

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON TAXATION**

**Call to Order:** By Chairman Mike Halligan, on March 25, 1993, at 7:00 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. Fred Van Valkenburg (D)  
Sen. Bill Yellowtail (D)

**Members Excused:** Sen. Tom Towe (D)

**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 438  
Executive Action: SB 257, SB 305, SB 410, SB 424, SB 426,  
SB 433, SB 438

#### **EXECUTIVE ACTION ON SB 305**

##### **MOTION:**

Senator Eck moved SB 305 DO PASS.

##### **DISCUSSION:**

Senator Halligan asked Jeff Miller, Department of Revenue (DOR), to explain the fiscal note for SB 305. Mr. Miller said the fiscal note was prepared prior to the amendments that were added in the Public Health Committee to change the rate of money distributed to the Debt Service and Long-Range Building Fund.

With the changes, we come closer to holding harmless the Long-Range Building Fund in FY '94. FY '95 is exactly equal. The fiscal note does not reflect the surtax that is currently in place and will not expire until August 15, 1993. There is an expected decline in consumption because of the increase in price. The DOR's review of the amendments, and taking into account the surtax consideration, would suggest that SB 305 comes very close to holding revenue-neutral the funding levels to Debt Service and Long-Range Building in both years of the biennium.

Senator Eck distributed Exhibit No. 1 to these minutes, showing what is mandated under the bill. Senator Eck said for each one cent, the increased tax is \$657,444 in 1994 and \$649,222 in 1995.

**MOTION:**

Senator Eck moved SB 305 DO PASS.

**SUBSTITUTE MOTION:**

Senator Harp moved a substitute motion to strike all of the ear-marking language out of Sections 6 and 7 and any other appropriate sections that might reflect earmarking of any expansion of eligibility, and direct the increase in funds to the General Fund, with the current revenue to remain as is.

**DISCUSSION:**

Jeff Miller pointed out that in language on Page 3, there is a discussion of what happens to the cigarette tax revenues, with allocation to Long-range Building Program and Debt Service, and under Sub (4) on Line 19, it talks about the remainder to the State Special Revenue account, with reference to Section 7. Consistent with Senator Harp's motion, that would also have to be addressed.

Jeff Martin, Legislative Council Staff, asked if the money would be left in for the MIAMI project. Senator Harp said it was being taken out. Mr. Martin suggested leaving the percentages for debt service the same and the remainder into the General Fund.

Senator Eck said the Committee has to recognize that it would not be funding health care. This amendment would strike out the possibility of funding any of these programs, including the Health Care Authority which has no funding.

Senator Yellowtail said if we are going to try to sell the cigarette tax, we need to justify the tax by using it for preventive health care. He feels this amendment weakens its chances.

**VOTE ON SUBSTITUTE MOTION:**

The substitute motion to de-earmark FAILED 6-5 on roll call vote (#1).

**SUBSTITUTE MOTION:**

Senator Harp moved a substitute motion to reduce the tax from an increase of 18 cents to 5 cents.

**DISCUSSION:**

Senator Yellowtail asked Senator Harp's opinion of this substitute motion. Senator Harp said he believes this committee sees a need for this bill, and he thinks he could support 5 cents. However, he does not agree with doubling the tax.

Senator Eck said the 5 cent increase would leave Montana among the lowest state on cigarette taxes, and an 18-cent increase would put Montana just slightly over the average.

**VOTE ON SUBSTITUTE MOTION:**

The substitute motion FAILED 6-5 on roll call vote (#2).

**SUBSTITUTE MOTION/VOTE:**

Senator Doherty moved a substitute motion to reduce the tax from an increase of 18 cents to 12 cents. The motion FAILED 7-4 on roll call vote (#3).

**SUBSTITUTE MOTION:**

Senator Doherty moved a substitute motion to reduce the tax from an increase of 18 cents to 10 cents.

**DISCUSSION:**

Senator Harp asked what the affect would be of 10 cents as opposed to 18 cents. Mr. Miller said a doubling of cigarette tax would also contemplate a doubling of the other tobacco products.

Senator Doherty said his substitute motion of 10 cents on the cigarette tax would include a ratable increase for the smokeless tobacco as well.

**VOTE ON SUBSTITUTE MOTION:**

The motion CARRIED 8-3 on roll call vote (#4).

**DISCUSSION:**

Senator Van Valkenburg asked Senator Eck if the level of increase in the bill would support the expansion of medicaid as

proposed in the bill. Senator Eck said that is one of the purposes of it, and it will more than pay for the medicaid, and will also pay for the long-range building fund, and will probably pay enough for the MIAMI program.

Senator Van Valkenburg said the wholesalers have raised the issue about the time in which the tax is collected.

Mark Staples, representing the Montana Tobacco Wholesalers, offered another amendment, Exhibit No. 2 to these minutes. He said, theoretically, wholesalers pay the tax before they sell the product, although some can buy on credit. However, when they pay for cigarettes, they pay the stamps up front at the tax rate at the time. If there is a tax increase, historically, it was never put on inventory. The last increase, before the surtax, the DOR did come in and put the tax on the inventory. The tax was paid at one rate and when the tax increase went on before the goods could be sold, they added the new tax as well. This was done primarily to wholesalers because they have the warehouses and are easier to work with. The out-of-state wholesalers and the retailers are more difficult to control. Mr. Staples asked the Committee to accept the amendment on the promise by the wholesalers that they will not stock pile up to the date that the tax is imposed, which is August 14, 1993. Mr. Staples said the DOR is not authorized to collect this tax on cigarettes stamped or cigarettes indicia in inventory at the old rate held by the wholesalers, subjobbers, or retailers.

Mr. Miller indicated the fiscal note prepared for SB 305 did not contemplate a floor tax, and parenthetically said that should there be one, the DOR would need \$4,000 or \$5,000 to handle it. The fiscal note also did not contemplate stockpiling.

Senator Halligan asked if the amendment should be amended to read "the effective date of this act", instead of "August 14, 1993".

#### MOTION TO AMEND:

Senator Van Valkenburg moved to adopt the Amendment presented by Mr. Staples, Exhibit No. 2 to these minutes, with "the effective date of this act", instead of "August 14, 1993".

#### DISCUSSION:

In response to questions by Senator Gage, Mr. Miller said smokeless tobacco is taxed based on invoice price at 12 1/2% of the wholesalers list price submitted to the DOR; there is no stamped issue attached to the product. Mr. Miller further said, absent any directions to the contrary, the DOR would impose a floor tax. This is consistent with what was done in the past when there was a 2-cent increase, and is consistent with what the Federal government does when they see a significant tax increase. The DOR sees it as their obligation to collect the tax, and there

is no difference between the stamp the day before the price went up and the day after, so a person cannot tell whether or not it was purchased at the higher rate. The DOR sees the way to address that is to go in and inventory everything in stock at the time the tax is changed.

Senator Doherty asked if any stockpiling is done by the retailers and if there is any way to check that. Mr. Miller responded there is no good way to check what is stockpiled at the retail level, and there are some major wholesalers who are not represented by Mr. Staples, so an agreement by some wholesalers not to stockpile is not a perfect solution. In response to this same question, Mr. Staples said there was no stockpiling at any point when the surtax was imposed, every business only has a certain amount of floor space and, by and large, inventory taxes and floor taxes are not collected against retailers.

**VOTE ON AMENDMENT:**

The motion to amend SB 305 (sb030501.ajm) carried on oral vote.

**VOTE ON ORIGINAL MOTION:**

The motion to DO PASS SB 305, AS AMENDED, CARRIED 7-4 on roll call vote (#5) (681134SC.Sma).

**EXECUTIVE ACTION ON SB 257**

**INFORMATIONAL TESTIMONY:**

Clayton Schenck, Senior Fiscal Analyst, Office of the Legislative Fiscal Analyst (LFA), presented Exhibit No. 3 to these minutes, and reviewed the information for the Committee. This exhibit regarding the proposed 4 and 3 cent fuel tax increase under SB 257 answers the four questions of (1) What will be additional revenue be used for? (2) Is it necessary to maximize federal funds? (3) Does it impact the Reconstruction Trust program? (4) Does it impact funding for primary and secondary highways?

**QUESTIONS FROM THE COMMITTEE:**

Senator Harp asked Mr. Schenck if the additional \$29 million would be added to the Federal aid money Montana will receive. Mr. Schenck said this amount is not figured in his report, and for the purpose of the match requirement, the LFA relies on the Department of Transportation (DOT) projections. However, he thinks for the \$29 million, there would be approximately \$3.5 million of additional state funds. In response to further questions by Senator Harp, Mr. Schenck said his budget modifications do not deal with the Reconstruction Trust Fund (RTF) in any way.

Senator Harp asked about the Highways Special Revenue Account as it relates to funding Fish, Wildlife and Parks Access. Mr. Schenck said \$1.25 million per year was added to the figure of \$84,000 in this legislative session, which is to maintain and construct parks roads. This is 1/4 of a cent from the revenue derived from SB 257.

Senator Eck asked if the 1-cent increase, proposed in SB 376, has been considered in any of Mr. Schenck's calculations. Mr. Schenck said that initiative hasn't been added into any of his projections; he is simply reflecting legislative action to date in terms of what has cleared the House in House Bills 2 and 5, and the additional revenues proposed in SB 257. Considering these total revenues, there is a balance at the end of FY 1995, of \$20.6 million, but in the long-term picture, carrying out to FY 1998, there is a balance remaining of \$2.8 million. What his report covers, the 4- and 3-cent increases would barely cover. If there was additional funding to go to the counties, there would have to be a reduction somewhere, or additional revenues added.

Senator Eck suggested there could be some extra money in the RTF fund, and wonders if an analysis has been done about what can be done with the \$100 million costs in RTF and how much could be done under the new regulations of ISTEA. Bill Salisbury, DOT, said those types of activities being done on the secondary system in the RTF program are not eligible for Federal aid so they cannot be done under the ISTEA program. Mr. Salisbury said these are on the secondary system which is covered by the Federal aid program, but the types of activities, projects and scope of projects being done in the RTF program on the secondary roads are not eligible for Federal aid, so any increase in the Federal aid program will not take care of those activities. Mr. Salisbury said none of these are new construction; they are all preservation, maintenance and repair of existing roads.

Senator Eck asked if there has been an analysis done toward looking at the cost per mile of 100% state money in repairing the roads versus what it would cost with 87% Federal money in rebuilding. Mr. Salisbury said those costs typically run \$150,000 per mile; to build to full Federal standards that would make them eligible can run anywhere from \$700,000 to \$1 million per mile.

Senator Harp asked Mr. Schenck what the affect would be if the approximate \$5 million per year from the coal tax was lost. Mr. Schenck said the coal tax of \$5 million per year is equal to about 1 cent fuel tax.

Senator Gage asked what was used for figures on Indian Reservations. Mr. Schenck said the distribution figures came from the DOT, and DOT was estimating between \$2.5 million and \$3.3 million. Mr. Schenck chose to go with \$3 million; the DOT is using \$2.6, so there is a minor difference in their figures.

There was no further executive action on SB 257 on this date.

### HEARING ON SB 438

#### Opening Statement by Sponsor:

Senator Barry "Spook" Stang, Senate District #26, presented SB 438, which is an act assuring the fact that if property is located in the state of Montana on the first day of the year, it will be eligible for a refund of taxes if the property is moved into another state and used in that state, and taxes are paid in that state. SB 438 allows the mechanism to compute that refund and assure that the person is not being taxed twice in one year on the property.

#### Proponents' Testimony:

Keith Olson, Executive Director of the Montana Logging Association, said he thought this issue was resolved by the legislatures in 1989 and 1991, and now he is here again to ask the legislature to resolve this issue. If logging equipment is in Montana on January 1st, the owners pay personal property taxes for the full year, and they are not eligible for a tax refund even if they were to move into Idaho, for example, on the 2nd of January, spend 8 or 9 months there, pay taxes there, and then come back to Montana. They would, basically, have to pay 20 months of personal property taxes in two different states in one year. The other problem is these loggers have to low-boy equipment back and forth over state lines on New Years Eve just to try and come up with the least economic competitiveness. Mr. Olson said no one is trying to beat the taxes, they just want to be on the same footing as other contractors in other states. He asked the Committee's support of this bill. Mr. Olson presented Exhibit No. 4 to these minutes.

#### Opponents' Testimony:

None.

#### Informational Testimony:

None.

#### Questions From Committee Members and Responses:

Senator Doherty asked how the migratory personal property issue was handled for cattle moving in and out of the state, and if this will be any different than logging equipment. Judy Rippingale, DOR, said the tax is assessed as of the location on January 1st. If equipment is moved in and out of the state, it is a complicated procedure as far as paying taxes and requesting refunds for taxes paid.

**Closing by Sponsor:**

Senator Stang said this bill is back again this session mainly because of codification problems. He said the treasurers from three states met and this bill was patterned after their agreement regarding migratory property. SB 438 does not pertain to vehicles; it involves large equipment that needs to be transported on low-boy trailers. If the property arrives in Montana after June 1st, owners only pay property tax from June 1st to the end of the year.

**EXECUTIVE ACTION ON SB 438****MOTION/VOTE:**

Senator Harp moved SB 438 DO PASS. The motion CARRIED UNANIMOUSLY on oral vote (671210SC.San).

**EXECUTIVE ACTION ON SB 410****MOTION/VOTE:**

Senator Van Valkenburg moved this committee reconsider its action in tabling SB 410. (See minutes of March 15, 1993.) The motion CARRIED on oral vote with Senator Brown voting "NO".

**MOTION:**

Senator Van Valkenburg moved that SB 410 DO PASS.

**DISCUSSION:**

A letter from the Sheriffs and Peace Officers Association was presented for review, which is Exhibit No. 5 to these minutes.

Senator Van Valkenburg said the current tax on gaming is 16.05% on gross revenue because of the 7% surtax that applies to the 15%. If SB 410 passes as presented, it will raise the gaming tax from the original 15% level to a 16% level in order to fund this program. (The present surtax will expire prior to the tax increase under SB 410.)

Senator Grosfield presented Exhibit No. 6 to these minutes, which is a chart of similar retirement programs under Montana's Public Retirement Systems. Senator Grosfield pointed out that all of them, except the Sheriffs' program, have a third funding source for their retirement program.

Senator Brown said he feels the gaming tax is an inappropriate source of funding for the Sheriffs' retirement program and he doesn't think our law enforcement people should be



dependent on gaming and its growth in order to underfund their retirement system. Senator Van Valkenburg asked Senator Brown if all of the video gaming tax was increased from 15% to 16% and that money was put into the General Fund, and the State General Fund paid the cost of the increase in the Sheriffs' Retirement System, would that be acceptable to him. Senator Brown said it might be acceptable but he did not agree with this activity or having government be dependent on it in any way.

Senator Doherty agreed with Senator Brown that it is bad public policy to tie the Sheriffs and Peace Officers Retirement to gambling. Unfortunately, he said, this funding seems to be the only one left to get them the needed addition for their retirement system.

Senator Eck suggested an amendment to SB 410 to de-couple the Sheriffs organization from the gaming industry, which would give this committee an opportunity to look for an appropriate permanent source of funding. This could be done by an amendment that the revenue raised would go into the General Fund.

Senator Gage suggested funding SB 410 with a beer tax. Senator Eck said she feels it is not appropriate to fund this bill with a beer tax without holding a special hearing and it is too late to hold a special hearing.

#### SUBSTITUTE MOTION:

Senator Gage moved a substitute motion to amend SB 410 to replace the source of funding with a tax on beer sales.

#### VOTE:

The substitute motion FAILED on roll call vote (#6).

#### VOTE ON ORIGINAL MOTION:

The motion to DO PASS SB 410 ended in a tie roll call vote (#7), with Senator Towe absent. Another vote will be taken when the full committee is in session.

#### EXECUTIVE ACTION ON SB 426

#### DISCUSSION:

Exhibits numbered 7, 8, and 9 to these minutes were distributed and discussed.

#### MOTION/VOTE:

Senator Van Valkenburg moved to adopt the amendments proposed by Mae Nan Ellingson, which are listed on Exhibit No. 7 to these minutes (sb042602.ajm). The motion CARRIED unanimously on oral vote.

**DISCUSSION:**

Jeff Martin, Legislative Council Staff, discussed Exhibit No. 8 to these minutes, which were proposed by Mae Nan Ellingson. He said these amendments primarily direct the Board of County Commissioners and cities, when considering an RSID or SID, to take into consideration the market value of parcels, lots, or tracts in the SID, the amount of special assessments to be levied compared with the market value within the SID, and the amount of outstanding special assessments already against the property, any delinquencies, a consideration of the public benefit, and consideration of the developer's contribution in the SID. There would also have to be a public notice with a statement that the SID is secured by a revolving fund.

Senator Van Valkenburg asked Senator Kennedy if he has any objection to the adoption of the amendments. Senator Kennedy replied he did not.

**MOTION:**

Senator Van Valkenburg moved the adoption of the amendments, (proposed by Mae Nan Ellingson, which are listed on Exhibit No. 8 to these minutes).

**DISCUSSION:**

Senator Doherty said we are giving directions to the public about RSIDs and SIDs for newly-platted subdivisions, and he doesn't think RSIDs and SIDs should be allowed if those subdivisions do not undergo subdivision review.

**SUBSTITUTE MOTION:**

Senator Doherty made a substitute motion to amend the amendments for a flat prohibition of any RSIDs or SIDs for any subdivisions that do not undergo governmental review under the Montana Subdivision Platting Review.

**DISCUSSION:**

Senator Eck said she believes this is already required.

Senator Van Valkenburg said he is sure there are some existing subdivisions that have come into place without going through the subdivision review process that need improvements. He asked if it is Senator Doherty's intention to preclude those subdivisions from using the special improvement district financing mechanism to put in sewers and all of the various improvements that can be utilized. Senator Doherty said he would like to include all SIDs and RSIDs, but he doesn't see any practical way to include them all since some of them may be grandfathered in, and it would be his intention to have this apply prospectively in newly-platted subdivisions.

**VOTE:**

The substitute motion by Senator Doherty CARRIED 7-3 on roll call vote (#8).

**VOTE:**

The motion by Senator Van Valkenburg to adopt the amendments (Exhibit No. 8) CARRIED UNANIMOUSLY on oral vote.

**DISCUSSION:**

Jeff Martin explained the additional amendments relating to the savings clause, Exhibit No. 9 to these minutes, which were also suggested by Mae Nan Ellingson during the hearing. Mr. Martin said the amendments just adopted were prospective in nature. These amendments would adopt bonds and warrants issued prior to the effective date of the act, and would affect other areas that haven't been challenged with judicial proceedings.

**MOTION/VOTE:**

Senator Harp moved adoption of these amendments to SB 426 (sb042601.ajm). The motion CARRIED UNANIMOUSLY on oral vote.

**DISCUSSION:**

Senator Harp asked if the passage of the amendment by Senator Doherty would help the SID process. Senator Doherty replied that he was trying to improve SB 426 with his amendment, and he believes that if developers want to receive the benefits under SIDs they need to have full reviews which will make their projects better, and there will be better-planned subdivisions in the future.

Senator Halligan expressed concern over language on Page 2, Line 16, of SB 426, where "may" is being changed to "must". It appears there was discretion before to address the delinquency or deficiency problem in the revolving fund and now it is "must". He asked Bruce MacKenzie, representative of Securities Industry Association, and in particular, D.A. Davidson & Co., to explain his interpretation. Mr. MacKenzie said he is familiar with this particular language and in the case of Havre v. Hanson, the Supreme Court interpreted the language "may" as a "must" and as a result, since that case, the language has been read with an absolute requirement that those funds must be advanced if there is a delinquency. He understands this committee's concern that this might mean that more funds would have to be advanced than what is available in the revolving fund. Mr. MacKenzie said it does not, because SB 426 refers to Sections 7-12-2182 and 7-12-4222, M.C.A., which have a restriction that any of those levies continue to be subject only to the maximum limitations imposed. He said the maximum that ever can be levied is 5%, and the 5% revolving fund limitation is not affected by SB 426.

In response to Senator Halligan's request for Mr. MacKenzie to respond to the amendment placed on SB 426 through Senator Doherty's motion, Mr. MacKenzie replied he is not knowledgeable in real estate law, but he understood that subdivision review laws did come in to play whenever major subdivisions were proposed with SIDs.

Senator Gage and Senator Halligan questioned language in Section 2(4) and Section 4 of SB 426, and Mr. MacKenzie explained that the distinction is that only the amount of money in the revolving fund is what can be loaned out; the funding sources controlled under 7-12-4222 and 7-12-2182, say these are the only sources of money available for loans, and the revolving fund can not be made any more than 5% of the total outstanding loan, so that the maximum that can be within the fund to loan is limited to the 5%. The intent is not to remove the caps that were placed by law in 1981. The intent is that if funds are available in the revolving fund, they must be loaned if they are pledged. It is the choice of the municipalities and counties as to whether they are going to pledge those funds. If they choose to pledge them, then they must loan those funds to the extent there are funds available.

Senator Brown said if there is a delinquency in some SID, and to the extent this bill imposes a general obligation on the people in the county, or other local government, he thinks SB 426 should apply only in the future, not retroactively. He is uncomfortable with the applicability section.

Senator Van Valkenburg said up until the decision by Judge Honzel, the revolving fund was available to cover delinquencies to the extent of 5% of the cost of the special improvement district, and Senator Brown's suggestion would be breaking faith with all the people who purchased bonds up to this time who relied on that revolving fund promise as part of the security for repayment.

#### MOTION:

Senator Brown moved to amend SB 426 to have the provisions of the bill apply prospectively, not retroactively.

#### DISCUSSION:

Senator Harp asked Anna Miller, Department of Natural Resources and Conservation (DNRC), about a particular construction project in his area which will be issuing SID bonds, and what affect this amendment would have on this SID and the obligation of the entire county. Ms. Miller said this amendment would present a major dilemma because this project is based on a \$5 million-plus EPA grant, a loan from DNRC backed by the Coal Tax which was made in December of 1992, and another loan for \$4 million. The bulk of the loan, back by General Fund dollars from the SRF program, is coming into play in one of the new bond

issues. The dilemma is the old bonds, issued in December, now do not have the revolving fund to come in and act as security for those bonds. That means there is a chance that the Coal Tax would have to come in to back those bonds. The new bonds would be backed by the SID revolving fund. There is another complication in that one assessment will be done for all of the properties in that area. If the assessment is divided between the loans, there is a conflict as to what part of those loans are backed by a security interest in the revolving fund and what part is not backed. It presents major problems because many of these projects are so large they take funding from several sources, and they have been done in phases. Ms. Miller added that I-105 does not apply to this because it involves debt service.

Senator Van Valkenburg asked Mr. MacKenzie what affect he thinks this amendment would have on the marketability of future bonds. Mr. MacKenzie said it would not affect future bonds; however, there would be a major drop in marketability of bonds outstanding and the people holding those bonds would have difficulty in the secondary market. Mr. MacKenzie said if this amendment is passed and it is applied only prospectively, it will definitely call into question what attorneys, local government people, the attorney general, and interpretations of the Supreme Court understood the law to be in the past.

Senator Brown asked if SB 426 is needed. Mr. MacKenzie replied the bill is needed because there is an uncertainty in the law at the present time as to the extent of the obligations with respect to revolving funds. If the revolving fund is pledged at the present time, it is not clear how long that obligation continues. There is an Attorney General's opinion that says it continues in perpetuity, but Mr. MacKenzie doesn't think that was the intention of the Legislature. What SB 426 intends to do is put a cap on that. Mr. MacKenzie said the need for this bill is to provide certainty as to the extent of the revolving fund obligation, and how long that term runs.

Senator Gage asked if bonds have been sold in the past without revolving fund backing and, if so, what is the likelihood, after the passage of this law, that any bonds will ever be sold without backing of a revolving fund. Mr. MacKenzie said to his own personal knowledge, he knows of no bonds that were sold without revolving funds. The reason is that if one property owner defaults in his assessment payments, there is no source of security for the bond. The Supreme Court recognized that in 1929 when the revolving fund was first adopted. It is important to remain current on these bonds and warrants for the benefits of the public.

**VOTE:**

The motion to have the bill apply prospectively FAILED on tie vote 5-5 on roll call vote (#9).

**MOTION/VOTE:**

Senator Van Valkenburg moved that SB 426 DO PASS AS AMENDED (681424SC.Sma). The motion CARRIED 6-5 on roll call vote (#10).

**EXECUTIVE ACTION ON SB 424****DISCUSSION:**

Senator Eck said, irregardless of the Duffield Report, the Land Board has the constitutional requirement to set fees. There will probably be as many cabin site land leases that will go down in price as well as those that will go up in price.

Senator Gage said it appeared to him the opposition to the bill came because of the Duffield Report rather than language in the bill, but he has asked the five Land Board members to what extent they planned to use the Duffield Report whether SB 424 passes or not. He has not heard from the Governor or the Superintendent of Public Instruction. He did receive a response by letter from Mark O'Keefe, Auditor, in which Mr. O'Keefe indicated he would use the Duffield Report the same way whether this bill passes or not; it would be another source of information for determining what the rentals would be. Senator Gage talked with the Attorney General and he indicated a similar response. The Senator talked with a person in the Secretary of State's office who said he does all of the backup work for the Secretary of State regarding Land Board issues, and he said when the Duffield Report was reviewed by the Land Board, OPI and the Auditor said to go with it, and the Governor, the Attorney General, and the Secretary of State think there are many more things to look at than just what's contained in the Duffield Report. The staff person indicated that what they would probably do would be to call in everyone who is going to be affected by this bill, to discuss the Duffield Report and other issues that are not covered in the Duffield Report, and then go from there. With that happening, Senator Gage said he would not have trouble supporting SB 424.

Jeff Martin presented Exhibit No. 10 to these minutes, which are Amendments requested by Senator Blaylock and prepared by Eddy McClure.

**MOTION:**

Senator Yellowtail moved adoption of the amendments to SB 424 as listed on Exhibit No. 10 (SB042401.AEM).

**DISCUSSION:**

Senator Stang asked if SB 424 would sunset in two years or if it is forever. Senator Eck said that constitutionally the Land Board has the authority to set fees, without the Legislature

doing anything, however, SB 424 adds in recreational cabin sites to the current law. Senator Yellowtail said leases are for 10 years and to sunset SB 424 in two years would have a very narrow effect on the total body of leases.

Senator Gage said he has been told that the fees which are in place have been set by the Legislature and are a minimum fee.

Senator Stang asked if the Duffield Study is the only one done. Senator Yellowtail said the Legislature commissioned the Duffield Study last year at the insistence of groups like the stockgrowers. Senator Grosfield said the two other studies presented in the hearing on SB 424, one by MSU and the other by Pepperdine University, discredit the Duffield Study.

#### SUBSTITUTE MOTION:

Senator Gage moved a substitute motion to Amendment No. 10 (671226SC.San), Exhibit No. 10, to put a period after "effective date of this act", and strike the remaining language.

#### DISCUSSION:

As it applies to Section 8 and Section 9 of SB 424, Senator Gage said he doesn't particularly want to be an identifying partner with an arbitrator setting policy and tagging the legislators with it, or with the Land Board setting the grazing fee rental and then saying the Legislature agreed with it.

#### SUBSTITUTE MOTION/VOTE:

Senator Yellowtail moved the motion be divided for consideration and adoption of amendments 1 through 8 on Exhibit No. 10. The motion CARRIED on oral vote with Senator Grosfield voting "NO".

#### DISCUSSION:

Senator Grosfield questioned how full market value is determined. Senator Yellowtail said full market value is established by a survey of leases in the surrounding market as it concerns leases of state land.

Senator Doherty said in determining full market value, the Land Board undoubtedly will take into account that some land is more valuable than other land, and a parcel that is not very good may have a lower market value than is charged now, but some other parcels may have a higher full market value.

Senator Eck said on recreational lands, the Land Board indicated they would not only consider the improvements made to the land but also consider allowance for weed control and other kinds of management.

John North, Department of State Lands, was asked to explain the 9th amendment on Exhibit No. 10. Mr. North said the rationale is that Senator Blaylock wanted the new rates to become effective as quickly as is legally possible without violating the contract clause in the Constitution, and so forth. For cabin sites, this amendment makes the rates become effective upon the 5-year adjustment period. Cabin site leases are for 15 years and there is an adjustment period in those leases every five years. The new rate would be triggered under SB 424 at that point. Section (2) is relating to recreational use license and that is effective next year. Section (3) applies to grazing and agricultural lands. Mr. North said there is a provision in all grazing and ag leases that says if the Legislature raises the rate any time mid-term, then that rate becomes effective as applied to that lease mid-term also. This amendment would say any rate raising done pursuant to SB 424 by the landlord is deemed to be an act of the Legislature for the purpose of that clause in the grazing and agricultural leases.

Mr. North said Section 4 (old Section 5) is Renewal leases, but it references to Section 8. Section 8 (old Section 9) is where the lease rate is actually established. He said this would apply the new rate to all grazing and ag leases that are currently in effect. Senator Grosfield said, historically, those leases are 10-year leases, and the lease rate is usually negotiated in the signed contract, and all of those lease rates, whether they have been in place one year or nine years, will be revised. Mr. North said this would at least apply to those leases that were issued at the statutory minimum rental, which is about 90% of the leases. If the Land Board sets a June minimum rate, all of those would go up.

Senator Gage asked if the landlord had a constitutional responsibility to maximize those rentals, why were they using the minimums on those grazing fee rentals. Mr. North replied that it became clear that the landlord had a duty to charge maximum fee rental when Attorney General Greeley issued an opinion in 1983. The landlord commissioned a study shortly thereafter; the study indicated that the statutory lease rates were at the market value at the time. Nothing more was done by the landlord until this new study was commissioned, and this new study has indicated otherwise.

#### MOTION:

Senator Yellowtail's previous motion TO ADOPT applies to Amendment No. 9 (SB042401.AEM) (Exhibit No. 10).

#### DISCUSSION:

Senator Grosfield asked Mr. North if annual adjustments on cabin leases are done every five years under statute. Mr. North said it is not statutory; it is language included in the lease form, and the Board could not unilaterally change that lease form



until renewal. Senator Grosfield asked if the corresponding language in the lease with respect to item 3 is that the rate stays the same unless the Legislature changes it. Mr. North said that is true; it is lease language and is also statutory. He said the Constitution gives the landlord the authority to set rates subject to rules and regulations prescribed by the Legislature.

**SUBSTITUTE MOTION:**

Senator Yellowtail moved that a period be placed after December 31, 1993, and strike the remaining language in Section (3) to Amendment No. 9.

**DISCUSSION:**

Mr. North said the reason this language was put in the amendment is because without it, the landlord will have to consider whether the new rate is done by the Legislature, under that provision in the lease, or whether the Land Board is supposed to consider that the Legislature didn't raise the rates and, therefore, the Land Board isn't supposed to raise the rates until the end of the current lease. The Land Board wants some clear direction from the Legislature as to what to do there.

Senator Yellowtail said it is his intent that upon the renewal of the lease, the Land Board would apply the new rates.

**VOTE:**

The motion to strike the remaining language in Section (3) to Amendment No. 9, following "December 31, 1993", CARRIED UNANIMOUSLY on oral vote.

**MOTION/VOTE:**

Senator Grosfield moved to change Page 7, Line 25, to read, "The reasonable value may not be less than the full market value of the improvements". The motion CARRIED UNANIMOUSLY on oral vote.

**MOTION:**

Senator Brown moved to restore the language in Section 1 (1) to the existing law. This would basically strike Section 1 from SB 424 and return the language to existing law.

**DISCUSSION:**

Senator Brown said this will allow the fee for leases of cabin sites to be based on 3.5% of the appraised value of the property and would be approximately what people would pay in property tax.

Senator Yellowtail said the effect of this amendment would be to deviate from full market value, which he thinks is the obligation of the process under the Constitution. Senator Eck agrees with Senator Yellowtail.

**VOTE:**

The motion to restore the language in Section 1 (1) to the existing law FAILED 6-4 on roll call vote (#11).

**DISCUSSION:**

Senator Grosfield asked Mr. North about the language in Section 4, Page 5, stating "The board may not accept a bid that is below full market value", and does that mean the Land Board will set what they think full market value is, or are they just going to accept the highest bid. Mr. North said the Board would set the floor, and the Board may, at that point, re-evaluate what it considers to be market value.

**MOTION:**

Senator Yellowtail moved SB 424 DO PASS AS AMENDED (671226SC.San). The motion CARRIED 6-5 on roll call vote (#12).

**EXECUTIVE ACTION ON SB 433**

**MOTION:**

Senator Harp moved SB 433 BE TABLED.

**DISCUSSION:**

Senator Grosfield said his SB 435, which deals with this same subject matter, will be heard in this committee on March 26th. He understands there are three House bills that have been combined into one bill, but he doesn't know if that bill is coming out of the House, and Senator Doherty's bill, SB 182, which deals with this same subject matter, is still in this Committee.


**VOTE:**

The motion to TABLE SB 433 CARRIED on oral vote with Senators Grosfield, Gage, and Yellowtail voting "NO".

**ADJOURNMENT**

**Adjournment:** The meeting adjourned at 10:05 a.m.

  
\_\_\_\_\_  
MIKE HALLIGAN, Chair

  
\_\_\_\_\_  
BONNIE STARK, Secretary

MH/bjs

## ROLL CALL

SENATE COMMITTEE      TAXATION

DATE 3-25-93

[illegible]

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
March 26, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 305 (first reading copy -- white), respectfully report that Senate Bill No. 305 be amended as follows and as so amended do pass.

Signed:   
Senator Mike Halligan, Chair

That such amendments read:

1. Page 2, line 6.

Strike: "36"

Insert: "28"

2. Page 3, line 12.

Strike: "36.77%"

Insert: "46.50%"

3. Page 3, line 14.

Strike: "15.10%"

Insert: "19.10%"

4. Page 5, line 17.

Strike: "25%"

Insert: "19.4%"

5. Page 6, line 9.

Strike: "50%"

Insert: "64.43%"

6. Page 7, line 8.

Strike: "36.77%"

Insert: "46.50%"

7. Page 7, line 13.

Strike: "50%"

Insert: "64.43%"

8. Page 11, line 24.

Following: line 23

Insert: "NEW SECTION. Section 8. Transition -- inventory. All cigarettes stamped by wholesalers on or after August 15, 1993, are taxed at the rate established in 16-11-111 as amended by [this act]. The department of revenue may not collect the new tax established in 16-11-111 on cigarettes that were stamped before August 15, 1993, and held in

inventory by wholesalers, subjobbers, or retailers on or  
after August 15, 1993."

Renumber: subsequent section

9. Page 11, line 24.

Strike: "SECTION"

Insert: "Sections"

10. Page 11, line 25.

Following: "6"

Insert: "and 8"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 25, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 438 (first reading copy -- white), respectfully report that Senate Bill No. 438 do pass.

Signed:   
Senator Mike Halligan, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 4  
March 26, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 426 (first reading copy -- white), respectfully report that Senate Bill No. 426 be amended as follows and as so amended do pass.

Signed:   
Senator Mike Halligan, Chair

That such amendments read:

1. Title, line 10.  
Following: "AND"  
Strike: "AN"

2. Title, line 11.  
Strike: "DATE"  
Insert: "DATES"

3. Page 6, line 15.  
Following: line 14

Insert: "(3) Prior to entering into the undertakings and agreements set forth in subsection (1), the board of county commissioners shall take into consideration the following factors, including other circumstances that the board may determine to be material:

(a) the estimated market value of the lots, parcels, and tracts included in the district at the time the district is created;

(b) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract;

(c) the amount of any outstanding special assessments against the property in the district;

(d) the amount of any delinquencies in the payment of outstanding special assessments or delinquencies in the payment or property taxes levied against property of the district;

(e) the public benefit of the improvements proposed to be financed; and

(f) in the case of a district created to make improvements in a newly platted subdivision, any contribution by developers of the subdivision to the costs of the improvements or any security given by the developers to secure payment of the special assessment levied in the district.

(4) Any findings made by the board of county commissioners with respect to the factors contained in a resolution authorizing undertakings and agreements or the issuance of bonds are conclusive evidence that the board has taken into consideration the factors required by subsection (3).



(5) The board of county commissioners may enter into the undertakings and agreements set forth in subsection (1) only if the notice of passage of the resolution of intention to create the rural special improvement district, as required in 7-12-2105, states in substance:

(a) that the bonds drawn on the district will be secured by the rural special improvement district revolving fund of the county;

(b) that the revolving fund is funded by general property taxes levied by the county or by loans from the general fund of the county;

(c) the average market value of the lots, parcels, or tracts in the district; and

(d) the estimated amount of the average special assessment to be levied against the lots, parcels, or tracts in the district.

(6) Error in the notice required under subsection (5) does not affect the validity of any undertaking or agreement with respect to the revolving fund."

Renumber: subsequent subsection

4. Page 6, line 23.

Following: line 22

Insert: "NEW SECTION. Section 5. Subdivision review required for issuance of bonds. A bond or warrant may not be issued under this part for an improvement district that has not been subject to subdivision review."

Renumber: subsequent sections

5. Page 11, line 5.

Following: line 4

Insert: "(3) Prior to entering into the undertakings and agreements set forth in subsection (1), the city or town council shall take into consideration the following factors, including other circumstances that the city or town council may determine to be material:

(a) the estimated market value of the lots, parcels, and tracts included in the district at the time the district is created;

(b) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract;

(c) the amount of any outstanding special assessments against the property in the district;

(d) the amount of any delinquencies in the payment of outstanding special assessments or delinquencies in the payment of property taxes levied against property of the district;

(e) the public benefit of the improvements proposed to be financed; and

(f) in the case of a district created to make improvements in a newly platted subdivision, any contribution by developers of the subdivision to the costs of the improvements or any security given by the developers to secure payment of the special assessment levied in the district.

(4) Any findings made by the city or town council with respect to the factors contained in a resolution authorizing undertakings and agreements or the issuance of bonds are conclusive evidence that the city or town council has taken into consideration the factors required by subsection (3).

(5) The city or town council may enter into the undertakings and agreements set forth in subsection (1) only if the notice of passage of the resolution of intention to create the special improvement district, as required in 7-12-4106, states in substance:

(a) that the bonds drawn on the district will be secured by the special improvement district revolving fund of the city or town;

(b) that the revolving fund is funded by general property taxes levied by the city or town or by loans from the general fund of the city or town;

(c) the average market value of the lots, parcels, or tracts in the district; and

(d) the estimated amount of the average special assessment to be levied against the lots, parcels, or tracts in the district.

(6) Error in the notice required under subsection (5) does not affect the validity of any undertaking or agreement with respect to the revolving fund."

Renumber: subsequent subsection

6. Page 11, line 13.

Following: line 12

Insert: "NEW SECTION. Section 10. Subdivision review required for issuance of bonds. A bond or warrant may not be issued under this part for an improvement district that has not been subject to subdivision review.

NEW SECTION. Section 11. Codification instruction. (1) [Section 5] is intended to be codified as an integral part of Title 7, chapter 12, part 21, and the provisions of Title 7, chapter 12, part 21, apply to [section 5].

(2) [Section 10] is intended to be codified as an integral part of Title 7, chapter 12, part 42, and the provisions of Title 7, chapter 12, part 21, apply to [section 10]."

Renumber: subsequent sections

7. Page 11, line 13.

Following: "Applicability."

Insert: "(1)"

Strike: "[This act]"

Insert: "Except as provided in subsections (2) through (5), [this act]"

8. Page 11, line 18.

Following: line 17

Insert: "(2) [Section 4], which amends 7-12-2185 to include subsections (3) and (4) concerning the factors to be considered and the findings to be made before the board of county commissioners may enter into undertakings and agreements and to include subsection (5) concerning notice, applies to improvement districts created after [the effective date of this act].

(3) [Section 9], which amends 7-12-4225 to include subsections (3) and (4) concerning the factors to be considered and the findings to be made before the city or town council may enter into undertakings and agreements and to include subsection (5) concerning notice, applies to improvement districts created after [the effective date of this act].

(4) [Sections 5 and 10] apply to rural special improvement districts or special improvement districts created after [the effective date of this act].

(5) [This act] does not apply to rural special improvement district and special improvement district bonds and warrants that are the subject of judicial proceedings that were begun before January 1, 1993."

9. Page 11, lines 19 through 21.

Strike: "does" on line 19 through "act]" on line 21

Insert: "is remedial in nature and does not:

(1) imply the invalidity of bonds or warrants issued before [the effective date of this act];

(2) affect rural special improvement district or special improvement district bonds or sidewalk, curb, or alley approach warrants issued before [the effective date of this act]; or

(3) affect any covenants entered into before [the effective date of this act] by a county or by a city or town to provide funds for a revolving fund or to make loans from the revolving fund on bonds or warrants issued before [the effective date of this act]"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
March 25, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 424 (first reading copy -- white), respectfully report that Senate Bill No. 424 be amended as follows and as so amended do pass.

Signed:   
Senator Mike Halligan, Chair

That such amendments read:

1. Title, line 11.  
Strike: "77-1-808,"

2. Title, line 14.  
Strike: "AN"  
Following: "APPLICABILITY"  
Strike: "DATE"  
Insert: "DATES"

3. Page 2, lines 23 and 24.  
Strike: subsection (4) in its entirety

4. Page 3, lines 3 through 5.  
Following: "value" on line 3  
Strike: remainder of lines 3 through 5

5. Page 3, line 11.  
Following: "follows."  
Insert: "must be credited as follows:  
(a) Except as provided in subsection (2)(b), license fees"

6. Page 3, line 22.  
Following: line 21  
Insert: "(b) Two dollars from the fee for each license, less 50 cents to be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808."

7. Page 4, line 3 through page 5, line 4.  
Strike: section 3 in its entirety  
Renumber: subsequent sections

8. Page 7, line 25 through page 8, line 1.  
Strike: "exceed" on page 7, line 25 through "costs" on page 8, line 1  
Insert: "be less than the full market value"

9. Page 10, line 25.  
Following: "Applicability."  
Strike: "[This act]"  
Insert: "(1) [Section 1]"

10. Page 11, line 2.  
Following: "act]"  
Insert: "and, for leases in effect on [the effective date of this  
act], to rentals due after rental adjustments made pursuant  
to adjustment provisions in the lease.  
(2) [Section 2] applies to licenses sold after February 28,  
1994.  
(3) [Section 3] applies to lease years beginning after  
December 31, 1993"

-END-

# ROLL CALL VOTE #1

SENATE COMMITTEE

TAXATION

BILL NO.

LB 305

DATE \_\_\_\_\_

3-25-93

# TIME

7:00

A.M.

P.M.

NAME \_\_\_\_\_

YES

NO

[illegible]

*Bonnie Stark*  
SECRETARY

Miko Hallgren  
CHAIR

MOTION: *Substitute Motion*

7 added 6-5.



ROLL CALL VOTE # 3

SENATE COMMITTEE

TAXATION

BILL NO.

SB 305

DATE 3-25-93

TIME 7:00

A.M. P.M.

NAME \_\_\_\_\_

YES

NO

[illegible]

*Bonnie Stark*  
SECRETARY

Mike Holligan  
CHAIR

MOTION: Substitute Motion to reduce tax  
from 18¢ to 12¢. Motion failed 7-4



ROLL CALL VOTE # 4

SENATE COMMITTEE

TAXATION

BILL NO.

LB 305

DATE \_\_\_\_\_

3-25-93

# TIME

7:00

A.M.

P.M.

NAME \_\_\_\_\_

YES

NO

[illegible]

Bonnie Stark  
SECRETARY

Mike Hallgren  
CHAIR

MOTION: Substitute Motion to reduce tax  
from 18¢ to 10¢. Motion Carried 8-3.

# ROLL CALL VOTE #5

SENATE COMMITTEE

BILL NO.

DATE 3-25-93 TIME 7:00 A.M. P.M.

NAME

YES

NO.

[illegible]

Bonnie Stark  
SECRETARY

Mike Halligan  
CHAIR

MOTION: Do Pass as Amended.

Секция 7-4

ROLL CALL VOTE # 6

TAXATION

BILL NO.

SB 4/10

3-25-93

# TIME

7:00

A.M.

P.M.

YES

NO

[illegible]

SECRETARY

## CHAIR

Substitute Motor.

Failed 6-4.

#7

SB410

DATE 3-25-93

TIME 7:00

A.M. P.M.

YES

NO

[illegible]

SECRETARY

## CHAIR

Dr. Lee

1000 - 1000

ROLL CALL VOTE #8

TAXATION

BILL NO. B 426

DATE 3-25-93 TIME 7:00 A.M. P.M.

YES

NO

[illegible]

Donnie Stark  
SECRETARY

Mike Halligan  
CHAIR

MOTION:

MOTION: Substitute Motion by Sen. Dohererty  
Carried 7-3.

ROLL CALL VOTE #9

SENATE COMMITTEE

TAXATION

BILL NO.

SB426

DATE 3-25-93

TIME 7:00

A.M. P.M.

NAME \_\_\_\_\_

YES

NO

[illegible]

Bonnie Stark  
SECRETARY

Mike Hallgren  
CHAIR

MOTION: Prospective Application.

Nation Failed.



ROLL CALL VOTE # 11

SENATE COMMITTEE

## TAXATION

BILL NO

SB424

DATE \_\_\_\_\_

3-25-93

# TIME

7:00

A.M.

P.M.

NAME \_\_\_\_\_

YES

NO

[illegible]

Leatrice Stark

SECRETARY

Mike Halligan

## CHAIR

MOTION:

Stump Section One

Failed 6-4



ROLL CALL VOTE #12

SENATE COMMITTEE

TAXATION

BILL NO.

SD 424

DATE \_\_\_\_\_

3-25-93

# TIME

7:00

A.M. P.M.

NAME \_\_\_\_\_

YES

NO

[illegible]

Lonnie Stark

SECRETARY

Mike Hallgren

CHAIR

MOTION:

Do Pass as Amended

Carried 6-5

**Funds Reserved for Health and Prevention under SB 305**  
**(as amended by Senate Public Health Committee)**

Cost of Expanding Medicaid Eligibility for Pregnant women and infants from 133% of Federal Poverty to 150% in FY 94 and 185% in FY 95:

| FY 94 |                                  | FY 95                              |
|-------|----------------------------------|------------------------------------|
|       | 740 additional women             | 2523 addit. women (cum)            |
| x \$  | 3191 cost per case               | x \$ 3193 cost per case            |
| x     | <u>.2829</u> state matching rate | x <u>.2950</u> state matching rate |
|       | \$ 668,023 GF                    | \$2,375,013 GF                     |

Cost of Expanding Medicaid Eligibility Immediately for children 11-18 to 100% of Poverty, instead of phasing them in by the year 2000:

| FY 94 |                                  | FY 95                              |
|-------|----------------------------------|------------------------------------|
|       | 8,907 additional children        | 7,844 additional children          |
| x \$  | 869 cost per case                | x \$ 1,035 cost per case           |
| x     | <u>.2829</u> state matching rate | x <u>.2950</u> state matching rate |
|       | \$2,189,698                      | \$2,394,969                        |

Totals of both Medicaid Expansion Projects:

\$2,857,721

\$4,769,982

Revenue reserved for MIAMI:

\$ 315,555

\$ 337,950

Total Funds for Health:

FY 94  
\$3,173,276

FY 95  
\$5,107,932

Sources: Fiscal Note SB 177, corrected by SRS, telephone conversation  
 Fiscal Note HB 145, second reading  
 Fiscal Note SB 305 as introduced

Provided by: Montana Council for Maternal and Child Health

**AMENDMENT TO SENATE BILL 305****"AN ACT INCREASING THE SALES TAX  
ON CIGARETTES AND ON TOBACCO  
OTHER THAN CIGARETTES"****SPONSORED BY SENATOR KLAMPE**

NEW SECTION - **Section 8. Transition - inventory.** All cigarettes stamped by wholesalers after August 14, 1993, will be taxed at the rate specified in this act. The Department of Revenue is not authorized to collect this new tax on cigarettes stamped at the old rate and held in inventory by wholesalers, subjobbers, or retailers on the effective date of this act.

Current Section 8 becomes Section 9.



TERESA OLCOTT COHEA  
LEGISLATIVE FISCAL ANALYST

STATE OF MONTANA

*Office of the Legislative Fiscal Analyst*

STATE CAPITOL  
HELENA, MONTANA 59620  
406/444-2986

March 24, 1993

SENATE TAXATION

EXHIBIT NO. 3  
DATE 3-25-93  
BILL NO. SB 257

Senator Mike Halligan  
Chairman, Senate Taxation Committee  
Room 305, State Capitol  
Helena, MT 59620

Dear Senator Halligan:

This letter is in response to your request for information on the proposed 4 and 3 cent fuel tax increase in Senate Bill 257 and where the added revenues will be spent. Specifically, you requested: 1) What will the additional revenue be used for? 2) Is it necessary to maximize federal funds? 3) Does it impact the Reconstruction Trust program? 4) Does it impact funding for primary and secondary highways? The following discussion addresses these questions, supported by the data in attached Tables 1 through 4(a).

Tables 1 and 2 show the projected cash flow for the highways state special revenue fund, with Table 1 showing no revenue increases and Table 2 reflecting the projected 4/3 cent fuel tax increase proposed in Senate Bill 257 as introduced. Expenditures for the 1995 biennium are based on legislative action to date (as adopted by the House). The expenditures are categorized on both tables by current level and by budget modifications and new initiatives added in this session. Current level is defined for this purpose as continuation of existing programs, funding to maximize federal aid funds for the construction program, and a \$20 million per year Reconstruction Trust program. The assumptions used in developing the cash flow projections are listed on the back of each table.

Please note that the figures presented in Tables 1 and 2 are substantially the same as those prepared by the Department of Transportation. They are simply presented in a different format to address the questions you raised, and in the case of Table 2, the only additional revenue shown is from Senate Bill 257, isolating the impacts of that bill for the purpose of committee discussion of the bill.

Table 1 shows the projected cash flow for the highways special revenue fund reflecting legislative action to date with no revenue increases. As the table shows, the fund has a significant structural imbalance, with revenues exceeding expenditures by up to \$30 million per year at current level, and up

to \$45 million per year when budget modifications and new initiatives are added. Note that at current expenditure levels, the fund would have a negative working cash balance of nearly \$100 million at current level at fiscal 1998 year end and a negative balance of nearly \$170 million with modifications and new initiatives.

Table 2 is identical to Table 1, except that it includes the estimated revenues that would be generated by a 4/3 cent fuel tax increase in the 1995 biennium (Senate Bill 257). As the table shows, the structural imbalance would be corrected at current level of expenditures, with revenues exceeding expenditures by up to \$15 million per year, leaving a cash balance at the end of fiscal 1998 of \$73.4 million. Additionally, the 4/3 cent fuel tax increase would adequately fund all modifications/new initiatives currently included in House Bills 2 and 5 through fiscal 1998, leaving a cash balance of \$2.9 million at the end of fiscal 1998. However, there would continue to be a modest structural imbalance, with expenditures exceeding revenues by up to \$7 million per year.

Table 3 shows where the additional revenues provided by the 4/3 cent fuel tax would be used, assuming that existing current level needs are met first. The table shows the amount, by cent of fuel tax, that would be used for the reconstruction trust program and new modifications/initiatives. As shown in Table 3, existing revenues can provide the funds necessary to match federal funds as currently projected by the Department of Transportation construction work plan and appropriated by the House. No additional revenues are required to directly support a maximization of federal match funds. It is noted, however, that a small portion of the budget modifications discussed below might be required where federal compliance is an issue to ensure continued maximization of federal funding.

Table 3 further shows that to continue funding for the Reconstruction Trust at \$20 million each year, additional revenues generated by the 4/3 cent fuel tax increase would be required. As shown in Table 1, there would be a \$99.4 million negative balance at current level of expenditures at the end of fiscal 1998 without additional revenue, with RTF expenditures from fiscal 1994 through fiscal 1998 at \$101.6 million. Thus, the RTF program would have to be virtually eliminated unless additional funding is provided. To provide adequate funding for the current level programs of the highways special revenue fund, a minimum 1 cent fuel tax increase would be required beginning July 1, 1993 to get through the 1995 biennium, or a minimum 3.75 cents to get through fiscal 1998.

The other uses of the new revenues from the 4/3 cent fuel tax increase, as shown on Table 3, would be the equivalent of 2 cents fuel tax for DOT budget modifications, 0.4 cents for a funding switch in the Department of Justice Motor Vehicle Division from general fund to highways special revenue, 0.25 cents to fund state parks roads, and approximately 0.02 cents for the library commission. The 4/3 cent fuel tax proposal provides the minimum

amount necessary to fund all programs currently included in House Bills 2 and 5.

Tables 4 and 4(a) provide more detail on the DOT budget modifications included in House Bill 2, requiring 2 cents fuel tax revenues each year. The tables provide a breakdown of the modifications in four categories: 1) those required for implementation of the federal transportation act (ISTEA); 2) those required for federal compliance issues; 3) Maintenance program expansions; and, 4) other. Table 4 shows the budget modification by category, the DOT program, number of FTE, highways special revenue cost, and cents of fuel tax required by each modification. Table 4(a) provides additional detail for each budget modification, including a brief description, the funding split, and total cost from all funds by fiscal year.

As shown in Table 4, modifications related to implementation of the ISTEA and federal compliance issues require 0.68 cents of fuel tax, while maintenance program expansions and other budget modifications require 1.32 cents of fuel tax. One budget modification (pavement preservation expansion in the maintenance program) requires 1.2 cents of fuel tax alone.

In summary, the fuel tax increase contained in Senate Bill 257 is not directly required for federal match funds as projected by DOT and included in House Bill 2, but is necessary to continue the \$20 million per year Reconstruction Trust program and to fund DOT budget modifications and new initiatives added in House Bill 2. To respond to your question regarding adequate funding for primary and secondary roads, those systems are funded in House Bill 2 at the level projected by the DOT. Therefore, adequate funding for these road systems do not rely directly on the fuel tax increase.

#### Federal Funds Estimate Too Low?

It is important to note that the construction projections reflected in this analysis and the attached tables (provided by the DOT) may very well represent too low an estimate of highways special revenue fund maximum needs. They do not include a number of possible contingencies that are likely to occur in the next several years, including additional DOT budget modifications in the 1997 biennium and historical increases higher than the 2 percent inflation for expenditures assumed in this analysis. Additionally, the ISTEA provides authority for a federal aid highway program of up to 30 percent more each year than used by DOT for the construction work plan projected in this analysis. The DOT assumed a federal aid program of only \$136 million each year compared to authority in the ISTEA of \$168 million per year. DOT's estimates were further lowered by not sufficiently including contingency federal funding that has been anticipated in prior year projections. While federal spending limitations have been imposed as low as 2 percent in some years and as high as 20 percent in fiscal 1993, the projections used by DOT appear to be exceptionally low, in view of the facts that: 1) they assume a spending limitation in excess of the maximum 20 percent limitation

that was imposed by the prior federal administration; and 2) the new administration has advocated a policy of providing maximum spending authority.

The new federal administration has already indicated plans to provide an additional \$29 million in funding to Montana for federal fiscal year 1993 that must be obligated by September 30, 1993. However, although the additional funding availability has been known since prior to the legislative session, the DOT has not requested additional appropriation authority in subcommittee, House Appropriations, or the House Floor, nor has it submitted a budget amendment or supplemental request. This additional federal authority would require an additional \$3.5 million of state match that is not included in DOT projections. Additional federal authority in future years can reasonably be anticipated, raising a very high likelihood that additional revenues approved to meet existing projections will be inadequate, requiring the department to reduce program expenditures or to request additional revenues.

I would be happy to provide any other projection scenarios or funding options that you or the Senate Taxation committee would like, and most projections can be calculated in just a few minutes. Also, I would be happy to provide any additional background or other information you desire. Please contact me if I can be of further assistance.

Sincerely,

EXHIBIT 3  
DATE 3-25-93  
SB-257

Clayton Schenck  
Senior Fiscal Analyst

CLS3:mb:SH3-24.ltr

cc: Senator Fred Van Valkenburg

# Table 1

## Combined Highways State Special Revenue Accounts

### Estimated Cash Flow – With No Revenue Increase

Fiscal years 1992 through 1998

|  | Fiscal 1992          | Fiscal 1993          | Fiscal 1994          | Fiscal 1995          | Fiscal 1996           | Fiscal 1997           | Fiscal 1998           |
|--|----------------------|----------------------|----------------------|----------------------|-----------------------|-----------------------|-----------------------|
| Beginning Working Cash Balance         | \$90,412,889         | \$72,794,299         | \$56,252,482         | \$32,392,935         | \$10,378,434          | (\$19,844,576)        | (\$48,687,792)        |
| <b>Revenues</b>                        |                      |                      |                      |                      |                       |                       |                       |
| Gasoline Tax                           | 82,825,427           | 88,935,581           | 82,762,764           | 82,831,346           | 82,831,346            | 82,831,346            | 82,831,346            |
| Diesel Tax                             | 25,128,409           | 27,315,504           | 25,997,851           | 26,475,823           | 26,475,823            | 26,475,823            | 26,475,823            |
| GVW tax                                | 26,181,530           | 27,812,792           | 27,033,668           | 26,839,500           | 26,839,500            | 26,839,500            | 26,839,500            |
| Coal Tax                               | 5,212,093            | 0                    | 4,937,872            | 4,941,370            | 4,941,370             | 4,941,370             | 4,941,370             |
| Bond Interest Earnings                 | 0                    | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| Stores                                 | 11,969,515           | 14,901,886           | 14,474,899           | 14,645,376           | 14,938,284            | 15,237,049            | 15,541,790            |
| Other                                  | 4,103,070            | 1,275,585            | 1,275,585            | 1,275,585            | 1,275,585             | 1,275,585             | 1,275,585             |
| Adjustment                             | (189,880)            | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| <b>Total Revenues</b>                  | <b>\$155,230,164</b> | <b>\$160,241,348</b> | <b>\$156,482,639</b> | <b>\$157,009,000</b> | <b>\$157,301,908</b>  | <b>\$157,600,673</b>  | <b>\$157,905,414</b>  |
| <b>Expenditures – Current Level</b>    |                      |                      |                      |                      |                       |                       |                       |
| Transportation Budget                  |                      |                      |                      |                      |                       |                       |                       |
| General Operations                     | 7,740,286            | 7,737,239            | 7,236,479            | 7,192,357            | 7,336,204             | 7,482,928             | 7,632,587             |
| Construction (and overhead):           |                      |                      |                      |                      |                       |                       |                       |
| Federal Aid Construction               | 43,401,024           | 33,168,312           | 36,450,157           | 35,574,373           | 38,641,541            | 38,401,992            | 39,331,915            |
| RTF Construction                       | 16,629,680           | 16,800,301           | 19,609,713           | 20,680,697           | 20,404,703            | 20,456,488            | 20,461,932            |
| Maintenance                            | 47,661,846           | 49,972,920           | 50,141,898           | 50,396,784           | 51,404,720            | 52,432,814            | 53,481,470            |
| Stores                                 | 14,227,850           | 14,901,886           | 14,474,899           | 14,645,376           | 14,938,284            | 15,237,049            | 15,541,790            |
| GVW                                    | 3,715,305            | 4,130,525            | 4,165,437            | 4,193,816            | 4,277,692             | 4,363,246             | 4,450,511             |
| Motor Fuels                            | 10,000               | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| Rail and Transit                       | 151,165              | 71,250               | 315,224              | 314,742              | 321,037               | 327,458               | 334,007               |
| DOT Personal Services Reduction        | 0                    | 0                    | (1,971,055)          | (1,990,590)          |                       |                       |                       |
| Bond Principal & Interest              | 10,655,332           | 19,865,598           | 18,231,881           | 18,380,881           | 18,316,151            | 17,602,816            | 15,975,628            |
| Local Government Distribution          | 14,075,000           | 14,075,000           | 14,075,000           | 14,075,000           | 14,075,000            | 14,075,000            | 14,075,000            |
| 1987 Bond Arbitrage Rebate (net)       | 1,357,559            | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| Indian Reservation Distribution        | 35,842               | 1,100,000            | 3,000,000            | 3,000,000            | 3,000,000             | 3,000,000             | 3,000,000             |
| Dept of Justice – Hwy Patrol           | 11,957,554           | 11,693,371           | 12,444,197           | 12,390,655           | 12,638,468            | 12,891,237            | 13,149,062            |
| Dept. Justice 1993 Supplemental        | 0                    | 919,000              | 0                    | 0                    | 0                     | 0                     | 0                     |
| Highway Traffic Safety                 | 72,646               | 80,807               | 84,356               | 85,410               | 87,118                | 88,861                | 90,638                |
| Dept Fish, Wildlife, & Parks           | 0                    | 84,000               | 84,000               | 84,000               | 84,000                | 84,000                | 84,000                |
| Long-Range Bldg                        | 372,412              | 2,182,956            | 2,000,000            | 0                    | 2,000,000             | 0                     | 1,000,000             |
| Adjustment                             | 785,253              | 0                    | 0                    | 0                    | 0                     | 0                     | 0                     |
| <b>Total Disbursements – C/Level</b>   | <b>\$172,848,754</b> | <b>\$176,783,165</b> | <b>\$180,342,186</b> | <b>\$179,023,501</b> | <b>\$187,524,918</b>  | <b>\$186,443,889</b>  | <b>\$188,608,540</b>  |
| <b>Expenses in Excess of Revenue</b>   | <b>(17,618,590)</b>  | <b>(16,541,817)</b>  | <b>(23,859,547)</b>  | <b>(22,014,501)</b>  | <b>(30,223,010)</b>   | <b>(28,843,216)</b>   | <b>(30,703,126)</b>   |
| Cash Balance                           | \$72,794,299         | \$56,252,482         | \$32,392,935         | \$10,378,434         | (\$19,844,576)        | (\$48,687,792)        | (\$79,390,918)        |
| Target Ending Cash Balance             | 20,000,000           | 20,000,000           | 20,000,000           | 20,000,000           | 20,000,000            | 20,000,000            | 20,000,000            |
| <b>Surplus(Deficit), Current Level</b> | <b>\$52,794,299</b>  | <b>\$36,252,482</b>  | <b>\$12,392,935</b>  | <b>(\$9,621,566)</b> | <b>(\$39,844,576)</b> | <b>(\$68,687,792)</b> | <b>(\$99,390,918)</b> |

**Approved Budget Modifications/New Initiatives**

|  |                       |                       |                       |                        |                        |
|--|-----------------------|-----------------------|-----------------------|------------------------|------------------------|
| Budget Modifications   | 10,494,326            | 10,475,118            | 10,684,620            | 10,898,313             | 11,116,279             |
| Motor Vehicle Division Fund Switch   | \$1,122,103           | \$2,244,207           | \$2,244,207           | \$2,244,207            | \$2,244,207            |
| FWP Parks Roads  | 1,250,000             | 1,250,000             | 1,250,000             | 1,250,000              | 1,250,000              |
| Library Commission   | \$100,000             | \$100,000             | \$100,000             | \$100,000              | \$100,000              |
| <b>Expenses in Excess of Revenues</b>  | <b>(\$36,825,976)</b> | <b>(\$36,083,826)</b> | <b>(\$44,501,838)</b> | <b>(\$43,335,736)</b>  | <b>(\$45,413,612)</b>  |
| <b>Surplus (Deficit) with Modifications/New Initiatives Approved to Date</b> | <b>(\$573,494)</b>    | <b>(\$36,657,320)</b> | <b>(\$81,159,158)</b> | <b>(\$124,494,893)</b> | <b>(\$169,908,505)</b> |



**COMMENTS/ASSUMPTIONS (HWYS. SSR CASH FLOW: NO REV.INCR.)**

1. Revenues from fuel taxes and the coal tax allocation reflect Revenue Oversight Committee revenue estimates. GVW fees/taxes and "other" are based on estimates provided by the Department of Transportation (DOT).
2. Revenue estimates are based on current law. No new revenue sources are included in the estimates.
3. Fiscal 1992 represents actual revenues/expenditures, based on SBAS.
4. Fiscal 1993 expenditures represent appropriated amounts, except for construction estimates, based on the DOT project management system.
5. 1995 Biennium expenditures are based on legislative action to date. Executive Budget recommendations at the bottom of the table have not yet been approved by legislative action.
6. Highway construction costs are as projected by DOT based on maximum use of federal aid funds at anticipated limitation levels prescribed by the 1991 ISTEA. RTF expenditures are continued at the \$20 million per year level appropriated for the 1993 biennium.
7. A 2 percent inflationary increase for administrative programs (excludes highway construction) is included for all years beyond the 1995 biennium.
8. No program expansions (modifications) are included in the estimates beyond the 1995 biennium.
9. An ending balance of \$20 million each fiscal year is included in the budget projections. DOT considers this the minimum balance required to adequately manage the highways fund cash flow. Surplus/deficit amounts referred to in the cash flow estimates are the amounts above or below the minimum \$20 million balance.
10. The 1995 biennium legislative action to date includes \$10.5 million each year in approved executive budget modifications.

**Table 2**  
**Combined Highways State Special Revenue Accounts**  
**Estimated Cash Flow – With 4/3 Cent Fuel Tax Increase**  
 Fiscal years 1992 through 1998

|  | Fiscal 1992          | Fiscal 1993          | Fiscal 1994          | Fiscal 1995          | Fiscal 1996          | Fiscal 1997          | Fiscal 1998          |
|--|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Beginning Working Cash Balance         | \$90,412,889         | \$72,794,299         | \$56,252,482         | \$52,559,675         | \$67,670,229         | \$75,947,219         | \$85,604,003         |
| <b>Revenues</b>                        |                      |                      |                      |                      |                      |                      |                      |
| Gasoline Tax                           | 82,825,427           | 88,935,581           | 82,762,764           | 82,831,346           | 82,831,346           | 82,831,346           | 82,831,346           |
| Diesel Tax                             | 25,128,409           | 27,315,504           | 25,997,851           | 26,475,823           | 26,475,823           | 26,475,823           | 26,475,823           |
| SB 257 Prop. 4/3 Cent Fuel Tax Incr.   | 0                    | 0                    | 20,166,740           | 37,125,055           | 38,500,000           | 38,500,000           | 38,500,000           |
| GVW tax                                | 26,181,530           | 27,812,792           | 27,033,668           | 26,839,500           | 26,839,500           | 26,839,500           | 26,839,500           |
| Coal Tax                               | 5,212,093            | 0                    | 4,937,872            | 4,941,370            | 4,941,370            | 4,941,370            | 4,941,370            |
| Bond Interest Earnings                 | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| Stores                                 | 11,969,515           | 14,901,886           | 14,474,899           | 14,645,376           | 14,938,284           | 15,237,049           | 15,541,790           |
| Other                                  | 4,103,070            | 1,275,585            | 1,275,585            | 1,275,585            | 1,275,585            | 1,275,585            | 1,275,585            |
| Adjustment                             | (189,880)            | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| <b>Total Revenues</b>                  | <b>\$155,230,164</b> | <b>\$160,241,348</b> | <b>\$176,649,379</b> | <b>\$194,134,055</b> | <b>\$195,801,908</b> | <b>\$196,100,673</b> | <b>\$196,405,414</b> |
| <b>Expenditures – Current Level</b>    |                      |                      |                      |                      |                      |                      |                      |
| Transportation Budget                  |                      |                      |                      |                      |                      |                      |                      |
| General Operations                     | 7,740,286            | 7,737,239            | 7,236,479            | 7,192,357            | 7,336,204            | 7,482,928            | 7,632,587            |
| Construction (and overhead):           |                      |                      |                      |                      |                      |                      |                      |
| Federal Aid Construction               | 43,401,024           | 33,168,312           | 36,450,157           | 35,574,373           | 38,641,541           | 38,401,992           | 39,331,915           |
| RTF Construction                       | 16,629,680           | 16,800,301           | 19,609,713           | 20,680,697           | 20,404,703           | 20,456,488           | 20,461,932           |
| Maintenance                            | 47,661,846           | 49,972,920           | 50,141,898           | 50,396,784           | 51,404,720           | 52,432,814           | 53,481,470           |
| Stores                                 | 14,227,850           | 14,901,886           | 14,474,899           | 14,645,376           | 14,938,284           | 15,237,049           | 15,541,790           |
| GVW                                    | 3,715,305            | 4,130,525            | 4,165,437            | 4,193,816            | 4,277,692            | 4,363,246            | 4,450,511            |
| Motor Fuels                            | 10,000               | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| Rail and Transit                       | 151,165              | 71,250               | 315,224              | 314,742              | 321,037              | 327,458              | 334,007              |
| DOT Personal Services Reduction        | 0                    | 0                    | (1,971,055)          | (1,990,590)          |                      |                      |                      |
| Bond Principal & Interest              | 10,655,332           | 19,865,598           | 18,231,881           | 18,380,881           | 18,316,151           | 17,602,816           | 15,975,628           |
| Local Government Distribution          | 14,075,000           | 14,075,000           | 14,075,000           | 14,075,000           | 14,075,000           | 14,075,000           | 14,075,000           |
| 1987 Bond Arbitrage Rebate (net)       | 1,357,559            | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| Indian Reservation Distribution        | 35,842               | 1,100,000            | 3,000,000            | 3,000,000            | 3,000,000            | 3,000,000            | 3,000,000            |
| Dept of Justice – Hwy Patrol           | 11,957,554           | 11,693,371           | 12,444,197           | 12,390,655           | 12,638,468           | 12,891,237           | 13,149,062           |
| Dept. Justice 1993 Supplemental        | 0                    | 919,000              | 0                    | 0                    | 0                    | 0                    | 0                    |
| Highway Traffic Safety                 | 72,646               | 80,807               | 84,356               | 85,410               | 87,118               | 88,861               | 90,638               |
| Dept Fish, Wildlife, & Parks           | 0                    | 84,000               | 84,000               | 84,000               | 84,000               | 84,000               | 84,000               |
| Long-Range Bldg                        | 372,412              | 2,182,956            | 2,000,000            | 0                    | 2,000,000            | 0                    | 1,000,000            |
| Adjustment                             | 785,253              | 0                    | 0                    | 0                    | 0                    | 0                    | 0                    |
| <b>Total Disbursements – C/Level</b>   | <b>\$172,848,754</b> | <b>\$176,783,165</b> | <b>\$180,342,186</b> | <b>\$179,023,501</b> | <b>\$187,524,918</b> | <b>\$186,443,889</b> | <b>\$188,608,540</b> |
| <b>Expenses in Excess of Revenue</b>   | <b>(17,618,590)</b>  | <b>(16,541,817)</b>  | <b>(3,692,807)</b>   | <b>15,110,554</b>    | <b>8,276,990</b>     | <b>9,656,784</b>     | <b>7,796,874</b>     |
| Cash Balance                           | \$72,794,299         | \$56,252,482         | \$52,559,675         | \$67,670,229         | \$75,947,219         | \$85,604,003         | \$93,400,877         |
| Target Ending Cash Balance             | 20,000,000           | 20,000,000           | 20,000,000           | 20,000,000           | 20,000,000           | 20,000,000           | 20,000,000           |
| <b>Surplus(Deficit), Current Level</b> | <b>\$52,794,299</b>  | <b>\$36,252,482</b>  | <b>\$32,559,675</b>  | <b>\$47,670,229</b>  | <b>\$55,947,219</b>  | <b>\$65,604,003</b>  | <b>\$73,400,877</b>  |

**Approved Budget Modifications/New Initiatives**

|  |                     |                     |                     |                    |                    |
|--|---------------------|---------------------|---------------------|--------------------|--------------------|
| Budget Modifications   | 10,494,326          | 10,475,118          | 10,684,620          | 10,898,313         | 11,116,279         |
| Motor Vehicle Division Fund Switch   | \$1,122,103         | \$2,244,207         | \$2,244,207         | \$2,244,207        | \$2,244,207        |
| FWP Parks Roads  | 1,250,000           | 1,250,000           | 1,250,000           | 1,250,000          | 1,250,000          |
| Library Commission   | \$100,000           | \$100,000           | \$100,000           | \$100,000          | \$100,000          |
| Expenses in Excess of Revenues   | (\$16,659,236)      | \$1,041,229         | (\$6,001,838)       | (\$4,835,736)      | (\$6,913,612)      |
| <b>Surplus (Deficit) with Modifications/New Initiatives Approved to Date</b> | <b>\$19,593,246</b> | <b>\$20,634,475</b> | <b>\$14,632,637</b> | <b>\$9,796,902</b> | <b>\$2,883,290</b> |

**COMMENTS/ASSUMPTIONS (HWYS. SSR C/F: 4/3 CENT FUEL TAX INCR.)**

1. Revenues from fuel taxes and the coal tax allocation reflect Revenue Oversight Committee revenue estimates. GVW fees/taxes and "other" are based on estimates provided by the Department of Transportation (DOT).
2. The fuel tax increase estimates are based on a 4 cent increase on July 1, 1993 and 3 cent increase on July 1, 1995 as introduced in Senate Bill 257. Each penny of fuel taxes is projected to bring in \$5.5 million in revenues (\$4.2 million gas tax, \$1.3 million diesel tax). All other revenue estimates are based on current law.
3. Fiscal 1992 represents actual revenues/expenditures, based on SBAS.
4. Fiscal 1993 expenditures represent appropriated amounts, except for construction estimates, based on the DOT project management system.
5. 1995 Biennium expenditures are based on legislative action to date. Executive Budget recommendations at the bottom of the table have not yet been approved by legislative action.
6. Highway construction costs are as projected by DOT based on maximum use of federal aid funds at anticipated limitation levels prescribed by the 1991 ISTEA. RTF expenditures are continued at the \$20 million per year level appropriated for the 1993 biennium.
7. A 2 percent inflationary increase for administrative programs (excludes highway construction) is included for all years beyond the 1995 biennium.
8. No program expansions (modifications) are included in the estimates beyond the 1995 biennium.
9. An ending balance of \$20 million each fiscal year is included in the budget projections. DOT considers this the minimum balance required to adequately manage the highways fund cash flow. Surplus/deficit amounts referred to in the cash flow estimates are the amounts above or below the minimum \$20 million balance.
10. The 1995 biennium legislative action to date includes \$10.5 million each year in approved executive budget modifications.

# Table 3

## Highways Special Revenue Account

### 4/3 Cent Fuel Tax Increase

### Application by Budget Issue (in Cents)

EXHIBIT 3  
 DATE 3-25-93  
SB-257

| Budget Issue  | ----- Fuel Tax in Cents ----- |             |             |             |             |
|---|-------------------------------|-------------|-------------|-------------|-------------|
|   | Fiscal 1994                   | Fiscal 1995 | Fiscal 1996 | Fiscal 1997 | Fiscal 1998 |
| <b>Current Level</b>  |                               |             |             |             |             |
| To Meet Federal Match Requirement Only<br>- No RTF Program                          | 0.00                          | 0.00        | 0.00        | 0.00        | 0.00        |
| To Retain RTF Program (Current Level)<br>(\$20 million/year) beyond 1993            | 0.00                          | 0.50        | 1.75        | 2.60        | 3.80        |
| <b>Modifieds/Policy Initiatives</b>   |                               |             |             |             |             |
| To fund 1995 Biennium DOT/Executive<br>Budget Modifications - \$10.5 Million/year*  | 0.00                          | 2.00        | 2.00        | 2.00        | 2.00        |
| To Fund Motor Vehicle Division (Dept Justice)<br>- Fund Switch from Gen. Fund       | 0.00                          | 0.40        | 0.40        | 0.40        | 0.40        |
| To Fund State Parks Roads/Access<br>- Dept Fish, Wildlife and Parks - \$1.25 mil/yr | 0.10                          | 0.25        | 0.25        | 0.25        | 0.25        |
| Library Commission - \$100,000/yr.  | <u>0.00</u>                   | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> |
| Total Revenue Increase Needs  | 0.10                          | 3.15        | 4.40        | 5.25        | 6.45        |
| Amount to Fund Balance "Surplus"  | <u>3.90</u>                   | <u>3.85</u> | <u>2.60</u> | <u>1.75</u> | <u>0.55</u> |
| Senate Bill 257 Proposed Tax Increase   | <u>4.00</u>                   | <u>7.00</u> | <u>7.00</u> | <u>7.00</u> | <u>7.00</u> |

\* See Tables 4 and 4(a) for more detail

# Table 4

## Department of Transportation Budget Modifications

### Highways Special Revenue Funds

### 1995 Biennium

| Budget Modification Category         | Program    | FTE          | Fiscal 1994         | Fiscal 1995         | Biennium            | Cents of Fuel Tax |
|--------------------------------------|------------|--------------|---------------------|---------------------|---------------------|-------------------|
| <b>ISTEA Implementation</b>          |            |              |                     |                     |                     |                   |
| 1 Highway Information System         | Gen. Ops.  | 0.00         | \$20,000            | 140,000             | 160,000             | 0.03              |
| 2 Information Service Staff          | Gen. Ops.  | 2.00         | 13,228              | 13,248              | 26,476              | 0.00              |
| 3 FHWA Grant Administration          | Gen. Ops.  | 1.00         | 24,274              | 24,309              | 48,583              | 0.00              |
| 4 Urban Planning Program             | Rail&Trans | <u>1.00</u>  | <u>36,658</u>       | <u>36,663</u>       | <u>73,321</u>       | <u>0.01</u>       |
| Subtotal                             |            | 4.00         | \$94,160            | \$214,220           | \$308,380           | 0.05              |
| <b>Federal Compliance Issue</b>      |            |              |                     |                     |                     |                   |
| 5 Roadway Striping                   | Maint.     | 0.00         | 1,000,000           | 1,000,000           | 2,000,000           | 0.19              |
| 6 Ice Control Material               | Maint.     | 0.00         | 1,285,091           | 1,373,391           | 2,658,482           | 0.25              |
| 7 Hazardous Waste Compliance         | Maint.     | <u>0.00</u>  | <u>1,000,000</u>    | <u>1,000,000</u>    | <u>2,000,000</u>    | <u>0.19</u>       |
| Subtotal                             |            | 0.00         | \$3,285,091         | \$3,373,391         | \$6,658,482         | 0.63              |
| <b>Maintenance Program Expansion</b> |            |              |                     |                     |                     |                   |
| 8 Pavement Preservation              | Maint.     | 0.00         | 6,500,000           | 6,500,000           | 13,000,000          | 1.20              |
| 9 Rest Area Maintenance              | Maint.     | <u>0.00</u>  | <u>165,000</u>      | <u>165,000</u>      | <u>330,000</u>      | <u>0.04</u>       |
| Subtotal                             |            | 0.00         | \$6,665,000         | \$6,665,000         | \$13,330,000        | 1.24              |
| <b>Other</b>                         |            |              |                     |                     |                     |                   |
| 10 Compliance Review Staff           | Gen. Ops.  | 5.00         | 211,847             | 201,259             | 413,106             | 0.05              |
| 11 Project Financial Mgt. System     | Gen. Ops.  | 2.00         | 13,228              | 21,248              | 34,476              | 0.00              |
| 12 Equipment - Stereo Plotter        | Constr.    | <u>0.00</u>  | <u>225,000</u>      | <u>0</u>            | <u>225,000</u>      | <u>0.03</u>       |
| Subtotal                             |            | 7.00         | \$450,075           | \$222,507           | \$672,582           | 0.08              |
| Total Budget Modifications           |            | <u>11.00</u> | <u>\$10,494,326</u> | <u>\$10,475,118</u> | <u>\$20,969,444</u> | <u>2.00</u>       |

# Table 4(a)

## Department of Transportation Budget Modifications

### Description and Funding From All Sources

### 1995 Biennium

| Budget Modification Category  |                               | Description   | -- All Funds -- |             |
|-------------------------------|-------------------------------|---|-----------------|-------------|
|                               |                               |   | Fiscal 1994     | Fiscal 1995 |
| ISTEA Implementation          |                               |   |                 |             |
| 1                             | Highway Information System    | Provides 80/20 fed/state funds to use a consultant services to evaluate DOT's current highway information system and upgrade it to accomodate the requirements of ISTEA.  | \$100,000       | \$700,000   |
| 2                             | Information Service Staff     | Adds 2.0 FTE to make program changes to 5 DOT mgt. information systems to comply with ISTEA. Funded by 80/20 fed/state match.   | 66,142          | 66,238      |
| 3                             | FHWA Grant Administration     | Adds 1.0 FTE funded by 100% state funds for monitoring and fin. management of an expanded federal grant program in the ISTEA.   | 24,274          | 24,309      |
| 4                             | Urban Planning Program        | Adds 1.0 FTE/funds to comply with the ISTEA expanded federal metropolitan planning organization (MPO) requirements. Funded by an 87/13 fed/state match.   | 281,986         | 282,023     |
| Federal Compliance Issue      |                               |   |                 |             |
| 5                             | Roadway Striping              | Provides 100% state funds to address a deficiency noted by the Federal Highway Administration Administration that Montana is failing to maintain road striping year round.  | 1,000,000       | 1,000,000   |
| 6                             | Ice Control Material          | Provides 100% state funds to purchase chemical de-icer/washed sand for ice control. Required to attain compliance with fed/state air quality regulations in areas designated as non-attainment areas.                         | 1,285,091       | 1,373,391   |
| 7                             | Hazardous Waste Compliance    | Provides 100% state funds to hire a consultant to develop a plan for DOT waste management disposal and reduction of existing hazardous waste materials in the department.   | 1,000,000       | 1,000,000   |
| Maintenance Program Expansion |                               |   |                 |             |
| 8                             | Pavement Preservation         | Provides 100% state funds for expansion of pavement preservation including patching, crack sealing, seal and cover, and pavement rejuvenation. Results in a 13.3% expansion of Maintenance program.                           | 6,500,000       | 6,500,000   |
| 9                             | Rest Area Maintenance         | Provides 100% state funds to maintain 10 new rest areas that DOT plans to add statewide. It provides funding for the entire biennium although the rest areas will not likely be open until near the end of the 1995 biennium. | 165,000         | 165,000     |
| Other                         |                               |   |                 |             |
| 10                            | Compliance Review Staff       | Adds 5.0 FTE additional staff for the motor fuels collection function to conduct compliance reviews to ensure all motor fuels taxes are collected. Funded 100% by state funds.  | 211,847         | 201,259     |
| 11                            | Project Financial Mgt. System | Adds 2.0 FTE and 80/20 fed/state funds to provide programmers and equipment to design and implement an integrated project financial management system for all highway construction projects.                                  | 66,142          | 106,238     |
| 12                            | Equipment - Stereo Plotter    | Provides 100% state funds to purchase a third analytic stereo plotter for mapping and cross-section data.   | 225,000         | 0           |

ELMORE & ASSOCIATES, P.C.  
ACCOUNTANTS • CONSULTANTS

February 23, 1993

Keith Olson, Executive Director  
Montana Logging Association  
P. O. Box 1716  
Kalispell, Montana 59903

SENATE TAXATION

EXHIBIT NO. 4

DATE 3-25-93

BILL NO. 18438

Re: Personal Property Tax on Migratory Property

Dear Keith:

We have become aware of an inequity in the personal property taxes in Montana that are affecting several of our logging clients. Since I am sure there has to be other logging contractors who have a similar problem, I would like to share the following information with you. The problem arises when a contractor performs work in both Montana and Idaho. Their personal property taxes can vary depending on where the equipment is located on the first day of the year. The following example illustrates the disparity in this law:

| <u>Length of Time</u><br><u>Equipment in</u> |              | <u>Period Personal</u><br><u>Property Tax Paid</u> |              | <u>Eligible for</u><br><u>Montana Refund</u> |
|--|--------------|--|--------------|--|
| <u>Montana</u>                               | <u>Idaho</u> | <u>Montana</u>                                     | <u>Idaho</u> |  |
| 1/1 - 6/30                                   | 7/1 - 12/31  | 1 Year   | 6 Months     | No   |
| 4/1 - 9/30                                   | 10/1 - 12/31 | 9 Months   | 3 Months     | Yes  |

As you can see from the illustration, property located in the state on January 1 is not eligible for a personal property tax refund. However, equipment moving into the state after January 1 is eligible for a refund.

I have enclosed copies of the Montana Tax Report which referred to a "refund of certain taxes paid on migratory property." In addition, I have also enclosed a memo from Shirlee Walker (head of our tax department) to myself dated February 22, 1993. When I originally read the Montana Tax Report enclosure, I assumed our clients would be eligible for a refund. However, as she points out in her memo, the refund is not available for personal property unless it was located outside of the state on January 1.

Mr. Olson  
February 23, 1993  
Page 2

Apparently this inequity was addressed in the last legislature. I have enclosed a copy of "Prorate Legislation" that was originally submitted in the 1991 legislature. However, this legislation was never passed.

Since our clients cannot be the only logging contractors affected by the inequity, I thought that the Association may want to address it.

If you should have any questions, please don't hesitate to contact me or Shirlee Walker.

Very truly yours,

ELMORE & ASSOCIATES, P.C.  
Certified Public Accountants

A handwritten signature in cursive script, appearing to read "Steve Gibbs".

Stephen R. Gibbs, Director

cc  
Enclosures



remainder of the year by the ratio that the number of days remaining is in the year after the destruction of the property bears to 365.

(4) This section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(5) A taxpayer receiving a reduction in taxes on personal property under this section shall notify the department if he replaces the destroyed personal property in the same tax year that the personal property was destroyed. The tax on the personal property replacing the destroyed personal property must be prorated according to the ratio that the number of days remaining in the year after the property was replaced bears to 365. A taxpayer who fails to notify the department within 30 days from the date of the replacement of the personal property is subject to the penalty prescribed in 15-1-303.

(6) For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind. A fire is considered a natural disaster regardless of the origin of the fire. However, if the taxpayer is convicted of arson for burning the property, property taxes may not be adjusted. If they had already been adjusted prior to the conviction, the original amount must be collected. (As amended by Ch. 317, Laws 1985; Chs. 717 and 773, Laws 1991, applicable to tax years beginning on or after January 1, 1992.)

[§ 93-670]

15-16-612. Refund of tax paid.—(1) If the property is destroyed after the property taxes have been paid for the current year, the taxpayer is entitled to a refund of the amount of tax paid in excess of the adjusted amount required by 15-16-611.

(2) A refund shall be made as provided for in 15-16-601. (As enacted by Ch. 541, Laws 1979, ap-

plicable to taxable years beginning after December 31, 1978.)

[§ 93-671]

15-16-613. Refund of certain taxes paid on migratory property.—(1) Subject to the provisions of 15-16-601 and upon proof that tax was paid in another state on the same property, a taxpayer whose property is assessed under 15-24-303 for a period longer than the actual number of months that the property has taxable situs in the state is entitled to a refund, as provided in this section.

(2) To obtain a refund, a taxpayer shall file an application for refund with the county treasurer in the county where the property was originally taxed. A taxpayer shall apply for a refund allowed under this section by January 31 following the year of assessment, and the county shall make the refund within the first quarter of the following fiscal year. The application must be made on a form provided by the department of revenue and may require information as prescribed by rule of the department.

(3) The amount of the refund is the difference between the amount of tax paid under 15-24-303 and the tax owed based upon the number of months the property had taxable situs in the state for the year. The refund may not exceed the amount of the tax paid.

(4) For the purposes of this section, "month" means any part of a calendar month. (As added by Ch. 601, Laws 1987; as amended by Ch. 778, Laws 1991, applicable retroactively to taxable years beginning after December 31, 1990.)

[§ 93-672—93-678]

Reserved

EXHIBIT 4  
DATE 3-25-93  
SB-438

[The next page is 9737.]

MEMO

TO: STEVE

FROM: SHIRLEE WALKER

SUBJECT: YOUR LETTER TO KEITH OLSON

DATE: February 22, 1993

I don't believe there ever has been a definition of "migratory property" in the Montana code. That's the problem with the new law. When Mike Noble and his group tried to submit new legislation to correct the issue, they defined "migratory/transitory" personal property in section 15-24-303. However, the bill that was passed (MCA 15-16-613) used the term migratory property but did not incorporate the definition. Therefore, the new law provides for a refund of property tax assessed under section 15-24-303 which applies to personal property brought, driven, or coming into any county after the assessment date.

In order to correct this inequity between migratory property in Montana on January 1 (the assessment date) and migratory property brought into Montana after January 1, MCA 15-16-613 needs to be amended to delete the reference to MCA 15-24-303 and add a definition of "migratory property". Until this happens, the Department of Revenue is bound by the law that provides for a proration of property taxes only if the property was not in Montana on January 1 (the assessment date).

PRORATE LEGISLATION

4  
DATE 3-25-93  
SB-438

Statement of Intent:

The proposed legislation would change existing statutes so that migratory/transitory property would only be assessed and taxed for that time that the property has-situs in Montana. The intent is to treat taxpayers who have migratory/transitory property in a fair and equitable manner by taxing their personal property based on its actual time in the state. The proposed legislation would also comply with a 1988 Court decision governing proration of personal property.

15-24-303, MCA, shall be amended to read as follows:

Proration of Migratory/Transitory Personal Property. The tax on unlicensed logging equipment, mining equipment, construction equipment, special mobile equipment and livestock shall be prorated if the property is used on an interstate basis. The tax shall be prorated according to the number of days that the property will have taxable situs in the state of Montana for the calendar year. This statute applies to the above types of property regardless of when the property gains taxable situs in the state.

15-16-613, MCA, shall be amended to read as follows:

15-16-613. Refund of certain taxes paid in other states. (1) Subject to the provisions of 15-16-601 and upon proof that tax was paid in another state, a taxpayer is entitled to a refund equal to the amount of tax paid in another state on a helicopter or property that was assessed in Montana under 15-6-138(1)(o) on January 1 of the year for which the refund is due. The refund under this section may not exceed the tax that was paid in Montana on the same property for the same period of time.

(2) If the taxpayer was assessed under the provisions of 15-24-303, MCA for a period greater than the actual period of time the property had tax situs in Montana, the taxpayer shall be entitled to a refund. The refund shall be based on the ratio between the amount of days originally taxed and the amount of days the property was actually in the state. The refund must be applied for by January 30 following the year of assessment.

mn43g

**PRESIDENT**

Barry Michelotti  
Great Falls, MT 59401  
761-6842

**PAST PRESIDENT**

Rick Ross  
Billings, MT 59101  
256-2930



**SECRETARY-TREASURER**

Tony Harbaugh, Sheriff  
1010 Main Street  
Miles City, MT 59301  
Office: 232-2237

OFFICIAL PUBLICATION  
"THE MONTANA SHERIFF"

# *Sheriffs and Peace Officers Association*

March 22, 1993

Senator Mike Halligan, Chairman  
Senate Taxation Committee  
Capitol Station  
Helena, MT 59624

SENATE TAXATION  
EXHIBIT NO. 5  
DATE 3-25-93  
BILL NO. SB 410

Dear Senator Halligan:

Today, March 22, 1993 the Board of Directors for the Montana Sheriffs and Peace Officers Association met and reviewed our options and alternatives to amend SB410 which is presently tabled in your committee.

It appears any alternative or amendment is not going to be any more difficult than that which is presently before you for consideration. In our hearing I believe the justification for SB410 as it is presently written was very well made and the appropriate funding source to meet the necessary shortfall is, as well, incorporated into the bill.

The most important points in our presentation were:

1. It is necessary to have a third funding source for our proposed retirement because the hardest impacts of I-105 have been borne by counties.
2. In the 1991 Session our first priority was to increase the base for elected official's salaries that had not been changed since 1981. Very few, and in some cases, not at all did county elected officials realize the full benefit of that salary increase, consequently sheriffs and deputies are not in a position to make a contribution more than they are presently able to make consequently necessitating a third-funding source.
3. The twenty-year retirement at a 50% salary is the standard for law enforcement, not only in this state but as well across this nation. The fact that we pay social security is not an issue that sheriffs and deputies should be penalized for in determining our retirement.

Additionally, I would add, that if we were to lessen either the calculation for years of service or change the cap we would, in fact, be negating the purpose for which we brought this issue before you.

The deadline is rapidly approaching whereby SB410 can be presented to the Senate for its consideration and thereby transmitted to the House. I wish to reaffirm to you on behalf of sheriffs and deputies in this state our desire for this to continue through the process.

Please reconsider your present action and move SB410 for further consideration by the full Senate.

Sincerely yours,

  
BARRY MICHELOTTI, PRESIDENT

cc: Senator Dave Rye  
Tom Harrison

# SENATE TAXATION

EXHIBIT NO. 6

DATE 3-25-93

BILL NO. SB 240

## COMPARATIVE SPREADSHEET #4 MONTANA'S PUBLIC RETIREMENT SYSTEMS (As of July 1, 1991)

### ACTUAL COSTS

|   | PERS                         | TRS           | SHERIFFS'    | MUNICIPAL<br>POLICE  | FIREFIGHTERS'<br>UNIFIED   | HIGHWAY<br>PATROL  | GAME<br>WARDENS'                 | JUDGES  |
|---|------------------------------|---------------|--------------|--|--|--|----------------------------------|---|
| Total payroll covered   | \$486,408,665                | \$404,256,229 | \$12,905,176 | \$11,200,507   | \$10,640,453   | \$5,353,530  | \$2,455,217                      | \$2,293,493   |
| Employer contribution   | 6.417%*                      | 7.459%        | 7.67%        | 13.92%   | 13.02%   | 36.23%   | 7.15%                            | 6.0   |
| Employee contribution   | 6.417%*                      | 7.044%        | 7.00%        | 6%/17.2%/18.7%   | 6.0%   | 9.0%   | 7.90%                            | 7.0   |
| Additional FY91 funding from other sources as a percentage of payroll** | None                         | None          | None         | State:<br>15.66%***<br>Tax premium funds used to pay additional/supplemental benefits:<br>11.94% | State:<br>23.27%***<br>Tax premium funds used to pay additional/supplemental benefits:<br>18.21% | 4.52%<br>(registration fees to fund imp-sum supplemental benefits) | Fines and forfeitures:<br>12.03% | Dist. court fees:<br>24.7<br>Supreme court fees:<br>1/4** |
| Percentage of payroll used to fund normal costs                         | 10.22%                       | 8.827%        | 14.67%       | 22.96%   | 21.36%   | 25.35%   | 15.96%                           | 37.7%****   |
| Percentage of payroll to unfunded liabilities                           | 2.614%<br>(3.18% on 7/1/93)  | 5.676%        | 0            | 15.32%   | 20.93%   | 13.43%   | 11.12%                           | 0   |
| Total FY cost as a percentage of total payroll                          | 12.834%<br>(13.4% on 7/1/93) | 14.5%         | 14.67%       | 48.46%   | 60.5%  | 49.9%  | 27.08%                           | 37.7  |

\* Increasing to 6.7% on 7/1/93.

\*\* Does not include the 2.5% benefit adjustment paid from the general fund to each system as required by SB 226, which also provided for state taxation of retirement income.

\*\*\* Paid from tax premium funds but not used for supplemental benefits.

\*\*\*\* 41.263% is the funding required by statute to cover normal costs. There was a 10% shortfall in district court fees, which, by statute, should contribute 34.71%.

Source: Public Employees' Retirement Board, Teachers' Retirement Board, and Actuarial Reports

Amendments to Senate Bill No. 426  
First Reading Copy

Requested by Senator Kennedy  
For the Committee on Taxation

Prepared by Jeff Martin  
March 16, 1993

SENATE TAXATION

EXHIBIT NO. 7  
DATE 3-25-93  
BILL NO. SB 426

1. Page 11, line 13.

Strike: "[This act]"

Insert: "Except for rural special improvement district and special improvement district bonds and warrants that are the subject of judicial proceedings that were begun before January 1, 1993, [this act]"

(406) 222-3000  
307 DAVIDSON BUILDING  
GREAT FALLS, MONTANA 59401  
(406) 727-3622  
801 GRAND, SUITE 3500  
DES MOINES, IOWA 50309  
(319) 282-1000

*Sen Stays*

## MEMORANDUM

44-71-222-3334  
36, RUE TRONCHET  
75008 PARIS, FRANCE  
33-1-48-66-59-49  
35 SQUARE DE MEEUS  
B-1040 BRUSSELS, BELGIUM  
32-2-504.44.11

TO: Senate Taxation Committee

FROM: Mae Nan Ellingson

DATE: March 18, 1993

CC: Senator Ed Kennedy

RE: Senate Bill 426

SENATE TAXATION

EXHIBIT NO. 8

DATE 3-25-93

BILL NO. SB 426

At the suggestion of Senator Towe, we have drafted amendments to Senate Bill 426 which may address some of the concerns that were raised about the revolving fund.

As both city and county representatives pointed out, cities and counties are in a position to reduce the potential exposure to their taxpayers when they issue bonds secured by the revolving fund, by evaluating the amount of assessments proposed to be levied against each parcel or tract of land in the district and the estimated market value of the land in the district. Many cities and counties have special improvement district policies that establish criteria under which they will create districts or issue bonds, with an eye toward minimizing that exposure. Perhaps it is appropriate to mandate by statute that governing bodies consider certain factors in order to secure an issue of special improvement district bonds by the revolving fund.

These amendments would:

1. require that the board of county commissioners or the city council take certain specified factors into consideration before securing an issue of special improvement district bonds by the revolving fund; and



DORSEY & WHITNEY

Senate Taxation Committee  
March 18, 1993  
Page 2

2. require that the notice of passage of the resolution of intention to create the district, which must under current law be both published in a newspaper of general circulation in the county or city and mailed to the property owners in the district, state that the county or city proposes to secure the bonds with the revolving fund and specify the average amount of special assessments to be levied and the estimated average market value of the lots or parcels of property to be assessed.

Obviously, these changes should apply only to districts created after the effective date of the bill, which has been provided for in an amendment to Section 9.

I would like to respond further to the question raised by Senator Brown about having this bill be applied only prospectively. We believe it is equally important, if not more so, that the bill apply to outstanding bonds and warrants (other than the bonds that are the subject of the Carbon County litigation). The principal purpose of the bill is to clarify Montana law in light of the uncertainties created by the decision of the district court in the Carbon County case. These uncertainties exist both for outstanding bonds and bonds proposed to be issued. The memorandum of the district court, by failing to specify a legal basis for the decision and failing to define when a district is "insolvent" and when a revolving fund is "insufficient," has left both issuers and owners of outstanding bonds uncertain as to the extent covenants made by issuers to loan funds from a revolving fund to a district fund are to be enforced.

The bill clarifies the uncertainties in a manner consistent with the law as it has been interpreted by the Montana Supreme Court, the Attorney General and a federal bankruptcy court (it is noteworthy that the district court itself acknowledges on page 9 of its Memorandum and Order that neither the statute nor precedent supports its decision) and provides a limitation on the duration of the obligation to loan funds from the revolving fund to a district fund, which was the "problem" the district court had to wrestle with in the Carbon County decision. (Memorandum and Order, Page 9.) Without these clarifications, substantial uncertainty exists as to state of the law on these points, which, if left uncertain, may have to be resolved in further litigation between bondholders and other issuers. And the holders of outstanding bonds may well suffer a detrimental financial impact during the period of uncertainty; we understand that because of the Carbon County decision the secondary market on which special improvement district bonds are traded has disappeared. Since the purpose of the bill is to clarify the law as it has existed since 1929, we respectfully submit that it does not make sense to give the bill prospective

EXHIBIT 8  
DATE 3-25-93  
SB-426

DORSEY & WHITNEY

Senate Taxation Committee  
March 18, 1993  
Page 3

effect only. A prospective bill would not clarify the law but only further the confusion generated by the Carbon County decision.

There was at least the suggestion at the committee hearing that this bill was written to protect Dorsey & Whitney from potential lawsuits. We are, of course, disturbed even at the offhand suggestion that we have consistently and deliberately misled issuers as to their obligations with respect to the revolving fund or bondholders as to the security afforded by the revolving fund. We have participated in the drafting of the legislation and testified at the hearing only because of our recognized expertise as bond counsel. We believe that the bill benefits local governments and holders of bonds primarily and it has been and will be our intention to let those parties advance the merits of the legislation.

As to potential lawsuits, cities and counties that have issued bonds and entered into covenants to secure the bonds with the revolving fund have sold those bonds to investors, primarily Montana citizens, who have purchased the bonds in reliance on such covenants. While it is true that underwriters and bond counsel have participated in these financings (and, as bond counsel, we may have potential liability to bondholders if we have negligently rendered our bond opinion as to the effect of the law), it was the city or the county that determined to create the district, to issue the bonds, to secure the bonds with the revolving fund, to obtain or fail to obtain additional security for the payment of assessments, and who received the proceeds of the bonds to build the public improvements that it thought to be necessary. The city or county also has an obligation under the securities laws to disclose to prospective bondholders any limitations it believes apply to its obligations to fund the revolving fund or to make a loan therefrom to a district fund. In no financing in which we have participated (other than the Carbon County financing when the County decided some five years after the bonds were issued that limitations on its obligations may be appropriate and other than certain Columbia Falls financings which are now the subject of bankruptcy proceedings, where again the City raised questions about limitations long after the bonds were issued), has the city or county ever suggested to us or, to the best of our knowledge, disclosed to bondholders that it thought such limitations might be applicable.

I will be out of my office the rest of the week, but if there are any questions about the amendments, which we generally think will be agreeable to cities and counties, or our testimony, please feel free to call my partners Bruce MacKenzie at (406) 727-3632, or Bill Johnstone at (612) 340-2815.

Proposed Amendments to Senate Bill No. 426

1. Page 6, following line 14.

Insert: "(3) Prior to entering into the undertakings and agreements set forth in subsection (1), the board of county commissioners shall take into consideration the following factors, in addition to other circumstances that the board may determine to be material:

(a) the estimated market value of the lots, parcels and tracts included in the district at the time the district is created;

(b) the amount of the special assessments proposed to be levied against each lot, parcel or tract in the district in comparison to the estimated market value thereof;

(c) the amount of any outstanding special assessments against the property in the district;

(d) the amount of any delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(e) the public benefit of the improvements proposed to be financed; and

(f) in the case of a district created to make improvements in newly platted subdivisions, any contribution of developers of the subdivision to the costs of the improvements or security given by the developers to secure payment of special assessments levied therein.

Any findings made by the board with respect to such factors in a resolution authorizing such covenants or agreements or the issuance of such bonds shall be conclusive evidence that the board has taken such factors into consideration as required by this subsection.

(4) The board of county commissioners may enter into the undertakings and agreements set forth in subsection (1) only if the notice of passage of the resolution of intention to create the rural special improvement district described in 7-12-2105 stated, in substance, that the bonds drawn on the district will be secured by the rural special improvement district revolving fund of the county, which is funded from general property taxes levied by the county or loans made from the general fund of the county, and specified the estimated amount of the average special assessment to be levied against lots, tracts or parcels of land to be assessed in the district and the approximate average market value of the lots, tracts or parcels in the district. Insubstantial errors in any such notice shall not affect the validity of any undertaking or agreement with respect to the revolving fund."

Renumber: subsequent subsection

2. Page 11, following line 4.

Insert: "(3) Prior to entering into the undertakings and agreements set forth in subsection (1), the city council shall take into consideration the following

8

DATE 3-25-93  
SB-426

factors, in addition to other circumstances that the city council may determine to be material:

(a) the estimated market value of the lots, parcels and tracts included in the district at the time the district is created;

(b) the proposed amount of the special assessments to be levied against each lot, parcel or tract in the district in comparison to the estimated market value thereof;

(c) the amount of any outstanding special assessments against the property in the district;

(d) the amount of any delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(e) the public benefit of the improvements proposed to be financed; and

(f) in the case of a district created to make improvements in newly platted subdivisions, any contribution of developers of the subdivision to the costs of the improvements or security given by the developers to secure payment of special assessments levied therein.

Any findings made by the city council with respect to such factors in a resolution authorizing such covenants or agreements or the issuance of such bonds shall be conclusive evidence that the city council has taken such factors into consideration as required by this subsection.

(4) The city council may enter into the undertakings and agreements set forth in subsection (1) only if the notice of the passage of the resolution of intention to create the special improvement district described in 7-12-4106 stated, in substance, that the bonds drawn on the district will be secured by the special improvement district revolving fund of the city, which is funded from general property taxes levied by the city or loans made from the general fund of the city, and specified the estimated amount of the average special assessment to be levied against lots, tracts or parcels of land to be assessed in the district and the approximate average market value of the lots, tracts or parcels in the district. Insubstantial errors in any such notice shall not affect the validity of any undertaking or agreement with respect to the revolving fund."

Renumber: subsequent subsection

3. Page 11, line 17.

Following: "act]"

Insert: ", except that the provisions of sections 4 and 5 of [this act] which add new subsections (3) and (4) to 7-12-2185 and new subsections (3) and (4) to 7-12-4225, respectively, apply only to rural special improvement districts or special improvement districts, respectively, created after [the effective date of this act]."

Amendments to Senate Bill No. 426  
First Reading Copy

For the Committee on Taxation

Prepared by Jeff Martin  
March 16, 1993

SENATE TAXATION

EXHIBIT NO. 9

DATE 3-25-93

BILL NO. SB 426

1. Page 11, lines 19 through 21.

Strike: "does" on line 19 through "act]" on line 21

Insert: "is remedial in nature and does not:

(1) imply the invalidity of bonds or warrants issued before  
[the effective date of this act];

(2) affect rural special improvement district or special  
improvement district bonds or sidewalk, curb, or alley approach  
warrants issued before [the effective date of this act]; or

(3) affect any covenants entered into before [the effective  
date of this act] by a county or by a city or town to provide  
funds for a revolving fund or to make loans from the revolving  
fund on bonds or warrants issued before [the effective date of  
this act]"

Amendments to Senate Bill No. 424  
First Reading Copy

Requested by Senator Blaylock  
For the Senate Taxation Committee

Prepared by Eddye McClure  
March 18, 1993

1. Title, line 11.

Strike: "77-1-808,"

2. Title, line 14.

Strike: "AN"

Following: "APPLICABILITY"

Strike: "DATE"

Insert: "DATES"

3. Page 2, lines 23 and 24.

Strike: subsection (4) in its entirety

4. Page 3, lines 3 through 5.

Following: "value" on line 3

Strike: remainder of lines 3 through 5

5. Page 3, line 11.

Following: "follows."

Insert: "must be credited as follows:

(a) Except as provided in subsection (1)(b), license fees"

6. Page 3, line 22.

Following: line 21

Insert: "(b) Two dollars from the fee for each license, less 50 cents to be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808."

7. Page 4, line 3 through page 5, line 4.

Strike: section 3 in its entirety

Renumber: subsequent sections

8. Page 10, line 25.

Following: "Applicability."

Strike: "[This act]"

Insert: "(1) [Section 1]"

9. Page 11, line 2.

Following: "act]"

Insert: "and, for leases in effect on [the effective date of this act], to rentals due after rental adjustments made pursuant to adjustment provisions in the lease.

(2) [Section 2] applies to licenses sold after February 28,

1994.

(3) [Section 3] applies to lease years beginning after December 31, 1993, and for leases in effect on [the effective date of this act], the lease rates established by the board of land commissioners pursuant to [section 8] are considered to have been established by the legislature"

Amendments to Senate Bill No. 305  
Second Reading Copy

For the Committee on Taxation

Prepared by Jeff Martin  
March 25, 1993

1. Page 2, line 6.

Strike: "36"

Insert: "28"

2. Page 3, line 12.

Strike: "36.77%"

Insert: "46.50%"

3. Page 3, line 14.

Strike: "15.10%"

Insert: "19.10%"

4. Page 5, line 17.

Strike: "25%"

Insert: "19.4%"

5. Page 6, line 9.

Strike: "50%"

Insert: "64.43%"

6. Page 7, line 8.

Strike: "36.77%"

Insert: "46.50%"

7. Page 7, line 13.

Strike: "50%"

Insert: "64.43%"

8. Page 11, line 24.

Following: line 23

Insert: "NEW SECTION. Section 8. Transition -- inventory. All cigarettes stamped by wholesalers on or after August 15, 1993, are taxed at the rate established in 16-11-111 as amended by [this act]. The department of revenue may not collect the new tax established in 16-11-111 on cigarettes that were stamped before August 15, 1993, and held in inventory by wholesalers, subjobbers, or retailers on or after August 15, 1993."

Renumber: subsequent section

9. Page 11, line 24.

Strike: "SECTION"

Insert: "Sections"

10. Page 11, line 25.

Following: "6"

Insert: "and 8"



DATE 3-25-93

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: SB 438

| Name | Representing | Bill<br>No. | Check One<br>Support Oppose |  |
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