Paul Gilje

50 years later, innovative tax-base sharing has survived challenges, continues to lower fiscal disparities

An interview on innovative public policy

January 22, 2021

Background

00:00 **- The Civic Caucus** (Janis Clay)

00:46 **- Introduction** (Clarence Shallbetter)

Shallbetter: Paul Gilje is an active member of the Civic Caucus and served as its executive director from 2005 through 2016. From 1964 to 1988, he was research director and later associate director of the Citizens League, a nonpartisan civic organization founded in 1952. Previously, he was a reporter for the *Minneapolis Star*. He grew up in Carrington, North Dakota, where his father published the community newspaper.

Starting in 1967, Gilje staffed the Citizens League's Fiscal Disparities Committee, which produced the March 1969 report *Breaking the Tyranny of the Local Property Tax*. The report recommended a system of property-tax-base sharing in the Twin Cities metropolitan area, which was enacted by the Legislature in 1971. This was the most ingenious report ever done by the Citizens League and the law remains in force today.

Gilje has written a new book (published in December 2020) titled *How Could You Do This?: 50 Years of Property-Tax-base Sharing in Minnesota*. In it, he details the history and the workings of Minnesota's Property Tax-Base Sharing Law, also known as Minnesota's Metropolitan Fiscal Disparities Law, which will celebrate its 50th anniversary in July 2021.

(The book is available for free online at the link above. Hard copies of the book are available for sale for $9.95 by clicking here. Click here for a press release summary of Gilje's book.)

A complete biography of Gilje follows the Discussion section below.

04:39 - Paul Gilje Opening Remarks: How property-tax-base sharing came to be.

Gilje: There are three important parts to my opening remarks: (1) the process of the Citizens League in coming up with the idea; (2) the process in the Legislature; and (3) why it was appropriate for the Center for Policy Design -a Minnesota-based nonprofit focused on innovation and the development of policy design at the system level in education, health care and government-to publish *How Could You Do This?*:Tax-base sharing was a new, out-of-the-box idea that never would have come out of people in the property-tax business.

Before 1971, it was tradition that whatever property-tax base a taxing district had within its border was what the district had to tax. Today, $500 billion per year in property-tax revenue is raised nationwide.

In the postwar area, we saw that some communities became almost all-bedroom communities, while others had a lot of business property, depending on what places could attract businesses to locate there. In the Twin Cities metro area, some communities near Twin Cities International Airport had higher property-tax base than other communities. It was no accident that places like Lake Minnetonka and White Bear Lake attracted expensive homes. So we had these differences in property-tax base.

Tax base determined the level of services possible in a community. For many years, the Citizens League published an analysis of the differences in property taxes rates among all metro communities on a similarly valued house. When the Fiscal Disparities Committee was working, that value was $18,000. Often, the communities with the lowest taxes on an $18,000 house would also have the highest spending per pupil in schools and higher spending for other services.

Fiscal disparities are the problem;

tax-base sharing is the answer.

The Metropolitan Council, which the Legislature created in 1967, was considering locating a second metropolitan airport in Anoka County's Ham Lake. People in Anoka County were itching to get the tax base a new airport would bring. Eventually, the Met Council decided against a second airport.

This was the setting in which the Citizens League's Fiscal Disparities Committee was working. Fiscal disparities are the problem; tax-base sharing is the answer.

Many communities engaged in fiscal zoning-zoning their communities so they would attract development that would pay its own way in property taxes. Attracting a warehouse into a community would bring in new commercial-industrial tax base, but few expenses, since it would bring no children to educate and would require few other services. In housing, it was particularly egregious: communities would zone out lower-priced housing and encourage higher-priced housing.

The Citizens League committee considered a number of possible solutions to the fiscal disparities problem, all of which would have been difficult to do:

- Impose a sales tax on the entire metro area and distribute the revenue back to communities.
- Merge all metro municipalities into one.
- Distribute state aid to communities or have the state take over some local services.

In this environment, F. Warren Preeshl, who worked in the area of municipal bonds and was a member of the Fiscal Disparities Committee, wrote a three-page memo in December 1968 proposing-for the first time-property-tax-base sharing. He suggested taking physical commercial-industrial buildings and moving part of their tax base-that is, gathering part of their value and distributing it to other communities.

15:48: Hear Gilje describe the analogy to Paul Bunyan picking up part of commercial-industrial property value to put in the tax-base sharing pool, as depicted in the following graphic:

Tax-base sharing was a very significant change, but it wouldn't disrupt the local power and the decisions of cities and they still could set their own tax rates. The tax rate that applied to commercial-industrial property had to apply to residential, as well, to help hold down spending.

The tax-base sharing idea emerged from the Citizens League committee and was approved by the organization's board in March 1969. In July 1971, the concept was signed into law, with tax-base sharing to begin in 1975.

In the Legislature, Rep. Charlie Weaver, Sr., of Anoka enthusiastically supported tax-base sharing and became chief author of the Metropolitan Fiscal Disparities Act in 1971. The bill got Minneapolis Senator Wayne Popham's support, as well as Saint Paul Senator Nick Coleman's and Minneapolis Rep. Martin Sabo's. Bloomington State Senator Jerry Blatz, chair of the Senate Tax Committee, was very opposed to tax-base sharing, but he didn't insist that the bill come before his committee.

Challenges to the tax-base sharing law.

In 1972, after the law was enacted, the village of Burnsville challenged the law's constitutionality in Dakota County District Court before Judge Robert J. Breunig. In his January 29, 1973, decision, Breunig found the law unconstitutional. He found that the actual tax burden on commercial-industrial property would be different from other kinds of property, which he said violated equal protection under the law. The State of Minnesota, the Metropolitan Council, and Anoka, Carver and Scott Counties appealed the District Court decision to the Minnesota Supreme Court, which heard arguments in the case in September 1973.

"The fiscal disparities statute is a bold and imaginative departure from conventional devices for balancing the benefits and burdens of taxation." - Minnesota Supreme Court Justice James C. Otis, Jr., Sept. 14, 1974.

Three lawyers who were members of the Citizens League-Allen Saeks, Greer Lockhart and Citizens League Fiscal Disparities Committee Chair Earl Colborn, Jr.,- wrote an *amicus curiae* brief on behalf of the appeal. On September 13, 1974, the state Supreme Court-on a 4-3 vote-reversed the District Court decision and upheld the constitutionality of tax-base sharing.

In writing for the majority, Justice James C. Otis, Jr., said, "The fiscal disparities statute is a bold and imaginative departure from conventional devices for balancing the benefits and burdens of taxation."

Because of the closeness of the decision, Burnsville filed an appeal with the U.S. Supreme Court, which was dismissed.

In 1975, the City of Shakopee and its taxpayers initiated a second court challenge. The suit began in Scott County District Court, but was transferred to the Minnesota Tax Court. It came to trial in 1980 before Judge Earl B. Gustafson, who decided to uphold the constitutionality of the law. Shakopee appealed the decision to the Minnesota Supreme Court.

The same group of lawyers who had prepared the previous*amicus curiae* brief, plus lawyer David Graven, prepared a new *amicus* brief on behalf of the tax-base sharing law. In February 1982, the state Supreme Court entered an order affirming the Tax Court decision upholding the constitutionality of the law.

In 1975, a bill introduced in the Legislature by a group of Dakota County legislators sought to repeal the tax-base-sharing law, but the bill went nowhere.

A separate tax-base-sharing law, similar to the metropolitan law, was enacted for Iron Range municipalities in 1996. The city of Cohasset challenged the constitutionality of the Iron Range law in Itasca County Court in 1998. County District Court Judge Jon Maturi declared the Iron Range tax-base-sharing law unconstitutional. The decision was appealed to the Minnesota Court of Appeals, which, in a unanimous 2001 decision, declared the law constitutional.

Cohasset then appealed to the Minnesota Supreme Court, which, in 2002, affirmed the Court of Appeals decision that the Iron Range law was constitutional.

Proponents of tax-increment financing (TIF), which the Legislature had authorized in 1969, argued that commercial-industrial property value within TIF districts should not be included in the tax-base sharing program. TIF districts were created as a way for local governments to pay expenses they incurred in preparing selected properties for new development.

In 1979, the Legislature took action that allowed TIF districts created before 1979 to be exempt from contributing to the tax-sharing pool until the districts expired. For districts created after 1979-except for a special legislative exemption granted until 2034 in Bloomington for the Mall of America-a city must include the value of any commercial-industrial property in a TIF district in determining its contribution to the tax-sharing pool.

In 1985, a proposal for developing the former Metropolitan Stadium site in Bloomington into a large office, retail and entertainment complex was announced by a Canadian development firm, Triple Five Corporation. The Bloomington City Council approved the proposal and, **in 1992, the Mall of America (MOA) opened**. **As soon as the MOA was announced, the City of Bloomington and the MOA tried to get it exempted from the tax-base sharing program.** Their initial attempts were unsuccessful, but **in 2013, the Legislature gave the MOA a 20-year break from tax-base sharing: property-tax base from the MOA will not be shared until 2034.**

30:20 **- Highlights of the Citizens League study process**. (Paul Gilje)

(Helen Baer presented slides she created, based on Gilje's description of the Citizens League study process.)

Baer: Selection of study topics for Citizens League committees involved taking the initiative on topic selection and keeping lists of other topic areas. Tenets of the process were the following: stressing that the problem should be addressed before looking at solutions; avoiding cutting corners; committee members being generalists; everyone learning together; and emphasizing learning over debating.

Clarence Shallbetter commented that a lot of specialists and special-interest representatives saw how effective Citizens League committees were and wanted to come to the meetings. But they had to sit around the perimeter of the room; only committee members could sit at the table.

Gilje: Some members of the Fiscal DisparitiesCommittee were people very knowledgeable about economics, property taxes and municipal finance. They kept us from naivete. But it was important not to let more knowledgeable people dominate the discussions and to insist that all committee members learn together.

Baer: Study-committee staff kept detailed minutes of meetings and shared the committee's learning with outsiders as broadly as possible. It was also important for the committee to hear from a broad assortment of viewpoints.

Creative new ideas might not succeed themselves,

but they can stimulate people to come up with better ideas .

Shallbetter: Study committees could ask staff to find information responding to questions that people were asking. Sometimes, staff could go back to the minutes to find the answers. There was an active response to the members' data questions.

Baer: Staff prepared early drafts with the committee's findings and conclusions, not yet recommendations. The Citizens League process insisted that optional possibilities be raised, not just one. Committee members were urged to be open to new possibilities, not just conventional thoughts.

Gilje: Creative new ideas might not succeed themselves, but they can stimulate people to come up with better ideas. Something new, like tax-base sharing, was extremely fragile. The concept started out with sharing all commercial-industrial tax base. But the idea shifted to require sharing only new commercial-industrial tax base added after 1971. That was a critical element in the final approval of tax-base sharing: nobody loses what they already have today, only tax-base growth in the future.

Discussion

44:35 **- Part of the source of this issue is state law requiring local governments to raise their own revenues. Was there ever discussion in the committee of letting the state collect for all the units of government and then redistributing this according to need at the local level, which is common in other parts of the world?** (John Adams)

Gilje: In 1971, there was clearly a very strong antipathy toward higher levels of government making decisions on how local levels spend their money. There was a supplement to the Fiscal Disparities Committee report that had separate recommendations dealing with state aid to municipalities and school districts.

In 1969 to 1970, another Citizens League committee looked at school district and municipal finance. In September 1970, that committee came up with a drastically improved school aid program that, for the first time, added in special aid for poor children. The committee also came up with a proposal of state aid to municipalities. Legislative approval of those two state aid programs in 1971 is what's known as the Minnesota Miracle.

The Legislature's approval of tax-base sharing in 1971, along with school aid and municipal aid, made for a package of achievements.

48:08 **- What were the arguments for and against property-tax-base sharing in the courts? What was the ultimate constitutional basis on which property-tax-base sharing was approved?** (Lee Munnich)

Gilje: In 1969**,** Jack Windhorst, an attorney in the Dorsey law firm, was invited to draft into bill form Rep. Charlie Weaver's tax-base sharing proposal, which was the Citizens League's proposal. Windhorst's hard work is still present today.

The concept seemed to be pretty clear then that everybody within the same unit of government had to be taxed the same. In the 1972 to 1973 Burnsville case, Judge Breunig ruled the tax-base sharing law unconstitutional, noting that the actual burden paid by commercial-industrial property in a jurisdiction would be different from that of other properties. He held that would violate the requirement of equal protection under the law.

When the case came to the Minnesota Supreme Court in 1973, Justice James Otis, Jr., writing for the 4-3 majority, said the decision to reverse the District Court and find the tax-base-sharing law constitutional hinged on what the court sees as a developing concept of the meaning of benefit. In the heavily populated Twin Cities seven-county metropolitan area, Otis wrote, it's no longer necessary for units of government to get the same kind of tangible benefit when raising taxes to satisfy the uniformity clause. It was a very far-reaching decision.

53:10 **- Had Local Government Aid (LGA) already been implemented at that point in time? Local Government Aid has a large number of factors relating to need, whereas tax-base sharing is more about the ability to raise money. How did these issues influence the fiscal disparities legislation?** (Paul Ostrow)

Gilje: We made a recommendation on municipal aid in the Citizens League tax-base sharing report. In 1967, the Legislature enacted the state's first sales tax. A small portion of the new sales-tax revenue was dedicated to cities and schools across the state.

The Legislature had major discussions in 1970 and 1971 about putting elements of need into the distribution of state tax revenue to cities and schools. Central-city legislators realized that state school aid by itself was not going to help Minneapolis or Saint Paul. But they saw they could get need in as a factor in distributing municipal aids, as well as school aids. So, the combination of school aids and municipal aids came together in 1971 as the Minnesota Miracle.

Steve Hinze commented that if the Local Government Aid and school aid formulas had come into place first, that would have killed tax-base sharing. It was an odd set of circumstances that allowed it all to pass.

Gilje: Local Government Aid and school aid are subject to state budgets and tend to fluctuate. **Tax-base sharing just happens each year automatically, with no need for legislative review or appropriation.** It's virtually the same as when it was passed in 1971.

1:05:10 **- Could we take the core ideas of the Citizens League study process and use these ideas to stimulate organizations today to use this process for other purposes? Could the Legislature, seeing what was possible, realize that you could be highly contentious and still make good progress?** (Paul Gilje)

1:05:52 **- How much of the property-tax-base sharing success is the result of a process template that can be used elsewhere and how much has to do with a serendipitous constellation of talented people? How much of the success has to do with the general affluence of that era that made that type of creativity and collaboration possible?** (Jeff Johnson)

Gilje: Lots of luck has to occur. Rep. Charlie Weaver had a good relationship with Ted Kolderie, then executive director of the Citizens League.

1:08:09 **- Could we use the Citizens League Study process today to stimulate getting better proposals on the table? Why aren't we doing this? Why is much of the financing attention from foundations focused on downstream, rather than upstream, solutions?** (Paul Gilje)

John Adams commented about **prosperity at the time of the passage of the Minnesota Miracle and tax-base sharing. Inflation pushed people into higher tax brackets, so the state could collect more tax revenue without having to raise tax**

rates. That allowed the Legislature to do things that wouldn't have been possible otherwise.

Lee Munnich commented that **this period of time is known for its legislative innovations, with both sides of the aisle working together, despite partisanship, with more willingness to collaborate.** This has changed today, with stronger negative partisanship and the rural/urban divide growing to encompass political parties. Also, there were more innovative thinkers, whereas today, there is less willingness of innovative thinkers to try to get things done. It's a much different time now. I wish we had the kinds of legislators we had then.

Paul Ostrow commented that **one of the keys in encouraging legislators who want this kind of innovation and want to end tribal politics is to tell them these kinds of stories about how it can work.** One of our challenges is to convince people that despite changes in media and technology, the basic rules of what it takes to get things done in politics have not changed.

1:13:36 - How do you respond to people who will dismiss your ideas out of hand, saying they're history and what happened 50 years ago is not relevant, because people no longer think this way? (Paul Ostrow)

Gilje: The Civic Caucus November 2016 report, *Looking Back, Thinking Ahead: Strengthening Minnesota's Public-Policy Process*, said leadership in the community must come up with ideas, because the Legislature is not good at coming up with them.

We suggested in that report that an essential first step is to identify unmet needs facing Minnesota. We did that and published the June 2018 list, *Priority Issues/Choices Facing Minnesota*. Maybe the community-proposal group needs to be more aggressive in coming up with ideas, rather than having the Legislature be the barrier to good ideas.

1:16:52 - In 1971, what was the role of the governor in the deliberations around property-tax-base sharing and municipal and school aid proposals, compared with the role of the governor in legislation in recent years? (Clarence Shallbetter)

Lee Munnich commented that **during the 1970 gubernatorial campaign between Doug Head and Wendell Anderson, state school aid became an issue. Head came out against state school aid and Anderson came out for it.** After Anderson won the election, he was committed to the idea. The governor's leadership was important. That made a difference.

Gilje: Jerry Christenson, John Haynes and Eileen Baumgartner were heavily involved in helping the governor on the Minnesota Miracle legislation and were drafting the bills pretty directly.

John Cairns commented that then-state Representative Doug Johnson from Cook understood the nuances of the Minnesota Miracle better than practically anybody. He favored the Iron Range for all the years he was chair of the House Tax Committee.

Steve Hinze commented about governors' influence on tax-base-sharing legislation. When the Mall of America was first proposed in the 1980s, Governor Rudy Perpich agreed that the mall should be exempted from tax-base sharing. The Legislature didn't go along at that time. But in 2013, the Legislature granted the mall a 20-year exemption, largely because Governor Mark Dayton supported extending the mall's tax-increment-financing district.

1:21:55 **- What are the disparities in property-tax wealth before and after property-tax-base sharing?** (Dana Schroeder)

Gilje: Among the 60 metro-area communities over 9,000 in population, the top-to-bottom ratio in property tax-base per capita *without* tax-base sharing is 13-to-one. *With* tax-base sharing, the ratio drops to six-to-one.

Lee Munnich commented that bond-rating houses always cite tax-base sharing as a strength.

1:23:27 **-The Citizens League kept legislators who were interested aware that there was a committee on a given issue.** The Legislature then kept the public informed on subjects that could require legislative action, so that by the time a proposal arrived at the Legislature, there was receptivity to the idea. **The process depended on the Citizens League bringing the proposal to the Legislature on a silver platter to be analyzed from there, rather than relying on the Legislature to come up with the specifics, as is the case today.** (Comment by Pat Davies)

Gilje: There's a tendency in any group to keep things quiet while the group is working on something. **The Citizens League thought it was better to let everybody know what was going on. When bringing an idea to the Legislature, you have to have a proposal specific enough that a bill can be drafted from it.** The recommendation for tax-base sharing was clearly specific enough that Jack Windhorst could take it and draft it into a bill.

1:28:07 **- How important was compromise to the development of property-tax-base sharing and getting it implemented? In particular, how crucial was the idea that we won't take 75 percent, not even half, but we'll share 40 percent?** (Dana Schroeder)

Gilje: It was absolutely critical. Then-state Rep. Bill Frenzel asked Rep. Charlie Weaver to change his tax-base-sharing bill from requiring communities to share 50 percent of their commercial-industrial tax base to requiring only 40 percent. Weaver agreed.

The other dimension is that **the tax-base-sharing law doesn't do as much as you'd think.** A recent analysis of tax-base sharing shows that 71 percent of the shared value gets sent back to the same communities from which it came. Only 29 percent goes from richer to poorer communities.

The question is, does it go far enough? I'd love to see pre-1971 tax base included or to raise the sharing amount from 40 to 50 to 60 percent. But trying to do that would let in other people to do their mischief to the law.

Among the 60 metro-area communities over 9,000 in population, the top-to-bottom ratio in property tax-base per capita without tax-base sharing is 13-to-one. With tax-base sharing, the ratio drops to six-to-one.

1:31:25 - The factors in the property-tax-base sharing distribution formula are overwhelmingly based on population. Do you think there should have been more need-based factors included in the formula? (Dana Schroeder)

Gilje: The distribution formula is population, modified by whether a community is lower or higher than the metro average in property-tax base per capita.

I don't think there should be more need-based factors. This is a rough distribution. However, there's always been a feeling among academics and some others that the distribution formula should have had more need factors in it. But **this distribution is about the *capacity* to raise revenue not about the *raising* of the revenue.**

The tax-base sharing distribution applies not only to municipalities, but also to school districts, counties and other taxing districts. Because of that, it's very difficult to add in other factors of need, like income or racial makeup.

1:34:03 - A large difference today is the role that lobbyist