MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on April 12, 1999 at 8:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:
Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. E. P. "Pete" Ekegren (R)
Sen. Alvin Ellis Jr.(R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: Sen. Jon Ellingson (D)

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 174, 4/1/1999; HB 540, 4/1/1999; HB 678, 4/1/1999
Executive Action: HB 658; HB 661; HB 174

HEARING ON HB 678

Sponsor: **REPRESENTATIVE ROBERT R. STORY JR., HD 24, PARK CITY**

Proponents: **Madalyn Quinlan, Office of Public Instruction**
Rod Sundsted, Commissioner of Higher Education
Harold Blatty, Montana Association of Counties
Jim Reno, Yellowstone County Commissioners
Judy Paynter, Department of Revenue

Mike Kadas, Mayor, Missoula
Alec Hansen, Montana League of Cities and Towns
Russ Ritter, Montana Resources
Evan Barrett, Montana Economic Developers Association
Tim Burton, Lewis and Clark County
Tom Daubert, Montana Association of Oil, Gas and Coal Counties
Colleen McCarthy, Mayor, Helena
Jim Peterson, Montana Stock Growers Association
Gloria Paladichuk, City of Glendive and Richland County Economic Development Association
Aaron Rudio, D. A. Davidson & Company
Rody Holman, Butte-Silver Bow
Chris Gallus, Montana Chamber of Commerce
Jane Jelinski, Montana Association of Counties
Bob Gilbert, Rosebud County

Opponents: **None**

Opening Statement by Sponsor:

REP. BOB STORY, HD 24, PARK CITY, said this bill came out of a subcommittee of the House Taxation Committee to deal with the reimbursement to counties and schools for revenues that they will be short as a result of the several tax relief bills that have been moved through this session. He said the tax relief provided will cause a lot of change in the tax base in the counties and school districts, and this is a unified reimbursement plan to deal with that, including **HB 20** and **SB 417.**

REP. STORY said **HB 678** is a broad-ranging bill for two reasons: 1) to try to get a unified system of reimbursement, and 2) to cover as many things as possible in this bill. He said if some of them were discarded along the way, that would be fine. It is a lot easier to take things out of a bill than to put them in.

REP. STORY handed out a sheet entitled "Local Government and School Reimbursement Methodology, March 23, 1999," **EXHIBIT(tas79a01).** He said this demonstrates how reimbursements will be handled for counties and cities in the left-hand column, with schools on the right side, as well as countywide transportation and countywide retirement.

REP. STORY then distributed a handwritten sheet which demonstrated a plan for reimbursement, **EXHIBIT(tas79a02).** He said this idea gets most of the schools off of the property tax base and leaves the property tax base in local governments. He said that would still put motor vehicle taxes into schools, and the rest of the reimbursement money would then be put into the guaranteed tax base and leave the countywide mills for retirement, transportation, and the county and city government mills can increase back to budget. There would still be a net reduction to taxpayers, but counties and local governments would be on a property tax base rather than reimbursement. He said $70 million to $100 million need to be reimbursed. **REP. STORY** said there is a problem with mill caps in some areas, and a plan to allow those to float is in the works.

REP. STORY said there is a 1.5% growth factor in the reimbursement for county and local governments. It is calculated back to a 1998 base to reimburse for the year 2000, and then it is increased 1.5% a year to get to the reimbursement for year 2000. In 1999, the base is calculated and then increased 1.5% a year. To get that figure, you take the 1998 base and multiply it by 102.25. He said originally there was a two-year sunset on local government reimbursement so the **HB 622** study committee would be able to perhaps come up with another idea. That bill has been changed, so the sunset was taken off in House Taxation Committee on the first two sections of the bill. At the top of page 3 is the subcommittee's attempt to carry this bill into the following biennium. He said the base year needs to be checked.

Proponents' Testimony:

Madalyn Quinlan, Office of Public Instruction, said it is important that schools and local governments be reimbursed for the dollars that they will be losing as a result of the various property tax relief bills that are going through this session. She said school districts and educators are particularly concerned about how the tax shifts will affect residential property taxpayers upon whom they rely for their budgets.

Ms. Quinlan said there are four key points to this bill and how it affects schools: 1) motor vehicle fees are proposed to be replaced for school districts through the direct state aid formula; 2) the property tax reductions are compensated through the Guaranteed Tax Base Aid formula for school district general funds and for the county retirement fund; 3) the bill reimburses for county transportation by increasing the state's share of the unscheduled transportation costs; and 4) the bill replaces revenue to school district funds, other than the school district general fund, through a block grant proposal.

Ms. Quinlan said the Department of Revenue is suggesting amendments which will push everything through the General Fund, and OPI would support that as well.

Rod Sundsted, Montana University System, asked that as this bill is being considered, the university six mill levy account, although it is understood that it is the intent to backfill that revenue, currently that is not in **HB 678.** That is a significant amount of money for the University System, and if the six mill levy account is short, they do not have the revenue to fund the operating budgets approved by the legislature. He distributed a proposed amendment, **EXHIBIT(tas79a03).**

Harold Blatty, Montana Association of Counties, urged support for **HB 678.** He said it is the long-awaited reimbursement bill that local governments have been eagerly waiting to see. He said they are in support of other actions taken by this legislature, and this will pull it all together and allow local governments to have the revenues they need to carry out their duties.

Jim Reno, Yellowstone County Commissioner, he said he applauds the legislature for providing tax relief as promised, and he also commended them for keeping their word in backfilling those counties that will be losing tax base. He urged do pass for **HB 678.**

Judy Paynter, Department of Revenue, said the Department strongly supports the reimbursement bill for local governments and schools. She said the Department has been working with the House Tax subcommittee that has been working on reimbursement and trying to find the simplest way to do that reimbursement so that there is not a lot of time spent administratively shuffling numbers. The Department is very supportive of having one method for reimbursement and making it as simple as it can possibly be.

Mike Kadas, Mayor, Missoula, distributed an exhibit with pie charts which demonstrated Fiscal Year 1999 General Fund expenditures on the front page and 1999 General Fund revenues on the back page, **EXHIBIT(tas79a04).** He said over half of the City's tax base is either frozen or declining, and that is why **HB 678** is so important. He said he favors keeping the sunset off. He said the 1.5% yearly increase may not be enough, since it does not come close to inflationary percentages which have an effect on wages.

Finally, **Mayor Kadas** said he is most concerned about the first two pages of this bill, the reimbursement mechanism for local governments. This basically says that it is very complicated and the legislature is leaving it to the Department of Revenue to figure out. He said he can live with that. He said Department of Revenue has proposed a reimbursement mechanism which puts most of the reimbursement back to schools and then allows local governments to increase their millage in order to make up their losses. He said Missoula's charter has a **I-105** cap, and under that mechanism, they would have to go over that cap. Billings also has a similar clause in their charter. He said this makes these cities more dependent on the property tax. He said for dealing with local governments over the long term, they really want to get away from **HB 20** and **SB 417** type mechanisms. He said those put local governments in a bind over time. They need a revenue stream that actually grows. The local governments had suggested early on in this process they figure out what the losses are, figure that dollar amount as a percentage of the income tax, and then allocate that percentage of the income tax to local governments. All local governments would be made whole by dollar amount.

Alec Hansen, Montana League of Cities and Towns, said his organization supports **HB 678.** He said in his 18 years with the League of Cities and Towns, he has never seen a bill that was more important to local governments than **HB 678.** He said this bill is based on the premise that the legislature understands the needs of local governments. It makes the connection between the legislature's authority to cut taxes and the legislature's responsibility to assure adequate funding for local governments.

Russ Ritter, Montana Resources, said that the Senate passed **HB 420**, which allows the mining industry to eliminate the transportation cost as a part of the tax base. In negotiating this with Butte-Silver Bow and the Butte School District, Montana Resources agreed that they would help them in some way to try and make up the resulting loss to them. He said for that reason, Montana Resources favors **HB 678.**

Evan Barrett, Butte Local Development Corporation and the Montana Economic Developers Association, said they support **HB 678.** He said it is a really important thing to see the legislature committing to long-term reimbursement on the hits that come with the good policy changes that reduce the tax base. He reminded the committee of the needs of tax increment districts, and said they support the removal of the sunset provision.

Tim Burton, Chief Administrative Officer, Lewis and Clark County, said that **HB 678** is the most important bill before this session. He said it is critical for local governments to be able to provide at an adequate level the infrastructure necessary, and it rolls into economic development and jobs. **HB 678** also provides stability for budgeting and planning. He urged support.

Tom Daubert, Montana Association of Oil, Gas and Coal Counties, an association of the 33 counties which are home to development and production for oil, gas and/or coal industries, said his 99 county commissioners asked him to support this bill, but also asked him to emphasize that **HB 678** does not cover nor attempt to cover significant revenue losses to those 33 counties embedded in other pieces of legislation which have caused revenue loss to these counties because of tax breaks to these industries.

Colleen McCarthy, Mayor, Helena, said she concurred with **Mayor Kadas** and **Alec Hansen** in their suggestions. She said without reimbursement to local governments for losses in tax revenues resulting from some of the legislation passed in this session, local governments cannot provide needed services. Local governments are encouraged by the long-range aspect of **HB 678**, and she urged support.

Jim Peterson, Montana Stock Growers Association, said this type of legislation is greatly needed, but he is not convinced that the formula in **HB 678** is the right way to go, because 1) with the motor vehicle fee and reimburse back to the counties on a per-student basis, there will be a shift from rural counties to the urban counties, and 2) when the cap is taken off the local mill levies, the only way a county can make up that difference is to raise the mill levy. With **SB 200** in place, the only way that can be done effectively in a rural county is to put that on agricultural land.

Gloria Paladichuk, Richland Economic Development and the City of Glendive, said the tax relief packages provided by this legislature will only be true tax relief if local governments are fully reimbursed for the lost revenues. She said if local governments are not kept whole and mills have to be raised locally to pick up the lost revenue, the properties that will be most affected in eastern Montana will be agricultural land, the very taxpayers that the legislature is trying to help. She urged support for this legislation.

Aaron Rudio, D. A. Davidson and Company, said his company is a frequent underwriter of bonds issued by local governments in Montana, because it is essential to ensure the good credit quality of local governments both in terms of their general financial viability and in terms of their ability to meet their ongoing obligations for indebtedness, such as general obligation bonds, and short-term debt as well, he would urge the committee to consider the amendments which have been presented to the Governor's office and staff and Department of Revenue which would also extend the protection of **HB 678** to tax increment districts which are currently unprotected absent the passage of this bill.

Rody Holman, Economic Development Director, Butte-Silver Bow, said he supports **HB 678.** He said there are some amendments floating around for this bill, and he asked the committee to look favorably upon those amendments. He provided a handout entitled "Tax & Tax Increment Flow in BSB TIFID #2," **EXHIBIT(tas79a05).** He urged passage of **HB 678** with the amendments associated with tax increment districts.

Chris Gallus, Montana Chamber of Commerce, said it is a good idea to provide the reimbursement for tax revenue losses involved in the various tax relief bills that have been passed. He urged support of **HB 678.**

Jane Jelinski, Montana Association of Counties, said her organization thanks **REP. STORY** and this legislature for recognizing that cities and counties are the direct providers of critical services that protect the public health, safety and welfare of all Montana citizens. She urged support for **HB 678.**

Bob Gilbert, Rosebud County, said they support the concept of **HB 678**; however, they urged the committee to pay close attention to **Mr. Peterson's** comments regarding the effect on agricultural land.

Opponents' Testimony: **None**

Questions from Committee Members and Responses:

CHAIRMAN DEVLIN said there had not been any testimony about applying a growth factor in here as far as new construction and new tax base that would come in. He asked if **Mayor Kadas** had any comment. **Mayor Kadas** said Missoula County does have new construction. He said Missoula levies about $10 million of taxes, they are one of the fastest growing places in Montana, and they have about $250,000 in new revenue because of growth. He said with that growth, additional services must be provided. He said it is a component of the whole package. He said new growth does not offset inflation, and there are lots of places in the state that do not have any new growth at all. **CHAIRMAN DEVLIN** asked if the formula on page 3 of **HB 678**, which is the 1.5%, should be adjusted according to the growth in a specific taxing jurisdiction, and **Mayor Kadas** said no, because when there is new growth, additional services must be provided. **CHAIRMAN DEVLIN** asked if he thought dollar-for-dollar would be better, and **Mayor Kadas** said that they try to plan for new construction in areas where services and infrastructure is already provided, but there are a number of studies which show that new growth actually costs more.

SEN. BOHLINGER asked if **Mayor Kadas** could explain the reimbursement formula that he had testified about that would tie the growth and the income tax payments. **Mayor Kadas** said this would apply only to local governments. He said you would figure out what the total tax loss was because of changes that have been made, and use that figure as a percentage of the total anticipated income taxes, so the law dedicates that percentage of income tax collections to cities and counties. That creates a pool of dollars, and that is distributed back to local governments based first on what they have lost because of the tax breaks, so everyone is held even, and then theoretically that tax base will grow each year and that percentage would continue to be distributed each year to the local governments strictly on population.

SEN. BOHLINGER asked if an amendment had been prepared to achieve this sort of redistribution. **Mayor Kadas** said they had not prepared the amendment, but he said he would be glad to participate in creating a mechanism that would accomplish that.

SEN. ECK asked if someone could provide the committee with some of those studies that illustrate the cost of growth, and which demonstrate that the additional tax does not cover the cost of the growth. **Jane Jelinski** said she would provide that information.

SEN. ELLIS said that it had been alluded that the Department of Revenue has amendments, and he wondered if they were available for the committee. **Judy Paynter, Department of Revenue,** said the Department does not have amendments prepared for distribution at this point, but they are endeavoring to see what would happen if the reimbursements were put back through the school-based program, direct state aid and guaranteed tax base. She said the reason for that is that administratively it would be a very simple adjustment because it would be using a mechanism that is already available.

SEN. ELLIS said this bill as it is currently takes two other bills out of existence that also reimburse local taxing jurisdictions, and **Ms. Paynter** said that was correct, **HB 20** and **SB 417.**

SEN. ELLIS asked if those bills use different mechanisms which would be more complicated, and **Ms. Paynter** said that **HB 20** is a different mechanism than **SB 417,** so there are two mechanisms. The Department is not very interested in having two existing mechanisms and the potential for four or six new mechanisms, each individually different. So it is the Department's desire to have one methodology.

SEN. ELLIS said **SB 260** has already been signed by the Governor, and to an extent it reimburses by changing the flow of the 40 mills. He wondered if this bill could change that. **Ms. Paynter** said she hoped that there could be changes in this reimbursement bill which would affect other bills which have reimbursement mechanisms in them to bring them into one.

SEN. GLASER asked how soon the Department could provide information to the committee regarding this matter, and **Ms. Paynter** said the Department has some preliminary information and she estimated that by 4:00 p.m. they would have the information available.

SEN. BOHLINGER said concerns had been expressed regarding tax increment financing districts and the need to protect bondholders from default. He wondered if amendments had been prepared to accomplish that. **REP. STORY** said as far as he knew, they had not been prepared, although some of the proponents said they had those amendments in the works.

SEN. DEPRATU asked in regard to the local option tax bill, if this might have a positive or negative impact in relationship to **HB 678**. **Mayor Kadas** said this is a much-needed alternative and he appreciated the opportunity that that allows cities, but it is the kind of thing that will be reacted to differently in different areas.

SEN. ECK said there are other bills out there where smaller amounts of revenue is lost to local government, and she wondered if it was the intent that these all be included in this bill. **REP. STORY** said this bill was created to take care of the big items, and depending on how the calculations are being done, this bill could cover everything that is lost.

Closing by Sponsor:

REP. STORY said this is a lengthy and complicated bill. He said his intent was to reimburse local governments and schools, because if reimbursement is not provided for tax revenues lost through tax relief such as has been provided this session, it simply shifts the taxes. He said he would be glad to work with the committee in creating a reimbursement mechanism that would work for local governments and schools.

CHAIRMAN DEVLIN appointed a subcommittee to study this matter consisting of SEN. GLASER, chair, with SEN. DEPRATU and SEN. STANG.

EXECUTIVE ACTION ON HB 658 AND HB 661

SEN. ELLIS reported that the subcommittee had decided to leave the bills separate, because one increases the limit on what is considered stripper wells and the other deals with exemptions. Both bills have thresholds. The subcommittee had decided to leave the threshold as it is in current law, which is $30, and then all stripper legislation is not in effect and they pay current rates for wells greater than strippers. Regarding distribution, he said currently on wells that are between four and ten barrels a day, one-half of the money goes to the state and one-half goes to local governments; and inasmuch as what will be left if that bill passes will be only the amount that is going to local governments, the subcommittee changed the direction of that money so that it all goes to local governments.
Mr. Heiman provided copies of the proposed amendments HB065801.alh, **EXHIBIT(tas79a06)**. He said **HB 658** is the bill that discusses the wells that produce three barrels or less. The subcommittee decided to make the uniform $30-a-barrel provision, and that is what this amendment does in the first five amendments. Amendment No. 6 sets the rates at .5% and 14.8%, which coordinates with **HB 661.** He said the way the bill is slightly amended in No. 7, it works right into **SB 530,** so if that passes, this amends the same sections so it will all mesh.

Mr. Heiman then provided amendments for **HB 661**, **EXHIBIT(tas79a07).** He said this also sets the uniform provision for $30 a barrel, and it includes the coordination with the stripper well exemption in **HB 658.** He said in amendment No. 4, it should be 5.5% and 14.8%, and 9.0% and 14.8%, and that will have to be changed. This provides that barrels zero through ten are at 5.5% and 14.8% and then barrels ten to fifteen are at 9.0%. There is also the change to the $30-a-barrel and 15-barrels-a-day definition, so if the oil goes above $30 a barrel, there is no longer a stripper rate.

Motion/Vote: SEN. ELLIS moved AMENDMENT HB065801.ALH. Motion carried 7-0.

Motion: SEN. ELLIS moved AMENDMENT HB066102.ALH.

Discussion:

SEN. ELLIS asked which amendment redirects all the money to local governments, and **Mr. Heiman** said the way it works now is in subsection (9), the first ten barrels go to the local government.

Vote: Motion carried 8-0.

Motion: **SEN. ELLIS moved that HB 661 and HB 658 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. ECK said she will vote for this bill, but she encouraged the committee to be sure that these changes are part of the reimbursement.

SEN. ELLIS said that as amended, this bill won't affect the local tax base below ten barrels, but above ten barrels they will be affected some. **CHAIRMAN DEVLIN** asked if the Fiscal Note should reflect less impact for local governments, and **SEN. ELLIS** said it should be less for local governments and more for General Fund.

Vote: **Motion carried 8-0. SEN. ELLIS** will carry the bill.

HEARING ON HB 174

Sponsor: **REPRESENTATIVE CHASE HIBBARD, HD 54, HELENA**

Proponents: **Jerome Anderson, PP&L Montana**
Dennis Burr, Montana Taxpayers Association
Tom Ebzery, Pacificorp, Puget Sound Energy, Portland General Electric, Avista Corp.
Russ Ritter, Montana Resources
Neil Colwell, Avista Corp.
Ernie Kindt, Montana Power Company
Mike Uda, ASARCO
Bob Gilbert, Rosebud County
Chris Gallus, Montana Chamber of Commerce
John Alke, MDU Resources

Opponents: **None**

Opening Statement by Sponsor:

REP. CHASE HIBBARD, HD 54, Helena, said this bill started in the 1997 session with some discussions about inevitable tax implications having to do with the passage of **SB 390.** This resulted in the deregulation of generation, and in so doing, we have joined 16 other states around the country, covering 50% of all electric consumers who now have choice and some form of deregulation. **SB 390** directed the Revenue Oversight Committee to analyze the tax implications of restructuring and report to this legislative session. That committee found that 1) hidden taxes impede efficient, competitive production. He said in Montana 10.6% of a utility bill is state and local taxes. He said

Montana's antiquated tax structure distorts free-market competition. If we are noncompetitive, we face erosion of our market share and the subsequent erosion of our tax base as well.

REP. HIBBARD said the Revenue Oversight Committee also focused on the tax principles, the most important of which was competitive neutrality. Meeting a goal of competitive neutrality would mean that tax policy would not affect the consumer's choice when affecting the price.

REP. HIBBARD said this bill was originally submitted by the Revenue Oversight Committee, it changed on the eve of the first hearing, it changed again before executive action. It was tabled and was changed again to accommodate all the concerns that had developed during that course of events. One of the large concerns was that a kilowatt hour tax was imposed on consumers, and it was eliminated in the final draft. This particular bill taxes imports and exports of power, which was a concern previously. It addresses the concerns of the large industrial consumers who were getting hit very hard under the kilowatt hour tax, and the whole energy transmission tax in this bill amounts to about one-sixth of what the kilowatt hour tax was. It also addresses the philosophical concerns that were addressed by the co-ops, in that the WET tax should be included in the bill.

REP. HIBBARD explained that **HB 174** reduces the tax rate on electric generation facilities from 12% to 6% and establishes a new class, class thirteen, for electric generation and also the assets of telecommunications that are going to 12% to 6%. Transmission and distribution will remain regulated and will stay at a 12% rate. The generation tax will continue as it was previously, which raises approximately $4.6 million per year. The WET tax will be imposed upon the owner of electricity that is transmitted on nonfederal transmission lines at a rate of 0.015 cents per kilowatt hour, which should raise $3.5 million to $4 million per year.

REP. HIBBARD said that the generator who exports from the state will pay the tax on that electricity. The distribution services provider, who is the local utility, pays the tax on all electricity that comes into his local distribution system. There is some electricity that is exempt from this WET tax: 1) the electricity purchased by rural electric cooperatives unless they have elected to compete, 2) electricity transmitted through the state that is neither produced nor delivered in the state, 3) electricity generated in the state by an agency of the federal government for delivery outside the state, and 4) electricity delivered to the Columbia Falls Aluminum Company. He said the collector of the WET tax is the owner of the transmission line.

If electricity is transmitted over more than one system, the last service provider to transmit the electricity will collect the tax, and it will be collected quarterly. He said there is also a provision in the bill to make whole local taxing jurisdictions.

REP. HIBBARD said an amendment posed by **REP. HARRINGTON** would exempt the purchases of AsiMI in Butte from the WET tax, because the contract was negotiated previous to this new tax, and this will expire when the contract is up. Any renegotiated contract would be subject to the new tax.

REP. HIBBARD said there is an amendment prepared by Jeff Martin and Lee Heiman which simply clarifies the reimbursement language and will allocate the centrally assessed telecommunications companies to this new class thirteen. He also said the Fiscal Note is inaccurate and he had not signed it. When the amendments are added, a new Fiscal Note can be prepared.

Proponents' Testimony:

Jerome Anderson, PP&L Montana, provided a handout entitled "Montana Tax and Transmission Cost Benchmarking," **EXHIBIT(tas79a08).** He said PP&L Montana will be a local company headquartered in Billings, Montana, and will purchase and operate all the power generating facilities in Montana and Wyoming operated by the Montana Power Company, except the facility at Milltown. He said the classification of these facilities must be moved to the new class thirteen as provided for in **HB 174** because they need the reduction of the tax rate from 12% to 6%. He said his handout demonstrates the comparative tax rates in this area of the country. He urged support.

Dennis Burr, Montana Taxpayers Association, distributed a sheet which demonstrated what they consider to be the fiscal impact of **HB 174** with the amendment, **EXHIBIT(tas79a09).** He said there was some language in the bill which required the Department of Revenue to use the wrong base value in calculating the difference between the tax at 12% and 6%, and with that amendment, these numbers are what you would see in a Fiscal Note. It reflects that the impact will be approximately $3.4 million yearly.

Tom Ebzery, Pacificorp, Puget Sound Energy, Avista Corp., Washington Water Power, and Portland General Electric, said that these four entities, along with Montana Power Company, own the units at Colstrip. He said they had appeared before this committee on **SB 85** because they had problems with the wholesale energy transaction tax. He said he believes that the collection mechanism has been modified significantly, and they are in support of this legislation.

Russ Ritter, Montana Resources, said they were opposed to this legislation in its initial state; however, since the time the various negotiations have taken place, they now feel it is a good piece of legislation and they support it.

Neil Colwell, Avista Corp., reminded the committee that they had had some issues and concerns with the WET tax in **SB 85**, but they feel they can support the concept that has been put into **HB 174.** He walked the committee through the mechanism of this bill. Page 3, Section 4: (a) sets out that transmission will be taxed at .015 cents per kilowatt; (b) states that generators pay the WET tax on generation that is exported outside of the state; (c) and (d) deal with electricity produced in the state or imported into the state for delivery to the distribution service providers; (e) sets out that the cooperative that has opted into competition will pay the WET tax on the energy that is delivered to those customers that are subject to competition; (f) is similar to (e) and clarifies which organization would pay the WET tax.

Mr. Colwell went on to subsection (2) which gets to details of how this actually works, specifying that the last transmission company collects the tax; (b) sets out the circumstances where a distribution service provider would pay the tax; (c) provides that that energy will only be taxed one time. Subsection (3) contains the exemptions from this tax; Subsection (4) ensures that a distribution services utility that is regulated can go to the PSC and apply for a recovery of these tax rates in their rates; and Subsection (5) is a multi-state exemption.

Ernie Kindt, Montana Power Company, said MPC stands in support of this bill. He said Montana Power Company has worked for several years with the Department of Revenue and the legislature to try and correct the problem of excessive taxes on generation and to create competitive taxes. He said this bill goes a long ways toward correcting that problem.

Mike Uda, ASARCO, said they were in opposition of this bill in its original form; however, they now believe this is a good piece of legislation, and they support this compromise which really brought together a variety of different interest groups.

Bob Gilbert, Rosebud County, said that Rosebud County and the newly incorporated city of Colstrip are at ground zero in this whole process. He said they like the provisions which make their citizens and their taxpayers held harmless in this legislation.

Chris Gallus, Montana Chamber of Commerce, said they rise in support of **HB 174.**

John Alke, MDU Resources, said MDU may end up being one of the last utilities in Montana that actually owns its own generation. He said this bill respects and protects a very wide range of interests, including those of MDU.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. BOHLINGER asked, if **HB 174** is not passed, and if PP&L Montana were to have to pay the present rate of tax, whether they would have some second thoughts about completing the purchase of MPC operating assets, and **Mr. Anderson** said he could not speak for PP&L Global, but if that were to happen, it would be a tragic consequence for Montana.

SEN. STANG said in the sample Fiscal Note that **Mr. Burr** had provided, there was an increase in the WET tax of $1.8 million in 2000, and he wondered if that tax would be passed on to the electrical customers of the state or would it be eaten for that one year. **Mr. Burr** said that was a good question, but that he thought the industry would say it will be eaten every year because competitive forces are going to determine the price of electricity and they are no longer in the position as generators to be able to pass tax through.

SEN. STANG said that in 2001 there is a $3 million impact which would be an impact of $6 million per biennium, and **Mr. Burr** said that was correct. **SEN. STANG** asked, then, if that is part of the reimbursement process that is involved in the other bill, and **Mr. Burr** said that was also correct.

SEN. ELLIS asked if he understood correctly that this WET tax will not be paid by power transmitted on federal lines, and **REP. HIBBARD** said that was what he said. It will not be paid by the federal transmitter as a taxpayer, but it will be paid by the distribution services company, and they will self-assess and submit it. **SEN. ELLIS** asked if out-of-state entities will have to pay this tax, or will it be paid by the generator, and **REP. HIBBARD** said the generator pays it when it goes out of state. **SEN. ELLIS** asked what the rationale was that co-ops do not pay this WET tax, and **SEN. HIBBARD** said that the tax structure is entirely different for co-ops than it is for investor-owned utilities, and there are historical justifications for the tax rates that are applied to each entity. These distinctions have been maintained in this bill. **SEN. ELLIS** asked what percentage of power co-ops sell in this state, and **SEN. HIBBARD** said he did not know.

CHAIRMAN DEVLIN asked when the ASiMI contract is up, and **REP. HIBBARD** said that at the end of the duration of the present contract, this exemption goes away, and that will be in 2002.

SEN. STANG asked if **Mr. Colwell** could explain further Section 4 (5), the multi-state exemption. **Mr. Colwell** said this provides some basic Constitutional protections and it is forward looking. This allows a consumer to not be taxed twice on the transmission of electricity if other states adopt transmission taxes.

SEN. STANG said that as long as we are exporting the product to another state, there will not be a credit, and **Mr. Colwell** said that was correct. **SEN. STANG** said, then, if we are importing from another state, we have to pay the tax, and there will be a credit for imports but not exports, and **Mr. Colwell** said in the instance that this tax were being imposed in both states, that would be the purpose, to charge only one transmission tax on a purchase transaction. **SEN. STANG** said the tax credit is basically aimed at electricity imported into the state from another state that might have that tax, and that there will be nothing in this credit that will prohibit us from exporting our tax to other states. **Mr. Colwell** said the concept of exporting the tax becomes more difficult in a commodity market.

SEN. ECK asked what other states are doing for taxation, and whether they have taxes that they will try to impose on the transmission of energy in Montana. **REP. HIBBARD** said that some of the states are setting taxation before they deregulate, some are doing it at the same time, some are deregulating first and considering taxes secondly. California and Montana are among the latter. He said eventually all of our surrounding states will change some tax policies regarding the competitive electric markets. This bill is structured in the WET tax so that there will be credits given to eliminate dual taxation. **SEN. ECK** said there is a mechanism in this bill for reimbursing local governments, but she wondered if **HB 678** is going to override all of these mechanisms. **REP. HIBBARD** said this bill has a very definite reimbursement scheme to make whole local taxing jurisdictions.

SEN. ECK said there is a lot of talk about mergers and sales, and that in another ten years there might be only three giant companies in the U.S., but she wondered how the sale of PP&L Global might have an effect on the situation in Montana. **REP. HIBBARD** said we have to look at what is happening with generation assets around the country. It has been predicted that very large companies will end up owning generation because competition is going to be fierce and extreme and a company is going to have to have very deep pockets and a huge balance sheet in order to be in this business. **SEN. ECK** asked if PP&L Montana would be considered a small company, and **REP. HIBBARD** said he was not familiar enough to know, but their parent company is a very substantial company.

CHAIRMAN DEVLIN said the sheet provided that shows what the Fiscal Note may look like after the bill has been amended showed the property tax reduction, and he wondered if that reflected the increased value of those properties. **Mr. Burr** said it does. It is the difference between the 12% tax on the old values and the 6% tax on the new values. **CHAIRMAN DEVLIN** then asked, where it is going to be a continued reduction of $3 million per year from 2001 and on, if there was any discussion about increasing the WET tax to cover that. **Mr. Burr** said it was the general opinion that it had been pushed just about as far as possible.

SEN. STANG said he noticed that this bill takes care of bonding provisions, but he wondered if those provisions were run by the State Bond Council to make sure they are sufficient. **REP. HIBBARD** said he did not know if they had been run by the State Bond Council, but they are consistent with the bonding provisions in other bills that have gone through that also address tax base. He said the security is still there no matter what tax rate exists. **SEN. STANG** asked if the bonding should be addressed in **HB 678**, and **REP. HIBBARD** said he felt the language is adequate, but the committee might want to double-check that.

SEN. STANG asked if it was the intent of PP&L to have their property assessed on the market value or will they come in later and appeal their taxes because they feel they should be assessed on the book value. **Mr. Paul Farr, the Financial Officer of PP&L Montana**, said it is the company's interpretation of existing law that the values that will be used for property tax assessment will be the fair value based on willing buyer/willing seller. **SEN. STANG** asked, then, if it was safe to assume that PP&L will not come in and appeal to the Department based on Montana Power's book value and would be willing to pay it on the market value. **Mr. Farr** said they would be willing to pay it in the initial year on the market value, but they would expect as their business develops within the state that they will be taxed on multiple bases.

SEN. STANG said that the $30 million capital gain that might be available to the state from this sale of MPC's generating assets has been discussed, and he wondered if MPC will pay that $30 million or will they do their best to see that they don't have to pay that. **Ed Bartlett, Montana Power Company**, said MPC does not know exactly what their tax liability will be for the calendar year 1999, but if the sale were to close in 1999, as is hoped and expected, the proceeds that will be received from that sale do in fact increase their tax liability. There will be other occurrences within the year that will also increase that liability and some that will decrease it. **SEN. STANG** asked if **Mr. Bartlett** thinks that the Board of Directors of the Montana Power Company will do everything in their power to reduce their tax liability to as low as they can, and **Mr. Bartlett** said the tax exposure is one of the considerations that Montana Power, and any other prudent company, would make in making investments and making decisions, but that is not the driver. The driver is whether it is a correct business opportunity or not, and the tax liability flows from that.

David Wheelihan, General Manager, Montana Electric Cooperatives, said, in response to **SEN. ELLIS'S** question about the consumption of co-ops in the state, approximately 8% or 9% of the kilowatt hours generated or sold in Montana are used by electric co-ops, so the kilowatt hour tax will apply to those co-ops who open their system to competition consistent with the principles of **SB 390**.

Closing by Sponsor:

REP. HIBBARD said that if a co-op opts into competition under the terms of **SB 390**, they pay the same taxes. If they are not opting into competition, they don't pay it and they stay in the same tax structure as they were previously.

SEN. HIBBARD said he is no longer on the MPC board, but it is the job of any prudent business tax manager and board of directors to minimize taxes. They are not in the business of paying taxes. However, there is a common misconception about the $30 million on the MPC sale, and that is, people think that that money between the cost and the book value and what is received can be put in any investment, even though it is a sale of generation assets. That is not true. It falls within a very narrow definition that has to do with those generation assets, and he believes that this $30 million will probably materialize.

REP. HIBBARD also commented on whether or not the WET tax will be passed on. **Mr. Burr's** comment that if competition develops the way it probably will, it may end up being eaten and not be passed on to the consumer, but it is possible to pass it on, and it is also conceivable that it will be identified on the consumer's bill. On the average Montana customer's bill, it would amount to about $2 a year.

HEARING ON HB 540

Sponsor: **REPRESENTATIVE LARRY GRINDE, HD 94, LEWISTOWN**

Proponents: **Riley Johnson, NFIB**
Mike Foster, Montana Contractors Association
Brian Cavey, Montana Motor Carriers Association

Opponents: **Dave Burch, Jefferson County Weed District Coordinator**

Opening Statement by Sponsor:

REP. LARRY GRINDE, HD 94, Lewistown, presented the committee with an explanation of **HB 540, EXHIBIT(tas79a10).** He said this bill provides for a flat fee on motor vehicles.

REP. GRINDE distributed copies of an amendment, HB054003.agp, **EXHIBIT(tas79a11),** which transfers the GVW fees into the highway account. He then distributed HB054002.agp, **EXHIBIT(tas79a12).** He said that when the new car sales tax was backed out, a great portion of that money went to the highway fund, and in order to make that fund intact, this amendment directs that all those registration fees will be applied to the highway account. **REP. GRINDE** then provided copies of HB054004.agp, **EXHIBIT(tas79a13),** which is an amendment that shifts to the Montana Department of Transportation interest on the highway special revenue account of $1.2 million, and this comes pretty close to making that fund whole.

Proponents' Testimony:

Riley Johnson, National Federation of Independent Businesses, said this would be a welcome relief for the small business.

Mike Foster, Montana Contractors Association, said they support the bill with the amendments that were proposed by **REP. GRINDE.** He said they had learned that this bill was going to have a very bad effect on the Highway Trust Fund, and they appreciate **REP. GRINDE'S** willingness to work on solving that problem. These amendments will resolve that issue by providing the money needed to match the federal programs.

Brian Cavey, Montana Motor Carriers Association, said that with the addition of the amendments presented by the sponsor, his organization believes that this will be a very positive addition to the efforts of tax reform that are being accomplished by this legislature. He urged support.

<u>**Opponents' Testimony**</u>:

Dave Burch, Jefferson County Weed District Coordinator and Montana Weed Control Association of Weed District Supervisors, said there is one part of this bill that they feel will hurt the Noxious Weed Trust Fund; and that is, when a person buys a five-year plate, any vehicle after that certain time does not have to register or buy another plate again as long as that person owns that car. What will happen is the $1.50 on those vehicles will be lost, and that will be a significant impact on the Fund. He asked that the committee would give that issue consideration. He provided written testimony, **EXHIBIT(tas79a14).**

<u>**Questions from Committee Members and Responses**</u>:

SEN. STANG asked if the information on the second page of **REP. GRINDE'S** handout had been compared with **SB 260**, and **REP. GRINDE** said this bill is taken from **SB 260.** He said it was already signed, so every calculation in this handout takes into consideration **SB 260.**

SEN. GLASER said that in the first four-year fee, it is $195. He said there are some small cars that will be paying more than presently. He wondered if there was a possibility, during that first four years of having a slightly lower rate for those light cars. **REP. GRINDE** said that that was correct, there would be a few vehicles in that category that could possibly see an increase. He said it had been considered and it was finally decided to go with these three categories in spite of that.

CHAIRMAN DEVLIN asked if the weed districts' problem had been considered on the extended purchase of plates, and **REP. GRINDE** said they had talked to **Mr. Burch** but they had not come to any conclusions. However, the weed districts will pick that up in the first five years, and it could go into a fund that would accumulate interest.

SEN. DEPRATU asked if this only covered through one-ton vehicles, and **REP. GRINDE** said that was correct.

SEN. GLASER said that **Mr. Gillett** had put a lot of figures together for the various people working on the vehicle tax, and he wondered what he had to say about the weed district problem. **Jim Gillett, Legislative Audit Division,** said that they had analyzed the population of older motor vehicles and found that through attrition and those that are sold, the average turnover on a vehicle 11 years old and older is five years. That would mean if you take five times the weed fee and put it in the Noxious Weed Fund, it would be a wash. The gain to the weed fund would be if they chose to invest that money and let it earn more money.

SEN. STANG asked if any kind of assessment had been done on how many winners and losers there will be under each fee category, and **Mr. Gillett** said he was not sure they had done that on this version. He said the problem is that the base now is **SB 260**, and as we move forward into 2000 and use base **SB 260** and then move forward into 2001 to do the comparisons of **SB 260** to this bill, you begin to have to theorize on what is going to happen with the MSRP on new vehicles and what the demographics are going to be. He said at this point they had not done that, but they could take a stab at it. **SEN. STANG** asked how long that might take, and **Mr. Gillett** said it would probably take 48 hours. **SEN. STANG** asked if they could get that information to the committee as quickly as possible. **CHAIRMAN DEVLIN** said he was going to request a new Fiscal Note on this because it had been amended extensively.

SEN. EKEGREN asked **SEN. GLASER** to refresh his memory on the impacts of **SB 260**. **SEN. GLASER** said it depends upon whether you look at the General Fund hit or the local government hit. Once it phases in completely, there could be as much as $39 million a year or two years out total impact.

SEN. ELLIS asked if the Fiscal Note is based on **SB 260**, and **REP. GRINDE** said it is because **SB 260** is current law.

CHAIRMAN DEVLIN said the Fiscal Note has a 2/15 date on it, and he wondered how it could be based on **SB 260** if it was created on that date. **Brian Smith, Department of Revenue**, said the Fiscal Note available to the committee today is based on the as-introduced bill. **CHAIRMAN DEVLIN** asked how long it would take the Department to get new figures out on a new Fiscal Note, and **Mr. Smith** said if the amendments are not too complicated, they could probably have that together by the end of the day.

REP. GRINDE said he had a 4/9/99 Fiscal Note available today, so that would reflect how it came out of the House. **CHAIRMAN DEVLIN** said that with these amendments, there would be another reflection, and **REP. GRINDE** said that was correct.

CHAIRMAN DEVLIN asked **Mr. Gillett** if he had any further comments, and **Mr. Gillett** said when **SEN. STANG** asked his question, he asked for numbers of vehicles for winners and losers, and although that has not been done, he does have a chart that makes some projections as to the averages, **EXHIBIT(tas79a15)**. **SEN. STANG** said **REP. GRINDE** had shown those averages in his computations, but he said when something is revenue neutral, it is an average.

He said he would like to know the numbers of winners and losers because the Department had said there would not be many losers, and he would like to know the numbers above and below the average. **Mr. Gillett** said he would provide that information.

Closing by Sponsor:

REP. GRINDE said he hoped that this bill could be changed to accommodate these questions because he felt it was a good bill and needed to be passed.

EXECUTIVE ACTION ON HB 540

Motion/Vote: SEN. STANG moved AMENDMENT HB054004..APG. Motion carried 8-0.

Motion/Vote: SEN. STANG moved AMENDMENT HB054002.APG. Motion carried 8-0.

Motion/Vote: SEN. STANG moved AMENDMENT HB054003.APG. Motion carried 8-0.

EXECUTIVE ACTION ON HB 174

Motion: SEN. DEPRATU moved AMENDMENT HB017412.AJM, EXHIBIT(tas79a16).

Discussion:

SEN. DEPRATU said this is an amendment that takes care of a timing issue and keeps rural people under the co-op in the purchasing and exchange that went on up in the Flathead area. He said it keeps the people who are in the metro area and the incorporated cities still paying the tax, but keeps the co-op people in the rural areas from being impacted negatively.

CHAIRMAN DEVLIN asked if this had been perused by the affected parties, and **SEN. DEPRATU** said it had.

SEN. ELLIS asked what the impact of this amendment was, and **SEN. DEPRATU** said it was about $142,000 impact for the WET tax.

SEN. STANG asked if the WET tax applied to the people in the Kalispell area, or to people all over the state, and **SEN. DEPRATU** said Kalispell was the only place because of the date specific, May 2, 1997. They got caught in the middle on this, and this resolves that matter.

SEN. STANG asked if someone could explain the effects of how they got caught in the middle and why. **Dave Wheelihan, Manager, Montana Electric Cooperatives,** said Flathead Electric purchased Pacificorp facilities in the Flathead Valley. They rolled approximately two-thirds of those members into their cooperative, but there was about one-third of the old Pacificorp members that they could not because of existing state law that if they formed a separate subsidiary that is regulated by the Public Service Commission, for those members, that is Whitefish, Kalispell and Columbia Falls, those people will be subject to the WET tax, but the two-thirds members that were rolled into the cooperative with this date change would be treated in the same manner as everybody else in the cooperative.

SEN. STANG asked if this amendment only affects the one-third that weren't in the co-op, and **Mr. Wheelihan** said it affects the two-thirds that are in now. He said the one-third was always subject to the WET tax because it is a fully regulated subsidiary. This affects the two-thirds that were rolled into the co-op. That co-op has opened up, and if those members chose, this WET will apply; so the fiscal impact could even be less than estimated.

SEN. STANG asked if they were in the process of opening up, and **Mr. Wheelihan** said they were.

<u>Vote</u>: Motion carried 8-0.

Mr. Heiman said HB017401.alh, **EXHIBIT(tas79a17)**, are the amendments mentioned by **REP. HIBBARD** that correct the distribution formula, 1 through 8. Amendment No. 9 on the second page is the coordinating instructions to **HB 128** which also changed the personal property on telecommunications property, and this melds the two class thirteen properties together in case both bills pass. On page 3, the new Section 35 is a coordination instruction with **HB 128** which passed out of this committee totally unamended. This amendment cleans up the contingent voidness provision in **HB 128**.

<u>Motion/Vote</u>: SEN. STANG moved AMENDMENTS HB017401.ALH. Motion carried 8-0.

<u>Motion</u>: SEN. EKEGREN moved that HB 174 BE CONCURRED IN AS AMENDED.

<u>Discussion</u>:

SEN. STANG said he was going to vote against it today even though he may vote for it on the floor. He said he felt he needed a little more time to study it.

SEN. GLASER said this bill has probably been the biggest fight in the legislature this session, but he feels that probably most everyone is happy with the present bill and it needs to be moved forward.

SEN. ECK said there was some coordinating language and there were comments that the reimbursement provisions in this bill will be rolled into the big reimbursement bill, but she wondered if there needed to be an amendment saying something to that effect. **Mr. Heiman** said that **HB 678** has all the coordinating instructions in it, so it will declare the provisions in this bill void and that will then cause the **HB 678** provisions to be used.

Vote: Motion carried 6-1 with Stang voting no.

CHAIRMAN DEVLIN said **SEN. THOMAS** had been asked to carry this.

ADJOURNMENT

Adjournment: 11:30 A.M.

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SEN. GERRY DEVLIN, Chairman

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SANDY BARNES, Secretary

GD/SB

EXHIBIT(tas79aad)