

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN CHASE HIBBARD**, on January 20, 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. John C. Bohlinger (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: None.

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 188
HB 164
SB 45
SB 54

Executive Action: SB 54 - Concurred In
HB 182 - Tabled

{Tape: 1; Side: A .}

HEARING ON HB 188

Opening Statement by Sponsor:

REP. BILL WISEMAN, House District 41, Great Falls, explained that HB 188 would provide for funding District Court costs. In a brief review of court funding, he said that the legislature passed a temporary .5% optional tax on light vehicles that counties could use to fund District Courts. In 1991 the legislature made the tax permanent, but they placed a June 30, 1993 sunset on the temporary tax. In 1993 the sunset was extended to June 30, 1995. Additionally, in 1993 the Legislature established an interim committee on judicial unification and finance which published a report in November 1994. HB 188 is the result of one of the recommendations of that committee. It establishes a state cost-sharing program for District Court civil expenses, court reporters, juvenile probation and indigent defense similar to the criminal reimbursement program except the state would pay only 50% of the cost. REP. WISEMAN said that in 1985 the legislature passed a 2% tax on light vehicles to fund criminal court costs because large cases were arising in small, sparsely populated counties where there was no tax base to finance a huge criminal trial. The state now reimburses counties for the criminal cases. HB 188 would do the same thing for civil cases. To pay for the civil reimbursement program, a mandatory, state-wide vehicle tax of .1% tax would be imposed in addition to the 2% already in place. For counties that already have authority for the local option vehicle tax, the tax would be reduced from .5% to .4%. The bill requires that a public hearing be held annually for the imposition of the tax in counties that elect to adopt the optional tax. The bill makes permanent the present authority for the utilization of the .4%, removing the previous sunset clause. The bill also allows salaries for court reporters and the number of court filings to be determined on a fiscal year basis rather than on a calendar year basis.

Proponents' Testimony:

John Stephenson, member of the Judicial Unification and Finance Commission, said the bill is one result of the Commission's deliberations. EXHIBIT 1. He reported that court funding became acute in Cascade County when the civil courts were shut down because of lack of funding. The 37 Montana District Courts cannot pay their costs out of designated court revenues and have to dip into other county funds. In 1992 over \$2 million in optional light vehicle license taxes was spent on the District Courts. If the sunset provision is not removed, District Court funding will again be critical. The tax would raise in excess of \$2.6 million and the counties could apply for reimbursement of half of the court's expenses for civil cases.

John W. Larson, District Court Judge, Missoula, and a member of the Judicial Unification and Finance Commission, rose in support of the bill. The juvenile justice system is one of the biggest growing problems in Montana. There has been a dramatic increase in very serious felonies coming into juvenile court and there are few programs available to address juvenile issues. HB 188 would provide a state-wide pool of funding to help on juvenile probation issues. He urged the Committee's favorable action on HB 188.

Janet Kelly, County Commissioner, Custer County, and member of the Judicial Unification and Finance Commission, supported HB 188. The text of her testimony is included in EXHIBIT 2.

Nancy Sweeney, Clerk of the District Court, Lewis and Clark County, spoke in favor of the bill. Her testimony is attached as EXHIBIT 3.

Gordon Morris, Montana Association of Counties, provided information relative to the local option vehicle fee, FY 95. EXHIBIT 4. He noted that 37 counties use some or all of the .5% tax option available to them. He commented that more study had gone into this bill than probably any bill to come before the legislature in this session. The Montana Association of Counties, following many months of intensive review and conversations with county officials throughout the state, stands strongly in support of HB 188. This bill is a major priority for counties in this legislative session.

Alec Hansen, Montana League of Cities and Towns, testified in support of HB 188. He said it was a difficult decision because the cities and towns in the 37 counties imposing this local option tax would lose revenue. However, this is a reasonable solution to the perplexing problems of funding the District Courts and he asked for the Committee's favorable support.

Vicki Hyatt, Stillwater County Commissioner, said that Stillwater County does not impose the local option tax and does not have a District Court funding crises. The Commissioners do, however, realize that they are only one case away from a funding crises and they would consider this bill an "insurance policy" for the future; therefore, they support the bill.

Kathleen Breuer, Clerk of District Court, Missoula County, and President of the Montana Association of Clerks of District Courts, said she could not add to the previous testimony, but urged passage of the bill.

Opponents' Testimony:

Steve Turkiewicz, Executive Vice President, Montana Auto Dealers Association, said it was interesting to note that the bill provides cost sharing for state and local government but he noted that it is the vehicle owner who is paying the tax. According to

the fiscal note, this amounts to over a million dollars per year. Montana's car owners are already paying a fair share of the tax structure. Since 1987, the amount of money derived by Montana's counties from automobiles has gone from \$34.5 million to \$44 million because of the 2% tax. He said he was sympathetic to the problems of the District Courts but he did not think it was fair to characterize this as a state and local cost sharing program when it is focusing on one particular taxpayer to pay the mandatory .1%. The Montana Auto Dealers Association opposes this legislation.

Dennis Burr, Montana Taxpayers Association, asked the committee to consider whether the .1% tax which is actually a 5% increase in the tax is significant. This is one of the few bills that will be taking a local government tax and making it a state tax. To put the tax into perspective, the 2% tax on motor vehicles comes out to be about 278 mills which is lower than the average mill levy in Montana but he asked the Committee to keep in mind that motor vehicles are the only item of personal property owned by individuals in Montana subject to a property tax. **Mr. Burr** then called attention to the fiscal note which discusses dedication of revenue, when it is appropriate to earmark revenue, and the relation this would have to legislation being introduced relative to de-earmarking funds. He noted that to be earmarked, a program or activity must provide a direct benefit to those who pay the dedicated tax and is commiserate with the cost of the program. This tax does not meet the criteria. In conclusion, he stated that this tax will not do much to solve the problem with the District Courts and the obvious solution would be for the state to fund its courts.

Bob Bachini, former Legislator from Hill County, now living in Helena, testified that during his six terms in the Legislature, he had opposed this legislation every time it arose. The state had a flat tax on vehicles and people were happy with that; however, the legislature went back to the tax system. **Mr. Bachini** said he opposed this bill because the Legislature was "sold a bill of goods" when the bill was introduced to fund the courts because one county that was a big supporter of the legislation had court costs they couldn't cover. When the tax was imposed the intent was to help the courts, but, because that wasn't specified in the bill, the counties are spending it on all kinds of other things. He commented that the bill requires a public hearing but, if this were changed to a public vote, the people would turn it down.

{Tape: 1; Side: B.}

Questions From Committee Members and Responses:

REP. BOHLINGER said he liked the statement made by Ms. Kelly that "justice is everybody's business" but, as he understood it, he would also apply some thoughts introduced by Dennis Burr in his testimony that if justice is everybody's business, why aren't the

courts funded by the State of Montana which represents the entire population as opposed to just one segment of the population.

Ms. Kelly said she sat on a State Bar Association Committee which is working toward that goal. At the present time it is difficult for the state to provide the services with the money that is available. She said that the Judicial Unification and Finance Commission had considered this but had come to the conclusion that if this was the recommendation of the Commission, it probably wouldn't be accomplished because there is not enough money to do it. It was more practical to deal with the realities and try to resolve the problems faced right now and continue to work on the issue.

REP. BOHLINGER commented that if the Legislature rejects HB 188 and the funding mechanism is no longer available, the court system would not collapse because the state recognizes the need. He asked if it was likely that the state would do what they should have done some time ago to provide funding.

Ms. Kelly said she could not speak for the state and had no idea what they would do.

REP. BOHLINGER apologized for the unfair question. He then referred to a document showing how local option taxes are being spent and it was obvious to him that it is not being used specifically for the courts. He noted that the funds are being used in various counties for road department equipment, general fund, hospital building funds, poor funds and various other uses. He asked why, if the intent is to fund the court system, the revenue is being used for other purposes. **Mr. Morris** said that in the 1991 session when HB 312 was adopted following much consideration, the legislative intent was that the first issue to be addressed by counties was District Court funding but the bill did not specify that. Every county commissioner across the state of Montana is aware of that and that intent must be fulfilled. When funds are used otherwise, it reflects the fact that the Legislature gave the discretion to the counties.

REP. MURDOCK said there are a number of counties that do not levy the optional tax who obviously have court costs. She asked where they received their funding. **Mr. Morris** said there are 19 counties that do not levy any portion of the local option tax, yet all 56 counties benefit from the criminal reimbursement program because it is an insurance program against the unexpected, astronomical court case that could arise in any county at any time. That is what the criminal reimbursement program is for and even the counties who do not apply the tax currently realize that this would provide a pool for them in the case of the unanticipated case. On behalf of the 19 counties not utilizing the money, they also stand before the Committee supporting this legislation. **Mr. Morris** indicated that this is a very complicated matter and only a few people understand what has happened since 1985 and what the intent of the bill actually was.

He said that MACO had gone before the Commission and urged them to come up with an alternative but they were just as frustrated in light of the fact that there was no opportunity for an alternative to this.

REP. SWANSON asked if this would mean that because she lives in Gallatin County, she would receive an increase when licensing her vehicle. **Mr. Morris** said that was correct but assumed that Gallatin County would be receiving more back then it would be sending in. **REP. SWANSON** then asked if she lived in Blaine County, which does not levy the optional tax, she would have a mandatory increase of .1% and the commissioners would have the option of levying an additional .4%. **Mr. Morris** said that was correct. **REP. SWANSON'S** final question was if the legislation did not pass, would the counties continue to have the option of levying the .5% tax. **Mr. Morris** replied that the sunset in the bill does not apply in reference to the option itself and if it is allowed to toll in 1995 as scheduled, the option would not go away -- what does go away is the 50/50 allocation set forth in the bill. Fifty percent of the 2% goes to the district courts and the other 50% is split between the counties, cities and towns. The typical allocation would be 25% to the state by virtue of the levies for schools and universities, schools get about 60% and the rest goes to the counties, cities and towns. What would happen if the sunset is taken off is that the allocation would parallel what is outlined on page 3, lines 1-6 and, from a county perspective, they are now getting 75% of the revenue, sharing it with cities and towns. Under the allocation that would go into effect if the sunset is allowed, the counties would get 17% and, on behalf of the county commissioners, the 17% would not be worth it to many of them from the standpoint of the fact that they are the ones that have to stand in front of the voters on an annual basis and ask to impose the local option tax. There is no advantage to them to take the heat when the tax is primarily going to schools.

REP. NELSON asked what the situation would be in Yellowstone County. **Mr. Morris** replied that instead of paying .1%, they would pay .2% because the .1% would become mandatory and Yellowstone County is currently levying .1%.

REP. ORR asked if there had been discussions in the Commission to look at the things the state requires the District Courts to do and if there had been any discussions on bringing bills before the Legislature to reduce the burden on the courts. **Mr. Stephens** indicated that they had looked at a large range of problems and some of the bills coming before the Legislature are not funding bills. He said they had looked at the judiciary system and the services provided by the courts and talked about a unified court system. The legal changes involved would be so sweeping, it would not be realistic to try to propose them and some would require constitutional changes. One of the realities about the court system is that they are a necessary service of government, mandated in the constitution. What is happening in the court

system is that it is being burdened with more demands, not because the judges or clerks of court want to increase the number of cases, but because they have no control over the number of cases being imposed upon them.

REP. HARPER said he agreed with Mr. Burr that the state should support its courts. He asked how he could justify the Montana Taxpayers Association support of this concept when it had also supported the return of the \$21 million surplus. **REP. HARPER** said it would only take \$6 million to fund this program at the state level. He asked if Mr. Burr had any suggestions for cutting other programs to fund this one, places where taxes could be raised, or perhaps the rebate should be reconsidered. **Mr. Burr** said that if a parallel was going to be drawn between every spending need and the rebate program, it would be necessary to draw the same parallels between this spending program and every other spending program. The Legislature can do more than one thing during this session. It may be necessary to make cuts to free up revenue to do things but he wouldn't recommend that the first dollar saved should go to this program. Every time there is a need for a program, it is unnecessarily proper to "beat on the rebate" as the only thing the Legislature is facing that is going to cause a program to go unfunded.

REP. HARPER said he understood that but regardless of how it is termed, \$25 million is being spent on the rebate, and that could mean that programs like this are not funded and he thought the parallels were proper. **Mr. Burr** said that he had a different way of looking at it and he felt the worst thing that could be done would be to build it into the budget in a way that would increase expenditures over expected state revenue for the next biennium. This would, once again, create a structural imbalance that has been so difficult to deal with during the last seven or eight years. There are probably many uses for one-time money, but in this case, we are talking about an on-going program and it wouldn't be a proper use of that particular amount of money.

REP. RANEY said there wasn't any move to raise taxes in this session so it will be necessary to prioritize spending. Therefore, if this is a priority, he suggested that rather than 2% and add .01%, that the 2% be reduced to 1.9% which means that the 2% fee will have to be distributed differently. He asked if this would be feasible -- local governments wouldn't take a hit and state government gets the responsibility for this .1%, without raising taxes. **Mr. Morris** said this was a good question, and remarked that he wasn't sure of the numbers but if 2% was reduced to 1.9%, the distributions to state equalization aid of 55 mills could be eliminated and the remaining money could be distributed among the remaining levies, that would make it up. If it didn't, the same thing could be done by eliminating the 40 mill school foundation levy and redistribute the money back across the remaining levies and it would then be basically revenue neutral from the standpoint of the counties. It would not be revenue neutral from the standpoint of the state and there

would then have to be more money coming from state income tax into these accounts. It could be done by striking out "the state" on line 5, page 3. **REP. RANEY** said he would ask Mr. Heiman to draft amendments and asked Mr. Morris to work with him to ensure that local governments would not lose any revenue. **Mr. Morris** replied that, as a representative the Montana Association of Counties, he could work with Mr. Heiman to draft such an amendment providing there would be no adverse effect on counties by doing so.

REP. WELLS referred to a handout presented by **Janet Kelly** which indicated that the county commissioners don't have control over the District Court funds and he asked if she had any suggestions for controlling costs. **Ms. Kelly** responded that if the law were changed so the commissioners were able to set rates for probation officers or court reporters, that would be a step in the right direction. As pointed out, the commissioners don't have control of the budget. Because of the unpredictability and the purpose of the district court system, it's impossible to know what sort of case load will come through the system. **REP. WELLS** then asked if these people were being paid by case or whether they were salaried. **Ms. Kelly** said that there are witness fees and other costs associated with trials. The wages are fixed and some costs are reimbursed through the criminal reimbursement program. The case load definitely impacts the overall budget.

REP. HANSON asked the sponsor if he had any statistics on what percentage of the population actually own vehicles and how many might use urban transportation. **REP. WISEMAN** responded that the people who will pay this tax are the people who own vehicles and the more expensive vehicle owned, the more expensive the tax will be. For those who ride the bus system or walk to work, there will be no tax increase. For those who have minimal transportation, it will be a minimal tax. He indicated that he did not have the statistics, however.

REP. BOHLINGER stated that he prescribed to the principle that the people who pay the tax should in some way benefit from the tax and, since he had never come before the court, he felt this could be considered an unfair tax. He asked for comments on how ethical it is to extract a tax from people that have not benefited from the tax. **District Judge John Larson** commented that the Montana Constitution requires that the courts handle cases within a limited span of time, they cannot limit the number of jurors and cases may last for many weeks. Abuse and neglect cases, juvenile cases, all must be handled expediently. In Missoula, cases have been shifted between courts in an effort to provide more space for probation officers, but they are at a point where they will have to hire more and try some different ideas in juvenile justice cases. The caseload does affect cost and they do try to work with the county commissioners on budgets because they feel it is a cooperative process. **Judge Larson** said that from an ethical standpoint, everyone benefits from the court system. If this bill is not passed, the tax will not go away,

District Court funding will be reduced and the courts will not be able to function and everyone will be dissatisfied.

{Tape: 2; Side: A.}

REP. FUCHS said he had some experience with the judicial process and had been working on some judicial reform. He asked when the judges would begin to hold attorneys accountable for delays in cases which can cause a financial burden on the court system.

Judge Larson said they are doing this in Missoula right now. They have mandatory mediation of all civil cases before a trial date is set and there are 70 attorneys in Missoula who have volunteered to serve as mediators. He said they are finding that approximately 60% of the cases are resolved before going to trial. They are using volunteers in abuse and neglect cases to provide followup. They are also getting into the computer age to try to speed things up.

At this point **CHAIRMAN HIBBARD** asked Committee Members to please make their questions brief.

REP. SOMERVILLE requested an explanation of how wages are set for court reporters and juvenile probation officers. **Judge Larson** said the ranges are set in the statutes and the judges, by order, set the salary for court reporters. The salaries of juvenile probation officers is a matter of the judges consulting with the county commissioners. The same is true for public defenders.

REP. ROSE asked if all the money assigned to the District Courts was used for that purpose or whether it was siphoned off for other county departments. **Ms. Breuer** said the funding coming to the District Court is used in the Court. **REP. ROSE** then asked who pays for a juvenile case that is referred to Family Services for review. **Ms. Hughes** replied that the court pays and it is not reimbursed.

REP. STORY asked if any attempt had been made to redistrict the courts because of population shifts. **Mr. Stephens** replied that judicial districts are set by law and it would be up to the Legislature to determine any changes in the boundaries of the districts. **REP. STORY** then asked if this could be an option to reduce the workload. **Mr. Stephens** said there are significant disparities in workload and some of the judges in areas with a light case load will take cases from other districts. There is no mechanism in the law at this time to deal with this.

Closing by Sponsor:

REP. WISEMAN said he would like to point out that this is a continuing problem and it is everyone's problem and something must be done. The sunset law will mature in five months and 37 of the 56 counties in the state are experiencing District Court funding shortfall. This bill would help alleviate the problem. This would not be a tax increase for those counties already

levying the full .5% and it would be an increase, depending on what county commissioners do in the counties that do not levy the full .5%. The people who will pay the tax are the people who own light vehicles in the State of Montana and there is a discrepancy between those who own expensive vehicles and those who have no automobile who will pay nothing or those who have very basic transportation and will pay a minimal amount. It is an insurance for those counties that currently do not levy the tax. He said everyone uses the court system every day. He emphasized that he uses it every day to keep people from assaulting him, stealing his vehicle or suing him in court. He said he had signed a pledge not to raise taxes but he could vote for this bill because in his county, they levy the full .5%. He suggested that Committee Members determine if their counties levy the tax and, if so, this would not be a tax increase for constituents.

HEARING ON 164

Opening Statement by Sponsor:

REP. HARPER, House District 52, Helena, explained that HB 164 would end a "free ride" some people are having on Montana's highways. Almost all the money for road maintenance and repairs comes from fuel taxes -- gas, diesel, or special fuels -- and no matter what fuel you use, you have to pay something for the use of the highways unless you have a car that runs on natural gas. That fuel is not currently taxed, partially because of an error made in the last session that eliminated the tax. This bill would reinstate the tax at the previous level.

Proponents' Testimony:

William Salisbury, Administrator, Administration Division, Montana Department of Transportation (DOT), appeared before the committee in support of the bill. His written testimony is attached as EXHIBIT 5.

Jim Paladichuk, Montana-Dakota Utilities, offered support for HB 164.

Con Malee, Montana Power Company, appeared before the Committee in support of HB 164 because the tax represents a fair and reasonable tax on the commodity. The use of compressed natural gas as a vehicle fuel is supported by the Energy Policy Act of 1992 which strives to reduce the dependence on non-domestically produced transportation fuels. The Clean Air Act of 1990, Executive Order 12759, signed by President Bush, and Executive Order 12844 signed by President Clinton attempt to reduce air pollutants, and the Environmental Quality Commission proposes an alternative fuels policy for development within the State of Montana. Montana Power Company currently operates 180 company vehicles and fuels approximately 24 private vehicles within their service territory with compressed natural gas. Montana Power

intends to encourage the contingent construction of privately held refueling stations. Mr. Malee said the value of alternative fuels in keeping the environment clean can be demonstrated in Montana provided that a reasonable tax policy exists that will allow the growth of this industry. He urged the passage of HB 164.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. BOHLINGER asked if there were any estimates of revenue generated by the tax. Mr. Salisbury said the fiscal note indicates it would be \$2,700.

REP. WELLS asked why Montana Power Company would support a tax on this fuel when not taxing it would encourage people to convert to compressed natural gas. Mr. Malee said MPC believes that this tax was removed in error during the last session and in all fairness it is appropriate that they pay tax on the commodity.

REP. STORY, referring to page 8, section 19, speaking to temporary permits, asked why only vehicles over 26,000 pounds would need a temporary permit. Mr. Salisbury said that is because they are primarily fleet vehicles and it is easier for them to pay on a permit basis rather than for a whole year. A temporary permit is primarily Canadian recreational vehicles that come into the state. REP. STORY said his question was why were all vehicles required to have a permit for LPG and only the largest for natural gas. Mr. Salisbury said that is the way the permit system works. There was a discussion in the last legislature about changing it from a flat fee to a per-gallon fee but it was easier to administer by permit.

Closing by Sponsor:

REP. HARPER said this bill was simply to correct the error made in the last session.

HEARING ON SB 45

Opening Statement by Sponsor:

SEN. TOM BECK, Senate District 28, Deer Lodge, advised the Committee that during the interim he had served as a member of the Revenue Oversight Committee and this bill was brought before that Committee by the Department of Revenue (DOR) to clarify that the tax rates that apply to oil production from horizontally completed wells be explained explicitly in this bill. At the present there is some doubt as to the legitimacy of the 7% net

proceeds tax which is collected after the 18-month exempt period given during the special session of 1993.

{Tape: 2; Side: B.}

Informational Testimony:

Don Hoffman, Natural Resources Bureau, Department of Revenue, said this bill was brought forward at the Department's request to clarify the tax break that applies to oil produced from wells that are horizontally completed. When the bill was enacted it was somewhat unclear in the statutes what the rate would be once the 18-month exempt period had expired. This bill clarifies the rate to be 7% which is the same rate that applies to vertically drilled new wells. The bill also clarifies to whom and when the tax will be paid.

Proponents' Testimony:

SEN. LARRY TVEIT, Senate District 50, Fairview, said that when the bill was passed in the Senate, one item had been missed and he was appearing before the Committee to suggest an amendment. He explained that on page 4, line 16, the bill says the operator "may" withhold from royalties the amount of tax paid, and that is generally the way it is done. There is a tax on the production which must be collected and sent to the state and the taxes withheld should show on the royalty owners checkstub. His amendment would change the "may" to "shall" because when production dropped off several years ago, the oil companies sent letters to royalty owners informing them that they owed taxes because no tax had been withheld from royalty checks. The oil companies had submitted the tax to the state to use as a deduction against their expenditures. Changing the language would correct this deficiency.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ELLIOTT asked Sen. Beck if he had any objection to the amendment. **SEN. BECK** said he had talked to the DOR and they had no problem with the amendment.

Closing by Sponsor:

REP. BECK said it was a straightforward bill and he would appreciate the Committee's consideration.

If passed, **REP. MARIAN HANSON** will carry the bill in the House.

HEARING ON SB 54Opening Statement by Sponsor:

SEN. DOROTHY ECK, Senate District 15, Bozeman, said this bill was brought before the Revenue Oversight Committee by the Department of Revenue. One of the requirements of the Department is to produce a biennial report which, by statute, requires the Department to include recommendations for changes in the state's tax structure. The Department believes that these recommendations are not the Department's responsibility. **SEN. ECK** indicated that the report is a valuable resource. However, when the Department has a recommendation for change, it has a bill prepared, and she would request that the requirement in the law for the Department to provide recommendations be removed. Specifically, they would like to have it removed because the Legislative Auditor, in evaluating the report, noticed that the statute had not been complied with.

Proponents' Testimony:

Judy Paynter, DOR, said this bill was a recommendation of the Legislative Auditor that Department recommendations be included in the biennial report or they request that the language be removed. There are many other forms where recommendations for tax system improvements are made. To include them would increase the volume, increase costs, could make the report political, and the suggestions could be contradictory. She said it is a more useful document when it contains only factual information.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ELLIOTT asked if he understood correctly that they had not included any recommendations in the last report. **Ms. Paynter** said that they had not.

REP. WELLS questioned why "tabulated form" was crossed out in the bill. **Ms. Paynter** said she wasn't sure but if the Committee objected to that language being crossed out, it could be reinserted. She said the most efficient form they now have is graphics as well as the tabulated form and they have no plans to make dramatic changes.

REP. RANEY said this was just put into the law in the last decade and the idea was that most legislators don't know much about collecting taxes and how the system worked so this was put in the law to get recommendations from the people who work with it on how to better improve the tax system -- not what better taxation might be but how the Department can do a better job of collecting the taxes. **Ms. Paynter** replied that there are other forms of

getting that information to the Legislature. They report to the Revenue Oversight Committee on any major undertaking and they have put together committees to work on some of the legislative mandates such as Project 95 and some were done because the Governor said there would be a change. Each of these reports is very lengthy and they are brought forward for discussion. They have brought forward to the Legislature, through a budget request, changes in technology that they feel should be implemented and they have worked with the Appropriations Committee on that. There has been an aggressive attempt to bring issues to the Legislature.

REP. SOMERVILLE said he would like to know who looks at the system and keeps everyone advised. **Ms. Paynter** said there are a number of groups who look at Montana's tax system. The Department of Revenue's Biennial Report and the research staff that puts together all this information answer most tax policy questions. When it gets down to what the executive branch will propose in terms of a sales tax or other taxes, that is political, and is handled at the Director's level. **REP. SOMERVILLE** followed up that question by commenting that a tremendous amount of good ideas come from "blue collar" workers within any industry, including government. There could be some very good ideas about solving tax problems from employees and he wondered if these are stifled. **Ms. Paynter** replied that suggestions do get to the Director and, as an example, advised that "Project 95" came from within the Natural Resource Bureau who thought there was a much better way to deal with these taxes. They put together a committee who got together with the industry and after talking with many people came up with the plan.

{Tape: 3; Side: A.}

Closing by Sponsor:

SEN. ECK said she was pleased to see Committee Members coming up with new ideas. She commented that there should be a real effort to identify major changes in the tax system. The Department does recommend changes and they are very helpful with working on changes, but that should not be their goal. This bill relieves the Department of that responsibility and **SEN. ECK** commented that she would be pleased if someone would want to address that responsibility somewhere else.

EXECUTIVE ACTION ON SB 54

Motion:

REP. HARPER MOVED THAT SB 54 BE CONCURRED IN.

Discussion:

REP. STORY asked if there were amendments.

Motion:

REP. WELLS MOVED THAT THE LANGUAGE REFERRING TO "IN TABULATED FORM" WHICH HAD BEEN DELETED BE LEFT IN THE BILL.

Discussion:

REP. REAM said he didn't have an objection to the amendment but he didn't think there was any other way to do it so the language is redundant and he would not want the information limited to tabular form.

REP. RANEY spoke against the amendment because they have always used tabular form and new technology might provide a better way to present the information. In addition, an amendment would mean sending the bill back to the Senate.

REP. ARNOTT said she did not see anything wrong with the bill the way it was.

On the basis of Rep. Raney's comment, REP. WELLS WITHDREW THE MOTION TO AMEND THE BILL.

REP. RANEY said he thought the requirement for recommendations in the biennial report was alright and he would like to see it continued.

REP. WELLS said he would agree. The statute doesn't say they are required to make recommendations or put an additional burden on the Department. CHAIRMAN HIBBARD reminded the Committee that Judy Paynter had testified that the Legislative Auditor had recommended that they comply with the requirement or remove the language.

REP. HARPER said he thought the Department could take this as an onerous burden, especially if it became political, and part of the Department's problem is that it is headed by a political appointment and, undoubtedly, the Department will assist the Committee with requests on better ways to do things but, to require them to make such recommendation could get too political and, finally, this could be considered an unfunded mandate that the Legislature has put on the Department.

Vote: On a roll call vote, the motion that SB 54 be concurred in passed 10-9.

EXECUTIVE ACTION ON HB 143

Motion:

REP. BOHLINGER MOVED THAT HB 143 DO NOT PASS.

Discussion:

REP. HANSON said she believed there is funding to do the same thing in the bill heard this morning. **REP. REAM** explained that this bill is to deal strictly with archiving the records. It is a serious problem, particularly in some counties, and the older the records get, the faster they will deteriorate beyond use.

CHAIRMAN HIBBARD noted that the fiscal note indicates there will be no impact on state government, but there would be an effect on county and local revenues.

REP. SOMERVILLE asked if there was an amendment and the **CHAIRMAN** agreed that there was. **REP. RANEY** said the Committee had just heard a bill asking for funding for the operation of the District Courts and he said he thought the District Courts should have their own funds and prioritize how the money was to be spent. He assumed that preservation of documents was an important part of what District Courts do and it should be prioritized.

REP. HARPER said the question is who is to make the final decision. The Clerks of Court are charged with the responsibility and the Judge may see a different priority. The Clerks were the individuals testifying for this legislation and he would speak against the motion and in favor of the bill.

REP. ORR spoke in favor of the do not pass motion and confirmed that this bill is somewhat similar to what the Committee heard earlier in the day. The Clerks of Court are required to preserve the records and now they are saying they don't have the money to do it. Although a tax will not be passed, we are allowing the Clerks of Courts to raise their fees so it will be a local tax.

CHAIRMAN HIBBARD reminded the Committee that the amendment had not been moved.

Motion: **REP. REAM MOVED THE AMENDMENT.**

Lee Heiman explained that the amendment would add \$1 to the cost for certified and sealed documents which would go into the fund for District Court records. EXHIBIT 6.

Vote: On a roll call vote, the amendment passed 11-9.

REP. ELLIOTT said that in his years in the Legislature, he had never voted for a court funding bill or to raise Judges' salaries, or to raise fees, but the time has come for this to change because he believes that the judicial system is important and records are not only important, but mandated by the state, and the fee is paid by the person who uses the service, yet the service will also benefit anyone who wishes or needs to do research into court records. He said he did not like raising fees or taxes but the courts are at a point where they will fall

apart and function less well, so it's time to put some money into the system. He said this is a good bill.

Substitute Motion: REP. ELLIOTT MOVED THAT HB 143 DO PASS.

REP. SWANSON asked what the situation would be when a judge waived the payment of the fee. Kathleen Breuer, Missoula County District Court, said it would probably be in the case of the indigent.

CHAIRMAN HIBBARD said he did not understand the use of the term "share \$160,000" in the fiscal note and wondered whom it was to be shared with. Ms. Breuer said the funds would not be shared with anyone as it was their intention that the fees were to be for the use of the Clerks of the District Courts for the purpose of restoration and preservation of court records. She said she did not know where this language came from because it was not requested.

REP. REAM said that on re-reading the language, he thought the word "share" was inappropriate. REP. ELLIOTT said he thought it meant that if they waived the fee in 15% of the cases as they currently do, the \$160,000 represents a \$5 fee levied in 85% of the cases.

{Tape: 3; Side: B.}

Nancy Sweeney, Lewis and Clark County District Court Clerk, explained that the Supreme Court has a similar request for a \$5 increase for court technology which is totally separate from this bill and she wondered if the fiscal note referred to that.

CHAIRMAN HIBBARD advised that he would like to postpone final action on this bill until some clarification is received. There were no objections from the Committee.

EXECUTIVE ACTION ON HB 182

Motion: REP. BOHLINGER MOVED THAT HB 182 DO NOT PASS.

Discussion:

REP. BOHLINGER said he is respectful of Rep. Cobb's effort to make the federal government pay for its mandates and his intentions are good but, through this action costs would be increased by \$1,022 a year for everyone in a nursing home. It is a financial burden that the elderly and sick cannot afford and therefore he could not support this bill.

REP. ARNOTT said it was her understanding that the private payers were paying for those on Medicaid. She asked Rep. Raney if there was a way to get around that. REP. RANEY said he would offer an amendment which would provide that the private payers

could use their payment as a credit on their income tax; therefore, the state could capture the federal money. EXHIBIT 7. The problem was that he could not ascertain if this would be possible to do. He had been informed that the federal government would take the position of "nice try" to get around the law. He is looking into the legal ramifications of doing this. If this amendment is put on the bill, it would save the private payers from having to pay the tax.

Motion: REP. RANEY MOVED THE AMENDMENT.

Discussion:

REP. RANEY said it is difficult to move forward with the amendment if it won't work but, by the same token, he would hate to see the bill die if the federal dollars could be captured to better pay for unfunded mandates.

REP. REAM said he could understand what Rep. Raney was trying to do and it was an interesting idea but he thought there would also have to be an appropriation to match the federal money.

REP. RANEY said it would be collected from the facilities and then given back to the private individuals who were footing the bill. However, he said that Ms. Hughes had told him that "Uncle Sam is smarter than that" and it probably wouldn't work.

REP. ELLIOTT said he thought it would be consistent with the principle that it can be deducted, known generally as a tax credit, and there shouldn't be any reason a tax credit couldn't be given and it is probably within the context of Montana law.

Lee Heiman said that it would be a credit for tax paid indirectly because it is the facility that pays the tax and the credit is given to the people in the facility. This is done with low income homeowners. A renter doesn't pay property taxes but is given a property tax credit so it would be a valid credit to give. However, as Rep. Raney indicated, federal requirements are that every person pay the tax.

REP. ELLIOTT remarked that most of the people on Medicaid are indigent and do not have income taxes to pay.

REP. STORY said this was a novel concept and the only other question he would have would be how many people in nursing homes are paying their own bill or have an income tax liability that they could benefit from the credit. If the bill is passed with the amendment and it is found that 40% of the people paying their own bill would be assessed the extra tax, and they don't have a credit coming, it would not help that portion of the population.

REP. RANEY suggested putting the amendment on the bill and then asking for a fiscal note.

REP. ORR said the idea of getting back at the federal government for the mandates they give the state is an intriguing idea and he would support it but his feeling was that the amendment would make a bad bill somewhat better -- it still doesn't make it a good bill so he would speak against the amendment.

REP. ELLIOTT asked if he could speak on the bill and, to answer Rep. Raney's question, said he also thought this was a bad bill and he was prepared to offer a motion to table the bill, with or without the amendment.

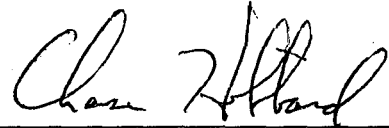
CHAIRMAN HIBBARD asked for a "straw poll" because his feeling was that the bill was not going to pass. He asked for a show of hands which indicated that the bill would not pass the Committee.

REP. RANEY WITHDREW HIS MOTION TO AMEND THE BILL.

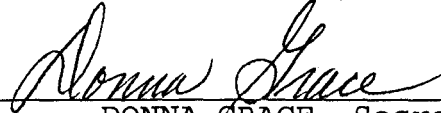
Substitute Motion/Vote: REP. ELLIOTT MOVED TO TABLE THE BILL.
The motion to table passed unanimously, 20-0.

ADJOURNMENT

Adjournment: 11:15 A.M.



CHASE HIBBARD, Chairman



DONNA GRACE, Secretary

CH/dg

HOUSE OF REPRESENTATIVES

Taxation

ROLL CALL

DATE 1/20/95

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	✓		



HOUSE STANDING COMMITTEE REPORT

January 20, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Taxation** report that **Senate Bill 54** (third reading copy -- blue) be concurred in.

Signed: _____

A handwritten signature in cursive script, appearing to read "Chase Hibbard", is written over a horizontal line.

Chase Hibbard, Chair

Carried by: Rep. Ream

Committee Vote:
Yes 10, No 9.

171344SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

DATE 1/20/95 BILL NO. 54 NUMBER 1

MOTION: Moved as Presented as occurred in.

NAME	YES	NO
Vice Chairman Marian Hanson	✓	
Vice Chairman Bob Ream	✓	
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		
Chairman Chase Hibbard	✓	

Passes

10

9

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

DATE 1/20 BILL NO. 143 NUMBER

MOTION: Amendment

NAME	YES	NO
Vice Chairman Marian Hanson		✓
Vice Chairman Bob Ream	✓	
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	✓	
Chairman Chase Hibbard	✓	

JUDICIAL UNIFICATION AND FINANCE COMMISSION
SUMMARY OF PROPOSALS

The Judicial Unification and Finance Commission (JUFC), was created by the 1993 Legislature to study the potential unification and future financing of Montana's courts. The committee is proposing seven Legislative bills and a number of Recommendations.

JUFC LEGISLATIVE PROPOSALS

LC0067 District Court Funding -- Establishes a state cost-sharing program for certain district court expenses in civil proceedings similar to the criminal reimbursement program, except that the state would pay up to 50% of the costs. Eligible expenses under this program are:

(1) Representation of indigent persons who are (a) charged with a misdemeanor in justice court, (b) subject to civil commitment proceedings, (c) youths charged under the Montana Youth Court Act, (d) subject to child dependent and neglected proceedings;

(2) Juvenile probation; and

(3) Court reporters salaries in civil cases.

To pay for the civil reimbursement program the legislation imposes a mandatory 0.1% light vehicle tax. Funding for the 50/50 cost share would be statutorily appropriated for the above stated civil expenses. Counties will continue to have the option to levy a light vehicle tax up to 0.4% and the bill makes

permanent the present distribution of option tax monies (50% the county and 50% to the cities, towns, and outlying areas of the county on the basis of population) thereby removing the previous sunset provision which otherwise would become effective on July 1, 1995.

RATIONALE: The Legislature should act LC67 to provide state funding for up to 50% of each county's most volatile or uncontrollable court expenses in civil cases: indigent representation, juvenile probation and court reporters' salaries. More than half of Montana's counties are experiencing serious shortfalls in their district court budgets. District court expenses such as indigent defense and juvenile probation are volatile and unpredictable. Unexpectedly high expenses can seriously affect the stability of county budgets and fiscally hurt some counties more than others. Furthermore, county commissions have no authority to control some expenses that are dictated by statute such as salaries for court reporters and juvenile probation officers. The bill also eliminates the sunset provision in the existing 0.5% light vehicle option tax thereby guaranteeing counties a permanent source of revenue for district court and other needs as well as a permanent source of revenue for cities and towns.

LC0130 Civil Commitment Proceedings -- Provides that payment for civil psychiatric evaluation and treatment costs incurred in involuntary civil commitment proceedings will be assumed by the state, and will be paid from the state general fund.

RATIONALE: Seriously mentally ill persons, who were formerly cared for in state custodial institutions, are now the

responsibility of the counties of which they are "residents." (53-21-113 M.C.A.) During civil involuntary commitment proceedings, such persons must be hospitalized and a typical hospitalization is two to four weeks at an average cost of \$1,200 per day. Seriously mentally ill persons from outlying counties tend to take up residence in counties which have mental treatment centers and thus the burden of these expenses tends to impact urban counties disproportionately. Such expenses are escalating, they are unpredictable, and they cannot be controlled at the local level. Such expenses exceeded \$1.2 million during the 1993-1994 biennium. By shifting these expenses from the counties to the state general fund, the cost of caring for such patients would again be assumed by state and the counties would no longer be subject to uncontrollable expenses mandated by the state for which no funding mechanism is otherwise provided.

LC0066 Post Conviction Relief Expenses -- Provides that the district court criminal reimbursement program pay certain costs for post conviction relief hearings and habeas corpus proceedings and for certain expenses incurred by the state in federal habeas corpus cases challenging the validity of conviction or of a sentence.

RATIONALE: Current statutes (Title 46, Chapters 21, 22) provide that a person convicted and sentenced for a criminal offense may file a petition challenging the validity of the court's judgment. These post-conviction relief proceedings involve expenses for evidentiary hearing and court appointed counsel. The district court criminal reimbursement program funded under Section

3-5-901 M.C.A. does not reimburse counties for these expenses. Although exact data is not available it is estimated that the cost of these proceedings state wide is probably less than \$20,000 per year and adding this category to the criminal reimbursement program will not require any additional funding sources.

LC0065 Court Automation -- Requires all courts of original jurisdiction to impose a \$5.00 user surcharge (to be statutorily appropriated) in criminal, civil, and probate cases to be used for state funding of court information technology.

RATIONALE: In 1990, the Supreme Court ordered the Office of Court Administrator to provide automation for the 182 courts in Montana. Contemplated projects include computerized legal research, automation of district court records, state wide access to court records, automation of traffic citations and fine collections and others. Although some progress has been made there is no funding mechanism in place to continue. The \$5.00 user surcharge would provide funding to allow the continued development of court automation.

LC0064 Court Record Retention -- Requires counties to establish a fund for district court records retention, preservation, and technology. Clarifies the disposition of district court fees and raises certain district court fees by \$5.00 in most cases. Provides that the increase in fees be deposited in the county fund for district court records retention, preservation and technology.

RATIONALE: District courts must provide for the storage and preservation of district court records, some of which date back

to 1880. However, counties have no specific budgets for maintaining such records. The objective of LC64 is to provide the funds necessary for the clerks of district courts to effectively maintain, store, and preserve such records.

LC0063 Assignment of District Judges to Other Districts -

- Provides that the Chief Justice, rather than the Governor, has the authority to temporarily assign a district judge to hold court in a district other than the judge's own district. Eliminates the requirement that such assignment is pursuant to a request by an interested person or by written order.

RATIONALE: Present §§ 3-5-111 and 3-5-112 M.C.A. provide that the Governor has the authority to assign a district judge to hold district court in another district if by reason of caseload or other circumstances the elected judge of the district is unable to do so. These statutes violate the constitutional separation of powers. Under the amended statutes, the Chief Justice will assume these functions and the requirement that an interested person must first request the reassignment is eliminated.

LC0062 Seven Member Supreme Court -- Makes permanent the provision setting the number of associate justices on the Montana Supreme Court at six.

RATIONALE: This provision would retain the present seven member court which otherwise will be reduced to a five member court pursuant to a sunset provision effective January 6, 1997. Since 1979, when the Legislature first authorized a seven member court, the number of Supreme Court cases has been increasing and between

1983 and 1993, the annual number of cases rose from 561 to 659. In fiscal year 1993, the Supreme Court issued 437 opinions, or about 62 opinions per justice. If the court were reduced to five members, the number of opinions per justice per year would increase to about 87, a 40% increase. Retention of a seven member court is essential to keep pace with the increasing work load.

ADDITIONAL RECOMMENDATIONS

The JUFC also made the following additional recommendations for which no legislation was proposed.

RECOMMENDATION NO. 2: Continue to explore long term solutions. The Legislature should continue to explore long term funding solutions that ensure the sufficient, stable and equitable funding of Montana's district courts, including the potential for total state assumption of district court funding. Furthermore, if the Montana Supreme Court establishes an advisory council (see Recommendation (No. 6) the advisory council should explore court funding needs and should advise the Supreme Court and the Legislature on ways to allocate resources in the most efficient and effective manner possible.

RECOMMENDATION NO. 5: Pursue grant funding. The judicial branch in each county and court individually should actively seek funds being made available to state courts through the federal crime control bill and other court grant programs.

RECOMMENDATION NO. 6: Judicial advisory council and regional conferences. The Montana Supreme Court should establish a judicial advisory council to conduct long range strategic planning for the judicial branch. Among the issues that the

advisory council should examine are total state funding, court unification options, judicial compensation (which remains among the lowest in the nation), and court reporter employment issues.

Membership on the advisory council should include one representative each appointed by:

(1) The Supreme Court, District Court judges, Magistrates Association, Clerks of District Courts, the Court Reporters Association, the State Bar of Montana, the Montana Association of Counties, the Montana League of Cities and Towns, the Sheriffs and Peace Officers Association, the Governor, the Senate and the House of Representatives.

In conjunction, the Supreme Court should provide for regional conferences to enhance communication between judicial officials and courts at all levels.

The JUFC endorses the efforts of the Montana Judges Association to address these issues within the judicial branch.

RECOMMENDATION NO. 11: Use available technology.

The Legislature, judiciary and local government should strongly support the use of available technology, especially the Montana Educational Telecommunications Network (METNET), to improve court operations. The METNET system, which provides a two way interactive, televideo capability, should be available to as many courts as possible so that initial hearings can be conducted without the cost and security risks of transporting a defendant from the jail or detention center to the court of jurisdiction.

RECOMMENDATION NO. 12: Modify the budgetary and revenue system (BARS).

The Department of Commerce and Office of Court Administrators should work together to modify the budgetary and accounting revenue systems (BARS) format to establish a more uniform system for counting reporting of court expenditures. Uniform and accurate reporting of expenditure data is essential to determining the fiscal status of Montana's court systems.

RECOMMENDATION NO. 13: Address juvenile justice issues.

The Legislature should thoroughly examine and expeditiously address problems with Montana's juvenile justice system, especially confidentiality, sentencing, and extended jurisdiction issues involving serious juvenile offenders.

Testimony of Janet R. Kelly, Chair, Custer County Commission
before the House Taxation Committee
Friday, January 20, 1995

Chairman Hibbard, Members of the Committee, Ladies and Gentlemen:

Good morning. My name is Janet Kelly, a Commissioner from Custer County. I am here in support of HB 188. I represented the Montana Association of Counties on the Judicial Unification and Finance Commission that was established by the 53rd Legislature. One of our tasks was to study the problems of current and future financing of the Montana Judiciary and propose solutions. HB 188 is the result of our work, and it addresses the funding of our district courts.

District Court funding isn't a new problem. In 1990, I was a member of the state-wide committee, that studied this very same issue. HB 188 picks up where this Committee's work left off, and I believe it moves us one step closer to resolving the district court funding dilemma that has plagued so many counties for many years

HB 188 addresses the district court funding crisis by revising the responsibilities of the state and county governments in funding district courts. More Specifically, HB 188 proposes the following:

1. Establishing a state cost-sharing program with counties for certain district court expenses in civil proceedings. The eligible costs under this program are outlined in the attachment to my testimony. This program is similar to the currently-existing criminal reimbursement program; however, under this program the State would pay up to 50 per cent of the costs. The State's costs would be funded by imposing a statewide 0.1% light vehicle tax that would be statutorily appropriated.

2. Reducing the currently-existing 0.5% local option vehicle tax to 0.4% and eliminating the sunset provision on the distribution of tax revenue to counties and cities. The sunset is scheduled for July 1 of this year.

As you know, district courts are currently funded by the county's district court mill levy, miscellaneous revenues designated by statute, the state criminal reimbursement program, and the grant-in-aid programs. My county, like most counties throughout the state, levies the statutory maximum, but it isn't enough money to pay our District Court bills. The vehicle option tax has given us a way to try to keep up with the ever-rising costs of running our district court. Currently 37 of the 56 counties impose the light vehicle option tax. Many of these counties use this money to supplement their district court fund. Repealing the sunset provision from this option tax will guarantee the availability of additional dollars to county governments that can be used pay district court costs.

District Court funding has become increasingly difficult for several reasons:

1. I-105 has frozen our taxes at the 1986 level;
2. The State has decreased its level of contribution to District Courts;
3. Inflation has shrunk the value of our dollars.
4. County Commissions don't have total control over the District Court Fund. District Court Judges set wage levels for Court Reporters and Juvenile Probation Officers. County Commissioners must follow these court orders, and any other court payment directive, or we'll find ourselves in contempt of court.

We're responsible for paying the bills to operate the district court, but the law doesn't allow us to control the cost.

Custer County is an excellent example of what the local option tax means to counties. At the end of the 1992 fiscal year, Custer County's District Court fund deficit was \$48,133. By imposing the local vehicle option tax, we ended last year with a positive cash balance.

However, even with the money generated by the option tax, funding district courts continues to be a problem for all counties because the costs are volatile, unpredictable and we don't have total control.

A gentleman by the name of Harry Jones succinctly summarizes the problems we face in funding our district courts:

"[C]ourts are agencies of the government and fundamental court reform can be achieved only by political action. Our ... courts will never be structured and reinforced to sustain the burdens of the law explosion until it is brought home to the public at large that justice is everybody's business.¹"

HB 188 will move us one step closer to solving our district court funding problem by:

1. Repealing the sunset provision on the local option vehicle tax.
2. Reaffirming that district court funding is a joint responsibility of counties and the State of Montana, by the State funding up to 50 per cent of each county's most volatile expenses in civil cases.

I urge your favorable consideration and support of HB 188. Thank you.

¹ November 1994, Report to the 54th Legislature: Laying a Foundation for the Future of Montana's Judiciary: A Study of Court Finance and Administration; Judicial Unification and Finance Commission.

Appendix

Eligible expenses for the State Cost-sharing Program for District Court Expenses in Civil Proceedings

1. Representation of indigent persons who are:
 - (a) charged with a misdemeanor in justice court,
 - (b) subject to civil commitment proceedings,
 - (c) youths charged under the Montana Youth Court Act,
 - (d) subject to child dependent and neglected proceedings;
2. Juvenile probation; and
3. Court reporters salaries in civil cases.

The State would pay up to 50% of the costs. To pay for the civil reimbursement program, HB 188 imposes a state-wide 0.1% light vehicle tax. Funding the 50/50 cost share would be statutorily appropriated for the above stated civil expenses.

NANCY SWEENEY
CLERK OF DISTRICT COURT
Lewis and Clark County Courthouse
P. O. Box 158
Helena, Mt 59624-0158
447-8216

EXHIBIT 3
DATE 1/20/95
HB 188

January 19, 1995

Rep. Chase Hibbard, Chairman
House Taxation Committee
Capitol Station
Helena, MT 59620

Dear Chairman Hibbard and members of the committee,

Lewis and Clark county is in the unique position of being the jurisdiction where a majority of the state litigation occurs. Venue of state litigation is permitted and many times mandated by state law. The rationale behind these laws are easily understood when viewed from the state's perspective of saving time and expenses by litigating cases in Helena where most of the state offices are located.

Although litigating cases in Lewis and Clark county is an effective management tool for the state, it places a heavy burden on Lewis and Clark county's district courts. A recent review of the records in my office indicated that in 1994 58% of the 2277 civil cases filed in Lewis and Clark county were initiated by the State of Montana on behalf of it's agencies. This percentage does not include any of the cases which were filed as a result of a state action or decision but initiated by someone other than the state, such as petitions for judicial review or tort cases. Although we did not have time to compile the statistics on civil cases in which the state was a defendant or respondent, a conservative estimate could attribute an additional 10 to 15% of Lewis and Clark county's civil case load to those type of actions. House Bill 188 would not provide compensation for the majority of cases I have referred to but it would provide for payment of up to 50% of certain district court expenses in civil proceedings.

Lewis and Clark county's disproportionate percentage of civil cases causes an additional financial disadvantage to the county under the criminal case reimbursement program. Some allowable expenses, such as court reporters' salaries, are based on a percentage of criminal cases to civil cases. The criminal case reimbursement program reimburses only 13% of our court reporters' salaries. There are only 3 counties out of the 56 that receive a smaller percentage than Lewis and Clark county. One of the reimbursable expenses included in House Bill 188 are court reporters' salaries in civil cases.

I am responsible for submitting Lewis and Clark county's request for criminal case reimbursement. This bill addresses many district court expenses which are not covered under that program and appropriately should be shared by the state. It is the public's right to have representation in cases brought by the state, even if an individual is unable to afford such representation. The county bears all expenses for indigent persons in cases which may result in incarceration for misdemeanor or juvenile expenses, involuntary commitment to the state mental hospital or removal or limitations of an individual's parental rights. Criminal case reimbursement covers less than 50% of our public defenders' salaries in Lewis and Clark county despite the fact that the public defender provides representation only to clients who are entitled to their services by law.

I would like to see the criminal case reimbursement program make allowances for state generated litigation in Lewis and Clark county and for the state to develop a system which would provide the district court in Lewis and Clark county with financial assistance for state litigation but those are issues to be considered another day and perhaps another forum. For now, House Bill 188 provides an important step forward in state assumption of constitutionally mandated public services for all counties and I would urge the committee to support this bill.

Sincerely,

NANCY SWEENEY

Nancy Sweeney
Clerk of District Court

EXHIBIT 4
 DATE 1/20/95
 HB 188

1994-95 (FY 95) LOCAL OPTION VEHICLE FEE

COUNTY	NO	YES	WHAT USED FOR	AS of: October 27, 1994
BEAVERHEAD		.5	Road Department Equipment	
BIG HORN	NO			
BLAINE	NO			
BROADWATER		.5	District Court & General Fund	
CARBON		.5	General Fund	
CARTER		.5	Rd. Fund 50%, remaining-1/2 General Fund & 1/2 Hosp. Bldg. Fund	
CASCADE		.5	District Court & other relates fund	
CHOUTEAU		.5	District Court/Personal Services	
CUSTER		.5	District Court	
DANIELS		.5	District Court	
DAWSON		.4	General Fund	
DEER LODGE	NO			
FALLON	NO			
FERGUS		.5	general fund, poor fund/dist court fund	
FLATHEAD	NO			
GALLATIN		.5	Courts, Libraries, Road & Capitol Improvements	
GARFIELD		.5	General Government	
GLACIER				
GOLDEN VALLEY		.5	General Fund - Towns of Rvegate & Lavina	
GRANITE	NO			
HILL		.5	Road, General and District Court	
JEFFERSON		.5	Dit Court/funding general government operations	
JUDITH BASIN		.5	District Court & General Fund	
LAKE		.5	District Court	
LEWIS & CLARK		.5	District & Justice Court Funding & Small Amt. to Co. Att.	
LIBERTY		.5	General Government	
LINCOLN		.5	70% General Fund, 30% General Fund	
MADISON	NO			
MCCONE	NO			
MEAGHER		.5	General Fund	
MINERAL		.5	Distributed to countywide levies for general government.	
MISSOULA		.5	85% Dist Court/15% Rd Bridge/Museum Fund	
MUSSELSHELL		.5	District Court	
PARK	NO			
PETROLEUM	NO			
PHILLIPS	NO			

EXHIBIT 5
DATE 1/20/95
HB 164

January 20, 1995

House Bill 164

SUBMITTED BY: WILLIAM SALISBURY, ADMINISTRATOR
ADMINISTRATION DIVISION
MONTANA DEPARTMENT OF TRANSPORTATION

"AN ACT TO PROVIDE FOR THE COLLECTION OF A TAX ON COMPRESSED NATURAL GAS (CNG).

HB 164 provides a tax procedure for compressed natural gas (CNG) used in highway vehicles in this state.

The Montana Department of Transportation appears before this committee to offer our support for HB 164

Prior to the 1993 Regular Legislative Session compressed natural gas (CNG) was taxed with special fuel. HB539 eliminated that tax since SB431 addressed both LPG (Liquified Petroleum Gas) and CNG. SB431 never passed out of committee which eliminated the taxation on CNG used in highway vehicles and continued the permit system on LPG. The failure of SB431 was due to a disagreement among the LPG dealers over changing the existing permit system to a tax per gallon.

HB 164 if passed, would reinstate the tax on CNG at 7 cents per 120 cubic feet used in highway vehicles. This CNG tax was inadvertently deleted through the legislative process in 1993.

The Montana Department of Transportation urges this committee to give this proposal a do-pass recommendation.

Amendments to House Bill No. 143
First Reading Copy

Requested by Rep. Pavlovich
For the Committee on Taxation

Prepared by Lee Heiman
January 18, 1995

1. Page 2, line 6.

Strike: "\$2"

Insert: "\$3"

2. Page 4.

Following: line 9

Insert: "(8) Of the amount collected for each certificate, with seal, as provided in subsection (1)(h):

(a) \$2 must be deposited in the county district court fund. If no county district court fund exists, fees must be deposited in the county general fund for district court operations.

(b) \$1 must be deposited in the fund established in [section 1] for district court records."

Renumber: subsequent subsections

3. Page 4, line 30.

Following: "(1)(g)"

Insert: "and (1)(i)"

4. Page 5, line 15.

Strike: "(10)"

Insert: "(11)"

5. Page 5, line 16.

Strike: "(8)(d)"

Insert: "(9)(d)"

6. Page 5, line 17.

Strike: "(9)(b)"

Insert: "(10)(b)"

EXHIBIT 7
DATE 1/20/95
HB 182 4540 Raney Kelly

Amendments to House Bill No. 182
First Reading Copy

Requested by Rep. Raney
For the Committee on Taxation

Prepared by Lee Heiman
January 19, 1995

1. Title, line 5.

Following: "FACILITIES;"

Insert: "PROVIDING FOR AN INDIVIDUAL TAX CREDIT EQUAL TO THE
UTILIZATION FEE TIMES THE NUMBER OF DAYS A PERSON SPENDS IN
A FACILITY;"

2. Title, line 6.

Strike: "AN"

Strike: "DATE"

Insert: "DATES"

3. Page 1.

Following: line 15

Insert: "NEW SECTION. Section 2. Income tax credit --
utilization fee for bed days in nursing facilities. A
person is entitled to a nonrefundable credit against taxes
imposed by 15-30-103 in an amount equal to the utilization
fee for bed days in nursing homes, established in 15-60-102,
multiplied by the number of days the person spent in a
nursing facility, as defined in 15-60-101. If the amount of
the fee changed while the person was in the nursing
facility, the credit must be computed based upon the number
of days each amount of the fee was in effect."

Renumber: subsequent sections

4. Page 1.

Following: line 27

Insert: "NEW SECTION. Section 4. Codification instruction.
[Section 2] is intended to be codified as an integral part
of Title 15, chapter 30, and the provisions of Title 15,
chapter 30, apply to [section 2]."

Renumber: subsequent sections

5. Page 1, line 29.

Following: "Applicability."

Insert: "(1)"

Strike: "[This act]"

Insert: "[Section 1]"

6. Page 1.

Following: line 30

Insert: "(2) [Section 2] applies retroactively, within the
meaning of 1-2-109, to tax years beginning after December
31, 1994."

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Location COMMITTEE BILL NO. 188
 DATE 4/20/95 SPONSOR(S) Rep. Wiseman

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John W. Larson	Judicial Administration and Finance Committee			X
KATHLEEN D. DREIER	Clerk of Dist. Ct.	188		X
Vicki Hyatt	Stillwater Co	188		X
Mona Nutting	Carbon Co	188		X
Nancy Sweeney	Lewis & Clark County Clerk of Court			X
JANET R. Kelly	Custer Co. Commissioner			X
John Stephenson	Judicial Administration & Finance Committee	188		X
Bob Backlund	Self	188	X	
Bill Verwo 1 f	City of Helena	188	✓	
Dennis Brown	MONTANA	188	✓	
Steve Turkiewicz	Monte Auto Dealers Assn	188	✓	
Gordon Morris	MACo	188		✓
Alec Hansen	MLCT	188		✓

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. HB 164
 DATE 1/20/95 SPONSOR(S) Rep. Harper

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Jim PALADICHUK	M. D. U.			✓
Con Malee	MPC			✓

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Location COMMITTEE BILL NO. SB 45
DATE 1/20/95 SPONSOR(S) Sen. Beck

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Don Hoffman	Don			✓

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. SB 54
 DATE 1/20/95 SPONSOR(S) Sen. Eck

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