

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON TAXATION

Call to Order: By CHAIRMAN GERRY DEVLIN, on March 7, 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 345, SB 306, 3/3/97  
Executive Action: None

#### HEARING ON SB 345

**Sponsor:** SEN. MIKE TAYLOR, SD 37, PROCTOR

**Proponents:** Ben Havdahl, Montana Motor Carriers Association  
Riley Johnson, National Federation of Independent  
Businesses  
Gail Abercrombie, Montana Petroleum Association

**Opponents:** None

**Opening Statement by Sponsor:**

SEN. MIKE TAYLOR, SD 37, PROCTOR explains SB 345 is a job  
creation bill. A bill which creates wealth for Montana by

employing its people. Montana graduated 16,479 students in 1996. That included high school seniors, two and four year colleges and BA and MA students. Montana at the same time had about 7,500 jobs which included almost 50% part time workers and approximately 20%, 1400 jobs, were paid \$20,000 or more. That's not very many for the amount of students we are graduating from the state. We are going to spend approximately 35% of our total budget to educate about 70% of our students or about \$2 billion this biennium. SB 345 is patterned after HB 417 which passed in 1995, gradually reducing Class 8 property tax from 9% to 6%. SB 345 extends that rate from 6% to 3% beginning in the year 2000 or FY 1999. SB 345 backfills counties as HB 417 did, until Class 8 property values rise to offset decreases. Now the values will go up. It'll be offset in a certain period of time with new companies coming in and more equipment. "What will the cost be?" Less than 1% of the total biennium budget for the years 2000 through 2010. Approximately .6% each year is as close as we can get, depending on the price and value of the property and if there is no rise in the value of the property. The cost will be much less when tax revenues are collected from newly created jobs. **SEN. TAYLOR** supplies (EXHIBIT #1) and explains. **SEN. TAYLOR** points out that Michigan in 1991 was \$4 billion in the hole. They cut 23 different taxes including the main one - our Class 8 personal business taxes and in three years, by 1995, they were \$1 billion in the black. It created over 150,000 new jobs. If you look at how taxable values have gone up in Montana, we have about a 4.9% increase over that period of time. Obviously, we're slowing down. If this is a true fact, we are going to be in serious trouble in the next biennium trying to come up with money if we don't create more jobs and more wealth in this state. We certainly can't put this tax burden on the taxpayers. The fiscal note is incorrect. **SEN. TAYLOR** references to the last page of (EXHIBIT #1) and Amendment #SB034501.ADB (EXHIBIT #2) and explains. I think Montana needs to strive to increase high tech companies and technology. By dropping the Class 8 tax rate, Montana will become a more job, user and business friendly state. If we can create only 4,000 new jobs that are paying \$20,000 or more, we're going to generate \$36 million in state revenues, which more than offsets what it's going to cost us for this bill. It's either half empty or half full. This is the way to create wealth without burdening the same people constantly with the same tax...we've got to grow.

*{Tape: 1; Side: 1; Approx. Time Count: 8:14; Comments: None.}*

Proponents' Testimony:

**Ben Havdahl, Montana Motor Carriers Association (MMCA)**, states MMCA would like to go on record in support of SB345. See testimony (EXHIBIT #3).

**Riley Johnson, National Federation of Independent Businesses (NFIB)**, states the lower the property tax, the more we are going

to invest in equipment which will create more jobs. NFIB would like to stand in support of SB 345.

**Gail Abercrombie, Executive Director of the Montana Petroleum Association (MPA)**, explains what some of the property taxes in Montana do in relationship to drill rig activities. The drill rigs that come into Montana are taxed at the county rate. Those companies quite often locate their storage facilities right across the border, in a neighboring state, so with adjustments in the property taxes it is more equitable. It's possible we could see some of these relocating back into Montana with a lower tax rate and Montana would receive more property tax. The other issue would be through the refineries. If you see fit to pass the repeal of the minimum market law legislation, that will create more competition within the refined product market place. This type of lower property tax will enable refineries to be more competitive with the competition that comes from Canada and Washington.

*{Tape: 1; Side: 1; Approx. Time Count: 8:19; Comments: None.}*

Opponents' Testimony: None

Questions From Committee Members and Responses:

**SEN. MIKE SPRAGUE** asks if this was enacted, would the ability to lower these costs be passed on to the consumer? **Mr. Havdahl (MMCA)**, states taxes and other costs of doing business reduced are going to be reflected in rates charged by carriers and shipping in Montana. How much of a rate reduction is hard to say. The trucking business is very competitive and is looking to cut costs to compete and to stay in business.

**SEN. SPRAGUE** states Billings received letters from South Dakota enticing the trucking and business industry to move to South Dakota. He asked if South Dakota and Wyoming managed to cannibalize some of our industry? **Mr. Havdahl (MMCA)**, replies, "I don't know of any specific incident where a carrier has moved to South Dakota or any other state just because of the tax structure or economic incentive per se." He points out that most of the interstate carriers operate in many states anyhow. It's truly an interstate industry.

**SEN. SPRAGUE** asks if **Mr. Havdahl (MMCA)** was familiar with High Ball and if they are in the state currently? **Mr. Havdahl (MMCA)**, states he is familiar with High Ball and they are in the state. They have moved part of their operation to Wyoming several years ago because of the high Workers' Compensation insurance rates. Our Workers' Compensation rates have come down considerably since then. High Ball still has an operation in Billings.

**CHAIRMAN DEVLIN** asks what do the amendments do? **SEN. TAYLOR** explains the amendment doesn't change the content of the bill, it

merely moves the backfilling to the counties in the same respect as HB 417.

**SEN. BOB DEPRATU** questions that there were 7,500 jobs created last year in the state and 20% of those (or 1,400) were \$20,000 a year or more paying jobs. **SEN. TAYLOR** states that is correct and out of the 7,500, approximately 3,000 of those were part time jobs that paid minimum wage or less.

**SEN. FRED VAN VALKENBURG** asks how many people retired from employment in Montana last year? **SEN. TAYLOR** states he did not have that figure but he certainly would get it. **SEN. VAN VALKENBURG** states the implication is that we have more people coming into the job market than we have jobs being created. Unless you take into account the number of people who are leaving employment, I don't think there is any sort of basis to apply that we are not creating sufficient jobs for people that are coming into the job market. **SEN. TAYLOR** replies, in his opinion we're still at a negative even if you take into consideration the declining retirements.

**SEN. VAN VALKENBURG** expresses this is the kind of bill you really can't ask questions on because it's such a pie in the sky proposal.

**SEN. SPRAGUE** asks **Jerome Anderson, Shell Western, B&P INC. (B&P)**, if he saw any companies that opted out of Montana because of the tax incentives offered in other states. **Mr. Anderson (B&P)**, replies there are a number of companies that opted out several years ago because of the combination of the tax structure and Workers' Compensation. One of the heavy considerations was the tax structure. He receives constant comments about the property tax structure in the state from not only Shell but from other people in the gas industry.

**SEN. SPRAGUE** asks if it's a fact that we are competitive and if not, we must be losing jobs relative to our lack of being competitive? **Mr. Anderson (B&P)**, replies we have improved on our property tax structure in comparison by reducing some of that tax structure in the last several sessions of the Legislature, but his company does not think Montana is competitive.

**SEN. MATT COLE** asks if the long-range effect in the fiscal note is correct? **SEN. TAYLOR** states we're taking into account there is no growth, there's no new companies, no new equipment purchases, and it's the cost straight across. He believes by stimulating business and more purchases the impact will be less.

**SEN. DOROTHY ECK** states an exemption might work better than a reduction. You could do it two ways: (1) give an exemption for the first \$100,000 of personal equipment, (2) give a tax credit for the first several thousand of tax that a business paid. **SEN. TAYLOR** states he is in favor of all these things to create more jobs.

**SEN. ECK** states that looking at jobs created, it would be interesting to look at who pays the largest amount of personal property taxes. Almost all of them that reach the top 25 are oil and mining companies. The statistics we have are that jobs are not being created now. You might say that jobs will be saved because those industries are going downhill. The areas where the jobs are being created are in smaller businesses. **SEN. TAYLOR** replies certainly small businesses contribute 80-85% of the jobs but unfortunately small businesses don't pay \$20,000 or more in property taxes. We need to get companies to come into Montana.

**SEN. MIKE FOSTER** states it all ties back to the Legislature's efforts last session to reduce this rate which is now at 8%. He asks if there are any statistics from that change? **SEN. TAYLOR** states the figures are not concrete yet because this is fairly new. He refers back to **EXHIBIT #1**. I would say you need to give this three or four years but then the Dept. of Commerce has to promote it.

**SEN. SPRAGUE** asks if we raise taxes is there a lag time, and when we lower taxes is there a lag time to see the consequences? **SEN. TAYLOR** replies that's exactly what he's saying.

**SEN. SPRAGUE** asks if we have always taxed personal property? **Randolph Wilke, Dept. of Revenue (DOR)**, replies "Yes."

**SEN. ECK** states that one of the conversations she's heard is that Montana does not really have a research arm that does planning that would say what kind of tax break would best create jobs. How difficult would it be to look at those companies that have benefited the most from tax breaks and how many new jobs have they been able to create? Does the Dept. of Commerce do anything like this? **Mr. Wilke (DOR)**, states they might do something like this and they probably have a better handle on the number of jobs created. **SEN. ECK** asks if the Dept. of Revenue worked with the Dept. of Budget and Program Planning in the Governor's Office. She voices her concerns that Montana isn't really doing what it should be doing in this area. **Mr. Wilke (DOR)**, states the department does work very closely with the Governor's Office.

*{Tape: 1; Side: 1; Approx. Time Count: 8:45; Comments: Turn Tape.}*

Closing by Sponsor:

**SEN. TAYLOR** closes. See closing testimony (**EXHIBIT #4**).

*{Tape: 1; Side: 2; Approx. Time Count: 8:57; Comments: None.}*

**Sponsor:** SEN. TOM KEATING, SD 5, BILLINGS

**Proponents:** Gail Abercrombie, Montana Petroleum Association  
Jim Mockler, Executive Director, Montana Coal  
Council  
John Fitzpatrick, Pegasus Gold Inc.

**Opponents:** SEN. DOROTHY ECK, SD 15, BOZEMAN

**Opening Statement by Sponsor:**

SEN. TOM KEATING, SD 5, BILLINGS explains SB 306 deals with the sunset of the half of one percent tax on the gross proceeds of gas, oil, coal and hard rock minerals, and what happens when the Constitutional trust fund reaches \$100 million. The fund at the end of the FY 97 will be about \$95 million and by the end of FY 99 it is anticipated to be at \$98 million. The potential for achieving the Constitutional goal of \$100 million is approximately somewhere between the year 2000 and 2001. SEN. KEATING distributes Constitutional Amendment (EXHIBIT #5) and explains uses of the fund. If the tax were to sunset, there would be \$1.8 million per year that the tax is now funding the departments and government in general. About \$1 million is actually going into the Reclamation Account. The shortfall from that tax sunset would be \$800,000 a year. Groundwater Assessment spends \$600,000 a year and if that were a priority, that would be a hit but since groundwater assessment is not a priority, the reduction there would not be a big loss of any sort. Also, some of the other programs that are funded are not essential so the \$800,000 hit will not be all that hard on the budget. Why should the tax sunset? Oil, gas, coal and hardrock mining, are "natural resources" but they are not in the public trust. They are not something like air and water that belongs to all of the people. If an individual citizen owns a piece of property and has title to the minerals, that's private property. If he negotiates with an operator who wants to locate and produce that mineral interest, they contract privately and the operator risks his investment to locate the minerals whether it be gas, coal or hardrock. If it is successful and there is production, the state is taxing that production on a severance tax basis and it is a tax on an asset that is a diminishing asset plus the royalty owner has to pay income tax on it and the operator has to pay profits tax on it. So both are taxed on income and on the gross proceeds as well. Montana has the highest oil and gas taxes in the nation. That industry has paid its lion share of the trust and has made its contribution to the policy for reclamation. In addition the industry has cleaned up as its gone along and in recent years has taken care of itself. But all in all, the oil and gas is taxed at 12.8%, the highest in the nation. North Dakota is at 9%, Oklahoma is at 7%, Colorado is at 9-11% (depending on the county). We are competing with those other states for investment dollars. 95% of the exploration investment in Montana to locate oil and gas comes from out of state. Those people looking for gas and oil go where the economic return is

best. Wyoming gets more exploration because their success ratio is much higher than Montana. I am appealing to the committee, if you consider that the oil, gas and coal industry is a contributor to the fund and they are paying higher taxes than any place else, it would be beneficial to the state to encourage exploration. A reduction of half of one percent doesn't seem like much but it would be an incentive that would be a statement the legislature would appreciate expiration. It isn't as though we're eliminating the whole tax, just a small part. It would not hurt the budget that much and I'm sure we can work around it. When the incentive was given for horizontal drilling, there was so much new production that there were more revenues at the lower rate than there would have been from the old rate because of the increased exploration activity. The counties would like to have more exploration because that payroll goes through their economy and it's very helpful to them. If the committee could see its way clear to once again allow the sunset, it won't take affect until the year 2000 or 2001, depending on the price of the product in the next few years, but it would be helpful and it would be stimulating and I'd appreciate a do pass.

**Proponents' Testimony:**

**Gail Abercrombie, Executive Director of the Montana Petroleum Association (MPA)**, states MPA is in support of SB 306. Many RIT bills are floating around in different committees and we are trying to work out some of the spendings on these particular accounts. The Department of Natural Resources has a recent proposal regarding how to wean the agencies and general staffing from RIT cash. We would like to see it capped at \$100,000 million by putting provisions in there for its maintaining \$100,000 million. Then a tax can be levied to address if we need more money for the Natural Resources Mitigation specifically. You create a pot of money and then it's very attractive for all folks.

**Jim Mockler, Executive Director, Montana Coal Council (MCC)**, states there is a major part of this whole program that **SENATOR KEATING's** bill doesn't show and most people don't even realize. The coal industry is taxed 35 cents a ton on top of RIT, on top of severance; on top of everything else. It's a federal tax of 35 cents a ton, half of which comes back to the State of Montana; 17 1/2 cents. They get about \$7 million a year from the coal industry. Where does it go? It's suppose to go to reclaim old coal land. That took about six months to accomplish with the money. Now it all goes to reclaim hardrock claims. We continue to pay \$7 million a year and it's spent every year for mitigation of Natural Resource damage. None of that damage is from coal. We also have the highest severance taxes in the nation but we think the coal industry feels they deserve to have their RIT taxes capped.

**John Fitzpatrick, Pegasus Gold Corporation (PGC)**, states he supports capping the trust at \$100 million and also supports the

oil industry in their request to cap and adjust their tax rate. He adds he also supports the coal industry in the position articulated by **Mr. Mockler (MCA)**. He is not sure the hard rock industry should be in this bill. Pegasus would like to have a tax reduction and that's what this bill does in Section 11, however, their presence in the bill creates some confusion. We have made some efforts here in recent years to try to correct some of the money from the hard rock tax into the remediation of abandoned mines. We need to make sure that what ever happens with metal mines assures those programs are adequately funded. I would like to endorse the bill, maybe ask for a day or two to talk over some possible amendments, but at this time I'm not inclined to think that metal mines should be part of the bill.

*{Tape: 1; Side: 2; Approx. Time Count: 9:22; Comments: None.}*

Opponents' Testimony:

**SEN. ECK** states I'm not at all sure in the year 2000, 2002, 2020, we will reach the \$100 million dollar cap. The Legislature and the administrations have been quite creative in ways to pull the money out before it gets in there. I don't see any papers with the ballot language where the people voted for the RIT tax. It didn't say it all had to be used for remediation. It said that it was to indemnify the people of Montana for a resource lost. Ten years ago there was a court case on this where a group of people said the tax was to be used for reclamation and basically nothing else. The court ruled that it was not to be used for anything. I also think it's a mistake when they started using this money as General Fund monies to fund different state departments resources. I'm pleased someone is trying to work towards moving the agencies off reliance of the General Fund. However, I don't think the tax itself should be removed. I think that the \$100 million dollar limit should be increased. The trust should be allowed to increase to keep up with the rate of inflation. If we use the entire trust fund (the interest on it now) to fund grants and loans, it could take care of a tremendous number of the needs that we are trying to address through Treasure State Endowment. I hope we'll eventually look at coming to a unified simple way to planning for the use of our various trust funds and I think this should be one of them. I cannot agree with removing the tax.

*{Tape: 1; Side: 2; Approx. Time Count: 9:27; Comments: None.}*

Questions From Committee Members and Responses:

**SEN. VAN VALKENBURG** asks if the position stated by **Mr. Fitzpatrick (PGM)** is that of Pegasus's and not that of the industry as a whole with respect to the continuation of the tax on hard rock? **Mr. Fitzpatrick (PGM)** replies that is correct, the mining association is not taking a position on this bill.



**SEN. VAN VALKENBURG** contends in past sessions, **SEN. KEATING** has argued that through the initiative that established this tax, it was the intent of the referendum to be capped at \$100 million but he didn't recall that he said it today. **SEN. KEATING** states he doesn't think the tax was a referendum, the half of one percent was a legislative policy. There was not, to his knowledge, a referendum to the coal tax.

**SEN. VAN VALKENBURG** asks was it the intent of the framers of the Constitutional provision that the \$100 million be a maximum, a minimum, or was it just to be a figure that in essence once established could be changed in any fashion by the Legislature? **SEN. KEATING** replies there is no language to indicate the intent beyond the simple sentence, there would be a trust that would be fulfilled at \$100 million.

*{Tape: 1; Side: 2; Approx. Time Count: 9:30; Comments: None.}*

Closing by Sponsor:

**SEN. KEATING** closes by stating the idea of reclamation is the purpose for the trust and I appreciate **Mr. Fitzpatrick's (PGM)** comment Pegasus will be willing to continue the tax for remediation and reclamation from hard rock mining. If this bill we're allowed to become effective and their half of one percent tax was rescinded when the fund reaches \$100 million, the legislature could then implement that tax for abandoned mines or for reclamation and remediation. In the oil industry, we are working on a different method of bonding for reclamations so we can avoid orphan wells in the future. The orphan wells that we have been working on and plugging to protect the groundwater has been coming through a grant by the Department of Natural Resources out of the Reclamation Account. All in all the Resource Indemnity Trust money is being put to good use. **SEN. ECK** referred to the policy when the tax was established in statute. The resources do not belong to the people as such, they are not in the public trust. The resources are private property and that tax is being paid by a citizen. The tax is not paid by the people of Montana. It's paid by an individual who's giving up a share of the property that they own in order to fund this trust. It is not fair for a royalty owner or an operator, who has taken the risk to develop an asset that has value to that individual and is that individual's private property to be taxed for the purpose of somebody else's benefit. The groundwater assessment is not a benefit to the royalty owners of this state and yet this tax is being diverted for groundwater assessment. The irrigation projects that are funded from the RIT and from a diversion of the tax is not a benefit to the royalty owners or to the operators, but it is a benefit to the irrigators. I don't think that's fair and I don't think the purpose of government is to transfer property from one person and give it to another. That's happening under this situation because people have the idea Natural Resources somehow belong to all the people. That's not the case. It's private property that's being taxed. I would

ask for your consideration from the standpoint of fairness and equity that the royalty owners and the operators be relieved of this tax when they have fulfilled the Constitutional level of \$100 million for the trust.

ADJOURNMENT

Adjournment: 9:36 a.m.

  
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GERRY DEVLIN, Chairman

  
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RENEE PODELL, Secretary

  
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Transcribed By: VALERIE PALMER

GD/RP/VP