MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

**Call to Order:** By **VICE-CHAIR ETHEL HARDING**, on January 10, 1995, at 1:00 p.m.

ROLL CALL

**Members Present:**
Sen. Thomas A. "Tom" Beck, Chairman (R)
Sen. Ethel M. Harding, Vice Chairman (R)
Sen. Sharon Estrada (R)
Sen. Delwyn Gage (R)
Sen. Don Hargrove (R)
Sen. Dorothy Eck (D)
Sen. John "J.D." Lynch (D)
Sen. Jeff Weldon (D)

**Members Excused:** none

**Members Absent:** none

**Staff Present:** Susan Fox, Legislative Council
Elaine Johnston, Committee Secretary

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

**Committee Business Summary:**
Hearing: SB 2, SB 8
Executive Action:

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

HEARING ON SB 2

Opening Statement by Sponsor:

**SEN. BRUCE CRIPPEN, SD 10, Billings**, presented SB 2. **SEN. CRIPPEN** gave a lengthy background of Special Improvement Districts (SID) and Rural Special Improvement Districts (RSID) and how they work. SB 2 would requires 5% of the cost of improvements to go into the revolving if the revolving fund secures the bonding, in addition another 5% of the cost of improvements into a district reserve account to be used first to replenish funds in the general operating account of the district fund. This additional 5% is optional and can only be assessed one time. This would benefit the general tax payer providing more security to them and the bond holders. SB 2 also makes it mandatory for an additional 1/2% above the interest rate of the bonds goes into the operating account of the district fund to pay interest and may be used to pay principle. Another optional up to 1/2% can be assessed on the bonds to be put in the interest account of the district fund. The additional 1/2% can be reduced or eliminated but once it has been reduced or eliminated it can not be increased or reinstated. SB 2 includes a mandatory list that must be considered before the establishment of an SID or RSID.

Proponents' Testimony:

**Alec Hanson, MT League of Cities and Towns**, supported SB 2 as SIDs and RSIDs are the fairest and most effective way of financing improvements. He said that SB 2 provides guidelines that balance the interests of taxpayers, developers, investors, and others.

**Mona Nutting, a Commissioner from Carbon County**, stated that the commissioners from Carbon County support SB 2.

**Merl Gamrault, Finance Director for the City of Bozeman**, urged the support of SB 2. He felt SB 2 passed more of the risk of SID financing onto the developers of the project rather than the taxpayers, provides guidance to local governments that are not experienced in creating SIDs.

**Anna Miller, Department of Natural Resources**, supported SB 2.

**Nathan Lubergen, Finance Director of the City of Billings**, supported SB 2.

**Tim Magee, Finance Director of the City of Great Falls**, said that SB 2 would help many cities in the state and urged support of SB 2.

**Mae Nan Ellingson, a lawyer with Dorsey & Whitney**, submitted information on SIDs and suggested amendments to SB 2 **(EXHIBIT 1 and 2)**.

**Gordon Morris, Director of the Montana Association of Counties,** supported SB 2.

**Charles Brooks, representing the Yellowstone County Commissioners**, stated their support of SB 2.

**Gene Huntington, representing Dain Bosworth**, support SB 2.

**Shelly Lane, Director of Administrative Services for the City of Helena**, supported SB 2.

Opponents' Testimony: none

Questions From Committee Members and Responses:

**SEN. DELWYN GAGE** asked what happens to the funds in the revolving fund when there is no longer a need for the fund on any bond? **SEN. CRIPPEN** replied that the money goes back to the general fund.

**SEN. GAGE** asked if city folks would in some cases be paying for RSID's? **SEN.CRIPPEN** answered that that may be the case.

Closing by Sponsor:

**SEN. CRIPPEN** closed.

## HEARING ON SB 8

Opening Statement by Sponsor:

**SEN. CRIPPEN** SD 10 presented SB 8 which provides certain county improvement districts may declare bankruptcy under the federal law.

Proponents' Testimony:

**Mae Nan Ellingson, an attorney wiht Dorsey & Whitney**, presented her written testimony in support of SB 8 **(EXHIBIT 3)**.

Opponents' Testimony: none

Questions From Committee Members and Responses:

**SEN. JEFF WELDON** asked about the definition of insolvency. **Ms. Ellingson** answered that the definition is defined under the bankruptcy code as being unable to pay debt.

**Ms. Ellingson** confirmed **SEN. GAGE's** question that her comments on SB 2 also reflected on SB 8.

Closing by Sponsor:

**SEN. CRIPPEN** closed.

## ADJOURNMENT

**Adjournment:** 1:50 p.m.

Sen Tom Beck

SEN. THOMAS A. "TOM" BECK, Chair

Elaine Johnston

ELAINE JOHNSTON, Secretary

TAB/ej

MONTANA SENATE
1995 LEGISLATURE
LOCAL GOVERNMENT COMMITTEE

ROLL CALL

DATE 1-16-95

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| DOROTHY ECK | ✓ | | |
| SHARON ESTRADA | ✓ | | |
| DELWYN GAGE | ✓ | | |
| DON HARGROVE | ✓ | | |
| J. D. LYNCH | ✓ | | |
| JEFF WELDON | ✓ | | |
| ETHEL HARDING, VICE CHAIRMAN | ✓ | | |
| TOM BECK, CHAIRMAN | ✓ | | |

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1
DATE 1-10-95
BILL NO. SB 2


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FARGO
LONDON
BRUSSELS

MAE NAN ELLINGSON


# MEMORANDUM

TO: Senate Local Government

FROM: Dorsey & Whitney
Mae Nan Ellingson

DATE: January 10, 1995

RE: Senate Bill 2

Since 1913, Montana counties, cities and towns (municipalities) have been authorized to create special improvement districts and issue special assessment bonds for the purpose of financing the costs of certain public improvements within such districts. The laws governing rural special improvement districts created by counties and special improvement districts created by counties are essentially the same.

Under Montana law, a municipality may finance the cost of local improvements, such as street and utility improvements, and assess the costs thereof against benefitted property only by the creation of special improvement districts. Such districts are created following adoption by the governing body of the municipality of a resolution of intention that specifies the boundaries of the district, the general character of the improvements, an approximate estimate of the cost thereof and, under current law, the method or methods by which the cost of the improvements will be assessed against property in the district. Notice of the passage of the resolution of intention must be published in a newspaper published in the municipality and must be mailed to the owners of real property within the proposed district. The governing body of the municipality is empowered to include lots not fronting on the proposed improvements within the district if it finds that such lots or improvements are benefitted thereby.

Within 15 days after the date of publication of the notice of passage of the resolution of intention, owners of property within the district to be assessed with the cost of the improvements may make written protests against the improvements or the creation of the district. Unless the owners of more than 50% of the assessable property file protests, the governing body of the municipality, after a public hearing, may adopt a resolution creating the district and ordering the improvements. In the case of city sewer improvements, the council can override the protest of affected property owners, to the extent the protest does not exceed 75% of the assessable property. In case of rural improvement districts created for sewerage improvements protest, the county commissioners can override a protest by a unanimous vote. Following the creation of the district, the governing body is authorized to advertise for construction bids and let construction contracts, so long as the cost of the improvements does not exceed the estimate of costs contained in the resolution of intention.

Following advertisements for competitive bids, the municipality is also authorized to issue its special improvement district bonds the proceeds of which are used to pay the costs of the improvements. Initially, special improvement district bonds had only a single, final stated maturity, but were subject to mandatory redemption at any time if after paying interest due on the bonds, there remained amounts on deposit in the district fund. Special improvement district bonds issued since 1985 must mature annually, either as serial bonds or amortization bonds. The bonds are still subject to mandatory redemption either from unexpended proceeds thereof or from the prepayments of special assessments levied in the district. Special improvement district bonds are drawn on the fund of a special improvement district. Two sources are pledged to the district fund to pay the bonds: special assessments levied in the district and since 1929, as later discussed, amounts loaned to the district fund from the revolving fund.

To secure the bonds and thus pay the cost of the improvements undertaken in or for the benefit of a district, the municipality is obligated to levy assessments in the principal amount of the bonds against assessable property in the district. "The theory upon which a municipality may levy assessments for special improvements is that the property charged receives a corresponding physical, material, and substantial benefit from the improvement; that the property assessed will be enhanced to the extent of the burdens imposed." State ex rel. City of Great Falls v. Jeffries, 83 Mont. 111, 270 P. 638, 639 (1928) (citations omitted). The assessments are payable over a term, not to exceed 20 years, corresponding to the final maturity of the bonds, and are payable semiannually in equal principal amounts, with interest on the unpaid installments of the assessment equal to the average annual rate of interest on the outstanding bonds. (Changes made by the Legislature in 1987 authorize the levy of assessments in amortized amounts and bearing interest at a rate up to 1/2% above the average rate of interest on the outstanding bonds.)

Special assessments do not represent a personal obligation of the property owner, but instead "constitute a lien upon and against the property upon which such assessment is made and levied from and after the date of the passage of the resolution levying such assessment. The lien can only be extinguished by payment of such assessment with all penalties, costs, and interest." Section 7-12-4190. The lien of a special assessment may be enforced only by the sale of the property at a tax sale conducted pursuant to Title 15, Chapter 17. Montana law grants the delinquent taxpayer or other interested parties the right to redeem property sold at a tax sale.

Since 1929, municipalities creating special improvement districts have been authorized to create and maintain special improvement district revolving funds to secure the prompt payment of the principal and interest on special improvement district bonds. The provisions relating to the revolving fund are found at Sections 7-12-2181 through 7-12-2186 for counties and Sections 7-12-4221 through 7-12-4229 for cities and towns (the Revolving Fund Law).

Prior to 1929, special assessments were the only source of payment for special improvement district bonds. Up to that time, Montana law provided that a tax deed conveyed absolute title free from all encumbrances, except the lien for taxes which may attach subsequent to the sale. In State ex rel. City of Great Falls v. Jeffries, 83 Mont. 111, 270 P. 638 (1928), the Montana Supreme Court construed this provision of Montana law to hold that a tax deed extinguished the lien of all special assessments levied against the property, not only those installments payable before issuance of the deed but subsequent installments as well. The discharge of future installments upon issuance of a tax deed virtually assured that special improvement district bonds secured by such assessments would not be paid in full.

In construing the Revolving Fund Law, the Montana Supreme Court noted in 1929:

> "As the cost of an improvement is ordinarily apportioned to the several lots according to area or front footage on the improvement, it will be seen that, by reason of delinquency of property owners in paying assessments, a certain percentage of the principal and interest on

> special improvement bonds may never be paid. In order to meet this situation, the Legislature in 1929 enacted the [Revolving Fund law]." Stanley v. Jeffries, 86 Mont. 114, 284 P. 134, 136 (1929). At the time, "the value of [special improvement] district bonds and warrants was problematical, and their salability greatly impaired, and the public credit and public good necessitated some action to remedy the defects in the existing law." 284 P. at 139.

The Revolving Fund law required that a municipality create a special improvement district revolving fund (the Revolving Fund) for any special improvement district bonds it would thereafter issue. The purpose of the Revolving Fund is to secure the prompt payment of special improvement district bonds and interest thereon when due. Section 7-12-2181 and Section 7-12-4221. Whenever there is insufficient money in a district fund to pay any special improvement district bond or interest thereon when due, an amount sufficient to make up the deficiency is to be loaned from the Revolving Fund to the district fund, to the extent that moneys are available. Section 7-12-2183 and Section 7-12-4223. The Revolving Fund originally secured all special improvement district bonds or warrants of the municipality issued after the effective date of the Revolving Fund law. As will be discussed later, the Legislature in 1983 authorized a municipality to issue special improvement district bonds or warrants not secured by the Revolving Fund. There are three sources of funds for the Revolving Fund: (1) since 1981, a deposit of up to five percent of the proceeds of special improvement district bonds; (2) a loan from the general fund of the City of such amount as may be deemed necessary; and (3) a levy of a tax on all taxable property in the municipality as shall be necessary to meet the financial requirements of the Revolving Fund. Section 7-12-2182 and Section 7-12-4222. If a tax is levied, the tax may not be an amount that would increase above the balance in the Revolving Fund five percent of the then outstanding special improvement district bonds and warrants secured thereby. Whenever the Revolving Fund loans money to a district fund, it has a lien therefor on all unpaid assessments and installments of assessments (whether delinquent or not) thereafter deposited in the district fund, to the extent such assessments are not required to pay debt service on the bonds. Sections 7-12-2183(2), 7-12-2185, 7-12-4222(2) and 7-12-4224. Whenever there is excess money in the Revolving Fund, it may be transferred to the general fund.

The Stanley v. Jeffries case involved two actions, one challenging the constitutionality of the Revolving Fund law in general as, among other things, authorizing a loan or donation of public funds for the benefit of holders of bonds

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secured thereby and authorizing the levy of a tax for a private purpose, and the other challenging the pledge of the Revolving Fund to special improvement district bonds that were issued before the enactment of the Revolving Fund law. With respect to the first action, the court stated:

> Here, it is true, the holders of bonds and warrants of any city in this state, issued for the payment of special improvements made under the special improvement district law will profit by the provisions of [the Revolving Fund law], as compliance by the city with its provisions will, in part at least, do away with losses by reason of the failure of a certain per cent of the property owners to pay the special assessments, and consequent loss of liens on property, as above pointed out, for which, without this act, there was no method of recoupment. But the work to be done within such improvement districts as are hereafter created in cities is essentially public work, and the purpose of providing for such work necessarily a public purpose.
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> . . . .
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> [T]he laying out and improvement of streets, alleys, sewers, and the like is essentially a public purpose benefiting the entire community, although the work is done in but a portion of the city, and, in the absence of any legislative restriction, each portion of the city might be thus improved at the general public expense, and no taxpayer could be heard to complain thereof. In other words, in order to erect any public improvement by the creation of special improvement districts, both general benefits to the municipality and special benefits to particular property must be conferred--the special benefit to adjacent property is but incidental to the general benefit to the city; it could not otherwise lawfully be created.
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> When, therefore, the Legislature provided that, as to special improvement districts created in the future, a fund shall be created to insure the prompt payment of bonds and warrants issued in payment of such improvements, it but modified the special improvement district law to impose upon the general public, within the municipality, a conditional obligation to pay a small portion of the cost of erecting the public improvement, whereas it might have, lawfully, imposed a much greater burden upon the municipality.

Id. at 138-139 (emphasis added, citation deleted). It is evident that the Court, in upholding the constitutionality of the Revolving Fund law, contemplated that losses resulting from delinquent assessments were transferred in part from holders of special improvement district bonds to the issuing municipality and the Revolving Fund.

In that case, the Court held that the Revolving Fund could not be used to secure bonds issued before the date of the Revolving Fund law, because such application, even if approved by the voters of the municipality, would authorize the levy of a tax for a private purpose in that it unduly benefitted the bondholders by giving them additional security they did not bargain for.

The significance of this case is the recognition by the Court over 60 years ago that the Legislature can authorize a municipality to levy a tax on all property owners within the jurisdiction to enhance the marketability of special improvement district bonds.

The only other Montana Supreme Court case that addressed the obligation of the Revolving Fund with respect to special improvement district bonds, prior to the Carbon County litigation, was Hansen v. City of Havre, 112 Mont. 207, 114 P.2d 1053 (1941), in which the Montana Supreme Court held that special improvement district bonds secured by the Revolving Fund do not constitute indebtedness of the municipality within the meaning of the Montana Constitution:

> The special improvement district revolving fund . . . is made up of funds transferred from the general fund of the city or by the levy and collection of a tax on all the taxable property in the city. However, the moneys in the revolving fund are not chargeable with the payment of the bonds, but moneys used for that purpose from the revolving fund are merely loaned by the revolving fund to the district fund. And when such a loan is made the revolving fund has a lien as security for the loan . . . .
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> . . . Hence, the possibility that part of the bonds may have to be paid with moneys obtained from the revolving fund which in turn is created by a tax levy on the property of the city does not create a city

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> debt but is merely an arrangement whereby the city, through the revolving fund, loans money to the district, and for which it holds security in the form of a lien.

Id. at 1057. The Court also held in that case that a municipality must loan money from the Revolving Fund to a district fund even though the provision in question (now Section 7-12-4223) provides that such money "may," by order of the city council, be loaned:

> The Legislature has made it mandatory for the city council to levy taxes for the purpose of raising sufficient money in the revolving fund to meet the financial requirements of such fund, thereby recognizing that the revolving fund must meet certain requirements. In order to carry out the obvious legislative plan with respect to the revolving fund, we hold that it is mandatory that the city council use that fund for the purpose intended, and that it must make orders directing loans from the revolving fund to the district funds when funds are needed to make up any deficiency. This being so, the contract to do so does not bind successive officers to perform a discretionary act. The law makes the act mandatory irrespective of the contract.

Id. at 1059.

In the mid-to-late 1970's and early 1980's, special improvement districts were widely used to finance the required public improvements for newly platted subdivisions. Montana law required cities and counties to adopt subdivision regulations by July 1, 1974, which had to address the improvement of roads, provision of adequate water, drainage and sanitary facilities . . . ." As a condition to final approval of a subdivision plat, a city or county had to make sure the public improvements would be constructed. Special improvement districts provided a mechanism for doing so, since the city or county could control the creation of the district, the issuance of the bonds and the construction of the improvements. When lots in some of the subdivisions throughout the State did not sell as anticipated and developers did not pay their assessments, taxes had to be levied in several jurisdictions to fund the Revolving Fund in order to make Revolving Fund loans to the various district funds. I personally recall some debate and discussions in various legislative sessions throughout the late 1970's and early 1980's as to the fairness or propriety of the Revolving Fund mechanism, but no changes were made until 1983.

In 1983, the Legislature amended the statutes to provide that a county "may . . . create, establish and maintain" such a fund. The Legislature then added a final sentence saying: "Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and the interest thereon have been fully paid and discharged." Sections 7-12-2181 and 7-14-4221.

The purpose for making the Revolving Fund optional instead of mandatory was explained in the legislative history of the 1983 amendment which illustrates that the Legislature has always seen the Revolving Fund as providing additional security for the bondholders. Consider the comments made by the amendment's sponsor:

> Rep. Walter Sales, District 79, sponsor, opened by saying we have delinquent RID's and SID's at this time. Our present laws that establish bonds for SID's and RID's have a revolving fund requirement that the whole tax paying area is actually responsible for the payment of those bonds. When you get into a period like we're in now when payments are not being made, then the county has to levy a property tax on the whole district to make those bond payments. This is an alternate type of bond. It would limit the obligation to the district where the improvement is being made. There would be no general taxing backup of these bonds. It would not effect the existing law but it would create a new section for a new type of bond.
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> Rep. Walter Sales, Dist. #79, said this gives an alternative method of financing RIDs and SIDs for cities, towns and counties. It doesn't interfere with the present manner. It also sets up a district and issues bonds that are not secured by the revolving fund. The general taxpayers are not liable for any default. The whole obligation would remain with the property in the district itself.

The comments of another proponent are described this way in the legislative history:

> Bill Verwolf, city of Helena, said this would provide cities that don't wish to have their general taxing authority back the bonds, to assist

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developers. They would not be backed by the taxing authority of the city. Some cities don't want their taxing authority tied to the bonds.

Thus, in 1983 the Legislature gave cities and counties an option of issuing bonds "that are not secured by the revolving fund" so that taxpayers would not be "liable for any default." These minutes clearly reflect that it was understood that if the Revolving Fund was pledged, the issuer was obligated to levy either a county-wide or city-wide tax, subject to the 5% limitation to fund the Revolving Fund.

In upholding the validity of the Revolving Fund pledge, the Montana Supreme Court in Carbon County v. Dain Bosworth, et al. held that:

> "The County's agreement to make loans from the revolving fund is mandatory and not discretionary. The County must continue to make loans to the revolving fund and must continue to levy taxes to replenish the revolving fund until the obligations not extinguished by the bankruptcy proceedings are paid in compliance with § 7-12-2181, MCA."

During the course of the deliberations of the Revenue Oversight Committee, a consensus developed that special improvement district financing was a much needed and much utilized method by which local governments can and do upgrade and extend their public infrastructure.

It also was clear that given the nature of the special improvement district mechanism bonds could not be readily marketed at a cost effective rate without some type of additional security. There has been, we believe, a general consensus among the Subcommittee members, as well as the participants, that the revolving fund law has worked relatively well over the 50 years that it has been in place and has achieved its stated purpose, making special improvement bonds marketable at reasonable rates. The only real problem identified to date has been the use of special improvement districts secured by the revolving fund to finance improvements in raw land subdivisions where all improvements are financed and the property is owned by developers. Because of that, it was determined that an effort should be made to address the troublesome issues presented by the Revolving Fund, rather that throw it out and start over with a new mechanism.

Thus, the recommendations for change in Senate Bill 2 arose in an effort to preserve the option of special assessment financing in Montana and, if necessary, in order to do so, to shift some of the burden for delinquent assessments to the other property owners in the district rather than the revolving fund, and ultimately the general taxpayers. In addition, the recommendations attempt to minimize risks to the revolving fund, specifying the factors that must be taken into consideration in determining whether to secure bonds and warrants by the revolving fund.

Before discussing the specific recommendations it is well to keep in mind that under existing law, a city and county need not secure bonds with the revolving fund. All the risk of non-payment of assessments securing such bonds is borne by the bondholders. Property owners in the district bear the burden of higher interest rates or even lack of marketability of bonds. No change is recommended in this right of a city or county to elect not to secure bonds by the revolving fund. (County - 7-12-2185(7); City - 7-12-4225)

Generally, the specific recommendations incorporated in the proposed legislation are as follows:

1. In the event an issuer determines to secure the bonds with the revolving fund, the contribution to the revolving fund in the amount of 5% of the amount of the bonds proposed to be issued be made mandatory.

2. The issuer be given statutory authority to require an additional upfront contribution to a "district reserve account" in an amount up to another 5% of the principal amount of the bonds, which account would be used to make principal and interest payments before resort is made to the revolving fund.

3. Cities and counties be required to charge an interest rate on the assessments 0.5% over the rate of interest on the bonds. Currently, this is mandatory for counties and optional for cities. In addition, cities and counties would be given the discretion to charge up to an additional 0.5%.

4. Cities and counties may pledge the revolving fund only after taking into consideration certain enumerated factors.

5. Termination of the revolving fund obligation.

A brief summary of the changes of Senate Bill No. 2, section by section, is set forth below:

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Section 1. *Amendment of Section 7-12-2015.*

Section 1 eliminates the requirement that notice of intention to create a rural special improvement district be posted in three places. It requires that if the revolving fund is to be pledged, the notice that is to be published and mailed include a statement that "the general fund may be used to make loans to the revolving fund or a tax levy may be imposed to meet the needs of the revolving fund."

Section 2. *Amendment of Section 7-12-2153.*

Section 2 requires that if special improvement bonds are secured by the revolving fund, 5% of the principal amount of the bonds must be deposited in the revolving fund. This deposit is currently optional.

In addition, Section 2 authorizes the county commissioners to require an additional 5%, which is to be deposited into a district reserve account created within the district fund. The district reserve account will be used to make payments on the bonds prior to using the revolving fund.

Section 3. *Amendment to Section 7-12-2176.*

Section 3 authorizes the county to assess an additional 1/2 of 1% a year, over and above the interest borne by the bonds and the 1/2 of 1% that is currently required to be assessed.

Section 4. *Amendment to Section 7-12-2182.*

Section 4 makes a corresponding amending to reflect that the 5% contribution required by the Section 2 change is a source of revenue for the revolving fund. This change is to obtain consistency between city and county statutes.

Section 5. *Amendment to Section 7-12-2183.*

Section 5 contains much of the substance of the changes to be made by SB 2. Section 5 by the opening reference to 7-12-2185(2) provides that the revolving fund obligation is a limited one. A limit was not contained previously in the statute, and it was perhaps this feature that caused the trial court in the Carbon County litigation to try to limit Carbon County's responsibility for the revolving fund.

Under the amendment to 7-12-2185(2) the revolving fund obligation continues until either all bonds are paid or until the later of the final maturity date of the bonds or the date on which all special assessments are paid or deemed discharged. Delinquent special assessments are deemed discharged if extinguished by the issuance of a tax deed or, if the county is the recipient of the tax deed, upon the sale or leasing of the property by the county or payment in full of the allowed secured claim for the assessment in a bankruptcy where the property owner is the debtor. As a result, if all special assessments have been either been paid or foreclosed by tax sale, the obligation to make a loan will end upon the final stated maturity date of the bonds, which is established by the issuer at the time the bonds are issued.

Subsection (1) as amended contains a conforming amendment as to the nature of the revolving fund obligation is and otherwise codifies what has been the law of Montana for more than 50 years. In *Hansen v. City of Havre*, 112 Mont. 207, 114 P.2d 1053 (1941), the Court held that "may" as used in the corresponding statutory provision in the special improvement district law must be interpreted to mean "shall." The Court stated: "The Legislature has made it mandatory for the city council to levy taxes for the purpose of raising sufficient money in the Revolving Fund to meet the requirements of the fund, . . . , thereby recognizing that the Revolving Fund must meet certain requirements. In order to carry out the obvious legislative plan with respect to the Revolving Fund, we hold that it is mandatory that the city council use that fund for the purpose intended, and that it must make the orders directing loans from the Revolving Fund to the district funds when funds are needed to make up any deficiency." 114 P.2d at 1059. This conclusion was reiterated by the Montana Supreme Court in *Carbon County v. Dain Bosworth, Inc., et al.*. So as to avoid any confusion on the part of an issuer, when it undertakes to issue bonds secured by the revolving fund, it was determined that changing may to must in (1) was desirable.

Section 6. *Amendment of Section 7-12-2185.*

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Section 6 contains the actual amendments to the limitation on the duration of the obligation to make loans described under Section 5. Those are contained in 7-12-2185(2).

In addition, Section 6 provides that a county may not pledge its revolving fund to the payment of bonds, unless it has considered a number of factors specified in subsection (3). The purpose of requiring the consideration of these various factors is to get the county to assess and determine that the value of the land against which the assessments are to be placed will exceed the amount of assessments levied against the property, so as to minimize any risk to the revolving fund.

Section 7. _Amendment of Section 7-12-4106._

Section 7 makes the same changes in the special improvement district law that Section 1 does to rural special improvement district law.

Section 8. _Amendment of Section 7-12-4169._

Section 8 makes the same changes in special improvement district law that Section 2 does to rural special improvement district law.

Section 9. _Amendment of 7-12-4189._

Section 9 makes the same changes to special improvement district law that Section 3 does to rural special improvement district law.

Section 10. _Amendment of Section 7-12-4222._

Section 10 makes the same changes in the special improvement district law that Section 4 makes in the rural special improvement district law.

Section 11. _Amendment of Section 7-12-4223._

Section 11 makes the same changes in the special improvement district law that Section 5 makes in the rural special improvement district law.

Section 12. _Amendment of Section 7-12-4225._

Section 12 makes the same changes in the special improvement district law that Section 6 makes in the rural special improvement district law. The only difference appears in Subsection (3) (b) to recognize the ability of cities and towns under Title 15, Chapter 17, Part 3, to acquire the county's interest in property sold at a tax sale upon payment of delinquent property taxes but not delinquent special assessments.

Dorsey & Whitney

Suggested Amendments to SB 2

1. Page 2, line 2, "or methods" should be reinserted. The law currently provides that a combination of methods may be used to assess improvement within a district. This option is used frequently to achieve equity and fairness in the methods of assessment.

2. If Senate Bill 8 is approved, Section 6 of the bill should be amended on page 5, line 26 to add the phrase "or discharged in a bankruptcy case in which the special improvement district is the debtor".

3. Sections 13 and 14 of the bill were not discussed by the Revenue Oversight Committee in its deliberations and we believe they are principally there because of the global reference to posting requirement. As drafted, these types of special improvement districts, (pedestrian malls and off street parking districts) can be created without the necessity of the public hearing required of other districts. If bonds to be issued for these types of districts are to be secured by the revolving fund, it would seem logical that the requirement of section 7-12-4106, as proposed to be amended, and Section 7-12-4225, as proposed to be amended, should be made applicable. In addition, the title of the bill does not contain references to Section 7-14-4712 or 7-14-4732.

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 3
DATE 1-10-95
BILL NO. SB 8


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MAE NAN ELLINGSON


# MEMORANDUM

TO: Members of Senate Local Government Committee

FROM: Dorsey & Whitney
Mae Nan Ellingson

DATE: January 10, 1995

RE: Senate Bill 8

As we understand it, the purpose of Senate Bill No. 8 is to grant Montana counties the right to petition the court for bankruptcy on behalf of rural special improvement districts, as cities and towns may currently do for special improvement districts.

It should be noted that since this bill was drafted there have been additional changes in the United States Bankruptcy Code (the "Code"). Specifically, the Code now requires in Section 109(c) that there be specific authorization for the filing of bankruptcy, rather than the general authorization that was previously authorized. It is arguable that under the new amendments to the Code a Montana municipality could not file bankruptcy on behalf of a special improvement district.

Because of this change in the Code, we would suggest that Section 2 of the bill be amended to reflect that this authority is granted, pursuant to Section 109(c) to file for bankruptcy under Chapter 9.

In Section 2 of the bill, 7-7-4111(2)(b) should be further amended to read: "upon the acceptance or deemed acceptance of the proposed plan of adjustment of the petitioning local entity, as provided in the federal laws." The reason for this change is that the section as written does not reflect how bankruptcy operates and thus, if the local entity could only file under these circumstances, it would render the statute meaningless. In this instance, for example, a plan can be forced ("crammed down") upon the creditors, without their approval in writing.

If this bill is approved, a revision should be made in Section 6 of Senate Bill 2 to mirror the change in Section 12 of that bill relating to municipalities to reflect that the revolving fund obligation ends on the "date on which all bonds or warrants of the issue and interest on the bonds or warrant have been fully paid or discharged in a bankruptcy case in which the special improvement district is the debtor."

Again, it is important to note, for the record, that this only grants the county the authority to file for bankruptcy on behalf of special improvement districts. There are numerous other types of governmental entities, special districts of all kinds and counties in general, that are not included in the scope of this legislation and there is a somewhat awkward result. But that was really outside the scope of the Committee's deliberation. It might be appropriate that the legislature or one of its committees take a look at the whole issue of municipal bankruptcy.

MONTANA SENATE

VISITORS' REGISTER

LOCAL GOVERNMENT COMMITTEE BILL NO. SB 2

DATE 1-10-95 SPONSOR(S) SEN. CRIPPEN

**PLEASE PRINT PLEASE PRINT PLEASE PRINT**

| NAME AND ADDRESS | REPRESENTING | Support | Oppose |
|---|---|---|---|
| Jeff Martin | Legislative Council | | |
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MONTANA SENATE

VISITORS' REGISTER

LOCAL GOVERNMENT COMMITTEE BILL NO. SB 8

DATE 1-10-95 SPONSOR(S) SEN. CRIPPEN

**PLEASE PRINT PLEASE PRINT PLEASE PRINT**

| NAME AND ADDRESS | REPRESENTING | Support | Oppose |
|---|---|---|---|
| Mona N[illegible] | [illegible] | X | |
| [illegible] | [illegible] | X | |
| [illegible] | City of Billings | X | |
| Tim Magee | City of Great Falls | X | |
| Gene Huntington | Dan Bosworth | ✓ | |
| [illegible] | City of Bozeman | ✓ | |
| Charles [illegible] Brooks | Yellowstone City | ✓ | |
| DALE STAHL | SELF | | |
| Bill Rappold | Pondera County | | |
| Jeff Martin | Legislative Council | | |
| [illegible] | DNRC | | |
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MONTANA SENATE

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LOCAL GOVERNMENT COMMITTEE BILL NO. SB 2

DATE 1-10-95 SPONSOR(S) SEN. CRIPPEN

# PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | Support | Oppose |
|---|---|---|---|
| [illegible] | [illegible] | X | |
| [illegible] | [illegible] | [illegible] | |
| [illegible]<br>Tim Magee | DNRC<br>City of Great Falls | X<br>X | |
| [illegible] | [illegible] | ✓ | |
| [illegible] | [illegible] | X | |
| Gene Huntington | Dain Bosworth | ✓ | |
| [illegible] | City of Bozeman | ✓ | |
| [illegible] | MACo | ✓ | |
| [illegible] | MLCT | | |
| DAVE STAHLY | — | ? | |
| Charles R. Brooks | Yellowstone County | ✓ | |
| [illegible] | Ravalli Co. | ? | |
| DENNIS BURR | MT TAX[illegible] ASSOC | ✓ | |

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