

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 16, 1983

The twenty-eighth meeting of the Taxation Committee was called to order at 8 a.m. by Chairman Pat M. Goodover in Room 415 of the Capitol Building.

ROLL CALL: All members were present. (Senator Halligan was excused later in the meeting and was absent when the roll call votes on SB 376 and SB 243 were taken.)

CONSIDERATION OF SENATE BILL 334: Senator Tom Hager, Senate District 30, was the sponsor of the bill. It allows the use of partial area assessment, assessed value assessment, or street frontage assessment for county rural improvement districts.

PROPOSERS

William L. Romine, representing the Clerks and Recorders Association, said the intent of the bill is to allow boundary and assessment districts to be two different things. See Exhibit A. You may have two different values of a lot on a particular improvement. In the Montana Attorney General's Opinion dated February 1, 1982 (Vol. 39, Opinion No. 48), Attorney General Mike Greely said under present law you can not have two different areas--the boundary area and the assessment area must be the same. See Exhibit B. SB 334 says you can use different boundary areas and assessment areas. The purpose is to equalize regarding delinquent taxes.

Merrill H. Klundt, Yellowstone County Clerk and Recorder and chairman of the Montana Association of Clerks and Recorders Legislative Committee, submitted written testimony attached as Exhibit C.

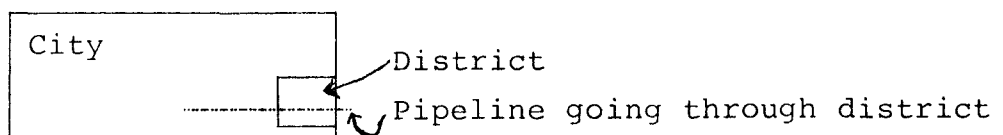
OPPOSERS

There were no opposers to SB 334.

Questions from the committee were called for.

Senator Turnage asked what the county clerks and recorders had to do with this bill. Mr. Klundt indicated that he was asked to present this.

Senator Turnage said an alternative would be to create a district for a small area, as in the diagram below.



The intent is to provide different methods of assessment based upon the value you will receive. In the diagram, those living within the small district would pay less than those who are receiving the benefit.

Senator Crippen was concerned about ability to protest. Under the present way, we can protest based on 51% of land area. Mr. Klundt said that under present law, boundaries can only be assessed by boundary. You go on total square footage, with the assessed value to be on land with no improvements.

Senator Crippen said there should be a direct relationship between protest and the amount of taxes they have to pay.

Senator Mazurek asked Mr. Romine what problem the Attorney General's opinion had caused.

Senator Towe asked how the catchall clause (d) in Section 1 was going to be accomplished, or if there would be an agreement by everybody before it was done. Mr. Klundt responded that they wanted to go by assessed value.

Senator Towe asked if Mr. Klundt was suggesting that the Attorney General's proposal would be used unless all owners consented to a different method.

The hearing on SB 334 was closed.

CONSIDERATION OF SENATE BILL 80: Senator Tom Hager, Senate District 30, was the sponsor of this bill also and said it is a companion bill to SB 334; if one passes, the other should pass also.

PROPOSERS

Merrill Klundt, Yellowstone County Clerk and Recorder, said this is a follow-up bill which says that no matter what method of assessment is used, you would use the method in SB 80 for maintenance and operation.

Bill Romine, representing the Clerks and Recorders Association, submitted written testimony, attached as Exhibit D.

OPPOSERS

There were no opposers to SB 80.

Questions from the committee were called for.

Senator Norman asked why the bills were tied together. Mr. Romine said that if SB 334 passes, you have to tie your annual assessments back to the original method.

The hearing on SB 80 was closed.

CONSIDERATION AND DISPOSITION OF SENATE BILL 342: Senator Delwyn Gage, Senate District 7, was the sponsor of this bill. It changes the date for filing reports for gas and oil pipelines and gas and oil net proceeds. The pipeline people have additional problems in that they have energy reports and ICC reports to file at the same time. There is also a bill in to deal with the windfall profits tax and royalty holders.

PROPOSERS

Don Allen, representing the Montana Petroleum Association, said he had received several calls with concerns about the ability to meet the proposed deadline. The Department of Revenue changed their policy and made a statement saying no further extensions on filing these reports would be granted. After that, many of the filers could not meet the deadline, and they had to pay big penalties. Everyone has to move in concert by a certain date. He said he was not here just to say, "make it easier." They worked with the PSC staff regarding their requirements and came up with suitable arrangements with them. Last session, they worked with DNRC regarding energy resource reports that must be filed with them.

OPPOSERS

John Clark, deputy director of the Department of Revenue, said the Department of Revenue has taken that posture because they have a statutory deadline to turn assessment books over by the first of July. If this passes, give us extra people or give us an extension to turn over the books, he asked.

Questions from the committee were called for.

Senator Elliott asked who the reports went back to. Mr. Clark said the books are certified by the Department of Revenue and then returned to the county clerks and recorders.

Senator Norman asked how long the counties had before they had to use the books. Mr. Clark said the clerks and recorders need them back by the first Monday in August for budget considerations.

Senator Lynch asked Mr. Clark if it would kill the Department if the committee passed SB 342, and Mr. Clark said no.

Senator Towe asked Mr. Clark what the Department does that takes more than 60 days. Mr. Clark said he didn't know. A thousand papers come in that have to be checked out and cross-checked with other information.

Mr. Allen added that they check to make sure the right deductions are taken, verify arithmetic, etc. He said he was told the Department has been in the process of computerizing and could do the job faster.

Senator Lynch suggested splitting the difference, giving an additional two weeks. He moved that the following amendments be adopted:

Title, line 6.
Following: "APRIL"
Strike: "30"
Insert: "15"

Page 1, line 20.
Strike: "30"
Insert: "15"

Page 2, line 25.
Strike: "30"
Insert: "15"

The motion was seconded and passed unanimously.

Senator Mazurek then moved that SB 342 DO PASS AS AMENDED. The motion was seconded and passed unanimously.

CONSIDERATION OF SENATE BILL 376: Senator Dorothy Eck, Senate District 39, sponsored the bill and said the graduated income tax is the fairest tax of all. People want their property taxes reduced. They say it's regressive and should use income tax. Within the committee and in society, there are differences in philosophy on what we want taxes to accomplish. We have people who want to cut taxes in order to encourage the activities we want. Last year, we launched a major tax reform program and we cut taxes amounting to \$20 million in each year. If we look back, we came into the last session with enough surplus that we were willing to cut taxes. There were reasons for excluding some of the interest income. Everyone was delighted to see the surtax go. We gave relief to the elderly homeowners and renters. They were not all that equitable. The income tax has become less progressive. The top 10% of the income earners got 25% of the interest exclusion. There were over \$40 million in tax cuts, and the top 10% of income earners got 37% of the cuts. Alternative energy credits were spread over all income brackets, but others go to higher income earners only. This bill rationally adjusts the brackets. Those paying increased taxes under this would be those with taxable incomes over \$18,000. She pointed out that if the state tax goes up, the federal tax goes down.

Senator Eck said she had reviewed some Department of Revenue printouts which showed that in 1981 there were 51 persons with adjusted gross incomes of \$125,000 or more and who paid no taxes. There were 500 persons with adjusted gross incomes of at least \$26,000 paying no taxes. One taxpayer had an adjusted gross income of over \$50,000 and received the elderly homeowner/renter credit. In looking at farm income, 50% of farm income was below \$10,000. As a committee, looking at how we use the income tax, we should look at how it can raise additional revenue for us,

and we should face the fact that we do need it. We should look at the income tax and credits at the same time. In examining the income tax we should not lose sight of the fact that we look at the income tax as the most progressive tax we have, and keep it fair.

PROPOSERS

There were no proposers other than the sponsor.

OPPOSERS

S. Keith Anderson, representing the Montana Taxpayers Association, stated that the governor's budget does not show a need for additional revenues. He has presented a "no tax increase" budget. We don't want to bring in additional spending. Our tax structure was responding to inflation. The legislature is going to spend in revenue. While the government has tripled in revenue, the population has gone up only 15%. Montana ranks 19th in present capacity of income tax collections. The legislature did a great service to eliminate the surcharge last session. SB 376 increases progressiveness when we believe the opposite should come about. Congress has elected for certain deductions. We have various schemes to mitigate the progressive structure of our income tax. This is a penalty on success.

Senator Bruce Crippen, Senate District 33, spoke against the bill, saying it impedes capital formation. You take money earned and it goes into the economy in one of two ways. It goes in through the taxpayer, or it goes in through the government. When the money that we earn comes into society, it has a ripple effect on the economy. For every ripple, it creates wealth. That is what free enterprise is based upon. He said he opposes any type of tax that more than doubles the tax to any taxpayer. We are creating facilities with the money not used to pay taxes. SB 376 won't create jobs.

Questions from the committee were called for.

Senator Hager noted that many businesses are cyclical. You can make \$10,000 of income for two or three years and then you might have a big year. On the federal level you can level out the income, but on the state return, you can't.

Senator Gage said there are two types of tax relief-- tax evasion and tax avoidance. Tax brackets such as those proposed in SB 376 engender both of these. The higher you get, the more apt people are to attempt to evade or avoid paying taxes.

Senator Eck said her bill was a response to indexing. It would not negate indexing. It did away with bracket creeping. These people at the top have no brackets to creep into. We have tax credit proposals before us (\$30 million worth). People investing their money as Senator Crippen does are not in there providing

them with credits, so the money is not there to pay taxes on. The committee should look at where income tax indexing needs fine tuning. It raises revenue and promotes economic development in the state.

Senator Turnage moved that SB 376 DO NOT PASS. Senator Lynch made a substitute motion that SB 376 be tabled. The substitute motion was seconded. Senator Turnage reminded the committee that the administration said it would not approve any general tax increases.

Senator Towe thought Senator Lynch's motion was a good idea. We might want to just table the bill in case something comes up later.

A roll call vote was taken and the motion to table SB 376 passed 8-6 (Senator Halligan being absent at the time the vote was taken). The roll call vote sheet is attached to these minutes.

DISPOSITION OF SENATE BILL 108: Senator Brown moved that the committee adopt the Department of Revenue's amendments submitted when the bill was heard on February 12. (See Exhibits G and H to the February 12, 1983, minutes.) The motion was seconded and passed unanimously.

Senator Brown then moved that SB 108 DO PASS AS AMENDED. The motion was seconded and passed, with Senators Elliott, Gage, Hager, and Severson voting no.

Senator Brown asked those who voted no for their reasons for doing so.

Senator Elliott felt the Department of Revenue did not present a strong enough case for quarterly returns. He thought the bill was unnecessary.

Senator Towe noted that coal taxes are required on quarterly reports. They were going to make the coal taxes payable on a quarterly basis also.

Senator Gage said he voted against the other quarterly one, also. SB 108 will be more work for the taxpayer. Why keep adding more?

Senator Severson felt the legislature was getting penalty happy this session.

DISPOSITION OF SENATE BILL 281: Senator Hager said he would carry this bill on the floor if it gets there. Senator McCallum asked if they wanted to vote to let local governments have the option to tax. Local governments can put anything out to a vote of the people, he said.

Senator Crippen moved that SB 281 DO PASS. The motion was seconded and passed unanimously.

DISPOSITION OF SENATE BILL 247: Senator Lynch moved that SB 247 DO PASS. The motion was seconded. Senator Towe made a substitute motion that SB 247 be amended as follows:

Page 3, line 25.

Following: "applicable"

Insert: "only"

Strike: "retroactively within the meaning of"

Page 4, line 1.

Strike: "1-2-109"

Page 4, line 2.

Following: "1983."

Insert: "It is to be applied retroactively within the meaning of 1-2-109 for such periods."

The motion was seconded.

Senator Turnage asked if it was the intent that the bill have no prospective application. Senator Towe replied that it should be applied only to those taxable years. Senator Himsl's bill and others take care of 1983 forward.

A voice vote was taken on Senator Towe's substitute motion to amend, and it passed unanimously.

A vote was then taken on Senator Lynch's motion that SB 247, as amended, DO PASS. It passed unanimously.

DISPOSITION OF SENATE BILL 227: Senator Towe moved that SB 227 DO PASS. The motion was seconded. This bill allows the first portion of the metalliferous mines license tax to go to the Hard Rock Mining Impact Board and the rest to the general fund. The legislature has to determine how much money goes into it. Page 3, lines 11 and 12, of the bill says "specifically appropriated." It will be about \$104,000 in FY 1984 and \$106,000 in FY 1985. The tax is around \$2 million a year. We could amend HB 718.

A vote was taken on Senator Towe's motion, and it passed unanimously.

DISPOSITION OF SENATE BILL 243: Senator Towe discussed amendments to be made on page 3 of the bill as follows:

Page 3, line 8.

Following: "taxable"

Strike: "years beginning"

Insert: "periods covered by returns due"

Page 3, line 9.

Strike: "1977"

Insert: "1980"

That makes it clear that we are talking about the statute of limitations running for the period governed by the returns due after 1980. It would not have retroactive effect.

Senator Norman asked if fraudulent returns were covered now. Senator Turnage said it covered five years from the date of discovery of the fraud. Senator McCallum thought all of them should have 3-year statutes of limitations. Senator Towe pointed out that all state statutes of limitations are five years. Federal laws have statutes of limitations of three years.

Senator Elliott asked if "fraudulent" was defined in the state statutes. He said the Internal Revenue Code says a return is fraudulent if 25% or more of gross income is not reported. Committee members checked the Montana Code Annotated and found no definition of "fraudulent."

Senator Crippen recalled that George Bennett raised a question concerning retroactivity. Senator Towe said that in the Catepillar case, a 2-year statute would apply if no other statute of limitation was specifically set out. Mr. Bennett said would apply; the Department of Revenue said may apply. In regard to claims based on a state return, and in the absence of any specific statute, that one (27-2-211(c), MCA) governs. James Madison's guidelines made more of a net proceeds tax than a gross proceeds tax. The Department felt that that could not be justified, and now it is gross proceeds again. This bill might allow them to expand their statute of limitations.

Senator Towe moved that the following amendments to SB 243 be adopted:

Page 3, line 8.

Following: "taxable"

Strike: "years beginning"

Insert: "periods covered by returns due"

Page 3, line 9.

Strike: "1977"

Insert: "1980"

The motion was seconded and passed unanimously.

Senator Towe then moved that SB 243 DO PASS AS AMENDED. The motion was seconded, and a roll call vote was taken. The bill passed 8-6, with Senator Halligan being absent at the time the vote was taken. The roll call vote sheet is attached to the standing committee report attached to these minutes.

Senator Severson stated that he would be absent from the meeting on Saturday, February 19, and requested that he go on record as voting in favor of SB 384 and SB 252. Chairman Goodover stated he would allow it this time, but that that was not going to become a practice of the committee members.

Upon motion duly made, the meeting was adjourned at 10:05 a.m.

Chairman

ROLL CALL

SENATE TAXATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2/16 /83

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GOODOVER, CHAIRMAN	✓		
SENATOR McCALLUM, VICE CHAIRMAN	✓		
SENATOR BROWN	✓		
SENATOR CRIPPEN	✓		
SENATOR ELLIOTT	✓		
SENATOR GAGE	✓		
SENATOR TURNAGE	✓		
SENATOR SEVERSON	✓		
SENATOR HAGER	✓		
SENATOR ECK	✓		
SENATOR HALLIGAN	✓		
SENATOR LYNCH	✓		
SENATOR NORMAN	✓		
SENATOR TOWE	✓		
SENATOR MAZUREK	✓		

DATE February 16 , 1983

COMMITTEE ON TAXATION

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

SERVICE TRANSMISSION CERTIFICATE

EXHIBIT A

Feb-16, 198 3

Senate BILL/RES. 334

BILL No. S.B. 334

NAME Bill Romine

ADDRESS Helena

DATE 2-16-83

WHOM DO YOU REPRESENT Clerks & Recordars

SUPPORT X

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: this bill merely allows the District Boundary and the Assessment Boundary To be different. Under an Attorney General ~~affirmative~~ opinion, the present Law does not allow this procedure.

* Page 2, line 21 should be amended by striking the words "If an assessed area assessment is used, it" and insert "the method of assessment"

RURAL SPECIAL IMPROVEMENT DISTRICTS - Assessment of less than all property in district;
RURAL SPECIAL IMPROVEMENT DISTRICTS - Inclusion of portions of individual lots within district;
RURAL SPECIAL IMPROVEMENT DISTRICTS - Enforcement of delinquent assessments;
SUBDIVISION AND PLATTING ACT - Exemption from Act of division which occurs through enforcement of lien for rural special improvement district assessments;
MONTANA CODE ANNOTATED - Sections 7-12-2151, 7-12-2168, 7-12-4161 to 7-12-4165, Title 76, ch. 3.

- HELD: 1. The County Commission has no power to create a rural special improvement district in which only portions of the land within the district will be assessed for the cost of the improvement.
2. The County Commission may create a rural special improvement district including only portions of individual lots in a rural subdivision in order to equalize the benefits and burdens borne by each lot.
3. If only a portion of a lot is included in the district and the owner defaults in paying his rural special improvement district assessment, only the portion of the lot within the district may be sold to satisfy the delinquency.
4. Sale of a portion of a lot to satisfy delinquent rural special improvement district assessments is a division of property "by operation of law" which is exempt from the provisions of the Subdivision and Platting Act, Title 76, chapter 3, MCA.

1 February 1982

Harold F. Hanser, Esq.
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

Montana Administrative Register

4-2/25/82

You have requested my opinion on the following question:

May the county commissioners create a rural special improvement district containing within its boundaries a smaller "assessment area" whose property will bear the entire assessed cost of the improvement?

Your letter and memorandum inform me that the Yellowstone County Commission has proposed creation of a rural special improvement district for the purpose of paving a road into a rural subdivision. The subdivision contains lots ranging in size from two to twenty acres. The commissioners have determined that each lot is equally benefitted regardless of size. They decided to include the entirety of each lot within the boundaries of the subdivision but to assess only an equal sized portion of each lot. The result is the proposed district contains within its boundaries land which is not assessed for the cost of the improvement.

In my opinion, the statutes dealing with creation of rural special improvement districts do not permit this kind of arrangement. Section 7-12-2151, MCA, provides the method by which the cost of an improvement must be assessed against the land within the district boundary:

To defray the cost of making any of the improvements provided for in this part, the board of county commissioners shall adopt the following method of assessment:

- (1) The board shall assess the entire cost of such improvements against the entire district. Each lot or parcel of land assessed in such district shall be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.
- (2) Where said rural special improvement district is located more than 5 miles from the boundary of an incorporated city or town, said assessment may, at the option of the board, be based upon the assessed value of the lots or pieces of land within said district.
- (3) The board in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out

4-2/25/82

Montana Administrative Register

of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(Emphasis added.) In creating a special improvement district, a local government must comply in all respects with the statutory procedures. Shapard v. City of Missoula, 49 Mont. 269, 278-79, 141 P. 544, 547 (1914). The Shapard rule requires the local government to comply with statutory methods of assessing the cost of the improvement against the property in the district. Smith v. City of Bozeman, 144 Mont. 528, 540-41, 398 P.2d 462, 469 (1965). Your proposal for creation of an "assessment area" including only a part of the land within the district boundary is plainly at odds with the legislative provision, set forth in section 7-12-2151, MCA, that the cost of the improvement "shall" be assessed against "the entire district," and that each lot be assessed a percentage of the cost based on the ratio of its area to the total area of the district. Unlike the statutes dealing with municipal special improvement districts, the statute in question here gives the county commissioners very little discretion in selecting a method of assessment. Compare § 7-12-2151, MCA, with §§ 7-12-4161 to 7-12-4165, MCA. Montana law does not allow the method you propose.

You suggest that assessment of the cost on an area basis will result in an unconstitutional inequality between the assessment and the benefit derived by the larger lots. The Montana Supreme Court has found such arguments unpersuasive in cases in which the local government complied with a statutory requirement that the assessment be determined on an area basis. Mansur v. City of Polson, 45 Mont. 585, 594-96, 125 P. 1002, 1004-5 (1912); McMillan v. City of Butte, 30 Mont. 220, 224-28, 76 P. 203, 204-05 (1904). Concededly, in both Mansur and McMillan the Court had before it no proof of equal benefit accruing to differently situated lots. However, even if such proof is present, see, e.g., Larsen Farms v. City of Plentywood, 145 Mont. 509, 402 P.2d 410 (1965), the commissioners are not thereby empowered to violate the law and create an assessment method other than that set forth in the statute. Rather, the commissioners may deal with the problem of equalizing benefits and burdens by including within the boundaries of the district only part of the larger lots which would otherwise bear an unfairly large part of the cost. Ricker v. City of Helena, 68 Mont. 350, 360-61, 218 P. 1049, 1051-52 (1913).

EXHIBIT B

Feb-16 1982

Sen. BILL/RES. 334

4-2

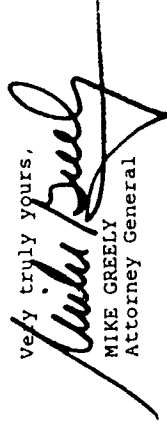
Montana Administrative Register

111, 116-17, 270 P. 638, 640 (1928). In such a case, the lot is divided by operation of the statutes, and not through any affirmative act on the part of the owner. Such a division "by operation of law" is exempt from the requirements of the Subdivision and Platting Act.

THEREFORE, IT IS MY OPINION:

1. The County Commission has no power to create a rural special improvement district in which only portions of the land within the district will be assessed for the cost of the improvement.
2. The County Commission may create a rural special improvement district including only portions of individual lots in a rural subdivision in order to equalize the benefits and burdens borne by each lot.
3. If only a portion of a lot is included in the district and the owner defaults in paying his rural special improvement district assessment, only the portion of the lot within the district may be sold to satisfy the delinquency.
4. Sale of a portion of a lot to satisfy delinquent rural special improvement district assessments is a division of property "by operation of law" which is exempt from the provisions of the Subdivision and Platting Act, Title 76, chapter 3, MCA.

Very truly yours,


MIKE GREELY
Attorney General

4-2/25/82

Montana Administrative Register

While this may not be a wholly satisfactory solution, it appears to be the only option left open by law.

You raise an additional question not reached by the Court in Ricker: In the event the property owner defaults in paying his assessments, may the county execute against and sell the entire lot, or only the portion included in the district? You assert that sale of only a portion of the lot may be workable. Under Montana law, taxes for rural special improvement districts are a lien "against the property assessed." § 7-12-2168(1), MCA. While our courts have not ruled on the question, it appears the general rule is that statutory methods of enforcement of special improvement assessments are exclusive. 88 A.L.R.2d 1250 (1963); see City of Cut Bank v. Clapper Motor Co., 120 Mont. 274, 280, 182 P.2d 474, 476-77 (1947). The Legislature provided a lien against assessed property as the enforcement mechanism, and it is doubtful the courts would permit the county to proceed against the owner's other property to satisfy any deficiency in the security provided by the lien. Since only the portion of the lot within the district is assessed and therefore is subject to the lien, only that portion may be executed against and sold.

You suggest that this conclusion will provide insufficient security for the county. If so, the same result may follow from your proposal to create "assessment areas" within the rural special improvement district. As noted above, the statutory lien attaches only to "the property assessed" under section 7-12-2168(1), MCA. If only a portion of the lot is assessed, it could be argued that only a portion may be subjected to the lien, even if the entire lot is included in the district. If this reasoning is adopted, your attempt to assess less than all of the property will be unavailing. In any event, if the statute provides insufficient security, it is for the Legislature to remedy.

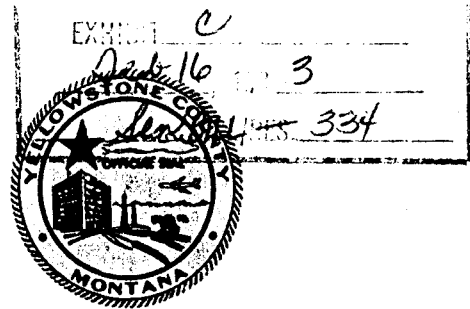
You finally suggest that sale of only a portion of a lot would subject the sale to the provisions of the Subdivision and Platting Act, Title 76, chapter 3, MCA. I disagree. Section 76-3-201(1), MCA, exempts divisions of land resulting from an order of a court or "by operation of law" from the requirements of the Act. Where part of a lot is sold to satisfy a rural special improvement district assessment, the buyer acquires a new title created by operation of the statutes governing enforcement of delinquent assessments. See State ex rel. City of Great Falls v. Jeffries, 83 Mont.

4-2/25/82

Montana Administrative Register

County of Yellowstone

MERRILL H. KLUNDT
Clerk & Recorder



BILLINGS, MONTANA

59101

February 7, 1983

Senator Pat M. Goodover
Chairman, Taxation Committee
Capitol Building
Helena, Montana 59601

Dear Chairman Pat Goodover and Committee Members:

Senate Bill #334 is a bill which provides for additional assessment methods for Rural Special Improvement Districts. Under current statutes the only methods are by square footage basis and assessed value.

This bill provides for square footage basis as described under Section 7-12-2151 (1) (a) Lines 15 - 21, page 1; (b) Frontage assessments Lines 22 - 25, page 1 and Line 1, page 2; (c) Assessed value assessment Lines 2 - 6, page 2 and (d) Lines 7 - 16, page 2, Assessed area assessment, by which the board, to equalize the assessment in a district consisting of different sized lots or parcels that receive benefits equivalent to their size, value or frontage; establishes a method of determining an area less than the total area of each of the lots or parcels of land within the district and that reduced area of each lot or parcel is assessed with that part of the whole cost which its area bears to the area of the entire assessment area of the district, exclusive of streets, avenues, alleys and public places. This will provide the local governing bodies with at least four options instead of two as at the current time.

Sub-section (2). The Board may not adopt an assessed area method of assessment unless it has determined that this manner of assessment bears an equitable relation-ship to the benefits received.

Sub-section (3). I would like to propose an amendment change by striking out the language in Line 21 starting with, "If an assessed area assessment is used it," and insert, "The method of assessment." Therefore Sub-section 3 should read as follows: "The method of assessment is for the purpose of assessment only. The entire area of each lot or parcel is still included within the district and upon delinquency the total lot or parcel is subject to satisfaction of any delinquency."

The purpose of the amendment is so that when any of the methods of assessment under A, B, C and D are used and assessment area is smaller than the outside district boundaries, the entire lot or lots are included within the district and upon delinquency the total lot or parcel is subject to satisfaction of any delinquency.

Yellowstone County Attorney Harold Hanser requested an attorney Generals opinion and on February 25, 1982, Opinion #48, Volume 29 stated the following:

1. Can the board of county commissioners create a rural special improvement district containing within its boundaries a smaller assessment area whose property will bear the entire assessed cost of the improvement? The Attorney Generals opinion states "they are without power to do so." Provision A and B and C of this bill would allow this.

2. Under #2 the Attorney Generals opinion it states "the county commission may create a rural special improvement district including only portions of individual lots in a rural subdivision in order to equalize the benefits and burdens borne by each lot and can be done only under the current statutes on the square footage. The more equitable method would be by provision (d) assessed area assessment and further controlled by subsection (2) Lines 17 - 20.

The opinion only created more problems for local governing bodies by paragraphs 3 and 4, whereby he states "If only a portion of a lot is included in the district and the owner defaults in paying the rural special improvement district assessment, only the portion of the lot within the district may be sold to satisfy the delinquency."

With subsection 3, Line 21 amended to read "The method of assessment is for the purposes of assessment only," the remainder of the language in this section would clarify this existing problem.

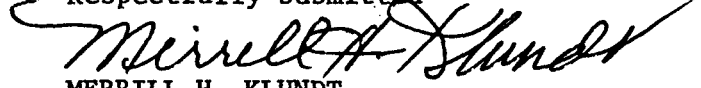
Paragraph 4. The Attorney General states: "The sale of a portion of a lot to satisfy delinquent rural special improvement district assessments is a division of property "by operation of law" which is exempt from the provisions of the subdivision and platting act, Title 76, Chapter 3, MCA." Therefore it would be very apparent that if the county took tax deed to a portion of a lot it could be the owner of this parcel indefinitely. Who would purchase a portion of a lot?

Most rural special improvement districts are created in areas where the lots are $\frac{1}{2}$ acre to 1 acre or more and this is due to the area having one facility such as water or sewer and in many instances neither.

The Attorney Generals opinion never addressed the problem relating to the violation of the State Health and Sanitation Regulations if the parcel is under 20,000 square feet with only one facility or if it has neither.

The proposed bill would rectify these problem areas and I urge your passage and approval.

Respectfully submitted



MERRILL H. KLUNDT

Yellowstone County Clerk & Recorder
and Chairman, MACR Legislative
Committee

WITNESS STATEMENT

EXHIBIT D

Feb-16, 1983 3

Sen BILL/RES. 80

NAME Bill Romine

BILL No. SB 80

ADDRESS Helena

DATE 2-16-83

WHOM DO YOU REPRESENT clerks & Records

SUPPORT X

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: This bill is a companion bill to S.B. 334. If SB334 passes, then SB80 is necessary

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date Feb 16 , 1983 Senate Bill No. 376 Time 9:20

NAME	YES	NO
SENATOR GOODOVER, CHAIRMAN		✓
SENATOR McCALLUM, VICE CHAIRMAN		✓
SENATOR BROWN	✓	
SENATOR CRIPPEN		✓
SENATOR ELLIOTT		✓
SENATOR GAGE		✓
SENATOR TURNAGE		✓
SENATOR SEVERSON	✓	
SENATOR HAGER	✓	
SENATOR ECK	✓	
SENATOR HALLIGAN	<i>Absent</i>	
SENATOR LYNCH		
SENATOR NORMAN	✓	
SENATOR TOWE	✓	
SENATOR MAZUREK	✓	

Secretary: Barbara J. Effing
Motion:

Chairman: Pat M. Goodover

Substitute motion to table SB 376

(include enough information on motion—put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 16 19 83

MR. PRESIDENT

We, your committee on taxation

having had under consideration Senate Bill No. 227

Respectfully report as follows: That Senate Bill No. 227

DO PASS

February 16

19 83

MR. PRESIDENTWe, your committee on taxationhaving had under consideration Senate Bill No. 243Respectfully report as follows: That Senate Bill No. 243

introduced bill, be amended as follows:

1. Page 3, line 8.

Following: "taxable"

Strike: "years beginning"

Insert: "periods covered by returns due"

2. Page 3, line 9.

Following: "31,"

Strike: "1977"

Insert: "1980"

And, as so amended

DO PASS

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date Feb 16, 1983 Senate Bill No. 243 Time 10:00

NAME	YES	NO
SENATOR GOODOVER, CHAIRMAN		✓
SENATOR McCALLUM, VICE CHAIRMAN		✓
SENATOR BROWN	✓	
SENATOR CRIPPEN		✓
SENATOR ELLIOTT	✓	
SENATOR GAGE		✓
SENATOR TURNAGE		✓
SENATOR SEVERSON	✓	
SENATOR HAGER		✓
SENATOR ECK	✓	
SENATOR HALLIGAN	<i>Absent</i>	
SENATOR LYNCH	✓	
SENATOR NORMAN	✓	
SENATOR TOWE	✓	
SENATOR MAZUREK	✓	

Secretary: Barbara J. Effing
Motion:

Chairman: Pat M. Goodover

Moved That SB 243 as amended do pass.

(include enough information on motion—put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 16

19 83

MR. PRESIDENT

We, your committee on taxation

having had under consideration Senate Bill No. 247

Respectfully report as follows: That Senate Bill No. 247

introduced bill, be amended as follows:

1. Page 3, line 25 through page 4, line 1.

Following: "applicable"

Strike: "retroactively within the meaning of 1-2-109"

Insert: "only"

2. Page 4, line 2.

Following: "1983."

Insert: "It is to be applied retroactively within the meaning of 1-2-109 for such periods."

And, as so amended,

DO PASS

JL

STANDING COMMITTEE REPORT

February 16

19 83

MR. **PRESIDENT**

We, your committee on **taxation**

having had under consideration **Senate** Bill No. **281**

(Hager)

Respectfully report as follows: That **Senate** Bill No. **281**

DO PASS

24 24

February 16 19 83

MR. PRESIDENT

We, your committee on taxation

having had under consideration Senate Bill No. 342

Respectfully report as follows: That Senate Bill No. 342

introduced bill, be amended as follows:

1. Title, line 6.

Following: "APRIL"

Strike: "30"

Insert: "15"

2. Page 1, line 20.

Following: "April"

Strike: "30"

Insert: "15"

3. Page 2, line 25.

Following: "April"

Strike: "30"

Insert: "15"

And, as so amended,

DO PASS