



HB 49 Subcommittee on Local Government Special Purpose Districts

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

60th Montana Legislature

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BILL NOONEY

SENATE MEMBERS

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SHOOTS VEIS

MINUTES

December 12, 2007

Capitol Bldg. Rm. 152
Helena, Montana

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HB 49 Subcommittee on Special Purpose Districts

SUBCOMMITTEE MEMBERS PRESENT

SEN. KIM GILLAN, Chair
REP. GARY BRANAE, Vice Chair
SEN. RICK LAIBLE
REP. BILL NOONEY
PAULETTE DEHART
MIKE MCGINLEY
ED MEECE
MARTY REHBEIN
PAULA ROBINSON
SHOOTS VEIS

STAFF PRESENT

LEANNE HEISEL, Lead Staff
CLAUDIA (CJ) JOHNSON, Secretary

Visitors/Agenda

Agenda, Attachment 1
Visitors' list, Attachment 2

SUBCOMMITTEE ACTION

- HB 49-Special Purpose Districts - Attachment 3
- Committee Work Groups - Attachment 4

CALL TO ORDER AND ROLL CALL

00:15:13 **SEN. KIM GILLAN** called the subcommittee to order, and welcomed everyone to the ELG subcommittee. The secretary noted the roll. Attachment 5.

AGENDA:

SEN. GILLAN explained how the agenda will proceed. She then introduced Norm Klein, Department of Administration (D of A).

PUBLIC COMMENT:

00:18:40 **Norm Klein, Local Government Services Bureau,, D of A,** gave a presentation on the Department's involvement with special purpose districts. He said the Department has identified 819 special purpose districts. The Department tracks the existence of these districts for purposes of financial reporting that is identified in Title 7, Chapter 6, part 6, MCA, and Title 2, and Chapter 7, part 5, MCA (the Montana Single Audit Act). Mr. Klein said it is his role to provide technical accounting assistance to special purpose districts and governments that are located throughout Montana. His program usually handles the special purpose districts upon request if they want to receive state funding through the Teasure State Endowment Program (TCEP) or community development block grants, and other types of federal funding where the grantor or agency is interested in whether the district or the government has a bonafide accounting system in place that they can rely on to track the grants, etc. He talked about how the reporting system works and provides information on the special districts and how they operate. He talked about how the D of A tracks the special purpose districts and explained the Local Government Assistance Program. He said that the counties are required to submit reports which allow the D of A to keep track of the districts.

00:23:21 **SEN. GILLAN** asked Norm Klein and Tom Hayes from D of A to give recommendations to the Subcommittee on what they should expect.

00:24:07 Tom Hayes, Local Government Services Bureau, Audit Review Program, D of A, talked about financial statements provided by the cities, towns and counties, and

how these statements are used to force an audit. When these entities file their annual report and their revenues meet the audit threshold of \$200,000, it automatically triggers an audit. His program then notifies that local government who contacts a CPA to perform the audit. When that report is finalized it is sent to the Audit Review Program which reviews the report for accuracy and law guidelines. He discussed the volunteer fire districts and how they relate to rural fire districts and fire service areas.

QUESTIONS:

- 00:26:14 Paulette DeHart asked Mr. Hayes if it is his understanding that the volunteer fire companies can be created without public participation or participation from local governments. Mr. Hayes responded that the volunteer fire companies can be formed for e.g., several ranchers who want to create a volunteer fire company can look at state law and create one. If a fire service area is created because the county wants tax dollars it could have two entities, a rural fire district and a fire service area servicing this geographic area, plus a volunteer fire company which could also be receiving some of the donations and revenues.
- 00:27:28 Marty Rehbein and Mr. Hayes talked about when local governments reach the state threshold, and how it is determined when local governments must file an annual report. The audit threshold is moving to \$500,000 from the previous \$200,000. They discussed a provision in state law that addresses financial reviews, which is a limited review of accounting records. He said that Montana has an option where local governments can have a bi-annual audit every two years when they meet the threshold.
- 00:29:49 Harold Blattie, MACo, talked about the audit threshold bill enacted by the 2007 Legislature, and said it is tied to the federal threshold. He reiterated that the threshold will be increased to \$500,000 in the next fiscal year before an audit is triggered.
- 00:30:28 Mike McGinley wanted to know about fire jurisdiction, and when fire districts can cross the county line. Mr. Blattie replied there are a number of these throughout the state, and said he knows of one fire district that crosses four county lines.

REPORT FROM GREG PETESCH ON DEFINITION OF A FREEHOLDER:

Legal status and meaning of "freeholder" and legal status of corporations in special purpose district statutes

00:31:24

Greg Petesch, Code Commissioner, Legislative Services Division, talked about the definition of a freeholder, and informed the subcommittee that a freeholder is a person who holds a title to real property. This title can be a legal title or equitable title. Under a contract for deed sale it is the purchaser rather than the seller who holds that title. He said there are provisions in statute that address resident freeholders. There is a distinction because a person can be a freeholder without being a resident, or a person can also be a resident without being a freeholder. The rules for determining residents is that every person has a single residence for the law. It is a place where a person remains who can be called away for temporary labor, or special purpose. It is based on actual action and the intent. He gave an example of a resident freeholder as a resident who is a construction worker and resides in Helena, but spends a year working on a construction job in Missoula then returns to Helena when the job is finished. That person is still a resident of Helena for purposes of the law. He added that to prove a person's place of residence is circumstantial evidence. A resident freeholder is a person who resides within the jurisdiction affected, and who owns real property in that jurisdiction.

Mr. Petesch talked about limiting the election franchise to resident freeholders which is determined on a case by case basis depending on the type of district that is under consideration. The general rule is that under the federal Voting Rights Act, and then equal protection as applied to voting rights, that residents who are qualified under state election laws have the right to vote. He said there can be restrictions on that right depending on whether a district is a very limited special purpose district whose benefits and burdens are directly impacted on property ownership, and the reason there can be freeholder requirements in certain instances.

Mr. Petesch discussed an incident which several senior citizens in a senator's district were upset because people who didn't own real property were allowed to vote in mill levy elections, e.g., school mill levy elections. This Senator wanted to know if they could change voting requirements, and the US Supreme Court said it cannot be done. He discussed the court case that involved a 33 year old stockbroker who lived with his parents in New York, and wanted the right to vote. Mr. Petesch said at that time the law in New York said a person had to be a property owner in the district, or a parent of children who were of school age in the district in order to vote. The Court responded that education is such a broad public concept that people who don't have one of those qualifications have a very legitimate interest in the kind of education that people are getting, because

education is the cornerstone of citizenship. The U.S. Supreme Court struck down the NY statutes that limited the franchise that states, "anybody who is a qualified elector gets to vote in those elections". He talked about a case in Montana that deals with irrigation districts. He said the Court upheld a resident freeholder requirement for an irrigation district because to take advantage of the benefits of the purpose of an irrigation district a person had to be a property owner. A person cannot irrigate someone else's land, they can only irrigate their own land. The general rule as to whether a person has freeholder requirements for purposes of exercising the franchise is that it has to be a very limited special purpose district whose burden falls directly and almost exclusively on the property owners. He said that when dealing with public health and public safety the ability to impose the freeholder requirements diminishes greatly. He gave an example of fire districts stating if a person wasn't a real property owner within that district they still have a legitimate interest as a renter within the boundaries of that district to have protection on personal property, such as personal vehicles, pets, etc. The concept of people paying through property taxation or some sort of assessments that is tied to the land doesn't mean that the franchise can be restricted to only those people that are landowners. A person has to examine the purpose of the district then make that balancing test to determine if that benefit is almost exclusively for landowners. He addressed how corporations fit within the scheme of freeholders. He talked about the two cases in Montana; one in 1973 when the Montana Supreme Court stated that neither corporations nor a partnership is a resident freeholder. He said this came about because of a protest to annexation. He said the Court upheld the legislative scheme of making it more difficult to protest annexation in a first and second class city then they did for third class cities and towns. Whether a corporation is considered the same as a natural person for purposes of residence depends entirely on the context of the statute in question. He said corporations have to be put into context, because it is easier to allow a corporation to participate on the protest side in the creation of districts than it is in the operation of districts. The question then becomes, "do the statutes regarding elections for a district require qualified electors?" Corporations cannot be qualified electors because they can never be citizens, which is a constitutional requirement in Montana. The Montana Supreme Court states that a corporation that holds real property is a resident freeholder for purposes of protesting annexation under the Planned Community Development Act.

00:41:00

Mr. Petesch continued stating that the freeholder requirements have normally been struck down as a qualification for office. He talked about a case in Montana in 1978 that stated "the former freeholder requirement for being an alderman (which is now a city council member) was unconstitutional, because property ownership did not relate to the issues involved in being a city councilman." The issues were much broader and there was no specific basis that would allow a person with ties of owning real property to be qualified for public office. He said this is not necessarily true in some of the very limited special districts. Irrigation

districts are the best example in Montana, because they are the most litigated.

QUESTIONS:

- 00:43:21 SEN. GILLAN asked if the basis for who is entitled to vote is dependent on how the revenues are assigned, and does the statute link how the money will be generated to who gets to vote. Mr. Petesch replied not directly. He said in some instances there is a linkage where a resident freeholder can vote on the creation or reduction in size or management of that district. He said if the assessment is going to be on property ownership it should be either a volume basis or frontage basis depending on the district. He talked about school districts in Montana as a good example, because they are funded through property taxes. He closed stating that people who own real property pay for the funding at the local level in that school district.
- 00:46:58 Mike McGinley asked what types of special districts can be taxed for property and for household. Mr. Petesch said it depends on the purpose of the special districts. He said some are assessed on projected use, some on the services of the district, and he named others.
- 00:49:13 Ed Meece asked Mr. Petesch what assessments will be based on projected use. Mr. Petesch commented that it could be some of the new street maintenance districts that allow projected use by commercial properties to be funded on the estimated vehicle trips to the property.

INFORMATION:

- 00:50:13 Leanne Heisel distributed a handout on fire districts. She walked the subcommittee through the handout section by section, and explained what the legislature had originally agreed on. **EXHIBIT 1**
- 00:59:37 Ms. Heisel talked about the Fire Suppression committee stating they will probably not be amending fire district statutes. She asked the subcommittee if they want to discuss what to do with fire districts or wait on a draft of the uniform act. The subcommittee members discussed the distinction between city and county districts, how they are taxed, and how they work hand in hand with the Department of Natural Resources and Conservation (DNRC). Shoots Veis said there are separate fire limits between the city and the county, but they work well together. They discussed budgets and keeping track of accounts, and how the city assists the county when working on budgets. Ms. Heisel informed the subcommittee that the fire districts and fire service areas are authorized by statute.

PUBLIC COMMENT:

- 01:07:02 Harold Blattie, MACo, said that fire districts create an entity to assess funds for fire protection. Fire service areas are created to deal with fire protection for structures, they do not fight fires, but are formed to collect fees. He talked about the three overlays that are distinct and separate entities, and who is responsible for providing wildfire protection. SEN. GILLAN asked if the fire service areas normally contract out for fire protection or do they have their own internal structure, such as trustees, administrators, etc. Mr. Blattie said both structures exist. They are created administratively to collect funds, and contract with another entity for fire protection. He talked about a new fire service created in Granite county that handles administrative duties and protects property. SEN. GILLAN asked if both property and structures can be in fire service areas and a fire district. Ms. Heisel replied that it can occur. She said there is nothing that prohibits that from happening and there is some overlap. Ms. Heisel said that a governance of a fire service area can either be the commissioners themselves or they can appoint trustees to manage the affairs. **EXHIBIT 2**
- 01:13:16 REP. NOONEY asked who creates fire district areas. Mr. Blattie replied it is the Board of Commissioners. Ms. Heisel said there has to be a petition of at least 30 property owners before the Board can establish a fire district and then they receive a petition. REP. NOONEY asked about establishing a fee schedule. Ms. Heisel responded there is a fee schedule in the resolution that creates a fire service area.
- 01:14:52 Paula Robinson asked if there is a cap on the fee. Ms. Heisel said there is no dollar amount just that it needs to be fair. Ms. Robinson asked if the fee can increase yearly. Ms. Heisel said the fee schedule has to be in the resolution, and if the commissioners wanted to increase or change the fee, they would have to hold a hearing. Mr. Blattie responded there is a provision where a county can annually set fees. The counties can do it more often than yearly. Mr. Blattie talked about Initiative 105 that passed in 1985 and placed a limitation on property taxes, and the fire service area statutes that were passed in 1987. Mr. Blattie suggested that the subcommittee look at the statutes to help provide some uniformity.
- 01:18:15 SEN. GILLAN and the subcommittee discussed how they feel about keeping fire districts on the table or work on uniformity and other major districts before they make a decision. Ms. Heisel stated that maybe the workgroups could look at specific concerns where uniformity doesn't apply to fix in the statutes
- 01:19:35 SEN. GILLAN talked about SB 103, and asked the subcommittee to reject major changes to what SB 103 did, but to keep the issues on the table. SEN. GILLAN asked if anyone has seen or heard anything on SB 103 since it was passed during the regular legislature. Harold Blattie replied that he hasn't received any phone calls.

- 01:22:00 Leanne Heisel distributed a handout of the unofficial draft copy of the "Uniform Act", and gave an overview of the Act. **EXHIBIT 3**
- 01:27:05 SEN. LAIBLE wanted to know if he could appeal the creation of a district by going to the county office and obtain a list of people to gather signatures. Marty Rehbein said yes he could, but the list cannot be used as a mailing list in order to solicit. She quoted the state statute in Title 2.
- 01:37:30 Ed Meece talked about a clause that reserves powers and gives back to the governing body. He said the assignment of powers to a created Board does not pre-empt the governing body from exercising the same powers.
- 01:39:45 The subcommittee talked about suggested language on special districts being governed by a governing board of resolution. It was suggested that the workgroups may want to look at a resolution of intention so the public will know who is creating the districts, such as the Board of Commissioners.
- 1:53:52 The subcommittee talked about 90-day assessments and making them uniform with the regular property tax protest.
- 03:14:04 Break

PUBLIC COMMENT:

- 03:14:55 Tim Magee, Certified Public Finance Officer, Administrative Services Director, City of Helena, referred to Exhibit 3, and discussed the various sections that are of interest to him:
- 1) Section 3, page 2, on the authorization to create special districts. He talked about street light districts.
 - 2) Section 5, item 3, regarding protests. Mr. Magee talked about one large property owner in an area who could protest and kill a unit, and stated it should all be equal. Mr. Hansen said there is wording that can be used to protest.
 - 3) Section 8, item 1, Governance regarding powers and duties.
 - 4) Section 11, notice of resolution for assessment. He said that a governing body is a local government, by definition a city, town or a consolidated district. He talked about electing an appointment who would have authority to oversee local government entities. He discussed Title 7, part 6, budget laws for cities and counties, and appointments.

03:22:06 Harold Blattie, MACo, talked about the difference between municipalities, cities and towns, and stated that special districts create boundaries. He urged the subcommittee workgroups to look at how: 1) special districts are created, 2) to dissolve special districts, 3) are special districts governed, and 4) special districts assessments methodology. Mr. Blattie said the subcommittee will have to decide what sections of statute they want repealed. He stated that would have a lot of influence on what the final outcome and product would be of the Uniform Act.

QUESTIONS:

03:36:57 Mike McGinley wanted to know what other districts are there other than weed districts that have statutes and employ their own people. He wanted to know if there are other common special district boards that also have this. Mr. Blattie replied yes, and identified several of them

PUBLIC COMMENT:

03:37:59 Alec Hansen, Montana League of Cities and Towns, commented that cities are especially interested in Title 7, chapter 12, special improvement districts. He informed the subcommittee there are 80 pages of law that relate to special improvement districts. He said that most of the laws deal with municipal governments. He said a lot of these laws were enacted in 1913, that the list covers most of the services provided by cities for special purpose districts. He stated that each of these statutes are different, they have different protest provisions, and different assessment provisions. He said it will be difficult for this subcommittee and the legislature to enact a statute that compresses 80 pages of law and 80 pages of history into one bill. He talked about how counties are separate. They have special districts that have separate boards that aren't directly under the control of the county commissioners. He said that cities, with the exception of business improvement districts, are mostly financing mechanisms, such as street maintenance districts, which are a way to finance street improvements for:

- sidewalks,
- fire hydrants,
- street lights, and
- parking.

He reiterated these are not a governance issue, but a finance mechanism. He suggested that the subcommittee consider removing most of the special improvement districts from the scope of this study, especially those that are municipal endowments. He said the subcommittee could then go forward with the uniformity idea. He also suggested the workgroup work on governance and protest provisions.

QUESTIONS:

- 03:41:49 SEN. GILLAN asked Mr. Hansen what he would like the workgroup to exclude. Mr. Hansen said there is a list of county special districts that are not included in Title 7, chapter 12. He said that this list of counties each have their own governing body, and the counties want uniformity in the statutes.
- 03:42:54 SEN. GILLAN asked Mr. Hansen if he thought HB 49 was for a larger group of special districts or a smaller group. Mr. Hansen said there was discussion on HB 49 which was an initiative from the Association of Counties, and the League of Towns and Cities supported HB 49. He commented that cities and counties have different ideas on special districts, and he would like to see one law that would be flexible and applicable to all districts.
- 03:44:35 SEN. LAIBLE asked Mr. Hansen if he wants the city and county to be one and the same. Sen. Laible said if the subcommittee comes up with model legislation that could apply to both municipal and county, it still will not do away with every special assessment district that has ever been created. He wanted to know if the special districts from 1913 would be grandfathered in under the way they were originally formed then the subcommittee couldn't go back and change them anyway. Mr. Hansen responded with examples of the complications that he is talking about:
- SID - Municipal for water and sewer districts - requires 75 percent of the affected property owners to protest within 15 days. The county section of law states that it only requires 50 percent of the property owners to protest, but a unanimous vote from the county commission or a determination by a public health board organization can override the protest.
- He asked "how will you write one law that will affect two situations and numerous other situations like this that are similar, complicated, and put it all into one statute, and bring it all together and have it make sense"?
- 03:48:49 REP. NOONEY asked Mr. Hansen if he liked the Uniformity Act draft that Ms. Heisel presented. (see Exhibit 3). Mr. Hansen replied yes, but said that each district has a different purpose, so they are each funded in different ways; the protests are different; and the assessments are different. Mr. Hansen noted there are many issues involved in this process.
- 03:51:18 Robin Trenbeath, Department of Administration, said he is the State's Geographic Information Officer. He explained to the subcommittee how his office gathers information of government boundaries, and discussed the overlap of districts. His office digitizes legal descriptions of boundaries and puts them on maps. He talked about a website with this information and said they receive approximately

30,000 to 50,000 hits a day from landowners or people looking at purchasing property. He urged the subcommittee to look at Exhibit 3, Section 4, (2)(c), that addresses "a general description of the territory giving the boundaries of the proposed special districts". He said the language is too general. He said the language in the school district law is better when determining how boundaries are set. He suggested that the subcommittee look at that language to incorporate into the Uniform Act draft.

- 03:54:27 Shoots Veis asked Mr. Trenbeath if detailed language was inserted into another area of the Uniform Act if he would be fine with that. Mr. Trenbeath replied yes. He said after the district is formed, his office needs a central location where they can have access to the information and apply it to the digital map.
- 03:55:10 Marty Rehbein asked Mr. Trenbeath if all parcels in Montana have a Geo code, along with the tax ID, owner record, and mailing address of taxpayer. Mr. Trenbeath deferred the question to Erin Geraghty, GIS Bureau, D of A, who responded stating that she is involved with one of the projects on school districts and collects information on what is important information from each district. She said there will be a unique I.D. for districts, for e.g., levy information that is in the database from the Department of Revenue that has this tax information.
- 03:57:07 Ms. Heisel talked about adding reporting requirement to the bill, and wanted to know if it will put a huge burden on local governments, or is this already being done. Paulette DeHart replied that it depends on what the description requirements are, and how cumbersome it would be for the county or the city, and if it is being done differently than what they are currently doing.
- 03:59:31 Paulette DeHart explained how the reporting happens.
- 04:00:25 SEN. GILLAN and the subcommittee talked about what the workgroups will need to discuss, and what the outcome should be.
- 04:01:33 Ms. Heisel explained to the subcommittee what their assignments are. She said that each group will take a district and compare it with the draft of the Uniform Act and go through each section to determine what they want to keep and what they can get rid of.

REPORTS FROM THE WORKGROUPS:

- 05:28:52 REP. BRANAE, Vice Chair asked group 1 to report.
- **GROUP 1:**
- 05:29:26 Marty Rehbein explained her group's discussion on:
1) Multijurisdictional Service Districts,

- 2) Business Improvement Districts, and
- 3) Hospital Districts.

DISCUSSION:

05:30:47 Paulette DeHart explained why they included the hospital districts. She said that hospital districts are small, but there are several types, such as, RID. She said that a number of cities that are governed by a governing body are just a financing mechanism, and her workgroup felt they do not belong in the Uniform Act.

● **GROUP 2:**

Leanne Heisel explained her group's discussion on:

- 1) City lighting districts that could be covered under the Uniform Act. She said there are areas that are specific to lighting districts, such as infrastructure. She talked about the workgroup having problems with assessments. She said a lot of provisions in the lighting district could deal with resolution of intent in determining assessments that the workgroup thought could be repealed and covered under the Uniform Act.

Mike McGinley explained:

- 2) Parks Maintenance District. He talked about the creation of Park districts and the overlap with city parks. He thought these districts could work together under this model bill.

DISCUSSION:

Marty Rehbein talked about a bill that would be applicable to all people. If something is working reasonably well, don't do anything.

● **GROUP 3:**

05:40:14 Ed Meece explained and discussed:

- 1) Governance - giving local governments the flexibility to maintain and where to use model to create a balance and establish assessments and responsibility to impose a cost.
- 2) Some considerations for boundaries with sewer and water districts. Need a mechanism where lines are drawn.
- 3) Special finance needs to be created in all of these districts across the board.

DISCUSSION:

05:43:51 Alec Hansen, Montana League of Cities and Towns, talked about assessments, and protests. He said the real challenge will be to find the pieces that need to be

saved. He will assist Ms. Heisel to help make the pieces fit. Ms. Heisel suggested that Mr. Hansen and the city representatives divide up and work in their special areas and work on this issue.

COMMENTS FROM COMMITTEE MEMBERS:

- 05:46:58 SEN. LAIBLE talked about freeholders, and said maybe the subcommittee could break the districts down into two separate categories, e.g., which ones apply to freeholders, and which ones apply to everyone.
- 05:49:28 SEN. GILLAN and the subcommittee discussed if they should try to find five or six common elements that will fit into the Uniformity Act, or take a subsection from each district that has some similarity to find out what can be combined together.
- 05:51:19 REP. LAIBLE talked about a list for the subcommittee to address, such as, 1) who sets the fees, and 2) where does the money go when it is received. He said this could allow for local control in the districts and they could be dated and looked at it at a different time.
- 05:53:59 SEN. GILLAN asked Ms. Heisel to take all the comments and insert them into Exhibit 3, the Uniform Act, to see what works.
- 05:57:57 SEN. GILLAN stated this is a starting point. She asked Harold Blattie and Alec Hansen to assist Ms. Heisel in the draft and expand on the comments to be made.

ADJOURN:

- 06:07:41 SEN. GILLAN closed by informing the subcommittee what the agenda will address at the next meeting.
- 06:08:59 SEN. GILLAN adjourned the subcommittee meeting at 4:05 p.m.