

MINUTES

MONTANA SENATE 53rd LEGISLATURE - SPECIAL SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Halligan, Chair, on December 13, 1993,
at 4:50 p.m.

ROLL CALL

Members Present:

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

Members Excused: Senators Eck and Doherty

Members Absent: None.

Staff Present: Jeff Martin, Legislative Council
Beth Satre, Committee Secretary

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

Committee Business Summary:

Hearing: None.
Executive Action: SB 1, SB 17, SB 27

EXECUTIVE ACTION ON SENATE BILL 1

Discussion:

Chair Halligan asked **Senator Gage** to give the Committee an update on SB 1.

Senator Gage reminded the Committee that the Education Committee was considering HB 22 which addressed the same section of statute as SB 1. He said he had asked the Education Committee if they could simply amend the provisions in SB 1 into HB 22, but was told they had amended that section out of HB 22 and did not want to amend it back in. **Senator Gage** asked if the Committee was interested in SB 1. He noted that since the hearing on SB 1 he

had received a report from the Office of Public Instruction (OPI) detailing the revenues collected by the schools in 1991, 1992, and 1993. He said using the numbers in the report he had determined that the schools received about \$7.8 million less in non-mill revenues in 1993 than in 1992 which, given the current statutory requirement that non-mill revenue projections be based on the previous years receipts, meant that schools had to project \$7.8 million more in revenue than they actually received. According to **Senator Gage**, \$6 million of the decrease was in investment earnings which had resulted from a combination of the Legislature's reduction of school reserves and the decrease in interest rates. He stated school districts could have anticipated those reductions had they been allowed and added that the coal gross proceeds and local government severance tax amounts were known a year in advance and could also be anticipated very closely. He noted the remaining non-mill revenues were already based on previous year receipts because they did not vary too much.

Chair Halligan said that he would prefer to give the Committee the chance to talk with the committee members on Education and act on SB 1 the next day. He explained he would like the Committee to concentrate on property tax issues for the remainder of the meeting.

EXECUTIVE ACTION ON SENATE BILL 17 and SENATE BILL 27

Discussion:

Senator Van Valkenburg informed the Committee that he had been discussing with **Senator Crippen** the need to find some common ground on the two property tax packages heard by the Senate Taxation Committee. He said since the hearing on SB 25, SB 26, SB 27, which he sponsored, he had received a fiscal note on SB 25 which had shocked him. He noted he was waiting for the Legislative Fiscal Analyst's Office to do an independent analysis of the numbers on the fiscal note, and added if those numbers accurately reflect the revenue impact, he would probably not push SB 25 forward. **Senator Van Valkenburg** said he had talked to **Senator Harp** about the fact that SB 20 was premature and depended upon the public's vote on the constitutional amendment.

Senator Van Valkenburg stated the two pieces of legislation containing proposed constitutional amendments provided some potential for possible agreement. He identified SB 17 as **Senator Crippen's** proposal and SB 27 as his own. He noted that SB 17 focused primarily on eliminating the constitutional requirement to equalize and on providing the Legislature with permissive ability to use acquisition values. He noted SB 27 would provide a fixed limitation on increases in value due to reappraisal and would allow for a phase-in of reappraised values. He said he had discussed the possibility of drafting some language which would

meld the two approaches together with **Greg Petesch**, **Legislative Council**, the Governor's attorney, and **Senator Crippen**. He stated he had asked if the Committee could have the current meeting in order to have a broader discussion about these issues which involved the members of the Committee and the public. He asked if **Senator Crippen** would like to offer some comments.

Senator Crippen distributed a proposed change to SB 17 which he said would leave the concept of equalization in the Constitution but provide that it be specifically achieved through the classification of property (Exhibit #1). He stated the Legislature needed to agree upon a proposed constitutional amendment that would act as a counterweight to the issue the "Perot people" would get on the ballot. He stated if Montana voters were not given a choice, the Legislature would be faced with an onerous situation in 1995. Given that, he said he was willing to insert a cap in paragraph two of SB 17, he noted, however, he questioned whether reference to the consumer price index (CPI) should be in the Constitution. After explaining that he was "pretty much of a strict constructionist" in the area constitutional law, **Senator Crippen** stated his opinion that the original version of SB 17 was the best approach because it gave the Legislature "all kinds of flexibility". He noted, however, that he was also a realist and believed that the voters would prefer an amendment which would establish more of a constitutional guarantee. He said the Committee might want to use the language "as the Legislature may determine, but not to exceed one percent a year" instead of referring to the CPI since the former represents constitutional language whereas the latter does not.

Senator Crippen informed the Committee he had distributed this proposal to the Senate and House democratic leadership and discussed the topic with **Greg Petesch** as well. He admitted that the proposal varied from SB 27, although it did have similarities if the Committee chose to use the language "as the Legislature may determine". He noted that SB 17 could stand apart from SB 20, although they were presented as a package, and said that SB 17 would not require but allow that the acquisition value be used. He stated that the Legislature could take up the means to statutorily address the problem that came about because of the substantial increases in property values for property tax purposes in the next session.

Senator Harp asked if **Senator Crippen** would like to comment on the fact that SB 17 would basically allow for a phase-in. **Senator Crippen** replied he was unsure of the mechanics of that section but noted it was similar to SB 27 approach on that issue. He stated he had tried to incorporate as much of SB 27's provisions into SB 17 as possible to allow some sort of compromise.

Senator Towe said he was bothered by the inclusion of the CPI reference. He noted that even if the Committee chose to use the "as the Legislature may determine" language, **Senator Crippen's**

proposal still contained a one percent limitation. **Senator Towe** stated the one percent was an onerous limitation to insert into the Constitution. He asked **Senator Crippen** if he really thought such language was appropriate or if it was intended to direct the Legislature toward adopting acquisition value. **Senator Crippen** assured the Committee that was not the intention of that limitation, even if that was an end result. He stated he was not fixed on that figure but thought that the constitutional limit ought to contain some type of a cap.

Senator Towe asked what **Senator Crippen** thought of simply using good constitutional principles and allowing fairly broad legislative action. He explained all the necessary language was contained in section three, (1)(a) and (1)(b). According to **Senator Towe** that would allow that equalized valuation may be achieved through the classification of property and may be based on acquisition value. **Senator Crippen** noted **Senator Towe's** suggestion was similar to SB 17 in its original form. He added, however, the people wanted more constitutional protection and such broad language would not gain their confidence. He repeated that the Legislature's constitutional amendment would be compared to amendments placed on the ballot by the group United We Stand which would put a specific and onerous limitation on what the Legislature could do. He stated if SB 17 did not contain any guarantees, the people might be inclined to vote for the other.

Senator Towe asked if **Senator Crippen** believed that if the Legislature presented the voters with a reasonable alternative, there would be a better chance of getting the legislative constitutional amendment adopted rather than United We Stand's or any other group's proposal. **Senator Crippen** replied "right". He stated he had opposed the insertion of specifics into the Constitution but had decided that their absence was "fuel to the fire". He admitted he might be wrong about the reaction of the members of United We Stand. He added, however, that he did not want to give that group anymore ammunition because their approach would "rip the guts right out of whatever [the Legislature] was trying to do. He noted that even though legislators had their own political approaches to the current problems, every member of the Legislature agreed that Montana could not afford to have "those folks" prevail. **Senator Crippen** concluded that he believed compromise was necessary.

Senator Towe asked what **Senator Crippen** thought about the "super majority" idea of Susan Good. **Senator Crippen** said he was not familiar with that idea. He added, however he did not "like any of that stuff" because he preferred the representative form of government.

Senator Crippen asked **Senator Van Valkenburg** if he had any specific changes that he would like to see in the proposal. He stated he would take any suggestions to the Governor's staff and see if they would agree. He cautioned the Committee that it was necessary to take action on this issue because the House had made

it "pretty evident" that it wanted to have some input.

Senator Yellowtail noted that the basic policy question on this issue was whether or not Montana should have equalization in property values. He stated acquisition value and equalization were inconsistent concepts and noted that he favored putting that question if anything before the people. He stated he did not favor "muddling up the Constitution" with details that ought to be statutory because that would tie the hands of future legislatures which might need to make adjustments. He said both acquisition value and caps clearly lead to disequity over time and if the voting public wanted to approve that they could.

Senator Crippen noted he tended to agree with **Senator Yellowtail** about the muddling of the Constitution. He added, however, that equalization was not present in the current system. **Senator Yellowtail** noted equalization was in the present constitution. **Senator Crippen** responded the term was also in his proposal. He pointed out that it was the equalization portion of Constitution that struck down the sales assessment ratio and did actually tie the hands of the Legislature.

Senator Towe asked why the word "appraisal" was removed in the proposal. **Senator Crippen** replied the administration took that out because they are trying to "get out of the appraisal business". As a result, if the state goes to pure acquisition value someone might decide to challenge the constitutionality of the system if "appraisal" remained in the Constitution. He repeated property owners would still be protected by the concept of equalization when their properties are assessed.

Chair Halligan asked if **Senator Crippen** was referring to all property including personal property. He noted that personal property was currently taxed at nine percent which could cause a real problem. **Senator Crippen** responded his proposal did not deal with any particular property but referred to property "within a class". He said that he was unaware of any lawsuit challenging the constitutionality of the state's policy of determining taxation by classification. He noted that the Railroad, Revitalization and Reform Act (4-R Act) provided an exception but had never resulted in a constitutional challenge.

Chair Halligan noted that **Senator Crippen** had asked **Senator Van Valkenburg** if he had any specific reactions to the proposal under discussion. He asked whether **Senator Van Valkenburg** would like to respond. **Senator Van Valkenburg** replied he did not care for the proposal's phrase "not to exceed one percent a year". He stated he did not know why the proposal would make reference to the CPI while making that qualification because the CPI has historically always been greater than one percent.

Senator Harp asked if **Senator Van Valkenburg** would accepted the one percent limitation. **Senator Van Valkenburg** replied no, he preferred the four percent provision in SB 27.

Senator Gage noted that the proposal only made reference to increases. He asked what would happen if Montana entered a depression and experienced severe decreases in valuation.

Senator Crippen responded under the acquisition method the changing valuations would reflect deflation in values. He said that the current wording of his proposal would allow enough latitude for the Legislature to statutorily deal with such a situation. He noted that the Legislature's hands were currently tied as to possibilities in such situation. He said he had conferred with **Representative Mercer** on that point and had suggested that a statutory method should be provided with which a person would have the right to go back in to the property tax appraisers for a new valuation in the wake of natural disasters, fire or condemnation. **Senator Crippen** agreed that if sections two and three of the proposal were eliminated then the language would be close to what **Senator Van Valkenburg** would want except the phrase "appraised, assessed and equalize the valuation" would be limited. **Senator Crippen** reiterated that the Legislature could still enact laws that would demand equalization but it would be a "legislative fiat rather than a constitutional mandate".

Senator Yellowtail stated if the aim were to achieve maximum flexibility for the Legislature the only necessary language would be "the state shall assess the valuation of all property". He stated that approach would remove any reference to appraisal or equalization and not set up a preference for or presupposition of acquisition value.

Senator Brown commented that action on the part of the Legislature would "raise a red flag to the voter". He said he was unsure whether people would understand the implications of acquisition value. He noted, however, he was sure that the "suspicious nature" of the voter would not really trust any legislative action that would simply strike the phrase "appraise, asses and equalize the valuation" from the Constitution.

Senator Yellowtail replied he certainly would not trust that action on the part of the Legislature. He stated, however, that the result would be the same if acquisition value was placed in the Constitution, since acquisition value was not equalization.

Senator Crippen agreed that **Senator Yellowtail** was raising a valid point. He referred to California's Proposition 13, and noted that a proposal offering the possibility of a property tax system based on acquisition value would have a chance if a ground swell of voter support developed for an approach similar to Proposition 13 which specifically referred to acquisition value. He noted when **Greg Petesch** first drafted his proposal he had questioned the need for any specific reference to acquisition value as long as it was statutorily possible. According to **Senator Crippen**, **Greg Petesch** had said the reference would make it a little more specific and better able to deal with the problem of other ballot issues.

Senator Van Valkenburg responded to **Senator Brown's** concerns about the voters reaction to a possible constitutional amendment. He stated he believed that SB 27 as introduced would be interpreted by the average voter as proof that the Legislature was responding to public concern. He explained that SB 27 would establish something that would really limits what could happen to property taxes in the future. He stated if the Committee was really interested in giving voters an alternative to the other proposals which might make the ballot, SB 27 would come much closer to accomplishing that the proposal **Senator Crippen** had presented. He said he knew that SB 27 did not contain permissive language with regard to acquisition value, and added that he had hoped to find a way to insert such a reference into SB 27.

Senator Brown stated **Senator Van Valkenburg's** proposal retains the good terms and is also specific about what the Legislature was trying to accomplish with the constitutional amendment. He stated he did not think it was clear, however, that SB 27 would allow acquisition value although it was specific about the four percent cap.

Senator Van Valkenburg distributed a proposal that he had requested which made an attempt at melding together the basic concepts in SB 17 and SB 27 (Exhibit #2). He noted that **Greg Petesch** had given him two slightly different options but directed the Committee's attention to the language "[t]he valuation of classes of property may be based on acquisition value" while retaining the four percent per year limitation.

Senator Yellowtail argued once again that this kind of material ought to be statutory. He stated the question ought to be put before the people as to whether or not the requirement for equalization should be removed from the Constitution. He said the explanatory material could make it very clear that a vote for the amendment would permit the Legislature to statutorily establish caps, percent, phase-ins, acquisition value, etc. He repeated that putting all that stuff in the constitution would "trash it up" and argued that such specifics did not represent appropriate constitutional language.

Senator Crippen stated that **Senator Yellowtail's** was a good point.

Senator Grosfield agreed that several people were making good points. He stated his dislike for the idea of placing such specifics in the Constitution, but asked that the Committee stop thinking like strict constitutional constructionists and start thinking about what ballot issues were going to be in front of the people in the November election. He emphasized that the Legislature's constitutional amendment was not going to be the only thing addressing property tax on the ballot, which, according to **Senator Grosfield**, meant that people would be picking and choosing and trying to select the one that made the most sense to them. He reminded the Committee that the people's

trust in their legislators and the legislative process was not great and would probably not improve by November. He argued that the Legislature needed to offer the electorate something that looked more concrete because people would vote for a more specific proposal if they were presented with a choice between that and vague legislative language. He stated the responsible thing for the Legislature to do would be to offer something that would be a meaningful alternative so that Montana would "not end up with something that would basically trash our whole system".

After remarking that it might be "pollyana-ish", **Senator Yellowtail** responded that the Legislature ought to do what is responsible and if someone else can persuade the people to do something irresponsible then that is their burden.

Senator Brown said he did not disagree but added that it was important to understand the public's mood at the time a proposal was developed. He noted that the reasons **Senator Yellowtail** might amend the Constitution would be different then reasons that he might. He stated he agreed with **Senator Grosfield** and believed that "the Perot Nazis" needed to be prevented from taking over Montana's government. He said he did not want to present the people with a constitutional amendment that just made vague references to limitations, struck the words "value" and "equality" from the Constitution, and appeared to give the Legislature more latitude than ever.

Senator Towe asked what would prevent people for voting in favor of both kinds of constitutional amendments. **Senator Brown** replied he did not know. He stated, however, that the Legislature could maybe stake out some ground where those legislators who felt more responsible for maintaining representative government could stand and have something to use in order to defend against the groups which were trying to take the power to tax completely away from government or to impose a two-thirds majority on every level of government. He emphasized that this was an issue where defense, instead of a cleaner constitutional approach, was necessary.

Chair Halligan asked if it would be possible to include what **Senator Yellowtail** was referring to as a direct statement to the public that acquisition value or caps would allow unequal treatment. He stated he would like to incorporate those truths into the ballot language. **Senator Brown** replied that **Senator Van Valkenburg's** proposal did not do that. **Chair Halligan** replied neither proposal currently did that. **Senator Brown** noted that the second page that **Senator Van Valkenburg** had distributed was "getting pretty close" to his position (Exhibit #2).

Senator Harp stated the current reappraisal system did not achieve equalization either. He noted that every committee member probably was aware of several pieces of property in their legislative districts which were undervalued. He argued that those property owners were being treated differently then those

people whose values are treated at or above market value. He stated it was necessary to place something on the ballot that could successfully counteract the Perot or the Better Government for Montana groups. He stated if the Legislature could not agree he believed that the result would be something akin to CI-27 which was on the ballot in the 1986 elections. He stated that any agreement crafted in the legislative forum might not be perfect but it would be a lot better for Montana than anything any other group would propose. He suggested that **Senators Crippen and Van Valkenburg** should lock themselves in a room for an hour and come up with something that the Legislature could "go with".

Senator Crippen noted he had a meeting with the Governor after the meeting. He suggested that he report that negotiations had started on the constitutional amendment and that the two proposals were fairly close. **Senator Valkenburg** noted the proposals were not close if **Senator Crippen** insisted on the one percent limit. **Senator Crippen** responded he was not referring to the percentage. He stated the Committee needed to determine whether it would support a more "watered down" approach like in SB 17 or his proposal would present if paragraphs two and three were stricken (Exhibit #1). He offered to go to the administration and get their response and suggestions to **Senator Van Valkenburg's** proposal.

Senator Gage asked if the language in section two of **Senator Van Valkenburg's** proposal would eliminate periodic reappraisal if the state moved toward acquisition value (Exhibit #2, page one). **Senator Crippen** replied yes and added that the only time reappraisal would occur would be when a person improved their property.

Senator Van Valkenburg commented that the language also contained the assumption that at some point it would be determined that the current value was acquisition value. He said the Legislature would have to adopt a statute defining that point and noted that if a statute did not exist, periodic reappraisals of property based on market value would be necessary.

Senator Gage said then that language would not limit any reappraisal cycles establishing acquisition values to the four percent. He added that under a system based on acquisition value the four percent limit would only apply to those properties which were not determined by acquisition value. **Senator Van Valkenburg** agreed.

Senator Gage said that on reappraisal of acquisition value or acquisition that value might double or triple. **Senator Harp** replied that the potential existed in an acquisition value system that the value of a piece of property could increase by much more than four percent when it was either transferred or sold.

Senator Gage noted that if the next Legislature decided to adopt

an acquisition value system using 1993 values as the base and if it was decided that in five years it was necessary to re-appraise those values, the potential existed for those values to be higher than the supposedly allowable 20 percent. **Senator Crippen** said that would be possible under **Senator Van Valkenburg's** proposal and added that he was uncertain whether or not that could occur under his proposal.

Senator Van Valkenburg said he had wanted to get the discussion started in order to determine what the opinions of committee members were. He asked that the Committee think about the issues and alternatives and come back to work on this issue some more the next day.

Senator Towe asked if adding the sentence "the Legislature may limit the rate of increase of the value of property" at the beginning of paragraph one would satisfy **Senators Brown and Crippen** (Exhibit #1).

Senator Brown replied he thought four percent or some percent needed to be included, even though including specific numbers might be short-sighted. He explained that would be better understood by the public.

Senator Towe said although that was true, it would fill up the Constitution. **Senator Brown** responded that Benjamin Franklin had once said "when you come to a low place, stoop". He noted that the current situation required that the Legislature be more specific than it might want to be.

Senator Towe noted that **Senator Brown** would rather muddle the Constitution then be saddled with something that is worse than a muddled constitution. **Senator Van Valkenburg** commented that it was also necessary to resist the Neville Chamberlain approach to appeasement.

ADJOURNMENT

Adjournment: 5:58 p.m.



SENATOR MIKE HALLIGAN, Chair

BETH E. SATRE, Secretary

ROLL CALL

SENATE COMMITTEE

TAXATION

DATE December 13, 1993
p.m.

p.m.

[illegible]

FC8

Attach to each day's minutes

SENATE TAXATION

EXHIBIT NO. 1

DATE December 13, 1993

BILL NO. SB 17

SENATE BILL NO. 17 (suggested revisions)

Substitute for Section 1.

Section 1. Article VIII, section 3, of the Constitution of the State of Montana is amended to read:

Section 3. Property tax administration. (1)(a) Subject to subsection (1)(b), the state shall assess and equalize the valuation of all property which is to be taxed in the manner provided by law.

(b) Equalized valuation may be achieved through the classification of property and may be based on acquisition value.

(2) For property tax purposes, the value of all classes of property may increase at the same rate of increase as the [consumer price index] but not to exceed one percent a year, unless utilization of the acquisition method of valuation results in a change in the value of the property for the taxable year. leg. mar. deter.

(3) Subject to the limitations of subsection 2, any increase in the value of a class of property resulting from periodic reappraisals may be phased in during the appropriate reappraisal cycle.

SENATE TAXATION

EXHIBIT NO. 2

DATE December 13, 1993

BILL NO. SB 27

LGLCORO 12-08-1993 10:26:11
Your TextDBMS Requests Were:
Bill: SB 0027

=== Latest version is: SB 0027/01 Introduced version
12/02/93 Earlier versions are: None
=== SENATE BILL NO. 27 INTRODUCED BY

A BILL FOR AN ACT ENTITLED: ~~"AN ACT IMPLEMENTING LONG RANGE
STRUCTURAL CONCERNS OF THE GOVERNOR'S TAX ADVISORY COUNCIL FOR
PROPERTY OWNERSHIP BY SUBMITTING TO THE QUALIFIED ELECTORS OF
MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 3, OF THE MONTANA
CONSTITUTION TO ALLOW PROPERTY VALUES TO BE BASED ON ACQUISITION
COST, TO LIMIT INCREASES IN VALUATION OF RESIDENTIAL PROPERTY,
AND OTHER PROPERTY IF PROVIDED BY LAW, TO 4 PERCENT A YEAR FOR
PROPERTY TAX PURPOSES AND TO ALLOW INCREASES BECAUSE OF PERIODIC
REAPPRAISAL TO BE PHASED IN OVER THE COURSE OF A REAPPRAISAL
CYCLE."~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article VIII, section 3, of The Constitution of the State of Montana 0.7-8-103 is amended to read:

"Section 3. Property tax administration -- valuation limitations. (1)(a) The Subject to subsection (1)(b), the state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

(b) The valuation of classes of property may be based on acquisition value.

(2) The value of property that is not based on acquisition value, may not increase by more than four percent a year due to periodic reappraisal for property tax purposes. Any increase in the value of property because of periodic reappraisals may be phased in during a reappraisal cycle."

NEW SECTION. Section 2. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1994 by printing on the ballot the full title of this act and the following:

XX [[FOR allowing property taxes to be based on acquisition value, and limiting annual increases in valuation of residential and other property to 4% a year for property tax purposes and allowing increases to be phased in.

XX [[AGAINST allowing property taxes to be based on acquisition value, and limiting annual increases in valuation of residential and other property to 4% a year for property tax purposes and allowing increases to be phased in.

-End-

LGLCORO 12-08-1993 10:26:11
Your TextDBMS Requests Were:
Bill: SB 0027

=== Latest version is: SB 0027/01 Introduced version
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shall appraise, assess, and equalize the valuation of all
property which is to be taxed in the manner provided by law.

(b) Equalized valuation may be achieved through the
classification of property and may be based on acquisition value.

(2) For property tax purposes, the value of residential
property and any other class of property may not increase by more
than four percent a year. Any increase in the value of a class of
property because of periodic reappraisals may be phased in during
a reappraisal cycle."

NEW SECTION. Section 2. Submission to electorate. This
amendment shall be submitted to the qualified electors of Montana
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on the ballot the full title of this act and the following:

[] FOR allowing property taxes to be based on acquisition
value, and limiting annual increases in valuation of residential
and other property to 4% a year for property tax purposes and
allowing increases to be phased in.

[] AGAINST allowing property taxes to be based on
acquisition value, and limiting annual increases in valuation of
residential and other property to 4% a year for property tax
purposes and allowing increases to be phased in.

-End-