

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON HOUSE BILL 308

Call to Order: By CHAIRMAN TOM BECK, on April 7, 1995, at 9:00 a.m.

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck (R)
Sen. Larry L. Baer (R)
Sen. John "J.D." Lynch (D)
Rep. Douglas T. Wagner (R)
Rep. David Ewer (D)
Rep. Roger Somerville (R)

Members Excused: none

Members Absent: none

Staff Present: Bart Campbell, Legislative Council
Elaine Johnston, Secretary

This conference committee was dissolved and a free conference committee was appointed with the same members. However, the free conference committee did not meet because the members who did not agree in the conference committee met and had amendments prepared that they agreed upon. The free conference committee report is included in these minutes.

{Tape: 1; Side: A; Approx. Counter: ; Comments: .}

Discussion:

CHAIRMAN TOM BECK said that the House rejected the amendments the Senate put on HB 308 and he asked for a brief explanation of what was done to HB 308.

REP. DAVID EWER, said that the amendments put on by the Senate did three things. First, they put a lot of notification requirements in and second, the Senate had a problem with the way trailer parks were treated. When the bill came out of the House, liens for people who did not pay their water or sewer district charges, a lien could be put on the property. REP. DOUG WAGNER and REP. EWER had agreed that the lien would go against the home and not the land. The third amendment put back in a list of what

it meant to be benefitted property in a district. Lastly, he said that when dealing with general obligation bonds, the language on page 8 Prior to imposing rates or charges for facilities under that subsection was stricken and he agreed to the amendment.

REP. WAGNER said his concern for the bill was the list of what it meant to be benefitted property. He understood **REP. EWER** to want to finance water systems and if a line ran across someone's property, it would benefit their property and at some point they could be charged whether they hook up or not. In Hungry Horse, they took out a FHA loan and bought out the old water system and put in a new system. He stated that he would not support having the list back in the bill. He had a conflict somewhat with the bill because his wife had the potential of inheriting one third of trailer park. The water company in Hungry Horse was a district and when someone hooked up for service, they were charged a deposit and if for some reason they did not pay their bill, they could be shut off. HB 308 said that if a person did not pay their bill, a lien would be put on the property owner. **REP. WAGNER** said as a landlord, he could raise the rent but that would not give people the incentive to conserve water. He did not understand the bonding portion of the bill but did agree with the notification requirements. **REP. WAGNER** felt that there was enough other things to be dealt with in the bill that a conference committee would not be able to handle the problems.

CHAIRMAN BECK said that if they could not reach an agreement in conference committee, he was willing to go into a free conference committee.

REP. EWER said that he would always object to having a free conference committee on a bill like HB 308 unless there was a large technical flaw. He felt that in respect to the process, they should try to reach an agreement but he would not object to a free conference committee. He said that HB 308 was a very important bill to water and sewer districts across the state.

REP. WAGNER said that the world has gone on with out HB 308 and if there was such great need for the bill, if HB 308 did not pass the session, during the interim, the people who are affected by the bill would be willing to work with the sponsor to find a bill that would work in the future. He continued that the boards may have been in support but they did not take into consideration the consumers.

REP. ROGER SOMERVILLE said that they should go through section 7 which included the benefit list. He said that **REP. WAGNER** may be confused as to what the list actually did. He wanted to make sure that anyone who did not agree to their sewer district should not be taxed for the district but if they had signed on or agreed to the district, they should be charged.

SEN. LARRY BAER said that he agreed with **REP. WAGNER AND REP. SOMERVILLE** that section 7 seemed to be the focal point of the problems in addition to the mobile home park issue. He said that they should take a look at section 7 and modify the amendments accordingly to suit the needs of the people.

CHAIRMAN BECK said that the first amendment dealt with the title and that was fine. The second amendment dealt with factors to determine if the property would be benefitted, and that would be tied in with section 7. Amendment three dealing with the sections in the code he was not sure and asked **Bart Campbell** to explain the amendment.

Mr. Campbell said that in amendment number five, those are the two sections that are being amended to fit in with the title.

CHAIRMAN BECK asked what the applicability date was.

Anna Miller, Department of Natural Resources, said that they were talking about being able to assess people and put a lien on their tax property, so if the bond was issued in the eighties people who sign on to the bond are committing themselves to a period of time.

CHAIRMAN BECK asked if the Department asked for the effective date amendment.

Ms. Miller said that it was part of Mae Nan Ellingson's amendments.

REP. WAGNER asked if what **Ms. Miller** said was they could go back and assess property taxes from back in the eighties with out a vote.

Ms. Miller said if a water and sewer district issued a bond in the eighties for twenty years, and it had been paid regularly but something in 1995 made them quite paying their bill, they could do the assessments talked about.

CHAIRMAN BECK said there was no problem with amendment number five which dealt with the public hearing process.

REP. EWER said if people are delinquent with their water and sewer, HB 308 allowed districts to put a lien against the property just like the cities can do.

REP. WAGNER said that was one of the areas where there was a problem because there was no reason a well managed system could not stop the delinquency.

REP. EWER said that every time **REP. WAGNER** made a point he would have a counter point. He continued that HB 308 did not say a lien was required, it did give another option. They had made sure in the House to make it a permissive option.

REP. SOMERVILLE asked how in Hungry Horse they dealt with the delinquent payments.

REP. WAGNER said that typically, the bookkeeper would provide the list of delinquent payments and a posting notice would be put on the users property to pay by a certain time and if not paid they would be shut off. He said that when one was shut off, there was a message sent to the people and there has been less than 1% shut off.

REP. SOMERVILLE asked how they handled a person who was six months in debt and still owned the property but had left town.

REP. WAGNER said they would not let people get six months in debt. Secondly, they would call a collection agency if the person left and the agency would try to collect 50% and the other 50% would be written off. Also, there would be a deposit on file to cover any loss.

SEN. BAER said that the problem arose from the difference between the land owner who accrues the debt must be public services and a renter of a trailer park that accrues the debt. He said that if you were going to hold the trailer park owner responsible by way of a lien against the property for unpaid debts of the tenants, the only way to reach an equitable solution is if the landlord requires an adequate security deposit to cover the liability.

REP. WAGNER said that you can not take utility bills out of a security deposit.

Barbara Leitz, from Hungry Horse, said that according to Montana State Code 70-25-101 on security deposits only allowed for cleaning, tangible loss, and unpaid rent to be taken from a security deposit.

SEN. BAER said that possible what they would need to do is create another type of security deposit for situations like utilities that would not necessitate a lien on the property. The debts should be followed up periodically rather than letting them accrue into a large problem at the end of the year.

REP. WAGNER questioned if that would take a separate piece of legislation or if it would fit within the scope of HB 308.

SEN. BAER said he was not sure if that would conform with the title of the bill.

Mr. Campbell said that it would require a change in the landlord tenant law or creating a provision that would not withstand that section. He said it would be within the title.

REP. SOMERVILLE asked if he owned a fourplex, would the same rules apply to renters of a fourplex as those in a trailer.

CHAIRMAN BECK said the reason he was concerned was that when the bill was in the Senate Local Government Committee, the trailer home was being assessed and if the trailer was to leave, who would they collect the water bill from? There would not be the problem with permanent structures as there will mobile units.

REP. SOMERVILLE said in reality, there was the same situation except one had wheels, so the rule should apply to apartments as well as mobile homes.

CHAIRMAN BECK said when renting a unit, he did not know how the landlord passed the fees onto the renter. He stated when dealing with the conservation of water, metered water would be metered to each tenant and you could meter the mobile home.

REP. EWER stated the issue of the bill was whether a lien would be against the mobile home or the property and the bill as it stood, mobile homes are the only carved out exception. With rental property, usually the landlord pays for the water and it was not separately metered. To allow landlord tenant situations where the tenant would have to be responsible he did not agree with.

SEN. BAER said the only thing you would be able to lien would be the real property because the tenant would be gone. If the property owner was to be held liable for the tenant, there should be some type of mechanism to protect the landlord.

REP. SOMERVILLE said to **REP. EWER** that the basis to HB 308 was to work favorably toward the bonding of the system and the lien language was needed to have a guarantee to pay for the system. You would still be able to assess the property owner so that he could make the payments and still sell the bonds.

REP. EWER said that he objected to the insinuation that because he was the bond program officer that he was doing stuff for the bonds. He stated the motive for the bill was to make current water and sewer law that was not working and to enable a political subdivision, water and sewer district to be able to collect its charges in a manner that other political subdivisions had.

CHAIRMAN BECK asked **Mr. Campbell** to research if the suggestion of **SEN. BAER** would work. He continued with amendment six.

Mr. Campbell said that the amendment dealt with the language stricken by the mobile home exception.

CHAIRMAN BECK asked **REP. WAGNER** if he still objected to the amendment.

REP. WAGNER stated that was one of the areas of concern he had because there was no conservation incentive.

CHAIRMAN BECK continued on with amendment seven which dealt with the definition of benefitted and asked for some comments.

SEN. BAER stated that to charge a property owner for the use of a facility just because the line runs by their property was patently unfair.

CHAIRMAN BECK asked **REP. EWER** to defend his position that a line across a piece of property provides a benefit but the property owner does not hook up why should they be assessed charges.

REP. SOMERVILLE clarified that if a line went across a persons property, it may not indicate whether they need to be on it or not. It must go back to whether the person was in the water or sewer district. For a sewer district to operate, they may have to have a sewer plant 10 miles away from the town. That 10 miles could cross farmed fields so the farmer has not signed or voted into a water district, they should not have to pay any services on that line but if they did sign themselves into the district they should have to pay the charges.

CHAIRMAN BECK said that it was hard to believe they would have piece meal water and sewer districts.

REP. SOMERVILLE said that Lakeside was a perfect example of districts that are not contiguous.

REP. EWER stated that HB 308 did not give any authority to a district to impose rates and charges on property outside of the district. If the line went outside of a district because of a treatment plant, those people not in the district would not be assessed any charges. He questioned who should pay rates and charges within a district. There are three types of people in a district, those who are directly connected, those who are benefitted, and those who are not benefitted. HB 308 tried to make clear that there are those folks who are not benefitted and live in the district that would not have to pay for facilities they would never use. Section 7 tried to flush out what it meant to be benefitted but what was strange was that there was ample law about other types of districts dealing with benefitted property like television districts. HB 308 stayed with many years of precedent and for the first time gave some parameters for what it meant to be benefitted. He said he would not have cared if they struck the parameters out.

REP. WAGNER said that they had struck the parameters out on the House floor but airwaves could not be controlled so a television district needed to have everyone involved. If an electric line goes over your property but you are not hooked up, you are not assessed a charge. He felt this should be the same for water and sewer districts. In Hungry Horse, they had people with vacant property in the water district who did not receive any charges until hooked up.

REP. SOMERVILLE stated that television stations are mostly private enterprise and gas was mostly private enterprise. Sewer and water are public entities so there needs to be a way to fund a district.

REP. EWER said that it was important to remember what the law and HB 308 did. First, to be a water and sewer district you must actively petition and it required a substantial number of people to do that. HB 308 requires the debt to be voted by the people and it must be 40% of the voters and a majority vote. The only facility charge that could be imposed was capital fees which had to be voted by the district. If you say you were not benefitted, and you could not hook up for three years and don't want to be included in the district, that process was already in statute and with HB 308 they tried to do a better job.

SEN. J.D. LYNCH said that he agreed with **REP. EWER** only because he had an apartment that he had not used in eight years but he still paid garbage on it. He stated that much of the session dealt with local control and when section 7 was put back in, your county commissioners and district board of directors decide who would benefit and who would not. Apparently, he said the committee did not want to give local control and if there were two votes against putting that back in the bill they were not going anywhere.

CHAIRMAN BECK said he was not convinced because a line running through your property was grounds to be assessed a charge. There should be a way for a person to get out of a district.

SEN. LYNCH said he agreed that if there is no beneficial use and you will never have any use, then you should not have to pay. The board of county commissioners and the board of directors in a district would make sound judgments on determining if a person would be benefitted.

SEN. BAER stated that a vacant lot which may not be able to be built on you would still be charged the sewer fee for the square footage of the lot. Whether the property is currently served by the facilities was a valid criteria, if it is not served by the facilities then a person should not pay. The next criteria of a property would be served by the facilities if the owner elected to connect, he said that they were contradicting the first criteria and becoming very ambiguous. Additional facilities required to connect with the facility was a gray area he stated. He said that the only criteria that applies was whether or not the property was being served by the facilities. If you receive something you should pay for it but if you don't receive or want a facility, you should not have to pay. Just to pay for an indebtedness in a district, you should not require people to pay for an item that was distinguishable by use.

SEN. LYNCH asked **SEN. BAER** about item (g) on the list as he thought it seemed to be distinguishable by the board. If your

lots went up in value because of sewage available, shouldn't that mean something?

SEN. BAER said that it was an inadvertent increase perhaps and was not brought about by the property owner, it was not a criteria for them to pay.

CHAIRMAN BECK said he agreed with **SEN. BAER** because if he had a forty acre lot that he was farming and the sewer goes along beside that and the use of the lot does not change he should not have to pay.

REP. SOMERVILLE said there was still some confusion as to how the districts were set up. If a person did not petition to get into a district then they should not have to pay but if a person has three city lots and petitioned to get into the district they would benefit. If a well was put on a forty acre lot an investment of \$8,000 was beneficial to the property. If your lot gains value and you petitioned to get into the district you should be paying he said.

REP. WAGNER asked if a person was in the district boundaries and voted against the district. There was 10% needed to start the process and 40% of the voters need to turn out for the election.

REP. EWER said that 40% needed to show up to vote and 60% of those needed to approve the district.

REP. WAGNER said that they had many people in their district who wanted to petition out but the board did not allow them out but did not charge them because they had no beneficial use.

CHAIRMAN BECK asked what the possibility of using actual use rather than beneficial use?

Mr. Campbell said that 7-13-2302, county water and sewer districts, in subsection three used the word benefitted and he questioned if there were court decisions on what benefitted meant.

SEN. BAER asked what the courts definition of benefitted was?

Mr. Campbell said he would get a synopsis of the court cases.

SEN. BAER said that regardless of what the courts have decided benefitted to mean the legislature could make a change.

REP. EWER said the House striped out the parameters and if the committee wanted to strip them out it was fine.

Motion/Vote: **SEN. LYNCH** MOVED TO STRIKE THE NEW SECTION SEVEN. THE MOTION CARRIED WITH **REP. SOMERVILLE** VOTING NO.

Discussion:

REP. WAGNER asked **Ms. Leitz** about a part of the bill that did not allow the people to vote on an indebtedness.

Ms. Leitz said she questioned when bonded indebtedness was referenced to school districts. School districts she said could incur a bonded indebtedness up to 45% of the taxable value within the district. She wanted to know if that meant they could enforce that without holding an election or if they would sell bonds for \$10,000.

REP. EWER said that all the debt authorized in HB 308 had to be voted with the exception of the district refunding for advantage to the purposes for the district. You can refund existing debts without a vote and was standard for all governments. When debt was used to retire debt, generally a vote was not needed.

SEN. BAER said that he was not sure totally eliminating section seven was the right thing to do. He asked how the elimination of section seven would affect the implementation of HB 308. Would a person still under law be required to pay a fee? He also asked if the determination of a benefit by the county commissioners should be left?

Mr. Campbell said that benefitted would still be an undefined term unless there was some court precedent. With other districts, it talked about being able to charge benefitted property but he was not sure if it was general concept to charge benefitted property existed. Most of the current sewer district law was based on charges as the way a district would meet its expenses.

REP. EWER said that under section seven all it did was try to flush out what it meant to be benefitted. If there were no parameters for what it meant to be benefitted, the district would determine who would be benefitted and they could still charge those who were not actually hooked up. If section seven was taken out and you insisted if you were not hooked up that you wouldn't pay for the capital charge that people voted on themselves, then water and sewer district finance law would not be used. In 1988, a court decision said if a water line went passed your property but you were not hooked up you did not have to pay but at anytime you could force the district to hook you up. He stated that was unfair.

CHAIRMAN BECK asked what if they left only subsection (a) in the HB 308?

REP. EWER if that stayed in then the statute would not work.

SEN. BAER asked about leaving in lines 10 and 14 of section seven but modify them but inserting "use of facilities" on line 12 and on line 13 strike "or availability of services". He said that would solve some of the problems of striking the entire section.

CHAIRMAN BECK told the committee to think about the bill and if they could come up with something everyone could live with that would be great but if not they would have to ask for a free conference committee. He asked **REP. EWER, REP. WAGNER, REP. SOMERVILLE,** and **SEN. BAER** to meet and work out a solution to present to the committee.

ADJOURNMENT

Adjournment: 10:15 a.m.


SEN. TOM BECK, Chairman


ELAINE JOHNSTON, Secretary

TB/ej



FREE CONFERENCE COMMITTEE

on House Bill 308

Report No. 1, April 7, 1995

Page 1 of 3

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 308** and recommend the following amendments:

1. Title, line 5.

Strike: "AVAILABILITY"

Insert: "DIRECT BENEFIT"

2. Title, line 9.

Following: "JURISDICTION;"

Strike: "PROVIDING" through "BENEFITED;"

3. Title, line 12.

Following: "DATE"

Strike: "AND AN APPLICABILITY DATE"

4. Page 2, line 18.

Strike: "in accordance with 7-13-2301"

5. Page 4, line 3.

Strike: "(a)"

6. Page 4, line 5.

Strike: "or indirectly"

7. Page 4, line 6.

Following: "and"

Insert: "direct"

8. Page 4, lines 17 through 22.

Strike: subsection (b) in its entirety

9. Page 4, line 27.

Following: "(a)"

Strike: "A"

ADOPT

REJECT

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Insert: "If the board has ordered discontinuance of service as provided in subsection (3) and the person or entity who received the service has not made full payment of all delinquent charges, interest, penalties, and deposits, then a"

10. Page 5, line 14.

Following: "HOME."

Insert: "If the property on which arrearages remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the amount owed must be assessed as a tax against the property."

11. Page 5, line 15.

Strike: "assessments"

Insert: "delinquent charges"

12. Page 5, line 29.

Strike: "5"

Insert: "7"

13. Page 7, line 10 through page 8, line 4.

Strike: section 7 in its entirety

Re-number: subsequent sections

14. Page 8, line 8.

Strike: "30"

Insert: "40"

15. Page 8, lines 16 and 17.

Following: "use" on line 16

Strike: "or" on line 16 through "availability" on line 17

16. Page 9, lines 19 and 20.

Strike: "THROUGH" on line 19 through "9" on line 20

Insert: "and 8"

17. Page 9, line 21.

Strike: "THROUGH 9"

Insert: "and 8"

18. Page 9, line 23.

Strike: "-- APPLICABILITY"

Strike: "(1)"

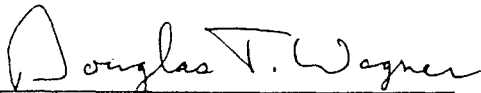
19. Page 9, lines 25 and 26.

Strike: subsection (2) in its entirety


We recommend that the amendments considered above to House Bill 308 be acceded to by the senate.

And this FREE Conference Committee report be adopted.

For the House:



Chair
Wagner

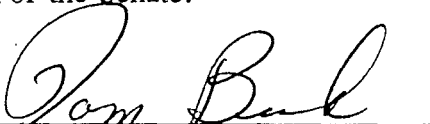


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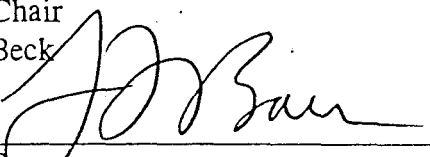


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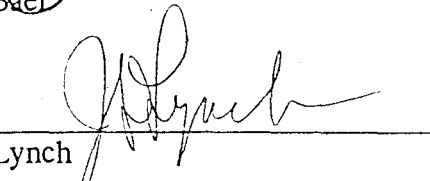
For the Senate:



Chair
Beck



Baer



Lynch