

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 257

Call to Order: By CHAIRMAN DELWYN GAGE, on April 12, 1995, at
4:30 p.m.

ROLL CALL

Members Present:

Sen. Delwyn Gage, Chairman (R)
Rep. Larry Hal Grinde, Vice-Chairman (R)
Sen. John G. Harp (R)
Sen. Dorothy Eck (D)
Rep. Peggy Arnott (R)
Rep. Emily Swanson (D)

Members Excused: None

Members Absent: None

Staff Present: Phoebe Kenny, Secretary
Jeff Martin, Legal Staff, Legislative Council

Discussion:

CHAIRMAN DELWYN GAGE, SD 43, Cut Bank, said this was the Conference Committee on SB 257. He stated they were talking about the House amendments to the bill. He continued that there was a difference of about \$2.8 million in General Fund the way the bill came out of the Senate and it appeared there was a difference of about \$2 million the way the bill came out of the House. The Department of Revenue indicated to their company that they would have been willing to take two-thirds of the escrow amount and settle on that basis. The rail car company said that they would do that if the Department would agree to accept SB 257. They were not willing to do that.

SENATOR GAGE stated that they were looking at something in the neighborhood of a \$17 million dollar swing, compared to what the State would get if they accepted the Senate Bill, compared to what would happen if there was no bill or the House bill went through. His understanding was if the House bill went through the money that came in went into the escrow account and just kept building that account until such time as the court said. With that background he opened the meeting for comments.

SENATOR JOHN HARP, SD 42, Kalispell, said that he would like Mick Robinson to give a new run on 75% speed and 25% miles. He

assumed the average rail road mill levy would stay as the House had it at 315 mills. He was curious to see what the dollar amount would be, in trying to find something that would be more than the Senate Bill originally introduced but less than the House version. He thought current law was 50% speed and 50% miles. He did not know why the House moved or why the Senate had started it the way they had but they were trying to find a tax that would preserve in the court, have principal tied to it while at the same time settling the issue. He hoped that there would be some numbers on that and was curious what the feeling was in the House.

REPRESENTATIVE EMILY SWANSON, HD 30, Bozeman, said she had followed the bill pretty carefully. She related a little bit of history about when the bill was first introduced... In the Senate Mick Robinson testified against the bill, but not very vigorously. When the bill got to the House, he had prepared a lot more documentation about what the actual case was. He wasn't terribly vigorous in the Senate because he was nervous about the impact on litigation and their negotiating ability. When the Bill reached the House he decided that he needed to separate tax policy from the legislature negotiating litigation. The law was miles to miles. They had the ability through Administrative Rule to add some speed component into that. They added the speed component because of the great increase in taxation revenues that the miles to miles generated. Going to half of it at speed ameliorated the increase somewhat, but the litigation was all around that issue. In the information that the Department provided, out of 26 states that tax railroad companies 13 of them tax miles to miles with no speed component entered at all. We were giving them leeway going to any speed component in the formula to begin with. When it was changed from gross proceeds to miles to miles, the companies that had been accurately reporting the number of miles being traveled in the state had their taxes go down. The companies that had their taxes skyrocket were companies who had been under reporting the number of miles travelled through the state. The whole issue around what was fair taxation policy should not be looked at in terms of the number of dollars being generated. It should be looked at in what is a fair way to tax these companies and to stay away from litigation negotiations. Moving slightly away from the 50\50 seemed acceptable, and it passed out of House Taxation and got good support on the House floor because most felt it was a fair deal and would move toward reconciliation without going to a totally unfair form of tax policy which the 100% speed formula was.

SENATOR HARP said there was another bill introduce dealing with the issue and the estimate which was talked about what that tax would do to the rail car tax was underestimated by over a million dollars at the time.

REPRESENTATIVE SWANSON noted he was referring to HB 24. House Bill 24, introduced in the 1992 Special Session, was the bill

that moved the tax from gross proceeds to miles to miles. That took place because of a dispute over miles to miles based on the Four R's Act. That dispute was you can't tax rail car companies differently than you tax other property. They put that into a miles to miles formula and into class 9 property and taxed it as property rather than gross receipts. At that time the assumption was if there had been accurate reporting on miles the way it was calculated the tax should have been revenue neutral. It was discovered that there were a lot more miles being travelled in the state than had been reported so the taxes jumped.

SENATOR HARP stated that was the reason for an increase in taxes unreported. It was not that it was underestimated when the bill was passed in the Special Session.

CHAIRMAN GAGE conveyed that the only comment or correction he would make was that there could be nothing found in the Minutes of HB 24 that said anything about if the proper miles were being recorded. The fiscal note said it would at least match \$2.9 million. Certainly the legislature has changed from one system to another a multitude of times and most things have been done on a tax neutral basis.

REPRESENTATIVE SWANSON read a portion of the minutes from the July 10, 1992, House Taxation Committee Hearing. She read the State had been challenged under the Four R's Act on the Freight License Tax. The DOR had proposed to tax freight cars as property in the same manner as stock of Burlington Northern or Montana Rail Link. All companies would be taxed the same whether they were railroads or freight line companies such as TXX. That was the only place revenue neutrality was addressed.

CHAIRMAN GAGE noted it didn't say anything in those minutes about assuming that the proper number of miles were being reported. That is why he believed they were looking at tax neutrality.

SENATOR DOROTHY ECK, SD 15, Bozeman, said there was no reason that they always had to figure out how much tax was needed and then determine what tax policy to use to get that amount. She believed it should be designed on what was the most appropriate tax policy. It doesn't need to go off what other States do, but since these were multi-state operations it would make sense.

REPRESENTATIVE SWANSON noted 40% of the miles travelled in the state were untaxed. When they changed from gross receipts to miles to miles they found that the taxes increased by 99%. The miles that were being reported increased by 93%. The tax rate per mile only increased by 3%.

SENATOR HARP conveyed that taxation was an imperfect world. He wanted to find a middle ground between the Senate and the House. He wondered if there would be any interest in amending the bill to do that. He wanted to see the problem solved not so much for

the escrow but to put a tax in effect to prevent the issue from being continually litigated.

Mick Robinson, Department of Revenue, explained EXHIBIT 1.

SENATOR HARP said if the legislature adopted the 75\25 it would be \$1.5 million.

REPRESENTATIVE SWANSON clarified that was based on the definition of speed as the House had amended.

Mick Robinson said that at the higher mills the difference was about 10% so the relationship of those higher mills was about a 10% reduction. If the higher mills under the 75\25 were used \$200,000 would have to be added to the \$1.9 figure.

REPRESENTATIVE SWANSON noted the House amendments changed not only the percentage rates but also the definition of speed.

REPRESENTATIVE LARRY GRINDE, HD 94, Lewistown, asked to hear from the Rail Car people.

John Alke, Defense Trial Lawyers, said that when the bill was introduced it was simply to produce a tax which was much closer to the tax presented to the 1992 session. He had never intended to negotiate a lawsuit. He had no authority to say that if they passed a 75\25 split that he would settle a lawsuit for 66%. He said they were faced with a bill that he thought was fair when it started in the Senate and whether or not the underlying litigation of the prior years was resolved or not, he couldn't say, and at this point in time there is no way to find out before the legislature was over. He said 75\25 was still a very high tax particularly calculated on cents per mile.

CHAIRMAN GAGE said from his perspective the whole thing was based on competition.

SENATOR HARP said that a lot of sessions end up with a compromise between the House and the Senate. If there was interest in that it would put it at \$3.5 million which was about in the middle of what the House and Senate wanted.

CHAIRMAN GAGE said the real question was what the rail car company and the Department of Revenue would do as a result of whatever form of the bill passed as far as the 1997 biennium. If the Department would not do anything and the rail car companies say that regardless of what was done here the money went into a escrow account, it seemed to him that they were just spinning their wheels by doing anything.

SENATOR HARP thought that if they walked away from this, under the current HJR 9 they were showing no revenue for the rail car tax so if they didn't have some kind of proposal to tax rail cars

then there was no money. He said that a little more hinged on this bill than the rail tax.

REPRESENTATIVE SWANSON said that there was nothing to say that the litigation would be settled outside of what was done in the legislature. The litigation itself was in court.

Terry Johnson, Legislative Fiscal Analyst, said if SB 257 was killed the current law would be in place. His recommendation to the Revenue Oversight Committee in November was to assume zero in terms of the revenue estimate. He would make that same recommendation again.

SENATOR HARP said that the difference between the House and the Senate was \$1.7 million.

REPRESENTATIVE PEGGY ARNOTT, HD 20, Billings, said that the Governor might not accept the bill as introduced. It was her assumption that they believed the fair proposal for them was what was introduced. It was her assessment that the only taxes that the companies were willing to pay without protest were the ones contained in SB 257 as introduced.

Motion/Vote: **SENATOR HARP MADE THE MOTION TO STRIP THE HOUSE AMENDMENTS.** The motion **FAILED** with **SENATOR ECK**, and **REPRESENTATIVES ARNOTT AND SWANSON** voting no.

Motion: **SENATOR HARP MADE THE MOTION TO CHANGE THE CALCULATION TO 90% SPEED AND 10% MILES.**

Discussion: **REPRESENTATIVE ARNOTT** asked what that would do to the budget.

SENATOR HARP said they could take SB 257 as originally introduced at \$1.4 million per year, back out \$1.7 million and still end with a 1995 balance of \$25 million dollars which was always the target.

REPRESENTATIVE SWANSON asked if the rail car companies were going to continue to pay that under protest what was the point.

SENATOR HARP said they couldn't assume that. They could only assume that whatever the legislature passed that it would meet the muster of both parties and be considered in revenue.

REPRESENTATIVE SWANSON said that the point was to try to reduce the financial impact as much as possible with some sort of split between miles and speed.

SENATOR HARP said that he was desperately trying to get a Conference Committee Report.

Vote: The motion **FAILED** with **SENATORS ECK & GAGE** voting no.

Motion: SENATOR HARP MADE THE MOTION THE SPLIT BE CHANGED TO 75/25 WITH A REPEALER PROVISION.

Motion: SENATOR ECK MADE A SUBSTITUTE MOTION THE SPLIT BE CHANGED TO 75/25 AND LEFT AS A DETERMINATION POINT.

Discussion: Mick Robinson stated he was not concerned with the repealer.

SENATOR ECK'S MOTION WAS NOT VOTED ON.

REPRESENTATIVE SWANSON said that if the House amendments weren't acceptable she would rather the bill die.

SENATOR HARP said there was still the matter of the State budget. Therefore, he was not willing to have the bill die.

REPRESENTATIVE SWANSON said she understood that. She believed that the only way to guarantee the payment of the tax was to go to the Senate Bill as introduced and she was unwilling to do that.

REPRESENTATIVE GRINDE noted the Department testified they did not have a problem with the repealer. He believed if the Department wanted to renegotiate this they should.

REPRESENTATIVE SWANSON said either SB 257 or current law put a fair tax policy in place.

Vote: SEN. HARP'S motion FAILED with REPRESENTATIVE GRINDE voting yes.

Discussion: John Alke, Defense Trial Lawyers, said the determination date meant the tax went back into effect in 1997. There was no way they would ever dismiss a lawsuit challenging the validity of the current law if they knew it would come back into effect in 1997.

REPRESENTATIVE SWANSON said they should go to 75\25 and remove the determination date.

SENATOR HARP insisted it should be 75\25 with a repealer.

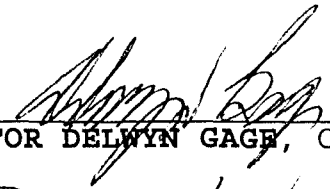
SENATOR ECK asked if the Department felt they could get out of this without negotiation.

Dave Woodgerd, Department of Revenue, said a final decision was five years away because of the appeals through the federal court system.


Motion: SENATOR HARP MADE THE MOTION TO ADOPT 75/25 WITH A DECEMBER 31, 1997, REPEALER. The motion CARRIED with REPRESENTATIVE SWANSON AND SENATOR GAGE voting no.

ADJOURNMENT

Adjournment: CHAIRMAN GAGE adjourned the meeting at 5:00 p.m.



SENATOR DELWYN GAGE, Chairman



PHEOBE KENNY, Secretary

DG/pk

Free Conference Committee
on SB 257
Report No. 1, April 12, 1995

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Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 257, met and considered:

SB 257 in its entirety

We recommend that SB 257 (reference copy as amended - salmon) be amended as follows:

1. Title, line 7.

Following: "SECTIONS"

Insert: "15-6-145, 15-6-201, 15-23-101, 15-23-103, 15-23-104, 15-23-105, 15-23-201,"

Following: "MCA;"

Insert: "REPEALING SECTIONS 15-23-211, 15-23-212, 15-23-213, 15-23-214, 15-23-215, AND 15-23-216, MCA;"

2. Title, line 7.

Strike: "AN"

3. Title, line 8.

Strike: "IMMEDIATE"

Following: "EFFECTIVE"

Strike: "DATE,"

Insert: "DATES AND"

4. Title, lines 8 and 9.

Following: the second "DATE"

Strike: the remainder of line 8 through "DATE" on line 9

5. Page 3, line 4.

Strike: "ONE-THIRD"

Insert: "one-fourth"

6. Page 3, line 5.

Strike: "TWO-THIRDS"

Insert: "three-fourths"

7. Page 3.

Following: line 12

Insert: "Section 4. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to

ADOPT

REJECT

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tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

- (l) all watercraft;
- (m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;
- (n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;
- (o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;
- (p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;
- (q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.
- (r) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:
 - (i) construct, repair, and maintain improvements to real property; or
 - (ii) repair and maintain machinery, equipment, appliances, or other personal property;
 - (s) harness, saddlery, and other tack equipment;
 - (t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;
 - (u) beginning January 1, 1994, timber as defined in 15-44-102; and
 - (v) all trailers and semitrailers with a licensed gross weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:
 - (i) designed and used only for carrying property;
 - (ii) designed and used to be drawn by a motor vehicle; and
 - (iii) either constructed so that no part of its weight

rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle; and

(w) railroad cars not owned by a railroad company.

(2) (a) The term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 5. Section 15-6-145, MCA, is amended to read:

"15-6-145. Class twelve property -- description -- taxable percentage. (1) Class twelve property includes ~~all property of a railroad car company as defined in 15-23-211~~, all railroad transportation property, except railroad cars not owned by a railroad company, as described in the Railroad Revitalization and Regulatory Reform Act of 1976 as it read on January 1, 1986, and all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on

January 1, 1986.

(2) For the tax year beginning January 1, 1991, and for each tax year thereafter, class twelve property is taxed at the percentage rate "R", to be determined by the department as provided in subsection (3), or 12%, whichever is less.

(3) $R = A/B$ where:

(a) A is the total statewide taxable value of all commercial property, except class twelve property, as commercial property is described in 15-1-101(1)(d); and

(b) B is the total statewide market value of all commercial property, except class twelve property, as commercial property is described in 15-1-101(1)(d).

(4) (a) For the taxable year beginning January 1, 1986, and for every taxable year thereafter, the department shall conduct a sales assessment ratio study of all commercial and industrial real property and improvements. The study must be based on:

(i) assessments of such property as of January 1 of the year for which the study is being conducted; and

(ii) a statistically valid sample of sales using data from realty transfer certificates filed during the same taxable year or from the immediately preceding taxable year, but only if a sufficient number of certificates is unavailable from the current taxable year to provide a statistically valid sample.

(b) The department shall determine the value-weighted mean sales assessment ratio "M" for all such property and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4)(a) by "M" prior to calculating "A" in subsection (3)(a).

(c) The adjustment referred to in subsection (4)(b) will be made beginning January 1, 1986, and in each subsequent tax year to equalize the railroad taxable values.

(5) For the purpose of complying with the Railroad Revitalization and Regulatory Reform Act of 1976, as it read on January 1, 1986, the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, except class twelve property, as commercial property is defined in 15-1-101(1)(d)."

Section 6. Section 15-23-101, MCA, is amended to read:

"15-23-101. **Properties centrally assessed.** The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property of railroads and ~~railroad car companies~~ operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph,

telephone, microwave, electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

- (3) all property of scheduled airlines;
- (4) the net proceeds of mines and of oil and gas wells;
- (5) the gross proceeds of coal mines; and
- (6) property described in subsections (1) and (2) which is subject to the provisions of Title 15, chapter 24, part 12."

Section 7. Section 15-23-103, MCA, is amended to read:

"15-23-103. Due date of reports and returns -- extensions.

(1) Except as provided in subsection (2) and 15-23-602, each report or return described in 15-23-301, 15-23-402, 15-23-502, 15-23-701, or 15-23-517 must be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-201, ~~15-23-212,~~ 15-23-515, or 15-23-516 must be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days."

Section 8. Section 15-23-104, MCA, is amended to read:

"15-23-104. Failure to file -- estimate by department -- penalty. ~~(1)~~ If any person fails to file a report or return within the time established in 15-23-103 or by a later date approved by the department, the department shall estimate the value of the property that should have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303. In estimating value under this section, the department may subpoena a person or the person's agent as specified in 15-1-302. An assessment pursuant to parts 5 through 8 of this chapter based on estimated value or imputed value is subject to review under 15-1-211. For each month or part of a month that a report is delinquent, the department shall impose and collect a \$25 penalty, with the total not to exceed \$200, and

shall deposit the penalty to the credit of the general fund. The department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent. The department shall notify the county treasurer of each affected county of the amount of the penalty, and the treasurer shall collect the penalty in the same manner as the taxes to which the penalty applies.

~~(2) For a delinquency in reporting under 15-23-212, the department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent."~~

Section 9. Section 15-23-105, MCA, is amended to read:

"15-23-105. Apportionment among counties. The department shall apportion the value of property assessed under 15-23-101, 15-23-202, or 15-23-403, ~~other than railroad car company property,~~ among the counties in which such property is located. Apportionment shall be on a mileage basis or on the basis of the original installed cost of the centrally assessed property located in the respective counties. If the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage or on the basis of the original installed cost of the centrally assessed property located in the respective counties, the department may adopt such other method or basis of apportionment as may be just or proper."

Section 10. Section 15-23-201, MCA, is amended to read:

"15-23-201. Assessment of railroads. The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating any railroad in more than one county in this state or more than one state must on or before April 15 each year furnish the department a statement signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending December 31 immediately preceding:

- (1) the whole number of miles of railroad in the state and, where the line is partly out of the state, the whole number of miles without the state and the whole number within the state, owned or operated by such corporation, person, or association;
- (2) the value of the roadway, roadbed, and rails of the whole railroad and the value of the same within the state;
- (3) the width of the right-of-way;
- (4) the number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state;
- (5) the number, kind, and value of rolling stock owned and operated in the state;
- (6) the number, kind, and value of rolling stock used in the state but not owned by the party making the returns;

(7) the number, kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns or by and upon other railroads;

(8) the whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state;

(9) the number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof of all engines; passenger, mail, express, baggage, freight, and other cars; or property owned or leased by such corporation, person, or association;

(10) the number of sleeping and dining cars not owned by such corporation, person, or association but used in operating the railroads of such corporation, person, or association in the state or on the line of the road without the state during each month of the year for which the return is made; also the number of miles each month the cars have been run or operated within and without the state;

(11) a description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road has once been given, no other annual description thereof is necessary unless the road has been changed. Whenever the road or any portion of the road is advertised to be sold or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad or the right-of-way for the same. If such statement is not furnished as above provided, the assessment made by the department upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12) the gross earnings of the entire road;

(13) the gross earnings of the road within the state and, if the railroad is let to other operators, how much was derived by the lessor as rental;

(14) the cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;

(15) net income for such year and amount of dividend declared;

(16) capital stock authorized;

(17) capital stock paid in;

(18) funded debt;

(19) number of shares authorized;

(20) number of shares of stock issued; and

(21) ~~number, kind, and total number of miles traveled~~

~~within the state by railroad cars owned by railroad car companies; and~~

(22) any other facts the department may require."

NEW SECTION. Section 11. Repealer. Sections 15-23-211, 15-23-212, 15-23-213, 15-23-214, 15-23-215, and 15-23-216, MCA, are repealed."

Renumber: subsequent sections

8. Page 3, line 14.

Strike: "date"

Insert: "dates"

Following: "applicability."

Insert: "(1)"

Strike: "[This act] is"

Insert: "[Sections 1 through 3 and this section] are"

9. Page 3, line 15.

Strike: "applies"

Insert: "apply"

10. Page 3.

Following: line 16

Insert: "(2) [Sections 4 through 11] are effective January 1, 1998."

11. Page 3, line 18.

Strike: Section 5 in its entirety

And that this Free Conference Committee report be adopted.

For the Senate:

Gage

Chair

Harp

Eck

Amd. Coord.

For the House:

Grinde

Chair

Arnott

Swanson

SB 257
EFFECT OF DOR AMENDMENT

Current	
Speed 50% - Miles 50%	
Average C&I Mill Levy - 349.27	\$3,134,427
SB257	
Varying Speeds at 100%	
Average C&I Mill Levy - 349.27	\$1,400,000
SB257 - Amended	
Speed 67% - Miles 33%	
Average RR Mill Levy - 315.13	\$2,081,626

EXHIBIT NO. 1
DATE 4/12/95
BILL NO. SB257

SHORT TITLE: Revise Rail car tax

SPONSOR: Gage

ORDER OF BUSINESS NO. 6

CONFERENCE COMMITTEE APPOINTMENTS

SENATOR HARP: MR. PRESIDENT, I MOVE THAT PRESIDENT
BROWN APPOINT A FREE
CONFERENCE COMMITTEE ON (H) (S) BILL
NO. 257.

PRES. BROWN:	THE PRESIDENT APPOINTS	SPEAKER APPOINTS:
	SENATOR <u>GAGE</u> , CHAIR;	REP. _____, CHAIR
	SENATOR <u>HARP</u> ;	REP. _____
	SENATOR <u>ECK</u> ;	REP. _____
	TO THE <u>FREE</u> CONFERENCE	
	COMMITTEE ON (H) <u>(S)</u> BILL NO. <u>257</u> .	



MONTANA STATE SENATE

April 12, 1995

The Honorable John Mercer
Speaker of the House of Representatives
State Capitol
Helena, MT 59620

Mr. Speaker:

I am directed by the Senate to inform the House of Representatives that the Senate on April 12, 1995, failed to concur with the House amendments to Senate Bill 257, "REVISE RAIL CAR-TAX -- ALLOCATED VALUE BASED ON MILES & EQUIVALENT CAR COUNT", and by motion, the President was authorized to appoint a Free Conference Committee.

The President appointed the following members:

Senator Del Gage, Chairman
Senator John Harp
Senator Dorothy Eck

The Senate requests that the House appoint a like committee to confer on Senate Bill 257.

Respectfully,

A handwritten signature in cursive script that reads "Rosana Skelton".

ROSANA SKELTON
Secretary of the Senate



HOUSE STANDING COMMITTEE REPORT

April 6, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Taxation report that Senate Bill 257 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Chase Hibbard
Chase Hibbard, Chair

And, that such amendments read:

Carried by: Rep. Story

1. Title, lines 4 and 5.

Following: "BY" on line 4

Strike: remainder of line 4 through the second "CARS" on line 5

Insert: "ALLOCATING VALUE BASED UPON MILES AND EQUIVALENT CAR
COUNT; USING THE AVERAGE MILL LEVY APPLIED TO RAILROAD
PROPERTY"

2. Title, line 6.

Following: "DATE"

Insert: ", "

Strike: "AND"

3. Title, line 7.

Following: "DATE"

Insert: ", AND A TERMINATION DATE"

4. Page 1, line 14.

Strike: "statewide" through "industrial"

Insert: "mill levy applied to all railroad transportation"

5. Page 1, line 15.

Following: "property"

Insert: "specified in 15-6-145, except for railroad car company
property"

SB 257

Committee Vote:
Yes 13, No 7.

HOUSE
791616SC.Hdh

6. Page 1, lines 16 through 23.

Strike: subsections (2) and (3) in their entirety

Renumber: subsequent subsections

7. Page 2.

Following: line 17

Insert: "(5) the total car miles traveled, loaded and unloaded,
within and outside of the state during the calendar year
preceding the date of filing;"

Renumber: subsequent subsections

8. Page 2, line 26.

Strike: "made on the"

9. Page 2, lines 28 and 29.

Strike: first "average" on line 28 through "miles" on line 29

Insert: "calculated by taking one-third of the ratio of car miles
traveled within the state to the total car miles traveled,
plus two-thirds of the ratio of equivalent car count to the
total number of cars. The equivalent car count"

Following: "company's"

Strike: remainder of line 29 in its entirety

10. Page 2, line 30.

Following: "mileage"

Insert: "for all its cars"

Strike: "the miles" through "car"

Insert: "500 miles per day"

11. Page 3, line 9.

Insert: "NEW SECTION. Section 5. Termination. [This act]
terminates December 31, 1997."

-END-

SENATE BILL NO. 257

INTRODUCED BY GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE RAIL CAR TAX BY ~~DEFINING CLASSES OF RAIL CARS AND MILEAGE ATTRIBUTABLE TO CLASSES OF RAIL CARS~~ ALLOCATING VALUE BASED UPON MILES AND EQUIVALENT CAR COUNT; USING THE AVERAGE MILL LEVY APPLIED TO RAILROAD PROPERTY; AMENDING SECTIONS 15-23-211, 15-23-212, AND 15-23-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, ~~AND A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION~~ DATE."

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

Section 1. Section 15-23-211, MCA, is amended to read:

"15-23-211. Definitions. As used in 15-23-211 through 15-23-216, unless the context requires otherwise, the following definitions apply:

(1) "Average levy" means the average ~~statewide rate of taxation on commercial and industrial~~ MILL LEVY APPLIED TO ALL RAILROAD TRANSPORTATION property SPECIFIED IN 15-6-145, EXCEPT FOR RAILROAD CAR COMPANY PROPERTY.

~~(2) "Class of car" means class F flat, class G gondola, class H hopper, class L special, class MW maintenance of way, class N caboose, class P passenger, class R refrigerator, class S stock, class T tank, and class X box, as used by the association of American railroads, operation and maintenance department, mechanical division in the classification of freight equipment cars. A class includes subclasses of the class.~~

~~(3) "Miles per day per class of car" means for class F flat, 500 miles per day; for class G gondola, 525 miles per day; for subclass LO of class L special, 250 miles per day; and for all other classes of car, 175 miles per day.~~

~~(2)(4)(2)~~ "Person" includes an individual, firm, association, company, partnership, corporation, joint-stock company, agency, syndicate, or cooperative.

~~(3)(5)(3)~~ "Private railroad cars" means all railroad cars that:

(a) are not owned by a railroad company operating in this state;

1 (b) are used for transporting persons or freight; and

2 (c) are not otherwise assessed for property taxation in this state;

3 ~~(4)(6)(4)~~ "Railroad car company" means any person, other than a railroad company, engaged in
4 operating, leasing, or furnishing private railroad cars, whether or not owned by that person, for the
5 transportation of persons or freight over railroad lines located wholly or partially within this state."
6

7 **Section 2.** Section 15-23-212, MCA, is amended to read:

8 "15-23-212. **Annual report.** Each railroad car company shall, annually and within the time
9 requirements of 15-23-103(3) and (4), file with the department of revenue a report, signed and sworn to
10 by one of its designated officers, that provides the following information as of the preceding December 31:

11 (1) the name and nature of the business of the company;

12 (2) the number, ~~kind~~ class of car, acquisition cost, date of acquisition, and name of owner of its
13 private railroad cars;

14 (3) the cost of additions and betterment, special equipment, racks, protective equipment, or any
15 other modification or improvement to a car since acquisition;

16 (4) the total car miles traveled by class of car, loaded and unloaded, within the state during the
17 calendar year preceding the date of filing;

18 ~~(5) the total car miles traveled, loaded and unloaded, within and outside of the state during the~~
19 ~~calendar year preceding the date of filing;~~

20 ~~(6) the average number of miles traveled by each class of car during the year;~~

21 (5) THE TOTAL CAR MILES TRAVELED, LOADED AND UNLOADED, WITHIN AND OUTSIDE OF THE
22 STATE DURING THE CALENDAR YEAR PRECEDING THE DATE OF FILING;

23 ~~(7)(5)(6)~~ the description and location of real and personal property that is owned by the railroad
24 car company and that is subject to taxation within this state; and

25 ~~(8)(6)(7)~~ any other facts that the department may require."
26

27 **Section 3.** Section 15-23-213, MCA, is amended to read:

28 "15-23-213. **Assessment -- allocation -- taxable value.** (1) The department of revenue shall assess
29 the property in the name of the railroad car company owning the property unless the property is reported
30 by another person leasing or operating the property. .

1 (2) The allocation of property to this state must be ~~made on the basis of the car miles traveled~~
2 ~~within the state to the total car miles traveled unless the department by administrative rule adopts a~~
3 ~~different formula average number of cars necessary to make the Montana miles. The average number of~~
4 ~~cars necessary to make the Montana miles~~ CALCULATED BY TAKING ONE-THIRD OF THE RATIO OF CAR
5 MILES TRAVELED WITHIN THE STATE TO THE TOTAL CAR MILES TRAVELED, PLUS TWO-THIRDS OF
6 THE RATIO OF EQUIVALENT CAR COUNT TO THE TOTAL NUMBER OF CARS. THE EQUIVALENT CAR
7 COUNT must be determined by the company's class of car's or cars' annual Montana mileage FOR ALL ITS
8 CARS divided by the product of the miles per day per class of car 500 MILES PER DAY multiplied by the
9 number of days in the year.

10 (3) In determining taxable value, the department shall use the percentage rate "R", as provided in
11 15-6-145, to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory
12 Reform Act of 1976, as amended."

13
14 NEW SECTION. Section 4. Effective date -- retroactive applicability. [This act] is effective on
15 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after
16 December 31, 1994.

17
18 NEW SECTION. SECTION 5. TERMINATION. [THIS ACT] TERMINATES DECEMBER 31, 1997.

19 -END-