

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 195

Call to Order: By **CHAIRMAN JOHN HARP**, on April 14, 1997, at 3:40 p.m., in Room 325.

ROLL CALL

Members Present:

Sen. John G. Harp (R)
Sen. Bruce D. Crippen (R)
Sen. Mike Halligan (D)
Rep. Chase Hibbard (R)
Rep. Dan W. Harrington (D)
Rep. Robert R. Story, Jr. (R)

Members Excused: None

Members Absent: None

Staff Present: Greg Petesch, Legislative Services Division
Jodi Jones, Committee Secretary

HEARING ON SB 195

Discussion:

CHAIRMAN JOHN HARP asked what are the qualifications for school elections? **Greg Petesch** said the school levy elections are ambiguous as currently written into the amendments. The I-105 section specifically provides that the tax limitation does not apply to school districts.

REP. DAN HARRINGTON said this should be clarified in the amendments. School districts do not come under I-105 right now and by doing this, it will clarify this issue.

Greg Petesch said he found information on election turnout rates. He said the only information that was available was general and primary election voter turnout. They do not keep statistics for municipal elections. In the last general election there was a 70 percent voter turnout and in the primary there was a 40 percent turnout.

SENATOR BRUCE CRIPPEN said what they are dealing with is whether they want to use the qualified voters as a base, to take a percentage on, or use another method. He said there are situations in some counties where there are a large number of qualified voters, but generally they don't always vote. A better

way of measuring these numbers is to look at how many voted in the last previous election.

SENATOR MIKE HALLIGAN said if they go to the number of voters that voted in the last general election there is a purging after the presidential election. He thought the qualified electors should be removed and look at who voted in the last general election.

CHAIRMAN HARP asked if election laws distinguish between primary and general elections? **Greg Petesch** said yes they do.

CHAIRMAN HARP asked if there would be two opportunities where an election could take place based on the turnout from the previous election. **Greg Petesch** said the primary and general elections are referred to as regularly scheduled elections in Montana.

SENATOR CRIPPEN said they want to have more than just a simple majority, and they want to give more protection to the tax-payers. It makes more sense for counties to rely on those that have voted, rather than those that just qualify.

CHAIRMAN HARP asked based on the 1996 elections, would voter turnout qualify for these standards? **Greg Petesch** said these elections are held in each taxing unit as opposed to the general statewide numbers which were given.

CHAIRMAN HARP said there are thousands of taxing units, and there are costs related to those. There is no way to determine how to make each of those general in regards to participation as each district is different. **Greg Petesch** said only the electors of each taxing unit are allowed to vote on mill levy increases in that taxing unit. Someone outside the district could not vote on that levy.

REP. HARRINGTON discussed amendment #4 (EXHIBIT 1).

REP. CHASE HIBBARD said with the formula working the way it is at two percent and then having it reduced by the reduction in classification rate, class 3 will mitigate and is lower than class 4. The mill reduction will be very small to bring those three classes down to zero. **Greg Petesch** discussed amendment #4 (EXHIBIT 1).

{Tape: 1; Side: A; Approx. Time Count: 3:54 p.m.; Comments: .}

CHAIRMAN HARP said he would like to work through amendment #1 and do the amendments in order.

Discussion on Amendment #1:

SENATOR CRIPPEN discussed amendment #1 (EXHIBIT 2).

CHAIRMAN HARP said they are retaining the ability to re-value property in Montana, but they don't know when that will happen for sure. **Greg Petesch** said the way it is written, the re-evaluation will occur when the new values are phased in. Every legislature that meets will have the opportunity to visit this language. **Mick Robinson, Governors Office**, said he had some concerns with the present language and the 50 year phase in. He said all other property must be re-valued annually except for those particular classes that are written into the language. He said it needs to be written to where this phase-in is temporary in nature and is not expected to be a 50 year cycle. Right now it is permanent in nature and causes significant problems in a constitutional standpoint when all other classes are re-valued on an annual basis.

CHAIRMAN HARP asked **Dennis Burr, Taxpayers Assoc.** what his thoughts were on the temporary provisions. **Dennis Burr** said they don't have to phase-in one reappraisal before they can start phasing in another one. He said there may also be decreases in property values and still be phasing in the increase from this period. He said two years from now the next Legislature may want to know where property values have gone since the last reappraisal.

SENATOR HALLIGAN said he agrees that there needs to be a time certain and the temporary language may be okay but it needs to be defined as to when it terminates etc. He asked if there was a constitutional issue if no time certain was put in. **Dave Woodgerd, MT Department of Revenue**, said he would be more comfortable with temporary language as market values can get off base from year to year.

SENATOR CRIPPEN asked which was more applicable, the language of having a temporary solution or a specific time. **Dave Woodgerd** said as long as this is viewed as a temporary solution, the court system will also accept it as a temporary solution. He said at some point in the future they will probably be out of balance to the actual market values as compared to the assessed values and the courts will over-rule that. He said if a time certain is put in place it is hard to say what will happen.

SENATOR CRIPPEN asked if in the past has there been legislation enacted pertaining to this property tax reappraisal and has it been temporary in nature. **Dave Woodgerd** said there has been legislation enacted that has had the effect of being temporary but no specific legislation just dealing with property tax has been enacted.

CHAIRMAN HARP said in the Albright Case the window for reappraisal was 5 years. However, the average reappraisal has been seven years. He asked if it is safe to say that this will be solid for the year 2001? **Dave Woodgerd** said based upon past history this appears to be accurate.

CHAIRMAN HARP asked what about in 4 years? **Dave Woodgerd** said yes it should be solid.

SENATOR HALLIGAN said they should still look at a date certain even if it is viewed as temporary language. **CHAIRMAN HARP** said they could do it as an option of being temporary or up to 10 years.

REP. BOB STORY asked if they are referring to section 2 or the whole bill as being temporary? **CHAIRMAN HARP** said the way this works is if the phase-in is temporary the ratcheting has to follow the same standard. **Greg Petesch** said he agreed.

SENATOR CRIPPEN used the example of the legislature saying they were going to phase this in and the reappraisal cycle was going to be 10 years down the road versus a temporary view. He asked what would happen to all of these reappraisers if the cycle were 10 years. **Mary Bryson, MT Department of Revenue** said there are other classes of property that are valued on an annually basis and that does require some additional staff. She said their department would have to take a look at what their needs would be to do a reappraisal. She said right now they are staffed to do a three year reappraisal cycle.

SENATOR CRIPPEN said if they went to a 10 year cycle, with the exception of other classes of property, would there be a need for a large staff? **Mary Bryson** said no there would not be.

SENATOR CRIPPEN said if they extend the reappraisal cycle, then the staff can be reduced as well as the cost.

SENATOR HALLIGAN said if they decide to do the 10 year cycle and eliminate several reappraisers, the court will look at that as an abandonment or disregard of a market value concept. **CHAIRMAN HARP** said they can continue to do the two percent phase-in and the ratcheting without identifying the amount of years and allow temporary language. They do have this window of opportunity to hold property taxes down in Montana while they start to look at property tax reform. Senate Bill 195 has always been a temporary measure and they know what their parameters are in this bill.

Motion:

REP. HIBBARD MOVED TO ADOPT THE TWO PERCENT PHASE-IN AND THE RATE RATCHETING.

Discussion:

REP. HARRINGTON asked if there was any information of on what the outcome of this would be from county to county? **CHAIRMAN HARP** passed out a county assessment sheet and discussed it (EXHIBIT 3).

{Tape: 1; Side: A; Approx. Time Count: 4:15 p.m.; Comments: .}

SENATOR HALLIGAN asked what happens to a home where its values went down and how does the two percent and the ratcheting affect this home? **Greg Petesch** said the valuation for that declining property would be phased in at two percent of the decrease and the reduced tax rate would apply to that reduced value.

SENATOR HALLIGAN said if his house went from \$100,000 to \$90,000 would the 2 percent be applied to the \$10,000? He also asked if he would still end up paying taxes on the \$99,000 rather than the \$90,000. **Greg Petesch** said yes at the reduced ratcheted tax rate.

CHAIRMAN HARP said based on the Albright Case, wasn't it stated that they will get as close as possible to equalizing all values in Montana and there has to be some flexibility in the way they assess property. **Greg Petesch** said one of the key phrases in the Albright Case was a reasonable approach. The idea of the phase-in is they are phasing in increases and decreases in the same manner. The decrease is being phased in at the same rate as the increase and by that regard all taxpayers are treated the same.

Vote:

MOTION TO ADOPT THE PHASE-IN AND THE RATCHETING PASSED 4-2 WITH **SENATOR HALLIGAN** AND **REP. HARRINGTON** voting no.

Discussion on Amendment #2:

Greg Petesch explained amendment #2 (**EXHIBIT 4**).

REP. HIBBARD said there has been some concern from Yellowstone Co. and the timing of the assessment notices and the local budgets going out. Those assessment notices will go out in August under this bill. Under current law, budgets must be adopted by the 2nd week in August. There would be a short delay if those assessment notices were not set out until August. The concern by Yellowstone Co. was that there would be additional interest charged with this delay. **CHAIRMAN HARP** said he had the same concern. Normally, the assessments go out in June, but now they will not come out until the first of August and if the budget is set on the 2nd Monday in August then there will only be a small delay.

Gloria Paladichuk, Richland Co. said the only delay that would affect their county is the certified mills.

Motion:

REP. HIBBARD MOVED TO ADOPT AMENDMENT #2 (**EXHIBIT 4**).

Discussion:

SENATOR HALLIGAN asked if they were clear on where the money was going to come from? **Greg Petesch** said this money would otherwise be reverted from all appropriations to the department during the

last biennium. The Fiscal Analyst Staff did calculations and figuring in HB 497, there should be an excess of \$2 Million.

Vote:

MOTION TO ADOPT AMENDMENT #2 PASSED UNANIMOUSLY.

Motion:

REP. HARRINGTON MOVED TO ADOPT AMENDMENTS #3 (EXHIBIT 5).

Discussion on Amendment #3:

SENATOR HALLIGAN said he wanted to make sure that this committee would be looking at a full range of the potential tax systems even though they know the focus will be on replacing the property tax system. There are several other types of taxes that relate to property tax and the whole mix needs to be looked at. He said the money for the committee is too low. If they are going to bring in the tax experts that are needed to do this, the fund needs to be larger. CHAIRMAN HARP said if SENATOR HALLIGAN had some proposals that he wanted to include as far as a mission dealing with tax reform, particularly property tax, now was the time to add them.

SENATOR HALLIGAN said this was discussed earlier that this committee was not specifically only looking at the property tax system but there may be discussion of other types of tax. If the interim committee decides that they need to look at a whole range of taxes to solve the property tax issue then they need to be able to have that flexibility.

SENATOR CRIPPEN said there really isn't any new ideas out there that nobody has ever discussed before. This interim committee is going to take some of those ideas and look at them in a more focused manner. He said they didn't have the time this legislative session to do this properly and the interim committee is the alternative.

Vote:

MOTION TO ADOPT AMENDMENT #3 PASSED UNANIMOUSLY.

Discussion on Amendment #4:

CHAIRMAN HARP said amendment #4 needs to be segregated and they should discuss market values first (EXHIBIT 1).

SENATOR CRIPPEN said he is in favor of market values because this is a process of negotiation. He said some people don't care for market value and others feel it is the only way to go. Market value takes the middle ground and recognizes the concerns of some, but it also says they are not abandoning market value.

REP. HARRINGTON said he doesn't have any problems with putting market values in, but he doesn't know if they are accomplishing anything by putting it in there.

SENATOR HALLIGAN said they recently had a Supreme Court decision that upholds the way they do market value right now and it is foolish to abandon market value once they have had a major Supreme Court decision on it. If they go to a square footage or rental value it is like shifting taxes from west to east. The property is growing in the west and decreasing in the east. If he was a rural person, he would be afraid of moving away from market value.

CHAIRMAN HARP said land in Montana does not have to be tied to market value. Rental tax is an example of this. There is no place in the Constitution where market value is identified. He said lets look at the big picture and still keep our options open. He said senior citizens have been forced out of their homes because of increased market values outside of Montana's borders. If they could find a way to ease that and still treat all properties fair and equal in Montana, then it is worth looking at.

REP. HIBBARD said market values have led to huge increases. He said they have thought in terms of market value for so long that it is hard to think about it another way. There are a lot of property tax systems that don't involve market value. He said they need to open their minds and see if they can find some alternatives.

Motion/Vote:

SENATOR CRIPPEN MOVED TO ADOPT THE MARKET VALUE AMENDMENTS (EXHIBIT 1). MOTION CARRIED 4-2 WITH SENATOR HALLIGAN AND REP. HARRINGTON voting no.

Discussion:

CHAIRMAN HARP said the next section that needs to be dealt with is updating I-105 from 1986 to 1996. They are capping the actual dollar amount levied by each tax unit in Montana.

Motion/Vote:

REP. STORY MOVED TO ADOPT THE AMENDMENTS DEALING WITH 1996 DOLLAR AMOUNT FOR EACH TAXING UNIT. MOTION CARRIED UNANIMOUSLY.

{Tape: 1; Side: B; Approx. Time Count: 4:42 p.m.; Comments: .}

Discussion:

CHAIRMAN HARP said the next section deals with millage. There is still some concern and how it relates to the striking of the cyclical reappraisal, which was excluded from I-105. He said he would like to skip that for now and go on to the limit of tax

levy on non-levy revenues where counties that have oil and gas will be allowed to increase those revenues and not be affected by the 1996 taxing dollar units.

Motion:

REP. HIBBARD MOVED TO ADOPT THE AMENDMENTS CONCERNING COUNTIES THAT HAVE OIL AND GAS TO BE ALLOWED TO INCREASE THOSE REVENUES AND NOT BE AFFECTED BY THE 1996 TAXING DOLLAR UNITS.

Discussion:

SENATOR HALLIGAN asked how school districts will be affected by this revenue? CHAIRMAN HARP said basically when they look at oil, coal, and gas and look at net gross proceeds, counties have not enjoyed these increases in values, especially in eastern Montana.

Vote:

MOTION TO ADOPT THE AMENDMENTS PASSED UNANIMOUSLY.

Discussion on Amendment #5:

CHAIRMAN HARP said they are moving into an area where they have an occurrence of a taxing unit where taxable valuation is decreased by more than five percent. This would allow for additional mills to levied and voted upon.

Greg Petesch explained sub-section 6 of amendment #5 (EXHIBIT 6).

CHAIRMAN HARP said at five percent or less they would be allowed to increase their ability to generate revenue for those losses. He asked if this would be a McCone Co. amendment. Greg Petesch said he believed they would be a jurisdiction that would be affected.

REP. HARRINGTON asked how many counties does this affect and how many have tried to move to five and above? CHAIRMAN HARP said right now this only affects five and below. Once they go to five and above then they have to be concerned about the voting issue.

Motion:

REP. STORY MOVED TO ADOPT THE AMENDMENTS DEALING WITH THE FIVE PERCENT AND BELOW.

Discussion:

REP. HIBBARD asked if Jefferson Co. loses their gold mine and it is greater than five percent, would the county would be able to recover the first five percent? CHAIRMAN HARP said he didn't think this was correct because if they were above five percent and it would have to go to a vote of the people. Greg Petesch said that is the way the proposal is currently written. If they

decline by more than five percent they go to the voters for any amount of increase. Below five percent they will automatically get that back.

REP. HARRINGTON said he doesn't understand why the counties couldn't go back and at least collect on some of this.

SENATOR HALLIGAN said this is a good provision for allowing the counties to get back the revenue that they would of lost for the less than five percent decrease.

Vote:

MOTION TO ADOPT THE AMENDMENTS OF FIVE PERCENT AND BELOW CARRIED UNANIMOUSLY.

Discussion:

Greg Petesch discussed the voting methods. He said they could require a 40 percent or greater turnout of the voters in the district tied to registered voters or voters who voted in the last election in the district. If less than 40 percent turned out then they would need a 60 percent approval of the measure.

REP. STORY said he has some concerns about voter turnout because they don't keep very good records on how many people voted in those elections. He said some districts may not have had an election for quite some time and have not kept records on this voter turnout.

CHAIRMAN HARP said what they are talking about is major county wide issues that affect all taxpayers.

Dennis Burr, Taxpayers Assoc., said currently the provision in the bill pertains to school levy or bond elections, which requires at least a 30 percent voter turnout. He said there are reasons for these stipulations in bond elections, because once bonds are sold and they have to be redeemed, they can sell people's property that live in the district to repay those bonds if there is no other way to pay for them. He said they are not dealing with that in local government issues, they are not going to have to sell people's property to get the money back. If it is an open ended levy, that could be a justification for a higher majority. He said he doesn't care for a super-majority on these types of things, because the people who didn't go to the poles are counted as voting no. He said there has been elections where he hasn't voted, but that doesn't mean he would of voted no. If the local government has a resolution to vote on the mill levy for five mills for the county road fund and they specify a date certain of when that mill levy will expire, then that could be by a simple majority. If it is designated as a mill levy that will go on forever, then maybe this will require a larger majority. For these types of measures in which local governments are asking their constituents for an increase in taxes and they specify what

the money is to be used for then the simple majority is sufficient.

Alec Hansen, MT League of Cities and Towns, said city elections are held in odd numbered years. He said they don't have the ability to tag into a statewide general election without going to the cost of a special election. He said if they are going to commit the tax-payers to bonding for five years then a super majority requirement would fit. But on issues of increasing mill levies, the simple majority is sufficient. A person should not be able to vote no by staying home and the goal of any election is participation. If the issue is important, people will show up, but they can't guarantee 40 percent will show up.

Gordon Morris, MACo, said a taxing unit means something very specific and they can't think in county wide consequences. Even the county is not a county wide taxing unit for all purposes. Lewis and Clark Co. is a taxing unit for general governmental purposes relative to the General Fund. But if they take the road fund that affects people in each taxing unit in different parts of the county. Under I-105, they can't impose a tax liability on somebody in the taxing unit who is not affected relative to current law. He said a county can't reduce a road fund levy and use it to fund the General Fund or visa versus. The road levy is a taxing unit, the General Fund is a taxing unit, and the planning department is a taxing unit, etc. The voting records are there and are accurate in every instance in regards to these taxing units.

SENATOR CRIPPEN said the reason they have I-105 is because they might have a 30 percent turnout and 51 percent vote to increase property taxes for everybody who lives in the county. He said if they went to a majority then the only other alternative is to go to a capping mechanism. There would have to be the cap on the length of time and a dollar or percentage cap on the money.

Gordon Morris said originally under I-105 the duration was one year and the increase was whatever the voters would approve. Since then they have gone to an indefinite duration and no limit on the increase. This is where they need to be in this bill also.

{Tape: 2; Side: A; Approx. Time Count: 5:04 p.m.; Comments: .}

CHAIRMAN HARP said maybe there is some middle ground as far as the contract, the time, and the dollar amount that the voters would have in taxing unit. He asked if the counties would come back with a proposal for suggested methods of voting on these issues. He said the mood of the public is one of caution when voting on increases in property taxes. **Gordon Morris** said if the committee is suggesting further restrictions in terms of voting, then he doesn't support the bill. He supports it the way it is now.

CHAIRMAN HARP asked if he supported it with the current restrictions? **Gordon Morris** said that was correct as outlined in sub-section 8(a).

CHAIRMAN HARP asked him if he support sub-section 8(b). **Gordon Morris** said they don't need to tie this down to a vote based on the super-majority. He suggested striking sub-section (b). But if they are not going to strike it, then tie it to the voter turnout percentage in the last general election. **Alec Hansen** said he would object to a reasonable limit. He said he prefers to see a limit on the amount of money that can be raised.

Discussion on Cyclical Reappraisal:

CHAIRMAN HARP said they also need to discuss the millage reduction where taxable values are greater than the average and also the elimination of cyclical reappraisal that is currently in I-105. He said they have already accepted the phase-in and the ratcheting down.

Greg Petesch explained amendment #4 concerning cyclical reappraisal. (EXHIBIT 1)

CHAIRMAN HARP said lets talk about taxable valuation with county mills and the exclusion of cyclical reappraisal pertained in I-105.

SENATOR CRIPPEN said one thing that concerns him is they may be ratcheting down so fine that it should not be done. **Greg Petesch** discussed the example of the Sweet Grass Co. handout (EXHIBIT 3).

CHAIRMAN HARP said with the City of Big Timber, they are using the most drastic example in Montana due to reappraisal. By changing the millage, a property owner in Sweet Grass Co. that owns a home will pay less than he would of before reappraisal. He said the millage section of this bill is overkill. He said they need to strike the cyclical reappraisal and let the natural occurrence take place.

REP. HIBBARD said he agreed because they are not just talking about class 4 property but also classes 3 and 10. If those classes are added it will wipe out any increase that mills would have to be adjusted for anyway.

REP. STORY said if the cyclical reappraisal would of never been included in I-105 in the first place they wouldn't be here today.


SENATOR HALLIGAN asked if tax increment districts were at any way affected. **Greg Petesch** said no.

SENATOR HALLIGAN said he would like to discuss a back up plan in case this bill doesn't hold up in court and is found unconstitutional.

ADJOURNMENT

Adjournment: 5:22 p.m.



SEN. JOHN HARP, Chairman

JODI JONES, Secretary

JH/jj