MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on April 8, 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: HB 601, HB 612 - April 3, 1997
Executive Action: HB 612, BCI; HB 434 & HB 591, Discussion Only

HEARING ON HB 612

Sponsor: **REP. CHASE HIBBARD, HD 54, HELENA**

Proponents: **Gordon Morris, Montana Association of Counties**
George Bennett, Montana Bankers Association
Keith Colbo, Montana Independent Bankers
Dennis Burr, Montana Taxpayers Association

Opponents: None

{Tape: 1; Side: 1; Approx. Time Count: 8:00; Comments: None.}

Opening Statement by Sponsor:

REP. CHASE HIBBARD, HD 54, HELENA explains the history behind HB 612. For many years banks and financial institutions were taxed on shares. They were taxed by local taxing jurisdictions as a property tax. The bankshares tax in 1979 was ruled unconstitutional. Rather than have that source of income for local taxing jurisdictions dry up, they struck a deal with the State of Montana and counties, whereby, a percentage of the corporate license tax that was paid into the state would be returned to the counties based upon the taxes paid in those respective counties. There would be a flow-back to the counties as there was previously. This particular bill addresses that and does two things: First, it allows financial institutions to file consolidated returns. The reason for that is with recent banking law that allow mergers, consolidations and branching, it's appropriate for these institutions to now file consolidated returns and they ARE filing consolidated returns. Second and the most important thing this bill does, it changes the way that distribution of tax money goes back to the counties. As I mentioned previously, 80% goes back to those counties in relationship to the amount paid in any given year. There are a couple of problems with that. The first problem is that if a bank has a profitable year and pays a lot of corporate income tax, it goes to the state and 80% goes back to the county. The next year, if that financial institution has an unprofitable year, it could possibly be looking at some loss carried forward carried back and it could put that county into a position of having to refund money to the state. The second problem that exists, is recent Federal legislation makes it possible for qualifying financial institutions to declare Subchapter S status. If they do that, they no longer file corporate license taxes, therefore, the flow of money back to that county would dry up from that particular financial institution. What this bill does, it changes the method with which this is calculated. It does it all on a five year average. It'll take the five year average for all the financial institutions within a particular county, divided by the total collections statewide and it will return that money back to those counties based upon it's five year average. If there's a blip in any given year, where a financial institution loses money, or if one declares Subchapter S status, that flow of money will not dry up. It'll just become part of the average and the money will continue to flow back to the county. It's a very simple bill. Financial institutions and counties all testified in favor of the bill. It passed the House by a vote of 97-2. I will be happy to answer questions.

{Tape: 1; Side: 1; Approx. Time Count: 8:05; Comments: None.}

Proponents' Testimony:

Gordon Morris, Montana Association of Counties (MACO), states this is a bill they have worked on with the Banking Association. He comments by referring to the fiscal note **(EXHIBIT #1)** under

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES and closes with the **LONG-RANGE EFFECTS OF PROPOSED LEGISLATION**. He states this is an idea we have talked about for years and we finally have a proposal that we can all live with in HB 612. We ask for your consideration.

George Bennett, Attorney for Montana Bankers Association, states that while this is a banking bill, it was drafted by the Dept. of Revenue. It irons out the problems that **REP. HIBBARD** has described to you. The allocation back to local government of revenues derived by financial institutions. That problem is going to increase in difficulty as we see new statewide interstate branching. The sourcing of income would apply to deposit is going to become a little bit more difficult. This bill helps everyone. The financial institutions, local government, and the Dept. of Revenue in addressing the problems of allocating back to local government and in allowing fairness in the filing of returns because only financial institutions to this date have been made to wait to file consolidated returns. One little historic note. Before 1979, Congress dictated how states could tax national banks and that's how you got the banks cash and the money kept, in fact, was applied to what we use to call savings & loans, now called savings banks. Credit unions are not affected because they do not pay tax. This will bring equity between the state and national banks and the state and national savings banks. We hope you'll see fit to pass this bill.

Dennis Burr, Montana Taxpayers Association (MTA), states we support the bill for the reasons mentioned and this bill allows banks to file returns like all other businesses. It provides the distribution method to local governments to ensure they will have an even flow of revenue from these institutions.

Keith Colbo, Executive Director of the Montana Independent Bankers Association (MIBA), states we stand in support of HB 612 and we would certainly like to compliment those that have worked on this bill.

Informational Testimony:

Lynn Chenoweth, Dept. of Revenue (DOR), states he supports this bill for all the reasons explained. He expounds that under current law, when the Department of Revenue distributes taxes paid by a particular bank to the county where that bank is located, those taxes may be subject to a refund for five years. If a bank has a loss, which they carry back, or if the bank has any other adjustments to their taxable income, they have five years to file a refund with the department. It has happened in the past, where a county would receive the money and three or four or five years later, they had to give the money back to the bank. Money they had already spent. This bill will address that and it will also give the counties a fairly predictable and steady source of revenue that they can budget for in near years. We support the bill.

Questions From Committee Members and Responses:

SEN. BOB DEPRATU asks when does the five year average start? **Mr. Chenoweth (DOR)** states if it starts July 1, we would go back the previous five years to compute what the average accounting was for the last five years. That average would be applied to the first year.

SEN. DEPRATU asks if the state could conceivably advance funds over and above what they have collected? **Mr. Chenoweth (DOR)** states "no they wouldn't." They would distribute money at the end of the year. If the department collected money and received a refund claim, they would distribute the net amount. The department would never distribute more money than what it has received.

CHAIRMAN DEVLIN asks how can that be if you are on an average and they have a low year? **Mr. Chenoweth (DOR)** states the average that he is talking about is a percentage, it's not a dollar amount. So if Lewis & Clark County's five year average was 5%, then a year from now the county will receive 5% of whatever the department receives.

SEN. MACK COLE asks that each county the money goes into, does it go back on a percentage over a five year period, broke down county by county? **Mr. Chenoweth (DOR)** replies the money, when it's originally paid by the bank, comes to the department. Under current law the bank pays $100 tax and we distribute $8 back to the local county. This bill will change this method of distribution. Under this bill, we'll put the $100 in with the taxes paid by every bank and add it up at the end of the year. If the total is $10 million, $8 million will get distributed and each county will get their share of that $8 million based upon the five year average percentage.

SEN. DOROTHY ECK asks how do they figure what each county receives? **Mr. Chenoweth (DOR)** states they would get their share based upon ratio of the deposits in each county. If a bank has ten other banks, but they all merged into one, each county would still get their portion of the tax paid by the one bank based upon the deposits that were made in each branch.

SEN. ECK states that in the past this committee has dealt with national organizations that have businesses in Montana and the unitary tax. Do we still have that? **Mr. Chenoweth (DOR)** replies "yes, we do."

SEN. ECK asks if unitary tax has any affect on this banking bill? **Mr. Chenoweth (DOR)** states that it doesn't have any impact on the method of distribution. The unitary tax is a way of computing your tax liability and this bill doesn't compute your tax liability. This bill determines once you've paid your tax, how it should be distributed back to the counties.

{Tape: 1; Side: 1; Approx. Time Count: 8:15; Comments: None.}

Closing by Sponsor:

REP. HIBBARD states just so you have some idea of the magnitude of this, the corporate license tax which is currently distributed back to the counties is currently $10 and $14 million and we are looking at 80% of that amount. This is not an insignificant amount of tax revenue that's involved. This ratio is figured based upon a percent. It's the five year average for the county, divided by total contributions and it's the percent of those total contributions to the total collections. That's going to be a moving average that's going to change from year to year, depending on the total collections. This is a bill that benefits all parties involved. We did have some questions in the House Committee about allowing the filing of consolidated returns. An example would be: If there was a bank in Lewis and Clark County that had a branch in Jefferson County, all of a sudden they file a consolidated return. Would Lewis and Clark get credit for all of those taxes and Jefferson County not get credit? The answer to that is "NO". This is figured out based upon deposits of each member institution. Counties are still going to get credit for the existence of the financial institutions in that particular location if the consolidated location is somewhere else. This is a bill that helps all involved and I would encourage your favorable consideration.

HEARING ON HB 601

Sponsor: **REP. DAN HARRINGTON, HD 38, BUTTE**

Proponents: **W. James Kembel, City of Billings**
Matthew Cohn, Montana Dept. of Commerce
Brian Cockhill, Montana Historical Society
Evan Barrett, Montana Economy Developers

Opponents: None

{Tape: 1; Side: 1; Approx. Time Count: 8:20; Comments: None.}

Opening Statement by Sponsor:

REP. DAN HARRINGTON, HD 38, BUTTE states that in this Legislature they have been asked appropriately to take steps to save some of the unique historical structures in Montana. There may be some disagreement with how we pay for these efforts, but there is precious little disagreement about how we preserve Virginia and Nevada City. Thank God that so many of us in the Legislature understand that history is not just totally in the books. Historically, it also belongs to the historic buildings and architecture that still remain. Preserving those buildings and putting them in contemporary use while still retaining their historical character is a goal of the United States government. It has been for many years. They provide a Federal tax credit to those who address the use of historical structures. Montana needs to adopt the same provisions in HB 601, to stimulate historical preservation by authorizing a state tax credit to partially match the Federal tax credit. Virtually every community in Montana has one or more historical significant structures. I'm sure most of you can visualize such a structure in your own home town. HB 601 provides incentive to lease or proper development of such structures. The tax credit on HB 601 is 25% of the Federal tax credit. The Federal tax credit of 20% of funds or above the initial purchase price invested in property or renovating the historical structure. The state tax credit then would be about 5% of the funds fully invested. This isn't much but it is an amount that can help make a difference between a building that is left to ruin and a building that is preserved. There's virtually no administrative cost to this effort. The bill is written so through the Federal historical structure, identification designed to review construction monitoring and eventually granting a Federal tax credit, must all be completed before the developer can apply for historical cash credit from the state. We simply augment the tax credit after it is granted. I want to urge you to support HB 601 as a small tool that can make a big difference in restoration and the use of historic structures in the State of Montana.

{Tape: 1; Side: 1; Approx. Time Count: 8:26; Comments: None.}

__Proponents' Testimony__:

Brian Cockhill, Director of the Montana Historical Society (MHS), states that placed before the committee are files of buildings currently being considered for historical preservation tax credits under the Federal law allowing for such renovation. We obviously support this bill because we believe not only is it good to celebrate our heritage but more importantly, it is important we recognize an investment in our historic structures. What this does for us as the Montana Historical Society operates the program, it gets communities and developers a chance to restore or bring into life our downtowns. The small tax credit will help to a great degree with developers. You need to understand, first off, this is only going to be allowable on properties that are income generated. The state will be assured that any tax credit will be offset eventually by economic contributions to the vitality of a given community. What you have before you are records of a commercial street in Bozeman; the Power Hotel which is a $3 million project in Red Lodge; the OW Ranch near Decker; and, the Herbert Tower which is the first skyscraper in Montana. These are projects underway in Montana which will add to the economic vitality of the Main streets in the communities of Montana. We already have an office that administers the program to allow for Federal tax credits. There would be no additional work and no additional cost other than the obvious tax credit itself.

Evan Barrett, Executive Director of the Butte Local Development Corporation and a member of the Montana Economic Developers Association, states this legislation has advanced from the last session and I'm pleased that it has come before the Senate. We hope you give it positive consideration. Tourism is a key component of our economic development, particularly in areas where they don't have industry. The historical infrastructure is a key part of that, taking advantage of that which we already have. The Federal tax credit that exists today is a reduced level tax credit compared to what it use to be. Formally there was a 25% level tax credit which helped to provide incentive for the reconstruction of historical structures. The Federal government lowered that from 25% to 20% and by the state adopting this tax credit, it essentially would boast the tax credit back up to the 25% level which is an added incentive for the investment necessary to do this. **Mr. Barrett (MEDA)** provides **(EXHIBIT #2)** **<u>HB 601 -- Benefit Analysis</u>** and explains. He also states the fiscal note is too high. Reality is that the average amount of reconstruction over the last seven years has averaged about $1.87 million rather than $3.4 million. Remember, we're talking about a 5% credit against that. The retention of the significant history and character of communities is an important part of the quality of life that makes Montana an attractive place to live and to do business. We in the economic development community believe passage of this legislation would have modest financial impacts on the state and significant benefits in terms of the character and the tourism potential for the state as a whole. We urge your support.

Matthew Cone, Administrator of Travel Montana, Dept. of Commerce, states that **Mr. Cockhill (MHS)** spoke on the nature of the bill. I would like to speak on the tourism side to emphasize that historic and cultural tourism have become an ever increasing part of the mix that we see. We find that about 20% of the nonresident visitors to our state, that's what they're interested in...that's their primary purpose for coming here. While there are many states and many countries that have great scenic beauty and diversity like we do in Montana, what makes us unique is the combination of our people, our culture, and our place. These historic structures are an important part of who we are, and what we are, and also why people visit. I urge your support on this bill.

Jim Kimbell, Representing the City of Billings, states we support the legislation in that it provides additional incentive for the development of the downtown areas.

{Tape: 1; Side: 1; Approx. Time Count: 8:35; Comments: None.}

Questions From Committee Members and Responses:

CHAIRMAN DEVLIN asks the department if they put the fiscal note together? **Jeff Miller, Dept. of Revenue (DOR),** states they did put the fiscal note together. **CHAIRMAN DEVLIN** states the effective date on this is December 31 and then we get into a fiscal year that there is no impact and no impact in the FY 98. **Mr. Miller (DOR)** states the reason is because these would be for investments that occur after December 31, 1997. So likely that would occur in CY 98 and those returns would be filed in CY 99. It would be FY 99 before we would see anything. **CHAIRMAN DEVLIN** states then it wouldn't change from FY 99 to FY 2000. **Mr. Miller (DOR)** states that would depend on the investment.

SEN. VAN VALKENBURG states the fiscal note indicates that the certified historic rehab expenditures annually averaged $3.4 million since 1991. **Mr. Barrett (MEDA)** told us that it's quite a bit less than that. **Mr. Cockhill (MHS)** states it has been their experience that we do about seven or eight projects a year and that's based on an average. They can obviously vary in value. I think, we would come down to an amount somewhere in the middle, based on the experience of having done this over the course of the last 25 years.

SEN. VAN VALKENBURG asks, do you know when the Federal government changed its percentage that it allows the credit from 25% to 20%. **Mr. Cockhill (MHS)** states his best recollection is eight or nine years ago.

SEN. ECK asks where is this ranch and bunkhouse? **Mr. Cockhill (MHS)** states that what we were tried to do in bring these to you was to give you a variety of different kinds of commercial structures that are being considered for this tax credit. The ranch is near Decker. It's a ranch and out buildings that were constructed in the 1890's. The reason it qualifies is because it is being restored but it will continue to be a working cattle ranch. Therefore the ranch will have an income producing nature to it.

Closing by Sponsor:

REP. HARRINGTON states we all have a responsibility for Montana's future. We also have a responsibility to the past. We can help make the future by the decisions we make in this Legislature. By our actions here, we can only preserve small parts of the remainder of the sorted past and that past was part of the soul of Montana. By passing HB 601, we will be investing a few dollars into the soul of our great state. As we look across the state, we know that in each of these communities there have been certain buildings that have been designated as historical sights. We see many of these areas that are deteriorating for the most part. We are looking to make these areas a productive part of our cities. Remember that's the only ones that would qualify under this bill and they have to go through the process to be declared at the Historical Society.

{Tape: 1; Side: 1; Approx. Time Count: 8:43; Comments: None.}

EXECUTIVE ACTION ON HB 434

Motion: **SEN. ECK MOVES HB 434 BE CONCURRED IN.**

Discussion:

SEN. ECK states HB 434 has some tax impact and the Governor will have to decide what he'll do with it. But in the long run, we've discussed this with a number of the programs we have in contributing toward endowments. It means the funding continues over a long period of time and I think we are going to rely more and more on private endowments to fund different programs.

SEN. GLASER states looking at the fiscal impact and it appears to be approximately $200,000. 25% of that is corporate income tax and I think if I recall correctly that a portion of corporate income tax does goes to local governments. You are looking at $100,000 that are going to be taken away from kids because a good portion of that income tax revenue goes right into the General Funds which in turn goes to the foundation schedules, etc. I'm not going to support this bill.

Vote: **THE DO PASS MOTION FOR 434 FAILED 5-4 ON ROLL CALL VOTE.**

EXECUTIVE ACTION ON HB 612

Motion: **SEN. SPRAGUE MOVES HB 612 BE CONCURRED IN.**

Discussion:

SEN. GLASER states he thinks HB 612 provides stability and regulation of income to local government. That's what income averaging is all about.

CHAIRMAN DEVLIN agrees stating in the small county he represents they have only one bank. The county has trouble with the budget because they don't know how much money they're going to receive and it's a considerable amount of their budget.

SEN. STANG questions what do they do with a new bank in a county and there is no five years to average? Do they get nothing for five years until they get a five year average? **Mr. Chenoweth (DOR)** replies that county would get a portion of tax, it would be a smaller portion gradually built up. The first year they would get what share of the percentage of the total is for that year - they would get 1/5 of it, then the next year 2/5, and the next 3/5, etc. After five years, then they would get the full share.

CHAIRMAN DEVLIN asks where there is a branch bank in one county and the other one is out of state, how does that work? **Mr. Chenoweth** answers if there is one branch in the state and the rest of its out of state, 100% of the tax goes into the pool of monies and that county where the branch is at will get their share of the average.

SEN. SPRAGUE asks if his analysis is correct that this is like averaging your utilities or averaging your gas (winter months versus summer months). A leveling out of expectations. **Mr. Chenoweth** replies "you're right." The averaging we're talking about is the average of revenue that goes to the county. The banks don't get income average of their tax and they pay taxes like any other corporation does. It's the counties that can average their revenues so that it's a more stabile source.

Vote: **THE DO PASS MOTION FOR HB 612 PASSES WITH SEN. STANG VOTING NO.**

SEN. SPRAGUE offers to carry bill.

EXECUTIVE ACTION ON HB 591

Motion: **SEN. VAN VALKENBURG MOVES HB 591 BE CONCURRED IN.**

Discussion:

SEN. VAN VALKENBURG states basically this is a real good bill. It simplifies the process for the elderly homeowner tax credit. As the department indicated, it is one of the things that is most used in terms of credits on our state income tax. The department has come up with a proposal that keeps this revenue neutral and it establishes a little more equity in the application of the credit. Some people who have very high incomes are not going to be eligible for the credit now due to the change in the way pension income is figured. At the same time, other people who are in the upper mid level, who have not been eligible for the credit at all before because they didn't have specific pension income (they had rents or other income) are now going to be eligible. HB 591 does a good job all the way around.

SEN. DEPRATU states he has problems penalizing those people who work hard to get ahead and prepare for their retirement.

SEN. ECK states people that do good by investing in stocks or bonds, deserve to have that credit recognized as much as if you have a pension. I think this provides a good balance.

Vote: **THE DO PASS MOTION FOR HB 591 RESULTED IN A TIE VOTE ON ROLL CALL VOTE. CHAIRMAN DEVLIN HOLDS VOTE OPEN FOR SEN. MIKE FOSTER.**

<u>Motion</u>: **SEN. SPRAGUE MOVES TO RECONSIDER ACTION ON HB 434.**

<u>Discussion</u>:

SEN. SPRAGUE states he did not speak up on this bill and he thinks there is a misunderstanding. He requests the committee reconsider its action because we're concentrating on the wrong end of the rope.

SEN. ECK states this bill WILL come to the Floor eventually. There are 22 senators who have signed the bill and over half of those are Republicans. I think it would be better if we send it out from the committee rather than have a motion from the Floor.

SEN. VAN VALKENBURG states that **SEN. FOSTER** was not here to vote on the last motion but he is one of the cosponsors of the bill.

<u>Vote</u>: **MOTION CARRIES TO RECONSIDER ACTION ON HB 434 5-3 ON ROLL CALL VOTE.**

CHAIRMAN DEVLIN states the committee will not go any further on HB 434 until **SEN. FOSTER** is present.

ADJOURNMENT

Adjournment: 9:10 a.m.

GERRY DEVLIN, Chairman

RENEE PODELL, Secretary

Transcribed By: Valerie Palmer

GD/RP/VP