

SENATE BILL NO. 138

INTRODUCED BY GAGE

IN THE SENATE

JANUARY 13, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

FIRST READING.

JANUARY 20, 1993

COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

JANUARY 21, 1993

PRINTING REPORT.

SECOND READING, DO PASS.

JANUARY 22, 1993

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 40; NOES, 9.

TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 23, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

FIRST READING.

FEBRUARY 6, 1993

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

FEBRUARY 9, 1993

ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

FEBRUARY 13, 1993

ON MOTION, TAKEN FROM SECOND READING
AND REREFERRED TO COMMITTEE ON
EDUCATION AND CULTURAL RESOURCES.

MARCH 10, 1993

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 15, 1993

SECOND READING, CONCURRED IN AS
AMENDED.

MARCH 18, 1993

THIRD READING, CONCURRED IN.

AYES, 91; NOES, 7.

MARCH 19, 1993

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 24, 1993

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 25, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 138
2 INTRODUCED BY 14
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
5 LOCAL GOVERNMENT SEVERANCE TAX WAS ENACTED TO REPLACE
6 PROPERTY TAX LEVIES; AMENDING SECTION 15-36-101, MCA; AND
7 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
8 APPLICABILITY DATE."
9

10 WHEREAS, controversy has arisen on the intended use of
11 the local government severance tax on oil and gas production
12 because of a phrase that reads "for the exclusive use and
13 benefit of local governments"; and

14 WHEREAS, that phrase is a copy of the phrase "for the
15 exclusive use and benefit of the state of Montana" used
16 earlier in the same sentence relating to the state severance
17 tax on oil and gas in which the local government severance
18 tax was incorporated during the June 1989 Special Session on
19 school financing; and

20 WHEREAS, the local government severance tax was enacted
21 at the request of petroleum producers to replace an unwieldy
22 county-by-county property tax on oil and gas net proceeds
23 with an administratively viable tax applicable to all
24 pre-1985 production on the same basis statewide; and

25 WHEREAS, the allocation of the proceeds of the local

1 government severance tax was intended to replace various
2 property tax levies on the net proceeds of oil and gas
3 production and not to institute a new system of tax
4 distribution; and

5 WHEREAS, the term "local government severance tax" is a
6 label for the tax and was not intended as a limit on the tax
7 because if the proceeds were strictly limited to local
8 governments in the constitutional sense, then schools, which
9 received the property tax revenue, would be eliminated
10 because they are not local governments and municipalities
11 would reap a benefit by receiving proceeds that they did not
12 receive under the property tax system; and

13 WHEREAS, the Legislature considers the clarification of
14 the distribution of the local government severance tax to be
15 of a curative nature and thus it is applicable to all
16 distributions made since the original effective date of the
17 tax.
18

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 **Section 1.** Section 15-36-101, MCA, is amended to read:

21 "15-36-101. Definitions and rate of tax -- state
22 severance tax -- local government severance tax --
23 assessment of nonworking interest owner -- exemption. (1)
24 Every person engaging in or carrying on the business of
25 producing petroleum, other mineral or crude oil, or natural

1 gas within this state or engaging in or carrying on the
 2 business of owning, controlling, managing, leasing, or
 3 operating within this state any well or wells from which any
 4 merchantable or marketable petroleum, other mineral or crude
 5 oil, or natural gas is extracted or produced shall, except
 6 as provided in 15-36-121, each year when engaged in or
 7 carrying on the business in this state pay to the department
 8 of revenue a state severance tax for ~~the-exclusive-use--and~~
 9 benefit deposit in the general fund of the state of Montana
 10 plus a local government severance tax in lieu of a tax on
 11 net proceeds for ~~the--exclusive--use-and-benefit-of-local~~
 12 government replacement of property taxes formerly levied on
 13 net proceeds. Except as provided in subsection (3), the
 14 state severance tax and the local government severance tax
 15 are as follows:

16 (a) except as provided in subsections (1)(b), (1)(c),
 17 and (1)(d), a 5% state severance tax on the gross taxable
 18 value of all the petroleum and other mineral or crude oil
 19 produced by the person, plus the local government severance
 20 tax of 8.4% on the gross taxable value, as defined in
 21 subsection (6)(a)(ii), of all the petroleum and other
 22 mineral or crude oil produced by the person other than new
 23 production, from each lease or unit; but in determining the
 24 amount of the state severance tax and local government
 25 severance tax, there must be excluded from consideration all

1 petroleum or other crude or mineral oil produced and used by
 2 the person during the year in connection with ~~his~~ the
 3 person's operations in prospecting for, developing, and
 4 producing the petroleum or crude or mineral oil;

5 (b) a 2.65% state severance tax on the gross taxable
 6 value of all natural gas produced by the person, plus the
 7 local government severance tax of 15.25% on the gross
 8 taxable value, as defined in subsection (6)(a)(ii), of all
 9 natural gas produced by the person other than new
 10 production, from each lease or unit; but in determining the
 11 amount of the state severance tax and the local government
 12 severance tax, there must be excluded from consideration all
 13 gas produced and used by the person during the year in
 14 connection with ~~his~~ the person's operations in prospecting
 15 for, developing, and producing the gas or petroleum or crude
 16 or mineral oil; and there must also be excluded from
 17 consideration all gas, including carbon dioxide gas,
 18 recycled or reinjected into the ground;

19 (c) a 2.5% state severance tax on the gross taxable
 20 value of the incremental petroleum and other mineral or
 21 crude oil produced by the person, plus the local government
 22 severance tax of 5% on the gross taxable value, as defined
 23 in subsection (6)(a)(ii), of the incremental petroleum and
 24 other mineral or crude oil produced by the person other than
 25 new production, from each lease or unit in a tertiary

recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the board of oil and gas conservation. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the board; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

- (A) miscible fluid displacement;
- (B) steam drive injection;
- (C) micellar/emulsion flooding;
- (D) in situ combustion;
- (E) polymer augmented water flooding;
- (F) cyclic steam injection;
- (G) alkaline or caustic flooding;
- (H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the department as a tertiary recovery method.

(d) a 5% local government severance tax on the gross taxable value, as defined in subsection (6)(a)(ii), of all petroleum and other mineral or crude oil produced by the person other than new production produced by a stripper well, as defined in subsection (7).

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the board, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the board must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the

1 following rates:

2 (i) 12.5% on the gross value paid in cash or
3 apportioned in kind to a nonworking interest owner by the
4 operator or producer of extracted marketable petroleum and
5 other mineral or crude oil;

6 (ii) 15.25% on the gross value paid in cash or
7 apportioned in kind to a nonworking interest owner by the
8 operator or producer of extracted or marketable natural gas.

9 (b) The amounts paid or apportioned in kind to
10 nonworking interest owners are exempt from the local
11 government severance taxes imposed under 15-36-121(2) and
12 under subsections (1)(a) through (1)(d) of this section.

13 (4) Nothing in this part may be construed as requiring
14 laborers or employees hired or employed by any person to
15 drill any oil or natural gas well or to work in or about any
16 oil or natural gas well or prospect or explore for or do any
17 work for the purpose of developing any petroleum, other
18 mineral or crude oil, or natural gas to pay the severance
19 tax, nor may work done or the drilling of a well or wells
20 for the purpose of prospecting or exploring for petroleum,
21 other mineral or crude oil, or natural gas or for the
22 purpose of developing them be considered to be the engaging
23 in or carrying on of the business. If, in the doing of any
24 work, in the drilling of any oil or natural gas well, or in
25 prospecting, exploring, or development work, any

1 merchantable or marketable petroleum, other mineral or crude
2 oil, or natural gas in excess of the quantity required by
3 the person for carrying on the operation is produced
4 sufficient in quantity to justify the marketing of the
5 petroleum, other mineral or crude oil, or natural gas, the
6 work, drilling, prospecting, exploring, or development work
7 is considered to be the engaging in and carrying on of the
8 business of producing petroleum, other mineral or crude oil,
9 or natural gas within this state within the meaning of this
10 section.

11 (5) Every person required to pay the state or local
12 government severance tax under this section shall pay the
13 tax in full for ~~his~~ the person's own account and for the
14 account of each of the other owner or owners of the gross
15 proceeds in value or in kind of all the marketable petroleum
16 or other mineral or crude oil or natural gas extracted and
17 produced, including owner or owners of working interest,
18 royalty interest, overriding royalty interest, carried
19 working interest, net proceeds interest, production
20 payments, and all other interest or interests owned or
21 carved out of the total gross proceeds in value or in kind
22 of the extracted marketable petroleum or other mineral or
23 crude oil or natural gas, except that any of the interests
24 that are owned by the federal, state, county, or municipal
25 governments are exempt from taxation under this chapter.

Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(6) For purposes of this section, the following definitions apply:

(a) (i) "Gross taxable value", for the purpose of computing the state severance tax, means the gross value of the product as determined in 15-36-103.

(ii) "Gross taxable value", for the purpose of computing the local government severance tax, means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit.

(7) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels a day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365."

NEW SECTION. **Section 2.** Effective date -- retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to August 11, 1989.

-End-

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 138

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE LOCAL GOVERNMENT SEVERANCE TAX WAS ENACTED TO REPLACE PROPERTY TAX LEVIES; AMENDING SECTION 15-36-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, controversy has arisen on the intended use of the local government severance tax on oil and gas production because of a phrase that reads "for the exclusive use and benefit of local governments"; and

WHEREAS, that phrase is a copy of the phrase "for the exclusive use and benefit of the state of Montana" used earlier in the same sentence relating to the state severance tax on oil and gas in which the local government severance tax was incorporated during the June 1989 Special Session on school financing; and

WHEREAS, the local government severance tax was enacted at the request of petroleum producers to replace an unwieldy county-by-county property tax on oil and gas net proceeds with an administratively viable tax applicable to all pre-1985 production on the same basis statewide; and

WHEREAS, the allocation of the proceeds of the local

government severance tax was intended to replace various property tax levies on the net proceeds of oil and gas production and not to institute a new system of tax distribution; and

WHEREAS, the term "local government severance tax" is a label for the tax and was not intended as a limit on the tax because if the proceeds were strictly limited to local governments in the constitutional sense, then schools, which received the property tax revenue, would be eliminated because they are not local governments and municipalities would reap a benefit by receiving proceeds that they did not receive under the property tax system; and

WHEREAS, the Legislature considers the clarification of the distribution of the local government severance tax to be of a curative nature and thus it is applicable to all distributions made since the original effective date of the tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-36-101, MCA, is amended to read:

"15-36-101. Definitions and rate of tax -- state severance tax -- local government severance tax -- assessment of nonworking interest owner -- exemption. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural

1 gas within this state or engaging in or carrying on the
 2 business of owning, controlling, managing, leasing, or
 3 operating within this state any well or wells from which any
 4 merchantable or marketable petroleum, other mineral or crude
 5 oil, or natural gas is extracted or produced shall, except
 6 as provided in 15-36-121, each year when engaged in or
 7 carrying on the business in this state pay to the department
 8 of revenue a state severance tax for ~~the-exclusive--use--and~~
 9 benefit deposit in the general fund of the state of Montana
 10 plus a local government severance tax in lieu of a tax on
 11 net proceeds for ~~the--exclusive--use-and-benefit-of-local~~
 12 government replacement of property taxes formerly levied on
 13 net proceeds. Except as provided in subsection (3), the
 14 state severance tax and the local government severance tax
 15 are as follows:

16 (a) except as provided in subsections (1)(b), (1)(c),
 17 and (1)(d), a 5% state severance tax on the gross taxable
 18 value of all the petroleum and other mineral or crude oil
 19 produced by the person, plus the local government severance
 20 tax of 8.4% on the gross taxable value, as defined in
 21 subsection (6)(a)(ii), of all the petroleum and other
 22 mineral or crude oil produced by the person other than new
 23 production, from each lease or unit; but in determining the
 24 amount of the state severance tax and local government
 25 severance tax, there must be excluded from consideration all

1 petroleum or other crude or mineral oil produced and used by
 2 the person during the year in connection with ~~his~~ the
 3 person's operations in prospecting for, developing, and
 4 producing the petroleum or crude or mineral oil;

5 (b) a 2.65% state severance tax on the gross taxable
 6 value of all natural gas produced by the person, plus the
 7 local government severance tax of 15.25% on the gross
 8 taxable value, as defined in subsection (6)(a)(ii), of all
 9 natural gas produced by the person other than new
 10 production, from each lease or unit; but in determining the
 11 amount of the state severance tax and the local government
 12 severance tax, there must be excluded from consideration all
 13 gas produced and used by the person during the year in
 14 connection with ~~his~~ the person's operations in prospecting
 15 for, developing, and producing the gas or petroleum or crude
 16 or mineral oil; and there must also be excluded from
 17 consideration all gas, including carbon dioxide gas,
 18 recycled or reinjected into the ground;

19 (c) a 2.5% state severance tax on the gross taxable
 20 value of the incremental petroleum and other mineral or
 21 crude oil produced by the person, plus the local government
 22 severance tax of 5% on the gross taxable value, as defined
 23 in subsection (6)(a)(ii), of the incremental petroleum and
 24 other mineral or crude oil produced by the person other than
 25 new production, from each lease or unit in a tertiary

1 recovery project after July 1, 1985. For purposes of this
2 section, a tertiary recovery project must meet the following
3 requirements:

4 (i) the project must be approved as a tertiary recovery
5 project by the board of oil and gas conservation. The
6 approval may be extended only after notice and hearing in
7 accordance with Title 2, chapter 4.

8 (ii) the property to be affected by the project must be
9 adequately delineated according to the specifications
10 required by the board; and

11 (iii) the project must involve the application of one or
12 more tertiary recovery methods that can reasonably be
13 expected to result in an increase, determined by the board
14 to be significant in light of all the facts and
15 circumstances, in the amount of crude oil which may
16 potentially be recovered. For purposes of this section,
17 tertiary recovery methods include but are not limited to:

- 18 (A) miscible fluid displacement;
- 19 (B) steam drive injection;
- 20 (C) micellar/emulsion flooding;
- 21 (D) in situ combustion;
- 22 (E) polymer augmented water flooding;
- 23 (F) cyclic steam injection;
- 24 (G) alkaline or caustic flooding;
- 25 (H) carbon dioxide water flooding;

1 (I) immiscible carbon dioxide displacement; or

2 (J) any other method approved by the department as a
3 tertiary recovery method.

4 (d) a 5% local government severance tax on the gross
5 taxable value, as defined in subsection (6)(a)(ii), of all
6 petroleum and other mineral or crude oil produced by the
7 person other than new production produced by a stripper
8 well, as defined in subsection (7).

9 (2) For purposes of this section, the term "incremental
10 petroleum and other mineral or crude oil" means the amount
11 of oil, as determined by the board, to be in excess of what
12 would have been produced by primary and secondary methods.
13 The determination arrived at by the board must be made only
14 after notice and hearing and shall specify through the life
15 of a tertiary project, calendar year by calendar year, the
16 combined amount of primary and secondary production that
17 must be used to establish the incremental production from
18 each lease or unit in a tertiary recovery project.

19 (3) (a) A local government severance tax is imposed on
20 the gross value paid in cash or apportioned in kind to a
21 nonworking interest owner by the operator or producer of
22 extracted marketable petroleum, other mineral or crude oil,
23 or natural gas subject to local government severance taxes
24 imposed under this chapter. The local government severance
25 tax on nonworking interest owners is computed at the

1 following rates:

2 (i) 12.5% on the gross value paid in cash or
3 apportioned in kind to a nonworking interest owner by the
4 operator or producer of extracted marketable petroleum and
5 other mineral or crude oil;

6 (ii) 15.25% on the gross value paid in cash or
7 apportioned in kind to a nonworking interest owner by the
8 operator or producer of extracted or marketable natural gas.

9 (b) The amounts paid or apportioned in kind to
10 nonworking interest owners are exempt from the local
11 government severance taxes imposed under 15-36-121(2) and
12 under subsections (1)(a) through (1)(d) of this section.

13 (4) Nothing in this part may be construed as requiring
14 laborers or employees hired or employed by any person to
15 drill any oil or natural gas well or to work in or about any
16 oil or natural gas well or prospect or explore for or do any
17 work for the purpose of developing any petroleum, other
18 mineral or crude oil, or natural gas to pay the severance
19 tax, nor may work done or the drilling of a well or wells
20 for the purpose of prospecting or exploring for petroleum,
21 other mineral or crude oil, or natural gas or for the
22 purpose of developing them be considered to be the engaging
23 in or carrying on of the business. If, in the doing of any
24 work, in the drilling of any oil or natural gas well, or in
25 prospecting, exploring, or development work, any

1 merchantable or marketable petroleum, other mineral or crude
2 oil, or natural gas in excess of the quantity required by
3 the person for carrying on the operation is produced
4 sufficient in quantity to justify the marketing of the
5 petroleum, other mineral or crude oil, or natural gas, the
6 work, drilling, prospecting, exploring, or development work
7 is considered to be the engaging in and carrying on of the
8 business of producing petroleum, other mineral or crude oil,
9 or natural gas within this state within the meaning of this
10 section.

11 (5) Every person required to pay the state or local
12 government severance tax under this section shall pay the
13 tax in full for his the person's own account and for the
14 account of each of the other owner or owners of the gross
15 proceeds in value or in kind of all the marketable petroleum
16 or other mineral or crude oil or natural gas extracted and
17 produced, including owner or owners of working interest,
18 royalty interest, overriding royalty interest, carried
19 working interest, net proceeds interest, production
20 payments, and all other interest or interests owned or
21 carved out of the total gross proceeds in value or in kind
22 of the extracted marketable petroleum or other mineral or
23 crude oil or natural gas, except that any of the interests
24 that are owned by the federal, state, county, or municipal
25 governments are exempt from taxation under this chapter.

1 Unless otherwise provided in a contract or lease, the pro
2 rata share of any royalty owner or owners will be deducted
3 from any settlements under the lease or leases or division
4 of proceeds orders or other contracts.

5 (6) For purposes of this section, the following
6 definitions apply:

7 (a) (i) "Gross taxable value", for the purpose of
8 computing the state severance tax, means the gross value of
9 the product as determined in 15-36-103.

10 (ii) "Gross taxable value", for the purpose of computing
11 the local government severance tax, means the gross value of
12 the product as determined in 15-36-103 less the gross value
13 paid in cash or apportioned in kind to a nonworking interest
14 owner by the operator or producer of extracted marketable
15 petroleum, other mineral or crude oil, or natural gas.

16 (b) "Nonworking interest owner" means any interest
17 owner who does not share in the development and operation
18 costs of the lease or unit.

19 (7) For the purposes of this section, "stripper well"
20 means a well that produces less than 10 barrels a day,
21 determined by dividing the amount of production from a lease
22 or unitized area for the year prior to the current calendar
23 year by the number of producing wells in the lease or
24 unitized area and by dividing the resulting quotient by
25 365."

1 NEW SECTION. **Section 2. Effective date -- retroactive**
2 **applicability.** [This act] is effective on passage and
3 approval and applies retroactively, within the meaning of
4 1-2-109, to August 11, 1989.

-End-

Senate BILL NO. 138

INTRODUCED BY 14

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE LOCAL GOVERNMENT SEVERANCE TAX WAS ENACTED TO REPLACE PROPERTY TAX LEVIES; AMENDING SECTION 15-36-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, controversy has arisen on the intended use of the local government severance tax on oil and gas production because of a phrase that reads "for the exclusive use and benefit of local governments"; and

WHEREAS, that phrase is a copy of the phrase "for the exclusive use and benefit of the state of Montana" used earlier in the same sentence relating to the state severance tax on oil and gas in which the local government severance tax was incorporated during the June 1989 Special Session on school financing; and

WHEREAS, the local government severance tax was enacted at the request of petroleum producers to replace an unwieldy county-by-county property tax on oil and gas net proceeds with an administratively viable tax applicable to all pre-1985 production on the same basis statewide; and

WHEREAS, the allocation of the proceeds of the local

government severance tax was intended to replace various property tax levies on the net proceeds of oil and gas production and not to institute a new system of tax distribution; and

WHEREAS, the term "local government severance tax" is a label for the tax and was not intended as a limit on the tax because if the proceeds were strictly limited to local governments in the constitutional sense, then schools, which received the property tax revenue, would be eliminated because they are not local governments and municipalities would reap a benefit by receiving proceeds that they did not receive under the property tax system; and

WHEREAS, the Legislature considers the clarification of the distribution of the local government severance tax to be of a curative nature and thus it is applicable to all distributions made since the original effective date of the tax.

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1 gas within this state or engaging in or carrying on the
 2 business of owning, controlling, managing, leasing, or
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 8 of revenue a state severance tax for the ~~exclusive--use--and~~
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 20 value of the incremental petroleum and other mineral or
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 23 in subsection (6)(a)(ii), of the incremental petroleum and
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1 recovery project after July 1, 1985. For purposes of this
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3 requirements:

4 (i) the project must be approved as a tertiary recovery
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6 approval may be extended only after notice and hearing in
7 accordance with Title 2, chapter 4.

8 (ii) the property to be affected by the project must be
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15 circumstances, in the amount of crude oil which may
16 potentially be recovered. For purposes of this section,
17 tertiary recovery methods include but are not limited to:

- 18 (A) miscible fluid displacement;
- 19 (B) steam drive injection;
- 20 (C) micellar/emulsion flooding;
- 21 (D) in situ combustion;
- 22 (E) polymer augmented water flooding;
- 23 (F) cyclic steam injection;
- 24 (G) alkaline or caustic flooding;
- 25 (H) carbon dioxide water flooding;

1 (I) immiscible carbon dioxide displacement; or

2 (J) any other method approved by the department as a
3 tertiary recovery method.

4 (d) a 5% local government severance tax on the gross
5 taxable value, as defined in subsection (6)(a)(ii), of all
6 petroleum and other mineral or crude oil produced by the
7 person other than new production produced by a stripper
8 well, as defined in subsection (7).

9 (2) For purposes of this section, the term "incremental
10 petroleum and other mineral or crude oil" means the amount
11 of oil, as determined by the board, to be in excess of what
12 would have been produced by primary and secondary methods.
13 The determination arrived at by the board must be made only
14 after notice and hearing and shall specify through the life
15 of a tertiary project, calendar year by calendar year, the
16 combined amount of primary and secondary production that
17 must be used to establish the incremental production from
18 each lease or unit in a tertiary recovery project.

19 (3) (a) A local government severance tax is imposed on
20 the gross value paid in cash or apportioned in kind to a
21 nonworking interest owner by the operator or producer of
22 extracted marketable petroleum, other mineral or crude oil,
23 or natural gas subject to local government severance taxes
24 imposed under this chapter. The local government severance
25 tax on nonworking interest owners is computed at the

1 following rates:

2 (i) 12.5% on the gross value paid in cash or
3 apportioned in kind to a nonworking interest owner by the
4 operator or producer of extracted marketable petroleum and
5 other mineral or crude oil;

6 (ii) 15.25% on the gross value paid in cash or
7 apportioned in kind to a nonworking interest owner by the
8 operator or producer of extracted or marketable natural gas.

9 (b) The amounts paid or apportioned in kind to
10 nonworking interest owners are exempt from the local
11 government severance taxes imposed under 15-36-121(2) and
12 under subsections (1)(a) through (1)(d) of this section.

13 (4) Nothing in this part may be construed as requiring
14 laborers or employees hired or employed by any person to
15 drill any oil or natural gas well or to work in or about any
16 oil or natural gas well or prospect or explore for or do any
17 work for the purpose of developing any petroleum, other
18 mineral or crude oil, or natural gas to pay the severance
19 tax, nor may work done or the drilling of a well or wells
20 for the purpose of prospecting or exploring for petroleum,
21 other mineral or crude oil, or natural gas or for the
22 purpose of developing them be considered to be the engaging
23 in or carrying on of the business. If, in the doing of any
24 work, in the drilling of any oil or natural gas well, or in
25 prospecting, exploring, or development work, any

1 merchantable or marketable petroleum, other mineral or crude
2 oil, or natural gas in excess of the quantity required by
3 the person for carrying on the operation is produced
4 sufficient in quantity to justify the marketing of the
5 petroleum, other mineral or crude oil, or natural gas, the
6 work, drilling, prospecting, exploring, or development work
7 is considered to be the engaging in and carrying on of the
8 business of producing petroleum, other mineral or crude oil,
9 or natural gas within this state within the meaning of this
10 section.

11 (5) Every person required to pay the state or local
12 government severance tax under this section shall pay the
13 tax in full for his the person's own account and for the
14 account of each of the other owner or owners of the gross
15 proceeds in value or in kind of all the marketable petroleum
16 or other mineral or crude oil or natural gas extracted and
17 produced, including owner or owners of working interest,
18 royalty interest, overriding royalty interest, carried
19 working interest, net proceeds interest, production
20 payments, and all other interest or interests owned or
21 carved out of the total gross proceeds in value or in kind
22 of the extracted marketable petroleum or other mineral or
23 crude oil or natural gas, except that any of the interests
24 that are owned by the federal, state, county, or municipal
25 governments are exempt from taxation under this chapter.

1 Unless otherwise provided in a contract or lease, the pro
2 rata share of any royalty owner or owners will be deducted
3 from any settlements under the lease or leases or division
4 of proceeds orders or other contracts.

5 (6) For purposes of this section, the following
6 definitions apply:

7 (a) (i) "Gross taxable value", for the purpose of
8 computing the state severance tax, means the gross value of
9 the product as determined in 15-36-103.

10 (ii) "Gross taxable value", for the purpose of computing
11 the local government severance tax, means the gross value of
12 the product as determined in 15-36-103 less the gross value
13 paid in cash or apportioned in kind to a nonworking interest
14 owner by the operator or producer of extracted marketable
15 petroleum, other mineral or crude oil, or natural gas.

16 (b) "Nonworking interest owner" means any interest
17 owner who does not share in the development and operation
18 costs of the lease or unit.

19 (7) For the purposes of this section, "stripper well"
20 means a well that produces less than 10 barrels a day,
21 determined by dividing the amount of production from a lease
22 or unitized area for the year prior to the current calendar
23 year by the number of producing wells in the lease or
24 unitized area and by dividing the resulting quotient by
25 365."

1 NEW SECTION. **Section 2.** Effective date -- retroactive
2 applicability. [This act] is effective on passage and
3 approval and applies retroactively, within the meaning of
4 1-2-109, to August 11, 1989.

-End-

HOUSE STANDING COMMITTEE REPORT

March 9, 1993
Page 2 of 2

March 9, 1993
Page 1 of 2

Whitewater School District No. 20AA	121,924
Whitewater School District No. D	73,196
Malta Elementary School District No. 14	12,923
Malta High School District No. A	8,086"

Mr. Speaker: We, the committee on Education and Cultural Resources report that Senate Bill 138 (third reading copy -- blue) be concurred in as amended.

Renumber: subsequent section
-END-

Signed: JS "Sonny" Hanson
Sonny Hanson, Chair

And, that such amendments read: Carried by: Rep. Dolezal

1. Title, line 6.
Following: "LEVIES;"
Insert: "REQUIRING CERTAIN SCHOOL DISTRICTS TO REPAY AN OVERDISTRIBUTION OF FOUNDATION PROGRAM MONEY FOR SCHOOL FISCAL YEAR 1991 THAT IS ATTRIBUTABLE TO AN OVERDISTRIBUTION OF LOCAL GOVERNMENT SEVERANCE TAX REVENUE;"

2. Page 2, line 17.
Following: "tax"
Insert: "; and
WHEREAS, Saco Elementary School District No. 12A, Saco High School District No. B, Whitewater Elementary School District No. 20AA, Whitewater School District No. D, Malta Elementary School District No. 14, and Malta High School District No. A, Phillips County, received foundation program money in excess of the districts' foundation entitlements for school fiscal year 1991."

3. Page 10, line 1.
Following: page 9, line 25
Insert: "NEW SECTION. Section 2. Repayment of foundation program money. Beginning July 1, 1993, and by June 30, 1998, Saco School Districts No. 12A and B, Whitewater School Districts No. 20AA and D, and Malta School Districts No. 14 and A, Phillips County, shall repay any overdistribution of foundation program money for school fiscal year 1991 attributable to an overdistribution of local government severance tax revenue in the following amounts, based on an annual repayment schedule approved by the superintendent of public instruction:

Saco School District No. 12A	\$135,682
Saco School District No. B	102,003

Committee Vote:
Yes 18, No 0.

531356SC.Hpf

HOUSE

5B138
531356SC.Hpf

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 138
Representative Kadas

March 15, 1993 10:29 am
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 138 (second reading copy -- yellow).

Signed: *Mike Kadas*
Representative Kadas

And, that such amendments to Senate Bill 138 read as follows:

The House Education and Cultural Resources standing committee report dated March 9, 1993, is amended as follows:

1. Amendment No. 3, insertion, line 2.

Following: "."

Insert: "(1)"

2. Amendment No. 3, insertion, line 8.

Following: "amounts"

Insert: ", plus interest as provided in subsection (2)"

3. Amendment No. 3, at end of insertion.

Following: "8,086"

Insert: "(2) A repayment amount under subsection (1) must include interest at the average annual short-term investment pool rate of the preceding fiscal year."

ADOPT

REJECT

HOUSE

SB 138

581029CW.Hss

1 SENATE BILL NO. 138

2 INTRODUCED BY GAGE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
5 LOCAL GOVERNMENT SEVERANCE TAX WAS ENACTED TO REPLACE
6 PROPERTY TAX LEVIES; REQUIRING CERTAIN SCHOOL DISTRICTS TO
7 REPAY AN OVERDISTRIBUTION OF FOUNDATION PROGRAM MONEY FOR
8 SCHOOL FISCAL YEAR 1991 THAT IS ATTRIBUTABLE TO AN
9 OVERDISTRIBUTION OF LOCAL GOVERNMENT SEVERANCE TAX REVENUE;
10 AMENDING SECTION 15-36-101, MCA; AND PROVIDING AN IMMEDIATE
11 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
12

13 WHEREAS, controversy has arisen on the intended use of
14 the local government severance tax on oil and gas production
15 because of a phrase that reads "for the exclusive use and
16 benefit of local governments"; and

17 WHEREAS, that phrase is a copy of the phrase "for the
18 exclusive use and benefit of the state of Montana" used
19 earlier in the same sentence relating to the state severance
20 tax on oil and gas in which the local government severance
21 tax was incorporated during the June 1989 Special Session on
22 school financing; and

23 WHEREAS, the local government severance tax was enacted
24 at the request of petroleum producers to replace an unwieldy
25 county-by-county property tax on oil and gas net proceeds

1 with an administratively viable tax applicable to all
2 pre-1985 production on the same basis statewide; and

3 WHEREAS, the allocation of the proceeds of the local
4 government severance tax was intended to replace various
5 property tax levies on the net proceeds of oil and gas
6 production and not to institute a new system of tax
7 distribution; and

8 WHEREAS, the term "local government severance tax" is a
9 label for the tax and was not intended as a limit on the tax
10 because if the proceeds were strictly limited to local
11 governments in the constitutional sense, then schools, which
12 received the property tax revenue, would be eliminated
13 because they are not local governments and municipalities
14 would reap a benefit by receiving proceeds that they did not
15 receive under the property tax system; and

16 WHEREAS, the Legislature considers the clarification of
17 the distribution of the local government severance tax to be
18 of a curative nature and thus it is applicable to all
19 distributions made since the original effective date of the
20 tax; AND

21 WHEREAS, SACO ELEMENTARY SCHOOL DISTRICT NO. 12A, SACO
22 HIGH SCHOOL DISTRICT NO. B, WHITEWATER ELEMENTARY SCHOOL
23 DISTRICT NO. 20AA, WHITEWATER SCHOOL DISTRICT NO. D, MALTA
24 ELEMENTARY SCHOOL DISTRICT NO. 14, AND MALTA HIGH SCHOOL
25 DISTRICT NO. A, PHILLIPS COUNTY, RECEIVED FOUNDATION PROGRAM

MONEY IN EXCESS OF THE DISTRICTS' FOUNDATION ENTITLEMENTS
FOR SCHOOL FISCAL YEAR 1991.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-36-101, MCA, is amended to read:

"15-36-101. Definitions and rate of tax -- state severance tax -- local government severance tax -- assessment of nonworking interest owner -- exemption. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for the-exclusive--use--and benefit deposit in the general fund of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for the--exclusive--use-and-benefit-of-local government replacement of property taxes formerly levied on net proceeds. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), a 5% state severance tax on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value, as defined in subsection (6)(a)(ii), of all the petroleum and other mineral or crude oil produced by the person other than new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with his the person's operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the gross taxable value, as defined in subsection (6)(a)(ii), of all natural gas produced by the person other than new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with his the person's operations in prospecting for, developing, and producing the gas or petroleum or crude

or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) a 2.5% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (6)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person other than new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the board of oil and gas conservation. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the board; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil which may

potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

- (A) miscible fluid displacement;
- (B) steam drive injection;
- (C) micellar/emulsion flooding;
- (D) in situ combustion;
- (E) polymer augmented water flooding;
- (F) cyclic steam injection;
- (G) alkaline or caustic flooding;
- (H) carbon dioxide water flooding;
- (I) immiscible carbon dioxide displacement; or
- (J) any other method approved by the department as a tertiary recovery method.

(d) a 5% local government severance tax on the gross taxable value, as defined in subsection (6)(a)(ii), of all petroleum and other mineral or crude oil produced by the person other than new production produced by a stripper well, as defined in subsection (7).

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the board, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the board must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the

combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(2) and under subsections (1)(a) through (1)(d) of this section.

(4) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any

oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within this state within the meaning of this section.

(5) Every person required to pay the state or local government severance tax under this section shall pay the tax in full for his the person's own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum

1 or other mineral or crude oil or natural gas extracted and
 2 produced, including owner or owners of working interest,
 3 royalty interest, overriding royalty interest, carried
 4 working interest, net proceeds interest, production
 5 payments, and all other interest or interests owned or
 6 carved out of the total gross proceeds in value or in kind
 7 of the extracted marketable petroleum or other mineral or
 8 crude oil or natural gas, except that any of the interests
 9 that are owned by the federal, state, county, or municipal
 10 governments are exempt from taxation under this chapter.
 11 Unless otherwise provided in a contract or lease, the pro
 12 rata share of any royalty owner or owners will be deducted
 13 from any settlements under the lease or leases or division
 14 of proceeds orders or other contracts.

15 (6) For purposes of this section, the following
 16 definitions apply:

17 (a) (i) "Gross taxable value", for the purpose of
 18 computing the state severance tax, means the gross value of
 19 the product as determined in 15-36-103.

20 (ii) "Gross taxable value", for the purpose of computing
 21 the local government severance tax, means the gross value of
 22 the product as determined in 15-36-103 less the gross value
 23 paid in cash or apportioned in kind to a nonworking interest
 24 owner by the operator or producer of extracted marketable
 25 petroleum, other mineral or crude oil, or natural gas.

1 (b) "Nonworking interest owner" means any interest
 2 owner who does not share in the development and operation
 3 costs of the lease or unit.

4 (7) For the purposes of this section, "stripper well"
 5 means a well that produces less than 10 barrels a day,
 6 determined by dividing the amount of production from a lease
 7 or unitized area for the year prior to the current calendar
 8 year by the number of producing wells in the lease or
 9 unitized area and by dividing the resulting quotient by
 10 365."

11 NEW SECTION. SECTION 2. REPAYMENT OF FOUNDATION
 12 PROGRAM MONEY. (1) BEGINNING JULY 1, 1993, AND BY JUNE 30,
 13 1998, SACO SCHOOL DISTRICTS NO. 12A AND B, WHITEWATER SCHOOL
 14 DISTRICTS NO. 20AA AND D, AND MALTA SCHOOL DISTRICTS NO. 14
 15 AND A, PHILLIPS COUNTY, SHALL REPAY ANY OVERDISTRIBUTION OF
 16 FOUNDATION PROGRAM MONEY FOR SCHOOL FISCAL YEAR 1991
 17 ATTRIBUTABLE TO AN OVERDISTRIBUTION OF LOCAL GOVERNMENT
 18 SEVERANCE TAX REVENUE IN THE FOLLOWING AMOUNTS, PLUS
 19 INTEREST AS PROVIDED IN SUBSECTION (2), BASED ON AN ANNUAL
 20 REPAYMENT SCHEDULE APPROVED BY THE SUPERINTENDENT OF PUBLIC
 21 INSTRUCTION:

22	<u>SACO SCHOOL DISTRICT NO. 12A</u>	<u>\$135,682</u>
23	<u>SACO SCHOOL DISTRICT NO. B</u>	<u>102,003</u>
24	<u>WHITEWATER SCHOOL DISTRICT NO. 20AA</u>	<u>121,924</u>
25	<u>WHITEWATER SCHOOL DISTRICT NO. D</u>	<u>73,196</u>

1 MALTA ELEMENTARY SCHOOL DISTRICT NO. 14 12,923
2 MALTA HIGH SCHOOL DISTRICT NO. A 8,086
3 (2) A REPAYMENT AMOUNT UNDER SUBSECTION (1) MUST
4 INCLUDE INTEREST AT THE AVERAGE ANNUAL SHORT-TERM INVESTMENT
5 POOL RATE OF THE PRECEDING FISCAL YEAR.
6 NEW SECTION. **Section 3.** Effective date -- retroactive
7 applicability. {This act} is effective on passage and
8 approval and applies retroactively, within the meaning of
9 1-2-109, to August 11, 1989.

-End-