

MINUTES OF THE MEETING OF THE LOCAL GOVERNMENT COMMITTEE
March 24, 1981

The Local Government Committee met Tuesday, March 24, 1981 at 12:30 p.m. in Room 103 of the Capitol. Chairman Bertelsen called the meeting to order and the secretary called the roll. All committee members were present except REPS. AZZARA, DUSSAULT, GOULD, and HURWITZ. Staff Researcher LEE HEIMAN was present too.

SB 96 , Sponsored by SEN. FRED VAN VALKENBURG

SEN. VAN VALKENBURG presented the bill to committee members. This bill would amend the laws relating to funding of the Special Improvement District revolving fund to provide that the cost of the improvements may include up to 5% of that total amount to fund the revolving fund which guarantees payments on any defaults from SID payments. The reason this is being sought is that presently the revolving fund is funded from all the sources, but one is from a general fund mill levy. What is happening there is that all of the taxpayers in a community are being forced to guarantee the bonds that are being sought by the limited number who want to have a particular special improvement district in their area. This has the effect where general fund monies are very tight, making it difficult to form SID's in one respect or to fund other needed services that are required out of the city's general fund in another respect.

You may be interested to know that the Revenue Oversight Committee during the interim between the last session did a fairly extensive study of SID's in Montana. There is considerable discussion on pages 3 and 4 about this particular problem of funding the revolving fund. The Senate added an amendment to the bill, new section 4, which would require that if the revolving fund was never tapped to pay off defaults, it would revert back to the property owners in the SID in the form of a partial payment on their final assessment. There may be some objection to that from representatives of the cities, but the members of the Senate who worked on that felt fairly strong about it and would be interested in taking this to a conference committee if that disappeared. On the other hand, I think there were problems with the language used and as a result I would propose that that section be rewritten to accomplish the general purpose of the Senate in that regard. The Senate acted on both this bill, SB 221 and SB 382 after the transmittal date and transmitted them after the 45th transmittal date. Consequently, from your work perspective, I don't feel there is a real rush to put amendments on these bills and pass them out by the 70th day. The Senate is bound by its commitment of treating these as revenue bills. They were referred to the Senate Taxation Committee rather than the Senate Local Government Committee.

On page 2, line 10 the present statutory conjunction of "and" was stricken and an "or" was inserted. I question whether that should not be left as "and" and I think that one of the people

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 2

who testify on the bill has the opinion that it should definitely be left as "and". I ask that you look at that very carefully to determine what it should be.

PROPOSERS FOR SB 96

MAE NAN ELLINGSON, Missoula Deputy City Attorney, said you may remember that earlier in the session when REP. SALES had two bills dealing with SID's, I mentioned at that time that SB 96 would hopefully be coming over and that the bill would address some of the problems Rep. Sales was having with that general fund liability for SID payments and delinquencies. It is our opinion that SB 96 does just that. SB 96 allows the local governing body to require that 5% of a SID be included with the bond issue to fund the revolving fund. We agree with Sen. VAN VALKENBURG that the "or" be changed to "and". We would also add that this committee pay particular attention to Section 4. It is our position that the bill is better off without that section. If the intent of section 4 is reasonable to this committee, then it should be drafted in such a way that it will do the job it is intended to do. (For balance of testimony, see written material attached to and made a part of these minutes.)

BILL VERWORLF, Finance Director for the City of Helena, said the City of Helena is a proponent of this bill in its concept and basically in the way it is presented. There are some cities that are providing 5%. The City of Helena has been providing a 5% contribution to the SID revolving fund for about four years. It is not done through the SID bond issue. It is done on a requirement basis that the City says we will not approve it unless we get that contribution. The developer is required in that instance to come up with the 5% through other financing mechanisms outside of the SID procedure. That has two advantages. It makes our revolving fund a stronger and more viable fund and makes it easier to sell the bonds and probably helps our interest rate. The other thing is it places a requirement to guarantee those bonds on the people doing the developing or the people living in a new area rather than on the general population of the city.

We have two concerns with this bill in terms of Section 2 on page 2, line 10. It strikes out the word "and", and changes it to the word "or". I understand that to mean you may use either one procedure or the other. We have bond issues that have been out-standing for some time and have a different set of rules. We also have new issues that are coming into being and will require the 5%. We will also have new issues that will come into being and will not require the 5%. An example of those would be a SID in an already build up area of town that

has a gravel street and needs to be paved. What we're saying is that instead of having to make a specific choice for the future, we should have both of those available as a funding mechanism for the revolving fund. The other thing concerns the payback or the disposal of funds deposited which is the last section of the bill. The way the bill is written it says you will make the final payment for the payment for the property owner. In our experience, we normally issue a 15 year SID and by the 10th year over half of the people have paid off the entire balance of their SID so they don't have a final payment. If it is interpreted to mean that when they make the payoff, we pay a portion of this back, we don't know how much of this will be left at the end of 15 years. So it would be very hard to determine how much to repay. If you wait until the end, then we have perhaps 20% of the property owners still making payments, so you can't apply it just to them. So what happens to the people who make a payoff early? We're suggesting that this section really is not necessary. The municipalities can make the determination of how that can be paid back to the property owners.

Currently in our City of Helena, it is paid back to the property owners of the district. If you feel that section is necessary we feel a much more simple wording would be that at the end of the SID (the 15th year), if there is money left in the fund as is stated in the first part of that paragraph, the payback should be returned to the owner of record of the property in the ratio of the assessment that was originally on that property, not with regard to when they paid off the SID or how many years they let it run or how much balance they have left now, just that ratio. We prefer that the cities be allowed to make that allocation of those funds. The funds are there to guarantee the bonds. Once they have established that purpose, they can be available against future bonds.

AL THELEN, City Administrator of Billings, said they support SB 96. We do, however, oppose the amendment which was put on and I will speak specifically to it. I support the technical amendments MR. VERWOLF mentioned. I'd like to talk about the addition to that section. It was my privilege to serve in Helena when they first adopted their 5% requirement of developers and also in Billings when they did that. We found two different circumstances. In Helena it was the feeling of the City Council that they wanted to provide a vehicle much like Section 4 does for the return of that money toward the end, either the last year or last two years, depending on the amount of the assessment. It is very difficult to develop the administrative parts and I agree that the way it is done here simply will not work. In Billings the City Council did not want to make the requirement that the developer pay 5% up front. In both of those cities it was done so the revolving fund would not get in trouble and so the general taxpayer did not get that

obligation. In Billings they wanted the money in the revolving fund, when it exceeds the need, to return to the general fund and be used for arterial street purposes in accordance with the district statutes. If this bill is passed in its current form, it wouldn't be used in Billings. We would not use the privilege of letting the developer take the 5% out of the bond issue simply because that would then be controlled by Section 4. We would probably require that it come up-front from him so we could control the fee and put it into the general fund. There could be circumstances when we might want to offer that to the developer and I would either suggest eliminating Section 4 altogether or at least make that option and not penalize the cities that have solved this problem without the legislation.

CLIFF CHRISTIAN represented the Montana Association of Realtors. He said he is here to speak in support of the amendment that the cities want to strike. Bearing in mind what MR. THELEN said about not using the 5% capitalization on the SID's, I would plea with you to require that the cities have the 5% within the capitalization of the SID bonds so that Mr. Thelen or anybody else can't play games or make threats to my people in this committee. We feel that the SID's are generated by the property owners and that 5%, if there is any surplus, should be returned to the property owners. It should not be placed in the general fund. In addition, SEN. VAN VALKENBURG'S amendment looks fine with one exception. I would ask that you also return to the property owners all interest earned from the 5%.

BRUCE MACKENZIE said he is general counsel for D.A. Davidson and Company. He said he can supply some verification on this bill and that they support the bill. He drafted the bill at the request of the League of Cities and Towns at their September meeting. The "and" and the "or" were my insertions. Since you were putting in the new section and to provide maximum flexibility, I thought the word and/or would provide that. The Legislative Council informed me later that was a no-no; you don't use, and/or; you have to pick and choose and they chose. They chose the word "or" but I would urge the committee to choose "and", because that is the best flexible method for the cities. With respect to the amendment, (new section 4,) I think you should give heed to the cities' plight in keeping an accounting of these funds. The request by the realtors to return interest would expose them to a tremendous problem. Remember larger cities have many districts and you'd be asking them to keep track of each district fund, the amount of interest earned and particularly the 5% that was put into the fund to begin with. Then you'd have to deduct the amount loaned out to the district for revolving fund purposes, so you couldn't earn interest on that amount. You'd be creating a bookkeeping

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 5

nightmare for the cities and towns who have enough troubles with what they have to do now. We urge your consideration of SB 96 within the limits of what has been talked about today.

CHAIRMAN BERTELSEN asked if there were further proponents; he asked if there were any opponents of SB 96. As there were none, he asked SEN. VAN VALKENBURG if he'd like to close.

SEN. VAN VALKENBURG said even though you have heard a great deal of dissention with respect to section 4 in the bill, I remind you that it seems everybody is pretty much in agreement that the 5% method of funding the revolving fund is a very good idea. I encourage you to change the language on page 2, line 10 to "and" and to use your wisdom with respect as to how section 4 should be dealt with.

REP. ANDREASON asked BRUCE MacKENZIE a question. He said he is not quite sure what was being said in relation to section 4. Would you clarify it for me?

BRUCE MacKENZIE: All I was saying is you should give consideration as to what the cities are saying because it creates a problem for them in administration. We have no quarrel one way or the other with the section. We deal with the cities often and many times they come to us for help. With respect to the amendment suggested by the Realtor's Association, I think that would compound the problem they have.

REP. SALES: Bruce, would you explain to the committee what the obligation of the city as a whole is to the payment of both the principal and the interest on delinquencies? Is there any limit to that obligation?

BRUCE MacKENZIE: That entails an explanation of the revolving fund mechanism. Since 1929 there were some defaults on SID's. Sid's are paid through a special assessment district itself. To the extent that there may be one property owner within a district, if he fails to make his assessment payment on time, there is a fund set up which has been funded either through loans from the general fund to the special district revolving fund or through a general tax up to 5% of the amount of the bonds. That is used to fund the revolving fund. The revolving fund then makes loans to the district which is charged interest for the loan in the amount of delinquent tax assessment. That loan is repaid out of assessments that come back in once the assessment is paid off. If the individual never pays his taxes, the property has to go up for a tax sale and it is presumed the loan will be repaid in that manner.

REP. SALES: Is the limit of the city's obligation 5% of the principal amount of the SID bonds outstanding?

BILL VERWOLF answered the question. He said the limit is 5% in any given year. You can levy up to 5% of the outstanding bond principal in a given year and then you can do it again the next year. The ultimate liability of the city could be 100% of the bonds.

REP. SALES said he is talking about what happens if the whole district fails? How much do all the taxpayers in the state get stuck for?

BILL VERWOLF said for as many years as it takes to pay that bond issue off. Principal is paid last; interest is paid first. Any delinquency is paid either by transfer from the general fund or a levy of not to exceed 5% of the outstanding bond principal. For a given district you may pay the whole thing off in one year because we may have a \$500,000 SID but we have \$11,000,000 in bonds outstanding for all SID's.

REP. SALES said he can't imagine why the developers wouldn't be willing to put up that 5% front-end money and never get it back and do it very willingly when they are using that good faith and credit of every property taxpayer in the entire city?

CLIFF CHIRSTIAN said we are not the ones requiring this. I assume that the developers that I represent are very much concerned about the 5%.

REP. PISTORIA said he didn't know who to ask but he'd like any of the proponents of the amendment (section 4) if they are for the amendment?

BILL VERWOLF said he would prefer to offer a changed working. The problem with the wording is that it still requires that it be given back to the property owners as partial payment of their final payment. That is where we have the problem. At the final payment date, not everybody owes money. If section 4 remains in the bill, I would offer a revised wording which merely says you give the money back to the property owners in the ratio to which it was assessed to start with.

REP. HANNAH asked AL THELEN to respond to some of the other questions.

AL THELEN said there were two things that were mentioned. One was that they weren't asking for SIDs. The use of a SID is at the request of either the developer or the people in the area. In every city I know of, the developers also have the ability to fund through private financing. In our city it is about

50-50. Yet I would like to point out that two cities have solved the problem this bill addresses; the problem of charging the general taxpayer for the revolving fund. In my judgment with the amendments or with the subamendments that have been made, you are still penalizing the cities that for four or five years have stopped the policy of a general property tax to fund SID's.

REP. HANNAH: Al, would you explain to me how the city has stopped the general policy of the general fund liability?

AL THELEN said not the liability, but the funding. Many cities have had to go to a general mill levy for the City. The funds are the revolving funds. In both Helena and Billings that is up-front by the developer through a contribution of 5%. The only difference is it does come out of proceeds of the bond issue, but it is like a fee we must pay on the front-end in order to use the SID. The result of that is that there is not the general property tax levy.

REP. HANNAH said Al, then that 5% is cash up-front by the developer and is given to the city. The city uses that money for the revolving fund. Is that correct?

AL THELEN said that is correct.

REP. HANNAH continued that when the SID is totally paid up, the city takes whatever balance is left out of the fund and puts it into the general fund. Is that correct?

AL THELEN stated that in the City of Helena it goes to pay the last payment for those special assessments that have not been paid. Then if there is any thing left, it goes into the general fund under the general provision law. In Billings because of a different kind of problem with arterial streets, their policy was at the end of the 15th year the money would go to the general fund to be used for arterial streets. My plea is "don't take that option away from the local government who has done a good, responsible job of managing the revolving fund."

REP. HANNAH then asked Al Thelen: Don't you have a guilt problem about giving the people that 5%, which is rightfully theirs?

AL THELEN said it was a reasonable fee. I supported what they did in Helena when they wanted to give it back. And I support Billings because the circumstances are different. I don't think it has to be the same. I point out that in Helena it didn't slow down the use of SIDs at all. I think practice has shown it is a good deal. I don't think it slows it down in Billings either. But in both of those cities, they do have the option to

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 8

use private financing if they wish. I think each city should make that decision. I would not like to see a mandatory requirement by the state on that issue.

REP. SALES said Al, let's take an example of a very small 30 lot subdivision where all the lots have been assessed. Of this 5% of the principal, when the principal becomes due at the end of the first year and just one lot out of that 30 is delinquent, that would wipe out the 5%. Or are we talking about the full amount? Are we talking about the principal due that year or are we talking about the full amount of the principal for the entire bond issue?

AL THELEN said about the whole bond issue on the ones he is familiar with.

CHAIRMAN BERTELSEN asked if there were further questions. As there were none, he closed the hearing on SB 96.

SB 221-Sponsored by Senator Fred Van Valkenberg.

SEN. VAN VALKENBURG introduced the bill by stating it was to clarify that SID assessments were subject to, first of all, the same penalties and interest requirements that are appropriate for delinquent property taxes. There are some minor amendments that occur on page 2, line 1 and on page 5, lines 8 and 9, to insure that what we're talking about here for late payments is the same thing as delinquent property taxes. In addition it was the desire here to also clear up an ambiguity that might exist that the payments on SID's could be made either semi-annually or annually. There are a number of language changes in order to make that particular point clear. There have been some special improvement districts assessed on payments to be collected by the bond holders on the annual basis. There was some confusion as to whether the statutes permitted that. This bill attempts to clarify this matter. In addition, the Senate Taxation Committee amended the bill on page 6 with respect to the collection of the assessment from the property owners to provide that one-half shall be payable on November 30 and the other half in May, the same as the provision with respect to payment of property taxes. That may cause some problems. It was not the intent of what the Senate was trying to do, but the manner in which the language was written. I talked to Senator Norman when he was here earlier. He was on the sub-committee that dealt with that. He explained to me that the real intent of the Taxation Committee was to make those payments optional to the taxpayer, but I am not sure that is what the Senate Taxation Committee accomplished. In fact, I'm told there is some real internal conflict in the bill now.

PROPOSERS FOR SB 221

MAE NAN ELLINGSEN, Missoula Deputy City Attorney, said they started out being proponents of this bill, and we still are proponents at least on the intent of the bill. As it has been amended by the Senate, it creates so many problems that I'm sure it is not workable. I'll call your attention to a couple of those conflicts so that you will notice them.

Section 1, page 1, indicates that as a general rule SID payments will be due and payable on November 30 of each year, except as provided in subsection 2. Subsection 2 then indicates that a municipality may allow one half of these payments to be made in May. That section is in direct conflict with section 5 which is on page 5 and 6, which clearly states the assessment will have to be made twice a year.

The bill also creates some conflict with current RSID's or the County SID law. The county SID law provides currently that assessments and payments for special improvements are made on an annual basis rather than on a semi-annual basis. The requirement here for payment of the semi-annual basis conflicts with the practice in the county assessors and collectors offices, who end up collecting the city SID's.

The third problem with the bill is that it seems as though you will probably be increasing the interest rates for the cities on these bonds, and fourth, section 5, as it is written, presents the possibility to me that a city would be required to go back on all its SID's for which annual interest payments have been specified and refigure them so they will be collected twice a year. It may create at least a legal problem and at most, if not a legal problem, an inordinate amount of work. The City of Missoula has about 110 SID's. About 90 of those are SID's with annual interest payments. It seems as though the intent of section 5 as written would require us to go back and refigure them. I'm not sure we can legally do that and if we can legally do it, it certainly creates a nightmare.

We would support SB 221 as originally introduced and would urge you to delete the amendments made by the Senate Taxation Committee.

BILL VERWOLF, Finance Director for the City of Helena, gave a little history that affects this. Up until July 1, 1979 the state statute very clearly specified that all collections of special assessments were to be paid completely in November. The law passed in the 1977 legislature provided for mandatory semiannual coupons but it provided the city the option, as you saw on the first page of this bill, for either annual or semi-annual payments. That was the purpose of it. The problem

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 10

we get to now is we require that one-half of the taxes be collected in November and one-half collected in May. For all districts in which annual interest payments have been specified, you are including the issues that were issued prior to July 1, 1979 which were issued in accordance with the state law that provided for a specific method of collection of those assessments, with the bonds to be payable in January. If we change that collection, we are going to change the availability of money to make those January bond payments. You are changing the conditions for the repayment of those bonds subsequent to selling to the bondholders. It is my understanding there is a real legal or constitutional question as to whether you can go back and retroactively change the conditions on the bonds. I want to be very clear that if this section were to pass, it would apply to those bond issues after July 1, 1979 and not to those issued prior to that date.

BRUCE MacKENZIE said he is general counsel for D.A. Davidson and Company. We support the bill basically in concurrence with the City Attorney from Missoula. The amendments do create a great amount of confusion. It was in 1979 that the law was passed which is in section 1 of your bill, which provides municipalities the discretion to provide for semiannual assessment payments. If you will look at the original language in the bill and if a municipality specified annual interest payments, then you would have annual assessment payments. The reason is that under the statutes bonds are payable on their interest payment date. When you receive the assessment payments, you have money in the fund which is available to make the interest payment and then you could call principal on the bond to the extent the bonds are available. With the amendments, if you had an annual interest payment, you'd still have to have semiannual assessment payments. The money is coming in but you can't call the bonds. But you can call the bonds under another statute. Internally it creates a number of problems. The amendment really isn't necessary. An individual has the option to come in and make his payments early if he chooses, but the city would not have to make a payment on the bonds.

CHAIRMAN BERTELSEN asked if there were any further proponents to SB 221, and there were none. He asked if there were any opponents and there were none. He asked Senator Van Valkenburg if he'd like to close.

SEN. VAN VALKENBURG said I will close and leave the bill to your discretion.

QUESTIONS FROM COMMITTEE MEMBERS. There were none.

CHAIRMAN BERTELSEN closed the hearing on SB 221.

SB 382 Sponsored by Sen. Jean Turnage.

SENATOR TURNAGE representing District 13, said that SB 382 is one of two which Sen. Norman and he introduced. The other bill was killed in Senate Taxation. This bill didn't get anywhere in the last session so we're trying again this year. The whole issue involves special improvement district bonding in Montana. If there isn't some concern addressed to SID bond financing, I'm afraid we'll have all the counties and cities getting into the action. We'll have every square foot mortgaged to a point where I don't know if the people will be able to stand it.

An SID bond is, as a practical matter, a general obligation, even though that is denied in the court decision and by the opponents of that particular funding activity. The original SID funding was intended to help those municipalities and counties put in such things as water, a sewer line or a street for a developed, built up area, not a raw land subdivision. Money is not available for subdivision development so they have gone to this method to finance raw land subdivisions. The people generally don't realize that their entire country or municipality is under the mortgage. If they did realize this, there would probably be some concern and distress. So far there haven't been too many problems but I think as the economy struggles to keep its chin above water, there will be some trouble, especially if we keep financing these projects without limitation as to interest on them. We're going to get those mortgages so expensive that they can't be repaid.

When a SID is created without any input from the people, they set up a fund for that SID. They can levy a tax against all the people of the city to front-end money the fund and there is no limitation on the mill levy that can be used to feed the revolving fund. Loans can be made out of that fund and transfers can be made in and out with mill levy money without limitation on the mills. It is a real neat method of financing for those who benefit from it, but not so good for the city taxpayers or the county.

As part of the bonding agreement, after the SID is approved by the governing body, there is an agreement entered into with the bonding company. The agreement is provided for in section 7-12-2182. Sen. Turnage then explained the bill section by section.

SEN. TURNAGE said he doesn't really object to SID financing but he does object to the people not being told what the name of the game is and not having any input or right to object, which they don't have. They can reelect their city councilmen or commissioners, but that is their only recourse. This is a

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 12

dangerous thing and will become more dangerous because the lack of funds will bring more and more pressure on this particular method of financing. I don't think we should shut them off, but everything should be up front where everybody can understand it.

This bill will be bitterly opposed because it limits the amount of the fund to 5% of the outstanding bonds. As I told you, there is no limit now. I'm sure it is an abuse of the taxpaying public. I feel judgment should be exercised in levying in the future. The only way you can do that is to let the governing bodies know what is happening. I submit to you that there are many people on these boards that simply don't understand this. I don't care what you do with the bill, but I'd like to have you put in RED LETTERS on everybody's doorstep that this SID can be dangerous to your property.

All this bill does is require some taxpayer approval, but that was killed in the Senate.

PROPOSERS FOR SB 382.

BRUCE MacKENZIE with D.A. Davidson said he will simply say they support the bill as amended. We think it will help to cure some of the abuses that have occurred in the past with SID bonds. We would be happy to work with Sen. Turnage or any other individual in the future on working toward legislation which would cure some of the other problems he has addressed. He goes a little further than we would in talking about it, but we do think there are some things which can be done to cure some of the abuses.

REP. SALES said this is such a mild mannered little approach to the problem you just can't help but be a proponent of it. I must tell Jean that I had two bills in here which would have done away with the revolving fund altogether, which of course is a radical way of doing it. But this is a very mild approach to what is a very severe problem coming up. I hope that somebody takes Bruce up on his offer and does a lot of work in reviewing what is actually being done across the country and try to come up with something which can be presented to the next session to provide a little bit of protection.

CHAIRMAN BERTELSEN asked if there were any other proponents. As there were none, he asked if there were any opponents. As there were none, he asked Sen. Turnage if he'd like to close.

SENATOR TURNAGE said he'd answer any questions.

QUESTIONS FROM COMMITTEE MEMBERS:

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 13

CHAIRMAN BERTELSEN said he was under the impression there is some action on the federal level to curtail the use of these bonds.

SEN. TURNAGE said their approach, as he understands it, would be to deny the tax deduction. Presently municipal bonds are non-taxable for income tax purposes.

CHAIRMAN BERTELSEN asked if there is actually a limit on the number of bonds that a city or county can issue based on the value of the city or county, or is it all based on the value of the project, or is it on neither?

SEN. TURNAGE said on neither. The general obligation bond statute has a limitation of so much of the valuation. Somehow they managed to get the Court to decide that these are not general obligation bonds and therefore didn't apply. I can't follow that reasoning because the bottom line is that there was no city or county to contest this. To answer your question, there is no limit on the amount of the bonds, on the interest paid on the bonds and the project is mortgaged as Class A collateral and the rest of the city is Class B. But more importantly the pocketbook of the taxpayer is pledged as really the umbrella of the whole thing.

CHAIRMAN BERTELSEN asked Bruce MacKenzie if he has a comment on this?

BRUCE MacKENZIE said the only thing he can say is that since 1973 there has not been an interest rate limitation on SID bonds as a result of the case of the State, cities and towns versus D.A. Davidson and Company. In that case the Supreme Court held that there was no limit on SID bonds.

CHAIRMAN BERTELSEN commented that what you're really saying is the Legislature has really changed them?

BRUCE MacKENZIE said no.

CHAIRMAN BERTELSEN asked if there were further questions. As there were none, he closed the hearing on SB 382.

REP. HANNAH asked if he could discuss what happened in subcommittee on SB 362. He said he met this morning with REP. ANDREASON, as REPS. DUSSAULT and KESSLER were out of town. As a result of that meeting, I'm going to have to get together with the subcommittee and DAVE WANZENREID to try and work out the multitude of problems which have to be addressed. I don't think all of them can be addressed in this bill but it might be a step in the right direction. Mr. Wanzenreid did print out 5 points that

were the result of our discussion as to some of the problem areas he saw. He is not trying to schuttle the bill but is responding to our request to try and answer some of the questions which were raised so I'll hand them out and let the committee members look at them. If you have any questions or problems after reading this, contact me, Mr. Wanzenreid, or Reps. Kessler and Dussault so we might have a better opportunity in subcommittee to incorporate them into the language of the bill.

CHAIRMAN BERTELSEN said he thinks this a very good idea. We'll find it isn't as easy to disincorporate a city as we thought.

CHAIRMAN BERTELSEN said he needs someone to carry SB 399 on the floor. This is the bill sponsored by Sen. Manley which was drastically amended. Perhaps I can get Rep. Gould to take it as he had some interest in it. There were no volunteers.

CHAIRMAN BERTELSEN said Lee will pass out the grey bill for SB 50 which is the salary bill. We won't act on it today, but I want everyone to have a copy to study.

EXECUTIVE ACTION:

SB 382 Sponsored by Senator Jean Turnage.

REP. ANDREASON said he has a question and wanted to ask Lee about it, having to do with amending the same section in an incompatible manner. We are looking at SB 96 and 382 which are doing essentially a similar type of thing.

LEE HEIMAN said he has listed the places where they conflict. Sen. Turnage's bill in section 7-12-4227 strikes the words, "the amount which the council deems" and in Sen. Van Valkenburg's SB 96 he uses those on both sides of the amendatory language which he puts in. I think this is a technical amendment which I can work out with the two sponsors if both bills pass.

SB 382

REP. SWITZER moved that SB 382 BE CONCURRED IN.

As there was no discussion, the question was called. All in favor of concurring with SB 382, say "aye". All committee members present voted "aye" and the MOTION CARRIED. SB 382 received a BE CONCURRED IN recommendation.

SB 221 Sponsored by Senator Van Valkenburg

REP. SALES moved that the Senate amendment on SB 221 be amended out.

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 15

REP. HANNAH asked Rep. Sales why he wants those amendments deleted?

REP. SALES said he thinks it creates a terrible mess for book-keeping. The way the law reads now, people can pay their assessments twice a year. We are not changing the base of bonds. We can still make them either annual or semi-annual payments in the future. When we start saying "they shall be collected" we get into a whole different thing.

REP. BERTELSEN said it appeared from the discussion that it created a conflict between one law and the other but it still is possible as Rep. Sales says by resolution for the city to allow that, but it doesn't have to be made mandatory.

REP. SALES asked if it would be possible to have Al or Bill go through that again? I'm concerned about what the Senate amendments to Fred's bill create.

BILL VERWOLF said the problem he sees is that we've been informed by bond counsel out of Minneapolis that we had to preserve the sanctity if you will, of the annual assessment on bonds issued prior to the effective date of that bill which was July 1, 1979. This would raise a real question as to whether you could do that; whether you could continue to collect the annual assessment rather than the semi-annual assessment on the older issues. It appears that this would make it mandatory that all special assessments would be collected in November and May. There is a legal question as to whether that could be done because you are changing the conditions under which those old bonds were sold. In most cities, that is the bulk of our SID's. In the City of Helena we have taken the option of using the two payment system. The old issues are still a single payment system. That has been bond council's interpretation of what the 1979 bill says. This may change that. We get into a real problem of interpretation and procedures to be used.

REP. SALES said to carry that a little further, we not only took out some things the Senate added, but does what you have left of the bill solve any problems for you?

BILL VERWOLF said he thinks the material was put in to clarify the mandatory as opposed to many questions. This bill will allow you to have annual coupon payments as opposed to semi-annual bond and coupon payments, but you would still have the ability to have semi-annual payments from that assessed property. It gives more flexibility to ease the burden on the property owner than the old bill did, but the amendment goes one more step and makes it mandatory and creates a question about prior years.

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 16

The amendments to SB 221 are as follows:

1. Page 6, lines 7 and 8.

Following: "payable"

Strike: "AS FOLLOWS:"

(A) "ONE-HALF OF SUCH TAXES SHALL BE PAYABLE"

2. Page 6, lines 15 through 19.

Following: line 14

Strike: subsection (B) in its entirety

QUESTION ON THE AMENDMENTS:

All in favor of Rep. Sales' amendment, say "aye". As no one was opposed, the motion carried and SB 221 received an AS AMENDED BE CONCURRED IN recommendation.

REP. SALES will carry this bill.

SB 96 Sponsored by Senator Fred Van Valkenburg

CHAIRMAN BERTELSEN said this is the act to provide funds for special improvement district revolving funds by allowing 5% of the improvement cost to be an initial incidental expense to be deposited in the revolving fund.

REP. BERGENE asked if there is any kind of tie up between SB 96 and 382.

LEE HEIMAN said he doesn't see anything. They both do different things. I did check through the amendments and I didn't see anything except a conflict of wording.

REP. PISTORIA said it seems to be the opinion of all of us to go back to "and", and eliminate "or" on line 10 of page 2.

REP. PISTORIA moved the above amendment.

QUESTION ON AMENDMENT: All in favor of the amendment say "aye". All present replied "aye" and the MOTION on the amendments CARRIED.

REP. BERTELSEN said he has received an amendment which he'd like to read to provide a payback in a little different manner. It says:

NEW SECTION. SECTION 4. DISPOSAL OF FUNDS DEPOSITED IN REVOLVING FUND. "The amount of funds deposited in the revolving fund under 7-12-4169 (2) less the amount of any outstanding loans to the district fund and less any interest earned on such funds shall

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 17

be returned to the owners of record of the property of the district in direct proportion to the total assessment levied on that property."

REP. BERTELSEN gave the amendment to Lee and asked if he thought it was in proper order? This bill was furnished by the cities and he got it from Mr. Verwolf, and it might do away with the objection we are having to the payout.

REP. KESSLER asked a question of Al Thelen. Would that amendment take care of that "may" or "shall" that we talked about?

AL THELEN said it does not take care of that problem, but it makes that portion of it more workable.

REP. SALES said his concern is, it seems they have found a way to work it out without something being explicitly in the law. It always bothers me when they find a way to work something out at the local level and we have trouble under the law, telling them what to do. I would assume they would be better off without it, but then you get back to the idea of a refund all together. If you really think the people who are getting the advantage of tax-exempt improvements and financing home improvements and the fact that everybody in the city shares their liability for those improvements and you don't think that is worth that 5% upfront money, then they should get the refund. I suppose you should try to figure out a way for them to get it back.

REP. KITSELMAN asked to have Al Thelen answer another question.

Am I correct that in Billings the money goes back to work for other improvements on highways and so forth? What does that 5% amount to for the average property owners, say in the Heights?

AL THELEN said it depends on whether you are talking about streets, water and sewer, but generally we are talking about something in excess of \$1 per square foot for assessments. I would say the average would be between \$400 to \$500.

REP. KITSELMAN asked "is that then contributed to doing a lot of our repairs on our arteries in Billings, the downtown area, and so on?"

AL THELEN said it is tied to our arterial streets, maintenance and construction. We haven't gotten in any of that as yet but it is earmarked for that.

REP. KITSELMAN commented that it looks like in his case, in 15 years when my SID's are paid off, I'm donating \$500 to the City of Billings to fix those crazy streets?

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 18

AL THELEN replied yes, that is right.

REP. KITSELMAN said he wouldn't care for that.

REP. HANNAH asked Al what rate of interest he is getting on the money in the revolving fund?

AL THELEN said they are on a daily interest rate. The last time he looked at it, it was between 13% and 14%. This changes weekly, based on the daily balance.

REP. HANNAH said the problem he has with it would be primarily in commercial areas. If you had a developer who came in and put in a major mall like Rimrock Mall, let's say there was a 5% requirement on the SIDs and he is the sole owner of the piece of property. In 15 years it would seem to me there would be a considerable chunk of money sitting in that revolving fund that would come back to one person, or one group of people who were developers of the property. It is rather simplistic in my mind to say it wouldn't be fair to take all the money plus the interest that has been put up by those people. So by breaking the fairness issue down through the property owner, even though he doesn't have quite as much and its spread among more people, somehow I think there is more equity involved when you talk about it under a revolving fund. If the city actually got into the banking business per se and said that this is a service fee, like Walt is talking about, that is a different matter. I wouldn't have any objection to that, if we changed to the revolving fund and the money came out and you were saying in order to take advantage of the tax exempt bonds and the city wants a 5% service fee, fine. But when we start talking about it as being a portion taken from the bonds and that kind of thing, it seems to me that the equity in that should go back to the property owner. Am I addressing this thing squarely? Do I have my facts right?

REP. SALES said he thinks it is philosophical.

REP. HANNAH: Do I have the basic principle of what is going on correct in my mind as to what is happening in the revolving fund?

AL THELEN said yes, you do. I think the equity issues and factors you have identified are there. My suggestion is that different people will weigh those equity factors differently, and local government officials ought to be able to do that.

REP. MATSKO asked Al Thelen the following: Is there anything in this bill about the 5% going to a city or municipality to take care of arterial roadways going in and out of a new subdivision. Is there anything in this bill that would tie that strictly to

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 19

that, or could the municipalities actually spend that money any place they felt like it.

AL THELEN said they could. The current law requires the money after the bonds are paid for that district to go back to the general fund. Once it is in the general fund, the city council can use it for any general fund purposes they wish. That is how we've done it. We've tied it in for arterial streets, but my understanding of the law is that it could be used for anything in the general fund. No city has done that yet as a result of the 5% because the first of those happened in Helena only four and one-half years ago.

REP. KESSLER said to Al, "with the language now in Section 4 on page 4, with "shall" you have to do it." Is that right?

AL THELEN said if this passes and we decide to use the proceeds of the bond issue, we'd be much happier if that was a "may". It may well be that real estate developers will convince the City Council of Billings to change that. It would depend on the circumstance.

REP. BERGENE: Did we pass a bill that says that some of this general fund revolving fund could be used for low interest loans to people who were assessed for SIDs? Or was that in Business and Industry?

CHAIRMAN BERTELSEN said he doesn't remember it.

REP. BERGENE said she asked for what other purposes they would want to use the money from the general fund? That is what reminded me of that.

REP. HANNAH said the only flaw he sees with giving the City complete control is that once they have complete control they can say "yes" or "no" as to whether the developer can have the tax exempt bonds depending upon the way they want to do it. That may be fine being they have the general obligation bonds behind them, but I don't quite see the negotiation portion Mr. Thelen talks about when the city holds the trump card.

REP. PISTORIA asked that the amendment be reread, and this was done by Mr. Heiman.

REP. PISTORIA moved the amendment read by Lee and deleted Section 4.

REP. KESSLER moved to amend the amendment to change "shall" to "may".

REP. PISTORIA withdrew his amendment.

MINUTES OF THE MEETING OF THE LOCAL
GOVERNMENT COMMITTEE
March 24, 1981

Page 20

REP. HANNAH asked that we delay action until he talks to some people about this bill.

CHAIRMAN BERTELSEN said that we're having a problem with SB 152 which we passed on and which we left out some technical amendments. I would like to ask you to reconsider to allow Lee to put the amendments in the bill to make it legal. This is the lighting bill.

REP. KITSELMAN moved that Lee Heiman be delegated to make the technical amendments.

LEE HEIMAN said this has to do with Section 2. Section 7-12-4321. There are two sections within the same part that say "not more than three-quarters and not less than one-fourth." Those two sections conflict. They should have exactly the same wordings on line 20.

CHAIRMAN BERTELSEN commented that he is trying to make the rest of the code coincide with what we have done in this bill. In order to make the bill proper, it needs to be done in that manner. It won't change the bill in any way. Is it agreeable with the committee that Lee take care of that clarification?

REP. HANNAH moved that we consider action on SB 152 for the sole purpose of allowing Lee Heiman to make the necessary corrections for coding purposes.

QUESTION: All in favor of this reply "aye". All replied "aye".
MOTION CARRIED UNANIMOUSLY.

The meeting adjourned at 2:20 p.m.


VERNER L. BERTELSEN, Chairman

hbm

HOUSE *Local Government* COMMITTEE

Date Mar 24 1981

12:30 p.m.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE Local Government COMMITTEE

BILL S.B. 96
 COSOR Senator Van Valkenburg

Date Mar. 24, 1981
12:30 p.m.

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

AMENDMENT TO SB 96

Strike: Existing Section 4

Insert: New Section 4. Disposal of Funds Deposited in Revolving Fund.

The amount of funds deposited in the revolving fund under 7-12-4169(2) less the amount of any outstanding loans to the district fund and less any interest earned on such funds shall be used to make all or a portion of the final payment or payments on the district bonds or warrants and shall reduce the final assessment on the property within the district to the extent of the available funds.

TO: MEMBERS OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

FROM: CITY OF MISSOULA

RE: SENATE BILL NO. 96

DATE: MARCH 23, 1981

As you are aware, the use of Special Improvement Districts have become an important method by which local governments finance public improvements. The theory of the special improvement assessments is to apportion public improvement costs to properties that are deemed to derive a primary, special or local benefit from that improvement. Special Improvement District bonds are not general obligation bonds nor do they constitute an indebtedness of the City.

Existing state law requires that a city issuing S.I.D. bonds establish a revolving fund to secure the payment of the district bonds and interest thereon as it becomes due. The legislature has authorized the city to fund the revolving fund by either loaning the revolving fund money from the general fund or by levying a tax on property within the city not to exceed in any one year 5% of the principal amount of outstanding bonds. Irrespective of the way the revolving fund is financed, any payment of bond or interest made from the revolving fund is a loan to the Special Improvement District. This loan gives rise to a lien against further assessments for the amount of the loan.

The purpose of Senate Bill No. 96 is to provide cities with another alternative for financing the revolving fund. It is our position that to the extent local property owners benefit from the creation of a Special Improvement District those property owners ought to contribute directly to the revolving fund, thus relieving the general fund taxpayers of that obligation. Having this additional source of revenue for the revolving fund is particularly important during the first year of an S.I.D. when the delinquencies are likely to be high.

This bill as amended provides that the amount contributed to the revolving fund by the district shall be utilized in the last year of the S.I.D. to make the final S.I.D. payment. Thus the cities will not be accumulating a large revolving fund.

Respectfully submitted,



Mae Nan Ellingson
Missoula Deputy City Attorney

HOUSE Local Government COMMITTEE

Date Mar 24, 1981
12:30 p.m.

12:30 p.m.

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

March 26, 1981

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 96

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FUNDS FOR SPECIAL IMPROVEMENT DISTRICT REVOLVING FUNDS BY ALLOWING 5% OF THE IMPROVEMENT COST TO BE AN INITIAL INCIDENTAL EXPENSE TO BE DEPOSITED IN THE REVOLVING FUND; AMENDING SECTIONS 7-12-4169 AND, 7-12-4222, ADD 7-12-4227, MCA."

House Amendments to:

Respectfully report as follows: That SENATE Bill No. 96

1. Page 2, line 10.

Following: "and"

Strike: "or"

Insert: "and"

2. Page 4, lines 7 through 12.

Following: "REPAID"

Strike: the remainder of section 4

Insert: "may be returned to the owners of record of the property of the district in direct proportion of the original assessment on each piece of property or as an alternative a municipality may transfer the funds placed in the revolving fund as a result of 7-12-4169(2) to the general fund after the final payment of the district's bonds or warrants are paid."

AS AMENDED BE CONCURRED IN

~~DO-PASS~~

Verner L. Bertelsen

Chairman.

STANDING COMMITTEE REPORT

March 24, 1961

MR. SPARKER

We, your committee on LOCAL GOVERNMENTS

SENATE
having had under consideration Bill No. 221

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY THE LAWS RELATING TO SPECIAL IMPROVEMENT DISTRICTS; AMENDING SECTIONS 7-12-4188, 7-12-4202, 7-12-4203, 15-16-102, AND 15-16-103, MCA."

House Amendments to:

Respectfully report as follows: That LOCAL GOVERNMENTS Bill No. 221

1. Page 6, lines 7 and 8.

Following: "payable"

Strike: "AS FOLLOWS:"

(A) ONE-HALF OF SUCH TAXES SHALL BE PAYABLE"

2. Page 6, lines 15 through 19.

Following: line 14

Strike: subsection (B) in its entirety

AS AMENDED BE CONCURRED IN

DO PASS

Vernon L. Bertelsen
Chairman.