

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

CONFERENCE COMMITTEE ON SENATE BILL 339

Call to Order: By **CHAIRMAN TOM BECK**, on April 14, 1997, at 3:43 p.m., in Room 319

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck (R)
Sen. Dorothy Eck (D)
Sen. Lorents Grosfield (R)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Emily Swanson (D)

Members Excused: None

Members Absent: None

Staff Present: Serena Andrew, Secretary
Martha Colhoun, Legislative Services Division

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

Committee Business Summary:

Hearing & Date Posted: Conference Committee on SB 339
POSTED 4/14/97

{Tape: 1; Side: A; Approx. Time Count: 3:43 p.m.}

HEARING ON SB 339

CHAIRMAN TOM BECK said SB 339 was **SENATOR LORENTS GROSFIELD'S** bill and asked him to comment.

SENATOR GROSFIELD said the House added amendments; those causing the problem are 1 and 2 by **REPRESENTATIVE EMILY SWANSON**, House Committee of the Whole, April 4, 1997, 1:01 p.m. (**EXHIBIT #1**). These amendments deal with a review of a subdivision done by a judge. It was an attempt to keep judges from dividing property without going through the subdivision review process, but failed because of the separation of powers issue.

The language on page 4, lines 6, 7 and 8 of the bill says the court must notify the governing body and present written comment on any subdivision it makes. That was the reason for introducing the bill.

He hoped the House could be convinced to agree with eliminating amendments 1 and 2.

Apparently amendment No. 3 (see EXHIBIT #1) addresses some technical issue in the bill.

{Tape: 1; Side: A; Approx. Time Count: 3:49 p.m.}

REPRESENTATIVE CLIFF TREXLER commented that when he had read the bill and talked to a local judge he found it was one of the few areas where it is deemed proper to make a decision as long as it is all right with someone.

He said judges split up families and estates without consulting anyone in divorce proceedings. He thought this idea was putting a burden on judges and it was something that shouldn't be done.

SENATOR GROSFIELD said he firmly believed the legislature was the policy making branch of government, but often an activist judiciary tries to do some law making. Also, there are professionals who attempt to avoid provisions of the subdivision law.

Over the last three sessions, the legislature has discussed the subdivision law. Most of the arguments have been over the loopholes in the law. The present bill does not close the loopholes; it merely says the court has to notify the governing body.

{Tape: 1; Side: A; Approx. Time Count: 3:55}

CHAIRMAN BECK asked what local authorities could do if a judge did notify them. SENATOR GROSFIELD said he must notify them and give them an opportunity to comment before he makes his final decision.

SENATOR DOROTHY ECK said it was a matter of judges needing to be educated and updated on laws. CHAIRMAN BECK asked if she thought a judge would make a decision without understanding the subdivision laws.

REPRESENTATIVE TREXLER said he thought a precedent would be set if a judge were required to consult certain people before making a decision.

SENATOR GROSFIELD said this issue was not similar to other court operations.

{Tape: 1; Side: A; Approx. Time Count: 3:59}

In response to REPRESENTATIVE STOVALL'S question, SENATOR GROSFIELD said there was no penalty in the bill for noncompliance by a judge.

REPRESENTATIVE STOVALL commented that he didn't think it made much difference one way or the other, and **CHAIRMAN BECK** agreed.

SENATOR GROSFIELD said his county commissioners had asked him to fix this problem.

REPRESENTATIVE SWANSON said she was just beginning to understand the origin of the issue and she was glad to hear the reason for it.

CHAIRMAN BECK said the discussion was about amendments 1 and 2 and suggested a vote.

MOTION/VOTE: **SENATOR GROSFIELD** moved to **DELETE** amendments 1 and 2 by **REPRESENTATIVE SWANSON**, House Committee of the Whole, April 4, 1997, 1:01 p.m. The motion **CARRIED UNANIMOUSLY**.

{Tape: 1; Side: A; Approx. Time Count: 4:07 p.m.}

REPRESENTATIVE STOVALL said that **REPRESENTATIVE McGEE'S** amendments removing 43 U.S.C. 753, were deleted on the floor. He said he had a suggested amendment (**EXHIBIT #2**). The amendment attempts to define what is being done.

SENATOR GROSFIELD said he presumed **REPRESENTATIVE STOVALL** was not suggesting doing anything with line 27 where the key word is "original." On the very first survey it may have come out as lots. If that were ever changed to something else, the result would not be a tract of record. He asked if they would be separate parcels if they were always described as lots.

If, the first time they changed hands, they were no longer described as lots but as the $N\frac{1}{2}N\frac{1}{2}$ you could not call them lots if they were sold together.

REPRESENTATIVE SWANSON asked what this would do to the ability to sell them later as separate lots if the original survey described them as lots. She thought the committee was agreed that it didn't want unreviewed subdivisions to go on because of the way the original survey was done.

{Tape: 1; Side: A; Approx. Time Count: 4:11}

REPRESENTATIVE STOVALL said usually government lots occur on the edge of a township and an effort was being made to recognize that legal description. He understood there might be other places that might have more acres but have never been described that way. The tract would still be described as 670 acres unless it was separated; then it would have to be surveyed and come under review.

CHAIRMAN BECK asked why **REPRESENTATIVE McGEE** struck 43 U.S.C. 753 (the original federal survey). **REPRESENTATIVE SWANSON** said

everyone found it confusing to deal with federal law while dealing with state law.

REPRESENTATIVE STOVALL said they were trying to do something federal law already did and describe it in a way everyone could understand. **REPRESENTATIVE McGEE** had agreed with the language in the amendment he (**SENATOR STOVALL**) had presented (see **EXHIBIT #2**).

REPRESENTATIVE TREXLER said they should remember to include documents of transfer and asked **John Shontz** to explain it.

{Tape: 1; Side: A; Approx. Time Count: 4:15}

John Shontz, Association of Realtors, said it was another way to articulate that there were adjustment lots. This amendment says if that property were transferred as "Section 6" through history although not in the original government survey, those tracts were not tracts of record. Through a title change, government lots have been broken out as lots. The idea behind the amendment was not to create thousands of tracts of record where they did not exist.

REPRESENTATIVE SWANSON asked if it were necessary to do this.

Mr. Shontz said if the state were operating in a vacuum, it might not be an issue, but the Attorney General has been asked for an opinion because people are confused about it. He thought it would be better to have the legislature decide.

REPRESENTATIVE SWANSON said she didn't know what the amendment said. She asked for an interpretation she could understand.

{Tape: 1; Side: A; Approx. Time Count: 4:20}

SENATOR GROSFIELD commented that it said "that can be identified by legal description using documents of transfer other than the original one." He didn't think that was clear. The first time a transfer is made it's a record, but the name could be changed by a subsequent transfer. He thought it should relate to the most current document on file within the records of the County Clerk and Recorder. He asked how many cases were possible.

Jim Richard said "hundreds of thousands."

John Shontz said he didn't think any new tracts of record were being created. It gets back to the issue of being identified on the original deed.

REPRESENTATIVE STOVALL said he didn't think it made any difference whether it was government lots or not.

{Tape: 1; Side: B; Approx. Time 4:25}

REPRESENTATIVE TREXLER said the idea was that if a tract had been transferred it was a tract of record.

SENATOR ECK asked if the committee was sure that was what it wanted to do.

Martha Colhoun said this issue concerns a legal description. The question goes to interpretation.

REPRESENTATIVE TREXLER said perhaps a person has purchased land from three different owners but some attorneys and Clerks and Recorders put them on one deed. **REPRESENTATIVE SWANSON** said that was what was being covered.

John Shontz commented that the language was intended to cover pseudo-government lots never covered in a transfer before. They appeared that way on the original government survey but that doesn't count - there must be a transfer record.

REPRESENTATIVE STOVALL said he didn't want to go around an environmental review. He wanted to recognize the original patent surveys.

CHAIRMAN BECK asked if the committee were interested in going back to the floor to request a free conference committee.

REPRESENTATIVE STOVALL said he would like to see the issue clarified. **REPRESENTATIVE TREXLER** agreed.

REPRESENTATIVE SWANSON said she couldn't decide, but an Attorney General's opinion might be a better way to go.

SENATOR GROSFIELD said apparently the issue is before the Attorney General.

{Tape: 1; Side: B; Approx. Time Count: 4:41 p.m.}

CHAIRMAN BECK asked if some language could be devised to follow the tract of record concept.

REPRESENTATIVE SWANSON said if a parcel had always been owned by a single owner then it is a single tract; if sold separately, they are separate tracts of record.

Mr. Shontz said it would be necessary to strike "irrespective of ownership."

CHAIRMAN BECK asked what was wrong with the bill in its present form.

SENATOR GROSFIELD asked if the committee wanted to wait for the Attorney General's opinion.

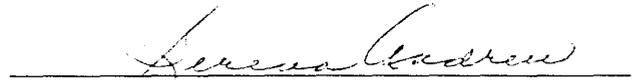
SENATOR BECK suggested one more meeting and asked for a suitable amendment from **Martha Colhoun**.

Jim Richard pointed out that a free conference committee might not be necessary; in a way, the committee was still dealing with the original amendments.

ADJOURNMENT

Adjournment: 4:50 p.m.


SEN. TOM BECK, Chairman


SERENA ANDREW, Secretary