MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB GILBERT,** on January 22, 1993, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Bob Gilbert, Chairman (R)
Rep. Mike Foster, Vice Chairman (R)
Rep. Dan Harrington, Minority Vice Chairman (D)
Rep. Shiell Anderson (R)
Rep. John Bohlinger (R)
Rep. Ed Dolezal (D)
Rep. Jerry Driscoll (D)
Rep. Jim Elliott (D)
Rep. Gary Feland (R)
Rep. Marian Hanson (R)
Rep. Hal Harper (D)
Rep. Chase Hibbard (R)
Rep. Vern Keller (R)
Rep. Ed McCaffree (D)
Rep. Bea McCarthy (D)
Rep. Tom Nelson (R)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Bob Ream (D)
Rep. Rolph Tunby (R)

Members Excused: None

Members Absent: None

Staff Present: Lee Heiman, Legislative Council
Jill Rohyans, Committee Secretary

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

Committee Business Summary:

Hearing: SB 101
SB 10
HB 204
SB 114

Executive Action: SB 101
SB 114

HEARING ON SENATE BILL 101

Opening Statement by Sponsor:

SEN. JUDY JACOBSON, SD 36, Butte, said SB 101 is being introduced at the request of the Legislative Finance Committee. The bill clarifies how the Department of Revenue (DOR) can mask their data and subjects the Office of Budget and Program Planning (OBPP) to the same laws and penalties. The Legislative Fiscal Analyst (LFA), DOR, and OBPP all agree on the provisions of the bill.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. TOM NELSON asked for some background information on the bill. **Terry Cohea, Legislative Fiscal Analyst,** said that a 1986 statute allowed the LFA to receive masked income tax data for use by the Legislative Finance Committee and the Revenue Oversight Committee (ROC). In order to protect confidentiality of the taxpayer information, various methods have been used. Some data in higher returns has been lumped together, scrambled, and a .015 factor applied. This method proved unworkable. Names and identification have been removed, but concern still exists that due to the uniqueness of some returns, identification of the taxpayer might still be possible. Current legislation says that the LFA is subject to the same penalties as DOR for failure to protect confidentiality. She said no problem has arisen to this point. The bill would ensure that nothing does happen in the future.

Closing by Sponsor:

SEN. JACOBSON closed.

HEARING ON SENATE BILL 10

Opening Statement by Sponsor:

SEN. TOM TOWE, SD 46, Billings, stated SB 10 is being introduced at the request of the Metra Board in Billings. The bill will authorize combining the two mill levy for arena facilities and the 1.5 mill levy for county fairs for those areas where there is an arena/civic center and county fair operated jointly. It would allow for greater flexibility if the Boards jointly decide to use the total mills for a single project.

Proponents' Testimony:

Bill Chiesr, General Manager, Metra Park, Billings, said current law allows the Fair Board and the Metra Board to meet jointly as one Board. Although they do maintain separate budgets, this bill would allow them the flexibility to combine the mills on certain projects. He said it would be a definite money saving tool for the Boards to use.

Jerry Thomas, Fair Board Member and former Budget Director of Yellowstone County, said this bill would be a great help in calculating time records and cost allocations between the fair and arena. Determining cost and profits of concessions between the two entities during one event can be quite complicated. The bill is a simplification method the two boards need.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. HAL HARPER asked how the Boards defend moving funds from one area to another. **Mr. Chiesr** said for every dollar that comes into the Fairgrounds/Metra approximately $47 goes back to the community.

REP. ROLPH TUNBY asked if any other counties levy the 1.5 cultural mills. **SEN. TOWE** replied only Cascade and Yellowstone Counties levy the mills. There are no other arenas at fair-grounds in the state of which he is aware.

REP. CHASE HIBBARD asked if Great Falls supported the bill. **Mr. Chiesr** said the Rocky Mountain Fair Association unanimously endorsed the bill and the Great Falls Boards specifically asked him to express their support.

REP. ED McCAFFREE asked if this bill merely combines funds or does it merge the boards as well. **SEN. TOWE** said the boards can merge if they wish but would still have to maintain two separate budgets.

REP. HARPER asked what would happen if the two boards disagreed.

Mr. Chiesr said in the case of a disagreement, the county commissioners are still the ultimate authority. The two boards are combined for more efficient operation, however, the county commissioners still have the final decision-making power as to how funds are spent.

REP. JIM ELLIOTT expressed concern that the counties with no cultural programs planned could lose all the funding to the fair board. **SEN. TOWE** replied that this could happen. However, if it did, the boards would have to gather signatures for a ballot measure.

Closing by Sponsor:

SEN. TOWE said this bill is an efficiency measure which allows boards to combine funding for easier operation of combined facilities. The county commissioners retain final authority over decisions of the boards. If the funding were to go totally to one board, 15% of the voters would have to sign a petition for a ballot measure.

HEARING ON HOUSE BILL 204

Opening Statement by Sponsor:

REP. BOB REAM, HD 54, Missoula, said HB 204 provides for a four mill levy for capital improvements within the county but outside the corporate limits of a city or town. The mills may also be used for cities and towns, but it may not be applied to both county and city entities. The four mills are exempted from the I-105 restrictions. He stated infrastructure across the state is in bad shape. When I-105 was passed, maintenance of facilities was the first to be affected.

Proponents' Testimony:

Alec Hansen, Montana League of Cities and Towns, said I-105 has been in force for five and a half years. During that time federal funds have dried up, the inflation rate has grown, over 700 employees have been laid off and many programs have been eliminated. Total layoffs comprise almost 15% of the total work force. Municipalities need some help to meet the demands of public safety. The bill provides a strategy to help cities and municipal governments provide some capital improvements under very serious budget conditions.

Gene Vuckovich, Vice President, League of Cities and Towns, Board Member of Montana Association of Counties, and former City Manager of Anaconda/Deer Lodge County, said infrastructure maintenance has been seriously impacted or, in some cases, completely eliminated by the provisions of I-105. Federal and state grants are available but need matching funds in order to secure them. He said the infrastructure in Anaconda/Deer Lodge County is over 100 years old and is deteriorating. The water system has to be replaced at a cost of $4 million and the sewer and lighting systems are both going to have to be replaced very soon. He said the bill is critical to his area and urged the Committee to support the bill.

Chuck Stearns, Chief Clerk and City Manager of Missoula, presented written testimony in support of the bill. **EXHIBIT 1**

Gloria Hermanson, Montana Cultural Advocacy, expressed support for the bill.

Miral Gamradt, City of Bozeman, said towns have been living with I-105 for the better part of seven years. It has frozen the largest revenue source available to cities and counties for infrastructure repair and maintenance and they are running out of alternatives. When money is short, capital items are the first to be cut. HB 204 would generate approximately $100,000 per year for Bozeman if the full four mills were levied. The owner of a $70,000 house would pay $11 annually. The bill does provide some help but cities and counties need relief from the provisions of I-105. The bill offers some flexibility and gives local officials the capability of putting the matter to a vote of the people.

Joe Frost, City Commissioner, Bozeman, said the voters understand the infrastructure is deteriorating and would be willing to pass the levies if they were on the ballot. He said the bill would help local governments and asked the committee to give it a do pass recommendation.

Jerry Thomas, Executive Director, Montana Trade Port Authority, Billings, said this bill can be a very effective economic development tool which will help start-up businesses and expansion of existing businesses. Often public infrastructure is an important component of business development plans.

Opponents' Testimony:

Tom Hopgood, Montana Association of Realtors, said the Realtors organization takes the position that this bill further erodes the rights of private property owners. The property tax burden is too high and should be alleviated. The system needs overall tax reform, not "end-runs" on I-105 which allow property taxes to increase. He said I-105 specifically says there will be no further property taxes imposed on property classes 3, 4 6, 9, 12, and 14. The voters said no more taxes and they trust the Legislature to enforce their wishes.

Steve Mandeville, Legislative Chairman, Montana Association of Realtors, asked the Committee to protect the rights of property owners. He said they do not want variations or innovative additions to I-105. If changes need to be made, they should be made through tax reform and revision.

Questions From Committee Members and Responses:

REP. JERRY DRISCOLL asked what, specifically, **Mr. Thomas** would do with funds generated by the four mills. **Mr. Thomas** said the county would improve the fairgrounds stock barns and county roads. It would take $25 million more than the annual levies to bring county roads in the state up to standard and there would still be no money for maintenance. Yellowstone County would also use funds for weed control.

REP. DRISCOLL asked **Mr. Stearns** if Missoula would use the funds for road improvements. **Mr. Stearns** replied he is employed by the city, not the county, but the major problem in the Missoula area is the jail. Although the county might use the funds for roads, the City of Missoula would use the funds for sewer connections and the water treatment plant. He said it costs $10,000 per connection now.

Closing by Sponsor:

REP. REAM said with rights come responsibilities. He said it is important to give local governments the tools needed to fulfill their responsibilities to private landowners, such as water and sewer systems in good operating condition. This bill provides a vehicle for improving infrastructure and will put people back to work at the local level.

HEARING ON SENATE BILL 114

Opening Statement by Sponsor:

SEN. TOM HAGER, SD 48, Billings, presented SB 114 as per the attached **EXHIBITS 2 and 3.**

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SEN. HAGER closed.

EXECUTIVE ACTION ON SENATE BILL 101

Motion/Vote: **REP. HARRINGTON MOVED SB 101 BE CONCURRED IN.** The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 114

Motion/Vote: **REP. McCARTHY MOVED SB 114 BE CONCURRED.** The motion carried unanimously.

ADJOURNMENT

Adjournment: The meeting adjourned at 10:55 a.m.

Bob Gilbert

BOB GILBERT, Chairman

Jill Rohyans

JILL ROHYANS, Secretary

BG/jdr

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL DATE 1/22/93

NAME	PRESENT	ABSENT	EXCUSED
REP. GILBERT, CHAIRMAN	✓		
REP. FOSTER	✓		
REP. HARRINGTON	✓		
REP. ANDERSON	✓		
REP. BOHLINGER	✓		
REP. DOLEZAL	✓		
REP. DRISCOLL	✓		
REP. ELLIOTT	✓		
REP. FELAND	✓		
REP. HANSON	✓		
REP. HARPER	✓		
REP. HIBBARD	✓		
REP. KELLER	✓		
REP. McCAFFREE	✓		
REP. McCARTHY	✓		
REP. NELSON	✓		
REP. ORR	✓		
REP. RANEY	✓		
REP. REAM	✓		
REP. TUNBY	✓		

HOUSE STANDING COMMITTEE REPORT

January 22, 1993

Mr. Speaker: We, the committee on Taxation report that Senate Bill 114 (third reading copy -- blue) be concurred in .

Signed: ______________________
Bob Gilbert, Chair

Carried by: Rep. M. Hanson

HOUSE STANDING COMMITTEE REPORT

January 22, 1993

Mr. Speaker: We, the committee on Taxation report that Senate Bill 101 (third reading copy -- blue) be concurred in .

Signed: ______________________
Bob Gilbert, Chair

Carried by: Rep. Harrington

MISSOULA FINANCE/CITY CLERK OFFICE
435 RYMAN ST. • MISSOULA, MT 59802-4297 • (406) 523-4700
FAX (406) 728-6690

FINANCE AND DEBT MANAGEMENT
BUDGET AND ANALYSIS
ACCOUNTING
CITY CLERK
UTILITY BILLING
RISK MANAGEMENT
GRANT ADMINISTRATION

EXHIBIT 1
DATE 1/22/93
HB 204

CHUCK STEARNS TESTIMONY ON HOUSE BILL #204
January 22, 1993

The City of Missoula strongly supports HB204 and appreciates Representative Ream's sponsorship of this critical bill. This special property tax authority would be in addition to existing levy authority and would be exempt from the limitations of I-105 as amended. This bill would allow a small amount of flexibility to raise local matching funds for infrastructure investment projects.

The City of Missoula believes the Legislature recognizes the need to do something about infrastructure. In the last two legislative sessions, we have testified about a 1988 study that demonstrated one of the first credible links of government investment in non-military capital assets and the U.S. productivity rate. Attached is a summary of that study by David Alan Aschauer of the Chicago Federal Reserve Bank. Since then, many diverse interests have cited this study to underscore the importance of infrastructure financing.

There is a dire need to have authority to raise more local funds for infrastructure. Looking back at history, since Governor Schwinden's Task Force on Infrastructure in 1984 identified over 8 billion dollars of <u>repairs</u> needed to Montana's infrastructure, we have seen:

1. The loss of revenue sharing for the state and local governments.
2. The imposition of I-105.
3. The elimination of EPA grants for sewage treatment facilities and the creation of low interest loans to be repaid entirely by local users.

Finally, this tide of disinvestment has begun to turn around as we have seen the establishment of a significant amount of new state and federal grant funds that are available to both cities and counties, **if they can raise the necessary local matching funds**. These new grant funds include the Treasure State Endowment, the federal ISTEA highway enhancement funds, the federal housing program called HOME whose funds are passed through the State's Department of Commerce, and the possible federal economic stimulus bill. All of these programs are available for both cities and counties, yet if these jurisdictions have to provide funds for a match, many will be forced to divert funds from other existing programs if they want to take advantage of the opportunity.

The ISTEA enhancement program will provide $198,661 for Missoula County and $238,367 annually for the City of Missoula, if each of these jurisdictions can raise 13% matching funds. If these funds are unused, they will revert back to the state or federal government for reallocation to cities and counties that can provide matching funds.

As shown in the attached survey from the Advisory Commission on Intergovernmental Relations, the public generally does support special taxes for specific projects, especially infrastructure projects where they can see the tangible results easily. In Missoula, if the City Council levied the full four mills, that would translate to a 3% increase in the City's mill levy or a 0.58% increase in a taxpayer's total property tax bill.

Raising matching funds will be critical to increasing investment in infrastructure. Let us learn from the problems caused by a lack of infrastructure investment that other cities have experienced and not have to deal with bridges falling down or tunnels flooding as in the downtown Chicago area. Such problems disrupt business activity and lessen private investment in the area. We strongly encourage your support of HB204.

AN EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER M/F/V/H

ESSAYS ON ISSUES

THE FEDERAL RESERVE BANK OF CHICAGO

SEPTEMBER 1988
NUMBER 13

Chicago Fed Letter

Rx for productivity: Build infrastructure

A six-car collision on Tampa's two-lane Howard Frankland Bridge—the locals call it the "Frankenstein"—causes a three-hour traffic jam during rush hour. A dam bursts near Toccoa, Georgia, killing thirty-nine residents—mostly children—of a tiny Bible college. A bridge collapses on Interstate 95 in Connecticut, hurling six people into the river some 75 feet below, killing three and injuring several others.

Such accidents and disasters happen almost daily in the United States. They are outward signs of a growing affliction—the decay of our national infrastructure. But not only safety and convenience are affected. There are deeper implications of this national neglect for the health of the U.S. economy. Indeed, as Bill Clinton, Governor of Arkansas, recently wrote, "America is falling apart, literally. Federal budget pressures and changes in the Federal tax law in the 1980s have steepened a decline in public works spending that dates to the 1950s."[1]

This *Letter* looks at recent trends in public works expenditures and relates the fall-off in such spending with the productivity slowdown that became evident in the United States around 1970. The decline in public capital spending—on dams, highways, sewers, mass transit, etc.—relative to employment and private investment in plant and machinery forces private business to absorb higher costs, and thereby lowers productivity. And lower productivity, sooner or later, means a lower standard of living.

A stronger commitment to America's infrastructure by the public sector is necessary for at least two reasons. First, a well-maintained public works system contributes to an expanding, robust economy. Second, directly and indirectly, it contributes to an improved standard of living.

A check-up

On the basis of most external appearances, the economy's health is robust. We are experiencing an expansion of output that is progressing into its sixth year; economists are raising their forecasts for this year's growth rate of gross national product (GNP); we see surging employment and a declining unemployment rate. To be sure, we see some threats of inflation, but not the inflation fever of other periods.

A complete physical examination, however, produces evidence of economic atrophy. The growth of output that is not explained by increases in labor and private capital inputs—generally called "total factor productivity"—has slumped during the last decade and a half. Indeed, the annual growth rate of total factor productivity in the private business economy has plummeted from 1.5% from 1951 to 1960 and 1.8% from 1961 to 1970 to 0.8% in the 1970s and a dismal 0.7% in the first half of the 1980s.

When an economy begins to produce less per worker, as has been the experience in the United States of late, commonsense suggests various possible solutions. Households can scale back consumption purchases in line with reduced income growth. Firms can reduce expenditures on capital goods in the face of lower profit margins. Or the government can reduce its own spending on goods and services (consumption spending), leaving a larger slice of output to be allocated to competing private sector needs. However, none of these resolutions have occurred, or at least have not occurred sufficiently enough to match the diminished availability of domestically produced goods and services.

Instead, households, businesses, and the government have saved less and borrowed more in the attempt to consume, invest, and finance public spending in excess of their income, cash flow, and tax revenue.

1. Tandem downturn: U.S. productivity and government investment

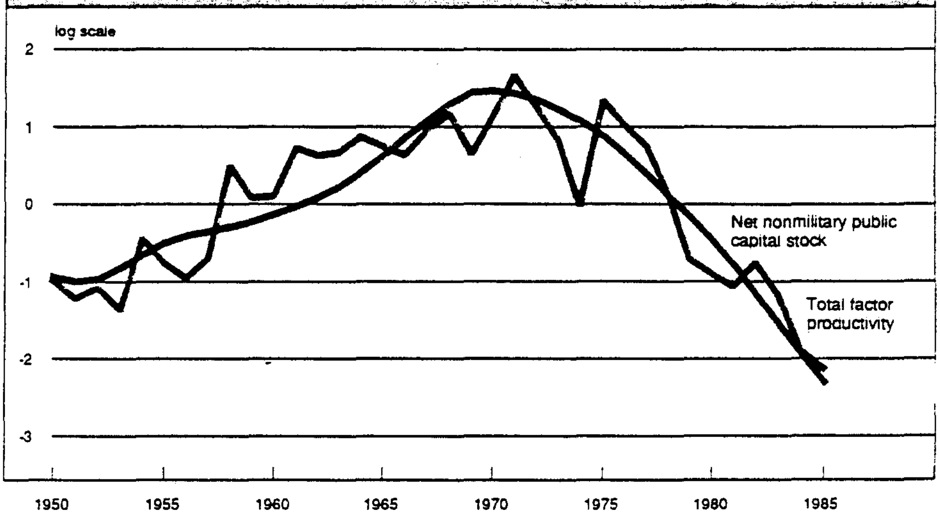


EXHIBIT 1
DATE 1/22/13
HB 204

After averaging 9% of GNP during the 1960s, the private savings rate fell to 8.3% during the 1970s and even lower, to 6.2%, during the first half of the 1980s. Also, there has been a high budget deficit as the government sector's outlays exceeded the pace set by tax revenues. During the last years of the Carter Administration and throughout the Reagan Administration, budget deficits ballooned, with the excess of spending over revenues peaking at 5.4% of GNP in 1984.

In turn, the national attempt to spend beyond our present means has forced up real interest rates as well as caused a trade deficit in the international accounts. Higher interest rates work to choke off private expenditure, particularly on durable goods, thereby lowering the demand for borrowed funds. At the same time, higher domestic interest rates—relative to foreign rates—also attracted foreign capital. This had the desirable effect of allowing a higher private investment rate, thereby enhancing future productive capacity, than would have occurred in an economy closed off from international capital markets. Still, this has resulted in a large liability to the rest of the world. Indeed, by most accounts, the United States went from being the world's largest creditor to the world's largest debtor in less than a decade.

The ultimate consequence of the productivity disease then will be a lower standard of living as we pay back the debt held by foreigners.

Previous diagnoses

Prior studies of the fall-off in productivity have centered on a relatively small number of potential causes. A surge in aggregate productivity can be expected whenever resources are shifted from less to more productive sectors of the economy. The migration of labor from farm to nonfarm occupations had such an effect, but mostly came to a halt by the mid 1960s. Certain economists, most notably Zvi Griliches of Harvard University, have emphasized a general slowing of expenditures on research and development and a related slowing of technological change.

Average annual growth rates

of:	1950-85	1950-70	1971-85
Productivity	1.5%	2.0%	0.8%
Public capital	3.0%	4.1%	1.6%
Public capital relative to private inputs	1.1%	2.4%	-0.6%
Capacity utilization	0.2%	0.3%	0.1%

But, the combination of these factors does not go far enough in explaining the productivity decline. The Bureau of Labor Statistics, for example, estimates that these factors probably account for only one-fourth or so of the slower productivity growth in the private economy. Lower rates of capacity utilization also may explain some of the reduction in total factor productivity; after averaging 84.1% during 1951 to 1970, the rate of capacity utilization fell to 79.5% in the period 1971 to 1985. But changes in capacity utilization rates, largely driven by erratic fluctuations in aggregate demand for goods and services and transitory technological shocks, are more likely to explain short-term, rather than long-term movements in productivity.

A new diagnosis

One place to search for a plausible reason for the productivity decline is in the government accounts—how the government gets and spends its money. Many have insisted that the financial status of the public sector—the budget deficit and consequent creation of government bonds—may play an important role in influencing the economy's performance. Specifically, it is argued that high public sector bond issuance forces up real interest rates and drives down the new private investment spending that is essential for fostering economic growth and technological improvement.

I suggest, however, that it is more reasonable to look at the physical aspects of the government budget, at the distribution of government spending across various broad categories.

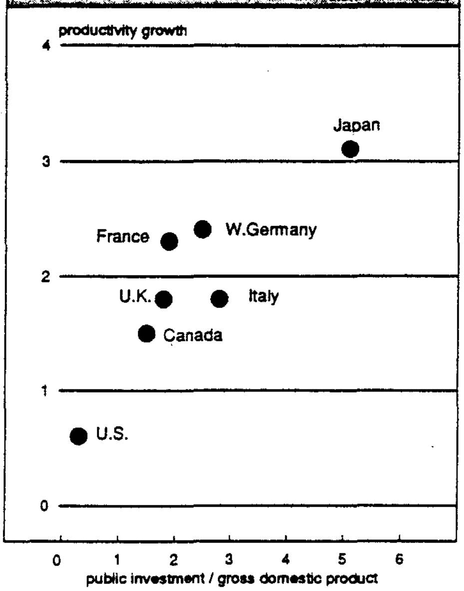
As it happens, there is a remarkable correlation between the level of total factor productivity and the level of the nonmilitary public capital stock over the last thirty-five years. My empirical results suggest that movements in public capital are capable of explaining a large portion of the longer term movements in productivity in the private sector over the period 1949 to 1985.[2]

Roughly, a one percentage point increase in the level of the net stock of public capital relative to the level of private sector inputs of labor and capital brings forth a one-third of one percentage point (.33) rise in productivity. Table 1 translates this result into an accounting mechanism for the growth rate of total factor productivity during the high-growth period 1950-70 and the subsequent low-growth period 1971-85. While productivity growth fell from 2% to 0.8% per year—a fall-off of 1.2 percentage points—the growth rate of the net stock of nonmilitary public capital shriveled from 4.1% to a mere 1.6% per annum. Even more strikingly, the growth rate of the public capital stock *relative to* a "combined" unit of private labor and capital went from a strongly positive 2.4% to a *negative* 0.6% in the slowdown period.

Multiplying the slump in the growth in public capital by the sensitivity of productivity to public capital growth—the previously mentioned 0.33—shows that fully (3.0) x (.33) = 1.0 percentage point of the total decline in productivity of 1.2 percentage points can be attributed to the neglect of infrastructure.

Figure 1 vividly illustrates the tight relationship between public nonmilitary capital and total factor productivity by comparing levels of total factor productivity and the stock of public structures and equipment after removing time trends. As is clearly demonstrated, this relationship holds for the period of rising productivity growth during the 1950s and 1960s as well as for that of falling productivity growth during the last decade and a half. And, as low productivity growth leads a low standard of living by the hand, insufficient investment in the economy's infrastructure will soon force individuals to trim their style of living; Senator Quentin Burdick of North Dakota warns, "We have produced a high standard of living, but we are beginning to see cracks in that high stand-

2. Back of the G-7 pack



ard, and a less than adequate infrastructure has been identified as the cause."[3]

We would also expect that countries that sustain a high level of public investment relative to output would experience higher productivity growth than countries that do not invest in infrastructure. Figure 2 illustrates precisely this result, plotting combinations of annual growth rates of gross domestic output per employee hour and ratios of public investment spending to gross domestic output for the "G-7" countries over the period 1973-85. Japan has invested about 5.1% of output in public facilities and achieved productivity growth of 3.3%; at the other end of the spectrum we find the United States with a low public investment of 0.3% per year and low productivity growth of 0.6% per annum. At the same time, productivity growth in these countries was negatively related to government consumption spending.

While total government outlays relative to GNP have risen from 26% in the late 1950s to 35% in the middle of the 1980s, public nonmilitary capital expenditures have slid precipitously. Dana Huestis, President of Associated General Contractors of America, has stated in Congressional testimony, that "the infrastructure crisis is real. As a nation, we have not been investing enough in our public facilities to either keep up with new growth, or to rebuild and protect what is falling into disrepair."[4]

Thus, a root cause of the decline in the competitiveness of the United States in the international economy may be found in the low rate at which our country has chosen to add to its stock of highways, port facilities, airports, and other facilities which aid in the production and distribution of goods and services. Just as thoughtful athletes would not think of neglecting their health for fear of failing to compete well on the playing field, we as a country should be vitally concerned with the viability of our economic lifelines that enable us to meet the challenge of an increasingly competitive world marketplace.

In the words of Nancy Rutledge, Executive Director of the National Council on Public Works Improvement, "If we spend too little on public works...society loses more than the direct public cost. In the long run, our ability to compete in the international economy will be weakened, and our standard of living will suffer."[5] Nearly echoing her remarks, Peter Butkus, a public works manager for the State of Washington, has said that "good public works becomes the single most important thing that local governments can provide in the nation's effort to maintain and expand foreign trade and competitiveness."[6]

Prognosis

The chance for a recovery from a physical condition such as a minor hardening of human arteries is usually quite good if it is identified early enough, and the patient adopts a proper counting of calories, a good diet, and a certain amount of exercise. Similarly, given the stability of the relationship between the economy's infrastructure and the productivity of private factors of production, we may be confident that a more balanced distribution of public sector resources, shifting some from consumption and into capital accumulation, will rejuvenate the economy's lifelines. Raising the level of public investment spending from its current abysmal level of less than one half a percent of GNP to a modest two percent—some 80 to 90 billion dollars per year—would work wonders, quite likely wonders comparable to those of modern medicine in dealing with human disease.

— David Alan Aschauer

[1] "America is Buckling and Leaking," *New York Times*, June 24, 1988.

[2] These estimates are contained in David Alan Aschauer, "Is Public Expenditure Productive?" Federal Reserve Bank of Chicago, working paper, in press.

[3] Senate Hearings, Subcommittee on Water Resources, Transportation, and Infrastructure, October 21, 1987.

[4] Senate Hearings, Subcommittee on Water Resources, Transportation, and Infrastructure, October 6, 1987.

[5] *Fragile Foundations*, National Council on Public Works Improvement, February 1988.

[6] Senate Hearings, Subcommittee on Water Resources, Transportation, and Infrastructure, November 4, 1987.

Karl A. Scheld, Senior Vice President and Director of Research; David R. Allardice, Vice President and Assistant Director of Research; Edward G. Nash, Editor.

Chicago Fed Letter is published monthly by the Research Department of the Federal Reserve Bank of Chicago. The views expressed are the authors' and are not necessarily those of the Federal Reserve Bank of Chicago or the Federal Reserve System. Articles may be reprinted if the source is credited and the Research Department is provided with copies of the reprints.

Chicago Fed Letter is available without charge from the Public Information Center, Federal Reserve Bank of Chicago, P.O. Box 834, Chicago, Illinois 60690, or telephone (312) 322-5111.

ISSN 0895-0164

EXHIBIT 1
DATE 1/23/93
HB 204

Table 20

1988

If There Is a Need to Raise Additional Revenues to Improve Public Works Services, Which One of These Would You Prefer?

(in percent)

1. User Fees or Charge for Specific Services
2. Special Taxes Dedicated to Funding Specific Services
3. General Purpose Taxes
4. Don't Spend More/Don't Increase Revenues (volunteered)
5. Other **6. Don't Know/No Answer**

	1	2	3	4	5	6
Total Public	35	37	12	7	2	7
Male	36	33	14	7	3	7
Female	33	42	10	7	1	7
Head of Household	36	37	12	8	2	5
Male Head	37	34	14	8	3	4
Female Head	34	41	11	7	1	6
Under 35 Years of Age	38	35	12	5	2	8
18–24	37	35	12	4	1	11
25–34	38	36	12	6	3	5
35–44	35	39	10	10	2	4
45–65	36	36	13	6	3	6
Over 65	26	42	12	9	2	9
High School Incomplete	30	36	14	11	1	8
High School Graduate	36	36	11	8	3	6
College Incomplete	34	40	8	8	2	8
College Graduate	39	39	14	1	2	5
Household Income: Under $15K	29	39	12	9	2	9
$15–24.9K	35	37	11	10	2	5
$25K+	38	35	12	6	2	7
$25–29.9K	34	37	16	6	1	6
$30–39.9K	35	37	10	8	2	8
$40K+	42	34	12	4	3	5
Own	35	39	12	7	2	5
Rent	36	34	11	9	2	8
White	36	36	12	7	2	7
Nonwhite	25	43	12	12	2	6
Employed	37	37	12	7	2	5
Employed Female	35	44	8	8	2	3
Unemployed	32	38	11	9	2	8
Not Employed Female	32	40	12	6	1	9
Prof., Manager, Owner	40	39	12	2	2	5
White Collar, Sales, Clerical	36	34	9	11	3	7
Blue Collar	35	36	13	8	2	6
Retired	27	41	12	13	1	6
Married	37	37	12	7	2	5
Not Married	31	38	12	7	2	10
Household Size: 1-2 People	35	37	12	8	2	6
3–4 People	34	40	12	4	2	8
5+ People	35	20	9	23	2	11
Children in Household: Under 18	36	38	12	7	2	5
No Children	34	37	12	7	2	8
Northeast	33	38	8	12	2	7
North-Central	39	36	13	5	3	4
South	33	40	12	5	2	8
West	34	35	13	9	1	8
Nonmetro	34	38	12	6	3	7
Metro-50,000 and Over	—	—	—	—	—	—
Fringe	42	33	12	6	2	5
Central City	28	41	12	10	1	8

Source: "Changing Public Attitudes on Governments and Taxes", Advisory Commission on Intergovernmental Relations (ACIR), Report S-17, Washington, DC., 1988, p. 41.

EXHIBIT 2
DATE 1/22/93
HB SB 114

received less revenue. Section 15-1-111, MCA, provides a reimbursement to local governments for the lost revenue. However, the language of the statute is ambiguous regarding the mechanics of how the reimbursement is to be made. The Department of Revenue proposes to amend § 15-1-111, MCA, to make it clear how reimbursements shall be made to local governments for the loss of personal property taxes by specifying how newly created taxing jurisdictions and disbanded or dissolved taxing jurisdictions are to be treated.

Legislative Identification Number 3 (DO-03)

Conform statutory time limit to bring declaratory judgment action to Supreme Court decision.

Section 15-1-406, MCA, provides that taxpayers may bring a declaratory judgment action in district court to seek a declaration that a tax levied by a state or local government is illegal or unlawful. However, the statute requires taxpayers to bring the action "within 90 days of the imposition of the tax."

Recently, in the Holly Sugar case, the Montana Supreme Court interpreted the language of "within 90 days of the imposition of the tax" to mean an action must be brought within 90 days of the date the assessment was mailed. The Department proposes to amend § 15-1-406, MCA, to reflect the Court's holding, thus notifying taxpayers that the 90 day period begins to run on the date the assessment was mailed.

Additionally, the Department proposes to amend § 15-1-406, MCA, to clarify that taxpayers are required to serve a summons and complaint on the appropriate state or local government officials. This will ensure that government officials are aware of declaratory judgment actions and can anticipate the effect such actions may have on revenue and budgets.

Legislative Identification Number 4 (DO-04)

Consolidating or eliminating certain reports made by the Department to the Governor and Legislature. (The Legislative Council has tentatively agreed to make this part of a council bill concerning reports to the legislature.)

Pursuant to § 72-16-202, MCA, the Department is required to report to the Governor and the Legislature on inheritance tax matters. The Department is also required to make a biennial report to the Governor and the Legislature under § 15-1-205, MCA. The Department proposes to combine these two reports, making the report on inheritance tax matters a part of the biennial report. This would eliminate the need of making two separate reports.

Section 2-7-104, MCA, requires the Department to prepare revenue estimates and submit them to the Governor and the Legislature. However, in practice, the Governor's Budget Office prepares the revenue estimate report. The Department will continue

SB 114 - DOR

DATE 11/22/93
SB 114

HOLLY SUGAR CORPORATION, Plaintiff and Appellant, v. THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA; THE STATE OF MONTANA; THE COUNTY OF RICHLAND; THE TREASURER OF RICHLAND COUNTY; THE ASSESSOR OF RICHLAND COUNTY; HIGH SCHOOL DISTRICT NO. 1, RICHLAND COUNTY; DISTRICT NO. 5, RICHLAND COUNTY; BOARD OF TRUSTEES, HIGH SCHOOL DISTRICT NO. 1, RICHLAND COUNTY; BOARD OF TRUSTEES DISTRICT NO. 5, RICHLAND COUNTY; SUPERINTENDENT OF SCHOOLS, SIDNEY PUBLIC SCHOOLS; AND SUPERINTENDENT OF SCHOOLS, RICHLAND COUNTY, Defendants and Respondents.

No. 91-108.
Submitted on Briefs February 19, 1992.
Decided April 9, 1992.
49 St.Rep. 299.
___Mont.___.
___P.2d___.

TAXATION, Appeal by taxpayer from order granting summary judgment for all defendants on grounds that statute of limitations for bringing such actions had run on taxpayer. The Supreme Court held:

1. TAXATION - Imposition of tax, for purposes of bringing an action, occurs on date actual notice of taxes due is sent.

Appeal from the District Court of Richland County.
Seventh Judicial District.
Honorable Richard G. Phillips, Judge presiding.

For Appellant: **James P. Sites**, Argued, Crowley, Haughey, Hanson, Toole & Dietrich, Billings.

For Respondent: **Phillip N. Carter**, Argued, Koch & Carter, Sidney; **David Woodgerd**, Chief Legal counsel, Department of Revenue, Helena.

Reversed.

JUSTICE HUNT delivered the Opinion of the Court.

Plaintiff/appellant (hereinafter "taxpayer") brought a declaratory judgment action in District Court pursuant to § 15-1-406, MCA, alleging that certain property taxes levied against the taxpayer were "illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax." Taxpayer alleged that the requirements of § 15-10-412(9), MCA, were not satisfied by the taxing authority. The District Court did not consider the merits of taxpayer's contention, as the court granted summary judgment for all defendants on the grounds that the statute of limitations for bringing such actions had run on the taxpayer. We reverse.

We phrase the issues before this Court as follows:

1. Did the District Court err in holding that the 90-day statute of limitations for bringing an action pursuant to § 15-1-406, MCA, began running on the date the amount of tax due was entered on the assessment book and the Department of Revenue affixed their affidavit thereto?

2. Did the District Court err in not finding that jurisdiction was present under the Uniform Declaratory Judgments Act?

The facts in this case can be briefly stated. The District Court Judge summarized the relevant facts in his Memorandum Opinion and Order as follows:

"This action stems from a tax increase that was the result of a request by Richland County School Districts 1 and 5 for voter approval to exceed the limitations of 15-10-402 MCA. Resolutions calling for an election were adopted on March 13, 1989 and an election was held on April 4, 1989. At the election the question was approved by the voters. Plaintiff paid the portion of its taxes dealing with the increased school levy under protest on November 30, 1989 and filed this action January 26, 1990."

The total amount of taxes in dispute is $169,915.64. The tax statement, which is the notice of the property tax due, was mailed on October 31, 1989. Taxpayer received the tax statement indicating the amount of property taxes owed on November 1, 1989.

In response to taxpayer's declaratory judgment action, the defendants moved for summary judgment. This motion was based upon three separate grounds: (1) the statute of limitations set forth in § 15-1-406, MCA, had run; (2) laches, in that the taxpayer should have taken action earlier based upon the school levy election results; and (3) taxpayer was estopped from bringing the action in that the taxpayer's delay in filing suit allowed the defendants to change their position detrimentally relying on the election results. The court did not address issues 2 and 3, but granted summary judgment based on the statute of limitations.

Section 15-1-406(2), MCA, states that a declaratory judgment action of this nature "must be brought within 90 days of the *imposition* of the tax." [Emphasis added.] The question before the District Court was when the actual "imposition" of the tax occurred. Defendants argued that the imposition of the tax occurred on April 4, 1989, when the emergency levy election was held. The 90-day statute of limitations began running at that time according to the defendants. The taxpayer argued that the imposition of the tax was not until November 1, 1989, when they received notice of the amount of the tax due. Taxpayer then contended that since the 90-day statute of limitations began to run on November 1, 1989, taxpayer's suit filed on January 26, 1990, was within the 90-day period provided by statute in which to bring an action. The District Court, in its January 29, 1991, memorandum, opinion, and order, determined that "[w]hen the final steps to impose the tax were taken the cause of action to challenge the tax accrued to the Plaintiff." According to the court this date was October 25, 1989. By October 25, 1989, the court found that all the necessary steps had been taken and the tax was imposed as of that date. The property had been assessed, the final budget and levy had been determined, and the actual tax liability was set and entered in the assessment book. Taxpayer's declaratory judgment action was filed January 26, 1990, which is just over the 90 days allowed to bring the action. The court found it was not significant that the notice was not sent until October 31, 1989, and that the taxpayer did not receive the notice of the actual tax liability until November 1, 1989. The court stated that the actual tax liability had been determined and it was the taxpayer's own fault that he was unaware of the actual tax liability. Taxpayer could have checked to determine if his tax liability had been entered on the books and his lack of knowledge as to when the tax was entered on the books did not postpone the beginning of the period of limitations.

I

Did the District Court err in holding that the 90-day statute of limitations for bringing an action pursuant to § 15-1-406, MCA, began running on the date the amount of tax due was entered on the assessment book and the Department of Revenue affixed their affidavit thereto?

The outcome of this case turns on this Court's determination of when the imposition of the tax in question occurred. It is only upon the imposition that the 90-day period of statute of limitations begins to run. The question presented here has not been previously addressed by this Court. However, there are a number of District Court decisions on when the imposition of a tax occurs. The present case presents this Court with the opportunity to clarify the existing law in this area and settle a point of some contention in the lower courts.

Taxpayer filed suit on January 26, 1990, and therefore, taxpayer's declaratory judgment action was filed within the required 90 days pursuant to § 15-1-406, MCA, if the "imposition" of the tax is determined to have occurred after October 28, 1989. Section 1-1-306, MCA. On appeal, taxpayer argues that the District Court erred in determining that the imposition of the tax was on October 25, 1989, seven days prior to the time taxpayer received notice of the tax.

The defendants also argue on appeal that the District Court erred in its determination of when the tax was imposed. Defendants contend that the tax was imposed on April 4, 1989, when the election was held and request that we modify that part of the District Court's decision which found that the imposition of the tax occurred on October 25, 1989.

Section 15-1-406, MCA, the primary statute in question in this case, reads as follows:

"(1) An aggrieved taxpayer may, in lieu of proceeding under 15-1-402 or 15-1-211, bring a declaratory judgment action in the district court seeking a declaration that a tax levied by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

"(2) *The action must be brought within 90 days of the imposition of the tax*. The court shall consolidate all actions brought under subsection (1) which challenge the same tax levy. The decision of the court shall apply to all similarly situated taxpayers except those taxpayers who are excluded under 15-1-407.

"(3) The taxes that are being challenged under this section must be paid when due as a condition of continuing the action. [Emphasis added.]"

Section 15-16-101, MCA, mandates that within ten days after the tax liability is entered on the assessment books, the county treasurer must send a notice to taxpayers indicating the amount of taxes due. Taxpayer contends that it is only upon receipt of this notice that the tax is actually imposed. The District Court's decision imposes an affirmative duty upon taxpayers to check with the taxing authorities from time to time to determine if their tax liability has been

EXHIBIT 3
DATE 11/22/93
HB SB 114

determined yet. Taxpayer contends this decision not only disregards the purpose of the required statutory notice, but would be an administrative nightmare for local taxing authorities.

Unlike personal income taxes, property taxes are "non-self-assessing," and are assessed and determined by the government. Taxpayer argues that the process of determining property taxes is complicated and that the necessary information is in the hands of the government, and therefore, individual taxpayers should not be expected to know what their property taxes will be prior to receiving notice.

Defendants counter by arguing that the taxpayer should have been aware of the tax, and that they were in a position to easily figure out what the tax would be. Defendants also argued that public policy requires that "an aggrieved taxpayer should be required to file its declaratory judgment action at the point in time when it first learns that its taxes are going to be increased," and that this should be "prior to the time when the school authorities are forced to commit to the expenditure of this expected revenue." Allowing taxpayers 90 days from the time they receive notice of their tax liability to file suit creates too much uncertainty for the schools. They will not be able to properly determine the amount of money they will actually have until this time period has passed.

The public policy arguments raised by the defendants are indeed important, but this Court is bound to follow and apply the intent of the legislature, as manifested in constitutionally sound statutes. As we have stated in the past:

"In construing a statute, it is our function as an appellate court to ascertain and declare what in terms or in substance is contained in a statute and not insert what has been omitted."

State v. Crane (1989), 240 Mont. 235, 238, 784 P.2d 901, 903. Whenever possible, this court is to look to the plain meaning of the statute in determining the legislative intent. *State Ex Rel. Roberts v. Public Service Commission* (1990), 242 Mont. 242, 790 P.2d 489.

[1] As previously mentioned, this Court has not interpreted the term imposition as it is used in § 15-1-406, MCA. Additionally, the term has not been defined by the legislature. The statutes are silent as to when the actual imposition of the tax occurs. The District Court concluded that the imposition of the tax occurred when the taxing authority had completed all the steps necessary to impose the tax and there was nothing remaining for the government to do. The District Court determined that all the steps necessary to impose the tax had been completed when the taxes were entered on the assessment book and the Department of Revenue affixed its affidavit to the assessment book as provided in § 15-10-305, MCA. This date was October 25, 1989. The basic framework utilized by the District Court was correct, but the analysis of the District Court stopped one step short of completion. The tax is imposed when the taxing authority completes all the steps necessary to impose the tax, including the final step that the taxing authority is statutorily bound to comply with before the tax is imposed. Pursuant to § 15-16-101, MCA, the county treasurer is required, within ten days after receipt of the assessment book, to send each taxpayer a written notice showing the amount of taxes and assessments due. It is not until this notice has been sent that the government has taken all the steps necessary to impose the tax. We hold that the imposition of the tax, for purposes of bringing an action under § 15-1-406, MCA, occurs on the date the actual notice of taxes due is sent. In this instance, that occurred on October 31, 1989. Taxpayer filed suit on January 26, 1990, which is within the 90-day period allowed for bringing an action under § 15-1-406, MCA. We must therefore reverse the decision of the District Court and remand for further proceedings consistent with this opinion.

II

Did the District Court err in not finding that jurisdiction was present under the Uniform Declaratory Judgments Act?

In light of our holding on the first issue, a determination of the question of jurisdiction under the Uniform Declaratory Judgments Act is not essential to the outcome of this case.

Reversed and remanded to the District Court for further proceedings consistent with this opinion.

CHIEF JUSTICE TURNAGE and JUSTICES HARRISON, TRIEWEILER, GRAY and WEBER concur.

JUSTICE McDONOUGH dissents.

The District Court in its opinion and order was correct. All the necessary steps to impose the tax were completed on October 25, 1989. An action of this nature must be brought within 90 days of the imposition of the tax. Section 15-1-406(2), MCA. There are no cases in Montana which have interpreted the term "imposition" relative to the imposition of a property tax.

In *Soo Line Railroad Company v. Commissioner of Revenue* (Minn. 1985), 377 N.W.2d 453, 458, the court, in what I feel to be a correct analysis, discussed the use of the term in the process of taxation as follows:

"[Taxation] consists of two distinct processes—the one relating to the levying or imposition of the taxes on persons or property; the other the collection of the taxes levied. The first is constituted of the provisions of law which determine or work out the determination of the persons or property to be taxed, the sum or sums to be thus raised, the rate thereof and the time and manner of levying and receiving and collecting the taxes. It *definitely and conclusively establishes the sum to be paid by each person taxed, or to be borne by each property specially assessed*, and creates a fixed and certain demand in favor of the state or a subordinate governmental agency, and a definite and positive obligation on the part of those taxed, and prescribes the manner of its voluntary or enforced fulfillment."

Mayor and City Council of Baltimore v. Perrin, 178 Md. 101, 12 A.2d 261, 264-65 (1940).

"When used in connection with the authority to tax, 'levy,' strictly speaking, denotes the exercise of a legislative function, which imposes the tax and sets the amount, purpose, and subject of the exaction. *Carkonen v. Williams*, 76 Wash.2d 617, 458 P.2d 280, 286 (1969). See also *Fichtner v. Schiller*, 271 Minn. 163, 135 N.W.2d 877, 879 (1965). In view of the interchangeable use of the terms 'impose' and 'levy' by the United States Supreme Court, e.g., *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575, 103 S.Ct. 1365, 75 L.Ed.2d 295 (1983), we conclude the excise tax was imposed by legislative action, i.e., § 290.02, not by the commissioner's attempt to collect it, ... (Emphasis added.)"

The components that are necessary to impose a tax on pieces of property in Montana are the value of the property, the amount of the millage and the establishment of the sum to be borne by each piece of property. The value of the property is established by the application of the assessment and equalization statutes which is not contested here. The millage, or the rate of tax, was established in this case by the certification of the school board to the county commissioners after public notice of the amount of millage needed. The commissioners then, at their meeting on the second Monday in August of 1989, and after notice to the public, levied the millage and taxes against the taxable property of the district. See § 7-6-2502, MCA. The third step is the computations by the county assessor of the exact tax to be paid by each piece of property and its entry on the assessment book. This, by statute, is to be done by the second Monday in October, and the assessment book is then delivered to the county clerk and recorder with the assessor's affidavit of completion. See § 15-10-305, MCA. This completes the first step as set forth in the above quotation; it definitely and conclusively establishes the sum to be paid by each person taxed and the sum to be borne by each property specially assessed.

The second step in the process starts by requiring that on or before the third Monday in October, the county clerk and recorder charges the county treasurer with the full amount of the taxes levied and delivers the assessment book to the treasurer. This second process, the collection of the taxes, is not governed by Chapter 10 which provides for the levy or imposition of the taxes. Rather, the collection is governed by law in a different chapter, Chapter 16 of Title 15 of the MCA. Part 1 of said Chapter 16 provides for the notice to be given to the taxpayers, what the notice shall contain, the time and place of payment, etc.

In this specific case the county assessor was late in completing and delivering the assessment book together with the affidavit and it was not done until October 25, 1989. On this date then, all the steps necessary to levy and impose a tax on a specific piece of property owned by a specific person were completed. The 90 day statute of limitations began to run on this date. This action was not filed until January 26, 1990, which is more than 90 days after the tax was imposed.

What the majority opinion has done is add the requirement of the mailing of the notice of taxes due, which is governed by said Chapter 16, as a requirement to the levy and imposition of the taxes. The notice requirement is actually a part of the second process, to wit: the collection of the taxes. I would affirm the order granting summary judgment.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

HB 204
SB 114
SB 101
SB 10

House Taxation COMMITTEE BILL NO. SB 10

DATE 1/22/93 SPONSOR(S) SEN. TOWE, SEN. JACOBSON, SEN HAGER, REP. REAM

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bill Chiesa	SB 10 Metra Park	✓	
Bill Chiesa Metra Park	HB 204	✓	
Jerry S. Thomas Bls, Mt.	Montana Taxpayers Assn MetraPark SB 10	✓	
Jerry S. Thomas Bls. Mt.	" HB 204	✓	
Mirad Gamradt Bozeman	City of Bozeman HB 204	✓	
Joe Frost Bzn City Commission	HB 204	✓	
Chuck Stearns	HB 204	✓	
Terry Cohea	SB 101	✓	
Gloria Hermanson	HB 204 MT Cultural Advocacy	✓	
Tom Hopgood	HB 204 Mt. Assoc Realtors		✓
Steve Mandeville	HB 204 MT Assoc Realtors		✓
Alec Hansen	HB 204 MLCT	✓	
Gene Vuckovich	HB 204 MLCT	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.