

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on February 21, 1997,
at 8:00 a.m., in Room 415.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Wm. E. "Bill" Glaser (R)
Sen. Mike Sprague (R)
Sen. Barry "Spook" Stang (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Services Division
Renée Podell, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 355, 2/14/97; SB 358,
2/14/97; SB 362, 2/14/97

Executive Action: None

HEARING ON SB 355

Sponsor: SEN. GREG JERGESON, SD 46, CHINOOK

Proponents: Jack Gunderson, Former State Representative

Opponents: Ronna Alexander, Montana Petroleum Marketers
Association
Rex Manuel, Cenex
Gail Abercrombie, Montana Petroleum Association
Steve Viscome, Petroleum Marketer
John Augustine, Conoco

Opening Statement by Sponsor:

SEN. GREG JERGESON, SD 46, CHINOOK says the 1% reimbursement to distributors for remitting gasoline and special fuel taxes to the State of Montana is a possible way to supplement revenues for the highway construction program. There has been information released regarding the declining value of the federal/state match to the State of Montana and what that means to the highway construction program. Last week one of the appropriation subcommittees eliminated six highway patrolmen in an effort to put money towards highway construction. The distributors are providing a service to the state when they calculate and remit fuel taxes and they should be compensated. They have up to 55 days to remit this money and the opportunity to take advantage of the float and earn interest on this amount. It will be up to this committee to determine whether the interest of 1% or some other number is adequate.

{Tape: 1; Side: A; Approx. Time Count: 8:07; Comments: None.}

Proponents' Testimony:

Jack Gunderson, Former State Representative comments that he has been doing considerable work in trying to get some fairness in gasoline pricing in Montana. While doing this he ran across this issue. He submitted handouts (**EXHIBITS 1, 2 & 3**) and explained them. With the possibility of the Department of Transportation (DOT) running short of money in the next fiscal year and possible tax increases it is legitimate to put this money in the highway fund. The law reads that the tax has to be paid to the state on the 25th of the month following the sale. He points out that (**EXHIBIT 3**) shows the amount of interest it would be possible to earn during the float period. **Mr. Gunderson** believes this interest is more than enough money to reimburse them for the administrative costs associated with remitting this money to the state. As a gasoline consumer, he says he resents having 1% of gas tax going to distributors rather than to build highways and hopes this committee will pass this bill.

{Tape: 1; Side: A; Approx. Time Count: 8:12; Comments: None.}

Opponents' Testimony:

Ronna Alexander, Montana Petroleum Marketers Association contends that 2/3 of the association membership is licensed distributors responsible for collecting and remitting the motor fuels tax to the Department of Transportation (DOT). This is an attack on the industry by a citizen who is angry about gas prices. These fuel distributors represent the single largest private tax collector for the State of Montana, collecting close to \$200 million a year in fuel tax revenues. **Ms. Alexander** says they serve as a watchdog and they perform a service for government. The first distributors allowance was put into effect in 1952 at 2% of the gas tax which was 6 cents. The 1987 Legislature increased the

fuel tax to 17 cents and changed the allowance to 1%. The allowance serves a dual purpose, administrative costs and shrinkage by evaporation. The distributor pays the tax based on purchases, not sales, paying the tax on the 25th day of every month and has 30 days to distribute the fuel, sell it, and collect the money. If the distributor has a delinquent account he still has to pay the tax. The penalty for being one day late is 10% of the tax plus interest. This allowance is a mere pittance considering the tax collection burden involved. She notes she would like to offer an amendment changing the 1% to 2%. The DOT is not here supporting this bill. The contractors aren't supporting this bill. This is a bad piece of legislation and I don't think personal vendetta's have a place in the Legislature. **Ms. Alexander** urges a do not pass on SB 355.

Rex Manuel, Cenex says he would like to go on record as being opposed to this bill for the reasons previously stated. There are other private tax collectors in the state, for example Fish, Wildlife and Parks uses private dealers to write their licenses, these dealers get 50 cents per license.

Gail Abercrombie, Montana Petroleum Association explains collecting these taxes is a service for the state which requires a considerable amount of work for the distributors.

Steve Viscome, Petroleum Marketer believes this allowance was called a shrinkage allowance in statute until the last legislative session. During that session the verbiage was changed calling this a collection allowance.

John Augustine, Conoco opposes this bill saying some sort of compensation is due the distributors. One thing not discussed here is drive-offs, when people drive off without paying for their gas. The distributor still has to pay the state and federal tax on this fuel. I don't feel a 1% collection allowance is unfair. He asks the committee to vote against this bill.

Questions From Committee Members and Responses:

CHAIRMAN DEVLIN asks if the dealers get any compensation for the federal tax they collect. **Mr. Viscome** says there is no shrinkage allowance on the federal level.

SEN. MIKE SPRAGUE questions if the bulk dealer gets an allowance from the refineries? **Mr. Augustine** answers that Montana has a law giving the distributor a choice once a year to buy net or gross.

SEN. SPRAGUE asks what the drive-off factor is that the industry is loosing? **Mr. Augustine** comments he doesn't know the answer to that.

SEN. FRED VAN VALKENBURG explains there is not an allowance made to the distributors reimbursing the collection of the tax nor any

allowance for shrinkage. He asks **SEN. JERGESON** if that is correct? **SEN. JERGESON** comments that is the way the bill is written.

SEN. VAN VALKENBURG asks if there is any state that does not allow the fuel tax collector compensation for collecting the tax. **SEN. JERGESON** affirms not to his knowledge. He says he thinks the committee has to determine whether or not there is a float that exists and if that is adequate compensation. We have heard that there is no federal shrinkage allowance.

SEN. VAN VALKENBURG remarks distributors pay for fuel on the 25th and remit the tax to the state on the 25th of the following month so there is 30 days from the time they pay for the fuel to the time they remit the tax. That is different from the 55-day float you talk about them having before paying the tax. **SEN. JERGESON** says if the committee has found clarification regarding the remittance dates and there is not a float period, that may affect the decision the committee will make on this bill. **Mr. Gunderson** explains that the first paragraph of the bill explains how payments are to be made. The figures on **(EXHIBIT 3)** may not be totally accurate but reflect a considerable amount of money that compensates them adequately for the work they do.

SEN. DOROTHY ECK asks how much retailers are allowed for the collection of the sales tax in your sales tax bill. **SEN. DELWYN GAGE** says as he recalls it is up to \$50.00 per month.

{Tape: A; Side: A; Approx. Time Count: 8:37; Comments: None.}

Closing by Sponsor:

SEN. JERGESON insists he is always on the hunt for revenue to provide for appropriate expenditures, programs and projects of the State of Montana. He says he doesn't have a personal vendetta in introducing this bill and chooses not to question the motivation of any of the citizens when he is asked to bring a bill before the Legislature. This committee has some choices; pass the bill, amend it or kill it but it cannot raise the allowance to 2%.

{Tape: A; Side: A; Approx. Time Count: 8:40; Comments: None.}

HEARING ON SB 358

Sponsor: **SEN. DARYL TOEWS, SD 48, LUSTRE**

Proponents: None

Opponents: Gail Abercrombie, Montana Petroleum Association
Roger Hogan
Jim Mockler, Montana Coal Council
Jerome Anderson, Shell Western Exploration and
Production Inc.

SEN. DELWYN GAGE, SD 43

Larry Brown, Northern Montana Oil and Gas Association

Ken Williams, MPC

Stan Kalazick, Burlington Resources Oil and Gas

Hugh McNaver, McNaver Realty Trust

Jim Paladichuk, MDU Resources Group

Opening Statement by Sponsor:

SEN. DARYL TOEWS, SD 48, LUSTRE maintains SB 358 is an outgrowth of discussions he's had with people in his district on how to broaden the tax base without hurting a significant number of people in the state. This bill allows for 10% of personal property tax to be transferred to severed mineral interests. Landowners are responsible for researching who does and doesn't own the minerals and delinquent taxes. **SEN. TOEWS** says we have to look for ways to broaden the tax base and this bill does that. A lot of the mineral interests are owned by out-of-state people and there is no way to appraise these minerals.

{Tape: 1; Side: A; Approx. Time Count: 8:45; Comments: None.}

Proponents' Testimony: None

Opponents' Testimony:

Gail Abercrombie, Montana Petroleum Association The current system of taxation of severed minerals in the State of Montana is logical, reasonable and based on sound fact. The property is valued and taxed as it attains value. Several minerals have either no value or speculated value. There are income taxes to pay if you lease a mineral. We have seen this type of legislation in various forms over the years, this one is interesting in that it seems to tax at a 10% rate whether the mineral is being produced or not. There is a fairness issue on Line 24, in that the owners of severed mineral interests are not subject to this taxation unless the surface owner turns them in which would then make inequitable taxation throughout the state. There has always been a move to try to rejoin severed mineral interest to the surface which is addressed in this bill by having delinquent property taxes go to sale.

Roger Hogan alleges there is no way to determine what the mineral rights are worth under the ground. He explains his family feels that when or if we discover any kind of value to our mineral rights we will pay our fair share of taxes at that time. I believe the trust is the way to go and it is not reasonable to support this bill.

Jim Mockler, Montana Coal Council affirms mineral rights are exactly what they say they are, a property right whether severed or connected. He joins in the frustration that they are becoming more and more severed and difficult to put together.

Jerome Anderson, Shell Western Exploration and Production Inc., says for all of the reasons previously testified to he opposes the bill. He congratulated the sponsor of the bill on the innovative approach.

SEN. DELWYN GAGE, SD 43, says he would like to talk about tax policy in the State of Montana. One of the reasons the net proceeds tax was taxed at 100% was because it is only taxed once. If that is true and we are going to tax it every year by assessing 10% the amount of the surface taxes then we need to reduce production tax. Please look at consistency in regard to tax policy and why we put values on property in different ways.

Larry Brown, Northern Montana Oil and Gas Association confirms for the reasons already heard he opposes this legislation.

Ken Williams, MPC declares this bill is not revenue neutral as written. The first paragraph talks about 10% of property taxes, it is unclear if that is an additional 10%. He says if the sponsor meant this to be revenue neutral it appears he missed an article in the drafting. He opposes this bill for the reasons previously stated.

Stan Kalazick, Burlington Resources Oil and Gas comments he wishes to register his opposition to SB 358.

Hugh McNaver, McNaver Realty Trust says he is the trustee of a small mineral interest trust. He reports he has about 5,000 mineral acres of which a very small portion is producing. He affirms he has been trying to sell the total interest and most of the offers received have been based upon the value of the producing interest and have given no value to the non-producing interest.

Jim Paladichuk, MDU Resources Group announces for all of the reasons that have already been explained, he would like to go on record in opposition to SB 358.

Questions From Committee Members and Responses:

SEN. ECK questions **Mr. Wilke** from the Department of Revenue asking him if he has any information on the valuation of what the market/sales is on properties in a similar area that have severed and unsevered mineral rights. **Randy Wilke, Department of Revenue** says he doesn't have that kind of information. **SEN. TOEWS** claims there probably isn't a difference but it is easier to deal with fewer people.

CHAIRMAN DEVLIN comments that the way the bill is written a fiscal note should show a 10% increase on the total property tax in the State of Montana. **SEN. TOEWS** maintains that was not the request or intent. The intent was to be neutral and would reduce to the surface.

{Tape: 1; Side: B; Approx. Time Count: 9:01; Comments: None.}

Closing by Sponsor:

SEN. TOEWS stresses one point needs to be made, when we talk about property rights and ownership we frequently refer to surface ownership as though we really own the property and we don't. All we own is a bundle of rights which is what we buy and sell. If that is the case, then a mineral right is in the same category, not ownership but a right. I think there is a correlation between the two. I believe we will eventually be doing something different than we are doing today and this might be the vehicle.

{Tape: 1; Side: B; Approx. Time Count: 9:02; Comments: None.}

HEARING ON SB 362

Sponsor: SEN. DELWYN GAGE, SD 43, CUT BANK

Proponents: Carter Christiansen, Plevna Superintendent of
Schools
Don Rieger, Fallon County Commission
Tom Daubert, Montana Association of Oil, Gas and
Coal Counties

Opponents: None

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, CUT BANK says currently oil and natural gas production taxes are being distributed based on prior years millage. This bill converts this to a percentage so there would be an ability for the taxing jurisdictions to be able to depend on these percentages over a period of time as opposed to variations in millage over a period of years. We need a few amendments to the bill, one to deal with Page 4, Line 15 referring to fire districts as every county does not have a fire district and one addressing the transportation and retirement levy for school districts.

Proponents' Testimony:

Carter Christiansen, Plevna Superintendent of Schools explains a number of years ago he started working in the school district and became involved with pre and post 1985 oil distribution. I couldn't figure out why pre 1985 was on a flat percentage rate even though it differed by taxing jurisdiction (LGST) around the state and post 1985 (new production) was on a fluctuating scale. It bounces around from mill levy to mill levy, taxing jurisdiction to taxing jurisdiction, year to year. A few years ago I started asking why can't we develop a local distribution that is on a fixed percentage? This would ease calculation and as a fixed rate with an estimate you know what types of

distribution are going to occur. All there is to worry about is what the projection is for production in post 1985 oil or gas. This is an attempt to make the same percentage statewide for all post 1985 percentages in all taxing jurisdictions. This bill places more dollars in the local taxing units which will lower the guaranteed tax base that is paid to some schools. It does not give the local schools or counties a windfall. Long term benefits in post 1985 production will benefit the state, counties, schools and local taxpayers. It isn't a massive tax reduction on a statewide basis but is a step in the right direction.

Don Rieger, Fallon County Commission announces he is here to rise in support of SB 362. It gives flexibility within our taxing jurisdictions.

Tom Daubert, Montana Association of Oil, Gas and Coal Counties strongly supports the concept behind this bill, specifying in statute the percentages of distribution. He feels there are some flaws in the current version of the bill and a few amendments will be needed. There may need to be some fine tuning in the percentages this bill proposes.

Opponents' Testimony: None

{Tape: 1; Side: B; Approx. Time Count: 9:11; Comments: None.}

Questions From Committee Members and Responses:

CHAIRMAN DEVLIN attests that a couple of years ago we went through the process of trying to do a redistribution system which may be what we are correcting now, is that so? **SEN. GAGE** comments we are going to a different method now.

CHAIRMAN DEVLIN says reporting gas and oil production last session was easier, this may not pertain to this bill but is that working better for the producers than what we had before? **SEN. GAGE** answers that the producers he has talked to say they wish we had the old system back but I'm not sure all the producers would say that.

SEN. BILL GLASER asks **Ms. Quinlan** to explain Page 4, Lines 24-26. **Madalyn Quinlan, Office of Public Instruction** says she believes the intent of the bill is to say that school trustees can choose how the funds allocated to elementary and high schools will be distributed with the qualification that it has to go to funds that qualify for state Guaranteed Tax Base Aid (GTBA). The only school district fund that qualifies for GTBA is the district General Fund. I believe this language could be clearer to show that you need to fully fund the district General Fund if it is eligible for GTBA.

SEN. ECK asks if this will make a difference with SB 319 in how much each school district is receiving? **Ms. Quinlan** says in

response it will make a difference to the extent that this increases the non-levy revenue available to a school district. Most districts benefit under this at the cost of the state equalization fund and the county retirement and transportation funds. Counties now have more non-levy revenue and their property tax requirements should go down. This only applies to those school districts that have oil and gas production.

SEN. GLASER reports as he figures it this reduces the flow to the state by about 30%, is that correct? **Ms. Quinlan** says she can't respond to the percentage, the flow chart shows a \$1 million reduction to what comes to the state through the statewide levies.

SEN. ECK voices concern that several people have referred to the flow chart and asks **SEN. GAGE** if he has a copy for the committee. **SEN. GAGE** notes the chart was just received and he'll see that the committee gets a copy of it.

Steve Bender, Office of Budget and Program Planning affirms they had to go to the counties to get this information for the fiscal note. We filed a request for an extension yesterday. This spreadsheet was put together last night and shows that the state millage revenue would be reduced but doesn't show what happens to the state costs. This spreadsheet only tells half the story. We will get you a fiscal note Monday which tells the whole story.

{Tape: 1; Side: B; Approx. Time Count: 9:20; Comments: None.}

Closing by Sponsor:

SEN. GAGE believes the purpose of the bill and what it can accomplish has been explained. It gives taxing jurisdictions a better long term look at where they will be. The school districts don't know what the counties are going to do which has a bearing on how much they get on a millage basis and vice versa. This puts in a percentage that they can count on each year for budget creation.

ADJOURNMENT

Adjournment: 9:22 a.m.



SEN. GERRY DEVLIN, Chairman



RENEE PODELL, Secretary

GD/rp