

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU

Steve Bullock
Attorney General



1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

MEMORANDUM

TO: JENNIE STAPP
Montana State Librarian

FROM: JIM SCHEIER
Assistant Attorney General

RE: Legislative Histories – HB 124 and SB 138 (2001)

DATE: September 26, 2012

You asked me to provide the complete legislative history of House Bill (HB) 124, enacted by the 2001 Montana Legislature. This bill (known as “the Big Bill”), along with Senate Bill (SB) 138 in the same session, changed Montana laws governing the control of library boards over library budgets. I have obtained complete legislative histories of both bills, which I can provide on your request. Be advised, though, that the legislative history for HB 124 consists of nearly 600 pages (a three-inch stack), and the history for SB 138 consists of more than 100 pages. I made extra copies for you if you’d like to have them – just let me know and I can have them delivered.

In this memorandum I will attempt to summarize the major changes that resulted from the enactment of each bill. After carefully reviewing each legislative history, I can tell you that HB 124 made only a minor change that affected library budgets, while SB 138 enacted one statute and repealed two statutes that resulted in a substantial change to the relationship between library boards and local governments in the area of budgetary authority for support of libraries.

HB 124

HB 124, known as the “Big Bill,” was a very complex bill (nearly 400 pages) revising state laws on local government financing, and changing a large number of statutes that had been in existence for many years. As originally introduced electronically, on December 20, 2000, Section 23 of HB 124 would have amended then-existing law in Mont. Code Ann. § 7-6-2348, which exempted the proposed budgets of public libraries

and airport authorities from approval by the local government, by eliminating that exemption:¹

Section 23. Section 7-6-2348, MCA, is amended to read:

7-6-2348. Budgets of appointed boards and commissions -- exemption for bonds. (1) ~~With Subject to 7-6-2502 and with~~ respect to tax and fee money, the proposed budget of and the number of mills to be assessed by any board, commission, or other governing entity, ~~except a board of trustees of a public library and an airport authority,~~ appointed by a local government are subject to approval by that local government. . . .

This section dealt with county budget law. Section 33 of the bill proposed a similar change with respect to municipal budget law:

Section 33. Section 7-6-4259, MCA, is amended to read:

7-6-4259. Budgets of appointed boards and commissions -- exemption for bonds. (1) Subject to 15-10-420 and with respect to tax and fee money, the proposed budget of and the number of mills to be assessed by any board, commission, or other governing entity, ~~except a board of trustees of a public library and an airport authority,~~ appointed by a local government are subject to approval by that local government.

Thus, the existing law in Mont. Code Ann. §§ 7-6-2348 and 7-6-4259 at the time HB 124 was introduced clearly exempted public library budgets from approval by the local government. The introduced version of HB 124 would have deleted that exemption language, which presumably would have made library budgets subject to approval by local governing bodies.

At a request of the Montana State Library, Sections 23 and 33 were amended out of HB 124. At a hearing before the House Local Government Funding Select Committee held on February 6, 2001, Rep. Story noted that the library and airport board budgets and levies were “eliminated from HB 124” through the amendment.

¹ My March 16, 2012 email to you incorrectly stated that the bill as introduced *preserved* the then-existing exemptions for libraries and airport authorities, and that those statutory sections were later *eliminated* by the bill. As the discussion in this memo establishes, I was mistaken in my initial interpretation of the effect of HB 124.

Therefore, HB 124 did not have a significant impact on the budgetary process followed by public libraries. The only real change to Montana library laws that resulted from enactment of HB 124 was in Section 128 of the bill, which amended Mont. Code Ann. § 22-1-304 by removing the mill levy limits and related provisions, as follows:

Section 128. Section 22-1-304, MCA, is amended to read:

"22-1-304. Tax levy -- special library fund -- bonds. (1) Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service. ~~The special tax levy that may be levied by the governing body of a county may not exceed 5 mills on the dollar on all property in the county. The special tax that may be levied by the governing body of a city may not exceed 7 mills on the dollar on all property in the city.~~

(2) (a) The governing body of a city or county may by resolution submit the question of ~~exceeding the maximum~~ imposing a tax levy provided in subsection (1) to a vote of the qualified electors at the next appropriate election or at a special election as provided for in Title 13 an election as provided in [section 2]. The resolution must be adopted at least 75 days prior to the election at which the question will be voted on.

(b) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of ~~exceeding the maximum~~ imposing a mill levy, the governing body shall submit to a vote of the qualified electors at the next election or at a special election as provided for in Title 13 ~~[section 2]~~ the question of ~~exceeding~~ imposing the maximum mill levy. The petition must be delivered to the governing body at least 90 days prior to the election at which the question will be voted on.

~~— (c) The question must be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.~~

~~— (d) The ballots must also specify the amount of time during which the proposed increase exceeding the maximum mill levy is to be in effect.~~

~~— (e) The votes cast for the adoption or rejection of the question must be canvassed, and:~~

~~— (i) if a majority of the voters voting on the question vote to exceed the~~

~~maximum mill levy, the governing body shall levy the additional tax for the time specified on the ballot; or~~

~~—— (ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded.~~

(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 ~~through~~ and 7-6-4453.

(4) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(5) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(6) Bonds may be issued by the governing body in the manner prescribed by law for the following purposes:

(a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;

(b) buying a bookmobile or bookmobiles; and

(c) funding a judgment against the library."

HB 124 was signed by the Governor on May 5, 2001, and took effect on July 1, 2001.

SB 138

SB 138 was introduced electronically on December 20, 2000. The bill faced relatively little opposition in Legislative hearings. The introduced bill was slightly amended in the Senate, and also in the House. On April 4, 2001 the Senate passed the bill as amended by the House. The Governor signed SB 138 on April 20, 2001, and it took effect on July 1, 2001.

SB 138 did several things that substantially affected the relationship between public libraries and local governing bodies. The bill repealed Mont. Code Ann. §§ 7-6-2348 and 7-6-4259 (referred to above), which had the effect of removing the exemption of budgets submitted by library boards from approval by the local government. SB 138 also enacted into law new Section 31, which provides:

Section 31. Tax levies for boards and commissions -- bond exemption. (1)

The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.

(2) Except for a port authority created under Title 7, chapter 14, part 11, the taxes, revenue, or fees legally pledged for the payment of debt are not subject to approval by the governing body.

(3) Except for judgment levies under 2-9-316 or [section 19], all tax levies are subject to 15-10-420.

Section 31 is currently codified as Mont. Code Ann. § 7-6-4035, which was cited in the June 1, 2012 Attorney General's Opinion issued to the Livingston City Attorney.

SB 138 thus resulted in significant changes in the relationship between public library boards of trustees and local governing bodies with respect to the library budgetary process. The Attorney General, in the above referenced opinion, stated that the 2001 Legislature "upended the funding of public libraries." The end result is that while a public library board of trustees retains the authority to "prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds," (Mont. Code Ann. § 22-1-309(6)), the proposed budget is "subject to approval by the governing body." Mont. Code Ann. § 7-6-4035(1).

Let me know if you have any questions, and whether you would like me to deliver the copies of the legislative histories for these two bills.

jms