

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Senator Kennedy, on January 21, 1993, at
1:00 p.m.

ROLL CALL

Members Present:

Sen. Ed Kennedy, Chair (D)
Sen. Sue Bartlett, Vice Chair (D)
Sen. Dorothy Eck (D)
Sen. Delwyn Gage (R)
Sen. Ethel Harding (R)
Sen. John Hertel (R)
Sen. Bernie Swift (R)
Sen. Eleanor Vaughn (D)
Sen. Mignon Waterman (D)
Sen. Jeff Weldon (D)

Members Excused: Sen. David Rye

Members Absent: None.

Staff Present: Connie Erickson, Legislative Council
Rosalyn Cooperman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 106, SB 139
Executive Action: SB 92, SB 106, SB 139, HB 80

HEARING ON SB 106

Opening Statement by Sponsor:

Senator Delwyn Gage, Senate District 5, stated he would defer to
Mr. Dave Woodgerd from the Department of Revenue to explain SB
106.

Proponents' Testimony:

Mr. Dave Woodgerd, Chief Counsel, Department of Revenue, spoke
from prepared testimony in support of SB 106. (Exhibit #1)

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Senator Gage stated he would close on SB 106 since there were no questions from the Committee.

EXECUTIVE ACTION ON SB 106

Motion/Vote:

Senator Eck moved SB 106 DO PASS. Motion carried unanimously.

HEARING ON SB 139

Opening Statement by Sponsor:

Senator Tom Towe, Senate District 46, stated SB 139 would allow local governments to invest in not just government bonds but other investments secured by the Federal Government. He said these investments secured by the Federal Government are just as safe as government bonds. Senator Towe said current law states, "A local governing body may invest public money not necessary for immediate use by the county, city or town in direct obligations of the United States government and securities issued by agencies of the United States." He noted SB 139 would also permit local governments to invest in securities guaranteed but not issued by agencies of the United States, mutual funds that invest only in government obligations or securities issued by agencies of the United States and securities guaranteed but not issued by agencies of the United States. Senator Towe concluded SB 139 is consistent with certain banking regulations.

Proponents' Testimony:

Ms. Sandra Oitzinger, Bond Administrator, Montana Association of Counties (MACo), stated her organization's support for SB 139. She also offered additional information regarding SB 139 to members of the Committee. (Exhibits #2 and #3) Ms. Oitzinger concluded she agreed with Senator Towe's comments of the need for flexibility for local government investments.

Ms. Christine Mangiantini, League of Women Voters, stated her organization's support for SB 139.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Weldon asked Senator Towe if there were many mutual fund companies which invest in federally secured obligations, to which Senator Towe replied yes.

Senator Eck asked Senator Towe what is the difference in return on funds. Ms. Oitzinger replied the difference is about one or two percent.

Closing by Sponsor:

Senator Towe stated he would close on SB 139 since there were no further questions from the Committee.

EXECUTIVE ACTION ON HB 80

Discussion:

Connie Erickson stated a bill passed in 1991 allows county treasurers the discretion to deposit non-tax revenue under twenty five dollars into the general fund. She added this option was discretionary. Ms. Erickson stated HB 80 would not conflict with existing law because it says "except as otherwise provided" in Section 1.

Motion/Vote:

Senator Weldon moved HB 80 BE CONCURRED IN. Motion passed unanimously.

EXECUTIVE ACTION ON SB 92

Discussion:

Connie Erickson submitted one set of amendments to SB 92 to the Committee. (Exhibit #4) She said she spoke with Clerk and Recorders in Rosebud and Lincoln counties about the date of park district elections. Ms. Erickson stated both Clerks preferred park district elections be held with school elections.

Senator Vaughn asked if the title to HB 80 needed to be changed, to which Ms. Erickson replied no.

Senator Weldon asked if HB 80 required an immediate effective date, to which Ms. Erickson replied HB 80 would become effective October 1st. Senator Swift noted an immediate effective date could be problematic because the county would still be required to go through the procedure of establishing a park district.

Motion:

Senator Waterman moved the Committee adopt the amendments offered to SB 92. Motion carried unanimously.

Discussion:

Senator Gage asked when the election for the replacement of a trustee would occur since SB 92 specifies it would be held at the next scheduled school election. Connie Erickson stated she thought the election for replacement would occur in April with the election of trustees. Senator Weldon suggested the Committee add to page 7, line 6 a reference to 20-3-304 which specifies the date for annual elections.

Motion/Vote:

Senator Weldon moved the Committee adopt the amendment to SB 92 to include, "held pursuant to 20-3-302" on page 7, line 6. Motion carried unanimously.

Motion/Vote:

Senator Swift moved SB 92 DO PASS AS AMENDED. Motion carried unanimously.


EXECUTIVE ACTION ON SB 139

Motion/Vote:

Senator Weldon moved SB 139 DO PASS. Motion carried unanimously.

ADJOURNMENT

Adjournment: 1:35 p.m.


SENATOR JOHN "ED" KENNEDY, Jr., Chair


ROSALYN COOPERMAN, Secretary

JEK/rlc

ROLL CALL

SENATE COMMITTEE Local Government

DATE 1-21-93

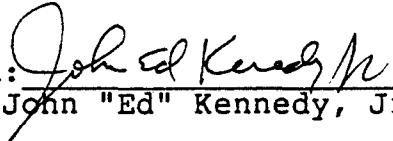
NAME	PRESENT	ABSENT	EXCUSED
Senator John "Ed" Kennedy	✓		
Senator Sue Bartlett	✓		
Senator Dorothy Eck	✓		
Senator Delwyn Gage	✓		
Senator Ethel Harding	✓		
Senator John Hertel	✓		
Senator David Rye			✓
Senator Bernie Swift	✓		
Senator Mignon Waterman	✓		
Senator Jeff Weldon	✓		
Senator Eleanor Vaughn	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1993

MR. PRESIDENT:

We, your committee on Local Government having had under consideration Senate Bill No. 92 (first reading copy -- white), respectfully report that Senate Bill No. 92 be amended as follows and as so amended do pass.

Signed: 
Senator John "Ed" Kennedy, Jr., Chair

That such amendments read:

1. Page 5, line 2 through line 4.

Strike: "at" on line 2 through "if" on line 4

2. Page 5, lines 24 and 25.

Strike: "election" on line 24 through "13-1-104(2)" on line 25

Insert: "school elections held pursuant to 20-3-304"

3. Page 7, line 6.

Strike: "county"

Insert: "school"

Following: "election"

Insert: "held pursuant to 20-3-304"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1993

MR. PRESIDENT:

We, your committee on Local Government having had under consideration Senate Bill No. 106 (first reading copy -- white), respectfully report that Senate Bill No. 106 do pass.

Signed: John Ed Kennedy
Senator John "Ed" Kennedy, Jr., Chair

Am
Amd. Coord.
Sec. of Senate

171030SC.San


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1993

MR. PRESIDENT:

We, your committee on Local Government having had under consideration Senate Bill No. 139 (first reading copy -- white), respectfully report that Senate Bill No. 139 do pass.

Signed: John Ed Kennedy
Senator John "Ed" Kennedy, Jr., Chair

 Amd. Coord.
Sec. of Senate

171031SC.San


SENATE STANDING COMMITTEE REPORT


Page 1 of 1
January 22, 1993

MR. PRESIDENT:

We, your committee on Local Government having had under consideration House Bill No. 80 (first reading copy -- white), respectfully report that House Bill No. 80 be concurred in.

Signed: John Ed Kennedy, Jr.
Senator John "Ed" Kennedy, Jr., Chair

 Amd. Coord.

 Sec. of Senate

171032SC.San

TESTIMONY OF THE DEPARTMENT OF REVENUE
ON SENATE BILL NO. 106
First Reading
January 21, 1993

The purpose of this bill is to insure that taxpayers get a refund on net or gross proceeds taxes, centrally assessed property taxes, and local government severance taxes if the department determines a refund is due.

Under 15-8-601, the department has 10 years to conduct an audit. The audit usually reveals that the taxpayer owes more taxes to the county. Sometimes the taxpayer is due a refund from the county. The current law does not require counties to give a refund when the taxpayer did not file a claim with the county within 10 years of the date the taxes were paid. Because this provision was enacted retroactively last session and because of delays, the taxpayer can not always file a claim within 10 years.

Section 15-16-601 has been repealed and replaced by Sections 1, 2 and 3. This change in format is simply to clarify what is presently in 15-16-601. The change in existing law to correct the above problem is found in Section 1(1)(d), page 2, lines 1 - 5.

This bill also makes the following changes in existing law to clarify the refund process:

1) Section 1(2), page 2, lines 9 through 10, provides that where an independent authority has not determined that a refund is due, the taxpayer must show that a refund is due.

2) Section 2, page 2, line 17, through page 3, line 6, provides for judicial review of a decision by the county commissioners to deny a tax refund.

There are no other substantive changes to existing law.

SENATE LOCAL GOVERNMENT

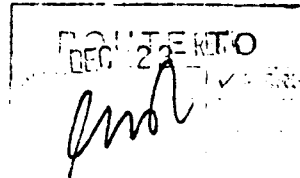
EXHIBIT NO. 2

DATE 1-21-93

BILL NO. SB 139

DISTRIBUTED BY:
CROSBY OPINION SERVICE

2210 East 6th Ave.
Helena, MT 59601
406-443-3418



VOLUME NO. 44

OPINION NO. 22

BANKS AND BANKING - Appropriate institutions and investments for deposit of public money by local governing bodies;
COUNTIES - Permitted types of investments for county money;
PUBLIC FUNDS - Appropriate institutions and investments for deposit of public money by local governing bodies;
SECURITIES - Permitted types of investments for county money;
MONTANA CODE ANNOTATED - Sections 7-6-202, 7-6-202(2);
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 25 (1987);
UNITED STATES CODE - 15 U.S.C. §§ 80a-1 to 80a-64.

HELD: Pursuant to section 7-6-202, MCA, a local government may not invest public money in a mutual fund that invests in securities guaranteed, but not issued, by agencies of the United States.

December 20, 1991

John C. McKeon
Phillips County Attorney
P.O. Box 1279
Malta MT 59538

Dear Mr. McKeon:

You have requested my opinion concerning the following question:

May public funds be invested pursuant to section 7-6-202(2), MCA, in an open-end investment company, or mutual fund, that invests primarily in mortgage-backed securities issued or guaranteed by agencies of the United States and where the fund's custodian takes delivery of the collateral?

You indicate that the Phillips County Treasurer has made investments in the Franklin Adjustable United States Government Securities Fund. The prospectus of this fund indicates that it is organized by the Franklin Investors Securities Trust which is an open-end management investment company, or mutual fund, and the fund is registered under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 to 80a-64. The prospectus and correspondence from the Franklin Trust indicate that the Adjustable United States

December 20, 1991

Government Securities Fund invests in securities "issued or fully guaranteed" by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC) and the Small Business Administration. For purposes of this opinion and based upon the prospectus and "Fund Summary" of the Franklin Adjustable United States Government Securities Fund, I have assumed that while Franklin's portfolio may be comprised entirely of federally-guaranteed instruments, some of those instruments are privately-issued securities that are neither direct obligations of the United States government nor securities issued by agencies of the United States. You question the propriety of the investment of Phillips County in this particular mutual fund in light of the statutory language of section 7-6-202, MCA.

My response to your question requires an examination of the relevant statute, its legislative history, and a prior opinion of this office.

Section 7-6-202, MCA, places limitations upon the types of securities which may be purchased by a local government with public money not necessary for immediate public use. This statute was the focus of a 1987 Attorney General's Opinion which interpreted in some detail specific limitations placed upon the investment authority of local governments. 42 Op. Att'y Gen. No. 25 at 99 (1987). Although this opinion was partially overruled by the 1989 Legislature's amendment of section 7-6-202, MCA, it controls the resolution of your present inquiry.

In 1987, at the time of the former opinion request, section 7-6-202, MCA, stated in full:

Investment of public money in direct obligations of the United States. Said local governing body is hereby authorized to invest such public money not necessary for immediate use by such county, city, or town in direct obligations of the United States government and securities issued by agencies of the United States.

In 42 Op. Att'y Gen. No. 25, Attorney General Mike Greely addressed several questions concerning investment limitations, two of which are relevant to the present analysis. First, the Attorney General determined that the statute's express authorization to invest in "direct obligations" and "securities issued by agencies" of the United States precluded a county treasurer from investing in mutual funds. While a mutual fund may be limited in its holdings to investments in which the treasurer could directly invest under section 7-6-202, MCA (1987), the actual security purchased is an interest in an investment company. Id. Second, Attorney General Greely recognized that mortgage-backed certificates, although guaranteed by agencies of the United States, such as GNMA, are issued by a private party, generally a financial institution that

December 20, 1991

possesses a pool of mortgages. Consequently, it was held that these certificates are not securities issued by agencies of the United States and thus were not permissible investments under section 7-6-202, MCA (1987).

The holding of the 1987 opinion concerning investment in mutual funds was affected when the 1989 Legislature amended section 7-6-202, MCA, to permit the investment of public money in certain mutual funds. House Bill 431 amended the statute to read as follows:

7-6-202. Investment of public money in direct obligations of the United States. (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in direct obligations of the United States government and securities issued by agencies of the United States.

(2) The local governing body may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

The intent that can be gleaned from the legislative history accompanying House Bill 431 is best summarized by the following passages from an exhibit submitted by a codrafter of the bill:

This legislation has two goals, to clarify the law and to allow an entity to invest indirectly in government obligations through a mutual fund where an entity is now authorized by state law to invest directly in government obligations.

....

This bill extends to entities, the flexibility in investing monies to obtain the same security and return as obtainable by an investment in Government securities, avoiding inconveniences which exist in the purchase of Government securities.

December 20, 1991

Minutes, Senate Business and Industry Committee Hearing, March 3, 1989, Exhibit 1 at 1-2. This and other references in the legislative history to the prior statutory investment authority of local governments lead me to conclude that the intent was to permit indirect investment, through mutual funds, in those obligations of the federal government previously authorized: direct obligations of the United States government and securities issued by agencies of the United States. Thus, the purchase of securities of a mutual fund with a portfolio consisting exclusively of direct obligations of the United States government and securities issued by agencies of the United States, including those obtained through repurchase agreements that are fully collateralized by United States government obligations, is contemplated by section 7-6-202, MCA.

Based upon the foregoing, I conclude that pursuant to section 7-6-202, MCA, a local government may invest public money in a mutual fund that invests, or obtains through repurchase agreements fully collateralized by the United States government, direct obligations of the United States and securities issued by agencies of the United States. A local government may not, however, invest public money in a mutual fund that invests in government obligations or securities that are guaranteed, but not issued, by agencies of the United States.

THEREFORE, IT IS MY OPINION:

Pursuant to section 7-6-202, MCA, a local government may not invest public money in a mutual fund that invests in securities guaranteed, but not issued, by agencies of the United States.

Sincerely,



MARC RACICOT
Attorney General

MR/GS/bf

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 3

DATE 1-21-93

BILL NO. SB 139

RESOLUTION 92-15

INVESTMENT IN SECURITIES GUARANTEED BY GNMA

WHEREAS, local governments currently are not permitted to invest in securities guaranteed by the Government National Mortgage Association (GNMA), and

WHEREAS, securities guaranteed by GNMA are backed by the full faith and credit of the U. S. Treasury as to principal and interest, and

WHEREAS, securities guaranteed by GNMA have a lower degree of default risk than other types of securities currently allowed to be invested in by local governments, and

WHEREAS, most mutual funds that invest in U. S. Government securities contain GNMA's within their portfolios and many of these mutual funds provide good investment opportunities for local governments.

NOW, THEREFORE BE IT RESOLVED that MACo seek legislation amending MCA 7-6-202(1) to read: "A local governing body may invest public money not necessary for immediate use by the county city, or town in direct obligations of the United States government and securities issued by agencies of the United States or in mutual funds that invested in government obligations or securities that are guaranteed, but not issued, by the agencies of U. S.

SPONSORED BY: Yellowstone County

RECOMMENDATION: DO PASS

PRIORITY: HIGH

APPROVED: JUNE 18, 1992

Amendments to Senate Bill No. 92
First Reading Copy

For the Committee on Local Government

Prepared by Connie Erickson
January 21, 1993

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 4
DATE 1-21-93
BILL NO. SB 92

1. Page 5, line 2 through line 4.

Strike: "at" on line 2 through "if" on line 4

2. Page 5, lines 24 and 25.

Strike: "election" on line 24 through "13-1-104(2)" on line 25

Insert: "school elections held pursuant to 20-3-304"

3. Page 7, line 6.

Strike: "county"

Insert: "school"

Following: "election"

Insert: "held pursuant to 20-3-304"

DATE 21 January 1993

SENATE COMMITTEE ON Local Government

BILLS BEING HEARD TODAY: SB 106 - Gage
SB 139 - Tower

Name	Representing	Bill No.	Check One	
			Support	Oppose

Sandra Ditzinger	MACo	SB139	✓	
Beverly Gibson	MACo	SB106	✓	
Dave Woodgerd	Dept. of Rev.	SB106	✓	
Christine Mangiantini	LWV	SB139	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY