

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By CHAIRMAN TOM BECK, on February 13, 1997, at
3:10 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: HB 22 Posted 2/5/97
SB 294 Posted 2/6/97
SB 308 Posted 2/7/97

Executive Action: HB 22 Be Concurred In
SB 274 Tabled

HEARING ON SB 308

Sponsor: SENATOR TOM BECK, SD 28, Deer Lodge

Proponents:

Andy Skinner, Self
Jim Taylor, Self
Ken Cross, Self
Stephen Kologi, Self
Palmer Hoovestal, Attorney

John Shontz, MT Assoc. of Realtors
William Spilker, Self
Mark Johnson, Self
Ann Hedges, MT Environmental Information Assoc.
Richard Llewellyn, Self
Don Chance, MT Building Industry Assoc.
Stuart Doggett, MT Manufactured Housing and RV Assoc.
Bob Hollow, Self
Steve Skinner, Self

Opponents:

Gordon Morris, MT Assoc. of Counties
Leroy Schramm, Legal Council University System
Alec Hansen, MT League of Cities and Towns
Mark Cadwallader, Self

Informational Testimony:

Dave Woodgerd, Department of Revenue

Opening Statement by Sponsor:

SENATOR TOM BECK, SD 28, Deer Lodge, presented SB 308. This bill is an act requiring state and local government entities to prepare a written statement of needs and legal authority before taking certain action. There appears to be times when local governments will delay the process or not give justification if they are complying with law and regulations including subdivision, licensing and other things.

Proponents' Testimony:

Andy Skinner, Self spoke in favor of SB 308. He said many times on the county and local level it is very difficult to obtain a permit and there is no legal position why they are not going to give an individual a permit. He handed out an example of a subdivision permit (EXHIBIT 1). If he follows what the state says, the county will file a suit against him, and if he follows the county, the state could go against him. It is a serious problem and this bill would help clarify these problems.

Jim Taylor, Self said he is a consulting engineer in Helena and a number of times there have been questions on the authority of local government on concerns of some of the regulations on subdivisions. If local government does interfere, most of the time citizens comply with the county because it takes too much money and time to argue it. He has worked on one small sub-division that has been in the court system for four years and there is still no resolution on where the authority lies. During this time, engineering and legal costs have sky rocketed. If the authority was laid out in writing it would eliminate a lot of the money being spent on litigation. This bill does have penalties and they are needed. It is only against government officials who

commit the crime that will be punished and not the whole local government. Fines are important as a deterrent to someone who refuses to give a statement of why they are being denied a permit.

{Tape: 1; Side: A; Approx. Time Count: 3:21 p.m.; Comments: .}

Ken Cross, Self, said about four years ago he bought land for his grandson and daughter. It took him four years and \$10,000 to get the permits he needed for this piece of land.

Stephen Kologi, Self, said he has also had problems with a family transfer of land. He said it took him over a year to get the permits he needed. Eventually, he was able to get all of the information out of the county that this bill is saying they will have to do.

Palmer Hoovestall, Attorney, spoke in favor of SB 308 (EXHIBIT 2).

John Shontz, MT Assoc. of Realtors, said this is not a new idea. Any responsible government official should be able to explain his or her action of why it has to be done this way. If the law is exceeded, then there should be penalties. He discussed section 6 and self-governing powers. He said liberal construction of the law can have some discrepancy in meaning. If the law is silent on an issue then a person can arbitrarily use that law to create a new law or rule. Responsible construction will bring us back to the original intent of liberal construction.

William Spilker, Self said oftentimes government officials don't follow what is written in statutory regulations. One area is family exemption of sub-division and the other is attractive record definition of a sub-division act where government officials have over-stepped the statutes. In the case of family exemption, the assistant county attorney in Lewis and Clark Co. said that only children applied under this law. However family exemption can apply to parents or if it is given as a gift. There is nothing wrong with local government officials giving a reason and stating what their justification is for their decision.

Mark Johnson, Self spoke in favor of SB 308 (EXHIBIT 3 & 4).

Ann Hedges, MT Environmental Information Assoc. rose in support of SB 308. She had a couple of concerns with this bill in that a statement should be issued by local government officials after a public hearing process. An appeal process should also be put in place so the person applying for a permit has a chance to revoke this decision. Line 6, page 3 the word "detail" is somewhat confusing and not defined in that disputes could arise over which level of detail is appropriate. On line 20 where a person can go after an individual employee is not in the best context. She feels local government officials should take care of their own employees if there is a problem. If the state or local government has to pay a fine they will more than likely straighten out an

employee who has misguided a citizen. It doesn't seem proper to go after individual employees.

{Tape: 1; Side: A; Approx. Time Count: 3:36 p.m.; Comments: .}

Richard Llewellyn, Self, said, as an attorney, he has seen this problem on the inside and outside of government. He said a year ago a lady received approval from the planning board on a small sub-division. Two weeks after she received the permit the county said she needed to have paving within the sub-division. She called them and asked where this decision came from and they refused to provide her with any explanation or reference to sub-division requirements. She asked them if re-constituted asphalt would be okay and the road foreman informed her this was fine and she spent \$15,000 paving her road. A month later a letter arrived from Jefferson Co. telling her re-constituted asphalt wasn't sufficient. She asked for the authority as to why this wasn't applicable and she received no response. She received another letter saying she had to have 6 inches of asphalt paving not only on the sub-division roads but also on the nearby public road. This would cost her \$55,000 and because of this act by Jefferson Co. her sub-division was killed. He used another example of the Aspen Youth Alternative Project on the Boulder River. The city government in Boulder refused to extend the water service across the Boulder River to service the project. After much protest by citizens and businesses in Boulder the town government decided to extend the water system. A lady named Kathy Kirsh, who owns Dairy Queen in Boulder, was walking down main street one night and observed lights on in the town hall. It was not the regular council night so she went into the hall and found the entire council reviewing proposals from perspective contractors in the process of obtaining contracts from the town of Boulder to do the water system analysis. She asked what was going on and they told her this was not a public meeting. She left and began asking questions of the town of Boulder as to why the council was having a meeting to make these decision without the voice of the public or the contractors present. The council refused to give her an answer and she went to the Jefferson Co. attorney, who wrote a letter saying this doesn't appear to be lawful. The town council refused to respond and as a result the newspaper got involved. Kathy Kirsh got a letter from the town of Boulder which contained some very derogatory comments about her. There is no reason why a citizen of the State of Montana has to go kiss the government's ass to find out what authority it is acting on. This is the reason for this bill. The criminal penalty in this bill will serve as a deterrent. There are many times where government officials overstep the boundaries and then someone has to spend \$10,000 in attorney fees to sue the government. The applicant can't handle this cost and they end up complying with local government decisions even though they don't know if they are lawful or not.

Don Chance, MT Building Industry Assoc. rose in support of SB 308.

Stuart Doggett, MT Manufactured Housing and RV Assoc. supported SB 308. Over the past few years there has been an inconsistency on how government officials have treated the location of manufactured homes.

Bob Hollow, Self rose in support of SB 308 (EXHIBIT 5 & 6).

Steve Skinner, Self, said he supports this bill, especially section 6, dealing with construction of self-government power. Liberally construed can be used against an individual and the wording reasonably construed is more appropriate language.

Michael Kakuk, Attorney turned in testimony in support of SB 308 (EXHIBIT 7).

{Tape: 1; Side: A; Approx. Time Count: 3:47 p.m.; Comments: .}

Opponents' Testimony:

Gordon Morris, MACo, said he had some concerns with section 6 of the bill. Liberal construction of the Montana codes is set forth in the Montana Constitution. The language reasonable cannot be used to replace something that is already in the constitution. Section 6 should be taken out of the bill.

Leroy Schramm, Legal Council University System, said if they expand the way people sue it catches a lot of people's attention. The definition of government act, a written notice is going to have to come from an employee before any government action can be taken. He said government already follows these rules that are being proposed in this bill. Sub-sections 2 and 3 would not only cover local government officials but it would encompass a public librarian telling someone to leave because they are noisy, a ticket taker or an usher telling someone they can't enter the stadium, or a school teacher expelling a student from class. This bill is drafted too broadly. If a written statement is not given then an individual can sue this person. The bill as it is drafted would require a number of notices to be given for virtually any kind of governmental action.

Alec Hansen, MT League of Cities and Towns, said government isn't perfect. People do make mistakes and most of the 7000 people that work for the cities and towns across Montana are dedicated professionals. They may cause problems but to hold them criminally liable for their actions will make it difficult to recruit and maintain public servants. The application of a rule like this could create problems that nobody wants to deal with. He asked about emergencies where they cannot always have the appropriate piece of paper ready at the right time. The language liberal construction is in the Montana Constitution and this could cause some problems in the statutes. Government is not perfect and this should be worked out locally.

Mark Cadwallader, Self, said this will have an effect at the local level. Police officers will no longer be able to give a verbal warning as they would not be in compliance with this bill.

Informational Testimony:

Dave Woodgerd, Department of Revenue, said they support the concept behind this bill. Government should be accountable, and explain itself about the authority on the decisions it makes. The largest concern though is the penalty on the individual employee. If a statement is not provided this is a criminal act and they can be put in jail for up to a year. He used the example of one of his employees issuing a liquor license and he told that person if he was going to sell alcohol, he would need a license. Under this bill, the employee who told this citizen they would need a liquor license could go to jail. This would make people paranoid and make it more difficult for the public to get information and to get along with the government.

Questions From Committee Members and Responses:

SENATOR J.D. LYNCH asked if section 2 is more of a statement of intent rather than a statute. **SENATOR BECK** said he agreed that it is more of a statement of intent.

SENATOR LYNCH asked if the idea of being delinquent and giving them a year in the slammer was a little severe for a person who makes a mistake. **SENATOR BECK** said if there is not strict enforcement then nothing will be accomplished by this bill.

SENATOR DOROTHY ECK asked if legislators are government employees and when we act are we going to have to provide written statements for everything we do. **SENATOR BECK** said yes we are government employee but no we will not have to provide written statements for our actions.

SENATOR SPRAGUE said the intent of the bill is good and would the sponsor be willing to make some amendments. **SENATOR BECK** said he would work with these people as long as the bill will still show its intent. Those people that got up and testified in favor of this bill were citizens and he wants to do something for them.

Closing by Sponsor:

SENATOR BECK closed on SB 308.

{Tape: 1; Side: B; Approx. Time Count: 4:10 p.m.; Comments: .}

HEARING ON HB 22

Sponsor: DEB KOTTEL, HD 45, Great Falls

Proponents:

Gordon Morris, MT Assoc. of Counties
Tony Herbert, Department of Administration

Opponents: None

Opening Statement by Sponsor:

DEB KOTTEL, HD 45, Great Falls, spoke in favor of HB 22. In the data management sub-committee they studied the relationship between local and state government. State government has not always been sensitive to the needs of local government for the purchasing of hardware and software or how it is fed into the state government system. The already existing ITAC which is the Information Technology Advisory Council will have two members from local government sit on this council. ITAC will guide state and local agencies to encourage cooperative efforts in information resources.

Proponents' Testimony:

Gordon Morris, MACo, supported HB 22. Local government does need to play a part in this council.

Tony Herbert, Department of Administration, spoke in favor of HB 22. This bill will let local governments become more involved and state and local governments will be able to work more efficiently together.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR ECK asked if the legislature is computer illiterate. REP. KOTTEL said computer language and age is a barrier.

Closing by Sponsor:

REP. KOTTEL closed.

EXECUTIVE ACTION ON HB 22

MOTION/VOTE:

SENATOR LYNCH MOVED HB 22 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 274

Discussion:

SENATOR LYNCH said the bill should be tabled and if that is not accepted then he will propose some amendments that include the

state. Private and municipal governments already work well together.

Motion:

SENATOR LYNCH MOVED SB 274 BE TABLED.

Discussion:

SENATOR BECK said Butte-Silverbow was going to contract for about \$3 Million worth of pipeline and it didn't happen. This bill is too tight at \$25,000 as counties can still maintain roads, sewers etc. for this cost. He suggested putting a cap of \$500,000 that if a county was to take on a job that was more than that it should be put out for bid.

SENATOR LYNCH said he asked the State Department of Transportation what their construction and maintenance equipment was over the Department of Transportation, and it is over \$110 Million. The tax-payers bills will not stay down under this bill.

SENATOR SPRAGUE said he felt the bill should be tabled as well. He said there have been other bills before the legislature to privatize the whole process and they have been voted down.

SENATOR BECK said he will oppose putting the state in this bill. Most of the highway construction contracts are put out to bid, but when all state maintenance is added, then it is very expensive. Maintenance cannot be put in there.

Vote:

MOTION TO TABLE SB 274 PASSED ON A ROLL CALL VOTE 7-1 (EXHIBIT 8).

{Tape: 1; Side: B; Approx. Time Count: 4:26 p.m.; Comments: .}

HEARING ON SB 294

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, Big Timber

Proponents:

Paul Luwe, City of Bozeman
Ron Brey, City of Bozeman
Ellen Engstedt, Don't Gamble with the Future
Julie Ippolito, Citizens Against Gambling Expansion

Opponents:

Larry Akey,
Dennis Casey, Gaming Industry
Kotte Kintli, MT Tavern Assoc.
Dave Brown, MT Independent Machine Operators Assoc.

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, Big Timber, presented SB 294. This bill is an attempt to let local governments have more input on decisions for gambling and casinos. Page 2 of the bill defines casino as a place that has more than five video gambling machines. If the establishment has the word casino in the name of the business or more than half of their revenue comes from gambling this is also considered a casino. In the bill there are also regulations and zoning for gambling operations. Section 3 says the premise is subject to local zoning, section 4 is the county zoning statute and Section 5 deals with municipal zoning.

Proponents' Testimony:

Paul Luwe, City of Bozeman, spoke in favor of SB 294 (EXHIBIT 9).

Ron Brey, City of Bozeman, rose in support of SB 294. This is not an anti-gambling bill. Section 2 of the bill sets the stage for the rules that are consistent with the current steps that the Department of Revenue takes for licensing of alcoholic beverages. Over the last five years Bozeman has gone through several changes and studies to coordinate developments with due process. The coordination between state licensing and local government permitting will help the cities make the process work smoother for individuals proposing to establish casinos.

Ellen Engstedt, Don't Gamble with the Future, spoke in favor of SB 294 (EXHIBIT 10).

Julie Ippolito, C.A.G.E., passed out testimony in favor of SB 294 (EXHIBIT 11).

Opponents' Testimony:

Larry Akey, MT Coin Machine Operators opposed SB 294. In 1989 the legislature passed a bill addressing the uniformity in gambling operations across the state. This bill is an erosion of that work done in 1989. Cities and towns already have the ability to regulate gambling operations by zoning and this bill starts segregating different gaming businesses. The problem is the definition of a casino. Some communities might not regard five machines as a casino. Each community may want to set their own limits on the number of gambling machines in those businesses. The word casino in the name of a business is also a problem. If a business named their establishment "This is not a Casino" that is an absurd reduction of the language. The most troubling is 50 percent or more of the gross revenue has to come from gaming machines to be considered a casino. Right now the state does not have that information and cities and towns would be required to start filing with the state. If they are a small business that has five or fewer machines but they make 51 percent in gambling one month and 49 percent the next month, this is not a workable

standard. If we want to go back to local control of gambling lets go all the way.

Dennis Casey, Gaming Industry, said SB 294 arbitrarily defines casino as a premise license to sell alcoholic beverages that have more than five gaming machines. However, under current statute, those that have a beverage license are entitled to 20 machines. Not all operators have the maximum amount but they may if they choose. This bill would attempt to limit by zoning what a licensee is legally entitled to under the statute.

Kotte Kintli, MT Tavern Assoc., said their organization opposes SB 294.

Dave Brown, MT Independent Machine Operators Assoc., said the legislation that was passed in 1989, the whole intent was to level out gaming in Montana. It gave local governments the ability to zone and this bill goes beyond reason. This bill provides restraint on businesses and he urged a no vote on SB 294.

{Tape: 2; Side: A; Approx. Time Count: 4:47 p.m.; Comments: .}

Questions From Committee Members and Responses:

SENATOR LYNCH asked if the definition of a red light district is where there are bars and they gamble? **Julie Ippolito** said she was referencing back historically and not really today.

SENATOR LYNCH said in Butte, zoning prevents him from building a bar on Mercury street. They can't put bars just anywhere in Butte and what is the point of this bill. **SENATOR GROSFIELD** said already in law there is the ability for local governments to zone where a bar may be located. In the law there is also a provision that allows local governments to zone where gambling establishments are not suitable.

SENATOR LYNCH asked in order to have a gambling license they also must have a liquor license? **SENATOR GROSFIELD** agreed, but theoretically a city could say a bar could be placed in one location but with no gambling because there are two different statutes. This bill is trying to define a casino, because no place in the statutes is casino defined. Local governments have ordinance powers and they need to have the power to define a casino and treat them differently from other establishments.

SENATOR LYNCH said if he wanted to name his business "J.D.'s Littlest Casino in the World" because he only had one machine, then it would be a casino because the wording in the title has casino. **SENATOR GROSFIELD** said yes under this bill that would be true.

SENATOR VAN VALKENBURG asked **Janet Jessup**, Department of Justice, if they had any regulations that define a casino. **Janet Jessup** said no they did not.

SENATOR VAN VALKENBURG asked for a break down of licensees who have gaming machines of 5 or under, 10 and under, etc. **Janet Jessup** said 382 establishments had 1-4 machines, 560 establishments had 5-9 machines, 242 establishments had 10-14, 136 establishments had 15-19 machines, and 295 establishments had 20 machines.

SENATOR VAN VALKENBURG asked how many of these establishments use the name casino in their operation. **Janet Jessup** said she did not know this information.

SENATOR VAN VALKENBURG asked where does a person in Montana have to drive past casino strobe lights to get into a town. **Ellen Engstedt** said reference to a strobe light was misinterpreted and she meant to say neon lights.

SENATOR VAN VALKENBURG asked if this bill passes would there be a number of casinos that would be non-conforming in certain zoning areas. **Paul Luwe** said part of that would depend on the zoning ordinance of that community.

SENATOR VAN VALKENBURG asked if an owner of a liquor license had five or less machines and in the future wanted to expand the number of gaming machines, would this person be prohibited from doing that if they were in a zoning district prohibiting casinos. **Paul Luwe** said it would depend on zone codes. Most of these codes say whether a business can expand or extend on non-conforming use.

SENATOR HARGROVE said if there was no definition in this bill would there be any objection of giving the city council total authority to regulate and define a casino. **Dennis Casey** said he would be opposed because there would be a lot of discrepancy against cities.

SENATOR SPRAGUE asked how do cities provide a suitable location for these establishments. **Paul Luwe** said in Bozeman in 1991 the city commission defined a casino as 15 or more machines and they have a conditional use permit. They determine the effects the casino would have on a neighborhood.

SENATOR SPRAGUE said Bozeman provides suitable areas but doesn't provide suitable locations. **Paul Luwe** said this was correct. They define the districts they believe would be appropriate for a casino.

SENATOR ECK said the city of Bozeman does have the ability to make a recommendation of where a new liquor license can be located. **Ms. Kintli** said this was correct.

SENATOR ECK asked if zoning would limit licensing? **Ms. Kintli** said the number of licenses cannot be limited but a zoning ordinance prohibits where a casino can be placed.

SENATOR ECK asked if zoning, limits where and what locations new liquor licenses can be granted. **Paul Luwe** said only if that business wants to have the number of machines the zone will allow.

SENATOR ECK asked what about situations without this bill. **Paul Luwe** said if somebody applied for a liquor license in a zone that is for liquor licenses they would have to go through the conditional use permit. If they want to become a casino, they cannot do so without being in a certain district.

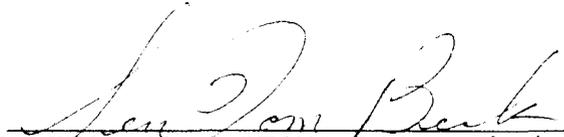
CHAIRMAN BECK asked how they came up with the definition of five machines. **SENATOR GROSFIELD** said when gambling was first authorized by the legislature in 1985 the number was five machines. The legislature envisioned a very small operation and not what we have now. Two sessions later the number was upped to 20. Five machines seemed reasonable and this will keep the small businesses in place. He said if the committee wanted to adjust this number or give local governments the ability to adjust the numbers for their own community this could be the answer.

Closing by Sponsor:

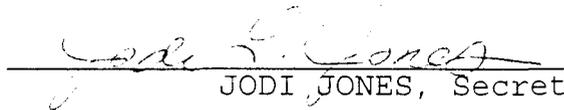
SENATOR GROSFIELD said there are good reasons for zoning. Liquor licenses are in the Department of Revenue and gambling license in the Department of Justice and this makes it confusing. There are zoning statutes for liquor and gambling. A county cannot restrict the number of licenses within their jurisdiction but they can say where they will be placed. Each town is different as some want all of their casinos in a specific area and others want them spread out. This bill puts local governments on solid footing with regard to casinos and size.

ADJOURNMENT

Adjournment: 5:14 p.m.



SEN. THOMAS A. "TOM" BECK, Chairman



JODI JONES, Secretary

TB/jj