

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By NORM WALLIN, CHAIRMAN, on February 18, 1993,  
at 3:15 p.m.

**ROLL CALL**

**Members Present:**

Rep. Norm Wallin, Chairman (R)  
Rep. Ray Brandewie, Vice Chairman (R)  
Rep. Ellen Bergman (R)  
Rep. John Bohlinger (R)  
Rep. Dave Brown (D)  
Rep. Tim Dowell (D)  
Rep. Dave Ewer (D)  
Rep. Stella Jean Hansen (D)  
Rep. Jack Herron (R)  
Rep. Ed McCaffree (D)  
Rep. Sheila Rice (D)  
Rep. Tim Sayles (R)  
Rep. Liz Smith (R)  
Rep. Randy Vogel (R)  
Rep. Karyl Winslow (R)  
Rep. Diane Wyatt (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Bart Campbell, Legislative Council  
Pat Bennett, Committee Secretary

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

**Committee Business Summary:**

Hearing: HB 644, HB 631, HB 613  
Executive Action: HB 644, HB 631, HB 613, HB 463, HB 536

**HEARING ON HOUSE BILL 644**

**Opening Statement by Sponsor:**

REP. DAVE BROWN, HD 72, Butte, informed the Committee that HB 644 would provide an additional mechanism by which local governments and the state could construct facilities. HB 644 would allow the construction of a public facility using the lease-back method of financing. This method has been used successfully in a number of other states. The drafting of the bill was patterned after the

state of Kentucky's legislation. The key element of the bill would allow local governments and the state to enter into 20-year leases on public facilities. This statutory change would make the financing through this bill possible. At the end of the 20-year lease the public facility would revert to government ownership. State construction would still go through the normal legislative authorization process. The construction done under this methodology would have to comply with all state, federal and local laws on construction requirements, bonding requirements and prevailing ledger requirements. The public facilities may be constructed on public or private land. REP. BROWN noted that the bill also provides procedures for awarding lease purchase contracts.

**Proponents' Testimony:**

REP. RUSSELL FAGG, HD 89, Billings, said HB 644 is part of the concept of reinventing government. It allows private enterprise to do some things that currently, because of fiscal constraints, governments are not able to do.

Evan Barrett, Executive Director of the Butte Local Development Corporation, expressed support for HB 644 stating that construction is a private sector job producer and wherever buildings are being built the economy is more vibrant, using Billings as an example. This bill would give government more options in financing construction.

Harrison Fagg, Billings Architect, explained that the bill resulted from a job he had been working on at Hedges Hall in Bozeman. Montana State University (MSU) selected the architects by competitive solicitation and have been advancing the money for the project directly. This project became a lease-back which is the background of HB 644. Mr. Fagg stated that the lease-back method has been working. He informed the Committee that he had spoken with James M. "Mickey" Gamble, Administrator, Corrections Division, Department of Corrections, who said that the department is using this method but are not sure if it's legal since the current statute only addresses temporary facilities. This bill will remedy that problem. Mr. Fagg also pointed out that he contributed a section to the bill that states in order for the program to be viable it must be more economical to the state than the current method.

Charlotte A. Nesbitt, Criminologist, Correctional Services Group, Inc., Kansas City, Missouri, said one of the frequent uses of the lease-back method has been in the area of correctional facilities. Montana is not the only state that has been having fiscal problems and problems with overcrowding in their facilities. The lease-back provides another option to consider and understand some of these problems. A recent study from Florida State University predicts that by the year 2000 approximately 10% of offenders will be in a facility that involves a lease-back or private investors. The major benefit

this bill provides is that states with operational moneys but no capital can spread payments over a number of years. At least 15 other states have been involved with lease-back methods.

**Elmer Johnson, President of Bruce-Anderson, Co., Inc., Bozeman,** expressed support for HB 644 in order to aid the state in developing building projects. **Mr. Johnson** pointed out that local governments do not have the up-front money it takes to do these projects, but added that his company has sources of financing and would welcome the opportunity to bid on these projects.

**Bill Egan, Montana Conference of Electrical Workers,** said they support the bill however, there may be a need to address new versus existing facilities and also the 30-year requirement.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:**

**REP. VOGEL** asked **Mr. Egan** about the 30-years being referenced in the bill. **Mr. Egan** said that there is a section in the bill, page 6, line 1, relating to the requirement for equipment to last 30-years and said there is equipment which won't last that long.

**REP. VOGEL** asked **REP. BROWN** if the legislation was intended for new construction and for him to respond to **Mr. Egan's** concern about the 30-year construction requirement.

**REP. BROWN** said that was correct, the bill only applies to new construction. Over the first 20 years, the private sector owner of the structure takes care of maintenance. This part of the bill is a guarantee that the structure and the equipment will last at least 30 years.

**REP. EWER** asked if this vehicle was debt. **REP. BROWN** said he would confer with **Mae Nan Ellingson** about this.

**REP. EWER** then asked if there were any non-appropriation clauses in the bill. **REP. BROWN** replied he was not aware of any. That would have to be obligated by either the legislature or the county/city commissioners.

**REP. EWER** clarified that if you are going to have a lease purchase contract and it is not debt, then it is not subject to voter approval. He said that if the obligation is for more than one year, it is done through the voters. The voters give their permission to obligate the tax base for more than one year. This bill suggests an obligation for 20-years and ordinarily bonded amendments are used for that.

**REP. BROWN** stated that it is his belief this approach has to be viewed as exemplary and that it will get more work on the House floor and also in the Senate. **REP. BROWN** said that it does work in other states and all that is needed are the keys to making it

work in our state.

REP. BOHLINGER asked REP. BROWN if the bill could be amended so that if money becomes available, the lessor could be taken out of it six or seven years down the road. REP. BROWN said the bill would not have to be amended, just make certain the contract is written that way.

REP. RICE referred to a situation in Great Falls where Northern Montana is leasing a building when there is 10,000 square feet of unfinished basement at the Vo Tech. She asked if there could be a lease purchase by hiring someone to finish this area and lease it to Northern. REP. BROWN said he thought it would be possible.

REP. MCCAFFREE asked if this bill would supersede all other laws pertaining to term limits on leases and also the bonded indebtedness of a county. REP. BROWN replied this was similar to the concern expressed by REP. EWER and the answer would have to be resolved before going much further.

REP. MCCAFFREE asked what the incentive would be over and above that of a county bonding themselves and building it. Mr. Fagg said the incentive is definitely profitable. Private enterprise can build and rent buildings cheaper than the government. He stated that 90% to 95% of federal buildings are done on this basis.

REP. MCCAFFREE expressed concern that with the financial struggles government has, it could create a situation where they have more buildings built than they can afford. Mr. Fagg said that with regard to the state it would not be a problem since it would take a two-thirds vote of the legislature and no proposal could be considered until it had gone through the Long-Range Building Committee. As far as counties go, they have to answer to the people they represent.

REP. EWER said he understands lease purchase to be just a way to get around the voters and cited an example of a county in Texas which could not get a bond issue passed to build a jail. The county commissioners were in a tough position when someone came up with the lease purchase idea. He wondered if we recognize this mechanism truly as debt which would require a vote of the people, if that is the intention of the sponsor. He cautioned that if it was just a way to get around the voters it would create a big problem. REP. BROWN said the mechanism will do whatever the voters want. He stated that it is not an attempt to bypass the voters. REP. BROWN also said that during his time in the legislature he has seen extraordinary and proper belief in the qualifications and ability of local government officials. They operate in the same environment legislators do.

REP. BRANDEWIE asked if the people opt to bond to have a jail built and obligate themselves and the City Council opts for a lease purchase to circumvent the vote, which department would be

closed down in order to get the lease. REP. BROWN replied that was one of the areas which needs to be addressed and be included in the bill.

Closing by Sponsor:

REP. BROWN closed on HB 644.

HEARING ON HOUSE BILL 631

Opening Statement by Sponsor:

REP. DAVID EWER, HD 45, Helena, introduced HB 631, a committee bill being presented at the request of the Billings airport authorities. Last session a bill was passed which contradicted other statutes. The port and airport authorities have the ability to levy two mills and authority to borrow against those mills. However, through recent changes in the law, county commissioners would be obligated to approve the budgets of these authorities. The problem is no bond holder will provide an authority bond proceeds unless they are assured subsequent commissioners are not going to say no.

Proponents' Testimony:

Mae Nan Ellingson, Dorsey and Whitney, Missoula, testified in favor of HB 631. EXHIBIT 1

Ken Heikes, Yellowstone County and the Montana Trade Port Authority, testified in favor of HB 631.

Gordon Morris, Executive Director, Montana Association of Counties, (MACo), stated that the change made in 1991 was a MACo bill and also came from Yellowstone County and dealt with their port authority to clarify who was in charge. The commissioners are in charge insofar as they appoint the Port Authority who reports to them on the budget. Mr. Morris stated that it was the Association's intent that if they pledge long-term debt the debt service level not be included. The Association therefore is in support of HB 631.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SAYLES asked Ms. Ellingson if the county commissioners would have oversight of the Airport Authority or if it would be under the direction of the city council. Ms. Ellingson said there are two separate sections of law being amended; one which applies to cities and one which applies to counties. Under the current system they can have city created airport authorities and they can have county created airport authorities. In Missoula the airport authority is created by the county. There can be joint

airport authorities as well.

REP. BROWN informed Ms. Ellingson that he had spoken to Tim Phillips of Missoula, who indicated they should add some language under the exception section in both clauses and add "airport authority" following library. He asked if she felt it was needed.

Ms. Ellingson said that as far as bonding authority, the provision in section two, as amended, gives bond holders and bond council underwriters comfort that they can pledge these revenues. She said she had also spoken to Mr. Phillips, and he is concerned because if you have a duly concentrated airport authority that is a political subdivision and municipal corporation that can incur debt and enter into agreements and issue bonds, why should it have to submit its budget to local governments.

Closing by Sponsor:

REP. EWER closed the hearing on HB 631.

HEARING ON HOUSE BILL 613

Opening Statement by Sponsor:

Rep. David Ewer, HD 45, Helena, explained that the purpose of HB 613 is to acknowledge that the municipal bond industry has changed over the years and legislation has not kept up with the change. The bill repeals many sections relating to bonding. There are technical changes made with regard to principal installments. After 1983 all municipal bonds under federal tax must be registered. Ownership is determined by this registration. Current law requires that the newspaper be used to notify the bondholder that the bonds are callable. If you have a bond issuer who knows who the owners of the bonds are it should not have to use the newspaper. This is a waste of money and effort. Many of the changes to the bill reflect that there are more registered bonds than there are bearer bonds. There are a great many statutes dealing with revenue bonds and there is a redundancy which requires sections be repealed.

Proponents' Testimony:

Mae Nan Ellingson, Dorsey and Whitney, Missoula, testified in favor of HB 613. EXHIBIT 2

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. EWER asked Ms. Ellingson if her testimony should have also included repealing sections 7-13-4302 and 7-13-4303. Ms. Ellingson said the two sections should have been included.

CHAIRMAN WALLIN asked if the investor is protected for a certain number of years as far as the rate of interest. Ms. Ellingson said that in almost no instance would someone lend money for 20 years and give a 20-year rate if they know that you will taking away the investment within two or three years. Under Montana law, with respect to revenue bonds, the municipality at the time of issuance may establish their own call features. Typically if a 20-year revenue bond is issued, you can tell the bondholder that you are reserving the right at the end of 10 years to call those bonds.

REP. SMITH asked what involvement the public has with regard to the processing of the bonds. Ms. Ellingson replied that with respect to a revenue bond, under current law, the city council does not have to get approval by vote to issue a revenue bond. There is not current voter approval for the issuance of pure revenue bonds.

REP. BOHLINGER asked, in the event there are not enough revenues to support a revenue bond, what protection is there for the bondholder. Ms. Ellingson said the person who buys a revenue bond is at a greater risk than someone who buys a general obligation bond. The person buying a revenue bond is exclusively looking to that pot of revenues. There are standards in the market which are built into the bond documents to prevent a default. They usually go into a reserve and the city or town will covenant to collect 125% of what they need. The bondholder is at risk since they cannot sue a city or county to levy taxes to bail them out.

CHAIRMAN WALLIN asked if all bonds sold have a sinking fund built into them.

Ms. Ellingson said that almost all bonds are structured to have a debt service account. A typical water and sewer bond would have a principal payment coming due once a year and would usually have a debt service account set up and each month one-sixth of the interest and one-twelfth of the principal would be put in.

Closing by Sponsor:

REP. EWER closed the hearing on HB 613 and reminded members that the first bill he brought before the Committee was that if they were going to have revenue bonds backed by taxing authority they would require a vote. He noted that there is a real distinction between revenue bonds, which are not tax-backed and those that are. If you want them tax-backed you must have them voted on by the people.

EXECUTIVE ACTION ON HOUSE BILL 644

Discussion: REP. BRANDEWIE expressed concern about passing a bill with unanswered questions.

REP. BROWN apologized for the lateness of the bill and assured REP. BRANDEWIE that the questions on bonding and financing will be fully answered by the time the bill reaches the floor. REP. BROWN said his intent was to enhance the operation of the private sector relationship with state government in a manner that is acceptable to both.

Motion/Vote: REP. BROWN MOVED HB 644 DO PASS. Motion carried 13-3 on a roll-call vote with REPS. MCCAFFREE, WYATT, and CHAIRMAN WALLIN opposing.

EXECUTIVE ACTION ON HOUSE BILL 631

Motion: REP. BRANDEWIE MOVED HB 631 DO PASS.

Motion/Vote: REP. BROWN moved to adopt the amendments for HB 631. EXHIBIT 3 Motion carried 10-6 on a roll-call vote with REPS. EWER, MCCAFFREE, SAYLES, SMITH, WINSLOW and WYATT opposing.

Motion/Vote: REP. BROWN MOVED HB 631 DO PASS AS AMENDED. Motion carried 15-1 on a roll-call vote with REP. MCCAFFREE opposing.

EXECUTIVE ACTION ON HOUSE BILL 613

Motion/Vote: REP. WYATT MOVED HB 613 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 536

Motion/Vote: REP. VOGEL MOVED HB 536 DO PASS. Motion carried unanimously.

Motion/Vote: REP. SAYLES MOVED TO PUT HB 536 ON THE CONSENT CALENDAR. Motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 463

Motion: REP. BRANDEWIE MOVED HB 463 DO PASS.

Discussion: The Committee discussed the effects of this type of legislation and agreed on a provision to sunset July 1, 1995.

Motion/Vote: REP. BROWN MOVED TO AMEND HB 463. EXHIBIT 4 Motion carried unanimously.

Motion/Vote: REP. BRANDEWIE MOVED HB 463 DO PASS AS AMENDED. Motion carried 10-6 with REPS. SAYLES, BROWN, VOGEL, WINSLOW, MCCAFFREE, and CHAIRMAN WALLIN opposing.



ADJOURNMENT

Adjournment: 6:30 p.m.



NORM WALLIN, Chairman



PAT BENNETT, Secretary

NW/PB

## LOCAL GOVERNMENT

DATE \_\_\_\_\_

[illegible]

HOUSE STANDING COMMITTEE REPORT

February 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 536 (first reading copy -- white) do pass and be placed on consent calendar.

Signed: Norm Wallin  
Norm Wallin, Chair

# HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT COMMITTEE

## ROLL CALL VOTE

DATE 2/18/93 BILL NO. HB631 NUMBER 10-6

MOTION: Rep Brown moved to amend  
pg 1, line 18 and pg 2, line 11  
following "library" insert "an airport authority  
Motion passed 10-6. Exhibit 3

NAME	AYE	NO
REP. RAY BRANDEWIE, VICE CHAIRMAN	✓	
REP. ELLEN BERGMAN	✓	
REP. JOHN BOHLINGER	✓	
REP. DAVE BROWN	✓	
REP. TIM DOWELL	✓	
REP. DAVID EWER		✓
REP. STELLA JEAN HANSEN	✓	
REP. JACK HERRON	✓	
REP. ED McCAFFREE		✓
REP. SHEILA RICE	✓	
REP. TIM SAYLES		✓
REP. LIZ SMITH		✓
REP. RANDY VOGEL	✓	
REP. KARYL WINSLOW		✓
REP. DIANA WYATT		✓
REP NORM WALLIN, CHAIRMAN	✓	

# HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT COMMITTEE

## ROLL CALL VOTE

DATE 2/18/93 BILL NO. HB 631 NUMBER 15-1

MOTION: Rep Brown moved HB 631  
do pass as amended.  
Motion passed 15-1-

NAME	AYE	NO
REP. RAY BRANDEWIE, VICE CHAIRMAN	✓	
REP. ELLEN BERGMAN	✓	
REP. JOHN BOHLINGER	✓	
REP. DAVE BROWN	✓	
REP. TIM DOWELL	✓	
REP. DAVID EWER	✓	
REP. STELLA JEAN HANSEN	✓	
REP. JACK HERRON	✓	
REP. ED McCAFFREE		✓
REP. SHEILA RICE	✓	
REP. TIM SAYLES	✓	
REP. LIZ SMITH	✓	
REP. RANDY VOGEL	✓	
REP. KARYL WINSLOW	✓	
REP. DIANA WYATT	✓	
REP NORM WALLIN, CHAIRMAN	✓	

# HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT COMMITTEE

## ROLL CALL VOTE

DATE 2/18/93 BILL NO. HB 644 NUMBER 13-3

MOTION: Rep Brown moved do pass.  
Motion passed.

NAME	AYE	NO
REP. RAY BRANDEWIE, VICE CHAIRMAN	✓	
REP. ELLEN BERGMAN	✓	
REP. JOHN BOHLINGER	✓	
REP. DAVE BROWN	✓	
REP. TIM DOWELL	✓	
REP. DAVID EWER	✓	
REP. STELLA JEAN HANSEN	✓	
REP. JACK HERRON	✓	
REP. ED McCAFFREE	.	✓
REP. SHEILA RICE	✓	
REP. TIM SAYLES	✓	
REP. LIZ SMITH	✓	
REP. RANDY VOGEL	✓	
REP. KARYL WINSLOW	✓	
REP. DIANA WYATT	.	✓
REP NORM WALLIN, CHAIRMAN		✓



The amendment contained in House Bill 631, does not attempt to alter the purpose of the initial legislation, as amended, but rather attempts to clarify the amendment, simply by saying if a governing entity that is appointed by a city council or county commission, as the case may be, and is otherwise authorized by statute to pledge taxes or revenues to the repayment of bonds, that it can do so without the city or county's approval.



DORSEY & WHITNEY

EXHIBIT 2  
DATE 2/18/93  
HB 613

Members of the House Local Government Committee  
February 18, 1993  
Page 3

By its terms Chapter 413 evidenced the legislative intent to have this change supersede any other provision of law, to the contrary, part of Chapter 413 now codified at Section 7-7-4403 provides:

"(1) The powers conferred in this part shall be in addition and supplemental to the powers conferred by any other general, special, or local law.

(2) The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under this part for said purposes, notwithstanding that any general, special or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking or the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law, including but not limited to any requirement for the approval by the voters of any municipality.

(3) Insofar as the provisions of this part are inconsistent with the provisions of any other general, special, or local law, the provisions of this part shall be controlling."

We believe that since 1973, all water and sewer revenue bonds have been issued under the Revenue Bond Act. By virtue of that Act, the provisions of Sections 7-13-4321 through 7-13-4345 have been rendered obsolete, and as far as we can determine, not used for any purpose. They only add confusion by continuing to remain in our codes.

Amendments to House Bill No. 631  
First Reading Copy

EXHIBIT # 5  
DATE 2-18-93  
HB # 631

Requested by Representative Dave Brown  
For the Committee on Local Government

Prepared by Bart Campbell  
February 19, 1993

1. Page 1, line 18.  
Following: "library"  
Insert: "and an airport authority"

2. Page 2, line 11.  
Following: "library"  
Insert: "and an airport authority"

Amendments to House Bill No. 463  
First Reading Copy

Requested by Representative Ewer  
For the Committee on Local Government

Prepared by Bart Campbell  
February 19, 1993

EXHIBIT #4  
DATE 2-18-93  
HB #463

1. Title, line 12.

Following: "DATE"

Insert: " AND A TERMINATION DATE"

2. Page 3, following line 19.

Insert: "

NEW SECTION. Section 6. {standard} Termination. [This act]  
terminates June 30, 1995."

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Local Government COMMITTEE HB 644  
DATE 2-18-93 SPONSOR(S) Rep. Brown

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Elmer L. Johnson 6030 Browning Bozeman T	Bruce-Anderson Co., Inc	X	
Charlotte A. Nesbitt 4600 MADISON AV Suite 400 KANSAS CITY MO 64112	Correctional Services Group, Inc	X	
Cavan Barrett 130X 807 Bueth NW 59701	Battle Local Dev Corp	X	
DAVE BROWN	Sponsor - HD #72	X	
Wm Egan	MT Conf Elect WKrs	X with Amend	
HARRISON FARR	SELF	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

HB 631

Rep Ewer

**PLEASE PRINT**

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

LOCAL GOVERNMENT \_\_\_\_\_

COMMITTEE \_\_\_\_\_

BILL NO. HB 613

DATE 2/18

SPONSOR(S) Rep. Evers

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Mae Newell</i>	<i>Joseph Whiting</i>	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.