Court declared that the law, and thus the property taxable values determined under the law, were unconstitutional after December 31, 1990. Therefore, this legislature must deal with the procedure for determining how the taxable value for real residential and commercial property will be established for tax year 1991 and beyond.

The effect of not dealing with the sales assessment ratio study for tax years 1991 through 1993 will be to have residential property taxable value adjustment ranging from a 14.5 percent decrease to a 30.7 percent increase. Commercial property taxable values will change from a 2.9 percent decrease to a 33.7 percent increase. The three counties with the largest dollar change in taxable value are Cascade county will have a \$6.3 million decrease, Gallatin County with a \$3.9 million decrease, and Flathead with a \$3.5 million decrease. The largest taxable value increase will be in Yellowstone county with a \$21.1 million increase. In general there will be a property tax shift from the West to the East.

Rolling back these property tax adjustments, which reflect the changing economies of the state, delays and exasperates the changes which will take place at the end of this reappraisal cycle. Taxpayers will be notified in 1993 what their assessed value changes are. Without these interim adjustments, the tax base will shift dramatically in 1994. This causes taxpayers to question the fairness of the system that has been out of line for so long and causes disruption to county and city governments which must make immediate adjustments with no time to address mill levy ceilings.

SB 412 addresses the problems with the sales assessment ratio in an orderly and cost efficient manner; allows reappraisal to be completed on time; and shortens the next reappraisal cycle; and eliminates the sales assessment ratio study adjustments after 1993.

Section 1. Deals with appeals. There are two aspects of appeals--the individual property value and the sales assessment area.

1991 - continues

A. The owner may now appeal the market value of the home in comparison to recent sales and appraisals rather than needing to show that the 1982 cost base values were wrong when applied at the end of the last reappraisal cycle.

1991 - 1993

- B. The sales assessment area or percentage adjustments may be commented on during the rule making process or the taxpayer may file suit seeking a declaratory judgement action to review the department's determination of the area or percentage adjustment.

1991 - 1993

Section 2. More clearly defines condominiums as residential property, removes trailer houses from the area adjustments, and establishes selective reappraisal. Two criteria are set up for being selected for reappraisal--the assessment level in relationship to the market value and the magnitude of the variation in how individual properties' assessment level varies from the market value.

- A. If the assessment level is less than 80 percent of the market value for an area in the tax year 1991 study, then a selective reappraisal will be done. This is the central and east side of Great Falls.
- B. If either the assessment level is less than 80 percent of the market value for an areas in the tax year 1992 or 1993 study or the variation in the assessment level and the market price exceeds a statistical standard of 20 percent and the area will receive an increase in the assessed property value, then a reappraisal will be done.

1994 - continues

Section 3. Puts the reappraisal cycle for agriculture land at three years.

1994 - continues

Section 4. Puts the reappraisal cycle for timberland at three years.

Continues

Section 5. Extends the agricultural land formula permanently.

Ends 1993

Section 6. Deletes that term "weighted mean assessment level" for tax years beginning after December 31, 1993 because the sales assessment ratio study is eliminated.

Ends 1993

Section 7. Repeats the section 1 appeals language and deletes the sales assessment ratio appeal language after December 31, 1993.

1994 - continues

Section 8. Repeals the sales assessment ratio study for tax years after December 31, 1993 and shortens the reappraisal cycle from 5 to 3 years.

1994 - continues

Section 9. Repeals the I-105 sales assessment ratio study exemption for tax years beginning after December 31, 1993.

Section 10. Coordinates the timberland formula with House Bill 340.

Section 11. Sets the applicable dates.

Section 12. Terminates the sales assessment appeal procedures and selective reappraisal after December 31, 1993.

Section 13. Makes the bill effective upon passage and approval and makes the repeal of the sales assessment ratio effective January 1, 1994.

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3-7-91

Exhibit 1 also included 59 pages of charts, tables, and maps presented by the Department of Revenue. The originals are stored at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)

SB 412
SALES ASSESSMENT RATIO - SHORTENED REAPPRAISAL CYCLE

March 7, 1991

When the Montana Supreme Court ruled that HB 703 was unconstitutional, it had several options for providing relief to the plaintiffs and for providing direction to the legislature for acceptable solution.

Some of the options available to the court were:

1. It could have said that the harm to taxpayers was greater than the inconvenience caused to local governments through redoing their budgets and required that all adjustments be rolled back to the previous year. There was adequate time to redo budgets and it would not have been the first time that tax statements were mailed late. But the court did not take this option.

2. It could have said that all sales assessment ratios were illegal and could not be used in the future, but because of the inconvenience to local governments they could be implemented in 1990. But the court did not take this option.

3. The court could have said that no further adjustments can be made during the current reappraisal cycle unless the state does a complete reappraisal of the property. There was discussion among the justices as to inadequate funding by the legislature to do more timely appraisals. However, I think the court recognized the inability to accelerate the reappraisal cycle even if massive amounts of money were appropriated this session. So the court did not take this option.

However, the court did state that it wanted to give the legislature an opportunity to resolve the issues during this session. And that is why we are here today supporting SB 412.

We have spent untold hours analyzing the court's decision, looking at solutions that are fair and equitable to all areas of the state, and putting together a proposal that not only gets us through this reappraisal cycle but which proposes a plan for future reappraisal cycles.

There have already been a number of bills submitted which repeal HB 703. While these bills play well with constituents and the local press, they totally ignore the ramifications resulting in other areas of the state. Neither the department nor the legislature can focus on just one area of the state and ignore the inequities that would be caused in other areas of the state.

TITLE 15-8-111 MCA states that all taxable property must be assessed at 100% of its market value. This includes all residential and commercial real property.

Were it not for the large number of statewide mills, there would not be as great

a concern as to having all properties reflect a current market value. But the statewide mills create a real inequity where some property is over valued (taxpayer pays too much in taxes) and some is under valued (taxpayer does not pay his fair share).

Appraisal of property is an art not a science, separate appraisals on the same property may vary significantly.

We now have 4 years sales

SENATE JOURNAL

EXHIBIT NO. 4

DATE 3/7/91

BILL NO. SB 980

Amendments to House Bill No. 580
Third Reading Copy (Blue)

For the Senate Committee on Taxation

Prepared by Eddy McClure
March 6, 1991

1. Page 3, line 24.

Strike: "Guaranteed overschedule general fund budget"

Insert: "Permissive amount"

**Amendments to Senate Bill 345
1st. Reading Copy**

**Prepared by the Department of Revenue
February 13, 1991**

The following amendments accomplish two purposes. First, amendments to §§ 15-36-101, and 15-36-121, MCA, are to clarify the definition of gross value. Gross value of product is the term used to describe tax base for both the state severance tax and the local government severance tax. However, they are not computed in the same manner. The department's amendments clarify that the correct gross value of product is matched up with the right tax.

The other purpose is to clarify that the administration of the local government severance tax is the same as the existing procedures for administration of state severance tax. If upon audit the amount of lgst found to be due is greater than the amount paid the department shall issue the same notice to the taxpayer it would issue if the case an audit should the amount of state severance tax was underpaid. If a taxpayer required to pay the lgst fails to file a return the department will compute the tax due in the same manner as it would do if a taxpayer failed to file a state severance tax return. The procedure for issuing a deficiency assessment, the hearing on the deficiency assessment and the amount of interest charged on a deficiency assessment will be the same for lgst as for state severance tax. If the lgst is overpaid the taxpayer will be given credit for the overpayment on the lgst in the same manner as credit is given for an overpayment on the state severance tax.

1. Title, Line 4.
Following: "AN ACT"
Insert: "TO REVISE THE TAXATION OF NATURAL RESOURCES BY"
2. Title, Line 7.
Following: "FISCAL YEAR;"
Insert: "CLARIFYING THE DEFINITION OF GROSS VALUE FOR COMPUTATION OF THE LOCAL GOVERNMENT SEVERANCE TAX; AND STANDARDIZING THE ADMINISTRATION OF THE LOCAL GOVERNMENT SEVERANCE TAX;"
3. Title, Line 8.
Following: "15-23-703"
Strike: "AND 15-36-112"
Insert: "15-36-101, 15-36-105, 15-36-107, 15-36-108, 15-36-112, 15-36-113, 15-36-114, AND 15-36-121"
4. Page 1,
Following "Line 11"
Insert: "Section 1. Section 15-36-101, MCA, is

amended to read: "15-36-101. Definitions and rate of tax -- local government severance tax. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for the exclusive use and benefit of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for the exclusive use and benefit of local government. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), a 5% state severance tax on the total gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value as defined in subsection (6)(a)(ii) of all the petroleum and other mineral or crude oil produced by the person other than ~~interim production and~~ new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the total gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the ~~total~~ gross taxable value as defined in subsection (6)(a)(ii) of all natural gas produced by the person other than ~~interim production or~~ new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) a 2.5% state severance tax on the total gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the ~~total~~ gross taxable value as defined in subsection (6)(a)(ii) of the incremental petroleum and other mineral or crude oil produced by the person other than ~~interim production and~~ new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the department of revenue. The approval may be extended

only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the department; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the department to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

- (A) miscible fluid displacement;
- (B) steam drive injection;
- (C) micellar/emulsion flooding;
- (D) in situ combustion;
- (E) polymer augmented water flooding;
- (F) cyclic steam injection;
- (G) alkaline or caustic flooding;
- (H) carbon dioxide water flooding;
- (I) immiscible carbon dioxide displacement; or
- (J) any other method approved by the department as a tertiary recovery method.

(d) a 5% local government severance tax on the ~~total~~ gross taxable value as defined in subsection (6)(a)(ii) of all petroleum and other mineral or crude oil produced by the person other than ~~interim and~~ new production produced by a stripper well, as defined in 15-36-121.

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the department of revenue, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the department must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

- (i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;
- (ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance

taxes imposed under 15-36-121(2) and under subsections (1)(a) through (1)(d) of this section.

(4) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within this state within the meaning of this section.

(5) Every person required to pay the state or local government severance tax under this section shall pay the tax in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(6) For purposes of this section, the following definitions apply:

(a)(i) "Gross taxable value" for the purpose of computing the state severance tax means the gross value of the product as determined in 15-36-103.

(ii) "Gross taxable value" for the purpose of computing the local government severance tax means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease

or unit."

Section 2. Section 15-36-105, MCA, is amended to read: "15-36-105. Statement to accompany payment -- records -- collection of tax -- refunds. (1) Each person shall, within 60 days after the end of each following quarter, complete on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum and other mineral or crude oil or cubic feet of natural gas produced or extracted by the person in the state during each month of the quarter and during the whole quarter, the average value of the production during each month, and the total value of the production for the whole quarter, together with the total amount due to the state as severance taxes and local government severance taxes for the quarter, and shall within such 60 days deliver the statement and, except as provided in 15-36-102(2) and 15-36-121, pay to the department the amount of the taxes shown by the statement to be due to the state for the quarter for which the statement is made. The statement must be signed by the individual or the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company, or syndicate making the statement. Any person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all operations in one statement. The department shall receive and file all statements and collect and receive from the person making and filing a statement the amount of tax payable by the person, if any, as appears in the statement.

(2) It is the duty of the department to examine each of the statements and compute the taxes thereon, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the state severance tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 10 days after written notice of the amount of the deficiency is mailed by the department to the taxpayer. If the local government severance tax found to be due is greater than the amount shown the excess shall be due at the time provided for payment in 15-36-102(2). If the state severance tax or local government severance tax imposed is less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters or refunded if there is no subsequent tax liability.

(3) If the state severance tax or the local government severance tax is not paid on or before the due date, there must be assessed a penalty of 10% of the amount of the tax not paid, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax under this chapter is not paid when due, interest must be added to the tax at the rate of 1% a month or fraction thereof, computed on the total amount of state or local government severance tax and penalty from the due date until paid."

Section 3. Section 15-36-107, MCA is amended to re "15-36-107. Procedure to compute tax in absence of statement -- penalty

and interest. If any such person shall fail, neglect, or refuse to file any statement required by 15-36-105 within the time therein required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the number of barrels of petroleum and other mineral or crude oil or cubic feet of gas extracted and produced by such person in this state during such quarter and during each month thereof and the average value thereof during each such month and shall determine and fix the amount of the state severance taxes due to the state and the amount of local government severance taxes due from such person for such quarter and shall add to the amount of such severance taxes a penalty of 10% thereof plus interest at the rate of 1% per month or fraction thereof computed on the total amount of state or local government severance taxes and penalty. Interest shall be computed from the date the severance taxes were due to the date of payment. The department shall mail to the person required to file a quarterly statement and pay any severance tax taxes, a letter setting forth the amount of state or local government severance tax taxes, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed. The 10% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-36-105 is provided to the department."

SECTION 4. Section 15-36-108, MCA, is amended to read: "15-36-108. Warrant for distraint. If all or part of the state severance tax or local government severance tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded."

Renumber: subsequent sections

5. Page 4.

Following "Line 19"

Insert: "SECTION 6. Section 15-36-113, MCA, is amended to read: "15-36-113. Deficiency assessment -- hearing -- interest. (1) When the department of revenue determines that the amount of state severance tax or local government severance tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional severance tax proposed to be assessed. Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional severance tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his severance tax liability. If no protest is filed, the amount of the additional state severance tax or local government severance tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral

hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the state severance tax or local government severance tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return."

SECTION 7. Section 15-36-114, MCA, is amended to read: "15-36-114. Credit for overpayment -- interest on overpayment. (1) If the department of revenue determines that the amount of state severance or local government severance tax, penalty, or interest due for any year taxable period is less than the amount paid, the amount of the overpayment shall be credited against any state severance or local government severance tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-36-113 due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) No interest shall be allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable."

SECTION 8. Section 15-36-121, MCA, is amended to read: "15-36-121. Exemption from state severance tax -- imposition of local government severance tax. (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year shall be taxed as provided in this section. Production must be determined by dividing the amount of production from a lease or unitized area for the year

prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production per well is exempt from all of the state severance tax imposed by 15-36-101. The first 30,000 cubic feet of average daily production per well is subject to a local government severance tax of 10% on the gross taxable value, as defined in section 15-36-101 (6)(a)(ii). Everything over 30,000 cubic feet of gas produced is taxed at 1.59% on the total gross taxable value for the state severance tax plus a local government severance tax of 10% on the gross taxable value, as defined in section 15-36-101 (6)(a)(ii).

(3) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels per day determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area, and by dividing the resulting quotient by 365.

(4) Notwithstanding the provisions of subsections (2) all reporting requirements under the state severance tax remain in effect."

Renumber: subsequent sections

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1991

MR. PRESIDENT:

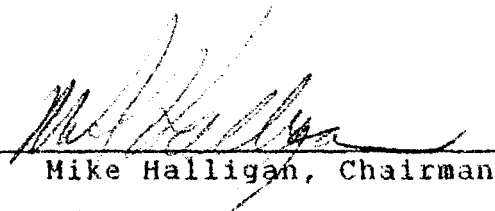
We, your committee on Taxation having had under consideration House Bill No. 580 (third reading copy -- blue), respectfully report that House Bill No. 580 be amended and as so amended be concurred in:

1. Page 3, line 24.

Strike: "Guaranteed overschedule general fund budget"

Insert: "Permissive amount"

Signed: _____


Mike Halligan, Chairman

191 3-7-91
Amd. Coord.


SB 3-7 @ 2:55
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 345 (first reading copy -- white), respectfully report that Senate Bill No. 345 do pass.

Signed: 
Mike Halligan, Chairman

LD 3/7/91
Amd. Coord.

SP 3/7 10:45
Sec. of Senate