

DAILY ROLL CALL
 LOCAL GOVERNMENT COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 19-1987

NAME	PRESENT	ABSENT	EXCUSED
REP. NORM WALLIN, CHAIRMAN			
REP. RAY BRANDEWIE, VICE CHAIRMAN	✓		
REP. BUDD GOULD	/		
REP. REP. TIMOTHY WHALEN	✓		
REP. PAULA DARKO	/		
REP. TOM BULGER	✓		
REP. JAN BROWN	/		
REP. BOB GILBERT			
REP. LARRY GRINDE	✓		
REP. WALTER SALES	✓		
REP. STELLA JEAN HANSEN	✓		
REP. PAUL PISTORIA	✓		
REP. ROBERT HOFFMAN	/		
REP. LES KITSELMAN	✓		
REP. JACK RAMIREZ	✓		
REP. DAVE BROWN	/		
REP. CAROLYN SQUIRES	✓		

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 19, 1987

The meeting of the Local Government Committee was called to order by Chairman Norm Wallin on January 19, 1987 at 1:00 p.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Dave Brown who was absent.

CONSIDERATION OF HOUSE BILL NO. 204: Rep. Harry Fritz, House District 56 of Missoula, Sponsor of the bill, stated this bill is a repealer and the law that it repeals is that every city and town is responsible for injuries to real and personal property within its corporate limits that is done or caused by mobs or riots. He wants to stress that this responsibility laid upon cities and towns for damage caused by mobs or riots is absolute; there are no qualifications in Montana, there are no conditions; cities and towns are absolutely liable for damages caused by the destruction of property by mobs or riots.

This law has only been applied once, in Montana history. In 1920 the city of Butte was held responsible for damages caused by the destruction of the Butte Miners Union Hall in a riot in June, 1914 - and this is the most famous riot in Montana history. The City of Butte had absolutely nothing to do with it in this conflict between rival union factions but the Montana Supreme Court in 1920 held that the city of Butte had to ante up \$63,000 to the Butte Miners Union to pay for the damages caused by the destruction of their hall, despite the fact that the Butte Miners Union had stored arms and ammunition in its Union hall, or that the destruction began with shots fired by someone in the building itself - shots which killed two men on the street outside; despite the fact that the city had nothing to do with the formation of the mob, and indeed they tried to discourage it. The city certainly did not incite the mob through riot or violence and despite these circumstances the Supreme Court held that the city of Butte was absolutely liable for the destruction of the Miners Union Hall.

The law in question which makes cities and towns liable for damage to real and personal property caused by mobs or riots was passed in 1895 and it is easy to understand just

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why the law was passed at that time. There was in 1890 an era of labor and ethnic violence of mobs and riots in American history and in Montana history. This is the era of the homestead strike, Hoggan's army strike which hijacked a Northern Pacific train in Butte and drove it all the way to Forsyth - a railroad depot in Dillon was burned to the ground as an off-shoot of the Pullman strike in Montana. Butte suffered a riot at the hands of its Irish fire department which blew apart a Protestant saloon with fire hoses in 1894 and Montana itself was experiencing tremendous unemployment in the state as a result of the repeal of the Sherman silver purpose act and closing down of all the silver mines, etc.

The law was enacted in 1895 and the law itself is of long standing . . . it was passed in the state of New York in 1855, in Pennsylvania in 1841 and had origins that go far back in the American, Colonial and English common law. The purpose of the law apparently is to suppress or try to suppress mob violence by instilling in citizens the knowledge that they have to pay for any damage that's done - to quote the Montana Supreme Court, in the 1928's, primarily the court said "government exists for the maintenance of peace and social order." The purpose of our statute and those of similar import is to create municipal liability and tend to instill in the minds of every person liable to contribute to the public expense a will to discourage violence and to stimulate effort to preserve public safety.

The Supreme court was reading a New York case of 1865, and it upheld the constitutionality of the law and held the city of Butte liable. Rep. Fritz stated that as he understands American law, the whole trend in this area has been toward the primitization of liability of tort law in this case. You do not hold a community or government responsible, but you try and find the guilty parties, and make this a portion of tort law, actions between individuals rather than holding the government itself liable. You don't punish innocent taxpayers for the guilty acts of violence or evangelistic acts of a few; but the law itself remains on the books and in today's era of judicial activism with enterprising trial attorneys winning huge claims for their clients, he is surprised they haven't found this yet. He would submit it

is a time bomb for the cities and towns of Montana - it's a booby trap for them to fall into and unless somebody can persuade me to the contrary, I urge its repeal.

PROPONENTS: Alec Hansen, Montana League of Cities and Towns, spoke in support of this bill. This issue came up at their convention last fall in Butte and was identified as a possible source of unwarranted liability for cities. Their delegates unanimously adopted a resolution asking the legislature to repeal this law. There is a potential here that this law could be used to impose liability on cities and towns. The modern application of this law could come at sporting events. They have had some situations that were nearly riotous in connection with sporting events around Montana in recent years and if some enterprising attorney could establish municipal liability under this law the city could be responsible for all the cars and damage in connection with some riotous behavior in connection with sporting events. We suggest that this committee agree to repeal this law. There are several sections such as Sec. 7-4-4303 which details the powers of mayors, etc. and in the last two parts of this section (Part #5) says that the mayor has the power to call on every citizen in the city or town over the age of 18 years to aid in the enforcement of the laws and ordinances in case of riot; the next section says that the mayor also has the power to call up the militia to aid in the suppressing of riots or other disorderly conduct, extinguishing fires, securing safety, etc. . . . the Montana league of cities and towns are in agreement with Rep. Fritz that this law should be repealed.

OTHER PROPONENTS: Brooks More, Administrative Officer for the city of Helena and the Helena city commission would like to go on record as supporting this bill. He stated that anything that reduces municipal liability will be extremely beneficial and he urged their support in approving House Bill No. 204.

OPPONENTS: There were none.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 204: Rep. Whalen asked if there is any provision in the law that would hold local government liable for their negligent acts with regard to riots? Rep. Fritz said that he cannot cite it but he was sure there is. Rep. Whalen asked if he knew whether or not cities or towns license groups that are allowed to get together. Rep. Fritz replied yes. Rep. Sales said he did not know if anybody can really answer this, but by repealing this statute would it in any way weaken any of the parallel laws

that allow the city for instance that Alec brought up, to call in citizens in case of a riot. It hasn't been too many years ago they had a situation up there in West Yellowstone when a motorcycle gang caused a riot situation and the populace did a wonderful job of quelling it. He would not want to do something that would weaken the cities ability to react. Rep. Fritz said he did not think it would as the law stands alone and strongly in this regard. Rep. Wallin said that Lee Heiman says it would have no effect on the other laws. Rep. Ramirez asked if any of the other states had trouble - have they repealed their law. Rep. Fritz said he did not know and did not have any recent history.

Rep. Pistoria asked if it were true that in recent years we have had an epidemic of law suits where millions of dollars could be involved in law suits against the city in similar cases. Rep. Hoffman asked if this would also take cities and towns out of any joint liability - if they are named as joint defendants in an action? Rep. Fritz said he did not know if that would be the case or not. Rep. Hoffman further asked if he had any indication from the cities or from the insurance people what impact this would have on their liability or insurance costs. Rep. Fritz said he did not have any indication of that. Rep. Wallin stated he would guess that it should lower the insurance premiums. The Chairman asked Rep. Fritz if he wished to close.

Rep. Fritz stated that perhaps there is a good reason for this law to remain on the books, but he hasn't found it yet, and closed.

CONSIDERATION OF HOUSE BILL NO. 159: Rep. Ray Brandewie, House District No. 49, sponsor of this bill said the purpose of this bill is to extend bonding authority for two more years on the federal airport improvement program grant, something they passed in the last session. It allows bonding and loans to local airports, county airports, city airports. There is a representative here from the Dept. of Aeronautics Division, and from the Dept. of Administration, also the FFA who can explain his bill to us.

PROPOSERS: Mike Ferguson, Administrator of the Aeronautics Division, stated HB 159 merely extends for two more years the authorization to use the money that is in the account right now. In addition to extending the authorization, to

use the balance of this money it would remove a restriction of being able to use this money solely for 10% match of federal projects that are being funded under the aviation users trust fund account which is administered by the Federal Aviation Administration. They still have quite a balance as they sold the bonds in the fall a little over a year ago and loaned out \$135,447 as of the first of the year. There are probably several reasons for this (1) the previous biennium they had the authorization for the sale of a bond also. They used all the money - 1.3 million dollars in loans. Some of the airports that still have projects felt they couldn't indebt themselves that much that soon again - these were ten year pay backs, and (2) the cost of money has gone down considerably and some of the municipalities were able to get funding elsewhere or possibly even better interest rates.

On these bonds, the legislation requires that they carry the same interest rate as the bond office; so the loans could be used to repay and that is approximately 7 1/4 percent. They have had several requests from communities that have projects or airports that are not eligible under this Federal improvement program and therefore have not been able to use any of this loan money. Some airports that are eligible to use the money for other projects are not eligible for certain types of projects and yet they do have several airports that don't fall within the requirements necessary to use the money at all. They feel this money would be used if they could remove that restriction as well as extend it for two more years.

FURTHER PROPONENTS: James Houghton, with the Federal Aviation Administration in Helena, which is the jurisdictional office of the state of Montana, and is the administrative arm of the Federal government that maintains the grant program of 90% federal assistance to those communities that are eligible. He would like to correlate that he means by those airports that are eligible and those that are not, and the significance of what Mr. Ferguson's group has proposed here through Rep. Brandewie.

In the state of Montana there are about 236 airports that are open to the public. Of that number, there are 71 airports that could qualify under their eligibility. So with the removal of that caveat you are opening the door to other folks who can possibly use those funds for airport improvements.

Another point is that by extending the time these loans can be made, it's recognized by all, that you are not extending to the bonding company any additional time. Bonds were sold on 10 years; they were sold in 1987 and they need to be paid back in 1995; and in this law it states that the loans, even though they are loaned in '89, they would only have six years to be paid back rather than ten. They get somewhere in the neighborhood of 7 million dollars for air carrier airports. in the smaller airports - the general aviation airports, there is a national impact on those airports in that they are in dire straits for funding. They need to use innovative ways to maintain operations until the economy recovers. In that regard, they only have 2.5 million that they will pump into the state this year. There are probably 10 million dollars of requests at this office at this time.

If an airport, especially one that is not eligible, needs to have an improvement, they need every opportunity so they could see their way clear to borrow the money for the remaining eight years. He would close in saying he thinks there is one additional item, and that is even though we have 71 airports eligible for 90% funding from them, there are items that are ineligible (a hangar facility is an example or a parking lot).

FURTHER PROPONENTS: Karen Munro, department of administration, stated that the current law does not state what to do upon termination of the program; the present law terminates June 30, 1987 and and it is being proposed to extend it to June 30, 1989. The current law doesn't say what to do with any of the remaining bond proceeds should there be some at the termination of the program. So if there is 1.5 million remaining at the end of the biennium, the department of administration wanted to know where should they put the money; so they propose a housekeeping change to the law, in Sub Part #4: what they propose to say, is that if there are any remaining bonds that that money should remain in the state special revenue fund created by this law and the money invested and interest earned to be used to retire the debt. If this law is not revised, then by statute if there are any remaining bond proceeds, the money reverts to the long-range building program.

She pointed out that if reappropriation does occur then it is possible that the general fund may have to pick up the remaining debt payment in proportion to the GO debt because the general obligation bonds are backed by full payment credit of the state. This means that the bond maturity in

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August of 1995 (beginning fiscal year of 1996) so we have eight or nine years left to pay on it and we are talking about 2.5 million dollars in principal and interest payments that we make. The department of administration is proposing this housekeeping change because the funds from the general fund have to pick up the remaining debt payment.

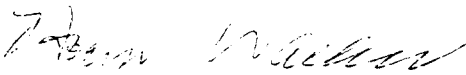
OPPONENTS: None.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 159: There were questions from the committee relating to the amount of interest paid for the bonds and the amount of interest we are earning at this time to reduce debt. Ms. Moore stated the money that is sitting in the Treasury pays 6% - 6 1/4% interest. We bought the bonds at 7.4% so we are losing money unless the interest rate goes up or it is loaned out to local government at the price we paid which is 7.4%. There was a short discussion relating to the role of the Board of Examiners in this situation.

DISPOSITION OF HOUSE BILL NO. 159: Executive action was deferred until Wednesday, January 21, 1987.

DISPOSITION OF HOUSE BILL NO. 204: Rep. Paul Pistoria made a motion that HB 204 DO PASS. Motion CARRIED.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 2:45 p.m.



NORM WALLIN, Chairman

Dept. of Administration

TESTIMONY

TITLE:

"AN ACT TO REQUIRE THAT EXCESS BOND PROCEEDS FROM THE AIRPORT IMPROVEMENT PROGRAM, BE RETAINED IN THE STATE SPECIAL REVENUE FUND; SPECIFYING HOW THOSE FUNDS ARE TO BE USED; AMENDING SECTION 67-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

PURPOSE:

\$1.7 million in general obligation bonds were issued in July 1985 for the airport loan program. As of Dec. 1, 1986 over \$1.5 million of these bond proceeds remain. Section 67-1-301(3), which provides for loans to local and state government agencies for airport improvements, terminates June 30, 1987. However, the law does not state the disposition of any remaining funds that are not loaned out by the termination date.

The legislation proposed should correct this housekeeping problem.

DESCRIPTION OF BILL:

Section 1 subpart 4 adds language to require the remaining bond proceeds (at June 30, 1987) to remain in the state special revenue fund. The funds would be invested and the interest earnings, and the bond proceeds, only used to retire the outstanding debt.

Section 2 requires an immediate effective date upon passage and approval because the current statute terminates June 30, 1987.

EFFECT OF THE BILL:

No FTE are requested.

The Dept. of Administration will require a statutory appropriation to make the debt payments out of the state special revenue fund. The Dept. currently has statutory authority to make general obligation debt payments on other state bond issues.

STANDING COMMITTEE REPORT

January 19

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Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report HOUSE NO. 204

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| <input type="checkbox"/> do pass | <input type="checkbox"/> be concurred in | <input type="checkbox"/> as amended |
| <input type="checkbox"/> do not pass | <input type="checkbox"/> be not concurred in | <input type="checkbox"/> statement of intent attached |

REP. NORM WALLIN,

Chairman

REPEALING LIABILITY FOR MOB DAMAGE

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