

MINUTES

MONTANA SENATE 53rd LEGISLATURE - SPECIAL SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 027

Call to Order: By Senator Van Valkenburg, Chair, on December 18, 1993, at 10:24 a.m.

ROLL CALL

Members Present:

Sen. Fred Van Valkenburg, Chair (D)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Rep. Bob Gilbert, Chair (R)
Rep. Mike Foster (R)
Rep. Jerry Driscoll (R)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Council
Beth Satre, Committee Secretary

Discussion:

Senator Van Valkenburg advised the House members that the Senate had rejected the House amendments to SB 27 for two reasons. First, he said gathering the 42 Senate votes for the House version of SB 27 necessary to allow the constitutional amendment to advance to the ballot would have been impossible. Second, he said it was obvious that the majority of the Senate did not concur with the House's position on SB 27, since the amendments the House put on SB 27 had been considered and rejected on the Senate floor. **Senator Van Valkenburg** then opened the floor to any comments or suggestions as to how an agreement might be reached on SB 27.

Representative Gilbert stated he and **Representative Foster** certainly preferred most of the amendments the House put on SB 27. He noted they both were willing to discuss some of the specific provisions, but dismissed the possibility of their agreeing to the Senate's final version of SB 27.

Representative Driscoll informed the Committee that the House Democrats were split on the issue. He stated "quite a few" wanted SB 27 to contain the provision "must use acquisition" for residential property as well as to limit the inflation of values to one or two percent. He noted those people would prefer to

allow no inflation of values but also realized that would not happen. He said SB 27 could not expect much support from his caucus if it only allowed acquisition value. Commenting on the current form of SB 27, **Representative Driscoll** said using acquisition value on agricultural land would put farmers and ranchers out of business. He added that requiring acquisition value for commercial properties might not be wise; commercial property would still need to be appraised after every sale because of the way it is sold. He stated he would prefer that SB 27 contained the language "must use acquisition for class four residential" and "may use acquisition for class four commercial" as well as a two percent limit.

Senator Halligan stated he did not think it wise to put a mandatory provision in the Constitution when there was chaos in California. He added that the actual impact of a property tax system based on acquisition value could not be established for residences around the state because Montana, unlike California, had 101 statewide mills. He stated mandatory language would hamper future legislatures that might develop ideas for structuring Montana's property tax system which would better address Montana's particular situation, including the 101 statewide mills. **Senator Halligan** said that requiring acquisition value for commercial properties would be anti-business and anti-economic development. He explained such a provision would discourage new businesses since they would be paying property tax based on acquisition cost while competing against main street businesses. He agreed that acquisition value on agricultural land "was out of the question". He stated that the Legislature and the public debates surrounding the constitutional referendum needed to "air out" all of the advantages and disadvantages of acquisition costs. He stated if that were done, a permissive rather than mandatory constitutional amendment might pass.

Representative Foster noted there were obviously some mixed feelings about acquisition price. He reminded the Committee, however, SB 27 had only garnered 20 votes in the Senate whereas the House version had received nearly 60 votes. He repeated that he and **Representative Gilbert** were quite willing to change some provisions: they would agree to using class four property and, in the spirit of compromise, to an inflation rate of one or two percent. He also noted that he personally did not think the difference between "may" and "must" was "a big deal". He stated, however, neither he nor **Representative Gilbert** were willing to separate commercial and residential property.

Senator Van Valkenburg said agreeing to a one or two percent limit on inflation was hardly a compromise when the House version of SB 27 already contained one percent. Speaking on the issue of caps, he stated people had taken what was intended to be a limit on the growth of value and converted it in their minds to a requirement that the appraised value of property grow at four percent per year. He noted he had originally introduced SB 27

because it was the recommendation of the Governor's Property Tax Advisory Council (PTAC). He stated those numbers represented a very legitimate way to protect those people who were not experiencing a growth or experiencing a decrease in their property values from having to pay the property taxes that people who were experiencing a very substantial increase in their property values would not have to pay. He stated that provision was intended to protect those people who were not receiving this increase in personal wealth that clearly accrues to people whose property values increase, even if they do not realize it until they sell their property. He noted, however, those people could probably, in almost all instances, easily borrow money, or invest money because of their increased property values. **Senator Van Valkenburg** stated it was disturbing to see something designed to protect people who were not benefitting from property value growth be dismissed in favor of a one percent limit which would force those same people to shoulder even more of the property tax burden.

Representative Driscoll said **Representative Raney** had come out with the first article in any newspaper advocating mandatory acquisition value for residential real property. He reminded the Committee that the difference between the proposed system and California's property tax system at the time of Proposition 13 was that California voters also rolled property taxes back from three to one percent of property value. He noted that in most taxing jurisdictions in Montana the tax rate was close to 1.5-2 percent depending upon the number of mills assessed. He stated that the Legislature was advocating placing a limit on increases in property value, not taxes. He stated that taxes could still increase, if a jurisdiction votes more mills, property owners would pay more taxes. In reference to appraised property values, **Representative Driscoll** noted that the last two reappraisal cycles happened to be based on values obtained in years in which the state's economy was up, and even though there was a downturn in the State's economic cycle between 1982 and 1992, property owners never received any discount. He said that the sticker shock that property owners experienced in 1982 spawned I-105 and CI-27. He stated local government hated I-105, but if the Legislature does not do anything, local governments "are really going to hate what's coming this time". He concluded people are not willing to keep paying increased taxes.

Representative Gilbert responded to **Senator Van Valkenburg's** comments about the recommendations of the PTAC by saying that being appointed by the Governor to a council was similar to being elected to the Legislature; such people do not become all-knowing but remain normal people who listen and try to make judgements to the best of their ability. He said collective decisions made under such circumstances should not be immediately interpreted as the best for the people of Montana. He stated his personal opinion was that the PTAC recommendations were not, whereas **Senator Van Valkenburg's** personal opinion was that those recommendations probably were. **Representative Gilbert** argued

that the people of Montana seemed to be unhappy with the current situation, and noted the Legislature needed to address their concerns. He stated that neither the Senate nor the House version of SB 27 was "overly popular" as evidenced by the votes it received in the two chambers.

Representative Gilbert stated he could not support any separation between class four residential and class four commercial property. He acknowledged the arguments that acquisition value created an anti-business climate but argued that purchase price for a business included not only the land and building but also inventory, name recognition, etc. to which property taxes did not apply. He noted that the logical and "only proper" way to establish value would be to have certified appraiser appraise the building and land, and use that value as the acquisition price, not the value of the business. He stated this approach would be simple and would involve giving no one an advantage over another because costs would be about the same. He stated his willingness to change "must" to "may" and to exclude agricultural land from acquisition value. He echoed **Representative Driscoll's** comments that the Legislature could always change tax rates if it deemed that action necessary.

Senator Harp stated the public was beginning to better understand the concept of acquisition value and would support its adoption if the Legislature could reach some agreement on the principle. He explained that since acquisition value would freeze property values until that property was either sold or transferred, people would choose predictability of their taxes over the great fluctuations in appraised values, even though those values would be frozen at appraisal values from a "high year". **Senator Harp** commented that the Committee had not at all dealt with the constitutional problems of the current system. He referred to an analysis showing that local governments would benefit from acquisition value: the analysis used 1986 values as its base and showed that if acquisition had been in place, the average increase in values through 1992 would have been about 3.1 percent versus 2.6 percent under the current system. He stated that in an acquisition system value changed immediately when property was sold or transferred and new construction would also be placed on the tax rolls much more quickly.

In referring to the cap on increases, **Senator Harp** noted PTAC had offered the four percent cap as a way of putting specific terminology in the Constitution. He argued that the proposed constitutional amendment which contained neither specific terminology nor a mandate for the acquisition method could not hope to compete with other ballot issues which guaranteed no increases of taxes or fees without a public vote. He stated if nothing else came out of the special session, the Legislature needed to arrive at some agreement which both allowed the use of acquisition value and established some percent limitation on increase in values. He reminded the Committee that the Legislature was competing "for who is going to control state

government come November election on the ballot" against a strong group of people who want to totally restructure Montana's tax system.

Senator Van Valkenburg asked **Senator Harp** if he understood that any artificial limit placed on the growth of values would cause a shift in the tax burden from people who may have greater ability to pay property tax to those who have less ability to pay.

Senator Harp replied yes and stated he found that shift acceptable because such a shift was already occurring under the existing tax laws, the current appraisal system, how statewide mills are handled, and the changes in school financing. He noted, however, he honestly believed that once acquisition was established and property values for tax purposes might begin to vary greatly within a neighborhood, property owners would still prefer the certainty of that tax system. He cited the fact that California voters in 1992 defeated a major ballot issue to "completely redo" Proposition 13 by a margin of two to one.

Senator Harp admitted there was no question but that some shifting of the burden would occur and that occasionally individuals might "not be treated properly". He stated, however, property changed hands every seven years on the average and stated, as those transfers occurred, the system would eventually level itself out and great disparities would not exist. He repeated that he thought the public would be supportive of a property tax system based on acquisition value.

Representative Foster said he had been speaking with some state employees who had asked him general questions about this session. He stated every one of them had brought up acquisition price and had expressed their opinion that acquisition value would be a "real plus" for the people of Montana. He noted they talked about "consistency and predictability" and concluded "the public is starting to learn about acquisition pricing as a concept and they like it".

Senator Van Valkenburg said he was unsure of **Senator Halligan's** opinion on the issue but he had personally never been opposed to putting permissive language about acquisition price in the Constitution. He emphasized that he was trying to communicate to committee members the fact that there will be a number of properties the value of which would not be determined by acquisition price but by increased value for at least an average of seven years if not much longer in many instances. He added that under the proposal in SB 27 an appraisal system would still be in place. He stated a percentage limit would force a shift in the tax burden from people who have ability to pay to those who have less ability to pay. He noted that putting acquisition value into the constitution could be a point of agreement.

Senator Van Valkenburg said a concept which would be acceptable to himself and **Senator Crippen** as well as correspond to the Governor's proposal, would be to provide that the Legislature would set any limit. He stated he was not in favor of putting an

actual limit in the Constitution because the Committee could not know the future consequences any Committee compromise. He noted that if committee members were agreeable to that possibility only two other issues would need to be discussed: "may" or "must" and whether the proposal would be limited to residential or broadened to include other property.

Representative Driscoll said he agreed that a cap would create a tax shift but argued that the shift would be in favor of those that do not have the ability to pay and toward those that do. He explained the stable neighborhoods are usually working class and senior citizens; those groups do not sell and, under acquisition, their values would not go up. He stated people who sell are those whose income has gone up and they buy better or more expensive houses or move into different neighborhoods. He noted that many people who have the ability also move closer to schools when their children are younger. He stated when "you cannot afford a different home your values are frozen and that is what people want; they do not want to have to argue and appeal appraisal values".

Senator Halligan disagreed. He stated both acquisition values and a one, two or three percent cap cause a definite shift in effective tax rates from the upper income taxpayer onto the property owners **Representative Driscoll** had mentioned. He stated a definite shift in burden would occur.

Representative Foster noted that when inequities are discussed, the inequities in the current system also deserved mention. He stated court cases have indicated that big inequities and problems currently exist. He said reappraisal would always involve some human subjectivity and the chance for human error. He stated he agreed with **Representative Driscoll** on the issue of tax shifts. He noted, however, that if the voters approve an acquisition price the Legislature could address issues of inequity afterwards.

Senator Van Valkenburg said the argument still seemed to be conducted as if there was opposition to acquisition values. He repeated he and **Senator Halligan** were not opposed to acquisition values being placed in the Constitution.

In response, **Representative Gilbert** defined the conflict as involving two issues: the percent of the cap, and the choice between "may" and "must". He stated those two words would become very important if a percentage was not established; if the Committee agreed on permissive language and did not set a percentage "then it is a wide open ball game and the citizens are telling us very clearly they do not like the old rules and will no longer play under those old rules anymore". He stated he understood the concern that if limits are set too low government might not be able to reach a balance between what it "wants to spend" and what it can collect. He stated he thought some flexibility existed in that regard but acknowledged that the

committee members did not all agree. He concluded the Committee needed to discuss those points.

Senator Van Valkenburg replied government would not be limited by the proposal. He stated if that was the fundamental argument the people were being sold on something that was untrue. He stated government could still raise the mills or change the assessed value that was put on the property. He stated the proposal would actually mean that people who have higher value property would not have to pay as much as those who have lower value property. He stated the public was being misled as to what really occurs when an artificial cap is placed on increases in appraised value as opposed to the current system's assessed value.

Senator Van Valkenburg noted another free conference committee was scheduled to meet and said the Committee had made some progress. He said committee members understood each other's positions "a good deal better" but expressed his doubt that any member was ready to start offering amendments to SB 27. He suggested the Committee recess and then come back to move toward that point.

Senator Harp asked if **Senator Van Valkenburg** had language which would incorporate "the Legislature shall determine" on any type of cap. **Senator Van Valkenburg** replied yes and added he would bring that language to the next meeting.

Representative Gilbert stated the House members agreed that it would be best to move on to the next committee since the same three members also sat on that committee. He stated the free conference committee on SB 27 would meet later at the call of the chair.

Recess and Reconvene:

Senator Van Valkenburg recessed the free conference committee on SB 27 at 10:55 a.m. He reconvened the meeting at 12:52 p.m. with all members in attendance.

Discussion:

Senator Van Valkenburg said he had met with **Senators Harp, Crippen and Halligan** in an attempt to reach agreement among, at least, the members of the Senate on some possible changes to SB 27. He noted that attempt was somewhat successful and offered **Senator Crippen**, who had also introduced a bill for a constitutional amendment, the opportunity to comment.

Senator Crippen stated the people present at that meeting had drafted language which he hoped would be agreeable to all caucuses. He explained the amendments would do two primary things: one, it would place the concept "acquisition value" in the Constitution and two, it would remove the cap on annual

increases in property valuation currently in SB 27. He noted some had argued that caps were necessary for the adoption of SB 27 and agreed that point might be "realistic". He stated, however, he had difficulty with the idea of caps because from a constitutional constructionist standpoint, caps should be determined by statute and not placed in the Constitution. **Senator Crippen** stated that with the proposed amendment, the Legislature could present a proposed change to the Constitution to the people for review which would still preserve the representative form of government which was currently under challenge. He stated the public would be accorded protection and while ensuring the Legislature enough flexibility to enact laws that would give all Montanans more protection. He said he would argue in any discussion with constituents that it was important to pass SB 27 in this form because the elected representatives of the people are responsible for establishing restrictions or caps.

Senator Crippen said the language he was presenting was "a trade off". He stated **President of the Senate Van Valkenburg** and **Senator Halligan** were clearly working with the Senate Minority and added **Governor Racicot**, **Speaker of the House Mercer** and the House Republicans had agreed to the proposed changes. **Senator Crippen** said he was unsure what other results might be reached before the end of this "difficult" special session. He noted, however, legislators could possibly point to SB 27 "with pride" and say the Legislature was able to preserve the representative form of government and compile a constitutional amendment for the people's vote.

Senator Van Valkenburg distributed the set of amendments to which **Senator Crippen** had made reference (Exhibit #1). He asked **Greg Petesch** to explain the amendments and how the Constitution would read if they were adopted.

Greg Petesch said the title would read "to submit to the qualified electors the amendment to allow equalization of property values for property tax purposes to be based on classification and on acquisition values and to limit increases in valuation of property as provided by law." He noted that subsection(b) would read "equalized valuation of residential and commercial property may be achieved through the classification of property and may be based on acquisition value", and subsection(2) would provide that "for property tax purposes the value of any class of property may be limited by law". **Mr. Petesch** also noted that the statements of implication would read "for allowing property taxes to be based on acquisition value and allowing limits on annual increases in valuation of property"

Senator Van Valkenburg noted **Mr. Petesch** had left an important word out of his explanation. He said the amendments would change the wording in subsection(2) to read "for property tax purposes increases in the value of property may be limited by law". He stated this language represented an attempt to reach agreement on the issue of using acquisition value in a permissive way to limit

that application to residential and commercial property. He noted the Legislature should not place a reference to "class four property" in the Constitution. He noted a statutory definition for residential and commercial property would probably become necessary, even though a general understanding of that definition was already extant.

According to **Senator Van Valkenburg**, providing that increases in the value of property may be limited by law would make agreement on a constitutional amendment possible and provide future legislatures with some flexibility. He explained that since SB 27 was potentially constitutional language, the Legislature needed to consider carefully the way that caps shift the tax burden to property owners whose property values are not increasing at that rate that certain parts of Montana have been experiencing in the last several years. He noted that given the current atmosphere, there was no doubt that the Legislature would probably approve a bill establishing a statutory limit of one or two percent. **Senator Van Valkenburg** said it would still be an "uphill battle to get the Legislature as a whole" to agree on SB 27 in this form, but stated the amendments represented the best chance to gain approval. He said he had also conferred with the **Speaker of the House of Representatives** in this matter. He noted that **Speaker Mercer** was in the room and asked if he would like to comment.

Speaker Mercer said he had reviewed the proposed language and listened to the discussion. He stated the amendments represented a good deal of progress and very closely mirrored the Governor's wishes while taking into account other public concerns. He stated the leadership of the House would like to see it adopted so that they "could take a run at it". He noted it would be difficult to get the 100 necessary votes, but added if the President of the Senate could "twist a lot of arms in the Senate", it would be possible to get some votes in the House.

Representative Foster asked if the proposed language would limit the increase in value by law for both residential and commercial property. **Senator Van Valkenburg** replied that the language would actually apply to all classes of property.

Motion:

Senator Halligan MOVED TO AMEND SB 27 (Exhibit #1).

Discussion:

Representative Driscoll said he did not know how the members of the House Democratic Caucus would react. He stated some members did not like acquisition and some wanted "must" for at least real property. Since the amendment would provide only that the Legislature "may", he stated the people opposed to acquisition might be willing to support such a constitutional amendment but said the people who want to make acquisition value mandatory most

likely would not.

Senator Van Valkenburg noted that with respect to that caucus, **Representative Raney**, who had also introduced a proposed constitutional amendment, was in attendance. He stated **Representative Raney** had asked to address the Committee.

Representative Raney agreed with **Senator Crippen's** comments about how it was necessary to come to an agreement on this issue because of the way Montana citizens currently feel about their government. He stated, however, that the solution currently under discussion was not going to give the people what they wanted. He said that while the Legislature's being able to agree was "pretty cheery", the people were not going to be at all impressed by language that agreement would place on the ballot. He explained that in their current mood the public would not be comforted by language indicating that the legislature may limit increases because it is not definitive. He stated the proposed language "missed the boat".

Senator Van Valkenburg responded some people felt that way, but lots of other people felt differently. He stated the very fact that an agreement was possible rather than continued divisiveness was something the people would appreciate.

After stating he was not entirely happy and would have liked to have seen more, **Representative Gilbert** said the amendments would give the citizens of Montana a choice. He stated that if the amendments were adopted and SB 27 passed, a property tax system using acquisition price would at least be a possibility whereas currently it was not. He said he would support the motion.

Senator Van Valkenburg commented that any change in property tax had a great impact on local governments. He asked **Alec Hansen, Montana League of Cities and Towns**, if local governments had any strong opposition to the proposal. **Alec Hansen** replied that as long as the law is permissive and the decision was made in the Legislature, local governments could agree to the proposal. He stated local governments were opposed to having some provision "locked up in the Constitution" that might prove untenable in 20 years time.

Vote:

The motion TO AMEND SB 27 CARRIED UNANIMOUSLY (Exhibit #1).

Discussion:


Representative Driscoll asked if it was necessary to keep the provisions allowing the phase-in of reappraisal values in SB 27. **Senator Van Valkenburg** responded that amendment seven had removed those lines from SB 27 in their entirety (Exhibit #1).

Motion/Vote:

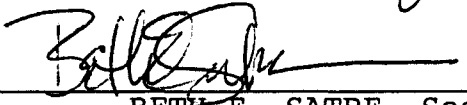
Senator Halligan moved SB 27 DO PASS AS AMENDED by the Free Conference Committee. The MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 1:07 p.m.



SENATOR FRED VAN VALKENBURG, Chair



BETH E. SATRE, Secretary

FVV/bs

ROLL CALL

FREE CONFERENCE COMMITTEE ____ SB 27 ____

DATE _12/18/93_ 10:30

NAME	PRESENT	ABSENT	EXCUSED
SENATOR VAN VALKENBURG, Chair	X		
SENATOR HALLIGAN	X		
SENATOR HARP	X		
REPRESENTATIVE GILBERT, Chair	X		
REPRESENTATIVE DRISCOLL	X		
REPRESENTATIVE FOSTER	X		

Amendments to Senate Bill No. 27
Reference Reading Copy

For the Committee on SB 27

Prepared by Greg Petesch
December 18, 1993

1. Title, line 15.

Strike: "L"

Insert: "AND"

2. Title, line 16.

Strike: "L IF"

Insert: "AS"

3. Title, lines 17 through 20.

Following: "LAW" on line 17

Strike: remainder of line 17 through "CYCLE" on line 20

4. Page 2, line 5.

Following: "VALUATION" on line 5

Insert: "of residential and commercial property"

5. Page 2, line 8.

Following: "L" on line 8

Insert: "increases in"

6. Page 2, lines 9 through 13.

Following: "property" on line 9

Strike: strike remainder of line 9 through "provided" on line 10

Insert: "may be limited"

Following: "law" on line 10

Strike: remainder of line 10 through "YEAR" on line 13

7. Page 2, lines 14 through 16.

Strike: subsection (3) in its entirety

8. Page 2, line 23.

Strike: "limiting"

Insert: "allowing limits on"

9. Page 2, line 24.

Strike: "to"

10. Page 3, line 1.

Strike: "1%"

11. Page 3, line 3.

Strike: "limiting"

Insert: "allowing limits on"

12. Page 3, line 4.
Strike: "to"

13. Page 3, line 6.
Strike: "1%"