



HB 49 Subcommittee on Local Government Special Purpose Districts

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60th Montana Legislature

HOUSE MEMBERS

GARY BRANAE--Vice Chair
BILL NOONEY

SENATE MEMBERS

KIM GILLAN--Chair
RICK LAIBLE

PUBLIC MEMBERS

PAULETTE DEHART
MIKE MCGINLEY

ED MEECE
MARTY REHBEIN
PAULA ROBINSON
SHOOTS VEIS

COMMITTEE STAFF

HOPE STOCKWELL, Lead Staff
CLAUDIA (CJ) JOHNSON,
Secretary

MINUTES

July 29, 2008
10 a.m. to 2:30 p.m.

HB 49 Special Districts
MSU-Bozeman,
Strand Union Bldg, Rm 220

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

SEN. KIM GILLAN, Chair
REP. GARY BRANAE, Vice Chair
PAULETTE DEHART - attendance by polycom phone
MIKE MCGINLEY
MARTY REHBEIN
PAULA ROBINSON

COMMITTEE MEMBERS EXCUSED

ED MEECE
SEN. RICK LAIBLE
REP. BILL NOONEY
SHOOTS VEIS

STAFF PRESENT

HOPE STOCKWELL, Lead Staff
CLAUDIA (CJ) JOHNSON, Secretary
GREG PETESCH, Staff Attorney and Code Commissioner

Visitors/Agenda

Visitors' list, Attachment #1.
Agenda, Attachment #2

SUBCOMMITTEE ACTION

- ▶ Committee approved minutes from May 29, 2008.
- ▶ Committee removed urban transportation districts, public library districts, and all types of water and sewer districts from inclusion in LC9208.
- ▶ Committee approved a 40% signature requirement for petitions to create special districts under LC9208.
- ▶ Committee approved a 30-day certification period for petitions submitted to the clerk of the local governing body under LC9208.
- ▶ Committee approved a 50% threshold for sufficient protest of action to create a special district under LC9208.
- ▶ Committee approved a requirement in LC9208 that the boundaries and legal description of newly created special districts be submitted to DOR within 60-days or by the following January 1st, whichever is earlier.
- ▶ Committee approved a 40% threshold for sufficient protest of a proposal to dissolve a special district under LC9208. The threshold is tied to property taxpayers or real owners of property, depending on how the district was funded.
- ▶ Committee approved a requirement in LC9208 that when governing bodies publish a notice of resolution of intention to create a special district, the governing body also must prepare a list of those who would be subject to potential assessment under the proposed special district.
- ▶ Committee approved a requirement that governing bodies be restricted from attempting to create a special district for 12 months, if a previous attempt to create the district met sufficient protest under LC9208.

AGENDA

00:00:01 SEN. GILLAN called the subcommittee to order at 10:10 a.m. The secretary noted the roll. Attachment #3. Ed Meece, Shoots Veis, SEN. RICK LAIBLE and REP. BILL NOONEY were excused. SEN. GILLAN welcomed everyone and asked the committee members, staff, and the audience to introduce themselves. Rep. Bill Nooney provided a proxy. Attachment #4

Public Speakers

00:02:57 Marty Lambert, County Attorney for Gallatin County
Darlene Staffeldt, Montana State Librarian
Erin Geraghty, ITSD, Department of Administration (D of A),
Robin Trenbeath, ITSD, and state Geographic Information Center, D of A
Anna Miller, Department of Natural Resources (DNRC)
Magda Nelson, Local Government Services, D of A
Jeanine Cole, Browning, Kaleczyc, Berry & Hoven, Helena

Dan Clark, Director, Local Government Center, MSU, Bozeman
Paul Lachapelle, MSU Extension/Department of Political Sciences
Harold Blattie, Montana Association of Counties (MACo), Helena
Mae Nan Ellingson, Dorsey and Whitney, LLC, Missoula

Motion/vote:

00:04:14 REP. BRANAE made the **motion** to approve the minutes from May 29, 2008. The motion carried **unanimously** by voice vote. REP. BILL NOONEY voted aye by proxy. Attachment #4.

Background on HB 49/Overview of today's considerations

00:05:01 Hope Stockwell provided background information on HB 49, the Uniform Act draft, and the subcommittee's work thus far on LC9208, **EXHIBIT 1**, and changes from the May 29 meeting. She presented:

- ▶ A General overview of the Uniform Act
- ▶ Numbers to consider - **EXHIBIT 2**
- ▶ Bonding provision update
- ▶ Subcommittee comments/questions

00:06:15 Ms. Stockwell distributed a copy of HB 49, and explained the changes that took place at the last meeting. **EXHIBIT 3**

00:06:58 Ms. Hope submitted a letter from Browning, Kaleczyc, Berry & Hoven, P.C. on behalf of the Montana Rural Water Systems (MRWS) **EXHIBIT 4** The letter discusses LC9208. The firm addressed concerns how LC9208 would affect rural water systems and stated opposition to this legislation. The letter states that MRWS is an organization whose membership includes over 400 drinking and waste water systems throughout the state of Montana. SEN. GILLAN and the committee discussed the pros and cons of the letter.

00:11:49 Ms. Stockwell walked the committee through each section of the Uniform Act bill draft. Ms. Stockwell had included comments the members had made at the last meeting.

Questions from Committee members:

00:13:55 SEN. GILLAN asked the committee if they had any questions.

00:15:46 Paula Robinson responded. She talked about the suggestions she had sent in for signature requirements on a petition to create a special district. Ms. Robinson said the suggestions incorporate comments from her elections services manager and the county attorney, who offered a "split" option, which states:

- ▶ if the proposed district would have less than 25 parcels, the petition shall be signed by 51% of property tax owners. She gave several examples on the creation of districts stating it depends on the size of the district, which can make it complicated, or
- ▶ if the proposed district is greater than 25 parcels, then the petition would be signed by 20% of the property taxpayers and registered voters, or

whichever is less.

00:15:37 SEN. GILLAN asked Mr. Petesch if there is any problem in differentiating the percentages by the number of parcels, if so, is it acceptable. Mr. Petesch replied that it is acceptable.

0:15:42 Mike McGinley talked about taxpayers per parcels, and asked if one landowner owns 10 of those parcels is that person a voter on each parcel or do they have one vote. Mr. Petesch stated if it is tied to the number of owners of parcels, there would be the same number of votes as there are parcels. He said it could be determined by language or tie it to taxpayers, and if that is the case, then that person is a single taxpayer.

Public Comment:

00:17:18 Mae Nan Ellingson from Dorsey & Whitney, LLP, distributed a handout **EXHIBIT 5** regarding her concerns and observations regarding the Uniform Act draft. She said the firm does a lot of work for local governments. She addressed the changes in the draft, and feels the changes are significant, but not in a good way compared to current statute. Ms. Ellingson asked "what part is intentional and what part is just a side effect of trying to make the statutes more consistent." After addressing her concerns she closed stating that she fears the proposed draft, LC 9208 is much worse than the current problem.

00:34:32 SEN. GILLAN talked about the different ways to initiate a petition and how that may relate to bonding and assessments. Ms Ellingson responded stating that in regard to a bond the key issue is keeping in compliance with the law. She said then the local government has to look at the law to determine if it is constitutional. She discussed the procedure for creating a taxing district in a special assessment district stating they are very different and critical. She explained the difference and why it is so constitutionally significant. She gave an example, if you are a registered elector in the city of Missoula, and they do a general obligation bond election it doesn't have to be initiated by a petition, and the city council can refer it to the voters. She said 51% of the voters who vote can approve it. She said all the local governments look at it as someone giving an opinion and was it approved by the majority of the voters. She said as a taxpayer they are not affected except on an annual basis, and no liens are filed against that taxpayer's property.

00:42:20 SEN. GILLAN asked Mr. Petesch if he agreed or had any thoughts on assessments vs. taxation - is it distinguished or could it cause confusion. Mr. Petesch said he believes that the current draft gives broad authority to the entity creating the district to determine in some cases whether there will be an assessment and how that assessment will be determined. He said there is broad flexibility built into the assessment, and some districts are authorized to impose tax levies.

00:44:01 Harold Blattie, Executive Director of MACo, wanted to address the issue presented by Ms. Ellingson on how the counties count. He said it has been an issue that local governments have had to deal with for many years. He said

"what is the denominator when you are calculating a percentage of who or what?" He talked about an attorney general's opinion that partially addresses this in the 1998 journal. He said it has been mitigated in Park County a couple of times in regards to zoning. He said there are areas of law that have been on the edge of this issue. He said when there is a case of a partnership it is usually accepted from each partner who is the eligible signer. But, do they constitute one vote in the denominator, and as to a corporation who is authorized to sign on a petition. He asked "does a corporation need to take action to decide who will sign on behalf of the corporation." He stated that this issue has baffled local governments for a long time.

00:46:24 Mr. Blattie talked about the definition of property taxpayers and stated that everyone needs to go back to the comments made by Greg Petesch, staff attorney, when he gave an explanation of a freeholder in a previous meeting, and the committee's discussion to change the language.

00:48:04 Mr. Blattie asked that the committee to not include rural improvement districts and special improvement districts. He said it will involve too many of those districts that do assessments. He referred to Alec Hansen's comments from a previous meeting when he commented about districts being created to provide a service and districts that are created to provide a funding mechanism. Mr. Blattie talked about the legislature making distinctions in a special levy election for a road district if a property owner is not a registered elector of the district. For example, a registered voter who lives in town or another county, but the legislature has extended voting privileges on that property tax levy to the owners of that property. He said this is an example of the legislature extending voting privileges to those who are going to be paying the bill outside of the registered voters area or their geographical boundaries. Mr. Blattie referred to page 8, exhibit 1, that states: 1) the individual is entitled to vote on a proposition as an individual if they are a registered elector, and 2) is a resident or a owner of taxable real property in the area subject to the proposed special district.

Comments from Committee Members:

00:53:38 Marty Rehbein said she is convinced by Mr. Blattie's comments about splitting the various types of jurisdictions if they are going to create some sort of Uniform Act and treat each district differently. She said that passing jurisdictions should all fit under one rural regulation of statutory law and the special assessment districts, which are more purpose driven should be under a different law. She wanted to know what districts Mr. Blattie and Ms. Ellingson would recommend be taxing jurisdiction. She talked about where there is a petition threshold to be created for people that petition the local governments, and who created the districts to set a threshold and parameters, then what types of districts would be considered special assessment districts to be created by the governing body subject to a protest, mail notice, and/or mail it prior to assessing that district. She said this could be an approach that would bail them out of the situation they are currently in. Mr. Blattie responded that the committee had already done some of what Ms. Rehbein was addressing by removing the municipal SIDs from consideration. He felt that it will take time to look at each particular one and he wasn't ready to look at the list at this time. He said the committee already

removed public library districts, and water and sewer districts from the Uniform Act. He said there is no governing body over a road district that has the authority to issue bonds. He said there are not many districts left in the bill that have authority to issue bonds. He mentioned that a lighting district is an assessment district by estimating what the cost of electricity will be from the power company, and then levy an assessment based on one of several methodologies, such as a rural fire district that is subject to a mill levy limitation. He said in order for the committee to accomplish what they want to do will take time.

00:58:15 Ms. Ellingson responded that she isn't confident that the committee has removed all the references to special assessments. She said it is important that the committee recognize the difference between assessments and fees. She said this bill will repeal over 557 substantive statutory laws. She feels this is a departure from what the intent is. She said unless local governments have a charter they will only have the powers that are given to them by statute. This bill wipes out all of the statutory authority. Ms. Ellingson said the draft sounds like the board of county commissioners can take the place of the legislature and grant powers. She stated that "all statutory reference to some entity to provide water and sewer in an unincorporated area has been taken out, and under the constitution a county can grant the board the authority to tax." She said we are trying to get rid of history by repealing substantive law that governs local governing bodies.

01:04:34 10 minute break.

01:18:12 Paulette DeHart reminded the committee to remember the reason we are here is to work on the creation and the dissolution of special districts to make them uniform. She directed the committee to a handout from the last meeting that listed numerous districts created by a petition. She addressed mosquito control which 10% of the ranchers on this property can create a petition. She said that rodent control requires 51% of the property owners. She said a person that spoke from the audience would like to see uniform numbers for the creation of districts at 51% so local governments are not using taxpayers resources to work on issues that a higher percentage of the property owners don't want. She referred to the same handout as above that show the percentages are different for each specific district, and questioned if that was legitimate or not.

01:20:12 Mr. Petesch responded to Ms. DeHart's comments. He said "this committee is a result of frustration among local governments over; 1) creation, 2) dissolution, and 3) governments of special districts, and primarily not over the authority granted to special districts." He said that for the most part the substantive law authority that governs special districts are not repealed. He stated there are some whole parts that are repealed, but that is not true for all special districts. He talked about issues regarding the cemetery districts where the repealer was too broad to begin with, and will need to be scaled back because of the trust fund provisions related to cemetery districts. He talked about the authority that was given to local governments for the districts that are covered in this bill are good examples of the ad hoc nature of local government law in Montana. He said with the way the local government authority is structured that every time someone

wants to do something they come to the legislature. He gave an example if Bozeman has a mosquito problem a mosquito district law is crafted for Bozeman. He gave another example of Powder River wanting to offer television to their residents, now there is a television district law that is crafted for Powder River county. He said then we take these laws that have already been created and try to make them work in other parts of the state. He stated that is the way the local government law has evolved in Montana. He said if anyone has sat in on the Local Government committee during the legislature they will know that there is a Bozeman day, a Missoula day, and so on. He said if we want to create a public power type of authority, for example if Great Falls wants to do this, we create a law to allow it to happen then it is applied in other areas throughout the state. He said the percentages shown on the handout from the last meeting are reflective of that ad hoc nature. He stated there was never any specific rhyme nor reason, and no magic number attached to any of these numbers for creating, dissolving, and petitioning a district. He said when we are dealing with that issue it is the number that people are promoting that piece of legislation wanted and that is why the special districts are there. He agreed with comments that it makes sense to distinguish between taxing districts and assessing districts, because they are two different actions.

Mr. Petesch talked about the districts that have been suggested to be taken out, such as the library, urban transportation, and water and sewer districts, which are the taxing districts. He gave an example of property taxpayers and the general public in a hospital district where there is a general interest district not related to just property taxes. He said the problem in that is they are limiting local governments ability to raise money statutorily for property taxes. If local governments want to raise money they have to do it through a mill levy. He said there isn't any reason it has to be done, but that is the way it is and good luck in getting it changed. He said the issues involved in a bill of this type are huge because you are changing the way things have always been done, but the idea behind this committee was to change the way things have always been done, because they are; 1) cumbersome, 2) different for every instance, and 3) does it make any sense if they are different for every instance, and if it doesn't make sense he suggested the committee change it. He said if the committee has run out of time, he suggested they take bite size pieces, or deal only with the creation of districts, or deal with only the creation and dissolution. He said these are not insurmountable problems, because they have all the issues laid out in front of them, and if they want to deal with governance and assessment authority then the committee can scale back and look at it in the next interim. He said everything that has been contemplated in this bill can be done. He said the committee needs to decide what they can realistically do and garner support to show the fruits of their work. He stated "it is a political choice that everyone here will have to make."

01:26:12 Ms. Stockwell responded to a question e-mailed to her by Marty Rehbein, who asked how other states govern special districts. Ms. Stockwell said there are some states that have one set of statutes for all districts, while others have specific provisions for certain districts, such as lighting and sidewalk districts, etc. She pointed out that not all special districts need a referendum at this time to be

created, there are some that do and some that don't.

- 01:27:32 SEN. GILLAN asked about sections of law that are eliminated in the Uniform Act, and wanted an example on how substantively this would work. Ms. Ellingson responded about being involved in re-writing title 7 regarding local governments. She said that it took two separate bienniums just to deal with city/county and local government law. She talked about being a fan and an advocate of local government. Ms. Ellingson said she agrees with Mr. Petesch that the history of Montana has been known not to treat local governments well. She talked about the 1972 Constitution that tried to give the legislature direction to implement home rule charter, but state law still restricts the nature of home rule government. She said the one thing that has not been changed and is not being addressed in the title of this bill and that is, "are we attempting to increase the power of county government per se." She asked, "do county governments of themselves have the authority to provide water and sewer districts." She stated that local governments have never had that authority. She said the reason there is a county water and sewer district law is because of people that lived outside of an incorporated municipality who got together and formed a water and sewer district. Ms. Ellingson reiterated "this bill does increase the power of county government."
- 01:33:20 SEN. GILLAN wanted to know if there is still merit in trying to collapse the numbers into a single number for a landowner, a qualified elector or a real property owner.
- 01:34:15 Paulette DeHart responded stating this is a real issue for election administrators. It is confusing for an individual trying to create or stop a district when the laws are not uniform. She stated her interest in trying to make that as uniform as possible making life easier for individuals that are trying to create new districts.
- 01:35:49 Marty Rehbein talked about qualified electors, and stated that the threshold should not be 51%, or there wouldn't be any point in having an election. She said the petition threshold that requires an elector should be achievable for those people that are interested in an improvement and to get the process started. She said there is a difference when there is a required registered elector as opposed to property owners.
- 01:37:09 SEN. GILLAN responded to Ms. Rehbein's comments and asked if all of these districts are subject to election. Mike McGinley replied that it depends if you are creating districts or funding the districts. He said if you are going back to the taxes/mill levies to fund the districts then there is an election.
- 01:38:03 Mr. Petesch explained how the bill will work. He said the way the bill is currently structured it is up to the governing body whether to submit the creation of the district to the electors or not. Under current law if you were to impose a mill levy you will have to reduce some other mill levy in order to submit that levy to the voters. The creation of the district itself under the bill is the option of the governing body to create it themselves or submit it to the qualified electors.

01:38:55 SEN. GILLAN asked the committee if they had any suggestions on what numbers to use. She said they can use 25%, 40% or a split, as previously described by Paula Robinson. Ms. Robinson reiterated that the idea for a split would work as follows:

- a) petitions to create a special district that would include less than 25 parcels shall be signed by 51% of the property taxpayers, or registered voters within the boundary of the propose special district, whichever is less, or
- b) if the district includes more than 25 parcels, the petition shall be signed by 20% of the property taxpayers or registered voters of the proposed special districts, whichever is less.

01:39:26 SEN. GILLAN asked if it would make sense to have a certain percentage to create petitions to be signed by at least 25% of landowners.

01:41:10 Mike McGinley commented that he feels what the committee it trying to achieve when creating districts is to have enough people that are serious enough to do it. He talked about getting the numbers (%) on how many signatures does it take to create a district. He said that 40% is a good number to feel if the creation of a district is for certain. He will make a motion for that number to be uniform on the creation of a district.

Motion/vote:

01:43:10 Mr. McGinley made the **motion** that 40% of the property taxpayers or registered voters would be needed to issue a petition. Mr. McGinley called the question to set the petition percentage to 40% . Roll call vote was taken. **(Attachment 5)** The motion **passed** 4 to 2. REP. BRANAE and Marty Rehbein voted no. Ed Meece, Shoots Veis, SEN. RICK LAIBLE and REP. BILL NOONEY were absent. Rep. Nooney voted aye by proxy.

(Working lunch was provided)

01:45:16 Lunch

01:58:10 Marty Lambert, County Attorney for Gallatin County, introduced himself and said he is available for any questions. Mr. Lambert said he is not with the Montana County Attorneys Association (MCAA), but he has 12 years of service with Gallatin County. He said there are issues of liability and exposure that are raised due to special districts. If counties are given more responsibility they will need to be very careful in regard to TORT claims. He talked about a statute 7-1-202, MCA, which is a list of boards that a commission can create, such as mosquito districts, cemetery districts, weed districts, etc. He talked about another statute that addresses TORT liability for local government entities that states "those particular (boards) entities cannot be sued separately from the county." In other words, "if you are going to take the mosquito district on you will have to take the whole county on."

02:09:34 SEN. GILLAN thanked Mr. Lambert for his input. SEN. GILLAN asked about local governments paying a fee for a county attorney. Mr. Lambert replied that when local governments hire a good experienced outside counsel they will pay

\$125 per hour or better, and when there is travel and lodging involved it is more. He said the county attorneys become a bargain even though they are not as available to give civil advice.

- 02:12:50 SEN. GILLAN, Ms. Stockwell and the committee members discussed excluding library, and water and sewer districts from the draft.
- 02:13:40 Mike McGinley talked about urban transportation districts. SEN. GILLAN asked the staff if this type of district is limited to a certain size. Mr. Petesch replied that the statute doesn't limit size. He said it is up to the county commissioner to create one. He said this type of district is designed to serve residents within the district boundaries, but may authorize service outside of the district boundaries when appropriate, but there are no restrictions. Mr. Petesch said it is viewed as a general service because it doesn't address a certain property. He said it is like a hospital district where it serves more as a taxing service than as a service jurisdiction.
- 02:17:05 Ms. Ellingson responded to the previous comments on urban transportation. She said this bill gives the governing body the authority to determine whether or not to have a referendum on the creation of a district and it could make sense to remove urban transportation districts from the draft, because they are now required to submit to the voters the approval of the creation of an urban transportation district and it has taxing power. She agreed that urban transportation should be removed from this bill.
- 02:18:00 SEN. GILLAN informed the committee they need to address the right to protest on page 7 of exhibit 1. Ms. Stockwell said it is in section 6 where it states it is currently a 30-day protest period for a person to submit written comment. She said it requires more than 50% of the area in the proposed special district and if it is more than 50% that made written protest then no further proceedings can be taken by the governing body at least for 6-months. Ms. Stockwell said she has spoken with Shoots Veis who has said the 30-days and the 50% make sense. She said that SEN. LAIBLE has said that 30-days is too short and suggested 60-days. He did say the 50% is reasonable, but suggested changing the 6-month provision to one year. Ms. Stockwell said that comments from Ms. DeHart said that the 30-days is ok, and she agreed with the 50%. Ms. DeHart also suggested tying the benefit and the protest together.
- 02:21:08 Ms. Rehbein discussed the public notices. She explained how she mails out the protest notice and provisions. She said the benefit is when you are creating a district that will be assessing by area, then a property owner with more area would have a bigger vote, because they will be paying more taxes than a property owner that has a smaller parcel. She stated this is how it works in the municipal SID statutes, so the protest is tied to the benefit/assessment method. There is equal protection to the law all the way through.
- 02:22:41 SEN. GILLAN asked Mr. Petesch to address tying the protest to the benefit. Mr. Petesch said if you are only going to assess property owners then the protest should be made by the property owners. If it is a general benefit district then it

should be tied to registered voters. Ms. Rehbein responded by giving an example of the street light district in Missoula stating that a person's assessment depends on your front footage to the street. She gave another example when creating a park district in Missoula it is considered an equal benefit. She talked about a sewer district where there is a large landowner that owns 160 acres in the district and everyone else has a one acre lot. The property owner with the 160 acres may choose to do an area assessment of that property because it could be driving a large part of the sizing for the main. She said if that property develops there would be a two inch main to service 165 acre parcels that could have 165 houses built on it. She stressed that is why the committee should address tying the protest to the assessment methodology.

02:28:50 Mr. Petesch talked about the issue raised by Ms. Rehbein about imposing a cost, then it will tell you who gets to protest. He said the difficulty is if the governing body is willing to make the decision on how they will impose a cost if the district is created first so it will be known who is entitled to protest.

02:29:43 SEN. GILLAN asked about the original petition to create a district, and does it delineate how the assessment will be made. Mr. Petesch replied no.

Public Comments:

02:30:43 Anna Miller, DNRC, talked about dealing with a large part of the finances regarding districts. She said when it is decided there is a leaking sewer line or a failing septic tank which is a health and safety issue, then you have a fire district area, so it isn't known in the beginning when creating a district what the costs will be. She said the district could be changed before it is determined who or how it will help. She said these issues are difficult for the districts as they struggle to decide what they want. She talked about doing a capital (large) project that could take two years to decide if there is a problem to actually building or constructing whatever it is they need.

02:31:57 Ms. Ellingson asked that not all statutes be repealed that are listed to be repealed. She talked about how it is clear to tax. She said there needs to be a way to remove ambiguity and not place the burden on the county board of commissioners or the people who are petitioning because the mechanism to pay for this is received from guidance through the statutes.

02:33:44 Harold Blattie asked the committee to look at section 15 on page 14. Exhibit 1 It is a list that sets the methodology for assessments. He addressed page 29, section 30. He said it should have addressed flexibility when using an assessment methodology or a taxing methodology, whichever one would be appropriate for that type of special purpose district.

02:35:04 SEN. GILLAN asked Mr. Blattie if he is comfortable with the 30-days and 50% of the area. Mr. Blattie said if this goes before the legislature it will be changed again. He talked about the time line for protesting and said that the 30-days could be short, and two weeks is too short, and he asked "where is the happy balance." SEN. GILLAN asked about the 50% required for protest. Mr. Blattie said the protest language that is currently in statute is to protect a large

landowner.

- 02:38:39 Ms. Ellingson addressed section 19 regarding protest provisions, and suggested leaving it for the county commissioners to decide assessments against a property. She asked Mr. Petesch and Ms. Stockwell to address this area. She said if it should be left in the discretion for the board of the county commissioners to determine what type of improvements can be financed on a special assessment basis and said that the procedure in the new bill draft does not require specific notice to property owners regarding the assessment. She discussed the SID laws where placing a lien against someone's property would be a lien until paid when there is a requirement for actual notice to that property owner. She said it isn't listed in the new draft and questioned the validity of the lien. Ms. Ellingson said the SID laws require a 51% protest provision.
- 02:41:37 Ms. Stockwell addressed section 10 - additional reporting procedures.
- Ms. Stockwell then asked to go back and address section 5, page 7, regarding written comments provided by SEN. LAIBLE who suggested that any list of property owners generated by a governing body be protected from being sold or used as a mailing list.
- 02:43:00 SEN. GILLAN asked the committee if they need to do anything regarding SEN. LAIBLE's concerns. Ms. Rehbein said it is currently being done.
- 02:43:55 Ms. Stockwell went back to section 10 on reporting requirements. She stated that the 60-days is a requirement that districts provide descriptions and maps of the boundaries to the Department of Revenue (DOR). Ms. Rehbein added that this is not in current statute because it is part of a new reporting requirement that relates to the geographical information system (GIS).
- 02:45:16 SEN. GILLAN, Ms. Stockwell and the committee members discussed the 60-days and how it ties in with the notice of January 1 as it relates to the tax bill cycle. With Mr. Blattie's concern that the information might not be in by 60-days, they are adding language that states "or by the following January 1st, or whichever comes first".
- 02:45:35 SEN. GILLAN informed the committee they will discuss the draft first then put everything into one motion at the end of the discussion.
- 02:46:55 Ms. Stockwell addressed subsection 20 on the bill draft that currently states 40% pertaining to the dissolution of special districts. She said that Mr. Veis had written comments that he thought 50% is a good number. He also wanted to add language after "besides the owners of real property " and add "registered voters" to make it consistent with provisions on how districts are created. She said it currently states "property taxpayers". She said that SEN. LAIBLE had suggested 25% for a petition for dissolution, and Ms. DeHart asked to have it left at 40%, so it will be uniform with the creation of a district. SEN. GILLAN clarified that the 40% is what is needed to protest.

- 02:51:26 SEN. GILLAN asked for comments on real property owners vs. registered voters. There were no comments.
- 02:52:36 SEN. GILLAN asked Mr. Petesch about a valid entity in the creation of a property tax payer or a registered voter, and she also asked him to address the difference between assessments and taxpayers. Mr. Petesch said there is a distinction between a property tax payer and an owner of real property, because you can own non-taxable property. He did say that non-taxable property may be subject to an assessment - special purposes. He talked to the committee about making the choice to make this consistent, but, he said that either choice is logical."
- 02:53:50 Ms. Stockwell informed the committee they need to decide what language they want "property taxpayers or owners of real property". She added they will also need to decide if they want to include registered voters in each requirement. Mr. Petesch added that the committee then needs to decide if they are allowed to levy taxes to fund a special district or if you are going to use assessments to fund your district. He said if you are going to levy taxes to fund your district, then it makes sense to say property taxpayers. But, if you are going to do assessments then it makes sense to say owners of real property. He stated "if you tell me how you are going to fund it, I can tell you who should petition or protest."
- 02:54:59 Ms. Rehbein talked about dissolving existing entities, and said the committee can write legislation here that ties the districts and petitions together. Mr. Petesch said the committee can create language that will reflect the funding mechanism that was made up front.
- 02:57:00 SEN. GILLAN said the committee will make a global motion to adopt in principle the numbers and language that have just been discussed. She said they will also make one motion to remove the districts.
- 02:58:00 Mr. Petesch presented an update on the bonding provision. He said at the last meeting that the committee had borrowed from current law regarding the bonding authority be governed the same way as school district bonds are authorized. He said the committee has changed that language to tie the bonding authority to the county bonding authority for county created districts and municipal bonding authority for municipal created districts. He informed the committee this language is the change in the bill from the last meeting.
- 02:58:53 Ms. Ellingson asked Mr. Petesch if these changes are in the original draft. Mr. Petesch directed Ms. Ellingson to page 12 (exhibit 1). Ms. Ellingson said she hasn't seen the new changes and would like the opportunity to review them and make comments. Mr. Petesch responded that the procedures are tied directly to the current law governing county general obligation bonds (G.O.), Municipal G.O. County Revenue bonds, and municipal revenue bonds. He said that previously these bonds were tied to school district bonds. Ms. Ellingson asked if this expands a county's ability to issue revenue bonds. Mr. Petesch replied no.

Motion:

- 03:02:23 SEN. GILLAN made a **motion** that will exclude the following districts from

LC9208: 1) public library districts, 2) urban transportation districts, and 3) water and sewer districts.

Discussion:

03:02:58 Ms. DeHart asked if that includes all of the water and sewer districts pertaining to the statutes or just specific ones. Ms. Stockwell said it will include all of the following:

- ▶ consolidated local government water supply and sewer districts,
- ▶ county water and sewer districts,
- ▶ local water quality districts, and
- ▶ metropolitan sanitary and storm sewer districts.

03:03:25 SEN. GILLAN asked Ms. DeHart if she is comfortable with the language. Ms. DeHart said she is.

Vote:

03:04:14 SEN. GILLAN said the motion will approve all the changes that Ms. Stockwell had made from suggestions by the committee and public response. The motion **passed** unanimously by voice vote. Ed Meece, Shoots Veis, SEN. RICK LAIBLE, and REP. BILL NOONEY were excused. Rep. Nooney voted aye by proxy.

Motion:

03:05:00 SEN. GILLAN made the **motion** to approve a conceptual amendment that the following numbers and language be adopted to address:

- ▶ the right to protest - 30-days,
- ▶ more than 50% of the area,
- ▶ additional reporting procedures will be within 60-days or by January 1, whichever comes first, at the dissolution of special districts with the language "unless 40% of the owners of real property based on whether there is an assessment or a levy", and
- ▶ when the notice is published that the list of those included in the district will be provided.

Discussion:

03:06:36 Mike McGinley asked if the committee is going to address the 6-month - 50% of the proposed special districts. He thought someone had addressed this and wanted it changed to 12-months. Ms. Stockwell responded that SEN. LAIBLE had suggested that it be a year. She said that 6-months is in current statute, but she stated that not all districts currently have this provision. SEN. GILLAN said she was going to make an executive decision and not include the change from 6-months to 12-months in this motion.

03:06:29 Ms. Stockwell recapped the motion that will adopt:

- ▶ section 3 of with 40% of the property taxpayers that are registered voters,
- ▶ section 6 - as it's written with 30-days, and more than 50% of the area,
- ▶ section 10 - to include within 60-days or by the following January 1st, whichever comes first after the creation of the special district,
- ▶ section 20 - the percentage required for protest for dissolution be 40%,
- ▶ tie the language on who is included in the 40% to the assessment or tax

- ▶ levies, whether it is property taxpayers or is it real owners of property, section 5 - subsection 3, language that states when the governing body publishes notice of resolution of intention that it also prepares a list of those who are subject to the potential assessment under the proposed special district.

Vote:

03:07:13 The **motion** passed unanimously by voice vote. Ed Meece, Shoots Veis, SEN. RICK LAIBLE, and REP. BILL NOONEY were excused. Rep. Nooney voted aye by proxy.

Discussion:

03:09:49 In discussing protest provisions in LC 9208, SEN. GILLAN asked whether a governing body should have to wait 6-months or 12-months to try again to create a special district if the first attempt fails. SEN. LAIBLE has suggested 12-months. Mr. McGinley said that 6-months is too short of time.

03:10:30 SEN. GILLAN asked Ms. Rehbein if the threshold of protest wasn't met do the people regroup and try to get it through again? Ms. Rehbein said that the only situation where this would happen is if the word didn't get out and it went to the ballot box, or if there was a major emergency they wouldn't be able to address. She stated that Missoula wouldn't reinstate a district for another year. She felt that SEN. LAIBLE's suggestion is reasonable.

03:12:05 SEN. GILLAN asked Mr. Petesch if the legislature in the past had limited the number of school mill elections to one time per year. Mr. Petesch said yes.

Motion/Vote:

03:12:24 Mr. McGinley made the **motion** to accept section 6, subsection 5 (c) and change the language from 6-months to 12-months - "that the proceedings may not be taken up by the governing body for at least 12-months." The **motion** passed unanimously by voice vote. Ed Meece, Shoots Veis, SEN. RICK LAIBLE, and REP. BILL NOONEY were excused. Rep. Nooney voted aye by proxy.

03:13:22 SEN. GILLAN stated that a vote needs to be taken to determine if the committee wants to proceed with the Uniform Act.

03:12:37 Michael Harris, Gallatin County, questioned the one year time-frame. He gave an example of Hebgen Lake where their sewer system failed in Gallatin County. They had to create a water and sewer district to fix that problem. He talked about the timing of a creation of a district and if it had failed by a vote from the date that the protest provision failed it would not have enough time to put it together in time for a vote in the following year, or he asked if it could be put out for two-years. SEN. GILLAN responded that the committee just took out water and sewer, and she asked if that issue is now moot.

03:15:06 Anna Miller, DNRC, said Mr. McGinley's comment is excellent. She said there are health and safety issues, and if the district hadn't taken action they would not be able to apply for federal funding, such as from a fire district, etc., because

they have the criteria of the process to have created a district taken from a certain action to be able to apply for funds. She said if the funder says "you haven't done A, B, or C so we'll give it to someone else." She said with the water and sewer districts out it will not affect Gallatin County's problem.

03:16:04 Paulette DeHart said on a local government level there may be emergency provisions to cover these types of emergencies or statutes that give local governments authorization to handle the emergency.

03:16:27 Mr. Petesch said there is an authority in law for emergency actions by the local government. He said what is happening here is there wouldn't be a district to operate it in, and it will have to be done by some other method in an emergency situation, such as declaring a public health emergency to handle a case like Hebgen Lake, but if they do it this way they wouldn't be able to use a district law.

03:17:03 Ms. Rehbein presented a scenario stating if Hebgen Lake had a rodent problem and several people have died from the hantavirus and they wanted to create a rodent district and it failed, and the county commissioners in Gallatin County declared an emergency does the levy go to all property taxpayers until a district can be formed. Mr. Petesch responded that it would work.

03:17:54 SEN. GILLAN recommended to the committee to keep the 12-month in the draft. She said it will give people time to react and they can deal with it another time, assuming the committee wants to proceed with the Uniform Act.

Motion:

03:18:32 REP. BRANAE made the **motion** that the committee proceed with the Uniform Act (exhibit 1) as amended today.

Discussion:

03:19:02 There was no comment.

Vote:

03:19:45 The **motion** passed unanimously by voice vote. Ed Meece, Shoots Veis, SEN. RICK LAIBLE, and REP. BILL NOONEY were excused. Rep. Nooney voted aye by proxy.

03:20:47 SEN. GILLAN and the committee members discussed presenting the Uniform Act draft to the full committee on the September 4 and 5, 2008.

Housekeeping Legislation LC9209

03:23:32 Ms. Stockwell gave an overview of LC9209, **EXHIBIT 6**, and explained it is a provision revising residency of board members as it relates to local governments. She said it amends two current sections and adds a new section to accommodate the GIS/mapping provision of districts.

03:24:11 Ms. Stockwell addressed Section 1 - subsection (1)(d) by adding language "including residency requirements". This allows flexibility to use a volunteer if

they live outside of that district. This is permissive language that amends 7-1-201, MCA. However, Ms. Stockwell says this language may be redundant when compared with current law.

- 03:26:31 Ms. Stockwell addressed Section 2, 7-12-4204, MCA, on the procedure to issue bonds and warrants. She said it addresses concerns that allows cities or town councils to contract with private institutions for the issuance of bonds.
- 03:27:21 Ms. Stockwell addressed new Section 3 - on additional reporting procedures - coordination of information. She said this is the GIS section and it uses the same wording as LC2908.
- 03:27:42 Ms. Stockwell addressed new Section 4 - transition clause is the GIS provision to will apply to all existing special districts and future districts. - added new language to transition to add in a two-year period.
- 03:29:21 Ms. Ellingson distributed a handout and addressed her comments on LC 9209.
EXHIBIT 7
- ▶ Section 1 - allowing county commissioners to establish residency requirements.
 - ▶ Section 2 - doesn't fit the sale of special improvement district bonds.
 - ▶ Section 7 - using the term "sale of bonds" rather than "issuance of bonds". She felt that this allows local governments to contract with a private entity to "issue" bonds.
 - ▶ New section 3 - there is no definition of special districts in this draft.
 - ▶ Section 1 and section 2 to be included in LC9208, and
 - ▶ The need to combine and amend rural and special improvement district bonds to be consistent in 7-12-21, 41, and 42, MCA.
- 03:32:28 Mr. Petesch said he will assist Ms. Ellingson on drafting language that will address her concerns.
- 03:33:44 Marty Rehbein suggested a dollar threshold on the bonding provision.
- 03:34:48 SEN. GILLAN said rather than take final action now that the committee can wait for Ms. Ellingson to work through her issues with Ms. Stockwell and Mr. Petesch to come up with a dollar amount. SEN. GILLAN asked Mr. Petesch and Ms. Stockwell to also work with Ms. Rehbein regarding the threshold amount.
- 03:35:33 Harold Blattie, MACo, addressed section 3 and section 4 in LC9209. He stated that the language to report should be charged to the governing body that created the district. He said the district that was just created should not be responsible for giving geographical information to the DOR, it is the entity that creates the district.
- 03:37:06 Anna Miller, DNRC, asked about the water and sewer districts. She talked about going before the Local Government committee in the 2007 session with a housekeeping bill that would allow a person who lives out of the district to participate in that county, for example they have a cabin in another county and

can also vote in that county. Ms. Stockwell said this bill will not preclude that issue. She said the residency requirement is only a permissive issue.

- 03:38:45 Ms. Stockwell and Mr. Petesch discussed the GIS issue and said that the titles will be broad so that GIS can fit within that language.
- 03:39:53 Ms. Rehbein talked about the DOR and the D of A being involved in all of the special districts in Montana. She said these departments do not administer SIDs. Her office prepares the data and then informs the departments which properties to assess. She feels that the DOR could be opening this up to a larger appropriation if they want to map all the districts when they might be interested only in the districts where there is a tax levy against the taxable evaluation of the property.
- 03:40:48 Ms. Ellingson said she had made reference to Ms. Rehbein's concerns in her letter addressing LC9208 that asked what special districts will this new section apply to, because it isn't defined.
- 03:41:51 Robin Trenbeath, Geographic Information Officer, D of A, distributed a handout on "Boundaries Executive Summary". **EXHIBIT 8** He said the department has many reasons to accurately locate the boundaries of districts. He said they have legal requirements, grant requirements, mapping and public information that the department provides. He stated the information isn't just for taxing. The DOR may need the information for taxing information, but he reiterated that D of A has many other areas they use the information for.
- 03:42:51 Ms. Rehbein and Mr. Trenbeath discussed Missoula's street lighting districts and how the legal descriptions were created when the lights were installed. She stated if the D of A needed any information on the Missoula street lighting districts now, and those districts would have to be created.
- 03:44:48 SEN. GILLAN asked Ms. Stockwell to do a 1 to 2 page summary of the decisions that have been made here today and forward it to the committee in the next two weeks.
- 03:45:59 Ms. Stockwell gave an overview on the committee's budget.
- 03:46:35 Paul Lachapelle, MSU Extension, Department of Political Science, talked to the committee about how the board operates that he serves on.
- 03:47:52 SEN. GILLAN asked if there were further comments or questions. There was no response.
- 03:48:45 SEN. GILLAN adjourned the committee at 1:58 p.m.