

MINUTES OF THE MEETING  
TAXATION COMMITTEE  
MONTANA STATE SENATE

February 25, 1981

The thirty-fifth meeting of the committee was called to order at 8:00 a. m. in Room 415 of the State Capitol Building, Chairman Pat Goodover, presiding.

ROLL CALL: All members were present except for Senator Healy.

CONSIDERATION OF SENATE BILL 447:

"AN ACT TO ALLOW OWNERS OF LAND IN A PROPOSED SPECIAL IMPROVEMENT DISTRICT TO PETITION FOR AN ELECTION AT THE NEXT REGULARLY SCHEDULED ELECTION ON THE QUESTION OF WHETHER THE DISTRICT MAY BE ESTABLISHED."

Senator Aklestad, District 6, said this bill gives the people some input if they desire not to have a SID but still not to redistrict. City council will start the bill and it would be tough to have them have an election for an SID, but smaller towns could circulate a petition--25% of signatures in SID, then it would go to an election. He emphasized that, if the people were in agreement with the council they could go ahead. Opponents: Mae Nan Ellingsen, testimony attached. Attachment #1.

- 1) unnecessarily restricts the city's ability to create a SID.
- 2) imposes possibility of minority rule.
- 3) eliminates necessity for SID's.

She didn't feel this bill gives any more protection than persons already have and in many ways it reduces that protection and allows 25% to thwart the rest. When a city undertakes to create an SID, (1) it passes resolution of intention and has to do three things: a) defines boundaries; b) designates character of improvements; c) gives approximate cost; (2) Notice must be given, notice is sent to every owner of property telling about resolution of intention. Property owner has fifteen days to protest the SID. Council cannot hold public hearing until fifteen days after notice has been received. If owners of more than 50% of the property to be assessed file a written protest, the city council can go no further for six months. If there is not sufficient protest, the city can create the SID. Once resolution is passed, it's not effective for thirty days. People can circulate and subject SID to referendum. SB 447 does not seem to achieve extra protection. Under law, the person who protests is the owner of the property in which the assessment is to be made. Sometimes the person may not be a registered elector. Election offices in the state have no record of whether a person registered owns property. It would be a difficult task for the elections office to come up with this information to determine who could vote. The bill would create conflict between the rights of the property owner who may not be a registered voter. The impact would allow 25% of resident electors to put creation of SID on the

ballot. When an SID is passed, resolution has to be mentioned, and we have to say how much improvement will cost. Supreme Court has held that there cannot be much of a variation between what you told than when doing the resolution and what it will cost them. If you are subjecting this SID to no further action until next election, you may be talking about one to two years down the road and the cost will change. By putting it on the ballot, they have effectively killed the SID and they can effectively block it everytime even if 59% choose to vote. The bill creates headaches and doesn't go far in protecting the interest of the property owner. Senator Aklestad closed by asking the committee to refer to page 2, line 5 where it says "property owner." He reminded them that an SID can go through if there is no petition circulated around. If 25% sign the petition, then it will have to go to an election. The elderly will sign a petition rather than file a protest. I think that is more access to the people. When there are protests, people are put on the defensive all the time. I would like to emphasize it does take 50% of the people to put this in.

TOWE to AKLESTAD: Was it your intent to have two separate methods?  
Answer: Yes, specifically because large towns have many SID's every year. The small towns I represent want a vote right away.

TOWE to AKLESTAD: How do you respond to a court case that requires an estimate of costs to be 7 1/2%, that by this petition and election you have so much time going by that you can't accurately estimate costs? Answer: I don't believe the time span is that great. People still have to go to the council. Senator Aklestad said there are general, primary, and school elections.

TOWE: How about the point that it's difficult because property owners and registered voters may not correspond? Answer: The expense will be handled from the general fund of the city.

ECK: Have you discussed this with an election administrator.  
Answer: They have indicated it was impossible for them to have elections for fire districts, etc., and I would think they would consider this to be the same impossibility.

CRIPPEN: If this bill would gain favor, would you accept an amendment that would support certain cities? Answer: Yes. I have talked with the chairman and I am willing to work it into another bill.

Senator Goodover announced that SB 447 had been put in a sub-committee and Senator Aklestad indicated his willingness to work with the sub-committee to incorporate this in another bill. The hearing was closed on SB 447.

#### CONSIDERATION OF SENATE BILL 460:

"AN ACT TO REQUIRE THE COUNTY ASSESSOR TO RELEASE THE  
ROLLBACK TAX LIEN WHEN THE ROLLBACK TAX HAS BEEN PAID."

Senator Graham, District 29, said that he has been told that there

is no way to be able to release a rollback tax lien once it has been paid. There were no proponents or opponents--questions from the committee were called for:

TOWE: We do not affect, in the repealer of the rollback, the taxes already paid; and there is some merit by which those people could get a lien release. The hearing was closed on SB 460.

CONSIDERATION OF SENATE BILL 466:

"AN ACT TO REVISE THE MOTOR VEHICLE DEALER LAWS BY CHANGING THE FEES: REVISING DISTRIBUTION OF DEALER PLATES: PROVIDING FOR DEMONSTRATOR PLATES AND USES; PROVIDING FOR RECREATIONAL VEHICLE DEALER LICENSING."

Senator Graham, District 29, said this attempts to figure out some new deal on dealer's plates. There has quite a lot of abuse in dealer plates, RV plates, auto, etc., Trying to figure out an equitable way to handle dealer abuse. There is a fiscal note with this bill. I have Jerry Roenig and Larry Huss here to deal further with the bill.

Testimony by Jerry Roenig, Montana Automobile Dealer's Association: The intent is to set up a new classification for RV dealers. They would be licensed separately from new car and truck dealers and provided a distinctive plate--this changes the system using "D" plates. The formula limiting the number of plates is on page 6, lines 3-10, and would allow the dealer enough for his operation. Plates would be issued from DMV and, if it has a sticker on it, it's o.k. This bill nails down who can use these. In addition to that, those dealers would obtain demonstrator plates at basically the cost they are now. Demonstrator plates would be used if a customer wants to drive another car without dealer plates for road resting, etc.,

Larry Huss, an attorney representing MADA, said there were corrections to the bill. He went through various amendments with the committee but said he would furnish the amendments in typewritten form at a later date.

Larry Jajerus, Administrator of Motor Vehicle Division, said that the bill 1) sets aside RV dealers. Some people use this as a cheap way to get into the business of selling RV's. 2) Dealer vs. Demonstration plates. Some go with the demonstration permit instead of plate. Trying to tie sales in with the dealer plates. I support amendments to the bill. The fiscal note was prepared while Mr. Majerus was out of town, and he suggested that the amount of money raised would be much less than one-half of what is stated. There were no opponents to the bill--questions were asked for.

CRIPPEN: Senator Crippen said he would appreciate amendments in a more readable form. He wondered how this would affect county coffers. Mr. Huss said that there is no effect on coffers because fees go to State Motor Vehicle Division.

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Senator Goodover said in the new language spouse's were included as drivers using dealer plates. He didn't think that should be in there. Larry Huss felt that spouses would only use them occasionally or in the course of the business, if they were employed by the dealership. He didn't feel that records would be falsified so that other members of the family could take advantage of the law. Senator Towe thought a better distinction could be made between dealer and demonstrator plates. The hearing was closed on Senate Bill 466.

CONSIDERATION OF SENATE BILL 457:

"AN ACT TO ALLOW AN INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS TO A NONPROFIT CORPORATION, FUND, FOUNDATION, TRUST, OR ASSOCIATION ORGANIZE AND OPERATED EXCLUSIVELY FOR THE BENEFIT OF NONPROFIT INSTITUTIONS OF HIGHER LEARNING OR NONPROFIT PRIVATE INSTITUTIONS OF ELEMENTARY OR SECONDARY EDUCATION."

Senator Dover said this bill is to encourage support for private and non-profit organizations in schools and is a tax incentive bill that doesn't take a lot from any one individual. It could amount to quite a bit. It is a credit against the tax to help financing for these private institutions and for public institutions on a voluntary basis. A state institution has to be above twelvth grade; a private one has to be approved by the Board of Education. This bill gives an individual who might want to give some incentive to finance the same.

PROPOSERS:

Bob Korthuis, Association of Nonpublic Schools of Montana, and principal of Manhattan Christian School gave the testimony attached. (Attachment 2). He gave seven reasons for supporting the bill: 1) The bill would encourage pluralism in the American society; 2) the bill would not aid the institution but give aid directly to parents; 3) the bill guarantees freedom of religion, not from religion, means to keep state and church separate; 4) the system is unjust that forces me to have my child educated within the secular humanism framework--there is no such thing as a neutral position in education; 5) it does not take money out of public coffers for it wouldn't have been there to begin with; 6) a non-public school provides a considerable savings to the public; 7) the bill would encourage higher quality education among nonpublic schools as it requires school accreditation for qualification for the credits.

Sister Mary Editha Brown, representing the Catholic Schools of eastern Montana, gave the attached testimony. (Attachment 3).

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OPPONENTS:

Alve Thomas, Deputy Superintendent, Office of Public Instruction submitted testimony. Testimony is attached. (Attachment 4).

David Sexton, Montana Education Association.

Ellen Feaver, Director of Department of Revenue, appeared neither as opponent or proponent, pointing out three things to consider: 1) not clear to her whether credit will give deduction and credit, or one or the other; 2) charitable contributions are not allowable to corporations. This bill provides credit for corporations; 3) she thought committee might wish to consider statement of intent stating whether or not amount given to these private institutions could result in decreases in tuition.

Senator Dover concluded by saying this is not something new but it has been used in other states. It is mentioned that this is an appropriation. This is an opportunity for someone to get credit for giving support to private schools as well as the public. Diversion of funds: If public schools had to be for all students going to private schools, we would be paying lots more. We need to get benefits from these private students that someone else is paying for.

The meeting was adjourned at 9 a. m.

  
PAT GOODOVER, Chairman

ROLL CALL

TAXATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/25/81

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 Feb. 25, 1981

COMMITTEE ON

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

To. Members of Senate Legislation Committee  
 From. Mae Max Ellingson for the City  
 of Minneapolis

Re. S.B. 447

The City of Minneapolis is strongly opposed to Senate Bill - 447 in that unnecessarily restricts the City's ability to create an S.D., it imposes the possibility of minority rule, and it could considerably eliminate the use of S.D.s in some instances.

The apparent purpose of this bill is to protect the citizens within a proposed Special Improvement District from being assessed for an improvement they do not want. In actuality the bill does not give these persons any greater protection than they already have, it merely strips it reduces that protection, and it allows for a very small minority to thwart the wishes of the majority in a proposed district.

By way of explanation of that statement, let me briefly explain the steps a city must go through in order to create a S.D.

1. After receiving a petition requesting the S.D.  
 1. The City must pass a Resolution of intention to create the Spec. Imp. Dist.

This Res. must describe the  
 (1) boundaries of the district, (2) the character of the improvement and (3) the approximate cost of the improvement.

2. The Council must give notice of the passage of this Res. to the  
 is done in 2 ways: (1) publication in a newspaper and (2) mailing a letter to each



person, firm having real property  
within the district.

The notice must <sup>also</sup> state the nature of the improvement,  
the cost & the time and  
place where the council  
will hear on the protest.

The Council must then conduct  
Public Hearing - after the 15 day  
time has expired for the  
filing of written notice of protest.

If the owners of more than  
40% of the area of property so  
assessed, ~~the~~ <sup>the</sup> object, the  
- cannot create the L&D or propose  
it for 6 months.

If there is not sufficient  
support, the Council can then  
cancel the L&D by a Resolution.

That Resolution according to  
Rule 40, of Rule 7, Chapter 5 is  
not effective until 30 days after  
its passage, and during that  
time, it is subject to a referendum.

It is difficult for me  
to see how <sup>the</sup> property  
owners within the district need  
greater protection than this.  
All the individual property  
owner has to do in order  
to protest the L&D, is to simply  
write a letter or note to the  
City Clerk indicating he or  
she protests the creation of  
the L&D. That is, in my  
opinion, a much easier method  
for the taxpayer to protect  
himself than circulating a  
formal petition and then  
going to vote at an election conceivably  
several months later.

But, surely you assume  
that the taxpayer needs more protection

from whoever, his neighbors, himself. You must ask is SB447 the way to achieve that protection.

It clearly is not for the following reasons:

1. The bill mixes two entirely different citizen interests: resident electors and property owners.

Currently, the election offices have absolutely no records showing whether registered electors are property owners. Hence the US Supreme Court has ruled that such property ownership is not a requisite to vote.

What about the property owner who is not a registered elector.

2. The election itself would be costly and difficult to administer in determining who is eligible to vote since SD boundaries are not related in any way to precinct boundaries.

3. This bill would allow 25% of the electors to <sup>effectively</sup> ~~kill~~ a SD by simply filing the petition seeking for an election.

As I indicated earlier, the City Council must pass a Res of fat and publish notice of that action. The Montana Supreme Court in Kaibab City of Helena stated in 1957 that the primary purpose of that Res. was to let the people affected know the cost of the improvement.

In that case, the costs of the proposed improvement had increased <sup>markedly</sup> by 1/2 from the time of the passage of the Res of fat to the time the bids for the work

were received. The Court ruled that the costs could not be increased by 7 1/2% without going through the entire procedure again; that is passing a new Res of Intention and the giving of notice. The Court ruled that the notice must be sufficiently definite to apprise the landowner of the cost of the various movements.

It appears to me submission of the issue of the creation of an SPD at the next regularly scheduled meeting could result in estimates that are as much as 20 years old. So, even if approved by the majority, the Council could have to begin anew since the costs are very likely to have changed, at least as much as the 7 1/2% in the Leitch case.

Thus, simply by getting the issue on the ballot, a minority, a very small minority could thwart the desires of the majority.

In summary, this bill causes so many problems and really seeks to protect no interest that is not already protected.

Please do not pass SB 447.

Honorable Chairman and members of the Committee:

For the record, I am Bob Korthuis, principal of Manhattan Christian School, President of the Association of Nonpublic Schools of Montana, and its registered lobbyist. Our association represents some 5,000 elementary and secondary students of the state of Montana, as well as about that many parents. We support SB 457 endorsing the concept of income tax credits for the following reasons:

1. This bill would tend toward the encouragement of pluralism in American society. Our country was founded upon the principle of freedom of choice, but this is being hampered practically speaking because of the inability of parents to jointly fund the public school system through their taxes and the system of their choice through some form of taxation.

2. This bill would not, first of all, aid an institution offering private education but rather give aid directly to parents making the choice.

3. The premise that such a bill would aid the establishment of religion and thereby violate the principle of separation of church and state guaranteed by the first amendment is a faulty premise. This amendment guarantees freedom of religion, not freedom from religion. It was meant to keep the state and the church separate as institutions not to keep religious principles out of American society.

4. If you must on non-support for parents wishing to have their children educated in light of Christian principles, then I submit to you that you consider the injustice of a system that forces me to have my child educated within the religious framework of secular humanism. There is no such thing as a neutral position in education.

5. This bill would not take money out of public coffers for this money would not have been there to begin with.

6. The nonpublic school provides a considerable savings to the public and this goes much beyond the amount granted by this bill.

7. Historically speaking in America, education started out by being based upon religious principles and this at public expense.

8. This bill would encourage higher quality education among the non-public schools for it requires school accreditation for qualification for the credits.

I am appreciative for the opportunity to speak in support of SB 457.

WITNESS STATEMENT

Name Sister Mary Editha Brown Date February 25, 1981  
Address 121 So. 23rd S. Great Falls Support ? Yes  
Schools  
Representing Catholic  Eastern Montana Oppose ?    
S.B. 457  
Which Bill ?   Amend ?

Comments: I am Superintendent of Schools in Eastern Montana, Diocese of Great Falls-Billings. (17 elementary, 2 Junior High, 3 High Schools) I present rationale for your consideration of S.B. 457.

The catholic schools go hand in hand with the public schools in their concern that the product of their schools are responsible, civic minded productive citizens of this country, and of this state. The products of catholic school education enter into every type of service to the people. The catholic colleges, hospitals, orphanages, social services are all an outgrowth of catholic education.

How do we do this? It's simple. Catholic and other parents choosing to use our schools, pay their taxes and their levies to support the public education system. Then in exercising their freedom of choice they elect to use the catholic school for their children, thereby not using one cent of public money for their own education, thereby freeing their own and other tax money for use in the public sector. Lets speak in terms of dollars. This current school year, the parents of catholic school children in Eastern Montana have freed their own children's cost of education plus, have paid the private school. The per pupil cost in the state, times the number of students in elementary and secondary catholic schools in Eastern Montana has saved the state over \$5,000,000. Cost that would have to be raised if the catholic schools did not exist. Over \$7,000,000 if the catholic schools in Eastern and Western Montana are included. Products of catholic schools are not against public education   , they have and will continue to support both, but the passage of S. 457 would be a witness to the recognition of what these people do for the great state of Montana.

The dollar value of the bill is minimal. The public school would lose only \$12.50. What is that when compared to the millions of cost dollars the state is saved by the contribution of parents in providing their own schools, recognized and accredited by the state.

The bill protects quality education in its condition of accreditation. The opposition will worry over loss of money for public schools. I have pointed out the millions in contribution by parents of catholic school children. Opponents will question the constitutionality of the bill. I Please leave prepared statement with the committee secretary.

432 that you pass this bill and let the constitutionality be tested at the level to which it belongs.

The American system of education that has in-built penalty for those who elect to use their freedom of choice in selection of schools, is akin ~~only~~ only to education in communist dominated countries. ~~Canada~~ Canada, our northern neighbor has an absolutely equitable system that provides all education tax money to the school of parental choice. Passage of S.B. 457 would be a tremendous witness to the equality and freedom of choice that we so proudly boast.

For those who are concerned about division. Three weeks ago our catholic newspapers carried a story and a letter to the people, reminding them of their obligation to support public education and urging them to support local referendums and levies. We are concerned about our state and our country.

I ask that you pass into the legislature this bill, after fully considering the monumental contribution catholic education has made to the state. For example, the Sisters of Providence who operate the College of Great Falls, have poured 80 million dollars into the continuance of the College, thus saving the high institutions of the state that amount plus all of the other total cost of education. Thereby freeing that much money for use by those using State institutions.

WE will continue to provide services, to support referendums and levies as we ask for only token recognition of freedom of choice in this bill, because even though it might seem a fecitious way to put it, we do believe in "rendering unto Caesar."

Thomas Arcusa Typing



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL  
HELENA, MONTANA 59601  
(406) 449-3095

Ed Argenbright  
Superintendent

February 23, 1981

To: Senator Pat Goodover, Chairman  
Senate Taxation Committee

From: Alve Thomas, Deputy Superintendent  
Office of Public Instruction

Re: Senate Bill #457

A handwritten signature in cursive script, appearing to read "Alve Thomas", is written over the "From:" line of the letterhead.

The Office of Public Instruction opposes the tax credit bill for private elementary and secondary schools for the following reasons:

1. Montana public school foundation program presently receives 25% of individual income taxes and 25% of corporation income tax revenues. This bill would reduce the total amount received and the tax credit would go to private schools.

Under present tax laws all other contributions to nonprofit institutions are considered as deductions. This legislation would grant a tax credit.

2. Senate Bill 457 requires that a school be accredited to be eligible for tax credit. Consequently, the tax credit would not be distributed equitably as private elementary schools are not eligible to be accredited by the Board of Public Education. Under the provisions of this bill only those donating to private secondary schools or schools of higher education would be eligible for the tax credit.

The ten private secondary schools that now are accredited by the Board are all sponsored by a religious denomination. We question the constitutionality of granting a tax credit to a sectarian school.

Article X Section 6 of the Montana constitution states "(1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

We believe that private schools are a very necessary part of the educational offerings of this state and should continue to exist and offer an alternative to public education. We further believe that those who choose to send their children to private schools or to donate to private institutions should be willing to pay for that cost.

/dkk