

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By DAN HARRINGTON, CHAIR, on March 5, 1991, at
9:00 a.m.

ROLL CALL

Members Present:

Dan Harrington, Chairman (D)
Bob Ream, Vice-Chairman (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
Marian Hanson (R)
Jim Madison (D)
Ed McCaffree (D)
Bea McCarthy (D)
Tom Nelson (R)
Mark O'Keefe (D)
Bob Raney (D)
Barry "Spook" Stang (D)
Fred Thomas (R)

Members Absent: Rep. Cohen (D)
Rep. Elliott (D)
Rep. Hoffman (R)
Rep. Schye (D)
Rep. Wanzenried (D)

Staff Present: Lee Heiman, Legislative Council
Lois O'Connor, Committee Secretary

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

HEARING ON HB 121

Presentation and Opening Statement by Sponsor:

REP. COBB, House District 42, Augusta, stated HB 121 is an act to repeal the laws on the \$11 state store licenses which is required that all stores purchase. It bring in \$270,000 a year. The problem with the law is that it is only an \$11 license. The DOR just sends out a letter requesting the \$11. Some people pay it and some people don't. It is hard to collect and has no purpose.

Proponents' Testimony:

REP. M. HANSON and Riley Johnson, NFIB, went on record in support of HB 121.

Opponents' Testimony: None

Questions From Committee Members:

REP. RANEY asked REP. COBB what license are we talking about. He has to buy two store licenses for his gift shop in Livingston. REP. COBB referred the question to Jeff Miller, DOR. Mr. Miller said you have a wholesalers license and a store retailers license. This bill would address both of these licenses. Currently, DOR licenses about 750 wholesalers and approximately half that as retailers. REP. RANEY asked is the \$45 a flat rate or is it a progressive tax. Mr. Miller said the wholesaler fee is a flat fee. It is \$43.50 a year regardless of the amount of sales. The store license is graduated; \$11 per store if the sales are under \$350,000, and it jumps when a person owns 3 or 4 stores. He gave an example: a chain store the size of Buttreys. They would be paying \$206 per store for a store retail license. REP. RANEY asked if there was a way to accomplish all of this and eliminate the single stores but leave the progressive stores in. Mr. Miller said no.

REP. REAM asked Jeff Miller if they are set in statute as dollar amounts and how long ago was it done. Mr. Miller said they are set in statute as dollar amounts, and has been in place for 2 to 3 decades.

Closing by Sponsor:

REP. COBB made no closing on HB 121.

REP. COBB asked the committee to table HB 750 because the Governor and REP. WYATT have introduced similar bills on reappraisal. It is easier to amend their bill than to have another one introduced.

EXECUTIVE ACTION ON HB 750

Motion/Vote: REP. HARRINGTON MOVED HB 750 BE TABLED. Motion carried unanimously by voice vote.

HEARING ON SB 202**Presentation and Opening Statement by Sponsor:**

SEN. HAGER, Senate District 48, Billings, stated SB 202 would declare that information agents report separately to the DOR interest coming from municipal bonds and other state and political subdivisions of that state. While out camping, he ran into a lady who was in the business of filling out tax returns.

He read a letter from her which supported SB 202. Municipal bonds are sold in large amounts, \$5,000 or more. If a person is buying them, they are probably getting a substantial amount of interest. Municipal interest and state interest of Montana subdivisions is not taxable in this state. If they are from a state other than Montana, it is taxable. SB 202 would require the information agents to report this interest to the state. This is a way for Montana to pick up more money. People who can afford to invest in these types of things can afford to pay more.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members:

REP. ELLIOTT asked REP. HAGER what an information agent is. SEN. HAGER said an information agent is like D.A. Davidson or Merrill-Lynch.

REP. M. HANSON asked if people over 65 have to report this income and if they are under 65 they don't. SEN. HAGER said no. The point is that they are suppose to report it; but because the state does not get the information, the accountants are advising their clients not to report it.

Closing by Sponsor: SEN. HAGER made no closing statement.

HEARING ON HB 900

Presentation and Opening Statement by Sponsor:

REP. O'KEEFE, House District 45, Helena, stated HB 900 is the first retirement bill brought before the House Taxation Committee. During the special session in 1989, we tried to deal with the problem of taxation of retirement benefits. We were unable to do anything except exempt the federal retirees from any taxation to make them equal to the state; thus leaving the private pensioners in a position where they were paying taxes and nobody else was. HB 900 is an attempt to remedy this situation, and is based on what other states have done who find themselves in the same situation after the Davis Case.

REP. O'KEEFE gave a summary of offset benefits which shows how other states have dealt with the problem. EXHIBIT 1

He stated his personal preference regarding the treatment of retirees is to not tax anybody. However, having seen what the Governor had on the table for retirement taxation and having gone through this once before, he realizes this is not a reality. The original aim of HB 900 is to keep the revenue produced for the state around \$15 to \$16 million dollars, and at the same time provide a benefit offset for the public employees whom he

believes the state has a moral and ethical obligation to treat their retirement in a matter that is slightly different than federal and private retirements.

HB 900 recognizes that as a result of the Davis Decision, the state must tax the retirement benefits of state and federal retirees equally; and it provides a uniform \$3,600 exemption for all retirees. It would treat the state and federal retirees the same. HB 900 recognizes that the state can not afford to exempt all retirement from taxation. With the amendments he will propose, it will generate \$14 to \$16 million for the general fund.

HB 900 also provided retired public employees and retired teachers with an adjustment in benefits that would provide the average PERS retiree with approximately \$124 per year. The position that the public retiree finds themselves in is much like a private retirement; in that, the federal government said "you can put your money in an IRA and not get taxed, but when you take your money out, we will tax you". As a result of the Davis Decision, the state people are being put in the same position.

DOR came to him with amendments that talk about definitions of pensions. There will also be amendments removing all reference to brackets found in the bill which are used for the calculation of the adjustments used by the retirement board. In place of the brackets will be directions for the board to provide all members with the same percentage increase under PERS and TRS. Amendments to HB 900 will also remove the \$4,000 threshold to the eligibility for the adjustment. It will adjust the amount of the statutory appropriation to reflect the estimates in the preparation of the fiscal note. A fifth amendment will provide a specific division of the statutory appropriation between the two retirements boards. The final one will define the definition of Montana resident for the purposes of eligibility of adjustment. All of the amendments will be provided for the subcommittee and the committee on the whole at a later date.

The statement of intent of HB 900 delegates to the retirement boards the authority to develop a method of distributing the benefits to members. The amendments will eliminate the reference to brackets. Section 1 includes retirement benefits in excess of \$3,600 in the definition of the adjusted gross income. Section 2 includes retirement benefits in excess of \$3,600 in computing taxes on estates and trust. Section 3 provides a statutory appropriation of 2.5%. Section 4 sets out the method for the retirement boards to calculate the benefit adjustment. Section 5 amends the statutory appropriation definition to include the statutory appropriation to the retirement boards. Sections 6 - 17 amend all the various public retirement laws to provide that only \$3,600 is exempt from taxation. Section 18 is a nonseverability clause. Section 19 is the codification clause; and Section 20 is the effective date which is applicable to tax year 1991.

Proponents' Testimony:

Leo Berry, Association of Montana Retired Public Employees, stated the association has opposed most of the retirement taxation bills previously because the exemption that public employees currently have is a benefit of employment. The benefit is part of the employment package that started with most of the early systems. It was designed to accomplish a public purpose which was to attract and retain qualified employees in the public sector of employment. The private sector has its own method of attracting and maintaining these people. The public sector chose to blend its tax policy with its benefit package. In 1985, the Legislature provided a pay increase for cost of living for active employees by exempting their contributions to the PERS system for taxes. Montana has historically blended its tax policy with its benefit plan.

The Davis Decision was the case where the federal employees sued to claim that they were taxed differently than state employees. Most people misunderstand this case in that they think it was based on equal protection and constitutional law. That is not what the court said. The principle of the Davis Decision was based on early years when the states governments where discriminating against the federal government in many ways. Congress passed a law in the 1800's that said you can't treat federal government any differently than the state government is treated. It was a statute passed by Congress and has changed over the years. The last change was in the 1900's and this was the statute that the Supreme Court relied on in the Davis Decision to rule that you can't tax federal retirees differently than state retirees. It had nothing to do with equal protection.

This issue has been presented to the Legislature on several occasions in other contexts, in that, private retirees are being treated differently than public retirees. The private retirees brought a law suit in the state district court claiming that they were being treated unfairly, and that they should be receiving a similar exemption or the state laws should all be declared unconstitutional. They brought it to the courts on the grounds of equal protection and ultimately lost the case. The court ruled that it was not unfair to have the current tax system. The result of these two cases is that you don't have to do anything. There is no legal need to change our current tax system. If, however, you want to tax the federal retirees; then you must tax the public retirees. This is the current status of the law. This doesn't mean that you have to do anything differently for the private retirees. The court went on to say that the fact that the private employers are free to develop their own incentives to hire and maintain employees currently justifies the state of Montana in doing so for its employees.

The principle behind the taxation is no different than if you buy a municipal bond. Income from the bond is tax free because you are trying to accomplish some public purpose. If you buy a corporate bond, such as from U.S. West, it is taxable because there is no public purpose. There is a fundamental difference between the public sector and the private sector. There is an employment relationship between the public sector and the Legislature and the state government as a whole. There is none between the private sector. He stated that his association has researched this very thoroughly and have found that if you want to tax the federal retirees, then you must provide some kind of offset for the public employees. We think that they have a benefit of employment and a vested right. HB 900 provides the offset which the court will ultimately conclude you must provide for them. Therefore, the association will stand in support of the bill.

Ralph Eudaily, Montana Retired Teachers Association, provided written testimony. EXHIBIT 2

Dick Williams, President, Association of Montana Retired Public Employees, provided written testimony. EXHIBIT 3

Tim Bergstrom, Montana State Firemen's Association, stood in support of HB 900 and its proposed amendments. He stated many federal and private pensions do enjoy cost of living adjustments. Montana public employees pension systems do not.

Ed Fleece, Montana State Council of Professional Firefighters, and **Bill Olsen, American Association of Retired Persons,** went on record in support of HB 900.

Opponents' Testimony:

Edward Sheehy Jr., Helena Attorney, stated he was appearing on behalf of the plaintiffs in the lawsuit now pending against the state of Montana for refunds for the taxes paid five years prior to the Davis Decision. In our view, HB 900 is going to return Montana exactly into the position that it was in prior to the Davis Decision. It will again be discriminating with regard to taxation of state employees retirement benefits and the taxation of federal employer retirement benefits.

REP. O'KEEFE stated in his opening statement that the Legislature, in the special session, exempted federal retirement income from taxation. This is not true. The special session did nothing with regard to the statutes on taxation. It left them in the same status they were in prior to the Davis Decision. As a result, they filed a lawsuit where we asked the district court to either declare all retirement income of federal and state employees exempt or tax it all. The DOR and his clients stipulated that for tax years 1989, 1990, and into the future, retirement income for the state and federal employees would be

tax exempt. The district court affirmed that stipulation and this is the current status of law.

It has been said that the treatment of state retirees is used as an employment benefit. The court did say that, however, the problem is that the Davis vs Michigan Case made the same argument. They stated that because this is an employment benefit we are not discriminating and violating the federal law which states that you can tax the income of state and federal employees as long as you don't discriminate. The state of Michigan said they were not violating this because this is an employment benefit. The U. S. Supreme Court said otherwise. The high court said what you are doing is basing your taxes on the source of compensation. This is exactly what Montana was doing. HB 900 will put us back in the same position. It will give state employees a cost of living increase based on the taxes that they pay. It only applies to Montana residents which means a person has to be paying taxes in Montana to benefit from the cost of living increase. The "whereases" in HB 900 make it clear that this is what the intent is.

We do not care whether the Legislature gives a cost of living increase to state retirees, nor do we take a position as to how you should treat the retirement income; however, if these two things are going to be done, they must be done separately. It can not be tied to taxation. As it stands, HB 900 does discriminate. He hopes, however, that HB 900 will pass, because it will then give us the right to pay those taxes under protest and allow us to collect refunds for the taxes because it can not be argued that the outcome was not foreshadowed. We will be back in court if HB 900 is passed.

Larry Zimmerman, National Association of Retired Federal Employees, provided written testimony. EXHIBIT 4

Stan Rosenberg, National Association of Retired Federal Employees, stated HB 900 as written will discriminate in favor of state retirees to the detriment of federal retirees. Current law states that federal retirees can not be taxed differently than state retirees. To do so constitutes discrimination. The bill is an obvious attempt to tax federal employees retirement beyond the \$3,600 figure and give the monies accrued from the tax to state employees as a rebate. It is possible that the surrounding states will comply with Davis vs Michigan, and Montana will be one of the few states in the region where federal retirees income will be taxed differently than state retirees. He asked that if HB 900 is passed that it be cleaned up as to its intention.

He suggested that the Legislature find an alternative method of keeping the states promise to retired state employees. He suggested that the committee consider paying state retirees health insurance premiums. State retirees, by virtue of receiving social security in addition to retirement, are entitled to medicare. He recognizes this method will not bring in the

revenue but it is less tainted than the approach used. He is opposed to the bill as drafted because of its unfairness.

Everett Woodgerd, National Association of Retired Federal Employees, provided written testimony. **EXHIBIT 5**

Sherwood Trotter, Retired Federal Employee, provided written testimony. **EXHIBIT 6**

Chester Kinsey, Montana Senior Citizens Association, stated they were not expressing opposition to the bill itself. They are objecting to Page 3, Lines 5 through 9. He feels this is not a good option.

John Malee, Montana Federation of Teachers, stated he is in opposition to the taxation of the pensions of Montana teachers and public employees. Montana made a promise to these retirees over 40 years ago that their pensions would not be taxed. This promise must not be broken. He appreciates **REP. O'KEEFE'S** attempt to compensate retirees they remain in opposition to any tax on PERS or TRS. Public employees wages have not kept up with inflation and teachers pay is 41st in the nation. The state and local governments find it increasingly difficult to attract and retain qualified employees. Additional state employees have lost 23% of their buying power over the last decade. Any taxes on PERS and TRS pension would be hard on people already getting inadequate benefits through insufficient pay increases over the past. If the Legislature is determined to tax retirement benefits, we feel HB 900 is the best option available. But before the Legislature decides on such an option, we urge you to remember the promise made by the state of Montana.

Ladd Shorey, National Association of Retired Employees, provided written testimony. **EXHIBIT 7**

Lou Marquardt, Equality in Taxation, provided written testimony. **EXHIBIT 8**

Norris Maybry, Equality in Taxation, stated the private retirees would be the only retirees who would pay taxes. This is grossly unfair since they are the lowest income average group of the three in question. He has learned a lesson in that what is legal and what is right are two different things.

Mary Craig, C.P.A., Equity in Taxation, stated this group has no problem with giving the state employees a COLA. What they are interested in is equity in the taxation of retirement. The inequities in HB 900 are numerous: (1) Page 2, whereas the Legislature wishes to encourage retired state, local, and school employees to remain within Montana--it would be nice if the Legislature encourage federal, private, and people without retirement to remain in Montana. This is what we call equity. (2) Whereas the Legislature therefore grants an increase in benefits to former public employees who are residents to the

state, but not to people who are no longer residents. These employees don't count. Is this equity? (3) Page 3, the brackets will begin at four with the largest amount of money going to the people in the top bracket. What happened to the people under four? Is this equity? (4) It states we will give federal, state, and private retirees \$3,600. **Denis Adams, DOR**, said that 50% of the people who have an \$800 elderly exclusion have no retirement benefit. Is this equity? HB 900 addresses only 50% of the elderly. (5) Page 24, Section 18 states a nonseverability clause. Most legislation has a severability. It means if there were a case, then the taxation would be heard to the way it is now. Is this equitable? She asked the committee to consider HB 900 as inequitable.

Mark Russell, Montana Society of Certified Public Accountants, stood in opposition to HB 900.

Bernard Graine, Retired Federal Employee, stated there has been one thing that has been overlooked in all of the testimony and that has been the historical basis for the \$3,600. When this was enacted 30 years ago, it applied only to federal retirees. The historical basis for this was that other retirees were receiving social security, which was totally tax exempt. At that time, the maximum social security was \$3,600. The purpose was to give the federal retirees a level playing field. As time went on, social security was increased and the state did not see fit to increase the \$3,600 exemption. HB 900 perpetuates an unfairness. The legislature must set up a program where the total amount of exemption funds are considered.

Questions From Committee Members:

REP. REAM referred to the handout given by **REP. O'KEEFE** (Exhibit 1) and asked **Leo Berry** if all the states had exemptions for state retirees. **Mr. Berry** said yes and each state handled the resolution of this issue in one bill as HB 900 does. **REP. REAM** referred to Page 15, Line 4 and 16, of the bill in that **Mr. Berry** had referred to making that adjustment. If we made the adjustment either as a 3% or 2.5% level and applied it to retirees who are not residents of the state, what would the additional dollar amount be. **Mr. Berry** said he could not answer this. He would have to get that information from **Larry Nachtsheim, Director, PERS** or **David Senn, Director, TRD**.

REP. HARRINGTON said **Ed Sheehey** stated that the bill would have a serious court challenge and asked him to comment on it. **Mr. Sheehey** said HB 900 would have a substantial bearing in litigation with regard to discrimination. If people outside of Montana are treated the same as people in Montana, it would lessen the argument about discrimination. As it stand with HB 900, in tying the two together, we will still end up in court.

REP. GILBERT asked **Ed Sheehey** if the bill were amended to eliminate the \$3,600 exclusion and "make whole" portion and leave

a \$12,000 or \$14,000 exclusion to all retirees, would this lessen the chance of a lawsuit. Mr. Sheehey said yes.

Closing by Sponsor:

REP. O'KEEFE stated he heard of no one, either proponent or opponent, that they liked everything in HB 900. He heard two attorneys argue both sides. He wanted to repeat his philosophy on retirements. If it were up to him, no retiree would be taxed. It is not up to him or the state to give this type of loss of revenue back to the retirees.

Everyone says they want to see equity in taxation. Well, all pension benefits for all retirees in the state over \$3,600 in HB 900 would pay the same taxes. This is what the bill does. What the opponents don't like is that we offset the benefit. Opponents do like COLAs but they don't like offset benefits. He suggest that they could call this a COLA. We could take the money and put it in a COLA account and the affect would be the same. He gets lost in that argument.

The \$4,000 came up several times. It has been taken out because the retirement board said exactly what the opponents said. The people at the lower end need more help than the people at the upper end. The way the offset benefits work is that across the board, everyone will get 2.5% or 3% no matter what they pay in. It will be an offset benefit which helps the lower income retiree.

REP. O'KEEFE spoke to Mr. Grainey in what was legal and what was right. He agreed with him in that he didn't always like what is legal and he doesn't think that what is legal is always right. In this case, he is looking at it from the other side of the coin. He has a three year old son; and the one thing he tries to teach him is that if he makes a promise, he must keep it. This is right. Since 1936, the state of Montana has made a promise that public retirement benefits are not taxable. We have also made the promise to the federal retirees that they would be taxed because we did tax them up until two years ago. We made the promise to the private pensioners that they would be taxed. They are still taxed to this day. Maybe we want to recommend that none of them be taxed. There is much work to be done on HB 900. You can throw out all the whereases as far as he is concerned.

HEARING ON SB 152

Presentation and Opening Statement by Sponsor:

SEN. TOWE, Senate District 46, Billings, stated SB 152 deals that section of the code that exempts property from property tax. The problem is when we come to museums, art galleries, zoos, and observatories; it is not clear if they are exempt from taxation. It is assumed but not clear. It is not clear that a museum, zoo would be included. On the definition of the term public art

gallery and public observatory and it includes only those art galleries and observatories that are open to the public without charge, at all reasonable hours, and are used for purposes of education only. The language "without charge" eliminates all museums because all museums charge for maintenance and upkeep. This excludes the museums that charge. Every museum is in fear that the tax assessor will tell them that they are subject to tax. SB 152 would clarify that.

DOR has proposed some amendments to add "personal and real property" at the top of Page 6; on Line 3 strike "or" and insert ","; and Line 4, after "display" insert ", or" (iii) used to house or store a public display".

He stated that it would not affect revenue at all. There are no museum properties at presently being taxed. It is a major concern to many museums.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members:

REP. THOMAS asked Denis Adams, DOR, if the term "profit" was a correct term. Mr. Adams said the term "profit" means that they are doing more than covering their operating expenses, such as if they were being reimbursed for property taxes or for utilities paid.

REP. McCAFFREE asked Mr. Adams to explain the term "non-profit". Mr. Adams said this term comes from the Internal Revenue Service in that they set a criteria to qualify as a non-profit organization. This is primarily a 501-(3)(C) corporation which means that cannot be viewed for profit upon the termination of the organization. The proceeds or assets left must be used for another non-profit organization.

REP. HOFFMAN said as he reads the definition of public museums would it apply to ghost towns. SEN. TOWE said if it was genuinely held up for public display and if a ghost town is used for that purpose, yes it would be.

REP. MCCARTHY said a number of communities release or rent the grounds of a museum for functions such as Art in the Parks as a profit fundraiser and asked SEN. TOWE if this was considered. SEN. TOWE said he intended to exclude the situation where the you submit the land on a lease for the clear intent of the lease is to make a profit. In this situation, the Department will have to make regulations to define profit. Profit is defined as over and above the cost of upkeep and maintenance of the property. If the lease amount is no higher than the cost of the upkeep, this is not profit.

Closing by Sponsor: SEN. TOWE made no closing statement.

EXECUTIVE ACTION ON SB 152

Motion: REP. HOFFMAN MOVED SB 152 BE CONCURRED IN.

Motion/Vote: REP. ELLISON moved to amend SB 152. Motion carried unanimously. EXHIBIT 9

Motion/Vote: REP. HARRINGTON MADE A SUBSTITUTE MOTION THAT SB 152 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 121

Motion: REP. ELLIOTT MOVED HB 121 DO NOT PASS.

Discussion:

REP. HARRINGTON said he had serious reservations. This is a bill that costs \$500,000. REP. M. HANSON said this bill is similar to her HB 547. She felt that something could be done with it. REP. HARRINGTON said he had no problem with HB 547, but this bill is different. REP. FOSTER said it would help if the DOR would at least provide the committee with the breakdown of the \$11, what it is providing, and what the graduated schedules are providing. REP. HARRINGTON said it would be his intention to put HB 121 and HB 547 in a subcommittee to be looked at.

Motion: REP. ELLIOTT withdrew his Do Not Pass motion: NO ACTION WAS TAKEN ON HB 121.

HEARING ON HB 806

Presentation and Opening Statement by Sponsor:

REP. SPRING, House District 77, Belgrade, stated HB 806 is an act exempting levies for conservation district special assessments from the property tax freeze.

Proponents' Testimony:

Peggy Parmelee, Montana Association of Conservation Districts, provided written testimony. EXHIBIT 10,11

Ray Beck, DNRC, provided written testimony. EXHIBIT 12

Eric Feaver, Montana Education Association, stated schools received none of this money. We believe I-105 was a terrible mistake, and it is haunting our local governments to provide the basic necessary services to the citizenry. It is an appropriate legislative activity to take care of I-105 piece by piece. He

stated the Association would support the Legislature in repealing I-105, but if they are not ready to do this, then they must pay attention to the fact that there are entities who are excluded from I-105 already. Many have restriction as to what they can do. There is no reason why we can not add other institutions who need the relief.

Opponents' Testimony:

Gordon Morris, Montana Association of Counties, said for all the reasons stated by **Eric Feaver**, MACO opposes HB 806

Questions From Committee Members: None

Closing by Sponsor:

REP. SPRING stated in 1986, I-105 became the taxing authority. The limitation on the amount of taxes levied did not apply to some special assessments. HB 806 requires an approval of the taxpayers it will affect and it costs the general fund nothing. He urged the committee's support.

EXECUTIVE ACTION ON HB 806

Motion: **REP. O'KEEFE** MOVED HB 806 DO PASS.

Discussion:

REP. McCAFFREE said the committee can't pass the bill because of the reasons stated before. The people voted and HB 806 is an I-105 breaker.

REP. REAM said the existing language refers to "rural improvement district" and the inserted language is "special assessments"; and asked what kind of special assessments are they talking about and does it relate to rural improvement districts. **Ray Beck** said he was not sure because he was talking about two different sections of law. He would have to look it up to be sure. **REP. REAM** asked if in the case of the conservation districts, what would the special assessments be used for. **Mr. Beck** said Section 1 was not used a great deal.

REP. O'KEEFE said the conservation districts have about 19 different bill proposed for funding sources most of which he can't support, but HB 806 he will support.

CHAIR HARRINGTON asked **Lee Heiman, Legislative Council**, if he found anything on conservation districts. **Mr. Heiman** said conservation districts are very similar to special improvement districts in that there is a bonding provision to allow for long term capital type of improvement. **REP. REAM** said based on **Mr. Heiman's** answer he can see no reason to oppose the bill. He said that it is clarified that conservation districts can use the mechanism already in place for rural improvement districts.

REP. GILBERT said if we keep poking holes in I-105, we are going to repeal I-105 just like we are going to get a sales tax in Montana--piece by piece. If we are going to repeal I-105, then someone should introduce a bill to repeal it. This is the way it should be done, and he will oppose HB 806 on those grounds.

REP. McCAFFREE asked Lee Heiman if all conservation districts county wide. Mr. Heiman said he didn't know. Mr. Beck said that there are 59 conservation districts which is three more than counties. REP. McCAFFREE said if that is the case, it separate a conservation district from RIDs. Most of them are a specific area within the county, whereas, conservation districts are county wide. You can not put the two together.

REP. FAGG in regards to REP. REAM'S point, said the Attorney General looked at this and researched it very thoroughly. We can not in a couple of minutes decide that this is like a SID and we can overturn the AG's opinion. He did not think this was appropriate. He also stated that he would have to oppose HB 806 for the same reasons given by REPS. McCAFFREE and GILBERT said. The people voted for I-105, and we should stick with it until they vote to repeal it.

Vote: Motion that HB 806 carried 11 to 8 on a roll call vote.
EXHIBIT 13

EXECUTIVE ACTION ON SB 85

Motion/Vote: REP. FAGG MOVED SB 85 BE CONCURRED IN. Motion carried unanimously on a voice vote.

EXECUTIVE ACTION ON SB 194

Discussion:

CHAIR HARRINGTON said this was the generation skipper bill. REP. O'KEEFE said he had a problem with the affective date on SB 194. How do we make the affective date right in terms of coordinating it with the tax year? Denis Adams, DOR, said for this type of tax, it really makes no difference what the affective date is because the person will have died before the estate is probated. He didn't see a problem with the affective date. REP. O'KEEFE said he would like to see the codes on the books; and if the affective date doesn't matter then we might as well put them in at the October 1st date.

Motion: REP. O'KEEFE moved to amend SB 194. To take out the new section effective date.

Discussion:

REP. RANEY said he understood what REP. O'KEEFE is saying; but this is something that they don't even use. We will just be running this back to the Senate and it is not that important.

REP. RANEY asked **Denis Adams** if DOR anticipated using SB 85. **Mr. Adams** said there could be a possibility that they could use it. The IRS doesn't even use it. It was passed by Congress to take care of a California resident who wanted to pass down a bunch assets to his grandchildren.

Vote: Motion to amend SB 194 failed by voice vote.

Vote: Motion that SB 194 Be Concurred In carried in 15 to 1 with **REP. GILBERT** voting no.

EXECUTIVE ACTION ON HB 699

Discussion:

CHAIR HARRINGTON said HB 699 was **REP. ELLISON'S** travertine bill.

Motion/Vote: **REP. REAM** MOVED HB 699 DO PASS. Motion carried 15 to 1 with **REP. O'KEEFE** voting no.

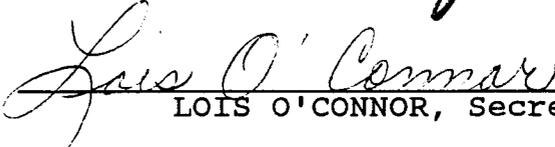
Announcements: **CHAIR HARRINGTON** announced that SB 202, SB 547, HB 121, and HB 900 would go to the Income/Severance Tax Subcommittee.

ADJOURNMENT

Adjournment: 12:00 p.m.



DAN HARRINGTON, Chair



LOIS O'CONNOR, Secretary

DH/lo

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL

DATE 3/5/91

NAME	PRESENT	ABSENT	EXCUSED
REP. DAN HARRINGTON	✓		
REP. BEN COHEN, VICE-CHAIRMAN		✓	
REP. BOB REAM, VICE-CHAIRMAN	✓		
REP. ED DOLEZAL	✓		
REP. JIM ELLIOTT		✓	
REP. ORVAL ELLISON	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. MARIAN HANSON	✓		
REP. DAVID HOFFMAN		✓	
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. BEA MCCARTHY	✓		
REP. TOM NELSON	✓		
REP. MARK O'KEEFE	✓		
REP. BOB RANEY	✓		
REP. TED SCHYE		✓	
REP. BARRY "SPOOK" STANG	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED		✓	

1:17
3-5-91
JDR

HOUSE STANDING COMMITTEE REPORT

March 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that Senate Bill 152 (third reading copy -- blue) be concurred in as amended.

Signed: 
Dan Harrington, Chairman

Carried by: Rep. 

And, that such amendments read:

1. Page 6, line 1.
Following: "organizations."
Insert: "Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and"

2. Page 6, line 2.
Following: "PERSONS"
Strike: "THAT"
Insert: "is exempt if it"
Following: "IS"
Insert: "":
(i)"

3. Page 6, line 3.
Strike: "OR IS"
Insert: "":
(ii)"

4. Page 6, line 4.
Strike: "IS"
Insert: "": or
(iii) used to house or store a public display"

5. Page 6, lines 4 through 7.
Strike: "EXEMPT" on line 4 through "ORGANIZATION" on line 7

HOUSE STANDING COMMITTEE REPORT

March 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that House Bill 806 (first reading copy -- white) do pass .

Signed: _____
Dan Harrington, Chairman

HOUSE STANDING COMMITTEE REPORT

March 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that Senate Bill 85 (third reading copy -- blue) be concurred in .

Signed: _____
Dan Harrington, Chairman

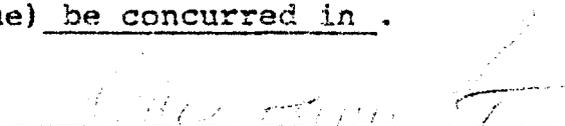
Carried by: Rep. McCarthy

HOUSE STANDING COMMITTEE REPORT

March 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that Senate Bill 194 (third reading copy -- blue) be concurred in .

Signed: 
Dan Harrington, Chairman

Carried by: Rep. Marian Hanson

HOUSE STANDING COMMITTEE REPORT

March 5, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that House Bill 699 (first reading copy -- white) do pass.

Signed: _____
Dan Harrington, Chairman

SUMMARY OF OFFSET BENEFITS

Arizona

Exclusion: \$2,500

Benefit Offset: 3% tax equity benefit increase to members of the retirement system who retired prior to September 15, 1990.

Georgia

Exclusion: Prior to 1/1/90 - \$8,000
On or after 1/1/90- \$10,000

Benefit Offset: Legislature granted One-time 1.75% cost-of-living adjustment to present retirees in 1990. Board of Trustees granted special 1.75% increase effective July 1, 1990 to retirees at the time of retirement. In addition to regular cost-of-living adjustments of 1.5% granted each January and July.] 3.5%

North Carolina

Exclusion: \$4,000

Benefit Offset: Retirement allowance increased by 1.9% to persons on retirement rolls as of June 1, 1989.

Oregon (This was put out to the voters and did not pass the general election)

Exclusion: \$5,000

Benefit Offset: Additional benefit for tax years 1989 and 1990 -- an amount equal to that portion of the member's Oregon personal income tax liability that is attributable to all benefits received by the recipient in the previous calendar year.

South Carolina

Exclusion: \$3,000

Benefit Offset: Increase of 7% of benefits payable due to retirement before July 1, 1989.

Utah

Exclusion: None

Benefit Offset: 3% increase for all who retire or receive retirement allowances in calendar year 1989.

Montana Retired Teachers Association



Testimony in Support of House Bill 900

March 5, 1991

EXHIBIT 2
DATE 3-5-91
HB 900

Mr. Chairman, members of the Committee, my name is Ralph Eudaily and I appear here today on behalf of the Montana Retired Teachers Association.

Our Association recognizes that the Davis Decision has created a problem for the Legislature. We do not view tax exemption as preferential tax treatment but as a part of the compensation that has been provided for a career of public service. This point was reinforced recently in District Court when a group of private retirees failed in their challenge to the tax treatment of public employees. Judge McCarter found, ".....a legislative purpose to include as a benefit of employment, a tax exempt retirement income." We believe that the state has made a promise, that has been a factor in the career and retirement decisions of many educators.

The position of the Montana Retired Teachers Association is to resist any state taxation of retirement benefits. However, if the Legislature finds that they must tax pension benefits, some adjustment must be made in the level of pension benefits to maintain the promise made to Montana's teachers.

House Bill 900 would provide a benefit adjustment that would compensate for the loss of tax exemption for teacher's pension benefits. We believe that House Bill 900 makes a good faith effort to limit the erosion of the income of retired teachers.

Other states, including Utah and Arizona, have made adjustments in the pension benefits of public employees and teachers in response to the Davis decision. To our knowledge this method of addressing the Davis decision has not be challenged in court.

The Montana Retired Teachers Association supports House Bill 900, with the amendments proposed by Representative O'keefe.

March 4, 1991
House Bill #900
Association of Montana Retire Public Employees
By: Dick Williams, President

The Association of Montana Retired Public Employees (AMRPE) supports HB 900. AMRPE represents approximately 4,000 retired state, local and municipal workers who live throughout Montana. If it were not for the fiscal impact to the state, AMRPE would like to see no change in the status quo; in other words, no change to the current tax-exempt status of public retirement benefits. In fact, that is the official position of AMRPE. However, we also recognize the difficult position in which the Davis decision puts the state. We, therefore, thank Representative O'Keefe for helping find a solution to this difficult problem.

The tax-exempt status of the Public Employees Retirement System benefits has its origins in the low pay and small benefits historically paid public employees. When we came to work for the public sector, that tax-exempt status was presented as a benefit and was a consideration for many in choosing public employment over that of the private sector. Rightfully or wrongfully, the state chose to mix its tax policy with its benefit package. Through no fault of the state or the retirees, the Davis decision has created an unanticipated revenue loss to the state.

It is unfair to those who gave their employment lives to public service to now change the rules. The state has a moral, if not a legal, obligation to protect and "make whole" its employees. Attached to my testimony is an article from Sunday's Independent Record which indicates that 20 percent of state employees need to "moonlight" to make ends meet. At a time when the state is having difficulty attracting and retaining qualified employees, it seems counter-productive to eliminate a valuable benefit. HB 900 attempts to protect public retirees and to keep them as "whole" as possible. If the legislature feels it necessary to pass some legislation to equate the tax-exempt status of retirement benefits, then HB 900 deserves your consideration and support.

Ex. 3
3-5-91
HB 900

Moonlighting

Low wages force many state workers to hold two jobs to make ends meet

By KEN PEKOC
IR Staff Writer

Meet five state employees with reason to gripe about low wages.

Margie Ness is a single parent with five children in Helena and a bachelor's degree in accounting from Carroll College.

For the past 18 months she's held two jobs, working full time as a Revenue Department

tax examiner and 30-plus hours each week as a waitress at Frontier Pies.

What little time is left goes to her children, one of whom still lives with her.

"You say good-bye to your kids in the morning, like my daughter (age 3), then I don't see her until that night, when she's

(More on MOONLIGHT, page 8A)

Moonlight

Continued from Page 1A

asleep," Ness said last week. "She cries about it, and I feel bad, but what can I do?"

"You cannot be a single parent and raise a family on what you make at the state."

Ness works with Kathy Broussard, Scott Payton, Nita Ibara and Dwain Wood at the Revenue Department.

For their own financial reasons, which go beyond typical cost-of-living expenses, they all moonlight, saying their state incomes don't allow them to make ends meet.

■ Ness has to provide for her children.

■ Wood pays support for two children and is paying off college loans.

■ Payton, a diabetic, has large medical bills and student loans.

■ Broussard is helping pay for her husband to attend Car-

■ Ibara is a single parent helping pay for her daughter to attend Montana Tech.

To cover these and other expenses, Payton and Ibara work nights and weekends as K mart cashiers, Broussard sells jewelry at JC Penny and Wood tends bar at the Exchange Supper Club in Montana City.

Their social lives may lack pizzazz, but they certainly don't lack substance.

"Once you're on the schedule to work, your decision (how to spend a day) is made for you," Ness said. "It's not a life with luxuries, it's a life with just the basics."

It is, however, a life more and more state workers are leading.

Exact figures aren't available through the state Personnel Division, but Jeff Miller, administrator of the Revenue Department's Income and Miscellaneous Tax Division, said an informal survey of 103 of his employees revealed that 22 people had more than one

job. That ratio even surprised Jim Adams, associate director of the Montana Public Employees Association. The MPEA has lobbied lawmakers for a two-year, \$100 million pay raise for the 14,000 state government and university system employees.

"I'd have figured 15 percent," Adams said of Miller's informal survey results. "I don't think you stumbled into a unique department though."

"K mart must have 12 state workers on its payroll. It's something, isn't it?"

He and others contacted last week said state employees working throughout the Capitol Complex are forced to work more than one job, with the trend being most acute in the Revenue, Family Services and Social and Rehabilitation Services departments.

"I don't think lawmakers are aware of that as much as they need to be," said House Speaker Hal Harper, a Helena Democrat.

He said the moonlighting situa-

tion "is symptomatic of people being trapped" by loyalty to their state and families.

"It's sad," he said. "These jobs that are supposed to be in step with some sort of career ladder have gone flat."

He said most every state administrator and legislator agree that state workers need "substantial" pay hikes, but the decade-old problem has been agreeing on an amount and source.

Harper said state employees have "been dumped on" by having wages frozen for most of the 80s, and they might see the pay-hike issue settled this session before lawmakers tackle other key funding issues, such as university funding.

Until they see those increases, Payton said morale will continue to wane among state workers.

"People are leaving now because they're not able to make it from pay day to pay day," he said. "I'm one of the lucky ones who can."

Presentation to the Montana State Legislature---- March 5, 1991
Room 437 -- 9 AM

EXHIBIT 4
DATE 3-5-91
HB 900

My appearance before you today is as an advocate for Montana folks who live (primarily) on retirement income. In the next several weeks you will be faced with revision of the Montana State Income Tax Law. To arrive at a fair and equitable way to tax retirement income from all the various sources is, indeed, an extremely difficult challenge. After mentioning "fair and equitable", I'd be remiss if I didn't at least offer a definition -- not mine, but one from principles developed by and endorsed by, among others, the National Conference of State Legislators. Principle No. 4 reads: "A high-quality tax system should: Be equitable. A fair system should (a) shield genuine subsistence income from taxation, (b) not be regressive, and (c) insure that comparable households with a given income pay approximately the same tax. To elaborate briefly on this last test of fairness: In 1988 a retired federal military or civil service citizen in Montana, filing a joint tax return with standard deduction and \$30,000 total income, paid a federal income tax of \$2989 and a Montana State income tax (with the \$3600 exemption) of \$917. This same amount of retirement income, \$30,000, that included an exemption for average social security retirement income resulted in a federal income tax of \$1189 and Montana State income tax of \$203. Although social security retirement exemptions have tripled over the past 28 years, the \$3600 exemption for federal military and civil service retiree citizens of Montana, enacted by the Montana Legislature in 1963, has remained constant.

Now, I'd like to address another subject. Very recently Dr. Tom Power of the Economics Department at the University of Montana prepared a report entitled: "Retirement Income Flows in the Montana Economy: Comments on an Important but Not Very Well Understood Phenomenon". I'd like to draw on that report to highlight some of his major points. During the 12-year time period from 1978 through 1989, when most sources of Montana income were either in a flat or declining mode, income from the category "retirement and returns from past investments" increased about 50%. Retirement programs -- private, state and federal -- comprise 75 to 80% of this category. In 1989 this "retirement and investment" income was several times larger than all of the State income from mining and manufacturing. This was non-labor income. It did NOT compete in the job market, AND it represents a figure almost 60% as large as ALL of the 1989 income from wages and salary in the State.

Ex. 4
3-5-91
HB 900

Dr. Power states that income flows this large HAVE TO BE IMPORTANT. We need to understand what determines the flow of these dollars into our communities and what impact they have on those communities. One important aspect of these income flows is that they are "foot-loose" in the sense that they follow people and the residential choices that people make. These choices are more guided by preferences for various qualities of the living environment rather than the job market. That is, the qualities of the natural and social environment can play a major role in those location choices and the resulting non-labor income flows that follow. Retirement income is a good example of "foot-loose" income. When an existing resident chooses to MOVE upon retirement, a community loses that income, just as it GAINS it when retirees decide to relocate in that area. In dollar terms, a single retiree who chooses a particular community as his or her new home is worth hundreds of tourists streaming through that community. The new resident's productive activities are also likely to make a significant contribution to the vitality of that community. It is for these reasons that many areas around the country have focused a significant part of their economic development efforts to attracting or maintaining retirees.

It is also very important to note that retirees, because of their need for and use of medical facilities, contribute greatly to the existence and availability of top-notch medical services in many Montana communities. About 50% of hospital patients provide an infusion of Medicare funds. Improved medical facilities, of course, enhance the quality of life for everyone.

In summary: The natural and social environments play a major role in retirement location choices. Montana's natural beauty is unsurpassed. Retirement income is a very large source of income in Montana and it contributes mightily to the health of Montana's economy. A most important part of providing a desirable social environment for retirees involves the COST OF LIVING in the state or place of choice. An equitable Montana State tax structure will promote a continuing increase of retirement income flowing into the economy, both from Montana retirees and out-of-state retirees moving to the BIG SKY COUNTRY.

Submitted by:
Larry Zimmerman
#1 Martha's Court, Missoula, MT

PREPARED BY:
 EVERETT E. WOODGERD
 611 LIVINGSTON AVE.
 MISSOULA, MT. 59801

	TOTAL INCOME ALL SOURCES	SOCIAL SECURITY INCOME (ALL TAX EXEMPT IN THESE EXAMPLES)	ANNUITY OR PENSION INCOME	TAXABLE INTEREST INCOME	FEDERAL TAX LIABILITY	MONTANA TAX EXEMPT AMOUNT ENCIRCLED	MONTANA TAX LIABILITY	COMBINED FEDERAL & MT TAX LIABILITY	DISPOSABLE INCOME AFTER MT & FEDERAL TAXES
1988 CSRS	30,000	-0-	25,000	5,000	2,989	(3,600)	917	3,906	26,094
1989 CSRS	30,000	-0-	25,000	5,000	2,944	(25,000)	-0-	2,944	27,056
" FERS	30,000	(12,000)	13,000	5,000	1,144	(13,000)	-0-	1,144	28,856
" PRIVATE	30,000	(12,000)	13,000	5,000	1,144	(3,600)	173	1,517	28,683
" CSRS	25,000	-0-	20,000	5,000	2,186	(20,000)	-0-	2,186	22,814
" PRIVATE FERS	25,000	(12,000)	8,000	5,000	634	(3,600)	29	663	24,337
" PRIVATE FERS	25,000	(12,000)	8,000	5,000	634	(8,000)	-0-	634	24,366
" CSRS	20,000	-0-	15,000	5,000	1,426	(15,000)	-0-	1,426	18,574
" PRIVATE	20,000	(12,000)	3,000	5,000	-0-	(3,000)	-0-	-0-	20,000
" FERS	20,000	(12,000)	3,000	5,000	-0-	(3,000)	-0-	-0-	20,000

For the first time in history most Americans over the age of 65 are enjoying a reasonable degree of security in their "golden" years. Except for the Civil Service Retirement System (CSRS) which has been in operation since the early 1920's, most retirement programs were initiated during the working careers of this age group. The most notable of these was Social Security. (late 1930's)

This provides a basic pension for most retirees and their spouse. Medicare has been in effect since the middle 60's. It affords free hospital services (Part A) to the Social Security eligible and their spouses, 65 years of age and older, after payment of a deductible. Part B (Doctor care) is available to all 65 and over, but requires a small monthly premium. Federal retirees earned no Social Security credit, until the mid eighties, so are not automatically entitled to free Medicare Part A. It may be purchased for a substantial fee. (\$175 per month-each)

There are numerous inherent differences in the multitude of retirement systems, such as the amount of employee contribution, period for vesting, withdrawal of funds and amount of return-to name a few. That is all behind the retirees now. The present problem involves retaining the greatest amount after fixed expenses, such as income tax.

Hopefully, the tax chart will demonstrate some of the major differences in retirement taxation. The most pronounced, at both the State and Federal levels, being the largely untaxed Social Security benefits. A 1988 and 1989 example of federal retirement is shown to illustrate the effects of a recent U.S. Supreme Court decision on this matter.

For purposes of preparing this chart the following assumptions were made:

1. Only basic income tax deductions were considered.
2. Rates and deductions are for a joint return for couples 65 or older.

An attempt was made to provide examples for Civil Service retirees (CSRS), Public Employees (FERS) and private. There are many exceptions and combinations that can apply, but this

Mr Chairman - Members of the Committee

I would like to focus your attention on one element of the bill with which you are now dealing.

The proposed "\$3600" exemption is not adequate to provide the intended tax relief. The figure "\$3600" was established in 1963, 28 years ago.

Time & inflation have taken their inevitable toll.

An exemption figure nearer \$12,000⁰⁰ would be needed to provide the same protection the Montana Legislature established in 1963.

I respectfully request your serious consideration of an updated exemption figure.

Sherwood C. Trotter
Retired Federal Civil Service
2105 Gerald
MISSOULA MT 59801

MIDLAND EMPIRE CHAPTER #459
NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES

EXHIBIT 7
DATE 3-5-91
HB 900

BILLINGS, MONTANA

March 5, 1991

TO: Chairman and Committee Members

RE: Hearing on HB-900 introduced to the House Taxation Committee in Montana House.

House Bill No. 900 is an Act to provide an exemption of \$3,600 from taxation of benefits from Federal, State, and private retirement, annuity and pension; to provide for an adjustment payment to retirees of state, local and teacher retirement systems who are Montana residents, etc.

One of the most important issues at the Montana Legislature is Pension Reform. It is not well known that approximately 50 percent of the retirees in Montana are presently exempted from paying Montana State Income Tax after retirement, due to their allowed 100 percent exemption. (Please refer to Par. A and B(2) of Page 5 of Montana Individual Income Tax Booklet for 1990). There were in 1989, 44,212 households claiming retirement exemptions. Of this number, 23,700 (including 7,254 PERS, 4,267 Teachers, and 12,179 Civil Service and Railroad retirees) enjoyed a 100 percent exemption of their retirement income.

20,512 retirees listing and reporting private retirement income were only allowed an exemption of \$3,600.

Under HB-900 there would be a \$3,600 exclusion for all retirees but with an added feature of reimbursement of that tax to the PERS and Teachers to make them "whole". This would leave all the other retirees again discriminated against in payment of state income taxes and in spite of a U.S. Supreme Court Decision in "Davis VS Michigan."

NARFE Chapter 459 of Billings, Montana believes that the budget of the State of Montana should not be balanced on the backs of retirees of the state whose other earnings including all types of investments bear the full share of income taxation. We ask for fair and equitable taxation among all, including we retirees and think HB-900 is an unfair way to go. We offer instead, our support of your legislator's SB-124 based on a \$12,000 exclusion on retirement income which would protect our lower-paid retirees and still provide a fair and non-regressive tax on all retirement income over the \$12,000 base for all.

Respectfully submitted

Ladd S. Shorey
Ladd S. Shorey, Legislative Officer

Dependent Care Assistance Credit—If you took dependent care assistance as a deduction on Federal Schedule C and will be taking the Montana dependent care assistance credit, you must add back the amount of assistance deduction that the credit is based on.

Reductions of Income

Line 27—If you had an installment sale(s) of a capital asset(s) which you entered into before January 1, 1987 you may be able to take a capital gain exclusion of 40%. Compute your exclusion on the worksheet below.

If Federal Schedule D line 18 is negative, you are not allowed a capital gain exclusion. Do not proceed any further.

Capital Gain Worksheet

1. Enter the amounts from Federal Schedule D lines 11 and 14 which pertain to sales entered into before January 1, 1987. _____
2. Enter amount from line 16g of Federal Schedule D. _____
3. Divide line 1 by line 2 (cannot be greater than 100%) _____
4. Enter the smaller of line 17 or 18 from Federal Schedule D, but not less than zero. _____
5. Multiply the amount on line 4, times the percentage on line 3:

$$\text{_____} \times \text{_____} \% = \text{_____}$$
6. Multiply amount on line 5 times 40% — this is your Montana capital gains deduction. Enter on line 27 Form 2. .40 _____

Line 28—Interest Exclusion for Elderly—If you're 65 or older, and filing single, separately, or head of household, you may exclude up to \$800 of interest income. You may deduct up to \$1,600 if filing jointly.

Note: If you're married filing separately, only the spouse 65 or older can exclude up to \$800 interest. However, if you file a joint return you're allowed to exclude up to \$1,600 even if only one of you is 65 or older. If you're married and both 65 or older, you're each allowed to exclude up to \$800 interest when filing separately or jointly. The excluded amount may not exceed the taxable amount on line 7 and line 22.

Line 29—Exempt Interest Income—Interest income received on obligations of the United States Government is exempt from Montana income tax if the following conditions are met. The instruments must be written documents, bear interest, and contain a binding promise by the United States to pay **specified sums at specified dates**. Also, contains specific Congressional Authorization which pledges the full faith and credit of the United States in support of the promise to pay. If any one of these conditions is not met, the interest from the obligation is taxable to Montana. Obligations that are taxable include GNMA's and FNMA's.

Line 30—Part-year and nonresidents only.

Line 31—Exempt retirement income. Include copy of W-2P or 1099R.

Treatment of Civil Service Retirement Income

The tax treatment of civil service and military retirement income is divided into two areas. How the income is taxed in 1990 and how it is taxed in prior years.

Tax Treatment in 1990

In 1990, civil service and military pensions will be 100% excludable. If you have two retirement incomes, you may be limited to the exclusion of the larger of the two pensions. See the worksheet on this page.

Treatment of Prior Years

District Judge Sherlock sustained the Department's position by denying plaintiffs' motion for summary judgement. This decision has the effect of denying refund claims filed by federal civil service and military pensioners related to years 1988 and earlier. An appeal to the Montana Supreme Court has been filed. There will be no refunds on this issue until the Department has a final decision from the courts.

If line 15 (Form 2) includes amounts from an early withdrawal from an IRA or similar plan, please call the Department for clarification of whether or not the retirement exclusion applies.

- A. Railroad retirement benefits received from the Railroad Retirement Board are fully exempt from Montana tax. If you receive another pension from a private source, you are allowed to exclude up to \$3,600 of that pension.
- B. If you receive only **one** pension per person and it is:
 - 1) Private or a non-Montana pension, you may deduct the smaller of \$3,600 or the pension amount. Exclude the amount on line 31.
 - 2) Montana PERS, Teachers, Highway Patrol, Municipal Police, Fire Fighter or Judges pension and Civil Service or Military, total amount is exempt. Exclude the amount on line 31.
- C. If both you and your spouse have qualifying retirement income, you must compute the retirement exclusion separately. If filing joint, add your two exclusions together. Enter on line 31 Form 2 or line 15 Form 2S.
- D. If you receive more than one pension each, use the retirement worksheet below to figure your exclusion.

Retirement Worksheet

Line	Type of Retirement	Total Amount	Exclusion
1.	Montana PERS, Teachers, Highway Patrol, Municipal Police, Fire Fighter, Judges and <u>Civil Service</u> or Military. If none enter 0.	\$ _____	
2.	Private, Corporate & Non-Montana State Pensions. If none enter 0.	\$ _____	
3.	TOTAL OF lines 1 & 2	\$ _____	
4.	If there is an amount on line 1 and it is \$3,600 or more enter the amount from line 1 here, otherwise enter 0 and go to line 5.	\$ _____	
5.	If the amount on line 1 is less than \$3,600 go to line 3. Compare the amount on line 3 and \$3,600 and enter the lesser on line 5.	\$ _____	
6.	Enter the greater of line 4 or 5. This is your exclusion. Enter on line 31 Form 2, or line 15 Form 2S.	\$ _____	

Line 32—State refund

If included on line 16, deduct it here.

Line 33—Other reductions (Please be specific.)

3-5-91
HB 900

Number of Households Having Retirement Income
Filing Tax Year 1989 Montana Income Tax Returns

<u>Type of Retiree</u>	<u>Total</u>
PERS	7,254
TRS	4,267
Federal	12,179
Private	<u>20,512</u>
Households Claiming Retirement Exemptions	<u><u>44,212</u></u>



NARFE

National Association of Retired Federal Employees

1533 New Hampshire Avenue NW
Washington, DC 20036-1279
(202) 234-0832 FAX: 797-9698

EXHIBIT 7
DATE 3-5-91
HB 900

September, 1990

MEMORANDUM

TO: National Field Vice Presidents
State Federation Presidents, Vice Presidents & Legislative Officers
Chapter Presidents and Legislative Officers

FROM: Judy Park, Director
Legislative Department

*To you LADD
Judy Park*

Enclosed is a listing of the number of Civil Service annuitants (retiree and survivor) and aggregate monthly benefits paid in your own region or state, with the state total broken down into Congressional Districts (CDs). This information was compiled from computer data recently provided our Legislative Department by the Office of Personnel Management. The OPM report covers some 2.1 million retiree and survivor annuitants who were receiving benefits as of October 1, 1989, and the respective monthly annuities (not lump sums or refunds) being paid as of that date.

PLEASE NOTE: There will be discrepancies between the "totals" listed for your state and the totals derived from adding the numbers given for each CD. This results from the fact that some Zip Codes overlap CDs, and in such cases the number of annuitants residing in the split Zip Codes have been allocated as closely as possible, but may have been counted twice. However, in the total for each state, no annuitant nor annuity is counted more than once.

This information can and should be used by all of us in our contacts with Members of Congress as it indicates the numbers of state or district constituents (translate to voters) who stand to be affected by legislation amending Civil Service Retirement, the Federal Employees Health Benefits Program, etc. The dollar amounts of annuities paid to these annuitants are useful in illustrating how our numbers impact the economic and tax bases of the state or local area. The data can also be helpful and effective in federation contacts with state legislators.

This Congressional District data will not be published in Retirement Life because of space limitations, and therefore we ask that as state and chapter officers, you help make it available to your membership. Once again, thanks for your cooperation.

<u>CONGRESSIONAL DISTRICT</u>	<u>REPRESENTATIVE</u>	<u>NUMBER OF ANNUITANTS</u>	<u>IND. ANNUITY PER MONTH</u>	<u>MONTHLY GROSS ANNUITY</u>
ONE	Williams, Pat (D)	4,801	\$1,104.36	\$ 5,302,023.00
TWO	Marlenee, Ron (R)	3,537	1,019.04	\$ 3,604,334.00
	TOTAL	8,338		\$ 8,906,358.00

National Association of Retired Federal Employees

H. T. Steve Morrissey

Harold "Hal" Price

Benny L. Parker

Chairman Harrington and members of the House Taxation Committee, my name is Lou Marquardt.

I am a member of a group called Equity in Taxation. Our group is made up of people who draw their pensions from the private sectors; from state pension plans other than Montana; and individuals who are retired and have their own private retirement plan. By that I mean farmers, ranchers, small businessmen etc.

I appear as an opponent of H.B. 900 not because of the \$3600 exemption it provides, but because of the language used or conditions shown in the bill.

To begin with let us look at page 2, beginning at line 3, which reads "WHEREAS, the Legislature wishes to encourage retired state, local, and school employees to remain within Montana etc..." You will note that it makes no mention of retired federal, military, private employees or other individuals who have established their own retirement plan. By omission it appears to me that the bill is suggesting that those people who are omitted move out of Montana and take their retirement income with them. Based on Department of Revenue figures in tax year 1989 there were 12,179 federal, 20,512 private, and approximately 16,300 other private households with retirement income. Federal, private, and other private retirement income amounted to 1.4 Billion dollars. Now I'm sure the legislature does not want Montana to lose \$1.4 Billion; and to be sure there is no misunderstanding I recommend that this section be amended, beginning on page 2, line 4, following "Schools" omit "employees" and insert Federal, military, private employees and other

2x. 8
3-5-91 HB 900

individual who have established their own retirement plan to remain within Montana, etc.

The next problem I see is in the statement of intent where on page 3, line 7, it reads "with the smallest payment going to those in the bracket beginning at \$4,000." It seems to me that those individuals who's pension is below \$ 4,000 are the ones who really need some help. I realize that they may not have to pay any tax on income less than \$ 4,000, but if the state can afford to give an individual with a \$98,000 pension an adjustment, it can surely afford to help the individuals with less than \$ 4,000. Out of the 11,251 households of PERS and teacher retirees there were only 297 who fell under \$4,000.

Finally on page 24, new section 18, Nonseverability - this is like looking up the barrel of a loaded gun and not knowing which way the shot might go. I would recommend that section 18 be omitted in its entirety.

Thank you, I'll be happy to answer any questions that you might have about my testimony.

And, that such amendments read:

EXHIBIT 9
DATE 3-5-91
HB SB15

1. Page 6, line 1.

Following: "organizations."

Insert: "Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and"

2. Page 6, line 2.

Following: "PERSONS"

Strike: "THAT"

Insert: "is exempt if it"

Following: "IS"

Insert: ":(i)"

3. Page 6, line 3.

Strike: "OR IS"

Insert: ":(ii)"

4. Page 6, line 4.

Strike: "IS"

Insert: " or

(iii) used to house or store a public display"

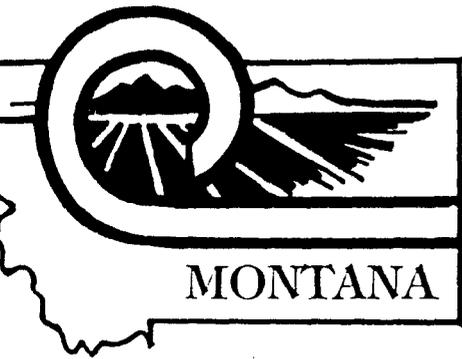
5. Page 6, lines 4 through 7.

Strike: "EXEMPT" on line 4 through "ORGANIZATION" on line 7

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SB152

EXHIBIT 10
DATE 3-5-91
HB 806



MONTANA

Association of Conservation Districts

501 North Sanders
Helena, MT 59601

(406) 443-5711

HB 806
March 5, 1991

Mr. Chairman and members of the committee for the record my name is Peggy Parmelee and I am executive vice president of the Montana Association of Conservation Districts.

HB 806, as Representative Wilbur Spring told you, will make it possible for the conservation districts to use the "project areas" of their law.

The district law is explicit on when and how this special project area and special assessment may be established. The people affected by the project and the assessment have the opportunity to have input at public meetings as well as casting a vote either in favor or opposed to the project. In other words it is a project area that would have to carry the support of the local community before it could be enacted.

You will notice on page 7 of the bill that the limitation of I 105 does not apply to several taxing units, including rural improvements districts, special improvement districts, and levies for economic development if the voters in the taxing unit approve an increase in tax liability.

I urge you to support this bill.

Mr. Chairman with your permission, I would also like to read the following letter from Marieanne Hanser who is a supervisor with the Yellowstone County Conservation District and a MACD director-at-large

This bill does not affect the district mill levy.

Peggy Parmelee

Reference: MCA 76-15-601

EXHIBIT 11
DATE 3-5-91
HB 806

TO: Representative Dan Harrington, Chairperson
House Taxation Committee

From: Marieanne Hanser, supervisor *M.A.*
Yellowstone County Conservation District
and State Conservation Board Director at Large

RE: HB 806

DATE: February 28, 1991

Our conservation district was surprised when advised by our county attorney that we would be unable to consider a project under Title 76, Chapter 15, Part 6, MCA due to the application of I 105. When this limitation was discussed at our State meeting in December the membership voted to request the legislature to address this problem. I have attached a copy of 42 AG Op 76 (1988), authored by former Attorney General Mike Greely holding that special assessments as well as our regular assessment is covered by I 105. The special assessment is the method of funding a project under the captioned code sections.

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Quite frankly we believe the attorney general's opinion is not an accurate statement of the law, but as you know we are bound by it unless overturned by a court or the legislature. The board of supervisors of a conservation district cannot create a project area on their own motion.

MACD

- * A petition is required by either a specified governmental agency or 50% of the qualified electors who will be affected by the project.
- * The board of supervisors must conduct an investigation of the need for the proposed project area.
- * The supervisors shall give notice of a public hearing.
- * If more than 50% of the owners of land in the proposed project area protest no further action can be taken for six months.
- * If, after the hearing the board of supervisors determine that the proposed project area is desirable, proper, and necessary they shall schedule and election.
- * If a majority vote in favor, the project area is created.

It is difficult to understand any basic or substantial difference between a project area and a special improvement district which the attorney general has held is not covered by I 105. In both instances those who will be affected by the assessment have an opportunity for notice, protest, a determination by the board of necessity, and the right to vote on the question.

It just doesn't make any sense to tell land owners that they cannot assess themselves for a desirable, proper, and necessary project to protect the land and water resources of this state.

I would urge the committee's favorable response to HB 806. Thank you for taking the time to listen.

11X



EXHIBIT 12
DATE 3-5-91
HB 806

MONTANA

Association of Conservation Districts
501 North Sanders
Helena, MT 59601

(406) 443-5711

HB 806

"An Act Exempting Levies For Conservation District Special Assessments From The Property Tax Freeze"

By law, conservation districts may establish "project areas -- with special assessments." Upon petition of a county, city, town, cooperative grazing association, or other special purpose district, or by more than 50% of the qualified electors affected, the conservation district supervisors are authorized to establish project areas for carrying out projects to accomplish one or more of the purposes of the district and within which area special assessment can be made for carrying out the project purpose.

By law the conservation district must hold a public hearing on the petition. Prior to that hearing the CD shall investigate the need for establishment of the proposed project area and prepare a report of the findings. Any owner of property liable to be assessed for the project may protect against the proposed project or the creation of the project area, or both.

The board of supervisors will then make a decision as to if the project is feasible or not.

They will then notify the county election administrator that an election is to be held in the proposed area for the purpose of determining whether or not the project area shall be created. Only qualified electors who reside within the boundaries of the proposed project area is entitled to vote.

In 1986 I 105 froze the taxing authority of government entities. But, the limitation on the amount of taxes levied did not apply to some special assessment categories. Please look at pages 1, line 21 where conservation district special assessments, Title 76, chapter 15, part 5 and 6, line 22, (8). HB 806 would add conservation district special assessments on page 7, line 14, (k).

I want to emphasize that this special assessment has to have the approval of the tax payers that it will affect.

EXHIBIT 13
 DATE 3-5-96
 HB 806

HOUSE OF REPRESENTATIVES
 TAXATION COMMITTEE
 ROLL CALL VOTE

DATE 3/5 BILL NO. _____ NUMBER HB 806

MOTION: _____

NAME	AYE	NO
REP. BEN COHEN, VICE-CHAIRMAN <i>Sh</i>		
REP. ED DOLEZAL	✓	
REP. JIM ELLIOTT	✓	
REP. ORVAL ELLISON	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER		✓
REP. BOB GILBERT		✓
REP. MARIAN HANSON	✓	
REP. DAVID HOFFMAN	✓	
REP. JIM MADISON	✓	
REP. ED MCCAFFREE		✓
REP. BEA MCCARTHY	✓	
REP. TOM NELSON		✓
REP. MARK O'KEEFE	✓	
REP. BOB RANEY		✓
REP. BOB REAM, VICE-CHAIRMAN	✓	
REP. TED SCHYE <i>Proxy</i>	✓	
REP. BARRY "SPOOK" STANG		✓
REP. FRED THOMAS <i>Proxy</i>		✓
REP. DAVE WANZENRIED <i>EX AB</i>		
REP. DAN HARRINGTON, CHAIRMAN	✓	
TOTAL		

~~AB~~

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Page 1 of 2

Taxation

COMMITTEE

BILL NO. HB 900

DATE 3/5

SPONSOR(S) Rep. O'Keefe

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Juanita Carlson	ET		X
Norris Mabey	ET		X
Mary R. Craig	ET		X
Paul O. Shoney	NARFE		X
Stanley Rosenberg	NARFE *843 BOZEMAN		✓
Paul Shoney	Reason Aging # 11 #107 Chapel		
George F. McGovern	NARFE Great Falls		X
Larry Zimmerman	NARFE Chap 322 MISSOULA		X
Everett Woodgerd	NARFE Missoula		X
Sherwood C. Trotter	Myself		X
Emmett Soble	Myself		X
Eben Soble	Myself		X
Mark Russell	Montana Society of CPAs		X
Richard E. Williams	NARFE	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Milton A. City
James K. Kurland

HB 900 / Ref
ET

X
X

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Taxation COMMITTEE BILL NO. HB 900
DATE 3/5 SPONSOR(S) Rep. O'Keefe
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Joe Marguardt</i>	<i>Equalizer Taxation ET</i>		<input checked="" type="checkbox"/>
<i>R E Jifer</i>	<i>" " "</i>		<input checked="" type="checkbox"/>
<i>Barbara Krebs</i>	<i>JRS</i>		<input checked="" type="checkbox"/>
<i>Monty Biggs</i>	<i>MPRS</i>		<input checked="" type="checkbox"/>
<i>John Maler</i>	<i>M.F.T. + M\$E</i>		<input checked="" type="checkbox"/>
<i>D Shubert</i>	<i>NARFE</i>		<input checked="" type="checkbox"/>
<i>Bernard F. Francis</i>	<i>Self</i>		<input checked="" type="checkbox"/>
<i>LC STEINER</i>	<i>Self</i>		<input checked="" type="checkbox"/>
<i>Tommy Pryor</i>	<i>Ret. Rod Teachers</i>	<input checked="" type="checkbox"/>	
<i>Alve Thomas</i>	<i>RTA</i>	<input checked="" type="checkbox"/>	
<i>Gene Huntington</i>	<i>MRTA</i>	<input checked="" type="checkbox"/>	
<i>G V Erickson</i>	<i>—</i>		
<i>Tim BERGSTROM</i>	<i>Mt. State Firemen's Assoc</i>	<input checked="" type="checkbox"/>	
<i>VERN ERICKSON</i>	<i>" " " "</i>	<input checked="" type="checkbox"/>	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Eric Feaver

MSA

RALPH Eudair

MONT. Retired Teachers

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Taxation

COMMITTEE

BILL NO. HB 806

DATE 3/5

SPONSOR(S) Rep. Spring

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ray Beck	DWR	X	
Gordon Morris	M.A.C.O.		X
Joseph M. Bell	RETIRED		X
ERIC FEVER	MEA	X	
Peggy Parmelee	MACT	X	
Susan Burke	MSGA MWGA		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.