

**MINUTES**

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

**COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN TOM BECK**, on February 20, 1997, at 3:24 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 255 Posted: 2/17/97

Executive Action: SB 137 Tabled  
SB 294 Tabled  
SB 308 Do pass as amended  
SB 311 Do pass as amended  
SB 328 Do pass  
SB 339 Do pass as amended

**HEARING ON HB 255**

**Sponsor:** REPRESENTATIVE BOB LAWSON, HD 80, Whitefish

**Proponents:**

Gordon Morris, MT Assoc. of Counties  
Mike Griffith, Lewis & Clark Co. Commissioner  
Charles Brooks, Yellowstone Co. Commissioner  
Gloria Paladichuk, Richland Co. Commissioners

Mona Jamison, MT Lung Assoc.

Opponents:

Dave O'Connell, Self

Opening Statement by Sponsor:

REPRESENTATIVE BOB LAWSON, HD 80, Whitefish, presented HB 255. He read the title of the bill. He said tobacco free was in the original bill and this was amended out on the House Floor. The reason for this was the concern for the use and possession of tobacco products and smokeless tobacco. He said it is difficult to have smoking facilities in many of our older public buildings because of maintenance and providing a well ventilated area. The governing body will make this decision rather than a local manager for greater consistency. There are no state costs involved. He said there were eight proponents in the House committee and no opponents.

Proponents' Testimony:

Gordon Morris, MACo, spoke in favor of HB 255 and said this is a very good bill.

Mike Griffith, Lewis and Clark Co. Commissioner, supported HB 255. State municipal governments are not required to provide public smoking rooms. He said they would like to give county commissioners the authority to designate non-smoking and smoking areas in local government buildings. County Commissioners must ensure the health and well being of individuals employed by the counties. The State of Montana has recognized the increased health hazards of second-hand smoke yet counties are still under a mandate to provide at risk smoking facilities.

Charles Brooks, Yellowstone Co. Commissioner, supported HB 255.

Gloria Paladichuk, Richland Co. Commissioner, said they are already doing this and they would like to be in compliance with the law.

Mona Jamison, MT. Lung Assoc., supported HB 255. It is important for local governments to have an option.

Opponents' Testimony:

Dave O'Connell, Self, opposed HB 255. He handed out testimony (EXHIBIT 1).

Questions From Committee Members and Responses:

SENATOR J.D. LYNCH said the Butte-Silverbow Courthouse has had non-smoking in the entire building for some time. He asked if they were wrong in doing that? He asked if non-smoking in the

whole school district was legal. **Gordon Morris** said yes it is legal.

**SENATOR MIKE SPRAGUE** asked how much tobacco tax does the county receive. **Gordon Morris** said none that he knows of. Most of the cigarette tax goes into the permanent building trust.

**SENATOR SPRAGUE** asked if there was any city municipalities receiving tobacco tax. **Gordon Morris** said he was not aware of any tax being collected. **Alec Hansen, MT League of Cities and Towns** said no, they do not receive any tobacco tax.

**SENATOR DON HARGROVE** asked where did the bill come from and what is the extent of the problem in local government buildings. **REPRESENTATIVE LAWSON** said this problem came to his attention through his local county government. It is a problem in older buildings to try to establish a smoking area and to ensure that the non-smoking areas keep their integrity.

**SENATOR HARGROVE** redirected his question to **Gordon Morris** and asked what was the extent of the problem. **Mr. Morris** said they do have a resolution 9632 and the law says if there are more than seven employees who smoke, a smoking area must be provided. He said many public buildings are smoke free and are not in compliance with the law. This law would remove having to set aside an area for smoking and leave it to their discretion.

**SENATOR SPRAGUE** said in some areas of the country if you smoke a cigarette within two and half hours of coming to work you could be dismissed from work. He asked if the state is heading toward this. **Gordon Morris** said no he didn't think so. There is no reason why local governments can't have the same permissive authority that a restaurant or bar has.

**SENATOR SPRAGUE** said local governments compare themselves to public restaurants with patronage in that they put up a sign and they can either come in or not if they choose to do that. He said he sees a lot of difference between a county court house where you have to get your licenses, file deeds etc. compared to public restaurants. **Gordon Morris** said he didn't see the difference. He said putting up a sign that this a smoke free building is not a problem.

**SENATOR LYNCH** asked if smokers are exempt from paying taxes. **Gordon Morris** said no and right now buildings are smoke free. The Capitol is a smoke free building.

**SENATOR SHARON ESTRADA** asked if Yellowstone Co. Courthouse is smoke free. **Gordon Morris** said yes it is and under current law that is illegal.

**SENATOR ESTRADA** asked if a place of employment has seven or more employees, must they provide a smoking area in the building under the current law? **Gordon Morris** said that was correct.

**SENATOR ESTRADA** asked what this bill was doing then? **Gordon Morris** said it is eliminating the requirement that public buildings have to provide a smoking area.

**SENATOR SPRAGUE** asked **Mr. Morris** if he saw no difference between a county courthouse and a restaurant? **Mr. Morris** said there is a difference, but if McDonald's can make a corporate decision to make the building smoke free then local governments should have the same corporate responsibility to make their courthouse smoke free.

**SENATOR SPRAGUE** asked **Mr. Morris** if he doesn't see the difference from a citizen who pays every employee's wage in a courthouse, to the citizens that provide the government facilities to the people who choose to go to McDonalds. It is a choice to go to McDonalds, but people have no choice when it comes to going to the courthouse to get their licenses etc. He asked if there was a distinction between that. **Gordon Morris** said yes, he can see a distinction that he has a choice to not go to McDonalds as a smoker but he has to go to the courthouse. Non-smokers should have some privileges when it pertains to a public building. It is not unreasonable to ask smokers to not smoke while they are in the court house on public business.

**SENATOR SPRAGUE** asked if local governments should not provide a facility to smokers even if it is in the dungeon part of the building. **Mr. Morris** said it should be discretionary and local governments should not have to go to the extra expense of finding a room, ventilating it, and making sure the air is forced to the outside.

**SENATOR SPRAGUE** asked under current law some local governments are breaking the law. Can he make a distinction between county governments and facilities breaking the law on the public and the public walking in after this law has passed and they are smoking a cigarette, then are they breaking the law? **Gordon Morris** said the only thing that will happen to the person smoking the cigarette is he will be asked to put it out or leave the building.

**SENATOR SPRAGUE** said if the law does not pass, can an individual walk into a local government building and they won't have to leave the premise for smoking a cigarette. **Gordon Morris** said that under current law that person would be asked to go to the designated smoking area. Currently, there are state office buildings that are also entirely smoke free under law.

**SENATOR ECK** said under current law this is an unfunded mandate for local governments. They have to spend money to provide a smoking area. If this law is passed, we are relieving county governments of an unfunded mandate.

Closing by Sponsor:

REP. LAWSON said that if a person came into the court house with chew or tobacco in their pocket then they would be breaking the law under the original bill and this was taken out. He said he didn't think Flathead Co. Court House was a smoke free building and the cost of ventilating that building would be costly.

EXECUTIVE ACTION ON SB 137Amendments:

SENATOR HARGROVE discussed the amendments (EXHIBIT 2).

Motion:

SENATOR HARGROVE MOVED TO ADOPT THE AMENDMENTS. MOTION CARRIED UNANIMOUSLY.

Discussion:

SENATOR LYNCH asked if clustering is still allowed on waterways. SENATOR HARGROVE said yes.

Motion:

SENATOR LYNCH MOVED SB 137 BE TABLED.

Discussion:

SENATOR HARGROVE said everybody talks about open space. In the past two years in Gallatin Co. there will be over 10,000 more acres in development. In this bill there is little incentive; it is basically up to the land owner to decide if he wants to use this or not. The incentive is to keep the farmer on the land and the only other alternative right now is development. He said he has never seen a county yet refuse a sub-division. In this bill, water quality review and septic review are still there and the county can review the proposal. Not very many people will do it to begin with because it isn't a big money maker; it is incentive rather than being under state mandates. The people who supported this bill were citizens and farmers. He said the people who were here in opposition were paid to be here. The environmental groups were in opposition of this bill and he didn't understand why because this is a people's bill with no major organizations behind it. If a developer sub-divides the land a person can not always pick his neighbors, but under this bill the land owner gets to choose his neighbors.

SENATOR SPRAGUE said this incentive is optional, will run for two years in sunset, and is a social experiment and no one knows if it will work or not. He said it is a good idea as somebody is trying to find solutions and if in two years it doesn't work then it can go back to the original law.

Motion:

SENATOR HARGROVE MADE A SUBSTITUTE MOTION THAT SB 137 DO PASS AS AMENDED.

Discussion:

SENATOR HARGROVE read an article out of the Washington Post. He said the article stated that Bozeman was the second fastest growing community in Montana and they had no authority to stop new sub-divisions. The county planning boards are not doing a good job.

SENATOR VAN VALKENBURG asked about section 5 requiring non-significance criteria for on sight sewage systems. He asked if those would apply only to sub-divisions pursuant to this experiment or to all sub-divisions. SENATOR HARGROVE said it will apply all sub-divisions. This will eliminate some of the frustration of having to wait to go through a long sub-division.

SENATOR VAN VALKENBURG asked Jan Sensibaugh, Department of Environmental Quality, what their department has in mind in terms of applying criteria to all significant sub-divisions and the effects on the water quality at that sight. Jan Sensibaugh said currently, they have a non-degregation task force that has been meeting for over a year to come up with criteria which could be applied generically to all sub-divisions. They have come up with four criteria and will have a public meeting on this matter.

SENATOR ECK asked if they are doing this on a case by case basis? Jan Sensibaugh said yes they do it case by case, but as soon as the rules are approved and the submittal comes in and meets the rules then the case by case would not have to be done.

SENATOR ECK asked what size of sub-division and how many home sites would this apply to. Jan Sensibaugh said the way the rules are written they are trying to adopt by lot size.

Vote:

MOTION THAT SB 137 DO PASS AS AMENDED FAILED 3-5 ON A ROLL CALL VOTE.

Vote:

MOTION THAT SB 137 BE TABLED PASSED 5-3 ON A ROLL CALL VOTE.

{Tape: 1; Side: B; Approx. Time Count: 4:08 p.m.; Comments: .}

EXECUTIVE ACTION ON SB 294Amendments:

Amendments for SB 294 were passed out (EXHIBIT 3).

Motion:

SENATOR HARGROVE MOVED TO ADOPT THE AMENDMENTS.

Discussion:

SENATOR HARGROVE discussed the amendments. (EXHIBIT 3)

Vote:

MOTION TO ADOPT THE AMENDMENTS CARRIED UNANIMOUSLY.

Motion:

SENATOR J.D. LYNCH MOVED SB 294 BE TABLED.

Discussion:

SENATOR LYNCH said they have enough rules in the city with zoning. He said the definition that five gambling machines makes it a casino is wrong. He visits his local taverns and most of them have more than five machines and he does not consider these places to be a casino. He thinks local governments can handle their own problems.

SENATOR ECK said Bozeman has handled this and have done their own zoning and definitions. She doesn't think this bill will help or solve any of those problems.

Vote:

MOTION TO TABLE SB 294 CARRIED 8-1 WITH SENATOR HARGROVE voting no.

EXECUTIVE ACTION ON SB 308

Amendments:

Testimony and a gray bill were handed out for SB 308 (EXHIBIT 4 & 5). Amendments were handed out for SB 308 (EXHIBIT 6,7,8).

Motion:

SENATOR J.D. LYNCH MOVED TO ADOPT THE BECK AMENDMENTS.

Discussion:

CHAIRMAN BECK and Martha Colhoun explained the amendments (EXHIBIT 6,7,8).

SENATOR LYNCH said he didn't understand what this bill is doing now with the amendments.

SENATOR ECK said she had a comment on self-governing powers. She said most governments cannot take any action they are not specifically authorized to do. Self governing bodies can take action if they choose unless the Legislature specifically prohibits them.

Motion:

SENATOR VAN VALKENBURG MADE A SUBSTITUTE MOTION THAT AMENDMENT 19 SHOULD BE SEGREGATED FROM THE OTHER AMENDMENTS.

Discussion:

SENATOR LYNCH agreed and said the state can prohibit but there would be no sense in having self-governing power if all they can do is what is granted by the Legislature.

SENATOR SPRAGUE asked for an explanation of why self governing powers often cross the line, and isn't there guidelines they must all follow. This bill would not be in front of us if they were following the guidelines.

SENATOR ECK said in many cases they prohibit self-governing bodies from taking action, for example they won't let them enact a sales tax.

CHAIRMAN BECK said the problem is that sometimes the state government has been more liberal on an approach to the environment. But the counties end up going far and beyond what the state's intent was.

Vote:

MOTION TO ADOPT THE AMENDMENTS 1-18 CARRIED UNANIMOUSLY.

Discussion:

SENATOR VAN VALKENBURG said amendment 19 should be segregated because it extends far beyond what the proponents are talking about. This is a general provision of law applying to local governments and it is over reaching. If amendment 19 is voted down then section 6 should be struck from the bill.

SENATOR HARGROVE asked if there was anything wrong with section 6? SENATOR VAN VALKENBURG said in amendment 19 there are contradictory provisions, the powers and authority of a local government with self-governing powers may not be expanded to exceed the powers granted to it by the Legislature. By giving the authority to have self-governing powers then they are not limited in their powers.

Martha Colhoun explained article 11 section 6 of the Montana Constitution.

{Tape: 1; Side: B; Approx. Time Count: 4:28 p.m.; Comments: .}

SENATOR SPRAGUE said it is very frustrating when local governments overstep their boundary authority. They should only have the authority to do what they are granted.

SENATOR LYNCH said if they compare it to the U.S. Constitution and the tenth amendment. It says the states have all the powers not specifically delegated by the federal government. Self-governing says the cities have all the power they want unless it is denied by the state.

Vote:

MOTION TO ADOPT AMENDMENT 19 FAILED UNANIMOUSLY.

Motion/Vote:

SENATOR VAN VALKENBURG MOVED TO STRIKE SECTION 6 OF SB 308.  
MOTION PASSED 5-4 ON A ROLL CALL VOTE.

Amendments:

SENATOR HARGROVE discussed his amendments (EXHIBIT 7).  
He said amendments 11 and 12 should be segregated.

Motion:

SENATOR HARGROVE MOVED TO ADOPT AMENDMENT 3-8.

Discussion:

Martha Colhoun said that by striking lines 10-13 of the original bill this would create a conflict with CHAIRMAN BECK'S amendments.

SENATOR VAN VALKENBURG said if SENATOR HARGROVE'S amendments are adopted then CHAIRMAN BECK'S amendments are changed to conform with the amendments.

SENATOR LYNCH asked if they are eliminating "providing for civil actions." CHAIRMAN BECK said that was stricken.

SENATOR SPRAGUE asked if they are striking (ii) and (iii) because it will help save the bill. SENATOR HARGROVE said this was true.

Vote:

MOTION TO ACCEPT HARGROVE'S AMENDMENT 2-10 PASSED 6-3 WITH SEN. LYNCH, SEN. SPRAGUE, AND SEN. BECK voting no.

Motion:

SENATOR VAN VALKENBURG MOVED AMENDMENT #1 OF HIS AMENDMENTS TO SB 308 (EXHIBIT 8).

Discussion:

SENATOR VAN VALKENBURG discussed his amendments (EXHIBIT 8).

SENATOR BECK asked Andy Skinner, Self if septic systems were the main problem. Mr. Skinner said the problem is government in action period. It is not just septic systems, it deals with a lot of areas and he doesn't want to have to take the local government to court on every issue.

SENATOR ESTRADA asked if this amendment would gut the bill? Mr. Skinner said yes, and septic systems are just a small part of the problem.

SENATOR SPRAGUE said this is not a specific problem bill; it is a much bigger issue.

Vote:

MOTION TO ADOPT THE VAN VALKENBURG AMENDMENTS FAILED ON A VOICE VOTE.

Motion/Vote:

SENATOR LYNCH MOVED SB 308 DO PASS AS AMENDED. MOTION PASSED 8-1 WITH SENATOR VAN VALKENBURG VOTING NO.

EXECUTIVE ACTION ON SB 311

Motion:

SENATOR LYNCH MOVED AMENDMENTS TO SB 311 (EXHIBIT 9).

Discussion:

Martha Colhoun discussed the amendments (EXHIBIT 9).

Vote:

MOTION TO ADOPT THE AMENDMENTS PASSED UNANIMOUSLY.

Motion:

SENATOR LYNCH MOVED SB 311 DO PASS AS AMENDED.

Discussion:

SENATOR HARGROVE said some of the counties are already doing this and it is an unfunded mandate. It doesn't make any sense for them to handle this at the Legislature, it is a local problem.

SENATOR GLASER said it is important to keep these ballots secret and he supports the bill.

Vote:

MOTION TO PASS SB 311 AS AMENDED CARRIED 8-1 WITH SENATOR HARGROVE voting no.

{Tape: 2; Side: A; Approx. Time Count: 4:49 p.m.; Comments: .}

EXECUTIVE ACTION ON SB 328Motion:

SENATOR ESTRADA MOVED SB 328 DO PASS.

Discussion:

SENATOR GLASER said this bill discusses the unfunded provision on retirement from 17 to 20 years and it spends \$60 Million at \$2 Million per year.

SENATOR HARGROVE said there is no motivation to move up because the retirement benefits are not there.

SENATOR VAN VALKENBURG said they have been trying to resolve this for the past four sessions. They want to take care of their fellow officers. He said if they are really concerned about the fiscal note then they might require the cities and towns and active police officers to put money into this fund. This is how other retirement programs work.

SENATOR HARGROVE said they just passed a bill that would have a study concerning the municipal getting more money than the highway patrol.

CHAIRMAN BECK said this problem gets worse each year that they don't do anything about it. Local governments and active police officers won't put money into this fund anymore than anyone else will.

SENATOR LYNCH said the base sergeants salary in Missoula is \$36,000 and they would get half of that which would be \$18,000.

SENATOR SPRAGUE asked when do they retire? SENATOR LYNCH said it is after 20 years.

SENATOR SPRAGUE said the quicker they retire the longer they are on the retirement system and they are going to run out of cash. The idea is to get another job because people are young enough to do this.

SENATOR HARGROVE said the GABA bill was tabled in committee.

Vote:

MOTION TO DO PASS SB 328 CARRIED 5-4 ON A ROLL CALL VOTE.

{Tape: 2; Side: A; Approx. Time Count: 4:59 p.m.; Comments: .}

EXECUTIVE ACTION ON SB 339

Amendments:

SENATOR LORENTS GROSFIELD, SD 13, Big Timber explained amendments to SB 339 (EXHIBIT 10). He also discussed the current statutes (EXHIBIT 11).

Motion/Vote:

SENATOR HARGROVE MOVED TO ADOPT THE AMENDMENTS. MOTION CARRIED UNANIMOUSLY.

MOTION/VOTE:

SENATOR ESTRADA MOVED SB 339 DO PASS AS AMENDED. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 255

Motion:

SENATOR ESTRADA MOVED HB 255 BE TABLED.

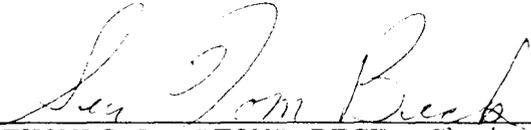
Discussion:

SENATOR VAN VALKENBURG said they should hold off till next meeting to vote on this.

SENATOR ESTRADA withdrew her motion.

ADJOURNMENT

Adjournment: 5:08 p.m.



SEN. THOMAS A. "TOM" BECK, Chairman



JODI JONES, Secretary

TB/jj