

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN CHASE HIBBARD**, on February 7, 1995,
at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Chase Hibbard, Chairman (R)
Rep. Marian W. Hanson, Vice Chairman (Majority) (R)
Rep. Robert R. "Bob" Ream, Vice Chairman (Minority) (D)
Rep. Peggy Arnott (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Rick Jore (R)
Rep. Judy Murdock (R)
Rep. Thomas E. Nelson (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. John "Sam" Rose (R)
Rep. William M. "Bill" Ryan (D)
Rep. Roger Somerville (R)
Rep. Robert R. Story, Jr. (R)
Rep. Emily Swanson (D)
Rep. Jack Wells (R)
Rep. Kenneth Wennemar (D)

Members Excused:

Rep. John C. Bohlinger (R)

Members Absent: None.

Staff Present: Lee Heiman, Legislative Council
Donna Grace, Committee Secretary

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

Committee Business Summary:

Hearing: HB 149

Executive Action: HB 156 - Discussion Only
HB 343 - Discussion and Amendments Only

{Tape: 1; Side: A.}

HEARING ON HB 149

Opening Statement by Sponsor:

REP. JOHN MERCER, House District 74, Polson, said he was the chief sponsor of HB 149. He explained that small businesses that provide gambling are being prohibited from operating because they are on the Flathead Indian Reservation and the federal government passed a law that said there would be no gambling on a reservation unless there is an agreement between the state and the tribe. This came about without any notice and it has created a tremendous financial hardship on these business owners. The bill would make up for the funds that have been lost to the cities and counties as well as the private business owners because of something they had no control over. The bill takes money from the revenue that would be distributed to counties and cities all over the state, and before the distribution is made, pays the money that was lost to cities and counties that are on the Reservation. The bill also provides for a tax credit to the operators for a portion of the revenue they have lost because of their inability to operate. The tax credit would be paid from gambling revenue that goes into the general fund. REP. MERCER said he was not a supporter of gambling in Montana and this bill is not a popular one throughout the state. He said he was supporting the bill on the basic concept of fairness. Because of an action by the federal government, people in Montana are prohibited from operating their businesses through no fault of their own while everyone else in Montana in the same business is allowed to profit. REP. MERCER said this bill is a last resort as they have appealed to the U.S. Congress, had meetings with the Indian Affairs Committee of the U.S. Senate, they have been to the courts, to the tribe, met with the Governor and the Attorney General and no help has been provided. REP. MERCER said he would appreciate the Committee's positive consideration of this bill.

Proponents' Testimony:

John W. Glueckert, Mayor, City of Polson, testified that the City of Polson was in support of HB 149. The bill would provide financial assistance to certain counties, cities and towns as well as certain individuals that have suffered financial losses as a result of the failure of the State of Montana and certain Indian tribes to enter into agreements under the Federal Indian Gaming Regulatory Act. He pointed out that support of the bill was not to indicate that the city was choosing sides in the impasse between the state and the tribes. Both sides should do more to reach agreement but the city is powerless and frustrated by the lack of progress. Passage of HB 149 would provide a positive impact on the City of Polson and would represent positive action in a situation where the federal government has

not allowed them to participate in the bargaining. When gaming was discontinued in Polson, the city lost \$102,000 per year, representing 14.3% of its annual operating budget. Fifteen businesses in the City of Polson are affected by the loss of revenue and two have already closed. The continued loss of revenue will result in the closure of more businesses with a resultant loss of jobs. **Mr. Glueckert** urged the Committee's support of HB 149.

Alec Hanson, Montana League of Cities and Towns, rose in support of the bill. He said this issue was discussed in a meeting of the League recently and it was noted that the same situation could occur anywhere in Montana. Gambling revenues are the difference between a balanced budget and a financial catastrophe. The League supports a contribution of funds from gambling revenues to less fortunate cities and towns.

Shawnee Gilroy, representing the Citizens of Lake County, Polson, advised that since passage of the Federal Indian Gaming Regulatory Act, her family has faced financial and psychological devastation. Prior to the Act, they paid nearly \$45,000 per year in state, federal and local taxes. Now their business is closed and they are losing their home. They were employers who furnished 18 jobs, paid their bills and taxes, and contributed to the community.

Mike Hutchin, Lake County Commissioner, said that 38 businesses in Lake County have suffered financially because of the action of the federal government. Lake County and Ronan have also lost revenue used to provide services to local taxpayers. The economy in the entire area has been affected. The bill would help the area survive until a compact agreement is reached.

Bob Pierce, Lake County Tavern Association, testified that he had purchased a business in 1991 and through hard work the business flourished. On June 5, 1992, he received a letter from the Department of Justice, Gaming Division, advising that as of that moment gambling was illegal on the Flathead Reservation. He provided a fact sheet to the Committee which provided a history of the gaming shut down and the resulting effects on the gaming industry. EXHIBIT 1. He said that 125 jobs have been lost and there has been a net income loss of \$1,799,000. In addition, capital purchases have been deferred and the money generated by these businesses would have resulted in over a million dollars that would have been spent in the community. He said there has also been a drastic reduction of tourism in the area as a result of the loss of gambling. He asked for the Committee's support on HB 149.

Kevin Engebretson, Port Polson Inn, said he had experienced a 16% decrease in revenues attributed to the lack of people coming to the area to play. He encouraged the Committee to take into consideration the number of people affected and offer them some relief.

Mark Staples, Montana Tavern Association, testified in support of the bill and used this situation as an example to illustrate the importance of the revenue received from gambling to small towns and communities. These legitimate small businesses have contributed over \$80 million in tax revenues to the State of Montana over the past three years. He said the Federal Indian Gaming Regulatory Act had been studied before the National Attorney Generals' Association, The National Governors' Conference, six federal district courts, the Congress, and is now before the Supreme Court. He urged the Committee to not waste its time on debating the issue that brought about the situation. The Committee's decision should be based on the results of that legislation and how it has affected cities and counties on the Flathead Reservation. He said it was not easy for these people to come before the Committee and ask for help. He asked the Committee to allow the other cities, counties and towns in Montana to help their neighbors.

{Tape: 1; Side: B.}

Dennis Asper, South Shore Lounge, said he had records to show it had cost \$30,000 from his own pocket to stay in business and they won't be able to do that much longer. He asked the Committee to support this bill.

Larry Akey, Montana Coin Machine Operators Association, advised that the members of the Association are small businesses that provide coin-operated devices, including video gaming machines, to Montana bars and taverns. This is an issue of local governments and businesses being trapped by larger forces. Two sovereign governmental agencies are trying to reach a negotiated settlement on a very complex issue and, unfortunately, some small businesses and local governments have become pawns in the game. The bill is a good neighbor bill. It is the position of the Montana Coin Machine Operators Association that the bill be extended to other gaming-related businesses such as the coin machine route operators, and he offered to discuss amendments with Committee members.

Calvin Brown, the Idle Spur, Dayton, identified himself as one of the small businesses that had been affected by the federal legislation. He explained that the community of Lakeside, which is eleven miles from Dayton, is flourishing because of the business that has left the Reservation. He said he has lost three employees and he realizes that the big problem must be settled elsewhere; however, this legislation would help until the major problem has been settled.

Jim Jakob, Big Sky Amusement Games, said he represented one of the vending companies referenced by Mr. Akey. He said he had serviced 12 locations on the Reservation when gaming was permitted and had a first hand knowledge of the impact.

John Finnell said he was a retired contractor living in Polson. He reported that he could see his friends and neighbors suffering from the devastation of losing jobs and he asked the Committee to support the bill.

Tom Jones, Polson City Council, and owner of a bar and restaurant, emphasized the support the community of Polson has shown for HB 149 and encouraged the Committee to support the bill.

Rod Smart, Second Chance Saloon, Ronan, said he has a very small business with only four machines and, because his business is paid for, he has been able to operate so far even though he is not making any money. Now he must let some of his employees go so the business can survive.

Opponents' Testimony:

Ellen Engstedt, representing Don't Gamble With the Future, spoke in opposition to the bill. Her prepared testimony is attached as EXHIBIT 2.

REP. GEORGE HEAVY RUNNER, House District 85, Browning, said he could recognize and sympathize with the situation on the Flathead Reservation. However, the fundamental issue is that there is always disagreement between the tribes and the state. The tribes want recognition that they exist, have legal and historical rights to control their own destiny, have limited sovereignty and the right to find economic avenues. Gambling may not be the best avenue to look at but, nevertheless, with the high unemployment rates and socio-economic problems, they have to grasp at what is available. He said he thought a lot of the hysteria could be attributed to watching a 60-Minute special. If every tribe has the right to gambling, it could open up a multi-million dollar casino, but he thought that was just a fairy tale in Montana. If anyone is doing any expanding, it would be the Flathead or Blackfeet because of their proximity to Glacier National Park and the tourist population. The issue is one of fairness. He said that Chairman Old Person had recently addressed the Legislature, and had stated that the tribes recognize the state's loss and he asked the state to recognize theirs and that is the fundamental issue. The tavern owners have suffered, but the Indian owners are suffering, too. The tribes are saying that if there is to be an agreement, it should be on a level playing field. The impasse is not on the tribe's side, it is on the state's side. He pointed out that the Federal Indian Regulatory Gambling Act did not come about overnight as was claimed by the proponents to this bill. He said his tribe had entered into the court in an attempt to establish a compact with the state. The Montana judges failed to recognize that the tribes have certain rights. It is a personal tragedy on both sides and it is up to this legislative body to encourage the parties on both levels to treat each other fairly and get moving on the main issue instead of letting people on the fringes suffer.

Don Horne, Fort Belknap Tribe, said that Rep. Mercer had said that Polson was the only place in the state without gambling and that is not true because Fort Belknap does not have a compact with the State of Montana and they have also been without gambling since April, 1993. They lose about \$500,000 a year from gaming revenue and there is no relief in sight. This bill will undermine the Act because it doesn't provide relief for both sides.

Questions From Committee Members and Responses:

REP. ELLIOTT said that in reading the bill, he did not see any provision for terminating the statute once an agreement had been reached.

{Tape: 2; Side: A.}

REP. MERCER said there was a provision in the bill. **REP. ELLIOTT** then asked about the \$60,000 appropriation in the description of the bill. **REP. MERCER** replied that 2/3 of the revenue lost by the cities and towns would be paid by their fellow cities and towns from the gambling tax and 1/3 of the loss would come from the general fund. The \$60,000 is the money that goes to the cities and towns on the reservation from money that would otherwise be distributed to other counties around the state.

REP. ELLIOTT asked what the status of negotiations with the tribes was at the present time. **CHAIRMAN HIBBARD** said the focus of the Committee was not on the status of the negotiations because that was a problem beyond the scope of the Committee, however, he allowed the question as a basis for understanding the situation that exists on the Flathead Reservation. **Janet Jessup, Administrator of the Gambling Control Division**, said the state is attempting to continue the negotiations and they have correspondence from the tribe indicating that they anticipate litigation. The Division has asked them to reconsider. They are in litigation with the Salish-Kootenai Tribe and some additional litigation is pending from the Flathead operators. She said the two basic issues are sovereignty and the scope and kinds of gaming that are allowed. Only those legal in Montana can be negotiated in the compact and that is where the major issue lies. They are no closer to a resolution and some of the issues are on their way to the Supreme Court. They have no idea how long it will take.

REP. ELLIOTT asked how many other tribes have not negotiated an agreement. **Ms. Jessup** said the state does not have an agreement with the Blackfeet Tribe or the Fort Belknap Tribe.

REP. SWANSON asked if the loss that was discussed in the bill was from the time gambling was shut down. **REP. MERCER** said the bill will cover future losses beginning with this year. Each quarter the local governments would get the amount of money they would have received if the machines were still operating.

REP. SWANSON asked if any consideration had been given to including the losses of the coin machine operators. **REP. MERCER** said he would leave that up to the Committee but he didn't think it should be extended to the route operators because they could move to other areas so the impact would be temporary.

REP. FUCHS said it sounded like these people had been caught in political crossfire. He asked where the Indian Gaming Regulatory Act fit in. **Ms. Jessup** explained that the Act provides the outline of the negotiations process between the state and the tribes. It lays out the structure for conduct of Class III gaming on reservations and requires the state and the tribes to negotiate a compact which leaves Congress out of the actual negotiations. The Act recognizes the tribes' sovereignty but requires negotiation -- and that is what has produced the dilemma. Under federal law, the state has no jurisdiction over Class I and Class II gambling.

REP. WENNEMAR asked if the legislation would apply to tribal members or only to the state licensees. **REP. MERCER** said it would only apply to the state licensees; however, if it was the Committee's desire to expand it to tribal members the cost would increase but would be something the Committee could explore. The logic was that the state licensees are the ones who have paid taxes statewide. The tribal operators do not pay for licenses or pay taxes.

{Tape: 2; Side: B.}

REP. REAM asked what the positive impact would be for the local government entities. **REP. MERCER** said he could obtain that information prior to the time the Committee takes executive action on the bill.

REP. REAM said he heard in the testimony that Polson depended on gaming revenue for 14% of its budget. He asked if the bill would bring them back up to the same dollar level. **REP. MERCER** said it would be the same number of dollars but it would not be 14%.

REP. SWANSON asked **Ms. Jessup** if she thought this legislation might undermine any settlement between the state and the tribes. **Ms. Jessup** said that the state has pledged to continue to negotiate to achieve an interim compact at the least, and they will continue to do that regardless of pending litigation or this legislation.

REP. STORY inquired about the cost of administration of this program and also asked why the fiscal note was not signed. **REP. MERCER** said at the time the fiscal note was prepared he did not agree with the figures. It was later explained to him and he now agrees with it. **REP. MERCER** said he assumed there would be some administrative cost. **Rick Ask, Gambling Control Division**, advised that it would take three or four hours of programming

time on the computer and that would be negligible so no costs were included in the fiscal note.

REP. JORE asked if, prior to the shut down of gambling on the reservation, tribal and non-tribal operators were all treated the same as far as payout limits and numbers of machines were concerned. **Mr. Pierce** said the tribal members were not regulated by the state and the payout regulations and number of machines were at the discretion of the tribal operator.

REP. RYAN asked if the bill would cover operators on other reservations not having a compact in place. **REP. MERCER** said he did not know if there were non-tribal operators on other reservations. If there are, they would be covered by the bill.

REP. REAM asked Mr. Ask if the impact shown on the fiscal note was for the Flathead Reservation only. **Mr. Ask** said the only reservation affected is the Flathead.

REP. REAM said the hearing had brought up a number of interesting points; however, it was troubling to him because he has not been a supporter of gambling. This bill has brought to light the addiction of local governments to gambling revenue. He pointed out that if people are leaving the reservations to go elsewhere to gamble, it indicates another addiction. **REP. REAM** questioned the wisdom of using general fund money to pay for an inequity brought about by addictive behavior. As a taxpayer, he said he resented subsidizing gambling in this manner. **REP. MERCER** explained that 1/3 of the gambling tax is put into the general fund so the income tax credit would actually be paid from gambling revenue which had been deposited in the general fund. The difficult thing is that it is hard to separate gambling from the small business owner's perspective. This is an area where a small business, by federal action, has been held to be illegal while everyone else in Montana is flourishing from the same business, and spending the money to operate their communities and furnish jobs.

REP. REAM said that Rep. Mercer had made a good point; however, according to the fiscal note, the one-third that goes back to the state from the video gaming tax does go into the general fund.

REP. MERCER again explained how the distribution would be made.

REP. HARPER asked the individuals from the Flathead to furnish the Committee with specific examples of where jobs have been lost. **Ms. Gilroy** said she would be pleased to provide that information.

REP. STORY inquired if the tax credit would be transferable in the event a business had been sold. **REP. MERCER** said he understood that it was. Following up, **REP. STORY** asked if the purpose of the tax was to compensate for the loss of the gambling revenue. **REP. MERCER** agreed that it was the purpose. **REP. STORY** said he thought that some of the businesses had already been sold

and had been discounted because of the loss of the machines and they would be getting a credit for something they had never owned. **REP. MERCER** said he could see the possibility that if someone sold a business in desperation, a windfall could be received by someone who bought it at a discount. He suggested that the Committee amend the bill to take care of that possibility.

Closing by Sponsor:

REP. MERCER thanked the Committee on behalf of the people from his community who had made a long trip to Helena for the hearing. He pointed out that the bill is the last resort for these people on this issue. He said the large gaming interests in eastern and southwestern states had the federal legislation pushed through without giving any thought to how it would affect small operators. The resulting conflict between the state and the tribes, is based on the premise that the state does not want expanded gambling on the reservations. The tribes position is if the state can decide how much gambling it wants, the tribes if they are sovereign, should be able to determine how much gambling they want. The state's position is that if there are large gambling casinos on the Flathead Reservation, it would be detrimental to the state operators who could not provide the same level of gambling. The conflict was not created by the people who live on the reservation. **REP. MERCER** said that the arguments against the bill proposed by Don't Gamble with the Future were in opposition to gambling and that would have to be dealt with in another bill because of the economic impact that would create. Gambling is legal in Montana and it is no different from any other business, except in this case, a few businesses are being prevented from operating because of action of the federal government. If the state starts picking up a part of the cost, there will be an added incentive for settlement.

{Tape: 3; Side: A.}

EXECUTIVE ACTION ON HB 156

CHAIRMAN HIBBARD asked the DOR to explain the fiscal note on HB 156.

Ms. Paynter said the bill presented a number of problems with definitions and how they were used in the bill. The way the bill is written there are a number of questions about how much property would be left to tax.

REP. REAM asked if Ms. Paynter had reviewed the proposed amendments. She said the amendments would add an entire new element to the bill, a different concept from the original bill. Her understanding was that the concept was to exempt new equipment for the first two years after purchase. EXHIBIT 3.

REP. ELLIOTT asked if the impact of the bill, as well as the amendments, would fall on county governments. **Ms. Paynter** said the bulk of it would be on schools, and then on county governments. **REP. ELLIOTT** then asked if it would be possible for the counties to provide information about the fiscal impact. **Ms. Paynter** said they could not provide any further information beyond what the DOR has provided. She emphasized that the way the bill is written, it would be impossible to cost it out.

REP. ELLIOTT said he was prepared to make a motion to table the bill. He said the bill sounds like a good idea but it would be fiscally irresponsible to pass a bill out of the Taxation Committee without any idea of the fiscal impact on state and local governments.

REP. HANSON said the DOR sends out a form which shows exactly what an individual has listed for personal property, the year it was acquired, and the cost. She said most old junk machinery that is under the \$1,000 value, has been written off and this bill wouldn't create much of a difference in local taxing jurisdictions.

REP. RANEY said he could see where there could be a significant loss to local governments. Using his own business as an example, he said he thought everything in his store would become exempt. He did like the bill because of the paperwork reduction it would provide for small businesses.

REP. SOMERVILLE agreed with Rep. Raney. He said this tax creates "crooks" in Montana because people are not honestly reporting their personal property. If the tax rate were reduced, taxpayers might be more honest.

REP. WENNEMAR presented a response to a letter he had sent to county commissioners in his district in regard to HB 156 which indicates there would be an impact on Sanders County. EXHIBIT 4.

REP. ELLIOTT pointed out that this would include sophisticated equipment such as computers. The average mill levy in the state is 387 mills and for every \$1,000 dropped off the tax rolls, a local taxing jurisdiction loses \$34.83. Therefore, the cost may be significant. He cautioned that any changes would also change the rate paid by the railroad and the amount could be significant if the Bergsagel amendments are added.

REP. SWANSON asked for an explanation of the Bergsagel amendments and whether they would change the title of the bill. **Mr. Heiman** said the Constitution requires that a bill cannot be changed during the course of passage to have a different purpose and the title of the bill must reflect what is within the bill. The Bergsagel amendment has to do with taxation classification and would not alter or change the bill so that it totally changes in the course of passage. Whether it fits within the title is not

germane; what is germane is whether it totally changes the concept of the bill and **Mr. Heiman** did not believe it did because the bill still relates to the taxation of class eight property. If it is constitutionally within the scope of the bill, the title can be changed to reflect what the bill does.

Motion:

REP. RANEY MOVED THAT HB 156 DO PASS.

Discussion:

REP. RANEY proposed an amendment that would simplify the language on page 2, sub-section 3, line 3. **Ms. Paynter** said it was important to include "acquired by the taxpayer at a market value in excess of \$1,000" because it provides a definition for the DOR to use in setting rules.

{Tape: 3; Side: B.}

Mr. Robinson commented that "according to the rules adopted by the department" also should be included to make sure everyone understands what the value means. At the present a depreciation factor is applied to the property and whenever the term "value" is used it must be narrowly defined. The language makes it clear that it is the department that makes the decision.

REP. STORY said he would speak against the amendment because it would change what the sponsor was trying to accomplish with the bill. He said the bill does not exempt items that cost under \$1,000 when purchased. The amendment now says the item had to cost over \$1,000 and be depreciated down. Most of the class eight equipment is fairly substantial and it would stay on the tax roles until the depreciation schedule gets below \$1,000.

REP. HARPER addressed the bill in general and said he suspected that the Committee would be considering a number of other bills dealing with this same issue. He suggested that a sub-committee might be named to make recommendations to the Committee on the different policy questions relating to class eight property.

CHAIRMAN HIBBARD thanked Rep. Harper for his suggestion. In light of the other tax reform measures the Committee will be hearing, this bill "muddies" the issue because the impact, although unknown, would be substantial. He suggested holding HB 156 until later in the session to see what else develops.

REP. RANEY withdrew both of his proposed amendments.

REP. ROSE said he agreed with Rep. Harper and felt the bill should be considered at a later date.

CHAIRMAN HIBBARD announced that further action on HB 156 would be postponed until a later date.

EXECUTIVE ACTION ON HB 343

CHAIRMAN HIBBARD advised that the fiscal note on HB 343 was inaccurate. If the amendments to this bill are adopted, a new fiscal note can be requested. The DOR also has a concern about limiting the exemption to in-state production. He suggested that the Committee take action on the amendments and, if they pass, a new fiscal note could be obtained prior to taking final action on the bill.

Motion:

REP. HANSON MOVED THAT HB 343 DO PASS.

Discussion:

Mr. Heiman distributed copies of amendments including the Holland amendments and the clarification requested by the DOR that requires that the facility receiving the exemption must be located within the state. EXHIBIT 5.


Motion/Vote:

REP. HANSON MOVED THAT THE AMENDMENTS TO HB 343 DO PASS. The motion passed 13 - 4.

CHAIRMAN HIBBARD announced that executive action on this bill would continue when the revised fiscal note is received.

ADJOURNMENT

Adjournment: 11:15 A.M.



CHASE HIBBARD, Chairman



DONNA GRACE, Secretary

CH/dg

HOUSE OF REPRESENTATIVES

Taxation

ROLL CALL

DATE Feb. 7, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Chase Hibbard, Chairman	✓		
Rep. Marian Hanson, Vice Chairman, Majority	✓		
Rep. Bob Ream, Vice Chairman, Minority	✓		
Rep. Peggy Arnott	✓		
Rep. John Bohlinger			✓
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Rick Jore	✓		
Rep. Judy Rice Murdock	✓		
Rep. Tom Nelson	✓		
Rep. Scott Orr	✓		
Rep. Bob Raney	✓		
Rep. Sam Rose	✓		
Rep. Bill Ryan	✓		
Rep. Roger Somerville	✓		
Rep. Robert Story	✓		
Rep. Emily Swanson	✓		
Rep. Jack Wells	✓		
Rep. Ken Wennemar	✓		

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EXHIBIT 1
DATE 2/7/95
HB 149

BACKGROUND DATA
IN SUPPORT OF HB-149

prepared by:
Bob Pierce-Lake County Tavern Association

for

REP. CHASE HIBBARD, CHAIRMAN
AND MEMBERS OF
HOUSE COMMITTEE ON TAXATION
2-7-95

TESTIMONY - HOUSE TAXATION COMMITTEE - HB 149

Mr. Chairman and members of the Committee:

For the record, my name is Ellen Engstedt and I represent Don't Gamble With The Future, a statewide organization opposed to the expansion of gambling and in favor of stronger regulation of the gambling currently legal in Montana. Our membership is comprised mostly of small business folks and their families.

With respect to Rep. Mercer, Don't Gamble With The Future opposes HB 149.

Business conducted on Indian reservations is under a different set of rules than it might be outside of a reservation. It becomes a choice and business decision of any business owner to decide whether to establish a given enterprise on a reservation. There may be benefits to doing business on a reservation and there may be problems as a non-tribal member. That is a conscious decision and choice made by individuals.

The tavern owners who are located on Indian reservations made a conscious business decision to establish their operations in those locations. Perhaps they were bar owners who, when video gambling machines became legal, made a business decision to add that activity to their existing operations. Or, perhaps they saw an opportunity to open a bar and gambling business on the reservation at that time. The point is those owners made a business decision to locate on a reservation.

Members of my organization have made conscious business decisions many times. Sometimes those decisions have been

profitable and sometimes they have not, but they have been decisions made by people who accept the outcome and responsibility for their own actions. Those folks have not gone to the state or other counties or other citizens and asked that someone else subsidize their business choices. There are risks in any business venture. Rules change along the way and sometimes the rules impose hardship.

I do not recall in my years of being around the Legislature that other businesses were given tax credits to subsidize choices. There are instances of tax incentives which were offered to bring new businesses into a community or the state at a lower tax rate with the understanding that over time those tax rates would increase.

I think of the small businesses that closed when ARCO left Butte, when the smelter stopped in Anaconda, when the oil boom ceased and businesses in small communities all across Montana closed. It happened because of decisions made by corporate America and dictated by the world market on minerals and oil. There was no bail out bill for those folks. They had no control over what happened to their businesses in their communities. They were told life changes and they needed to be responsible for themselves. With some creativity real economic development alternatives could be explored for the communities and individuals affected by the lack of negotiation and compacting.

HB 149 appears to give to a county in which gambling has been shut down by lack of negotiation and compact between a tribe and the state the amount of lost revenue it might have made had the activity been conducted. That's equivalent to saying I might make the same amount of money in 1995 being self-employed as I did in 1994 when I worked for the State of Montana. There is no guarantee in this life that each year's income equates to the last year's income and if it does not, the rest of Montana's taxpayers are responsible. Even if the argument of unemployment compensation could be used to say that in some cases Montana's taxpayers do help out, unemployment runs out in 13 weeks. There is no end in sight with HB 149.

HB 149, new section 3, also gives a tax credit equal to 30 percent of the gross income from all machines taken out of service to the taxpayer of the license who sells alcoholic beverages on the premises for which a permit had been issued to operate video gambling machines. With the sometimes complicated system of permitting of gambling machines, there is, to me at least, a question of who is the taxpayer, who is the owner, who is the operator, who is the vendor, and who gets the credit. Everybody on a license...in many cases there are several individuals on a license.

There are members of Don't Gamble With The Future who could have used such an opportunity when they watched their businesses slipping because of the competition for disposal income wherein

that income is being spent on gambling instead of shoes, movies, or furniture. If the State of Montana is going to get into the habit of handing out tax credits, one of my members suggested a tax credit for all of the small restaurants across Montana whose businesses have faltered because they can't give food away the way casinos can.

Those same members are already grappling with the concept of having to give a tax credit for gambling machine owners to put in place a dial-up system of monitoring gambling machines when my small business people routinely face and pay for expenses imposed upon them by a variety of sources. They resent subsidizing the gambling industry in any form and to them HB 149 is repugnant.

The Montana State Legislature is the policy setting body of government. HB 149 represents poor tax policy for the majority of the citizens of the State of Montana and I encourage Committee members to just vote no.

Thank you for your time and attention.

Amendments to House Bill No. 156
First Reading Copy

Requested by Rep. Bergsagel
For the Committee on Taxation

Prepared by Lee Heiman
January 25, 1995

1. Title, line 6.

Following: "PURPOSES;"

Insert: "PROVIDING THAT ~~NEW CLASS EIGHT~~ PROPERTY IS EXEMPT FROM
TAXATION FOR 2 YEARS;"

2. Title, line 6.

Strike: "SECTION"

Insert: "SECTIONS 15-6-201 AND"

3. Title, line 7.

Following: line 6

Insert: "EFFECTIVE DATES AND"

4. Page 2, line 26.

Insert: "NEW SECTION. Section 2. New personal property --
exempt from taxation for two years. (1) New property that is
classified as class eight property under 15-6-138 is exempt from
taxation in the 2 tax years following the year in which it was
acquired.

(2)(a) For the purposes of this section, "new property"
means property that:

(i) has not previously been operated for consideration or
owned for any purpose other than as inventory;

(ii) has not previously been rented or leased by any person,
firm, corporation, or association; or

(iii) was acquired from a manufacturer, dealer,
distributor, or importer of the property.

(b) Property used for an insubstantial period of time for
the purposes of demonstrating the property is considered new
property.

(c) Property upon which ad valorem taxes, other than ad
valorem taxes on inventory, have been paid in this state or in
another state or province is not new property.

(3) To qualify for the elimination of market value under
this section, the owner of the property shall make an affidavit
to the department, on a form provided by the department, setting
forth:

(a) a statement that the property is new class eight
property that satisfies the provisions of subsection (2);

(b) a detailed description and, if possible, identification
of the property, such as a serial number; and

(c) the location of the property.

Section 3. 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 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) all class eight property . This exemption applies only for the 2 tax years following the year in which the property was acquired, as provided in [section 2].

(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."

NEW SECTION. **Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [section 2].

NEW SECTION. **Section 5. Effective dates.** (1) [Sections 2 and 3] and this section are effective on passage and approval.

(2) [Sections 1, 4, and 5] are effective October 1, 1995."

Renumber: subsequent section

Sanders County

State of Montana

EXHIBIT 4DATE 2/7/95HB 156

January 31, 1995

Ken Wennemar, Representative
House District 71
Capitol Building
Helena, MT 59620-0400

Post-It Fax Note - 7671		Date <u>1/31/95</u>	# of pages <u>1</u>
To <u>KEN WENNEMAR</u>		From <u>Sanders County</u>	
Co./Dept. <u>REPRESENTATIVE</u>		Co. <u>COMMISSIONERS</u>	
Phone #		Phone #	
Fax # <u>444-4512</u>		Fax # <u>827-4388</u>	

Honorable Representative Wennemar:

This letter is in response to your faxed letter of January 27, 1995, regarding the effects of HB 156. Our responses are as follows:

1. Do you have a budget for expected taxes to be collected on new personal property?
Yes, we take from last years collections.
2. Do you budget on the past trends?
Yes.
3. Are you able to calculate the loss to Sanders County for the \$1,000.00 cut-off? No. A \$500.00 cut-off? No.
Our Assessor uses \$100.00 cut-off at present.
4. Will this adversely affect the County budget?
Yes
5. Will this help the County to gain development?
It could help development but would adversely affect the County budget.

We hope this will help you when it comes time to vote.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
Sanders County, Montana

Cherie Hooten
Cherie Hooten, Chairman

Steve Wheat
Steve Wheat, Member

Carol Brooker
Carol Brooker, Member

SANDERS COUNTY TREASURER
Sanders County, Montana

Debra H. Wilk

Amendments to House Bill No. 343
First Reading Copy

EXHIBIT 5
DATE 2/7/95
HB 343

Requested by Rep. Holland / DOR
For the Committee on Taxation

Prepared by Lee Heiman
February 6, 1995

1. Page 2, line 9.
Strike: "process or"
Insert: "processing"
Following: the second "facility"
Insert: "located at the site of the mine"
Following: "that"
Insert: "produces a solid, liquid, or gaseous fuel from coal as
its primary product and thermally or chemically"
2. Page 2, line 11.
Following: "value"
Insert: "per pound"
3. Page 3.
Following: line 4
Insert: "(11) "Feedstock" means raw coal processed by a coal
enhancement facility."
Renumber: subsequent subsections
4. Page 4, line 26.
Strike: "process or"
Insert: "processing"
Following: the second "facility"
Insert: "located at the site of the mine"
Following: "that"
Insert: "produces a solid, liquid, or gaseous fuel from coal as
its primary product and thermally or chemically"
5. Page 4, line 28.
Following: "value"
Insert: "per pound"
6. Page 5.
Following: line 18
Insert: "(10) "Feedstock" means raw coal processed by a coal
enhancement facility."
Renumber: subsequent subsections
7. Page 7, line 11.
Strike: "A"
Insert: "In addition to the exemption described in subsection
(4), a"
8. Page 7, line 12.
Following: "produces"
Insert: "as feedstock"

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. HB 149
 DATE 2/7/95 SPONSOR(S) Rep. Mercer

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Thomas M. Jones	City of Polson & Member of Lake Co Tavern	149		X
John W. Glueckert	Mayor City of Polson	149		X
Dennis Asper	South Shore Lounge	149		X
Karin Engebretsen	Port Polson Inn. ^{LCTA}	149		X
Calvin Brown	The Idle Spur Dayton	149		X
John Finnell	INTERESTED CITIZEN	149		X
Rob Smart	2 nd Chance Saloon	149		X
Bob Pierce	Lake County Tavern Assoc	149		X
ELLEN ENGSTEDT	Don't Gamble With The Future	149	X	
Mike Hutchin	LAKE COUNTY	149		X
LARRY ALET	MT COIN MACHINE OPERATORS ASSOC	149		AMEND & SUPPORT
Alice Hanson	MLCCF	149		X
Jim JAKOB	BIG SKY AMUSEMENT GAMES	149		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

