

MINUTES OF LOCAL GOVERNMENT COMMITTEE MEETING HELD
THURSDAY, JANUARY 8, 1981, 12:30 P.M.

Chairman Bertelsen called the meeting to order.

All committee members were present.

The Chairman stated House Bill 28 would be heard.

HB 28: Sponsor Kerry Keyser was asked to brief committee members. The purpose of the bill is to clarify the existing law by reiterating that county powers relating to building codes are the same as those exercised by a municipality. The Department of Administration would no longer have the authority to modify or require certification of local building codes, but a local government must adopt, as a minimum standard, those codes adopted by the state. The local government may set fees for building code inspections.

Inspection fees and hiring of the inspector would be taken care of by the local district. State standards would not allow any city or county to go below set standards. Inspection fees are relatively high and one of the things builders are against, as they are not standard. Rep. Keyser said he does not object to the bill, only to one little clause. Fees will be set by the local government, but will be sent to the Department of Administration. The State will have a copy of the plan that the county has adopted. We are taking the fees and all aspects back to the local level for those districts that have adopted a plan of their own. If the districts do not adopt a plan, they will revert back under state supervision. With this briefing, Rep. Keyser closed.

Chairman Bertelsen then called on proponents for their views.

PROPOSERS: Gordon Sheffield, representing the City of Ennis, said he had experienced too many delays in processing. He said they have experienced delays of as much as six months. The fee (check) would be cashed and then nothing would be heard for an indefinite time, which caused many problems. He definitely supports an amendment, giving control back to the local government.

Ed Miller, also from Ennis, said he'd recently built a house and the inspection fee was \$280, but just before his was built, 20 other homes just like it were charged only a \$50 inspection fee. He doesn't want to get ripped off and wants set fees. Definitely supports the amended bill.

H. S. Hanson representing the Montana Technical Council, submitted written information, attached to the minutes. His group recommends: 1. Need only one Code - which allows standardization of requirements which benefit all. 2. Suggests using Building Codes Advisory Council for code changes. 3. No need for paragraph 2 on page 8, lines 15 thru 18. He supports the bill if amended.

Jim Nugent, representing the City of Missoula, left prepared testimony, (attached), stating he definitely supports HB 28.

Doris Shepherd, representing the Montana Association of Counties, supports the bill, if amended.

W. James Kembel, Administrator, Building Codes Division, is in support of the bill, provided the attached amendment is incorporated.

There being no further proponents, Chairman Bertelsen called for testimony from opponents.

OPPONENTS: Ed Sheehy, Jr., of Helena, representing the Montana Manufactured Housing Association, said their concerns could be taken care of by an amendment. Codes for mobile homes are currently covered by federal standards only. His concern was with modular homes which are covered by state building codes. Because of this, there could be problems should any county or municipality adopt a more stringent standard. Various standards could not be met in different counties, so all counties should have the same standards. Modular housing is becoming very popular and we should not do anything to cause these people trouble. Mr. Sheehy approves the bill, provided it is amended.

CLOSING by Rep. Keyser: Mr. Keyser said this is a good bill as it is a vehicle which will bring back power to local government. He said it is not an unreasonable bill and he strongly urges committee members to support it.

QUESTION AND ANSWER PERIOD: A question and answer period followed. Rep. Dussault asked Mr. Keyser if he would be willing to accept a minimum provision that would state that the State Department would have the authority to certify that local building codes are in compliance with the State law? Mr. Keyser said if the counties do not adopt minimum codes, the State would then step in and see that their codes are followed. Rep. Dussault feels there should be a time limit so builders will not be unduly delayed.

The "4 and 1/2 mile limit" was discussed. It was agreed if it was enforceable it would be their job to do so. If the city adopts standards and the county adopts standards, the city's limit would end at the "4 and 1/2 mile" boundary.

Question: When land is annexed by the city, which was previously in the county, who controls the codes? Answer: Any building built after annexation by a city is under the city's standards.

Rep. Vinger commented we'd get quicker inspections if the fee is not paid prior to requesting an inspection.

Since there were no further questions, the following motion was made by Rep. Sales: I move that HB 28 DO PASS. Motion was seconded by Rep. Switzer.

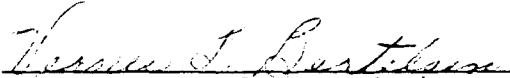
A substitute motion was then made by Rep. Dussault: She moved that the Department's amendment be adopted, as this amendment clarifies jurisdiction. Members voted "Aye", with the exception of Reps. Hurwitz, Sales, Switzer and Vinger, who voted "No".

After further discussion, the motion was made that HB 28 DO PASS AS AMENDED. Motion carried unanimously.

The Chairman said annexation bills have been tentatively set for hearing on January 24.

He also said there would be no committee meeting on Saturday, January 10, 1981.

The meeting adjourned at 2:00 p.m.


Verner Bertelsen, Chairman
Local Government Committee

hbm

TO: The Chairman and Members of the House Local Government Committee

FROM: Lee Heiman, Committee Counsel

RE: Summary of HB 28

DATE: January 8, 1981

This bill clarifies the existing law by reiterating that county powers relating to building codes are the same as those exercised by a municipality. The department of administration would no longer have the authority to modify or require certification of local building codes, but a local government must adopt, as a minimum standard, those codes adopted by the state. The local government may set fees for building code inspections.

HOUSE BILL 28

Page 8, Lines 15 through 19, Paragraph (2)

MODIFY TO READ AS FOLLOWS:

- (2) A municipal or county building code may include only codes adopted by the Department. A municipality or county may submit proposed code changes to the Building Codes Division for review and recommendations by the Building Codes Advisory Council.

OK Proposed Amendments to H.B. 28

1. Page 9, line 3.

Following: "department".

Insert: "If the adopted building code and plan for enforcement are not filed with the department by the municipality or county, the department shall enforce the state building code within the municipality's or county's jurisdictional area as provided in 50-60-205."

Statement of W. James Kembel, Administrator, Building Codes
Division in support of attached proposed amendment to H.B. 28

The amendment is offered by the Department of Administration in order to assure that local governments file the necessary documents so that the department will know what areas it is responsible for code enforcement in and in order to avoid jurisdictional disputes between the state and local governments. Otherwise, the state, local governments, and more importantly the public will be confused as to what governmental agency has proper jurisdiction. This will also avoid liability questions (i.e., what governmental entity is liable) for negligent or improper code enforcement.



W. (JAMES KEMBEL

Bridge contractor held negligently liable for damages in deaths of two men in automobile crash

Bridge contractor, liability for fatal automobile crash. *Taylor Bridgebuilders, Inc.*, 269 S.E.2d 337 (Sup.Ct.S.C. 1980).

The Supreme Court of South Carolina has affirmed a lower court ruling awarding \$72,000 to the estates of two men who were killed when their car drove off the end of an approach road and struck the foundation wall of an uncompleted bridge.

Bridgebuilders, Inc., was hired by the South Carolina State Highway Department to erect a new bridge and approach roadways as a replacement for a bridge that had a lower traffic-carrying capacity.

Bridgebuilders began its work and constructed concrete foundations for the new bridge. In an unusual sequence of construction, however, before the bridge itself was erected, the contractor completed the approach roadways down to the curbing, sidewalks, and even the painted lane markings.

An extensive manual of highway standards stipulating the warning devices to be used by contractors engaged in highway construction had been adopted as law by South Carolina and had been made a part of the bridge contract. Despite this, Bridgebuilders claimed that the bridge had not been completed solely by means of movable barricades and two signs reading "Road Closed" and "Bridge Out."

Russell Taylor and Edgar Elvington had been drinking and then drove down the road that led to the uncompleted bridge. They went past the barricades, which had not been placed to impede their travel, and continued along the approach road at more than 70 miles per hour. Upon realizing the bridge was out, they attempted to brake the car, skidding 168 feet before sailing off the end of the road to crash 38 feet farther into the concrete abutment foundation.

The estates of the two dead men sued Bridgebuilders and were awarded a total of \$72,000 actual damages. The contractor appealed the award, asserting that it was contrary to law. The relevant statute says that contributory negligence is not a bar to recovery in a motor vehicle accident action except if the suing parties contributed more than half the cause of the accident. According to Bridgebuilders, Taylor and Elvington's heavy drinking and reckless driving more than offset the contractor's own failure to provide adequate warning and protective devices. The state's high court disagreed, noting that the contractor had been absent from the site for two weeks prior to the accident and that no attempt had been made to maintain the barricades in position.

The defense of contributory negligence, against the injured person's suit, will not defeat a claim where the contractor's fault was excessive and unwarranted. — MSS

City of Baton Rouge held liable for workers' deaths in collapse of building erected without examination of plans

Building collapse, liability of city. *Stewart v. Schmieder*, 386 So.2d 1351 (Sup.Ct.La.1980).

The Supreme Court of Louisiana has ruled that the failure of the City of Baton Rouge's building inspector to examine a project's plans and specifications before issuing a building permit made the city liable for deaths and injuries which occurred when the building collapsed during construction.

Owner Don Schmieder hired Architect Roy Rackley to design the building, which was to be leased to an engineering firm. On November 26, 1973, Rackley submitted a set of incomplete plans to the city, along with a building permit application, certifying that the plans complied with the building code. He also promised to inspect the construction work, and, upon completion, to certify that the building had been built in accordance with the plans and specifications.

Initially the city refused to issue the permit, saying that more complete plans were required, but on January 25, 1974, it issued a permit marked "shell only." Rackley never completed the plans and specifications.

Although Schmieder never asked him to make inspections, the architect visited the building site during construction. He wrote two letters to Schmieder pointing out problems with the construction, sending copies of the letters to the city. The city wrote back to Rackley, stating that a certificate of occupancy would not be issued until the problems had been corrected. On September 25, 1974, the architect sent a letter to the city asserting that his recommendations had been followed and the problems had been solved.

Five days later the building collapsed, killing three workers and injuring two others. It was subsequently determined that the collapse was the result of a failure in the concrete roof structure, and was caused by Rackley's faulty roof design.

The injured workers and the estates of the dead ones sued Rackley and the city. The trial court found both responsible for the accident and the Court of Appeal upheld that judgment.

Acting on the city's further appeal, the state's high court ruled that the city's building official had failed to carry out his duty to require detailed plans and specifications before issuing a building permit and to examine those plans to determine if they were safe. Hence, the city was responsible for the deaths and injuries caused by the building's collapse.

Municipalities beware: A city is responsible for its inspector's improper action. Building permits are for the public's protection, and the failure to properly enforce the requirements relating to them may result in the city's liability. — MSS

HOUSE

COMMITTEE:

U L

Date Nov. 2, 1931

SPONSOR

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

The City of Pasadena supports the proposed amendment to section 50-60-210, M.C.H. set forth within HB 28 which would allow a municipality or county to adopt building regulations that are more stringent than those of the state building code.

This provision would allow local government officials the flexibility to adopt building regulations that are more stringent than those of the state building code whenever they deem such regulations to be desirable or necessary to address particular problems within their respective jurisdiction.

NAME HS Hanson BILL No. HB-28
ADDRESS HECENA DATE 1/8/81
WHOM DO YOU REPRESENT MONT. TECHNICAL COUNCIL
SUPPORT ☒ OPPOSE ☐ AMEND ☒

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. NEED ONLY ONE CODE. - ALLOWS STANDARDIZATION OF REQUIREMENTS WHICH BENEFITS ALL.
2. SUGGEST USING BUILDING CODES ADVISORY COUNCIL FOR CODE CHANGES.
3. NO NEED FOR PARA (2) ON PAGE 8 LINES 15 THRU 18

NAME _____ BILL No. _____
ADDRESS _____ DATE _____
WHOM DO YOU REPRESENT _____
SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Prepared Statement 10-2

STANDING COMMITTEE REPORT

January 9, 1961

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 28

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY AND EXPAND THE AUTHORITY OF MUNICIPALITIES AND COUNTIES IN ADOPTING AND ENFORCING LOCAL BUILDING CODES AND ELIMINATING THE CERTIFICATION REQUIREMENT FOR THE ADOPTION OF LOCAL CODES; AMENDING SECTIONS 50-60-101, 50-60-104, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-301, 50-60-302, 50-60-303, AND 50-60-404, MCA."

Respectfully report as follows: That HOUSE Bill No. 28

1. Amend Page 9, line 3:

Following: "department"

Insert: "If the adopted building code and plan for enforcement are not filed with the department by the municipality or county, the department shall enforce the state building code within the municipality's or county's jurisdictional area as provided in 50-60-205."

AS AMENDED

DO PASS

Page 2 - Amendments to HB 28 (continued)

*50-60-102. Applicability. (1) Outside municipalities and their jurisdictional area, as defined by 50-60-101(9), parts 1 through 4 apply only to single family dwellings and to public places, as defined in 50-60-101(11).

Insert: include all the remainder of 50-60-102 as shown in MCA.
Renumber: subsequent sections.

4. Page 8, line 16.

Following: "(2)"

Strike: "As a minimum standard, a"

Following: "A"

Insert: "A"

5. Page 8, line 17.

Following: "may"

Strike: "must"

Insert: "May"

Following: "only"

Insert: "only"

6. Page 9, line 5.

Following: "IP"

Strike: "THE ADOPTED"

Insert: "A"

AS AMENDED
DO PASS

STANDING COMMITTEE REPORT

JANUARY 22,

1921

SPEAKER

MR.

LOCAL GOVERNMENT

We, your committee on

HOUSE

28

having had under consideration Bill No.

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY AND EXPAND THE AUTHORITY OF MUNICIPALITIES AND COUNTIES IN ADOPTING AND ENFORCING LOCAL BUILDING CODES AND ELIMINATING THE CERTIFICATION REQUIREMENT FOR THE ADOPTION OF LOCAL CODES: AMENDING SECTIONS 50-60-101, 50-60-104, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-301, 50-60-302, 50-60-303, AND 50-60-404, MCA."

HOUSE

28

Respectfully report as follows: That Bill No.

(second reading) be amended as follows:

1. Title, line 8.

Following: "50-60-101,"

Insert: "50-60-102,"

2. Page 4, line 13.

Following: "amendments."

Strike: " " "

3. Page 4.

Following: line 13

Insert: "(15) "County jurisdictional area" means that area in a county outside of a municipality or municipal jurisdictional area and includes only single family dwellings and public places as provided in 50-60-102."

Following: above insertion

Insert: "'Section 2. Section 50-60-102, MCA, is amended to read:

DORRIS