

Implementation of SB489

SB489 Class 9 Pipeline property:

- natural gas distribution utilities
- rate regulated natural gas transmission or oil transmission pipelines regulated by either the PSC or FERC
- a common carrier pipeline as defined in 69-13-101
which states; *"The following are hereby declared to be common carriers....(e) made a common carrier by or under the terms of contract with or in pursuance of the laws of the United States*
- a pipeline carrier as defined in 49 U.S.C. 15102(2)
which states; *"(2) Pipeline carrier. - The term 'pipeline carrier' means a person providing pipeline transportation for compensation."*
- gas gathering facilities specified in 15-6-138(6)
15-6-138(6) states:
"The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in the tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this section, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."

Information Requested for Class 9 Property

SB489 created new requirements for the determination of Class 9 property. To implement these requirements the Department sent the questions to pipeline companies that we believed may meet the requirements established in SB489.

- Are your companies' pipelines defined as:
 - a common carrier as defined in 69-13-101
 - a pipeline carrier as defined in 49 U.S.C. 15102(2)
 - a rate regulated oil or gas pipeline regulated by the PSC or FERC
- How many miles of gas gathering lines does your company and affiliates own
- Please provide maps of your company's pipelines
- Please provide a copy of your company's organization chart
- Please establish whether you believe your property qualifies as class eight or class nine property



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill # SB0489

Title: Revise taxation laws related to pipelines

Primary Sponsor: Essmann, Jeff

Status: As Amended in House Committee

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|--|--|--|
| <input checked="" type="checkbox"/> Significant Local Gov Impact | <input type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	(\$370,336)	\$194,458	\$192,550	\$194,694
Revenue:				
General Fund	\$3,607,991	\$3,813,647	\$3,996,702	\$4,188,544
State Special Revenue	\$235,906	\$249,352	\$261,321	\$273,865
Net Impact-General Fund Balance:	<u>\$3,978,327</u>	<u>\$3,619,189</u>	<u>\$3,804,152</u>	<u>\$3,993,850</u>

Description of fiscal impact:

A recent Montana Supreme Court decision relating to the property taxation of natural gas pipelines will result in reduction in revenue for the state general fund, the university state special revenue fund, local governments and school districts. This bill changes the definitions of locally assessed oil field and gas field property and centrally assessed pipeline property, for purposes of classification and assessment. The bill will increase state general fund revenues and university system state special revenue fund revenue relative to the court decision.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

1. The final resolution of *Omimex vs. Montana* (ruling of December 2nd, 2008) on February 10, 2009 effectively shifts some class 9 (transmission property of utilities, including pipelines - 12% tax rate) property into class 8 (business equipment - 3% tax rate), reducing statewide taxable value. Both HJR 2 and the school funding calculations have not accounted for this change in taxable value. The impact of the decision was incorporated in the HJR 2 revenue estimates revised on March 21, 2009. This fiscal note is written recognizing that the court decision is current law.
2. The Montana Supreme Court decision applies to natural gas production and transportation property, but not to liquid (crude oil and refined products) production and transportation property.

3. All of the property of eight natural gas pipelines was move from class 9 to class 8 by the decision. The court decision results in an annual reduction of approximately \$3.7 million in general fund revenue, and \$235,000 in university state special revenue, if it had applied to TY 2008 property. An analysis of this revenue loss, by level of government, is presented below:

**Estimated Annual Statewide Impact on TY 2008 Property Tax Revenue
Due to *Omimex vs. Dept. of Revenue*
Montana Supreme Court Decision of December 2, 2008**

Action	State General Fund (95 mills)	University SSR Fund (6 mills)	Local Government	Local School Districts
Move Natural Gas Pipeline Property from Class 9 (12%) to Class 8 (3%)	(\$3,683,748)	(\$232,658)	(\$5,948,284)	(\$5,575,389)

4. This bill would return a significant portion of this property to class 9 and increase property tax revenue
5. Specifically this bill amends 15-6-138, MCA (class 8 property, tax rate 3%) adding flow lines and gathering lines, along with statutory definitions, to the list of oilfield machinery and equipment to class 8. New subsection 15-6-138(6), MCA in the amended bill further states: "The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."
6. The bill also amends 15-6-141, MCA (class 9 property, tax rate 12%), centrally assessed property that is included in class 9. This bill replaces the language "centrally assessed natural gas companies having a major distribution system in this state" with "centrally assessed natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(6)".
7. This bill amends 15-23-101, MCA (property centrally assessed) by adding more restrictive language defining "natural gas or oil pipelines" as "those regulated by the public service commission or the federal energy regulatory commission. Section 3 also adds common carrier pipelines and natural gas distribution facilities to the list of centrally assessed properties.
8. Section 15-23-201, MCA (reporting requirements for centrally assessed companies) is revised to make this statute consistent with the changes to 15-6-141 and 15-23-101, MCA.
9. This bill, as amended, clarifies that five of the eight natural gas pipelines will be centrally assessed in class 9 for future years. Liscom Creek Station LLP, a small natural gas pipeline with property in two counties will be in class 8 property for future years. Williston Basin Interstate Pipeline's centrally assessed pipeline property has historically included the pipeline property of two of its subsidiaries, Bitter Creek Gathering and Fidelity Exploration. The department believes that under this bill Williston Basin's subsidiary Bitter Creek Gathering will still be centrally assessed as part of Williston Basin's property in class 9. However the status of Williston Basin's other subsidiary, Fidelity Exploration is undetermined. The department at the present cannot determine the future status of Devon Energy Production Company, LP natural gas pipeline property. For purposes of this fiscal note it is assumed that the pipeline property

of Devon Energy and Fidelity Exploration will be class 8 property. The following table lists all pipelines in Montana and their property tax status under the provisions of this bill.

Property Tax Status of Pipeline Property Under SB 489 as Amended

Company	Product
Centrally Assessed Property (Class 9)	
Energy West Development	Natural Gas
Colorado Intrstate Gas Company	Natural Gas
Havre Pipeline	Natural Gas
Northern Border	Natural Gas
Omimex Canada Ltd Pipeline	Natural Gas
Williston Basin Interstate Pipeline, (includes Bitter Creek Gathering)	Natural Gas
Belle Fourche Pipeline	Oil
Rocky Mtn Pipeline	Oil
Tesoro Westcoast Company	Oil
Front Range Pipeline, LLC	Oil
Butte Pipeline\Texaco	Oil
Conocophillips Pipeline	Oil
Express Pipeline	Oil
Enbridge Pipeline LLC	Oil
Exxonmobile Pipeline	Oil
Cenex - Products	Refined Products
Bridger Pipeline	Oil
Yellowstone Pipeline	Refined Products
Plains Pipeline	Oil
Locally Assessed Property (Class 8)	
Liscom Creek Station LLC	Natural Gas
Uncertain Status	
Devon Energy Production Company, L.P.	Natural Gas
Fidelity Exploration (subsidiary of Williston Basin)	Natural Gas

10. The following table shows the estimated statewide impact of this bill on tax revenue based on TY 2008 data. This data will be used as the basis for estimating fiscal impacts for FY 2010 through FY 2013

SB 489 as Amended: Estimated Annual Statewide Impact on Tax Revenue TY 2008

	General Fund (95 mills)	University SSR (6 mills)	Local Governments	School Districts
Move Some Natural Gas Pipeline Property from Class 8 (3%) to Class 9 (12%)	\$3,413,426	\$215,585	\$5,638,395	\$5,440,365

11. The HJR 2 assumed growth rate for class 9 property for FY 2010 and FY 2011 is 5.7%. For purposes of this fiscal note the OBPP class 9 estimated growth rates for FY 2012 and FY 2013 (4.8%) are used to project growth. The following table shows the calculation of the revenue impacts for FY 2010 through FY 2013.

SB 489 as Amended: Estimated Fiscal Impact FY 2010 through FY 2013

	TY 2008	FY 2010	FY 2011	FY 2012	FY 2013
Assumed Growth Rate Class 9	(Basis)	5.7%	5.7%	4.8%	4.8%
State General Fund (95 mills)	\$3,413,426	\$3,607,991	\$3,813,647	\$3,996,702	\$4,188,544
University System SSR Fund (6 mills)	<u>\$215,585</u>	<u>\$227,873</u>	<u>\$240,862</u>	<u>\$252,424</u>	<u>\$264,540</u>
State revenue impact	\$3,629,011	\$3,835,865	\$4,054,509	\$4,249,125	\$4,453,083

12. This bill will have no impact on administrative costs for the Department of Revenue.

Office of Public Instruction

- 13. The increase in taxable value and the distribution of that property due to SB 489 as amended would create a GTB savings of \$33,880 in FY 2010 and about \$195,000 ongoing GTB cost to the state general fund in subsequent years.
- 14. County school levies for all district funds will not change revenue received due to SB 489 (as amended) as local school districts would adjust mills. The amount each taxpayer will pay will change based on the property classification.
- 15. Countywide retirement GTB will have a savings due to the change in distribution of property tax values by approximately \$36,456 in FY 2010. There will be no effect in future years. This is based on a historical average of 28% of the costs paid by the state and FY 2009 county levies of \$65.1 million (0.20% increase in property tax value X \$65.1 million X 28%). It is assumed that county wide retirement GTB payments would change to the same degree that statewide GTB payments change.

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
<u>Fiscal Impact:</u>				
Department of Revenue				
<u>Revenues:</u>				
General Fund (01)	\$3,607,991	\$3,813,647	\$3,996,702	\$4,188,544
State Special Revenue (02)	\$227,873	\$240,862	\$252,424	\$264,540
TOTAL Revenues	\$3,835,864	\$4,054,509	\$4,249,126	\$4,453,084
Office of Public Instruction				
<u>Expenditures:</u>				
Local Assistance:				
GTB	(\$333,880)	\$194,458	\$192,550	\$194,694
County Retirement	(\$36,456)	\$0	\$0	\$0
TOTAL Expenditures	(\$370,336)	\$194,458	\$192,550	\$194,694
<u>Funding of Expenditures:</u>				
General Fund (01)	(\$370,336)	\$194,458	\$192,550	\$194,694
State Special Revenue (02)	\$0	\$0	\$0	\$0
TOTAL Funding of Exp.	(\$370,336)	\$194,458	\$192,550	\$194,694
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$3,978,327	\$3,619,189	\$3,804,152	\$3,993,850
State Special Revenue (02)	\$227,873	\$240,862	\$252,424	\$264,540

Effect on County or Other Local Revenues or Expenditures:

1. Local mills will float to adjust to the new higher taxable values.

Technical Notes:

1. Central assessment is based on the integration of property used across political boundaries, not on the basis of regulation. In an environment of partial deregulation, a bill that bases central assessment on the existence of regulation puts the state at risk of litigation from other centrally assessed firms, with concomitant costs.
2. This bill does increase overall revenues, and recoups a significant portion of the lost taxable value due to the Montana Supreme Court decision in the *Omimex* case for future tax years.
3. The Supreme Court decision applies to Omimex Canada, Ltd.'s TY 2004 property tax appeal. Omimex Canada, Ltd. has also appealed its taxes for tax years 2005, 2006, 2007, and 2008 on property located in Blaine, Glacier, Hill, Liberty, Phillips, Silver Bow, Toole, and Valley counties.

Sponsor's Initials

Date

Budget Director's Initials

Date

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

May 11, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

The constitutional ten day period for my consideration of Senate Bill 489 has now passed, and the bill has become law without my signature. Senate Bill 489 recovers a portion of the traditional tax base of local governments and schools that was removed as a result of the Montana Supreme Court decision in the case of *Omimex v. State*, 2008 MT 403. Because I have some serious concerns with both the content of Senate Bill 489, and the manner in which it reached my desk, I am delivering it to you accompanied by this formal message.

My objection to Senate Bill 489, as passed by the 61st Legislature, is that while it restores the majority of the traditional tax base to local governments and schools that existed prior to *Omimex*, I do not believe that the approach adopted in the legislation reflects sound tax policy. Most problematic is that, as fashioned with its fine-tuned definitions, the bill would allow companies to manipulate their ownership interests in gas lines to avoid the payment of taxes. Also troubling is that the concept of "regulation" has for the first time been added to the inquiry of whether a pipeline is centrally assessed – which is particularly troubling in these post-deregulation years.

Equally troubling is that, although the bill resolves a significant portion of the fiscal problems that resulted from the *Omimex* decision, there nonetheless remains a high degree of uncertainty as to the effect of the bill's provisions. This uncertainty was highlighted by the testimony of at least one county official testifying in favor of the bill, who based his support on the premise that a particular company would be centrally assessed. However, during the same hearing a representative of the very company referred to by the county official testified as a proponent of the bill *based on the exact opposite premise*, claiming that the company would *not* be centrally assessed.

Other legislative testimony on Senate Bill 489 demonstrated uncertainty as to whether, under the bill's definitions, three of the largest integrated natural gas companies in Montana would be centrally assessed and classified as class 9 properties, or locally assessed and classified as class 8 properties, making the prospect of litigation as to the determination highly probable. The uncertainties as to the classification of these oil and natural gas transport pipelines and affiliated properties should have been avoided.

Hon. Linda McCulloch
May 11, 2009
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This leads me to my objection regarding the manner in which Senate Bill 489 reached my desk. Like some other bills winding their way through the 61st Legislature, there was a delay in the delivery of this bill to me following its passage by both houses. This delay impeded my constitutional authority under Article VI, section 10 of the Montana Constitution to issue an amendatory veto of the bill for the Legislature's consideration. In fact, had the bill been delivered to me in a timely manner, I had planned to propose amendments that would have addressed the uncertainties and ambiguities existing in the legislation. Because of the delay in its delivery, and because I could not offer amendments to remedy the bill's problems, I anticipate uncertainty for Montana's local governments and school districts, and litigation that could have been avoided.

I also note that House Bill 657, which passed the Legislature and became law, directs the Revenue and Transportation Interim Committee to study the issues surrounding taxation of oil and natural gas property sought to be addressed in Senate Bill 489. I am concerned that the litigation risks posed by Senate Bill 489, at best, will limit and, at worst, prevent, the successful completion of the study, as occurred during the 2005-2006 interim when the *Omimex* case was in court.

Montana can ill afford the adverse effects on local governments and school districts that would occur without Senate Bill 489. Therefore, as stated at the outset, despite the problems it creates, on balance, I decided to let the bill become law without my signature. I anticipate work remains for the next legislature to remedy the bill's problems.

Sincerely,


BRIAN SCHWEITZER
GOVERNOR

cc: Robert Story, Jr., President, Montana Senate
Bob Bergren, Speaker, Montana House of Representatives
Senator Jeff Essman