

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **SEN. JOHN C. BOHLINGER**, on February 1, 1999 at 9:00 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. Jon Ellingson (D)
Sen. Alvin Ellis Jr. (R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

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: SB 146, 1/28/1999; SB 220,
1/25/1999
Executive Action: SB 274

HEARING ON SB 220

Sponsor: SENATOR DARYL TOEWS, SD 48, LUSTRE

Proponents: John Tubbs, Department of Natural Resources and Conservation
Peter Blouke, Director, Department of Commerce
Henry Headdress, Fort Peck Assiniboine and Sioux Municipal, Rural and Industrial Water Supply System
Charlie Cahill, Dry Prairie Rural Water Association
Allen Bunk, Dry Prairie Rural Water Association
Dan Keil, Tiber County Water District
Annmarie Robinson, Bear Paw Development
Dave Jones, Hill County Water District

Opponents: None

Opening Statement by Sponsor:

SEN. DARYL TOEWS, SD 48, Glasgow, presented **SB 220** as a bill which deals with the funding of two large water systems in the upper Hi-line area. He said until now, Montana's communities have had small, local water systems, but this deals with two water systems that will service large areas, the Fort Peck Sioux Assiniboine Rural Water System and the Rocky Boy's Central Montana. He said these are large systems, \$200 million and \$179 million. **SEN. TOEWS** said the size of these projects has created some special and unique problems in putting together a funding system that will work. and this bill diverts some coal trust monies, and has to do with the Treasure State Endowment System.

Proponents' Testimony:

John Tubbs, Chief of Resource Development, Department of Natural Resources and Conservation, said that **SB 220** needs strong state support. He said that proposals that will be introduced here today will describe two large regional water systems that will service over 60 communities and two reservations.

Mr. Tubbs said the leaders of these communities have been working on these projects for several years, and are now prepared to move forward with congressional authorization of the projects; but to be successful, there has to be a strong state partnership to go along with the local work. **SB 220** provides that strong state role, but it also requires that the locals provide an equal dollar-for-dollar match for every state dollar expended so together the locals and the state can go to Congress with a strong voice as to how Montana supports this project.

Mr. Tubbs passed out a handout, **EXHIBIT (tas25a01)**, the first page of which tracks how the coal severance tax deposits to the

permanent trust are made. He said the first thing is, you split 50% of the total tax receipts, an estimated \$16 million per year, which then goes through a bond fund that is used to support the coal severance tax loan program; a school bond contingency fund that is backing school bonds outstanding, about \$23 million; and then the revenues in **SB 220** are split. He explained that \$4 million will continue to be deposited into the coal severance tax permanent fund, \$8 million will continue to flow into the Treasure State Endowment Fund, and then the new Treasure State Endowment Regional Water System Fund would receive \$4 million per year. **Mr. Tubbs** said that essentially we are splitting 50/50 the money that under current law is deposited into the permanent fund. The deposits build within the Regional Water System Fund, the proceeds themselves are never expended.

Mr. Tubbs went on to say that earnings from that fund, within the trust boundaries, will be used to provide the state's share for these proposals. It is anticipated that for the North Central Rocky Boy's System, the state share would be \$20 million, matched again by \$20 million of local funds; and in the Fort Peck/Dry Prairie proposal, currently they are estimating \$8 million in state share with a matching \$8 million of local funds. In total we are seeking \$320 million of federal funds.

Mr. Tubbs then referred the committee to the second side of the chart which steps through the dollars. He said going from left to right, the \$16 million gets deposited into the trust and follows the same flow chart. \$500,000 is used for support of state bonds, leaving the remaining to be deposited, \$8 million in the TSEP, \$4 million in the permanent fund, and \$4 million in the new Regional Water System Fund. The next-to-the-last column shows how those deposits accumulate over time, and the deposits sunset in the year 2013, as do the Treasure State Endowment Program deposits. That raises a balance of an estimated \$55 million that continues to be available for regional water systems.

Mr. Tubbs said the target of \$30 million which is needed to match these two projects is reached somewhere around 2013, and it goes on so other regional water systems could be funded, or the monies could be put back into the Treasure State Endowment Program for grants to local communities, or the legislature could take the funds back to supplement the General Fund.

Mr. Tubbs explained that the hit on the General Fund is a future hit, and doesn't impact current fund deposits. He said every dollar that goes to a Regional Water System Fund would have been a General Fund dollar. He referred to the cumulative earnings

column and where it shows the total General Fund dollars over time.

Peter Blouke, Director, Department of Commerce, said that his department stands in strong support of **SB 220**, not only from the standpoint that it will have a very meaningful impact to the communities in terms of their having access to good drinking water, but also in the sense that it has a significant economic impact. He said that as the Department developed their Jobs and Income proposals, this was one of the areas that they felt was an important step forward in terms of developing the economies of those regions, some of the most devastated, economically deprived regions in the state. Without an adequate water system, it is virtually impossible to attract and support industry.

Henry Headdress, Public Involvement Coordinator for the Fort Peck Assiniboine and Sioux Municipal, Rural and Industrial Water Supply System, submitted written testimony, **EXHIBIT (tas25a02)**, saying that the Tribes wholeheartedly support the Dry Prairie portion of the project, and join with them in seeking this committee's support for **SB 220**. He said they also recognize the merits of the North Central project for the Rocky Boy's Indian Reservation and the communities of that region and join in support of their project as well.

He said that when the Tribes first began looking at a reservation-wide water system, they became aware of the need for water outside the reservation; thus, the creation of the Dry Prairie portion of the plan. He explained briefly the arrangements with Dry Prairie to accomplish this project. **Mr. Headdress** said that the Missouri River is a high-quality source of water. After filtration and disinfection to remove microorganisms, the finished water quality from this most valuable stream will be safe and adequate for drinking and all other purposes. The Assiniboine and Sioux Tribes have offered the use of their water rights in the Missouri River to Dry Prairie for this project. He said the Assiniboine and Sioux Tribes and the Dry Prairie folks look to this project for improvement in health and quality of life.

Charlie Cahill, Secretary/Treasurer of Dry Prairie Rural Water, Scobey, also submitted written testimony, **EXHIBIT (tas25a03)**. He thanked the Fort Peck Tribes for their gracious offer to be involved with this project. He said without their insistence and invitation, Dry Prairie would not be here today. He said the \$179 million rural water system is designed to pump water from the Missouri River, treat the river water at a treatment plan, and deliver the treated water to all those who would want water.

Mr. Cahill said it is important to note that the proposed water system will actually be two integrated but separately operated systems that will make the complete system. The systems will be divided by the Fort Peck Reservation line with all the system inside the reservation held in trust by the United States for the Fort Peck Tribes and all outside the reservation to be held by Dry Prairie Rural Water on behalf of the water users.

Mr. Cahill said that they are in the middle of their subscription drive to fund the local portion of this project and are pleased with the results. He said that both the Administration and DNRC have offered support for this project, and **SB 220** would provide for the 50% of the local cost share to be provided by the state of Montana. If this bill passes, local share would be cut in half and would thereby decrease the debt on the local users. He said current policy dictates that the state will assist local cities and towns up to 50% cost share for water projects. This bill is simply an extension of that process, except instead of building many smaller water projects, the bill would permit one rural water project to serve both city and rural users.

Mr. Cahill said that **SB 220** will be an important tool to bring water into that area of the state. The project will bring funding from outside the state that will at a minimum provide jobs for many over a ten-year period. It will bring an infrastructure project that will solidify our communities for future development as well as strengthening our existing communities.

Allen Bunk, Vice Chairman, Dry Prairie Water System, testified that, simply put, this project will save the state of Montana money by creating a large water system that serves several communities, rather than supplying grants for small, local water projects. He said engineering studies have proven that this will save the state \$50 million for an \$8 million investment. He said that this water system plan can provide good quality water for the region's inhabitants at a water bill cost of \$40 a month. He also said that aside from costs and benefits the project will have on health and quality of life, from 300 to 500 man years of employment will be created by project construction. He also provided written testimony, **EXHIBIT (tas25a04)**.

Dan Keil, Co-chair of the Rocky Boy's North Central Montana Regional Water Facility Ad Hoc Committee, Conrad, offered prepared testimony, **EXHIBIT (tas25a05)**, and a letter of support from the Tiber County Water District, **EXHIBIT (tas25a06)**. He said his committee is made up of six members, three from the Chippewa-Cree tribe and three off-reservation users, and three alternates from each area. He said the North Central project grew out of

discussions that came about with the negotiations on the settlement of the water rights for the Rocky Boy's Reservation. **Mr. Keil** said most of the area involved in this project is serviced by rural water districts which are having problems complying, and this proposal would be providing service in place of those smaller systems. He said the feasibility study for this project demonstrates that the cost benefit ratio is equal to or exceeds that of the communities having their own systems.

Anmarie Robinson, Bear Paw Development, Havre, said that her company is the coordinator for this project through a procurement process for the state of Montana, and has the contract with Department of Natural Resources and Conservation. She said that her company has worked with the communities in procurement of funds on the local level, which includes six municipalities and 12 rural systems. This new system will cover 7,000 households and a population of about 19,000.

Ms. Robinson said this system will be unique in that they will provide wholesale water to municipalities and rural systems. Again, this is a system that will save the state because it will be a large, regional system rather than several small municipal systems. **Ms. Robinson** said the cost of the North Central system is \$200 million, of which \$120 million is the Tribal share, which is funded 100% by the federal government. The rest amounts to \$80 million which would be split between the federal and then the state/local. Again this is a one-to-one dollar match.

Dave Jones, Hill County Water District and Ad Hoc Committee, North Central Rocky Boy's Water System, related that Hill County's water system has serious problems in regard to EPA regulations. He said presently the system is under an EPA mandate to filter their water. He said it is their hope that this plan will go through so that they don't have to do a small, local system. He said it would cost \$1.5 million to put in their own system, and it would not guarantee the water quality they want or keep them up to date. He urged passage by the committee.

Written testimony in support of **SB 220** was submitted by **James Hogue, Chairman of the Sweetgrass Community County Water/Sewer District, EXHIBIT (tas25a07); Robert C. Goodell, Mayor, Town of Dutton, EXHIBIT (tas25a08); Dave Jones, Chairman, Hill County Water District, EXHIBIT (tas25a09); Russ Tempel, Chairman, Sage Creek County Water District, EXHIBIT (tas25a10); and Charles Comp, Mayor, Town of Big Sandy, EXHIBIT (tas25a11).**

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. ELLINGSON asked **SEN. TOEWS** if, when these two projects are paid off, there will be other water projects needing this same kind of assistance. **SEN. TOEWS** said that is his anticipation, but he doesn't know that for sure. He said 2013 is a long way down the road, but he said this body could revert the money to some other place if there was not a water project that needed that support.

SEN. ECK asked about grant monies from other sources in the state, and **Mr. Tubbs** said that each of these communities have come in to the state to request a cost-share program to help upgrade current systems; however, demand in Treasure State Endowment, which is the key infrastructure program, are running two-to-one, twice as many grants requested as they have revenue available out of that account. He said based on information from the Department of Commerce and the Department of Environmental Quality, he doesn't expect a change in that. He said our communities' infrastructure is old and in need of repair. **SB 220** augments that program in two ways: 1) provides a source of funding directly to the communities involved in these projects, and 2) it frees up the competition in the existing Treasure State Endowment Program for the other communities of the state to seek those funds. He said these projects are so massive and unique, it became clear that a separate funding mechanism was needed just for these two projects.

SEN. DEPRATU asked **Mr. Cahill** what percent of participation came from the rural areas, and he responded by saying that they had done a phone survey of these people, and 30% were against the project, 30% were totally committed to the project, and 30% thought that they probably would be, but weren't sure at this time. He said most of these projects have 80% to 90% participation in the rural areas, and Dry Prairie anticipates the same. **SEN. DEPRATU** asked if the water would be drinkable as it comes into a residence off of that pipeline, and **Mr. Cahill** said it would be high-quality, EPA-standard water. **SEN. DEPRATU** then asked how much spare capacity there will be in this system for future growth of the region, and **Mr. Cahill** referred the question to **Mike Watson, the project engineer**. **Mr. Watson** said that there is capacity for a 25% increase over the existing population, most of which is projected on the reservation. He said the population of Dry Prairie is pretty stable.

SEN. GLASER said that the 500 projected workers on this project could result in an income tax of \$1.25 million to \$1.5 million that isn't reflected in the fiscal note and wondered if that would reduce the cost of the project to the General Fund. **SEN.**

TOEWS said that was correct. **SEN. GLASER** then asked over what period of time this project would run, and **Mr. Cahill** said the project would run approximately 12 years, **EXHIBIT (tas25a12)**.

SEN. DEVLIN asked **Mr. Cahill** what kind of an agreement Dry Prairie has with the Tribes, whether it was under the Water Compact that it was signed, and how the people outside the reservation will continue to receive the water from the reservation's water. **Mr. Cahill** said that this will be a contract between the Secretary of the Interior, Dry Prairie Rural Water and the Tribes. He said this contract will be written into the federal legislation and will essentially guarantee a continuous supply of water over the life of the project. He said that the Tribes and Dry Prairie Rural Water will also have a board that will share responsibilities on policy decision making on the treatment plant and the transmission lines. **SEN. DEVLIN** then asked what the makeup of the board would be, and **Mr. Cahill** said that had not yet been decided. He said he assumed that it would be split half and half between reservation and off-reservation entities. **SEN. DEVLIN** asked if that would be part of the agreement that's signed with the Secretary of the Interior, and **Mr. Cahill** said that was correct. **SEN. DEVLIN** then asked if the board would be more or less named in there and what its makeup would be. **Mr. Watson** said that it would be in a contract required by the federal legislation. **SEN. DEVLIN** then asked who would make that determination, and **Mr. Cahill** said it would be a contract basically between the Tribes and Dry Prairie Rural Water. He said he assumed that at that point in time the Bureau of Reclamation, which is the primary entity that oversees the project, would have suggestions on that makeup.

SEN. DEVLIN suggested to **SEN. TOEWS** that this bill might belong in the Finance and Claims Committee, and asked if he would agree. **SEN. TOEWS** said that it was sent to the Taxation Committee, but probably would eventually end up in Finance and Claims.

SEN. BOHLINGER asked **Mr. Cahill** about how the South Dakota rural water projects were funded, and **Mr. Cahill** said that approximately 70% of South Dakota is served by different projects and referred the question to **Mr. Watson**. He said that they are funded basically by the same mechanism that is proposed here, with as much as 80% federal participation in the projects and 20% local. The local cost shares are divided among the water users and the state of South Dakota. He said that is resulting in about a \$30-a-month water bill on those projects, and added that a little over \$1 billion has been expended in those projects over the last ten years.

SEN. BOHLINGER then asked **Mr. Bunk** about his statement that with an \$8 million investment, it could save the state \$50 million.

Mr. Bunk said that that is basically what these small towns will be looking for in the next 20 years or so. **Mr. Watson** added that the numbers for the project show that if these systems in the individual communities were financed the way they are now, that over the 50-year life of this regional water project, there would be an investment by the state at present values of more than \$50 million. He said that the program that is being proposed here, over the next 10 to 12 years, would involve an investment on the part of the state of \$8 million.

SEN. BOHLINGER referred to **Ms. Robinson's** statement that there would be a local bonding indebtedness of about \$10 million and asked about the ability of the local communities to support that bond indebtedness. **Ms. Robinson** said that the Rocky Boy's project is different than the Dry Prairie project because this project will be working directly with municipalities and systems. She said those municipalities and systems have been made aware of what the cost is going to be and what the cost share is for each of them. She said they are proposing legislation currently under **SB 302** to do a water authority that would then do the revenue bond, and that would be a net revenue bond where the revenue generated would then pay to retire the bonds.

SEN. BOHLINGER then asked **SEN. TOEWS** about **Mr. Jones's** comment that the EPA has notified water systems in this area that their water is not safe and does not meet standards, and that because of the cost associated with finding temporary solutions to a long-term problem, they have done nothing. He wondered if **SEN. TOEWS** had heard of incidents where people are getting sick from the water. **SEN. TOEWS** said he hadn't heard of any illness specifically attributed to the water, and **Mr. Jones** added that they have no record of anybody getting sick from the water, but that they are under a boil order mandate from EPA.

SEN. DEVLIN asked how upkeep of these projects will be paid for, and **Mr. Cahill** said that that is part of the local funding, and that user fees will pay for future upkeep. **SEN. DEVLIN** asked if the user fees will go into a type of trust, and **Mr. Cahill** said that there would be some sort of reserve funding budget for future costs. He said these details will be worked out as the project progresses. **SEN. DEVLIN** asked if that would be worked out by the board, and **Mr. Cahill** said that was correct, along with the users.

SEN. DEPRATU asked if **Mr. Tubbs** had some comments for the committee, and he said he did. First of all, he said there is no documentation regarding illness due to the water in this area,

but that these people are drinking untreated surface water. He said they draw water from the Milk River, put it through chlorination and send it down the pipe. If a contaminant should get in through the intake that chlorination will not kill, people will be sick.

Mr. Tubbs went on to say that there will be bonding indebtedness on all these projects, and under those requirements, there will be a requirement for a sinking fund reserve account to be invested for repair of facilities. He said that for the next 50 years they will be in good shape, but they need to be farsighted enough to take over after that.

SEN. GLASER asked **Mary Bryson of the Department of Revenue**, about the \$179 million over the next 12-and-a-half years, if half of that is wages, how much income tax will be collected, and could it be enough to zero out the General Fund. **Ms. Bryson** said that the Department had not done that analysis. **SEN. GLASER** asked if they could do that for the committee, and she said they would try.

Closing by Sponsor:

SEN. TOEWS closed by saying that one thing he likes about this legislation is that it will be beneficial to two large parts of the state and has the potential of helping other areas when they need it. He said the water in these areas is genuinely poor. Also, he said both of these projects carry a major relationship with our Indian friends. He also reminded the committee that if the federal government does not come through, there is no risk to the state. He urged do pass.

HEARING ON SB 146

Sponsor: SENATOR ALVIN A. ELLIS, JR., SD 12, RED LODGE

Proponents: None

Opponents: Margaret Morgan, Montana Association of Realtors
Ronda Carpenter, Montana Housing Providers

Opening Statement by Sponsor:

SEN. ALVIN ELLIS JR., SD 12, Red Lodge, introduced **SB 146** as a companion bill implementing **SB 61**. He said that property taxes are probably the most mistrusted tax nationwide, and in Montana the dramatic tax shifts each time we reappraise property values causes taxpayer mistrust.

SEN. ELLIS said most of **SB 146** is in Section 1. Subsection (2) states that the assessed value of a class four property may not exceed the market value of the property, and Subsection (3) states that when the property changes hands it is revaluated. He said (8) (i) and (ii) deal with corporations, partnerships and S corporations, and states that whenever 50% of the property exchanges hands, the property shall be revaluated by the Department of Revenue. He said there are some added exemptions on page 17 that further define when property is revaluated and when it is not.

Proponents' Testimony: None

Opponents' Testimony:

Margaret Morgan, Montana Association of Realtors, said her organization is opposed to the acquisition form of valuation for taxation purposes. She said that **SB 146** implements acquisition value when there is an open question that the Constitutional amendment will not even make the ballot. If it does appear on the ballot, it will not be voted on until the year 2000. There will be a legislative session in the year 2001. She wondered why the implementation bill was being presented now. The voters may go to the polls in the year 2000 thinking they know what they are voting on, when indeed, it could change in the legislative session in 2001.

Ms. Morgan said that this bill requires yearly appraisals on market value. Yearly appraisals will need to be funded, adding to government spending. This bill allows a 1% increase in the assessed value or the percent change in the CPI, whichever is lower. A 3% increase in assessed value or percent change in the CPI would be favored because it would help to minimize the shifts that are going to be created under acquisition value.

Pointing to page 2 of the fiscal note, **Ms. Morgan** indicated that in the 2003 biennium, property tax revenues will increase, so what we have here is a predetermined property tax increase. She thanked the committee for the opportunity to make these comments.

Ronda Carpenter, Montana Housing Providers, which is a coalition of landlord associations across the state of Montana representing approximately 1,000 members. As she has stated in the past, her organization opposes the acquisition value form of appraisal. Although they also appreciate the need to fix Montana's tax system, they do not feel shifting the tax burden from one group to another is the answer. This bill unfairly shifts the tax burden to the newest homeowner and business operator. She asked the committee to vote no on this bill.

Questions from Committee Members and Responses:

SEN. ECK asked the Department of Revenue who would address the issue of yearly appraisals and what the cost might be. She said this would mean that the Department would switch and do early appraisals, and she wondered if they had calculated the costs of that and are they set up to do that. **Randy Wilke, Department of Revenue**, said he didn't think this particular bill requires reappraisal of each and every property. It certainly does put the Department in a position where they have to be able to do that, depending on whether a property sells under certain situations, but it wouldn't affect all the properties. In terms of expense, it would cost less money to do that at this stage of the game. He said the Department has a small concern with the base year that's required and there may be some amendment that might resolve that concern.

SEN. ECK asked **SEN. ELLIS** if we were doing anything different with base year, and **SEN. ELLIS** said as far as the base year is concerned, there is an amendment that sets the base year up as the most recent year prior to acceptance of this by the electorate. **SEN. ECK** then asked if this goes on the ballot in November of this year, the base year would be 1998, and **SEN. ELLIS** said that the Constitutional amendment has to go on the ballot first, so that we have the ability to use acquisition value as determined by the legislature.

SEN. ECK asked if he was intending to amend the base year in this act, or if that was something that would be done in 2001, and **SEN. ELLIS** said he has an amendment prepared which will be presented at a later time.

Closing by Sponsor:

SEN. ELLIS closed by saying that **Ms. Morgan** may have pointed out one of the strong points of this legislation when she talked about yearly appraisals, because, in fact, there are yearly appraisals when property changes hands and it is determined that the transaction was not an arm's length transaction. He said he feels that this type of appraisal system would be far less costly for the state to run.

SEN. ELLIS referred to **Ms. Carpenter's** comments on the disparities caused by acquisition value are even more exaggerated in the purchase price. The legislature would not think of insisting that every business have a comparable purchase price in order to make competition equal, yet she is advocating equal taxes.

SEN. ELLIS read a portion of the "Cal Tax News" put out by taxpayer organizations in California, which says, "If California did not have an acquisition value standard for assessing property, it would probably have to consider creating one. An acquisition value standard has advantages for taxpayers and for the government. The system is more equitable as it links tax liability to the ability to pay more directly than the market value system. It is also more predictable for taxpayers and protects homeowners against prohibitive property tax increases between periods of rising values. For businesses, most find the predictability of Proposition 13 one of the few bright spots of California's often burdensome climate of taxation and regulation. For government, acquisition value has created a stable and relatively fast growing revenue source with a reserve of value to cushion revenue when downturns do occur."

NOTE: CHAIRMAN DEVLIN RESUMES THE CHAIR.

EXECUTIVE ACTION ON SB 111

Motion: SEN. DEPRATU moved that SB 111 DO PASS.

Discussion:

SEN. ECK said she was uneasy taking this up this soon due to the fact that it has a huge fiscal impact, and also there were a lot of questions that the committee didn't really have a good understanding of concerning centrally assessed and how they would be impacted. She also mentioned the issue concerning liquor licenses and how this might prevent the Department from taxing those, and a number of other taxes.

SEN. ELLIS said that this bill does have a rather large fiscal note, but that the tax policy has to be made as to whether we are going to tax intangible property or not. He said it doesn't seem that we can any longer evade that decision, and he would be reluctant to initiate a procedure of taxing these items. He said he is in favor of this bill.

SEN. ELLINGSON said that he is of two minds on this problem. The first is that it is certainly clear that we have required taxation of intangible personal property in the past but we have done a very bad job of imposing that obligation upon intangible personal property, and certainly one of our concerns has to be making our taxes fairly imposed upon the taxpayers. He said he would support legislation which would exempt good will because he doesn't believe that it can be evaluated. On the other hand, there are items that are on this list for which a value could be pretty easily determined, such as liquor licenses and copyrights

and patents. He said it is clear that we have to do something to make our imposition of taxes fair, but he doesn't think that we have to throw out all of these categories from taxation in order to achieve the desired effect of being fair. Finally, **SEN. ELLINGSON** said he would concur with **SEN. ECK** in her concern about the \$3.2 million fiscal note. He said he will have to vote against this.

CHAIRMAN DEVLIN said that the Department is not getting the \$3.2 million impact now, and wondered how you can lose something you don't have. He said those things on this list are only taxed on the centrally assessed companies where it is all lumped together.

SEN. STANG said he has concerns about the centrally assessed property that is in this bill that we are currently taxing, and the loss that entails. **CHAIRMAN DEVLIN** said he was not sure whether the centrally assessed could be taken out of this. **Mr. Heiman** said he didn't think there was a way to split this amongst the type of ownership of the intangible property. He said that perhaps the types of intangible properties that you would want to tax could be split out, but it would be difficult to split it up by the type of ownerships.

SEN. DEPRATU said that he had some of these same questions when the bill was being drafted, and he had been told by the legal staff that it was basically an all or nothing bill.

SEN. GLASER said also that **CI-75** must be dealt with on this issue, that if we take a tax off, we have to vote to put it back on. He said we really can't pick and choose who gets taxed and who doesn't, so the only way to deal with it would be to pick who and what we wanted to include or not include on the list.

CHAIRMAN DEVLIN asked **Mr. Heiman** whether there is a way to name these various categories in a bill such as this by amendment, without disturbing centrally assessed, and he responded by saying that that could be done by saying that all personal property in subsection (1) is exempt from taxation "except the following," and then more carefully define what types of intangible properties are taxable, as opposed to the other way around.

SEN. ELLIS said he asked payers of this intangible property tax how they defined their intangible property, and they were at a loss to define it. He wondered if the Department of Revenue could tell the committee what exactly the definition is of this intangible property. He said it is hard to put it into law if we don't know how to define it. **CHAIRMAN DEVLIN** said that probably in time the courts will make a decision on a lot of those intangibles.

SEN. STANG said he was thinking along the same lines as **SEN. ELLIS**, that maybe the Department has some idea as to how we could exclude all of this other property and still include the intangible property that we've been getting from the centrally assessed property. **Ms. Bryson** said that you determine what value you attach to intangible property of the centrally assessed by looking at the value of the unit as a whole and the business as a whole, and then a specific value can be assigned to tangible property and to some of the other attributes of the property itself, and then there is a value included within the market value of the property that's not necessarily identifiable and some of that is attached to intangible property such as patents, licenses, software. **Ms. Bryson** said that it may not be segregated, but it is somewhat identifiable in regard to the value of the property as a whole. She said smaller companies are valued with a cost methodology, not necessarily the income methodology, which would lead us into determining values that are attached to intangible properties, and we don't have the same level of information available for those other companies.

Ms. Bryson went on to say that the Department had discussed this issue internally of how to minimize the significant impact on the fiscal note to the General Fund because it is all primarily in centrally assessed. She said the Department might be able to suggest how you could identify things that are very specifically identifiable and are much easier to fix a value to than others, but she didn't know if that can be separated out based upon the type of ownership. She said there are some things that the Department could suggest, but again, it will impact both centrally assessed and noncentrally assessed properties, and she was not sure if it would be possible to affect the \$3.2 million impact.

SEN. DEPRATU asked **Ms. Bryson** about government issued licenses, and whether that could mean a barber's license would have to be taxed, and she responded that if you could actually find a value for it, she suspected that it could be taxed. That's one of the issues of the Department, how to attach what market value is.

SEN. DEPRATU then asked what the Department's intentions are if this bill should fail, and is there any way to bring in a date specific, that as of such-and-such a date, certain things would not be taxed. **Ms. Bryson** said that as indicated to the Revenue Oversight Committee, the Department's plan is to identify during calendar year 1999 types of properties that will be subject to taxation under the intangible statute. The Department would then set out to determine values for that property and then issue assessments in January of 2000 for tax year 2000 for that property. As far as a specific date, the committee could probably do something like that if they chose to.

SEN. ECK asked **Ms. Bryson** about the various types of intangibles and where information might be to actually place a value on these type of things. **Mr. Bryson** said the Department could do some research as to what other states are doing. She said this bill is actually based on legislation in the state of Washington.

SEN. DEPRATU withdrew his motion of do pass at this time to give everyone an opportunity to think this through and get additional information.

SEN. ELLINGSON asked exactly what the Department of Revenue is going to provide in regard to what other states are doing, and whether we can simply exempt centrally assessed property from this list, if there is a Constitutional problem on that. **Ms. Bryson** said that the position of the Department of Revenue in that regard is that that would lead to some Constitutional questions. She said the Department could perhaps provide some choices for the committee regarding intangible personal property.

SEN. ELLINGSON said he would also like to know what the intention of the Department of Revenue is with respect to this kind of intangible property if this bill fails. **Ms. Bryson** said that they have a memo that they can provide, **EXHIBIT (tas25a13)**. **SEN. ECK** said she would also like to know what licenses have value.

SEN. STANG asked if the committee could just exclude (c), (e), (f), (g) and (h) from this bill and make (h) just liquor licenses. **CHAIRMAN DEVLIN** asked about water and mineral rights. **SEN. ELLIS** said that perhaps BLM leases should also be included as an intangible property.

CHAIRMAN DEVLIN admonished the committee to give this some serious consideration because he feels that something definitely needs to be done with intangible properties and that the committee will discuss it again at some future meeting.

EXECUTIVE ACTION ON SB 274

SEN. STANG asked if the committee had gotten a fiscal note on **SB 274**. **Mr. Heiman** said that he had checked before the meeting and there hadn't been one printed yet.

SEN. GLASER said that there was only one word in this whole bill that concerned anybody, and that was the word "support" and what that meant. **CHAIRMAN DEVLIN** said he had some amendments to address that matter.

Motion: **SEN. STANG** moved **SB027401.ALH**, **EXHIBIT (tas25a14)**.

Discussion:

CHAIRMAN DEVLIN said that what he intended to do with the amendments was to clarify the questions about how far you go with support staff or support businesses. **Mr. Heiman** said that this amendment does that by saying that it has to be used directly for the design, manufacture, launch and repair and maintenance of the space vehicle.

Vote: Motion passed 8-0, Ekegren excused.

Motion: SEN. STANG moved SB 274 DO PASS AS AMENDED.

Discussion:

SEN. DEPRATU said he would like to speak in favor of **SB 274**. He said he believes that this just proves that Montana's business equipment tax is unfair. This shows that to bring businesses in, whether they are large or small, Montana has to get rid of our personal property tax. He said he believes in the elimination of this tax, and is in favor of this bill because he believes it is good business to go after this company. He said he believes there is a reasonable chance that Montana can really benefit from this project.

SEN. ECK said that she does not favor getting rid of the tax altogether, but the legislature has always responded to opportunities by removing this tax and giving various businesses tax incentives.

Vote: Motion carried 8-0, Ekegren excused.

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas25aad)