

**MINUTES**

**MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON FINANCE & CLAIMS**

**Call to Order:** By SENATOR GARY AKLESTAD, CHAIRMAN, on February 1, 1995, at 5:55 p.m.

**ROLL CALL**

**Members Present:**

Sen. Gary C. Aklestad, Chairman (R)  
Sen. Thomas F. Keating, Vice Chairman (R)  
Sen. Thomas A. "Tom" Beck (R)  
Sen. James H. "Jim" Burnett (R)  
Sen. Loren Jenkins (R)  
Sen. Ethel M. Harding (R)  
Sen. Arnie A. Mohl (R)  
Sen. Charles "Chuck" Swysgood (R)  
Sen. Daryl Toews (R)  
Sen. Larry J. Tveit (R)  
Sen. B.F. "Chris" Christiaens (D)  
Sen. Eve Franklin (D)  
Sen. Judy H. Jacobson (D)  
Sen. Greg Jergeson (D)  
Sen. John "J.D." Lynch (D)  
Sen. Mignon Waterman (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Clayton Schenck, Legislative Fiscal Analyst  
Lynn Staley, Committee Secretary

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

**Committee Business Summary:**

Hearing: HB 16  
Executive Action: HB 16 - BE CONCURRED IN

**HEARING ON HOUSE BILL 16**

**Opening Statement by Sponsor:**

REPRESENTATIVE DIANA WYATT, House District 43, Great Falls, sponsor, said that HB 16, brought at the request of the Office of Budget and Program Planning, would appropriate money to the Department of Justice for fiscal year ending June 30, 1995. The

bill is necessary as a response to the Woith v. Cascade County property tax lawsuit that was filed. She commented that a solution was mutually agreed upon between the Attorney General and the Department of Revenue for \$2.5 million. Funding which came from the Attorney General's office has been returned to Cascade County, and now that money has to be returned to them to replace their lost funding. She concluded that the Governor's office is in support of this legislation.

**Proponents' Testimony:**

**Chris Tweeten, Chief Deputy Attorney General, Department of Justice**, testifying in support of HB 16, said the bill is a supplemental appropriation bill. During the 1993 special session an effort was made by the Cascade County delegation to secure money to allow the State to participate in the settlement of a lawsuit brought in Cascade County by a class of property taxpayers. The lawsuit dealt with an allegation that Cascade County residential property had been erroneously assessed with respect to its value and that taxpayers had paid too much property tax during tax years 1990, 1991 and 1992. Litigation had gone to the Montana Supreme Court. The State of Montana's defenses had been litigated, and the Court ruled adversely due to positions taken by the Department of Revenue and sent the case back to the District Court for a trial regarding the amount of refund due the taxpayers in that case. Cascade County legislators felt the case should be settled and urged the 1993 special session to pass an appropriation for the settlement. The legislature did not do that but did put language in HB 2 indicating that if it became necessary for the Department of Justice to advance money for the State's share in the settlement that a supplemental appropriation could be asked for. He stated that the Department of Justice and Attorney General's Office has not been lead counsel in this litigation, but rather attorneys from the Department of Revenue. The Justice Department became involved because of some limitations placed into law by the 1991 legislature regarding an agency's ability to seek supplemental appropriations. In Section 17-7-301 MCA, there was an exception giving the Department of Justice, at the request of the Attorney General, the opportunity to come before the legislature and seek supplemental appropriations to pay costs associated with litigation in which the Department of Justice must provide representation for the state. In 1993, the Department of Justice at the request of the Attorney General's office was made part of the discussions, and Justice agreed if the case was settled and the protective language was placed in HB 2, Justice Department would participate in settlement discussions and advance the needed money to pay the state's share. Then they would ask for a supplemental appropriation. He noted that settlement negotiations progressed following the 1993 special session. The legal staff of the Department of Revenue took the lead role in the negotiations and Department of Justice participated also. A settlement was then reached in the fall of 1994, which settlement has been approved by the District Court. The money has been

taken from the Department of Justice budget and disbursed to Cascade County taxpayers. He concluded that the Department of Justice is now asking for compensation to their budget to allow for financing the settlement. The money advanced was borrowed from the Motor Vehicle Division budget as being the only source to take that amount of money. If HB 16 is not passed and signed by the Governor by the end of April, the Motor Vehicle Division will be out of money.

**Larry Fasbender, representing County of Cascade, Cascade County Coalition and School District 1,** indicated that all the groups he represents were affected by this legislation. There was initial concern that the liability in Cascade County alone may be as high as \$6 million and could escalate beyond that figure, so there was a great deal of interest in settling the lawsuit. He said the Department of Justice graciously took on that risk, if there was a risk that the money would be spent, and a supplemental appropriation needs to be provided to replace that. He urged the committee's support, adding that some real problems will be created if they do not get the supplemental. He noted this occurred as a class action suit which is something the state may not wish to expose itself to in the future. He noted there are ways to prevent this from occurring again, and he would be willing to discuss this with the committee if they desired.

**SENATOR CHRIS CHRISTIAENS, Senate District 23, Cascade County,** testifying as a proponent, noted that last session he was instrumental in urging that the language be put in the HB 2 free conference committee. He said the liability would have been considerably higher than \$1 million that is now due if this would have gone on. He urged favorable consideration of this supplemental bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

**SENATOR LYNCH** questioned our involvement in this issue if most of the property tax went to the school district and the local government.

**Larry Fasbender** said the state levies 101 mills for schools.

When questioned by **SENATOR LYNCH** if that is \$1 million, **Larry Fasbender** said while he did not know the exact amount, it was fairly close to \$1 million when it was worked out. There was concern on the State's part that the level should be that high. The HB 2 free conference committee thought by putting any level of funding in there would encourage them to settle for that amount, and they were able to negotiate it down to \$1 million.

When asked by **SENATOR LYNCH** as to the amount received by Cascade County and School District 1, **Larry Fasbender** said it was \$1.5 million. He noted it was \$2.5 altogether; the school district and taxing jurisdictions in Cascade County came up with \$1.5 million.

**SENATOR LYNCH** asked if they got close to \$6 million from the taxpayers.

**Larry Fasbender** said when the Department of Revenue originally looked at this, their estimate of the over-taxation that occurred in Cascade County went as high as \$6.5 million.

**SENATOR LYNCH** related his understanding that Cascade County took in \$6 million from the taxpayers, but according to the settlement only had to pay \$1.5 million back to them.

**Larry Fasbender** said although that is one way to look at it, it is really more complicated than that. Cascade County did receive some of those services and what would have happened had the assessed values not been so high, the mill levies probably would have been higher. If the \$6.5 million ultimately was used as the number to settle on, they would have had to go back and levy taxes on taxpayers in Cascade County through an emergency levy to pay that. Part of the settlement was that they would not do that. They would get the money from sources that were in reserves or from the state for \$1 million. They did not want it to escalate beyond Cascade County.

In questioning from **SENATOR JENKINS** why it was funded by the Department of Justice rather than the Department of Revenue, **Larry Fasbender** said because of statutory language, there was no other source they could go to for a settlement without an actual appropriation by the legislature. The legislature did not want to make an outright appropriation because that would set the ceiling they would settle on which would be what the people negotiating would come in and ask for. That could only be done by current language allowing the Department of Revenue in a case like this to advance the money out of existing appropriations and then come back and ask for a supplemental. He concluded that is the way the supplemental language is currently written.

**SENATOR JENKINS** remarked that maybe the law should be changed.

When asked by **SENATOR JERGESON** if there are no funds in the Department of Revenue large enough to cover this, **Larry Fasbender** said the way the law was written, before the Department of Revenue could ask for a supplemental, they would have to reduce spending in all possible sources. The Department of Justice had language in their statutes that allowed them to go into their appropriation and make the money available for the settlement without having to first reduce their operations.

**SENATOR JERGESON** noted that the Department of Revenue appears in front of taxation committees, offering their advice on the construction of our tax statutes. Although he understood their defense that they did not have any available ready cash, they share responsibilities for the adoption of a tax bill that taxpayers are able to sue us over.

In answer to a question from **SENATOR BECK** if this is an appropriation out of the general fund, **Chris Tweeten** said it is.

**SENATOR BECK** said there is no unspent balance. The entire \$1 million has been expended from the Department of Justice budget, transferred to Department of Revenue and disbursed to the taxpayers pursuant to the settlement. If there were uncollected tax refunds, under the unclaimed property laws that money would escheat to the state and go to the school trust. It was felt by the Department of Revenue that it should go that way rather than come back to the general fund, and that is why the amendment was put on the bill in the House. He voiced concern that general funds are being expended and questioned why we did not go back into the original funding.

**Chris Tweeten** said although he did not have an answer for that question, he thought the decision was made to construct the bill in this way by the Budget Office.

**REPRESENTATIVE WYATT** said it was her understanding that since these taxes were not paid under protest, there was no fund to get these taxes. She commented that is why **Larry Fasbender** mentioned that the legislature may want to deal with this issue in further legislation.

**SENATOR SWYSGOOD** asked why this wasn't handled as a supplemental rather than a bill.

**Chris Tweeten** said they asked that it be included in the bill that had the supplemental for the State Land fire suppression costs and other areas, but the Budget Office decided that they would make it a free standing bill.

**SENATOR KEATING** asked what the essence of the complaint was and what years the taxes were contested.

**Chris Tweeten** said he had hoped that a representative of the Department of Revenue legal staff would have attended the committee hearing as they are more conversant on the issue than he is. He indicated there were ongoing disputes about the methods used for valuing residential property and the use of sales assessment ratios to adjust the value of residential property from year to year. There was concern whether that was an appropriate method of arriving at the value of a particular parcel of property for tax purposes. He said the contested tax years were 1990, 1991 and 1992.

When asked by **SENATOR SWYSGOOD** what would happen if they did not get this funding, **Chris Tweeten** said they borrowed \$1 million from the Motor Vehicle Division, the largest division in the Department of Justice funded with general fund money, and if the supplemental is not received, the Motor Vehicle Division would be out of money on May 1.

**SENATOR AKLESTAD** asked if \$6.5 million was actually collected.

**Larry Fasbender** said that was the original estimate from the Department of Revenue. When they looked at the sales assessment ratios and how they were applied on residential property in Cascade County, they had originally estimated there was \$6.5 million that they were over-appraised and therefore over-taxed by that amount of money. In the negotiations it was pointed out that even if that were true, services received that would have to be paid for would offset a large portion of that amount, so it was eventually reduced down to an agreed \$2.5 million. It could possibly be said they were overpaid \$6.5 million, but they would have had to raise the mill levies to cover a lot of those services anyway; and when the mill levy went up, it would offset some of the appraised value.

When questioned by **SENATOR AKLESTAD** if the county actually collected \$6.5 million, **Larry Fasbender** said they did.

**SENATOR AKLESTAD** said if the services went up proportionately the extra \$4 million, the county must have made some money on this.

**Larry Fasbender** said a lot of shifts took place. When they ran the sales assessment ratios, there were certain portions of Great Falls where the values were under-assessed. As those values went up, they collected more money from residential property taxpayers and less from some commercial property. The total amount of money they spent for services did not change, but the amount collected from different people within Cascade County was shifted around. In addition, a substantial amount went to the state through the 101 mills because those appraised values were beyond what the court said was legal.

When questioned by **SENATOR AKLESTAD** if the Motor Vehicle Division is the largest budget in the Department of Justice, **Chris Tweeten** said that is where the largest pot of general fund money is. The Highway Patrol may be a larger budget than Motor Vehicle but the Highway Patrol is state special revenue and they did not feel that money could be diverted for this settlement. He added that they were faced with difficult bookkeeping in their attempt to get the funds under any circumstances because of the timing.

In response to a question from **SENATOR AKLESTAD** relative to reversions in 1994, **Chris Tweeten** said he was sure they had reversions but he did not know the amount. When questioned as to projected reversions for 1995, **Chris Tweeten** said he could obtain that information for the committee.

SENATOR JENKINS questioned if there were quite a number of people protesting the taxes during that time and if there was a settlement made prior to the lawsuit.

Chris Tweeten said there were taxes paid under protest by members of this class, and the protest fund was part of the settlement paid out in the lawsuit. Taxpayers paying under protest received their refunds and their protest fund was used to fund the settlement from the county side.

When asked by SENATOR JENKINS if they used their protest money to help settle those that sued, Chris Tweeten said the county looked at this matter in terms of having to come up with \$1.5 million from the City of Great Falls, from the school districts and from Cascade County. They realized that they only have a certain amount of money as well as a protest fund that they will lump together to add up to \$1.5 million, which is the way they came up with this. He was not sure that they went back and did it taxpayer by taxpayer.

Closing by Sponsor:


REPRESENTATIVE WYATT closed on HB 16.

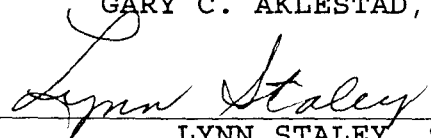
EXECUTIVE ACTION ON HB 16

Motion/Vote: SENATOR HARDING MOVED THAT HB 16 BE CONCURRED IN.  
Motion CARRIED on a roll call vote, 9-6.

ADJOURNMENT

Adjournment: 6:25 P.M.

  
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GARY C. AKLESTAD, Chairman

  
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LYNN STALEY, Secretary

MONTANA SENATE  
1995 LEGISLATURE  
FINANCE AND CLAIMS COMMITTEE

ROLL CALL

DATE

2/1/95

NAME	PRESENT	ABSENT	EXCUSED
SWYSGOOD, CHUCK	✓		
BURNETT, JIM	✓		
MOHL, ARNIE	✓		
JERGESON, GREG	✓		
FRANKLIN, EVE	✓		
TVEIT, LARRY	✓		
JENKINS, LOREN	✓		
JACOBSON, JUDY	✓		
LYNCH, J.D.	✓		
HARDING, ETHEL	✓		
TOEWS, DARYL	✓		
CHRISTIAENS, B.F. "CHRIS"	✓		
WATERMAN, MIGNON	✓		
KEATING, TOM - VICE CHAIRMAN	✓		
BECK, TOM	✓		
AKLESTAD, GARY - CHAIRMAN	✓		





SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 2, 1995

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration HB 16 (third reading copy -- blue), respectfully report that HB 16 be concurred in.

Signed:   
Senator Gary Aklestad, Chair

 Amd. Coord.  
 Sec. of Senate

  
Senator Carrying Bill

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MONTANA SENATE  
1995 LEGISLATURE  
FINANCE AND CLAIMS COMMITTEE  
ROLL CALL VOTE

DATE 2/1/95 BILL NO. HB 16 NUMBER \_\_\_\_\_

MOTION: Sen Jenkins motion that  
HB 16 Be Concurred In.  
Carried

NAME	AYE	NO
SWYSGOOD, CHUCK		✓
BURNETT, JIM		✓
MOHL, ARNIE <i>excused</i>		
JERGESON, GREG	✓	
FRANKLIN, EVE	✓	
TVEIT, LARRY		✓
JENKINS, LOREN	✓	
JACOBSON, JUDY	✓	
LYNCH, J.D.	✓	
HARDING, ETHEL	✓	
TOEWS, DARYL		✓
CHRISTIAENS, B.F. "CHRIS"	✓	
WATERMAN, MIGNON	✓	
KEATING, TOM - VICE CHAIRMAN	✓	
BECK, TOM		✓
AKLESTAD, GARY - CHAIRMAN		✓

DATE February 1, 1995

SENATE COMMITTEE ON Finance & Claims

BILLS BEING HEARD TODAY: H/B. 16 Rep. Wyatt

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Check One

Name	Representing	Bill No.	Support	Oppose
Chris Tweeten	Dept of Justice	HB/6	<input checked="" type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY