

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

January 22, 1981

The tenth meeting of the committee was called to order at 8:00 a.m. by Chairman Pat Goodover in Room 415 of the State Capitol Building.

ROLL CALL: All members were present, except Sen. Ochsner, and Senators Eck and McCallum who were excused.

CONSIDERATION OF SENATE BILL 96: Sen. Fred Van Valkenburg, District 50, said this is an act that would amend the law on SID's to provide an additional option to cities to fund the required revolving fund account. The revolving fund has been required by statute since 1929 to provide a method of covering delinquencies which might arise in payment of SID's. The fund is available to act as a loan to the SID's. It has become necessary over the years because local governments find it almost impossible to sell SID bonds without a revolving fund. The law now provides that it be funded by one of two options: 1) loans from the general fund of the city and 2) a general levy of all taxpayers within the taxing entity to provide up to 5% of the then outstanding bonds. This bill proposes an additional option to fund the RF by collecting up to 5% of the bonds that are sought to be issued from the people seeking to create a new SID. He felt this was important because those people are the ones who are creating the obligation and he felt they, rather than the general taxpayer, should bear the cost.

PROPOSERS: Mae Nan Ellingson, Missoula Deputy City Attorney, presented testimony which is incorporated into these minutes as Attachment #1.

Bill Verwolf, City of Helena, agreed that this proposal transfers the responsibility for providing the security for SID bonds to the newly developed areas, through the developers, rather than general property taxpayers. He felt it also allowed this to be accomplished under the tax-exempt interest structure to assist the development.

Bruce MacKenzie, General Counsel and Vice-President of D. A. Davidson, supports bill's concept. He said the revolving fund is an extremely important source of security for SID's.

Al Thelen, City of Billings, said that because every development that comes before a city is not the same, he sees this bill as giving other options to create more equity. His testimony is incorporated as Attachment #2.

John Evans, City of Bozeman County Commissioners, presented a commission resolution which is incorporated as Attachment #.

Scott Currey, Montana Association of Realtors, would like to see an amendment to the effect that money in the revolving fund be eventually returned to land owners.

There were no opponents to this bill and questions and comments were called for from the committee.

Senator Van Valkenburg responded to Mr. Currey's amendment proposal saying he had no strong objection to it other than he thought it might be a bookkeeping nightmare with respect to returning the money 15 years later.

Sen. Towe to Mae Nan: What is average size of SID? She answered it varies from \$30,000 to \$900,000. Al Thelen's guess was an average of \$350,000. Sen. Towe asked what became of money if the revolving fund built up larger than necessary. Mae Nan said there is a state law that provides the money can be returned to the general fund. Sen. Elliott wondered if there was anything preventing the cities from requesting the developer to deposit into the revolving fund. Mae Nan replied Missoula has no specific statute authority that would allow this, but none that would deny it either. Sen. Crippen asked Mr. Thelen whether cities that don't have the 5% are obligated to take one of these options when a developer comes in and wants to improve the land. Mr. Thelen said developer would come in and have option to make the improvement or create SID's. Until 1978, if they chose to use SID method the revolving fund was funded by general taxing of people in the community. He said some developers prefer to go with private financing so payments can be spread over 30 years. He said he didn't like the proposed amendment because some small cities don't want to use this and they should have an option.

The hearing was closed on Senate Bill 96.

CONSIDERATION OF SENATE BILL 107: Because sponsor, Sen. McCallum, was ill, the Chairman announced that Dennis Burr would present the bill for him.

Dennis Burr said SB 107 is an attempt to deal with an appeal problem. He said the only method a taxpayer has for protest is paying the tax under protest and then within 90 days bringing an action in district court. He said the situation has arisen where a unit of state government has applied an illegal levy, subsequently challenged, but that there is no way to challenge before the tax is collected. For the general taxpayer who doesn't have large resources the effort of recovering the taxes is more problem than the amount of the tax. SB 107 says that if an action is brought in district court first, it can be brought before the taxes so that the levy may be challenged prior to payment. It expands district court powers and helps them with the two options mentioned above.

There were no proponents. Larry Weinberg, Dept. of Revenue, spoke as an opponent to the bill. He felt the Declaratory Judgment Act could be used and achieve the same end that the bill proposes. He

January 22, 1981

saw problems with the bill as presented: 1) if a tax that may have been shown as a credit on income tax were thrown out, it could affect the federal return, and 2) if it is actually an action after the taxes are paid, but without protest, that money is gone. If court ordered money to be refunded to an entire class, that would present problems for any government. He saw the bill as providing legal advice for the prevailing party and says the UDJA provides costs the court considers fair. The DOR prefers that method because 1) not all suits to strike taxes are brought in good faith, and 2) if a taxpayer challenges a 55-mill levy as unconstitutional and the court decides that 2 mills were bad but 53 were fine, how would cost be divided then. He felt if remedies are specified, one is bound by the remedies. He summed up by saying he feels the law is all right as it is.

Dan Mizner, Montana League of Cities and Towns, was concerned where the money would come from to pay fees. He felt local governments have to have a concern about lawsuits brought against them and would like to have things cleared up.

Keith Anderson thought the levies in question would be above the statutory levies provided by law.

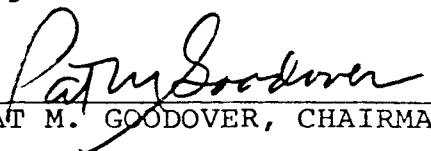
Mr. Burr agreed that the bill as drafted doesn't speak to challenging a levy before the tax is paid and thinks there should be a better method for challenge. He went on to say he thought there might be technical problems with the bill but said they're interested in allowing district courts to have options on how to dispose of illegal levies.

Mr. Weinberg said that in the Declaratory Judgment Act there's a section that talks about summary relief. He suggested a subsection specifically about taxpayer suits providing direction to the court for considering options. He offered to work on such a subsection. He saw another option as going to the tax law and putting in a provision that when an action is brought under the DJA, the options would be available. His objection is that a few parties could speak for many and he thinks the present law sufficient. He went on to say that there are circumstances where courts can give preventive relief.

Sen. Steve Brown said he thought we're after a law that finds a way to repay taxpayers and to give courts flexibility within confines of a particular situation. Larry Weinberg had an additional comment about coordination. He said if a court declared something illegal 1 year and the next year declared it legal, the taxpayer would catch it both ways.

Mr. Mizner said he would like language drafted so that counties can interpret what they can and cannot do.

The Chairman announced he would hold the bill until Sen. McCallum returns. The meeting was declared adjourned.


PAT M. GOODOVER, CHAIRMAN

ROLL CALL

TAXATION

COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/22/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat M., Chairman	✓		
McCallum, George, Vice			✓
Brown, Bob	✓		
Brown, Steve	✓		
Crippen, Bruce D.	✓		
Eck, Dorothy			✓
Elliott, Roger H.	✓		
Hager, Tom	✓		
Healy, John E. "Jack"	✓		
Manley, John E.	✓		
Norman, Bill	✓		
Ochsner, J. Donald		✓	
Severson, Elmer D.	✓		
Towe, Thomas E.	✓		

Each day attach to minutes.

DATE

Jan. 22, 1981

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	SENATE BILLS#	Check One	
			Support	Oppose
Bruce R. MacKenzie	D.A. Dawson Co.	96	✓	
John M. Evans	CITY OF BOZEMAN	96	✓	
Al Teller	city of Billings	96	✓	
Bill Verneff	CITY of Billings	96	✓	
	Continental Bank	96		
Scott Currier	MT. ASSOC OF PRODUCERS	96	✓	
Mac Ann Ellington	City of Missoula	96	✓	
Jack K. Kiser	Montana State	96	✓	
Larry Weinberg	D. O.R.	107		✓
	Continental Bank	96	✓	
TRIXNER Rick Kiser	Montana State	107		✓

(Please leave prepared statement with Secretary)

TO: MEMBERS OF THE SENATE TAXATION COMMITTEE
FROM: CITY OF MISSOULA
RE: SENATE BILL NO. 96
DATE: JANUARY 21, 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.

Your favorable consideration of Senate Bill No. 96 will be greatly appreciated.

It should be noted that the City of Missoula has read the Revenue Oversight Committee Report on Special Improvement Districts; and while we feel there are several inaccurate statements contained in the Report, we do recognize that there is concern about the use of S.I.D.'s. Part of that concern appears to be the extent to which the general taxpayers might be liable for S.I.D. payments. They are not liable for those payments! But to the extent the general fund taxpayers are taxed to fund the revolving fund to lend money to the district, this bill should alleviate the need for the general fund levy.

Respectfully submitted,

Mae Nan Ellingson
Mae Nan Ellingson
Missoula Deputy City Attorney

MNE/jd

January 22, 1981
Room 415

TESTIMONY PROVIDED BY AL THELEN TO THE SENATE COMMITTEE ON TAXATION
REGARDING SENATE BILL 96.

My name is Al Thelen. I am the City Administrator for the City of Billings, Montana, and I appear before you today on behalf of the City of Billings.

The City of Billings supports SENATE BILL 96 because it will provide another option to raise capital at a time when it is very difficult to find the funds necessary to make special improvements to accommodate community improvements. The City of Billings has a policy at the present time that requires the owners and/or developers of a new subdivision to make a contribution of 5% of a proposed special improvement district bond issue to the Revolving Fund before the City will authorize the issuance of such bonds. The City policy states that if the development is 25% or more developed, that the contribution to the Revolving Fund is not required. The latter provision was made in order to allow the owners of property within older districts to use this method of financing public improvements. Our policy would be more equitable and easier for us to administer if we could include the 5% contribution of multiple districts to come out of the proceeds of the bond issue. This would further allow the Revolving Fund to receive money from all of the owners of property benefiting from the improvements as opposed to a general tax levy on all property.

I urge you to favorably consider SENATE BILL 96. Thank you.

COMMISSION RESOLUTION NO. 2300

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, EXPRESSING SUPPORT OF AND URGING PASSAGE BY THE MONTANA LEGISLATURE OF SENATE BILL NO. 96, "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."

WHEREAS, the purpose of a Special Improvement District Revolving Fund is to secure prompt payment of any special improvement district bonds or sidewalk, curb, and alley approach warrants issued in payment of improvements made therein and the interest thereon as it becomes due; and

WHEREAS, the present sources of money for the revolving fund are limited to transfers from the General Fund and a special tax levy on all taxable property of the City, and both sources impose a financial burden on all taxpayers of the City; and

WHEREAS, special improvements by their nature and intent primarily benefit only a limited specific geographic area of the City; and

WHEREAS, Senate Bill No. 96 provides an option, deemed practical, fair and reasonable, to alleviate the imposition of City-wide tax levies to support the special improvement district revolving fund.

NOW, THEREFORE, BE IT RESOLVED that the City Commission of the City of Bozeman supports and urges passage of Senate Bill No. 96 by the Montana Legislature 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.

PASSED AND ADOPTED by the City Commission of the City of Bozeman, at a regular and stated session of said City Commission, held on the 21st day of January, 1981.

Mayor

ATTEST:

Samuel D. [Signature]
Clerk of the City Commission