#### MINUTES

## MONTANA SENATE 53rd Legislature - Regular Session

#### COMMITTEE ON TAXATION

**Call to Order:** By Chairman Mike Halligan, on March 4, 1993, at 8:00 a.m.

## ROLL CALL

#### Members Present:

Sen. Mike Halligan, Chair (D)
Sen. Dorothy Eck, Vice Chair (D)
Sen. Bob Brown (R)
Sen. Steve Doherty (D)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John Harp (R)
Sen. Spook Stang (D)
Sen. Tom Towe (D)
Sen. Fred Van Valkenburg (D)
Sen. Bill Yellowtail (D)

Members Excused: None.

Members Absent: None.

**Staff Present:** Jeff Martin, Legislative Council Bonnie Stark, Committee Secretary

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

Committee Business Summary: Hearing: SB 382, HB 269, HB 303, HB 330 Executive Action: SB 325, SB 370, SB 382, HB 269, HB 303, HB 327

#### HEARING ON HB 330

## Opening Statement by Sponsor:

Representative Jody Bird, House District #52, presented HB 330, which is a bill drafted at the request of the Department of Revenue (DOR) to clarify the statute of limitations on individual income tax assessments and refund claims.

#### Proponents' Testimony:

Bob Turner, Bureau Chief of Income and Miscellaneous Tax Division, DOR, spoke in support of HB 330. For background, Mr.

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Turner said a taxpayer filed an amended income tax return delinquently, in 1991, and requested a refund. This was actually a 1980 return, filed in 1986, and in 1989 the taxpayer filed an amended return. The DOR disallowed the refund on this return because the statute of limitations for tax year 1980 had expired April 15, 1984. The taxpayer requested an informal conference on the DOR's decision, and the informal conferee found in favor of the taxpayer because there are two conflicting statutes in law. One statute states that a refund can be filed five years from the due date of the return, and the second statute states five years from the date of filing. HB 330 will allow a taxpayer five years from the tax filing due date in which to file an amended return. Mr. Turner presented Exhibit No. 1 to these minutes and explained the conflict in the statutes which HB 330 will eliminate.

#### **Opponents' Testimony:**

None.

## Informational Testimony:

None.

## Questions From Committee Members and Responses:

Senator Grosfield asked Mr. Turner if the problem in question happens often, since the fiscal note shows no impact. Mr. Turner said it happens often enough that the conflict in law should be corrected. The DOR determined it is better to correct the problem in the Legislature than to take it through the court system.

Senator Gage asked if someone doesn't file a 1987 return until May 1, 1993, is he precluded from amending that return? Mr. Turner said this is correct if the return was filed timely. Senator Gage asked for a response if the return was past the statute date before he filed the original return. Mr. Turner said the taxpayer can file the return, but cannot amend it if the original return is filed past the five-year statute of limitations deadline. The state would then have five years to review the return. Mr. Turner pointed out that in the review of a tax return, he instructs his technicians and examiners to make sure there is a fair tax paid so if there are any deductions, these are brought up at the time of the examination.

Senator Towe asked for further clarification. Mr. Turner said HB 330 is directed at delinquent taxpayers. Under the informal hearing, if the delinquent taxpayer filed now, he would have five years from this date to file an amended return, even though taxpayers who complied under the law would not have any additional time because the statute of limitations had expired. HB 330 will put the delinquent taxpayer into compliance with those who file timely and obey the law. HB 330 will allow a delinquent taxpayer to amend only up to five years after the due

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date of the return, not five years after the date of filing. HB 330 applies to refund returns. Under current law, a person can file a 1980 refund return, and since the original return time has passed five years, the DOR won't be able to give a refund. However, tomorrow he could file an amended return and get a refund under the informal hearing process. What the DOR wants the new law to state is that the DOR cannot give a refund after that length of time.

Senator Towe asked if there is an audit and a proposal for change in the taxable income status, how much time would be given that person for a refund. Mr. Turner said the DOR can take up to five years after a return is filed to audit the return. However, he instructs his examiners and the audited taxpayer to have the taxpayer pay a fair tax. The DOR will take additional itemized deductions into consideration in arriving at a fair tax.

Senator Eck asked how this corresponds to how the Federal government handles the issue. Mr. Turner said he understands the Federal government will allow a refund up to three years after the return is due, or two years after the tax is paid, whichever is later. After that, no refund can be obtained.

Senator Towe said the audit extends the statute of limitations in the Federal law, if there is a 90-day letter assessing additional taxes, which stops the statute of limitations, and it does not apply again until 90 days after the 90-day letter is resolved. Mr. Turner said this is taking it into the appeal process. Mr. Turner further said that if the situation is taken into the appeal process with the State tax return, the statute of limitations would be stayed until this is resolved. Dave Woodgerd, Chief Legal Council, DOR, said he is not sure if an appeal process would stay the running of the statute of limitations in order to file an amended return.

#### <u>Closing by Sponsor:</u>

Rep. Bird offered no further comments in closing.

#### HEARING ON HB 269

#### Opening Statement by Sponsor:

Rep. Don Larson, House District #65, presented HB 269 which will allow for pro-ration of permit fees for video gambling machines. Currently, the state charges gambling machine operators \$200 per machine per year as a license permit fee and is pro-rated if the operator buys a machine in the 2nd, 3rd, or 4th quarter of the year. The industry has no quarrel with this system. The conflict occurs when a business changes hands, and the new operator assumes control of the liquor and gambling licenses. Tavern operators in Montana are licensed separately by the Department of Justice (DOJ) and the DOR. Under current law,

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when a new operator takes a business over during the first quarter after license permit fees are paid, he must pay the full permit fee again. HB 269 will change the law so if the ownership transfer occurs during the first quarter of a permit year, the machines will transfer to the new owner, upon payment of a processing fee of \$25 per machine.

#### Proponents' Testimony:

Mark Staples, representing the Montana Tavern Association, spoke in favor of HB 269. Licensing of gambling machines occurs on July 1st each year. HB 269 is a compromise worked out with the DOJ so that the licensing permit is transferable only during the first quarter of the permit year, upon payment of the processing fee. Prorations already occur in the 2nd, 3rd and 4th quarters.

Dennis Casey, Executive Director of the Gaming Industry Association (GIA), said the GIA supports HB 269.

Janet Jessup, Administrator of the Gambling Control Division, said the DOJ supports HB 269. Some amendments made to the bill will satisfy the Department's previous concerns, and the revenue loss associated with the bill can be absorbed. Ms. Jessup believes the bill is fair to the businesses caught in the first quarter situation.

## **Opponents' Testimony:**

None.

## Informational Testimony:

None.

## Questions From Committee Members and Responses:

Senator Towe asked if the \$25 transfer-processing fee is new. Mr. Staples said it is a new fee established to help defray expenses associated with the video gambling machine transfer.

Senator Eck asked Ms. Jessup about the revenue loss associated with HB 269 and if the \$25 transfer-processing fee would cover the total cost of transferring ownership of the machines. Ms. Jessup said the \$25 fee would pay for mailing and some of the processing time, as well as incidental costs associated with the transfers. Senator Eck asked how the investigation costs of new license holders is handled. Ms. Jessup said that cost is paid through the license processing fees applied to the new owner.

## <u>Closing by Sponsor:</u>

Rep. Larson said HB 269 is an effort to avoid double taxation on video gambling machines, and will allow the DOJ to collect a processing fee for transferring ownership of the machines. He asked for a favorable vote from the Committee.

## HEARING ON HB 303

## Opening Statement by Sponsor:

Rep. Sheila Rice, House District #36, presented HB 303, which will expand the tax increment financing statute to include pollution facilities or equipment. Rep. Rice said Montana is the only state that has tax increment financing which does not allow for pollution control in that financing program.

## Proponents' Testimony:

Bill Egan, representing the Montana Council of Electrical Workers, spoke in favor of HB 303, saying they can't see any better purpose for the use of tax increment funding.

## Opponents' Testimony:

None.

## Informational Testimony:

None.

## Questions From Committee Members and Responses:

Senator Harp asked Rep. Rice about tax increment funding in Great Falls and if it has particular needs for environmental protection. Rep. Rice said Great Falls has been very successful in a number of projects using tax increment funding, and is now working itself through the first industrial tax increment financing project, with another project recently identified. The Federal Clean Air Act and the matching state Act both call for pollution control equipment on small businesses that have been previously untouched by air pollution control standards. She sees tax increment financing being utilized in those instances, such as dry cleaning establishments located in the downtown area.

Senator Doherty asked if a project 35-40 miles away from a municipality would be able to qualify for funding under HB 303. Rep. Rice said she understands that a business has to be within a tax increment district, which would preclude a project outside the confines of that district.

Senator Gage asked if storm water run-off would qualify for funding, since the EPA has recently drafted new rules requiring additional monitoring equipment to handle storm water run-off. Rep. Rice said the project first must be within a tax increment district, and second, there needs to be an agreement to make the municipality involved in the project, and the municipality will have approval authority over what qualifies as an acceptable project.

## <u>Closing by Sponsor:</u>

Rep. Rice said it is important to remember that tax increment financing, other than municipality improvements, such as curbs, gutters and sewers, etc., is a tax subsidy repaid by taxpayers within that tax increment district and not paid for by taxpayers outside the district. She urges the Committee to concur in HB 303.

## HEARING ON SB 382

## Opening Statement by Sponsor:

Senator Cecil Weeding, Senate District #14, presented SB 382, which will earmark a portion of the local impact coal tax monies to the eastern Drug Task Force counties, a coalition of nine counties in the southeastern corner of the state. Traditionally, the Coal Board would appropriate the monies, and fund the projects through grants. The fiscal note indicates an allocation of approximately \$497,000 in FY 94 and \$496,000 in FY 95 from this local impact account to fund the ongoing drug investigations in those counties.

## **Proponents' Testimony:**

Gary Fjelstad, Chairman of the Eastern Coal Counties Task Force, and Undersheriff of Rosebud County, spoke in favor of SB 382. Mr. Fjelstad originally intended to come to the Legislature only to seek direction for the Coal Board to continue the drug task force program. There now appears to be interest in placing the Coal Board revenue into the General Fund, so the Task Force decided to pursue this legislation because they feel the program is too important to eastern Montana, and to the state, to just abandon and discontinue it. Mr. Fjelstad said local governments cannot afford to pay for the program. This task force has operated since 1982 in an effective war against illegal drug activity in Montana; they have seized over \$10 million worth of illicit drugs; they have jailed over 800 people who are top-tomid-level drug suppliers. They are not dealing with the smalltime user, and to discontinue the program at this point would be tragic, according to Mr. Fjelstad. Three years ago, the program was expanded to include drug education in an effort to have a greater impact. The DARE program is active within schools in the nine county area, and they have more requests to expand the program than they have DARE officers to provide the training. All these activities will be affected by SB 382. Without task

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force funding, they could lose the DARE program and the matching Federal grant money for the DARE officers program.

Joe Mazurek, the State Attorney General (AG), testified in support of SB 382. Mr. Mazurek said the efforts of the Eastern Coal Counties Task Force need to be supported to insure a permanent funding source of the drug enforcement effort in eastern Montana. This is the only multi-jurisdictional effort in eastern Montana, and it is critical to the state-wide drug enforcement efforts. There is an inter-local agreement in this very successful program. Mr. Mazurek said because of the governor's proposal to do away with the coal board funding and efforts to put this program in the General Fund, this critical program may be left without funding. Mr. Mazurek said it is important to find a permanent funding source because the recruitment and retention of officers is dependent on a grant every two years.

Mr. Mazurek said there are currently 37 pending cases relating to drug sales; the task force averages about 40 cases per year taken to prosecution. Generally, all of those cases are sale cases; they are not the small-time possession cases. In the last five years, they have had a 100% conviction rate. The cooperation between the state and local authorities has been facilitated through this task force program, and the Attorney General urges the passage of SB 382 to continue those endeavors.

#### **Opponents' Testimony:**

None.

## Informational Testimony:

None.

#### Questions From Committee Members and Responses:

Senator Gage asked Senator Weeding why the 17 1/2% allocated to the credit of the local impact account is listed as a separate item in SB 382. Senator Weeding said this has been a traditional source of funding.

Senator Towe asked if it is Senator Weeding's understanding that the Coal Board would have discretion to deny the grant. Senator Weeding responded, no. There has always been an agreement with the Coal Board that the task force would need this funding, but this is the first time it has been set up statutorily.

Senator Towe said the language in SB 382 states the money will be allocated to the Coal Board to be used exclusively to fund on-going drug investigation activities, but it sounds like it is at the discretion of the Coal Board. He asked Attorney General Mazurek if the money could be used for anything else or

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if the Coal Board could withhold some of the money. Mr. Mazurek said the intention is to have it pass through the Coal Board directly for this drug task force funding without having to go through the grant process. The Coal Board has never refused to award the grant, although there was a considerable amount of controversy two years ago. Mr. Mazurek said it is important to know that a portion of this money is providing the local match to fund the DARE programs. There is about \$375,000 a year going to the drug task force, and another \$75,000 going to the drug education, for a total of \$450,000 annually.

Senator Towe asked Senator Weeding if his intention is for this Committee to multiply the 18 1/2% times the 17 1/2% and put this in as an extra budget item. Senator Weeding said HB 350 will affect the drug task force funding, and if HB 350 passes, he thinks this would be necessary; if HB 350 does not pass, it would not be necessary. AG Mazurek said HB 350 changes the allocation program, and the distribution formula on this program would be changed to only about 1/3 of the money they have gotten in the current formula.

Senator Grosfield said much of the coal trust is earmarked for various programs, and what will prevent other areas of the state from coming to the coal trust for funding of their DARE programs. Senator Weeding said this is always a possibility, but the check point on that is that the unspent balance reverts to school education, so there is a pretty strong argument not to fund the DARE programs randomly across the state. Mr. Mazurek responded by saying this money provides local match money to be applied against other grant money to operate DARE programs in these nine counties. It helps free up more money for the rest of the state.

Senator Eck asked the AG what happens to the education and enforcement budget as far as it relates to counties other than these nine southeastern counties involved with SB 382. Do they have funding and programs comparable to this program? Mr. Mazurek said there are a number of task forces around the state which rely on a combination of Federal grant money, local money, and inter-local cooperation attempts. In Missoula, there is a Board of Crime Control funded operation that provides county prosecutor services and some assistance in the Missoula County Attorney's office, and other related assistance. There are also other programs in other areas across the state.

Senator Eck asked if the Board of Crime Control money is all Federal money. Ed Hall, Administrator for the Board of Crime Control, said all of the pass-through monies that support the task forces that are either DARE or undercover operations, are Federal funds coming from one of two Federal sources: either through the Department of Education or through the Federal Department of Justice. There are approximately 11 undercover task forces in the state at a cost of approximately \$1.5 million per year, funded by Federal funds. In response to questions by Senator Grosfield, AG Mazurek said their position is trying to maintain and preserve a funding source for this important drug enforcement effort.

Senator Grosfield commented that by virtue of the highway reconstruction trust fund account ending June 30, 2003, the percentage going to the southeastern coal counties task force will increase.

## Closing by Sponsor:

In closing, Senator Weeding proposed to amend SB 382 by adding "education and prevention" after "drug investigation" on Page 1, Line 6; Page 4, Line 25; and Page 7, Line 6.

## EXECUTIVE ACTION ON HB 269

#### MOTION/VOTE:

Senator Stang moved HB 269 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. (491210SC.San) Senator Stang will carry the bill on the Senate floor.

## EXECUTIVE ACTION ON HB 303

## **DISCUSSION:**

Senator Van Valkenburg expressed concern that the language on Page 3, Line 6, "protecting the natural environment" is extremely broad and could mean just about anything. Another concern is that the people who are within the tax increment districts are not contributing to the school equalization account or the 6-mill levy, and it is state-wide taxpayers who are subsidizing tax increment districts by virtue of that fact. All of the increased value of the property tax is going just for the people who have their businesses in that particular district.

Senator Towe said this is a very narrow portion of the tax increment financing law, and is for an out-right cash offset or payment for pollution equipment for private industry. If a business wants to own the pollution equipment, they should borrow the money, get the tax increment financing bonds at a lower rate of interest, and then they will own the equipment. He does not understand why the tax increment district would want to buy it.

Senator Eck said she questioned using tax increment financing to fund buildings that would belong to private entities. If these are construction improvements to public property, that would be acceptable, but to use this financing to fund improvements for private industries, would not be acceptable to her.

### MOTION TO AMEND:

Senator Van Valkenburg moved to amend HB 303 on page 3, line 6, following "pollution", to strike the remaining language, through line 7.

#### **DISCUSSION:**

Senator Yellowtail asked if a substitute motion to table the bill would be in order.

Senator Towe and Senator Harp said they hesitate to table the bill because Senator Doherty is not present and it is a Great Falls bill on which he may want to offer input.

#### VOTE:

The amendment motion to HB 303 CARRIED UNANIMOUSLY on oral vote.

No further executive action was taken on HB 303 at this time.

#### EXECUTIVE ACTION ON SB 382

#### **DISCUSSION:**

Senator Towe said if anything is going to be done with this bill, it probably should be as a separate earmarked item in the General Fund, instead of through the Coal Board. He thinks the language in the bill gives the Coal Board full authority to refuse the grant. If that would happen, the money could revert into the education trust fund.

Senator Van Valkenburg said if this funding is not made part of the local impact account, there is no justification for it only going to the nine counties.

Senator Yellowtail said this bill would hinge on the outcome of HB 350, and he thinks it should be left alone at this time.

In response to questioning from Senator Towe, Senator Van Valkenburg said the main place that gets assistance through state-wide programs is Missoula County for the reason that this county has had a long history of pursuing drug enforcement, they have a good track record, and have been able to make a case to the Board of Crime Control as to how effective the use of Board of Crime Control money is. Missoula County has put up significant matching monies, sometimes as much as 50%. Further, Missoula County has offered assistance to any surrounding counties as far as prosecutorial law enforcement efforts. The remainder of the state has grants available to them from the Board of Crime Control, used primarily for equipment purchases as opposed to personnel. These have not been extensive grants, and they have been sporadic.

No further executive action was taken on SB 382 at this time.

## EXECUTIVE ACTION ON SB 325

#### **DISCUSSION:**

Dave Woodgerd, DOR, said specific language in Montana statutes did not track with a California case regarding separate private interests in tax exempt property. The DOR requested this clarification to make sure Montana did not run into problems in this regard.

## MOTION:

Senator Harp moved SB 325 DO PASS.

#### **DISCUSSION:**

Senator Towe said there is a Montana case that has gone all the way to the U. S. Supreme Court that says beneficial use is taxable under the existing language in Montana law. He questioned if it is dangerous to change the language in the statute at this time. Mr. Woodgerd said it is the DOR's view that it is dangerous to leave the language the way it is existing. The way the statute now reads is not exactly the way the Montana Supreme Court interpreted it. In order to make certain Montana follows Federal law and existing case law, Mr. Woodgerd recommends SB 325 pass.

## VOTE:

The motion that SB 325 DO PASS CARRIED UNANIMOUSLY on oral vote. (491213SC.San)

#### EXECUTIVE ACTION ON SB 370

#### **DISCUSSION:**

In response to questions by Senator Grosfield, Senator Eck said the SBA has written off this property, and Senator Towe said he doesn't think the SBA has taken title to this property.

Senator Towe said he has a concern about this kind of bill because the secured party, whether a bank, mortgagor, SBA, etc., always wants to get out of the payment of taxes, and they want to get a superior position. Senator Towe thinks the taxes should be paid first, and doesn't see why there should be a subordination to any lending institution. Senator Harp said the problem is that the property would stay as it now exists, and will never move. He thinks there has to be a way to get the property back on the tax rolls.

Senator Van Valkenburg said he is concerned that by passage of this bill, there would be total avoidance of statutory duty, i.e., taking care of underground storage tanks, etc. He would like to put a termination date on this bill, see if this property can be sold, and see what other similar requests surface, before making this a permanent law.

#### MOTION TO AMEND:

Senator Van Valkenburg moved to amend SB 370 to add a termination clause of December 31, 1994.

## **DISCUSSION:**

Jeff Martin, Legislative Council Staff, said that termination date will require a new section in law. Senator Harp said it would be good if this would require someone to come in and be an advocate for retaining the statute. Senator Gage said the statute needs to be left long enough to see what develops and how much interest there is in retaining it.

Senator Grosfield asked if Yellowstone County would get some assurance ahead of time so they can make a determination to cancel or not cancel the delinquent taxes. Senator Towe said his understanding is that a commitment would be made in advance from the county that if the prospective purchaser cleans up the property, the county then has the authority to cancel the taxes, and will commit to cancel them.

#### VOTE:

The amendment to SB 370 CARRIED UNANIMOUSLY on oral vote. (sb037001.ajm)

#### **DISCUSSION:**

Senator Gage asked who "the governing body" is in this bill. Senator Halligan said "the governing body of a county or consolidated local government" is defined in the bill, so the determination to cancel or not cancel delinquent taxes is made at the county level.

Jeff Martin said the cancelled taxes applies to all mill levies, and the county government is the governing authority.

#### MOTION/VOTE:

Senator Harp moved SB 370 DO PASS AS AMENDED (491214SC.San). The motion CARRIED UNANIMOUSLY on oral vote.

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## EXECUTIVE ACTION ON HB 327

## MOTION/VOTE:

Senator Gage moved HB 327 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. (491211SC.San) Senator Forrester will carry the bill on the Senate floor.

## ADJOURNMENT

Adjournment: The meeting adjourned at 9:44 a.m.

ALLIGAN, Chair STARK, Secretary

MH/bjs

# ROLL CALL

SENATE COMMITTEE TAXATION

DATE 3-4-93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Halligan, Chair	~		
Sen. Eck, Vice Chair			
Sen. Brown		-	
Sen. Doherty	V	-	
Sen. Gage			
Sen. Grosfield	~	-	
Sen. Harp	V		
Sen. Stang	~		
Sen. Towe			
Sen. Van Valkenburg	V		
Sen. Yellowtail	V		
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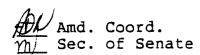
Attach to each day's minutes

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MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 269 (first reading copy -- blue), respectfully report that House Bill No. 269 be concurred in. / //

Signed: Senator Mike Halligan, Chair



Stang Senator Carrying Bill

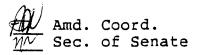
491210SC.San

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MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 325 (first reading copy -- white), respectfully report that Senate Bill No. 325 do pass.

Signed: Mike Halligan, Chair Senator



Page 1 of 1 March 4, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 370 (first reading copy -- white), respectfully report that Senate Bill No. 370 be amended as follows and as so amended do pass.

Signed: Mike Ha Chair Senator ligan,

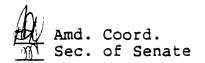
That such amendments read:

1. Title, line 10.
Strike: "AND"
Insert: ","

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

3. Page 4.
Following: line 3
Insert: "NEW SECTION. Section 5. Termination. [This act]
 terminates December 31, 1994."

-END-

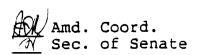


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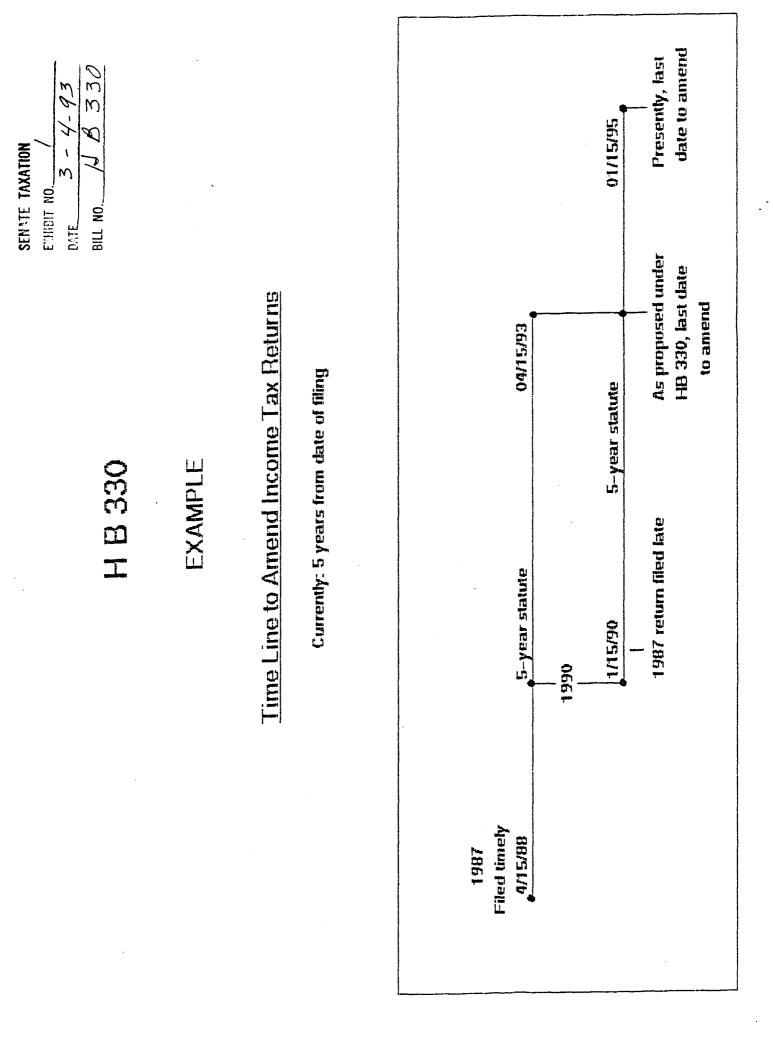
## MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 327 (first reading copy -- blue), respectfully report that House Bill No. 327 be concurred in./ /

Signed: Senator Mike Halfigan, Chair



Amd. Coord.ForresterSec. of SenateSenator Carrying Bill



DATE 3-4-93 Texe SENATE COMMITTEE ON 2 BILLS BEING HEARD TODAY: 3 303 69.

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## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY