MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB DEPRATU**, on January 26, 2001 at 8:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:
Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 224, 2/4/2001; SB 223, 2/4/2001
Executive Action: SB 227

HEARING ON SENATE BILL 224

Sponsor: **SENATOR KEN TOOLE**, SD 27, Helena

Proponents: **Tim Davis, Montana Smart Growth Coalition; Anne Hedges, MEIC; Robert Rasmussen, Self; Judy Smith, Homeward; Julia Page, NPRC; Bob Horne, Montana Association of Planners; Jeff**

Barber, Clark Fork Coalition; Briana Kerstein, Montana Peoples Action; Janet Ellis, Montana Aubobon

Opponents: Peggy Trenk, Montana Association of Realtors; Webb Brown, Montana Chamber of Commerce; Byron Roberts, Montana Building Industry Association; Ronda Carpenter, Montana Board of Housing; Steve Mandeville, Realtor and Auctioneer; Linda Cockhill, Mountain West Bank

Opening Statement by Sponsor: SENATOR TOOLE presented SB 224. He described his experience in the Bitterroot valley when their family moved to a farm. He has watched the growth and is concerned about the crowded conditions. This area was a good example of the impacts of growth. SB 224 would add a 1% realty transfer fee to sales over $100 thousand and the proceeds will be split to fund local planning, affordable housing projects and agricultural heritage programs. Due to the impacts of growth, more funds are needed to fund planning, affordable housing issues, loss of agriculture and open space. ***{Tape : 1; Side : A; Approx. Time Counter : 0 - 3.7}***

Proponents' Testimony: Tim Davis, representing Montana Smart Growth Coalition, said his membership supported the bill. As family agriculture becomes more difficult and land prices and population grow, maintaining the quality of life is going to become more difficult unless we find ways of adequate, ongoing funding for local planning, the agricultural heritage program and affordable housing revolving loan account. The realty transfer tax bill is the most appropriate way to fund three vital programs in order to protect family farms and ranches and livable, affordable home towns. He distributed testimony from Art Loendorf, President of Montana Farmers Union **EXHIBIT(tas21a01)** and John Horwich, Professor and Director of the Land Use Clinic. **EXHIBIT(tas21a02)** ***{Tape : 1; Side : A; Approx. Time Counter : 3.7 - 6.4}***

Anne Hedges, MEIC, spoke in support of the bill. She said the Interim Committee on Local Government Funding and Structure did some analysis on the realty transfer tax. There is a document by the Department of Revenue, by Brad Simshaw, that points out there are realty transfer taxes in other states. She described the guiding principals of taxation that made the realty transfer tax fit well for new legislation. These are simplicity, accountability, economic neutrality, equatability, complementary, competitive, balanced and reliable. ***{Tape : 1; Side : A; Approx. Time Counter : 6.4 - 16.7}***

Robert Rasmussen, a local government planner, testified on his own time. He said he had 25 years in local government and volunteered on the planning board as a consultant. He pointed out the increasing need for funding for local planning efforts. The property tax freezes have gone into effect in the mid 80's, a decline in revenues in production of coal tax revenues, and an increase in needs because of the growth and development, particularly in Western Montana and because of the decline of development in Eastern Montana we have seen the needs increase for local planning development efforts. Local governments have been strapped. Planning staff are supported by general fund monies and property tax reliance. There is a need to expand the sources of revenue that are available to meet the needs of local governments for planning purposes. There are obligations to update our comprehensive plans to meet the requirements of new growth policies established by the Legislature. The next step now in developing those plans takes additional efforts and revenue. In addition, in Lewis and Clark Counties in the mid-80's we adopted what is called a Voluntary Agricultural Land Conservation Program. It parallels the goals of the State Agriculture Heritage Program, in terms of providing opportunities and encouragements of private land conservation through various mechanisms including conservation easements. The percentage of this proposed tax going toward the Agricultural Heritage Trust Fund, would complement the goals of Lewis and Clark County in terms of our own approach to dealing with similar circumstances. He supported the Board of Housing efforts to seek help in affordable housing. Our community is always struggling to provide opportunities for reduced costs in the development process to achieve affordable housing goals, that includes where properties are located, cost of developments and structures and comprehensive planning goes a long way to achieving those goals.
{Tape : 1; Side : A; Approx. Time Counter : 16.7 - 20}

Judy Smith, representing Homeward, testified in favor of the bill. She distributed a sheet on the Montana Housing Trust Fund. **EXHIBIT(tas21a03)** The trust fund was sent up during the last Session but did not have a source of funding. This Session, those concerned with housing issues are looking at different funding sources. There are four bills being considered this time. A trust fund provides money for building low income housing. She described the problems with finding affordable housing since low income people often need more than fifty percent of their income for their housing. There are people paying 50-100% of their income on housing. People on welfare who get a welfare check for $400 cannot find a place to live in Missoula for less than $500. She described the Missoula report, two weeks ago, that demonstrated the situation as almost reaching discrimination status. There is no stock in Missoula County to put people into housing. It is not about helping out with rental vouchers, because there is nothing to rent. A big concern is that land is so expensive because of the growth. She described the Billings area. She noted there were also great problems in rural areas as well for low income housing. She discussed the homeless families and a survey done by the Montana Continuum of Care Coalition that showed a significant number of homeless families. **EXHIBIT(tas21a04)**

Julia Page, representing Northern Plains Resource Council, spoke in favor of the bill. She handed out written testimony. **EXHIBIT(tas21a05)**

Bob Horne, Planning Director for Great Falls City County Planning Board and the Montana Association of Planners, described the growth policy needs. Real solutions for affordable housing for economic development, for growth of development, for infrastructure for capital improvement programs and other issues could be developed with passage of this bill. ***{Tape : 1; Side : B; Approx. Time Counter : 0 - 3}***

Jeff Barber, representing Clarkfork Coalition, a group of citizens, scientists, family farmers and ranchers, recreationists and other concerned with maintaining the water quality of the Clark Fork Valley. They are members of the Smart Growth Coalition because this affects family farms and ranches and allows people to stay on the land. Community planning and affordable homes all translate ultimately into cleaner waters in Montana. The EQC has spent the last four years studying planning and have found the single greatest need to be funding. This bill would provide that. ***{Tape : 1; Side : B; Approx. Time Counter : 3 - 4}***

Briana Kerstein, representing Montana Peoples Action and the low income work force, supported the bill. A growth management policy would be helpful to all people. They were specifically supporting the Housing Trust Fund. She said the Homeward Program in Billings had eight new homes. They were specifically for low income families who were involved in the planning and design. The houses were energy efficient which solved one main problem in housing efficiency.

Janet Ellis, Montana Audubon Association, said this was an appropriate source of funding for land use planning as well as the Agricultural Heritage Program. This program had more call for funding than the state of Montana has been able to give them. This would provide additional funds.

Opponents' Testimony: **Peggy Trenk**, Montana Association of

Realtors, spoke on behalf of the association against the bill. The Realty Transfer Tax would add to the cost of purchasing a home. It hurts those who already have trouble coming up with a down payment, as well as paying the recording and filing fees and other expenses involved in buying a home. This is not just new homes in new developments but existing homes. This bill calls for exempting the first $100,000 of the purchase price of a home it still does not address the regressive nature of this highly selective sales tax. Even with amendments, the bill targets lower and middle income families. This will have an effect on the real estate economy. Real estate transfer taxes have a history of starting low and creeping up, either by eliminating exemptions or raising the percentage. Once on the books they can be tapped for other reasons. For example, in 1980 the state of Washington changed their real estate transfer tax at a local level to one state wide. In 1984, they added a temporary surcharge, another .04%. That was increased in 1982 to .07, in 1983 that tax was made permanent. In 1987, the transfer tax was increased to 1.28%. That same year, another temporary increase was adopted. Meanwhile, in 1982, cities and towns in Washington imposed a local options transfer tax on top of that. In 1990, the state Growth Management Act added another .25% and they can add another 1% for the purchase of conservation areas. There, the combined total of realty transfer taxes in Washington state is 1.78% and in some areas as high as 2.78%. In New Hampshire, they initiated a temporary transfer tax of $1 per thousand for 1968. Today it is $15 per thousand, split between the buyer and seller and they are asking for $2 more. They still call it a temporary tax. This demonstrates what can happen when a tax like this is put on the books. She said their association recognizes the value of all three of the recipients of this tax. Funding for planning grants are supported by the association. However, this tax should not be at the expense of people trying to purchase a home. ***{Tape : 1; Side : B; Approx. Time Counter : 4 - 13}***

Webb Brown, Montana Chamber of Commerce, expressed opposition to the bill.

Byron Roberts, MBIA, spoke in opposition to the bill. He said he represented 1,500 members of the building industry association and opposed the realty tax to fund local planning. Builders are supporter of local planning and feel it is essential in guiding community growth and development, creating livable neighborhoods and programing capital improvements. Builders also recognize the need to find a source of funding for the development of growth policies. The two year study effort by EQC was HB 92 that provided grants for communities for growth policy development. Realty transfer taxes are the wrong source and they add significantly to the cost of housing for one third of Montana families who don't already own their own home. Montana has one of the highest rates of home ownership in the nation, 70%. For the other 30%, housing is virtually impossible. This tax is no more than a sales tax on housing. When a sales tax is imposed, housing is usually exempted. He distributed a summary on Lewis and Clark County, a study done by MSU Billings, regarding the impact of building 200 homes in Lewis and Clark County in 1999. **EXHIBIT(tas21a06)** He pointed out that new homes pay almost twice the amount of property taxes. Housing and real estate is already paying its own way. ***{Tape : 1; Side : B; Approx. Time Counter : 13 - 17.7}***

Ronda Carpenter, representing the Montana Housing Providers, a coalition dedicated to providing affordable housing to Montana's renters. She pointed out this bill would jeopardize some of the existing funding in order to create new funding. She discussed the cost this would have on rental property and a way of passing on the tax to those who could least afford it. She discussed how it would increase the costs in the Board of Housing 1,800 placements in low to moderate income people. The board can loan money to people with houses as high as $130 thousand dollars. There are FHA standards that affect low to moderate income people. This bill does not just affect high income houses, but affect houses that are served by Montana Board of Housing. She explained the added costs to low income housing projects. These costs were just added to the cost of rents which amounted to $300 per year. The burden is placed on the least able to pay. ***{Tape : 1; Side : B; Approx. Time Counter : 17.7 - 22}***

Steve Mandeville, realtor and auctioneer, opposed the bill. He said this added to a property already burdened by the present tax structure. He asked about the consequences when a house had been sold five times and paid the tax five times, as the fees are included in the value.

Linda Cockhill, Mountain West Bank, spoke in opposition to the bill. She said she had worked in the real estate industry for at least twenty five years and had been doing financing for home owners to purchase residences. She cited reasons why members should vote against the bill. The realty transfer tax is nothing more than a sales tax and is regressive. It is unfair to those families who need to move out of the state of Montana to other communities to seek better employment. The second reason to vote against the bill is that the per capita income in Montana is one of the lowest in the United States. The real problem is developing an economic environment so our residents don't have to move away for better paying jobs. She distributed examples of what a borrower would have to pay if they moved to Montana or bought a home in Montana. **EXHIBIT(tas21a07)** Low and medium income people can't afford even the lowest down payment. These are standard closing costs and some mortgage companies can even charge higher fees. ***{Tape : 1; Side : B; Approx. Time Counter : 24 - 27}***

Questions from Committee Members and Responses: **SENATOR ELLINGSON** asked about the tax being viewed as useful in other states. ***{Tape : 1; Side : B; Approx. Time Counter : 27 - 30}***

Ms. Trenk replied that their association had data from a national perspective. One of the concerns is that older folks were choosing not to downsize once their kids leave home. Property tax structures were a factor when people choose to buy homes.

SENATOR ELLINGSON asked for an explanation of the Housing Trust Fund. **Mr. Roberts** replied that the Realty Transfer Tax was not the appropriate measure to fund the trust. **SENATOR ELLINGSON** questioned the status of the Agricultural Heritage Program. **Mr. Volesky**, Director of the program, discussed the funding aspect. He said the program was created to contribute state funding for the purchase of agricultural conservation easements on farm, ranch and forest land in Montana. The idea was to keep agricultural land in production and keep open spaces out there. Last Session, the program was given one million dollars in general funds to grant. That million dollars had 22 applicants, agricultural land owners, to the tune of $5.5 million. $888 thousand dollars was granted to 8 different land owners. It was matched by $6.6 million dollars in other sources of money, private donations and foundations and other federal funding. The state got over a 7-1 match. The executive budget has slated this program for a $600 thousand dollar cut. He pointed out that this was not a lot of money when considering the land values in Montana.

SENATOR COLE questioned the details of the EQC planning study. **Julia Page** described various funds that had been considered.

SENATOR BOHLINGER asked **Ms. Cockhill** to describe the closing costs that one must face when purchasing a piece of property. He asked about whether the closing costs could be included in the financing. **Ms. Cockhill** replied that these fees would not be able to be financed. A non-conforming loan will finance but the interest rates can be much higher. ***{Tape : 2; Side : A; Approx. Time Counter : 10.9 - 17.6}***

SENATOR BOHLINGER asked about the Realty Transfer Tax in Washington and how it had influenced home sales. **Ms. Trenk** said it affected volatility. She said she would find out about the trends to see if real estate sales had been affected. ***{Tape : 2; Side : A; Approx. Time Counter : 17.6 - 19.2}***

Closing by Sponsor: **SENATOR TOOLE** closed. He noted that the Montana Department of Revenue had a report that demonstrated the effect on monthly payments. The tax is tied directly to the impacts of growth, affordable housing, loss of open space and the need for planning. Growth affects our communities in a lot of ways and there are costs associated with that. Thirty seven other states do this and it is a workable program. ***{Tape : 2; Side : A; Approx. Time Counter : 19.2 - 21}***

HEARING ON SENATE BILL 223

Sponsor: **SENATOR PETE EKEGREN,** SD 44

Proponents: **Carl Schweitzer, Subcontractor Association; Ed Maronick, President of the Contractors Association; Mike Christie, Bozeman; Byron Roberts, MBIA**

Opponents: None

Opening Statement by Sponsor: **SENATOR EKEGREN** explained the bill would allow Montana construction contractors to utilize earned income tax credits for a seven year period forward or a two year period in the past of unused gross receipt tax credits. This represents a 1% tax on all public construction in Montana. The history of the tax is that it was created at the request of the industry as a means of giving Montana contractors a competitive bid advantage over out of state contractors. Contractors can offset their income or personal property taxes dollar for dollar against their gross receipt tax credits they have earned. Currently, a contractor must use the credit in the year it is earned, use it or loose it. This bill permits contractors to carry forward up to seven years or back two, thereby giving them a ten year opportunity to utilize the credit. ***{Tape : 2; Side : A; Approx. Time Counter : 21 - 25.3}***

Proponents' Testimony: **Carl Schweitzer,** Subcontractors Association of Montana, spoke in favor of the bill. The bill would allow contractors who do public works to earn credit. They earn 99% and 1% goes into the gross receipts fund. The reason for this tax is when out of state contractors bid on a construction project, they are competing against Montana contractors. When there was a high business equipment tax they had to pay this tax year around. An out of state contractor coming into Montana only had to pay the tax for the time the equipment was in Montana. Montana contractors were paying year around versus an out of state contractor paying a limited amount of time. This gross receipts tax mechanism attempted to equalize that. The problem is if you do a lot of work one year, earn the credit, but don't pay any taxes, you never get to use it. There is no advantage. This bill addresses this situation. ***{Tape : 2; Side : A; Approx. Time Counter : 25.3 - 27.9}***

Ed Maronick, President of Maronick Construction of Helena and current President of Montana Contractors Association, spoke in support of the bill. It is a fairness issue. This tax credit belongs to the contractors and this bill would allow them to claim it.

Mike Christie, Christie Electric Bozeman, said the bill was fair and allowed the contractors to use the credit. The tax is factored into bids to the state and thereby costs the state a lot of money to even have the gross receipts tax.

Byron Roberts, Montana Building Industry Association, felt the modification to the tax would make it better for all contractors. ***{Tape : 2; Side : A; Approx. Time Counter : 29 - 30}***

Questions from Committee Members and Responses: **SENATOR STONINGTON** asked if this was non-refundable. **Mr. Schweitzer** gave an example about public works of a $500 thousand dollar job where the tax of 1% was $5,000. That could be taken off the personal income tax. You cannot get credit for anything beyond what you paid in taxes. This bill would allow a carry over.

Closing by Sponsor: **SENATOR EKEGREN** closed.

EXECUTIVE ACTION ON SENATE BILL 223

SENATOR GLASER MOVED SB 223. He explained that the bill would allow a slight competitive advantage over out of state contractors. There are years of profit and loss, but the money belongs to the contractors. It gives them a tool in an up and down economy to recapture their money.

The question was called. The motion **PASSED** unanimously.

ADJOURNMENT

Adjournment: 9:32 A.M.

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SEN. BOB DEPRATU, Chairman

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DEB THOMPSON, Secretary

BD/DT

EXHIBIT(tas21aad)