

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

March 23, 1977

The meeting of the Local Government Committee was called to order by Chairman McCallum on March 23, 1977 at 9:30 a.m. in Room 410 of the State Capitol Building.

ROLL CALL: All members present except Senator Thiessen.

The following visitors were present:

JoAnn Woodgerd	Secretary of State Office
Glen Drake	League of Cities and Towns
Dean Zinnecker	Montana Association of Counties
Darlene Grove	League of Women Voters
Rep. H. Robbins	District #46
Larry Weinberg	Legislative Council
Dale Harris	Self

CONSIDERATION OF HB 537: Representative Carroll South appeared before the Committee and explained that this amends the alternative forms bill that was passed two years ago in the legislature. Currently, there are three county commissioners nominated in three districts but they are elected at large. This amendment would allow a county to include all the rural area in one district and divide the urban area into two districts. This would assure that rural representation would be maintained in any change in local governments.

There were no opponents to HB 537.

DISCUSSION BY COMMITTEE: Would the rural district completely surround the town? Yes, it could also be five or seven districts, not necessarily three. This would also meet the one man-one vote - this has been tested in two states and it would meet it because everyone in the county gets the opportunity to vote on the election. It is an at-large election. This could also be applied to a larger city where there is a large population that is not being represented. The question was asked if the cities would then control the county government because they would have two commissioners? The cities would control it more so without this amendment. This would assure that overpowering of the rural voters would not happen.

CONSIDERATION OF SJR 39: Senator Hazelbaker appeared on behalf of SJR 39. If this Joint Resolution should go to the Priorities Committee he felt that it would be at the top of their list because of the controversial matter in HB 122. These things in HB 122 could be presented to the 1979 Legislature in three, and not more than five, separate bills which would be easier to study than one large volume such as HB 122.

Dean Zinnecker, Montana Association of Counties, stated that the Federal, State and County governments have all been studied. Federal and State have been adopted but local government has not. They feel that the legislature should really know more about local government laws. This might help the legislature to understand the restrictions

under which local governments are operating.

Glen Drake, Montana League of Cities and Towns felt that HB 122 is deserving of a thorough study by the Legislature and expressed support for this Resolution.

Hershel Robbins, Representative from District #46, expressed support for Resolution 39.

Dale Harris, representing himself, said that he would support SJR 39 as an opportunity for the Senate and House to understand that HB 122 is not a monster and that it does have sufficient merit.

There were no opponents to SJR 39.

DISPOSITION OF SJR 39: Senator Watt moved that SJR 39 Do Pass, motion seconded by Senator Peterson. Motion carried unanimously.

CONSIDERATION OF SB 445: Senator Lockrem, sponsor of the bill, appeared before the committee. He called this a "mini" 122, and felt that it is all that is left for local governments. It will, however, need a 2/3 vote for suspension of the rules to be accepted by the House so the responsibility for getting this bill into the proper form will be left to the Senate because the House will not have sufficient time to spend on it.

Hershel Robbins, Representative, agreed that it will take a 2/3 vote for suspension but did feel they would get it. It will not allow the House to do much with the bill once it goes out of the Senate because of lack of time.

Glen Drake, League of Cities and Towns, supported the bill, however, Dan Mizner has an amendment to Section 4 of the bill and Mr. Drake will have these amendments to the committee as soon as possible.

DISCUSSION OF SB 445: Mr. Larry Weinberg, staff attorney for the Legislative Council, was asked if the procedures in the amendments were taken right out of HB 122. He stated that the amendments try to pick up some problem areas that will enable the local governments to function.

Section 5 was taken right out of HB 122; Section 6 is present law; Section 7 is present law for municipalities. (This would provide it for counties); Section 8 again taken out of HB 122; Section 9 - out of HB 122, as amended in the House (if a signor of a petition is a defendant in a law suit the city will pick up the legal costs). In any consolidated form of government are ordinances addressed to cities and counties so dissimilar that they cannot be used? Mr. Weinberg stated that there are no ordinances for counties right now. In answer to a question if they could use the ordinances for municipalities, he replied that they probably could but they would be subject to law suits.

Mr. Weinberg suggested some additional changes to the proposed amendments, namely "sections 4, 6, 14, 15, 16 and 17" be added in Section 11. Section 12 should have a catch line: "Scope of Act". Section 13 is taken from HB 122. He also pointed out that there is a possibility of conflict with HB 438.

DISCUSSION BY THE COMMITTEE: Senator Lockrem asked Mr. Harris if there was not 19 cities that voted for alternate forms of government in four counties, and are all of them charters? He answered that there were 16 charters of the 19 self governments. There is no procedure for amending their alternate forms in the next two years.

Chairman McCallum asked if the cities that kept their present form of government could amend that form. Mr. Weinberg said yes, they could submit it to the electors and a majority would have to accept it.

JoAnn Woodgerd stated that there would be a conflict with HB 438. She strongly urged the Committee to come up with one which would be the same; to clarify if the committee wants petitions and amend it into SB 445. Also felt that there should be a definition of what the number of qualified electors is based on for petitions. The Committee asked Mr. Weinberg to include this in the gray bill that he is going to have printed for the committee to study.

Senator Story asked several questions of Mr. Harris, one being, when did he know that what was being done was not complete? Mr. Harris replied that he knew as early as September, 1973, when the Governor proposed a step by step process for implementing the Constitutional provisions. There was a significant amount of research and planning that needed to be done. In 1975 approval was given the procedures for submitting alternative forms to the voters. The legislature has chosen not to adopt 122. Budget laws and issuance of bonds - these issues need to be adjusted - which budget law they are going to be under.

Mr. Weinberg was asked to prepare the attached amendments to carry the local governments through the next two years. There are some areas that are critical. Mr. Harris said that the governments could get by the next couple of years if the committee does not clean this up but there would be questionable areas.

DISPOSITION OF HB 659: Senator Thomas moved that HB 659 Be Concurred In, motion seconded by Senator Peterson. Motion carried unanimously.

DISCUSSION OF HB 801: Senator Watt moved that HB 801 Be Concurred In. Since there are proposed amendments by Senator Dunkle, this was held for executive session and to review the amendments.

Meeting adjourned 11:00 a.m.


George McCallum, Chairman

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 3/22/71

[illegible]

SENATE

COMMITTEE

Bill _____

VISITORS' REGISTER

DATE _____

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

SUPPORT

OPPOSE

Arlene Grove

League of Women Voters

SR 39

445

interest

H. B. Robinson

State Rep. Dist 46

SR 35

SR 445

INTEREST

Larry W. W. W.

Legs Council

SR 445

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

1. Amend title, line 6.

Following: "CHARTERS"

Insert: "OR ADOPTED ALTERNATIVE FORMS OF LOCAL GOVERNMENT, TO PROVIDE FOR ENACTMENT OF ORDINANCES AND RESOLUTIONS, TO PROVIDE FOR LOCAL GOVERNMENT INITIATIVE AND REFERENDUM, TO PROVIDE FOR THE OPERATION OF CONSOLIDATED UNITS OF LOCAL GOVERNMENT"

2. Amend title, line 7.

Following: "LAWS"

Insert: "; AMENDING SECTION 23 of CHAPTER 513 OF LAWS, 1975"

3. Amend page 3, section 4, line 11.

Following: "charters"

Insert: "or adopted alternative forms of government"

4. Amend page 3, section 4, line 12.

Following: "charter"

Insert: "or an adopted alternative form of government"

5. Amend page 3, section 4, line 21.

Following: "charter"

Insert: "or an adopted alternative form of government"

6. Amend page 3, section 4, line 24

Following: "question on"

Strike: "charter"

Following: "amendment"

Insert: "of a charter or an adopted alternative form of government"

7. Amend page 4, section 4, line 7.

Following: line 6

Insert: "Section 5. Ordinance requirements. (1) All ordinances shall be submitted in writing in the form prescribed by resolution of the governing body.

(2) No ordinance passed shall contain more than one comprehensive subject which shall be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies made available to the public.

(4) In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

(5) After passage and approval, all ordinances shall be signed by the chairman of the governing body and filed with the official or

STANDING COMMITTEE REPORT

March 23

19 77

MR. President

We, your committee on Local Government

having had under consideration House Bill No. 659

Respectfully report as follows: That House Bill No. 659

~~DO PASS~~ BE CONCURRED IN

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STANDING COMMITTEE REPORT

March 23 19 77

MR. President.....

We, your committee on..... Local Government.....

having had under consideration..... Senate Joint Resolution..... BM No. 39.....

Respectfully report as follows: That..... Senate Joint Resolution..... BM No. 39.....

~~DO PASS~~ DO PASS

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STANDING COMMITTEE REPORT

March 25 19 77

MR. President

We, your committee on Local Government

having had under consideration Senate Bill No. 445

Respectfully report as follows: That Senate Bill No. 445

introduced bill, be amended as follows:

1. Amend title, line 6.

Following: "CHARTERS,"

Insert: "or adopted alternative forms of local government, to provide for enactment of ordinances and resolutions, to provide for local government initiative and referendum, to provide for the operation of consolidated units of local government,"

2. Amend title, line 7.

Following: "LAWS"

Insert: "; amending Section 23 of Chapter 513 of Laws, 1975, and providing an effective date"

3. Amend page 1, section 1, line 15.

Following: "election."

Insert: "The declaration shall be accompanied by a petition signed by at least 25 electors of the local government requesting the candidacy."

DO PASS

CONTINUED

4. Amend page 1, section 1, line 15.

Following: "election."

Insert: "The declaration shall be accompanied by a petition signed by at least 25 electors of the local government requesting the candidacy."

5. Amend page 3, section 4, line 11.

Following: "charters"

Insert: "or adopted alternative forms of government."

6. Amend page 3, section 4, line 12.

Following: "charter"

Insert: "or an adopted alternative form of government"

7. Amend page 3, section 4, line 21.

Following: "charter"

Insert: "or an adopted alternative form of government"

8. Amend page 3, section 4, line 24.

Following: "question on"

Strike: "charter"

Following: "amendment"

Insert: "of a charter or an adopted alternative form of government"

9. Amend page 4, section 4, line 6.

Following: line 6

Insert: "Section 5. Ordinance requirements. (1) All ordinances shall be submitted in writing in the form prescribed by resolution of the governing body.

(2) No ordinance passed shall contain more than one comprehensive subject which shall be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies made available to the public.

(4) In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

(5) After passage and approval, all ordinances shall be signed by the chairman of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

(6) No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

(7) If the plan of government allows the chief executive to veto an ordinance, this power must be exercised in writing prior to its next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect.

(E) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval, except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.

(9) (A) No later than 1980 and at 5 year intervals thereafter appropriate ordinances shall be compiled into a uniform code and published.

(B) The recodification is not effective until approved by the governing body.

Section 6. Adoption and amendment of codes by reference. (1) Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and there kept available for public use, inspection, and examination. The filing requirements herein prescribed shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 30 days following its adoption and cannot be reenacted as an emergency ordinance.

(3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(4) The filing requirement of subsection (1) of this section shall be complied with in adopting amendments to codes.

(5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment, or any provision thereof separately, and no part of any penalty shall be incorporated by reference.

(6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof; and shall include specifically but shall not be limited to: traffic codes, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

Section 7. Penalty for violation of ordinance. A local government may fix penalties for the violation of an ordinance which do not exceed a fine of \$500 or 6 months' imprisonment or both the fine and imprisonment.

Section 8. Resolution requirements. (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body.

(3) If the plan of government allows the executive to veto resolutions, this power must be immediately exercised in writing at the same meeting. If the executive fails to act, the resolution shall be approved. If the executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

(4) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

(5) All resolutions shall be immediately effective unless a delayed effective date is specified.

Section 9. Initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2) of this section, may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in this section.

(2) The powers of initiative shall not extend to the following:

- (a) The annual budget;
- (b) Property tax levies;
- (c) Bond proceedings, except for ordinances authorizing bonds;
- (d) The establishment and collection of charges pledged for the payment of principal and interest on bonds; or
- (e) The levy of special assessments pledged for the payment of principal and interest on bonds.

(3) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(4) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(5) A petition or resolution for initiative or referendum shall:

- (a) Embrace only a single comprehensive subject;
- (b) Set out fully the ordinance sought by petitioners, or in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment, or in the case of referendum, set out the ordinance sought to be repealed; and
- (c) Contain the signatures of 15% of the electors of the local government.

(6) (a) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(b) If the governing body does not, within 60 days, take the proposed action, then the question shall be submitted to the electors at the next school, primary, or general election or a special election called for that purpose. Before submitting the question to the electors, the governing body may direct that a suit be brought in district court by the local government to determine whether the petition is regular in form, has sufficient signatures, and whether the proposed action would be valid and constitutional.

(c) The complaint shall name as defendants not less than 10 or more than 20 of the petitioners. In addition to the names of the

defendants, to the caption of the complaint there shall be added the words: "And all petitioners whose names appear on the petition for an ordinance filed on the _____ day of _____, in the year _____", stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein, and in addition shall be published.

(d) If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative, at any time, to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

(7) (a) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(i) The petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(ii) The governing body calls for a special election on the question.

(b) If the adequacy of the petition is determined by the elections administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election, unless a special election is called.

(c) Whenever a measure is ready for submission to the electors, the appropriate election official shall, in writing, notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.

(d) The question shall be placed on the ballot giving the electors a choice between accepting or rejecting the proposal.

(e) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal.

Section 10. Determination of the number of signatures required for a petition. In order to determine the number of signatures needed on a petition to meet the percentage requirements of this act, the number of electors shall be the number of individuals registered to vote at the last preceding general election for the local government.

Section 11. Operation of consolidated units of local government.

(1) Whenever existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a consolidated unit of local government which contains at least one county and one municipality shall, by ordinance, adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those areas where such units are subject to state law under 47A-7-201 through 47A-7-204.

(2) A combination of county and municipal offices in a consolidated unit may be accomplished by ordinance whenever such a combination is necessary for carrying out a duty assigned by state law to the local government. Whenever state law imposes a duty upon a specific official or employee of a local government and the local government under its adopted alternative form of government does not have such an official or employee, the governing body may by ordinance assign that duty to the appropriate official or employee of the local government.

Section 12. Section 23 of Chapter 513 of Laws, 1975, is amended to read as follows:

"Section 23. Automatic repealer. This act, except for sections 4, 6, 14, 15, 16, and 17, terminates on June 30, 1977."

Section 13. Scope of act. Whenever the provisions of this act conflict with the provisions of other laws related to local government, the provisions of this act prevail.

Section 14. Definition. As used in this act, "chief executive" means the elected executive in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

Section 15. Effective date. This act is effective May 1, 1977."

AND AS SO AMENDED, DO PASS

Sen. George McCallum, Chairman