MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN TOM BECK**, on January 23, 1997, at 1:00 p.m., in Room 405.

ROLL CALL

Members Present:
Sen. Thomas A. "Tom" Beck, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Wm. E. "Bill" Glaser (R)
Sen. Don Hargrove (R)
Sen. John "J.D." Lynch (D)
Sen. Walter L. McNutt (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Martha Colhoun, Legislative Services Division
Jodi Jones, Committee Secretary

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 140, SB 164, SB 139
Posted: 1/15/97
Executive Action: None

HEARING ON SB 140

Sponsor: **SENATOR KEN MESAROS, SD 25, Cascade**

Proponents: **Robert Gruel, Self**

Opponents:

Lance Melton, MT School Boards Assoc.
Loran Frazier, MT School Administrators

Opening Statement by Sponsor:

SENATOR KEN MESAROS, SD 25, Cascade, presented SB 140. He said this bill is a fairness issue and has to do with bond issues of

school districts. Many people in a district feel they are taxed without having a say because they live on boundaries of school districts. Often times residents send their children to school in one district while living in another and only get to vote in the district they live in. He passed out two letters of support **(EXHIBIT 1 & 2).**

Proponents' Testimony:

Robert Gruel, Self, said they live and vote in one district while their children go to school in another district. They never get to vote on any school issues in the district their children go to school in.

Opponents' Testimony:

Lance Melton, MT School Boards Assoc., said their Association is against SB 140. See attached testimony: **(EXHIBIT 3).**

Loran Frazier, MT School Administrators, said school districts are growing and many people who just owned land now have a permanent residence. If this bill was to pass, those people outside the resident area could register a vote by not voting. On bond issues, the district needs a certain number of voters to support the bond. By not voting, is just as strong as having the privilege to vote. He also wondered if the local people should be influenced by property owners who are only there part time or not there at all. He said the schools want to consider the needs of the residents of the area as well as the people that are part-time residents.

Mae Nan Ellingson, Dorsey and Whitney LLP, submitted testimony **(EXHIBIT 4).**

{Tape: 1; Side: A; Approx. Time Count: 1:10 p.m.; Comments: .}

Questions From Committee Members and Responses:

SENATOR DON HARGROVE, asked if not voting is a vote, and is that true in all elections? **Mr. Frazier** stated this was true.

SENATOR HARGROVE, asked if it is a fairness issue then why is the bill a bad idea? **Mr. Frazier** said a lot of people view their schools as the best ones on the block but the ones down the road are not. Voters do not go to the polls with the same empathy if their children do not go to that school. It is easier to vote on issues where your children go to school. He asked if it was fair to the residents that live there year-round and have children in school to let residents have a vote that don't live there full time.

SENATOR HARGROVE said we hear the same things among tax-payers who have grown children or do not have children, that they are not interested as to what goes on in the schools. **Mr. Frazier**

said this is growing problem and if people are not attached to the program and it economically hurts the voter, that person is not as inclined to vote for a mill levy.

SENATOR BILL GLASER said he has many children and grandchildren and they all live on one piece of property and they all vote. The property is in 5 different districts so which district do they get to vote in or do they vote in every district. **SENATOR MESAROS** said the intent of the bill is if you have property in overlying districts and pay your taxes you should have a vote in that district.

SENATOR GLASER asked if you have that type of situation, especially, on Indian reservations where there is over 200 owners on one piece of property what is the fiscal impact. **SENATOR MESAROS** said this could be requested.

SENATOR GLASER said in earlier years there was a weighted vote, the more property a person had the more votes they received. He thought this was declared unconstitutional, and was legislative services aware of this? **SENATOR MESAROS** said the legal staff had no problem with the bill when it was drafted.

SENATOR HARGROVE asked if other districts, such as water and sewer already allow for this type of vote. **Gordon Morris, MT Assoc. of Counties** said he thought this was correct.

SENATOR HARGROVE asked if there was legislation and laws allowing for this type of vote in a district. **Mr. Morris** said yes, this was true, specifically in drainage and irrigation districts.

SENATOR FRED VAN VALKENBURG asked if this is an issue to limit the voting rights of property owners solely to individuals as opposed to any other kind of property owner. He used the example of property being held in partnerships, corporate, or other types of ownership. **SENATOR MESAROS** said this is directed to specific property owners registered in the district they vote in.

SENATOR VAN VALKENBURG said a great portion of land is owned by Plum Creek Timber, which is a limited partnership. Do all partners of Plum Creek Timber get a right to vote in a school bond election where the property is located? **SENATOR MESAROS** said that was not the intent of the bill, but it could be addressed.

SENATOR VAN VALKENBURG asked about condominiums that are located in a school district and often these condominiums are owned on a time share basis, do those individuals get a vote? **SENATOR MESAROS** said if the bill needs to be more specific then this can be addressed in the bill.

SENATOR DOROTHY ECK said we need to look at the number of ranches that are family corporations. If they own shares but do not live there do they still get a vote? **SENATOR MESAROS** said his intent is to give taxed landowners an opportunity to vote.

SENATOR ECK asked if a person bought up numerous parcels of land in several different counties would that person be able to vote in all of the elections where this land is owned? **SENATOR MESAROS** said the intent of the bill is on overlying districts and the scope of the bill may need to be narrowed. If a person owns 50 parcels of land in different areas then they shouldn't have to vote in 50 school bond issues.

SENATOR ECK asked if this would apply to areas that are adjacent or overlying. **SENATOR MESAROS** said this is true and the common complaint is property owners have overlying boundaries and individuals do not know what districts to vote in. This bill was drafted following the same language of bills that have been drafted for irrigation districts.

CHAIRMAN TOM BECK said this is taxation without representation. If someone has a large amount of land in one district, but his residence is in another district, he could be paying a substantial amount of taxes. He wanted to know if anyone has challenged this in the courts. **Lance Melton** said not to his knowledge did he know of such circumstances.

CHAIRMAN TOM BECK asked if it looked like there was a possibility it might happen in the future. **Mr. Melton** said the focus of his research was with Montana law and how it treats property ownership as a voter qualification. If litigation is a problem then the bill needs to be narrowed in its scope. He doesn't see any reason why there would be litigation on this matter.

Closing by Sponsor:

SENATOR MESAROS said the bill may be too broad and will consider some amendments. There is a legitimate complaint by many districts and a number of tax-payers feel they want to have a vote in what affects them. This was patterned after irrigation districts and there was no constitutional problems when the bill was drafted. He closed on the bill.

{Tape: 1; Side: A; Approx. Time Count: 1:29 p.m.; Comments: .}

HEARING ON SB 164

Sponsor: **SENATOR MIKE SPRAGUE, SD 6, Billings**

Proponents:

Stuart Doggett, Manufactured Homes
Chuck Ball, Home Owner
Ivan Cockrell, Home Owner
Mike Skinner, Manufactured Homes Assoc.
Derek Birnie, MT Peoples Action
Jan Rehberg, Oakland Homes
Mari Russell, Home Owner

Opponents:

Alec Hansen, MT League of Cities and Towns
James Kembel, City of Billings

Opening Statement by Sponsor:

SENATOR MIKE SPRAGUE, SD 6, Billings, presented SB 164. He said the bill is a zoning restriction bill based on manufactured housing. He said last year his son tried to find property and a home in his price range. He also had his mother in-law who wanted to move back to Montana trying to find affordable housing. Both his son and mother-in-law where trying to find homes between the $50,000-$70,000 range. In order to buy a home in that range, those houses would more than likely be 50 years old, with poor wiring, plumbing and maintenance costs. He said you can't advise young people to get into these kinds of homes, because getting in is the easy part, but maintenance can be very expensive. If an elderly person buys into this type of home they have to find someone to try and maintain it for them. **SENATOR SPRAGUE** said there is a solution to this problem. He said there is a lot of mis-perceptions about the idea of what a manufactured home is. Zoning officials will call manufactured homes anything from a modular to mobile and anything that is not site built. He passed out some facts for manufactured homes **(EXHIBIT 5).** The average cost of a manufactured home in 1995 was $46,300. The cost per square foot is $29.00 as opposed to $60.00/sq. foot for a site-built home. He said many cities need an infrastructure renewal. In the older part of town there are the older homes and the infrastructure is all there. The trees, parks, sidewalks, churches and schools are well established. He feels it is a shame that his mother in-law cannot move into this area in a relatively modern house and live in an established neighborhood.

{Tape: 1; Side: A; Approx. Time Count: 1:39 p.m.; Comments: .}

Proponents' Testimony:

Stuart Doggett, Manufactured Homes, spoke in favor of SB 164. In 1993, their industry passed legislation concerning manufactured homes. Manufactured houses had to be at least a 1000 sq. feet, located on a permanent foundation, with compatible siding and a pitched roof. The language also provided a rebuttal presumption, stating that homes that are manufactured do not lessen the value of homes in other areas. He passed out amendments **(EXHIBIT 6).** This bill addresses a problem in which zoning officials will allow UBC homes, but not HUD code factory built homes. The two are the same and follow strict standards. He used an example of an individual who purchased a HUD code home that was over a 1000 sq. feet and was a 1990 factory built home. It came into an area where there was other factory built UBC homes. The city wanted this home to be removed out of the area. **Manufactured Homes** fought this as it was against federal pre-emption. They created a pre-emption letter to the city of Laurel. In conclusion, many

opponents will say this bill allows for a $50,000 home to be built next to a $250,000 home. He said this is probably not true as the covenants and the rights of owners to have covenants should exist. If a piece of land is purchased for $50,000, the purchaser is not going to put a $30,000-$50,000 home on that lot.

Chuck Ball, Home Owner, said he is in the construction business and manufactured homes are qualified, very well built homes. These homes are permanent fixtures with appealing aesthetic values. They have 2 x 6 construction on the outside, R38 in the ceiling, R22 in the floor and they are not energy users. He supported SB 164.

Ivan Cockrell, Home owner, said his job was terminated in 1983. He was 58 years old and nobody wanted to hire him. He had a realtors license and sold a few homes. They were forced to sell their 3 bedroom home and buy a manufactured home and move into a trailer court. Had they not been able to buy a manufactured home he doesn't know what they would of done. In Billings they have not been successful in finding spaces for manufactured homes. When people mention mobile home courts many think of old cars, muddy streets and unkept homes. Mobile home parks need not be that way if they have regulations making sure these parks are maintained and look like other residential neighborhoods. Many of our senior citizens need to have affordable housing available.

Mike Skinner, Manufactured Home Assoc., has a manufactured home and lives in an R3 zone which is a specified area for factory built homes. The bill addresses the county and the city. He said there are no affordable places in the city for people to go with manufactured homes any more. The R3 zones are gone. Currently, he lives in an area where he is surrounded by some homes valued at $200,000-$300,000. He has a factory built home and no one has ever complained about his home being in this zone because it doesn't look factory built. He also works as a developer for manufactured subdivisions. He said many people get upset about manufactured home subdivisions. Often, people think a fabricated home means getting the older mobile trailers that will ruin property values. This misconception is being abolished and the subdivisions that have been built in the Helena valley are very nice. A land owner can also covenant his property.

{Tape: 1; Side: B; Approx. Time Count: 1:57 p.m.; Comments: .}

Derek Birnie, MT Peoples Action, said his organization deals with low and working income Montanans. Housing is a key program in their organization. Montana has the lowest rental vacancies rates in the nation. The 1990 census reported that 51 percent of Montana households are earning $15,000 or less. As a result, 80% of the new homes built between 1980-1990 where manufactured homes. Many communities are building cooperative, manufactured housing sub-divisions. From these efforts, people are able to secure financing and technical assistance. Finding land is a key

problem and prohibits many people from owning land. It opens up the options for more affordable housing.

Jan Rehberg, Oakland Homes, said affordable housing is both a rural and urban issue. Finding housing for our young and elderly can be very difficult. She said this bill is reducing regulations. If a manufactured home meets the criteria of any other home in the area then the factory built home should be allowed. The state should remove restrictions of affordable housing and let the market work in the housing industry.

Mari Russell, Home owner, said she has lived in a manufactured home for 5 years and had it not been for these types of homes she would be living in an apartment. She couldn't afford a site-built home and so she bought a factory built home. The maintenance is low and affordable for a single person. Most home owners take pride in maintaining their home and take care of the maintenance. She has had many people stop and ask where she got her home and others have purchased homes like hers.

Opponents' Testimony:

Alec Hansen, MT League of Cities and Towns, opposes SB 164. He passed out a letter from the City of Kalispell, **(EXHIBIT 7).** He said the state should not enter into an area that is a local control issue. Cities and counties for years have adopted zoning codes. Cities have zoning hearings and the people of the community come and participate. If these decisions are removed from the neighborhoods, state government is silencing the people and denying them the right to speak out on the type of cities and towns they grew up in. He thinks cities have done a decent job in providing areas for manufactured housing. In Belgrade, there has been 140 new homes located within the city limits over the last year, and 74 of them have been manufactured homes. Belgrade has provided areas in their zoning regulations for manufactured housing. These decisions should not come from the state as it is a public participation issue. **MT League of Cities** is concerned about the definitions of a manufactured home and the language is too general. The definitions should define the differences between the UBC and HUD standards. HUD applies to manufactured homes and UBC to modular homes. There are also some economic effects the bill will have on Montana. Most manufactured homes are not made in Montana. Site-built homes create jobs for the local craftsmen and the people in the community. Craft jobs could be lost if this bill passes. He feels the cities can set aside quality areas for manufactured homes and let it be a local decision and not an area the legislators need to decide.

James Kembel, City of Billings, said in Billings they do provide areas for manufactured homes. The city is concerned they cannot enforce deed restrictions and code enforcement authority if this bill passes. If the city is found in violation of the requirements put forth in this bill the state would have the right to take away their jurisdiction.

{Tape: 1; Side: B; Approx. Time Count: 2:12 p.m.; Comments: .}

Questions From Committee Members and Responses:

SENATOR DON HARGROVE asked if it would be helpful to have manufactured homes more defined. **Stuart Doggett** said part of that is taken care of on page 3, lines 6 & 7. The definitions for a mobile home are under title 61 and those codes could be provided for the committee.

SENATOR HARGROVE asked if it would be better to leave it up to local governments to decide where these homes should be placed or to simply set the standards, structures and appearance of homes. Many times people cannot tell the difference if a home is manufactured or not. Can these standards be implemented for the type of construction that a manufactured home should follow? **SENATOR SPRAGUE** said this is the intent of the bill. He explained that on page 2, line 27, the bill explains the type of home and the standards that it must meet. The FHA standards say you cannot discriminate against a home if those standards are met. Many homes in Helena are manufactured homes, if fact, a lot of them are 1930 vintage manufactured homes that where ordered out of Sears and Wards.

SENATOR SHARON ESTRADA said she would like someone to have the HUB and UBC standards to the committee before executive action so she can see the differences.

SENATOR J.D. LYNCH asked why should state government interfere with local government affairs. This is a zoning issue and a local problem, why should the state interfere. **SENATOR SPRAGUE** said this is backing away from state government, because currently there are too many restrictions.

SENATOR LYNCH said the bill implies local governments may not prohibit, the language is taking away the rights of the cities and counties. **SENATOR SPRAGUE** said law is prohibitive or law is getting off the backs and unprohibiting people.

SENATOR LYNCH asked if the bill is giving the cities and the counties more latitude or less latitude. **SENATOR SPRAGUE** said the bill is giving them less latitude to be lawful.

SENATOR VAN VALKENBURG asked if it made any difference if a local government has self governing powers as opposed to a government that does not. Do you think the state legislature should step in and tell local governments how to zone their cities. **SENATOR SPRAGUE** said often times state and local government must be defined. If it is an issue of fairness where local governments are active on the interest of the whole then he thinks the state should be involved.

SENATOR VAN VALKENBURG asked if there is a difference between city and county government. Cities are largely built up with very

few building sites left and they have a long standing reliance on zoning. If people are building outside the city limits there is urbanizing and a sense of freedom and less zoning. **SENATOR SPRAGUE** said this is a valuable point. In the bigger cities the infrastructure in some places has deteriorated more dramatic than in Montana. In the olden days, everything was in walking distance and as the town grew, the infrastructure was the oldest part of town and people moved farther away from those areas. The infrastructure became the slum area and finally rental property became unsafe and torn down. Nobody would buy this property so it would go to county tax deed and become a parking lot. It is an urban renewal affair, the sidewalks, trees, parks, etc. are all established, but the facilities on it are worn out. The cities will continue to grow on the outside but they can also go back into the infrastructure and make those properties more appealing and valuable.

SENATOR HARGROVE asked when it comes to zoning to prohibit manufactured homes do they base it on the fact that they are just manufactured homes or do they specify a size, appearance, shape, etc. **Alec Hansen** said he is not an expert on zoning. Homes are not excluded specifically because they are manufactured. He thinks there are zones that allow for manufactured homes. Zoning is a protection that homes in certain districts are going to conform to specific standards.

Closing by Sponsor:

SENATOR SPRAGUE said the standards are no problem. Many manufactured homes will meet the standards in any zoning district. He closed on the SB 164.

{Tape: 2; Side: A; Approx. Time Count: 2:29 p.m.; Comments: .}

HEARING ON SB 139

Sponsor: SENATOR MACK COLE, SD 4, Hysham

Proponents:
Gordon Morris, MT Assoc of Counties
Alec Hansen, MT League of Cities and Towns
James Kembel, City of Billings
Lance Melton, MT School Boards Assoc.
Lynda Brannon, MT Assoc. of School Business Officials
Mike Griffith, Lewis and Clark Co. Commissioner

Opponents:

Ann Hedges, MT Environmental Information Center
Mike Feaver, MT Education Assoc.
Darrell Holzer, AFL-CIO

Opening Statement by Sponsor:

SENATOR MACK COLE, SD 4, Hysham, presented SB 139. He said this is a bill dealing with amending the Montana Constitution under Article XI by adding a section prohibiting the state from imposing mandates on political subdivisions unless funded by the state or approved by a vote of the qualified electorate or the political subdivision's local legislative body. This bill was requested from the governor's office and supported by **MACo.**

Proponents' Testimony:

Gordon Morris, MACo, handed out testimony relating to SB 301 that was in the 1995 Session **(EXHIBIT 8).** This bill is a clean up bill of the 1995 Session and would like to have this bill passed and before the voters in 1998 as a Constitutional amendment.

Alec Hansen, MT League of Cities and Towns, said their organization supports this bill. He said there is always problems between different levels of government. There are a lot of things at the local level that we are paying for as a result of enactments by the state legislature. The cities and towns of Montana do not have the money to absorb anymore mandates from the state and federal government. He thinks a Constitutional amendment would protect the concepts and relationships between state and local governments.

James Kembel, City of Billings, supported SB 139.

Lance Melton, MT School Boards Assoc., said their organization supported the bill in 1995 and also supports this bill. He said this matter should be put before the voters to decide.

Lynda Brannon, MT Assoc. of School Business Officials, said this is a common sense bill. She said their organization finds it sad that it takes a Constitutional amendment when it appears there is already state law in place. Schools have had a very rough 20 years, with accreditation standards, decreased funding, and numerous budgeting constraints. Schools have had to absorb additional costs of state and federal laws while trying to keep one eye on the taxpayers of their district and keep educational programs in place that will educate the children of those taxpayers. Since existing law is unenforceable or ignored, a Constitutional amendment is the only avenue of relief and this bill needs to be put through.

{Tape: 2; Side: A; Approx. Time Count: 2:39 p.m.; Comments: .}

Mike Griffith, Lewis and Clark Co Commissioner, supported SB 139. The federal government should not force unfunded mandates on state government and the state should not force mandates on local governments.

Opponents' Testimony:

Ann Hedges, MT Environmental Information Center, said Constitutional amendments send out a red flag. She believes the Constitution is a very important document and the highest law of our state. She said a bill was introduced in the 1995 Session that does the same thing as SB 139 does. The 1995 bill explained what would happen if the state violated provisions concerning unfunded mandates. If the state does impose a mandate on local governments then who will pay for the election, will the state or the local government pay for this? If the state does pay for it then should there be a fiscal note for SB 139?

Mike Feaver, MT Education Assoc., said many people don't always know if they have an unfunded mandate before them. This is particularly clear in the Board of Education. Any time the Board of Education tries to change a standard one could argue that this is an unfunded mandate. The Board of Education is a Constitutionally empowered body. There could be some legal issues arise over this process of governing our schools through Constitutionally empowered body of the Board of Education and the state. He also said there have been several cuts in funding for public schools. If we have a Constitutional amendment that would prohibit the state from having new mandates then we ought to have a Constitutional amendment that would require the state to cut back mandates if it cuts funding. This has been the primary problem in public education over the last decade. New mandates are not the problem, it is trying to stay up to speed with less money. If the state does not fund mandates then it leaves the door open to the issue of equity. Some communities may vote to accept unfunded mandates and others would not and this would cause checker board legislation. He urged the committee to vote against this bill.

Darrell Holzer, AFL-CIO, said they are not proponents of dealing with unfunded mandates. However, people do not live on an island and everyone has to pay for the good things we all want to enjoy. He used the example of going to the legislature and individuals asking for unfunded mandates. This might include protecting workers safety, tax breaks for businesses, etc. and we all have to pay for it. In reviewing the number of proposed Constitutional amendments before the legislature, if only a portion of them were adopted, our most sacred document would be unrecognizable.

{Tape: 2; Side: A; Approx. Time Count: 2:49 p.m.; Comments: .}

Questions From Committee Members and Responses:

SENATOR LYNCH asked if there has been some instances where the current law has not been doing a good job. **SENATOR COLE** said the law is doing a good job, but this Constitutional amendment will strengthen the law as far as unfunded mandates are concerned.

CHAIRMAN BECK asked if **Gordon Morris** felt the same way. **Gordon Morris** said that was correct.

CHAIRMAN BECK asked if in political subdivisions would school districts also be included and if funding is cut on a school district would that be an unfunded mandate. **Gordon Morris** said the Drake amendments are written into the Montana codes requiring the legislature to provide an additional service to be performed without giving any funding. It doesn't address taking money but it could be argued as a good example.

CHAIRMAN BECK asked if the state gets a mandate from the federal government and it is passed onto the local government would it be declared as an unfunded mandate. **Gordon Morris** said that is why this bill is before the legislature. It is a fear that the counties will end up having the burden of paying for these mandates.

Closing by Sponsor:

SENATOR COLE said this bill will help governments. He closed on SB 139.

ADJOURNMENT

Adjournment: 2:55 p.m.

SEN. THOMAS A. "TOM" BECK, Chairman

JODI JONES, Secretary

TB/jj