

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB GILBERT**, on March 26, 1993, at
8:15 a.m.

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent: None

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

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

Committee Business Summary:

Hearing: SB 379
Executive Action: HB 688 Do Pass
HB 687 Do Pass

HEARING ON SENATE BILL 379**Opening Statement by Sponsor:**

SEN. STEVE DOHERTY, SD 20, Great Falls, said SB 379 is the product of work between the Tax and Probate Section of the Montana Bar Association and the Department of Revenue (DOR). Legislation passed last session dealing with payment of taxes under protest and declaratory action remedies was called into question during the interim. This bill is the result of a joint effort to make the statute uniform and consistent.

Proponents' Testimony:

Dave Nielson, member of Tax and Probate Section of the Montana Bar, said the bill consolidates the sections dealing with payment under protest with the tax appeal process in order to make taxpayers and practitioners more aware that they must pay their taxes timely under protest if they want a refund after appealing their tax bill. There is no substantive change in the tax appeal procedure. Under current law there are three possible procedures for executing a declaratory judgement action. SB 379 consolidates the three procedures into one uniform declaratory judgement action and makes it the exclusive remedy **EXHIBIT 1**.

Dave Woodgerd, Chief Counsel, DOR, said the bill is a joint effort supported by both the Bar Association and DOR. He also expressed support for the bill from the State Tax Appeal Board (STAB) whose members are meeting in Billings and could not be present for the hearing.

Opponents' Testimony: There were no opponents.

Questions From Committee Members and Responses:

REP. ELLIOTT asked if there is a specific procedure for notifying the taxpayer that protested taxes must be paid timely or a refund will not be forthcoming.

Mr. Nielson said he did not think so. Neither STAB nor the county boards are required to give such notice.

REP. FELAND asked what is done with the tax money that is paid under protest.

Mr. Nielson replied it is deposited into a protest fund and held in escrow drawing interest. Most counties will never use the money in the protest fund because they cannot pay it back if the case is settled in favor of the taxpayer.

Closing by Sponsor:

SEN. DOHERTY closed saying the bill is very straightforward and is simply a clarification and simplification measure. He indicated an amendment regarding a notice provision for the timely payment of protested taxes would be a good idea. He said it would be simple enough to have it printed on the notices which are sent out by STAB and/or DOR. He said he would support such an amendment so that the bill would not have to go to conference committee.

EXECUTIVE ACTION ON HOUSE BILL 688

Motion: **REP. FOSTER** MOVED HB 688 DO PASS. HB 688 establishes a tax incentive for the extended depth auger method of mining coal.

Discussion:

REP. ELLIOTT said he is wary of granting special privileges when there is no way of estimating what the actual costs may be. He visited with Mr. Mockler of the Coal Council and called some other states to endeavor to identify some costs. He has yet to find a state that is using the extended depth auger method of coal mining. The financial overhead of mining underground coal is more than the financial overhead of strip mining. In the extended depth auger method the overburden has already been removed. The seam is exposed and the overburden does not have to be replaced. He said the only additional expense he has been able to determine is the cost of the machine which may be substantial. He felt the machine should not be much more than the drag line that is used to remove the overburden which should make the financial overhead somewhat the same.

REP. HANSON said the tax on this type of mining is the same as that on the underground mines in the Roundup area. She said this method is less destructive to the topsoil and allows for mining of the entire seam.

REP. MCCAFFREE said he was told by the representative of the company which hopes to initiate the extended auger method that the machine costs approximately \$1.5 million. **REP. MCCAFFREE** said his primary concern is for the water that travels through the aquifers. He said the seam should be left in place to give the water an avenue to flow through. Strip mining disturbs the water tables and there have been problems with wells and streams drying up completely. He said this method would exacerbate that problem.

REP. BOHLINGER said the extended auger method is a way of extending the life of the strip mining that would otherwise be ending. It creates more jobs, more tax revenue and contributes to the economy of the communities and the state. He said 4% of something is better than 15% of nothing and urged the Committee members to support the bill.

REP. RANEY said the Committee asked for information on this method of mining and has never received it. This is a matter of tax policy and the decision should be based on the profitability of the method. He felt there is no way to offer an 11% reduction in severance tax when there is no financial information on which to base such a decision.

REP. FOSTER said it will take a two year period to get extended auger mining started in the state. The bill is a method of "jump-starting" that process. He felt it is important to offer some assistance to developing the process in the state. In the course of two years there will probably not be that much progress and the incentive can then be reviewed by the next legislature. He pointed out that 25 jobs per machine represents a significant economic impact for the area that is being mined by the extended auger method and for the state.

REP. HANSON said she had been told by a hydrologist that a foot of coal has to be left in the seam for an aquifer. She said that may be a fairly recent decision and therefore some of the older mined areas may not have that protection.

REP. ELLIOTT said he agreed with **REP. RANEY'S** comments. He said he would like to have some concrete facts and figures before a decision is made. He felt the coal should be mined and he is favor of the creating the jobs but tax breaks should not be given away when the financial position is not clear.

REP. NELSON said he is concerned about the aquifer and jobs, also. He noted it is late in the session and felt the bill should be passed. If the information that comes in is negative, then pressure can be exerted in the Senate Taxation Committee to kill the bill.

REP. McCAFFREE said he is distressed that everyone is only concerned about the financial impact and totally ignoring the water problem. Water is the lifeblood of Montana and when it is gone, a great deal more is lost than a few seams of unrecoverable coal.

REP. ORR said at this point in Montana's economic health, jobs and economic development are critically important.

REP. FOSTER said only by offering this tax level will it even be feasible to look seriously at developing this method of mining. He said this will only be an extension of 300 - 600 feet from the strip mine and doubted that would create much more damage.

REP. TUNBY asked if strip mines have ruined the aquifers in many cases, and if so, have they tried to remedy the damage.

REP. McCAFFREE replied that most strip mines do not wreck the aquifer and they do tend to repair damage that is done. He cautioned that no amount of coal is worth the water in eastern Montana.

REP. TUNBY said that if damage is repaired from the strip mines, it would probably be repaired with the extended auger method also.

REP. ELLIOTT said coal is a non-renewable resource for the state and it is important to bargain from a position of power rather than weakness. He stressed the importance of having information in hand before decisions are made. One of the reasons the state is having money problems is because the coal tax has already been cut in half.

REP. HARPER agreed with REP. ELLIOTT. He said it is possible this kind of mining could replace strip mining in the future. He said it is highly unlikely that the rate will be changed in two years. Once the rate is established, it remains in place. He said more information is needed before far reaching decisions of this nature are made. He suggested referring the matter to the Revenue Oversight Committee so that a slow, well-reasoned and informed decision can be made based on state of the art information.

Motion: REP. ELLIOTT MOVED THE 4% RATE BE AMENDED TO 10% AND NOT BE CLASSIFIED AS UNDERGROUND MINING.

Discussion:

REP. KELLER said that a 10% rate would kill the bill.

REP. RANEY objected to the motion saying the Committee requested more information in order to make an informed decision and still has not received that information.

Motion: REP. ELLIOTT WITHDREW THE PREVIOUS MOTION.

Motion: REP. HARPER MOVED TO AMEND HB 688 WITH AN EFFECTIVE DATE OF JULY 1, 1993, AND A TERMINATION DATE OF JULY 1, 1995.

Discussion:

REP. FOSTER disagreed with the motion. He said the bill is a good idea and deserves to go through the legislative process. Changing the dates would only serve to neuter the whole bill.

REP. NELSON said Revenue Oversight could still review the bill.

REP. HARPER said that if this is a temporary statute, the information could be presented to Revenue Oversight and a case made for extending the dates.

REP. FOSTER said even if the company already has the machines, they will still have to move them here, hire people, do site surveys, and other preparatory work. They will not be interested if they can get cut off at the knees in two years.

Vote: The motion to amend failed on a tie roll call vote.

Discussion: Discussion reverted to the original Do Pass motion.

REP. HARPER said if a man comes in asks the legislature to lift a sunset provision, he will not be turned down. He said he was just trying to slow down the important decision process regarding tax policy.

CHAIRMAN GILBERT said this is a late bill, but no later than several other important bills before the Committee. In order for the bill to proceed through the process, a decision has to be made today. He said if this were the last day of session, he would vote to kill the bill, but there is time enough left to make the important decisions on this bill.

Vote: HB 688 DO PASS motion carried on a roll call vote.

EXECUTIVE ACTION ON HOUSE BILL 687

Motion: **REP. ELLIOTT** MOVED HB 687 DO PASS.

Discussion:

REP. ELLIOTT said the bill continues the diversion of coal tax funds into the parks preservation fund. Makoshika Park, Bannack, Ulm Pishkun, and the Pictograph Cave will receive funding for preservation and maintenance. The bill extends funding for the projects from the last biennium.

CHAIRMAN GILBERT asked what would not be funded if the bill were not to pass.

Arnie Olson, Fish, Wildlife, and Parks, said if no other parks funding bill passes, such as HB 2 and HB 5, this bill would be the only means of maintaining the four sites. There would be no capital improvements, only maintenance.

CHAIRMAN GILBERT asked **Mr. Olson** to clarify what coal trust monies are being utilized for the parks funding.

Mr. Olson said a portion of the coal trust interest funds the parks trust. This bill simply diverts a payment to the parks trust into funding the four historic preservation projects for the coming biennium.

Vote: HB 687 DO PASS motion carried on a roll call vote.

ADJOURNMENT

Adjournment: The meeting adjourned at 11:00 a.m.



BOB GILBERT, CHAIRMAN



JILL ROHMANS, Secretary

BG/jdr

HOUSE OF REPRESENTATIVES

TAXATION

COMMITTEE

ROLL CALL

DATE

3/26/95

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

HOUSE STANDING COMMITTEE REPORT

March 26, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that House Bill 688 (first reading copy -- white) do pass.

Signed: Bob Gilbert

Bob Gilbert, Chair

Committee Vote:
Yes 12, No 7.

681302SC.Hpf

HOUSE STANDING COMMITTEE REPORT

March 26, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that House
Bill 687 (first reading copy -- white) do pass.

Signed: Bob Gilbert

Bob Gilbert, Chair

Committee Vote:
Yes 16, No 3.

681301SC.Hpf

HOUSE OF REPRESENTATIVES

TAXATION

COMMITTEE

ROLL CALL VOTE

DATE 3/26/93 BILL NO HB688 NUMBER _____

MOTION: by Rep. Harper to amend HB688
with an effective date of July 1,
1993 & a termination date of
July 1, 1995

NAME	AYE	NO
REP. FOSTER		✓
REP. HARRINGTON	✓	
REP. ANDERSON		✓
REP. BOHLINGER		✓
REP. DOLEZAL	✓	
REP. DRISCOLL	✓	
REP. ELLIOTT	✓	
REP. FELAND		✓
REP. HANSON		✓
REP. HARPER	✓	
REP. HIBBARD		✓
REP. KELLER		✓
REP. McCAFFREE	✓	
REP. MCCARTHY	✓	
REP. NELSON		✓
REP. ORR		✓
REP. RANEY	✓	
REP. REAM	✓	
REP. TUNBY	✓	
REP. GILBERT		✓

HOUSE OF REPRESENTATIVES

TAXATION

COMMITTEE

ROLL CALL VOTE

DATE 3/26/93 BILL NO. HB 688 NUMBER

MOTION: by Rep. Foster that HB 688 do Pass

NAME	AYE	NO
REP. FOSTER	✓	
REP. HARRINGTON		✓
REP. ANDERSON	✓	
REP. BOHLINGER	✓	
REP. DOLEZAL		✓
REP. DRISCOLL	✓	
REP. ELLIOTT		✓
REP. FELAND	✓	
REP. HANSON	✓	
REP. HARPER		✓
REP. HIBBARD	✓	
REP. KELLER	✓	
REP. McCAFFREE		✓
REP. MCCARTHY		✓
REP. NELSON	✓	
REP. ORR	✓	
REP. RANEY		✓
REP. REAM		✓
REP. TINBY	✓	
REP. GILBERT	✓	

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL VOTE

DATE 3/26/93 BILL NO. HB 687 NUMBER

MOTION: by Rep Elliott that HB 687 do Pass

NAME	AYE	NO
REP. FOSTER	✓	
REP. HARRINGTON	✓	
REP. ANDERSON	✓	
REP. BOHLINGER	✓	
REP. DOLEZAL	✓	
REP. DRISCOLL	✓	
REP. ELLIOTT	✓	
REP. FELAND	✓	
REP. HANSON		✓
REP. HARPER	✓	
REP. HIBBARD		
REP. KELLER	✓	
REP. McCAFFREE	✓	
REP. MCCARTHY	✓	
REP. NELSON	✓	
REP. ORR	✓	
REP. RANEY		✓
REP. REAM	✓	
REP. TINBY	✓	
REP. GILBERT		✓

from
3/26

SENATE BILL 379

EXHIBIT 1
DATE 3/26/93
SB 379

Summary of Testimony of David L. Nielsen

The bill effects two areas of the tax appeal procedure: taxpayer rights to refunds of taxes paid under protest and uniformity of the remedy for declaratory judgment in tax cases.

If a taxpayer contests the assessment of that taxpayer's property, the taxpayer must appeal to the county tax appeal board, and if unsuccessful to the state tax appeal board. If unsatisfied at the state tax appeal board, the taxpayer could file an action in district court on a petition for judicial review. Now the procedure for petitions for judicial review from the state tax appeal board, § 15-2-303, MCA, is an action independent from the action required for a refund of taxes paid under protest. If the taxpayer who files a petition for judicial review desires a refund on taxes paid under protest, that taxpayer must also comply with § 15-1-402, MCA. Many unwary taxpayers and their representatives are unaware of this dual requirement for refund on protested taxes and fail to comply with § 15-1-402, MCA, resulting in an inability to get a refund even if successful in the petition for judicial review. All that these taxpayers can win is a right to prospective changes in their assessments.

This bill combines the procedures of §§ 15-1-402 and 15-2-303, MCA, into one procedure that mirrors the judicial review procedure of the Montana Administrative Procedures Act. The petition must be filed within 60 days but there is no longer the requirement that it must also be served upon the parties within that time.

Under this bill the county treasurer no longer needs to be named and served as a party in order for a taxpayer to obtain a refund of protested taxes. This bill does require, however, that the treasurer be notified of the petition so that the money may continued to be held by the treasurer in the protest account.

The bill clarifies the declaratory judgment statutes on challenging tax statutes and the application of these statutes. Under current law there are three declaratory judgment procedures that are available to challenge the legality of a tax. Two are found in Title 15 and the third is the Uniform Declaratory Judgment Action. Under this bill, the two declaratory judgment procedures in Title 15 are combined into one procedure and these are made the exclusive declaratory judgment remedy in tax matters.

The bill allows for the payment of taxes under protest in declaratory judgment actions. Under present law, in a declaratory judgment action the taxes must be paid to continue the action but they cannot be paid under protest. This new provision allows contesting taxpayers the assurance of a refund if they are successful in their declaratory judgment action.

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DATE: MARCH 25, 1993
TO: THE HOUSE NATURAL RESOURCES COMMITTEE
ATTENTION OF: ALL COMMITTEE MEMBERS
FROM: DORIS RUSSELL

We are transmitting a total of 1 pages, including this page. If you do not receive the correct number of pages, please call us as soon as possible. Our telephone number is 406-628-8772

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ADDITIONAL INSTRUCTIONS:

RE: SB 261/DOHERTY'S SUBDIVISION BILL

AS A LANDOWNER AND AS A REAL ESTATE AGENT, I

ASK EACH OF YOU TO OPPOSE THIS BILL, AS I
DO NOT CARE TO HAVE GOVERNMENT TELL ME WHAT I

CAN AND CANNOT DO WITH MY PERSONAL PROPERTY
OWNERSHIP. PLEASE VOTE NO.