

**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON TAXATION**

**Call to Order:** By **CHAIRMAN GERRY DEVLIN**, on March 20, 1997, at 8:01 a.m., in Room 413.

**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  
Meg Angell, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 555; HB 434; HB 63  
Executive Action: SB 391; HB 63

**HEARING ON HB 555**

**Sponsor:** REP. DICK SIMPKINS, HD 49, GREAT FALLS

**Proponents:** Governor Tim Babcock  
Candace Torgerson, WIFE  
Bob Stephens, Montana Grain Growers  
John Youngberg, Montana Farm Bureau  
Don Judge, Montana State AFL-CIO  
Tom Harrison, Montana Agri-Tech

**Opponents:** Carl Schweitzer, Montana Contractors

**Informational:**

Bill Salisbury, Department of Transportation

Opening Statement by Sponsor:

EXHIBIT 1

*{Tape: 1; Side: A; Approx. Time Count: .7; Comments: None.}*

REP. DICK SIMPKINS, HD 49, GREAT FALLS, introduces the bill as being the culmination of a great project in Great Falls accumulating over \$140 million dollars to build an Ethanol plant. This bill is not a new bill; it is a change extending time limits pertaining to current law. The Ethanol plant in Great Falls will be supported by grain, not corn, as is usual. The plant will eventually employ 200 people and will produce the following products: Ethanol, Wheat and Barley Meal, Vital Wheat Gluten and Carbon Dioxide. The Great Falls plant will purchase locally 3.6 million bushels of wheat and 11.3 million bushels of barley. Payroll will be approximately \$4 million annually; Income Tax revenues will be approximately \$270,000 annually; Corporate license tax will amount to approximately \$2 million annually. The plant will be a turn-key construction.

Proponents' Testimony:*{Tape: 1; Side: A; Approx. Time Count: 9.0; Comments: Summary Follows.}*

Tim Babcock, Former Governor of Montana knows this project having worked on it for six years. He believes it's important for Montana's financing houses to know we support this project. He indicates no money will be used until the plant is up and in production.

Candace Torgerson, Women Involved in Farm Economics (WIFE) supports this legislation as being good for Montana farmers.

Bob Stephens, Montana Grain Growers Association says this plant will be a good outlet for their wheat.

John Youngberg, Montana Farm Bureau believes this as a good opportunity for Montana to add value to our products before we export them.

Don Judge, Montana State AFL-CIO indicates the tax incentive will not come on line for two years and that the project will create good jobs.

Tom Harrison, American Agri-Tech

EXHIBIT 2

Mr. Harrison calls the Committee's attention to this project's alignment with the State Energy Policy (Exhibit 2). He believes this legislation encourages use of alternative fuels and holds great promise for the State of Montana.

Informational Testimony:*{Tape: 1; Side: A; Approx. Time Count: 17.8; Comments: None.}*

Bill Salisbury, Department of Transportation informs the committee the Department of Transportation has concerns regarding the long-term impact on highway account funds.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Count: 18.3; Comments: None.}

**Carl Schweitzer, Montana Contractors Association** EXHIBITS 3 & 4  
Mr. Schweitzer says the Contractors' Association is not opposed to the production of Ethanol at the Great Falls plant. Their concern is usage of the highway account to the incentive. He offers two alternatives for the Committee to consider:

- 1) Beginning in the year 2000, increase the current gas tax of 27 cents to 28 cents per gallon;
- 2) Include agricultural entities in those who have to pay the gas tax.

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 23.4; Comments: None.}

SEN. DOROTHY ECK asks Mr. Harrison what benefits from Ethanol there are now. Mr. Harrison indicates he does not know.

SEN. MIKE FOSTER says his understanding is that Ethanol plants are interested in lower quality grain. He asks Mr. Stephens if that assumption is correct. Mr. Stephens agrees, but indicates this process is more productive than Ethanol plants that are supported by corn. SEN. FOSTER asks Governor Babcock about the construction/implementation date. Governor Babcock says construction will take between 20 and 24 months and this plant could be in operation sometime in 1999.

CHAIRMAN GERRY DEVLIN inquires of REP. SIMPKINS if there are any other Ethanol plants operating in Montana. REP. SIMPKINS responds there are none. CHAIRMAN DEVLIN continues inquiring as to the break point when alcohol can compete. REP. SIMPKINS indicates he doesn't know but reminds the Committee we still don't have a distribution system to our gas stations in Montana; the incentive is to keep the price in the range that we can market it to a marketer on the west coast until we can build up the market here in Montana. CHAIRMAN DEVLIN then asks about how the property taxes coming into Cascade County were figured - he believes the businesses would be eligible for a 3% tax rate as new/expanding business. REP. SIMPKINS responds he can't answer that.

SEN. MACK COLE inquires of REP. SIMPKINS if there are any other plants in the United States using this process. REP. SIMPKINS indicates he doesn't think so. This process was developed in Finland; it comes up with the four products without waste, and has been very successful in Finland.

SEN. BOB DEPRATU queries REP. SIMPKINS regarding the estimated grain production in Montana. REP. SIMPKINS estimates 155 million bushels are produced.

**SEN. BARRY STANG** requests **Mr. Salisbury** what the Department of Transportation projected gas tax increase will be in the next session to maintain their balance and how much that would have to increase if we were to take \$3 million out of it. **Mr. Salisbury** reports there is no tax increase proposal. They are spending \$15 million more than they are taking in now and estimate it would mean a three cents per year differential.

**SEN. FRED VAN VALKENBURG** inquires of **REP. SIMPKINS** if he recalls how many votes this legislation got on the 3rd reading in the House. **REP. SIMPKINS** indicates the legislation received 88 votes. **SEN. VAN VALKENBURG** requests clarification from **Mr. Schweitzer** regarding the basis for **Mr. Schweitzer's** constitutionality issue. **Mr. Schweitzer** says it's partially based on the 3/5 vote and also that there is no statutory appropriation; if no money is being appropriated via this bill he questions how the money gets to this project.

**SEN. MIKE SPRAGUE** asks **REP. SIMPKINS** if there is any proposal regarding price vs value to include alcohol. **REP. SIMPKINS** defers to **Governor Babcock** who states this product is pure alcohol; the volume of 30 million gallons will meet all of Montana's needs for fuel.

**SEN. BARRY STANG** asks **Mr. Mick Robinson, Governor's Office**, what the Governor's view is of this issue, and whether they have discussed the possibility of a gas tax increase. **Mr. Robinson** says he has not had discussions with Governor Racicot on this issue; they have discussed the possibility of a gas tax increase and there is no plan to ask for an increase. One of the proposals being considered is to try do something with the extra funding if there is additional revenue over the projections to try to pull the highway funding out of the gas tax.

Closing by Sponsor:

*{Tape: 1; Side: B; Approx. Time Count: 43.2; Comments: None.}*

**REP. SIMPKINS** thanks the Committee for a good hearing and closes indicating legal staff have stated the 3/5 vote is not necessary because we are merely changing the bill and it's not the creation of a bill. The 3/5 vote was met at the time the original bill was enacted. Further, he states this is likely the best environmental bill that's been introduced. He says alternative funding sources will be sought. **SEN. WILLIAM WILSON** will carry the bill.

EXHIBIT 5

Note: Exhibit 5 (Testimony of Terry Pehan, President, Great Falls Chamber of Commerce) received.

HEARING ON HB 434

Sponsor: REP. CHASE HIBBARD, HD 54, HELENA

Proponents:

Sue Talbot, Governor's Task Force on Endowed Philanthropy  
Mick Robinson, Governor's Office  
Steve Browning, Montana Community Foundation  
Tom Harrison, Montana CPA's  
Vern Petersen, Central Montana Foundation  
Russ Ritter, Washington Corporation Foundation  
John Witt, Chouteau County  
Greg Grouper, Energy Share of Montana  
John Delano, Citizen  
Sherry Burns, Montana Bankers' Association  
Clark Pyfer, East Helena Citizen

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: B; Approx. Time Count: 2.2; Comments: None.}

REP. CHASE HIBBARD, HD 54, HELENA, introduces the bill as the tax credit bill for endowed philanthropy. There are three criteria which must be met to qualify:

- 1) The gift must be irrevocable and permanent;
- 2) The income generated must be given in a charitable fashion, must be a 501 (c) (3);
- 3) It must be managed according to the "prudent person rule" which is defined in law.

This must be a planned gift. These gifts are usually given prior to death, but use of the money is available to the giver during his/her lifetime. Corporations can qualify as long as the gift is made to an endowment. Anything over \$20,000 would not qualify. There are approximately 300 endowments in Montana which qualify. The bill doesn't compete with charities which do annual drives. The fiscal note is based on Michigan figures which has had this process in place for several years. The "sunset" for this bill is 12/31/2001.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Count: 9.6; Comments: None.}

Sue Talbot, Governor's Task Force on Endowed Philanthropy

EXHIBIT 6

Ms. Talbot says the Governor's Task Force would like to encourage Montanans to do more than just contribute to annual charity drives and states this is a powerful tool for that purpose.

**Mick Robinson, Governor's Office****EXHIBIT 7**

Mr. Robinson believes this bill is an improvement over proposed 1995 session legislation. This bill focuses the tax incentive into an endowed plan. He reminds the Committee planned giving will necessitate education for the public which may mean some time lag before there is significant use of the incentive. further, he states the tax credit can benefit people of all income levels.

**Steve Browning, Montana Community Foundation** **EXHIBITS 8, 9 & 10**

Mr. Browning says there has been much discussion about planned giving in Montana, but there are relatively few planned gifts. He says one of the reasons is that the incentives are sometimes not strong enough. He believes the planned giving credit will likely increase state revenues.

**Tom Harrison, Montana CPA's** indicates CPA's are the people who are "in the trenches" on this type of philanthropy and they do a lot of the work along with tax attorneys. He proposes the Committee support this bill.

**Vern Peterson, Central Montana Foundation** indicates this bill would assist many people in the state; special taxing district such as rural fire districts, cemetery districts, weed districts are just a few which would benefit.

**Russ Ritter, Washington Corporation Foundation** indicates this legislation would give the opportunity for many good projects to be funded.

**John Witt, Chouteau County Senior Citizen** encourages the Committee to support this bill as it would keep money within our communities.

**Greg Groepper, Energy Share of Montana** states this legislation would keep programs in Montana from being eliminated when federal money runs out. He also believes this would help keep power bills down by providing Energy Share a way to benefit from private funding.

**John Delano, Citizen** provided his "me too."

**Sherry Burns, Montana Bankers' Association** indicates last sessions bill was narrowly based. The definition in this bill clarifies and expands the organizations and individuals which would qualify and benefit.

**Clark Pyfer, Retired CPA****EXHIBIT 11**

Mr. Pyfer offers his support and reads a letter from Sharon Hoff, Montana Catholic Conference which indicates their support of the bill.

**Opponents' Testimony: None**

*{Tape: 1; Side: B; Approx. Time Count: 37.8; Comments: None.}*

Questions From Committee Members and Responses:

*{Tape: 1; Side: B; Approx. Time Count: 37.9; Comments: Questions and responses continued on Tape 2, Side A.}*

CHAIRMAN GERRY DEVLIN inquires of REP. HIBBARD if the predecessor to this bill was killed in Committee or on the floor. REP. HIBBARD says the former bill did not make it out of Committee. CHAIRMAN DEVLIN continues asking if people have so much expendable income there must be some they're not giving it to. REP. HIBBARD responds this bill differs in that those gifts were given out of current disposable income; these come from a major asset which is not disposable during an individual's lifetime.

SEN. MIKE FOSTER requests REP. HIBBARD provide examples of numbers which would explain further how the credit works in various situations. REP. HIBBARD indicates he will provide the examples which will clarify the difference between a credit and a deduction.

SEN. STANG asks REP. HIBBARD if we are not just giving money away to people who can afford it more than others who can't. REP. HIBBARD indicates planned giving has been in existence for quite some time, but not utilized much. SEN. STANG continues by asking if this is more of an estate planning tool. REP. HIBBARD says it could be used that way but in this case the beneficiary is charity. SEN. STANG then asks if a tax consequence is necessary to give a gift. REP. HIBBARD states the true value will be to make people aware of the opportunity as a relatively unknown tool.

CHAIRMAN DEVLIN inquires if one can designate anyone he/she chooses. REP. HIBBARD states yes, as long as the three criteria are met as outlined in his opening statement. CHAIRMAN DEVLIN requests the Committee be provided with the criteria for 501 (c) (3) qualification. Mr. Browning will provide the information.

SEN. MIKE SPRAGUE asks REP. HIBBARD what this bill will do to those who make their fortune elsewhere and want to give to someone in Montana. REP. HIBBARD indicates this bill will encourage that for people who file both in and out of state.

SEN. DOROTHY ECK also requests more information from the sponsor. REP. HIBBARD says he will provide the requested information.

Closing by Sponsor:

*{Tape: 2; Side: A; Approx. Time Count: 16.7; Comments: None.}*

REP. HIBBARD closes by stating this is the third session in which this issue has been proposed. He indicates Montanans are enthusiastic about the bill and that he believes the benefits will far outweigh the cost involved.

SEN. MIKE FOSTER or SEN. FRED THOMAS will carry the bill.

HEARING ON HB 63

Sponsor: REP. DAN HARRINGTON, HD 38, BUTTE

Proponents:

Annie Bartos, Department of Commerce  
Alvie Thomas, AARP  
Steve Turkiewicz, Montana Automobile Dealers' Association  
Bud Schoen, Department of Justice, Motor Vehicle Division  
Mona Jamison, Motor Vehicle Manufacturers

Opponents: None

Opening Statement by Sponsor:

*{Tape: 2; Side: A; Approx. Time Count: 13.8; Comments: None.}*

REP. DAN HARRINGTON, HD 38, BUTTE EXHIBIT 12  
REP. HARRINGTON introduces this bill referring to the 1983 "Lemon Law" legislation. This bill is a new vehicle allocation of \$1.00 per vehicle to the Department of Commerce to be used to administer new vehicle warranty laws. It amends current law Section 51-3-502. The legislation sets up funding for an arbitration panel to assist consumers. It also protects dealers.

Proponents' Testimony:

*{Tape: 2; Side: A; Approx. Time Count: 22.1; Comments: None.}*

Annie Bartos, Department of Commerce supports this bill as the "Lemon Law" as mentioned in REP. HARRINGTON'S opening statement is mandated but not funded.

Alvie Thomas, Senior Citizen, AARP notes this is a good consumer protection bill and encourages support by the Committee.

Steve Turkiewicz, Montana Auto Dealers' Association offers that group's support of the bill.

Bud Schoen, Department of Justice, Motor Vehicle Division indicates there would be approximately 36,000 vehicles subject to this tax in Montana per year.

Mona Jamison, Motor Vehicle Manufacturers indicates that group's support of the legislation.

Opponents' Testimony: None

*{Tape: 2; Side: A; Approx. Time Count: 29.5; Comments: None.}*

Questions From Committee Members and Responses:

*{Tape: 2; Side: A; Approx. Time Count: 29.7; Comments: None.}*



CHAIRMAN GERRY DEVLIN asks REP. HARRINGTON who makes the car referred to in Exhibit 12. REP. HARRINGTON does not know, but someone in the audience states the car is made in Korea.

SEN. MACK COLE inquires of Ms. Bartos if this tax would apply only to new cars. Ms. Bartos replies in the affirmative. SEN. COLE continues then that there would, therefore, be no protection for someone who buys a "lemon" second hand. Ms. Bartos indicates dealers must disclose on a used car sticker if that vehicle has been party to arbitration, but that people who buy a used vehicle from another party rather than from a dealer have no protection.

SEN. MIKE SPRAGUE inquires of Ms. Bartos why \$1.00 was chosen for the tax. Ms. Bartos states that amount will provide efficient/effective management of the panel.

SEN. BARRY STANG queries REP. HARRINGTON as to the recourse to dealers if they refuse to fix the car under this bill. REP. HARRINGTON'S response is to return to the manufacturer.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Count: 35.9; Comments: .}

REP. HARRINGTON feels this is a good consumer bill. It is also good for the dealers and the state.

THERE HAS BEEN NO PARTICULAR PERSON CHOSEN to carry this bill.

EXECUTIVE ACTION: SB 391

MOTION: SEN. STANG MOVED SB 391 DO PASS

{Tape: 2; Side: A; Approx. Time Count: 39.8; Comments: None.}

MOTION/VOTE: SEN. FOSTER MOVED TO PUT CONTINGENCY VOIDNESS CLAUSE ON THE BILL. MOTION CARRIED 5-3 with SEN. ECK, SEN. STANG and SEN. VAN VALKENBURG voting no, and SEN. GLASER not voting.

{Tape: 2; Side: A; Approx. Time Count: 39.9; Comments: None.}

MOTION/VOTE: SEN. VAN VALKENBURG MOVED TO STRIKE "OR AT" THROUGH "COLLEGE" (LINE 7); TO STRIKE "OR AT" THROUGH "COLLEGE" FOLLOWING "SYSTEM" (LINE 27); TO STRIKE LINES 29-30; TO STRIKE "OR AT" THROUGH "COLLEGE" (LINE 14). MOTION FAILS 2-6 with SEN. ECK and SEN. VAN VALKENBURG voting yes, and SEN. GLASER not voting.

{Tape: 2; Side: B; Approx. Time Count: .2; Comments: None.}

SUBSTITUTE MOTION/VOTE: SEN. VAN VALKENBURG MOVED SB 391 BE TABLED. MOTION CARRIED 7-1 with SEN. STANG voting no, and SEN. GLASER not voting.

COMMITTEE BUSINESS - Short discussion of preparation materials for Sen. Christiaen's bill to be acted upon tomorrow.

EXECUTIVE ACTION: HB 63

MOTION: SEN. SPRAGUE MOVED DO CONCUR ON HB 63.

*{Tape: 2; Side: B; Approx. Time Count: 9.2; Comments: None.}*

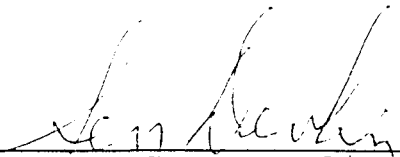
DISCUSSION - The Committee briefly discussed the testimony heard earlier in the meeting on this bill. SEN. DEPRATU noted he may have a conflict as he is an auto dealer. CHAIRMAN DEVLIN responded "so noted."

VOTE: MOTION CARRIED 8-0 with SEN. GLASER not voting.

SEN. BARRY STANG will carry the bill.

ADJOURNMENT

Adjournment: 10:30 a.m.

  
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Sen. Gerry Devlin, Chairman

  
\_\_\_\_\_  
Meg Angell, Secretary

GD/ma

Minutes taped on Sony BM 89-T.