

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 26, 1985

The fifty-seventh meeting of the Senate Taxation Committee was called to order at 8:03 am by Chairman Thomas E. Towe in Room 413-415 of the State Capitol.

ROLL CALL: Senator Hager joined the committee at 8:15 am, Senator Brown at 8:25 am; Senator McCallum at 9:05 am. All other members were present at roll call.

CONSIDERATION OF HB 616: Representative Jan Brown, House District 46, was recognized as chief sponsor of the bill. She said the bill would allow for the creation of a business improvement district, much like special improvement districts are now created.

PROPONENTS

Mr. Pat Melby, representing the Helena Improvement Society, said the bill is a tool that will help encourage private investments. He said the bill needed amendment and discussed how the amendments would work (Exhibit 1).

Mr. Bill Verwolf, City of Helena, said he agreed that the amendments improved the bill and that the city supported the bill. He said this legislation is the top priority for the city. He said it gives the business community a self help mechanism for which the city acts as an agent.

Mr. Greg Jackson, Urban Coalition, said they are in favor of HB 616. He mentioned related bills.

Ms. Carol Daly, President of the Montana Economic Development Association, said that in a poll of their own membership and 1000 other businesses, there was overwhelming support for HB 616. She said they urge passage with amendment.

Mr. Larry Douglas, Department of Commerce, Business Assistance Division, said that research in other states indicates that this kind of legislation is effective. He noted that the legislation is permissive and allows a partnership between the public and private sectors. He said that those who conceive the legislation are held responsible for its functioning. He said that the amendments streamline and clarify the bill.

Mr. Gordon Morris, Montana Association of Counties, said the benefit had been outlined by others and that MACO supported the bill.

Mr. Roger Young, Great Falls Area Chamber of Commerce, said this would give businesses a tool to harness themselves for their own benefit.

Mr. Alan Nicholson, Helena Improvement Society and Helena Chamber of Commerce said they have worked now for four years to pass this bill.

Mr. Clark Pyfer, speaking for Ed Jasmin and the Montana Ambassadors, said that they enthusiastically support the bill.

OPPONENTS

None were heard.

Questions from the committee were called for.

Mr. Melby clarified for Senator Halligan that the duration of the business improvement district would be 10 years unless otherwise specified by the resolution that created it. He noted that 10 years was the maximum allowed without the creation of a new district.

Senator Eck asked about the protest provisions wanting to know on what the 50 percent would be based. Mr. Melby responded that it was his understanding that it would be based on taxable value. He said the amendments could address that more specifically if necessary.

In response to another question by Senator Eck, Mr. Melby explained that the governing body first forms a work plan, then prepared a budget and finally decides the manner of assessments. He said the local government entity can adjust this before adopting the plan. Senator Eck said that perhaps the protest method could be decided at that point as well because protest would be premature before the assessment method was determined.

Mr. Melby, in response to a question from Senator Lybeck, said that compensation could not accrue to any individual.

Senator Neuman felt that local government would receive criticism for a tax increase. Mr. Melby responded that this would represent a broader group of people seeking to tax themselves. He said it should be viewed as enabling legislation. He likened it to a special improvement district.

Representative Brown, in closing, said that she had served for one year as president of the Helena Downtown Merchants Association. She said this bill would be an effective tool for a better downtown. She said that if the bill passed, she would request that Senator Mazurek carry the bill.

CONSIDERATION OF HB 696: Representative Les Kitselman was recognized as chief sponsor of HB 696. He said the bill would repeal a rule adopted by the Department of Revenue in December of 1984. He said the enactment of the rule would raise the valuation on Mountain Bell by 23 percent and on Montana Power by 40 percent. He said that if the repeal is not done it will leave everyone in an uncomfortable situation that could require litigation to resolve.

PROPONENTS

Mr. Dennis Burr, representing Mountain Bell, said that the Department can currently look at replacement cost depreciated as akin to market

value. He said that is not workable as utility property has no value on the market and is not sold in that manner. He said to enact the rule would increase utility taxation more than intended by the legislature.

Mr. John Alke, Montana-Dakota Utilities, said that the Department has consistently indicated its preference for replacement cost. He said that there is no market value, however, for utility property. He said that their valuation must be based on capitalization and that applying replacement cost is unacceptable.

Mr. Gene Phillips, Pacific Power and Light, said that they support the bill. He said an example for them would be a hydroelectric plant built in 1913. He said that taxing on replacement cost would raise the tax unreasonably.

Mr. Stan Kaleczyc, Burlington Northern, said that they support the bill. He noted that it gives the Department flexibility to use, where they feel appropriate, replacement costs as an indicator of market value.

OPPONENTS

None were heard.

Questions from the committee were called for.

Senator Eck asked if this would not open the door for legislation regarding rule making. Representative Kitselman said, no. He said the Department is in an awkward situation and this would help. He said the legislature always must have the authority to get its intention enacted.

Senator Eck asked Dan Bucks, Deputy Director of the Department of Revenue, if this could be handled through the Administrative Procedures Act. He said it would take about 90 to 120 days to adopt the repeal. He said either way, the job is done.

Senator Neuman asked if the administrative procedure would be a quicker way to handle the problem. Representative Kitselman said that the rule would not be effective until 1986 so it didn't matter whether the legislative route or administrative route repealed the bill. He noted that the Department of Revenue had done nothing to start the repeal process.

Representative Kitselman closed without further comment.

CONSIDERATION OF HB 704: Representative Bob Marks, House District 75, was recognized as chief sponsor of the bill. He said that the bill would give concrete assistance to local governments having problems with millage that is paid under protest and thus cannot be used in the budgets. He said some taxing jurisdictions are dealing with 30 to 80 percent of their budget protested. He said the bill would allow the county commissioners to levy millage against the unprotected

portion of the tax base. He said that this would relieve the taxing jurisdictions by allowing them to be fully funded. He said the reward to taxpayers would come when the cases were settled and the money returned to those jurisdictions by a reduction in overall millage.

PROPOSERS

Mr. Bob Laumeyer, Superintendent of the Boulder Public Schools, said that half of the elementary district tax base is currently paid under protest. He said they can no longer afford to operate in a deficit situation. He said one elementary school has 88 percent of its budget paid under protest. He said that with reserves depleted there is no way to fund the school. He said that warrants can be registered, but that they are a more costly way to accomplish the same goal. He said that no possibility exists that a capricious administrator would overspend a windfall as the bill precludes that possibility.

Mr. Bill Anderson, Office of Public Instruction, said the schools need fully funded budgets to operate.

Mr. Tom Cotton, Superintendent of School District 1, Deer Lodge, said that no piece of legislation is more important to his district. He said the budgets are currently submitted before protests are lodged making adjustments impossible and leaving considerable short fall in the funding. He provided Exhibit 2 to explain his situation.

Mr. Chip Erdmann, Montana School Board Association, rose in support of the bill.

Mr. Floyd Larkin, Superintendent of the Powell County High School, Deer Lodge, said that his district would be out of operating cash before the school equalization dollars came. This bill, he said, would give schools an ability to operate within the limits of the available funding without having the short fall situation.

Mr. Tom Beck, President of the Montana Association of Counties and a Powell County Commissioner, said the bill would help any county with a major portion of taxes paid in protest. He said the interest and principle go to the winner, leaving the county governments in a very vulnerable position if the protests are lost.

Mr. Dan Bucks, Department of Revenue, said that the legislation would alleviate local government problems when protests occur. He said the Department is satisfied that the bill is constitutionally and legally sound.

OPPOSERS

Mr. Dennis Burr, representing the Montana Taxpayers Association, said that the bill would require other taxpayers to pay their share of the protesting taxpayer. He said there is no functional provision in the bill for lowering levies. He said there are constitutional problems with the bill.

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He said that if the bill is passed it should be amended to allow this procedure only for large taxpayers, using a percent of the taxable value as a threshold. He said the provisions requiring the return of the money if the protest is won should be tightened. He said that registered warrants are the way to handle this problem. He said that the numbers and percentages are not as large as they appear because they are figured only on the property taxation when the school districts and counties have other sources of funding.

He also questioned why all units of local government were not included.

FURTHER PROPONENTS

Mr. Jess Long, representing the School Administrators of Montana, apologized for arriving late and said that they support SB 704.

Questions from the committee were called for.

The mechanism of taxing the protester was discussed until the committee was satisfied that the protester would not get a tax break. Representative Marks pointed out that if a short fall existed, the local taxpayers would have to pick it up anyway and that this bill was a mechanism to handle that more easily.

Senator Towe questioned the dates for the protest. Mr. Laumeyer said that they needed a date prior to the second Monday in August when school levies are set.

Senator Eck asked Representative Marks why cities were not included in the bill. He said he had no objection to the inclusion of other units of local government.

Senator Towe asked about limiting the legislation to large taxpayers. Representative Marks said that all should be included and that if they were it could reduce the need for high reserves in school districts. He said it would be a more complicated determination if some were excluded. In response to Senator Towe's question, Mr. Bucks of the Department said that the administration was comfortable with the bill in its current form, but he could not respond to how they would view changes. Mr. Laumeyer said that even if the figure of 5 percent of county valuation were used it could hurt small school districts badly.

In an ensuing discussion of reserves Mr. Cotton noted that some already operate on a small reserve. Mr. Laumeyer said he would be comfortable with a lower statutory reserve limit if he knew that he could collect the full amount of his budget.

Senator Towe asked Representative Marks how he proposed to reduce subsequent tax levies. Representative Marks noted that the status quo was worse in that regard than this bill. He said now a windfall could occur with no statutory requirement to lower the levy. He said it would work exactly as it works in state budgeting where the

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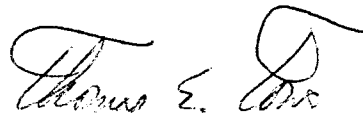
excess reverts to the ending fund balance. Senator Towe said that the language expresses intent, but questioned whether it could be enforced. Representative Marks said the bill is explicit. Senator Towe suggested inserting a formula into the bill that would refigure the mill with the protested amount accounted for.

Senator Eck asked how this would affect the school foundation program as the fluctuation in mill levy occurred. Representative Marks said that the 45 mills would not be affected as it would not be raised when the local mills were raised. Senator Eck noted that the counties would get less back in equalization funding with the fluctuating mill.

Mr. Anderson of the Office of Public Instruction said that there was no problem with the state mills. He said the focus should be the need for schools to be funded in a businesslike manner and that this cannot be done from Helena.

Representative Marks said that he would close with asking Mr. Lau-meyer to work with the Office of Public Instruction to determine affects on the school foundation program. He noted that in most cases only a portion of the tax is protested. He said that tightening the provisions of returning millage to the taxpayer in the event the protested amount came to local government would be okay. He said the bill is really important to school districts and local governments. He asked the committee to make every attempt to pass the bill and said he would work with them in anyway necessary.

Chairman Towe adjourned the meeting at 10:02 am.



Chairman

ROLL CALL

SENATE TAXATION COMMITTEE

49th Legislative Session -- 1985

Date March 26, 1985 8:03am

Location -- Room 413-415

Name Present Absent Excused

Senator Brown	8:24am		
Senator Eck	✓		
Senator Goodover	✓		
Senator Hager	8:15am		
Senator Halligan	✓		
Senator Hirsch	✓		
Senator Lybeck	✓		
Senator Mazurek	✓		
Senator McCallum	9:05am		
Senator Neuman	✓		
Senator Severson	✓		
Senator Towe	✓		

COMMITTEE ON

DATE

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VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bill Verwolf	City of Helena	616	✓	
David Kelly	MT CON DEV ASSN	616	✓	
Greg Jackson	Urban Coalition	616	✓	
Don Morris	MHCO	616 704	✓	
Jim Beck	Malco Powell Co.	704	✓	
Pat Melly	Helena Trp. Society	616	✓	
Dennis Burr	MonTAX	704		✓
Dennis Burr	4th Mt BOD	696	✓	
Wing ERDMANN	MT School Bd Assoc	704	✓	
Clark Ryker	Mont Ambassador ^{East} Helena	616	✓	
Roger Young	Great Falls Chamber of Commerce	616		
Alan Nicholson	Helena Trp. Society -	616		
Harry T Douglas	Mont. Dept. Commerce	616	✓	
GENE PHILLIPS	PACIFIC POWER & LIGHT	696	X	
Floyd H. Fackin	Powell County High School	704	X	
Bill Anderson	OPI	704	X	
Tommy Cotton	Kear. High Elem	704	X	
Robert L. Lumsden	Boulder Pub. Sch.	704	X	
Janice L. Anderson	Boulder Schools	704	X	

NAME: Roger W Young, President DATE: 3/26/85

ADDRESS: Great Falls Area Chamber of Commerce Box 2127

PHONE: 761-4434

REPRESENTING WHOM? Great Falls Area Chamber of Commerce

APPEARING ON WHICH PROPOSAL: HB 616

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: The Great Falls Chamber supports giving local business
communities another tool to use in stimulating economic
development. SID's typically deal with physical improvement and
construction projects, BID's provide a means to harness the
collective power of businesses in an area for promotion, maintenance,
beautification, mutual security, etc. The BID is something which
could help to revitalize downtown Great Falls in a "self-help"
manner. We have discussed successful experiences with
other cities which have implemented BID's

We are unaware of any immediate plans or intent
to implement a BID in Great Falls should HB 616 pass, however
we do advocate the legislative option of having it. We
think it has great potential

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME Clark Pyke BILL NO. 616
ADDRESS East Helena Mont DATE 3/16/85
WHOM DO YOU REPRESENT Montana Ambassadors & Helena
SUPPORT X OPPOSE _____ AMEND improvement
sect.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

In the out of state situation of
Pres Ed Jasmin - he has asked
me to represent the Montana Ambassadors
as their chairman of the Community Recognition
Program.

SUMMARY OF PROPOSED AMENDMENTS TO HOUSE BILL 616
THIRD READING COPY

The following is a summary of amendments proposed to House Bill 616 (third reading copy). These amendments are proposed to make some technical corrections and to alleviate some concerns which were expressed in the floor debate in the House.

Amendment 1. House Bill 616 was amended on the floor of the House to include the city manager in a city commission form of government in the definition of "chief executive officer." This amendment was made in response to a recent supreme court decision which stated that the city manager rather than the mayor in a city commission form of government hires and fires city personnel. The only function of the chief executive officer in the business improvement district bill is to appoint the members of the board of trustees. Appointments to boards is still the function of the mayor in city commission forms of government and it should be the function of the mayor in this act.

Amendments 2, 3, and 4. House Bill 616 presently states that a business improvement district is created in the same manner as a special improvement district pursuant to Title 7, Chapter 12, Part 41. This reference to the creation of a special improvement district causes confusion and makes it difficult to follow just exactly how a business improvement district is created. In addition, special improvement districts involve capital improvements and in some ways the creation of a special improvement district is not appropriate to the creation of a business improvement district. For this reason, it is suggested that the procedure for creating a business improvement district be included in the bill. In this manner, all of the statutes dealing with a business improvement district would be found in one chapter of the codes. In addition, future changes in the procedure in forming a special improvement district would not affect the creation of a business improvement district. The procedure included in these amendments parallels the procedure for the creation of a special improvement district.

Amendments 6 and 9. These amendments would provide flexibility to the governing body to levy assessments and would allow alternative methods of assessment to insure that the assessment was done in an equitable manner. The bill presently provides for only one way of levying an assessment - on the assessed value. The bill further provides that the governing body can levy the assessment in this matter only if it is equitable in proportion to the benefits received. If the governing body could not make that determination it could not go forward with the creation of a business improvement district.

To insure equitable assessment and to provide flexibility, several alternative methods of levying the assessment are allowed, including a combination.

Amendments 7 and 8. These amendments are technical only. They clarify that the governing body is levying an assessment to fund the business improvement district, not a tax.

Amendment 10. There was concern expressed on the floor of the House during debate that the business improvement district was perpetual and that there was no way for the owners within the district to dissolve it. This amendment would provide that the district would have a period of duration as specified in the resolution of creation but that the period of duration would not be longer than ten years unless the district was extended by going through the process required for the original creation of the district.

Proposed Amendments to House Bill 616 3rd Reading Copy

1. Page 2, lines 15 and 16.
Following: "municipality"
Strike: "city manager in city commission form of government,"
2. Page 2, line 24.
Following: line 24
Insert: "(7) 'owner' means a person in whom appears the legal title to real property by deed duly recorded in the county records or a person in possession of real property under claim of ownership for himself or as the personal representative, agent, or guardian of the owner."
3. Page 3, lines 4 through 6.
Following: "district" on line 4
Strike: the remainder of lines 4 through 6
Insert: "as provided in [this act]"
4. Page 3, lines 10 through 15.
Strike: lines 10 through 15 in their entirety.
Insert: "Section 5. Resolution of intention to create business improvement district - notice. (1) Before creating a district, the governing body shall pass a resolution of intention to do so designating the boundaries thereof.

(2) Notice of passage of the resolution must be published for five days in a daily newspaper or in one issue of a weekly paper published in the municipality or county or, in case no newspaper is published in the municipality or county, then by posting for five days in three public places in the municipality or county. A copy of the notice shall be mailed to every owner of real property within the proposed district listed on the last completed assessment roll for state, county, and school district taxes, at the owner's last-known address, on the same day the notice is first published or posted.

(3) The notice must describe the general purpose of the district and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the creation of such district. The notice shall refer to the resolution on file with the governing body or clerk, if any, for the description of the boundaries.

Section 6. Protest against proposed district.
(1) Any owner of property liable to be assessed may make written protest against the extent or creation of the district to be assessed or both.

(2) The protest must be in writing and must be delivered to the governing body or its clerk, if any, not later than 5 p.m. of the last day within 15 days after the date of the first publication of the notice of the resolution of intention. The date and hour of receipt of the protest shall be endorsed thereon.

Section 7. Hearing on protest, sufficient protest to bar proceedings. (1) At a regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall proceed to hear and pass upon all protests. Its decision shall be final and conclusive.

(2) The governing body may adjourn the hearing from time to time. A protestant shall have the right to withdraw a protest at any time before final action thereon by the council or commission.

(3) No further proceedings may be taken for a period of one year from the date when protest has been received by the governing body by owners of more than 50% of the property to be assessed for the district.

Section 8. Resolution creating special improvement district. When no protests have been delivered to the governing body within 15 days after the date of the first publication of the notice of the passing of the resolution of intention, when a protest shall have been found by the governing body to be insufficient or has been overruled, or when a protest against the extent of the proposed district has been heard and denied, the governing body has jurisdiction to order the creation of the district and shall pass a resolution creating the district in accordance with the resolution of intention."

6. Page 6, line 24.
Following: "basis"
Strike: "the method"
Insert: "one of the methods"
7. Page 6, line 15.
Strike: "assess a tax"
Insert: "levy an assessment"
8. Page 6, line 22.
Strike: "and assess a tax"
Insert: "an assessment"

9. Page 7, line 4.

Following: "Section 11."

Strike: The remainder of section 11 in its entirety.

Insert: "Assessment of costs -- area, lot, and taxable valuation options. (1) At the same time the board submits the annual budget and work plan to the governing body as provided in [section 14], the board shall also recommend to the governing body a method of levying an assessment on the property within the district which will best ensure that the assessments on each lot or parcel is equitable in proportion to the benefits to be received.

(2) The governing body shall assess the entire cost of the district against the entire district using a method which best ensures that the assessments on each lot or parcel is equitable in proportion to the benefits to be received. In determining the method of assessment to be used the governing body shall consider the recommendations of the board. The governing board shall levy the assessment using one of the following methods:

(a) each lot or parcel of land within such district may be assessed for 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;

(b) if the governing body determines that the benefits derived by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;

(c) each lot or parcel of land, including the improvements thereon, may be assessed for that part of the whole cost of the district which its taxable valuation bears to the total taxable valuation of the property of the district; or

(d) by using any combination of the assessment options provided in subsections (1)(a) through (1)(c).

10. Page 8, line 1.

Following: "is"

Strike: the remainder of Section 12.

Insert: "for the period specified in the resolution of the governing body creating the district but shall not be for a period longer than 10 years unless the duration of the district is extended in compliance with the provisions of [this act] for the creation of a district."

Deer Lodge Elementary Schools

BOARD OF TRUSTEES

GARY BECK, CHAIRMAN
LORRIE DUNCAN, VICE-CHAIRMAN
SANFORD C. PORTER, TRUSTEE
HERBERT NELSON, TRUSTEE
KARLA RYDEEN, TRUSTEE
MAXINE FISKE, CLERK

SCHOOL DISTRICT NO. ONE
P.O. BOX 630
DEER LODGE, MONTANA 59722

(406) 846-1553

ADMINISTRATION

TOM COTTON, SUPERINTENDENT
RICHARD NICAISE, PRINCIPAL
O.D. SPEER SCHOOL
GRANVILLE STUART SCHOOL
PATRICK ROGERS, PRINCIPAL
JUNIOR HIGH SCHOOL

My name is Tom Cotton, representing Deer Lodge School District #1, and I am here to testify in support of House Bill 704. House Bill 704 was introduced to alleviate a problem which arises due to protested taxes. I would like to explain to you the ramifications if this situation is not remedied by legislative action.

Currently, in Powell County, there is 2.5 million dollars in protested taxes involving five firms which contract with the Bonneville Power Authority for usage of their power lines. This protest was not filed until after budgets had been submitted to county commissioners for setting of mill levies on the second Monday of August. As a result, my school district currently faces the loss of the following revenue:

General Fund	124,166
Transportation Fund	13,697
Bus Depreciation Fund	7,145
Debt Service Fund	29,826
Comprehensive Insurance	<u>4,937</u>
	179,771

In addition to the above, the county-wide fund for retirement will also be short revenue.

It is imperative that legislation be enacted to exclude valuation which is being protested in order for political subdivisions to be able to count on revenues needed for operational expenses. If this action is not taken, the result will be that these political entities with large amounts of protested taxes will deplete their operating reserves, which will result in the registering of warrants. This will result in additional expenses being incurred by these political entities.

I would suggest one change in the bill, on page 2, line 6. I suggest that the wording be changes from the second Monday in August to the first Monday in August. The rationale behind this change would be to allow county officials time to adjust figures in completing county and school district budgets. As the second Monday in August is when this must be completed, it would be impossible to complete this task if protests are allowed up to this date.

We would ask that you carefully consider this legislation to allow us to get those funds necessary for our operation.

Thank you,

Tom Cotton

Exhibit 2 -- HB 704
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