

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

April 1, 1985

The sixty-first meeting of the Senate Taxation Committee was called to order by Chairman Thomas E. Towe at 8:07 am in Room 413-415 of the State Capitol.

ROLL CALL: Senator McCallum was absent. All other members of the committee were present.

CONSIDERATION OF HB 704: Mr. Jim Lear, committee staff, was recognized to discuss a series of amendments. The first set of amendments (Exhibit 1) addressed the inclusion of municipalities into the provisions of the bill.

MOTION: Senator Eck moved that HB 704 be amended per Exhibit 1. With Senator Halligan abstaining, all other members of the committee voted yes. The motion carried.

Mr. Lear said that to amend the bill to include all special districts would require amendment to 20 to 30 sections. The committee concurred that was not necessary.

Mr. Lear brought a second set of amendments to the committee. This set would not bring the provisions of the bill into play unless five percent of the taxable valuation were under protest.

Senator Mazurek asked if that were five percent of the cumulative total. Mr. Lear said, yes.

Senator Neuman asked how this would be determined. Mr. Lear said the Department of Revenue would certify taxable value for each taxing authority.

In response to a question by Mr. Hirsch, Mr. Lear said that there is no distinguishing between partial and full protests.

Senator Neuman asked if five percent was too low a figure. In discussion the committee noted that five percent would pick up the major protests, but that even a number of smaller ones would not necessitate the provisions of the bill.

Senator Mazurek asked if this would have a different impact when reappraisal was completed. Mr. Groepper said that the timing of the appeals process was such that even if there were a large number of appeals most would be decided at the county level before the Department certified the valuation. Senator Mazurek then asked if this would affect Cascade County? Mr. Groepper said that the five percent limit would not have been triggered there until the Anaconda Company closed.

MOTION: Senator Brown moved that HB 704 be amended per Exhibit 2. The motion carried unanimously.

April 1, 1985

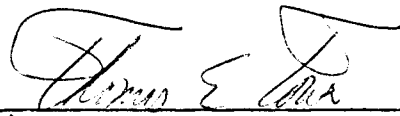
Mr. Lear then brought Exhibit 3 before the committee at the request of Chairman Towe. Exhibit 3 amends the bill to allow access to a 50 percent portion of the protest fund by the county. It would give the counties a one-year time for repayment at the conclusion of the protest, should the county lose.

Senator Goodover asked if interest would be paid during the time of pay back. Senator Towe said, yes, that was covered by another statute.

Senator Towe noted that most protest came out without a 100 percent win on either side. He said this would balance the mill levy changes at each end.

Senator Eck asked Mr. Laumeyer how this would affect his schools if he had to pay back the money. He responded that in a one year situation it would be no problem. He said if it was a four to six year protest that lost 100 percent it could be difficult. He said that the original bill would have jumped his mill levy from 27.5 to 39 mills. He said with this amendment they would go only to 33 mills.

Chairman Towe determined that the committee could not finish work on the bill in the available time. The meeting was adjourned at 8:36 am.



Chairman, Thomas E. Towe

ROLL CALL

SENATE TAXATION COMMITTEE

49th Legislative Session -- 1985

Date April 1, 1985

Location -- Room 413-415

Name	Present	Absent	Excused
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Senator Brown	✓		
Senator Eck	✓		
Senator Goodover	✓		
Senator Hager	✓		
Senator Halligan	✓		
Senator Hirsch	✓		
Senator Lybeck	✓		
Senator Mazurek	✓		
Senator McCallum			
Senator Neuman	✓		
Senator Severson	✓		
Senator Towe	✓		

HB 704, third reading copy

1. Title, line 7.

Following: "COUNTY"

Insert: ",MUNICIPALITY,"

2. Title, line 9.

Following: "COUNTY"

Insert: ",MUNICIPALITY,"

3. Title.

Following: line 11

Insert: "7-6-4232,"

4. Page 1, line 23.

Following: "year."

Strike: "The"

Insert: "Except as provided in subsection (2), the"

5. Page 2.

Following: line 23

Insert: "Section 2. Section 7-6-4232, MCA, is amended to read:

"7-6-4232. Fixing of tax levy. (1) On the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The Except as provided in subsections (2) and (4), the taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy shall be made in the manner provided by 15-10-201.

(4) (a) The taxable value of property which was protested under the provisions of 15-8-113 through 15-8-115 and which remains under protest on the first Monday in August of the current year must be excluded from the city's taxable valuation in computing mill levies to fund the amounts necessary to be raised under the provisions of subsection (1).

(b) If tax money that was collected on property excluded under subsection (4) (a) is not required to be refunded to the taxpayer from the protest fund at the conclusion of a protest proceeding, such money shall be used to reduce subsequent property tax levies of the appropriate funds or levies from which it was previously withheld in protest."

Renumber: subsequent sections

6. Page 3, line 8.

Following: "the district"

Insert: ", except as provided in subsection (2),"

E N D

Amend HB 704, 3rd Reading Copy

1. Title, line 8.

Following: "LEVIES"

Insert: "IF THE TAXABLE VALUE OF SUCH PROPERTY UNDER PROTEST
EXCEEDS 5% OF THE TAXING JURISDICTION'S TAXABLE
VALUATION"

2. Page 2, line 10.

Following: "valuation"

Insert: " if the taxable value of such property remaining
under protest exceeds 5% of the county's taxable
valuation"

3. Page 3, line 15.

Following: "valuation"

Insert: "if the taxable value of such property remaining under
protest exceeds 5% of the district's taxable valuation"

4. Page 4, line 14.

Following: "year"

Insert: "if the taxable value of such property remaining under
protest exceeds 5% of that taxing jurisdiction's
taxable valuation"

Amend HB 704, 3rd Reading Copy

1. Title, line 6.

Following: "OF" at the beginning of the line

Insert: "A PORTION OF"

2. Title, line 11.

Following: "LEVIES;"

Insert: "PROVIDING COUNTIES, MUNICIPALITIES, AND SCHOOL DISTRICTS
ACCESS TO A PORTION OF SUCH PROTEST FUNDS BEFORE
CONCLUSION OF A PROTEST PROCEEDING;"

Following: "7-6-2321,"

Insert: "15-1-402, 15-8-115,"

3. Page 2, line 6.

Following: "(a)"

Strike: "The"

Insert: "One-half the"

4. Page 2.

Following: line 23

Insert: "Section 2. Section 15-1-402, MCA, is amended to read:

" 15-1-402. Payment of taxes under protest — action to recover.

(1) The person upon whom a tax or license fee is being imposed may proceed under 15-1-406 or may, before the tax or license fee becomes delinquent, pay under written protest that portion of the tax or license fee protested. The payment must:

- (a) be made to the officer designated and authorized to collect it; and
- (b) specify the grounds of protest.

(2) After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax or license fee was paid or against the county or municipality in whose behalf the same was collected and the department of revenue.

(3) Both the officers to whom the tax or license fee was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with timely summons and complaint within the time prescribed.

(4) Any action instituted to recover any such portions of tax or license fee paid under protest shall be commenced and summons timely served within 60 days after the date of the final decision of the state tax appeal board.

(5) When any protested tax or license fee is payable in installments, then any subsequent installment portion considered unlawful by the state tax appeal board need not be paid and no action or suit need be commenced to recover the same, but the determination of the action or suit commenced to recover the first installment portion paid under protest shall determine the right of the party paying such subsequent installment to have the same or

(a) — any part thereof refunded to him or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(6) ~~Att~~ Except as provided in subsection (b), all

portions of taxes and license fees paid under protest to a county or municipality shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any action or suit to recover the same.

(b) One-half the taxes paid under protest under the provisions of 15-8-113 through 15-8-115 and which remain under protest on the first Monday in August of the current year shall be taken from the protest fund and deposited to the credit of the fund or funds to which the tax properly belongs if the taxable value of the property remaining under protest exceeds 5% of the affected taxing jurisdiction's taxable valuation.

(7) Nothing contained herein prohibits the investment of the money of this fund in the state unified investment program. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(8) (a) If no action is commenced within the time herein specified or if such action is commenced and finally determined in favor of the county or municipality or treasurer thereof, the amount of the protested portions of the tax or license fee shall be taken from the protest fund and deposited to the credit of the fund or funds to which the same property belongs.

(b) If such action is finally determined adversely to a county or municipality or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action from the state tax appeal board, or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor such judgment is rendered the amount of such protested portions of the tax or license fee, with costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest. If such action was commenced for the purpose of recovering the first installment portions of any such tax or license fee and any subsequent installment thereof has been paid under protest as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment, also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, together with interest thereon at the rate of 6% a year from the date of payment under protest.

If the refund includes taxes removed from the protest fund pursuant to 15-1-402(6)(b), the refund of that portion so removed may be made within 1 year from the conclusion of the protest proceedings."

Section 3. Section 15-8-115, MCA, is amended to read:

15-8-115. Department to defend property tax appeals — costs and judgments. (1) The department of revenue or its designee is the party defendant in any proceeding before a county tax appeal board, the state tax appeal board, or a court of law that seeks to dispute or adjust an action of the department under 15-8-101 arising from the exercise of the department's duties as prescribed by law or administrative rule. For the purposes of proceedings before county tax appeal boards, service on the department may be obtained by serving the local county assessor.

(2) Costs, if any, shall be assessed against the department and not against a local taxing unit.

(3) In any suit brought in the courts of this state for the refund of taxes paid under protest and those funds are held by the treasurer of a unit of local government in a protest fund, the court shall enter judgment, exclusive of costs, against the treasurer if the court finds the taxes should be refunded.

If the judgment includes taxes removed from the protest fund pursuant to 15-1-402(6)(b), the court shall order the refund of that portion of the taxes by the treasurer within 1 year from the date of the judgment."

Renumber: subsequent sections

5. Page 3, line 11.

Following: "(a)"

Strike: "The"

Insert: "One-half the"

6. Page 4, line 11.

Following: "and"

Insert: "one-half"