

HOUSE BILL NO. 866

Introduced: 02/15/83

Referred to Committee on Taxation: 02/15/83

Hearing: 3/4/83

Died in Committee

1 House BILL NO. 866
2 INTRODUCED BY Sullivan
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A SALE
5 BY ADVERTISEMENT OF PROPERTY IN COUNTY RURAL IMPROVEMENT
6 DISTRICTS AND CITY SPECIAL IMPROVEMENT DISTRICTS IN LIEU OF
7 A TAX SALE ON SUCH PROPERTIES WHEN ASSESSMENTS BECOME
8 DELINQUENT; AMENDING SECTIONS 7-6-4423, 7-12-2168, AND
9 7-12-4182 THROUGH 7-12-4184, MCA."
10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Sale on delinquent assessment
13 -- notice -- sale -- payment. A delinquent assessment may be
14 foreclosed by advertisement and sale as follows:

15 (1) The county attorney shall prepare a notice of
16 assessment sale. A copy of the notice must be filed with
17 the county clerk and recorder for record. The notice must
18 contain:

19 (a) the name of the delinquent person as his name
20 appears on the latest assessment roll of the county;

21 (b) the amount of the delinquent assessments and the
22 total amount of accelerated assessments;

23 (c) a description of the property to be sold; and

24 (d) the date, time, and place of the assessment sale.

25 (2) The county shall give notice of the sale in the

1 following manner:

2 (a) At least 120 days before the date fixed for the
3 sale, a copy of the notice of sale must be mailed by
4 certified mail to:

5 (i) each person designated in the latest assessment
6 role as the owner of the property for which the assessment
7 is delinquent, at the address shown on the assessment role;
8 and

9 (ii) any person having a lien or interest subsequent to
10 the interest of the county and whose lien or interest and
11 address appear of record on the filing date and time of the
12 notice of sale.

13 (b) At least 20 days before the date fixed for the
14 sale, a copy of the notice of sale must be posted in some
15 conspicuous place on the property to be sold. Upon request
16 of the county, the notice of sale may be posted by the
17 sheriff.

18 (c) A copy of the notice of sale must be published in
19 a newspaper of general circulation published in the county
20 in which the property is located at least once each week for
21 3 successive weeks. The last publication must be made at
22 least 20 days before the date fixed for the sale.

23 (3) The county attorney must, before the date of the
24 sale, file for record in the office of the clerk and
25 recorder of the county where the property is situated

1 affidavits of mailing, posting, and publication showing
2 compliance with the requirements of this section.

3 (4) On the date and at the time and place designated
4 in the notice of sale, the county attorney or his designee
5 shall sell the property at public auction to the highest
6 bidder. The property may be sold in one parcel or in
7 separate parcels, and any person may bid at the sale. The
8 person making the sale may, for any cause he considers
9 expedient, postpone the sale for a period not exceeding 15
10 days by public proclamation at the time and place fixed in
11 the notice of sale. No other notice of the postponed sale
12 need be given.

13 (5) The purchaser at the sale must pay the price bid
14 in cash, and upon receipt of payment, the county attorney
15 shall execute and deliver an assessment sale deed to the
16 purchaser. If the purchaser refuses to pay the purchase
17 price in cash, the person conducting the sale has the right
18 to resell the property at any time to the highest bidder.
19 The party refusing to so pay is liable for any loss
20 occasioned thereby, and the person making the sale may in
21 his discretion thereafter reject any other bid of such
22 person.

23 NEW SECTION. Section 2. Disposition of proceeds of
24 sale. The county shall apply the proceeds of the sale as
25 follows:

1 (1) to the costs and expenses of the sale, including
2 reasonable county fees for conducting the sale, and attorney
3 fees;

4 (2) to the assessment delinquency plus interest and
5 penalties;

6 (3) the surplus, if any, to the person or persons
7 legally entitled thereto; or the county attorney in his
8 discretion may deposit the surplus with the clerk and
9 recorder of the county in which the sale took place. Upon
10 depositing such surplus, the county is discharged from all
11 further responsibility therefor and the clerk and recorder
12 shall deposit the funds with the county treasurer, subject
13 to the order of the district court of the county.

14 NEW SECTION. Section 3. Deficiency judgment not
15 allowed. When an assessment delinquency executed in
16 conformity with [sections 1 through 6] is foreclosed by
17 advertisement and sale, no other or further action, suit, or
18 proceedings may be taken or judgment entered for any
19 deficiency against the delinquent owner or his surety,
20 guarantor, or successor in interest, if any, on the
21 delinquent assessment.

22 NEW SECTION. Section 4. Assessment sale deed. (1) The
23 assessment sale deed to the purchaser at the trustee's sale
24 may contain, in addition to a description of the property
25 conveyed, recitals of compliance with the requirements of

[sections 1 through 6] relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the delinquency, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the assessment sale deed is recorded in the deed records of the county where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under [section 1] are prima facie evidence in any court of the truth of the matters set forth therein, except that the same are conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The assessment sale deed operates to convey to the purchaser, without right of redemption, all right, title, interest, and claim of the county to such property.

NEW SECTION. Section 5. Possession. The purchaser at the sale is entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that date under any interest are considered to be tenants at will.

NEW SECTION. Section 6. County fees and attorney fees. Reasonable county fees and attorney fees to be charged under [section 2] for advertisement and sale may not exceed, in the aggregate, 5% of the amount due on the assessment,

including penalties and interest, at the time of the sale. If prior to the sale the delinquency is extinguished by the payment of all delinquent assessments and if the assessments have been accelerated by payment of all accelerated assessments, the reasonable county fees and attorney fees to be charged may not exceed \$150.

Section 7. Section 7-12-2168, MCA, is amended to read:

"7-12-2168. Assessments and certain other charges as liens. (1) Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall 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. This lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

(2) Any special assessment levied and made for any of the purposes mentioned in 7-12-2120 and 7-12-2161, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

~~(3) A county may:~~

~~(a) sell property with delinquent assessments the same as other property is sold for taxes; or~~

~~(b) declare by appropriate resolutions that when a payment becomes delinquent all payments are delinquent and the property may be sold by advertisement as provided in [sections 1 through 6]."~~

NEW SECTION. Section 8. Sale on delinquent assessment

-- notice -- sale -- payment. A delinquent assessment may be foreclosed by advertisement and sale as follows:

(1) The city attorney shall prepare a notice of assessment sale. A copy of the notice must be filed with the county clerk and recorder for record. The notice must contain:

(a) the name of the delinquent person as his name appears on the latest assessment roll of the county;

(b) the amount of the delinquent assessments and the total amount of accelerated assessments;

(c) a description of the property to be sold; and

(d) the date, time, and place of the assessment sale.

(2) The city or town shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the sale, a copy of the notice of sale must be mailed by certified mail to:

(i) each person designated in the latest assessment role as the owner of the property for which the assessment is delinquent, at the address shown on the assessment role; and

(ii) any person having a lien or interest subsequent to the interest of the city or town and whose lien or interest and address appear of record on the filing date and time of the notice of sale.

(b) At least 20 days before the date fixed for the sale, a copy of the notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the city or town, the notice of sale may be posted by the sheriff.

(c) A copy of the notice of sale must be published in a newspaper of general circulation published in the city or town in which the property is located at least once each week for 3 successive weeks. If there is no such newspaper, it must be published in a newspaper of general circulation published in the county in which the property is located. The last publication must be made at least 20 days before the date fixed for the sale.

(3) The city or town attorney must, before the date of sale, file for record in the office of the clerk and recorder of the county where the property is situated affidavits of mailing, posting, and publication showing

1 compliance with the requirements of this section.

2 (4) On the date and at the time and place designated
3 in the notice of sale, the city or town attorney or his
4 designee shall sell the property at public auction to the
5 highest bidder. The property may be sold in one parcel or
6 in separate parcels, and any person may bid at the sale.
7 The person making the sale may, for any cause he considers
8 expedient, postpone the sale for a period not exceeding 15
9 days by public proclamation at the time and place fixed in
10 the notice of sale. No other notice of the postponed sale
11 need be given.

12 (5) The purchaser at the sale must pay the price bid
13 in cash, and upon receipt of payment, the city or town
14 attorney shall execute and deliver an assessment sale deed
15 to the purchaser. If the purchaser refuses to pay the
16 purchase price in cash, the person conducting the sale has
17 the right to resell the property at any time to the highest
18 bidder. The party refusing to so pay is liable for any loss
19 occasioned thereby, and the person making the sale may in
20 his discretion thereafter reject any other bid of such
21 person.

22 NEW SECTION. Section 9. Disposition of proceeds of
23 sale. The city or town shall apply the proceeds of the sale
24 as follows:

25 (1) to the costs and expenses of the sale, including

1 reasonable city or town fees for conducting the sale, and
2 attorney fees;

3 (2) to the assessment delinquency plus interest and
4 penalties;

5 (3) the surplus, if any, to the person or persons
6 legally entitled thereto; or the city or town attorney may
7 in his discretion deposit the surplus with the clerk and
8 recorder of the county in which the sale took place. Upon
9 depositing such surplus, the city or town is discharged from
10 all further responsibility therefor and the clerk and
11 recorder shall deposit the funds with the county treasurer,
12 subject to the order of the district court of the county.

13 NEW SECTION. Section 10. Deficiency judgment not
14 allowed. When an assessment delinquency executed in
15 conformity with [sections 8 through 16] is foreclosed by
16 advertisement and sale, no other or further action, suit, or
17 proceedings may be taken or judgment entered for any
18 deficiency against the delinquent owner or his surety,
19 guarantor, or successor in interest, if any, on the
20 delinquent assessment.

21 NEW SECTION. Section 11. Assessment sale deed. (1)
22 The assessment sale deed to the purchaser at the trustee's
23 sale may contain, in addition to a description of the
24 property conveyed, recitals of compliance with the
25 requirements of [sections 8 through 13] relating to the

exercise of the power of sale and the sale, including recitals of the facts concerning the delinquency, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the assessment sale deed is recorded in the deed records of the county where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under [section 8] are prima facie evidence in any court of the truth of the matters set forth therein, except that the same are conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The assessment sale deed operates to convey to the purchaser, without right of redemption, the city or town's title and all right, title, interest, and claim of the city or town to such property.

NEW SECTION. Section 12. Possession. The purchaser at the sale is entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that date under any interest are considered to be tenants at will.

NEW SECTION. Section 13. City or town fees and attorney fees. Reasonable city or town fees and attorney fees to be charged under [section 9] on foreclosure by advertisement and sale may not exceed, in the aggregate, 5%

of the amount due on the assessment, including penalties and interest, at the time of the sale. If prior to the sale the delinquency is extinguished in accordance with the provisions of 7-12-4184, the reasonable city or town fees and attorney fees to be charged may not exceed \$150.

Section 14. Section 7-6-4423, MCA, is amended to read:

"7-6-4423. Sales for delinquent taxes when municipality collects municipal tax. (1) (a) Whenever, in a city or town whose city treasurer or town clerk collects its own taxes or special assessments or both, any such taxes or assessments shall become delinquent, no tax sale, except a sale by advertisement as provided in [sections 8 through 13], shall be held therefor by such city treasurer or town clerk but such city treasurer or town clerk must, within 10 days after the date the same become delinquent, certify all such delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated.

(b) Such certificate shall contain:

- (i) the description of each lot or parcel of land on which any tax or assessment has become delinquent;
- (ii) the name and address of the person to whom assessed;
- (iii) the date when the same became delinquent;
- (iv) the amount of the delinquent tax or assessment.

1 the penalty to be added thereto, and the total amount of
2 such delinquent tax or assessment with penalty added.

3 (c) If any special assessment is payable in
4 installments and any installment thereof becomes delinquent,
5 the amount of such delinquent installment shall be included
6 in such certificate; provided, however, that if the city or
7 town council, by the adoption of an appropriate resolution,
8 shall declare the whole of the assessment remaining unpaid
9 to be delinquent as provided in 7-12-4181, then the whole of
10 the assessment remaining unpaid shall be included in such
11 certificate.

12 (2) Upon receipt of such certificate, the county
13 treasurer shall enter such delinquent taxes and assessments
14 in the delinquent tax list of the county, and the county
15 treasurer in selling property for delinquent taxes must
16 include all such city and town delinquent taxes and
17 assessments. There shall be but one sale for each piece of
18 property. Such sale shall cover the aggregate of such city
19 or town, county, and state taxes and special assessments,
20 with the penalties, interest, and costs provided by law."

21 Section 15. Section 7-12-4182, MCA, is amended to
22 read:

23 "7-12-4182. Collection of district assessments by city
24 treasurer in cities collecting their own taxes --
25 delinquencies. (1) In every city or town which shall provide

1 by ordinance for the collection of its taxes for general,
2 municipal, and administrative purposes by its city treasurer
3 or town clerk, such city treasurer or town clerk shall
4 collect all special assessments and taxes levied and
5 assessed in accordance with any of the provisions of this
6 part and part 42 in the same manner and at the same time as
7 said taxes for general, municipal, and administrative
8 purposes are collected by him. All of the provisions of
9 7-6-4423 shall apply to the collection of such special taxes
10 and assessments in the same manner as such provisions apply
11 to the collection of other city or town taxes.

12 (2) When one payment becomes delinquent, all payments
13 shall, at the option of the city or town council and by
14 appropriate resolutions duly adopted, become delinquent and
15 the whole property shall be sold the same as other property
16 is sold for taxes or, at the option of the council, by sale
17 by advertisement as provided in [sections 8 through 13]."

18 Section 16. Section 7-12-4183, MCA, is amended to
19 read:

20 "7-12-4183. Collection of district assessments by city
21 treasurer in cities where county collects taxes. (1) In any
22 city or town where taxes for general, municipal, and
23 administrative purposes are certified to and collected by
24 the county treasurer in accordance with the provisions of
25 7-6-4407 and 7-6-4423, the city or town may, nevertheless,

1 provide by ordinance for the collection by its city
2 treasurer or town clerk of all special assessments and taxes
3 levied and assessed in accordance with any of the provisions
4 of this part and part 42 in the same manner and at the same
5 time as said taxes for general, municipal, and
6 administrative purposes are collected by the county
7 treasurer. All of the provisions of 7-6-4423 shall apply to
8 the collection of such special taxes and assessments in the
9 same manner as such provisions apply to the collection of
10 other city or town taxes.

11 (2) When the payment of any one installment of any
12 special assessment becomes delinquent, all payments of
13 subsequent installments shall, at the option of the city or
14 town council and by appropriate resolution duly adopted,
15 become delinquent. Such delinquent special assessments shall
16 ~~may be collected through sale by advertisement by the city~~
17 ~~or town as provided in [sections 8 through 13], or they may~~
18 be certified to the county clerk of the county in which such
19 city or town is situated, and the county treasurer must
20 collect such delinquent special assessments and taxes in the
21 same manner and at the same time as said taxes for general,
22 municipal, and administrative purposes are collected by him.
23 In case the same are not paid, the whole property shall be
24 sold, the same as other property is sold for taxes."

25 Section 17. Section 7-12-4184, MCA, is amended to

1 read:

2 "7-12-4184. Reinstatement of delinquent assessment.
3 (1) Whenever any special assessment or installment is
4 delinquent, is declared to be delinquent by appropriate
5 resolution of the city or town council, and is certified to
6 the county clerk and county treasurer for collection as
7 herein provided, the city or town council may, nevertheless,
8 at its option, by appropriate resolution, order the
9 delinquent assessment to be withdrawn from the county
10 treasurer, canceled from his records and proceedings, and
11 reinstated in the office of the city treasurer and on the
12 assessment book thereof upon the payment to the city
13 treasurer of the assessment or the installment and interest
14 up to date.

15 (2) The certified copy of the resolution of the
16 council with reference to such payment, withdrawal, and
17 reinstatement, filed with the county treasurer, is authority
18 for the county treasurer to cancel and withdraw the
19 delinquent special assessment or installment.

20 (3) The withdrawal and reinstatement may be made at
21 any time before or after sale of the property for delinquent
22 taxes and before a tax deed therefor is executed ~~or before~~
23 ~~the sale of the property as provided in [section 8]."~~

24 **NEW SECTION.** Section 18. Codification instructions.

25 (1) Sections 1 through 6 are intended to be codified as an

- 1 integral part of Title 7, chapter 12, part 21.
- 2 (2) Sections 8 through 13 are intended to be codified
- 3 as an integral part of Title 7, chapter 12, parts 41 and 42.

-End-