

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION
COMMITTEE ON LOCAL GOVERNMENT**

Call to Order: By Chairman Esther Bengtson, on February 19, 1991, at 3:25 p.m.

ROLL CALL

Members Present:

Esther Bengtson, Chairman (D)
Eleanor Vaughn, Vice Chairman (D)
Thomas Beck (R)
Dorothy Eck (D)
H.W. Hammond (R)
Ethel Harding (R)
John Jr. Kennedy (D)
Gene Thayer (R)
Mignon Waterman (D)

Members Excused: none

Staff Present: Connie Erickson (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON SB-302

Presentation and Opening Statement by Sponsor: Senator Don Bianchi, District 39, stated that this bill basically does three things. There are some amendments that will clarify a few things. The problem that created this bill is access to public lands and is being debated across the state. There are lots of lawsuits filed. There are situations where people think they have a public right to a road, but are unsure. They go to the County Commissioners and the commissioners and County Attorney is not sure. This bill will clarify what in fact is a county road. Page 2 of this bill does not change existing law of what is a county road. It includes roads, by petition, by common

dedication, by prescription, or in accordance with 43 USC 932, are in fact also county roads. The use of 43 USC 932 is for roads that were built, in many instances by the Federal Government, during the homestead days. All the land was public land at this time. To open the land, the Federal or State government, would come in and build roads, so people could get to their homesteads. At the end of that, the Federal Government passed laws that said they were dedicating all these roads back to the State of Montana. The way this works in the State of Montana, these kinds of roads have come to the county level for administration. In addition, this bill puts a new classification of county roads of "primitive road". The definition of a primitive road is a road or any portion of a road that is in a condition that makes vehicle traffic difficult, Page 1, Section 1, subsection b. The reason to add this section was that currently the counties in many instances are not sure if they have a road that is declared a county road, they will have to maintain that road. In many instances these are no more than trails, and they are not something that the public necessarily wants to have maintained to drive on. Most counties are not too interested in accepting these kinds of roads because they do not have the monies or inclination to try to maintain them. By putting in this classification of a primitive road, the option is there to take a road that they do not want to maintain, continue to provide the access, but the county will not have the expense for maintenance. The third part of the bill, which is the goal of the bill, is to address abandonment of county roads. In his time with the Fish Wildlife and Parks, he testified many times in front of County Commissioners who had been petitioned by the public to abandon a particular road that in fact lead to public lands. In many instances these roads provided the public access to the public land. Through the process of abandonment the access to public lands by the public would be taken away. This bill deals with abandonment of a road that is going to, or that provides access to state or federal land or water, or this land can provide access to state and federal land or water. Before the County Commissioners can abandon this type of road they have to make an offer to the state or federal land management agency giving them the road versus abandoning it. By doing this, the county gets rid of their responsibility of maintaining the road, but the public will continue to have access to the public lands if one of the land management agencies is willing to accept the road.

Proponents' Testimony: Gordon Morris, Executive Director, Montana Association of Counties (MACo) said his association was in support of SB-302, and he had several friendly amendments to

propose that would alleviate many of the concerns of the opponents in the room. (Exhibit #1). The first thing was in Section 1, the issue that is of concern there, is that currently counties and county commissioners have the option of accepting roads. The types of roads are listed in the bill. They can do this by petition, common law dedication, prescription, those three in particular. The bill says on Page 2, line 11, "and a road that was created". There are many that were created by petition, prescriptive easements, one might assume that they would become public roads. The counties retain the prerogative as to whether these roads will be taken as dedicated counties roads for maintenance purposes. We are trying to clear this up and eliminate, by striking, "and a road that was created...." through line 16. This would very clearly reserve the option for any of those roads to be considered by the County Commissioners for purposes of becoming county roads under the current law. MACo likes the reference in Section 1, to "primitive roads", and the recommendation there would be a clarification to make that read as Amendment #3 Exhibit #1, "county primitive road". The remaining amendments are for maintenance and designation purposes it would read "that a county may designate a county road or any portion of a county road...". This makes it clear that it has to be a county road, one that has already been taken, maintained by the county, that would pursuant to a county action, be redesignated to a "county primitive road". They would be consistent with Page 3, Subsection 2, line 3. Then the county would not be responsible for maintaining a primitive county road. With these amendments and striking of Section 4, he thought that SB-302 was a good, clean bill that clarifies, from the standpoint of County Commissioners in particular, what roads are eligible for being taken for county maintenance and all other purposes. The response from Senator Bianchi pointed out that in abandonment procedures, the one concern is that if a road proposed for abandonment is offered to a state or federal government or their agencies, and those entities refuse to take it, it does not mean that the county can not proceed with abandonment actions. Once the decision to abandon is decided, the offer made, and they refuse, then the county can proceed with its normal abandonment procedures. These amendments will clarify and alleviate most of the concerns he has heard raised by the opponents. He asked for the committees favorable consideration of the amendments, and then a Do Pass on SB-302 as Amended.

Ron Stevens, President, Public Land Access Association, said he stood in support of this bill. (Exhibit #2)

Carlo Cieri, County Commissioner, Park County, originally he was going to oppose this bill, but after talking with Mr. Morris and

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seeing the amendments he decided to support this bill. His biggest concern was the cost to the county. Senator Bianchi said that there would be no cost to the county, but by changing the wording with the amendments, the county will not have any road just those county roads. He saw no problem with other agencies taking over abandoned roads, and he could support SB-302 if amended.

Lewis E. Hawkes, President, Montana Wildlife Federation, said with his purposed amendments, they support the bill. (Exhibit #3).

Opponents' Testimony:

Alan Evans, Vice Chairman, Private Lands Committee for the Montana Stockgrowers Association. He is also retired from the BLM. He opposed this bill. (Exhibit #4)

Ward Swanser, Attorney, Moulton, Bellingham, Longo & Mather of Billings, MT, and a member of the Montana Stockgrowers Association, opposed SB-302 (Exhibit #5).

Carol Mosher, Montana Cattle Women and the Women Involved in Farm Economics, strongly opposed this bill. (Exhibit #6).

Walter Steingruber, President, Agricultural Preservation Association, opposed this bill and request a do not pass (Exhibit #7).

Ed Butcher, Rancher from Winifred, whose ranch is in northern Fergus County opposed this bill (Exhibit #8).

Walter Johnson, Rancher from Belt, Montana and a member, Montana Stockgrowers Association, told the committee that he had county roads that go through his place, and he knows something about them. Mr. Johnson asked the committee to look back at what happened and how and where county roads originated. Roads were put were there was a need stated by the community. The roads were created by petition for the need of the community. They surveyed the road, and the first contingency was that the landowner had to donate this road to the county for this purpose. This point is being missed. It was donated for this purpose. So the road was built. Then the other contingency was that if you want the road the landowners had to fence off the road, so no livestock would get on a public road. So the landowner has to fence the road and then in the years to come, they have do maintain that fence. This is the responsibility of the landowner that donated the land for the road. What happens when the county

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abandons the road? When the county decides there is no more need for this road to go where it was intended to go, no more use for it, and they say they will abandon the road. So then the federal or state government comes in and takes over. This committee knows that roads don't stay in the same condition year after year. One flood can put a bridge out, put cullies through it, and who is going to maintain that road? Do we want to put more responsibility on the state? When the county is not there with equipment, the state will have to contract it out. Does the state have money to do this on all these abandoned roads? Does the federal government want to come in and spend all that money to do it? If the state or federal want this road to go where they want it to go for recreational purposes, let them come in and renegotiate the right of way. Let them pay for the fencing, and go from there. This land that the county wants to abandon, and turn over to the state or the federal, was never intended for that purpose by the people who donated the land.

Lorna Franks, Montana Farm Bureau, stated that the bureau oppose this bill for all the same reasons given by the other opponents.

Jo Brunner, Executive Secretary, Montana Water Resources Association, have no problem with the majority of the bill. They do have a concern on the Section 3, line 17, that would offer abandoned roads to the Federal and State Government. She could understand if sometime when these roads were closed off that they might cause some problems with access to federal lands. One of the MWRA board members told about a road that the county was trying to abandon that goes back to state land. No one uses except the two landowners and people who like to come out and party, and quite often, steal calves. Consequently, if this road was abandoned under this bill, they would have to offer it to the state. If the state kept it open, it would really be harmful. So we oppose that portion of the bill.

Bob Stephens, Montana Grain Growers Association, and they oppose the bill.

Ward Jackson, member of the Montana Stockgrowers, opposed this bill (Exhibit #9). He added that he knows a chunk of BLM land that has good access by good gravel road, but hunters have requested the county commissioners to open another road that used to be a county road that is a primitive road now and only crosses private land. This is not a short cut, and it ends in the same place as the gravel road that gets to the BLM ground. Why do these hunters want this road opened? My bet is to say, show me a hunter that can drive through my private property, spot an 8 point bull elk, not look around to see if I'm watching, and then

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not shoot it when its less than 50 yards from the road, and I'll show you a saint! This bill has been misnamed. It should be named "stream access" because that's what this bill is for.

Elaine K. Balm, Vice Chairman, Sweet Grass County Commissioners, wrote a letter of opposition to SB-302 (Exhibit #39).

Questions From Committee Members:

Senator Beck asked Senator Bianchi whether these primitive roads would be for motorized vehicles? Senator Bianchi said yes. Senator Beck said he was concerned that these county roads lead to wilderness areas and motorized vehicles could drive right into the wilderness area. Senator Bianchi said that they could drive right up to it, but not into the wilderness area because that would be against Federal Regulations. If the road did go to the area there could be a parking lot where people could eat a meal on whatever public land that was there. Senator Beck said he did not see anything in the bill that deals with abandoning roads because of a newer access to the public land. Nothing in here that would allow the counties not to offer the land to other state or federal agencies, if the public still had access to the public land via a different or new access on more improved roads. There are cases where people just want to get into private property, and that is not correct. Senator Bianchi said if a federal or state agency had access to the particular public land by a better road, then why would they take on the responsibility of maintaining a road that the county is proposing to abandon? He just didn't think they would do it. Nothing says that in the process of abandonment, the county has to offer it to the agencies, but the bill does not say the agencies have to accept it. If not accepted, then the county will continue on with the abandonment procedures. This is the intent of that section. Senator Beck asked if Senator Bianchi supported the MACo amendments presented? He said yes he did.

Senator Beck asked Senator Bianchi about the easement across private lands generally by the Forest Service or whomever owns the public land. He did not know of any county road abandonment where the easements did not have some protection. He asked Senator Bianchi for an example of where this bill would be needed. Senator Bianchi said outside Bozeman there was the old highway that went up Gallatin Canyon. New highway was built, and the highway took over the maintenance of the old road because it went to a couple of residences, and then it dead ended because it hit the river where the bridge was no longer then. It was about 150 yards from Federal lands. The residents at the end of the road asked for the road to be abandoned because they wanted the

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road private, so people would not drive up there and go fishing which is what they were doing. The Forest Service also wanted that road because they thought it would be a simple place to give access across the private land to the public land. They wanted to work with the private landowner to do that. The Forest Service had it in their long range plans, so they did not want the county to abandon the road. Here was an opportunity for people to have a place to fish on road proposed for abandonment, but also an opportunity to get into public lands. In that instance, because of costs, the county did abandon the road. If this bill had been there, the Forest Service could have taken over the responsibility for the road, no cost to the county, and then the Forest Service would have the responsibility of maintaining that road for access to the water or if they decided to expand the access to public lands.

Senator Beck asked one more question. In that case, was there anything precluding the Forest Service from getting an easement on that road anyway? Senator Bianchi said that they could go through a lawsuit, spent public funds, to get the easement through condemnation procedures. But it seems hard to justify why a public owned road, that another public agency will takeover, why the public should have to pay for the condemnation process to get the road back. The cost of maintaining the road by the county is usually the reason for abandoning it. For the public agency, that would take over the road, to go through the condemnation process on something already public does not seem realistic. Senator Beck asked his final question. In that case, most of the roads are not to public lands. The public has the right of use on the road, but the land still belongs to the landowner who pays taxes on it. In this case, was it the public's land under the road, or was it the private landowner's land and so a condemnation suit should have been brought back for an easement? Senator Bianchi said that he was not sure if the property under the road was actually bought by the county, or it was like most county roads, worked out with the individual landowner.

Senator Hammond asked Mr. Morris if the county commissioners across the state approve this bill if amended? Mr. Morris said that the county commissioners he had contacted have agreed that the amendments would alleviate their concerns. Their are county commissioners from Teton County, you heard from Park County, and also Gallatin County. He argued that if you take a look at the amendments, they leave it the prerogative of the county commissioners to designate a road for public purpose by way of taking it, then you have alleviated most of our concerns.

Senator Hammond asked if the road levy is only for the county?

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Mr. Morris said that yes it was a county only levy outside the incorporated limits of cities and towns.

Closing by Sponsor: Senator Bianchi closed by pointing out that county commissioners and county roads are not just roads to service agriculture. County roads and county commissioners are elected by the public, by all of us, not just agriculture. County roads have a responsibility to all the people of the county and the state as offering access to get to friends, public lands or whatever. The roads are not there just to serve the agricultural community. They are paid for by taxpayers in the county, not just agricultural taxpayers, but ALL of us. They are in fact public roads. When somebody in the old days gave a road to the county, many times the county could give tax credits to the individuals to go out and work on the road, and in turn the property owner would donate the land. So many records do not show any real road dedication for sale of the property, through the years they are county roads that are public roads. If a road is abandoned, and the county had at one time paid for the land, then that land would revert back to the adjoining landowners. That is probably fair because the county does not want it any longer. Even if the public had paid for it. But if there is a reason to maintain that road as a public entity, so the public can access public land where ever, then he thought that was something that it would be common sense to retain this in public ownership. This is especially true if some state or federal agency was willing to take over and maintain it at least for vehicle or foot path, but it would be under public ownership. A couple of people said that just by having primitive roads that the public land will be accessed across their private land. Senator Bianchi was not sure how that got into their vocabulary. This bill takes existing public roads that are going to or close to public lands, and giving the public the opportunity to keep them in public ownership. This has nothing to do with crossing private land any place. This is for existing public county roads. This is an honest attempt to keep public roads so that we will be able to continue to enjoy public lands because we will have public access to them.

A county commissioner from Gallatin County asked to point out that an abandoned road is initiated by the public not by county commissioners. It starts with a petition by the citizens of the county, not the county commissioners.

HEARING ON SB-305

Presentation and Opening Statement by Sponsor: Senator John Anderson, District 37, said he sponsored a simple bill that comes from the model city of Montana, West Yellowstone. The bill explains itself. The title tells you that it authorizes multijurisdictional ambulance service. The first section provides for the services. #2 provides for the multijurisdictional services that may be provided. The bottom of the bill just adds ambulance service to the list.

Proponents' Testimony: Mayor Carol Janson, West Yellowstone, supported this bill (Exhibit #10).

Ken Davis, Director, West Yellowstone Ambulance Service, supported this bill (Exhibit #11).

Cal Dunbar, Volunteer, Wyoming Ambulance, supported this bill by explaining the boundaries of the area where services are rendered by West Yellowstone ambulance service (Exhibit #12).

Alec Hanson, MLCT, said that the association endorsed this bill last fall. West Yellowstone has a unique need to be able to provide ambulance service to such a wide area. This law has been used for other services, and this is what it was enacted for, so let's use it. Mr. Hanson presented a copy of the existing law for funding ambulance services (Exhibit #13). This does not address West Yellowstone's problem.

Gordon Morris, Executive Director, MACo, said this bill came about by legislation in the 1985 session introduced by MACo. He said the association had no problem with this bill. He did suggest that the bill from 1985, that this section of law could be amended to prevent what is happening here today from ever happening again. That would be to take the bill beginning on Page 1, line 14, and strike everything clear on through. This would leave it a clear case that the multijurisdictional service district may be authorized in cases where local governments already are authorized, to provide a service. Otherwise in two years, we'll be back to asking you to add something else to it. It was MACo's intent to give broad discretionary authority to cover these types of cases.

Bill Howell, West Yellowstone City Council, said that the committee has heard all the reasons for them wanting this. And all that you have heard about West Yellowstone in the last three years, we should be rolling in dough down there, so why would we

need this amended to have a multijurisdictional opportunity to work with the county. He pointed out that the legislation in 1985 that provided the local resort tax was very generous. He told the committee what has been done with the money, and why they need ambulance added to this opportunity. West Yellowstone has bonded \$4 million dollars in our street projects against our revenue stream from our resort tax. We have a storm sewer project and street project both totaling over \$4 million dollars. We also have a waste water project going on now in phase 1, 2, & 3 are over \$500,000 which part of the money will come from the resort tax. Then we just completed a \$1.2 million dollar water improvement project where we now have city municipal water. They is being funded by user fees. The point is that the resort tax is fairly well obligated through the bonding against it, so that revenue stream is not readily available for this project. They also want to point out that the law sure can take care of dogs, but we can't take care of sick people. That's what we want you to remember because that is what we are trying to accomplish.

R. Mark Zandhuisen, President, Montana Emergency Medical Services Association, faxed a letter of support (Exhibit #14).

Opponents' Testimony: none

Questions From Committee Members:

Senator Thayer asked Mr. Morris asked if it would be possible to amend this bill to cover ambulance or any other essential service? Mr. Morris said that would be o.k., but then there would probably be debate, requiring the Attorney General's Opinion, of what qualified for "other essential services". In 1985, this bill got all hung up over trying to identify what services would qualify services to be covered under this particular legislation. The argument was if it was a service that currently is provided by a local government, then they ought to have the option of doing it on a multijursidictional basis, period. We added dogs for Paul Pectoria, ambulance for West Yellowstone, what next year? No disrespect, but it could be for one of you here, next year.

Senator Eck asked Mr. Morris if the bill as presented in 1985 did it still only have those services that are authorized or did it have any services? Mr. Morris said it had only those services authorized.

Closing by Sponsor: Senator Anderson said that the bill received a good hearing. West Yellowstone officials have answered the questions, and he was sure the committee could see the real need for this bill. You know that West Yellowstone is an isolated area, and they have a real need to be able to set up a district of this kind. He urged the committees support of SB-305.

HEARING ON SB-334

Presentation and Opening Statement by Sponsor: Senator Ethel Harding, District 34, said this bill does two things: #1 it changes the form of liability for county officials, and #2 it changes the person responsible for the liability. Most of you understand line item, and this bill changes the liability for a line item to a department total, and the responsible official. At present it is the county commissioners or county clerks and recorders are responsible and liable for overage on the line item. As a past clerk and recorder, she knew how nervous you could get about outstanding bills from other departments, and you're responsible for an overage in someone else's department total. It's enough to be responsible for your own total, but to be responsible for someone else's is not right. In her county, Lake County, she was so nervous that she started a purchase order system to try to track expenditures.

Proponents' Testimony: Betty Lund, Ravalli County Clerk & Recorder, supported this bill by presenting her own budget with a line item overage. (Exhibit #15, 15A).

Gordon Morris, MACo, had reviewed this bill and they support it.

Opponents' Testimony: none

Questions From Committee Members:

Senator Kennedy asked if this is in the city law? He said that you could go over on the line item, as long as you were not over at year end. Senator Bengtson said this could probably be settled in Executive Action on Thursday, February 21, 1991.

Senator Thayer asked Senator Harding if current law says that you are liable at any point in time you are over, or is it just for the fiscal year. Senator Harding said it is for the fiscal year,

but Betty Lund pointed out that she is already over on that line item, so she is liable.

Closing by Sponsor: Senator Harding closed by referring to Senator Thayer's question. Sometimes some item or some emergency comes up and it costs more than had been budgeted for. So early on in the year, you have expended like \$2.00 over on a line item, but at the end of the year you still have money left. This is the point of this bill. You are given a budget for an entire year, and you can't be exactly stuck to the line item. Sometimes it just does not work out to be the exact amount of money. Then you can be careful not to go over in the total budget. This gives them a leeway, and she is sure that Senator Kennedy is right that cities can do this now. The other thing is to make the county commissioners or the clerk & recorder, or all of them, responsible for another department head's budget when you get to the end of the year is wrong. The responsible thing to do is have the department head be responsible. They turn in their budget, they request the proposed amount, they anticipate what they will spend, and they are responsible people. Then the commissioners and clerks do not have to be nervous about anyone's budget, but their own. She urged the committee's passage of SB-334.

HEARING ON SB-367

Presentation and Opening Statement by Sponsor: Senator Bruce Crippen, District 45, said 26 years ago the old county jail in Billings was converted to an art center. It is now a state of the art art center and museum. The county still owns the land and the building. This bill would allow the county to give the land and the building to the Yellowstone Art Center Foundation. The county has to have authority from the Legislature to do this according to Greg Pederson. The reason that they would like to do this, is that the Art Center has grown so substantially that they would like to expand. The county wants them to expand. It makes more sense for the county not to be involved in the expansion for various reasons. The best way to handle this is to have specific legislation authorizing the county to give this building and land to the Yellowstone Art Center Foundation. The Art Center has been taking care of it since it started, and they have paid all the expenses involved, mostly by Foundation Gifts. You will notice in the section there is a contingency that says these will have to maintain it as an Art Museum for two consecutive years. This is required by the law according to Greg

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Pederson, and said it should be in the bill. The bill terminates in 1992 at the time of transfer, and there will be no reason to have it on the books. Donna Forbes, the director of the Yellowstone Art Center, could not be here because her annual board meeting today, and the Yellowstone County Commissioners could not be here today, but with the number of bills this committee has today, he told them that more testimony was not needed. There are no opponents.

Proponents' Testimony: Senator Crippen handed out a letter from the Yellowstone County Commissioners supporting this bill (Exhibit #16).

Opponents' Testimony: none

Questions From Committee Members:

Senator Kennedy asked why they need legislation to do this? Senator Crippen said according to attorney, Greg Pederson, that they must have authorization to do this.

Senator Thayer questioned this because of the transfer of the Russell Museum, and the city had owned that property. Senator Crippen said this is what they have been told by the Legislature, so that's why he is here.

Closing by Sponsor: Senator Crippen had no closing remarks, but asked for a Do Pass on Sb-367.

EXECUTIVE ACTION ON SB-367

Motion: Senator Eck moved to Do Pass SB-367. The vote was unanimous, and was recorded as a roll call vote.

HEARING ON SB-405

Presentation and Opening Statement by Sponsor: Senator Blaylock asked the committee to table SB-405. He told the committee he was doing them a favor!

EXECUTIVE ACTION ON SB-405

Motion: Senator Vaughn moved to Table SB-405 as requested by Senator Blaylock.

Recommendation and Vote: The vote to table was unanimous and recorded as a roll call vote.

HEARING ON SB-437

Presentation and Opening Statement by Sponsor: Senator Bob Brown, District 2, as principal sponsor he said the title states that it allows local governments to establish reasonable fees for lake-related construction permits. The Lake Shore Protection Act was passed in 1975, and the fee for a construction permit along a lakeshore was established then at \$10.00. That remains the case today. For the committee's background, there are several sections of the statute that were enacted in 1975, that encompass the Lake Shore Protection Act. He cited 75-7-207 required all governing bodies with jurisdiction over a lake or lakes, to adopt criteria for the issuance or denial of permits to work in the lakes. In that same year, 75-7-272, provided for the administration of lakeshore regulations to be funded by these \$10.00 application fees, as well as by Federal revenue sharing monies. Federal revenue monies ran out in 1985, and then we had I-105. So the bottom line is, the Lake Shore Protection Act which is what the county planning board is administering, is subsidized by county government. It is extremely expensive in the lake counties where there are numerous lakes. The example is Flathead County where in 1986 there were 74 permits issued, and in 1990 there were 140 permits. They say the trend is getting quite steep because it represents the local growth rate. Some of the people's applications for work is simple and routine like fixing a dock. These are not very expensive. But many are extremely expensive, complex, and time consuming. They far exceed the \$10.00 permit fee. Any time a request for a variance from the established regulation it requires a public hearing. It usually requires testimony from someone from the county planning office or perhaps the county commissioner to go out to the site to see what the person wants to do. Those far exceed the \$10.00 fee. So this bill purposes is that the permit fee must reasonably address the cost of administering the permit application. The bill lists the factors that local government shall consider when establishing the fee. Senator Brown said he thought that something needed to be done in this area because nothing has been

done since 1975. It is become an impact item on Flathead and Lake County, so this is the time to do something.

Proponents' Testimony: none, due to the fact that this bill was read today, scheduled for hearing today, and Steve Huberly, Administrator for Flathead County, could not make it to Helena in time. Senator Bengtson apologized to Senator Brown for this, but the committee only has one meeting left, and would need to be able to do Executive Action on this bill.

Opponents' Testimony: none

Questions From Committee Members:

Senator Thayer stated this was the first he had ever heard of this. If someone wants to add a dock or remodel they need a permit? Senator Brown said yes they do because they do not own the lake.

Senator Eck asked if this also related to streams? Is this a city affair? Senator Brown said that streams were not addressed in this section of law.

Senator Bengtson asked if there was any upper limit to the fee to be charged? Senator Brown said only those considerations listed in the bill would be used to determine the fee. He said the \$10.00 fee is ridiculous. The law currently states that the administration costs of the program will be paid by the fees from these permits. If there is an upper limit, it must be reasonable because some applications cost as high as \$1000.

Senator Thayer asked Senator Brown what he thought a reasonable upper fee would be? Senator Brown said the problem is that some applications it might cost \$2000 dollars, and other cases it might be \$10.00 or less, so it might not be easy to say.

Senator Waterman stated that the committee has been saying "let's let local government have authority, so let's let them be responsible to set fees to cover their costs. Senator Brown agreed that this was the intention of the bill to be able to cover the costs.

Closing by Sponsor: Senator Brown closed by asking the committee to allow other to be available during Executive Action.

HEARING ON SB-440

Presentation and Opening Statement by Sponsor: Senator Bengtson introduced the committee's bill. This is the bill that addresses Title 7, tier 1, boards. She said that Representative Peck and Senator Fritz signed the bill, as they had sponsored bills dealing with museum bills.

Proponents' Testimony: C. Erickson explained the language that struck or repealed language in the statutes about the authority on boards appointed by the county commissioners. These are museums, parks, county fair, district weed, rodent control, mosquito boards, and local control boards. It simply struck language that related to the number of people to serve, and it struck or repealed language that had to do with their terms of appointments. If there were any other portions of statutes that talked about the number of people that serve, they were amended. The language is not exactly what Linda Stoll-Anderson presented. The intent is the same, to allow the county commissioners to appoint the number of members to a board that they see necessary. Ms. Anderson's language said as many as county commissioners deemed necessary. C. Erickson said that where is county board, and the county commissioners can appoint members. Then language was added in each section that the county commissioners shall, at a public meeting, pass a resolution that will establish the number and the terms of the appointment. So the number, staggering the terms, etc. is up to the county commissioners.

Linda Stoll-Anderson, County Commissioner, Lewis & Clark County, said she felt like a mother to this bill. She thanked the committee for the opportunity to help with bill. She is comfortable with the changes. She had heard comments that some commissioners would like to be able to eliminate some boards all together. Testimony on other bills showed the lack of interest in running for irrigation districts and rodent control boards. We sometimes just can't get people to serve, and would like to be able to say o.k., no board. But she liked the bill, and hoped it would save the committee from hearing these types of bills in the future. Of course she supports it.

Opponents' Testimony: none

Questions From Committee Members: none

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Closing by Sponsor: Senator Bengtson said the committee should be commended for this bill.

EXECUTIVE ACTION ON SB-440

Motion: Senator Waterman moved to Do Pass on SB-440. The committee voted unanimously, and the vote was recorded with a roll call vote.

HEARING ON SB-407

Presentation and Opening Statement by Sponsor: Senator Waterman, District 22, said that she sponsored this bill on behalf of the Department of Health and Environmental Sciences (DHES). She briefly stated what was in the bill. This bill arises from the Montana Public Water Supply Task Force, and she presented their report (Exhibit #17). Senator Waterman said that this bill had to do with Federal requirements for public water supply, and there are State of Montana requirements. Federal law states that where both federal and state requirements are very similar or the same, then the state can retain control. She had received a letter of support from the Rural Water Association reflected very closely the feelings of Montanans that it is important to have regulations administered by the state versus the federal government and EPA. The bill before provides for administrative enforcement orders, administrative and civil counties, authorizes the department to collect fees, authorizes the department to review new proposed public water systems for viability and general minimum design standards in subdivisions. The purpose of this is to cut down on the subdivision review time, and allow for a follow-up of plans. It would remove some things and fee structure would be changed. It would allow them to cover their costs. The subcommittee has discussed this when the DHES budget was reviewed. They proposed adding one FTE for that levy, providing it would be paid through increased fees for associations. This will be made clear through DHES testimony.

Proponents' Testimony: Jim Melstad, DHES, Water Quality Bureau, helped prepare Exhibit #17 as a member of the Governor's Task Force. He supported this bill and gave proposed amendments because they had not intended for this legislation to add subdivision fees to go elsewhere (Exhibit #18, 18A, 18B)

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Erling Tufte, Director, Public Works in Great Falls, supported this bill and its general intent (Exhibit #19).

Ray Wadsworth, Montana Rural Water Systems, supported this bill, except Section 1, on behalf of this organization (Exhibit #20).

Pete Frazier, City-County Health Department, Great Falls, supported this bill (Exhibit #21).

Richard Nisbit, Director of Public Works, City of Helena, also representing the Montana Public Water Supply Task Force, as a member of that group. He asked the committee to support the task force recommendations and include in SB-407. The city of Helena is on record supporting the implementation of the task force's recommendation. The method of assessment will be presented in DHES public hearings before the board when they set the rates. We feel strongly that these recommendations should be implemented. His third hat, he is National Director for the American Water Works Association, and they support the implementation of the task force recommendations. They do not meet until next spring, so they are not on record for this bill. All these water groups will have the opportunity to testify during public hearings.

Chris Kaufmann, Montana Environmental Information Center (MEIC), was pleased to rise in support of SB-407. It is a growing public concern about the quality of drinking water. We hear it often. The state needs to be prepared to make a good and quick response to problems. There are some public water systems that are not currently meeting water quality standards. They also believe it is important for Montana to have primacy in most regulatory programs involving environmental and public health issues. It allows Montana to be more responsive to local communities, and to provide more technical assistance. She first noticed this bill because it has something to do with subdivision, which is a big issue of concern with MEIC. The importance of regulating water systems in new subdivisions is an important component in this bill, we want to support it.

Mr. Melstad presented three statements of support.
Jim Carlson, Director, DHES, Missoula City-County Health Department, faxed a letter of support (Exhibit #23).

Jane Lopp, Chairperson, Flathead City-County Board of Health, faxed a letter of support (Exhibit #24).

Gary Strumm, Montana Society of Engineers, and American Society of Civil Engineers/Montana Section, supported this bill (Exhibit

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#25).

Opponents' Testimony: Bruce Mc Candles, Assistant City Administrator, Billings, said he hated to oppose the testimony of some of his city brethren, but he wanted to go on record. First the City of Billings supports the state of Montana primacy in administering the state drinking water quality act. So his testimony is not that much in opposition to what has been heard. He had to express great concern about the fee structure. If you notice in the bill, all the money for the programs proposed, are based upon the services to be provided by department personnel, with the exception of the Public Water Supply Chairman. That is to be based upon a flat fee. The flat fee is \$3/service connection. \$3/year/connection will provide 25 cents per month for service connection does not sound like much money. But when it is multiplied by the 25,000 service connections in the city of Billings, then it is \$75,000/year and this is talking about real money. Secondly this is imposed through regulations with no cap imposed by the Legislature. We have some very serious concerns about that. He read a sentence from the Executive Summary, "however small water facilities, comprising over 96% of Montana's systems, will have the most difficult time meeting the requirements." Exactly so, but what that says is that conversely, 4% of the water systems will be paying the bulk of the fees to support the program. We do not feel this is appropriate. Billings is more than willing to pay the fees for the services that they receive. We recognize, as the largest water service system in the state, we are likely to help with the subsidization of the program for the smaller systems in the state. But we would like to see a fee structure that is a bit closer to the services provided being equal to the fees being charged. He also stated that there is some information about the staffing of the department, he is unable to locate the Fiscal Note on this bill. He urged the committee to examine it closely before their decision is made.

Questions From Committee Members:

Senator Beck asked where is the Fiscal Note? Senator Waterman said one was requested. Joyce Inchauspe-Corson informed the committee that the fiscal note was ordered on 2-16-91. The Secretary of the Senate said it was highly unlikely that the Fiscal Note would be available before this hearing. As of today, it is still not available. Senator Beck asked Senator Waterman about the use of broad language. Is there any limit, so that it can't exceed \$5/hookup? He said it appears that these funds are being sent into a trust account, so we are not actually doing

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service rendered, we are going to collect a fee, into an account that could grow? Senator Waterman referred the question to Mr. Melstad. Mr. Melstad said the fees that the task force recommended was \$3/year as a maximum per connection, which is about 25 cents/month, and that is what they plan to stick with and not exceed, but that is not in the legislation. Senator Beck asked if it could be put in the bill? Senator Waterman said this was the appropriation, the budget is based on these fees, so they can not exceed it because it is in the budget. Senator Beck disagreed with that. This money is going into a special revenue account. Even if they budgeted, if that revenue account begins to grow, if there is no problem putting a maximum of \$3/hook-up, they would satisfy their budget and us, why not put it in. Senator Waterman said she had no problem putting it in. Her concern is that this committee talks about not having to bring these things back to the Legislature for review all the time if the fees need to change. She did not know if this was something we want to put into the bill, and in the future years, when their budget needs to go up, they will need a bill to do this.

Senator Eck said the budget does reflect a spending authority based on these fees? Senator Waterman said correct. Senator Eck said if every two years as they review this kind of authority, the amount of fees would be a part of it. Senator Waterman said she thought next Legislative session, if the fund is building up, then the Legislative process would reduce it or the committee would have the opportunity to review this and force them to use this money.

Senator Bengtson said she supposed that would be the DHES budget under the Water Quality Bureau and all that money is appropriated. The money they spend in fees, whether it goes out in grants or training, etc., that would all be reviewed in the Appropriations process. Those fees would also be reviewed. Senator Waterman said these fees were discussed, and they also discussed the other concern. Two issues have been discussed. One is how the fees will be divided up between large v.s. small communities. And #2 will these funds be general fund dollars?

Senator Eck asked Senator Waterman, what is happening in the Subcommittee, and DHES in looking at what is required in reviewing the subdivision because in the past it has always been true, that the department has omitted that they have not asked for anywhere near what they needed to the job. They have not reviewed, haven't monitored, they are having terrible problems with pollution in the Flathead. Are you satisfied that they have asked and are getting the FTEs that they need to do the job? Senator Waterman said one of the Subcommittee concerns focused on

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this issue. It is very apparent that the review process is inadequate, and lagging behind. That's why the additional FTE was approved in hopes there could be time cut from the process of going through this review process. There are concerns that expressed that the subdivision review process is taking too long. The other issue, DHES omitted, that they do not have adequate staff to go out and see if the recommendations for the water system from the review process were carried through. Someone filed a complaint about polluted water, did they find out the water system had not been done according to plan. We believe we have addressed that need with the additional FTE. We discussed the issue of fees versus general fund dollars.

Senator Eck asked the same question about subdivisions of Rick Duncan, Subdivision Program Director, WQB. Senator Eck asked if one new FTE will make a dent in the backlog that he has? Mr. Duncan said he was hoping it would. Right now, two people are reviewing all the subdivisions in the state of Montana. The economic conditions of the state vary year to year, and biennium to biennium. Some years have less minor and major subdivisions for review. This year to date, there are already more reviews than for the entire year two years ago for minor subdivisions. Some years things go quickly. The last couple of years, major subdivisions are pushing the 60 day limit because of the backlog.

Senator Hammond asked how many minor subdivisions/year? Mr. Duncan said last year there were approximately 840, and a minor subdivision is anything with 5 or less lots. Many are two lots. The year before was about 670 minor. This year we are already at 600 this fiscal year. Senator Hammond asked what they had to do for work in a minor subdivision? Mr. Duncan said the primary concerns are water supply, sewage disposal, and solid waste disposal. They also have concerns under the Montana Environmental Policy Act (MEPA). We have been recently informed that some form of an EIS for all subdivisions stating briefly the concerns of the MEPA have been addressed. Senator Hammond said Mr. Duncan is suppose to do this, but he wanted a picture of how much work this really entails? Mr. Duncan said the work varies. There are a number of local county health departments that are contracted with DHES to perform review of minor subdivisions. Each of those types of systems, most counties contract to review the basic well and septic system or the services through a public supply. These are fairly simple. Senator Hammond said the counties take care of this? Mr. Duncan said yes, and DHES has oversight responsibilities. He added, that in the major subdivision that handled all aspects of the review. Senator Hammond asked what was a major? Mr. Duncan said 6 lots or more is a major subdivision.

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Senator Hammond questioned whether the counties don't take on 6 or more lots? Mr. Hammond said yes. Senator Hammond said he knew of a subdivision that was done just by correspondence, and the DHES never appeared on the scene. The county did 118 lots. Mr. Duncan said it was certainly possible with only two persons reviewing, this imposition hopefully free everyone up to be able to out and look at the sites of major controversial subdivisions. Senator Hammond asked about the cap on lots now would be removed? Mr Duncan said the level of funding for this year from general fund monies is about \$130,000. The receipts last year were only \$80,000. A portion of the receipts goes into general fund and a portion was reimbursed to local governments for their review work. The \$130,000 provides for staffing of two FTE, an administrative assistant, assistants to the legal and administrative staff. We would like to raise or remove the cap on review fees to allow for an additional engineering position, so that those subdivisions requiring more technical review would have a person available for that review. It would also allow for field work to check that water systems that require engineering approval, have been put in according to the plans and specifications of DHES.

Senator Eck asked whether he was familiar with other states' review process, staffing, and time constraints and how Montana stands as far as efficiency? Mr. Duncan said his information is from the Subdivision Task Force done several years ago, and the Montana Subdivision Act compared favorably with other states with similar populations. Senator Iverson was Chair of the EQC, and several experts from the state presented information to the task force.

Senator Thayer asked if this bill was only for new hook-ups? Mr. Duncan said no, that it would be charged to all hook-ups. Senator Thayer asked how penalties would affect Butte Water? Mr. Melstad answered that currently there are only small criminal penalties, and they would have to go to court to get court order for a compliance schedule. This bill would allow a fine of \$10,000/day to be assessed or \$1000/offense similar to what is available in water pollution control programs nation wide. Our public water supply program needs to be brought up to a level of were the water pollution control program is for enforcement.

Senator Harding asked what would be done in small communities having problems, what kind of financing could they get? Mr. Melstad said this legislation does not address financing. Financing could be sought from Community Development Block Grants or the State Water Development. He added that Senator Max Baucus has proposed legislation to fund rural water systems with federal

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funds. Senator Harding asked about penalties? Mr. Melstad said that penalties are unfortunate part of any regulatory program, and without penalties, regulations can not be enforced. Primacy is in this bill because we are not enforcing regulations. Senator Harding said she has heard testimony that there is not enough money to fund all of those systems, so where do small communities go? Mr. Melstad said those communities need to determine what their water is worth. Some places pay less for water than cable T.V.

Senator Thayer asked if the task force considered the millions of dollars needed to bring small communities up to standards? Mr Melstad said again, they are a regulatory agency. The task force was formed to address whether primacy should be kept in the state for enforcement of the drinking water act. If primacy is lost by the state, EPA will enforce the same rules and regulations with a lot more authority than we have. So in terms of enforcement, this legislation is not worse for Montana public water supplies, it tends to keep it in the state. Financing those systems and helping small communities is another matter. Unfortunate actions are not meant to be taken because they do not comply, and that is where assistance from the state can help those communities along the way.

Senator Hammond asked if he could see a community that knows its water is inadequate and they aren't trying to improve it? Mr. Melstad said some large communities are just put off because they need large infrastructure improvements. It is a matter of councils and boards postponing those huge rate increases, so they are the dirty ones that raise the rates. The Big Sky Dividend addresses these needs for infrastructure work.

Closing by Sponsor: Senator Waterman closed by saying that she thought it was important that the federal regulations are coming and we need to retain primacy in enforcement. We can do it now, or let the Feds do it for us. It is critical to this now. The Federal regulations allows communities grace periods to come into compliance, and it is important to work towards this. The bottom line is we need to do it, the matter is who will enforce the regulations that will force Montana water systems to comply. This is a very important bill, and she urged a Do Pass on SB-407.

HEARING ON SB-99

Presentation and Opening Statement by Sponsor: Senator John Harp, District 4, said this bill was requested by the EQC. This is one of the reasons we have public hearings to determine exactly what the law states concerning public and private concerning solid waste management system. If you look at 75-10-102, Subsection c, it states that private industry is to be utilized to the maximum extent in planning, designing, managing, structuring, operating, manufacturing, and marketing functions relating to solid waste management system. The next section says local government shall retain the primary responsibility for adequate solid waste management. So there is an ambiguous state law as far as preference to either public or private. This bill offers at least one tool that would allow the DHES to set up a procedure pursuant to 75-10-104. The DHES would look at both sectors to determine which would be able to deliver the service at the most reasonable cost and meet the regulations. Some current problems: this existing statute is causing great difficulty with some private contractors on a new landfill right here in Lewis and Clark County. We are only seeing the tip of the iceberg. With Subtitle d regulations coming into affect in the next couple of years, there will be an absolute increase in the new landfills in the state of Montana. This bill only deals with new landfills, not current ones. The private sector will tell you today about the possible better service they can provide, the tax base they support, the private sector's ability to offer something that we would not have now. Another legal aspect is whether local governments are liable, and the difference if the private sector was involved is a concern. Senator Harp said at some point they would like to discuss the Fiscal Note. He signed it, but he has some real problems with it.

Proponents' Testimony: Representative Bob Gilbert, District 22, chaired the EQC, and said he was pleased to have this bill before the committee. He said they spent a lot of time on all these solid waste issues and this is one of them. Several committee members have served on the EQC, so they should be helpful in the Executive session on this bill. We are not saying that counties can't do it, but we're saying there should be a chance for the private sector to have input and bid on the service. This is not working at this time. We want this to be clarified, so in every county in the state it will be done the same, not by the whims of the county commissioners. This may not sound nice, but it happens. Sometimes we spend too much time worrying about the courthouse, and not enough time worrying about the people in the

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little house on the street. These are the people that we need to be concerned about. There are questions about liability. If the county has a landfill, under current interpretations of the law, the county is not liable beyond actual cost and maybe not even those. A private business is. The citizens are given a little comfort knowing that if they are damaged they can collect. Several areas need to be addressed. His county is looking at a new landfill. What happened, the county made an effort to purchase a ranch prior to announcing it would be a landfill. When the public found out they went crazy. These things are happening. These procedures will help make sure money is not thrown away, and citizens will have the opportunity to input up front instead of after the fact. Privatization doesn't stand a chance, even if it could be cheaper and more efficient, nor does the public have a chance. The money is already gone. In his counties case, the county gave up their earnest money of \$15,000 in tax dollars, and went to ground zero. With proper procedures to handle these sorts of things this would not happen. Taxpayers' money would not be thrown away. He suggested the committee listen closely to the proponents and opponents, but he felt this was a good bill.

Chris Kaufman, MEIC, does not support private waste management nor public waste management. MEIC supports this bill because it is environmentally sound waste management. We support an integrated waste management approach. This bill creates a balance between the public and private sector, a partnership needed in this state. We have been working with a group of citizens concerned about citing of a landfill in their neighborhood. It has been frustrating process for them, and unpleasant for her. They would have liked to have had some confidence that their local government was evaluating all the options they had in a rational kind of process. This bill sets up that process, so that citizens can count on a process being done. They can know that the local government will be looking at all the options. Some local citizens heard that a private company would be interested in doing this, and they were going to select another site. So naturally the citizens were interested. Unfortunately, their proposal was very late in the local government process, almost the 11th hour. This bill would set up a procedure for local government to follow for the public and private sector. This would broaden the playing field. We are much more concerned about the setting up of the procedure than for the private preference.

Frank Crowley, Montana Solid Waste Contractors, Inc., supported this bill (Exhibit #39).

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James Leiter, Landfill Manager, Browning-Ferris Industries of Montana, Inc., supported this bill (Exhibit #27, 27A).

Bob Fagliano, Southwest Area Director, Montana Solid Waste Contractors, said he supports this bill, and he hopes the net affect of this bill is to nudge the public-private partnership to take ground in the state of Montana. The tax base in the state of Montana is a shrinking entity. It is a three-legged stool: #1 & #2 is cities and counties needing the tax dollars generated, #3 the schools and education for the state of Montana.

What this bill will do is help develop the opportunity to expand the tax base in the state of Montana by allowing the private sector to put in a bid for the development and operation of solid waste systems in the state.

Representative Ben Cohen, District 3, where he operates Park County Refuse, a small private garbage collection service, providing commercial service in the city, residential and commercial outside the city. He would like to provide residential service in the city, but the one time the city gave him the opportunity to bid against their own proposal, the man who analyzed the bids was the same person making a bid, so he chose his own bid over mine. Of course part of the bid was no increase in 5 years, and frivolously the city arbitrarily increased their rates by about 22%. We do need something to set up a fair and arbitrary way of determining which bid is the correct and proper bid. More recently, Mr. Kelly, Mr. Holt, and himself have been trying to work on a refuse disposal district to get a recycling community wide reduction facility established. We have had no success working with the refuse disposal district. They just put us off, and off, and off. We think the folks in our community want to have a recycling program. We want to do it, but the refuse disposal district refuses to work with us.

Walt Conelmn, Attorney, Bozeman, MT, who has had the unique opportunity of representing a city in Wyoming for eight years, and he has worked in the private sector representing local garbage companies. In all his years in public service, he has found that private sectors, government studies here and in Canada support this, are more efficient in solid waste disposal and safety of handling it. People in the private industry of solid waste only do solid waste. They put their best minds, because all their money rides on the safe, efficient, disposal of solid waste. In the local governments in small rural, like most are in Montana, you tend to have people handling solid waste that have more than one responsibility. Public works directors are dealing with traffic problems, design of roads, public works facilities, many jobs, and they can not be an expert in all these areas. It

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simply is impossible. In the private sector, all the impetus of that business is geared towards the safe and efficient disposal of solid waste. He pointed out, that in Montana, private industry needs to have a chance. Since he has been in Montana a couple of things have become readily clear: private industry is looked upon as something that we have to avoid when dealing with public works issues, he's doesn't know why, its just the attitude. Many opportunities for savings in tax dollars are being lost because of this attitude. This bill will help bring the private sector into the private sector, so good decisions can be made, based on the real facts. He supports the bill.

Doug Gilbert, Montana Recycling, Helena, phoned C. Erickson to give his support to SB-99. There is a shrinking tax, and the public competing against the private sector is wrong. The public should not provide services if the services are more expensive to the taxpayer than those provided by the private sector. He said there are super-mini fund sites, operated by local governments in Butte, Bozeman, Helena.

Opponents' Testimony: Neva Hasanin, Northern Plains Resource Council, opposes this bill because the state should not force local government to hire private industry (Exhibit #28, #29).

Dave Pruitt, Montana Association of Counties Solid Waste Task, opposed SB-99 because of the private preference for solid waste management (Exhibit #30)

Pete Frazier, Director Environmental Health, City-County Health Department in Cascade County, opposed this bill (Exhibit #31).

Erling Tufte, Director, Public Works City of Great Falls, opposed SB-99 (Exhibit #32).

Carlo Cieri, Park County Commissioner, opposed this bill. He worked on the committee that helped bring about some of these bills. He knows we need change in solid waste management. He did not agree with anything that would privatize waste management over public. He said he agreed with Commissioner Dave Pruitt and the MACo statements of opposition.

Senator "Doc" Rea, District 38, opposed this bill. This is in all good intent, it has been well written, up to a point. Page 2, line 25, through Page 3, line 3, should not mandate our local governments to be dope pressers. He felt that testimony heard proves that local governments are very adamant that they are able to make these judgements. We should not try to tell these people

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that they have to give preference to private industry. He had worked locally on a landfill in his area, and did not see any objections to this. He suggested that the controversy could be amended by removing this preference.

Mike Shea, Assistant Public Works Director, Butte-Silver Bow, did not want to repeat the remarks made already. A couple of reasons Butte-Silver Bow does not support SB-99 because #1 it does not recognize the ability of local governments to manage their own affairs relative to solid waste management, and #2 we are absolutely opposed to the funding mechanism that would require local governments to pay for. So for these reasons we oppose SB-99.

Alec Hanson, MLCT, opposed this forced abdication of responsibility of local government to manage a critical and very cost sensitive service. (Exhibit #33). Mr. Hanson said that SB-154 rewrites liability laws pertaining to local governments. And another bill specifically addresses the exclusion for environmental liability.

Dick Nesbit, City of Helena, opposed this bill (Exhibit #39).

Bruce McCandles, Billings, added one quick observation. The standard normal for aborting contracts for services and facilities and equipment is usually to the low bidder. This bill would propose that the cities to not have to award it to the low bidder. It scares him to death to have to award a contract for disposal and collection of garbage even to the low bidder. This bill would give an even higher preference to private industry than the low bidder.

Questions From Committee Members:

Senator Thayer asked Senator Harp about the drafting of this bill. The testimony given stated that the committee recommended not to submit this bill, and then that this bill was part of the 11 bills, does it pertain to those? Senator Harp said it was 1 of 11 bills. There was an advisory group that met separately from the EQC, and they discussed that this piece of legislation was not going to be introduced at this time. Then at the last meeting of the EQC, the EQC recommended that this bill be part of the 11 bill package.

Senator Vaughn asked Senator Harp if there would be any regulations and control over raising the rates? Is there a mechanism to control that in private industry? Senator Harp said there is no control presently in local governments. They can

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raise rates anytime they want, so it would be no different, so the PSC would not be involved with the rates.

Senator Hammond asked Tony Grover, DHES, about the Fiscal Note? Mr. Grover said in defense of the Fiscal Note, that this bill will have costs to develop rules and procedure and then it will cost to enforce the rules afterwards. He said he was not an expert on cost-benefit ratios, nor is anyone in the DHES. He estimated about \$20,000 would be required to hire a financial consultant to help them come up with cost-benefit ratios and things like this. We are ignorant and incompetent in that area. It would be great if we could do everything, but we can't. So this lowly, grade 15, step 2, person that would implement this program, which is not entry level salary, that this person would not be naive and they would do a good job.

Senator Waterman said she knew Helena has been dealing with this. What does this do to the quagmire that Helena is in on this whole thing? Will we have to go back to ground zero? Secondly, she asked about the liability issue, because people in Helena had severe damage and were denied the right to sue because the county was not liable for the landfill? Senator Waterman said Alec Hanson talked about the changes in the law, is there a bill to allow lawsuits against cities and counties for environmental damage because of landfills? Mr. Hanson stated that there are 2 bills. SB-154, which is a rewrite of legislative immunity statute, which under the provisions of this SB-154, it does not appear to grant immunity for environmental damages. HB-691 provides a specific exclusion, it specifically includes environmental damages as damages that a municipal and county government would be liable for. SB-154 passed on a voice vote yesterday. He assumed that it has passed the Senate and is on its way to the House.

Closing by Sponsor: Senator Harp wanted to respond to Senator Vaughn's question about actual rate regulations. Local governments have the ability to raise their rates without any regulatory body above them, but the private sector that has a contract has to have approval, so they are regulated by the entity they have the contract with. Senator Beck asked who the approval was from? Senator Harp said the local city Assessor. He also responded to NPRC who made this sound like a BFI and WMI bill. Right here in this room there are proponents from Glasgow, Ravalli County, Whitefish, Columbia Falls, Kalispell, Helena, and Libby. Between all of these gentlemen, they would not amount to .1% of BFI's interest, even in the state of Montana. But they are interested in the proposal because private business should

have the opportunity to provide the service and be treated fairly. The other thing that Mr. Hanson stated about the grade 15, step 2 person who will put all these regulations into affect. We all know that the Administrative Rules Procedure and the procedures for hearings, this bill will be heard through the DHES. All the procedures and hearings will be brought into full light, and not one single individual will be writing and reviewing this procedure. Let's clear the record. The amount of revenue of \$90,000, Tony Grover admitted he didn't know. This is his best shot, and he is doing the best he can on that estimate. It has nothing to do with general fund dollars. All we are asking for in this bill, and he was not sure why local governments are so concerned, is the opportunity for a public hearing just like this today. Let's talk about it. Let's hear who can provide the service at a reasonable cost. As we move to the sub d regulation, we will be faced with additional costs, and local governments are going to have trouble providing it. Senator Harp said he was surprised by local governments that he has worked with in the past concerning I-105, did not talk about being strapped for money. Here is the ability to let the private sector take care of some of the concerns as far as running certain entities in local government. With that, he closed.

HEARING ON SB-413

Presentation and Opening Statement by Sponsor: Senator Eve Franklin, District 17, said that this piece of legislation was asking that when municipal utilities raise their rates that they be permitted to raise their rates annually as it correlates with the Consumer Price Index (CPI). The bill has been amended (Exhibit #34). This changes the title which asks for Cost of Living Increase, and in consultation it was decided the CPI was more appropriate scale to use. We are asking if a municipal utility increases their rates, that it may not annually be higher than the CPI put out by the PSC. This does not strip the municipal utility of their ability to raise rates, but it asks for some moderation, and something not arbitrary as the 12%. The history of this legislation began in 1981 with HB-765 did give municipalities the ability to raise rates at a 12% level. The rationale at the time was it did give flexibility, and it was felt that the PSC did not need to be involved in all rate cases. In response to that, the sense is that the economic trends of high inflation that HB-765 was based on have changed, and we can now make some other choices based on where current economics are. She said she would permit the people to speak to the particulars

of the bill. She said that Clyde Jarvis, PSC retired, wanted to be named as a supporter of this bill.

Proponents' Testimony: Bob Anderson, District 3, PSC, an area of 8 counties, said that while he was campaigning for office in Great Falls, he heard a lot of complaints about the impending rate increases that the city of Great Falls intended to file for water and sewer. The people were upset because they felt that the city had neglected to pay adequate management attention to the systems. The 12% exemption was used several years in a row, but it wasn't enough and they were falling behind on the capital improvements. They now have an application pending before the PSC. He was at the city commission meeting where they approved the submission of the application to the PSC. It was just a clear sense of relief from the city administration to get it off their agenda and onto the PSC's agenda. It is a difficult thing when we speak of rates. This is about the accountability which you will hear about from the city folks later. When the bill was based in 1981 that relieved cities from filing for every rate increase, it was a time of high and increasing inflation. The principle motivation for the bill was so cities would not have to file frequent rate increases in that inflationary environment. So the exemption was set at 12% which was the approximate rate of inflation at the time. Shortly after, the rate of inflation dropped steadily and is now about 4-5% ever since. Because of that cities and towns don't file many rate cases anymore. In 1980 we had 72 cases, now we have 2 or 3 per year. The important thing is that the 2 or 3 a year that we get are big capital improvement cases. They are the cases where a city hasn't kept up with its capital improvements, so they have to come to the PSC for a big rate shock. They pass the buck from their own accountability system to the PSC. What is missing in this system, is that the PSC no longer regulates for the ordinary monopoly type abuses that cities assess just as well as utilities. We don't see some of the anti-trust and monopoly behaviors that they did. This was the real reason that the PSC got into this. For these reasons, the PSC voted unanimously to support this legislation. It would impact the PSC with a greater case load. Their utility division is over extended at this point, they would have to add staff. The Fiscal Note is being submitted to testify that 1 1/2 FTEs would be added to handle the extra cases. He suggested a couple of amendments. The CPI is not the best index to use. A better index is the Engineering News Record Index because it deals with construction activity. We also feel that a little leeway be offered to the municipalities. There are occurrences that are beyond their control like the dates of negotiation of labor contracts, rate

SENATE LOCAL GOVERNMENT COMMITTEE

February 19, 1991

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affects due to some body requirements, so even well managed utilities could exceed the inflation rate in a given year. We suggest that begging it to the inflation rate, but giving them a little leeway by adding to it.

Allyn Christiaens, Vice Chairman, Montana People's Action, avidly support SB-413 (Exhibit #35). Great Falls' situation is why they got involved with this bill.

Montana People's Action, Billings, faxed a letter of support (Exhibit #36).

Opponents' Testimony: Dick Nesbit, City of Helena, opposed this bill (Exhibit #40).

Alec Hanson, MLCT, opposed this bill. He said that the 1981 legislation was like his child. He presented a copy of the CPI to show it would not work. (Exhibit #37, #37A).

Erling Tufte, Director Public Works, Great Falls, said he strongly opposed this bill. These rate increases are through his office. He assured the committee that the city commission gets no particular pleasure out of raising water and sewer rates. The proposals the commission has made have been very well founded. The rates are inadequate to support the cost. There are inflationary pressures. You have heard about some of these things. There is an deteriorating infrastructure, and these are just some of the reasons for increased rates, and why they went to the PSC. Their have been comments about Great Falls' increases in the last couple of years. What you didn't hear was for 13 years the sewer rate had not been increased. That was during what was deemed a high inflationary period. So Great Falls is reacting to something that they got caught short on, and they are trying to be above board with it. He has suffered with these issues, as the Public Works Director. He has a lot of confidence that the mayor and the city commission are doing what has to be done to take care of some of the problems that come from the past. And to also plan for tomorrow. Will those plans for tomorrow become reality? We can't be sure, but when we are criticized for projections, we reply that we have to wait to see if these rate increase are needed. If they are not we won't be looking for the increases called for in the projections. He strongly opposed SB-413. He asked the committee to show some confidence that local government can deal with this issue as adequately as possible. If they can't, the 12% rule is in place, and anything beyond that goes to the PSC. This will cost them, by the time they finish the water-sewer rate cases a total staff

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SENATE LOCAL GOVERNMENT COMMITTEE

February 19, 1991

Page 33 of 34

time of \$250,000. Who pays that? The rate payers do, there is no place else to base the cost on. The more we have to go to the PSC, the more often we incur these types of cost. He does not want to do this.

Ray Wadsworth, Montana Rural Water Systems (MRWS), said that in 1981 when Alec Hanson was working with the MLCT, that the MRWS had its first coalition with them, and we helped get that bill through. We supported it because the PSC had a backlog at the time of 18-19 months. You could just about expect that if you had to put in a rate increase in your water system, that by the time you got it heard, it might be 18 months later. At that time in the '70's, inflation was rampant. That was the reason the 12% was chosen because it was an average. He assured the committee that working with the 450 systems in the MRWS, that their rate schedules range from \$2.50 at Two Dot to \$134/month on the north Havre district on the highline. MRWS probably has a better handle on rates in the state of Montana for working with the folks to put fair and equitable rate structure together than any other organization in the state of Montana. In working with these systems since 1981, he assured them that there is no water system in the state of Montana that is abusing this 12% law. We have systems that have had to put in the 12% 4 or 5 times, and they are still in the red. When you have a 400% increase in your power bill, a water system pumps its water 3-5 times to get it to the customers, then you can't adjust for that increase with a 12% increase in 3 or 4 years.

Questions From Committee Members:

Senator Thayer asked Mr. Christiaens if he was aware that there had been no increase in rates for 13 years? Mr. Christiaens said he knew that, but they are asking for a massive increase, and it will take most of people's social security. Senator Thayer asked if those low income people would be better off paying for lawsuits? Mr. Christiaens said the rates for covering suits would not be as high as the projected ones. Senator Thayer asked how he could testify and presume that the city will raise the rate 12% every year? Mr. Christiaens provided the committee with two more exhibits that he claimed supported his concerns (Exhibit #38, #38A).

Senator Eck asked Mr. Christiaens what the low income rate is now? He said it was approximately \$18/month.

Senator Thayer asked Erling Tufte to address these new exhibits. Mr. Tufte said that they were planning documents of lots of what if's for 10 years. These were scenarios of projections for

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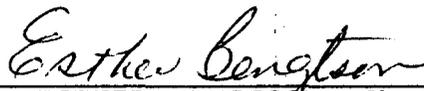
10 years.

Closing by Sponsor: Senator Franklin closed by chuckling that she did not know that she was threatening Alec Hanson's first born! She said she felt compelled by points from both sides. At the risk of sounding "pollyannyish" which hounds her, she said she does feel that people are working in municipalities to do a difficult job to manage their resources. Her sense is that the checks and balances that local government and the PSC have taking place between them is to protect the public. Recently a rate case was filed in which a local municipality filed papers and a very significant error was found. It was upwards of \$1.3 million dollars, and if that had not been caught by the checks and balance, perhaps this information would not have been corrected. We set up these systems to make the larger picture work for us. She trusted the committee would make a reasonable judgement based on the merits of the case made by each party.

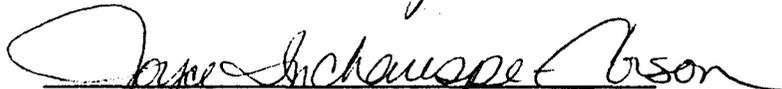
The committee decided that the 3 bills that they did Executive Action on today would be enough. The remaining bills will be acted on Thursday, February 21, 1991. Different members of the committee requested amendments be prepared for some of the bills heard today. C. Erickson will prepare those.

ADJOURNMENT

Adjournment At: 7:50 p.m.



ESTHER BENGTON, Chairman



JOYCE INCHAUSPE-CORSON, Secretary

EB/jic

DATE FEBRUARY 19, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
<i>Lee W. ...</i>	MT Solid Waste Cont	99	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Ray W. ...</i>	MT Rural Water Systems	407	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CARLO CIERI	PARK Co	99	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ERLING TUPTIS	405 CITY OF GF	405 99	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ed Butcher	Self	405 302	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ERLING TUPTIS	CITY OF GF	407	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
" "	" "	413	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
J.W. REINHARDT		302	<input type="checkbox"/>	<input checked="" type="checkbox"/>
David Pruitt	MABO & Gallatin Co	³⁰² 99	<input type="checkbox"/>	<input checked="" type="checkbox"/>
M.D. LAWRENCE	RANCHER	SB 99	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Karla ...	Banahan	SB 99	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Don Kandilas	City of A.F.	407	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Don Kandilas	" " "	413	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Pat Decker	West Yellowstone	302	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FRANK CROWLEY	MT. SOLID WASTE CONTRACTORS ASSOC	99	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tommy Butler	Mont. Dept of State Lands		<input type="checkbox"/>	<input type="checkbox"/>
Nora Hassanein	NPRC	SB 99	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Chris Kaufman	MERC	SB 99	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Richard Nisbet	City of Helena	SB 413	<input type="checkbox"/>	<input checked="" type="checkbox"/>
" "	" "	SB 99	<input type="checkbox"/>	<input checked="" type="checkbox"/>
" "	" "	SB 407	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kay Foster	Yellowstone County	SB 367	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bob Fogliano	Gallatin County	SB 99	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Duke ...	Gallatin County	SB 99	<input checked="" type="checkbox"/>	<input type="checkbox"/>
J. Peter ...	GALLATIN COUNTY	SB 99	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gary L. Stum	Rocky Per Spectres	SB 302	<input checked="" type="checkbox"/>	<input type="checkbox"/>

DATE FEBRUARY 19, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
WARD JACKSON	SELF	302		✓
Martin Barber	A. P. A.	302		✓
Matt Steingraber	A. P. A.	302		✓
Quinn Steingraber	A. P. A.	302		✓
Lucia L. Evans	SELF	302		✓
Kim Enkerud	MT Assn. State Grazing ^{Dist.}	302		✓
Allyn Christians	Montana People's Adm'n	413	✓	
Donald W. Jones	SELF	302		✓
STEVEN W. DANIELS	WEST YELLOWSTONE	305	✓	
Sanna Peterson	Idaho	99	✓	
TERRY KELLY	Kalispell	99	✓	
Alan Evans	MSGA - Self	302		✓
Walt Johnson				
Tony Cushman	MSWCA	99	✓	✓
CARLO CIERI	PARK CO	302		✓
Henry A. Hoge	Wes. Rural Mob. Assn.	99	✓	
SCOTT J. ORR	SIJUR SERVICES - MSWC	99	✓	
Ron Stevens	Public Land Access Assoc. Inc.	302	✓	
Tom Hardin	Teton Co.	302	✓	
Lewis S. Hamker	BOZEMAN - NWF	302	✓	
Alfred Carlson	Teton Co. Comm.	302	✓	
Arnold Hittel	Teton Co. Comm.	302	✓	
Pete Frazier	City-Co. Health WT FALLS	99		✓
" "	" "	407	✓	
Lynn Leucker	Council, West Yellowstone	305	✓	
Bill Hessel	West Yellowstone	305	✓	

DATE FEBRUARY 19, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Lorna Frank	Harm Bureau	SB302		X
CAROL MOSHER	MT. CATTLE WOMEN	SB302		X
KAY NORENBURG	WIFE			X
Wendy Swanson	Selk & Mont. Steel Graver	SB 302		X
Janet [unclear]	MSGA	"		X
Tom Johnson	Bulle/Solar Bond	S.B. 99		X
Mike Shyn	"	S.B. 99		X
Up [unclear]	MSGA	SB302	-	X
Ken John H. Anderson	[unclear]	SB305	L	
Gordon Morris	MIA Co	SB302	Amend	
Bob Gilbert	McWolgraves Grm	SB302		X
Gary L. Stucky	Montana Society of Engineers	SB407	✓	
Bob Stephens	Mr. Kevin Gomer	382		X
Gordon Morris	MIA Co	315	✓	
Betty Lund	MACK	334	✓	
Bonnie Ramey	MACK	334	L	
Tony Schaefer	Skyline Sports ^{Amend. Sports} men	334	✓	
Ray Wadsworth	MT Rural Water Systems	413		X
Rick Duncan	DHES - WATER QUALITY BUREAU	SB407	-	
Jim Melstad	DHES - Water Quality Bureau	SB407	X	
Gordon Morris	MIA Co	SB99		X
Jim [unclear]	BFI of Montana	SB99	X	
Gene Huntington	EPC	SB99		

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 2-19-91

52 LEGISLATIVE SESSION _____

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X		
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 2-19-91 Bill No. SB-405 Time _____

<u>NAME</u>	<u>YES</u>	<u>NO</u>
SENATOR BECK	X	
SENATOR BENGTON	X	
SENATOR ECK	X	
SENATOR HAMMOND	X	
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER	X	
SENATOR VAUGHN	X	
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTON
Chairman

Motion: Move to Table SB-405

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 2-19-91 Bill No. SB-440 Time _____

NAME	YES	NO
SENATOR BECK	X	
SENATOR BENGTON	X	
SENATOR ECK	X	
SENATOR HAMMOND	X	
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER	X	
SENATOR VAUGHN	X	
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTON
Chairman

Motion: move to Do Pass SB-440

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 2-19-91 Bill No. SB-367 Time _____

NAME	YES	NO
SENATOR BECK	X	
SENATOR BENGTON	X	
SENATOR ECK	X	
SENATOR HAMMOND	X	
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER	X	
SENATOR VAUGHN	X	
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTON
Chairman

Motion: move to do Pass

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 20, 1991

MR. PRESIDENT:

We, your committee on Local Government having had under consideration Senate Bill No. 367 (first reading copy -- white), respectfully report that Senate Bill No. 367 do pass.

Signed: *Esther G. Bengtson*
Esther G. Bengtson, Chairman

JA 2-20-91
Cmd. Coord.

Sec. of Senate

NOTICE OF COMMITTEE EXECUTIVE ACTION

(Do not use for actions resulting in report to floor).

To: Secretary of the Senate

Dated this 19th day of February, 1991.

Committee: SENATE LOCAL GOVERNMENT

Bill: SB-405

Action: MOVED TO TABLE SB-405

Signature

E. Bengtson

SB 2-20-91 7:45

**MONTANA
ASSOCIATION OF
COUNTIES**

2711 Airport Road
Helena, Montana 59601
(406) 442-5209
FAX (406) 442-5238

SB 302 AMENDMENTS
SENATOR BIANCHI, SPONSOR

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 1
DATE 2-19-91
BILL NO. SB-302

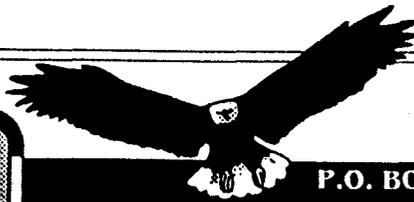
tive

SB-302

iru 16
Strike new language

tive

5. Page 2, line 25
Following: a
Insert: COUNTY
6. Page 2, line 25
Following: Primitive
Insert: COUNTY
Strike: public
7. Page 3, line 4
Following: Primitive
Insert: COUNTY
Strike: public
8. Page 4, line 2
Strike: Section 4 in its entirety



**PUBLIC LAND
ACCESS
ASSOCIATION
INC.**

P.O. BOX 3902 • Bozeman, Montana • 59772-3902
(406) 587-2736 or 586-7810

19 February 1991

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 2

DATE 2-19-91

BILL NO. SB-302

Montana State Senate:

I am Ron Stevens, President of the Public Land Access Association, Inc. (PLAAI) representing approximately 835 individual and 6,000 affiliate members, all public land users

The requirement for a primitive road designation may best be illustrated by some Gallatin County road statistics. On two occasions Gallatin County Road Superintendent, Sam Gianfrancisco, has publicly stated, "Gallatin County has not accepted any new county roads for 22 years." Since 1967 approximately 96 miles of county roads have been abandoned. In 1967 there were 985 miles of county roads. Currently there are 890.5. Concurrently, the Gallatin County population has continued to grow from 32,505 in 1970 to 42,865 in 1980, and to 50,310 in 1990. Thus, with a population increase of 55% Gallatin County has decreased transportation routes to service her taxpayers by 9.7%.

Lack of funding may limit the counties' ability to maintain an adequate, first class transportation system, but it should not be reason to abandon rights of way which remain adequate for foot, horse and trail vehicle use. Legislation establishing a primitive county road system will retain public access routes to our beautiful Big Sky country and may provide some budgetary relief.

The Public Land Access Association, Inc. strongly supports passage of SB302.

Respectfully submitted,


Ronald B. Stevens
President

- PRESIDENT**
Ronald B. Stevens
Colonel, USA, Ret.
Bozeman, MT
- VICE PRESIDENT**
Doug E. Daniels, P.E.
Belgrade, MT
- EXECUTIVE DIRECTOR**
Lewis E. Hawkes
Professional Wild Lands Mgr.
Bozeman, MT
- SECRETARY/TREASURER**
Stephanie Smith
Bozeman, MT
- DIRECTORS**
- Perry Nelson
Fish & Wildlife Mgr., Ret.
Bozeman, MT
- Paul F. Berg
Biologist, Ret.
Billings, MT
- Jerry Jackson
Real Estate Broker
Billings, MT
- Craig Staley
Sheridan, MT
- Arthur W. Van't Hul, P.E.
Professional Engineer &
Real Estate Broker
Bozeman, MT
- Vergil L. Lindsey
Forester, Ret. District Ranger
Ennis, MT
- Robert E. Olson
Ret. NP - BN Switchman
Livingston, MT

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of FEBRUARY, 1991.

Name: LOWIS E. HAWKES

Address: 16 CLONINGEA LANE

BOZEMAN, MT. 59705

Telephone Number: 587-2736

Representing whom?

MONTANA WILDLIFE FEDERATION

Appearing on which proposal?

SB 302

Do you: Support? Amend? Oppose?

Comments:

RECREATION ON PUBLIC LANDS IN MONTANA
IS ONE OF THE GREATEST LONG TERM
ECONOMIC BENEFITS AVAILABLE TO THE
STATE OF MONTANA.

ADUQUATE ACCESS TO STATE AND FEDERAL
LANDS IS A PREREQUISITE TO CAPTURING
THESE MAXIMUM ECONOMIC BENEFITS FOR
ALL MONTANANS. WE SUPPORT SB 302
AS A NECESSARY STEP TOWARDS CREATING
MAXIMUM GOOD ECONOMIC RECREATIONAL RETURNS.

WE SUGGEST SB 302 BE AMENDED ON
LINE 1 SECOND PAGE TO READ: "COUNTY ROAD MAPS
MUST BE PREPARED IN DIGITIZING"

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

TESTIMONY

SENATE LOCAL GOVERNMENT COMMITTEE

TUESDAY, FEBRUARY 19, 1991

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO COUNTY ROADS

GOOD AFTERNOON MR. CHAIRMAN AND COMMITTEE MEMBERS. FOR THE RECORD, MY NAME IS ALAN EVANS. I AM RECENTLY RETIRED FROM BLM WHERE I SERVED AS ACCESS POLICY SPECIALIST FOR BLM IN MONTANA AND THE DAKOTAS. I AM CURRENTLY VICE CHAIRMAN OF THE PRIVATE LANDS COMMITTEE FOR THE MONTANA STOCKGROWERS ASSOCIATION. I OPPOSE SENATE BILL 302 FOR THE FOLLOWING REASONS:

- THE BILL'S PROVISION FOR PRE-EMINENCE FOR FEDERAL AND STATE AGENCIES IS WRONG. IT ATTEMPTS TO EXTEND THE AGGRESSIVE MOVEMENT BY ADVOCATES OF THE PUBLIC TRUST DOCTRINE. CONGRESSMAN RON MARLENEE, LAST SATURDAY, ANNOUNCED HE RECENTLY COMPLETED A TALLY OF ACREAGE IN MONTANA REVERTED TO PUBLIC OWNERSHIP OR LOCKED UP DURING THE PAST DECADE. IT NOW EXCEEDS 19 MILLION ACRES OR 20% OF MONTANA. THIS DOESN'T INCLUDE THE US FOREST SERVICE, NATIONAL PARK SERVICE OR OTHER PUBLIC LAND ALREADY SET ASIDE. THAT COMPRISES ANOTHER 20 - 30 MILLION ACRES.

ACCESS IS ONE OF THE PUBLIC TRUST DOCTRINES KEY OBJECTIVES. MONTANA HAS GOT TO RETAIN CONTROL OF ITS OWN DESTINY. COUNTY COMMISSIONERS SHOULD DECIDE COUNTY ROAD MATTERS.

- THE ATTORNEY GENERAL NOW DEFINES COUNTY ROADS, BASED ON

STATUTE, AS THOSE DEDICATED BY ACTION OF THE COUNTY COMMISSIONERS. THIS BILL WOULD EXPAND THIS DEFINITION TO INVOLVE COMMON LAW DEDICATION, PRESCRIPTION AND LORD KNOWS WHAT ELSE. IT SEEMS TO IGNORE RIGHTS OF PROPERTY OWNERS GUARANTEED BY THE FIFTH AMENDMENT.

IF THE FEDERAL GOVERNMENT OR STATE GOVERNMENT NEEDS ACCESS, THEY SHOULD COME TO THE TABLE WITH ALL FREEHOLDERS AND MAKE THEIR CASE. THIS CURRENT LAW WORKS. PLEASE DON'T CHANGE IT. REMEMBER, AS A LAST RESORT, GOVERNMENT MAY EXERCISE EMINENT DOMAIN WHERE THE JUSTIFICATION EXISTS. SO THE PUBLIC INTEREST IS ALREADY INSURED IN SEVERAL WAYS.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of Feb, 1991.

Name: Alan D. Evans

Address: 4300 Hwy 87 So.
Roundup, MT 59072

Telephone Number: 406 323-2888

Representing whom?
MT. Stockgrowers

Appearing on which proposal?
SB 302

Do you: Support? Amend? Oppose?

Comments:
See testimony handed in.

TESTIMONY OF WARD SWANSER IN OPPOSITION TO SB 302

My name is Ward Swanser, an attorney with the firm of Moulton, Bellingham, Longo & Mather, of Billings, Montana, a member of the Montana Stockgrowers Association, and I hereby oppose Senate Bill 302 for the following reasons:

IT MISTATES OR IS IN VIOLATION OF EXISTING LAW

Senate Bill 302 adds onto the definition of what is a county road, many of which roads may have been classified as private road, trails or paths.

To create a county road, you had to have an actual dedication to the county for public use and their acceptance. The county does not want to take on the cost of maintaining or the liability concerning many roads. The county also wants certain improvements to be installed before it will accept certain roads. Senate Bill 302 ignores this criteria and procedure on how a county road is created and dumps into that classification any road that was created by petition; common law dedication; prescription; in accordance with 43 USC 912 -- whatever that is -- and primitive public road.

By this definition, many roads which were never meant to be public may now be classified as a county road. This bill ignores the legal ramifications and issues arising between adjoining neighbors as to whether or not they have a county road, an easement, or a right to cross adjoining lands created by prescriptive use, etc., and other real property issues. The law books are full of cases concerning disputes between adjoining landowners with regard to roads, rights of way, easements, prescriptive easements, etc. This bill purports to lump those all together as county roads when in fact they may not be.

THE ATTEMPT TO MAKE THE COUNTY OFFER COUNTY ROADS TO STATE OR FEDERAL AGENCIES IS BOTH UNINTELLIGIBLE AND UNREALISTIC

The new law provides that any road which has the potential to provide access to state or

federal land or water shall be offered to the agency responsible for the management of that land or water.

This reminds me of the old saying that all roads lead to Rome. In the same manner, I suggest that all roads either lead to water or to state or federal land.

Thus, in every circumstance a county would have to go through the formality of offering the road to a state or federal agency, not knowing for sure which, and never knowing if in fact it complied with the statute. This would put a cloud on each and every attempted abandonment to come before the commissioners.

THE EXISTING PROCESS WORKS WELL

Under the existing process, those people who are actually interested and concerned are provided an opportunity for hearing and their needs and wishes are considered. All parties who use county roads for access to and from their property must be given notice and their consent must be obtained or if not, the road in all probability would remain open.

If the state or federal agency wishes to acquire a right of way, it should do so by paying just compensation for the same. Just because a road exists does not mean that adjoining owners do not have a vested right in that road, nor does it mean that the road is a county road. Upon abandonment, the ones who dedicated it should be the ones entitled to receive it back.

WHO WOULD PROVIDE MAINTENANCE FOR THE ABANDONED ROADS?

No provision is made as to who or how the abandoned road would be maintained. For the aforementioned reasons, I oppose Senate Bill 302.



P. O. Box 1679
Helena, Montana 59624
(406) 442-5420

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 6

DATE 2-19-91

BILL NO. SB-302

NAME Carol Mosher BILL NO. SB 302

ADDRESS Box 1679, Helena, MT. 59624 DATE 2-19-91

WHOM DO YOU REPRESENT Montana CattleWomen

SUPPORT _____ OPPOSE XXXXXX AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The members of our organization strongly oppose SB 302 because we think parts of it may be unconstitutional in its "TAKINGS" without any just compensation.

Many roads of various kinds in the different areas of the state were put there in the first place by easements and/or agreements of some sort with adjoining landowners. In many instances the land owner continues to pay the taxes to the center of the road, or all of the right of way if a person owns land on both sides of that road. When these types of roads are abandoned, then in those cases, the land should be put back in the possession of the adjoining landowner.

In our rural areas, we land owners are usually very co-operative with our county road crews. Those people are members of our close-knit communities and we all depend upon each other for vital services. I can site you instances where the county commissioners and/or road bosses have worked with us in shaving corners or hills in order to improve the safety for our school buses. There are also many instances where by the landowner allowing changes whereby corners are cut off here and there that we can halp save the county thousands of dollars in maintenance.

Agriculture has always recognized the importance of "farm-to-market" roads, so have known the benefits in co-operating with efforts to improve them.

The state and federal agencies who have land in these areas are not now denied entry. In our leases with those agencies, arrangements are perfectly clear to us that those people can get on those lands for the proper administration of them, so this is not a problem.

If you pass this bill, you will risk the good will of the many, many landowners in this state who are the very ones that government personnel will be having to deal with in the years ahead.

We urge your understanding and ask that you vote NO on SB 302.

Thank you.

APA

AGRICULTURAL PRESERVATION ASSOCIATION

XX

Box 65, Willow Creek, MT (406)285-6920

February 19, 1991

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 7

DATE 2-19-91

BILL NO. SB-302

Chairman and Members
Senate Local Government Committee
Room 405, Capitol Building
Helena, Montana 59620

Re: SB-302, Generally Revise
Laws Relating to County
Roads

Ladies and Gentlemen:

As you know county roads are not county property but only an easement given by landowners to provide a road to get to town and schools. This easement does not deed the property to the county and taxes are still paid by the landowner. When the county takes on such a road, it must be maintained by the county.

When a road is declared abandoned by the county, the land reverts to the landowner because the land is still his because it was never deeded only loaned.

We oppose this proposed law and request you do not pass this bill.

Sincerely yours,

Walter A. Steingruber

Walter A. Steingruber, President

Testimony - SB 302

February 19, 1991

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 8

DATE 2-19-91

BILL NO. SB-302

For the Record I am Ed Butcher - Winifred, Mont. I own a ~~large~~ ranch in Northern Fergus County with no public roads through my property.

There are isolated tracts of BLM Land scattered through it plus one school section in the middle which is unfenced and 3 miles from the nearest public road.

Under this bill all of my cattle feeding trails would fall under the primitive road designation and would completely remove my constitutional right to manage my agricultural business.

Who will compensate me for the acquisition of the Land I have paid taxes on for years and what happens when liability issues arise? I must be absolved of all liability when recreationists force their way upon my property.

As I change pastures use from one year to the next - I also transverse the property from different locations as the use changes. Every time I change a trail under this proposed legislation, I will have a new "primitive trail."

Gentlemen & ladies, I believe this unrealistic effort to gain public access is simply eroding the few rights we have left to protect private property usage. If some specific parcel of public land is deemed public interest then the right away should be purchased and maintained through existing procedures. We have in place workable procedures for road abandonment and do not need to add more federal & state involvement in the process which is addressed locally.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of Feb, 1991.

Name: Walter W Johnson

Address: Belt - MT

Telephone Number: 738 - 4472

Representing whom?
MSGH Montana Stockgrowers

Appearing on which proposal?
Senate Bill 302

Do you: Support? Amend? Oppose?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

~~LOSS OF PRIVATE AREAS~~

LOSS OF INCOME TO MARGINAL RANCHES

WILL TAKE THE ROADS, TAKE AWAY THEIR INCOME

THEY'LL BE FORCED TO GATE FENCE THEIR HOME FARM "WINTER GATE RANGE" IN AN

ATTEMPT TO SAVE THEIR RANCHING FUTURE
TO WORK YET SUBDIVIDE THEIR SUMMER RANGE

ARE YOU GOING TO STOP PEOPLE FROM USING THESE ROADS DURING ELK CALVING SEASON

LOSS OF "QUIET AREA"

PERSONALLY I HATE ELK, THEY'RE A NOXIOUS WEED

BUT I HATE EVEN WORSE PEOPLE WHO CHASE THE

CALVES WITH THEIR MOTORCYCLES

ACCESS TO STATE LANDS AND WATER

IS THIS A STATE LANDS ~~UNDER~~ ^{ACCESS} BILL, BY MEANS OF

ROADS THAT CROSS CREEKS

WHAT ABOUT OLD UNUSED COUNTY ROADS THAT

DEAD ENDED ON A STATE SECTION, HAVEN'T BEEN USED FOR FIFTY YEARS?

ROAD WHERE BLM & FOREST SERVICE ARE CLOSED ABOVE THE DEEDED GROUND AND OTHER ACCESS IS AVAILABLE LESS THAN 2 MILES AWAY

COUNTY ROAD UNDER CENTER PIVOT AND STATE SECTION LEASED TO SOMEBODY ELSE



PROPERTY BOUNDARY BETWEEN RANCHER A & B

WIDOW B DOESN'T EVEN KNOW THAT THERE IS AN OLD COUNTY ROAD UNDER HER CENTER PIVOT, IS SHE GOING TO HAVE TO MOVE IT, GO OUT OF BUSINESS

ROAD HUNTERS

I SPEND TOO MUCH TIME IN BARS, I KNOW OF BLM ^{LAND} THAT HAS ACCESS, GOOD GRAVEL ROAD

BUT HUNTERS HAVE REQUESTED TO MADISON CO. COMMISSIONER TO OPEN ANOTHER ROAD, THAT IS PRIMITIVE AND ONLY CROSSES PRIVATE LAND

IT IS NOT A SHORT CUT, ANDS ENDS THE SAME PLACE AS THE GRAVEL ROAD

WHY DO THEY WANT THAT ROAD OPEN?

Show me a Hunter that can drive thru private property and not shot a 8 point bull all that less than 50 yards from the public road and not look around to see if his watch is and all that

SCRIPT FOR HEARING

EXHIBIT NO. 10DATE 2-19-91

HEARING - AMBULANCE DISTRICT

BILL NO. SB-305

SB # 305

Greetings to Chair, Committee from Mayor

Background:

West Yellowstone is in the ambulance business where most small rural communities depend on volunteer ambulance services.

We realize we are not required under the law to provide this service, however, we have many people travel through our town and we are located in a very remote area as far as services are concerned. We pay for our remoteness. Example: Town copy machine, we pay a service man approximately \$200.00 to come to West to replace a .78 cent part because of our remoteness. The nearest hospital to West Yellowstone is 91 miles one way.

VOLUNTEERS in most communities can expect to put in 1 or 2 hours when they go out on a call. Our volunteers need to expect to put in 4 1/2 to 5 hours a call. We believe that is why we ended up in the ambulance service in West Yellowstone, with two paid employees.

Our reason for wanting a rural ambulance district is so that we can ask the people who live outside the town limits to help pay for the service provided. As it stands right now, the people in West Yellowstone end up paying about \$20,000. a year (uncollected bills) for the privilege of providing this service. This of course is the age old problem of getting everyone who uses a service or who depends on a service to be available to share equally in the payment of those services. Our rural people are as remote as we are from medical services. When they call the ambulance they expect us to answer that call. As the situation stands now, we could be sued and we would loose if we didn't answer the call, and yet the people within the Town limits are the ones paying for the service.

We are in the process of enhancing our billing process and our collection process. We have just recently become a billing merchant with Mastercard-/Visa.

We would probably anticipate forming the district along the school district boundaries.

About two weeks about I visited with Jane Jelinski, President of the Gallatin County Commissioners and she said they most heartily support our efforts.

The law set up under 7-11-1101 through 7-11-1112 already spells out in detail how the process would work in establishing this multijurisdictional service district and all we are asking is that under 7-11-1102 be added letter (f) ambulance.

Chair Senator Bengaton and committee I thank you for your consideration in this matter.

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 11

DATE

BILL NO.

2-19-91

SB-305

Feb. 17, 1991

In support of SB 305

Senator Bengston, Committee
Thanks for opportunity

I am Ken DAVIS, ^{volunteer} Dir. of
W.Y. Ambulance Service.

Our town needs this
Amendment.

The reason we need this
bill are simple, the
people of West Yellowstone
are supporting AW
Ambulance service for
themselves and residents
in WY areas well in excess of
320 sq mi. outside of
the town limits in
Gallatin County.

- Outside of the town Proper
- There are a dozen subdiv.
 - 85 Summer homes in
The Gallatin National
Forest
 - 4 Forest Service Camp-
grounds
 - A large motel, numerous
guest ranches, the states
second largest KOA
 - 13,000 acre Hebgen Lake
 - All of these require
emergency health service
at one time or another

- 3 -

NONE of them presently
the Ambulance Service.

TOWN PEOPLE pay the
cost for running the
Service for Tourists &
Seasonal residents who
live out of town.

The TOWN gov't. is
doing all it can to help
collect on our service's
bills but income does
not keep pace with
expenses.

We have an aggressive
collection system we even
take mastercard

- 4 -

But payment for health care
is slow -

Few other rural ambul.
services in MONTANA are
responding to over 100
calls per year.

An average bill for an
Ambulance ride from WY
to a well equipped hospital
is, on average, \$600.

We run a good service.
We try to keep expenses low,
we have 2 hire responders
and approx. ¹⁵ ~~6~~ volunteers
The town Govt broke
down and bought a new
amb last year because
we

-5-

Ran the wheels off over and
it was no longer reliable -
The new one costs \$60,000
We need to replace another
older unit soon -

This bill will benefit
residents & visitors alike

It will spread costs over
a larger area keeping
costs to individual taxpayers
down.

It will help us continue
to provide a needed service,
when its needed, to residents
& visitors alike

7-34-101

EXHIBIT NO. 13 1046
DATE 2-19-91
BILL NO. SB-305

- 7-34-2162. Hearing on petition for dissolution — notice.
- 7-34-2163. Decision on dissolution petition.
- 7-34-2164. Effect of dissolution.

Part 22 — County Hospital Services

- 7-34-2201. Erection and management of county hospital.
- 7-34-2202. Hospital commission.
- 7-34-2203. Provision of care for indigent and nonindigent sick.
- 7-34-2204. Lease of county property for hospital purposes.

Part 23 — County Boarding and Nursing Homes for the Aged

- 7-34-2301. Construction and operation of county boarding or nursing home authorized.
- 7-34-2302. Nature of services provided.
- 7-34-2303. Lease of county property for boarding or nursing home.

Part 24 — Financing of County-Operated Hospitals and Nursing Homes

- 7-34-2401. Depletion allowance reserve fund authorized.
- 7-34-2402. Sources of money for depletion allowance reserve fund.
- 7-34-2403. Accumulation of reserve fund.
- 7-34-2404. Investment of reserve fund.
- 7-34-2405 through 7-34-2410 reserved.
- 7-34-2411. Hospital and nursing home bonds authorized.
- 7-34-2412. Applicability.
- 7-34-2413. Limitations on bond authority.
- 7-34-2414. Election required on question of issuance of bonds.
- 7-34-2415. Details of bonds.
- 7-34-2416. Tax-exempt status of bonds.
- 7-34-2417. Special tax levy authorized.
- 7-34-2418. General tax to support bonds authorized.

Part 25 — Multicounty Operation of Hospitals and Nursing Homes

- 7-34-2501. Definitions.
- 7-34-2502. Joint institutions authorized.
- 7-34-2503. Contract for joint institution.
- 7-34-2504. Division of costs among counties.

Parts 26 through 40 reserved

Part 41 — Municipal Hospital Services

- 7-34-4101. Detention hospitals.

Chapter Cross-References

Hospitals and related facilities, Title 50, ch. 5.

State assumption of county public assistance

programs, Title 53, ch. 2, part 8.

**Part 1
Ambulance Services**

Part Cross-References

Ambulance service licensing, Title 50, ch. 6, part 3.

7-34-101. Ambulance services authorized. A county, city, or town, acting through its governing body, may establish and maintain an ambulance

service for such county, city, or town. Any county, city, or town may contract with any county, city, or town to establish and maintain a joint ambulance service and to share the costs, such costs to be apportioned according to the benefits to accrue, with the proportion to be paid by each to be fixed in advance by joint resolution by the respective governing bodies, if the governing body has received a petition signed by 15% of the electors registered to vote in the county, city, or town at the last preceding general election or in each of the counties, cities, or towns wherein a joint ambulance service is being established.

History: En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967; R.C.M. 1947, 69-3601(part).

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-34-102. Special mill levy permitted. In addition to all other levies authorized by law, each county, city, or town may levy an annual tax up to 1 mill on the dollar of the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service.

History: En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967; R.C.M. 1947, 69-3601(part).

Cross-References

Authority to levy special taxes and assessments, 7-6-4406.

7-34-103. Manner of providing ambulance service. If a county, city, or town establishes or maintains such ambulance service it may, acting through its governing board:

- (1) operate the service itself or contract for such service;
- (2) buy, rent, lease, or otherwise contract for vehicles, equipment, facilities, operators, or attendants;
- (3) adopt rules and establish fees or charges for the furnishing of such ambulance service.

History: En. Sec. 2, Ch. 238, L. 1961; R.C.M. 1947, 69-3602.

Cross-References

Municipal contracts and franchises, Title 7, ch. 5, part 43. Cooperative agreements — ambulance services, 50-6-304.

7-34-104. Certain ambulance services unaffected. The provisions of this part shall in no way affect county, city, or town ambulance service in operation on March 14, 1961.

History: En. Sec. 3, Ch. 238, L. 1961; R.C.M. 1947, 69-3603.

Parts 2 through 20 reserved

Part 21

Hospital Districts

Part Cross-References

County tax levy for nursing homes and hospital facilities, 7-6-2512.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Hospitals and related facilities, Title 50, ch. 5.

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 14DATE 2-19-91BILL NO. SB-305

MONTANA EMERGENCY MEDICAL SERVICES ASSOCIATION
 P.O. Box 30336
 Billings, MT 59107
 (800) 247-2369

DATE: February 19, 1991

TO: Senate Local Government Committee
 Senator Benggson, Chair

SUBJECT: Testimony Concerning SB305

Please verbally enter the following into the Senate Local Government Committee hearing concerning SB305.

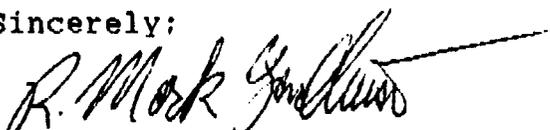
The Montana Emergency Medical Services Association Inc. (MEMSA) is the professional organization of Emergency Medical Technicians (EMT, D, I, P) in our state. Membership is voluntary and consists of over 800 members. The majority are associated with rural volunteer emergency medical service (EMS) organizations.

Montana, being a rural, sparsely populated state, depends on volunteer emergency medical services organizations to assure that EMS is available when needed. We applaud Senator Anderson and Representative Hoffman for introducing SB305, a bill that we feel supports emergency medical services (EMS) and will be beneficial to the quality and availability of care provided.

MEMSA is in support of this bill, however we feel the language of the bill excludes an intricate part of the EMS team. Specifically the use of the words "Ambulance Service" creates the exclusion of nontransporting medical units, commonly known as Quick Response Units (QRU's), such as those located in Alder, Virginia City, Twin Bridges and many other rural areas throughout our state. These nontransporting medical units provide rapid initial care until the ambulance arrives having a tremendous positive impact on the patients outcome. The method we recommend to alleviate this exclusion is to replace the words "Ambulance Service" with the definition of a licensed emergency medical service as provided in the EMS Licensing Law (50-6-302 section 5).

Thank you for consideration of this issue.

Sincerely:


 R. Mark Zandhuisen


 Garv R. Haigh

COUNTY OF RAVALLI

STATE
OF
MONTANA

The Bitterroot Valley

HAMILTON, MONTANA 59840

February 19, 1991

Senate Local Government
Capitol Station
Helena, MT

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 15

DATE 2-19-91

BILL NO. SB-334

RE: SB 334 "An act revising the personal liability of county officials et seq."

Madam Chairman and Members of the Committee:

For the record, my name is Betty T. Lund, Ravalli County Clerk and Recorder, and vice president of the Montana Association of Clerks and Recorders.

I rise in support of SB 334. This bill is a result of a resolution of the Clerks and Recorders. We have always felt it was not quite right to have the Clerks and Recorders and the County Commissioners responsible for the budget overages of the other elected and appointed officials.

SB 334 will change the law to have the department heads, responsible for their over budget expenditures. This only addresses the final budget overdrafts not line item overruns which will be corrected with journal entries at the end of the budget year. I have taken the liberty to pass out a copy of my budget so you can see that I am talking about.

If you have any questions, please feel free to ask me. Thank you for your attention and a DO PASS for SB 334.

Sincerely,



Betty T. Lund
Ravalli County Clerk & Recorder

FUND 1000 GENERAL FUND
DEPT 104 CLERK & RECORDER
ACCOUNT DESCRIPTION
SUB SUB

ACCOUNT DESCRIPTION	ACTUAL	EXP	ACTUAL	EXP	REMAINING	BUDGET
110 SALARIES & WAGES	1509	102	10646.01	101	1112	7403.39
112 SALARIES & WAGES-TEMPORAR	80		34.85	0	965	930.35
140 EMPLOYER CONTRIBUTIONS	362	90	2436.04	96	4347	1910.56
220 ELECTION SUPPLIES	75	0	4.27	0	900	711.04
310 POSTAGE	308	3	1372.79	64	3700	2327.21
321 PRINTING & DUPLICATING	958		5851.25	87	11500	5648.75
331 LEGAL PUBLICATIONS	45		192.80	80	550	357.20
370 TRAVEL	41		449.30	154	500	50.70
380 TRAINING/EDUCATION	41				500	500.00
391 ELECTION JUDGES	983		8057.84	117	11500	3742.10
394 PROGRAMING	166		1457.00	125	2000	543.00
530 RENT	30		245.00	116	365	120.00
TOTAL	4598	41	30932.24	86	55239	24306.76
4100 ELECTIONS	1971	97	13117.30	90	23424	10366.70
4101 PERSONAL SERVICES	2647	1	17814.94	96	31815	14000.00
4102 OPERATION & MAINTENANCE						
4103 CAPITAL OUTLAY						
TOTAL	4598	41	30932.24	96	55239	24306.76
4109 RECORDS ADMINISTRATION	1572	106	11045.35	100	18975	7824.65
4110 PLAT ROOM	434	99	2881.74	95	5217	2335.26
4111 SALARIES & WAGES-TEMPORAR	29	23	39.24	19	352	312.71
4112 EMPLOYER CONTRIBUTIONS	179	83	312.11	29	2149	1835.89
4113 OFFICE SUPPLIES	273		311.03	16	3285	2973.97
4114 GAF BLUEPRINT	34		419.00	175	411	8.00
4115 PLAIN PAPER COPIER-SUPPLI						
4116 PLAIN PAPER COPIER-MAINT						
TOTAL	2521	106	15067.42	85	30288	15220.58
4117 RECORDS ADMINISTRATION	4549	105	31918.33	100	54590	22671.67
4118 SALARIES & WAGES	1273	99	8913.02	95	17284	8847.98
4119 EMPLOYER CONTRIBUTIONS	191	2	1306.46	104	2300	903.54
4120 OFFICE SUPPLIES						

DATE: 12/31/91 PERIOD OF ENDING: 12/31/91 BILL NO: SB-334

County of Yellowstone



COMMISSIONERS

(406) 256-2701

Box 35000
Billings, MT 59102

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 16

DATE 2-19-91

BILL NO. SB-367

TO: Senate Local Government Committee
Senator Esther Bengtson, Chairperson

DATE: February 18, 1991

FROM: Mike Mathew *MM*
Chairman, Yellowstone County Commissioners

RE: SB 367

Yellowstone County has been working with the Board of Directors for the Yellowstone Art Center to facilitate a remodel and expansion of that facility. Part of the expansion project includes building on the land to the north of the current location. Ownership of that expansion as it connects to the existing building creates a problem between the Art Center Foundation and Yellowstone County. It is the opinion of our County Attorney and the Board of Commissioners that the easiest solution is for Yellowstone County to gift the facility to the Art Center. Under current statutes it is not possible to do this.

For this reason we are asking your support for SB 367 so that this excellent facility can expand to better meet the needs of the citizens of Yellowstone County.

Report to

DHES

Governor Stephens
the 1991 Legislature



prepared by the
MONTANA
Public Water Supply
Task Force



PWS Program History

Montana has had a PWS program since 1907 when public health legislation was passed in response to deaths resulting from waterborne disease. In 1974, the first national drinking water legislation, the Safe Drinking Water Act (SDWA), was signed into law. The SDWA established minimum treatment and monitoring requirements for all public water supplies. The Montana Department of Health and Environmental Sciences (DHES) obtained "Primacy" from the Environmental Protection Agency (EPA) to enforce the SDWA in 1978, and has had responsibility for enforcing the law and associated regulations since then. There are approximately 2100 public water systems in Montana that are regulated under the SDWA.

In addition to enforcing the requirements of the 1974 SDWA, the Montana PWS program has for many years conducted state-mandated water supply and wastewater responsibilities. These include plan and specification review to insure minimum standards of construction, operator training and certification, sanitary surveys, technical assistance and emergency response. Montana's PWS program has always focused on training and preventive measures rather than enforcement. The PWS program has also recently combined with the subdivision review program to form one section within DHES.

1986 SDWA Amendments

In 1986, Congress amended the SDWA to require extensive changes in response to growing public concern over drinking water. The number of contaminants regulated will increase from 22 to approximately 180 in the year 2000. Other new requirements included stringent requirements for filtration of surface water supply systems, mandatory disinfection of all vulnerable water supply systems, greatly expanded monitoring and reporting for systems, more stringent public notification and more aggressive enforcement by the EPA. The 1986 amendments stipulated that these new requirements be phased in steadily as new regulations. These new regulations are about 50% completed, and their impacts are now beginning to be realized.

PWS Program Status

Because of the extensive new requirements of the new regulations and staff turnover, the program is not able to keep up legislative responsibilities. Most importantly, over 50% of the public water supplies are not meeting current standards for monitoring, reporting and/or for water quality. Limited resources, especially with respect to enforcement, are responsible for these problems and things will only get worse as more federal regulations are promulgated.

Early in 1990, EPA informed DHES that Montana will likely lose

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 18B

DATE 2-19-91

BILL NO. SB-407

January 18, 1991

TO: Senator Mignon Waterman

FROM: Dan L. Fraser, Water Quality Bureau

SUBJECT: DHES Legislation regarding Public Water Supply and Subdivision Programs.

Attached is a copy of the department's proposed bill for the Public Water Supply/Subdivision Section. It's a bill that proposes to amend both the Montana Public Water Supply Act and the Sanitation in Subdivisions Act. Its purposes are more fully explained in the package but briefly are to:

UNDER THE PUBLIC WATER SUPPLY ACT:

1. provide for administrative enforcement orders,
2. provide both administrative and civil penalties,
3. authorize the department to collect fees,
(We are proposing a fee of up to \$3.00/service connection and fees to cover part of the costs of providing engineering plan and specification review.)
4. authorize the department to review proposed new public systems for "viability" as well as for general minimum design standards. The purpose of this is to attempt to avoid the creation of more public systems which have no hope of complying with state and federal requirements.

UNDER THE SANITATION IN SUBDIVISIONS ACT:

1. remove the current fee cap of \$48.00/lot to enable the department to raise the fees enough to support one additional FTE for the Subdivision Review Program. (This may need to be taken out in view of the committee's action regarding this position.)

We would appreciate it very much if you would consider carrying this legislation for us. I would be happy to meet with you at your convenience to provide further information if you so desire. I can be reached at 444-2406 (work) or 443-2322 (home). Thanks for your support and consideration.

RESOLUTION
1990-17

WHEREAS, THE QUALITY OF DRINKING WATER IN MONTANA IS A CRITICAL RESPONSIBILITY OF STATE AND LOCAL GOVERNMENT, AND;

WHEREAS, THE STATE WATER QUALITY BUREAU HAS WORKED EFFECTIVELY WITH CITIES AND TOWNS TO MONITOR AND INSPECT SYSTEMS AND PROVIDE TRAINING AND TECHNICAL ASSISTANCE FOR OPERATORS, AND;

WHEREAS, IF ADEQUATE FINANCING IS NOT AVAILABLE, THE REGULATORY FUNCTIONS OF THE BUREAU WILL BE ASSUMED BY THE FEDERAL GOVERNMENT AND THE TECHNICAL ASSISTANCE PROGRAMS WILL BE DISCONTINUED, AND;

WHEREAS, MUNICIPAL UTILITIES AND CONSUMERS CAN BE SERVED MORE EFFECTIVELY IF THE STATE RETAINS CONTROL OF THE WATER QUALITY PROGRAM.

NOW, THEREFORE, BE IT RESOLVED THAT THE MONTANA LEAGUE OF CITIES AND TOWNS WILL SUPPORT LEGISLATION TO ALLOW THE STATE TO ADMINISTER THE SAFE DRINKING WATER ACT AND TO CONTINUE TRAINING, TECHNICAL ASSISTANCE, PUBLIC EDUCATION, CONTAMINATION MONITORING AND INVESTIGATION SERVICES.

BE IT FURTHER RESOLVED THAT THE LEAGUE WILL WORK TO ASSURE THAT THE FEE SYSTEM THAT IS IMPOSED TO FUND THESE SERVICES WILL NOT DISCRIMINATE AGAINST MUNICIPAL CONSUMERS OR OBSTRUCT THE ORDERLY DEVELOPMENT OF CITIES AND TOWNS.

February 15, 1990

RECEIVED
FEB 16 1990
GOVERNOR'S OFFICE
HELENA, MONTANA

Governor Stan Stephens
Capitol Office Bldg.
Helena, MT 59620

Dear Stan:

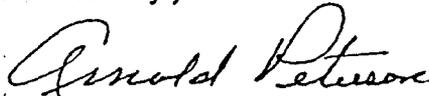
I enclose a letter signed by a number of the groups in Montana who are involved in delivering safe drinking water to the rural communities and small towns of Montana.

We all are most supportive of Montana retaining authority in administering the Safe Drinking Water Act in Montana. We are also aware of many of your problems when it comes to funding these programs.

This is a sincere offer on our part to do anything we can to assist you in working out this particular problem.

I would like to meet with you and as many of these organizations as you desire at your convenience to discuss this.

Sincerely,



Arnold Peterson

AP:ajt

Enclosures

The Honorable Stan Stephens
Page 2

Our organizations provide a vehicle for input from the regulated public regarding the extensive ramifications of the SDWA in the State of Montana. Perhaps, an interim committee comprised of key DHES officials, executive and legislative representatives, the Consumer Council, and our organizations could study the issues and present proposals for legislative action.

Thank you for the opportunity to present our viewpoint.

Sincerely,

Ralph Dunahoo
Ralph Dunahoo, MSAWWA National
Director, Conrad, MT

Gerald Lukasik
Gerald Lukasik, MSAWWA Chairman
Missoula, Montana

Lyle Meeks
Lyle Meeks, MSAWWA Gov't
Affairs Committee
P.O. Box 6039, Great Falls, MT 59406

Dan Keil
Dan Keil, MRWA National
Director, Conrad, MT

Ray Wadsworth
Ray Wadsworth, MRWA Executive
Director, Great Falls, Montana

Arnold Peterson
Arnold Peterson, MRWA
Legislative Chairman
1220 5th St., Havre, MT 59501

cc Mr. Allen Kolstad, Lt. Governor
Mr. Don Pizzini, MDHES
Mr. Bill Opitz, MDHES
Mr. Steve Pilcher, MWQB
Mt. Environmental Quality Council

MONTANA SECTION AMERICAN WATER WORKS ASSOCIATION

JANUARY 15, 1990

**RESOLUTION SUPPORTING THE STATE OF MONTANA
RETAINING PRIMARY ENFORCEMENT AUTHORITY**

WHEREAS, the State of Montana adopted state-wide rules and regulations in 1907 for the assurance of safe drinking water; and

WHEREAS, the U.S. Congress in 1974 passed the first National Safe Drinking Water Act (SDWA) public law 93-523 with enforcement authority given to the U.S. Environmental Protection Agency (EPA); and

WHEREAS, Montana was awarded primacy in 1977, and the State, through the Montana Department of Health and Environmental Sciences, has maintained primacy since that time; and

WHEREAS, the U.S. Congress in 1986 adopted amendments to the Safe Drinking Water Act and mandated standards for 83 specified contaminants; and

WHEREAS, Montana's concern for its citizens and its desire to address its own problems and concerns has been a tradition for over 100 years; and

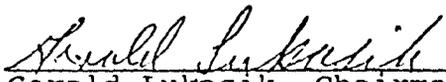
WHEREAS, Montana finds itself at a point of critical decision making; and

WHEREAS, the concept of primacy is having federal standards with the application of state judgement; and

WHEREAS, it is in the best interest of the citizens of the State of Montana that the State retain primary enforcement authority through the Montana Department of Health and Environmental Sciences over the Safe Drinking Water Act.

THEREFORE, be it resolved this day, January 15, 1990 that the Montana Section American Water Works Association urges the State of Montana to retain primary enforcement authority, through the Montana Department of Health, and the Montana Section urges the legislature to take the necessary action to ensure that proper resources will be authorized to ensure the State can retain primacy.

ADOPTED JANUARY 15, 1990 BY VOTE OF THE MONTANA SECTION BOARD MEMBERS.



Gerald Lukasik, Chairman
Montana Section
American Water Works Association

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

City Cty Health Dept - GT Falls
Organization

Cherry Loney, Health officer
Name of Representative (print)

Cherry Loney
Signature

12-20-90
Date

RECEIVED
JAN 3 - 1991
MONTANA DEPT. OF HEALTH & ENV. SCIENCES
WATER QUALITY BUREAU

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

Midwest Assistance Program
Organization

Bill LEONARD - MT Field Representative
Name of Representative (print)


Signature

12/21/90
Date

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

Montana Section
American Water Works Association
Organization

Richard A. Nisbet - National Director
Name of Representative (print)


Signature

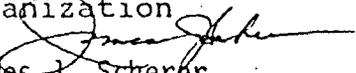
January 2, 1990
Date

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

U.S. Environmental Protection Agency
Region VIII

Organization


James J. Scherer

Regional Administrator

Name of Representative (print)

Signature

11/26/90

Date

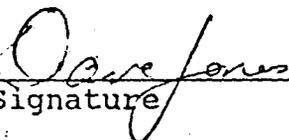
STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

Montana Rural Water Systems, Inc. endorses this program with those minor changes made by the Montana Rural Water Systems, Inc. Legislative Committee.

~~Montana Rural Water System, Inc.~~
Organization
925 - 7th Avenue South
Great Falls, MT 59405

Dave Jones
Name of Representative (print)


Signature

December 20, 1990
Date

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the appropriate action to ensure their full implementation.

U.S. Environmental Protection Agency, Reg. VIII
Organization

Max H. Dodson
Director, Water Management Division
Name of Representative (print)

Max H. Dodson
Signature

11/13/90
Date

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

US EPA REGION VIII MONT
Organization

JOHN F WARDELL
Name of Representative (print)

John F. Wardell
Signature

11/19/90
Date

Commissioners
Russell J. Ritter, Mayor
Rayleen Beaton
Tom Huddleston
Rose Leavitt
Blake J. Wordal



City-County
Administration Building
316 North Park
Helena, MT 59623

Phone: 406/442-9920

William J. Verwolf
City Manager

City of Helena

Tom

November 20, 1990

Dan L. Fraser, P.E., Supervisor
Public Water Supply Section
Dept. of Health & Env. Sciences
Water Quality Bureau, Cogswell Bldg.
Helena, MT 59620

Dear Dan:

At the November 19, 1990, meeting the City Commission approved a resolution to approve the recommendation of the Public Water Supply Task Force. Attached is the Statement of Endorsement from the Executive Summary Report which has been signed by Russ Ritter, Mayor, City of Helena.

Sincerely,


Richard A. Nisbet, P.E.
Director of Public Works

RAN/SKW/sw

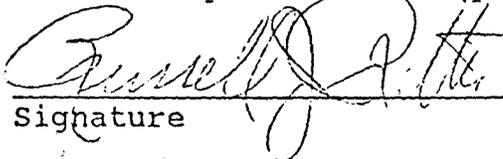
endrsmnt.wtf

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

City of Helena
Organization

Russell J. Ritter, Mayor
Name of Representative (print)


Signature

November 19, 1990
Date

Honorable Stan Stephens
State of Montana
Page 2

Your Task Force concluded that Montana water users and suppliers are confronted with the same contamination, operational, and economic problems other PWSs are facing throughout the United States. This emphasizes the need to implement a strong PWS program in your State, one with adequate resources to meet these challenges and ensure a continuous supply of safe drinking water. We at EPA Region VIII are prepared to provide you all possible support to continue to implement an effective PWS program.

Please call John Wardell, Director, EPA Montana Office, at 449-5432 or me at (303) 293-1603 with your questions or concerns.

Sincerely,



James J. Scherer
Regional Administrator

cc: Dennis Iverson, MDHES
John Wardell, SMO
Max Dodson, BWM

Report to

DHES

Governor Stephens

the 1991 Legislature



prepared by the

MONTANA

Public Water Supply

Task Force



notification program to inform water users of contamination and compliance problems.

Almost all of Montana's 2,400 public water systems will be affected by these amendments. However, small water facilities (comprising over 96% of Montana's systems) will have the most difficulty in meeting the new requirements. Their limited resources and narrow tax base can not readily handle the technical and financial impacts of the regulations.

In order to completely meet the new regulations, Montana's Public Water Supply Section is estimated to need 59.25 FTE's (1.8 for Operator Certification; 5.55 for Subdivisions; and the remaining 51.9 for the Public Water Supply Program). These needs are comparable to those of other states' drinking water agencies preparing to meet the 1986 SDWA amendments.

Loss of State Primacy

If Montana loses primacy, the EPA will become the primary enforcement authority over public water supplies in the state. EPA enforcement action will occur only after health standards are exceeded or systems are in violation of the SDWA. The EPA's approach to Montana's public water supplies will be strictly regulatory, not preventative.

Loss of state primacy will also result in a loss of federal funding assistance which is essential to Montana's drinking water programs. These programs include operator training, public education, technical assistance, responses to contamination, and investigations of waterborne diseases. The Subdivision and Operator Certification programs would also suffer because of their reliance on the Public Water Supply Program for staff and funds.

Continuing to fund existing state drinking water programs without primacy would cost Montana an additional \$1.18 million over existing state support. Elimination of the Public Water Supply Program with retention of only the Subdivision and Operator Certification programs would still require an additional \$339,184 over the present budgets of these programs. Clearly, Montana will face a greater financial burden if federal funding assistance to its drinking water programs is lost.

Task Force Conclusions and Recommendations

After carefully reviewing the problems facing Montana's Public Water Supply Program, the Task Force developed the following conclusions and recommendations.

Conclusions

- ❑ Montana's Public Water Supply Program should retain existing regulatory and technical assistance functions.
- ❑ Montana's Public Water Supply Program must be expanded to include requirements of the amended Safe Drinking Water Act and state primacy must be retained.
- ❑ Legislative changes must be made to authorize the DHES to assess fees to supplement funding of the Public Water Supply Program.

Recommendations

- ❑ Montana must provide a comprehensive Public Water Supply Program including preventive and enforcement activities.
- ❑ The Public Water Supply Section should be staffed and funded to support the interim program shown in Figures 1 and 2.
- ❑ The Sanitation in Subdivisions Act, MCA 76-4-105, should be amended to increase fees to support an additional 1.0 FTE.
- ❑ The Public Water Supply Act should be amended to authorize the Department of Health and Environmental Sciences to assess fees for services to alleviate the Public Water Supply Program funding shortfall. Funds raised through fees should be used to supplement existing funding of the Public Water Supply Program.*
- ❑ The Task Force should reconvene to reassess the status of the Public Water Supply Section and make recommendations for the 1993 Legislative Session.

**Fees should be generated as engineering plan review fees and service connection fees. Total cost for the program would not exceed the equivalent of a \$3 annual fee on each public water supply service connection. Very small water systems (those with less than 33 connections) may be assessed a minimum annual fee of \$100 to reflect their program support more equitably.*

It is important to note that any new fee assessments or increases in existing fee schedules would be determined through the rule-making process. This guarantees the public opportunity to review and com-

MONTANA PUBLIC WATER SUPPLY PROGRAM

TASK FORCE MEMBERS

Mr. John Wardell, Director
Montana Office - EPA Region VIII
301 So. Park, Drawer 10096
Helena, MT 59626
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Mr. Max Dodson, Director
Water Management Division
EPA Region VIII 8WM
999 18th Street
Denver, CO 80202-2405
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Montana Consumer Council
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Water and Waste Water Operators
Advisory Council
c/o Dept. of CEEM
Montana State University
Bozeman, MT 59715
PHONE - 994-6130

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PHONE - 456-3217

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Office of Bdgt. & Prog. Plan.
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Mont. Env. Training Center
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PHONE - 657-8352

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Montana Dept. of Commerce
Community Development Bureau
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200 North Front
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Consulting Eng. Council of Mont.
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1200 - 25th St. South
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Montana Society of Engineers and
American Society of Civil Engineers
c/o Morrison-Maierle/CSSA, Inc.
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Ms. Connie Ternes Daniles,
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Anaconda-Deer Lodge Co.
RFD 203 So. Dixon
Opportunity, MT 59711
PHONE - 563-8421

Mr. Alec Hanson, Exec. Director
Montana League of Cities and
Towns
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Ms. Denise Peterson
Public Service Commission
Dept. of Public Service Regulation
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Mr. Ron Woods
Public Service Commission
Dept. of Public Service Regulation
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Helena, MT 59601
PHONE - 444-6199

Mr. Bill Leonard
Midwest Assistance Program
P.O. Box 1456
Whitefish, MT 59937
PHONE - 862-3600

Ms. Gail Kuntz
Environmental Quality Council
Capitol Station
Helena, MT 59620
PHONE - 444-5366

Ms. Ellen Leahy, Director
City-County Health Dept.
301 W. Alder St.
Missoula, MT 59802
PHONE - 721-5700

Mr. Jim Carlson
City-County Health Dept.
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Missoula, MT 59802
PHONE - 721-5700

Mr. Pete Frazier
City-County Health Dept.
1130 17th Ave. South
Great Falls, MT 59405
PHONE - 761-1190

Mr. Dick Nisbet
Mont. Section AWWA Director &
City of Helena Public Works Dir.
316 N. Park
Helena, MT 59623
PHONE - 442-9920 EXT. 426

Mr. Robert Peccia, P.E.
Robert Peccia and Assoc.
810 Hialeah - Box 5653
Helena, MT 59604
PHONE - 442-8160

Mr. Ray Wadsworth
Montana Rural Water Systems, Inc.
925 7th Ave. South
Great Falls, MT 59405
PHONE - 454-1151

Ms. Melissa Tuemmler, President
Montana Envir. Health Assoc.
c/o City-County Health Dept.
1130 17th Ave. South
Great Falls, MT 59405
PHONE - 761-1190

TESTIMONY ON SB 407

Mr. Chairman and Committee Members. My name is Erling Tufte, Director of Public Works for the City of Great Falls.

We agree with the general intent of SB 407 to adequately fund the Department of Health and Environmental Science's (DHES) Montana Public Water Supply Program.

Our views are as follows:

1. We recognize that regulations and public interest demand increasing attention to public water supply management.
2. We support State vs. EPA primacy in enforcing federal regulations.
3. We believe that the current State program is underfunded.
4. We believe that a combination of general tax revenues and consumer fees is the appropriate means of funding the State Public Water Supply Program.
5. We suggest that the program be closely monitored so that it's cost does not escalate beyond the public's ability to pay. A specific limitation on cost is recommended.

Our support of the specific fee structure and level of fees proposed in SB 407 is qualified. As we require at the local government level, we recommend that the proposal be thoroughly presented and justified. The public should be clearly informed on the total cost, revenue structure, proposed level of service and possible alternatives.

Finally, we wish to express our concern for, and commitment to responsible Public Water Supply management. We recognize that much of what we do is likely to be in response to Federal or State regulations. We hope that the Federal and State Governments will be partners in education, solutions and funding; not simply vehicles to author and pass along regulations. New government demands without accompanying funding have become an increasing burden to local government.

For recording secretary —

5B407

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 20

SENATE LOCAL GOVERNMENT COMMITTEE

DATE

2-19-91

BILL NO.

3B-407

Montana Rural Water Systems; a private non-profit Training and Technical Assistance organization, is not a proponent of regulations but we are genuinely concerned about the health of our citizenry and the purity of water they are served for drinking. With a membership representing the majority of community type drinking water systems in Montana, we have become their representative at both the State and National level. As such, we are obligated to enumerate their wishes.

Montana has historically been a leader in new developments of the drinking water industry. Because of emphasis by the State on seemingly more important issues over the past several years, the industry has been caught up short and now we find ourselves in a position wherein we could lose primacy in the State of Montana in our drinking water program. In simplified terms, this means that unless the water systems in Montana are regulated by the State of Montana to meet the requirements of the Safe Drinking Water Act and its 1986 Amendments, the State of Montana will no longer regulate its own activities but rather will be regulated by EPA at the National level. Notice has been given by USEPA that the State of Montana must get into compliance or lose its primacy.

Faced with a shortage of staff and a multitude of non-primacy duties, our State Regulatory Agency has not been able to comply with the monitoring required by EPA. Random sampling of some of our water systems has turned up such water contaminants as benzene, radon, lead, trichloroethylene and others which tells us these problems are not just "big city" problems but are also found out here in what we commonly consider as "pristine Montana".

EXHIBIT NO. 21

DATE 2-19-91

BILL NO. SB-407

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of February, 1991.

Name: Pete Frazier

Address: 3305 17 Ave S. Co. Falls

Telephone Number: 761-3508 (h) 761-1190 (w)

Representing whom?

City-Co Health Dept - Co Falls

Appearing on which proposal?

SB 407

Do you: Support? Amend? Oppose?

Comments:

State WRB must have adequate funding & staff to maintain Primary for the Safe Drinking Water Act Enforcement. Should EPA take back this program, as they are threatening to do, WRB will not be able to provide adequate inspectors & technical assistance to public water supplies. We urge a Do Pass on SB 407

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of Feb, 1991.

Name: Richard A Nisbet

Address: 316 N. Park Ave
Helena, MT

Telephone Number: 447-8426

Representing whom?

City of Helena & Montana Section of American Water Works Assn

Appearing on which proposal?

SB 407

Do you: Support? Amend? Oppose?

Comments:

Support intent of SB 407
will reserve comment on fees till
hearing's are held by DSES.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of February, 1991.

Name: Chris Kaufman

Address: 107 Lawlerca
Helena

Telephone Number: 443-2520

Representing whom?
MEIC

Appearing on which proposal?
SB 407 + SB99

Do you: Support? Amend? Oppose?

Comments:

FEB-19-1991 02:09PM FROM MISSOULA HEALTH DEPT.

TO 167277914442606 P.03

14065234755

FEB-19-1991 02:08PM FROM MISSOULA HEALTH DEPT.

TO 167277914442606 P.01



CITY-COUNTY HEALTH DEPARTMENT
301 W. ALDER
MISSOULA, MONTANA 59802

HERE'S THE FAX:

TO: *Jim Melstad*

FROM: *Jim Cade*

DATE: *2/19/91*

NO. OF PAGES INCLUDING COVER: 3

OUR FAX NUMBER: (406) 523-4781

OUR TELEPHONE NO.: (406) 523-4755

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 23
DATE 2-19-91
BILL NO. SB-407

Please find some one to read & submit.

Flathead County

SENATE LOCAL GOVT. COMM.

FACSMILIE MESSAGE TRANSMITTAL FORM

EXHIBIT NO. 24

DATE 2-19-91

800 SOUTH MAIN STREET • KALISPELL, MONTANA 59901

BILL NO. SB-407
(406) 752-5300

FAX (406) 756-5699

DATE: Feb 19 1991

FAX TO #: 444-1374

NAME: Jim Melsted

LOCATION: MT DIES

PHONE: _____

TOTAL # OF PAGES (INCLUDING COVER SHEET) 3

FAX FROM: Joe Russell

DEPARTMENT: Health

PHONE: 756-5632

MESSAGE



Flathead City-County Health Department

723 5th Ave. East • Kalispell, Montana 59901
Environmental Health Services 756-5632 • Community Health Services 756-5633

DATE: February 19, 1991
TO: Senate Local Government Committee
Eleanor L. Vaughn, Chairperson
FROM: Flathead City-County Board of Health

TESTIMONY: SB 407

In accordance with the position statement of the Flathead City-County Board of Health adopted January 17, 1991, the Board fully supports the proposed legislation introduced as Senate Bill number 407. This Bill establishes, in short, administrative enforcement of the laws protecting public water supplies and providing for assessment of fees established through rulemaking to recover cost of department services under the laws relating to Public Water Supplies and to Sanitation in Subdivisions.

This Bill would primarily affect local health departments in two ways. Our Environmental Health Services division contracts with the Department of Health and Environmental Sciences to: perform sanitary surveys of Public Water Supplies and perform concurrent review of subdivision proposals as a local governing body.

The Sanitary Survey Program is an important local program. Through the survey mechanism, with state support, we are able to identify potential problems that may arise with any given system and make changes before major problems occur. This program can be very "proactive" with additional support.

Our subdivision review program is an essential local program. Local review is necessary to compare a subdivision proposal to the actual site conditions. The existing reimbursement schedule falls well short of the services we provide. A recent internal assessment indicates that we are reimbursed roughly \$13.00 per hour we spend in this program. This figure does not reflect driving time, vehicle maintenance, or administrative time, which if considered, substantially reduces the above dollar amount. Seventy five percent (75%) of the respondents to a recent survey conducted by this office indicated that they are unwilling to subsidize the development of property with tax dollars. Therefore, an increase in review fees is necessary.

Respectfully Submitted,

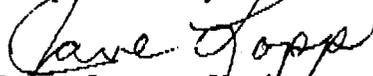

Jane Lopp, Chairperson
Flathead City-County Board of Health

EXHIBIT NO. 25

WITNESS STATEMENT

DATE 2-19-91

BILL NO. SB-407
person who wants

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of February, 1991.

Name: Gary L. Sturm

Address: 176 Briarwood
Helena MT 59601

Telephone Number: (406) 442-3050

Representing whom?

Montana Society of Engineers - American Society of
Appearing on which proposal? Civil Engineers/Montana Section
SB 407

Do you: Support? Amend? Oppose?

Comments:

I served on Montana Public Water Supply Program
Task Force 1990 as a representative of the Montana
engineering profession. I do not believe that the
interests of the Montana citizen will be served by
allowing the State to lose primacy as defined
by 1986 Safe Drinking Water Act Amendments. Senate
Bill 407 will provide the legislative and financial
tools required to allow the State to keep primacy
and continue to insure that Montana public water
systems deliver safe and reliable drinking water.

COMMENTS IN SUPPORT OF SENATE BILL 99
(Including Proposed Minor Amendments)

Montana Solid Waste Contractors' Association
(443-1160)

February 19, 1991

Madam Chairman and members of the Committee my name is Frank Crowley and I am from Helena. I am here representing the Montana Solid Waste Contractor's Association (Association) which is a state-wide organization of private refuse haulers and landfill owners and operators. We are here to ask your strong support for Senate Bill 99 which establishes a procedure for assuring that private solid waste firms get a chance to make proposals for solid waste systems in the future. My testimony will be short, I have ten brief points:

(1) Background of Preference

Fifteen years ago when the Legislature did a major rewrite of the Montana Solid Waste Act, it included a preference for private industry in the provision of solid waste services. That policy was needed because local government historically had handled solid waste and a mechanism was needed to encourage the entry of private firms into solid waste programs. The Legislature recognized that a blend (or, as we like to say, a "partnership") of public and private entities was needed in the solid waste field because such a blend promotes cost efficiency and innovation in meeting the various needs of solid waste services. In short, the 1977 Legislature recognized that a healthy private solid waste industry is a good complement to the public sector.

The preference was needed then and is needed today because local government really does not have any built-in incentives to consider private alternatives. So the private preference was stated as a statutory public policy. Unfortunately that public policy has never has any meaningful implementation in the State which is reflected in some of the lop-sided numbers concerning solid waste programs in the State. For example, in Montana only 15% of landfills are operated by private firms whereas, nationally, the average is upwards of 50%.

(2) Senate Joint Resolution 19 (1989)

As this Committee is well aware, the 1989 Legislature, through Senate Joint Resolution 19, mandated a comprehensive study of solid waste issues that are emerging in the 1990's and beyond. That study was conducted over the last 18 months and it resulted in this



MONTANA SOLID WASTE CONTRACTORS, INC.

report called "Interim Study of Solid Waste Management (SJR19)", prepared by the Environmental Quality Council. The Council, as a result of its study, recommended a package of 11 bills which are integrated and are designed to work together. This package of bills strikes a balance between various competing concerns and has been given a lot of thought by the Council.

Just two weeks ago today before this Committee our Association was here before you supporting another one of the EQC bills, Senate Bill 189, which granted sweeping new authorities to local governments as to how they organize and operate local solid waste programs, including substantial increases in their authority to impose service charges, issue bonds, levy taxes, participate in public finance programs (e.g. state Board of Investments), and so on. Two weeks ago we asked you to defer action on that bill until this bill came. We understand that you have passed the bill out and it is currently being considered by the Senate. I can assure you however that if Senate Bill 189 passes and this bill, Senate Bill 99, does not pass, the Legislature will have created a substantial shift in favor of local government provision of these services and a trend is likely to develop where it would be more and more difficult for private entities to participate in the provision of these services.

(3) Objectives of Senate Bill 99

What Senate Bill 99 does is to establish a uniform state-wide procedure for assuring that if a public entity is going to apply for a new solid waste management system license (be it collection, storage or disposal) that they must provide some kind of notice inviting any interested private firms to submit a proposal. After consideration of that proposal the local government must prefer the private alternative if and only if the private proposal is substantially equivalent or less in cost than the public proposal. I must also add that Senate Bill 99 applies to only new license applications and does not affect existing arrangements. The bill does not create new policy. It only strikes a compromise on how to make the existing policy meaningful. Simply stated, all the Bill says is that if a local government can provide the service cheaper than a private alternative then it should do so. But if a private firm can do it cheaper, then that alternative should be selected. This is essentially a taxpayer issue and should not be a government powers issue.

(4) Local Control

One complaint which local governments have had is that due to the limitation on the term of solid waste contracts (5 years) they are uneasy in turning over services to private firms because they have no cost guarantees at the expiration of that relatively short 5 year term. This is a legitimate concern on the part of local

government and it has also been a frustration to private firms seeking to contract with local government. Senate Bill 189 to which I referred earlier will take care of that because it doubles from 5 to 10 years the possible term of a solid waste contract. In our opinion this removes one of the principle objections that local governments have had to considering private alternatives.

(5) Local Government Immunity from Environmental Liability

Until current interpretations of law are changed, local governments who operate landfills which contaminate adjacent properties are immune from suits by affected parties. Just today I spoke with the attorney for a family here in Helena whose water supply was contaminated by the Lewis and Clark County (Scratch Gravel) Landfill. The family filed suit against the county and the county moved to dismiss on the basis of immunity. Judge Sherlock granted the motion and dismissed the case. Subsequently, the family filed a motion to reconsider because the Supreme Court in the late fall of 1990 handed down the Billings Metra decision which found liability against the Metra. Once again the county argued that it was immune even under the Metra decision and once again Judge Sherlock dismissed the case against Lewis and Clark County on the basis of governmental immunity. By contrast a private operator of a landfill enjoys no such immunity.

(6) Fiscal Note to Senate Bill 99

First of all it must be remembered that the amount projected in the fiscal note is not General Fund money but will come out of the "02" account which is slated to be established in House Bill 209. Secondly, Mr. Grover of DHES who prepared the note has informed me that this fiscal note is a worst-case scenario prepared by DHES and DHES concedes that it could cost substantially less than what appears in the fiscal note. As a former attorney for the DHES, I would have found it an extreme luxury to have put together a budget like this for every rule-making responsibility that I had and the Association believes that this fiscal note is extremely liberal in its assumptions and we frankly cannot believe that the creation of some rules to implement this policy would even approach the kind of money that appears in the fiscal note.

(7) DHES Rule-Making

DHES is uniquely qualified to prepare these rules which will ultimately be presented for consideration by the State Board of Health and Environmental Sciences under the Montana Administrative Procedure Act. DHES understands all of the various components of solid waste management systems including collection, storage, transportation and disposal and I can think of no other entity in state government which would be appropriate to create a balanced system of making these determinations.



Preservation of Tax Base: Private garbage collectors generate taxes of many types that help support the community. Studies have shown that a private firm pays excise taxes, state and local taxes, local licensing fees and other regulatory expenses, in effect, rebating about 15% of its revenues to the community.

TAXES AND FEES PAID BY:

Private Collector:

Federal Fuel Tax
 Federal Income Tax
 Federal Truck Tax - For over 33,000 lbs
 (12% of cost)
 Federal Excise Tax on Tires
 Federal Road Use Tax
 Tax Assessed on Truck Size by # of Axles
 State Income Tax
 State Diesel Fuel Tax
 GVW Fees
 License Fees
 Real Estate Tax
 Personal Property Tax
 Consumer Council Tax

Municipal Collector:

None
 None
 None
 None
 None
 None
 None
 State Tax on Gasoline
 None
 None
 None
 None
 None

MONTANA SOLID WASTE CONTRACTORS, INC.

EXHIBIT NO. 27
DATE 2-19-91
BILL NO. SB-99

Testimony of: James E. Leiter, Landfill Manager
Browning-Ferris Industries of Montana, Inc.
P.O. Box 8449
Missoula, Montana 59807

In support of: SB 99

Before the Senate Local Government Committee

Mr. Chairman, members of the committee, I am Jim Leiter, Landfill Manager for Browning-Ferris Industries of Montana in Missoula. I am here to encourage your support of SB 99 which would amend the existing Refuse Disposal District Act to encourage privatization of solid waste management services whenever it is practical.

Prior to my affiliation with B.F.I. in May of 1990, I was the solid waste program manager for the DHES for the preceding twelve years. As such, I became very familiar with solid waste management systems in the state, whether they be operated by cities, counties, refuse disposal districts or private companies such as B.F.I. Private companies have historically operated a small percentage of hauling companies and landfills in Montana, when compared to national averages. There are some reasons why this has occurred, but one difficulty has been that local governments in Montana have traditionally been assigned the responsibility for refuse disposal, oftentimes by default, and private companies have had to "blend in" to a service which local government often had already institutionalized.

The Solid Waste Management Advisory Committee to the EQC looked carefully at solid waste management in the state and developed comprehensive proposals for solid waste handling for the future of Montana. This committee discussed privatization in detail and it was a general consensus that due to the significant liabilities and responsibilities associated with solid waste management and disposal for the future, both public and private entities had to be involved with solid waste management issues, and it was advantageous to the people of Montana that public/private partnerships be encouraged. The ideal seemed to be that local governments maintain control of solid waste systems, but allow private industry actually deliver the services whenever possible. To that end, it was generally agreed that legislation

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 27A

DATE 2-19-91

BILL NO. SB-99



BOWLING-FERRIS INDUSTRIES

757 North Eldridge
P.O. Box 3151
Houston, Texas 77253
(713) 870-8100

The Politics of Waste

Northern Plains Resource Council

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 28

DATE 2-19-91

BILL NO. SB-99

2/19/91

Testimony for the Northern Plains Resource Council
Senate Bill 99
Senate Local Government Committee

I am testifying on behalf of the Northern Plains Resource Council. We oppose SB 99 because we believe the state should not force local governments to hire private industries for their solid waste disposal needs. Furthermore, we should not spend over \$90,000 to do it. Our money would be better spent on enforcing the existing and newly developing regulations, so that all landfills, public or private are operated as safely as possible.

Some claim that private companies operating landfills have done a better job than public entities in Montana. There is documented ground water contamination at 9 of the 12 waste disposal sites that have ground water monitoring systems in Montana and it is nearly equally divided between private and publicly operated landfills. The fact is that all landfills will eventually leak, regardless of who is operating them. I am submitting for your information a factsheet on ground water contamination problems associated with landfills.

In the past 15 years, waste disposal has become a huge multinational business dominated by three companies who are, in descending order of size: Waste Management Inc., Browning Ferris Industries, and Laidlaw. These companies have had antitrust cases brought against them in states throughout the country and have pleaded either "guilty" or "no contest" in over a dozen civil and criminal antitrust cases since 1985. Moreover, the EPA considers Waste Management and Browning Ferris responsible parties to more than 100 Superfund sites across the country. It has been estimated that WMI has paid over \$43 million dollars since 1980 in fines, penalties and out-of-court settlements for admitted and alleged violations of environmental laws at its dump sites. Do we want to force local governments to delegate the responsibilities for solid waste management to companies such as these? What criteria would be used in the decision making procedure envisioned by this bill?

Let me make it perfectly clear that I am not arguing that public landfills are necessarily better operated than private ones. For example, the landfill operated by the City of Billings is fraught with problems. Ground water in the area has been found to be contaminated with heavy metals and the Billings landfill is a state Superfund site. We take our drinking water out of the river only a half a mile downstream. Clearly the criterion for who should operate a landfill should not be whether or not it is public or private, but who will do the most responsible job. Perhaps we need a clear process to make such decisions, but this bill does not do that.

The state should spend its dollars on developing and staffing a good solid waste bureau in the Dept. of Health such as that proposed under SB 209, rather than on writing rules requiring local governments to favor privately owned and operated solid waste management systems.

2-19-91

Solid Waste, Landfills and Groundwater Contamination

A Northern Plains Resource Council Factsheet

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 29 January 1991

GARBAGE IS CATCHING UP

Americans are fast approaching the 21st century full of optimism and enthusiasm for a cleaner and brighter world. But, the affluent, fast paced and disposable American culture is producing garbage at a stupendous rate. U.S. garbage generation grew 80%, from 1960 to 1986, rising from 87.5 million tons to 157.7 million tons. It is expected to increase 22% by the year 2000 (Time Magazine, 9/5/88, "Garbage, Garbage, Everywhere").

Each U.S. citizen generates roughly 1,600 pounds of garbage each year. Montanans collectively generate 600,000 tons each year. Urban as well as rural areas are simply running out of options for disposing of their waste, most of which is now hauled away to landfills, dumped in the ocean or incinerated. This factsheet examines the consequences of burying garbage in landfills.

The Environmental Protection Agency (EPA) is issuing new regulations that recognize the hazards of solid waste and the problems with disposal in landfills. These regulations make siting and monitoring of landfills strict and consequently very expensive. The result has been that small, older landfills are closing and fewer larger landfills are being developed. Further, many urban areas are looking to sparsely populated states to take care of their waste.

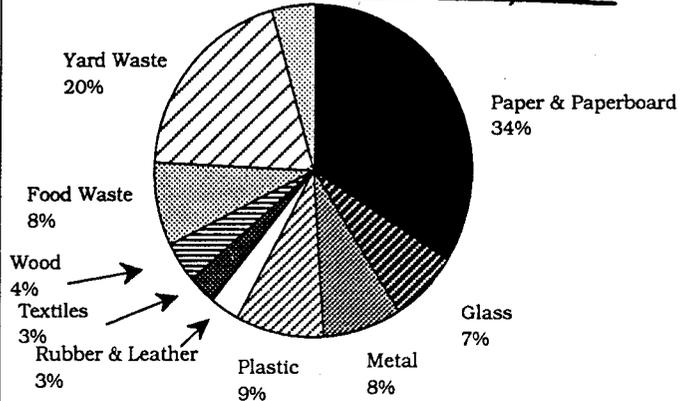
IT'S JUST HOUSEHOLD GARBAGE...

The total amount of solid waste sent to our landfills each year amounts to approximately 150 million tons (Utne Reader Nov/Dec 1990). The municipal solid waste produced in this country in just one day fills roughly 63,000 garbage trucks which, lined up end, to end would stretch the distance from San Francisco to Los Angeles (Scientific American December 1988 Vol. 259 No. 6 "Managing Solid Waste").

Figure 1 shows the average "profile" of U.S. garbage.

Figure 1.

DATE 2-19-91
Other
BILL NO. SB-99



Sources: The U.S. Postal Service; Environmental Defense Fund; and Franklin Associates Ltd.

Household garbage contains a whole host of products and chemicals that when mixed together create a toxic situation. Paint, paint thinner, fertilizer, pesticides and cleansers are household items that end up being hauled to the city dump or buried on private property. Additionally, one thousand new chemicals are invented each year, making it virtually impossible to predict all the possible combinations of chemicals that will be created inside a landfill. According to a study conducted by Geraghty and Miller of Port Washington, New York, under contract to EPA, wastes that are deposited in landfills continue to weather and leach for years. Chemical interactions within a landfill do not cease when dumping stops.

BUILDING LANDFILLS, A LEAKY SCIENCE

All landfills leak. According to several studies, most notably the one by Geraghty and Miller, even the most modern and up-to-date landfill technologies cannot prevent leakage after a relatively short period of time. EPA discovered that 86% of the landfills studied had contaminated underground water supplies beyond the boundaries of the landfill.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19th day of February, 1991.

Name: Dave Pruitt, Chairman, Montana Association of Counties Solid Waste Task Force

Address: 311 W. Main, Room 301, Bozeman, MT 59715

Telephone Number: 585-1400

Representing whom?

Montana Association of Counties Solid Waste Task Force

Appearing on which proposal?

Senate Bill 99 - Private Preference for Solid Waste Management

Do you: Support? Amend? Oppose?

Comments:

MACo adamantly opposes the requirement that a preference be given to a private over public operated solid waste management systems. Example of consequences:

If a private garbage hauling operation had control of all the permits for a county or region and then was successful in controlling the landfill that private company would have a total monopoly. This monopoly would be protected by the permit system and would not be subject to any rate structure for charging the public for waste disposal.

MACo adamantly opposes the Health and Environmental Services developing the rules to determine whether a private or public operator should be chosen for solid waste management operations. Local government at this time has the ability to determine through the bidding process and their own review of the bids whether a private or public operator should be chosen.

TESTIMONY ON SB-99

MADAM CHAIR AND COMMITTEE MEMBERS, MY NAME IS PETE FRAZIER, DIRECTOR OF ENVIRONMENTAL HEALTH WITH THE CITY-COUNTY HEALTH DEPARTMENT IN CASCADE COUNTY. IN ADDITION, I HAVE SERVED AS THE DIRECTOR OF THE CASCADE COUNTY SOLID WASTE DISPOSAL DISTRICT SINCE ITS CREATION 20 YEARS AGO.

I MUST COME BEFORE YOU IN OPPOSITION OF SB-99. CURRENT LAW STATES THAT, AS A PUBLIC POLICY OF THIS STATE, LOCAL GOVERNMENTS SHALL RETAIN PRIMARY RESPONSIBILITY FOR ADEQUATE SOLID WASTE MANAGEMENT. THIS MEANS THAT CITIES, TOWNS, AND COUNTIES HAVE THE RESPONSIBILITY TO PROVIDE ADEQUATE SOLID WASTE MANAGEMENT PROGRAMS FOR THEIR CITIZENS, YET THIS BILL SAYS THAT STATE CAN DICTATE TO LOCAL GOVERNMENTS WHO SHALL PROVIDE THESE SERVICES BY REQUIRING THAT LOCAL GOVERNMENTS HIRE PRIVATE INDUSTRY TO PROVIDE THESE SERVICES IF COSTS ARE SUBSTANTIALLY EQUAL BETWEEN PUBLIC OR PRIVATE SERVICES. FURTHER, THIS BILL TELLS LOCAL GOVERNMENTS THAT THE STATE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES WILL DICTATE, BY RULE, HOW LOCAL GOVERNMENT WILL DETERMINE IF A SOLID WASTE MANAGEMENT SYSTEM SHOULD BE PUBLIC OR PRIVATE.

PLEASE REMEMBER THAT LOCAL GOVERNMENTS ARE GOVERNED BY COMPETENT CITY AND TOWN COUNCILS OR COMMISSIONS AND COUNTY COMMISSIONS, ALL OF WHICH HAVE BEEN ELECTED BY THE RESIDENTS OF THE LOCAL COMMUNITY AND COUNTY. WHEN THESE INDIVIDUALS ASSUME OFFICE, THEY DO SO WITH THE UNDERSTANDING THAT THEY ARE REPRESENTING THE PUBLIC'S BEST INTERESTS AND WILL AUTHORIZE THE EXPENDITURE OF PUBLIC FUNDS IN THE MOST EFFICIENT MEANS POSSIBLE. THESE LOCAL GOVERNMENT LEADERS KNOW THEIR COMMUNITIES BETTER THAN DO STATE GOVERNMENT, AND SHOULD BE ALLOWED THE LATITUDE TO MAKE THE NECESSARY DECISIONS FOR THEIR LOCAL AREA WITHOUT BEING DICTATED TO BY THE STATE. IN MANY CASES, THERE MAY BE ONLY ONE QUALIFIED PRIVATE FIRM AVAILABLE TO PROVIDE SOLID WASTE SERVICES IN A PARTICULAR LOCATION, YET, IF PUBLIC AND PRIVATE COSTS ARE SUBSTANTIALLY EQUAL, UNDER THIS BILL, LOCAL GOVERNMENT WOULD BE FORCED TO ACCEPT THE PRIVATE FIRM'S SERVICES, WITHOUT ANY OTHERS FOR COMPARISON. IF THIS PRIVATE FIRM DECIDES TO PULL OUT AFTER THE INITIAL CONTRACT PERIOD, WHICH UNDER EXISTING LAW CAN BE NO MORE THAN FIVE (5) YEARS, THE LOCAL GOVERNMENT IS LEFT WITH NO BACK UP FOR A

SMOOTH CONTINUANCE OF SERVICES DURING THE SEARCH FOR A NEW OPERATOR SINCE THE LOCAL GOVERNMENT WOULD NOT BE EQUIPPED TO TAKE OVER DUE TO THE REQUIREMENT THAT A PRIVATE FIRM PROVIDE THE SERVICES.

IN CONCLUSION, WE FEEL THIS BILL WILL HAMSTRING LOCAL GOVERNMENT DECISION-MAKING WITH REGARD TO SOLID WASTE MANAGEMENT, AND COULD CREATE A SERIOUS LIABILITY PROBLEM TO COUNTIES AND CITIES SHOULD THE PRIVATE OPERATION CLOSE DOWN IN THE FACE OF BEING HELD ACCOUNTABLE FOR POLLUTING ACTIVITIES. IF LOCAL GOVERNMENT CAN PROVIDE SOLID WASTE MANAGEMENT SYSTEMS THAT MEET ALL REQUIRED ENVIRONMENTAL LAWS FOR LICENSURE AT A COST EQUIVALENT TO PRIVATE OPERATIONS, AND DESIRE TO PROVIDE THOSE SERVICES THEMSELVES, THEY SHOULD BE ALLOWED TO DO SO WITHOUT STATE INTERFERENCE. THEREFORE, WE URGE THIS COMMITTEE TO VOTE A DO NOT PASS RECOMMENDATION FOR SB-99.

THANK YOU.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of February, 1991.

Name: Pete Frazier

Address: 3305 17 Ave. S. - 67 Falls

Telephone Number: 761-3805 (H) 761-1190 (W)

Representing whom?

City - Co Health Dept 67 Falls

Appearing on which proposal?

SB 99

Do you: Support? Amend? Oppose?

Comments:

Written testimony submitted to secretary

TESTIMONY ON SB 99

() Chairman and Committee members. My name is Erling Tufte, Director of Public Works for the City of Great Falls. I also have served as a member of the SJR 19 Advisory committee to the EQC on solid waste management issues.

I strongly oppose SB99. I am disappointed that the bill was even introduced because it was overwhelmingly opposed by the SJR's advisory committee. I personally received a number of calls accusing me of "selling out" to the private sector. The introduction of this bill by the EQC raised the suspicion of public sector employees about the ten solid waste bills--most of which are to the benefit of everyone in Montana. The question asked of me has been "Are the other bills as poorly conceived and biased as this one?"

In Great Falls, the City and private industry compete head to head for solid waste collection and disposal. The City does so entirely by monthly user fees, not general taxation. In my opinion the private sector has an edge already and does not need preferential legislation as well. In spite of these advantages we are competitive in cost and service.

What are some of the private sector advantages?

Government Influence and Inside Information: One of our firms has a former EPA Administrator as CEO and another a former White House Chief of Staff and Senate Majority Leader as a board member.

Ability to Weather EPA Fines: One of our firms has the financial strength to continue being one of the EPA's largest fine recipients and still remain solvent.

Collusion: Again, our large firms have the financial strength to absorb large fines.

We made an attempt 1 ½ years ago to privatize a portion of our City solid waste operation in Great Falls. Our customers and some private sector customers pleaded with the City Commission to keep us in business. We raised our prices and successfully stayed in business. The message was that people wanted to avoid a private sector monopoly without controls. Because this business is very capital intensive, residents were concerned that the City could not afford to re-enter the business once its resources were liquidated.

The bill is aimed at giving the services to the private sector, making the public sector responsible for the services and also paying for necessary administration. I urge you to reject SB99 showing your confidence that local government will make the appropriate decision on public or private services based on the public's interest.

Alec HANSON, MLCT

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 33

DATE 2-19-91

BILL NO. SB-99

PREFERENCE FOR PRIVATE WASTE
MANAGEMENT OPERATIONS IS NOTHING
MORE THAN AN ATTEMPTED DIVERSION
OF LOCAL GOVERNMENT'S RESPONSIBILITY
TO MANAGE AN ESSENTIAL & COST SENSITIVE
SERVICE

UNDER THIS BILL AN UNELECTED EMPLOYEE
OF THE DEPARTMENT HEALTH, DESIGNATED
IN THE FISCAL NOTE AS A GRADE 15
STEP 2, WILL WRITE THE RULES THAT
WILL CONTROL CONTRACTS FOR WASTE
SYSTEMS ACROSS THE STATE

WORKERS, COUNTY MEMBERS AND COUNTY
COMMISSIONERS HAVE THE RESPONSIBILITY TO
GUIDE SERVICES LIKE WASTE FOR THE
PEOPLE THEY REPRESENT. THEY HAVE GOT TO
LOOK AT THE COST AND QUALITY OF
SERVICES AND THE LONG TERM CONSEQUENCES
OF THE CONTRACTS THEY NEGOTIATE. THEY'VE
GIVEN CONSIDERABLE THOUGHT ALREADY TO THE
ELEMENTS OF THE INITIAL AGREEMENT.

IS THERE GOING TO BE A MONOPOLY
WILL THE CITY OF MONTGOMERY BE

LETTER and meeting both former
employees of the department.

THE ANSWER TO ALL THESE QUESTIONS
IS NO -

THE ONLY WAY TO PROTECT THE
CONSUMER IS TO ASSURE THAT THEIR
CONSUMER CAN BE HANDLED THROUGH
THE POLITICAL SYSTEM - BECAUSE
THIS IS THE WAY WE DO THINGS IN
MONTANA.

THERE ARE TWO OTHER MAJORS
AND A COUNTY AND STATE ON THIS
COMMITTEE, AND WHAT THE BILL SAYS
IS THAT THE PEOPLE WHO CONTROL THEM
IN OFFICE COULD BE EXPECTED TO
DECIDE A BASIC SET OF PUBLIC POLICY

Liability - SIBISH

UNIQUE KEYS - Unregulated
monopoly -

Amendments to Senate Bill No. 413
First Reading CopyRequested by Senator Eve Franklin
For the Senate Committee on Local GovernmentPrepared by Tom Gomez
February 19, 1991

1. Title, lines 5 and 6.
Following: "INCREASE" on line 5
Insert: "UTILITY"
Following: "RATES" on line 5
Strike: remainder of line 5 through "INCREASE" on line 6
Insert: "BASED UPON THE INCREASE IN THE CONSUMER PRICE INDEX"

2. Page 1, line 12.
Following: "limitation."
Insert: "(1)"

3. Page 1, line 19.
Following: "~~in~~"
Insert: "in"

4. Page 1, line 21.
Following: "percentage"
Strike: "of the cost-of-living"
Following: "increase"
Insert: "in the consumer price index"

5. Page 1, lines 22 and 23.
Following: "year" on line 22
Strike: remainder of line 22 through "statistics," on line 23

6. Page 2, line 5.
Following: line 4
Insert: "(2) For purposes of this section, "consumer price index" means the consumer price index, United States city average, for all items, using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor."

Chairman Lynch, and members of the committee, thank you for allowing me to speak with you today. My name is Allyn Christiaens. I live in Great Falls and I am vice chairman of the state board of directors of Montana People's Action. Montana People's Action is a statewide nonprofit people's empowerment group which is very active in local government with an emphasis on how local legislation affects the low and moderate income people of our communities.

I am here today to express my avid support for Senate Bill 413, a bill that will bring back fairness to the implementation of municipal utility rate increases.

During the era of deregulation and energy shortage of the late 1970's and early 80's, the legislature passed HB 765 in 1981 which would allow municipal utilities to increase water and sewer rates by 12% per year without Public Service Commission scrutiny and approval. This bill was to be effective for a two year trial period. In 1983, the passage of SB 436 made this temporary provision a permanent one. Both bills were passed despite strong objection by the PSC, the Montana Consumer Counsel, many senior citizens, and legislators including former Rep. Paul Pistoria. Major reasons for opposition at those times were loss of regulatory control by the PSC, perpetuation of local government fiscal mismanagement, and unduely increased and nonregulated rate increases which are burdensome to persons of limited or low income. Now, the fears of the opposition have come to pass.

SB 413 before you was drafted with the intent of rectifying a serious flaw in the justification for these prior bills. Rather than using a flat 12% rate increase, this bill would adjust the increase to be reflective of the previous years' Consumer Price Index (CPI) as determined by the US Bureau of Labor Statistics, an indicator which is more consistent with consumer buying power and cost to producers. If I could draw your attention to Table 1, you will notice that for the years 1960 through 1988, the total CPI increased markedly for the years 1979, 1980, and 1981 (the year HB 765 was enacted). However, since 1981, the CPI has leveled off to nearly the same percentage levels prior to those three years. The mean CPI for the past 30 years is 4.8% annually. Since 1981, the mean CPI is 4.2% annually.

Now, if I could draw your attention to Table 2. An increase based upon the CPI implemented annually for 10 years would generate \$1.2 million dollars (or a 60% revenue increase) for a utility that currently generates \$2 million in rates. This revenue, combined with bonding and optional PSC approved rate hikes, would give ample funding to operate and maintain the utility. However, a flat 12% annual increase for the same utility over the same 10 year period, would generate over \$4.2 million (or a 211% revenue increase). This revenue combined with large PSC approved rate hikes and bonding is more than persons with limited income can bear!

In conclusion, Montana People's Action enthusiastically endorses this legislation which will be fair not only to municipal utilities, but to the ratepayers footing the bill.

TABLE 1

No. 757. CONSUMER PRICE INDEXES—PERCENT CHANGE IN MAJOR GROUPS: 1960 TO 1988

(In percent)

YEAR	ALL ITEMS—		Energy	Fuel, and other utilities	Food	Shelter	Transportation	Apparel and upkeep	All commodities	Services
	Total	Less food, energy								
1960.....	1.7	1.3	2.3	2.4	1.0	2.0	-	1.6	.9	3.4
1961.....	1.0	1.3	.4	1.2	1.3	.8	1.0	.9	.8	1.7
1962.....	1.0	1.3	.4	-	.7	1.6	2.3	.4	.9	2.0
1963.....	1.3	1.3	-	1.1	1.6	1.2	.3	1.3	.9	2.0
1964.....	1.3	1.6	-.4	-	1.3	1.5	1.6	.9	1.2	2.0
1965.....	1.6	1.2	1.8	-	2.2	1.9	1.6	1.1	1.1	2.3
1966.....	2.9	2.4	1.7	.4	5.0	3.0	1.3	2.5	2.6	3.8
1967.....	3.1	3.6	2.1	1.5	.9	3.8	3.1	4.1	1.9	4.3
1968.....	4.2	4.6	1.7	1.1	3.5	4.5	3.0	5.3	3.5	5.2
1969.....	5.5	5.8	2.5	2.2	5.1	8.3	4.1	5.8	4.7	6.9
1970.....	5.7	6.3	2.8	3.9	5.7	8.9	5.0	4.2	4.5	8.0
1971.....	4.4	4.7	3.9	6.9	3.1	4.2	5.3	3.2	3.6	5.7
1972.....	3.2	3.0	2.6	4.5	4.2	4.6	1.0	2.0	3.0	3.8
1973.....	6.2	3.6	8.1	5.5	14.5	4.7	3.3	3.7	7.4	4.4
1974.....	11.0	8.3	29.6	18.7	14.3	9.6	11.2	7.4	11.9	9.2
1975.....	9.1	9.1	10.5	11.5	8.5	9.9	9.4	4.5	8.8	9.8
1976.....	5.8	6.5	7.1	8.8	3.0	5.5	10.0	3.7	4.3	8.3
1977.....	6.5	6.3	9.5	10.7	6.3	6.6	7.1	4.5	5.8	7.7
1978.....	7.6	7.4	6.3	6.9	9.9	10.2	4.6	3.6	7.2	8.6
1979.....	11.3	9.8	25.1	10.8	11.0	13.9	14.3	4.3	11.3	11.0
1980.....	13.5	12.4	30.9	16.4	8.6	17.6	17.9	7.1	12.3	15.4
1981.....	10.3	10.4	13.6	14.6	7.8	11.7	12.2	4.8	8.4	13.1
1982.....	6.2	7.4	1.5	9.8	4.1	7.1	4.1	2.6	4.1	9.0
1983.....	3.2	4.0	.7	5.6	2.1	2.3	2.4	2.5	2.9	3.5
1984.....	4.3	5.0	1.0	4.6	3.8	4.9	4.4	1.9	3.4	5.2
1985.....	3.6	4.3	.7	1.6	2.3	5.6	2.6	2.8	2.1	5.1
1986.....	1.9	4.0	-13.2	-2.3	3.2	5.5	-3.9	.9	-.9	5.0
1987.....	3.6	4.1	.5	-1.1	4.1	4.7	3.0	4.4	3.2	4.2
1988.....	4.1	4.4	.8	1.4	4.1	4.8	3.1	4.3	3.5	4.6

- Represents zero.

TABLE 2

EXAMPLE OF MEAN CPI-BASED RATE vs CURRENT 12% FLAT RATE

	<u>4.8% (CPI based 30 yr. mean)</u>	<u>Current 12% Flat Rate</u>
Current Utility Annual Revenue	\$ 2,000,000	\$ 2,000,000
Addition Revenue 1990-1991	96,000	240,000
1991-1992	100,608	268,800
1992-1993	105,437	301,056
1993-1994	110,498	337,192
1994-1995	115,802	377,655
1995-1996	121,661	422,974
1996-1997	127,186	473,731
1997-1998	133,291	530,579
1998-1999	139,689	594,248
1999-2000	146,394	665,558
TOTAL REVENUE INCREASE	\$ 1,196,266 (60% increase over 10 yr.)	\$ 4,211,873 (211% increase over 10 yr.)

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19th day of February, 1991.

Name: Allyn Christiaens

Address: 1910 4th Ave No., Great Falls, MT 59401

Telephone Number: 727-2642

Representing whom?
Montana People's Action

Appearing on which proposal?
SB 413

Do you: Support? Amend? Oppose?

Comments:

The present yearly 12% increase in municipal utility rates is based upon an arbitrary figure that closely resembles the consumer price index for the 3 years prior to enactment as HB in 1981. This CPI rate however has dropped dramatically but the 12% rate remains. Abuse has taken place in local government by applying this rate increase annually for several years with no intention of stopping the ever increasing and outrageously expensive escalation of rates for ratepayers. Changing the percentage from 12% to the percentage of increase for the previous calendar based on the consumer price index would not only provide reasonable revenue for the non profit utility but would also make the ratepayer's bills more affordable.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

(see additional submitted testimony)

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 36DATE 2-19-91BILL NO. SB-413

FAX 1 OF 2 PAGES

DATE 2-19-91

TO: The Senate Local Government Committee

FROM: Montana Peoples Action

FAX ORIGINATION NUMBER: 245-6106

MONTANA PEOPLES ACTION

STATE OFFICE

3 6th St. N., Rm. 409
Great Falls, MT 59401
(406) 727-9962

208 E. Main
Missoula, MT 59802
(406) 728-5297

24 South 29th St.
Billings, MT 59101
(406) 245-6106

TESTIMONY TO THE SENATE LOCAL GOVERNMENT COMMITTEE

This testimony is submitted by the Billings Board of Montana Peoples Action (MPA) which represents 1600 Billings MPA members.

The Billings Chapter of Montana Peoples Action requests that the members of the Senate Local Government Committee vote for Senate Bill 413 that reduces the amount a municipally owned utility company can raise rates without review by the state Public Service Commission. The reduction would be from 12% to the consumer price index.

As residents of Montana we are feeling the results of the national recession. Our resources are stretched to the limits and we cannot afford any increase in our monthly living expenses.

We do not claim to be energy experts and that is the reason our taxes and votes provide for a utility regulatory commission.

We need our municipal utilities and we need them to operate efficiently. By allowing unregulated increases of 12% annually we are setting ourselves and our municipal governments up for failure and unnecessary confrontations.

By passing the amendments to SB 413 Residents of Montana cities can be assured that municipal utility rate increases are needed, fair, and those affected, will be assured a meaningful voice in the process.

As members of the 52nd legislature you have the difficult job of making a little money, in recessionary times, go a long way. SB 413 makes your job a little easier; it will weed out unnecessary financial burdens on urban residents by requiring the Municipal utilities to use our resources wisely.

The Billings chapter of Montana Peoples Action thanks you for your vote on SB 413.

SB - 413

This law has been on the books for 10 years - It represents a significant grant of authority from the state to local governments, and it has saved municipal utility consumers thousands of dollars in attorney and expert witness fees that would have been required for rate requests to the ASC,

In the old days - cities spent as much as \$80,000 on utility rate cases. These costs were excessive, and as a result rate adjustments were deferred until maintenance, operation and construction budgets were totally unmanageable - This type of deferred maintenance and sudden increases didn't work - Rates were static and then increased radically -

The legislature recognized in 1981 that this "stop and go" system of setting rates was not practical

The 12% cost rule was the result. It has worked - There have been some isolated problems, particularly in

CONSUMER PRICE INDEX - OCTOBER 1990

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 37A

DATE 2-19-91

BILL NO. SB-413

All Urban Consumers (CPI-U)

	U.S. CITY AVERAGE		
	1982-84=100	Percent Change From	
		1 Yr. Ago	1 Mo. Ago
ALL ITEMS.	133.5	6.3	0.6
FOOD AND BEVERAGES.	133.4	5.6	0.3
HOUSING	130.6	5.0	0.1
APPAREL AND UPKEEP.	128.4	4.6	1.3
TRANSPORTATION.	125.8	9.9	2.3
MEDICAL CARE.	167.1	9.4	0.8
ENTERTAINMENT	134.3	4.6	0.1
OTHER GOODS & SERVICES.	163.2	7.5	0.4
ALL ITEMS (1967=100).	400.0		

Urban Wage Earners and Clerical Workers (CPI-W)

	U.S. CITY AVERAGE		
	1982-84=100	Percent Change From	
		1 Yr. Ago	1 Mo. Ago
ALL ITEMS.	131.9	6.2	0.6
FOOD AND BEVERAGES.	133.1	5.6	0.3
HOUSING	128.3	4.7	0
APPAREL AND UPKEEP.	127.1	4.2	1.1
TRANSPORTATION.	125.7	10.0	2.3
MEDICAL CARE.	166.8	9.0	0.8
ENTERTAINMENT	133.1	4.2	0.2
OTHER GOODS & SERVICES.	162.8	7.5	0.2
ALL ITEMS (1967=100).	393.0		

INFORMATION:
 816-426-2481 KANSAS CITY
 303-844-2467 DENVER
 314-425-4511 ST. LOUIS

The CPI for October will be issued on December 18, 1990.

TABLE 2-1

WASTEWATER UTILITY
OPERATING FUND FLOW OF FUNDS

JB-413

Line No.	OPERATING FUND	Fiscal Year Ending June 30									
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	Revenue	2,614,800	2,614,800	2,614,800	2,614,800	2,614,800	2,614,800	2,614,800	2,614,800	2,614,800	2,614,800
2	User Charge Under Existing Rates	336,300	672,500	672,500	672,500	672,500	672,500	672,500	672,500	672,500	672,500
3	Additional User Charge Revenue Required	244,800	979,200	979,200	979,200	979,200	979,200	979,200	979,200	979,200	979,200
4	Fiscal Year	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
5	Months Effective	6	12	12	12	12	12	12	12	12	12
6	Annualized Revenue Increase	25,774	81,100	81,100	81,100	81,100	81,100	81,100	81,100	81,100	81,100
7	Actual Revenue Increase	12,864	40,550	40,550	40,550	40,550	40,550	40,550	40,550	40,550	40,550
8	Total Additional User Charge Revenue	581,100	1,651,700	2,078,400	2,547,700	3,064,000	3,531,900	4,256,600	4,943,700	5,246,000	5,560,400
9	Miscellaneous	15,600	15,600	15,600	15,600	15,600	15,600	15,600	15,600	15,600	15,600
10	Interest Income [1]	9,800	29,000	49,200	53,500	56,900	56,300	54,600	60,300	61,700	67,800
11	Total Revenue	3,220,500	4,311,100	4,758,000	5,231,600	5,751,300	6,318,600	6,941,600	7,634,400	7,938,100	8,254,600
12	Revenue Requirements	2,506,300	2,631,600	2,763,200	2,901,300	3,046,200	3,198,500	3,358,500	3,526,500	3,702,800	3,887,900
13	Bond Debt Service	426,100	427,200	427,500	427,000	428,200	428,100	429,600	429,700	428,600	429,000
14	Existing Revenue Pledged	0	1,040,700	1,040,700	1,665,100	1,665,100	2,431,900	2,431,900	3,089,200	3,089,200	3,198,800
15	Proposed Revenue Pledged [7]	61,520	0	0	0	0	0	0	0	0	0
16	Fater Fund Loan Payment	(30,100)	(102,900)	(102,900)	(146,600)	(146,600)	(200,300)	(200,300)	(246,300)	(246,300)	(254,000)
17	Routing Capital Expense	2,983,820	3,996,600	4,495,500	5,369,800	5,515,900	6,573,200	6,734,700	7,679,100	7,833,300	8,168,700
18	Transfer to (from) CAPITAL FUND	256,681	314,500	282,500	(138,200)	235,000	(254,600)	296,900	(44,700)	94,800	89,500
19	Transfer to (from) BOND RESERVE FUND	0	256,700	571,200	833,700	695,500	930,900	676,300	883,200	839,500	923,300
20	Total Revenue Requirements	256,700	571,200	833,700	695,500	930,900	676,300	883,200	839,500	923,300	1,013,600
21	Net Operating Funds Available	698,900	720,600	756,600	794,400	834,100	875,800	919,600	965,600	1,013,900	1,064,300
22	Beginning Operating Fund Balance	175,574	147,324	149,954	130,674	141,304	129,324	138,864	134,894	134,014	134,934
23	Operating Fund Balance	174,124	147,064	149,734	130,514	141,264	129,254	138,864	134,824	134,004	134,894
24	Operating Fund Balance	174,124	147,064	149,734	130,514	141,264	129,254	138,864	134,824	134,004	134,894
25	Debt Service Coverage	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
26	Annual [3]	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
27	Average [4]	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
28	Maximum [6]	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7

[1] Interest on available operating fund balances computed at a 7.00% annual interest rate.
 [2] One twelfth of current year's debt expense plus 20 percent of preceding year's debt expense.
 [3] Total sales revenue plus miscellaneous revenue plus interest income on operating, capital, and bond reserve funds, less operation and maintenance expense, all divided by the current year's revenue pledged debt service.
 [4] Total sales revenue plus miscellaneous revenue plus interest income on operating, capital, and bond reserve funds, less operation and maintenance expense, all divided by subsequent years' average revenue pledged debt service.
 [5] 125 percent coverage required by bond ordinance No. 187.
 [6] Total sales revenue plus miscellaneous revenue plus interest income on operating, capital, and bond reserve funds, less operation and maintenance expense, all divided by subsequent years' maximum revenue pledged debt service.
 [7] See Table 2-2, Line 3 and Note 1.
 [8] Anticipated interim increase.
 [9] Additional annual increase needed to meet full increase request ((1-25771-2079-1)*100-63.17%).

D. Ward P. ... City Pse ...

WASTEWATER UTILITY
CAPITAL FUND FLOW OF FUNDS

Line No.	CAPITAL FUND	Fiscal Year Ending June 30										
		(1) 1990-91	(2) 1991-92	(3) 1992-93	(4) 1993-94	(5) 1994-95	(6) 1995-96	(7) 1996-97	(8) 1997-98	(9) 1998-99	(10) 1999-00	
Source of Funds												
1	Funds on Hand at Beginning of Year	52,600	56,400	2,822,200	143,000	2,405,500	658,900	4,260,000	1,170,600	5,001,200	1,647,600	
2	Transfer (to) from OPERATING FUND	0	0	367,000	523,000	523,000	715,000	715,000	840,000	879,000	907,000	
Bond Issues												
3	Revenue Bonds [1]	0	9,500,000	0	5,700,000	0	7,000,000	0	6,000,000	0	1,000,000	
4	General Obligation Bonds	0	0	0	0	0	0	0	0	0	0	
5	Double Barrel General Obligation Bonds	0	0	0	0	0	0	0	0	0	0	
6	Total Bond Issues	0	9,500,000	0	5,700,000	0	7,000,000	0	6,000,000	0	1,000,000	
7	Loans	0	0	0	0	0	0	0	0	0	0	
8	Special Assessments	0	0	0	0	0	0	0	0	0	0	
9	Other	0	0	0	0	0	0	0	0	0	0	
10	Interest Income [2]	3,800	380,200	103,600	256,900	107,300	378,100	190,100	392,500	232,700	125,000	
11	Total Funds Available	56,400	9,936,600	3,293,000	6,623,500	3,035,800	8,732,000	5,165,100	8,443,100	6,112,900	3,679,600	
Use of Funds												
12	Scheduled Major Capital Improvements [3]	0	4,839,200	3,149,400	3,300,600	2,376,900	3,375,200	3,994,500	2,484,600	4,469,300	2,436,800	
13	Inter Fund Loan Payment	0	759,500	0	0	0	0	0	0	0	0	
14	Bond Reserve Fund Requirement	0	1,049,700	0	624,400	0	766,800	0	637,300	0	109,500	
15	Capital Financing Issuance Expense	0	475,000	0	285,000	0	350,000	0	300,000	0	50,000	
16	Total Use of Funds	0	7,114,400	3,149,400	4,210,000	2,376,900	4,492,000	3,994,500	3,441,900	4,469,300	2,596,300	
17	Funds on Hand at End of Year	56,400	2,822,200	143,000	2,405,500	658,900	4,260,000	1,170,600	5,001,200	1,647,600	1,003,300	

[1] Assumes 20 year, nine percent bonds are issued July 1 of the fiscal year indicated.

[2] Interest on available capital funds computed at a 7.00% annual interest rate.

[3] See Sewer Mini Master Plan, Appendix F. Includes 3.29 percent allowance for annual inflation.

WHITE UTILITY
OPERATING FUND FLOW OF FUNDS

Line No.	OPERATING FUND	Fiscal Year Ending June 30									
		1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
1	Revenue	3,518,600	3,518,600	3,518,600	3,518,600	3,518,600	3,518,600	3,518,600	3,518,600	3,518,600	3,518,600
2a	Sales Revenue Under Existing Rates	463,900	927,900	927,900	927,900	927,900	927,900	927,900	927,900	927,900	927,900
2b	Additional Sales Revenue Required:	165,800	663,300	663,300	663,300	663,300	663,300	663,300	663,300	663,300	663,300
3	Fiscal Year	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
4	Annualized Revenue Increase	26.37%	14.92%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
5	Months Effective	6	3	12	12	12	12	12	12	12	12
6	Actual Revenue Increase	13.18%	4.16%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
7	1990-91	463,900	927,900	927,900	927,900	927,900	927,900	927,900	927,900	927,900	927,900
8	1991-92	165,800	663,300	663,300	663,300	663,300	663,300	663,300	663,300	663,300	663,300
9	1992-93	408,800	408,800	408,800	408,800	408,800	408,800	408,800	408,800	408,800	408,800
10	1993-94	441,500	441,500	441,500	441,500	441,500	441,500	441,500	441,500	441,500	441,500
11	1994-95	478,800	478,800	478,800	478,800	478,800	478,800	478,800	478,800	478,800	478,800
12	1995-96	515,000	515,000	515,000	515,000	515,000	515,000	515,000	515,000	515,000	515,000
13	1996-97	556,200	556,200	556,200	556,200	556,200	556,200	556,200	556,200	556,200	556,200
14	1997-98	525,600	525,600	525,600	525,600	525,600	525,600	525,600	525,600	525,600	525,600
15	1998-99	321,300	321,300	321,300	321,300	321,300	321,300	321,300	321,300	321,300	321,300
16	1999-00	334,200	334,200	334,200	334,200	334,200	334,200	334,200	334,200	334,200	334,200
12	Total Additional Sales Revenue	629,700	1,591,200	2,000,000	2,441,500	2,918,300	3,433,300	3,989,500	4,515,100	4,836,400	5,170,600
13	Total Sales Revenue	4,148,300	5,109,800	5,518,600	5,960,100	6,436,900	6,951,900	7,508,100	8,033,700	8,355,000	8,689,200
14	Miscellaneous	32,000	32,000	32,000	32,000	32,000	32,000	32,000	32,000	32,000	32,000
15	Interest Income [1]	26,100	44,800	59,900	59,600	59,400	60,800	66,100	75,000	78,500	79,300
16	Total Revenue	4,206,400	5,186,600	5,610,500	6,051,700	6,528,300	7,044,700	7,606,200	8,140,700	8,465,500	8,800,500
17	Revenue Requirements	2,715,700	2,897,500	3,097,200	3,252,100	3,414,800	3,585,200	3,764,600	3,952,900	4,150,400	4,358,000
18	Operation and Maintenance Expense	1,169,000	1,177,000	1,182,700	1,191,100	1,204,000	1,217,100	1,232,900	1,242,700	1,256,600	1,271,800
19	Bond Debt Service	169,300	832,600	832,600	1,314,600	1,314,600	1,807,500	1,807,500	2,311,400	2,311,400	2,563,400
20	Proposed Revenue Pledged	0	0	0	0	0	0	0	0	0	0
21	Interest Fund Loan Payment	0	0	0	0	0	0	0	0	0	0
22	Transfer to (from) CAPITAL FUND	(89,000)	(187,300)	(187,300)	(181,000)	(181,000)	(215,700)	(215,600)	(250,800)	(250,800)	(266,500)
23	Transfer to (from) BOND RESERVE FUND	3,965,000	4,994,800	5,469,200	6,202,800	6,382,300	7,150,100	7,349,400	8,145,200	8,359,600	8,883,700
24	Total Revenue Requirements	241,400	291,800	141,300	(151,100)	146,000	(105,400)	256,800	(4,500)	105,900	(83,200)
25	Net Operating Funds Available	252,500	493,900	785,700	927,000	775,900	921,900	816,500	1,073,300	1,068,800	1,174,700
26	Beginning Operating Fund Balance	493,900	785,700	927,000	775,900	921,900	816,500	1,073,300	1,068,800	1,174,700	1,091,500
27	Commutative Operating Fund Balance	734,400	784,600	837,600	890,400	935,000	961,700	1,030,800	1,062,300	1,136,400	1,193,200
28	Desired Operating Fund Balance [2]	137,600	136,470	136,970	128,450	135,410	129,810	137,600	132,600	132,020	126,500
29	Annual [3]	142,500	140,150	141,400	132,750	141,330	136,000	148,140	141,400	143,900	141,900
30	Average [4]	128,540	130,330	131,170	124,440	131,670	127,600	135,930	131,520	131,460	131,200
31	Maximum [5]										

[1] Interest on available operating fund balances capped at a 7.00% annual interest rate.

[2] One twelfth of current year's debt expense plus 20 percent of preceding year's debt expense.

[3] Total sales revenue plus miscellaneous revenue plus interest income on operating, capital, and bond reserve funds, less operation and maintenance expense, all divided by the current year's revenue pledged debt service.

[4] Total sales revenue plus miscellaneous revenue plus interest income on operating, capital, and bond reserve funds, less operation and maintenance expense, all divided by subsequent years' average revenue pledged debt service.

[5] 125 percent coverage required by bond ordinance No. 1827.

[6] Total sales revenue plus miscellaneous revenue plus interest income on operating, capital, and bond reserve funds, less operation and maintenance expense, all divided by subsequent years' maximum revenue pledged debt service.

[7] See Table 2-2, Line 3 and Note 1.

[8] Anticipated interim increase.

[9] Additional annual increase needed to meet full increase request ((1.2837*1.3492-1)*100=45.22%).

TABLE 2-2

WATER UTILITY
CAPITAL FUND FLOW OF FUNDS

Line No.	CAPITAL FUND	Fiscal Year Ending June 30									
		(1) 1990-91	(2) 1991-92	(3) 1992-93	(4) 1993-94	(5) 1994-95	(6) 1995-96	(7) 1996-97	(8) 1997-98	(9) 1998-99	(10) 1999-00
Source of Funds											
1	Funds on Hand at Beginning of Year	818,700	27,400	2,329,800	518,700	2,577,000	735,300	2,743,500	921,900	3,042,900	1,092,500
2	Transfer (to) from OPERATING FUND	0	135,000	504,000	626,000	630,000	756,000	760,000	889,000	882,000	959,000
Bond Issues											
3	Revenue Bonds [1]	0	7,600,000	0	4,400,000	0	4,500,000	0	4,600,000	0	2,300,000
4	General Obligation Bonds	0	0	0	0	0	0	0	0	0	0
5	Double Barre] General Obligation Bonds	0	0	0	0	0	0	0	0	0	0
6	Total Bond Issues	0	7,600,000	0	4,400,000	0	4,500,000	0	4,600,000	0	2,300,000
7	Loans	0	0	0	0	0	0	0	0	0	0
8	Special Assessments	0	0	0	0	0	0	0	0	0	0
9	Other	0	0	0	0	0	0	0	0	0	0
10	Interest Income [2]	29,600	306,100	99,700	237,800	115,900	254,100	128,300	274,100	144,700	142,900
11	Total Funds Available	848,300	8,068,500	2,933,500	5,782,500	3,322,900	6,245,400	3,631,800	6,665,000	4,079,600	4,494,400
Use of Funds											
12	Scheduled Major Capital Improvements [3]	820,900	2,435,600	2,414,800	2,503,500	2,547,600	2,783,900	2,709,900	2,908,200	2,987,100	3,069,900
13	Inter Fund Loan Payment	0	2,090,500	0	0	0	493,000	0	503,900	0	252,000
14	Bond Reserve Fund Requirement	0	832,500	0	482,000	0	493,000	0	503,900	0	252,000
15	Capital Financing Issuance Expense	0	380,000	0	220,000	0	225,000	0	230,000	0	115,000
16	Total Use of Funds	820,900	5,738,700	2,414,800	3,205,500	2,547,600	3,501,900	2,709,900	3,642,100	2,987,100	3,636,900
17	Funds on Hand at End of Year	27,400	2,329,800	518,700	2,577,000	735,300	2,743,500	921,900	3,042,900	1,092,500	1,057,500

[1] Assumes 20 year, nine percent bonds are issued July 1 of the fiscal year indicated.

[2] Interest on available capital funds computed at a 7.00% annual interest rate.

[3] See Water Master Plan 1990 - 2000, Appendix J. Includes 3.29 percent allowance for annual inflation.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of Feb, 1991.

Name: Richard A Nisbet

Address: 316 N Park Cir
Helena, mt

Telephone Number: 497-8926

Representing whom?
City of Helena

Appearing on which proposal?
SB 99

Do you: Support? Amend? Oppose?

Comments:
State should not determine how
local govt will evaluate
private proposals on Solid Waste
Mgt Systems. local govt's are
directly responsible to the public
& can effectively determine the benefits
etc of Private versus Public solid
Waste Mgt systems -

SWEET GRASS COUNTY, MONTANA



County Attorney

Telephone (406) 932-4376

P.O. Box 1188
Big Timber, Montana 59011

SENATE LOCAL GOVT. COMM.

EXHIBIT NO. 39

DATE 2-19-91

BILL NO. SB-302

Direct to Senate
Committee For 3:00
Hearing on SB 302
Feb. 19, 1991

To: Senator Esther Bengston
Chair, Senate Local Government Committee

From: G. Thomas Biglen
Sweet Grass County Attorney
Big Timber, MT

G. Thomas Biglen

Re: Senate Bill No. 302
"An Act to Generally Revise the Laws Relating to County
Roads..."

Date: February 19, 1991.

I was asked by the Sweet Grass County Commissioners to review Senate Bill No. 302 and comment on it based on my experience dealing with county road problems over the past eight years.

The existing laws pertaining to county roads are outdated and are difficult to administer particularly in light of numerous and seemingly contradictory Montana Supreme Court Decisions which have attempted to interpret county road law. For example, it can be more difficult to abandon an old "petitioned for road" which has never been maintained, than it can be to abandon a currently used county road which may have outlived its usefulness or been made obsolete by changing traffic patterns. The quirks that have developed in county road law occurred because the Montana Supreme Court has had to pass judgement on petitioned roads, roads developed by prescription, and dedicated roads. A very artificial and confusing system of road law has developed because of these distinctions.

This bill does not address the problems that have developed over the years, and it appears that the bill may be creating even more confusion than already exists. Beginning at line 11 page 2 the bill expands the definition of a county road substantially. This expanded definition will open up a whole series of problems

for the counties and taxpayers. For example, an old petitioned for road from the turn of the century which has obviously been abandoned and serves no useful function is under the expanded definition still a county road. It even appears that any road which at any time in the past was county maintained gains the status of a county road without any regard to its current use. This could place a heavy burden on county government. The bill as drafted will give any number of special interest groups the ability to attempt to force counties to provide county access and maintenance on selectively designated roads for very limited and special purposes.

The inclusion of a "primitive public road" serves no useful function as it is proposed. If a county road is going to be used then it should be maintained. If it is not going to be used then it should be abandoned or closed. On rare occasions a county road ceases to serve the purpose for which it was created, but still may have some importance to county traffic patterns. For example in Sweet Grass County we have one road north of the Yellowstone which connects two major county roads. It is the only point north of the river where this can happen. Right now no one lives on the road, but if certain population trends occurred then the old road can become an important traffic artery. The county needs the ability to close that road, but not abandon it. It shouldn't be designated a "primitive road" and it definitely should not have traffic on it because it is not being maintained.

The definition for a primitive road is so broad as to be either meaningless or so broad to include nearly every road, path, or trail, which more than one person representing the public has been able to bounce over, crawl through, or drag any vehicle across. Finally, it serves no purpose to have county roads which are not maintained; the liability problems alone are endless notwithstanding putting up signs. If the roads are so little used or so specialized in their use then they should not be county roads. For example, if the road only serves to gain access to a creek for fishing, or to a section of state land for access to the lessee, then the road should be controlled by that particular landowner; not by the county for the benefit of the owner or specialized user.

Finally, the section beginning on line 17, page 3, puts an unwarranted and probably indefinable burden on the commissioners. How do the commissioners determine if a road has the "potential to provide access to state or federal land or water." I suppose every road in the county be it county, public or private somehow would fit somewhere in the definition. Under the existing law a hearing is held when a road is to be abandoned and affected property owner's and users will voice their concerns. This is as it should be. The commissioners should not be required to make preliminary determinations about some sort of potential access.

The Montana county road law needs a lot of work, the first bit of work being to once and for all identify existing county roads in

some legally comprehensive manner, rather than by antiquated petitions, and conflicting court cases. The second bit of work would be to streamline the existing law to do away with all the legal conflicts arising because of the artificial distinctions created by the designations "petitioned roads, prescriptive roads, dedicated roads, etc." The last bit of work would be to establish a uniform approach to creating, maintaining, controlling, managing, etc., county roads.

Senate Bill 302 only adds more confusion to an already confused area of governmental law. It creates new classes of county roads, broadens definitions to where they are almost incomprehensible, and generally impose burdens on the county governments which are not fair and serve no county purpose.

Please enter this document as testimony regarding Senate Bill 302.

SWEET GRASS COUNTY COMMISSIONERS concur with the above opinion.

SWEET GRASS COUNTY COMMISSIONERS

By Elaine K. Alvestad
Vice-Chairman

John O. Dravidahl
Road Supervisor

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of Feb, 1991.

Name: Richard H Nisbet

Address: 316 N. Park Ave
Helena, Md

Telephone Number: 447-5426

Representing whom?
City of Helena

Appearing on which proposal?
SB 413

Do you: Support? Amend? Oppose?

Comments:

This bill would require
annual rate increases in water &
sewer ops. The 12% allows for
better mgt & fiscal planning for
our operations without annual rate
increases. Each rate case takes
a minimum of 3 1/2 months for
preparation, public notification & public
hearing. PSC hearings take 7 months
to 1 year.