

MINUTES

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

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN TOM BECK**, on January 28, 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. 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: Sen. Sharon Estrada (R)

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 159, SB 137
Posted: 1/21/97
Executive Action: None

HEARING ON SB 159

Sponsor: SENATOR GREG JERGESON, SD 46, Chinook

Proponents:

John Cadby, MT Bankers Assoc.
Gordon Morris, MT Assoc. of Counties
Alec Hansen, League of Cities and Towns

Opponents: None

Opening Statement by Sponsor:

SENATOR GREG JERGESON, SD 46, Chinook, presented SB 159. He said this bill was requested by his county treasurer. He explained

that her duties include depositing county funds in financial institutions and managing the financial paperwork of the county. The current statutes have not changed in response to the way the county is able to deposit money in branch banks such as Norwest. Under this bill, the new statutes state that deposits can be made in a branch bank, independent bank, etc. This will ease the ability for county treasurers to deposit county funds.

Proponents' Testimony:

John Cadby, MT Bankers Assoc., said virtually all money that is put out by the county is put out on bid with the financial institutions in their area or invested with the state board of investments.

Gordon Morris, MT Assoc. of Counties, said this bill shortens the statutes and he is in favor of SB 159.

Alec Hansen, MT League of Cities and Towns, said this law also applies to municipal governments. This practice is not common anymore and the law should reflect what is happening in the real world.

{Tape: 1; Side: A; Approx. Time Count: 1:06 p.m.; Comments: .}

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SENATOR GREG JERGESON closed on SB 159.

HEARING ON SB 137

Sponsor: SENATOR DON HARGROVE, SD 16, Belgrade

Proponents:

Tom Langol, Self
Phil Olson, Gallatin Co. Commissioner
Sam Hofman, Gallatin Co. Rancher
Jessie Nelson, Self
Larry Brown, Ag Preservation Assoc.
Joe Skinner, Self
Bob Dewitt, Self
Cary Hegreberg, MT Wood Products Assoc.

Opponents:

Jim Richards, MT Wildlife Federation and MT Assoc. of Planners
Kelly Fleherty-Settle, Self
Alan McCormick, Lewis and Clark Co.
Carolyn Duckworth, Bear Creek Council

Tim Murphy, Department of Natural Resources and Conservation
Bob Carroll, Wildlife Society
Janet Ellis, MT Audubon
Peter Funk, Trout Unlimited
Joan Miles, Lewis and Clark Health Department
Dave Bishop, Jefferson Co.
Mark Haggerty, Greater Yellowstone Coalition
Jon Sesso, Butte-Silverbow Planning Board
Mike Griffith, Lewis and Clark Co. Commissioner
Gordon Morris, MACo
Brett Waters, State Firewardens Assoc.
Kathy Macefield, City of Helena
Kerwin Jensen, City of Billings
Anne Hedges, MT Environmental Information Center
Jim Stone, Powell Co. Planning Board
Debbie Smith, Sierra Club

Opening Statement by Sponsor:

SENATOR DON HARGROVE, SD 16, BELGRADE, presented SB 137. He said in Montana it is the land and it is our passion and this bill exercises the individual rights of property owners. It is a bill to maintain open space and to do this by incentive rather than by state mandates. In Montana the average agriculturist is about 60 years old. In Gallatin Co. alone there is about 3000 acres a year going into subdivisions and development. He said the perceived wealth of a land owner is quite wrong. Most of the land owner's money is tied up in stock, building, equipment and mostly in the land. If that individual wants to use that money for whatever reason, they have to sell their land. When they sell their land it will probably go to a developer or be sold off in 20 or 160 acre plots that end up being mini knapweed farms. This bill is providing land owners another alternative. The land owner can still subdivide and develop his land if he wishes. Often what happens in Montana is the owner will stay and work the land until he dies and then his children will be forced to sell the land because of inheritance taxes. Each piece of land has a certain amount of development rights. A person can develop land by a certificate of survey, register the property and build a house on it and all they have to do is meet county septic rules. Under this bill, a person can still do this, but take those development rights and move them around. There must be a one acre minimum and five acres as an arbitrary maximum in these cluster communities. A person can design the developed land the way he/she likes and still leave enough land open for the owner to stay and work the land or have it for the State of Montana and for the people to enjoy. The land could also be put into an elk habitat, or for agriculture use. In order to do that, an owner must put in deed restrictions or a conservation easement so the land will not be developed. A person can sell it in one to five acre plots, or however big of a parcel he wishes and probably make more money than if he sold the land in geometrically 20 acre plots. This is a citizens initiative and has been worked on for over a year. He discussed the amendments (**EXHIBIT 1**). He also discussed the

fiscal note and the projection of there being a giant increase of houses. This is not true. There can be no more houses under this bill than there is under the 20 or 160 acre plots. He also discussed roads and access problems. **SENATOR HARGROVE** said he believes people who have been on the land for generations are going to be more concerned and able to make better decisions than someone in the county seat or an out of state landowner. If an owner has a section of land, there will be a minimum of 32 roads under the current subdivision law. Under this bill, there will be one road and it will be a good one.

{Tape: 1; Side: A; Approx. Time Count: 1:22 p.m. Comments: .}

Proponents' Testimony:

Tom Langol, Self, spoke in favor of SB 137. He said the reason they came up with this bill is because he has developed many 20 acre tracts. He said often times he didn't want to develop 20 acre plots, but this was the easiest thing to do rather than going through 2 years of subdivision review and excessive money spent on the project. There is currently hundreds of acres developed into 20 acre lots. He showed the typical 20 acre development and the new plan under SB 137. **(EXHIBIT 2)** The incentive to do this is the land owner will not have to go through a full subdivision review. The incentive for the people is that 75% of the land will be in open space. **(EXHIBIT 3 & 4)** He asked the committee how many bills they would look at that a land owner would voluntarily increase his taxes? **(EXHIBIT 5)**

Phil Olson, Gallatin Co. Commissioner, supported SB 137. He passed out testimony **(EXHIBIT 6)**.

Sam Hofman, Rancher, spoke in favor of SB 137. He said he is amazed at the housing that has been built in Gallatin Co. over the past 25 years and the rapid population growth in this county. By 2015 there will be 150,000 people in Gallatin Co. which is three times as many as in 1990. Many people move in, build and want to have open space so it won't ruin their view and still have privacy. He thinks this bill is good for the county and for ranching and farming.

Jessie Nelson, Self, said she is interested in this bill because she loves the land. Her grandfather was a farmer in Idaho and she raised her children in a rural community and is fortunate to own land. She said as a realtor she has watched Gallatin Co. and other places in the state be taken up by development. She said she has learned a lot about the stewardship and the responsibility of the land and all of the different concepts land deals with. Montana land is very precious. This bill offers better stewardship, and land management. She used the example of a 20 acre piece of land that is good farm land and wondered if the owners knew what to do with this land. She is concerned about knapweed and the need for it to be controlled. She said if certain subdivisions had homes that could of been grouped, farm

land could of stayed in production. Many ranchers are torn when it comes to developing their property. However, many feel they should have a right to that income. She said north of Bozeman in the Springhill community, there has been clustering of homes to save some of the agriculture land and they really value this open space. In the Bitterroot valley, if homes would of been clustered, the spotted knapweed would not have taken over. Most people do not know what to do with their land and clustering would prevent this and keep Agriculture in business.

{Tape: 1; Side: B; Approx. Time Count: 1:40 p.m.; Comments: .}

Larry Brown, AG Preservation Assoc. said it is an option to the Agriculture community and what they can do with their land. The tax incentive is a big issue and should be considered. This bill will help the tax base of the communities and the state. Gallatin Co. is not the only area in the state this could be applicable to, as this dilemma is being brought forth in all areas of the state. As these parcels are evaluated, there is every opportunity to be involved to ensure the environmental qualities are met.

Joe Skinner, Rancher, said he has seen first hand what has happened to rapid development. He doesn't feel a lot of land owners would use this bill but the ones that do, will have a win situation for both the land owner and the community. The bill realizes the development value of land, but still maintains agriculture integrity. The urban community will benefit because it conserves open space at no cost to the community. The land can be developed in a more creative way that will cluster the development, conserve the open space, and still provide for the needs of the land owner and future generations.

Bob Dewitt, Self, said many opponents would argue there needs to be more planning authority over this process. Land owners already have planning rights and they only need to go through septic and road permits. He said this bill does not take away any planning authority. He said many times he has seen people buy property and not have the proper resources to take care of the land. He also said from a planning prospective, they look at fire protection, snow plows, and public services that the tax payers have to provide to all rural communities. When a developer has a section of land divided into twenty acre plots, providing those services becomes expensive and complicated.

Cary Hegreberg, MT Wood Products Assoc., said they support the amendments that delete forest practices. Often agriculture land is managed with forest production as part of their operations. He encouraged passage of this bill.

{Tape: 1; Side: B; Approx. Time Count: 1:48 p.m.; Comments: .}

Opponents' Testimony:

Jim Richard, MT Wildlife Federation and MT Assoc. of Planners, said both of his organizations are strong believers of open space and cluster development. He passed out testimony in opposition of SB 137 (EXHIBIT 7).

Park Co. Commissioner handed out testimony in opposition to SB 137 (EXHIBIT 8).

Kelly Fleherly-Settle, Self, opposed SB 137. She handed out testimony to SB 137 (EXHIBIT 9).

Alan McCormick, Lewis and Clark Commissioner, said under this bill, parcels could be created along a stream, in the flood plain, and where habitat dwell. There is no criteria that says where these lots should be placed, and what the definitions of open space are. Also there is no protection for adjacent farms and ranches. Local review is very important for agriculture operations. All subdivisions have to have a weed plan and protective easements have to be placed on irrigation ditches and facilities. The local review provides the farmer, rancher, and the neighbor all a voice in the process. They support open space and the need for it, but it should not come through an exemption in the subdivision laws.

Carolyn Duckworth, Bear Creek Council, spoke against SB 137, (EXHIBIT 10).

{Tape: 1; Side: B; Approx. Time Count: 2:03 p.m.; Comments: .}

Tim Murphy, Department of Natural Resources and Conservation, opposed SB 137. He handed out testimony (EXHIBIT 11).

Bob Carroll, MT Chapter of Wildlife Society, spoke against SB 137, (EXHIBIT 12).

Janet Ellis, MT Audubon Assoc., handed out some documentation on SB 137 concerning land that is exempt of subdivision review (EXHIBIT 13,14,15).

Peter Funk, Trout Unlimited, said public review is a costly matter, but what it accomplishes is that the cost is not shifted to the public, but to the developer and those who use the land. Neighbors will not have any input on this process under this bill. The parcels being sold will be on the river and creeks because that is where they are most valuable. The bill does not reflect the kind of plan in which small acreages are going to be created vs. mandates of conservation easements placed on the rest of the property. He is also concerned on the ability to enforce deed restrictions. Usually, deed restrictions are only enforceable by those who grant them. He asked the committee to ask how much local governments have spent in the planning process? Most local governments have spent a lot of money on

comprehensive planning. Development that is free from review will only hinder the hard work that has gone into planning by local governments.

Joan Miles, Lewis and Clark City Health Department, handed out testimony against SB 137 (**EXHIBIT 16**).

Dave Bishop, Jefferson Co. Commissioner, said there was a subdivision law passed in 1993 and it was amended in 1995 and the county had to go through the whole review of subdivision regulations and rewrite and reproduce them. This was done through many public hearings. He said the proponents are coming only from Gallatin Co. and 55 other counties would be affected by this bill. There is already provision in the law that a person can dedicate open space through zoning. In Jefferson Co. in the Milligan Canyon area the citizens got together and developed zoning that would preserve the agriculture aspect. They developed the plan themselves and went through the public hearing process and the zoning district was adopted and there can be no subdivision in this district under 640 acres. There are other avenues for providing open space areas. He urged a do not pass by the committee.

Mark Haggerty, Greater Yellowstone Coalition, opposed SB 137 he passed out testimony in support of this position (**EXHIBIT 17 & 18**).

{Tape: 1; Side: B; Approx. Time Count: 2:20 p.m.; Comments: .}

Jon Sesso, Butte-Silverbow Planning Board, said review of subdivisions and the creation of open space is good public policy, but an exemption should not be granted. The creation of open space is just one of the several criteria to approve a subdivision. He said if we create an exemption in one place then everyone will be asking for exemptions when it comes to subdividing land. The planning board reviews a piece of property and does sub-divisions consistently to other sub-divisions in the area. Creating an exemption from the opportunity to work with people does public policy no good. He thinks clustering is a good idea and should be addressed by the developer and the planning board. This clustering should only happen if they are meeting all other criteria in the public review process.

Mike Griffith, Lewis and Clark Co. Commissioner, said the structure of the bill as currently written has a lot of problems. He urged SB 137 to be killed.

Gordon Morris, MACo, passed out testimony from Carbon Co. Commissioners (**EXHIBIT 19**). He said this resolution was brought up at their convention in September and was defeated overwhelmingly with over 49 counties present. The concept is flawed and it needs to have review perspectives written into the bill. He opposed SB 137.

Brett Waters, State Firewardens Assoc., stood in opposition to SB 137. Their association would not have any fire protection reviews for the safety requirements on subdivisions. Roads and bridges need to be inspected and go under review to make sure they pass regulations.

Kathy Macefield, City of Helena, passed out testimony in opposition to SB 137 (**EXHIBIT 20**).

Kerwin Jensen, City of Billings, said even though the language has been amended to take out the cities, it is destructive with the current language. Billings relies heavily on arterial streets and this bill could be detrimental to these roads.

Anne Hedges, MT Environmental Information Center, passed out testimony from **Don Spivey, Turn in the River Inn**, in opposition of SB 137 (**EXHIBIT 21**).

Jim Stone, Powell Co. Planning Board, said their county is opposed to SB 137.

Debbie Smith, MT Sierra Club, said there is already statutes in the law that gives land owners the right to dedicate portions of their land to open space through conservation easements.

County of Stillwater and Missoula Co. Commissioners turned in testimony in opposition to SB 137 (**EXHIBIT 22 & 23**)
{Tape: 2; Side: A; Approx. Time Count: 2:30 p.m.; Comments: .}

Questions From Committee Members and Responses:

SENATOR J.D. LYNCH asked if most of the clustering would occur on waterways and would this be beneficial to Montana in the long run. **SENATOR HARGROVE** suggested that would not happen. The owner would more than likely not place houses on waterways as they know the land and realize the damage this would have to these areas if homes were built there.

SENATOR FRED VAN VALKENBURG said **Mr. Langol's** example put the lots right on the waterways. **SENATOR HARGROVE** said just because you have an example on a piece of paper doesn't mean this will happen.

SENATOR VAN VALKENBURG said one of the concerns with this bill is it would allow very large land owners to take development rights from land they never had any intention of sub-dividing and then cluster around lakes. He used Plum Creek Timber as an example and said they have vast holdings of timber land throughout Western Montana. They could use development rights from these lands to create huge sub-divisions on the lakes of the Seeley Swan River drainage area. Is there anything in here that would prevent this from happening? **SENATOR HARGROVE** said there are a lot of things that would prevent this from happening. Plum Creek would have no incentive to do clustering in the first place. It is a stock

holder public corporation, and they want to make money. Taking advantage of this bill would not give them the maximum amount of money. If we force people into development as it is now, the alternatives have to be thought of. Plum Creek is not interested in the land, they are more interested in making money.

SENATOR BILL GLASER asked what is open-space? **SENATOR HARGROVE** said it is land that is not developed commercially or residentially.

SENATOR GLASER asked if a golf course is open space? **SENATOR HARGROVE** stated no.

SENATOR GLASER asked if a hunting club is open space? **SENATOR HARGROVE** said we might do a lot of what ifs. He thought it would be.

SENATOR GLASER asked what isn't open space? **SENATOR HARGROVE** said open space is not condominiums, developed areas that have gone through sub-division laws with streets and homes, or smelters.

SENATOR MIKE SPRAGUE asked there is a time and a place we need to address clustering. We know what the problem is but we don't know how to solve them. He asked **Kerwin Jensen** if this was a west vs. east problem, and open land space vs. streams and valleys. **Kerwin Jensen** said there is a solution, but it cannot be done in one legislative session and all organizations need to be involved.

SENATOR SPRAGUE asked if this law may be applicable in some areas and not in others. Is there an opportunity where local regions could decide if they wanted open space and others could decide not to have it. **Mr. Jensen** said it would be open to the entire state wherever there is land divisions of 20 acres.

SENATOR SPRAGUE asked if the solution could be localized, rather than state wide. **Mr. Kerwin** said there is counties already doing this.

SENATOR DOROTHY ECK asked if an easement could be granted to a conservation organization. **SENATOR HARGROVE** said yes there are lots of them. The intent of the amendment is to make easements as strong and permanent as possible. The land alliance and Gallatin Land Trust are specialized in agriculture land and deal with riparian areas, etc.

SENATOR ECK said most land trusts require a substantial amount of money to make sure they are protected. It appears that Gallatin Co. is the only one interested in this bill and she asked if it could be addressed as a local option. She said she is uncomfortable doing away with public involvement of sub-dividing land, but if a county had an option, the public would be more involved. She said she has been impressed that large land owners want to participate in planning efforts of the county. She asked if the sponsor would be interested in a local option. **SENATOR**

HARGROVE said if this will strengthen the bill he would be interested in doing that.

CHAIRMAN TOM BECK said he is concerned about adjacent land owners and the review process. He asked if it was true there would be no review and the adjoining property would have no say in a cluster sub-division. **SENATOR HARGROVE** said part of the answer comes from the right-to-farm bill law in Montana. The land owner that has been there for generations is going to want to have good neighbors.

SENATOR BECK said a person might have the right-to-farm but if they come into a residential area and put in a hog parlor, they might not have that right. **SENATOR HARGROVE** said the bill is not talking about sub-divisions that have already gone through public review.

SENATOR BECK asked if there was a sunset clause in the bill. **SENATOR HARGROVE** said the Department of Environmental Quality agreed to put in some words explaining what the water quality review would be. There is a lot of bureaucracy involved in sub-divisions and the Department of Environmental Quality agreed they have been part of the problem.

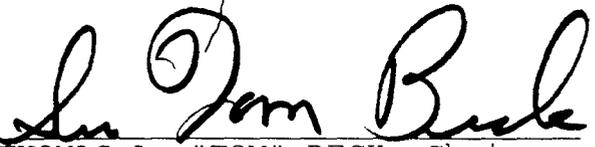
{Tape: 2; Side: A; Approx. Time Count: 2:44 p.m.; Comments: .}

Closing by Sponsor:

SENATOR HARGROVE said he thought this bill was simple and there are still some misunderstandings. The access for fire trucks is an amendment to the bill and will take care of their concerns. He said he has heard a lot about the protection of the developer, bureaucracy, and fish, but nothing about the protection of the land owner. Do we really need a bureaucracy to make decisions for us? In the case of the land owner, we will make better decisions without them. The incentive is the land owner is not going to have to hire somebody to sell and develop his land, and he can still maintain control over his property. He is convinced there is not a mountain too high and no canyon too steep that there won't be a banker from Japan, a businessman from New York or a Hollywood star that will take this 20 acre lot and build a home on it with orange signs and the guard dog and he will visit it every two years and grow knapweed. Sub-divisions have been done very poorly in this state. This is not taking away anything from anybody else. It is providing one option. If a land owner has a section of land there will be 32 roads that have no review or requirements and many won't even have roads. To have a nice development that is well thought out by the people who own the land and have one good road rather than 32 poor ones is more advantageous for everyone. Buildings do not last forever, but once they are built, it is not open space anymore. We have to think of the alternatives.

ADJOURNMENT

Adjournment: 2:52 p.m.

A handwritten signature in black ink, appearing to read "Sen. Tom Beck". The signature is written in a cursive style with a large, prominent "S" at the beginning.

SEN. THOMAS A. "TOM" BECK, Chairman

A handwritten signature in black ink, appearing to read "Jodi L. Jones". The signature is written in a cursive style with a large, prominent "J" at the beginning.

JODI JONES, Secretary

TB/jj