

MINUTES OF THE MEETING  
LOCAL GOVERNMENT COMMITTEE  
MONTANA STATE SENATE

March 22, 1979

The meeting of the Local Government Committee was called to order by Chairman George McCallum on March 22, 1979 at 12 Noon in Room 405 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Senator Thomas, who was excused.

Dennis Taylor, Staff researcher, was also present.

Many visitors were in attendance. (See attachment.)

CONSIDERATION OF HOUSE BILL 879: Representative John Scully, sponsor of House Bill 879, from District 76, gave a brief resume. This bill is an act to generally revise and clarify the Subdivision and Platting Act. Representative Scully stated the basis of this bill comes from his experience with subdivisions in Gallatin County.

There were no proponents to the bill, Therefore, Chairman McCallum called on the opponents.

Bette Hostad representing the League of Women Voters, stated that House Bill 879 does not address the loopholes in the present subdivision laws. Her group is opposed to this bill and asked the Committee to not concur with the House on it. Mrs. Hostad handed out written testimony to the members of the Committee. (See attachment.)

With no further opponents, Representative Scully made the closing remarks. He stated that this bill will clean up ambiguities and problems in the present law.

The meeting was opened to a question and answer period from the Committee. Discussion was held.

CONSIDERATION OF HOUSE BILL 81: Representative Burt Hurwitz of District 45, sponsor of House Bill 81, gave a brief resume. This bill is an act to provide for expanded local government review of sanitary requirements for subdivisions; modifying the definition of a subdivision; and providing new administrative and judicial remedies. The intent of this bill, according to Representative Hurwitz, is to try to address some of the problems regarding subdivisions which were brought out in the Interim Committee at hearings held around the State.

Stan Bradshaw, representing the Department of Health and Environmental Sciences, stood in support of the bill. He

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passed out his comments and proposed amendments to the members of the Committee. (See attachment)

Ed Casne, of the Department of Health and Environmental Sciences, stated that he supported the bill. However, he does not like the amendment on Page 6, lines 10-15. The department would no longer have the authority to collect the fees in the subdivision master plans. The review must take place, therefore, the department should be able to collect the fee. Mr. Casne stated his department will lose approximately \$60,000, because of this.

Sonny Hansen, representing the Montana Technical Council, stated he would support the bill with the amendments proposed by the departments. Mr. Hansen also offered a few more amendments. (See attachment.)

Bette Hostad, of the League of Women Voters, stated more local government control will aid better assessment by the counties for growth and subdivision planning. Mrs. Hostad offered written testimony to the Committee. (See attachment.)

Dan Mizner, of the League of Cities and Towns, stood in support of the bill. Mr. Mizner reported that he had not seen any of the proposed amendments.

With no further proponents, Chairman McCallum called on the opponents.

Cliff Christian, representing the Montana Association of Realtors, stated that if the situation does not improve the Governor will have some changes made. There is a very serious problem. The red tape at the Department of Health and Environmental Sciences in subdivision review is "horrendous". The fees were raised in the last session and it does not seem to have helped. Mr. Christian stated that he hopes local control does occur. This bill has no definition of subdivision certificate of survey. Mr. Christian stated he does not want to give the department any more power.

With no further opponents, Representative Hurwitz made the closing remarks. He stated you can not pass a law without putting restrictions on the people. The whole business of subdivisions is a learning process. Representative Hurwitz asked the Committee to look kindly on the bill.

The meeting was opened to a question and answer period from the Committee. Discussion was held.

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DISPOSITION OF HOUSE BILL 81: A motion was made by Senator Watt that House Bill 81 BE CONCURRED IN.

After some discussion the Committee decided that perhaps House Bill 81 should be placed in sub committee with the other two subdivision bills to be studied further.

DISPOSITION OF HOUSE BILL 382: This bill is in regards to city and locally owned fire departments.

Senator McCallum suggested perhaps the bill should be amended on page 1, line 21; following: institute; add, "and impose a municipal tax for".

Senator Watt stated that perhaps on page 2, line 8 that 3times is too high.

Senator Thomas now arrived at the meeting.

A motion was made by Senator Lockrem that House Bill 382 be amended on page 1, line 21 as proposed. Motion carried. (See attachment.)

A motion was made by Senator Lockrem that House Bill 382 BE CONCURRED IN, as amended. Motion carried. (See attachment.)

DISPOSITION OF HOUSE BILL 704: This bill is in regards to allocation of state funds for public transportation.

A motion was made by Senator Rasmussen that the Committee reconsider their actions on this bill. Motion carried.

A motion was made by Senator Rasmussen that House Bill 704 be amended on page 3, line 1. (See attached Committee Report.) Motion carried.

A motion was made by Senator Rasmussen that House Bill 704 BE CONCURRED IN, as amended. Motion carried. (See attachment.)

DISCUSSION ON HOUSE BILL 34: This bill changes the notice requirement for creation of a refuse disposal district.

Senator Thomas stated that the local government should have to place a large ad, maybe 2x4 size, on a page other than the classified ad page for the people to see.

ADJOURN: The meeting was adjourned at 1:30. The next meeting will be held on Friday, March 23 at 12 Noon.

*Handwritten signature: Gary M. ...*

Jan 22

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

46th LEGISLATIVE SESSION - 1979

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NAME	PRESENT	ABSENT	EXCUSED
GEORGE MCCALLUM, CHAIRMAN	✓		
LLOYD LOCKREN, VICE CHAIRMAN	✓		
MAX CONOVER	✓		
JESSE A. O'HARA	✓		
BOB PETERSON	✓		
A. T. (TOM) RASMUSSEN	✓		
PETE STORY	✓		
BILL THOMAS			✓
ROBERT D. WATT	✓		

Each Day Attach to Minutes.

SENATE COMMITTEE LOCAL GOVERNMENT

Date March 22 House Bill No. 382 Time

NAME	YES	NO
GEORGE MCCALLUM, CHAIRMAN	✓	
LLOYD LOCKREM, VICE CHAIRMAN	✓	
MAX CONOVER		✓
JESSE A. O'HARA	✓	
BOB PETERSON	✓	
A. T. (TOM) RASMUSSEN	✓	
PETE STORY	✓	
BILL THOMAS	✓	
ROBERT D. WATT		✓

Elaine Stanley  
Secretary

George McCallum  
Chairman

Motion: A motion was made by Senator Lockrem that House Bill  
382 be amended to page 1, line 21. Motion carried.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LOCAL GOVERNMENT

Date March 22 House Bill No. 382 Time

NAME	YES	NO
GEORGE MCCALLUM, CHAIRMAN	✓	
LLOYD LOCKREM, VICE CHAIRMAN	✓	
MAX CONOVER		✓
JESSE A. O'HARA	✓	
BOB PETERSON	✓	
A. T. (TOM) RASMUSSEN		✓
PETE STORY	✓	
BILL THOMAS	✓	
ROBERT D. WATT		✓

Secretary  
Secretary

George McCallum  
Chairman

Motion: A motion was made by Senator Lockrem that House Bill  
382 BE CONCURRED IN, as amended. Motion carried.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LOCAL GOVERNMENT

Date March 22 House Bill No. 704 Time

NAME	YES	NO
GEORGE MCCALLUM, CHAIRMAN	✓	
LLOYD LOCKREM, VICE CHAIRMAN		✓
MAX CONOVER	✓	
JESSE A. O'HARA	✓	
BOB PETERSON	✓	
A. T. (TOM) RASMUSSEN	✓	
PETE STORY		✓
BILL THOMAS	✓	
ROBERT D. WATT	✓	

Secretary

Chairman

Motion: A motion was made by Senator Rasmussen that House  
Bill 704 BE CONCURRED IN, as amended. Motion carried.

(include enough information on motion--put with yellow copy of committee report.)

# STANDING COMMITTEE REPORT

March 22 1979

MR. President:

We, your committee on Local Government

having had under consideration House Bill No. 382

Menahan (Lockren)

Respectfully report as follows: That House Bill No. 382,

third reading bill, be amended as follows:

1. Page 1, line 21.

Following: "institute"

Insert: "and impose a municipal tax for"

EDPASS And, as so amended, BE CONCURRED IN

# STANDING COMMITTEE REPORT

March 22 1979

MR. President:

We, your committee on Local Government

having had under consideration House Bill No. 704

Fagg (Rasmussen)

Respectfully report as follows: That House Bill No. 704,

third reading bill, be amended as follows:

1. Page 3, line 1.

Following: page 2.

Insert: "Section 2. THERE IS A NEW MCA SECTION THAT READS:

Distribution of funds in excess of those appropriated.

Nothing in [this act] shall commit the state to distribute funds in excess of those specifically appropriated for this purpose."

Renumber: Subsequent section.

1604  
XOXLARR AND, as so amended, BE CONCURRED IN

SENATE

COMMITTEE

BILL \_\_\_\_\_

VISITORS' REGISTER

DATE \_\_\_\_\_

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
W.S. Hanson	Mount Iron Council	HB 81	<input checked="" type="checkbox"/>	
Bill Angles	Dept of Health	HB 81	<input checked="" type="checkbox"/>	
Stan Bradshaw	"	"	<input checked="" type="checkbox"/>	
Ed Case	"	"	<input checked="" type="checkbox"/>	
Janette Tallan	Mont Chamber	HB 81		
Debbie Schmidt	leg. Council	81		
Pat Hutton	MT ASSN of Pastors	879	amends	<input checked="" type="checkbox"/>
Ann R. Riddery	MT Assn of Pastors	81	amends	
Pat Hutton	League of Women Voters	81	<input checked="" type="checkbox"/> (81)	<input checked="" type="checkbox"/> 81
Jan Brown	MT Assn of Churches	81		

NAME: Beth H. L. L. DATE: 3/22/79

ADDRESS: 8906 Douglas Circle

PHONE: 458-9588

REPRESENTING WHOM? League of Women Voters

APPEARING ON WHICH PROPOSAL: 879

DO YOU: SUPPORT?            AMEND?            OPPOSE? ✓

COMMENTS:  testimony enclosed

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: H.S. HANSON

DATE: 3/28

ADDRESS: HELENA

PHONE: 449-5500

REPRESENTING WHOM? MONT. TECHNICAL COUNCIL

APPEARING ON WHICH PROPOSAL: HB-81

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: 1) THE 20 ACRES SHOULD REMAIN

2) PAY DEPT. FOR WORK DEPT. DOES

3) EIS STATEMENTS SHOULD NOT BE DONE

~~IN THE~~ ~~PROPER~~ IN THE PROPER MANNER

4) MAKES THE LOCAL GOV. ~~LOCAL~~ RESPONSIBLE

FOR THEIR ACTION -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: ED CASNE DATE: 3/22/79

ADDRESS: DHES Board of Health Building

PHONE: 449-3946

REPRESENTING WHOM? DHES

APPEARING ON WHICH PROPOSAL: HB 81

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? ☒ \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

Little Hotel

DATE:

3/22/79

ADDRESS:

8906 Douglas Circle

PHONE:

458-9588

REPRESENTING WHOM?

League of Women Voters

APPEARING ON WHICH PROPOSAL:

81

DO YOU:

SUPPORT?

☒

AMEND?

OPPOSE?

COMMENTS:

testimony incl.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Stan Bradshaw DATE: \_\_\_\_\_

ADDRESS: 1400 11th Ave.

PHONE: ~~1400 11th Ave~~ 449-2630

REPRESENTING WHOM? DHES

APPEARING ON WHICH PROPOSAL: H.B. 81

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Tom Dawson DATE: 22/1/71

ADDRESS: 201 So. LC Blvd

PHONE: 442-6230

REPRESENTING WHOM? L+C G. Webb

APPEARING ON WHICH PROPOSAL: AB 81

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? ☒ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

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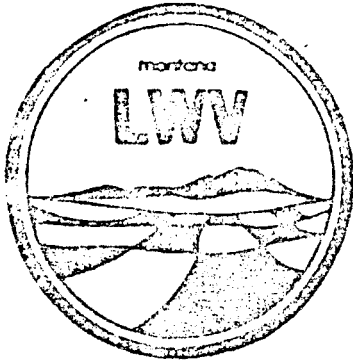
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



HB 879

March 17, 1979

I am Bette Hostad, representing the League of Women Voters of Montana. The League has an on going commitment to good subdivision legislation. We have worked in the past and are still working this session for strong subdivision laws.

While HB 879 does not on the whole address the loopholes in the present law it does, however, affect the public interest criteria for certain subdivisions. This bill would exempt minor subdivisions from the public interest criteria(p. 10, 11. 12-14). These eight criteria are the public's insurance that in finding a subdivision in the public interest at least specific concerns are addressed by the governing body. The effect of 5 minor subdivisions is the same as one major subdivision in these eight areas of concern. To exempt minor subdivisions from these eight criteria is to do a disservice to good planning.

We are opposed to HB 879 and hope this committee will give this bill a do not pass.

Thank you.

## ARTICLE XI

### LOCAL GOVERNMENT

Section 1. Definition. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

#### COMMENTS

The present Montana Constitution creates considerable confusion in its scattergun use of terminology concerning local government. Such imprecise constitutional terminology has resulted in confusion and court litigation. In an attempt to avoid this problem, Section 1 adopts "local government units" as a generic term and specifies that counties and incorporated cities and towns fall within its meaning. However, the section specifically authorizes the legislature to create other local government units, thus providing freedom for the legislature to meet future needs that cannot be met by the traditional city or county structures. Certain special districts, for example, might be appropriately designated as "local government units" by the legislature.

The committee believes that Section 1 will discourage litigation and avoid confusion concerning the rest of the Local Government Article; it also recommends that terminology corresponding to that used in this section be incorporated in other articles of the new constitution when local government units are discussed.

Section 2. Counties. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

#### COMMENTS

Section 2, admittedly controversial, provides that the present county boundaries and county seats will be retained unless changed by a majority of those voting on the question in each county approves. Thus, a large county could not "swallow" a small county without the latter's permission.

The proposed section combines sections 1, 2 and 8 of Article XVI of the present Constitution. Other than deletion of statutory material, the basic intent of those sections is retained--with one exception. The present language (sections 2 and 8) requires approval of a majority of the qualified electors of the county affected before a county boundary can be changed or a county seat transferred; the proposed Section 2 would require approval of a majority of those voting on the question.

The difference can be quickly seen. Under the present provision, for example, if a county to be consolidated had 5,000 "qualified electors" but only 3,000 of them vote on the consolidation question, a majority of the 5,000 (or 2,501), rather than a majority of the 3,000 (or 1,501), apparently would have to favor consolidation to meet the constitutional restriction.

## County Seats

Constitutional provisions protecting county seats from being changed by legislative action are common among the 50 states. Section 2 simply substitutes a concise statement of the protection now found in Article XVI, Section 2 and Article V, Section 26. The present Constitution's requirement that county offices must be kept at the county seat (Article XIX, Section 6) was deleted from the proposal. Such a requirement might prevent counties from sharing officers and setting up branch county offices. To the extent that such a requirement is needed, it can be provided for by legislation.

Section 3. Forms of government. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question. (2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

## COMMENTS

Section 3 aims at allowing the legislature to provide the broadest possible range of forms of local government for counties, cities, towns and other local government units, including consolidated forms. Virtually every national and state authority on local government urges such flexibility; indeed, the Montana Constitution (Article XVI, Section 7) already gives the legislature broad powers to provide "any plan, kind, manner or form" of local government.

The intent of Section 3 is to offer just as broad freedom to the legislature to provide various forms of local government as is allowed under the present Section 7. Because of that intent, the committee considered retaining the present language of Section 7; this idea eventually was rejected because the present wording is unclear and confusing. It is hoped that Section 3's straightforward direction to the legislature to provide optional and alternative forms of government will result in a greatly expanded offering to the local government units in Montana.

The possibilities that could be provided under Section 3 are great. At present, only three forms of city government (mayor-council, commission, and commission-manager); two forms of county government (the traditional form and county manager), and one general form of city-county consolidation are authorized by statute in Montana. Other states offer considerably more alternatives. New Jersey, for example, employs what has been called the "cafeteria-style" form of local government options, under which a local unit

However, Section 4 is not intended as a broad grant of self government powers; such powers are provided for in Section 6 only upon an affirmative vote of the residents of a local government unit.

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

#### COMMENTS

At present in Montana, only the legislature can draw up charters; local residents are only given the authority to adopt or reject the legislature's work.

Section 3 reaffirms the authorization for the legislature to continue its practice of providing alternative forms of government for local units, subject to local voter approval. Section 5 adds a new feature: authorization for the people of a locality to frame and adopt their own form of government through a "self-government charter." Such local charter-writing power now is authorized in about half of the state constitutions.

Section 5 directs the legislature to provide procedures and limitations under which local government units--or combinations of those units (for example, a county and the cities and towns within the county)--can design their own form of government. Two major safeguards are built into the plan:

(1) The legislature must set limits and procedures under which charters may be drafted. For example, the legislature might determine that only those units or combination of units with more than 10,000 population should have charter-writing authority. Or the legislature could specify the method of selection and the number of members of a local charter-drafting commission. The committee considered including such provisions within Section 5, as some state constitutions do, but rejected the idea on the basis that such provisions should have the flexibility of statutory law.

(2) No charter or charter amendment could become effective until it is approved by a majority of the local voters.

The section also limits the power of the legislature over locally written charters in two ways:

(1) Although it allows the legislature to set procedures and limitations concerning the drafting of a local charter, Section 5 specifically denies both the state legislature and local legislative bodies (such as city councils) the power to veto a locally approved charter. The committee believes that



March 21, 1979

MEMORANDUM

TO: Members of the Senate Local Government Committee

FROM: R. Byron Roberts, Assistant Administrator  
DCA/Planning Division

RE: H.B. 704 (amendments to transit subsidy act)

I have been asked by Mr. Dave Hunter of the City of Helena to provide a clarification of the expenditure limitations contained in the transit subsidy act.

The law states that the department shall allocate each year ( $\frac{1}{2}$ ) of the funds appropriated for the purposes of this section to the cities of the state which operate public bus systems.

The appropriation under this act is \$75,000 annually to be divided among cities operating transit systems. For each of the past three years the department has apportioned the full \$75,000 among those cities. The department has not and cannot spend more than has been appropriated by the legislature under this section.

The appropriation for the upcoming biennium remains the same as it has been for the past two bienniums. Under this act \$150,000 is provided for each year of the biennium. Of this amount \$75,000 is apportioned to counties and \$75,000 is apportioned to cities operating transit systems.

The act states that "a city may not receive more than 50% of any year's operating deficit." This provision imposed an upper limit on the amount of deficit that can be reimbursed to a city but this is only a ceiling. The \$75,000 available to cities, when divided among several communities, offsets only a very small percentage of local operating deficits.

Proposed amendments to this act contained in H.B. 704 will not increase or decrease the amount of gas tax monies expended. This is governed by a fixed appropriation.

State of Montana  
BUDGET JUSTIFICATION

Detail Form C  
Expenditure Category Name  
Gr

Code  
6505 page 15 of 6

Agency  
DCA  
Program  
Planning

Summary - General Fund		(OBPP Use Only)	1979 Authorized	1980	1981
Earmarked Revenue Fund			458,835	475,000	475,000
Federal and Private Revenue Fund			280,000	310,000	310,000
Other Funds					
TOTAL			738,835	785,000	785,000
Category of Fed. Domestic Assistance No.	State Statute Number	Brief Description	GF ER FPR Other Total	GF ER FPR Other Total	GF ER FPR Other Total
	1975	Sec. 11-4513 Transit subsidy to cities Chapter 515 Session Laws	75,000	75,000	75,000
	82-3710 RCM 1949	Coal severance tax Funds for land planning	383,835	400,000	400,000
14-203		701 Local Planning Assistance	110,000	140,000	140,000
20.500		UMTA 16(b) (2) - capital assistance to organizations serving the elderly and handicapped	150,000	170,000	170,000
20,505		UMTA - State management assistance	20,000		
			20,000		

Comments of the Department of Health and Environmental Sciences

Subdivision Bureau

Over the past year, the Department has submitted a number of suggestions to the Interim Subcommittee on Subdivision Laws. The Bill which the Subcommittee has proposed for the Amendment of the Sanitation in Subdivisions Act, HB 81, has incorporated, in part, a number of these suggestions.

Instead of citing all of the changes which we support, we will discuss only the major changes.

"Subdivision Certificates of Survey"

Throughout the Act there is reference to "subdivision certificate of survey" in addition to "plat". This is done to make the Act's reference to the documents which we review consistent with already existing Sections which recognize that our authority over divisions which may be recorded on certificates of survey. The Department has had review authority over a number of such divisions since 1975. The word "subdivision" was added to "certificate of survey" to make it clear that our review authority is limited only to those certificates of survey which define a subdivision and not to all certificates of survey. For instance, we would not want to review certificates of survey which are merely retracements of existing surveys. The proposed amendment recognizes that situation as beyond the authority of the Department's review.

Administrative Enforcement (MCA 76-4-108)

The Department has recommended changes in the Act's enforcement provisions. First, the Department recommended changes in the administrative remedy available to it. As a matter of practice, administrative remedies are generally designed to provide a remedy which is easily invoked and whose sanctions are merely corrective, and not punitive. They are less drastic and less onerous than remedies which require application to district court either for penalties or injunction. The present administrative remedy, requires a scheduling, at the outset, of a fullblown contested case hearing prior to the issuance of any order. The problem with this procedure is that, for minor violations which might readily be cured, the scale of the enforcement is so costly and time consuming as to be prohibitive. Effectively, the present remedy, far from being one which allows for relatively expeditious remedy of minor violations, it creates a mechanism which makes pursuit of minor violations so cumbersome and time consuming as to be prohibitive.

In response to this problem, the Subcommittee has proposed an amendment which allows the Department to describe the alleged violation with which it is concerned and to prescribe the corrective action which needs

to be taken. If the alleged violator felt the Department's position is incorrect he may request a hearing before the Board of Health and Environmental Sciences to plead his case. Thus, the violator's procedural rights are fully protected, should he wish to contest the Department's actions, but the way is left open for a much more expeditious resolution of the problem should the alleged violator wish to merely correct the problem.

This amendment is modeled after a similar provision in the Montana Water Pollution Control Act which has been used with considerable success in dealing with widespread minor violations. The use of this kind of provision should scale down the cost of both enforcement and compliance to a level consistent with the severity of the violation.

#### Penalties (MCA 76-4-108)

The second major change which the Department has proposed is in the area of penalties. Currently, the Act indicates that any body violating the Act may be guilty of an offense and subject to a fine. Fines can only be sought by county attorneys. The difficulty with this particular penalty section is that, very often, county attorneys, because of their diverse and sometimes heavy work loads, place a low priority on violations of the Sanitation in Subdivisions Act. Also, very often, if a violator has succeeded in getting the clerk and recorder to file a certificate of survey improperly the clerk and recorder's action, however unwittingly, is also unlawful. As a result it makes it very difficult for a county attorney's office to go after criminal penalties. Also, people are loathe to attach the stigma of criminality to violations of the Sanitation in Subdivisions Act.

Accordingly, the Subcommittee, at the Department's urging, proposes a civil penalty section, again modeled largely upon the Clean Air Act and the Water Pollution Control Act. The purpose of the Civil Penalty Section is to provide some positive inducement to those who may consider violating the Acts. Right now, there is little danger of suffering any kind of monetary penalty. The only action which the Department is authorized to bring at this time is an action for injunctive relief compelling compliance with the law. Thus, if a person wishes to violate the Act at this time, he may do so with the knowledge that probably the worse sanction he faces is an action for injunctive relief telling him to comply with the law. Thus, upon receiving a complaint for injunctive relief he need merely come in and agree to comply regardless of enormity of his violation. Thus, the Department must spend considerable time and money in preparation of a suit against a violator, and the violator has no inducement to comply with the law since, the only penalty, should he be caught, would be compliance with the law. Accordingly, the Department supports the amendment for a civil penalty for which the Department could seek an action. Under the civil penalty section the Department could, in addition to seeking injunctive relief to compel compliance with the law, also ask that the court levy a civil penalty. This provides

some deterrent to the would-be violator who would otherwise want to gamble on getting caught, without adding the stigma of criminality to the enforcement act itself. It would be an alternative to the criminal penalty.

Finally, the Department wishes to express its opposition to the proposed language on page 8, lines 7-12. This section proposes to award attorneys fees to anyone who prevails in an action for injunctive relief. Currently, there is nothing in Sanitation in Subdivision Act or anywhere else in the MCA which authorizes the award of attorneys fees. Logically, if a party brings an action in good faith and loses, he should not be subject to attorneys fees. This sanction makes it difficult, if not impossible, for a bureau chief to plan a budget, since it is impossible to absolutely predict such an award. Thus, it serves as a deterrent to the vigorous enforcement which is lacking in the Act now. Accordingly, while it might be argued that the Department would be deterred from the indiscriminant filing of suits by this section, the Department's history of litigation does not support any suggestion. By the very nature of its limited staff and heavy work load, the Department must choose its cases carefully. Thus, a positive inducement to careful and well-considered filing of cases already exists. Accordingly, the Department asks that this section be stricken.

#### Review Authority to Local Governments (MCA 76-4-128)

Section 12 has completely reorganized the Department's delegation of review authority to local governments. Those subdivisions which the local governing body can review have been expanded to include not only subdivisions containing five or fewer parcels with individual water and sewer, but also subdivisions containing parcels ten acres or larger in size when each parcel has individual water and sewer.

Subsection 2 addresses the influence of the Montana Environmental Policy Act, with its requirements of preliminary environmental review or environmental impact statements, upon the subdivision review process. If a subdivision is going to include ten or more parcels the local governing body will notify the Department in case there is the necessity of doing an environmental impact statement. Subsection 3 recognizes that if the local governing body does not take complete review authority over from the Department then it must advise the Department of its recommendation for approval or disapproval. This provision is largely the same as what is in the existing law. Subsection 4 allows the governing body the option of taking full review authority for the subdivisions described in this section. It requires, however, that if the local governing body assumes that authority that it would also accept legal responsibility for the decisions that it makes under that authority.

#### Fees for the Review of Subdivisions in Master-Plan Areas

The House has deleted provisions page 6, line 21, which refer to the distribution of lot fees for subdivisions in master-planned areas. This section has generally been recognized as conferring the Department

with the authority to collect lot fees in master-planned areas. The Department has proposed an amendment for page 5, line 21 which would reinstate that authority.

Master-plan subdivisions receive much the same review as any other subdivision of its water, sewer, and solid waste facilities. In fact, the Department, even in master-plan subdivisions, is still obligated to conduct this review. The primary difference between the Department's review of master-plan subdivisions and other subdivisions is that, in master-plan subdivisions, the Department conducts its review after the plat has been filed.

Thus, to exempt certain people from payment of fees for review, and to require payment of others where the review is largely the same raises serious questions of equal protection and fairness under the law. In master-plan subdivisions, the taxpayer would be subsidizing the developers review. Thus, the Department urges that the Senate reinstate its authority to collect review fees for master-plan subdivisions.

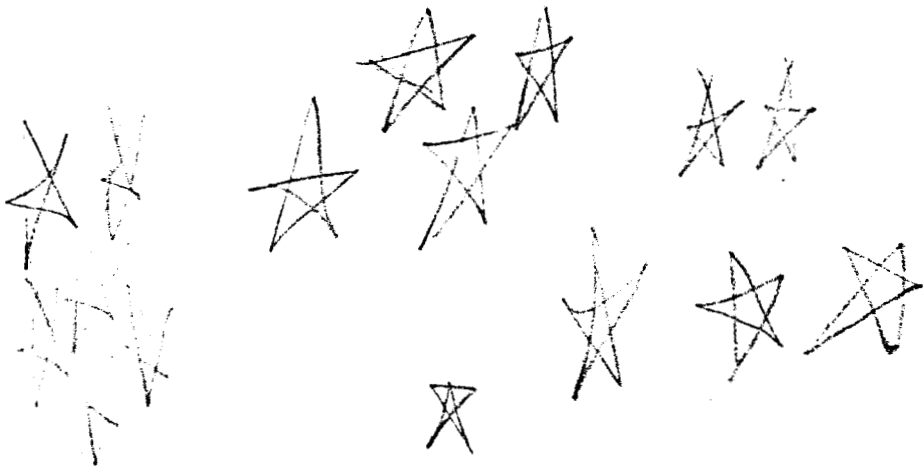
These comments encompass the major changes proposed by the Interim Subcommittee on Subdivisions. The Department would be most willing to answer any other enquiries which the Committee might have.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES' PROPOSED AMENDMENTS  
TO HB 81

Page 8, lines 7 through 12: strike all but the first word  
of line 7, and all of lines 8 through 12.

Page 5, line 21: Add, after the word "subdivisions",  
"including Master-Planned Subdivisions."

Page 7, line 25: strike "willfully"



Amendments to a Bill for an Act entitled: "An Act to Amend Title 76, Chapter 4, to provide for expanded local government review of sanitary requirements for subdivisions, modifying definition of a subdivision, providing new administrative and judicial remedies." Amending 76-4-102, 103, 104, 105, 108, 109, 121, 122, 123, 124, and 128, MCA.

The Amendments are as follows: Insert the word treatment before the word "disposal" in every case where the term disposal of sewage or sewage disposal system is used.

Line 12, page 3, 76-4-104, subsection (1): Insert the word minimum in the first sentence on line 13 between "of" and "sanitary."

Line 2, page 4: Delete subsection ~~(a)~~<sup>(b)</sup> and substitute the following: (a) The department shall delegate to a local government the authority to review a subdivision under this part when the subdivision will not be serviced by public water and public sewage treatment facilities and the local government has qualified personnel, as approved by the department, to adequately determine whether the water supply, sewage treatment, and solid waste disposal facilities proposed for the subdivision meet the standards prescribed by the department.

Line 1, page 5: Insert and other soil analyses after "testing" - delete ~~and-required-percolation-testing~~

Line 14, page 13, 76-4-128: Delete subsection ~~(a)~~<sup>(b)</sup> and substitute the following: (a) The department shall delegate to a local government the authority to review a subdivision under this part when the subdivision will not be serviced by public water and public sewage treatment facilities and the local government has qualified personnel, as approved by the department, to adequately determine whether the water supply, sewage treatment, and solid waste disposal facilities proposed for the subdivision meet the standards prescribed by the department.

Line 3, page 14: Delete (b) from (1)(b)

Line 4, page 14: Delete ~~parcels~~, insert acres; delete ~~nine-(9)~~, insert fifty (50)

Line 7, page 14: Delete the word ~~may~~; delete ~~require~~ and insert requires

Line 23, page 14: Delete ~~the-proposed-subdivisions~~; insert proposed subdivisions of five (5) or fewer parcels

Line 10, page 15: <sup>Delete</sup> Change subsection (b) ~~to (d)~~, insert the following: (b) When local governments exercise the delegated authority to conduct review pursuant to subsection (1) of this section, but do not choose to make the final decision on proposed subdivisions pursuant to subsection (4) of this section, the department shall transfer fees of not less than ten dollars (\$10) per parcel and according to the adopted fee schedule as provided for in 76-4-105 (2) of this act, to the local governing body for its review of those subdivisions. (c) When local governments conduct any other review pursuant to subsection (1) of this section, the department shall transfer fees to the local government according to the fee schedule provided for in 76-4-105(2) of this act, for its review ~~of that review~~.

Amendments to House Bill 81

1. page 2, lines 21 and 22

Following: "parcels"

Reinstate: all the stricken material

2. page 11, line 4

Following: "necessary."

Strike: "."

Insert: "and all fees collected pursuant to 76-4-105  
shall be transferred to the local government."

3. page 14, lines 8 through 18

Strike: subsection 2 in its entirety

4. page 15, line 8

Following: "decision"

Insert: "In any action filed against a local government,  
for their disapproval of a subdivision the prevailing  
party shall be awarded reasonable attorney fees."

HB 81  
3/22/79

I am Bette Hostal, representing the League of Women Voters of Montana. The League of Women Voters supports HB 81 under its Land Use position. Our position reads that in land use planning we should leave local government authority for innovative land use planning at the local level with state assistance. The position further states that there should be adequate incentives and penalties as tools for good planning. Local control is desirable for land use issues of local concern. The State Legislature should encourage maximum local decision making by means such as offering technical assistance, data sharing and granting the authority of local government to implement innovative land use planning.

This bill encourages the local review of sanitation requirements for certain subdivisions(sec 76-4-128). Local government is most affected and most concerned with subdivision growth. This bill provides for departmental review, local review with departmental decisions, or local review with local decision making. Along with local decision making, however, comes the responsibility for those decisions. The League of Women Voters supports such accountability. This bill sets out procedures and penalties for violations and we support this also.

More local government control will aid better assessment by the counties of growth and subdivision planning.

We urge HB 81 receive a due pass from this committee.

