

MINUTES OF THE MEETING OF THE LOCAL GOVERNMENT COMMITTEE
March 5, 1981

The Local Government Committee met March 5, 1981 at 12:30 p.m. in Room 103 of the Capitol.

CHAIRMAN BERTELSEN called the meeting to order and asked the secretary to call the roll. All committee members were present except REPRESENTATIVES HURWITZ and WALDRON who were absent and REP. MATSKO who was excused because of illness. Staff Reseacher Lee Heiman also attended the meeting.

SENATOR STEVE BROWN was introduced since he was the sponsor of SENATE BILL 35 which was heard on March 3. He apologized for not attending said meeting and said all he asked was that the committee support SENATE BILL 35.

SENATE BILL 115 - sponsored by Senator George McCallum.

CHAIRMAN BERTELSEN introduced SENATOR McCALLUM. He stated the reason the bill was introduced was because of something that happened in his area where a garbage district was formed by the people. They had an understanding of what the fee would be, but when it came out in the taxes, it was about double. This upset a number of people. This bill allows the proposed fee to be charged but if there is any objection to it, there will be a hearing, provided more than 50% of the owners have signed a petition. The hearing will be held to determine an acceptable fee. This bill would make it necessary that everybody know what the fee would be and if they protested with the necessary 50%, they would have a hearing to straighten out the matter. Perhaps no one would have kicked if they'd originally known the exact amount of the charge.

PROPOSERS FOR SENATE BILL 115. There were none. The CHAIRMAN then called for OPPOSERS to Senate Bill 115 and there were none. He asked Senator McCallum if he'd like to close.

SENATOR McCALLUM said "I close".

QUESTIONS FROM COMMITTEE MEMBERS:

REP. ANDRESON asked Senator McCallum if he didn't think requiring 50% of the people to sign a protest before the Board of Commissioners would set a hearing was a rather high percentage?

SENATOR McCALLUM replied it could be high, but 50% was the figure set. Some people think it should be even higher. If people had known what the charge would be, they wouldn't have been as upset as they were when they were billed for it.

REP. ANDREASON wondered if it wouldn't be hard to get 50% of the people together to protest.

REP. HANNAH asked Senator McCallum if it is his thought to replace the hearing notice with a procedure prior to the actual agreement?

SENATOR McCALLUM replied, "yes".

REP. HANNAH: Then this isn't a protest until after you find out the charge would be more than it was thought to be?

SENATOR McCALLUM said you'd have to let the people know what the fee would be before it was billed to them.

CHAIRMAN BERTELSEN said the way he reads the bill on page 4 is "the board shall establish a fee for service, with approval of the county commissioners, provided written protest on the proposed fee has not been received from more than 50% of the family residential units in the district." What is the action if that protest has been received besides appealing? Are they then unable to go ahead with the fee?

SENATOR McCALLUM said if the protest gets to the county commissioners, they will probably adjust the fee, or at least defend it.

CHAIRMAN BERTELSEN said the wording of the bill worries him because the way it is written says if they use this protest, the commissioners can't approve the fee. Does anyone else understand that if they get the protest, the fee cannot be approved?

REP. SALES wondered what was wrong with that.

CHAIRMAN BERTELSEN said, "eventually they might have to approve some fee."

REP. SALES said it would then have to be a different fee.

REP. AZZARA said that on page 3 it does say "no further proceedings shall be taken by the commissioners." Did you mean there would be no further consideration until a year has elapsed?

SENATOR McCALLUM: Do you mean on forming the garbage district?

REP. AZZARA replied no, to find out if the fee can be raised?

SENATOR McCALLUM said he'd imagine that after the Board is appointed and they see the dollars which are needed, they would notify the public or the users what they plan to charge.

REP. GOULD asked Senator McCallum if most of the districts aren't fairly small rural areas. If this is true, there shouldn't be much of a problem to get 50% of the people to sign a protest.

SENATOR McCALLUM said he feels that is true. The district he is talking about represents about 400 homes.

REP. KITSELMAN said he is interested in this because of its implication with a metro district bill. In the area that it is designed for, a refuse district is permissible. We're talking about 3,000 homes, so the 50% figure would have a definite impact.

SENATOR McCALLUM said if the committee wants to cut the 50% down, it is okay, but he was satisfied with it.

CHAIRMAN BERTELSEN asked if there were further questions. As there were none, he closed the hearing on HOUSE BILL 115.

SENATE BILL 131 sponsored by Senator Paul Boylan.

SENATOR BOYLAN said he appears as the chief and only sponsor of Senate Bill 131. We kept it in George McCallum's committee the first part of the session trying to get something going. The purpose of the bill is to try and take care of some problems regarding building fences between improved real property and agricultural property by the owner of the improved real property. Failure to construct the fence is a defense by the owner of trespassing livestock for damages. We have previously talked about Greenbelt legislation which has to do with farms and ranches close to city limits. People tell you that farm land close to the city limits is more valuable than land further out. This legislation has to do with liability if cattle get out, get on a main thoroughfare or up town and someone runs into them and gets killed. Now the liability is on the farmer. The insurance company may pay a claim the first or second time, but after that your insurance is usually cancelled. If you are backed up against an industrial park or some of the subdivisions, the people really wreck fences. The owner is responsible for them. If you are butted up ranch to ranch, it has always been the right hand part of the fence was yours and the left hand belonged to the other farmer, so you didn't have any problem.

Now with industrial developments and subdivision, who will be responsible? I have a couple of places butting up against the City of Bozeman and I have a little problem there. The fences are not really the problem as I try to keep them up, but every once in a while workers from the industrial park will come in from a roofing outfit, back up and dump trash, and the next thing they are encroaching on you. If a cow gets out, people start raising the devil.

I hope you have time to improve this bill, because I think it is a foot in the right direction. It is a new idea. Senator Boylan passed some pictures around to show some of the things happening to his land close to the City of Bozeman. He has talked with others who have similar problems. He feels that in Western Montana where we are getting more development, we'll be running into more and more of these problems.

CHAIRMAN BERTELSEN asked if there were any PROPONENTS to HOUSE BILL 131. There were none. He then asked if there were any OPPONENTS. There were none, so he asked for committee questions.

QUESTIONS FROM THE COMMITTEE:

REP. AZZARA commented to Senator Boylan that he doesn't understand the wording beginning on line 25 of page 1, "If that person fails to construct or maintain such a fence, his failure is a defense against the claim of any person for damages to such improved real property caused by trespassing livestock." Is that what you meant to say? If you look at the bill beginning on line 21 and go to the end of the bill, it sounds to me that you are saying that failure to maintain a fence constitutes a defense against a liability claim against you? Is that what you meant to say?

SENATOR BOYLAN said yes. His failure to keep up his part of the fence means that he shares the liability with the rancher.

REP. NEUMAN stated that a legal fence is defined someplace in the code, correct? Answer: Yes. What about the case where you would have a subdivision against some land that was agricultural and didn't have any livestock, such as farm land. Would the person be required to build a fence there even though it probably wasn't needed?

SENATOR BOYLAN replied that if there was no livestock involved, it would not be necessary.

REP. ANDREASON remarked to Senator Boylan that the way he reads the bill is that if the person who improves or puts their property on what was formerly agricultural land and does not build a fence around their improved property that they just placed there and if the livestock gets on their property, then that failure to build a fence around their property is a mitigating circumstance against a claim that they might have on their property which has been damaged by the livestock. If the livestock goes through the neighbor's property and goes into town how will that help the rancher's problem? It refers to such real improved property, in other words the property of the person who builds his industrial complex or home on former agricultural land. Is that your intention?

SENATOR BOYLAN: Yes, that is what it does. He asked Senator Mazurek if he could clarify.

SENATOR MAZUREK said "the question is whether or not you are required to build a fence." I think Senator Crippen raised that because he is from Billings. You don't have to build the fence; it is just that if you don't build one and a cow goes on your property, you can't sue Paul Boylan. He has a defense. If the cow goes on into town and gets killed, you don't have a claim for that.

REP. AZZARA asked Staff Researcher Heiman if he thinks the wording conveys that intent clearly?

LEE HEIMAN said yes, he thinks it is clear.

REP. McBRIDE asked the question, "What about the instance where I'm driving down the road and hit one of your cows? Are you no longer liable? Is that your defense?"

SENATOR BOYLAN said no. What I'd like this bill to do is make the new neighbor as liable as myself because of not maintaining the fence. This is what I'm trying to get across. The neighbor is as liable for maintaining the fence as I am.

CHAIRMAN BERTELSEN asked Senator Mazurek if he'd like to reply to the question.

SENATOR MAZUREK said that in response to Rep. McBride's question, there are specific statutes already on the books regarding open range, cattle getting out and fencing cattle out. This bill creates an exception in the rural urban area only as to property damage claims between property owners.

REP. BERGENE commented to Senator Boylan that he talked about sharing costs of damage. I understand what you are talking about, but I don't think that is what the bill says.

SENATOR BOYLAN said that might be true. But I'm hoping that if the committee has time, they can improve it. I think the committee realizes the problem. Liabilities are getting so great that if we don't help we may as well bunch it.

REP. HANNAH asked Senator Mazurek, "does this bill say that if I build a house on land that butts up against agricultural land that I'm as responsible for fencing in and maintaining a fence as the person who owns the livestock?"

SENATOR MAZUREK: No, I think it says that if you don't build a fence and my cow gets on your property and you try to get damages from the owner of the cow, the fact that you didn't build the fence is going to preclude you from recovering against any damage.

REP. HANNAH then commented that in other words we're changing the law from the standpoint where it currently is a situation where the livestock owner must fence in his livestock to a situation in this rural urban area where the property owner must fence out.

SENATOR MAZUREK said yes, that is correct in that type of urban rural situation.

REP. ANDREASON said he wishes to point out that this must be a case where this was agricultural land prior to improvement or building. It was there first, and then someone built a house on it. That is the difference.

REP. HANNAH to Lee Heiman: "Do we have laws on the books now that deal with one property owner doing something creating damages to another property owner?" Let's say I build a stock pond next to your property line and water seeped in and ruined your property.

MR. HEIMAN said there are statutes to protect you in that case.

REP. GOULD wanted to clarify the situation. For instance, you have your farm, there is no fence and you have a homesite, a cow gets out and eats the rose bushes in your new neighbor's yard. That man is as responsible as the farmer for the rose bushes. When you get to the second homesite that **abuts** the first homesite, and the cow eats those rose buses, then the farmer alone would be responsible for those rose bushes.

SENATOR BOYLAN: What I'd like to do is make the person living against me share in the liability for the third party because he or I have been negligent in maintaining a fence.

The CHAIRMAN asked, "are there any more questions?" As there were none, he closed the hearing on HOUSE BILL 131.

SENATE BILL 152 sponsored by Senator Joe Mazurek.

SENATOR MAZUREK said he and SENATOR KEATING of Billings introduced this bill which deals with lighting improvement districts. Under the present statutes being amended by the bill, 7-12-4301, the general property taxpayers are required to pay at least 25% of the cost of all lighting improvement

districts. Under this bill, we would give discretion to local governments to make owners of property with ill-lighting improvement districts pay all or a part of that cost. When the districts were originally created, I believe the 25% requirement was used because it was felt the general property taxpayer would benefit from the lighting improvement district through access to the streets and the general benefits to the community. What we're finding out in my district and I represent the other side of Helena, all the lighting districts are going in around the capitol area and in the new residential districts. However, the people in my lighting district are paying one-fourth of the cost of the lighting improvement district behind the capitol. We are not talking about a great deal of money. This is \$30,000 for the whole city of Helena, about one mill. But I quote the question of equity. I feel that in the downtown area all of the taxpayers should be required to pay a portion of the assessment, or in the main thoroughfare areas. I think it is unfair for the taxpayers in my district to have to pay for a small lighting improvement district which is purely a residential subdivision in another corner of the city.

This bill will allow local governments to say, in our opinion, 100% or 80% of the cost of installing and maintaining that district in the corner of the city which benefits primarily those residents of that area will be paid for by them. The city should be allowed to make that determination, and I urge your concurrence in SENATE BILL 152.

PROPOSERS FOR SENATE BILL 152

BOB ERICKSON, City Manager for Helena, said he has a couple comments on what Senator Mazurek touched upon. The flexibility that will be provided in the bill is not a mandate and is not assumed to be one. It would allow governing bodies the flexibility of assessing the costs of installing and maintaining the lighting system for those who actually benefit. I think the point of equity is very important, not only with what Senator Mazurek indicated of equity between those who don't have any lights versus those who do and assuring that 25%, but the equity fact that in lighting districts there are various types of lights and various costs that go along with them. You can have post top, ornamental, or incandescent lights. There is not only the equity factor of not having lights versus having them, but there are different types of lights which are more expensive, ornate types. The whole community shares in that proposition also.

I speak in favor of the bill. I think it would allow the local governing bodies to make those determinations on a district by district basis. That is the flexibility we lack today. I think we should have that flexibility.

TOM CROWLEY, City Engineer of Missoula, supported Senate Bill 152. This bill makes the city lighting districts consistent with county lighting districts, with one exception. It does allow real flexibility when you get into a situation where a governing body wants to determine that flexibility and make it more equitable. At present the city is mandated to pick up 25% of the charges. We have some industrial subdivisions coming in. They want higher levels of lighting and some very expensive fixtures. The rest of us have to pay for it. It would be more equitable if they could pick up some percentage of the cost. Helena has several county lighting districts that are now in the city. These were formed years ago and as the city grew, these lighting districts are now inside of the city.

On the county lighting districts they pay 100%. Just across the street in a city lighting district the taxpayer only pays 25% of the cost. In our specific case the general taxpayer is picking up \$24,000 plus paying for the general lighting.

I feel this bill is equitable. Most of the time your improvement districts are created by petition of the people who want the lighting districts in trying to determine what type of lighting they want. The cities try to be responsive and give them what they are asking for, but at the same time they are mandated to pay 25%.

DAN MIZNER said he is Secretary of the Montana League of Cities and Towns and they support Senate Bill 152. It applies to all cities and towns, whether large or small. We've had some rural areas that have been put under a lighting district on the edge of the city, as explained to you, and eventually that comes into the city. To be fair to all the people, we hope you will grant to the city government the flexibility contained in this bill.

OPPONENTS TO SENATE BILL 152

REP. PAUL PISTORIA said he hates to be against a Senator. But I think this is a bad bill. This would allow the citizens to pick up the full bill, if the city wanted them to do it. You will have less street lighting than you ever had before. If the citizens have to pay the full bill, there won't be much street lighting in our cities. I don't feel this bill would encourage street lighting because of the cost to the citizens.

CHAIRMAN BERTELSEN asked if there were further opponents. As there were not, he asked SENATOR MAZUREK to close.

SENATOR MAZUREK closed. He stated this bill would bring the lighting district into conformance with paving and sidewalks SID's. You could make the same arguments for those who benefit from dust control and so forth but the residents of that district are required to pay the entire cost of that. One other thing, in Billings the total assessment to the general property taxpayer is \$100,000.

QUESTIONS FROM THE COMMITTEE

REP. KESSLER asked Senator Mazurek if he agreed with the flexibility in the bill that the city can apportion the payments for those thoroughfares or for the downtown area.

SENATOR MAZUREK: Yes, there is just no mandatory 25% requirement.

REP. HANNAH asked Senator Mazurek if there are any other statutes which require a public hearing or input as to how you come up with what a major thoroughfare is and what is for the good of everybody in the city.

SENATOR MAZUREK said he is not aware of anything. The only process I can think of would be a bill that the general public would participate in which would be the general budget process. Perhaps Bob Erickson could answer that.

BOB ERICKSON said public hearings were held giving all of the citizens of Helena the opportunity to come in and say whether or not they think there should be a total levy for the whole city. They had that opportunity at that time.

REP. HANNAH asked Bob Erickson if when Helen's downtown area was redone, the citizens had an opportunity to come in and say whether or not it should be a total levy for the whole city.

BOB ERICKSON said the policy was resolved by a commission prior to holding the hearings.

REP. ANDREASON told Senator Mazurek that he is worried that with the great flexibility we've allowed here that there might be a tendency for those that have been previously supported by the system and have gotten their lighting to say to the new developments, "we've got our lighting and now if you want lighting, you'll have to pay for it yourself". Is that a possibility?

SENATOR MAZUREK; It could be. However, a counter-balancing possibility is that the city may well take the district out, and say "the cost of installing and maintaining has been born by you, but for the maintenance of the district from this time forward, you'll pay 100%." It runs both ways.

TOM CROWLEY mentioned he'd like to address the public hearing process. Lighting districts are handled just like special improvement districts. The city is required to mail out notices to each and every property owner within the district and there is a public hearing. At the original creation of the district, you have a full review of the process. Before the lighting district is created, the council has the opportunity to have the

resolution creating the district in its final form as they feel that the majority of the people will agree to it. Every year thereafter the city council has to pass a resolution relating to the lighting districts for assessments because Montana Power raises the rates as approved by the Public Service Commission. Once the lighting district is created, the property owners still have the opportunity to protest in case that special improvement district to be dissolved or altered. It happens all the time. There is a full range of review from front to back on lighting districts.

CHAIRMAN BERTELSEN asked if there were further questions. As there were none, he closed the hearing on SENATE BILL 152.

EXECUTIVE SESSION:

SENATE BILL 35 - sponsored by Senator Steve Brown.

REP. SALES moved that SENATE BILL 35 BE CONCURRED IN.

CHAIRMAN BERTELSEN stated this bill proposes a joint hearing for the municipality and subdivision review.

QUESTION is whether SENATE BILL 35 be concurred in.

All in favor say "aye". All voted "aye" and the MOTION CARRIED by UNANIMOUS VOTE.

SENATE BILL 115 - sponsored by Senator George McCallum

REP. SALES moved that Senate Bill 115 BE CONCURRED IN.

CHAIRMAN BERTELSEN asked if there were any questions or discussion. This bill has to do with protest hearings on refuse districts.

REP. ANDREASON said he'd like a little discussion on the percentage figure. It seems to me that the percentage is quite high.

REP. GOULD suggested that it be left as is for now. If there are any problems, it can be changed at the next legislative session.

REP. HANNAH said he sees no need for the bill. There is one localized problem over one localized sewer district and this bill is designed to address that problem.

REP. SALES responded to Rep. Hannah. We set up a rural garbage district 10 years ago in Gallatin County. It took in Three Forks, Manhattan, Belgrade and all the rural area. Over 6,000 people

are served in that district. All we used was the estimated cost like it says here. Nobody in the district had any idea what it was going to cost on a fee basis individually. There was no protest, but when it went into effect and after the contracts were let, and we came out with the fees, they went through the ceiling. They had no idea how it would affect them as individuals. I think the fee basis warns the public much better than having estimated costs.

REP. ANDREASON moved that we amend Senate Bill 115, page 3, line 17 by striking "50%" and insert "25%". Also amend page 4, line 6 by striking "50%" and insert "25%". We are trying to get a number of people together to say they don't like the fee so we can hold a public hearing to see if the fees are in order. I think 25% of the people would be a sufficient number.

CHAIRMAN BERTELSEN said he agrees with Rep. Andreason. If it was a matter of doing away with the district or something of more consequence then the 50% might be reasonable, but where you are merely calling for a hearing it seems to me 50% is quite a lot.

REP. DUSSAULT asked Lee if a protest against the fee could be a protest against the service? Subsection 1 is a protest against the proposed service, and if 50% of the people protest against the service, in essence the thing dies. But in subsection 2 we are talking about the protest against the fees, but it seems that we are drawing a real fine line if somebody is protesting a fee that the net effect could be they are really protesting the service. I am wondering if this couldn't be real complicated.

LEE HEIMAN said it will have to be where the protest is written that whoever starts the protest will have to say "in service of the fee" and if they don't say "fee" that would be against the whole service.

CHAIRMAN BERTELSEN said we are still on the amendment.

REP. SALES offered a substitute motion. I would like to see the percentage required to hold the hearing on line 17, page 3, dropped to 5% but where you get down to making the final decision as to whether they can put the fee in or not, on page 4, line 6, I think the 50% maybe ought to be there. Holding a hearing shouldn't require hardly anything, but when you get to making the final determination perhaps the 50% determination is fair.

REP. SWITZER wondered if for urban or near urban people, would it be unreasonable to think that 50 new residents could form a district. If so, with only 5 or 10 percent, you wouldn't have very many people at a meeting. You could have a meeting and I wouldn't even know about it.

CHAIRMAN BERTELSEN asked all those in favor of amending page 3, line 17 from 50% to 10% and on page 4, line 6 to leave the figure at 50%, vote aye. All 16 committee members present voted "aye" and the motion carried.

REP. HANNAH asked if there are provisions in the bill or in other statutes requiring that this be a public hearing because I think that is a good question to be brought up for a small district.

CHAIRMAN BERTELSEN said he thinks any hearing in this day and age would be public.

REP. DUSSAULT asked Lee a question. A district is created and 50% did not protest the creation of the services. But 10% did protest the fee. They go a public hearing and as a result of that hearing the fee was changed. As I understand it, from there you impose that fee unless 50% protest. The question is what happens if 50% protest because there is no direction at that point? There is no provision for action if 50% protest.

LEE HEIMAN said it didn't apply.

CHAIRMAN BERTELSEN said he asked the same question of Senator McCallum and he didn't get a good answer.

REP. DUSSAULT said she thinks we have a problem then.

REP. SALES asked Lee if he feels there should not be a district if 50% of the people cannot agree on a fee?

CHAIRMAN BERTELSEN said, "it seems to me that they can't even submit a different fee at this point."

REP. SALES said they can change it.

CHAIRMAN BERTELSEN said he can't see where the bill provides for that.

REP. DUSSAULT said there is no provision for action if 50% of the people protest. You'd have to scrap the whole thing and start over with a new plan.

REP. ANDREASON said maybe in addition to that we could end up in a deadlock.

REP. HANNAH asked, "is it conceivable that a district would be requested, that the total cost would be spread on the district, and that the charge could be computed on a fee, and then the people would protest that fee to an amount of money less than what is needed to pay for district?"

CHAIRMAN BERTELSEN said he thinks it would end the district right there.

REP. HANNAH said that is almost a moot point because if people aren't willing to pay the cost of the district, then you won't have a district. It doesn't matter if they want to go to a lower fee or not.

LEE HEIMAN said section 4 is talking about when you are creating a district and you are talking about the Board of County Commissioners creating a district. When you get to section 5, you have the Board of the Refuse Disposal District. The district is rolling along and wants to change fees. That is what happens in section 5. That doesn't have anything to do with the original creation of the district.

REP. DUSSAULT moved to strike Section 5 from Senate Bill 115.

REP. ANDREASON said he was going to make a substitute motion that we delay action on this bill until we can contact the sponsor and find out what he wants to do about that or he suggested we form a subcommittee to deal with the problems. I don't think this is a bad idea; but it needs to be thought out a little better.

QUESTION on delaying action on Senate Bill 115 and appointing a subcommittee to work on the problems. A roll call vote was taken. Of the 15 members present, 11 members voted to delay action and 4 voted "no". Those voting "no" were Representatives Hannah, Kitselman, Neuman, and Pistoria. Motion carried and a subcommittee was appointed. Rep. Andreason is chairman, serving with Rep. Dussault and Rep. McBride.

SENATE BILL 131 sponsored by Senator Paul Boylan

REP. SALES moved that SENATE BILL 131 BE CONCURRED IN.

REP. HANNAH said this is a fundamental change where we are going to require someone else to fence out another persons property as opposed to them fencing their property in. I think we have laws on the books maintaining if someone destroys another person's fence or if there is encroachment, the person destroying the fence is liable. I think this bill is a step in the wrong direction.

REP. ANDREASON said he wishes to speak against the substitute motion for the bill. The situation is happening where you have agricultural land. Somebody builds something on that land. In the process of doing so they destroy a fence that was there, or a fence that was there is removed. In essence we have the

possibility for an opening for livestock on that agricultural land to go on the part that used to be agricultural land and cause some damage. All we're saying is that the person fix the fence or he can't go back to the person who had the agricultural land next to him for damages.

REP. KESSLER said that is what the Senator meant to say, but it doesn't say that in the bill.

REP. ANDREASON: Lee, is the bill saying essentially what I said?

LEE HEIMAN said the way the bill is now, if livestock damage the persons property, you have to look and see whose fault it was that the property was damaged. If that landowner destroyed the fence that was there and the cow comes in and eats up the garden, I suspect the fault rests on the residential landowner because he has been negligent. The basic problem of several adjoining landowners and then a non-livestock owner destroying the fence is not solved by this bill. As far as damage occuring any place other than on two adjoining pieces of property, this bill doesn't cover it.

REP. ANDREASON; But it does cover what I said in terms of that person's property and livestock coming on that person's property who builds on the former agricultural land.

LEE HEIMAN said yes, that is true in this bill.

REP. SWITZER asked Lee if he would agree with him that Senator Boylan's problem is not with who ate the rose bushes but if the cow should continue on to a highway or street and there be a severe accident occur and a high liability claim established, there is where he wants some help.

LEE HEIMAN said right. He wanted a joint liability with the two people having joint responsibility for the cow and the fence.

REP. HANNA: Practically speaking, it doesn't seem to me that we'll ever have a situation where a homeowner will build a house in the middle of a former piece of agricultural property; without that property being sold at one time or another by the owner of the property, who also owns the cows. Secondly, if he buys land that adjoins another piece of property and there is a fence already there, we already have laws to cover that landowner coming in and destroying that fence. You have a situation where we have laws that cover it on one side and you'd have to have the sale permission on the other.

REP. ANDREASON said he realizes the bill doesn't do all that Senator Boylan wanted, but it does some of what he wanted. I'm not sure it should do everything he wanted because I think that extends the liability a long way in terms of a very complex thing.

REP. SALES: The really important thing is that the person who comes in and starts a different usage of that agricultural land is responsible for building and maintaining a fence. I think that is great and I'm all for it.

QUESTION was called. CHAIRMAN BERTELSEN said the question is DO NOT BE CONCURRED IN ON SENATE BILL 131.

REP. KITSELMAN made a substitute motion that we table the bill temporarily until the staff researcher can look into the matter further.

SENATE BILL 152 sponsored by Senator Joe Mazurek.

CHAIRMAN BERTELSEN said this bill deals with lighting districts.

REP. KESSLER moved that SENATE BILL 152 BE CONCURRED IN.

REP. PISTORIA said we need to encourage lighting areas and not discourage them. According to this bill, the city could force the whole city to agree to lighting and make them pay 100% of the cost.

REP. BERGENE asked what the procedures are now if people want lighting in their districts?

LEE HEIMAN said a petition signed by 51% of the residents can create a lighting district.

REP. NEUMAN: In other improvement districts, people outside of the district don't pay any of the costs.

REP. BERTELSEN asked if he is correct that a lighting district can include the whole city, or those within quite an area of the district.

LEE HEIMAN said it could be possible.

REP. McBRIDE asked Lee if this lighting system is completely consistent with other types of improvement districts?

LEE HEIMAN said this would allow the city to pick up part of the special improvement district.

REP. McBRIDE wanted to know how this is different?

LEE HEIMAN said with other types, the landowners within the district are assessed to completely pay the costs.

REP. ANDREASON said he seems to be in the minority today, so I'm going to keep on going. I think the potential is the people who

have their lighting say "we've got our lights and you people in the new districts, if you want lights, will have to vote for them and pay for them yourself." I think this will discourage lighting. Everybody else in those areas got the lighting via this system and now they are going to change the system and the new ones won't get it.

REP. HANNAH asked Rep. Andreason if that wouldn't only be true in situations where there would be a lighting district that the whole city would pay for. Under this bill as I read it, the lighting district in a particular area of town would come in and say "we want lights" and the only time that there would be a need for a protest or a hearing by people outside of that district would be if the city wanted to charge a portion of the fees for that district to the other people outside of the district. Is that correct?

CHAIRMAN BERTELSEN replied yes.

REP. ANDREASON said he thinks the law, as written now, is that the discretion of that particular municipality is between 1/4 and 3/4 percent of the cost. I believe this will remove those boundaries and put the discretion up to a possible 100% being paid for by the people in that new area. I think that many times that will occur.

REP. HANNAH: What you are saying is that you don't think it is necessarily fair that the people in a new district should have to pay the full cost of the district.

REP. KESSLER: The question is that in many districts it is not just basic lighting; they want far more than that. I don't think I should have to pay for more than what is basic.

REP. ANDREASON said he'd thought of that too. That is why we have the big range from between 1/4 and 3/4 percent of the cost.

REP. AZZARA said the abuses mentioned are possible. But the bill is trying to address other real problems and that is that in some cities there is an unfair cost burden being shared by people in the inner city who are paying for just their lighting. Maybe they have more than they need or maybe they are using the other tax base that fosters special frills and certain other people are being forced to pick that up. I don't know how to solve the problem because I think it will exist no matter if the bill passes or not. The bill doesn't obligate that all costs be picked up; it simply allows that it be a political decision made at the local level.

CHAIRMAN BERTELSEN asked if there were any further questions. As there were none, he asked if the group was ready for question. QUESTION OF DO CONCURR IN SENATE BILL 152. A roll call vote was taken, which resulted in 6 voting "aye" and 8 voting "naye". Those voting "naye" included Representatives Bertelsen, Andreason, Bergene, Gould, Holliday, Neuman, Pistoria and Switzer. MOTION FAILED.

REP. GOULD MOVED that the vote be reversed and that SENATE BILL 152 DO NOT BE CONCURRED IN.

Meeting adjourned at 2:15 p.m.


VERNER L. BERTELSEN, Chairman

HBM

VISITORS' REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

BILL SENATE BILL 152

Date MARCH 5, 1981

SPONSOR SENATOR JOE MAZUREK

12:30 p.m.

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME Tom Crowley BILL No. SB 152
ADDRESS _____ DATE March 5, 1981
WHOM DO YOU REPRESENT City of Missoula
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This Bill makes City lighting districts consistent w/ County lighting districts.
2. We have some County lighting districts within the city & the properties in ~~these~~ districts ~~pay~~ pay 100% of the cost.
3. Downtowns & Industrial and some multifamily subdivisions petition to lighting district for higher lighting levels & more expensive type installation. In the City the rest of the tax payers have to now pay 25% of the lighting district cost.
4. This bill would make lighting assessments consistent through out an area. plus flexibility
5. Presently the general tax payers have to pay 25% or \$24,000 in missoula for lighting district that they really don't receive the specific benefit.

TO: The Chairman and Members of the House Local Government Committee
FROM: Lee Heiman, Committee Counsel
DATE: March 5, 1981
RE: Summaries of Senate Bills 115, 131, and 152

SB 115 (McCallum). Provides for notice and protest provisions on fees to be charged for refuse disposal districts. A protest by 50% of the family residential units in the district regarding the fee to be charged requires a hearing to determine an acceptable fee.

SB 131 (Boylan). Requires that a fence be built and maintained between improved real property and agricultural property by the owner of the improved real property. The failure to construct the fence is a defense by the owner of trespassing livestock for damages.

SB 152 (Mazurek). Allows greater flexibility in assessing the costs for street lighting districts. Allows any portion of the costs to be assessed against property owners in the district, rather than the current provision limiting the assessment to between 3/4 and 1/4 of the costs.

STANDING COMMITTEE REPORT

March 21, 1971

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 115

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY AND ESTABLISH NOTICE AND HEARING PROCEDURES RELATING TO FEES FOR REFUSE DISPOSAL DISTRICTS; AMENDING SECTION 7-13-201, MCA."

House Amendments to:

Respectfully report as follows: That SENATE Bill No. 115

1. Page 3, line 20.

Following: "fee."

Insert: "Following the hearing the commissioners may adopt the proposed fee or a different fee."

2. Page 4, lines 5 through 7.

Following: "provided"

Strike: the remainder of subsection (1).

Insert: "a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of such increase is given as provided in 7-13-208 and opportunity for protest is allowed as provided in 7-13-209 and 7-13-211."

AS AMENDED BE CONCURRED IN

DO PASS

STANDING COMMITTEE REPORT

March 21, 1981

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 131

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE LOCAL SUBDIVISION REGULATIONS TO REQUIRE SUBDIVIDERS TO CONSTRUCT AND MAINTAIN FENCES AROUND SUBDIVISIONS IN AGRICULTURAL AREAS FOR THE PURPOSE OF PREVENTING DAMAGE TO LIVESTOCK AND PROPERTY; AMENDING SECTION 76-3-501, MCA."

Respectfully report as follows: That SENATE Bill No. 131

BE NOT CONCURRED IN

~~DO PASS~~

STANDING COMMITTEE REPORT

March 25, 19 81

MR. **SPEAKER**

We, your committee on **LOCAL GOVERNMENT**

having had under consideration **SENATE** Bill No. **152**

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW MUNICIPALITIES GREATER FLEXIBILITY IN ASSESSING THE COSTS OF INSTALLING AND MAINTAINING A LIGHTING SYSTEM TO THOSE WHO BENEFIT FROM A SPECIAL LIGHTING DISTRICT; AMENDING SECTION 7-12-4301, MCA."

House Amendments to:

Respectfully report as follows: That **SENATE** Bill No. **152**

1. Title, line 7.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "7-12-4301,"

Insert: "7-12-4321, AND 7-12-4328,"

2. Page 2.

Following: line 7

Insert: see attached

AS AMENDED BE CONCURRED IN

DOES

Verner L. Bertelsen Chairman.

" Section 2. Section 7-12-4321, MCA, is amended to read:

"7-12-4321. Apportionment of costs. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps, and other suitable or necessary appliances for the purpose of lighting said streets or public highways and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, ~~not--less--than--one-fourth--or--more--than~~ three-fourths all or any portion as shall be determined by the city or town council, shall be borne by the property embraced within said district."

Section 3. Section 7-12-4328, MCA, is amended to read:

"7-12-4328. Resolution to provide for assessment of costs of installation. (1) It shall be the duty of the city or town council to ascertain the cost of installing such lighting system and, on or before the first Monday in October, to pass and finally adopt a resolution levying and assessing all of the property embraced within said district with ~~not--less--than--one-fourth--or--more--than--three-fourths~~ all or any portion of the entire cost of installing the same; each lot or parcel of land in said district to be assessed in accordance with the method adopted by the city council as provided in 7-12-4321 through 7-12-4324.

(2) Any such resolution shall contain a list in which shall be described each lot or parcel of land, either the total number of square feet of property contained therein or the total number of linear feet abutting the improvements as may be required to determine the total assessment in the district, and the amount levied against each lot or parcel of land set opposite.

(3) Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk."